

A determination is appealable to an appeal tribunal but only with the leave of the FAIS Ombud who will take into consideration the complexity of the matter and whether there is a reasonable likelihood that the appeal tribunal may reach a different conclusion.

There is a further right of leave to appeal to the Chair of the appeal tribunal, should the FAIS Ombud refuse leave to appeal.

6. SUMMARY DISMISSAL OF COMPLAINTS

A complaint may be dismissed summarily if on the facts provided by the complainant it appears to the FAIS Ombud that –

- the complaint does not have any reasonable prospect of success;
- the responding party has made an offer which is fair and reasonable and which is still open for acceptance by the complainant;
- the matter has previously been considered by the FAIS Ombud or has essentially been decided in court proceedings;
- the subject matter of the complaint is pending in court proceedings; or
- the complaint is being pursued in a frivolous, vexatious or abusive manner.

7. COSTS AWARD

No upfront fees are payable to the FAIS Ombud by the complainant. The responding party may be charged a case fee of R1 000,00 once the complaint has been accepted. The FAIS Ombud is entitled to quantify the costs of the complainant and award costs –

- (a) against the complainant if, in the opinion of the FAIS Ombud, the conduct of the complainant was responsible for an unreasonable delay in the finalisation of the matter; and
- (b) against the respondent at the discretion of the FAIS Ombud having regard to the nature of the complaint, the time spent on the complaint, the expense and inconvenience caused to a party and the conduct of a party in resolving the complaint.

8. PENALTY

Any person who commits an act in relation to the FAIS Ombud or an investigation by the FAIS Ombud which, if committed in respect of a court of law, would have constituted contempt of court, is guilty of an offence and on conviction liable to any penalty which may be imposed on a conviction of contempt of court.

9. EFFECTIVE DATE

The office will officially accept complaints on or after 30 September 2004.

OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS



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1. THE OMBUD

The Office of the Ombud for Financial Services Providers ('FAIS Ombud') was established by the Financial Advisory and Intermediary Services Act, No 37 of 2002 ('FAIS Act').

The FAIS Ombud is appointed by the Financial Services Board and must be a person qualified in law who possesses adequate knowledge of the rendering of financial services. The Board may also appoint one or more persons as Deputy Ombud.

The objective of the FAIS Ombud is to consider and dispose off complaints by clients against financial services providers in a procedurally fair, informal, economical and expeditious manner and by reference to what is equitable in all the circumstances.

2. FUNDAMENTAL PRINCIPLES

In the investigation and disposal of a complaint the FAIS Ombud acts independently, impartially and objectively.

The complainant and any other party to the complaint are expected to give their fullest cooperation to the disposal of the complaint within a reasonable time.

The services of the FAIS Ombud are not similar to those of a professional legal adviser and are confined to the mediation, conciliation or determination of complaints in terms of the FAIS Act and the Rules.

3. COMPLAINTS

The FAIS Ombud deals with complaints submitted to the Office by a specific client against a financial services provider. "Complaint" means a specific complaint relating to a financial service rendered by a financial services provider or a representative of such provider to the complainant. The complaint will be considered if it is alleged that the provider or representative:

- has contravened or failed to comply with a provision of the FAIS Act and that as a result thereof the complainant has suffered or is likely to suffer financial prejudice or damage;
- has wilfully or negligently rendered a financial service to the complainant and has caused prejudice or damage to the complainant or which is likely to result in such prejudice or damage; or
- has treated the complainant unfairly.

"Client" means a specific person or group of persons, excluding the general public, who is or may become the subject to whom a financial service is rendered intentionally, or is the successor in title of such person or the beneficiary of such service.

The act of omission complained about must have occurred on or after 30 September 2004.

Before submitting a complaint to the Office, the complainant must endeavour to resolve the complaint with the responding party. The responding party has six weeks in which to resolve the complaint with the complainant. After receipt of the final response of the responding party, the complainant has six months within which to submit a complaint to the FAIS Ombud.

The complaint must not constitute a monetary claim in excess of R800 000,00 unless the responding party has agreed in writing to this limitation being exceeded.

The complaint must not relate to the investment performance of a financial product which is subject to the complaint, unless such performance was guaranteed in express terms or such performance appears to the FAIS Ombud to be so deficient as to raise a prima facie presumption of fraud, negligence or maladministration on the part of the responding party.

A complaint will not be investigated if, before the date of receipt of the complaint by the FAIS Ombud, or during an investigation by the FAIS Ombud, the complainant institutes proceedings in a court regarding the subject matter of the complaint.

4. PARTIES AGAINST WHOM A COMPLAINT MAY BE LODGED

The complaint must relate to a financial service rendered by a financial services provider or the representative of the provider.

"Financial services provider" means any person who as a regular feature of the business of such person –

- (a) furnishes advice; or
- (b) furnishes advice and renders any intermediary service; or
- (c) renders an intermediary service.

"Financial service" means any service contemplated in paragraph (a), (b) or (c) above;

"Advice" means any recommendation, guidance or proposal of a financial nature furnished by any means or medium to any client or group of clients, and which relates to the purchase of, or the investment in any financial product or on the conclusion of any other transaction in respect of any financial product.

"Intermediary service" means any act performed by a person for or on behalf of a client or a product supplier –

- the result of which is that the client may enter into, offers to enter into or enters into any transaction relating to a financial product with a product supplier; or
- with a view to buying, selling or otherwise dealing in a financial product purchased by a client from a product supplier or in which the client has invested, collecting or

accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or receiving, submitting or processing the claims of a client against a product supplier.

Provided a party performs the function of furnishing advice or rendering an intermediary service in respect of a financial product, that party will be subject to the jurisdiction of the FAIS Ombud. The responding party could, therefore, be a product supplier (eg a long-term insurer, a short-term insurer or a bank), a financial intermediary (eg an insurance broker in the long-term or short-term insurance industry), an investment manager, or a representative who renders a financial service to a client for, or on behalf of any of these persons.

"Financial product" means all types of securities and financial instruments, a participatory interest in a collective investment scheme, a long-term or a short-term insurance policy, a benefit provided by a pension fund or a friendly society, a foreign currency denominated investment instrument, a bank deposit, a health service benefit provided by a medical scheme, any comparable financial product issued by any foreign product supplier and marketed in the Republic; any combined product containing one or more of the listed financial products.

5. PROCEDURE IN THE DISPOSAL OF COMPLAINTS

In investigating or determining a complaint, the FAIS Ombud may follow and implement any procedure which the FAIS Ombud deems appropriate, and may allow any party the right to legal representation.

Any responding party must be informed of the complaint submitted to the Office to the extent necessary to respond thereto fully.

The responding party is required to act professionally and reasonably and to co-operate with a view to ensuring the efficient resolution of the complaint.

The FAIS Ombud must first explore any reasonable prospect of resolving a complaint by a conciliated settlement between the parties, endeavouring to mediate such a settlement or to make a recommendation as to how the complaint should be resolved.

Where a matter has not been settled or the FAIS Ombud's recommendation not accepted by the parties, the FAIS Ombud will make a final determination which may include –

- the dismissal of the complaint; or
- the upholding of the complaint wholly or partially, eg by awarding the complainant an amount as fair compensation for the financial prejudice or damage suffered.

The FAIS Ombud's determination has the effect of a civil judgment of a court.