

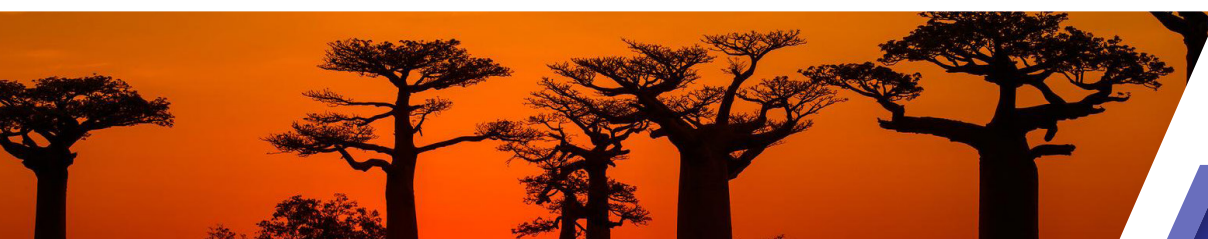


Introduction:

The end of the third quarter of 2017 sees the 17th edition of Under the Baobab Tree, the newsletter of the Office of the FAIS Ombud. The case studies in this edition of the newsletter focus on various areas within the financial planning environment. The first case study deals with the important difference between 'Business use' and 'Private use' with regards to motor vehicle insurance. The second case study looks at assistance policies and the waiting periods that apply to policies such as funeral policies, where no underwriting is conducted prior to the issuing of the policy by the insurer. The importance of appropriate advice underlines case study number three which looks at the tax treatment of retrenchment and severance benefits. The fourth and final case study once again involves

a short term insurance matter, more specifically the perils of not making sure that your household contents are insured for their replacement value which can lead to any future claim being reduced by the principle of average.

Whilst all these case studies differ significantly, the common theme throughout is the requirement that a financial services provider must ensure that he or she obtains all relevant and available information from the prospective client so that any recommendation made is appropriate to the clients specific needs and circumstances, and that all material information is disclosed to the client to enable the client to make an informed decision.



Case Study 1: Business Use vs Private Use

The premium one pays an insurer in return for the benefits provided by a short term insurance policy is worked out according to one's individual risk profile. An example of how a risk profile is determined, for instance when insuring a motor vehicle, would see an insurance provider consider factors such as your age, gender and driving record; the value of the car; where the car is parked and the security measures utilised. The greater your risk profile, the higher your premium. One such factor involves the specific purpose for which the vehicle is used, either private or business use. 'Private or Social use' covers driving between your home and regular place of work. 'Business use' is where the vehicle forms an essential part of the performance of ones work and can also include private use. If you utilise your vehicle for business purposes, it will be on the road more often than if you only use it for private purposes; this increases the chance of it being stolen or involved in an accident. The premium 'Business use' is therefore higher compared to the same vehicle being used only for 'Private use'. If you insure your vehicle for the incorrect use your premium will be incorrect and you will not have cover in the event of a claim.

T vs A

The Facts:

The complainant had vehicle insurance policy with the respondent, the said policy having incepted during January 2016. On the 21 September 2017 the complainant was involved in an accident while he was driving back from a work meeting in his motor vehicle. He lodged a claim with the respondent and the claim was rejected on the basis that he had been using the car for business purposes. During the initial telephonic conversation with the respondent's representative, the complainant confirms having been asked what he would be using the car for, and the complainant had answered that it was for personal use. The complainant had also sought further clarification on the meaning of 'Business use' to which the respondent's representative had provided the following explanation: "...it is to use the car for running of a business". The complainant confirmed that he would not fall under this category as he does not have a business; he explained that he was employed as a superintendent for a company and was office bound. On the day of the accident however, the complainant had attended a work meeting, something that was such a rare occurrence that he did not regard it as a business trip as defined by the respondent's representative.

The complainant approached this Office looking for the claim to be settled by the respondent, as the vehicle, valued at R81 000 had been written off.

FAIS Ombud's Intervention:

Upon receipt of the complaint this Office directed the matter to the respondent, requesting that it show compliance with Section

7 (1) (c) (vii) of the General Code of Conduct for Authorised Financial Services Providers and Representatives ('the Code'). This section of the Code specifically requires that a financial services provider provide concise details of any material terms of the contract, including any exclusions or instances in which cover will not be provided. It was evident from the recording provided of the initial interaction between the complainant and the respondent's representative that the complainant had not been correctly advised with regards to the scope of 'Business use'. The complainant was therefore unable to have made an informed decision. This Office was also of the view that the complainant had been treated unfairly. The respondent should have obtain all relevant and available information to ensure that not only is the recommendation appropriate to the needs and circumstances of the client, but also directs the financial services provider to make all material disclosures which would enable the client to make an informed decision, a key requirement of the Code.

The respondent, upon receipt of the correspondence from this Office, revised its decision and decided to honour the claim in full, inclusive of salvage. An amount of R92 350 was paid in full and final settlement.



Lessons learnt

1. When insuring a motor vehicle make sure that the financial services provider explains in detail the manner in which the insurer defines and interprets the term 'Business use'. This will allow one to evaluate one's personal circumstances and to make the correct disclosure in this regard.
2. It is also vital that one makes honest disclosures on what the vehicle will be used for, as this has a direct bearing on the premium that the insurer will quote. If you are paying the incorrect premium then you will not be covered in the event of a claim.





Case Study 2: Waiting Periods

Assistance policies, such as funeral policies, do not require medical examinations at the inception of the policy. There is thus no way to determine the risk posed by the prospective client, and so there is a need for the providers of such policies to protect themselves from anti-selection. This is a term that refers to individuals who apply for assurance benefits with the intent of claiming. In other words they know full well that they are unwell, and apply for assurance benefits in an attempt to profit from their specific situation. It is for this reason that the providers of funeral policies will insist on a waiting period of between 3 to 6 months, and in some cases 12 months, during which the life assured is not covered in the event of death as a result of natural causes. Accidental death as a result of murder, car accidents and most other accidental deaths are, however, paid out immediately during this period. The most important aspect of waiting periods is that whilst they begin upon the payment of the initial premium, which is the inception of the policy, they are not determined by the number of premiums paid, but are dependent on the life assured being a member for a specific number of calendar months.

D v L:

The Facts:

The complainant, who was the aunt of the deceased and the beneficiary noted on the policy, claimed that the deceased had successfully applied for two funeral cover policies with the respondent during April 2017. The benefits provided by the two policies had been R30 000.00 and R50 000 respectively. On 14 May 2017, the deceased had been shot and killed during a house robbery; the subsequent claim lodged with the insurer had been rejected due to the deceased having passed away during the initial 6 month waiting period. Whilst the complainant argued that the deceased's passing was accidental, the rejection letter provided by the respondent claimed that its definition of an accidental death, is: "a sudden, unforeseen and unexpected event which is unintended". It went on to claim

that the findings of the SAPS had determined that the cause of death was due to murder, which was not an unintended event, and as the policy is still within the initial 6 month waiting period no benefits would be payable.

The complainant does not recall ever having been informed of the restrictions applicable to this policy, and felt that she was being treated unfairly. She therefore approached this Office for assistance.

FAIS Ombud's Intervention:

The definition of a complaint in Section 1 of the Financial Advisory and Intermediary Services Act No.37 of 2002, ("the FAIS Act") includes instances in which the complainant has been treated unfairly. This Office therefore directed correspondence to the respondent where it was put to the respondent that the essence of a waiting period was to prevent the life assured or the beneficiaries of the policy from benefiting from anti-selection, and that murder, whilst not specifically accidental, was nevertheless unnatural. The complainant, as the beneficiary of the policy, cannot be seen to have benefited unfairly from this policy, and this Office requested that the respondent reconsider its stance with regards to the settlement of the claims lodged against the two policies, or to provide this Office with reasons as to why it believed that its rejection of the claim was fair and reasonable.

The respondent replied to this Office's initial correspondence by providing proof of payment in the amounts of R50 000 and R30 000 in full and final settlement of the complaint raised by the complainant.

Lessons learnt

1. Assistance policies such a funeral policies which do not require any medical examinations or underwriting at the inception of the policy will always include a waiting period in respect of death as a result of natural causes. It is however important that you acquaint yourself with the duration of the waiting period, as the industry standard may be between 3 and 6 months, but there are policies who require waiting periods as long as 12 months.
2. It is important to note that should one want to insure extended family members on a funeral policy, the waiting period for individuals over the age of 65 and extended family members in general, may be longer than the waiting period applied to the main life assured and his or her immediate family.
3. The clients of such policies must also ensure that they familiarise themselves with the policy's terms and conditions, as instances where premiums are missed or where policies are reinstated after having lapsed, will see the reintroduction of the original waiting period, regardless of how long one has had the policy.



Case Study 3: Retrenchment and Severance Benefits

In the event of retrenchment, the retrenchment benefit which refers to the withdrawal from the employer's retirement fund, is taxed as if the benefits were payable upon retirement and in accordance with that, the first R500 000 is free of tax, with any further amounts taxed according to a sliding scale. It is important to note that the R500 000 tax free amount is not per withdrawal, but cumulative over the life of the individual and inclusive of any previous retirement fund withdrawals made. It is therefore vital that upon retrenchment one is provided with the correct advice, as should one also receive a severance package, it too is taxed as a retirement fund lump sum, which would have an impact on the R500 000 tax free amount. Furthermore when you transfer a retrenchment benefit to a preservation fund, it loses its "identity" as a retrenchment benefit, and even though you will be entitled to make one full or partial withdrawal from the preservation fund, before retirement (earliest age 55), the withdrawal will be taxed as a normal withdrawal in accordance with the withdrawal lump sum tax table, where only the first R25 000 is tax free, and any amount thereafter will be taxed at a sliding scale beginning with 18% for the first R660 000.



K v A:

The Facts:

The complainant, who was 47 years old at the time, had been retrenched during March 2015 from Phillips where he had been employed for 15 years. The complainant had been a member of the employer's provident fund which provided him with a retrenchment benefit of R1 373 12 together with a severance package of R350 000. The complainant states that at retrenchment, the respondent had advised him to make a withdrawal from the provident fund to settle his debts as the funds were going to be transferred into a provident preservation fund administered by the respondent. Prior to the transfer and in

accordance with prevailing legislation, the complainant had withdrawn an amount of R200 000 from the provident fund to pay off an existing loan and other debts. The complainant states that on 15 December 2016, he had approached the respondent and requested a further withdrawal of R400 000 net of tax, from the provident preservation fund. The complainant had been under the impression that an amount of R90 000 would be deducted for tax in accordance with the retirement lump sum tax-tables. The complainant was however aggrieved to discover that as a result of the funds having been placed into a preservation funds, the transaction was now deemed to be a withdrawal from the fund, and as a result he had been taxed accordingly. This meant that instead of receiving just over R400 000 from the R500 000 withdrawal he received only R349 274.94, a difference of R61 108.54.

After numerous attempts to resolve the matter with the respondent failed to bring about a resolution, the complainant approached this Office for assistance.

FAIS Ombud's Intervention:

Section 7 (1) (a) of the Code provides that the disclosure of all material information must be made to ensure that that the client is placed in a position to make an informed decision. Furthermore section 8 (1) (c) of the Code requires that any recommendation made is appropriate to the needs and circumstances of the client, in this case the complainant. In this instance the respondent's representative ought to have been aware of the tax implications of transferring the complainant's funds to a preservation fund, and should have adequately advised complainant so that the best decision could have been made regarding his circumstances. When this was put to the respondent, a decision was made to resolve the matter in full and final settlement of the complaint, and an offer was presented to the complainant for the full R61 108, 54 as requested, an offer that was ultimately accepted.

Lessons learnt

1. Retrenchment benefits are not taxed in the same way as a withdrawal upon resignation or dismissal. The retrenchment benefit is actually treated the same as if the member has retired from the fund, unless the funds are transferred to a preservation where after the funds will forthwith be treated as withdrawal benefits. It is therefore vital to get the correct advice to ensure that any decision made best serves ones circumstances.
2. Any decision one makes with regards to retirement funds during one's lifetime with regards to withdrawals prior to retirement are cumulative in nature and will have an impact on the tax free benefit at retirement.
3. Decisions taken with regards to retirement benefits either prior to or at retirement can be absolute and the consequences can be far reaching. The benefits of appropriate a suitable advice cannot be understated.

Case Study 4: Under Insurance

The replacement value of an item is what it would cost you, at the time of a claim, to replace it with a similar or brand new item. Furthermore, with regards to household contents insurance, you, as the insured, are not allowed to select the items that you want to insure and are required to provide the insurer with a value for the replacement of all the items in your possession. In the event that you submit a claim in terms of the household contents benefit, your insurer will calculate the replacement value of all your items and if it is found that you insured your belongings for less than what you ought to have insured them for, you will be underinsured. Under insurance occurs therefore when there is a shortfall between the amount of cover selected and the actual replacement value of what is being insured; therefore the insured must bear a rateable proportion of the loss. The portion of the claim that you as the insured will be liable for, is determined through the application of the principle of average and the following calculation (Sum Insured / Value at Risk) x Amount of Loss, which will be used to reduce the settlement value of the claim ultimately paid to you.

DG vs L:

The Facts:

During January 2017, the complainants had requested their broker to specify the following items on the policy:

- Television Cabinet R 15 000
- Brush cutter R 3 500
- Lawn mower R3000
- Hives and equipment R R15 000
- Carport R120 000

Subsequent to this instruction and during June 2017 the complainants' main house was consumed by the fires which broke out in the Knysna region. A claim was duly submitted on 12 June 2017 to the insurer. The complainant was however informed that the items listed above had never been listed or specified on the policy and as a result the complainant was under-insured.

The complainants approached this office as they wanted to make sure that the respondent settled the outstanding amount of the claim, which totalled R165 500 in respect of the specified items which it had failed to include on the policy.

FAIS Ombud's Intervention:

Section 3 (1) (d) of the Code requires that the financial service be actioned in accordance with the reasonable requests and or instructions of the client. There was sufficient documentation to support the complainant's claims that the respondent had been timeously notified of the need to provide for the additional items on the policy, and that the respondent had failed to action the request in accordance with the provisions of the above mentioned section of the Code.

This Office directed communication to the respondent in compliance with Rule 6(b) of the Rules on the Proceedings of this Office, and requested that respondent provide this Office with cogent reasons why, in the face of such overwhelming evidence, it had to date failed to resolve the matter with the complainant. In its response the respondent proposed to settle the matter in full with the complainant and an amount of R165 500 was paid to complainant.

claim. The complainant accepted the offer.

Lessons learnt

1. The aim of short term insurance cover is to restore you to the position you were prior to the event of a loss. It is for this reason that your items must be insured for their replacement value.
2. Furthermore, it is important that the value of your household contents cover reflects the replacement value for all the items in your possession. These items include everything that you will take with you should you move - from the cutlery in the kitchen to the items in your wardrobe.



FAIS Ombud Graduate Trainee Program

The FAIS Ombud Graduate Trainee Programme was established in December 2010 with the aim of grooming promising law graduates from previously disadvantaged communities and institutions through mentorship and training for a period of 12 months. Candidates are selected from various law schools and as a requirement, must be in the process of completing their Practical Legal studies. The programme has since launched the careers of 46 Graduate Trainees and continues to afford selected law graduates the opportunity to kick-start their careers in a high performing professional environment while gaining exposure to various legal aspects in financial services. The programme continues to mature, and the growth in the number of graduates joining our organisation every year signifies the development of the programme as well as the confidence of the FAIS Ombud in the benefits accrued by each graduate at the end of the 12-month period.

The training covers topics such as investments, financial services legislation and retirement planning as well as soft skills, all assisting graduates to be successful in their future endeavours. We are confident that the programme contributes to the wider economic development of South Africa.

During September 2017 this Office began with the recruitment drive for the January 2018 Graduate Trainee intake. This recruitment drive took the Office to various law schools around the country which included Durban, East London, Polokwane and Cape Town.



Candidates in Polokwane completing the written assessment



East London Law School



Determinations:

In terms of Section 28 of the Financial Advisory and Intermediary Services Act, where a matter has not been settled or the FAIS Ombud's recommendation not accepted by the parties, the FAIS Ombud will make a final determination which may include –

- the dismissal of the complaint; or
- the upholding of the complaint wholly or partially, e.g. by awarding the complainant an amount as fair compensation for the financial prejudice or damage suffered.

The FAIS Ombud's determination is equivalent to a civil judgement of a court.

Determinations issued by this Office provide valuable insight into the manner in which this Office interprets the provisions of the FAIS Act and its corresponding General Code of Conduct for Authorised Financial Services Providers and Representatives.

Below is a table of all determinations issued during the quarter July 2017 to September 2017.

<i>Year</i>	<i>Product</i>	<i>Complainant</i>	<i>Respondent</i>	<i>Date issued</i>
2017/18	Investments	REMO EHLERS	ABE GOUWS MAKELAARS CC and ABRAHAM JACOBUS GOUWS	20170829
2017/18	Investments	PHELADI PATRICIA NAPO	SILVER SEED CAPITAL (PTY) LTD; SANDRO MANUEL AZEVEDO VELOZA; EDDIE AMARO and JOHN LAW	20170731
2017/18	Investments	PIETER GEORGE TALJAARD	JOHANN EN MARINDA MAKELAARS (Pty) Ltd and JOHANN WILHELM JANSE VAN RENSBURG	20170801

These determinations and all other decisions handed down by this Office, as well as past editions of the newsletter are available on our new interactive website www.faisombud.co.za.





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Anyone who has a complaint about the service delivery of this office must kindly email their complaint to hestie@faisombud.co.za