



**ANNUAL REPORT OF
THE OFFICE OF THE
OMBUDSMAN OF
FINANCIAL SERVICES**



2015/2016

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OFFICE OF THE OMBUDSMAN OF FINANCIAL SERVICES

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1. MANDATE

The Office of the Ombudsman of Financial Services (the Ombudsman) is an independent body with the legislative mandate to receive, investigate and make fair and reasonable determinations of certain disputes against authorised financial services providers in terms of Sections 74 & 75 of the Financial Services Regulatory Authority Act 2 of 2010 (the “Act”).

2. ABOUT THE OFFICE OF THE OMBUDSMAN OF FINANCIAL SERVICES

2.1. Background

Historically, the resolving of disputes in the non-bank financial services industry has been characterised by a lengthy and often expensive process due to the use of the more formal and traditional adjudication system. The enactment of the FSRA Act and the provision for the appointment of the Ombudsman therein is an acknowledgment of the pressing need to find alternative systems, as is the global trend, by which disputes can be resolved. In consideration of the size of the economy of Swaziland as well as the object of the FSRA Act to strengthen the economy of Swaziland through increasing financial participation and inclusion of the people in the economy, the establishment of the Ombudsman serves a much needed manifold purpose within the financial services industry. The functioning of the Ombudsman plays a role in the enforcement of the FSRA Act and strengthening education of the people through the resolution of disputes, regular reporting of trends to the public and the Authority as well as regular consultation with industry players and other stakeholders of the Ombudsman.

The Ombudsman is appointed by the Authority to receive, investigate and make fair and reasonable determinations on complaints lodged against authorised financial services providers, and to effectively resolve such non-bank financial services disputes in an impartial, cost-effective and expedient manner with minimum formality.

Prior to the Ombudsman, the Office of the Insurance and Retirement Funds Adjudicator (the IRFA) was in existence from the second half of 2011, the mandate of the IRFA being to

resolve disputes relating to insurance and retirement funds in terms of the Insurance Act and Retirement Funds Act, 2005, respectively. The operations of the IRFA were later placed on hold following the Court Judgment issued on the 31st March 2014. The judgment referred to is the High Court of Swaziland Case No. 1055/2013 *Swaziland National Provident Fund v Insurance and Retirement Funds Adjudicator & 4 others*. Subsequent to the aforementioned judgement, the IRFA and the FSRA lodged an appeal on the matter to the Supreme Court. Such appeal was heard and the previous decision was upheld by the Supreme Court of Appeal.

In and during October 2014 the Board of the FSRA announced the appointment as OMBUDSMAN of Judge T. Masuku which was effected in accordance with section 74 (1) of the FSRA Act. The position of OMBUDSMAN was then occupied from the 17th October 2014 until 21st November 2014 during which time steps towards finalising the groundwork of the Ombudsman were made before the subsequent departure of Judge T. Masuku. The present OMBUDSMAN, Ms Nondumiso O. Simelane, was appointed in terms of the said Section 74 (1) of the FSRA Act, with effect from the 01st November 2015.

As a result of the above-mentioned, this is the first issue of the Ombudsman Annual Report to the Board of the FSRA as required in terms of Rule 4 (k) of the Draft Rules of the Office of the Ombudsman read with resection 27 of the FSRA Act. This report therefore covers the operational activities of the IRFA as well as the Ombudsman from the 1st April 2014 to the 31st March 2016. This edition also captures a synopsis of a two years complaints statistics and an overview of the steps taken in establishing the Ombudsman.

2.2. Our Vision, Mission and Core Values

Vision

The Ombudsman is an independent office aspiring to be a world-class dispute resolution forum for easy access and redress to aggrieved persons in the non-bank financial services sector.

Mission

The mission of the Ombudsman is to effectively resolve non-bank financial services disputes in an affordable, fair, reasonable and speedy manner, with minimum formality.

Core Values

The Ombudsman will strive to act professionally at all times. To this end, in delivering our services we are guided by the following principles and values:

- Independence of thought
- Impartiality of judgment
- Integrity of conduct
- Transparency in our dealings
- Fairness in determinations
- Accountability in operations
- Flexibility in approach
- Courtesy in interactions
- Confidentiality
- Performance Excellence

3. OPERATIONS REPORT

3.1. Complaints Statistics

All complaints lodged and remaining pending at the IRFA as well as those received by the FSRA in anticipation of the appointment of the OMBUDSMAN have been deemed to have been lodged with the Ombudsman and needed not be lodged afresh. Members of the public were notified by the Authority by way of Newspaper notices in the national dailies in and during November 2015 that new complaints would be received by the Ombudsman from the 01st February 2016.

3.1.1. Complaints received

A total of 38 (thirty-eight) files were inherited from the IRFA (30 pension related; 8 insurance). These files were registered by the IRFA and are not included in the statistics of new complaints of the Ombudsman for reporting purposes. The Ombudsman further registered a total of 17 (seventeen) existing complaint files that had been received by the FSRA Credit and Savings Institution Division in anticipation of the establishment of the

Ombudsman (6 in respect of money lending; 11 relating to SACCOs). A further 7 (seven) existing complaint files were received from the FSRA Legal, Policy and Intervention Division (2 pension; 5 insurance). In these few months of operations the Ombudsman has received and registered 5 (five) new complaints: 2 pension, 2 consumer credit and 1 securities related.

The period under review has seen a drastic drop in complaints received conceivably as a result of the Supreme Court decision in case No. 1055/2013 *Swaziland National Provident Fund v Insurance and Retirement Funds Adjudicator & 4 others* as well as the absence of an Ombudsman. Figures 1 (a) and 1 (b) show a total of the complaints received.

FINANCIAL YEAR	NEW COMPLAINTS
2014 / 2015	5 [1 insurance; 4 pension fund]
2015 / 2016	29 [8 consumer credit; 11 SACCOs; 5 insurance; 4 pension fund; 1 securities]
TOTAL	34

Figure 1(a)

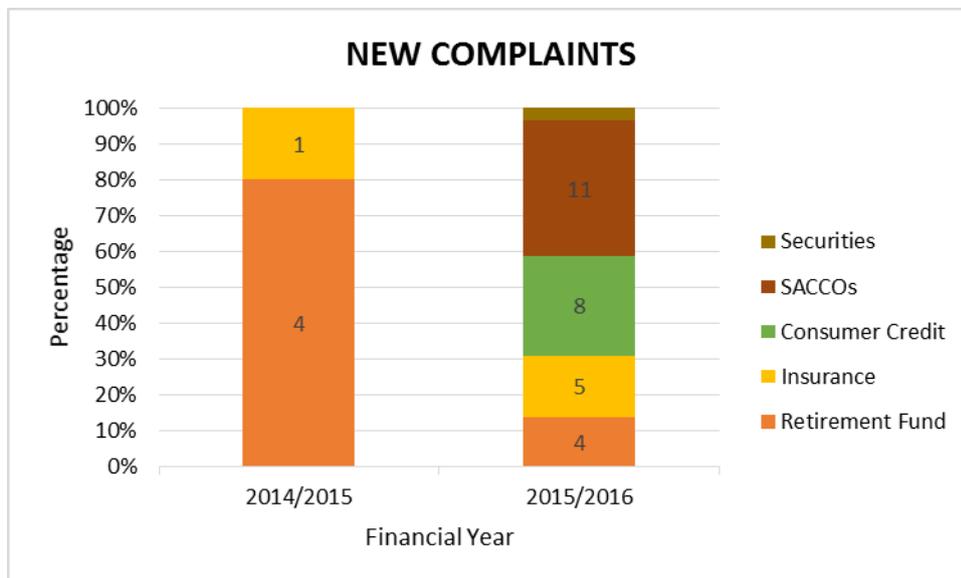


Figure 1(b)

3.1.2 Complaints disposed of

A total of 7 (seven) files were disposed of between 01 April 2014 and 31 March 2016. 5 (five) files were closed due to the lack of jurisdiction of the Ombudsman, 1 (one) complaint was resolved through a settlement and 1 (one) complaint was withdrawn by the complainant. Figures 2 (a) and 2 (b) show the total of complaints disposed of.

FINANCIAL YEAR	COMPLAINTS DISPOSED OF
2014/ 2015	1
2015/2016	6
TOTAL	7

Figure 2(a)

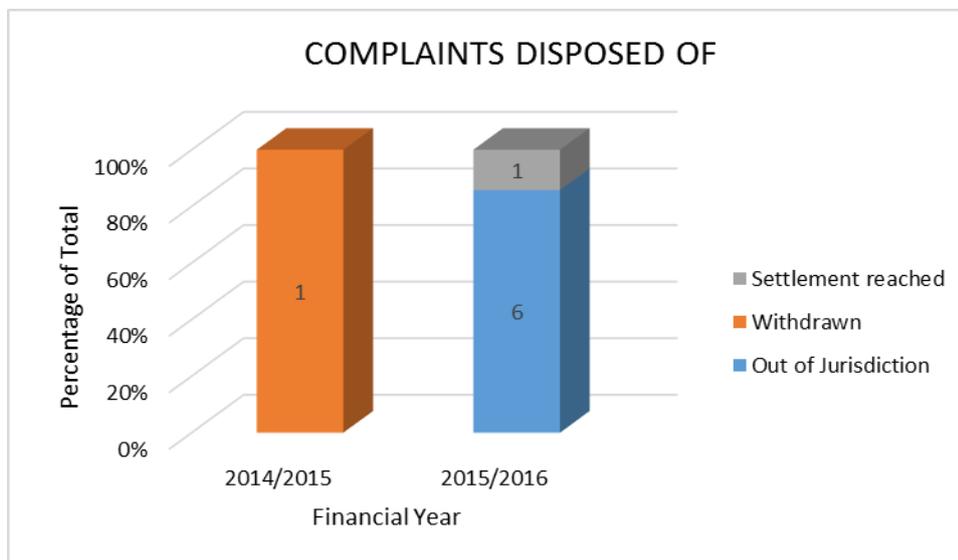


Figure 2(b)

3.2 Determinations

As an alternative dispute resolution body, it is required of the Ombudsman to establish internal processes and procedures that will allow for the speedy resolution and determination of disputes with the required level of professionalism as well as make room for matters to be resolved prior to the stage of drafting a determination. A great deal of research has been made into the internal structures of similar bodies within the SADC region as well as internationally in order to allow for the operations of the Ombudsman to produce determinations that will set sound precedent for non-bank financial services complaints in future.

After the receipt of a complaint, the possibility of mediation and settlement is explored prior to the adjudication process beginning and resulting in a determination by the Ombudsman. The strengthening of operational staff through appropriate training and attachments in other Ombudsman schemes practicing ADR mechanisms anticipates that fewer determinations will be issued by the Ombudsman as the Ombudsman adopts the use of facilitation, conciliation and mediation of the complaints.

The Ombudsman inherited 8 (eight) unissued Determinations of the IRFA that were held in abeyance due to the High Court ruling of the 31 March 2014. The matters currently at the Office are being dealt with, with the older matters taking priority and it is anticipated that determinations of the Ombudsman will be issued alongside finalisation of the Draft Rules in consultation with the Legal Committee of the Board.

4 OPERATIONAL ACTIVITIES

4.1 Attachment at the Financial Advisory and Intermediary Services Ombud of South Africa

The former Legal Officer, Tilungile Ntshalintshali, went on a visit to the Financial Advisory and Intermediary Services Ombud (the FAIS Ombud) in Pretoria for a familiarization training tour of their operations. The Legal Officer underwent training and a study of the case management system of the FAIS Ombud from the 02nd – 06th March 2015 which resulted in the obtaining of their operations manual and production of a detailed report on the internal procedures of the FAIS Ombud as well as information on the qualifications of the different positions within the organisational structure of the FAIS Ombud.

4.2 Attachment at the Pension Funds Adjudicator of South Africa

The OMBUDSMAN as well as the Legal Officer visited the Office of the Pension Funds Adjudicator (the OPFA) for a two-day visit between the 14th and 15th January 2016. The attachment covered an introduction to the mandate, organisational structure, processes as well as familiarisation of the case management system of the OPFA.



Ms Nondumiso Simelane (OMBUDSMAN of the Ombudsman) and Ms Muvhango Lukhaimane (Adjudicator of the OPFA) at the Reception of the OPFA, Riverwalk Office Park, Pretoria, South Africa.

Meeting with the Financial Services Board Registrar of Pension Funds

On the 14th January 2016 the Ombudsman attended at the offices of the Financial Services Board (the FSB) and met with the Registrar Mr Dube Tshidi. During the brief meeting the Registrar emphasised the importance of information sharing within the region in order that one becomes aware of what the other is doing. The Registrar expressed the sentiment that although the one may occupy a position of power, the power is not that of office holder as a public servant but of the people.



Standing: Ms Muvhango Lukhaimane (Adjudicator of the OPFA) and Mr Dube Tshidi (FSB Registrar of Retirement Funds) Sitting: Ms Nondumiso Simelane (OMBUDSMAN of the Ombudsman)

5. STAFF

The financial years in review saw the departure of the founding staff members of the IRFA, namely Ms Doris Tshabalala (Adjudicator) and Ms Tilungile Ntshalintshali (Legal Officer) who both left the organization in January 2015 and July 2015, respectively, to pursue new opportunities.

Ms Doris Tshabalala served both as the Adjudicator of the IRFA as well as the Chairperson of the FSRA Appeals Tribunal and her contributions to the success of the functioning of the IRFA during its time were invaluable. The excellence with which Ms Ntshalintshali served in her position as Legal Officer during the challenges faced in anticipation of the establishment of the Ombudsman is greatly appreciated.

Ms Zodwa Dube remained as the Admin Assistant and welcomed Ms Elizabeth Mzungu who joined the Ombudsman in the position of Legal Officer.

Although the Ombudsman is new in its establishment the contributions of the staff of the IRFA have laid a valuable foundation for the Ombudsman to become a competitive employer for candidates in both the Legal and Financial industry. We look forward to acquiring and retaining the necessary expertise to face the broad scope of financial products that will be dealt with by the Ombudsman.

6. CHALLENGES

6.1. Staffing

Currently the Ombudsman is understaffed, with only the OMBUDSMAN, Legal Officer and Administrative Assistant. However, efforts are underway to obtain a full staff complement and such remains a priority for the coming financial year.

6.2. Restoration of Stakeholder Confidence

With the inactivity occasioned in the period from the era of the IRFA to date the office is faced with the fact of lack of stakeholder confidence.

6.3. Manual Case Management System

The mandate of the Ombudsman being the resolution of disputes within the financial services industry quickly, and as such time frames are of the essence, the manual case management system presents a challenge to effective discharge of such mandate.

6.4. Complaint Turnaround Time

For the reason that the case management system is still manual this will have an effect on our complaint turnaround time.

7. ACKNOWLEDGEMENTS

The office would like to acknowledge the work of the CEO of the FSRA and his team for their support and guidance. The task of establishing the office is one we look forward to and hope to make strides in as well as having the role of the Ombudsman in furthering financial inclusion through speedy financial dispute resolution in Swaziland.