CPD ARTICLE

# THE CLAIM WAS DECLINED, but where did it really go wrong?

In considering complaints, one feature that often emerges is that the dispute is not always about the policy wording itself, but rather how that wording has been applied to the facts of the claim.

### Understanding proximate cause

*"Heavy rain preceded damage to my client's wall; storm damage is covered, therefore the claim must be covered."*

For example, in a recent complaint involving a claim for structural damage to a boundary wall after heavy rainfall, the complainant believed the rain caused the damage. Independent engineering evidence, however, established that the proximate cause was long-term hydrostatic pressure and soil movement, both of which were expressly excluded under the policy.

On the policy wording and the available evidence, the insurer was entitled to decline the claim. However, simply relying on the legal correctness of a repudiation proved not to be enough. It became apparent that the decision needed to also be clearly explained, properly supported by evidence and communicated in a way that managed the client's expectations, to avoid unnecessary escalation.

Many disputes arise because complainants and sometimes their intermediaries confuse the immediate event with the proximate cause. Heavy rain may immediately precede a loss, but if expert evidence establishes that long-term deterioration caused the failure, the rainfall becomes merely the triggering event rather than the operative insured peril or proximate cause.

Instead of an insurer simply stating that a claim was correctly repudiated in accordance with a specific clause, it must be determined why and how the assessor reached their conclusion. In the current example, the assessor concluded that the damage developed over time rather than resulting from a sudden insured event. On those findings, the insurer would be justified in relying on the policy exclusion for gradual deterioration.

### Understanding the limits of cover

*"My doctor told me not to travel, so surely my trip cancellation is covered."*

To use a different context, a complainant may be advised by a treating specialist not to travel and understandably assume that this entitles them to cancellation benefits in terms of a travel insurance policy. However, many travel policies do not provide unrestricted cover for every medically advised cancellation.

Instead, cover may be limited to specific insured medical events or defined complications. In these cases, the dispute is often not about whether the doctor's advice was genuine, but whether the medical condition falls within the scope of cover promised by the policy.

When disputes reach an Ombud's office, an adjudicator evaluates the complaint by asking a specific set of questions: What exactly happened? What does the policy promise? Which clauses apply? Is there evidence, and what does it indicate? Are there other considerations that may affect the decision from a fairness and equity perspective?

Crucially, adjudicators look at the dispute through two distinct lenses:

1. Was the insurer contractually correct?
2. Was the complainant treated fairly throughout the process?

### Explaining the 'why' behind decisions

Just because the policy wording supports a rejection does not mean the decision is fair. Additionally, the communication of that rejection may be unclear or incomplete. The general disclosure standards under Rule 11 and the provisions under Rule 17 of the Policyholder Protection Rules (PPRs) require insurers to communicate with policyholders in a manner that is clear, fair and not misleading, including providing appropriate reasons for claims decisions.

Complainants referred to an Ombud often demonstrate the importance of these requirements, particularly where the explanation clearly links the assessor's findings, the policy wording and the basis upon which the claim was accepted, limited or declined.

Ultimately, good claims decisions are not only about reaching the correct outcome. They are also about enabling the policyholder to understand why that outcome was reached. A well-explained rejection may still disappoint, but it is far less likely to result in a dispute.

**Samuel Setlhoko**
**Legal Intern**
**Non-Life Insurance Division**
**National Financial Ombud Scheme South Africa**