

# 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. 3 of 2014**

### ***IN THIS ISSUE:***

- *Ombudsman's Advice: Case Studies*
  1. Lodging a fraudulent claim can leave you high and dry without insurance cover
  2. Material Misrepresentation: asking about previous losses and an Insurer's Duty of Disclosure
  3. Car repairs taking too long? Car hire not an unlimited time option when claiming
  4. Insurer's Obligation to indemnify when stolen Motor Vehicle is recovered outside of South Africa
  5. Theft from an Unattended Motor Vehicle and Storage of Valuables
  6. An Unacceptable Property Risk and the Insurer's Duty of Disclosure
- Useful Consumer Tips
- Let's hear it for OSTI
- What does OSTI do?
- Contact us

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**LODGING A FRAUDULENT CLAIM CAN LEAVE YOU HIGH AND DRY WITHOUT  
INSURANCE COVER  
(DISCOVERY)**

Submitting a fraudulent claim had more than one consequence as an insured learnt when he submitted his claim for the theft of his mountain bike. During the investigation and validation process made by the insurer, it was established that the insured had in fact reported a fraudulent claim. Based upon their findings, the insurer rejected the claim and cancelled the policy due to the insured being a moral and unacceptable risk.

The insured admitted that he was at fault in fraudulently claiming that his mountain bike had been stolen and cited that he had submitted the fraudulent claim due to him struggling financially and that his wife's motor vehicle had broken down and had to have repairs done. He thought that he could use the money from the claim to repair his wife's vehicle. He also advised that he was not in the habit of reporting fraudulent claims but his financial predicament had necessitated his action.

As the insurer had rejected the claim and cancelled the policy, he had attempted to obtain insurance elsewhere. However, due to the reason for the cancellation of the policy, other insurers were not prepared to accept the insured on risk.

The insured then approached the Ombudsman's office to assist him by requesting that the insurer either reinstates his policy (as he was unable to obtain insurance elsewhere) or alternatively, that if the insurer would not reinstates the policy, that they at least change the cancellation reason on the policy.

The insurer advised the Ombudsman's Office that the claim was rejected based upon a clause in the insurer's policy

wording which specifically deals with fraud, misrepresentation and inaccurate information and that the clause clearly stated that all benefits in terms of the policy in respect of any claim would be lost where there is fraud, misrepresentation or inaccurate information which has been supplied to the insurer and that the policy may be voided or cancelled at the discretion of the insurer. Based upon the clause and the fact that the insured had demonstrated a lack of good faith by reporting a fraudulent claim, the insurer was not prepared to reinstate the policy or accept the insured under a new policy. The insurer was also not prepared to amend its cancellation reason.

**View of the Ombudsman:**

Due to a fraudulent claim being submitted by the insured the insurer was well within their right to reject the claim. The Ombudsman advised that he would not request the insurer to either reinstate the policy or issue a new policy. Furthermore the insurer could also not be requested to amend the cancellation reason as the reason for the rejection of the claim. The cancellation of the policy was justified under the circumstances.

The insured was advised that he would need to disclose to future insurers when seeking insurance cover that his previous policy had been cancelled. If he failed to do so, future insurers would be entitled to reject a claim and void or cancel the policy based on a material non-disclosure.

It is imperative that consumers provide their insurer with true, accurate and complete information at all times so as to avoid a claim being rejected and the policy being cancelled or declared void. Honesty is the best policy!



**MATERIAL MISREPRESENTATION: ASKING ABOUT PREVIOUS LOSSES AND AN INSURER'S  
DUTY OF DISCLOSURE  
(OUTSurance)**

Following a loss of trade stock during a burglary at his business premises, the insured submitted a claim to his insurance company. The claim was made under the "stock in trade" section of the insurance policy. After consideration, the insurer rejected the claim on the basis that the insured had not provided complete information at the time of purchasing the insurance policy, specifically with regard to previous losses incurred by the insured. The insured advised that he had answered all questions posed to him by the insurer truthfully and that he had made no misrepresentations.

The insurer stated that the insured had advised, when applying for insurance, that he had suffered no previous losses in the past. However during the validation period of the claim it was discovered that he had indeed suffered two previous burglaries, which were not disclosed to the insurer. The insurer advised that they would have underwritten the policy on different terms had they been advised of the previous losses and that they were clearly not provided with the correct

information at the point of sale for them to make an appropriate assessment of the risk to be insured.

**View of the Ombudsman:**

Following representations made by both parties and listening to the recorded sales conversation, it was noted that on two occasions the sales advisor requested information on previous losses but reiterated that this information related to contents claims only and not stock claims. The type of commercial policy being offered to the insured covered the contents of the business under the contents section of the policy and stock under the "stock in trade" section of the policy.



**MATERIAL MISREPRESENTATION: ASKING ABOUT PREVIOUS LOSSES AND AN INSURER'S DUTY OF DISCLOSURE (OUTSURANCE) CONTINUED...**

The insured had never claimed with regards to his contents and informed the insurer accordingly. The policy was accepted on that basis and the sales advisor never requested any information on other claims.

The Ombudsman's Office advised the insurer that specific questions were asked to which the insured had provided the

correct information and that he had not misrepresented his loss history to the insurer at all. As such, the insurer was requested to pay the claim in full, which they agreed to.

**CAR REPAIRS TAKING TOO LONG? CAR HIRE NOT AN UNLIMITED TIME OPTION WHEN CLAIMING (ABSA INSURANCE CO. LTD)**

Following a hijacking incident, the insured was provided with a rental vehicle for an initial period of twenty days by his insurer. The period of rental was then extended for a further period of ten days and then an additional four days. After the insurer approved the rental period for the additional four days, the insured was advised that there would be no further extensions granted.

The insured kept the rental vehicle for a further two months after the expiry of the rental period allowed by his insurer. The insured advised that due to delays with the repairs to his motor vehicle, the period of the car rental ended before the repairs could be completed. As such the car rental company billed him for the additional two month period. The insurer rejected the insured's claim for costs incurred for the rental vehicle for this period.

**View of the Ombudsman:**

In considering the matter, the Ombudsman read the clause of the policy which dealt with car hire and it stated that the hired car would be arranged for a period, which in total would not

exceed thirty days and that the period of car hire would end as soon as the vehicle was repaired to the insured's satisfaction (if the insurer has authorized its repair), or the date on which the claim is settled by cash payment or the date on which the insured replaces the vehicle.



The insured argued that no inference could be drawn from the clause that the thirty day period would always stand unless one of the above events listed in the policy, had occurred.

The Ombudsman was of the view that the clause was very clear and informed the insured that car hire would not be for a period longer than thirty days. The policy did not state that the insured could have a hired car for as long as his claim remained unresolved or that the car hire would be extended beyond the thirty days. The extension of the car hire beyond the thirty day period was at the discretion of the insurer. As such the Ombudsman upheld the insurer's decision.

**INSURER'S OBLIGATION TO INDEMNIFY WHEN STOLEN MOTOR VEHICLE IS RECOVERED OUTSIDE OF SOUTH AFRICA (MUTUAL AND FEDERAL INSURANCE COMPANY LIMITED)**

Following the hijacking of his motor vehicle in South Africa, the insured submitted a claim to his insurer, which was accepted. The motor vehicle was later recovered in Botswana before the claim had been settled. However due to cross border administrative reasons, the officials in Botswana refused the repatriation of the motor vehicle back to South Africa. The insurer then repudiated the insurer's claim on the ground that the policy covered "loss of" or "damage to the vehicle". The insurer advised that it was not aware of any damages to the motor vehicle and that the vehicle was not lost. The insurer further contended that the motor vehicle had been recovered and that there was no reason for the insured to be prejudiced by the fact that the motor vehicle was recovered outside of South Africa.

The insurer also argued that "detention, confiscation or requisition" by officials or authorities was a specific exclusion to the insurance policy. According to the insurer had the motor vehicle not been recovered it would have accepted the claim in full.

**View of the Ombudsman:**

Upon reviewing the facts and circumstances of the matter, the Ombudsman held the view that the insurer was not justified in the subsequent repudiation of the insured's claim after having initially accepted the claim and that its



**INSURER'S OBLIGATION TO INDEMNIFY WHEN STOLEN MOTOR VEHICLE IS RECOVERED  
OUTSIDE OF SOUTH AFRICA  
(MUTUAL AND FEDERAL INSURANCE COMPANY LIMITED) (CONTINUED)...**

contention that the motor vehicle had been detained, confiscated or requisitioned by authorities in Botswana was without merit. The administrative requirements of the Botswana authorities relating to the return of the motor vehicle to South Africa did not constitute "detention, confiscation or requisition" as contemplated in the insurance policy. The Ombudsman's opinion was that the proximate cause of the insured's loss was the hijacking incident for which the insured was covered.

The Ombudsman found that the insurer had not indemnified

the insured for the loss as the insured's motor vehicle had not in fact been recovered and returned to him, thus placing him back in the same position that he was in, prior to the loss.

The Ombudsman recommended that the insurer settle the claim and thereafter attempt to recover the motor vehicle from the Botswana authorities as salvage. The insurer agreed and the insured's claim was settled.

**THEFT FROM AN UNATTENDED VEHICLE AND STORAGE OF VALUABLES  
(INFINITI)**

A musical flute was left by the insured's daughter in a motor vehicle whilst she was visiting her parents. The flute was stowed away under the passenger seat and the motor vehicle was parked in front of the house in the driveway. After the visit, the insured discovered that the passenger window of the motor vehicle had been broken and that the flute was missing. The flute was specified as an item under the All Risks section of the insured's insurance policy.

The insurer declined the claim based upon a clause in the policy which stipulated that the insured would not be covered for the loss of anything from any motor vehicle when left unattended unless the loss or disappearance followed visible forcible or violent entry or unless the theft was immediately after the accident. It also stipulated that the claim would not be paid unless the items were in a fully enclosed portion of the motor vehicle and could not be seen from the outside. The policy defined an enclosed portion as being the cubbyhole and boot of the motor vehicle. The insurer's contention was that the item had not been placed in one of these enclosed areas and as such rejected the claim.



**View of the Ombudsman:**

On interpreting the specific clause the Ombudsman noted that the requirements for the insurance cover consisted of three different aspects:

- There had to be visible forcible or violent entry
  - The item had to be placed in a fully enclosed portion of the motor vehicle (e.g. cubbyhole or boot)
  - The item could not be visible

The insured had failed to adhere to the requirement of placing the item in an enclosed portion of the motor vehicle, which meant that one of the three requirements had not been adhered to.

The insurer had made an ex-gratia offer to the insured, which was declined. The Ombudsman advised the insured that he should consider accepting the ex-gratia offer since the rejection of the claim was valid in terms of the policy agreement.

**AN UNACCEPTABLE PROPERTY RISK AND THE INSURER'S DUTY OF DISCLOSURE  
(SANTAM)**

The insured, a medical doctor, submitted a claim to his insurer for the theft of copper pipes which had been forcibly removed and stolen from his property, a month after he had purchased the property. He had purchased the property in his private capacity and had arranged insurance cover by adding the property to his personal insurance policy. The property was not occupied as he intended to renovate the property in order to use it as consulting rooms for his practice.

He advised his insurance broker that the property would be unoccupied for a period of approximately three months whilst the property was being renovated and that the building would be used as consulting rooms in the near future.

The claim was initially accepted by the insurer but later rejected on the ground that the insurer would not have accepted the risk had they known that the property had been purchased with the intention of being used for consulting rooms, as the risk for insuring consulting rooms was higher when compared to private residences.

The insured was not satisfied with the rejection of the claim as he was of the view that he had been honest with his insurance broker by disclosing that the property would be unoccupied



**AN UNACCEPTABLE PROPERTY RISK AND THE INSURER'S DUTY OF DISCLOSURE  
(SANTAM) (CONTINUED)...**

for the first three months and that the intention was to renovate the property and use it as a consulting room in the future. At the time of the loss, the property was unoccupied and not in use as a consulting room yet. The property had been purchased and registered in the insured's name and not under a business name. It was also located in a residential area. The insurance broker advised that the risk had therefore not been increased at the time that the loss occurred and that the property should only be insured under a commercial policy once the property was being utilized as a consulting room.

The insurer was of the view that the property was purchased with the sole intention of converting it into a medical consulting room and that it should not have been added onto the insured's personal insurance policy but rather covered under a commercial policy. The insurer also provided the definition of buildings as noted in the policy which referred to "... the building of your private residence ..". The insurer also stated that the insured had not disclosed at inception that the property would be unoccupied for three months and that it would be used as a business practice in the near future. Had the insurer been aware of these facts it would not have accepted the risk. The insurer then voided the policy and refunded the premiums to the insured.

**View of the Ombudsman:**

After further enquiries were made with both the insured and insurer it was established that there was an agreement between the insurer and the insurance broker that the policy could be amended online by the broker. However an amendment could only be made after all the required information had been captured online and that all the compulsory questions had been answered. Thus, when the property was added to the policy, the information that the property would not be occupied for ninety days had already been declared. However the system did not make enquiries regarding what alterations or renovations were being made to the property.

The Ombudsman's view was that as the system did not make provision for the insured to disclose whether alterations or renovations were being affected to the property, the insurer did not create a duty of disclosure on the insured at this time. Furthermore at the time of the loss, the property was not being used as a consulting room. The insurer was requested to settle the claim, which they agreed to do.



## OMBUDSMAN'S ADVICE:



## USEFUL CONSUMER TIPS

### Contents

Always remember to contact your insurer regarding any change in your home environment. This will include renovations to your home, new television set bought or burglar alarm installed. This should happen once a year so your contents cover is always up to date to avoid underinsurance and specified items not being paid at claim stage.

### Perils and Exclusions

A policy of insurance is either a listed peril based policy or a policy of exclusion. If your policy lists a number of perils for which cover is provided, you will only be covered for the perils specifically listed, subject to the certain exclusions specified in your policy. A policy of exclusions will provide general cover, but will limit the cover by way of listing a number of exclusions.



## LET'S HEAR IT FOR OSTI

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



Thank you for the prompt and professional manner in which you dealt with my case. Your assistance in sorting my case is highly appreciated.

.....

Thank you so much for the spectacular job you have done for me. I am very pleased as well as relieved.

.....

I highly appreciate the Ombudsman's services for helping with my insurance dispute. I am so happy to hear that the insurance is going settle my car and if it wasn't because of the Ombudsman I would have still been paying for the car that I do not even drive.

.....

I have encouraged many people, who are having difficulty with their insurance company, to contact your organization for help. Win or lose, it is good to know that there is someone out there to help us. Keep up the wonderful work.



### 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](http://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:  
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For more information on our activities, please visit our website at [www.osti.co.za](http://www.osti.co.za).  
We welcome any feedback or comments you may have.

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