

# SPECIAL EDITION



## INSIDE THIS ISSUE!

FROM THE EDITOR'S DESK	P1
APPOINTMENTS	P1
ANNUAL REPORT LAUNCH	P2
SETTLEMENTS	P3
OFFICE UPDATES	P8
STATISTICS	P11
TIPS	P14

# FROM THE EDITOR'S DESK

As the year draws to a close, and we look back over what was indeed a year filled with challenges for the Office of the FAIS Ombud, we are proud to say that despite all the challenges faced, we were still able to fulfill our mandate to resolve complaints in a procedurally fair, informal, economical and expeditious manner, with reference to what is equitable in all circumstances. The unexpected resignation of the previous acting Ombud, Ad. Tshombe, during September 2022, followed by the appointment of Ms. Thobile Masina as Acting Ombud for a period of 6 weeks, created much uncertainty both inside and outside the organisation. This uncertainty was however short lived with the permanent appointment, of Adv. John Simpson effective 1 November 2022.

The permanent appointment of Adv Simpson brings certainty to the leadership structure of the Office of the FAIS Ombud marks a new phase for the Office. The staff of the FAIS Ombud and its stakeholders are looking forward to this Office making progress under the leadership of Adv Simpson.

The appointment of Adv. Simpson was followed by the launch of the **2021/22 Annual Report** during the latter part of November 2022. The report details the work done by the Office of the FAIS Ombud for the period **1 April 2021 – 31 March 2022** and the highlights are dealt with in greater detail below. Whilst the annual report records the positive strides that this Office has made in delivering upon its mandate, the Office of the FAI Ombud is always looking at ways in which we can improve our service to those we serve and we look forward to taking our service to new heights during 2023. We hope that 2023 will be a great year to achieve everything you have always wanted, and we wish you and your family a blessed and safe festive season.

If you would like to get in touch with us, you can send us an email at [info@faisombud.co.za](mailto:info@faisombud.co.za).

## NEW APPOINTMENT



### Ombud Adv. John Simpson

**Qualifications: BJuris and LLB (Unisa)**

Adv. Simpson's career has seen him rise through the ranks of the legal system over a 10 year period, from State Prosecutor in the Department of Justice, to Magistrate and then as an admitted advocate in private practice. His quest for renewed challenges led him to take on the positions of Manager and then General Manager for the Ombudsman for Banking Services, where he served for 11 years.

This extensive experience positioned Adv. Simpson as a legal consultant, providing advice and guidance to companies on the Consumer Protection Act and assisting the National Consumer Tribunal in the design and implementation of its case management systems.

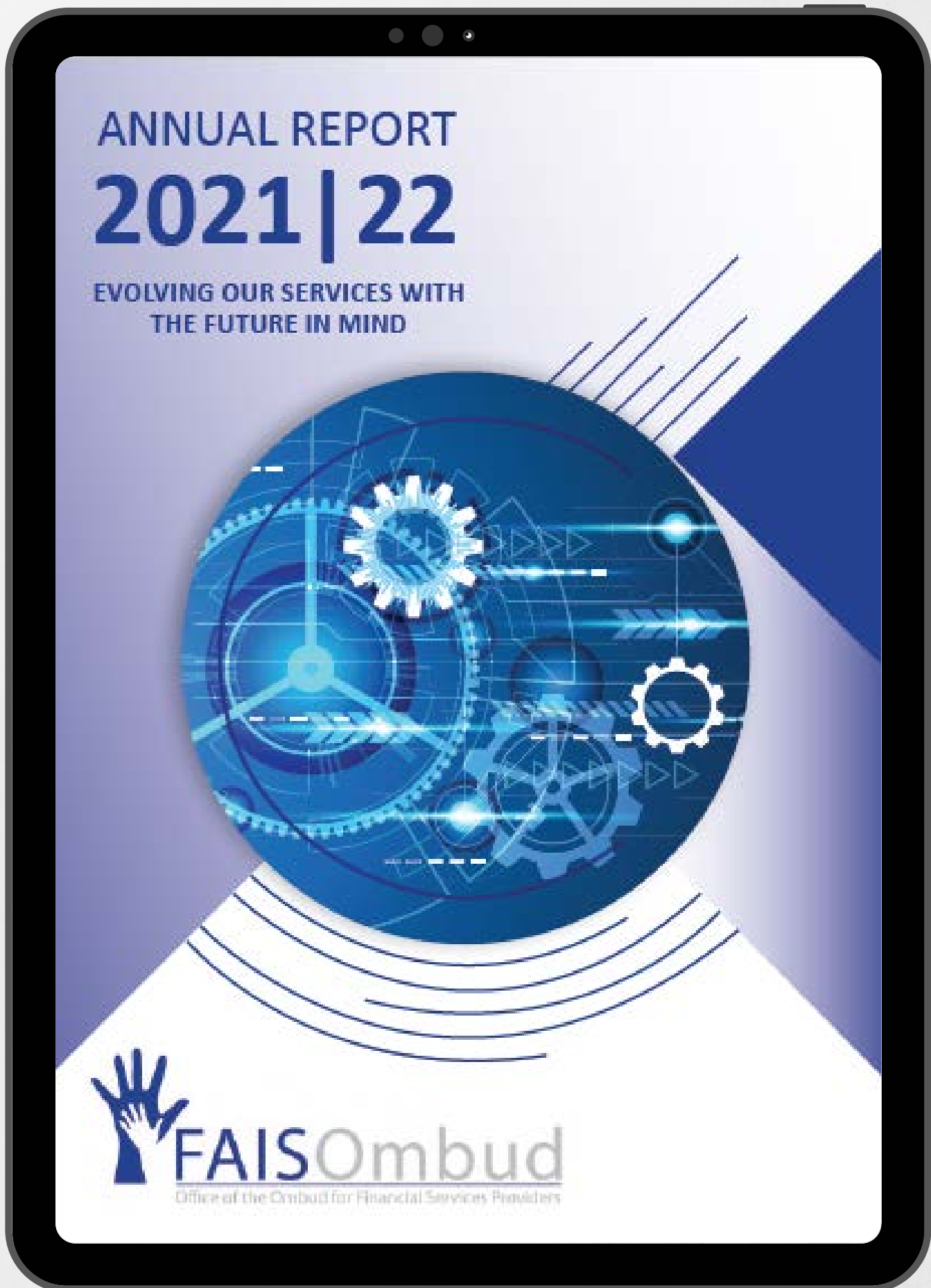
He was appointed as a full time Member of the Tribunal in June 2013, adjudicating cases in terms of the National Credit Act and the Consumer Protection Act. After 9 years with the Tribunal, Adv. Simpson was appointed as the FAIS Ombud from 1 November 2022.

# ANNUAL REPORT LAUNCH

The Office of the FAIS Ombud launched the 2021/22 Annual Report for the Financial Year (1 April 2021 to 31 March 2022) on 18 November 2022. The release of the Annual Report was virtual, utilising this Office's social media platforms[TM1]. The Office saw the need to utilise its social media platforms as way to increase brand recognition, fosters trust and boost authority by demonstrating our expertise and credibility.

The Annual Report and its contents reflect the period when Adv. Nonku Tshombe was the acting Ombud. Adv. John Simpson was appointed as Ombud from 1 November 2022.

If you missed out on the activities that took place during the launch, please visit our website and social media platforms for a recap of the launch during the week.



## WE TAKE A LOOK AT SOME OF THE HIGHLIGHTS OF THE ANNUAL REPORT



# SETTLEMENTS

## ENDOWMENT POLICIES SOLD AS INVESTMENTS



Essentially, an endowment is a life insurance policy, as defined in the Insurance Act. An endowment policy can be used as an instrument to create wealth tax-efficiently. That is however if you are a potential investor with a marginal tax rate greater than 30% and a minimum investment time horizon of 5 years. Access to one's capital within an endowment is limited in the first 5 year period, and taxable growth (interest, net rental income and foreign dividends) is taxed at 30% within the plan to then provide you with a tax-free maturity value. The main concern for the Office of the FAIS Ombud is that in most instances the recommendation of an endowment policy was not appropriate to the client's needs and circumstances and ought not to have been recommended. The misleading component of endowment policies stems from the way these policies are sold. These policies are in fact sold as investment solutions and savings products, utilising the term investment as opposed to policy, without any emphasis on the fact that they are, as stated above, 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; because the discussion then focuses on the investment horizon and illustrative returns. Whilst these products 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 these products as life assurance policies means that, in addition to surrender fees and penalties, there are additional consequences to the restriction period applicable to, for instance, an endowment policy. 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 5-year term endowment policy could effectively become an 8- or 9-year term policy by one merely increasing one's premium more than what is allowed.

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

N v M

The complainant had initially applied for an educational investment with the respondent in respect of her daughter. The investment subsequently matured during 2019, when the complainant's daughter was still in Grade 11. As a result, the complainant asked the respondent for the funds to be reinvested in a manner that would allow the funds to be accessed when her daughter matriculated during 2021.

In addition, the complainant had instructed the respondent to initiate a debit order to make further contributions towards the investment. The complainant claims to have explicitly explained not only when the funds would be required but also the reason for the investment, which was the furthering of her daughter's education.

Later in 2019 the complainant made a withdrawal from the investment and in 2020 she attempted to make a further withdrawal, however, she was informed that she could not because of the previous withdrawal during 2019, which the complainant understood. During 2022 when the complainant's daughter was making plans to register at a tertiary institution, the complainant was advised of restrictions, that the investment was now in a restricted period and that she is unable to access any of the funds until 2024. The complainant was not satisfied with the feedback provided as she claims this was not disclosed to her at the inception, and that the investment did not cater for her needs as expressed to the respondent's representative.

On conducting the preliminary assessment of the complaint received from the complainant, this Office noted that the investment referred to by the complainant was in fact not an 'investment,' but an endowment policy. It was apparent from the documentation provided that the endowment policy had not been provided to the complainant as a policy, which would then have seen the respondent's representative make the required disclosures in respect of the restrictions applicable to the policy.



Instead, the respondent's representative provided this to the complainant as an investment, without any disclosure of the material terms and conditions of the policy. In addition, this Office was also concerned that the advice provided to the complainant during 2019, when the complainant had sought to reinvest the proceeds of the original investment with specific instructions as to when the proceeds will be required.

This Office was therefore concerned that there would not appear to have been compliance with section 7(1)(c) (vii) and 8(1) (a-c) of the General Code and this was put to the respondent in addition to this Office's concerns with the way the policy was sold to the complainant. Upon receiving this Office's correspondence, the respondent advised that it would be resolving the matter with the complainant.

The respondent confirmed that the complainant was indeed provided with an endowment policy for a term of 10 (ten) years, with an initial monthly premium of R690 and a lumpsum investment of R83 909,01. In view of the cash withdrawal of R20 000 made by the complainant on 14 February 2020, the respondent offered a settlement value of R82 334,55 which represented the full surrender value as of 14 February 2020 (less the R20 000 already paid) as well as all premiums paid by the complainant after 14 February 2020. This was accepted by the complainant.

**Settlement value: R83 909**

# LESSONS LEARNED:

1. Financial Services Providers ('FSP') will use terms like investment plan, investment builder, savings plan, growth plan etc., when recommending an endowment policy. Always ensure that your financial advisor explains exactly what it is that you are applying for and that you understand the material terms of the product being recommended and that you are satisfied that it meets your investment needs.
2. When your FSP recommends an investment solution with a term of 5 years, you are more than likely being recommended an endowment policy. Make sure your FSP then explains the material terms of an endowment policy and why the recommendation thereof suits your specific needs.
3. When an FSP tells you that an endowment policy provides you with a tax free lump sum at maturity, i.e. after 5 years, it is because the growth of the portfolio has been taxed within the endowment at a rate that can be as much as 30% depending on the composition of the portfolio.



Living annuities If you are a member of a pension, pension preservation or retirement annuity fund, and of late a provident fund and provident preservation fund, and the value of your fund exceeds R247 500, you must in accordance with prevailing legislation utilise two-thirds of your fund proceeds at retirement to purchase an annuity to provide you with an annuity income for life. In South Africa you have two choices in this regard, a guaranteed annuity, or a living annuity.

A living annuity is an investment product that, unlike a guaranteed annuity, transfers the risk and responsibility of securing an adequate income for life onto the shoulders of the consumer. The living annuity allows you to select an annuity income between 2,5% and 17,5%, and you as the annuitant in conjunction with your financial advisor, decides how to invest your retirement savings. And so, begins the constant struggle between what is the appropriate drawdown rate and what is the optimal asset allocation that will not only supplement the income drawdown, but exceed it to ensure that the annuity remains sustainable in the long term.

This is where the problems begin, as most individuals have simply not made sufficient provision for retirement and the danger exists to attempt to rectify this situation by selecting a significant income drawdown.

In addition to this, these consumers are let down by the very individuals seen as knowledgeable experts to whom they turn to for advice at a critical time of their lives where the decisions they make can have serious implications going forward and at a time when they are no longer economically active. In the previous Annual Report, the Office of the FAIS Ombud bemoaned the failure of financial service providers (FSPs) to make a recommendation as provided for by section 8(1)(c) of the General Code of Conduct for Authorised Financial Services Providers and Representatives (the General 14 Code).

In this regard FSPs often simply provide the prospective client with the level of income they require to meet their current standard of living regardless of whether sufficient provision has been made and to the detriment of the client who will see the initial capital invested reduced over time leaving them destitute in later years.

When approached by this Office for a response these FSPs hide behind generic terms such a single need (also addressed in previous Annual Reports) and try to blame the client whose instructions they were executing, all to deflect from their inability to have the difficult discussions with their clients and to manage expectations from the beginning of the transaction. Even more disappointing is when the FSP has indeed addressed the client's failure to have made sufficient provision for retirement and cautioned the client as to the consequences and implications of drawing an income that is unsustainable only to then sabotage the client by failing to act with the required skill care and diligence. In this regard we refer to the FSP's total reliance on the risk profiling questionnaire and its outcome, at the expense of what is in the client's best interests.

An example would be where a client has selected an income drawdown of 8%, however when completing the risk profiling questionnaire, the client's risk profile is determined to be 'Conservative', based on the scores from a generic set of questions. This conservative risk rating then forms the basis for selecting, for example, a Money Market Fund to correspond with the client's apparent risk-averse nature.

The selection of a money market type fund will never provide for a return that would cater for an income drawdown of 8%, and over time the client will begin eating into his original capital and find themselves in a precarious situation in years to come.

Add the effects of inflation to this situation, and one can appreciate the responsibility the FSPs have in ensuring they conduct a detailed needs analysis to ensure they know their client to enable them to make an appropriate recommendation to the client and make all material disclosures that will enable the client to make an informed decision. These are the cornerstones of not only the financial planning profession, but the General Code as well.

#### **A v P**

The complainant retired on 31 August 2014 and invested his retirement fund benefit of R 1 432 221,44 into a living annuity with the respondent. The complainant was not happy with the performance of the annuity as it was his only source of income. When the complainant consulted with the respondent regarding investing his funds offshore, the respondent did not recommend it.

On 16 March 2020, the respondent contacted the complainant and advised that the stock markets were tumbling, and that the complainant had lost a substantial portion of his portfolio. The respondent thus advised the complainant to move his funds into a money market fund.

The complainant had agreed verbally and signed the relevant documents. Upon speaking with friends who are financial advisors, the complainant was informed that the respondent had acted in haste. When the complainant questioned the respondent's representative, he did not receive an adequate response, and so he lodged a formal complaint with the respondent regarding the advice received from its representative, which was calculated to have been R188 711.

This Office received a response from the respondent where it was communicated that during the 2017, 2018 and 2019 reviews of the complainant's portfolio its representative had stressed the fact that the level of income the complainant was drawing (13,57%) as a percentage of his portfolio was not viable over the long term and that it would ultimately lead to the depletion of his capital. These claims by the respondent were also supported by the relevant documentation. In addition, the respondent also advised that its representative had contacted the complainant on 16 March 2020 to discuss a switch to his portfolio.

According to the respondent, at that stage the South African market and markets around the world were in a severe downward trend because of COVID-19, and nobody was sure as to how far this downward trend or collapse would go. As the capital of the complainant was being further depleted by the fall in the market, and to safeguard the balance of the capital, the respondent's representative had proposed that the complainant switch the funds to a money market fund which is an extremely minimal risk fund, and that the complainant had verbally agreed with this proposal.

This Office confirmed with the respondent that it was satisfied with the advice provided and the record keeping, that is until the respondent's representative had recommended a switch to a money market fund during March 2020. Not only did this confirm the losses sustained on paper, but this Office questioned why one would advise the complainant to move to a money market fund where he would receive around 3 to 4% when he was still withdrawing over 13% as an income.

Despite these misgivings, this Office needed to determine whether there was a financial prejudice suffered by the complainant had the complainant remained in the market with the same income drawdown as opposed to moving to a money market fund.

This Office's concerns were communicated to the respondent, and it was requested to provide this Office with an actuarial calculation of what the portfolio in the living annuity would have been and how it compares to the current value of the portfolio. The respondent referred the matter to senior management for a decision whereafter a settlement offer was made to the complainant by the respondent, which was accepted by the complainant.

Settlement value: R188 711

## LESSONS LEARNED:

1. There is no magical solution at retirement, and the truth is that if you have not made sufficient provision for retirement, then utilizing the income drawdown, up to a maximum of 17.5%, available to you in respect of a living annuity, is not a solution to your urgent income needs. You will need to make significant decisions in respect of your standard of living.
2. One must be realistic when it comes to risk. You may well be risk averse, however if your risk appetite does not correlate with the level of income, you are drawing from a living annuity and the type of portfolio that is required to meet the income drawdown, then you may well have to make so serious decisions. Not only in respect of the risk you need to take but also whether a living annuity is the product for you.



# EVOLVING OUR SERVICES WITH THE FUTURE IN MIND

With the outbreak of the pandemic the country was left with very little choice other than to accept the inevitable, that is doing business using Fourth Industrial Revolution (4IR) technologies.

The country benefited from basic services like ordering food and groceries online, universities and schools moving their teaching online, easily organising conferences via Webex and a number of other platforms; all of which will likely remain in use permanently.

While the system shock resulting from the paradigm shift was caused by the need to continue life during the pandemic, digitised platforms came in very handy in managing the pandemic itself.

Examples are the use of Artificial Intelligence (AI) and mobile technology; the integration of which made it possible to trace COVID-19 contacts, monitor symptoms, detect outbreaks and assess risks in the context of the pandemic.

Further benefits include the use of AI in medical diagnoses, the Internet of Things for goods, transportation, financial transactions and other services that can be obtained via linkages to the Internet.

In the above circumstances, it is important for financial services providers as well as consumers to note that while the digitised world has made it possible for financial advice and financial products to be provided via any number of platforms, such advice is still subject to regulatory requirements, as has been the case with written and verbal advice involving interaction with a human being.

Complaints emanating from advice given via digitized platforms It is for the above reason that the Office expected to receive a lot of complaints stemming from advice given via digitised platforms.

The absence thereof is perhaps an indication that complainants are not aware that they are receiving advice when regulated financial products and advice are offered on such platforms, and consequently there is a need for compliance with regulation within the financial services legislative framework.

Where this is not understood, a consumer may not be aware of their rights in terms of the General Code of Conduct for Financial Services Provider and intermediaries.



## TRANSFORMATION



# DIGITIZING THE COMPLAINTS RESOLUTIONS

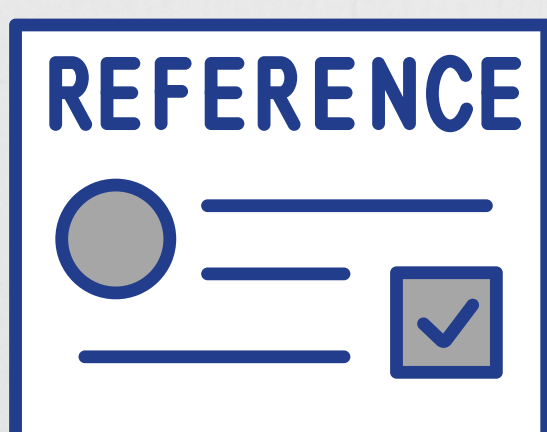
The Ombud Office has thus identified the need to digitize the lodging of complaints. For instance, the complaints portal on the website is already configured to function in a digitised world in that it is able to:



**1** Accept complaints and attachments,



**2** Send the complaints and attachments directly to the Complaints Management department within the Office,



**3** Allocate a reference number,



**4** Allocate the complaint to a case manager in real-time with the complainant able to receive updates on the progress via the digitised system.

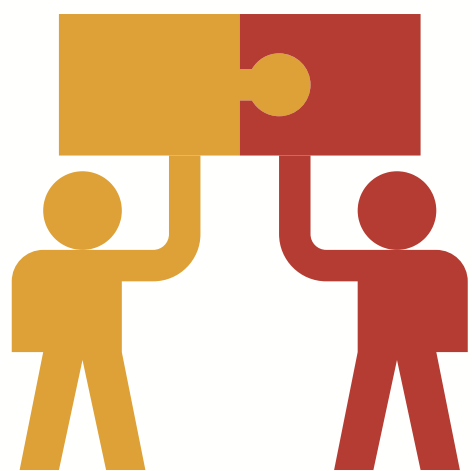
The usage of this capability may not yet be optimized since complainants may not know that it exists. However, the Office is acquiring systems that are preparing for this service with the future in mind.



# INNOVATIVE WAYS OF ENHANCING OUTREACH ACTIVITIES

The Office has started and surged forward quite visibly and with encouraging results in the digital Media space.

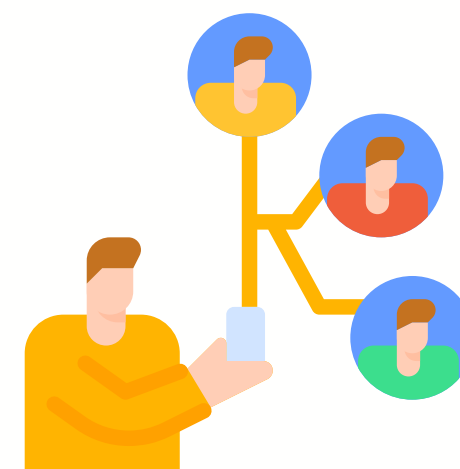
The intention of this has always been to:



**01** Improve engagement between the Office and its stakeholders.



**02** Keep its stakeholders and the public up to date with the FAIS Ombud's activities and services.



**03** Enhance the organisation's reputation by communicating service offerings and achievements.



**04** Impart knowledge, educate and allow for a more interactive experience with our stakeholders thereby contributing to financial inclusion.

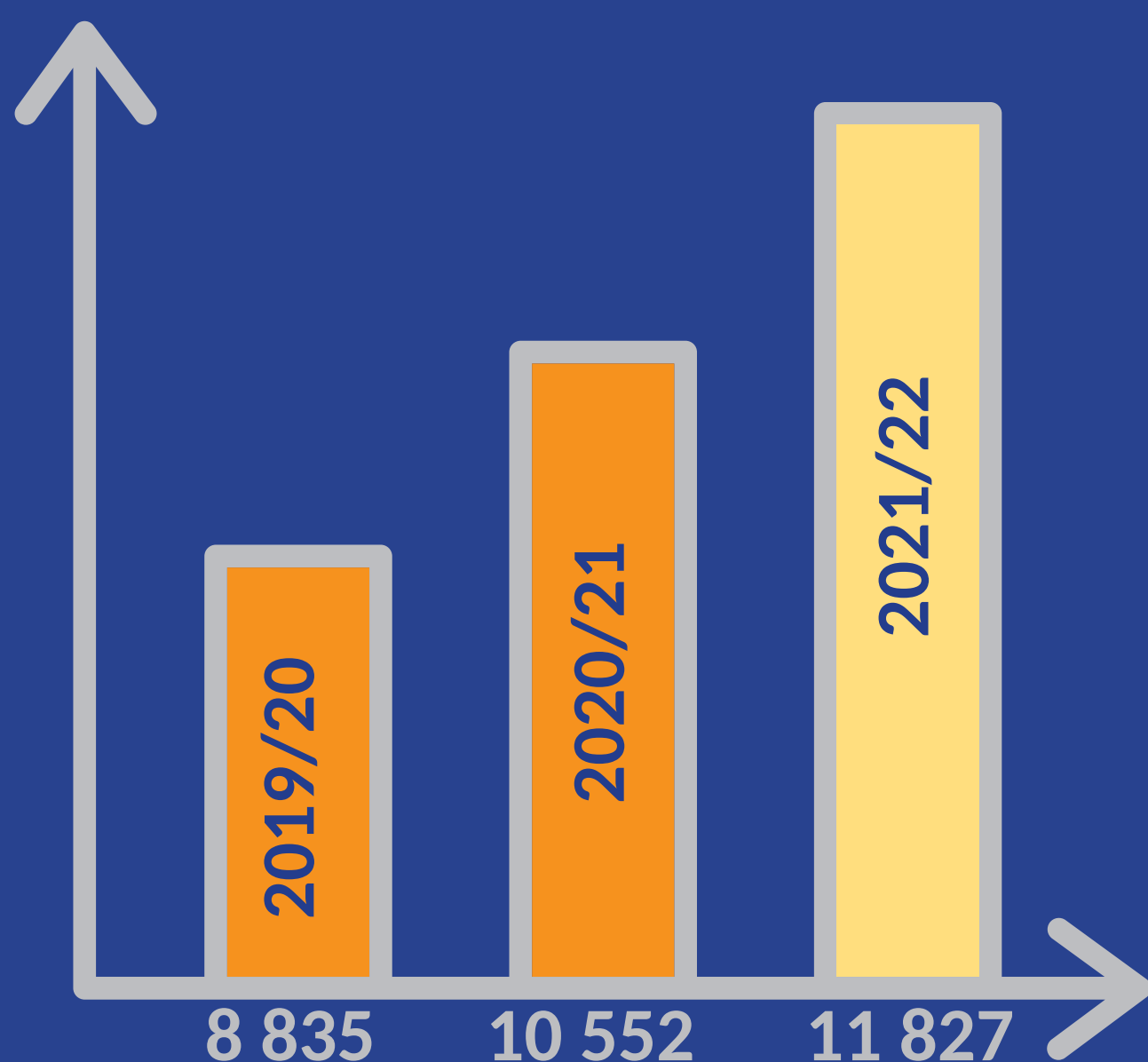
At the rate that the audience is reacting it seems the objectives set out above may be achieved faster than has been the case before all the initiatives were set on course.



# RESOLUTION OF COMPLAINTS

When the Office of the FAIS Ombud reports on complaints received and complaints resolved during a specific financial year, it firstly reports on the resolution of those complaints received within the period (in this case 1 April 2021 to 31 March 2022), then it looks at the overall number of complaints resolved, which includes complaints carried over from previous financial years. This is done to ensure a more holistic view of how successful this Office has been in executing upon its mandate.

During the 2021/22 financial year, the Office of the FAIS Ombud received 11 827 new complaints.



This is not only higher than the 10 552 complaints received for the corresponding period during the 2020/21 financial year, but the highest number of new complaints received by the Office of the FAIS Ombud for a specific financial year since it was established.

This also represents a 10,78% increase in the number of complaints received over the preceding financial year. In addition, an unprecedented 68% of all complaints received fell within the mandate of this Office.

This resulted in 8 011 complaints referred to the Case Management department for investigation; the most ever since the inception of this Office and a significant increase over the 6 975 complaints received during the 2021/22 financial year which fell within the Office's mandate. Therefore, the Office of the FAIS Ombud not only received more complaints overall but more of those complaints represented matters that fell within its mandate.

This was seen as a positive development, testifying to the efforts to expand the awareness and understanding of its existence, as well as the services provided by the FAIS Ombud Office. However, it also placed a strain on existing resources during a period that continued to see uncertainty in a post-pandemic environment.

Of the 11 827 complaints received for the 2021/22 financial year, a total of 4 957 complaints were dismissed. A total of 3 791 complaints were referred to alternative fora and 1 269 complaints were settled in favour of the complainant. The number of complaints settled, 1 269, was less than the 1 389 complaints settled during the 2021/22 financial year



**4 957 Dismissed**



**3 791 Referred**



**1 269 Settled**

Whilst these numbers are still a testament to the efforts made and commitment to the conciliatory resolution of complaints by this Office and FSPs alike to ensure that complainants continue to be treated fairly, the reduction in the number of complaints was because of the nature of the complaints received by the FAIS Ombud Office, which shall be expanded upon below.

The number of complaints received during the 2021/22 period that were carried over was 1 810, which was lower than the 2 041 carried over during the previous financial year, despite the significant increase in the number of complaints received.

This means that a total of 10 017 complaints were resolved within the financial year, which represents 84,70% of all complaints received.

This means that the Office of the FAIS Ombud achieved its strategic outcome to resolve a minimum of 80% of all complaints received within a specific financial year and confirms how efficient this Office was in executing upon its mandate.

In respect of complaints referred to other fora, a total of 3 947 complaints were referred to other ombud schemes, which was higher than the 2 877 referred during the 2020/21 financial year.

This is in accordance with the commitment of the Office of the FAIS Ombud which is to ensure that even where it is unable to be of assistance, the complaint of any person submitted to this Office will be carefully considered and that where possible, the complainant shall be referred to the correct forum to receive the assistance required.

All this is part of our continued commitment to service and to enhancing access to justice for all South Africans

## HOW TO LODGE A COMPLAINT



Consumers who wish to lodge a complaint with our Office can do so by emailing detailed information to [enquiries@faisombud.co.za](mailto:enquiries@faisombud.co.za), visiting the complaints portal on our website, calling our Office on (012) 762 5000 or on our Sharecall number 086 066 3274 for further assistance.

For updates and further information, please visit our website at [www.faisombud.co.za](http://www.faisombud.co.za).

### FOLLOW US ON OUR SOCIAL MEDIA PLATFORMS:

 **Facebook:** FaisOmbud

 **Twitter:** Faisombud

 **LinkedIn:** Fais Ombud SA

 **Instagram:** Faisombud

# Statistics for the year ending 31 March 2022

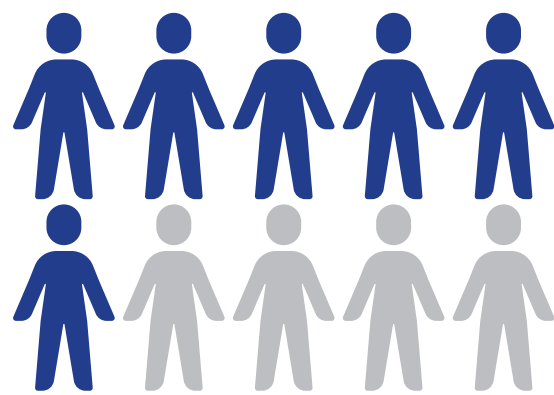
**R69 979 324**

Overall settlement value for the year under review.



**11 827**

Overall complaints received.



**10 017**

Complaints resolved by our Office.



**68%**

Complaints received that fell within the FAIS Ombud mandate



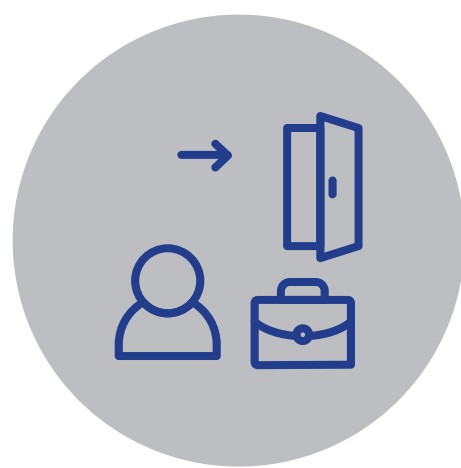
**8 011**

Referred to the Case Management department for investigation.



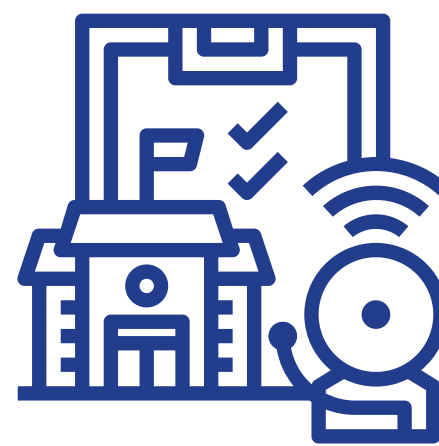
**4 957**

Complaints that were dismissed.



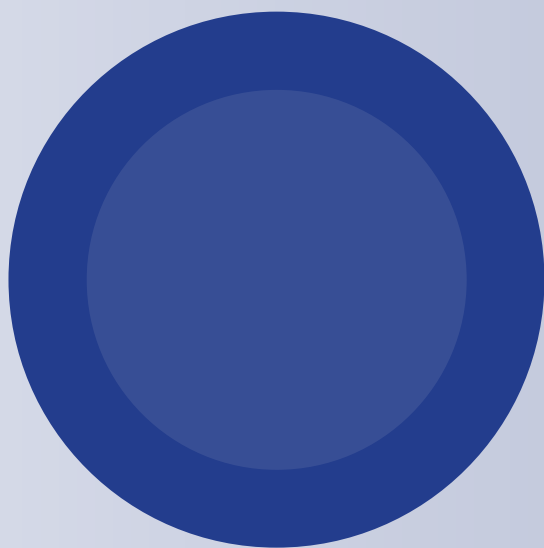
**3 791**

Complaints were referred to alternative fora



**1 269**

Complaints settled in favour of the complainant.



# Tips for consumers for financial products purchased

---

**1** Be honest when you give information to the FSP about your health, financial status and other personal information because they rely on this information to give you advice.

**2** Ask if a product has a cooling-off period (normally 30 day) you must receive a copy of your contract within 30 days. If you do not, follow up with the provider until you do or you can exercise the option to cancel.

**3** Always ask the financial services provider to give you a copy of the advice they gave to you or the discussion they had with you in writing to make sure that the agreement represents what you understand from what you were told.

**4** If you are offered a funeral policy, ask for the details of the underwriter (the party that will actually satisfy the claim) and call the underwriter to make sure that they still have an agreement with the financial services provider.

**5** When replacing your insurance, make sure that the new policy has been incepted before cancelling the old policy

**6** Review policies yearly especially when new changes arise that the FSP is not privy of, also to assess if the policy still caters for your needs/risk.





**Physical Address:**  
Menlyn Central Office Building,  
125 Dallas Avenue,  
Waterkloof Glen, Pretoria, 0010  
-25.78545, 28.27918

**Contact Details:**  
Tel: +27 12 762 5000  
Sharecall: 086 066 3274  
Email: [info@faisombud.co.za](mailto:info@faisombud.co.za)