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Executrix entrusted death grant claim to the solicitor who was obtaining probate

*Held* that in the circumstances it was reasonable for her to rely on her solicitor to claim

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1. My decision is that the claim for death grant is allowed
2. The question in this case is whether the claimant has proved that there was good cause for the failure to make the claim for death grant within the prescribed time.
3. The claimant entrusted her solicitors with the task of making the claim. The deceased died on the 13th July, 1949, but the claim was not made until the 10th September last
4. In a case in which it was practicable for the beneficiary to make his claim for benefit himself but he has delegated the task of making it to another person who fails to make the claim in time, good cause for the failure can be shown by proving that having regard to all the circumstances, including

the beneficiary's education and experience of affairs, a reasonable person in the same position would not have thought it necessary to send the claim to the local Insurance Office himself but would have relied on the other person to send it in time and would have taken no steps beyond those (if any) which the beneficiary took to ensure that the other person had sent the claim in time.

5. I do not think that it is shown that the solicitors had good cause for their failure to forward the claim in time. The explanation given in their letter of the 16th September is that the beneficiary was not in a position to claim as legal representative of the deceased until probate was granted on the 10th August, 1949. This opinion was mistaken, but even if it had been accurate it would not have been good cause for delaying to send in the claim for a further month. (The earlier written notice of claim which is referred to in the second paragraph of the letter was presumably the solicitors' letter of the 5th September, in which they asked for the claim form.)

6. It remains therefore to consider whether in the sense indicated above, the claimant has proved that good cause for failure to claim in time is shown. I think it is.

7. On form L.T. 62 the claimant gives a fuller history of the matter than she gave to the Local Tribunal. It appears that she was handed leaflet N.I. 49 at the office of the Registrar of Deaths where the clerks had expressed contradictory opinions as to her right to death grant. She had already instructed the solicitors to obtain probate of the deceased's will, of which she was executrix, and the undertaker advised her to take all the papers to the solicitors who would "know about it". The claimant accordingly handed leaflet N.I. 49 to the solicitor (apparently without reading it herself) and the solicitor said he would see to it.

8. In these circumstances it seems to me that the claimant acted as any reasonable woman in her position would have acted. She needed advice as to her legal right to death grant and it was clearly reasonable for her to consult the solicitor who was already dealing with probate for her.

9. In my opinion when the solicitor said he "would see to it" the claimant could not reasonably have been expected either to refuse his services and insist on sending in the claim herself or to make independent inquiries about the time limit and remind the solicitor of his duty before that limit expired. In other words, I think that from the practical point of view it was inevitable that the claimant should leave this matter to her solicitor and that she could not have done more than she did to see that the claim was made in time.

10. I desire to emphasise that a claimant can only prove good cause if he shows that he did all that he reasonably could to ensure that the claim was made in time. Every case of this kind must be judged in the light of the particular circumstances: it does not follow from this decision that in a case in which the claimant is in no doubt about his legal right to the benefit and is not already consulting a solicitor about a matter closely connected with the claim but merely asks the solicitor (as he might ask a lay friend or employee) to make the claim for him in order to save himself time and trouble, the claimant will be held to have proved good cause for delay if the solicitor fails to make the claim in time.

11. The appeal is allowed.

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