

THE OMBUDSMAN'S BRIEFCASE

FROM THE EDITOR'S DESK



NEWS AND EVENTS



CASE STUDIES



CONSUMER TIPS



FROM THE EDITOR'S DESK



In our first edition of the Ombudsman's Briefcase for 2021 we take this opportunity to wish you a safe and prosperous year ahead.

We face this year with a little more hope having emerged from a second wave of the coronavirus and with the COVID-19 vaccine being rolled-out.

In this edition we look at insurance claims that arose due to the COVID-19 pandemic, and how OSTI dealt with them.

OSTI's Terms of Reference require the office to deal with matters using "the criteria of law, equity and fairness". The office is empowered to resolve complaints and disputes and make rulings "based on the law and equity". It must have regard to the provisions of the policy, the circumstances of each case and what is fair and reasonable in those circumstances. Each matter must be considered on its own merits.

OSTI, however, cannot re-write or amend the terms of a policy.

NEWS AND EVENTS



Welcoming OSTI's new team members

In January 2021 we welcomed two new administrative interns and five new legal interns.

Our administrative interns are Lucky Jacobson and Mapule Ramoshaba.



Lucky Jacobson obtained a National N-Diploma in Public Management at Sedibeng (Tvet) College. Lucky says that he is excited to be part of OSTI and thankful for the opportunity to gain experience in the insurance industry.



Mapule Ramoshaba studied Office Administration and Management at South Cape College. Before joining OSTI, Mapule worked as a telesales agent. She enjoys reading and listening to music.

Our legal interns are Luqmaan Chopdat, Eunine Dlamini, Kgothatso Maja, Tsholofelo Malatse and Sephetha Mpja.

NEWS AND EVENTS continued



Luqmaan Chopdat joins OSTI as a legal intern after completing a mentorship programme with the South African Chapter of the International Association of Women Judges. He holds an LLB degree (cum laude) from the University of South

Africa. Luqmaan is a voracious reader with some of his favourite authors including John Brooks, Ben Horowitz and William Thorndike, amongst others.



Tsholofelo Malatse recently graduated from the University of South Africa with an LLB degree. She volunteered for a file archiving project at the High Court of South Africa, Gauteng Local Division, where she worked under the supervision of the

Honourable Judge President Mlambo and the Johannesburg Attorneys Association. She enjoys outdoor activities, doing research and watching Netflix.



Eunine Dlamini completed her LLB degree at the University of Johannesburg where she also completed two certificates in African Insights and Artificial Intelligence. Eunine was a member of the Student Representative Council

at the University of Johannesburg. In her spare time, Eunine runs sanitary pad drives for high school learners.



Sephetha Mpja has a BSc degree from the University of Limpopo. He worked as a plant operator at a diamond mine in Musina before starting his LLB degree at the University of the Witwatersrand. Whilst completing his LLB, Sephetha

was involved in the First Year Experience programme where he mentored first year students and helped them integrate from high school to university life.



Kgothatso Maja also obtained her LLB degree from the University of Johannesburg. Development and growth are important to Kgothatso and she is excited to be a part of OSTI. Kgothatso enjoys experimenting with food.



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 Mr C and his Motor Vehicle Insurance Claim During Lockdown

On 3 May 2020 Mr C submitted a motor vehicle insurance claim to the insurer which was rejected on the basis that Mr C contravened the Disaster Management Act Regulations 2020, more specifically Regulation 31 (2) under both the Level 4 and 5 protocols set in place by government.

Mr C's version of the events

Mr C said that the accident occurred after he had just received a permit to return to work on 4 May 2020. Mr C was relocating from one residence to another and was travelling to get his laptop which he needed for his return to work the next day.

The insurer's rejection

In the rejection letter sent to Mr C, the insurer said it *"makes no admission of liability regarding your claim and reserve all our rights under this policy. We place on record that the above reasons for rejection are based on the policy's terms and condition and is neither exclusive nor exhaustive of our reasons for rejecting the claim. We, accordingly, reserve the right to entertain the matter more comprehensively at the appropriate time and forum, should the need arise."*

Mr C alleges that the rejection is unfair

Mr C approached OSTI for assistance because he felt that his claim had been unfairly rejected.

OSTI requested the insurer to provide a copy of the policy wording and to highlight the relevant policy provision that it relied on to justify its rejection of the claim.

OSTI mentioned that, if the policy provision on which the insurer relies is not material to the loss, then the insurer should consider settling the claim.

The insurer's response

The insurer advised that when it investigated the accident, the following was established, which had a material impact on its decision to reject the claim:

"In an interview conducted with the complainant, it was established that the accident event occurred at about 18:00 on 3 May 2020 when the complainant was travelling along the Golden Highway near Lenasia South. The complainant had a passenger in his vehicle at the time of the accident event.

The complainant and the passenger, who was in the vehicle with the complainant when the accident had occurred, had both confirmed that they had,



OSTI CASE STUDY 1



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during the lockdown (Alert Level 5) on 26 April 2020, travelled from Soweto to Orange Farm to the complainant's second residence. On this date, South Africa was observing Alert Level 5 of the lockdown and travelling was severely restricted and only allowed under strict directions. The complainant, according to his own admission, travelled between his residences in order to cast an eye over his second house and not for essential services or to move to a new house or to move back to his primary place of residence, should he have been forced into lockdown at his second place of residence. Both the complainant and his passenger further confirmed that on 3 May 2020, when the accident event occurred, they were travelling from this residence in Orange Farm back to Soweto.

It is, therefore, true that under Lockdown levels 4 and 5 persons had to remain home and were only allowed to travel under circumstances as published in Gazette 43258 and amendments. In considering the regulations and its directives the following was found to be true:

The complainant was not performing an essential service. The complainant was not moving to a new residence. The complainant was not returning to his place of residence before lockdown; and the complainant was not moving children nor attending a funeral.

Therefore, the relaxation on the restriction of movement did not apply to the complainant's social movement between his households as was the case when the event occurred.

It was noted, at this stage, that the complainant was in possession of a work permit which specifically allowed him to travel between his residence in Chiawelo, Soweto to Bryanston (his place of work). However, this permit did not provide for the

travelling between Orange Farm to Soweto, which was the route the complainant was travelling when the accident event occurred, and therefore, the complainant failed to have the required permissions to travel between these two locations and was, consequently in contravention of the Regulations.

In consideration of the above Regulations and the date of the accident event, it is clear that the complainant, by being on the road when the accident event occurred, had contravened the Regulations in that his purpose for being on the road was not for any of the instances as provided for in terms of Regulation 16(2).

The level 4 Regulations, as indicated in point 3.4 above took effect from 1 May 2020, and therefore when the accident occurred, the complainant was in contravention of Level 4 Regulations. Should the complainant have complied with these Regulations as it pertained to the movement of persons, the complainant would not have been travelling on the road when the accident event occurred and the accident would, therefore, not have occurred.

In response to the COVID-19 pandemic, the insurer stated that it had undertaken to assist its clients in these trying financial times. To this end, it offered clients who were unable to afford their premiums during the lockdown, a payment holiday for that month. This enabled the insurer to successfully offer this option to their clients due to the change in its risk resulting from the restriction of movement of persons under the Regulations, which, in turn, meant fewer persons travelling on the roads, and, consequently a lowered risk of accident events occurring. Were it not for the Regulations provided for under Regulation 16, the insurer would not have been able to make such



OSTI CASE STUDY 1



a risk-adjusted decision to help those clients who were not able to afford their monthly premiums. Therefore, clients who contravene this Regulation 16 directly impacts its risk.

The complainant, by merely being on the roads on both 26 April 2020 and 3 May 2020, when the accident event occurred, had increased the insurer's risk in that, firstly, he was doing so in contravention of both the Level 5 and Level 4 Regulations, respectively. Secondly, if he had complied with the Regulations, it would have invariably reduced the insurer's risk to the extent that the accident event would not have occurred in the first place as the complainant would not have been on that road or travelling that route at all.

As a result of the above submissions, this formed the reasoning which underlies the repudiation of the complainant's claim...".

The insurer also said the following clause from

the policy schedule allowed them to repudiate claims where the insured or driver of the vehicle breaks the law:

7 "If you or the driver driving your car does not have a valid driver's license, or **if you break the law**".

OSTI's findings

OSTI advised the insurer that its response did not address the materiality of the policy exclusion to the loss itself. In other words, the insurer had not shown that the accident was caused by the insured breaking the law. OSTI considered the matter from an equity perspective and found that there was no causal connection/link between the breach of the law and the accident. Accordingly, OSTI recommended that the insurer settle the claim.

The insurer confirmed that it would abide by OSTI'S recommendation and agreed to settle Mr C's claim.



OSTI CASE STUDY 2



The Case of Mr S and his Travel Insurance Claim

In January 2020, Mr S booked a vacation to Switzerland at a cost of R76 302 for his spouse, his son and himself.

Mr S took the “premium” insurance package for himself and his spouse because it was a total inclusive insurance package that included all issues, like “force majeure”.

Mr S claims for a refund due to the cancellation of the trip

After South Africa imposed a travel ban due to the Covid-19 pandemic lockdown, Mr S contacted the travel agency for a refund. The travel agency advised that it was not in a position to refund the

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full amount that he had paid. The agency was, in terms of its rules, only in a position to refund an amount of R11 481.43 as, at the time of the cancellation, Mr S had fallen into the 80% loss bracket.

Mr S then filed a claim with the travel insurer for an amount of R50 868.

The insurer rejects the claim

Mr S' claim was rejected on the basis that the COVID-19 pandemic is not a covered peril in terms of the policy.

The insurer advised that the policy provides cover for specific perils and the circumstances under which the insured's travel plans were cancelled, did not fall within the covered perils.



OSTI CASE STUDY 2



The policy states:

"The company will reimburse the non-refundable portion of travel costs and/or accommodation costs paid by the insured person following necessary cancellation of an insured journey, or any flight penalties due to a necessary postponement of an insured journey prior to departure due to:

1. *The Insured Person's unexpected death, Illness or Injury of his Spouse, Business Associate, Children, the person with whom he had intended to stay abroad, a Relative or Travel Companion as deemed necessary by a Medical Practitioner.*
2. *Non availability of the person that is in charge of the Insured Person's minor or disabled Children due to such person's unexpected death, Illness or Injury within 30 days prior to the dated of the Insured Journey.*
3. *Cancellation or diversion of scheduled Public Conveyance services, including by reason of strikes or other industrial action, unless there was media warning before the date the particular Insured Journey was booked that such events were likely to occur; or*
4. *Serious or considerable accidental material damage to immovable property owned by the Insured Person caused within 30 days of the intended date of departure. The cause of such damage must be unintentional,*
5. *Not as a direct result of any action of the Insured Person and require him to cancel the Insured Journey for the safeguarding of his interests.*
6. *A Traumatic Event occurring within 30 days of the date of departure to the Insured Person, his Spouse, Children or the person abroad*

with whom he intended to stay, a Relative of Business Associate where medical advice has been sought and he has been advised not to travel.

7. *Loss or Theft of travel documents (travel tickets, passports and visas)."*

Mr S did not agree with the rejection and approached OSTI for assistance.

OSTI requested the insurer to advise why the loss was not covered under clause 5 of the above provision.

The insurer's reply

The insurer explained that there had been an error in the way that the wording was presented in the policy documentation. The insurer stated that clauses 4 and 5 should have read as one clause under clause 4, as follows: *"Serious or considerable accidental material damage to immovable property owned by the Insured Person caused within 30 days of the intended date of departure. The cause of such damage must be unintentional, not as a direct result of any action of the Insured Person and requires him to cancel the Insured Journey for the safeguarding of his interests."*

The insurer stated that 'safeguarding of his interests' refers to property and not any other 'interest'.

The policy wording was corrected by the insurer and following engagements with its management, the insurer decided to reconsider Mr S' claim, and agreed to settle the claim.

OSTI CASE STUDY 3



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The Case of Mrs M's Stolen Vehicle

On 21 July 2020, Mrs M's car was stolen while she was staying with her brother in Brakpan, Gauteng. She submitted her claim to the insurer and on 14 August 2020 she was informed that her claim had been rejected because she had failed to update her residential address, from Bloemfontein to Brakpan, with the insurer.



The insurer's consideration

Mrs M approached the insurer's internal dispute officer to express her dissatisfaction with the rejection of her claim. On 4 September 2020, Mrs M was informed that the initial decision to reject her claim was overturned and that the insurer would settle the claim on a proportional basis by deducting the percentage of the premium that would have been paid to the insurer if Mrs M had updated the address on the policy. The insurer explained to Mrs M that the reason it had deducted 29,12% from her claim was because she had been based in Brakpan, Gauteng, for two months and had failed to inform the insurer about the change of her risk address during that period.

The insurer said that since it had only received 70.88% of the correct premium, it would only pay 70.88% of the claim.

Mrs M's response

Mrs M said that the insurer was not acting in good

faith and deemed the insurer's decision to be unfair because she was initially visiting her family on a temporary basis. She said that she had no choice but to remain in Gauteng due to the Covid-19 pandemic lockdown. Mrs M requested a full pay-out of her claim.

OSTI's recommendation

OSTI noted that Mrs M did not move to Gauteng permanently but remained in Gauteng due to the national lockdown. The vehicle had been at the "new" risk address for only one month before being stolen and, therefore, OSTI was of the view that a proportional settlement was inappropriate. OSTI requested the insurer to rather settle the claim by deducting the actual difference in premium for the month that the vehicle was at the "new" risk address.

The insurer agreed with OSTI's recommendation and settled the claim accordingly.

OSTI CASE STUDY 4



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The Case of Mr K's claim for Curtailment of his Travel Plans

Mr K travelled to India for business on 9 March 2020 and was scheduled to travel back to South Africa on 31 March 2020. However, while in India, the government of India announced lockdown measures in response to the threat of the Covid-19 virus. In anticipation that air travel from India would be suspended, Mr K took a flight back to South Africa on 18 March 2020.

Mr K submitted a claim following the curtailment of his trip. The claim was declined because, according to the insurer, the reason for the curtailment was not an insured event covered by the policy.

The insurer's stance

The insurer advised that the policy only covered specific events leading to the cancellation or curtailment of a journey. The reason why Mr K's trip was curtailed, did not fall within any of those specific events.

The insurer's stance was based on the following policy provisions:

"Section 4: Journey Cancellation, Journey Curtailment, Journey Extension and Travel Delay

4.2 Journey Curtailment

If it is necessary for you to curtail your journey as a result of one of the following, we will pay for or reimburse you the non-refundable portions of travel or accommodation arrangements or for which you are legally liable and the reasonable additional travel and accommodation expenses

(3-star accommodation and economy class travel expenses) incurred by you to return to your country of residence:

- 1. Unforeseen, unexpected and sudden death, illness or injury of you, your travel companion, your immediate family, business associate or the person with whom you intended to stay with abroad. Medical reasons must not be relating to a Pre-Existing Medical Condition.*
- 2. Hijack, Riot, Strike or Civil Commotion causing direct cancellation and/or delayed departure of Your transport.*
- 3. A traumatic event whilst you are on your Journey.*
- 4. Retrenchment or redundancy.*
- 5. Accidental damage or burglary to your main residence resulting in a loss in excess of R100 000.*
- 6. Theft or loss of your or your travel companions travel documentation causing unavoidable curtailment.*
- 7. A Terrorist incident occurring whilst you are on your journey in the same city noted on your prepaid itinerary.*
- 8. The non-availability of the person that is in charge of your minor or disabled children due to such person's unexpected death, illness or injury within 30 days prior to the date of the insured journey."*



OSTI CASE STUDY 4



OSTI's findings

OSTI found that it was clear from the policy wording that the reason why Mr K's journey was curtailed, was not occasioned by any of the perils listed in the policy.

Mr K challenges OSTI's decision

In response to OSTI's decision, Mr K said that he did not understand the insurer's reply to his complaint and stated *"The policy may have no wordings of this virus but please no policy has mentioned this virus. it's unfair to have my claim not granted."*

The matter was reviewed by OSTI's Escalation Committee who explained that the policy is a contract between the two parties, and that its terms and conditions determine the rights and

obligations of the parties.

OSTI, therefore, could not create new rights and obligations outside of the policy terms and conditions. One of OSTI's functions is to ensure that the insurer applies the terms and conditions correctly and fairly.

Mr K, as the claimant, bears the onus of proving that a claim falls within the ambit of the cover, in other words that the circumstances of the change in his travel arrangements resulted from an insured event.

On a proper reading and interpretation of the policy, OSTI found that Mr K did not enjoy cover as the policy made no provision for circumstances other than those specifically provided for in the policy wording. Mr K had not proven that the claim fell within the scope of the policy. The insurer's rejection of the claim was upheld.



CONSUMER TIPS



CONSUMER TIPS

01

As we do each year, we remind consumers to check their policies to ensure that their assets are correctly insured.

02

Check that your policy not only suits your pocket in terms of the premium but that the cover suits your needs.

03

Ensure that you comply with the requirements for cover.

04

Do not only focus on what is covered but also consider what is not covered (or excluded) in the policy.

05

If you are under financial constraint and thinking about cancelling your insurance policy, then listen to Mr Peter Nkhuna's, Senior Assistant Ombudsman, interview with SAFM:
"Insurance Through Challenging Times"
<https://www.osti.co.za/news-room/#interviews>



what does OSTI do?

Our Mission

To resolve short-term insurance complaints fairly, efficiently and impartially.

We resolve disputes between consumers and short-term insurers:

- as transparently as possible, taking into account our obligations of confidentiality and privacy;
- with minimum formality and technicality;
- in a cooperative, efficient and fair manner.

We are wholly independent and do not answer to insurers, consumer bodies or the Regulator.

what to do if you have a complaint?

Before contacting our Office, we would advise you to complain to your insurance company first. It is best to complain in writing. Make sure that you keep copies of all correspondence between you and your insurer.

If you are not happy with your insurer's approach, you can complete our complaint form and send it back to us either by post, fax or email.

You can also lodge a complaint online, please visit our website and click on "Lodge a Complaint" and follow the easy prompts.

If you would like to lodge a complaint or require assistance, please contact our office by calling **011 726 8900** or our share-call number on **0860 726 890** or download our complaint form via our website at www.osti.co.za, click on **Lodge a Complaint** and then follow the prompts.

If you would like to be added to our mailing list, please contact us on:

Telephone number: 011 726 8900

Share-call number: 0860 726 890

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