

**IN THE OFFICE OF THE STATUTORY OMBUD FOR FINANCIAL SERVICES
PROVIDERS**

Case Number: FAIS 01933/13-14/ KZN 3

In the matter between:

DAVIN GOVENDER

Complainant

And

PIETER DE WET t/a MODEL INSURANCE COMPANY

Respondent

**DETERMINATION IN TERMS OF SECTION 14(3) OF THE FINANCIAL SERVICES OMBUD
SCHEMES ACT NO. 37 OF 2004 ('FSOS Act'), READ WITH SECTION 28(1) OF THE
FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT NO. 37 OF 2002 ('FAIS
ACT')**

A. THE PARTIES

[1] The complainant is Davin Govender, an adult male whose particulars are on file with the Office.

[2] The respondent is Pieter De Wet, a sole proprietor who conducted short-term insurance business under the name Model Insurance Company ('Model') whose address is 502 Charter House, 75 Crompton Street, Pinetown, KwaZulu Natal.

B. BACKGROUND

[3] The determination is made in terms of the FSOS Act¹ read with section 28(1) of the FAIS Act. The complainant in this matter is one of a number of policy holders who

¹ Financial Services Ombud Schemes Act 37 of 2004.

lodged complaints with this Office following the respondent's failure to honour their claims.

[4] The respondent held himself out to be an authorised short-term insurer and collected premiums from members of the public. It emerged from enquiries with the Registrar that the respondent had never been licensed in terms of Section 7(1) of the FAIS Act to render financial services to the public. He had also never been registered to conduct business as a short-term insurer as required by Section 7 of the Short-term Insurance Act ('STIA'). In terms of Section 7 of the STIA:

'(1) No person shall carry on any kind of short-term insurance business unless that person –

(a) is registered or deemed to be registered as a short-term insurer, and is authorised to carry on the kind of short-term insurance business concerned under this Act; or

(b) is authorised under section 56 to do so and carries on that business in accordance with this Act.'

[5] During February 2012, the Registrar issued a warning, requesting the public not to conduct business with Model Insurance. Despite this warning, the respondent continued to conduct unregistered insurance business. The Registrar reported the respondent to the Commercial Crime Branch of the South African Police Service and secured an interim interdict in the Kwazulu-Natal High Court to stop the respondent from carrying out short-term insurance business.

C. JURISDICTION

[6] The respondent is not a member of a recognised scheme as contemplated in Section 10 and 11 of the FSOS Act.

[7] Accordingly and in terms of Section 13 of the FSOS Act, the FAIS Ombud, in its capacity as Statutory Ombud assumes jurisdiction over the respondent in respect of this complaint.

[8] The FAIS Ombud therefore deals with this complaint in terms of Section 14 of the FSOS Act.

D. COMPLAINT

[9] The following are the material aspects of the complainant's complaint:

9.1 During April 2013, the complainant entered into a comprehensive short-term insurance agreement with the respondent. The respondent furnished a confirmation of insurance document² containing the policy number 11117 to the complainant. The policy incepted on 22 April 2013, and the complainant who had been assured of immediate cover, cancelled his previous insurance policy.

9.2 On 29 April 2013, the complainant was involved in a motor vehicle accident with his 2007 Z4 BMW. The damage sustained to the vehicle amounted to R97 776.04. He duly reported the matter to the South African Police Service, and instituted a claim with the respondent.

9.3 The claim was rejected by the respondent on 29 May 2013, claiming that the terms and conditions of the policy do not provide benefits for claims submitted within the first three months of the policy.

9.4 The complainant confirmed that he had never been informed of this exclusion as he had been assured that the cover was provided immediately and subsequently cancelled his previous insurance.

² Proof provided.

9.5 Aggrieved by the respondent's failure to honour his claim in full, the complainant lodged a complaint with the Ombudsman for Short-Term Insurance ('OSTI') who in turn referred the complaint to this Office.

E. RELIEF SOUGHT

[10] The complainant seeks an order compelling the respondent to indemnify him for the costs of repair to his vehicle.

F. RESPONDENT'S VERSION

[11] The complaint was sent to the respondent requesting him to resolve it with the complainant, alternatively to furnish this Office with a detailed response. The respondent failed to address this Office on the merits of the complaint. Subsequent thereto, the complaint was formally accepted for investigation in terms of Section 27(4) of the FAIS Act, and the respondent was again invited to file a response to the complaint. Once again, he failed to respond.

[12] Having received neither the requested response nor the supporting documentation, the matter is determined on the basis of the complainant's version. From the history of matters³ determined by this Office on prior occasions, it is clear that the respondent has no defence against the allegations made against him. This determination therefore must be read with the determination in the matter of *Ramraj v Pieter de Wit t/s Model Insurance*⁴.

G. DETERMINATION

[13] The transaction concluded between the respondent and the complainant was a replacement of previous insurance held, and as a result the respondent was required to comply with section 8 (1) (d) of the General Code of Conduct for Authorised Financial

³ See in this regard, *Ramraj v Pieter de Wet t/a Model Insurance*, FAIS 02166 12/13 MP 3, available on www.faisombud.co.za/determination

⁴ Supra

Services Providers and Representatives ('the Code'). Section 8 (1) (d) provides that where the financial product ("the replacement product") is to replace an existing financial product wholly or partially ("the terminated product") held by the client, that the respondent is required to fully disclose to the client the actual and potential financial implications, costs and consequences of such a replacement.

[14] One of the implications of this specific replacement, and the reason for the rejection of the complainant's claim, was the exclusionary clause that provided that no claim would be entertained within the first three months of the inception of the policy. By failing to adhere to this specific section of the Code and not disclosing material information, the respondent prevented the complainant from being in a position to make an informed decision as required in terms of section 7 (1) (a) of the Code.

[15] Furthermore, section 8 (1) of the Code dictates that a provider must, prior to providing a client with advice;

15.1 seek appropriate and available information regarding the complainant's financial situation, financial product experience and objectives to enable the provider to provide the client with appropriate advice;

15.2 conduct an analysis for the purpose of the advice, based on the information obtained; and

15.3 identify the financial product or products that would be appropriate to the client's risk profile and financial needs, subject to the limitations imposed on the provider under the Act or any other contractual arrangement.

[16] There is no evidence that the respondent complied with this section of the Code, specifically with the requirement that the recommendation be appropriate for the circumstances of the complainant. Allowing the complainant to replace an existing policy with a policy that excluded any claims within the first three months, effectively

rendering the complainant uninsured, cannot be seen to have been appropriate or in the best interest of the complainant. The respondent therefore failed to ensure that his client understood the advice, and failed to treat him fairly.

H. FINDINGS

[17] From the undisputed facts before this Office, it can be concluded that:

17.1 The respondent failed to comply with sections 8 (1) (a-d); 7 (1) (a); 3 (1) (a) and section 2 of the Code.

17.2 Had the respondent adhered to section 8 (1) (d) (ii), the complainant would have been aware of the exclusion of cover during the first three months and therefore in a better position to make an informed decision about cover.

17.3 Furthermore, the respondent misrepresented to the public that he was an authorised short-term insurer and financial services provider.

17.4 The respondent collected premiums from members of the public but had no financial means to honour claims as they arose.

17.5 Although the respondent was not a registered short-term insurer, he entered into a binding short-term insurance agreement with the complainant⁵.

I. QUANTUM

[18] The complainant seeks payment of the amount of R97776.04, based on a quotation furnished to him by the panel beaters. I therefore intend to make an order in the amount of R 97776.04.

J. ORDER

[19] In the premises the following order is made:

⁵ In terms of Section 54(1) of the STIA 'A short-term policy, whether entered into before or after the commencement of this Act, shall not be void merely because a provision of a law, including a provision of this Act, has been contravened or not complied with in connection with it.';

1. The complaint is upheld.
2. The respondent is hereby ordered to pay to the complainant the amount of R97 776.04.
3. Interest at a rate of 10% per annum, seven (7) days from date of this order to date of final payment.
4. Should any party be aggrieved with the decision, leave to appeal is granted in terms of section 28 (5) (b) (i), read with section 230 of the Financial Sector Regulation Act 9 of 2017.

DATED AT PRETORIA ON THIS THE 28th DAY OF JANUARY 2019.



NARESH S TULSIE

OMBUD FOR FINANCIAL SERVICES PROVIDERS