



## THE OMBUDSMAN'S



# BRIEFCASE

Newsletter of The Ombudsman for Short-Term Insurance

### WHAT'S INSIDE?

Launch of the Ombudsman's  
Annual Report  
PAGE 1 - 8

Advice from the  
Ombudsman  
PAGE 9 - 10

OSTI Cares: Staying Warm  
PAGE 11

Consumer Tips  
PAGE 12

What does the  
Ombudsman do?  
PAGE 13

## LAUNCH OF THE OMBUDSMAN'S 2016 ANNUAL REPORT

The Ombudsman launched her 2016 Annual Report at a function held in Johannesburg on 30 May 2017.

Some statistical highlights of the report include the office's receipt of 10 175 formal complaints and the closure of 8631 formal complaints. The office recovered R99 139 593 on behalf of complainants and complaints were resolved in an average turnaround time of 91 days.

A copy of the annual report is available on our website on [www.osti.co.za](http://www.osti.co.za)



# LAUNCH OF THE OMBUDSMAN'S 2016 ANNUAL REPORT

The Ombudsman had this to say at the launch:

"Motor makes up the majority of the matters that our office deals with, comprising 49% of the formal complaints investigated by our office and accounting for 60% of the Rand value recovered by OSTI on behalf of consumers.



Deanne Wood, Ombudsman

*I am going to deviate slightly from the statistical analysis to highlight some interesting trends noted by OSTI during 2016 with particular reference to motor insurance.*

Technological advancements and the ever increasing impact of social media and the big brother syndrome have had a significant impact on the way in which the insurance industry operates. Consumers who

may in the past have succeeded in taking a chance or presenting "alternative facts" to insurance companies are often caught out by comments made on social media platforms that contradict information that was given to their insurance company at the time that a policy was taken out.

A common illustration of this – and one that is all too familiar to our office – is alternative fact information given about who the regular driver of a vehicle will be. Older drivers pay significantly lower premiums than younger drivers. The difference in premium can be significant. Certainly significant enough to encourage consumers to provide inaccurate information about who the regular driver of a vehicle will be. Our office sees far too many claims being submitted where, for example, parents have represented that they will be the regular driver of a vehicle when, in fact, the vehicle was purchased by them for use by their child. Paying the lower premium is all well and good until a loss is suffered. Simple desk-top investigations using Facebook or other social media searches can all too easily reveal misrepresentations made by consumers who forget to cover their tracks when making misrepresentations to their insurance companies.

However, as effectively as insurers are at making use of technological

advancements during claims assessment stage, OSTI believes that more inroads should be made by insurers into using technology and available information during sales stage.

In this regard I am referring to underwriting information that could be easily accessible to insurers through database sharing or information pooling rather than obtaining it from consumers during sales conversations. For example, claims history or years of uninterrupted insurance.

OSTI sees a large number of complaints submitted where information relating to previous claims is asked by the sales consultant during the sales call and inaccurate or incorrect information is given simply because an insured could not accurately recall her previous claims history.

In modern times where information is available by reference to a database, there should be no need to leave the accuracy of such disclosure to the vagaries of human recollection.

*Of course, that is not to say that consumers should not be held accountable for telling lies or making misrepresentations. And of course the industry remains*

# LAUNCH OF THE OMBUDSMAN'S 2016 ANNUAL REPORT

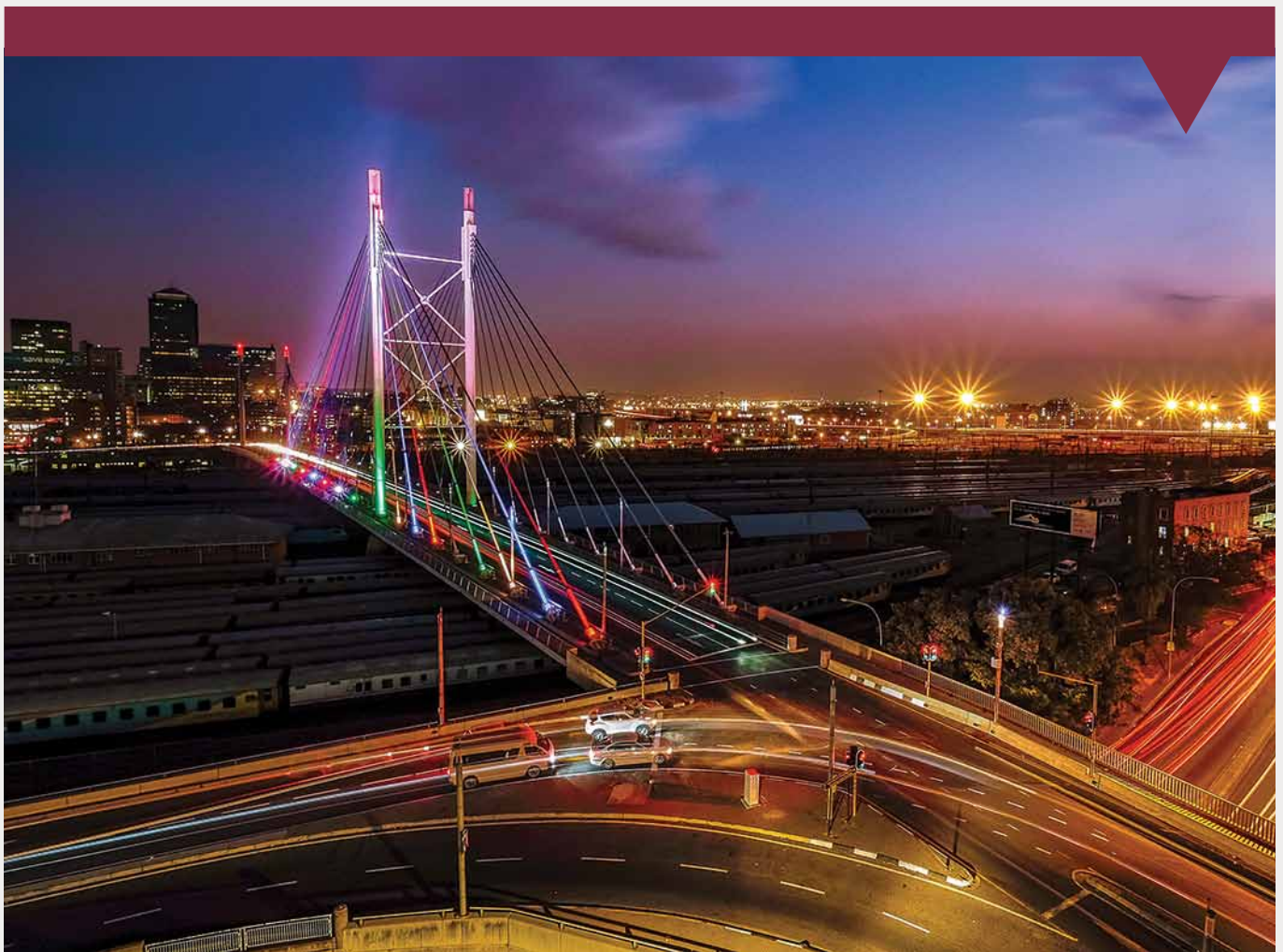
*cautious and must be vigilant because of the high incidences of consumer fraud that exist in the market.*

In my year in office I learnt a lot about the high levels of creativity behind opportunistic insureds looking to make a quick buck from the insurance

industry. The types of suspicious claims that cross the desks of OSTI's ombudsmen are too numerous to mention. However, a disproportionate number of so-called paper vehicle claims come to OSTI's office. A paper vehicle is one that does not actually exist, other than on paper. Insurance is taken out for the non-existent vehicle using fraudulent registration papers. A theft of the vehicle is then reported in an effort to receive a cash pay-out for the non-existent vehicle.

*It is in an effort to avoid claims of this nature that many insurers require vehicles to be inspected before insurance kicks in."*

*Deanne Wood  
Ombudsman*



# TWIN PEAKS, THE FINANCIAL SECTOR REGULATION BILL AND THE OMBUD SCHEME SYSTEM IN SOUTH AFRICA

by Kershia Singh (Guest Speaker)

Kershia Singh, Acting Director, Market Conduct, at National Treasury was our guest speaker at the function. Kershia addressed the audience on the Twin Peaks, the Financial Sector Regulation Bill, and the Ombud Scheme system in South Africa. Kershia had this to say:



Kershia Singh, Guest Speaker

“Good afternoon, and thank you for the opportunity to speak at the launch of the Annual Report of the Ombudsman for Short-Term Insurance.

I've been asked to speak to you today about a topic that I'm sure many in this room are already familiar with – the Twin Peaks reforms.

I am pleased to say that the Financial Sector Regulation Bill – giving legislative effect to the shift toward a Twin Peaks model – was

passed by the National Assembly in December and was voted on by the National Council of Provinces just last week. Today, the Bill was referred back to the Standing Committee on Finance for them to approve the recommendations made by the NCOP. This means the Bill is well on its way to enactment in the near future!

## Financial customer protection in South Africa

Before I get into the legal and technical details of what the Bill provides for in relation to the ombuds system, I wanted to share with you, as stakeholders of the Short -Term Insurance Ombud, some of the responses and reactions to the ombuds provisions in the Bill.

*The FSR Bill is some 270 pages long. It has 17 chapters, and 305 separate clauses. And yet, once it entered Parliament, both in the National Assembly and the National Council of Provinces, chapter 14 – the ombuds chapter – was highlighted as being of specific importance to both the Standing and Select Committees*

*on Finance. In fact, the Voluntary Ombuds Association was invited to present to both of these committees during their deliberations on the Bill. The ombuds were asked to explain the work that they undertake in today's current regulatory environment, and to give their views on how the proposed reforms would affect them.*

Most recently, the ombuds presented to the Select Committee on Finance on the 14th of February this year. I was struck by the interaction with the Committee on the day, particularly the words of the chairperson. He emphasised to the committee members that they should make sure that they take the information regarding the ombuds back to their constituents, many of whom live in rural areas of South Africa, reminding members that their role was to make sure that information was spread to those who weren't able to be in Cape Town to hear it firsthand.

The high level of Parliamentary interest brought into sharp focus

# TWIN PEAKS, THE FINANCIAL SECTOR REGULATION BILL AND THE OMBUD SCHEME SYSTEM IN SOUTH AFRICA

how vital a role an ombuds office plays. The interest of both houses of Parliament in the ombuds system is, I think, largely due to the front line role that such offices play every day in upholding customer rights. While the executive and legislative arms of government can try to create the necessary conducive, enabling environments for businesses and consumers to operate within, players such as ombuds are the ones dealing with customers directly. In the financial sector, the six financial sector ombuds we have in South Africa, are ones listening and responding to often-frustrated customers, and to those who feel that they have been mistreated by financial service providers. They also provide information and guidance in many instances to those who may be unsure of where to go or what action they can take. They provide ordinary South Africans with a sense of comfort that there is an independent, knowledgeable resource available to them, who will listen impartially to a dispute and ensure that the right course of action is followed. Their effective operation is vital, and Parliament took very seriously the proposals being made in the FSR Bill that impacted on ombuds system.

I think the role of financial sector ombuds has been especially important in South Africa, which has comparatively low levels of general

consumer activism. At a consumer engagement dialogue organized by the Financial Services Board earlier this year, a participant characterized South African's interactions with the financial sector as historically being one of 'taking what you get' – accepting the imbalance of power between yourself as a customer and the institution you are dealing with, and not wanting to complain because its assumed that it will not make a difference.

*However, more and more, this appears to be changing. Consumers are becoming increasingly aware of their rights and more willing to make sure that they are not being unfairly treated. Anecdotally for example, financial institutions and financial sector ombuds report that customers are more frequently questioning how the behavior of financial firms meets the Treating Customers Fairly approach.*

Increasing consumer awareness is likely being driven by a variety of factors. This includes developments such as the enactment of the Consumer Protection Act and the establishment of the National Consumer Commission in South Africa. In the financial sector there has certainly been increased publicity of poor behavior by financial institutions, as well as on efforts to improve regulatory approaches in the post financial crisis era. I don't doubt that the ombuds offices are also playing a role in driving consumer education and awareness – for example, it is encouraging to see that the Ombudsman for Short Term Insurance now has an active Twitter presence providing useful information on consumer rights and relevant contact details, directly to consumers.

I am positive that this consumer awareness will continue to grow as customer protection remains a sustained focus of the financial sector regulatory reform process in South Africa. The Twin Peaks reforms place dedicated focus on strengthening market conduct and the fair treatment of customers. Apart from establishing a dedicated Financial Sector Conduct Authority, the reforms also seek to build on the role that the financial sector ombuds have historically played in South Africa.

# TWIN PEAKS, THE FINANCIAL SECTOR REGULATION BILL AND THE OMBUD SCHEME SYSTEM IN SOUTH AFRICA

## Twin Peaks reforms to the ombuds system

The main change to the current operation of the ombuds system is the creation of an Ombuds Council. This body will replace the current Financial Services Ombud Scheme Council, and will differ from it in a few key ways. Firstly, the Ombud Council will be a full-time operational body, in contrast to the current part-time Board structure of the FSOS Council. It will be able to appoint staff, and will have an executive head, known as the Chief Ombud. The Ombud Council will continue to recognize ombud schemes. It will also be able to set rules for all ombud schemes to follow, and importantly, will now be able to take enforcement action should these rules not be followed. The rules will be aimed at ensuring a more harmonized and consistent approach to complaints resolution across the sector, in line with the objective of ensuring that customers have access to affordable, effective, independent and fair alternative dispute resolution processes.

## Other key functions of the Ombud Council will be to:

- promote public awareness of ombuds and ombud schemes and the services they provide;
- take steps to facilitate access by financial customers to appropriate ombuds; and
- publicise ombud schemes, including publicising the kinds

of complaints that different ombud schemes deal with.

*Provisions in the FSR Bill require that the Ombud Council put into place concrete measures, including but not limited to a call centre, to improve access of consumers into the ombud system. A central call line, consistently marketed and publicized by the Council as well as the ombuds themselves, can go a long way toward raising consumer awareness and ease of access to the system.*

Given the important front-line role that ombuds offices play, provisions have also been made in the FSR Bill for information emanating from the ombuds system as a whole to be better used. The ombuds offices themselves will be required to submit an annual report to the Ombud Council, which will highlight the trends in customer complaints and the conduct of financial institutions giving rise to such complaints. The Ombud Council will be required to make information available to the Minister of Finance and National Treasury. And the Council, along

with all ombuds, will be required to provide similar information to the Financial Sector Conduct Authority, either on request or when the ombuds or Ombud Council themselves may deem it necessary.

*For financial institutions, the FSR Bill now makes membership to an ombud scheme obligatory, ensuring that all financial customers will have access to the ombuds system should they require dispute resolution services.*

## Considerations for potential future reform

In a nutshell, the Twin Peaks reforms therefore aim to provide much stronger oversight of ombud schemes, and ensure that the system is well-publicised and more easily accessible. The Ombud Council is also expected to monitor the performance of the ombuds schemes, to evaluate whether the system is meeting its intended objectives. It is expected that in three to five years, an assessment will be made as to whether the system is operating optimally, and whether or not further reform measures may be required.

# TWIN PEAKS, THE FINANCIAL SECTOR REGULATION BILL AND THE OMBUD SCHEME SYSTEM IN SOUTH AFRICA

*Deliberations on the ombuds reforms by the Standing Committee on Finance, for example, already resulted in the executive head of the Ombud Council being called a Chief Ombud, even though this position does not come with any 'ombud' powers – in other words, the Chief Ombud will operate more like the Managing Director of the Ombud Council rather than being able to adjudicate on customer complaints. However, the Standing Committee requested that the title of Chief Ombud remain, should future consolidation of the ombuds system be required.*

Another Twin Peaks reform that is likely to impact on ombuds system in future is the development of the Conduct of Financial Institutions (CoFI) Bill. The CoFI Bill aims to put in place a single market conduct law for all financial institutions,

replacing the requirements that are currently found in close to 13 pieces of existing laws applicable to the financial sector. This means that all financial institutions will need to comply with one law for market conduct requirements. The implication of having in place one consolidated, activity-based law for the current sectorally-focused ombuds offices, will need to be carefully considered.

Options under considerations for future reform include the consolidation of ombuds into a single statutory office, moving toward an exclusively industry-established ombud scheme with strong oversight, or continuing the current mix of ombud schemes but with some attempt at rationalisation. The experience and evaluation of the Ombuds Council, together with the ombuds themselves, will be vital in informing any future reform to the ombuds system, and extensive further consultation and engagement will take place before any further reforms are proposed.

## Conclusion

The Twin Peaks reforms entail one of the biggest changes to the financial sector regulatory environment since democracy. South Africa's financial sector has for many years been lauded for being one of the most efficient and most stable in the world. But this hasn't been through luck or

good fortune – rather, it has been through ensuring the regulatory environment remains relevant to the industry it serves. We have had to take a hard look at the sector, and acknowledge where weaknesses lie. Government is aware that legislation and regulation has not necessarily kept pace with how the dynamic and increasingly complex financial sector actually operates today. There are laws dating back to 1956 applicable to the financial sector, alongside those developed in 2012. Outdated requirements, inconsistencies in approach, duplications and gaps in the regulatory environment have led to poor outcomes – including that the fair treatment of customers has not always received adequate attention. Ensuring that our financial sector remains world-leading requires that we acknowledge its weaknesses, and put in place measures that properly address these.

The Twin Peaks reform process has been long and multifaceted. However, we are encouraged by the support we have received in the journey. In particular, directly affected stakeholders like financial institutions and the ombuds themselves, have provided valuable input into the FSR Bill, ensuring that it is appropriate to the nature and operation of South Africa's financial sector and for its customers.

# TWIN PEAKS, THE FINANCIAL SECTOR REGULATION BILL AND THE OMBUD SCHEME SYSTEM IN SOUTH AFRICA

*It is also encouraging to see the steps that have been taken by stakeholders without waiting for new laws to be in place. In the ombuds system in particular, significant work has gone into improving coordination and cooperation amongst ombuds offices, and further consideration is being given to improving overall efficiencies where possible.*

Finally, I would like to congratulate Advocate Wood on a successful first year as Ombudsman for Short-Term Insurance. The OSTI office has continued to be a supportive and valuable stakeholder to the National Treasury under her able leadership and I have no doubt she places the organization in good stead for its operation under the new financial sector regulatory model in South Africa.

The Twin Peaks reform process will result in a safer financial system, and one that serves the interests of customers better. This includes building a strong, efficient and effective ombud scheme system. I look forward to continued engagement with industry and stakeholders as the reforms are implemented. Thank you. "

*Kershia Singh*





# ADVICE FROM THE OMBUDSMAN: CASE STUDIES

Please note that each matter is dealt with on its own merits and no precedent is created by the findings in these matters. The case studies are intended to provide guidance and insight into the manner in which OSTI deals with complaints.

## NON-PAYMENT OF PREMIUM

### KING PRICE INSURANCE

On 8 October 2016 Mr. M was involved in a motor vehicle collision. The insurer rejected the claim on the grounds that Mr. M failed to make payment of his monthly premium for the month of October 2016. Mr. M's premium was due on 4 October 2016, however when the monthly debit order was submitted it was returned unpaid. A second debit order was submitted on 19 October 2016. According to the insurer, this debit order was submitted in accordance with the 15 day grace period provided for under Rule 7.5 of the Policyholder Protection Rules.

*The insurer stated that, in submitting the second debit order, it had complied with the provisions of the Policyholder Protection Rules and that it was accordingly entitled to decline to make payment of the claim.*

*Rule 7.5 of the Policyholder Protection Rules provides that:*

*'An insurer shall ensure that a policy contains a provision for a period of grace for the payment of premiums of not less than 15 days after the relevant due date: Provided that in the case of a monthly policy, such provision must apply with effect from the second month of the currency of the policy.'*

This provision makes it clear that, in the event of a non-payment of a premium for a specific month, insurers are obliged to have a clause in their policy wording which grants consumers a 15 day grace period within which to pay the premium.

*The second debit order in this matter was submitted on 19 October 2016. This was 15 days after the first debit submission. Accordingly, in this matter the insurer only allowed for a 14 day grace period. It submitted the debit order on the 15th day. Had the insurer submitted the second debit order on 20 October 2016 (that*

*being the first day after the expiry of the 15 day grace period, there would have been sufficient funds in the insured's account to pay the premium.*

The insurer argued that the 15 day grace period required by the Policyholder Protection Rules afforded Mr M fifteen days within which to make payment of the premium failing which he would receive no cover. The insurer argued that the grace period affords an insured fifteen days within which to make payment of the failed premium deduction. Further, said the insurer, once this 15 day period expires, and if no premium is paid, the insurer is free to take punitive action against the insured (such as the cancellation of the policy or repudiation of the claim).

Upon considering the arguments by both parties, the Ombudsman found that the insurer's interpretation of Rule 7.5 was indeed correct. The 15 day grace period affords the insured a second opportunity within which to make payment of

# ADVICE FROM THE OMBUDSMAN: CASE STUDIES

a premium and is “a period of time beyond a date during which a financial obligation may be met without penalty or cancellation” (Websters Business Dictionary). Thus, in the event that the insured fails to make payment of the premium on expiry of this period (i.e. by, and not after, day 15), punitive action can be taken against him or her on day 16.

Accordingly, if insurers reserve, in their policy, the minimum grace period of 15 days for a second payment to be made, it is appropriate for it to submit a second debit order on day 15. The insurer may of course submit a debit earlier than day 15 but it will not be entitled to take any punitive action against the insured until the expiry of the 15 days.

*The Ombudsman found that in effecting a second deduction on the day 15, the insurer did satisfy its statutory obligation in relation to the Policyholder Protection Rules.*

Accordingly, the Ombudsman found that the insurer had complied with its statutory requirements and was entitled to reject the claim. The insurer's rejection of the claim was upheld.



# OSTI CARES

## KEEPING THE CHILDREN AT MASIBAMBISANE WARM

Masibambisane After Care facility alerted OSTI to a need for heating for their assembly halls. The OSTI team visited Masibambisane on 25 April 2017, and presented them with a donation of four oil heaters

as well as seven boxes of Beacon easter eggs for the children to enjoy. We are pleased to have received feedback that the children are being kept warm during the cold winter months.



# CONSUMER TIPS:

- Does your policy cover you for pothole damage? Read your policy wording and know your cover.
- Times are tough, but don't sacrifice your short-term insurance cover to save money. Pay your premiums and avoid disastrous consequences.
- Motor accidents are the most common insurance claims. If you have a vehicle, you need cover to protect you, your vehicle, your passengers, other drivers and pedestrians.



# WHAT DOES THE OMBUDSMAN DO?

How we can assist you if you have a complaint with your short-term insurer

The Ombudsman for Short-Term Insurance (OSTI) resolves disputes between insurers and consumers. We are an independent organisation appointed to serve the interests of the insuring public and the short-term insurance industry. Our mission is to resolve

short-term insurance complaints fairly, efficiently and impartially. We offer a free service to consumers whose claims have been rejected or partially accepted by their insurer. We apply the law and principles of fairness and equity.

## WHAT TO DO

### IF YOU HAVE A COMPLAINT?

Before contacting our Office, we would advise you to complain to your insurance company first. It is best to complain in writing. Make sure that you keep copies of all correspondence between you and your insurer.

If you are not happy with your insurer's decision you can complete our complaint form and send it back to us either by post, fax or email.



If you would like to lodge a complaint or require assistance, please contact our Office by calling

**011 726 8900 or 0860 726 890**

or download our complaint form via our website at

**www.osti.co.za**, click on lodge a complaint and then click on steps to follow.

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## WE ARE ON TWITTER



For the latest and most up to date news, follow us on [@Ombud4ShortTerm](https://twitter.com/Ombud4ShortTerm)

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