



INTRODUCTION

The 9th edition of *Under the Baobab* the newsletter for the Office of the FAIS Ombud, allows us to reflect on the messages communicated during the previous two editions of this newsletter. The reason for this is that this edition of *Under the Baobab* focuses on a quarter that included National Savings Month, an initiative held on an annual basis during the month of July by the South African Savings Institute. It is no secret that South Africa as a nation, has a poor global ranking when it comes to savings which has resulted in a population that is reliant on debt and an economy stimulated by foreign investment.

During the 7th edition of *Under the Baobab*, we focused on the benefits of savings for the man in the street, and National Treasury's initiative to introduce tax free savings accounts that were meant to reward a behavioral shift towards an enhanced savings culture. The importance of saving and the role it plays in allowing one to take control your financial future were also highlighted during the 8th edition of *Under the Baobab* where we noted the importance of obtaining professional advice post retirement, and the precarious position many South Africans find themselves in as a result of a failure to have made sufficient provision, which often leads to risks being assumed that are detrimental to one's financial future.

The decision to begin saving and to take control of one's financial future however often goes hand in hand with seeking advice from a financial planner, and there are certain questions you should ask of your advisor to ensure that you can as far as possible hold your financial planner accountable for the advice provided. First and foremost is the need to establish whether or not the financial

planner is licenced, Financial Services Providers in South Africa must be licensed with the Financial Services Board. As a licensed financial planner you are assured that the person you are dealing with has attained the appropriate qualifications and experience that meet the requirements set out by the Financial Advisory and Intermediary Services Act No. 37 of 2002.

Prospective clients should also determine whether the financial planner follows the six-step process for identifying a client's current financial situation, so that the gap between your current situation and your desired outcome becomes the basis of the financial plan. Also look to establish a professional relationship with the financial planner, and manage expectations by setting out the details for ongoing interaction that are critical to the success of any financial plan. The management of expectations also extends to the important aspect of the basis upon which the financial planner charges fees, and what it is that the financial planner will provide in exchange for those fees

Another important question to ask your financial planner, is what the costs are with regards to the recommended product, and how those costs impact on the performance of the product. When all is said and done however the most important aspect is whether you are satisfied that your financial planner is able to articulate why the product ultimately recommended is appropriate to your needs and circumstances, and that you have been placed in a position to make an informed decision.



CASE STUDY 1

UNDERSTANDING THE RESTRICTIONS ATTACHED TO ENDOWMENT POLICIES

The restriction period of an endowment policy refers to the minimum contract period for which an endowment must be undertaken. According to current legislation the minimum restriction period 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 loan the full investment value. Furthermore in the event of the investor increasing the monthly or annual contributions by more than 20% over the previous year, a new five year restriction period will be applied. This means that a 5 year termed endowment policy could effectively become an 8 or 9 year termed policy by one merely increasing ones premium in excess of what is allowed. Always ensure that your Financial Services Provider is able to explain all the implications involved in investing in an endowment policy especially with regards to the liquidity aspects surrounding the policy and your potential need to access the funds in the future.

THE CASE OF MS F



Facts

After resigning from her employment, the complainant had invested an amount of R200 000 into an endowment policy, upon the recommendation of the respondent's representative. The complainant had informed this Office that her intention had been to receive the funds after a period of 5 years, on the understanding that she would be able to access the funds as and when she needed. After the inception of the policy, the complainant had successfully made one partial surrender and one loan against the policy. On the assumption that she was able to make unlimited withdrawals from the policy whenever the need arose, the complainant had attempted to make a third withdrawal. After receiving no feedback from the respondent with regards to her request, the complainant had visited the offices of the respondent, where she had been informed that she could not make any further withdrawals from the policy and that the remainder of the funds would only be able accessible upon maturity during 2019.

Aggrieved by this, the complainant had lodged a complaint with this Office.



Our Intervention

The respondent was requested to show its compliance with the provisions of the General Code of Conduct for Authorised Financial Services Providers and Representatives ('Code'), by providing documentation showing that the complainant had been made aware of the nature of the product recommended, with specific reference to the restrictions and limitations applicable. The respondent was asked to provide documentation in support of why this product was deemed to have been appropriate in view of the complainants prevailing financial situation.

The respondent, without responding to the issues raised in the above mentioned correspondence, had reverted to this Office by agreeing to resolve the matter with the complainant.

The resolution had been equivalent to the remaining fund value of the policy.



Lessons learnt

A client must always satisfied that he or she understands the potential limitations and or restrictions attached to the financial product recommended, such as those prevalent within an endowment policy.

Therefore any potential client must be satisfied that the funds to be invested will not be required before the maturity date of the policy, and that provision has been made for any unforeseen expenses.

Should one for whatever reason need to access the proceeds of an endowment policy than thought must be given to what may be required as no further opportunities will be available for the duration of the restriction period.

CASE STUDY 2

HOMEOWNERS INSURANCE REQUIRES A SOLID FOUNDATION

A comprehensive homeowner's insurance policy protects your home from the risk of structural damage, including fire damage, storm damage or a burst geyser. Furthermore such cover is often compulsory if you apply for a home loan. It must however be borne in mind that defects caused by substandard building material, design and/or poor workmanship are more often than not specifically excluded from cover and no claim will be entertained should this be determined by the assessor. This once again brings us to the importance of ensuring that your Financial Services Provider discloses all material terms and conditions as well as any exclusions of liability and circumstances in which cover will not be provided.

THE CASE OF MR K



Facts

The complainant had been contributing premiums towards a homeowner's insurance policy that had been applied for as a result of him having obtained a home loan from the respondent. When complainant's property suffered damages as a result of an earthquake, he had submitted a claim to the respondent. The respondent had subsequently rejected the claim on the basis that the damages suffered were not as a result of the earthquake, but rather due to the fact that the insured building had not been built in accordance with the appropriate standards and that the materials used had been of substandard quality.

Dissatisfied by the outcome of the claim, the complainant had approached this Office for assistance.



Our Intervention

Upon receiving the complaint, correspondence was directed to the respondent to which the respondent had replied by confirming that according to the assessor's report, the construction of the building was inferior, substandard and defective.

The respondent had relied on the fact that this was a specific exclusion in terms of the policy documentation, and was unwilling to entertain the complainant's claim for compensation.

The matter was officially accepted for investigation in terms of section 27(4) of the Financial Advisory and Intermediary Services Act 32 of 2002. This Office argued that no documentation had been provided showing that the relevant exclusions had been explained to the client, especially with regards to the specific clause relied upon to reject the claim. It was also made clear to the respondent that it was not sufficient that it had provided the complainant with the policy documentation containing the exclusions after the policy had already been entered into, without any explanation that would have allowed him the opportunity to have made an informed decision and to have possibly made an attempt to mitigate his losses.

The respondent subsequently reverted with a settlement offer which was accepted by the complainant.

Lessons learnt

It may be worthwhile to have your new property evaluated by an independent assessor to ensure that it conforms to the required standards that allow for peace of mind that any future claims will not be subjected to such an exclusion.

Regardless of the disclosures made by your Financial Services Provider, always ensure that you understand any and all exclusions pertaining to your policy that may result in any future claim being rejected.

CASE STUDY 3

GAP COVER IS NOT A SUBSTITUTE FOR MEDICAL AID

Most medical aid schemes cover hospital costs at 100% of the applicable medical aid rate. However, most specialists, surgeons, anaesthetists and other healthcare professional service providers charge in excess of this recommended rate. As a result medical aid scheme members are left with substantial shortfalls in payment for these services, which, depending on the severity of condition and length of stay in hospital, could significantly impact on a member's financial wellbeing. Gap cover which is not a medical aid but an insurance policy governed by the Short Term Insurance Act, can be a solution which bridges the difference between the medical aid scheme's payment and the actual private rate charged. It must be appreciated however that as with any insurance policy, gap cover policies also have certain exclusions on cover, and traditionally will not cover the difference where you have utilised services outside of your medical aid schemes network of providers or for hospital charges that your scheme regards as unnecessary. Cover may also not extend to instances where your bill has exceeded your schemes overall annual limit on cover or for procedures where the required pre-authorization was not obtained. Within the gap cover space, there are a multiple of entities that provide a myriad of options and variations to provide for any number or eventualities, and you must ensure that the policy you choose best suits your needs and the benefits provided by your medical scheme. This is definitely not an area where one size fits all.

THE CASE OF MR G

Facts

In addition to his medical aid scheme, the complainant had also applied for a gap cover policy on the recommendation of the respondent's representative. The complainant was under the impression that in instances where his medical aid scheme did not cover his medical costs in full, his gap cover policy would settle the difference. After undergoing a medical procedure, the complainant discovered that there was a shortfall that his medical aid scheme had not provided for, so he settled the outstanding amount from his own pocket, and then submitted the invoice to be refunded in terms of the policy. The respondent however failed to settle the claim and the complainant who felt that the material aspects of the policy had been misrepresented to him approached this Office for assistance.

Our Intervention

The complaint was referred to the respondent in accordance with the Rules on Proceedings of the Office. In our correspondence, this Office requested that the respondent provide documentation showing that the material terms of the policy had been specifically disclosed to the complainant in accordance with the provisions of the General Code of Conduct, and that the complainant had been placed in a position to have made an informed decision. The respondent failed to address this Office on the issues raised, and chose instead to respond directly to the client, wherein an apology for poor service on the part of the respondent was recorded in addition to confirmation that the claim would be paid in full.

Lessons learnt

Gap cover insurance is not medical aid cover and will not stand in where your medical aid either does not provide cover, or where the medical aid has declined cover for a specific procedure.

One must clearly understand what type of gap cover policy you are purchasing, as well as the benefits provided in terms of that policy to ensure that it not only coincides with the medical aid scheme to which you belong, but that is also in keeping with your specific needs.



CASE STUDY 4

FACTORY FITTED EXTRAS MEAN EXTRA COVER.

The aim of insurance is to place one in the position you were prior to the loss incurred. It is therefore important to ensure that your vehicle is adequately insured and this includes specifying all extras on the vehicle. In the main comprehensive motor vehicle insurance will provide cover limited to the retail value of your motor vehicle which will include factory fitted items that are included in the listed price. The dealer invoice will guide you in this respect, as for example specific vehicle models come standard with leather seats. If however there are any factory fitted extras that you specifically ordered from the factory then these need to be specified with the correct replacement cost noted for each item. These extras would as a rule be noted separately on the dealer invoice, and by specifically specifying these items you will pay an additional premium, but also have peace of mind that you will be placed in the same position should any losses occur.

THE CASE OF 'MR T'

Facts

During June 2014 the complainant, Mr T, had had been involved in an accident that had resulted in his motor vehicle being declared as a write off. After having submitted a claim to his insurers the complainant was provided with an agreement of loss which upon closer inspection by the complainant represented a shortfall of R79000. The complainant noted that a number of items had been excluded from the agreement of loss, and that only the xenon lights, mag wheels and sunroof had been included. Items such as the front sport seats, blue tooth, aluminium trim etc. had been excluded as nonstandard vehicle extras which had not been specified on the policy. Aggrieved by the offer provided and by what he believed was a failure by the respondent's representative to have adequately advised him with regard to the items that needed to be specified, the complainant had approached this Office for assistance.



Our Intervention

Upon receiving the complaint it was referred to the respondent in accordance with the rules on proceedings of this Office. In response, the respondent claimed that the complainant had been informed of the importance of ensuring that any and all extras were specifically specified, and that as a result the complainant had specifically listed the sunroof, mag wheels and xenon lights. The respondent also indicated that the proposal form completed in the presence of the complainant did not include any of the items that had been excluded during the claim.

During the investigation the respondent had also indicated that the complainant had previously been insured with another Financial Services Provider ('FSP') for the very same vehicle and that the same extras had been noted on the schedule of insurance. This Office approached the previous FSP and we were provided with a recording of the conversation between the complainant and a representative of the FSP at the inception of the policy.

During this conversation the representative of the FSP had explained in detail to the complainant the importance of ensuring that any and all extras that are not standard features of the vehicle were to be disclosed and then specifically specified to ensure that they would be provided for in the event of a claim. The complainant is heard to have confirmed his understanding of the importance of doing so and then proceeded to only list the sunroof, mag wheels and xenon lights and he had done with the respondent.

This Office was therefore satisfied that on at least two separate occasions the complainant had been advised as to the importance of ensuring that any extras to his motor vehicle are specified, and yet he had failed to disclose any items in addition to the three already mentioned above. As the complainant had already signed the agreement of loss and had received payment from the insurer, this Office saw no basis for any further payments from the respondent, and the matter was dismissed.



Lessons learnt

Any and all extras that are not standard features of the vehicle and that are specifically ordered from the factory must be specified on the policy.

Important to consult the dealer invoice as these items are as a rule noted separately from the purchase price of the invoice.

Very important when insuring a used vehicle that one determines the exact specifications of that vehicle, such as which factory fitted items came standard with the vehicle, which were included in the purchase price, and which were added either pre or post-delivery.

CASE STUDY 5

GUARANTEES – WITHDRAWALS CAN BE EXPENSIVE

Capital protection guarantees are normally provided by life assurance companies on products such as endowment policies to allow one the opportunity to preserve the capital investment should the returns be negative. It must be borne in mind that there will be an additional charge for this guarantee, which could have an effect on the final maturity value of the investment should the chosen portfolio show positive growth during the term of the investment. Top of Form

Another important aspect of such a guarantee is that it will be affected by any withdrawals made which may result in a recalculation of the guarantee. One must therefore understand the cost implications of a taking a guarantee together with any potential need to access the funds during the term of the investment to make an informed decision as to whether your needs and conservative risk profile are best served by taking a guarantee.

THE CASE OF 'MRS S'

Facts

The complainant had approached a representative of the respondent seeking advice on how to invest an amount of R450000. The funds were required to supplement the complainant's monthly income, and the complainant, as a result of her circumstances and the fact that these funds reflected her entire investment portfolio, had required a conservative investment option. The representative of the respondent had recommended that the funds be invested into a multi access endowment policy together with a capital protection guarantee, which according to the respondent would allow the complainant to make monthly withdrawals from the policy to supplement her income and still enjoy the benefits of having her capital guaranteed.

What the complainant was unaware of at the time, was that every withdrawal made from the policy in lieu of her monthly income had led to a recalculation of the guaranteed amount. Upon receiving an annual review statement the complainant realised that value of the investment had decreased from the original R450000 invested, and that the capital that was guaranteed was now only R239000.

The complainant approached this Office requesting to be placed in a position she would have been had she been provided with a policy that was better suited to her needs.

A WORD OF THANKS

The Newsletter Committee would like to thank Ms Nomfundo Dhlomo, Ms Sesethu Memese, Ms Hendrina Williams and Mrs Rita van der Westhuizen for their contribution to the continued success of Under the Baobab the newsletter for the Office of the FAIS Ombud



Our Intervention

The respondent's response to this matter was that the complainant had required a certain level of income and that the product recommended had indeed provided the complainant with a level of liquidity that had supported her need for income. Furthermore the guarantee provided had according to the respondent corresponded with the complainant's conservative risk profile. The respondent was therefore of the view that the recommendation had been appropriate to the needs of the complainant, and that the loss of capital was as a result of the complainant having desired an income in excess of what the underlying portfolio could support by way of growth.

This Office was of the view that the respondent's failure to have adequately advised the complainant with regards to the importance of drawing an income that would not exceed the performance of the portfolio, had contributed to the loss of capital as the complainant had not been placed in a position to have made an informed decision. This Office was however also of the view that the capital protection guarantee provided had been inappropriate to the complainant's needs, in that not only did the complainant pay an additional fee for this guarantee, but the monthly withdrawals had led to a continuous recalculation of the guarantee. The complainant had therefore been allowed to labor under the false impression that she could withdraw a certain level of income and still benefit from the guarantee provided.

This was further evidence of the fact that the recommendation provided by the respondent's representative had been inappropriate to the needs of the complainant, and a recommendation was made to the respondent that the matter be resolved by way of a fair and reasonable offer. The respondent subsequently made with the complainant and made an offer that was accepted by the complainant in full and final settlement of the matter.



Lessons learnt

A guarantee will result in an additional charge that may impact on the final maturity value.

The recalculation of the guarantee upon the withdrawal of funds may not make a capital guarantee an appropriate option for an investor who requires a monthly income.

A prospective investor must appreciate that there is a trade-off between risk and return, and that there are implications and consequences of taking a capital guarantee that must be considered in relation to your specific needs and financial goals.



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