

## **Case 22 – Payment of Interest**

*Late payment of claim due to suspicion of suicide – Date from which interest is payable*

### **Background**

1. The policy commenced with effect from 1 September 2010 with cover of R1 000 000.
2. The insured passed away on 27 January 2012 at the age of 46.
3. The policy had a suicide exclusion applicable for the first two years.
4. The circumstances surrounding the insured's death were as follows:
  - The deceased was alone at the time of her death and there was no forced entry into the house.
  - The deceased was found in the bathroom by her fiancé.
  - The deceased was not breathing.
  - The deceased was being treated for depression.
  - The police docket contained photographs of numerous medications that appeared to have been found near the deceased.
5. The claimant submitted a death claim on 6 February 2012.
6. Toxicology tests were to be done for the purpose of the post mortem report. Liberty Life had been advised that it could take up to 7 years to obtain the report and/or results from the state's pathologist.
7. Liberty Life required the report and/or results to determine the exact cause of death and deferred the claim pending receipt of said report / results.
8. The complaint was submitted to our office by the claimant's attorney due to the expected delay.
9. It was established that the medications had not been found near the deceased, but on discovery by the police, had been placed on a kitchen counter for photographing.
10. Following discussions between the office, Liberty Life and the claimant's attorney, Liberty Life agreed to expedite the toxicology results with the assistance of a professor from a provincial forensic pathology service. Liberty Life agreed to provide the office with weekly progress reports.
11. The toxicology tests were completed in June 2015. Liberty Life received the reports on 13 July 2015, the findings of which were inconclusive.
12. The claim was paid on 17 August 2015.

13. Liberty Life advised that interest would be paid from 13 July 2015 to the date of the claim payment.
14. Following an enquiry from the complainant's attorney, the date was amended by Liberty Life from 13 July 2015 to 23 January 2013, it being the date on which the last requirement in terms of the claim form, i.e. the police statement, had been received by Liberty Life.
15. The claimant's attorney did not accept the calculation date of 23 January 2013.
16. Liberty Life was requested by this office to consider paying interest from 27 March 2012 (two months after the date of death).
17. Liberty Life maintained that interest, amounting to R134 654.86, was only due from 23 January 2013.

### **Provisional determination**

18. The matter was discussed at an adjudicator's meeting and the office made a provisional determination, dated 7 December 2015 on the following basis:
  - The complainant proved the death of the deceased with the submission of the death certificate.
  - Liberty Life required the submission of the toxicology results and the police statement to determine the cause of death. This is an investigation that Liberty Life undertook to determine if the claim may be excluded in terms of the policy. It is not required to establish if the event giving rise to the claim, death, has occurred.
  - The police statement was not a requirement in terms of the policy.
  - Whilst the policy gave Liberty Life a discretion to receive information and evidence which it considered necessary to determine the admissibility of the claim, this discretion had to be exercised reasonably.
  - Interest was not being levied as a result of fault on the part of Liberty Life.
  - Liberty Life had possession of the sum insured for longer than it should have, as payment was due after the date of death. The complainant /estate was deprived of the use of the funds for the time that it was in Liberty Life's possession.
19. For the above reasons, the meeting unanimously agreed that interest was payable from 8 April 2012 to the date of the claim payment in terms of the

industry protocol. On re-calculating the date referred to in paragraph 16 above, it was established that the 60 day period, from the date the claim was submitted, expired on 8 April 2012.

20. Liberty Life disputed the provisional determination and submitted that:

- It had to receive all the requested information and evidence, which it considered necessary to determine the admissibility and amount of the claim.
- That it had reasonably exercised its discretion, in that it had followed up on numerous occasions between March 2012 and February 2013, with the complainant, to obtain the outstanding police report.
- That its practice is to pay interest only from the date of receipt of its last claim requirement.
- That as the complainant was aware of the outstanding requirement, it is reasonable that interest is only due from 23 January 2013.
- That as the claim could not be assessed without the outstanding requirements it is fair and reasonable that interest is paid from 23 January 2013.

### **Final Determination**

21. The matter was again discussed at an adjudicator meeting on 29 January 2016.

22. The meeting unanimously upheld the provisional determination for the following reasons:

- It was accepted that Liberty Life was entitled to receive information and evidence which it deemed necessary to assess the admissibility of the claim. This, however, dealt with the question of the admissibility of the claim and not with the question of when the claim payment was due.
- The payment is due when the event giving rise to the claim occurs, i.e. death.
- Death was proved with the submission of the death certificate on 6 February 2012.
- Liberty Life had not provided a persuasive argument to convince the office that it was entitled to benefit from the proceeds to the prejudice of the complainant / estate.

- The office had regard to its equity jurisdiction, in the exercise of which, it must strike a fair balance between the rights of the parties.
- Fairness demanded that, as the complainant/estate was deprived of the use of the proceeds of the policy for the time that it was in Liberty Life's possession, interest is payable from the time that the claim payment was due, despite the absence of fault on the part of Liberty Life.

23. Taking into consideration the industry protocol and the suggested guideline of 60 days, Liberty Life was instructed to pay interest from 8 April 2012.

### **Outcome**

24. Liberty Life paid the full amount of interest, amounting to R178 601.35, from 8 April 2012 as instructed.

25. Subsequently after an enquiry from the claimant's attorney, Liberty Life increased the interest amount and a further R168 857.99 was paid.