



ANNUAL REPORT

FOR THE FINANCIAL YEAR
01 JULY 2022 TO 30 JUNE 2023

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LETTER OF TRANSMITTAL



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LETTER OF TRANSMITTAL

Monday, 20 November 2023

Honourable Mahen Kumar Seeruttun
Minister of Financial Services and Good Governance
Ministry of Financial Services and Good Governance
SICOM Tower
Ebene

Honourable Minister,

Annual Report for the financial year 01 July 2022- 30 June 2023

In accordance with the provision of section 17 (2) of the Ombudsperson for Financial Services Act (the "Act"), I am pleased to submit the Annual Report of the Office of Ombudsperson for Financial Services for the financial year 01 July 2022 - 30 June 2023.

The Report details our achievements, activities and challenges, as well as providing bases for reforms in the financial services sector.

A copy of the Annual Report is to be laid before the National Assembly by virtue of section 17(3) of the Act.

Yours sincerely,

Dr M. D. Maraye FCCA
Ombudsperson for Financial Services



STATEMENT OF THE OMBUDSPERSON FOR FINANCIAL SERVICES



In our Annual Report for the year ended 30 June 2022, I concluded that “Patience has its limits”. I was then concerned of the considerable waiting time complainants had to endure prior to closure of a complaint. Consequently, my Office is taking appropriate action to reduce the waiting period subject to the implementation of decisions taken during an official meeting I had with the Director (Economic and Finance) of the Ministry of Finance, Economic Planning and Development who clearly understood the functioning of our Office. I am pleased to announce that our 2023/2024 budget has made provision for appropriate resources.

As regards human resources, it would be in the interest of the country if institutions responsible for recruitment and conditions of service be more rational and consistent in their approach so as to promote confidence in the public service.

Financial Institutions falling under our purview had been given 30 days to resolve complaints hoping that the number of complaints referred to us would decrease. Unfortunately, our experience during the last two years clearly draws us to the conclusion that the increase from 7 days to 30 days has not had the expected result. Consequently, my Office has submitted proposals for an appropriate amendment to the law to the Ministry of Financial Services and Good Governance with a view to reducing the period given to Financial Institutions to address a complaint from 30 days to 14 days.

“
... accountability is the lubricant to
the machinery of good governance
in a democratic environment
”

Upon a detailed analysis of processes, my Office has concluded that it takes an average of 20.32 effective hours to close a complaint. However, this period is spread over an average of 3 months depending on the promptness and relevance of responses received from Financial Institutions and other related parties to a complaint.

The Office of Ombudsman for Financial Services has developed a culture of continuous improvement by accepting responsibility and criticism through feedback bearing in mind that accountability is the lubricant to the machinery of good governance in a democratic environment.

I would like to thank all members of my Office who have contributed towards the achievement of our mission through compliance of our values.

Dr M. D. Maraye FCCA
Ombudsman for Financial Services

OUR MISSION AND VISION

Our Mission

Our mission is to ensure that consumers and providers of regulated financial services are being treated fairly in terms of quality of service both pecuniarily and without undue delay whilst contributing towards the enhancement of the reputation of the Mauritius International Financial Centre.



Our Vision

The Office of Ombudsperson for Financial Services is a dedicated independent institution driven by integrity and transparency while giving due consideration to the views and opinions of stakeholders so as to ensure fairness in the financial services sector within the parameters of regulations, issued guidelines and statutory objectives.

OUR TEAM



“
The common denominator about institutions is us human beings, and the rationality of our behaviour is the determining factor between success and failure”

COMPLAINTS PROCESSES

HOW TO MAKE A VALID COMPLAINT

STEP 1

Make a written complaint to the financial institution

1. The complainant must make a complaint to the financial institution first and provide the latter with an opportunity to resolve the matter without the necessity for formal dispute resolution processes.
2. The complainant must make it clear that he/she is making a complaint (*A clear distinction must be made between a situation where the person is complaining and a situation where the person is merely corresponding with the financial institution*).
3. The complainant must introduce himself/herself, state his/her relationship with the financial institution, explain his/her concerns in detail and provide documentary evidence if need be, and say what are his/her expectations.
4. After submission of the complaint to the financial institution, the latter has 30 days to respond.

The possible outcomes:

- The complainant obtains a response from the financial institution within 30 days and he/she is satisfied with the offer/outcome = the matter is closed.
- The complainant obtains a response from the financial institution within 30 days and he/she is not satisfied with the offer/outcome = The complainant may then submit a complaint to us.
- The complainant does not obtain a response from the financial institution = the complainant then submits a complaint to us after 30 days of his/her complaint to the financial institution.

STEP 2

Make a written complaint to the Office of Ombudsperson for Financial Services

Mode of submitting a complaint to our office

All complaints must be submitted in writing. We do not accept verbal complaints.

Complaints may be submitted:

- Through our complaint forms on our website
- By email
- By post
- By hand delivery

Content of the complaint

1. Submission by letter: To address the complaint to the Ombudsperson for Financial Services and to insert the date;
2. Submission through the website: To fill out the complaint form and submit to our office;
3. Provide name and contact details;
4. If a person is representing the complainant, he/she must include a signed authorisation from the complainant;
5. If a person is making a complaint on behalf of a company, he/she must include an authorisation from the board of directors;
6. The complainant must provide the name and address of the financial institution against which the complaint is made;

COMPLAINTS PROCESSES

7. The complainant must tell us if a complaint was made to the financial institution, when the complaint was made, whether the financial institution replied to the complaint;
8. The complainant must provide details on the nature of his/her complaint (For eg, he/she has an insurance policy, a pension plan, an agreement for financial services);
9. The complainant must make it clear that the person is making a complaint. Give details of why he/she disagrees with the financial institution;
10. The complainant must provide details of the relief being sought.

HOW WE HANDLE COMPLAINTS

STEP 1

Preliminary Assessment

An officer will carry out a preliminary assessment to verify whether the complaint falls under our jurisdiction.

The complaint must:

- be against a financial institution licensed by the Financial Services Commission or the Bank of Mauritius;
- relate to a service licensed or regulated by the Financial Services Commission or the Bank of Mauritius;
- be one in which the complainant has sufficient interest in the subject matter.

The complaint must not be one which is or has been before the Commissioner for the Protection of Borrowers, a Court, a tribunal or an arbitrator.

We may decide not to proceed with a complaint:

- where we believe that appropriate action has already been taken or offered and after analysis we conclude that pursuing the complaint would be futile;
- the outcome sought is considered unreasonable or unachievable.

Each complaint is assessed on a case-by-case basis. If we decide not to take a complaint further after an early assessment, we will write to the complainant and explain why. We will send the financial institution a copy of our decision.

STEP 2

Representations from financial institutions

After the Preliminary Assessment phase, representations will be sought from the relevant financial institution, in which case they will be given at least **7 days** to submit their reply.

Where a financial institution requests for an extension, it has to provide reasons. We will consider extending the deadline in exceptional circumstances.

If no representation is received by the deadline and no request for extension is made, we will proceed with the investigation.

COMPLAINTS PROCESSES

STEP 3

Investigation

At this stage, we will make a thorough assessment of the issues involved, the laws applicable and carry out inquiries. Our investigation may be delayed:

- where we need information from other Authorities or persons;
- where we need further evidence or information from the complainant or the financial institution.

Upon completion of the investigation, we will decide whether we need a Hearing or we may proceed to the decision stage.

STEP 4

Hearing

We will proceed to summon parties if a Hearing is warranted.

During the Hearing, parties may be legally represented but this is not necessary.

Parties will be heard and examined. They will be provided with an opportunity to mediate and settle the matter.

Proceedings of the Hearing are kept in writing.

At the end of the Hearing, if a settlement is agreed, we will formalise the settlement in an Agreement.

If no settlement has been reached, a decision will normally be issued within 21 days.

STEP 5

Decision

A written and motivated decision is issued after the completion of an investigation and/or Hearing.

Any person aggrieved by any decision (including an award) of the Ombudsperson for Financial Services may apply, within 21 days, to the Supreme Court for a judicial review of the decision or Award, as the case may be.

COMPLAINTS PROCESSES

FINANCIAL INSTITUTIONS AND FINANCIAL SERVICES

A complaint may only be submitted to us if it relates to financial services and is against a financial institution.

The meaning of “financial services”

“Financial services” include services and activities regulated under the following enactments:

1. Bank of Mauritius Act
2. Banking Act
3. Captive Insurance Act
4. Financial Services Act
5. Insurance Act
6. National Payment Systems Act 2018
7. Private Pension Schemes Act
8. Protected Cell Companies Act
9. Securities Act
10. Securities (Central Depository, Clearing and Settlement) Act
11. Trusts Act
12. Virtual Asset and Initial Token Offering Services Act 2021

“Financial services” do not include:

- (i) services provided, or any business activity conducted, by an entity licensed or authorised under Part X of the Financial Services Act;
- (ii) services provided from outside Mauritius;
- (iii) services provided by a financial institution to an entity licensed or authorised under Part X of the Financial Services Act;
- (iv) services not licensed or regulated by the Bank of Mauritius or the Financial Services Commission.

The meaning of “financial institution”

Banking

Includes all banks, non-bank deposit taking institutions, cash dealers licensed by the Bank of Mauritius.

Non-Banking

Includes the following licensees of the FSC:

- Insurance Companies
- Insurance Intermediaries
- Private Pension Schemes
- Leasing Companies (for finance leases)
- Other Persons and Businesses licensed under the relevant Acts of the FSC.

But excludes: global business companies, authorised companies, Management Companies and all entities licensed under Part X of the Financial Services Act.

COMPLAINTS PROCESSES

COMPLAINTS ASSESSMENT OUTCOMES

Assessment outcome	Description
Withdrawn	The complainant decides to withdraw his/her complaint.
Failure to comply with procedures	The complainant will be advised on procedures. If the complainant fails to comply with procedures after 6 months, the file will be closed as we cannot investigate a complaint which does not meet statutory requirements.
Out of jurisdiction	Our governing legislation sets out what we can and cannot accept as a complaint. We have no jurisdiction to entertain complaints which are: <ul style="list-style-type: none"> • not against a financial institution • not related to financial services and activities licensed or regulated by the Financial Services Commission or the Bank of Mauritius • already before the Court, Commissioner for the Protection of Borrowers, a tribunal or an arbitrator. • against a financial institution under Part X of the Financial Services Act.
Not entertained	We cannot entertain a complaint where it is made more than 6 months from the date of receipt of the decision of the financial institution.
Resolved	These are cases we did not investigate further as they were resolved to the satisfaction of both parties without the need for a full investigation.
Rejected	After completion of an investigation, we may reject a complaint if we find that: <ul style="list-style-type: none"> • the financial institution did not commit failures or breaches of its obligations; • the financial institution has already accepted service failures and taken appropriate steps to address them; • we cannot achieve better results than already offered by the financial institution; • the expected outcome is not achievable by us; • the complainant has failed to prove his/her case.

COMPLAINTS PROCESSES

COMPLAINTS ASSESSMENT OUTCOMES (CONT'D)

Assessment outcome	Description
Upheld	<p>When a complaint is upheld, it means that we find for the complainant.</p> <p>The Ombudsperson may:</p> <ul style="list-style-type: none"> • issue an Award, directing the Financial Institution to pay a stated amount of compensation to the complainant; • give Directives to the Financial Institution; • require the financial institution to take a specific step to make things right; • require the financial institution to issue an apology.
Award	<p>An Award may be made where the Ombudsperson is satisfied, after investigating into a complaint, that the complainant has suffered financial loss.</p> <p>A decision to make an Award is taken on a case to case basis and largely depends on the merits of the complaint.</p> <p>In calculating the amount of an Award, we will consider monetary losses to the complainant.</p>
Settled	<p>During the Hearing, Mediation will be attempted. If there is an agreed outcome, parties will be requested to sign a Settlement Agreement before the Ombudsperson for Financial Services.</p>

STATISTICS

Statistics for the period of 01 July 2022 to 30 June 2023

Statistics for the period of 01 July 2022 to 30 June 2023			
	Bank	Non Banks	Total
Outstanding complaints as at 01.07.2022	155	669	824
Number of complaints received during the year ended 30.06.2023	129	450	579
Total number of cases in process	284	1119	1403
Less cases closed during the year ended 30.06.2023	71	636	707
Outstanding complaints as at 30.06.2023	213	483	696

The above table depicts activities carried out during the year ended 30 June 2023.

As at 01 July 2022, there were 824 complaints, out of which, 155 were against banking institutions and 669 against non-banking institutions which were being investigated.

During the financial year ended 30 June 2023, a total of 579 complaints were received comprising of 129 complaints against banking institutions and 450 complaints against non-banking institutions. Following analysis and investigations, 707 complaints were resolved, out of which 71 were against banking institutions and 636 against non-banking institutions.

Our Office successfully finalised 50.4% of outcomes during the year under review.

As at 30 June 2023, a total of 696 complaints, out of which, 213 against banking institutions and 483 against non-banking institutions, are outstanding and under process.

STATISTICS

Number of complaints received during the period 01 July 2022 to 30 June 2023

BANKS	Number of complaints
Mauritius Commercial Bank	57
State Bank of Mauritius	35
State Bank of India (Mauritius) Ltd	8
Bank One Ltd	7
MauBank	7
Bank of Baroda	5
Afrasia Bank	3
Barclays Bank- ABSA Bank	2
Banque de Mascareignes - BCP Bank	1
Development Bank of Mauritius	1
Hong Kong Shanghai Banking Corporation (HSBC)	1
ABC Banking Corporation	1
Silver Bank	1
TOTAL	129

INSURANCE COMPANIES	Number of complaints
Mauritius Union Assurance Company Ltd (MUA)	42
Lamco International Insurance Ltd	39
Phoenix Insurance (Mauritius) Ltd	31
National Insurance Company (NIC) General Insurance Co Ltd	20
Swan General Ltd	18
The New India Assurance Company Ltd	11
Jubilee Insurance (Mauritius Ltd)	10
G.F.A Insurance Ltd	9
Mauritius Eagle Insurance	9
State Insurance Company of Mauritius Ltd (SICOM) General Insurance Ltd	8
Quantum Insurance Ltd	4
Sun Insurance Co Ltd/ Sanlam General Insurance Ltd	3
IOGA Insurance	3
Life Insurance Corporation of India (LIC)	3
Afrilife Insurance	3
Island life Insurance	2
Rainbow Insurance Co Ltd	1
TOTAL	216

OTHER COMPLAINTS	Number of complaints
Other Financial Institutions and Non-Financial Institutions	234

STATISTICS

Availability of Human Resources 2022/2023

Working Hours Per Day: 6 Hours 45 Minutes													
No. Working Days per Month: 20													
	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Total
Working Force	8	8	8	10	10	10	10	10	11	11	12	12	
Total No. of Working Days	160	160	160	200	200	200	200	200	220	220	240	240	2400
Total No. of Working Hours	1080	1080	1080	1350	1350	1350	1350	1350	1485	1485	1620	1620	16200
Total Absences (days)	17.5	30	10	18	15	31	31.5	27.5	36	31.5	28.5	28.25	304.75
Total Absences (Hours)	118.13	202.50	67.50	121.50	101.25	209.25	212.63	185.63	243.00	212.63	192.38	190.69	2057.06
Effective Working Hours	961.88	877.50	1012.50	1228.50	1248.75	1140.75	1137.38	1164.38	1242.00	1272.38	1427.63	1429.31	14142.94

The above table highlights the effective availability of Human Resources during the year ended 30 June 2023. Whereas we understand that staff are entitled to annual leaves, it is important that decision makers bear in mind the impact of absences on efficiency of operations.



KEY ACCOMPLISHMENTS

Website

Our website was designed by the Government Online Centre with the participation of all staff members of the Office. The website focuses on awareness and accessibility of our services. The online platform concentrates on ensuring there are accessible and flexible ways to submit a complaint, and to obtain relevant information in formats and mediums suitable for the appropriate audience.

Consumers of financial services may now use our online complaint forms to submit their complaints.

The website also provides detailed guidance on how to submit a complaint, eligibility criteria, the processes involved, the applicable laws and our policies.

Complaints Handling Process Manual

Our Complaints Handling Process Manual (“Manual”) was issued and published on 8 February 2023. The purpose of the Manual is to disclose the approach of the Office of Ombudsperson for Financial Services in the exercise of its powers for complaints handling, because our Office recognises the need to bring transparency to the processes.

The Manual explains how the Office exercises its powers and the various procedures applied. At the same time, the manual also contains the Office’s expectations from both financial institutions and complainants. This engagement serves as an outline of the Ombudsperson’s duties to be fair, independent and impartial.

The content of the manual will not be enforceable and is not tantamount to Guidelines issued under the Ombudsperson for Financial Services Act. It simply assists in making the roles, responsibilities and expectations of each party more explicit so that all parties have a shared understanding of good and ethical conduct.

International presence

On 23 June 2023, the Office was granted membership with the International Ombudsman Institute (“IOI”). The IOI is the only global independent international institution currently representing more than 200 national, regional and local public sector and parliamentary ombudsman institutions from around 100 different countries.

The Office will be able to get access and forge close ties with a number of Ombudsman Schemes across the world. As well as benefiting from training programmes, subsidies for projects and assistance in research, the Office will also be able to consolidate its standards and widen its perspectives.

Public Sector Anti Corruption Framework

The Ombudsperson for Financial Services recognises that corruption in the public sector erodes public trust in government institutions. The Office is committed to prevent corruption by promoting integrity, transparency and accountability in the conduct of its affairs through the adoption of and adherence to corruption prevention strategies in the organisation.

The Public Sector Anti-Corruption Framework (PSACF) has been developed by the Independent Commission Against Corruption (ICAC) with a view to reinforce public sector efforts and capacity in preventing corruption/malpractices and fostering public sector integrity. This framework is meant to assist public bodies in adopting a strategic approach in the fight against corruption.

KEY ACCOMPLISHMENTS

The Office of Ombudsperson for Financial Services deemed it imperative to strengthen its organisation capabilities through the establishment of appropriate mechanisms to control the likelihood of corruption. The Office has thus adopted a holistic approach to combat corruption by embarking on the PSACF and has set up its Anti-Corruption Committee (ACC). The Anti-Corruption Policy (ACP) was approved and signed on 20 April 2023.

On 21 April 2023, a first ACC meeting was held and same was chaired by the Ombudsperson in the presence of an Ex-Officio Member of the ICAC. During the meeting, members of the Committee were guided on how to proceed with the Corruption Risk Assessment (CRA) exercise.

The team is currently working on the CRA exercise and 2 important areas have been identified namely, complaints handling and procurement. The Office believes that these areas have loopholes which may give rise to corrupt practices.

Legislative Amendments

The definition of “financial services” was amended to exclude services not licensed or regulated by the Bank of Mauritius or the Financial Services Commission. The amendment was made to bring clarity to our intervening powers. Some institutions are licensed and regulated for specific activities and not licensed for other activities. Complainants tend to assume that we have the power to intervene even if a service is not licensed, when the institution is licensed for other activities. For example, the Mutual Aid Association is licensed for deposit taking activities only and not for personal loans. Our jurisdiction may not extend to personal loans in such cases.

The impediments which hindered our operations

Imprest

The Office is allocated with an amount of Rs 10,000 in its Imprest Account for running expenses. The procedures to replenish the Imprest Account is lengthy and involves many formalities, which leads to heavy delays in replenishment.

Human Resources

Since its inception in March 2019, the Office has not been provided with any employee of the technical cadre. It has, since April 2021, been operating with staff seconded from the Financial Services Commission.

In July 2021, following formal exchanges, a meeting was held at the seat of the Prime Minister's Office to discuss recruitment. It was agreed that recruitment processes would be initiated on a fast-track basis. However, recruitment exercises are still ongoing at the level of the Public Service Commission.

The lack of human resources inevitably leads to delays in processing, investigating, hearing and providing a decision. Officers are subject to abusive behaviour and anger from members of the public on a daily basis. The combined effect is considerable strain on staff. The considerable delay caused also negatively impacts on the reputation of the Office.

Budget

After lengthy procedures and detailed submissions to the Ministry of Finance, Economic Planning and Development, the approved budget for the year 2022-2023 showed gross anomalies, which adversely impacted on our operations. However, following a positive meeting chaired by the Director (Economic and Finance), Ministry of Finance, Economic Planning and Development, appropriate provision of funds has been approved in the 2023/2024 budget.

Dealing with challenging behaviour

Different types of challenging behaviour warrant a different level of response. Most challenging behaviour can be dealt with through good complaint handling and defusing strategies. It is only when behaviour is truly unreasonable that it is necessary to consider limiting access to services. Behaviour becomes unreasonable when, because of its nature or frequency, it raises health and safety issues.

At the outset, we communicate our role and procedures to follow for a valid complaint. Our website contains detailed information on our processes, expected timeframe, possible outcomes. We apply our "Unacceptable Behaviour" Policy, in exceptional circumstances as detailed in the policy.

OUR INSIGHT

RETAIL BANKING

Communication of important information

Important and relevant information which affects the decision of a consumer must be disclosed. The method of disclosure is pivotal in determining whether there has been effective communication. We have seen cases where there is a considerable decrease in repo rates, which then affects other interest rates of commercial banks. Communication of revised rates was made through a circular affixed in all branches of a bank in a particular case. We believe that it might be onerous to require a customer to verify updates randomly on the bank's premises. We have to be conscious of the fact that certain people do not have access to information technology and will not therefore consult a website. When there is a significant impact on the interests of a consumer, banks should consider other effective methods of communication.

Customer waiting time

It has been observed from complaints that there are long queues and long periods of customer waiting time at certain branches of commercial banks. The importance of customer waiting time management lies in the fact that customers' perception of waiting time could affect their current and future relationship with the banks.

Customer engagement is also governed by the strategic planning of bank branch layouts and designs, which can optimise customer flow and reduce wait times. For instance, dedicated queuing areas with clear signage and designated spaces can prevent crowding around service counters. Banks could consider assigning separate areas for senior citizens to ensure smooth service.

Technology such as digital signage or queue management systems can provide real-time updates on waiting times and service availability, helping customers manage their time and expectations.

Implementing multiple service points or teller stations can distribute customer flow, ensuring prompt and efficient service and minimising waiting times. Branch designs prioritizing customer queuing can streamline customer flow, enhance customer experience, and ultimately result in higher customer satisfaction and loyalty.

Exclusion clauses

Banks should make reasonable and judicious use of exclusion clauses. We have seen an exclusion clause, used by a commercial bank which provides that the bank and the firm responsible for the maintenance of the ATMs shall in no circumstances be liable for the malfunction, temporary breakdown or misuse of the ATM, which may result in the retention of the Card or its being torn, destroyed or rendered unusable, and shall not be held liable for any consequence resulting from same. If a customer cannot rely on the relevant bank, who owns the ATM, for a malfunction of the ATM, then the question is to whom should the customer address these issues?

Access to banking services

We have had complaints from a particular category of consumers, who find it more convenient for them to use the traditional "Carnet de Banque" for updates of bank balances. We understand that bank statements are available upon request, however, it is a paid service. We also noted that some categories of consumers do not wish to make use of cards but choose to effect all transactions personally on the banks' premises. In this digitalisation era, as we move towards FinTech, banks should place focus on financial inclusion and consumer education. At the same time, the consumer should also accept the evolution and development of the Mauritian economy and should be more willing to adopt innovative practices.

We rely on the understanding of banks to ensure a reliable and prompt service that instill trust in the sector.

INSURANCE

Scale of costs in medical insurance

Most of the medical insurance covers are subject to a “scale of costs”. In all cases in which this concept has been implemented, we have seen that consumers were completely ignorant of its meaning and application.

The term “scale of costs” is usually mentioned in terms and conditions of the insurance agreement. However, the scale of costs is not always disclosed.

The aim of a scale of costs is to provide a cap to clinic and doctors’ fees, in order to prevent excessive charges. Insurers usually base themselves on market rates and arrangements with medical institutions and medical practitioners. It is however noted that the scale of costs is not revised to reflect the increase in fees and charges.

Consumers should have reasonable access to information that allows them to identify costs and charges relating to their prospective treatments including, ideally, if practical and feasible, on an unbundled basis (i.e. a breakdown of the components of the total price).

Assessments in medical insurance

When it comes to medical claims, insurers tend to make an in depth assessment. Insurers look for any correlation between the actual and previous treatment to decide whether the consumer had properly disclosed his/her medical history and whether all requirements to claim the benefits are met.

We have no qualms with the investigations carried out by insurers, which show their diligence in preventing insurance fraud. However, we have seen instances where despite medical reports/opinion are issued by the treating doctor, insurers request for the opinion of a non-treating doctor, who may not have seen the consumer at all. Interpretations and extrapolations are made from medical reports when the facts and medical opinion are clearly stated. This practice has become very common amongst insurers. While we may provide redress on a case to case basis, we believe that there is a need for remedial action by the Regulator.

Intermediaries

Intermediaries, though licensed and regulated, represent a common source of complaint. Insurers are never aware of the advice given to consumers or whether proper communication of information is carried out by intermediaries. We have identified some worrying cases where consumers are misled by intermediaries.

We believe that Regulators should supervise and examine intermediaries on a regular and ongoing basis to help ensure firm compliance with suitability and other customer protection requirements relating to the sale of financial products. The competent authority should take enforcement actions, as appropriate. Regulators should consider the value of making enforcement actions public in order to protect customers and enhance market integrity.

Life insurance

A common major issue in life insurance products is that the consumer is unable to differentiate between a savings account and a life insurance policy. The insurer projects high rates of bonuses and upon maturity, states that there was high volatility in bonus rates, there was a considerable decrease in repo rates, there were poor investment returns. Surprisingly, we have heard the same answers each and every time.

What is more surprising is that when questioned about the relation between a particular rate and the investment in question, many insurers are unable to explain.

OUR INSIGHT

Another common issue that we come across is that the consumer is not aware of the fact that the total value of premium is not invested. There is therefore a reasonable expectation that at least the total premium paid will be recovered which may not be the case.

When insurers disclose or make available to their customers information regarding life insurance product, reasonable care should be given to assist customers in making an informed investment decision, particularly in making them aware, before the purchase of the product. Any information disclosed to the customer regarding a complex financial product should present a fair, clear, comprehensible and balanced picture regarding both the risks and potential benefits they pose, especially when the product's performance is sensitive to extreme scenarios. In particular, where an insurer provides the customer with scenario analysis, it should be based on reasonable assumptions and presented in a way that does not overstate the potential benefits and understate the risks of the product. This is because financial products may have features and pose investment risks that are difficult for many customers, even non-retail customers, to appreciate fully. In some instances, these products link high return rates to certain favorable, but unlikely scenarios, which may be used to create or enhance customer expectation.

Surveyors (Motor Insurance)

An insurer relies on "expert" opinion when assessing a claim. In road accident cases, the insurer usually requests for the opinion of a surveyor, who will inspect the damages caused to the vehicle, assess the circumstances of the accident and see whether the damages corroborate with the version put forward by the claimant.

As surveyors are unregulated, their qualifications, expertise and capacity to provide an opinion are not adequately assessed. The survey reports are of poor quality and sometimes it is difficult to even understand the content. In addition, these reports are heavily based on assumptions, there is much story telling, extrapolations and attempts at mind reading. We believe that these reports should be strictly factual and concise

Insurers should also be cautious when relying on reports which contain apparent statements from third parties, without the actual statements.

The terms of reference of the surveyor should also be clear. Insurers may not delegate their decision making responsibility, for which they are licensed, to surveyors. In some cases, we have seen that surveyors decide on claims. Surveyors' mandates should be strictly restricted to opinion.

Market practice

A famous and much used "reason" that we always hear: "Market practice". Insurers are reminded that "market practice" does not become acceptable when practiced by others. We determine complaints based on the law and regulatory requirements, not on market practice.

PRIVATE PENSION SCHEMES

Complex formulas

Complex formulas are used in calculation of private pensions. Most of the time, the consumer does not understand these formulas

While disclosure of the rules which contain all information pertaining to calculations is duly made, it is unfortunate that the administrators or the governing bodies of private pension schemes do not provide explanations in clear lay terms to the beneficiaries.

The Regulator must have further consideration on the element of communication to different categories of beneficiaries. Possible scenarios which reflect differing outcomes (best/most likely/ worse) must be discussed with beneficiaries at the outset to enable them to make an informed decision.

Technical Funding issues with Defined Benefit Schemes and Integrated Schemes

Defined Benefit (DB) Schemes were initially designed and funded by employers on a voluntary basis. In such types of schemes, employers guarantee a specific retirement benefit amount for each participant that is based on factors such as the employee's salary and years of service.

DB Schemes require complex actuarial projections and insurance for guarantees, hence increasing the costs of administration. As a result, DB Schemes have been largely replaced by Defined Contribution plans over the last few decades. The shift to Defined Contribution plans has placed the burden of saving and investing for retirement on employees.

In Mauritius, DB Schemes are in operation for approximately 40 years, prior to the introduction of the Private Pensions Schemes Act ("PPSA").

The National Pensions Scheme (NPS) has been introduced since 1976. It is based on a two-tier system in which Government finances payment of the universal basic pensions whilst earnings-related contributory benefits are paid to insured persons or their dependents, on basis of contributions paid to the scheme by the insured persons and their employers.

Under the then National Pensions Act, contribution made to the National Pension Fund (NPF) by employers for employees, was mandatory. The question which often arises is whether an employer could deduct a mandatory contribution from another scheme.

The Regulator is of the opinion that there is no provision in the law preventing the said deduction and that the rules of the scheme allow such deductions. In terms of practicality, the Regulator felt that DB Schemes were already heavy with liability and therefore if they would not be allowed to deduct the NPF contribution, this may lead to significant costs.

When the State Pension was introduced in 1948 in the UK, it was recognised that some employees in the public and private sectors already had occupational pensions. A State Pension paid in addition could provide them with incomes in retirement which would not be far short of retiring salary. Also, where the occupational scheme was contributory, the total contributions required could be quite heavy. Provision was therefore made for occupational pension schemes to take account of the State Pension. One response to this was to enable schemes to take account of the State Pension in their rules.

OUR INSIGHT

Public service schemes included a reduction in pensions at State Pension age to avoid duplication of benefits. These 'national insurance modification' rules were abolished from 1980. Private sector occupational schemes also included such arrangements in their rules, which are sometimes described by the term "pension integration, clawback or bridging pension".

The establishment of an occupational pension scheme by employers is voluntary. For many employers facing the burden of funding a pension scheme on the basis of gross earnings could lead them to decide that the cost of establishing or continuing to operate a pension scheme was too high. Such a decision would deprive employees of any occupational pension scheme to supplement the state provision. Integration may make a scheme affordable. However, with an integrated scheme, pensioners do not lose the pension derived occupational pension clawback from that initial tranche of earnings as this is provided by the state retirement pension.

A campaign to scrap integration was launched as far back as 1998 in the UK. It was argued that clawback is anachronistic and unethical, and trade unions, pensioners' organisations and politicians had been calling for it to be abolished. The argument was that at a time when everyone was being urged to make adequate provision for their retirement, it could not be right for employers to be able to claw back a portion of their retired employees' pensions.

Integrated schemes have been practiced since the introduction of the NPS. We understand that if we were to compel schemes to withdraw this "integration", it would place significant unexpected costs upon employers. At the same time, Rule 17 of the Private Pension Schemes (Technical Funding Requirement) Rules 2013 aims to ensure that DB schemes are fully funded.

We gather that if employers were forced to change their schemes overnight and remove the deduction, many of them might decide that they could no longer afford to provide a scheme at all. In such circumstances, the Regulator has many options under the Private Pension Schemes (Technical Funding Requirement) Rules 2013, which may be summarised as follows:

- (a) consideration of a contingency plan that is aimed at restoring the funds of the scheme to a financially sound condition;
- (b) where it is reasonably necessary in the interests of the beneficiaries, to take such measures as are appropriate, including issuing a direction, appointing a conservator, revoking its licence or authorisation, or applying for the winding up of the scheme;
- (c) consideration of such other course of action acceptable to the Regulator will bring the scheme into compliance with, or prevent it from being in contravention of section 18, 19 or 20, or any FSC Rules relating to technical funding requirement and to technical provisions.

ADDRESSING ISSUES IN BANKING AND NON-BANKING SECTORS

Investor Education and Financial Literacy

As the financial landscape continues to evolve and innovate, investment products are becoming increasingly complex and financial services increasingly diverse. Greater understanding of key financial concepts is required on the part of retail investors to understand and evaluate the choices available to them.

Investor education and financial literacy programs have the potential to help improve financial outcomes for retail investors. Some key benefits include more informed saving and investment decision-making, better financial and retirement planning, greater confidence and higher participation in the securities markets, greater wealth accumulation, and increased awareness of investor rights and responsibilities.

ADDRESSING ISSUES IN BANKING AND NON-BANKING SECTORS (CONT'D)

Investor Education and Financial Literacy (Cont'd)

Ideally, investor education and financial literacy programs can help address any misalignment of investor and industry interests, particularly with respect to information asymmetry. For example, investor education could potentially reduce both the propensity for investors to mis-buy investment products and services, and for intermediaries to mis-sell products and services. This could lead to fewer complaints. In addition, investor education can also help investors better assess the appropriateness and suitability of investment advice, investment products and services. It can also help investors, detect and avoid suspected fraudulent activity, and distinguish between regulated and nonregulated activity, all of which could reduce investor losses.

Education programs will not completely eliminate the need for regulatory intervention in order to achieve desired outcomes for investors. However, the case for providing investor education and financial literacy programs is compelling, particularly when viewed as an additional tool available to regulators in supporting regulation and supervision. For example, investor education programs can complement regulations that enforce conduct standards, require financial institutions to provide clients with appropriate information, strengthen legal protections for consumers or provide for redress. The challenge is to identify and utilise effective methods of delivering investor education and financial literacy materials and messages to investors. Ultimately, improved financial skills and knowledge can lead to increased confidence and trust in the financial services sector, and a greater likelihood that investors will participate in the financial services markets. This, in turn, could benefit capital raising in general and promote greater industry efficiency.

Knowledge and understanding

We have identified low levels of knowledge among consumers about basic financial concepts, such as how interest rates affect investments, inflation, portfolio management, risk diversification, debt structuring and the roles of different players in the industry.

While investors often believe that they are well informed about the features of investment products and services, in practice many are not. For example, investors may not understand the risks of a product in which they have invested, particularly when the investment product is complex, or appreciate the impact of fees on long-term returns.

Retail investors may be unable to assess the suitability of investment products and services for their own unique set of personal circumstances (for example, risk appetite, current financial commitments and goals, investment time horizon). They may also not be aware of product features that could impede their exit from the investment if their circumstances change, for example, due to illness or job loss.

Our data show that retail investors continue to be susceptible to investment scams or frauds, and fictitious trading platforms.

Financial skills and competence

In the saving and investing environment, there is evidence that some people make poor financial decisions due to various biases, for example, inertia, loss aversion, procrastination, perceived lack of knowledge, cultural sensitivities and a variety of environmental stimuli.

Background verification

Retail investors may not understand their rights under their jurisdiction's legal framework, or be aware of the importance of researching intermediaries, products and licenses. Many retail investors are unaware of tools and resources that can help them check the background of a financial services professional.

OUR INSIGHT

Financial planning and management

Some consumers invest all their savings under a particular plan, which may not be a savings plan, but assumes that the returns will be as projected to them, based on actuarial assumptions. Sometimes, consumers may not have the knowledge, experience or access to tools needed to exercise a healthy sense of scepticism or to determine whether the advice they receive is accurate, suitable and appropriate with their goals.

Whenever a financial institution recommends the purchase of a particular financial product, including where the intermediary advises or otherwise exercises investment management discretion, the financial institution/intermediary should be required to take reasonable steps to ensure that recommendations, advice or decisions to trade on behalf of such customer are based upon a reasonable assessment that the structure and risk-reward profile of the financial product is consistent with such customer's experience, knowledge, investment objectives, risk appetite and capacity to absorb losses.

Complex financial products

The retail consumer is not reasonably likely to understand complex structures, terms, features and risks associated with a product.

A classification must be made between retail and non retail consumers. The background, financial position, expertise, knowledge of a customer must be assessed before deciding on the financial advice.

However, the overarching high-level principle to act honestly, fairly and professionally and the general duty of good conduct should apply irrespective of the customer classification.

Before recommending complex financial products to customers, financial institutions should themselves develop a thorough understanding of the features of the relevant product and its complexity and associated risks taking into account, when providing individual portfolio management or advice, the composition of the customer's portfolio.

In particular, in the case of complex financial products, financial institutions should perform their own analysis that considers:

- (a) how the complex financial products are structured and priced;
- (b) the nature and complexity of a product's returns and underlying components;
- (c) the relevant level of risk (with, if appropriate, a separate assessment of counterparty, liquidity and market risks);
- (d) the experience and reputation of the issuers and product providers/manufacturers;
- (e) any fees, charges or any other costs associated with the product;
- (f) relevant termination conditions exit options and associated costs;
- (g) how the product performs under abnormal or extreme conditions; and
- (h) the nature of any guarantees.

Suitability requirements generally aim at ensuring that financial institutions and intermediaries only make suitable recommendations and that customers have the necessary expertise, knowledge and financial capacity to trade in financial instruments and to understand associated risks given their investment objectives. Suitability requirements reflect the general duty to act fairly, honestly, professionally and in accordance with the best interests of the customer.

The regulatory system should require financial institutions to comply with suitability requirements, calibrated to the complexity and riskiness of the product and service and the level of sophistication of the customer.

Disclosure

Most of the issues identified arise from a lack of disclosure of important information from financial institutions. Customers should receive or have access to material information to evaluate the features, costs and risks of the financial products. Any information communicated by financial institutions to their customers should be communicated in a fair, comprehensible and balanced manner.

Regulators should consider requiring a particular form of disclosure where products carry risks that may not be readily apparent to customers, particularly retail customers. In particular, regulators may require the employment of a simplified and user-friendly format summarising the key features of the financial product.

We believe that when an intermediary sells a complex financial product on an unsolicited basis, the regulatory system should provide for adequate means to protect customers from associated risks.

CASE STUDIES

The case studies are based on real complaints investigated by the Office. The names of complainants and financial institutions used are fictitious.

Motor Insurance - Driver under the influence of alcohol

The complainant held a "COMPREHENSIVE, ERA, RIOT, CYCLONE, FLOOD, AIC" cover with IHB Insurance Company Ltd ("IHB"). He met with an accident with Vehicle B, who was insured with Pacific Ocean Assurance Ltd ("POA"). The driver of Vehicle B was under the influence of alcohol during the accident and he was prosecuted and convicted before the District Court.

The complainant's claim was declined by POA on the basis that their insured breached a policy condition.

Our decision

It was noted that the breach of policy conditions, which triggered the exemption clause, was caused by POA's insured and not the complainant. However, the applicability of the exclusion clause to the detriment of the complainant, however unfortunate, is permissible following the judgment of **Bloom Insurance General Ltd v Sky Insurance Co. Ltd & Kory 2016 JSC 333**.

The Road Traffic Act provides that compulsory insurance covers are restricted to death and bodily injury only and not extended to material damage.

Article 1983-92 of the Mauritian Civil Code provides for compulsory third-party insurance in respect of both material damage and bodily injury. Article 1983-92 must be read subject to the Road Traffic Act from which it cannot derogate.

The principal issue in the quoted case was similar to the present matter, which was, whether an Insurance Company is entitled to invoke a breach of the contractual agreement embodied in an Insurance Policy between an Insurer and the Insured in order to avoid liability towards third parties in respect of material damages.

The Supreme Court held that in the light of the applicable provisions of the Road Traffic Act, an insurer cannot be precluded from restricting its liability in an insurance policy with respect to material damages incurred by third parties. The insurer was precluded from avoiding liability only in those situations which are prohibited by law.

We were informed by IHB that legal proceedings against the driver of vehicle B were considered but not pursued due to the financial situation of the latter. IHB also attempted another approach by requesting POA's insured to sign an acknowledgement of debt towards the complainant. However, POA's insured never signed the said document.

The complainant's own insurance cover did not provide for a refund of excess or loss of use. As is the practice, these costs were reimbursed by the party at fault. However, POA was entitled to reject the claim based on the above-mentioned judgment.

The complaint was therefore rejected under section 10 (1)(b) of the Ombudsperson for Financial Services Act.

Bank transfer instructions

The complainant attended Victory Bank with a telegraphic transfer form instruction duly filled and signed by himself, together with supporting invoices and requested the bank to make a telegraphic transfer to a beneficiary, Globex Corporation, for an amount of EUR 25,176.32 to Waverly Bank in United Kingdom.

On the same day, Victory Bank processed the transfer, and a copy of the swift message was provided to the complainant.

According to the complainant, he drew the attention of the bank that the beneficiary's address sent to him by email was different from the address mentioned in the invoice.

The complainant then suspected that he dealt with a third party and not his supplier. He called his supplier to verify if the funds had reached them and learnt that the supplier never received the funds.

The complainant informed the bank that he was victim of a scam, and he reported the matter to the Police. The bank proceeded to recall the funds but was informed by Waverly Bank that there were no funds in their customer's account. The complainant thereafter attempted to engage with Waverly Bank and after several exchanges, Waverly Bank informed him that he should refer to his bank.

Waverly Bank revealed that the beneficiary's name differed from the account number but could not reveal the actual name of the beneficiary due to data protection laws in the UK. On this basis, the complainant felt that Victory Bank defaulted as it should have verified that the account number and the name tallied. He therefore asked for a refund of the amount transferred.

Our decision

The telegraphic transfer application form was duly filled in and signed by the complainant. All details were inserted by the complainant himself. The name of the beneficiary was written as "Globex Corporation" and details of account number, sort code and beneficiary's bank were all provided by the complainant. The issues raised by the complainant are summarised below:

- (a) The funds were transferred to a different beneficiary;
- (b) The bank did not make efforts to retrieve his funds;
- (c) The transaction was processed in another currency (pounds sterling) when he chose Euro in his form.

Despite being suspicious of the differing email accounts, the complainant nevertheless proceeded with the transfer.

As soon as the complainant informed Victory Bank of the scam, Victory Bank proceeded, on the same day, to attempt to recall the funds. The complainant informed the bank of the scam 7 days after the transfer, and it was far too late to recover the funds by then. The scammer had already retrieved all funds from the account. We have seen the swift messages mentioned by the complainant, and they did not contain any information that the transaction was processed in another currency.

There was a common misconception from consumers of financial services that if there was a mistake in the name of a beneficiary, the bank would not process the transaction. We believed that banks should reflect upon this and insert the necessary notes in their transfer forms to properly inform consumers of the fact that a transfer would be processed if the account details, sort code etc. are in order. We did not believe that the complaint was frivolous and made in bad faith since the complainant appears to have held genuine beliefs that the bank shared a responsibility to verify his details.

CASE STUDIES

Based on the above analysis, we found that:

- (a) the complainant had the responsibility to verify details of his transactions correctly;
- (b) the bank made ample efforts to assist the complainant in recovering his funds;
- (c) the funds could not be recovered as the scam was discovered at a later stage when the scammer had already retrieved the funds;
- (d) the matter appears to be of a criminal nature and the relevant authority would be the Police.

The complaint was rejected under section 10(1)(b) of the Ombudsperson for Financial Services Act (the "Act").

Life Insurance Policy

Mr. Jared Vasquez and Mrs. Drea Vasquez subscribed to "Sea Asset-Endowment Assurance with Profit" with SLA for a term of 5 years. The sum assured for Mr. Jared Vasquez was Rs 468,440 and for Mrs. Drea Vasquez was Rs 469,595.

At maturity, the complainants expected to receive the amount which was given as projections to them at the time of subscription.

Our decision

Such types of insurance policies, as described in the policy, entitle the beneficiary to payment of the sum assured upon the occurrence of death or disability and this is irrespective of the amount contributed.

In the case of survival post the policy term and non-occurrence of the events mentioned, or in the case of a surrender, the insured was entitled to the accumulated policy fund, after deduction of relevant charges, as detailed in policy terms and conditions.

It was noted that it was usual for a quotation to contain estimates with an illustration of the estimated bonus rate to the customer. The quotation contained an important note which reads "The above bonus rates are variable and may vary, depending on future company performance."

We did not find any commitment from SLA on minimum and maximum rates and we noted that consumers do not usually make a distinction between an insurance product and a savings account.

The complaint was rejected under section 10(1)(b) of the Ombudsperson for Financial Services Act.

Custodian Services

NovaWave Limited is a company registered in Isle of Man. A complaint against Prime Commercial Bank ("PCB") was lodged by Vertex Trust Company (Isle of Man) Limited ("Vertex"), on behalf of NovaWave Limited. Vertex is the corporate service provider for NovaWave Limited, which is also licensed and regulated in the Isle of Man (the "complainant").

PCB was acting as a Custodian for NovaWave Limited, by virtue of a Custodian Agreement. PCB signed an agreement with Victory Bank SA ("Victory") on 1 November 2016 ("Master Agreement") for the provision of online financial and trading services via internet platform operated by Victory for PCB to provide these services to its clients. In May 2020, in accordance with the Master Agreement, PCB received a Termination Notice ("Notice") from Victory. The Notice required all client custodian accounts to be closed by 30 June 2020 and to transmit transfer instructions to Victory by 15 June 2020. Victory further notified that it would levy an additional weekly fee of USD 5,000 if these deadlines were not met for the closure of the accounts.

Custodian Services (Cont'd)

The complainant averred that on 17 November 2020, PCB informed them that charges amounting to CHF12,500 were being levied with respect to services provided for the third quarter and that they would sell the assets to cover the charges if the funds were not received by 24 November 2020.

As relief, the complainant requested that the transfer of the structured note be effected to the account that they opened with Redwood Private Wealth without charges.

Our decision

The complainant mentioned about “difficulties” in opening a new account, which caused a delay of 7 months in sending transfer instructions to PCB. However, PCB has accommodated requests for postponement to the extent that it could and repeatedly informed the complainant about the consequences of maintaining the account.

The complainant has failed to disclose to us about non-compliance with the request for KYC information. In view of strict legal provisions on anti-money laundering, KYC is the core of any operation in the financial services industry.

PCB acted in accordance with the Custodian Agreement to pay charges to Victory and to then request for a refund from the complainant.

The complaint was rejected under section 10 (1)(b) of the Ombudsperson for Financial Services Act.

Private Pension Scheme

Mrs Cooper, the complainant, was a member of a defined benefit scheme. She had contributed an amount of Rs 69, 503.16 and her accrued benefits amounted to Rs 32, 026. She disagreed with this amount.

Our decision

It was noted that:

- (a) the contributions of the employer completely disappeared and the contributions of the Complainant have been reduced to half the total value of contributions;
- (b) a deduction, in breach of the Rules of the pension fund, was made monthly by the employer;
- (c) the pension fund had technical funding issues in breach of the law.

We found that the pension fund has failed to:

- (a) act in the best interests of the fund on a long term basis;
- (b) ensure that the scheme is in compliance with the law;
- (c) ensure that the scheme is in a financially sound condition at all times;
- (d) act independently of the sponsoring employer; and
- (e) act in the best interests of beneficiaries.

The complaint was upheld. An Award in the amount of Rs 69, 503.16 representing the financial loss incurred by the Complainant was made under section 11 of the Ombudsperson for Financial Services Act.

CASE STUDIES

Medical Insurance

Mrs Mindy Chen (the “complainant”) purchased a travel insurance policy from Sky Insurance Company (Mtius) Ltd (“Sky”) in August 2019, for the period 18 August 2019 to 10 November 2019, to cover a trip to Reunion Island.

On 7 October 2019, the complainant experienced pain, described as “douleur thoratique” and she was urgently admitted to a hospital in Reunion Island.

A medical report from Reunion Hospital provides that the complainant was diagnosed with “*décompensation cardiaque et douleur épigastrique avec signes électriques*”. Cardiology consultation was advised as treatment.

The complainant made a claim of EUR 9,496 to Sky, which was rejected owing to a general exclusion clause for “all pre-existing, congenital and/or chronic medical conditions”.

Our decision

The treating doctor from Reunion Hospital stated that the complainant was on “Eliquis” since September 2019, which is probably in the context of hyperthyroidism and not heart related issues. He was not of the opinion that the medication was related to cardiovascular disease and made it clear that no risk factors relating to cardiovascular disease were found.

It is also worth noting that the complainant was administered with “Eliquis” in September 2019, which is post the subscription to the travel insurance policy, so that she could not have disclosed a condition which did not exist at the time of subscription.

It was clear that Sky was making assumptions based on a real medical report which contains all the facts, medical condition and risk factors.

The complaint was upheld because:

- (a) Sky relied on mere assumptions, without successfully proving that there was a pre-existing condition which was not disclosed. Sky has unreasonably relied on extracts from a third party to establish the existence of medical opinion and failed to provide evidence of their assertions;
- (b) We failed to find a pre-existing condition based on the medical report from Reunion Hospital and in the absence of cogent evidence from Sky;
- (c) We already had a medical report from the treating doctor and from the hospital in which the complainant was actually treated and we therefore could not rely on the opinion of other doctors (opinion which were not laid before us), which have not even seen or be involved in the treatment of the complainant.

An Award in the amount of nine thousand four hundred and ninety-six Euros (EUR 9,496) representing the financial loss incurred by the Complainant was made under section 11 of the Ombudsperson for Financial Services Act.

Fire Insurance

The complainant subscribed to a Fire Insurance Policy which included a burglary cover with New Amys Assurance Co. Ltd for a total sum assured of Rs 3, 259, 500.

On 16 October 2018, the complainant made a claim to New Amys Assurance Co. Ltd in which he reported that the safe from the first floor of his residence was carried away during a burglary. He claimed an amount of Rs 270, 000 for the items which were in the safe.

On 19 October 2018, the complainant reported the burglary to the Police. In his declaration, he stated that jewellery and some foreign currencies were stolen from his electronic safe.

Our decision

Under the policy, burglary is defined as: "theft following an actual forcible and violent entry into or exit from the premises". The Insurance rejected the claim on the bases that there were contradictions between the version given to the Insurance and the one was given to the Police and there was no actual forcible and violent entry.

To determine whether there was actual forcible and violent entry, we had summoned the Police to give information on the inquiry. Two individuals were arrested in the matter and some articles were recovered from them and were returned to the complainant. The two accused parties were prosecuted, fined and sentenced for the offence of "Larceny made by 2 individuals and Possession of Stolen Property."

The police's inquiry in this case revealed an internal breaking. They had in possession an email dated 27 November 2018 from the complainant who stated that the door was not locked. It is therefore clear that there was no forcible or violent entry.

In accordance with Article 1983-1 of the Civil Code, "Le contrat d'assurance est un contrat purement consensuel". The terms and conditions of the policy as well as all definitions contained therein were agreed by both the complainant and the insurer. The complainant made attempts to formulate his own definitions of "forcible or violent" entry, which we cannot consider.

The complaint was rejected under section 10 (1)(b) of the Ombudsperson for Financial Services Act.

ACKNOWLEDGEMENT

The Office of Ombudsperson for Financial Services expresses its appreciation and gratitude to all stakeholders of the Financial Services Sector including all complainants for their understanding and cooperation during our investigations.

The Office fosters a spirit of fairness and integrity and will continue on this path when resolving situations where concerned parties may not be in agreement.





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