

THE Mediator

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LET'S GET BACK TO BASICS ON THE ROAD!

With 103 road fatalities recorded for the first six months of 2009 and counting, it is clear that we need to get back to being disciplined on the road by following the basic rules of driving i.e Obey the Highway Code!

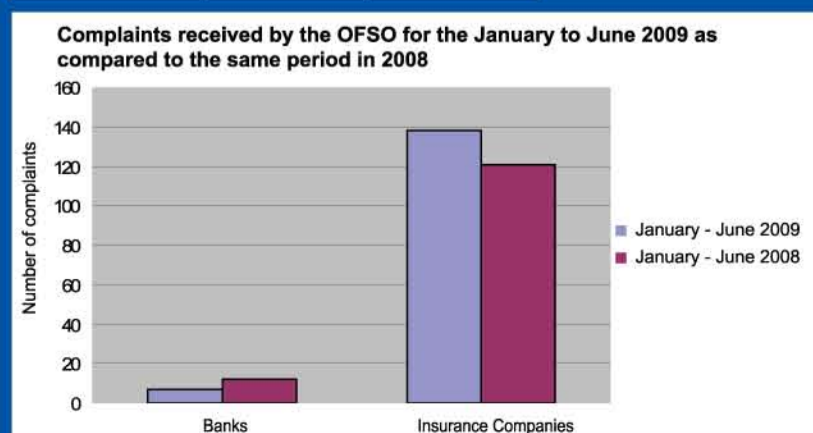
We can all give examples of citizens routinely breaking red lights, overtaking illegally, speeding excessively, driving on the shoulders and driving under the influence of alcohol. These types of reckless behavior are all major contributors to the crashes and carnage currently occurring on our nation's roads.

For the six months of 2009, our Office has seen an increase in complaints against insurance companies when compared with the same period last year. (See graph). We have also noted that complaints relating to accidents occurring at junctions involving major roads and at traffic lights are on the increase. This is indeed unacceptable since it is clear that the basic rules of road safety are being flouted. This issue of The Mediator will therefore remind citizens of some of these basic rules.

Finally, it is important that we ask ourselves who, insurance wise, subsidizes this horrendous accident rate. The answer is the good and accident-free driver. It must be noted that the resultant effect of a high accident rate is an increased level of liability payments to crash victims, which then leads to an increase in the cost of insurance premiums for all drivers.

TIP: A truly good driver is constantly planning ahead and allowing for every conceivable mistake that everyone else on the road might make, too. (Source: DSA – Drive and Stay Alive Inc.)

	Complaints Received	
	Jan-June 2009	Jan-June 2008
Banks	7	12
Insurance Companies	138	121
Total	145	133



PLACES WE HAVE BEEN PEOPLE WE HAVE SEEN...



LEFT: Audience at the OFSO 2009 Annual Meeting.

RIGHT: Governor Williams giving the opening remarks at the OFSO 2009 Annual Meeting.



LEFT: Dr. Anselm London (THA) and Ms. A. Narine (FSO) at the signing ceremony for the OFSO Tobago office, April 2009.

RIGHT: OFSO meeting with representatives of 8 NFIs – new members.



Helpful Hints Corner

Section 15 of The Highway Code states that

- Drivers must keep within the lane markings and cross them only when moving into another lane.
- You should change lanes only when you have given the appropriate signal and it is safe to perform the manoeuvre.
- Slow moving traffic should always keep on the left lane.

Section 27 of The Highway Code states that

- When approaching a junction with a sign marked 'STOP' and a white line at the corner, you are required to slow down gradually and stop before the white line. Proceed only when the major road is clear.

CASE STUDIES



1. Greater duty of care on entering line of traffic:

Mr. A was plying his maxi taxi for hire on the Priority Bus Route (PBR) when his vehicle was struck by a car that moved suddenly into his path from the shoulder of the road. He submitted a third party claim to the other driver's insurance company stating that their insured was responsible and seeking compensation for repairs to his vehicle.

However, his claim was denied by the company because their insured maintained that he was not responsible for the accident. He claimed that he was at a standstill when the complainant collided with him. Mr. A did not accept the company's position and submitted to them a police accident report that was coded against their insured.

However, the company advised that in the determination of liability, it was their policy to consider not only the police coding but the results of their investigations and their insured's statement. Furthermore, they held the view that the complainant could have avoided the

accident had he been more attentive to the traffic to his side and the road condition. Mr. A then sought the assistance of the Financial Services Ombudsman in resolving the matter.

The Ombudsman's office reviewed his case and wrote to the company, indicating that the position taken seemed unreasonable. By denying liability, they were implying that the complainant should anticipate the actions of drivers driving ahead of him and those parked alongside. The Ombudsman held the view that the company's insured was the one who attempted to join the line of moving traffic, and as such had a greater burden of care to ensure that it was safe to do so. Mr. A. was travelling in his proper lane, as he was expected to do, when he was struck on the front left corner of his vehicle by the company's insured. After some negotiations, the company reversed their decision and agreed to settle Mr. A's claim for the full value of his adjusted repairs.

Lesson of the case:

The Highway Code is clear about circumstances such as these as it states that "you should change lanes only when you have given the appropriate signal and it is safe to perform the manoeuvre". The insurance company reversed their decision as their insured was the one who was moving from a parked position into the moving traffic and a greater duty of care lay with him to ensure he could do so safely.

2. Stop and Proceed with caution when entering a major road intersection

Mr. J was proceeding along a major road, on entering the intersection he was hit by an oncoming vehicle travelling from the minor road. Based on the circumstances of the accident, Mr. J made a claim to the other driver's insurance company for reimbursement of his expenses for repairs.

The company was willing to settle only fifty percent (50%) of Mr. J's claim, citing that the accident occurred at an intersection and they determined that both parties were equally responsible for the accident. Mr. J contended that he was driving along the designated major road and the company's insured was responsible for the accident as he totally disregarded the "stop line" painted on the minor roadway, before entering the intersection. Not satisfied with the company's

offer, Mr. J lodged a complaint with the Financial Services Ombudsman to assist in settling his claim.

The Ombudsman's office reviewed the case and pointed out to the insurance company, that while we were willing to accept the premise that the accident could have been avoided if both drivers had exercised more caution, there is no question that their insured was required to exercise far greater caution in this situation and the accident was as a result of his reckless and negligent driving.

After much deliberation, the company agreed to settle the claim on a contributory basis of 80-20 in favor of the complainant. The Office conveyed the company's position to Mr. J, who accepted the offer.

Lesson of the Case:

Drivers travelling along a minor road and desirous of entering onto a major road intersection must obey the Highway Code. This requires the driver to slow down when approaching the intersection and proceed only when the major road is clear. The onus was on the insurance company's insured to proceed with more due care and attention and therefore he was responsible for a greater portion of liability.

Complaints Process

Scope of Services

The OFSO can consider matters relating to a wide range of products and services offered by the banks and insurance companies. Generally, we will investigate issues such as:

Banks

- Deposit Accounts
- Loan Accounts
- Investment Services
- Trust Accounts
- Mutual Funds

Insurance

- Life policies
- Individual Annuity contracts
- Fire and general insurance
- Third Party Property Damage claims to a maximum of \$ 25,000.00, under a Motor Policy

Complaint Guidelines

Before the Ombudsman office can accept a complaint, the following guidelines should be considered:

- The matter must have first been referred to the institution at which the complaint arose and the complainant is still not satisfied with the outcome.
- The subject of your complaint must have first occurred on or after January 1, 2003 in the case of a banking complaint and after January 1, 2004 in the case of an insurance complaint.
- The complaint must not be related to the institution's general risk management policies, general rate of interest offered, or the pricing of products and services, such as premium rates, fees and charges.
- The matter must not currently be or have been before the courts or an arbitration body or any other dispute resolution process.

Making a Complaint

- The complaint must be in writing on the prescribed form. (Forms available at our offices or can be downloaded via our website).
- The form must be signed by the Complainant and the authorized representative, if necessary.
- It must state the names and addresses of both the Complainant and the branch of the bank or insurance company.
- The facts pertaining to the complaint must be supported by any relevant documents. Also, you should include the nature and extent of the loss suffered and the relief being sought from the OFSO.

Resolution of Complaint

The Ombudsman Office will assess your complaint to determine whether it falls within its terms of reference. Thereafter, all attempts are made to settle the dispute by agreement between the two parties, that is, yourself and the financial institution.

If no agreement is reached, then a full investigation is launched into the matter leading to the making of a recommendation or finally to an award by the Ombudsman to settle the matter.

The complainant does not surrender his/her legal rights and is free, at any time, to explore other options for the resolution of his/her complaint including taking legal action. In this case the OFSO will consider the matter closed at that stage.

For Further information, you may contact or visit:

The Office of the Financial Services Ombudsman

located at: First Floor, Central Bank Building, Eric Williams Plaza, Independence Square, Port of Spain
The OFSO Tobago office is located at the THA Conference Facility, Glen Road, Scarborough

Tel: 625-4921 Ext.2685/2681/2675/2650

• Email: info@ofso.org.tt

• Website: www.ofso.org.tt