

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

HELD IN PRETORIA

CASE NO: FOC 934/05/GP (1)

In the matter between:

JENNIFER PATRICIA MALAN

Complainant

and

**STANDARD BANK FINANCIAL CONSULTANCY –
A DIVISION OF STANDARD BANK LTD**

Respondent

**DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL
ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002 ('FAIS Act')**

The Parties

[1] Complainant is Jennifer Patricia Malan, adult female aged 61, married out of community of property with accrual, a bookkeeper, residing at 11 Kirmara Lodge, Troupant Place, Bryanston, Johannesburg, Gauteng.

[2] Respondent is Standard Bank Financial Consultancy, a division of Standard Bank Limited, a registered bank in terms of the laws of the Republic of South Africa, and an authorised financial services provider in terms of the FAIS Act, with its principal place of business at Standard Bank Centre, 7th Floor, 5 Simmonds Street, Johannesburg.

The Complaint

- [3] The Complainant wrote to this Office on 5 May 2005 complaining about the conduct of the Respondent.
- [4] In her complaint, Complainant alleges that one Louis Pfeiffer ('Pfeiffer'), an employee and authorised representative of the Respondent, misled her into purchasing a financial product not suited to her needs.
- [5] Complainant at all material times laboured under the impression that a money market account linked to her cheque account had been effected. Instead, a unit trust investment had been sold to her.
- [6] Complainant also alleges that no financial needs analysis was conducted to determine her financial needs.
- [7] As a result, Complainant alleges that she suffered loss due to Pfeiffer's conduct.

The Response

- [8] Upon receipt of the complaint, this Office dispatched a letter together with the letter of complaint on 3 June 2005 to the Respondent, providing it with

an opportunity to resolve the complaint within the six weeks period as prescribed in the Rules on Proceedings of the Office of the Ombud for Financial Services Providers ('the Rules'). This Office received no response to the letter dated 3 June 2005 from Respondent.

[9] In a letter dated 19 July 2005, this Office informed the Respondent that as the matter is unresolved, it is proceeding to investigation. This Office, accordingly requested the Respondent's response to the complaint, in terms of section 27 (4) of the FAIS Act.

[10] On 25 July 2005, the Respondent wrote to this Office, stating that it could not find any wrong doing on its part and 'therefore cannot entertain the Complainant's request for compensation.'

[11] Respondent's reply consisted of a covering letter together with the following attachments:-

[11.1] A letter dated the 21 June 2005, from Richard Browne ('Browne'), a Consultancy Manager from the Respondent's Sandton office;

[11.2] A letter dated 3 May 2005 addressed to Complainant by Browne;

- [11.3] An e-mail dated 26 July 2005 from Pfeiffer to JP du Plessis ('du Plessis'), Manager: Customer Services;
- [11.4] A form titled 'Financial Consultancy Record of advice';
- [11.5] A form titled, 'Financial Consultancy Needs and Risk Analysis';
- [11.6] A document titled, 'FAIS Disclosure and other legal information';
- [11.7] A form titled, 'FICA DECLARATION'.
- [12] In its response, Respondent does not specifically deny the allegations set out in the complaint. Instead it furnished this Office with the above documents. A discussion on these documents will follow in the course of the determination.

Is this complaint justiciable before the Ombud?

- [13] This is a complaint over which the FAIS Ombud has jurisdiction. The broad allegations are that the Respondent in rendering the financial service, which resulted in Complainant's loss, failed to comply with the FAIS Act. The failure, so the allegations go, was that the Respondent did

not take into account Complainant's needs and objectives. It also appears that no full disclosure of fees had been made.

[14] It is quite clear and not in dispute that the financial service was rendered by a representative of the Respondent, acting in the course and scope of his employment with Respondent.

[15] The alleged loss is the sum of R32 000.00 which falls within the jurisdictional limits of this Office.

The Context

[16] The complaint arises against the following factual background:-

[16.1] During March 2005, the Complainant and her husband, Peter Malan, sold their family home for the sum of R1 000 000.00. Complainant, although still in employment is of pensionable age. She and her husband, a pensioner already, wanted to acquire a smaller property for their retirement with part of the proceeds. Any balance remaining after the property purchase would tide them over during their retirement.

[16.2] On 15 March 2005 Complainant went to Epson Downs of the Standard Bank to open a money market account linked to her existing cheque account with the Respondent. According to Complainant she needed the funds to be available at short notice for the purposes of acquiring another property.

[16.3] On her arrival at the branch, Complainant proceeded to the enquiries desk and was met by Ms Martha Mboe ('Mboe'), a bank consultant, with whom Complainant made a prior appointment over the telephone to open a money market account. Complainant alleges that Mboe was very busy attending to telephone calls and other customers. Whilst busy completing the application form for the money market account at the bank's reception, Mboe informed Complainant that she should wait for Pfeiffer, who would be able to assist her. Pfeiffer was at Respondent's Fourways Branch and Complainant had to wait for his arrival. Mboe did not mention whether Pfeiffer is a financial advisor or bank consultant.

[16.4] During the consultation with Pfeiffer, Complainant explained to him that she wanted to place the R1 000 000.00 in a money market account. She also explained her need to have access to the money on short notice in order to acquire a smaller property

where she and her husband could spend their retirement years. Complainant was advised by Pfeiffer that he could provide her with a new product, 'a special managed account', that would suit her requirements and with a better return than that of the money market account. Complainant asked whether there were any risks involved and Pfeiffer's reply, somewhat jokingly, was only if the bank collapsed.

[16.5] Complainant alleges that save for asking her what her annual income was; no further enquiries were made by Pfeiffer. Pfeiffer allegedly told Complainant that as all her details were already with Respondent there was no need for her to wait and that he would complete the rest of the documentation. All she needed to do was sign. The documentation was signed and the consultation lasted no more than 10 minutes.

[16.6] It is common cause that apart from Pfeiffer disclosing an 'initial one off deposit fee of 1%', to which Complainant agreed, no other costs, fees or charges were disclosed.

[16.7] No further consultations took place after this.

[16.8] The following day, 16 March 2005, whilst busy with internet banking, Complainant discovered that the R1 000 000.00 had been withdrawn from her cheque account but no new linked account existed. She immediately tried to contact Pfeiffer. She was unable to contact him, as he was apparently away on holiday. On the same day, Complainant contacted Respondent's Customer Services Department and she was only then informed that the funds had been invested in a unit trust fund. Complainant was shocked to discover this, as at no stage was she ever told that the funds were to be placed in a unit trust investment.

[16.9] Complainant's husband eventually got hold of Pfeiffer a few days later. Pfeiffer informed him that they should remain in the investment as they had already paid the costs and that the fund would perform. Pfeiffer also suggested to the husband that the costs would be easily recovered.

[16.10] Complainant's son, Wayne Malan, after being informed of the situation by Complainant, then contacted Pfeiffer's manager, Browne. After this telephonic conversation with Browne, a letter, dated 3 May 2005 was faxed to Browne stating all the facts with a request to cancel the unit trust investment and to restore the original investment amount.

[16.11] Shortly after this on the same day, Wayne Malan received a telephone call from Pfeiffer advising him that Complainant should remain in the investment in order for the costs to be recovered. Later on the same day Complainant received a letter, per facsimile, from Browne dated 3 May 2005 dismissing her request to reinstate the original capital stating that ‘...SBFC cannot entertain a claim for charges or unrealised interest’. Attached to this letter was a repurchase form to undo the investment.

[16.12] The repurchase amount of R976 197.14 was paid into Complainant’s bank account on 5 May 2005.

[16.13] This amount has since been invested in a money market account with another bank.

Determination and reasons

Failure to respond to Complainant’s allegations

[17] Complainant in her first letter dated 3 May 2005 to Respondent, states the following:

'I expressly asked for a money market account, with no market risk and for the flexibility to withdraw a portion or all of the funds within a short period of time in order to purchase a new property.'

[18] Supporting this statement, in the letter of complaint which was sent to this Office on 5 May 2005, Complainant expresses the same sentiment. Paragraph 2 of the letter reads:

'We had the intention of buying a replacement property at the soonest opportunity and thus needed the funds to be available at short notice'.

[19] This allegation has not been denied by Respondent. Indeed it is confirmed, although in a different manner, by this somewhat cryptic note in Respondent's record of advice: 'invest savings to build house'. Although one would find it strange that a couple in retirement years would want to build a house, I accept that Respondent knew that there was a need for Complainant to access the money at short notice to acquire property.

[20] Respondent confirmed in the e-mail dated 26 July 2005 that Complainant approached their branch in order to open a 'savings vehicle'. However, Pfeiffer suggested to Complainant that '...we could facilitate an investment structure with a potentially better return in excess of the bank's Money Market.'

[21] The Respondent has furnished this Office with two letters from Browne and an e-mail from Pfeiffer with attachments. Both letters do not pertinently challenge Complainant's version. What Respondent states is that the product was appropriate and that Complainant signed certain documents and agreed to the contract.

[22] Respondent's failure to deal pertinently with Complainant's allegations leads one to conclude that Complainant's version must then be accepted to be the truth.

[23] The case law deals with instances where there is silence or no response on stated allegations. The enquiry is to reach a finding on a balance of probabilities, which must be weighed against the background of all the circumstances. Davis J in *Maitland and Kensington Bus Co (Pty) Ltd v Jennings* 1940 CPD 489 at 492, states the following:

'For a judgment to be given for the plaintiff, the Court must be satisfied that sufficient reliance can be placed on his story for there to exist a strong probability that his version is the true one.'

[24] Thus what are being weighed in the balance are not quantities of evidence, but the probabilities arising from that evidence and all the circumstances of the case.

[25] It is also my view that the allegations are admitted since it has not been dealt with even though Respondent had been afforded time to deal with the allegations put to them. Thus the principle expounded in *Absa Bank v W Blumberg and Wilkinson* 1997 3 SA 669 at 673 H that:

‘Every allegation of fact in the combined summons or declaration which is not stated in the plea to be denied or to be admitted shall be deemed to be admitted.’

can be extrapolated to support my view in this matter.

[26] The court further held in *East Asiatic Co. (S.A.) Ltd v Midlands Manufacturing Co. (Pty) Ltd* 1954 (2) SA 387 (C) at 391 E:

‘...mere silence cannot be taken as acceptance unless there is some duty upon defendant to speak.’

[27] Respondent was, in terms of the Rules, given an opportunity to resolve the complaint. Respondent was also given an opportunity to respond to Complainant’s various allegations but elected to ignore them, alternatively

remained silent. There was therefore a duty on Respondent, in terms of Rule 6 (d) and (f) of the Rules, to address the issues raised by Complainant.

Appropriateness of Advice and Non-Compliance with the Act

[28] The General Code of Conduct for Authorised Financial Services Providers and Representatives, as promulgated in Board Notice 80 of 2003 and published in Government Gazette 25299 of 8 August 2003, sets out various duties which providers must comply with when rendering financial services. I propose to deal with Respondent's conduct in the light of the various sections in the Code.

[29] Part II, section 3 (2) (a) of the Code provides:-

'A provider must have appropriate procedures and systems in place to-

a) record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act, this Code or any code drafted in terms of section 15 of the Act;'

[30] Pfeiffer in his e-mail dated 26 July 2005 to du Plessis states:

'I explained all risks with regard to the investment and took a reduced fee due to Mrs Malan's age and status.'

[31] No record could be found of how and where these risks were explained, notwithstanding the documents provided to this Office.

[32] There is no record of communication to support what is said. It is already mentioned that a provider is required to record verbal and oral communications with its clients regarding the financial service rendered. In addition to the above, section 9 of the Code provides that a provider must subject to and in addition to the duties imposed by section 18 of the Act and section 3 (2) of this Code, maintain a record of the advice furnished to a client as contemplated in section 9, which record must reflect the basis on which the advice was given and in particular-

‘(a) a brief summary of the information and material on which the advice was based;

(b) the financial products considered; and

(c) the financial product or products recommended with an explanation of why the product or products selected, is or are likely to satisfy the client’s identified needs and objectives:’

[33] I have no record of information and material on which the advice was based. There were definitely no other products considered and there is no

explanation recorded anywhere to give a clear picture as to why the product sold is likely to suit the Complainant's identified needs and objectives.

[34] It is clear that the document called the 'Record of Advice' was simply filled in without due regard to the above requirements. This document was signed by Complainant and as part of the document is a 'Customer declaration', which lists a number of aspects that a client agrees to. Amongst these aspects is the statement that 'I confirm that an analysis of my financial needs was conducted'. Complainant pertinently denies that an analysis was conducted, which serves as proof that this document was simply presented to Complainant for signature. This issue will be dealt with below.

[35] The Code, in terms of section 8, provides that a provider prior to providing a client with advice must:-

- '(a) take reasonable steps to seek from the client appropriate and available information regarding the client's financial situation, financial product experience and objectives to enable the provider to provide the client with appropriate advice;
- (b) conduct an analysis, for the purposes of the advice, based on the information obtained;

(c) identify the financial product or products that will be appropriate to the client's risk profile and financial needs, subject to the limitations imposed on the provider under the Act or any contractual arrangement;'

[36] With reference to the above requirements of the Code, I now deal with Pfeiffer's e-mail to du Plessis. This e-mail is dated 26 July 2005. The first two lines of the e-mail read:

'I met with Mrs JP Malan on the 15/03/2005 when she came into the bank to open a savings vehicle. I suggested to her that we could facilitate an investment structure with a potentially better return in excess of the bank's Money Market.'

[37] This e-mail signifies that Respondent had a preconceived idea of what the financial product was, regardless of Complainant's circumstances.

[38] Respondent recommended a product which clearly is in conflict with Complainant's needs. Complainant had informed Pfeiffer that she would need her funds on short notice to acquire property, but Pfeiffer nevertheless places her in an investment which clearly did not suit that need.

[39] During the consultation no other characteristics of the product were discussed with the Complainant and no other product had been considered apart from the product sold. In the record of advice Complainant confirms by her signature that she was given 'all relevant information and furnished with applicable terms and conditions of the products'. It has been established that a fund fact sheet was provided to Complainant only after the complaint was lodged.

[40] The court per Kroon J in *Poultney v Absa Brokers and Another* Eastern Cape Division case number 430/200 (unreported) states at page 22 paragraph 45:-

'A needs analysis embraces not only a thorough analysis of the client's applicable affairs and actual financial needs, but also a determination, by the application of the adviser's knowledge and skills, of which services would best fulfil the client's particular needs (ILPA code, par.2.2). To be read therewith are the provisions of para.2.9 of the code which required, *inter alia*, that the advantages and limitations of any service offered to a client should be explained to him or her so that an informed decision thereanent might be made.'

The various provisions of the Code referred to above clearly incorporate the principles expounded by the learner Judge herein.

[41] Complainant simply signed forms and it is evident from the documents provided by Respondent that there was no intention to conduct a needs analysis or to make relevant disclosures as required by the FAIS Act. This is confirmed by Respondent's failure to challenge the Complainant's statement that no financial needs analysis was conducted. It is not a sufficient response to merely state that the documents were signed. No material terms of the product was disclosed to Complainant, although documents were signed. Therefore the *caveat subscriptor* rule cannot apply in this instance. (See in this regard *Maxidor (Pty) Ltd v Flexware (Pty) Ltd*, Cape of Good Hope Provincial Division, case number A352/2003 (an as yet unreported judgment) at paragraphs 15-16.

[42] This Office has been furnished with documents by the Respondent, which purportedly aim to support the conclusion that the provider had embarked on the exercise of a needs analysis and also did a risk analysis, which would ultimately lead to the identification of the product that would best suit the Complainant's need.

[43] In particular a record of the essence of what was discussed should provide some assistance but as I have stated it does not exist. This record should reflect the information gathered during the conversation about the financial circumstances relating to the Complainant which would lead to the advice provided.

[44] In the document titled 'Standard Bank Financial Consultancy Record of Advice' under the section 'Summary of Advice' the needs identified was to 'invest savings to build house'. The document further reflects that the products recommended were 'managed flexible' and the motivation for products recommended were 'well diversified-interest & capital not guaranteed'. This again serves as proof that only one product was considered.

[45] Upon examination of the document titled 'Financial Consultancy Summary Needs and Risk Analysis', the following was noted:-

[45.1] On Page 1 of the Needs Analysis document, there is a block for the Customer's details. Under this block, there are smaller tick boxes which must be marked to indicate the Complainant's marital status. This is not marked. In fact, Complainant states that she is married out of community with accrual;

[45.2] On the same page, there is a block into which information about existing insurance and investment portfolios is to be filled in. The information required also relates to the company providing the product benefits. No information is filled in, indicating that the Complainant does not have any insurance policy. On further enquiry Complainant confirmed that she had a policy as well as an investment;

[45.3] Of fundamental importance is a block for 'Broker's note authorisation'. No details are filled in except Complainant's signature and the date. This document enables providers to establish as much information as is necessary to conduct the analysis set out in section 8 of the Code. It simply confirms that nothing besides Complainant's R1 000 000.00 was considered when the financial service was rendered. How advice can be provided without establishing these crucial details is a cause for concern;

[45.4] On page 2 of the Needs Analysis, information is sought as to the assets and liabilities of the Complainant. No information is included at all; only R1 000 000.00 is written next to investments, which was the savings to be placed in the money market account. Complainant, however, had other assets at that stage being a townhouse and a vehicle. Complainant further had liabilities in respect of a motor vehicle lease;

[45.5] Apart from a note of the annual income of Complainant I have no other record of income or expenditure statement that would have informed the financial needs analysis that was alleged to have been conducted by the Respondent;

[45.6] The above are just some of the critical aspects that I have detailed which points to a singular lack of care and concern for the needs and objectives of the Complainant when this financial service was rendered;

[45.7] On the basis of what I have highlighted in the preceding subparagraphs, it is abundantly clear that Respondent had no intention to conduct a financial needs analysis.

[45.8] All of these factors confirm Complainant's version that no analysis was done and the consultation in fact lasted 10 minutes.

[46] The Code specifically requires a provider in terms of section 3 (1) (a) (vii) to disclose all amounts, sums values, charges, fees, remuneration or monetary obligations mentioned or referred to therein and payable to the product supplier or the provider, be reflected in specific monetary terms. The section further states that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably predeterminable, its basis of calculation must be adequately described. Once again, Respondent failed to address this, by simply stating in the letter addressed to Complainant 'It is clearly stated that there is a fee on this investment, which was in fact done at a discount, through the financial advisor concerned'.

[47] It is accepted that an initial fee of 1% was disclosed to Complainant. However, apart from this no other fees or charges were disclosed. Just to indicate some of the disclosures that are required to be made when a unit trust is purchased, the Office looked at a document compiled by the Association of Collective Investments titled 'Unit Trust Fact Sheet'. Under the heading 'Everything you need to know about unit trust fees and charges', fees such as VAT on initial charges, annual fees, trailer fees, switching fees, exit fees and performance-based fees are mentioned as some of the fees and charges that a consumer should be made aware of. In addition, the tax implications of this investment were not discussed with Complainant. Capital Gains Tax is payable on these types of investments when investors sell their units. Again this was not disclosed to Complainant.

[48] The 'Stanlib Managed Flexible Fund Fact Sheet' was signed by Complainant. Respondent simply relies on the fact that it was signed by Complainant and therefore assumed she was aware of what type of investment this was and the fees charged. The font size used in the 'statutory and general terms and conditions' document is 'HelveticaNeue' size 4. The writing is so minuscule that the document can only be read with the assistance of a magnifying glass. It is my conclusion that Complainant could never have read the 'fine print' during the consultation or at any other stage and that the document was simply given to her to

sign. As stated under [41] *supra* the *caveat subscriptor* rule cannot apply in these circumstances.

[49] I cannot understand from any of the documents provided, how Respondent could conclude that the product would be appropriate to Complainant's need and objectives.

[50] From Respondent's conduct it is apparent that foremost in Pfeiffer's mind at the time of his consultation with Complainant was that he sell her the financial product that he had in mind and not what the Complainant needed.

[51] It is my conclusion that the product was not suitable to Complainant's needs and objectives and that the advice provided was not appropriate in the circumstances.

[52] Part VI, section 7 (1) (c) of the Code, requires a provider to furnish a client at the time of rendering a financial service, with information to enable the client to make an informed decision about the product. The information set out in this section is, *inter alia*:-

'(i) Name, class or type of financial product concerned;

- (ii) nature and extent of benefits to be provided, including details of the manner in which such benefits are derived or calculated and the manner in which they will accrue or be paid;
- (iii) Where the financial product is marketed or positioned as an investment or as having an investment component -
 - (aa) concise details of the manner in which the value of the investment is determined, including concise details of any underlying assets or other financial instruments;
 - (bb) separate disclosures of any charges and fees to be levied against the product, including the amount and frequency thereof and, where the specific structure of the product entails other underlying financial products in such a manner as to enable the client to determine the net investment amount ultimately invested for the benefit of the client;

[53] Pfeiffer's e-mail response to the complaint does not even allude to the above mentioned information. Surely, this must have signalled something about the information furnished to the Complainant about the product, seeing that savings and access were the main issues raised by the Complainant.

[54] In the letter by Browne, to whom this complaint had first been referred to, he concludes that he had found nothing to suggest that Complainant was

misled. It is difficult for me not to conclude that even Browne's inquiry into this matter was short sighted, biased and indicates a clear lack of understanding of the Code.

[55] It appears as if Respondent's primary focus was to earn commission rather than addressing the needs of Complainant. It is obvious that no commission would have been paid by Complainant had the money been invested in a money market account. Commission earned on this transaction was R 6 840.00. All this in the space of a 10 minute exercise. This certainly paints a lucrative picture for aspirant financial advisors. It explains why certain advisors would rather opt to do shoddy work and not pay attention to the detailed provisions required in the FAIS Act and the Code. When the focus, as is evident in this case, is primarily on commission then it would not inure to the benefit of consumer protection and the integrity of the financial services industry.

[56] The entire language used in the complaint indicates that at no stage was Complainant aware that the product she was buying was not a traditional bank product. This is especially so because she was in the portals of a bank where this transaction was concluded. She was also not aware that the product she purchased was a unit trust, governed by the Collective Investment Schemes Control Act 45 of 2002, a different set of laws to those governing a traditional bank product.

[57] This indicates that the Respondent was not upfront and frank about the nature, class and type of product sold to the Complainant. At all material times, the Complainant believed that her money was with the bank. This is evidenced in her complaint where she says:

‘The following day I discovered that the R1 000 000.00 had been withdrawn from my cheque account but no new linked account existed.’

[58] The nature of the product is simply not the same as a bank account. The fund fact sheet, in minuscule print, provide under ‘statutory disclosure and general terms and conditions’ that:

‘Collective investment schemes in securities are generally *medium to long term investments*. The value of participatory interests may go down as well as up and past performance is not necessarily a guide to the future. *An investment in the participations (sic) of a collective scheme in securities is not the same as a deposit with a banking institution.*’ (my italics)

[59] It further strikes me that out of all the disclosures that are to be made in terms of the Code, the focus on Pfeiffer’s letter revolves around the interest and fees of the investment. Clearly the issue here is not only fees

but the fact that Complainant laboured under the impression that her money was invested in the bank linked to her cheque account.

[60] I further fail to understand why the product discussed, was only compared on the basis of return. This is clearly in conflict with Part III, Section 4 (4) of the Code which specifically provides that:

‘A Provider may not, in dealing with a client, compare different financial products, product suppliers, providers or representatives, unless the differing characteristics of each are made clear, and may not make inaccurate, unfair or unsubstantiated criticisms of any financial product, product supplier, provider or representative.’

[61] Respondent simply told Complainant that he had a product with a much better return than that of the money market, without specifying the differing characteristics and the material features of the new product as stated under paragraph 60.

[62] The Code in terms of section 3 (1) (a) (iv) requires a provider, Respondent in this instance, in rendering a financial service that representations made and information provided to a client must be provided timeously so as to afford the client reasonably sufficient time to make an informed decision about the proposed transaction. The legislature certainly did not envisage such a complex investment to be concluded within 10 minutes. By

concluding a transaction in the way Respondent did, simply shows disregard for this requirement of the Code. It is difficult to imagine that a client could have made an informed decision in these circumstances.

Conclusion

[63] In the circumstances of this case, Respondent failed to take material information, particularly Complainant's needs and objectives into consideration when the Complainant was advised.

[64] This failure resulted in Respondent placing Complainant's funds in a unit trust investment, which eventually caused Complainant to suffer loss.

[65] I am satisfied that Complainant was advised to invest in unit trusts prior to establishing her needs, that the documents were completed just as a formality without paying any attention to the questions and answers so provided.

[66] There is sufficient basis to conclude that the Respondent did not have the Complainant's interests in mind at the time of rendering the financial service, hence the quality of information recorded in the formal documents provided to support the Respondent's case.

[67] I am therefore satisfied that the Complainant has a valid complaint in terms of which a financial service has been rendered and the provider has both contravened the provisions of the FAIS Act. Respondent's conduct has caused the Complainant to suffer financial prejudice. In the circumstances, Complainant will have to be placed in a position she would have been in, had it not been for Respondent's inappropriate advice and the investment.

[68] The complaint is upheld and an order is made in the following terms:

Order

[69] It is hereby ordered that :-

[69.1] Respondent pays the Complainant the difference between R1 000 000.00 and the amount paid to Complainant on the repurchase of the unit trusts;

[69.2] Respondent provides a schedule of interest calculations to this Office within a period of 14 days from date hereof, such interest to be payable as if the funds were invested in the money market account, taking into account the date of investment, the date of

repurchase and the amounts withheld since repurchase to date of final payment;

[69.3] Interest as stipulated in paragraph [69.2], above shall be paid to Complainant within seven (7) days of reaching agreement thereon with this Office;

[69.4] Respondent pays this Office the case fee of R1 000.00, together with Value Added Tax at the rate of 14 %.

DATED AT PRETORIA ON THIS THE 20th DAY OF OCTOBER 2005



CHARLES PILLAI
OMBUD FOR FINANCIAL SERVICES PROVIDERS