



NEWSLETTER

2023, ISSUE 3

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From the editors desk:

Reflecting on the year, we take pride in launching our annual report, showcasing our commitment to consumer advocacy. Our commitment to assisting consumers remains a top priority for us, serving as a reliable support for individuals navigating the complexities of financial services.

This year, we are pleased to highlight the significant impact we've made, as evidenced by the successful resolution of cases.

Please take a moment to read about a notable settlement covered in this issue, where we successfully secured R800,000 for a consumer who fell victim to a broker's misappropriation of a trust fund.

As we close the year, we extend our gratitude to all stakeholders and consumers for their trust and support. Wishing everyone a joyful festive season and looking forward to continuing our mission in the coming year.



CLOSED
for the
Holidays

From 15 December - 01 January 2024

NEW APPOINTMENTS



MS. DESHREE PILLAY
ASSISTANT OMBUD

Deshree Pillay is an admitted attorney with a demonstrated history of working in the financial services industry. Throughout her career, Deshree has honed her expertise in Complaints Management within the legal and financial sector, whilst amassing substantial knowledge in Insurance Law, Risk and Compliance Management and Leadership. Her experience includes extensive engagement with various ombudsman offices, gaining invaluable insights into dispute resolution and client advocacy within the financial realm. Her commitment to excellence in legal and financial matters has earned her recognition as a member of the Institute of Risk Management South Africa. With a keen eye for detail, a deep understanding of regulatory frameworks, and a passion for achieving optimal outcomes, Deshree is driven by a relentless pursuit of excellence and is excited to continue making meaningful contributions to this dynamic industry.



MS. INGA HENDRICKS
GRADUATE TRAINEE

Inga Hendrick is an enthusiastic and focused graduate from the University of Pretoria. She graduated with a Bachelor of Arts in Law and an LLB. She has a passion for Alternative Dispute Resolution and has a keen interest in the Financial Sector. She is eager to develop her technical skills and gain valuable work experience. Inga is eager to learn and provide a meaningful contribution to the Ombud's mission to provide access to justice.



MR. DONAVAN PYE
ICT NETWORK AND SECURITY SPECIALIST

Donavan Stanley Pye is an ICT Network and Security Specialist with over 10 years of experience in the IT field. He pursued his studies at Centurion Academy for ITCT and holds numerous accolades in security and cybersecurity. Donovan is deeply passionate about enhancing the security posture of the FAIS Ombud.



MS. REABOKA PANANA
GRADUATE TRAINEE

Reaboka Panana, is a three-time graduate from Tshwane University of Technology. She holds a Postgraduate Diploma in Public Finance, an Advanced Diploma in Public Finance, and a National Diploma in Finance and Accounting. Rea is deeply passionate about Public Finance, particularly in the areas of management, allocation, and distribution. She considers herself ambitious, bold, result-oriented, and has a genuine love for working with people. Rea is thrilled at the prospect of advancing her career while making meaningful contributions to the Ombud's Financial Performance.



MR. KGOPOTSO MOGOALE
GRADUATE TRAINEE

Kgopotso Mogoale is a highly motivated and ambitious graduate from the University of the Free State. He holds an LLB and is currently undergoing Practical Legal Training under the Law Society of South Africa. With a profound passion for law, Kgopotso is enthusiastic about exploring innovative approaches in the legal field. He values collaboration, considering himself a team player, and is excited to contribute to the success of the Office. Additionally, he is keen to acquire new skills in Alternative Dispute Resolution.



MS. OLIVIA JULY
GRADUATE TRAINEE

Olivia July is an ambitious, enthusiastic, and adaptable LLB graduate from North-West University. She is passionate about various areas of law, including Insurance Law, Deceased Estates, and Family Law. Olivia is eager to learn and gain valuable work experience while building healthy work relationships and networks. Her commitment to justice and dedication to quality workmanship are what she aims to contribute to the mission of the Ombud.



MR. XHANTI NABI
GRADUATE TRAINEE

Xhanti Nabi is a self-motivated and punctual graduate with a strong career drive. He holds a Bachelor of Laws degree from the University of Fort Hare and is currently pursuing a Master of Laws (Tax Law) degree at the University of Cape Town. Xhanti has a keen interest in obtaining an MBA degree with a focus on Corporate Strategy and Consultation. He is a firm believer in the importance of continuous learning and personal development.

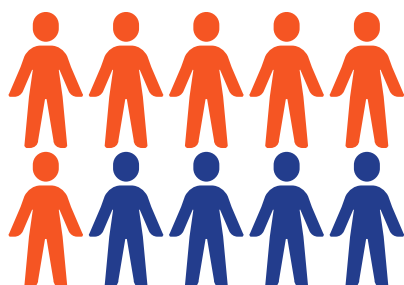


LAUNCH OF THE FAIS OMBUD ANNUAL REPORT 2022/23



We recently released our Annual Report for the year 2022/23 offering a profound insight into the organization's commitment to consumer protection and the integrity of the financial services industry.

Rooted in a mission dedicated to fair and expedient complaint resolution, the FAIS Ombud's report unfolds as a testament to our unwavering dedication. Our team persevered through numerous challenges, efficiently resolving thousands of consumer complaints. Notably, 4,796 cases were resolved, with 29% reaching settlements, and a total compensation of R39,133,121 awarded to consumers.



R39,133,121

The overall settlement value for the 2022/23 financial year

On average, 84.04% of all complaints received by the Office were resolved within three months, 91.05% within six months, and 96.47% within nine months. Overall, the total number of complaints closed during the 2022/23 financial year was 6 483.

Annual Report Highlights

- **Clean Audit Achievement:** Celebrate our achievement of a Clean audit opinion for the 2022/23 financial period, reflecting our commitment to financial integrity.

[The full Annual Report is available to read here.](#)

SETTLEMENTS

A close-up photograph of a document titled "PROFESSIONAL INDEMNITY INSURANCE" held by a gold-colored metal clip. The document is on a light-colored surface, possibly a desk. The text "INSURED" is partially visible on the left side of the document.

Professional Indemnity Insurance

Professional Indemnity Insurance is a type of business insurance that provides coverage for professionals who provide advice or services to clients. A Professional Indemnity Insurance Policy will therefore cover the policyholder in an instance where they are liable for financial losses due to the provision of negligent services or advice, provided that the negligent act, error, or omission occurred during the course and scope of the insured's professional duties.

A vital aspect of a Professional Indemnity Insurance Policy is that it is a "Claims Made Policy" which means that the policy must be in force at the time an incident is reported. It covers claims arising from work performed on or after the retroactive date stated on the policy. When you purchase a Professional Indemnity Insurance Policy, it will have a specific retroactive date mentioned in the policy. This date represents the point in time from which your coverage starts, protecting you against claims arising from work performed on or after that date. Any error or omission that occurred prior to the inception date (or retroactive date if a replacement policy is being issued) of the policy will not be covered.

This makes retroactive cover an important aspect of Professional Indemnity Insurance, as it is designed to protect professionals against claims related to past acts, errors, or omissions that may come to light after the policy has been issued. Without retroactive cover, the insurance policy would only cover claims arising from work performed after the policy's effective date.

Various insurers may have distinct criteria or prerequisites concerning retroactive cover and dates, so you should canvass this with your Financial Services Provider prior to applying for a Professional Indemnity Insurance Policy. Your Financial Services Provider must provide this information in any recommendation that is made in respect of this type of policy.

H vs S

The complainants had applied for a combined professional indemnity policy specifically covering misappropriation of trust funds, on the recommendation of the respondent on 1 February 2022. After inception of the policy, the complainants lodged a claim with the insurer, which was repudiated.

The claim was in respect of the misappropriation of trust funds. The complainant discovered that one of their directors had misappropriated funds from the firm to the amount of R 1 051 972.72, between September 2020 and 1 March 2022. The complainant believed it was covered for the misappropriation of trust funds. According to the policy, the cover for misappropriation of trust funds was R 1.5 million with an excess of 10%.

The claim was rejected because the portion referring to misappropriation of trust funds was not retroactive for the period before the inception of the policy. The complainants disputed this reason for rejection, asserting that they were not specifically informed that it was not retroactive. The complainant referred to the replaced policy, which provided for the following in respect of the misappropriation of trust funds: *'You will note from this policy that although this policy came into effect on 1st of February 2021, it had retrospective working back to 10 January 2019.'*

The replacement policy never provided for a retroactive date, and the complainant submitted this was never communicated to them prior to the rejection of the claim. In addition, the complainant submitted that the respondent had dealt with both policies, and that they had moved to the new policy based on the advice of the broker. They submitted that if they were made aware of this clause, they would have never moved to the current policy. They feel their broker failed to honor his duty towards them as clients by failing to inform them of the clause and as a result had acted negligently.

The complaint was sent to the respondent to respond to the claim raised by the complainants, and the respondent specifically referenced the proposal form that had been sent to the complainant to complete, which stated the following: *"Please note that failure to provide accurate information may affect your ability to lodge a successful claim". "If any part of this document is not understood, please contact your broker before you sign it".* The respondent submitted that it is evident from the perusal of the Proposal Form, that the complainants did not complete nor insert a date in the space provided for in the *"Retroactive date"* block.

This block was simply left blank by the complainant. The respondent also submitted that a copy of the schedule of insurance was sent to the complainant, which states the following: *"Kindly go through this document and advise us immediately of any changes to ensure that the cover accurately reflects the Insured's present insurance requirements. If we are not advised of any errors or omissions, no liability will be accepted for such error or omission in the event of a loss". "The policy schedule and policy wording must be read as one. Kindly familiarise yourself with the conditions, exceptions, clauses, exclusions, and excesses applicable to the insurance classes stated on the policy."*

The respondent submitted that since the inception of the policy, the complainant never questioned or queried the cover regarding the misappropriation of trust funds.

The respondent specifically referenced the complainants' claim about the retroactive date: *"...was never communicated to us before the repudiation of the claim,"* and that *"if we were made aware of the fact that there was no retroactive date in regard to the misappropriation of trust funds, we would never have decided to move from our previous insurer..."*



TRUST
FUND

In response to both of these claims, the respondent asserts that, according to its records, there were no communications wherein the complainants expressly inquired about a retroactive date. The respondent contended that the complainants had every reasonable opportunity to ensure that the cover in place was accurate and met their needs. The respondent did not seek to resolve the complaint, as it believed the complainants were attempting to shift the blame for its own shortcomings in this regard.

Once this Office was able to consider both submissions, a recommendation was issued to the respondent to resolve the complaint, and the following issues were raised. Despite the respondent's claims that it was the complainant that had failed to apply for retroactive cover or provide for a specific date in the application form, this transaction was a replacement. The General Code of Conduct for Authorised Financial Services Providers and Representatives ('the Code') and specifically section 8(1)(d), provides for specific requirements in respect of replacement policies. One of these is that a financial services provider must fully disclose to the client the actual and potential financial implications, costs, and consequences of such a replacement, including any special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions, or circumstances in which benefits will not be provided, which may be applicable to the replacement product compared to those applicable to the terminated product.

It was put to the respondent that there was no indication in the documents provided that this was ever undertaken by the respondent. Should the respondent be unable to show compliance with this section of the Code, it was recommended to resolve this matter with the complainant. It was also pointed out to the respondent that while the complainants were sent policy schedules, it remains the responsibility of the Financial Services Provider, in terms of Section 8(1)(c) of the Code, to make a recommendation that is appropriate to the client's needs and circumstances. Simply providing the client with a proposal form to complete, especially when the transaction was a replacement, does not comply with this section of the Code. Neither does it demonstrate that the respondent had acted with the required due skill, care, and diligence in the interests of the complainants, as provided for by Section 2 of the Code.

The respondent conceded that it does not have any records that it had complied with the above referenced sections of the Code, and that after having considered the recommendation, contacted the complainant to resolve the complaint. A settlement that equaled the maximum jurisdictional limit of this Office was agreed between the parties.

Settlement: R800 000



Lessons learned :

1.) Retroactive cover in respect of Professional Indemnity Insurance is vital as it is a “Claims Made Policy” where any error or omission that occurred prior to the inception (or retroactive date if a replacement policy is being issued) of the policy will not be covered.

2.) The replacement of any financial product has implications and consequences for the client, and any change must be seriously considered before any decision is made to replace an existing financial product with another. The responsibility placed on a Financial Services Provider is significant and provided for in the Code.



Minimum Security Requirements and Household Contents Cover



Minimum security requirements are a standard feature in every short-term insurance policy, and prospective clients need to ensure compliance in this regard, as they form the basis upon which the insurer is willing to underwrite the risk posed by the application. One of the main reasons for the rejection of house content claims is policyholders not adhering to the policy conditions related to the minimum security requirements. The minimum security requirements may slightly differ between insurers; however, as a rule, they may include:

- Burglar bars on all opening and louvre-type windows
- Security gates on all sliding doors, or at least a second lock that is either a key operated locking bolt or locking pin, fitted at a 90-degree angle to the existing door lock.
- An alarm system linked to a 24-hour control room with an armed reaction unit.
- Security gates in front of all opening external doors.



It must be appreciated that there is no fixed rule, and it is important that the Financial Services Provider disclose to you what the minimum-security requirements are. These requirements could be influenced by various factors, such as the area in which you reside. This is crucial, as you will note from the case study below, the disclosure of minimum-security requirements is also extremely important when one moves to a different address.

P vs O

The complainant made amendments to his household insurance cover, which included updating the risk address.

On 6 October 2022, there was a robbery at the new risk address and various items were stolen from the property. A case was opened with the SAPS and the complainant proceeded to submit a claim for the stolen items. The claim was rejected on 30 December 2022, as it was established that the risk address did not comply with the minimum-security requirements. There were no burglar bars on all opening windows and no alarm linked to armed reaction.

The complainant argued that the respondent did not advise him correctly regarding the changes made to his existing policy, including the minimum-security requirements. The complainant argued that the respondent did not explain or bring to his attention the minimum-security requirements, which resulted in the claim being rejected.

In response to the correspondence issued by this Office, the respondent claimed that the minimum-security requirements had not changed in respect of the new residence. The complainant was aware of the security requirements in respect of the previous address and ought to have been aware that it applied to the new address. The respondent further claimed that the complainant had never informed the respondent that the new residence did not have a burglar alarm linked to an armed reaction unit, and did not have burglar bars on all opening windows.

Having considered the respondent's response, this Office issued a recommendation to the respondent that detailed its obligations to the complainant in respect of this transaction. It was noted that the respondent's representative had merely recorded the change of address and no further questions were asked, or any fact-finding undertaken to ensure whether the new address complied with the minimum-security requirements. Despite the advice previously provided, the complainant's move to a new address represented a material change to the complainant's circumstances. It was a separate transaction that required the respondent to ensure that it establish whether the complainant still complied with the minimum-security requirements, so that the complainant could be appropriately advised. The Respondent was required to comply with Section 8(1) (a-c) of the Code, and in not doing so, the respondent did not act with the required due skill care and diligence as provided for in Section 2 of the Code.

Upon receipt of the recommendation, the respondent approached the complainant to settle the complaint and an agreement was reached in full and final settlement.

Settlement: R239 180

Lessons learned

1.) Compliance with the minimum security requirements is vital to ensure that you will have cover in respect of a theft or burglary claim. 2.) A change of address can lead to a change in the minimum-security requirements. There may be a change in risk from one suburb to the next that will influence the risk posed to the insurer and may require additional measures. 3.) Any material change in one's circumstances, such as moving to a new address, requires that the financial services provider revise the advisory process to ensure that the client remains appropriately covered.



INVESTOR WEEK: NAVIGATING INVESTMENTS - A SIMPLE GUIDE TO SMART CHOICES



Avoiding common mistakes is crucial to safeguard your money when dealing with investments. Grasping the fluctuations in the financial markets is essential, as there are risks that can influence your investments. Let's break down some straightforward lessons to help you make wise investment choices.

Lesson 1: No Rush, No Pressure

Advisors or investment offers that push you to decide quickly are often trouble. If someone is rushing you, take a step back. Legitimate opportunities won't disappear overnight.

Lesson 2: Be Curious - Ask Questions

Good investments are like open books. If the person selling the idea avoids answering your questions, that's a warning sign. If they are not clear, it's best to walk away.

Lesson 3: Take Your Time

Legitimate investments give you time to consider. If someone says you can't take your time or talk to family and friends before deciding, be cautious. Quick decisions often lead to regrets.

Lesson 4: Understand Before You Invest

If the details of how the investment works seem confusing, it's okay to say no. A good investment should make sense to you. If it doesn't, it might not be the right choice.

Lesson 5: Check Before You Trust

Before putting your money in, make sure you know the company well. If it's unfamiliar and no one you know has heard of it, take the time to find out more. It's your money, after all.

Lesson 6: Question the Promises

If someone says you will make loads of money quickly, think twice. If it sounds too good to be true, it probably is. Ask yourself, if it's such a good deal, why do they need you to join?

Continue reading on page 12...



Lesson 7: Double-Check Claims

Just because someone says they or their friends invested in the same thing doesn't mean it's a good idea. Double-check before you decide.

Lesson 8: Listen to Wise Words

Remember the saying, 'a fool and his money are soon parted.' Don't let unscrupulous providers turn you into a fool. Do your homework before parting with your money. Ask questions from people around you and research.

Additional Tips:

- Call the regulator to check if the provider is licensed under the FAIS Act.
- Even after confirming, continue to make inquiries from a variety of people before paying your money.
- Take charge—it's your money.
- Research both the investment vehicles and the individuals selling them.
- If the returns sound too good to be true, they usually are.
- These simple guidelines can empower you to make informed decisions, protecting your money from unscrupulous schemes. Remember, it's your hard-earned money—invest it wisely!

your

We want

feedback

Website Survey

We would appreciate hearing your thoughts on our website. We are interested in knowing where you learnt about our office and what aspects you think could be enhanced. Your feedback is valuable and will contribute to improving our services.

[Take the survey.](#)

THE ADVICE CORNER: INVESTMENTS

Welcome to our advice corner, where we shed light on what the FAIS Ombud investigates and what falls beyond our jurisdiction. Our goal is to help you understand when and how you can approach us for assistance in resolving **investment-related** grievances.

What the FAIS Ombud Investigates:

- Disputes about investment advice provided. If risks, terms, or conditions were
- misrepresented when you invested. If critical terms or risks were not adequately disclosed.

What the FAIS Ombud Doesn't Investigate:

- We don't assess broader market trends or forecasts.
- Disputes not directly tied to terms, conditions, or claims of the investment product.



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 will be directed accordingly.

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Sharecall: 086 066 3274

Email: info@faisombud.co.za

Website: www.faisombud.co.za



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