

Case 38

Funeral Benefits – when cover commences

Background

1. The complainant joined a funeral group scheme covering his parents and uncle. He signed a stop order for the premiums to be deducted from his salary. The inception date was 01/06/2018. The complainant received a participation certificate when the policy was issued. His uncle died on the 09/12/2018 and the complainant submitted a claim.

2. We wrote as follows to Safrican:

During the assessing of this complaint we have noted the following:

a. The Participation Certificate (page 1) refers to:

- i. Contract Inception Date (1), which is defined as (1) Contract Inception Date: Refers to the date on which the legal obligation by Safrican is created in respect of the insurance policy.
- ii. Cover Start Date (2), which is defined as (2) Cover Start Date : Refers to the date on which the legal obligation by Safrican is created in respect of the benefit.
- iii. Waiting Period Expiry (3), which is defined as (3) Waiting Period Expiry : The date on which the policyholder is entitled to claim for the benefit in respect of a natural death. Only accidental deaths will be paid immediately provided that the first premium is received. In the event that the policyholder elects a higher benefit at a later stage only the increased amount will be subject to the waiting period, please refer the reverse side of this document for the applicable terms and conditions.
- iv. Disclaimer : The payment of the benefit in respect of a natural death is subject to the respective premiums being paid up to date as well as the fulfilment of the waiting period. The "Waiting Period Expiry" is calculated from the date on which Safrican ought to have received the first premium, it does not relate to the number of premiums paid.

b. The reverse page of the Participation Certificate confirms:

- i. "Terms and Conditions Of Participation
 - 2. A Policy commences on the first day of the month following the receipt of the first premium by Safrican.
 - 4. The waiting period shown in the table above refers to the full calendar months the policy has to be in force before any valid claim will be payable. The period is calculated from the commencement date of the policy. It does not relate to the number of premiums paid. The waiting period shown shall apply on natural deaths. Only accidental deaths will be paid immediately provided that the first premium is received."

c. The Participation Certificate – Terms and conditions (Page 3) confirmed:

- 1. WAITING PERIOD
The waiting period is reflected on the reverse side of this document. Only claims due to accidental death will be paid immediately.

3. The tables on the Participation Certificate state:

RELATIONSHIP	COVER TYPE	BENEFIT	PREMIUM	COVER START DATE ⁽²⁾	WAITING PERIOD EXPIRY ⁽³⁾
Principal	Full Family	30,000.00	37.15	2018-06-01	2018-11-30
Spouse	Full Family	30,000.00	0.00	2018-06-01	2018-11-30
Father	Extended Family - Voluntary	20,000.00	70.00	2018-06-01	2018-11-30
Mother	Extended Family - Voluntary	20,000.00	70.00	2018-06-01	2018-11-30
Uncle	Extended Family - Voluntary	20,000.00	70.00	2018-06-01	2018-11-30
Extended Family - Voluntary 0 - 64 years					6 months

* To protect confidentiality we removed the names of individuals.

4. Our office recommended that your office consider the claim as the documentation was ambiguous, regarding the expiry of the waiting period.
5. Your office, however, offered to settle 50% of the claim.
6. The client refused the offer and requested the full claim be settled, as the documentation confirmed that waiting period had expired on the 30/11/2018.

Provisional Determination

7. The matter was discussed at a meeting of the adjudicative staff on the 03/05/2019 under the chairmanship of the Ombudsman, Judge McLaren. The office made a provisional determination on the following basis:
 - a. The meeting's view was that the policy terms and conditions were ambiguous and conflicting.
 - b. The meeting was of the view that fairness demands that the claim should be considered.
 - c. The policy terms and conditions confirm that the waiting period information applicable is reflected on the participation certificate and this document clearly states that the waiting period expired on the 30/11/2018.
 - d. The policy terms and conditions did not confirm that the waiting period was "6 Months" and this is not reflected on the policy terms and conditions issued to the client.
 - e. The meeting's decision was that the claim should be evaluated on the policy terms and conditions issued to the client.
 - f. The claim should be settled and we should be provided with a copy of the proof of payment.
8. Your office, however responded on the 4 June 2019 as follows:

Dear Mrs Heath

Thank you for the correspondence below, contents of which are noted.

We believe the office of the Ombud erred and did not consider full information provided.

It is no matter of dispute that, the full terms and condition clearly indicate that, policy incepts and/or obligation commences on receipt of 1st premium.

The matter which is in dispute is question of stating the 6 months and how it is counted.

It is our reading that, the following

APPLICABLE WAITING PERIOD PER AGE	WAITING PERIOD
Funeral Full -Family 18 - 64 years	6 months
Extended Family - Voluntary 0 - 64 years	6 months

Clearly indicate the applicable waiting period in instances stated i.e. 18 – 64.

Safrican has already explained how the incorrect dates were generated and drawn your honourable office's attention to the disclaimer in the policy contract.

Inception is not a matter of dispute i.e. on collection of 1st premium. If the interpretation provided through the provision ruling is to be accepted, then Safrican will effectively have provided cover without having received any consideration, which would contradict the very principle of insurance.

It is our interpretation and reading that, the policy is clear on when Safrican liability started i.e. on receipt of 1st premium, it is also clear on how waiting period, is supposed to be calculated, which is illustrated on the above extract.

We hope the above is in order.

Regards

Final Determination Discussion

9. The matter was again discussed at an adjudicator meeting on the 13/06/2019.
10. The meeting unanimously agreed and upheld the provisional determination for the following reasons:
 - a. At your own admission a system error caused the Cover Start Date on the Participation Certificate to be incorrectly calculated.
 - b. The interpretation of the six-month waiting period is ambiguous, contradictory, and not easily understood.
 - c. At best for the insurer, there is uncertainty about the interpretation of the contract, with regard to the 6-month waiting period. In such an event, the *contra proferentem rule* would apply and the interpretation would be against the insurer, as drafter of the contract. The issue is addressed in the book,

Life Insurance in South Africa – A compendium by PM Nienaber and MFP Reinecke.

- d. It is the office's opinion that, for these reasons, the policy must be interpreted *contra proferentem*.

Final Determination: Order

11. Taking the above into account, Safrican is instructed to pay the claim of R20 000.00.
12. This determination is final and Safrican is instructed to comply with this determination within 30 days (by 16 July 2019) hereof.

Outcome

Safrican paid the claim.