

Claim declined due to pre-existing condition – Policy sold on non-advice basis in lower income market – Understanding and conclusion of contract questioned - Fairness

Background:

1. The complainant applied for the policy on 30.8.2018. The policy commenced on 25.9.2018.
2. One of the insured lives passed away on 5.9.2019.
3. Santam Structured Life (SSL) declined the claim for the reason that the cause of death was related to a pre-existing medical condition from which the deceased suffered.
4. SSL relied in the first instance, on the 2nd page of the application form which stated:
“Pre-existing medical conditions are not covered.” ,
5. Secondly, SSL relied on the Schedule, which stated:
“SPECIFIC EXCLUSIONS (Please note these must be read together with the Exclusions contained in the Master Agreement terms and conditions which shall also apply):
The insurer will not pay out a claim if the following circumstances exist:
...
*d. You or an Insured Person’s death is caused by a **pre-existing medical condition** (this is a condition you had or have at the time You accepted this cover...”*
6. The Master Agreement, defined ‘Pre-existing Condition’ as:
“means any medical condition whether affecting your mental, physical or emotional well-being which existed prior to the original Inception (start of cover) or reinstatement or reissue date of your policy for which you have had treatment or should have sought medical help given your symptoms.”
7. The Master Agreement stated:
“Section 2: Insurance Policy General Terms – to be read with the insurance provisions in the Schedule.
A. **General Exclusions** (means that the following are NOT covered under this Agreement):
 1. **The insurer will NOT provide any Policy Benefits in the event that the Insurable Event is due directly or indirectly, to:**
 - a. **Pre-existing Medical Conditions, including pre-existing Injury, Illness, Infirmary or congenital disorder (whether physical and/or mental).”**
8. The complainant avered that the exclusion was not explained to her at application stage. She stated in the original complaint:

“...when the time I joined the Death cover they didn’t explained to me what the Death cover terms and conditions, that I must not joining someone who got chronic diseases...”

9. SSL confirmed that the policy is sold on a non-advice basis. The “agent” uses a script and provides information, not advice.
10. SSL was of the view that the onus is on the policyholders to familiarise themselves with the provisions and in doing so, be aware of the relevant exclusion.
11. SSL further relied on the content of an upgrade call, wherein SSL was of the view that the policyholder was made aware of the pre-existing exclusion clause.

Provisional Determination:

12. This matter was discussed at a meeting of the adjudicative staff on 17.1.2020 under the chairmanship of the Ombudsman, Judge RP McLaren.
13. The meeting:
 - Took cognisance of the fact that these policies are sold in the lower income market;
 - Found that the script contains no information in relation to the pre-existing exclusion clause and as such accepted that no such information would have been brought to the attention of the policyholder at application stage;
 - Having considered the application form together with the script, was of the view that the policy may be seen as and assumed to be a funeral policy;
 - On such assumption, held that the application of a pre-existing exclusion clause for the duration of the policy term, was unusual;
 - Held that in such circumstances, SSL’s reliance on the policyholder familiarising himself/herself with the provisions of the policy, was not reasonable;
14. The meeting, after listening to the upgrade call, found:
 - That the purpose of the call is to sell additional cover, not to make the policyholder aware of the pre-existing exclusion clause;
 - That the call had been conducted in an underhand manner;
 - That the complainant / policyholder did not appear to understand that an additional premium was to be paid.
 - That, whilst the pre-existing exclusion clause was mentioned, it was not explained;
15. For the reasons set out above and considering the complainant’s contention in point 8 above, the meeting was of the view that there had not been a meeting of the minds at application stage and as such no consensus regarding the terms of the policy, had been reached. The meeting unanimously agreed that the contract was to be considered as void and that all premiums contributed, were to be refunded.

16. SSL disputed the provisional determination. It was of the view that:

- *“if a refund of premium is contemplated, it would have to be a refund of premium only relating to the particular life assured who had a pre-existing condition because the insurer will have been on risk for every other life assured. There is further not a lack of consensus in regard to all lives assured”;*
- *“As insurers, we have been on risk throughout for all the other lives insured. If one of them had died, we would have paid the claim and the premium has been earned. The insured does not contend that she would not have taken out the policy for the other lives who remained insured. This is not basis for considering the contract void which would mean the other insured parties would have had free cover.”*

17. SSL appeared to argue that the policy was divisible and offered to refund the premiums contributed for the deceased only.

18. The complainant did not accept SSL’s offer and did not wish to continue with the policy.

Final determination:

19. The matter was again discussed at an adjudicators’ meeting on 7.8.2020.

20. The complainant, by the completion of one composite application form, applied for one policy, covering multiple lives.

21. The consensus or lack thereof is between the applicant and SSL and not between the multiple lives and SSL. The multiple lives are not contracting parties and their consensus is not relevant to the issue at hand.

22. The meeting, having regard to that set out in point 20 and 21 above, was of the view that the lack of consensus on the part of the contracting parties, i.e. the applicant and SSL, affected the contract as a whole and not just a particular life insured.

23. The meeting held that it was artificial to say that the policy was divisible.

24. The meeting , for the reasons set out above, unanimously confirmed its view as set out in point 15 above, that due to a lack of consensus at application stage, the contract was to be considered as void and that all premiums contributed, were to be refunded

Final determination order:

25. Taking the above into account, Santam Structured Life was instructed to refund all the premiums contributed.

Outcome:

26. Santam Structured Life paid the complainant R663.68.