

5 [and 7] of this Code, to the extent that any such information has not already been provided to the client in writing [as has not yet been recorded or provided to the client in writing before the conclusion of any transaction, must be provided to the client in writing within 30 days thereafter].”; and

- (d) the insertion of the following subsection after subsection (6):
“(7) A provider must, on request of the client, make recordings of telephone discussions available to the client.”.

Amendment of Part XI of the General Code

13. Part XI of the General Code is hereby amended by the substitution of the following Part:

PART XI COMPLAINTS MANAGEMENT (ss 16 - 19)

16 DEFINITIONS

In this Part –

“**client query**” means a request to the provider or the provider’s service supplier by or on behalf of a client, for information regarding the provider’s financial products, financial services or related processes, or to carry out a transaction or action in relation to any such product or service;

“**complainant**” means a person who submits a complaint and includes a –

- (a) client;
- (b) person nominated as the person in respect of whom a product supplier should meet financial product benefits or that persons’ successor in title;
- (c) person whose life is insured under a financial product that is an insurance policy;
- (d) person that pays a premium or an investment amount in respect of a financial product;
- (e) member;
- (f) person whose dissatisfaction relates to the approach, solicitation marketing or advertising material or an advertisement in respect of a financial product, financial service or related service of the provider,

who has a direct interest in the agreement, financial product or financial service to which the complaint relates, or a person acting on behalf of a person referred to in (a) to (f);

“**complaint**” means an expression of dissatisfaction by a person to a provider or, to the knowledge of the provider, to the provider’s service supplier relating to a financial product or financial service provided or offered by that provider which indicates or alleges, regardless of whether such an expression of dissatisfaction is submitted together with or in relation to a client query, that –

- (a) the provider or its service supplier has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the provider or to which it subscribes;
- (b) the provider or its service supplier’s maladministration or wilful or negligent action or failure to act, has caused the person harm, prejudice, distress or substantial inconvenience; or
- (c) the provider or its service supplier’s has treated the person unfairly;

“**compensation payment**” means a payment, whether in monetary form or in the form of a benefit or service, by or on behalf of a provider to a complainant to compensate the complainant for a proven or estimated financial loss incurred as a result of the provider’s contravention, non-compliance, action, failure to act, or unfair treatment forming the basis of the complaint, where the provider accepts liability for having caused the loss concerned, but excludes any –

- (a) goodwill payment;
- (b) payment contractually due to the complainant in terms of the financial product or financial service concerned; or

- (c) refund of an amount paid by or on behalf of the complainant to the provider where such payment was not contractually due;
and includes any interest on late payment of any amount referred to in (b) or (c);

“goodwill payment” means a payment, whether in monetary form or in the form of a benefit or service, by or on behalf of a provider to a complainant as an expression of goodwill aimed at resolving a complaint, where the provider does not accept liability for any financial loss to the complainant as a result of the matter complained about;

“member” in relation to a complainant means a member of a -

- (a) pension fund as defined in section 1(1) of the Pension Funds Act, 1956 (Act 52 of 1956);
- (b) friendly society as defined in section 1(1) of the Friendly Societies Act, 1956 (Act 25 of 1956);
- (c) medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998); or
- (d) group scheme as contemplated in the Policyholder Protection Rules made under section 62 of the Long-term Insurance Act, 1998, and section 55 of the Short-term Insurance Act, 1998;

“rejected” in relation to a complaint means that a complaint has not been upheld and the provider regards the complaint as finalised after advising the complainant that it does not intend to take any further action to resolve the complaint and includes complaints regarded by the provider as unjustified or invalid, or where the complainant does not accept or respond to the provider's proposals to resolve the complaint;

“reportable complaint” means any complaint other than a complaint that has been -

- (a) upheld immediately by the person who initially received the complaint;
- (b) upheld within the provider's ordinary processes for handling client queries in relation to the type of financial product or financial service complained about, provided that such process does not take more than five business days from the date the complaint is received; or
- (c) submitted to or brought to the attention of the provider in such a manner that the provider does not have a reasonable opportunity to record such details of the complaint as may be prescribed in relation to reportable complaints; and

“upheld” means that a complaint has been finalised wholly or partially in favour of the complainant and that -

- (a) the complainant has explicitly accepted that the matter is fully resolved; or
- (b) it is reasonable for the provider to assume that the complainant has so accepted; and
- (c) all undertakings made by the provider to resolve the complaint have been met or the complainant has explicitly indicated its satisfaction with any arrangements to ensure such undertakings will be met by the provider within a time acceptable to the complainant.

17 COMPLAINTS MANAGEMENT FRAMEWORK

Establishment of complaints management framework

- (1)(a) A provider, excluding a representative, must establish, maintain and operate an adequate and effective complaints management framework to ensure the effective resolution of complaints and the fair treatment of complainants that -
 - (i) is proportionate to the nature, scale and complexity of the provider's business and risks;
 - (ii) is appropriate for the business model, policies, services, and clients of the provider;
 - (iii) enables complaints to be considered after taking reasonable steps to gather and investigate all relevant and appropriate information and circumstances, with due regard to the fair treatment of complainants;
 - (iv) does not impose unreasonable barriers to complainants; and
 - (v) must address and provide for, at least, the matters provided for in this Part.
- (b) A provider must regularly review its complaints management framework and document any changes thereto.

Requirements for complaints management framework

- (2)(a) The complaints management framework must at least, provide for –
- (i) relevant objectives, key principles and the proper allocation of responsibilities for dealing with complaints across the business of the provider;
 - (ii) appropriate performance standards and remuneration and reward strategies (internally and where any functions are outsourced) for complaints management to ensure objectivity and impartiality;
 - (iii) documented procedures for the appropriate management and categorisation of complaints, including expected timeframes and the circumstances under which any of the timeframes may be extended;
 - (iv) documented procedures which clearly define the escalation, decision-making, monitoring and oversight and review processes within the complaints management framework;
 - (v) appropriate complaint record keeping, monitoring and analysis of complaints, and reporting (regular and ad hoc) to executive management, the board of directors and any relevant committee of the board or in the absence of a board the governing body on –
 - (aa) identified risks, trends and actions taken in response thereto; and
 - (bb) the effectiveness and outcomes of the complaints management framework;
 - (vi) appropriate communication with complainants and persons representing complainants on the complaints and the complaints processes and procedures;
 - (vii) appropriate engagement between the provider and a relevant ombud;
 - (viii) meeting requirements for reporting to the Registrar and public reporting in accordance with this Part;
 - (ix) a process for managing complaints relating to the provider's representatives and service suppliers, insofar as such complaints relate to services provided in connection with the provider's financial products, financial services or related services, which process must –
 - (aa) enable the provider to reasonably satisfy itself that the representative or service supplier has adequate complaints management processes in place to ensure fair treatment of complainants;
 - (bb) provide for monitoring and analysis by the provider of aggregated complaints data in relation to complaints received by its representatives and service suppliers and their outcomes;
 - (cc) include effective referral processes between the provider and its representatives and service suppliers for handling and monitoring complaints that are submitted directly to either of them and require referral to the other for resolution; and
 - (dd) include processes to ensure that complainants are appropriately informed of the process being followed and the outcome of the complaint; and
 - (x) regular monitoring of the complaints management framework generally.

Allocation of responsibilities

- (3)(a) The board of directors or in the absence of a board the governing body and key individuals of the provider, excluding a representative, is responsible for effective complaints management and must approve and oversee the effectiveness of the implementation of the provider's complaints management framework.
- (b) Any person that is responsible for making decisions or recommendations in respect of complaints generally or a specific complaint must –
- (i) be adequately trained;
 - (ii) have an appropriate mix of experience, knowledge and skills in complaints handling, fair treatment of customers, the subject matter of the complaints concerned and relevant legal and regulatory matters;
 - (iii) not be subject to a conflict of interest; and
 - (iv) be adequately empowered to make impartial decisions or recommendations.

Categorisation of complaints

- (4)(a) An provider, excluding a representative, must categorise reportable complaints in accordance with the following minimum categories –
- (i) complaints relating to the design of a financial product, financial service or related service, including the fees, premiums or other charges related to that financial product or financial service;
 - (ii) complaints relating to information provided to clients;
 - (iii) complaints relating to advice;
 - (iv) complaints relating to financial product or financial service performance;
 - (v) complaints relating to service to clients, including complaints relating to premium or investment contribution collection or lapsing of a financial product ;
 - (vi) complaints relating to financial product accessibility, changes or switches, including complaints relating to redemptions of investments;
 - (vii) complaints relating to complaints handling;
 - (viii) complaints relating to insurance risk claims, including non-payment of claims; and
 - (ix) other complaints.
- (b) A provider must, in addition to the categorisation set out in paragraph (a), consider additional categories relevant to its chosen business model, financial products, financial services and client base that will support the effectiveness of its complaint management framework in managing conduct risks and effecting improved outcomes and processes for its clients.
- (c) A provider must categorise, record and report on reportable complaints by identifying the category contemplated in paragraphs (a) and (b) to which a complaint most closely relates and group complaints accordingly.

Complaints escalation and review process

- (5)(a) A provider, excluding a representative, must establish and maintain an appropriate internal complaints escalation and review process.
- (b) Procedures within the complaints escalation and review process should not be overly complicated, or impose unduly burdensome paperwork or other administrative requirements on complainants.
- (c) The complaints escalation and review process should -
- (i) follow a balanced approach, bearing in mind the legitimate interests of all parties involved including the fair treatment of complainants;
 - (ii) provide for internal escalation of complex or unusual complaints at the instance of the initial complaint handler;
 - (iii) provide for complainants to escalate complaints not resolved to their satisfaction; and
 - (iv) be allocated to an impartial, senior functionary within the provider or appointed by the provider for managing the escalation or review process of the insurer.

Decisions relating to complaints

- (6)(a) Where a complaint is upheld, any commitment by the provider to make a compensation payment, goodwill payment or to take any other action must be carried out without undue delay and within any agreed timeframes.
- (b) Where a complaint is rejected, the complainant must be provided with clear and adequate reasons for the decision and must be informed of any applicable escalation or review processes, including how to use them and any relevant time limits.

Record keeping, monitoring and analysis of complaints

- (7)(a) A provider must ensure accurate, efficient and secure recording of complaints and complaints-related information.
- (b) The following must be recorded in respect of each reportable complaint-
- (i) all relevant details of the complainant and the subject matter of the complaint;
 - (ii) copies of all relevant evidence, correspondence and decisions;
 - (iii) the complaint categorisation as set out in subsection (4); and
 - (iv) progress and status of the complaint, including whether such progress is within or outside any set timelines.

- (c) A provider must maintain the following data in relation to reportable complaints categorised in accordance with subsection (4) on an ongoing basis -
 - (i) number of complaints received;
 - (ii) number of complaints upheld;
 - (iii) number of rejected complaints and reasons for the rejection;
 - (iv) number of complaints escalated by complainants to the internal complaints escalation process;
 - (v) number of complaints referred to an ombud and their outcome;
 - (vi) number and amounts of compensation payments made;
 - (vii) number and amounts of goodwill payments made; and
 - (viii) total number of complaints outstanding.
- (d) Complaints information recorded in accordance with this subsection must be scrutinised and analysed by a provider on an ongoing basis and utilised to manage conduct risks and effect improved outcomes and processes for its clients, and to prevent recurrences of poor outcomes and errors.
- (e) A provider must establish and maintain appropriate processes for reporting of the information in subsection (7)(d) to its governing body or executive management.

Communication with complainants

- (8)(a) A provider must ensure that its complaint processes and procedures are transparent, visible and accessible through channels that are appropriate to the provider's clients.
- (b) A provider may not impose any charge for a complainant to make use of complaint processes and procedures.
- (c) All communications with a complainant must be in plain language.
- (d) A provider must, wherever feasible, provide clients with a single point of contact for submitting complaints.
- (e) A provider must disclose to a client –
 - (i) the type of information required from a complainant;
 - (ii) where, how and to whom a complaint and related information must be submitted;
 - (iii) expected turnaround times in relation to complaints; and
 - (iv) any other relevant responsibilities of a complainant.
- (f) A provider must within a reasonable time after receipt of a complaint acknowledge receipt thereof and promptly inform a complainant of the process to be followed in handling the complaint, including –
 - (i) contact details of the person or department that will be handling the complaint;
 - (ii) indicative and, where applicable, prescribed timelines for addressing the complaint;
 - (iii) details of the internal complaints escalation and review process if the complainant is not satisfied with the outcome of a complaint;
 - (iv) details of escalation of complaints to the office of a relevant ombud and any applicable timeline; and
 - (v) details of the duties of the provider and rights of the complainant as set out in the rules applicable to the relevant ombud.
- (g) Complainants must be kept adequately informed of –
 - (i) the progress of their complaint;
 - (ii) causes of any delay in the finalisation of a complaint and revised timelines; and
 - (iii) the provider's decision in response to the complaint.

18 ENGAGEMENT WITH OMBUD AND REPORTING

Engagement with ombud

- (1)(a) A provider must –
 - (i) have appropriate processes in place for engagement with any relevant ombud in relation to its complaints;
 - (ii) clearly and transparently communicate the availability and contact details of the relevant ombud services to complainants at all relevant stages of the relationship with a client, including at the start of the relationship and in relevant periodic communications;

- (iii) display and/or make available information regarding the availability and contact details of the relevant ombud services at the premises and/or on the web site of the provider;
 - (iv) maintain specific records and carry out specific analysis of complaints referred to them by the ombud and the outcomes of such complaints; and
 - (v) monitor determinations, publications and guidance issued by any relevant ombud with a view to identifying failings or risks in their own policies, services or practices.
- (b) A provider must –
- (i) maintain open and honest communication and co-operation between itself and any ombud with whom it deals; and
 - (ii) endeavour to resolve a complaint before a final determination or ruling is made by an ombud, or through its internal escalation process, without impeding or unduly delaying a complainant's access to an ombud.

19 REPORTING COMPLAINTS INFORMATION

A provider must have appropriate processes in place to ensure compliance with any prescribed requirements for reporting complaints information to any relevant designated authority or to the public as may be required by the Registrar.

Short title and Commencement

14. This Notice is called the Amendment of the General Code of Conduct for Authorised FSPs and Representatives, 2017, and comes into operation on publication in the Government Gazette, except those paragraphs of the Notice specified in the first column of the Table hereunder, which will take effect on the dates as indicated in the second column of the Table.

Provision of Notice	Effective Date
Paragraph 11 (in respect of section 14 of the General Code)	1 July 2018
Paragraph 13 (in respect of Part XI of the General Code)	1 January 2019