

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.

duty to disclose a change in risk during the existence of a policy

As a first time policyholder it is important to understand that a contract of insurance creates duties and obligations for both the insurer and the insured.

In addition to making the correct disclosures at the start of the policy and paying the premium, most policies place a duty on the insured to inform the insurer of any change in circumstances that may affect the insurer's ongoing acceptance of the risk.

The following case study highlights the importance of advising the insurer of a change in the risk.

The insured submitted a claim for a motor vehicle accident to his insurer. The insurer rejected the claim on the grounds that the regular driver of the vehicle at the time of the accident was not the regular driver noted on the policy schedule.

When the policy was underwritten, the insurer was advised that the regular driver of the vehicle would be the insured. The vehicle was involved in accident while the insured's daughter was driving. During the

investigation of the claim the insured's daughter advised the insurer that she was the regular driver of the vehicle.

The insurer submitted that the insured had failed to inform the insurer of the change in regular driver and rejected the claim in accordance with the policy.

The policy contained the following provision relating to the regular driver:

"70. Regular driver

The regular driver is the person who uses the vehicle the most frequently and more than any other person in any given monthly period. It is, therefore, very important that the correct regular driver is reflected as the policy holder/insured in the schedule, for the reason that the premium is calculated based on the risk profile of the regular driver. It is equally important that you notify us immediately if the regular driver of the vehicle changes.

If the incorrect regular driver is noted in the schedule, there will be no cover in the event of a claim.

Other persons may on occasion drive the vehicle in addition to the regular driver, provided that such a person driving the vehicle:

- is only the secondary driver of the vehicle;*
- is over the age of 30;*
- has held his or her driver's licence for more than two years;*
- has never been refused insurance;*
- has not had any claims, accidents or losses in the past two years; and*
- has complied with the terms and conditions of the policy.*

There will be no cover in the event of a claim if other persons driving the vehicle do not comply with the above requirements.



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If the secondary driver happens to be your spouse or life partner, the requirement that he or she must be over the age of 30 falls away."

The insured submitted that his daughter was driving the insured vehicle to take the insured's younger child to school every morning. The insured stated that he would normally take his son to school on his way to work. However, he had started attending a skills program which required him to leave home earlier every morning because he needed to travel a greater distance. For this reason, he allowed his daughter to use the insured vehicle to take his son to school.

The insurer argued that, in terms of the above provision, there was a duty on the insured to notify the insurer of the change in the regular driver and that the regular driver was material to the insurer's assessment of the risk. It argued further that the

insured breached the policy terms and conditions by not advising the insurer of the change in regular driver and, as a result it was prejudiced by the breach and it was entitled to reject the claim.

However, there was nothing before this office to suggest that the insured intentionally misrepresented the regular driver. There was also no indication that the insurer would not have accepted the risk had it been advised of the change in regular driver. In the circumstances, this office found that it would not be fair nor equitable to the insured if the insurer rejected the claim in its entirety. Instead, we recommended that the insurer calculate the premium prejudice that it had suffered and make payment to the insured of the adjusted amount.

The insurer agreed to abide by our recommendation and settled the insured's claim.

