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Executors asked their sister with whom the deceased had been living, to employ local solicitors to wind up the estate, four months passed before she instructed them to claim death grant.

*Held* that the executors could not prove good cause since it was not inevitable that they should delegate making of the claim to their sister.

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- 1 My decision is that the claim for a death grant is not allowed
- 2 The claimant is one of two executors who in that capacity claim a death grant in respect of their sister who died on 21th July, 1949
- 3 The claim, which was submitted by the solicitors acting for the executors, has been accepted by the Minister as having been made on 28th November, 1949, although form B D 1A was not actually sent in until 11th February, 1950. The claim was disallowed by the local Insurance Officer (whose decision was upheld by the Local Tribunal) on the ground that it was not made within the prescribed period of one month from the death and that good cause for the delay was not proved, see Regulation 11 of the National Insurance (Claims and Payments) Regulations, 1948 [S I 1948 No 1041] as amended by the National Insurance (Death Grant) Regulations, 1949 [S I 1949 No 1204]

4. The deceased lived with her sister, Miss. R.R., in Margate, and she left a will appointing her two married sisters to be her executors. One of these lived at Chingford, and the other lived at Seaford. Therefore, as so often happens, the winding up of the deceased's affairs was put in the hands of a local firm of solicitors in Margate, but the executors for whom they acted were only able to instruct them from a distance.

5. It appears that the executors adopted the convenient course of allowing Miss R.R., the unmarried sister in Margate, to attend on their behalf to all matters not requiring their actual signatures. Miss R.R. accordingly took the will to the solicitors and arranged with them to take the usual steps to obtain probate. She also specifically instructed the solicitors to claim a death grant, but unfortunately she did not do this until November. She told the Local Tribunal that she knew the National Insurance Act made provision for death grants but thought that the provision was not operative until July, 1950. She formed her mistaken impression from statements in the Press. It was not until she mentioned the question of a death grant when talking to an official of the Prudential Assurance Company that she realised her mistake.

6. It is not suggested that Miss R.R. received incorrect advice from the solicitors, nor is it suggested that the solicitors were in any way the cause of the delay. Nor yet is it suggested that Miss R.R., owing to the novelty and very recent introduction of death grants, was not aware of their existence. It is clear that the publicity given to the introduction of death grants in July, 1949, had attracted her attention, but that she had made an unfortunate mistake regarding the relevant date. It would not be proper to hold that her mistake, albeit a perfectly genuine one, was reasonable. Consequently I am unable to hold that it constituted good cause within the meaning of the regulations for her failure to make the requisite inquiries or to instruct the solicitors at an earlier stage with regard to claiming a death grant.

7. There appears to be a suggestion that the delay occurred because it was not known whether the deceased was an insured person or whether her contributions were in order. But uncertainty as to such matters could not have prevented (in fact, ought to have prompted) the making of inquiries at the local Insurance Office.

8. Miss R.R. is, however, not the claimant, and strictly speaking it is not her delay, but the claimant's delay (i.e., the executors' delay), which has to be explained. When a claimant delegates the handling of his claim to someone else, he is not held responsible for the other person's mistakes if the delegation was from a practical point of view inevitable. For a claimant is only expected to do all that he reasonably can to ensure that the claim is made in time. But in the present case it cannot be said that the delegation of responsibility by the executors to Miss R.R. was inevitable, although no doubt it was very convenient. If executors delegate the doing of something which they could themselves do through the post, they cannot reasonably disclaim responsibility if a mistake is made by their agent. I therefore hold that good cause for the executors' delay in making the claim has not been proved.

9. I have, then, to consider the contention put forward on the claimant's behalf that in equity it is not open to the Ministry to say that the claim was out of time, because as late as 30th November the Ministry were of opinion

that no claim could be made at all. It is argued that if that was the Ministry's view in November, the claimant herself could not be expected to know that she was entitled to make a claim as early as July. I do not think that is a sound argument. The fact that the local office of the Ministry misinterpreted the Act, as they did on 30th November, by stating that executors as such cannot claim death grant, does not mitigate or in any way affect the fact that the claimant or her agent failed to ascertain the correct procedure for making a claim. The statutory regulations have to be complied with, and there is no equity for one mistake to excuse another, nor is there any power to relax the regulations on sympathetic grounds.

10. It is further contended that the Ministry, having first denied that there was any valid claim at all, ought not to have changed their ground and rejected the claim because it was out of time. There might have been force in this contention if the attitude of the Ministry had contributed in any way to the delay in making the claim, but short of that, and provided the claimant is not prejudiced in any other respect, I can see no reason why the Ministry should not contest the claim on any grounds they consider to be available.

11. The question whether an executor can claim a death grant was discussed in the correspondence between the claimant's solicitors and the Ministry, and it has recently been answered in the affirmative by Commissioner's Decision No. C.G. 177/50 (reported). That decision related to the case of a sole executor, and it may be desirable that I should add that it is equally applicable in the present case where there are two executors.

12. The claim in this case was submitted on form B.D.1A in the name of both executors claiming jointly. The Ministry, however, proceeded as if the claim had been made in the name of one executor only, presumably on the ground that Section 22(6) of the Act provides that "Not more than one person shall be entitled to a death grant in respect of the same death". In my view the Ministry should have accepted the claim in the names of both executors. "If a man appoints several executors, they are esteemed in law but as one person . . .". Bacon's Abridgment, Title Executors and Administrators, (D)1. If, on the other hand, the claim had been made by only one of the two executors, it would equally have been a valid claim, for since the executors are one person in law either of them can give a good discharge without the concurrence of the other.

13. The way the claim has been dealt with procedurally does not affect the substance of the proceedings or the validity of my decision. The claim was made by both executors jointly: the appeal was signed by one only "for self and co-executor". The whole matter is thus validly and effectually before me.

14. For the reasons indicated the appeal must be disallowed.