Press Release: 30 September 2021

Settled Complaint

The Office of the FAIS Ombud ("the Office") is committed to resolving complaints in a procedurally fair, informal, economical and expeditious manner, with reference to what is equitable in all circumstances. In order to execute on this commitment, the Office always explores every available avenue to resolve complaints between parties on an informal basis without the need to resort to formal resolution by way of a determination.

The Office recognises that a settlement agreement entered into in order to resolve a complaint via a conciliation process is concluded on a confidential basis. This manner of resolution is also much preferred by the Office whenever possible because it is an expeditious process, it does not expose the parties to legal costs and it lends itself towards the harmonious atmosphere required between consumers and financial services providers that can lead to the requisite confidence of consumers in the financial services industry. Further, some of the issues that arise give the Ombud an opportunity to highlight to the whole industry specific concerns that arise every now and again.

The settlement that has been anonymously sketched below is in respect of policies that are commonly referred to as guaranteed income plans. What these policies provide is a guaranteed income for a period of 5 years. The income is guaranteed, as the original capital is split into to portions, with one portion used to provide a specific level of income for the duration of the 5-year term, with the second portion being invested into an endowment policy where the funds are invested in selected collective investment schemes to provide a lumpsum at maturity. The concern with these policies, in respect of complaints received by this Office, is with regards to the 'second' portion, i.e., the funds that are invested to provide a return after 5 years. The funds invested in the endowment can either be guaranteed, i.e., one will receive the full capital invested at maturity, or the funds can be invested in the markets without a guarantee, in an attempt to provide a capital amount at maturity that is more than was invested. This second option obviously brings with it the risks associated with market fluctuations and can see one receiving less at the end of 5 years than was originally invested. The major difference between the two options besides the obvious capital guarantee is the significant impact the selected option has on the guaranteed income one can expect to receive, with the guaranteed option providing a lower level of income. In complaints received by this Office as with the matter detailed below, there is a tendency with the advisor to not manage the client's expectations, and to provide the complainant with the income requested by the complainant without considering whether the risks associated in not preserving the capital are appropriate to the client's needs and circumstances. Capital preservation is a vital consideration that is often ignored, and clients such as the complainants detailed below are not always placed in a position to make an informed decision as to the option that is most appropriate to them.

Complaint : S v S

Complainant claimed that she and her husband shopped around with various banking institutions to find the best option to invest an amount of R1000 000.00, which represented their life savings to generate an income. Complainant states their instruction was that they wanted the capital protected and that any income to be paid only from interest earned. Complainant states that they needed the investment to be safe, since they had lost the bulk of their life savings in the "failed Pickvest Investment Scheme". Complainant was 80 years old at the time the financial service was rendered.

The respondent had recommended a 5-year termed investment where the funds invested would be split into two with one portion going towards providing a monthly annuity and the remainder of the funds would be invested to generate a return during the 5-year term. At maturity the complainants were stunned to learn that they would receive an amount R737 251.15, which was R262 748.85 less than what was originally invested. In response to the complaint the respondent claimed that the complainant had never specifically requested that the funds be guaranteed, and that when one considers the level of income received during the term of the policy and maturity value of R737 251, 15 then the product provided had in effect provided the complainant an effective return in excess of the original R1 000 000 invested. This Office could not accept this response as when one considered the complainant's age and the previous losses that had left them with this sole R1 000 000 with which to provide an income, then the respondent's representative would appear to have contravened Section 8 of the General Code of Conduct in that the recommended product was not appropriate. Subsequent to meeting held with this Office the respondent then provided a response with a calculation of the income that the complainant would have earned from a guaranteed version of the product provided and then compared this from the difference between the maturity value and the original investment. The respondent claimed that any offer in excess of this would constitute enrichment.

The offer was rejected by the complainant and this Office respondent to the respondent that a settlement that placed the complainant in the position they would have been had the advice been appropriate could never be considered as enrichment as the reality for the complainant is that she now has a reduced lumpsum with which to provide her with an income to sustain her standard of living, meaning that she may need to either significantly reduce her standard of living or assume greater risk in the portfolio's she is now invested in, placing her in an even more precarious situation. When one then adds the effects of inflation since the commencement of the investment and going forward, and the additional pressure this will place on whatever income she can now hope to generate, then one cannot possibly conclude that this complainant will be enriched by being placed in the position she would have been in, had she been placed in a position to make an informed decision.

Subsequent to this response the respondent amended its offer to pay the difference between the original capital and maturity value in the amount of R252 999.47. An offer that was accepted by the complainant in full and final settlement.

Should you believe that you have indeed been financially prejudiced as a result of the financial service rendered to you, you may submit a complaint in writing to info@faisombud.co.za, Fax: (012) 348 3447 / (012) 470 9097 or via post to P O Box 74571, Lynnwood Ridge, 0040. Alternatively you can submit a complaint via our website at www.faisombud.co.za or call our Client Care Centre on (012) 762 5000 or Sharecall 086 066 3274 for assistance in submitting a complaint.