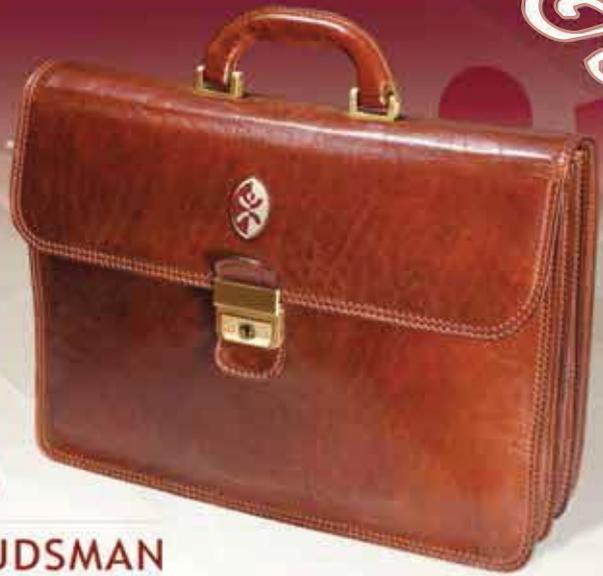


THE OMBUDSMAN'S BRIEFCASE

*Official Newsletter of the
Ombudsman for Short-Term
Insurance*



THE OMBUDSMAN
For Short-Term Insurance



Mission

To resolve short-term insurance complaints fairly, efficiently and impartially

Issue No. 1 of 2013

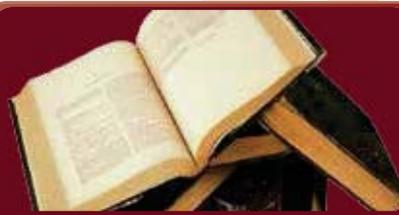
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2013



NEWLY APPOINTED DEPUTY OMBUDSMAN



We are delighted to announce that Edite Texeira-McKinson has been elected as Deputy Ombudsman. We wish her every success during her tenure.

Edite hails from Kwazulu Natal and completed her BA LLB at the University of Natal. She was admitted as an attorney in 1993 and worked for several short-term insurers before joining the Ombudsman's Office in 2007 as an Assistant Ombudsman. Edite was promoted to Senior Assistant Ombudsman in 2008.

After a short spell at a short-term insurer Edite returned to the Office of the Ombudsman as General Manager in 2010.



ARTICLE:



TREATING CUSTOMERS FAIRLY (THE TCF INITIATIVE)

Earlier this year the Ombudsman had a meeting with the FSB (Financial Services Board) to discuss the TCF (Treating Customers Fairly) initiative. As most members of the industry will probably know by now, there is an on-going move to adopt a similar approach to the UK's FSA (Financial Services Authority) - driven TCF framework in terms of which FSP's (Financial Services Providers) have as one of their primary considerations, the fair treatment of customers. The meeting was intended to establish ways in which the Ombudsman can support the initiative.

The TCF initiative has at its core, six outcomes which function as a guide (for now) to how financial service providers can achieve the imperative of treating customers fairly

Outcome 1 requires FSP's to ensure that the fair treatment of customers is central to their corporate culture.

Outcome 2 deals with product and service design and their suitability for the target market.

Outcome 3 requires FSP's to properly inform customers prior to the purchase and to keep them informed even after the sale.

Outcome 4 requires the FSP to provide advice suitable to the customer and their peculiar circumstances, where advice is required or offered.

Outcome 5 requires the FSP to ensure that their products perform in line with the expectations created and that the services are of an acceptable standard.

Outcome 6 requires the FSP not to create any post-sale barriers to change the product, switch providers, to claim or to complain, when they want to.

Most who are familiar with the Ombudsman's workings, will be aware that part of the Ombudsman's approach in making determinations, is consideration of fairness and equity. It should therefore be clear that the Ombudsman's function involves the application of the same principles as the TCF initiative would require. It was therefore resolved between the Ombudsman and the FSB that the Ombudsman would not only continue as he had been doing, to consider fairness and equity in making his determinations, but would also use similar language and terminology as used in the TCF initiative to ensure synchrony.

One of the outcomes of this meeting was that a more concerted and focused effort would be directed at supporting the TCF initiative in the determinations made and in directing insurers' attention towards the initiative, by using the same language and terminology used in the TCF initiative.

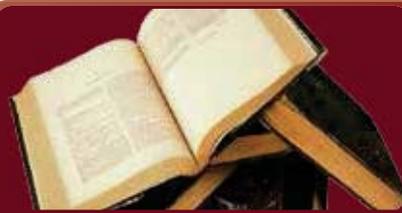
The Ombudsman will also from time to time publish what is considered to be good practice in terms of the TCF Framework.

Below is a great example of adopting and applying the TCF principles.

This matter was referred to the Ombudsman but got to be resolved by New National (the insurer), within three days of being referred and while the Ombudsman was still



ARTICLE:



... (CONTINUED)

busy processing the Application for Assistance. The insured had been involved in a motorcycle accident. The accident had occurred while two drivers had been involved in a road rage incident and one of the drivers had then knocked into the insured's motorcycle. The accident was a hit and run and had apparently left the insured dazed. He had therefore not been in a position to take down any of the responsible driver's details, including their registration numbers.

There was however a witness who had apparently been able to provide the name of the company that appeared on the side of the vehicle and to which the vehicle probably belonged. The insured had then done an internet search of the company and obtained their details, which had been supplied to the insurer.

The insurer agreed to settle the claim but had imposed an additional excess applicable where the insured cannot supply third party details. This is what had given rise to the complaint.

The insured's argument had been that under the circumstances it could not be reasonably expected of him to supply the third party details and that as he had taken steps to ascertain the company's details, he had done enough not to be penalised by the application of the additional excess.

The insurer's initial argument had been that the policy states clearly that if the insured did not provide the third party's details, the excess would be applicable. This therefore entitled them to apply the additional excess.

Upon considering the peculiar circumstances and the insured's actions in trying to ascertain the third party's details, the insurer had apparently decided to rather waive the additional excess.

It is our view that the TCF initiative, and more particularly Outcome 1, requires the insurer to be flexible and to use the principled approach when dealing with their customers to ensure that the outcome is fair towards their customers. (Outcome 1 requires the fair treatment of customers to be central to corporate culture.)

It is envisaged that the adoption of the TCF principles not entail a tick box approach usually followed where regulation is concerned, but a substantive consideration of how to treat customers fairly throughout the lifespan of the insurer's products and services, with the greatest emphasis being on an ultimately fair outcome for the customer.

FAILURE TO REPORT ACCIDENT WITHIN 24 HOURS TO THE SAPS

Merits:

The complainant was involved in a single vehicle accident on 16 June 2012. Immediately after the collision the complainant contacted Oakhurst's (the insurer) call centre, which, in turn, asked him whether he had called the SAPS yet. The complainant answered that he had not. The call centre operator informed the complainant "not to do anything further". The call centre informed him that they were arranging a breakdown service to uplift the vehicle and that the complainant must not contact anyone else.

Insurer:

Having processed the claim, the insurer noticed that the complainant had failed to report the accident to the police within 24 hours. The insurer therefore declined liability stating that the complainant was in breach of the following term as stated in the applicable policy agreement:

"You must inform the South African Police within twenty four (24) hours of any claim if it involves any motor vehicle accident in which the insured vehicle is involved..."



The Complainant's View:

The complainant sought relief from this office and stated that he was brought under the impression by the insurer that he need not do anything further when they specifically informed him not to do anything until such time that they respond to him. The complainant, in particular, referred to the initial conversation that was held with the call centre.

Ombudsman:

The Ombudsman pointed out to the insurer that the complainant could indicate and provide a plausible explanation for not notifying the SAPS timeously of the accident. In addition to the aforementioned and whether the complainant's intentions were *bona fides* or not, the insurer could not rely on a breach of this term without substantiating that the insurer had suffered prejudice due to the accident not being reported to the SAPS within 24 hours. The insurer was unable to provide any objective evidence indicating that they had suffered prejudice. As a result the Ombudsman recommended that the claim be settled in full. The insurer agreed to settle the claim.



DRIVER IN POSSESSION OF A LEARNER'S LICENSE BUT NOT ACCOMPANIED BY A LICENSED DRIVER

Details of Claim:

The insured vehicle (a 1400 bakkie) was involved in an accident during or about September 2011. The insured's brother was driving the vehicle at the time of the accident and was on his way to the hospital early that morning as his two week old baby had been ill with a high fever during the evening and early morning. The brother was in possession of a learner's license. The brother's girlfriend (unlicensed) was also a passenger in the vehicle and according to the insured, a friend who was in possession of a valid driver's license was also a passenger on the back of the bakkie at the time. The claim was however rejected on the ground that the insured could not prove that there was a passenger with a valid driver's licence accompanying his brother when the accident occurred and as the driver was only in possession of a learner's license, he was not entitled to drive the vehicle without a passenger holding a valid driver's license. The relevant provisions of the policy wording relied on by the insurer when rejecting the claim read as follows:

"We do not indemnify you for:

No license, under the influence or endorsed license....."

The Complainant's View:

The insured was adamant that as there was a passenger on the vehicle who did hold a valid driver's licence, there had, in fact, been compliance with the relevant legislation and policy condition and he was therefore entitled to be indemnified in terms of the policy. The insured argued that, as the vehicle was a bakkie and the passenger was sitting at the back of the vehicle at the time that the accident occurred, there was still compliance with the policy condition and legislation by virtue of the fact that the passenger was on the vehicle at the time. The insured also provided an accident report completed by a police official who attended the scene of the accident which noted the licensed passenger's details. A copy of the driver's license of the passenger was also provided by the insured as proof that he was licensed to drive.

The Insurer's View:

Auto & General (the insurer) argued that despite the fact that the insured had now established, through this office, that there was a passenger at the back of the bakkie at the time, the fact that the passenger was sitting at the back, defeated the intention and purpose of the legislation which requires a person holding a learner's license to be accompanied by a validly licensed driver as the licensed driver needed to be able to assist the driver in situations such as these due to the lack of experience of the learner driver. The insurer also argued that despite the fact that this may have been an emergency, the driver could very easily have allowed the passenger with the driver's license to drive the vehicle rather than continuing to drive the vehicle with the passenger sitting at the back of the bakkie. The insurer

further argued that the driver had also previously been charged with driving without a valid driver's license as there was no passenger with a valid driver's license accompanying him at that time.

The Ombudsman's View:

Whilst we did sympathise with the incident driver and insured as it appeared that his brother was rushing to hospital due to his child's illness at the time when the accident occurred, it was agreed that the fact that the passenger (the licensed driver) was sitting at the back of the bakkie was not sufficient to comply with the policy condition and legislation.

Furthermore, the fact that the incident driver was only in possession of a learner's license was material to the loss itself as the passenger sitting at the back of the bakkie could not have been able to assist the driver. It is required in law that when a learner driver is driving the vehicle concerned he/she must be under the direct and personal supervision of the licensed driver in or on that vehicle. Further, the driver, when picking up the licensed passenger to accompany him to the hospital, could easily have allowed the licensed passenger to drive the vehicle. It is the Ombudsman's stated policy that when the issue of public safety is involved, it would be difficult to assist the insured by way of applying equity.

The rejection of the claim was therefore upheld.





DIGITAL CAMERA: OPERATION OF AN INSURED PERIL

Merits:

The complainant was the owner of a Sony digital camera, the battery of which had reached the end of its life span. It being a model no longer in production, it was not possible to obtain a replacement battery. The complainant duly intimated a claim with his insurer under the All Risk section of the policy for the replacement of the camera.

The Insurer's View:

Hollard (the insurer) initially repudiated the claim on the basis that the damage was as a direct result of wear and tear which is specifically excluded in the policy. The complainant however pointed out that wear and tear was only an exclusion that was mentioned under the "Personal Computer" section of the policy and therefore did not apply to the All Risk cover.



The insurer then relied on an exclusion of damage as a direct result of mechanical or chemical breakdown. The complainant similarly rejected the reason for repudiation and when the insurer maintained its repudiation, he approached the office of the Ombudsman for Short-Term Insurance for relief.

The Ombudsman's View:

It was of the Office's view that it was not necessary to bring the claim within the ambit of an exclusion contained in the policy wording to avoid liability for the claim. The policy, under the All Risk section, only covered "loss" or "damage" of insured items. As the camera was neither lost nor damaged, it was clear that the claim was simply not covered in terms of the policy.

The insurer's decision to reject was upheld.

MATERIAL MISREPRESENTATION AND QUANTUM

Details of Complaint:

The complaint arose out of a claim following a motor vehicle accident in which the insured's son had apparently been forced off the road. Auto & General (the insurer) had rejected the claim on grounds that during the inception of the policy, the insured had supplied them with an incorrect insurance history for the son. According to the insurer, the insured had advised that the son had uninterrupted previous comprehensive motor insurance for eight years and without any losses. The insurer had accordingly granted the insured a discount on the premiums based on a "7 year No Claim Bonus" (NCB 7).

At the time of the claim, the insurer had not been able to confirm the NCB 7 insurance history and had accordingly declined liability for the claim based on the alleged misrepresentation.

From the correspondence exchanged and the evidence on file, it appeared that the insured had made the alleged misrepresentation based on a misunderstanding of the question posed by the insurer. He had understood it to relate to the period over which the son had driven a motor vehicle which was comprehensively insured. The insured's understanding was that the question related to the cover on the vehicle itself and not the insured driver.

The insured was only able to provide proof of insurance over approximately five and a half years, as some of the history was not possible to confirm due to the lapse of time. The insured also provided bank statements showing that there were payments which appeared to substantiate the insured's allegation that they had insurance cover dating back to 2001/2002, **albeit inconclusive proof.**

The insurer gave the insured the benefit of the doubt based on the above and made a reasonable settlement offer in line with the Ombudsman's view, that where the insurer cannot

prove intentional misrepresentation, a claim settlement would be recommended.

The Ombudsman's View:

The Ombudsman agreed with the insurer's decision to make a reasonable settlement offer. It was also pointed out to the insured that they had still not proved that the son had previous comprehensive insurance cover; without losses, to qualify for the NCB 7 discount. The insurer was accordingly entitled to make an offer taking into account the premium prejudice suffered by them.

Complaint on Quantum:

The complainant then challenged the insurer's offer based on the value of the vehicle on which the offer was based. In substantiating a higher value of the vehicle, an advertisement found by the complainant, on a website, was presented to the Ombudsman. The Ombudsman pointed out to the complainant that the advertisement was not sufficient to prove the value alleged by the insured. It was further pointed out that the TransUnion Auto Dealers' Guide, used by the insurer, was regarded as the reliable source for car values as it is based on actual sales data and not just advertisements, which are a mere invitation to do business, often at a different negotiated price.

The Ombudsman's View on Quantum:

The Ombudsman accordingly upheld the insurer's proposed settlement offer, including the value of the vehicle offered by the insurer.



LET'S HEAR IT FOR OSTI



What a few of our complainants have had to say about OSTI recently:

Thank you very much, I can't begin to tell you how happy I am. The service from OSTI has been nothing short of outstanding.

.....

Thank you for handling my complaint with such professionalism. I truly appreciate the manner in which you resolved my case.

.....

May I applaud the services of your office, indeed it was a prompt and professional service rendered to my case.

.....

I thank you so much for all your assistance and hard work you put through.

WHAT DOES THE OMBUDSMAN DO?

The Ombudsman for Short-Term Insurance resolves disputes between Insurers and consumers in an independent, impartial, cost-effective, efficient, informal and fair way.

The Ombudsman is appointed to serve the interests of the insuring public and the short-term insurance industry. The Ombudsman acts independently of the insurance industry in all complaints. All members of the South African Insurance Association conducting personal lines and commercial lines business have voluntarily agreed to accept the Ombudsman's formal recommendations.

If you want to lodge a complaint or require assistance please contact the Ombudsman's Office by calling 0860 726 890 or visiting our website at www.osti.co.za where application forms can be downloaded.

CONTACT US

If you would like to be added to our mailing list, please contact us on:
Tel: 011 726-8900 Fax: 011 726-5501 or email: info@osti.co.za
For more information on our activities, please visit our website at www.osti.co.za.
We welcome any feedback or comments you may have.

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