SETTLEMENTS

COMPLAINANT N v K

Issue: Failure to act on instructions of client

The complainant stated that he had given his broker instructions to cancel his short term insurance policy with the insurer. He later discovered that this instruction had not been forwarded to the insurer and as a result his bank account was still being debited in respect of the monthly premium. Having failed to resolve the complaint with the respondent, complainant lodged a complaint with this Office. Upon forwarding the complaint to the respondent, he initially denied receiving any such instruction to cancel the policy. However, when an email was produced by the complainant, confirming that the request had indeed been sent, the respondent agreed to refund the complainant all premiums debited after the instruction had been received. An amount of R9 077.50 was paid to complainant in full and final settlement.

SETTLEMENT: R9 077.50

COMPLAINANT P v O

Issue: Failure to disclose amendment costs

During September 2014, the complainant commenced with the process of changing his retirement annuity policy in favour of a new and improved version. It was the complainant's contention that despite having liaised with the respondent on numerous occasions regarding the anticipated change, the respondent had failed to disclose the fact that there would be a change to the costs incurred in respect of the transaction.

In its response to this Office, the respondent had stated that while it acknowledged that its representative may have failed to highlight the pertinent charges applicable to the complainant, it would be unreasonable to assume that the complainant had not been aware that certain charges would be levied. As a result, the respondent offered to pay the complainant an amount of R3 000.00 in lieu of the poor service. The respondent further contended that in terms of the old fund rules, charges are applied to all members who access their retirement benefits before the end of the premium paying term and it should also be noted that the respondent had itself incurred upfront costs when the contract had been issued, which it had planned to recoup over the term of the contract.

The matter was officially accepted for investigation by this Office and a recommendation was made to the respondent to refund all the charges incurred. This Office was of the view that the actions of the respondent's representative had denied the complainant an opportunity to have made an informed decision regarding the proposed change.

The complainant was subsequently refunded the charges incurred.

SETTLEMENT: R17 658.71

COMPLAINANT D v DD

Issue: Failure to disclose charges upon termination of investment policy

Complainant had enquired from the respondent about the costs involved for the early surrender of her policy. The respondent had indicated that the surrender penalties would only be R 839.29.

After the policy had been surrendered, the complainant noticed that the amount paid out to him was R10 869.31 less than what had originally been indicated.

Complainant proceeded to lodge a complainant with our office as she felt that the explanation provided to her had not been satisfactory.

The complaint was forwarded to the respondent, specifically requesting that it address the Office on the R10 869.31 charged. The respondent argued that the percentage charged was contained in the documents signed by complainant. However, there was no evidence to prove that this had been disclosed to complainant and it was further noted that it would not suffice for the respondent to convey the percentage charged. There was a duty for it to have reflected the amount in specific monetary terms as the Code demands where the amount is reasonably ascertainable.

The respondent settled the matter by offering the complainant an amount of R10 869.31.

SETTLEMENT: R10 869.31

COMPLAINANT: L v L

Issue: Failure to disclose commission and appropriateness of the product sold

The complainants, a retired couple, held various policies some of which had reached maturity; some had been ceded and new policies issued on the recommendation of their advisor.

The complainants were eventually advised to consolidate all the policies and replace them with one policy from Old Mutual. When the complainants received their policy documents they noticed that

commissions had been charged by the respondents representative despite having been informed that the proposed changes represented a reinvestment and that no fees would be payable as a result. Furthermore the complainants also noted that the maturity date for the policy was recorded as 2029. This despite the fact that the complainants, at the inception of the policy, were already at the ages of 82 and 76 years respectively.

Initial correspondence was sent to the respondent requesting that it address this Office on the suitability of the changes effected. Particularly how the changes had been conveyed to the complainants and how the extended term was in the complainants' interests. The respondent replied agreeing to refund the commission received and to amend the term of the policy to one agreeable to the complainants' particular circumstances.

SETTLEMENT: R26 141.72

COMPLAINANT: R v C

Issue: Failure to act with integrity and in the interests of the client

Complainant's husband passed away having purchased numerous life policies and various other death benefits.

However the respondent who was also the advisor to the deceased had noted his (respondent's) wife as a creditor and beneficiary on the policies, of the deceased. It was only when the deceased's wife enquired about the proceeds due to her that she was informed that she was no longer noted as a beneficiary on the policies.

Correspondence was sent to the respondent, requesting details of how his (respondent's) wife had ended up being nominated as a beneficiary on his client's policies. Further investigations revealed that the deceased had entered into a loan agreement with the respondent's wife, however the outstanding balance of the loan had been paid during the deceased's lifetime.

The complainant provided proof that the loan had in fact been settled during her husband's life time and the matter was resolved.

SETTLEMENT: R110 250.00

COMPLAINANT: S v M

Issue: Misinformation to the client

The complainant had applied for life cover in order to cover himself and his family. During the sales call, prior to the inception of the policy, the respondent had advised the complainant that he enjoyed immediate cover under the policy, notwithstanding the fact that the first premium had not yet been paid.

On 24 June 2014 the complainant's son was involved in a fatal car accident. The complainant submitted a claim on his policy which was subsequently rejected on the basis that cover only commenced on 2 July 2014.

The respondent however conceded that its representative had provided the complainant with incorrect information at the time the financial service was rendered. Specifically it was incorrect for the representative to have said "immediate cover" would be enjoyed by the complainant and his family. The respondent offered an ex gratia amount of R10 000.00 and the matter was settled.

SETTLEMENT: R10 000.00

COMPLAINANT: I v B

Issue: Failure to appropriately advise a client

The complainant's husband had been on chronic treatment for high blood pressure and had died from a heart attack during November 2013. The complainant's claim against the policy, which had been sourced to provide cover in respect of the bond was rejected by the insurer. The basis for the rejection was the 24 month exclusion of pre-existing health conditions as set out in the policy. The complainant contended that no one had explained meaning of the words "pre - existing condition exclusion". The complaint was referred to the respondent who argued that the complainant had a duty to have made all the necessary disclosures and to have reviewed the policy wording. The respondent made an initial offer of R335 000.00 which was rejected by the complainant. The respondent argued that with a life policy one's existing health conditions are highly relevant and that this ought to have been disclosed to its representative. It was pointed out to the respondent that the deceased would not have known to disclose life threatening condition simply because his representative had not explained what is meant by pre-existing condition. The respondent increased the settlement offer, which was subsequently accepted by the complainant.

SETTLEMENT: R400 000.00

COMPLAINANT: G v O

Issue: Appropriateness of advice

Complainant had, upon the recommendation of the respondent, invested funds in an overseas property syndication structure that owned student housing.

The complainant subsequently submitted a redemption instruction against her investment but had been unable to access her funds as a result of the fund having been temporarily suspended following its inability to meet the high volume of redemption requests.

We sent initial correspondence to the respondent and received a response with documentation supporting the various delays in the redemption of the complainant's investment. After an investigation it was found that the Fund was a high risk investment, and therefore not suitable for the complainant, when one considered her established risk profile.

The respondent agreed to pay the complainant an amount of GBP31 084.52 in full and final settlement of the complaint.

SETTLEMENT: GBP31 084.52 – R558 620.45

COMPLAINANT: N v H

Issue: Failure to act with due skill, care and diligence

The respondent made recommendations to move the complainant's funds out of an Offshore Commercial Property Fund into an Offshore European logistics Fund and EEA Life Settlements Fund, allegedly to diversify the risk. Subsequently, the Offshore European Logistics Fund was investigated for fraud by the Financial Standards Authority in the UK and ultimately suspended. Over time, the value of the funds depreciated drastically which resulted in the submission of the complaint. The complainant alleged that the respondent had been negligent when advising her to move her funds and had not acted with due skill, care and diligence. As the complainant had no success in her pursuit to be reimbursed, she lodged a complaint with the FAIS Ombud. Upon receiving the complaint, the respondent had no hesitation in making an offer in full and final settlement of the matter. The offer was accepted.

SETTLEMENT: R450 000.00

COMPLAINANT: M v N

Issue: Failure to correctly insure client/Failure to provide factually correct information

The complainant purchased a motor vehicle and had sought vehicle finance and Insurance from the respondent. The proposal for the insurance policy covering the vehicle had included a restriction of cover in terms of 'Nominated Drivers' and an exclusion for drivers below the age of 27. The complainant alleged that the broker had advised him to use his parents as the nominated drivers of the vehicle due to his age, the complainant was 26 years old at the time. (The technical aspect of this case is that a quotation was issued on the basis that the complainant's father and mother were the drivers of the vehicle. Upon acceptance of the quote, it was added in the proposal forms that the son was an additional driver.) Subsequently, the vehicle was involved in an accident whilst driven by the complainant (the owner of the vehicle) and the insurer had rejected his claim citing that the driver at the time of accident was not one of the nominated drivers. The complainant alleged that the broker had failed to inform the insurer once he had reached the age of 27, which would have removed all restrictions applicable. The complainant concluded by stating that the broker's conduct or omission had resulted in him suffering financial loss of R1 166 752.93. After much deliberation, the respondent agreed to settle the matter by paying an amount limited to this Office's jurisdiction in full and final settlement.

SETTLEMENT: R800 000.00

COMPLAINANT: J v O

Issue: Failure to act on instruction of client

The complainant sought investment advice from the respondent's representative. The complainant stated that he had instructed the advisor to invest R100 000.00 in a long-term deposit account and R250 000.00 in a flexi deposit. The representative had however failed to carry out his instructions having invested the R250 000.00 in an endowment policy. After the complainant had made two withdrawals, he was prevented from making another one, as he could only access the remaining funds after 5 years. The complainant alleged that the advisor had not followed his instructions, and as a result had lodged a complaint with this Office. Upon assessment of the complaint the respondent agreed to settle the matter by cancelling the policy. The complainant accepted the offer.

SETTLEMENT: R229 096.00

COMPLAINANT: C v L

Issue: Appropriateness of advice and failure to act in the interests of client

On 10 April 2012, the complainant had applied for life assurance. When the complainant was provided with an updated policy schedule she discovered that she had been contributing premiums towards an accidental death policy. The complainant's intention was to have life cover in the wider sense including death due by natural causes. She complained to this Office claiming a refund of all premiums contributed towards the policy. The complaint was referred to the respondent who responded by stating that after its consultant had gone through the medical and lifestyle questions with the complainant she only qualified for an accidental death

benefit and not whole of life cover. A recommendation was made by the Office that the respondent reconsider its stance by resolving the matter with the complainant, as the consultant would appear to have failed to advise the complainant that based on the results of the medical and lifestyle questionnaire conducted, she only qualified for the accidental death benefit. The complainant had not been placed in a position to have made an informed decision. The respondent subsequently decided to cancel the policy and refund all the premiums paid since inception. The matter was resolved and the complainant accepted the settlement offer.

SETTLEMENT: R6 591.16

COMPLAINANT: P v F

Issue: Failure to provide cover for vehicle extras

During September 2011 the complainant had requested the respondent to comprehensively insure his 2009 Toyota Hi-Lux 3.0 4 WD vehicle. On the 29th December 2011 the complainant's vehicle was stolen. The complainant subsequently submitted a claim and was however dismayed to learn that the settlement value proposed by the insurer did not provide for any of the extra's on his vehicle. The complainant claimed that the respondent had never advised him that the extras on the vehicle had to be specifically insured. The respondent had initially been unwilling to resolve the matter after having received initial correspondence from this Office. The matter was therefore officially accepted for investigation. The respondent reconsidered its stance and offered a further amount to the complainant in lieu of the extras.

SETTLEMENT: R7 500.00

COMPLAINANT: H v S

Issue: Failure to act with the required due skill care and diligence

The complainant had, during 2006, invested an amount of R600 000 into a product called Sanvest, upon the recommendation of a representative of the respondent. The complainant had then invested a further R676 581.74 into the investment during 2010. During 2013, the complainant fell ill, and required capital from the investment to pay for medical expenses. However, when sought to withdraw she was informed that her investment was tied up in property and that no funds could be withdrawn. The complainant contended that this had not been what had been agreed to, and claimed to have been under the impression that funds were always available. Prior to the submission of the complaint to this Office, the respondent had offered to refund the initial R600 000.00 to the complainant, an offer that was reiterated when the respondent responded to the initial correspondence received from this Office. The respondent had, however, refused to take responsibility for the remaining R676 581.74 as it claimed that the representative had facilitated this investment after he had left its employ during 2008. This Office officially accepted the matter for investigation, and further investigation revealed that the representative had been debarred during 2008 after an investigation by the Financial Services Board, (FSB). This fact had been known to the respondent and yet no documentation was provided to show that the complainant, or indeed, any of the debarred representative's clients had been notified of and or cautioned as to the representative's reasons for leaving. It was put to the respondent that the complainant, as a result of its perceived failure to act with the desired due skill care and diligence and in the complainant's interests, as required by the General Code of Conduct, would not have been alive to the representative's debarred status when he asked her for an additional investment in 2010. The respondent after a lengthy consideration provided an offer for half of the outstanding R676 581.74, which was subsequently accepted by the complainant.

SETTLEMENT: R938 745.00

COMPLAINANT: K v A

Issue: Failure to disclose material information to the complainant.

After having insured his motor vehicle with the assistance of the respondent, the complainant had been involved in a motor vehicle accident, and had submitted a claim against the policy. The complainant's claim was however rejected on the grounds that the person driving the vehicle at the time of the accident had not been listed as a nominated driver of the vehicle. The complainant, aggrieved by the decision, had claimed that she had never been adequately informed with regards to the nominated driver exclusion on the policy. This Office after receiving the complaint, directed our initial correspondence to the respondent, requesting that it provide documentation, in compliance with the General Code of Conduct, that it had firstly sought to determine the status of the regular driver from the complainant, but that secondly it had provided concise details with regards to the importance of ensuring that the correct identity of the regular driver be provided. The respondent after careful consideration reconsidered its stance with regards to the resolution of the complaint, and had decided to settle the matter to the satisfaction of the complainant.

SETTLEMENT: R111 599.18

COMPLAINANT: C v O

Issue: The replacement of a financial product is not always appropriate

The complainant had informed the respondent's representative that she had an existing life assurance policy and that he was welcome to provide her with an alternative recommendation should he be able to source a more affordable premium. The complainant, therefore on the recommendation of the respondent's representative, had agreed to replace her existing policy with a new policy which had also included Life, Disability and Severe Illness benefits. The representative had allegedly assured the complainant that she had, as a result of the replacement, acquired the best policy in terms of disability and severe illness cover. The complainant was subsequently admitted to hospital for the treatment of a pulmonary embolism, and after having submitted a claim under the severe illness benefit of the policy, she had been informed that this condition was only available under the Comprehensive and Extensive Cover option - an option that she had not been provided with. After receiving initial correspondence from this Office, the respondent remained reluctant to resolve the complaint. This Office then recommended the respondent reconsider its stance with regards to the resolution of the complaint. Not only had it been established that the replaced policy would have reacted positively to the claim, but that we were unable to find any documentation to support the fact that the complainant had been advised as to the consequences and/ or implications involved in the replacement of her existing policy. Furthermore, the replacement policy, albeit a cheaper option, did not provide the same level of cover. The respondent, after careful consideration, presented the complainant with an offer that had been accepted in resolution of the matter.

SETTLEMENT: R11 765.00