

**THE DUPLICATION IN THE CLASSIFICATION
OF FUNERAL INSURANCE AND ITS EFFECT
ON THE POLICYHOLDER**

A COMPARATIVE STUDY

by

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CHAPTER 1 GENERAL INTRODUCTION

1.1 Background

Death is inevitable. A funeral, in one form or another, regardless of culture or religion, is inevitable. Obtaining insurance cover for a funeral is usually easy, generally affordable, and most importantly: based on an inevitability.¹

It is therefore not surprising that funeral insurance is a booming, unceasing and considerable portion of insurance business in South Africa.² Countless South Africans ensure that, even if they have no other insurance policies in place, they have, at the very least, funeral cover for themselves or their loved ones.³

Justice Nienaber and Preiss, in their work titled: “Funeral Insurance: A Perception from the Office of the Ombudsman for Long-term Insurance”⁴, wrote:

“Funeral insurance may broadly speaking be described as an undertaking by one party, the insurer, to another, the policyholder, to provide, in consideration of predetermined contributions usually payable at predetermined regular intervals, a funeral service or a cash benefit or a combination of both, on the death of the life assured, in respect of whom the policyholder has an insurable interest, regardless of the aggregate of contributions the insurer may have received in respect thereof at the time of the death of the life assured.”⁵

¹ Reinecke “South African Insurance Law” at 567-569.

² 2001 SA Merc LJ 638 at 638.

³ Struwig J *et al* “Financial Literacy in South Africa: Results of a 2012 national survey update” at 14, 75 and 78; (2006) 18 SA Merc LJ 291 at 294; Bester H *et al* “A regulatory review of formal and informal funeral insurance markets in South Africa” at 6-9; Reinecke “South African Insurance Law” at par 26.68.

⁴ (2006) 18 SA Merc LJ 291.

⁵ (2006) 18 SA Merc LJ 291 at 292-293.

Funeral insurance⁶ is a form of Life Insurance Business.⁷ A Life Insurance Policy is defined in the Insurance Act⁸, as: “...any arrangement under which a person, in return for provision being made for the rendering of a premium to that person, undertakes to meet insurance obligations...on the happening of a...death event...”.⁹ In terms of Schedule 2 of the Insurance Act¹⁰, there are a total of nine classes of Life Insurance Business, namely: Risk, Fund Risk, Credit Life, Funeral, Life Annuities, Individual Investment, Fund Investment, Income Drawdown and Reinsurance. This dissertation focuses on only two of the aforementioned nine classes, namely: Risk and Funeral.

The Risk class, sub-class: Individual Death, is defined as a: “Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable on the happening of a death event”.¹¹ The Risk class, sub-class: Group Death, is defined as a: “Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable to a beneficiary on the happening of a death event”.¹² The Funeral class, sub-class: Individual, is defined as a: “Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals not exceeding an amount prescribed by the Prudential Authority to cover cost associated with a funeral or the rendering of a service on the happening of a death event”.¹³ The Funeral class, sub-class: Group, is defined as a: “Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals not exceeding an amount prescribed by the Prudential Authority payable to a beneficiary to cover costs associated with a funeral or the rendering of a service on the happening of a death event”.¹⁴ Taking these definitions into account, it is clear that funeral cover can thus be written under either the Risk class or the Funeral class of Life Insurance Business.

⁶ Reinecke “South African Insurance Law” at par 26.67.

⁷ Schedule 2 of Act 18 of 2017.

⁸ Act 18 of 2017.

⁹ S1 of Act 18 of 2017; Reinecke “Insurable Interest in the Context of Long-Term Insurance” (2020-04-10) <https://www.ombud.co.za/topics-cases/insurable-interest/insurable-interest-2> at 11-13.

¹⁰ Act 18 of 2017.

¹¹ Schedule 2 of Act 18 of 2017.

¹² Schedule 2 of Act 18 of 2017.

¹³ Schedule 2 of Act 18 of 2017.

¹⁴ Schedule 2 of Act 18 of 2017.

1.2 Problem statement

The classes of Life Insurance Business have various prudential and market conduct standards that need to be adhered to. Although some of these standards are constant throughout the various classes, there are some standards that differ. This dissertation intends on exploring these differences and seeks to establish what effect these differences might have on consumers. Put differently: to policyholders, who wish to take out insurance to cover funeral expenses for themselves or for another; does it matter how the said cover is underwritten? Are there any benefits to a consumer choosing funeral cover which is underwritten under the new Funeral class of Life Insurance Business, as opposed to funeral cover which is underwritten under the new Risk class of Life Insurance Business? Similarly, are there any disadvantages to this choice?

1.3 Methodology

In answering the research question, this dissertation will use a doctrinal approach.¹⁵ The starting point will be an extensive review of South African law to sketch the prevalence of the problem. To place the study in perspective, the dissertation will contain a detailed discussion of the underwriting of risk class or the funeral class of life insurance business.

1.4 Outline

The current chapter (chapter one) of the dissertation sets out the background, problem statement and research methodology

¹⁵ For an explanation of the nature of doctrinal legal research, see Hutchinson and Duncan "Defining and describing what we do: Doctrinal legal research" (2012) 17 Deakin L Review 83.

Chapter two will set out the recent legislative developments in South African insurance law and explain what the current insurance framework is, since the development of the twin peaks. This chapter will describe how funeral cover was previously underwritten, before 1 July 2018, as well as further explain how such cover could have been written either as a Life Policy¹⁶ or as an Assistance Policy¹⁷, both of which were previously defined in the Long-Term Insurance Act¹⁸. This chapter will also describe how funeral cover may currently be underwritten, in terms of the new Insurance Act¹⁹. It will also briefly explain what the new classes and sub-classes of Life Insurance Business²⁰ are, whilst paying specific attention to the Risk class and Funeral class. The development of the Prudential Authority and the Financial Sector Conduct Authority will also be discussed, as well as what role these two authorities will play in the context of funeral insurance.

Chapter three will provide an overview of the Risk class of Life Insurance Business and will delve into all of the prudential and market conduct standards applicable to the Risk class relating to funeral cover. Similarly, chapter four will provide an overview of the Funeral class of Life Insurance Business and will consider the prudential and market conduct standards applicable to the Funeral class. Lastly, chapter five will summarise and compare the two classes of Life Insurance Business, in order to offer a holistic view of the discussions contained within the dissertation.

In this dissertation, the following branches relating to the main topic are acknowledged, but will not be discussed, namely: informal funeral or burial societies;

¹⁶ As per Schedule 1 of Act 18 of 2017, “life policy” is defined in Act 52 of 1998 as: “...a contract in terms of which a person, in return for a premium, undertakes to- (a) provide policy benefits upon, and exclusively as a result of, a life event; or (b) pay an annuity for a period; -and includes a reinsurance policy in respect of such a contract”.

¹⁷ As per Schedule 1 of Act 18 of 2017, “assistance policy” is defined in Act 52 of 1998 as: “...a life policy in respect of which the aggregate of- (a) the value of the policy benefits, other than an annuity, to be provided (not taking into account any bonuses to be determined in the discretion of the long-term insurer); and (b) the amount of the premium in return for which an annuity is to be provided, -does not exceed R30 000, or another amount prescribed by the Minister; and includes a reinsurance policy in respect of such a policy.”

¹⁸ Act 52 of 1998.

¹⁹ Act 18 of 2017.

²⁰ Schedule 2 of Act 18 of 2017.

microinsurance business; non-life insurance, particularly Accident and Health policies; and international law aspects.

In essence, this dissertation will be a discussion of the two classes in which funeral insurance can be underwritten, the various Prudential and Market Conduct standards that are applicable to those aforementioned two classes, as well as, whether or not the choice of class would ultimately affect the policyholder, and if so, whether or not such effect is to the policyholder's detriment.

CHAPTER 2 LEGISLATIVE DEVELOPMENT

2.1 Introduction

The Financial Crisis of 2007-2008 had devastating worldwide repercussions. Following the major contagion effect of this global financial crisis, South Africa was forced to re-evaluate its own financial sector.

When compared to other countries, South African financial institutions were some of the least affected. Nevertheless, the financial sector and the economy, suffered consequences, causing the country to review its strategy, particularly with regard to market conduct, consumer protection and financial inclusion. National Treasury recognised this fact in their Policy Document, published 2011, by stating that: “To promote sustained economic growth and development, South Africa needs a stable financial services sector that is accessible to all.”²¹

But how is this achieved? For years, South Africa had followed, as in the United Kingdom, the integrated approach when regulating the financial sector.²² This meant that there was one regulator, the Financial Services Board (hereinafter referred to as the FSB), that regulated both prudential and market conduct aspects of the sector.²³

Prudential aspects aim, *inter alia*, to safeguard the financial stability in the sector, whereas market conduct aspects aim, *inter alia*, to ensure that people have access to affordable and appropriate financial products. It was National Treasury’s view, substantiated by various international views, that having only one regulator regulating both prudential and market conduct aspects, ultimately meant that neither aspect received the necessary attention it required. This led South Africa to adopt the Twin

²¹ National Treasury “A safer financial sector to serve South Africa better” 2011 at 2.

²² Nagel “Commercial Law” at par 24.12.

²³ National Treasury “A safer financial sector to serve South Africa better” 2011 at 29.

Peaks approach: two separate regulators regulating the two aspects of our financial sector.²⁴

The Financial Sector Regulation Act²⁵, which commenced on 29 March 2018, brought into being the two regulators. The prudential aspects are now regulated by the Prudential Authority, and market conduct aspects are regulated by the Financial Sector Conduct Authority (hereinafter referred to as the FSCA).

Operating within the administration of the South African Reserve Bank, the Prudential Authority's objectives are, *inter alia*, to promote and enhance the safety and soundness of financial institutions, and to protect customers against the risk that financial institutions may be unable to meet their obligations.²⁶ The prudential aspects of the insurance industry, regulated by the Prudential Authority, is now governed by the Insurance Act²⁷ and its accompanying prudential standards, which came into effect on 1 July 2018.

The objectives of the FSCA's (previously known as the FSB) are, *inter alia*, to enhance and support the efficiency and integrity of the market, to protect customers by promoting their fair treatment and by providing them with enough information to enable them to make sound financial decisions.²⁸ The intention is for market conduct, regulated by the FSCA, to be governed by the future Conduct of Financial Institutions Act²⁹ (which because it is still a Bill, will be referred to as the COFI Bill). However, although the legislature is still in the process of finalising the COFI Bill, it became necessary to introduce legislation to address the deficiencies in market conduct regulation. This was done in phases, so as not to disrupt business or have the effect of causing even further unfair customer outcomes.

²⁴ National Treasury "A safer financial sector to serve South Africa better" 2011 at 27.

²⁵ Act 9 of 2017.

²⁶ Kamlana U "Regulatory Structure" at 5; Prudential Authority "Regulatory Strategy 2018-2021" at 3.

²⁷ Act 18 of 2017.

²⁸ Kamlana U "Regulatory Structure" at 5; Prudential Authority "Regulatory Strategy 2018-2021" at 3; National Treasury "Explanatory Policy Paper accompanying the Conduct of Financial Institutions Bill" at 7.

²⁹ National Treasury "Treating Customers Fairly in the financial sector: A Draft Market Conduct Policy Framework for South Africa" at 8; National Treasury "Explanatory Policy Paper accompanying the Conduct of Financial Institutions Bill".

The then FSB commenced the Treating Customers Fairly (hereinafter referred to as TCF) initiative by issuing the TCF Discussion Document in April 2010, and further detailed the implementation plan in the TCF Roadmap, published March 2011.³⁰ The overarching principle of TCF is to always treat customers fairly by appropriately meeting customers' financial needs throughout the product's entire life cycle. The six TCF outcomes are:

“Outcome 1: Customers are confident that they are dealing with firms where the fair treatment of customers is central to the firm culture.

Outcome 2: Products and services marketed and sold in the retail market are designed to meet the needs of identified customer groups and are targeted accordingly.

Outcome 3: Customers are given clear information and are kept appropriately informed before, during and after the time of contracting.

Outcome 4: Where customers receive advice, the advice is suitable and take account of their circumstances.

Outcome 5: Customers are provided with products that perform as firms have led them to expect, and the associated service is both of an acceptable standard and what they have been led to expect.

Outcome 6: Customers do not face unreasonable post-sale barriers to change product, switch provider, submit a claim or make a complaint.”³¹

TCF is an outcomes-based approach to enable the spirit of the law to be applied to the regulation of market conduct. The TCF approach was applied in the United Kingdom

³⁰ Financial Services Board “Treating Customers Fairly: The Roadmap”.

³¹ Financial Services Board “Treating Customers Fairly: The Roadmap” at 7; National Treasury “A safer financial sector to serve South Africa better” 2011 at 42.

as well, but it was noted by the UK's Financial Services Authority, that although there were vast improvements, the legal framework needed to be more robust and proactive. This confirmed that the lax TCF principles approach, which relied on financial institutions "doing the right thing", needed to be more pro-active and a new conduct model intervention was introduced with clear consequences for any non-compliance. These outcomes-based principles would thus need to be properly enforced through legislation, resulting in an application of both the "spirit" and "letter" of the law. This view was accepted by the South African National Treasury, and it was stated that in order to achieve these outcomes, formalized rules would need to be put into place.³²

In anticipation of a stronger market conduct regulatory regime, the new Long-Term Insurance Regulations³³ (hereinafter referred to as the Regulations) and Long-Term Insurance Policyholder Protection Rules³⁴ (hereinafter referred to as the Policyholder Protection Rules) were drafted and published on 15 December 2017, effective 1 January 2018, and the requisite amendments made to the Financial Advisory and Intermediary Services Act's General Code of Conduct for Authorised Financial Services Providers and Representatives³⁵ (hereinafter referred to as the General Code of Conduct) were published and became effective on 26 June 2020.

The Regulations³⁶ govern the relationships between insurers and their agents, ensuring that any conflicts of interests are properly and transparently managed. The Policyholder Protection Rules³⁷ are aimed at protecting the policyholder and members of group schemes. The Financial Advisory and Intermediary Services Act³⁸ (hereinafter

³² National Treasury "A safer financial sector to serve South Africa better" at 40 and 42.

³³ Government Notice R1492 in Government Gazette 19495 as amended by Government Notice 1015 in Government Gazette 41942.

³⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

³⁵ Board Notice 80 in Government Gazette 25299 as amended by Government Notice 706 in Government Gazette 43474.

³⁶ Government Notice R1492 in Government Gazette 19495 as amended by Government Notice 1015 in Government Gazette 41942.

³⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

³⁸ Act 37 of 2002.

referred to as FAIS) and its accompanying General Code of Conduct³⁹ governs the relationship between a financial services provider and a client or group of clients.⁴⁰

To summarise, before 1 July 2018, both the prudential and market conduct aspects of all Life insurance business (previously known as Long-term insurance) were regulated by the Long-Term Insurance Act⁴¹ and its subordinate legislation; the Regulations⁴² and Policyholder Protection Rules⁴³. However, as from 1 July 2018, the prudential aspects of all Life Insurance Business are regulated by the Insurance Act⁴⁴ and its accompanying Prudential Standards, and the market conduct aspects of all Life Insurance Business are regulated by the remaining sections of the Long-Term Insurance Act and its new accompanying Regulations⁴⁵ and Policyholder Protection Rules⁴⁶. All financial services were and still are regulated by FAIS⁴⁷, its General Code of Conduct⁴⁸ and its other subordinate legislation.

The next section will explain how funeral cover, specifically, was underwritten and regulated before 1 July 2018.

2.2 The regulation of funeral cover before 1 July 2018

Before 1 July 2018, all Long-Term Policies⁴⁹ (now known as Life Insurance Business⁵⁰) were regulated by the Long-Term Insurance Act⁵¹. Long-term policies are defined⁵² as

³⁹ Board Notice 80 in Government Gazette 25299 as amended by Government Notice 706 in Government Gazette 43474.

⁴⁰ For an explanation on the FAIS Act, see Millard "The FAIS Act Explained".

⁴¹ Act 52 of 1998.

⁴² Government Notice R1492 in Government Gazette 19495.

⁴³ Government Notice 1407 in Government Gazette 41321.

⁴⁴ Act 18 of 2017.

⁴⁵ Government Notice R1492 in Government Gazette 19495 as amended by Government Notice 1015 in Government Gazette 41942.

⁴⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

⁴⁷ Act 37 of 2002.

⁴⁸ Board Notice 80 in Government Gazette 25299 as amended by Government Notice 706 in Government Gazette 43474.

⁴⁹ As defined in S1 of Act 52 of 1998.

⁵⁰ As defined in S1 of Act 18 of 2017.

⁵¹ Act 52 of 1998; Reinecke "South African Insurance Law" at 556.

⁵² S1 of Act 52 of 1998.

‘assistance’, ‘disability’, ‘fund’, ‘health’, ‘life’, ‘sinking fund’ policies, or a combination thereof. These policies have all been individually defined in the Long-Term Insurance Act.⁵³ When considering how funeral cover was underwritten prior to the Insurance Act,⁵⁴ one need only focus on two of the aforementioned Long-term policies, namely: life policies and assistance policies.⁵⁵

A “life policy” is defined⁵⁶ as:

“...a contract in terms of which a person, in return for a premium, undertakes to-

(a) provide policy benefits upon, and exclusively as a result of, a life event;

or

(b) pay an annuity for a period;

and includes a reinsurance policy in respect of such a contract.”

An “assistance policy” is defined⁵⁷ as:

“...a life policy in respect of which the aggregate of-

(a) the value of the policy benefits, other than an annuity, to be provided (not taking into account any bonuses to be determined in the discretion of the long-term insurer); and

(b) the amount of the premium in return for which an annuity is to be provided,

does not exceed R30 000, or another amount prescribed by the Minister; and includes a reinsurance policy in respect of such a policy.”

Thus, before 1 July 2018, funeral cover could be written either as a life policy or as an assistance Policy.⁵⁸ It is also clear, from the above definitions, that assistance policies are in fact life policies, but with a proviso that the maximum cap of the aggregate benefits provided for under an assistance policy, could not exceed R30 000.⁵⁹

⁵³ S1 of Act 52 of 1998.

⁵⁴ Act 18 of 2017.

⁵⁵ Reinecke “South African Insurance Law” at 556.

⁵⁶ S1 of Act 52 of 1998.

⁵⁷ S1 of Act 52 of 1998.

⁵⁸ Bester H et al “A regulatory review of formal and informal funeral insurance markets in South Africa” 2005 at 63; Reinecke “South African Insurance Law” at par 26.69.

⁵⁹ (2006) 18 SA Merc LJ 291 at 292-293.

For example, say one was to take out funeral cover, before 1 July 2018, for a benefit payout of R25 000, this could have been written as an assistance policy. However, if the benefit payout was for R50 000, this would have then been seen as a life policy. Moreover, only insurers who are registered⁶⁰ to provide assistance policies and Financial Services Providers⁶¹ (hereinafter referred to as FSPs) who are licenced⁶² to provide financial services in respect of assistance policies, could do so. Similarly, only insurers registered⁶³ to provide life policies and FSPs licenced to provide financial services in respect of life policies, could do so.⁶⁴

The next paragraph explains how funeral cover is currently underwritten.

2.3 The regulation of funeral cover after 1 July 2018

As described at the beginning of this chapter, the new Insurance Act,⁶⁵ which came into effect on 1 July 2018, introduced, *inter alia*, the new terms: Life and Non-life Insurance Business, to replace the previously known terms: Long-term and Short-term Insurance. The Insurance Act⁶⁶, with its accompanying Prudential Standards, governs all prudential aspects of Life insurance business. The market conduct aspects of Life Insurance Business are currently regulated by the remaining sections of the Long-Term Insurance Act⁶⁷, its new accompanying Regulations⁶⁸ and Policyholder Protection

⁶⁰ In terms of Act 52 of 1998.

⁶¹ S1 of Act 37 of 2002.

⁶² In terms of Act 37 of 2002.

⁶³ In terms of Act 52 of 1998.

⁶⁴ For more on how funeral insurance contracts were previously regulated, please see 2001 SA Merc LJ 638 at 642-645.

⁶⁵ Act 18 of 2017.

⁶⁶ Act 18 of 2017.

⁶⁷ Act 52 of 1998.

⁶⁸ Government Notice R1492 in Government Gazette 19495 as amended by Government Notice 1015 in Government Gazette 41942.

Rules⁶⁹, as well as by FAIS⁷⁰, its General Code of Conduct⁷¹ and other subordinate legislation.

Table 1 of Schedule 2 of the Insurance Act⁷², lists nine different classes of Life Insurance Business. This dissertation will, however, only focus on two of the nine classes, being the first class, namely: Risk class and the fourth class, namely: Funeral class. Funeral cover can be written under either the Risk class or the Funeral class of Life Insurance Business and these classes will be discussed in more detail in the following two chapters.

2.4 Conclusion

The Prudential Authority lists various prudential standards, contained in the “Frameworks for Governance and Operational Standards for Insurers” (hereinafter referred to as the GOI standards) and the “Frameworks for Financial Soundness of Insurers” (hereinafter referred to as the FSI standards), that insurers need to adhere to depending on which class of insurance business they supply. There are also various market conduct standards, prescribed by the FSCA, applicable to both the Risk and Funeral classes of Life Insurance Business. These various prudential and market conduct standards, for both the Risk and Funeral classes of Life Insurance Business, will be explained in the following two chapters.

⁶⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

⁷⁰ Act 37 of 2002.

⁷¹ Board Notice 80 in Government Gazette 25299 as amended by Government Notice 706 in Government Gazette 43474.

⁷² Act 18 of 2017.

CHAPTER 3 RISK CLASS OF LIFE INSURANCE BUSINESS

3.1 Introduction

The Risk class of Life Insurance Business is defined in Table 1 of Schedule 2 of the Insurance Act⁷³. The Risk class has eight sub-classes, namely: Individual Death, Individual Health, Individual Disability – lump sum; Individual Disability – recurring payment, Group Death, Group Health, Group Disability – lump sum and Group Disability – recurring payment. For the purpose of this dissertation and our particular focus on funeral cover, the focus will be on two of the Risk sub-classes, namely: Individual Death and Group Death.

The Risk class, sub-class: Individual Death, is defined⁷⁴ as a:

“[L]ump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable on the happening of a death event”.

The Risk class, sub-class: Group Death, is defined⁷⁵ as a:

“[L]ump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable to a beneficiary on the happening of a death event”.

Furthermore, the following definitions are also relevant⁷⁶ for the discussions in this chapter:

‘Beneficiary’ is defined⁷⁷ as:

“(a) in the case of an insurance policy other than a group insurance policy, the person stated in the insurance policy or a person nominated by the

⁷³ Act 18 of 2017.

⁷⁴ Schedule 2 of Act 18 of 2017.

⁷⁵ Schedule 2 of Act 18 of 2017.

⁷⁶ Similarly as in (2006) 18 SA Merc LJ 291 at 296-299.

⁷⁷ Schedule 2 of Act 18 of 2017.

policyholder as the person in respect of whom the insurer should meet the insurance obligations; or

(b) in the case of a group insurance policy-

(i) a member of the association or fund, or an employee; or

(ii) a person nominated by the member referred to in subparagraph (i) in respect of whom the insurer should meet the insurance obligations, which person is not the association, fund or employer”;

‘Death event’ is defined⁷⁸ as:

“...the event of the life of a person or an unborn having ended”;

‘Group’ is defined⁷⁹ as:

“...in respect of the classes of insurance business, relates to an insurance policy entered into with-

(a) an autonomous association of persons united voluntarily to meet their common or shared economic and social needs and aspirations (other than obtaining insurance), which association is democratically-controlled;

(b) an employer; or

(c) a fund,

where the association, employer or fund holds the insurance policy exclusively for the benefit of a beneficiary”;

⁷⁸ S1 of Act 18 of 2017.

⁷⁹ Schedule 2 of Act 18 of 2017.

'Individual' is defined⁸⁰ as:

"...in respect of the classes of insurance business, relates to an insurance policy entered into with a person (whether individually risk rated or underwritten on a group basis) and-

(a) *includes-*

(i) *an insurance policy where a credit provider is the policyholder and the person in respect of whom the insurer should meet the insurance obligations, and the persons who are the lives insured under the policy are debtors of that credit provider;*

(ii) *an insurance policy where an employer is the policyholder and the person in respect of whom the insurer should meet the insurance obligations, and the persons who are the lives insured under the policy are directors or employees of that employer; but*

(b) *excludes-*

(i) *a group insurance policy; and*

(ii) *subject to (a)(i) and (ii), an insurance policy where the persons who are the life insureds under the policy are two or more persons without an insurable interest in each other";*

'Insurance obligations' is defined⁸¹ as:

"...all obligations (other than the obligations of the policyholder), whether those obligations constitute an obligation to pay one or more sums of money, render services or meet any other obligations, under or arising from insurance

⁸⁰ Schedule 2 of Act 18 of 2017.

⁸¹ S1 of Act 18 of 2017.

policies, and, in respect of life insurance policies, includes any guarantees and discretionary participation features”;

‘Insurance policy’ is defined⁸² as:

“a life insurance policy or a non-life insurance policy”;

‘Life insurance business’ is defined⁸³ as:

“...any activity conducted with the purpose of entering into or meeting insurance obligations under a life insurance policy”;

‘Life insurance policy’ is defined⁸⁴ as:

“...any arrangement under which a person, in return for provision being made for the rendering of a premium to that person, undertakes to meet insurance obligations-

(a) on the happening of a life event, health event, disability event or death event; or

(b) on or from a fixed determinable date or at the request of the policyholder, but excludes-

- (i) a deposit with an institution authorised under the Banks Act, 1990 (Act No. 94 of 1990), the Mutual Banks Act, 1993 (Act No. 124 of 1993), or the Co-operative Banks Act, 2007 (Act No. 40 of 2007); and*
- (ii) participatory interests in a collective investment scheme registered in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002),*

and includes a renewal or variation of that arrangement”;

⁸² S1 of Act 18 of 2017.

⁸³ S1 of Act 18 of 2017; Reinecke “Insurable Interest in the Context of Long-Term Insurance” (2020-04-10) <https://www.ombud.co.za/topics-cases/insurable-interest/insurable-interest-2> at 11-13.

⁸⁴ S1 of Act 18 of 2017; Nagel “Commercial Law” at paragraphs 24.13 and 24.46; 1967 (3) SA 124 (W) at 127-128.

'Life insured' is defined⁸⁵ as:

"...the person to whom a death, disability, health or life event under an insurance policy relates, which person may be or may not be the policyholder";

'Lump sum' is defined⁸⁶ as:

"...a single stated sum of money";

'Policyholder' is defined⁸⁷ as:

"(a) the person with whom or with which an insurer enters into a life insurance policy or a non-life insurance policy; or

(b) the successor in title of the person referred to in paragraph (a)";

'Premium' is defined⁸⁸ as:

"...any direct or indirect, or partially or fully subsidised, consideration given or to be given in return for an undertaking to meet insurance obligations";

'Underwritten on a group basis' is defined⁸⁹ as:

"...where the risks covered under an insurance policy are rated based on the characteristics of a group of people together, as opposed to that of the individual or individuals to whom the policy relates".

The definitions as described above illustrate that policies written under the Risk class, Death sub-class of Life Insurance Business provide for a monetary benefit to be paid out upon the death of the Life Insured. This fact clearly shows that one can, therefore, write a funeral policy under both the Individual and Group categories of the Death sub-class of the Risk class of Life Insurance Business.

⁸⁵ S1 of Act 18 of 2017.

⁸⁶ Schedule 2 of Act 18 of 2017.

⁸⁷ S1 of Act 18 of 2017.

⁸⁸ S1 of Act 18 of 2017.

⁸⁹ Schedule 2 of Act 18 of 2017.

The next paragraph considers which prudential standards are applicable to the Risk class, Death sub-class of Life Insurance Business.

3.2 Risk Class | Prudential Standards

The prudential standards, applicable to the Risk class, Death sub-class, of Life Insurance Business, can be found in the Insurance Act⁹⁰ as well as in its accompanying “Framework for Financial Soundness of Insurers” (FSI) and “Governance and Operational Standards for Insurers” (GOI) prudential standards.

The FSI⁹¹ prudential standards set out the framework in which insurers’ financial soundness is assessed.⁹² The main objective of these standards is to ensure that insurers have sufficient capital to meet all insurance obligations toward their policyholders, even during times of substantial unforeseen losses.⁹³ Similarly, the GOI⁹⁴ prudential standards set out the framework whereby the governance and operational standards of insurers are assessed.⁹⁵ The GOI⁹⁶ prudential standards ensure that insurers apply good governance and effective risk management in line with the Prudential Authority’s expectations.⁹⁷ Both the FSI⁹⁸ and GOI⁹⁹ standards set out the principles that insurers need to adhere to, in order to qualify as prudentially sound to run an insurance business.

There are six FSI¹⁰⁰ standards, namely:

- | | |
|-------|--|
| FSI 1 | Framework for Financial Soundness of Insurers; |
| FSI 2 | Valuation of Assets, Liabilities and Eligible Own Funds; |

⁹⁰ Act 18 of 2017.

⁹¹ The Frameworks for Financial Soundness of Insurers.

⁹² FSI 1 at 1.

⁹³ FSI 1 at 1.

⁹⁴ The Governance and Operational Standards for Insurers.

⁹⁵ GOI 1 at 1.

⁹⁶ The Governance and Operational Standards for Insurers.

⁹⁷ GOI 1 at 1.

⁹⁸ The Frameworks for Financial Soundness of Insurers.

⁹⁹ The Governance and Operational Standards for Insurers.

¹⁰⁰ The Frameworks for Financial Soundness of Insurers.

FSI 2.1	Valuation of Assets and Liabilities other than Technical Provisions;
FSI 2.2	Valuation of Technical Provisions;
FSI 2.3	Determination of Eligible Own Funds;
FSI 3	Calculation of the MCR;
FSI 4	Calculation of the SCR using the Standardised formula;
FSI 4.1	Market Risk Capital Requirement;
FSI 4.2	Life Underwriting Risk Capital Requirement;
FSI 4.3	Non-life Underwriting Risk Capital Requirement;
FSI 4.4	Operational Risk Capital Requirement;
FSI 5	Calculation of the SCR Using a Full or Partial Internal Model; and
FSI 6	Liquidity Risk Assessment.

There are seven GOI¹⁰¹ standards, namely:

GOI 1	Framework for Governance and Operational Standards for Insurers;
GOI 2	Governance of Insurers;
GOI 2.1	Corporate Culture;
GOI 3	Risk Management and Internal Controls for Insurers;
GOI 3.1	Own Risk and Solvency Assessment (ORSA) for Insurers;
GOI 3.2	Business Continuity Management;
GOI 3.3	Reinsurance and Other Forms of Risk Transfer by Insurers;
GOI 4	Fitness and Propriety of Significant Owners and Key Persons of Insurers;
GOI 5	Outsourcing by Insurers;
GOI 6	Transfers of Business and Other Significant Transactions by Insurers; and
GOI 7	Miscellaneous Regulatory Requirements for Insurers.

¹⁰¹ The Governance and Operational Standards for Insurers.

The above standards were published together with guidance notes in order to assist readers with obtaining a better understanding of these principles. Insurers need to follow the above principles to ensure that they are financially sound, have sufficient capital to meet all obligations toward policyholders, and are run with good governance and effective risk management in place.

Most of the FSI and GOI standards are indeed applicable to the Risk class, Death sub-class of Life Insurance Business, but this dissertation will focus specifically on FSI 4.2.

FSI 4.2 sets out the calculations that need to be followed in order for insurers to determine whether or not they have sufficient capital for underwriting risk related to Life Insurance Business. There are various calculations that may be followed, namely: Mortality Risk, Longevity Risk, Disability-Morbidity Risk, Lapse Risk, Expense Risk, Life Catastrophe Risk and Retrenchment Risk.¹⁰² Insurers writing policies under the Risk class, Death sub-class of Life Insurance Business will apply the Mortality Risk calculation.¹⁰³

Mortality Risk is defined as: *“...the risk of loss or adverse change in the value of insurance obligations resulting from changes in the level, trend, or volatility of mortality rates; where an increase in mortality rates leads to an increase in the applicable technical provisions for liabilities subject to mortality risk. Mortality risk arises where an insurer guarantees to make a payment in the event of death.”*¹⁰⁴

These calculations are assessed by the actuaries of the insurer to ensure that the insurer holds sufficient capital to meet insurance obligations relating to the deaths of life insureds.

Just as the Prudential Authority set out prudential standards that insurers need to adhere to, so has the FSCA set out market conduct standards that insurers need to

¹⁰² FSI 4.2 at 1.

¹⁰³ FSI 4.2 at 4 and 5.

¹⁰⁴ FSI 4.2 at 4.

adhere to. The next section will deal with which market conduct standards are applicable to the Risk class, Death sub-class of Life Insurance Business.

3.3 Risk Class | Market Conduct Standards

3.3.1 Introduction

The FSCA has set out a number of market conduct standards to be adhered to when providing policies written under the Risk class, Death sub-class of Life Insurance Business. These standards can be found in the remaining sections of the Long-Term Insurance Act,¹⁰⁵ its new accompanying Regulations¹⁰⁶ and Policyholder Protection Rules¹⁰⁷, as well as in FAIS¹⁰⁸, its General Code of Conduct¹⁰⁹ and other subordinate legislation.

Although most of the aforementioned market conduct standards are applicable to the Risk class, Death sub-class of Life Insurance Business, this dissertation only focuses on certain applicable rules from the new Policyholder Protection Rules.¹¹⁰

3.3.2 The Policyholder Protection Rules

Rule 1¹¹¹ lays the foundation of the market conduct standards by codifying the six TCF outcomes.¹¹² The rule places a requirement on insurers to put policies and procedures

¹⁰⁵ Act 52 of 1998.

¹⁰⁶ Government Notice R1492 in Government Gazette 19495 as amended by Government Notice 1015 in Government Gazette 41942.

¹⁰⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁰⁸ Act 37 of 2002.

¹⁰⁹ Board Notice 80 in Government Gazette 25299 as amended by Government Notice 706 in Government Gazette 43474.

¹¹⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928. For a discussion of the Policyholder Protection Rules, see Jackson C "Insurance and reinsurance in South Africa: Overview" (2019-11-01) [https://uk.practicallaw.thomsonreuters.com/1-505-2026?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/1-505-2026?transitionType=Default&contextData=(sc.Default)&firstPage=true).

¹¹¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹¹² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 1.4.

in place to ensure consistent delivery on the TCF outcomes in relation to, not only policyholders, but to members of group schemes¹¹³ as well. The rule also explicitly states that even where advice is provided by an independent intermediary, the insurer remains responsible to take all reasonable steps to mitigate the risk of unsuitable advice being provided.¹¹⁴ For funeral policies, this means that the consumer would need to be treated fairly, even in circumstances where the life insured was not a family member of the claimant but where the claimant could prove insurable interest, as seen in various cases heard by the Ombudsman for Long-Term Insurance on funeral benefits.¹¹⁵

Rule 2¹¹⁶ speaks to the design of appropriate insurance products. It prescribes that when designing products, insurers need to carefully consider the product's target market's needs and use same to design appropriate wording, pricing, distribution methods and disclosure documents.¹¹⁷ It further places a responsibility on all new products to be signed-off, in writing, by a senior manager.¹¹⁸ When applied to funeral policies, even when written under the Risk (Death sub-class) class, the insurer remains responsible to identify the target market the funeral product is aimed at, and to then carefully design said product to meet the specific needs of the target market. This rule aims to avoid the provision of confusing policy documentation, as was so prominent in the past.¹¹⁹

Rule 4¹²⁰ provides the policyholder, or member of a voluntary group scheme, with a cooling-off right. A cooling-off right provides the policyholder or member with the

¹¹³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 1.5.

¹¹⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 1.9.

¹¹⁵ OLTl Final Determination Case 39/2019; OLTl Final Determination Case 34/2018.

¹¹⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹¹⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2.2.

¹¹⁸ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2.3.

¹¹⁹ See (2006) 18 SA Merc LJ 291 at 301-303.

¹²⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

option to cancel an insurance policy within 31 days of receiving the policy contract. This cancellation must be provided in writing and can only be done if no benefit has yet been paid out or claimed for and no insured event as yet occurred.¹²¹ If the policyholder or member, elects to use this right, the insurer must comply with such cancellation request, within 31 days, and repay all premiums or monies paid by the policyholder or member, up to the date of receipt of the cancellation notice. The insurer is permitted to deduct the cost of any risk cover enjoyed by the policyholder or member.¹²² In the context of funeral policies, this has the effect of allowing the policyholder to fully consider the decision made, to carefully read through the documents provided and to cancel the product, without being unnecessarily charged, if it doesn't meet his or her particular needs.

Rule 5¹²³ prohibits an insurer from using negative option selection of any policy terms or conditions. Negative option selection is where an insurer, or any person acting on behalf of an insurer, specifies or provides that a specific default policy term or condition will apply unless the policyholder, or member of a group scheme, explicitly chooses a different term or condition.¹²⁴ Such negative option selection will only be permitted when required by law¹²⁵ or if the default selection is required in order to achieve fair customer outcomes.¹²⁶ This must, however, be clearly and prominently disclosed to the policyholder or member.¹²⁷ For the funeral industry, this means that funeral cover policyholders will not be forced into terms that they did not specifically agree to.

¹²¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 4.2.

¹²² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 4.3 and 4.4.

¹²³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹²⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 5.1.

¹²⁵ Hutchison "Law of Contract in South Africa" at 254.

¹²⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 5.2.

¹²⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 5.3.

Rule 6¹²⁸ requires that all premiums payable must be appropriate and fair, in that they *“must reasonably balance the interests of insurers and the reasonable benefit expectations of a policyholder or member, and be based on assumptions that are realistic and that the insurer reasonably believes are likely to be met over the term of the policy.”*¹²⁹ It further prohibits insurers from charging any additional fee unless the additional fee is permitted in legislation or has been explicitly provided for in the policy.¹³⁰ Furthermore, any additional fee must be clearly and prominently disclosed to the policyholder or member before the policy is entered into.¹³¹

Rule 7¹³² sets out certain provisions, that if used in an insurance policy, the provision will be considered void. These void provisions include any provision: that forces a policyholder or claimant to undergo a polygraph test;¹³³ inducing a policyholder or claimant to voluntarily agree to a polygraph;¹³⁴ rejecting a claim or voiding a policy on the sole basis of a failed polygraph test;¹³⁵ allowing arbitration as the only single avenue to resolve a dispute;¹³⁶ rejecting a claim on the basis of premium non-payment if payment was made within the grace period;¹³⁷ exempting an insurer from liability for the actions, omissions or representations of a person acting on its behalf;¹³⁸ allowing the insurer’s obligations toward a beneficiary to first be dependent on the

¹²⁸ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹²⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 6.1.

¹³⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 6.2 and 6.3.

¹³¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 6.4.

¹³² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹³³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 7.1(a).

¹³⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 7.1(b).

¹³⁵ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 7.1(c).

¹³⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 7.1(d).

¹³⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 7.1(e).

¹³⁸ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 7.1(f).

discharging of another person's obligations under a reinsurance agreement;¹³⁹ or allowing a person or life insured to waive a right such person is entitled to.¹⁴⁰

Rule 8¹⁴¹ states that an insurer, or any person acting on its behalf, may not request, induce or act upon any waiver, by an active or potential policyholder or member of a group scheme to any of their rights in terms of the PPRs. It further states that any such waiver will also be deemed as null and void. The obvious application of this rule to insurance is that policyholders will retain their rights under their funeral cover, even if they were induced to waive said rights.

Rule 9¹⁴² states that an insurer, or any person acting on its behalf, may not accept nor assist with completing of any blank or incomplete forms submitted by the active or potential policyholder or member of a group scheme. This rule seems obvious but in the context of funeral insurance, it is extremely important as often, in practice, the target market is quickly persuaded into buying a funeral policy whilst busy with another transaction, for example: opening up a bank account or buying clothes on credit. In circumstances such as these, blank or incomplete application forms are often submitted in order to obtain funeral cover. An insurer, or any person acting on its behalf, may not accept nor complete said blank or incomplete forms.

Rule 10¹⁴³ contains clear rules on how to advertise an insurance product¹⁴⁴ and applies to all communication published or republished on or after 1 July 2018¹⁴⁵, regardless

¹³⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 7.1(h).

¹⁴⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 7.1(i).

¹⁴¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁴² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁴³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁴⁴ See (2006) 18 SA Merc LJ 291 at 303.

¹⁴⁵ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Chapter 8: Administration.

of the medium,¹⁴⁶ which is intended to create public interest, but this rule does not apply to communication to a specific policyholder regarding detailed information given for a specific policy or service.¹⁴⁷ For funeral insurance offered under the Risk (Death sub-class) class of Life Insurance Person, an insurer may also make use of the term “funeral” or a derivative thereof in an advertisement, as long as the cover is intended to cover costs associated with a funeral or service relating to the happening of a death event.¹⁴⁸

Rule 11¹⁴⁹ sets out stringent rules regarding all communications made, or ought to be made, to active, or potential, policyholders or members of group schemes.¹⁵⁰ This rule provides lists of various disclosures to be made before¹⁵¹ and directly after (within 31 days) the inception of a policy,¹⁵² as well as during the existence of the policy and upon any variation of cover.¹⁵³ Save for a few detailed disclosures, many of the required disclosures to be made in terms of Rule 11, are already a requirement in terms of the FAIS General Code of Conduct¹⁵⁴. The underlying purpose for these detailed disclosures, is based on the principles of contracting in *bona fide*. Ultimately, the information provided must enable a potential or active policyholder or member to sufficiently understand the features of the policy in order to be able make an informed decision on whether or not the policy meets his or her needs.¹⁵⁵

¹⁴⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 10.2.2.

¹⁴⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Definition of “advertisement”.

¹⁴⁸ Joint Communication 4 of 2020 at par 3.5.

¹⁴⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁵⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 11.3.9.

¹⁵¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 11.4.

¹⁵² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 11.5.

¹⁵³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 11.6.

¹⁵⁴ Board Notice 80 in Government Gazette 25299 as amended by Government Notice 706 in Government Gazette 43474 at sections 2, 4, 5, 7, 8, 9, 14 and 15.

¹⁵⁵ Roos S “The impact of Policyholder Protection Rules 1.9 and 11 on the interpretation of an insurance policy” (2019-04-05) <https://www.lindsaykeller.com/the-impact-of-policyholder-protection-rules-1-9-and-11-on-the-interpretation-of-an-insurance-policy/> ; (2006) 18 SA Merc LJ 291 at 301-303.

Rule 12¹⁵⁶ aims to fill the market conduct gap left by FAIS¹⁵⁷ by ensuring that insurers are held appropriately responsible for their actions, even when acting through an intermediary. The rule states that an insurer may only enter into an intermediary agreement with an intermediary who is appropriately licensed in terms of FAIS¹⁵⁸ to conduct the required intermediary services with regard to the particular product.¹⁵⁹ The intermediary agreement must be concluded directly between the insurer and the intermediary.¹⁶⁰ Where an intermediary wishes to charge a policyholder a fee, but requests that the insurer facilitates the payment of said fee, the insurer has a legal duty to evaluate the fee in terms of Rule 12.4.

Rule 13¹⁶¹ requires an Insurer to have a Data Management Framework in place as well as sufficient operational ability to ensure that the Data Management Framework is effective. An insurer is required to have sufficient and reliable data in order to, at any point in time, properly assess its risk under a policy. Furthermore, the data must be detailed enough, for an insurer to, at any point in time, effectively communicate with policyholders or members of group schemes. If an insurer chooses to outsource the processing of such data, the insurer is required to be able to access such data at any point in time.¹⁶²

Rule 14¹⁶³ provides that an insurer must conduct ongoing reviews of their products' performances, which includes assessing not only sales, but even more so, each product's distribution method, disclosure documents, complaints made, and claims

¹⁵⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁵⁷ Act 37 of 2002.

¹⁵⁸ Act 37 of 2002.

¹⁵⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 12.2.1.

¹⁶⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 12.2.2.

¹⁶¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁶² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 13.

¹⁶³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

received, in order to consistently meet fair outcomes and customers' needs.¹⁶⁴ An insurer is required to promptly implement remedial action with regards to any of its products, if so required.¹⁶⁵

Rule 15¹⁶⁶ provides for premiums to be reviewed, but only where the policy makes provision for the review, and states the frequency and circumstances of the review.¹⁶⁷ If a review is expected to result in a premium increase, it is the responsibility of the insurer to inform the policyholder, in writing and within a reasonable time, of the upcoming review.¹⁶⁸ If there is an increase to premium relating, specifically, to a policy written under the Risk class of Life Insurance Business, the insurer must provide the policyholder with suitable alternatives, such as an option to reduce benefits or cancel the policy, in order to reduce the detrimental impact on the policyholder.¹⁶⁹

Rule 15A¹⁷⁰ states that each policy must provide for a grace period of, at the very least, 15 extra days in which to pay the premium, if the premium payments were set at intervals of one month or less, or for a grace period of, at the very least, one month, if the premium payments were set at intervals of more than a month.¹⁷¹ If a claim is submitted during the grace period, the insurer may deduct the sum of the unpaid premium amount from the claim amount.¹⁷²

¹⁶⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 14.1.

¹⁶⁵ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 14.2.

¹⁶⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁶⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 15.1.

¹⁶⁸ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 15.6.

¹⁶⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 15.7.

¹⁷⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁷¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 15A.1.

¹⁷² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 17.11.1.

Rule 16¹⁷³ states that all communications with a policyholder or member of a group scheme, must be recorded in a written format, or in a format that is readily reducible to writing, and retained for a minimum period of five years from when the policy comes to an end.

Rule 17¹⁷⁴ refers to claims management by an insurer. An insurer must establish an effective claims management framework that must provide for, *inter alia*, documented processes on record keeping, processing of a claim throughout the claim's life cycle, intended timeframes in which to do so, claim escalation, analysing claims in order to effect necessary changes to the product, as well as ongoing and transparent communication with claimants.¹⁷⁵ Insurers, or anyone acting on the insurer's behalf, have strict timeframes in which to manage claims. An insurer must make a claims decision within a reasonable time and notify the claimant, in writing, within 10 days of making said decision. The notification should be in plain language and contain clear details and avenues of recourse available to the claimant which include the right to dispute the claim with the insurer, lodge a complaint with the ombudsman, or institute legal action, as well as clearly explain the timeframes in which to exercise said rights.¹⁷⁶

Rule 18¹⁷⁷ is not dissimilar from Rule 17¹⁷⁸, in that an insurer must establish an effective complaints management framework. In this case, it should also be approved by the insurer's board of directors, in order to ensure that all complainants are treated fairly. The framework must also provide for, *inter alia*, documented processes on record keeping, processing of a complaint throughout the complaint's life cycle,

¹⁷³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁷⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁷⁵ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 17.2 and 17.3.1.

¹⁷⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 17.6.

¹⁷⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁷⁸ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

intended timeframes in which to do so, complaint escalation, analysing complaints in order to effect necessary changes to the product, as well as ongoing and transparent communication with complainants.¹⁷⁹

Rule 19¹⁸⁰ provides for conduct standards relating specifically to individual policies written under the Risk Class of Life Insurance Business. This Rule will thus apply to individual funeral cover policies written under the Risk class, Death sub-class. It is the new insurer's responsibility, when an individual risk policy is taken up, to confirm with the intermediary as to whether or not the policy is, in fact, a replacement¹⁸¹ policy,¹⁸² and if this is so, the new insurer is required to obtain a copy of the intermediary's replacement record of advice, which needed to have been completed in accordance with section 9(1)(d) of the FAIS General Code of Conduct^{183, 184}. Within 14 days of receiving the copy of the replacement record of advice, the new insurer has to provide the insurer of the replaced product with a copy of said record,¹⁸⁵ and confirm, in writing, whether or not the record both complies with the FAIS General Code of Conduct¹⁸⁶ section 8(1)(d)'s disclosure requirements, as well as contains sufficient information to show that the replacement policy was better suited, for the

¹⁷⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 18.2 and 18.3.1.

¹⁸⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁸¹ As per Rule 19.1 of Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928, "replacement" is defined as: "...action or process of – (a) substituting an individual risk policy (the "replaced policy"), wholly or in part, with another individual risk policy (the "replacement policy"); (b) the termination or variation of an individual risk policy (the "replaced policy") and the entering into or variation of another individual risk policy (the "replacement policy"); – with the purpose of meeting the same or similar needs or objectives of the policyholder or in anticipation of, or as a consequence of, effecting the substitution or variation, irrespective of the sequence of the occurrence of the transactions."

¹⁸² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 19.2.1.

¹⁸³ Board Notice 80 in Government Gazette 25299 as amended by Government Notice 706 in Government Gazette 43474.

¹⁸⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 19.2.2.

¹⁸⁵ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 19.2.3.

¹⁸⁶ Board Notice 80 in Government Gazette 25299 as amended by Government Notice 706 in Government Gazette 43474.

policyholder's needs, than that of the replaced policy.¹⁸⁷ Lastly, if the new insurer discovers that an intermediary has not disclosed the fact that this is a replacement policy, the new insurer has a duty to report the non-disclosure to the FSCA, as well as, if the policy was replaced within the last six months, inform the policyholder that he or she has the right to make use of the cooling-off right and cancel the policy within 31 days of being notified thereof.¹⁸⁸

Rule 20¹⁸⁹ sets out the manner in which policies may be terminated. Termination of policies must be done in a fair and transparent manner. If an insurer wishes to terminate an individual policy, written notice must be given to the policyholder at least 31 days before the intended termination.¹⁹⁰ If an insurer wishes to terminate a group scheme, written notice must be given to the policyholder and the FSCA at least 31 days before the intended termination and, in order to ensure that all members under the scheme are treated fairly: notice of the intended termination should be provided to each member as well.¹⁹¹ If a policyholder wishes to terminate a group scheme, the insurer has the responsibility to notify the FSCA as soon as the insurer becomes aware of the termination.¹⁹²

Rule 21¹⁹³ provides for conduct standards that need to be followed by an insurer if there were any misrepresentations made to the insurer at the time of assessing the risk. The rule states that the misrepresentation does not render the policy void, nor does it exclude or limit the insurer's obligations under the policy, unless it can be

¹⁸⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 19.2.4.

¹⁸⁸ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 19.2.5.

¹⁸⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

¹⁹⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 20.2.1.

¹⁹¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 20.2.4.

¹⁹² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 20.3.1.

¹⁹³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

proved that the misrepresentation was to such an extent that it materially affected the ability of the insurer to correctly assess the risk.¹⁹⁴

3.4 Summary

This chapter gave a breakdown of the prudential and market conduct standards applicable to the Risk class, Death sub-class of Life Insurance Business. It illustrates that funeral insurance is subject to strict regulation, even when written under the Risk (Death sub-class) class. In the following chapter, the focus will be on the relevant prudential and market conduct standards applicable to the Funeral class of Life Insurance Business.¹⁹⁵

¹⁹⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 21.1 and 21.2; (2006) 18 SA Merc LJ 291 at 303; 2018 (4) All SA 77 (GJ) at paragraphs 75 and 80.

¹⁹⁵ Joint Communication 4 of 2020 at par 2.3.

CHAPTER 4 FUNERAL CLASS OF LIFE INSURANCE BUSINESS

4.1 Introduction

The Funeral class of Life Insurance Business is defined in Table 1 of Schedule 2 of the Insurance Act.¹⁹⁶ The Funeral class has two sub-classes, namely: Individual and Group and both of the aforementioned will be explained in this chapter.

The Funeral class, sub-class: Individual, is defined¹⁹⁷ as a:

“[L]ump sum or, specified or determinable equal or unequal sums of money payable at specified intervals not exceeding an amount prescribed by the Prudential Authority to cover cost associated with a funeral or the rendering of a service on the happening of a death event”.

The Funeral class, sub-class: Group, is defined¹⁹⁸ as a:

“[L]ump sum or, specified or determinable equal or unequal sums of money payable at specified intervals not exceeding an amount prescribed by the Prudential Authority payable to a beneficiary to cover costs associated with a funeral or the rendering of a service on the happening of a death event”.

In addition, kindly refer to the definitions quoted under paragraph 3.1 above, as these are also relevant to our further discussions in this chapter.¹⁹⁹

Thus, to encapsulate the above definitions, a policy written under the Funeral class of Life Insurance Business provides for a monetary benefit to be paid out and/or a service to be provided upon the death of the Life Insured.²⁰⁰ One can therefore write a funeral

¹⁹⁶ Act 18 of 2017.

¹⁹⁷ Schedule 2 of Act 18 of 2017.

¹⁹⁸ Schedule 2 of Act 18 of 2017.

¹⁹⁹ Similarly as in (2006) 18 SA Merc LJ 291 at 296-299.

²⁰⁰ (2006) 18 SA Merc LJ 291 at 292-293.

policy under both the Individual and Group categories of the Funeral class of Life Insurance Business.²⁰¹

Which prudential standards are applicable to the Funeral class of Life Insurance Business will now be discussed.

4.2 Funeral Class | Prudential Standards

The prudential standards, applicable to the Funeral class of Life Insurance Business, are found in the Insurance Act²⁰² as well as its accompanying FSI²⁰³ and GOI²⁰⁴ prudential standards.²⁰⁵

As seen with policies written under the Risk class, Death sub-class of Life Insurance business, most of the FSI and GOI standards are also applicable to policies written under the Funeral class of Life Insurance Business. For the purposes of this chapter, the focus will be specifically, on FSI 4.2²⁰⁶ as well as GOI 7²⁰⁷.

As mentioned under paragraph 3.2 above, FSI 4.2 sets out the calculation that needs to be followed in order for insurers to know what is sufficient capital for underwriting risk related to Life Insurance Business. There are various calculations that may be followed, namely: Mortality Risk, Longevity Risk, Disability-Morbidity Risk, Lapse Risk, Expense Risk, Life Catastrophe Risk and Retrenchment Risk.²⁰⁸ As under the Risk class, Death sub-class, insurers writing policies under the Funeral class of Life Insurance Business will apply the Mortality Risk calculation.²⁰⁹

²⁰¹ (2006) 18 SA Merc LJ 291 at 295-296; Reinecke "South African Insurance Law" at par 26.69.

²⁰² Act 18 of 2017.

²⁰³ The Frameworks for Financial Soundness of Insurers.

²⁰⁴ The Governance and Operational Standards for Insurers.

²⁰⁵ Refer to paragraph 3.2 above, for a more detailed summary of the FSI and GOI standards.

²⁰⁶ FSI 4.2: Life Underwriting Risk Capital Requirement.

²⁰⁷ GOI 7: Miscellaneous Regulatory Requirements for Insurers.

²⁰⁸ FSI 4.2 at 1.

²⁰⁹ FSI 4.2 at 4 and 5.

The definition of the Funeral class, contained in Schedule 2 of the Insurance Act²¹⁰ states that the monetary benefit to be paid out in terms of policies written under this class of Life Insurance Business, is to be capped at an amount prescribed by the Prudential Authority. The Prudential Authority, in GOI 7, prescribes the value of the insurance obligations, to a maximum of R100 000.00 (escalating annually by the Consumer Price Index from 1 July 2018) per life insured, per policy.²¹¹

The next section will set out what market conduct standards are applicable to the Funeral class of Life Insurance Business.

4.3 Funeral Class | Market Conduct Standards

The market conduct standards applicable to policies written under the Funeral class of Life Insurance Business can be found in the remaining sections of the Long-Term Insurance Act,²¹² its new accompanying Regulations²¹³ and Policyholder Protection Rules²¹⁴, as well as in FAIS²¹⁵, its General Code of Conduct²¹⁶ and other subordinate legislation. However, for the purposes of this chapter, focus will be on Rule 2A of the new Policyholder Protection Rules,²¹⁷ as this rule was specifically drafted for, *inter alia*, policies written under the Funeral class of Life Insurance Business.

The majority of the general rules, contained in the new Policyholder Protection Rules,²¹⁸ apply to policies written under the Funeral class of Life Insurance Business.

²¹⁰ Act 18 of 2017.

²¹¹ GOI 7 at 2; Joint Communication 4 of 2020 at par 3.1.

²¹² Act 52 of 1998.

²¹³ Government Notice R1492 in Government Gazette 19495 as amended by Government Notice 1015 in Government Gazette 41942.

²¹⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²¹⁵ Act 37 of 2002.

²¹⁶ Board Notice 80 in Government Gazette 25299 as amended by Government Notice 706 in Government Gazette 43474.

²¹⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²¹⁸ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

However, in addition, Rule 2A.2²¹⁹ clearly states that Rule 2A was drafted²²⁰ and specifically applies to, *inter alia*, policies written under the Funeral class of Life Insurance Business²²¹ and if there were any inconsistencies between Rule 2A and the other rules contained in the new Policyholder Protection Rules²²², Rule 2A will prevail.²²³ Moreover, Rule 2A.1²²⁴ defines a Funeral Policy as: “...a life insurance policy underwritten under the funeral class of life insurance business as set out in Table 1 of Schedule 2 of the Insurance Act...”²²⁵

Rule 2A.4²²⁶ provides rules relating to the structure of the policy benefits of a Funeral Policy. The rule reconfirms that there is a cap, prescribed by the Prudential Authority, on the policy benefits that may be provided in terms of a Funeral Policy.²²⁷ A Funeral Policy must allow for any benefits offered as a “service”, to also be available to the policyholder in monetary terms, if the policyholder so prefers.²²⁸ The monetary equivalent or value of the service benefit, must be stated upon entering into or varying of the Funeral Policy,²²⁹ and where, for reasonable reasons, this cannot be done, the insurer must state why this is so,²³⁰ as well as confirm that the value of the service benefit will be determined at claims stage²³¹ and communicated as such to the

²¹⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²²⁰ See (2006) 18 SA Merc LJ 291 at 315-316 which predicts the drafting of more stringent rules with the aim of solving the ongoing concerns relating to funeral insurance.

²²¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.2.1 and 2A.2.3.

²²² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²²³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.2.4.

²²⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²²⁵ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.1 at definition of “funeral policy”.

²²⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²²⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.4.2; GOI 7 at 2.

²²⁸ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.4.5; (2006) 18 SA Merc LJ 291 at 292-293.

²²⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.4.5(b).

²³⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.4.6(a).

²³¹ OLTJ Final Determination Case 43/2019.

claimant.²³² Furthermore, no administration fee (or similar fees) may be charged to the policyholder, should the policyholder elect to receive the policy benefit as a sum of money as opposed to as a service.²³³

Rule 2A.5²³⁴ contains the rules relating to the variation and renewal of Funeral Policies. The terms and conditions of a Funeral Policy may not be varied within the first 12 months (even if the policy was renewed within that time), unless the insurer can prove that the variation is required due to reasonable actuarial grounds, or the variation is to the benefit of the policyholder or group scheme member.²³⁵ Any permitted variation must, however, still be done in accordance with Rules²³⁶ 11.6.4 and 11.6.5.²³⁷ Furthermore, if the Funeral Policy is underwritten on a group basis,²³⁸ regardless of whether or not they are written as individual or group policies, an insurer would not be allowed to cancel or refuse to renew individual policies forming part of the underwritten group.²³⁹

Rule 2A.6²⁴⁰ speaks to the rules regarding waiting periods that may or may not be applied to Funeral Policies. A Funeral Policy may not impose a waiting period *“exceeding the shorter of one quarter of the term of the policy or six months in respect of policy benefits payable on the happening of a death...event resulting from natural*

²³² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.4.6(b).

²³³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.4.7.

²³⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²³⁵ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.5.1 and 2A.5.2.

²³⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²³⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.5.1(b).

²³⁸ Defined, in Schedule 2 of Act 18 of 2017, as: “...where the risks covered under an insurance policy are rated based on the characteristics of a group of people together, as opposed to that of the individual or individuals to whom the policy relates”.

²³⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.5.3.

²⁴⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

*causes.*²⁴¹ A Funeral Policy may not impose any waiting period relating to policy benefits payable on the happening of a death event resulting from an accident.²⁴² If a policyholder had a previous Funeral Policy, at least 31 days before inception of the new policy, and in respect of similar risks, then the new insurer may only impose a waiting period less than or equal to the uncompleted (if any) portion of the previous waiting period that the policyholder had under the previous policy.²⁴³ Lastly, a Funeral Policy may also not impose a waiting period when the policy is renewed.²⁴⁴

Rule 2A.7²⁴⁵ states that a Funeral Policy may not impose any exclusion for a pre-existing health condition.²⁴⁶ The rule further states that a Funeral Policy may also not impose any exclusion for suicide for a period more than 12 months from the inception of the policy (regardless of whether or not the policy has been renewed).²⁴⁷

Rule 2A.8²⁴⁸ relates to the processing of claims under Funeral Policies. A claims decision must be made within two business days after receiving all claim documentation.²⁴⁹ If the claim is disputed, the insurer has a further 14 business days to investigate the claim further and to then make a final decision.²⁵⁰ Furthermore, a claim in relation to a Funeral Policy may not be repudiated on the basis of non-

²⁴¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.6.1; Reinecke “South African Insurance Law” at par 26.72.

²⁴² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.6.2; (2006) 18 SA Merc LJ 291 at 311-312; 2006 (4) All SA 333 (SCA) at par 10; 2002 (4) All SA 355 (SCA) at par 47.

²⁴³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.6.5-7.

²⁴⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.6.4.

²⁴⁵ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁴⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.7.1.

²⁴⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.7.2.

²⁴⁸ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁴⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.8.1.

²⁵⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.8.2.

disclosure if the undisclosed information was not specifically requested before the inception of the policy.²⁵¹

Rule 2A.9²⁵² relates to the reinstatement of a Funeral Policy. Should a Funeral Policy lapse due to premium non-payment, the insurer may reinstate the policy, but with no additional waiting period added, and the reinstated policy must be on the same terms as the lapsed policy.²⁵³ The insurer may also enter into a new policy with the policyholder, but it must be done within two months of the lapsed policy and the policyholder will then only need to complete the unexpired portion of the previous waiting period (if any).²⁵⁴

Rule 2A.10²⁵⁵ states that a Funeral Policy may not prescribe that a money benefit be paid directly to the service provider.²⁵⁶ Despite the aforementioned, a claimant may, however, direct the insurer to pay such a benefit directly to a service provider.²⁵⁷ Also, when providing a service benefit, the policyholder may not be charged an administration or similar fee.²⁵⁸

Lastly, if it is the first time an insurer is offering a new Funeral product, or has materially changed an existing Funeral product, the FSCA must be notified of this 31 days prior to the marketing and offering of said product.²⁵⁹

²⁵¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.8.3; 2018 (4) All SA 77 (GJ) at par 87.

²⁵² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁵³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.9.1.

²⁵⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.9.2 and 2A.9.3.

²⁵⁵ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁵⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.10.1.

²⁵⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.10.2.

²⁵⁸ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.10.3.

²⁵⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.11.1 and 2A.11.2.

4.4 Summary

This chapter provided a breakdown of the prudential and market conduct standards applicable to the Funeral class of Life Insurance Business. The following chapter will summarise the similarities and differences between the two classes of Life Insurance Business, namely: Risk class, Death sub-class and Funeral class.

CHAPTER 5 GENERAL CONCLUSION AND RECOMMENDATIONS

5.1 Summary of findings

In the previous chapters, the prudential and market conduct standards applicable to both the Risk (Death sub-class) and Funeral classes of Life Insurance Business were discussed. The similarities and differences between the two classes in relation to the standards applicable to each will now be explained.

5.1.1 Prudential Standards

The prudential standards of the two classes of Life Insurance Business are, in fact, extremely similar. Similar portions of the Insurance Act,²⁶⁰ as well as its accompanying FSI²⁶¹ and GOI²⁶² prudential standards, apply to both classes of Life Insurance Business. This includes the Mortality Risk calculation²⁶³ set out in FSI 4.2.²⁶⁴

The two main differences in the prudential standards between the two classes, are firstly, the fact that the benefit relating to policies written under the Funeral class of Life Insurance Business is capped at a maximum of R100 000.00 (escalating annually, by the Consumer Price Index, from 1 July 2018) per life insured, per policy,²⁶⁵ whilst there is no such cap for the insurance obligations relating to policies written under the Risk class, Death sub-class of Life Insurance Business.²⁶⁶ And secondly, as per the definitions of “Risk class, Death sub-class” and “Funeral class” found in Schedule 2 of the Insurance Act,²⁶⁷ benefits offered under the Risk class, Death sub-class can only be of monetary form, whereas benefits provided under the Funeral class can be offered

²⁶⁰ Act 18 of 2017.

²⁶¹ The Frameworks for Financial Soundness of Insurers.

²⁶² The Governance and Operational Standards for Insurers.

²⁶³ FSI 4.2 at 4 and 5.

²⁶⁴ See par 3.2 above.

²⁶⁵ GOI 7 at 2; Joint Communication 4 of 2020 at par 3.1.

²⁶⁶ Joint Communication 4 of 2020 at par 3.1.4 and par 3.2.1.

²⁶⁷ Act 18 of 2017.

in not only monetary form, but as a service as well, or instead (if the claimant so wishes).²⁶⁸

Thus, if you wish to take out funeral cover for yourself or another, for a benefit of more than R 100 000.00, and you are satisfied to receive a monetary benefit, as opposed to a service benefit, you would then contract with an insurer who underwrites funeral cover under the Risk class of Life Insurance Business and offers such a benefit.

5.1.2 Market Conduct Standards

As with the prudential standards, there are also numerous similarities relating to the market conduct standards when comparing the two classes of Life Insurance Business. However, unlike with the prudential standards, there are numerous differences between the market conduct standards applicable to the two classes.

The first similarity comes from the remaining portions of the Long-Term Insurance Act.²⁶⁹ Section 55²⁷⁰ caps the benefit amount that an insurer may provide upon the death of certain minors, and this section applies to both the Risk (Death sub-class) and Funeral classes of Life Insurance Business. An insurer is prohibited from providing a benefit exceeding the amount of R20 000.00 on the death of an unborn or a minor under the age of six years old.²⁷¹ An insurer is also prohibited from providing a benefit greater than R50 000.00 on the death of a minor who is six years or older, but below the age of 14 years old.²⁷² This is not a new section in the Long-Term Insurance Act²⁷³ but rather one that remained, even after many other sections were either repealed, amended or moved into the new Insurance Act.²⁷⁴ Section 55 was drafted with one of the aims being to help curb the rate of infanticide in South Africa.

²⁶⁸ Joint Communication 4 of 2020 at par 3.2.1 and fn 3.

²⁶⁹ Act 52 of 1998.

²⁷⁰ Act 52 of 1998.

²⁷¹ Act 52 of 1998 at s55(1)(a).

²⁷² Act 52 of 1998 at s55(1)(b).

²⁷³ Act 52 of 1998.

²⁷⁴ Act 18 of 2017.

Another similarity, between the two classes, can be found in the Policyholder Protection Rules,²⁷⁵ at rule 10.4.13, which states:

“An advertisement may not use the term “funeral” or any derivative thereof in relation to a policy, or suggest or create the impression that a policy is intended to cover funeral costs or any costs associated therewith unless the benefit under the policy is a lump sum, or specified or determinable equal or unequal sums of money payable at specified intervals to cover the cost associated with a funeral or the rendering of a service on the happening of a death event.”

The FSCA and Prudential Authority further confirmed, in a joint communication²⁷⁶ issued, that both the Risk class - Death sub-class and the Funeral class may make use of the term “funeral” or a derivative thereof in an advertisement, as long as the cover is intended to cover costs associated with a funeral or service relating to the happening of a death event.²⁷⁷

As seen in the two previous chapters, most of the rules²⁷⁸ apply to both of the Risk (Death sub-class) and Funeral classes of Life Insurance Business. There are, however, quite a few rules that differ, and these will be set out in the paragraphs that follow.

Rule 2A.4,²⁷⁹ which provides rules relating to the structure of the policy benefits of policies written under the Funeral class, does not apply to the Risk class, Death sub-class. There is no prescribed structure for policies written under the Risk class, Death sub-class.

²⁷⁵ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁷⁶ Joint Communication 4 of 2020.

²⁷⁷ Joint Communication 4 of 2020 at par 3.5.

²⁷⁸ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁷⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

Rule 2A.5,²⁸⁰ which contains the rules relating to the variation and renewal of policies falling under the Funeral class and states that such a policy may not be varied within the first 12 months (even if the policy was renewed during this time), unless the variation is done in accordance with the rule. This rule does not apply to policies written under the Risk class, Death sub-class. However, any variation made to policies written under either one of the two classes, will still require proper notifications to be made to the policyholders in accordance with Rules²⁸¹ 11.6.4 and 11.6.5.

Rule 2A.6,²⁸² speaks to the rules regarding waiting periods that may not, or may with limitations, be applied to policies written under the Funeral class. There are no limitations or requirements relating to waiting periods that may be applied to policies written under the Risk (Death sub-class) class, provided that policyholders are still treated fairly and in line with Rule 1.²⁸³

Rule 2A.7²⁸⁴ speaks to the fact that policies written under the Funeral class may not impose any exclusion for a pre-existing health condition,²⁸⁵ nor may it impose any exclusion for suicide for a period of more than 12 months from the inception of the policy (regardless of whether the policy has been renewed).²⁸⁶ These limitations to the exclusions that may be applied to a policy, are not applicable to policies written under the Risk class, Death sub-class of Life Insurance Business.

²⁸⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁸¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁸² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁸³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁸⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁸⁵ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.7.1.

²⁸⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.7.2.

Rule 2A.8²⁸⁷ relates to the processing of claims under policies written under the Funeral class, and states that a claims decision must be made within two business days after receiving all claim documentation.²⁸⁸ If the claim is disputed, the insurer has a further 14 business days to further investigate the claim and to then make a final decision.²⁸⁹ Furthermore, a claim in relation to such a policy may not be repudiated on the basis of non-disclosure if the undisclosed information was not specifically requested before inception of the policy.²⁹⁰ Rule 17.6²⁹¹ relates to the processing of claims in general and in doing so, relates to claims processed under policies written under the Risk class, Death sub-class of Life Insurance Business. Unlike Rule 2A.8,²⁹² there is no prescribed time limit, save for the requirement that a claims decision must be made within a reasonable period after receiving the claim.²⁹³ An insurer must thereafter, but within 10 days from making a decision, provide the policyholder with written notification of the decision made.²⁹⁴ An insurer, of a policy written under the Risk class, Death sub-class, may repudiate a claim on the basis of material non-disclosure.²⁹⁵

Rule 2A.9²⁹⁶ relates to the reinstatement of a policy written under the Funeral class, should the policy lapse due to premium non-payment. There are no such requirements, nor do any such limitations apply to policies written under the Risk class, Death sub-class.

²⁸⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁸⁸ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.8.1.

²⁸⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.8.2.

²⁹⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 2A.8.3.

²⁹¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁹² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁹³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 17.6.

²⁹⁴ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 17.6.

²⁹⁵ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 21.

²⁹⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

Rule 2A.10²⁹⁷ relates to the rules surrounding the provision of a service benefit under a policy written under the Funeral class. These principles are not applicable to the Risk class, Death sub-class, because as per the definition of said class, such a policy is not able to provide a service as a benefit.²⁹⁸ The benefit must either be in the form of a lump sum or specified or determinable equal or unequal sums of money.²⁹⁹

Rule 2A.11³⁰⁰ states that an insurer must notify the FSCA of any new product (or materially changed product) written under the Funeral class, at least 31 days prior to the marketing and offering of said product. An insurer offering new policies written under the Risk (Death sub-class) class may, however, market and offer these policies without having to provide prior notification to the FSCA, provided the insurer is licensed, in terms of the Insurance Act, to offer such policies.

Rule 15.7³⁰¹ states that if there is an increase to premiums relating to a policy written under the Risk class, the insurer must provide the policyholder with suitable alternatives, such as an option to reduce benefits or cancel the policy, in order to reduce the detrimental impact on the policyholder. There is no such requirement relating to policies written under the Funeral class, save for the fact that all policyholders must nonetheless be treated fairly.³⁰²

Rule 19³⁰³ applies to individual funeral cover policies written under the Risk class, Death sub-class. It is the new insurer's responsibility, when an individual risk policy is taken up, to confirm with the intermediary whether or not the policy is in fact a

²⁹⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

²⁹⁸ Schedule 2 of Act 18 of 2017.

²⁹⁹ Schedule 2 of Act 18 of 2017.

³⁰⁰ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

³⁰¹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

³⁰² Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 1.

³⁰³ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

replacement³⁰⁴ policy,³⁰⁵ and if this is so, to follow certain requirements as set out in Rule 19.³⁰⁶ There's no such requirement in relation to policies written under the Funeral class of Life Insurance Business.

5.2 A final word

From this research, it is noted that funeral cover may be written under either the Risk (Death sub-class) class or the Funeral class of Life Insurance Business.

The prudential standards applicable to the two classes, are extremely similar, save for the maximum cap placed on the benefits provided under the Funeral class, as well as the fact that policies written under the Funeral class may offer a service as a policy benefit.

However, on the other hand, with regard to the market conduct standards applicable to the two classes, although there are some similarities and overlap, there are many differences. Not only do the general rules³⁰⁷ apply to both classes, but, unlike policies written under the Risk (Death sub-class) class, policies written under the Funeral class also have their own specific rule: Rule 2A³⁰⁸ which applies additionally and pre-eminently.

³⁰⁴ As per Rule 19.1 of Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928, "replacement" is defined as: "...action or process of – (a) substituting an individual risk policy (the "replaced policy"), wholly or in part, with another individual risk policy (the "replacement policy"); (b) the termination or variation of an individual risk policy (the "replaced policy") and the entering into or variation of another individual risk policy (the "replacement policy"); – with the purpose of meeting the same or similar needs or objectives of the policyholder or in anticipation of, or as a consequence of, effecting the substitution or variation, irrespective of the sequence of the occurrence of the transactions."

³⁰⁵ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928 at Rule 19.2.1.

³⁰⁶ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

³⁰⁷ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

³⁰⁸ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

Therefore, as a policyholder, who wishes to take out insurance to cover funeral expenses for oneself or for another, the research shows that Rule2A,³⁰⁹ which is applicable only to policies written under the Funeral class and not to policies written under the Risk (Death sub-class) class, adds even further protection for the policyholder. Thus, by writing policies under the Funeral class, the insurer is forced to adhere to additional and stricter market conduct standards, which in turn provides the policyholder or claimant with increased protection and faster claim turnaround times.

To answer the initial research question, and considering all of the above research, for a policyholder wishing to take out funeral cover for oneself or another, it is the writer's opinion that it will be to the policyholder's advantage to contract with an insurer who underwrites funeral cover under the Funeral class of Life Insurance Business.

Consequently, however, a new question now arises: why would an insurer, who is licensed for both classes of Life Insurance Business, choose to offer funeral cover under the Funeral class, as opposed to offering funeral cover under the less stringent and far less encumbering Risk class, Death sub-class?

³⁰⁹ Government Notice 1407 in Government Gazette 41321 as amended by Government Notice 997 in Government Gazette 41928.

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