

1. COMPLAINT: M v N

Failure to disclose pre-existing condition clause

The complainant applied for a life cover policy that included an income protector and a disability benefit. The complainant was later declared to be medically unfit to work. When he submitted a claim with the respondent in terms of the income-protection benefit the claim was rejected on the basis that the claim had been submitted during the waiting period. The respondent relied on the policy's terms and conditions, which provided for a 24-month waiting period on pre-existing conditions. The illness that had rendered the complainant unfit to perform his duties had arisen directly from such a pre-existing condition. Despite correspondence from this Office requesting documentation to supply evidence that the relevant disclosures had been made, the respondent was unwilling to settle the matter and insisted that the product sold to the complainant was suitable, as it catered for the need that had been identified. The complainant knew of the exclusions, according to the respondent, as these had been disclosed in both the application form and the policy schedule.

In officially accepting the matter for investigation this Office drew the respondent's attention to the fact that it had failed to advise the complainant of the blanket exclusion that was applicable to the policy with regard to pre-existing conditions. In addition, the respondent had failed to elicit information from the complainant pertaining to his medical information. This information was both relevant and available and, had it been requested, the unsuitability of the product would have become evident to the respondent. The respondent responded by providing an offer that settled the matter in full.

Settlement: R563 581

2. COMPLAINT: DB v S

Failure to provide appropriate advice

This Office received a complaint from a father acting in his capacity as the guardian of his 47-year-old daughter who lacked the mental capacity to represent herself. Owing to the daughter's mental illness she had never been employed and was dependent on the support provided by her husband. The daughter and her husband subsequently divorced. As

part of the settlement, the daughter received a house, which was later sold for R2 100 000. The proceeds were placed in a family trust, where the intention of the deceased had been to invest the monies in a vehicle that would protect the capital and provide monthly income payments to sustain the daughter. Upon meeting with the respondent, it recommended an investment in a guaranteed income plan that guaranteed her an income for a period of five years. The complainant, representing the daughter, accepted the recommendation, only to find that at maturity the original capital amount was not guaranteed and that payment would be less than the amount originally invested.

In its response to this Office the respondent argued that the complainant had signed the application and the quotation in acceptance of the recommendation made. The respondent was of the view that the matter related to the performance of the funds into which the capital had been invested. The respondent was also of the view that the complainant had in fact not suffered a loss, as when one added the total of all the instalments paid to the complainant to the capital paid at maturity, it was more than the original investment. This Office was not convinced and was of the view that the respondent had failed to adequately consider the complainant's financial needs and circumstances at that time and had, therefore, failed to provide her with a product that was appropriate. Furthermore, this Office held the opinion that the respondent had failed to render the financial services in line with the terms of the agreement with the client. This Office made a recommendation to the respondent to resolve the matter with the complainant, which the respondent agreed to.

Settlement: R187 240

3. COMPLAINT: M v N

Failure to timeously action a claim

The complainant's husband had applied for an accidental death and disability policy with the respondent. The policy had incepted on 28 August 2013, with the first premium of R82.50 debited on 15 September 2013. The complainant's husband passed away in an accident on 21 September 2013, and the complainant lodged a claim on 26 November 2013. The complainant had initially been told to wait for the results

of a blood alcohol test. The result was obtained during June 2015 and, despite the fact that it confirmed that the deceased was not intoxicated, the claim remained outstanding. During December 2015 the complainant was informed that no claim had been lodged and that the policy had been cancelled. The complainant disputed this and approached this Office for assistance with her claim. Upon receipt of this Office's initial correspondence that sought reasons for the delay in settling the claim, the respondent confirmed that the matter had been reassessed and that payment had been approved in respect of the benefits provided.

Settlement: R200 000

4. COMPLAINT: L v S

Failure to act on the instructions of client

During 2015, the complainant sought the respondent's assistance in order to invest the proceeds awarded to her by the Road Accident Fund (RAF). The claim with the RAF was as a result of an accident that had left the complainant paralysed. The complainant claimed to have specifically requested an investment product that would provide her with a monthly income without eroding her investment capital. The complainant alleged that she was advised by the respondent to place her funds into a unit trust, which would provide her with the required monthly income from the product's accumulated interest. The respondent also promised that there would be no fees charged should the investment be cancelled. The complainant, however, did not receive the promised monthly interest for a period of approximately six months, resulting in the respondent recommending that the complainant move her funds to another investment in an effort to meet her income needs. When the second investment also failed to provide the required income, the complainant decided to cancel the investment with the respondent only to discover that her funds had been invested in a five-year endowment that she could not cancel without sustaining significant penalties due to early cancellation.

In responding to the complaint the respondent indicated (without evidence) that the complainant was aware that her funds were moved from a unit trust to an endowment policy. The respondent advised that all terms and conditions of the endowment policy were provided for in the policy schedule and that that was sufficient disclosure of all relevant information with regard to the product. The respondent also stated that the complainant's signature on the documents demonstrated that the complainant had been aware of the terms and conditions applicable to an endowment policy and had still proceeded with the transaction. This Office was, however, of

the view that regardless of the documentation signed by the complainant a consideration of her personal circumstances provided evidence that the product recommended was not appropriate to her financial needs and circumstances. This Office therefore requested that the respondent reconsider its stance and look to resolve the matter with the complainant. Upon receipt of this Office's recommendation, the respondent made an offer of settlement which the complainant accepted.

Settlement: R80 386

5. COMPLAINT: B v A

Failure to disclose fees and charges

The complainant, an elderly gentleman in retirement, submits that he had invested an amount of R1 000 000 in a fixed deposit on the advice of the respondent's representative. When the fixed deposit matured, the complainant was referred to another representative of the respondent, who asked for details with regard to the income he was receiving from his fixed deposit. When the complainant revealed he was earning 9.8%, the representative advised him that if the complainant moved his portfolio to her, it would be invested in a basket of unit trust funds and he would be able to take home a 10% monthly income – together with a 5% growth on his investment. The complainant contends that he made it clear to the representative that the investment had to last him for the rest of his life, as it was his only source of income. He was assured that his money would be safe.

The complainant, who was not too familiar with investments, requested a weekly statement in order that he could see how the investment was doing. The complainant became weary of losses being sustained on the portfolio. Even though he approached the representative on a number of occasions to express his concerns about the depreciating value of his investment, there appeared to be no appreciation for his concerns. The complainant submits that as a result of his portfolio having reduced by around R70 000 – due in part to the representative's commission, which had been in excess of R11 000 – he was worse off than before, and decided to withdraw all his money, and once again invested his funds in a fixed deposit.

The respondent alleged that the complainant had been advised of the depreciation that would occur as a result of the high income drawdown required by the complainant. It was further alleged that the complainant had been made aware that the investment would start to show significant gains only after a period of three to four years. The respondent further submitted that the complainant had not incurred

any loss; one needed to consider that the monthly income already received together with the capital amount the complainant withdrew had exceeded the funds initially invested. This Office was, however, of the view that the respondent's representative should have exercised greater caution and ensured that the complainant's capital was at the very least preserved. Many factors should have been considered: the complainant's age; the lump sum involved; the fact that this was the complainant's only source of income; and his inability to recoup any losses sustained. Furthermore, the duty of an FSP is to provide advice and not simply accede to the complainant's wishes, especially when these 'wishes' are in conflict with his circumstances. This was true for this matter, as the respondent had allowed the complainant to draw an income of his choosing without ever cautioning him about the risks involved. The respondent there and then made an offer in full and final settlement of the matter and the complainant accepted the offer.

Settlement: R15 168

6. COMPLAINT: R v S

Failure to disclose the inherent risks

The complainant, 59 years of age, approached the respondent's representative to discuss a possible switch of her funds held in a money market account into a portfolio that would potentially provide a higher return. The complainant informed the representative that, as a result of her age, she could not afford to lose any money and that she was dependent on these funds to provide an income for retirement. The respondent's representative then conducted a risk profile and a needs analysis, which profiled the complainant as a moderate risk investor. On the basis of this result the respondent recommended that the funds be placed into the respondent's bond fund, with the assurance that she would receive returns on her investment. The complainant accepted the recommendation, only to later find that her capital had decreased as a result of fluctuations in the market. She requested that the financial planner switch her funds back into the money market fund.

The complainant approached the Office of the FAIS Ombud to request the respondent to place her in the financial position she would have been in had she been advised of the risks involved in placing her money in the bond fund. This Office directed the complaint to the respondent in accordance with the Rules on the Proceedings of the FAIS Ombud and, in reply, the respondent offered the complainant a settlement that the complainant then accepted.

Settlement: R6 841

7. COMPLAINT: Z v M

Failure to disclose the material terms of a policy

The complainant, a 51-year-old married man and father, was previously employed as a general worker and had been retrenched during late 2014, at the age of 49. The complainant's total retrenchment benefit from his provident fund of R543 000 had been placed into a provident preservation fund, from which he had withdrawn a lump sum equal to 1/3rd of the amount invested, amounting to R181 000. The complainant had also received R105 000 as a severance package. The complainant claims that upon approaching the respondent he was not advised of the material terms of the policy and that he did not consent to his funds being, what he referred to as, "reinvested". The complainant was not receiving any income from his investment and he was in distress as a result of being unable to pay for his child's tertiary education, to pay his monthly rent, and to take care of his family as the sole breadwinner. The complainant was unable to access the remaining funds from the preservation fund. The proceeds of this fund came from the complainant's provident fund, but he had already made use of the one withdrawal available to him.

The respondent was required to provide documentation that could act as evidence of the financial planning that had been conducted for the complainant and of the recommendation that was to match the complainant's needs and circumstances. The respondent, however, responded that the 'advice' that was rendered had been in the form of a mass presentation to all retrenched staff, presented by a representative of the product provider. This Office informed the respondent that there were serious concerns with regard to the manner in which the transaction had been concluded. Not least of these concerns was that the tax benefits of a retrenchment benefit had been negatively affected by the funds having been transferred to a preservation fund. Another concern was the respondent's failure to disclose this to the complainant. A recommendation was made that the respondent reconsider its stance and look to resolve the matter with the complainant, which resulted in the respondent reaching a settlement with the complainant in full and final settlement of the complaint.

Settlement: R10 000

8. COMPLAINT: S v L

Failure to provide appropriate advice

The complainant retired as a member of his employer's pension fund. The complainant was the sole provider, supporting his wife and dependent child, who was a student at the time the transaction was concluded. The complainant had at the time sustained significant debt, which he had consolidated

by applying for a loan shortly before his retirement. This had been done in the knowledge that he would have access to one third of his pension benefit, with which he could settle the loan. Upon consulting the respondent a recommendation was made to apply for an annuity, which saw the entire pension benefit transferred into the annuity. When the complainant enquired as to the possibility of commuting one third of the pension benefit in the form of a lump sum, he was informed that he was unable to access any part of his pension benefit. The complainant, aggrieved by the respondent's conduct, approached this Office for assistance.

The respondent was requested to provide documentation showing that he had obtained all relevant and available information with regard to the complainant's financial situation at that time that the respondent had seen it appropriate to invest the entire pension benefit. An alternative action for the respondent would have been to reduce any outstanding obligations that may have allowed the complainant to budget in accordance with the income provided by the annuity. It was subsequently established that the respondent had not maintained a record of the advice, that it had failed to take the complainant's circumstances into account, and that this failure had resulted in a recommendation that was inappropriate to the needs of the complainant. Following a recommendation from this Office the respondent paid out an amount equal to one third of complainant's retirement benefit in full and final settlement.

Settlement: R570 994

9. COMPLAINT: D v I

Failure to provide appropriate advice

The complainant, a 48-year-old engineer, accepted a voluntary retrenchment package during July 2012. The complainant approached the respondent for advice on his options and he claims to have given strict instructions to the respondent that the full pension benefit of R965 476.73 be withdrawn and placed in an "investment account", where he would have access to the funds. The Complainant was starting his own engineering business and needed to purchase equipment to set up the business. During November 2012, the complainant received an amount of R426 772.84, with the remaining R538 703.46 transferred into a retirement annuity (RA). When the complainant had contacted the respondent to make a withdrawal he was told that he could not access the funds until he reached the age of 55.

In its response the respondent alleged that he was informed by a consultant from the pension fund that the complainant

could not take the full amount in cash. The respondent had taken that information at face value and did not do his own investigation. As it turned out, the fund rules allowed the complainant to take the full benefit in cash, with the remainder transferred to an approved fund. This Office was of the view that the respondent had also failed to make allowance for the complainant's needs and recommended that the matter be resolved. The respondent conceded that it had failed to render appropriate advice and made an offer that was accepted by the complainant in full and final settlement.

Settlement: R24 564

10. COMPLAINT: M v O

Failure to disclose material aspects of the policy

The complainant, a 56-year-old single parent of four minor children resigned from the Department of Correctional Services in 2015 with a pension benefit of R2 363 489. The complainant had resigned to start business as a mechanic. The complainant claimed to have informed the respondent that he wanted to withdraw a lump sum from the total pension benefit and to invest the remainder of the funds to provide an income, as well as to allow him access when required. The complainant knew that he would not be receiving an income until the business showed a profit. The complainant received an after-tax lump sum of R787 000 and the remainder of the funds were invested in an annuity. After requesting a withdrawal the complainant was advised that he could access the funds only when he turned 55. At 55 the complainant received only a further R8 000 lump sum, the rest having been utilised to purchase an annuity.

The respondent was requested to provide documentation evidencing what information had been obtained from the complainant that saw the recommendation made as having been appropriate. From the response it became evident that the respondent had not included details of the nature of the product that the complainant's pension benefits had been paid into. This Office recommended that the respondent settle the matter by paying to the complainant the commission that the advisor had earned as well as an ex gratia amount. The respondent in response to the recommendation made an offer to the complainant in full and final settlement, which the complainant accepted.

Settlement: R37 768

11. COMPLAINT: N v O

Failure to provide correct information

The complainant resigned as a teacher from the Government Employee Pension Fund ('GEPF') during 2015 at the age of 53. The complainant informed the respondent's representative that she wanted to take a portion of her pension benefit to pay off all her debts and to start a business, with the remaining funds to be preserved in a retirement annuity. The complainant confirmed that despite her instructions the full pension benefit of R997 6211.21 was transferred into a pension preservation fund. When the complainant requested a withdrawal she received only R200 000, which was further reduced by tax. The rules of the GEPF provide that, unlike other pension fund benefits, when a pension benefit is transferred to a pension preservation fund from the GEPF, the member has access through only one withdrawal, which itself is limited to only one third of the total pension benefit. In correspondence between the complainant and the respondent it became clear that the respondent had been unaware of this provision and had been unable to adequately advise the complainant as a result. The respondent subsequently made an offer to settle the matter with the respondent.

Settlement: R120 000

12. COMPLAINT: M v S

Failure to disclose the risk of underinsurance

The complainant had applied for a home owner's insurance policy with the respondent and after a fire in June 2015 he had duly lodged a claim against the policy. The damage caused by the fire was assessed to have been R261 000. The insurer offered to settle the claim to the value of R141 000, stating that the complainant had been underinsured and that, as a result, it had applied the rule of average in determining the quantum of the claim. The complainant, outraged by what he believed had been the respondent's failure to adequately provide for his needs, claimed not to have been informed of the requirement to have the building insured for its replacement value. Aggrieved by the respondent's continued failure to honour his total claim, the complainant approached this Office.

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). More specifically, the respondent had to show proof that its representative had obtained all relevant and available information to ensure that the product and indeed the benefits recommended were appropriate.

The respondent was unable to provide any documentation showing compliance with the Code, and could only point to having sent the complainant the policy schedules on an annual basis. The respondent further maintained that it was the complainant's responsibility to ensure that he was adequately provided for. After this Office had confirmed its stance with regard to the respondent's failure to adequately provide for the needs of the complainant, the respondent reconsidered its decision and made an offer to settle the claim to the value of the assessed quantum.

Settlement: R120 000

13. COMPLAINT: V v A

Failure to disclose minimum security requirements

The complainant, a 77-year-old pensioner, had a short-term insurance policy facilitated by the respondent that provided cover for his household contents. On 14 June 2014 at around 16:30 there was a burglary at his home and a claim was duly submitted on 29 June 2014. Following the submission of the claim, the complainant received correspondence from the insurer that the claim had been rejected on the basis that the minimum security measure required – security gates fitted to all doors leading outside – had not been complied with. The complainant claimed that this requirement had never been brought to his attention, and was adamant that the loss was as a result of the actions of the respondent.

In response to correspondence received from this Office, the respondent claimed that even though its representative had visited the complainant's residence on an annual basis, she was not a security expert and could not have been expected to comment on the complainant's failure to adhere to the minimum security requirements. The respondent further advised that a policy schedule was sent to the complainant and that the complainant ought to have been aware of the minimum requirements. This Office informed the respondent that policy documents do not show compliance with the requirements of the Code and that its representative had a duty to obtain all relevant and available information from the complainant. The respondent thereafter made an offer to settle the matter as though the required security measures had been in place.

Settlement: R56 823

14. COMPLAINT: M v I

Failure to provide appropriate and adequate disclosures

Subsequent to the purchase of a new motor vehicle in 2014 the complainant approached the respondent to obtain cover for the vehicle. The complainant had an existing insurance policy and the new vehicle was to have replaced the existing vehicle on the policy. The respondent, however, recommended that the complainant apply for a new policy with another insurer. When the complainant's 25-year-old son, noted as the regular driver on the policy, was in an accident, the complainant was shocked at the excesses payable for a driver of a vehicle who is under the age of 30 and who incurs a loss within six months of the policy having incepted. It is noted that the replacement policy did not have such excesses. The respondent was asked to show that its representative had clearly disclosed the implications and consequences of the proposed replacement to the complainant. Upon receipt of the correspondence from this Office, the respondent approached the complainant and offered to compensate her for the additional excesses charged, which offer was accepted by the complainant.

Settlement: R20 000

15. COMPLAINT: S v L

Failure to obtain material information during the application

The complainant, after having been involved in a motor vehicle accident, had seen his claim rejected on the basis that he had, during the application stage, failed to disclose that he had been in two motor vehicle accidents in the previous five years. The complainant, however, claimed that he had never lodged a claim in respect of either of the two accidents and that during the application stage he had been asked only about the number of claims submitted in the preceding five years. The complainant was adamant that he had never been asked how many accidents he had had and that if asked he would have disclosed this information. The complainant was therefore of the view that he had been financially prejudiced as a result of the respondent's actions and he submitted a complaint to this Office. The respondent was requested to show compliance with the Code and, specifically, that all relevant and available information with regard to any and all claims or losses had been obtained. Such information would have permitted an accurate assessment of the complainant's risk profile. The respondent was also asked to provide a copy of the recorded conversation to determine whether or not the complainant had been informed as to the importance of disclosing not only any and all claims submitted but, in addition, any and all losses sustained as well. In response

to correspondence received from this Office, the respondent made an offer to the complainant to settle the claim in full. The offer was accepted by the complainant as full and final settlement of the complaint.

Settlement: R56 921

16. COMPLAINT: S v A

Failure to disclose policy exclusions

The complainant, who was the owner of a funeral policy recommended by the respondent, claimed that the respondent had failed to inform him that there was an age limit of 21 years for individuals covered as dependants on the policy. The complainant had been paying a premium in respect of himself and his younger brother, who was covered as a dependant on the policy. At the inception of the policy the complainant's brother was 18 years of age, and at the time of his passing he was 24 years old. The claim submitted by the complainant was rejected on the basis that the deceased's cover had lapsed when he turned 21. The complainant was adamant that this was never explained to him at point of sale or during any of the annual renewal letters he received and he approached this Office for the respondent to pay the full benefit of R10 000. The respondent was requested to furnish this Office with a record of the disclosures made with respect to the exclusions applicable to dependents covered on the policy. The respondent was unable to do so and had merely referred to the policy documents that contained this clause, insisting all the while that this limitation was an industry standard that the client ought to have been aware of. The respondent was, however, prepared to make an ex gratia offer of R5 000. The complainant initially rejected the offer, but subsequently accepted it as full and final settlement of the complaint.

Settlement: R5 000