

**GROUP: Insurance - Fire & General**  
**SERVICE: Contents**  
**Complaint No : 129555**  
**YEAR: 2014**

**Casebook Index: Lapse, Premium/interest notices**

### Background

In December 2003, C and her husband arranged a contents insurance policy with P.

In October 2013, P sent a “*Policy Schedule*” addressed to C and her husband at their home address, stating that the policy was “*due for renewal on 12 November 2013*”. This “*Policy Schedule*” stated that the “*Total Amount Due by 12/11/13*” was \$536.60.

In November 2013, P sent 3 notices addressed to C and her husband at their home address, again stating that the policy was due for renewal.

In addition to these notices addressed to both C and her husband, P also sent 3 emails to the husband at his email address concerning the overdue premium payment.

In December 2013, the policy was cancelled by P for non-payment of premiums.

In April 2014, C contacted P to advise that there had been a burglary on that day at the home address. The total loss was estimated at between \$6,000 and \$7,000.

In May 2014, C emailed P to advise that she and her husband had separated, and that she had been unaware that the overdue premiums had not been paid.

In June 2014, P wrote to C, acknowledging that she thought her husband was paying the premiums, and that she was not aware the policy was overdue. However, in the absence of payment of the premiums, P considered that the policy had lapsed

### **Assessment**

The policy was renewable annually. Annual insurance policies are contracts, by which the insurer agrees to assume the risk in consideration for the premium. As a matter of law, such a policy will lapse if the renewal premium is not paid, because there is no consideration for assuming the risk. The risk is only assumed when the premium for the corresponding period has been paid.

Although a practice has developed within the insurance industry to send out renewal notices, insurers have no general legal obligation to do so, or to advise a policyholder of the possibility of lapse. In this case, the policy did not impose such obligations on P.

These legal considerations were referred to on page 970 of *MacGillivray and Parkington on Insurance Law* (8<sup>th</sup> edition), as follows:

*“Most insurance companies are in the habit of sending a notice to each assured before his renewal premium falls due, but the assured is not entitled to rely upon that act of courtesy being continued and, if for some reason or other a renewal notice is not sent or received, the assured cannot rely upon the omission as an excuse for unpunctuality in paying the premium.”*

Although it was not required to do so, P sent numerous renewal notices to C and her husband at their home address, but neither of them took steps to pay the overdue premiums or to renew the policy. Nor did either of them contact P to make alternative arrangements for payment.

The Case Manager acknowledged C’s difficult circumstances, and that the failure to pay the premiums resulted from miscommunications between C and her husband. However, it is the policy owners’ responsibility to ensure that premiums are paid and that insurance is up to date.

Having regard to all of the circumstances, P was entitled to lapse the policy for unpaid premiums and, as a result, P was entitled to decline the claim.

Result Complaint not upheld