



Annual Report 2010

OUR CREDO

We believe our first responsibility is to the constitution of the Republic of South Africa and to the statutory mandate which created our organisation. We are completely independent and deal with all disputes fairly and impartially.

Our service is for people from all backgrounds. We will look at the facts of each complaint – not at how well the case is presented. No one should need any special expertise or professional help in order to bring their complaint to us.

We aim to give clear, sound and logical reasons for our decisions – any fair-minded person will understand why we reached a particular conclusion.

We are not bound by formal and rigid procedures to resolve complaints and we aim to be flexible in our approach.

We will engage all concerned to help both consumers and financial services providers understand their respective rights and responsibilities. Our ultimate aim is to reduce the level of complaints and improve confidence in the financial services industry.

We must constantly strive to educate both ourselves and those we serve about our services and make our services easily accessible. We will ensure all parties in a dispute have an opportunity to present their case. In doing so, we will ensure the dignity of those we serve by treating each with utmost respect and courtesy.

We must at all times build a collegiate base that is diverse and equitable and encourage contributions to our core business. We are responsible to ensure that each of our colleagues is regarded as an individual and experiences an affirming and empowering learning environment.

We must be mindful of the ways in which we help our colleagues fulfil their family responsibilities. We must encourage each other to communicate our opinions, feelings and indeed, our grievances in an environment conducive to amicable resolution, not recriminations. We will support each other, to be innovative, to exercise reasonable initiative, and to share our learning.

We are responsible to the communities in which we live and work and to the larger international community. We must be good citizens and support civic initiatives.

We believe our final responsibility is to industry. Business must make sound profit, underpinned by good corporate governance and moral values. We must explore and suggest fresh approaches to consumer services in the course of our enterprise.

We believe when we operate according to these principles, we will all realise a significant improvement.



CONTENTS

Foreword by Minister of Finance	2
Financial Services Board Chairman's report	3
FAIS Ombud's operational report	5
Growth in complaints	10
The work we do	11
Our determinations	12
Statistical information on determinations and settlements	19
Where do our complaints come from?	20
What products do people complain about?	21
How complaints were referred to other forums	22
Settlements	24
Staffing	36
Engaging our stakeholders for mutual benefit	38
Annual financial statements	40
Performance information	61



The principle that we subscribe to is that ethical and moral practices are sustainable and by no means incompatible with commercial success.

Noluntu Bam
FAIS OMBUD



FOREWORD BY MINISTER OF FINANCE



"The recent financial crisis taught us important lessons on the importance of full disclosure and prudent advice to consumers of financial products."

Pravin Gordhan
MINISTER OF FINANCE

South Africa is well on its way to economic recovery, following one of the harshest financial crises in our lifetime. Our financial services sector, especially our banks, did not require any government assistance to survive the direct impacts of the crisis due to sound and robust macroeconomic policy and financial regulatory standards. This financial sector, together with real estate and business services, also happens to be the largest contributor to our GDP, and one of the most sophisticated globally.

The recent financial crisis taught us important lessons on the importance of full disclosure and prudent advice to consumers of financial products. South Africa has had its fair share of unfit and improper persons and institutions rendering financial services and advice to consumers. As government, we remain committed to ensuring that anyone who receives financial services in South Africa does so with confidence. This confidence is important for financial stability.

The cardinal role which the financial sector plays in any society and economy has also necessitated the need to protect consumers of financial services from unscrupulous and unfit brokers. It is in pursuing this objective that the FAIS Act, which establishes the FAIS Ombud, came into existence in 2002, with the objective of protecting the consumer against the miss selling of financial products and misleading advice.

The FAIS Ombud, therefore, plays a cardinal role in our society by providing a convenient and free service to all consumers who feel they have been unfairly treated by financial intermediaries. The willingness of the Office of the FAIS Ombud to interact with all sectors of society has made it both accessible and credible. This is embodied in the FAIS Ombud's Credo of the Office which states: "We will engage all concerned to help both consumers and financial services providers understand their respective rights and responsibilities. Our ultimate aim is to reduce the level of complaints and improve confidence in the financial services industry." This approach has been

pivotal in garnering the industry and community's trust. The Office of the FAIS Ombud must be able to discharge its responsibility without any fear and bias. Indeed, even-handedness is the guiding basis for the work of this Office. For example, in *Francois Barnard vs First Global Investment Managers (Pty) Limited*, the Ombud had no hesitation in stating: "In the instance, complainant was the author of his own misfortune and seeks to blame everyone but himself for his losses. This is not borne out by the evidence."

On the other side of the coin, errant advisers and institutions have also been exposed for inequitable conduct. Systematic practices masquerading as industry practice have been exposed by the Office of the FAIS Ombud. The fact that determinations become public documents reveals both the practices and perpetrators to public scrutiny.

I would like to thank Mr Charles Pillai, who has run the Office of the FAIS Ombud ably since its inception, including the period under review, for his service and wish him well with his new role as the Pension Funds Adjudicator. We also welcome Ms Noluntu Bam, the newly appointed Ombud and wish her and her team every success in this challenging but exciting public role. Lastly, I would like to thank the FAIS Ombud staff for the valuable contribution that they have made and continue to make in ensuring a fair and equitable financial services sector.

Pravin Gordhan
Minister of Finance

FINANCIAL SERVICES BOARD CHAIRMAN'S REPORT



"In many instances, it is a lack of information and education that allows individuals to be misled into entrusting their life savings to unregistered schemes promising excessive returns. We must do everything within our power to enhance financial literacy".

Abel Sithole

CHAIRMAN: Financial Services Board

Six years ago the Office of the Financial Advisory and Intermediary Services (FAIS) Ombud opened its doors to consumers to lay complaints on suspected miss selling of financial products and inappropriate advice. Charles Pillai was appointed as the first FAIS Ombud and served the Office in an exemplary manner until March 2010. This report pertains to the corresponding financial year-end of March 2010 and, as such, the events and data reported pertain to his stewardship. On behalf of the Board of the Financial Services Board I take this opportunity to thank him for his dedication and commitment to fulfilling the mandate as set out in the FAIS Act and taking up the challenge of setting up the Office from scratch and building it into a reputable adjudication institution. I wish him well in his new endeavours.

The Board of the Financial Services Board has appointed Ms Noluntu Nellisa Bam as the FAIS Ombud with effect from 1 April 2010. I welcome and congratulate her on her appointment.

Ms Bam is highly qualified and brings a wealth of experience to her role as FAIS Ombud. She has served as assistant and deputy FAIS Ombud. Prior to her joining the Office of the FAIS Ombud she worked as a legal practitioner in the financial services industry. She is thus well placed to carry the mandate of the FAIS Act with skill and integrity, and to execute her responsibilities without fear or favour.

During the year under review, the outgoing FAIS Ombud continued his quest to ensure that consumers get full disclosure and receive fair treatment.

In the determination of *De Jong vs Insurance Maintenance Planning* he tackled the very pertinent question of anomalies within the insurance industry pertaining to motor vehicle alarms.

In the instance, a claim in respect of a vehicle factory-fitted with an alarm, which was certified by the vehicle manufacturer as having the same level of security as an

insurance industry VESA system, was declined at claims stage by the insurer on the basis that the alarm system did not meet VESA standards, despite the vehicle manufacturer stating that it was equivalent.

Fortuitously for the insurer, it also required the fitment of a gear lock, which allowed an additional basis of repudiation. Put simply, vehicle owners, who have insured their vehicles on the understanding that their alarm system complies, run the risk of only finding out to the contrary when their claim is declined at claim stage. This is despite insurers having access to all relevant information at underwriting stage.

Charles Pillai felt it necessary to refer a copy of the determination to the South African Insurance Association, Financial Services Board, Ministers of Finance and Trade and Industry, as well as the Automobile Manufacturers of South Africa. There can be no doubt that this decision and its impact have been noted within the industry and led to a review of practice.

In the determination of *Hare vs Andre van der Merwe* he tackled the all-too-common problem of the peddling of unlisted shares, which also proved to be worthless to the consumer by a broker not licensed to sell them. As before, Mr Pillai decried the lack of enforcement that allowed such schemes to flourish and called for greater co-operation and co-ordination between regulatory bodies.

Appealing to consumers' greed, these schemes attract people from all social strata. However, in many instances they target the financially unsophisticated and those who can least afford it. The devastating social impact that these schemes have on people's lives does not usually grab headlines. Instead, the victims quietly join the numbers of those who are disempowered and disadvantaged, swelling the ranks of those already dependent on social grants.

There is a saying that 'the poor will always be with us', as if it is something that is inevitable, a consequence of their

FINANCIAL SERVICES BOARD CHAIRMAN'S REPORT

continued

own doing. Instead, we should be questioning what role we can play in helping to alleviate the poverty cycle. In particular, given the content of this report, I am referring to the way in which those within law enforcement and the financial services sector can act to protect people's savings and investments from fraud and abuse.

We need to recognise and then act swiftly and harshly in instances of abuse. White-collar crime must be seen for the damaging impact that it has on the very social fabric of society. In many instances, it is a lack of information and education that allows individuals to be misled into entrusting their life savings to unregistered schemes promising excessive returns. We must do everything within our power to enhance financial literacy.

Education is one of the greatest tools in the fight against poverty. It is our duty to ensure that the information is not only disseminated to the financially literate, but filters down to those that need it the most.

I note in the credo of the FAIS Ombud that: "Our service is for people from all backgrounds. We will look at the facts of each complaint, not at how well the case is presented. No one should need any special expertise or professional help in order to bring their complaint to us." This is a noble ideal given that complainants will, in all likelihood, not eloquently set out the issue at dispute or even be aware of the root cause of their problem. Even complainants who are educated and may be considered financially savvy, in most instances, lack the financial expertise and correct terminology to properly identify the issues.

Whilst economies of scale and education dictate that the have's are usually able to negotiate fees and select the financial instruments with the cheapest cost structure, the have not's are usually faced with the greatest costs and sometimes inappropriate products, which eat disproportionately into their meagre savings.

In such instances the FAIS Ombud is the last recourse for consumers against institutions with deep pockets and legal expertise.

I commend Ms Bam for taking the challenge of adjudicating complaints from aggrieved consumers who believe they have been misled or products and services misrepresented by providers and their representatives.

I also take this opportunity to express the Board's appreciation of the work of all the staff of the Office of the FAIS Ombud and the FAIS Ombud Committee.

Abel Sithole

Chairman: Financial Services Board

We must at all times build a collegiate base that is diverse and equitable and encourage contributions to our core business. We are responsible to ensure that each of our colleagues is regarded as an individual and experiences an affirming and empowering learning environment.

FAIS OMBUD'S OPERATIONAL REPORT



Noluntu Bam
FAIS OMBUD

Whilst Charles Pillai has since taken up the challenge as the new Pensions Fund Adjudicator, the achievements of the period under review arose out of his leadership and mentorship. In many respects the term 'mentorship' is more appropriate, given that it is a truer reflection of the guidance which he gave to so many of the staff.

The Office credo is the theme of this report. In essence these are the principles directing the Office. It is appropriate in that the former FAIS Ombud believed strongly in these principles and directed the Office accordingly. He firmly believed that our ambitions and aims in life must be grounded in a greater moral responsibility. This benefits not only the greater community, but has a profound effect on our own wellbeing.

If we accept that our actions have consequences far beyond what we can imagine, then we must accept the moral consequences of such actions. In South Africa we have enough experience to show us that one person can make a difference. That difference and magnification thereof, however, depends to a great degree on how a group acts in unison or a supporting role.

We must lead by example and assume our responsibilities. In terms of the Office we have an obligation and we believe our first responsibility is to the Constitution of the Republic of South Africa and to the statutory mandate which created our organisation. We are completely independent and deal with all disputes fairly and impartially.

This has resulted in our having to make some decisions which in some quarters are seen as unpopular. In essence we were seen as having gone against well-established practices. The mere fact that a course of business has been conducted in a certain way for decades does not in any way imbue it with the force of law or some moral certainty.

It is required of us that we make these decisions even though wiser counsel may advise against it. If it fails

constitutional and moral guidelines then such practices have no place in our society. This in no way means that we do not accept that financial institutions have as one of their primary goals the making of profit. In fact in terms of our credo we believe our final responsibility is to industry. Business must make a sound profit, underpinned by good corporate governance and moral values. However, the principle that we subscribe to is that ethical and moral practices are sustainable and by no means incompatible with commercial success.

As the English poet John Donne stated "no man is an island" – a fact only too evident in the recent BP disaster in the Gulf of Mexico. Our actions, or in this case mistakes, can have consequences far beyond those we imagine.

We have a responsibility to our environment and our fellow human beings. The simple act of switching off a light bulb or recycling on its own may make an insignificant difference but a combined effort may make a lasting contribution to all our wellbeing.

Sustainable business is no different. Price-fixing such as that exposed by the Competition Commission recently feeds into inflation and damages development in the economy as a whole. In short we sacrifice long-term gains for quick profits.

Excessive costs and fraudulent schemes rob people of their life savings, condemning many to poverty. Most likely to be impacted are the poor and vulnerable sectors of society who are then unable to break free from this cycle and make a meaningful economic contribution to society. Critically this hamstringing future generations, given that their offspring will often lack easy access to education and economic circumstances will force early dropouts from the education system.

This need not be the case, and the Grameen Bank in Bangladesh is an example and a source of inspiration. This institution extended microloans to poor sectors of the

community without requiring collateral and on terms that are fair and reasonable. This has allowed many to exit this trap and go on to establish small businesses which contribute to the economic wealth of India.

We have to start thinking long term, in particular how our decisions impact our clients and in turn their children, for nurtured correctly these become the future clients and entrepreneurs of a new generation.

As such we regard our Office as a learning institution, not just in the narrow formal sense of degrees and diplomas but more importantly combining exposure and practical experience on so many different levels. I personally have a passion for nurturing personal development and have no hesitation in affording staff every opportunity to acquire new skills.

This aligns with our credo which requires that: "We are responsible to ensure that each of our colleagues is regarded as an individual and experiences an affirming and empowering learning environment." As such our Human Resources Policies and Procedures Manual allows for generous study and examination leave as well as financial assistance in the form of a bursary covering both books and study materials.

Understandably, given our duty to the public, our motives cannot be entirely altruistic. We have a duty to deliver improving levels of service and efficiency. Continually evaluating our systems and procedures plays a material role but core is relevant staff knowledge and experience. Bluntly put, we need to ensure that our staff have the know-how to get the job done in the most efficient manner.

Operational requirements, therefore, dictate that the course of study is relevant, thereby adding to and complementing the knowledge base within the organisation. As might be expected the granting of a bursary is linked to the staff member agreeing to be bound to serve the Office for a period agreed to.

Many staff, including myself, have used and continue to use these benefits with everything from Bachelor of Commerce, Diploma in Financial Planning, Certified Financial Planner®, Masters in Business Leadership and Business Administration as well as Bachelors in Law being tackled during the year.

Within the Office we also accept the responsibility that we bear towards our colleagues. "We must at all times build a collegiate base that is diverse and equitable and encourage contributions to our core business." Whilst there can be no doubt that there is an obvious practical aspect to this given that we have 11 official languages and different cultures, this diversity has contributed so much to the Office. Diversity brings with it the strength of multifarious ideas and approaches to productivity. We live in an increasingly global environment which requires that our perceptions adapt accordingly. Creating the right environment enables us to take the Office into the future.

The forging together of teams and an Office identity have contributed much to the success which we have achieved. What makes the Office special is the passion people have for helping not only clients but their colleagues. Without this teamwork and the ideas that follow we would be so much poorer.

Our statistics

With the Office and FAIS Act now well and truly part of the financial services landscape one would expect to see an improvement in the manner in which advice is rendered as well as the attendant compliance elements such as record-keeping. On the whole our experience has been that to an extent this is indeed the case although there is still much to be done.

Now whilst the markets recovered to a degree from the second quarter of 2009 we have experienced financial turmoil and uncertainty over the last couple of years which we would expect to result in more complaints. Indeed, whilst compiling this report, we received an update from the International Network of Financial Services Ombudsman Schemes. Contained wherein was a report from Doug Melville, the Ombudsman for Banking and Investment Services, Canada. Of relevance was that they experienced a 48% increase in banking and investment complaints in the year 2009 as opposed to 2008. He went on to state that "while banking sector complaints were up 21%, investment complaints were up a staggering 73%". The global economic crisis, coupled with sharp declines in financial markets, gave rise to much of the increase in complaints. However, despite the improvement in the markets over the last year, complaint volumes remain high. We expect this to continue.

As such I would have expected our figures to have shown a similar trend, and indeed during the 2008/09 year complaints within FAIS showed a substantial 87% increase. The total number of complaints and enquiries increased by 29,6%.

However, looking at the year under review I note that the total number of complaints showed a smaller gain, increasing by just 3,11% from 7 416 to 7 647. No doubt the recession impacted on the number of financial products purchased and statistics indicate that whilst growth occurred it was very limited within certain products. However, of the complaints received, 2 653 fell within our jurisdiction, an increase of 24,8% on the preceding year. Clearly, however, statistics indicate that of the complaints received far more now fall within our jurisdiction.

What is interesting is that in terms of the cases which were settled involving monetary compensation, these declined marginally from 616 in the previous year to 580 this year, a drop of 5,8% and this despite the increased case load.

The quantum of settled and determined cases also evidenced a marked drop, declining by 27% from R32,9 million to R24,09 million.

Case managers indicate that as mentioned in the first paragraph of this section they are encountering increased levels of compliance. Whilst it is still too early to draw definitive conclusions, I am hopeful that figures highlighted are in fact an indication of such, particularly given that as illustrated a number of similar institutions elsewhere are still experiencing a substantial increase in complaints.

In last year's annual report we included an article on appeals by Natu Ranchod, then an Assistant Ombud who we are very pleased to mention has recently been appointed to a permanent position as a High Court Judge with the Pretoria division. Judge Ranchod had in the past served the division in an acting capacity.

In the article he effectively highlighted the contrast between the aims of the FAIS Act, which is to provide for a procedurally fair, economical and expeditious dispute resolution process, and the appeals process prescribed by the Act. In simple terms the appeal process corrupts the primary intention and converts it into a very legalistic and technical approach accompanied by attorneys/advocates and attendant costs.

In the article Mr Ranchod made mention of the case of *Maduray vs Action Plan Management and Renasa Insurance Company*. Then on appeal, the progress whereof encapsulated the problems enunciated by the Office on the appeals process. Indicative of this is the unequal weight of resources brought by the respondent given that it had appointed two senior counsel to appeal the decision whilst the complainant remained unrepresented. The old phrase 'its just not cricket' immediately comes to mind here.

It is quite likely that appealing the matter will cost the respondent more than the amount awarded against it.

We have no hesitation in stating that our procedures are such that all parties to a complaint, especially respondents, are given more than sufficient opportunity to present whatever evidence and submissions they might wish to make. Taking this into account and considering the aims and objectives of the FAIS Act, it is time that we give due consideration to levelling the playing fields and only allowing appeals by the complainant themselves. This would of course require buy-in from the industry itself. But given that this process is successfully followed by the Financial Services Ombud in the United Kingdom, one of the largest schemes of its type in the world, there is no reason why we should not learn from them.

Trends

The Financial Services Ombuds Schemes (FSOS) Act was created as a catch-all provision to enable the FAIS Ombud, acting in the capacity of statutory ombud, to deal with complaints against financial service providers that up to then did not fall within the jurisdiction of any existing ombud scheme.

The relevance thereof is evident in the determination of *S Chetty vs Orange Insurance*. In the instance, given that Orange Insurance did not fall under any other scheme, were it not for this piece of legislation the complainant would have had to resort to the courts, a potentially expensive and time-consuming process.

Whilst it is unlikely that the Office will ever deal with a large number of FSOS complaints, this is nevertheless an important piece of legislation, underpinning a number of settlements each year. In addition further determinations are likely to follow in the year ahead.

Whilst, as already mentioned, there have been improvements within the industry, particularly in so far as record-keeping is concerned, we still have some way to go in ensuring appropriate advice. This transcends just what products the adviser is able to offer and enters the question of whether such products offer real value for money to clients. There are still too many instances of products being designed merely for the benefit of the institution itself, without accepting any responsibility for poor performance, in many instances attributable to a combination of high costs and poor management.

In addition to the above there are of course the more obvious manifestations of human greed as evidenced by a recent *Business Report* headline dated 26 February 2010.

'MILLIONS LOST IN GAREK SCAM'

This headline is the result of a determination released by the Office, namely that of *Hare vs Van der Merwe*. Mr and Mrs Hare invested in GAREK, an unlisted company, based on the promise that the company would shortly list and the purchase price effectively increase from R2,50 to R20 per share.

In reality Van der Merwe had made in the region of R4,5 million in commission, flogging this scheme to various investors. As for GAREK, of the R74 046 875,99 received from investors only R299 061,89 was left at the time of a report compiled by the Department of Trade and Industry.

In many instances these schemes are perpetrated by the same individuals involved in earlier schemes and yet never prosecuted. As such we require effective prosecution of those behind the scams.

It is time that we accept that we all bear a collective responsibility to tackle this problem. For it is only by taking action where it is our responsibility and in turn demanding the same where it rests elsewhere, that we have any chance of succeeding.

In addition and as part of the same case we called for greater regulation of financial products. Until the release of two determinations which I will deal with hereunder, the jurisdiction of the Office was understood to be limited to a list of financial products as defined within the FAIS Act.

The impact of this was that in many instances clients believed that they were investing in legitimate financial products, subject to FAIS protection and yet when the complaint is brought to FAIS the adviser claims either that the investment was not a financial product and not subject to our jurisdiction, or alternatively that the client was aware that they were investing in something outside the FAIS boundaries.

In addition we occasionally encounter financial products that, whilst an investment, in every sense appear to have been intentionally designed to circumvent FAIS legislation.

Clearly there was a need for clarification within this area, and with it being our responsibility to interpret the Act we deemed it desirable that we issue an appropriate determination, which would provide guidance to advisers and industry alike.

FAIS OMBUD'S OPERATIONAL REPORT continued

The first of these and a matter reported on in last year's annual report was *Nebbe vs MJ Oosthuizen* where we held that as a licensed financial adviser you are obliged to sell only such products that fall within the FAIS definition.

This was reaffirmed within this financial year in the decision of *WJ Malan vs Willie Jordaan* wherein Jordaan questioned the Office's jurisdiction to determine the matter on the basis that bridging finance was not a financial product. In this case dealt with on page 16 of this report we went further and stated 'it is important to note that section 8(1)(c) of the code provides that after seeking information about a client's financial position and conducting an analysis thereof the adviser must identify the financial product or products that will be appropriate. In other words the adviser is not to give advice on a product that is not defined as a financial product.

Where the adviser has another business and the relationship between the parties is of a different nature, and the complainant is unequivocally aware that FAIS Act and its protection do not apply, there may be an exception to this rule.

This should, however, in no way be interpreted as allowing a financial adviser to steer clients towards their own scheme.

A further issue that has been of concern to us for some time is that of motor vehicle alarms. It is not uncommon for an insured to only find out at claim stage that their insurance claim is repudiated on the basis that their vehicle alarm does not meet a particular VESA standard.

Few, if any, would be able to advise as to the level of security system currently in our vehicles. Even the year of manufacture is no indication that the vehicle meets applicable standards. The Office is currently dealing with a complaint involving a 2007 motor vehicle from a well-known brand which, after it was stolen, turned out to not meet VESA specifications. According to the broker involved, when he enquired from the dealership prior to insuring the vehicle as to the alarm status, he was advised that it was a VESA Level 4 coded key.

The insurance company involved was aware that it did not meet standards and claims to have required a certificate that a VESA Level 4 system was installed. The confirmation supplied by the broker on his letterhead was

a confirmation of motor insurance with a section that stated VESA Level 3 or 4 approved and next to immobiliser the answer 'yes'.

Despite the insurance company being aware from its own systems that the vehicle did not have the requisite system it made no attempt to ask for a certificate from whoever would have installed such a system.

The case of *M de Jong vs Insurance Maintenance planning* highlighted on page 13 is another example of the confusion faced by the average vehicle owner. As such the then Ombud, Charles Pillai made the following recommendation.

"I therefore recommend that motor manufacturers, the Financial Services Board (FSB) and SAIA must meet to thrash out this apparent anomaly in the interests of ensuring that consumers who have factory-fitted alarm systems are not left to the whim of either insurers or SAIA itself when it comes to payment of claims involving theft of motor vehicles with factory-fitted alarms/immobilisers. To this end a copy of this determination is being sent to the CEO of SAIA, to the FSB, and to the National Association of Automobile Manufacturers of South Africa (NAAMSA)."

Conclusion

The success of the Office is attributable in no small way to the support which I have received from so many quarters. In particular I make mention of Adv Dube Tshidi, the CEO of the FSB and Abel Sithole, Chairperson of the board of the FSB. Most importantly this would not have been achieved without the hard work and dedication of all the FAIS Ombud staff. I also recognise that they in turn are dependent on the support of their families and as such personally extend my thanks not only to the staff but also their families. "We must be mindful of the way in which we help our colleagues fulfil their family responsibility".

Working together we have created an environment which fosters personal growth and an organisation of which staff are proud to say "I work for the FAIS Ombud Office".

Noluntu Bam

We will engage all concerned to help both consumers and financial services providers understand their respective rights and responsibilities. Our ultimate aim is to reduce the level of complaints and improve confidence in the financial services industry.

Case administration team



Ashwin Singh, Rebotile Manakana, Phumza Mtshemla, Mpho Mojapelo and Jaco van Rensburg



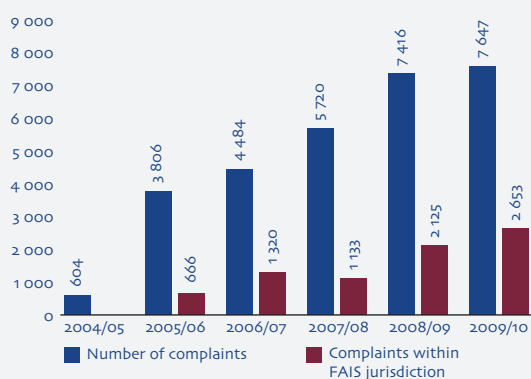
David Davidson (Assistant FAIS Ombud South Africa) and Caroline Mitchell (Lead Ombudsman Financial Services Ombudsman Service: United Kingdom) at the Annual Conference of the International Network of Financial Services Ombudsman in Ireland in June 2009



Stella Matamela (Assistant FAIS Ombud: appointed August 2009)

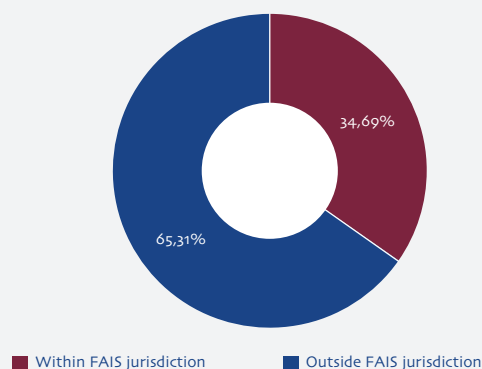
GROWTH IN COMPLAINTS

Growth in number of complaints



The number of new complaints filed with the Office increased from 7 416 in the 2008/09 financial year to 7 647 in this financial year – an increase of 3%. However, out of those complaints, 2 653 fell within our jurisdiction, an increase of 24,8%.

Overview of complaints and inquiries 2009/10



Key:

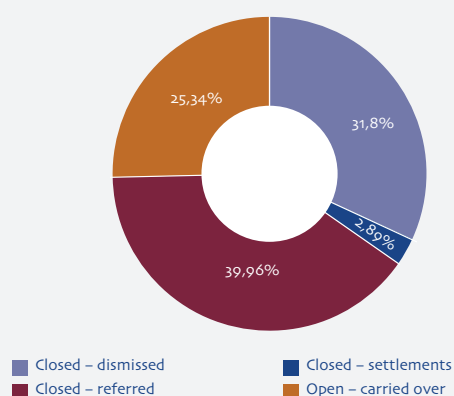
Within FAIS jurisdiction: These are complaints that fell within the jurisdiction of the Office and were, therefore, justiciable. These complaints were distributed to the Case Management Division.

Outside FAIS jurisdiction: These are complaints that fell outside the jurisdiction of the Office and includes complaints which were referred to appropriate forums or which were dismissed.

We are not bound by formal and rigid procedures to resolve complaints and we aim to be flexible in our approach.

THE WORK WE DO

How complaints were processed



31,8% closed – dismissed: These are new complaints received in the financial year 2009/10, which were dismissed due to various reasons including but not limited to falling outside FAIS jurisdiction.

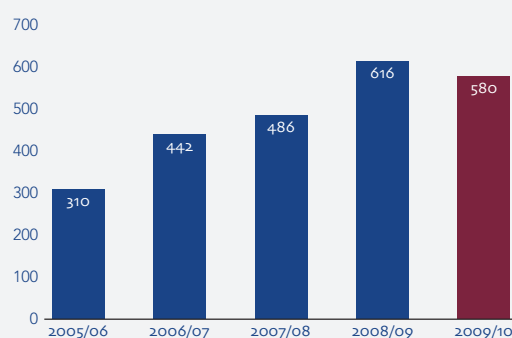
2,8% closed – settlements: These are new complaints lodged in the 2009/10 financial year and which have been successfully resolved in the same financial year.

39,9% closed – referred out: These are new complaints which either fell outside the jurisdiction of the Office or were sent to the Office in error. The complaints were, therefore, referred to various forums/ombud schemes or financial services providers for assistance.

25,34% open – carried over: These are new complaints which fell within our jurisdiction but at financial year-end were at various stages of investigation and adjudication.

74,5% of new complaints were closed in the same financial year. This is a pleasing improvement on the previous year's figure of 59% and reflects a commitment from the Office to deliver an efficient service to the South African public.

Volume of settlements



In this financial year, the Office settled 580 complaints. These include settlements of both new complaints and complaints from previous financial years. The number of settlements declined by 5,8%.

The quantifiable amount of cases settled or determined was R24 091 769, a 26,8% decrease from the previous year.

OUR DETERMINATIONS

We aim to give clear, sound and logical reasons for our decisions – any fair-minded person will understand why we reached a particular conclusion

NH Rakhadani vs Aquarius Insurance **Issued on 11 June 2009**

Complainant's broker switched his insurance cover from Santam to Regent shortly before an accident. Whereas Santam charged a monthly premium of R362,63, Regent's was R400,66. Complainant alleged that it was the increase in premium that resulted in the Regent debit order being dishonoured.

The Ombud had to decide whether respondent was negligent in not informing complainant about the change of insurer and the increase in premium and whether these factors caused complainant not to honour the debit order.

Our investigation revealed that even if the insurance had remained with Santam at the lower premium of R362,63, complainant did not have sufficient funds in his account to meet even that (lesser) amount.

The Ombud dismissed the complaint on the basis that complainant did not have sufficient funds in his bank account to meet even the original premium.

The rejection of the debit order arose out of the fact that complainant had insufficient funds in his account and was not linked to the advisers' actions. In short, there was no causal link between the conduct and loss suffered.

Estate ING Leighton vs Barons Belville **Issued on 11 June 2009**

Upon purchasing a vehicle, Mr Leighton was sold a credit life policy to meet any outstanding debt on the vehicle in the event of death.

Mr Leighton, who had been diagnosed with thyroid cancer in 1997, passed away in November 2007 from cancer and the insurer rejected liability on the basis of Mr Leighton's previous cancer diagnosis, i.e. a pre-existing medical condition.

Mrs Leighton, who had been present when the car was purchased and delivered, requested a copy of the policy documents which she alleged had not been provided to Mr Leighton. Upon perusal of the document, Mrs Leighton realised that Mr Leighton would have not qualified for cover firstly under Clause 2, which excludes cover for persons who have ever suffered from *inter alia* cancer, and secondly under Clause 4, which excludes cover for self-employed persons. Mr Leighton was self-employed.

Respondent was unable to furnish proof that the material terms of the product were disclosed, a written record of advice or any other document to show it had complied

with the FAIS Act and the Code of Conduct whilst rendering the financial service. Instead, it supplied an ex post facto affidavit in support of its version.

The Ombud found that the respondent's representative had failed to apply her mind to the situation. Had she done so, she would have immediately realised that the product was inappropriate to Mr Leighton's circumstances, thereby denying him the opportunity to seek life cover from alternative sources to cover this debt. Respondent was ordered to pay to the estate an amount of R27 265,86 being the outstanding balance owing plus interest thereon.

The affidavit provided by respondent is an ex post facto account of the details of the financial service rendered, deposited to almost five years after the event. A record of advice must be kept at the time the financial service is rendered. If this Office were to accept the affidavit in lieu of a record of advice, it would be weakening the protection which the code aims to provide both to the consumer and the financial services industry.

The provisions of the code are not only there to protect consumers. It is also there to support the cause of the respondent. The record of advice is often the sole piece of evidence to shed light on what actually happened at the time.

SM Mashiloane vs Tshukudu Investment **Issued on 2 September 2009**

Complainant invested R300 000 with Tshukudu Investment Group (Pty) Limited, the first respondent. He was to receive interest at a rate which translated to R9 000 per month. All dealings with the first respondent took place through Sello Edward Matsepe, the second respondent, who was its active and only director.

At the end of April 2007, complainant requested that he be refunded the capital and the balance of the interest due as he received the monthly interest payments of R9 000 for nine months only. This resulted in him being paid a further two payments of R1 900 and R2 000. Respondent described these payments as a gesture of goodwill for the inconvenience caused, i.e. the delay in refunding complainant's capital and outstanding interest. Second respondent apparently made numerous promises to repay complainant, but failed to do so over a protracted period of more than 14 months.

Our investigation found that in addition to not being licensed to render financial services, there was no record of necessary documentation, i.e. financial needs analysis, client advice record and risk analysis as required by the

Code of Conduct for Financial Services Providers. There was virtually no information available from respondents about the financial service rendered.

The Ombud ruled that respondents failed to comply with the requirements of the FAIS Act when they advised the complainant to invest the amount of R300 000 through Tshukudu Investment Group. Both respondents were found liable to the complainant for the amount of his loss and were ordered, jointly and severally, to pay complainant the sum of R300 000 together with interest at the rate of 15,5% per annum from 1 May 2007.

There is no record that indicates that the complainant was in a position to make an informed decision with regard to this investment.

CJ de Vries vs JA Louw Issued on 23 September 2009

Complainant lodged a complaint with this Office alleging that contrary to his instructions, respondent replaced an existing endowment policy which was to mature in 2011 with an Odyssey endowment which he later learnt would mature only in 15 years' time.

Complainant alleged that although he had paid R6 000 in premiums on the Odyssey policy, the cash value was only R1 606 after deduction of the commission paid to respondent, plus other costs. He cashed in the policy and was paid out a surrender value of R1 056 hence his claim for the difference of R4 944 plus interest from respondent.

In response to the complaint, respondent alleged that over the years he met with the complainant a number of times and he had never indicated any dissatisfaction with his portfolio. The decision to invest for a term of 15 years had been jointly made on the basis that after complainant had received his retrenchment package, it would provide him with a substantial return for later requirements.

The Ombud was not satisfied with respondent's version and eluded *inter alia* to respondent's failure to keep copies of the record of advice which would have cast light on what exactly transpired at the time the advice was given. Furthermore, when respondent realised the existing endowment policy was not providing an adequate return, a probable option would have been to switch the portfolios in which it was invested – at minimal cost to complainant.

The Ombud said that the switch to a new product – with the looming retrenchment of the complainant – to a 15-year term could not have been prudent in the given circumstances and seems in all probability to have been commission-driven.

The Ombud ordered respondent to pay the complainant R4 994 plus interest of 15,5% per annum from seven days after the date of order to date of payment.

M de Jong vs Insurance Maintenance Issued on 18 November 2009

During June 2006 respondent cancelled complainant's Santam policy and insured complainant with Mutual & Federal Insurance Company Limited (M&F). The vehicle security requirements in terms of the Santam policy were that the vehicle be fitted with a VESA-approved immobiliser whilst M&F required an ABS-approved gear lock to be fitted within 14 days. The basis for this was that according to M&F, the factory-fitted immobiliser fitted to the complainant's vehicle did not comply with M&F's minimum security requirements. The vehicle was stolen on 29 July 2006 and the claim repudiated by M&F on the basis that no ABS-approved gear lock had been installed. Additionally reliance was placed on the fact that the alarm system did not meet the requisite VESA standards.

Complainant alleged that the change in insurer and attendant variation in security requirements were not communicated to him. Consequently, he could not adhere to the required security measures.

Respondent maintained that contrary to complainant's assertion sufficient notice was given of the shift in insurers and the additional security requirements imposed by M&F. According to respondent it was complainant's duty to familiarise himself with the requirements of the M&F policy. Respondent further contended that had complainant remained with Santam, the claim would have, in any event, been repudiated as the vehicle was supposedly not fitted with a VESA-approved immobiliser in spite of complainant being aware of this requirement.

The Ombud found that no policy schedule was forwarded to complainant by respondent and that the correspondence sent by respondent did not detail the terms or conditions of the new policy. The Ombud said M&F's requirement of a gear lock as an additional security feature was such a material change as to require that this term be explicitly brought to complainant's attention. On the question of whether, had complainant remained with Santam, the claim would have been honoured, the Ombud pointed to Santam's representations to our Office wherein they stated that if the manufacturer confirms in writing that the immobiliser does agree with the VSS standards, they would accept the claim. This was so confirmed by manufacturer.

The Ombud held that respondent was negligent by either neglecting to advise complainant of the additional security requirements or more likely by failing to notice them in the first place. As a consequence, complainant did not install an approved gear lock, and the claim was repudiated on this basis. The Ombud held that there was thus a clear causal link between respondent's failure to carry out its responsibilities and the financial loss suffered by complainant as a consequence. Complainant's vehicle was insured for R49 600 by respondent. An excess of R5 460 was applicable. Respondent was ordered to pay complainant R44 140.

Insuring motor vehicles is probably one of the single biggest businesses of the short-term insurer in South Africa. Unfortunately, we have got to a stage where at claim stage, the consumer has no way of knowing whether the insurer will accept the claim or repudiate it. This then calls into question the very purpose of insurance and the consumer could very well ask: "Where is the point of having insurance when you are not sure whether your claim would be paid or not?"

S Lotz vs Momentum Group Issued on 18 December 2009

Complainant in her capacity as executrix of her late husband's estate lodged a complaint with our Office, claiming an amount of R260 000,00 together with interest. The claim is for damage she allegedly suffered as a result of advice furnished to her late husband by a representative of respondent. The advice, complainant claims, led to the cancellation of several of deceased's life policies and an endowment policy at a time when deceased's health militated against such action.

In effect her allegation was that the adviser might have taken advantage of deceased's state of health, inducing him to sign cancellations whilst under the influence of morphine. According to complainant, the adviser's conduct in relation to *inter alia* the cancellation of the endowment and a further policy issued by Old Mutual Life provide a causal link to the cancellation of the Myriad life policy worth R260 000,00.

The Ombud had to decide whether respondent was liable to pay compensation for the damage that complainant allegedly suffered as a result of the cancellation of the Myriad policy.

In order to answer the above, it was necessary to consider the sequence of events. The letter addressed to respondent cancelling the Myriad policy is dated 29 March 2007. The letter cancelling the endowment is dated 13 April 2007. A record of deceased's bank

statements was also obtained in order to assist this Office in further investigating the merits of the complaint. The bank statements indicated a history of failure to service policy premiums. As a result a number of deceased's policies had lapsed due to non-payment of premiums. In addition the cancellation of the policies occurred prior to deceased's illness being diagnosed and the Myriad life policy had been cancelled directly by deceased apparently without the assistance of the adviser.

Based on the sequence of events and deceased's bank records there was no basis for the Ombud to conclude that the adviser's conduct had any part in the cancellation of the Myriad policy. The complaint was, therefore, dismissed.

The bank statements indicated a history of failure to service policy premiums. As a result a number of deceased's policies had lapsed due to non-payment of premiums.

S Chetty vs Orange Insurance Issued on 24 December 2009

Complainant lodged a complaint against respondent, wherein he claimed that he had comprehensively insured his vehicle with respondent.

The vehicle was involved in an accident and Technostar Auto Body Repairers was authorised by respondent insurer to effect the necessary repairs. The repairs were done and despite numerous requests from Technostar, respondent failed to make payment. Technostar had refused to release the repaired vehicle to complainant until the repair costs had been paid.

As respondent was not a member of the Short-term Insurance Ombud Scheme, complaint was accepted under the Financial Services Ombud Schemes Act which empowers the Ombud for Financial Services Providers to act as a statutory ombud in such cases.

Complaint was sent to respondent requesting it to resolve the matter with complainant within seven days. The director of respondent provided a rather convoluted response claiming that the claim in question was part of a forensic audit being conducted by the Financial Services Board (FSB). Respondent also alluded to a dispute with Fleetsure (Pty) Limited and Zurich (an insurer) in explaining why it should not be held liable for outstanding claims.

The Ombud was of the view that respondent's dispute had no bearing on the crisp issue at hand. The complaint was upheld and respondent was ordered to pay R101 949,60 for the cost of repairs to the motor vehicle;

R2 000 for the towing charges; and storage charge at the rate of R190 per day from 31 March 2009 to the date of release of the vehicle by Technostar to complainant.

Of cardinal importance is that the respondent accepted liability for complainant's damages and has not furnished this Office with any logical or acceptable explanation for its failure to honour its undertaking to pay for complainant's damages.

This determination was therefore the first in a series that may follow against respondent.

S Kaywits NO vs MG Meiring t/a Eco Sure Issued on 8 October 2009

Complainant alleged that when respondent assisted him to switch his short-term insurance policy from Auto and General (A&G) to Santam during November 2004, he failed to properly advise him of Santam's security requirements resulting in a burglary claim being repudiated.

Our investigation revealed that respondent had used information from the earlier A&G policy to obtain the Santam quotation. Whereas A&G's underwriting questioned whether all opening windows, including louvres and fanlights, were fitted with burglar bars, Santam additionally asked whether security gates were fitted to all external doors.

Despite his insistence that "the quotation was discussed with the client, as well as all the terms, conditions, excesses applicable and so forth", respondent was unable to prove that he pertinently drew complainant's attention to the differences in the two insurers' questions. Notably respondent stated that he obtained the quotation based on information in the A&G policy schedule. The Ombud came to the conclusion that either Meiring or a responsible staff member answered the question without confirming the true facts. This was at best negligent and at worst reckless.

The Ombud upheld complainant, but deemed it prudent to separate the issue of quantum from the merits. The parties had to agree on the loss suffered which complainant avers is R23 614,77 and had provided quotations in support. If they fail to reach an agreement, either party may approach this Office to determine the quantum.

In general the security requirements as required by insurers in this day and age are of such an important nature that it is incumbent upon financial services providers to accord them special attention. They no doubt constitute a huge difference in premiums as well as the level of risk insurers are willing to assume.

IGB Scott vs W Gray and Quantum Leap Issued on 3 November 2009

From August 2004 to July 2005 complainant invested various amounts of his retirement capital totalling R600 000,00 into forex currency trading on the advice of respondents. Due to jurisdictional issues, the Ombud could only look at two investments – R130 000 made in January 2005 and R200 000 made in July 2005. In all the transactions, complainant would transfer funds on the advice of respondents into Reymount Investment Limited (Reymount). Reymount had its origins in the island of Jersey. The trading company was known as Kerford (Pty) Limited with its principal place of business in Sandton.

The investigation by the Ombud found that as early as April 2004, Quantum Leap became aware of an email circulated by the Jersey Financial Services Commission warning the public against investing with Reymount and specifically that Reymount was not a registered financial services provider in Jersey or in South Africa. Despite this, respondent nevertheless advised complainant to make an investment of R130 000 in January 2005.

Kerford later applied for a licence as a discretionary financial services provider but the application was declined by the FSB on 12 April 2005. On 11 May 2005 the FSB warned Quantum Leap that Reymount would not be recognised as a clearing firm for forex trading as required by the regulations. Despite the warning and without informing complainant of this, Quantum Leap nevertheless advised the complainant to make a further investment of R200 000,00 in July 2005 in the very same entities.

In determining the matter, the Ombud found that respondents actively advised and assisted clients to invest in unknown entities; the advice provided was negligent considering that the authorisation status of the entities was never disclosed; in so far as the investments made after the FSB had warned the respondents that the licence of the entities was not approved, the advice was wholly inappropriate and borders on reckless conduct; important and critical information relating to the rejection of the licence of the two entities was withheld from complainant in total disregard of the law; and respondents failed to act with due skill care and diligence.

In computing compensation, the Ombud took into account that of the R330 000 invested, complainant received R134 514 by way of monthly advances. Complainant was also remitted an amount equivalent to R95 311,25 at the time he closed the investment in June 2006. The Ombud, therefore, ordered respondents to pay complainant the sum of R100 174,75 together with interest.

Due skill, care and diligence would at its most basic level demand that providers comply with the law.

WJ Malan vs Willie Jordaan **Issued on 20 January 2010**

Complainant, who had wanted to invest in either retail bonds or a two-year fixed deposit plan at Nedbank, was advised by broker Willie Jordaan rather to invest R110 000 in a bridging finance scheme in the now collapsed Fidentia Holdings. The scheme was managed by Auctum Capital (Pty) Limited.

In response to complaint, respondent did not dispute that Malan was advised by him to invest in Auctum Capital. Instead he relied on the fact that because bridging finance was not a listed financial product as defined in the FAIS Act, he did not need to comply with the FAIS Act. Thus, so his defence went, the Ombud had no jurisdiction to hear the complaint.

In upholding complainant the Ombud found that firstly, respondent's conduct did fall within the FAIS Ombud's jurisdiction. Secondly, the Ombud pointed to section 8(1) (c) of the General Code which provides that after seeking information about a client's financial position and conducting an analysis thereof, the adviser must "identify the financial product or products that will be appropriate".

Therefore, by giving advice on a product that is not a defined financial product, respondent had clearly acted in contravention of the FAIS Act. The Ombud stated: "If schemes such as bridging finance and so-called investment clubs were to be allowed to be marketed by financial services providers (FSPs) on the basis that they fell outside of the FAIS Act, then it would frustrate the very purpose for which the FAIS Act was designed. Unscrupulous financial advisers will continue to ensnare unwary investors who may then have no recourse against the provider concerned. It may be tempting for the FSP to market products that do not fall within the definition in the Act in the knowledge that they may not be called to account by this Office or the Financial Services Board for the financial service rendered in that regard."

The Ombud held respondent liable for complainant's loss of R110 000.

In other words the adviser is not to give advice on a product that is not a defined financial product. If he or she does, they are clearly acting in contravention of the FAIS Act and this Office is, in my view, duty bound to determine such a matter not on the basis whether it does or does not have jurisdiction but on the basis that the FSP is falling foul of the FAIS Act in recommending a product not defined in the Act.

HG Raman vs Old Mutual **Issued on 21 September 2009**

Complainant, a 90-year-old pensioner, acting on the advice of respondent's representative, withdrew R560 000 from his Standard Bank savings account and invested it in the Old Mutual "Dynamic Floor" unit trust fund. Complainant's need was for a safe fixed investment to supplement his pension. Respondent's representative promised a 90% guarantee on capital and guaranteed income of R5 000 per month. When he later received an investment statement, he noted that his fund value now stood at R492 836,16. This represented a decrease of R52 163,84 even after taking into account the R15 000 already withdrawn. Complainant wished to disinvest at this early stage, but was convinced by respondent's representative to remain in the investment. Complainant eventually withdrew from the investment on 7 August 2008 and received the sum of R450 833,41 on disinvestment.

In response to complaint, respondent stated there was insufficient evidence of any negligence or misrepresentation on the part of their representative.

Although, prima facie it appeared that all material requirements of the FAIS Act had been complied with, the Ombud found several inconsistencies in respondent's version and supporting documentation including:

- the fact that the risk assessment document showed a time frame of 6 to 9 years for when complainant intends to start withdrawing, whereas the withdrawals had started almost immediately;
- the product did not contain any explicit guarantee but rather aimed to avoid capital losses greater than 10% over any 12-month period;
- respondent's client advice record reflected complainant's risk profile as conservative as opposed to the moderate risk profile indicated in the risk assessment document;
- evidence of documents having been altered after the fact; and
- commissions were not properly disclosed.

The Ombud found that the investment was not meant for complainant and it would have been more appropriate to have left him where he was. Respondent's conduct violated the General Code and as a result complainant suffered a loss resulting in respondent being ordered to compensate complainant in the amount of R40 359,05 plus interest which he would have earned had he remained at Standard Bank.

After the release of the determination an internal Old Mutual newsletter had the following to say: "Based on the evidence gathered during the investigation a disciplinary hearing was held followed by an appeal, which resulted in the summary dismissal and debarment of the adviser. This was primarily based on a finding of fraudulent conduct relating to the completion/alteration of documentation."

Complaints related to investment performance have increased with the economic downturn and care must be taken to differentiate between something that is in essence 'buyer's remorse' as opposed to non-disclosure or inappropriate advice.

There is certainly nothing wrong with efforts to obtain better performance and subject to the requirements of the FAIS Act being met, this Office will not intervene in instances where returns are not as expected.

F Barnard vs First Global Issued on 31 March 2010

Complainant, at 61 years old and effectively a pensioner, having been retrenched from Sanlam in 2001, was invested in an Investment Linked Life Annuity (ILLA). This investment was managed by respondent in accordance with a discretionary investment mandate.

Complainant alleged that respondent went against his wishes and risk profile and placed his funds in a "very aggressive" portfolio resulting in him experiencing significant losses in the recent downturn in world markets. He further claimed that respondent failed to comply with his explicit instructions to move to the money market during the downturn and in addition that respondent had altered documentation and/or made attempts to deliberately mislead him.

In March 2009 when the markets were at their absolute bottom, and contrary to respondent's advice complainant withdrew the mandate and personally switched the funds into the money market thereby locking in any diminution in value.

In dismissing the complaint, the Ombud found that on the contrary respondent had not exceeded his mandate. Instead it appeared that complainant's risk exposure was on the conservative side and as such aligned with complainant's own stated risk profile.

Furthermore, whilst there had been discussions between the parties pertaining to a possible move to the money market there was no evidence of this ever being a confirmed instruction. Neither were the complainant's allegations as to the alteration of documentation and manipulation of facts and figures supported by the evidence.

Interestingly, since then the All Share Index has repriced by over 40%. What this indicates is that had complainant remained invested as advised by respondent he would have in any event largely recouped any potential losses.

Additionally whilst complainant had indeed suffered a reduction in capital when compared against the high points of the market he had experienced a reasonable return on his investment over the longer term.

The complaint was dismissed.

In so far as the reduction in capital from the high point of the market is concerned the Ombud held 'In the instance complainant was the author of his own misfortune and seeks to blame everyone but himself for his losses. This is borne out by the evidence.'

AJ Hare vs Andre van der Merwe Issued on 24 February 2010

In December 2004, complainants purchased shares in a company called GAREK on the advice of respondent that a listing of the company was imminent. When the promised listing and several future listing dates never materialised, complainants approached the Office.

In addition to the evidence presented by the parties, the Ombud took into account the findings of a report on Garek issued by the Department of Trade and Industry.

The Ombud found that respondent had not complied with the FAIS Act in failing to consider whether the investment actually suited complainant's needs. Respondent had also failed to disclose risks associated with the investment. The requirement that complainants be able to make an informed decision must be interpreted to include an understanding of the financial merits of the investment itself.

He further held that respondent clearly did not possess the necessary skill or exercise the required due diligence to ensure that he actually understood what he was dealing with. A far more likely scenario though is that respondent intentionally misled complainants into believing that they were investing in a 'sure thing'.

Whilst respondent was an authorised financial services provider, he was, however, restricted to certain financial products and at the time was not licensed to sell shares.

OUR DETERMINATIONS continued

The Ombud ruled that respondent had either failed to exercise the necessary due skill, care or diligence when rendering a financial service; or alternatively, he was complicity in soliciting investors to invest in an entity which had no real intention of listing and whose sole purpose appears to benefit the directors and related individuals.

In acting upon the advice of respondent, complainants had made a bad investment in GAREK. According to the DTI report, of the R74 046 875,99 invested in the companies only R299 061,89 remained in the bank account. As none of the funds appear to have been utilised for any acquisition of assets coupled with the number of shares in existence running into the billions, there can be no doubt that complainants' shares are worthless. The Ombud stated "I have no doubt that the many violations of the code were deliberate, and as such in inducing complainants to invest with GAREK he knowingly placed them at risk from inception."

In the circumstances, the Ombud ruled that the complainants be placed back in the position in which they were prior to the investment but that interest thereon be awarded from 30 December 2004, the date of investment.

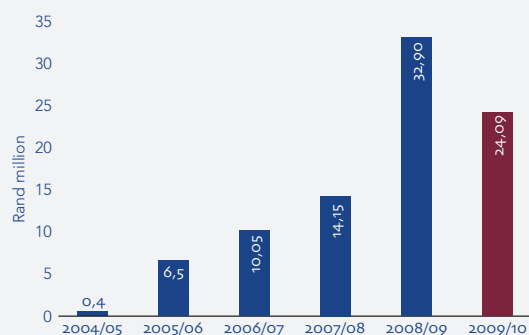
If ever there is a need for financial products to be subject to some form of approval before they are marketed to members of the lay public then this case makes out a compelling case for such action to be taken.

We have a responsibility towards the industry and mindful that business must make profit, however, it must be underpinned by good governance and moral values.

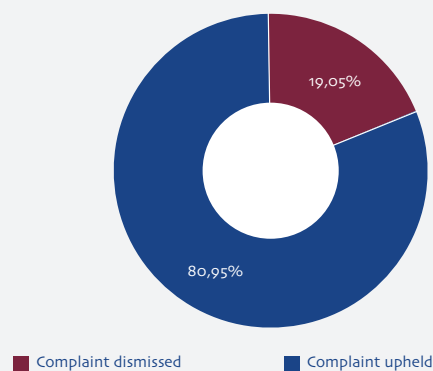
***Our service** is for people from all backgrounds. We will look at the facts of each complaint – not at how well the case is presented. No one should need any special expertise or professional help in order to bring their complaint to us.*

STATISTICAL INFORMATION ON DETERMINATIONS AND SETTLEMENTS

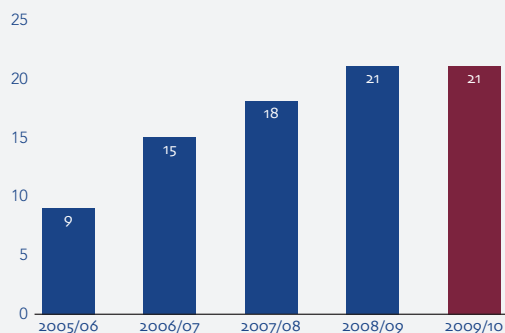
Quantifiable settlements and determinations



Outcome of determinations



Number of determinations

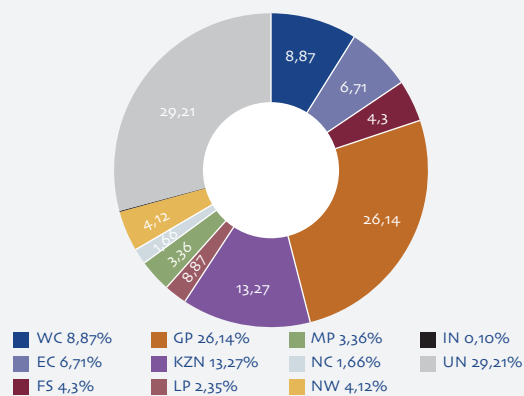


In making a final determination, the Ombud may either dismiss the complaint or uphold the complaint. In this financial year, the Ombud issued four determinations in favour of the respondent and 17 in favour of the complainant.

In terms of the FAIS Act, the Ombud must make a final determination in any case where a matter has not been settled or a recommendation accepted. In this financial year, the Ombud issued 21 determinations.

WHERE DO OUR COMPLAINTS COME FROM?

Where do our complaints come from?



Key:

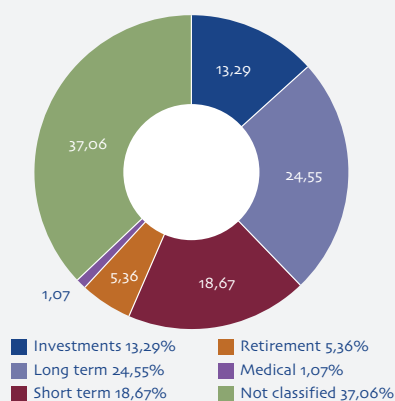
8,87%	WC	Western Cape
6,71%	EC	Eastern Cape
4,3%	FS	Free State
26,14%	GP	Gauteng
13,27%	KZN	KwaZulu-Natal
2,35%	LP	Limpopo province
3,36%	MP	Mpumalanga
1,66%	NC	Northern Cape
4,12%	NW	North West province
0,10%	IN	International
29,21%	UN	Unknown due to insufficient information provided by the complainant

This chart consists of complaints that were received by the Office. It clearly indicates where the complaints are received from according to South African provinces.

We are responsible to the communities in which we live and work and to the larger international community. We must be good citizens and support civic initiatives.

WHAT PRODUCTS DO PEOPLE COMPLAIN ABOUT?

What products do people complain about?



Key

Investments 13,29%: Investments in any investment product either through direct investment in an underlying asset or through investing in long-term insurance products such as endowments, unit trusts and equities.

Long term 24,55%: Long-term assurance products, such as life, disability and dread-disease cover.

Short term 18,67%: All short-term insurance products such as household, vehicle and travel insurance.

Retirement 5,36%: Any retirement products such as compulsory annuities, pension, provident and retirement annuity funds.

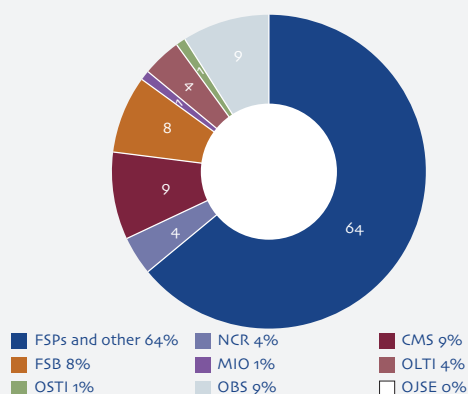
Medical 1,07%: Includes medical scheme complaints.

Not classified 37,06%: These are complaints which were not classified according to product as they are still in assessment or as they fell outside FAIS jurisdiction.

We believe *our final responsibility is to industry. Business must make sound profit, underpinned by good corporate governance and moral values. We must explore and suggest fresh approaches to consumer services in the course of our enterprise.*

HOW COMPLAINTS WERE REFERRED TO OTHER FORUMS

How complaints were referred to other forums



Key

9,13%	OLTI	Ombud for Long-term Insurance
8,97%	OSTI	Ombud for Short-term Insurance
4,29%	OBS	Ombud for Banking Services
8,25%	NCR	National Credit Regulator
1,31%	MIO	Motor Industry Ombud
3,53%	FSB	Financial Services Board
0,62%	CMS	Council for Medical Schemes
0,07%	OJSE	Ombudsman for JSE Complaints and Disputes
63,84%	FSPs and other:	Complaints, inquiries referred to specific financial services providers or other institutions not mentioned.

Most of these complaints are referred at assessment stage. An example is where a complainant erroneously requests this Office to correct their address details or cancel their policies. These complaints are immediately forwarded to the relevant financial firm. There were 3 056 complaints which were referred out in this way.

We must be mindful of the ways in which we help our colleagues fulfil their family responsibilities. We must encourage each other to communicate our opinions, feelings and indeed, our grievances in an environment conducive to amicable resolution, not recriminations. We will support each other, to be innovative, to exercise reasonable initiative, and to share our learning.

Case managers



Johan Scheepers, Khosi Segole-Sibisi, Thanduxolo Sidondi, Malanee Murugan-Modise (Team Resolution Manager), Phumza Mtshehla, Violet Ricketts and Nomvula Mtolo (seated)

SETTLEMENTS

"Where the employee is partially promoting the interest of the employer and partially his own, the employer will be liable."

The provider accepts responsibility for those activities of the representatives performed within the scope of, or in the course of implementing, any such contract or agreement

Van Pletzen

During April 2006 an adviser employed by respondent approached complainant, who was 85 years old at the time, and offered to reassess his investment portfolio. Adviser recommended that complainant disinvest R243 000 from one of his existing investments and invest the funds into an investment administered by his employer (ie Earnsure).

Adviser informed complainant that he would earn an income of R4 000 per month on the investment and recommended that the monthly payments be used to finance the premiums of an endowment policy.

During February 2007 complainant realised that no payment was made to the mentioned endowment. When complainant approached adviser, he learnt that the Earnsure investment is neither administered nor affiliated to adviser's employer. After numerous failed requests to have his investment liquidated, complainant turned to our Office for assistance.

The complaint was sent to respondent, who denied liability for any alleged loss suffered, arguing that adviser did not act within the course and scope of his duties.

We requested respondent to provide us with the necessary compliance documents in respect of the endowment policy, as this policy was administered by respondent and the monthly returns earned on the Earnsure investment were to finance the premiums payable on the policy. Respondent did not provide us with the requested documentation, but made an offer in full and final settlement of the matter. Complainant accepted the offer. Amount settled: R243 000.

Hi Johan

Old Mutual, myself and my father-in-law had a meeting on Monday 15/03/2010.

We had the opportunity to put our case to them and a settlement was reached that was acceptable to my father-in-law.

The matter took almost 12 months to resolve, but I personally want to thank you for your involvement in this case. I must say from day one I realised that we just had to be patient and that the case will be resolved in my father-in-law's favour.

Thank you again and good luck with this important role that the Ombudsman plays to resolve cases like this one.

Koos Koekemoer
on behalf of Piet van Pletzen

Acting as a financial services provider without a licence/Failure to keep a client advice record as required in terms of section 9 of the General Code

Wilmot

When complainant's husband passed away she duly instituted a funeral claim in the amount of R7 500 with respondent. Respondent rejected the claim citing a six-month waiting period as the reason for the rejection. Complainant avers that she was not made aware of the six-month waiting period by the representative of respondent that sold her the policy.

We referred the matter to respondent and requested full details of the person who rendered the financial service, their contractual status in relation to respondent and proof that respondent was licensed in terms of the FAIS Act.

In response they contended that they were not an entity rendering financial advisory or intermediary services and as such not governed by the FAIS Act, and therefore had no representatives as defined.

To the contrary we pointed out (by attaching a copy of the Act) that respondent was a friendly society and as such should have been registered in terms of the Friendly Societies Act. In addition, the products marketed by respondent fell within the definitions of a life policy and long-term policy as set out in the Long-Term Insurance Act (LTIA). Furthermore, even in the event that that we did not have jurisdiction, an unlikely situation given that respondent was marketing a financial product, to wit a long-term insurance policy which falls within the definition of a financial product as defined in the FAIS Act, this Office would still have had jurisdiction in terms of the Financial Services Ombuds Schemes Act (FSOS Act) given that respondent was conducting business as a financial institution.

In any event the contraventions of the FAIS Act as well as the FSOS Act are numerous (eg non-disclosure, failure to keep a client advice record, contravention of the LTIA etc) and would be expanded upon should respondent require us to do so. As such and in reply respondent conceded and communicated its willingness to resolve the matter with complainant.

Not surprisingly, respondent has now registered as a licensed financial services provider. Amount settled R5 000.

Requesting client to sign incomplete documents/Failure to obtain appropriate and available information from client

Fredericks

On 30 January 2008 complainants' were advised to purchase a life policy. This policy was to cover complainant and her husband for amounts of R1 000 000 and R500 000 respectively.

During July 2008 the cover amount payable on the husband's death was increased to R700 000. This was done with the assistance of second adviser (ie representative of respondent). When complainant's husband passed away on 20 August 2008 due to heart failure, she duly instituted a claim with the insurer. The insurer rejected the claim for R700 000 on the basis that the deceased failed to disclose that during 2005 he visited his general practitioner for chest pains and elevated cholesterol levels. Aggrieved by the state of affairs, complainant approached our Office for assistance.

Due to material inaccuracies in complainant's version and the fact that it was inconclusive whether or not the deceased had in fact disclosed his pre-existing conditions at point of sale, we decided to entertain only a part of the complaint (ie the increase of the cover amount from R500 000 to R700 000). From our investigation it was concluded that at the time when the cover amount was increased to R700 000, the adviser failed to complete the required underwriting questions and requested complainant and her husband to sign incomplete documents. The deceased could, therefore, not make an informed decision. Respondent's internal investigation department confirmed our conclusions and hence offered to compensate complainant with an amount equal to the difference between the original cover amount and the increased cover amount. Amount settled: R200 000.

A provider must at all times render financial services honestly and fairly; with due skill, care and diligence; and in the interests of clients and the integrity of the financial services industry

Ramaphosa

During October 2008 complainant's broker requested him to sign a new debit order authority to allow the current insurer to continue debiting premiums from his bank account. Unbeknown to complainant this was used to procure a second policy with another insurer. It was only 10 months later that complainant discovered that he was paying insurance premiums on two policies for the same cover.

As complainant's attempts to have the premiums amounting to R349 112,72 returned proved unsuccessful, he turned to our Office for assistance.

Respondent denied liability and contended that broker placed business with its competitors in breach of his employment contract. Respondent successfully debarred broker with the Financial Services Board and also instituted legal proceedings against him.

We explained to respondent that broker was in its employ at the time that the financial service was rendered. In our view, the employee had acted within the course and scope of his duties and hence respondent is responsible for his actions. Respondent concurred with our assessment and refunded the undue premiums together with interest. Amount settled: R349 112,72.

Failure to identify financial product appropriate to client's risk profile and financial needs

Harichunder

During March 2008 complainant, who was a 41-year-old widow at the time approached financial adviser to assist her with investing R2 000 000 that she had received on the death of her husband. As she had never been gainfully employed and her prospects of future employment were slim, these funds were to provide her with an income for life.

Adviser assured complainant that she would be able to draw an income of R15 000 per month without the risk of reducing the capital amount invested. Contrary to adviser's assurances, the income soon had to be dropped to R9 000 per month. Furthermore, complainant discovered that the income was being paid out of the capital and that her original capital amount had been reduced to R941 945,42.

When respondent was asked to explain the loss, respondent attributed it to poor market performance as opposed to the actions of adviser. Not satisfied with the response, complainant approached our Office for assistance.

We pointed out to respondent that complainant's risk profile had been noted as moderately aggressive. However, her funds were invested into four aggressive investment portfolios. It was determined that had complainant's funds been invested in line with her risk profile, the current value of her investment would have been R1 346 347,87. Respondent agreed to compensate complainant with the difference in value. Amount settled: R404 402,45.

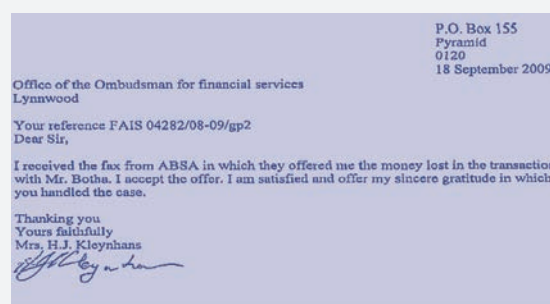
Failure to render a financial service in accordance with client's instructions

Kleynhans

During May 2007 complainant, who is a pensioner, approached adviser to assist her in making an investment of R1 300 000. Complainant specifically instructed adviser to invest her funds conservatively to ensure preservation of her investment capital. Adviser repeatedly assured complainant that her capital invested would be safe, as it was guaranteed.

During October 2008 complainant learnt that her investment was not guaranteed and that the value of the investment had dramatically decreased. Numerous attempts to contact adviser proved unsuccessful and she then approached our Office for assistance.

Shortly after we referred the complaint to respondent, highlighting the issue of the supposed guarantee, respondent offered to pay complainant a cash amount in full and final settlement of the matter. Complainant accepted the offer. Amount settled: R330 000.



Failure to render financial service with due skill, care and diligence/Requirement that a representative be competent to act

Zwane

On 31 December 2008 complainant resigned from his employer and approached adviser to assist him with investing his retirement benefits amounting to R1 047 219,55.

Labouring under an erroneous impression that he had to purchase a compulsory annuity, complainant informed adviser that he wanted to commute the full tax-free portion of his retirement benefits (ie R300 000) to a lump sum.

According to complainant, adviser informed him that he will receive the requested lump sum as soon as an annuity was purchased.

During March 2009 complainant approached adviser and enquired about the lump-sum payment. Adviser referred complainant to the product supplier, who in turn informed him that his full pension payout was used to purchase an annuity. Aggrieved by adviser who failed to adhere to his instruction, complainant turned to our Office for assistance.

We referred complaint to respondent who conceded that the financial product proposed by the adviser did not suit complainant's needs. In fact it turned out that complainant had not yet reached the minimum retirement age of 55 years at the time that the annuity was purchased and as such the funds were what is termed

voluntary monies. The effect of this is that they should not have been subject to the restrictions applicable to compulsory monies.

Respondent offered to return the retirement benefits received less any income received by complainant. Complainant accepted the offer. Amount settled: R970 055,54.

Information provided to client must be factually correct

Walton

When complainant purchased a credit life policy, she was assured that she would enjoy cover for any condition that would lead to a claim, irrespective of whether or not the condition was attributed to a pre-existing condition.

When complainant was diagnosed with cancer, she duly instituted a claim with the insurer. The insurer rejected liability and argued that the claim is attributable to a pre-existing condition (ie she was previously diagnosed with cancer).

After receiving the complaint, respondent conceded that the recording of the sales conversation confirmed that the complainant had disclosed the pre-existing condition, but was assured that she would still enjoy cover. Respondent paid complainant an amount equal to her claim amount. Amount settled: R50 000.

Replacement of existing product motivated by commission/Failure to explain the material differences between replaced and new financial products

Engelbrecht

Shortly after complainant's financial adviser replaced his life policy with another policy, he suffered a major heart attack. Complainant duly instituted a claim in the amount of R500 000 with his insurer. The insurer rejected liability, arguing that complainant's life policy did not cover him for dread deceases.

According to complainant, he was assured by his adviser that he would enjoy exactly the same cover under the replacement policy as he had enjoyed under the replaced policy. However, this was not the case, as unlike the replaced policy which covered complainant for death and dread deceases, the replacement policy provided cover for death and physical impairment. In other words, had the original policy never been replaced, complainant's claim would have been honoured.

Respondent argued that complainant's reason for switching life policies was premium-driven and eluded to a signed assessment record which reflects that complainant selected to be covered for death and physical impairment and not dread disease. Surprisingly, respondent ended its letter of denial with a cash offer of R200 000 in full and final settlement of the matter. Complainant refused to accept the offer.

We pointed out to respondent that, although complainant's life policy was replaced with another policy, the client advice record reflects that no replacement had taken place. Furthermore, two different copies of the assessment record mentioned above were provided to us, ie the two copies of the same document reflect different dates (29 May 2007 and 29 November 2007) as well as different information. Confronted with this misrepresentation, respondent offered to pay complainant an amount equal to the claim amount. Amount settled: R500 000.

Letter of appreciation

Mr and Mrs Engelbrecht would like to thank Ashley Percival and Mariet Kapp for the excellent service they have done for us, especially Ashley. The matter has been resolved and the file can be closed. Ashley, your sincerity made us never to lose faith or become discouraged as you always had our best interests at heart. You never ignored a problem no matter how small or big. You always met your deadlines. Your customer care to your clients is outstandingly excellent.

We can recommend you to anybody.

Thank you



Mr and Mrs Engelbrecht

Non-disclosure of material terms and conditions excluding liability

Nel

During October 2006 complainant entered into a personal loan agreement with respondent and simultaneously purchased a credit life policy in order to settle any outstanding balance on the loan in the event of death, disability or retrenchment.

When complainant was declared medically unfit to perform her duties during November 2008, she duly instituted a disability claim with insurer. The insurer rejected liability, citing as the reason for rejection the fact that the claim is attributable to a pre-existing condition (ie cancer).

According to complainant, the adviser failed to disclose to her that a credit life claim would not be honoured where a claim is attributable to a pre-existing condition. In other words, complainant was not put into a position to make an informed decision when she purchased the policy.

After raising the non-disclosure with respondent, they agreed to settle the outstanding balance on the loan. Amount settled: R6 650,50.

Failure to identify the financial product appropriate to client's risk profile/Failure to disclose difference in investment risk between a replacement product and the replaced product

Eksteen

During February 2008 complainant's financial adviser recommended that he switch the underlying fund of his linked life annuity (ie Smoothed Bonus Fund) into two resource funds which have aggressive risk ratings.

Not long after the switch, complainant's fund value dropped dramatically. Complainant avers that the two resource funds invested into do not mirror his moderate risk profile. Respondent denied liability for the loss and argued that nobody could have anticipated the international market crises which resulted in share prices dropping considerably.

We pointed out to respondent that a financial adviser should naturally be vigilant when dealing with his clients' investment funds, but particularly when retirement funds are at stake. Of specific concern was that the policy replacement document failed to disclose the difference between the investment risk of the replaced product and the new product.

Respondent conceded that our arguments had merit and after protracted negotiations in respect of the quantum of damages, the complainant accepted respondent's offer of placing him in a position he would have been in had the portfolio switch never occurred. Amount settled: R191 192,20.

Failure to adhere to instruction of client/Client asked to sign incomplete documents

Moodley

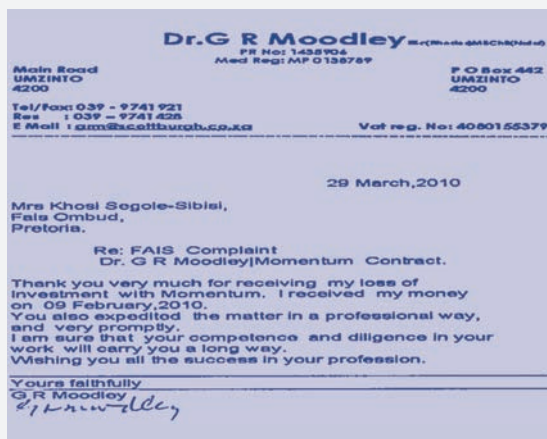
Complainant alleges that he approached financial adviser for assistance to invest an amount of R500 000. Complainant specifically requested adviser to ensure that the investment provides him with a guaranteed return without any capital risk.

Complainant avers that he was asked to sign incomplete application documentation on the assurance that the documents would be completed in accordance with his financial needs. Complainant was also assured that the investment would attract no tax.

Subsequent thereto, complainant learnt that adviser invested his funds in a second-hand endowment policy with a moderate risk rating. The value of the underlying investment dropped dramatically. Aggrieved that adviser had failed to adhere to instructions, complainant turned to our Office for assistance.

Respondent argued that complainant knew and understood that the investment he had entered into was not a guaranteed investment. Respondent urged our Office to view the complaint with caution and implied *inter alia* that the complaint is motivated by the poor market performance.

After we asked respondent for an explanation as to why complainant was advised that the investment into the second-hand endowment would attract no tax, respondent offered complainant a cash amount in full and final settlement of the matter. Complainant accepted the offer. Amount settled: R82 448.



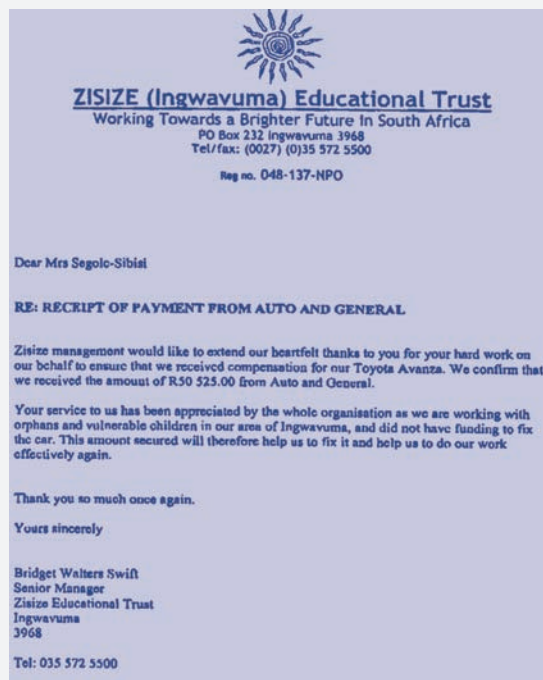
Failure to act on client's instructions/ Failure to ensure that the product fully met client's needs

Lee

During September 2007 complainants purchased a motor vehicle from their local motor dealer. As the vehicle had to be insured, complainants contacted a representative (direct marketer) of respondent. The vehicle was to be used by different drivers to transport children at an orphanage and hence complainant requested direct marketer to comprehensively insure the purchased vehicle for both business and private use.

During September 2008 the vehicle was involved in an accident, resulting in a claim being lodged with respondent. Respondent rejected liability, arguing that only two staff members of the orphanage enjoyed cover for business use of the vehicle and the rest of the staff enjoyed cover for private use of the vehicle. The person driving the vehicle at the time of the accident used the vehicle for business purposes, but was covered for private use only.

We referred the complaint to respondent who upon receipt of complaint advised that it was willing to pay complainant an amount equal to 50% of the claimed amount. Respondent argued that policyholders have a duty to read their policy documents to ensure that their needs are met. Complainants acknowledged that they failed to peruse the policy documents and were happy to accept the offer made by respondent. Amount settled: R50 525.



A provider must provide any restrictions on or penalties for early termination of or withdrawal from the product

Nupen (Mr and Mrs)

During January 2009 complainants cancelled their existing policy on the advice of respondent's representative. Representative informed complainants that their existing policy had a fund value of approximately R60 000. This amount was an important factor in complainants' decision to cancel the policy as they planned to utilise the funds to expand current business interests.

To the complainants' dismay an amount of R37 020,62 was paid into their account upon surrender of the policy as a result of the penalties levied for early termination of the policy. The insurer refused to waive the termination penalties and contended that representative was not accredited to market its product.

Quite simply representative was under an obligation to disclose the penalties and after we referred complainant to respondent, it offered to settle the matter by paying complainant an amount equal to two-thirds of the penalty fee levied for termination of the policy in question. Complainant accepted the offer. Amount settled: R16 000.

Failure to adhere to instructions of client

Sonto

After suffering a burglary at his house on 18 September 2008 complainant submitted a claim for an amount of R91 036,65 to respondent. Respondent in turn lodged the claim with the insurer who argued that complainant was underinsured. Consequently, the insurer was prepared to pay an indemnity of only R39 409,21 after average was applied (ie same proportion of underinsurance applied to payout).

Complainant argued that during December 2007 he had instructed respondent to increase the sum insured of his household goods (ie increase the insured value from R150 000 to R350 000). Although complainant received a text message from respondent confirming the instruction, it later became evident that respondent failed to adhere to the instruction.

Respondent contended that it forwarded the complainant's instruction to the insurer who failed to update the policy to reflect the new insured value of the household goods. We informed respondent that in the event that it is not able to provide documentary proof that complainant's instruction was communicated to the insurer, it should attempt to resolve the matter with complainant. Upon receiving our recommendation, respondent offered to pay complainant an amount equal to the balance of his insurance claim. Complainant accepted the offer. Amount settled: R51 627,44.

Failure to disclose circumstances in which policy benefits will not be provided

Shongwe

During April 2006 complainant purchased a hospital cash plan policy from respondent on the advice of one of its representatives. The policy inception on 1 May 2006 and provided cover for complainant and his family.

On 21 December 2007 complainant's daughter was hospitalised due to complications with her pregnancy. Complainant duly instituted a claim with respondent, which rejected liability on the basis that child pregnancy is not covered under the policy in question.

Complainant argued that at the point of sale of the policy respondent's representative failed to disclose that children are excluded from maternity cover. Furthermore, complainant never received any policy documents.

Respondent rejected liability and contended that, at point of sale of the policy complainant was informed of the fact that the policy excluded children for maternity cover. After we requested documentation showing compliance with the General Code, respondent changed its stance and settled the matter. Amount settled: R7 920.

Non-disclosure of material term of policy/Rendering of financial services without being licensed

Matoba

When complainant purchased a vehicle on 31 March 2005, she also purchased a shortfall cover policy to indemnify her for the difference between the amount that she owed the finance institution and the amount the comprehensive insurer pays in the event of a claim. The sale, finance arrangement and principal insurance application were executed by the vehicle dealership.

When complainant's vehicle was hijacked during May 2006, she lodged a claim with her short-term insurer, which honoured her claim. However, the shortfall cover insurer repudiated complainant's claim on the basis that her policy had lapsed at the end of April 2006. After complainant unsuccessfully attempted to resolve the matter with the shortfall cover insurer, she lodged a complaint with our Office.

The complaint was referred to the vehicle financier, which contended that the shortfall cover policy was not sold under its FSP licence, but under the licence of the vehicle dealership. However, it nevertheless wrote off 50% of the shortfall debt.

The matter was referred to the vehicle dealership which argued that the policy proposal clearly stipulates that the period of insurance was one year. When we requested the dealership to provide us with documentation showing compliance with the FAIS Act, we were informed that at the time the policy was sold it was not yet registered with the Financial Services Board and thus "it was not a requirement to keep records of documentation." When we questioned the validity of this statement, the dealership decided to settle the balance of the complainant's outstanding account with the financier. Amount settled: R44 889,18.

Contravention of the code of conduct (forex investments)/Failure to act with due care and diligence

Van der Hogen

During March 2005 complainant invested €10 000 into a spot forex investment on the recommendation of his adviser. Complainant later discovered through the financial press that the foreign forex services provider was being investigated by the Financial Services Board. Complainant immediately submitted surrender forms, but his investment funds were not paid out by the foreign forex services provider. It was only after a lengthy delay of 14 months that complainant finally received his investment funds. Aggrieved by the loss of interest on his investment, complainant lodged a complaint with our Office.

We referred the complaint to respondent and pointed out that it contravened the forex code of conduct by placing complainant's funds with an unauthorised foreign forex services provider.

After protracted negotiations, respondent paid complainant an amount in full and final settlement of the matter. Amount settled: R10 000.

Dear Malanee

I checked my Nedbank current account this morning and can now confirm that the amount of R10 000 owing by Mr Matthee (Matcor) has been deposited/received.

Above transaction now finalises this case in full and final settlement.

My wife and I hereby make use of this opportunity to thank you and your colleagues for the excellent and professional service you have rendered in dealing with my complaint.

We have always found that you have responded very promptly to requests for information/feedback or to give us a call.

It is gratifying to know that the Fais Ombud is looking after the rights and protection of the SA consumer.

Best regards

Frank van den Hogen



Back (left to right): Ashwin Singh, Ashley Percival (Team Resolution Manager), Marc Alves and Mashite Makgoo
Front (left to right): Qheliwe Baduza, Thandekile Va and Ncebakazi Gqwa

SETTLEMENTS continued

It is not possible to detail all the settlements effected by the Office.

Below is a sampling of more settled cases:

Complainant	Complaint	Issue	Resolution
Gurgen 4847/08-09 WC 6	Planning on starting a family, complainant joined a medical aid scheme. This was conveyed to the consultant. The consultant advised him on the most appropriate scheme and suggested that this would mean that he would not have to worry about birth-related costs. Consultant failed to advise him that there was a 10-month waiting period and when complainant's wife gave birth, the medical aid fund refused to entertain his claim.	Failure to disclose waiting period. Disclosure must be made of restrictions or circumstances in which benefits will not be provided.	Needless to say after our referral of the issue to respondent it agreed to honour the complainant's claim to the value of R4 102,85.
Roodman 04876/08-09 NW 4	A risk-averse pensioner's retirement benefits were invested into moderately aggressive unit trust funds. When his investment value dropped dramatically, he approached our Office for assistance. We ascertained that whilst an earlier risk profile had been more aggressive, a subsequent one reflected a moderately conservative profile, the latter more correctly reflecting complainant's actual position.	Appropriateness of advice identifies the financial product or products that will be appropriate to the client's risk profile.	After pointing out the apparent anomaly and inappropriateness of the advice, respondent paid complainant an amount of R135 000 in full and final settlement of the matter.
Murgatroyd 4212/07-08 KZN 3	Complainant instituted a claim with his insurer for a stolen vehicle. The insurer rejected liability, citing as the reason the fact that complainant's vehicle was not fitted with an immobiliser at the time of the loss. As the broker had failed to disclose the requirement of an approved immobiliser precedent to coverage, complainant turned to our Office. We learnt that respondent was contacted by the dealership to arrange cover upon purchase and never even dealt with complainant.	Failure to render financial services honestly and fairly with due skill, care and diligence.	Respondent offered to pay complainant an amount of R50 580 in full and final settlement of the matter. Complainant accepted the offer.
Ncala 03813/08-09 GP 2	When complainant's brother (life insured on her funeral policy) passed away, she lodged a claim of R15 000 with respondent. Although rejecting liability on the basis that it had not received premiums as the banking details had not been received, respondent rather surprisingly made an ex gratia payment of R7 500 to complainant. As complainant's premiums were in fact paid up to date, she turned to our Office for assistance.	Failure to render financial services honestly and fairly with due skill, care and diligence.	Respondent was provided with proof that all premiums had been met, upon which it paid the balance of the claim (ie R7 500).

Complainant	Complaint	Issue	Resolution
Van der Merwe 4961/08-09 GP 3	Complainant was involved in an accident and duly instated a claim with the insurer. The insurer rejected the claim stating that there was no cover in place on complainant's vehicle. As complainant was convinced that cover was in fact in place, she approached our Office for assistance. The evidence that the broker concerned had represented that cover was in place was referred to respondent.	Negligent misrepresentation.	Respondent confirmed that its broker had erroneously confirmed that cover was in effect on complainant's vehicle and paid complainant an amount equal to the claim amount less premiums due on the policy (ie R53 349,95).
Alcock 4448/08-09 KZN 2	During July 2007 complainant instructed adviser to change an existing medical lifestyle contract to a whole life contract. As adviser effected the instruction only on 3 December 2007, it resulted in complainant incurring an insurance premium of R1 213,38 per month as opposed to R1 037,98 per month.	Failure to give effect to client's instructions within a reasonable time.	After we intervened, respondent offered to reimburse the excess premium amounts paid (ie R5 454,67) and to reduce the existing monthly premium amount to R1 037,98.
Cilliers 01248/09-10 MP 3	Complainant's claim for his stolen vehicle was rejected on the basis that his vehicle was not fitted with a tracking device. However, his policy schedule made no mention of this requirement. Upon approaching the insurer involved we were advised that a policy amendment had been sent to respondent approximately one month prior to the loss. This had not been forwarded to complainant.	Material or significant changes in a policy must be disclosed to a client without delay.	The administrator and respondent offered to pay complainant the amount of R306 452,50 being the amount which the policy would have paid out.
Executor/estate late de Jager 05162/08-09 WC 2	Executor of the estate lodged a credit life insurance claim. The insurer repudiated the claim contending that the policy was cancelled due to non-payment of premiums. Executor argued that the deceased was not made aware of the cancellation of the policy by the intermediary (a well-known chain store) who collected the premiums payable on the policy. It became evident that despite their claims to the contrary respondent was unable to provide the Office with evidence that they had actually notified Mr de Jager that he was in arrears.	Failure to communicate cancellation of cover.	Offer to write off all outstanding balances amounting to R20 749 on the deceased's accounts.

SETTLEMENTS continued

Complainant	Complaint	Issue	Resolution
Lawrence 02525/08-09 GP 1	Contrary to instruction adviser invested complainant's funds in a 10-year endowment as opposed to the usual five-year term. Complainant was 80 years old at the time. She approached our Office for assistance and alluded to the fact that given her advanced age she would probably not see out the 10-year investment term. Furthermore, the underlying fund of the investment has a risk rating which did not mirror her risk profile and as a result her investment had reduced in value since the inception thereof.	Failure to adhere to client's instruction/ inappropriate product for client's needs.	Upon referral, respondent paid complainant R20 000 in full and final settlement of the matter. This catered both for the reduction in fund value as well as the penalties payable in the event that she disinvested from the policy.
Muthen 02242/08-09 KZN 3	When complainant's vehicle was hijacked and recovered, the canopy was missing. The insurer rejected liability on the basis that the canopy was not placed on risk. As broker was aware that the vehicle was fitted with a canopy at point of sale of the policy, complainant turned to our Office for assistance.	Failure to ascertain client's needs and resultant failure to tailor the advice and product accordingly.	The omission of the canopy was glaringly obvious and hence after our intervention, respondent replaced the canopy at a cost of R12 000.
van den Berg 1497/09 □ 10 GP 1	Complainant was advised to surrender an existing policy and replace it with another. At no stage was he informed by adviser that penalties would be levied because of the early surrender, and it was his contention that had he been so informed he would not have surrendered the policy. Complainant's attempts to resolve the matter with respondent were unsuccessful and so he turned to our Office.	Failure to disclose penalties arising out of the termination of an existing policy, as required by the General Code.	Upon being presented with his failure to comply with the General Code, respondent agreed to settle the amount of R8 458,74.
Zondi 3119/09-10 KZN 1	Adviser invested complainant's funds into what he termed a safe investment that was accessible at any time. Complainant subsequently learnt that the investment was within an endowment, and the underlying funds subject to market risk. In short, neither safe nor freely accessible. Aggrieved by a drop in his investment value, and the fact that he could not access his investment, complainant lodged a complaint with our Office.	Inappropriate advice.	We referred the complaint to respondent with the request that it address us pertinently on respondent's allegations. Upon reverting they offered to cancel the investment and pay complainant an amount of R30 270,64.

Complainant	Complaint	Issue	Resolution
Naidoo 4565/09-10 WC 3	Complainant alleges that when she settled her bond account during April 2006, a representative of respondent advised her not to close the bond account as she might need a loan in the future. Complainant later discovered that, although her bond account was previously settled, her bond account was surprisingly in arrears.	Failure to place clients in a position where they can make informed decisions.	Respondent conceded that its representative failed to adequately explain to complainant that keeping the bond account active would mean that homeowners policy premiums would still be payable. Consequently, it offered to refund all premiums together with interest in the amount of R6 536,86.
Strydom FOC 5793/08-09 GP 6	During November 2008 adviser assisted complainant to transfer to a different medical aid scheme. On 3 February 2009 complainant's dependent was admitted to hospital as he suffered from asthma. The insurer repudiated the claim for the medical bills on the basis that this pre-existing condition was not disclosed. The basis of the complaint was that adviser was aware of the condition and should have disclosed it.	Failure by complainant and adviser to communicate dependent's condition to medical aid fund.	Our investigation revealed non-disclosure on the part of both complainant and adviser but fortuitously, given that the dependant had been on complainant's previous medical aid, the waiting period was waived and the fund settled complainant's claim of R8 751,68.
Witbooi FOC 2535/09-10 GP 1	Upon attempting to make a third withdrawal from her endowment policy, complainant was informed that the Long-Term Insurance Act precluded another withdrawal. Attempts by her to resolve the matter with respondent were unsuccessful and she then approached our Office for assistance.	Product unsuitable to complainant's needs/ lack of due skill, care and diligence.	Adviser had negligently marked the incorrect financial product on the investment application document. Respondent rectified this and allowed complainant access to her capital in the amount of R73 070,20.

STAFFING



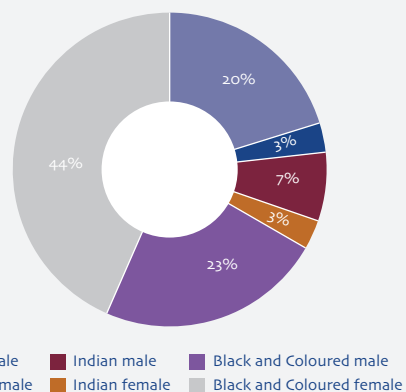
Back (left to right): Johan Scheepers, Marc Alves, Simphiwe Bana, Thanduxolo Sibondi, Tebogo Mashatole, Mashite Makgoo, Vusi Mtshweni, Ashley Percival, Thandekile Va, Leoni Niewoudt, Rebotile Manakana, Kelebogile Sesoko, Muzi Magagula, Ashwin Singh, Jaco van Rensburg and David Davidson

Front (left to right): Malanee Murugan-Modise, Noluntu Bam, Yvonne Shili, Mpho Mojabelo, Qheliwe Baduza, Hestie Teessen, Ncebakazi Giqwa, Khosi Segole-Sibisi, Violet Ricketts, Phumza Mtshemla, Nomvula Mtolo and Stella Matamela

Previously disadvantaged 76,67%

Population group	%
Black and Coloured	66,67
Indian	10
Total black	76,67
White	23,33
Total	100

Gender	%
Male	50
Female	50
Total	100



Skills and qualifications: Profile of the Office

Degree/Diploma	16
Postgraduate Degree/Diploma	11
CFP	7
Advanced CFP	1

Specialisation	No of degrees/diplomas
Area of specialisation	
Law	11
Finance and commerce	9
CFP	7
Advanced CFP	1
Other	7

ENGAGING OUR STAKEHOLDERS FOR MUTUAL BENEFIT

Date	Presentation/interview
26 March 2009	Intermediary Conference: Discovery's Head Office in Sandton
28 April 2009	SOCAP South Africa – Presentation
11 May 2009	Summit TV – Interview
13 May 2009	SANPAD – Presentation
15 May 2009	FSB Consumers – Presentation Consumer Education Familiarisation Programme
27 May 2009	Presentation to Nedbank Financial Planners JHB
4 June 2009	Presentation to Nedbank Financial Planners PTA
12 June 2009	Presentation to Nedbank Financial Planners CTN
18 June 2009	Presentation to Nedbank Financial Planners JHB
22 – 28 May 2009	36th AIO Conference and Annual General Assembly, Tanzania
1 June 2009	Financial Services Fraud and Money Laundering Conference – Keynote address
3 June 2009	FPI Convention – Keynote address Financial Planning Institute of Southern Africa at Emperors Palace
8 – 10 June 2009	Masthead: Professional Development Days – Roadshow
12 June 2009	Masthead: Professional Development Days – Roadshow
17 June 2009	Masthead: Professional Development Days – Roadshow
19 June 2009	Masthead: Professional Development Days – Roadshow
22 – 26 June 2009	Info 2009 – Dublin
28 July 2009	Absip Annual Meeting, Sandton
30 July 2009	Liberty Life
6 Aug 2009	FPI Breakfast Session, Pretoria – Presentation
21 Aug 2009	Black Brokers Forum – Presentation
2 September 2009	Omega: Microfinance and Ethics, Sandton
8 September 2009	Financial Services Board FAIS Conference
10 September 2009	Momentum Financial Planning Conference
22 October 2009	CNBC – Interview
23 October 2009	SABC News At 1
27 October 2009	SA Best Practice of the Year Award: The Forum in Bryanston, Johannesburg – Master of Ceremonies
1 December 2009	FPI Conference, Durban – Presentation
11 – 15 February 2010	Ethics and Business Presentation
23 February 2010	Budget Presentation: FAIS Ombud; Resource Crocodile Room; Canteen Riverwalk
14 March 2010	Rotary District 9270 Conference 2010
17 March 2010	Discovery: National Estate Planning Conference – Presentation



Workshops enlighten Nedbank Financial Planners

The Ombudsman Resolution team is mandated to resolve complaints from the various regulators and ombudsmen.

Charmaine Johnstone (Legal Ombudsman Manager) handles the complaints received from the FAIS Ombudsman's office, among others. These complaints refer to the giving of financial advice and or intermediary services. When planners give advice they are required to comply strictly with the FAIS Act. This ensures that clients are given the right advice according to their needs, which is clearly understood by them.

Data shows that it is apparent that Nedbank is very good at giving advice but not as good at record-keeping. Some complaints lodged by clients are as a result of a change in their circumstances as opposed to having received bad advice. However, if the bank is unable to produce the relevant records then the claim cannot be repudiated. This results in Nedbank paying vast sums of money.

Planners are encouraged to embrace these complaints as they help the team to understand what went wrong and provide an opportunity to win a client for life with a world-class service resolution. The focus is on: "How can Nedbank fix this?" rather than, "Who did this?"

Charmaine enlisted the help of Taryn Steenkamp, Legal and Compliance Manager in Nedbank Financial Planning (NFP) and Sigrid Ross, a communication manager to setup some workshops to reinforce what the planners already know and to highlight the importance of complying with every aspect of the act.

The FAIS Ombudsman's office was only too willing to assist in this quest. Case managers from their office joined the Nedbank team to share their knowledge and reinforce what is required from the bank to ensure prompt resolution of complaints received.



FAIS Office Case Managers: Ashley Percival, Stella Matamela, Marc Alves and Malanee Murugan-Modise.

Workshops were set up in Gauteng, Pretoria, Cape Town and Durban and were kept to smaller groups to ensure that the sessions were interactive and allowed for valuable questions and answer sessions.

Practical case studies were used in order to give delegates a better understanding on how to resolve some of the issues that arise. Delegates were constantly reminded of the importance of disclosing information. Stella Matamela from the FAIS office even did a little dance to emphasise this point. A serious subject was delivered in a fun way.

Initiatives like this go a long way in working towards delivering world-class service and assisting staffmembers in the escalated complaints environment to deal with difficult client interactions and potential conflict situations.

Staffmembers should remember to always log and track all complaints received on CCT. This is vital for the efficient management of client complaints and facilitates feedback being given to Nedbank clients in true world-class style.

Top: Charles Pillai, presenting a paper as part of a panel discussion at the Annual Conference of the International Network of Financial Services Ombudsman in Ireland, June 2009.

Seated: Paul Kenny (Pensions Fund Ombudsman – Ireland) and Eamon Timmins (Head of Advocacy and Communications, Age Action Ireland)

Left: Nedbank internal newsletter, making reference to a presentation conducted by FAIS Ombud staff.

Annual financial statements

CONTENTS

Statement of responsibility by FAIS Ombud	41
Report of the Auditor-General	42
Report of the FAIS Ombud Audit Committee	44
FAIS Ombud's report	45
Statement of financial position	46
Statement of financial performance	47
Statement of changes in net assets	48
Cash flow statement	49
Summary of significant accounting policies	50
Explanatory notes to financial statements	53
Detailed unaudited statement of financial performance	60

Simphiwe Bana
FINANCIAL MANAGER



Statement of responsibility by FAIS Ombud

for the year ended 31 March 2010

The FAIS Ombud is responsible for the preparation, integrity and fair presentation of the financial statements of the Office of the Ombud for Financial Services Providers (Office of the FAIS Ombud). The financial statements presented on pages 46 to 49 have been prepared in accordance with South African Statements of Generally Accepted Accounting Practice including any interpretation of such statements issued by the Accounting Practices Board, with the prescribed Statements of Generally Recognised Accounting Practice issued by the Accounting Standards Board, and include amounts based on judgements and estimates made by management. The FAIS Ombud also prepared the other information included in the annual report and is responsible for both its accuracy and consistency with the financial statements.

Furthermore, the FAIS Ombud is responsible for designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

The FAIS Ombud has relied, for payroll purposes, on the accounting controls, systems, frameworks and procedures adopted by the Financial Services Board. Nothing significant has come to the attention of the FAIS Ombud to indicate any material breakdown in the functioning of these controls, procedures and systems during the year under review.

In the opinion of the FAIS Ombud, based on the information available to date, the financial statements fairly present the financial position of the Office of the FAIS Ombud as at 31 March 2010 and the results of its operations and cash flows for the year then ended.

The going-concern basis has been adopted in preparing the financial statements. The Office of the FAIS Ombud has no reason to believe that the entity will not be a going-concern in the foreseeable future.

The audit report of the Auditor-General is presented on pages 42 to 43.

The financial statements, set out on pages 41 to 64, were approved by the FAIS Ombud on 29 July 2010 and signed on its behalf by:



Noluntu Bam
FAIS Ombud

Report of the Auditor-General

for the year ended 31 March 2010

TO PARLIAMENT ON THE FINANCIAL STATEMENTS OF THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

Introduction

I have audited the accompanying financial statements of the Office of the Ombud for Financial Services Providers, which comprise the statement of financial position as at 31 March 2010, the statement of financial performance, the statement of changes in net assets and the cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory information, as set out on pages 45 to 59.

Accounting authority's responsibility for the financial statements

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 (GRAP) and in the manner required by the Public Finance Management Act of South Africa, 1999 (Act No 1 of 1999) (PFMA) and the Financial Advisory and Intermediary Services Act of South Africa, 2002 (Act No 37 of 2002) (FAIS Act). This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor-General's responsibility

As required by section 188 of the Constitution of South Africa, section 4 of the Public Audit Act of South Africa, 2004 (Act No 25 of 2004) (PAA) and section 23(3) of the FAIS Act, my responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with International Standards on Auditing and General Notice 1570 of 2009 issued in *Government Gazette* 32758 of 27 November 2009. 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.

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.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

In my opinion, the financial statements present fairly, in all material respects, the financial position of the Office of the Ombud for Financial Services Providers as at 31 March 2010, and its financial performance and its cash flows for the year then ended, in accordance with South African Standards of GRAP and in the manner required by the PFMA and the FAIS Act.

Report on other legal and regulatory requirements

In terms of the PAA and General Notice 1570 of 2009 issued in *Government Gazette* 32758 of 27 November 2009, I include below my findings on the report on predetermined objectives, compliance with the PFMA and the FAIS Act, and financial management (internal control).

Findings

Predetermined objectives

No matters to report.

Compliance with laws and regulations

No matters to report.

Internal control

I considered internal control relevant to my audit of the financial statements and the report on predetermined objectives and compliance with the PFMA and the FAIS Act, but not for the purposes of expressing an opinion on the effectiveness of internal control. The matters reported below are limited to the deficiencies identified during the audit.

No matters to report.

Auditor-General

Pretoria

31 July 2010



AUDITOR-GENERAL

Report of the FAIS Ombud Audit Committee

for the year ended 31 March 2010

We are pleased to present our report for the financial year ended 31 March 2010.

FAIS Ombud Audit Committee members and attendance:

The FAIS Ombud Audit Committee consist of the members listed hereunder:

Name of member	Number of meetings attended
Z Bassa	2
B Hawksworth	2
P Matlala	2
G Anderson	2
B Naidoo	2

The above committee ceased to operate as of 14 August 2009 following the listing of the FAIS Ombud as a Public Finance Management Act Schedule 3A entity.

The following members were appointed to be members on 24 November 2009.

Name of member	Number of meetings attended
K Hoosain	2
B Ngonyama	–
T Tayob	1
B Naidoo	2

The above committee ceased to operate as of 31 March 2010. The Financial Service Board is the accounting authority of the FAIS Ombud from 1 April 2010 and has appointed the following members to be the FAIS Ombud Committee:

B Hawksworth
H Wilton
J Mogadime
P Sutherland

FAIS Ombud Audit Committee responsibilities

The FAIS Ombud 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 Regulation 27.1. The Fais Ombud Audit Committee reports that it has adopted appropriate formal terms of reference as its Fais Ombud 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 FAIS Ombud 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 that no material non-compliance with prescribed policies and procedures 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 controls 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 FAIS Ombud Committee has considered the financial statements of the FAIS Ombud and concurs with the opinion of the Auditor-General and recommends to the FAIS Ombud to accept the financial statements. The FAIS Ombud, having been appointed on 1 March 2010, accepts the recommendation of the FAIS Ombud Committee.

FAIS Ombud's report

for the year ended 31 March 2010

Nature of operations

The Office of the Ombud for Financial Services Providers (Office of the FAIS Ombud) 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 FAIS Ombud 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 ombuds 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 ombuds 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 of the FAIS Ombud. Determinations by the FAIS Ombud are deemed to have the same effect as a judgment of a court.

The office of the FAIS Ombud 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 of the FAIS Ombud is entitled to levy a fee of R1 000 per case once it has accepted a case for investigation.

Results of operations

This is the fourth full year of operations of the FAIS Ombud. During the period 7 647 (2009: 7 416) complaints and inquiries were received by the office. Of these, 2 653 were found to be complaints within the jurisdiction of the FAIS Ombud, whilst 4 994 were outside the jurisdiction.

The Office of the FAIS Ombud recorded a surplus of R1 818 969 during the financial year as shown in the statement of financial performance.

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 2010 and is the designated accounting authority in terms of section 23 of the FAIS Act, 2002 (Act No 37 of 2002).

Statement of financial position

for the year ended 31 March 2010

	Notes	2010 R	2009 R
Assets			
Non-current assets		951 414	1 247 053
Property, plant and equipment	1	765 409	857 716
Intangible assets	2	186 005	389 337
Current assets		2 586 843	653 854
Trade and other receivables	3	1 419 033	231 381
Cash and cash equivalents	4	1 167 810	422 473
Total assets		3 538 257	1 900 907
Funds and liabilities			
Funds		2 561 457	742 488
Accumulated surplus		2 561 457	742 488
Total liabilities		976 800	1 158 419
Non-current liabilities			
Finance lease liability	5	118 795	101 204
Current liabilities		858 005	1 057 215
Short-term portion of finance lease liability	5	35 846	57 286
Trade and other payables	6	822 159	999 929
Total funds and liabilities		3 538 257	1 900 907

Statement of financial performance

for the year ended 31 March 2010

	Notes	2010 R	2009 R
Operating revenue		234 305	109 216
Expenses		21 426 994	19 187 042
Operating expenses		6 396 182	5 731 371
Personnel costs		14 270 965	12 860 180
Amortisation		203 333	211 412
Depreciation		520 866	333 989
Impairment of assets		–	20 921
Finance costs		35 648	29 169
Operating deficit	7	(21 192 689)	(19 077 826)
Contribution to assets and expenses by the Financial Services Board	8	23 011 658	19 253 291
Surplus for the year		1 818 969	175 465

Statement of changes in net assets

for the year ended 31 March 2010

R

Accumulated surplus

Balance at 31 March 2008

567 023

Surplus for the year

175 465

Balance at 31 March 2009

742 488

Surplus for the year

1 818 969

Balance at 31 March 2010

2 561 457

Cash flow statement

for the year ended 31 March 2010

	Notes	2010 R	2009 R
Cash flows from operating activities			
Cash received from entities		21 713 259	20 018 739
Cash paid to suppliers and employees		(20 544 752)	(19 339 474)
Cash generated by operations	10	1 168 507	679 265
Finance costs		(35 648)	(29 169)
Net cash flows from operating activities		1 132 859	650 096
Cash flows from investing activities			
Proceeds from asset disposal		71 806	8 368
Purchase of property, plant and equipment		(455 479)	(362 716)
Purchase of intangible assets		-	(50 818)
Net cash flows from investing activities		(383 673)	(405 166)
Cash flows from financing activities			
Decrease in finance lease liabilities		(3 849)	(50 720)
Net cash flows from financing activities		(3 849)	(50 720)
Net increase/(decrease) in cash and cash equivalents		745 337	194 210
Cash and cash equivalents at beginning of year		422 473	228 263
Cash and cash equivalents at end of year		1 167 810	422 473

Summary of significant accounting policies

for the year ended 31 March 2010

1. SIGNIFICANT ACCOUNTING POLICIES

The Ombud for Financial Services Providers (FAIS Ombud) is a national public entity as specified in Schedule 3A of the Public Finance Management Act (PFMA), Act No 1 of 1999 (as amended by Act 29 of 1999). The principal accounting policies applied in the preparation and presentation of these financial statements are set out below. These policies have been consistently applied to the years presented, unless otherwise stated.

1.1 Basis of preparation

The FAIS Ombud's financial statements are prepared in compliance with Generally Recognised Accounting Practice (GRAP), as determined by Directive 5 (Determining the GRAP Reporting Framework) issued by the Accounting Standards Board (ASB) in accordance with sections 55 and 89 of the Public Finance Management Act, Act No 1 of 1999 (as amended by Act 29 of 1999).

These financial statements are prepared in concurrence with the going-concern principle and on an accrual basis with the measurement base applied, being the historical cost unless stated otherwise.

In terms of Notice 991 and 992 in *Government Gazette* 28095 of December 2005 and Notice 516 in *Government Gazette* 31021 of 9 May 2008 the FAIS Ombud must comply with the requirements of GRAP. Directive 5 details the GRAP Reporting Framework comprising the effective standards of GRAP, interpretations (IGRAPs) of such standards issued by the ASB, ASB guidelines, ASB directives, and standards and pronouncements of other standards setters, as identified by the ASB on an annual basis. Those relevant to the FAIS Ombud are listed below:

Title of standard	Standard
GRAP 1	Presentation of Financial Statements
GRAP 2	Cash Flow Statements
GRAP 3	Accounting Policies, Changes in Accounting Estimates and Errors
GRAP 4	The Effects of Changes in Foreign Exchange Rates
GRAP 5	Borrowing Costs
GRAP 9	Revenue from Exchange Transactions
GRAP 13	Leases
GRAP 14	Events after the Reporting Date
GRAP 17	Property, Plant and Equipment
GRAP 19	Provisions, Contingent Liabilities and Contingent Assets
GRAP 102	Intangible Assets
IPSAS 20	Related Party Disclosures
IFRS 7	Financial Instruments: Disclosures
IAS 19	Employee Benefits
IAS 32	Financial Instruments: Presentation
IAS 39	Financial Instruments: Recognition and Measurement

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.

In applying accounting policies, management is required to make various judgements, apart from those involving estimations, which may affect the amounts of items recognised in the financial statements. Management is also required to make estimates of the effects of uncertain future events which could affect the carrying amounts of certain assets and liabilities at the reporting date. Actual results in the future could differ from estimates which may be material to the financial statements. Details of any significant judgements and estimates are explained in the relevant policy where the impact on the financial statements may be material.

1.2 Property, plant and equipment

Property, plant and equipment, comprising office furniture, office equipment, motor vehicles, assets under finance lease, computer equipment as well as paintings, are stated at cost less accumulated depreciation and any accumulated impairment losses.

All items of property, plant and equipment are depreciated on a straight-line basis at rates which will reduce their book values to estimated residual values over their estimated useful lives. The assets' residual values and useful lives are reviewed and adjusted if appropriate at each balance sheet date. The useful lives are as follows:

Motor vehicles	5 years
Computer equipment	3 years
Office equipment	5 years
Furniture and fittings	5 years
Paintings	5 years
Assets under finance lease	5 years

Maintenance and repairs, which neither materially add to the value of assets nor appreciably prolong their useful lives, are charged against the income.

1.3 Intangible assets

Computer software

Acquired computer software licences and costs associated with the development of unique software products controlled by the office are capitalised on the basis of the costs incurred to acquire and bring to use the specific software. These costs are amortised over their estimated useful lives (not exceeding three years). Costs associated with developing and maintaining of computer programmes are recognised as an expense when incurred.

1.4 Impairment of non-financial assets

Assets that are subject to amortisation are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. An impairment loss is recognised for the amount by which the asset's carrying amount exceeds the recoverable amount. The recoverable amount is the higher of an asset's fair value less costs to sell and value in use.

1.5 Significant accounting judgements and estimates

The preparation of financial statements in conformity with the basis of preparation as described above requires the use of certain critical accounting estimates. It also requires management to exercise its judgement in the process of applying the FAIS Ombud's accounting policies. Estimates and judgements are continually evaluated and are based on historical experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances. The areas involving a higher degree of judgement or complexity, or areas where assumptions and estimates are significant to the annual financial statements, are disclosed below:

Critical accounting estimates and assumptions

Depreciation

During each financial year, management reviews the assets within property, plant and equipment and intangible assets to assess whether the useful lives and residual values applicable to each asset are appropriate.

Impairment of trade and other receivables

The FAIS Ombud tests annually whether trade and other receivables have suffered any impairment, in accordance with the accounting policy stated in note 1.7 below.

1.6 Financial assets

Loans and trade receivables are classified as 'Trade and other receivables' in the balance sheet. Loans and trade receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Loans and receivables are carried at cost and are included in current assets as their maturity is less than 12 months from balance sheet date. Financial assets are derecognised when the rights to receive cash flows from the loans and trade receivables have expired.

Summary of significant accounting policies continued

for the year ended 31 March 2010

1. SIGNIFICANT ACCOUNTING POLICIES (continued)

1.7 Trade and other receivables

Trade and other receivables are recognised initially at fair value and subsequently measured at amortised cost using the effective interest method, less provision for impairment. A provision for impairment of trade and other receivables is established when there is objective evidence that the FAIS Ombud will not be able to collect all amounts due according to the original terms of the trade and other receivables. The amount of the provision is the difference between the asset's carrying amount and the present value of estimated future cash flows, discounted at the effective interest rate. The amount of the provision is recognised in the income statement.

1.8 Cash and cash equivalents

Cash and cash equivalents includes cash in hand and bank balances.

1.9 Operating leases

Leases in which a significant portion of the risks and rewards of ownership are retained by the lessor are classified as operating leases. Payments made under operating leases (net of any incentives received from the lessor) are charged to the income statement on a straight-line basis over the period of the lease. All other leases are classified as finance leases.

1.10 Finance leases

Leases of property, plant and equipment where substantially all the risks and rewards of ownership are transferred to the FAIS Ombud are classified as finance leases. Finance leases are capitalised at the lease's commencement at the lower of the fair value of the leased property, plant and equipment and the present value of minimum lease payments.

Each finance payment is allocated between the liability and finance charges so as to achieve a constant rate on the finance balance outstanding. The corresponding rental obligations, net of finance charges, are included in other long-term payables. The interest element of the finance cost is charged to the income statement over the lease period so as to produce a constant periodic rate of interest on the remaining balance of the liability for each period. The property, plant and equipment acquired under finance leases are depreciated over the shorter of the useful life of the asset or the lease term.

1.11 Trade and other payables

Trade and other payables are recognised initially at fair value and subsequently measured at amortised cost using the effective interest rate method.

1.12 Provision and contingencies

Provision and contingencies are recognised when there is a presented obligation as a result of a past event, making it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation and a reliable estimate can be made of the obligation.

1.13 Revenue recognition

Revenue comprises the fair value of the consideration received or receivable in terms of section 22(1) of the FAIS Act. Revenue is recognised as follows:

Case fees

Fee income is recognised when the case is accepted for investigation.

Contributions to expenses by the Financial Services Board

Contributions from the Financial Services Board towards expenses are recognised on the accrual basis. The amount recognised is limited to the budget approved by the Financial Services Board in terms of section 22 of the FAIS Act.

1.14 Retirement benefits

Contributions towards a defined-contribution plan are paid to an administered pension fund on a contractual basis. There are no further payment obligations once contributions have been paid. The contributions are recognised as employee benefit expense in the period in which the employee renders the related service.

1.15 Related parties

All payments to executive management are classified as related party transactions. All transactions and balances with national departments of government and state-controlled entities are regarded as related party transactions and are disclosed separately in the notes to the financial statements (refer note 16).

Explanatory notes to financial statements

for the year ended 31 March 2010

1. PROPERTY, PLANT AND EQUIPMENT

	Motor vehicles R	Computer equipment R	Office equipment R	Furniture and fittings R	Assets under finance lease R	Paintings R	Total R
2010							
Cost	138 593	1 235 963	307 476	1 099 339	218 598	26 376	3 026 345
Accumulated depreciation	(106 593)	(914 546)	(196 620)	(956 998)	(59 883)	(26 296)	(2 260 936)
Net book value at 31 March 2010	32 000	321 417	110 856	142 341	158 715	80	765 409
Reconciliation of carrying value							
Net book value at the beginning of the year	50 506	363 476	129 159	179 157	135 318	100	857 716
Additions	–	169 494	23 668	160 190	102 127	–	455 479
Asset disposal	–	–	–	–	(26 920)	–	(26 920)
Current-year depreciation	(18 506)	(211 553)	(41 971)	(197 006)	(51 810)	(20)	(520 866)
Total	32 000	321 417	110 856	142 341	158 715	80	765 409

Assets under finance lease are encumbered as per note 5.

2009

Cost	138 593	1 066 469	283 807	939 149	299 337	26 376	2 753 731
Accumulated depreciation	(88 087)	(702 993)	(154 648)	(759 992)	(164 019)	(26 276)	(1 896 015)
Net book value at 31 March 2009	50 506	363 476	129 159	179 157	135 318	100	857 716
Reconciliation of carrying value							
Net book value at the beginning of the year	38 225	306 385	181 848	139 737	189 091	956	856 242
Additions	–	213 152	–	149 564	–	–	362 716
Assets disposal	–	(6 332)	–	–	–	–	(6 332)
Impairment of assets	–	(6 331)	(11 848)	(2 742)	–	–	(20 921)
Current-year depreciation	12 281	(143 398)	(40 841)	(107 402)	(53 773)	(856)	(333 989)
Total	50 506	363 476	129 159	179 157	135 318	100	857 716

Assets under finance lease are encumbered as per note 5.

Explanatory notes to financial statements continued

for the year ended 31 March 2010

2. INTANGIBLE ASSETS

	Computer software R	Data management system R	Website R	Total R
2010				
Cost	149 103	485 843	97 341	732 287
Accumulated amortisation	(130 807)	(343 101)	(72 374)	(546 282)
Net book value at 31 March 2010	18 296	142 742	24 967	186 005
Reconciliation of carrying value				
Net book value at the beginning of the year	37 240	304 673	47 424	389 337
Current-year amortisation	(18 944)	(161 932)	(22 457)	(203 333)
Total	18 296	142 741	24 967	186 004
2009				
Cost	149 103	485 843	97 341	732 287
Accumulated amortisation	(111 863)	(181 170)	(49 917)	(342 950)
Net book value at 31 March 2009	37 240	304 673	47 424	389 337
Reconciliation of carrying value				
Net book value at the beginning of the year	26 472	466 605	56 854	549 931
Additions	33 718	–	17 100	50 818
Current-year amortisation	(22 950)	(161 932)	(26 530)	(211 412)
Total	37 240	304 673	47 424	389 337

3. TRADE AND OTHER RECEIVABLES

	2010 R	2009 R
Trade receivables	148 000	171 140
Provision for doubtful debts	(46 000)	(60 000)
Net trade receivables	102 000	111 140
Contribution from the Financial Services Board	1 065 940	–
Prepaid expenses	251 093	120 241
Other prepayments	–	–
	1 419 033	231 381

A provision for doubtful debts is created where there is evidence that the collection of a debtor will not be possible according to the original terms of the receivable. When the trade receivable is uncollectable, it is written off against the provision already created.

All accounts receivable are due within 12 months from the balance sheet date and are valued at fair value.

Management concluded that there were no adjustments necessary for the impairment of trade receivables at the end of the year.

4. CASH AND CASH EQUIVALENTS

For purposes of the cash flow statement, cash and cash equivalents comprise cash in the current account with the bank. Cash and cash equivalents are stated at fair value at 31 March 2010.

1 167 810	422 473
-----------	---------

5. FINANCE LEASE LIABILITY

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 leases are classified as finance leases. Lease agreements have a fixed 60 months' term and interest is fixed at 10% with equal lease payments over the lease term.

Opening balance
New agreement entered into
Repayments

Short-term portion transferred to current liabilities

Long-term portion under non-current liabilities

	2010 R	2009 R
	158 490	209 210
	102 127	–
	(105 976)	(50 720)
	154 641	158 490
	(35 846)	(57 286)
	118 795	101 204

Reconciliation of minimum lease payments

2010

Less than one year
Two to five years

	Minimum payments R	Interest costs R	Present value R
	79 351	43 506	35 846
	198 368	79 573	118 795
	277 719	123 079	154 641
	78 666	21 377	57 289
	118 062	16 861	101 201
	196 728	38 238	158 490

2009

Less than one year
Two to five years

6. TRADE AND OTHER PAYABLES

Trade payables
Leave pay accrual
Other payables
Lease liability

	2010 R	2009 R
	440 535	267 830
	191 181	211 197
	36 304	230 004
	154 139	290 898
	822 159	999 929

All accounts payable are due within 12 months after balance sheet date.

7. OPERATING DEFICIT

The following items have been charged in arriving at operating deficit:

Audit fees
Operating lease rentals – office
Operating lease rentals – office equipment

	2010 R	2009 R
	633 051	624 995
	1 071 445	1 036 455
	22 496	38 831

Explanatory notes to financial statements continued

for the year ended 31 March 2010

8. CONTRIBUTION TO ASSETS AND EXPENSES BY THE FINANCIAL SERVICES BOARD

Funds received from the Financial Services Board in terms of section 22 of the Financial Advisory and Intermediary Services Act, 2002.

Donation of assets

Withdrawals and expenses paid on behalf of the office

2010 R	2009 R
79 875	–
22 931 783	19 253 291
23 011 658	19 253 291

9. TAXATION

No provision has been made 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).

10. RECONCILIATION OF THE SURPLUS FOR THE YEAR TO CASH GENERATED BY OPERATIONS

Surplus for the year

Profit on asset disposal

Amortisation

Bad debts written off

Depreciation

Impairment of assets

Finance costs

Provision for doubtful debts

Movements in working capital:

Increase in accounts receivable

Decrease in accounts payable

1 818 969	175 465
(44 885)	(2 036)
203 333	211 412
73 140	–
520 866	333 989
–	20 921
35 648	29 169
46 000	60 000
(1 306 794)	598 268
(177 770)	(747 923)
1 168 507	679 265

11. RECONCILIATION OF BUDGET SURPLUS IN THE STATEMENT OF FINANCIAL PERFORMANCE

Net surplus

Over-recovery of income

Increase in provision for bad debts

Underspending on personnel costs

Overspending on expenditure

Asset donation from Financial Service Board

Net surplus per approved budget

1 818 969	–
(162 305)	–
46 000	–
(2 177 367)	–
481 438	–
(79 875)	–
(73 140)	–

12. CREDIT QUALITY OF FINANCIAL ASSETS

Trade receivables

Group 1

Group 2

1 380 033	147 241
39 000	84 140
1 419 033	231 381

Cash at bank

A1 Bank

1 167 810	422 473
-----------	---------

Group 1 – debtors outstanding for less than 90 days

Group 2 – debtors outstanding for more than 90 days with no provision necessary

13. OPERATING LEASE COMMITMENTS

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 taxes. Escalations of 10% (2009: 10%) have been included in the lease agreement.

The future minimum lease payments payable under non-cancellable operating leases are as follows:

Not later than one year

Later than one year but not later than five years

2010 R	2009 R
1 450 265	1 070 937
6 160 821	1 160 181

14. RETIREMENT BENEFITS

The Office of the FAIS Ombud pays a defined contribution towards the pension funds established for its employees. The office has no other obligation to provide retirement benefits to its employees.

Pension fund contributions

1 149 678	1 019 565
-----------	-----------

15. FINANCIAL RISK MANAGEMENT

15.1 Financial risk factors

The FAIS Ombud has limited exposure to a variety of financial risks as a consequence of its operations. The FAIS Ombud's risk management programme is limited to the management of liquidity, case management and credit exposure. The FAIS Ombud complies with written principles for overall risk management.

(a) Market risk

Cash flow and fair value interest rate risk

The FAIS Ombud has no significant cash and cash equivalents and its income and operating cash flows are not dependent on changes in market interest rates. Finance leases are on a fixed interest rate and, therefore, there is no adverse exposure relating to the interest rate movements.

(b) Credit risk

Cash and cash equivalents and accounts receivable potentially subject the FAIS Ombud to credit risk. Cash and cash equivalents in excess of the FAIS Ombud's immediate operational requirements are always minimal and are deposited with a major bank. The credit risk is limited, as the FAIS Ombud is a regulatory body, and levies and other fees are charged in terms of legislation.

Below is the balance that is held by the bank at the balance sheet date:

Standard Bank Limited

1 167 810	422 473
-----------	---------

(c) Liquidity risk

Prudent liquidity risk management implies maintaining sufficient liquid resources and the ability to settle debts as they become due. The FAIS Ombud maintains adequate liquid resources consisting of cash and cash equivalents. Rolling cash flow forecasts of the cash and cash equivalents are monitored on the basis of expected cash flow.

Explanatory notes to financial statements continued

for the year ended 31 March 2010

15. FINANCIAL RISK MANAGEMENT (continued)

15.1 Financial risk factors (continued)

(c) Liquidity risk (continued)

The table below shows the FAIS Ombud's financial liabilities at the balance sheet date:

	Less than 1 year R	Between 1 and 2 years R	Between 2 and 5 years R
Year ended 31 March 2010			
Accounts payable	822 159	–	–
Year ended 31 March 2009			
Accounts payable	999 929	–	–

16. RELATED PARTIES

All national departments of government and state-controlled entities are regarded as related parties in accordance with Circular 4 of 2005: Guidance on the term "state controlled entities" in the context of IAS 24 (AC 126) – Related Parties, issued by the South African Institute of Chartered Accountants. The following transactions were recorded relating to transactions with related parties:

	2010 R	2009 R
Services provided by related parties		
<i>Public entities</i>		
Skills Development Levy	(129 573)	(110 561)
Unemployment Insurance Fund	(43 258)	(40 709)
Workmen's Compensation	–	(10 181)
	(172 831)	(161 451)
National government agencies		
South African Airways	(57 717)	(79 037)
Telkom Limited	(352 708)	(293 171)
	(410 425)	(372 208)
Year-end balances arising from services provided by related parties		
<i>National government agencies</i>		
Telkom Limited	9 774	10 628
Funding received from related parties		
<i>Public entities</i>		
Financial Services Board	23 011 658	19 253 291
Year-end balances arising from funding receivable		
<i>Public entities</i>		
Financial Services Board	1 065 940	(230 004)

Management emoluments

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

	Salary R	Allowance R	Pension contribution R	Performance bonus R	Leave commutation paid R	Total R
Year ended 31 March 2010						
C Pillai, FAIS Ombud	1 254 138	180 000	–	255 439	82 371	1 771 948
N Bam, Deputy Ombud	889 159	24 000	133 452	204 714	42 794	1 294 119
S Bana, Financial Manager	470 891	72 000	58 650	102 953	12 298	716 792
K Ntlonti, Office Manager	298 072	60 000	38 684	39 821	8 084	444 661
	2 912 260	336 000	230 786	602 927	145 547	4 227 520
Year ended 31 March 2009						
C Pillai, FAIS Ombud	1 116 749	180 000	–	429 509	28 639	1 754 897
N Bam, Deputy Ombud	838 609	24 000	120 410	166 388	35 211	1 184 618
S Bana, Financial Manager	419 483	72 000	53 096	61 834	11 283	617 696
K Ntlonti, Office Manager	264 562	60 000	35 063	28 292	5 946	393 863
	2 639 403	336 000	208 569	686 023	81 079	3 951 074

17. CONTINGENT LIABILITIES

There are no contingent liabilities or pending litigation known to management as at 31 March 2010.

Detailed unaudited statement of financial performance

for the year ended 31 March 2010

	Actual 2010 R	Actual 2009 R
Operating revenue		
Case fees	187 420	107 180
Bad debts recovered	2 000	–
Profit on asset disposal	44 885	2 036
	234 305	109 216
Total expenses	21 426 994	19 187 042
Amortisation	203 333	211 412
Depreciation	520 866	333 989
Finance costs	35 648	29 169
Impairment of assets	–	20 921
Personnel costs	14 270 965	12 860 180
Accrual for leave pay	(20 016)	19 814
Personnel costs	14 290 981	12 840 366
Operating expenses	6 396 182	5 731 371
Audit fees (external)	633 051	624 995
Audit fees (internal)	674 005	277 915
Annual reports	399 941	439 456
Advertising and recruitment	97 816	61 902
Bad debts written off	73 140	–
Bank charges	15 682	15 829
Cellular phone costs	88 492	91 059
Cleaning and general maintenance	223 581	179 367
Consulting fees	481 134	373 226
Committee fees	66 123	–
Courier and postages	31 168	29 226
Entertainment expenses	68 205	52 638
Insurance and security	88 792	67 312
Internet costs	329 506	410 686
Leasing and hire costs	22 496	38 831
Levies	129 573	110 561
Marketing expenses	8 733	27 196
Printing and stationery	253 123	188 729
Professional fees	45 540	26 008
Provision for doubtful debts	46 000	60 000
Rent	1 071 445	1 036 455
Repairs and maintenance	312 176	187 746
Rates and electricity	236 327	95 391
Staff training	149 702	369 458
Staff wellness	57 649	75 879
Strategy planning and workshops	43 258	108 606
Subscriptions	32 770	42 920
Telephone	352 708	293 171
Textbook/Library costs	167 857	140 355
Travel and accommodation	196 189	306 454
Operating deficit	(21 192 689)	(19 077 826)
Contribution to assets and expenses by the Financial Services Board	23 011 658	19 253 291
Surplus for the year	1 818 969	175 465

Performance information

for the year ended 31 March 2010

1. Strategic objective 1: Improvement of the complaints-handling processes

Development and implementation of a complaints-handling process for a cost-effective service, quicker turnaround times on cases as well as ensuring smooth flow and consistent performance standards.

The FAIS Ombud intends to continuously improve the processes of case management so that it remains capable of delivering a cost-effective service. Taking into account the practical experience the office has, the implementation of a complaints-handling process was recognised as a key priority. This process will ensure immediate registration of all complaints, thereby avoiding a backlog of unregistered files and providing clients with up-to-date feedback when required. This will include clear, efficient and unambiguous case-handling procedures to ensure smooth flow and consistent performance standards. Benchmarks for quality and timeliness will be identified and maintained. This will enable the office to improve its turnaround times and efficiencies, increase case load and provide better client satisfaction in the speed and manner in which complaints are resolved.

Objective(s)	Key performance areas	Target date	Progress at 31 March 2010	Reasons for variance
1. Develop and implement a complaints-handling process for a cost-effective service, quicker turnaround times on cases as well as smooth flow and consistent performance standards.	1. Evaluate and upgrade systems and document on workflow for each kind of new contact.	31 Jan 2010	100% achieved. The complaints-handling process has been reviewed and documented, and the new process is in use.	
	2. Automate the contact-handling process by integrating with the Customer Relationship Management (CRM) system which has inbuilt checks and balances.	31 Dec 2009	60% achieved. The only outstanding item is the synchronisation of emails to CRM.	There were delays in sourcing of service provider to automate some of the CRM processes. This was caused mainly by unavailability of providers who are familiar with the relevant software.
	3. Train relevant staff on effective use of the system.	31 Dec 2009	No training was undertaken during the financial year on the improved process.	This training can only follow the completion of the CRM automation.

2. Strategic objective 2: Information and communications technology

Effective use and further development of Microsoft Dynamics CRM, inclusion of all internal business processes into the system and automation of all key activities.

The office will continue to utilise CRM technology to increase its efficiency in case management. This will include further development of the Microsoft Dynamics CRM solution procured in the 2007/08 financial year to ensure that new developments in technology are utilised and all internal business processes are included in the system and all key activities are automated.

Performance information continued

for the year ended 31 March 2010

2. Strategic objective 2: Information and communications technology (continued)

Objective(s)	Key performance areas	Target date	Progress at 31 March 2010	Reasons for variance
1. Effective use and further development of Microsoft Dynamics CRM, inclusion of all internal business processes into the system and automation of all key activities in order to enable more efficient case resolution and to enhance quality of information.	1. Track and manage effectively all calls, from call logging to system tracking of files from start to finish in order to enable more efficient case resolution and to enhance quality of information.	31 Mar 2010	60% achieved. There is a built-in process of recording calls which will be fully utilised once the development of the contact-handling process is complete.	There is a manual process that tracks all contact points with the external stakeholders. The automation of this process was delayed as a suitable service provider could not be found within the expected time (refer to objective 1.1.2).
	2. Improve on Data Management System (disaster recovery and backups) in order to ensure minimal data/information loss.	31 Mar 2010	A full backup system was finalised only after year-end.	There were various backup methods that were tested and that failed. The fully functional and licensed process was finalised only after year-end.
	3. Improve information sharing within the office to enable more effective use of knowledge by staff.	Ongoing	Achieved in the last four quarters. The performance management sessions are used for information sharing.	

3. Strategic objective 3: Sourcing, development and retention of the right skills

Putting people first: sourcing, development and retention of people for performance and efficiency of the office, as productivity is linked to the utilisation of the right legal and financial services skills in case resolution.

The sourcing, development and the retention of skills are key priorities. This directly affects the performance and efficiency of the office as productivity is linked to the utilisation of the right legal and financial skills in case resolution. The office has committed to the principle of life-long learning. In pursuance of this principle, management has undertaken to make ongoing training available for all key personnel to guarantee efficient case management and complaints resolution. A proposed knowledge centre will play a key role.

A major component of the overall success of the office depends on an effective performance management system. Whilst the office has an existing performance management system in place, the office has undertaken to improve it. This will include performance standards of timeliness, efficiency, customer satisfaction and productivity, taking into cognisance the acquisition of Microsoft Dynamics CRM. A further element of this is the appropriate rewarding of employees for their performance to maintain employee satisfaction at all times. Included in the process of performance will be other awards on an ad hoc basis for employees who go the extra mile.

Objective(s)	Key performance areas	Target date	Progress at 31 March 2010	Reasons for variance
1. Sourcing, development and retention of people for performance and efficiency of the office, as productivity is linked to the utilisation of the right legal and financial services skills in case resolution	1. Acquire, develop and retain right skills, right quantity at the right time to optimise operational efficiency of FAIS Ombud.	31 Mar 2010	100% achieved. A retention strategy document has been discussed and was approved on 19 June 2009. All vacancies have been filled.	
	2. Ensure staff wellness.	31 Mar 2010	100% achieved. There is a staff wellness plan in place. A service provider has been appointed to manage the staff wellness activities.	

4. Strategic objective: Marketing and communication

Increasing the extent and impact of consumer information and education in the field, resulting in a decline in the number of complaints received not relating to the office.

With the extent of complaints being received that do not pertain to the FAIS Ombud's function and the increase in the number of complaints being received, there is need to increase the extent and impact of consumer information and education in the field. Appropriate consumer education should ensure that there would be a decline in the number of complaints received not relating to the office. Secondly, and very importantly, the FAIS Ombud is accumulating peculiar and highly pertinent knowledge in respect of appropriate advice and ethical practices which should be communicated to the public. This would suggest that it is necessary to rethink the consumer education function in the sector and move to a situation where the function is shared.

Similarly, in the communications area it will be necessary to increase the extent of information and reporting in the forthcoming annual reports and on an ongoing basis.

Objective(s)	Key performance areas	Key performance indicators	Target	Target date	Progress at 31 March 2010	Reasons for variance
1. Increase the extent and impact of consumer education in the field, resulting in a decline in the number of complaints received not relating to the office.	1. Reach as many SA consumers of financial services. (Contribute to raising the level of financial literacy).	1. Increase in complaints and inquiries related to FAIS Ombud and a reduction in non-related complaints and inquiries.	35% increase in volume of complaints and inquiries related to FAIS Ombud (%).	31 Mar 10	3% increase in the volume of complaints.	The behaviour of the financial services stakeholders, including service providers and customers, determines the nature and volume of enquiries and cases received. The target was the estimate based on the information that was available at the time.
			50% reduction in non-FAIS Ombud-related complaints and inquiries (%).	31 Mar 10	A reduction of 8% of non-FAIS Ombud complaints has been achieved.	More awareness created about the office has resulted in a reduction of non-FAIS inquiries.

Performance information continued

for the year ended 31 March 2010

4. Strategic objective: Marketing and communication (continued)

Objective(s)	Key performance areas	Key performance indicators	Target	Target date	Progress at 31 March 2010	Reasons for variance
			40% increase in coverage.	31 Mar 10	67% decrease in coverage compared with the previous year was achieved.	The previous year's exposure of determinations could not be achieved in the current financial year. Although fewer than expected mediums of communication were utilised, management believe that the intended consumers have been reached through other means.
			85% increase in webpage hits.	31 Mar 10	An increase of 274% on web hits was recorded.	Increased awareness of the website resulted in more hits recorded.
		2. Consumer education.	20% year-on-year increase in number of published determinations.	31 Mar 10	There has not been any change in the number of determinations published (0% increase).	The nature of cases that were received did not warrant more determinations.

CONTACT DETAILS

FAIS Ombud
Eastwood Office Park
Baobab House
Ground Floor
Lynwood Ridge
0081

PO Box 74571
Lynwood Ridge
0040

Customer Contact Division
0860 FAISOM (0860 324 766)
Tel: +27 12 470 9080
Fax: +27 12 348 3447
Email: info@faisombud.co.za
Website: www.faisombud.co.za



