



Annual Report

2011/2012



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MINISTER'S REPORT



Mr Pravin Gordhan - Minister of Finance

The FAIS Ombud was established in terms of Section 20 of the FAIS Act to resolve complaints informally, expeditiously and economically. The aim of this office is to create a forum that is accessible to all without many of the formalities and costs involved in litigating through courts. The complaints brought to the Office bear out the wisdom of establishing this function.

I am pleased to see that members of the public are indeed making use of the Office of the FAIS Ombud, as evidenced by the increased number of complaints received and resolved annually. However, such increase may also indicate that some companies in the financial advisory industry are failing to resolve issues with their clients, forcing clients to seek recourse through the Ombud process. Recent cases of rogue investment advice dealt with by the FAIS Ombud point to the danger still facing people seeking financial advice, especially the vulnerable in our society.

It is my hope that the shift towards a twin peaks system of regulating the financial sector will result in a stronger market conduct regulator who will take tougher action against poor market conduct practices, and get advisory industry to take full responsibility for dealing with complaints. I am also aware that it will take more than regulatory effort to improve the current environment to get to the point where all advice and services are provided fairly and objectively with consumers learning to exercise caution before parting with their hard earned money. We also need to focus our efforts on consumer education and better financial literacy. An informed consumer is better able to distinguish good from bad advice.

However, this must be combined with strong and effective consumer protection and market conduct regulation because, as stated by David Llewellyn, an expert on financial sector regulation: "On the whole, consumers place enormous trust in the advice they get from salesmen, unaware of the probable conflict of interests. Even where the trust has manifestly been

misplaced, the individual concerned may not realise that they have been given bad advice until years later, unless there is a regulator to intervene actively. Such a time-bomb of undetected bad advice does huge damage to the credibility of the industry when it eventually explodes."

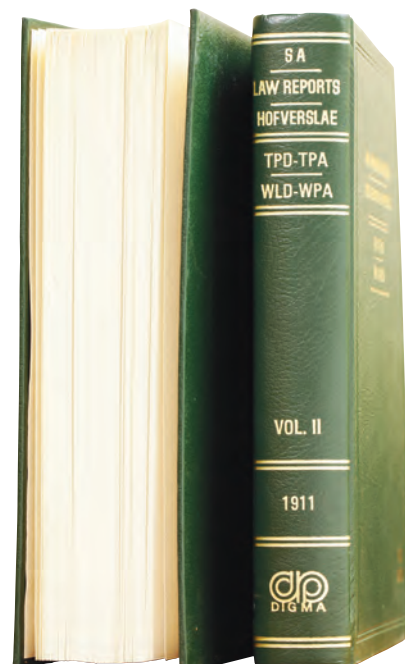
Unprofessional and unscrupulous conduct not only damages consumer confidence, it deals a blow to the integrity of the financial services industry as a whole. A young constitutional democracy like South Africa requires a properly functioning and healthy financial services industry.

I congratulate Ms Bam and her team for their effort and contribution to the financial services industry.

"On the whole, consumers place enormous trust in the advice they get from salesmen, unaware of the probable conflict of interests. Even where the trust has manifestly been misplaced, the individual concerned may not realise that they have been given bad advice until years later, unless there is a regulator to intervene actively. Such a time-bomb of undetected bad advice does huge damage to the credibility of the industry when it eventually explodes."

David Llewellyn

FINANCIAL SECTOR REGULATIONS EXPERT



CHAIRPERSON'S REPORT



Mr Abel Sithole - Chairperson of the Financial Services Board

South Africa watched in anticipation as the FAIS Act was signed into law in 2002, ushering in an era of accountability to those rendering financial services to members of the public. In August 2003, for the first time, the entity known as the FAIS Ombud, opened its doors. At that stage, members of the public, not worried about jurisdiction intricacies, wasted no time in lodging their complaints and demanded that the Office deal with their disputes. That trend continues to this day. The demand for the services of the FAIS Ombud appears to be on the increase. This is an indication that members of the public have confidence in the forum.

It saddens one, though, to learn that members of the public, in particular the elderly, are still being taken advantage of by those who choose to disobey the law. Members of the public should also exercise caution when approached with investment opportunities offering above average returns. Practical steps to take are:

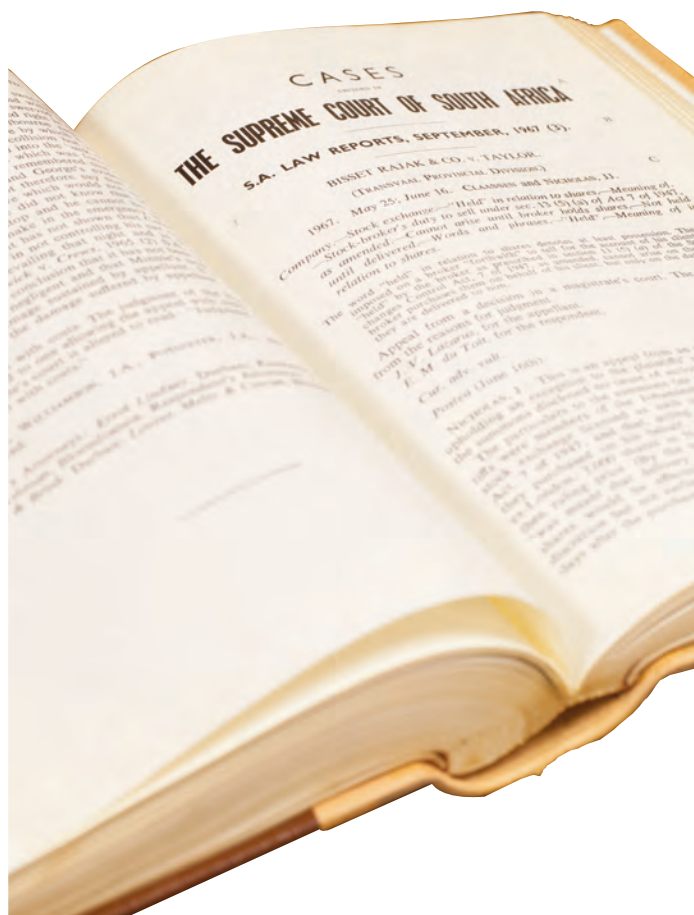
- a) **Do not rush into signing papers on the strength of persuasive talk where the papers indicate something else.**
- b) **Even where the promises are recorded on the papers, do not rush to sign.**
- c) **Speak to the regulators to find out whether they know about the entity you are going to put your money into.**
- d) **Speak to as many people as you can before parting with your money.**
- e) **Do not rely on the references you have been given by the person inviting you to invest. Do your own homework. If you need help, call regulators and obtain as much information as you can on the company you are invited to invest in.**
- f) **Ask the person to leave you with the investment papers and forms. Do not allow anyone to put**

pressure on you. If they do not want to leave the papers with you, that must be an indication that they do not want you to know much about what they are selling to you. Not a good sign.

- g) **Take your time; do not be rushed by talk that you will 'miss out on a once in lifetime opportunity'. Let the life time opportunity miss you if it means you must make hasty decisions as you may regret.**
- h) **Call or write to newspapers that deal with matters of finance, they may be able to obtain answers quicker than you can.**
- i) **Trust your instincts. If it sounds too good to be true, it probably is.**

Providers should not take advantage of the trust clients place in them because of a desire to earn a quick commission. They must remember that one bad sale reported to the Ombud can lead into financial ruin.

It is commendable that the FAIS Ombud has achieved its organisational goals. It is only with discipline and resolve that such a small team of people manage to deliver such sterling results. I congratulate the Ombud and her team.



OMBUD'S OPERATIONAL REPORT



Noluntu Bam - FAIS Ombud

INTRODUCTION

Having resolved in excess of eight thousand complaints in the past financial year that ended on 31 March 2011, our staff was once again challenged to extend themselves as the number of complaints continued to rise. Additionally, the complaints are proving to be more complex, exerting more pressure on limited resources. Investment complaints, in particular public property syndication schemes, demand a thorough investigation and analysis of copious records and continuous exchange of information until such time that the matter is determined. Bearing in mind the thousands of complaints involving other financial products, the goal of resolving 70% of the complaints received in financial year 2012 was ambitious on our part. Paramount in our quest to dispose of complaints expeditiously in line with our mandate is the commitment not to dilute quality. In this regard we deploy, at various levels, resources to attend to quality in respect of all complaints that are resolved informally. For complaints that are resolved formally, in addition to our internal quality control processes, there remains the avenue of appeal and review. Indeed, all our determinations are vigorously interrogated at appeal level.

RESOLVING COMPLAINTS

We have, over time, been criticised by some for enquiring into the real complaint, as opposed to constraining ourselves to what is detailed on the complaint form or letter. A case that comes to mind is that of a 30 year old complainant with a standard seven education who reported that a product provider has unfairly refused a withdrawal of a portion of a retrenchment benefit from a previous employer which had been transferred to a retirement annuity (RA). Unemployed for more than six months, the complainant needed the funds to save her house from repossession by the financiers.

We referred the complaint to the intermediary who rendered the financial services requesting information indicating that the product recommended suited the complainant's circumstances at the time of rendering the financial service. Ultimately, the complaint was resolved to the complainant's satisfaction.

Critics who advocate that we confine ourselves in our investigation to what is in the complaint form would have preferred that we refer the complaint to the product provider instead of dealing with the real **complaint**, which in this case was about a need that ought to have been addressed when the financial service was rendered.

Section 20 (3) of the FAIS Act provides:

The objective of the Ombud is to consider and dispose of **complaints** in a procedurally fair, informal, economical and expeditious manner and by reference to what is equitable in all circumstances.

Section 27 (5)(9) of the FAIS Act provides that:

The Ombud may, in investigating or determining an officially received complaint, follow and **implement any procedure (including mediation) which the Ombud deems appropriate**, and may allow any party the right of legal representation.

This aligns with the approach followed in the case of **Olitski Property Holdings v State Tender Board 2001 3 SA1247 (SCA)** at paragraph 12 where it was said that statutory interpretation 'requires consideration of the statute as a whole, its objects and provisions, the circumstances in which it was enacted, and the kind of mischief it was designed to prevent'.

Given that the FAIS Ombud receives complaints from people from all walks of life who may not necessarily have any education, the FAIS Ombud gives effect to the provisions of the Act by following an inquisitorial system when investigating such complaints. Thus, apart from the requirement that the complainant allege details that meet the definition of a complaint, there is no requirement that the issues to be determined be outlined in pleadings, nor could it be said that it was intended that the FAIS Ombud replicate the adversarial process followed by courts.

In the words of Mphati AJ¹:

“[1] To ‘investigate’ or ‘inquire into’ a complaint means more than simply to sit back and decide on the complaint on an adversarial basis in the same way as a criminal court. The term ‘investigate’ means to ‘search or inquire into’ or ‘examine’, while ‘inquire’ means to ‘seek knowledge of (a thing) by putting a question’ or to ‘request to be told.’³

"As counsel for the second respondent suggested, the BMCC was required to play an active and inquisitorial role in determining matters before it. If the investigative powers that were conferred on the BMCC were understood, as they must, to have referred to the inquisitorial role played by the BMCC, then there was nothing unconstitutional, and thus impermissible, in the arrangement."

Experience has shown that matters of finance are complicated even to the sophisticated. This dictum from Sachs J⁴ makes the point acutely clear, 'Standard form contracts by their very nature have standard effects. The fact is that one-sided clauses, the existence or import of which the consumer is likely to be largely totally unaware, hit the computer-literate owner of a relatively new BMW who buys online, with the same impact as they do the owner of a jalopy close to the scrap yard, who signs with a thumb print. It is not only the indigent and the illiterate who in practice remain ignorant of everything the document contains; the fact that consumer protection is especially important for the poor does not imply that it is irrelevant for the rich.'

DETERMINATIONS

Whilst our determinations are elaborated on in the determinations section of this report, it is perhaps appropriate that I highlight a few of the relevant issues.



The case of **Afrikeet Wildlife Promotions CC vs Coverall Insurance Brokers Pty (Ltd) & Kevin Vermeulen** highlights the duty of a provider to obtain relevant information from a client before pointing the client to a financial product.

In this instance an adviser had failed to enquire from his client as to the structure of a shopping centre which housed his client's bottle store and supermarket. The property had a thatched roof, a fact that had not been conveyed to complainant's insurers. Accordingly, when the centre was destroyed by fire in March 2009, and with it complainant's property, the insurers repudiated the contract on the basis of non-disclosure.

When asked for his records in order to have an idea of the discussion he had with complainant in advising him and what pertinent questions he asked about the property prior to the sale of the policy, the broker stated that his brokerage does not have recording facilities and therefore does not keep records.

The conclusion reached on a balance of probabilities was that respondent did not ask the complainant about the structure of the property. From respondent's answer to this Office, it could also be concluded he did not appreciate it was his duty as a provider to have actively asked complainant questions about the property. As a provider, he is aware of what needs to be disclosed. Adopting the reasoning in Raubenheimer⁵, the Office found against respondent and held both respondents jointly and severally liable to indemnify the complainant.

Important about the case is:

- a) The Office confirmed that it was the broker's duty to have sought relevant information from the client in order to advise him.
- b) In rendering financial services (insuring immovable property), a provider ought to know what relevant information must be sought from a client.
- c) The importance of maintaining records is confirmed; and
- d) The duty of the provider to advise the client and not merely to act as a conduit to connect the client to the product provider. If the client cannot provide the necessary information, the provider must follow the provisions of the Code.

Candida Buyile Nduna vs Aquarius Insurance Brokers CC & Maurizio Scolari

Complainant purchased a Peugeot 206 motor vehicle; the regular driver was to be her son, who at that stage was under the age of 25. Her son's driver's license was faxed through, the premiums adjusted accordingly and the vehicle insured with respondent, Aquarius brokers.

After an accident involving complainant's son, the claim was rejected on the basis that complainant's son was not named on the policy schedule.

It transpired that, upon the suspension of the previous insurance administrator's licence by the Financial Services Board, all clients' policies, which included the complainant's were taken over by a new insurer who imposed different terms and conditions including an increase in premiums.

Respondent, whilst aware of the takeover, failed to familiarise itself with the new terms and conditions or convey same to complainant.

Important about the case:

- a) Where there are changes in insurers, it is the duty of the broker to familiarise themselves with the terms and conditions under which their client is insured by the new insurer. Whilst every case is determined on its own merits, the complainant was not even advised that she was insured by a different insurer. Not only was she not advised of the new insurer, the terms under which she was insured were not communicated to her.
- b) The person who bears responsibility to communicate the

¹Islamic Unity Convention v Minister of Telecommunications Case CCT 33/07, [2007] ZACC 26

²Oxford English Dictionary Online 2 ed 1989 (Oxford University Press, Oxford 2007).

³Id.

⁴Barend Petrus Barkhuizen v Ronald Stuart Napier CCT 72/05 decided on 4 April 2007 at page 71, para 149.

⁵1996 (2) SA 670 OPD (O)



change in insurers and the disclosure of the material terms in this case was the broker and not any of the other parties.

- c) The broker in this case was not familiar with terms under which his client was insured by the new insurer yet it was his duty to familiarise himself with these terms.

NEWLOVE VS FNB LIMITED

There is a duty on authorised financial services providers to ensure that their representatives comply with the provisions of FAIS Act when they render financial services to members of the public.

The complainant, Newlove, a client of respondent, was informed about a product with competitive returns by a financial advisor then in the employ of the respondent. Although the investment document signed by complainant showed that she had loaned money to a company, Delwray CC, the product was nevertheless presented to her as an investment. Complainant did not enquire whether the product was sanctioned by the respondent. She simply assumed, because it was sold at the respondent's premises by its employee, that it was a product offered by respondent. Income paid by the investment fluctuated and was not always paid in time.

One day, when chatting to a stranger at a public place about her new investment, it was pointed to complainant that the return seemed exaggerated and may possibly be something fraudulent. Complainant contacted respondent's representative, a man called 'Mooi' and asked for proof of the investment. Mooi confirmed that the investment was indeed with the respondent and that the papers were kept by the respondent. When her income was not paid she contacted Mooi, who at that stage had been fired following a disciplinary enquiry.

Upon referral of the complaint to the respondent, respondent sought to distance itself from the Mooi's conduct arguing that Mooi was on frolic of his own in selling the loan transaction. Respondent argued that complainant should have noted that the process followed in selling the loan and the documentation used differed markedly from the sale of authorised financial products sold to her by Mooi, (an RA and another investment with RMB). There was the undisputed history that complainant first met with Mooi in respondent's premises. In all their interactions Mooi advised her on investments.

This Office disagreed and held respondent fully liable to pay the damage suffered by the complainant on the basis that Mooi could not have been on a frolic of his own when he was doing what he was employed to do: to advise members of the public on investment.

TRENDS

Property syndication investments

As we enter into the new financial year, one is hoping for a better 2013. The past financial year confirmed fears of a rise in the numbers of consumers who put their hard earned savings into black holes, on the basis of lamentably bad advice wrapped in fancy presentations and accompanied by marketing material devoid of any fact which could enable consumers to make informed decisions. As consumers watch these investment houses of cards unravel, one after the other, with no one willing to take responsibility, the wheels of justice continue to turn slowly. Not only have the peddlers of these products refused to take responsibility, they have wasted no time in painting the consumers as discerning, smart, and streetwise investors who knew what they were purchasing, this notwithstanding their lack of appreciation of what they sold.

Selling or taking over a short term insurance book

We have, since the commencement of this Office, warned providers that practice does not necessarily make perfect. Providers have from time immemorial been taking over or selling short term books to one another. Where such move is in the clients' interests and the necessary disclosures have been made, there will hardly be a complaint. The problem however, comes about when clients allege violations of the FAIS Act emanating from this age old practice. The case of Nduna mentioned in this report, highlights some of the problems consumers encounter with the movement of 'books' through no fault of theirs.

RISK PROFILING AND DISCLOSURE

RISK PROFILING

All too frequently, we encounter a disconnect between a complainant's risk tolerance, as calculated according to questions laid out in a risk profile document, and complainant's actual circumstances. Frequently, these questions could either be interpreted in several ways or fail to relate to the specific requirements of the actual investment at hand.

A typical example being questions such as; "have you ever invested in equities and/or how comfortable are you with equities?" In instances where the answer is yes, and the investment being considered is a property syndication investment, it can be said that the question is unfair and misleading. There is a world of difference between an investment in a single unlisted share as opposed to a pool of shares on a registered exchange such as the Johannesburg Stock Exchange ('JSE') or even a unit trust. The latter two, in addition to their stringent regulatory and reporting requirements, spread the risk over a number of assets as opposed to lumping them in a single basket.

What the Code envisages of financial services providers when making representations to clients as they render financial



services is clear, unambiguous language. This much can be gleaned from Part II, sections 3 (1) (a) (i) (ii) and (iii) of the Code.

It can be equally said that representations made to clients must make sense. We have not come across a form that states to the investor that the type of investment they have chosen means they could lose a small or substantial portion or all of their capital. In our view, this is the clear language the Code demands of providers. Unfortunately, with a number of providers proving to be highly ignorant of the products they sell repeatedly, it is hard to see how solutions can be found to eradicate this problem.

RISK DISCLOSURE

The Code demands that risk be disclosed to clients. With a number of providers proving to be highly ignorant of the products they sell repeatedly, it is hard to see how solutions can be found to eradicate this problem.

WORD OF APPRECIATION

A thank you is in order to all employees of the FAIS Ombud. The FAIS Ombud has a meaning to the people because of you. You are the salt of the earth. Together we have relentlessly pursued the strategic goals of the Office, making it possible for the men and women whose disputes are resolved at this forum to walk away with their faith intact about justice in financial services, regardless of the outcome of the resolution.

A special thank you to the Board of the Financial Services Board, the accounting authority, and its subcommittees for steering this Office to the correct direction. Thank you for allowing me to serve the people of South Africa in this prestigious and challenging capacity. Thank you to both the past internal and external auditors for their professional input. To the rest of the FAIS Ombud stakeholders, thank you. The media has a special role in the work we do. Their effort is acknowledged.

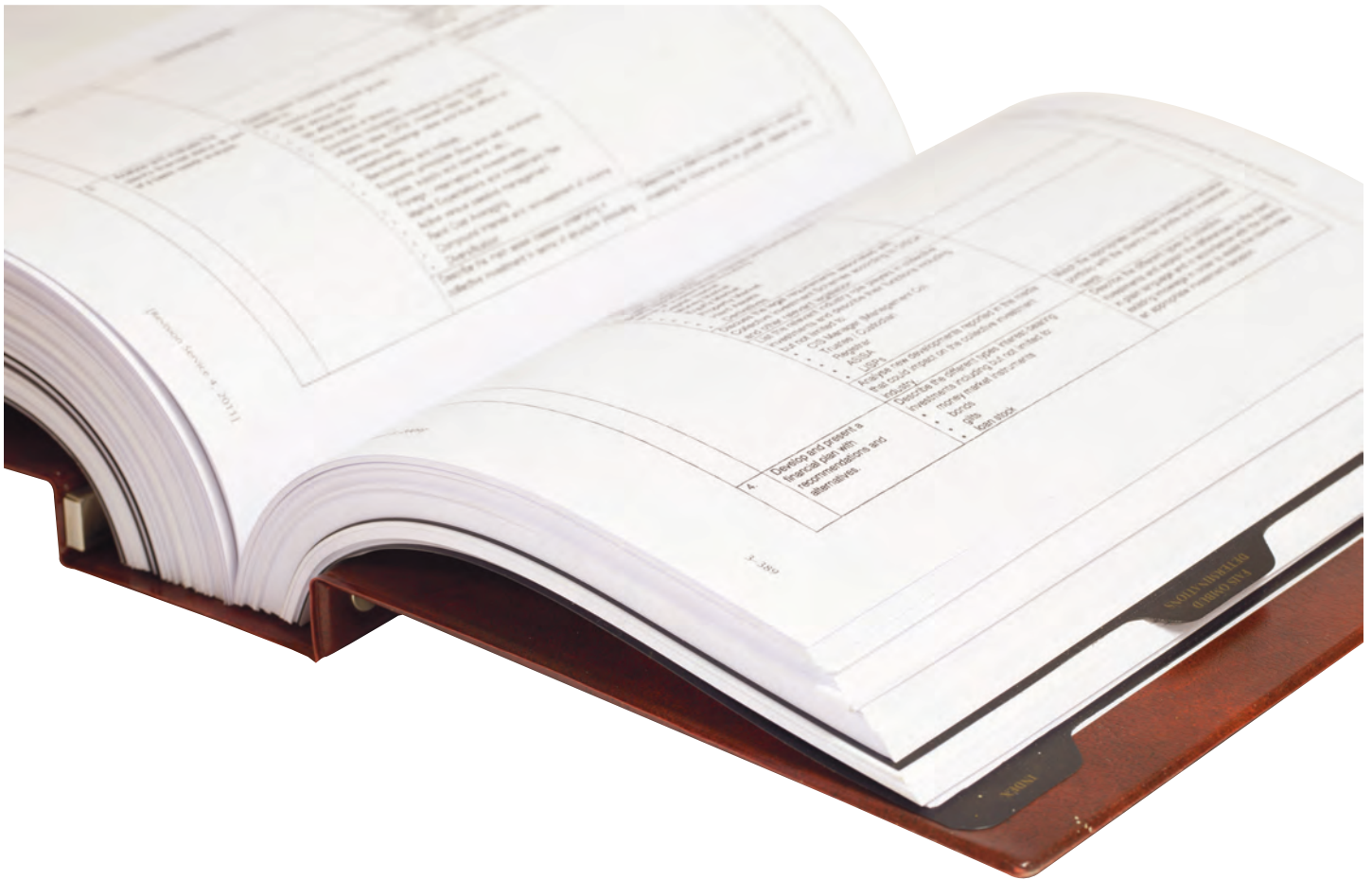
***Noluntu Bam
FAIS Ombud.***

**“Though force can protect in emergency,
only justice, fairness, consideration and
co-operation can finally lead men to the
dawn of eternal peace.”**

- Dwight David Eisenhower



DETERMINATIONS



HC Norval vs F Le Roux determined on 31st May 2011

Complainant, a pensioner and recipient of a voluntary retrenchment package, from which R100 000-00 had been invested with Sanlam to provide an income, was well known to respondent.

When the Sanlam investment matured on the 29th May 2007, complainant again sought respondent's help in reinvesting. Respondent recommended the Bluezone Spitskop investment, a property development scheme which paid R43.00 per month more than Sanlam. Complainant's primary concern was the security of his investment.

Complainant received his income until the end of July 2009, where after payments stopped; followed closely by respondent's advice in August 2009 that Spitskop was in liquidation. Complainant had earlier raised newspaper reports with respondent, questioning the legality and viability of the scheme, but had been advised that it was not possible to withdraw his funds.

Upon investigation it transpired that respondent had not carried out any objective due diligence to satisfy himself that Bluezone could be safely marketed, and neither was he licensed in his own right to market the product. Additionally, he gave no details of any training that would have rendered him competent to market this product.

Having neither the knowledge nor expertise regarding investments, complainant, who could not afford to lose his capital, relied entirely on respondent for advice. Yet complainant's risk tolerance was inconsistent with an investment in property syndication. Whilst a form of risk analysis was conducted by respondent, this was done more as a process as opposed to being taken seriously by respondent.

The Ombud ordered respondent to pay the complainant R100 000,00 plus interest thereon at 15.5% per annum from 18th October 2009 to date of payment.

JJ Mellet vs AP Nel of Du Nel Properties determined on 9th May 2011

Complainant invested R300 000,00 in an entity known generally as the Blue Pointer Business Administrators (Pty) Ltd (Blue Pointer) and PropDotcom property Consortium (PDC).

Unlisted shares were sold on the promise that investors would become part owners of a property paying an income and, hopefully, a capital gain upon the sale of the property. In reality, this investment is actually a loan to a property business and not a share in a property business.

These schemes are marketed through independent Financial Services Providers (FSP), usually engaged as representatives



in terms of section 13 of the FAIS Act. These FSPs are usually, themselves, not licensed to sell this category of financial product. In most instances, after the scheme's failure, the representative attempts to escape liability by hiding behind their provider.

Respondent offered complainant a profitable investment opportunity paying 10.5% interest over five years plus capital growth.

In August 2007 payments ceased, and despite respondent's assurances that all was well, complainant followed up only to learn that there was a huge financial mess and mismanagement of investor's money. Unable to redeem his investment, he submitted a complaint to the Office.

Investigations revealed that Blue Pointer's license application had been declined by the FSB and thus, in appointing respondent in terms of section 13, Blue Pointer acting contrary to the Act. Respondent, whilst himself a licensed FSP, was not authorised to sell this product.

The Ombud held that it is a representative's duty to satisfy himself, that a provider's product is economically viable and further, that he is qualified and competent to market it. If he does not understand the product he is unable to market it to the public.

Accordingly there was a duty to conduct an independent and objective check on Blue Pointer and its related entities. He failed to do so with no indication that he even checked whether any of the entities had issued financial statements. Respondent had no appreciation of how property syndications work or the required disclosures.

The complainant, an elderly pensioner and lay person, relied on the information obtained from respondent yet there is no record of advice or any indication that respondent conducted the necessary needs and risk analysis. This was a risky investment and respondent failed in his duty to point out the downside of investing in unlisted properties.

The Ombud ordered respondent to pay complainant the amount of R300 000.00 plus interest thereon from the 1st October 2008 to date of final payment.

JF and MS Maritz vs M Jacobs, Raymond Daniel De Villiers CC Jar Financial Services (Pty)Ltd And R D De Villiers Determined On The 24Th August 2011

On Jacobs' advice complainants, husband and wife pensioners of limited means, invested a combined R283 000 on the understanding that they were investing in low risk participation bonds with JAR financial services. Integral to this was the recommendation of de Villiers, a director of JAR and key individual of Raymond Daniel de Villiers CC.

In July 2005 and referring to the fact that the preceding month's rental had not been paid out, Jacobs advised complainant to withdraw their funds. Complainants were unable to withdraw the JAR investment and appointed an attorney.

An affidavit by a prior JAR director opined that the R283 000 had been dishonestly deposited in JAR's bank account and then dishonestly withdrawn.

Upon referral to this Office, an investigation revealed that in order for the investment to have been made in participation bonds, as advised by Jacobs and confirmed by de Villiers, JAR required registration in terms of the Collective Investment Schemes Act. This requires that invested monies be kept in the name of a nominee company and yet the cheque was made out to JAR directly with no indication of a nominee company or even so much as a separate bank account. No disclosures as required in terms of the rules governing a collective investment scheme in participation bonds were made. Nowhere on any form was any allegation made of registration in terms of the Collective Investment Schemes Act. Glaring anomalies should have alerted Jacobs to the fact that JAR was not registered in terms of the Collective Investment Schemes Act and in no position to receive the investment. There were not even any investments or mortgage bonds in the name of JAR.

Jacobs, as an adviser, should have been aware that there was no way that JAR could accept funds in its own name. Enquiries he conducted were nothing more than verbal reassurances and no independent verification was conducted. Jacobs did not even bother to check whether a license was applied for or granted.

De Villiers' recommendation that the investment be placed with JAR in participation bonds and the attendant confirmatory letters by Raymond Daniel De Villiers CC completely disregarded the provisions of the FAIS Act which require that 'a person may not carry on business by rendering financial services to clients for or on behalf of any person who is not authorised as a financial services provider'.

The Ombud ordered respondents to compensate Mr Maritz in the sum of R77 000 and Mrs Maritz in the sum of R206 000, interest thereon at the rate of 15.5% to be calculated 14 days from the date of determination to date of final payment.

P Marrie and S R Govender vs S Permimal trading as Mannies Financial Planning Services

Respondent initially acted as complainants' adviser when they purchased life policies through him. Complainants contend that, given his position as a licensed financial service provider, they saw no reason to doubt his integrity when he advised them that he was running a loan operation. This apparently consisted of loaning money to high profile people like doctors and lawyers at a very high interest rate.

Complainants invested R20 000 and R10 000 respectively on the understanding that they would receive a guaranteed return of 10% per month for 3 months with the option of investing for a further 3 months. It was clear to complainants that they were investing in loans, which per se, do not fall within the definition of financial product as defined.

We have in the past dealt with matters where the product appeared to be of a similar nature to a financial product and



held these to fall within the ambit of the legislation. What distinguished those matters is not only some similarity in form or function to a financial product but that complainants' understanding was that they were investing as such.

In the matter at hand, complainants were provided with post-dated cheques in the name of respondent as opposed to a separate entity. Additionally, there is no other documentation evidencing the investment and, as already discussed, complainants clearly understood that the monies were to be used to fund loans.

The promised interest rate of 10% per month was so usurious as to immediately suggest that this investment fell outside the realm of a conventional financial product and complainants could not have believed that they were investing in a conventional investment product or even something remotely similar. Accordingly, the complaint was dismissed on 5th July 2011.

P B Nieman vs J S P du Preez determined on the 3rd May 2011

Upon retirement, complainant requested that respondent set up a 5 year capital growth plan.

Respondent recommended that R380 000 be invested in a 5 year Sanlam annuity policy, the monthly income whereof to fund another Sanlam policy but in this instance a 10 year one.

Additionally, respondent recommended a further R375 000 investment in a PIC property syndication, the R2 800 income whereof funding an additional 10 year Sanlam endowment.

Complainant was later alerted to the fact that the R380 000 annuity policy ceased after 5 years, leaving him unable to continue paying the first 10 year policy.

Contrary to information from Sanlam, respondent initially stated that the policy premium could be reduced, or the policy paid up, without any penalties but then later argued that it could be funded by the PIC investment despite this lesser income already funding the separate 10 year policy.

Complainant stood by the advice given to complainant and his wife, asserting that it was the best option given the circumstances.

The Ombud, however, held on the evidence that 'the rational conclusion to make in the circumstances is that complainant did not understand that he was buying a voluntary annuity, the income instalments of which were fixed for a term far less than the endowment policy he was committing himself to'.

There was no doubt that respondent's advice to fund a policy which had a 10 year investment term was inappropriate. Apart from the commission earned on the endowment policy, the respondent was, according to Sanlam, paid commission of R5 700 on the voluntary annuity and a further R39 643.65 on yet a further 10 year endowment. The advice, in the Ombud's view, was motivated by commission.

Sanlam advised that the penalty to reduce the term of the applicable policy was R58 299.55.

The Ombud awarded damages equal to this amount with interest thereon at 15.5% per annum from seven (7) days after the date of the order.

S A M Dos Santos vs PF Business Services cc T/A EA Brokers and P Fernandes

In August 2008 complainant bought a Mercedes Benz and requested that respondent insure the vehicle. It was added to an existing policy and a copy of the policy schedule and terms forwarded to complainant via e-mail. In the e-mail, respondent stated that complainant needed to get a tracking device on the vehicle but that respondent would arrange that for him.

The vehicle was hijacked in October 2008 without a tracking device having been installed within 7 days of inception of the policy as required by the terms.

The crux of the complaint was the allegation that, whilst respondent had undertaken to arrange the tracking device, he had negligently failed to do so, resulting in the repudiation of the claim. In addition, he had also provided confirmation of insurance cover to the dealership despite this issue.

Respondent countered that it was not his duty as a financial services provider to seek out and ensure that complainant had the tracking device fitted to his vehicle. He further raised the point that complainant had never taken his vehicle to a tracking fitment centre or received an account from a tracking company.

Whilst the Ombud raised concerns about respondent's conduct, in particular the lack of record keeping and disclosure, it was never in dispute that the vehicle required a tracking device or that complainant was aware of said requirement.

There had been a seven week period between the inception of the policy and the loss, and no doubt complainant had been aware of the potentially negative impact on his cover and the need to install a tracking device within a reasonable time.

The seven week period was held to be in excess of a reasonable time and it was complainant's conduct in this regard that was the proximate cause of the loss.

The complaint was therefore dismissed on the 11th July 2011.



Paulina Susanna Coetzee vs ACS Financial Services And Cornelia SJ Snyman

Complainant, an elderly widowed pensioner, had a long standing professional relationship with her financial advisor, Mrs Snyman. In 2005, and on Snyman's advice, complainant withdrew funds from her Sanlam Investment account and invested R 530 000 in a property syndication scheme, Blue Zone Investments. The latter has been a subject of the Ombud's determinations.

In her complaint, complainant stated that Snyman presented her with an income plan in which she indicated that complainant would receive a monthly income of R4 257 for a year with projected increases indicated up to the tenth year. Snyman advised complainant that payments would be made into her account by the 7th of every month. However, after some few months, the Blue Zone scheme ran into difficulties and was placed under liquidation. Needless to say, the complainant lost her investment.

Snyman could not furnish any proof of compliance with the provisions of the FAIS Act when rendering advice to the complainant. In fact, she bluntly informed the Ombud that she had not kept the record of advice as required by the FAIS Act.

The Ombud found that Snyman had failed to disclose to the complainant basic information relating to the Blue Zone property syndication scheme. As a result, so the Ombud found, the advice rendered was not in accordance with the FAIS Act.

Accordingly, the Ombud found that the loss sustained by the complainant was caused by the respondent's failure to adhere to the provisions of the FAIS Act when she rendered advice. Snyman failed to conduct any due diligence of Blue Zone Investments, the property syndication into which she invested complainant's funds. In addition, Snyman had not made the material disclosures about the Blue Zone scheme.

What is more, Mrs Snyman did not conduct any risk profile to determine the Complainant's risk tolerance or the suitability of the financial product she had chosen to invest Complainant's money into.

Mrs Snyman failed to keep proper records of advice in terms of the Act and the Code. The Ombud dismissed the excuse proffered by the respondent for her failure to keep proper records of advice. In that regard, the Ombud also found that Snyman had failed to comply with various provisions of the Code when she rendered advice to the Complainant.

As a result of various breaches of the Code, Mrs Snyman invested Complainant's money into a property syndication scheme which was subsequently lost. This became evident when regular monthly payments that were promised to the Complainant failed to materialise and payments stopped after only few months.

The Ombud found that Snyman and her brokerage firm were jointly and severally liable, and accordingly ordered them to pay complainant compensation in the amount of R530 000 plus

interest.

Ntsundeni Nelson Tshitema vs Standard Bank

In Tshitema, the Ombud had occasion to consider the question of vicarious liability of the employer for the wrongful actions of its employee. The facts of Tshitema were briefly as follows:

The complainant, a businessman who banked with the respondent, received a call from the financial planner, Macwiri, who was employed by the respondent. The call asked the complainant to come to the branch regarding monies that were kept in his savings account.

On arrival at the branch, the respondent's employee expressed concern about the performance of his investment and advised him to place it in, what he described as, a "better fund". This was done ostensibly to mitigate the losses the complainant had incurred as a result of poor performance of his investment. The respondent's employee was in the company of one Dlamini. The respondent's employee then purported to be proffering advice to the complainant to invest his money into a scheme called Growth Coin. The latter scheme was presented to the complainant as one of the bank's numerous approved products.

However, in reality, the respondent's employee was acting fraudulently to divest complainant of his money because the Growth Coin scheme was a registered close corporation whose members were the respondent's employee and his friend Dlamini. The close corporation had been formed some few days before the complainant had been asked to invest his money into Growth Coin.

Significantly, the meetings between the complainant and the respondent's employee took place at the respondent's branch and the material used to communicate with the complainant was the bank's material.

Complainant's R400 000 was transferred from his account into Growth Coin's account. The transaction went through immediately, and without any difficulties. That was despite the fact that Growth Coin had never traded, as it had been formed a couple of days before the transaction. The Ombud found it disconcerting that the respondent was unable to pick up the fact that the only two members of the Growth Coin CC were its employee and Dlamini.

In her determination, the Ombud dealt extensively with the common law principles underpinning employer's vicarious liability. She also dealt with the statutory requirements of the FAIS Act to which financial services providers ought to adhere. The Ombud then criticized the respondent for having failed to put in place measures meant to protect its customers such as the complainant from fraud, as required in terms of section 11 of the Code. Added to that concern was the lack of proper supervision over Macwiri who was supposedly acting under the respondent's supervision. In that regard, the Ombud found that the measures taken by the respondent's manager in charge of Macwiri were superficial and inadequate to say the least.



Significantly, the Ombud found that various provisions of the FAIS Act and the Code had not been complied with during the rendering of services to the complainant. As a result, the complainant suffered financial loss.

Having found that the respondent's employee had been acting within the course and scope of his employment when he advised the complainant, the Ombud found the respondent liable for the payment of R400 000 of the complainant's money. The Ombud also found that the complainant had reasonably formed the impression that the Growth Coin scheme was one of the respondent's approved products.

Accordingly, the Ombud ordered the respondent to compensate the complainant for the payment of his entire amount of R400 000, which included interest.

Elise Barnes vs D Risk Insurance Consultants CC and Deeb Raymond Risk

In Barnes, as in most other similar matters, the complainant was an elderly pensioner who was advised by Deeb Raymond Risk (Mr Risk) to invest an amount of R400 000 in a Sharemax scheme called The Villa.

Mr Risk failed to apprise the complainant of the risky nature of the investment. Despite the volatility of the markets at the time of the investment, Mr Risk persuaded the complainant that the interest rates were coming down. That advice was contrary to objective reality which prevailed at the time, and amounted to misleading of the complainant.

As a result of Mr Risk's advice, complainant lost her capital amount of R400 000 and she turned to the Ombud for assistance.

In his response, Risk stated that he had been advised by his indemnity insurer not to respond until the matter had been fully investigated. Later, after the Ombud had afforded the respondent an opportunity to file his response, Risk filed a comprehensive response which was styled as an application in terms of 27 (3) (c) of the FAIS Act.

The response filed by Mr Risk's attorneys was two pronged. The first part dealt with the merits of the complainant and the second part raised a technical issue of jurisdiction. The respondents contended that the Ombud was not the appropriate forum to deal with his matter.

As regards the merits of the matter, Mr Risk was unable to satisfy the Ombud that his advice of the complainant had been done in accordance with the FAIS Act. Incredibly, Risk submitted that the complainant was well versed in the workings of financial markets. In support of his startling submission, Risk stated that it was clear from the questions posed to him by the complainant that he had a clear understanding of how financial markets work.

Quite tellingly, Risk submitted that, when he advised the complainant to invest in the Sharemax The Villa, he was not aware of the questions regarding the solvency and legality of the business model of the two Sharemax schemes. That was

an implicit concession by Mr Risk that he had not conducted any proper due diligence before he advised the complainant to invest.

The main issue, however, remained as to whether Risk had rendered advice in accordance with the FAIS Act. In that connection, all that was required of the respondents was the submission of the record of advice which indicated compliance with the Act. Regrettably, the respondents failed to produce any such record of advice showing compliance with the Act. Instead, the respondents sought to raise a number of factual disputes which, however, did not assist in the resolution of the matter. The Ombud held that the issue turned on the duty of the advisor to act with due skill, care and diligence. She accordingly found that on the facts, the respondents had failed to act as required in terms of the General Code.

After an extensive analysis of the prospectus and the structure of Sharemax, the Ombud found that Risk had failed to disclose the material aspects of the investment, including risk, to the complainant. In his response, Mr Risk had stated that he had furnished the complainant with the copy of the prospectus which contained information on the investment and its risky nature. As regards the disclosure of risk and the nature of the investment, it is apposite to reproduce here what the Ombud had to say:

“I start by highlighting that the act of furnishing 71 year old complainant with a 106 paged prospectus written in technical jargon and several instances of reference to various sections of the document before one deciphers the real meaning of a particular clause does not amount to disclosure of risk.”

(at page 10, paragraph 16)

In effect, the Ombud emphasised what she has previously cautioned financial services providers about; namely, that disclosure entails explaining in the simple language understood by complainants. The approach adopted by the Ombud once again indicated that it is the substance of compliance that matters and not merely the form. In the present matter, the Ombud expressed her strongest disapproval of the tendency to saddle complainants with loads of information and documents without having explained what that information entailed and what its implications were.

The Ombud went on to find that the respondent had failed to explain the structure of the investment to the complainant and what the implications for any possible future losses were.



The Ombud accordingly found both respondents liable and ordered them jointly to compensate the complainant for the amount of R400 000 plus interest thereon.

Furnell Ricardo Arends vs Anthony N Moses

The matter related to the investment made into the Blue Pointer Group of companies. In the *Bernard Frederick Dudley v Lifesure Financial Services*, FOC 04114/08/09 WC 1, the Ombud had occasion to deal fully with the history and background to the difficulties encountered by the Blue Pointer Group.

One of such several Blue Pointer companies was Turquoise Moon Trading 46 Limited, trading as PROPDOTCOM NO1, was a subject of an investigation by the regulator, the Financial Services Board (the FSB).

The complainant brought the complaint in his capacity as the representative of the deceased estate of his late mother Mrs V Arends. The nub of the complaint was that the respondent, an authorised financial services provider, had acted in breach of the FAIS Act when placing the complainant's mother's retirement money into the Blue Pointer company which was subsequently placed under liquidation. The amount of R60 000 of Mrs Arends' money invested represented a substantial portion of her life savings.

The question that the Ombud had to deal with related to the question of whether, when rendering advice, the respondent had acted with due skill, care and diligence and in the interest of clients and the integrity of the financial industry.

The Ombud made significant findings which indicate a worrying common thread running through most property syndication cases. In the present matter, she found on the facts that the respondent was not licensed to sell shares and debentures and that he had failed to make the required statutory material disclosures about the Turquoise Moon Trading 46 (Blue Pointer) investment to Mrs Arends. In that regard, the Ombud found that the respondent was in contravention of various sections of the Code of Conduct and in particular section 7 which required all financial services providers to be licensed when rendering financial advice or selling financial products.

The Ombud once again restated the important principle that "once the FSP holds himself out to members of the public as a qualified advisor, it then follows that members of the public may safely rely on the provider's services".

The Ombud further found that the respondent was in breach of section 2 of the Code which requires FSPs to act with due skill, care and diligence when rendering financial services. The respondent failed, so the Ombud found, to conduct a proper check on the Turquoise Moon Trading 46 (one of Blue Pointer's entities) which he could have done by going through the company's documents which would have shed light on the company's liquidity and general financial standing.

The Ombud also found that had the respondent bothered to

conduct the most elementary due diligence he would have found that Turquoise Moon Trading 46 did not own any assets. The Ombud described the respondent's conduct as bordering on dereliction of his duties as an FSP as he had failed to even explain the risk posed by investing in unlisted shares. In fact, the respondent could not even produce any record of advice reflecting that he had explained to Mrs Arends the risks involved in the investment. On the contrary, the Ombud found, the respondent was himself not aware of such risks and this was illustrated by his response to the present complaint.

The Ombud pointed out that Mrs Arends was an elderly pensioner who had no knowledge of investments and was entirely dependent on the respondent for proper advice.

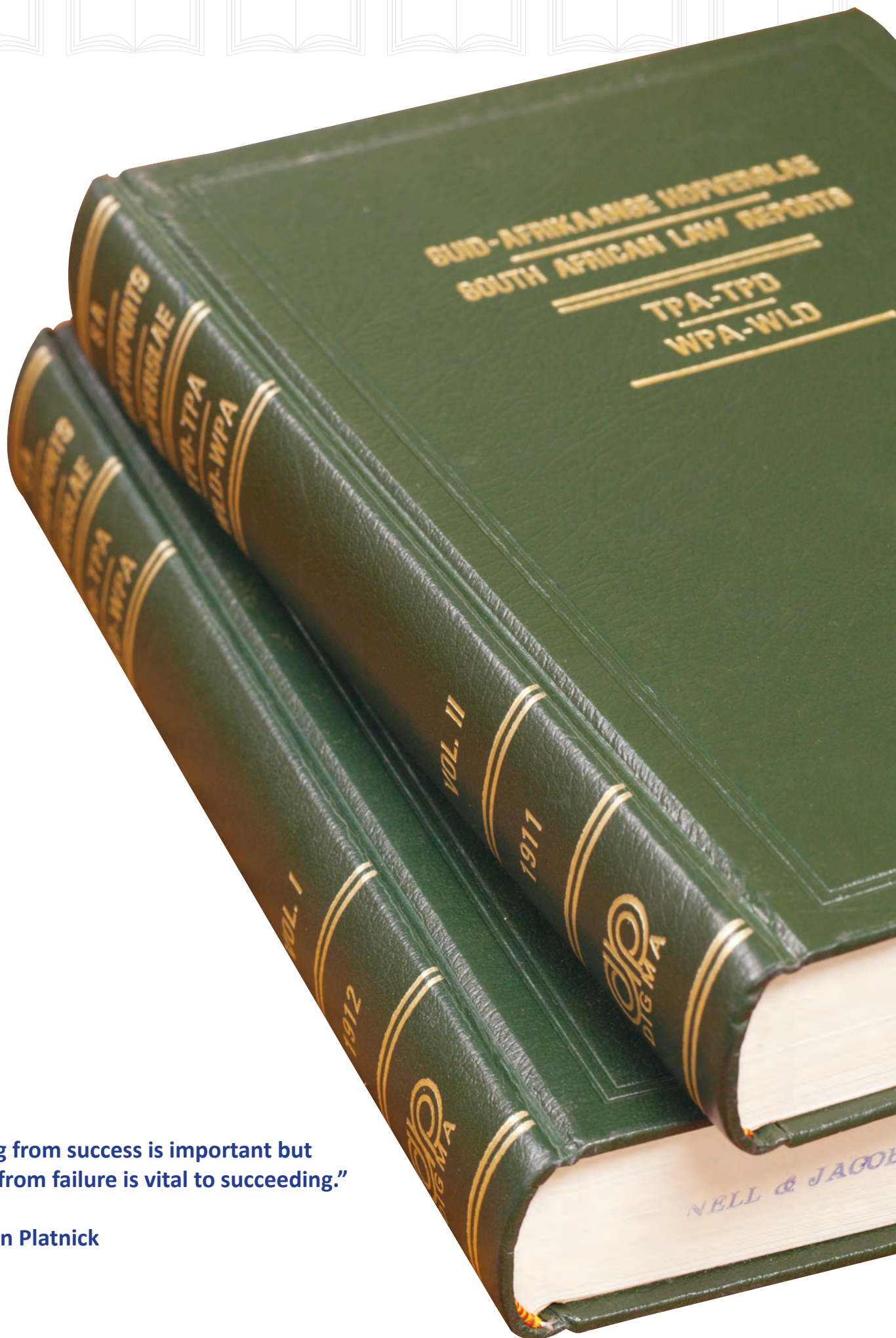
Accordingly, the Ombud found that the respondent had failed to explain to Mrs Arends that Turquoise Moon Trading 46 was a high risk investment. Furthermore, the respondent was not qualified to deal in unlisted shares and debentures, nor was he licensed to do so. The respondent had acted in breach of several provisions of the Code, and his breach had resulted in the complainant's loss. In the result, the Ombud therefore ordered the respondent to pay the complainant an amount of R60 000 plus interest thereon.



David Davidson



Sydwell Shangisa



“Learning from success is important but learning from failure is vital to succeeding.”

- via Jason Platnick

SETTLEMENTS



S v N

Issue: Failure to adhere to instruction of client.

When the complainant resigned from his employer he instructed his financial advisor to invest his provident benefits, ensuring that his funds are available to him when required. The complainant subsequently discovered that, contrary to his instruction, his provident benefits were invested in a retirement annuity and that he could only access his capital invested at age 55.

As the complainant's attempts to have his capital returned were unsuccessful, he approached the Office for assistance. After the Office intervened, the respondent offered to return the complainant's capital to his provident fund.

Settlement Amount: R666 735.75

D v S

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

The complainant represented her late husband in terms of a power of attorney when he applied for early retirement from his employer. According to the complainant, the advisor assisting her at the time failed to inform her of all options available to her husband at retirement. It was only after the complainant's husband passed away that she learnt that he had the option, at retirement, to select a continuation life cover benefit which did not require any underwriting. The complainant contends that, given her late husband's health at the time, she would definitely have opted for the said benefit had it been offered to her. Aggrieved by the state of affairs, the complainant lodged a complaint with the Office.

The respondent questioned the Office's jurisdiction and argued that the deceased's pension fund failed to carry out their fiduciary duties towards their fund member. We informed the respondent that their representative, as agent of complainant, failed in his duty to conduct a proper investigation into the options available to the complainant's late husband at retirement. Had the continuation life cover benefit been offered to the complainant, she would have, in all probability, opted for the benefit and would have been the recipient of the policy benefits at the passing of her husband.

Upon a recommendation from the Office, the respondent offered to pay the complainant an amount of R200 000 in full and final settlement of the matter. The offer was accepted after it was increased to R400 000.

Settlement amount: R400 000.00

M v D

Issue: Failure to provide a reasonable and appropriate general explanation of the nature and material terms of the relevant contract.

Complainant alleges that when she purchased a short-term

insurance policy the respondent failed to inform her that of the additional excesses that would be payable should she fail to install a tracking device in her vehicle. Consequently, when she lodged a claim with her insurer she was charged a high excess amount of R23 000. The high excess charged triggered a complaint to the Office.

The respondent reverted alleging that complainant had been made aware of the all excesses applicable. However, the respondent could not provide proof that it was specifically disclosed to the complainant what the effects of not installing a tracker in her vehicle would be.

The respondent agreed to make an offer equal to the difference between amount of the excess paid by the complainant and the excess amount that would have payable had a tracker been installed in her vehicle.

Settlement amount: R15 622.00

M v I

Issue: Failure to disclose policy exclusions to client.

When complainant purchased a house in 2009 he also obtained insurance cover with the assistance of the respondent. When the geyser of the house burst in September 2011 the complainant lodged a claim with his insurer. The insurer rejected liability on the basis that the geyser was older than 10 years and was therefore excluded from cover. As the complainant was not made aware of the exclusion, he contacted the Office for assistance.

Upon investigation, we discovered that that specific exclusion was added to the policy subsequent to the inception of the policy. When we requested the respondent to provide proof that the exclusion was disclosed to the complainant they contended that policy schedules were regularly sent to the complainant and that the complainant should have perused the policy schedules. We informed the respondent that sending policy schedules to a client could not be regarded as proof of adherence to the disclosure requirements of the General Code of Conduct. Material changes to policies need to be specifically pointed out to clients. The respondent adhered to our recommendation to make a settlement offer to the complainant.

The complainant accepted the respondent's offer of R2 500 in full and final settlement of the matter.

Settlement: R2 500.00

SETTLEMENTS



M v C

Issue: Failure to disclose penalties and fees to client.

In 2008 the complainant purchased a Retirement Annuity ('RA') at a premium of R200 per month on the advice of the respondent. In August 2011 the premiums payable on the RA increased to R550 per month at which point the complainant decided to make the RA paid up.

When the complainant received her tax certificate she realised that, although she paid premiums in excess of R17 000 on the RA, the fund value of the RA was a mere R8 460. The complainant also learnt that fees and charges represented a huge percentage of the premiums paid on the RA. The complainant alleges that the fees and charges payable on the RA were not disclosed to her at point of sale of the product. When the respondent refused to refund all fees and charges paid on the RA the complainant contacted our Office for assistance.

In support of his response, the respondent provided the Office with the fee structure of the product provider. However, he could not provide the Office with any disclosure documents evidencing disclosure to the complainant of fees and charges payable on the RA.

Upon our recommendation the respondent paid the complainant an amount equal to all fees and penalties paid on the RA.

Settlement: R10 831.92

M v D

Issue: Failure to execute client instruction as soon as reasonably possible.

When the complainant instituted a funeral claim the insurer rejected her claim citing as the reason that a nine-month waiting period applicable on the policy had not expired. The complainant argued that the nine-month waiting period had in fact expired since she instructed the respondent to obtain funeral cover.

Our investigations revealed that the respondent did not immediately action the complainant's application for insurance and thus the inception date of the policy had to be moved forward. Had the respondent adhered to the complainant's instruction timeously, the nine-month waiting period would have expired and the insurer would have been obliged to honour the complainant's claim.

The respondent adhered to our recommendation to pay complainant an amount equal to the claim amount.

Settlement amount: R18 000.00

J v N

Issue: Failure to adhere to instruction of client.

When the complainant traded in her Toyota on a Mercedes in 2005, she instructed the respondent to remove the Toyota from her insurance policy and to replace it with the Mercedes. The complainant recently discovered that, although the Mercedes was placed on risk, the Toyota was never removed from the policy.

When the complainant approached the respondent for a refund of premiums, the respondent refunded premiums for one year only and refused to refund the balance of premiums paid since 2005. Aggrieved by the respondent's refusal to refund all premiums, the complainant contacted our Office for assistance. In response to the complaint the respondent argued that policy schedules were sent to the complainant and she ought to have been aware that the Toyota was not removed from the policy.

We pointed out to the respondent that although policy schedules were sent to the complainant, they conducted only one annual review on the policy. After we recommend settlement of the matter the respondent agreed to refund premiums to the sum of R 10 413.36.

Settlement: R 10 413.36

L v Z

Issue: Failure to provide concise details of restrictions or circumstances when benefits will not be provided.

When the complainant's mother-in-law passed away she duly instituted a claim with the insurer. The insurer repudiated the claim and cited as the reason the fact that the deceased was 66 years old when she passed away. The policy restricted cover to persons 65 and younger.

According to the complainant, she was assured at point of sale of the policy that the deceased who was 66 years old at the time would be covered on the policy. As the recording of the sales conversation at point of sale of the policy confirmed the complainant's contention, we recommended that the respondent settle the matter.

The respondent made a settlement offer of R10 000, which was accepted after it was increased to R15 000.

Settlement amount: R15 00.00

S v J

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

When the complainant's thatched roof lapa was destroyed by fire he duly lodged a claim with his insurer. The insurer repudiated the claim and cited as the reason the fact that the lapa was not covered under the complainant's policy. Aggrieved by the respondent's failure to place lapa on risk with the insurer, the complainant lodged a complaint with Office.

Upon receiving the complaint, the respondent contended that



the complainant was aware that the lapa was not covered. Furthermore, no insurer would cover the lapa as there was no lightning conductor in the vicinity.

The complainant refuted the respondent's contention by providing proof that the lapa was covered under the policy, which was replaced by respondent with the current policy. Consequently, we recommended that respondent make a settlement offer to the complainant. The matter was ultimately settled for an amount of R 123 684.39.

Settlement: R 123 684.39

S v A

Issue: Failure to disclose the implications of replacing a financial product.

The respondent cancelled the complainant's dread disease policy and replaced it with a life policy. Approximately one and a half years after the replacement, the complainant's husband, who is the insured, was diagnosed with prostate cancer and the complainant instituted a claim in respect thereof. It was at this point that the complainant discovered that the life cover in question only provided death and disability cover without dread disease cover and that the adviser had essentially cancelled an existing cover and replaced it with less compatible cover.

The complainant lodged a complaint with our Office contending that the implications of the new life cover were never fully explained to her.

The respondent maintained that the adviser acted in good faith and in line with the complainant's instruction at the time and that the complainant's need to save premiums had necessitated the cancelling of the existing policy.

The respondent also noted that the cancelled policy did have exclusions to its dread disease cover which were applicable to prostate cancer of a less severe nature. It was, however, discovered upon further investigation that the previous insurer would have considered the claim had the policy not been replaced.

The respondent decided to review their stance on the matter and offered to pay the value of the benefit of the dread disease cover, taking into account premiums that would have been payable.

Settlement: R348 918.00

M v I

Issue: Failure to provide client with sufficient information to make an informed decision.

The complaint, acting on the advice of the respondent, insured a Caterpillar grader machine ('the grader'). The complainant alleges that he was not made aware that there were two types of cover available to him (i.e. New Replacement value and Market value) at the time the financial service was rendered.

The complainant realised, when he lodged a claim, that the grader had been insured for the market value and not for the replacement value. This meant that the insurer would only compensate him an amount equal to the value of the grader at the time of loss and not how much it would cost to replace it.

The complainant requested our Office to assist him with retrieving the shortfall from the respondent. He alleged that the loss resulted from the respondent's failure to provide him with sufficient information when the financial service was rendered.

The respondent stated that the grader was insured in good faith at market value and agreed to recalculate the premiums and refund the complainant the difference in the claim assuming that the grader had been properly insured.

Settlement: R9 309.33

T v B

Issue: When a provider renders financial services, presentations made and information provided to a client must be provided in plain language, avoid uncertainty or confusion and not be misleading.

The complainant took out vehicle insurance on the advice of the respondent. The complainant was subsequently involved in an accident and lodged a claim with the insurer. The insurer refused to settle the claim in full on the basis that the complainant's car had been rebuilt and, therefore, was only covered for 70% of the claimed amount. The complainant contacted our Office for assistance as she alleged that the direct marketer failed to provide a proper explanation of what a rebuilt vehicle was considered to be.

In response to the complainant, the respondent argued that a clear explanation of the meaning of rebuilt, modified and 'code three' had been given to the complainant. However, upon listening to the sales recording of the policy it became evident that this was not the case. The net effect was that the complainant's vehicle was insured for more than it was worth and the complainant was paying inflated premiums on her vehicle.

Taking the value of the rebuilt vehicle into consideration, our Office recommended that the respondent recalculate the premiums and refund the excessive portion of the premiums together with interest.

The complainant was duly refunded and was satisfied with the outcome.

Settlement: R6, 475.60

SETTLEMENTS



P v A

Issue: Failure to render financial service honestly, fairly, with due skill, care and diligence, and in the interest of the client.

The complainant approached a representative ('broker') of the respondent for assistance to make an income producing investment. The broker assisted the complainant in making the investment, however, a few months later, the complainant's income payments ceased. When the complainant made enquiries with the respondent, he was advised that the broker was no longer in their employ. The respondent rejected responsibility for the investment and argued that the broker was not mandated to make the investment. Aggrieved by the state of affairs, the complainant requested our Office to assist him with recovering his invested funds.

Upon investigation by the Office, it was ascertained that the broker invested the complainant's funds in a product not regulated by the FSB. We could not find any evidence that the broker disclosed to the complainant that he was not authorized to make the investment or that the product invested in is not a regulated product. The product was marketed on the premises of the respondent whilst the broker was in the employ of the respondent. In our view, the complainant could not reasonably have known that the broker invested his funds in a product not authorised by the respondent.

Upon recommendation by the Office, the respondent offered to refund the complainant's capital together with interest thereon. The complainant accepted the offer.

Settlement: R 970 837.09

K v D

Issue: Failure to disclose the penalties imposed on the early termination of a retirement annuity.

The respondent's representative recommended that the complainant transfer his retirement annuity ('RA') to another provider as the administrators preferred by the complaint were no longer the administrators of his provider. As opposed to switching the RA, the representative used the proceeds of the retirement annuity to purchase a living annuity. This resulted in penalties being charged for early termination of the RA.

The complainant contends that he did not authorise the purchase of the living annuity and was not informed of the penalties payable on early termination. The complainant requested the Office to assist him with recovering the penalties paid to the provider.

The respondent was requested to provide our Office with a comprehensive response to the complainant's allegations. Without filing a response, the respondent furnished our Office with a signed settlement agreement between himself and the complainant.

Settlement: R 49 189.59

P v N

Issue: Failure to provide an explanation of the nature and material terms of a contract.

The complainant purchased dread disease cover on the advice of the respondent. When the complainant suffered a heart attack he duly lodged a claim with his insurer. The insurer rejected the claim on the basis that persons over the age of 60 were not eligible for dread disease cover, i.e. an exclusion clause applied.

The complainant lodged a complaint with the Office alleging that he was not advised about the exclusion.

We referred the complaint to the respondent and requested a comprehensive response to the complaint. The respondent conceded that although the policy clearly excludes dread disease cover for persons over the age of 60 years, the complainant was already 60 years of age when the policy inceptioned. As a result, the respondent settled the claim.

Settlement: R37 490.09

TECHNICAL TEAMS - CASE MANAGEMENT



Left to right (back row): Lesego Moraka, Phumza Mtshemla, Bongwiwe Ngesi, Siphon Makuzeni, Ilné Potgieter, Marc Alves, Deon Esterhuizen, Andisiwe Mahamba

Left to right (front row): Violet Ricketts, Charlene Naidoo, Ayanda Mntonintshi, Malanee Murugan-Modise, Nivedna Rajmohan, Ncebakazi Giqwa, Nicolene Pretorius

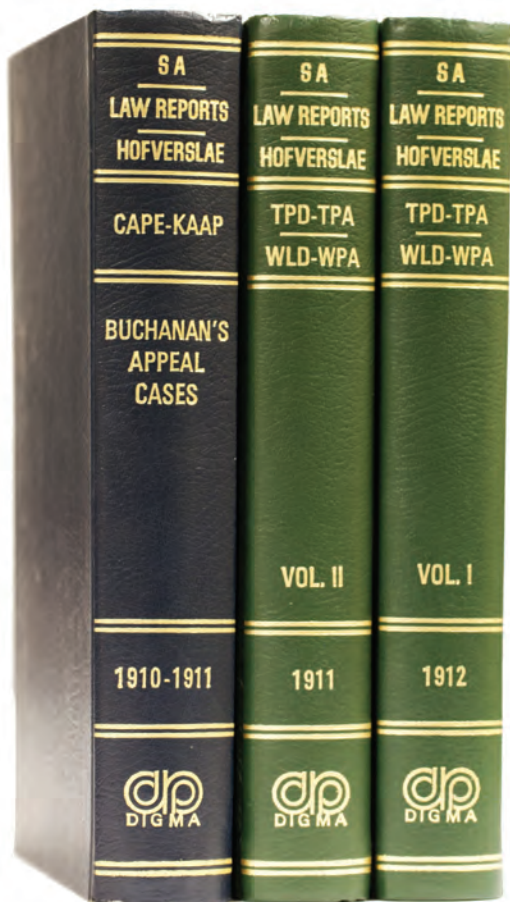


Left to right (back row): Kelebogile Sesoko, Zama Nkubungu, Ashwin Singh, Lelané Bezuidenhout, Thembile Msuseni

Left to right (front row): Nomvula Mtolo, Ashley Percival, Johan Scheepers, Mashite Makgoo, Sinovuyo Puzi



Tshepiso Mabaso, Mpho Koloko, Leoni Nieuwoudt, Muzi Magagula



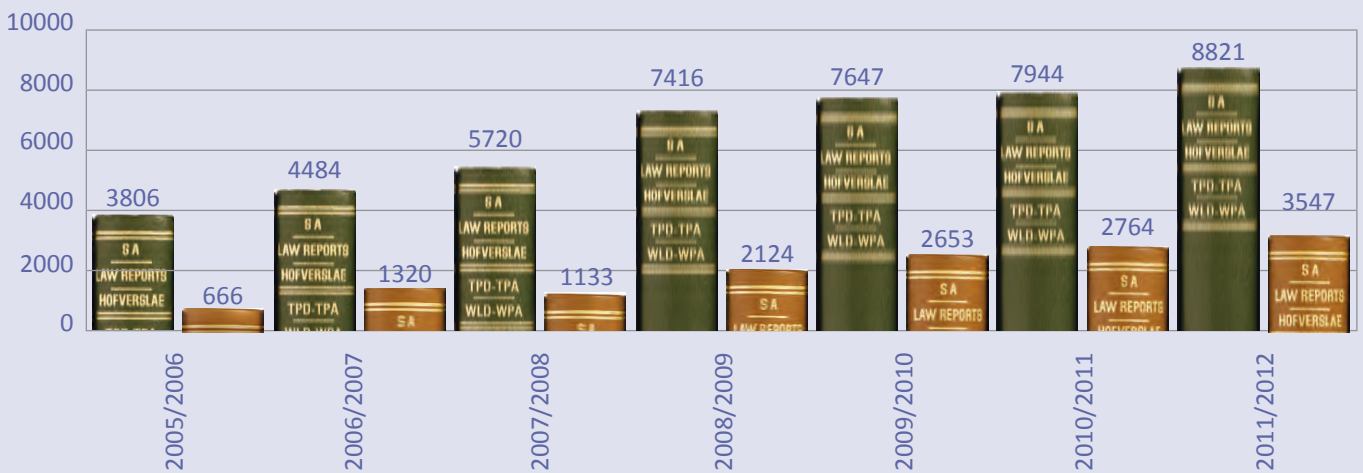
“Great teamwork is the only way we create the breakthroughs that define our careers.”

- Pat Riley

GROWTH IN NEW COMPLAINTS

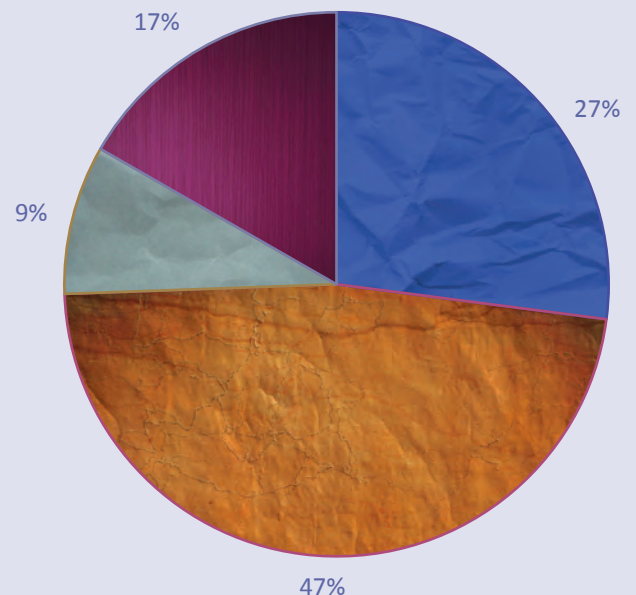
FINANCIAL YEAR	NO OF NEW COMPLAINTS	JUSTICIABLE
2005/2006	3806	666
2006/2007	4484	1320
2007/2008	5720	1133
2008/2009	7416	2124
2009/2010	7647	2653
2010/2011	7944	2764
2011/2012	8821	3547

■ NUMBER OF NEW COMPLAINTS
■ JUSTICIABLE



HOW NEW COMPLAINTS WERE DEALT WITH

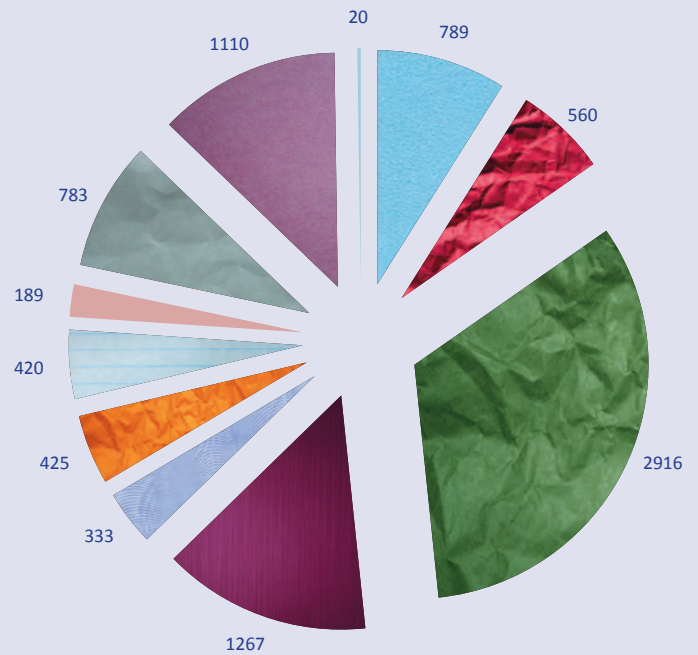
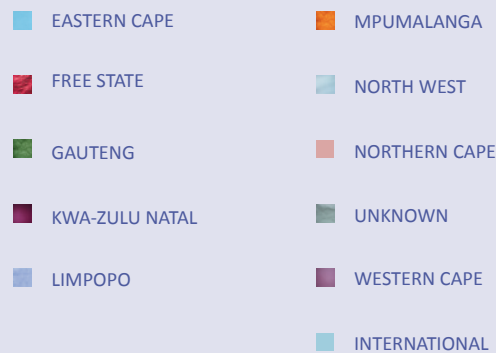
RESOLUTION TYPE	NUMBER	PERCENTAGE
DISMISSED	2386	27%
REFERRED	4180	47%
SETTLED	781	9%
CARRIED OVER	1474	17%
	8821	100%



■ DISMISSED ■ REFERRED ■ SETTLED ■ CARRIED OVER

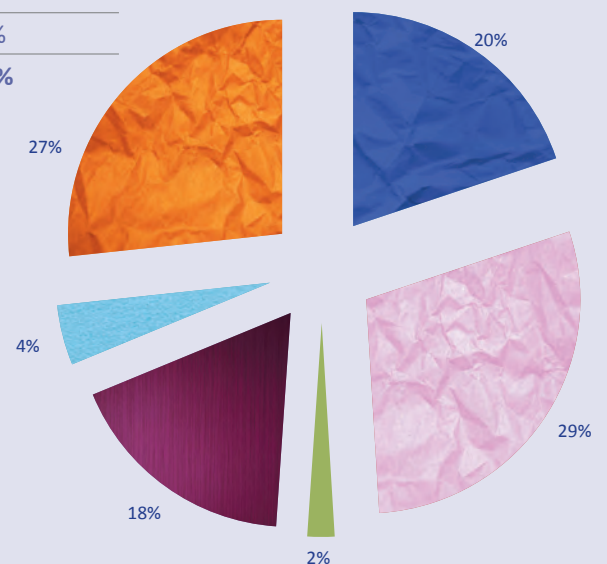
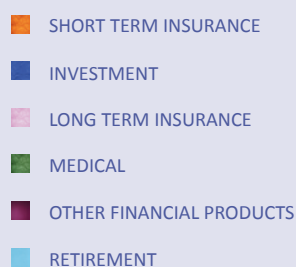
WHERE DO OUR COMPLAINTS COME FROM?

PROVINCE	NUMBER	PERCENTAGE
Eastern Cape	789	8.94%
Free State	560	6.35%
Gauteng	2916	33.06%
Kwa-Zulu Natal	1267	14.36%
Limpopo	333	3.78%
Mpumalanga	425	4.82%
North West	420	4.76%
Northern Cape	198	2.24%
Unknown	783	8.88%
Western Cape	1110	12.58%
International	20	0.23%
	8821	100%



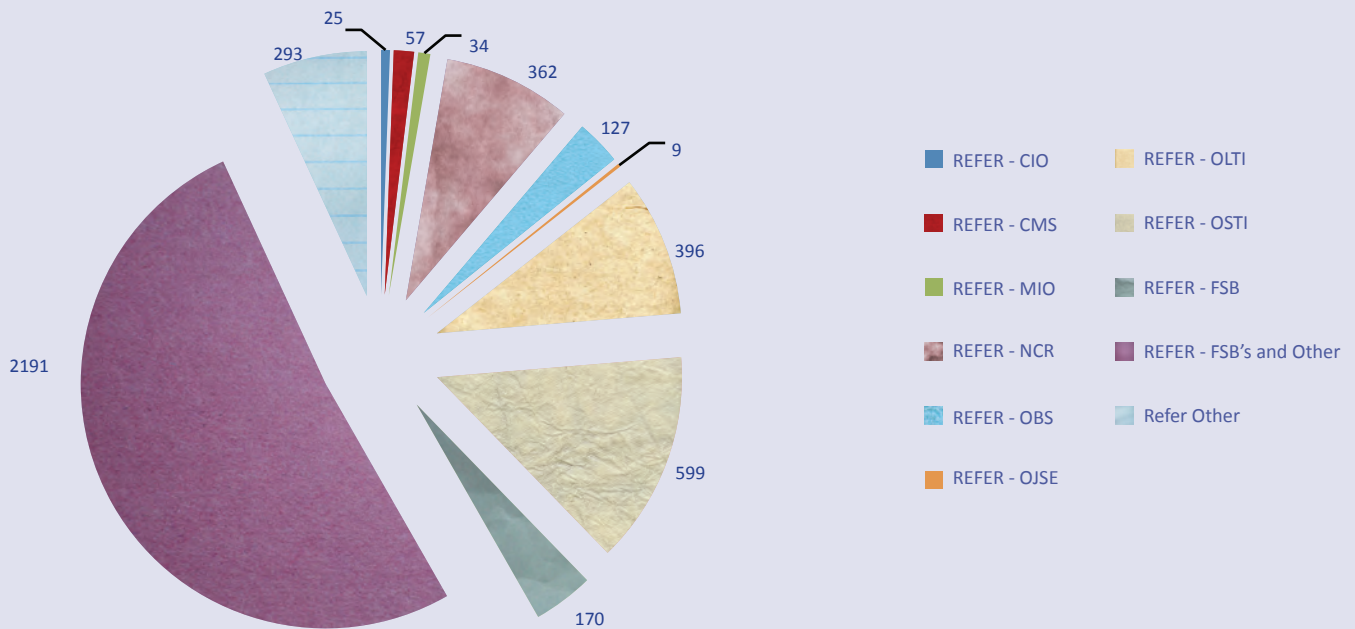
WHAT PRODUCTS DO PEOPLE COMPLAIN ABOUT?

PROVINCE	NUMBER	PERCENTAGE
Investment	1752	19.86%
Long Term Insurance	2573	29.17%
Medical	181	2.05%
Other Financial Products	1560	17.69%
Retirement	401	4.55%
Short Term Insurance	2354	26.69%
	8821	100.00%



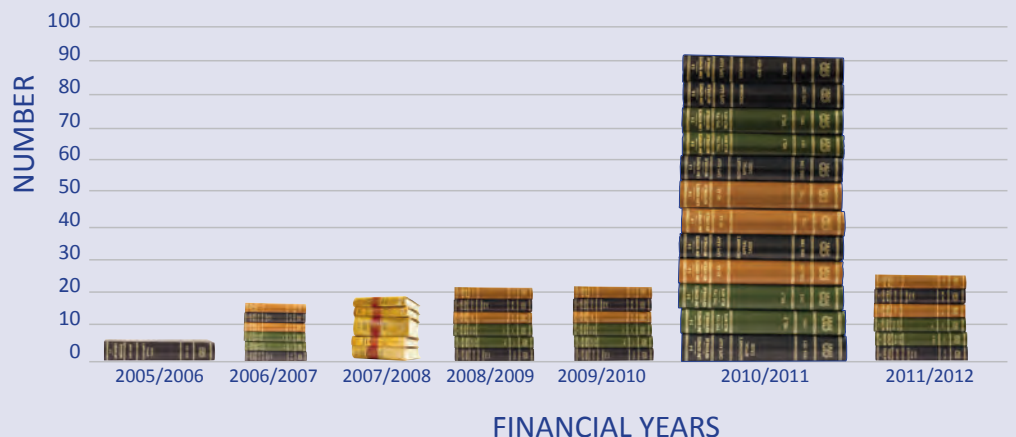
REFERRALS TO OTHER FORA

REFERRED TO	NUMBER	PERCENTAGE
CIO	25	0.59%
CMS	57	1.34%
MIO	34	0.80%
NCR	362	8.49%
OBS	127	2.98%
OJSE	9	0.21%
OLTI	396	9.29%
OSTI	599	14.05%
FSB	170	3.99%
FSP's and Other Financial Institutions	2191	51.40%
Other	293	6.87%
	4263	100%



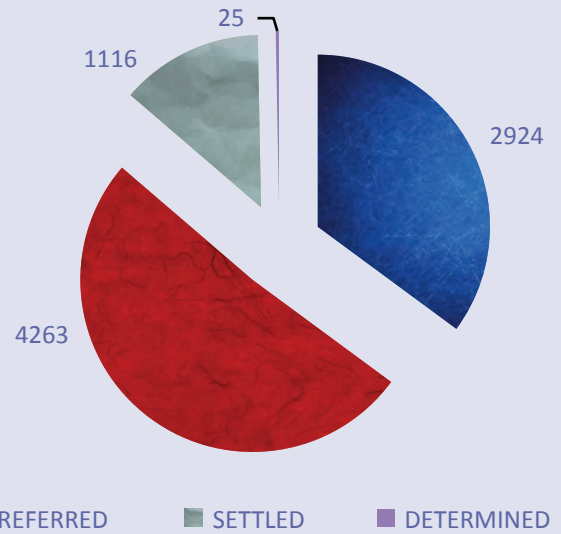
GROWTH IN NEW DETERMINATIONS

FINANCIAL YEAR	NO OF DETERMINATIONS
2005/2006	9
2006/2007	15
2007/2008	18
2008/2009	21
2009/2010	21
2010/2011	91
2011/2012	25



ALL RESOLUTIONS IN 2011/2012 FOR CASES FROM ALL YEARS

RESOLUTION TYPE	NUMBER	PERCENTAGE
DISMISSED	2924	35.11%
REFERRED	4263	51.19%
SETTLED	1116	13.40%
DETERMINED	25	0.30%
	8328	100%



QUANTUM SETTLED/DETERMINED

FINANCIAL YEAR	QUANTUM SETTLED/ DETERMINED	% DIFFERENCE
2005/2006	R 6,500,000	
2006/2007	R 10,059,978	54.77%
2007/2008	R 14,154,868	40.70%
2008/2009	R 32,916,192	132.54%
2009/2010	R 24,986,681	-24.09%
2010/2011	R 34,784,240	39.21%
2011/2012	R 44,112,534	26.82%



STAFFING

“Teamwork is so important that it is virtually impossible for you to reach the heights of your capabilities or make the money that you want without becoming very good at it.”

- Brian Tracy



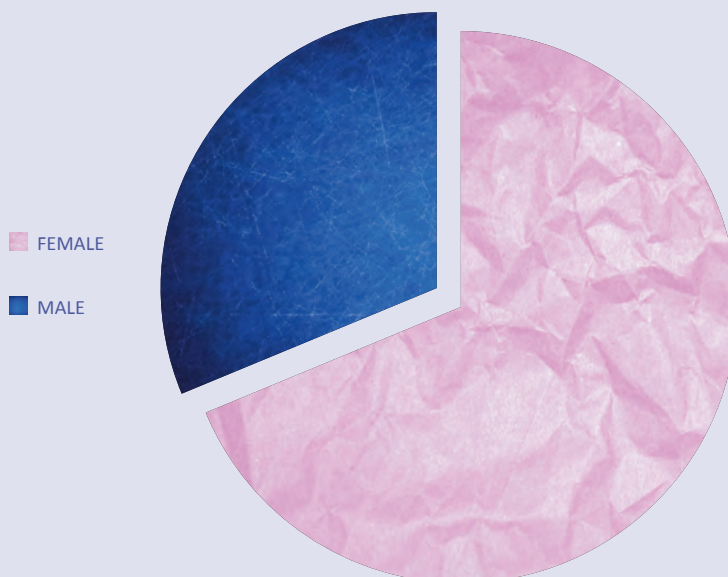
Left to right (back row): Thembile Msuseni, Deon Esterhuizen, Siphon Makuzeni, Mashite Makgoo, Vusi Mtshweni, Zama Nkubungu, Leoni Nieuwoudt, Lelané Bezuidenhout, Ilné Potgieter, Tshepiso Mabaso, Johan Scheepers, Andisiwe Mahamba, Zine Mahlaka, Lesego Moraka, Thabani Ngcobo

Left to right (middle row): Bongile Ngesi, Fezeka Jona, Johanna Mgidi, Kelebogile Sesoko, Charlene Naidoo, Sinovuyo Puzi, Sbhongile Mandita, Nomvula Mtolo, Phumza Mtshemla, Mpho Koloko, Nicolene Pretorius, Violet Ricketts, Hestie Teessen, Ncebakazi Giqwa, Ayanda Mntonintshi, Yvonne Shili, Thobekile Ngcobo, Nomlindo Mpongo, Nivedna Rajmohan

Left to right (front row): Ashwin Singh, Muzi Magagula, Xoliswa Mhlongo, David Davidson, Noluntu Bam, Ashley Percival, Sydwell Shangisa, Malanee Murugan-Modise, Nonkosi Koranteng, Marc Alves

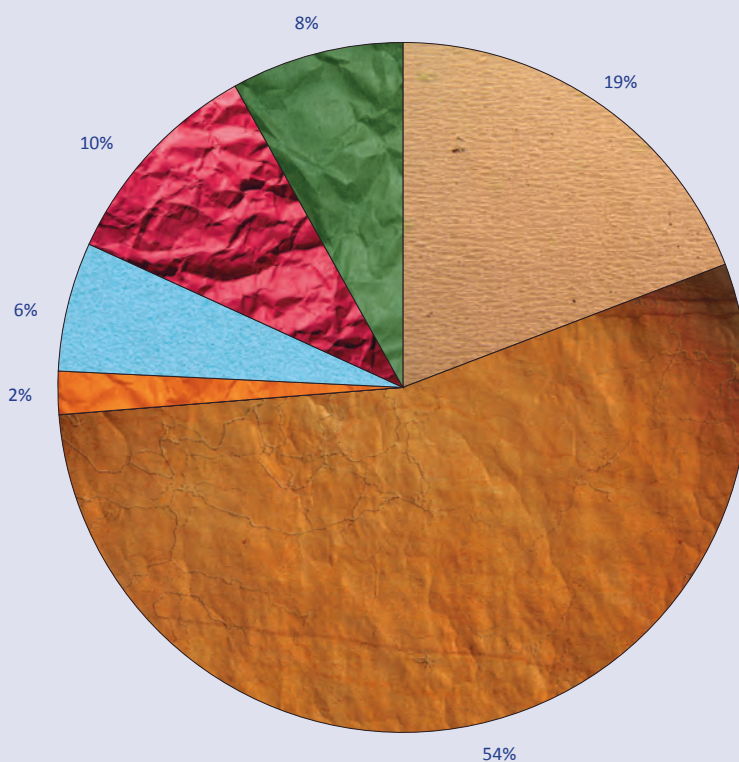
STAFFING 2011 - 2012

TOTAL NUMBER OF STAFF	
Female:	33
Male:	15
Total	48



POPULATION GROUPS

Population Group		
African Male	9	19%
African Female	26	54%
Coloured Male	0	0%
Coloured Female	0	0%
Indian Male	1	2%
Indian Female	3	6%
White Male	5	10%
White Female	4	8%
Total	48	100%



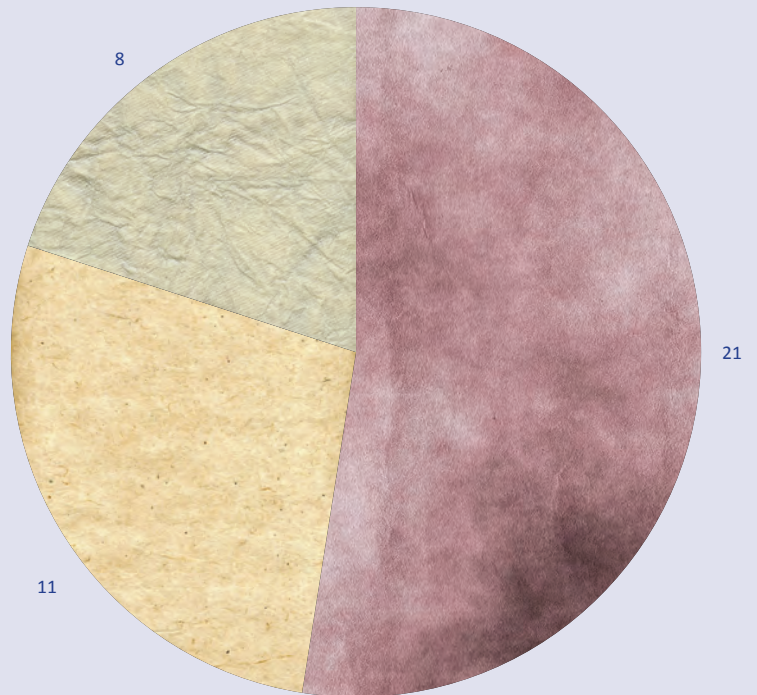
- AFRICAN FEMALE
- AFRICAN MALE
- WHITE MALE
- WHITE FEMALE
- INDIAN FEMALE
- INDIAN MALE

SKILLS & QUALIFICATIONS

EMPLOYEES WITH HIGHEST QUALIFICATION AS

Undergraduate Degree	21
Diploma/ National Certificate	11
Postgraduate Degree/ Diploma/ Certificate	8
Total	40

- UNDERGRADUATE DEGREE
- DIPLOMA/ NATIONAL CERTIFICATE
- POSTGRADUATE DEGREE/ DIPLOMA/ CERTIFICATE MALE

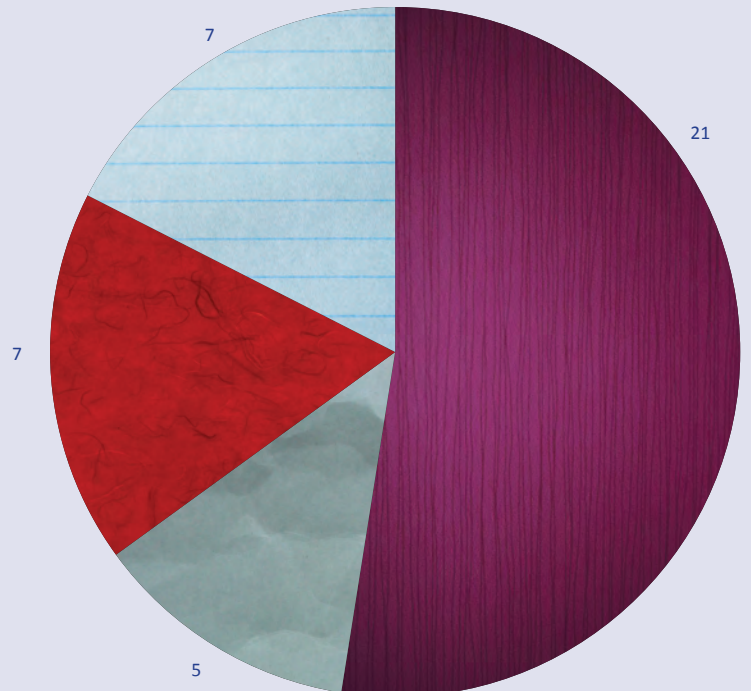


AREAS OF SPECIALISATION

SPECIALISATION:

Law	21
Finance & Commerce	5
CFP™ and/or Advanced CFP™	7
Other industry qualifications	7
Total	40

- LAW
- FINANCE & COMMERCE
- CFP™ AND/OR ADVANCED CFP™
- OTHER INDUSTRY QUALIFICATIONS



REPRESENTATION AT MANAGEMENT LEVELS

Level	Female	Male	African	Indian	White	Coloured
<i>Executive management</i>	3	1	2	1	1	0
<i>Senior management</i>	1	5	3	1	2	0

OFFICE SUPPORT



Yvonne Shili, Zine Mahlaka, Vusi Mtshweni, Xoliswa Mhlongo, Sbongile Mandita, Thabani Ngcobo, Johanna Mgidi



“Individually, we are one drop. Together, we are an ocean.”

- Ryunosuke Satoro



2012 GRADUATE TRAINEES



Thobekile Ngcobo, Bongwiwe Ngesi, Charlene Naidoo, Andisiwe Mahamba, Nomlindo Mpongo, Fezeka Jona

2011 GRADUATE TRAINEES



Akhona Zonke, Zamazulu Nkubungu, Siphon Makuzeni, Sinovuyo Puzi, Oko Matshaya

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012



Finance Manager - Xoliswa Mhlongo

INDEX

The reports and statements set out below comprise the financial statements presented to the provincial legislature:

INDEX	PAGE
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Audit Committee Report	34
Report of the Auditor General	35-36
FAIS Ombud's Report	37
Statement of Financial Position	38
Statement of Financial Performance	39
Statement of Changes in Net Assets	40
Cash Flow Statement	41
Accounting Policies	42-49
Notes to the Financial Statements	50-57

Accounting Authority's Responsibilities and Approval

The members are required by the Public Finance Management Act (Act 1 of 1999), to maintain adequate accounting records and are responsible for the content and integrity of the financial statements and related financial information included in this report. It is the responsibility of the members to ensure that the financial statements fairly present the state of affairs of the entity as at the end of the financial year and the results of its operations and cash flows for the period then ended. The external auditors are engaged to express an independent opinion on the financial statements and were given unrestricted access to all financial records and related data.

The financial statements have been prepared in accordance with Standards of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board.

The financial statements are based upon appropriate accounting policies consistently applied and supported by reasonable and prudent judgements and estimates.

The members acknowledge that they are ultimately responsible for the system of internal financial control established by the entity and place considerable importance on maintaining a strong control environment. To enable the members to meet these responsibilities, the accounting authority sets standards for internal control aimed at reducing the risk of error or deficit in a cost effective manner. The standards include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable level of risk. These controls are monitored throughout the entity and all employees are required to maintain the highest ethical standards in ensuring the entity's business is conducted in a manner that in all reasonable circumstances is above reproach. The focus of risk management in the entity is on identifying, assessing, managing and monitoring all known forms of risk across the entity. While operating risk cannot be fully eliminated, the entity endeavours to minimise it by ensuring that appropriate infrastructure, controls, systems and ethical behaviour are applied and managed within predetermined procedures and constraints.


The members are of the opinion, based on the information and explanations given by management, that the system of internal control provides reasonable assurance that the financial records may be relied on for the preparation of the financial statements. However, any system of internal financial control can provide only reasonable, and not absolute, assurance against material misstatement or deficit.

The members have reviewed the entity's cash flow forecast for the year to 31 March 2013 and, in the light of this review and the current financial position, they are satisfied that the entity has access to adequate resources to continue in operational existence for the foreseeable future.

The financial statements set out on pages 38 to 57, which have been prepared on the going concern basis, were approved by the accounting authority on 17 July 2012 and were signed on its behalf by



Abel Sithole
Chairperson



Noluntu Bam
FAIS Ombud



Audit Committee Report

We are pleased to present our report for the financial year ended 31 March 2012.

Audit Committee members and attendance

The Audit Committee consists of the members listed hereunder:

Name of member	Number of meetings attended
J Mogadime (Chairperson)	4
D Msomi	3
PJ Sutherland	4
H Wilton	4

The Audit Committee is a sub-committee of the Board of the Financial Services Board and consists of only non-executive Board members.

Audit Committee's responsibility

The Audit Committee reports that it has complied with its responsibilities arising from sections 51(1)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA) and Treasury Regulations 27.1. The Audit Committee reports that it has adopted appropriate formal terms of reference as its Audit Committee Charter, has regulated its affairs in compliance with this charter and has discharged its responsibilities as contained therein.

The effectiveness of internal control and the internal audit function

The system of controls is designed to provide cost effective assurance that assets are safeguarded and that liabilities and working capital are efficiently managed. The internal audit provides the Audit Committee and management with assurance that internal controls are appropriate and effective. This is achieved by means of risk management processes as well as the identification of corrective actions and suggested enhancements to the controls and processes.

From the various reports of internal audit, the audit of the annual financial statements and management letter of the Auditor-General, it was noted, except for what has already been highlighted, there is no material non-compliance with prescribed policies and procedures that has been reported. Adequate progress has been made in attending to the other matters reported to ensure that errors and irregularities which may occur will be prevented or detected by the internal controls in good time.

Accordingly we can report that the system of internal control for the period under review was sufficiently effective and efficient. The evaluation of the internal audit function was performed by the committee when considering the progress reports submitted by the internal auditors.

Evaluation of the annual financial statements

The Audit Committee has reviewed and evaluated the financial statements of the FAIS Ombud for the year ended 31 March 2012 and are satisfied that the statements comply with the requirements of the Public Finance Management Act, Act No. 1 of 1999, as amended, and the Standards of Generally Recognised Accounting Practice (GRAP) issued by the Accounting Standards Board. The going concern principle was adopted in preparing the financial statements. The Audit Committee concurs and accepts the conclusion of the Auditor-General on the annual financial statements and is of the opinion that the audited annual financial statements be accepted and read together with the report of the Auditor-General.

J Mogadime

REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

REPORT ON THE FINANCIAL STATEMENTS

Introduction

1. I have audited the financial statements of the Office of the Ombud for Financial Services Providers set out on pages 38 to 57, which comprise the statement of financial position as at 31 March 2012, the statement of financial performance, statement of changes in net assets and the cash flow statements for the year then ended, the notes, comprising summary of significant accounting policies and other explanatory information, and the accounting officer's report and the accounting authority's report.

Accounting authority's responsibility for the financial statements

2. The board of directors which constitute the accounting authority is responsible for the preparation and fair presentation of these financial statements in accordance with South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No. 1 of 1999) (PFMA) and the requirements of the Financial Advisory and Intermediary Services Act of South Africa, 2002 (Act No. 37 of 2002) (FAIS Act), and for such internal control as the accounting authority determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor-General's responsibility

3. My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004)(PAA), the General Notice issued in terms thereof and International Standards on Auditing. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.
4. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management as well as evaluating the overall presentation of the financial statements.

Opinion

5. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Office of the Ombud for Financial Services Provider as at 31 March 2012, and its financial performance and cash flows for the year then ended in accordance with SA Standards of Generally Recognised Accounting Practice and the requirements of PFMA and the requirements of the FAIS Act.

Emphasis of matter

6. I draw attention to the matter below. My opinion is not modified in respect of this matter.

Restatement of corresponding figures

7. As disclosed in note 19 to the financial statements, the corresponding figures for 31 March 2011 have been restated as a result of an error discovered during 2012 in the financial statements of the Office of the Ombud for Financial Services Providers at, and for the year ended, 31 March 2011.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS COMPANIES ACT REQUIREMENTS

8. In accordance with PAA and the General Notice issued in terms thereof, I report the following findings relevant to performance against predetermined objectives, compliance with laws and regulations and internal control, but not for the purpose of expressing an opinion.

REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

Predetermined objectives

9. I performed procedures to obtain evidence about the usefulness and reliability of the information in the annual performance report as set out on pages 58 to 60 of the annual report.
10. The reported performance against predetermined objectives was evaluated against the overall criteria of usefulness and reliability. The usefulness of information in the annual performance report relates to whether it is presented in accordance with the National Treasury annual reporting principles and whether the reported performance is consistent with the planned objectives. The usefulness of information further relates to whether indicators and targets are measurable (i.e. well defined, verifiable, specific, measurable and time bound) and relevant as required by the National Treasury Framework for managing programme performance information.

The reliability of the information in respect of the selected objectives is assessed to determine whether it adequately reflects the facts (i.e. whether it is valid, accurate and complete).

11. There were no material findings on the annual performance report concerning the usefulness and reliability of the information.

Compliance with laws and regulations

12. I performed procedures to obtain evidence that the entity has complied with applicable laws and regulations regarding financial matters, financial management and other related matters. My findings on material non-compliance with specific matters in key applicable laws and regulations as set out in the General Notice issued in terms of the PAA are as follows:

Annual financial statements, performance and annual report

13. The financial statements and the performance information report were not submitted within 2 months after year-end in accordance with PFMA sec. 55 (1) (c) (i).
14. The financial statements submitted for auditing were not prepared in terms of Generally Recognised Accounting Practice as required by section 55 (1) (a). Material misstatements relating to measurement of Property, plant and equipment and loss on disposal of assets were identified by the auditors, which were subsequently corrected, resulting in the financial statements receiving an unqualified audit opinion.

Internal control

15. I considered internal control relevant to my audit of the financial statements, annual performance report and compliance with laws and regulations. The matters reported below under the fundamentals of internal control are limited to the significant deficiencies that resulted in the basis for the findings on compliance with laws and regulations included in this report.

Leadership

16. There was a lack of oversight responsibility regarding financial reporting and related internal controls, which resulted in late submission of financial statements for auditing, furthermore the submitted financial statements contained material misstatements that were identified by auditors and subsequently corrected.

Financial and performance management

17. There was lack of control to ensure regular, accurate and complete financial reports that are supported and evidenced by reliable information as a result financial statements that were submitted for auditing contained material misstatements that were identified by auditors and subsequently corrected.

Auditor-General

Pretoria

31 July 2012



AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence



FAIS OMBUD'S REPORT FOR THE YEAR

NATURE OF OPERATIONS

The Office of the Ombud for Financial Services Providers ('Office') was established in terms of section 20 of the Financial Advisory and Intermediary Services Act, 2002 (Act No 37 of 2002) ('FAIS Act'). The objective of the Office is to investigate and adjudicate complaints as defined in the FAIS Act, by clients against financial services providers or their representatives.

The FAIS Ombud in terms of the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004) ('FSOS Act'), can also act as statutory Ombud to determine who amongst the various scheme ombudsmen can deal with a complaint where there is uncertainty over which Ombud has jurisdiction. The FAIS Ombud, acting as statutory Ombud can also investigate and adjudicate on complaints where the scheme ombudsmen have no jurisdiction.

The FAIS Ombud employs various mechanisms to resolve the complaint, including mediation, conciliation or determination of the complaint in terms of the FAIS Act and the Rules on Proceedings of the Office. Determinations by the FAIS Ombud are deemed to have the same effect as a judgement of a Court.

The Office is funded in terms of a budget approved by the Financial Services Board in terms of Section 22 of the FAIS Act. In addition, the Office is entitled to levy a case fee of R1 000 per case once it has accepted a case for investigation.

SUBSEQUENT EVENTS

There have been no significant events subsequent to the financial year end that have had an impact on the financial statements.

OFFICE BEARERS

The FAIS Ombud is the responsible officer for the year ended 31 March 2012 and the Board of the Financial Services Board is the designated accounting authority in terms of section 23 of the FAIS Act, 2002 (Act No 37 of 2002).

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012**Statement of Financial Position**

Restated

Figures in Rand	Note(s)	2012	2011
Assets			
Current Assets			
Accounts receivable	4	5,195,300	5,075,681
Cash and cash equivalents	5	539,423	261,598
		5,734,723	5,337,279
Non-Current Assets			
Property, plant and equipment	2	1,399,355	1,857,107
Intangible assets	3	327,551	273,884
		1,726,906	2,130,991
Total Assets		7,461,629	7,468,270
Liabilities			
Current Liabilities			
Finance lease obligation	6	23,894	44,552
Accounts payable	7	1,032,872	1,090,821
		1,056,766	1,135,373
Non-Current Liabilities			
Finance lease obligation	6	36,387	74,243
Total Liabilities		1,093,153	1,209,616
Net Assets		6,368,476	6,258,654
Net Assets			
Accumulated surplus		6,368,476	6,258,654

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012**Statement of Financial Performance**

Restated

Figures in Rand	Note(s)	2012	2011
Revenue	8	26,809,109	25,591,539
Operating expenses		(8,255,147)	(7,641,774)
Personnel costs	10	(17,702,945)	(14,490,616)
Depreciation and amortisation		(690,846)	(728,485)
Operating surplus		160,171	2,730,664
Finance costs	12	(50,349)	(45,752)
Surplus for the year		109,822	2,684,912

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012**Statement of Changes in Net Assets**

Figures in Rand	Note(s)	Accumulated surplus	Total net assets
Opening balance as previously reported		2,561,454	2,561,454
Prior year period error	19	1,012,288	1,012,288
Balance at 01 April 2010 as restated		3,573,742	3,573,742
Total Changes		2,684,912	2,684,912
Surplus as previously reported		3,183,502	3,183,502
Prior year period error	19	(498,590)	(498,590)
Balance at 01 April 2011 as restated		6,258,654	6,258,654
Surplus for the year		109,822	109,822
Balance at 31 March 2012		6,368,476	6,368,476

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012**Cash Flow Statement**

Figures in Rand	Note(s)	2012	2011
Cash flows from operating activities			
Cash received from entities		26,600,491	21,817,133
Cash paid to suppliers and employees		(25,703,333)	(21,745,971)
Net cash flows from operating activities	15	897,158	71,162
Cash flows from investing activities			
Purchase of property, plant and equipment	2	(238,227)	(592,781)
Proceeds from sale of property, plant and equipment	2	6,242	-
Purchase of other intangible assets	3	(281,334)	(302,995)
Proceeds from sale of other intangible assets	3	2,849	-
Net cash flows from investing activities		(510,470)	(895,776)
Cash flows from financing activities			
Finance lease payments		(108,863)	(81,598)
Net increase/(decrease) in cash and cash equivalents		277,825	(906,212)
Cash and cash equivalents at the beginning of the year		261,598	1,167,810
Cash and cash equivalents at the end of the year	5	539,423	261,598

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012

Accounting Policies

1. Statement of Compliance

The financial statements have been prepared in accordance with the Standards of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board in accordance with section 55 and 89 of the Public Finance Management Act, Act No.1 of 1999 (as amended by Act 29 of 1999).

Accounting policies for material transactions, events or conditions not covered by the GRAP reporting framework, as detailed above, have been developed in accordance with paragraphs 7,11 and 12 of GRAP 3 and the hierarchy approved in Directive 5 issued by the Accounting Standards Board.

Basis of preparation and presentation

These annual financial statements have been prepared on accrual basis of accounting and are in accordance with historical cost convention unless specified otherwise. They are presented in South African Rand.

These accounting policies are consistent with the previous year.

1.1 Significant judgements and sources of estimation uncertainty

In preparing the financial statements, management is required to make estimates and assumptions that affect the amounts represented in the financial statements and related disclosures. Use of available information and the application of judgement is inherent in the formation of estimates. Actual results in the future could differ from these estimates which may be material to the financial statements. Estimates and underlying assumptions are reviewed on an ongoing basis. Revision to accounting estimates are recognised in the period in which the estimate is revised and any future periods affected. Significant judgements include:

Impairment of receivables

The Fais Ombud assesses its loans and receivables for impairment at the end of each reporting period. In determining whether an impairment loss should be recorded in surplus or deficit, the surplus makes judgements as to whether there is observable data indicating a measurable decrease in the estimated future cash flows from a financial asset.

Useful lives of and residual values

The Fais Ombud reassesses the useful lives and residual values of property, plant and equipment and intangible assets on an annual basis. In reassessing the useful lives of property, plant and equipment and intangible assets, management considers the condition and the use of the individual assets to determine the remaining period over which the asset can and will be used.

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012

Accounting Policies

1.2 Property, plant and equipment

Property, plant and equipment are tangible non-current assets that are held for administrative purposes, and are expected to be used during more than one period.

The cost of an item of property, plant and equipment is recognised as an asset when:

- it is probable that future economic benefits or service potential associated with the item will flow to the entity; and
- the cost of the item can be measured reliably.

Property, plant and equipment is initially measured at cost.

The cost of an item of property, plant and equipment is the purchase price and other costs attributable to bring the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. Trade discounts and rebates are deducted in arriving at the cost.

Where an asset is acquired at no cost, or for a nominal cost, its cost is its fair value as at date of acquisition.

Recognition of costs in the carrying amount of an item of property, plant and equipment ceases when the item is in the location and condition necessary for it to be capable of operating in the manner intended by management.

Property, plant and equipment is subsequently carried at cost less accumulated depreciation and any impairment losses. Depreciation is recognised in surplus or deficit on the straight-line basis over the expected useful lives to their estimated residual values. Assets held under finance leases are depreciated over the expected useful lives on the same basis as owned assets or, where shorter, the term of the relevant lease.

Depreciation commences when the asset is ready for its intended use.

The useful lives of items of property, plant and equipment have been assessed as follows:

Item	Average useful life
Motor Vehicles	5-10 years
Furniture and fixtures	5-15 years
Office equipment	5-10 years
IT equipment	3-6 years
Leasehold improvements	over lease term
Paintings	5-10 years
Assets under finance lease	5 years

The residual value, and the useful life and depreciation method of each asset is reviewed at the end of each reporting date. If the expectations differ from previous estimates, the change is accounted for as a change in accounting estimate.

Items of property, plant and equipment are derecognised when the asset is disposed of or when there are no further economic benefits or service potential expected from the use of the asset.

The gain or loss arising from the derecognition of an item of property, plant and equipment is included in surplus or deficit when the item is derecognised. The gain or loss arising from the derecognition of an item of property, plant and equipment is determined as the difference between the net disposal proceeds, if any, and the carrying amount of the item.

1.3 Intangible assets

An asset is identified as an intangible asset when it:

- is capable of being separated or divided from an entity and sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, assets or liability; or
- arises from contractual rights or other legal rights, regardless whether those rights are transferable or separate from the entity or from other rights and obligations.

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012

Accounting Policies

1.3 Intangible assets (continued)

An intangible asset is recognised when:

- it is probable that the expected future economic benefits or service potential that are attributable to the asset will flow to the entity; and
- the cost or fair value of the asset can be measured reliably.

Intangible assets are initially recognised at cost.

An intangible asset acquired at no or nominal cost, the cost shall be its fair value as at the date of acquisition.

Intangible assets are carried at cost less any accumulated amortisation and any impairment losses.

The amortisation period and the amortisation method for intangible assets are reviewed at each reporting date.

Amortisation is provided to write down the intangible assets, on a straight-line basis, to their residual values as follows:

Item	Useful life
Data Management System	3 years
Website	3 years
Computer software	3 years
Licenses	1 year

1.4 Financial instruments

Initial recognition and measurement

Financial instruments are recognised initially when the FAIS Ombud becomes a party to the contractual provisions of the instruments.

The FAIS Ombud classifies financial instruments, or their component parts, on initial recognition as a financial asset, a financial liability or an equity instrument in accordance with the substance of the contractual arrangement.

For financial instruments which are not at fair value through surplus or deficit, transaction costs are included in the initial measurement of the instrument.

Regular way purchases of financial assets are accounted for at trade date.

Subsequent measurement

Loans and receivables are subsequently measured at amortised cost, using the effective interest method, less accumulated impairment losses.

Financial liabilities at amortised cost are subsequently measured at amortised cost, using the effective interest method.

Fair value determination

Fair value information for trade and other receivables is determined as the present value of the estimated future cash flows discounted at the effective interest rate computed at initial recognition.

Impairment of financial assets

At each end of the reporting period the Fais Ombud assesses all financial assets, other than those at fair value through surplus or deficit, to determine whether there is objective evidence that a financial asset or group of financial assets has been impaired.

For amounts due to the entity, significant financial difficulties of the debtor, probability that the debtor will enter bankruptcy and default of payments are all considered indicators of impairment.

Impairment losses are recognised in surplus or deficit.

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012

Accounting Policies

1.4 Impairment of financial assets (continued)

Impairment losses are reversed when an increase in the financial asset's recoverable amount can be related objectively to an event occurring after the impairment was recognised, subject to the restriction that the carrying amount of the financial asset at the date that the impairment is reversed shall not exceed what the carrying amount would have been had the impairment not been recognised.

Accounts receivable

Accounts receivables are measured at initial recognition at fair value, and are subsequently measured at amortised cost using the effective interest rate method. Appropriate allowances for estimated irrecoverable amounts are recognised in surplus or deficit when there is objective evidence that the asset is impaired. Significant financial difficulties of the debtor, probability that the debtor will enter bankruptcy or financial reorganisation, and default or delinquency in payments (more than 30 days overdue) are considered indicators that the trade receivable is impaired. The allowance recognised is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the effective interest rate computed at initial recognition.

The carrying amount of the asset is reduced through the use of an allowance account, and the amount of the deficit is recognised in surplus or deficit within operating expenses. When a trade receivable is uncollectible, it is written off against the allowance account for trade receivables. Subsequent recoveries of amounts previously written off are credited against operating expenses in the statement of financial performance.

Accounts receivables are classified as loans and receivables.

Accounts payable

Accounts payables are initially measured at fair value less any transaction costs (if any), and are subsequently measured at amortised cost, using the effective interest rate method.

Accounts payable are classified as financial liabilities at amortised cost.

Cash and cash equivalents

Cash and cash equivalents comprise cash on hand and demand deposits, and other short-term highly liquid investments that are readily convertible to a known amount of cash and are subject to an insignificant risk of changes in value. These are initially measured at fair value and subsequently at amortised cost using the effective interest method.

Cash and cash equivalents are classified as loans and receivables

1.5 Leases

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership. Leases in terms of which the entity assumes substantially all the risks and rewards of ownership are classified as finance leases. Upon initial recognition the leased asset is measured at an amount equal to the lower of its fair value and the present value of the minimum lease payments. Subsequent to initial recognition, the asset is accounted for in accordance with the accounting policy applicable to that asset.

When a lease includes both land and building elements, the entity assesses the classification of each element separately.

Finance leases - lessee

Finance leases are recognised as assets and liabilities in the statement of financial position at amounts equal to the fair value of the leased property or, if lower, the present value of the minimum lease payments. The corresponding liability to the lessor is included in the statement of financial position as a finance lease obligation.

The discount rate used in calculating the present value of the minimum lease payments is the interest rate implicit in the lease.

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012

Accounting Policies

1.5 Leases (continued)

Operating leases

Operating lease payments are recognised as an expense on a straight-line basis over the lease term. The difference between the amounts recognised as an expense and the contractual payments are recognised as an operating lease asset or liability.

1.6 Employee benefits

Short-term employee benefits

The cost of short-term employee benefits, (those payable within 12 months after the service is rendered, such as paid vacation leave and sick leave, bonuses, and non-monetary benefits such as medical care), are recognised in the period in which the service is rendered and are not discounted.

The expected cost of compensated absences is recognised as an expense as the employees render services that increase their entitlement or, in the case of non-accumulating absences, when the absence occurs.

The expected cost of surplus sharing and bonus payments is recognised as an expense when there is a legal or constructive obligation to make such payments as a result of past performance.

Retirement benefits

Contributions towards a defined contribution plan are paid to an administrated pension fund on a contractual basis. There are no further payment obligations once contributions are paid, the contributions are recognised as employee benefit expenses in the period in which the employee renders the related service.

1.7 Provisions and contingencies

Provisions are recognised when:

- the FAIS Ombud has a present obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation; and
- a reliable estimate can be made of the obligation.

The amount of a provision is the best estimate of the expenditure expected to be required to settle the present obligation at the reporting date.

Where the effect of time value of money is material, the amount of a provision is the present value of the expenditures expected to be required to settle the obligation.

The discount rate is a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability.

Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement is recognised when, and only when, it is virtually certain that reimbursement will be received if the entity settles the obligation. The reimbursement is treated as a separate asset. The amount recognised for the reimbursement does not exceed the amount of the provision.

Provisions are reviewed at each reporting date and adjusted to reflect the current best estimate. Provisions are reversed if it is no longer probable that an outflow of resources embodying economic benefits or service potential will be required, to settle the obligation.

Where discounting is used, the carrying amount of a provision increases in each period to reflect the passage of time. This increase is recognised as an interest expense.

A provision is used only for expenditures for which the provision was originally recognised.

Provisions are not recognised for future operating deficits.

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012

Accounting Policies

1.7 Provisions and contingencies (continued)

If an entity has a contract that is onerous, the present obligation (net of recoveries) under the contract is recognised and measured as a provision.

A constructive obligation to restructure arises only when an entity:

- has a detailed formal plan for the restructuring, identifying at least:
 - the activity/operating unit or part of a activity/operating unit concerned;
 - the principal locations affected;
 - the location, function, and approximate number of employees who will be compensated for services being terminated;
 - the expenditures that will be undertaken; and
 - when the plan will be implemented; and
- has raised a valid expectation in those affected that it will carry out the restructuring by starting to implement that plan or announcing its main features to those affected by it.

Contingent assets and contingent liabilities are not recognised.

1.8 Revenue from exchange transactions

Revenue is the gross inflow of economic benefits or service potential during the reporting period when those inflows result in an increase in net assets, other than increases relating to contributions from owners.

An exchange transaction is one in which the municipality receives assets or services, or has liabilities extinguished, and directly gives approximately equal value (primarily in the form of goods, services or use of assets) to the other party in exchange.

Measurement

Revenue is measured at the fair value of the consideration received or receivable, net of trade discounts and volume rebates.

Interest

Revenue arising from the use by others of entity assets yielding interest is recognised when:

- It is probable that the economic benefits or service potential associated with the transaction will flow to the FAIS Ombud, and
- The amount of the revenue can be measured reliably.

Interest is recognised, in the statement of financial performance, using the effective interest rate method.

1.9 Revenue from non-exchange transactions

Non-exchange transactions are defined as transactions where the entity receives value from another entity without directly giving approximately equal value in exchange, or gives value to another entity without directly receiving approximately equal value in exchange.

Recognition

An inflow of resources from a non-exchange transaction recognised as an asset is recognised as revenue, except to the extent that the liability is recognised in respect of the same inflow.

As the FAIS Ombud satisfies a present obligation recognised as a liability in respect of an inflow of resources from a non-exchange transaction recognised as an asset, it reduces the carrying amount of the liability recognised and recognises an amount of revenue equal to that reduction.

Measurement

Revenue from a non-exchange transaction is measured at the amount of the increase in net assets recognised by the FAIS Ombud.

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012

Accounting Policies

1.9 Revenue from non-exchange transactions (continued)

Measurement (continued)

When as a result of non-exchange transaction the FAIS Ombud recognises an asset, it also recognises revenue equivalent to the amount of the asset measured at its fair value as the date of acquisition, unless it is also required to recognise a liability. Where a liability is required to be recognised it will be measured as the best estimate of the amount required to settle the obligation at the reporting date, and the amount of the increase in net assets, if any, recognised in revenue.

1.10 Translation of foreign currencies

Foreign currency transactions

A foreign currency transaction is recorded, on initial recognition in Rands, by applying to the foreign currency amount the spot exchange rate between the functional currency and the foreign currency at the date of the transaction.

At each reporting date:

- foreign currency monetary items are translated using the closing rate;

1.11 Unauthorised expenditure

Unauthorised expenditure means it is expenditure that has not been budgeted, expenditure that is not in terms of the conditions of an allocation received from another sphere of government, entity or organ of state and expenditure in the form of grant that is not permitted in terms of the Public Finance Management Act (Act No. 29 of 1999).

All expenditure relating to unauthorised expenditure is recognised as an expense in the statement of financial performance in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

1.12 Fruitless and wasteful expenditure

Fruitless expenditure means expenditure which was made in vain and would have been avoided had reasonable care been exercised. All expenditure relating to fruitless and wasteful expenditure is recognised as an expense in the statement of financial performance in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

1.13 Irregular expenditure

Irregular expenditure as defined in section 1 of the PFMA is expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including -

- (a) the PFMA
- (b) the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of the Act; or
- (c) the FAIS Ombud 's Supply Chain Management policy

All expenditure relating to irregular expenditure is recognised as an expense in the statement of financial performance in the period that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

1.14 Budget information

FAIS Ombud is subject to budgetary limits in the form of appropriations or budget authorisations (or equivalent), which is given effect through authorising legislation, appropriation or similar.

A reconciliation between budget and actual information has been included in the notes to the annual financial statements and both are prepared on the same basis of accounting (Ref to Note 21 - Reconciliation between budget and statement of financial performance).

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012

Accounting Policies

1.15 Related parties

The FAIS Ombud operates in an economic sector currently dominated by entities directly or indirectly owned by the South African Government. As a consequence of the constitutional independence of the three spheres of government in South Africa, only entities within the national sphere of government are considered to be related parties.

Key management is defined as being individuals with the authority and responsibility for planning, directing and controlling the activities of FAIS Ombud, including those charged with the governance of the FAIS Ombud in accordance with legislation, in instances where they are required to perform such functions. FAIS Ombud regards all individuals at senior management as key management per the definition of the financial reporting standard.

Close members of the family of a person are considered to be those family members who may be expected to influence, or be influenced by, that management in their dealings with the FAIS Ombud.

Related party disclosure for transactions between government entities that took place in terms and conditions that is considered arm's length are not required in accordance with IPSA20, Related Party Disclosure.

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012**Notes to the Financial Statements****2. Property, plant and equipment**

	2012			2011 (Restated)		
	Cost/ Valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost/ Valuation	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fittings	853,323	(449,070)	404,253	613,651	(95,882)	517,769
Motor vehicles	138,593	(99,307)	39,286	138,593	(86,211)	52,382
Office equipment	473,573	(221,738)	251,835	406,581	(124,229)	282,352
Computer equipment	1,090,215	(539,796)	550,419	1,463,834	(681,273)	782,561
Leasehold improvements	140,257	(62,849)	77,408	134,086	(34,354)	99,732
Assets under finance lease	218,598	(147,322)	71,276	218,598	(103,603)	114,995
Paintings	26,376	(21,498)	4,878	26,376	(19,060)	7,316
Total	2,940,935	(1,541,580)	1,399,355	3,001,719	(1,144,612)	1,857,107

Reconciliation of property, plant and equipment - 2012

	Opening balance	Additions	Disposals	Depreciation	Total
Furniture and fixtures	517,769	-	(23,945)	(89,571)	404,253
Motor vehicles	52,382	-	-	(13,096)	39,286
Office equipment	282,352	43,972	-	(74,489)	251,835
Computer equipment	782,561	188,085	(206,008)	(214,219)	550,419
Leasehold improvements	99,732	6,170	-	(28,494)	77,408
Assets under finance lease	114,995	-	-	(43,719)	71,276
Paintings	7,316	-	-	(2,438)	4,878
	1,857,107	238,227	(229,953)	(466,026)	1,399,355

Reconciliation of property, plant and equipment - 2011 (Restated)

	Opening balance	Additions	Transfers	Depreciation	Total
Furniture and fixtures	420,410	210,544	-	(113,185)	517,769
Motor vehicles	65,477	-	-	(13,095)	52,382
Office equipment	166,995	99,106	71,145	(54,894)	282,352
Computer equipment	682,899	227,871	92,409	(220,618)	782,561
Leasehold improvements	58,779	60,789	-	(19,836)	99,732
Assets under finance lease	158,715	-	-	(43,720)	114,995
Paintings	9,755	-	-	(2,439)	7,316
	1,563,030	598,310	163,554	(467,787)	1,857,107

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012**Notes to the Financial Statements****3. Intangible assets**

	2012			2011 (Restated)		
	Cost/ Valuation	Accumulated amortisation and accumulated impairment	Carrying value	Cost/ Valuation	Accumulated amortisation and accumulated impairment	Carrying value
Licences	163,006	(84,769)	78,237	-	-	-
Computer Software	504,608	(288,043)	216,565	402,557	(181,261)	221,296
Data Management system	485,843	(485,843)	-	485,843	(485,843)	-
Website	49,540	(16,791)	32,749	146,881	(94,293)	52,588
Total	1,202,997	(875,446)	327,551	1,035,281	(761,397)	273,884

Reconciliation of intangible assets - 2012

	Opening balance	Additions	Disposals	Amortisation	Total
Licences	-	163,006	-	(84,769)	78,237
Computer Software	221,296	118,328	-	(123,059)	216,565
Website	52,588	-	(2,849)	(16,990)	32,749
	273,884	281,334	(2,849)	(224,818)	327,551

Reconciliation of intangible assets - 2011 (Restated)

	Opening balance	Additions	Transfers	Amortisation	Total
Computer Software	60,047	253,455	4,607	(96,813)	221,296
Data Management system	142,742	-	-	(142,742)	-
Website	24,967	49,540	-	(21,919)	52,588
	227,756	302,995	4,607	(261,474)	273,884

4. Accounts receivable

	2012	2011
Receivables	4,908,070	4,772,746
Prepayments	287,230	302,935
	5,195,300	5,075,681

5. Cash and cash equivalents

Cash and cash equivalents consist of:	2012	2011
Cash on hand	2,500	1,423
Bank balances	536,923	260,175
	539,423	261,598

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012**Notes to the Financial Statements**

Figures in Rand	2012	2011
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6. Finance lease obligation

Non-current liabilities	36,387	74,243
Current liabilities	23,894	44,552
	60,281	118,795

Some office equipment is leased under non-cancellable lease agreements. The lease terms are between three and five years and are renewable on a month to month basis at the end of the lease period at market rates. As the lease terms transfers substantially all the risks and rewards of ownership to the FAIS Ombud, these are classified as finance leases. Lease agreements have a fixed 60 months term, interest is fixed at 10% with equal lease payments over the lease term.

Reconciliation of minimum lease payments	Minimum Payments	Interest Costs	Present Value
Less than one year	70,045	46,151	23,894
Two to five years	116,720	80,333	36,387
	186,765	126,484	60,281

2011			
Less than one year	79,351	34,799	44,552
Two to five years	119,017	44,774	74,243
	198,368	79,573	118,795

7. Accounts payable

Trade payables	126,477	452,700
Operating lease liability	492,875	387,736
Accrued leave pay	413,520	250,385
	1,032,872	1,090,821

8. Revenue

Non-exchange revenue	26,615,081	25,335,939
Case fees	160,000	232,000
Bad debts recovered	24,200	23,600
Compensation from third party	9,828	-
	26,809,109	25,591,539

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012**Notes to the Financial Statements**

Figures in Rand	2012	2011
9. General expenses		
Auditors remuneration	1,435,659	1,389,419
Bank charges	22,746	22,106
Cleaning	64,006	48,496
Consulting and professional fees	1,267,489	1,119,960
Entertainment	112,766	86,652
Flowers	5,515	29,193
Gifts	2,765	-
Hire	43,738	28,450
Insurance	48,649	69,379
Conferences and seminars	49,539	48,555
Lease rentals on operating lease	1,923,538	1,881,320
Levies	166,285	135,864
Motor vehicle expenses	11,513	10,899
Placement Fees	78,070	87,592
Postage and courier	309,646	270,396
Printing and stationery	640,570	534,424
Security	11,387	6,315
Staff welfare	129,646	117,403
Subscriptions and membership fees	38,912	15,945
Telephone and fax	384,581	376,841
Training	247,835	274,710
Travel - local	114,833	94,566
Electricity	396,793	328,354
Text book or library books	213,213	179,185
Strategic planning and workshops	69,938	81,010
	7,789,632	7,237,034
10. Employee related costs		
Basic	16,073,394	13,199,222
Bonus	1,020,029	784,655
UIF	62,389	50,300
Leave pay provision charge	531,133	456,439
Long-service awards	16,000	-
	17,702,945	14,490,616
11. Debt impairment		
Debts impaired	89,000	106,000
12. Finance costs		
Finance leases	50,349	45,752
13. Taxation		

No provision has been made for 2012 tax as the office of the FAIS Ombud is exempt from taxation in terms of section 10(1)(cA)(i) (bb) of the Income Tax Act, 1962 (Act No. 58 of 1962 as amended).

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012**Notes to the Financial Statements**

Figures in Rand	2012	2011
14. Auditors' remuneration		
External audit	647,937	540,974
Internal audi	787,722	848,445
	1,435,659	1,389,419
15. Cash generated from operations		
Surplus	109,822	2,684,912
Adjustments for:		
Depreciation and amortisation	690,846	728,485
Loss in sale of asset	223,711	-
Finance costs - finance leases	50,349	45,752
Debt impairment	89,000	106,000
Changes in working capital:		
Increase in accounts receivable	(171,655)	(3,762,648)
(Decrease)/ Increase in accounts payable	(94,915)	268,661
	897,158	71,162
16. Operating lease commitment		
Operating leases - as lessee		
Minimum lease payments due		
- within one year	1,722,376	1,580,789
- in second to fifth year inclusive	2,857,656	4,580,032
	4,580,032	6,160,821

Office accommodation is leased in terms of an operating lease. The FAIS Ombud is required to give six months notice for the renewal of the lease. The operating lease rentals include a charge for rental, parking, operational costs, electricity, rates and levies. Escalations of 10% have been included in the lease agreement.

Operating lease payments represent rentals payable by the entity for certain of its office properties. Leases are negotiated for an average term of seven years and rentals are fixed for an average of three years. No contingent rent is payable.

17. Contingent liabilities

The are no contingent liabilities or pending litigation that are known to management as at 31 March 2012.

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012**Notes to the Financial Statements****18. Key management remuneration**

Personnel costs include the cost to the office for the following key staff

2012

	Emoluments	Travel allowance	Pension contribution	Performance bonus	Leave commutation paid	Total
N Bam, FAIS Ombud	1,360,680	24,000	202,346	261,300	87,681	1,936,007
S Bana, Resigned 30 June 2011	171,645	6,000	19,192	-	37,085	233,922
X Mhlongo, appointed 22 August 2011	329,868	-	35,637	-	-	365,505
S Sikhita, 29 February 2012	598,107	22,000	76,001	-	16,876	712,984
M Murugan-Modise, Team Resolution Manager	646,319	-	69,824	104,600	12,436	833,179
A Percival, Team Resolution Manager	628,298	18,000	69,822	104,630	14,831	835,581
Total	3,734,917	70,000	472,822	470,530	168,909	4,917,178

2011

	Emoluments	Other Travel allowance	Pension contribution	Gains on exercise of options	Committees fees	Total
N Bam, FAIS Ombud, appointed on 1 April 2011	1,132,935	24,000	169,065	148,155	134,630	1,608,785
S Bana, Financial Manager	583,841	64,000	66,743	80,000	6,000	800,084
K Ntloti, Office Manager, resigned on 20 October 2010	203,216	25,096	18,250	-	27,486	274,048
S Sikhita, Assistant Ombud	463,620	60,000	56,568	80,000	14,375	674,563
M Murugan-Modise, Team Resolution Manager	590,582	-	63,802	65,000	13,377	732,761
A Percival, Team Resolution Manager	548,473	42,000	63,791	65,000	-	719,264
Total	3,522,667	215,096	438,219	438,155	195,868	4,810,005

19. Prior year error

Property, plant and equipment was misstated due to incorrect treatment of useful life adjustments in the prior year and incorrect treatment of assets under the value of R5000.

The correction of the error(s) results in adjustments as follows:

	Impact	Impact
	2011	2010
Statement of Financial position		
Property, plant and equipment - Increase/(Decrease)	513,698	1,012,288
Accumulated Surplus - Increase/(Decrease)	513,698	1,012,288
Statement of Financial Performance		
Depreciation expense - Increase/(Decrease)	(498,590)	1,012,288
Surplus for the year - Increase/(Decrease)	(498,590)	1,012,288

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012**Notes to the Financial Statements**

Figures in Rand	2012	2011
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20. Risk management**Financial risk management**

In the course of the FAIS Ombud's operations, it is exposed to credit, liquidity and market risk. The FAIS Ombud has developed a comprehensive strategy in terms of Treasury Regulation 28.1 in order to monitor and control these risks. Internal Audit reports are submitted quarterly to the Audit and Risk Management Committee, an independent committee that monitors risks and policies implemented to mitigate risk exposures. The risk management process relating to each of these risk is discussed under the headings below.

Interest rate risk

As the FAIS Ombud has cash and cash equivalents and its income and operating cashflow are dependent on approved budget received from the Financial Services Board.

Credit risk

Credit risk consists mainly of cash deposits, cash equivalents as well as accounts receivable. The FAIS Ombud only deposits cash with established financial institutions approved by National Treasury.

Accounts receivable consist of monies owed by the Financial Services Board. Credit risk is limited as the FAIS Ombud is a regulatory body and levies are charged in terms of legislation.

Liquidity risk

Prudent liquidity risk management implies maintaining sufficient liquid resources and the ability to settle debts as they become due. In the case of the FAIS Ombud liquid resources consist mainly cash and cash equivalents. The FAIS Ombud maintains adequate resources by monitoring rolling cashflow forecast of the cash and cash equivalents on the basis of expected cashflow.

The table below analyses the FAIS Ombud's financial liabilities at year end.

At March 31,2012	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
Accounts payable	1,032,872	-	-	-
At March 31,2011	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
Accounts payable	1,090,821	-	-	-

21. Reconciliation between budget and statement of financial performance

Reconciliation of budget surplus/deficit with the surplus/deficit in the statement of financial performance:

Net surplus per the statement of financial performance	109,822	2,684,912
Adjusted for:		
Over recovery of income	(97,228)	(171,600)
(Decrease)/Increase in provision for bad debts	(27,000)	73,000
Overspending/(Underpending) on personnel cost	604,113	(2,181,066)
Overspending/(Underpending) on expenditure	64,868	(452,936)
Prior year adjustments	-	498,590
Net surplus per approved budget	654,575	450,900

FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2012**Notes to the Financial Statements**

Figures in Rand	2012	2011
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22. Employee benefits-Defined contribution plan

The office of FAIS Ombud pays contributions towards the pension fund established for its employees. The office has no other obligation to provide retirement benefits to its employees. The amounts recognised in the statement of financial performance are as follows:

Pension fund contributions	1,637,626	1,317,075
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PERFORMANCE INFORMATION

STRATEGIC FOCUS AREA 1:

IMPROVEMENT OF COMPLAINTS HANDLING PROCESS

Measurable Objective	Output	Outcomes	Measurable Indicator	Performance Targets		
				2011/12	Progress on 31 March 2012	Explanation/ Variance
Proper implementation of the approved complaints handling process for a cost effective service, quicker turnaround times on cases and ensuring smooth flow and consistent performance standards.	Implementation of the approved workflow process for each kind of contact	Fair and appropriate outcome of investigations	Effective implementation of approved complaints handling implementation plan	100% achievement of activities set out in implementation plan	100% of the activities have been achieved	The appointment of senior case managers in June 2011 provided an additional layer of quality control which resulted in improvement in turn-around times. In addition, more technical personnel was appointed to handle complaints.
	Closed complaints files		% of complaints closed within 9 months of receipt of complaint	70%	<p>This objective has been achieved. More than 70% of cases received by the Office were closed within 9 months of receipt. In fact on average 91.5% of cases were closed within 9 months of receipt.</p> <p><u>Quarter 1</u></p> <ul style="list-style-type: none"> - July 2010: 94.09% closed by 30 April 2011 - August 2010: 95.67% closed by 31 May 2011 - September 2011: 93.06% closed by 30 June 2011 <p><u>Quarter 2</u></p> <ul style="list-style-type: none"> - October 2010: 93.59% closed by 31 July 2011 - November 2010: 91.30% closed by 31 August 2011 - December 2010: 91.31% closed by 30 September 2011 <p><u>Quarter 3</u></p> <ul style="list-style-type: none"> - January 2011: 92.69% closed by 31 October 2011 - February 2011: 87.20% closed by 30 November 2011 - March 2011: 89.62% closed 31 December 2011 <p><u>Quarter 4</u></p> <ul style="list-style-type: none"> - April 2011: 89.4% closed by 31 January 2012 - May 2011: 88.7% closed by 29 February 2012 - June 2011: 90.9% closed by 31 March 2012 	
	Quality control plan		Annual revision of Quality control plan	31 March 2012	The Quality Control Plan was revised and approved by EXCO	

STRATEGIC FOCUS AREA 2: OPERATIONAL EFFECTIVENESS

STRENGTHENING THE FAIS OMBUD'S ORGANISATIONAL CAPABILITY, CAPACITY AND PERFORMANCE TO DELIVER ON ITS MANDATE IN AN ECONOMICALLY, EFFICIENT AND EFFECTIVE MANNER, IN ACCORDANCE WITH THE RELEVANT REGULATORY FRAMEWORK						
Measurable Objective	Output	Outcomes	Measurable Indicator	Performance Targets		
				2011/12	Progress on 31 March 2012	Explanation/ Variance
	Implement quality control plan		Implementation of quality plan in line with action plan	100% achievement of activities set out in implementation plan	This objective has been achieved. 100% of the activities in the plan have been implemented.	
To maintain, improve and align IT systems to support business needs and overall objectives by implementing the IT strategy	Approved IT strategy and plan and the successful implementation thereof	Enhanced internal effectiveness and service delivery	Progress against IT implementation plan	90% achievement of milestones for the financial year within the IT strategy and plan	IT strategy and plan were approved. 50% of the activities in the IT plan have been implemented	Three <u>major</u> activities involving case management and business continuity have been incorporated in the 2012-13 IT investment plan to allow proper alignment of IT infrastructure to strategy
To ensure a sustainable source of revenue to fund operations in accordance with the FAIS Ombud's mandate.	Approved Budget	Sufficient funds to deliver on mandate	An approved budget	Complete and approved budget by 31 March	This objective has been achieved. The budget was approved on 28 March 2011.	
	Management accounts		% deviation from budget vs actual	Less than 10% unexplained deviation	This objective has been achieved. There was an insignificant unexplained 4% deviation	
Ensure that appropriate talent is recruited, developed, retained and managed to support the execution of the FAIS Ombud's mandate	Approved recruitment strategy and successful implementation thereof	Appropriate skilled staff and competent staff to execute mandate	Approved recruitment strategy	Approved strategy by March 2012	This objective has been achieved. The recruitment strategy was approved on 18 April 2011.	
	Approved training strategy and plan and successful implementation thereof		Approved and updated training strategy and plan	Approved training strategy by March 2012	This objective has been achieved. The training strategy was approved on 18 April 2011.	
			% of training strategy plan executed	100% of training strategy plan executed by 2012-13	Not applicable in 2011-12	

STRATEGIC FOCUS AREA 2: OPERATIONAL EFFECTIVENESS (continued)

STRENGTHENING THE FAIS OMBUD'S ORGANISATIONAL CAPABILITY, CAPACITY AND PERFORMANCE TO DELIVER ON ITS MANDATE IN AN ECONOMICALLY, EFFICIENT AND EFFECTIVE MANNER, IN ACCORDANCE WITH THE RELEVANT REGULATORY FRAMEWORK						
Measurable Objective	Output	Outcomes	Measurable Indicator	Performance Targets		
				2011/12	Progress on 31 March 2012	Explanation/ Variance
	Approved performance management system	Motivated staff to achieve objectives of FAIS Ombud's	% of adherence to performance management system processes and deadlines	90% of adherence to performance management system processes and deadlines	This objective has been achieved. The FAIS Ombud adheres fully to all performance management systems and deadlines.	
	Succession planning		Date of approval of plan	31 March 2012	This objective has been achieved. The succession plan was approved on 19 March 2012.	
Ensure an effective risk and compliance framework in order to optimise operational and strategic efficiencies.	Approved Compliance and Risk Management Framework and the successful implementation thereof	The FAIS Ombud is seen as a compliant entity	Date of approval of updated Compliance and Risk Management Framework and implementation	31 March 2012	This objective has been achieved. Updated compliance and risk management framework and implementation was approved before the deadline.	
Develop and maintain stakeholder relationships to enhance performance, accountability, and public confidence.	Approved Stakeholder relationship strategy.	Informed and improved co-operation with stakeholders and public confidence.	Approved Stakeholder relationship strategy	Approved strategy by March 2012	This objective has been achieved. The Stakeholder relationship strategy was approved before the deadline.	
			% of marketing and communication plan implemented	90% implementation of activities in the marketing and communication plan	This objective has been achieved. 94% of the plan's activities have been implemented.	Commitment from FAIS Ombud staff and the interest shown by stakeholders in the activities of the office resulted in the reported achievement.

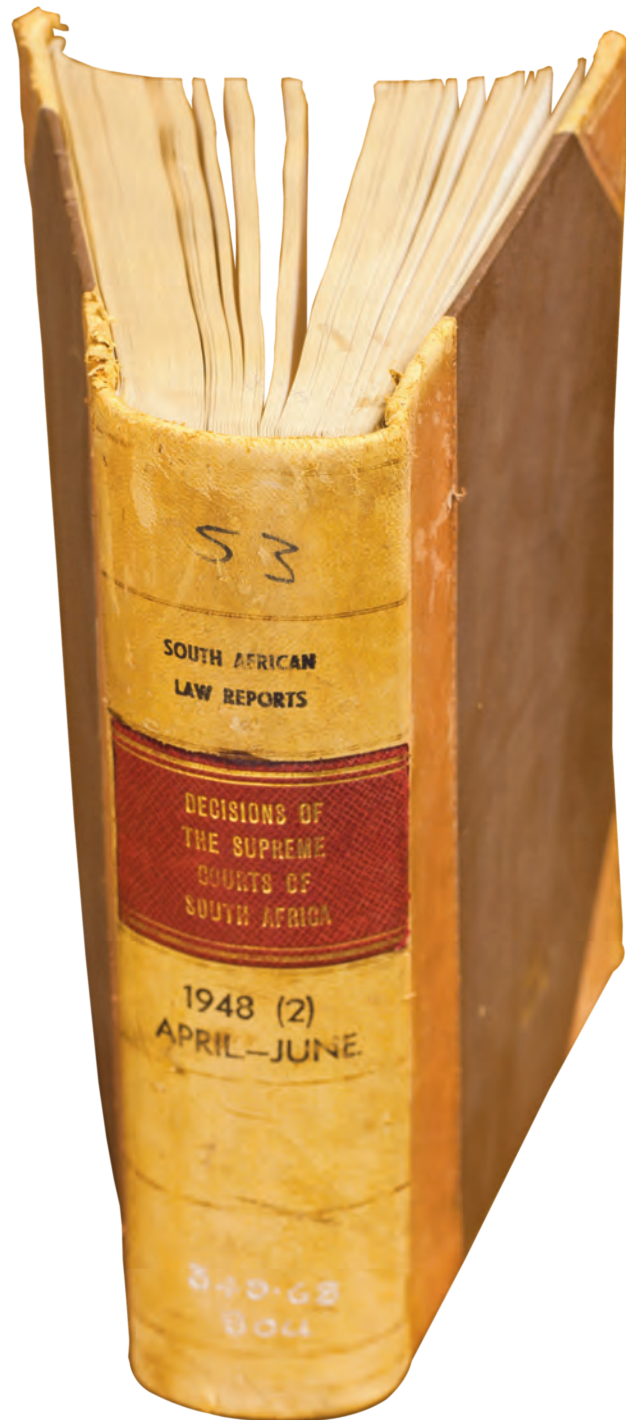


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•BAOBAB HOUSE•

Case No. 123456
The Appellant: John D. Doe
S. 1. 1
(APPELLANT)
September 1; October
WILL
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CASES
DECIDED IN
SUPREME COURTS OF SOUTH AFRICA



Office of the Ombud for Financial Services Providers