

## **OSTI urges the public to be entirely truthful with insurance companies**

JOHANNESBURG – The Ombudsman for Short-Term Insurance (OSTI) would like to remind consumers not to withhold or misrepresent information when taking out short-term/non-life insurance or when they claim from insurance companies. OSTI points out that non-disclosure or misrepresentation of material facts can lead to a claim being declined or a policy being cancelled or both. A consumer whose policy gets cancelled due to non-disclosure or misrepresentation may struggle to find alternative insurance cover as he/she may either be blacklisted or be considered an undesirable risk.

OSTI recognises that financial hardships may lead to consumers withholding or misrepresenting information. However, OSTI cautions against doing so because the rejection of a claim or cancellation of a policy by an insurer may lead to further financial strain.

When taking out a policy, consumers sometimes misrepresent the details of the regular driver, their insurance history, security requirements, criminal records or the use of their vehicles. The non-disclosure or misrepresentation of this information causes insurers to insure a consumer they would not have insured had they been correctly informed or to charge the incorrect premium.

When a claim is lodged, consumers sometimes provide incorrect or inconsistent versions of the events leading up to or during an incident, inflate their claims or refuse to give their insurers access to information that could affect the outcome of the claim, such as information about their whereabouts or alcohol consumption. Insurers may end up not being able to validate the claim and declining the claim or using other means to get the information.

Consumers often consider it unfair that insurers only validate their information at claims stage. However, it must be remembered that insurance policies are contracts entered into on the basis of good faith. It is the consumer's duty to provide complete and accurate information which insurers then rely on to underwrite the cover.

Furthermore, consumers should not underestimate the role of independent witnesses, expert evidence, vehicle tracking data, bank statements, cell phone records, medical records, police reports and call recordings, all of which insurers can rely on to validate a claim.

### **OSTI case study dealing with misrepresentation at sales stage**

A policyholder mentioned, during the sale's conversation, that his son would be the regular driver of the insured motor vehicle and that the vehicle would occasionally be used for business purposes. However, later in the conversation, the policyholder noted himself as the regular driver and insured the vehicle for private use. The consultant informed the policyholder that his son must not drive the vehicle more than him because the policyholder had noted himself as the regular driver.

The insured vehicle was damaged in a motor vehicle accident whilst being driven by the policyholder's son. The policyholder reported the accident to the insurer and submitted a claim.

During the investigation of the claim, the policyholder and his son informed the insurer's appointed assessor that the policyholder's son had been the regular driver of the insured vehicle since the policy started and that he had used the vehicle for business purposes. The assessor also interviewed a colleague of the policyholder's son. The colleague confirmed that the policyholder's son drove the vehicle and used it for business daily.

The insurer advised that it would not have accepted the risk had the correct facts been disclosed to it. The insurer therefore cancelled the policy from when it started and rejected the claim.

The policyholder disagreed with the insurer's decision and argued that the insurer was aware that his son was also going to drive the vehicle for business. He also advised that a previous claim had been reported to the insurer where his son was the incident driver, and no issue was raised by the insurer regarding the regular driver.

The insurer, however, pointed out that the previous claim was not validated nor settled as the cost of repairs fell within the excess payable by the insured. The insurer also acknowledged that it had been informed that the policyholder's son would drive the vehicle for business, however, the policyholder had indicated that this would only be occasionally, and that he would be the person driving the vehicle more often than any other person.

OSTI listened to the recorded underwriting and assessment conversations provided by the insurer and found that material facts relating to the regular driver of the vehicle were misrepresented. Moreover, the insurer's decision to reject the claim and cancel the policy was based on information provided by the policyholder and his son to the insurer during the validation of the claim. Based on the above, OSTI concluded that the insurer was within its rights to cancel the policy and reject the claim.

A policyholder must fully disclose all matters relevant to the insurer's assessment of the risk when requesting insurance cover or updating the cover. This is founded on the insurer's right to be informed of all the material facts to enable it to properly assess the risk. Most policies contain an obligation on the insured to provide true and complete information.

In terms of Section 53(1) of the ***Short-term Insurance Act 58 of 1998***, insurers are prohibited from avoiding contracts of insurance unless the policyholder is found to have misrepresented information which was *"likely to have materially affected the assessment of the risk under the policy concerned at the time of its issue or at the time of any renewal or variation thereof"*.

**ENDS**