

FAIS Ombud Press Release: 6 March 2019

Settled Complaint

The Office of the FAIS Ombud is committed to resolving complaints in a procedurally fair, informal, economical and expeditious manner, with reference to what is equitable in all circumstances. In this vein the FAIS Ombud always explores every available avenue to resolve a complaint between the parties on an informal basis without the need to formally resolve the matter by way of a determination.

The complaint detailed below is one such matter where this Office was able to facilitate the successful resolution thereof by way of a conciliated settlement. Appreciating the fact that all matters settled by this Office are done on a without prejudice basis, this matter does address a few significant issues that this Office believes need to be highlighted.

The complainant, Mr G, had applied for a short-term insurance policy on the recommendation of the respondent during 1997. The transaction that led to the conclusion of the short-term insurance policy had been conducted during the complainant's bond application. Subsequent to the inception of the policy, during 2013, Mr G had constructed an outdoor pizza oven, which unfortunately led to a fire breaking out on 13 December 2014. The fire destroyed the family's home, and the claim submitted was subsequently rejected after the appointed assessor discovered that the pizza oven had not been built according to standard building practices in terms of space heating, and that the pizza oven flue had been installed too close to the wooden rafters. This had resulted in charring and igniting which had led to the fire. The claim, in the amount of R1 495 040, was therefore rejected on the basis of the following exclusions:

- Change of Risk – The complainant needed to have informed the insurer within 30 days about any change in circumstances that could affect the risk of loss damage etc. as well as any extensions or alterations to the building structure.
- Defects – in the design, materials or construction
- Construction Type – Loss or damage is not covered if insured property does not comply with National Building Regulations or legislation applicable at the time.

Upon receipt of the complaint and after having provided the respondent with the opportunity to respond to the complaint, this Office was informed by the respondent that this transaction, the

provision of a short-term insurance policy, was precluded from the provision of advice. The respondent was of the view that the only requirement was that the representative, in this case the attorneys handling the transfer, needed to provide the complainant with factual information. This together with the fact that the complainant had been sent a policy document detailing all terms and conditions was seen by the respondent as sufficient to satisfy its duty of disclosure in terms of the General Code of Conduct. This Office however made it clear that it is of the view that the provision of financial service and or a financial product cannot be made in isolation of advice, or a determination by the Financial Services Provider as to the appropriateness of the recommended product to the client's needs and circumstances. This Office was also of the view that even if we were to accept the respondent's response, then it still had a duty to have complied with the provisions of the General Code of Conduct for Authorised Financial Services Providers and Representatives ('the Code') and to have provided concise details of any and all material terms of the contract, specifically dealing with any exclusions, limitations on cover or instances in which cover will not be provided.

The mere provision of policy documents and policy schedules subsequent to the rendering of a financial service does not negate the FSPs responsibility to make disclosures with regards to exclusions specifically dealing with issues such as the need to adequately maintain one's property, or what the requirements are should the client at any stage make alterations or extensions to the building or property, as was the case in this complaint. The fact that this important aspect was 'outsourced' to the lawyers responsible for conducting the transfer and that the respondent had relied on the fact that the complainant was sent a copy of the policy terms and conditions further illustrated the respondent's failure to exercise its duty of care.

An additional argument put forward by the respondent included reference to the fact that the policy had incepted during 1997, which was prior to the inception of this Office on 30 September 2004, and as a result the transaction and any advice rendered fell outside of our jurisdiction. This Office was of the view that the introduction of the FAIS Act and its corresponding Code of Conduct placed a duty on Financial Services Providers such as the respondent to ensure that the required disclosures were made, regardless of when the policy incepted. This is all the more relevant when one considers that short term insurance policies are annually renewable and yet the respondent was unable to provide any record that an annual review had been undertaken since the commencement of the FAIS Act during 2004, this despite continuing to receive an advisory fee on a regular basis.

It was put to the respondent that had annual renewals indeed taken place, which would have considered whether the policy still catered for the complainant's needs, then the addition of the pizza oven would have been brought to the brokers attention, who would have been in a position to have to have made the required disclosures to have ensured that complainant was placed in a position to make an informed decision, as to the need to have the building work adequately certified, and may even have prevented the loss from even occurring all together.

After having numerous interactions with the respondent, it made a decision to present the complainant with an offer of R800 000, which represented this Offices jurisdictional limit. Whilst the complainant's losses exceeded this value, he made the decision to accept the offer, which is the maximum amount that this Office could facilitate. (This Office has however made submissions for the increase in the jurisdictional limit, which has remained unchanged since the inception of the FAIS Act during 2002.)

Whilst the respondent's reliance on this Office's jurisdiction to limit its liability in this matter, makes the resolution of this complaint bitter sweet, it is nevertheless encouraging to receive feedback from the complainant, who we shall allow to have the last word:

"Finding someone willing to listen and help when you feel powerless has value far greater than what you may ever realise. Thank you for that."

"Thank you for the hope you gave us."