



## ***The FAIS ePortal and the FAIS eLicensing System***

As indicated in Volume 22 of the FAIS Newsletter, the names of the two FAIS online systems changed at the beginning of 2017.

The names of the two systems were changed as follows:

- The FAIS online reporting system will change to the FAIS ePortal; and
- The FAIS new license application system will change to the FAIS eLicensing system

The systems can be found in the exact same location on the FSB website, just under the new names

## ***Compliance Officer contact details***

The FAIS Registration Department is currently busy with a number of projects to ensure that the Registrar's data relating to Compliance Officers is up to date.

It has been noted that in many instances that the contact details, and more specifically the e-mail address of the compliance officer and / or compliance practice, is no longer correct and that the Registrar has not been notified of the change in details.

We would encourage all compliance officers to please verify your contact details on the FSB website. Where the contact details are incorrect or outdated please send an e-mail to [Faispfc@fsb.co.za](mailto:Faispfc@fsb.co.za) with the correct contact details so that the necessary updates can be made.

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### ***Disclaimer***

*The FAIS Newsletter must not be construed as a substitution of the FAIS Act and subordinate legislation. The newsletter is aimed at addressing specified areas and provides a quick reference to the reader. It does not take away the obligations that are imposed on FSPs, key individuals, representatives, compliance officers or any person involved in the rendering of financial services to acquaint himself or herself with the provisions of the FAIS Act.*

## ***Message from the Insurance Compliance Department (ICD)***

The Insurance Compliance Department (“ICD”) of the FSB has become aware of the following scenario which may be prejudicial to dependents of policyholders in cases where policyholders are, presumably, illiterate and not properly advised, resulting in them not being aware of the consequences of who they appoint as beneficiaries on their policies:

### **Scenario:**

- ✓ A broker sells a life risk or funeral policy to a farmworker – the farm worker (employee) is the policyholder, but possibly assisted by the farm owner (employer) in completing the necessary documentation.
- ✓ The policyholder names his employer as the beneficiary on the policy, believing that the benefits will eventually be passed on to his spouse when they become due.
- ✓ The employer signs a debit order authorising that premiums be deducted from his (the employer’s) bank account.
- ✓ However the employer in turn then deducts the premium amount from the employee’s salary. The employee is therefore not always aware that he is in fact paying for the policy, and not the employer.
- ✓ When the employee dies the benefits are paid out in full to the employer, as the named beneficiary.
- ✓ The employer then pays over only a portion of the benefit amount to the employee’s spouse.
- ✓ The employee’s spouse is aggrieved as she was under the impression that she was the beneficiary under the policy and would be entitled to the full benefit amount.

### **Our concern:**

It would appear that the employee believed his wife would receive the full benefits under the policy, and was unaware of the consequences of naming his employer as the beneficiary.



We request brokers to be particularly vigilant in assisting vulnerable customers such as those described in the above scenario in understanding that the nomination of a particular individual such as an employer as a beneficiary means that, in law, no other person (for example spouses, children or other dependents) would be entitled to receive the benefits under the policy. In addition, brokers must ascertain and clarify for customers whether employers who authorise debit orders against their own bank accounts, subsequently recover such premium amounts from their employee’s salaries, without their knowledge.

## ***Feedback on thematic visits conducted on Category I FSPs who do not have a Compliance Officer***

The FAIS Supervision Department initiated a training intervention in 2014 for category I FSPs that do not employ the services of a compliance officer. The intervention continued during 2015 and 2016. During 2014 and 2015 a total of 99 FSPs were visited and an additional 60 FSPs were visited during 2016. The rationale for selecting this category of FSPs was to provide guidance where required in respect of compliance with the FAIS Act and other subordinate legislation.

A further initiative, in the form of interactive workshops was hosted at the FSB during February 2016 and a further two workshops will be held on 03 and 10 March 2017 respectively.

The most common trends identified during the onsite visits related to either non-compliance or partial compliance with the following:

- Risk management;
- Disclosures;
- Agreements with product suppliers;
- Suitability analysis & record of advice;
- Conflict of interest management;
- Professional indemnity cover;
- Complaints handling processes;
- Competency requirements, i.e. regulatory examinations and/or qualifications; and
- Non-submission of annual compliance reports and/or financial statements.



The FSB has conducted an impact analysis during 2016 on the effect of the training intervention on the compliance culture of affected FSPs.

As at 15 January 2017 the status of the 99 FSPs were as follows:

- Out of 99 FSPs visited, a total of 80 FSPs were still authorised
- A total of six FSPs lapsed their licences.
- A total of thirteen FSPs did not comply with the FAIS legislation, despite additional assistance being provided after the onsite visit. Regulatory action was taken against these FSPs. Six out of the thirteen FSPs are currently suspended and seven FSPs authorisation has been withdrawn.

The analysis further revealed that a total of 92% of issues initially raised at the onsite visits were resolved.

It is evident that the compliance culture of the FSPs who went through this training initiative has been positively influenced. The FSPs now have a good understanding of the legislation that governs their business activities.

## Incentives being offered within the motor industry

To the extent that Finance and Insurance Managers (“F&I managers”) deployed in motor dealerships are registered representatives of financial service providers (FSP’s), they are bound by the provisions of the FAIS Legislation.

During the latter part of 2016, it came to the attention of the Registrar that certain motor dealers, their representatives and F&I managers are receiving incentives for selling specific products of the product supplier.

These incentives take various forms and include but are not limited to, vouchers that are loaded with points to be used at various merchants/ retailers or for travel (domestic or overseas) that are paid for by the product supplier. The vouchers are loaded with points which in most cases exceed the immaterial financial interest threshold of R1000 per calendar year.



The product supplier incentivises F&I managers who sell the most number of policies. The FSP in this instance acts as a conduit between the product supplier and the F&I manager in receipt of the incentive thus condoning the conduct. **Section 3A of the Code provides for instances when financial interest is allowed.** It provides as follows “ *A provider or its representative may only receive or offer the following financial interest from or to a third party (our emphasis)*”

- i) *Commission authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);*
- ii) *Commission authorised under the Medical Schemes Act, 1998 (Act No. 131 of 1998);*
- iii) *fees authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998 or the Medical Schemes Act, 1998 (Act No. 131 of 1998) if those fees are reasonably commensurate to a service being rendered;*
- iv) *Fees for the rendering of a financial service in respect of which commission or fees referred to in subparagraph (i),(ii) or (iii) is not paid, if those fees*
  - (aa) are specifically agreed to by a client in writing; and*
  - (bb) may be stopped at the discretion of that client;*
- v) *fees or remuneration for the rendering of a service to a third party which fees or remuneration are reasonably commensurate to the service being rendered....”*

Section 3A (1)(a) (vi) and (vii) also makes provision for a provider or its representative to offer to or receive from a third party, an **immaterial financial interest** or financial interest not referred to in subparagraphs (i) to (v) above, for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid by that provider or representative at the time of receipt thereof.

An immaterial financial interest: is defined in the Code as “*any financial interest with a determinable monetary value, the aggregate of which does not exceed R 1000 in any calendar year from the same third party in that calendar year received by a) a provider who is a sole proprietor, or b) a representative for that representatives direct benefit; or c) a provider, who for its benefit or that of some or all of its representatives, aggregates the immaterial financial interest paid to its representatives.*”

From the foregoing provision it is evident that the Act does allow for fees or commission to be paid, but same must be received within the confines of the law.

Your attention is also drawn to section 3A(1)(b) of the Code which provides as follows “*A provider may not offer any financial interest to a representative of that provider for:*”

- i) giving preference to the quantity of business secured for the provider to the exclusion of the quality of the service rendered to clients; or*
- ii) giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client; or*
- iii) giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client.”*

The conduct under discussion does not fall within the parameters of section 3A(1) of the Act and appears to be a contravention of section 3A(1)(b) of the Code. Offering the incentives described above gives rise to a **serious conflict of interest** in that the incentive offered exceeds the immaterial financial interest threshold. The F & I manager, as a result of not only association with the product supplier but also the incentive or the financial reward being offered, is encouraged or enticed to give preference to a specific product supplier. Furthermore he/she recommends to the client the product of the product supplier **even in circumstances when other products could have been recommended thus rendering financial services in a biased manner**. This conduct may be prejudicial to the client.



When the representative can give more than one product option to the client, the representative must act in such a manner that clients receive all information about all products on offer in order to make an informed decision.

The Code places a duty on all providers and representatives to render financial services with, inter alia, a duty of care, skill and diligence. Representatives are required to give quality service to clients and not to give preference to quantity of work secured.

The Registrar warns providers and representatives who are participating in this conduct to refrain from doing so as this attracts regulatory action.

## CONTACT DETAILS

### FSB Call Centre:

Are you aware that the Financial Services Board has a Call Centre / Contact Centre that is dedicated to resolving all your queries? The following toll free numbers may be used to contact the FSB Call Centre:

- 0800110443
- 0800202087

### Website :

All the important information applicable to financial services business is posted on our website. You are encouraged to frequently visit our website for latest information and updates. Our website address is [www.fsb.co.za](http://www.fsb.co.za).

On the FSB homepage select "FAIS" from the drop down list of departments.

E-MAIL INBOX	PURPOSE
<a href="mailto:Faisinfo@fsb.co.za">Faisinfo@fsb.co.za</a>	General FAIS related enquiries.
<a href="mailto:Faispfc@fsb.co.za">Faispfc@fsb.co.za</a>	Submission of profile change requests specifically relating to FSPs.
<a href="mailto:Reps@fsb.co.za">Reps@fsb.co.za</a>	Submission of the excel rep import spread sheet. This e-mail address should <b>only</b> be used where the person submitting the excel spreadsheet is registered to submit on behalf of the FSP.  Where the person is not registered to submit an excel spreadsheet on behalf of the FSP then the request should be sent to the <a href="mailto:faispfc@fsb.co.za">faispfc@fsb.co.za</a> inbox.
<a href="mailto:Fais.Lapse@fsb.co.za">Fais.Lapse@fsb.co.za</a>	Submission of any requests to lapse licenses and enquiries relating to lapse requests that have been submitted.
<a href="mailto:Fais.Licensecopies@fsb.co.za">Fais.Licensecopies@fsb.co.za</a>	Requests for duplicate copies of FAIS licenses and annexures. Please ensure that proof of payment accompanies the request for a duplicate license copy.
<a href="mailto:Fais.Newlicense@fsb.co.za">Fais.Newlicense@fsb.co.za</a>	E-mail submissions of new license applications for FSPs.
<a href="mailto:Fais.COapprovals@fsb.co.za">Fais.COapprovals@fsb.co.za</a>	E-mail submissions for application for phase 1 approval of compliance officers.
<a href="mailto:Fais.Mandates@fsb.co.za">Fais.Mandates@fsb.co.za</a>	Submission of specimen mandates for approval.

E-MAIL INBOX	PURPOSE
<a href="mailto:Fais.Exams@fsb.co.za">Fais.Exams@fsb.co.za</a>	All queries relating to the regulatory examinations e.g. queries related to duplicate certificates, how to register for exams, authentication etc.
<a href="mailto:Fais.Qualifications@fsb.co.za">Fais.Qualifications@fsb.co.za</a>	Queries relating to qualifications e.g. credits, recognition of qualifications.
<a href="mailto:Fitandproper@fsb.co.za">Fitandproper@fsb.co.za</a>	Queries relating to the Fit and Proper Requirements e.g. new entrants wanting to know what competency requirements they have to meet.
<a href="mailto:Fais.Compliance@fsb.co.za">Fais.Compliance@fsb.co.za</a>	Submission of documents and queries in response to an intention to suspend or suspension letter sent to an FSP.
<a href="mailto:Faisfins2@fsb.co.za">Faisfins2@fsb.co.za</a>	Extension requests for the submission of annual financial statements.
<a href="mailto:Faisfins3@fsb.co.za">Faisfins3@fsb.co.za</a>	Extension requests for the submission of annual financial statements.
<a href="mailto:Faiscomp1@fsb.co.za">Faiscomp1@fsb.co.za</a>	Queries on compliance reports and queries related to the FAIS online reporting system.
<a href="mailto:FaisComplaints@fsb.co.za">FaisComplaints@fsb.co.za</a>	Submission of FAIS related complaints against key individuals, representatives and FSPs.
<a href="mailto:Debarment@fsb.co.za">Debarment@fsb.co.za</a>	Submission of debarment notifications relating to representatives.
<a href="mailto:Fais.Exemptions@fsb.co.za">Fais.Exemptions@fsb.co.za</a>	Submission of exemption applications for exemptions specific to a person or FSP.
<a href="mailto:Fais.Examexemptions@fsb.co.za">Fais.Examexemptions@fsb.co.za</a>	Submission of excel spread sheets to register for the regulatory examination exemptions that published under Board Notice 102 of 2012.
<a href="mailto:Fais.conditions@fsb.co.za">Fais.conditions@fsb.co.za</a>	Submission of proof that conditions associated with exemptions that were granted have been complied with.
<a href="mailto:Fais.Dofa@fsb.co.za">Fais.Dofa@fsb.co.za</a>	Submission of DOFA related enquiries and requests for DOFA reports.