

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS PRETORIA

CASE NUMBER: FAIS-53191-23/24 GP 2

In the matter between: -

CHRISTO NEL

Complainant

and

BARTON INSURANCE BROKERS PTY (LTD) (FSP NO. 5254)

Respondent

**DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL ADVISORY AND
INTERMEDIARY SERVICES ACT NO. 37 OF 2002 (“FAIS ACT”)**

THE PARTIES

[1] Mr Christo Nel (“the Complainant”) complained to the Office of the Ombud for Financial Services Providers (“the Office”) on 23 October 2023.

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Fairness in Financial Services: Pro Bono Publico

[2] Mr Nel is an adult male.

[3] The Respondent is Barton Insurance Brokers (Pty) Ltd (“Barton”), a company duly incorporated under South African law, with the registration number (1993/005378/07). The Respondent is an authorised Financial Services Provider (FSP) (license number 5254), with its principal place of business noted in the Regulator’s records as 60 The Valley Road, Parktown, Johannesburg, 2193. The license has been active since 16 August 2005.

THE COMPLAINT

[4] Mr Nel insured his vehicle, a Toyota Fortuner 2.8 GD6 4x4 AT, on 1 August 2020. The endorsement of the specific cover of his vehicle at that time was a factory-fitted alarm and immobilizer, as well as a CIB-approved tracking device. Mr Nel submits that he complied with both requirements.

[5] His vehicle was stolen on 2 July 2023, after which he submitted a claim. On 7 July 2023, he received a response from CIB (Pty) Ltd (“CIB”), the underwriting manager, who stated that proof of his vehicle’s secondary tracking device and backup unit was required to process his claim.

[6] He was alarmed by this request from CIB because, before 7 July 2023, he had never been informed of any requirement regarding a secondary tracking device or backup unit. The only requirements he was aware of were, as mentioned above, a factory-fitted alarm and immobilizer and a tracking device approved by CIB. Barton failed to inform him of this material requirement or that non-compliance would result in his vehicle not being covered for theft.

[7] He submits that Barton had a duty to inform him of this material change to his policy. Yet, it failed to do so for more than three months (the secondary tracker requirement was implemented on 1 April 2023, but the Complainant only became aware of it in July 2023, after his vehicle had already been stolen).

[8] On 1 September 2023, he was informed that his claim had been repudiated because his vehicle was not fitted with a secondary tracking device or backup unit.

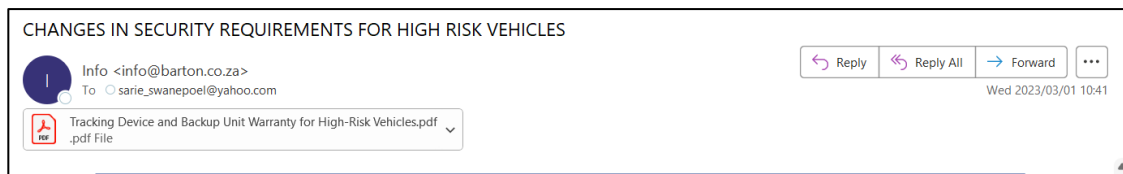
RESPONDENT'S RESPONSE

[9] Barton confirms that Mr Nel is a short-term insurance policyholder with Guardrisk through the administrator CIB (Pty) Ltd since 2018. His Toyota Fortuner vehicle was insured under this policy.

[10] On 2 July 2023, Mr Nel's vehicle was stolen. After his claim was submitted to CIB, Barton was informed via an email from CIB on 6 July 2023 that Guardrisk was considering rejecting the claim because he did not have a second tracking device installed in his car. CIB's notification of change to policy conditions required a second tracking device for certain high-risk vehicles, including Fortuners, as of 1 April 2023.

[11] Guardrisk ultimately rejected the claim because Mr Nel did not have the second tracking device installed.

[12] On 1 March 2023, Barton emailed a notification regarding this additional second tracker security requirement, "*Changes in Security Requirements for High-Risk Vehicles.*" Barton generated this correspondence using Guardrisk/CIB's instructions, which were to be emailed personally to every client. A screenshot of the email appears below:



[13] The email and record of advice were sent from Barton's email address, info@barton.co.za, to sarie_swanepoel@yahoo.com, which belongs to the Complainant's wife, Sarie Nel (previously Swanepoel). They are married out of community of property. Barton used this email address because, on CIB's internal

system (to which Barton, as a broker for CIB/Guardrisk, has full access), the email address for this policy was listed as sarie_swanepoel@yahoo.com.

[14] The notification process was planned to ensure that every policyholder was advised and contacted personally. This specific policy is the only one where the follow-up call was missed. As soon as they became aware that the Complainant had not received the follow-up call, they immediately went through all the calls based on the list of affected clients and confirmed that only this one call was missed.

[15] Barton is of the view it complied with its obligations in informing Mr Nel, for the following reasons:

- Ms. Swanepoel and the Complainant were previously co-policyholders of “For Their Respective Rights and Interests” (“FTRRI”) in 2018, and Ms. Swanepoel married the Complainant in February 2020.
- When the Complainant added the Fortuner in 2020, the policyholder’s name was changed to his name only. He arranged to pay the premiums and sent Barton all communications regarding the policy. Ms. Swanepoel’s assets remained insured under the policy.
- The changes to the policyholder are shown per annexures and emails “bewys van dekking nuwe voertuig” and CIB\P502526 // C NEL). Also attached as annexure “21230220123750 CIB policy schedule” is a copy of the policy reflecting Ms. Swanepoel as a co-policyholder FTRRI with Mr Nel from February 2020. Also attached is annexure 731202012429CIBP502526 Policy Schedule, which is the policy schedule after the Fortuner was added (and Ms. Swanepoel was removed as the policyholder) as of 31 July 2020.
- Because Ms. Swanepoel and the Complainant were previously both co-policyholders, Ms. Swanepoel’s email address is recorded on CIB’s internal system for this policy, and this is why Barton used this email for the notification in question.

[16] Certain clients are allocated to specific representatives. However, due to the large number of letters sent out at short notice, Ms. Swanepoel's email address, shown on the CIB system for this particular policy, was not picked up when each person's policy was checked to ensure the required change was applicable and the communication sent. Barton has updated this on the CIB system to avoid a situation like this in the future. Barton refers to the attachment as "CIB system," which now reflects the Mr Nel's email address. A screenshot of the system is reflected below:

The screenshot displays a web-based interface for a client named 'Mr Nel'. At the top, there are tabs for 'Policy History' and 'Print'. Below this is a navigation menu with tabs for 'General Details', 'Contact Details' (which is selected), 'Diary Items', 'Stats', 'Related Insureds', 'Dependants', 'Additional Detail', 'Billing Client', 'Co-Insured', and 'Doc'. The main content area is divided into two sections: 'Electronic Contact Details' and 'Address Details'. The 'Electronic Contact Details' section includes fields for 'Business Tel', 'Facsimile', 'Home Tel', 'Cell Phone' (with the value '072 607 2489'), 'E-Mail' (with the value 'cnchristo@gmail.com'), 'Reference 1', 'Reference 2', 'Contact Person', and 'Preferred Communication Method'. The 'Address Details' section has two sub-tabs: 'Physical Address' (selected) and 'Postal Address'. The 'Physical Address' section contains fields for 'Number', 'Street' (with the value 'Unit 102 Hurst Athol, 125 Ce'), 'Suburb' (with a dropdown menu showing 'ATHOLHURST' and 'JOHANNESBURG'), 'Postal code' (with the value '2196'), 'Street code' (with the value '2196'), 'Erf Details', 'Complex Name', 'Floor Number', and 'Unit Number'. There is a checkbox labeled 'Postal Address same as Residential' which is currently unchecked. At the bottom of the 'Physical Address' section, there is a label 'GRIP Address'.

[17] Barton could not confirm with CIB's IT department which telephone number was initially on the system, as CIB does not track contact detail changes throughout the policy's history. Since CIB policies do not list telephone numbers or email addresses, reviewing past schedules would not help. The system allows three numbers, so the Complainant's and Ms. Swanepoel's numbers were likely recorded from the start. The Complainant's contact details were only updated after direct verbal instruction and consent.

[18] Barton only realised the email on record was Ms. Swanepoel's, not the Complainant's, after the Complainant's loss. There were no prior instructions from the Complainant to

change the contact information. The email address was updated on 20 July 2023, following the Complainant's verbal instruction after the loss.

FURTHER SUBMISSIONS FROM THE COMPLAINANT

[19] Mr Nel disputes receiving the email notification as it was not sent to him. He also disputes that his wife received the email.

[20] Even if Barton correctly sent the email, it was sent to the wrong email address. He is the sole policyholder, and the email address Barton claims to have used is not his email address. Accordingly, he never received it or came to his attention. In those circumstances, Barton acted negligently.

[21] As of 31 July 2020, he has been the sole policyholder. Barton, therefore, had a duty to inform him of any changes, and it failed to do so.

[22] Since becoming the sole policyholder, whenever any changes to the policy have been requested, he communicated from his email addresses (cnchristo@gmail.com or christo@emerge-group.co.za). For instance, on the 17th of March 2021, the banking debit order details were changed to his details, and the change was requested by the Complainant and communicated from his email. The Complainant continued to use his email addresses whenever he required any policy changes.

[23] His policy document does not refer to the email address, contact number, or details for him to confirm his details. On the date Barton claims to have sent the email notification, 1 March 2023, he had already been the sole policyholder for some 31 months. Since then, the Complainant has been the sole policyholder and engaged with Barton via email at least 21 times to make necessary policy changes before his vehicle was stolen. With every request for a policy change, the policy document was sent to the Complainant's email, not his wife's.

[24] In addition to using the wrong email address to send the notification, Barton also acted negligently in that they never took any steps to make sure that he had received the

notification by, for instance, phoning him and ensuring that he was aware of such a significant policy change.

[25] Even after 1 March 2023, the Complainant engaged with Barton to enquire whether his vehicle would be covered if he parked it at OR Tambo Long Term Parking. Throughout that discussion, Barton never thought it necessary to inform him of the secondary tracking requirement, ultimately leading to his claim's rejection.

ATTEMPTS TO RESOLVE THE MATTER

[26] This Office closed this file on 22 April 2024 because the complaint had no reasonable prospects of success. At the time, the Office believed that Mr Nel could not provide evidence of a specific instruction to Barton to change the email address on record. Barton cannot be expected to unilaterally change the email address on record without direct instruction from the Complainant as the policyholder.

[27] Mr Nel objected to this finding and filed an application for reconsideration with the Financial Services Tribunal ("the Tribunal").

[28] The Tribunal issued a finding dated 5 November 2024. An extract of its findings is copied below.

31. In the circumstances, the first respondent erred in rejecting the applicant's complaint on the basis that it has no prospects of success. The dismissal of the complaint is destined to be set aside.

ORDER

32. Consequently, an order is hereby made as follows:

30.1 The dismissal of the complaint is hereby set aside.

30.2 The matter is hereby remitted to the first respondent for reconsideration.

[29] The Tribunal judgment set out numerous reasons why there was a basis for liability on the part of Barton. On 13 November 2024, a recommendation in terms of section 27

(5) (c) of the FAIS Act was sent to Barton, recommending that it settle the claim following the Tribunal's judgment.

[30] Barton disputed the Tribunal's reasoning and findings. Its response can be summarised as follows:

- The email address of Mr Nel's wife was the only one on record since the policy's inception. The broker followed standard procedure by using the recorded email address and could not change it without explicit instruction from Mr Nel. Any unauthorized change would breach data protection laws.
- A notice regarding fitting a secondary tracking device was sent to the email on record, which remained unchanged even after Mr Nel's wife was removed as a policyholder.
- There is no evidence or instruction from Mr Nel directing the broker to change the primary email address.

ASSESSMENT OF THE EVIDENCE

[31] In accordance with the Tribunal's order that the Office reconsider its decision, the Office obtained further information from Barton and reconsidered the facts and evidence in this matter.

[32] The facts relating to the theft of the vehicle and the reason for rejecting the claim are not in dispute.

[33] The only issues in dispute relate to whether Barton negligently failed to update the email address in its records and whether it took reasonable steps to inform the Complainant of the new tracking requirement.

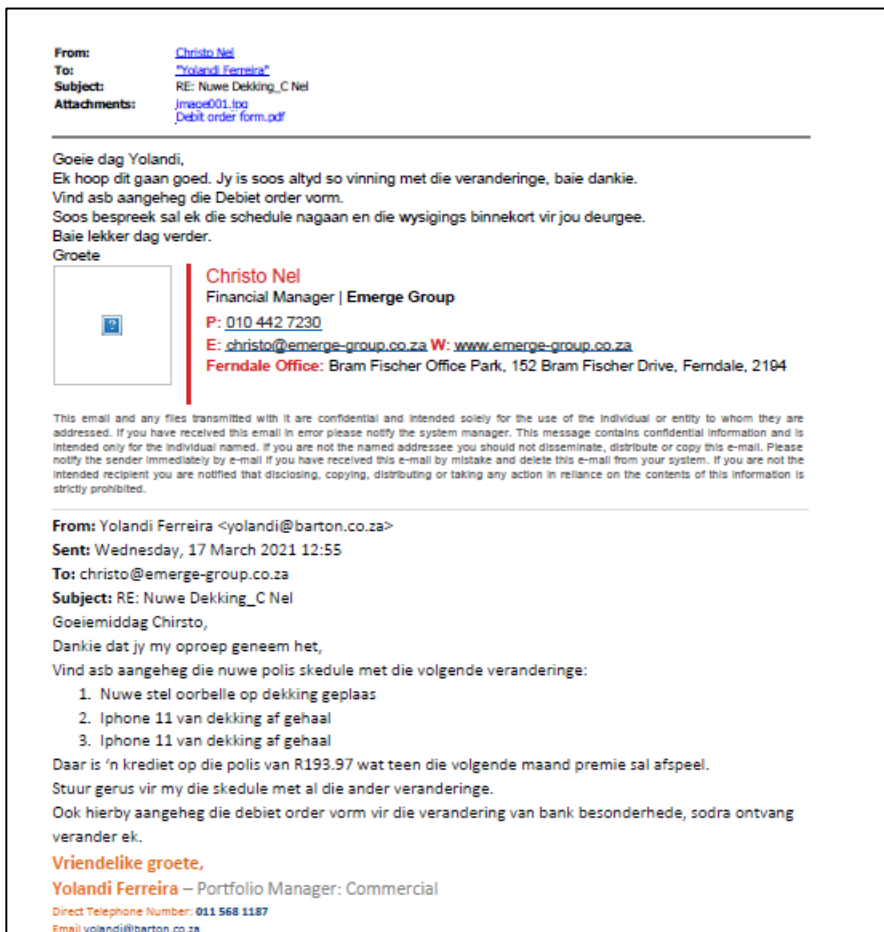
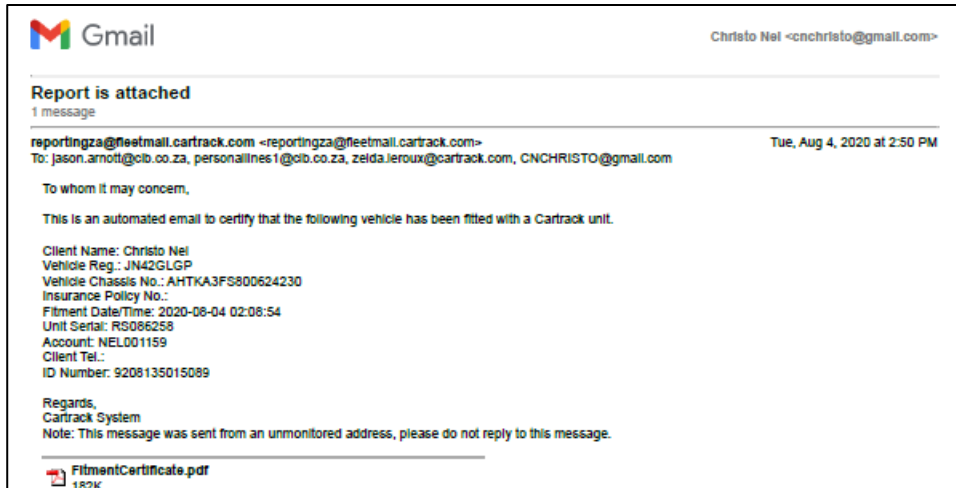
[34] Barton is correct in its basic submission. Under normal circumstances, it would be highly unusual and concerning if an advisor changed a client's contact details without direct

instruction. The Office closed the file originally on this basis. However, each case must be judged on its own facts and circumstances.

[35] As much as details cannot be changed without instruction, an advisor is equally expected to review policies and request guidance or instruction where applicable. It would be reasonable to expect an advisor to seek instruction or guidance from the client if there is a material change in the nature of the policy or if there is an ongoing clear and apparent change in the client's contact details.

[36] It is not in dispute that Mr Nel changed the policy from a co-policyholder with his wife to being the sole policyholder in 2020. This is a material change that would alert the reasonable advisor to review the contact details in the policy and ensure that they are still correct. A change from a co-policyholder to a sole policyholder is not a minor and insignificant change. It embodies a clear implied instruction that the previous co-policyholder is no longer a client in terms of the policy and should be removed from the contact list. At the very least, Mr Nel should have been asked whether the contact details on its system should remain the same. There is no evidence that the contact details were reviewed, and Barton confirms that the email address was not changed at that time.

[37] Mr Nel submitted numerous examples of emails that he received from Barton, which he replied to from 2020 onwards. On all occasions, his email addresses were used, not that of his wife. Two examples are reflected below:



[38] Mr Nel would not have been aware that his wife's email address was still the only formal communication channel recorded on the system. The schedule sent to him did not contain any contact information that would possibly alert him to a problem. All his

subsequent correspondence with Barton was from and to his email addresses. He would have no reason to suspect that the contact details were incorrect or that he should provide direct instruction that they be changed. This information was specifically within Barton's knowledge and unknown to anyone else.

[39] In July 2022, Ms Swanepoel sent emails to Barton regarding the addition of a cell phone to the policy. It can be noted that the emails originated from a business address ("RMB"), not her personal email address. This would have presented a further opportunity to review and confirm the contact details on their system.

[40] The *General Code of Conduct for Authorised Financial Services Providers and Representatives*¹ ("the Code") contains the following provisions which apply to this matter:

2. General duty of provider.—A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.

6. A provider must—

(a) in making contact arrangements, and in all communications and dealings with a client, act honourably, professionally and with due regard to the convenience of the client; and..."

[41] A reasonable advisor in Barton's position would have reviewed the contact details in the policy in 2020 when a material change was made to a sole policyholder. No review was done and no contact details were amended. Compounding this error, in the years that followed, Barton was very well aware that its main communication was primarily with Mr Nel and not his wife. A reasonable advisor would have sought formal instruction or confirmation to change the contact details on the system it uses. By failing to review and update the information, Barton did not adhere to reasonable

¹ BN 80 of 8 August 2003. As amended

standards and the general provisions of the Code and was, therefore, negligent.

[42] Barton submitted that its standard process in this instance was to send notifications to the affected clients and to follow up with a phone call. There is no evidence of any follow-up phone call made to Mr Nel or his wife regarding the notification. Despite the ongoing failure to amend the contact details on their system, a phone call could have averted the loss incurred. This failure compounds the Respondent's negligence even further. It can further be mentioned (although not material to the substance of the merits) that Barton did not submit any evidence that the email to Mr Nel's wife's email address was ever successfully transmitted or read.

[43] Had Barton changed the email address on its system to the correct one, Mr Nel would have noted the notification of the new tracker requirement. There is a high probability that he would have installed the system as required, and the insurer would have paid the claim. The same probability applies if a follow-up phone call had been made to him. Barton failed to send the email to the correct address and further failed to make a follow-up call as it says it did for other clients. It was not a single error or oversight that occurred, Barton's multiple errors were consecutive and ongoing. In this set of circumstances, there is clear factual and legal causality. Barton is liable for the loss suffered by Mr Nel.

[44] The Insurer confirms that had the claim been successful, the settlement amount would have been R681,250.00 (the applicable excess would have been waived).

[45] A draft version of the determination was sent to Barton to allow them a final opportunity to settle the complaint. Barton continued to deny liability and made various submissions and arguments regarding the findings and the evidence. Changes were made to the determination where directly relevant or applicable.

THE ORDER

[46] The following order is made:

- The complaint is upheld.
- The Respondent is ordered to pay the Complainant the amount of R681,250.00 as the sum insured for the vehicle and;
- Pay interest on the said amount at a rate of 11.25% per annum from the date of this determination to the date of final payment.

Please note that a person aggrieved by this decision has the right to apply for the reconsideration of the decision by the Financial Services Tribunal (“the Tribunal”) as contemplated in section 230 of the Financial Sector Regulation Act.

An application for reconsideration must be made:

(a) In accordance with the Tribunal rules ([link](#)); and

(b) Within 30 days as set out in section 230(2) of the FSR Act.

The contact details of the Tribunal secretariat are as follows: Ms.

Kim Host / Ms Alitah Morudu

E-mail: Applications@fstribunal.co.za

Telephone: (012) 741 4300 / (012) 741 4302 / (012) 741 4303

Kasteel Office Park

Orange Building (2nd Floor)

546 Jochemus Street

Erasmuskloof

Pretoria

DATED AT PRETORIA ON THIS THE 25TH DAY OF FEBRUARY 2025

A handwritten signature in black ink, appearing to be 'John Simpson', written over a horizontal line.

ADV. JOHN SIMPSON

OMBUD FOR FINANCIAL SERVICES PROVIDERS