OMBUDSMAN
OF FINANCIAL SERVICES
Umlamuli wetindzaba tetimali

ANNUAL REPORT
2020/2021

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OF FINANCIAL SERVICES
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Annual Report
2020/2021

Ombudsman of Financial Services
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What's Inside

ABOUT US

The Office of The Ombudsman of Financial Services

OUR LEGISLATIVE MANDATE

The Office of the Ombudsman of Financial Services (Ombudsman) is a product of Section 74 (1) of the Financial Services Regulatory Authority Act, No. 2 of 2010 (the Act). As per the Act, the Ombudsman has a mandate to resolve disputes in the non-bank financial services industry quickly and with minimum formality.

OUR INTENT

We aim to be a leading African forum in resolving financial services disputes in a fair and accessible way.

OUR PURPOSE

We resolve non-bank financial services disputes in a fair and accessible way, in order to uphold good practice in the financial services industry.

OUR VALUES

Independence - We handle complaints without taking sides and only consider what is fair and reasonable in each case.

Accessibility - We provide a service available to all and our processes are less formal and easy to grasp.

Confidentiality - We respect and protect all information that we receive, and we treat it with the privacy that it deserves.

An important purpose of this Annual Report is to reflect on the performance, key activities, and outcomes of the 2020-2021 financial year at the Office of the Ombudsman of Financial Services (OFS). However, the period under review also marks another significant milestone: the finalisation of the 2018-2021 OFS Strategy. Since 2015, the OFS has reached and assisted over 1,000 people and registered just over 150 complaints. This would not have been possible without the dedication and commitment of the OFS team, especially during this challenging season of the COVID-19 pandemic.I would like to honour the talented founding members who left a legacy at the OFS. I also celebrate the current team for their readiness to take up the baton as we move forward, together. Below are brief highlights of the OFS Officers, presented in no particular order:

> ***"If you want to go quickly, go alone. If you want to go far, go together."***
>
> **– African Proverb**

Ombudsman - Nondumiso Simelane

The Ombudsman oversees all functions as the Head of the OFS. This includes assignments at strategy level, providing legal oversight as well as being involved in stakeholder engagements. Another key function of the Ombudsman is to issue and sign off determinations that are made about complaints after investigation. The vision and values of the Office are exemplified by the Ombudsman who inspires the team to do the same.

Nondumiso's Favourite Quote: "*Alone we can do so little; together we can do so much.*" - Author unknown

Case Officer - Zodwa Dube

The Case Officer (CO) looks into the assessment of jurisdiction of all incoming complaints and the registration of same, as well as to determine if a matter must go to conciliation, facilitation, or mediation. She is instrumental in the resolution of disputes by amicable settlements through conciliation and facilitation.. Further, CO carries out preliminary investigations of all new complaints. The CO is instrumental in making sure we handle complaints in a way that is fair, reasonable, and easy to understand.

Zodwa's Favourite Quote: "*People often say that motivation doesn't last. Well, neither does bathing – that's why we recommend it daily.*" – Zig Zaglar

Administrative Assistant - Pumza Matsebula

The Administrative Assistant (AA) manages the running of the OFS. In addition to coordinating procurement, the AA ensures that all records about clients and any other important information is captured. Receiving questions from and educating the public about the OFS is another function of this role. Good customer service is central to how we serve at the OFS and the AA is at the forefront of this mandate.

Pumza's Favourite Quote: "*Never underestimate the ability to try. Even the smallest steps can lead you to incredibly big things.*" - Roger Lee

Lead Adjudicator – Sipho Simelane

The Lead Adjudicator (LA) uses the rule of law to carry out investigations and resolve complaints through facilitation, conciliation, or mediation. To this end, the LA ensures that complaints are handled without taking sides, considering what is fair and reasonable in each case. The LA also works closely with the Ombudsman to make sure the operations of our complaints resolution process run well.

Sipho's Favourite Quote: "*If we could change ourselves, the tendencies in the world would also change. As a man changes his own nature, so does the attitude of the world change towards him. We need not wait to see what others do*" - Mahatma Gandhi (real name Mohandas Karamchand Gandhi)

Adjudicator – Mcolisi Mbuli

The Adjudicator uses the rule of law to carry out investigations and resolve complaints through facilitation, conciliation, or mediation. To this end, the Adjudicator ensures that complaints are handled without taking sides, considering what is fair and reasonable in each case.

Mcolisi's Favourite Quote: "*We are the third world not because the sun rises on the West and sets in the East but because we have engaged the reverse gear and we are moving with jet like speed in the wrong direction -we must change this by rolling up our sleeves and working for the growth of our country.*" - Professor Patrick Loch Otieno Lumumba

Research & Communications Officer - Thandwa Maphalala

The Research & Communications Officer (RCO) collects, evaluates, and presents information about the OFS or the people and organisations that we work with. The trends from this research can be useful for informing the OFS' approach to stakeholder engagement and education. The RCO contributes to making our services accessible and easy to understand.

Thandwa's Favourite Quote: "*When things are hopeless, nothing you do will make it worse. So it's always worth taking the risk to see if just, just something you do will make it better.*" – Torey Hayden

In addition to our Team, I wish to recognise and celebrate our external partners. One such partner is the International Network of Financial Services Ombudsman Schemes (INFO) which has 57 members spread over 38 jurisdictions. Since the OFS became a member of INFO, we have participated in most of their activities.

During the period under review, and following the outbreak of COVID-19, we participated in an INFO webinar, themed, "COVID-19: Where we find ourselves." During this interactive session, we discussed COVID-19 developments worldwide, specifically covering how the pandemic is expected to affect complaints and respective scheme member caseloads. We had a constructive interchange of ideas and tips on how members manage the unprecedented shift to working from home. Business continuity plans and safety tips were also shared during this session.

We also participated in another webinar where emerging issues amid the pandemic in the financial services space were discussed. Getting to share in the experience of other schemes on issues we may not have experienced helped us to be anticipative. This discussion confirmed our identified need for the development of a policy to guide our approach to vulnerable complainants.

Finally, as the OFS moves forward into a new strategic period, we will continue to engage with our valued stakeholders, including partners, consumers, financial services providers, consumer bodies and associations. By building upon our goals and objectives, the aim is to reach more people and empower them with the knowledge they need to utilise the OFS' services. We are eager to see more EmaSwati experience financial freedom through increased awareness of their financial rights and responsibilities.

Nondumiso Simelane
Ombudsman

2018-2021 STRATEGY REVIEW

In the development of the 2018-2021 Strategy, the OFS analysed the following three-year goal: "To be a dispute resolution forum accessible to all our stakeholders countrywide, with an established case management process and increased public awareness by 2021." This analysis included probing external opportunities and risks, as well as assessing internal weaknesses. Subsequently, three strategic focus areas were identified, namely:

1. Outreach and Stakeholder Management
2. Process Efficiency
3. Performance Excellence

Each focus area was translated to strategic objectives which were then transformed to strategic programmes with detailed action plans and target dates. A summary of project outcomes is captured in Table 1 below.

Project	Project Activity	Status
Outreach and Stakeholder Management (90%)	Collecting contacts for all the stakeholders	Complete, and updated from time to time.
	Building stakeholder database.	Complete, and updated from time to time.
	Proposal of outreach plan / Events Proposal	Complete, modified, and by collaborative FSRA plan.
	Preparing content for the events (Outreach)	Complete.
	Proposal for introduction of FRL Clause	Complete.
	Development of Industry Service Letters.	Complete.
	Development and distribution of OFS office posters.	Complete.
	Establishing an evaluation process to review the performance & effectiveness of outreach / stakeholder initiatives.	Complete, currently being modified.
	Introduction of caller ID call back/PABX update/Personal Greeting	Complete.
	Partnership with FODSWA and development of content/material for disabled persons.	Complete; MOU signed, currently being reviewed for renewal.
	Run customer service survey pilot.	Not done. Deferred to next strategy period.
	Creation of media content for TV, radio, newsletter.	Complete, just modified per obtaining theme.
	Proposal for partnership with Central Bank and development of complaint referral process.	Complete; MOU signed; implementation on-going.
	Development of Customer Service Policy and Survey.	Policy Complete, Survey deferred to next Strategy period.
	Improve relations with FSRA.	Started and on-going.
	Development of Complainant Experience Survey Form	Started, and then put on hold until after recruitment of the Research and Communications Officer.

Project	Project Activity	Status
Process Efficiency (95%)	Develop respective processes from the MASTER PROCESS on complaint resolution	Complete.
	Develop a Jurisdiction Assessment Checklist	Complete.
	Develop Proper Policies and Procedure Manuals	Started and on-going.
	Make proposals for necessary amendments to legislation.	Complete.
	Identify Policies requiring development.	Complete, updated on need.
	Develop Risk Register for all processes.	Complete, updated as per identified new risk (s).
	Research into an effective PMS	Complete.
	Develop Research and Communications Officer (RCO) Job Profile	Complete.
	Make proposal for establishment of Research and Communications Officer post	Complete.
	Request Board approval of Research and Communications Officer post	Complete.
	Recruit Research and Communications Officer	Complete.
Performance Exellence (99%)	Investigate the possibility of salary review.	Complete.
	Organise team development.	Complete.
	Investigate possibility of flexible work hours.	Complete.
	Develop appropriate performance management tools.	Started and on-going.
	Revise Job titles	Complete.
	Revise and Adopt Appraisal Forms	Complete.

Of the three strategic focus areas, the highest percentage of completed projects was recorded under Performance Excellence at 99%. Overall, the average completion rate across the three focus areas is 94.6%, which demonstrates that most of the strategic goals were effectively operationalised.

COMPLAINT STATISTICS

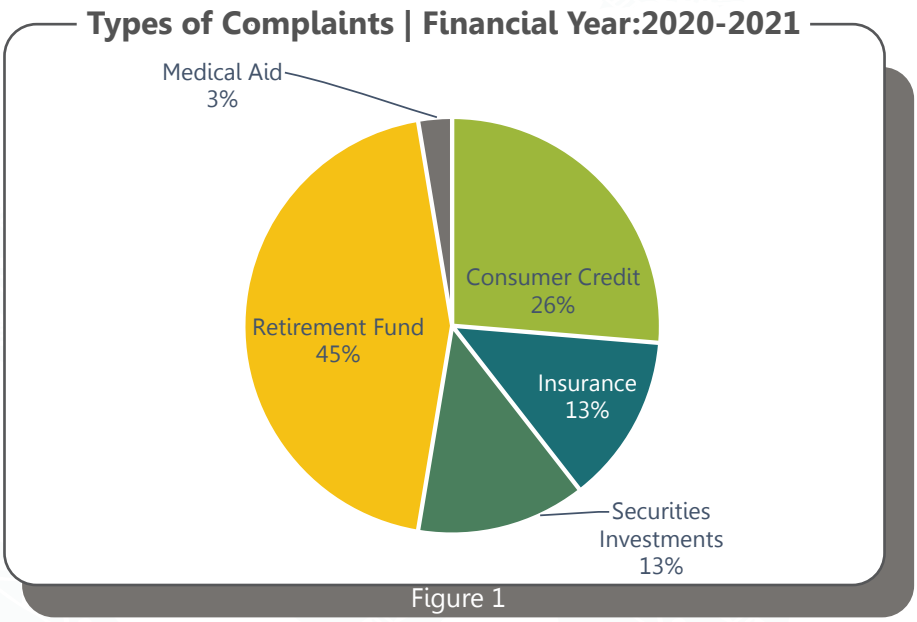


Figure 1

In the financial year under review, a total of 38 complaints were registered. This is the highest number of complaints the OFS has received within a financial year. Figure 1 above demonstrates that the highest complaint type was Retirement Fund complaints at 45%, followed by Consumer Credit complaints at 26%. Only 1 Medical Aid complaint (3%) was registered in this period.

Looking ahead, the OFS will explore mechanisms for strategically forecasting complaint traffic. The purpose of this approach is to anticipate targets, monitor progress and evaluate outcomes given these anticipated targets.

COMPLAINT DEMOGRAPHICS

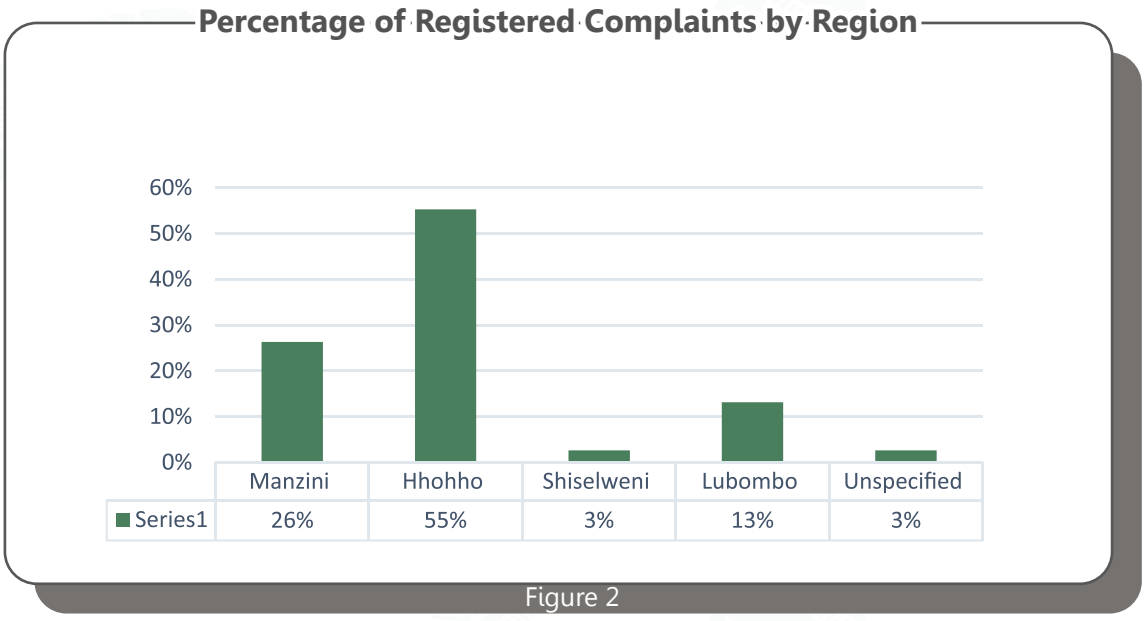
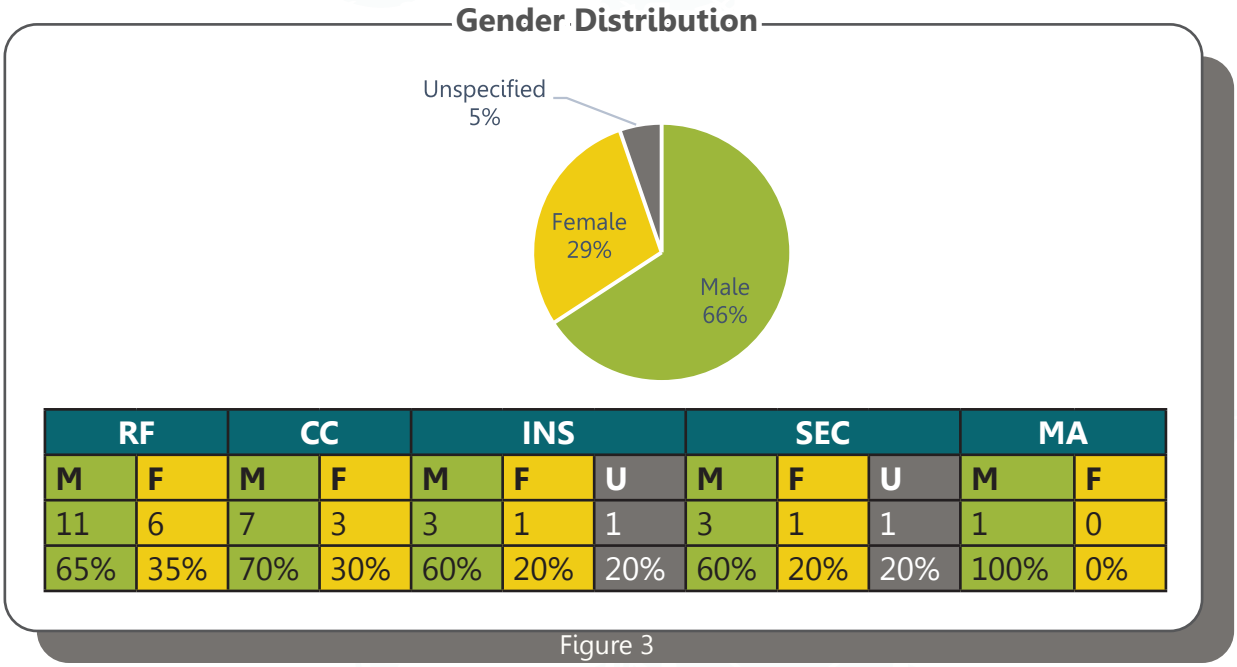


Figure 2

Of the 38 registered complaints, 55% originated from the Hhohho region, 26% complaints were from the Manzini region, and 13% from the Lubombo region. Shiselweni was the only region below 10%. It is noteworthy that complaint leads were generated from all 4 regions in the 2020-2021 financial year, as per Figure 2 above.



RF		CC		INS			SEC			MA	
M	F	M	F	M	F	U	M	F	U	M	F
11	6	7	3	3	1	1	3	1	1	1	0
65%	35%	70%	30%	60%	20%	20%	60%	20%	20%	100%	0%

Figure 3

Figure 3 indicates that in the 2020-2021 financial year, over 60% of complainants were male and 29% were female. No complaints from entities were recorded in this period. The gender distribution per complaint type is captured in the table above.

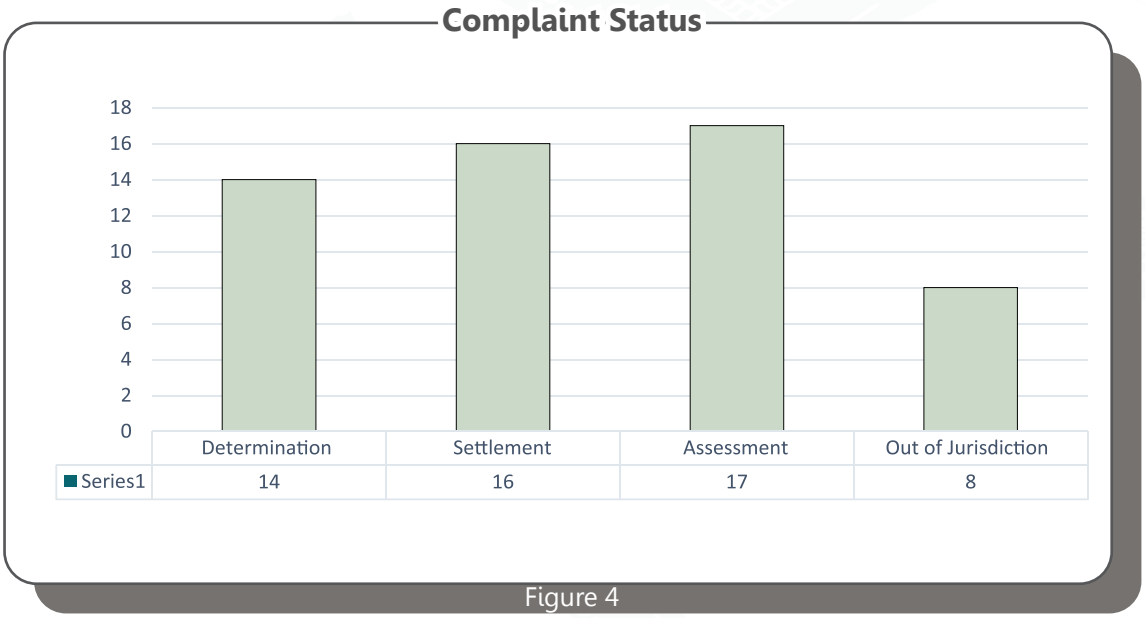


Figure 4

At the end of the 2020-2021 financial year, 14 complaints were closed by way of determination, 16 were resolved through facilitated settlements and 8 were out of jurisdiction complaints. The year under review closed with 17 complaints that are under assessment, as per Figure 4 above.

STAKEHOLDER ENGAGMENT

QUERIES

The OFS recorded a total of 369 queries in the 2020-2021 financial year. Social Media accounted for just 30% of the leads, followed by Referrals at 20%, including but not limited to referrals from the Regulator, the Financial Services Regulatory Authority (FSRA) and complainants' friends and family. Traditional Media comprises Radio, Television and Print Media, and accounts for 12% of the leads generated in the year under review.

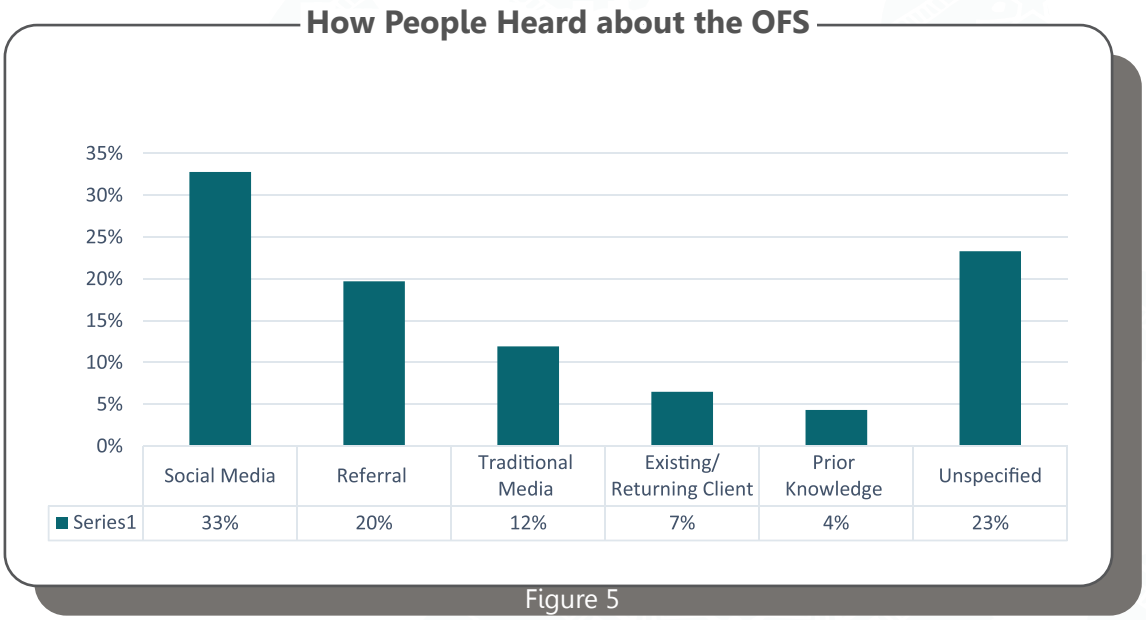


Figure 5

The start of the 2020-2021 financial year coincided with intensified COVID-19 regulations in Eswatini. The OFS was temporarily closed for physical consultations due to the COVID-19 Partial Lockdown for approximately half of the financial year under review. More so, in-person public education outreaches were suspended. Therefore, the OFS shifted to and maximised communication on digital and traditional media platforms, as is reflected by the increased public awareness investment in Figure 6 compared to lower expenditure in the 2019-2020 financial year, as demonstrated in Figure 7.

PUBLIC AWARENESS INVESTMENT (SZL): 2020-2021							
	Social Media	**Referral**	**Traditional Media[1]**	**Existing/Returning Complaint**	**Outreach**	**Prior**	**TOTAL**
Coverage Paid For	16,901.49	0	231,897.4	0	0	0	**248,798.89**
Coverage at no cost to the OFS	0	0	205,051.3	0	0	0	**205,051.30**

Figure 6

[1] Traditional Media includes Radio, Television and Print Media

PUBLIC AWARENESS INVESTMENT (SZL): 2019-2020							
	Social Media	**Referral**	**Traditional Media[1]**	**Existing/Returning Complaint**	**Outreach**	**Prior Knowledge**	**TOTAL**
Coverage Paid For	1.702	0	73,475.74	0	5,000	0	**75,177.74**
Coverage at no cost to the OFS	0	0	148,901.04	0	0	0	**148,901.04**

Figure 7

STAKEHOLDER ENGAGEMENT: Consumer Education

CONSUMER EDUCATION AND AWARENESS: TRADITIONAL MEDIA	
Print Media	
Unpaid	**Paid**
OmbudsDay: Our Commitment to Accessibility	Money Matters: Continuity During a Pandemic
OmbudsDay: Upholding Good Industry Practice Through Challenging Times	Sunday Times Supplement – How the Ombudsman Serves You'
OmbudsDay: COVID-19 and Your Finances	Sunday Times Supplement – Our People: Getting to Know the Team
Insurer: Keeping up with Premium Payments Through Difficult Times	Sunday Times Supplement – Our Processes: Understanding How We Work
OmbudsDay: Navigating Career Choices: A Message to our Students	Sunday Times Supplement – Your Rights & Responsibilities: Understanding Rights and Responsibilities in the Dispute Resolution Process
OmbudsDay: Monitor Your Moneylending	Sunday Times Supplement – Free. Fair. For All.
OmbudsDay: How the Ombudsman Can Assist You	Sunday Times Supplement – What We Love About ADR
Observer Supplement Advertorial – General Information	Times COVID Notices (x4)
OmbudsDay: Making Our Customer Services Dream a Reality	Observer COVID Notices (x4)
Insurer: A Cord of Three Strands - A look at the third-party complaint process	Times Townhall Notice
OmbudsDay: Reviewing Your Financial Services Products	Observer Townhall Notice
OmbudsDay: Do You Have a Complaint Against a Non-Bank FSP?	Times Festive Season Office Closure Notice
OmbudsDay: Keep an Eye on Your Loan Repayments	Observer Festive Season Office Closure Notice
OmbudsDay: Keeping up with Premium Payments through Difficult Times	Times PM Tribute
OmbudsDay: How the OFS Serves You	Observer PM Tribute

Figure 8

CONSUMER EDUCATION AND AWARENESS: TRADITIONAL MEDIA	
Television	
Unpaid	**Paid**
Eswatini TV COVID-19 Special Coverage Talk Show	Channel YemaSwati Infomercial
	Advert Mobile Infomercial
Radio	
Unpaid	**Paid**
EBIS: Letishisako	VOC: COVID-19 public awareness Infomercial
VOC: 12 Complementary runs of COVID-19 public awareness Infomercial.	VOC: Festive Season Office Closure Infomercial
	EBIS: Festive Season Office Closure Notice
	VOC: OFS Infomercial

Figure 8 (continued)

Figure 8 above illustrates that most of the OFS traditional media spend was allocated to print media, specifically towards the Sunday Times Personal Finance Supplement as well as Public Notices.

CONSUMER EDUCATION AND AWARENESS: SOCIAL MEDIA					
Number of Published Consumer Education & Awareness Information Content		**Total Page Likes/Followers**		**Total Number of Queries**	
FACEBOOK	**LINKEDIN**	**FACEBOOK**	**LINKEDIN**	**FACEBOOK**	**LINKEDIN**
127	49	4508	46	121	0

Figure 9

In the 3rd Quarter of the 2020-2021 financial year, the OFS' LinkedIn page was fully established and functional, to add on to the already established Facebook platform. An OFS Twitter account was also created. However, development of content on this platform had not commenced by the end of the financial year in question.

STAKEHOLDER ENGAGEMENT: External Partners

Figure 10 details some of the stakeholder engagements that the OFS participated in with external partners throughout the 2020-2021 financial year.

ENGAGEMENT	NOTES
ESASSCO SACCOs Meeting	The Ombudsman attended and presented about ensuring smooth operations during the COVID-19 pandemic, in order to ensure good industry practice by SACCOs as well as to maintain healthy stakeholder relations.
Waterford Kamhlaba Online Careers Fair	Waterford Kamhlaba hosted their annual Careers Fair online. Two Ombudsman Officers participated in a Zoom pre-recorded interview for this occasion.
#OmbudsmanForAll Facebook Competition Winners	This campaign allowed the Office to stay engaged with consumers as the OFS was not able to attend or host public engagements such as Roadshows, Community Presentations, and/or the Eswatini International Trade Fair, due to the pandemic.
ESPPRA - Procurement Plan & Report Development Virtual Workshop	Some key takeaways from this engagement included identifying the need to review the Ombudsman's Draft Records Management Manual to demarcate aspects touching on procurement as the Procurement Manual and those relating to records management as the Records Management Manual.
Eswatini Nazarene Health Institutions Staff Pension Fund Workshop	The main agenda item of this workshop was educating the representatives from the Fund about the OFS' mandate, function, jurisdiction and dispute resolution process.
Financial Services Regulatory Authority (FSRA) Strategy Townhall	The Townhall was attended by all staff from the FSRA, the Eswatini Stock Exchange (ESE) and the OFS. The sessions included topics such as strategy review, business processes and shifting company culture.
MoU Meetings: Federation of Organizations of Disabled People in Eswatini, Central Bank of Eswatini and Conciliation Mediation & Arbitration Commission.	The main purpose of these meetings was to enhance cooperation by operationalising the agreements between the OFS and the identified external stakeholders.

Figure 10

STAKEHOLDER ENGAGEMENT: Staff Training & Development

During the final quarter of the 2020-2021 financial year, the OFS staff came to full complement, with the finalisation of the recruitment and resumption of duty of the Adjudicator in January 2021. As such, now the staff stands at a total of 6, consisting of the Ombudsman, Lead Adjudicator, Adjudicator, Case Officer, Research and Communications Officer and the Administrative Assistant. With this, all recruitment processes have been concluded.

1	Brand and Marketing Management Short Course
2	The Executive Leadership Forum: The Enduring Organization: Inspiring Hope Through Values
3	Protection of Personal Information Act – Justifications Webinar
4	Social Justice Foundation Training: "How to manage high conflict people in mediation." Webinar
5	ESPPRA Procurement Training
6	MiM/UCT Commercial & Court Aligned Mediation Course
7	Effective Stakeholder Management Short Course

Figure 11

CASE STUDIES

DETERMINATIONS

RETIREMENT FUND – PENSION FUND: WITHHOLDING OF WITHDRAWAL BENEFITS

The Complainant was an employee of 2nd Respondent and as such, participated in 2nd Respondent's Pension Fund (1st Respondent/the Fund).

As a member of the Fund, the Complainant submitted the required documents upon exit. On submission of the documents, the withdrawal benefit was due and payable to the Complainant. The Fund withheld the Complainant's withdrawal benefit on account of alleged fraud, which arose from birth certificates or identity documents submitted by the Complainant for payment of her withdrawal benefits. Due to the non-payment, the Complainant approached the Ombudsman requesting a determination on whether the Respondents were acting within their rights and the law. The Complainant also requested the Ombudsman to issue an order on the interest that accrued on her mortgage agreements during that period.

1st Respondent's Response
The 1st Respondent argued that they did not refuse to pay out the Complainant's withdrawal benefit on exit. The 1st Respondent alleged that the non-payment was informed by a "*genuine predicament in establishing the rightful identity as the former employee submitted three different birth certificates*." The 1st Respondent further alleged that on several instances, they invited the Complainant to discuss the matter, but the Complainant ignored and refused to meet them. The 1st Respondent also argued that the documents submitted by the Complainant did not clearly identify who was due to be paid the withdrawal benefit. The 1st Respondent also stated that as a result of the differing details, they opened an enquiry case with the police, in order that they may effect payment accordingly.

2nd Respondent's Response
The 2nd Respondent confirmed the position of the 1st Respondent. They stated that they did not refuse to pay the Complainant on exit, but that the non-payment was informed by the differing identity information submitted by the Complainant. The 2nd Respondent further alleged that the Complainant was employed with them for a period of four years and ought to have corrected the error, owing to her being responsible for Human Resources (HR) Administration and safe keeping of HR personal files. The 2nd Respondent further argued that the Complainant was requested to correct same and provide a legal instrument to justify the discrepancies. The 2nd Respondent explained the problem with the identity documents to be that Complainant maintained her initials as NW, and that on exit the 2nd Respondent was informed that Complainant's initials are NWW. The 2nd Respondent confirmed that an enquiry file was opened to provide clarity.

The Ombudsman's Determination and Reasons
The Ombudsman was tasked with determining whether a legal justification existed in the 1st Respondent's failure to pay the Complainant her withdrawal benefit, in terms of the Retirement Funds Act (the RFA). Further, the Ombudsman was also tasked to determine whether the Respondents were liable for the interest accrued on the Complainant's mortgage agreements with the 2nd Respondent, resulting from the non-payment of her withdrawal benefit.

Protection of Benefits and Allowable Deductions

The Ombudsman considered that generally, pension benefits are not reducible, transferable, or executable save for certain exceptions as outlined in section 195 of the Constitution of Eswatini Act, 2005. The Ombudsman also considered that in terms of section 32 of the RFA, there is what is termed as allowable deductions, being tax deductions and maintenance orders.

Furthermore, the Ombudsman considered that in terms of section 32(2)(a), a retirement fund may deduct an amount from the members benefit in respect of:

> "*... an amount representing the loss suffered by the employer due to any unlawful activity of the member and of which judgement has been obtained against the member in a court or a written acknowledgement of capability has been signed by the member...*"

Withholding of Member's Benefit

The Ombudsman considered that in terms of the RFA, a fund can withhold a member's benefit in the event that the fund has obtained an order of court, or the member has acknowledged culpability in writing.

In further determining whether it was reasonable and fair for the Respondents to withhold the Complainant's benefit, the Ombudsman cited a local case **of Mthethwa v. Ministry of Education & Others, RFA/H/17/2012**, where the then Retirement Funds Adjudicator (the Adjudicator), found that thirty-four months was a long period for the employer to have held the member's benefit. The Adjudicator further found that holding the full benefit was against the language of section 32 (3) of the RFA, which authorizes the Fund to retain the benefit but only "up to an amount equal to the debt."

Request for Mortgage Interest to be Waived

In deciding waiver of the mortgage interest, the Ombudsman informed her decision through the lens of section 76 (1) of the Financial Services Regulatory Authority (FSRA) Act, which provides as follows:

> "*If a complaint which is dealt with by the Ombudsman is determined in favour of the Complainant, the determination may include:*
>
> *An award against the Respondent of such an amount as the Ombudsman considers fair compensation for loss or damage suffered by the Complainant...*"

In view of the above, the Ombudsman then found that the failure by the Respondents to comply with the RFA and law relating to pension funds, occasioned a loss to the Complainant who had to now pay interest that would have been avoided had the Respondents paid the Complainant's pension benefits. The Ombudsman found that the Complainant had experienced financial loss as a result of Respondents' conduct.

Decision/Order

The Ombudsman found that the 1st Respondent had not shown any justifiable reason in law, or its pension fund rules for withholding the Complainant's pension benefits. In the circumstances, the Ombudsman ordered the 1st Respondent to pay the Complainant her withdrawal benefit

plus interest at the rate of 8% per annum calculated from 1 April 2020 until the date of payment. The Ombudsman further ordered the 1st and 2nd Respondents, jointly and severally, to pay the Complainant an amount equal to interest on arrears charged on the Complainant's loan accounts from April 2020 to date of payment.

INSURANCE – SHORT TERM: THIRD-PARTY CLAIM DECLINED

The Complainant was involved in a motor vehicle accident with a motorcycle driven by the insured driver (the Insured). The motor vehicle driven by the Complainant as well as the motorcycle were both insured by the Insurer/ Respondent. The Complainant filed a third-party claim with the Insurer against the Insured's policy for the vehicle damage in the amount of E5 187.00.

The Complainant argued that after the accident took place, she approached the Insured to submit a claim for the repair of her vehicle. She was advised by way of a letter from the Insurer that her third-party claim was unsuccessful. The Insurer further advised that it would not be accepting liability as the police report did not assign any fault to the Insured.

The Complainant further argued that she then contacted the Insurer directly. When she submitted her complaint to the Insurer, the Claims Manager advised that her claim could not be considered and that she ought to lodge a claim under her own policy. When she submitted a complaint letter, it was communicated to her that she ought to have advised the Insurer that she also had cover with them as it would have been referred to the legal department and handled as an internal matter. The Complainant submitted copies of email correspondence between herself and the Respondent who, inter alia, communicated the process to be followed in a third-party claim.

She was expected to provide reasons and supporting documentation for her claim. In response to this, the Complainant further submitted her objection raising that the convoy of vehicles caused her not to notice the motorcycle. She further stated that she was not given a copy of the police report and was not advised of the other options to pursue the claim and that she was not contacted by an assessor. In response to the further submissions by the Complainant the Insurer attached case summaries of three English judicial decisions with similar scenarios to that of the accident, in support of their position.

The Complainant was not happy with the decision made by the Insurer to repudiate her third-party claim. She was further not satisfied with the way she was treated as a policyholder as she was advised that she was initially not known to the Insurer.

The Respondent's Response

The Respondent confirmed that the motorcycle involved in the accident was insured under the Insured's Motor Fleet Insurance Policy. They further advised that the third-party claim process includes the submission of a claim form by the Insured as notification. The Insured also submits relevant documentation in support of the claim, for processing. In respect to the claim form submitted by Insured, it was noted that the section relating to third party's details was not complete. However, it was indicated that there was a claim against them in respect to the accident.

There was also an indication that the third party had been advised that the Respondent could not assist as the motorcycle driver was not charged for a traffic offence. In addition, the Respondent stated that there was no indication that the Insured formally submitted a claim on behalf of the Complainant. The Respondent argued that the police report had been contested by both parties in respect to how the accident took place. The Respondent further argued that the Complainant's claim could not be processed under the Insured's policy as there was no contributary negligence apportioned to the Insured.

The Insured's driver denied that there was a convoy of cars and advised the Respondent that the Complainant had apologized at the scene of the accident saying that she had been distracted and had not seen the motorcycle. The Respondent also approached the police for clarity, and they were advised that the docket could not be found. The Respondent made use of the police report to come to a decision. The Respondent finally offered to pay 50% of the Complainant's repair costs.

The Ombudsman's Determination and Reasons

The Ombudsman had to determine whether the Respondent rightly rejected Complainant's third-party claim.

Insurance Policy

The Ombudsman considered that the terms of a contract of insurance are embodied in a policy (**Gordon & Gets, The South African Law of Insurance, 2012, 134**). This is an important document as it provides all the terms and conditions, as well as the rights and duties of the parties to the contract. In this complaint, the Respondent in support of its defence, attached the policy schedule and document it issued to the insured.

Third Party Claims

The Ombudsman considered that in respect to third party claims, the Insured's policy provided as follows:

The Respondent will indemnify the Insured in the event of an accident by or through or in connection with any vehicle described in the Schedule hereon including the loading and/or unloading of such vehicle against including claimant's costs and expenses which the insured shall become legally liable to pay in respect of

(i) Death of or bodily injury to any person

(ii) Damage to property

(iii) The Corporation will pay all costs and expenses incurred with its written consent and shall

be entitled at its discretion to arrange for representation at any inquest or fatal inquiry in respect of any death which may be the subject of indemnity under this Part or for the defending in any magistrate's court any criminal proceedings in respect of any act causing or relating to any event which may be the subject of indemnity this part."

The Ombudsman considered the manner in which the claim was processed. As set out by the Respondent, a third-party claim must be submitted to the Insurer by the Insured on behalf of the third party. It appears from the documentation that this had not been done ab initio (from the outset), leaving the Complainant to have to do so on her own.

Considering the facts and cases presented by the Respondent, the Ombudsman found the offer to settle 50% of the Complainant's damage against the Insured's policy to be reasonable in the circumstances.

Decision/Order
The Ombudsman ordered the Respondent to pay 50% of the Complainant's damages.

CONSUMER CREDIT: BREACH OF CONTRACT/MISREPRESENTATION

In March 2019, the Complainant applied for a loan through the Respondent. Thereafter, the Complainant received a Letter of Loan Offer / Acceptance (the Letter of Offer) dated 17 May 2019. The Letter of Offer included the terms and conditions of the loan agreement. The monthly instalment stood at E13, 433.00. The Respondent in its letter dated 5 July 2019 addressed to the Complainant's employer instructed the employer to deduct a monthly instalment of E21 051.00, detailed as follows:

Mortgage repayments	E 3 588.00
House Owners Insurance	E 327.00
Credit Life Premium	E 1 100.00
Sub Account No. 2	E 6 097.00
Sub Account No.3	E 9 939.00
TOTAL	**E 21 051.00**

The Complainant was not happy with the change/escalation in the monthly instalment. This change resulted in a difference between the initial amount and the final figure that the Respondent sent to his Employer to effect the monthly deductions. The Complainant felt that the Respondent misrepresented themselves by changing the instalment amount after the Complainant had signed the Letter of Offer. The Complainant also sought redress in the amount of E129 610.00 which he submitted is the cost incurred as a result of the communication by the Respondent. The computation of the amount was set out by the Complainant as follows:

Respondent's bond Costs	E 31 460.00
Accumulated Interest costs for the E 1 606 000.00	E 92 400.00
Evaluation of property for Nedbank application	E 5 750.00
TOTAL	**E 129 610.00**

It was Complainant's view that Respondent misrepresented themselves by changing the instalment amount after he signed the Letter of Offer. The Complainant requested the Ombudsman to investigate and decide whether the Respondent's conduct was compliant with the laws of Eswatini, particularly the Consumer Credit Act (CCA) of 2016.

Note: The Complainant approached another credit provider for assistance. The second credit provider granted the Complainant a loan to settle his indebtedness to the Respondent.

Respondent's Response
The Respondent confirmed that the Complainant's loan application was approved, and the loan amount was the sum of E1 600 600.00.

The Respondent further stated that the Letter of Offer issued to the Complainant included an annexure explaining the different interest rates applicable to different portions of the loan. The interest rates differed as there was a personal loan portion, a portion subject to the agreement with the employer, as well as a mortgage loan.

It was the Respondent's further submission that they provided the Complainant with guidance by way of annexing their complete Terms and Conditions with the Letter of Offer. The Respondent did not expect the Complainant would be surprised considering the communication they made with him. In respect to the costs the Complainant alleged were owed to him, the Respondent confirmed that the valuation cost E2 644.00 and that no early settlement charge was made. The Respondent submitted that they remained in compliance with the provisions of the CCA and denied any liability towards the Complainant arising out of the said transaction.

Complainant's Reply
The Complainant submitted that he had in fact applied for a loan of E2 100 000.00. Although his entire loan amount was not approved, he accepted the offer because the instalment of E13 433.00 over a period of twenty-five years was acceptable to him. He further submitted that he had applied for a single loan and that Respondent violated Section 39 (6) of the CCA by splitting the loan into different amounts and interest charges on each. He confirmed receiving the Letter of Offer and signing same on 17 May 2019, but the letter and annexures had no clause stating that the instalment was subject to such a significant change.

The Complainant submitted that this was not the first instance that he had to sign a facility letter and that he understood such a document to indeed be final and binding. It is for this reason he did not expect the instalment amount to change. He further confirmed that the bond was registered on 12 June 2019 and that he received the letter dated 5 July 2019 advising him of the new instalment amount. The Complainant explained that he was claiming the E31 460.00 "because had he known that his instalment had been increased, he was not going to take the offer." The Complainant's position was that Respondent's conduct amounted to a breach of contract and misrepresentation of facts and requested the Ombudsman to give him the redress he sought.

Respondent's Response to Complainant's Reply
The Respondent stated that the Complainant was notified about the instalment through verbal discussion with one of the Respondent's consultants. The Respondent further submitted that the change was communicated in writing in their letter dated 5 July 2019 with the instruction to his employer to commence deductions. In addition to the above, the Respondent referred to the loan application documents which reflected the loan amount of E 1 600 600.00. The Respondent argued that there was no liability to the Complainant for the amounts he was claiming.

The Ombudsman's Determination and Reasons
The Ombudsman had to determine whether the Respondent met the requirements of the CCA and

if so, whether the Complainant was entitled to the damages requested.

Requirements of the CCA

The Ombudsman noted that in the present set of facts, the initial quotation provided by the Respondent required that the Complainant should have been bound to the quotation based on an instalment that had not been calculated according to the special terms and conditions. The Complainant only became aware of the final instalment amount at the time the amount become due and payable. This considerable change in the monthly instalment was communicated without affording the Complainant an opportunity to accept and approve the deduction of such amount from his monthly income.

The instalment amount of 15 July 2019 had been calculated based on the Complainant's election in respect to insurance cover as well as a computation of the Emalangeni and Cents amount of interest payable. Although the interest and insurance had been included in the Letter of Offer, there was no indication that the Complainant should have reasonably expected the costs to inflate the instalment amount over 50% from the initially stated monthly repayment of E13 433.00.

The Ombudsman noted that the inclusion of the interest rates as well as terms and conditions relating to the interest negated the Complainant's allegations of misrepresentation by the Respondent.

However, the Ombudsman considered the purpose of section 24, which provides that a credit applicant should be assessed and given an opportunity to consider whether he/she can meet the quoted obligations. This extends to the credit applicant's right to consider whether he/she may obtain more favourable interest rates which would directly impact his/her monthly repayment obligations. Considering the fact that the Complainant had submitted an application for the takeover of other existing loans from various credit providers, and not just a mortgage loan, one could safely conclude that the competitiveness of the cost of credit was of significance to the Complainant and the coming into existence of the credit agreement in the first place. This is further evidenced by his choice to seek yet another credit provider transferring his business from the Respondent.

Claim of Damages

The Ombudsman found it appropriate that the Complainant be placed back in the position he would have been, had he been aware of the monthly instalment. The Ombudsman noted that it is accepted that the cost of the credit application with the Respondent would have still been incurred by the Complainant and therefore cannot be awarded damages on in this instance. In a similar vein, the costs of the subsequent application to the other service provider would have still been incurred as the Complainant exercised his rights to shop for a better rate.

The Respondent, however, would not have been entitled to collect any fees, nor charge cancelation fees for the agreement had the Complainant been given an opportunity to not enter into the agreement. The Complainant was therefore entitled to be refunded the costs charged to his account from the inception of the agreement until the date the account was transferred to the other service provider.

Decision/Order

The Ombudsman found that the Respondent failed to comply with the provisions of CCA, 2016 and that the Complainant failed to prove wilful misrepresentation by the Respondent.
The Ombudsman then made the following order:

a) That the Respondent refunds the Complainant all charges, fees and interest charged in terms of the credit agreement.

b) The Complainant's request for damages relating to the application costs with the other service provider was not granted.

SETTLEMENTS

Retirement Fund

The Complainant stated that his deceased wife is survived by her daughter who is not from their marriage His complaint was that the Fund allocated all the death benefit pay out to the child. His main issue was the fact that he was married to the deceased through civil rights, and therefore believed that he deserved to be allocated half of the payout.

The Ombudsman advised that the distribution of pension should be allocated to the deceased's legal and factual dependents. In this case, the Complainant and the child were legal dependents by virtue of the former being the deceased's spouse and the latter, her biological child. The Ombudsman further explained to the Complainant that a Fund has the discretion to distribute funds as they deem fit and in accordance with [its] or [the] investigation findings.

In this case, the Fund noted that the deceased's pension was not sizable. The Fund's distribution was based on the rationale that the deceased's child had just completed high school and still had to go through tertiary. Secondly, the apportionment to the child was also for maintenance since the deceased was her only surviving parent. The Fund further argued that the Complainant was gainfully employed and not dependent on the deceased.

More so, the Ombudsman explained to Complainant that pension cannot be equated to an estate whereby the Complainant would be obligated by the law to be granted a share. Alternatively, the extent of dependency must be considered with the distribution of pension. This is because pension exists as social security to sustain pensioners and dependents. The Complainant appreciated the clarity on the purpose of pension funds. The Complainant advised that he was comfortable with the death benefit being allocated to deceased's surviving child and the file was closed.

Medical Scheme

The Complainant stated that he was a member of the Scheme and listed his wife and two children as his dependents. He mentioned that due to a chronic illness, his treatment was expensive and depleted all the allocated medical funds. For instance, the Scheme would notify the Complainant that he had exhausted all the funds before the year had even ended. Therefore, the Complainant decided to remove his dependents from the policy.

The Complainant stated that he had solicited the services of a specialist to treat the illness. As such, the Scheme would liaise with his preferred Clinic in South Africa. The Complainant mentioned that when he was critically ill and needed treatment, the Clinic advised that there were no funds in his account, and he was subsequently denied treatment. He mentioned that he then called the Scheme to ascertain the issue with his policy. The Complainant believed that it was too early in the year for funds to have been exhausted, especially because he was the sole member during this instance when he sought treatment.

The Ombudsman called the Scheme's authorities to enquire about the issues raised by Complainant. The matter was facilitated without further investigation and/or exchange of correspondence since it was a life-threatening matter. The Scheme's responsible personnel acknowledged the sensitivity of the matter and stated that the Scheme paid the Clinic timeously. The Scheme then liaised with the Clinic to enquire about the allegations. The Clinic expressed that there must have been a

misunderstanding between themselves and the Complainant because there were no issues with his policy/funds. The Scheme requested that members should exhaust internal remedies first before reporting matters to the Ombudsman.

The Complainant was advised of the developments with the Scheme and the Clinic. He appreciated the intervention of the Ombudsman and further stated that he was panicked by the initial notification of non-availability of funds, especially because his health was at stake. The Scheme and the Clinic also contacted the Complainant to explain the misunderstanding. The matter was resolved, and the file was closed.

Consumer Credit

The Complainant stated that she had a loan with the Credit Provider. However, even though the Complainant's initial repayment period had lapsed, the loan value remained almost equivalent to its value when it was granted. There was therefore minimal reduction after a period of about 60 months. Upon receipt of the service letter from the Ombudsman, the Credit Provider stated that Complainant was not servicing the repayment of the loan as per agreement. The Credit Provider further communicated that the Complainant revolved the loan. The Credit Provider explained that there was a certain amount of payments that were received from the Complainant's employer and through a stop order from her bank. However, according to the Credit Provider, the Complainant would intermittently skip the due stop order payments or there would be insufficient funds in her account. As a result, the Complainant allegedly incurred arrears which in turn increased her loan balance. On the other hand, the Complainant argued that such an error only occurred for a few months when she had serious financial constraints. She stated that she believed that the extended repayment period covered the arrears. She also stated that she had not revolved the loan as submitted by the Respondent.

The Ombudsman advised the Complainant to compare her bank statements and statements from the Credit Provider to reconcile discrepancies in payments. This was after the Ombudsman had engaged the Credit Provider to consider same as the correspondence from both parties was not aligning well. Therefore, to resolve the matter, the Ombudsman afforded both parties the opportunity to reconcile the matter with understanding. The Complainant notified the Ombudsman of the error in calculations when she compared the statements. She had also forgotten that she revolved the loan. The Complainant and Credit Provider therefore settled the misunderstanding and both parties agreed on the best repayment terms that also considered the Complainant's financial constraints, so she would be able to live with what would be left of her salary. The Complainant requested for the file to be closed.

Insurance

The Complainant stated that she lost her mother who was a member of a burial scheme. The Complainant also stated that her mother was covered under the Complainant's burial scheme as well. Thus, when the Complainant's mother passed away, she requested for the deceased's death certificate for purposes of claiming burial funds. However, the Complainant was not paid as per the agreed amounts.

The Complainant stated that she and her deceased mother had taken insurance from different burial schemes that were both underwritten by the same Insurance Company. The Complainant stated that she had covered her mother for E40 000.00, and her mother had covered herself for

E30 000.00. When the Complainant's mother passed away, the Complainant submitted a claim for the E40 000.00 after she claimed and received the E30 000.00 under the deceased's policy. However, the Complainant mentioned that the insurer communicated that she would not be paid the full E40 000.00 and would only receive E20 000.00 because the deceased had reached the E50 000.00 cap under the Insurance Company.

The Complainant argued that as a consumer, she was not aware of E50 000.00 limit. She blamed the burial schemes for not advising her of same and further blamed the insurer for not picking up the error in their systems and notifying them. The Ombudsman explained that it is the duty of the consumer to ensure that their life insurance cover does not exceed the stipulated E50 000.00 per member, per claim from the same underwriter. The Complainant appreciated the clarification that insurance is risk not an investment, and that there are regulations provided for such. The Complainant requested that file be closed.

OMBUDSMAN
OF FINANCIAL SERVICES
Umlamuli wetindzaba tetimali

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