

THE Mediator

A Publication of the Office of the Financial Services Ombudsman



MESSAGE FROM THE FINANCIAL SERVICES OMBUDSMAN

A DRIVER'S RESPONSIBILITY

In this issue the Office focuses on driving with due care. As presented in our 2012 Annual Report, 99 percent of the reports received in 2012 pertained to motor vehicle accidents. While the Office seeks to mediate on behalf of citizens who have complaints against their insurance companies, we continue to urge our drivers to drive with due care on the road.

As a driver, it is your responsibility to drive safely and be aware of your surroundings; not get distracted by your cell phone or other electronic devices and obey the laws by wearing your seatbelt and acknowledging road signs. It is your duty to be careful on the road so you are not charged with careless driving.

Obey The Highway Code.

DRIVING without due care and attention

Driving without due care and attention is another term for careless driving.

In legal terms: Due care refers to the effort made by an ordinary or reasonable party to avoid harm to another. Where it refers to traffic accidents, care and attention is objective since a driver may be driving prudently and may be confronted by a sudden emergency or make a wrong decision. As such the term covers a variety of instances which include a momentary lapse in attention, or an error in judgement, to deliberate bad or dangerous driving. The circumstances of the offense are considered on a case by case basis where road conditions, weather and traffic are taken into account.

The explanation can be divided into two parts

The first is that the driver **demonstrates a disregard** for the safety of other road users such as passengers, other motorists and pedestrians.

Secondly, standard of driving falls below the level that is expected of a prudent motorist, (that is a driver that is careful and competent).

Careless driving is often punishable by a fine or by the suspension of your license.

Careless driving is a type of moving traffic violation caused by more than momentary inattention and is displayed where the safety of road users is affected, it includes;

- Overtaking on the inside/ or improperly
- Driving too close to another vehicle
- Driving through a red light
- Emerging from a side road into the path of another vehicle
- Hitting a stationary vehicle from behind
- Speeding
- Driving improperly where there is a high level of pedestrians or vehicles e.g. near a school

A charge for careless driving may be appropriate when an accident occurs and there is no evidence of mechanical defect, illness of the driver or any other plausible explanation as to why the accident happened.

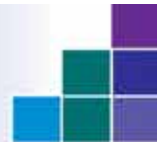
Motorists have been advised to avoid distractions while driving e.g. loud music.

There are other activities which cause a driver to be less responsive to his surroundings; such acts including driving with one hand help to determine if the driver is careless or dangerous. In determining an act of careless driving or driving without due care and attention, it becomes a matter of how that activity affects your ability to drive reasonably and safely on the roads.

Other activities are:

- Carrying out tasks while driving; putting on make-up/ counting money
- Tiredness/fatigue/nodding off
- Reading while driving
- Eating and or drinking while driving
- Talking on a cellphone or texting
- Lighting a cigarette
- Turning on the radio
- Glancing away from the road to respond to a comment from a passenger/friend





INSURANCE CASE STUDY

WHAT A DRIVE !!!

J was driving his brother’s car, one Friday night in the Diego Martin Area. As he approached a corner, another vehicle travelling in the opposite direction allegedly overtook three vehicles around the corner and collided with the vehicle which J was driving. J’s brother, M (owner of the vehicle) made a claim to the other driver’s insurer for compensation for the damages to his vehicle. However, the insurance company advised him that his claim was being denied on the grounds that the Police Report was coded against him and also the contents of their insured’s statement.

M then lodged a complaint against the said insurer with the OFSO. The Office held several discussions with the company but it maintained its position of denial of liability. The OFSO pursued the matter and the complainant was able to provide an independent witness to support his position.

The witness statement was presented to the company and they conducted further interviews with the witness. After a thorough review of the facts, the company was now prepared to accept one hundred percent liability (100%) and settled M’s claim.

In the words of the insurance company, their insured:

- overtook around a corner, when it was not safe to do so
- failed to keep proper look out
- failed to keep on his proper lane
- failed to maintain control over his vehicle

NOTE ON THE REGULATIONS

According to the Motor Vehicle and Road Traffic Act: Section.72, the insured was driving, without due care and attention or without reasonable consideration for other road users.

Further, the M.V.R.T.R. Regulation 38, Rule 5(3); states that persons should not overtake other traffic unless you have a clear and unobstructed view of the road ahead and can overtake and get back to the left before meeting any oncoming traffic.

M.V.R.T.R. Regulation 38, Rule 5(6); also states that drivers should not overtake when rounding a corner, or at an intersection, on the brow of a hill or over a hump back bridge.

TRINIDAD AND TOBAGO TRAFFIC SIGNS – HOW MUCH DO YOU KNOW?

1.		_____	6.		_____
2.		_____	7.		_____
3.		_____	8.		_____
4.		_____	9.		_____
5.		_____	10.		_____

Match the letters below with the correct pictures above

- | | |
|--------------------------|--|
| A. No overtaking | F. No Entry |
| B. Stopping prohibited | G. Parking prohibited |
| C. Dangerous Double Bend | H. Carriageway Narrows (Both sides) |
| D. Two-way Traffic | I. Intersection with a road the users of which have the Right-of-Way |
| E. Pass either Side | J. Right-hand Lane or dual carriageway road closed to traffic |

- | | |
|----------|----------|
| A. = 9. | E. = 8. |
| B. = 5. | D. = 3. |
| C. = 2. | I. = 6. |
| D. = 1. | H. = 7. |
| E. = 10. | G. = 4. |
| F. = 4. | J. = 10. |

PLACES WE HAVE BEEN

Courtesy call on the President



OFSO Ms Suzanne Roach pays a courtesy call on His Excellency Anthony Carmona President of the Republic of Trinidad & Tobago - January 2014

OFSO meets Seafood Industries Development Company Limited



OFSO Presentation at Seafood Industries Development Co. Ltd. - March 2014

OFSO at Divali Nagar



OFSO staff hand out information kits at the Divali Nagar - October - November 2013

OFSO at Blue Food Festival, Tobago



OFSO at Blue Food Festival, L'Anse Fourmi Tobago - October 2013

OFSO at Ramleela Weekend



OFSO at Ramleela festival Palmiste, San Fernando - October 2013



The Office of the Financial Services Ombudsman was set up by the Central Bank in conjunction with Banks and Insurance companies to investigate complaints from individuals and small businesses in respect of services provided by the financial institutions.

The aim of the Office is to render impartial and prompt resolution to complaints that customers have not been able to resolve satisfactorily with their financial institutions.

The Office is not a court of law. The process is relatively informal.

The Ombudsman's decision is based on four basic criteria:

1. Overall fairness and equity
2. General principles of best practice
3. Accepted industry standards and codes of conduct
4. Due regard to the law

The recommendations of the Ombudsman are not binding except when an award is made by the Ombudsman and accepted by the customer.

The customer does not surrender his/her legal rights and is free, at any time, to explore other options for resolution of the complaint including taking the matter to court.

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 \$ 50,000.00, under a Motor Policy

Complaint Guidelines

Before the Ombudsman's 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 are 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's 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

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• Website: www.ofso.org.tt

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