

Short-term insurance ombud faces first appeal hearing

A final ruling has prompted an insurance company to appeal.

Hanna Ziady | 20 May 2016 00:17

JOHANNESBURG – The Ombudsman for Short-term Insurance (OSTI) is facing its first appeal hearing next month, after newly appointed ombud, Deanne Wood, made a final ruling against an insurance company, which is now being appealed by the company in question.

According to the OSTI's 2015 annual report, issued on Thursday, a final ruling is made only when an insurer refuses to comply with a recommendation made by the ombud's office, thereby forcing the ombud herself to make a final ruling.

In turn, the OSTI's appeal mechanism allows an insurer or insured to apply for leave to appeal a final ruling and have it heard by an independent appeal tribunal.

This mechanism will be put to the test on June 9 for the first time since its December 2013 inception.

Not wanting to name the insurer involved, Wood, an advocate of the Johannesburg Bar, said the ruling relates to a material non-disclosure provision in the policyholder's contract.

In other words, the policyholder didn't disclose a material piece of information to the insurance company when taking out their policy, which would have impacted on the terms of the cover provided.

It is possible, however, that the insured did not realise they were withholding material information. "The insured may not have understood exactly what information the insurance company was after or may not have realised that their non-disclosure was in fact material," Wood explained.

"Without a broker present to explain what exactly is being asked, and in the absence of an explanation from the sales agent, it becomes very onerous on the consumer to ensure that they have provided all the information necessary when answering a general question," she added.

Generally, Wood is concerned that poorly drafted scripts used by sales agents can cause confusion in the minds of consumers when it comes to policy terms and conditions.

Policy drafting by insurance companies requires attention, Wood highlighted. This issue was similarly flagged by the former ombud, Dennis Jooste.



“Too many policy documents contain unclear and ambiguous clauses that are difficult to understand and problematic to interpret,” Wood, who was recently recommended for elevation to Senior Counsel (SC) status, said.

For example, in an attempt to simplify policy wordings, insurance companies may include very general clauses that are difficult to apply to real life situations and/or inadequately indemnify policyholders.

“Recently, we’ve seen a lot of cell phone insurance contracts that refer to exclusions when a cell phone is exposed in a public area, but it is not clear what is meant by exposure in a public area. For instance, if someone forgets their phone in a public bathroom and it is stolen, we would argue that their insurance company should cover their claim, but these types of clauses suggest that they may not be covered in this event,” Wood said.

“Policy documents cannot be simplified to such a high level that consumers no longer understand what is and isn’t covered,” she added.

Fewer complaints resolved in favour of consumers

The overturn rate, where the OSTI finds in favour of consumers and overturns the decisions of insurers, fell to 27% and has been reducing for several years.

This may in part be explained by opportunistic claims made by consumers. “People get desperate in tough times and start to claim from insurers for items that are not covered by their policies, such as wear and tear on their vehicles,” Wood explained.

Another explanation is that, in terms of Treating Customers Fairly (TCF), insurance companies are required to thoroughly assess whether or not a claim has been correctly repudiated. “Many complaints, by the time they get to us, have already been filtered by the insurer,” she said.

A lower overturn rate and fewer complaints from consumers no doubt contributed to the drop in the money recovered for consumers from short-term insurers, which fell to R100 million in 2015, from R116 million in 2014.

Last year 9 784 complaints against short-term insurers were received, slightly down from 10 253 in 2014.

This drop in complaints can partly be explained by hailstorms in 2014, which led to a spike in claims, a number of which were repudiated, Woods said.

Pictured: Deanne Wood, new short-term insurance ombud.