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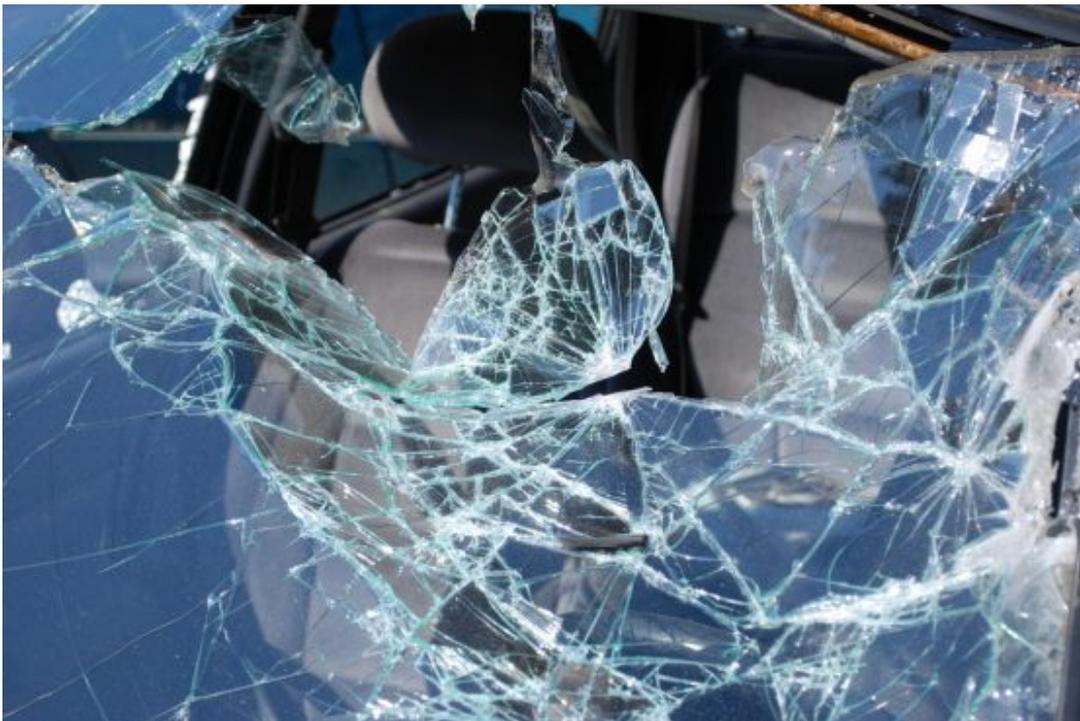
Insurance: The devil really is in the detail

Insurers may be in the wrong in rejecting some claims, but more often than not it's the policyholder who got something wrong.

By **Adriaan Kruger** 17 Sep 2020  00:03

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Knowing exactly what you are covered for is one way of making sure your claim won't be rejected. Image: Shutterstock

The first virtual workshop organised by the Ombudsman for Short-Term Insurance (Osti) delivered an important message to clients of insurers: It is the policyholder's responsibility to check their policy document, ensure they understand all the terms and conditions and know exactly what is covered by the policy and what is excluded.

Consumers need to understand and appreciate their responsibilities with regard to an insurance

policy, and realise that it is a contract between insurer and policyholder that puts responsibilities on both parties, says Darpana Harkison, senior assistant ombudsman at Osti.

“It is an important issue to address. If we spend our hard-earned money on an insurance policy every month, we should have protection,” says Harkison.

Disputes

Sometimes disputes arise. The coronavirus pandemic has provided a good example of this, with disputes between insurance companies and policyholders making headlines, after insurance companies said that business interruption cover excluded losses suffered due to the general Covid-10 lockdown.

Guardrisk and Santam are currently involved in court cases that are scrutinising the wording of policies to determine who is responsible for losses suffered during the lockdown, which prohibited businesses from operating.

Read:

[Hoteliers plead for Covid-19 business interruption insurance payouts](#) (Jul 2)

[Cape café’s ‘precedent-setting’ business interruption insurance victory](#) (Jul 8)

[Guardrisk to appeal High Court business interruption insurance judgment](#) (Jul 14)

[Insurer Guardrisk offers to settle with up to 700 virus-hit firms](#) (Jul 29)

The same situation is playing out in other countries. For instance, British newspapers carried reports of a similar court case in the UK high court to see to what extent policies must pay claims for business interruption due to the pandemic.

The case was taken to court by the country’s Financial Conduct Authority (FCA) to get clarity on the matter. Several insurance policies were considered by the court, which issued a ruling considering 21 different phrases. In essence, the court issued 21 rulings that will affect more than 360 000 policyholders in the UK. Judges found in favour of claimants “on the majority of the key issues” [according to the FT.](#)

Although the British court granted leave to appeal – similar to the high court in SA that heard the Guardrisk case – the eventual outcome will set a precedent that will set aside further bickering on the wording of contracts and open the way for the settlement of claims.

While SA is still awaiting final clarification by the courts, the UK case might prompt insurers and, more importantly, their reinsurers, to settle claims.

The Osti workshop thus came at an appropriate time.

Policyholder responsibility

Peter Nkhuna, senior assistant ombudsman, reiterated that policyholders must make sure they understand all the terms and conditions and should ask for clarification if there is anything they do not understand.

“It is also the client’s responsibility to ensure that they receive a policy document, especially in modern times when policies are sold online or finalised by telephone. Go through the document, see that all information is correct, that you have the right cover and understand your obligations.

“If you do not receive a policy document, it is your responsibility to ask for one. Check all details, such as specific terms of cover. An example is to ensure that the policy lists the correct driver of a motor vehicle, for instance the regular driver and any occasional drivers,” said Nkhuna.

Supply of information

Harkison added that it is important that policyholders supply the correct information and disclose all relevant information to avoid problems if a claim is lodged.

“This is any information that is material and would have influenced an insurer to agree to provide cover under the terms of the policy. For instance, the insurers might not have agreed to give a person cover if certain facts was brought to [their] attention, or would have influenced the premium.

“The insurer might not have accepted the risk or provided cover under different conditions. People must ensure that they understand the questions the insurer ask and answer correctly when taking out a policy and in the event of a claim,” said Harkison.

She mentioned a case where a policyholder did not disclose a prior accident, as the policyholder did not consider the particular event to be an accident. When a claim arose later, the insurer refused to pay due to the non-disclosure of the previous accident.

The ombudsman was approached, investigated the matter, and recommended that the insurer pay the claim on the premise that the previous incident would not have affected the policy.

However, the claim would have been settled much more quickly if all the information had been disclosed and was readily available, said Harkison.

Dispute resolution

The ombudsman received more than 10 000 complaints from clients regarding short-term insurance policies last year, according to Osti’s annual report for the year to end December 2019. More than 20% of the complaints were settled in favour of the policyholders.

Harkison reiterated that Osti serves as a mechanism to settle disputes, but is not a court of law, cannot procure evidence, and does not have the authority to interview people. “It investigates complaints and make recommendations,” said Harkison.

She added that the office of the ombudsman is impartial and pointed out that in cases where insurers claim misrepresentation of facts, Osti will consider whether the misrepresentation is material. She gave a hypothetical example of somebody lying by saying he was involved in an accident while on his way home to his wife, when he was actually on his way to visit his girlfriend.

“In this case, it is not material to the accident and should have no influence on the claim,” said Harkison.

“However, lying about drinking would have serious implications,” she said, adding that it is best to tell the truth.

“The truth does not cost you anything, but a lie can cost you everything.”

The workshop touched on several of the usual problems that lead to disputes, mostly because policyholders neglect to review their insurance from time to time.

These include:

- › Underinsured due to wrong value of household contents;
- › Items not covered or not specified;
- › Depreciation of a vehicle;
- › Expensive accessories added to a vehicle without updating the policy; and
- › Change of a vehicle’s regular driver or adding an additional driver (such as when a teenage daughter gets a learner’s licence and starts driving mom’s BMW).

“Circumstances change during your life,” said Harkison. “One should consider and update insurance policies to ensure the right cover at least once a year. It can have significant financial consequences.”

Needs change ...

The Covid-19 pandemic has also changed insurance needs significantly.

Unfortunately, many people have been retrenched and are now unable to continue with their insurance policies – yet this will be a difficult period to suffer a financial loss as a result of not being insured.

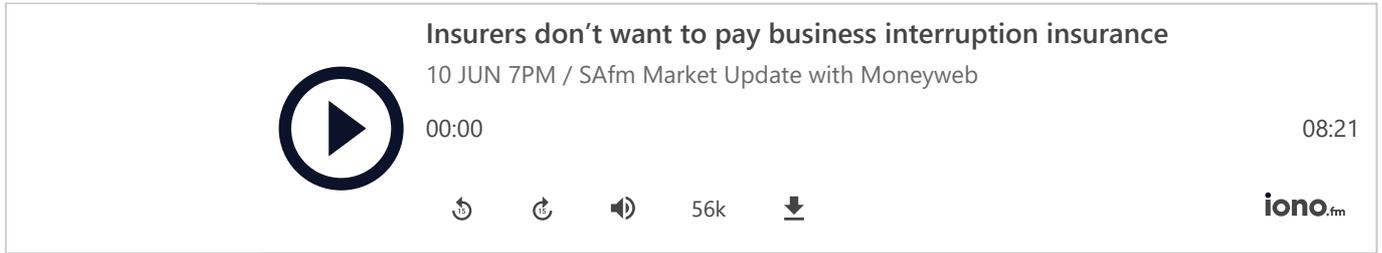
Working from home might reduce the risk of burglaries and will affect insurance premiums, as will the fact that people have been driving less. A car might also be safer parked at home every day than in a parking lot, which should reduce insurance premiums, said Harkison.

That only 45 people ‘attended’ the workshop, with another 52 watching it later, might be an indication that people do not realise the importance of potential losses and the financial impact they could suffer.

However, Nkhuna said Osti is pleased with its first broadcast. “The virtual aspect has opened up a whole new audience for Osti. Where these workshops were previously limited to consumer

a whole new audience for us. Where these workshops were previously limited to consumer bodies and journalists in the Gauteng region due to logistics, we are now able to invite people from all over the country.”

Listen to Duduzile Ramela’s interview with Ryan Wooley of Insurance Claims Africa (or read the transcript [here](#)):



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