

## **Press Release: 11 September 2020**

### **Settled Complaints**

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The Office of the FAIS Ombud (“the Office”) is committed to resolving complaints in a procedurally fair, informal, economical and expeditious manner, with reference to what is equitable in all circumstances. In order to execute on this commitment, the Office always explores every available avenue to resolve complaints between parties on an informal basis without the need to resort to formal resolution by way of a determination.

The Office recognises that a settlement agreement entered into in order to resolve a complaint via a conciliation process is concluded on a confidential basis. This manner of resolution is also much preferred by the Office whenever possible because it is an expeditious process, it does not expose the parties to legal costs and it lends itself towards the harmonious atmosphere required between consumers and financial services providers that can lead to the requisite confidence of consumers in the financial services industry. Further, some of the issues that arise give the Ombud an opportunity to highlight to the whole industry specific concerns that arise every now and again. The two settlements that have been anonymously sketched below raised an issue with regard to the waiting periods applicable to funeral policies and the financial prejudice that can be experienced by consumers of these policies if they are not appropriately advised and/or informed of the implications of not properly understanding the inception date of the policy and the relationship (if any) thereof with the date of commencement of premiums; all considered with reference to the calculation of a waiting period that may be imposed in the funeral policy.

The first matter also highlights a very important role that the Office plays in not only investigating complaints in accordance with its mandate in a fair, economical, expeditious and equitable manner, but also as a mechanism to effect positive change within the financial services industry by facilitating changes towards fairness within the processes and procedures of financial services providers. Such changes do not only streamline the processes of the FSP but also benefit future consumers to be serviced by the financial services provider.

When applying for a funeral policy, no medical underwriting is conducted by the insurer to determine the potential risk presented by the lives assured. In order to manage this risk, insurers include amongst other mechanisms, waiting periods where no benefit will be paid if death occurs as a result of natural causes before the expiration of the waiting period. It is important to note that a

waiting period starts on the date that an insured person becomes entitled to the cover, in other words either the date of acceptance of the application by the insurer or upon the payment of the first premium depending on the terms of the contract. (It is important to note that these dates are not always the same.) A waiting period can range from anywhere between 3 to 12 months, and it is the term (time) that matters not the number of premiums paid. This is important because even though the waiting period may require for example that a minimum of 6 consecutive premiums are paid, the waiting period is determined with reference to the stated number of months (3, 6 or 12 calendar months), even if the requirement relating to the premium has been satisfied. Prospective clients must therefore be aware of the applicable waiting periods and be cognitive of any issues that may unduly prolong this period as shall be demonstrated below.

### **Complaint 1: M v B**

The complainant, Mrs M, applied for a funeral policy with the respondent, a registered Financial Services Provider ('FSP') in terms of the FASI Act, that markets itself as a funeral service and assurance provider. The complainant claimed that the first premium was debited on the 14<sup>th</sup> of December 2019, and that his mother the life assured on the policy had passed away on the 8<sup>th</sup> of June 2020. The subsequent claim that was submitted was rejected by the respondent claiming that the deceased had passed away within the waiting period which the respondent claimed was in place until 14 June 2020. The complainant was not satisfied with the rejection and the reasons advanced by the respondent, as she argued that the policy terms and conditions provided that the inception date of her policy was in fact the 1<sup>st</sup> of December 2019, which means that the 6-month waiting period had expired prior to the deceased's passing.

Unable to resolve the matter with the respondent the complainant approached this Office for assistance. Upon investigation the Office of the FAIS Ombud examined the policy schedule and noted the following: "Insurance cover in terms of the Policy commences on the inception date. This inception date is determined by the date a first premium is received. Should a premium be received between the 1<sup>st</sup> and the 15<sup>th</sup> of that month, the inception date will be the 1<sup>st</sup> of that particular month AND should premium be received between the 16<sup>th</sup> and the last day of that particular month, the inception date will be the 1<sup>st</sup> of the following month." Appreciating the fact that the first premium was collected on 14 December 2019 the inception date as noted on the contract, which was stipulated as 14 December 2019, was contradictory to the terms and conditions. The inception date of the policy should have been recorded as 1 December 2019, which would have provided for a successful claim.

The matter was referred to the respondent who reviewed the claim and took a decision to honour the claim for the full benefit of R50 000. In addition, the respondent provided the following: “We are internally rectifying any administration challenges that affect both us and our clients to avoid such future incidents from happening. We would like to thank you Ombudsman for allowing us the time to investigate and improve where necessary.’

### **Complaint 2: M v B**

Upon the passing of his grandmother on the 15<sup>th</sup> of May 2020, the complainant submitted a claim on the 20<sup>th</sup> of May 2020, which was subsequently rejected on bases that the deceased had passed within the 6-month waiting period for death due to natural causes. The complainant was not satisfied with the rejection of the claim as he was of the view that the policy ought to have incepted on the 1<sup>st</sup> of November 2019.

In response to the complaint referred to it by this Office the respondent claimed that the policy had in fact incepted on the 14<sup>th</sup> of December 2019, after receipt of the first premium on that same date. The respondent was therefore of the view that the 6-month waiting period expired on the 14<sup>th</sup> of June 2020, and that the deceased, who had passed away on the 15<sup>th</sup> of May 2020, as a result of natural causes, did not enjoy cover. The respondent was also satisfied that the complainant had been made aware of the 6-month waiting period and that it was also standard industry practice.

Upon closer inspection of the respondent’s response and the supporting documentation, the Office of the FAIS Ombud noted that the commencement date, i.e. the date upon which benefits would become valid is 6-months after the 1<sup>st</sup> premium is received. It was also noted that the application form was completed on 14<sup>th</sup> of October 2019 with the policy holder having indicated that the deduction date should be the 15<sup>th</sup> of each month. Despite this, there was no debit from the policy holders account on the 15<sup>th</sup> of October 2019 or on the 15<sup>th</sup> of November 2019. In fact, the first debit that was collected was indeed the one processed on the 14<sup>th</sup> of December 2019. There was no reason provided for the delay in processing the debit order, a delay that had the effect of increasing the waiting period, as had the policy incepted on either of 15 October 2019 or 15 November 2019 the deceased would have enjoyed cover.

The respondent was requested to answer to the delay in the inception of the policy and whether this had been discussed with the complainant together with the implications and consequences thereof.

It was recommended that should the respondent be unable to justify the delay then it should reconsider its stance and look to resolve the matter with the complainant. The respondent reverted with its decision to honour the claim in full to the value of R50 000.

The duty placed on an FSP in terms of the General Code of Conduct for Authorised Financial Services Providers and Representatives ('the Code') is to provide financial services with the required due skill care and diligence in the interest of the client. The FSP also has a duty to ensure that the recommendation made is appropriate to the clients needs and circumstances and that all material disclosures are made inclusive of any special terms, waiting periods, exclusions or instances in which cover will not be provided to enable the client to make an informed decision. Should you believe that you have indeed been financially prejudiced as a result of the financial service rendered to you, you may submit a complaint in writing to [info@faisombud.co.za](mailto:info@faisombud.co.za), Fax: (012) 348 3447 / (012) 470 9097 or via post to P O Box 74571, Lynnwood Ridge, 0040. Alternatively you can submit a complaint via our website at [www.faisombud.co.za](http://www.faisombud.co.za) or call our Client Care Centre on (012) 762 5000 or Sharecall 086 066 3274 for assistance in submitting a complaint.