

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

Case Number: FAIS 05458/09-10/KZN/3

In the matter between

KEVIN GOVENDER

Complainant

and

ORANGE INSURANCE LIMITED

Respondent

**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”).**

A. THE PARTIES

[1] The Complainant is KEVIN GOVENDER, an adult male, residing at 64 Prestbury Terrace, Eastbury, Phoenix.

[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 2003/031 307/06) with its registered offices at 22 Koelenhof Road, Northcliff Ext, 19, 1709.

B. INTRODUCTION

[3] This is a determination pursuant to a complaint against the Respondent insurance company. The determination is made in terms of Section 14 (3) of the FSOS Act read with Section 28(1) of the FAIS Act. The Respondent insurance company entered into an agreement with a licensed financial service provider known as Fleetsure (Pty) LTD. The Respondent had entered into a binder agreement with Fleetsure in terms of which Fleetsure was authorised to conduct the business of short term insurance for and on behalf of the Respondent. Pursuant to this agreement and for the period 1st of June 2008 to 31st December 2008 Respondent provided short term cover for a number of Fleetsure's clients.

[4] A dispute arose between respondent and Fleetsure and as a result Respondent failed to pay claims emanating from the short term policies

placed by Fleetsure. The Complainant in this case is one of many policyholders who were not paid after claims were made in terms of their policies with the Respondent.

[5] Many policyholders filed a complaint with this Office after the Respondent refused to pay. The Respondent was requested to provide a written response to these complaints. For each of these complaints the Respondent relied on exactly the same response in the form of a letter dated 17th February 2010.

[6] On the 15th of September 2010, this Office made a determination in respect of another of these policyholders namely: Mr Innocent Sithembele Mthethwa. This determination was made under **Case Number: FSOS 06362/08-09/GP 3** and comprehensively dealt with the merits of the dispute between the Respondent and Fleetsure (the Mthethwa determination).

C. JURISDICTION

[7] The Respondent is not a member of a recognised scheme as contemplated in Section 10 & 11 of the Financial Service Ombud Schemes Act 37 of 2004 ("the FSOS Act").

[8] 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.

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

D. THE COMPLAINT

[10] According to the Complainant, the following are the material aspects of his complaint:

10.1 The Complainant alleges that the Respondent failed to honour a claim arising out of an accident involving the complainant's motor vehicle, a 2008 Volkswagen Polo 1.6 comfortline, bearing registration number and letters ND 626167.

10.2 On the 07th of April 2008, the Complainant entered into a Comprehensive short term insurance policy contract with the Respondent through Guardian Independent Finance Services, the principal Intermediary and a licensed Financial Service Provider under license number: FSP23699

- 10.3 The Complainant was furnished with a policy number: ZUR 1621GIFS, which was issued by the Respondent together with a schedule to the contract of insurance. The effective date for the complainant's cover was the 07th of April 2008. As will appear in this determination, Guardian Independent Finance Services' clients were part of the Fleetsure cell. This was one of many policies that Fleetsure placed with Respondent after 1st June 2008.
- 10.4 On the 28th December 2008 the Complainant's vehicle was involved in an accident, and he duly submitted his claim through Guardian Independent Finance Services.
- 10.5 As a result of the accident, the Complainant's vehicle which was valued at R160.000.00 was written off. On the 27th January 2009 the Respondent accepted the claim and duly agreed to settle the Complainant's costs in an amount of R140.600.00.
- 10.6 To date, the Respondent has failed to honour the complainant's claim.

10.7 The Complainant wants the Respondent to honour the claim by paying the replacement costs which equal the replacement value of the write off vehicle according to the policy agreement. Since the Complainant's vehicle was damaged, the Complainant has been left stranded without any means of transport.

10.8 On the 21st of December 2009, the Complainant referred his complaint to the FAIS Ombud for further investigation and necessary action.

10.9 It is not in dispute that the complainant entered into a contract of insurance in terms of which the Respondent comprehensively insured his motor vehicle. The schedule to the policy that was issued to the complainant records the respondent as the insurer. Nor is it in dispute that after the complainant purchased the policy the insured vehicle was involved in an accident. The respondent does not dispute that it then received a claim from the complainant policyholder.

E. THE RESPONSE FROM RESPONDENT

[11] As the complaint could not be resolved between the parties, it proceeded to investigation at which point the Respondent was requested to submit a reply to the allegations, taking into account the requirements of the FAIS Act.

11.1 The respondent chose not to deal with this claim specifically but decided to treat this claim together with other similar claims, all of which represent policies issued through Fleetsure, with reference to a letter dated 17 February 2010.

he respondent's response can be summarised as follows:

11.2 The Complainant was at all times factually insured by Zurich Risk Financing SA Limited, previously known as SA Eagle Insurance Company ("Zurich").

11.3 The Respondent further contends that Ms Ilse Becker trading as Fleetsure Insurance had attempted to transfer her Fleetsure portfolio from Zurich to the Respondent.

11.4 The Respondent disputes the validity of the above mentioned transfer by Ms Ilse Becker.

11.5 The Respondent further contends that Ms Becker and Zurich failed to comply with statutory requirements prescribed for intended transfer of the Fleetsure Book of Business from Zurich to the Respondent, and as such concludes that the intended transfer was void and of no force and effect.

11.6 The Respondent further avers that the liability as insurer remained with Zurich and not with them.

11.7 According to the Respondent Fleetsure was not authorised to use its logo on documentation and correspondence.

11.8 This Office, according to the Respondent, cannot deal with the complaints as the question of its liability is subject to an inspection by the Financial Services Board (FSB). The Respondent claimed that the whole matter was *sub-judice* and that any action on the part of this Office will be premature. The Respondent requested that this Office stay proceedings pending the outcome of the FSB inspection.

11.9 The reason for non-payment is attributed to a dispute between respondent, Fleetsure and Zurich. This dispute was the subject of

an investigation by the Financial Services Board. The respondent insisted on not dealing with this complaint as an individual complaint and stated that the matter was *sub judice* in the hands of the FSB.

- 11.10 The respondent states that there was no valid contract of insurance as between itself and the complainant. According to the respondent the complainant was a client of Fleetsure and/or one of the latter's brokers. The Respondent submits that it was not at risk as Fleetsure was not authorised to issue policies on its behalf and that it was in any event not aware of the fact that Fleetsure was conducting business on its behalf.

The defences raised by the Respondent will be dealt with in this determination.

F. Findings

For reasons stated in Mthethwa's case, I find that the Respondent was at risk and is liable to pay the Complainant in terms of the contract of insurance

G. Conclusion

On the undisputed facts before this Office the following conclusions are made:

- 12.1 The respondent as an insurer was at risk in terms of the policy

purchased by the complainant.

12.2 Complainant's policy was effected during the period 1st June 2008 and 31st December 2008.

12.3 The respondent has provided no legitimate basis in law to avoid paying the complainant's claim.

12.4 The complaint is upheld and the respondent is ordered to pay the Complainant's claim.

H. Quantum

13.1 In terms of the agreement of loss, the complainant agreed to accept the amount of R 140.600.00 in settlement of his claim.

13.2 Accordingly an order will be made that Respondent pay to complainant an amount of R 140.600.00

13.3 The loss agreement was signed on the 27th of January 2009. The complainant expected the amount to be paid by the end of February 2009. Accordingly, I intend to make an order that interest be paid on this amount from the 01st of March 2009 to date of payment.

I. ORDER

I make the following order:


1. The complaint is upheld.

2. The respondent is ordered to pay to the complainant:
 - 2.1 The amount of R 140.600.00

 - 2.2 Interest on the amount of R 140.600.00 at the rate of 15, 5% per annum from the 01st of March 2009 to date of payment.

3. Respondent is ordered to pay the case fee of R1000, 00 to this office within thirty (30) days of date of this determination.

DATED AT PRETORIA ON THIS THE 13th DAY OF OCTOBER 2010.



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS

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The undersigned hereby certifies that the information provided is true and correct.

Signature of the undersigned: _____

Date: _____

Name of the undersigned: _____

Address of the undersigned: _____

City: _____

DATE OF PRINTING: _____



Signature of the undersigned

NAME OF THE UNDERSIGNED

**CERTIFICATE OF INSURANCE NR: ZUR001621GIFS**

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Master Policy Number: SAERF000196

In consideration of the payment of the premium Zurich Risk Financing SA Limited (hereinafter referred to as the "Insurer") agrees to indemnify the Insured against the insured events as hereinafter provided occurring during the period of insurance but not exceeding the limits of indemnity as per the schedule of cover. The insurance certificate serves solely as evidence of a Contract of Insurance effected with Zurich Risk Financing SA Limited the terms and conditions of which may be viewed at the offices of the Insurer or Administrator.

Inception Date of Cover 2008-04-07

The interest of WESBANK is noted on this policy with reference

PERSONAL DETAILS OF INSURED

Surname (Title)	GOVENDER (MR)	First Names	KEVIN
ID Number	8303115103087		
Telephone Number	0312632090	Cell Number	0825741941
Fax Number	0312661788	E-mail Address	
Nominated Drivers	TODO		
Postal Address	64 PRESTBURY TERRACE EASTBURY PHOENIX 4067	Physical Address	64 PRESTBURY TERRACE EASTBURY PHOENIX 4067

VEHICLE DETAILS

Make	VOLKSWAGEN	Registration Number	ND626167
Model	POLO 1.6 COMFORTLINE	Limit of Indemnity	R R 160,000.00
Year	2008	Estimated Kilometre Reading	
VIN Number	AAVZZZ9NZ8U021811	Engine Number	BAH381881
Vehicle Use	Private	Category	Car

Signed at _____ on _____ day of _____

By Insured: _____

Signed by: _____ ON BEHALF ON THE INSURER

All amounts include 14% VAT

CERTIFICATE OF INSURANCE NR: ZUR001621GIFS

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DEALERSHIP DETAILS

Name	Guardian Independent Finance Services cc	FSP Number	23699
Telephone Number	0113264167	Fax Number	0866709889
Physical Address	Suite 109, 1st Floor Blairgowrie Office Tower 70 Conrad Drive Blairgowrie 2194		

POLICY NOTE

PREMIUM DETAILS

Motor Comprehensive Cover	R 600.00		
Introduction Fee (Once-off)	R 400.00		
Administration Fee	R 50.00		
Extensions			
- Excess Buydown Cover	R 0.00		
- Car Hire	R 0.00		
- Roadside Assistance	R 50.00		
Sub-Total	R 1,100.00		
First Month's Premium	R 1,100.00	Monthly Premium Thereafter	R 700.00

Note: Commission payable to intermediary at 12.5% (R 81.25) included in the monthly premium.

Signed at _____ on _____ day of _____

By Insured: _____

Signed by: _____ ON BEHALF ON THE INSURER

All amounts include 14% VAT

CONF/0.05

Dear Sir/Madam

CONFIRMATION OF SHORT-TERM INSURANCE COVER

We hereby confirm that the following vehicle is comprehensively insured and the policy is underwritten by Fleetsure (Pty) Ltd on behalf of Zurich Risk Financing SA Limited with effect 2008-04-07.

Insured: KEVIN GOVENDER
ID Number: 8303115103087
Policy No: ZUR001621GIFS
Address: 64 PRESTBURY TERRACE
EASTBURY
PHOENIX
4067
Engine No: BAH381881
Chassis No: AAVZZZ9NZ8U021811
Make: VOLKSWAGEN
Model: POLO 1.6 COMFORTLINE
Year: 2008
Reg No: ND626167
Use: Private
Policy Notes:
Value: R 160,000.00
Monthly Premium: R 700.00

The interest of WESBANK bank is noted on the policy with reference .

Master Policy number with Zurich Risk Financing SA Limited SAERF000196.

Trust you find the above to be in order

Kind Regards



Ilse Becker
Director

Director Company Registration 2004/003761/07
Director: Ilse Becker (AIRMSA), BCOM, MBA .Wiaan Theron CFA
Zurich Risk Financing SA Limited
Directors: NV Beyers (Chairman) DM Burton, C Schmidt, P Stols

