Quarter 4: 2019

FAIStime

CONSUMERS AND FSP'S

A TWO-WAY STREET

Inside this issue:

FAISOmbud
Office of the Ombud for Financial Services Providers

EDITORIAL

As we conclude the last quarter of the financial year for 2018 / 2019, we reflect on an exciting year that was earmarked by changes not only in the financial services industry, but also in the FAIS Ombud Office.

The Office stepped up its game in respect of consumer education, marketing and increasing the visibility of the Office. It speaks for itself that we cannot assist consumers if consumers are not aware of the Office and how we can help.

Several projects were embarked on , including radio interviews, outreach projects, press releases and attendance of consumer education workshops.

Notwithstanding our focus on educating consumers, we have not lost sight of our duty to protect the integrity of the financial services industry. This was evident from our interaction with stakeholders such as banks, during our visit to Pavillion Mall in Durban. We continue with our commitment to establish good, working relationships between this Office and stakeholders.

In this edition we continue our consumer focus. It is important for consumers to understand that it is not only about their rights, but also their obligations or responsibilities towards their respective financial services providers.

In the words of M Holden: "Its always a two way street, it's like what you do take responsibility for, because it's never just about one person, it's always about the collective, the two".

Thank you to all the parties that contributed towards this edition.

Happy reading!

"Someone calling themselves a customer says they want something called service."

LABORING WITH MR LEBOGANG LEBEKO—HR GENERALIST

The FAIS Ombud recently welcomed HR Generalist, and Executive Committee Member, Lebogang in its midst.

Lebo is not a many of many words, but he gave us some insight as to what he is all about:

What, if anything, has surprised you most about the Office?

The level of commitment towards assisting communities with the challenges that they encounter with the financial services industry (FSPs).

Out of your superpowers, which one do you use the most in performing your function as HR Manager?

Patience. I give an ear to anyone without worrying about the "merit" of his/her issue. In so doing, I learn to appreciate my role daily and serve to the best of my ability.

What book are you currently reading?

"*Leadership Call*" by Max Moyo.

Who has been the most influential person in your life and why?

My brother – He taught me to "take one day at a time" and not to put myself under undue pressure. Hence my "superpower": patience.

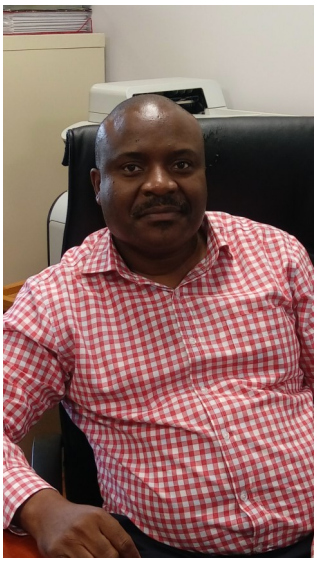
If you were a colour of the rainbow, which colour would you be and why?

Green – This colour denotes growth, health and wealth.

How do you like to spend your spare time?

Relaxing at home with my family – this is fulfilling.

Welcome Lebo!



INTRODUCING OUR CLIENT CARE CENTRE

The Office constantly strives to be a preferred, world-class dispute resolution forum providing an accessible, impartial, efficient and professional service, which is respected by all stakeholders, and provided by committed and passionate staff. In doing so, we ensure the dignity of those we serve, by treating all parties with the utmost respect and courtesy.

On 22 March 2019, a Client Care Centre was established to assist this Office in not only achieving upon the values that remain central to the service we provide, but to enhance the customer experience. The Client Care Centre shall ensure that this Office is able to not only efficiently deal with incoming calls related to existing complaints and enquiries, but to continue to effectively register complaints received.

The Client Care Centre shall give life to some of our core values, which include the education of those we serve and the promotion of access to justice. These values are achieved through efforts to increase awareness of this Office and the service it provides, and by ensuring that regardless of whether a complaint falls within the jurisdiction of this Office, that complaints received are directed to the correct forum on behalf of the complainant to ensure that they receive the required assistance.

We thank our dedicated staff members for embracing this opportunity to grow themselves and the Office!

THE INSURER, THE BROKER AND YOUR REPRESENTATIONS: WHO IS RESPONSIBLE FOR WHAT?

There is a common misconception that using a broker to approach an insurer for an insurance policy provides you, the client, with protection from misrepresentation or non-disclosure of key information to the insurer. It is important for you to know what the implications are of not providing the insurer with complete or honest information. To do this we will look at the obligations imposed on the insurer in the new Long- and Short-term Policyholder Protection Rules (PPRs) and what your obligations are.

Why do insurers ask you for information?

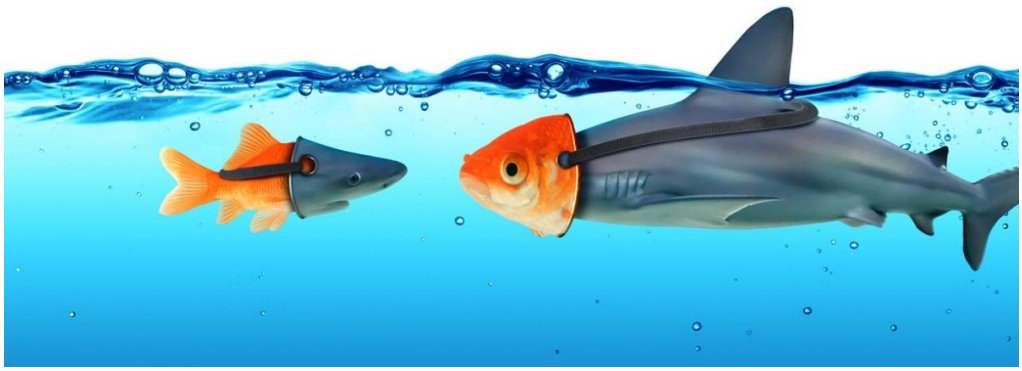
It is important to remember that the information an insurer gets from you is not arbitrary or unintentional. The insurer gathers certain information (such as your age, health status, smoker status, employment status, etc) to enable them to assess the risk you pose as an insured person. As you know, certain characteristics you have make you either less or riskier to insure. This information varies from product to product depending on what is being insured, and the insurer uses it to calculate your premium and how much cover to offer you.

What are the insurer's obligations?

Rule 11 of the Long- and Short-term PPRs requires that an insurer informs the client of which representations made by the client will be relied on by the insurer when assessing the risk that a client poses to the insurer (i.e. how likely you are to claim). This means that when you take out an insurance policy, the insurer must tell you what information that it is requesting from you that it thinks is important when assessing its risk. Rule 21 of the Long-term PPRs also provides that an insurer may not repudiate your claim based on non-disclosure or misrepresentation, unless the information given or not given would materially have affected the insurer's ability to assess the risk.

So, what does this mean for you?

While you can see that these obligations are placed on the insurer, we can learn things that will help you when dealing with an insurer or broker that may help you avoid uncertainty in the long run.



What can we learn?

Remember always to answer questions asked by the insurer openly, honestly and fully. Do not leave out information because you think you may be charged more. Paying a little bit more on your premium for being honest may hurt the pocket a little now, but it is nothing compared to not having your policy cover you when you need it most. Although you should always answer ALL questions completely and honestly, you should ask your broker which information is material to the insurer when the insurer is assessing its risk. More than anything – what you need to remember is that it is better to give complete and honest answers to avoid the potential negative consequences at claims stage.

With special thanks to
Isaac Manicus
Nedbank Limited

INSURANCE – LOOKING DEEPER THAN A PREMIUM

Benjamin Franklin once said "*The bitterness of poor quality remains long after the sweetness of low price is forgotten."* Truer words could not be said about the insurance industry. As consumers, we're all after a good deal and good deals are to be had in just about every industry imaginable. The insurance industry is no exception. Having said that, finding insurance that is both affordable and suitable for your needs is a delicate balancing act that consumers should each perform when searching for cover.

There are statutory obligations on FSPs to disclose the implications of the cover they offer. In light of this, FSPs go to great lengths to ensure such disclosures are made. However in the spirit of this quarter's edition of our newsletter, such an obligation cannot detract from the consumer's obligation to dig a little deeper than an attractively low premium. What implications lurk on the other side of a submitted claim? Our Office continually receives complaints from consumers experiencing unpleasant surprises at claim stage. When our Office listens to the sales recordings however, these "surprises" were often disclosed admirably at point of sale.

In motor vehicle insurance, there are unavoidable yet logical relationships at work between premiums, excesses and insured amounts. Generally speaking, the lower the premium, the lower the insured amount (the maximum amount you're insured for). In contrast, the lower the premium, the higher your claim excess (the first amount payable by the client in a claim event). Consequentially, the lowest possible premium would be obtained by having a very low insured amount and a very high excess. In a nutshell, the less you pay to the insurer monthly, the less they'll pay you at claim stage.

No one wakes up in the morning, unlocks their phone and gets excited at the sight of their insurance debit notification. For just about every person, insurance is a grudge purchase. Having said that, don't let the uncertainty of a claim event detract from considering the loss you may suffer if such a claim should arise. Do some homework, ask the advisor questions and don't be wooed by an attractively low premium alone. Insurers are fiercely competitive for your business. Bearing that in mind, consider your options and consider the implications of each at claim stage. Travel beyond the premium punchline.

"As consumers, we have so much power to change the world just by being careful in what we buy"

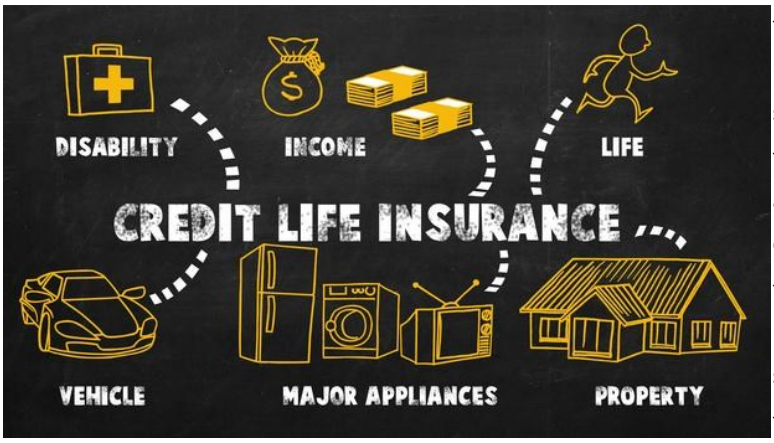
Emma Watson

Wrriten by:

Michael Willmore

ABOUT THAT CREDIT LIFE POLICY...

Credit life or credit protection plans are insurance policies that afford cover to consumers of credit to provide assurance that in the event of their death, disability, terminal illness, or retrenchment that the outstanding credit or finance charges will be taken care off. All these events are risks that are likely to impair one's ability to earn an income and in so doing prevent one from servicing the outstanding credit or finance charges in terms of a personal loan, bond, vehicle financing agreement, credit card, in-store credit or any other credit related transaction. Whilst these policies do cover the outstanding credit or finance charges in the event of death, permanent disability and or terminal illness, it must be highlighted that in the case of temporary disablement and or retrenchment, these policies only provide for the payment of the monthly instalments for a limited period, normally 6 months.



Retrenchment itself presents a unique challenge, in that this Office receives a number of complaints where claims in respect of retrenchment have not been honoured by the insurer as the claimant was at the time of the claimed event either self-employed or employed in terms of a contract. *Retrenchment* is a form of dismissal due to no fault of the employee, and it is a process whereby the employer reviews its business needs in order to increase profits or limit losses, which leads to reducing its employees. There is a specific process that must be followed in the event of retrenchment, and unless this process has been followed there can be no valid claim. There is however relief for those self employed or contract workers who have been sold credit life or credit protection plans which include retrenchment, as this would represent mis-selling. The General Code of Conduct for Authorised Financial Services Providers and Representatives ('the Code.) requires that a financial service provider ('FSP') obtains all relevant and available information to ensure than any recommendation made is appropriate to the clients needs and circumstances. It would therefore be required from an FSP to have knowledge of the nature of your employment, notwithstanding the fact that it would have been information disclosed during the credit application, and therefore, the provision of a retrenchment benefit to a self-employed individual or contract worker would be inappropriate and would be a matter for investigation by the FAIS Ombud.

Unlike your more traditional life assurance policies, these policies do not conduct medical underwriting at the inception of the policy, and so all applications are accepted irrespective of the risk posed to the insurer. This is important to understand, as a traditional life cover policy will require that one be subjected to a number of questions surrounding your medical history and where necessary you may be required to undergo medical underwriting in the form of various medical tests. This underwriting process is utilised by the insurance company to establish the risk presented by you, which will determine not only the premium payable and terms offered, but whether or not the insurer is prepared to accept you as a client. Credit life or credit protection plans manage the risk by introducing various exclusionary clauses such as those that deny cover in respect of any pre-existing medical condition that was diagnosed or for which one received treatment for prior to the conclusion of the transaction. This type of exclusion also differs between insures, with some applying the exclusion as a general exclusion for the term of the policy, normally the duration of the finance agreement, and others only applying the exclusion during the initial 24 months of the policy. Therefore, anyone who may have or is suffering from a medical condition or who received or is receiving treatment for a medical condition prior to the inception of such a policy, may want to consider applying for a more traditional life cover policy. This will see one undergo the underwriting process to ensure that when accepted by the insurer that any future claims will not be affected by your medical history. The Code however does

require that any material terms of the policy inclusive of exclusions and instances in which cover will not be provided be disclosed to you at the inception of the policy, to allow you to make an informed decision. Failure by the FSP to disclose this and or any other exclusion will result in a complaint justiciable by the Office of the FAIS Ombud as detailed in the highlighted case below.

The complainant had purchased a credit protection policy with the respondent, subsequent to having purchased a motor-vehicle. The vehicle had been financed by the respondent and this policy was to have provided cover in the event that the complainant was unable to make the monthly payments as a result of death, permanent disability or retrenchment. Following a stroke, the complainant had been rendered disabled and his subsequent claim had been rejected as the cause of the disability was directly linked to a condition that had been diagnosed prior to the commencement of the policy. The policy, as the complainant found out, included a 24-month waiting period and the complainant claimed that no disclosures had been made to him regarding the exclusion of any pre-existing condition let alone the 24-month waiting period applicable thereto.

Upon receipt of the complaint the matter was directed to the respondent, where this Office had requested that it show compliance with the Code in having obtained all relevant and available information to ensure that not only was the recommendation appropriate to the needs and circumstances of the client, but that all material disclosures had been made which would have allowed the client to make an informed decision. The respondent upon receipt of the correspondence from this Office revised its decision honoured the claim in full by settling the outstanding finance on the vehicle in the amount of R 115 240.00.

Points to Ponder:

When applying for any form of credit you may be provided with the option or in fact be required to apply for a policy to provide protection in terms of the outstanding finance in the event of death, disability, terminal illness or retrenchment. It is important that the FSP inform you that you have the freedom to source an alternative policy of your choice as a substitute to the policy provided.

When a financial service is rendered that encompasses advice, this would require the FSP to obtain all relevant and available information to ensure that any recommendation made is appropriate to your needs and circumstances. Ensure that prior to the conclusion of a transaction you are satisfied that the FSP is able to provide details of why the recommended product is appropriate to your needs and circumstances..

At the very least the information collected by the FSP would allow him/her to disclose concise details of any material terms of the contract such as the existence and nature of any exclusionary clauses which would see any future claims rejected. This would include any exclusions for pre-existing medical conditions and the duration of the exclusion and or any applicable waiting periods. You must be satisfied that you have been placed in a position to make an informed decision before concluding any transaction.

Should you be self-employed or employed on a contract basis the provision of a retrenchment benefit as part of a credit life or credit protection plan may not be appropriate.

There are different types of pre-existing condition clauses, which may see the exclusion only applicable for a reduced period of say 24 months or in some cases the exclusion may be a blanket exclusion for the duration of the policy.

Should it be that you were previously diagnosed with any sort of medical condition, or whether you have previously received treatment for any medical condition, then having knowledge as to the existence, and type of exclusion will allow you to determine whether the policy recommended to you is the best possible solution to your needs and circumstances.

Written by: Marc Alves

MEDICAL SCHEMES BROKERS—YOUR RIGHTS AND RESPONSIBILITIES

The Financial Advisory and Intermediary Services Act, or FAIS Act for short, is applicable to all Financial Services Providers ('FSP'), regardless of the nature of the financial product and or service provided.

The same applies to the conduct standards set out in the General Code of Conduct for Authorised Financial Services Providers and Representatives ('the Code')

This means that whether you are sold a medical scheme, gap cover policy or life insurance policy, your FSP must comply with the applicable law, which includes the provisions of the Code. In doing so there are a number of disclosures that an FSP must make in concluding the transaction:

Contributions

Not only must the nature and extent of the monetary obligations undertaken by you be clearly disclosed and agreed to, but the FSP must also establish whether your contributions will be collected upfront, or in arrears. The decision on when your premiums are collected can have significant implications on you, should you resign from the medical scheme. For example, in the event that you chose to pay your premiums in arrears and you resign from the medical scheme, you will still be liable for the outstanding premium for the period in which you enjoyed cover, in addition to the premium payable in respect of the replacement product. You will in effect make a double contribution.

Commission

It is not only imperative but a requirement in terms of the Code that your broker disclose to you any fees or commissions due to him / her. There are instances in which brokers collect a full contribution in respect of the fees due to them, resulting in the client being under the impression that he / she is paying contributions upfront, which is not the case. Therefore, it is important that clients ensure that FSPs clearly disclose the manner in which commission will be collected, and the impact of any such collection on the policy.

Waiting periods

Medical schemes, like any other financial institution utilise waiting periods to manage its exposure to risk. An FSP is obliged to provide concise details of any special terms, exclusions, waiting periods or instances in which cover will not be provided. This begins with a detailed explanation of the questions contained in the medical questionnaire and the importance of and extent to which you are required to disclose any and all pre-existing medical information, regardless of how minor you may believe it to be. All previous and existing medical information could impact not only on the application of waiting periods, but also result in the termination of membership, should any information become available subsequent to the signing of the contract. It is important that both the client and the FSP refrain from making decisions on the relevance of the medical information to be disclosed, and that full disclosure is made to conduct a true assessment of the risk posed by the application.

Late joiner penalties

In the event that you apply for medical scheme membership over the age of 35, the Medical Schemes Act makes provision for the imposition of penalties for those periods that you did not belong to a medical scheme. These penalties will be applicable for the rest of your life. Your broker is obliged to explain these penalties and the financial impact it will have on you.

Whilst the Code provides for certain duties of FSPs in terms of the financial service rendered, there are also certain obligations that are attributable to you as a client. First and foremost, would be to ensure that contributions are paid in full and timeously to ensure covered by the scheme.

Furthermore, the process of acquiring cover with a medical scheme, begins with the completion of an application form which forms the basis of your contract with the scheme concerned. Contracts of insurance are based on the principles of utmost good faith; therefore, you have to be completely honest about the information that you provide, especially if that information is material. Information is considered material if the insurer, in this case the medical scheme, would have relied on the information to determine the basis upon which it would provide you cover, or apply waiting periods.

The Code also provides that an FSP may not request that you sign any blank documentation. Ensure that you carefully read the full application form, inclusive of the terms and conditions. Refrain from allowing the FSP to direct you to only the sections where your signature is required, without satisfying yourself that the information is correct and what had initially been agreed to.

Written by: Melani Winkler

RISK PROFILING

When making the decision to invest, one of the most important aspects, after establishing your objective, is to determine your risk profile. Before one can proceed with an in-depth discussion on risk profiling and determining one's appropriate level of risk, there must first be an appreciation of the risk vs return trade-off. This trade-off provides that the potential **return** rises with an increase in **risk**, and that an investment can render higher returns only if the investor is willing to accept a higher possibility of losses i.e. a higher level of risk.

In understanding the risk vs return trade-off, it is noted that the establishment of one's risk profile is more than just completing a set of questions which generate a score rating one as conservative, moderate and/or aggressive. Risk Profiling is in fact a process which involves you making a decision with regards to the risk you need to take, risk you can afford to take, and your tolerance to risk. Each of these risks has an impact on the selection of an appropriate investment strategy that will contribute to you achieving your objective, whether it be saving for a specific goal in the short term, or longer term investing such as for retirement.

This risk profiling exercise requires that a financial service provider ('FSP') obtain all relevant and available information from you in order to address the three aspects of risk, and place the investor in a position to make an informed decision. The investor is prepared to accept that his/her tolerance to risk may not always be compatible with the current needs, circumstances or objectives. This relationship between the FSP, the investor and risk is explained below.

The risk that one needs to take is associated with the return required to achieve your objective in relation to your financial resources. This risk in turn is influenced by a number of factors such as the objective for investing, the time frame for the investment, one's age at the inception of the investment and whether you require an income from the investment.

Once such example is where an investor has delayed investing for retirement, and starts saving in his/her forties for instance. The investor may, depending on his/her available resources, need to assume a greater level of risk to achieve the objective of appropriate retirement savings, as a result of the reduced time frame.

Another example would be where an investor has failed to make sufficient provision for retirement and finds him/herself having retired with savings that do not support the income requirements. A decision now needs to be made as to whether there is scope to reduce one's income needs. Where this is not possible, consideration should be given to assuming a higher level of risk that could generate a return that would support one drawing a higher income.

The risk that one can afford to take, or what is commonly referred to as one's risk capacity, is directly linked to the financial loss that one is capable of absorbing. As with all aspects of risk, the risk you can afford to take is influenced by factors such as your available resources, objective for investing, the time frame for the investment, one's age at the inception of the investment and whether you require an income from the investment.

The client's age, financial resources, and objectives play an important role in this regard. An investor for example that is of advanced years, retired, and no longer economically active, may not have the capacity to assume a high level of risk, as this client may not be in a position to recoup any losses to the available capital; capital which may be required to generate an income for the rest of one's life.

RISK PROFILING continued

"Get closer than ever to your customers. So close that you tell them what they need well before they realise it themselves"

Steve Jobs

Contrast this with an investor in his/her twenties that begins to save for retirement with an expected retirement age of sixty. Here you have an individual that is economically active, with a significant period of time to recoup any losses sustained. This investor has the capacity to take a higher level of risk to maximise returns on the investment to achieve the objective of generating sufficient capital for retirement.

Finally, all this must be aligned with ones tolerance for, or what you as an investor is comfortable with. When it comes to establishing your risk tolerance, or what in the financial services is loosely referred to as your 'risk profile', there are many tools to measure this, which includes questionnaires that ask a range of questions to generate a score classifying the investor as either conservative, moderate or aggressive. It is however more desirable that your FSP take the time to gather all relevant and available information form you as the client so that there is an understanding of how to view risk and your appetite therefore based on your specific circumstances.

The examples and scenarios sketched above are by

no means exhaustive. The important aspect that must be gleaned from them is the importance of the FSP obtaining all relevant and available information from you, to ensure that a recommendation or recommendations can be made that are appropriate to your needs and circumstances, and that allow you as the client/investor the opportunity to make an informed decision. This is however a symbiotic relationship, that requires you as the client/investor to accept that there may be a requirement, depending on your specific needs and circumstances, to accept a higher level of risk than what you may ordinarily be willing to tolerate.

In closing the duty of an FSP to obtain all relevant and available information, and to ensure that you are placed in a position to make an informed decision to ultimately exercise a duty of care towards you as an investor, is provided for in the General Code of Conduct for Authorised Financial Services Providers and Representatives, which has essentially codified the common law and the duty of care that an FSP should display when rendering financial services. Furthermore, these provisions are also provided for in the outcomes of legislation such as Treating Customer Fairly, or as commonly referred to as TCF, thus affording the investor recourse where an FSP has fallen short in exercising this duty.

Written by: Marc Alves

POINTS TO PONDER

K v O

The complainant, Ms K, resigned from her employment as a nurse and received her full pension interest from the GEPF to the value of approximately R1.4 million.

The complainant approached the respondent for assistance to invest her funds in what she understood as a 6 month investment. This was to allow her time to plan her business venture for which she would require the capital.

About three months later, the complainant realised that something was amiss with the investment. Her monthly statement indicated that she lost a substantial portion of her investment. Upon enquiry, she was advised that it was administration fees.

Apart from the fact that the fees were not disclosed to the complainant, she stated that she was also not made aware that she invested in an endowment policy. The complainant had no record of advice in her possession to confirm the extent of the advice rendered by the respondent.

The complaint was duly submitted to the respondent in terms of Rule 6 (b) on the Rules of Proceedings of the Office. The respondent was required to resolve the matter with the complainant, alternatively, submit their response to the complaint with the necessary supporting documentation.

In response to the complaint, the respondent advised that the matter would be settled. The complainant received her full invested capital back, including an amount towards lost interest for the period in question.

S v F

The complainant invested R1 million with the respondent during 2013. The investment was for a term of 5 years, and was to provide the complainant with a monthly income whilst preserving his capital. The respondent's representative provided the complainant with a quotation reflecting a monthly income of R8000 monthly, which he accepted. When the policy matured during 2018, the complainant was informed that his capital had reduced by an amount of R280 000. The complainant approached this Office for assistance in having his capital loss refunded.

The respondent provided this Office with a copy of the record of advice which it claimed stated that the capital was not guaranteed and that the purpose of the investment was to provide for a monthly income. The respondent was also of the view that the record of advice was clear that the drawing of income in the amount stated may affect the capital of the complainant.

This Office put it to the respondent that the document presented as a record of advice, was a generic document that made no specific reference to the complainant's circumstances. Furthermore, the appropriateness of the advice provided was a concern, as the complainant was drawing an income of 9.8% whilst the funds were placed in a low risk fund. The fund selected would never have provided a return to support the income being drawn. There was a duty on the respondent's representative to inform the complainant that he cannot be a conservative investor and still draw an income of 9.8%. There had to be a trade-off between risk and return and the complainant needed to make a decision to either reduce his income, or assume a higher level of risk.

This was not done, and the complainant was allowed to labour under the false impression that the income he was earning was funded from the interest generated from the investment. The complainant was therefore not placed in a position to make an informed decision. The respondent made an offer of R186 414 in full and final settlement, which was accepted by the complainant.

POINTS TO PONDER

"Smart consumers should know what all the options are"

Rick Steves

G v S

The complainant, Mr G, had applied for a short-term insurance policy on the recommendation of the respondent during 1997. The transaction that led to the conclusion of the short-term insurance policy had been conducted during the complainant's bond application. Subsequent to the inception of the policy, during 2013, Mr G had constructed an outdoor pizza oven, which unfortunately led to a fire breaking out on 13 December 2014. The fire destroyed the family's home. The claim submitted was subsequently rejected after the appointed assessor discovered that the pizza oven had not been built according to standard building practices in terms of space heating, and that the pizza oven flue had been installed too close to the wooden rafters. This had resulted in charring and igniting which had led to the fire. The claim, in the amount of R1 495 040, was therefore rejected on the basis of the following exclusions:

Change of Risk – The complainant needed to have informed the insurer within 30 days about any change in circumstances that could affect the risk of loss damage etc. as well as any extensions or alterations to the building structure.

Defects – in the design, materials or construction.

Construction Type – Loss or damage is not covered if insured property does not comply with National Building Regulations or legislation applicable at the time.

Upon receipt of the complaint and after having provided the respondent with the opportunity to respond to the complaint, this Office was informed by the respondent that this transaction, the provision of a short-term insurance policy, was precluded from the provision of advice. The respondent was of the view that the only requirement was that the representative, in this case the attorneys handling the transfer, needed to provide the complainant with factual information. This together with the fact that the complainant had been sent a policy document detailing all terms and conditions, was seen by the respondent as sufficient to satisfy its duty of disclosure in terms of the General Code of Conduct.

This Office however made it clear that it is of the view that the provision of financial service and or a financial product cannot be made in isolation of advice, or a determination by the Financial Services Provider as to the appropriateness of the recommended product to the client's needs and circumstances. This Office was also of the view that even if we were to accept the respondent's response, then it still had a duty to have complied with the provisions of the General Code of Conduct for Authorised Financial Services Providers and Representatives ('the Code') and to have provided concise details of any and all material terms of the contract, specifically dealing with any

POINTS TO PONDER—continued

exclusions, limitations on cover or instances in which cover will not be provided.

The mere provision of policy documents and policy schedules subsequent to the rendering of a financial service does not negate the FSPs responsibility to make disclosures with regards to exclusions specifically dealing with issues such as the need to adequately maintain one's property, or what the requirements are should the client at any stage make alterations or extensions to the building or property, as was the case in this complaint. The fact that this important aspect was 'outsourced' to the lawyers responsible for conducting the transfer and that the respondent had relied on the fact that the complainant was sent a copy of the policy terms and conditions further illustrated the respondent's failure to exercise its duty of care.

An additional argument put forward by the respondent included reference to the fact that the policy had incepted during 1997, which was prior to the inception of this Office on 30 September 2004, and as a result the transaction and any advice rendered fell outside of our jurisdiction. This Office was of the view that the introduction of the FAIS Act and its corresponding Code of Conduct placed a duty on Financial Services Providers such as the respondent to ensure that the required disclosures were made, regardless of when the policy incepted. This is all the more relevant when one considers that short term insurance policies are annually renewable and yet the respondent was unable to provide any record that an annual review had been undertaken since the commencement of the FAIS Act during 2004, this despite continuing to receive an advisory fee on a regular basis.

It was put to the respondent that had annual renewals indeed taken place, which would have considered whether the policy still catered for the complainant's needs, then the addition of the pizza oven would have been brought to the brokers attention, who would have been in a position to have to have made the required disclosures to have ensured that complainant was placed in a position to make an informed decision, as to the need to have the building work adequately certified, and may even have prevented the loss from even occurring all together.

After having numerous interactions with the respondent, it made a decision to present the complainant with an offer of R800 000, which represented this Offices jurisdictional limit. Whilst the complainant's losses exceeded this value, he made the decision to accept the offer, which is the maximum amount that this Office could facilitate. (This Office has however made submissions for the increase in the jurisdictional limit, which has remained unchanged since the inception of the FAIS Act during 2002.)

Whilst the respondent's reliance on this Office's jurisdiction to limit its liability in this matter, makes the resolution of this complaint bitter sweet, it is nevertheless encouraging to receive feedback from the complainant, who we shall allow to have the last word:

"Finding someone willing to listen and help when you feel powerless has value far greater that what you may ever realise. Thank you for that."

"Thank you for the hope you gave us."

CONSUMER EDUCATION DRIVE

PAVILLION MALL—Westville—Durban

The Office of the FAIS Ombud is not only passionate about resolving complaints, but care deeply about consumer education.

Therefore, when an opportunity arose, the Office packed its bags and jet-setted to Durban to see how they could help.

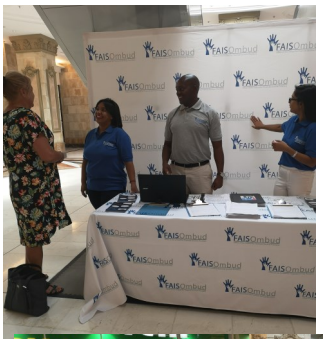
From 19 - 25 March 2019, the Office was visible in the Pavillion Mall, actively engaging with members of the public to inform them about the Office and how they could be helped.

The Office interacted with around 250 prospective complainants, of which just over 30 were able to complete complaint registration forms at the stand. Other complainants opted to submit complaints online and through other communication channels, like through the client care centre.

It was evident that consumers were not always aware of the existence of this Office, that the service provided is free.

It is important to help both consumers and financial services providers understand their respective rights and responsibilities. By doing this, the level of complaints can be reduced and confidence improved in the financial services industry through education.

Access to justice is at the heart of the Office. This can only happen if the Office is accessible to consumers from all walks of life, especially those from disadvantaged communities who are most in need of the services the Office can provide.



A special word of thanks to our dedicated team of employees who made this event not only possible, but a great success!

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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 FSCA Commissioner.

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

DID YOU KNOW?

SA has three capital cities: Pretoria is the Executive Capital, Cape Town the Legislative Capital and Bloemfontein the judicial Capital.