

NEWSLETTER



INTRODUCTION



Advocate Nonku Tshombe
Acting Ombud

30 September 2021 represented the halfway point of the 2021/2022 Financial Year, which concludes on 31 March 2022.

This is a perfect time to reflect on where we stand as an Office in respect of delivering on our mandate, that is, to resolve complaints in a procedurally fair, informal, economical and expeditious manner, and by reference to what is equitable in all circumstances, and to look at what may lie ahead based on statistics collected to date.

The Office of the FAIS Ombud has, as of 30 September 2022 received a total of 6028 complaints, which is an increase of 25% over the same period during the 2020/2021 Financial Year. You will also recall that during the 2020/2021 Financial Year, this Office received in excess of 10 000 complaints for the first time since the 2016/2017 Financial Year.

The upsurge of numbers received up to mid-year suggests that this Office will not only exceed the 2020/2021 number this financial



OVERVIEW

year but that it is likely to receive closer to 12 000 complaints.

Therefore, the possibility exists that the upswing of complaints during the 2020/2021 Financial Year, which was believed to have been driven by the fall-out from the COVID-19 pandemic, was not a once-off and that together with the increased focus on awareness by this Office, more South Africans are not only getting access to the services we provide but see the value of the services during these difficult times.

The other regulatory possibility that may be contributing to the rising numbers is the amendment of the General Code for Financial Services Providers, which has fleshed out some of the old provisions, for instance, what a financial services provider must do in order to determine the suitability of the product for a financial services consumer, what constitutes advertising and has legislatively done away with the concept of a “single need”, thereby expressing agreement with something the Office has been preaching over the years.

Instead, the Code has replaced Subsection (4) of the ‘original’

Code and substituted it with a new subsection (4), which obliges the provider to alert a client who requests the provider to focus or not focus on specific objectives in the needs analysis of the client, that there may be limitations on the appropriateness of the advice provided, caused by the provider not being able to assess the client’s profile properly; and that the client should take particular care to consider on its own whether the advice is appropriate considering its objectives, financial situation and particular needs, with particular emphasis on any aspects of such objectives, situation or needs that the provider did not consider as per the client’s instructions.

Having said that, it has also been noted that there is an increase in the percentage number of complaints that fall within the mandate of this Office from 67% during the 2020/2021 Financial Year to the current 69%.

While these are positive developments, they have placed a significant strain on the Office’s available resources. The settlement ratio, currently at 24%, is an aspect that we

have proudly communicated in previous financial years. The decrease has been the result of the upsurge in volumes and nature of the complaints we have received.

This Office aspires to maintain a settlement ratio closer to 30%, and whilst this is a little disappointing for us, this still represents a total of 925 settled complaints which is 140 more than the previous financial year.

In addition, the total settlement value of R 34 234 289 is outstanding for this time of the year and based on current trends, we should see this value not only exceeding last year’s R 49 773 803 but climbing in excess of R60 000 000 for this financial year.

As a result, the Office is pleased to welcome three new Jnr Case Managers to our ranks to provide a timely boost to our Case Management Department that has hitherto been running at a reduced capacity.

We are also proud that two of the new recruits were previously Graduate Trainees at the Office of the FAIS Ombud, a testament to the quality of the program and also to their interest in pursuing careers in financial services regulation and continue to contribute positively to those we serve.

All of this has been achieved whilst introducing a new Case Management system and all the teething problems that come with overhauling the main ICT program for the investigation of complaints. The new system will introduce new efficiencies into our processes and expedite the investigation of complaints.

The real advantage, however is access to the nature and variety of statistics that this Office now has, which will improve our value proposition in respect of tracking trends and providing quality feedback to our principals, i.e. National Treasury, the



COMPLAINTS RESOLUTION

FSCA and The Ombud Council. This is also a positive testament to all our stakeholder, particularly the Financial Consumer Group and all South Africans to improve communication as well as the effectiveness and proactiveness of regulations and contribute to developments in the financial ombud system of which we are an integral part.

In respect of trends, the first six months of this financial year have been characterized by a significant number of assistance business complaints, mostly in the funeral business space. This Office has been inundated by complaints against micro-entities where overwhelming numbers of claims have placed a strain on these

entities and delayed the payment of these benefits. There have also been a number of entities that have had to dramatically increase premiums and or reduce benefits due to solvency issues that require this Office's intervention and the subsequent reporting to the FSCA for further investigation.

There has also been a significant increase in the prevalence of fraudulent complaints where complainants dispute the implementation of policies that they have no knowledge of and have never authorized. Once again, where this Office notes any specific tendency or pattern in respect of fraudulent policy complaints, those FSPs will continue to be reported to the FSCA for their conduct to be scrutinized.



INVESTMENT FEES AND CHARGES

The General Code of Conduct for Authorised Financial Services Providers and Representatives ('the Code') provides in Section 3, that a Financial Services Provider ('FSP') must reflect all amounts, sums, values, charges, fees, remuneration or monetary obligations, payable in specific monetary terms. In addition, Section 7 (c) (bb) of the Code also provides that there must be a separate disclosure (and not merely disclosure of an

all-inclusive fee or charge) of any charges and fees to be levied against an investment, including the amount and frequency thereof.

Whilst this may require FSPs to disclose fees, thereby making potential clients more aware of the existence of these fees and charges, the reality is that a 1% charge is monetary equivalent and may not seem like a significant amount; however, the potential impact over an investment period of 10, 20 or even

40 years can be significant. This is best illustrated by way of an example: If one invests a lump sum of R100 000 for a period of 40 years, it will grow to R1,24 million if we assume a growth rate of 6,5% per annum. Adding a fee of 0,5% per annum to this equation will see the lump sum grow to R1,02 million (A reduction of R238 000). Increase this to 3% per annum of the investment value, and one will receive a mere R370 000.

The compounded effect of fees and charges over the duration of an investment can be significant, so it is important that FSPs not only disclose fees and charges in specific monetary terms but that the impact of those fees and charges on the investment and implications thereof on the ultimate performance must be disclosed as well to allow the client the opportunity to really make an informed decision.

SETTLEMENT

M v O

The Office recognises that a settlement agreement entered into in order to resolve a complaint via a conciliation process is concluded on a confidential basis. This manner of resolution is also much preferred by the Office whenever possible because it is an expeditious process, it does not expose the parties to legal costs and it lends itself towards the harmonious atmosphere required between consumers and financial services providers that can lead to the requisite confidence of consumers in the financial services industry. Further, some of the issues that arise give the Ombud an opportunity to highlight to the whole industry specific concerns that arise every now and again. As such, we may use certain details to highlight these issues but when we do, we will take every care not to share any information that may violate the privacy of the parties to the complaint.

During 2014 the complainant invested the proceeds of her pension, an amount of R1 714 192, on the recommendation of the respondent's representative. During December 2017, the complainant had a review of the portfolio with the respondent's representative, which confirmed that the value of the portfolio had risen to R1 932 483,12.

On 1 November 2018, the complainant received an annual review statement indicating that the value of the portfolio was now R1 699 896,54.

The complainant approached her nearest branch to make further enquiries and for the first time, became aware that the respondent's representative had earned an amount of R33 604,21 in respect of ongoing financial planning fees that she claimed had not been disclosed to her.

The complaint was forwarded to the respondent in accordance with the Rules on Proceedings of this Office, which require that a complaint be sukitted to a respondent to enable them to respond fully to the complaint.

The respondent was given an opportunity to respond to the allegations raised by the complainant and was asked to show that he had complied with the Code, especially in respect of the requirements for the disclosure of fees and charges.

This Office also requested that the respondent provide this Office with documentation showing that fees and charges as well as the potential implications thereof had been specifically discussed with the complainant as well as the potential implications thereof to the performance of the portfolio

Upon receipt of this Office's correspondence, the respondent made an offer of R36 510 in full and final settlement and the amount that was accepted by the complainant.



LESSONS LEARNT

- 1. Like most things in life, investing isn't free. However, high fees can really eat into your returns over time, so you should make sure you're aware of the different charges and the effect of these charges to your investment so that you can make an informed decision;*
- 2. Certain fees can be negotiated, such as the advisory fees and commission payable to the FSP that provides the advice. It is important that both parties can reach an agreement that is beneficial;*
- 3. A Record of Advice should be completed for every transaction that details the advice provided and disclosures made to you by the FSP. A copy of the Record of advice must be provided to you in order to review and make sure that the information recorded in the Record of Advice accords with your discussion with the FSP.*

ENDOWMENT POLICIES

An endowment policy is, just as the name suggests, an insurance policy, which is governed by the Long-Term Insurance Act.



Therefore, whilst it is an option for those looking to invest or save, it is not an investment or savings product. Notwithstanding this fact, however, endowment policies are, in most part, sold as investment solutions and savings products, utilising the term investment as opposed to the policy, without any emphasis on the fact that they are actually life assurance policies. It may appear to be a fine technical issue, but it has significant implications since this description results in the avoidance of how these life assurance products are structured and the various layers of costs involved.

As a result, when an endowment policy is sold as an investment, the discussion turns from the characteristics of the product to focus more on aspects such as investment horizon and illustrative returns etc. Whilst endowment policies have a place within the financial planning environment; they are not always suitable recommendations to the average client who is looking to invest funds for wealth creation or to save for a specific objective.

The categorisation of an endowment policy as a life assurance policies means that in addition to surrender

fees and penalties, there are additional consequences to the restriction period. In accordance with prevailing legislation, the minimum restriction period applicable to an endowment policy is five years.

During this five-year restriction period, the insurance company may not allow an investor to either fully surrender the policy or to borrow the full investment value.

Furthermore, in the event of the investor increasing the monthly or annual contributions by more than 20% of the previous year's contributions, a new five-year restriction period will be applied. This means that a five-year term endowment policy could effectively become an eight or nine-year term policy by one merely increasing one's premium in excess of what is allowed.

These restrictions involved in investing in an endowment policy, especially with regards to the liquidity and penalties, are not always adequately disclosed to potential clients to allow them to make an informed decision as to the policies' suitability to their needs and circumstances

SETTLEMENT

M v CB

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The complainant met with the respondent's representative during 2011, where a recommendation was made to invest his funds in a five-year termed endowment plan. A total of R5 000 000.00 was invested into an endowment with a fund that offered a minimum guaranteed return of R2 200 000.00 at maturity.

During 2015, the respondent's representative then, began contacting the complainant on numerous occasions, trying to convince him to move the funds to another insurer, where the promise was made that the complainant was going to make more than the R2 200 000 00 guaranteed amount. Finally, the complainant was convinced by the representative's tenacity and agreed to move the funds.

The complainant, over time then became suspicious of the product provided and when he requested to withdraw from the investment, he was presented with a quotation showing early withdrawal fees of almost R300 000.00.

The complainant claims that the withdrawal had never been disclosed or even discussed by the respondent's representative. Furthermore, the complainant claims that he only realised that neither the capital and or return were guaranteed and was of the view that the advice provided had not been appropriate.

The complaint was forwarded to the respondent in accordance with the Rules on Proceedings of this Office

to respond to the allegations raised by the complainant. In its response, the respondent submitted that from the documents obtained and signed by the complainant and considering the complainant's financial literacy, it is clear that the complainant was fully informed and received adequate disclosures of all the terms and conditions applicable to the investment and its chosen portfolios.

In addition, the respondent noted that the complainant had at the inception of the policy qualified for an initial investment booster of R 1 487 631.90 (12.5%) which in effect catered for the previous guarantee and that the losses sustained on the portfolio were as a result of the fall out from the COVID pandemic and could not have been foreseen.

In response, this Office noted that the record of advice provided clearly recorded that the complainant wanted a secure investment that provided guarantees. How the recommended product that exposed the complainant to market fluctuations with only an 80% capital guarantee was deemed to have been an appropriate replacement to the initial policy, was not evident from the documents provided.

Furthermore, in the replacement policy advice record, the respondent's representative disclosed that the new policy would provide a tax-free lump sum at maturity as compared to the previous policy where the portfolio attracted tax on interest income, dividends and in the form of CGT. This was a gross misrepresentation as both policies were endowment policies and would both provide a tax-free lump sum at maturity due to the taxation of the policies within the fund in accordance with the Four Funds Approach.

It was for these reasons and the fact that the surrender penalties were never adequately disclosed to the complainant that this Office was of the view that the complainant had never been placed in a position to make an informed decision as to the appropriateness of this replacement.

This Office recommended that the respondent look to resolve the matter with the complainant. In response, the respondent settled the matter with the complainant by offering the complainant a refund of all upfront and ongoing commission paid to the representative, which totalled R291 677.

LESSONS LEARNED:

- 1. An endowment is an insurance policy, not an investment. As a result and in accordance with the Long-Term Insurance Act, there are a number of restrictions on the policy and additional fees and charges should one want to extricate oneself from the policy.*
- 2. Make sure that the FSP provides concise details of the type and nature of the product being recommended to allow you to make an informed decision. The replacement of any financial product is not a decision that must be taken lightly*
- 3. Every product provider has their own suite of products with different features and benefits, and as a consumer, you must demand from the FSP a detailed breakdown of the comparison between the existing product and the replacement product and ensure that the FSP discloses to you any and all consequences and implications of the replacement.*





under the baobab tree

In light of the ongoing COVID 19 pandemic, the Office of the FAIS Ombud has implemented measures to limit the spread of the virus in an effort to protect both employees and external stakeholders.

Our staff shall be working remotely and will therefore not always be available to take telephone calls. However, the Office of the FAIS Ombud remains committed to its mandate of resolving complaints ensuing from the provision of financial services

Should you wish to register a new complaint a Complaints Registration Form can be downloaded from this site. The completed form can then be sent to info@faisombud.co.za. Please also be advised that new complaints can be submitted directly via our website at www.faisombud.co.za

Should you require assistance in submitting a new complaint, wish to follow-up on an existing complaint or for any other general enquiry please contact us on the numbers provided below and your query shall be directed accordingly.

Should you have any other urgent enquiry that needs a written response, please contact us via-mail on enquiries@faisombud.co.za and one of our dedicated staff shall attend to your query. We apologise for any inconvenience caused during this period.

Phone: (012) 762 5000

Fax: (012) 348 3447

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Website: www.faisombud.co.za



FAIS Ombud

Office of the Ombud for Financial Services Provide