IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA **Case Number: FOC 3486/06-07/GP (3)**

In the matter between:

MARINUS DE JONG **Complainant**

and

INSURANCE MAINTENANCE PLANNING CC **Respondent**

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

A. PARTIES

[1] The complainant is Marinus De Jong, an adult male, helicopter avionic team leader who resides at 36 Quartz Avenue, Dersley Park Ext 1, Springs.

[2] The respondent is Insurance Maintenance Planning CC, a close corporation duly incorporated in terms of South African laws with its principal place of business at 14 Wattlestreet, Northmead, Benoni. Respondent is an authorised financial services provider. At all material times, respondent was represented by a Ms Lizelle Bester.

B. THE BACKGROUND

[3] Complainant insured his 1995 VW Jetta A3 CLI Executive (the vehicle) with Santam Limited, through the intermediation of respondent effective from 1 February 2005.

[4] During June 2006 respondent transferred the aforementioned insurance to Mutual & Federal Insurance Company Ltd ('M & F') and cancelled the Santam policy. The transfer was effective from 1 July 2006.

[5] The vehicle security requirements in terms of the Santam policy were that the vehicle be fitted with a VESA approved immobiliser.

[6] M & F's security requirements differed in that it had an endorsement on the policy, which required an ABS approved gear-lock to be fitted within 14 days. The basis for this was that according to M & F the immobiliser fitted to the vehicle did not comply with M & F's minimum security requirements.

[7] The vehicle was stolen on the 29 July 2006 and the claim rejected by M & F on the basis that no ABS approved gear-lock had been installed.

[8] A complaint was initially lodged with the Ombudsman for Short-Term Insurance ('OSTI') against M & F. The complaint was not upheld and a complaint then lodged with this Office against respondent.

[9] The essence of this complaint is that the change in insurer and attendant variation in security requirements was not communicated to complainant, and as such he did not effect the required vehicle security measures.

The facts in dispute

An examination of the papers reveals that the following facts are in dispute:

Whether appropriate notice of the change of insurers from Santam to M & F was given to complainant

[10] Respondent maintains that contrary to complainant's assertion sufficient notice was given of the shift in insurers and the additional security requirements imposed by M & F. According to respondent it was complainant's duty to familiarise himself with the requirements of the M & F policy.

Whether, had complainant remained with Santam the claim would have been honoured

[11] Respondent contends that had complainant remained with Santam the claim would, in any event, have been repudiated as the vehicle was supposedly not fitted with a VESA approved immobiliser, in spite of complainant being aware of this requirement.

[12] This contention essentially aligns itself with M & F's position that the factory fitted alarm system was not VESA approved and hence its requirement that a gear-lock be fitted.

[13] Complainant disputes this and contends that the factory fitted alarm system met the requisite standards.

Whether the 'Minimum Requirements Form' means that Santam also required a VESA approved gearlock

[14] This aspect of the dispute centres around a document headed 'Minimum Requirements Form' signed by complainant on 20 January 2005. According to respondent this is a Santam document evidencing a requirement that vehicles under R100 000, 00 in value had to be fitted with a VESA approved gearlock. Thus, so respondent's argument goes, complainant did not comply with the security requirements of the Santam policy as well.

[15] Complainant's response to this is that the said document was not applicable in this instance.

Whether Santam was no longer prepared to insure complainant because of his adverse claims history

[16] This issue pertains to respondent's assertion that due to complainant's claims record, Santam was no longer prepared to carry the risk thereby necessitating the change to M & F.

[17] Complainant denies this and essentially contends that Santam merely required a premium increase as opposed to cancellation in view of complainant's claims history.

Investigation

I deal with each of these areas of dispute detailed above hereunder:

Whether appropriate notice of the change of insurers from Santam to M & F was given to complainant

[18] In investigating this aspect of the matter, this Office directed enquiries to Diagonal Insurance Solutions ('Diagonal'). Diagonal has a mandate to act on behalf of M & F in accepting business from various brokers, collect premiums and handle claims.

[19] In an e-mail from Ingrid Beetge, Diagonal's Operations director on 27 August 2007 she advised as follows:

> *'We were approached by the above broker in June 2006 to assist with a book that was either increased or cancelled by Santam effective date 01.07.06. Each Santam schedule with claims history outlined was individually underwritten by our Branch in Pretoria and endorsed accordingly. The cover was accepted and schedule forwarded to Broker ...on 22nd June 2006. The schedule had the endorsement on the particular vehicle in question to fit a Gearlock as immobiliser did not comply with the minimum security requirements'*

[20] According to Diagonal a copy of the policy schedule was e-mailed to respondent on 22 June 2006 and in turn respondent advised Diagonal that the schedule was forwarded to the complainant on the same date.

[21] In a letter from M & F to the OSTI dated 30 March 2007 they also advise that, *'The broker alleges that the Schedules were forwarded to the insured on the same date'*

[22] Respondent itself, in correspondence with this Office asserts that the policy schedule had been annexed to its correspondence to complainant.

[23] Amongst the documents provided by respondent were two letters to complainant pertaining to the switch from Santam to M & F. The first dated 22 June 2006 simply states that from 1 August 2006 the insurance cover was going to be placed with M & F.

[24] The second letter dated 29 June 2006 states that instead of the 1 August 2006, Santam had compelled an earlier move effective from 1 July 2006. In addition and of particular relevance is a sentence which translated reads; '*You will also see that on your schedule which* ***has been posted to you from Mutual and Federal****..... please go through the schedule and advise if everything is in order'* (emphasis added)

[25] It is clear that respondent's own correspondence makes no reference to the policy schedule being forwarded by it to complainant.

[26] Further it is noted that the schedule was forwarded by Diagonal to respondent on 22 June 2007 at five o'clock in the evening. In addition and as requested in this e-mail the schedule still had to be reviewed to ascertain if everything was in order.

[27] Quite simply on the evidence presented, no schedule was forwarded by respondent to complainant and neither of the letters sent by respondent details the terms or conditions of the new policy.

[28] In fact the new policy not only required that a gear-lock be fitted within 14 days but also levied a 25 per cent excess during this 14 day grace period.

Whether, had complainant remained with Santam the claim would have been honoured

[29] In order to deal with this issue, one has to establish whether the immobiliser complied with the applicable VESA standards. This was initially considered by the OSTI. As already mentioned M & F required the gear-lock because they were not satisfied that the factory fitted immobiliser met these standards.

[30] In correspondence between M & F and the OSTI dated 30 November 2006, M & F stated that they had approached the South African Insurance Institute ('SAIA') to establish whether the system could be regarded as approved by them. In response thereto they were apparently advised by SAIA that the system could not be regarded as approved.

[31] To this the OSTI responded by pointing out that the manufacturers (Volkswagen South Africa (Pty) Ltd) themselves had indicated that the specific device complies with the VSS system. The OSTI was therefore of the view that the insurer did not suffer any prejudice.

[32] Essentially the OSTI was drawing from a letter from a Mr. Marius Delport, Vehicle Identification Section at Volkswagen South Africa (Pty) Ltd dated 15 September 2006, in terms whereof Mr Delport stated, '*The above vehicle was fitted with an immobilizer and alarm system the equivalent of a VSS3 graded system*'

[33] In a response to the OSTI Elise Meintjies, Manager Specialist Claims & Support at M & F states:

> '*we are in receipt of the latest list of SAIA approved systems, with only a 1997 Volkswagen Jetta CLI listed but no earlier models. I confirm that we require a letter from Volkswagen South Africa confirming that the features / quality of the security system installed in the 1995 model is exactly the same as the 1997 model, with an explanation as to why the 1995 model is then not listed on the SAIA list of approved systems before we can consider the matter further.'*

[34] In a further response to M & F's query, Mr Delport, states ' *all Jetta A3 CLi models from 1993 to 1998 were fitted with the same alarm/immobilizer systems which were equivalent to a VSS 3 graded system.'*

[35] Subsequently thereto and as set out in a letter dated 22 March 2007 from the OSTI to M & F the above issue was apparently discussed between the OSTI and SAIA's Mr Bezuidenhout. SAIA's view of the matter was that the alarm system did not comply with VSS requirements.

[36] The complaint was thereafter dismissed by the OSTI.

[37] Whilst it does appear that the essence of the dismissal was based on the opinion of SAIA, it must be borne in mind that in terms of the policy the lack of a gear-lock in any event entitled M & F to reject the claim.

[38] What is cause for concern however is the fact that, on the one hand we have a major motor vehicle manufacturer confirming that the factory fitted alarm system met applicable standards; we have SAIA, an industry body disputing that the vehicle met applicable standards. In contrast, and in response to enquiries from this Office Santam provided the following comment. '*If the manufacturer confirm in writing that the immobiliser do agree with the VSS standards, we would accept the claim.*

[I deal with these apparently opposing views below]

Whether the 'Minimum Requirements Form' means that Santam also required a VESA approved gearlock

[39] I turn next to a consideration of the third area of dispute namely the 'Minimum Requirements Form', the relevant section whereof reads as follows:

‘Vehicles under R100 000, 00

VESA Approved level 3/4 immobiliser or VSS Approved factory fitted immobiliser

(after 1996)

VESA Approved Gearlock. OR

VESA Approved Satellite Tracking System.’

[40] Respondent states that it is clear from this form that vehicles under R100 000, 00 required a VESA approved gear-lock. She goes on to claim that this was also a requirement of Santam, which did not alter when the policy was transferred to M & F.

[41] However upon turning to the Santam policy document I was unable to find any reference to such a requirement. On the contrary the policy document clearly states that the vehicle did not have a gear-lock and the policy was accepted on this basis. In so far as the alarm system is concerned, this is noted as a VESA approved immobiliser.

[42] Whilst complainant accepts that he signed the ‘Minimum Requirements Form’ he claims to have been advised by respondent that only a section on this form dealing with household security was applicable.

[43] In support thereof he point to the fact that there are ticks, next to the household security section of this form.

[44] This is disputed by respondent and I do note that, there has been no attempt to cross out the balance of the form or any indication whatsoever that this is not applicable.

Whether Santam was no longer prepared to insure complainant because of his adverse claims history

[45] In so far as this area of dispute is concerned, respondent states that:

> '*On 7th June 2006 Ms Dawn Hartzenberg of the Rivonia branch of Santam informed us that there were 28 clients that Santam no longer wished to insure. Amongst these was Mr de Jong. Santam never gave us the 30 day notice period to arrange alternative insurance'* (the 30 day notice period being a requirement in terms of the Policy Holder Protection Rules).

[46] In support of the above respondent provided a copy of a document which she contends was provided by Ms Hartzenberg. This appears to be an excel printout with a list of clients names, policy numbers, claims ratios and comments. In the comments column I note the following different comments, '30 days notice of cancellation', 'future cancellation' and 'increase put through'.

[47] Whilst complainant reflects as having had three claims over a 15 months period and a claims percentage of 133.83 per cent, the comment next to his

name indicates neither cancellation nor future cancellation. On the contrary it reads ‘increase put through’

[48] When questioned on this anomaly respondent referred to a handwritten comment on the form purportedly made by Ms Hartzenberg. This states ‘To be placed with another insurer’

[49] Respondent was unable to explain the direct contradiction between the alleged comments of Ms Hartzenberg and the fact that the form itself clearly required that an increase be put through as opposed to a cancellation of the policy.

[50] In short, other than contending that she had been informed by Ms Harzenberg of the required transfer there was no indication that the contradiction evident in the document had been noted or whether any explanation was sought by respondent with regard thereto.

C. DETERMINATION

[51] The pivotal issues to be determined in this case are:

51.1 Whether in transferring complainant’s risk from Santam to M & F, respondent had informed complainant of the additional security requirement specified by M & F;

51.2 If it is found that respondent had indeed not informed complainant of the additional security requirement, whether such failure resulted in a loss; and if so;

51.3 The quantum of such loss.

[52] That M & F had as an additional security measure required that an 'ABS' approved gear-lock be installed on the vehicle in order for complainant to enjoy indemnity is common cause. Whether respondent had properly advised complainant of this requirement is one of the areas of dispute between the parties. Complainant says he was not advised of this, whilst respondent says that he was.

[53] According to respondent the way in which Lizelle Bester informed complainant of this requirement was to forward a copy of the M & F policy to him, upon receipt of the same from Diagonal.

[54] In the investigation of this complaint, it was found that no policy schedule was forwarded by respondent to complainant at the time the risk was transferred from Santam to M & F.

[55] All that respondent did was to send two letters to complainant dated 22 June and 29 June 2006 in which it advised of the transfer. Neither of these letters drew attention to any additional requirements such as that specified by M & F.

[56] The additional security requirement contained in the policy schedule was neither drawn to complainant's attention nor was the policy schedule itself

forwarded to complainant, contrary to respondent's assertions. Indeed on respondent's own version, it alerts complainant to the policy schedule and specifically points out in its letter of 29 June 2006 that the schedule '*has been posted ... from Mutual and Federal'.*

[57] Respondent's own assertion that the policy schedule has been posted by M & F flies in the face of respondent's assurances to M & F that it had forwarded the policy schedule to the complainant on 22 June 2006.

[58] On respondent's own version there is also nothing to suggest that Lizelle Bester had informed complainant of the M & F's additional security requirement, either verbally or in writing. Indeed I would go so far as to say that I am of the view, that Bester herself was not aware of this additional requirement.

[59] Bester's belief that a gear-lock was also a condition of the Santam policy and that complainant was aware of same is indicative of the fact that respondent was comfortable to assume that complainant was complying with this security requirement. Clearly respondent's view in this regard is misplaced.

[60] The basis of this argument is the signed 'Minimum Requirements Form' which supposedly lays down minimum requirements for a Santam policy, a gear-lock being one of them.

[61] Respondents argument is however fatally flawed. A reading of the Santam policy clearly indicates that a gear-lock is not a requirement of that policy. If

the terms in the 'Minimum Requirements Form' were, as respondent contends, applicable to complainant then no doubt these would have been echoed in the policy document.

[62] It is therefore logical to conclude that Bester's own understanding of the security requirements of the Santam policy may have lulled respondent into a misplaced assurance that the terms of the Santam and the M & F policy were the same.

[63] In so far as respondent's legal obligations to inform complainant of M & F's further security requirement is concerned, I am guided by the relevant provisions of the FAIS Act and the General Code Of Conduct For Authorised Financial Services Providers and Representative (Board Notice 80 of 2003) (General Code).

[64] Firstly advice is defined in section 1 (1) (d) of the FAIS Act to include:

> 'any recommendation, guidance or proposal of a financial nature furnished, by any means or medium , to any client or group of clients
>
> (a) .....
>
> (b) ....
>
> (c) ....
>
> (d) – **on the variation of any term or condition applying to a financial product, on the replacement of any such product.....'** (emphasis added)

As set out in *Nebbe vs Oosthuizen* FOC 2243/07-08 KZN (1) at pg 12 this includes an omission when an adviser fails to act in the manner expected of them.

[65] The General Code is more prescriptive and requires in section 7 (1) (c) (vii) that a provider provide:

> 'concise details of any special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided'

Had respondent been alive to the additional security requirement, it would have been obliged to draw complainant's attention to it as failure to comply would be a circumstance in which the benefit under the policy would not be paid in given circumstances.

[66] This is clearly a replacement of an existing product. Respondent would have had to comply with the provisions of section 8 (1) (d) (ii) of the General Code which stipulates that:

> 'A provider must prior to providing a client with advice fully disclose to the client the actual and potential financial implications, costs and consequences of such replacement, ... restrictions or circumstances in which benefits will not be provided'

[67] The fact that the legislature has seen fit to deal with this issue so specifically in two provisions of the General Code, is indicative of the importance which it places on the need to ensure a properly informed consumer.

[68] These provisions are bolstered by the requirements set out in section 8 (2) of the General Code, which requires that:

> 'The provider must take reasonable steps to ensure that the client understands the advice and that the client is in a position to make an informed decision.'

[69] M & F's requirement of a gear-lock as an additional security feature is such a material change as to require that this term be explicitly brought to complainant's attention. Coupled with this are the limited 14 day grace period and the onerous 25 per cent excess applicable. It is therefore inconceivable that any competent broker would not point this out to a client in the circumstances.

[70] Respondent owed a duty of care to complainant to pertinently bring to his attention M & F's additional security requirement. By any stretch of the imagination, the mere despatch of a letter with the statement (translated from Afrikaans):

> '*You will also see that on your schedule which has been posted to you from Mutual and Federal the inception date is 1 July 2006. Please go through the schedule and advise if everything is in order'*

in no way complies. Apart from drawing attention to the inception date of the policy, the letter says nothing else regarding terms and conditions.

[71] There is not even the slightest hint that there was a material change to the security requirement which required complainant's immediate attention. Thus

even if contrary to his version, complainant had indeed received respondent's letters there is nothing therein to place him on his guard.

[72] Compounding this is the fact that no schedule was forwarded by respondent.

[73] Whilst the policy schedule may eventually have been forwarded by M & F we have been unable to ascertain when exactly this occurred. In terms of the Short Term Insurance Act 17 of 2003, M & F only has to provide a copy within 30 days of entering into the contract.

[74] It is unlikely that the policy schedule would have reached complainant before the insured event occurred. Even if it did, which is denied by complainant there was nothing to alert him to the amended requirement and the necessity to attend to it immediately.

[75] There remains for me to deal with two related issues, which although not material this determination nevertheless impact upon respondent's credibility in dealing with this complaint.

[76] Respondent's assertion that they were compelled by Santam to switch insurers is without merit. Even the very document which they have submitted to support their version indicates that an increase was warranted as opposed to a cancelation.

[77] Even assuming that Santam; contrary to their own spreadsheet advised respondent to move complainant, I would at the very least have expected a representative exercising the necessary skill, care and diligence acting in the

interests of its client to have noted this most obvious contradiction and sought clarification. There is no evidence that it did.

[78] Not only did respondent fail to note that no change of insurer was required but then compounded this by failing to advise complainant regarding the additional security of a gear-lock.

[79] This lack of attention to detail evidenced throughout this matter leads me inescapably to the conclusion that respondent was negligent.

[80] Quite simply respondent either neglected to advise complainant on the additional security requirements or more likely failed to notice them in the first place.

Recommendation to ensure consumer certainty with regards to security requirements

[81] I turn now to deal with the issue of whether a factory fitted alarm/immobiliser complies with a particular insurer's requirements. This, in my view, will strike a chord with the many insurance clients that have had claims rejected on this basis.

[82] Complaints relating to the issue of security requirements relating to motor vehicles are dealt with, as is evident in this case, by both the OSTI and this Office. The OSTI deals with the issue as a contractual term whilst this Office deals with advice around the issue.

[83] In relation to advice around security requirements, this Office has both determined and settled many cases.

[84] The present case is a perfect example of the quandary in which many consumers find themselves at the stage that they lodge a claim in relation to an insured event, in this case a theft.

[85] On one hand they are requested to state whether their alarm system meets a particular standard, a situation fraught with risk given the technical nature and lack of appropriate knowledge on the part of the consumer.

[86] On the other hand, as is evident from this case, there are differences of opinion between motor manufacturers, SAIA and insurers themselves. This is an untenable situation.

[87] The untenable situation is that the consumer pays the premium in good faith and in the belief that she/he enjoys indemnity; only to find that one is embroiled in a dispute when a claim arises. It is not fair that the consumer should be faced with a possible rejection and an unexpected delay in the finalisation of a claim. This defeats the whole purpose of short term insurance. It is fundamental to short term insurance that there should be certainty. There should be standardised, uniform and published information between insurers and their stakeholders about the security requirements and applicable devices, such as alarms, immobilisers, gear-locks and vehicle tracking devices and tracking contracts. All this uncertainty is not good for the consumer or the integrity of the short term insurance industry.

[88] Insurance by its very nature is there to ensure peace of mind to the consumer. Clearly this is not a case where the consumer neglected to do something that he was clearly aware of.

[89] If insurers and the industry body itself sends out different messages, as in this case, this could, potentially unfairly prejudice intermediaries who are required to advise their clients on the appropriate security requirements to be installed on motor vehicles, subject to insurance.

[90] Insuring motor vehicles is probably one of the single biggest businesses of the short term insurer in South Africa. Unfortunately, we have got to a stage where at claim stage-the consumer has no way of knowing whether the insurer will accept the claim or repudiate it. This then calls into question the very purpose of insurance and the consumer could very well ask: Where is the point of having insurance when you are not sure whether your claim would be paid or not?

[91] Compounding the problem is that policy terms are contained in so called standard form contracts or contracts of adhesion, where one party, the consumer simply adheres to the terms offered by the product provider on *a take it or leave it* basis. Most importantly, whilst one party, (the product provider) is aware of the terms set out in the contract and clearly knows what they want to achieve, the consumer is seldom aware of the terms. Consider this statement by Todd D Rakoff, Byrne Professor of Administrative Law at Harvard Law School:

'..Institutions other that the state can and do dominate the individual within the framework of private law as ordinarily conceived...What the courts should say is that enforcing boilerplate terms trenches on the freedom of the adhering party. Form terms are imposed on the transaction in a way no individual adherent can prevent, and a major purpose and effect of such terms is to ensure that the drafting party will prevail if the dispute goes to court. The adhering party is remitted to such justice as the organization on the other side will provide.....'[1]

[92] Perhaps the universal impact of standard term contracts, can be deduced in this statement from Sachs J's dissenting judgment:[2]

'... Standard form contracts by their very nature have standard effects. The fact is that one-sided clauses, the existence or import of which the consumer is likely to be largely totally unaware, hit the computer literate owner of a relatively new BMW who buys online, with the same impact as they do the owner of a jalopy close to the scrap yard, who signs with a thumb print. It is not only the indigent and the illiterate who in practice remain ignorant of everything the document contains; the fact that consumer protection is especially important for the poor does not imply that it is irrelevant for the rich.....'

[93] It is evident from our investigation of this complaint that the eventual determination of whether a factory fitted alarm/immobiliser complies with the

[1] Rakoff "Contracts of Adhesion: An Essay in Reconstruction" (1983) 96 Harvard Law Review 1173 @1237

[2] Barend Petrus Barkhuizen v Ronald Stuart Napier, CCT 72/05 decided on 4 April 2007, page 71, paragraph 149:

necessary security requirements appears to have been left to the whim of either insurers or the industry body, SAIA.

[94] I therefore recommend that motor manufacturers, the Financial Services Board (FSB) and SAIA must meet to thrash out this apparent anomaly in the interests of ensuring that consumers who have factory fitted alarm systems are not left to the whim of either insurers or SAIA itself when it comes to payment of claims involving theft of motor vehicles with factory fitted alarms/immobilisers. To this end a copy of this determination is being sent to the CEO of SAIA, to the FSB, and to the National Association of Automobile Manufacturers of South Africa (NAAMSA).

[95] Further and importantly, I deem it appropriate that the lawmakers and Parliament are made aware of this, so that it could deliberate on the desirability of legislating to curb this unhealthy practice. To this end, I am sending a copy of this determination to the Minister of Finance and, in so far as it may relate to the recently enacted Consumer Protection Act, to the Minister of Trade and Industry.

D. CONCLUSION

[96] In the present instance and having considered the evidence, particularly Santam's statement that they would accept the motor manufacturer's assurances that the system met the requisite standard, I am of the view that had the policy remained with Santam it would have paid out as expected.

[97] Turning to my determination of this matter, I find that respondent when it transferred the risk from Santam to M & F, failed to alert complainant to M & F's additional security requirement of a gear-lock in clear contravention of the FAIS Act and the General Code. As a consequence, complainant did not install an approved gear-lock, and the claim was repudiated on this basis.

[98] There is thus a clear causal link between respondent's failure to carry out its responsibilities and the financial loss suffered by complainant as a consequence.

[99] The complaint is therefore upheld and the monetary value of fair compensation for any financial prejudice or damage suffered that I am prepared to award in terms of Section 28 (1) (b) (i) is determined as follows.

E. QUANTUM

[100] Complainant's vehicle was insured for R49 600, 00 by respondent. This is the same amount that he was insured for by Santam. In assessing quantum, I am guided by the provisions of section 28 (b) (i) which directs that:

> 'The complainant may be awarded an amount as fair compensation for any financial prejudice or damage suffered;'

[101] In terms of the Santam Policy a voluntary excess of R500, 00 was applicable as well as a theft hijacking at 10 per cent of claim with a R3 000, 00 minimum, resulting in an applicable excess R5 460, 00 and as such a claim of R44 140, 00.

[102] The theft occurred on 29 July 2006 and would have been paid out within a reasonable time thereafter.

[103] Assuming that a month would suffice in this regard, payment would fall due on 29 August 2009.

THE ORDER

I make the following order:

1. The complaint is upheld;
2. The respondent is ordered to pay complainant the sum of R44 140, 00;
3. Interest on the aforesaid amounts at 15.5 per cent per annum calculated from 29 August 2006;
4. The respondent is to pay the case fee of R1 000, 00 to this Office.

Dated at PRETORIA this 18 day of November 2009.

CHARLES PILLAI
OMBUD FOR FINANCIAL SERVICES PROVIDERS