



In the matter between:

THE COMPLAINANT

and

LIFE INSURANCE (ESWATINI) LIMITED

RESPONDENT

STATEMENT OF DETERMINATION OF COMPLAINT GIVEN IN TERMS OF SECTIONS 75 AND 75 OF THE FINANCIAL SERVICES REGULATORY AUTHORITY ACT NO 2 OF 2010 (THE FSRA ACT)

INTRODUCTION

1. This complaint relates to insurance. The Complainant is the surviving spouse of a policyholder, and the Respondent is Life Insurance Eswatini. The Respondent is a licensed financial services provider in terms of the FSRA Act, 2010.

THE COMPLAINT

2. On 28 August 2019, the Complainant submitted a sworn statement of his complaint (the Complaint Form). The complaint form was supported by documents. The following are some of the documents:

CONTRACT NUMBER NO. 1	DOCUMENT SUBMITTED
	Contract for Life Welcome Letter (dated, 4 December 2007),
	Committed Savings Benefit Frequently Asked Questions
	Contract Summary – Risk Benefits (dated, 25 December 2007)
	Contract Summary – Savings Benefit (dated, 25 December 2007)
	Accidental Disability And / Or Death Benefit Schedule
	Terms and Conditions - Accidental Disability And / Or Death Benefit
	Savings Benefit Schedule
	Terms and Conditions - Savings Benefit Schedule

CONTRACT NUMBER	DOCUMENT SUBMITTED
	Contract for Life Welcome Letter (dated, 13 May 2008),

NO.2	Committed Savings Benefit Frequently Asked Questions,
	Contract Summary – Risk Benefits (dated, 22 May 2008)
	Contract Summary – Savings Benefit (dated, 22 May 2008)
	Accidental Disability And / Or Death Benefit Schedule
	Terms and Conditions - Accidental Disability And / Or Death Benefit
	Savings Benefit Schedule
	Terms and Conditions - Savings Benefit Schedule

The complaint presents the following facts:

- 2.1. The Complainant was married to his deceased wife in November 2016 and was insured with the Respondent.
 - 2.2. She left two policies with Respondent.
 - 2.3. The policies are number No.1 and Policy No.2.
 - 2.4. After her demise, Complainant approached a broker to lodge a claim.
 - 2.5. The broker advised that the total pay-out of the claim was plus-minus E36 000. 00 (thirty-six thousand Emalangeneni)
 - 2.6. He later received half that amount.
 - 2.7. On 4 December 2017, he lodged an internal complaint with Respondent.
 - 2.8. The Respondent addressed the complaint. However, there were inconsistent accounts between the local office and the Head Office. The matter remained unresolved.
3. The Complainant asks that the Ombudsman investigates the pay-out he received. He asks that the inquiry covers what happened to the balance of the insured amount. Lastly, Complainant asks that the money be paid directly to the beneficiaries' accounts and with interest.

THE RESPONSE / DEFENCE

4. On 6 December 2019, the Respondent submitted a response to the complaint. The response had several supporting documents, including,
- 4.1. An affidavit confirming the Complaint,
 - 4.2. Terms and Conditions – Accidental Disability And / Or Death Benefit Number No.1
 - 4.3. Accidental Disability And / Or Death Benefit Schedule
 - 4.4. Respondent Complaint Form
 - 4.5. Contract Summary – Risk Benefits (dated, 22 May 2008).
5. The following facts can be extracted from the response:
- 5.1. The deceased had two policies, number 1 and 2.
 - 5.2. Policy number 1 lapsed in 2008.

- 5.3. Policy number 2 was active at the time of her death.
- 5.4. Risk-Benefit – Accidental disability / Death E100 000.00 (one hundred thousand Emalangeni) with an annual 5% increase.
- 5.5. Committed Savings Benefit – initial premium with a scheduled annual premium increase of 10%.
- 5.6. The E100 000.00 (one hundred thousand Emalangeni) was payable in the event of accidental death or disability.
- 5.7. The E18 865.95 (eighteen thousand eight hundred and sixty-five Emalangeni ninety-five cents) was the full amount payable.

THE REPLIES

6. On 3 March 2020, the Complainant replied to the responses of the Respondent. He did not raise any new issues. The same is true for the Respondent's reply dated 11 March 2020.

DETERMINATION AND REASONS THEREOF

7. It is the role of the Ombudsman to determine whether the pay-out was fair in the circumstances. Further, the Ombudsman is to determine whether the balance can be paid with interest.
 - 7.1. Lastly, the Ombudsman is asked to ascertain why the pay-out cannot be paid directly into the accounts of the beneficiaries.
8. In assessing the above, both versions of the parties were investigated. The following are common cause facts-
 - 8.1. The Complainant was married to the deceased.
 - 8.2. The deceased held two policies as described above.
 - 8.3. The Complainant was paid E18 865.95 (eighteen thousand eight hundred and sixty-five Emalangeni ninety-five cents).
9. The following facts were found to be in contention:
 - 9.1. Whether the Complainant was paid the full amount?
 - 9.2. Whether the beneficiaries can be paid directly (if at all)?

THE APPLICABLE LAW

10. It is settled law that insurance is a contract-based relationship. This means that the contract of insurance becomes the primary instrument of regulating the affairs of the parties. (Prof) MFB Reinecke (2016), Assistant Ombudsman, Office of the Ombudsman for Long Term Insurance in his article, "INSURABLE INTEREST IN THE CONTEXT OF LONG-TERM INSURANCE", states that:

"The authorities simply emphasized that a contract of insurance is a contract to transfer a risk threatening the patrimony of the insured. This implied that the insured must prove an interest upon the insured event to prove that he has in fact suffered a loss..."

11. The two policies can now be analysed. Firstly, one must understand what was being "covered" by the policies. The starting point is that this was an accidental disability and/or death insurance product. To support this fact, see the Benefit Clause in the "Terms and Conditions of Your Accidental Disability and / or Death Benefit." It provides:

POLICY NUMBER	BENEFIT CLAUSE WORDING
01	Benefit The Cover Amount will be payable in full or in part on the <ul style="list-style-type: none"> • Death • Disability... On the Life Covered <u>due to an accident, as defined...</u>

12. The two policies are written in the same language. Also, both policies define what an accident is. This definition excludes death by natural causes. Kagan J., (2020) in his article "Accidental Death Benefit", Investopedia defines this benefit as:

"... An accidental death benefit is paid to the beneficiary of an accidental death insurance policy....Accidental death benefits deaths [that are] due to accidents."

APPLICATION OF THE LAW TO THE FACTS

13. The question of whether the Risk Benefits were payable is answered by the nature of the policy. Part of the documents submitted with the complaint is a death certificate. The cause of death is classified as "natural causes". Because of the Benefits Clause in the terms and conditions of the policy, the Cover Amount of E100 000.00 (one hundred thousand Emalangeneni) is payable only if the death is accidental.

14. In its response, the Respondent states that the initial policy No.1 lapsed in 2008. Because the deceased took up a second life insurance policy in 2008 No.2, the earlier one ceased to operate. The rationale is that one insurer cannot cover the same life multiple times. There was therefore one policy operative at the time of death. To compute the amounts due, the "Customer Portfolio Details" is important. It was extracted on 8 December 2016.

TYPE OF BENEFIT	AMOUNT BALANCE	PAYABLE Y/N	
Accidental Disability And / Or Death	E100 000. 00	Yes	No
			✓
Committed Savings Benefit	E17 913. 75	Yes	No
		✓	

15. As of 8 December 2016, the amount due under policy No.1 is E17 913.75 (seventeen thousand nine hundred and thirteen Emalangeneni seventy-five cents). The eventual money paid out appears to account for any appreciation in the intervening period, that is to say, between December 2016 to the date of payment.

16. The remaining issue to be addressed is whether the beneficiaries can be credited directly. The Committed Savings Benefit product did not reflect any beneficiaries. In this regard, see the "Customer Portfolio Details". The only amount payable was paid to the Complainant as admitted by both parties.

FINDING

17. The Respondent paid the amount due in terms of the active policy. Because of the manner of death, only the Committed Savings Benefit was due to the Life Covered's beneficiaries. This is the amount of E17 913.75 (seventeen thousand nine hundred and thirteen Emalangenani seventy-five cents) plus any interest accrued.

THE ORDER

18. The complaint is not upheld.

19. No order is made against the Respondent.

THUS, DONE AT MBABANE ON AND CERTIFIED A TRUE AND CORRECT DETERMINATION OF THE OMBUDSMAN OF FINANCIAL SERVICES IN TERMS OF SECTION 75(5) OF THE FINANCIAL SERVICES REGULATORY AUTHORITY ACT OF 2010.

THE OMBUDSMAN OF FINANCIAL SERVICES