

CASE STUDIES

Please note that each matter is dealt with on its own merits and no precedent is created by the findings in these matters. The case studies are intended to provide guidance and insight into the manner in which OSTI deals with complaints.

DISCLOSING MATERIAL INFORMATION AT THE START OF THE POLICY

Ms A was involved in a motor vehicle accident. Her claim was rejected by the insurer on the ground of her failure to disclose a cancellation of a previous policy due to fraud or dishonesty. As a consequence of the non-disclosure, the insurer further voided the policy and tendered a refund of Ms A's premiums.

The insurer learnt, during the validation of a claim by the insured, that in January 2007, a previous insurance policy held by Ms A had been cancelled due to fraud or dishonesty by the previous insurer. This cancellation was based on the previous insurer's investigation into an incident in which Ms A admitted to having wilfully supplied incorrect information relating to items claimed for.

The new policy had been underwritten on information contained in a proposal form, in which the previous cancellation was not disclosed by Ms A.

The insurer's submission was that, had the previous cancellation been disclosed, it would not have accepted the risk. Ms A's argument against the decision was that the proposal form did not specifically require her to disclose this information and that she truthfully answered what was asked of her. She further added that she did not disclose the cancellation because she assumed that, if it was critical enough to the insurer, it would have asked the question in the application form. She also disputed the materiality of the

previous cancellation as it related to a different risk.

The Proposal Form

Although the proposal form did not specifically ask of Ms A to disclose previous cancellations, OSTI noted that under the heading 'General Details', the insurer provided that it was dependent on the insured providing true, correct and complete information and that all material information, whether asked or not, had to be disclosed. The proposal form further contained a warranty signed by Ms A that all statements on all pages were true and correct and contained all information known to her affecting the risks under the sections to be insured.

In OSTI's view, the above wording created a clear duty on Ms A to disclose the information relating to the previous cancellation, to which she was privy at the conclusion of the contract. OSTI further found that the information which Ms A withheld related to the acceptability of the entire risk and not only the single risk of a motor vehicle. OSTI found that a reasonable person in Ms A's position would have considered this information to be material and would have disclosed it at the start of the contract, whether the question was specifically asked or not.

The Policy Wording

In addition to the questions contained in the proposal form, the policy wording, which Ms A did not dispute having

received, reiterated the responsibility that Ms. A had to disclose any material information which she was reasonably expected to know. The wording further cautioned Ms A that, if any information was incomplete or incorrect at any time during the subsistence of the policy, and the decision to insure the property had been based on this information, that the insurer may cancel the policy and the insured may lose the right to claim.

OSTI took note of Ms A's contentions that the insurer had not satisfied her that it would not have accepted the risk had the cancellation been disclosed. OSTI's view is that an insurer is within its rights to determine the underwriting criteria it will use to decide whether to accept a risk or not.

OSTI upheld the insurer's decision as it found that there was a material non-disclosure by Ms A which entitled the insurer to reject the claim and void the policy. The insurer therefore refunded the premiums paid since the start of cover, less any claims that were paid during the subsistence of the policy.

When taking out insurance, it is always best to disclose all information which an insured is aware of to the insurer and let the insurer decide whether the information should be taken into consideration when underwriting of the policy.