

OSTI CASE STUDY 1



Please note that each matter is dealt with on its own merits and no precedent is created by the findings in these matters. These case studies are intended to provide guidance and insight into the manner in which the Ombudsman for Short-Term Insurance (OSTI) deals with complaints.

The case of Mrs H whose complaint was too late

On 14 November 2016 Mrs H lodged a claim with her insurer for lightning damage to her household items. The insurer rejected the claim on the basis that the damage was not caused by an insured peril and that the loss did not fall within the benefits provided by the policy. The insurer informed Mrs H of the rejection on 17 November 2016.

Mrs H was not happy with the insurer's decision and escalated the matter internally with the insurer.

Mrs H was informed of the outcome of the escalation of the dispute on 16 August 2017. The insurer stood by its rejection of the claim and advised that the matter was closed.

Mrs H applied to OSTI for assistance on 10 September 2019. This was more than two years after the outcome of the internal dispute with the insurer was communicated to her.

Time – barring provision

OSTI sent Mrs H's complaint to the insurer. In response to the complaint, the insurer argued that Mrs H's complaint was time-barred and should not be entertained because Mrs H did not approach OSTI within the time frame prescribed by the policy.

The insurer referred to the policy terms and conditions which set out the timeframe within which to dispute the outcome of the claim.

The policy stated:

"After we inform you of our decision on a claim, we will allow you 90 days to make representations to us about our decision. If you do not comply with this time limit, we will not reconsider the disputed claim. If we do receive representations, the decision will then be reviewed and the outcome communicated to you."



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If, after review, we do not indemnify you for a claim or any part of it and you wish to challenge our decision, you must serve legal process on us within six months calculated from the expiry of the 90-day period referred to above. If you do not comply with this time limit, you will be prevented from proceeding with legal process."

The insurer submitted that the rejection letter sent to Mrs H also set out the procedure to be followed if Mrs H was not satisfied with the outcome of her claim.

OSTI's Terms of Reference

OSTI's jurisdiction is limited concerning time-barred complaints. Clause 4 of OSTI's Terms of Reference states:

"4. The Jurisdiction of the Ombudsman

4.1 The Ombudsman shall only consider a complaint made to him if he is satisfied that:

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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."

Clause 4 of OSTI's Terms of Reference grants OSTI the power to condone non-compliance with a time bar provision in an insurance policy if the consumer can provide good cause for the late filing of the application for assistance.

When Mrs H approached OSTI, the time frame within which Mrs H had to challenge the insurer's decision had expired and the complaint was time-barred.

OSTI requested Mrs H to provide reasons for the late submission of the complaint. Mrs H failed to respond to OSTI. Mrs H failed to show good cause for her non-compliance with the time bar provision in the policy and, as a result, OSTI could not condone the late filing of Mrs H's complaint.

The complaint fell outside of OSTI's jurisdiction and could not be considered. No decision could be made about the merits of Mrs H's complaint.

