LONG-TERM INSURANCE OMBUD SCHEME

The Need for Governing Rules

The scheme provides a service to consumers and insurers in the long-term insurance industry. The size and impact of this industry can be demonstrated by the following numbers:

- as at September 2021 there were 51 688 139 individual policies and 92 383 scheme policies,
- its size in terms of assets under management was in excess of R3,5 trillion,
- death claims of more than R47,58 billion were paid in the 12 months up to 31 March 2021.

The policyholders, successors in title, lives assured, beneficiaries and premium payers of life policies and other users of long-term insurance business need to have an independent and impartial body which can resolve their disputes with long-term insurers without cost, taking fairness into account. The scheme's track record shows that it can fulfil this need. The features of the scheme mean that the scheme is well placed for this role.

Given the size of the insured public and the industry, the impact of the industry on peoples' lives and, on the economy, this is a financial service industry that cannot operate without a trusted Alternative Dispute Resolution (''ADR'') mechanism, The scheme was the first financial ombudsman scheme to be established in South Africa.

The features of the scheme ensure that the scheme complies with the fundamental principles of the International Network of Financial Services Ombudsman Schemes (''INFO''), as the Independent Review of the scheme confirms. See website: www.ombud.co.za

These principles are:

- Effectiveness
  Consistent redress in the scheme

- Independence
  Objective, impartial, and unbiased

- Accessibility
  Well known, easy to use, and free for consumers

- Fairness
  Processes and decisions visibly fair and equitable

- Efficiency
  Good quality of service and value for money

- Openness
  Clear and open to scrutiny about its work and the lessons that can be drawn from its activities

The scheme promotes confidence in the long-term insurance sector and provides complainants with free and fair complaint resolution. The fact that rulings are binding on subscribing members creates certainty in outcome for complainants, although they are not bound by the scheme's rulings and may still institute legal proceedings against the insurer.

In an industry where the bargaining power of a consumer is so unequal to that of an insurer, a fairness jurisdiction and the kind of powers the scheme can exercise, are crucial to level the playing field.

The Rules ensure a broad jurisdiction: there is no monetary limit. It is only the scheme that decides whether a complaint is within jurisdiction in terms of the Rules. All types of long-term insurance policies are covered and other than three obvious exclusions (See rule 2.2.), the scheme can decide to accept a complaint for consideration.

The insurers need an out of court, independent ADR mechanism that is trusted, efficient and cost effective, which is available to its customers. Such a mechanism bolsters confidence in the sector through its independence and good governance, efficient complaint-handling processes and specialist expertise.

There is value for insurers in that complainants having free access to the scheme: -

- could reduce litigation and the associated costs
- may lead to less adverse media comment
- leads to greater confidence in the industry

The regulator needs the scheme to deal with customer complaints as it is not desirable to have this function within the regulator for reasons of independent decision making and separation of functions.

Reach

It is clear from the fact that complaints are received from across the different Living Standards Measure ("LSM'') categories, that the reach of the scheme is widespread. Complaints about funeral policies are the most common, which is understandable as it is the most common type of long-term insurance cover. While these complaints do not involve high monetary amounts, the complaints are usually urgent as most of them involve declined funeral claims, and of course the benefits are very important in the lives of the complainants and their families, in their time of need. The percentage of cases resolved wholly or partially in favour of complainants is higher for complaints about these benefits.

Complexity

At the same time the long-term insurance industry in South Africa is known as one of the most complex and innovative in the world. This has resulted in a plethora of different types of products, some of which are legally and technically complicated. It requires experienced and knowledgeable adjudicators to deal with complaints about such policies. The scheme is fortunate that it has a mix of legal, industry and technical expertise both in its adjudicative staff and the experts with whom it contracts.

Reporting and providing information

The information distribution the scheme does on its activities and complaints in its annual reports, on its website, social media posts and other mediums, assists in enabling insurers and consumers to avoid problems. The annual reports and other information can be used by consumer advisers and the media to help improve the insurance knowledge of the public by explaining to consumers in plain language about insurance and what their rights are and how and when to contact the scheme if they need assistance. There are 484 case histories on the website, 47 newsletters and 47 final determinations. Complaint data per individual insurers have been published since 2015 in the annual reports and on the website.

Code of Ethics

The adherence to the Code of Ethics by the staff and other people involved with the scheme operations, gives the users of the scheme confidence in the integrity and ethical behaviour of the scheme's decision makers. The transparency in the complaint handling and the public reporting by the scheme further bolsters confidence.

Improvement

The scheme continuously seeks to improve its operations and does so by:

- benchmarking against international and local standards and practices. The scheme's membership of INFO assists it in this regard.
- the Council commissioning Independent Reviews every 3 to 5 years by a suitably qualified independent consultant and the scheme implementing the accepted recommendations of such reviews.
- responding to suggestions in complainant and insurer surveys.

Intended Operation of the Scheme

The scheme deals with complaints about its subscribing members, which makes up most long-term insurers in South Africa (95% by asset size). A list of the subscribing members appears on the website www.ombud.co.za

The complaint categories that the scheme deals with are as follows:

- Claims declined (54.49%)
- Poor service (29.36%)
- Dissatisfaction with
- maturity values (3.15%)
- Dissatisfaction with
- surrender values (1.52%)
- Lapsing (6.79%)
- Miscellaneous (4.22%)
- Misselling (0.47%)

These complaints can be broken down into benefit types:

- Funeral insurance benefits (39%)
- Life insurance benefits (34%)
- Disability insurance benefits (10%)
- Credit life insurance benefits (9%)
- Health insurance benefits (8%)

Complaint process:

The complaint process has been kept as easy to use as possible, for example, there is no prescribed form that is compulsory, although one is available if required by a complainant. The complaint process is described in more detail on the scheme's website.

Complaints can be lodged by post, email, online, via social media, fax, in person or telephonically in any of the 11 official languages

The scheme uses mediation, conciliation, recommendation or determination to resolve complaints. In appropriate matters, if there is a dispute of fact and both parties agree, a hearing can be held to try and resolve the dispute.

There is an emphasis on transparency and fair procedures, with both parties being given the opportunity to make submissions.

Open door policy

Both complainants and insurers can contact the office to speak to staff. The scheme has an open-door policy. There is a share call number for the use by complainants and the office will call a complainant if requested, e.g., if the complainant is short of airtime.

Vulnerable complainants.

In terms of their Vulnerable complainant policy, they adjust their procedures and remain flexible in their approach to accommodate the difficulties experienced by these complainants.

With regard to this policy the scheme can instruct an insurer in terms of rule 3.2 to take certain actions:

1) Pay a sum of money
   a) Such as claim payments; interest payments; refunds of premiums; shortfall in maturity or surrender benefits; compensation for poor service.
2) Take certain actions
   b) Such as to reinstate a policy; obtain a report from an expert; disclose information; amend or cancel a policy; apologise.

Quality Assurance

The scheme has robust quality assurance processes:

- The practice of issuing provisional rulings before a final ruling ensures that there is a review of any ruling where a party to the complaint is dissatisfied.
- In a further 5% of randomly selected cases there is quality control done by a contractor. This provides structured feedback to adjudicative staff.
- Having an Independent External Assessor for service complaints ensures that a party to a complaint can complain to an independent party about service issues, and this is investigated by an independent assessor.
- Independent Reviews, which include case file reviews and reviews of procedures and practices.

Impact of the scheme

The scheme plays an important role in identifying and mitigating risks of unfair customer outcomes.

In addition to the complaints it resolves, the scheme has had a significant impact on the general practices of the long-term insurance industry and individual insurers. To name a few examples:

- Since 1997 members have had to take fairness into account in accordance with rule 1.2.7 of the scheme Rules.
- Since 1997 members have had to pay compensation for poor service in terms of rule 3.2.5 of the scheme Rules.
- Through the efforts of the scheme, a practice of interest on late payment of benefits was established as not all insurers paid interest in such circumstances. As a result of its liaison with the industry, in 2004 the Life Offices Association (a predecessor of the Association for Savings and Investments South Africa (''ASISA'') issued a circular to its members on payment of interest on late payment of benefits. See the 2004 Annual Report p19. The scheme's approach to interest is set out in a practice note on the website www.ombud.co.za.
- The Didcott principle, which is based on fairness, is applied by insurers whereby insurers reconstruct policies rather than cancelling them when there has been non-disclosure of information by a policyholder. See 2006 and 2007 Annual Reports.
- The scheme insists on policyholders' attention being drawn to an unusual/ uncommon provision which a member inserts in its policies. If not done, the scheme will not uphold the provision if it is to the detriment of the policyholder.
- The scheme commissioned a handbook in 2009, *Life Insurance in South Africa* by PM Nienaber and MFB Reinecke, a former Ombudsman and assistant ombudsman of the scheme. The book gives the perspective from the scheme on long-term insurance complaints. The handbook is widely used by the industry.
- Through the efforts of the scheme s. 63 of the Long-term Insurance Act was amended to extend the protection of policies to disability benefits of insolvent policyholders. See p22 of the 2013 Annual Report.

Interaction with the regulator:

Through its interaction with the FSCA as the regulator for financial institutions (and its predecessor the FSB) the scheme reports on trends and systemic problems in the industry. It thereby acts as an early warning system for the regulator. This independent insight on complaints should enable the regulator to supervise the long-term insurance industry more effectively.

In addition, input on recommended legislative changes and comment on draft legislative and regulatory amendments from an ombudsman perspective, has been important and impactful.

This is particularly so because there is not a strong and active financial consumer lobby in South Africa, e.g., the scheme gave extensive input into the Policyholder Protection Rules (''PPR'') and continues to do so on proposed amendments to the PPR.

Expected Changes:

The scheme expects a change to its membership base if s.211 (3) of the FSR Act is enforced. The scheme believes that it is well positioned to accommodate these changes and has access to sufficient resources. Otherwise, the scheme's jurisdiction and powers are sufficient for its role.