

Press Release: 2 July 2019

Settled Complaint

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 vein, 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.

The complaint detailed below is one such matter 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 on a without prejudice basis, this matter does address a few significant issues that this Office believes need to be highlighted.

The complainant was the executor of the estate for the late Mr H. Upon his passing on 13 April 2018, the complainant, whilst finalising the affairs of the estate, discovered that the deceased's existing life insurance policy had been cancelled and replaced with a new policy with another insurer. The complainant subsequently submitted a claim to the new insurer, which was rejected as the insured had passed away prior to the inception of the policy.

On further investigation, the complainant determined that the application for the replacement policy had been completed on 20 February 2018 and that there was correspondence dated 14 March 2018 from the respondent instructing the deceased to cancel his existing policy. This letter was signed by the deceased and forward to the existing insurer, however the replacement policy had at that time not yet incepted. The replacement policy was supposed to incept on 1 April 2018, however during the underwriting process there were concerns surrounding the results of the deceased's Body Mass Index ('BMI'). The results of the deceased's BMI resulted in the new insurer issuing an 'Acceptance of Offer Letter' which saw the inception date of the policy extended to 1 May 2018.

As a result, when the deceased passed away on 13 April 2018, there was no policy in place. The complainant was of the view that the deceased had not been correctly advised to cancel the existing life insurance policy before the application for the new policy had even been accepted, let alone the new policy having incepted. The complainant therefore held the respondent liable for the losses incurred as a result.

This Office agreed with this view and the fact that the respondent had not acted with the required due skill care and diligence in the best interests of the deceased as required in terms of section 2 of the General Code of Conduct for Authorised Financial Services Providers and Representatives. This was communicated to the respondent, who accepted responsibility for the losses incurred by the complainant and provided the complainant with an offer of R1000 000, the cover amount, in full and final settlement. The offer was accepted by the complainant.

Whilst the facts surrounding this matter would appear to have been rather straight forward, and highlight the additional duty of care that a Financial Services Provider ('FSP') must exercise during the replacement of an existing life assurance policy, the significance of this matter lies in the respondent's willingness to resolve the complaint for the total loss incurred, despite this amount exceeding this Office's R800 000 jurisdictional limit.

The Rules on Proceedings of this Office do restrict the jurisdiction of this Office to the investigation of complaints where the losses incurred do not exceed R800 000, and any matter received that does exceed this limit would require that the complainant confirm in writing to forgo any amount in excess of R800 000. However, the very same rules do provide that this jurisdictional limit may be exceeded should the respondent agree to it in the interests of proceeding with the investigation.

It is therefore refreshing to note that especially during this time where there is a heightened focus on treating customers fairly, that a respondent has chosen to not only acknowledge the negligence that resulted in the losses incurred, but was also willing to resolve the matter in full. It is this type of collaboration between industry and an institution such as this Office, where the interests of the client are first and foremost, that will contribute further towards increasing the integrity of the financial services industry. Something that is not only part of the mandate of this Office, but an aspect that we take very seriously and we encourage more FSPs to follow the example above.

In accordance with the provisions of the Financial Services Regulation Act, this Office has a duty to report any concerns surrounding the conduct of FSPs during the investigation of a complaint. This Office does however recognise the importance of also highlighting the positive actions of FSPs in making a tangible contribution towards treating customer fairly.