

Short-term Bank Deposit Complaints – the FAIS Ombud can help!

As a result of the introduction of the Financial Sector Regulation Act on April 1 of this year, the FSCA is now more than ever dedicated to regulating market conduct across all financial institutions in South Africa. This includes the market conduct of banks in South Africa, which as a result will be directly regulated for the first time. In this regard, National Treasury and the FSCA have published for public comment a diagnostic study prepared by the World Bank aimed at ensuring fairer retail bank practices in South Africa, titled “South Africa Retail Banking Diagnostic: Treating Customers Fairly in relation to Transactional Accounts and Fixed Deposits.

With this in mind and owing to the fact that there would appear to be uncertainty as to the application of the Financial Advisory and Intermediary Services (FAIS) Act with regards to transactional banking, which includes short term bank deposits, this Office thought it important to highlight our mandate in this regard.

In truth, the Office of the FAIS Ombud has always had a mandate to investigate complaints with regards to the financial service rendered in respect of transactional and short-term bank deposits. Not only is “deposit” included in the definition of a financial product in terms of the FAIS Act, but during 2004, a specific Code of Conduct for Authorised Financial Services Providers and Representatives conducting Short-Term Deposit Business, was published under Board Notice 102. This Code mandates the FAIS Ombud to deal with complaints in respect of providers rendering financial services in respect of deposits¹ as defined in the FAIS Act, with a term not exceeding 12 months.

The Code provides in part II, a number of general duties providers are obliged to adhere to, which include the unsolicited contacting of clients, where providers must act honourably, professionally and with due regard to the convenience of the client. The purpose of the contact must be explained. In keeping with the requirements of the General Code of Conduct, providers in terms of this Code must also act honestly and fairly, with due skill, care and diligence, in the interests of clients and the integrity of the financial services industry.

¹ The Banks Act (94 of 1990) in section 1 defines a deposit as an amount of money paid by one person to another, subject to an agreement that an equal amount or a part of this amount will be repaid. This money will be repaid either by the person that received it, or by another person, and can be with or without a premium, on demand, or at specified or unspecified dates. The person making the payment and the person receiving it, can also agree on the circumstances under which it will be repaid, or whether interest will be payable or not, and at which intervals.

[Call 080 111 6666 to anonymously report incidences of fraud at the FAIS Ombud](tel:0801116666)

The Code also requires that a provider must ensure compliance with the provisions thereof in all communications and dealings with a client. Copies of the Code must be made available to clients on request, and relevant information must be made available in plain language, must avoid uncertainty or confusion and must not be misleading. Clients must also not be requested to sign any written or printed form, document or any transaction requirement unless all the relevant details have been completed. More importantly, where the client requested completion of documentation on his or her behalf, it must be a true reflection of the information provided. Furthermore, Section 7 of the Code states that a provider must ensure that contractual terms and conditions are fair and that the rights and responsibilities of clients are clearly set out.

When a provider is furnishing advice to a client, there is a duty to make reasonable enquiries to assess the client's financial needs and objectives, having regard to the circumstances of the client and the type of deposit on which advice is being given, and that at the earliest opportunity, a client be provided with complete and appropriate information of the following:

- The key features of the deposit and recommended safety measures, in order to assist the client to make an informed choice. This should also include any applicable cooling-off periods.
- How a relevant account with the provider will operate, including information on withdrawal of funds, and any applicable special procedures and safeguards.
- Applicable fees and charges, including whether such fees and charges will be negotiable or not. Any applicable additional charges or interest in case of early withdrawals or cancellation should also be disclosed.
- The manner in which funds may be dealt with at maturity.
- Information regarding client identification and verification documents when opening an account or when transacting on an account, as well as the availability of unique identification methods which may include PINS and passwords.
- When account details may be passed to, or required checks may be made with credit risk management services and other legally relevant entities.
- Closing of branches to clients of that branch.
- Closing of deposit accounts of clients, which must only be affected after reasonable prior written notice at the last address of the client furnished to the provider, and without prejudice to any legal

rights of a client in respect thereof. It will however be permissible to effect closing of accounts without prior notice to the client, if and when so required by law.

Clients must be informed of the recording of telephonic conversations, and the reasons therefore. There are strict requirements for the advertising of deposits, in that information may not be misleading, fraudulent or untrue.

The Code makes provision for a complaints handling process that providers must abide to. However, consumers who are experiencing concerns with regard to the manner in which they were advised of, or how the financial service was rendered in terms of their transactional accounts or short-term deposits and where there these concerns have not been adequately addressed by the provider, can contact the office of the FAIS Ombud to lodge a formal complaint. Complaints can be submitted telephonically on 012 762 5000, in writing via e-mail (info@faisombud.co.za), via fax on 086 764 1422 or directly on the website (www.faisombud.co.za).