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THE Mediator

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MESSAGE FROM THE FINANCIAL SERVICES OMBUDSMAN

RAINY SEASON - BE PREPARED

With the rainy season upon us, it is time to make sure that we have adequate insurance over our property (house) and other assets (motor vehicle).

A report from the Trinidad and Tobago Meteorological Office dated May 20, 2013, stated that Sunday May 19 heralded the beginning of the 2013 Rainy Season. The report further stated that:

"Preliminary analysis indicates this year's rainy season should be very productive - more so than is usual. With the expected start of the Tropical Atlantic Hurricane Season on 01 June, 2013, this year the season is forecast to be a very active one with the formation of 18 named Storms, 9 Hurricanes and 4 Major Hurricanes (Categories 3 and above). Historically, the averages for named Storms, Hurricanes and Major Hurricanes are 12, 7 and 2 respectively. Therefore, the overall picture weather-wise calls for a prepared public".

Flooding

In Trinidad and Tobago flooding is not a new phenomenon but it has become a perennial problem with flooding occurring in areas not normally prone.

- Flooding is caused mainly by prolonged rainfall (heavy rainfall, intense rainfall)
- Poor Land use
- Urbanization, (where concrete has replaced grass and trees).
- and Quarrying is also partially responsible.

Persons who build on river banks and flood plains, those who construct dwellings close to the coast or inhabit settlements where the drainage system has not been sufficiently improved or maintained to accommodate the increase in population are vulnerable to the increased risk of flooding.



The effects of flooding range from negligible to devastating. Direct effects of flooding include damage to physical infrastructure (buildings, roads and bridges), landslides and injury. In this issue, we refer to property damage as it relates to flooding.

Most policies do not define what is a 'flood'. According to The Reader's Digest Oxford Wordfinder; a) a flood is an overflowing of a large amount of water beyond its normal confines, especially over what is normally dry land; b) the water that overflows.

Therefore for our purposes, a flood does not have to be a sudden and violent event. We generally say that flooding can happen where water enters (or builds up in) a property slowly and steadily – and it does not necessarily have to be caused by the forces of nature. Therefore water escaping from something inside a property could be the cause of a flood just as a river bursting its banks can. (Financial – Ombudsman United Kingdom.)

At the Ombudsman's Office, we mediate where insurance claims have been rejected, in instances where complaints concern disputes over whether flooding was actually the root cause of the damage; as well as complaints that seem to be about flooding but actually concern the quality of repairs that were carried out during renovations or after repairs.



CASE STUDY

The Rains Came Down, and the Floods Came Up

Heavy rainfall caused flooding in the area where Mrs. F resides. As a result, part of the back wall safeguarding Mrs. F's property collapsed and a major part leaned due to the undermining of the wall caused by the flooding. Mrs. F now wanting to ensure that her home was properly secured made a claim to her insurer to repair the wall.

The insurance company, after reviewing her claim, made a settlement offer to Mrs. F which she bluntly refused. Mrs. F, very dissatisfied, attempted to negotiate a better settlement with her insurers but to no avail. She was advised by a friend that she should visit the Financial Services Ombudsman to lodge a complaint against the insurance company.

The Ombudsman's Office reviewed Mrs. F's case and asked the insurance company to provide information pertaining to her complaint. The company's response was received along with the pertinent details surrounding its assessment of the claim. The insurance company advised as follows:

- The estimated cost submitted by the complainant was indeed reasonable based on the company's or its Adjuster's Report.



- Since the property was, however, underinsured, that is, *insured for less than its current market value*; they had to apply the **Average Condition Clause** as per the terms and conditions of the policy contract.
- This policy condition states that "the insured shall be considered as being his own insurer for the difference and shall bear a rateable proportion of the amount of such loss."
- As a consequence, the company was willing to settle the claim for the adjusted figure after the clause was applied.

Based on the information provided by the insurance company the Ombudsman Office was satisfied that the offer being made to the complainant was a fair one. Mrs. F was notified of the company's position and she agreed to accept the offer.

A working example

• Valuation of Property	\$1,000,000
• Insurance on property	\$ 500,000 (½)
• Value uninsured	\$ 500,000 (½)
• Value of claim	\$300,000
• Proportion applicable to Insurance Company	½ of \$300,000=\$150,000
• Proportion applicable to the Insured	½ of \$300,000=\$150,000

* In the event of a claim, the Average Condition Clause applies

** The company will only pay \$150,000 of the claim.



Annually the Office receives complaints from individuals who are distraught after having lost all or most of their belongings and household possessions due to floods or damage from the heavy rains. The main reasons continue to be that of insufficient insurance coverage or no coverage of household contents.

Generally, comprehensive property (house) insurance would cover perils such as flood, fire and earthquake. However, many persons remain unaware that household items such as furniture and fixtures, appliances, electronics, jewellery, paintings, antiques and family heirlooms should be insured separately. Likewise, it is advisable to have your motor vehicle covered for flood damage in addition to fire and theft.

The consequences of under insuring one's property are shown in the following example:

Condition of average (also called **underinsurance** in the U.S., or **principal of average, subject to average, or pro rata condition of average** in Commonwealth countries) is the insurance term used when calculating a payout against a claim where the property owner undervalues the sum insured. In the event of **partial** loss, the amount paid against a claim will be in the same proportion as the value of the underinsurance. The formula used is

$$\text{Payout} = \text{Claim} \times \frac{\text{Sum Insured}}{\text{Current Value}}$$

Payout is the amount paid out by the insurance company; **Claim** is the amount claimed against the policy after a loss; **Sum Insured** is

the maximum amount to be paid out by the policy, and **Current Value** is the valuation of the asset (the amount for which the property should be insured).

Underinsurance occurs when *Sum Insured* is less than *Current Valuation*. *Payout* is pro rata in line with the underinsurance.

Home owner obtained a valuation on property for \$1.2 million but took out insurance for \$800,000. Due to heavy rains the property was severely damaged and the home owner made a claim for \$300,000 representing \$240,000 for the house and \$60,000 in furniture and fixtures, appliances and electronics. The insurance company ruled that the home owner was only due \$160,000 based on the Average Clause stipulated in the policy contract. The claim for \$60,000 was denied because contents were not covered under the policy.

Payout = Claim x $\frac{\text{Sum Insured}}{\text{Current Value}}$	Payout = \$240,000 x $\frac{\$800,000}{\$1,200,000}$	Payout = \$160,000
Valuation		

Insurance is an integral, often overlooked, cornerstone of our lives that enables all of us to manage risk and is an asset which we must leverage to the maximum extent in order to mitigate against risk.

Property insurance provides protection against risks such as theft, fire, earthquake, hurricane and floods. Let us now take a look at a case in point that should serve as a lesson to all of us.

CASE STUDY

Collapse of Retaining wall caused by Flooding

Mr. C put in a claim to his insurer when a retaining wall in his garden collapsed after heavy rainfall that he said amounted to a 'flood'. His garden was on sloping ground and the wall, which was over 100 years old, had been holding back earth between the garden and the patio next to his house.

The loss adjuster appointed by the insurer inspected the damage and reported that it could not be attributable to an 'insured event'. Instead, the loss adjuster said the main cause of the damage was gradual deterioration over a long period of time. As this was not covered under the policy, the insurer refused to pay the claim.

Mr. C complained about this. He said he was sure the damage was covered – and that if the insurer would not meet the claim under the 'storm and flood' section of the policy, then it should do so under the section that covered 'landslip'.

The insurer disagreed. The policy stated that a claim for landslip could only succeed in these particular circumstances if Mr. C's house or garage had been affected at the same time. This had not happened and the insurer re-stated its view that the cause of the damage was gradual deterioration over a long period of time, something that was not covered by the policy. Mr. C then referred his complaint to us.

Complaint not upheld

Typically, for a flood claim to succeed, there would need to have been an accumulation of water, even if it had built up gradually. In this case there was no evidence of any build-up of water behind the retaining wall.

The loss adjuster had established that the wall incorporated 'weep holes' for drainage. So to 'flood' the soil, the amount of rainfall would have had to be very substantial in order to overwhelm the weep holes and accumulate behind the wall. We checked the local weather records for the day of the incident and concluded that there had not been sufficient rainfall to have caused this type of flooding in this location.

We also looked at whether the damage might reasonably be attributed to a 'storm'. There was no dispute that there had been some heavy rainfall in the period leading up to the damage. However, there was no evidence of the high winds normally associated with storm conditions. And we thought it unlikely, in any event, that a storm could have been sufficient, on its own, to cause the wall to collapse.

We confirmed that the policy conditions excluded damage to the wall caused by landslip in the absence of damage to the house or garden.

We explained to Mr. C why we did not think the insurer had acted unfairly or unreasonably. We did not uphold the complaint.

Tips on Flooding (Property)

To Prepare for a Flood

- Know the difference between a flood watch and a flood warning.
- Have a personal flood plan that includes: knowing where to go, knowing what to move in terms of furniture, garden pots and plants and pets.
- Store water in jugs, bottles and bathtubs.
- Place valuables at the highest level of your house in plastic bags.
- Know who you can offer to help (vulnerable neighbours or relatives)/ and who you can ask for help (ODPM, Fire Services).
- Check your insurance cover as it relates to a) coverage for flooding b) your building and contents policy c) the limits to the policy as regards repairs.
- Prepare a flood kit to include torchlight, batteries, first aid kit, radio, non perishable items, medication, useful telephone numbers.
- Turn off electricity and water mains.

To make a claim for flood damage

- Immediately after a flood, although your premises may seem safe, enter cautiously; use a flashlight, do not turn anything on unless instructed by a professional.
- Contact your agent to report your loss.
- Separate damaged from undamaged property (do not throw anything away before the Adjuster has seen it unless you have to. Take photographs of the item before disposal, (keep samples (carpet) for the Adjuster to see).
- List damaged contents: quantity, description, brand name, cost and model. Provide a detailed estimate of your loss. Attach all the relevant documents (bills and receipts).
- List all the structural damage: once the Adjuster visits, point out all the damage that you notice. *(FYI, the Adjuster cannot approve your claim or tell you when it will be approved).*

Motor vehicles

The public is advised to take the necessary steps to ensure that their motor vehicles are adequately insured, it is advisable to have your motor vehicle covered for flood damage as well as fire and theft. A flood can easily total a car and the only way to get your insurance to pay for the repairs or your total loss is to carry comprehensive coverage on your policy.

Drivers, if you must be on the roads during adverse weather conditions, there are necessary precautions that should be observed while driving:

- Driving at a reduced speed to avoid sliding and skidding.
- Using headlights to help with visibility.
- Not tailgating to avoid collisions.
- Leaving for your destination earlier in case of detours and adverse road conditions that may cause you to pull over until the situation is controlled.

We advise that you *consider personal safety above your possessions*, if a flood warning has been issued in your area, you should move your vehicle to avoid any type of damage.

- Never attempt to drive through flood water. Besides the fact that you won't be able to see the objects lying below the waterline, the water could cause the engine to stall, marooning you in your vehicle. This is highly dangerous in moving water.



- If your vehicle is submerged in flood water either on the street or in the garage at home, Do not attempt to start it, water may have entered the engine and starting the engine may cause severe damage. Take steps to extract the water if you can and allow the vehicle to dry out. *Seek professional advice.* Do not try to dry the vehicle on your own. *(A flooded vehicle is not automatically a write-off. It depends on how much water got into the engine. Sometimes a vehicle will dry out without any lasting damage).*
- If your vehicle has to be towed or the unit requires temporary repairs; save all the receipts and make all the necessary steps to protect the unit from further damage. Seek professional advice.



The Claims Process

Time is of the essence with regard to flood damage claim, call the company immediately.

However, while waiting on the Claims Adjuster to visit, you should inspect the car and assess the flood damage.

Check the oil indicator. If the reading is high, there is water in the engine.

If possible, measure the depth of water that submerged the car. It is possible that water did not enter all the parts of the vehicle that are susceptible to damage. It is important to note what type of water the car was submerged in as salt water is more corrosive to car parts than fresh water.

Determine how long the car was submerged, the shorter the time the less the damage.

Look for obvious signs of damage; dried mud or rust in the glove compartment, the trunk, under the dashboard,

under the seats and the carpet. Also, capture any sediment that may be stuck in the bumper or the grill. Take as many pictures as possible from as many angles as possible.

- Although you have done a preliminary assessment, if possible, have a mechanic inspect your vehicle and provide you with a detailed damage estimate. (Request a total estimated repair cost as well as the estimated cost of each part to be repaired).
- Be present when the claims adjuster arrives to answer any questions that may arise when they inspect the vehicle and the estimate.
- After all, if your claim is rejected by the insurance company and after internal review, you may seek the services of the Financial Services Ombudsman.



FSO

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Places We have been

The OFSO continued its Outreach programme in 2013.



Financial Services Ombudsman and staff (Lester Paul, Karen Thompson-Morris, Helen Houlder, Deborah Jean Esdelle and Suzanne Roach) at the Brazil Village Community Centre.

In March and in conjunction with the Division of Ageing, (Ministry of the People and Social Development), the Office of the Financial Services Ombudsman made a presentation at the Community Centre in Brazil.



Members of the Carapo Progressive Women's Group.



In May at the invitation of the Carapo Progressive Women's Group, a visit and presentation was made at the Community Centre.



Places We have been continued.

In 2013, the Office of the Financial Services Ombudsman celebrates ten (10) years since its establishment in 2003.

The Annual Breakfast Meeting which was held on Friday April 26, 2013 at the Central Bank Auditorium formed part of the commemoration of this milestone. The theme of the meeting 'Promoting Responsible Consumer Behaviour and Consumer Protection' set the tone for Outreach sessions and customer relationships for 2013.



Governor of the Central Bank of Trinidad and Tobago, Mr. Jwala Rambarran, Financial Services Ombudsman, Ms. Suzanne Roach and Mr. Douglas Melville; Ombudsman and Chief Executive Officer of the Ombudsman for Banking Services and Investments, Canada. Guest Speaker at the OFSO Annual Breakfast Meeting.



Guests at the Annual Breakfast Meeting.



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

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

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