

**The Ombudsman for Short-Term Insurance comments on rejections based on misrepresentation of regular driver details.**

During the underwriting of a motor vehicle insurance policy, a prospective client is asked by the insurer to disclose the identity of the regular driver of the vehicle being insured. The regular driver is the person who drives the vehicle most often in any monthly period. This person's details, including their specific risk profile are captured by the insurer in order to determine the acceptability of cover and the appropriate premium. Details which influence the regular driver's risk profile include age, profession, how long he or she has been in possession of a valid driver's licence, insurance history, financial standing and so forth.

Consumers must understand the importance of providing an insurer with true and complete information during the underwriting process. This includes noting the correct details of the regular driver. An insurer may decline liability of an incident if it is found that the regular driver noted on the policy was not in fact the regular driver in respect of the insured vehicle at the time of the incident.

The underlying rationale behind a rejection on this basis is that the insurer may have concluded the insurance contract on materially different terms had it been given the opportunity to assess the risk on the correct risk profile. An insurer is entitled to collect the correct premium for the associated risk. If the regular driver details have been misrepresented, the insurer may have suffered a prejudice on the premium quoted. In certain cases, the insurer may have even declined to accept the risk on the basis that the regular driver did not meet its underwriting criteria.

Consumers may provide incorrect information to their insurer because they do not understand what is meant by the term "regular driver". More often however, consumers will intentionally misrepresent the regular driver details in order to receive the benefit of a cheaper premium on the details of an individual with a low risk profile. For example, a parent may agree for their child to note him or her as the regular driver on their vehicle being insured in order to receive a lower premium. The insurer will charge a premium based on the risk profile of an

older more experienced driver rather than on the profile of a younger, less experienced driver who is also more likely to make use of the vehicle in circumstances where the risk of loss or damage would be greater.

In a particular complaint referred to the Ombudsman, it came to light during the validation of the claim, that the insured's son had contacted insurer A and requested a quote for a motor vehicle to be placed on cover. During underwriting, he noted himself to be the regular driver. The quote was however not taken up by the insured's son on the basis that the premium was too high. The insured then approached insurer B for a quote in respect of the same motor vehicle, this time noting herself as the regular driver. The risk was underwritten on this basis and the insured was quoted a cheaper premium which she accepted and cover accepted.

Consumers fail to consider the greater financial effect of misrepresenting material information to the insurer. Whilst the insured may appear to be saving a few hundred Rand on a cheaper premium, there is in fact no valid cover. The majority of insurance policies exclude cover for any loss or damage in circumstances where it is found that information material to the correct underwriting of the risk was misrepresented or not disclosed. This rejection will also extend to third party liability cover, leaving the insured out of pocket in respect of his or her own damage as well as a liability claim which may be submitted by a third party.

Another misconception held by consumers is that insurers will never find out that the details of the regular driver noted on the policy are in fact not correct. An insurer has the right to validate any claim which is submitted under a policy. In addition to taking statements from the regular driver, the insured and the incident driver, this process may also include, conducting interviews with parties able to attest to the true identity of the regular driver of the vehicle including the neighbours, work colleagues, employers, relatives, friends etc. The information collated from these interviews may demonstrate that the regular driver details have not been noted correctly. If the evidence establishes, on a balance of probabilities, that the information was misrepresented, the Ombudsman will support the insurer's decision to reject the claim.

In the same complaint referred to the Ombudsman, an assessor was appointed by the insurer to validate the claim. He interviewed a number of witnesses at the place or residence and employment of the insured and her son including security guards, work colleagues, neighbours and petrol attendants at a nearby filling station. The assessor found that the insured's son was driving the insured vehicle on a daily basis. The insured had never been seen driving the insured vehicle. In fact, the insured had her own vehicle which she drove daily.

The decision of the Ombudsman was that the insurer had submitted sufficient evidence, which on a balance of probabilities, indicated that the complainant's son was in fact the regular driver of the insured vehicle. The Ombudsman therefore upheld the insurer's rejection of the claim.

The insurer's rejection of a claim on the grounds that the details of the regular driver had been noted incorrectly may be challenged on the basis that the insurer has not discharged its onus of demonstrating that the regular driver noted on the policy was not in fact the regular driver. In addition, the rejection may be challenged in circumstances where the insurer has not complied with specific provisions of the Policyholder Protection Rules. The insurer must ensure that the insured understands what is meant by the term "regular driver". Furthermore, the questions asked at underwriting stage relating to the regular driver must not be ambiguous or contradictory but clear and precise in order to extract the correct information required for purposes of underwriting. The onus lies with the insurer to clarify all pertinent issues, to explain the purpose of the questions and the possible consequences.

It is not only imperative that an insurer is informed of the correct details of the regular driver during underwriting, an insurer must also be advised immediately in the event that the details of the regular driver change at any time during the existence of the policy. Such a material change in risk may also entitle the insurer to reject a claim if the insurer can demonstrate that it has suffered a prejudice in the calculation and/or acceptance of the risk. The Ombudsman may recommend a proportionate settlement of the claim where the insurer has only suffered a premium prejudice in appropriate circumstances. This would still have a financial impact on the insured who will be responsible for the balance of the cost of the claim.

It's also important to distinguish between regular driver and nominated driver policies. Under a regular driver policy, an insurer may provide that any other person is permitted to drive the insured vehicle, subject to the applicable terms and conditions of the policy and, provided that this person does not drive the vehicle more often than the regular driver noted on the policy. However, under a nominated driver policy, only the person(s) nominated by the insured and specifically noted in the policy schedule are permitted to drive the vehicle and enjoy cover in the event of a loss.

Short-Term Insurance is a contract entered into on the basis of good faith. It is the insured's responsibility to disclose all material facts that may be reasonably expected to enable the insurer to properly assess the risk. The Ombudsman cautions consumers on the implications of compromising their insurance cover, advises consumers to be pay careful attention during the underwriting process and to provide the insurer with true and complete information in order to ensure valid cover.

### **About the Office of the Ombudsman for Short-Term Insurance**

The office of the Ombudsman for Short-Term Insurance is an independent organisation appointed to serve the interests of the insuring public and the short-term insurance industry. By applying the law and principles of fairness and equity, it resolves disputes between short-term insurance companies and their clients.

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