ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

April 2018 Edition

Instructions

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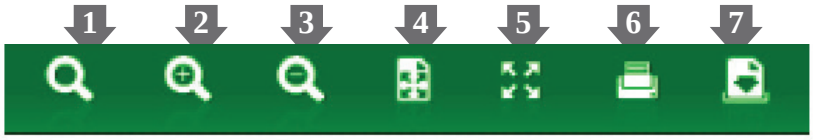

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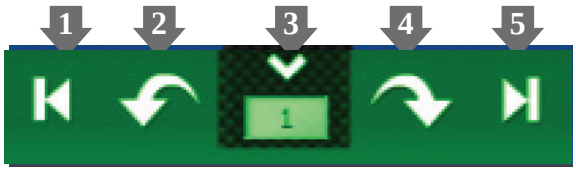

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Contents

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Fees Over and Above Risk Premium in the Short-term Sector

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What can be done and what needs to be done?

"Broker fees", "debit order fees", "admin fees" and even "compliance fees" have been common terms used to substantiate fees charged over and above policy risk premiums for many years. But times have now changed!

Insurer Fees

While there has never previously been any restriction on insurers charging a fee, the FSB (now FSCA) released a draft "undesirable business practice" document in July 2012. This document gave the intended view of the regulator that an insurer should not be charging an "admin fee" over and above the risk premium, due in part to the fact that such fees fall outside the solvency calculations of insurers and the belief that the costs of delivering an insurance product should all form part of the premium charged, so there is no need for a separation.

What did insurers use these fees for? Reduction of management expense ratios was one thing. Funding binder fees for brokers and/or UMAs was another.

While the draft undesirable business practice document never saw the light of the regulatory day. it has appeared as part of the Policyholder Protection Rules (PPR) that became generally effective from January 2018. These regulations, insofar as fees charged by insurers, becomes effective from June 2018, but don't forget that the PPR applies to Personal Lines and small Commercial Lines (client turnover/asset value below R2m pa), so the restriction is technically not applicable to larger commercial clients.

Will insurers apply this distinction? Our view is that because of the administrative complexities of monitoring commercial clients that do or do not "qualify", insurers should opt for the easier option of not charging fees across the board.

Time will tell as to how insurers choose to apply this standard, but for those insurers that used the fee to fund binder fee payments, the practical impact of simply collapsing these fees into the risk premium will not be as simple as first thought, depending on the reinsurance programme in place.

Broker Fees

Section 8(5) of the Short-term Insurance Act was for many years, despite clear FAIS-based standards that should be followed, the standard by which brokers justified fees charged to policyholders. It had no real requirements on justification of the fee, and all FAIS forced brokers to do was to clearly disclose those fees, which was done with little or no impact for the broker. All was well.

As far back as 2013 the regulator made it clear, via the Financial Sector Laws General Amendment Act, that section 8(5) fees were on their way out. As was to be expected, brokers preferred to adopt a "wait until I have to change" approach, and little or no preparation was done for the day when 8(5) fees would fall away. And fall away they did, from 1 January 2018.

What is the effect of this enactment of the removal of 8(5)? In simple terms, the FAIS standard now has no opposition as it had in the past. It does not mean, as many have said, that a broker cannot charge a fee, simply that (well maybe not that simple) the FAIS standard on disclosure of and acceptance of fees being charged must be followed to legitimise those fees.

So, what are those standards?

Well in simple terms (you can review the full current wording in Section 3A of the General Code of Conduct that sets out the standards for what a "provider" (FSP) can earn), they demand that any fees have to relate to "a financial service" for which commission and fees (essentially binder and outsource fees) are not paid. The important aspect is that such fees:

- Are specifically agreed to by a client in writing; and
- May be stopped at the discretion of that client; and
- Are "reasonably commensurate to the service being offered".

These standards are subject to a proposed amendment to the code, expected to be finalised in July 2018, that seeks to add clarity to what the standards are.

So, what does this mean to a broker who currently charges a fee?

In simple terms, they can carry on charging a fee, but not necessarily the same fee. All such brokers need to:

- Establish what services they actually provide to a client that is not provided for in commission and/or binder/outsource fees. The recently released RDR based draft segmentation analysis document, although still in draft, is a useful tool to assist in establishing these services.
- Establish what it costs to deliver said services. This is slightly harder, but it has to be done as insurers will be checking (see below), but remembering it is acceptable to have an acceptable margin in such fees.
- Establish how said services will be disclosed to clients; and probably more importantly how the clients will provide the necessary "explicit consent" to the paying of the fees? There are many ways to achieve this. Our view, as Associated Compliance, is a client Service Level Agreement (SLA). The content of such an SLA is the topic of another article, but simply put, such an agreement, if properly structured, will prevent the need for continual client acceptance across all policies sold to them and will set a professional basis for providing financial services by a broker to a client.

As a broker why must I go to all this trouble?

- Because the regulations say so;
- Because your friendly Compliance Officer will be looking to see that you are complying; and
- Because your insurer has been charged with the responsibility of keeping an eye on your processes.

What the new PPR regulations state is that where an insurer "facilitates" the collection of broker fees (and remember PPR applies to personal lines and small commercial business), they must ensure that the principles are being adhered to, i.e. at the most basic level you have the client consent to be paid these fees. It is not yet clear exactly how this monitoring will practically be applied, possibly because of the fact that their deadline for implementing such a standard is only January 2019, but some insurers are already out of the box on the issue.

The way we would expect to see the controls applied is that if a broker has a standard, has implemented a standard and continues to pursue client acceptance of this standard, specifically on existing business where client acceptance will be the most difficult area to comply to the letter of the law, then punitive standards, i.e. withholding broker fees by insurers, will not be applied.

One aspect where clarity is still sought is the position of an insurer who has outsourced a broker to collect premium on its behalf, i.e. a broker with an IGF. Is the granting of such an authority "facilitating fee collection" as noted in PPR? To be anything else would make little practical sense, but clarity is awaited from the regulator.

Notwithstanding the areas still in need of clarity, if you, as a broker, charge any type of fee to your client, it is no longer business as usual and steps need to be taken to ensure that you obtain client permission and that your processes can stand the insurer tests that will become increasingly prevalent as the year progresses.

While the insurer will be shouldering a large portion of the supervision of the fee collection process, it must be noted that the requirements are a FAIS standard and that not implementing your own standard will be a breach of FAIS and if not corrected potentially a reportable offence. Our approach on this issue is to actively promote compliance with these standards during the balance of this year. Once the insurers' deadline for the implementation of monitoring standards arrives, which will effectively be 1 January 2019, any FSP that has made no attempt to implement standards will unfortunately be facing the prospect of an irregularity report. We will continue to work with you to avoid such a situation.

Competence Registers and Representative Personal and Licence Category Details

We had hoped that the FSCA would release a draft of this new requirement so we could adjust our current KI and Rep register format around their standards, but unfortunately this did not happen. We are therefore releasing our suggested draft to all clients.

The effective date for implementation is 1 May 2018. We suspect that the annual report, due as at 31 May 2018, will call for a copy of the register to be included as an attachment thus confirming to the FSCA that at least all FSPs have such a register in place.

As there appears to be no regulatory standard at this stage for the format of a register, FSPs are at liberty to use a format "that works for them". Earlier in the month, the FIA released their suggested format. Click here to download a copy.

It is not the case that only training completed from 1 May 2018 should be recorded. Recent training, specifically for Reps under supervision as at 1 April 2018, may address some of the requirements of Class of Business and Product training. So, look back and not just forward when starting this process.

We have used this process to achieve some other 'licence maintenance' tasks related to the KI and Rep register, namely:

1. Check that the actual list of Reps is correct and importantly that they are all active within their licence categories and sub-categories. Where they are licenced to one or more categories but are not actively using these, especially where this has been for a long period of time, then these categories should be removed.
2. Update the address and contact details for KIs and Reps to reflect their residential address as opposed to the business addresses of the FSP.
3. Indicate which of the KIs (where there are more than one) should be noted as the primary contact person on the FSCA system.

Regulatory Exams and Deadlines

A number of clients have queried whether the FSCA will allow an extension to the 30 June 2018 deadline for those yet to write, given the incomplete status on the updated study material. Our view is that this will not happen. While there may be a lack of formal study material, the information upon which the exam is based is available in the Board Notice and we encourage those writing to use the legislation itself as the basis of study rather than summarised study notes.

INSETA, who produced previous study notes, have stated:

"INSETA is currently reviewing and updating the Regulatory Material. The estimated time of completion for this exercise is unknown, for further information regarding the Regulatory Material, INSETA advises you to contact the FSCA for further information."

Their website states that material will be available in the middle of May.

Bankseta have said:

"The BANKSETA is currently revising the RE Learning Materials that INSETA developed in 2014. The revised RE Learning Materials will be made available on the websites of both the INSETA and BANKSETA during the ***second week on May 2018".***

Solvency and Liquidity Declaration

As you know, we provide clients with a solvency and liquidity declaration as part of the preparation process for monitoring visits. Because of the FAIS Fit and Proper changes, we have amended our declaration. The new format will be supplied for use in monitoring visits from May onwards.

We would once again request that this declaration become an integral part of your management accounts, so you can easily establish your FAIS-based solvency and liquidity status every month and not only when AC pays you a visit.

PPR Rule 11: Disclosure

Just a reminder before we start on this subject – disclosure in the context of PPR differs markedly from the FAIS definition.

So, what is the relevance of Rule 11?

The rule sets a standard on the information that must be provided to a policyholder or potential policyholder in both short- and long-term insurance:

- Before a policy is entered into;
- After inception of a policy;
- On an ongoing basis, which includes:
  - Changes to terms and conditions
  - Renewal
  - Non-payment of premium.

Click here to download a copy of Rule 11 and then give it a good read. While doing so, think about how well insurer and UMA quote documents currently meet these standards. If you are a broker and you issue your own quote and renewal documents, how well do those documents meet the standards?

But PPR standards are directed at the insurer (and UMA), so why is this an issue for anyone else? We draw your attention to sections 11.3.6 and 7 of PPR Rule 11. This places a responsibility on the insurer that uses the broker distribution channel to ensure "…that all applicable information required by this rule is in fact provided to the policyholder at the appropriate times…"

The agency agreements (that will soon be re-issued to incorporate these and other regulatory changes) must make specific reference to this standard. So, insurers have a standard and brokers must follow the same standard. Thankfully it does not demand that documents issued by the insurer must be provided to a policyholder, but if a broker does not wish to do so then their own standards must be reviewed to ensure that they at least match if not exceed those of the insurer. If IT platforms are used to generate these documents, these standards will obviously have to be built into those platforms.

Another issue that will demand attention is the bundling of non-insurance products into insurance contracts, often referred to as VAPs. While it has always been good practice to make it clear that certain "services" are not insurance products, it is now a requirement that the cost of such services is clearly separated from insurance premiums and not referred to as premium (see 11.4.2. (h)). This means that policy schedules will need to be redesigned. So, the "total premium" as it is often referred to in a schedule will need to be "total cost" made up of the insurance premium and the cost of other goods and services.

While it is not specifically stated as a requirement in the Rule, it is implied that the provider of such goods and services must be clearly stated in the documentation supplied and what right of recourse and/or complaints mechanisms exist for those goods and services e.g. National Consumer Commission.

The Rule also lays down some specific timelines to be followed:

- 30 days from inception for the issuing and delivery of policy documentation (which itself has a set of minimum detail – see 11.5.1)
- 31 days prior to renewal date for the issuing and delivery of renewal notices (again with a set of minimum detail – see 11.6.5)
- 15 days for notification of non-payment of premium.

These standards are targeted to personal lines and small commercial (less than R2m turnover/asset value). We wonder if insurers will follow these standards across all product lines and client types?

These standards, as applied to brokers, will obviously need to be incorporated into the FAIS Record of Advice standards and monitored accordingly.

Insurers and UMAs have the balance of this year to fully implement these standards but given the required oversight of the brokers and the brokers responsibility to follow them, any development will need to happen sooner rather than later.

That list of “things to do” is getting quite long – for all of us!

Class of Business and Product Specific Training Standards

We have obviously been discussing the need for this training, specifically for those Reps under supervision as at 1 April 2018 and those Reps added in April. One question that consistently arises in each discussion is “what are the standards?” In discussing with clients as to what is a suitable pass mark for an assessment, it has been interesting to see that clients generally think that Product Specific training, as distinct from Class of Business training, should have a relatively high pass mark and specifically higher than the RE pass mark of 65% that we suggested.

With Class of Business training, which must be delivered by an accredited training provider, one must assume that they will bring some standards to the process, but the likely variance in standards from different providers remains.

From what we have seen and heard to date, confusion around the process and standards to be followed is high.

With Product Specific training, even with insurers and UMAs being the likely delivery mechanism, without a standard the risk of a variance in approaches to the assessment process is high. If there are no market-based standards, will the objective of these classes of training be achieved?

From FCSA

Who? Well the Financial Services Board officially became the Financial Sector Conduct Authority (FSCA) on 1 April 2018. Click here to download the official announcement.

The new authority has a new website www.fsca.co.za but all other contact details remain the same. The old FSB website is still there, but all functionality is directed to the new site.

Click here to download the update contact details for FSCA.

Here is an overview of the change for those not familiar with the reasons for or the structure of the FSCA courtesy of an FA News article.

Here is an alternative article via Insurance Gateway

And a link via Insurance Gateway to an article by National Treasury on the greater regulatory (Twin Peaks) structure becoming effective from 1 April 2018

One task you now need to do is to update the reference to the FSB in any of your documents, websites and specifically your FAIS Disclosure notice.

New Licence Application Documents

A new set of application documents has been released and is already in use. Any applications not submitted to FSCA as at 31 March 2018 will need to be re-done using the new format and standards. Unfortunately, no guidance note was issued as to their use or intentions of some of the questions.

One of the major changes is the question around the racial profile of the people within FSPs as well as ownership questions. This is the start of the process of profiling the entire FSP industry and will enable the FSCA, over time, to track transformation changes within the industry.

You may have questions when being asked to complete the forms that we will address for you as best we can.

Implementation of the Amendments to the FIC Act

The FSCA has released a communication to all Accountable Institutions (AIs) that sets a final target date for implementation of the new requirements of 2 April 2019. Click here to download the draft communication.

If you need to update your standards, how are you doing?

UMAs and RE5 exemption

The availability of this exemption has been around for a few years, but was not taken up by most UMAs, well within our client base at least. When the new Fit & Proper regulations were released the original Board Notice was repealed.

The FSCA have seen fit to continue to allow Reps of a UMA to have access to the exemption. Our view is that there are no meaningful grounds for a UMA to know less about the FAIS regulatory structures than a broker. In fact, given the increased oversight requirements of an insurer and thus by default their UMAs, they should probably know more.

Click here to download the Notice and here for the annexure to be completed if application is needed.

We will liaise with all UMA clients in the next round of monitoring visits to establish if this exemption is needed, either generally or on specific people. With the next RE deadline looming on 30 June 2018, Reps who are struggling may wish to take advantage. Just take care from an HR perspective when applying employment standards differently. If you need guidance in that regard remember our HR service, AC HAS.

Tier 2 products and fees payable

As you should be aware, the FSCA will soon be "adding" the tier 2 products (i.e. Short-term Personal Lines A1 and Long-term Category B2) to FSPs' licence profiles. FSPs will then be given three months to decide if these categories are necessary. Within the process of adding new categories there is usually a fee payable, but the FSCA has issued a Notice that confirms that this process, if done within the prescribed timeframes, will not require the payment of the usual fee.

From the Ombudsman for Short-term Insurance

The 2017 annual report has been released. Click here to download a copy.

From AC-HAS

While we are busy with Fit & Proper development and implementations, normal day-to-day business continues and with that comes the complicated task of managing employees. I am going to share a few interesting questions that have come across my desk in the last couple of months.

AC HUMAN ASSETS SERVICES

1. If my employee wants to go to the dentist or the doctor, do I deduct sick leave?

   The definition of sick leave is for an employee to take time off from work due to his or her inability to perform their duties because of illness or disability. If an employee is therefore visiting the doctor or the dentist for a check-up but is not unable to perform his/her duties, then the employee is not entitled to sick leave.

"We're a small company, so sick leave means if you get sick you leave."

2. Can I request a doctor's certificate if my employee has been off sick for one day?

   The Basic Conditions of Employment stipulates that all employees are entitled to paid sick leave because of sickness or injury. If the employee is sick for *one or two days*, the employer must grant paid sick leave, even if the employee is not booked off by a medical practitioner. If the employee is absent for *more than two consecutive days*, an employee must present a medical certificate in order to receive paid sick leave.

3. Is there anything specific that I need to ask when interviewing a person with a disability?

The Employment Equity Act (EEA) clearly states that employers may not discriminate on any basis, such as race, gender, sex, pregnancy etc. People with disabilities may not be refused a job interview based on their disability. The employer needs to determine what the inherent requirements of the position are that the person with a disability is being interviewed for. The employer can then ask any questions related to those skills and capabilities that are required for the position.

When interviewing the candidate, the employer must avoid making any assumptions about the applicant's abilities and should rather focus on the applicant's qualifications and experience with regards to the position. Rather ask the applicant how they would accomplish an essential function. Avoid asking any inappropriate questions about the person's disability.

If the employer is aware of the disability before the interview process (the disability is disclosed in the CV), then when setting up for the interview, the employer may ask the candidate if he/she has any preferred requirements for the interview. For example, for a deaf or hard of hearing candidate, you could ask what their preferred method of communication may be. Or if the candidate has a guide dog, you would want to cater for that.

It is important to note that a person with a disability has the choice as to whether or not they want to disclose their disability status (if the disability is not self-evident to the employer). If they choose not to disclose a disability, the candidate/employee cannot request reasonable accommodation or any adjustments to be made to the workplace environment. If the person has disclosed a disability, the employer has a right to verify the disability.

4. My employee has given me 24 hours' notice after resigning, however our contract states a two-week notice period. What can we do?

The Basic Condition of Employment Act (BCEA) prescribes notice periods of not less than one week for an employee employed between 0 to six months, two weeks if the employee was employed for more than six months but less than one year and four weeks' notice for employment of more than one year. The notice period that you have included in your Letter of Appointment will be the minimum period required for the employee to give notice. For an employee to give 24 hours' notice, is totally illegal. The BCEA does not make any provision for an employee to give 24-hour notice. But what do you do if the employee gives his two weeks' notice and leaves the next day anyway?

It would be advisable for the employer to include a clause in the employment contract that should the employee terminate the contract without tendering the contractual notice period, that the employer will deduct an amount equal to the period of notice from the final payment due to the employee.

Often, however, the employee resigns right after pay day or does not have adequate leave available from which the deduction can be made. If you don't have that clause in your contract, the only recourse for an employer is to sue the employee under common law for 'breach of contract'. Unfortunately, there is no recourse for the employer in terms of labour legislation.

If you have any other queries with regards to any HR matters, please send me an email to bronwynn@associatedcompliance.co.za or has@associatedcompliance.co.za.

From AC-Proofed

For those of you who don't have the time (or the capacity) to ensure that all of your FAIS documents are correct and up-to-date, AC-Proofed provides the perfect solution.

You're probably thinking "Why do I need that service? Surely, I can do it myself. I went to high school (maybe even varsity) and learned English; I even passed my RE exams." But think of it this way…

You've read your document so many times – and you're so familiar with it – that you don't see the mistakes. You aren't good with grammar. Document set-up isn't your forté! You don't have the time to check your document carefully, and you'd rather be doing something else!

Why not let AC-Proofed take that weight off your shoulders?

AC-Proofed provides quality proofreading services, and can improve the appearance and readability of all written media, including:

- Disclosure Notice
- Conflict of Interest Management Policy
- Complaints Procedure
- Disaster Recovery Plan
- FAIS Procedures
- Correspondence
- General office documents
- Website copy

You may not be au fait with Microsoft Word and all its complexities. For assistance with document set-up and formatting (including things like complicated Word documents, tables and mail merges, etc.), AC-Proofed is ready to help.

It's not going to cost you the earth! Every job is different, but here's a rough idea of costs:

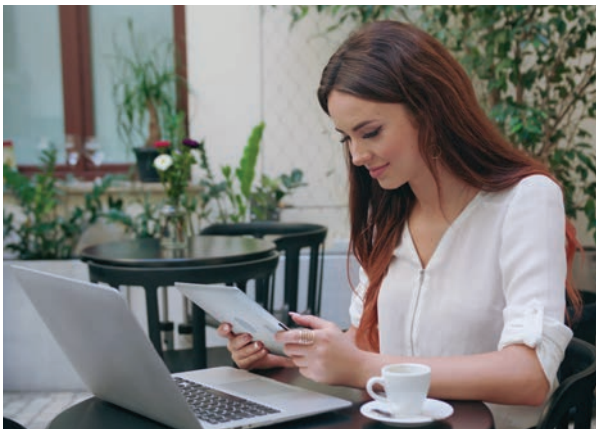
25 cents per word for proofreading

R25 per page for document formatting (if required)

Don't forget that you must now change the reference to the FSB in all your documents, websites and specifically your FAIS Disclosure Notice to the FSCA (Financial Sector Conduct Authority). AC-Proofed can help you with all of that, and I'm just a phone call away!

083 657 3377 | kimh@associatedcompliance.co.za

Insurance Gateway



Bye bye FSB, hello FSCA: By Shayne Krige and Hilah Laskov at Werksmans Attorneys. Another article on the FSCA/Twin Peaks structures that also starts to bring in the release of COFI.

Click here to read the article.

Short-term Ombud annual report for 2017: An article sourced from Bullion PR & Communication dealing with, among other aspects, the low overturn rate on complaints submitted.

Click here to read the article.

A holistic approach is needed for the future of premium collections: An article by IOM on the proposed amendments to the short-term premium collection standards.

Click here to read the article.

And a related article – well more of a product offering really but nevertheless very relevant to the premium collection issue – from Fulcrum.

Click here to read the article.

FANews

Mirror Mirror on the wall, is regulatory reform beneficial after all? An article reviewing a recent event hosted by the Free Market Foundation where the need for and benefit of regulation has been beneficial.

Click here to read the article.

COVER

FAIS Act and Twin Peaks costs billions and adds nothing: A hard hitting article from Professor Robert Vivian on the failings of legislation in the financial sector.

Click here to read the article.

Risk Africa

An article from the Short term Ombud highlighting the issue of clients intentionally providing incorrect information at quote stage to obtain cheaper premiums.

Click here to read the article.

FPI

A recent press release that dealt with issues that included details of and reasons for the cancellation of their 2018 Professional Convention and more importantly for most the CPD offerings from what the FPI refer to as their subsidiary, the FPI Centre for Professional Development, is worth a read. Click here to download a copy.

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