

FAIS Ombud case summary involving Davin Govender and Pieter de Wet t/a Model Insurance Company

By [Shamaa Sheik](#)

The following matter was heard in the Office of the Statutory Ombud for Financial Services Providers:

- *Davin Govender* (complainant) and *Pieter de Wet t/a Model Insurance Company* (respondent) (case number: FAIS 01933/13-14/ KZN 3)*

*This determination must be read with the determination in the matter of *Ramaraj v Pieter de Wit t/a Model Insurance* (case number FAIS 02166 12/13 MP3).

Fast facts

Financial Advisory and Intermediary Services Act 37 of 2002 – s7 – licence to render financial services

General Code of Conduct – breach – s 8(1) – furnishing of advice – misrepresentation

Market conduct – Advice – contractual liability of FSP – duty of FSP to advise with skill and care – loss associated with bad advice

Summary

Background

The complainant in this matter is one of several policy holders who lodged complaints with the Office of the Ombud following the respondent's failure to honour their claims.

The respondent had presented himself as 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 s 7(1) of the Financial Advisory and Intermediary Services (FAIS) Act 37 of 2002, to render financial services to the public. He had also never been registered to conduct business as a short-term insurer as required by s 7 of the Short-term Insurance Act (STIA) 53 of 1998.

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 any business in the short-term insurance space.

Jurisdiction

The respondent is not a member of a recognised scheme as contemplated in sections 10 and 11 of the Financial Services Ombud Schemes Act (FSOS Act) and in terms of section 13, the FAIS Ombud, in its capacity as Statutory Ombud assumes jurisdiction over the respondent in respect of this complaint.

Nature of the complaint

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

On 29 April 2013, the complainant was involved in a motor vehicle accident and the damage sustained to the vehicle amounted to R97 776. He then duly reported the matter to the South African Police Service and instituted a claim with the respondent.

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

The complainant in this matter sought an order compelling the respondent to indemnify him for the costs of repair to his vehicle.

Call by Ombud to Respondent to respond to complaint

The office of the Ombud had sent the complaint to the respondent requesting him to resolve it with the complainant or to furnish the Office with a detailed response. The respondent failed to address the Ombud's Office on the merits of the complaint.

The complaint was then formally accepted for investigation in terms of s 27(4) of the FAIS Act, and the respondent was again invited to file a response to the complaint and still failed to do so.

As the Ombud received no response to the requests made nor the supporting documentation, the matter was determined based on the complainant's version. From the history of matters determined by the Office on prior occasions, the respondent has no defence against the allegations made against him.

Considering the above, the Ombud indicated that this determination be read with the determination in the matter of *Ramraj v Pieter de Wit t/a Model Insurance*.

Findings

The following findings were concluded:

- The respondent failed to comply with ss 8(1)(a)-(d), 7(1)(a), 3(1)(a), and section 2 of the Code of Conduct for Authorised Financial Services Providers and their Representatives.
- Had the respondent adhered to s 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.
- The respondent misrepresented to the public that he was an authorised short-term insurer and financial services provider.
- The respondent collected premiums from members of the public but had no financial means to honour any claims.
- Although the respondent was not a registered short-term insurer, he entered into a binding short-term insurance agreement with the complainant

Determination

Considering the factors, the following determination was made:

- 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 s 8(1)(d) of the General Code of Conduct for Authorised Financial 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.
- 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 able to make an informed decision as required in terms of s 7(1)(a) of the Code.

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, could not 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.

Order

The complaint was upheld and the respondent was ordered to pay to the complainant the amount of R97 776 as claimed, together with interest at a rate of 10% per annum.

The law

- FAIS General Code of Conduct for Authorised Financial Services Providers and their Representatives - ss 2, 3(1)(a), 7(1)(a), 8(1)(a)-(d), 8(1)(d)(ii)
- Financial Advisory and Intermediary Services Act 37 of 2002 – ss 7(1), 27(4), 28(1),
- Financial Sector Regulation Act 9 of 2017 – ss 28(5)(b)(i), 230
- Financial Services Ombud Schemes Act 37 of 2004 – ss 10-14(3)
- Short-term Insurance Act – ss 7, 54(1)

[Full Determination wording](#)

Other Cases considered

- [Ramaraj v Pieter de Wit t/s Model Insurance](#) [case number FAIS 02166 12/13 MP 3]