

Speech of the Ombudsman for Long-term Insurance on opening the LOA's Annual General Meeting : 18 November 2005

1. When Gerhard Joubert asked me to say something, anything, I thought I would have to deliver myself of a few pleasantries in order to compensate for an otherwise free lunch.

Little did I realise, having regard to a recent press release issued by the Ministry of Finance, that I was required to open proceedings by saying a prayer for the LOA.

At any rate, judging from the attendance here today, I am relieved to see that the membership of the LOA is still relatively intact.

2. There can be little doubt that the industry is under siege at the moment. And because the LOA is the industry's voice, and dared to speak in its defence, it too has been vilified. And because the office of the Ombudsman is perceived to be in the same camp, we too have been drawn into the fray – firstly, by the PFA (who had something to say about our rules); secondly, by the media; and thirdly, so it would appear, by the authorities – and all because we supposedly lack the jurisdiction to deal with cost cases, which in fact is not the case.
3. The idea that there is some sort of link or tie-up between the LOA and our office is of course a misconception. There are those who seem to believe that the office is a branch of the LOA. That is not so. Both institutions are admittedly creations of the industry, creatures in the best sense, and as such, I suppose, branches of the same tree. Now, if you pronounce "LOA" you get "lower" and so I am happy to say that the LOA is the lower branch.
4. The one thing we do have in common is a more or less common membership, being by far the majority of registered insurers. But the LOA is *a part* of the industry, whereas the office stands *apart* from it. We jealously maintain our independence from it, and the industry has consistently recognised that independence.
5. Whereas the LOA is concerned with every aspect of the industry, its functioning, its reputation, its shareholders and its policyholders, the office is concerned with only one single aspect thereof: the resolution of complaints lodged against insurers, mainly by policyholders.
6. Even though our functions differ, the two institutions do co-operate. Our office interacts with insurers on two fronts: *firstly*, through the Committee, consisting of representatives of our subscribing members, which meets twice yearly. (Gerhard Joubert is a much valued member of that Committee.) The Committee advises our Council, which is our final decision-making and governing body. Secondly, we interact with the industry through the LOA.

7. We and the LOA meet regularly to discuss common concerns and, as an office, we frequently draw on the expertise of the LOA and its various technical sub-committees whenever we need a broader view. So, for example, the office has recently completed a detailed study on funeral insurance, entitled "*Funeral Insurance: A perception from the office of the Ombudsman for Long-term Insurance*". We submitted the draft of that study to the LOA for the expert input of its technical sub-committee, before the study will be circulated and published.
8. In paragraph 1.2 of that study we said:

"The Office of the Ombudsman for Long-term Insurance does not enjoy the benefit of a wide-angled overview over the entire long-term insurance industry. By its terms of reference it is concerned not with industry pathology but with individual dissatisfactions with registered insurers who are subscribing members to its scheme. As such the office is not a microcosm of the entire industry. Roughly 15% of complaints received by the office involves some or other aspect of funeral insurance. It is from that narrow and tapered perspective that this section of the industry is viewed by our office....."
9. And what is true for funeral insurance in particular, is true for the industry as a whole. We are not, as Ombudsmen, knowledgeable about the entire industry. And even though we receive more than 8000 complaints per year, that will only be a fraction of the total number of complaints raised against the industry as a whole. Hence I am not really equipped to pontificate about the industry and when I do venture to do so, like today, I speak as an outsider looking in and not as an insider being introspective.
10. And that brings me to the point I mentioned at the outset – the bad odour in which the industry finds itself at present which was precipitated by the recent flood of determinations of the PFA.
11. I am not going to say anything about the rightness or wrongness of those determinations. No doubt, if some of these matters had come before our office (as would have been the case before the advent of section 13 (2) of the FSOS Act), there would have been differences in approach, in style and perhaps even in the outcome of some of those determinations. Perhaps statutory ombudsmen feel less constraint than ombudsmen of voluntary schemes to adhere to the classic tradition of ombudsmen – to mediate, to conciliate, before you adjudicate. Be that as it may, many of these determinations are on appeal and we will all hopefully gain greater clarity and guidance from the pending appeal judgments than we derived from the rather disappointing one in the recent de Beer case – disappointing not necessarily for its outcome, but for its lack of clear principle which can be extended to contiguous cases.
12. But that is not really the point I wish to make. The real concern, for present purposes, is not so much the outcome of the PFA's determinations, serious as they may be for the industry, but the almost

universal condemnation of the long-term insurance industry which erupted as a result thereof – from the media, from the public and, most disturbingly, from the authorities. It is almost as if the PFA articulated a simmering disenchantment, even a resentment, against the industry. We also experience this in the complaints lodged with us. Why is that so? Where are the industry's champions? Why is the industry viciously castigated for even trying to defend itself?

13. When I served as a judge in the Natal Provincial Division my last Judge-President enjoyed a fearsome reputation as one of the old-style, rude, uncompromising, no-nonsense, tough-as-nails judges. And when I say "enjoy" he did enjoy it. He was feared but also admired. An argument for compassion got counsel nothing but a snort – en trané. At a bar dinner a long suffering advocate, tasked to propose a toast to him, said, in words to this effect: *Beneath that severe, unsmiling, uncompromising exterior, that gruff voice, that piercing look - beats a heart of stone!* Now, one thing you can say about insurers and their marketing material: they convey an impression of help and assistance, of the milk of human kindness flowing freely toward all mankind, especially potential policyholders. But I rather suspect, judging by the stories we get, that beneath that benevolent façade, also beats a heart of stone.
14. We fully appreciate that insurers are not charitable institutions; and that of necessity they are large-scale businesses that have their shareholders' financial interests at heart. Nevertheless there are two main points worth making, two impressions we have.
15. The one is based on the impression of complainants, no doubt fanned by what they read in the press, that companies are *generous* to a fault when it comes to advertising, sponsorships and generating new business, *profligate* when it comes to their own top executives, but *miserly* when it comes to their policyholders. And that the interests of shareholders and perhaps intermediaries will generally weigh more heavily than the interests of policyholders.
16. Time and again we hear the refrain - and if we hear it so often how it must ring in your ears – "My father entrusted all his money to this company; he advised me to do the same; I did so; and look what happened now." Disillusion is doubled when the realisation finally sinks in that the childlike faith reposed in the institution will not be rewarded and was misplaced. I appreciate that one cannot translate sentiment into rand and cent. But at least acknowledge it. And if you cannot somehow compensate, placate!
17. A loyal policyholder remains your most valuable asset. Loyalty cannot be bought. To retain loyalty is worth the effort and expense. Once the loyal customer has flown you will never win him back and he becomes your enemy. His disillusionment may well infect other potential customers. It is like a faithful old wife. She may be trouble and high maintenance but she is still cheaper to keep than replace. Did I say wife? I mean car.

18. The other impression is based on our own experience – that some insurers are less prepared than others to negotiate; that some are more inclined to fight for their rights at all costs, even though a case cries out for some concession. It is true that we possess an equity jurisdiction which we could impose in all cases if we wanted to, but we exercise it sparingly. It is a licence and like any licence it will lose its validity if it is abused. Many insurers, in our experience, do help when in all conscience they can. Those we commend. We do so when we thank them, and we do so now. They know who they are. We do sometimes, when there is cause to do so but all else fails, appeal to the goodwill or the business sense of our subscribing members to make ex gratia payments and many do respond. A concern is sometimes expressed that an ex gratia payment may create a precedent and be used against an insurer in future cases. That fear is unjustified. An ex gratia payment is an ad hoc once-off event. Some insurers try to help. Others, in principle, won't. To them we would say: there is no profit at all in scoring points and in fighting otherwise deserving claims to the bitter end. A bitter taste leaves a bitter trace. Word of mouth is small-scale and slow- combustion advertising but in the long run it is the most effective form of advertising because it is genuine. Good word of mouth is lip service at its very best; bad word of mouth is halitosis. It alienates.
19. The short message is: look after your policyholders. They are your true priorities.
20. There you have it. I started off praying for you and I ended up preaching at you. May you have a productive meeting. You have a tough year ahead of you. And now, to preserve my much vaunted independence and to show that I do not consort with the likes of you lot, I shall take my leave.

PMN
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