

KEY FACTS AND FIGURES

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- Complaints and enquiries filed with the office increased from 5 720 (2007/08) to 7 416 this year – an increase of 30%.
- Of the 7 416 complaints and enquiries, we dismissed 1 384 complaints as without merit, we settled 305 complaints involving monetary compensation, we referred out to other forums 2 707 and carried over into the new financial year 1 820 complaints. At year-end, we were awaiting information in order to complete the assessment of 1 200 complaints.
- We settled a total of 616 complaints involving monetary compensation this year. This includes complaints carried over from previous years. This equates to approximately three complaints being settled in each day.
- The quantum of complaints settled or determined this year amounts to R32,9 million – an increase of 132%.
- We issued 21 determinations, in which we upheld the complaint in 12 cases and rejected them in 7.

KEY FACTS

- The FAIS Ombud was established in terms of the Financial Advisory and Intermediary Services Act 2002 (Act No 37 of 2002) to deal with complaints by clients against financial services providers. The complaint must relate to a financial service rendered by the financial services provider to the client in which it is alleged that the client has or potentially will suffer financial prejudice or damage as a result of contraventions of the FAIS Act, wilful or negligent conduct or where the client has been treated unfairly.
- The financial service complained of, must have occurred on or after **30 September 2004**.
- Since **1 April 2005**, the FAIS Ombud can also act as Statutory Ombud in terms of the Financial Services Ombud, Schemes Act 2004 (Act No 37 of 2004). In his role as Statutory Ombud the FAIS Ombud can resolve a complaint where certain voluntary ombuds do not have jurisdiction or decide who should deal with a complaint where there is uncertainty over jurisdiction and such uncertainty cannot be resolved between the ombuds concerned.
- Since inception the FAIS Ombud has handled 22 030 complaints and enquiries from aggrieved financial services consumers involving total monetary compensation of R64 075 798.

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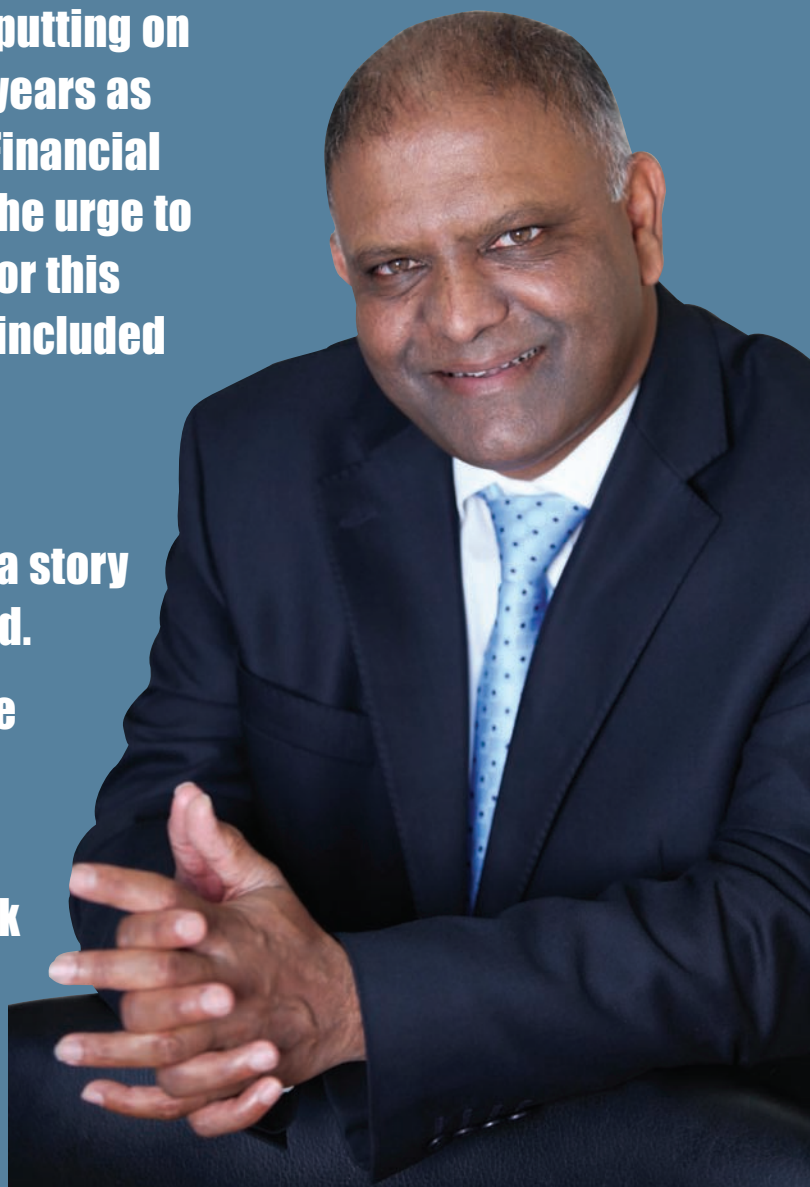
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As this is my last annual report, I decided I could not leave office without putting on paper my reflections after six years as South Africa's first Ombud for Financial Services Providers. I also felt the urge to give a glimpse into my ideals for this august insitution. Thus, I have included an epilogue at the end.

ep•i•logue – n

- 1. A final chapter at the end of a story after the main plot has ended.**
- 2. Used to wrap up all the loose ends.**
- 3. Also allows the main character a chance to 'speak freely'.**

(From Old French epilogue, from Latin epilogus, from Greek epilogos – conclusion of a speech.)



FOREWORD BY THE MINISTER OF FINANCE

The Office of the Ombud for Financial Service Providers (FAIS Ombud) has experienced an increase in the level of complaints received and processed. This is testimony to the institutional maturity of the office.

The statistics speak for themselves:

- There was a marked increase of approximately 30% in the number of complaints and enquiries received.
- Cases involving monetary compensation numbered 616 – a 27% increase from the previous year.
- The quantum of the settled and determined cases rose 132% from R14,1 million to R32,9 million.
- A total of 21 determinations were issued during this period.

The office of the FAIS Ombudsman cannot function without a high degree of credibility – enjoying the confidence of both the investing public and the relevant financial institutions. This too is reflected in the breadth of cases that received its attention within the financial services industry.

Of significance, a case involving a school teacher who was a victim of a fraudulent insurance policy being generated through her PERSAL managed salary was determined. This was one of a number of cases of unauthorised policies, which were being generated in this manner. Both the

Association for Savings and Investment in South Africa (ASISA) and the insurers involved are in ongoing discussions with the FAIS Ombud with a view to reduce and eventually exterminate the incidence of such fraudulent policies being generated.

Furthermore, consumer protection received a major boost in this period when the FAIS Ombud ruled on the practice of short-term insurers simply renewing policies without advising clients of the changes in respect of the value of their motor vehicles. This has alerted short-term insurers to the need to properly advise their clients at renewal.

This was followed by the FAIS Ombud ruling in a matter where an ‘unconscionable condition’ operated to the detriment of a client and was not pertinently brought to her attention at the time the policy was sold to her by either the insurer or the broker. This is likely to create greater awareness amongst insurers of the need to avoid unconscionable conditions and to pertinently direct the attention of potential clients to unusual clauses in insurance contracts.

The Office of the FAIS Ombud has matured, and as an institution will endure beyond the able stewardship of Mr Charles Pillai, who has unfortunately signalled that the coming year will be his last in this capacity. Mr Pillai must be complimented on the achievements of the office.

As the end of his term of office nears, Mr Pillai can look back and believe that he has fulfilled the objectives that were set for him. The Office of the FAIS Ombud is now recognised as an international institution. The impact of the FAIS Ombud on the financial sector has been remarkable in the relatively short time it has been in existence.

Trevor A Manuel
Minister of Finance



At its inception the establishment of the office was not entirely well received in many quarters. There was fear and uncertainty about what this newly established office was going to do. The challenge lay in fostering an ethos that encouraged all stakeholders to ensure constitutional values were expressed in business practices through the implementation of the FAIS Act and various Codes of Conduct promulgated thereunder.

To this end, and despite his appointment as South Africa's first Ombud for Financial Services Providers on 1 August 2003, and the gap year that he experienced as a result of his being legally empowered to accept complaints in respect of financial services rendered only on or after 30 September 2004, Mr Pillai engaged all stakeholders to accept the new office as an integral part of the financial services industry through numerous roadshows and presentations.

This went a long way in laying the foundation for active acceptance on the part of the industry of the role of the FAIS Ombud.

This period was additionally characterised by creating systems, staffing the office with the right people and interacting with international Ombudsmen on best practice.

Legal history was made when the FAIS Ombud began issuing precedent-setting determinations sanctioning providers for non-compliance or negligence when rendering financial services.

On 21 July 2005, a ground-breaking determination upholding the rights of all consumers in the case of ***Helene Dennis versus Nedbank Group Insurance Brokers and Another*** was made, when the Ombud ordered the respondents to grant free choice to its consumers in respect of homeowner's insurance cover. This determination prompted a change to the National Credit Act 2005 (No 34 of 2005), which now includes a section allowing free choice.

Other errant practices involving the failure to conduct proper needs analysis or to record the advice given resulted in further determinations against the larger banks.

A high profile financial services provider was also found to be wanting when it came to honesty and integrity when he relied on forged documentation to file a claim for fees. The ruling led to his subsequent disbarment.

Pronouncements on financial scams and schemes that skirted regulatory oversight drew public attention to these kinds of practices thereby alerting consumers to be

vigilant to such practices. Over the years there were several other landmark determinations.

Having taken the first bold steps towards creating a sound institutional framework for the Office of the FAIS Ombud, the seedling had blossomed into a sturdy tree.

As the end of his term of office nears, Mr Pillai can look back and believe that he has fulfilled the objectives that were set for him. The Office of the FAIS Ombud is now recognised as an international institution. The impact of the FAIS Ombud on the financial sector has been remarkable in the relatively short time it has been in existence.

After his last term as Ombud, I wish Mr Pillai success in his aspiration to grapple with the law – this time outside the office of the FAIS Ombud. Finally, I recall my words at the opening address at the launch of the FAIS Ombud on 23 September 2004 when I said: 'I will follow your Office's progress with keen interest.' How pleasing the progress has been!

Trevor A Manuel

Minister of Finance

CHAIRPERSON'S MESSAGE

It is an honour and a privilege to contribute a short message to this annual report of the FAIS Ombud.

Whilst this is my first message relating to the FAIS Ombud since assuming the chairmanship of the Financial Services Board, it is also my last during the tenure of the current Ombud, Charles Pillai, who will leave office later in the year.

Mr Pillai has dedicatedly served in his capacity as South Africa's first FAIS Ombud for a period close to six years. He has elected to leave office to pursue other interests.

As member of the board of the Financial Services Board, I have been involved in the administrative oversight of the Office of the FAIS Ombud and watched its progress with keen interest since its inception in August 2003.

I can fondly recall a question that I had posed to Mr Pillai when I was part of the interview panel deciding on his appointment. The question was whether, in the adjudication of complaints that came before him, he would not be biased against the industry, coming as he does, from a human rights background where he always acted for the underdog.

His reply was quite appropriate. He said that many of the judges who sit on the Constitutional Court were lawyers

who acted for the victims of apartheid. The people who approach that court would feel far more comfortable with a lawyer of that ilk telling them that they did not have a justiciable case than hearing it from someone who was not. That answer gave me a great deal of comfort in knowing that he was in fact the man for the job. My assessment was well placed and I have been vindicated in my support for his appointment.

Now six years into the role as FAIS Ombud, Mr Pillai has demonstrated his ability to exercise the powers that have been entrusted on him with fairness, impartiality and propriety. This has earned him the respect and trust of the industry for which he was appointed as Ombud.

I can cite as an example his careful assessment of the concept of equity in the well reasoned determination of *Elizabeth September vs Sanlam Insurance Limited*. He was careful to explain that the concept of equity is not an unruly horse to be straddled by an Ombudsman whenever he is unsure of what the law on an issue is. This ruling came after many determinations where he was guided by the law.

It is true that prior to the enactment of the FAIS Act, there was no prescribed format for dealing with the client amongst the general body of financial advisors. What the

The FAIS Ombud has stood tall in the regulatory landscape in ensuring that an aggrieved consumer was afforded a fair hearing and a reasonable outcome, even if such an outcome was eventually not in favour of the consumer.

Abel Sithole
Chairperson



FAIS Ombud has done in the short time in interpreting this important piece of legislation is to set the benchmark against which an advisor can render appropriate advice.

The body of determinations spells this out clearly to all advisors. These determinations have brought to life the Codes of Conduct and provisions of the FAIS Act. The interpretations made in the context of our Constitution and the FAIS Act have clearly set the benchmark. The determinations give guidance to advisors on the interpretation of the FAIS Act.

At a broader level, the South African consumer should take comfort in the knowledge that we have had a raft of legislation since the advent of our constitutional democracy that has both contributed to the protection of the consumer as well as the integrity of the financial services industry.

This has to a large extent prevented South Africa from being caught in the eye of the storm in the financial crisis that has engulfed the world. This, however, does not mean that we have to be lax in further regulatory control. Indeed the Financial Services Board has over the past year extended the enforcement committee with powers to impose administrative penalties, compensatory and cost orders on offenders under its Directorate of Market Abuse. This gives additional teeth to the FSB to ensure that transgressors are appropriately dealt with. All of these measures will go some way to restoring public confidence in the financial services industry.

Needless to say, the FAIS Ombud has stood tall in the regulatory landscape in ensuring that an aggrieved consumer was afforded a fair hearing and a reasonable outcome, even if such an outcome was eventually not in favour of the consumer.

Mr Pillai and his team have realised this in the complaints that have been investigated and adjudicated in that office.

On a personal note, I wish Mr Pillai well in his future endeavours. I am sure that the standard that he has set for the FAIS Ombud will stand this office in good stead in the years to come.

Abel Sithole

Chairperson

Financial Services Board

FAIS OMBUD'S OPERATIONAL REPORT

This report is written against the backdrop of a global financial crisis that has seen major financial institutions crumble amidst pleas for state bailouts particularly in the United States of America and the United Kingdom. This crisis may spell the birth of a new world economic age.

Amidst the cacophony resulting from the fallout, certain voices have prevailed which give us strong messages.

In his inaugural address to the American nation and beamed via satellite to the billions of people across the globe, US President Barack Obama said:

“Our economy is badly weakened, as a consequence of greed and irresponsibility on the part of some, but also our collective failure to make hard choices and prepare the nation for a new age.”

Closer home, former Minister of Finance Trevor Manuel echoed similar sentiments when he said in his much anticipated 2009 Budget speech that there are “millions of savers and lenders, linked through a financial architecture of such complexity that neither accounting standards nor regulatory oversight have served their intended purposes: prudential banking rules have been overwhelmed by folly and fraud, masquerading as financial innovation.”

South Africa, notwithstanding assurances to the contrary, feels the impact as the recession bites internationally. We have not been immune from the “greed and irresponsibility” that precipitated the global financial crisis.

I cannot but concur with Minister Manuel when he said “financial systems cannot go unregulated, trade arrangements cannot be subordinated to short-sighted protectionist influence, and the distribution of income cannot be entrusted to the merciless counterpoise of executive greed and unsupervised labour market dynamics.”

What is required of all of us is that we must make the “hard choices” that will further our democratic ideals of ensuring that consumers in this country do not continue to fall victim to greed and irresponsibility

According to the Minister, this means “protecting the poor, employment and training.”

“It means investing in infrastructure and building a competitive economy. It means sustainable public finances,” Minister Manuel said.

To contribute to the vision of a new economic age, the financial services industry needs to embrace a principles-based approach to compliance with legislation, where the spirit, rather than the letter of the law, is followed. It should be emphasised that legislation, like the FAIS Act is only the minimum standard and not the benchmark.

Whilst some of the complaints we have dealt with this year may have displayed the characteristics of greed and irresponsibility, others reflected a failure to understand the principles and spirit of the codes of conduct promulgated under the FAIS Act.

The excesses of the last few years have led to complicated schemes designed to make the largest profit in the shortest possible time regardless of risk.

More laws are not necessarily the answer as they not only strangle legitimate business but inevitably there are ways around new legislation.

Charles Pillai
FAIS Ombud



OUR STATISTICS

The Office of the FAIS Ombud is now recognised as an international institution. Its impact on the financial sector has been remarkable in the relatively short time it has been in existence. In the year under review, we experienced an increase in the level of complaints received and processed.

- There was a marked increase of approximately 30% (from 5 720 to 7 416) in the number of complaints and enquiries received;
- Cases which were settled involving monetary compensation numbered 616, a 27% increase from the previous year;
- The quantum of the settled and determined cases rose by a massive 132% from R14,1 million to R32,9 million;
- We determined 21 cases during this period.

While relatively few of the scores of determinations issued have been taken on appeal during the almost six years since the FAIS Office was established, there have been several applications for leave to appeal in the year under review.

Of the appeals lodged against the series of determinations issued in the so-called *Leaderguard* cases, which involved the failure of a foreign exchange trading entity called Leaderguard Spot Forex, the majority were withdrawn after the respondents settled the cases with complainants.

(See also page ▼▼)

TRENDS

Last year I reported on the manner in which unauthorised policies continued to plague consumers.

The typical victim of this kind of unlawful practice is the civil servant whose salary is managed through the state-run PERSAL payroll system. The practice involves policies taken out in the name of an individual without their knowledge or consent.

Signatures are forged and salary details are often illegally obtained from payroll data. In most cases it is quite some time after the event that the complainant realises that money is being deducted from her salary. It is only then that the time consuming process to investigate the fraud, cancel the policy and then get compensation for losses suffered begins.

The usual method of settling such matters by product providers is to simply refund premiums without taking into account interest, inconvenience suffered or expenses incurred in attempting to recover the monies.

The increasing number of these types of complaints and the way in which they were settled, indicated that a simple refund

of premiums provided little incentive to financial institutions to take active steps to root out this fraud.

The practice, we are aware, has continued despite intervention by the Ombudsman for long-term insurance when it had jurisdiction to deal with such matters, prior to the FAIS Ombud.

An in-depth approach was necessary and after a detailed investigation a determination was issued against *African Life Assurance, t/a Sanlam Sky Solutions, Timir Financial Service, t/a Southern Investment Corporation and Mr Leonard Sandile Mqadi*.

Several important recommendations were made in the determination to both the insurance industry and government departments. We believe that the necessary impact has been achieved with this determination to make insurers particularly aware of the need to properly verify information before they launch debit orders through the PERSAL system. Whilst we have held meetings with the insurer concerned, we are carefully monitoring the influx of complaints of this nature and will, if necessary take further steps to ensure its curtailment.

I am pleased to report that there has been a steady and welcome decline in similar complaints subsequent to this determination.

A similar trend emerged last year, after the determination in the case of *Gumede vs JD Group*, which highlighted the unsavoury practice of attaching various insurance products to the sale of furniture and appliances, often without the informed consent of the consumer.

Complaints of this type have since then remained at a low level and there is now clear evidence that the publishing of a determination has positive wide reaching industry implications far beyond that of the immediate parties to the complaint.

However, on a somewhat negative note, it is a matter of concern that several of the trends that we identified in last year's annual report have continued or increased.

The incidence of credit life policy claims that continue to be repudiated due to alleged non-disclosure of pre-existing conditions is of concern. When the complaint is investigated, it is often clear that the insured was never pertinently made aware of the pre-existing conditions clause in the insurance contract.

Conditions under which the policy would not pay out are seldom, if ever explained, to the client thus depriving the client of the opportunity to make an informed decision. Had the client been made aware of these limitations they could

FAIS OMBUD'S OPERATIONAL REPORT CONTINUED

have approached another insurer, had a full medical examination done and possibly accepted a policy with a higher (loaded) premium knowing full well that there would not be any problems at claim stage.

The consequences of repudiation of such policies are that dependants are left with a huge financial burden of having to settle the outstanding debt on a house or a motor vehicle purchased through a loan agreement.

Unlicensed and unregistered funeral schemes continue to flourish and take advantage of poor, vulnerable and marginalised members of our society. Meagre resources are sacrificed in order to fund funeral policies in the expectation that they or family members will be afforded a dignified burial. In many instances respondents either abscond with the premiums, refuse to make payment or continually require some or other document until the consumer eventually gives up in frustration. Attempts to pursue these complaints are usually frustrated, in that the "policy document" contains no information or contact details on the individuals or entity behind the scheme. There is a need for a coordinated effort between regulatory and law enforcement officials to take action against these illegal schemes operated by unscrupulous individuals.

Whilst the downturn in world markets, commenced in the preceding financial year, the Office only really started to experience an increase in related complaints in this financial year. The crisis has impacted most sectors, resulting in a negative impact on investment performance and in many instances actual losses. Complainants commonly attribute these losses to negligent and or inappropriate advice received from their financial advisors.

Complaints relating to bridging finance showed a definite upturn. Given current market conditions, the fall in property prices and the slowing down of the construction industry, this will continue to be an area of concern. These products are in most instances sold to individuals, dependent on the income producing returns which they promised. The failure has left

many in dire financial straits. The advisers who recommend such products have little or no understanding of the risks inherent in such schemes and in many instances were driven by higher than normal commissions. Whilst some clients understood the nature of the product many are given to understand that they were investing in mainstream financial products.

Whilst the downturn in world markets, commenced in the preceding financial year, the office only really started to experience an increase in related complaints in this financial year. The crisis has impacted most sectors, resulting in a negative impact on investment performance and in many instances actual losses. Complainants commonly attribute these losses to negligent and or inappropriate advice received from their financial advisors.

In addition they often allege that their investments were not managed correctly despite having paid advice and/or management fees. The FAIS Act specifically precludes the office from investigating complaints pertaining to investment performance, and I am well aware that advisers don't have a crystal ball that allows them to predict the markets. Nevertheless each complaint must be carefully considered to ensure that the advice was appropriate and in accordance with the FAIS Act and General Code. In many instances complaints emanate from retired individuals dependent on these investments for their living expenses. Whilst there are instances of inappropriate advice, we often have cases where it is evident that careful planning by an experienced adviser has mitigated these losses. In effect these cases evidence the important role that an experienced adviser can play in managing a client's affairs.

A matter of some concern is the manner in which consumers of retail credit are abused in the marketplace. Retail credit is utilised by a large portion of our society to purchase food, clothing and other items. In the past it was not uncommon to receive a card in the post, accompanied by a letter inviting you to phone in and activate your account, a credit limit having been pre-authorised. Whilst the card in the post may have fallen by the wayside, thanks largely to the National Credit Act 2005 (Act No 34 of 2005), a visit to any number of retail stores will often result in the consumer being made an offer to open an account.

Simultaneously with the opening of the account, consumers will be offered various products such as payment protection plans, partner protection plans, various club memberships and even airtime. Not only are we concerned about the manner and method of sale of the financial products but it is apparent from complaints that in many instances these products are merely added on after the account is

established. Deductions are then made without the consumer's knowledge or consent.

The Office of Consumer Protection at the Department of Trade and Industry has also received a number of similar complaints and in consequence a very productive meeting was held between our respective offices, where important discussions on how to deal with such matters took place. Further meetings are continuing and we are confident that a joint approach may curtail poor sales practices and fraud in this area of the market.

Whilst advisers are now more aware of the requirements of the FAIS Act and hence tend to have their paperwork in order, we still encounter allegations that this was completed after the fact, or that the client was just asked to sign. These allegations are particularly difficult to prove and as such often require considerable time to investigate. Sadly in a number of cases we have clear evidence of the alteration of documentation after the fact.

CHALLENGES AND OPPORTUNITIES

I reported last year how several of our staff embarked on courses of study to better enable them to understand the complex environment in which we function. In this regard several are working towards their Certified Financial Planner status, one is tackling the Advanced Postgraduate ▼▼ in Financial Planning and another has commenced his law degree.

As a public institution we have an obligation to take a proactive role in developing our staff in a manner that will enable them to contribute to our emerging economy. To this end our staff policy makes generous allowances in terms of both study leave and funding. Staff are encouraged and afforded the opportunity to attend presentations and lectures.

In order to stay ahead of the demand curve as the number of new complaints increased, a full-time case administration manager was appointed in order to effectively manage the receipt of such complaints and provide statistical information to the office.

In order to assist this process the office has implemented an electronic customer relationship management (CRM) system to log and track complaints. Whilst some teething problems were encountered, these have been dealt with, and in fact provided us with greater insight into how the system might be tweaked in the future to better suit our needs.

An exciting opportunity is the creation of a knowledge centre. Recent events have shown the complexity and lack of understanding of many within this industry of financial services and products. It is clear many of the fund managers, and even advisers have little understanding of or

appreciation for the risks they are taking with clients' savings. This complexity in itself compels the office to ensure that we are up to speed with both local and global trends. This is where we see the usefulness of establishing a knowledge centre within the FAIS Ombud.

This will go a long way towards creating the opportunity for advancement of our stakeholders from the perspective of both in-house training as well as acting as a resource for regional and international knowledge.

In addition the office became a member of the International Network of Financial Services Ombudsman Schemes, an organisation which promotes interaction and a sharing of information between network members. Meetings with similar schemes on the continent have proven particularly beneficial and communication and cooperation is likely to increase markedly in future as development of the financial services industry burgeons within Africa.

PRESENTATIONS

As part of the drive to both educate consumers and improve the level of compliance and service delivery by providers, the FAIS Ombud made numerous presentations to gatherings of financial services providers, business and consumer bodies and related forums (see page ▼▼).

What is needed is proper enforcement of existing legislation which, coupled with ethics and a commitment to accept responsibility by advisers, financial institutions, and above all, regulatory authorities, will go a long way to preventing investor abuse.

APPRECIATION

In recording my appreciation, I acknowledge the many people who have contributed not only for the period under review but during my term to make the FAIS Ombud an institution that is both proudly South African and recognised across the globe.

In this respect, I can record, in no particular order of importance, the contribution of many players in the governmental and non-governmental sectors; former Minister of Finance, Trevor Manuel, and Treasury personnel, the Auditor-General, international Ombudsmen among them a dear friend Walter Merricks, who assisted the office by giving us insight into the many systems and best practices which

we've employed and continue with to this day; Jeff van Rooyen, former registrar of the FSB who gave me unstinting support and advice whilst in office and thereafter; the members of the Board of the FSB and the FAIS Committee over the years; the current registrar Dube Tshidi; many colleagues from the legal profession whose support and advice I cherished to see me through the many challenges that I faced during my tenure as Ombud; undoubtedly my deputy Ms Noluntu Bam; my management team and staff who have been a tower of strength in assisting me to deliver on this important mandate; the media who have fairly reported on the many determinations issued but more so helped educate the South African consumer where such education was sorely needed; and significantly, the ordinary consumer of financial services for whom this office exists.

The record will show that overwhelmingly, the consumer has been appreciative of the role played by this office. This appreciation has been evident in the many communications that were exchanged between consumer and this office.

More complaints were rejected than those which were upheld. In accepting our decision, this was a clear indication that the consumer appreciated the role that we had played and for this we are grateful. This is also indicative of a maturing in this important stakeholder.

The interest and keenness on the part of the financial services industry to learn about the FAIS Ombud was evident from the hundreds of invitations I had received to address them.

Whilst a necessary adjunct to my role as Ombud, it also indicated to me that the industry was keen to adopt and accept the best practices that this office had set in its adjudication of complaints.

Finally I want to record my thanks and appreciation to my wife, Ragini, and children Jeremy, Jared and Santhuri who have had to put up with my frequent absence from home, especially during the formative years of the Office when I traversed the country addressing interest groups.

Conclusion

As this is my last report as FAIS Ombud, I deem it appropriate, particularly in the light of the current global financial crisis and the ever-deepening recession that bites as a result thereof, to end with the following observations, which I fervently hope will help us make the hard choices that President Obama referred to (also see page ▼▼).

There is a simple truth that we all have to accept and it is that the public in general has lost faith in the financial services industry. It will take a sea-change in behaviour coupled with time to again win the trust and confidence of the consumer.

The excesses of the last few years have led to complicated schemes designed to make the largest profit in the shortest possible time regardless of risk.

More laws are not necessarily the answer as they not only strangle legitimate business but inevitably there are ways around new legislation.

This is done by either utilising the age-old concept of capture of state institutions mandated to regulate and monitor compliance or alternatively designing products or structures to circumvent existing legislation.

It is such machinations that have contributed to the collapse of the financial system as we know it.

What is needed is proper enforcement of existing legislation which, coupled with ethics and a commitment to accept responsibility by advisers, financial institutions, and above all, regulatory authorities, will go a long way to preventing investor abuse.

Fortunately for South Africa, it has had a softer blow than most nations and this is largely because of prudent fiscal policies.

South Africa has managed to enjoy respect and credit worthiness in the international arena and only because of our strong financial organisation and regulatory framework.

South Africa's solid financial system carried the nation aloft in the face of other adversities and calamities.

It will be reckless now to compromise this reputation by diluting financial oversight mechanisms.

In fact we should endeavour to strengthen, rather than weaken, financial oversight.

The strengthening must ensure that regulatory structures maintain fierce independence from the industry that they regulate, and that the industry and the regulatory authorities take responsibility when things go wrong.

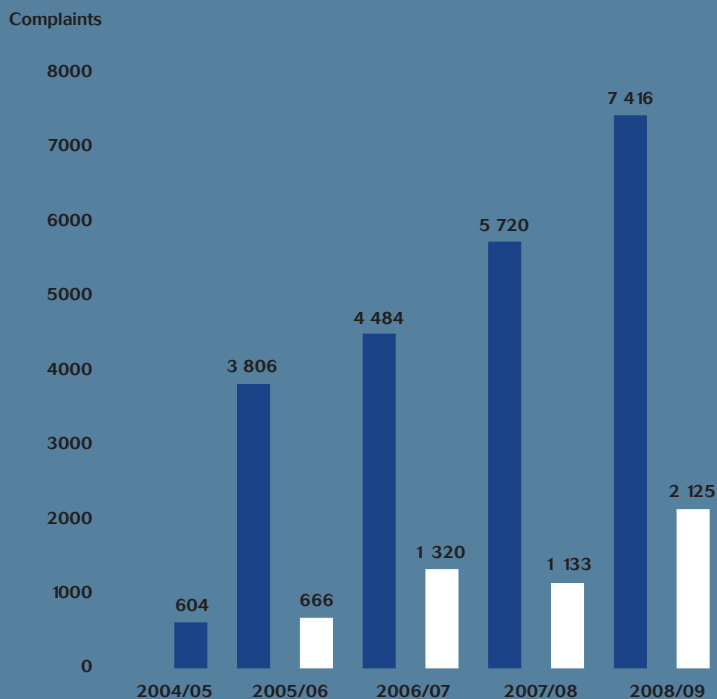


Charles Pillai
31 March 2009

GROWTH IN COMPLAINTS

The number of new complaints filed with the Office increased from 5 720 in the 2007 / 2008 financial year to 7 416 in this financial year – an increase of 30%.

Growth in number of complaints



- Number of complaints
- Complaints within FAIS jurisdiction

55% Outside FAIS jurisdiction (4 091)

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

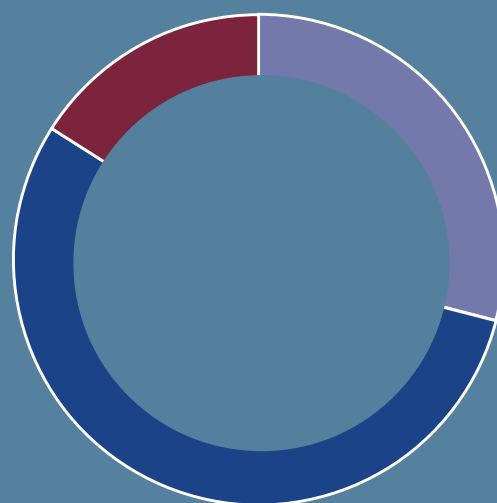
16% Outstanding CRF and Assessment (1 200)

This includes new complaints which contained insufficient information and therefore a complaint registration form (CRF) was sent to the complainants to complete but not returned by financial year-end. This number also includes new complaints which still needed to be assessed.

29% Within FAIS jurisdiction (2 125)

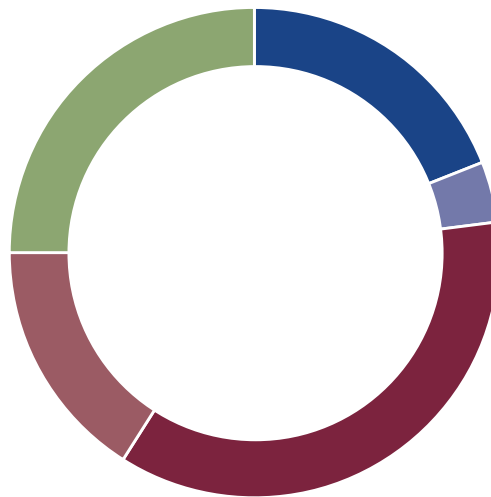
These are complaints that fell within the jurisdiction of the Office and were therefore justiciable. These complaints were distributed to the Case Management Division.

Overview of complaints and enquiries 2008/2009



THE WORK WE DO

How complaints were processed



19% Closed – Dismissed (1 384)

These are new complaints received in this financial year, which were dismissed due to various reasons including but not limited to falling outside FAIS jurisdiction.

4% Closed Settlements (305)

These are new complaints lodged in the 2008/09 financial year and which have been successfully resolved in the same financial year.

36% Closed – Referred (2 707)

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.

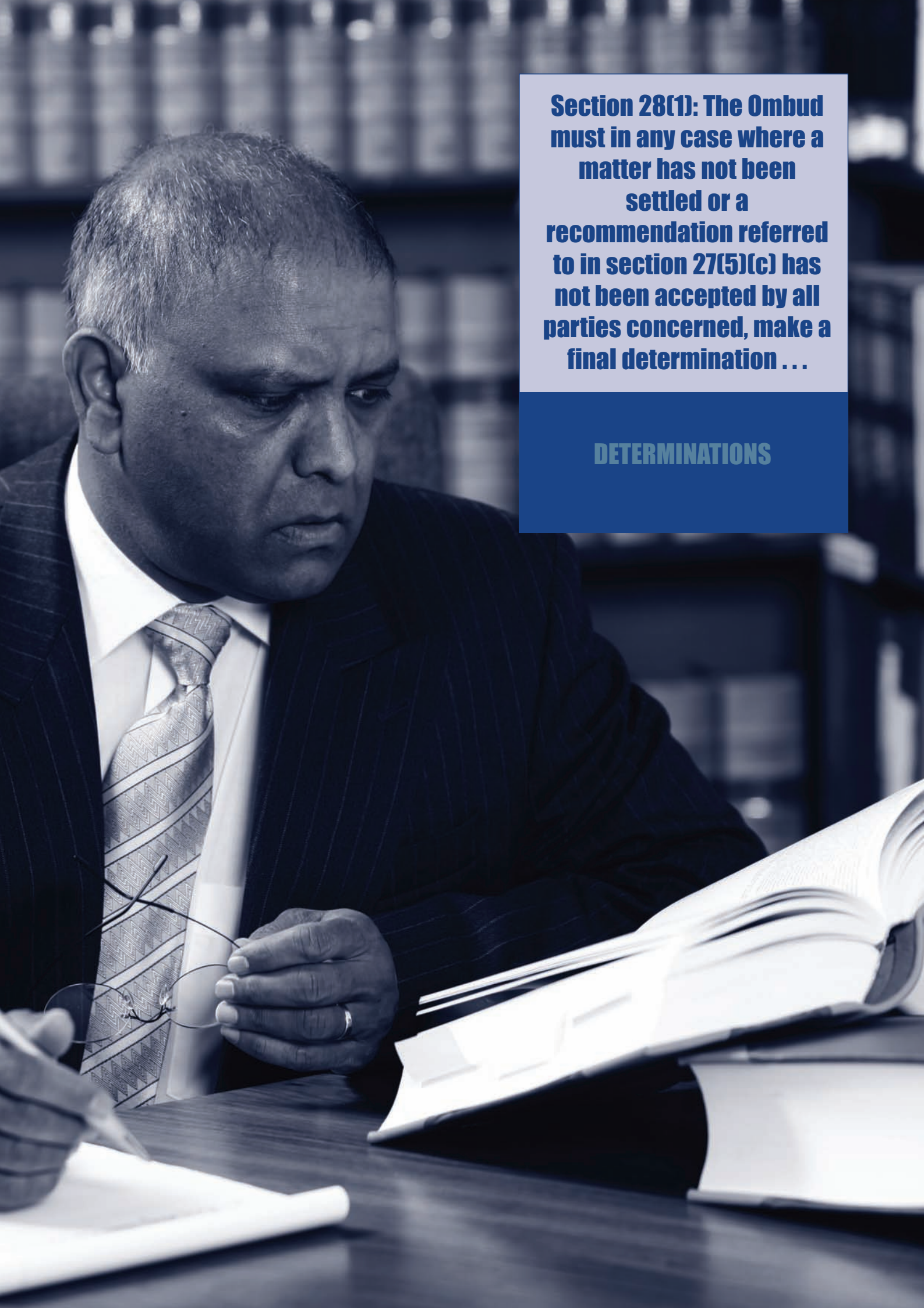
16% Open – Outstanding CRF and Assessment (1 200)

This includes new complaints which contained insufficient information and therefore a complaint registration form (CRF) was sent to the complainants to complete but was not returned by financial year-end. This number also includes new complaints which still needed to be assessed.

25% Open – Carried over (1 820)

These are new complaints, which at financial year-end, were at various stages of investigation and adjudication.

59% of new complaints were closed in the same financial year

A black and white photograph of a man in a dark pinstriped suit, white shirt, and patterned tie. He is sitting at a desk, looking down at a large open book. He is holding a pair of glasses in his right hand. The background is a blurred bookshelf filled with books.

Section 28(1): The Ombud must in any case where a matter has not been settled or a recommendation referred to in section 27(5)(c) has not been accepted by all parties concerned, make a final determination . . .

DETERMINATIONS

OUR DETERMINATIONS

by Noluntu Bam – Deputy Ombud

1. Client alleges negligence on the part of his broker, whilst withholding information from the FAIS Ombud.

COMPLAINANT: Andries J van der Walt vs Professional Group Insurance Brokers t/a Profgroup

The complainant alleged that the respondent, Profgroup had been negligent in rendering financial services in that it had failed to insure his vehicle, a horse and trailer, even though, he had requested it to do so. Two quotes were submitted in support of complainant's claim in the amounts of R41 005,83 and R119 889,76.

The facts indicate that on 30 June 2006, the complainant sent an email where he requested a quotation for insurance on the horse and trailer. An earlier email of 14 June 2006 wherein the complainant requested a quote for only the horse was not mentioned by the complainant when he lodged the complaint. The horse was a 2001 model valued at R260 000 and the trailer, R80 000. The respondent telephoned complainant on 12 July 2006 about a quote he had sourced in the amount of R1 600 per month. The quote was in respect of the horse only. Although the complainant indicated it was a good premium, the respondent did not hear from the complainant for the next 39 days. On 21 August 2006 the complainant sent another email to respondent requesting that his horse and trailer be insured. On 22 August, respondent opened the email. It was only at that stage that respondent realised that the request is actually not only for the horse but for both the horse and trailer. He immediately sought quotations for both and informed complainant when the latter called that he was still busy sourcing quotations. Complainant, it is alleged, told respondent that he must speed it up as he wanted to commence business. On 25 August 2006, the complainant telephoned respondent and asked whether his insurance was in order. Respondent allegedly replied that it was an allegation, which respondent denied. Complainant then advised respondent that the trailer had tipped over. After unsuccessfully demanding payment from respondent, complainant lodged a complaint with the Office. The complaint was dismissed on the basis that complainant had not been truthful. Firstly, he failed to mention the 14 June 2006 email where, he requested insurance for the horse only secondly, notwithstanding a material dispute of fact, it was found that on a balance of probabilities, complainant must have seen that the quotation of 12 July 2006 in the amount of R1 600 per month was in respect of the horse only, in line with his first request of 14 June 2006. We found that the complainant also failed to inform the respondent that he had started business and that the two vehicles had been put into use. The complaint was dismissed.

COMPLAINANT: Rungatrans CC vs Counterpoint Trading 328 CC t/a Policy Provider and Fusion Properties 268 CC t/a Broker's Choice

The second respondent offered to render financial services to complainant. As complainant was not happy with the service provided to it by its then broker, it agreed to the proposals made by the second respondent. A quotation was prepared for two of complainant's heavy commercial vehicles with trailers and the quotation was presented to complainant in April 2007. The quotation was accepted and on 4 May 2007, complainant received a policy document. The vehicle was insured through underwriting managers, Wheels with the risk carrier being Constantia. On 10 May 2007, one of complainant's vehicles had a tyre burst whilst on its way to the Western Cape and it overturned. A claim was lodged. No premium was deducted in April and May. Instead, a premium was generated on 15 June 2007 in respect of the remainder of April, the full month of May and June 2007. By this time, however, Wheels had already cancelled the policy owing to non-payment of premiums within the first 15 days of inception of the contract. Notwithstanding attempts by first and second respondent to have the policy re-instated, Wheels would not re-instate the policy. The complainant was refunded his/her premiums. However, the complainant was not satisfied and claimed the amount of R477 425 in respect of damages to the truck and trailer and towing expenses, claiming that the respondents had been authorised to debit its bank account on the 15th of every month but failed to do so. Such failure, according to the complainant led to the cancellation of the policy, which eventually denied it of indemnity by the insurers. The respondents claimed it is owing to both entities' systems that the premium was not debited and paid over to Wheels in time. Both respondents claimed that, on the 20th of every month, business books were closed for both entities. This defence, however, was found not to be acceptable. It was found that respondents had a duty to debit complainant's bank account for premiums and that once the entities had accepted that responsibility, it was up to them to align their systems in such a way that premiums could be effectively collected and paid over to the insurers. The respondents were ordered jointly and severally to pay the complainant the amount of R362 050,55.

2. A broker's system must be designed to comply with the provisions of the FAIS Act.

OUR DETERMINATIONS CONTINUED

3. A broker must always disclose terms, conditions and costs in order to put the client in a position to make informed decisions.

COMPLAINANT: Johan and Felicia Jacobs vs Hans Kema t/a Kloof Financial Services

The complainants, represented by their daughter, Celeste Eybers complained that the respondent had failed to disclose costs, in particular, his fee and an early withdrawal penalty of 7%. In addition to this, she claimed that the risk involved in the two investments sold to her parents, Common Cents and Sharemax, were not commensurate with her parents' circumstances. Our investigation however revealed that costs had been disclosed and the complainants were aware of the risks involved in Sharemax. The investment with Common Cents had long been undone by the time the Ombud determined the complaint. Common Cents collapsed with the demise of Fidentia.

The complaint was dismissed.

COMPLAINANT: Shaun van Vuuren vs Action Plan Management CC

The complainant insured his off-road motor bike with Constantia Insurance Company Limited through the respondent, Action Plan Management CC. The motor bike was insured for R50 000. After about five weeks from the date of inception of the policy, the motor bike was stolen from the complainant's locked garage. A claim was lodged with the insurers but rejected on the basis that complainant had failed to instal a tracking device or alarm on the motor bike. The complainant admitted being aware of the requirement but felt that since a tracking device or alarm needed to be powered, it would not apply to him because his motor bike had no battery. It was only after the theft occurred that he learnt from the respondents that there was a device that was meant specifically for his type of motor bike that could have enabled compliance with the policy condition. He lodged a complaint contending that the broker failed to properly advise him. The complaint was dismissed because the broker had disclosed the insurer's requirements. It was up to the complainant to enquire from the insurer if he had any doubts and not simply conclude on his own that the requirement did not apply to him.

The complaint was dismissed.

COMPLAINANT: L J Esterhyse vs Gavin Grobler and Plum Portfolio Solutions (Pty) Limited

The complainant had invested an amount of R250 000 during March 2005 with an entity known as Fulcrum Forex Internation (Pty) Limited Fulcrum through the respondent. The complainant emigrated from South Africa to Germany. He was looking for income on his investment to service some of his financial obligations in South Africa. The respondent, represented by one Gavin Grobler advised him about Fulcrum. The complainant was advised that Fulcrum would pay him an amount of R3 000 per month as his return. The term of the investment was one year. The email correspondence exchanged between the parties indicated that the amount of income

payable and the frequency thereof made up the entire advice provided to complainant. When Fulcrum failed to pay the complainant the promised return from the first month, the complainant sought answers from the respondent. Out of frustration, he then instructed respondent to withdraw his investment and pay it into this bank account. Fulcrum, however, was placed under liquidation and the complainant's investment was never paid. The complainant lodged a complaint blaming respondent for his losses stating that respondent had failed to properly advise him and had abused the trust, which hitherto existed between them. In their response, both respondents indicated that the complainant had been conversant with the risks involved in a forex investment and had made a decision to invest fully aware of the risks. The Ombud, however, rejected this contention as respondents failed to provide proof to support their case. In fact, the only evidence available indicated that respondents did not properly advise the complainant about the nature of the product, the legal status of Fulcrum (Fulcrum was not a licensed entity) and nothing was ever communicated regarding risk in all the correspondence exchanged between the parties. Respondents were ordered to pay complainant the full investment of R250 000 together with interest at the rate of 15,5% from date of order.

COMPLAINANT: Marna and George Rossouw vs Willie Jordaan

The couple, Marna and George Rossouw sought and obtained advice on how to invest an amount of R210 000 from Willie Jordaan, at the time an employee of Sanlam Insurance. The couple were advised of an investment in Fidentia. Their funds were placed with Fidentia. When Fidentia collapsed, they were advised that their money had been stolen. They sought relief from the Ombud for the amount of R210 000 together with interest. In his defence, Jordaan stated that he did not receive commission for the investment but rather a 'finder's fee'. The Ombud rejected this and held that Jordaan had failed to act with due skill, care and diligence required of a provider. Even though Willie Jordaan had in the past misled a client, one Elizabeth September to believe that her investment was with Sanlam, the Rossouws knew that their funds had been invested in Fidentia and that Fidentia was different entity from Sanlam. The Ombud ruled that Jordaan pays the Rossouws their initial investment of R210 000 less any capital received from the curators of Fidentia together with interest at the rate of 15,5% per annum.

4. Investment in Fidentia – Broker on a frolic of his own and not furthering employer's interests – held personally liable.

OUR DETERMINATIONS CONTINUED

5. Appropriate advice and disclosure of material facts – broker not to blame.

COMPLAINANT: Thabanchu Mashigo vs Old Mutual Life

Thabanchu Mashigo purchased an investment with Old Mutual through one of its agents, Ms Boikanyo in an amount of R60 000. Taking the time to satisfy herself of Mashigo's financial needs and circumstances, Boikanyo recommended a voluntary annuity. Mashigo however, wanted to generate income and was not interested in a voluntary annuity. An endowment with Investment Frontiers was recommended as another option. He accepted this option. The limitations of the product during the first five year period were explained to him. He indeed made use of the loan facility and surrender option. When he wanted a further loan from Old Mutual within the first five years, Old Mutual refused to assist him. He referred a complaint to the FAIS Ombud stating that he had not been aware of the material aspects of the product. Investigation conducted revealed that Boikanyo had fully complied with the FAIS Code of Conduct in advising Mashigo. The advice was found to be appropriate and the necessary disclosures had been made. At the time the advice was given, Mashigo was not a cash strapped client. He had access to other pools of funds.

The complaint was dismissed.

6. Failure to properly advise a client of the insurers' safety requirements.

COMPLAINANT: Busani Mathebula vs Chris Motimer and Insurance for you Brokers, (IFYB).

Mathebula insured his vehicle on 28 January 2005. The insurance for his vehicle, a Toyota Tazz valued at R45 000 at the time had been brokered by Insurance For You Brokers CC, (IFYB). When Mathebula's vehicle was stolen on 23 February 2005, barely a month after the insurance had been concluded, he informed IFYB and a claim was lodged with Santam, the insurers carrying the risk. Santam rejected the claim on the basis of non compliance with safety requirements, namely the installation of a Vesa approved gear lock and immobiliser. Mathebula was unaware of these requirements as no one had advised him of this. Chris Motimer, an authorised representative of the IFYB argued that the safety requirements had been disclosed to Mathebula during the telephonic conversation in which the insurance policy had been sold. When the Ombud requested voice logging or any other recording material maintained in order to satisfy himself that the disclosures had been made, neither respondents could provide same. The Ombud concluded that the probabilities favoured the complainant's version that the required safety features had not been communicated to Mathebula. The respondents were held jointly and severally liable to pay Mathebula's claim of R45 000 and an order to that effect was made.

COMPLAINANT: Mark Sandy vs Peter Greenwood

Sandy of Port Elizabeth met Greenwood at a pub. During a casual conversation, Sandy got to know that Greenwood was a broker. They spoke about insurance for Sandy's vehicle. As a result of advice given by Greenwood, Sandy ended up insuring both his car and his household contents as he was told it always works out cheaper to do it that way. The insurance proposal forms were signed at the pub after completion by Greenwood on 2 June 2005. On 1 February 2006 Sandy got home around midnight only to find that his house had been broken into and that certain items had been stolen. A claim was lodged with the insurers, New National Insurance Company through Greenwood. After continuously calling Greenwood to find out about the outcome of his claim, Sandy met Greenwood one night walking out of the pub. He advised him that his claim was not going to be paid because he did not have the burglar alarm on at the time. Sandy immediately argued there was some mistake as he had never had a burglar alarm. Greenwood promised to check up with the insurers and revert to Sandy, which he didn't. Sandy was later visited by an assessor who told him that his claim was not going to be paid. After failing to get his claim paid by the insurer, Sandy lodged a complaint. In his response to Sandy's complaint, Greenwood made a statement that 'A burglar Alarm Warranty is applicable in terms of the policy conditions. If Mr Sandy had picked this aspect up, he would surely have requested that it be removed.' The Ombud found that this was a clear acknowledgement that he (Greenwood) had not drawn this requirement to the complainant's attention. The complaint was upheld.

COMPLAINANT: Johan Anthony Maciel vs Bouvest 2340 CC t/a A Nell Makelaars

Maciel's vehicle, a 1999 Mitsubishi L300 worth R48 000 was insured with Santam in August 2005 through the respondent, A Nell Makelaars. Maciel dealt with an employee at the respondent's firm, one Susannah Maria Vos at the time of insuring his vehicle. The vehicle was stolen a few months later in November 2005. A claim was lodged with Santam. However, the claim was rejected because the insurer had not been informed that Maciel's previous policy had been cancelled by the insurer. In response to this Maciel argued he had handed over a document setting out his claims history to Vos and that it was therefore Vos's fault that the insurer had not known about the history. But the insurer made it clear that it was not only because of the claims history that the claim was being rejected; it was also the misrepresentation about who had cancelled the policy. A further ground for rejection of the claim was that there was also misrepresentation regarding the type of use of the vehicle. The vehicle was insured for private or domestic use, when it was in fact, used for business purposes. The insurer rejected the claim citing prejudice in that they would not have dealt with Maciel had they known all of this. The complaint was dismissed.

7. A client should not withhold information specifically sought by the insurer when that information is within the knowledge of the client.

OUR DETERMINATIONS CONTINUED

8. A broker has a duty to properly advise its client and not leave the client to his own devices.

COMPLAINANT: Anthony Naidoo vs Absa Brokers (Pty) Ltd

Complainant effected a short insurance policy for his vehicle in 1999 with Mutual and Federal Insurance Company Limited (M & F) through the Respondent. During July 2003, Complainant purchased a Toyota RunX Rsi (the vehicle) valued at R200 000.00 and added it to the same policy. During February 2006, Complainant discovered that although his policy was supposed to be adjusted according to the depreciating value of the vehicle, it was in fact insured for the original purchase price of R200 000.00 with premiums escalating on annual basis. Complainant wrote to this office for assistance. Upon receipt of the complaint this Office forwarded it to the Respondent. Respondent failed to resolve the matter. The Respondent also submitted that in any event the Complainant would have been informed of his obligations in terms of his policy, specifically with regard to ensuring that items insured under the policy were insured for the correct value. That the complainant would have received a policy document, inter alia informing him of his options in terms of the policy, which could result in him paying a lower premium. Respondent appeared to be confusing the concept of 'new business' with 'new contract'. In this case, the business was initiated in 1999 but the contract was for a term, that is, it was a month to month contract renewable annually. When a contract is renewed, a new contract is created and the duty to disclose arises just as it did when the old contract was originally concluded. The new contract replaces the old contract when the term of the old contract comes to an end. Thus, the respondent, it was found, had failed to comply with the provisions of the FAIS Act by informing the complainant that his premiums should be lowered in line with the depreciating value of his motor vehicle. The respondent was ordered to ascertain the value of the vehicle from 30 September 2004 and compensate the complainant the value of the premiums that he would have saved over the period.

COMPLAINANT: Jacobus J Grove v National Insurance Co-ordinators CC

In September 2003, Jacobus Grove told his broker National Insurance Co-ordinators of Gauteng that his son, Cornell was to be listed on the policy as a nominated driver.

In May 2006, Cornell had an accident and Grove lodged a claim with Hollard for the damage to his car as well as towing costs. However, Hollard rejected the claim because one of the policy conditions stated that any driver younger than 26 years and not specified as a regular driver, would not be covered.

The following month, Grove informed his broker that he had been unaware of the policy condition until Hollard declined his claim. On 8 June 2006, Hollard told Grove that a policy schedule had been forwarded to him.

At Grove's request, National Insurance Co-ordinators mailed a policy schedule to him on 9 June 2006.

Grove complained to the FAIS Ombud in April 2007.

In its response to the FAIS Ombud, the broker (National Insurance Co-ordinators) said:

- Grove had "nominated" his son as a driver and it was only after the accident that the broker became aware that Cornell was in fact a regular driver; and
- Grove had benefited from his "non-disclosure" because if Cornell had been named as a regular driver, the insurance premium would have been higher.

When asked for further documentation, the broker sent Pillai a form completed by Grove in 2002.

The form distinctly states that "there shall be no cover for any driver under the age of 25, if he is not a nominated driver in the policy."

Grove says he was never told by the broker that his son would not be covered under the policy. The broker had only told Grove that because his son was younger than 25, he would have to pay an additional excess of R1 000. Grove was able to back this up with a written quotation which had been forwarded to him by the broker. Grove was under the impression that the quotation was his policy schedule.

However, the policy schedule was issued three days after the quotation and included the condition that drivers under the age of 25 would not be covered unless named as "regular drivers".

The broker was unable to provide any proof that it had made Grove aware of the policy condition. He was also unable to prove that it had ever advised Grove of the difference between a regular driver and a nominated driver.

The broker was ordered to pay R17 082 plus interest of 15,5%.

OUR DETERMINATIONS CONTINUED

8. A broker has a duty to properly advise its client and not leave the client to his own devices. (continued)

COMPLAINANT: M Maduray v Action Plan Management & Renasa Ins. Co.

The complainant's motor vehicle was comprehensively insured by the second respondent and the first respondent was the broker or intermediary through whom the insurance was effected. A monitoring device tracked, inter alia, the vehicle's movements, its speed and when harsh braking took place. The policy also contained a so-called "Good Citizen Warranty". It imposed onerous conditions on the insured including that she will obey all road traffic ordinances, by-laws, regulations and laws of the country when driving the vehicle. It also provided that the insured will refrain from illegal parking and harsh braking.

Whilst the insured was driving the vehicle it overturned and was damaged beyond economical repair. She lodged a claim. It was rejected on the grounds that the monitoring device showed that she had been driving in excess of the speed limit and had therefore been in breach of the warranty.

The complainant said she was unaware of the warranty as she had not been told about it by the broker nor had she received the policy containing the warranty.

The Ombud held both respondents liable: The first respondent on the basis that it had a duty to disclose to its client any material terms or exclusions in the policy; the second respondent because it had itself undertaken to inform the complainant of the warranty clause but had failed to do so. In assuming that undertaking, it had not only been a mere product provider but also had also taken upon itself the role of an intermediary. It was also determined that the warranty was repugnant even on the basis of equity or fairness and constitutional values of human dignity, equality and freedom.

COMPLAINANT: F Nebbe vs M J Oosthuizen t/a Millenium Financial Advisory Services and Brokers

The complainant sought to recover an amount of R750 000 together with interest from the respondent. The amount had been invested in 2004 on the belief that the investment was, according to the complainant, similar to those that are offered by other insurance houses. But it later turned out that the investment had been placed in a property syndication by the name of Millenium Property Investment. The respondent did not deny that the money was invested. However, she made the point that the funds were invested by her in her personal capacity whilst acting as a representative of Millenium Property Investments and not as an authorised financial services provider. The investment was for a period of five years and it came with guarantees on both the capital and income in the amount of R6 562,50. The only documents that the complainant had as proof of the investment was a certificate furnished to her by the respondent. The respondent had also failed to maintain a proper record of advice and any other document required in terms of the FAIS Act. The complainant first learnt that the respondent had used the funds for her own personal business sometime in February 2007 when the respondent told him/her that she had used the funds to purchase a block of flats and as soon as that was sold, she intended to pay the complainant R200 000 in addition to the R750 000. As the jurisdiction of this Office is limited to R800 000, the Ombud ruled that the complainant be compensated by the respondent the amount of R800 000 together with interest at the rate of 15,5% running from seven days from date of the order.

COMPLAINANT: Nonhlanhla C. Kawula vs African Life Assurance Company Ltd t/a Sanlam Sky Solutions & Others

The complainant, a school teacher in KwaZulu-Natal had purchased a funeral policy and a retirement annuity plan with the first respondent through the services of a broker, one Leonard, Sandile Mqadi. After a while, the complainant discovered that in addition to the agreed premiums for the two policies, the insurer was also deducting a further R93, which she later discovered was for a third policy. Upon her conducting her own investigation she discovered that the life assured in the policy was a person she did not know and the beneficiary was the Leornad Mqadi, the broker who assisted her with purchasing her policies in the first place. After months of seeking redress, she eventually referred her complaint to this Office. After investigation, the Fais Ombud not only held the broker liable but the insurer as well. The deductions were stopped and payment in respect of premiums illegally deducted dating back to almost three years were paid to the complainant.

9. Honesty and integrity, acting in the best interest of the client and upholding the integrity of the financial services industry.

APPEALS – ARE THEY COMPATIBLE WITH OUR MANDATE?

By Natu Ranchod – Assistant Ombud

The FAIS Ombud’s Office has had several applications for leave to appeal its determinations in the year under review.

When leave is granted the appeal is regarded as an appeal in the wide sense and the appeal tribunal has the power to hear new evidence which a party did not present to this office. We, as well as no doubt other bodies whose decisions are taken on appeal to the appeal tribunal, have been unhappy about permitting the leading of evidence which was not put before us in the first instance.

The Financial Services Board Act has now apparently been amended. If a party wishes to lead evidence which it did not provide to the Ombud’s Office then the matter may be referred back to the Ombud to re-consider his decision in the light of the new evidence.

It is this office’s view that the amendment of the Act does not address the issue adequately. What it does in effect is let a party to the proceedings have the proverbial “second bite at the cherry”. This means the office has to revisit a matter when the party concerned should have furnished all evidence in the first instance. It also means that the speedy resolution of a matter, which is one of the objectives of this office, is compromised.

Another purpose of the Ombud’s Office is to resolve complaints cost-effectively. Complainants are almost invariably individuals who cannot afford the cost of litigation whereas the respondents are business entities who usually can, or have professional indemnity insurance to cover the legal costs. To then allow an appeal process frustrates or negates this objective. Appellants usually hire experienced counsel whereas the complainant is left to fend for his or herself or worse, makes no representations to the appeal tribunal at all.

It is instructive to note the approach adopted by applicants for leave to appeal. Their attorneys invariably adopt a very legalistic and technical approach. An example among the several applications for leave to appeal against some of the determinations issued by the Ombud or Deputy Ombud in the past year was that of *Maduray v Action Plan Management and Renasa Insurance Co. FOC 4250/06-07/KZN (3)*. Both respondents filed applications for leave to appeal the determination made in favour of the complainant.

In the introduction to their applications, both respondents said they reserved their rights to challenge the constitutional validity of certain provisions of the FAIS Act. That and the fact that both respondents’ attorneys adopted a very legalistic and technical approach in attacking the reasons for the determination, prompted the Ombud to set out in some detail in his reply to the applications, the parameters within which determinations are issued.

It is worth quoting the Ombud in this regard:

“It is apparent from the grounds of the applicant’s application for leave to appeal that ... [t]he respondents are confusing the evidential and procedural rules of courts of law with that of a complaints resolution mechanism such as that of the Ombud. It would, therefore, be appropriate to place the functions and objective as well as the procedural rules of the Ombud’s Office in a proper perspective before dealing with the merits of the application for leave to appeal.

“Section 20(3) of the Financial Advisory and Intermediary Services Act 37 of 2002 (“the FAIS Act”) states:

“The objective of the Ombud is to consider and dispose of complaints in a procedurally fair, informal, economical and expeditious manner and by reference to what is equitable in all the circumstances, with due regard to:

- (a) the contractual arrangement or other legal relationship between the complainant and any other party to the complaint; and
- (b) the provisions of this Act.”

“Rule 2(c) of the rules framed under the FAIS Act provides:

“The services rendered by the Ombud ... are confined to the investigation and determination of complaints in terms of the Act and these rules.”

“In making an award the Ombud must determine:

“... fair compensation for any financial prejudice or damage suffered;” (section 28(1)(b)(i)).

“The first thing to be noted is that the Ombud deals with **complaints** within a particular regulatory setting and not legal causes of action as would be required in a court of law.

“Complaints are made more often than not by laypersons who cannot be expected to, nor required by the FAIS Act, to formulate complaints with the precision and particularity required in pleadings.

“The resolution of a dispute must be done by reference to what is **equitable** in all the circumstances. In the application of the law, courts generally were not, before the advent of the New Constitutional dispensation, concerned with whether a judgment resulted in unfairness or was not equitable. Under a constitution with a Bill of Rights, much emphasis is placed on concepts of fairness and equity. The United Kingdom does not have a written constitution and reliance is placed on the common law and the Rule of Law. The Financial Ombudsman Service (“FOS”) in that country determines complaints “by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case”.¹ In the English case of *Heather Moor*² (which considered, inter alia, the effect of the Human Rights Act 1998 and contentions based on the Rule of Law) held that:

- it is possible to see in the fair and reasonable jurisdiction of the Ombudsman the source not merely of an alternative dispute resolution service but an important new source of law;
- an efficient and cost-effective and relatively informal type of dispute resolution should not be stifled by the imposition of legal doctrine;

¹ Paragraph 3.8.1 R (1) of the scheme rules made under Schedule 17 to the Financial Services and Markets Act 2000.

² R (*Heather Moor & Edgcomb Ltd v Financial Ombudsman*, Case No: C1/2007/2321, dated 11/06/2008 and heard in the Supreme Court of Judicature, Court of Appeal (Civil Division).

- the opportunity for development of new ideas fitting to financial services industries operating in consumer markets should be appreciated for the benefits it can bring; and
- the Ombudsman is not required to determine a matter in accordance with the law but by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.

“The FAIS Act requires complaints to be determined “by reference to what is **equitable** in all the circumstances”. “Equitable” is defined as “fair” and “the law of equity” as being that which is distinguished from common or statute law. (Encarta Dictionary: English (UK)).

“Walter Merricks, Chief Ombudsman at FOS said in his speech to the Financial Regulation Industry Group on 6 June 2001:

‘Our “fair and reasonable” jurisdiction has attracted a fair amount of attention. It allows us to look beyond the law, beyond wording of the small print, to take into account the large print in the promotional materials, good industry practice, and, if necessary, adopt a modern and fairer approach where it is clear that the law has lagged behind.’

“In the Heather Moor case (at 54) it is stated that:

“the Ombudsman stated that he was not applying the relevant law, but had taken into account in deciding what was fair and reasonable in the circumstances of the case.”

“The learned Judges went on to uphold this view of the Ombudsman.

“On the question of whether the Ombudsman was required to hold an oral and/or public hearing, the learned Judges of Appeal said:

“The court must constantly bear in mind that it is to the decision-maker, not the court, that Parliament had entrusted not only the making of the decision but also the choice as to how the decision is made.”

“The Constitution of the Republic of South Africa, 1996 provides in Section 39:

- (1) When interpreting the Bill of Rights, a court, tribunal or forum:
 - (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
 - (b) must consider international law; and
 - (c) may consider foreign law.
- (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.

It is, therefore, evident that the Ombud (as he has done in this case) is also enjoined to take into account constitutional imperatives; the Constitution being the supreme law of the land.

It will immediately be apparent that fairness or equitable dispute resolution is most important as opposed to a technical and formal approach, which characterises litigation in courts of law.

During the almost six years since the FAIS Office was established, the Ombud has issued scores of determinations. Relatively few have been taken on appeal.

A series of determinations were issued in the so-called *Leaderguard* cases which involved the failure of a foreign exchange trading entity called Leaderguard Spot Forex.

The determinations held the brokers or intermediaries liable for the losses suffered by their clients. It is of importance to note that six of these went before the Appeal Tribunal. Of these, three appeals were abandoned before they were heard as the intermediaries concerned opted to settle the matters. Another was partially heard when the intermediary decided to settle it. Only one appeal was upheld and another was referred back to this office for reconsideration on the basis of new evidence the appellant wished to lead.

In the case of *Penzhorn v Point Brokers Services CC* the appellant effectively abandoned the appeal and made a settlement agreement with the complainant. But the appellant then breached the agreement and the complainant is currently pursuing legal action against it.

In the *Renier Reyneke Transport CC t/a Premier Trading v Smit Garrun Brokers* appeal, the Chairperson of the Appeal Tribunal found that the appellant broker “carried out his duties as a broker with such sloppiness and shoddiness that it borders on dereliction of duty”.

But he then went on to hold that both the complainant and the respondent were to be blamed – in effect only partially upholding the appeal.

Similarly, the appeal in the matter of *Naidoo v SA Homeloans* succeeded only partially.

These matters, and the considerable number of cases (as mentioned elsewhere in this report) that are resolved in my view indicative of the fact that this office is successfully carrying out its mandate of resolving complaints impartially.

It is the Ombud’s considered opinion that the financial services industry has also accepted that the Ombud is impartial and gives sound reasons for his determinations. The time has now come for the financial services industry to buy into the concept of non-appealable determinations as is the case internationally in many jurisdictions.

(Of course, that would not preclude any party from applying for a review of a determination on procedural grounds.)

To allay any fears that the Ombud may not have considered all the facts in a determination, it can be issued as a matter of course first in the form of a recommendation. (Provision is made in the FAIS Act for the issuing of recommendations.) The parties to the dispute are then given a reasonable time within which to make any further representations they may wish to. A final determination can then be issued after taking into account any such further representations. It would concomitantly eliminate the need for providing an opportunity for submitting ‘new facts’ after a determination is issued and, for that matter, the entire appeal process.

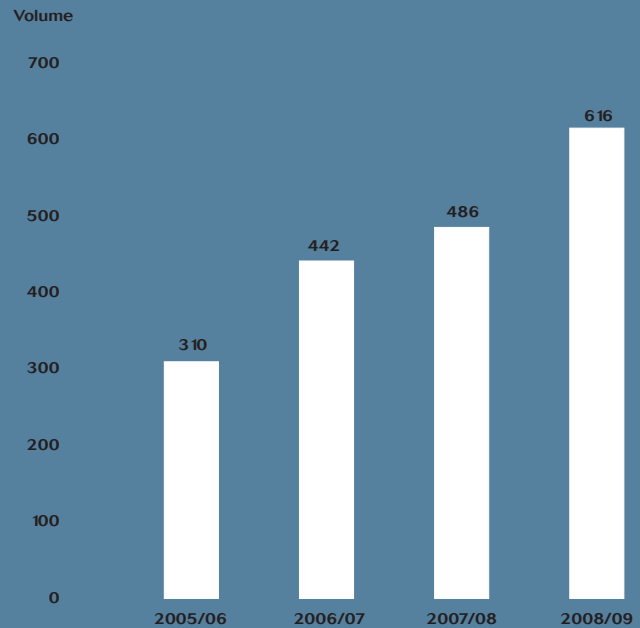
It would also fulfil the objective of the FAIS Act of speedy, informal and cost-effective resolution of complaints.

STATISTICAL INFORMATION ON DETERMINATIONS AND SETTLEMENTS

The number of settlements grew by 27%.

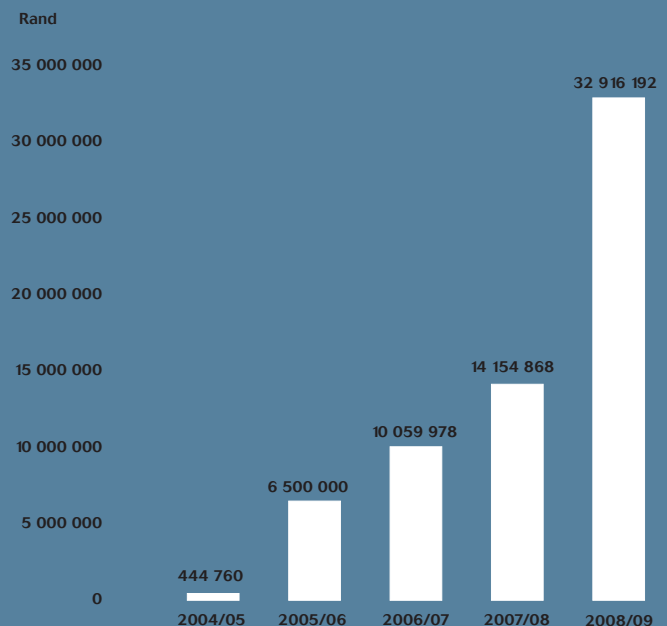
In this financial year, the Office settled 616 complaints which constituted an increase of 27% from the previous financial year. These include settlements in both new complaints and complaints from previous financial years.

Growth in volume of settlements



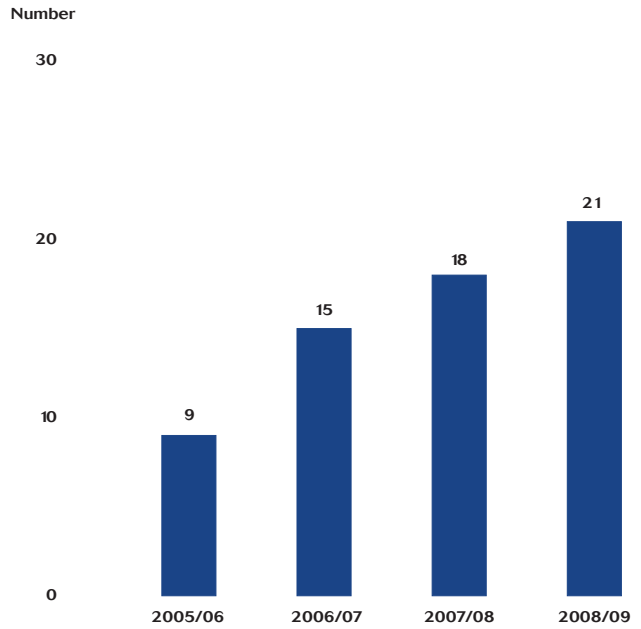
The quantifiable amount of cases settled or determined was R32 916 192 which represented an increase of 132% from the previous financial year.

Quantifiable settlements and determinations



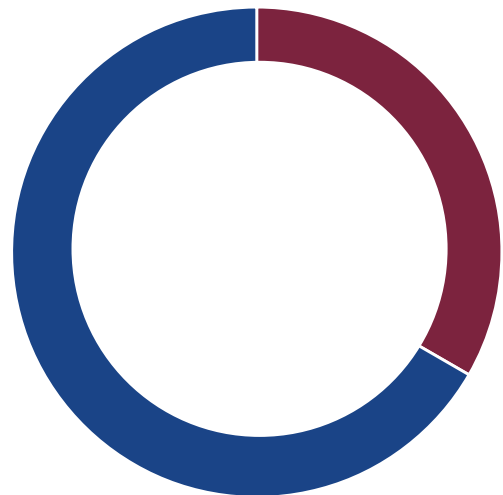
In terms of the FAIS Act, the Ombud must make a final determination in any case where a matter has not been settled or a recommendation accepted. In this financial year, the Ombud issued 21 determinations.

Growth in determinations



Outcome of determinations

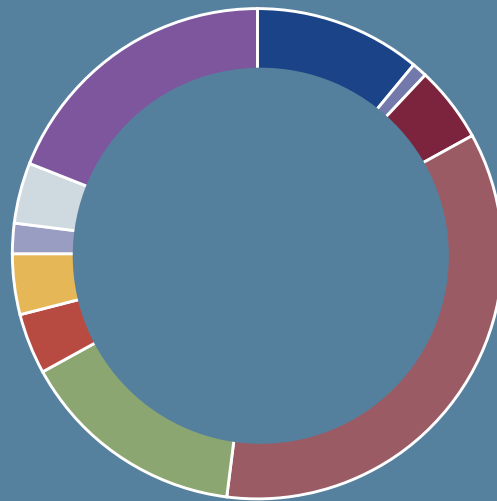
- **67% Complaint upheld (14)**
- **33% Complaint dismissed (7)**



In making a final determination, the Ombud may either dismiss the complaint or uphold the complaint. In this financial year, the Ombud issued 14 determinations in favour of the complainant and seven in favour of the respondent.

WHERE DO OUR COMPLAINTS COME FROM?

Where do our complaints come from

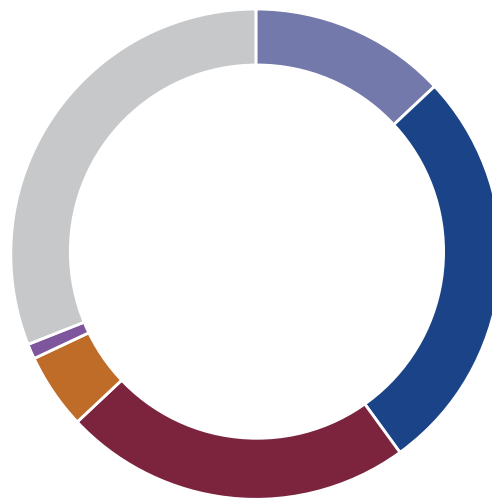


- 11% WC: Western Cape (792)
- 1% EC: Eastern Cape (51)
- 5% FS: Orange Free State (395)
- 35% GP: Gauteng (2 545)
- 15% KZN: KwaZulu-Natal (1 114)
- 4% LP: Limpopo Province (275)
- 4% MP: Mpumalanga (311)
- 2% NC: Northern Cape (163)
- 4% NW: North-West province (321)
- 19% UN: Unknown due to insufficient information provided by the complainant (1 439)
- 0% IN: International (10)

The majority of our complaints are from Gauteng with KwaZulu-Natal and the Western Cape following. This should give some indication of the need for greater consumer education in the other provinces.

WHAT PRODUCTS DO PEOPLE COMPLAIN ABOUT?

What products do people complain about



13% Investments (964): 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 trust and equities.

27% Long term (2 002): Long-term assurance products, such as life, disability and dread disease cover.

23% Short term (1 706): All short-term insurance products such as household, vehicle and travel insurance.

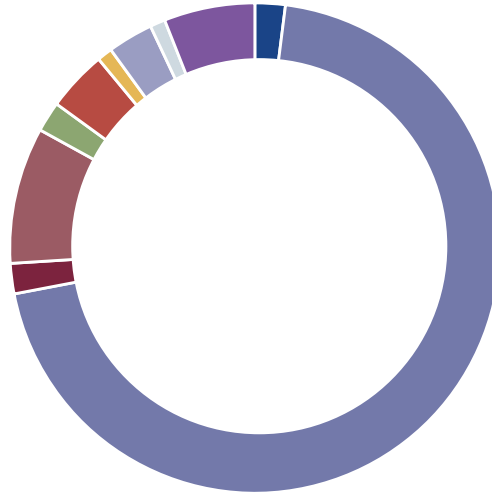
5% Retirement (371): Any retirement products such as compulsory annuities, pension, provident and retirement annuity funds.

1% Medical (74): Includes medical scheme complaints.

31% Not classified (2 299): These are complaints which were not classified according to product as they are still in assessment or as they fell outside FAIS jurisdiction.

HOW COMPLAINTS WERE REFERRED TO OTHER FORUMS

How complaints were referred to other forms



2% DTI (162)

Department of Trade and Industry.

4% NCR (110)

National Credit Regulator.

70% FSPs and other (1 902)

Complaints, enquiries referred to specific financial services providers or other institutions not mentioned.

1% MIO (15)

Motor Industry Ombud.

2% FSB (58)

Financial Services Board.

3% OBS (75)

Ombud for Banking Services.

9% OSTI (255)

Ombud Short-term Insurance.

1% CMS (12)

Council for Medical Schemes.

2% PFA (61)

Pension Funds Adjudicator.

6% OLTi (162)

Ombud Long-term Insurance.

0% OJSE (1)



**SECTION 27(5) THE OMBUD:
(A) ...**

**(B) MUST, IN THE FIRST
INSTANCE, EXPLORE ANY
REASONABLE PROSPECT OF
RESOLVING A COMPLAINT BY
A CONCILIATED SETTLEMENT
ACCEPTABLE TO ALL PARTIES.**

SETTLEMENTS

SETTLEMENTS DURING 2008/09

By Malanee Murugan-Modise – Case Manager

COMPLAINANT: Modi

Failure to act with due care, skill and diligence.

Failure to adequately disclose penalties payable.

Failure to record instructions.

The Ombud must in the first instance, explore any reasonable prospect of resolving a complaint by a conciliated settlement acceptable to all parties (section 27 (5) (b) of the FAIS Act)

In keeping with the above objective, the majority of the cases that fall within our jurisdiction are settled by adopting an approach that mediates the dispute in a conciliatory manner.

Here are some examples of cases that we settled:

The complainant, wanted to invest R2 million in an offshore account through his bank. After a delay with regard to his tax clearance certificate, he was advised by the bank broker that the transaction was going to proceed. However, the broker advised that there were penalties for not taking the transaction at the booked rate. The complainant later discovered that the penalties would amount to R400 a day for each day of the delay. The complainant then queried why he was not informed of these penalties at inception. The broker responded that this was in fact the first time she had heard of it from the offshore investment company. The complainant subsequently wanted to know what his options were and was informed by the broker that the investment company would buy back the dollars but he would have to assume a loss of R52 000 as a result of exchange rate fluctuations. The complainant was unhappy and threatened to cancel the transaction. The complainant later received notification that R49 346,03 was debited from his Nedbank account as a result of the cancelled transaction. The complainant queried this and was advised that the broker had cancelled the transaction on his instruction. The complainant advised that he had only threatened to cancel the transaction and did not actually cancel it.

The complainant wrote to us requesting our assistance in recovering the cancellation expenses. After our intervention, pointing out that the cancellation instruction ought to have been in writing, the respondent made a settlement offer, which was accepted by the complainant.

R49 346,03

COMPLAINANT: Molefi

Failure to act with due skill, care and diligence.

Failure to ensure new policy in place after existing policy cancelled.

Due to a 100% increase in premiums by the current insurer, the respondent advised the complainant that he should consider insuring with another insurer. The complainant agreed and requested the respondent to shop around for insurance cover at a good rate. The respondent found another insurer willing to insure the complainant and cancelled the complainant's existing insurance policy with the original insurer. However, he failed to ensure that the policy was indeed taken up by the new insurer and that the complainant enjoyed cover. The complainant was involved in an accident and unbeknown to him, he was not covered at the time. The complainant then lodged his complaint with us.

Although we recommended settlement of the matter, the respondent denied liability. However, the respondent's professional indemnity insurer concurred with our recommendation and duly made a settlement offer.

R99 201,16

The complainant wanted to invest R1 000 000, which was originally held in a money market account. The complainant was 62 years old at the time and needed the funds at age 65. The complainant approached a bank broker, who invested his funds in a five-year endowment policy. The complainant subsequently realised that broker had failed to disclose commission of R30 000 which was deducted from his investment and neither did he explain the financial implications, costs and consequences of replacing the money market investment with an endowment policy. At some stage the broker also misrepresented the value of the investment as being higher than what it actually was. The broker had given the complainant a piece of paper with the amount R1 096 085,65 written on it when in fact on that specific date, the value of the investment was R958 277,21.

After protracted negotiations, the respondent offered to settle the matter by paying an amount of R1 105 000 into the complainant's money market account.

R1 105 000

The complainant, a regular fixed deposit investor, was approached by the broker who advised her to invest R500 000 in an endowment. As the complainant was very risk averse, the broker promised her that she would not suffer any capital losses. The endowment investment had stock market exposure, which suffered heavy losses during the market downturn in the beginning of 2008.

As the client advice record contained phrases like: 'Capital **preservation** is important to me.'; I would really **not** like to face the possibility of a **capital loss**; I consider myself a **very conservative investor**; I invest in **bank products only** (typically money market funds) and have very little exposure to other investment products or opportunities and as such, I consider my investment knowledge to be **below average**', it was clear that the broker did not identify a suitable investment product to suit the complainant's profile.

As a result of the above, we advised the respondent to consider settlement. The respondent made a settlement offer of R12 000, but after negotiations with this office, an additional payment of R18 000 was offered by the respondent and accepted by the complainant.

R30 000

Dear Mr Percival

Ek wil net bevestig dat ek wel die bedrag van R30 000 ontvang het van FNB.

Ek is baie dankbaar vir al die hulp en ondersteuning wat ek gekry het van Ashley Percival.

Hy is professioneel en vriendelik en het my gereeld geskakel om my op hoogte van sake te hou.

Ek is baie gelukkig en verlig dat ek die bogenoemde bedrag ontvang het en dit is te danke aan die Ombudsman en veral Ashley Percival.

Nogmaals baie dankie Ashley.

Groete

COMPLAINANT: Van Rooyen

Failure to render financial service honestly, non-disclosure of fees, inappropriateness of advice, deficient client advice record.

COMPLAINANT: Smeda

Failure to identify financial product appropriate to client's risk profile. Failure to explain differences between existing and replacement financial product.

SETTLEMENTS DURING 2008/09 CONTINUED

COMPLAINANT: Moodley

Failure to act with due skill, care and diligence. Inappropriate advice given on pension withdrawal benefits.

The complainant resigned from a government department during July 2007. She complained that she was not given the option to withdraw her cash from her pension fund. She was advised that her pension benefits would have been heavily taxed if she exercised her withdrawal option. Consequently, the complainant's pension benefits were transferred directly to a retirement annuity and she could only access her funds at the age of 55.

We approached the respondent who denied the complainant's allegation and contended that the complainant was given two options, ie to transfer her pension benefits to a retirement annuity or to take the pension benefits as cash. We enquired from the respondent what their reason was for not giving the complainant, who was at that stage 17 years away from retirement, a third option, ie the option of placing her funds in a preservation fund. The respondent maintained that only two options were available to the complainant.

We provided the respondent with proof (a circular from their own legal department) that the complainant in fact had three options available to her at resignation from her pension fund. Confronted with this evidence, the respondent reversed investment transaction and transferred all investment funds back to the complainant's pension fund.

R289 694,16

Dear Mr Percival

I wish to thank you for the manner in which you assisted me in resolving the above matter. You explored all avenues and kept me regularly updated.

I would like to commend you for your efforts in ensuring a positive outcome.

Thank you once again.

Yours faithfully

The complainant, a diesel mechanic at a mine, bought two vehicles in May and June 2006 along with credit life insurance, which covered him in the event of him becoming unemployed.

At the time of the sale he alleges that after he disclosed to the salesperson that he had suffered from a renal infection during September 2004, the salesperson had assured him that it would not be a problem seeing that his problem has improved since then. In June 2006, he underwent a medical examination at work, which revealed that his vision had deteriorated by 50%. A year later his eyesight had deteriorated drastically and he was found to be medically unfit to continue with his job. As a result of the deterioration in his eyesight he was boarded on 24 July 2007. Around the same time the complainant consulted his nephrologist and was sent for a vascular access procedure for haemodialysis. The procedure was done on 16 July 2007. The complainant lodged a disability claim with the respondent, who rejected his claim on the basis that his disability was as a result of a pre-existing condition. The complainant lodged his complaint with us alleging that he had been medically boarded because of the defect in his eyesight and not as a result of the condition arising out of the renal infection.

The complaint was forwarded to respondent and in response they sent a medical certificate from the mine doctor, which stated that the renal infection and eyesight were the reasons for him being medically boarded. After listening to the tape recordings at the time of sale of the policy we discovered that the respondent's agent failed to explain to the complainant what a pre-existing condition was. Taking into account the complainant's level of education and the respondent's agent's cursory mention of pre-existing conditions exclusion without a proper or concise explanation of what it meant, was not sufficient. Based on the reasons provided the respondent decided to settle the matter.

R389 440

The complainant alleges that on 6 March 2008 she completed forms to withdraw her investment from the respondent. On 7 March 2008 she called the respondent's representative and asked if her forms had been processed and was informed that there were some outstanding documents she needed to submit before her application could be processed. On 12 March 2008 she submitted the outstanding documents. The documents only reached the respondent's head office on 28 March 2008 and were subsequently processed. By this time, the disinvestment amount had reduced significantly. According to the complainant because of the approximately 15-day delay by the respondent's representative she suffered a financial loss in an amount of R19 500,97.

The complaint was referred to the respondent and in response they advised this office that the complainant money was invested in a product called Guernsey Investment. They explained that the disinvestment process was a lengthy one, as the funds were invested offshore. The inter-bank and other procedures relating to the disinvestment of the funds delayed the transfer of the money into the client's account. They were only prepared to compensate for a five-day delay. The respondent agreed to compensate complainant with R6 500 which amounted to one third of the amount claimed. The offer was accepted.

R6 500

COMPLAINANT: Booysen

Failure to adequately explain material terms in credit life policy sold.

COMPLAINANT: Kleinhans

Failure to execute client's instructions as soon as reasonably possible and with due regard to the interests of the client.

SETTLEMENTS DURING 2008/09 CONTINUED

COMPLAINANT: Badenhorst

Failure to act with due skill, care and diligence and in the interests of the client.

Failure to provide appropriate advice.

In September 2007, the respondent's representative, wrote a new retirement annuity (RA) policy for the complainant. At the time the complainant already had in place an existing retirement annuity. The complainant alleged that she indicated to the representative that her immediate need was to increase her retirement savings. However, according to the complainant at no point did the representative indicate that she had the option of increasing the contribution on the existing retirement annuity (RA). When the complainant later enlisted the services of a new broker, the new broker brought to her attention that instead of taking out a new RA it would have been more appropriate to increase the contribution on the existing RA. The complaint was initially referred by the complainant to the respondent. Not satisfied with the respondent's response, the complainant complained to the office that the broker had given her inappropriate advice.

The complaint was referred to the respondent requesting a full explanation as to why it was necessary for the complainant to take out a "new" policy as opposed to increasing the contribution on her existing policy. The respondent was also requested to set out the financial implications in terms of the fees (commission, administration fees, etc) charged as a result of executing a new policy as opposed to increasing the contribution on an existing policy. The respondent responded that whilst they felt that the advice was "suitable," that a full refund of premiums from the new RA would be made into the complainant's existing RA. The complainant confirmed that she was happy with the outcome.

R58 000

Dear Malanee

Thank you very much for all the trouble you went through in resolving this.

It is much appreciated.

I hope you have a wonderful vacation and a prosperous new year.

Kind regards

The complainant's broker arranged short-term indemnity cover for the complainant's Mercedes Benz ML 270CDi. The car was stolen in August 2006. The claim was not honoured by the insurer as no tracker system had been installed in the vehicle and it was therefore not insured for theft. The complaint was initially sent to short-term insurance ombud – who decided in favour of the insurer but indicated that broker may be at fault. The complaint was then referred to this office.

We requested the broker's complete file of papers, which was duly furnished. An examination of the documents revealed that the broker had incorrectly advised complainant of security requirements, despite having received an email from the insurer which stated that *"A tracking device is to be installed/fitted in this motor vehicle too. We await the reply and confirmation of installation of a tracking device within 30 days"* The broker did not deny receiving this email but blamed the oversight on a junior clerk.

After informing him of this, the broker eventually agreed to pay the complainant the amount, which he would have been paid out by insurer plus the instalments paid from the time of loss to date. The complainant accepted the offer as full and final settlement of his complaint.

R309 160

In 2006, on the advice of the respondent's representative the complainant invested an amount of R2 000 000 into an offshore endowment, which according to the complainant went against his risk and liquidity needs. The Property Fund into which funds were invested had their Board of Directors resolved and so in terms of the Collective Investment Schemes Act of the Jersey Financial Services Commission, all redemptions would have taken a minimum of six months and would have to be agreed to by Guernsey Financial Services Commission. At the time of the transaction, the complainant was on contract overseas until 2008 whereafter he planned to return to South Africa.

Neither the six-month redemption period nor the client's need to redeem the funds on return to South Africa were taken into account.

The complaint was forwarded to the respondent who advised that the matter had been discussed with its professional indemnity insurers and they would resolve to settle the matter. The complainant was paid an amount of R4 000 000 which represented the maturity value of policy.

COMPLAINANT: Cornelissen

Failure to render a financial service with due skill, care and diligence.

Failure to furnish client with correct information.

COMPLAINANT: Montgomery

Failure to provide appropriate advice taking into account client's needs.

SETTLEMENTS DURING 2008/09 CONTINUED

COMPLAINANT: Makafane

Failure to disclose all the material terms needed to ensure the complainant was able to make informed decision.

When the complainant retired from his company in November 2007, he took his one third commutation to pay for his daughter's education. The remaining two thirds of his pension was invested into a living annuity on the advice of his broker. The total amount invested was R45 567. The complainant was then upset that he was only receiving R341,76 and was adamant that he was not appropriately advised and he wanted the returned to him as he would be able to utilise it better than in the current living annuity.

The respondent's initial response was to reject the complaint, as the complainant had undue expectations as to the income he could receive from the R45 567 investment, and the broker's advice had been correct as the funds were compulsory and so had to be invested to provide annuity. We then pointed out to the respondent that the investment was made after the legislation had been amended. The amendment meant that if a person's total pension benefit was below R75 000 than the entire amount could be commuted as a lump sum. It was clear that the broker had failed to inform the complainant of this important aspect and had also not clearly communicated the expected income from the living annuity. The complainant was therefore not able to make an informed decision as to the best way to utilise his retirement benefits.

The respondent subsequently agreed to allow the complainant to repurchase his units from the living annuity and all commissions were written back. This meant that the original investment less income payments would be returned to the complainant.

R43 174,68

COMPLAINANT: Yeo

Failure to render financial service with due skill, care and diligence when informing the complainant that she had an income replacement policy, and then providing her with a lump sum disability product instead.

The complainant, a business owner, was recommended that her life cover be supplemented with an income replacement policy. It was decided that R1 500 000 life cover and an amount of R600 000 income replacement would suffice as the R600 000 represented 17 months of income at R35 000 per month income. In July 2006, the complainant was involved in a vehicle accident and was unable to work from 31 July 2006 until 28 February 2007. When she submitted a claim for income replacement she was informed that she did not have such a policy but only a lump sum disability policy. Her condition did not qualify her for cover.

The complaint was sent to the respondent who initially denied that they were in any way liable for the complainant's loss of income. Their argument was that the complainant had signed the quote, which provides a description of the product, and the policy replacement record shows that in her previous policy she did not have income replacement policy.

We then raised our concerns at the lack of detailed compliance documentation, and the fact that the name of the product gave no indication as to whether it is disability or income replacement.

The respondent then decided to settle the matter and provided us with a detailed actuarial calculation of what the payout would have been in 2006 had the complainant been covered for income replacement. This amount was accepted by the complainant in full and final settlement.

R83 456,07

The complainant and her late husband bought a vehicle from a motor dealer and were sold a credit life policy as security for their indebtedness. When the complainant's husband passed away, the claim was rejected on the basis that the deceased had previously suffered from and been treated for high blood pressure, therefore falling within the pre-existing conditions clause. The complainant alleged that they were never informed of this and demanded that they be compensated for the indebtedness.

The respondents were initially very uncooperative. As no paperwork existed for the transaction, the respondent was informed of the possible contraventions of the General Code of conduct in terms of record keeping. The respondent then offered a settlement of R39 029,10 which was 50% of the settlement value of R78 058,20. The reason was that they felt that the deceased had been provided with a policy schedule and so should have been aware of the clause. This offer was not acceptable. We responded that in view of the contraventions as well as the fact that the deceased would have been able to qualify for cover elsewhere albeit with a loading the offer was increased to R50 000. The complainant accepted the increased offer.

R50 000

The complainant took out cover for his motor vehicle through his broker. The complainant suffered a loss during September 2006, which could not be entertained by the insurer due to the cancellation of policy. It appeared that in 2006, the insurer increased the premiums in respect of the broker's clients by 80%. At the same time, the insurer decided that the risk profile of the complainant was no longer acceptable to the company, and subsequently cancelled the cover with effect from 30 August 2006. A letter to inform complainant of the cancellation of cover dated 25 July 2006, was sent followed by another letter from the broker, indicating that the insurer decided to cancel the policy and alternative insurance cover was available to the complainant. The complainant denied receiving any correspondence from either the broker or the insurer in this regard.

The complaint was initially sent to the broker, who indicated that the policy application records were processed directly by the insurer's call centre. The insurer was therefore responsible from inception of the policy for posting the correspondence to clients. The complaint was then redirected to the insurer who discovered that the postal address of the complainant had been incorrectly captured. This would account for the fact that he never received notification of his policy having been cancelled.

The insurer therefore accepted responsibility and settled the claim.

R27 481,64

COMPLAINANT: Coetzee

Failure to disclose information or to maintain a record of advice.

COMPLAINANT: Kganyago

Failure to render financial services with due skill, care and diligence. Insurer capturing client's details incorrectly, causing loss.

SETTLEMENTS DURING 2008/09 CONTINUED

COMPLAINANT: Baba

Alleged failure to adhere to terms and conditions of policy. The respondent failing to carry out client's instructions.

The complainant bought a vehicle on 15 November 2007, on which date insurance cover was arranged telephonically, directly with the respondent, a direct marketer. On 18 November 2007, the complainant was involved in an accident and lodged a claim for damages on the same date. The first premium was scheduled to be debited from his bank account on 20 November 2007. This, however, was not honoured by the complainant. The complainant alleges that on 22 November 2007 he called the respondent to make payment arrangements to change the date of premium collection to 26 November 2007. He was later informed by the respondent that he was not covered during the time of accident due to unpaid premiums but that they were prepared to honour part of the claim. The respondent's calculation was based on the complainant's vehicle being listed as a 2002 model whereas the complainant alleges that his car was a 2004 model according to the dealer's specifications. A copy of vehicle inspection was provided by the complainant as a proof.

The complaint was sent to the respondent specifically requesting all relevant voice recordings. The recordings revealed that the complainant did request a change of payment date on 22 November 2007 (four days after the claim lodged). Therefore, the complainant should have still been covered in terms of the policy. We also discovered that incorrect information about the model of the vehicle was captured by the respondent.

The respondent decided to settle the complainant's claim for damages on his motor vehicle plus interest charged on to his debt due to the delay in settling.

R100 436,82

Dear Mr SM Makgoo

This letter serves to sincerely thank you for the professional and unbiased handling of my claim with XXX Insurance. It is my understanding that if it was not your knowledge and professionalism; today I would be a victim of the circumstances and not only that also my hard earned money would be down the drain.

Now I am a living proof that FAIS Ombudsman really does help people unbiasedly and lastly keep on helping my fellow SOUTH AFRICANS YOU ARE DOING A GREAT JOB.

BE PROSPEROUS IN WHAT EVER YOU DO, GOD BLESS YOU

Yours faithfully

The complainant effected insurance cover with the respondent for his motor vehicle. He alleges that when he purchased the vehicle he was informed that the vehicle is fitted with a tracking device. He was informed that the debit was not activated. The respondent allegedly indicated to the complainant that he could either choose to activate the tracking device or install a gear lock. He was informed that he had two weeks to exercise these options. The complainant then opted for a gear lock, which was installed a week after the vehicle was purchased. When the vehicle was stolen, the complainant lodged a claim with the respondent. His claim was repudiated on the basis that the application form he had signed had stated that a tracking device was to be installed. The complainant complained that he had never accepted installing or activating a tracking device and never received any policy contract.

After the complaint was forwarded to the respondent, it offered to settle the matter by honouring the claim.

R66 330

When the complainant sold his property, surplus funds became available. The respondent advised the complainant that he would invest the funds in a suitable investment fund that took into account his needs, including firstly, that he needed monthly repayments of R5 000 for his medical aid and car instalments and secondly that as a Muslim, could not invest in an interest-bearing account. The complainant alleges that he was asked to sign blank forms, which were later completed by the respondent. He did not receive any policy documents.

A year after the investment had been in force he was in need of finances and made a withdrawal with the insurer directly. When he was about to make the second withdrawal he was informed that it will be the last withdrawal and will not be able to access the funds till the expiry date. He requested policy document and was furnished with it. The complainant noticed that the investment was not what they had agreed upon. The complainant's health was at the same time deteriorating and he was in need of the finances for medical attention.

The complaint was forwarded to the respondent who offered to settle the matter in the following manner: that the policy be ceded to him and that he would pay out the balance remaining in the policy to the complainant. The offer was accepted by the complainant.

R300 000

COMPLAINANT: Van Deventer

Incorrect information and advice provided. Failure to provide the complainant with policy contract.

COMPLAINANT: Bham

Failure to give appropriate advice taking into account the client's needs.

SETTLEMENTS DURING 2008/09 CONTINUED

COMPLAINANT: Khanyile

Non-disclosure of penalty fees applicable for exercising early retirement options.

The complainant, a nurse claimed to have been persuaded by the respondent in taking early retirement at the age of 56. She eventually agreed and resigned in February 2007 with a payout of R732 560,38.

She complained that:

- she never received a quotation during consultation;
- full and frank disclosures were not made on the advice record particularly relating to the fees she would be liable for, as well as tax implications;
- there was a shortfall on her one-third gratuity and she was not able to get an explanation for one year;
- her monthly income which was supposed to be R1 951,33 was instead R1 366; and
- there was an amount of R585 deducted monthly from her income, which could not be accounted for.

She sought answers and a refund of the non-disclosed fees amounting to R27 000.

We corresponded with the respondent requesting that they address us on the above specific compliance issues. The respondent's investigation report revealed that:

- there is no evidence of early withdrawal disclosures on the advice record or any other client's records;
- no tax deducted on tax directive for the one third rather the shortfall was as a result of early withdrawal and administration costs.
- the R585 is a tax deduction for the income received on her monthly annuity.

Based on these findings the respondent offered a reimbursement of charges incurred by the complainant on her early withdrawal. The complainant accepted the offer.

R26 556,49

Dear Nomvula

I am writing this letter to let you know that I have received my compensation.

I would like to take this opportunity to thank you for the help you provided while I was on stress about this case.

May God Bless you.

Yours faithfully

The complainant, who died shortly after lodging the complaint with us, effected a group scheme policy with the respondent during 2000. The monthly premium of R158,45 was paid by stop order deductions from the complainant's salary. When the complainant's father passed away in May 2008, no claim was considered by the respondent as the policy had lapsed. According to the respondent the last premium was received in May 2007, and as no further premiums were received, the policy lapsed due to non-payment of premiums. The complainant then lodged his complaint with this office. According to the complainant he had been paying the premiums into a bank account number which was given to him by an employee of the respondent. He provided proof of the payments. The complainant suspected that the account number may have belonged to the said employee.

From the documentation at our disposal, it was not apparent that the account was provided by the respondent's employee and it became impossible to investigate this further as the complainant had died.

The respondent referred the matter to their forensic division for investigation. It turned out that the premiums were being paid into an unknown account. We pointed out to the respondent that the fact that the complainant had paid the premiums into the account clearly demonstrated his intentions to pay the premiums and that while it was not possible to verify his allegation regarding the employee that it would be unfair for him to be penalised for this discrepancy. The respondent then agreed to consider both death claims. The respondent settled the death claim in respect of the complainant and that of his father. Payment was made to the complainant's wife.

R15 030,45

COMPLAINANT: Kojang

Failure to render a financial service in accordance with the request or instructions of the client.

SETTLEMENTS DURING 2008/09 CONTINUED

Complainants	Complaint	Issue	Resolution
02550/ 08-09 KZN 1	The complainant invested his retirement capital of R100 000 on the respondent's advice that the capital was guaranteed. Monthly withdrawals of R1 000 were taken as income. On examining his investment statements, the complainant realised the capital was not guaranteed and that he had lost R30 000 over three months.	Inappropriate advice. Failure to disclose nature of financial product sold.	Our investigation revealed that complainant's funds were inappropriately switched out of a money market fund into an income and property equity fund. After our intervention, The respondent agreed to settle and place the complainant in the position prior to the inception of the investment. R41 403
3462/08-09/ GP 3	The complainant's vehicle was broken into and her car radio stolen. Although the insurer settled the claim in respect of the damage to the vehicle, it refused to settle the claim for the radio as it was not specified under the all risk section of the policy. The complainant alleged that he specifically informed the broker that the vehicle did have a radio fitted and that she wanted it insured.	Failure to carry out client's instructions. Failure to ensure specified item is insured under correct section of short-term insurance policy.	Upon our intervention the respondent offered to settle the matter by offering to pay for the cost of the radio. R2 330
3569/08-09/ GP 3	When the complainant's motor vehicle was stolen from her place of residence the respondent refused to settle the claim on the basis that the complainant had failed to comply with the security requirements of the policy. The vehicle was apparently not parked in a locked garage as required by the policy conditions	Failure to adequately ascertain the complainant's needs and circumstances.	The complainant informed us that she had not informed the respondent that her vehicle would be parked in a locked garage as she lived in a block of flats which only had carports. After our intervention, the respondent settled by paying out the claim. R16 384,65
4449/06-07/ GP 4	The complainant's late husband had an investment linked annuity with the respondent. The complainant was the beneficiary under the policy. Upon her husband's death, the complainant was advised to complete a life annuity application form in order to access the proceeds. Unbeknown to her, she was actually invested into a further investment linked annuity. She was advised she could only access the funds in six months' time. When she attempted to do so, she realised for the first time that she was invested for a further period.	Failure to render a financial service with due skill, care and diligence.	After our intervention the respondent agreed to settle the complainant. R693 644,15

Complainants	Complaint	Issue	Resolution
EO 357/06-07/ WC 1	The complainant was advised to sell a substantial portion of a R30 million equity portfolio held in a family trust and to reinvest the proceeds. The commission payable was R1 035 000. The complainant was not aware that the investment would attract a substantial capital gains tax liability. The complainant maintained that the high commission payable was not commensurate with both the level and quality of financial advice given and that she had not been given the opportunity to make an informed decision.	Inappropriate advice and failure to disclose material information.	Our investigation revealed that although the compliance documents were in place, the advice was inappropriate as it did not take into account the risk profile and goals of the complainant and also failed to properly disclose the capital gains tax implications of the transaction. After lengthy negotiations, the respondent reversed the commission amount up to the limit of our jurisdiction. R800 000
Dr ME Makada SMM FOC 02233/08-09/ KZN 1	The complainant entered into a 20-year endowment policy in October 2005 on the advice of the respondent. Not satisfied with the period of 20 years, the complainant sought to change the term to a five-year term as well as the reversal of all fees and the loss of growth on the investment.	Failure to provide appropriate advice.	The complaint was forwarded to the respondent who initially refused to settle. While the issue around the loss of growth was not entertained by our office, we did query the appropriateness of the advice specifically with regard to the term of policy. In our view, the 20-year period did not take into account a person's changing circumstances. With out accepting liability the respondent later offered an <i>ex gratia</i> settlement which the the complainant accepted. R38 355
Mrs PA Mabaso SMM FOC 3148/07-08/ GP/2	The complainant's late husband took out a funeral policy with the respondent, a retail store, where he also had a credit account. The policy premium was paid by debit order together with the monthly instalments on the credit agreement. When the complainant reported her husband's death she was told the account was in arrears and hence no funeral benefit was payable. It appeared that due to recent purchases the account status had become overdue. When the insurer was approached, it repudiated the claim based on the "no premium no cover" term of policy.	Failure to disclose material term of the policy in respect of the circumstances in which benefits would not be provided.	The complaint was forwarded to the respondent on the grounds that it appeared that the deceased had not been informed that the policy would lapse if the account was overdue and that as a result the deceased would not enjoy cover. The respondent settled the matter. R15 000

SETTLEMENTS DURING 2008/09 CONTINUED

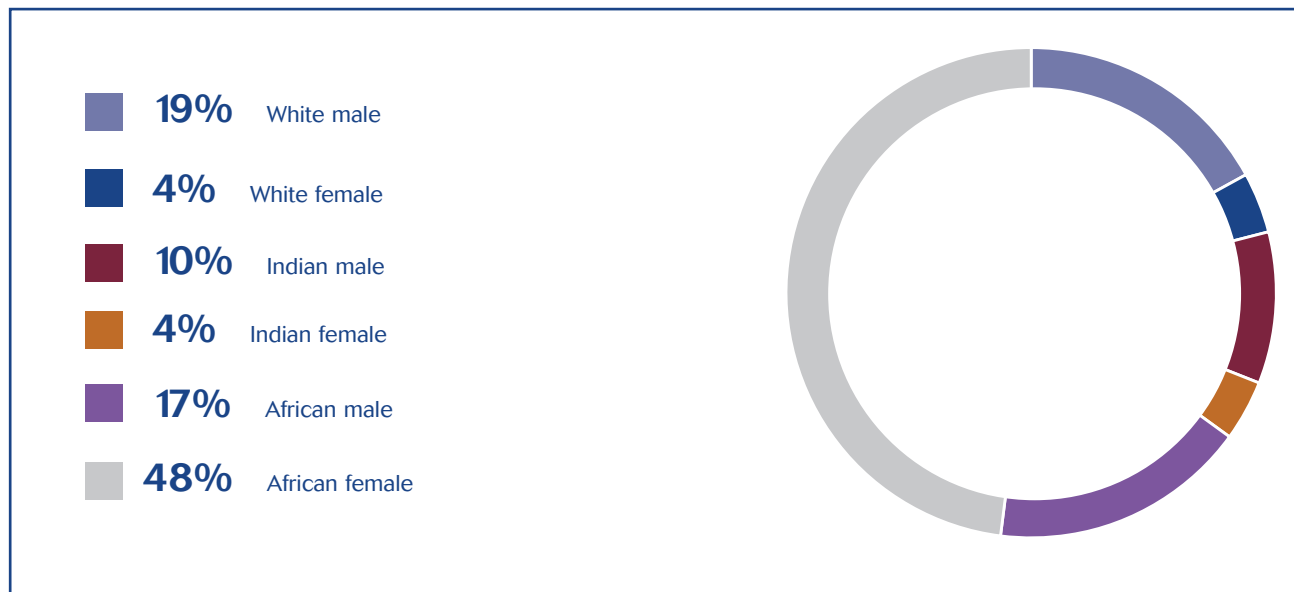
Complainants	Complaint	Issue	Resolution
NV September 00677/07-08/ KZN/3	The complainant invested R300 000 through the respondent's agent. The investment was split into 70% fixed bond investment and 30% investment funds. The complainant had arranged that the 30% portion of his investment should be available for regular withdrawals should he be unable to find employment. This is clearly indicated in the client advice record. As the complainant was struggling to get another job he made two withdrawals from his investment. When he sought to make a third withdrawal, he was told that no further withdrawals were possible as regulated by section 54 of the Long-Term Insurance Act.	Failure to provide appropriate advice taking into account the client's needs.	The respondent conceded that the 30% considered by the complainant to be invested on an accessible basis should be made available to the complainant. The funds originally invested in the investment fund would therefore be available for disinvestment subject to the current loan debt already accumulated by the complainant. R50 000
MW Mashiane 1474/07-08/ LP/2	In January 2006, the complainant took out a five-year endowment into which he paid a single premium of R150 000. After two withdrawals, he was refused further withdrawal. He alleged that he was not advised about the limitations on withdrawals but rather that he could withdraw as often as he needed.	Failure to disclose material terms of a policy.	It appeared that the financial advisor had failed to provide appropriate advice to the complainant despite being fully aware of the complainant's needs and financial situation. The respondent settled the complaint to the complainant's satisfaction. R53 503,53
Marageni 5414-08/09 GP3	The complainant purchased a credit life policy in March 2005 to cover her bond in the event of death of either herself or her spouse. When the complainant's spouse passed away in December 2006, she submitted a claim to the respondent. The claim was rejected on the grounds that the deceased had a pre-existing condition which fell within the 24-month exclusionary period.	Failure to disclose material facts.	We requested all relevant voice recordings from the respondent, which demonstrated that the material terms and conditions were explained to the complainant and her spouse. The respondent then settled the matter. R130 000

STAFFING

Employment equity

The FAIS Ombud is committed to the principles of employment equity. As at 31 March 2009, previously disadvantaged employees constitute **79%** of the FAIS Ombud’s staff complement. The following table represents an analysis of the FAIS Ombud’s equity profile.

Population group	%	Gender	%
African	65	Male	44
Coloured	0	Female	56
Indian	14		
Total black	79		
White	21		
Total	100	Total	100



Employees in terms of equity	Indian (A)		African (B)		Coloured (C)		Total (A+B+C)		Total		Total
	F	M	F	M	F	M	F	M	F	M	F & M
Occupational category											
Management	0	2	2	1	0	0	2	4	2	3	5
Non-managerial	1	1	12	4	0	0	13	5	14	10	24
Total	1	3	14	5	0	0	15	9	16	13	29

F = Female M = Male

Skills and qualifications: Profile of the office

Employees	Postgraduate qualification		Degree or diploma		CFP® qualification
	Finance and commerce	Law	Finance and commerce	Law	
Management		2	2	2	1
Technical	6	6	8	5	5

ENGAGING OUR STAKEHOLDERS FOR MUTUAL BENEFIT

Whilst consumer education and awareness of the Office of the FAIS Ombud fall within the remit of the Financial Services Board, the FAIS Ombud has invested significant time in disseminating knowledge to various stakeholders. Some of his engagements are set out below:

16 May 2008	Presentation: Allan Gray Independent Advisors Forum
29 – 30 May 2008	Presentation: Swaziland Financial Services Authority in Mbabane
2 June 2008	Presentation: Alexander Forbes
June – July 2008	Presentation: Masthead Members' Days roadshows
23 Sept 2008	Meeting with members of the National Credit Regulator
25 Sept 2008	Meeting South African Insurance Association
27 Sept – 3 Oct 2008	Presentation: Info 2008 Conference, New York
15 Oct 2008	Presentation: COSATU: Social Security and Retirement Funds Committee
15 – 17 Oct 2008	Meeting with Swaziland Financial Services Authority delegations in South Africa
22 Oct 2008	Presentation: Sanlam Developing Markets and Sanlam Channel Life
31 Oct – 1 Nov 2008	Meeting: Swaziland delegation in Mbabane
4 Nov 2008	Presentation: FPI Continuous Professional Development Sessions
13 Nov 2008	Meeting Ombudsman for Short-term Insurance
14 and 21 Nov 2008	Seminar Broker Help roadshows (Gauteng and Bloemfontein)
18 Nov 2008	Presentation: Albaraka Bank
19 Nov 2008	Meeting: Standard Bank
5 Dec 2008	Meeting in South Africa with Mr Petr Scholz, the Financial Vice Arbiter-Ombudsman of the Czech Republic
2 Mar 2009	Meeting: Office of Consumer Protection of the Department of Trade and Industry
3 Mar 2009	Meeting: Association for Savings and Investment South Africa (ASISA)
4 Mar 2009	Meeting: South African Insurance Association (SAIA)
26 Mar 2009	Presentation: Discovery Intermediary Conference

THE EPILOGUE

Ombud's think piece – 2009

Reflections – after six years as South Africa's first Ombud for Financial Services Providers.

If I were to draw from my alter ego as a thespian a title for this piece of writing, then it will have to be "The Epilogue".

The dictionary says an epilogue is a final chapter at the end of a story that often serves to reveal the fates of the characters. An epilogue can be used to hint at a sequel or "wrap up all the loose ends". An epilogue can occur at a significant period of time "after the main plot has ended". The epilogue can be used to allow the main character "a chance to speak freely".

When the curtains went up a little over six years ago, the FAIS Act took centre stage in the financial services industry. The Act came about in the wake of a devastating financial scam that saw investors – mostly pensioners – lose investments running into hundreds of millions of rands.

The establishment of the FAIS Ombud as part of the architecture under the Act was an important step toward ensuring consumer confidence in a much maligned sector. An important objective of the FAIS Ombud was to deal with complaints relating to inappropriate advice or willful misconduct on the part of those financial intermediaries whose function it was to ensure that peoples' savings were adequately protected against the vagaries of an uncertain market.

The position of the FAIS Ombud required an adequate knowledge of financial services. However, and more importantly, I believe my greatest strength was my belief in the Constitution and the values that it espoused. Equally important were my life's experiences growing up in rural KwaZulu-Natal where the principles of ubuntu – or humanism – identified the worth of a person in the greater scheme of things.

From the market gardens of Springfield to the dormitory township of Chatsworth where I cut my teeth as a street-wise lawyer; to my time as human rights lawyer at the Legal Resources Centre, a position which culminated in my contribution to creating the International NGO Declaration on Racism, Xenophobia and Related Intolerances in 2001 (www.iacenter.org/wcar/durban_forum041709/), I found myself thrust into the somewhat uncertain world of high finance, where I was to be the arbiter.

A prominent financial journalist described me soon after my appointment as FAIS Ombud as someone whose background and training as an actor and street-wise lawyer would equip me to see through the "smoke and mirrors" of high finance acrobatics.

Here I was, a founding Ombud, who had to prove himself and set a tone, standard and benchmark in a sector that, at least at that time, would probably not have recognised or appreciated the value of the contribution that the office was to make.

It is a sad indictment on our regulatory and prosecutorial authorities and the financial services industry itself that South African investors have fallen prey to unscrupulous service providers who are encouraged by the clear lack of effective enforcement of regulation.

Charles Pillai
FAIS Ombud



THE EPILOGUE CONTINUED

CHALLENGES

My first challenge was to be suddenly confronted by a financial services industry that to a certain extent was self-regulated but largely unregulated.

This industry is dominated by the financial institutions themselves and there are very serious financial and regulatory barriers for entry making it virtually impossible for newcomers to break in.

I was faced with an unusual landscape dominated by the major financial institutions around which were scattered the microlenders, loan sharks, stokvels and peddlers of toxic financial products and Ponzi schemes.

There were also very serious transformation challenges, characterised by racial exclusivity, financial constraints and complexity, effectively creating barriers to entry by previously disadvantaged people.

Whilst certain opportunities for participation in the financial services industry may have been created for the political elites through black empowerment transactions, regrettably not much has changed for the ordinary citizen.

I am disappointed there has been so little transformation. My observation from the scores of forums I have interacted with is that financial services remains largely in the hands of white males, and the few black groups of brokers that have come up are acting largely on the periphery. I beg to be proved wrong.

Whilst political power is 100 percent black and the majority of consumers are black, there is this anomaly which remains to be corrected.

South Africa boasts a raft of empowering legislation that advocates employment equity, skills development and financial sector participation. These need to be rigorously enforced to more truly reflect the demographics of the nation.

National transformational challenges were embraced in the real work of this office, which had from inception embraced a policy of employing aspirant black lawyers and financial planners.

Concurrently other races were recruited to enable skills transfer and foster cultural exchange. A group of highly-skilled white males, readily and unselfishly contributed to the Office of the FAIS Ombud being a learning and caring institution. This has rebounded to the benefit of the institution and the community it serves.

In the early days, we were often challenged by those who perceived us as incompetent civil servants. However, the principle of *Batho Pele* (putting people first) enshrined in our

Constitution and which we espoused in our own service level to the public, convinced our detractors that the FAIS Ombud was capable of both delivering a feisty punch to errant providers, as well as displaying fairness, justice and efficiency at all times. This is what gave us the high profile that we currently enjoy.

Excellence became the hallmark of how we went about our work – and excellence transcended any bigotry and petty prejudices.

Sadly our progressive attitude did not find resonance in some quarters – some of our institutions which were forged in the cauldron of the old boys' network and its attendant sycophantic back-scratching and cronyism, were facing the challenges of transformation with great difficulty.

In view of our socio-political legacy, it became necessary to look at complaints not just through the lens for compliance or negligent conduct, but to view it through the greater spectrum of the purposive interpretation of the legislation, taking into account our particular history and challenges.

REGULATORY FAILURE

It is a sad indictment on our regulatory and prosecutorial authorities and the financial services industry itself that South African investors have fallen prey to unscrupulous service providers who are encouraged by the clear lack of effective enforcement of regulation.

In the course of our work, we have had occasion to investigate and report on numerous financial scams. In the Leaderguard case, where an amount of R380 million left the country, it saddens me to note that the perpetrators are still at large notwithstanding a report to the National Prosecuting Authority, Parliament and the Regulator.

This lack of effective prosecution encourages similar schemes. Currently there are major cracks in property syndications and Ponzi schemes are rife. If there is not effective, proactive regulation and enforcement, these types of practices will flourish to the detriment our stable financial system. Unfortunately it will consistently hit the pockets of innocent citizens.

My role as Ombud inevitably compelled me to challenge even the efficacy of the regulatory authorities. In this context we challenged the process of allowing the very industry that is being regulated to be part of the process of regulation, no matter how well-intentioned their participation.

In this regard, I was guided not only by my own assessment of independence but also by what was spelled out by Judge Hennie Nel in the Masterbond Report, which precipitated the FAIS Act.

He pertinently drew attention to the fact that the regulator of financial services should not be influenced by the industry which it regulates.

This is what Nel had to say in criticism of the creation of an Financial Services Board advisory committee representative of industry players: “The very entities which created the necessity to regulate and supervise, and the very entities against which the public have to be protected, will thus be appointed to advise the registrar.”

Judge Nel’s warning was indeed prophetic and not confined to the South African situation.

We only have to examine what happened recently with the collapse of the great Ponzi scheme masterminded by Bernard Madoff, to understand that this principle is applicable internationally.

It comes as no surprise that Madoff was able to get away with deceiving the United States regulatory authorities for so long. Could it be this was so because he was so intrinsically involved with the American Securities Exchange Commission, the regulator that was charged with monitoring his conduct?

He served on its advisory panel. So too there have been many other reported cases of regulatory capture, which contributed to the cataclysmic collapse of the global financial system as we know it today. This comes with regulators having too cosy a relationship with the institutions being regulated. This extends to lax prudential controls even to the extent of allowing so called in-house auditors to give effect to financial regulation. A good example is the case of the American energy company Enron, which through audit failure caused the dissolution of Arthur Andersen, one of the five largest accounting firms in the world.

This issue of relationships also brings me to the relationship between the Office of the FAIS Ombud and the Financial Services Board.

I firmly believe that in the interest of being able to operate without fear or favour, no financial ombudsman should be subject to an employment relationship with the regulator of financial services.

The Ombud should not be subject to governance by the Financial Services Board. Good fences make good neighbours.

I had spelled out the ideal relationship for financial services Ombudsmen in South Africa in a document in May 2005 when I said:

“An Ombud should not be accountable to the regulatory body, in this case the Financial Services Board. There are sound reasons for this. There may be regulatory failures that

the Ombud may want to pronounce upon. This may be compromised in the present reporting structure.

This ideal has yet to be realised.

OMBUDS’ LANDSCAPE

High on the agenda throughout my tenure has been the call for a single ombud scheme in the financial services industry in South Africa.

I have consistently made reference to the plethora of voluntary ombudschemes within this industry ostensibly doing the same work. The resultant confusion and lack of integrity of the system cannot be in the interests of consumers.

In this regard I had called for the establishment of a single ombudscheme in May 2005.

I said at that time: “The ideal reporting function of the proposed single Ombud would be directly to Parliament, as is done by the current Chapter 9 institutions as set out in the Constitution. It is only through such an accountability function that the Ombud can be said to be truly independent and impartial.”

I am yet to see the realisation of this ideal.

APPEALS

After my very first determination in the matter of *Dennis vs Nedbank and Another*, I was confronted with the reality of the first of many challenges to my substantive assessment of complaints that crossed my desk.

My ruling was appealed against. Appeals against determinations, whilst a good thing in mainstream litigation before courts of law, frustrate the Ombud’s mandate to dispose of a complaint in “an economical, expeditious and procedurally fair manner”.

This process as it is currently applied is flawed for several reasons:

- An Ombudsman as the name suggests is a person of high moral authority whose determination of a complaint should be the final word. The anachronism that exists is that the industry has bought into a process where its voluntary ombuds are not subject to appeal whilst it enjoys such a right under the jurisdiction of the FAIS Ombud.
- The process itself whereby new evidence can be led through a retrial flies in the face of the Ombud’s mandate.
- The current system has opened itself up for abuse. Even legitimate complaints can be frustrated by unscrupulous respondents playing the system – the system can be exploited by corporates who can afford to litigate usually

THE EPILOGUE CONTINUED

against a layperson who cannot afford the luxury of expensive legal representation.

- The laborious process of furnishing of reasons for refusal of leave to appeal places just as onerous a responsibility on the Ombud, as if he is determining the matter afresh. This impacts seriously on time and resources and goes against the principles applicable to an Ombud's role.

I believe the time has come for this industry to accept the notion of no appeal on the merits for the respondent and only a right of review. This system has worked well in the United Kingdom and several European countries and I see no reason why it cannot be successfully applied in South Africa.

CONSUMER AWARENESS

An important observation is that the FAIS Ombud is seen as the champion of the ordinary people, those who interact with large financial institutions such as banks and companies.

They perceive the FAIS Ombud as someone who can represent them, will see that fairness prevails and that justice is done; rather than promote the interests of any institution.

One of the failures of the system is the lack of awareness among ordinary citizens that this system is available and they can access it cheaply.

Unfortunately due to the structure of the legislation which obviously impacts on budget, consumer education is a role that is not entrusted to the Ombud itself, this despite the office having peculiar knowledge of the nature of its services as well as the landscape in which it operates.

There is also a duty on the financial institutions to raise awareness of the existence and the services offered by the FAIS Ombud.

By so doing, they would be displaying confidence in the services they offer consumers. Regrettably, very little, if anything, is done in this regard – a failure which only serves to aggravate consumer confusion.

CONCLUSION

As the curtain falls and I take my bow as South Africa's first Ombud for Financial Services Providers, it is my fervent hope that the matters I have grappled with will assist the policymakers in the process of transforming our financial services industry to be both representative of the people it serves and also continue to attract the attention of the world to its efficient handling of the financial and fiscal discipline in this country.

South Africa is a country of dual economies. On the one hand we have the very rich and powerful whilst on the other we

have the desperately poor, the vulnerable and the marginalised.

Notwithstanding, positive political statements to address this imbalance, the poor continue to remain poor whilst the rich thrive on the backs of the vulnerable who are unable to assert their legally-entrenched rights.

Institutions that perpetuate existing orders and systems which are founded and grounded on inequality and exploitation must not be allowed to exist forever as this can lead to more serious threats to the very foundations of political and financial stability in our country.

The demise of apartheid was precisely because of the immoral and inhuman nature of the practice. The system encouraged mistrust and denial and discouraged transparency, openness, accountability and freedom of information.

A consumer, whether from Johannesburg's northern suburbs or the dusty streets of the Eastern Cape's Idutywa who transacts with a financial services provider, expects a tangible result from the transaction.

This result could be the dividend from an asset under management or payment of a basic funeral policy.

It is only through the application of the precepts of skill, care and diligence that one can cultivate a culture of confidence in consumers.

This can be achieved through effective communication, adherence to the principles of honesty and integrity by providers and raising of the benchmark on service delivery.

I have passed many milestones on this wondrous journey but there is still more road to travel before the final destination.

I wish those who come after me Godspeed as they open new vistas for consumer protection and integrity in financial services.

Charles Pillai

31 March 2009

**THE OFFICE OF
THE OMBUD FOR
FINANCIAL SERVICES
PROVIDERS**

FINANCIAL STATEMENTS

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STATEMENT OF RESPONSIBILITY BY THE FAIS OMBUD

for the year ended 31 March 2009

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 ▼▼ to ▼▼ 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 2009 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 page ▼▼ to ▼▼.

The financial statements, set out on pages ▼▼ to ▼▼, have been approved by the FAIS Ombud on 19 June 2009 and are signed on its behalf by:



Charles Pillai
FAIS Ombud

REPORT OF THE AUDITOR-GENERAL

for the year ended 31 March 2009

REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE FINANCIAL STATEMENTS AND PERFORMANCE INFORMATION OF THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS FOR THE YEAR ENDED 31 MARCH 2009

REPORT ON THE FINANCIAL STATEMENTS

Introduction

1. 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 2009, and the statement of financial performance, the statement of changes in net assets and the cash flow statement for the year then ended, a summary of significant accounting policies and other explanatory notes, as set out on pages ▼▼ to ▼▼.

The accounting authority's responsibility for the financial statements

2. The accounting authority is responsible for the preparation and fair presentation of these financial statements in accordance with the basis of accounting determined by the National Treasury, as set out in the summary of accounting policies and in the manner required by the Public Finance Management Act, 1999 (Act No 1 of 1999) (PFMA) and the Financial Advisory and Intermediary Services Act, 2002 (Act No 37 of 2002) and for such internal control as the accounting authority determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

The Auditor-General's responsibility

3. As required by section 188 of the Constitution of the Republic of South Africa, 1996 read with section 4 of the Public Audit Act, 2004 (Act No 25 of 2004) (PAA) and section 23(3) of the Financial Advisory and Intermediary Services Act, 2002 (Act No 37 of 2002) my responsibility is to express an opinion on these financial statements based on my audit.
4. I conducted my audit in accordance with the International Standards on Auditing read with *General Notice 616 of 2008*, issued in *Government Gazette No 31057* of 15 May 2008. 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.
5. 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 risk 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.
6. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

7. 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 2009 and its financial performance and its cash flows for the year then ended, in accordance with the basis of accounting determined by the National Treasury, as set out in the summary of accounting policies and in the manner required by the PFMA.

Basis of accounting

8. Without qualifying my opinion, the public entity's policy is to prepare financial statements in accordance with a comprehensive basis of accounting, determined by National Treasury as set out in the summary of accounting policies.

Other matters

9. Without qualifying my opinion, I draw attention to the following matters that relate to my responsibilities in the audit of the financial statements:

Unaudited supplementary schedules

10. The supplementary information set out on page ▼▼ does not form part of the financial statements and is presented as additional information. I have not audited this schedule and accordingly do not express an opinion thereon.

REPORT OF THE AUDITOR-GENERAL CONTINUED

for the year ended 31 March 2009

Governance framework

11. The governance principles that impact the auditor's opinion on the financial statements are related to the responsibilities and practices exercised by the accounting authority and executive management and are reflected in the key governance responsibilities addressed below:

Key governance responsibilities

12. The PFMA tasks the accounting authority with a number of responsibilities concerning financial and risk management and internal control. Fundamental to achieving this is the implementation of key governance responsibilities, which I have assessed as follows:

Number	Matter	Yes	No
Clear trail of supporting documentation that is easily available and provided in a timely manner			
1.	No significant difficulties were experienced during the audit concerning delays or the availability of requested information.	Yes	
Quality of financial statements and related management information			
2.	The financial statements were not subject to any material amendments resulting from the audit.	Yes	
3.	The annual report was submitted for consideration prior to the tabling of the auditor's report.	Yes	
Timeliness of financial statements and management information			
4.	The annual financial statements were submitted for auditing as per the legislated deadlines 55 of the PFMA.	Yes	
Availability of key officials during audit			
5.	Key officials were available throughout the audit process.	Yes	
Development and compliance with risk management, effective internal control and governance practices			
6.	Audit committee		
	• The public entity had an audit committee in operation throughout the financial year.	Yes	
	• The audit committee operates in accordance with approved, written terms of reference.	Yes	
	• The audit committee substantially fulfilled its responsibilities for the year, as set out in section 77 of the PFMA and Treasury Regulation 27.1.8.	Yes	
7.	Internal audit		
	• The public entity had an internal audit function in operation throughout the financial year.	Yes	
	• The internal audit function operates in terms of an approved internal audit plan.	Yes	
	• The internal audit function substantially fulfilled its responsibilities for the year, as set out in Treasury Regulation 27.2.	Yes	
8.	There are no significant deficiencies in the design and implementation of internal control in respect of financial and risk management.	Yes	
9.	There are no significant deficiencies in the design and implementation of internal control in respect of compliance with applicable laws and regulations.	Yes	
10.	The information systems were appropriate to facilitate the preparation of the financial statements.	Yes	
11.	A risk assessment was conducted on a regular basis and a risk management strategy, which includes a fraud prevention plan, is documented and used as set out in Treasury Regulation 27.2.	Yes	
12.	Powers and duties have been assigned, as set out in section 56 of the PFMA.	Yes	

Number	Matter	Yes	No
Follow-up of audit findings			
13.	The prior year audit findings have been substantially addressed.	Yes	
14.	SCOPA resolutions have been substantially implemented.	n/a	
Issues relating to the reporting of performance information			
15.	The information systems were appropriate to facilitate the preparation of a performance report that is accurate and complete.	Yes	
16.	Adequate control processes and procedures are designed and implemented to ensure the accuracy and completeness of reported performance information.	Yes	
17.	A strategic plan was prepared and approved for the financial year under review for purposes of monitoring the performance in relation to the budget and delivery by the Office of the Ombud for Financial Services Providers against its mandate, predetermined objectives, outputs, indicators and targets per Treasury Regulations 30.	y	
18.	There is a functioning performance management system and performance bonuses are only paid after proper assessment and approval by those charged with governance.	y	

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

Report on performance information

13. I have reviewed the performance information as set out on pages ▼▼ to ▼▼.

The accounting authority's responsibility for the performance information

14. The accounting authority has additional responsibilities as required by section 55(2)(a) of the PFMA to ensure that the annual report and audited financial statements fairly present the performance against predetermined objectives of the public entity.

The Auditor-General's responsibility

15. I conducted my engagement in accordance with section 13 of the PAA read with *General Notice 616 of 2008*, issued in *Government Gazette No 31057* of 15 May 2008.
16. In terms of the foregoing my engagement included performing procedures of an audit nature to obtain sufficient appropriate evidence about the performance information and related systems, processes and procedures. The procedures selected depend on the auditor's judgement.
17. I believe that the evidence I have obtained is sufficient and appropriate to report that no significant findings have been identified as a result of my review.

APPRECIATION

18. The assistance rendered by the staff of the Office of the Ombud for Financial Services Providers during the audit is sincerely appreciated.

Pretoria

▼▼ July 2009

REPORT OF COMMITTEE OF THE FAIS OMBUD

for the year ended 31 March 2009

We are pleased to present our report for the financial year ended 31 March 2009.

FAIS Ombud Committee members and attendance:

The FAIS Ombud Committee consist of the members listed hereunder:

Name of member	Number of meetings attended
Z Bassa (appointed in September 2008) (Chairperson from 30 March 2009)	2
H Wilton (appointed in October 2008, resigned on 30 March 2009)	1
B Hawksworth (Chairperson up to September 2008)	7
P Matlala	6
B Naidoo	7
G Anderson	6
D Napo (resigned in September 2008)	0
T Matshazi (resigned in September 2008)	1
N Molohe (resigned in February 2009)	5
M Ncube (appointed in September 2008)	2

FAIS Ombud Committee responsibility

The FAIS Ombud Committee reports that it has complied with its responsibilities arising from sections 51(1)(a) of the Public Finance Management Act, 1999 (Act No 1 of 1999) (PFMA) and Treasury Regulations 27.1. The Fais Ombud Committee reports that it has adopted appropriate formal terms of reference as its Fais Ombud 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 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 on the annual financial statements and management letter of the Auditor-General, it was noted that material non-compliance with prescribed policies and procedures has been reported. Adequate progress has been made in attending to the other important matters reported to ensure that errors and irregularities, which may occur will be prevented or detected by the internal controls in good time. Accordingly we can report that the system of internal control for the period under review was sufficiently effective and efficient. The evaluation of the internal audit function was performed by the committee when considering the progress reports submitted by the internal auditors.

Evaluation of the annual financial statements

The FAIS Ombud Committee has:

- reviewed and discussed with the Auditor-General and the FAIS Ombud, the audited financial statements to be included in the annual report;
- reviewed the accounting policies; and
- reviewed the Auditor-General's management letter and the responses of management.

The FAIS Ombud Committee concurs with and accepts the conclusion of the Auditor-General on the annual financial statements and is of the opinion that the audited annual financial statements be accepted and read together with the report of the Auditor-General.

Z Bassa

FAIS OMBUD'S REPORT

for the year ended 31 March 2009

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 ombudsmen can deal with a complaint where there is uncertainty over which Ombud has jurisdiction. The FAIS Ombud, acting as statutory Ombud can also investigate and adjudicate on complaints where the scheme ombudsmen have no jurisdiction.

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

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 FAIS Ombud is entitled to levy a case 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 7 416 (2008: 5 720) complaints and enquiries were received by the office. Of these, 2 125 were found to be complaints within the jurisdiction of the FAIS Ombud, whilst 4 091 were outside the jurisdiction. More information to determine jurisdiction and merit has been requested for the balance of 1 200 complaints and enquiries received.

The FAIS Ombud was listed as a Schedule 3A entity in the Public Finance Management Act, 1999 (Act 1 of 1999) ("PFMA") on 28 September 2008.

The FAIS Ombud has no surplus/deficit during the financial year as the operating deficit has, in terms of the FAIS Act, been fully funded by the Financial Services Board as shown in the Statement of Financial Performance. This funding relationship is expected to continue in the medium to long term.

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 responsible officer for the year ended 31 March 2009 and is the designated accounting officer in terms of section 23 of the FAIS Act, 2002 (Act No 37 of 2002).

STATEMENT OF FINANCIAL POSITION

as at 31 March 2009

	Notes	2009 R	2008 Restated R
Assets			
Non-current assets		1 247 053	1 406 173
Property, plant and equipment	1	857 716	856 242
Intangible assets	2	389 337	549 931
Current assets		653 854	1 117 912
Trade and other receivables	3	231 381	889 649
Cash and cash equivalents	4	422 473	228 263
Total assets		1 900 907	2 524 085
Funds and liabilities			
Funds		742 488	567 023
Accumulated surplus		742 488	567 023
Total liabilities		1 333 884	1 957 062
Non-current liabilities			
Finance lease liability	5	101 204	158 490
Current liabilities		1 232 680	1 798 572
Short-term portion of finance lease liability	5	57 286	50 720
Trade and other payables	6	999 929	1 747 852
Total funds and liabilities		1 900 907	2 524 085

STATEMENT OF FINANCIAL PERFORMANCE

for the year ended 31 March 2009

	Notes	2009 R	2008 R
Operating revenue		109 216	46 895
Expenses		19 187 042	14 269 598
Operating expenses		5 731 371	4 705 137
Personnel costs	8	12 860 180	8 782 156
Amortisation		211 412	121 951
Depreciation		333 989	541 104
Impairment of assets		20 921	86 945
Finance costs		29 169	32 305
Operating deficit	7	(19 077 826)	(14 222 703)
Contribution to expenses by the Financial Services Board	9	19 253 291	14 222 703
(Deficit)/Surplus for the year		175 465	–

STATEMENT OF CHANGES IN NET ASSETS

for the year ended 31 March 2009

	R
<hr/>	
Accumulated surplus	
Balance at 31 March 2007	567 023
Surplus for the year	–
<hr/>	
Balance at 31 March 2008	567 023
Surplus for the year	175 465
<hr/>	
Balance at 31 March 2009	742 488

CASH FLOW STATEMENT

for the year ended 31 March 2009

	Notes	2009 R	2008 Restated R
Cash flows from operating activities			
Cash received from entities		20 018 739	13 602 551
Cash paid to suppliers and employees		(19 339 474)	(12 475 920)
Cash generated by operations	11	679 265	1 126 631
Finance costs		(29 169)	(32 305)
Net cash flows from operating activities		650 096	1 094 326
Cash flows from investing activities			
Proceeds from asset disposal		8 368	–
Purchase of property, plant and equipment		(362 716)	(783 389)
Purchase of intangible assets		(50 818)	(534 177)
Net cash flows from investing activities		(405 166)	(1 317 566)
Cash flows from financing activities			
Decrease in finance lease liabilities		(50 720)	(66 124)
Increase in finance lease liabilities		–	116 470
Net cash flows from financing activities		(50 720)	50 346
Net increase/(decrease) in cash and cash equivalents		194 210	(172 894)
Cash and cash equivalents at beginning of year		228 263	401 157
Cash and cash equivalents at the end of the year		422 473	228 263

SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

for the year ended 31 March 2009

1. Accounting policies

The financial statements have been prepared on a historical cost basis and incorporate the following principal accounting policies which have been consistently applied.

Basis of preparation

The financial statements have been prepared in accordance with the South African Statements of Generally Accepted Accounting Practices (GAAP) including any interpretations of such statements issued by the Accounting Practices Board, with the effective Standards of Generally Recognised Accounting Practices (GRAP) issued by the Accounting Standards Board replacing the equivalent GAAP statement as follows:

<i>Standard of GRAP</i>	<i>Replaced Statement of GAAP</i>
GRAP 1: Presentation of financial statements	IAS 1 (AC101): Presentation of financial statements
GRAP 2: Cash flow statements	IAS 7 (AC118): Cash flow statements
GRAP 3: Accounting policies, changes in accounting estimates and errors	IAS 8 (AC103): Accounting policies, changes in accounting estimates and errors

Currently the recognition and measurement principles in the above GRAP and GAAP statements do not differ or result in material differences in items presented and disclosed in the financial statements. The implementation of GRAP 1, 2 and 3 has resulted in the following changes in the presentation of the financial statements:

(a) Terminology differences:

Standard of GRAP	Replaced statement of GAAP
Statement of financial performance	Income statement
Statement of financial position	Balance sheet
Statement of changes in net assets	Statement of changes in equity
Net assets	Equity
Surplus/deficit	Profit/loss
Accumulated surplus/deficit	Retained earnings
Contribution from owners	Share capital
Distribution to owners	Dividends

(b) The cash flow statement can only be prepared in accordance with the direct method.

(c) Specific information has been presented separately on the statement of financial position such as:

- (i) receivables from non-exchange transactions, including taxes and transfers;
- (ii) taxes and transfers payable; and
- (iii) trade and other payables from non-exchange transactions;

(d) Amount and nature of any restrictions on cash balances are required to be disclosed.

Paragraph 11 – 15 of GRAP 1 has not been implemented due to the fact that the local and international budget reporting standard is not effective for this financial year. Although the inclusion of budget information would enhance the usefulness of the financial statements, non-disclosure will not affect the objective of the financial statements.

1.1 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	five years
Computer equipment	three years
Office equipment	five years

Furniture and fittings	five years
Paintings	five years
Assets under finance lease	five years

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

1.2 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.

1.3 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.

1.4 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 1.6 below.

1.5 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.

1.6 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.

SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES CONTINUED

for the year ended 31 March 2009

1.7 Cash and cash equivalents

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

1.8 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.

1.9 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 is depreciated over the shorter of the useful life of the asset or the lease term.

1.10 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.

1.11 Provision and contingencies

Provision 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.

1.12 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.

1.13 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 expenses in the period in which the employee renders the related service.

1.14 Related parties

All payments to executive management are classified as related party transactions (refer note 8). 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 THE FINANCIAL STATEMENTS

for the year ended 31 March 2009

	Motor vehicles R	Computer equipment R	Office equipment R	Furniture and fittings R	Assets under finance lease R	Paintings R	Total R
1. Property, plant and equipment							
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
Asset 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.							
2008							
Cost	138 593	872 053	298 717	801 864	299 338	26 376	2 436 941
Accumulated depreciation	(100 368)	(565 668)	(116 869)	(662 127)	(110 247)	(25 420)	(1 580 699)
Net book value at 31 March 2008	38 225	306 385	181 848	139 737	189 091	956	856 242
Reconciliation of carrying value							
Net book value at the beginning of the year	65 944	162 477	89 048	169 670	124 451	6 233	617 823
Additions	–	250 383	131 166	285 370	116 470	–	783 389
Impairment of assets	–	–	(3 866)	–	–	–	(3 866)
Current year depreciation	(27 719)	(106 475)	(34 500)	(315 303)	(51 830)	(5 277)	(541 104)
Total	38 225	306 385	181 848	139 737	189 091	956	856 242
Assets under finance lease are encumbered as per note 5.							

EXPLANATORY NOTES TO THE FINANCIAL STATEMENTS CONTINUED

for the year ended 31 March 2009

	Computer software R	Data management system R	Website R	Total R
2. Intangible assets				
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	47 242	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	47 242	389 337
2008				
Cost	115 385	485 843	80 241	681 469
Accumulated amortisation	(88 913)	(19 238)	(23 387)	(131 538)
Net book value at 31 March 2008	26 472	466 605	56 854	549 931
Reconciliation of carrying value				
Net book value at the beginning of the year	64 930	136 526	19 328	220 784
Additions	–	485 843	48 334	534 177
Impairment of assets	–	83 079	–	83 079
Current year amortisation	(38 458)	(72 685)	(10 808)	(121 951)
Total	26 472	466 605	56 854	549 931
			2009	2008
			R	R
3. Trade and other receivables				
Trade receivables			171 140	106 960
Provision for doubtful debts			(60 000)	–
Net trade receivables			111 140	106 960
Contribution from the Financial Services Board			–	665 738
Prepaid expenses			120 241	92 265
Other prepayments			–	24 686
			231 381	889 649

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.

	2009 R	2008 R	
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 2009.	422 473	228 263	
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 transfer 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-month term, interest is fixed at 10% with equal lease payments over the lease term.			
Opening balance	209 210	136 365	
New agreement entered	–	116 470	
Repayments	(50 720)	(43 625)	
	158 490	209 210	
Short-term portion transferred to current liabilities	(57 286)	(50 720)	
Long-term portion under non-current liabilities	101 204	158 490	
	Minimum payments R	Interest costs R	Present value R
Reconciliation of minimum lease payments			
2009			
Less than one year	78 666	21 377	57 289
Two to five years	118 062	16 861	101 201
	196 728	38 238	158 490
2008			
Less than one year	78 667	27 947	50 720
Two to five years	196 729	38 239	158 490
	275 396	66 186	209 210
		2009 R	2008 R
6. Trade and other payables			
Trade payables		267 830	1 321 191
Leave pay accrual		211 197	191 383
Other payables		230 004	–
Lease liability		290 898	235 278
		999 929	1 747 852
All accounts payable are due within 12 months after the balance sheet date.			

EXPLANATORY NOTES TO THE FINANCIAL STATEMENTS CONTINUED

for the year ended 31 March 2009

	2009 R	2008 R
7. Operating deficit		
The following items have been charged in arriving at operating deficit:		
Audit fees	624 995	572 646
Operating lease rentals – office	1 036 455	979 356
Operating lease rentals – office equipment	38 831	44 798

	Salary R	Allowance R	Pension contribution R	Performance bonus R	Leave commutation paid R	Total R
8. Personnel costs for key management						
Personnel costs include the cost to the office for the following key managerial staff:						
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
Year ended 31 March 2008						
C Pillai, FAIS Ombud	988 558	180 000	–	193 410	60 150	1 422 118
N Bam, Deputy Ombud	717 625	24 000	108 375	92 356	32 603	974 959
S Bana, Financial Manager	307 050	72 000	40 950	33 913	8 055	461 968
K Ntlonti, Office Manager	210 750	60 000	29 250	49 870	5 753	355 623
	2 223 983	336 000	178 575	369 549	106 561	3 214 668

	2009 R	2008 R
9. Contribution to 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.		
Withdrawals and expenses paid on behalf of the office	19 253 291	14 222 703

10. 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).

	2009 R	2008 R
11. Cash generated by operations		
Surplus for the year	195 465	–
Profit on asset disposal	(2 036)	–
Amortisation	211 412	121 951
Depreciation	333 989	541 104
Impairment of assets	20 921	86 945
Finance costs	29 169	32 305
Provision for doubtful debts	60 000	–
Movements in working capital:		
Decrease/(increase) in accounts receivable	598 268	(667 047)
(Decrease)/increase in accounts payable	(747 923)	1 011 373)
	679 265	1 126 631
12. Credit quality of financial assets		
Trade receivables		
Group 1	147 241	791 689
Group 2	84 140	97 960
	231 381	889 649
Cash at bank		
A1 Bank	422 473	228 263
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% (2008: 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	1 070 937	961 023
Later than one year but not later than five years	1 160 181	2 002 132
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	1 019 565	628 835
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.

EXPLANATORY NOTES TO THE FINANCIAL STATEMENTS CONTINUED

for the year ended 31 March 2009

(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.

15. Financial risk management continued

15.1 Financial risk factors continued

(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 is 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:

	2009 R	2008 R
Standard Bank Limited	422 473	228 263

(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.

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

	Less than one year R	Between one and 2 years R	Between two and five years R
Year ended 31 March 2009			
Accounts payable	999 929	–	–
Year ended 31 March 2008			
Accounts payable	1 747 852	–	–
		2009 R	2008 R

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 IAS24 (AC126) – Related parties, issued by the South African Institute of Chartered Accountants. The following transactions were recorded relating to transactions with related parties:

Services provided by related parties

Public entities

Skills Development Levy	(110 561)	(31 375)
Unemployment Insurance Fund	(40 709)	(11 457)
Workmens' Compensation	(10 181)	–
	(161 451)	(42 832)

	2009 R	2008 R
16. Related parties continued		
<i>National government agencies</i>		
South African Airways	(79 037)	(114 869)
Telkom Limited	(293 171)	(164 996)
	(372 208)	(279 865)
Year-end balances arising from services provided by related parties		
<i>National government agencies</i>		
Telkom Limited	10 628	–
Funding received from related parties		
<i>Public entities</i>		
Financial Services Board	19 253 291	14 222 703
Year-end balances arising from funding receivable		
<i>Public entities</i>		
Financial Services Board	(230 004)	665 738
17. Contingent liabilities		
There are no contingent liabilities or pending litigation that are known to management as at 31 March 2009.		

DETAILED INCOME STATEMENT

for the year ended 31 March 2009

	2009 Actual R	Restated 2008 Actual R
Operating revenue		
Case fees	107 180	46 895
Profit on asset disposal	2 036	–
	109 216	46 895
Operating expenses	19 187 042	14 269 598
Amortisation	211 412	121 951
Depreciation	333 989	541 104
Finance costs	29 169	32 305
Impairment of assets	20 921	86 945
Personnel costs	12 860 180	8 782 156
Accrual for leave pay	19 814	50 096
Personnel costs	12 840 366	8 732 060
Operating expenses	5 731 371	4 705 137
Audit fees (external)	624 995	572 646
Audit fees (internal)	277 915	257 651
Annual reports	439 456	354 988
Advertising and recruitment	61 902	75 918
Bank charges	15 829	10 042
Cellular phone costs	91 059	58 721
Cleaning and general maintenance	179 367	205 630
Consulting fees	373 226	348 594
Courier and postages	29 226	37 270
Entertainment expenses	52 638	52 816
Insurance and security	67 312	45 531
Internet costs	410 686	437 964
Leasing and hire costs	38 831	44 798
Levies	110 561	31 375
Marketing expenses	27 196	8 920
Printing and stationery	188 729	71 090
Professional fees	26 008	30 753
Provision for doubtful debts	60 000	–
Recruitment fees	–	176 712
Rent	1 036 455	979 356
Repairs and maintenance	187 746	111 654
Rates and electricity	95 391	86 801
Staff training	369 458	102 497
Staff wellnessy	75 879	–
Strategy planning and workshops	108 606	52 906
Subscriptions	42 920	7 087
Telephone	293 171	164 996
Textbook/library costs	140 355	133 789
Travel and accommodation	306 454	244 632
Operating deficit	(19 077 826)	(14 222 703)
Reimbursement of expenses by the Financial Services Board	19 253 291	14 222 703
Deficit/Surplus for the year	175 465	–

PERFORMANCE INFORMATION

for the year ended 31 March 2009

1. Strategic objective: Improvement of the complaints handling processes

1.1 Complaints handling process: Develop and implement a complaints handling processes for a cost-effective service, quicker turn around times on cases and ensuring smooth flow and consistent performance standards.

OBJECTIVES (What do we want to achieve?)	Key performance areas (KPA's)	Key performance indicators/measures (How will we know we are succeeding?)	TARGET 2008/09	31 MARCH 2009
Create a new 'complaints handling process plan' and logging system (whether call/walk-in /letter/email/fax /post) (a.k.a. 'opening' the file)	1. Evaluation and upgrade systems document on workflow for each new kind of contact	<ul style="list-style-type: none"> Evaluation report Detailed action plan Implement the workflow Performance standards 	<ul style="list-style-type: none"> 31 March 2009 	Not complete. To be completed in September 2009.
	2. Automate the contact handling process by integrating with current systems eg Customer Relations Management (CRM), with checks and balances	<ul style="list-style-type: none"> Live test run of the system and report thereof Full run of the system Procedure manual of the system Quarterly review of results 	<ul style="list-style-type: none"> To test the system thoroughly in March 2009 and to complete this by 31 December 2009 95% compliance with the handling process 	Budget approved for 2009/10. 95% system compliance achieved.
	3. Training of relevant staff on effective use of the system	<ul style="list-style-type: none"> Number of staff trained Quality of training Number of errors on use of the process Turn around times (TAT) 	<ul style="list-style-type: none"> All staff trained 95% compliance with the handling process (performance standards) Training part of induction programme utilised. Further training to be undertaken when necessary. 	Staff fully trained on CRM. More than 80% of the features

PERFORMANCE INFORMATION CONTINUED

for the year ended 31 March 2009

2. Strategic objective: Information communication 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

OBJECTIVES (What do we want to achieve?)	Key performance areas (KPA's)	Key performance indicators/measures (How will we know we are succeeding?)	TARGET 2008/09	31 MARCH 2009
Track and manage effectively all calls, from call logging to system tracking of files from start to finish	1. Audit on usage of system	<ul style="list-style-type: none"> Frequency of call logging File tracking Production of reports 	<ul style="list-style-type: none"> 80% usage of features 	System in place to support the recording of calls. Basic logging within CRM in place. 100% utilisation achieved. All cases are recorded on CRM.
	2. Case management procedure (with work progress feedback loop)	<ul style="list-style-type: none"> Appointment of Case Administration manager Established quality standards 	<ul style="list-style-type: none"> 30 June 2008 95% Customer Satisfaction Index (CSI) 	Done on target. To be finalised by 31 July 2009
Improvement on data management system (disaster) recovery backups	1. Appointment of Service Provider	<ul style="list-style-type: none"> Agreement/contract signed for the improvement of Data Management System 	31 March 2009	Delay as a result of limited service providers available
	2. Back up and recovery of all data	<ul style="list-style-type: none"> Install uninterrupted power supply (UPS) Develop data disaster recovery plan/policy Disaster Recovery Plan/Policy Offsite backup Regular system testing 	<ul style="list-style-type: none"> 30 September 2008 31 March 2009 	Done. On target. Budget limited. Will include the development of this plan in 2009/10 budget. Offsite backups service provider will be signed by 31 May 2009.
	3. Internal information sharing platform	<ul style="list-style-type: none"> Define platform Define information to be on the platform Implement the information sharing platform 		Quarterly during performance appraisals. Nature of the discussions to be documented.

3. Strategic objective: The 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 skills in case resolution

OBJECTIVES (What do we want to achieve?)	Key performance areas (KPA's)	Key performance indicators/measures (How will we know we are succeeding?)	TARGET 2008/09	31 MARCH 2009
Acquisition of right skills, of the right quantity at the right time.	1. Development of performance management policy	<ul style="list-style-type: none"> Approval by FAIS OMBUD Committee 	<ul style="list-style-type: none"> 31 March 2009 	Done. Approved by the FAIS Committee in November 2008
	2. Improvement on HR policies	<ul style="list-style-type: none"> Approval by FAIS OMBUD Committee 	<ul style="list-style-type: none"> 31 December 2008 	Draft produced and to be submitted to FAIS Ombud Committee by 31 July 2009.
	3. Fill vacant posts with desired culture in mind	<ul style="list-style-type: none"> PA to Deputy Ombud Case Administration Manager Accountant 	<ul style="list-style-type: none"> 30 July 2008 30 July 2008 30 July 2008 	Done. Done. Done.
Staff wellness program	1. Develop a staff wellness Programme in consultation with staff	<ul style="list-style-type: none"> Approved wellness programme 	31 March 2009	In place. Ongoing reports on usage are reviewed continuously.
Staff learning and development	1. Develop personal develop plans (PDPs) linked to career pathing	<ul style="list-style-type: none"> Approved PDPs Signed career development plans 	<ul style="list-style-type: none"> 31 March 2009 	Personal development plans signed by 31 March 2009. This will be linked to succession planning development during 2009/10.

PERFORMANCE INFORMATION CONTINUED

for the year ended 31 March 2009

3. Strategic objective: The sourcing, development and retention of the right skills (continued)

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

OBJECTIVES (What do we want to achieve?)	Key performance areas (KPA's)	Key performance indicators/measures (How will we know we are succeeding?)	TARGET 2008/09	31 MARCH 2009
	2. Holding regular information sessions	<ul style="list-style-type: none"> Define structure and content of sessions 	31 March 2009	Ongoing. Included in the performance appraisal sessions.
Create a performance-driven culture	1. Ensure utilisation and implementation of the performance management system	<ul style="list-style-type: none"> Train staff on the policy Align performance contracts of all staff to FAIS strategy Signed performance contracts 	<ul style="list-style-type: none"> 31 March 2009 31 March 2009 31 March 2009 	Done. 30 April 2008 Done. 30 April 2008 Done. 30 April 2008
Ensure management development to create an environment in which delegation, fairness, transparency and involvement become the bywords of the office.	1. Needs analysis for the management development programme	<ul style="list-style-type: none"> Needs analysis report Employment satisfaction survey 	<ul style="list-style-type: none"> 31 March 2009 31 March 2009 	Session attended by management and reporters for management development. Employee satisfaction survey to be completed by 31 July 2009.

4. Strategic objective: Stakeholder relationship and risk management

OBJECTIVES (What do we want to achieve?)	Key performance areas (KPA's)	Key performance indicators/measures (How will we know we are succeeding?)	TARGET 2008/09	31 MARCH 2009
Ensure relationships with stakeholders are managed effectively	1. Stakeholder relationship strategic plan	• Stakeholder satisfaction survey	31 March 2009	To be completed by 31 August 2009
Risk management	Improve risk management strategy and measures	• Updated risk register	Quarterly results and feedback quarterly.	Risk register updated

5. Strategic objective: Marketing and communication: Increase 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

OBJECTIVES (What do we want to achieve?)	Key performance areas (KPA's)	Key performance indicators/measures (How will we know we are succeeding?)	TARGET 2008/09	31 MARCH 2009
To reach as many South African consumers of financial services. (Contribute to raising the level of financial literacy)	1. Develop a comprehensive marketing and communications strategy which includes: <ul style="list-style-type: none"> • SMART Goals; • Mediums; • Website; and • Market intelligence 	<ul style="list-style-type: none"> • Increased volume of complaints and enquiries related to FAIS Ombud • Number of published judgements 	27%	29,6% growth by March 2009 16,16% growth by March 2009

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