JANUARY 2023| ISSUE 23

under the baobab tree

FAISOmbud
Office of the Ombud for Financial Services Provide

FROM THE EDITORS DESK:

As we welcome the new year, the Office of the FAIS Ombud looks forward to another year of serving and protecting the rights of consumers in the financial services industry. Our goal is to empower consumers with the knowledge they need to make informed financial decisions, and to empower financial institutions and their representatives to provide financial services in accordance with the provisions of the General Code of Conduct to improve the integrity of the financial services industry

Another key area of focus for us in 2023 will be to continue to streamline our processes and improve our overall efficiency to ensure that complaints are dealt with in a timely and effective manner. As we move forward into the new year, we are confident that with the support of our stakeholders and the commitment of our dedicated team, we will be able to achieve our goals and make a real difference in the lives of South African consumers.

We look forward to the new year with enthusiasm and a renewed commitment to serving the public. If you would like to contribute to our newsletter, feel free to send us an email at info@faisombud.co.za.

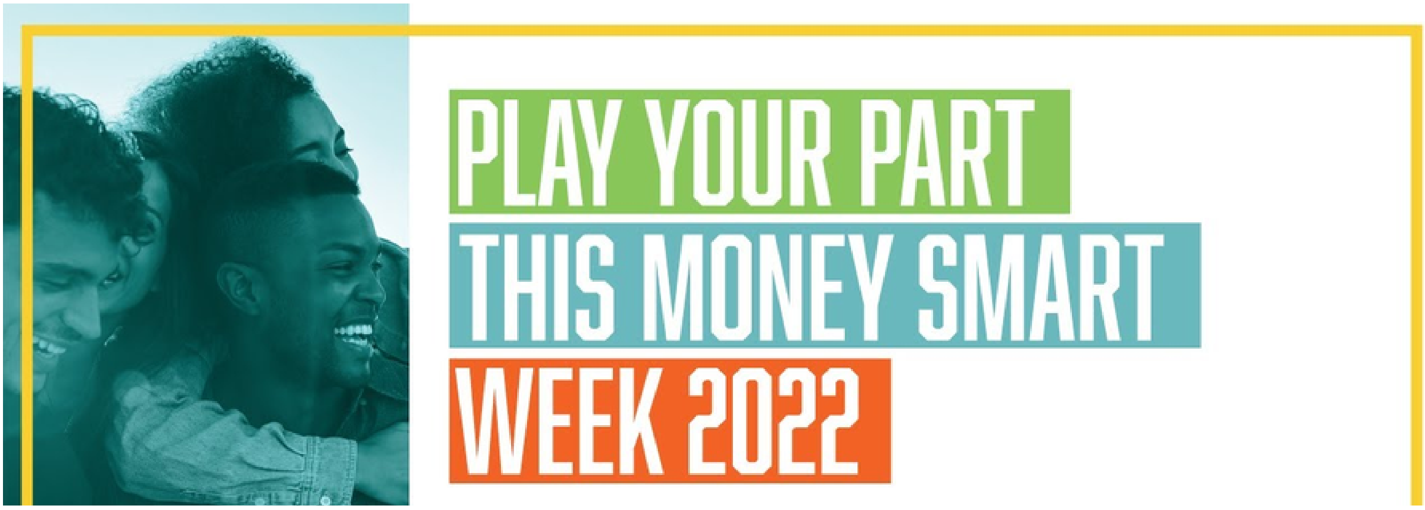
FAIS Ombud 2021/22 Annual Report Launch

The Office of the FAIS Ombud successfully launched the 2021/22 Annual Report. The report was officially released on the first week of December 2022 and provided an in-depth look at the work the Office has done over the past year, including key achievements, case statistics, and future plans.

The Annual Report provided a comprehensive overview of the office's performance during the year, including the number of cases received, resolved, and pending. It also highlighted the office's key achievements, such as the successful resolution of a significant number of complaints, as well as the implementation of new policies and procedures to improve our service delivery.

One of the most notable achievements in the report was the office's commitment to promoting financial literacy and education, through various initiatives and campaigns.

The office of the FAIS Ombud looks forward to continuing its efforts in promoting financial literacy, protecting consumers and ensuring fair treatment in the financial services industry. We extend our appreciation to all stakeholders.



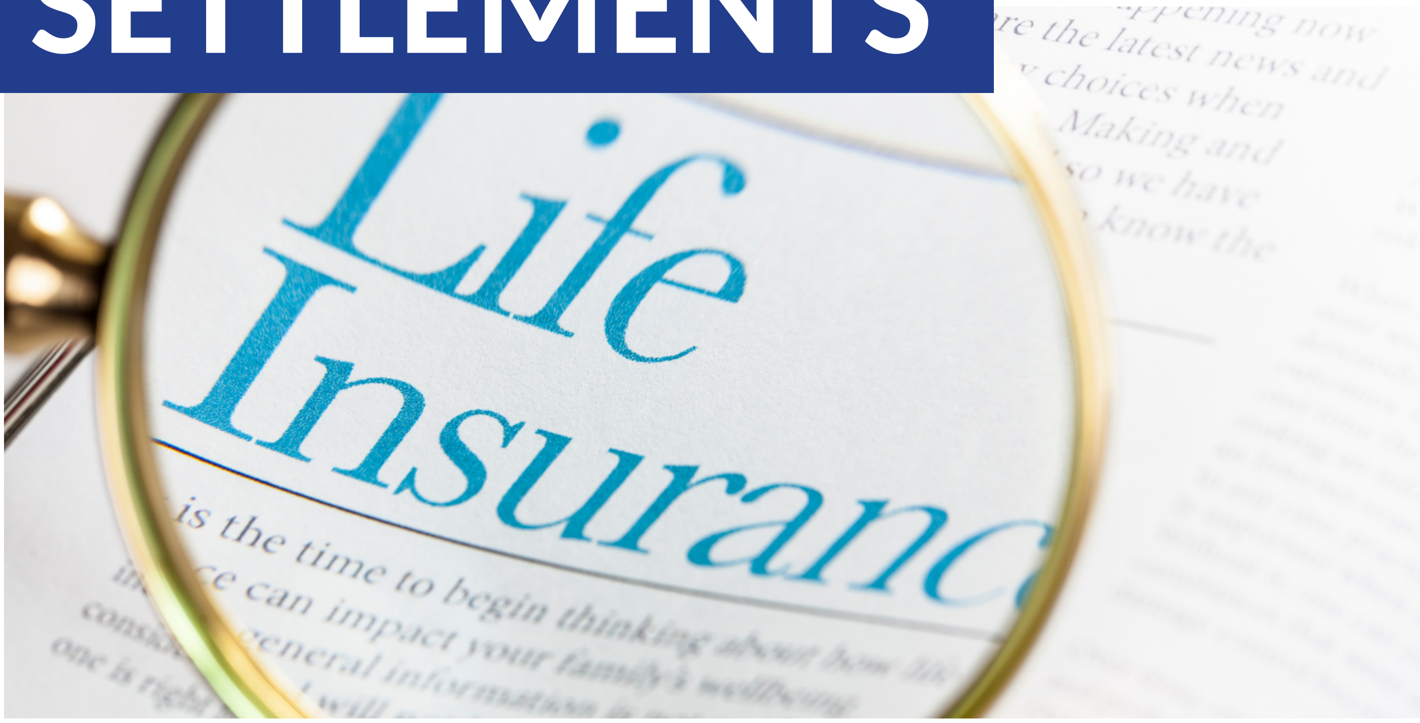
FAIS Ombud participates in the 3rd edition of Money Smart Week South Africa to empower consumers with financial knowledge.

The Office of the FAIS Ombud participated in the 3rd edition of the Money Smart Week South Africa (MSWSA2022). As a key player in the National Consumer Financial Education Committee (NCFEC), the FAIS Ombud is dedicated to educating consumers and promoting active involvement, collaboration, and coordination among stakeholders in consumer financial education. Chaired by National Treasury, the NCFEC is committed to empowering consumers with the knowledge they need to make informed decisions that involve their finances.

During the week of August 29th to September 4th, 2022, the FAIS Ombud hosted a variety of online, in-person and radio events. These activities aimed to provide consumers with valuable information and resources to help them navigate the financial landscape.

If you missed any of our activities during MSWSA2022, you can visit our website at **www.faisombud.co.za** or follow us on our social media platforms: Facebook, Twitter, LinkedIn, and Instagram for more information. We are already looking forward to participating in the 2023 Money Smart Week campaign and continuing our efforts to educate consumers.

SETTLEMENTS



Credit Life Insurance

Credit insurance refers to an insurance policy (such as a life insurance policy, disability and dread disease policy, retrenchment policy, salary protection policy etc.). Such insurance is taken out by a consumer to compensate a credit provider if the consumer is unable to repay a loan due to, among other reasons, death, disability, unemployment, or retrenchment. In addition, a credit provider is entitled to require a consumer to maintain a credit life insurance policy during the term of the credit agreement to ensure that any outstanding loan amount will be settled should something happen.

Credit life insurance was largely unregulated by the National Credit Act, No 34 of 2005 (NCA) until 9 February 2017, when the Minister of Trade and Industry published the final Credit Life Insurance Regulations (Regulations) under Government Gazette Notice No. 40606 of 2017. These Regulations sought to protect consumers from abusive practices that have developed over time such as selling consumers unnecessary and inappropriate insurance products and levying excessive insurance premiums without performing an accurate risk assessment of each customer.

Having said that, it is still important that those that provide financial services in respect of credit life policies ensure that they provide concise details of the material terms of a contract, to ensure that the prospective client is placed in a position to make an informed decision.

One of the main reasons for this is that credit life policies, unlike your more traditional life insurance policies, are not underwritten, which means the insurer does not calculate your premiums based on your actual risk. As a result, and to manage the risk posed, cover for pre-existing conditions is excluded, and at the claims stage the insurer will check to see if your death or disability was from a pre-existing condition. This exclusion can be an outright exclusion or limited to a specific period, say 24 months.

S v S

The complainant and her husband had a credit life policy with the respondent to cover the outstanding bond. This policy had incepted on 6 April 2018. After the complainant's husband was diagnosed with Stage 4 Brain Cancer during October 2021, the complainant had submitted a claim in respect of the dread disease benefit of the policy. After numerous follow-ups, the complainant was informed that the claim was denied as it was related to a pre-existing condition. The complainants claim that when they had applied for the bond with the respondent, they had been advised to apply for the credit life policy, based on the husband's medical history. The respondent's representative had therefore been aware of her husband's previous and existing medical conditions. In addition, the complainant also confirms that her understanding when applying for the policy was that pre-existing conditions are covered after a period of 12 months.

In response to the complaint, the respondent confirmed that the policy was a Home Loan Protection Plan Policy, which provided both the complainant and her husband with cover in respect of death, temporary disability, retrenchment, and dread disease. The respondent also confirmed that the policy had incepted on 6 April 2018, upon receipt of the first premium, and that the complainants were sent a new business schedule inclusive of the Obligatory Disclosures Terms and Conditions to familiarize themselves with and for them to raise any areas of concern before claims could arise. The respondent also confirmed that the dread disease claim that was reported on 31 January 2022, was repudiated due to the event occurring prior to the policy inception as the cancer had first been diagnosed during 2014 and had been spreading ever since.

In response, this Office questioned the reasons provided for the repudiation of the claim, as the respondent had confirmed that the policy had incepted on 6 April 2018. Of importance is the fact that the claim, after confirmation of the diagnosis of Stage 4 Cancer, had been submitted during October 2021. Clause 4.2 of the Obligatory Disclosure Document provides that no claim would be paid in the first 24 months after the start of cover which was due to any pre-existing condition, which includes any medical condition, inclusive of cancer, where one has seen a medical doctor about, or for which one is being treated. In addition, Section 7 (1) (c) (vii) of the General Code of Conduct, provides that a financial services provider must provide concise details of any special terms or conditions, exclusion of liability, waiting period, loadings, penalties, excesses, restrictions, or circumstances in which benefits will not be paid.

It would be therefore expected of the respondent to disclose all relevant material information to allow the prospective client the opportunity to make an informed decision regarding the proposed financial product.

Having been aware of the complainant's medical condition, and in view of the 24-month exclusionary clause for pre-existing conditions, the respondent had a duty to advise the complainant of any issues that may see a future claim for his existing medical condition being repudiated despite the completion of the exclusionary period.

The respondent subsequently responded by confirming that it had taken a decision to honor the claim in full and final settlement.

Settlement amount: R323 462

Lessons Learnt:

- **Credit life insurance is an important consideration as it provides you with peace of mind if you cannot earn an income to pay your monthly premiums on existing credit or loan agreement, as it will ensure that your outstanding debt will be paid off by this policy directly to the lender due to permanent disability, retrenchment, or death.**

- **Whilst the National Credit Act does provide that a credit provider may require one to take out credit life insurance when entering into a credit agreement, it cannot prescribe to you with whom this policy must be taken. In this regard, you have freedom of choice.**

- **Not all pre-existing condition clauses are the same. There are those that provide a blanket exclusion for the full duration of the policy and those that provide for an exclusion for a limited period of between 12 and 24 months. It is important to ensure that you are aware of what your policy provides to make an informed decision as to whether the policy meets your specific needs.**

- **You may, depending on your medical history or prevailing medical condition, need to consider a more traditional life cover policy with disability, impairment, dread disease etc. where medical underwriting will be conducted by the insurer to determine whether your risk is acceptable and the premium at which the risk is acceptable to the insurer. This will ensure that there can be no concerns at claim stage that a claim will be rejected due to pre-existing conditions.**

The Effects of Fees and Charges on Collective Investment Scheme (Unit Trust) Investments

Fees and charges are unavoidable when investing, and lead to what is commonly referred to as a cost or performance drag, which is the magnitude of the difference that costs make on the performance of a portfolio over time. Often, there are three costs associated with a collective investment scheme namely, financial advisory fees, administrator or platform fees, and investment manager fees.

The administrative or platform fees are related to a Linked Investment Service Provider (LISP), which is a company that enables you to invest in a wide range of collective investment schemes, via one entry point or platform. Investment managers charge an annual fee (as a % of assets) for the day-to-day management of the investment or fund. And the one most prevalent to this Office is the financial advisory fees, which the financial advisor will charge for the rendering of financial service.

The effects of fees and charges have a compounding effect over time, i.e., cost drag, and can be illustrated with this simple example: If one starts with a lump sum contribution of R500 000, and you receive a return of 10%, with costs of 3%, the value of your portfolio at the end of year one would be R535 000. The total portfolio value after 10 years will be R983 576, this will grow to R1 934 842 after 20 years and after 30 years it will be R3 806 128. Take the same R500 000, with the same 10% return, but with costs reduced to 1% and the total portfolio value after one year would be R545 000, R1 183 682 after 10 years, R2 802 205 after 20 years and R6 633 839 after 30 years. This means that a mere 2% difference in fees, could potentially see a R2 827 712 difference in the value of one's portfolio over a period of 30 years.

It is therefore of paramount importance that your financial advisor discloses not only the fees and charges applicable to your investment but the effects that these fees and charges can have on the performance of your investment. This will allow you the opportunity to make an informed decision especially when you consider that financial advisory fees for one, that can range between 0% and 3% are indeed negotiable.

U v S

The complainant claims to have received a phone call from a representative of the respondent, telling her that she must come and see her so she can invest her money in an account that would perform better than the money market account where her funds were currently invested.

At their first meeting, the complainant asked the respondent's representative whether there would be a cost involved. Upon hearing that costs would be incurred, the complainant claimed that she was not interested, as her funds were currently not attracting any monthly fees. The respondent's representative then assured her that if she signed for a 1-year fixed term then after 3 months the respondent would pay back all costs into the investment account. Based on this and the fact that the projected growth of 5-6% way outperformed the money market account she was currently invested in, the complainant agreed to invest R1 000 000.

When they met a second time after 3 months the complainant asked why the fees of R34 000 had not yet been paid back, the respondent's representative however denied having ever made such an undertaking, and despite several attempts to contact the representative, the complainant never heard from her again. The complainant then escalated the matter with the respondent and the investigation concluded with the respondent being unable to assist her claiming that she had signed and initialled the application form and all relevant documents.

The complainant then approached this Office for assistance. The respondent's initial response to the complaint was that the complainant had failed to provide definitive proof that its representative had promised that the fees and charges would be paid back into the investment after 3 months.

This Office then provided the respondent with a document, a fund fact sheet, where its representative had in her own handwriting provided such an undertaking, which she had also signed. This undertaking was made not once but twice in July 2021 and then again during December 2021. The respondent's further response was that no investment product or fund in the industry guarantees or offers any refund of fees after a specific period and that these investment products pay upfront advice fees which get deducted from the investment at inception with the net investment amount then being given full market exposure (invested).

The respondent was satisfied that this aspect had been duly disclosed and agreed upon by the client and that although these notes were made the client did have the actual fund factsheet of the fund explaining the product, fees, charge structure, etc. The respondent was also of the view that the compliance documentation forms the basis of the contractual agreement regarding the investment made and that respectfully no reliance could be put on external documentation which would attempt to contradict the pricing of the product agreed upon.

This Office once again communicated to the respondent, that its representative had indeed disclosed the fees and charges to be deducted, there can be no disputing that fact. The concern for this Office was that the handwritten notes, that were signed and dated by its representative and which its representative does not dispute, and which cannot be ignored, were false and had misled the complainant. In the absence of this misrepresentation, the complainant would not have accepted the investment as fees and charges were of importance to her in making such a decision. The respondent was asked to reconsider its stance and that it looks to resolve this matter with the complainant. The respondent reverted with an offer of R25 149, the was based on the difference between the original investment of R1 000 000 and that fund value of R874 851 as of 2 November 2021. The complainant accepted this offer that saw her original R1 000 000 returned to her.

Settlement amount: R25 149

Lessons Learnt:

- **Fees and charges can over time have a significant effect on the performance of a portfolio, and whilst they cannot be totally avoided, you must ensure that your advisor discloses all fees and charges and their potential impact so that you can make an informed decision as to whether the investment product being recommended is appropriate for your needs and circumstances.**

- **Advisory fees can be negotiated, and whilst it is only natural that financial services providers seek to be remunerated for their efforts in respect of the financial service rendered, it should be after it has been agreed upon between the two parties in view of the quality of service provided.**

THE IMPORTANCE OF REVIEWING YOUR INSURANCE POLICY SCHEDULE ANNUALLY

It is important to take stock of our insurance policies and ensure that they are still meeting our needs and providing the best value for money. The financial services industry is constantly evolving, and new products and options are continually being made available to consumers. It is crucial to stay informed and ensure that our insurance policies are up-to-date and suitable for our current needs.

Make sure that you protect yourself from any potential issues that may arise from not understanding your policy fully by following the following tips:

- Check the terms and conditions of the policy to ensure that they are still relevant to your needs.
- Look at the premium and compare it to other policies to ensure that you are getting the best value for money.
- Check the benefits of the policy and compare them to other policies to ensure that they are still suitable for your needs.
- Check the exclusions and limitations of the policy and ensure that you are aware of them before you renew the policy.
- Take note of any changes to the policy that have been made by the insurer and ensure that you understand the implications of these changes.
- If you have any doubts or questions about your policy, don't hesitate to contact your insurance provider for clarification.

By reviewing your policy schedule annually, you can ensure that you are getting the best possible value for money and that your policy is still suitable for your needs. By following the tips outlined above, you can also protect yourself from any potential issues that may arise from not understanding your policy fully.

Office of the FAIS Ombud successfully attended consumer outreach programs in various provinces

The Office of the FAIS Ombud successfully participated in consumer outreach programs in various provinces in 2022. These programs, held in Mpumalanga, Brits, and Midrand, aimed to educate consumers on their rights and responsibilities under the Financial Advisory and Intermediary Services (FAIS) Act. The Office was able to reach a large number of consumers who were previously unaware of the services offered by them.

During the engagement, the Office also educated consumers about the role of the Ombud and the services provided. The outreach helped the office to better understand the needs of the various communities and identify areas where they can provide assistance and support.

Furthermore, it helped to raise awareness of the services offered by the office and the assistance it can provide in resolving disputes between consumers and financial services providers.

CONTACT US

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 at the numbers provided below and your query shall be directed accordingly.

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