

If you are reading this newsletter, please remember to pass it around your office.

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## EDUCATION

**Peter Veal's Article's on..**

**RE exams update**

We have heard nothing further, but it is rumoured that the Financial Services Board will make an announcement this week or early next week ie. by 05/11/2010. We wait with great anticipation.

### **Just when we were getting used to the new qualification process.....**

As far back as 2003, it was clear that the unit standard based qualification delivery system was not working as planned. Every training provider had its own learning material and the level of difficulty varied between providers for the same qualification. Providers also appeared to have a different view as to what constituted a realistic final examination (summative assessment).

Learners inevitably compared notes and rightfully questioned the process. The training in our industry was being driven by training providers instead of our professional institutes and although the NQF (National Qualification Framework) objectives and outcomes-based education received widespread support, there were too many bodies responsible for standards generation and quality assurance.

It has taken quite some time, but at last there is movement in the right direction. The ministers of education and labour responded to the challenges by agreeing to make provision for the establishment of three Quality Councils (QCs) to manage three sub-frameworks - one for Higher Education Qualifications, one for General and Further Education Qualifications and one for Occupational Qualifications. It was agreed that these sub-frameworks will fall within a single National Qualifications Framework (NQF) and will be managed in collaboration with the South African Qualifications Authority (SAQA).

## RE exams update cont...

Legally, this was achieved by the passing of the Skills Development Act Amendment Bill which introduced the Quality Council for Trades and Occupations (QCTO), the function of which is to coordinate learning towards occupational competence within our national learning system. The idea is to facilitate the development of a demand-driven occupational learning system that will provide relevant occupational skills and be less bureaucratic.

Out of this has emerged a skills based coded classification system, known as the OFO (Organising Framework for Occupations).

If you see this as gobbledygook, don't worry – it really is a relatively simple process to understand.

In effect, every occupation within the insurance industry has been identified and over the next few years a Qualification, National Occupation Award or National Skills Certificate will be developed for each. Inseta has been appointed to lead us through the transitional process, and a task team has been established to prioritise the list of qualifications that require development. After considerable consultation with the industry, it has been decided that the underwriting clusters will be the first addressed and scoping will start early in November.

To address the 'delivery' problem, it has been decided that certain professional bodies within our industry should partner the QCTO to drive the process (just like the old days), but at this stage we do not know which institute(s) or associations have been selected.

In April, SAQA hosted a meeting of representatives from all professional bodies to inform them of their proposed process to develop policy and criteria for the recognition of professional bodies and registration of professional designations on the National Qualifications Framework (NQF). The meeting was attended by more than 250 people, representing in excess of 90 professional bodies, including representatives from all the insurance sector's professional associations and institutes.

Following this meeting a Professional Body Reference Group was established and between June and August this year it developed a draft policy and working paper entitled '*Policy and criteria for recognising a professional body and registering a professional designation for the purposes of the NQF Act of 2008*'.

Interested persons were asked to comment on the paper by the middle of this month, and we understand that there were more than 200 pages of submissions. The Group has collated all the responses and is presently in the process of making the necessary amendments to the document. As soon as this is finalised the document will be presented to the SAQA Board for approval.

Although the recognition of professional bodies and registration of professional designations on the NQF will only commence once this process has been completed, nevertheless it is clear that the process is in full swing and could even be concluded by the end of the year.

Once this has been sorted, it will be the professional bodies that will act as the QCTO's assessment partners and who will set the qualifying standards, thus effectively eliminating the current quality control problems.

### **What happens to our current credits and qualifications?**

Those practitioners that have already registered as a representative or key individual and have achieved a unit standard based qualification or skills programme as the base for their Fit and Proper status need not worry. Qualifications as we know them today have been loaded on the National Learner Record Database where they will remain. Obviously, those practitioners that are currently studying a unit standard qualification are encouraged to complete the qualification before the teach-out period expires.

Let's just hope that the new qualifications are ready for delivery before the current qualifications reach their registration end dates.

We'll definitely keep you up to date with developments.

## FROM PRETIUM

### REMINDER: Conflict of Interest – the new regulations

We would like to remind you that we are currently holding a series of workshops on the Conflicts of Interests regulations to help you better understand the work involved and practical implications.

The remaining Gauteng date and venue details are as follows:

Dates: 3 December 2010

Time: 9:30am

Venue:

ICE Training Rooms

1<sup>st</sup> Floor, Office 6

Warranty House

185 Smit Street

Cnr 5<sup>th</sup> Avenue

Fairlands

Contact Pranisha on (011) 678 2533 or [Pranisha@pretium.co.za](mailto:Pranisha@pretium.co.za) to book.

Bookings are done on a first come, first serve basis and seats are filling up fast.

We will be holding workshops in Durban in the near future. We will advise all of our Durban clients of dates, times, venues etc as soon as possible.

### Conflict of Interest – your plans

Most of you will have received the updated Guidance Note by now and many of you have attended the first two workshops in Johannesburg and those held in Cape Town.

It is now (past your) time to get your plans together, which may include asking us to assist. Remember the overall deadline is 19 April 2011 but you have already passed the first two inner deadlines relating to enhanced disclosures (19 July) and prohibitions on financial interest (19 October).

On the point of the immaterial financial interest; we have seen debates on the application of the R 1,000 limit per calendar year and how it is to be applied for the remainder of 2010 given that the limit applied from 19 October 2010. A view seems to be out there that states that a pro rata amount should be applied. Our view is that the regulations do not state this is the case – the limit is for a calendar year and therefore you can legitimately use R 1,000 for the balance of the year.

We have also started to see the practical effects of these limitations. One leading insurer is hosting a golf day – but their invitation went out with a note that the green fees were for the invitees own account. Yet another leading insurer has just sent our invites to the Nedbank Golf Challenge – inclusive of partners and overnight stay at Sun City – which would be a ‘tad’ over the limit. An FSP’s last stand maybe?

Maybe the article on p 32 of October’s COVER by Wendy Hattingh of the FSB may set out the intended principle better than the legislation itself. Stef Theofanidis, representing SAUMA, also pitches in with his perspective on p 36.

## **FSB Annual Levies**

Just a reminder that Sunday, 31<sup>st</sup> October 2010, is the deadline date for the payment of annual levies.

Please be aware that the FSB have informed us that should you be late with your payments, interest will be charged daily on these levies.

## **PS Monitoring Reports**

Those who have received a report following our second quarter visit will have noticed that the format for highlighting the results of the monitoring of business activity i.e. Quotes, New Business and Renewals has been upgraded. We now split the process into three distinct sections, namely:

- Furnishing of advice,
- Information: on the financial service and on the FSP, and
- Other details

In addition we rate on each section per process type. We hope this will better enable you to see where any shortfalls that may exist are located within the process.

## **Compliance officer regulations – impact of the changes**

We made mention of these new regulations in last month's Newsletter and we are currently busy with an assessment of our clients to establish which:

- Have more than one branch,
- Have more than one business unit (this may be in another branch or divisions within one branch,
- Juristic Representatives,
- Representatives based on satellite locations,
- Representative numbers that have meant not all Reps are seen at least twice a year.

One or more of these profiles will result in monitoring regimes being upgraded to ensure that all branches and divisions are seen at least once per quarter and every Rep seen at least twice a year.

We will communicate with those of you affected by these new monitoring requirements during the early part of November as the upgrade is applicable from December 2010.

## FROM THE FSB

We attended the annual FSB FAIS conference this month. The format was a little different than in previous years with more break away sessions which allowed for more focused discussion but meant we could not attend all sessions.

Whilst there was nothing dramatic learnt during the course of the day there were some useful tips, ideas and clarity of legislative intent established. These will be incorporated into our procedures or monitoring process where applicable. These aspects include:

- Section 7 (3) monitoring – This is the requirement where one FSP has to verify another's status – including their reps. The FSB have a weekly download of their FSP data available of all FSP details, which currently does not include reps info. We are compiling a guidance note on how to access and use this current download.

The FSB are prepared to provide full data to industry bodies that will enable members to access all required information. At this stage only ASISA have an agreement with the FSB. The supplied data is managed by ASTUTE. Apparently this system works very well. The FSB have confirmed they would talk to other industry bodies and we have already discussed the possibility with SAIA who have undertaken to investigate this further.

- Complaints lodged - The FSB or any pending regulatory action against an FSP will result in all other aspects of compliance being treated very strictly by the FSB e.g. extensions for the submission of financial
- OLD ID numbers of reps – these are causing problems with the registers managed by the FSB. If we encounter any such numbers we will need to get them updated before we can use them to register reps – so please bear this in mind when appointing reps.  
Passport numbers – where these are used for rep appointment with the FSB the issue of the expiry date of this passport will be looked at so please bear in mind when hiring staff with passports only.
- Conditions applying - KI's with conditions applied by the FSB i.e. not yet proven they meet the competency requirements as at 31/12/2009. The FSB will be looking at these with a view to suspensions of all pre 2008 people. We will be reviewing our own records to highlight these cases. Remember that this may relate to simply proving you have the credits/qualification.
- Next regulatory action - January 2011 will see another round of action being taken against all FSP's with outstanding financials and compliance reports. We will be reminding all of you that may be in this category individually shortly.

### DRAFT BINDER REGULATIONS

- Guidelines on outsourcing, as envisaged in the draft regulations, will be available by year end. This is intended to deal with the call centre industry within the framework of outsourcing.
- Issues around ownership and cell structures are being discussed with by the FAIS and insurance divisions. A discussion document is expected by Feb/March 2011. Cells and cell captives will be treated differently
- Policy issuing/premium collection will not be seen as a binder agreement so no fee can be paid by an insurer for doing this alone
- UMA's will not be allowed to charge ANY additional fees – including what is usually referred to as a debit order fee – over and above the risk premium

## **CONFLICT OF INTEREST**

- Auditors of FSP's will have a responsibility to check and report on these. It is our intention to include them, and book keepers and financial managers, as an integral part of the monitoring process.
- Charity events and donations – are these seen as an Immaterial Financial Interest? This could well be. If the event or payment is linked to another FSP then likely to be governed by the prohibitions and will need managing as such. If there is a straight donation to a charity this will be acceptable and fall outside the prohibition.

## **JURISTIC REPS:**

The interpretation of the regulations around appointing juristic reps was debated. The key aspects of the FSB's views were;

- Insurer agencies for the juristic reps. These must be in the name of the licence holder i.e. independent agencies for the juristic rep are not allowed. This aspect we don't agree with at all. The regulations do not make provision for this and there are many practical and high profile examples out there where this is done, and legitimately so in our view.
- Disclosure of the who the licence holder is and that the status of the Juristic Rep is needed supported by a formal written mandate from the licence holder, both aspects we agree with.
- The licence holder needs to "approve" the KI of a juristic rep as though it were being done by the FSB i.e. proof of management experience, certified copies of qualifications, verification of fit & proper status.
- Confirmed that KIs of the juristic rep can be under supervision for their role as Reps.
- The licence holder needs to verify the operational ability of its Juristic Reps.
- Juristic Reps cannot collect premiums. Again we don't agree with this. The regulations do not provide this restriction.

Certain aspects of these views have been queried and we await the feedback from the FSB. We will keep you posted as some have implications on some of you.

We also attended a conference held by the FSB's insurance division earlier in the month which focused on likely legislative changes outside of the FAIS environment. The key aspects being:

- Binder Regulations – We have discussed Binder Regulations in last month's newsletter. We have just picked up on another aspect that should be advised. There is a possibility of a UMA, on the back of the binder regulations, not having to be licenced in terms of FAIS.
- Placement of short term insurance business with entities not registered in SA will be amended by the following:
  - Information will be required on provisional application
  - There will be hold covered arrangement
  - Final applications must be lodged 15 working days before inception or renewal of cover.

For a full document of the above, please contact Pranisha at our offices for more details.

As most of you would have heard the effective date of the Consumer Protection Act has been pushed out till the end of the first quarter of 2011.

## FROM THE FAIS OMBUD

The following summary is courtesy of Compliserve and is reproduced in full as it illustrates very clearly the Ombud's view around ineffectual sales process, including the lack of advice around the suitability of product and risk carrier and subsequent moving of risk carrier without effective communication to the client. The poor reference to the insurer and that Lloyds as a name is not sufficient must be noted.

Sadly we see many of traits in the monitoring we do and this ruling, whilst small in Rand terms we see as significant for short-term brokers, especially those using motor dealers as a source of business.

### 1. Background

Mrs Blainey ("the complainant") purchased a vehicle from Ford Eagle Corner in 2007. The complainant also applied for vehicle insurance with Hamford (PTY) Ltd. The insurance was underwritten by a member of Lloyds of London and cover commenced on the day of purchase. A few months later, the complainant received a text message on her cell phone from Hamford that her cover had been cancelled, with no reasons given. Complainant immediately concluded alternative vehicle insurance with Hollard Insurance. The complainant discovered, a few months later, that she had an unauthorised debit order on her account.

The respondent had contracted with Niche Administrators ("Niche") for insurance on the complainant's vehicle and the debit order was in favour of Niche. The complainant had no knowledge of the policy with Niche. The complainant had had dual insurance on the same vehicle for 9 months. The complainant argued that she had requested from the respondent that the debit order be cancelled and the unauthorised premiums be repaid, but the respondent failed to do this even after it requested and received from the complainant, proof of insurance with Hollard. The complainant was then told that Niche's bank accounts had been frozen and it would be unable to repay the amounts. The complainant further stated that the respondent had contracted with yet another insurer for insurance of the complainant's vehicle.

The respondent admits that it had moved all client policies with Hamford over to Saxam insurance – which was administered by Niche. It had done so because it viewed the services delivered by Hamford, as not being satisfactory.

### 2. Complainant's case

The basis of the complainant's claim was that she had no knowledge of Niche, had not entered into any contract with them, nor did she give the respondent a mandate to cancel her existing insurance with Hamford or purchase insurance cover from any other insurer. The complainant sought an order from the Ombud compelling the respondent to repay her the amount of R 5400.

### 3. Respondent's case

The respondent denied any wrongdoing and stated that it had a written mandate from the complainant. It argued that at all times, it was acting in accordance with this mandate and in the complainant's best interests. It further stated that the complainant was informed of the change in insurers and a replacement policy schedule accompanied the letter to the complainant.

### 4. The issue

Had the respondent complied with the provisions of the General Code of Conduct, when it had rendered the financial service? More specifically, had the respondent complied with section 8 of the General Code with regard to the full disclosure of inter alia: details, conditions, implications and costs of a replacement product? Was the client put in a position to understand the advice given and to make an informed decision?

Secondly, if the respondent had failed to comply, had the complainant suffered any damage as a result?

## **5. Determination and reasons therefore**

Although the complaint was not directed at the initial sale of the policy, the respondent was held to have failed to comply with the provisions of the FAIS Act and the Code for the following reasons:

- 1) The advice record that was given to the complainant to sign on the day the car and the insurance was purchased:
  - a. Did not provide a recommendation that guided the client in choosing the appropriate insurance policy.
  - b. Merely states that Lloyd's of London was recommended and not which particular insurer within the Lloyd's syndicate.
  - c. Does not state why the recommendation is appropriate to the complainant's circumstances.
  - d. States that the reason given for the complainant selecting the product was that the product offered a 'good premium'. However, the respondent had failed to find out what the complainant thought was a 'good premium' in the first place. Comparing insurance cover only on the basis of premium amount is misleading & unfair to clients.
  
- 2) The documents (including the client mandate document) sent to the dealership to be signed by the complainant, had been pre-signed and pre-dated by the respondent's representative. The Ombud held that this was clearly not what was contemplated in the FAIS Act and Code. The complainant had not spoken to the representative but had merely signed the insurance documents in the presence of a dealership representative.

With regard to the client mandate, there was no discussion between the complainant and the respondent to understand the precise nature of the complainant's requirement. The Ombud held that this was not a proper mandate. The mandate was further held to NOT give the respondent powers to change policies at will, let alone change them to result in the client having to pay more – the complainant's express permission was needed for this.

- 3) The respondent cancelled all policies with Hamford. However, the respondent has no proof that the complainant was consulted about the cancellation of her policy, nor about the decision to insure through Niche brokers and their specific terms. The letter that was sent to the complainant, that supposedly informed the complainant of the change in insurers, did not contain the complainant's name or her address– there was no proof this letter was posted to the complainant.

With regard to the letter 'sent' to the complainant: The letter was not addressed to the complainant and there was no proof that the letter was posted. The respondent had ignored the provisions of the Code. The letter indicates that the respondent had unilaterally decided to move its clients to another insurer and the letter served to inform clients of this decision. This letter indicated that no advice was given as to the replacement policy. Nowhere on the letter is there any indication of the terms of the new policy, nor the premiums to be paid – the respondent was obliged to disclose this information and had failed to do so. If the complainant had been consulted, she would have been in a position of choice as to the moving of her policy. In addition, had the complainant been properly informed, she would NOT have ended up paying for two policies. The respondent's conduct was the sole cause of the complainant's loss.

Complaint upheld. The respondent was ordered to compensate the complainant with the amount of R5400 as well as interest thereon. In addition, the respondent was compelled to pay the case fee of R1000.

Complaints to the Office of the Financial Advisory and Intermediary Services (FAIS) Ombud grew only marginally during the 2009/10 financial year after rocketing by 87 percent in the previous year, according to the watchdog's annual report tabled in Parliament

In terms of cases settled involving monetary compensation, these declined marginally from 616 in the previous year to 580 in 2009/10. The quantum of settled cases dropped from R32.9 million to R24.09m.

## **FROM THE FINANCIAL INTELLIGENCE CENTRE**

The Financial Intelligence Centre (FIC) announced that 5720 cash threshold reports had been received since Monday, 04 October 2010, when reporting obligations commenced for casinos, motor vehicle dealers and attorneys.

Cash threshold reporting (CTR) requires accountable and reporting institutions to report any cash transactions amounting to R25 000 or more to the FIC.

Are your systems set up to handle such reports?

## **FROM INSETA**

The Insurance Sector Education Training Authority (INSETA) is requesting that Non levy paying enterprises, which are companies with an annual payroll below R 500,000 per annum, apply to INSETA to be registered on the INSETA database.

If you want to see the full article from INSETA and get the application form just let us know.

## INTERESTING ARTICLES WE HAVE READ

### Cover's October edition

- Exposures for company directors in terms of the new companies act – p10. Well publicised but we believe well ignored so far. By Jon Jon Smit. Also see latest edition of the Weathervane from Camargue for a related article.
- Medical practitioners and the need for compulsory PI cover – p 12 by Donald Dinnie
- Risk management – Small business – the mirror test p 59 by Paul Brightman

### Risk SA September edition

- Interview with Noluntu Bam – the FAIS Ombud
- Summary of Niche insurance products – p24 – 33
- Resistance is futile – making compliance work for your business – p86
- Is your business continuity plan right for your business – p108

### Enterprise Risk September edition

- Policy Holder protection rules and the SAIA code – p8

### Insurance Gateway

- **Sectional Title Insurance - The next level?**

A review of the insurance requirements, as set out under Management Rule 29 of the Sectional Titles Act (Act no. 95 of 1986) as amended and the issues relating to claims and repudiation of claims

- **Short-term Re-insurance and Insurance Data Exchange (STRIDE)**

The Short-term Re-insurance and Insurance Data Exchange (STRIDE) is an initiative created by members of the SAIA and the Financial Services Intermediaries' Association (FIA) that will provide a secure method of transferring underwriting data, primarily between insurers and intermediaries and this article provides an overview of the initiative.

## FA News:

- An Introduction to treating customers fairly – 30 September edition. (one of many around in the past month or so)
- More info on STRIDE – 19 October edition
- *Unintentional violation or non compliance should not always leave you empty-handed.* – 21 October – deals with an article by the Short-term Ombud, never one to mince his words, about the non disclosure to a client over the existence of violation covers often taken out by banks on financed vehicles. Take Note – this will not be the last we hear about this topic!

Pretium Services make every effort to ensure the soundness and accuracy of the contents of this Newsletter. However, we cannot take any responsibility for the consequences of any actions based on information or recommendations contained herein. You are advised to consult us for any specific assistance you or your staff may need before basing a decision on any information in this publication.

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