

## Ombud rules against Santam on non-advice policy

An insurer cannot hide behind the contention that a policy sold on a non-advice basis in the lower income market places the onus on the policyholder to be familiar with exclusions, the ombudsman for long-term insurance Judge Ron McLaren said.



Judge Ron McLaren

Ruling recently in a matter concerning such a policy, he said the contract must be considered as void and all premiums contributed, must be refunded as there had been no explanation or understanding of the exclusion.

The complainant applied for the Santam Structured Life policy on 30 August 2018 and the policy commenced on 25 September 2018. One of the insured lives passed away on 5 September 2019.

Santam declined the claim on the basis that the cause of death was related to a pre-existing medical condition from which the deceased suffered.

The complainant submitted that the exclusion was not explained to her at application stage.

Santam confirmed that the policy was sold on a non-advice basis. The “agent” uses a script and provides information, not advice. Santam maintained that the onus was on policyholders to familiarise themselves with the provisions and in doing so, be aware of the relevant exclusions.

Santam further relied on the content of an upgrade call, wherein Santam was of the view that the policyholder was made aware of the pre-existing exclusion clause.

## Ruling

A meeting, under the chair of the ombudsman, took cognisance of the fact that these policies were sold in the lower income market. It found that the script contained 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.

Further, having considered the application form together with the script, the meeting held that the policy may be seen as, and assumed to be, a funeral policy and, therefore, the application of a pre-existing exclusion clause for the duration of the policy term, was unusual.

The meeting was of the view that Santam's reliance on the policyholder familiarising himself/herself with the provisions of the policy, was not reasonable.

After listening to the upgrade call, the meeting found that the purpose of the call was to sell additional cover; not to make the policyholder aware of the pre-existing exclusion clause.

Also, the call had been conducted in an underhand manner; that the complainant did not appear to understand that an additional premium was to be paid; and that whilst the pre-existing exclusion clause was mentioned, it was not explained.

In the case of a policy that had been sold on a non-advice basis and where the policyholder claimed she was not aware of exclusions, the ombudsman 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 contract must be considered as void and all premiums contributed must be refunded.

Santam was of the view that only the premium relating to the particular life assured who had a pre-existing condition should be refunded because the insurer will have been on risk for every other life assured.

The ombudsman ruled that the complainant, by the completion of one composite application form, applied for one policy, covering multiple lives. It was “artificial” to say that the policy was divisible.

Santam was instructed to refund all the premiums contributed. The insurance company paid the complainant R663.68.