



## CONSUMER FOCUS: CULTIVATE YOUR MONEY

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# EDITORIAL

*“Blessed is the season which engages the whole world in a conspiracy of love”*

Hamilton Wright  
Mabie

Welcome back to the second addition of FAIS Time!

Another eventful quarter has passed as swiftly as it arrived, and preparation for the holidays are undoubtedly on the way!

It was not only business as usual at the Office of the FAIS Ombud though. Not only did the Office move premises during this period, but it also had a very successful Annual Report Launch.

It was during these stressful times that the dedication of staff members of this Office were the most prevalent.

Our people worked tirelessly to ensure that targets were met despite the disruptions. Furniture had to be moved and the launch had to proceed without a hitch. Well done to all who contributed in this regard!

With the year drawing to a close, we focus on consumer education and highlight important issues such as spending money wisely, being safe on the roads during the festive season, and taking care of your valuables and possessions.

The Office is dedicated to ensuring that consumers are aware of their rights and the pitfalls they might encounter along their financial journeys.

Thank you to all the individuals that contributed to this edition.

May the last stretch of 2018 be blessed.

Until we meet again in 2019!

**The Editor**



## MONEY TALKS: MEET OUR NEW CFO—SHAUNIL MAHARAJ

Heading up the Finance Office is not only about budget forecasting and general ledgers.

Newly appointed CFO Shaunil Maharaj “balances the books” for us:

### ***What personal characteristics describes you the best?***

I think trying to be a perfectionist is something that I strive for all the time. Being part of the finance team, this is a crucial characteristic as we have to ensure that everything balances to the tee. However, if you ask my sons, I think it’s a characteristic they hate in me – I won’t say why!

### ***What is the most challenging part about your job?***

The most challenging part of the job is to ensure that all deadlines are adhered to. Day one of the job taught me that. My first day on the job saw me having to review the monthly management accounts for submission to the Board. The next week saw me attending my first committee and Board meetings. Thereafter, it got

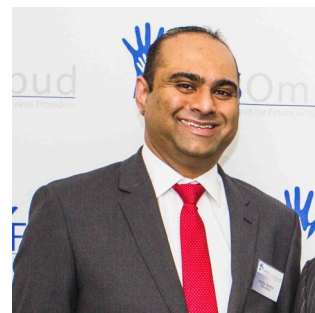
even more exciting and stressful in the same breath when we had to acquire new office premises. Having said that though, I am trying to now steady my legs to ensure that I get to grips with my day to day function whilst also familiarising myself with all the reporting requirements of the organisation. I also have to say that each day brings its new and exciting challenges which keep me on my toes.

### ***What do you value most about our culture and vision?***

With regards to the culture of the organisation, the two most important aspects that appeal to me are the independence and integrity of the organisation. These two aspects allow us to service the community at large without any fear or prejudice. Principles like these have kept me serving in the public sector for as long as I can remember and being part of organisations like these will keep me in public sector for a long time to come.

### ***What are your goals and objectives for the FAIS Ombud?***

History has played an important role for me. Being the auditor to conduct the first external audit of the FAIS Ombud back in 2005, the Office left a lasting impression on me. From the first audit and for long as I can remember, the FAIS Ombud always achieved an unqualified opinion. Taking the reins now, there is a huge expectation from my team and I to continue delivering on this achievement. My plans are to automate many of the processes within the Finance and Supply Chain Departments. Automation will allow both departments to operate more effectively, save money on printing and stationery and to increase overall productivity. In the next financial period we are hoping to be utilising the Cloud Accounting facilities which will ensure that we reduce our carbon footprint on the environment by reducing our reliance on paper.



### ***What is your favourite property in Monopoly, and why?***

I think it all depends on which board we are playing on – the traditional board, Stars Wars, Game of Thrones, Pokemon, Startrek, Lord of the Rings or Jurassic World.

If I had to choose a property from the traditional board it would be Marine Parade due to sentimental reasons. First off, it is the property closest to my hometown of Pietermaritzburg and secondly, Marine Parade reminds me of North Beach, the Golden Mile and all the family holidays and picnics that were held there as a child growing up.



Welcome Shaunil!



## FUNERAL POLICIES: A WARNING TO CONSUMERS



Conversations about death and funerals are never pleasant but certainly necessary, as we are all confronted by death at some point in our lives. We live in a diverse country where funerals have a different cultural meaning and experience, more than often at a large expense for those remaining behind. Bearing in mind the costs to bury or cremate a loved one, consumers seek insurance products that can provide cover for all the related expenses.

The Financial Sector Conduct Authority (FSCA) has on many occasions warned the public to be cautious when funeral insurance policies are bought. Many consumers have approached the Office of the FAIS Ombud for assistance when the funeral cover they had been paying for, is not providing them with the benefits they expected to receive. It is therefore important to clarify some concepts surrounding funeral cover.

The purpose of funeral insurance is to provide cover to assist with the payment of the cost of funerals. The most important feature is that funeral policies must be underwritten by a registered long-term insurance com-

pany. In terms of the Long-term Insurance Act, a company that provides financial services must either be registered as a financial services provider, or its policies must be underwritten by a registered insurer.

Why is this so important? Insurance is about risk. When a small funeral parlour has 1000 clients, it is possible that it might find itself having to cover the funeral expenses of 200 people at the same time. The challenge is that the funeral parlour might not have enough funds to meet this obligation. However, had the policies been underwritten by a registered insurer, a policyholder and beneficiaries would have been guaranteed payment of benefits in the event of a claim, owing to amongst others, the capacity of the insurer and the minimum solvency requirements. Insurers are also subjected to various laws which are enforced by the likes of the FSCA and the Prudential Authority.

Most importantly, it is illegal to conduct the business of an insurer when you are not registered or licensed to do so.

It is also important to explain the concept of insurable interest. A person will have an insurable interest in the life of another person when the death of that person would cause the surviving person a financial loss.

The death of a person should not be seen as an opportunity to be unduly enriched.

Such an example of schemes has been published by the Ombud for Long Term Insurance, where the operator would visit hospitals and obtain the details of patients. This person would then insure the lives either in his own name and for his own benefit, or in the name of the life assured, but for the benefit of the operator or his nominee.

The purpose of insurance is to assist with the funeral costs that you are obliged to pay, and not for profit making. Insurable interest has to exist at the time that the policy is bought.

There are a number of important factors which consumers should consider prior to taking out any funeral insurance: Ask for proof that the person or entity you are purchasing the policy from, is licensed. If in doubt, this information can be confirmed with the FSCA.

When applying for a policy, ensure that you are noted as the policy holder, and that you receive a contract or policy document.

Clearly state the relationship of the persons you insure under the policy. This will provide the insurer with an opportunity to determine whether insurable interest exist, and whether cover would be provided in the

event of a claim.

Be honest when you complete the application and claim forms, as misrepresentation might result in the cancellation of the policy, or repudiation of a claim.

Do not sign any blank documentation. It is a contravention of the General Code of Conduct for any financial services provider to ask you to sign blank documentation.

Ensure that you know what premium you will be paying towards the policy. Non-payment of premium will result in unpaid claims and lapsing of the policy. Premiums may also increase on a yearly basis.

Take note of the special conditions or exclusion applicable to the policy. Some insurers apply waiting periods to funeral policies. There are also age limitations to some policies.

Do not take out too many funeral policies. The objective is to provide cover for the financial obligations arising from a funeral, and not to make profit of the death of a person.

If you are aggrieved with the conduct of any person or financial services provider that sold you a funeral policy, you may approach the Office of the FAIS Ombud to lodge a complaint.

*Written by: Melani Winkler*

## FESTIVE SEASON TIPS

As we approach the festive season (dubbed by some as the silly season) many South Africans throw caution to the wind with regards to their budget and land up with the headache in “Januaworry”. While it is definitely a time to relax after what has been a rough year for South Africa and South Africans with food and petrol increases, here are some tips to help balance the fun with responsibility.

### Risk Management

Unfortunately, this period sees an increase in house robberies. It is a good time to review your short terms insurance and make sure that you are correctly covered. Did you know that if you are under insured for your house contents, your insurer will reduce the payment even in the event of a partial loss? The value of your insurance should match the value of your goods.

### Cash Management

If you do not have a budget, this is the best time to start. The euphoria of having time off work often translates to reckless spending.

If you are lucky enough to get a bonus, you can get this to work for you. You can use

some for the festive season spending but use a portion to pay off short term debt (such a credit cards or store accounts), or even double up on your home loan. If you just pay one additional instalment every year on a R1,000,000 home loan, you



could pay off your home in 16 years saving R 289,000 in interest.

Many companies also pay December salaries early. It is tempting to use this money immediately. However, this means that a salary that normally would be used in the month now has to last six weeks. If you are paid early, make sure that you do not touch your December salary until actual pay day. Again, you can make this work for you by parking the money to your credit card, thereby saving on two weeks of interest charges.

Due to the public holidays your debit order dates may have shifted. Understand

how your debits orders will be taken over this period and ensure that there are sufficient funds in your account.

### Gifting

This period is said to be one of the most stressful times in a

person’s lives. Much of this has to do with gift giving. Who do I buy for? What value do I buy for? What if I get a higher value gift than what I have given?

A simple rule to follow is that you do not have to buy gifts for everyone. If have not seen your brother’s wife’s second cousin twice removed for the last five years, you do not need to get them a gift. With your close family and friends, discuss this before hand and set a limit that is comfortable for everyone.

This time is for spending **with** family not spending **on** family. Rather plan fun activities like making biscuits, festive decorations and other arts and

crafts

### Entertainment

If like many your festive season will be a staycation, then make the most of it. We do not have a white Christmas like in colder climates. We have a pool and braai on Christmas. Rather than going out for expensive meals, do a South African tradition, the bring and braai. Spend time in the pool and everyone contributes to the meal. Less expense, less stress!

### Stay Safe

Above all, stay safe. Road fatalities increase significantly during this time. Make sure you and your loved ones are responsible and will celebrate many more festive seasons with you!

*Written by:*

*David Kop, FPI, with special thanks to Janet Hugo, CFP®, FPI Financial Planner of the Year 2018*

## SHORT-TERM BANK DEPOSIT COMPLAINTS – THE FAIS OMBUD CAN HELP!

Written by: Melani Winkler

*“In truth, the Office of the FAIS Ombud has always had a mandate to investigate complaints with regards to the financial service rendered in respect of transactional and short-term bank deposits”*

As a result of the introduction of the Financial Sector Regulation Act on April 1 of this year, the FSCA is now more than ever dedicated to regulating market conduct across all financial institutions in South Africa. This includes the market conduct of banks in South Africa, which as a result will be directly regulated for the first time. In this regard, National Treasury and

ing to the fact that there would appear to be uncertainty as to the application of the Financial Advisory and Intermediary Services (FAIS) Act with regards to transactional banking, which includes short term bank deposits, this Office thought it important to highlight our mandate in this regard.

Conduct for Authorised Financial Services Providers and Representatives conducting Short-Term Deposit Business, was published under Board Notice 102. This Code mandates the FAIS Ombud to deal with complaints in respect of providers rendering financial services in respect of deposits as defined in the FAIS Act, with a term not exceeding 12 months.



The Code provides in part II, a number of general duties providers are obliged to adhere to, which include the unsolicited contacting of clients, where providers must act honourably, professionally and with due regard to the convenience of the client. The purpose of the contact must be explained. In keeping with the requirements of the General Code of Conduct, providers in terms of this Code must also act honestly and fairly, with due skill, care and diligence, in the interests of clients and the integrity of the financial services industry.

the FSCA have published for public comment a diagnostic study prepared by the World Bank aimed at ensuring fairer retail bank practices in South Africa, titled “South Africa Retail Banking Diagnostic: Treating Customers Fairly in relation to Transactional Accounts and Fixed Deposits.

With this in mind and ow-

In truth, the Office of the FAIS Ombud has always had a mandate to investigate complaints with regards to the financial service rendered in respect of transactional and short-term bank deposits. Not only is “deposit” included in the definition of a financial product in terms of the FAIS Act, but during 2004, a specific Code of

The Code also requires that a provider must ensure compliance with the provisions thereof in all communications and dealings with a client. Copies of the Code must be made available to clients on request, and relevant information must be made available in plain language, must avoid uncertainty or confusion and must not be misleading. Clients must also not be requested to sign any written or printed form, document or any transaction requirement unless all the relevant details have been completed. More importantly, where the client requested completion of documentation on his or her behalf, it must be a true reflection of the information provided. Furthermore, Section 7 of the Code states that a provider must ensure that contractual terms and conditions are fair and that the rights and responsibilities of clients are clearly set out.

When a provider is furnishing advice to a client, there is a duty to make reason-

able enquiries to assess the client's financial needs and objectives, having regard to the circumstances of the client and the type of deposit on which advice is being given, and that at the earliest opportunity, a client be provided with complete and appropriate information of the following:

The key features of the deposit and recommended safety measures, in order to assist the client to make an informed choice. This should also include any applicable cooling-off periods.

How a relevant account with the provider will operate, including information on withdrawal of funds, and any applicable special procedures and safeguards.

Applicable fees and charges, including whether such fees and charges will be negotiable or not. Any applicable additional charges or interest in case of early withdrawals or cancellation should also be disclosed.

The manner in which funds may be dealt with at maturity.

Information regarding client identification and verification documents when opening an account or when transacting on an account, as well as the availability of unique identification methods which may include PINS and passwords.

When account details may be passed to, or required checks may be made with credit risk management services and other legally relevant entities.

Closing of branches to clients of that branch.

Closing of deposit accounts of clients, which must only be affected after reasonable prior written notice at the last address of the client furnished to the provider, and without prejudice to any legal rights of a client in respect thereof. It will however be permissible to effect closing of accounts without prior notice to the client, if and when so required by law.

Clients must be informed of the recording of telephonic conversations, and the reasons therefore. There are strict requirements for the advertising of deposits, in that information may not be misleading, fraudulent or untrue.

The Code makes provision for a complaints handling process that providers must abide to.

However, consumers who are experiencing concerns with regard to the manner in which they were advised of, or how the financial service was rendered in terms of their transactional accounts or short-term deposits and where these concerns have not been adequately addressed by the provider, can contact the office of the FAIS Ombud to lodge a formal complaint.





## THE FAIS OMBUD'S PERSPECTIVE ON FAIRNESS

Written by: *Siyanda Sindikolo*

***“Fairness is one of the most significant traits in wisdom, the fairer you are, the wiser you become”***

*Pearl Zhu*

The Integrity of the Financial Services Industry is of critical importance in the relationship between consumers and financial services providers. The mission of the FAIS Ombud is to promote consumer protection and contribute to the integrity of the financial service industry by resolving complaints in a manner that is impartial, expeditious, economical, accessible, and at all times equitable.

This article is borne by numerous requests from consumers seeking the view of the FAIS Ombud on whether there ought to be a causal link between the circumstances that give rise to a claim versus non-disclosure of material information.

The below views are intended to enhance consumer education, taking into account the recent debate regarding the integrity of the financial service industry.

The FAIS Ombud investigates complaints and each case is dealt with on its own merits. The role of the intermediary in relation to the rendering of financial service is crucial when a consumer applies for a financial product. Section 2 of the General Code of Conduct

for Authorised Financial Services Providers requires an intermediary and general providers of financial services to act honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.

As the FAIS Ombud we regulate the advice and intermediary services that is rendered to consumers by intermediaries. The Office evaluates whether the financial product sold to the client was appropriate for their personal circumstances, and ensure that material information was disclosed to the consumer. During our investigations we have come across numerous instances where a consumer would state that they disclosed details of their medical history, however, the intermediary would indicate that certain information is not relevant. This results in certain omissions of medical information which may be crucial in the underwriting process for the insurer to determine whether they would be willing to accept the risk, or whether it is undesirable for them.

It is debatable whether the intermediary has the authority to dictate which medical information is relevant or not relevant, and more so, who the intermediary is acting on behalf of in rendering such service. Our view is that consumers should disclose all medical information and insist on it being accurately captured on the medical questionnaire. The full disclosure ensures that consumers do not encounter problems at claims stage, and it enables the insurer to assess the risk properly.

Reality dictates that in many instances intermediaries either advise consumers that certain medical information is not relevant or, the intermediary does not accurately capture the information provided by the consumer. Knowing this and the potential for claims to be rejected as a result, perhaps it is appropriate for the industry to take cognizance of this and evolve by requiring all intermediaries to have a telesales recording for the completion of medical questionnaires. Alternatively, the insurer should be compelled that upon receipt of the application, they contact the client to verify the disclosures rec-



## THE FAIS OMBUD'S PERSPECTIVE ON FAIRNESS...CONTINUED

orded by the intermediary on the medical questionnaire. It must be stressed that intentional non-disclosure and / or misrepresentation of information cannot be condoned or tolerated. It is tantamount to fraud which impacts on the integrity of the financial services industry.

It is also imperative that clients do not sign blank documentation, or sign without reading the medical questionnaires to verify that the medical information is indeed a true reflection of what was presented to the intermediary.

In instances where the non-disclosed information is sufficiently linked to the claim event, our Office will uphold the rejection of the claim as the consumer would have been treated fairly. However, in practice, there is a problem of insurers conducting what is termed "underwriting at claims stage", and this can result in unfair avoidance of liability. This occurs when the insurer only verifies information that is material to the insurance contract provided by a consumer at claims stage. This information, if so crucial to the insurer and the risks they are prepared to under-

write, should rather be verified at point of sale. In many instances our Office finds that such information could have been verified by insurers at conclusion of the contract, but insurers deliberately choose not to do so citing the costs involved as the primary reason.

The "*underwriting at claims stage*" poses a challenge for the public at large, as there is room for potential abuse and / or prejudice. This occurs where the insurer states that had the non-disclosed information been disclosed at inception of the policy, it would not have granted cover, or the consumer would have received a counter offer providing cover under different terms and conditions. At the outset, the former is quite convenient for the insurer as it is based on the benefit of hindsight. The insurer should be required to prove that they would not have accepted the risk by submitting actuarial calculations of the risk assessment. The latter is quite common wherein the insurer would accept the risk and place a premium loading, or alternatively exclude the condition from cover.

We take cognizance of the existence of a contract and its

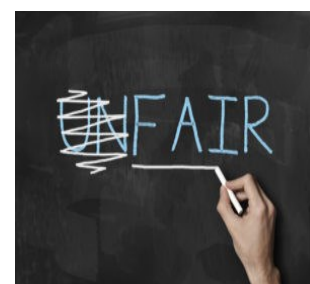
provisions which should be taken into account when establishing, on the facts presented, whether there is non-disclosure. Assuming the facts confirm that there was non-disclosure, the insurer has to embark on an evaluation exercise regarding the materiality of the information in relation to the claim, in order to establish whether the insurer is entitled to reject the claim.

The aforesaid evaluation should adopt a holistic approach, as opposed to a narrow approach which would inherently disregard the crucial surrounding circumstances. The evaluation ought to be based on the principle of fairness and consider the circumstances that gave rise to the claim. Essentially, there must be a correlation between the claim event and the non-disclosed information. At this juncture, it is imperative to point out that the applicable "Treating Customers Fairly" outcomes have been incorporated into the updated Policyholder Protection Rules (PPR) which is not principle based, but rather outcomes based. Accordingly, the outcomes based approach is holistic and demands that the event that gave rise to the claim be elevated above the non-disclosure, if the non-

disclosed information has no direct link to the claim event. In the event that the above approach is not adopted, the insurer would be treating the consumer unfairly and damaging its own reputation. The unfair treatment of consumers compromises the integrity of the financial service industry as a whole, which cannot be tolerated.

The financial services industry continuously evolves in order to adapt to the changes in society, and the regulator and insurers must engage to agree on certain parameters of assessing claims to avoid the inconsistent outcomes of similar claims.

The relationship between the insurer and consumer is mutually beneficial, and must be protected by fairness at all times.



## MAHALA INSURANCE—IS IT REALLY FOR FREE?

Written by: Rita-Mari van der Westhuizen

The FAIS Ombud has recently received a number of complaints from the public in relation to what they perceive as “free insurance”. This free insurance was obtained from a vehicle dealership whilst purchasing a specific brand of vehicle. The complaints mostly arose at claim stage when complainants were required to pay excesses.

The Office, upon further investigation found that the complainants were all informed that because they purchased the vehicle, they will receive free short-term insurance cover for a period of 12 months. In this case, *free* means that they were not required to pay a monthly premium. It must be noted that normally, when a purchaser obtains finance to purchase a vehicle, they will be required to provide proof that insurance cover is in place before collection of the vehicle can take place. Any other insurance product would require the insured to pay a monthly premium. In addition and in most instances, excesses are also applicable at claim stage.

The question arose that if the insurance cover was indeed for “free”, what does *free* mean in this context? If one considers a common dictionary definition of *free*, it means *without cost or payment; without restrictions and obligations*. The complainants were under the impression that they would have no financial responsibility in respect of the cover during the 12 month period, or at claim stage. Our investigation of these complaints revealed the following:

The insurance is in fact not for free, since the insurance cover is included in the purchase price of the vehicle. Even if the purchaser de-

clines the offer for insurance, it makes no difference to the purchase price and no refund would be payable. In most cases, the complainants were not even aware of these terms and conditions.

Secondly, the insurance cover is for private use only, which means that if you use the vehicle for your business, the insurance offer would not be applicable.

An examination of the relevant documentation unveiled that the purchaser was required to sign pages which refers to applicable excesses:

- A standard excess structure applies as follows: First Claim (Basic excess): R7 500. Second claim within 12 months: R5 000. Windscreen 20%, minimum R500.
- Additional excess for any claim within the first 90 days of ownership: R7 500 (in addition to the basic excess)
- Additional excess for any claim after 90 days, as follows: (in addition to the basic excess): Single Vehicle accident: 5% of claim, minimum R2 500. License less than 2 years: R3 000. Driver under the age of 25: R3 000.

It would appear that there was no proper disclosure as provided for in section 7 (1) (c) (vii) of the General Code of Conduct. This section states that a provider must in particular provide full and appropriate information of the following: concise details of

any special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided.

It is unlikely that the complainants took cognisance of the excesses in the absence of specific reference to it, since they were under the impression that the insurance is for free. The excesses payable is very high, and complainants indicated that they were neither aware of it, nor able to afford it.

According to the documentation an excess waiver is offered, however at an additional cost. It would appear that this was also not explained to the complainants.

Section 8 (2) of the General Code of Conduct provides that a client must be placed in a position to make an informed decision when financial services are rendered. There has to be an understanding as to what the policy entails in order for the client to make a decision. As alluded to above, all excesses and limitations must be disclosed to clients.

Consumers should, prior to considering an offer of a “free policy”, ask the following questions:

Who really pays the insurance, as no insurer will provide cover for free?

What excess will be applicable, and can I afford it?

Know your rights!

**“The best things in life are free. The second best are very expensive”**

Coco Chanel

# MONEY SMART WEEK 2018



The National Treasury (NT), Financial Sector Conduct Authority (FSCA), National Consumer Financial Education Committee (NCFEC) and the Financial Services Consumer Education Foundation (FSCEF), launched the Money Smart Week South Africa (MSWSA) campaign – an educational awareness platform involving financial institutions, companies, schools and communities, aimed at improving financial literacy in the country on 3 August 2018.

This campaign aims to give individuals the ability to make informed financial choices regarding issues such as saving, investing, and borrowing, as well as addressing a variety of other financial related topics that people encounter in their every-day lives. This is a result of research showing that too many South Africans are battling to save. Statistics show that large numbers of people rely on friends, family and government for their retirement.

At the launch of the MSW initiative, the Deputy Minister of Finance, Minister Mondli Gungubele in his speech, emphasized the importance of clarity when financial services providers are dealing with consumers.

MSW was championed by the National Treasury with the Minister of Finance as patron. It was implemented and coordinated by the Financial Sector Conduct Authority (FSCA) with a steering committee consisting of various financial

industry stakeholders, including Regulators, various Ombudsman Offices and representatives from the financial industry.

The initiative looked at coordinating various activities within communities in one week (8-12 October 2018), where people could discuss their financial situation and seek help.

In total, 48 partners came on board to contribute to Money Smart Week. They contributed by donation and / or sponsorship, either by funding the entire event, or by providing resources, content and collateral.

### ***The key messages of the MSW were as follows:***

- Financial education is accessible & readily available.
- Qualified professionals exist to provide informed financial advice.
- Controlling one's financial situation is important for the future.

### ***How was this achieved?***

People came together in community halls at Mamelodi, Ivory Park, Alexandra and Soweto, where workshops were conducted. Presentations were also done at the Sammy Marks Hall in Tshwane. Furthermore, talks, exhibitions, industrial theatre, online portals, competitions, game shows, media and financial literacy treasure hunt (with learners), were held at shopping malls in the same areas.

### ***Some of the topics covered were:***

How to get out of debt, basic money management, savings and investments, unauthorized deductions, unclaimed benefits, rendering of financial services – advice (where and how to complain). Consumer rights and responsibilities when dealing with financial services providers. Mandate of the various Ombudsman's offices.

### ***How did the FAIS Ombud contribute?***

The Office embraced the opportunity to participate in Money Smart Week, during which it shared with consumers its role, how it deals with complaints against financial services providers where FSP's have failed to adhere to the FAIS Act, the FSOS Act or the General Code of Conduct.

MSWSA was a great experience for our Office considering it was our first time participating. As an Office we felt the presentations were very effective and that this was proven by the types of questions received from the audience. It was evident that our Office is not known by many and the MSWSA was a good tool for us to educate the consumers about our mandate, types of complaints we can assist with and just providing education in general. We also had the opportunity to learn and interact

with other participants.

Putting the name of the Office out there to the community and interacting with individuals from all levels was interesting and helpful for future reference. The locations achieved a good balance of visitors in general, some knowing little or nothing about the programme and others being very well informed.

The Office hopes to be more involved in future campaigns to ensure that we can reach as many people as possible who might need our assistance.

MSW was a pilot project which only happened in Gauteng. The plan is to spread MSW to other provinces during 2019, including the Office as a participant.

The various media platforms listed below are still live and can be accessed to view the MSW's events and activities, which will also be uploaded onto the website during December 2018.

Web: [www.mswsa.co.za](http://www.mswsa.co.za)

E-mail: [Info@mswsa.co.za](mailto:Info@mswsa.co.za)

Facebook: @MSWSA2018

Instagram:  
@money\_smart\_week\_sa

Twitter: @MSW\_SA

You Tube: Money Smart Week South Africa

LinkedIn: @MSWSA

*Written by: Violet Ricketts*

## 2017 / 2018 ANNUAL REPORT LAUNCH



The FAIS Ombud, in a spectacular function at the Protea Hotel Fire and Ice in Menlyn, launched its 2017 / 2018 Annual Report on the 2nd of November 2018.

Honoured guests included members of the Board, the FSCA, National Treasury, other Ombuds, representatives from the financial services industry, and most importantly, the valued employees of the FAIS Ombud Office.

The Annual Report provides a review of the performance of the Office of the FAIS Ombud, as well as reports on its financial affairs.

The report reflected that for the 2017/2018 financial year, the Office received a total of 10 211 new complaints; a slight reduction from the 10 846 received during the 2016/2017 financial year. This is the second consecutive year that this Office has received more than 10 000 complaints within one financial year. This Office once again resolved in excess of 10 000 complaints; the

total number being 10 542.

The quantum of settled / determined cases also showed an increase from R 58 343 824 in 2016/2017 to R60

889 786 in 2017/2018. Of the 10 211 complaints received during the financial year, a total of 7969 were justiciable matters, in that they fell within our mandate. A total of 4749 complaints were dismissed, and 2687 were referred to the appropriate fora.

It must be appreciated that whilst only 883 complaints received during the 2017/2018 financial year were resolved in favour of

the complainant, the referral of complaints to other fora remains an important aspect of the service provided by this Office in assisting complainants with access to justice. Furthermore, the dismissal of complaints is not done without the required due skill, care and consideration of the facts, to ensure that the correct decision is made that is equitable in all circumstances.

At 31.8%, complaints with regards to short term insurance formed the majority of complaints received, to-



gether with long term insurance at 30.4%. Complainants domiciled in Gauteng remained the source of the majority of complaints received by this Office, with 41.8% of all complaints being received from this province, which was followed by the

Western Cape and Kwa-Zulu Natal at 14.5% and 14.3% respectively.

The Office of the FAIS Ombud would like to acknowledge the various entities and individuals who assist the Office in achieving its man-

date.

A special word of thanks to all our guests and staff who attended the launch. It is heart-warming that so many people share in our vision for an inclusive financial service industry.

We look forward to welcoming you next year!





# 2017 / 2018 ANNUAL REPORT LAUNCH—continued





## INFO Network—Ireland 2018



The International Network of Financial Services Ombudsman Schemes (INFO Network) is the worldwide association for financial services ombudsmen.

INFO was formalised in 2007, and facilitates cooperation among its members to build expertise in external dispute resolution, by exchanging experiences and information in areas including office structures, functions and governance models; office codes of conduct; how information technology is utilised; the handling of systemic issues; cross border referrals of complaints, as well as staff training and continuing education.

The FAIS Ombud is a member of INFO, and was fortunate enough to travel to Dublin, Ireland in September to attend the 2018 conference.

Delegates from across 36 countries were in attendance, which provided many opportunities to learn about the financial industry of other coun-

tries, and how the respective ombud structures assist their consumers.

The problems we experience on a day-to-day basis are not unique to South Africa, and it was surprising to learn of similar challenges experienced by our fellow ombuds.

The program ran over three days, and some of the presentations included topics such as:

- Behavioural economics
- Unconscious bias
- Lessons from the Irish Peace Process
- Good governance
- Maintaining the Independence of an Ombudsman Scheme
- Balancing confidentiality and transparency in an Ombudsman mediation service
- Motivating and retaining staff
- Practical case studies

But, in true Irish style, the hosts ensured that we not only worked, but also played.

From learning new skills such as “broom dancing”, and playing the traditional penny whistle, to gala dinners in the



Crypt of the Christ Church Cathedral and singing to folk songs such as “Molly Malone”



Ireland is a beautiful country with a rich and sad history, but despite their struggles,

have amazingly friendly and hospitable citizens.

It was an awesome experience, and we look forward to welcoming the 2019 INFO conference delegates to South Africa, which the Ombudsman for Banking Services will be hosting at Bakubung in the North West Province.



## POINTS TO PONDER

### **DM vs S**

#### **Facts:**

The complainant was employed as a teacher, a position she had resigned from during March 2017 at the age of 51.

Subsequent to her resignation, the complainant applied to exit the Government Employee Pension Fund ('GEPF), and was paid her pension interest of R1 200 000.

The complainant, on 1 September 2017, approached the respondent, seeking to invest an amount of R300 000. The remainder of the funds were utilized to pay off her debts. The respondent recommended an endowment policy.

Shortly after having made the investment, the complainant withdrew an amount of R85 000. Thereafter, she applied for what she had been led to believe was a loan against the policy in the amount of R60 000 during December 2017.

When the complainant required further access to the funds, she was advised that

she was now unable to access the remainder of the funds until the completion of the 5-year period.

The complainant claims that she had expressly instructed the respondent to ensure that she would have access to her funds at any time, and that she had not been made aware of any restrictions applicable on the policy. The complainant has children at University, and has to pay for their tuition and transport fees. This information had been disclosed to the respondent at the inception of the policy.

#### **Investigation:**

Upon receipt of the complaint, this Office directed correspondence to the respondent where the respondent was requested to respond to the allegations that the complainant was not informed about the limitations prevalent to an endowment policy. The respondent was also requested to provide documentation demonstrating why an investment into an

endowment policy was appropriate to the needs and circumstances of the complainant, taking into account her age and the fact that she may require access to the funds in the event of an emergency, or as was the case, should she need to fund her children's tertiary education needs.

The respondent subsequently took the decision to release the remaining funds to the complainant without any charges or penalties, and an amount of R133 631.66 was paid to the complainant.

### **E vs RB**

#### **Facts:**

The complainant is a business owner who held commercial and personal lines policies, including cover for a caravan and its contents.

The complainant claimed that during September 2012, he was approached by the respondent to review and take over his insurance business, and the



complainant duly provided him with all his policy schedules.

As a result, the complainant's personal and commercial policies were consolidated into one, however, the caravan contents was not included in the new cover.

During August 2014, the complainant submitted a claim after the theft of contents from his caravan. The claim was rejected on the basis that the contents of the caravan was excluded from cover in respect of the All Risk benefit.

In its response to the complaint, the respondent claimed that the policy had simply been moved from the previous policy, on the same basis, and that the previous policy had not provided any cover in respect of the caravan contents.

## POINTS TO PONDER

The respondent was therefore of the view that the fault lay with the original advice provided to the complainant by his former broker. The respondent was of the view that it had adhered to the complainant's request that the policy be transferred to the new insurer on the same basis.

The complainant was not satisfied with this explanation and approached this Office to recoup losses in the amount of R40 000.

### **Investigation:**

In initial responses to this Office, the respondent remained of the view that it simply transferred the policy "as is" from the previous insurer to the new policy, and that this was done in accordance with the instructions of the complainant. The fault in his view, lay with the previous broker for not having provided the complainant with cover in respect of the caravan's contents.

This Office however held the view that upon taking over the complainant's insurance portfolio, there was a duty on the respondent to conduct an analysis of the policy, as well as

of the complainant's needs and circumstances, to ensure that the policy remained appropriate.

The respondent, who was receiving commission from the policy facilitated for the complainant, could not simply transfer the policy without ensuring that it remained appropriate to the needs of the complainant.

After numerous interactions with the respondent that saw the matter escalated to a formal investigation, the respondent made an offer to settle the matter with the complainant. An amount of R25 000 was paid in full and final settlement.

### **M vs SB**

#### **Facts:**

During 2015, the complainant applied for a homeowner's insurance policy upon the successful application for a home loan. The policy was facilitated by the respondent.

During November 2017, the complainant's house was burgled and the complainant submitted a claim. The claim was rejected by the respondent

on the basis that the house had been unoccupied for a period in excess of 30 days at the time of the loss.

The complainant claims that the house had indeed been unoccupied at the time, as she had been in the process of selling the house, however she had never been informed that any potential claim would have been affected by the house being unoccupied. Had she known, she would have taken appropriate measures.

### **Investigation:**

The respondent in his response to this Office claimed that in facilitating this policy, it had not provided advice to the complainant and that the policy had been provided based on features and benefits. As a result, there had been no duty to provide advice.

This Office rejected the respondent's submission that there was no need to provide advice. Not only is there a duty on the respondent to ensure that all relevant and available information have been obtained to ensure the appropriate-

*"Money speaks only one language—if you save me today, I will save you tomorrow"*



ness of the product ultimately recommended, but that all material terms of the policy, inclusive of instances in which cover would not be provided, ought to have been disclosed to the complainant to ensure that she was able to make an informed decision.

Even if this Office were to accept the respondent's claims that it had no duty to provide advice, the features and benefits presented to the complainant made no mention of this specific exclusion.

Having been unaware of the requirement that the building may not be unoccupied for a period in excess of 30 days, the complainant had been unable to comply with the policy's terms and conditions; a situation that was attributable to the respondent's failure to make the required disclosures.

The respondent ultimately resolved the matter with the respondent and an amount of R165 254.12 was paid in full and final settlement.

### **S vs AMI**

#### **Facts:**

The complainant was the owner and the policyholder of an Asterio Medical Insurance policy, which commenced on 1 December 2015. This policy, which covered both the complainant and her husband, provided benefits for emergency medical services, illness and dread disease.

On 30 November 2017, the complainant's husband complained of stomach pains which led him to contact the respondent for authorization.



On 02 December 2017, the complainant's husband underwent a gastroscopy which led to him being admitted to hospital. Pre-authorization was requested and declined on the basis that in terms of the policy wording, illness means the

onset of any acute somatic, unforeseeable, unpredictable illness (excluding mental illness) which requires admission to hospital, and which was not a pre-existing condition.

The complainant states that she was never advised about this exclusion of cover, and wanted the respondent to resolve the matter in respect of the outstanding medical expenses.

#### **Investigation:**

After entering into corre-

spondence with the respondent where the respondent's duties to comply with the General Code of Conduct in respect of disclosures of material terms of the policy was explained, the respondent argued that the sale of this

policy was done online via the Asterio website. The complainant, it claims, therefore completed the documents on her own, and the application was submitted without any advice having been provided.

This Office was of the view that this transaction which amounted to robo-advice did not absolve the respondent from ensuring that the complainant was made aware of the material aspects of the policy in order for her to be able to make an informed decision.

The respondent was requested to provide this Office with details of the process followed when one applies online, what disclosures are made and what information is provided to prospective clients in respect of the exclusions applicable to the policy.

The respondent did not respond to the requests from this Office. Instead, it took the decision to settle the matter with the complainant and an amount of R7 829.00 was paid in full and final settlement of the claim.



## **WE HAVE MOVED!**

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The FAIS Ombud was established in terms of section 20 of the Financial Advisory and Intermediary Services Act, (37 of 2002) (FAIS Act). The FAIS Ombud is a schedule 3A entity in terms of the Public Finance Management Act, (1 of 1999) (PFMA) and reports to the Minister of Finance through the Transitional Management Committee of the FSCA.

The main objective of the FAIS Ombud is to investigate and resolve complaints in terms of the FAIS Act and the Rules promulgated thereunder.

