

ANNUAL REPORT 2021 | 22

EVOLVING OUR SERVICES WITH
THE FUTURE IN MIND



FAISOmbud

Office of the Ombud for Financial Services Providers

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PART A

GENERAL INFORMATION

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MR ENOCH GODONGWANA
MINISTER OF FINANCE

FOREWORD BY THE MINISTER OF FINANCE: THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICE PROVIDERS

The Explanatory Policy Paper which accompanied the first draft of the COFI Bill which was published for comment in December 2018 made the following statement:

“The protection of customers in the financial sector, and meaningful financial inclusion in South Africa, are mutually reinforcing objectives. The market conduct policy approach should therefore be seen as a supporting pillar of South Africa’s financial inclusion policy – higher standards of customer protection can drive greater inclusion as customers feel more secure in their participation in the financial sector. A financial inclusion Policy Paper setting out the South African approach will also be forthcoming.”ⁱ

In the building of a capable and developmental state, responsibility is placed on the public sector to deliver efficient services while contributing to the development of the skills of its people and the enhancement of experience and expertise. The FAIS Ombud plays a key role in this strategy given its many training initiatives and annual graduate programmes. The Ombud Office has also implemented various outreach initiatives to complement its mandate with a firm aim to increase its visibility and accessibility. The Office has particularly focused on initiatives aimed at enhancing the integrity of the financial sector and protecting consumers.

The consolidated and streamlined legislation expected from the COFI legislation will strengthen the protection of customers by providing a single source of market conduct regulation. This will ensure consistency in the principles governing the sector as well as optimize collaboration within the financial regulatory framework.

The progress of the Bill is evidence of the National Treasury’s commitment to policies aimed at improving

market conduct that was initiated by the Twin Peaks financial sector regulatory reform. Various processes have already been implemented in preparation for the current critical step; this includes the ongoing development of the COFI Bill, with the second draft of the Bill released for public comment in September 2020. The Bill was preceded by the Treating Customers Fairly Market Conduct Policy Framework and the Policy Holder Protection Rules, as well as by a process of providing clarity and the closure of gaps in policy through the amendment to the General Code of Conduct for Financial Services Providers, the first tranche of which was gazetted on 26 June 2020.

The Bill has also taken wisdom from other jurisdictions on Institutional Arrangements for Financial Consumer Protection. In this regard it is apposite to conclude on this area once again with a quote from the Policy Paper, which reads:

“The strengthening and reform of market conduct regulation in South Africa are thus consistent with reforms being undertaken internationally as the issue of consumer protection is increasingly placed into focus. In developing the legal framework and institutional structure, South Africa has drawn on learnings and best practices internationally, while also ensuring that the reform programme is suited to the South African context.”ⁱⁱ

On 28 October 2020, National Treasury followed up on its promise and released the First Draft of the Financial Inclusion Policy for comment. The Policy paper starts by

recognizing that in the South African context, various segments of society that underutilize financial services are inadequately provided for. For this and other reasons, the objective of the document has been stated to establish a policy framework for financial inclusion in the country and to formulate an approach to its implementation. The Policy document also recognizes the importance of supporting financial inclusion through continuous consumer financial education and consumer protection at all levels of the programme pyramid.

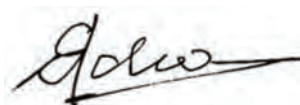
Having identified the critical role of financial inclusion in the socioeconomic context of South Africa, the Paper proposes various pillars of activities, areas, and levels of society in which financial inclusion must play a role, as well as identifying what those various roles could be. Some of these are already in the landscape, but with poor results due to a lack of proper oversight, guidance, and implementation.

Having commissioned the World Bank, together with the FSCA to advise with regard to a diagnostic on the best Ombud system in the South African financial sector, on 24 May 2021, the first Board of the Ombud Council, as well as the Chief Ombud, were appointed to give effect to the new financial ombud system as set out in Chapter 14 of the Financial Sector Regulation Act No. 9 of 2017 ("the FSR Act"). The Ombud Council will recognize industry ombud schemes as set out in the FSR Act and will thus have oversight powers over both the statutory and industry ombuds. Concerning the most appropriate Financial Ombud System, National Treasury is still under engagement on the recommendation made in the

World Bank Ombud Diagnostic Report, and engagement between the National Treasury, the Ombud Council, and the ombuds is ongoing, including the FAIS Ombud. The biggest challenge consistently faced by this institution has been and remains funding. For the period under review, this was exacerbated by the inability to pass the Financial Levies legislation into law, resulting in the Office having to revert to the old Section 15 of the FSB Act formula. These funding challenges strain the capacity of the Ombud Office to compete for the critical skills needed by the Office in order to meet its mandate.

The Office is grateful for the ongoing interaction from National Treasury, the Executive Committee of the FSCA, and its governance committees as well as recently the Ombud Council.

It is hoped that all of the above will drive forward the strengthening of market conduct, customer protection, trust in the financial services sector, and a marked contribution of the sector to an improved economy. The crucial role played by the protection of customers in the financial sector, which, in South Africa is played by the Ombud system needs to be recognized accordingly.



MR ENOCH GODONGWANA
MINISTER OF FINANCE



COMMISSIONER'S REPORT

The period covered in this report of the Ombud for Financial Services Providers ("FAIS Ombud") is characterized by forward movement in the strategic objectives and priorities of the financial sector regulatory environment.

MR UNATHI KAMLANA
COMMISSIONER OF THE FSCA

There are also strong synergies between the FAIS Ombud and the FSCA, given that the Ombud's contribution to consumer protection and the market conduct focus of the FSCA have a common policy objective, that is, the building of confidence and integrity in the financial sector, whose intended outcome is the maintenance of trust in the financial sector.

The strategic objectives of the FAIS Ombud as encapsulated in its 2020 – 2025 Strategic Plan have a significant role to play in the achievement of better consumer protection outcomes in the financial sector. As such, the collaborative relationship that is growing within the regulatory bodies in the sector is a welcome development.

The effectiveness of the work done and continues to be done by the FAIS Ombud is and will be greatly enhanced by the amendments as well as the continual review of the General Code of Conduct for financial services providers ("the Code of Conduct"), and work is continuing in this area.

Amidst the uncertainty posed by the effect on the statutory FAIS Ombud of the still to be finalised policy by National Treasury on a combined Ombud structure, the level of performance achieved by the Office in the

past financial year confirm that the Office continues to deliver on its mandate.

It is hoped that regular engagement with the financial sector ombud system in whatever form it will be following the proposals by the World Bank, the formalization of engagement with the Ombud Council, direct engagement with financial customers will enhance consultation and flow of information between the FSCA and the Ombuds and should better inform the final structure of the Ombud system in the SA financial sector in the interests of improved consumer protection outcomes.

Audit Report:

For the financial year under review, the Office of the FAIS Ombud achieved an Unqualified Audit (with findings) opinion.

Unathi Kamlana
Commissioner of the FSCA



OMBUD'S REPORT EVOLVING OUR SERVICES WITH THE FUTURE IN MIND

Like the rest of the world, the COVID-19 pandemic has catapulted South African business into various digital platform-based business models, as seen in active and operational fintechs in the country.

ADVOCATE NONKU TSHOMBE

Introduction

Like the rest of the world, the COVID-19 pandemic has catapulted South African business into various digital platform-based business models, as seen in active and operational fintechs in the country. Even though the country has not attained an optimal state of readiness for this paradigm shift, reports indicate rising numbers of segments of fintech firms; with payment systems, insuretechs and the use of non-traditional data. The benefits and risks must be identified. For instance, the key benefits are financial inclusion, personalisation, affordability and an enhanced customer experience. The risks are data, privacy, protection, decision bias, fairness and transparency. The old threat of loss of employment is also prevalent during these times when the country is experiencing high levels of unemployment. Even before the outbreak of the pandemic the country has been under pressure to create employment opportunities and protect the automation of jobs in labour-intensive industries. With the outbreak of the pandemic the country was left with very little choice other than to accept the inevitable, that is doing business using Fourth Industrial Revolution (4IR) technologies. The country benefited from basic services like ordering food and groceries online, universities and schools moving their teaching online, easily organising conferences via Webex and a number of other platforms; all of which will likely remain in use permanently.

While the system shock resulting from the paradigm shift was caused by the need to continue life during the pandemic, digitised platforms came in very handy in managing the pandemic itself. Examples are the use of Artificial Intelligence (AI) and mobile technology; the

integration of which made it possible to trace COVID-19 contacts, monitor symptoms, detect outbreaks and assess risks in the context of the pandemic. Further benefits include the use of AI in medical diagnoses, the Internet of Things for goods, transportation, financial transactions and other services that can be obtained via linkages to the Internet.

In the above circumstances, it is important for financial services providers as well as consumers to note that while the digitised world has made it possible for financial advice and financial products to be provided via any number of platforms, such advice is still subject to regulatory requirements, as has been the case with written and verbal advice involving interaction with a human being.

Complaints emanating from advice given via digitised platforms

It is for the above reason that the Office expected to receive a lot of complaints stemming from advice given via digitised platforms. The absence thereof is perhaps an indication that complainants are not aware that they are receiving advice when regulated financial products and advice are offered on such platforms, and consequently there is a need for compliance with regulation within the financial services legislative framework. Where this is not understood, a consumer may not be aware of their rights in terms of the General Code of Conduct for Financial Services Provider and intermediaries.

The Ombud Office has thus identified the need to digitise the lodging of complaints. For instance, the complaints portal on the website is already configured to function in a digitised world in that it is able to:

- accept complaints and attachments,
- send the complaints and attachments directly to the Complaints Management department within the Office,
- allocate a reference number,
- allocate the complaint to a case manager in real-time with the complainant able to receive updates on the progress via the digitised system.

The usage of this capability may not yet be optimised since complainants may not know that it exists. However, the Office is acquiring systems that are preparing for this service with the future in mind.

Annual Report launches during COVID-19

For the 2021/22 financial year, the Office continued its campaign already identified earlier to expand its Annual Report launch as part of the creation of brand awareness and consumer outreach. The approach adopted was to launch the Annual Report on various radio stations. Certain aspects of the Annual Report were highlighted during radio interviews as well as further information on what the office is about and the opportunity was given to the public to ask questions. The Office also relied on press releases and radio announcements to alert key stakeholders that the Annual Report was to be published via radio airing.

All national and community radio stations were approached for the Office's staff to do presentations in appropriate languages for various areas of the country.

The radio campaigns were concentrated in the provinces from which the office receives the least number of complaints. The campaigns started in the Mpumalanga and North West provinces. The initiative went very well, enough for the Office to receive an invitation for an interview from one of the national radio stations free of charge. This was the result of positive feedback from their listeners. The Office participates in the National Consumer Financial Education Committee (NCFEC), which was established to secure active involvement, collaboration, and coordination of various stakeholders in consumer financial education. As part of the NCFEC, the Office has contributed articles that got published in Vuk'uzenzele, a publication owned by the Government Communication and Information System Department (GCIS). In addition, the Office issues media releases on its work and participates in various webinars hosted by, for instance the Financial Planning Institute (FPI), the Insurance Institute of KZN (IIKZN) where it makes educational presentations that contribute to the training of financial services providers.

Other innovative ways of enhancing outreach activities

Social media and website

The Office has started and surged forward quite visibly and with encouraging results in the digital Media space. The intention of this has always been to:

- improve engagement between the Office and its stakeholders,
- keep its stakeholders and the public up to date with the FAIS Ombud's activities and services,
- enhance the organisation's reputation by communicating service offerings and achievements,
- impart knowledge, educate and allow for a more interactive experience with our stakeholders thereby contributing to financial inclusion.

At the rate that the audience is reacting it seems the objectives set out above may be achieved faster than has been the case before all the initiatives were set on course.

The appointment of the Ombud Council

The financial year under review also culminated in the former Minister of Finance, Mr Tito Mboweni, appointing the first Ombud Council Board and a Chief Ombud for the Council, giving effect to the new financial Ombud system in terms of the Financial Sector Regulation Act No. 9 of 2017 (FSR Act). The Minister also appointed a Chief Ombud for the Ombud Council as a transitional measure, until a full-time Chief Ombud is appointed.

The Ombud Council is established in terms of section 175(1) of the FSR Act. The objective of the Ombud Council is to assist in ensuring that financial customers have access to, and are able to use affordable, effective, independent and fair alternative dispute resolution processes for complaints about financial institutions in relation to financial products, financial services and services provided by financial infrastructures.

The Ombud Council will have oversight powers over both the statutory and industry Ombuds namely:

1. Office of the Pension Fund Adjudicator
2. Office of the Ombud for Financial Services Providers (FAIS Ombud)
3. Office of the Credit Ombud
4. Ombudsman for Long-Term Insurance
5. Ombudsman for Short-Term Insurance
6. Ombudsman for Banking Services
7. Johannesburg Stock Exchange Ombud

This is a step forward with respect to the future of the Financial Ombud System in South Africa.

Resolution of complaints

When the Office of the FAIS Ombud reports on complaints received and complaints resolved during a specific financial year, it firstly reports on the resolution of those complaints received within the period (in this case 1 April 2021 to 31 March 2022), then it looks at the overall number of complaints resolved, which includes complaints carried over from previous financial years. This is done to ensure a more holistic view of how successful this Office has been in executing upon its mandate.

During the 2021/22 financial year, the Office of the FAIS

Ombud received 11 827 new complaints. This is not only higher than the 10 552 complaints received for the corresponding period during the 2020/21 financial year, but the highest number of new complaints received by the Office of the FAIS Ombud for a specific financial year since it was established. This also represents a 10,78% increase in the number of complaints received over the preceding financial year. In addition, an unprecedented 68% of all complaints received fell within the mandate of this Office. This resulted in 8 011 complaints referred to the Case Management department for investigation; the most ever since the inception of this Office and a significant increase over the 6 975 complaints received during the 2021/22 financial year which fell within the Office's mandate. Therefore, the Office of the FAIS Ombud not only received more complaints overall but more of those complaints represented matters that fell within its mandate. This was seen as a positive development, testifying to the efforts to expand the awareness and understanding of its existence, as well as the services provided by the FAIS Ombud Office. However, it also placed a strain on existing resources during a period that continued to see uncertainty in a post-pandemic environment.

Of the 11 827 complaints received for the 2021/22 financial year, a total of 4 957 complaints were dismissed. A total of 3 791 complaints were referred to alternative fora and 1 269 complaints were settled in favour of the complainant. The number of complaints settled, 1 269, was less than the 1 389 complaints settled during the 2021/22 financial year. Whilst these numbers are still a testament to the efforts made and commitment to the conciliatory resolution of complaints by this Office and FSPs alike to ensure that complainants continue to be treated fairly, the reduction in the number of complaints was because of the nature of the complaints received by the FAIS Ombud Office, which shall be expanded upon below. The number of complaints received during the 2021/22 period that were carried over was 1 810, which was lower than the 2 041 carried over during the previous financial year, despite the significant increase in the number of complaints received. This means that a total of 10 017 complaints were resolved within the financial year, which represents 84,70% of all complaints received. This means that the Office of the FAIS Ombud achieved its strategic outcome to resolve a minimum of 80% of all complaints received within a specific financial year and confirms how efficient this Office was in executing upon its mandate.

Further evidence of this is the fact that on average, 84,05% of all complaints received by the Office were resolved within three (3) months, 88,77% within six (6) months, and 95,68% within nine (9) months. Overall, the total number of complaints resolved during the 2021/22 financial year was 12 089; more than ever resolved by the FAIS Ombud Office during a single financial year. The number of complaints settled during 2021/22 was 1 823 (inclusive of determinations) and was an increase on the 1 729 positively resolved in favour of the complainant during the previous financial year. Despite this increase however, the Office of the FAIS Ombud thus attained a settlement ratio of 22%, lower than the 27,59% achieved during the 2020/21 financial year. A discrepancy that

can be attributed to the increased number of complaints that this Office dismissed after initial investigations were conducted, which revealed no basis or merit in respect of the complaint. This is an indication of the economic impact of the post-pandemic environment and the subsequent desperate situation faced by many complainants whose complaints revealed that there was a bigger change in circumstances as opposed to the inappropriateness of the advice provided at inception. The overall settlement value for the 2021/22 financial year was R69 979 324 which is the highest value returned to consumers recorded by the Office of the FAIS Ombud during a financial year. Once again, the positive aspect of this achievement that must be highlighted is that most of the settlement value attained was from informal settlements achieved via conciliation processes between FSPs, consumers and the Office of the FAIS Ombud.

The dismissal of complaints is only considered after significant due diligence has been undertaken during the investigation, and the Ombud Office is required by law to provide detailed reasons for any decision made inclusive of complaints dismissed. Any party that feels aggrieved by decisions taken by this Office can approach the Financial Services Tribunal for the matter to be reconsidered. During the 2021/22 financial year, a total of 158 applications for reconsideration were made to the Financial Services Tribunal and, of the 145 matters decided on as at 31 March 2022, 136 of those applications were dismissed with only nine (9) referred back to this Office for further investigation. This reflects a favourable rate of agreement (94,30%) with the Tribunal. Therefore, whilst the number of complaints dismissed (6 314) during the 2021/22 financial year has increased from the 4 245 dismissed during the 2020/21 financial year, the positive affirmation of this Office's decisions by the Tribunal confirms this Office's commitment to the diligent investigation of complaints in accordance with its mandate to provide independent and impartial rulings.

In respect of complaints referred to other fora, a total of 3 947 complaints were referred to other ombud schemes, which was higher than the 2 877 referred during the 2020/21 financial year. This is in accordance with the commitment of the Office of the FAIS Ombud which is to ensure that even where it is unable to be of assistance, the complaint of any person submitted to this Office will be carefully considered and that where possible, the complainant shall be referred to the correct forum to receive the assistance required. All this is part of our continued commitment to service and to enhancing access to justice for all South Africans.

It is important to note that the figures detailed above do not include complaints that this Office still deals with in respect to investments made into property syndications schemes. These complaints, which do not relate to complaints received and/or resolved during the 2021/22 financial year, are maintained separately. During the 2021/22 financial year the office of the FAIS Ombud made a commitment to reduce the original number of 1 300 active property syndication complaints by a minimum of 10% annually. As at 31 March 2022, it was able to reduce this number to 1 004, a reduction of 3,09%.

Settlements

The Office of the FAIS Ombud is committed to resolving complaints in a procedurally fair, informal, economical and expeditious manner with reference to what is equitable in all circumstances. In this regard the FAIS Ombud always explores every available avenue to resolve a complaint between the parties on an informal basis without the need to formally resolve the matter by way of a determination.

Detailed below are complaints where this Office was able to facilitate the successful resolution thereof by way of a conciliated settlement. Appreciating the fact that all matters settled by this Office are done without prejudice, these matters are highlighted as they address a few significant issues this Office believes need to be highlighted.

M v O

During 2014 the complainant invested the proceeds of her pension, an amount of R1 714 192 on the recommendation of the respondent's representative. During December 2017, the complainant had a review of the portfolio with the respondent's representative which confirmed that the value of the portfolio had risen to R1 932 483,12. On 1 November 2018, the complainant received an annual review statement indicating that the value of the portfolio was now R1 699 896,54. The complainant then approach her nearest branch to make further enquiries, and for the first time became aware that the respondent's representative had earned an amount of R33 604,21 in respect of ongoing financial planning fees that she claimed had not been disclosed to her.

The complaint was forwarded to the respondent in accordance with the rules on proceedings of this Office and the respondent was requested to show compliance with the Code, especially in respect of the requirements for the disclosure of fees and charges. This Office also requested that the respondent provide this Office with documentation showing that these fees and charges had been specifically discussed with the complainant, as well as the potential implications thereof to the performance of the portfolio.

Upon receipt of this Office's correspondence, the respondent made an offer of R36 510 as full and final settlement. The amount was accepted by the complainant.

Settlement value: R36 510

M v CB

The complainant met with the respondent's representative during 2011, where a recommendation was made to invest his funds in a 5-year termed endowment plan. A total of R5 000 000 was invested into an endowment with a fund that offered a minimum guaranteed return of R2 200 000 at maturity.

During 2015 the respondent's representative began contacting the complainant on numerous occasions trying to convince him to move the funds to another insurer, where the promise was made that the complainant would make more than the R2 200 000 guaranteed amount. Finally, the complainant was convinced by the representative's tenacity, and agreed to move the funds.

Over time the complainant became suspicious of the product provided and when he requested to withdraw from the investment, he was presented with a quotation showing early withdrawal fees of almost R300 000 that the complainant claims had never been disclosed or even discussed with the respondent's representative. Furthermore, he also realised that neither the capital and/or returns were guaranteed by the respondent and was of the view that the advice provided had not been appropriate.

The complaint was forwarded to the respondent by this Office in accordance with the rules on proceedings of this Office to respond to the allegations raised by the complainant. In its response, the respondent submitted that from the documents obtained and signed by the complainant and considering the complainant's financial literacy, the complainant was fully informed and received adequate disclosures of all the terms and conditions applicable to the investment and its chosen portfolios. In addition, the respondent noted that the complainant had at the inception of the policy qualified for an initial investment booster of R1 487 631,90 (12,5%) which in effect catered for the previous guarantee, and that the losses sustained on the portfolio were because

of the fallout from the COVID-19 pandemic which could not have been foreseen.

In response, this Office noted that the record of advice provided clearly recorded that the complainant wanted a secure investment that provided guarantees. How the recommended product, which exposed the complainant to market fluctuations with only an 80% capital guarantee, was deemed by the respondent to have been an appropriate replacement to the initial policy was not evident from the documents provided. Furthermore, in the replacement policy advice record the respondent's representative disclosed that the new policy would provide a tax free lumpsum at maturity as compared to the previous policy where the portfolio attracted tax on interest income, dividends and in the form of CGT. This was a gross misrepresentation as both policies were endowment policies and would both provide a tax free lumpsum at maturity due to the taxation of the policies within the fund in accordance with the Four Funds Approach.

It was for these reasons and the fact that the surrender penalties were never adequately disclosed to the complainant by the respondent that this Office was of the view that the complainant had never been placed in a position to make an informed decision as to the appropriateness of the replacement. This Office recommended that the respondent look to resolve the matter with the complainant. In response the respondent settled the matter with the complainant by offering the complainant a refund of all upfront and ongoing commission paid to the representative which totalled R291 677.

Settlement value: R291 677

K v C

During November 2019, the respondent's representative contacted the complainant with a proposal to trade in an upcoming IPO with any amount and make more profit than with any other company. The complainant accepted the proposal, and deposited R45 000, the equivalent of \$3 048. Once the money reflected in the respondent's bank account the respondent and its representative were unreachable.

The complainant then started trading on his own until he started losing money. That is when he sent an email to the respondent complaining about his situation, again without any response. About a week after he began complaining he noticed a bonus of \$500 in his trading account due to the losses he incurred since inception.

During December 2019, the complainant became convinced that someone from the respondent had

manipulated the system to prevent him from making a profit. The complainant immediately called the respondent and was informed that they were having a 'system freeze' which eventually saw the complainant losing his remaining capital. The complainant unsuccessfully lodged a complaint with the respondent, then approached this Office for assistance in respect of what he saw as fraud.

The complaint was referred by this Office to the respondent in accordance with the rules on proceedings of this Office and requested they respond to the allegations raised by the complainant. Upon receipt of this correspondence the respondent undertook to duly refund the complainant his original investment of R45 000. The settlement offer was accepted by the complainant with the following feedback to this Office: "Thank you very much for your assistance in this matter and I really appreciate how good your service has been to me. Stay blessed"

Settlement value: R45 000

N v M

The complainant had initially applied for an educational investment with the respondent in respect of her daughter. The investment subsequently matured during 2019, when the complainant's daughter was still in Grade 11. As a result, the complainant asked the respondent for the funds to be reinvested in a manner that would allow the funds to be accessed when her daughter matriculated during 2021. In addition, the complainant had instructed the respondent to initiate a debit order to make further contributions towards the investment. The complainant claims to have explicitly explained not only when the funds would be required but also the reason for the investment, which was the furthering of her daughter's education.

Later in 2019 the complainant made a withdrawal from the investment and in 2020 she attempted to make a further withdrawal, however, she was informed that she could not because of the previous withdrawal during 2019, which the complainant understood. During 2022 when the complainant's daughter was making plans to register at a tertiary institution, the complainant was advised of restrictions, that the investment was now in a restricted period and that she is unable to access any of the funds until 2024. The complainant was not satisfied with the feedback provided as she claims this was not disclosed to her at the inception, and that the investment did not cater for her needs as expressed to the respondent's representative.

On conducting the preliminary assessment of the complaint received from the complainant, this Office noted that the investment referred to by the

complainant was in fact not an ‘investment,’ but an endowment policy. It was apparent from the documentation provided that the endowment policy had not been provided to the complainant as a policy, which would then have seen the respondent’s representative make the required disclosures in respect of the restrictions applicable to the policy. Instead the respondent’s representative provided this to the complainant as an investment, without any disclosure of the material terms and conditions of the policy. In addition, this Office was also concerned that the advice provided to the complainant during 2019, when the complainant had sought to reinvest the proceeds of the original investment with specific instructions as to when the proceeds will be required.

This Office was therefore concerned that there would not appear to have been compliance with section 7(1)(c) (vii) and 8(1)(a-c) of the General Code and this was put to the respondent in addition to this Office’s concerns with the way the policy was sold to the complainant. Upon receiving this Office’s correspondence, the respondent advised that it would be resolving the matter with the complainant. The respondent confirmed that the complainant was indeed provided with an endowment policy for a term of 10 (ten) years, with an initial monthly premium of R690 and a lumpsum investment of R83 909,01. In view of the cash withdrawal of R20 000 made by the complainant on 14 February 2020, the respondent offered a settlement value of R82 334,55 which represented the full surrender value as of 14 February 2020 (less the R20 000 already paid) as well as all premiums paid by the complainant after 14 February 2020. This was accepted by the complainant.

Settlement value: R83 909

A v P

The complainant retired on 31 August 2014 and invested his retirement fund benefit of R 1 432 221,44 into a living annuity with the respondent. The complainant was not happy with the performance of the annuity as it was his only source of income. When the complainant consulted with the respondent regarding investing his funds offshore, the respondent did not recommend it.

On 16 March 2020, the respondent contacted the complainant and advised that the stock markets were tumbling, and that the complainant had lost a substantial portion of his portfolio. The respondent thus advised the complainant to move his funds into a money market fund. The complainant had agreed verbally and signed the relevant documents. Upon speaking with friends who are financial advisors, the complainant was informed that the respondent had acted in haste. When the complainant questioned the respondent’s representative, he did not receive

an adequate response, and so he lodged a formal complaint with the respondent regarding the advice received from its representative, which was calculated to have been R188 711.

This Office received a response from the respondent where it was communicated that during the 2017, 2018 and 2019 reviews of the complainant’s portfolio its representative had stressed the fact that the level of income the complainant was drawing (13,57%) as a percentage of his portfolio was not viable over the long term and that it would ultimately lead to the depletion of his capital. These claims by the respondent were also supported by the relevant documentation. In addition, the respondent also advised that its representative had contacted the complainant on 16 March 2020 to discuss a switch to his portfolio. According to the respondent, at that stage the South African market and markets around the world were in a severe downward trend because of COVID-19, and nobody was sure as to how far this downward trend or collapse would go. As the capital of the complainant was being further depleted by the fall in the market, and to safeguard the balance of the capital, the respondent’s representative had proposed that the complainant switch the funds to a money market fund which is an extremely minimal risk fund, and that the complainant had verbally agreed with this proposal.

This Office confirmed with the respondent that it was satisfied with the advice provided and the record keeping, that is until the respondent’s representative had recommended a switch to a money market fund during March 2020. Not only did this confirm the losses sustained on paper, but this Office questioned why one would advise the complainant to move to a money market fund where he would receive around 3 to 4% when he was still withdrawing over 13% as an income. Despite these misgivings, this Office needed to determine whether there was a financial prejudice suffered by the complainant had the complainant remained in the market with the same income drawdown as opposed to moving to a money market fund. This Office’s concerns were communicated to the respondent, and it was requested to provide this Office with an actuarial calculation of what the portfolio in the living annuity would have been and how it compares to the current value of the portfolio. The respondent referred the matter to senior management for a decision whereafter a settlement offer was made to the complainant by the respondent, which was accepted by the complainant.

Settlement value: R188 711

Trends

Delays in the payment of funeral policy claims

Section 2A.8.1 of the Policyholder Protection Rules (PPRs) provides that an insurer must (within two business days after all required documents in respect of a claim under a funeral policy have been received) assess and make a decision whether or not the submitted claim is valid, and if valid, authorise payment of the claim; alternatively repudiate the claim; or dispute the claim and notify the claimant of the dispute.

The Office of the FAIS Ombud has however noticed a significant rise in complaints against funeral policy providers where this rule is not being adhered to. There are several reasons for this, chief among them is the proliferation of funeral parlours and other providers of funeral policies who operate outside of the law by firstly not being regulated as required in terms of the Financial Advisory and Intermediary Services Act No. 37 of 2002 (FAIS Act), and secondly by providing long-term insurance benefits without having the scheme underwritten in contravention of the Insurance Act No. 18 of 2017.

In addition, there are schemes where the provider is appropriately licenced in terms of the FAIS Act, and comply with prevailing legislation by having their schemes underwritten, but struggle to get the claims of their members paid due to financial difficulties experienced by the underwriter because of financial difficulties experienced both during and post the COVID-19 pandemic. In such instances this Office finds itself having to investigate both the provider and the insurer trying to determine which entity is the responsible party.

An example of this would be the much-publicised matter of B3 Insurance and Funeral Services (B3) where there is an ongoing dispute between B3 and its previous underwriter African Unity Life Ltd (AUL) regarding the reconciliation of premiums received, the settlement of claims and what would appear to be a so-called 'offsetting' of these amounts. The complaints received by this Office are directed against B3, and much of this Office's focus has been in respect of B3's actions and its ultimate responsibility to its policy holders. However, during November 2021 the Financial Services Conduct Authority (FSCA) issued a directive against AUL in terms of section 144 of the Financial Services Regulation Act. AUL was directed, amongst others, to remedy the failure to pay claims which have been assessed to be valid and to identify the cause of such failure, as well as to ensure that all valid claims are settled within 2 (two) working days in accordance with rule 2A.8.1. As a result, this Office has had to refocus its investigation by concentrating on AUL's adherence to applicable rules.

Complaints such as those referred to in the example above, as well as others against smaller funeral parlours operating in the rural areas of South Africa who more often than not are unlicensed, tend to take longer to resolve as this Office is committed to finding an informal resolution to these matters as opposed to proceeding to a formal ruling by the Ombud in the form of a determination, as after the determination is finalised this Office is no longer involved and the complainant, most of which are without the requisite means, find themselves once again at the mercy of the formal justice system to get the determinations acted upon and to fight any appeals lodged against the decision. This Office is therefore prepared to take a little longer to find a positive resolution and works closely with the FSCA by referring any such entity to the regulator for further investigation into the entity's conduct.

Post-retirement planning – Living annuities

If you are a member of a pension, pension preservation or retirement annuity fund, and of late a provident fund and provident preservation fund, and the value of your fund exceeds R247 500, you must in accordance with prevailing legislation utilise two-thirds of your fund proceeds at retirement to purchase an annuity to provide you with an annuity income for life.

In South Africa you have two choices in this regard, a guaranteed annuity, or a living annuity. A living annuity is an investment product that, unlike a guaranteed annuity, transfers the risk and responsibility of securing an adequate income for life onto the shoulders of the consumer. The living annuity allows you to select an annuity income between 2,5% and 17,5%, and you as the annuitant in conjunction with your financial advisor, decides how to invest your retirement savings. And so begins the constant struggle between what is the appropriate drawdown rate and what is the optimal asset allocation that will not only supplement the income drawdown, but exceed it to ensure that the annuity remains sustainable in the long term.

This is where the problems begin, as most individuals have simply not made sufficient provision for retirement and the danger exists to attempt to rectify this situation by selecting a significant income drawdown. In addition to this, these consumers are let down by the very individuals seen as knowledgeable experts to whom they turn to for advice at a critical time of their lives where the decisions they make can have serious implications going forward and at a time when they are no longer economically active. In the previous Annual Report, the Office of the FAIS Ombud bemoaned the failure of financial service providers (FSPs) to make a recommendation as provided for by section 8(1)(c) of the General Code of Conduct for Authorised Financial Services Providers and Representatives (the General

Code). In this regard FSPs often simply provide the prospective client with the level of income they require to meet their current standard of living regardless of whether sufficient provision has been made and to the detriment of the client who will see the initial capital invested reduced over time leaving them destitute in later years. When approached by this Office for a response these FSPs hide behind generic terms such as a single need (also addressed in previous Annual Reports) and try to blame the client whose instructions they were executing, all to deflect from their inability to have the difficult discussions with their clients and to manage expectations from the beginning of the transaction.

Even more disappointing is when the FSP has indeed addressed the client's failure to have made sufficient provision for retirement and cautioned the client as to the consequences and implications of drawing an income that is unsustainable only to then sabotage the client by failing to act with the required skill care and diligence. In this regard we refer to the FSP's total reliance on the risk profiling questionnaire and its outcome, at the expense of what is in the client's best interests. An example would be where a client has selected an income drawdown of 8%, however when completing the risk profiling questionnaire, the client's risk profile is determined to be 'Conservative', based on the scores from a generic set of questions. This conservative risk rating then forms the basis for selecting, for example, a Money Market Fund to correspond with the client's apparent risk-averse nature. The selection of a money market type fund will never provide for a return that would cater for an income drawdown of 8%, and over time the client will begin eating into his original capital and find themselves in a precarious situation in years to come. Add the effects of inflation to this situation, and one can appreciate the responsibility the FSPs have in ensuring they conduct a detailed needs analysis to ensure they know their client to enable them to make an appropriate recommendation to the client and make all material disclosures that will enable the client to make an informed decision. These are the cornerstones of not only the financial planning profession, but the General Code as well.

Previous insurance and assumed level of knowledge

Whilst short-term insurance complaints are no longer the bulk of the complaints received by this Office, the Office of FAIS Ombud continues to receive a considerable number of complaints in respect of the failure by FSPs to advise their clients, or where the FSP has failed to make the appropriate disclosures to their clients.

Nowhere is this more apparent than in respect of motor vehicle insurance, especially in the personal lines space and the failure of FSPs to appropriately advise their clients of the need for a tracking device and/or the

implications and consequences of not complying with this minimum-security requirement (that theft cover will not form part of the benefits provided by the policy). It must be stressed that we are not referring to when a client applies for a short-term insurance policy for their motor vehicle for the first time. We are referring to where the FSP and the client have had a relatively long-standing relationship and a number of transactions have been concluded in respect of the policy in the past, and where many amendments and or changes have been affected.

In these situations, a certain level of familiarity develops, and whilst it is not unusual that an FSP develops a rapport with their clients, in fact it is even positive, it often comes at the expense of the FSP's adherence to the provisions of the General Code. The addition and or replacement of assorted items on the policy such as motor vehicles, becomes very informal and conducted via e-mail, where only the basic details are appropriate to add, for example, a motor vehicle to the policy. The FSP almost assumes the role of simply actioning the client's instructions without making the required disclosures, such as the requirement for a tracking device. When the newly added motor vehicle is then stolen, the claim is subsequently rejected as the vehicle does not comply with the minimum security requirements, and when approached for a response the FSP will more often than not respond that this was not the first motor vehicle that the complainant had insured with the FSP, that this was a standard term and condition of the policy and all the complainant's previous vehicles had been fitted with a tracking device so the complainant ought to have known that the new vehicle would have required the same security requirement.

This is a very simple illustration, and there are many short-term insurance provisions which are handled in the very same way. What FSPs fail to understand is that it is not sufficient to merely assume that the client has knowledge or experience of material terms and conditions, and that each and every transaction that involves the addition of an item to the policy requires that the requirements of the General Code be adhered to, especially section 7(1)(c)(vii) which provides that concise details of any special terms, warranties, exclusions, or instances where cover will not be provided be made to the client. This is to ensure that the client is placed in a position to make an informed decision and to ensure that he or she complies with the requirements of the policy, such as the requirement for a tracking device for a certain type of vehicle, a vehicle over a certain amount, or a vehicle that is kept in a specific area.

We can even go further, in that section 3 of the General Code, in relation to the specific duties of an FSP provides in section 3(a)(viii), that when an FSP renders a financial service representations made and information provided

to a client by the FSP need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant financial service renders it necessary, in which case a disclosure of the changes to the client must be made without delay. The addition of an item to the insurance policy, especially a motor vehicle which most consumers consider a significant asset, is a financial service that renders it necessary for the FSP to repeat the need for a tracking device as a minimum security requirement.

Financial planners' duty in terms of underinsurance

The average consumer of short-term insurance policies assumes that if they have a policy for household contents in place, the policy will cover all their possessions if lost, stolen or damaged. What these consumers do not realise until it is too late (in the event of a claim), is that if their possessions are not insured at their replacement value there will be a shortfall on the settlement offer by the insurer in respect of the claim. The replacement value is what it would cost the client at the time of a claim to replace all the belongings in the house with similar brand new ones. In the event of a claim, the insurer will calculate the replacement value the client should have been insured for, and if the insured amount is less than that, the insurer will only pay a part of the claim.

Determinations

This phenomenon, known as underinsurance means that the claimant will only receive a proportional part of the claim, as the principle of 'average' would be applicable. The principle of average results in the following formula (sum insured / value at risk) x amount of loss. The result is the value the insurer will settle the claim for.

It is therefore vital that when providing the financial service in respect of short-term insurance policies, especially those involving household contents and homeowners' insurance, the FSP advises the client of this material term of the contract to empower the client to make an informed decision. The response this Office receives from FSPs in respect of complaints where the principle of average applies to household contents claims, for instance, is that the FSP had asked the complainant what level of cover the client desired and it was the client that provided the specific value. The FSPs then proceed to state that they are not assessors and that they have no business questioning the value provided by the client or even recommending an alternative value.

This Office agrees with this sentiment, in that the Office of the FAIS Ombud does not expect any FSP to value a client's belongings or make any suggestions as to what level of cover would be appropriate to result in a positive claim. What this Office does expect is that the FSP complies with section 7(1)(c)(vii) of the General Code and that the client is appropriately advise of the need to ensure one's belongings for replacement value, what replacement value entails, and the consequences of not doing so; in other words the application of the principle of average. In doing so the FSP places the client in a position to make an informed decision as to the appropriate level of cover that will see their belongings covered.

Daniel Steenkamp and Another v Colonial 1952 (Pty) Ltd

The responsibility of an FSP when client receives advice about medical aid

The first and second complainant are husband and wife. During 2017, the complainants approached the respondent with a request that the respondent assist the complainants secure medical aid cover. At the time, the second complainant was pregnant and though her and the first complainant had a medical insurance policy, the complainants were concerned that the cover would be inadequate for their child. The complainants were looking for more comprehensive cover than their medical aid insurance policy offered. The respondent advised the complainants that in order for their unborn child to receive cover from date of birth, that either one or both of them would themselves have to be members

on the medical aid policy and one of them would have to be the main member on the policy. The complainants were provided with a number of quotations from various medical aid schemes. Ultimately, the complainant's selected an option offered by Discovery and opted for only the second complainant to join the medical aid scheme as the main member. The cover commenced on 1 August 2017 and on 16 September 2017, the complainant's son (baby Steenkamp) was born.

During baby Steenkamp's 14-week immunization visit, the nurse who attended to him advised the complainants that the sutures on his head did not seem to be healing

as they should. The nurse advised that this would be assessed again on his next visit and mentioned to the complainants that if the manner in which the sutures were healing did not improve, that baby Steenkamp may have to undergo 'scans'. During the next visit, the nurse noted that the sutures had not healed in the manner expected and referred the complainants to a doctor for an assessment. The doctor who assessed baby Steenkamp shared the nurse's concerns and requested that baby Steenkamp undergo a CT scan. Baby Steenkamp was seen by a doctor on 18 January 2018 and the doctor also noticed some irregularities with his skull and advised that he would be required to undergo a CT scan.

The CT scan was done on 6 February 2018 and baby Steenkamp was diagnosed with a medical condition known as Craniosynostosis. Craniosynostosis is a birth defect in which the bones in a baby's skull join together too early. This happens before the baby's brain is fully formed and as the baby's brain grows, the skull can become more misshapen. If left untreated, Craniosynostosis can lead to serious complications, including head deformity, possibly severe and permanent, and increased pressure on the brain. The doctor advised that to treat the diagnoses, baby Steenkamp would have to undergo surgery.

The doctor sent a request to Discovery to authorise the surgery but Discovery rejected the request and voided baby Steenkamp's cover from the date on which he became a member of the scheme. Discovery claimed that the complainants failed to disclose material information regarding baby Steenkamp's health before he joined the medical aid scheme. The complainants appealed the decision to Discovery, with the respondent's assistance, but were unsuccessful. Given the urgency of the surgery, the complainants borrowed the money required for the surgery.

The complainants allege that the respondent failed to properly advise them when they sought help with the medical aid cover and that if they had been properly advised with respect to the time afforded to them to add baby Steenkamp to the medical aid plan without underwriting, that they would not have suffered the loss they did. The respondent denies these allegations, and in each of the responses provided to this Office, claims that the complainants failed to act on the advice given to them. According to the respondent, the complainants were advised that baby Steenkamp should be added to the policy within 90-days of birth and that contributions for the cover may be backdated depending on when baby Steenkamp would be added as a member to the medical aid scheme. The complainants denied this and claimed that the respondent advised them that baby Steenkamp would be covered immediately.

Amongst the documents collected during the investigation of the complaint is an email the advisor

sent to the complainant on 14 July 2017 in which she informed the complainants that 'Malan sal wel dadelik dekking geniet ek het dit so bevestig'. In this email, the advisor did not refer to any conditions that would have to be met in order for baby Steenkamp to enjoy immediate cover. The complainants tried to resolve the matter with the respondent but the parties were deadlocked on who bore responsibility of the loss. The complainants approached this Office for assistance and in their complaint, claimed that the respondent was liable for the harm they suffered y having to cover the medical expenses themselves.

On receipt of the complaint, this Office made several attempts to resolve the complaint between the parties but was unable to do so. The respondent maintained that that it was not to blame for the complainant's loss and that the blame lay at the complainant's feet because the complainants did not timeously act on information provided to them on the cover which would have ensured that baby Steenkamp would enjoy cover from date of birth.

Having investigated the complaint, this Office was of the view that the respondent failed to discharge a number of duties placed on it by the General Code of Conduct for Authorised Financial Services Providers (the General Code) and that it had failed or was unable to show that it had discharged these duties. This Office found that the failure to discharge the duties led to Discovery's decision to reject the request for authorisation which in turn compelled the complainants to cover the costs themselves. This Office recommended that the respondent pay to the complainants the costs incurred for the surgery, and subsequent medical treatment, plus interest on this amount.

The respondent was afforded ten (10) days to respond to the recommendation and in response advised that it did not accept the recommendation. The respondent elected instead to address this Office on the allegations and findings set out in the recommendation. The gist of the respondent's response was to deny liability and to make whatever statements it believed would support its claims that it was not liable for the complainants' loss. In its dogged determination to deny that it failed to render the financial service in accordance with the prescripts of the FAIS Act and that its broker failed to discharge the duties mandated by the Code, the respondent did not deal with the inconsistencies in its earlier statements that had been drawn to its attention in the recommendation letter. Instead, the respondent, in some respects, furnished this Office with a different version of what transpired before baby Steenkamp became a member of the medical aid scheme and conflated what the complainants knew and did not know when they completed the forms to add Baby Steenkamp to the medical aid scheme, but before this was actioned. In

the main, the respondent claimed that the complainants became aware of the concerns regarding Baby Steenkamp's health before they completed the forms for him to become a member of the medical aid scheme but that they withheld this information from the broker when completing the forms. This, according to the respondent, was the reason why Discovery voided Baby Steenkamp's cover from inception. For this reason, the respondent claimed that it was not to blame for Discovery's decision and that it should not be required to compensate the complainants for having to cover their costs in their personal capacity. The respondent however overlooked that it was common cause that from the first meeting, the complainants were clear on the fact that their need was for their son to enjoy cover from birth and that they did not want him to be subjected to any underwriting

in order to enjoy the cover. The complainants had contacted the respondent soon after Baby Steenkamp was born but well within 90-days of his birth and advised that they wanted to add baby Steenkamp to the medical aid cover. In response, the respondent sent them a form to add a beneficiary as opposed to a form to add a newborn baby, the latter of which was less complicated and which the complainants confirmed they would not have needed assistance to complete. The respondent also did not advise the complainants that the form would have to be sent to the medical aid within 90-days of Baby Steenkamp's birth and that the complainants would be required to pay backdated contributions. None of the emails and documents furnished to this Office showed that this advice was ever rendered to the complainants, but the respondent claimed it was.

Vemilla Govender and Another v AIK Insurance Brokers (Pty) Ltd

How proper record keeping can address issues regarding claims of material non-disclosure by a client

The respondent also overlooked that the form to add Baby Steenkamp as a beneficiary was only sent some three weeks after the form was completed, the broker made a mistake when responding to one of the health questions on the form, which prompted Discovery to request further irrelevant information about Baby Steenkamp's health, and that both of these incidents meant Baby Steenkamp would not be added as a beneficiary effective 1 January 2018 as per the complainants' instructions. The broker did not inform the complainants about the error she made when she completed the form to add Baby Steenkamp as a beneficiary even after the second complainant sent an email during January 2018 to enquire why there had been no change to the contributions deducted for January. Although the broker gave the complainants an option to either amend the start date from 1 January to 1 February 2018, she did not disclose to the complainants what the consequence of this might be. This, we found, was especially important at the time because the second complainant had already in her email following up on the contribution deduction, informed the respondent that Baby Steenkamp may have to 'undergo scans'.

Even though the respondent knew, at that time, that Baby Steenkamp may have an as yet undiagnosed health condition, she did not inform the complainants that they would need to disclose this to the medical aid scheme. When the broker responded to Discovery's request for further information on the erroneously completed health questionnaire, she had an opportunity to make the disclosure regarding Baby Steenkamp possibly having to undergo scans but did not. Instead, the broker simply informed Discovery that a mistake had been made when the form was completed. This, plus the fact that Baby Steenkamp then only became a member from 1 February, influenced Discovery's decision not to

authorise the surgery and to remove Baby Steenkamp from the scheme.

This Office was satisfied that the evidence before it pointed to the respondent being the factual and legal cause of the complainant's loss. The complainants depended entirely on the respondent to assist it obtain the cover they needed. The complainants were clear on their instructions and, from the documents, believed that they had provided all the necessary information and made all the disclosures necessary to enable the respondent to action their request. Yet, the respondent did not deal with the complainants with the care they needed as people who were admittedly unfamiliar with the workings of medical aid schemes but knew enough to know that medical insurance would not offer the protection and cover they needed for their child.

This Office found that the respondent, despite their vehement denial, should be held liable for the harm suffered by the complainants. The respondent was ordered to pay the complainants R200 710.59 and interest on this amount at a rate of 7% per annum from the date of receipt of the complaint, 21 August 2018, to date of final payment, both dates included.

During December 2017, the first complainant applied for a comprehensive contract of insurance to insure a 1998 BMW 316. The complainant was assisted by a broker employed by the respondent and the broker interacted with the insurer and responded to the questions asked by the insurer during the underwriting process on behalf of the first complainant. During the underwriting process, the insurer enquired from the broker who the regular driver of the vehicle was. In response, the broker informed the sales agent that the first's complainant's

son, Mr Damelin Ruthman (Mr Ruthman) was the regular driver. The broker was then asked if Mr Ruthman was licensed to drive, what the license code was and when the license was first issued. The broker advised that Mr Ruthman is licensed to drive, holds a Code 10 or C1 driving licence and though she was initially unable to confirm when the first date of issue was, the broker later advised that the license was issued when Mr Ruthman was 20 years old. At the time of the application, Mr Ruthman was 24 years old.

On the basis of the information received from the broker, the insurer quoted a premium of R1 689.63 to comprehensively insure the vehicle if Mr Ruthman as the regular driver. The broker was concerned that the premium was too high, and the sales representative indicated that the factors which had the most impact on the premium were the fact that Mr Ruthman had no history of insurance and had a C1 driver's license. The broker asked how the premium would change if Mr Ruthman had an EB driver's license and the sales representative advised that the premium will be cheaper. The broker asked that the details of the driver's license be changed from C1 to EB even though she indicated that she did not know if Mr Ruthman in fact has a C1 driver's license and the insurer obliged the request. The premium however did not change much even after the license code was changed and the broker asked if the premium will be cheaper if the policy is issued in the first complainant's name.

The broker asked that the details of the regular driver be amended and that the first complainant be recorded as the regular driver in place of Mr Ruthman. When the broker was asked to provide details such as when the first complainant obtained her license, the broker informed the insurer that the first complainant obtained the license when she was 34 years old. The broker did however admit that she could not say with certainty how old the first complainant was when she applied for the license and because of the broker's uncertainty, the sales representative asked if they should keep the response as is and if the broker would later confirm this. The broker responded 'ja, just leave it'. The insurer advised the broker that 'it's very important that you update this right' and the broker responded 'okay'. The details were however never updated.

After changing the details of the regular driver from Mr Ruthman to the first complainant, the insurer recalculated the premium and the premium decreased from R1 689.63 to R672.90. The broker accepted the cover, with the decreased premium, on the complainant's behalf. The policy inceptioned on 21 December 2017.

On 20 February 2018, the second complainant, who is the first complainant's daughter, contacted the insurer to report an accident that occurred involving the insured vehicle and to lodge a claim. The second complainant

reported that at the time of the accident, the vehicle was being driven by a family friend, who had been driving the vehicle to a petrol station down the road from the first and second complainant's house to refuel the vehicle. According to the second complainant, a pedestrian who was carrying a child ran across the road and the family friend swerved the vehicle in an attempt to avoid hitting the pedestrian and the child. The second complainant states that the vehicle collided with a vehicle that was travelling in the opposite direction and that the vehicle the driver collided with was a marked police vehicle. At the time of the accident, the second complainant's husband was also in the car.

The insurer appointed an investigator to validate the claim. Validating the claim involved confirming information supplied during the underwriting and claim stage as well confirming that the claim would fall within the ambit of cover. During the investigation, the insurer learnt that the first complainant was not licensed to drive and that she did not know how to drive. The insurer presented its findings to the first complainant during an interview with the first complainant. According to the insurer, the first complainant confirmed during this interview that she does not drive because firstly she is too ill and secondly, she doesn't know how to drive.

The insurer concluded that if the correct information had been provided to it during the underwriting process, that the application for cover would not have been accepted and rejected the claim on the basis of material misrepresentation. The insurer also voided the policy from inception and refunded the complainants the premiums it had collected from inception of the policy. The complainants disputed the insurer's decision and lodged a complaint with the Ombudsman for Short Term Insurance (OSTI).

During its investigation of the complaint, the OSTI was provided with a copy of the sales recording. After reviewing the sales recording, the OSTI upheld the insurer's decision to reject the claim. The OSTI advised the first complainant that she may have cause to lodge a complaint against the respondent and that should she wish to pursue the matter further, this Office would be the correct forum to lodge the complaint against the respondent. The first and second complainant heeded the advice of the OSTI and lodged their complaint against the respondent with this Office.

In the complaint, the complainants claimed that the broker was instructed to apply for an open driver policy and was never instructed to add the first complainant as the regular driver of the vehicle. The complainants claim that the broker was responsible for the misrepresentation and denied that they ever provided false information to the broker with the intention that this would be provided to the insurer when applying for

the policy. The respondent was provided with a copy of the complaint and was afforded an opportunity to either resolve the complaint with the complainants or respond to the complainants' allegations. The respondent was advised that if it elected to respond to the complaint, it must attach relevant documents to support its response including a record of the advice that its broker rendered to the first and/or second complainant and a record of all communication between it and the complainants.

The respondent did not respond to this letter or any other correspondence sent to it by this Office until this Office issued a recommendation letter on 18 March 2019. In the recommendation letter, the respondent was advised that despite requests that it furnish this Office with its records that the records were still outstanding. Almost four weeks later, this Office received its first response from the respondent. The respondent claimed that it had not received any of the earlier communication sent to it and in response to the allegations made against it, claimed that the complainants were the cause of their loss because at the time of the accident, the vehicle was being driven by their neighbour. The respondent did not deal with the allegation that the broker advised the insurer that the first complainant would drive the vehicle regularly, in contravention of an instruction that the policy be an open driver policy. The respondent also did not deal at all with the fact that the first complainant admittedly, did not know how to drive and had never obtained a driving license, least of all an EB license.

This Office was not satisfied with the respondent's response and advise the respondent of this in a notice sent to it on 3 May 2019. In this notice, the respondent was advised that the matter had been accepted for formal investigation and the respondent was given another opportunity to submit the record of advice and recorded communication between it and the complainants.

In response to the notice, the respondent repeated its earlier statements about the insurer's reasons to reject the claim. The respondent also claimed that the broker relied on information she received from the second complainant who, at all times, acted as the first complainant's representative. The respondent claimed that the second complainant requested that the first complainant be recorded as the regular driver in order to reduce premiums on the policy and that it was the second complainant who acted 'fraudulently' The respondent however did not attach any proof to support its claims. In response to all other allegations regarding the failure to render the service in accordance with the various applicable provisions of the General Code, the respondent's responses amount to bare denials. Shortly after receiving the respondent's response to the notice, this Office finalised its investigation of the complaint.

In the determination, the Office noted, with much disappointment, the manner in which the respondent

had conducted itself when it rendered the financial service to the complainants and during the investigation of the complaint. This Office was particularly concerned with the fact that the respondent was unable and/or unwilling to furnish it with the documents it is mandated to keep in terms of the General Code of Conduct for Authorised Financial Services Providers and Representatives (the Code). These include the record of advice and the recorded conversations between the respondent and the complainants. These records, if maintained in accordance with the provisions of the Code, would have shown what discussions preceded the application for the insurance policy. Specifically, the Office would have been able to ascertain from the documents if the second complainant instructed the respondent to record the first complainant as a regular driver and how that instruction was made, that is by email, phone or using any other method of communication.

In place of these records, the Office effectively only had the sales recording at its disposal. Having reviewed the recording, the Office identified that:

- the broker is the one who remarked that the 'premium' was expensive if Mr Ruthman was recorded as the regular driver;
- the broker did not ask to confirm with either the first or second complainant if the first complainant would in fact drive the car more regularly before requesting the sales representative to update the information regarding the regular driver;
- when the broker was informed by the sales representative that the information she provides must be correct, the broker responded by asking 'who would know that?';
- the broker did not make much of the sales representative's warnings about the need to verify the information supplied during the underwriting process and to update it where necessary. Instead, the broker persisted in providing information she was unsure of after she was apprised of the possible consequences, at claims stage, if the insurer was provided with incorrect information.

On account of this, and all other information collected during the investigation of the complaint, this Office found that the broker failed to discharge the duties imposed on it by the Code. In particular, the respondent was found to have failed to seek appropriate and available information from the first and/or second complainant regarding their financial situation, financial product experience and objectives, to enable the respondent to provide the client with appropriate advice. The respondent was then not in a position to analyse the information that should have been collected from the complainant and to recommend a product that would meet the complainants' needs and objectives. The policy that incepted, did not, from the date of inception, afford

the first complainant the cover she required and that the respondent was supposed to assist her to obtain.

Despite the respondent's claims that the information it supplied to the insurer 'must have been' obtained from the second complainant given that she undertook to liaise with the respondent on behalf of the first complainant, there was no evidence provided by the respondent to support its contentions. The respondent did not provide the records it is required to keep in terms of section 3(2) of the Code and the record it submitted, which it claimed to be a record of advice completed and kept in compliance with section 9 of the Code, did not substantively meet the requirements described in section 9.

Section 3(2) of the Code mandates all providers of financial services to have appropriate procedures and systems in place to record such verbal and written communication relating to a financial service rendered to a client, to store and retrieve such records and any other material documentation relating to the client or financial service rendered to the client, and to keep such client records and documentation safe from destruction. While section 9 of the Code not only states that providers of financial services must keep a record that must reflect the basis on which the advice was given but sets out the specific information that must be reflected in the record of advice. In terms of section 9, a record of advice must, in particular contain a brief summary of the information and material on which the advice was based the financial products which were considered, and the financial product or products recommended with an explanation of why the

product or products selected, is or are likely to satisfy the client's identified needs and objectives.

In the purported record of advice received from the respondent, the respondent did not: record the first complainant's need or needs, provide a summary of the information and material on which the advice was based, indicate which financial products were considered and did not list any other products that were considered other than the policy actually offered to the complainant. In the space where the respondent was invited to provide an explanation for why the particular insurance product was recommended, the answer given is a single word, 'affordability'.

The documents and information available to the Office point to the fact that the respondent did not honour the duty to be diligent, honest and to accord the interests of the client priority over its own when rendering the financial service to the complainants. In the absence of any evidence to substantiate the claims that the second complainant was dishonest, this Office found that the loss suffered by the complainants was factually and legally caused by the respondent when they contravened the various provisions of the Code. The Office enquired from the insurer how it would have settled the claim had it accepted it and ordered the respondent to pay this amount to the complainants plus interest on the amount. The respondent was ordered to pay the complainants R52 100.00 plus interest at a rate of 7% from the date of determination to date of final payment. This Office shared the determination with the Financial Sector Conduct Authority to conduct an investigate whether the broker and her supervisors remain fit and proper to act as financial services providers.

Mr and Mrs Visser v Theuns Greyling

What constitutes adequate disclosure of investment risks

In February 2007, Mr and Mrs Visser (first and second complainant respectively) collectively invested R1 200 000 into property syndication schemes promoted by Blue Zone on the advice of Theuns Greyling (the respondent). The respondent recommended the investment to the complainants because interest rates in property were low. First complainant invested an amount of R600 000 and second complainant an amount of R600 000 which was made in two tranches of R300 000 each. While the investments were positioned to the complainants as being secure and guaranteed, Blue Zone collapsed and investors lost their capital. The Blue Zone companies were liquidated and there is no longer any prospect of investors recovering any portion of their investments. Complainants similarly lost their funds, were unable to reach any settlement with respondent and lodged a complaint with this Office. Even after the complaint was lodged, the parties were afforded time to possibly settle the matter. This was fruitless as the respondent refused to take any responsibility for complainants' loss.

The complainants were invested in a property syndication scheme known as the Spitskop Village Properties Ltd ("the Spitskop Project") which was promoted by Blue Zone. The first complainant told Greyling that he wanted a safe investment to earn interest to fund their living expenses. Ms Stroh (Blue zone representative) was introduced to complainants by the respondent who made a presentation wherein she promised the investment will yield interest at the rate of 9.5% per annum on capital and a further 7% for capital growth and that Blue Zone was a very big and financially strong company with international interests. The respondent was present but did not offer a comment. Stroh also mentioned that the prospect of Blue Zone being liquidated, was nil. There was also insurance against such risk. Complainants state that they did not expect Greyling to invest their funds into an empty shell and two years later to lose their capital and be left financially destitute.

In June-July 2009, the complainants received a notice regarding the Blue Zone investments. Shareholders were invited to a meeting that was attended by various managers and officials of Blue Zone. During the meeting, investors were advised that the project was complete and was due to be sold to a company in the Cape called Share Africa. But there was going to be a loss of 7%. This information turned out to be false as Share Africa did not exist nor was there any developed property to sell. Spitskop was and remains nothing but a bare field in the middle of nowhere. It was unsurprising then that not long after investors were advised that the property had been sold but a loss, that they received another notice in which they were advised that Spitskop Village and Blue Zone were liquidated. Spitskop Village was liquidated by an order of the Gauteng Division of the High Court, sitting in Pretoria.

When making its order to liquidate the syndication, the Court found that the development was 'hopelessly insolvent and will probably not succeed'. This is despite the millions of Rands raised from investors and which, according to a notice issued by the Department of Trade and Industry, should have been held in trust and only paid out of the trust account in the event of registration of transfer of the property into the syndication vehicle, or underwriting by a disclosed underwriter with details of the underwriter, or repayment to an investor in the event of the syndication not proceeding. None of the three instances when the funds could be paid from the trust account were applicable when the funds were paid from the purported trust account into which they were paid.

Complainants point out that the interest received after investments were made were paid out of their own funds. Further it turned out that Stroh had lied to them as investor funds were not insured against insolvency. Following receipt of the complaint, this office forwarded the complaint to the respondents in order to bring the complaint to their attention and to afford the respondents an opportunity to either settle the complaint with the complainants or to defend themselves against the claims raised by the complainants. The respondent opted to respond to the complaint where he stated that he did not do anything wrong and in fact did not give complainants advice to invest in Blue Zone. He however admits to having introduced them to the property syndication and that he brought along a representative of Blue Zone to meet with complainants.

In his initial submissions, the respondent explained how he came to know about Stroh and that he had told her that he does not usually do lump sum/single premium investments; but when he does, he places the investments with Liberty/ Stanlib. The respondent stated that when they did quotes for Liberty, the first complainant said the income they would receive from the Liberty investment was too low and that was when

the respondent told the complainants about Blue Zone. In his further submissions, the respondent stated that all dealings regarding the investments were made directly with Stroh and he accordingly cannot provide this Office with a record of advice, financial analysis, and record of correspondence with complainants.

On 19 October 2017, the respondent submitted a further response. The respondent challenges the fairness of the finding that Blue Zone was a Ponzi scheme and this Office's finding that it was a pyramid scheme. The respondent challenges the fairness of the fact that whilst every investment, including those of complainants, was made under the watch of regulators, compliance officers and key individuals, not a single broker was informed that the company had lost its substratum and had contravened the Banks Act. The respondent concludes by denying that he failed to act according to the Act and the Code of Conduct.

The respondent said that he met the complainants through a consultant from Liberty, yet there is no evidence that the information was shared with either complainant's permission. From this it is obvious that the Liberty consultant and the respondent saw an opportunity to earn some easy money. It is equally not in dispute that the FSP fraternity were aware of the lucrative commissions being paid by the property syndications. The going rate was 6% of the capital invested, payable immediately on the funds being deposited, with no claw back provision. The complainants were rushed into making the investment without any compliance with the provisions of the Code. From the evidence before this Office, it was evident that the respondent was focused on the commission although he denies this. The respondent claims that he did not receive a commission from the investment but a, conveniently called, "referral fee". The respondent did not confirm however how much of this "referral fee" he received. Based on the usual commission of 6% paid by Blue Zone, this Office ascertained from that and the respondent pocketed a cool R72 000, for doing absolutely nothing (according to his own version).

The Office had 2 issues to consider namely: whether the respondent rendered the financial service herein negligently and/ or in a manner which is not compliant with the FAIS Act and if it is found that the respondent did render the financial service negligently and/or failed to comply with the FAIS Act, it must be determined whether such negligence or failure caused the complainant's loss.

Although the complainants did write to the Office complaining about Liberty Life abusing their personal and private information by sharing it with the respondent. They contended that but for Liberty Life's conduct they would never have even heard of Blue Zone. They submitted had that it was Liberty who "sent Greyling to

our home". If Liberty acted legally, then Blue Zone and the respondent would have remained unknown to them and they would not have lost their life savings. This Office found that the respondent did not bother to conduct even the most basic investigation on Blue Zone. He appeared blissfully ignorant as to his duties in terms of both common law and the FAIS Act, as a representative. There is no indication that the respondent sought to establish whether any of the Blue Zone entities had issued any financial statements. Had the respondent checked, he would have established that Blue Zone did not own any assets of value except the piece of land it had purchased through a sister company for R 1 057 000.

This Office's investigation of the complaint revealed that the investment into Blue Zone was wholly unsuitable to the complainants, that the complainants did not understand the advice and were not placed in a position to make an informed decision. Blue Zone was high risk, even without any alleged fraud by the directors.

In advising his clients, the respondent did not conduct himself as a reasonably competent FSP in similar circumstances. The respondent was under a duty of care to act with due care skill and diligence in advising complainants. He negligently breached that duty and thereby caused harm to complainants. In providing complainants with financial advice, the respondent breached the provisions of the Act and the Code of conduct. The fact that the respondent was in breach of the Act and The Code of conduct does not mean that he is therefore liable for complainants' loss. There is a breach of contract as well as a claim in delict.

Consequently, this Office found in favour of the complainants and ordered the respondent to repay to them the capital they invested in the syndications plus interest on the amounts at a rate of 7% per annum calculated 7 days from the date of determination to date of final payment for both investments made by first and second complainant.

Hester Hendrina Van der Spuy v Louis Andries Grove t/a grove Financial Planners

The many factors that determine the suitability of an investment

This is a complaint against a financial services provider ("FSP") who advised complainant to invest in Highveld syndications 19 and 21 ("PIC Investments"). Complainant invested R150 000 in HS19 and R400 000 in HS21. The scheme collapsed and went into business rescue and complainant's monthly interest was first reduced and then came to a halt. Complainant believes that her investment is lost.

The parties were unable to settle the matter and complainant filed a complaint in this office. The complaint and supporting documents were delivered to respondent. After being given sufficient time to consider the complaint and after a request for respondent's records were made by this office, respondent filed a comprehensive response supported by his documentation.

Complainant was at the time a 73 years old pensioner, resident in Port Elizabeth and was 84 years old at the preparation of this determination. Respondent was at the time a licensed FSP operating under FSP 23369 and resident in Bloemfontein. This licence lapsed on the 13 June 2013. Respondent is currently a shareholder, director and key individual of Grove Financial Solutions (Pty) Ltd licensed under FSP 44410. Respondent is based in Pellissier Bloemfontein.

Below is set out the most important submissions which support the allegations against respondent concerning

his conduct and the appropriateness of his advice to complainant to invest in a high-risk property syndication. It is common cause that complainant and respondent knew each other for many years and the latter had also advised other members of complainant's family. In January 2007 complainant received a telephone call from respondent advising that Complainant's funds invested with Old Mutual Fairburn Capital had matured.. In this conversation Complainant advised that she wanted to move her funds "into something safe". Respondent stated that he wanted to move Complainant's funds to Pickvest as it was "a safe and guaranteed" investment. Respondent stated that it was urgent and he required a decision from complainant immediately.

When respondent advised complainant to invest in Pickvest, this was done telephonically and complainant had not been provided with a prospectus. Complainant stated that respondent did not explain the nature of the investment to her nor did he explain the risks in the investment, instead Respondent pressurised her to make a decision and give respondent the go-ahead to move an amount of R550 000 into Pickvest.

Respondent was aware of complainants needs and risk profile but did not disclose the business model behind the PIC investment and the non-suitability of the investment for complainants needs. Complainant points out that she was a conservative investor and had no appetite for risk. This investment was not suitable

for her needs. Complainant states that it was “highly irresponsible” of respondent to take her funds from a conservative investment and invest it in a high-risk property syndication.

Respondent failed to disclose the commission he was going to earn and significantly complainant believed that respondent was employed or was a representative of Old Mutual because he had been with Old Mutual in the past and had advised complainant to invest in a conservative Old Mutual backed product. However, when questioned by complainant about the Pickvest product, Respondent refused to give complainant a clear answer as to whether or not this was an Old Mutual approved investment thereby deliberately creating the impression that he was still with Old Mutual, which was not true.

Complainant complains that respondent failed to comply with the General Code of Conduct for FSPs (the Code) relating to replacement products. Complainant believed that respondent moved her funds from Fairburn Capital fixed investment to PIC.

Significantly, complainant states that on respondent’s instructions, she signed a blank form authorising the investment. This was contrary to the Code. He also failed to explain the “important information” in the forms signed by complainant. This is a relevant and important statement and I will deal with it in more detail below.

A further complaint is that respondent failed to carry out basic due diligence into the investment that went beyond what Picvest itself said about its product. Respondent failed to explain how income was to be paid by PIC and how it was guaranteed. According to complainant, had respondent carried out basic inquiries he would have found out just how high a risk this investment represented.

The investment sold to complainant was the Pickvest Investment Highveld Syndications 19 and 21 and the amount invested was R550 000. Significantly, complainant states that at no time did respondent explain that she was investing in linked units of R1 000 each and that R999 of each such amount comprised a loan and only R1 was allotted to the purchase of the share. Respondent did not explain the legal implications of an unsecured floating rate investment nor did he explain that Pickvest shares were unlisted and as such represented a capital risk and that complainant could lose all her funds. Complainant is adamant that had this been explained to her, she would not have invested.

A further complaint is that respondent himself had profiled complainant as conservative in regard to risk. Had respondent explained the risks or appreciated them himself, complainant would not have invested in PIC. She was highly risk averse as her investments were to provide her with an income for her retirement years.

At no stage, neither in writing nor orally, did respondent explain that complainant could lose her capital of R550 000. In complainant’s view an FSP acting in the best interests of client would not put such a large portion of client’s capital at risk. If respondent did not understand the product he was selling, then it was highly irresponsible of him to recommend it to complainant.

According to complainant, respondent failed to provide her with a prospectus and a record of advice.

Complainant concluded as follows:

- a) That it was respondent’s intention to “peddle” the investment regardless of her needs and objectives;
- b) That he failed to take reasonable steps to ensure that she was in a position to make an informed decision; and
- c) That he failed to act with due skill, care and diligence in her interests and in the interests of the integrity of the financial services industry.

Complainant believes that she has lost her investment as a result of respondent’s inappropriate advice.

Complainant instructed her attorneys to write a letter of demand to respondent. The latter refused to answer the allegations in the letter and chose to reserve his rights. Complainant did not instruct her attorneys to proceed with legal action against respondent due to the costs. Instead she lodged a complaint with this office.

In support of her complaint, complainant forwarded copies of the documentation she had. Is relevant to briefly deal with these documents. The first document is a faxed letter sent to complainant by respondent on the 18 January 2007 headed as follows:

“MESSAGE: DOCUMENTATION FOR MATURITY AND NEW INVESTMENT AS DISCUSSED THIS MORNING.

There are 15 crosses where you must please place your full signature. Do not fill in anything else. You can fax the documents back to me at: 015-5052505 and the Cheque can be posted to me. Should you have any questions please call me. Please fax all the pages back including a copy of your ID, proof of banking account and proof of residential address.” (emphasis added). Other accompanying documents will be referred to below.

Most of the rest of the documents were left blank and, in some instances, details were filled in by respondent. This letter supports complainant’s version that she signed the documents in blank on respondent’s instructions. This letter states that complainant must merely sign and leave the rest of the documents blank, to be filled in by respondent.

The second document is an “Application for withdrawal”. It is an Old Mutual document meant to release the

matured funds to complainant. The document requests release of the full amount of the matured funds. This part of the document, being the first page was filled in by respondent and only signed by complainant as instructed. The rest of the document, two more pages, were signed by complainant but the rest of the document was left blank.

The next document is an “Old Mutual Client Record of Advice”. This is a two-page document where respondent marked with a cross where complainant must sign. The first page contains a policy number, 12938609, being the policy that matured. Then respondent wrote in manuscript the following: “Pay contract 12938609 out into my bank account as attached”. Immediately below these words there is a cross and a line drawn by respondent where complainant was expected to sign. The rest of the page was blank.

The second page of this document is significant as it contains a client questionnaire designed to ensure that client was properly advised. This section of the document specifically requires the client to read and understand the questions and to ensure that the answers correctly reflect the true position. Then follows a series of eight questions with the client having to tick off a chosen “yes” or “no” answer. This part of the document is left blank. Ironically, the fourth question reads as follows: “I confirm that the application form and any other form was filled in completely by me before signature”. Respondent still advised complainant to sign in blank.

Of further importance is what appears on page 3 of this document. Save for complainant’s signature, next to the cross, the rest of this page was left blank by complainant as instructed by respondent. Of significance is “Section 6” on this page. This section has a heading as follows: “IDENTIFICATION (Request will not be processed if this section is not filled in)”. The importance of this section is then emphasised by the form stating on the next line that “This is a requirement of Old Mutual and is intended to protect the legal owner and must be signed by the owner in the presence of an Old Mutual official or a commissioner of oaths.” The document then provides for the owner’s identification number, the place and date where the owner signed, the full name of the person identifying the owner, the signature of the owner and the person identifying the owner and the official title of the person before whom the owner appeared. There is also a space for the official’s official stamp. All of this was left blank.

On the same page and in “Section 7” there appears a space for the place and date when the investor signed the document. This was also left blank. Below this appears a cross, next to which complainant signed.

The significance of this page appears below when the documents received from respondent’s records are discussed.

Then follows an important document “Application Form for Shares Highveld Syndication No 19 Ltd”. This document was faxed to complainant who was instructed to merely sign where indicated by a cross. The following observations are relevant:

- a) This application form is attached to the prospectus. However, it was removed from the prospectus and faxed to complainant by respondent. The transmission record of the fax clearly shows that the whole prospectus was not faxed at the same time. It was intended that an investor should first read and understand the prospectus before signing the application form. This supports complainant’s version that she did not receive the prospectus but merely followed respondent’s instructions for her to sign next to the crosses and fax it back to him in Bloemfontein. He had been her FSP as well as that of her brother, she trusted respondent to act in her best interests knowing what her financial profile entailed. What I will show is that PIC flagrantly contravened the provisions of Notice 459.
- b) Paragraph 2 on the first page of the application form is significant. On respondent’s version, complainant had to read and understand this before signing the application form. This paragraph deals with the funds paid by the investor. The funds had to be paid by the investor into an attorney’s trust account, Eugene Kruger and company. This much amounts to compliance with Notice 459. But that is where any semblance of compliance ends.
- c) Paragraph 2.1 provides that the parties agree that the “Promoter” may instruct the attorneys to invest the funds according to Section 78 (2A) of the Attorneys Act, on behalf of the “Promoter”. The funds were intended to be invested for the benefit of the investor, not the promoter.
- d) Paragraph 2.2 is even worse. This provides that the funds will be retained in trust until the company (PIC) takes “occupation” of the property. It further gives the promoter a discretion to use part of the funds to pay for the property and to pay for various expenses.

Section 2 (b) of notice 459 provides as follows:

“Funds shall only be withdrawn from the trust account in the event of registration of transfer of the property into the syndication vehicle; or underwriting by a disclosed underwriter with details of the underwriter; or repayment to an investor in the event of the syndication not proceeding.” (My emphasis)

Notice 459 does not provide for the trust money to be withdrawn on “occupation” of the property, what is required is “transfer” of the property. In this respect the prospectus did not comply with Notice 459. Respondent did not query this and failed to disclose this to his client.

e) Ironically, the prospectus contains the following declaration by the directors of PIC:

“PIC Syndications supports the regulation of the property syndication industry. PIC complies with all of the requirements stated in the Government Gazette of 30 March 2006.” (Notice 459)

As appears in the paragraphs above, nothing could be further from the truth.

The investment in HS19 and HS21 was meant to provide an income, yet it had no trading history and no assets. It had no income from which to pay investors. The inference is irresistible that HS19 and HS21 paid investors from their own funds. The duty was on respondent, as a reasonably competent FSP, to disclose this to his client. There is no record that he did so.

Then follows another important document; “Client Advice Record”, which was not filled in by complainant; it was filled in by respondent in his manuscript in the absence of complainant.

Section D of the document contains details of the advice and motivation. The following is written in manuscript by respondent: “Conservative investor” requiring “income and capital growth” also wants “guarantee from PIC Syndication number 19 – 8% Interest plus 8.5% escalation and 7% capital growth “guaranteed”. The following is significant:

- i) Respondent wrote, in his own manuscript, that complainant is a conservative investor. Yet he does not give a rational explanation as to why he advised her to invest in a high-risk property syndication, not suitable for complainant's needs and risk tolerance.
- ii) Respondent noted that complainant wanted income and capital growth to be guaranteed. PIC gave no such guarantee and even warned that capital could be lost;
- iii) Nor did PIC guarantee the returns noted by respondent. If respondent was aware that complainant wanted her capital to be guaranteed, then respondent chose an investment that was not suitable for her needs.

It is not disputed that complainant made an investment of R150 000 in PIC HS19 and R 400 000 in PIC HS21. Each of these investments were made using separate application forms at different times. Complainant's exposure in PIC Syndications amounted to R550 000. On each occasion respondent sent complainant a set of blank forms for her to sign where indicated with a cross. On each occasion the faxed documents were accompanied by a letter instructing complainant how to sign. Complainant had to merely sign where there was a cross and was not to fill any details on the forms.

Complainant trusted her FSP of many years and did as instructed.

Complainant kept copies of the documents as they were faxed to her and kept copies of the documents after she signed and faxed them back to respondent. It is clear that she signed the documents in blank. Respondent disputes this and provided this office with his documents. They were compared to the documents faxed to complainant and clearly, they were now completed and filled in. The writing is in manuscript and is not that of complainant. There is compelling proof that complainant did sign blank documents on respondent's written instructions. Important documents such as application form, risk analysis and client advice records were signed in blank.

The Respondent's response is captured below:

Legal Action Commenced

The first defence raised is that complainant had already commenced legal action against respondent and therefore this office cannot register this complaint. Complainant had instructed her attorney to send a letter of demand to respondent claiming payment of her investment of R550 000. However, it is not disputed that complainant, due to costs, did not instruct her attorneys to commence action against respondent. Instead, she chose to file a complaint against respondent with this office. A letter of demand does not constitute legal action as contemplated in the Act. This office is therefore not precluded from dealing with this complaint.

Moonstone Compliance

This part of respondent's response is inserted with a sense of disappointment as the sheer disregard of the complaint's welfare and interests. After respondent received a letter of demand, he consulted with Moonstone Compliance, in particular Mr Gideon Potgieter, for advice. Potgieter in his written advice firstly advised respondent not to answer complainant's allegations and to merely reserve his rights. Secondly, Potgieter advised him as follows:

“Let the time run out and then they can follow the route of the ombud. That will buy time and will take months to work its way through the Ombuds system.” (English translation)

This advice is inappropriate as it is regrettable. In this regard the following must be noted:

- a) Moonstone is a compliance service provider to FSPs. It is registered as compliance officers and their services are widely used within the financial services industry.
- b) Potgieter, instead of advising respondent to contact complainant and try to settle the dispute or resolve

it, advised him to “buy time”, respondent was advised to cause delay and not to deal with the substance of the allegation that he had acted negligently and gave unsuitable advice;

- c) But more inappropriate was the advice that respondent can buy even more time if complainant filed a complaint with this office. The clear inference is that Potgieter advised respondent that this office’s systems are such that it will take months to deal with the complaint. The clear implication is that respondent can take advantage of the fact that this office is inefficient and does not resolve disputes within a reasonable time and it is better for respondent if complainant did not go to court but filed a complaint with this office;
- d) This office plays an important role within the financial services industry and should enjoy the support of the stakeholders within the financial services industry, including registered compliance officers;
- e) In terms of Section 17 (1) (b) of the Act Potgieter had to comply with the “fit and proper” standard. This means that he had to act fairly, professionally and in the interests of the financial services industry. Instead, he failed to comply with this standard by deliberately undermining the integrity of this office within the financial services industry.

This Office will therefore report Potgieter’s and Moonstone’s conduct to the FSCA for further investigation and possibly disciplinary action.

Respondent states that complainant was his client since 1995. It is undisputed that respondent provided financial services to complainant as well as other members of the complainant’s family over many years. It must therefore be the case that respondent was well aware of complainant’s financial needs and risk profile.

Respondent proceeds to explain that complainant was interested in the PIC investment and requested more information and application forms. According to respondent he explained the “investment type” and gave complainant “factual information”. Respondent is being deliberately vague. He does not state what is meant by “investment type” and nor does he state what “factual information” he provided.

But significantly respondent claims to have faxed information about the product to client and faxed the application forms as well. He states as follows: “Please take note that all documentation had been filled in properly and only required a signature from the complainant if she wanted to continue with the investment. At no stage was any blank documentation sent.” (emphasis added)

There is a dispute of fact as to whether or not respondent got complainant to sign in Blank. Her

version is that respondent sent blank forms with a written instruction to only sign and not fill in any other details. As stated above, complainant kept copies of the documents she signed and faxed to respondent. Her copies were certainly signed in blank. But the same documents were delivered to this office by respondent as part of his records. Only this time all the blank spaces were filled in. The documentary evidence before this office does not support respondent’s version. This evidence is therefore persuasive to make a finding that complainant’s version is true and it is supported by all the available documentation. It must be added that a reasonably qualified FSP would not indulge in the illegal and unfair practice of getting clients to sign life changing documents in blank.

Complainant complained that her investments in PIC were replacement investments, replacements for her investments in Fairburn Capital. She then states that respondent failed to comply with Section 8(1)(d) of the General Code.

On the records before this office, complainant’s investments in Fairburn Capital had matured and funds became available. Complainant, on the advice of respondent, instructed Old Mutual to pay out the funds into her bank account. This was done by Old Mutual. These funds were then invested from complainant’s account into the PIC investments. Accordingly, respondent submits that the investments were not replacement products intended to replace existing financial products held by client. This is supported as correct by the office and it is agreed with respondent that he did not have to comply with Section 8 of The Code with respect to replacement products.

In the above regard, respondent then made a significant statement which is quoted below in full:

“I told complainant that I will send information regarding the product to her and that she should enlighten herself with the type of product, features and possible risks. At that stage **complainant indicated that she trusted my judgment** and that I should send her the necessary documentation to finalise the transaction. I specifically told complainant that she should acquaint herself with the information and only when satisfied make an informed decision. Complainant accepted this as **she had known me for many years and knew that I will never place her capital in jeopardy.**” (emphasis added)

This statement is important for the following reasons:

- a) It confirms complainant’s version that she trusted respondent and therefore agreed to accept his advice. Respondent also confirms that he knew that complainant trusted him not to take risks with her funds;

- b) Respondent states that he furnished complainant with information so she could make an informed decision. That he sent her the information as well. Firstly, respondent does not say what factual information he gave complainant about the product; secondly, he does not say what information was sent to complainant so that she could assess the possible risks in the product. Complainant kept a copy of all the documents she received from respondent and none of it contained relevant information about the product type and risks therein. What she received were the application forms and documents authorising Old Mutual to pay out her available funds. The application forms were in the prospectus, but respondent removed the pages and only faxed the forms not the prospectus itself. Again, the documents in complainant's possession do not support respondent's version;
- c) It is not likely that respondent gave factual information on the telephone. The parties were in different parts of the country and respondent never met with complainant to take her through the prospectus. Respondent instead relies on complainant's own reading of the information, whatever that might be, to satisfy herself that she can make an informed decision. The respondent was under a duty to ensure that he made a full disclosure of the nature and type of product he intends to sell to complainant. It is not enough for him to rely on his pensioner client to read and understand a fairly complex investment product riddled with risks and likely to cause loss of her capital.
- d) On his own version, respondent does not detail what factual information he provided and if this included the risks inherent in an investment in property syndication. Complainant's version is that respondent merely assured her that it was a safe investment and did not explain the risks.
- e) Respondent was aware of complainant's financial needs and tolerance for risk. He also knew that complainant trusted him not to place her savings in harm's way. Yet, respondent does not provide a rational reason as to why he chose to invest her money in a high-risk investment; the PIC investment. It cannot be disputed. There was not suitable for conservative pensioners with no tolerance for risk. This was nothing more than a complete betrayal of complainant's trust.

Respondent repeatedly points out that complainant received the prospectus and even signed a document confirming receipt of the prospectus. The document where complainant acknowledged receipt was merely signed in blank on respondent's written instructions. Complainant states that she did not receive a copy of the prospectus. She supports this by referring to the documents faxed by respondent to her. There is no record nor copy of the prospectus. Respondent is

unable to provide proof that he sent complainant the prospectus.

Besides, to merely send a prospectus to an aging lay client is not compliance with the Code. Respondent was obliged to take respondent through the prospectus explaining the nature of the investment and drawing her attention to the risks and that neither capital nor income was guaranteed. It is an undisputed fact that this did not happen. It is not respondent's version that he took complainant through the prospectus, he merely relied on her own reading and understanding of this lengthy and complex, jargon riddled document. I note is that respondent never personally met with complainant to explain this investment and only spoke to her on the telephone. If he took her through the prospectus it had to be via a telephone call, it would then be an extraordinarily lengthy call and respondent would have provided this office with his telephone records. He did not. Besides, it is certainly not his version that he took her through the prospectus over a telephone conversation.

Respondent sarcastically points out "that complainant is not a minor child and of sound mind and understanding". This matter is not about complainant's capacity to enter into a contract. It is about her capacity to understand the complexities and risks in this investment. On respondent's own version, complainant signed the application forms in his absence and simply trusted him to carry out his obligations as a licensed FSP.

Respondent also states that complainant had "about two weeks to scrutinize the proposal from HS19 Company and make an informed decision". Exactly what "proposal" respondent is talking about is not clear. If it means the prospectus, then complainant did not receive it. Complainant states that she was under pressure to immediately sign the documents and fax them back to respondent in Bloemfontein. The dates support complainant's version and she certainly did not have two weeks to consider the investment. Respondent, provides no chronology to support his submission that he gave complainant two weeks to consider the investment.

Respondent states that he never sold the product as a guaranteed product. It is not disputed that complainant wanted capital preservation and a guaranteed income. As stated above, respondent noted this in his own writing. The point being made is that, on his own version, he knew complainant was a conservative investor and he told her that the product was guaranteed, in writing. Yet he also knew that the product providers promised no such guarantee and even warned about possible loss of capital. Respondent's version must be rejected.

Respondent admits he told complainant that growth was guaranteed through a Head Lease Agreement. However, respondent does not provide any details. Certainly, the

prospectus informs that the properties were secured by a head lease. But respondent was under a duty to, at least, call for a copy of the head lease and to check if the lessee was financially capable of honouring its obligations in terms of the lease. If respondent did so, he would have noticed that the head lease agreement was nothing more than a three-page sham document. A copy was obtained by this office. Nor did the lessee provide any financial statements to show that they were capable of making payment. It must come as no surprise that there was a breach of the head lease and the whole scheme collapsed.

Respondent failed to obtain relevant information about the investment and was not in a position to make a full and frank disclosure to complainant. Respondent relies on the fact that complainant, in November/December 2007, invested in another PIC syndication, HS20, with a different advisor in the Eastern Cape. He then concludes that she must have had all the information to make an informed decision to invest in the HS product and understood the risks involved.

Firstly, on respondent's own version he was not aware of these previous investments, he had to assume that she did not have enough knowledge about the product and he was obliged to carry out his obligations in terms of the Code.

Secondly, the fact that complainant made other investments in the past does not mean that she had the information on HS19 and HS21, and in particular, that she knew of the risks involved. On the probabilities, had she known about the risks, she would never have invested.

There is no substance to this defence.

Respondent relies on the fact that complainant voted in favour of Business Rescue in respect of HS19, HS20 and HS21. This cannot possibly absolve respondent of all liability. It is well known that hundreds of HS investors were requested to support business rescue as a possible means of recovering some of their capital. We know now that investors did not receive any payment of even a part of their capital and the HS companies, Nic Georgiou and some investors are currently engaged in time consuming litigation not likely to result in payments to investors.

That complainant supported business rescue is of no assistance to respondent.

Respondent points out that he cannot "be held responsible for the non-performance of the contractual parties to the agreements". He also relied on the business rescue practitioner's statement that the downturn in the economy adversely affected the companies and that tenants had cancelled their leases.

At all material times respondent was aware that he was investing complainant's funds in property syndication. What is stated by the business practitioner and the fact there was non-performance by some of the parties, is precisely the risks inherent in property syndication. Respondent knew this at the time of advising complainant. That is why such investments are regarded as high risk, risk capital investments. As a reasonably competent FSP, respondent was obliged to identify these risks and explain them to his client. He should also have known that this type of investment was entirely unsuitable for complainant's financial needs and risk profile. There is no record that respondent explained the risks and notwithstanding such explanation, complainant chose to invest in the HS products. Respondent can only rely on the warning of risks in the prospectus which he expected complainant to read and understand herself.

It appears, on respondent's own version that he merely faxed the forms and prospectus to complainant and left it to her to read and understand what he was recommending. For this effort respondent pocketed a 6% commission amounting to R33 000.

Complainant submitted that she was unaware that her investment was not liquid and will be tied in for 5 years; and even after 5 years they were not easily cashed out. Respondent's explanation is that complainant knew she was investing in unlisted shares, because he explained it to her and she read the prospectus. There is no record from respondent that he explained to complainant exactly what she was investing in. Complainant thought that she was investing in property which she considered to be safe. Respondent did not explain that the investment was not in property and only 1% of her investment went towards the purchase of shares and the rest went into a loan to the developer (debentures). Complainant did not receive a prospectus and even if she did, she did not have the capacity to read and understand it.

At complainant's age (73 years old at the time) she needed access to her funds. A reasonably competent FSP would know this. Respondent ought reasonably to have known that complainant needed liquidity, yet he chose to put her funds where they will be inaccessible and at risk of being lost.

Respondent makes a startling admission as follows:

"The product was never sold as a product where the investor had instant access to his/her capital."

It is clear from respondent's own version that he advised complainant to place her funds in an investment which was not suitable for her needs. How can a five-year fixed term investment be in the best interests of a 73-year-old?

As pointed out above, complainant made a well-motivated complaint against respondent. The latter repeatedly relies on the same submission; that complainant was furnished with the prospectus and read and understood it. To quote from respondent:

“Her signature to the Prospectus confirms her knowledge as I was not present at time of signature thus not being able to unduly influence complainant in any manner. All the issues raised by complainant was addressed in the Prospectus (risk, type of product, liquidity).”

In the circumstances of this matter, it was inappropriate for respondent to rely on complainant’s own reading of the prospectus. This conduct is inconsistent with the Code.

Respondent is indignant that complainant should complain about how his commission was paid. He points out that complainant did not pay his commission and her full amount was invested. This is not true. The properties invested in were still not completed and still not fully occupied by tenants. Just where did respondent believe PIC was going to find the funds to pay commissions and monthly returns to investors? It is a fact that investors fund’s were not held in the safety of a trust account. Instead, the funds were illegally paid out of trust to PIC. The inference is inescapable that PIC paid commissions and interest out of investor’s own funds. A reasonably competent FSP in respondent’s position would have worked this out and informed his client accordingly.

According to respondent, complainant’s capital is still available and she has not suffered any loss. The truth is that first, PIC, without notice reduced the monthly interest paid to investors. Thereafter the companies went into business rescue and all payments to investors ended. Since then, the whole matter has become embroiled in lengthy litigation with no prospect of investors receiving any part of their capital. For all practical purposes, complainant lost her capital as well as her accumulated interest.

Here certain relevant documents relied on by respondent are reviewed. As stated above, there is documentary proof that respondent instructed complainant to sign blank documents. A fact which respondent consistently denies. However, the same documents have been disclosed by respondent, except that they are now filled in; and not in complainant’s writing.

Application for Withdrawal of Matured Funds

Respondent attached this document to his response and it is the same document he faxed to complainant; except that it is now filled in. All the blank spaces from the document signed and faxed by complainant are now filled in. The first thing to notice is that the date and place of signature is filled in. The place where complainant signed

is filled in as “Bloemfontein”. It is an undisputed fact that complainant, in signing these papers, was never in Bloemfontein, when she signed, she was in Port Elizabeth.

On page three of this document, section 6 is now filled in. It is complete with a stamp from a commissioner of oaths. This was blank when complainant received it. Note that complainant was supposed to appear before the commissioner of oaths. She did not, she was in Port Elizabeth and the commissioner of oaths in Bloemfontein.

Amongst respondent’s documents was an undated letter from respondent to complainant. From the content of the letter, it must have been dated after 26 February 2009. The first paragraph reads as follows:

“Attached is the maturity payment forms for the above policy as well as the PIC application as discussed telephonically with Andre Grove on the 26 February 2009. **Please sign on every form next to the cross.**” (emphasis added) This is consistent with a previous letter only this one did not instruct complainant not to fill in anything else. Complainant’s version is consistent, she followed instructions and merely signed next to the cross and did not fill in anything else. This is confirmed in respondent’s documents where all necessary detail is filled in, in manuscript by someone other than complainant, most probably respondent.

The fourth paragraph of this letter contains the following:

“Included is also information about the PIC investment.”

Significantly, the letter does not say what information. On respondent’s version it must have been the prospectus. However, complainant denies receiving a prospectus and no prospectus was found amongst the documents faxed by respondent to complainant.

Respondent included the quotation he gave complainant for the second investment of R400 000 in HS21. The complainant was offered 12.5% per annum interest from inception of the investment and paid out monthly. This is an extraordinary rate bearing in mind what was available on the market. Nowhere in his response does respondent explain how and from what funds or income stream PIC intended to make this payment to investors. This was relevant information that respondent was obliged to establish for the benefit of his client.

The quotation also promises three things:

- a) That the public company has entered into a head lease which secures the income for the duration of the investment;
- b) That the monthly income is paid from interest in the loan account; and

- c) That the capital value is assured through a guaranteed share buyback scheme at the end of five years.

The head lease was a Sham and respondent certainly did not read it. The monthly income was paid out of the loan account; in other words, out of the investors' own funds. The share buyback scheme certainly did not guarantee the value of the capital invested.

The quotation was completely misleading and respondent was under a duty to explain the quotation to complainant. Respondent gave no explanation.

As part of the application form, complainant was required to state the purpose of the investment. In the space provided, respondent filled in: "Maximum Income" and "Capital preservation".

Respondent knew this to be complainant's purpose and need in the investment, yet he places her funds in a highly risky investment not suitable for her needs. Respondent does not explain this.

On the 8 February 2007 respondent wrote a letter to complainant thanking her for making an investment in PIC HS19. In that letter he assures her that the investment is safe with outstanding income and growth. This was anything but a safe investment, respondent misled complainant.

Respondent points out that he did not carry out a full needs analysis as complainant did not want to furnish him with all her financial information. However, respondent admits that he was her FSP for 17 years. He did not need a full needs analysis; he does not dispute that he knew complainant's financial circumstances and her appetite for risk. Complainant disputes that she refused to provide her financial information. She accepted that as her long-standing FSP, respondent was familiar with it and trusted him to act in her best interests.

The Guarantees

It is undisputed that complainant, in writing, informed respondent that her needs were capital preservation and income. Respondent does not dispute that he assured her that there was capital preservation. However, in truth, when one considers the prospectus:

- The capital is not guaranteed as it is based on the performance of a future buy-back agreement;
- The income is not guaranteed as it is based on the future performance of the head lease; and
- The promoters had no control over how these contracts will perform and therefore gave no guarantees.

In short, this product was not appropriate for complainant's needs. There is no record anywhere that the possibility of reduced income and loss of capital were mentioned as possible risks. Respondent, in breach of section 2 of the Code, recommended the PIC product.

Respondent further submits that complainant's capital was not lost and the company will recover from business rescue. He provides no evidence to support this contention. The record shows that in September 2011 HS21 went into business rescue and was subsequently liquidated. There is no prospect that complainant will recover her capital.

Respondent avers that his advice to invest in PIC was not the cause of complainant's loss. Respondent states that he could not reasonably have foreseen that the PIC investment would fail as a result of contractual breach between the promoters and the parties to the head lease and buy-back agreement and on that basis the requirement of legal causation was not met.

On the respondent's own version factual causation was established. But for respondent's advice, complainant would not have invested in a high-risk entity such as PIC and her capital would not have been lost.

The issue of legal causation based on the question of indeterminate liability for FSPs for pure economic loss has to be addressed (the remoteness question).

I do not believe that the loss of complainant's funds falls under the realm of delictual "pure economic loss". The respondents' conduct resulted in direct loss of the complainant's capital or property. In this regard see:

Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA 2006 (1) SA 461 (SCA)

'Pure economic loss' in this context connotes loss that does not arise directly from damage to the plaintiff's person or property but rather in consequence of the negligent act itself, such as a loss of profit, being put to extra expenses or the diminution in the value of property.

In the event that I am incorrect (and I do not concede this) in finding that the complainant's loss is not "pure economic loss"; I deal with legal causation in the paragraphs that follow.

Respondent did not pertinently deal with the issue of legal causation fully. He merely suggests that it was not his conduct that "caused" loss to complainant. Significantly, the respondent failed to deal with the law and merely relies on a possible factual finding that the PIC collapse was not reasonably foreseeable and that the cause of the collapse is unknown.

Had the respondent acted according to his own risk analysis and considered the prospectus carefully, he would have realized, as a reasonably competent FSP, that this was a risky investment not suitable for the complainant's needs and that there were insufficient safeguards against director misconduct or

mismanagement. Particularly due to the fact that the prospectus did not comply with notice 459. The test here is not whether or not a collapse, for whatever reason, was foreseeable; but whether or not the investment was appropriate for the complainant, bearing in mind her needs and tolerance for risk.

The enquiry is whether, as a matter of public and legal policy, it is reasonable, fair and just to impose legal responsibility for the consequences that resulted from the conduct of the respondents in giving advice that was inappropriate in terms of the Act and the Code.

It is easy and convenient to impute loss to director mismanagement or other commercial causes. The complainant's loss was not caused by management failure or other commercial influences. If the respondent did his work according to the Act and code, no investment in PIC would have been made, bearing in mind complainant's needs and tolerance for risk. The cause of loss was the inappropriate advice to invest in a risky product. That the risk actually materialized, for whatever reason, is not the cause of the loss. Otherwise, the whole purpose of the Act and Code will be defeated. Every FSP can ignore the Act and Code in providing services to their clients and hope that the investment does not fail. Then when the risk materializes and loss occurs, they can hide behind unforeseeable conduct on the part of product providers. This will fly in the face of public and legal policy and the provisions of the Act and Code.

The reasonable foreseeability test does not require that the precise nature or the exact extent of the loss suffered or the precise manner of the harm occurring should have been reasonably foreseeable for liability to result: it was sufficient if the general nature of the harm suffered by the complainant and the general manner of the harm occurring was reasonably foreseeable. A skilled and responsible FSP, acting according to the Act and the Code, would not have advised complainant to invest in PIC. The loss suffered by complainant as a result of respondents' inappropriate advice was reasonably foreseeable by the respondent.

See:
STANDARD CHARTERED BANK OF CANADA v NEDPERM BANK LTD 1994 (4) SA 747 (AD).

It was also held in the above case that:

"as to the issues of loss and causation, that although the untrue report issued by the respondent had been a factual cause of the appellant's loss, the test to be applied to the question whether the furnishing of the untrue report had been linked sufficiently closely or directly to the loss for legal liability to ensue was a flexible one in which factors such as reasonable foreseeability, directness, the absence or presence of a novus actus interveniens, legal policy, reasonability, fairness and justice all played a part."

It is appropriate to point out that in addition to these

factors one has to take into account, in the circumstances of this case, there is the Act and Code which all FSPs are bound to comply with as well as legal and public policy. All of which factors, when taken into account in this case, show that there is a sufficiently close connection between the respondents' advice and the loss of complainant's capital.

See:
LIVING HANDS (PTY) LTD AND ANOTHER v DITZ AND OTHERS 2013 (2) SA 368 (GSJ).
LEE v MINISTER FOR CORRECTIONAL SERVICES 2013 (2) SA 144 (CC).
STELLENBOSCH FARMERS' WINERY LTD v VLACHOS t/a THE LIQUOR DEN 2001 (3) SA 597 (SCA).
SMIT v ABRAHAMS 1994 (4) SA 1 (A).

Negligence

A reasonably competent FSP, at the time of providing financial advice to client, can be expected to do the following:

- a) ensure that he read and understood the Code;
- b) understand that he is obliged to comply with the Code in providing financial advice;
- c) understand the nature of the financial product/s he is recommending to client;
- d) understand the product so that he is in a position to explain it to client in plain language;
- e) accept that he is obliged to make a full and frank disclosure of all the available information about the product;
- f) understand that he is obliged to ensure that his client will be in a position to make an informed decision; and
- g) accept that he must recommend a product that is suitable for client bearing in mind the latter's financial circumstances and tolerance for risk.

Respondent states that he explained the risks in the PIC product to complainant, however he is extremely vague about the details. There is no record of advice that documents the risks explained to complainant.

Respondents conduct in not explaining the risks is exacerbated by the fact that he had received training in the products and had even read and understood the prospectuses. Yet he failed to tell complainant the following:

- a) Neither her capital nor her monthly returns were guaranteed;
- b) That the investments were considered risk capital;
- c) That in fact she was not investing in property, PIC did not own any property and she was investing in debentures;
- d) Her funds were not going to enjoy the safety of a trust account, but were going to be paid out to the promoters who could use it at their discretion;

- e) That PIC did not comply with the requirements of Notice 459;
- f) That PIC did not have independent financial resources from which to pay agents commission and interest on the capital; and
- g) That her interest was going to be paid from her own capital and from the investments of other investors.

None of the above was a secret, this information appears in the prospectus and was available to respondent at the time when he gave complainant advice to invest. Respondent admits to have read the prospectus. There can be no doubt that had this information been disclosed to complainant, she would not have invested. Respondent failed to comply with the Code and negligently advised complainant to invest her modest savings in PIC.

Application of Law

[99] Bearing in mind the facts found to be proved and the conclusions to be drawn from them, the following findings can be made:

- a) Respondent failed to act honestly, fairly, with due skill, care and diligence;
- b) Respondent failed to act in the interests of his client and by his conduct compromised the integrity of the financial services industry. Respondent contravened section 2 of The Code of Conduct;
- c) Respondent failed to provide full and frank disclosure of all the material information about the PIC products;
- d) Respondent failed to enable complainant to make an informed decision. Respondent contravened section 7 (1) (a) of The Code of Conduct; and
- e) Respondent failed to seek relevant information from complainant and failed to provide appropriate advice. Respondent failed to identify a product that was appropriate to complainant's risk profile and financial needs. Respondent contravened section 8 (1) (a), (b) and (c) of The Code.

The fact that respondent was in breach of the Act and The Code of Conduct does not mean that he is therefore liable for complainant's loss. There is a breach of contract as well as a claim in delict.

Further, this office as well as the Board of Appeal has consistently found that there existed a contract between FSP and client. It was an express, alternatively implied term of the contract that Respondent, in carrying out his obligations, will comply with the provisions of the Act and The Code of Conduct. For reasons already stated, respondent was in breach of this term. A consequence of this breach was the loss of complainant's capital.

In a number of recent judgements in the high court, it was found that complainants claim is one in delict based on negligence. Once it is established that the respondent gave financial advice, two questions arise:

- a) did the respondent comply with his legal duties towards the client; and
- b) whether in terms thereof the respondent acted wrongfully and negligently.

A reasonably competent FSP in the position of respondent would have done the following:

- a) Carried out diligent research to become familiar with the nature of the PIC products he intended to sell;
- b) As a basic step he was expected to read and understand the prospectuses and the annexures thereto and explain it to complainant in plain language;
- c) Made a point of understanding how PIC intended to pay his commission and investors returns bearing in mind that the latter owned no assets and enjoyed no trading history and did not have any independent means of making these payments (these facts are stated in the prospectus). Significantly, respondent had a duty to explain this to complainant;
- d) Would have noticed that contrary to what was initially stated in the prospectus, it then informs that investor funds will not be kept in trust but will be paid out to the promoter;
- e) Would have noticed that the shares will not be easy to dispose of, the promoter offered no assistance in disposing of the shares and the onus was placed on the investor to find a buyer (also stated in the prospectuses).

Clearly by failing to draw complainant's attention to the above information, respondent failed in his legal duties to his client.

The respondent also acted wrongfully and negligently; he was under a legal duty to make a disclosure of these facts to complainant. Respondent acted negligently in not making full and frank disclosure thereby depriving complainant of the right to make an informed decision.

Respondent must be judged by the standard of a reasonably competent FSP in the same circumstances. Then the inquiry must progress to the next question: would a reasonably competent FSP have advised complainant differently. It is overwhelmingly clear that a reasonably competent FSP would have read and understood the prospectus and would not have advised a 73-year-old pensioner to invest her available funds in a manifestly high-risk investment where there was a prospect of losing all the capital. The SCA in *Durr v ABSA Bank, Schutz JA* stated as follows:

"The reasonable person has no special skills and lack of skill or knowledge is not per se negligence. It is, however, negligent to engage voluntarily in any potentially dangerous activity unless one has the skill and knowledge usually associated with the proper discharge of the duties connected with such an activity."

"Liability in delict arises from wrongful and negligent acts or omissions. In the final analysis the true criterion for determining negligence is whether in the particular circumstances of the conduct complained of falls short of the standard of the reasonable person."

Respondent's conduct fell short of this standard and was the factual and legal cause of complainant's loss.

Accordingly, and in the circumstances, the respondent was under a legal duty of care to comply with his obligations. An omission to comply, in the circumstances, amounts to a negligent breach of the duty of care. A reasonably competent FSP, at the time of providing advice, should reasonably be expected to foresee that in the event of a breach of the aforesaid legal duty of care client will suffer harm. That harm will be the possible loss of client's capital. The precise or exact manner in which the harm occurred need not be foreseeable, the general manner of its occurrence had to be reasonably foreseeable. For example, advice to invest in a risky investment must result in a reasonable foreseeability that the investment could be lost in the near future. It is not a question of performance of the product but the realisation of existing risks in the product. The reasonable foreseeability must become even more clear where the product provider actually warns the FSP of the risks in the product. As in this matter, the prospectus and disclosure documents stated the risks in the PIC. The respondent was aware of these risks; but nevertheless, advised complainant to invest her funds.

Respondent's conduct fell short of a reasonably competent FSP and Respondent was the factual and legal cause of complainant's loss.

See *Sea Harvest Corporation (Pty) Ltd and Another v Duncan Dock Cold Storage (Pty) Ltd and Another* 2000 (1) SA 827 (SCA).

I refer to the following decisions:

OOSTHUIZEN v CASTRO AND ANOTHER 2018 (2) SA 529 (FS).

CENTRIQ INSURANCE COMPANY LTD v OOSTHUIZEN AND ANOTHER 2019 (3) SA 387 (SCA) – approved of the Castro judgement.

ATWEALTH (PTY) LTD AND OTHERS v KERNICK AND OTHERS 2019 (4) SA 420 (SCA) at p529.

For all of the reasons stated above, the Office finds that respondent acted negligently and such negligence was the cause of complainant's loss.

Accordingly it is concluded that, based on the peculiar facts of this case, both factual and legal causation was established.

CONCLUSION

For reasons set out above, the Office finds that, in advising complainant to invest in PIC, respondent contravened sections 2, 3(1) (a)(i), 7 (1) and (2) and 8 (1) and (2) of the Code. It is also found that this conduct was the negligent cause of complainant's loss.

It is common cause that complainant did not invest for capital gain. She wanted an income and capital preservation. Her income was reduced from 12.5%

down to 2% and there is now absolutely no prospect that any investor will buy her shares. Accordingly, she wants a refund of her capital. As stated above, there is now no prospect that investors will get any part of their capital back.

It is therefore appropriate to order respondent to pay to complainant the capital amount of R550 000 – 00.

Operational effectiveness

ICT governance report

The COVID-19 pandemic presents an immediate and pressing need for organisations to look for leading-edge solutions that promote resilience and system recovery in this challenging time. I can report that the FAIS Ombud have successfully moved the Case Management system (which is the core system to deliver on the organisational mandate) to Cloud and decommissioned the redundant server that was hosted in-house. Moreover, ICT embarked on a project of moving all the in-house hosted systems (Finance, HR and Supply Chain) to be hosted on the Cloud to maximise performance, security and reliability. The project is at the last stage of implementation.

The office tools of trade such as laptops, screens, headsets, data, software and other tools, as well as supporting infrastructure (network bandwidth and number of remote connections) to support the transition to remote working were provided to all staff. A cyber security social engineering campaign was initiated to determine the 'human' security position at the FAIS Ombud's Office, which resulted in ICT to implement new security protocols and processes in order to improve security when employees work remotely. Communication to staff on cyber security awareness were elevated to help employees understand the role they play in helping to combat information security breaches. To strengthen ICT security, the Office conducted monthly vulnerability assessments to detect vulnerabilities in the ICT environment that cyber criminals can exploit.

The overall ICT infrastructure environment for FAIS Ombud remains adequate and effective. Proactive preventative maintenance and monitoring of all systems were maintained and resulted in the average availability of 95%. The office successfully conducted one planned ICT systems recovery test to ensure business continuity.

The ICT and the FAIS Ombud internal committees will continue to initiate and monitor the technology developments in all spheres of technology. ICT succeeded in overcoming challenges of transitioning everyone to work remotely.

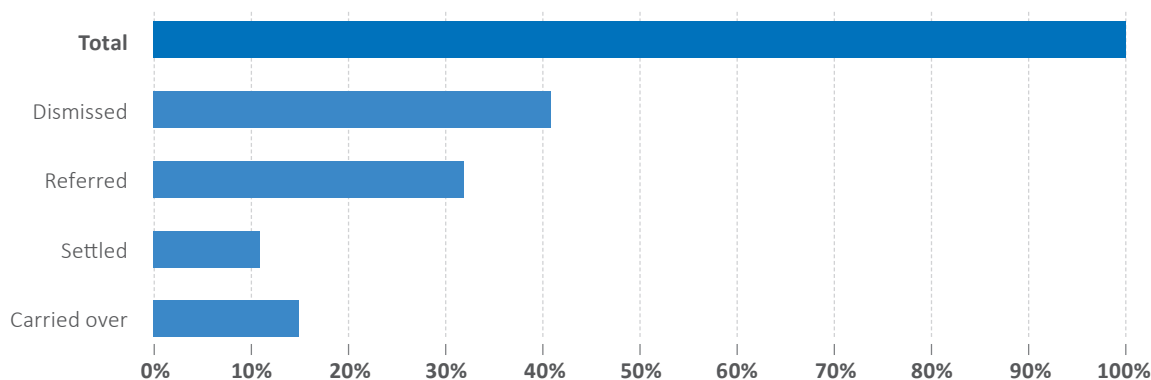
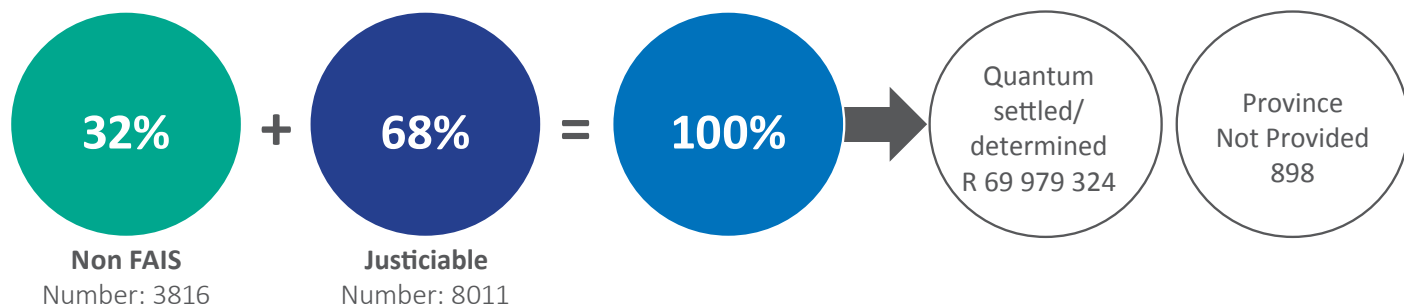


Adv Nonku Tshombe
Acting Ombud

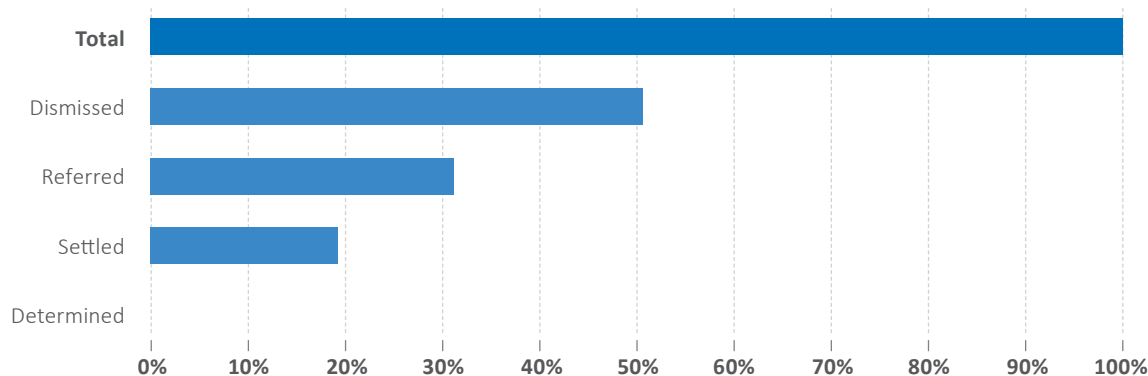
Statistics

for the year ending 31 March 2022

Cases received



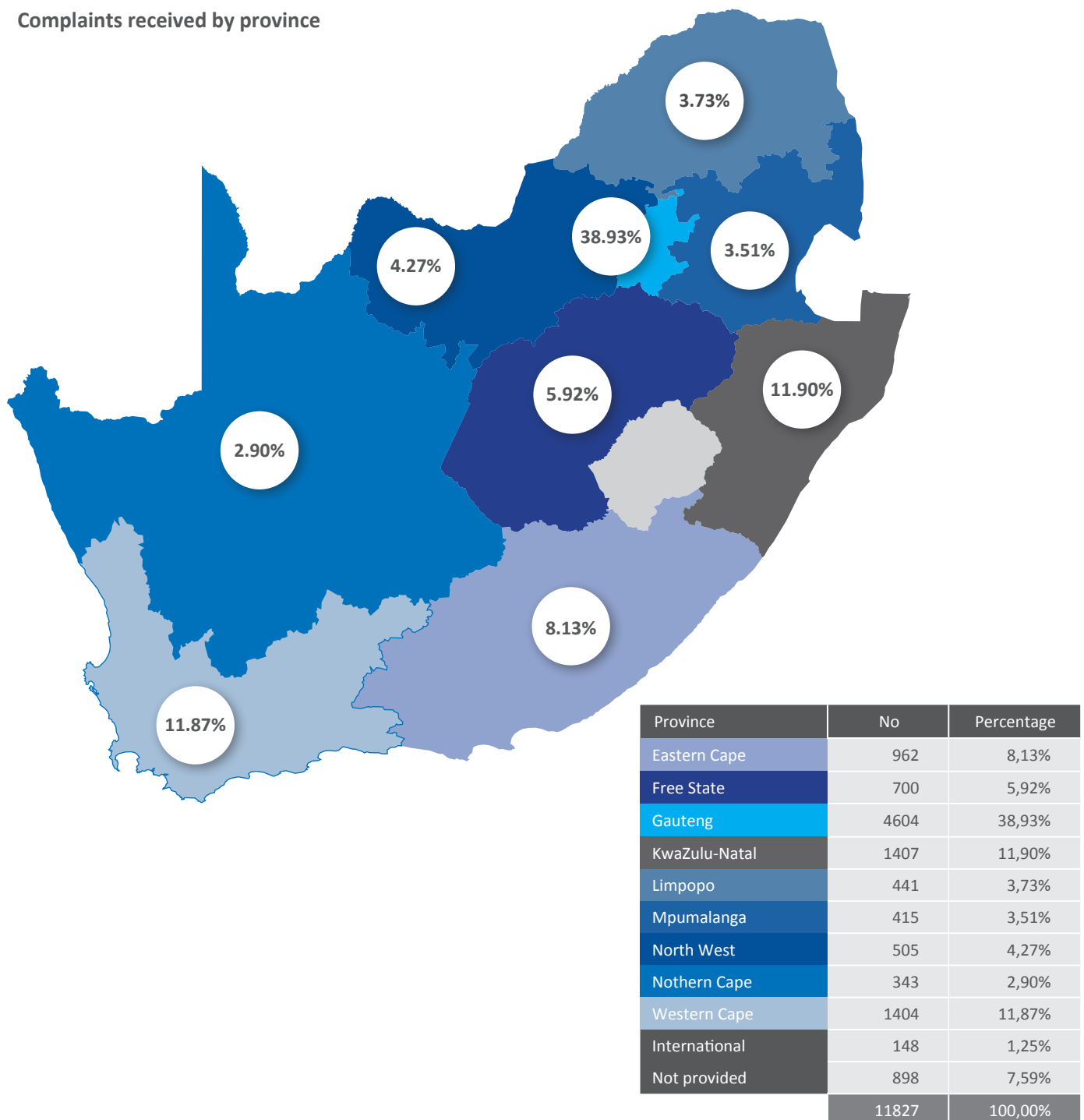
New Cases Resolved - All Complaints Received	No.	Percentage
Dismissed	4957	42%
Referred	3791	32%
Settled	1269	11%
Carried over	1810	15%
Total	11827	100%



All Cases resolved - All Complaints Received	No.	Percentage
Dismissed	6314	52%
Referred	3947	33%
Settled	1823	18%
Determined	5	0%
Total	12089	100%

Product	No.	Percentage
Long term insurance	4381	37,04%
Short term insurance	2558	21,63%
Investment	976	8,25%
Retirement	491	4,15%
Medical Assurance	156	1,32%
Forex	128	1,08%
Non FAIS	2634	22,27%
Banking	396	3,35%
Medical Aid	85	0,72%
Crypto Currency	17	0,14%
Property Syndication	5	0,04%
	11827	100,00%

Complaints received by province

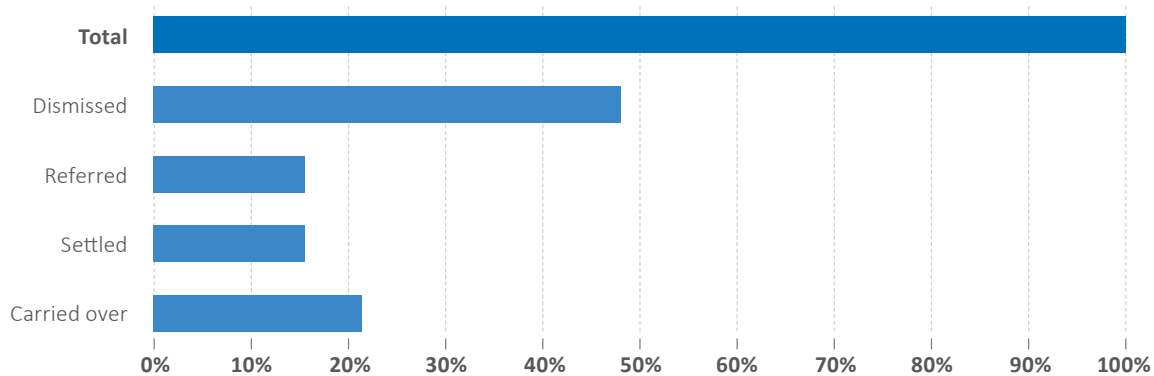


Referred to other fora	No.	Percentage
Community Goods & Services Ombud	11	0,29%
Community Schemes Ombud Service	4	0,11%
Council for Medical Schemes	38	1,00%
Credit Information Ombud	40	1,05%
Financial Services Conduct Authority	50	1,32%
Financial Services Providers	993	26,17%
Insurance Ombud	689	18,16%
JSE Ombud	14	0,37%
Motor Industry Ombud	26	0,69%
National Consumer Commission	415	10,94%
National Credit Regulator	671	17,69%
Ombudsman for Banking Services	435	11,47%
Ombudsman for Long-Term Insurance	17	0,45%
Ombudsman for Short-Term Insurance	104	2,74%
Other fora	208	5,48%
Pension Fund Adjudicator	68	1,79%
Tax Ombud	11	0,29%
	3794	100,00%

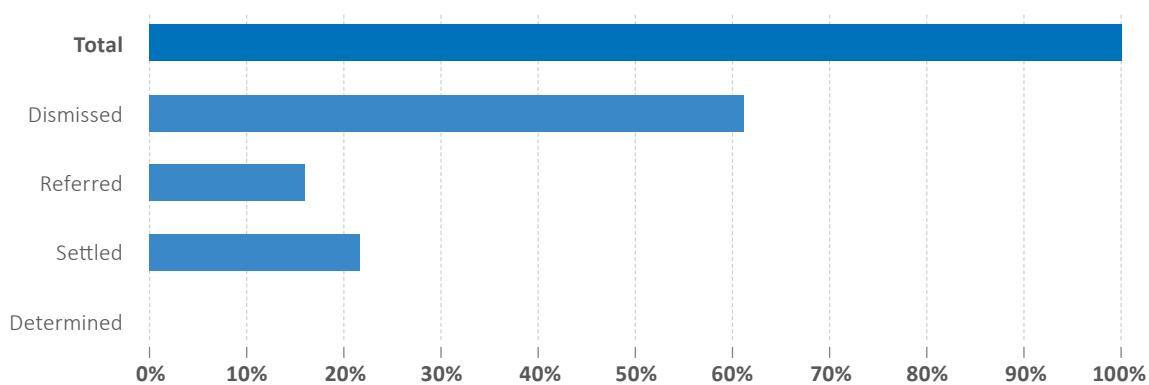
Average Turnaround - Working Days	No.	Days
No. of Days - Inclusive of Weekends	10017	35.87
No. of Days - Excluding Weekends	10017	23.91
	10017	

Settlement value – Product	Percentage	Value
Long-term insurance	55,53%	R38 860 869
Short-term insurance	6,10%	R4 271 602
Investment	29,96%	R20 967 554
Retirement	5,68%	R3 974 394
Medical aid	0,41%	R283 999
Medical aid/assurance	1,19%	R833 850
Banking	0,00%	R3 027
Forex	0,51%	R358 510
Non-FAIS	0,61%	R425 519
	100,00%	R69 979 324

Complaints Referred to the Tribunal	No.
Total number referred	158
Right of appeal granted	2
Referred back to this Office	9
Application dismissed	136
Awaiting Decision	11
	94.30%



New cases resolved – Within our mandate	No.	Percentage
Dismissed	3 732	47%
Referred	1 262	16%
Settled	1 269	16%
Carried over	1 748	22%
	8 011	100%



All cases resolved – Within our mandate	No.	Percentage
Dismissed	5 093	61%
Referred	1 421	17%
Settled	1 823	22%
Determined	5	0%
	8 342	100%

Our credo

The FAIS Ombud's credo states:

- We believe our first responsibility is to the Constitution of the Republic of South Africa and to the statutory mandate which created our organisation. We are completely independent and deal with all disputes fairly and impartially.
- Our service is for people from all backgrounds. We will look at the facts of each complaint, not at how well the case is presented. No one should need any special expertise or professional help in order to bring their complaint to us.
- We aim to give clear, sound and logical reasons for our decisions – any fair-minded person should understand why we reached a particular conclusion.
- We are not bound by formal and rigid procedures to resolve complaints and we aim to be flexible in our approach.
- We will engage all concerned to help both consumers and financial service providers understand their respective rights and responsibilities. Our ultimate aim is to reduce the level of complaints and improve confidence in the financial services industry.
- We must constantly strive to educate both ourselves and those we serve about our services and make our services easily accessible. We will ensure all parties in a dispute have an opportunity to present their case. In doing so, we will ensure

Mission

To promote consumer protection and enhance the integrity of the financial services industry by the fair and expeditious resolution of complaints, reasonably, informally and free of charge.

Vision

To be an independent, effective and trusted alternative dispute resolution office for the resolution of complaints arising from the provision of financial services.

the dignity of those we serve by treating each with utmost respect and courtesy.

- We must at all times build a collegiate base that is diverse and equitable and encourage contributions to our core business. We are responsible to ensure that each of our colleagues is regarded as an individual and experiences an affirming and empowering learning environment.
- We must be mindful of the ways in which we help our colleagues fulfil their family responsibilities. We must encourage each other to communicate our opinions, feelings and indeed, our grievances in an environment conducive to amicable resolution, not recrimination. We will support each other, to be innovative, to exercise reasonable initiative, and to share our learning.
- We are responsible to the communities in which we live and work and to the larger international community. We must be good citizens and support civic initiatives.
- We believe our final responsibility is to industry. Business must make a sound profit, underpinned by good corporate governance and moral values. We must explore and suggest fresh approaches to consumer services in the course of our enterprise.
- We believe when we operate according to these principles, we will all realise a significant improvement.



MR MARC ALVES
TEAM RESOLUTION MANAGER

Legislative mandates

1. Constitutional mandate

The Constitution guarantees equality before the law and the right to equal protection and benefit of the Law. The Office of the FAIS Ombud protects this right of citizens by providing an alternative dispute resolution mechanism in the financial services industry free of charge.

2. Legislative mandates

The FAIS Ombud was established in terms of section 20 of the Financial Advisory and Intermediary Services Act, (Act 37 of 2002) (“FAIS Act”). The FAIS Ombud is a schedule 3A entity in terms of the Public Finance Management Act (Act 1 of 1999 as amended by Act 29 of 1999) (“PFMA”) and reports to the Commissioner of the FSCA and National Treasury.

FAIS Act

The main objective of the FAIS Ombud is to investigate and resolve complaints in terms of the FAIS Act, the Code of Conduct for Financial Institutions and the Rules promulgated thereunder.

A complaint could arise where, in the rendering of a financial service by a Financial Services Provider or their representative, it is alleged that the financial services provider:

- has contravened the provisions of the FAIS Act and that the complainant has or is likely to suffer financial prejudice or damage;
- has acted wilfully or negligently in rendering the financial service and has caused or is likely to cause prejudice or damage to the complainant;
- has treated the complainant unfairly.

In resolving complaints in terms of the FAIS Act and Rules, the FAIS Ombud acts independently and must be impartial.

Financial Services Ombud Schemes Act

A further function of the FAIS Ombud is to resolve complaints in terms of the Financial Services Ombud Schemes Act (Act No. 37 of 2004) (FSOS), which are not covered by any of the other voluntary Ombud schemes or where there is uncertainty over jurisdiction.

In terms of the FSOS Act a complaint means:

“a complaint by a client relating to any agreement with, or a financial service or product of, a financial institution, and in which it is alleged that the client has suffered or is likely to suffer financial prejudice or damage as a result of the financial institution –

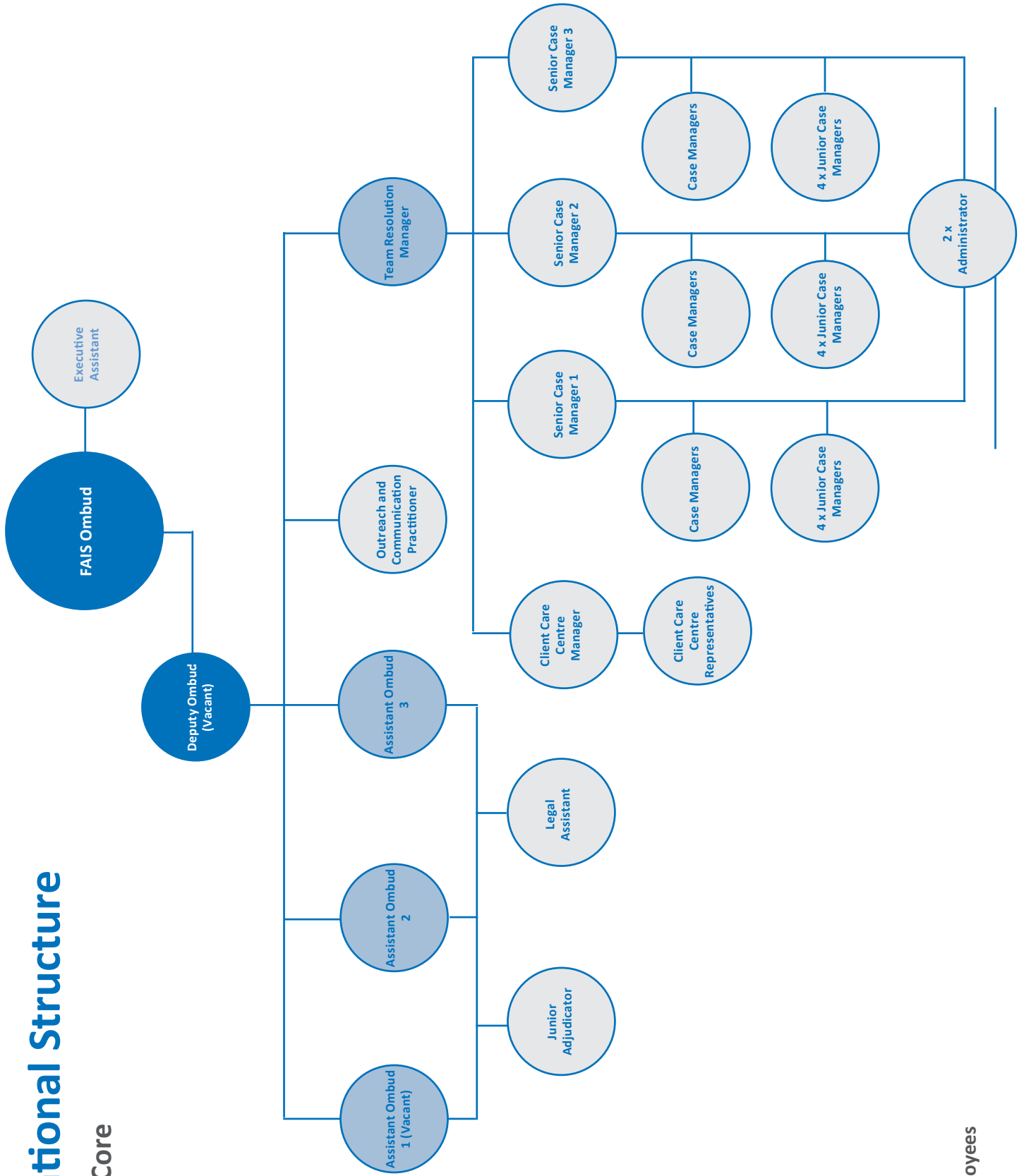
- (a) having contravened or failed to comply with a provision of any agreement or the law or of a code of conduct subscribed to by the financial institution;
- (b) having wilfully or negligently supplied, or failed to supply, a financial service or a product to the client;
- (c) having treated the client unreasonably or inequitably; or
- (d) having mal-administered the implementation of an agreement with, or the supply of a financial service or a product to, the client.”

Reconsideration of Ombud determinations by Tribunal

For parties aggrieved by determinations issued by the FAIS Ombud Office, there is a process of reconsideration of such determination by the Financial Services Tribunal established in terms of the FSR Act.

Organisational Structure

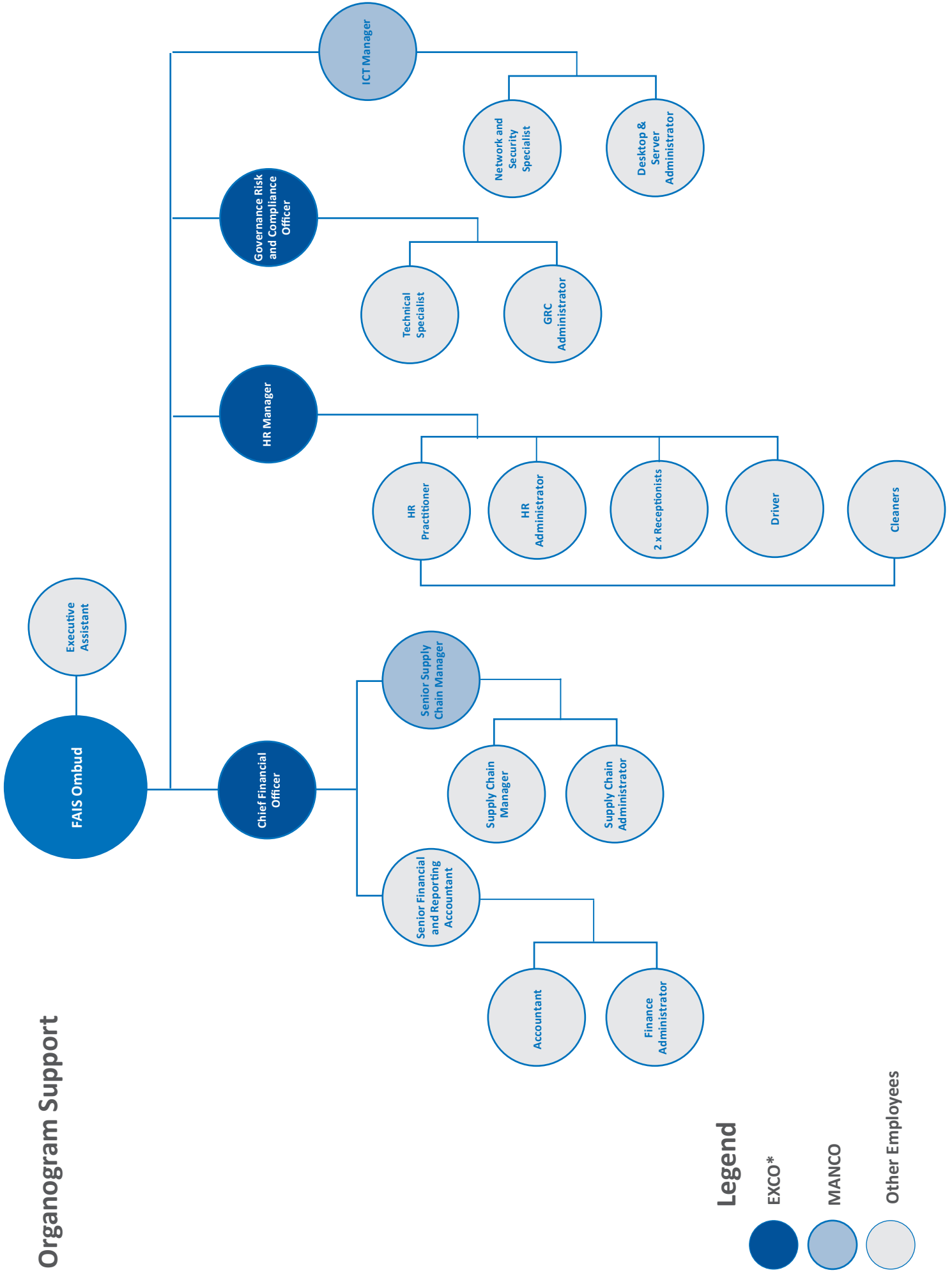
Organogram Core



Legend

- EXCO*
- MANCO
- Other Employees

Organogram Support



Legend

- EXCO*
- MANCO
- Other Employees

Executive Committee



Adv Nonku Tshombe
Acting Ombud



Mr Shaunil Maharaj
Chief Financial Officer

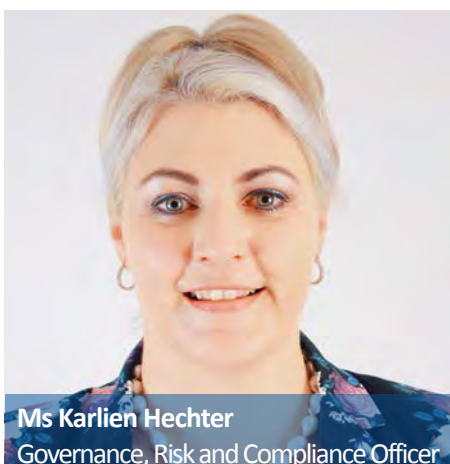


Mr Lebogang Lebeko
HR Manager



Ms Karlien Hechter
Governance, Risk and
Compliance Officer

Management Committee



Adjudication Department



Adv Nonku Tshombe
Acting Ombud



Ms Hestie Teessen
Executive Assistant to the Ombud



Ms Thobile Masina
Assistant Ombud



Ms Regina Chindumo
Assistant Ombud



Ms Nomfundo Mthethwa
Legal Assistant



Ms Bontle Douglas
Language Practitioner



Ms Heather Ledwaba
Language Practitioner



Ms Dineo Sello
Language Practitioner

Absent during the photoshoot

Ms Philile Kamanga
Junior Adjudicator



Ms Thuso Ngwagwe
Outreach and Communications
Practitioner

Case Management



Mr Marc Alves
Team Resolution Manager



Mr Mashite Makgoo
Case Manager



Ms Agnes Tompa
Junior Case Manager



Ms Cebisa Mkiwane
Case Management Administrator



Mr Loyiso Nosenga
Junior Case Manager



Ms Nonhlakanipho Nhlapo
Case Management Administrator



Ms Sesethu Memese
Junior Case Manager



Mr Sifundo Tiki
Junior Case Manager



Ms Talisha Rothman
Junior Case Manager



Ms Tshilidzi Nemaonzeni
Junior Case Manager



Ms Uyanda Lila-Phiri
Junior Case Manager



Ms Violet Ellis
Junior Case Manager

Case Management



Mr Vusani Mulovhedzi
Junior Case Manager



Mr Wonke Mramba
Junior Case Manager



Ms Zine Mahlaka
Junior Case Manager



Ms Zizipo Mazitshana
Junior Case Manager



Ms Amisha Isaacs
Graduate Trainee



Mr Linda Qwabe
Graduate Trainee



Ms Palesa Motaung
Graduate Trainee

Absent during the photoshoot

Ms Lutendo Mitileni
Junior Case Manager

Mr Claudius Magoro
Graduate Trainee

Ms Lungelwa Mpapela
Junior Case Manager

Client Care Centre



Ms Ncebakazi Gqwa
Case Administration Manager



Ms Mpho Koloko
Case Administrator



Ms Kelebogile Sesoko
Case Administration Assistant



Ms Nhlanhla Mngomezulu
Case Administrator



Mr Tshepiso Mabaso
Case Administrator



Mr Hector Gumede
Case Administration Assistant

Absent during the photoshoot

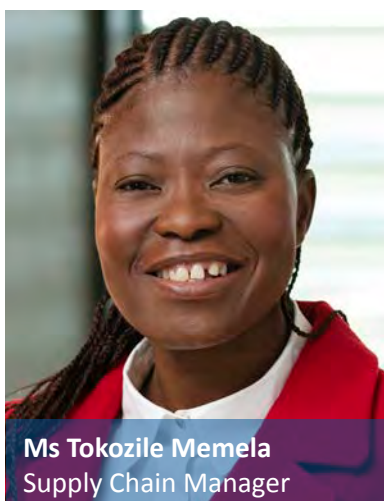
Mr Brian Nyide
Case Administrator

Ms Rebotile Manakana
Case Administration Assistant

Finance Department



Supply Chain



Human Resource



Mr Lebogang Lebeko
HR Manager



Ms Mpho Diako
HR Practitioner

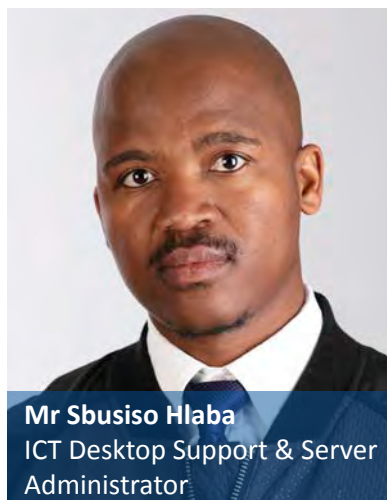


Ms Ayanda Mntonintshi
HR Administrator

Information and Communications Technology (ICT)



Ms Petronnell Sehlola
ICT Manager



Mr Sbusiso Hlaba
ICT Desktop Support & Server Administrator



Ms Maphiri Mabaso
Graduate Trainee - ICT



Mr Kopano Dibobo
Graduate Trainee - ICT

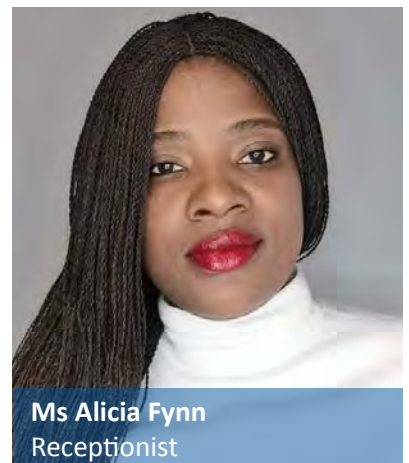
Absent during the photoshoot

Mr TJ Riekert
ICT Network & Security Specialist

Governance Risk and Compliance



Support



Absent during the photoshoot

Ms Jabulile Zwane
Cleaner



PART B

PERFORMANCE INFORMATION

SITUATIONAL ANALYSIS

External environmental analysis

The external performance environment and the influences therefrom were considered and a PESTEL (Political, Economic, Social, Technological, Environmental and Legal) analysis were completed for the entity. The assessment is reflected below.

1. Political environment

The governance and support structures are in a state of evolution due to the legislative changes, the provisions of some of which are not yet effective. The further implementation of the FSR Act will have an impact on the governance structures of the Ombud system in general, including the FAIS Ombud and changes are expected to continue during the new decade. The Commissioner of the FSCA is currently the Accounting Authority of the FAIS Ombud until the Ombud structure (the Ombud Council), as set out in the FSR Act, is finalised.

2. Economic environment

In 2019, South Africa was rated as the most economically unequal country in the world. Continued high levels of unemployment, low economic confidence, high levels of indebtedness, and low levels of government guaranteed investments such as bond markets have resulted in a decrease in investment activity. We anticipate that this may encourage people to be attracted to investment or investment vehicles with so called 'high' or unrealistic rates of return in a bid to address the unfavourable economic situation.

On 27 March 2020 the rating agency, Moody's, downgraded South Africa's sovereign credit rating to junk status. Subsequent to this, on 3 April 2020 the ratings agency, Fitch, downgraded South Africa to junk status. The third ratings agency, Standard & Poor's Global Ratings (S&P), followed suit with the same rating on 29 April 2020. In downgrading South Africa's sovereign credit rating to junk status, S&P cited the impact of COVID-19 on South Africa's public finances and economic growth as one of the reasons for its rating.

- According to the South African Reserve Bank (SARB) it is expected that the country's GDP is to contract by between 5 and 10% in 2021. This is an indication of how the economy is shrinking as a result of the junk status, COVID-19 and the corresponding lockdown implemented to reduce the spread of the pandemic. This will have a devastating effect on businesses and unemployment and place significant pressure on the financial services industry within which the Office of the FAIS Ombud operates.
- The above economic circumstances may likewise encourage people to pursue the emerging specialised

financial products, such as crypto currencies, as an alternative to the financial products available in the traditional and predictable financial markets. Together with the inadequate deterrents to prevent or limit the influx of unscrupulous financial services providers, this points to the likelihood that there will be an increase in the number of complaints received by this office.

3. Social environment

- The majority of people in South Africa are inarguably illiterate. This illiteracy translates, in potentially greater respects, to financial illiteracy and consumer illiteracy of how financial services are regulated in South Africa. If consumers are unaware of the nature of the service they are receiving and whether it accords with the service they should be receiving, it bears on the likelihood that they may receive a financial service that does not comply with legislative prescripts without being aware. Consumer illiteracy presents itself in primarily two ways. In the first place, if consumers do not know how the financial sector is regulated, it is unlikely that they would know where to go if they had an issue with a financial product or with the manner in which it was sold to them. Secondly, consumer illiteracy of the regulated environment may impact on the preparedness of the majority of the South African public to engage in formal investment activities given that people tend to be less willing to participate in an activity they do not understand and instead turn to activities in the informal sector which are more prone to result in a reproachful treating of consumers, thus increasing the risk of the complaints that may be lodged with this office.
- All of this results in the continued financial illiteracy in the population and vulnerability to pyramid, ponzi schemes and products that still require regulatory investigation, such as crypto currency.
- The social impacts of COVID-19 such as job losses, often involving the sole breadwinner, interruptions to public health programmes, loss of access to educational and other child support services, growing challenges with mental health, and increased gender-based violence are collectively deepening destitution in many communities. This will only aggravate the scenario presented above.

4. Technology environment

Robo advice is a consequence of advancement in technology. It is intended by financial services providers to be a convenient and efficient way of rendering services by relying on technology. Robo advice does not then exist as a separate category of financial services or products, but it is a tool of providing largely the known financial services and products.

Consequently, the products and/or services are regulated in the same manner as providing financial services and products face-to-face. Because the FAIS Act dictates how financial services must be rendered, its reliance on technology is intended to improve and expedite the process, but it must still be compliant with current legislation. The risk is that robo advice misses some of the prescribed steps in the advice process and might lead to negligence on the side of the FSP which will compromise the organisation and give rise to possible complaints due to that element of negligence.

In the same way that organisations in the country, and around the world, are improving their business processes by relying on technology, the FAIS Ombud has done the same through the introduction of a voice-log system that allows it to receive complaints by telephone. The Rules that govern the proceedings of the FAIS Ombud provide those complaints to the FAIS Ombud must be submitted in writing. The Rules however make provision for the FAIS Ombud to receive complaints in any other manner in circumstances deemed appropriate. The voice log system was introduced in response to the fact that the FAIS Ombud office is located in a single city in South Africa, in a metropolis, which materially affects the ability of a number of South Africans to access the office. The voice log system caters for the many South Africans without access to electronic means such as email and fax as well as those without access to postal services.

Developments and advancements in technology have also brought about a general increase in cybercrime and theft of data. This office, by virtue of the work it undertakes and being a caretaker for a great deal of personal information, is obliged to take certain measures to protect all the data and personal information it receives by compliance with, primarily, the Protection of Personal Information Act, 4 of 2013 (the PoPI Act). The FAIS Ombud office, in a bid to comply with its legal obligations to protect the personal information of all stakeholders, is compelled to take more strenuous measures to achieve this task. This means that the Office must employ people with the appropriate expertise and procure appropriate systems to ensure that this information

is secure. A general increase in cybercrime and computer viruses therefore has a bearing on the legal obligations this Office has in terms of safeguarding personal information and ultimately this will affect its budgetary needs in respect of a support function.

The COVID-19 pandemic has exacerbated a number of existing challenges in the South African insurance industry. The lack of digitisation has been strongly highlighted during the COVID-19 lockdown, with many insurers' operations heavily constrained and new sales limited. COVID-19 has motivated insurers as to the value and need to digitise their internal processes. This will fast-track existing plans or adoption of new plans to digitise their operations. This will also expedite aspects such as robo advice and its associated challenges as detailed above.

5. Environmental impact

We interpret environment to mean both the natural environment as well as the financial services environment, and consider circumstances and conditions both impact on this.

With regards to the natural environment, climate change has resulted in an increase in natural disasters and events. This has put a strain on insurance products because the premiums that are payable in exchange for cover are determined with reference to, amongst others, the propensity of a particular event occurring. Natural disasters that were not common in certain areas are now common. An insurer's ability to provide cover may be affected and this may give rise to an increase in complaints.

With respect to the financial services environment, the global exposure of the South African economy to international products and practices affects this area because South African consumers may purchase or invest in international products that are not regulated in South Africa. Should the product fail to deliver what was represented, this Office may not, even if a complaint is brought before it, be able to render the assistance required by the consumer. There are also growing concerns about the unscrupulous behaviour in the financial services environment with financial service providers wilfully disregarding their legal duties. The consequence is that consumers will be impacted by this behaviour, and it is therefore envisaged that there will be an increase in the complaints received by the FAIS Ombud.

The financial services industry will not escape the economic impacts of the COVID-19 pandemic and it will be affected by the increase in the cancellation of policies, savings and investments as well as the reduction in new business as a result of increased unemployment and poor business performance. This

could see a significant number of smaller FSPs leaving the industry in addition to the shrinking workforces within the larger FSPs which will culminate in the reduction of levies collected by the FSCA. This could have a significant impact on the manner in which the Office of the FAIS Ombud operates going forward.

6. Legislative environment

The FAIS Ombud is a creature of statute. It was created by and derives its mandate from the FAIS Act. There are intended amendments to the legislative environment, one of which is the repeal of the FAIS Act. This then will affect the way the FAIS Ombud operates. In particular, there is uncertainty regarding governance and support structures due to the establishment of the Ombud Council which it seems will be responsible for governance of the Ombud schemes recognised under the FSR Act. Changes

following the establishment of the Ombud Council are expected to be implemented.

In addition, there are also legislative prescripts that speak to the FAIS Ombud's support functions. Legislative, regulatory and policy changes by National Treasury and the DPSA, such as those that speak to cost containment, bear on the operations of the entity since they will affect procurement and may also affect recruitment of staff.

7. Internal environmental analysis

The internal performance environment and the influences therefrom were considered and an analysis of strengths, weaknesses, opportunities and threats (SWOT) were changes following the establishment of the Ombud Council are expected to be implemented. completed for the entity.

Strengths	Weaknesses
<ul style="list-style-type: none"> • Clear legislative mandate which sets out the FAIS Ombud's function, power and independence. • Strong oversight from National Treasury, audit processes and corporate governance structures. • Status of determinations as court rulings, same being in the public domain, thereby ensuring enforcement thereof and hopefully changing market behaviour in the industry and related business practices. • The FAIS Ombud is seen as independent by the industry and other stakeholders given its statutory nature, funding and the statutory reconsideration process via the Financial Services Tribunal. • Automated business processes involved in executing the mandate, including voice logging system which allows the FAIS Ombud to receive complaints by telephone outside of office; thereby achieving real-time updating of complaints. 	<ul style="list-style-type: none"> • Very low financial jurisdictional limit for awards to complainants thereby jeopardising the restitution effect of determinations. • Resource and budget limitations of the Office affecting achievement of strategic objectives. • Low salary levels negatively affecting the ability to attract and retain specialist resources to execute on the mandate and specialist support services. • Lack of succession planning due to vacancies of senior positions.
Opportunities	Threats
<ul style="list-style-type: none"> • A focussed governance approach from the Ombud Council and its Board after Chapter 14 of the FSR Act becomes effective. • FAIS Ombud collaboration initiative with FSCA Consumer Education Department (FSCA CED) and GEPEF. • Improved Office brand awareness, financial literacy and customer awareness by enhancing the social media footprint. • Attraction of relevant skills and expertise in order to capacitate the Office to meet its mandate. 	<ul style="list-style-type: none"> • Uncertainty regarding the future of the Ombud structure. • Funding challenges resulting from the negative effects of COVID-19 on the collection of levies from the industry. • Influx of complaints, including complex complaints, resulting from poor economic activity which gives rise to mischievous and illegal behaviour in the financial services industry. • Cyber-attacks. • Emergence of fintech and international developments that may result in unregulated products. • Labour unrest resulting from unionised environment.

8. Risk management framework

The FAIS Ombud's risk management framework includes policies and procedures that enable it to identify, measure, monitor and manage the range of risks effectively, including threats and weaknesses that arise in the course of business by the entity. It takes an integrated and comprehensive view of its risks. The framework also sets out the methodologies for identifying and assessing the impact of risks and the roles and responsibilities of management in relation to risks. The Risk Committee ensures that the FAIS Ombud continues to maintain an effective risk management framework.

The FAIS Ombud's risk management processes are designed to identify, measure, manage and monitor strategic and operational risks across the entire organisation. It continues to use risk management techniques to identify potential threats that could impede its ability to achieve its strategic goals and objectives.

INSTITUTIONAL PROGRAMME PERFORMANCE INFORMATION

Resolve complaints in a fair, expeditious and informal manner

All the processes and procedures within the Client Care Centre and the Case Management department are tailored towards enhancing the customer experience to all parties to a complaint. This includes the manner in which the outputs for this outcome have been crafted. All the outputs, as detailed below, are designed to measure the effectiveness of the Office of FAIS Ombud in executing its mandate in respect of the expeditious investigation of complaints. Ensuring the expeditious investigation of complaints is central to not only delivering upon the mandate of the FAIS Ombud but also to the satisfaction of all those that utilise its services. The following outputs measure the effectiveness of the FAIS Ombud in expeditiously investigating complaints and the achievement thereof is vital to enhancing the customer experience and delivering upon this outcome:

- The percentage number of complaints resolved with a period of 9 (nine) months from date of receipt: The Office of the FAIS Ombud has committed to ensuring that 92% of all complaints that are received are resolved within a period of 9 (nine) months.
- The percentage number of complaints resolved within a period of 6 (six) months from date of receipt: The Office of the FAIS Ombud has committed to ensuring that 85% of all complaints that are received are resolved within a period of 6 (six) months.
- The percentage number of complaints resolved within a period of 3 (three) months from date of receipt: The Office of the FAIS Ombud has committed to ensuring that 75% of all complaints that are received are resolved within a period of 3 (three) months.

- Maximum percentage active complaints older than 9 (nine) months of total active complaints (excluding property syndication complaints): The Office of the FAIS Ombud has committed to ensuring that at any time not more than 20% of all active complaints will be older than 9 (nine) months from date of receipt.
- Efficiency ratio measuring the percentage number of closed complaints received in a specific financial year: The Office of the FAIS Ombud has committed to ensuring that a minimum of 80% of all complaints received during the 2021/22 financial year are resolved within the financial year.
- The percentage reduction in the number of active property syndication complaints : The Office of the FAIS Ombud has committed to ensuring that the number of active property syndication complaints as at 1 April 2022 is reduced by 10% as at 31 March 2023.

In addition to the outputs listed above, the Office of the FAIS Ombud has an additional output that is designed to measure the effectiveness of these outputs in enhancing the customer experience. At the conclusion of all investigations conducted by the Office of the FAIS Ombud a Customer Satisfaction Form (CSF) is sent to all the parties of a complaint to rate the service provided during the investigation and the effectiveness thereof. This output is detailed below:

- The percentage number of satisfied customers as measured on returned CSFs for all resolved cases: The Office of the FAIS Ombud has committed to ensuring that 90% of all CSFs that are returned are positive.

Operational excellence/Achievement of legislative mandate

Operational excellence is achieved through compliance with applicable legislation/prescripts which is measured via achieving an unqualified audit opinion. The graduate trainee program is a means by which the Office meets its resource requirements and creates a skilled workforce to achieve our strategic goals. Employment equity statistics contributes to compliance with prevailing legislation.

Enhanced stakeholder management

Given the nature of the work undertaken by this Office, enhancing stakeholder relationships requires that we engage in a number of programmes if we are to achieve this objective or outcome. To this end, the Office identifies outreach programmes in various parts of the country including in rural and peri-urban areas and engagements with members of the industry.

Education of consumers can generally be split into two sub sections or categories. The first is financial literacy and the second is consumer literacy of the regulated

environment. Financial literacy means an understanding of and ability to differentiate financial product skills and will likely lead to consumers seeking financial advice or help so they can adequately manage their finances. This is because the knowledge you need for a financial product may not translate into knowing which financial product you need given your circumstances. Financial advisors provide a service to assist with the latter. Consequently, financially literate consumers, though wise to the need to manage their finances may not know what products can assist them to do so and will very likely continue to rely entirely on the advice received from financial services providers and to trust this advice implicitly. Financial literacy alone may not translate to less reliance on the services of this Office if these consumers experience the failings that can give rise to a complaint.

The levels of literacy of the consumers about the regulated environment is however different. It speaks to knowing more intimately how financial services and products are regulated and that very likely means that a consumer can identify the processes that must be followed in the provision of such financial services and products to them. Ideally, this should lead to less complaints, especially in

the category of complaints based on misinformation, failure to provide information (about risks and the nature of a financial product) and incorrectly recording or failing to record and/or reliance on information received from a consumer because a consumer can scrutinise the process and identify any shortcomings during the process of the rendering of the financial service or advice.

Where the collective literacy is not sufficient to afford such protection, this Office will continue to serve as a free resource to consumers to resolve such disputes to people who often don't have access to our Courts because of the prohibitive costs, lengthy delays and the adversarial nature of the litigation process.

The Office of the FAIS Ombud believes that our final responsibility is to industry. Business must make a sound profit, underpinned by good corporate governance and moral values. The Office of the FAIS Ombud must therefore explore and suggest fresh approaches to consumer services in the course of our enterprise. This is achieved through constant engagement and interaction with key industry entities and industry bodies, which includes the Financial Planning Institute.

REPORTING ON THE INSTITUTIONAL RESPONSE TO THE COVID-19 PANDEMIC

On 30 June 2021 the Office of the FAIS Ombud (the Office) conducted a risk assessment in terms of the “consolidated direction on occupational health and safety measures in certain workplaces” signed by the Minister of Employment and Labour on 11 June 2021. The purpose of the risk assessment was to consider both the mitigating factors already in place, the effectiveness thereof, as well as the potential and identified risks posed by the COVID-19 pandemic, to allow EXCO to make a recommendation on whether vaccinations should be made mandatory in accordance with paragraph 3(1)(a) (ii) of the Direction.

Based on the findings of the risk assessment the EXCO of the Office of the FAIS Ombud decided that vaccinations would not be made mandatory for the following reasons:

- The risk assessment conducted points to the risk within the Office as being ‘low’.
- The measures the Office of the FAIS Ombud had already put in place minimizes the risks identified in the risk assessment.
- The measures put in place also ensure that, should there be a positive COVID-19 case, the operations are not severely impacted.
- The regulations provide employees with the right to decide whether to vaccinate. Employees of the FAIS Ombud should therefore be afforded an opportunity to decide whether they want to vaccinate or not.
- The Office of the FAIS Ombud would continually and proactively monitor and assess the control measures in place to determine whether more stringent measures need to be applied or any amendments need to be made to the current controls in its continuing efforts to stem the tide of the virus and pandemic.
- The Office of the FAIS Ombud would continue to provide the necessary support, including allowing anyone who wants to get vaccinated be provided with any assistance required to do so.
- The Office of the FAIS Ombud also undertook to educate employees as to the advantages and disadvantages of vaccinations.

The Office of the FAIS Ombud has continued to update its Workplace Plan in accordance with latest directives issued by the Department of Employment and Labour. This includes the Code of Practice: Managing Exposure

to SARS-COV-2 in the Workplace 2022 published by the Minister of Employment and Labour in terms of section 203(2A) of the Labour Relations Act, 1995 on 15 March 2022 and which took effect when the Declaration of a National State of Disaster was announced.

The Office of the FAIS Ombud is in the process of moving towards a hybrid working environment, and in the meantime this Office continues to only allow one third of all staff to be present in the Office at any one time. The Office of the FAIS Ombud also continues to ensure that all staff members have access to the required PPE should they have cause to work from the Office. After the results of an informal census conducted in February 2022 where this Office’s vaccination rate was determined to have been below 50%, this Office through EXCO made the decision to retain all COVID-19 protocols, specifically that masks continue to be a requirement in the Office. The COVID-19 protocols retained by this Office are listed below:

- There is regular communication to staff informing them of any COVID-19 developments and ensuring they are reminded of the appropriate COVID-19 protocols and restrictions during the various alert levels.
- In accordance with the Workplace Plan, the Office of the FAIS Ombud has implemented strict COVID-19 protocols in respect of hand sanitation, social distancing, and the wearing of masks. This is reinforced with signage and disinfection stations throughout the Office.
- The Office of the FAIS Ombud conducts quarterly risk assessments regarding the effectiveness of the protocols employed. This assessment shows that the overall risk rating within the Office is low.
- The Office of the FAIS Ombud has compulsory screenings for both staff and visitors to the Office upon entry.
- The Office of the FAIS Ombud also closes the Office for a period of 7 (seven) days after any positive infection or close contact to allow for the required self-isolation period.
- The Office of the FAIS Ombud has also procured and maintains appropriate levels of PPE for all staff inclusive of masks and hand sanitisers as well as disinfectants to be used to clean the Office.

Table 1: Progress on institutional response to the COVID-19 pandemic

Programme/ Sub programme	Intervention	Geographic location (province/district/ local municipality) (where possible)	No. of beneficiaries (where possible)	Disaggregation of beneficiaries (where possible)	Total budget allocation per intervention (R'000)	Budget spent per intervention	Contribution to the outputs in the APP (where applicable)	Immediate outcomes
Deep cleaning and disinfection	Monthly sanitation of the Office and disinfection after any positive COVID-19 test to ensure a safe working environment.	Gauteng, Tshwane Municipality	N/A	N/A	N/A	55 998,25	N/A	Created a safe working environment for staff that may have been required to work from the office.
PPE	Ensure all staff have access to masks, hand sanitation etc. to ensure protection whilst on the premises.	Gauteng, Tshwane Municipality	All staff	N/A	N/A	26 251,35	N/A	Promote compliance with COVID-19 protocols for staff that may have been required to work from the office.
Total						82 249,60		



Marc Alves
FAIS Ombud COVID-19 Compliance Officer (March 2020 – March 2022)



PART C

GOVERNANCE



INTRODUCTION: GOVERNANCE

The King IV Report on Corporate Governance (2016) describes governance as the exercise of ethical and effective leadership by the governing body to achieve particular governance outcomes, such as ethical culture, good performance, effective control, and legitimacy.

Ms Karlien Hechter

Governance, Risk and Compliance
Officer

The FAIS Ombud is committed to driving and maintaining a culture that is accountable and upholds values of integrity and honesty. Good corporate governance is not a set of rules but rather principles that organisations, such as the FAIS Ombud, choose to live by.

Governance Committee Appointments

The FAIS Ombud accounts to the Minister of Finance through the Accounting Authority (the Commissioner of the FSCA) assisted by the appointed Governance Committees. The Governance Committees, as appointed by the Director-General in terms of Section 68 (1) of the Financial Sector Regulation Act (FSR Act), consist of non-executive members with diverse backgrounds. These appointments are made with consideration to experience, technical skills, and the competencies required for service in the financial services industry with due regard to public interest.

The Governance Committees are empowered by the FSR Act to review, monitor, and advise the FSCA Executive Committee (EXCO) on the policies of the FAIS

Ombud regarding remuneration and the risks faced by the Office as well as plans for managing those risks. Furthermore, being a public entity in terms of the (PFMA), the Accounting Authority of the FSCA and thus of the FAIS Ombud Office is required in terms of Section 51 (1)(a) to establish an Audit Committee, which will direct and control internal and external audits as well as reporting responsibilities of the Accounting Authority in terms of the PFMA. The FSCA EXCO has also established a Human Resources and Social and Ethics Committee with responsibilities that extend to the FAIS Ombud office. These Governance Committees are responsible for ensuring the institution complies with relevant legislation, codes of good corporate governance, and practices. Each committee has its own terms of reference, which are reviewed annually in line with best practice.

Within the reporting period, the Governance Committees met at least once per quarter and special meetings were convened when required. The names of the members as well as a record of the number of Committee and Sub-committee meetings attended are noted below:

Committee Member	Audit Committee	Risk Committee	Human Resources Committee	HR Committee
Total number of meetings	5	4	4	5
Mr Nico Esterhuizen- Chairperson Audit from 13/09/2021	3	2	N/A	N/A
Ms J Mogadime – From 1/08/202	5	N/A	4	N/A
Ms D Msomi – Chairperson HR from 1/08/2020	N/A	N/A	4	5
P Sutherland – Chairperson REMCO from 01/08/2020	N/A	N/A	3	5
Mr S Gounden – from 01/08/2020	2	1	N/A	N/A
Dr P Mokgobu from 1/08/2020	1	N/A	3	N/A
Ms P Mvulane from 1/11/2020	4	N/A	N/A	N/A
Mr H Ratshefola - Chairperson Risk from 1/07/2020	5	4	4	N/A
Adv S Malatji from 1/07/2020	N/A	4	N/A	N/A
Mr P Koch from 1/07/2020	N/A	3	N/A	N/A
Professor T Ajam from 1/07/2020	N/A	3	N/A	N/A
Ms L Molebatsi from 1/07/2020	N/A	N/A	N/A	4
Ms T Randall from 1/07/2020	N/A	N/A	N/A	5
Ms V Balgobind from 1/07/2020	N/A	N/A	N/A	4

OTHER COMMITTEES

Risk Committee

The Risk Committee, as a statutory sub-committee of the FSCA EXCO, has the same responsibilities towards the FAIS Ombud as it does towards the FSCA. Accordingly, the Risk Committee has committed the FAIS Ombud to a process of risk management that is aligned with the Public Sector Risk Management Framework applicable to all national public entities as set out in the PFMA, National Treasury Regulations as well as the principles of King IV.

The Risk Management Committee is responsible for assisting the Accounting Authority and the Ombud in addressing its oversight requirements of risk management and evaluating and monitoring the organisation's performance with regards to risk management. The Risk Management Committee's role is to formulate, promote, and review the institution's Enterprise Risk Management objectives, strategy, and policy and monitor the process at strategic and management levels.

Audit Committee

The Audit Committee is, amongst others, responsible for overseeing the internal and external audit functions, maintaining effective and efficient internal controls,

reviewing the financial information, and ensuring the integrity of the annual financial statements. The Audit Committee assists the Accounting Authority to safeguard the assets of the FAIS Ombud and to manage financial and other risks that might affect the organisation.

Human Resources Committee

The Human Resources Committee assists the Accounting Authority by ensuring that the FAIS Ombud's Human Resources strategy and policies are adequate, reviewed regularly for relevance, and is implemented effectively by management.

Remuneration Committee

The role of the Remuneration Committee is to assist the Accounting Authority in ensuring that senior management and employees of the FAIS Ombud are appropriately rewarded for the contribution they make towards the goals of the organisation. Not only does this ensure the retention of employees with appropriate skills but also employees that are motivated to contribute in a positive manner.

DEFINED AND SEPARATE ROLES: ACCOUNTING AUTHORITY AND THE OMBUD

The roles of the Accounting Authority and the Ombud are separate, with a clear division of responsibilities to

ensure a balance of power and authority as set out in a Delegation of Authority document. The Accounting Authority fulfils a non-executive function.

Delegation of Authority

The Delegation of Authority evidences the separation of the roles of the Accounting Authority and the Ombud. In terms of the FAIS Act, the Ombud has administrative powers that enable the Ombud to run the day-to-day operations of the FAIS Ombud efficiently.

FAIS Ombud Risk Management Philosophy

The FAIS Ombud’s philosophy is to ensure a safe working environment for employees, wherein risk is effectively managed and improved service delivery for the benefit of all stakeholders.

While the Accounting Authority is ultimately responsible for ensuring that effective, efficient, and transparent systems of financial and risk management and internal control are maintained, the reality is that every official in the Office of the FAIS Ombud has a part to play in risk management.

The Office is further committed to conducting risk management activities in a cost-effective manner that is commensurate with the principles of fairness, accountability, responsibility, and transparency.

To this end, the Executive Committee of the FAIS Ombud (‘EXCO’) is committed to ensuring the following:

- There is a sound and effective system of internal controls and an enterprise-wide risk management plan in place;
- That the FAIS Ombud’s risk management framework ensures risk ownership from line management to the Executive Committee of the FAIS Ombud;

- This framework is embedded in the operations of the FAIS Ombud and all measures are taken to ensure its effectiveness;
- That the FAIS Ombud’s risk management strategies are consistently reviewed; and
- That there is an effective system of monitoring and reporting.

RISK MANAGEMENT WITHIN THE FAIS OMBUD

The EXCO exercises ongoing oversight of risk management and sets the direction for how risk should be approached and addressed in the organisation. In making decisions, risks are treated as integral. EXCO sets the tone for the organisation through its commitment to risk management and its support of internal policies.

EXCO further exercises oversight over the operations of the FAIS Ombud through monthly reporting by the respective departments and/or sub-committees within the organisation. This ensures accountability, transparency, and fairness. The aforesaid function is supported by regular internal and external audits.

Risk management is the responsibility of every employee at the FAIS Ombud. Not only is risk management incorporated in the individual performance contracts of each employee, but the respective departments in the organisation are actively involved in managing their risk registers on a regular basis. It is imperative that all employees understand the risks confronting the FAIS Ombud in their day-to-day activities and how to manage these risks.

Below is a list of the top five (5) strategic risks faced by the FAIS Ombud during the 2020/21 financial year, including the risk stemming from the global pandemic crisis the FAIS Ombud was faced with during the Financial year. Detailed assessments of these risks are performed on a quarterly basis and an annual strategic risk workshop.

Number	Risk
1.	Going concern risk, including the risk of not being able to fund the operations of the Ombud
2.	Uncertainty in the Ombud landscape
3.	Inability/Restraint in filling of key senior management positions
4.	Fraud and corruption risk—exposure to fraud and corruption
5.	Business continuity risk—inability of the FAIS Ombud to continue functioning in the case of a disaster

FRAUD AND CORRUPTION

Fraud and corruption in the public sector are a reality and regarded as one of the major risks faced by public entities. No entity is immune to fraud and the FAIS Ombud, therefore, manages this risk relentlessly. Not only are newly-appointed employees made aware about the FAIS Ombud's zero tolerance attitude to fraud but, throughout an employee's stay at the FAIS Ombud, they are reminded by means of training and information sessions.

The FAIS Ombud's fraud and corruption prevention strategy includes its Fraud and Corruption Prevention Policy, Fraud and Corruption Prevention Plan, Fraud and Corruption Response Plan, and Whistle Blowing Policy. The whistle blowing hotline is managed by an independent service provider. A register of tip-offs is maintained to ensure that all tip-offs received that fall within the mandate of the FAIS Ombud are followed up on. Tip-offs that fall within the mandate of other regulators are passed on to them. Ethical conduct and organisational integrity are key to preventing fraud and corruption in any organisation.

Code of Conduct and Ethics

The FAIS Ombud's code of conduct and ethics/credo statement establishes norms and standards related to integrity, ethics, professional conduct, and anti-corruption. It acts as a guideline to employees with regards to their conduct from an ethical point of view, both in their individual conduct and in their relationship with others. It helps to uphold organisational integrity as well as build a value-driven workplace.

The code/credo statement spells out the spirit in which employees should perform their duties, what should be done to avoid conflicts of interest, and what is expected of them in terms of their personal conduct. Compliance with the code of conduct and ethics enhances professionalism and helps ensure confidence in the Office of the FAIS Ombud. The code/credo statement always places a duty and responsibility on the employees to behave ethically. Employees will be subject to disciplinary steps if they are in breach of the code of conduct and ethics.

HEALTH, SAFETY, AND ENVIRONMENTAL ISSUES In terms of the OHS

Act (Act 85 of 1993) and Regulations, the Office must ensure and maintain a safe working environment for employees.

Furthermore, the Office of the FAIS Ombud is required to comply with the Consolidated Direction on Occupational Health and Safety Measures in Certain Workplaces,

issued by the Department of Employment and Labour in respect of COVID-19 safety measures in the workplace. The last updated version of this directive was 11 June 2021.

The FAIS Ombud remains committed to ensuring that the entity continues to operate whilst prioritising the health and safety of its employees. The FAIS Ombud has developed a workplace plan that is constituted in accordance with regulation 16(6)(b) and shall remain in force for as long as the directive and the declaration of a national disaster, published in the National Gazette 43096 on 15 March, 2020, remains in force. Therefore, the Office is in adherence to the Occupational Health and Safety Act, Act 85 of 1993, as well as the COVID-19 Government Notices published in terms of the Disaster Management Act, 2002.

Remote working vs working from the office

Due the effects of COVID-19 and the imminent risk of infection, the FAIS Ombud continues to implement aggressive strategies to maintain the health and safety of employees while ensuring that business continuity is not compromised. The majority of staff members continued to work remotely.

SOCIAL RESPONSIBILITY The Office of the FAIS Ombud will continue the practice of donating the assets whose book values have been fully depreciated to schools and charitable institutions. Notwithstanding that these assets have been fully depreciated for accounting purposes; they can still be used by such institutions. The Office remains committed to sustainable business operations.

Environment

As an office-based organisation, the Office of the FAIS Ombud has a limited impact on the environment. Our office buildings incorporate many green features, particularly elements of energy and water saving.

Electricity Consumption

Some of our sustainable initiatives include the auto detector to switching off of lights and basement fans when no movement is detected, or after-hours and during weekends. Light sensors were installed in the bathrooms, meeting rooms, and training rooms.

Compliance with Laws and Regulations

Quarterly regulatory compliance reports in terms of the PFMA and Treasury Regulations were submitted to National Treasury and reports were reviewed by the Risk and Audit Committee. No deviations were noted. Internal policies and procedures were reviewed to ensure compliance with applicable laws and regulations. The external audit report indicated that no instance of non-compliance was identified.



PART D

HUMAN RESOURCES MANAGEMENT



Mr Lebogang Lebeko
HR Manager

HUMAN RESOURCES MANAGEMENT

The Human Resources department is at the centre of sound employment practices through the advisory and guidance service it provides to management and employees.

The Human Resources department is at the centre of sound employment practices through the advisory and guidance service it provides to management and employees. As part of its objectives the HR department aims to build optimal capacity in terms of human resources and processes to deliver on the mandate in an economic, efficient and effective manner. In order to further ensure that the organisation provides a safe and sound work environment, the HR department continues to review its policies. This is done to create and maintain optimal functioning of the organisation and its staff.

Employee wellness programme

Our wellness service programme is continuously educating and assisting our employees to take better care of themselves and their families. Earlier in the year staff members of the FAIS Ombud office were able to attend, for the first time since the start of the COVID-19 pandemic, a physical employee wellness event. During the event, employees enjoyed activities such as yoga and hiking, a psychologist was also on site to speak to employees about dealing with change.

This topic of Change Management arose from the introduction of the hybrid policy, this is after employees were working from home for a period of 2 (two) years. The introduction of the hybrid policy was welcomed by employees and seen as an employee value proposition since it allows for flexibility and thereby improving the quality of life-work balance for our employees.

Trainee development programme

The organisation considers the training and development of its employees as very important. Employees' education, training and development will always be undertaken in accordance with the strategic objectives and operational requirements of the FAIS Ombud. As such, the FAIS Ombud will ensure that all training provided is of a high quality, is relevant to its core functions and is in alignment with the development of employees in line with the Personal Development Plans (PDPs). During the 2021/22 financial period, the FAIS Ombud office spent R 464 318 on various training programmes and formal studies.

Human Resource Statistics

Table 1: Employment equity stats

Occupational level	African		Indian		Coloured		White		M	F	Total
	M	F	M	F	M	F	M	F			
Top Management	0	1	0	0	0	0	0	0	0	1	1
Senior Management	2	2	1	0	0	0	1	1	4	3	7
Professionally qualified and experienced specialists and mid-management	1	2	0	0	0	0	1	0	2	2	4
Skilled technical and academically qualified	6	13	0	0	0	1	1	1	5	15	22
Semi-skilled	5	11	0	0	0	1	0	0	5	12	17
Unskilled	0	3	0	0	0	0	0	0	0	3	3
Fixed-term contractors	4	6	0	1	0	1	0	0	4	8	12
Total	18	38	1	1	0	3	3	2	22	44	66

Table 2: Terminations

Reason for leaving:	Number of resignations
Death	0
Resignation	3
Dismissal	0
Retirement	0
Ill- health	0
Expiry of contract	0
Total	3

Personnel-related costs

Table 1: Salary by occupational level

Occupational level	Salary (R'000)
Top management	2 414
Senior management	9 229
Professionally qualified and experienced specialists and mid-management	2 905
Skilled technical and academically qualified	9 325
Semi-skilled	4 576
Unskilled	610
Temporary	1 697
Total	30 755

Table 2: Performance rewards

Occupational level	Performance rewards (R'000)
Top management	239
Senior management	512
Professionally qualified and experienced specialists and mid-management	104
Skilled technical and academically qualified	469
Semi-skilled	227
Unskilled	0
Total	1 551

Table 3: Training

Type of training	Number of attendees	Total cost incurred (R'000)
Short courses	55	302
Formal studies (e.g., Degree)	44	201
Total	99	503

B-BBEE compliance performance information

The FAIS Ombud's B-BBEE status was verified during the year under review and the overall BBEE Contribution level received was "non-compliant".

The scoring is as follows:

Scorecard element	Target score	Actual score
Management control	20	13,58
Skills development	25	0,00
Procurement	30	25,77
Enterprise and supplier development	20	0,00
Socio-economic development and consumer education	5	0,00
Total	100	39,35

This FAIS Ombud has put measures in place to ensure an improved rating in future.



PART E

FINANCIAL INFORMATION



Shaunil Maharaj
Chief Financial Officer

The reports and statements set out below comprise the financial statements presented to the parliament:

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14. Annual performance report	116

Abbreviations

AGSA	Auditor General South Africa
ASB	Accounting Standards Board
CPD	Corporation for Public Deposits
FSCA	Financial Sector Conduct Authority
GRAP	Generally Recognised Accounting Practice
IAS	International Accounting Standards
PFMA	Public Finance Management Act
SA GAAP	South African Statements of Generally Accepted Accounting Practice
SARB	South African Reserve Bank
SETA	Sector Education and Training Authority
TR	Treasury Regulations

STATEMENT OF RESPONSIBILITY AND CONFIRMATION OF ACCURACY

To the best of my knowledge and belief, I confirm the following:

All information and amounts disclosed in the annual report is consistent with the annual financial statements audited by the Auditor General.

The annual report is complete, accurate and is free from any omissions.

The annual report has been prepared in accordance with the guidelines on the annual report as issued by National Treasury.

The Annual Financial Statements have been prepared in accordance with the GRAP standards applicable to the public entity.

The accounting authority is responsible for the preparation of the annual financial statements and for the judgements made in this information.

The accounting authority is responsible for establishing, and implementing a system of internal control has been designed to provide reasonable assurance as to the integrity and reliability of the performance information, the human resources information and the annual financial statements.

The external auditors are engaged to express an independent opinion on the annual financial statements.

In our opinion, the annual report fairly reflects the operations, the performance information, the human resources information and the financial affairs of the entity for the financial year ended 31 March 2022.

Yours faithfully



Mr. U. Kamlana
Commissioner – FSCA
29 July 2022



Adv. N. Tshombe
(Acting) FAIS Ombud
29 July 2022

ACCOUNTING AUTHORITY'S RESPONSIBILITIES AND APPROVAL

The Commissioner of the FSCA, as Accounting Authority, is required by the Public Finance Management Act (Act 1 of 1999), to maintain adequate accounting records and are responsible for the content and integrity of the annual financial statements and related financial information included in this report. It is the responsibility of the Commissioner to ensure that the annual financial statements fairly present the state of affairs of the entity as at the end of the financial year and the results of its operations and cash flows for the period then ended. The external auditors are engaged to express an independent opinion on the annual financial statements and was given unrestricted access to all financial records and related data.

The annual financial statements have been prepared in accordance with Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board.

The annual financial statements are based upon appropriate accounting policies consistently applied and supported by reasonable and prudent judgements and estimates.

The Accounting Authority acknowledges that he is ultimately responsible for the system of internal financial control established by the entity and place considerable importance on maintaining a strong control environment. To enable the Accounting Authority to meet these responsibilities, he sets standards for internal control aimed at reducing the risk of error or deficit in a cost effective manner. The standards include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable level of risk. These controls are monitored throughout the entity and all employees are required to maintain the highest ethical standards in ensuring the entity's business is conducted in a manner that in all reasonable circumstances is above reproach. The focus of risk management in the entity is on identifying, assessing, managing and monitoring all known forms of risk across the entity. While operating risk cannot be fully eliminated, the entity endeavours to minimise it by ensuring that appropriate infrastructure, controls, systems and ethical behaviour are applied and managed within predetermined procedures and constraints.

The Accounting Authority is of the opinion, based on the information and explanations given by management, that the system of internal control provides reasonable assurance that the financial records may be relied on for the preparation of the annual financial statements. However, any system of internal financial control can provide only reasonable, and not absolute, assurance against material misstatement or deficit.

The Accounting Authority has reviewed the entity's cash flow forecast for the year to 31 March 2023 and, in the light of this review and the current financial position, the Accounting Authority is satisfied that the entity has or has access to adequate resources to continue in operational existence for the foreseeable future.

The annual financial statements are prepared on the basis that the entity is a going concern and that the entity has neither the intention nor the need to liquidate or curtail materially the scale of the entity.

Although the Accounting Authority is primarily responsible for the financial affairs of the entity, it is supported by the entity's external auditors.

The external auditors are responsible for independently reviewing and reporting on the entity's annual financial statements. The annual financial statements have been examined by the entity's external auditors and their report is presented on page 79.

The annual financial statements set out on pages 84 to 115, which have been prepared on the going concern basis, were approved by the Commissioner on 29 July 2022:



Mr. U Kamlana
Commissioner: FSCA

AUDIT COMMITTEE REPORT

The Audit Committee is pleased to present its report for the financial year ended 31 March 2022.

Audit Committee members and attendance

The audit committee consists of the members listed hereunder and should meet 5 times per annum as per its approved terms of reference. During the current year 5 meetings were held.

Name of member	Number of meetings attended
Mr. S. Gounden (Resigned in July 2021)	2/2
Dr. P. Mokgobu	1/1
Ms. J. Mogadime	5/5
Mr. H. Ratshefola	5/5
Ms. P. Mvulane	4/5
Ms. L. Senne	3/3
Mr. N. Esterhuizen (Chairperson) - Appointed in September 2021	3/3

Audit Committee's responsibility

The Committee reports that it has complied with its responsibilities arising from section 51(a)(1) of the PFMA and section 77 of the PFMA and Treasury Regulation 27.1.

The Committee also confirms that it has adopted appropriate formal terms of reference as its Audit Committee Charter, has regulated its affairs in compliance with this charter and has discharged all its responsibilities as contained therein.

Risk Management

The Risk Management Committee has been established in terms of the Financial Sector Regulation Act to oversee the risks associated with the entity. The chairperson of the Audit Committee is a member of the Risk Management Committee and vice versa to ensure that relevant information is transferred effectively. The Risk Management Committee fulfils an oversight role on financial reporting risks, internal financial controls, compliance risks, fraud risk as it relates to financial reporting, and information technology risks as these relate to financial reporting.

The effectiveness of internal financial controls

The system of internal controls applied by the entity over financial and risk management is effective, efficient and transparent. In line with the PFMA requirements, Internal Audit and management provides the Committee with assurance that the internal controls are appropriate and effective. This is achieved by means of the risk management process, as well as the identification of corrective actions and suggested enhancements to the controls and processes. From the various reports of the Internal Auditors, the Auditor-General of South Africa, it was noted that no matters were reported that indicate any material deficiencies in the system of internal control or any deviations therefrom. Accordingly, the Committee reports that the system of internal control over financial reporting for the year under review was adequate and effective.

Evaluation of annual financial statements

The Committee has:

- reviewed and discussed the audited annual financial statements to be included in the annual report, with the Auditor-General of South Africa;
- reviewed the Auditor-General of South Africa's management report and management's response thereto;
- reviewed changes in accounting policies and practices;
- reviewed the entities compliance with legal and regulatory provisions;
- reviewed significant adjustments resulting from the audit.

The Committee has discussed and agreed on the conclusions of the Auditor-General of South Africa on the annual financial statements. The Committee has recommended the annual financial statements to the Commissioner for approval.

In-Year Management and Monthly/Quarterly Report

The Committee has:

- Reviewed the quarterly financial management and performance reports submitted to National Treasury in terms of the PFMA and Treasury Regulations.
- Reviewed the policies and procedures to ensure compliance with applicable laws and regulations.

The Committee is satisfied with the quality of the in-year reports that were presented at the Audit Committee meetings.

Internal Audit

The Committee is satisfied that the internal audit function is operating effectively and that it has addressed the risks pertinent to the entity and its audits.

The following internal audit work was completed during the year under review. Internal audit reports on the following subject matter were issued:

- Internal financial controls
- Audit of pre-determined objectives
- Supply Chain Management and contract management
- Follow up on External and Internal Audit Report
- Data migration Review
- Review of the draft annual financial statements
- OHS and Covid-19 Audit
- Internal control audit opinion
- Complaints Handling

Auditor-General of South Africa (External Auditors)

The Audit Committee has met with the Auditor-General of South Africa to ensure that there are no unresolved issues.



Mr. N. Esterhuizen
Chairperson
29 July 2022

RISK MANAGEMENT COMMITTEE'S REPORT

Committee Mandate

Effective risk management is imperative to the FAIS Ombud to fulfil its mandate. Risk management efforts are focused on supporting the FAIS Ombud's strategic objectives.

1. Governance of Risk

The Accounting Authority has committed the FAIS Ombud to a process of risk management that is aligned to the principles of good corporate governance, as supported by the PFMA.

The Accounting Authority has delegated certain aspects of its authority as it pertains to risk management to the Risk Management Committee.

The committee consists only of non-executive members. The committee's overall objective is to assist the Accounting Authority in fulfilling its responsibility of risk management by ensuring that management identifies significant risks associated with the environment within which the FAIS Ombud operates and develops a framework for managing these risks. The Risk Management Strategy, incorporating a Fraud Prevention Plan, has been developed accordingly.

The committee meets at least four times a year. The Ombud, Chief Financial Officer, Governance, Risk and Compliance Officer; and Human Resources Manager are permanent invitees of the Committee. Members of senior management of the FAIS Ombud, assurance providers and other members may be required to attend committee meetings by invitation only.

The committee is an advisory committee and not an executive committee and as such it does not perform any management functions or assume any management responsibilities. Its role is that of an independent and objective adviser and it operates as an overseer, making recommendations to the Accounting Authority for final approval.

The committee has complied with its responsibilities as stipulated in Section 51 of the PFMA. Furthermore, the Risk Management Committee has regulated its affairs and discharged its responsibilities in accordance with its formal terms of reference and provided objective oversight and advice.

2. Roles and Responsibilities

The Risk Management Committee has fulfilled its oversight responsibility for risk management by ensuring that:

- The risk management strategy, risk management policy and risk management plans were considered;
- The continual monitoring of risks was undertaken;
- The risk management plan is integrated into the daily activities of the FAIS Ombud;
- Management has identified significant risks associated with the environment within which the FAIS Ombud operates and has developed a framework for managing these risks;
- The risk management strategy covering strategic, operational and financial risks was reviewed and approved;
- The risk management strategy incorporates a Fraud Prevention Strategy, which in turn incorporates the Fraud Prevention Policy, the Fraud Prevention Plan, the Fraud Response Plan and the Whistle Blowing Policy; and
- The systems for risk management processes are effective.



Mr Hamilton Ratshefola
Chairperson: Risk Management Committee
29 July 2022

CORPORATE GOVERNANCE REPORT

1. GOVERNANCE COMMITTEES

The governance committees were established in terms of the Financial Sector Regulation Act and PFMA to review, monitor, advise and make recommendations to the Accounting Authority for decision-making. These governance committees are responsible for ensuring the institution complies with relevant legislation, codes of good corporate governance and practices. Each committee has its own terms of reference, which are reviewed annually in line with best practice.

2. AUDIT COMMITTEE

The committee assists the institution in its responsibility for safeguarding assets, operating control systems, combined assurance, finance functions, internal and external audit services, and advises the on the adequacy of risk management processes and strategies. It meets at least five times per annum.

Member	Qualifications	2021/05/28	2021/07/26	2021/09/23	2021/12/02	2022/03/18
Mr. S. Gounden (Resigned in July 2021)	B Compt; Higher Diploma in Accounting; CA; Executive Leadership Development Institute	Yes	Yes	N/a	N/a	N/a
Dr. P. Mokgobu (Transferred in July 2021)	PhD; MBA MAdmin; B Admin; BAdmin (Honours); Diploma in Labour	Yes	N/a	N/a	N/a	N/a
Ms. J. Mogadime	BA; MBA; Dip Marketing (Cim)	Yes	Yes	Yes	Yes	Yes
Mr H. Ratshefola	BCom (Information Systems); IBM Executive Leadership	Yes	Yes	Yes	Yes	Yes
Ms. P. Mvulane	B Com (Honours); CA; Diploma in Auditing,	Yes	Yes	Yes	No	Yes
Ms. L. Senne	B Com (Honours); CA; Diploma in General Management, MBA	N/a	N/a	Yes	Yes	Yes
Mr. N. Esterhuizen (Appointed in September 2021)	B Degree (Hons, Masters (Degrees (2).CA;	N/a	N/a	Yes	Yes	Yes
*N/A - Not applicable						

3. RISK MANAGEMENT COMMITTEE

The committee assists the institution in ensuring the institution implements effective policies and plans for risk management that will enhance its ability to achieve strategic objectives. It advises the institution on the adequacy of risk management processes and strategies. It met four times in the review period, with attendance reflected below.

Member	Qualifications	2021/06/02	2021/09/01	2021/11/30	2022/03/02
Mr. H. Ratshefola	BCom (Information Systems); IBM Executive Leadership	Yes	Yes	Yes	Yes
Mr. S. Gounden (Resigned in July 2021)	B Compt; Higher Diploma in Accounting; CA; Executive Leadership Development Institute - Harvard Business School	Yes	N/a	N/a	N/a
Mr. P. Koch	MSc (Industrial Relations & HR Management), BA (Philosophy, Politics & Economics), PGDip (Accounting), BCom Honours BBusSci Honours, CA	Yes	No	Yes	Yes
Mr. N. Esterhuizen (Appointed in September 2021)	B Degree (Hons, Masters (Degrees (2)).CA;	N/a	N/a	Yes	Yes
Prof T. Ajam	PhD (Public Management), M.A, B.A. (Hons) Economics, M. Bus & B. Bus. Sc	Yes	Yes	Yes	No
Adv S. Malatji	B.A, LLB, Advanced Diploma in Banking, Financial Management and Investments, Post Diploma in Drafting & Interpretation	Yes	Yes	Yes	Yes
*N/A - Not applicable					

4. HUMAN RESOURCES COMMITTEE

The function of this committee is to ensure the institution's human resources strategy and policies are implemented. The committee also fulfills the duties of an ethics and social committee it meets at least four times per annum.

Member	Qualifications	2021/06/03	2021/09/14	2021/11/18	2022/03/03
Ms. D. Msomi	BA (Hons); PMD, MBA; Postgraduate (Corporate Governance); Postgraduate (Advertising and Marketing)	Yes	Yes	Yes	Yes
Ms. J. Mogadime	BA; MBA; Dip Marketing (Cim)	Yes	Yes	Yes	Yes
Mr. H. Ratshefola	BCom (Information Systems); IBM Executive Leadership	Yes	Yes	Yes	Yes
Prof P. J. Sutherland	BCom LLB (Cum Laude), PhD	Yes	Yes	Yes	No
Dr. P. Mokgobu (Appointed in August 2021)	PhD; MBA; MAdmin; B Admin; BAdmin (Honours); Diploma in Labour	N/a	Yes	Yes	Yes
*N/A - Not applicable					

5. REMUNERATION COMMITTEE

The committee ensures the institution's remuneration strategies and policies are implemented. It reviews compensation matters and benchmarks salaries of staff. The committee met five times in the period under review, with attendance reflected below.

Member	Qualifications	2021/06/03	2021/09/22	2021/11/29	2021/12/09	2022/03/07
Prof. P. J. Sutherland	BCom LLB (Cum Laude), PhD	Yes	Yes	Yes	Yes	Yes
Ms. V. Balgobind	Bachelor of Administration, B. Administration (Honours) (Industrial Psychology), Masters (Industrial Psychology), Masters in Business Leadership	Yes	Yes	No	Yes	Yes
Ms. L. Molebatsi	BA(Psychology), Senior Executive Program, PG Diploma: Rural Development & Management and Senior Management Development Program	Yes	No	Yes	Yes	Yes
Ms. T. L. Randall	BCompt (Accounting & Auditing), Secretarial Diploma	Yes	Yes	Yes	Yes	Yes
Ms. D. Msomi	BA (Hons); PMD, MBA; Postgraduate (Corporate Governance); Postgraduate (Advertising and Marketing)	Yes	Yes	Yes	Yes	Yes
*N/A - Not applicable						

REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

Report on the audit of the financial statements

Opinion

1. I have audited the financial statements of the Office of the Ombud for Financial Services Providers (FAIS Ombud) set out on pages 84 to 115, which comprise the statement of financial position as at 31 March 2022, the statement of financial performance, statement of changes in net assets, cash flow statement and statement of comparison of budget and actual amounts for the year then ended, as well as notes to the financial statements, including a summary of significant accounting policies.
2. In my opinion, the financial statements present fairly, in all material respects, the financial position of the FAIS Ombud as at 31 March 2022, and its financial performance and cash flows for the year then ended in accordance with the Generally Recognised Accounting Practice (Standards of GRAP) and the requirements of the Public Finance Management Act no. 1 of 1999 (PFMA).

Basis for opinion

3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of my report.
4. I am independent of the public entity in accordance with the International Ethics Standards Board for Accountants' International code of ethics for professional accountants (including International Independence Standards) (IESBA code) as well as other ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.
5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Responsibilities of the accounting authority for the financial statements

6. The accounting authority is responsible for the preparation and fair presentation of the financial statements in accordance with the Standards of GRAP and the requirements of the PFMA 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.
7. In preparing the financial statements, the accounting authority is responsible for assessing the public entity's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the appropriate governance structure either intends to liquidate the public entity or to cease operations, or has no realistic alternative but to do so.

Auditor-general's responsibilities for the audit of the financial statements

8. My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.
9. A further description of my responsibilities for the audit of the financial statements is included in the annexure to this auditor's report.

Report on the annual performance report

10. In accordance with the Public Audit Act 25 of 2004 (PAA) and the general notice issued in terms thereof, I have a responsibility to report material findings on the usefulness and reliability of the reported performance information against predetermined objectives presented in the annual performance report. The accounting authority is responsible for the preparation of the annual performance report.
11. I performed procedures to evaluate the usefulness and reliability of the reported performance information on

selected performance indicators in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice.

12. I performed the procedures in accordance with the AGSA audit methodology. This engagement is not an assurance engagement. Accordingly, I do not express an opinion or an assurance conclusion.
13. My procedures address the usefulness and reliability of the reported performance information on the selected performance indicators, which must be based on the public entity's approved performance planning documents. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures do not examine whether the actions taken by the public entity enabled service delivery. My procedures do not extend to any disclosures or assertions relating to the extent of achievements in the current year or planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.
14. I performed procedures to determine whether the reported performance information was properly presented and whether the performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the selected performance indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.
15. I selected the following material performance indicators contained in Complaints resolution presented in the public entity's annual performance report for the year ended 31 March 2022 set out on pages 116 to 120. I selected the indicators that measure the public entity's performance on its primary mandated functions and which are of significant national, community or public interest.

PERFORMANCE INDICATORS: COMPLAINTS RESOLUTION
Percentage of satisfied customers as derived from the CSFs in 2021/22
Percentage of complaints closed within 9 months of receipt
Percentage of complaints closed within 6 months of receipt
Percentage of complaints closed within 3 months of receipt
Percentage of active complaints that are older than 9 months (excluding property syndications)
Efficiency ratio
% decrease in active property syndication complaints from the number of active property syndication complaints as at 1 April 2021

16. I did not identify any material findings on the usefulness and reliability of the reported performance information for the selected material performance indicators.

Other matter

17. I draw attention to the matter below.

Achievement of planned targets

18. Refer to the annual performance report on 116 to 120 for information on the achievement of planned targets for the year and management explanations provided for the underachievement of targets.

Report on compliance with legislation

19. In accordance with the PAA and the general notice issued in terms thereof, I have a responsibility to report material findings on the public entity's compliance with applicable legislation relating to financial matters, financial management and other related matters. The accounting authority is responsible for the public entity's compliance with legislation.
20. I performed procedures to test compliance with selected requirements in key legislation in accordance with the AGSA audit methodology. This engagement is not an assurance engagement. Accordingly, I do not express an assurance opinion or conclusion.
21. I selected requirements in key legislation for compliance testing that are relevant to the financial and performance management of the public entity, clear to allow consistent measurement and evaluation, while also sufficiently detailed and adequately available to report in an understandable manner. The selection is done through an established AGSA process. The selected legislative requirements are as follows:

Legislation	Sections or regulations
Public Finance Management Act 1 of 1999 (PFMA)	Sections 51(1)(a)(iv); Sections 51(1)(b)(i); 51(1)(b)(ii); Section 51(1)(e)(iii); Sections 53(4); 54(2)(c); 54(2)(d); Sections 55(1)(a) - (b); 55(1)(c)(i); Sections 57(b);
Treasury regulations	TR 16A3.2(a); 16A 3.2 (fairness); TR 16A6.1; 16A6.2(a) & (b); TR 16A6.3(a) - (c); 16A6.4; TR 16A6.5; 16A6.6; TR 16A.7.1; 16A.7.3; 16A.7.6; TR 16A.7.7; 16A8.3; 16A8.4 TR 16A9.1(b)(ii); 16A9.1(d) - (f); TR 16A9.2(a)(ii); TR 30.1.1; 30.1.3(a) - (b); TR 30.1.3(d); TR 30.2.1; 31.2.1; TR 33.1.1; 33.1.3
Construction Industry Development Board Act 38 of 2000 (CIDB)	Section 18(1)
CIDB regulations	Regulations 17; 25(7A)
Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA)	Sections 1(i); 2.1(a),(b) and (f)
Preferential Procurement regulations (PPR), 2011	Regulations 4.1; 4.3; 5.5; 6.1; 6.5; 7.1; Regulations 9.1; 9.5; 11.2; 11.5
Preferential Procurement regulations (PPR), 2017	Regulations 4.1; 4.2; 5.1; 5.3; 5.6; 5.7; Regulations 6.1; 6.2; 6.3; 6.5; 6.6; 6.8; Regulations 7.1; 7.2; 7.3; 7.5; 7.6; 7.8; Regulations 8.2; 8.5; 9.1; 10.1; 10.2; Regulations 11.1; 11.2
Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA)	Section 34(1)
NT SCM Instruction Note 05 of 2009/10	Par 3.3
NT SCM Instruction Note 04 of 2015/16	Par 3.4
NT SCM Instruction Note 03 of 2016/17	Par 8.1; 8.2; 8.3; 8.5
NT SCM Instruction Note 4A of 2016/17	Par 6
NT SCM Instruction Note 07 of 2017/18	Par 4.3
NT SCM Instruction note 03 of 2019/20 [Annexure A - FIPDM]	Par 5.5.1(vi); 5.5.1(x)
NT SCM Instruction Note 08 of 2019/20	Par 3.1.1; 3.6; 3.7.2; 3.7.6(i) - (iii)
NT SCM Instruction Note 03 of 2020/21	Par 3.6; 3.7; 5.1(i); 6.1; 6.3
NT SCM Instruction Note 05 of 2020/21	Par 3.2; 3.7; 4.3; 4.6; 4.8; 4.9; 5.3
Erratum NT SCM Instruction Note 05 of 2020/21	Par 1; 2
Second Amendment to NT SCM Instruction Note 05 of 2020/21	Par 1
NT Instruction Note 11 of 2020/21	Par 3.1; 3.4(b); 3.9
NT SCM Instruction Note 02 of 2021/22	Par 3.2.1; 3.2.4(a); 3.3.1; 4.1
SCM Practice Note 8 of 2007/08	Par 3.3.1; 3.3.3; 3.4.1; 3.5
SCM Practice Note 7 of 2009/10	Par 4.1.2

22. The material findings on compliance with the selected legislative requirements, presented per compliance theme, are as follows:

Procurement and contract management

23. I was unable to obtain sufficient appropriate audit evidence that some contracts were awarded in accordance with the legislative requirements as documentation for four (4) of the selected awards to the value of R9 203 812 could not be provided for audit purposes.

Other information

24. The accounting authority is responsible for the other information. The other information comprises the information included in the annual report which includes the foreword by the minister, commissioner's report, Ombud's report, audit committee report and the risk committee report. The other information does not include the financial statements, the auditor's report and those selected material indicators presented in the annual performance report that have been specifically reported on in the auditor's report.
25. My opinion on the financial statements and material findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion on it.
26. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the material indicators in the scoped in programme presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.
27. I did not receive the other information prior to the date of this auditor's report. When I do receive and read this information, if I conclude that there is a material misstatement therein, I am required to communicate the matter to those charged with governance and request that the other information be corrected. If the other information is not corrected, I may have to retract this auditor's report and re-issue an amended report as appropriate. However, if it is corrected this will not be necessary.

Internal control deficiencies

28. I considered internal control relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. The matters reported below are limited to the significant internal control deficiencies that resulted in the findings on compliance with legislation included in this report.
29. The accounting authority has exercised oversight regarding compliance and related internal controls, however it was not effective due to identified instances of material non-compliance with applicable laws and regulations
30. Management's monitoring controls over records management were not effective to ensure that complete, relevant and accurate information is accessible and available to support all compliance with laws and regulations.

Other reports

31. I draw attention to the following engagements conducted by various parties which had, or could have, an impact on the matters reported in the public entity's financial statements, reported performance information, compliance with applicable legislation and other related matters. These reports did not form part of my opinion on the financial statements or my findings on the reported performance information or compliance with legislation.

Investigations

32. An independent consultant was investigating the conduct of the acting FAIS Ombud at the request of the accounting authority, covering the period 2019-20 to 2020-21. The investigation was concluded on 21 July 2021. The proceedings into the implementation of the recommendations as per investigation report were in progress at the date of this report.
33. An independent consultant was investigating the recruitment and appointment of the Governance risk and compliance officer at the request of the accounting authority, covering the period 2020-21. The investigation was concluded on

21 July 2021. The proceedings into the implementation of the recommendations as per investigation report were in progress at the date of this report.

Auditor-General

Auditor-General
Pretoria
31 July 2022



AUDITOR-GENERAL
SOUTH AFRICA

Auditing to build public confidence

Annexure – Auditor-general’s responsibility for the audit

1. As part of an audit in accordance with the ISAs, I exercise professional judgement and maintain professional scepticism throughout my audit of the financial statements and the procedures performed on reported performance information for selected programme and on the public entity’s compliance with respect to the selected subject matters.

Financial statements

2. In addition to my responsibility for the audit of the financial statements as described in this auditor’s report, I also:
 - identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error; design and perform audit procedures responsive to those risks; and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control
 - obtain an understanding of internal control relevant to the audit 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 public entity’s internal control
 - evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting authority
 - conclude on the appropriateness of the accounting authority’s use of the going concern basis of accounting in the preparation of the financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists relating to events or conditions that may cast significant doubt on the ability of the Office of the Ombud for Financial Services Providers to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor’s report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify my opinion on the financial statements. My conclusions are based on the information available to me at the date of this auditor’s report. However, future events or conditions may cause a public entity to cease operating as a going concern
 - evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation

Communication with those charged with governance

3. I communicate with the accounting authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.
4. I also provide the accounting authority with a statement that I have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and, where applicable, actions taken to eliminate threats or safeguards applied.

STATEMENT OF FINANCIAL POSITION

	Note(s)	2022 R	2021 R
ASSETS			
Current assets			
Receivables from exchange transactions	2	568 612	949 912
Statutory receivables from non-exchange transactions	3	1 416 007	47 836 848
Pre-payments	4	940 894	383 178
Cash and cash equivalents	5	45 694 045	2 126 956
		48 619 558	51 296 894
Non-current assets			
Property, plant and equipment	6	4 645 620	2 905 652
Intangible assets	7	5 249 069	5 563 930
Other financial assets	8	1 510 123	-
		11 404 812	8 469 582
TOTAL ASSETS		60 024 370	59 766 476
LIABILITIES			
Current liabilities			
Finance lease obligation	9	24 452	-
Payables from exchange transactions	10	2 679 348	2 416 536
		2 703 800	2 416 536
Non-Current Liabilities			
Finance lease obligation	9	27 584	-
Total Liabilities		2 731 384	2 416 536
NET ASSETS		57 292 986	57 349 940
Accumulated surplus		57 292 986	57 349 940
TOTAL NET ASSET		57 292 986	57 349 940

STATEMENT OF FINANCIAL PERFORMANCE

	Note(s)	2022	2021
		R	R
Revenue from non exchange transactions	11	57 797 457	57 627 407
Revenue from exchange transactions	12	957 912	-
Operating expenses	13	(19 355 841)	(11 331 526)
(Loss) / Profit on disposal of assets		(82 524)	4 519
Operating lease rentals	14	(3 522 612)	(3 106 305)
Personnel costs	15	(32 749 167)	(26 546 831)
Depreciation, impairment and amortization	16	(3 082 506)	(1 187 239)
Operating (deficit) / surplus		(37 281)	15 460 025
Finance costs	17	(19 673)	(20 725)
(Deficit) / Surplus for the year		(56 954)	15 439 300

STATEMENT OF CHANGES IN NET ASSETS

	Accumulated surplus	Total net assets
	R	R
Balance at 01 April 2020	41 910 640	41 910 640
Surplus for the year	15 439 300	15 439 300
Total changes	15 439 300	15 439 300
Balance at 01 April 2021	57 349 940	57 349 940
Deficit for the year	(56 954)	(56 954)
Total changes	(56 954)	(56 954)
Balance at 31 March 2022	57 292 986	57 292 986

CASH FLOW STATEMENT

	Note(s)	2022 R	2021 R
Cash Flow From Operating Activities			
Receipts			
Levies received		102 536 531	46 037 611
Interest income		953 137	-
		103 489 668	46 037 611
Payments			
Suppliers		(22 615 634)	(13 879 655)
Salaries		(32 749 167)	(26 546 831)
		(55 364 801)	(40 426 486)
Net cash flows from operating activities	18	48 124 867	5 611 125
Cash Flows From Investing Activities			
Purchase of property, plant and equipment	6	(3 675 674)	(1 584 822)
Proceeds from sale of property, plant and equipment	6	90 060	46 218
Purchase of other intangible assets	7	(1 004 523)	(5 341 813)
Net cash flows from investing activities		(4 590 137)	(6 880 417)
Cash Flows From Financing Activities			
Repayment of finance leases		(6 565)	(32 340)
Finance costs		(19 673)	-
Finance lease inflow at inception		58 600	-
Net cash flows from financing activities		32 362	(32 340)
Net increase/(decrease) in cash and cash equivalents		43 567 092	(1 301 632)
Cash and cash equivalents at the beginning of the year		2 126 960	3 428 592
Cash and cash equivalents at the end of the year	5	45 694 052	2 126 960

STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

Budget on Cash Basis

	Approved budget	Adjustments	Final Budget	Actual amounts on comparable basis	Difference between final budget and actual	Reference
	R	R	R	R	R	
Statement of Financial Performance						
REVENUE						
Revenue from exchange transactions						
Revenue from exchange transactions	-	-	-	957 912	957 912	28
Revenue from non exchange transactions	57 755 000	-	57 755 000	57 797 457	42 457	
Total Revenue	57 755 000	-	57 755 000	58 755 369	1 000 369	
EXPENDITURE						
Audit costs	(2 305 477)	-	(2 305 477)	(2 164 731)	140 746	
Consulting and professional fees	(2 500 000)	1 380 000	(1 120 000)	(1 614 409)	(494 409)	28
Depreciation and amortisation	(2 236 000)	(1 498 000)	(3 734 000)	(3 082 505)	651 495	28
Finance costs	(60 000)	-	(60 000)	(19 673)	40 327	
Legal fees	(1 700 000)	(3 262 324)	(4 962 324)	(4 998 183)	(35 859)	
Personnel cost	(40 825 514)	1 226 900	(39 598 614)	(32 749 167)	6 849 447	28
Recruitment and advertising	(550 000)	(550 000)	(1 100 000)	(1 004 957)	95 043	
Rental and operating costs	(5 575 000)	635 100	(4 939 900)	(4 570 719)	369 181	28
Repairs, maintenance and support	(3 867 047)	738 069	(3 128 978)	(2 182 197)	946 781	28
Telephone and fax	(1 328 017)	-	(1 328 017)	(1 509 982)	(181 965)	
Other operating expenses	(6 044 348)	1 330 255	(4 714 093)	(4 833 276)	(119 183)	
Total expenditure	(66 991 403)	-	(66 991 403)	(58 729 799)	8 261 604	
Operating (deficit) / surplus	(9 236 403)	-	(9 236 403)	25 570	9 261 973	
Loss on sale of property, plant and equipment	-	-	-	(82 524)	(82 524)	
Savings / Retention of surplus	9 236 403	-	9 236 403	-	-	28
(Deficit) / Surplus for the year	-	-	-	(56 954)	-	

SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

1. Presentation of Annual Financial Statements

The annual financial statements have been prepared in accordance with the Standards of Generally Recognised Accounting Practice (GRAP), issued by the Accounting Standards Board in accordance with Section 91(1) of the Public Finance Management Act (Act 1 of 1999).

These annual financial statements have been prepared on an accrual basis of accounting and are in accordance with historical cost convention as the basis of measurement, unless specified otherwise.

A summary of the significant accounting policies, which have been consistently applied in the preparation of these annual financial statements, are disclosed below.

These accounting policies are consistent with the previous period. Where applicable, the amounts are rounded off to the nearest Rand.

1.1 Presentation currency

These annual financial statements are presented in South African Rand, which is the functional currency of the entity.

1.2 Going concern assumption

These annual financial statements have been prepared based on the expectation that the entity will continue to operate as a going concern for at least the next 12 months.

1.3 Materiality

Material omissions or misstatements of items are material if they could, individually or collectively, influence the decisions or assessments of users made on the basis of the financial statements. Materiality depends on the nature or size of the omission or misstatement judged in the surrounding circumstances. The nature or size of the information item, or a combination of both, could be the determining factor.

Assessing whether an omission or misstatement could influence decisions of users, and so be material, requires consideration of the characteristics of those users. The Framework for the Preparation and Presentation of Financial Statements states that users are assumed to have a reasonable knowledge of government, its activities, accounting and a willingness to study the information with reasonable diligence. Therefore, the assessment takes into account how users with such attributes could reasonably be expected to be influenced in making and evaluating decisions.

The FAIS Ombud Materiality and Significance Framework is used to assess whether an omission or misstatement is material and could influence the user's decision.

1.4 Significant judgements and sources of estimation uncertainty

In preparing the annual financial statements, management is required to make estimates and assumptions that affect the amounts represented in the annual financial statements and related disclosures. Use of available information and the application of judgement is inherent in the formation of estimates. Actual results in the future could differ from these estimates which may be material to the annual financial statements.

In the process of applying its accounting policies, and in preparing the annual financial statements, management is required to make various judgements, including estimates and assumptions, that may affect the determination of the reporting framework, affect amounts represented in the annual financial statements and as well as related disclosures. Use of available information and the application of judgement is inherent in the formation of estimates. Actual results in the future could differ from these estimates which may be material to the annual financial statements.

Other significant judgements, sources of estimation uncertainty and/or relating information, have been disclosed in the relating notes.

Impairment of financial assets

The entity assesses its financial assets for impairment at the end of each reporting period. In determining whether an impairment loss should be recorded in surplus or deficit, the entity makes judgements as to whether there is observable data indicating a measurable decrease in the estimated future cash flows from a financial asset.

Useful lives and residual values

The entity reassesses the useful lives and residual values of property, plant and equipment and intangible assets on an annual basis. In reassessing the useful lives of these assets, management considers the condition and the use of the individual assets to determine the remaining period over which the asset can and will be used.

The residual values of these assets have been estimated as the amount that the entity would currently obtain from disposal of each significant asset, in its current

1.4 Significant judgements and sources of estimation uncertainty (continued)

condition, if the asset were already of the age and in the condition expected at the end of its useful life.

Impairment testing of receivables from exchange and non-exchange transactions

The entity assesses its receivables from exchange and non-exchange transaction for impairment at the end of each reporting period. In determining whether an impairment loss should be recorded in surplus or deficit, the Office makes judgements as to whether there is observable data indicating a measurable decrease in the estimated future cash flows from a financial asset.

The impairment for receivables from exchange and non-exchange transactions is calculated individually, when assets

are individually significant, and individually or collectively for financial assets that are not individually significant. Where no objective evidence of impairment exists for an individually assessed asset (whether individually significant or not), an entity includes assets in a group of financial assets with similar credit risk characteristics and collectively assesses them for impairment.

Impairment testing for non-financial assets

The Office has judged all non-financial assets to be non-cash generating based on the entity's objective of using these assets to deliver a service and not to generate a commercial return. The entity reviews and tests the carrying value of assets when events or changes in circumstances suggest that the carrying amount may not be recoverable. The recoverable service amount is the higher of fair value less costs to sell and value in use. These calculations require the use of estimates and assumptions.

1.5 Property, plant and equipment

Property, plant and equipment are tangible non-current

assets (including infrastructure assets) that are held for use in the production or supply of goods or services, rental to others, or for administrative purposes, and are expected to be used during more than one period.

The cost of an item of property, plant and equipment is recognised as an asset when:

- it is probable that future economic benefits or service potential associated with the item will flow to the entity; and
- the cost of the item can be measured reliably.

The cost of an item of property, plant and equipment is the purchase price and other costs attributable to bring the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. Trade discounts and rebates are deducted in arriving at the cost.

Where an asset is acquired through a non-exchange transaction, its cost is its fair value as at date of acquisition.

Recognition of costs in the carrying amount of an item of property, plant and equipment ceases when the item is in the location and condition necessary for it to be capable of operating in the manner intended by management.

Property, plant and equipment are depreciated on the straight-line basis over their expected useful lives to their estimated residual value.

Depreciation of an asset begins when it is available for use, i.e. when it is in the location and condition necessary for it to be capable of operating in the manner intended by management. Depreciation of an asset ceases at the date that the asset is derecognised.

Property, plant and equipment is carried at cost less accumulated depreciation and any impairment losses. The useful lives of items of property, plant and equipment have been assessed as follows:

Item	Depreciation method	Average useful life
Furniture and fixtures	Straight-line	Up to 20 years
Motor vehicles	Straight-line	5 to 20 years
Office equipment	Straight-line	3 to 15 years
Computer equipment	Straight-line	3 to 20 years
Leasehold improvements	Straight-line	Lease period (5 years)
Assets under finance lease	Straight-line	Lease period (2 years)

The depreciation method used reflects the pattern in which the asset's future economic benefits or service potential are expected to be consumed by the entity. The depreciation method applied to an asset is reviewed at least at each reporting date and, if there has been a significant change in the expected pattern of consumption of the future economic benefits or service potential embodied in the asset, the method is changed to reflect the changed pattern. Such a change is accounted for as a change in an accounting estimate.

The entity assesses at each reporting date whether there is any indication that the entity expectations about the residual value and the useful life of an asset have changed since the preceding reporting date. If any such indication exists, the entity revises the expected useful life and/or residual value accordingly. The change is accounted for as a change in an accounting estimate.

The depreciation charge for each period is recognised in surplus or deficit unless it is included in the carrying amount of another asset.

Items of property, plant and equipment are derecognised when the asset is disposed of or when there are no further economic benefits or service potential expected from the use of the asset.

The gain or loss arising from the derecognition of an item of property, plant and equipment is included in surplus or deficit when the item is derecognised. The gain or loss arising from the derecognition of an item of property, plant and equipment is determined as the difference between the net disposal proceeds, if any, and the carrying amount of the item.

The entity separately discloses expenditure to repair and maintain property, plant and equipment in the notes to the financial statements.

1.6 Intangible assets

An asset is identifiable if it either:

- is separable, i.e. is capable of being separated or divided from an entity and sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, identifiable assets or liability, regardless of whether the entity intends to do so; or

- arises from binding arrangements (including rights from contracts), regardless of whether those rights are transferable or separable from the entity or from other rights and obligations.

A binding arrangement describes an arrangement that confers similar rights and obligations on the parties to it as if it were in the form of a contract.

An intangible asset is recognised when:

- it is probable that the expected future economic benefits or service potential that are attributable to the asset will flow to the entity; and
- the cost or fair value of the asset can be measured reliably.

Where an intangible asset is acquired through a non-exchange transaction, its initial cost at the date of acquisition is measured at its fair value as at that date.

Intangible assets are carried at cost less any accumulated amortisation and any impairment losses.

An intangible asset is regarded as having an indefinite useful life when, based on all relevant factors, there is no foreseeable limit to the period over which the asset is expected to generate net cash inflows or service potential. Amortisation is not provided for these intangible assets, but they are tested for impairment annually and whenever there is an indication that the asset may be impaired. For all other intangible assets amortisation is provided on a straight-line basis over their useful life.

Amortisation begins when the asset is available for use, i.e. when it is in the location and condition necessary for it to be capable of operating in the manner intended by management. Amortisation ceases at the date that the asset is derecognised.

The amortisation period and the amortisation method for intangible assets are reviewed at each reporting date.

Amortisation is provided to write down the intangible assets, on a straight-line basis, to their residual values as follows:

Item	Depreciation method	Average useful life
Licences	Straight-line	2-5 years
Computer software	Straight-line	3-10 years
Data management system	Straight-line	3 years
Website	Straight-line	6 - 7 years

1.6 Intangible assets (continued)

Intangible assets are derecognised:

- on disposal; or
- when no future economic benefit or services potential are expected from its use or disposal.

The gain or loss arising from the derecognition of intangible assets is included in surplus or deficit when the asset is derecognised.

1.7 Financial instruments

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or a residual interest of another entity.

The amortised cost of a financial asset or financial liability is the amount at which the financial asset or financial liability is measured at initial recognition minus principal repayments, plus or minus the cumulative amortisation using the effective interest method of any difference between that initial amount and the maturity amount, and minus any reduction (directly or through the use of an allowance account) for impairment or uncollectibility.

Credit risk is the risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation.

The effective interest method is a method of calculating the amortised cost of a financial asset or a financial liability (or group of financial assets or financial liabilities) and of allocating the interest income or interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments or receipts through the expected life of the financial instrument or, when appropriate, a shorter period to the net carrying amount of the financial asset or financial liability. When calculating the effective interest rate, an entity shall estimate cash flows considering all contractual terms of the financial instrument (for example, prepayment, call and similar options) but shall not consider future credit losses. The calculation includes all fees and points paid or received between parties to the contract that are an integral part of the effective interest rate (see the Standard of GRAP on Revenue from Exchange Transactions), transaction costs, and all other premiums or discounts. There is a presumption that the cash flows and the expected life of a group of similar financial instruments can be estimated reliably. However, in those rare cases when it is not possible to reliably estimate the cash flows or the expected life of a financial instrument (or group of financial instruments), the entity shall use the contractual cash flows over the full contractual term of the financial instrument (or group of financial instruments).

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable willing parties in an arm's length transaction.

A financial asset is:

- cash;

- a residual interest of another entity; or
- a contractual right to:
 - receive cash or another financial asset from another entity; or
 - exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity.

A financial liability is any liability that is a contractual obligation to:

- deliver cash or another financial asset to another entity; or
- exchange financial assets or financial liabilities under conditions that are potentially unfavourable to the entity.

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates.

Liquidity risk is the risk encountered by an entity in the event of difficulty in meeting obligations associated with financial liabilities that are settled by delivering cash or another financial asset.

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. Market risk comprises three types of risk: currency risk, interest rate risk and other price risk.

Other price risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices (other than those arising from interest rate risk or currency risk), whether those changes are caused by factors specific to the individual financial instrument or its issuer, or factors affecting all similar financial instruments traded in the market.

A financial asset is past due when a counterparty has failed to make a payment when contractually due.

Financial instruments at amortised cost are non-derivative financial assets or non-derivative financial liabilities that have fixed or determinable payments, excluding those instruments that:

- the entity designates at fair value at initial recognition; or
- are held for trading.

Financial instruments at cost are investments in residual interests that do not have a quoted market price in an active market, and whose fair value cannot be reliably measured.

The entity has the following types of financial assets (classes and category) as reflected on the face of the statements of financial position or in the notes thereto.

Classification

The entity has the following types of financial assets (classes and category) as reflected on the face of the

1.7 Financial instruments (continued)

statement of financial position or in the notes thereto:

Class	Category
Cash and cash equivalents	Financial asset measured at amortised cost
Receivables from exchange transactions	Financial asset measured at amortised cost
Receivables from non exchange transactions	Financial asset measured at amortised cost

The entity has the following types of financial liabilities (classes and category) as reflected on the face of the statement of financial position or in the notes thereto:

Class	Category
Trade and other payables from exchange transactions	Financial liability measured at amortised cost
Trade and other payable from non-exchange transactions	Financial liability measured at amortised cost

Initial recognition

The entity recognises a financial asset or a financial liability in its statement of financial position when the entity becomes a party to the contractual provisions of the instrument.

The entity recognises financial assets using trade date accounting. The trade date is the date on which the entity commits to purchase or sell the instrument.

Subsequent measurement of financial assets and financial liabilities

The entity measures all financial assets and financial liabilities after initial recognition using the following categories:

Financial instruments at fair value - subsequently measured at fair value, with gains and losses arising from changes in fair value being included in surplus or deficit for the period.

Financial instruments at amortised cost - subsequently measured at amortised cost, using the effective interest rate method, less accumulated impairment losses.

Financial instruments at cost - subsequently measured at cost less accumulated impairment losses.

All financial assets measured at amortised cost, or cost, are subject to an impairment review.

Impairment and uncollectibility of financial assets

The entity assess at the end of each reporting period whether there is any objective evidence that a financial asset or group of financial assets is impaired.

Receivables from exchange from exchange and non-exchange

Receivables are recognised initially at fair value and subsequently measured at amortised cost, using the effective interest method less allowance for impairment. An allowance for impairment is established when there is objective evidence that not all amounts due will be collected in accordance with the original terms, significant financial difficulties of the debtor, probability that the debtor will enter bankruptcy, and default or delinquency in payments are considered indicators that the receivable is impaired.

The amount of the impairment is the difference between the asset's carrying amount and the present value of estimated future cashflow, discounted at the effective interest rate. The carrying amount of the asset is reduced by the amount of the impairment, which is recognised in the statement of financial performance. When the receivable is uncollectable, it is written off and subsequent recoveries of amounts previously written off are credited in operating expenses in the statement of financial performance.

Trade and other payables from exchange from exchange and non-exchange

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

Cash and cash equivalents

Cash and cash equivalents include cash on hand and deposits held at banks. Cash equivalents are held for the purpose of meeting short-term cash commitments rather than for investment or other purposes. Cash and

1.7 Financial instruments (continued)

cash equivalents are recognised at cost, which equates to their fair value.

Derecognition

Financial assets

Financial assets are derecognised when the rights to receive cash flows from the investments have expired or have been transferred and the entity has transferred substantially all risks and rewards of ownership.

Financial liabilities

Financial liabilities (or a part of a financial liability) are removed from its statement of financial position when, and only when, they are extinguished — i.e. when the obligation specified in the contract is discharged, cancelled or expired.

Presentation

Interest relating to a financial instrument or a component that is a financial liability is recognised as finance income or finance costs in surplus or deficit.

Offsetting financial instruments

A financial asset and a financial liability are only offset and the net amount presented in the statement of financial position when the entity currently has a legally enforceable right to set off the recognised amounts and intends either to settle on a net basis, or to realise the asset and settle the liability simultaneously.

Statutory receivables are receivables that arise from legislation, supporting regulations, or similar means, and require settlement by another entity in cash or another financial asset.

Carrying amount is the amount at which an asset is recognised in the statement of financial position.

The cost method is the method used to account for statutory receivables that requires such receivables to be measured at their transaction amount, plus any accrued interest or other charges (where applicable) and, less any accumulated impairment losses and any amounts derecognised.

Nominal interest rate is the interest rate and/or basis specified in legislation, supporting regulations or similar means.

1.8 Statutory receivables

Identification

Statutory receivables are receivables that arise from legislation, supporting regulations, or similar means, and require settlement by another entity in cash or another financial asset.

Carrying amount is the amount at which an asset is recognised in the statement of financial position.

The cost method is the method used to account for statutory receivables that requires such receivables to be measured at their transaction amount, plus any accrued interest or other charges (where applicable) and, less any accumulated impairment losses and any amounts derecognised.

Nominal interest rate is the interest rate and/or basis specified in legislation, supporting regulations or similar means.

The transaction amount for a statutory receivable means the amount specified in, or calculated, levied or charged in accordance with, legislation, supporting regulations, or similar means.

Recognition

The entity recognises statutory receivables as follows:

- if the transaction is an exchange transaction, using the policy on Revenue from exchange transactions;
- if the transaction is a non-exchange transaction, using the policy on Revenue from non-exchange transactions (Taxes and transfers); or
- if the transaction is not within the scope of the policies listed in the above or another Standard of GRAP, the receivable is recognised when the definition of an asset is met and, when it is probable that the future economic benefits or service potential associated with the asset will flow to the entity and the transaction amount can be measured reliably.

Initial Measurement

The entity initially measures statutory receivables at their transaction amount.

Subsequent Measurement

The entity measures statutory receivables after initial recognition using the cost method. Under the cost method, the initial measurement of the receivable is changed subsequently to initial recognition to reflect any:

- interest or other charges that may have accrued on the receivable (where applicable);
- impairment losses; and
- amounts derecognised.

Impairment losses

The entity assesses at each reporting date whether there is any indication that a statutory receivable, or a group of statutory receivables, may be impaired.

In assessing whether there is any indication that a statutory receivable, or group of statutory receivables, may be impaired, the entity considers, as a minimum, the following indicators:

- Significant financial difficulty of the debtor, which may be evidenced by an application for debt counselling, business rescue or an equivalent.
- It is probable that the debtor will enter sequestration, liquidation or other financial re-organisation.
- A breach of the terms of the transaction, such as default or delinquency in principal or interest payments (where levied).
- Adverse changes in international, national or local economic conditions, such as a decline in growth, an increase in debt levels and unemployment, or changes in migration rates and patterns.

If there is an indication that a statutory receivable, or a group of statutory receivables, may be impaired, the entity measures the impairment loss as the difference between the estimated future cash flows and the carrying amount. Where the carrying amount is higher than the estimated future cash flows, the carrying amount of the statutory receivable, or group of statutory receivables, is reduced, either directly or through the use of an allowance account. The amount of the losses is recognised in surplus or deficit.

In estimating the future cash flows, an entity considers both the amount and timing of the cash flows that it will receive in future. Consequently, where the effect of the time value of money is material, the entity discounts the estimated future cash flows using a rate that reflects the current risk-free rate and, if applicable, any risks specific to the statutory receivable, or group of statutory receivables, for which the future cash flow estimates have not been adjusted.

An impairment loss recognised in prior periods for a statutory receivable is revised if there has been a change in the estimates used since the last impairment loss was recognised, or to reflect the effect of discounting the estimated cash flows.

Any previously recognised impairment loss is adjusted either directly or by adjusting the allowance account.

The adjustment does not result in the carrying amount of the statutory receivable or group of statutory receivables exceeding what the carrying amount of the receivable(s) would have been had the impairment loss not been recognised at the date the impairment is revised. The amount of any adjustment is recognised in surplus or deficit.

Derecognition

The entity derecognises a statutory receivable, or a part thereof, when:

- the rights to the cash flows from the receivable are settled, expire or are waived;
- the entity transfers to another party substantially all of the risks and rewards of ownership of the receivable; or
- the entity, despite having retained some significant risks and rewards of ownership of the receivable, has transferred control of the receivable to another party and the other party has the practical ability to sell the receivable in its entirety to an unrelated third party, and is able to exercise that ability unilaterally and without needing to impose additional restrictions on the transfer. In this case, the entity:
 - derecognise the receivable; and
 - recognise separately any rights and obligations created or retained in the transfer.

The carrying amounts of any statutory receivables transferred are allocated between the rights or obligations retained and those transferred on the basis of their relative fair values at the transfer date. The entity considers whether any newly created rights and obligations are within the scope of the Standard of GRAP on Financial Instruments or another Standard of GRAP. Any difference between the consideration received and the amounts derecognised and, those amounts recognised, are recognised in surplus or deficit in the period of the transfer.

1.9 Leases

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership.

Finance leases - lessee

Finance leases are recognised as assets and liabilities in the statement of financial position at amounts equal to the fair value of the leased property or, if lower, the present value of the minimum lease payments. The corresponding liability to the lessor is included in the statement of financial position as a finance lease obligation.

1.9 Leases (continued)

The discount rate used in calculating the present value of the minimum lease payments is the interest rate implicit in the lease.

Minimum lease payments are apportioned between the finance charge and reduction of the outstanding liability. The finance charge is allocated to each period during the lease term so as to produce a constant periodic rate of on the remaining balance of the liability.

Operating leases - lessee

Operating lease payments are recognised as an expense on a straight-line basis over the lease term. The difference between the amounts recognised as an expense and the contractual payments are recognised as an operating lease asset or liability.

1.10 Impairment of non-cash-generating assets

Cash-generating assets are assets used with the objective of generating a commercial return. Commercial return means that positive cash flows are expected to be significantly higher than the cost of the asset.

Non-cash-generating assets are assets other than cash-generating assets. Impairment is a loss in the future economic benefits or service potential of an asset, over and above the systematic recognition of the loss of the asset's future economic benefits or service potential through depreciation (amortisation).

An impairment loss is recognised immediately in surplus or deficit.

Carrying amount is the amount at which an asset is recognised in the statement of financial position after deducting any accumulated depreciation and accumulated impairment losses thereon.

Costs of disposal are incremental costs directly attributable to the disposal of an asset, excluding finance costs and income tax expense.

Depreciation (Amortisation) is the systematic allocation of the depreciable amount of an asset over its useful life.

Fair value less costs to sell is the amount obtainable from the sale of an asset in an arm's length transaction between knowledgeable, willing parties, less the costs of disposal.

Recoverable service amount is the higher of a non-cash-generating asset's fair value less costs to sell and its value in use.

Useful life is either:

- the period of time over which an asset is expected to be used by the entity; or

- the number of production or similar units expected to be obtained from the asset by the entity.

Identification

When the carrying amount of a non-cash-generating asset exceeds its recoverable service amount, it is impaired.

The entity assesses at each reporting date whether there is any indication that a non-cash-generating asset may be impaired. If any such indication exists, the entity estimates the recoverable service amount of the asset.

Irrespective of whether there is any indication of impairment, the entity also tests a non-cash-generating intangible asset with an indefinite useful life or a non-cash-generating intangible asset not yet available for use for impairment annually by comparing its carrying amount with its recoverable service amount. This impairment test is performed at the same time every year. If an intangible asset was initially recognised during the current reporting period, that intangible asset was tested for impairment before the end of the current reporting period.

Recognition and measurement

If the recoverable service amount of a non-cash-generating asset is less than its carrying amount, the carrying amount of the asset is reduced to its recoverable service amount. This reduction is an impairment loss.

An impairment loss is recognised immediately in surplus or deficit.

After the recognition of an impairment loss, the depreciation (amortisation) charge for the non-cash-generating asset is adjusted in future periods to allocate the non-cash-generating asset's revised carrying amount, less its residual value (if any), on a systematic basis over its remaining useful life.

Reversal of an impairment loss

The entity assesses at each reporting date whether there is any indication that an impairment loss recognised in prior periods for a non-cash-generating asset may no longer exist or may have decreased. If any such indication exists, the entity estimates the recoverable service amount of that asset.

An impairment loss recognised in prior periods for a non-cash-generating asset is reversed if there has been a change in the estimates used to determine the asset's recoverable service amount since the last impairment loss was recognised. The carrying amount of the asset is increased to its recoverable service amount. The increase is a reversal of an impairment loss. The

increased carrying amount of an asset attributable to a reversal of an impairment loss does not exceed the carrying amount that would have been determined (net of depreciation or amortisation) had no impairment loss been recognised for the asset in prior periods.

A reversal of an impairment loss for a non-cash-generating asset is recognised immediately in surplus or deficit.

After a reversal of an impairment loss is recognised, the depreciation (amortisation) charge for the non-cash-generating asset is adjusted in future periods to allocate the non-cash-generating asset's revised carrying amount, less its residual value (if any), on a systematic basis over its remaining useful life.

1.11 Employee benefits

Employee benefits are all forms of consideration given by an entity in exchange for service rendered by employees.

Short-term employee benefits

Short-term employee benefits are employee benefits (other than termination benefits) that are due to be settled within twelve months after the end of the period in which the employees render the related service.

Short-term employee benefits include items such as:

- wages, salaries and social security contributions;
- short-term compensated absences (such as paid annual leave and paid sick leave) where the compensation for the absences is due to be settled within twelve months after the end of the reporting period in which the employees render the related employee service;
- bonus, incentive and performance related payments payable within twelve months after the end of the reporting period in which the employees render the related service; and
- non-monetary benefits (for example, medical care, and free or subsidised goods or services such as housing, cars and cellphones) for current employees.

The expected cost of compensated absences is recognised as an expense as the employees render services that increase their entitlement or, in the case of non-accumulating absences, when the absence occurs. The entity measures the expected cost of accumulating compensated absences as the additional amount that the entity expects to pay as a result of the unused entitlement that has accumulated at the reporting date.

The entity recognises the expected cost of bonus, incentive and performance related payments when the entity has a present legal or constructive obligation to make such payments as a result of past events and

a reliable estimate of the obligation can be made. A present obligation exists when the entity has no realistic alternative but to make the payments.

Post-employment benefits: Defined contribution plans

Defined contribution plans are post-employment benefit plans under which an entity pays fixed contributions into a separate entity (a fund) and will have no legal or constructive obligation to pay further contributions if the fund does not hold sufficient assets to pay all employee benefits relating to employee service in the current and prior periods.

1.12 Provisions and contingencies

Provisions are recognised when:

- the entity has a present obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation; and
- a reliable estimate can be made of the obligation.

The amount of a provision is the best estimate of the expenditure expected to be required to settle the present obligation at the reporting date.

Where the effect of time value of money is material, the amount of a provision is the present value of the expenditures expected to be required to settle the obligation.

The discount rate is a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability.

Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement is recognised when, and only when, it is virtually certain that reimbursement will be received if the entity settles the obligation. The reimbursement is treated as a separate asset. The amount recognised for the reimbursement does not exceed the amount of the provision.

Provisions are reviewed at each reporting date and adjusted to reflect the current best estimate. Provisions are reversed if it is no longer probable that an outflow of resources embodying economic benefits or service potential will be required, to settle the obligation.

Where discounting is used, the carrying amount of a provision increases in each period to reflect the passage of time. This increase is recognised as an interest expense.

A provision is used only for expenditures for which the provision was originally recognised.

1.12 Provisions and contingencies (continued)

Provisions are not recognised for future operating surplus.

Contingent assets and contingent liabilities are not recognised. Contingencies are disclosed in note 21.

1.13 Commitments

Items are classified as commitments when an entity has committed itself to future transactions that will normally result in the outflow of cash.

Disclosures are required in respect of unrecognised contractual commitments.

Commitments for which disclosure is necessary to achieve a fair presentation should be disclosed in a note to the financial statements, if both the following criteria are met:

- Contracts should be non-cancellable or only cancellable at significant cost (for example, contracts for computer or building maintenance services); and
- Contracts should relate to something other than the routine, steady, state business of the entity – therefore salary commitments relating to employment contracts or social security benefit commitments are excluded.

1.14 Revenue from exchange transactions

Revenue is the gross inflow of economic benefits or service potential during the reporting period when those inflows result in an increase in net assets, other than increases relating to contributions from owners.

1.14 Revenue from exchange transactions (continued)

An exchange transaction is one in which the entity receives assets or services, or has liabilities extinguished, and directly gives approximately equal value (primarily in the form of goods, services or use of assets) to the other party in exchange.

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

Measurement

Revenue is measured at the fair value of the consideration received or receivable, net of trade discounts and volume rebates.

Sale of goods

Revenue from the sale of goods is recognised when all the following conditions have been satisfied:

- the entity has transferred to the purchaser the significant risks and rewards of ownership of the goods;
- the entity retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold;
- the amount of revenue can be measured reliably;
- it is probable that the economic benefits or service potential associated with the transaction will flow to the entity; and
- the costs incurred or to be incurred in respect of the transaction can be measured reliably.

Interest

Revenue arising from the use by others of entity assets yielding interest or similar distributions is recognised when:

- It is probable that the economic benefits or service potential associated with the transaction will flow to the entity, and
- The amount of the revenue can be measured reliably.

Interest is recognised using the effective interest rate method for financial instruments, and using the nominal interest rate method for statutory receivables. Interest levied on transactions arising from exchange or non-exchange transactions is classified based on the nature of the underlying transaction.

1.15 Revenue from non-exchange transactions

Revenue comprises gross inflows of economic benefits or service potential received and receivable by an entity, which represents an increase in net assets, other than increases relating to contributions from owners.

Exchange transactions are transactions in which one entity receives assets or services, or has liabilities extinguished, and directly gives approximately equal value (primarily in the form of cash, goods, services, or use of assets) to another entity in exchange.

Non-exchange transactions are transactions that are not exchange transactions. In a non-exchange transaction, an entity either receives value from another entity without directly giving approximately equal value in exchange, or gives value to another entity without directly receiving approximately equal value in exchange.

The Office is funded from levies from the financial sector industry where the various financial services providers are levied on annual basis. These levies are collected on behalf of the office by the FSCA. Once collected, the levy is transferred over to the Office where it is utilised for its operational requirement.

Recognition

An inflow of resources from a non-exchange transaction

recognised as an asset is recognised as revenue, except to the extent that a liability is also recognised in respect of the same inflow.

Measurement

Revenue from a non-exchange transaction is measured at the amount of the increase in net assets recognised by the entity, which is based on the annual budget.

When, as a result of a non-exchange transaction, the entity recognises an asset, it also recognises revenue equivalent to the amount of the asset measured at its fair value as at the date of acquisition, unless it is also required to recognise a liability. Where a liability is required to be recognised it will be measured as the best estimate of the amount required to settle the obligation at the reporting date, and the amount of the increase in net assets, if any, recognised as revenue. When a liability is subsequently reduced, because the taxable event occurs or a condition is satisfied, the amount of the reduction in the liability is recognised as revenue.

1.16 Comparative figures

Where necessary, comparative figures have been reclassified to conform to changes in presentation in the current year.

1.17 Fruitless and wasteful expenditure

Fruitless expenditure means expenditure which was made in vain and would have been avoided had reasonable care been exercised.

Fruitless and wasteful expenditure is accounted for in line with all relating requirements, including, but not limited to, ruling Legislation, Regulations, Frameworks, Circulars, Instruction Notes, Practice Notes, Guidelines etc (as applicable).

1.18 Irregular expenditure

Irregular expenditure as defined in section 1 of the PFMA is expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including -

- (a) the PFMA; or
- (b) the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of the Act; or
- (c) the entity's supply chain management policy.

Irregular expenditure that was incurred and identified during the current financial and which was condoned before year-end and/or before finalisation of the financial statements must also be recorded appropriately in the

irregular expenditure register. In such an instance, no further action is required with the exception of updating the note to the financial statements.

Where irregular expenditure was incurred in the previous financial year and is only condoned in the following financial year, the register and the disclosure note to the financial statements must be updated with the amount condoned.

1.19 Budget information

The entity is typically subject to budgetary limits in the form of budgets authorised by the Accounting Authority, which is given effect through the authorising legislation.

General purpose financial reporting by entity shall provide information on whether resources were obtained and used in accordance with the legally adopted budget. The approved budget is prepared on an accrual basis and presented by functional classification linked to performance outcome objectives.

The approved budget covers the fiscal period from 2021/04/01 to 2022/03/31.

The Statement of comparative and actual information has been included in the annual financial statements as the recommended disclosure when the annual financial statements and the budget are on the same basis of accounting as determined by National Treasury.

The annual financial statements and the budget are not on the same basis of accounting therefore a reconciliation between the statement of financial performance and the budget have been included in the annual financial statements. Refer to note 28.

Comparative information is not required.

1.20 Related parties

A related party is a person or an entity with the ability to control or jointly control the other party, or exercise significant influence over the other party, or vice versa, or an entity that is subject to common control, or joint control.

Control is the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.

Related party transaction is a transfer of resources, services or obligations between the reporting entity and a related party, regardless of whether a price is charged.

Management are those persons responsible for planning, directing and controlling the activities of the

entity, including those charged with the governance of the entity in accordance with legislation, in instances where they are required to perform such functions.

1.21 Events after reporting date

Events after reporting date are those events, both favourable and unfavourable, that occur between the reporting date and the date when the financial statements are authorised for issue. Two types of events can be identified:

- those that provide evidence of conditions that existed at the reporting date (adjusting events after the reporting date); and
- those that are indicative of conditions that arose after the reporting date (non-adjusting events after the reporting date).

The entity will adjust the amount recognised in the financial statements to reflect adjusting events after the reporting date once the event occurred.

The entity will disclose the nature of the event and an estimate of its financial effect or a statement that such estimate cannot be made in respect of all material non-

adjusting events, where non-disclosure could influence the economic decisions of users taken on the basis of the financial statements.

1.22 Prepayments

Prepayments are payments made in advance for services that have not been delivered for which the entity expects the delivery in the next financial period. Prepayments are recognised as current assets and are not discounted as the discounting effect thereof is considered immaterial.

1.23 Statement of Compliance

The annual financial statements have been prepared in accordance with the Standards of Generally Recognised Accounting Practice (“GRAP”), issued by the Accounting Standards Board (“ASB”) in accordance with Section 91(1) of the Public Finance Management Act (Act 1 of 1999) (“PFMA”).

These annual financial statements have been prepared on the going concern basis and on an accrual basis of accounting and are in accordance with the historical cost convention as the basis of measurement, unless specified otherwise. Standards and amendments to standards issued and implementation date:

Grp Statement	GRAP description	Implementation date
GRAP 25	Employee Benefits	No effective date
GRAP 104	Financial Instruments	No effective date

NOTES TO THE FINANCIAL STATEMENTS

2. Receivables from exchange transactions

	2022 R	2021 R
Sundry debtors	30 569	425 203
Study advances	538 043	524 709
	568 612	949 912

Fair value of receivables from exchange transactions

The carrying amount of receivables from exchange transactions approximates their fair value. The maximum exposure to credit risk at the reporting date is the fair value of each class of receivable mentioned above. The entity does not hold any collateral as security.

Age Analysis

No age analysis has been disclosed for the two receivables below due to their nature.

Sundry debtors - The Office intends to recover this debt within twelve months and hence the full amount is deemed to be current.

Study advances - Study assistance is provided to employees with a work-back condition and collection is considered probable, hence the balance was not impaired.

3. Statutory receivables from non-exchange transactions

	2022 R	2021 R
Financial Sector Conduct Authority	1 416 007	47 836 848

	2022 R	2021 R
Reconciliation of statutory receivables:		
Opening balance	47 836 848	36 246 492
Levies receivable	57 755 000	57 627 407
Funds utilised for operating expenses, other expenses and transfers	(104 175 841)	(46 037 051)
	1 416 007	47 836 848
Total receivables from non-exchange transactions	1 416 007	47 836 848

Fair value of statutory receivables from non-exchange transactions

The carrying amount of receivables from non-exchange transactions approximates their fair value. The maximum exposure to credit risk at the reporting date is the fair value of each class of receivable mentioned above. The entity does not hold any collateral as security.

Transaction(s) arising from statute

The FAIS Ombud is funded by the levies that are collected from the financial services industry. These levies are in terms of the relevant legislation. The FSCA collects these levies on behalf of the FAIS Ombud and recognises these levies in their financial records. Annually, the FAIS Ombud submits its budgetary requirements to the Commissioner of the FSCA, who is also the Accounting Authority for the FAIS Ombud for approval. Once approved by the Commissioner, these funds become available to the FAIS Ombud for their operational and capital requirements. The FSCA then deposits the approved funds in trenches throughout the year as and when required by the FAIS Ombud. The trenches received are recognised as income and presented as 'Revenue from non-exchange transactions' in the Statement of Financial Performance. The receivable arises when a portion of the total budget has not been transferred by year end.

4. Prepayments

	2022 R	2021 R
Software licenses	124 119	80 309
Rental of office premises	317 072	279 016
ICT services	499 703	23 853
	940 894	383 178

5. Cash and cash equivalents

Cash and cash equivalents consist of:	2022 R	2021 R
Cash on hand	7 000	2 573
Standard Bank	1 732 907	2 124 383
South African Reserve Bank	43 954 138	-
	45 694 045	2 126 956

Credit quality of cash at bank and short-term deposits, excluding cash on hand

The credit quality of cash at bank and short term deposits, excluding cash on hand that are neither past due nor impaired can be assessed by reference to external credit ratings (if available) or historical information about counterparty default rates:

	2022 R	2021 R
F1+(zaf) (Fitch)	1 732 907	2 124 383

6. Property, plant and equipment

	2022 R			2021 R		
	Cost/ valuation	Accumulated depreciation and accumulated impairment	Carrying value	Cost/ valuation	Accumulated depreciation and accumulated impairment	Carrying value
Furniture and fixtures	422 331	(152 340)	269 991	1 318 177	(1 206 691)	111 486
Motor vehicles	449 828	(156 022)	293 806	587 112	(203 342)	383 770
Office equipment	237 410	(166 138)	71 272	1 089 337	(981 396)	107 941
Computer equipment	4 690 990	(2 856 768)	1 834 222	4 585 099	(2 473 067)	2 112 032
Leasehold improvements	2 519 991	(388 647)	2 131 344	891 512	(701 089)	190 423
Equipment under finance lease	58 601	(13 616)	44 985	-	-	-
Total	8 379 151	(3 733 531)	4 645 620	8 471 237	(5 565 585)	2 905 652

Reconciliation of property, plant and equipment – 2022

	Opening balance	Additions	Disposals	Depreciation	Total
	R	R	R	R	R
Furniture and fixtures	111 486	265 059	(64 503)	(42 051)	269 991
Motor vehicles	383 770	-	-	(89 964)	293 806
Office equipment	107 941	12 052	(6 104)	(42 617)	71 272
Computer equipment	2 112 032	1 228 737	(101 977)	(1 404 570)	1 834 222
Leasehold improvements	190 423	2 111 225	-	(170 304)	2 131 344
Equipment under finance lease	-	58 601	-	(13 616)	44 985
	2 905 652	3 675 674	(172 584)	(1 763 122)	4 645 620

Reconciliation of property, plant and equipment – 2021

	Opening balance	Additions	Disposal	Depreciation	Total
	R	R	R	R	R
Furniture and fixtures	162 301	-	-	(50 815)	111 486
Motor vehicles	-	449 828	-	(66 058)	383 770
Office equipment	181 930	-	-	(73 989)	107 941
Computer equipment	1 701 170	1 134 994	(41 699)	(682 433)	2 112 032
Leasehold improvements	293 441	-	-	(103 018)	190 423
	2 338 842	1 584 822	(41 699)	(976 313)	2 905 652

Pledged as security

No assets have been pledged as security and there are no restrictions on the assets.

Expenditure incurred to repair and maintain property, plant and equipment included in Statement of Financial Performance

	2022 R	2021 R
General expenses	10 525	5 204

7. Intangible assets

	2022 R			2021 R		
	Cost/ valuation	Accumulated amortisation and accumulated impairment	Carrying value	Cost/ valuation	Accumulated amortisation and accumulated impairment	Carrying value
Computer software	106 840	(75 942)	30 898	1 243 156	(1 168 764)	74 392
Data management system	5 967 830	(1 098 991)	4 868 839	5 449 150	(485 843)	4 963 307
Licenses	318 586	(118 415)	200 171	572 768	(266 168)	306 600
Website	447 800	(298 639)	149 161	497 340	(277 709)	219 631
Total	6 841 056	(1 591 987)	5 249 069	7 762 414	(2 198 484)	5 563 930

Reconciliation of intangible assets – 2022				
	Opening balance	Additions	Amortisation	Total
	R	R	R	R
Computer software	74 392	-	(43 494)	30 898
Data management system	4 963 307	1 004 523	(1 098 991)	4 868 839
Licenses	306 600	-	(106 429)	200 171
Website	219 631	-	(70 470)	149 161
	5 563 930	1 004 523	(1 319 384)	5 249 069

Reconciliation of intangible assets – 2021				
	Opening balance	Additions	Amortisation	Total
	R	R	R	R
Computer software	127 055	59 920	(112 583)	74 392
Data management system	-	4 963 307	-	4 963 307
Licenses	15 887	318 586	(27 873)	306 600
Website	290 101	-	(70 470)	219 631
	433 043	5 341 813	(210 926)	5 563 930

8. Other financial assets

Designated at cost

	2022 R	2021 R
Rental deposit	1 510 123	-

Rental deposit is repayable at the end of the five year lease and no interest is receivable per the agreement entered into with the lessor.

Non-current assets

	2022 R	2021 R
Designated at cost	1 510 123	-

9. Finance lease obligation

	2022 R	2021 R
Minimum lease payments due		
- within one year	62 064	-
- in second to fifth year inclusive	36 944	-
	99 008	-

	2022 R	2021 R
Present value of minimum lease payments due		
- within one year	24 452	-
- in second to fifth year inclusive	27 584	-
	52 036	-

The Office entered into a finance lease agreement for the procurement of computer equipment (tablets) for a period of two years.

	2022 R	2021 R
Non-current liabilities	27 584	-
Current liabilities	24 452	-
	52 036	-

10. Payables from exchange transactions

	2022 R	2021 R
Trade payables	675 298	673 274
Operating lease liability	109 910	141 103
Accrued leave pay	1 639 014	1 191 119
Other accrued expenses	255 126	411 040
	2 679 348	2 416 536

11. Revenue

	2022 R	2021 R
SETA Income	42 457	-
Funds Received from the FSCA	57 755 000	57 627 407
	57 797 457	57 627 407

The amount included in revenue arising from non-exchange transactions is as follows:

	2022 R	2021 R
Transfer revenue		
SETA Income	42 457	-
Funds received from the FSCA	57 755 000	57 627 407
	57 797 457	57 627 407

12. Revenue from exchange transactions

	2022 R	2021 R
Other revenue	957 911	-

The amount included in other revenue arising from exchanges of goods or services are as follows:

	2022 R	2021 R
Interest received	953 138	-
Discount received	4 773	-
	957 911	-

13. Operating expenses

The operating (deficit)/surplus is stated after accounting for the following:	2022 R	2021 R
Assets costing less than R5 000	1 062 959	-
Auditors remuneration	2 164 731	2 140 589
Bank charges	55 749	21 804
Cleaning	100 326	290 581
Committee members' fees	775 435	768 969
Conferences and seminars	271 211	26 996
Consulting and professional fees	1 614 409	1 665 352
Entertainment	18 342	7 920
Flowers and gifts	-	418
IT expenses	879 138	1 003 881
Insurance	196 640	187 590
Library costs	566 230	-
Litigation fees	4 998 177	1 816 530
Motor vehicle expenses	10 525	5 204
Operating cost - office building lease	275 975	169 292
Postage and courier	2 577	2 741
Printing and stationery	452 895	292 763
Promotions	320 134	6 573
Recruitment and advertising	1 004 957	632 057
Relocation costs	274 082	-
Repairs, maintenance and support	2 099 483	1 007 912
Security	7 891	10 822
Staff welfare	294 631	141 146
Subscriptions and membership fees	70 727	107 006
Telephone and fax	514 429	328 110
Training	464 318	99 762
Travel - local	5 025	1 870
Water and electricity	854 845	595 637
	19 355 841	11 331 525

14. Lease rentals on operating lease

	2022 R	2021 R
Premises		
Contractual amounts	3 439 898	3 106 305
Equipment		
Contractual amounts	82 714	-
	3 522 612	3 106 305

These are payments effected towards the rental of the office premises and that of the office printers.

Office lease: The lease for the Kasteelpark office premises came to an end in January 2022, the lease was for a period of three years and had an annual escalation of 8%. An operating lease agreement was entered into in February 2022 for the lease of the new office premises. The lease term is for a period of five years with an annual escalation of 8%.

Equipment lease: The operating lease for the office printers is for a period of 3 years, the agreement was entered into in May 2021.

15. Personnel costs

	2022 R	2021 R
Accrued leave pay charges	447 895	1 191 119
Basic salary	30 272 224	23 407 619
Bonus payments	1 550 711	1 600 679
Compensation Fund Contributions	32 118	10 880
Long-service awards	36 000	72 000
Skills Development Levy	292 876	168 115
Unemployment Insurance Fund	117 343	96 419
	32 749 167	26 546 831

16. Depreciation and amortisation

	2022 R	2021 R
Property, plant and equipment	1 763 122	976 313
Intangible assets	1 319 383	210 927
	3 082 505	1 187 240

17. Finance Costs

	2022 R	2021 R
Finance leases	19 673	20 725

18. Cash generated from operations

	2022 R	2021 R
(Deficit) surplus	(56 954)	15 439 300
Adjustments for:		
Depreciation and amortisation	3 082 505	1 187 240
Loss / (Profit) on sale of assets	82 524	(4 519)
Finance costs - Finance leases	19 673	20 725
Changes in working capital:		
Receivables from exchange transactions	381 300	(314 252)
Other receivables from non-exchange transactions	46 420 841	(11 590 356)
Prepayments	(557 716)	314 812
Payables from exchange transactions	262 817	558 175
Rental deposit	(1 510 123)	-
	48 124 867	5 611 125

19. Auditors' remuneration

	2022 R	2021 R
External audit	1 598 632	1 601 776
Internal audit	566 099	538 813
	2 164 731	2 140 589

20. Taxation

No provision has been made for taxation as the entity 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).

21. Contingencies

A complainant that is litigating against the Office has requested the court to award a costs order against the Office. At year end the case had not yet been set down for hearing and, if awarded, the costs could not reasonably be estimated.

22. Related parties

	2022 R	2021 R
Public Entities in National Sphere of Government: Financial Sector Conduct Authority - Both entities report to the National Treasury Key management: Refer to note 23		
Amounts included in Trade receivable (Trade Payable) regarding related parties: Financial Sector Conduct Authority	1 416 007	47 836 848
Revenue from statutory non exchange transactions: Financial Sector Conduct Authority	57 755 000	57 627 407
Administration fees paid to (received from) related parties: Financial Sector Conduct Authority	15 640	15 640

23. Members' emoluments

Executive

2022

	Emoluments	Pension paid	Performance bonus	Leave commutation	Total
	R	R	R	R	R
KE Hechter, Governance, Risk & Compliance Officer	1 523 876	222 687	75 469	-	1 822 032
LC Lebeko, HR Manager	981 107	105 992	67 245	-	1 154 344
NL Tshombe, Acting Ombud	2 385 313	-	238 596	-	2 623 909
S Maharaj, CFO	1 593 228	171 970	106 845	-	1 872 043
	6 483 524	500 649	488 155	-	7 472 328

2021

	Emoluments	Pension paid	Performance bonus	Leave commutation	Total
	R	R	R	R	R
Karlien Hechter, Governance, Risk & Compliance Officer, (Appointed 11 January 2021)	331 762	54 984	-	-	386 746
LC Lebeko, HR Manager	723 922	78 208	67 256	16 009	885 395
NL Tshombe, Acting Ombud	2 320 125	-	239 000	109 568	2 668 693
S Maharaj, CFO	1 317 885	142 313	121 635	-	1 581 833
	4 693 694	275 505	427 891	125 577	5 522 667

Committee members

2022

	Human Resource and Remuneration Committee	Audit Committee	Risk Committee	Special Meetings	Total
	R	R	R	R	R
D Msomi	75 490	-	-	37 180	112 670
J Mogadime	30 713	42 029	-	-	72 742
L Molebatsi	29 097	-	-	-	29 097
L Senne	-	29 097	-	-	29 097
MH Ratshefola	30 714	42 029	25 864	17 782	116 389
N Esterhuizen	-	29 097	12 932	1 616	43 645
P Koch	-	-	19 398	6 466	25 864
P Mokgobu	24 247	6 466	-	-	30 713
P Mvulane	-	32 330	-	-	32 330
PJ Sutherland	58 194	-	-	32 330	90 524
S Gounden	-	12 932	6 466	51 728	71 126
S Malatji	-	-	25 864	6 466	32 330
T Ajam	-	-	19 398	6 466	25 864
TL Randall	35 563	-	-	-	35 563
V Balgobind	27 481	-	-	-	27 481
	311 499	193 980	109 922	160 034	775 435

23. Members' emoluments (continued)

2021					
	Human Resource and Remuneration Committee	Audit Committee Risk	Management Committee	Other	Total
	R	R	R	R	R
D Msomi	50 192	-	-	131 987	182 179
H Wilton	6 466	-	8 083	56 578	71 127
J Mogadime	19 398	19 398	8 081	24 248	71 125
L Matlhabe	11 316	-	-	-	11 316
L Molebatsi	17 782	-	-	-	17 782
MH Ratshefola	12 932	19 398	35 563	38 796	106 689
P Koch	-	-	27 480	-	27 480
P Mokgobu	-	19 398	-	-	19 398
P Mvulane	-	12 932	-	-	12 932
PJ Sutherland	43 646	-	-	53 345	96 991
S Gounden	-	19 398	27 480	14 549	61 427
S Malatji	-	-	27 480	-	27 480
T Ajam	-	-	27 480	-	27 480
TL Randall	17 782	-	-	-	17 782
V Balgobind	17 781	-	-	-	17 781
	197 295	90 524	161 647	319 503	768 969

24. Risk management

Financial risk management

In the course of the entity's operations, it is exposed to credit, liquidity, and market risk (currency, interest rate and other price risk). The entity has developed a strategy in terms of Treasury Regulation 28.1 in order to monitor and control these risks. Internal audit reports are submitted quarterly to the Audit and Risk Management Committees, independent committees that monitor risks and policies implemented to mitigate risk exposures. The entity is not exposed to significant currency risk or other price risk. The risk management process relating to each of these risks are discussed under the headings below.

Liquidity risk

The entity's risk to liquidity is a result of the funds available to cover future commitments. The entity manages liquidity risk through an ongoing review of future commitments and credit facilities.

Prudent liquidity risk management implies maintaining sufficient liquid resources and the ability to settle debts as they become due. In the case of the entity, liquid resources consist mainly of cash and cash equivalents. The entity maintains adequate resources by monitoring rolling cashflow forecast of the cash and cash equivalents on the basis of expected cashflow.

The table below analyses the entity's financial liabilities at year end. The amounts disclosed in the tables are the contractual undiscounted cash flows.

24. Risk management (continued)

At 31 March 2022				
	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
	R	R	R	R
Trade and other payables from exchange transactions	1 040 341	-	-	-

At 31 March 2021				
	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
	R	R	R	R
Trade and other payables from exchange transactions	1 225 418	-	-	-

Credit risk

Credit risk is the risk of financial loss to the entity if the counterparty to a financial instrument fails to meet its contractual obligations, and arises principally from the entity's accounts receivable and cash and cash equivalents. Strict credit control is exercised and when necessary, provision is made for doubtful debts.

The entity is exposed to certain concentrations of credit risk relating to its cash balances. The entity only deposits cash with major banks with high quality credit standings. The counterparties that are used by the entity are evaluated on a continuous basis. Financial assets that potentially subject the entity to concentrations of credit risk consist primarily of cash and cash equivalents as well as accounts receivables. The maximum exposure to credit risk relating to accounts receivable is the amount as shown in the statement of financial position.

Financial assets exposed to credit risk at year end were as follows:		
Financial instrument at fair value	2022 R	2021 R
Standard Bank SA	1 732 907	2 124 383
South African Reserve Bank	43 954 138	-
Receivables from exchange transactions	568 612	949 912

Market risk

Interest rate risk

The entity's exposure to interest rate risk is reflected under the respective notes. As part of managing the entity's exposure to interest rate risk, interest rate characteristics of new borrowings and the refinancing of existing borrowings are positioned according to expected movements in interest rates.

The entity manages its cash flow interest rate risk by using fixed interest rates. As a result, the entity's income and operating cash flows are substantially independent of changes in market interest rates.

Financial assets exposed to interest rate risk are as follows:		
	2022 R	2021 R
South African Reserve Bank	43 954 137	-

Capital risk management

The entity's objectives when managing capital are to safeguard the entity's ability to continue as a going concern in order to provide services to the public. The entity has developed systems and internal controls that are sufficient and effective in maintaining efficient levels of working capital which ensure that the entity has sufficient cash flow to fund its operations. As a Public Entity, the office has no desire to maintain a highly geared capital structure.

25. Events after the reporting date

No material events occurred after year end that require disclosure or adjustment of the financial statements.

26. Fruitless and wasteful expenditure

	2022 R	2021 R
Opening balance as previously reported	-	39 941
Less: Amount written off - current	-	(39 941)
Closing balance	-	-

27. Irregular expenditure

	2022 R	2021 R
Opening balance as previously reported	7 962 443	6 130 917
Add: Irregular Expenditure - current	481 790	4 037 942
Less: Amount condoned	(7 750 518)	(2 206 416)
Closing balance	693 715	7 962 443

Incidents/cases identified in the current year include those listed below:	Disciplinary steps taken/criminal proceedings	2022 R	2021 R
It was identified that the contract of the service provider was extended without following the relevant procurement processes.	The matter was discovered during the current year end audit. The Office intends to undertake an investigation to determine the initial procurement process in the appointment of the service provider. If applicable, corrective action will be implemented in due course should it be found that the correct procurement processes were not followed.	481 790	-
This balance relates to a contract for the previous office accommodation which had not been procured through the competitive bidding process.	None. The contract for the leasing of the office premises was condoned by National Treasury after the applicable processes were followed and complied with by the Office. The R7 750 518 condoned in the current year relates to the expenses incurred on this contract.	-	4 037 941
		481 790	4 037 941

28. Actual operating expenditure versus budgeted operating expenditure

The budget is prepared on the accrual basis. The reasons for differences between the budget and actual amounts are provided below where significant variances were identified. The internally approved Materiality and Significance Framework was used as a basis in determining the material variances to be explained. For the 2021/2022 financial period, the approved materiality level was R314 860.

Revenue from exchange transactions

Revenue from exchange transactions consists of interest income from the South African Reserve Bank (SARB). This amount had not been budgeted for as the Office was still in the process of opening the CPD account at the SARB.

Personnel costs

The Office is still in the process of filling critical vacancies like the roles of Senior Case Managers and Assistant Ombuds. The position of the Deputy Ombud had also been budgeted for but the process could not take place until the permanent Ombud is appointed. The variance identified for the period is as a result of the savings attributable to these various positions not being filled to date.

Consultants and professional fees

The budget amount was exceeded as an amount previously disclosed as salaries was incorrectly classified. Upon making the correcting adjustments, the line item exceeded the adjusted budgeted amount. However, overall, the office had not exceeded the total approved budget for the year.

Rental and operating costs

The savings attributable to this expense line item is due to the three month lease extension of the old office premises. A higher cost had initially been budgeted for the new office premises.

Repairs, maintenance and support

The expenditure incurred on computer equipment maintenance is less than budget as new equipment was procured during the course of last year as well as this year. This resulted in lower costs as fewer items require to be maintained as most of these assets are still covered under their warranties and/or guarantees.

Savings/ Retention of Surplus / Non-cash items

During the budget planning phase for the 2021/22 financial period, savings available to the Office were considered in funding the budget shortfall. The use of these savings was approved by both the Accounting Authority and National Treasury. However, due to the various cost containment implemented by the Office, the Office was able to avoid using all of its savings that it had budgeted for the financial year. The saving will be utilized for future purposes for any budget shortfalls that may be experienced.

Depreciation and amortization

The development of the CRM system was completed in October 2021 and was available for use from that date. This led to a smaller depreciation than was anticipated.

29. Employee benefits – defined contribution plan

The entity pays contributions towards the pension fund established for its employees. Other than these monthly contributions, the entity has no other obligation to provide retirement benefits to its employees. The amounts recognised in the statement of financial performance are as follows:

	2022 R	2021 R
Pension fund contributions	2 568 892	1 971 804

30. Commitments

	2022 R	2021 R
Authorised capital expenditure Already contracted for:		
Intangible assets - CRM system	-	1 193 473
Authorised operational expenditure Already contracted for but not provided for:		
General expenses	4 557 960	3 643 040

In the previous year, the two contracted items were omitted from the list of commitments disclosed. The one related to a computer maintenance contract amounting to R88,967 and a contract relating to the employee wellness amounting to R158,700. In total, both contracts were not material. Furthermore, in the current year, the internal audit engagements have not been disclosed as a commitment due to it not being a fixed contractual amount and audit conducted would vary.

Operating leases as lessee Minimum lease payments due	2022 R	2021 R
Within one year	3 945 832	1 953 114
In second to fifth year	18 019 882	-
	21 965 714	1 953 114

Office lease: The lease for the Kasteelpark office premises came to an end in January 2022, the lease was for a period of three years and had an annual escalation of 8%. An operating lease agreement was entered into in February 2022 for the lease of the new office premises. The lease term is for a period of five years with an annual escalation of 8%.

Printer lease: The operating lease for the printers was entered into in May 2021. This lease has no escalation clause and it is for a period of three years.

31. Covid-19

For a second year in a row, the Office operated in an environment affected by the COVID-19 pandemic. In its continued prevalence of the COVID-19 pandemic, the Office abided by the relevant regulation and provisions as set out in terms of the Disaster Management Act 57 of 2002, as directed by the President of the Republic of South Africa. In an attempt to limit the spread of the virus, the Office continued with its work from home and work from office practice to ensure the smooth flow of operations. On occasion, the Office had to be closed when the a positive case of the virus was detected but was reopened once the relevant measures carried out which included the disinfection of the Office.

32. Implementation of the Levy Bill

It is anticipated that during the 2022/23 financial year, the Financial Sector and Insurance Levies Bill (Bill) will become effective. At present, National Treasury is currently finalizing the processes and it is expected that the Bill be approved by Parliament during the 2022/23 financial year. On implementation of the Bill the entity will be solely responsible for its funding and will no longer receive financial assistance in any form from the FSCA. The Office does not foresee any issues surrounding the funding element or cashflows as a result of the Bill being implemented.

33. Change in estimate

Property, plant and equipment

The useful life of property, plant and equipment was reassessed and management have revised their estimates. The effect of this revision has increased the depreciation charges for the current period by R31,469 (2021: R10,745). In future periods the depreciation charges will decrease by R31,469.

The impact of the change in estimate per class of assets on surplus/deficit is as follows (Decrease) / Increase:

Property, plant and equipment (Decrease) / Increase	2022 R	2021 R
Computer equipment	(34 443)	8 074
Furniture and fittings	2 974	1 240
Office equipment	-	1 431
	(31 469)	10 745

The estimated useful life for certain office furniture and the old motor vehicle had changed in the previous year in anticipation of their continued use. This change was not deemed to be material on both classes of assets.

34. Going concern

We draw attention to the fact that at 31 March 2022, the entity had an accumulated surplus of R 57 292 986 and that the entity's total assets exceed its liabilities by R 57 292 986.

The annual financial statements have been prepared on the basis of accounting policies applicable to a going concern. This basis presumes that funds will be available to finance future operations and that the realisation of assets and settlement of liabilities, contingent obligations and commitments will occur in the ordinary course of business.

ANNUAL PERFORMANCE REPORT FOR THE 2021/22 FINANCIAL YEAR

Outcome	Output	Output Indicator	Actual Audited Performance 2019/20	Actual Audited Performance 2020/21	2021/22		Deviation from planned target to Actual Achievement 2021/2022	Reason for deviation
					Planned Annual Target	Actual Achievement		
Programme: Administration								
Optimised internal capacity, business processes and systems to enhance operational excellence through the support services	External Audit Report	Clean audit opinion (AGSA)	Clean audit opinion.	Clean audit opinion.	Obtain AGSA clean audit opinion	Not achieved – AGSA Unqualified (with findings) audit opinion	Unqualified (with findings)	Management control and oversight to be improved.
	Management Accounts on Supplier invoices paid	Percentage suppliers' invoices paid within 30 days	100%	100%	Pay 100% of valid supplier's invoices within 30 days	Not achieved – 99.47% of valid supplier's invoices within 30 days	- 0.53%	The finance department relies heavily on manual processes which decreases the efficiency of the department., In turn, it also affects the department's ability to achieve the objective of paying all valid invoices within the set timeframes.
	Quarterly report on Employment Equity Targets	Percentage achievement of FAIS Ombud EE targets	67%	67%	51% female	Achieved – 63.8% (5.5% white and 94.5% black)	+ 12.8%	N/A
			86%	90%	75% black	Achieved – 94%	+ 19%	N/A
			0%	2%	2% employees with disabilities	Achieved – 3%	+ 1%	N/A
	Signed trainee contracts	Number of trainees appointed per annum.	11	9	9 trainees appointed by the 31 March 2021/22	Achieved – 10 trainees appointed by the 31 March 2021/22	+ 1 trainees appointed by the 31 March 2021/22	N/A
	Implemented CRM system – Project Closeout Report	Date of implementation of the CRM system.	N/A – new initiative	N/A – new initiative	Implementation of the CRM system by 30 September 2021	Achieved – The CRM system has been implemented and in use as of 1 July 2021	N/A	N/A

Outcome	Output	Output Indicator	Actual Audited Performance 2019/20	Actual Audited Performance 2020/21	2021/22		Deviation from planned target to Actual Achievement 2021/2022	Reason for deviation
					Planned Annual Target	Actual Achievement		
Programme: Complaints Resolution								
Achievement of legislative mandate -Satisfied Customers	Customer satisfaction forms	Percentage of satisfied customers as derived from the CSFs in 2021/22	96.42%	96.90%	Achieve 90% satisfaction rate as derived from the CSFs in the 2021/22 financial year	Achieved – 90% satisfaction rate as derived from the CSFs by 31 March 2022	N/A	N/A
	Report on complaints closed within 9 months of date of receipt	Percentage of complaints closed within 9 months of receipt	96.25%	94.99%	92% complaints closed within 9 months of date of receipt	Achieved – 94.23% complaints closed within 9 months of date of receipt measured at 31 December 2021	+ 2.23%	+ 2.23% Target was exceeded due to greater efficiencies.
	Report on complaints closed within 6 months of date of receipt	Percentage of complaints closed within 6 months of receipt	91.18%	91.12%	80% of complaints closed within 6 months of receipt	Achieved – 88.60% complaints closed within 6 months of date of receipt measured at 31 December 2021	+ 8.60%	Target was exceeded due to greater efficiencies.
	Report on complaints closed within 3 months of date of receipt	Percentage of complaints closed within 3 months of receipt	81.76%	84.43%	70% complaints closed within 3 months of date of receipt measured at 31 March 2022	Achieved – 82.14% complaints closed within 3 months of date of receipt measured at 31 March 2022	+ 12.14%	Target was exceeded due to greater efficiencies.
	Report on Complaints older than 9 months	Percentage of active complaints that are older than 9 months (excluding property syndications)	17.93%	19.27%	20% or less active complaints older than 9 months by 31 March 2022 (excluding property syndications)	Achieved – 17.57% active complaints older than 9 months at 31 March 2022 (excluding property syndications)	+ 2.43%	Target was exceeded due to greater efficiencies.

Outcome	Output	Output Indicator	Actual Audited Performance 2019/20	Actual Audited Performance 2020/21	2021/22		Deviation from planned target to Actual Achievement 2021/2022	Reason for deviation
					Planned Annual Target	Actual Achievement		
Programme: Complaints Resolution								
Achievement of legislative mandate -Satisfied Customers	Report on efficiency ratio (% closed complaints vs received complaints within the financial year)	Efficiency ratio	17.93%	19.27%	20% or less active complaints older than 9 months by 31 March 2022 (excluding property syndications)	Achieved – 17.57% active complaints older than 9 months at 31 March 2022 (excluding property syndications)	+ 2.43%	Target was exceeded due to greater efficiencies.
	Report on efficiency ratio (% closed complaints vs received complaints within the financial year)	Efficiency ratio	84.91%	80.66%	80% Efficiency ratio for the 2021/22 financial year	Achieved – 84.70% efficiency ratio for the 2021/22 financial year	+ 4.7%	Target was exceeded due to greater efficiencies.
	Property Syndication complaints report	% Decrease in active property syndication complaints from the number of active property syndication complaints as at 1 April 2021	14.31%	20.31%	10% decrease in active property syndication complaints from the number of active property syndication complaints as at 1 April 2021	Not achieved – 3.09% decrease in active property syndication complaints from the number of active property syndication complaints as at 1 April 2021	- 6.1%	Target not met due to resource constraints and the majority of Property Syndications that is currently in Afrikaans and requires translation prior to being able to process the complaints.

Outcome	Output	Output Indicator	Actual Audited Performance 2019/20	Actual Audited Performance 2020/21	2021/22		Deviation from planned target to Actual Achievement 2021/2022	Reason for deviation
					Planned Annual Target	Actual Achievement		
Programme: Stakeholder Management								
Enhanced relationships with stakeholders	Exco reports on stakeholder engagements	Number of stakeholder engagement with key stakeholders, including NT, Governance Committees, Union and Auditors	N/A – stakeholder engagement initiative has been redefined.	N/A – stakeholder engagement initiative has been redefined.	13 National Treasury submissions	Achieved – 13 National Treasury submissions	N/A	N/A
					16 Governance committees	Achieved – 16 Governance committees	N/A	N/A
					4 Union engagement meetings	Not achieved – 3 Union engagement meetings	- 1 Union engagement meetings	N/A
					2 Internal Audit Engagement meeting	Achieved – 16 Internal Audit Engagement meetings	+ 14 Internal Audit Engagement meetings	Additional Internal Audit Engagement meetings were required.
					2 External Audit Engagement meeting	Achieved – 3 External Audit Engagement meeting	+ 1 External Audit Engagement meeting	Additional External Audit Engagement meetings were required.
	Exco reports on stakeholder engagements	Number of stakeholder engagement with key stakeholders, including NT, Governance Committees, Union and Auditors	N/A – stakeholder engagement initiative has been redefined.	N/A – stakeholder engagement initiative has been redefined.	1 MoneySmart week	Achieved – 1 MoneySmart week	N/A	N/A
					12 posts on social media (Twitter, Facebook and LinkedIn)	Achieved – 176 posts on social media (Twitter, Facebook and LinkedIn)	+ 164 posts on social media (Twitter, Facebook and LinkedIn)	Target exceeded due to greater efficiencies and due to news worthy information that needed to be disseminated to the public.
					12 posts on social media (Twitter, Facebook and LinkedIn)	Achieved – 176 posts on social media (Twitter, Facebook and LinkedIn)	+ 164 posts on social media (Twitter, Facebook and LinkedIn)	Target exceeded due to greater efficiencies and due to news worthy information that needed to be disseminated to the public.

Outcome	Output	Output Indicator	Actual Audited Performance 2019/20	Actual Audited Performance 2020/21	2021/22		Deviation from planned target to Actual Achievement 2021/2022	Reason for deviation
					Planned Annual Target	Actual Achievement		
Programme: Stakeholder Management								
Improved brand awareness, financial literacy and customer awareness	Exco reports on stakeholder engagements	Number of stakeholder engagement with key stakeholders, including NT, Governance Committees, Union and Auditors	N/A – stakeholder engagement initiative has been redefined.	N/A – stakeholder engagement initiative has been redefined.	12 press releases	Not achieved – 6 press releases	- 6 press releases	<p>Delayed recruitment of Marketing & Communication practitioner.</p> <p>3 press releases were planned for each quarter. Since the Marketing & Communication practitioner was appointed, the office has achieved the quarterly targets. The planned number of press releases will therefore be published in the new financial year.</p>
					4 Newsletters	Not achieved – 2 Newsletter	- 2 Newsletter	<p>Delayed recruitment of Marketing & Communication practitioner.</p> <p>4 newsletters were planned for the year. Since the Marketing & Communication practitioner was appointed, the office has achieved the quarterly targets. The planned number of newsletters will therefore be published in the new financial year.</p>



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