

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

**Case Number: FSOS 00132/13-14/ GP 3**

**In the matter between:-**

**DAVID JACKSON MBETSE**

**Complainant**

**and**

**PIETER DE WET t/a MODEL INSURANCE COMPANY**

**Respondent**

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**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')**

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**A. THE PARTIES**

[1] The complainant is David Jackson Mbetse, an adult male whose details are on file with this Office.

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

## **B. BACKGROUND**

[3] The determination is made in terms of the FSOS Act<sup>1</sup> read with section 28(1) of the FAIS Act. The complainant in this matter is one of a number of policy holders who 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'). Section 7 of the STIA provides that:

*'(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

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<sup>1</sup> Financial Services Ombud Schemes Act 37 of 2004.

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<sup>2</sup> and 11<sup>3</sup> of the FSOS Act.

[7] Accordingly, and in terms of Section 13<sup>4</sup> 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<sup>5</sup> of the FSOS Act.

### **D. COMPLAINT**

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

9.1 During June 2013, the complainant entered into a comprehensive short-term insurance agreement with the respondent. The respondent furnished a confirmation of insurance document<sup>6</sup>, containing the policy number 999026 to the complainant. The policy incepted on 26 June 2013, and the complainant, who had been assured of immediate cover, paid a pro-rata premium for the remainder of June 2013.

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<sup>2</sup> Section 10 of the FSOS Act provides for the requirements for recognition of a scheme.

<sup>3</sup> Section 11 of the FSOS Act provides for manner in which an application must be made for recognition.

<sup>4</sup> Section 13 of the FSOS Act sets out the jurisdiction of the various schemes

<sup>5</sup> Section 14 of the FSOS Act details the Authority of statutory ombud to entertain complaints

<sup>6</sup> Proof provided.

- 9.2 On 1 July 2013, the complainant was involved in a motor vehicle accident with his 2012 Mercedes Benz C180. The damage sustained to the vehicle was quoted as having been R172 145.02, and the complainant duly instituted a claim with the respondent.
- 9.3 The claim was rejected by the respondent on 4 July 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. The respondent in its letter to the complainant, does not refer to the specific provision relied upon.
- 9.4 Furthermore, and despite numerous requests by the complainant, no policy documents in support of this provision have been provided. The complainant has also confirmed that he had never been informed of this exclusion. In addition to not having been provided with a copy of the policy wording, the complainant had been assured that cover was provided immediately.
- 9.5 Aggrieved by the respondent's failure to honour his claim, 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 pay him an amount of R172 145.02, which is what he paid to have his vehicle repaired. The complainant has provided proof of both the quotation for repairs and payment made by him in lieu of the repairs 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, and 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 matters<sup>7</sup> 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/a Model Insurance<sup>8</sup>. The complaint therefore, succeeds.

## **G. FINDINGS**

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

13.1 The respondent misrepresented to the public that he was an authorised short-term insurer and financial services provider;

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

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<sup>7</sup> See in this regard, Ramaraj v Pieter de Wet t/a Model Insurance, FAIS 01266 12/13 MP 3, available on [www.faisombud.co.za/determinations](http://www.faisombud.co.za/determinations)

<sup>8</sup> Supra

13.3 Although the respondent was not a registered short-term insurer, he entered into a binding short-term insurance agreement with the complainant<sup>9</sup>;

13.4 In terms of the short-term insurance agreement, the respondent agreed to indemnify the complainant against any loss or damage arising out of the use of his vehicle at a monthly premium of R771. 58;

13.5 The respondent, despite the unsubstantiated claims of a 3-month exclusionary period, was at risk and liable to pay the complainant in terms of the contract of insurance.

#### **H. QUANTUM**

[14] The complainant seeks payment of the amount of R172 145.02, the amount spent to repair the vehicle. The confirmation of cover letter confirms that there was no basic excess payable.

#### **I. ORDER**

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

1. The complaint is upheld.
2. The respondent is hereby ordered to pay to the complainant the amount of R172 145.02.
3. Interest on this amount at a rate of 10% per annum from the date of determination to date of final payment.

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<sup>9</sup> 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.';

4. The matter is further referred to the Registrar for possible further action, in view of the respondent continuing to conduct the business of an insurer, despite not being duly authorized and licensed to do so.

**DATED AT PRETORIA ON THIS THE 12<sup>TH</sup> DAY OF JUNE 2018.**



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**NARESH S TULSIE  
OMBUD FOR FINANCIAL SERVICES PROVIDERS**