

*Lapsing of policy – complainant repeatedly having failed to pay premiums – insurer always accepting double premiums thereafter – insurer held to have waived lapsing provision.*

### **Background**

The complainant complained that her policy, a dependant care plan, had been cancelled by the insurer in 2007 due to unpaid premiums. She stated that, after the policy was sold telephonically to her in 2003, she had never received a contract from the insurer. She stated that over the years there had been several occasions on which she had not paid the monthly premiums, but she had paid a double premium the next month and these were always accepted by the insurer. In February 2007 she was told that the policy had lapsed and she asked for it to be reinstated, which was done. She missed a premium some months later, however, and although she paid double the next month the insurer this time refused to reinstate the policy.

In its response to our office the insurer stood by its decision, relying on the lapsing and reinstatement clause in the policy, which read:

“If one month’s premium is unpaid the policy will lapse, no further benefits will be made and no premiums will be refunded. The policy can be reinstated within three months from date of the last premium being paid. Reinstatement can only be made once during the life of the policy. Outstanding premiums may be recovered at claims stage”.

The complainant persisted in her allegation that, despite repeated requests, she had never been sent a copy of the policy, and the insurer was unable to disprove this.

### **Discussion**

We asked the insurer to provide us with a full premium history from inception of the policy. From this it was evident that there had been erratic payments - premiums had been missed in July 2003, September 2003, March 2004, November 2004, March 2005, June 2005, October 2005, November 2005, December 2005, January 2006, February 2006, March 2006, May 2006, June 2006, July 2006, August 2006, October 2006, November 2006, January 2007, March 2007, and May 2007. In each case there was a payment recovery some weeks after the due date. The insurer had cancelled the policy in February 2007, whereafter it was reinstated, and cancelled it again in May 2007.

We pointed out to the insurer that it had accepted late payment on several occasions over the life of the policy. By the insurer’s own conduct in regularly accepting late payments the insurer may thus be deemed to have waived the right to regard the policy as having lapsed in terms of the policy provision

quoted above. Even if this conduct did not amount to a waiver, the complainant was, in our view, reasonably justified in believing, on the strength of the insurer's past conduct, that it would not insist on strict and prompt payment in future.

We asked the insurer whether notices had been sent to the complainant in January/February 2007, or later, warning of the arrear premiums and the imminent lapsing of the policy. Such notices are required to be sent, in terms of section 52(1) of the Long-term Insurance Act. We also asked why the complainant had not been provided with a copy of the policy when it commenced in 2003.

### **Result**

We never received a direct answer either to these questions or to our comments about the apparent waiver of the lapsing clause.

The insurer's response was simply that it had decided to reinstate the policy, with the proviso that in future the terms of the policy would be adhered to, and no further reinstatements would be considered.

We advised the complainant to ensure that her premiums were paid regularly and on time in future.

**SM**  
**May 2008**