

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

**Case Number: FSOS05506/08-09/GP (3)**

In the matter between:-

**SABASTIAN CHETTY**

**Complainant**

and

**ORANGE INSURANCE LIMITED**

**Respondent**

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

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**PARTIES**

[1] The Complainant is Mr Sabastian Chetty an adult male financial advisor of 27, Barcelona 1, Spica Avenue, Sundowner, RANDBURG, Gauteng.

[2] The Respondent is Orange Insurance Limited, a registered insurer and financial institution duly incorporated according to the company laws of the Republic of South Africa (registration number 2003 / 031307 / 06) with its registered offices at 22 Koelenhof Road, NORTHCLIFF EXT. 19, 1709.

- [3] The respondent is not a member of a recognised scheme as contemplated in section 11 of the FSOS Act. The FAIS Ombud, in his capacity as Statutory Ombud in terms of section 13 has therefore assumed jurisdiction over the respondent as provided for in section 14 of the FSOS Act.
- [4] The complainant says he caused his motor vehicle, a 2008 Ford Focus with registration letters and numbers XMS 289 GP to be comprehensively insured with respondent through his broker Guardian Finances.
- [5] The vehicle was involved in an accident on 12 December 2008 and complainant duly submitted a claim for the damages he suffered. On 6 January 2009 the vehicle was assessed by a duly authorised assessor who concluded that the vehicle was a 'write-off' i.e. beyond economical repair. On 23 January 2009 respondent informed the complainant that the vehicle was to be re-assessed by a different assessor. This assessor reported that the vehicle could be repaired.
- [6] Technostar Auto Body Repairers ('Technostar') was authorised by respondent to effect the necessary repairs in accordance with a letter dated 6 February 2009 to this effect. The repairs were done and despite numerous requests from Technostar, respondent has failed to make payment for the repairs. Technostar has refused (as it no doubt is entitled to do) to release the repaired vehicle to the complainant until the repair costs have been paid. Complainant eventually complained to the FAIS Ombud on 12 February 2009.

- [7] Complainant wants respondent to pay all the costs of repairs to his vehicle including towing charges and costs of storage by Technostar and return of his repaired vehicle to himself.
- [8] In due course the complaint was sent by the Statutory Ombud to the respondent requesting it to resolve the matter with the complainant within seven days, alternatively to revert to this Office with its response to the complaint by 12 November 2009. The matter was not resolved with complainant nor did this Office receive any response from the respondent.
- [9] A case manager of this Office telephonically contacted a Mr Alvin Beiling – a director of respondent – and explained to him the consequences of failure by respondent to respond to the complaint, which was then confirmed in an e-mail to the respondent. The respondent then requested an extension until 27 November 2009 to respond.
- [10] On 27 November Mr Gary Campher (also a director of respondent) provided a rather convoluted response by e-mail as follows (quoted as is):

“We . . . want to bring to your attention that the Claims in-question were all part of the forensic audit, conducted and completed by the Financial Services Board (FSB), a higher authority, and await there ruling on the matter. In conclusion, the matters in question are all Sub-Judice’ the FSB Ruling by the Registrar.

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After consultation with our Legal Council, it was their collective view that we direct you to contacting the Financial Services Board, as the matter is at it’s

most advanced stage already, thereby avoiding a possible duplication of events/procedures.”

It is important to note that it was the FSB itself that referred several other similar matters to this Office for investigation and adjudication.

[11] The case manager in this Office responded in an e-mail dated 1 December 2009. The relevant parts are:

“... the Financial Services Board and the FAIS Ombud have different functions.

Firstly, the Financial Services Board was constituted by the Financial Services Board Act 97 of 1990(FSB) which states that the functions of the FSB are:

- to supervise the compliance with laws regulating financial institutions and the provision of financial services;
- to advise the Minister on matters concerning financial institutions and financial services, either of its own accord or at the request of the Minister; and
- to promote programs and initiatives by financial institutions and bodies representing the financial services industry.

Secondly, the objectives of the FAIS Ombud is to consider and dispose off complaints by clients against financial Services Providers in a procedurally fair, informal, economical and expeditious manner and by reference to what is equitable in all the circumstances. In so investigating and disposing of such complaints the Ombud acts independently, impartially and objectively. Both the complainant and any other party is expected to give their fullest cooperation to the disposal of the complaint within a reasonable time.

Thirdly, the services offered by the FAIS Ombud are not similar to those of a professional legal advisor and are confined to the handling of complaints in terms of the FAIS Act and the Rules.

Finally I conclude by urging you to revert to this office with your response to our letter dated 5 November 2009 by no later than 4 December 2009, failing which your conduct will be forwarded to the Ombud for his determination.

We draw your attention to the fact that a determination has the effect of a civil judgement and is publishable.

Should we then not have received your response by the close of business on 4 December 2009 the Ombud will proceed in Terms of Section 28 of the FAIS Act and conclude this matter on the information before him.”

- [12] In spite of this clear explanation to the respondent that it was misconstruing the roles of the FSB and the FAIS and Statutory Ombuds, it sent an e-mail on 2 December 2009 stating:

“With reference to your attached email, Orange Insurance Limited (OIL) fully understands your role as the FAIS Ombud. However, OIL and it’s legal team have been engaged with the Financial Services Board since February 2009, to resolve the issue of outstanding claims between ourselves (OIL) ,Fleetsure (Pty) Ltd , Zurich.

The claimants / complainants your institution represents, in all probability form part of the dispute on unresolved claims. By view of the fact that these claimants are interlinked with the ongoing dispute, we enclose a copy of a communiqué addressed to the FSB, for your perusal , fully addressing the facts on why OIL is not be held liable for any outstanding claims. We trust that this letter meets your requirements and that the matter between the various parties to the claims dispute will be resolved soon.

Further to the above we have been advised by our attorneys to arrange a meeting with yourselves at a time convenient to all parties for further elucidation of the above matter, . . .”

- [13] It will immediately be apparent that the respondent persists in not addressing the pertinent issues at hand. It is using its alleged dispute with Fleetsure (Pty) Ltd and Zurich (an insurer) as reason for not settling the complainant’s claim even though it has made a clear admission of liability in this regard and having itself instructed Technostar to effect the repairs and thereafter withholding payment.

- [14] The investigation by the FSB referred to by the respondent relates to -

“an inspection of the affairs of Orange Insurance Limited, Zurich Insurance Limited, Fleetsure (Pty) Ltd, Escape Premium Collection (Pty) Ltd, Guardian Independent Financial Services CC, Inbrocon Insurance Broekrs CC, Multi Risk Transport (Pty) Ltd, Michelle Nel Insurance Borkers CC and any of their respective associated institutions.”<sup>1</sup>

[15] The scope of the inspection relates to various compliance issues in terms of the Short-term Insurance Act and the Policy Protection Rules by one or more of the parties, and a dispute between some of them regarding an underwriting/cell ownership agreement and so forth.

[16] In my view none of them have a direct bearing on the crisp issue at hand. That is that respondent has not denied that it was complainant’s insurer at the relevant time and that a valid contract of insurance existed between them. Of cardinal importance is that respondent accepted liability for complainant’s damages and has not furnished this Office with any logical or acceptable explanation for its failure to honour its undertaking to pay for complainant’s damages. All that respondent has done, is make vague references to the FSB investigation and referring to the FSB as the “higher authority” in relation to the FAIS Ombud.

[17] Based on the facts at my disposal, I have no doubt that respondent is liable for complainant’s damages and the complaint should be upheld.

[18] There remains the question of the amount of complainant’s loss. The authorisation (to repair the vehicle) to Technostar by the respondent’s representative, namely,

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<sup>1</sup> Inspection report issued to the Registrar of Short-term Insurance and the Registrar of Financial Services Providers dated 17 September 2009.

Claims Solutions lists the repair costs as R113 783.35 (including VAT) less an excess of R11 833.75. Complainant incurred initial towing charges to tow the vehicle from the place of the accident to his house in the amount of R2 300.00 according to an Invoice (No. 738) from Ronnie's Towlines & Recovery. However, according to the insurance policy the respondent indemnifies the complainant up to a maximum of R2 000.00 for towing costs. Technostar is levying storage charges at the rate of R190.00 per day as from date (30 March 2009) of its final invoice.

- [19] This Office has received numerous other complaints against the respondent in this matter. The vast majority are almost identical in substance, that is, that respondent has failed to pay for its admitted liability for damage caused to the complainants' vehicles as a result of accidents. This determination is therefore the first in a series that may follow against the respondent.

### **THE ORDER**

I make the following order:

- 1 The complaint is upheld.
- 2 The Respondent is ordered to pay complainant:
  - 2.1 R101 949.60 for the cost of repairs to the motor vehicle;
  - 2.2 R2 000.00 for the towing charges; and
  - 2.3 Storage charges at the rate of R190.00 per day from 31 March 2009 to date of release of the vehicle by Technostar to the Complainant.

3 Respondent is ordered to pay the case fee of R1000.00 to this Office within ten days of date of this determination.

**Dated at PRETORIA this 24 day of DECEMBER 2009.**



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**CHARLES PILLAI**

**OMBUD FOR FINANCIAL SERVICES PROVIDERS**