

DON'T RISK YOUR LICENCE

THROUGH NON-COMPLIANCE OR INAPPROPRIATE PROCESS

Ian Middleton | Managing Director, Masthead



The number of financial service providers has decreased by almost 13 per cent due to people exiting the industry, practices merging and the suspension of FSPs who do not meet compliance or regulatory requirements. According to Masthead, having one's licence suspended or having the FAIS Ombud uphold a complaint from an aggrieved customer is completely avoidable.

"No FSP should have their licence suspended for non-compliance, as conformity to regulation can and should be done. Likewise, one can minimise the possibility of complaints being raised through the office of the FAIS Ombud," said Ian Middleton, Masthead managing director.

"Risk management (which includes compliance) is about process and diligence in the advice process," he noted. To determine whether compliance requirements have been met, the FSB looks at whether the requirements set out in the FAIS Act have been followed. But, in relation to advice, the FAIS Ombud takes into account whether the adviser acted with due skill, care and diligence and in the interests of the client.

"It is easy to see whether you are complying as the regulatory framework, specifically the General Code of Conduct, provides guidelines for this process. The

code prescribes how to advise a client, the steps to follow and how to check the client's understanding," said Middleton. "During the advice process, you can test yourself against the code's checklist. It's easy to see whether a process has been followed, but it's more difficult to judge whether the process was good."

There are several noticeable areas in which some advisers fail to comply and risk an adverse finding from the FAIS Ombud or even suspension of their licence by the FSB. "The fact that a client suffers a loss does not necessarily mean that an adviser was negligent. Rather, the biggest error is complying for the sake of complying – going through the motions but not testing the substance of the process followed, the appropriateness of the advice given and the solutions implemented," Middleton explained.

"Another major area of concern is that some advisers neglect to conduct a proper needs analysis, or simply don't do one at all. There are many single-need, or execution-only sales taking place. As one of the cornerstones of compliance, a needs analysis is essential to provide clients with the appropriate advice," he said.

The third area relates to policy replacements. "Many replacements are done without the adviser obtaining the right information from or understanding the client's circumstances. In many cases,

the reason given for the replacement is a lower premium. But advisers should not consider factors beyond premium, like the age, health, insurability of the client and guarantee of payout.

"A reputation for poor or non-compliance will increase the scrutiny that the regulator will have on an adviser's business. A poor record will ultimately impact your business brand and reputation, and therefore your ability to stay in business."

"By being compliant, clients are assured that they are doing business with advisers who are meeting their licence requirements." By outsourcing compliance professionals, the practice owners can get on with their core business of financial advice and clients can have peace of mind knowing that they are dealing with a business confident enough to subject itself to external assessment.

"To embrace compliance requires a mindset or culture of compliance – recognition that compliance is not a bad thing," said Middleton. "If an adviser sets out to comply with the spirit of the legislation, compliance to the letter of the legislation will follow naturally."

Through its core service offerings, Masthead aims to help advisers to remain compliant and thereby reduce risk. For more information on Masthead's services, please visit www.masthead.co.za.

