



**A PROVIDER IS REQUIRED BY LAW TO PAY ATTENTION TO THE CLIENT'S GOALS AND NEEDS AND FURTHER ACT IN ACCORDANCE WITH THE CLIENT'S INSTRUCTIONS**

**Mr J vs Representative**

Mr J (complainant) sought from the respondent's representative on how to invest his funds. He alleged that he requested the respondent to invest R100 000 in a long-term deposit account and R250 000 in a flexi-deposit account. It would appear from the complaint that complainant's intention was to have ready access to the R250 000.

Complainant further explained that he wanted to use the R100 000 for his child's education and the R250 000 for ongoing house renovations. From his complaint, it became evident that the child's education was a

long term goal, such that complainant wanted to protect the R100 000. Over time the complainant made withdrawals from the amount of R250 000.00. However, when he attempted to make a third withdrawal, the respondent informed him he would only have access to his remaining funds in 2017, (after the expiry of the period of five years). It became clear that the funds had been invested in an endowment policy, instead of a flexi-deposit.

Following the denial of a further withdrawal, Mr J lodged a complaint with the FAIS Ombud requesting assistance in order to have his funds be paid out in full.

**Our intervention:**

Correspondence was sent to the respondent wherein we conveyed the complainant's version of events. The respondent replied alleging that they had adhered to the complainant's instructions. However, the

supporting compliance documents received supported the complainant's version of events. There were also inconsistencies that led this Office to believe that the complainant's version of events was more probable.

Further questions were posed to the respondent and he replied agreeing to release the complainant's remaining funds. An amount of R229 095.77 was paid to the complainant as full and final settlement of the complaint.

#### Lessons:

- Financial services providers must pay attention to the client's goals and needs and act in accordance with the client's requests and instructions.
- An exception can arise in the event the instruction given by the client is likely to place the client in a worse off financial situation.
- In that event the respondent is required by the General Code of Conduct, (the Code) to record the client's decision to go against his/her advice.

### 30% INTEREST INCOME MONTHLY, UNLIKELY (IF IT IS TOO GOOD TO BE TRUE, IT PROBABLY IS)

Mr X, an educated man, bought an investment that was expected to pay out 30% interest on his R60 000 capital monthly, for three months. When the first month's interest was due, the provider offered him excuses as to why the interest was not paid, which excuses Mr X readily accepted. During the second month, no interest was paid but the reason was cited as Mr X's incorrect banking details, coupled with the fact that payments were only being made on specific days of the month. He was told, since he had missed payment for those days, he would receive all his interest in the third month.

On the third month the provider was nowhere to be found, his cell-phones were no longer working. The complainant lodged a complaint with the FAIS Ombud putting his allegations forward.

#### Our intervention:

Upon tracking the respondents, the complaint was referred to them in terms of the law but no feedback was ever received by the Office.

#### Lessons:

- Recall the old saying, 'a fool is soon parted with his money', do not allow unscrupulous providers with ridiculous promises to turn you into a fool.
- Do your homework before parting with your money. Ask questions from people around you
- Call the regulator to establish whether the provider is licensed in terms of the FAIS Act.
- Even after establishing, continue to make enquiries from a variety of people before paying your money.
- Take charge, it is your money.
- Research about investment vehicles as well as the individual selling the investment.
- If the returns sound like they are too good to be true, in most cases they are.

## IS IT SUITABLE FOR THE CLIENT? THEIR NEEDS COME FIRST

### Mrs F v S

Mrs F, 61 years old, was sold an endowment for an amount of R1 250 000. She had specifically requested for her lump sum to be invested into flexible unit trusts as she needed regular withdrawals due to the uncertainty of her occupation as an artist.

After receiving her investment contract, she sought assistance from her new advisor as she did not thoroughly understand her documents. The advisor confirmed that the investment was not in accordance with her needs and requirements. Mrs F requested that her capital be moved to unit trusts but was penalised with R132 000. According to Mrs F she was not informed that a termination charge would be applicable should she withdraw her money, or a portion thereof. She then complained to the product provider and claimed the amount for the penalties, but was unsuccessful.

The provider's response was that Mrs F applied for an investment and throughout the process had numerous telephonic communications with her advisor. When the investment documents had to be signed, they were forwarded to Mrs F to verify everything before signing. The advice was furnished telephonically until she was satisfied and subsequently signed the documentation.

According to the provider's records the letter of acceptance, the contract and advice documentation were forwarded to the client. It was stated in the quotation and policy document that a termination charge would be applicable in the event the client decided to terminate the plan.

#### Our intervention:

The Office requested proof that the complainant's personal circumstances were taken into account especially considering her age, retirement and occupational status. We also requested proof that the applicable penalties in the event of a cancellation of the endowment were disclosed to her. In response, the provider offered to resolve the complaint with Mrs F with an offer, which she accepted

#### Lessons:

- When investing, ensure that the documents you sign record what was communicated to you by the provider. Signing documents which do not relate to the product of your choice may result in dire financial consequences.
- The act of asking a client to sign blank forms is prohibited by law.
- Do not sign blank forms for your own protection.
- You may also regret to learn that you have signed for product which may not be suitable to your needs and circumstances.
- A service provider is obliged to explain all monetary obligations payable by you, including penalties and charges applicable on early termination or withdrawal from a product before maturity date.
- A provider must also explain the restrictions applicable in a product.

## YOUR PREVIOUS INSURANCE HISTORY IS IMPORTANT TO AN INSURER AND ALL INFORMATION SOUGHT BY THE INSURER MUST BE CONVEYED.

### The case for “Mrs A”

During March 2011 Mrs A had applied for short term insurance (through her broker) to cover her household contents. On the 18th of March 2011 it is alleged that the insurer enquired from her broker as to Mrs A's previous insurance, specifically whether she or any members of her family had ever had their policies cancelled by an insurer, to which the broker had answered “No”. Mrs A claimed that at no stage did the broker ask her whether any member of her family had had their insurance cancelled by an insurer.

After a burglary at Mrs A's house where her jewellery and luxury watches were stolen, Mrs A lodged a claim which was rejected due to her failure to disclose that her husband's insurance policies had been cancelled on five previous occasions. The insurer further argued that had it been aware of these cancellations it would never have accepted the risk, and subsequently cancelled the policy.

### Our intervention:

After an in-depth investigation, we could not be of assistance to Mrs A as both her and the husband's policies including their business policies were previously cancelled by several insurers, following several insurance claims. This information was material to the insurer's evaluation risk. Regardless of the actions of the broker, the insurer had made it clear that had the correct disclosures been made at the inception of the policy, cover would not have been provided. The complaint was dismissed.

### Lessons:

- Do not take chances when sourcing insurance cover.
- When asked for information disclose it as candidly as possible.
- Your claims history is not only relevant but critical for the pricing of risk.

## GIVE ME MY MONEY

Complainant alleged that he met an insurance advisor Mr V through a mutual friend and the advisor immediately persuaded him to move his investment policies from “A” insurers to “B” insurers. According to the complainant the advisor had promised a “better deal”. Labouring under the impression that his investments would be better off with “B”, the complainant had agreed to the move.

During January 2013 complainant lost his employment following a restructuring exercise by his employer. Upon payment of his retrenchment benefit and his provident fund, he consulted Mr X and informed him of his intentions to place the funds in a 32 day call account in order to have access should he struggle to find employment. Complainant alleged that Mr X had dissuaded him from effecting the 32 day call account and had instead advised that he set up a Retirement Annuity for him.

Mr X later brought the completed documents to the complainant and asked him to sign. Although the complainant admitted that he had not read the papers, he had specifically informed the advisor that he wanted to have access to his funds as he was unemployed.

The respondent maintains that the product recommended by him was a Provident Preserver and not a Retirement Annuity (as requested by the client).

### Intervention:

Although the respondent maintains that the complainant had been made aware of all the terms and Conditions, the issue from the FAIS Ombud's side was about appropriateness of advice, which the provider clearly failed. The provider could not provide any information to support the appropriateness of a Retirement Annuity in the light of the complainant's circumstances. A solution was proposed by the provider which was accepted by the complainant.

### Lessons:

- A retirement annuity is an investment vehicle from which money is locked until one reaches the age of 55 or their chosen retirement age.
- Money that is paid into a retirement annuity cannot be withdrawn before the early age of 55.
- Money in a retirement annuity is protected by law and is placed beyond the reach of creditors.
- A retirement annuity cannot be ceded as security. These are some of the benefits that the law affords you to encourage people to save for their retirement.

## DRIVING INTO THE SUNSET NOT AS BLISSFUL AS YOU THINK

When the complainant took delivery of her brand new vehicle, her broker sent confirmation stating that the vehicle was fully insured under her mother's policy. However, to the complainant's dismay, after a couple of weeks, she was involved in a minor accident. She then contacted her broker to inform her of the incident, only to be told that this particular vehicle had not been insured as previously stated.

The complainant then approached this Office to assist with what she perceived to be a grave injustice.

The investigation revealed that the policy had lapsed due to non-payment of premiums.

### Lessons:

- It is the insured's responsibility to pay the premiums.
- It is also the insured's responsibility to ensure that their vehicle is covered. In this regard, the insured must be able to demonstrate the steps taken which led them to believe they had a valid insurance policy.

## ARE YOU GETTING WHAT YOU PAID FOR?

This Office has in the past few years experienced an increase in the number of complaints involving the failure by financial advisors to provide ongoing financial service advice and report to their clients annually, this despite them being paid on-going commission.

## The law:

In terms of Section 7(4) of the General Code:

A financial service provider (FSP) who has provided advice to a client or is rendering ongoing financial services to the client in respect of one or more financial products, must on a regular basis (but not less frequently than annually), provide the client with a written statement identifying such products as are still in existence, and brief current details (where applicable), of:

- (a) any ongoing monetary obligations of the client in respect of such products;
- (b) the main benefits provided by the products;
- (c) where any product was marketed or positioned as an investment or as having an investment component, the value of the investment and the amount of such value, which is accessible to the client; and
- d) any ongoing incentives, consideration, commission, fee or brokerage payable to the provider in respect of such products.

## CASE STUDY:

According to the complainant, he had been paying on-going advisory fees on his retirement annuity policy, despite not seeing his advisor for the past five years. Upon enquiries, the complainant was surprised to learn that his broker resigned from his employer and that he had a new broker.

Aggrieved by not receiving ongoing financial services from his advisor, the complainant requested a refund of all advice fees charged on his investment over the last 5 years, which was refused by the respondent. This triggered the complaint to this Office.

Upon receiving the complaint from the FAIS Ombud, the respondent first

dismissed the complaint and refused to refund any fees, arguing that the complainant had received quarterly statements. The respondent also stated that 'it must be borne in mind that the relationship between advisor and client is not solely the responsibility of the advisor'.

It was pointed out to the respondent that the administration fee charged against complainant's investment should ordinarily cover the cost of issuing the quarterly statements. Further, it was pointed out that it would have been impossible for the complainant to have established a relationship with his new advisor, without the latter being introduced to him. Furthermore, it was unacceptable that the client's investment was charged for a service that had not been rendered to the client.

Against that reply from this Office, the respondent promptly offered to settle the matter by paying to the complainant the amount of R5 000, which was accepted by the complainant.

## Lessons:

- Consumers who pay ongoing advice fees (trail fees), should receive ongoing financial services from their financial services provider;
- Where an FSP or its representative furnishes you (as a client) advice which leads you to buy a financial product or he renders ongoing financial services, the FSP must send you a statement every year, wherein he/she gives you an update on the status of the financial product;
- Providers are required by law to disclose upfront, the costs associated with a financial product including trail fees;
- You also have the obligation to inform your advisor when you move addresses or when there is a change in your circumstances, which might make you inaccessible.



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