

## **Draft Ombud Council rules for the FAIS Ombud – A call for comments by 16 October 2023; impact on FSPs**

**In a move that underscores the evolving landscape of financial regulations, the Ombud Council has released its draft rules for the Ombud for Financial Services Providers (FAIS Ombud) for public comment.** This development, while expected, marks a significant step in refining the compliance and dispute resolution processes within the financial sector.

The FAIS Ombud, established under section 20 of the Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS Act), serves as a pivotal entity in addressing complaints related to financial services providers and their representatives. Its objective is to ensure that these complaints are handled in a manner that is fair, informal, economical, and expeditious.

Historically, the **Financial Sector Conduct Authority** (FSCA) held the power to make rules concerning the proceedings of the FAIS Ombud. However, with the promulgation of section 301(2) of the Financial Sector Regulation Act 9 of 2017 (FSR Act), the baton has been passed to the Ombud Council.

### **What's new in the draft rules?**

The draft Ombud Council Rules, now available on the Ombud Council's website, propose several changes:

- *Compensation Limit Increase* – One of the most notable changes is the proposed increase in the maximum compensation amount the FAIS Ombud can award. This change was previously consulted on by the FSCA.
- *Updated References and Clarifications* – The new rules aim to remove outdated references and provide clarity on certain procedural and jurisdictional matters.
- *Enhanced Dispute Resolution Processes* – The draft rules emphasise the Ombud Council's commitment to ensuring that financial customers have access to affordable, effective, independent, and fair alternative dispute resolution processes.

The Ombud Council is inviting stakeholders and the public to provide their comments on the draft rules. While there isn't a designated template for comments, stakeholders are encouraged to submit their feedback by 16 October 2023 to the email address: [admin@ombudcouncil.org.za](mailto:admin@ombudcouncil.org.za).

**For professionals in the financial sector, this is an opportunity to have a say in the rules that will govern the FAIS Ombud's operations. The draft rules, once finalised, will play a crucial role in shaping the compliance landscape, and it's imperative for stakeholders to be both informed and involved.**

The release of the draft Ombud Council Rules for the FAIS Ombud is a testament to the dynamic nature of the financial sector's regulatory environment. As the sector continues to evolve, such developments underscore the importance of adaptability, engagement, and proactive participation by all stakeholders.

For those interested in delving deeper into the draft rules and understanding their implications, the full document, along with a supporting statement, is available below.

[Notice Regarding the Publication of Draft Ombud Council Rules for the Ombud for Financial Services Providers, 2023](#)

[Draft Ombud Council Rules for the Ombud for Financial Services Providers, 2023 Statement of Need, Intended Operation, and Expected Impact](#)

### *Compli-Serve Says...*

*The financial sector is a dynamic environment, constantly evolving in response to market demands, technological advancements, and regulatory changes.* One of the most recent regulatory shifts is the publication of the Draft Ombud Council Rules for the Ombud for Financial Services Providers, 2023. This article aims to dissect the implications of these rules, particularly focusing on the impact they might have on Financial Services Providers

(FSPs).

## 1. The Role of the FAIS Ombud

The Ombud for Financial Services Providers, commonly known as the FAIS Ombud, was established under section 20 of the Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS Act). Its primary role is to address and resolve complaints related to financial services providers and their representatives. The process is designed to be fair, informal, economical, and swift.

## 2. The FAIS Ombud as a Statutory Ombud Scheme

According to section 20A of the FAIS Act, in conjunction with the Financial Sector Regulation Act 9 of 2017 (FSR Act), the FAIS Ombud is recognised as a statutory ombud scheme. This designation further solidifies its role in the financial sector's regulatory framework.

## 3. Empowerment of the Financial Sector Conduct Authority (FSCA)

Section 26 of the FAIS Act grants the FSCA, which succeeded the former Financial Services Board, the authority to establish rules concerning the FAIS Ombud's proceedings. These rules, previously set in 2003 and later amended in 2004, are now under review.

## 4. The Introduction of the FSR Act

With the promulgation of section 301(2) of the FSR Act, the rules established under section 26 of the FAIS Act were integrated into the Ombud Council Rules. This integration allows for the amendment or revocation of these rules in line with the FSR Act.

## 5. Compensation Limit Increase

One of the most notable changes in the Draft Ombud Council Rules is the proposed increase in the maximum compensation amount the FAIS Ombud can award. This change aims to reflect the current market realities and ensure that compensation remains fair and relevant.

## 6. The Role of the Ombud Council

The Ombud Council's primary objective, as outlined in section 176 of the FSR Act, is to ensure that financial customers have access to affordable, effective, independent, and fair alternative dispute resolution processes. This objective underscores the importance of the Ombud Council's rule-making powers.

## 7. Expected Impact on Financial Services Providers

- *Compensation Limit Adjustments* – **The proposed increase in the compensation limit from R800 000,00 to R3 500 000,00 is significant.** While this change aims to provide fair compensation to financial customers, FSPs might face higher compensation payouts in cases of disputes.
- *Consistency Across the Board* – The alignment of the FAIS Ombud's compensation limit with other financial sector ombud schemes ensures consistency in the sector. This uniformity can lead to clearer expectations and reduced ambiguities for FSPs.
- *Potential Increase in Complaint Volumes* – While the FAIS Ombud already handles complaints involving amounts higher than the current limit, the proposed increase might lead to a rise in the number of complaints. This surge could be indicative of the change's relevance and necessity.
- *No Procedural Changes* – The proposed rules do not introduce any procedural changes to the complaint handling processes of the FAIS Ombud or FSPs. This continuity ensures that FSPs do not need to overhaul their existing complaint resolution mechanisms.

### *Criteria for Complaints Adjudicated by the Ombud*

*To ensure clarity and transparency in the financial sector, it's essential to understand the criteria under which complaints can be considered by the Ombud.* Here's a breakdown of the conditions a complaint must meet:

#### 1. Scope of the Complaint

The complaint must be within the jurisdiction of:

- The Act and the associated Rules.

- Any relevant Ombud Council Rule as per section 201(2)(d) of the Financial Sector Regulation Act.
- A designation made by the Ombud Council according to section 211 of the Financial Sector Regulation Act.

## ***2. Timing of the Act or Omission***

The act or omission that the complaint pertains to should have taken place when the current Rules or the previous set of Rules were active.

## ***3. Preliminary Resolution Efforts***

Before approaching the Ombud:

- The complainant should have made genuine efforts to resolve the issue with the respondent.
- The respondent should have either not addressed the complaint or not done so satisfactorily within a six-week timeframe from receiving the complaint.

## ***4. Submission Window***

The Ombud must receive the complaint:

- Within six months post the complainant getting a final response from the respondent.
- Or, within six months after the six-week period mentioned in the third point has elapsed.

## ***5. Monetary Limitation***

The complaint should not involve a monetary claim exceeding R3 500 000,00. Exceptions can be made if:

- The respondent provides written consent to surpass this limit.
- The complainant willingly abandons the amount that exceeds R3 500 000,00.

## ***6. Exclusion of Investment Performance***

Complaints related to the investment performance of a financial product are not considered unless:

- The performance was explicitly or implicitly guaranteed.
- The performance is so subpar that it raises a direct presumption of misrepresentation, negligence, or maladministration by the respondent or their representative.

## ***7. Relation to Financial Service***

The complaint should be either directly or indirectly linked to a financial service provided by:

- An individual or entity authorised as a financial services provider.
- Someone acting on behalf of such an individual or entity.

**So for a complaint to be justiciable by the Ombud, it must meet the criteria outlined above. This ensures that the Ombud only deals with complaints that fall within its mandate and jurisdiction, ensuring efficiency and fairness in the adjudication process.**