

BOARD NOTICE

BOARD NOTICE 95 OF 2006

FINANCIAL SERVICES BOARD

FINANCIAL SERVICES OMBUD SCHEMES ACT, 2004 (ACT NO. 37 OF 2004)

GUIDELINES ON DETERMINATION OF CASE FEES BY STATUTORY OMBUD (FINANCIAL SERVICES OMBUD SCHEMES ACT)

The Financial Services Board, after consultation with the Financial Services Ombud Schemes Council, hereby gives notice that it has under section 14(4) of the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), set the guidelines in terms of which the statutory ombud may determine amounts payable by financial institutions to cover costs of dealing with complaints submitted in terms of that Act, as set out in the Schedule.



Chairperson of Financial Services Board

SCHEDULE

GUIDELINES ON DETERMINATION OF CASE FEES BY STATUTORY OMBUD (FINANCIAL SERVICES OMBUD SCHEMES ACT)

Section 14(4) of Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004)

Definitions

1. In this Schedule “the Act” means the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), any word or expression to which a meaning has been assigned in the Act, unless the context indicates otherwise, bears that meaning, and-

“**case fee**” means the costs of dealing with a complaint officially received as such, as contemplated in section 14(4) of the Act.

Case fees

2. The statutory ombud may under subsection (4) of section 14 of the Act, and subject to subsection (5) of that section and paragraph 3 of these Guidelines, in the case of any complaint officially received as such determine a case fee of R1 000 (one thousand Rand) to be paid by the financial institution involved to cover the costs of dealing with the complaint.

Qualifications

3. The statutory ombud may, in the discretion of the ombud, in any particular case-
 - (a) reduce, waive or refund a case fee;
 - (b) charge the financial institution involved an additional fee in respect of every different stage which is required for the adjudication of the complaint,

with due regard to the nature of the complaint, the time spent on the complaint, the expense and inconvenience caused by a party to the complaint, the conduct of a party in resolving the complaint and any other factor deemed appropriate by the ombud.

Short title and commencement

4. These Guidelines are called the Guidelines on Case Fees by Statutory Ombud (Financial Services Ombud Schemes Act), 2006, and come into operation on the date envisaged in section 20 of the Act.

**MEMORANDUM ON OBJECTS OF GUIDELINES ON CASE FEES BY
STATUTORY OMBUD
(FINANCIAL SERVICES OMBUD SCHEMES ACT, 2004)**

1. The Guidelines provides that a maximum case fee of R1 000 (derived from the Rules of Proceeding of the Office of the Ombud For Financial Services Providers, 2003 ("FAIS Ombud") should be imposed by the statutory ombud under section 14(4) of the Financial Services Ombud Schemes Act, 2004 ("the Act"), but that the statutory ombud may adjust the fee under the circumstances envisaged in paragraph 3 of the Guidelines.
2. Section 14(4) of the Act gives effect to a policy that the contribution so imposed on the financial institutions serves a consumer benefit purpose as it obviates the need to use the Courts for the resolution of complaints by complainants.

In South Africa there has been increasing concern that the cost of access to the courts has put justice out of the reach of the ordinary person. Funds available for legal aid provide such access only for the poorest members of the community and only in a limited range of cases. The greater recognition of consumers' rights means that more and more people will seek such access if available. But apart from the expense, ordinary court processes are slow and cumbersome. Thus, unless redress can be achieved easily and expeditiously, the average consumer will give up the struggle and write it off to experience.

In recent years attention has been focused on alternative methods of dispute resolution. There has been an identifiable trend, especially in the commercial area, favouring a shift away from court-imposed resolution of disputes to more flexible and informal modes of extra-judicial dispute settlement. These include consultation, complaint procedures, conciliation and arbitration. Resolution of commercial conflict outside the court system can provide cheap, speedy and effective justice relative to that on offer in the "official" legal system.

The "statutory ombud" (the FAIS Ombud) may play a role in promoting the image of the financial services industry. The industry's standing in the eyes of the public is greatly affected by the extent to which complaints can be properly redressed. If this can be obtained quickly through the office of the statutory ombud, by settlements acceptable to both sides, then not only is public dissatisfaction reduced, but time and money are saved by not having to proceed to the point of litigation. Therefore, for the good reputation of the industry, financial institutions must be prepared to contribute financially to the resolution of complaints by the "statutory ombud".

3. It must be borne in mind that the "statutory ombud" who is the FAIS Ombud in another capacity, is a functionary whose infrastructure and funds derive mainly from the Financial Services Board (section 22 of the Financial Advisory and Intermediary Services Act, 2002 ("FAIS Act"). When acting as a statutory

ombud this functionary will utilise all facilities already provided and funded for under the FAIS Act. Nevertheless in the expected few cases where this functionary will have to act as a "statutory ombud", additional costs can be expected, and the case fees serve to address this additional financial need.

4. The "tiered approach" embodied in paragraph 3(b) of the Guidelines reflects the practical realisation that the complexity of a particular relevant complaint, and/or the conduct of the parties thereto, may cause a situation where the complaint cannot be dealt with "in one sitting". The power of the statutory ombud to determine additional fees also for the different stages which may then ensue, enables the case fees to reflect the extra time spent on the resolution of the complaint, and also provides the relevant financial institutions with an incentive to settle early.
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