

TERMS OF REFERENCE OF THE OMBUDSMAN FOR SHORT-TERM INSURANCE NPC

1. PREAMBLE

- 1.1 The Ombudsman is appointed to serve the interest of the insuring public and all short-term Insurers registered under the Short-term Insurance Act and including Lloyds. The Ombudsman provides, free of charge, an accessible, informal and speedy dispute resolution process to Policy Holders who have disputes with their Insurers where those disputes fall within the Ombudsman's jurisdiction.
- 1.2 The Ombudsman acts independently and objectively in resolving disputes and is not under instructions from anybody when exercising his or her authority. The Ombudsman resolves disputes using the criteria of law, equity and fairness. These Terms of Reference define the powers and duties of the Ombudsman.
- 1.3 The services rendered by the Ombudsman are not the same as those rendered by a professional legal advisor and are confined purely to resolution in terms of clause 3.1 below or mediation or conciliation in an attempt to settle complaints.

2. DEFINITIONS

In these terms of reference the following expressions have the following meanings:

- 2.1 "the Board" means the Board of Directors of the Ombudsman for Short-term Insurance NPC ;
- 2.2 "Commercial Lines Policy" means a policy (a) issued to a person who is not a natural person, or (b) if issued to a natural person is intended to indemnify such a natural person in respect of a commercial enterprise conducted by the natural person for his or her own benefit.
- 2.3 "the Complainant" means any Policy Holder who makes a complaint to the Ombudsman in respect of any insurance services provided by their Insurer;
- 2.4 "Ruling" means, with respect to a complaint, a written directive issued by the Ombudsman which is binding on the Insurer and which is based either in law or equity;
- 2.5 "the Ombudsman" means the Ombudsman for Short-term Insurance appointed from time to time by the Board of the Ombudsman for Short-term Insurance NPC ;
- 2.6 "Ombudsman's office" means the office of the Ombudsman established to perform the functions set out in these terms of reference;

- 2.7 “Policy” means a short term insurance Policy issued by an Insurer to a Policy Holder;
- 2.8 “Policy Holder” means the person entitled to be provided with the Policy benefits under a Policy;
- 2.9 “Insurer” means a short-term insurer registered as such in terms of the Short-term Insurance Act of 1998;

3. **THE OMBUDSMAN’S POWERS AND DUTIES**

- 3.1 The Ombudsman shall:
 - 3.1.1 act within these terms of reference;
 - 3.1.2 receive complaints relating to the provision within the Republic of South Africa of insurance services by an Insurer to a Policy Holder;
 - 3.1.3 resolve such complaints, relating to the provision of insurance services, by agreement or by the making of a ruling or by such other means as may seem expedient, subject to these terms of reference.
- 3.2 The Ombudsman should advise the public on the procedure for making a complaint to the Ombudsman’s office and should take such steps as are reasonably possible conducive to client and industry education and training. The Ombudsman shall in his annual report referred to in clause 3.9 below provide details of steps taken in this regard.
- 3.3 On receipt of a complaint in the prescribed format, the Ombudsman will notify the Insurer of the complaint by providing the details of the complaint to the Insurer, and the Insurer shall then be obliged to give all relevant information and assistance required (including documentation requested by the Ombudsman) to enable the Ombudsman to assess fully the merits of the complaint.
- 3.4 During any period in which the Ombudsman is unable to exercise his duties owing to absence, incapacity or death or in a situation where a conflict of interest may arise, the Board may appoint a deputy or acting Ombudsman to act in place of the Ombudsman.
- 3.5 The Ombudsman shall have the overall responsibility for the conduct of the day to day administration and business of the Ombudsman’s office. The Ombudsman may

appoint an Administrator to be responsible to him for day to day matters of administration of the Ombudsman's office.

- 3.6 The Ombudsman shall have the power on behalf of the Ombudsman's office to appoint and dismiss employees, consultants, legal experts, independent contractors and agents and to determine their salaries, fees, terms of employment or engagement.
- 3.7 The Ombudsman shall have the power to incur expenditure on behalf of the Ombudsman's office in accordance with the current financial budget approved by the Board.
- 3.8 The Ombudsman shall give the Board any information and assistance which it reasonably requires, including the making of recommendations to the Board on any issues which the Ombudsman believes requires the Board's attention.
- 3.9 The Ombudsman shall publish an annual report on the activities of the office, which shall be published by 30 May of each year. Such report will be available to the public.

4. **THE JURISDICTION OF THE OMBUDSMAN**

- 4.1 The Ombudsman shall only consider a complaint made to him if he is satisfied that:
 - 4.1.1 the complaint is not the subject of existing litigation;
 - 4.1.2 the complaint is not the subject of an instruction to an attorney in contemplation of litigation against the relevant Insurer except where the attorney has simply assisted the Policy Holder in bringing the application to the Ombudsman;
 - 4.1.3 the complaint does not involve a monetary claim in excess of the amount as determined by the Board from time to time.*

**The limits are currently as follows namely, (a) R5 million for complaints relating to all types of cover, except for home owners/buildings cover; (b) R10 million for complaints arising from home owners/buildings cover. The same quantum limits apply to personal lines and commercial lines complaints.*
 - 4.1.4 the complaint is made by a Policy Holder or a duly authorised representative of the Policy Holder to whom or for whom the insurance services in question were provided;

4.1.5 the complaint relates to any dispute in regard to a Policy and/or any Claim or Claims thereunder or any dispute in regard to insurance premiums, or any dispute on the legal construction of the Policy wording relating to a particular complaint complying with the requirements of this clause 4.1;

4.1.6 the complaint is being pursued reasonably by the Complainant and not in a frivolous, vexatious, offensive, threatening or abusive manner, as the Ombudsman may decide in his or her sole discretion;

4.1.7 the complaint has not become prescribed in terms of the Prescription Act, 1969 or any enforceable time bar provisions contained in the Policy, provided that in relation to any enforceable time-bar provisions in the policy

4.1.7.1 the Ombudsman shall have the power to condone non-compliance therewith upon good cause shown, and

4.1.7.2 the provisions of any enactment which provides for the extension of any period contained in such time-bar provision shall be given effect to.

4.2 Should a complaint be lodged with the Ombudsman's office and thereafter the Complainant refers such dispute to an attorney for the further conduct of the dispute and/or direct correspondence with the Insurer, or for litigation, then the Ombudsman will immediately withdraw from the matter.

4.3 With the written consent of an Insurer and at his discretion the Ombudsman may investigate a complaint which exceeds his jurisdiction and make a recommendation or a Ruling in relation thereto.

4.4 A Complainant may at any time terminate the Ombudsman's adjudication of the complaint and resort to litigation.

5. **LIMITS ON THE JURISDICTION OF THE OMBUDSMAN**

Subject to these terms of reference, the Ombudsman shall have the power to consider a complaint made to him and make a recommendation or Ruling in regard thereto except:

5.1 Where the Ombudsman determines that it is more appropriate that the complaint be dealt with by a court of law or through any other dispute resolution process;

5.2 Where the matter is already under the consideration by the person appointed to adjudicate disputes in terms of the Financial Advisory and Intermediary Services Act.

6. **TIME BARRING PROVISIONS**

6.1 Any enforceable time bar clauses in terms of a Policy shall not run against a Complainant and shall be interrupted during the period that the complaint is under consideration before the Ombudsman. In particular, the Insurer waives and abandons all or any rights to rely in subsequent litigation on any time barring provisions in the Policy applying to the commencement of litigation after rejection of a claim, or after the happening forming the subject of the claim or after notification of the claim. In the event of the complaint being finalised in the office of the Ombudsman the Complainant shall have 30 (thirty) days or the remaining period of the time bar provision of the relevant policy, whichever is the longer, within which to institute proceedings against the relevant Insurer, provided however, that the Claim had not already become time barred in terms of the Policy when the complaint was received by the Ombudsman and the Ombudsman has not condoned the late receipt of the complaint as is envisaged in clause 4.1.7

6.2 For the purposes of clause 6.1, the time during which a matter is before the Ombudsman shall (provided that the complaint is accepted for adjudication) commence on the day that it is lodged with the Ombudsman's office to the time that the Ombudsman dismisses the complaint or makes a Ruling.

6.3 Save as may be otherwise provided in the Financial Services Ombud Schemes Act 37 of 2004 as amended or in any other legislation relating to or governing the Ombudsman, the lodging of any complaint with the Ombudsman shall in no way affect the running of prescription in terms of the Prescription Act, 1969 in respect of such complaint.

7. **RULINGS**

7.1 When all the material facts are agreed or the facts have been established to the Ombudsman's satisfaction on a balance of probabilities, the Ombudsman may make a Ruling.

7.2 Rulings shall be based on the law and equity.

7.3 Where a material fact cannot be established or cannot be resolved on a clear balance of probabilities the Ombudsman may not make a Ruling. In such cases the

Ombudsman shall advise the Complainant that the complaint is not one on which he or she can assist and that alternative recourse may be sought through the courts.

7.4 Any Ruling made by the Ombudsman shall be binding on the Insurer concerned save where an appeal against such Ruling is noted as is provided in Clause 8 below.

8. **RIGHT OF APPEAL AGAINST RULINGS OR FINDINGS OF THE OMBUDSMAN**

(As approved at the Annual General Meeting on 15 July 2013)

8.1 Any party affected by any formal ruling or finding on the part of the Ombudsman may appeal against the ruling or finding of the Ombudsman, either in part or in whole. In this context a "Ruling" shall mean, in relation to a complaint received, "a written directive issued by the Ombudsman which is binding on the insurer and which is based either in law or equity and fairness or a combination of law and equity". "Finding" shall mean, with respect to a complaint, "a written directive issued by the Ombudsman in relation to the complaint received in terms of which the Ombudsman has dismissed the complaint or declined to intervene in a dispute between the complainant and insurer".

8.2 No appeal against the ruling or finding of the Ombudsman shall be considered by any Appeal Tribunal, unless the Ombudsman shall have granted the applicant leave to appeal against such ruling or finding.

8.3 The Ombudsman shall only grant leave to appeal to any appellant where he is of the opinion that:

8.3.1 There is a reasonable prospect that the appeal, either in whole or in part, if prosecuted, will succeed; and

8.3.2 The matter is one of complexity or difficulty; or

8.3.3 The ruling or finding in question involves issues or considerations which are of substantial public or industry interest or importance or It is in the interest of justice or public policy that the ruling or decision be considered by an Appeal Tribunal; or

8.3.4 The ruling or decision involves principles of law where the law may be considered to be uncertain or unsettled; or

- 8.3.5 The matter in dispute involves the jurisdiction of the Ombudsman to entertain the dispute; or
- 8.3.6 The issues are of such a nature that the judgment or order sought by the appellant will not be of academic relevance only and will have a practical effect or result.
- 8.4 The power to grant leave to appeal as contemplated in this section shall not be limited by reason only of the value of the matter in dispute, or the amount claimed or awarded by the Ombudsman, or by reason only of the fact that the matter in dispute is incapable of being valued in money.
- 8.5 Notice of any intention to appeal against any ruling or finding of the Ombudsman shall be filed with the Ombudsman within a period of 30 calendar days of the handing down of any ruling or finding and shall state whether the appellant appeals against the whole or part of the ruling or finding of the Ombudsman, the findings of fact and/or ruling of law appealed against and the grounds upon which the appeal is founded. The notice of intention to appeal shall be accompanied by an application for leave to appeal.
- 8.6 A Notice of Cross-Appeal shall be delivered within 15 calendar days after delivery of the Notice of Appeal, or within such other period of time as may, upon good cause shown, be permitted by the Ombudsman. The provisions of these rules with regard to appeals shall equally apply to cross-appeals. A "cross-appeal" shall mean a process by which the respondent in any appeal proceedings, having been advised by the Ombudsman of receipt of a notice of intention to appeal, wishes in turn to appeal against the terms of the ruling or finding made by the Ombudsman in relation to the complaint submitted to the Ombudsman.
- 8.7 Where an appeal has been noted, or an application for leave to appeal has been made, the operation and execution of the ruling or finding of the Ombudsman shall be suspended, pending the decision of the Appeal Tribunal on the matter, unless the Ombudsman, on the application of a party and on good cause shown, otherwise directs.
- 8.8 Upon receipt of a Notice of Appeal the Ombudsman shall within a period of 5 business days thereafter notify every other party to the dispute that a Notice of Appeal has been received.

8.9 All documentation in connection with any appeal proceedings including the notice of intention to appeal and the application for leave to appeal, shall be served upon the office of the Ombudsman by hand or alternatively by way of registered post or by e-mail save where the Ombudsman shall have expressly consented to any other method of service. Documentation served upon the Ombudsman shall be in A4 format and shall be clearly legible and capable of being photocopied. Wherever possible, original documents should form the subject of any appeal proceedings but copies of documents shall be acceptable subject to the provisions of these terms of reference.

Applications for Leave to Appeal

8.10 Any party who desires to appeal against any ruling or finding of the Ombudsman shall, within 30 calendar days of the handing down by the Ombudsman of any final ruling or finding, serve upon the Ombudsman as provided for herein, a Notice of intention to Appeal, together with an Application for Leave to Appeal which shall set out the basis for the proposed appeal as contemplated in Clause 8.5 above, together with reasons why Leave to Appeal against such ruling or finding should be granted by the Ombudsman. The granting of leave to appeal shall be a pre-requisite for the prosecution of any appeal.

8.11 Failing receipt by the Ombudsman of any Notice of Appeal within the time period referred to in paragraph 8 above, the final ruling or finding by the Ombudsman shall become final and binding upon the parties and shall be carried into effect without further delay.

8.12 Any late filing of a Notice of Appeal or an Application for Leave to Appeal shall be null and void save where accompanied by an application for condonation for the late filing of the appeal. Any application for condonation must set out in full the reasons why condonation should be granted, the reasons for any non-compliance and that the matter is one worthy of consideration.

8.13 The Ombudsman, after considering any application for condonation, may grant or refuse such application in his discretion.

8.14 Where leave to appeal against any ruling or finding of the Ombudsman is refused by the Ombudsman, the unsuccessful party may, within 15 business days of notification of such refusal, petition the Chairman of the Appeal Tribunal, to review the decision of the Ombudsman not to grant leave for appeal. The same provision shall apply *mutatis mutandis* to any application for condonation for the late filing of an appeal.

8.15 Any such request shall be addressed to the Chairman of the Appeal Tribunal via the Ombudsman who shall convey such request to the Chairman of the Appeal Tribunal. The Chairman of the Appeal Tribunal shall within a reasonable period of time but in any event not later than a period of 15 calendar days of the receipt of any such petition, either confirm or amend the decision of the Ombudsman not to grant leave to appeal or refusal to condone any application for the late filing of an appeal. The Ombudsman shall thereafter within a period of 5 business days, inform the parties accordingly.

Appeals

8.16 An appeal against the ruling or finding of the Ombudsman shall be heard by an Appeal Tribunal who shall consider the matter as if it were the Ombudsman and shall include the consideration of procedural as well as substantive matters pertaining to the objection raised by such party to the decision of the Ombudsman.

8.17 The Appeal Tribunal may, where it considers it necessary or in the interests of justice, permit the leading of evidence or new evidence on any matter, even if the Ombudsman himself did not hold a hearing, or receive evidence on any matter prior to making a finding on any complaint referred to him.

8.18 Where the Appeal Tribunal decides to permit, or calls for the leading of evidence, or evidence is led on material that was never considered by the Ombudsman, the tribunal may decide, in its sole discretion to invite the Ombudsman to consider the matter in the light of such evidence and to canvass the views of the Ombudsman on the matter. The Ombudsman should be invited to comment on the new material in the manner and on such terms as it may regard to be fair to both parties.

8.19 Save where the Appeal Tribunal permits or calls for the leading of evidence, no evidence shall be led and the matter shall be decided by the Appeal Tribunal on the basis of the record of appeal furnished to it by the Ombudsman, including the documentation filed by the parties in connection with the appeal.

8.20 The record of appeal shall, save where in the opinion of the Ombudsman additional documentation is required, consist of the following:-

8.20.1 The complainant's Application for Assistance form and supporting documentation;

- 8.20.2 The insurer's response to the complaint;
 - 8.20.3 The complainant's reply to the insurer's response to the complaint;
 - 8.20.4 The Ombudsman's finding in relation to the complaint and any reasons furnished by the Ombudsman for any ruling or finding; and
 - 8.20.5 The submissions or representations made by the parties to the Appeal Tribunal in connection with the appeal.
- 8.21 The Ombudsman may, in his discretion, when submitting the documentation to the Appeal Tribunal in connection with any appeal, make representations to the Appeal Tribunal by way of explanation or elaboration of his earlier determination and shall be entitled in such representations to deal with such matters as policy, industry practices and the approach followed by him in regard to equity. In addition the Ombudsman may furnish the Appeal Tribunal with such other information as he may consider to be of assistance or guidance to the Appeal Tribunal, save that the parties shall be afforded an opportunity to respond to any such additional material thus placed before the Appeal Tribunal.
- 8.22 Save as aforesaid, the Ombudsman shall not participate in the appeal process save where he should be asked to do so by the Appeal Tribunal itself on such terms and in such manner as may be determined by the Tribunal.

Composition of the Appeal Tribunal

- 8.23 The Chairman of the Board, in consultation with the Vice-Chairman, must appoint the members of the Appeal Tribunal from the persons nominated by the Ombudsman.
- 8.24 The Appeal Tribunal must consist of a Chairperson and at least two members appointed for a minimum period of two years.
- 8.25 The Chairman of the Board must appoint the Chairperson of the Appeal Tribunal and such Chairperson must either be a retired Judge or a practicing Attorney or Advocate, or a person who formally practiced as an Attorney or Advocate, with at least ten years' experience and with appropriate experience in Insurance Law.

- 8.26 The Chairperson of the Appeal Tribunal is responsible for assigning matters for adjudication, taking into consideration the nature and complexity of the dispute or any special circumstance, to a panel of two or more members of the Appeal Tribunal who are suitably qualified to decide on a particular matter.
- 8.27 The Chairman of the panel must be the Chairperson of the Appeal Tribunal.
- 8.28 The person's nominated by the Ombudsman must be:
- 8.28.1 Practicing Attorneys or Advocates or persons who formerly practiced as an Attorney or Advocate, with at least ten years' experience and with appropriate experience in Insurance Law, and may include retired Judges; or
 - 8.28.2 Persons with extensive experience in relation to the insurance industry and who by virtue of their knowledge, training and experience are able to perform the functions of a member of the Appeal Tribunal; or
 - 8.28.3 Academics with the particular knowledge of specific areas of the law or persons of specific knowledge, skill or training whose expertise as an expert in any particular field may be appropriate.
- 8.29 The Chairman of the Appeal Tribunal may, in consultation with the Chairman of the Board and the Ombudsman, appoint a person who is not a member of the Appeal Tribunal to serve on the panel if in the opinion of the Chairperson of the Appeal Tribunal such appointment is merited or deemed desirable.

The Hearing of Appeals

- 8.30 The Ombudsman shall be in charge of all practical or administrative matters preceding and relating to the hearing of an appeal and shall be responsible for the preparation of the record, the giving of notices and the making of arrangements for the hearing of an appeal, the recording of evidence, if any, and all such other matters incidental to the hearing or disposal of the appeal.
- 8.31 The Appeal Tribunal shall determine its own procedure both prior to and during the course of the hearing, including the hearing of oral evidence.

- 8.32 Appeals shall be heard at such place and time and in such manner as the Appeal Tribunal shall determine from time to time.
- 8.33 Not later than 10 business days before the hearing of an appeal, the appellant shall deliver to the Ombudsman a concise and succinct statement of the main points which he intends to argue on appeal, as well as the list of legal authorities (if any) to be tendered in support of each point to be raised. Not later than 5 business days before the hearing of an appeal, the respondent shall deliver a similar statement.
- 8.34 The Chairman of the Appeal Tribunal may, after consultation with the Ombudsman, direct that a contemplated appeal be dealt with as an urgent matter and that the appeal be prosecuted at such time and in such manner as the Chairman of the Appeal Tribunal deems appropriate.
- 8.35 The Appeal Tribunal should approach the matter on appeal put forward as if it were the Ombudsman determining the complaint. The Appeal Tribunal shall take into account the balance of probabilities and its finding shall be based on the criteria of law, equity and fairness.
- 8.36 The Appeal Tribunal shall deliver its judgment on the matter in writing to the Ombudsman within one calendar month of the conclusion of the hearing. The Ombudsman shall in turn deliver a copy thereof to the parties within a period of 10 business days.

Representation

- 8.37 Any party to any appeal shall have the right to be represented at the hearing but, wherever possible, the parties should confine their submissions in regard to matters before the Appeal Tribunal to written submissions contained in a statement of case including, where appropriate, heads of argument.
- 8.38 Any party who employs a representative to represent their interest before the Appeal Tribunal shall be personally responsible for any fees and expenses associated with such representation.

The Effect of the Decision and Order of the Appeal Tribunal

- 8.39 Where a complainant appeals against the ruling or finding of the Ombudsman, such person shall abide by the decision of the Appeal Tribunal and the order of the Appeal

Tribunal shall be final and binding in relation to the proceedings before the office of the Ombudsman. The complainant shall however be entitled, if so desired, to thereafter pursue the matter further in any court of law.

- 8.40 An unsuccessful appellant insurer shall have no further right of recourse or action and shall be bound by the terms of the order of the Appeal Tribunal save that nothing contained herein shall in any way affect the right of an insurer to review any ruling made by the Ombudsman or the Appeal Tribunal in a court of law.

Precedent

- 8.41 In recognition of the requirement that rulings made by the Ombudsman shall not establish any precedent in the Ombudsman's office, the decisions of the Appeal Tribunal shall not be accorded any formal status or regarded as creating binding precedents, but may serve as guidelines for future cases. Such findings or orders may however, serve as strong persuasive value for the Ombudsman and any other Appeal Tribunal in which the same dispute may be raised so as to ensure consistency in the decisions of the office of the Ombudsman.

Cost to the Parties to Appeals

- 8.42 Where an insurer notes an appeal against any final ruling of the Ombudsman and is not, in the opinion of the Chairman of the Appeal Tribunal, successful with such appeal, it shall defray the cost of such appeal incurred by the Ombudsman in connection with the appeal proceedings.
- 8.43 Where the insurer is the appellant in any proceedings, save where the Chairman of the Appeal Tribunal may direct otherwise, the cost to be paid by the insurer in relation to any appeal proceedings may be determined by the Board of the Ombudsman for Short-term Insurance, from time to time.
- 8.44 Where the complainant is the appellant in any appeal proceedings the Ombudsman may, in his discretion and taking into account, inter alia, the amount of the claim, the complexity of the issues and the complainant's personal circumstances, call upon such party to pay a deposit in an amount determined by the Ombudsman which deposit shall be refunded to the appellant should the appellant be successful in the appeal. In the event that the appeal fails, the deposit shall be forfeited to the office of the Ombudsman and shall constitute the only liability on the part of the complainant for the costs of the appeal proceedings. If the appeal is, in the view of the Appeal

Tribunal, successful, the amount paid by the appellant shall be refunded to the appellant.

8.45 In no case shall the Appeal Tribunal award costs in favour of a successful party and in no case shall a losing party to an appeal be ordered by the Appeal Tribunal to pay costs to the other party, save where the Chairman of the Appeal Tribunal considers that, having regard to the presence of exceptional circumstances, a punitive order as to costs against any party is merited.

9. **POLICYHOLDER/COMPLAINANT'S RIGHTS**

The Policy Holder/Complainant's rights to institute proceedings in any competent court of law against the Insurer shall not be affected by any of the provisions of these terms of reference provided that, if the Policy Holder/Complainant institutes proceedings while the complaint is under investigation by the Ombudsman, the provisions of clause 4.2 shall apply.

10. **PRECEDENTS**

Rulings shall not establish any precedent in the Ombudsman's office.

11. **CONFIDENTIALITY**

(As approved at the Annual General Meeting held on 28th June 2011)

11.1 The Ombudsman shall as far as possible, maintain confidentiality unless the parties concerned expressly exempt him or her from that duty and the duty shall continue after the termination of his or her services. The duty of confidentiality shall however, not prevent the Ombudsman from:

11.1.1 Publishing details of rulings made by him or her.

11.1.2 Reporting on details of rulings or furnishing statistical information in connection with the workings of the office to the South African Insurance Association (SAIA), the Financial Services Board (FSB), the National Treasury or any other body or organisation which may be entitled to receive such information from the Ombudsman in connection with his/her activities and/or which may have a legitimate interest in such information, having regard to its statutory mandate, role as an industry association or otherwise.

11.1.3 Publishing statistics and related information in the Annual Report of the Association concerning complaints received by the Ombudsman against members of the Association as approved by the Board of the Ombudsman for Short-term Insurance from time to time.

11.1.4 Filing, either on behalf of the Company, or any complainant from whom a complaint is received, a complaint with SAIA in connection with any Code of Conduct applicable to or adopted by that organisation and which may be applicable to any member of the Company.

11.2 The Insurer and the Complainant shall not be entitled to make use of any information which comes to their knowledge as a result of the intervention of the Ombudsman during the course of any investigation by him or her.

11.3 A complaint will be regarded as confidential as between the Policy Holder, the Insurer and the Ombudsman and it is for the Ombudsman to decide what should be disclosed to the Insurer and/or the Policy Holder.

11.4 Documents brought into being as a result of any approach to the Ombudsman shall not be liable to disclosure or be the subject of a discovery order or subpoena in the event of any legal proceedings between the Complainant and the Insurer.

11.5 The Ombudsman or any member of his staff will not be liable to be subpoenaed to give evidence on the subject of a complaint in any proceedings.

12. **COMPLAINTS NOT SETTLED IN DEFINED PERIOD**

The Ombudsman shall report to the Board all complaints, which have not been completed in one or way or another within a time, laid down by the Board. This time period shall initially be set at 6 (six) months calculated from the date that a complaint became an accepted complaint.