



CompliNEWS
/Targeted Compliance

16/2011

www.compliserve.co.za

0861- CSERVE,
20 May 2011

Dear Subscriber

www.complinews.co.za Visit our new exciting compliance news and information site and get your daily dose of compliance news and information. Updated each and every day.

The avalanche of regulatory reform — track all financial services legislation via CompliNEWS

Those involved in the financial services industry face an unprecedented volume and breadth of regulatory change. It's already happening- Follow all the news as it unfolds via South Africa's only dedicated compliance news service, **CompliNEWS**.

2011 compliance reports available- CompliNEWS the first to publish all 9 of them; guidance to follow...

To access the documents either click on the 'Dashboard/Library' section and access the '2010/2011 compliance library' section or access the 'Latest regulatory documents' page

Financial Advisory and Intermediary Services Act: Compliance Report for financial service providers without a Compliance Officer who have appointed a Compliance Officer 2011, G 34291, BN 93

Financial Advisory and Intermediary Services Act: Compliance Report for Category II and IIA financial service providers 2011, G 34291, BN 86

Financial Advisory and Intermediary Services Act: Compliance Report for foreign financial service providers 2011, G 34291, BN 91

Financial Advisory and Intermediary Services Act: Compliance Report for Category II financial service providers 2011, G 34291, BN 88

Financial Advisory and Intermediary Services Act: Bi-Annual Compliance Report for Category III financial service providers 2011, G 34291, BN 89

Financial Advisory and Intermediary Services Act: Compliance Report for Category I financial service providers without a Compliance Officer 2011, G 34291, BN 84

Financial Advisory and Intermediary Services Act: Compliance Report for financial service providers changing Compliance Officer during reporting period 2011, G 34291, BN 92

Financial Advisory and Intermediary Services Act: Interim Compliance Report for Category IIA financial service providers 2011, G 34291, BN 87

Financial Advisory and Intermediary Services Act: Compliance Report for Category I financial service providers with a Compliance Officer 2011, G 34291, BN 85



FEATURED ITEMS/ REGULATORY DOCUMENTS

- 20 May 2011: Compli-Serve Guidance Note- The 2011 FAIS Compliance Report Highlights
- 20 May 2011: Australia: ASIC Report 240 Compensation for retail investors: the social impact of monetary loss *RECOMMENDED
- 20 May 2011: Recommended Reading- ASIC research on the impacts of misconduct in the financial services industry. It gives examples of misconduct leading to financial losses, such as inappropriate advice, fraud, defective disclosure and misleading or ...
- 19 May 2011: 2011 compliance reports available- CompliNEWS the first to publish all 9 of them; guidance to follow...
- 19 May 2011: UK Financial Ombudsman Service- 2011 Annual Review of consumer complaints
- 19 May 2011: Media release from the FSB: FAIS Licence Update - 14 March – 17 April 2011
- 17 May 2011: Pushing the wrong buttons- IFAs should take a close look at the reasons behind the FSA's action against N&P for selling unsuitable Keydata products to its customers
- 17 May 2011: Banks' payment insurance protection was in fact a racket; Lloyds has put its hands up. Barclays, HSBC and Royal Bank of Scotland need to follow, even if the final bill is £8bn
- 16 May 2011: National Credit Act: Regulations: Debt counselling: Comments invited, G 34281, GeN 288, 11 May 2011 -- comments by 15 July 2011
- 16 May 2011: Basic Conditions of Employment Act: Determination: Earnings threshold, G 34287, GoN 422, 13 May 2011
- 16 May 2011: National Credit Act: Regulations: Debt counselling: Comments invited, G 34281, GeN 288, 11 May 2011 -- comments by 15 July 2011

TIMELINES

Please take note of the following:

Requirement	When
Category IIA Compliance Report submission deadline	30 June 2011 (Reporting date: 31 May 2011)
Category II Compliance Report submission deadline	31 October 2011 (Reporting date: 31 August 2011)
Compliance Report- Category 1 with Compliance officer	15 August 2011 (Reporting date: 31 May 2011)
Compliance Report- Category 1 with No Compliance officer	28 February 2012 (Reporting date: 31 December 2011)
Compliance Report- Category III Bi-annual Compliance Reports submission deadline	July 2010 and January 2012 (Reporting date: June 2011, 31 December 2011)
The Consumer Protection Act became effective	1 April 2011
The new Companies Act became effective	1 May 2011
COI Management policy published on website and disclosed in Introduction Letter and all registers in place-see below	19 April 2011



Regulatory examinations- Take note of the fit and proper requirements for KI's and Reps. All KI's and Reps must write and pass these exams Register for the Afrikaans exam via the FSB website.	31 December 2011
Events- Fit4FAIS training dates for May to be announced shortly. Visit www.fit4fais.co.za (See below)	May 2011
Treating Customers Fairly Road Map	Released 31 March 2011- Read full document under our special TCF section via the CompliNEWS Library. (dashboard)

Enter the CompliNEWS
dashboard & compliance
library (incl. legislation
service)

www.complinews.co.za

The above **LINK** takes you straight to the existing dashboard and our exclusive library. The **Watchlist** function is still available from this section of the site so you can constantly focus on news that is relevant to you. Here you also have exclusive access to our SA Legislation Service.

Latest Compliance News section of the website

The latest compliance news section features some great enhancements. Click on any of the recent postings which is spanned over 3 pages.

Download an immediate listing and snapshot of all this week's news via '**This Week's Content**'

Download an immediate listing and snapshot of the latest compliance news via '**More Compliance News**'

Quicklinks

- **Latest Newsletter** – Check out the latest and past editions of **CompliNEWS**.
- **FAIS Ombudsman Case Study Index** –Your gateway to SA's only FAIS Ombud Case Study index.
- **Latest Regulatory Documents--** the last 50 regulatory document items are listed for ease of download.
- **Current Featured Items-** the last 20 main featured items are listed for ease of download.



- **The Enforcement Pages**- takes you straight to the local and overseas enforcement pages.

Top Categories

- **News from South Africa**-the latest compliance news and information from South Africa.
- **International Compliance News**- the latest international compliance news and information.
- **FSB News & Information**- News from our main regulator, the FSB. Stay up-to-date.
- **Compli-Serve Guidance Notes**- the latest Guidance Notes from the Compli-Serve team.
- **SA Legislation Service**- Full legislation service for the whole financial services industry.
- **Anti-Money laundering**- Straight to the latest anti-money laundering news and analysis

TOP STORIES for the week ending 20 May 2011

1. Banks' payment insurance protection was in fact a racket; Lloyds has put its hands up. Barclays, HSBC and Royal Bank of Scotland need to follow, even if the final bill is £8bn

The Guardian

Personally, I'm a sucker for a slice of lemon in my gin and tonic – but I don't expect the barman to quietly stick a few pounds extra on the bill for provision of this twist of fruit. Fair's fair – as consumers, we expect to be told if we're to be charged for any inconsequential add-ons that we may or may not value.

Britain's banks adopted a rather more relaxed attitude to this principle throughout the 1990s and most of the noughties. Millions of personal loans and mortgages were sold with unwanted, unneeded and often unnoticed policies providing payment protection insurance (PPI), supposedly looking after borrowers' repayments if they ever fell sick or lost their jobs.

These policies often added between 20% and 50% to the cost of loans – in one case, the Citizens Advice Bureau found an unsecured personal loan of £11,000 supplemented by a £5,133 payment protection premium. And a £5,059 hire purchase agreement for a car carried a £2,157 bill for PPI – a straightforward "protection racket", complained the bureau, creating one of the biggest mis-selling scandals for a generation, encompassing 20m policies.

So it's immensely welcome news that a seven-year battle surrounding this rip-off, which began to be exposed back in 2004, is finally drawing to a close. Britain's top banks have been fighting through the courts to limit the scope of compensation they must pay out to those who didn't want, didn't need or weren't realistically eligible for protection coverage, yet who were still unwittingly fleeced.

Lloyds, under its new chief executive António Horta-Osório, last week broke ranks by throwing in the towel, setting aside an eye-watering £3.2bn to settle potential claims.



In time for a legal deadline of Tuesday, rival banks – Barclays, RBS and HSBC – must decide whether to pursue, or abandon, an application for a supreme court appeal against the Financial Services Authority, which has ordered a retrospective payback to all customers affected. The full compensation bill, according to analysts at Deutsche Bank, could reach £8bn.

This affair has shown the banking industry at its worst. Banks sold protection against job losses to the self-employed, who could not possibly have been eligible to claim. On sickness cover, the criteria were sometimes so tight that it was extremely difficult to claim. Payout rates were just 15p to 20p for each pound the banks hoovered up in premiums.

It's worth taking a moment to consider this. Executives at the highest echelons of banks can hardly have failed to notice that they were selling insurance with a payout rate of below 20% – a sure sign of a warped market. This was a cynical, conscious mugging of customers. It was worse, in a sense, than the wrong-headed build-up of toxic mortgages and derivatives that drove banks to the brink of oblivion during the global financial crisis. It's conspiracy, as opposed to cock-up.

In an ideal world, consumers who got burned by their banks would simply close their accounts and go elsewhere. But few actually do so; switching banks is considered a hassle and rates of change, according to the House of Commons' Treasury select committee, are just 3% to 7% per year.

James Daley, money editor of *Which*, says: "If you go to a supermarket every week, the checkout girl swears at you and the fruit's rotten, you'll change supermarkets. But it seems like banks can sling as much mud as they like and still keep their customers."

For the banking industry, there are broader issues at stake than a hefty £8bn payout. The British Bankers' Association complains that the FSA is trying to apply new standards, retrospectively, to past transactions. It feels that it would be unjust, on principle, to rewrite rules after the event and then to declare policy sales unlawful.

In the eyes of consumer organisations, this is a broader clash between box-ticking, rules-based regulation and more flexible common-sense, principles-based oversight.

Lloyds, the sprawling financial empire that includes Halifax, Bank of Scotland and TSB, may have won plaudits for surrendering first. But its actions were tactical. It makes sense for Horta-Osório, an incoming boss, to get this issue out of the way right at the start, rather than waging his predecessor's battle and facing a possible bill further down the road. And the bank's huge provision looked suspiciously like a "kitchen sink" job with the prospect of clawing back gains in a couple of years' time.

For Barclays, HSBC and Royal Bank of Scotland, a dignified retreat now seems the least they can do. The banks have tried the public's patience more than enough over the past four years. The remnants of this shameful scam should be tidied up and consigned to the industry's darkest archive.

2. Staggering numbers from the UK Ombudsman Service- Over a million enquiries and more than 200,000 disputes... ombudsman service publishes *annual review of personal finance disputes*; 51% of the new cases were about the sale of payment protection insurance (PPI) with the number more than doubling to 104,597 – the highest number ever received in a year about a single financial product

FOS

51% of the new cases were about the sale of payment protection insurance (PPI) with the number more than doubling to 104,597 – the highest number ever received in a year about a single financial product.



The Financial Ombudsman Service – the independent organisation that settles disputes between consumers and financial companies – today publishes its *annual review* covering the 2010/11 financial year. The review shows that during the year:

- the ombudsman handled over a million front-line enquiries and complaints from consumers – around 4,000 each working day
- around 1 in 5 of the initial consumer enquiries we received turned into a formal dispute requiring the involvement of our adjudicators and ombudsman – a record 206,121 new cases, up 26% on the previous year
- 51% of the new cases were about the sale of payment protection insurance (PPI) with the number more than doubling to 104,597 – the highest number ever received in a year about a single financial product

Natalie Ceeney, chief executive and chief ombudsman, said:

This year has been the busiest in our ten-year history – with over 200,000 disputes referred to us and a million front-line enquiries. This reflects the increased confidence of an ever more diverse range of consumers getting in touch about a wider range of problems and issues.

Aside from PPI cases, over the year we've seen encouraging signs of improvements in the way that some businesses are handling complaints – and it's good to see that the number of disputes about some other financial products has now started to fall.

Statistics from the ombudsman's *annual review* show:

- the number of investment complaints dropped by 30% and banking complaints fell by 9%
- the ombudsman resolved almost half of all disputes (apart from PPI) in three months and three quarters within six months
- the ombudsman's involvement resulted in compensation for consumers in 51% of cases
- complaints about consumer credit, travel insurance and motor insurance increased, while complaints about health insurance, current accounts and home contents insurance fell
- half of the total number of disputes referred to the ombudsman service involved four of the UK's largest financial services groups – while 2,131 businesses had just one complaint each
- 78% of adults said they were aware of the Financial Ombudsman Service – with awareness of the ombudsman highest in the Wales and lowest in Northern Ireland

3. OSTI: Beware the comprehensive policy! Cautions consumers purchasing insurance cover from insurers to satisfying themselves prior to inception of any contract, that the policy offered by the insurer covers their specific risk needs and not to be fooled into purchasing insurance products because they offer a low premium

CompliNEWS

The Ombudsman for Short-term Insurance would like to caution consumers purchasing insurance cover from insurers to satisfying themselves prior to inception of any contract, that the policy offered by the insurer covers their specific risk needs and not to be fooled into purchasing insurance products because they offer a low premium.

It is well known that traditional comprehensive motor vehicle insurance cover, which has been available to motorists for a very long time, is not cheap and that roughly only 35% of motor vehicles travelling on South



African roads are insured. The very high incidence of uninsured vehicles on our roads has created significant problems for society as a whole, especially the victims of negligence on the part of uninsured drivers, who are more often than not, unable to compensate their victims for their actions.

The affordability of motor vehicle insurance is a matter for ongoing concern to both the South African Insurance Industry and consumers. Recently some insurers have introduced forms of insurance cover at what is said to be substantially reduced premiums, in an endeavour to reduce the number of uninsured vehicles on our roads. Such products however, may not offer much protection to consumers and may lead consumers into a false sense of security. Consumers are urged to very carefully analyse the cover provided by such products and to critically assess whether the cover provided is relevant to their circumstances and whether they are able to carry the potential consequences of excluded risks themselves.

A traditional comprehensive motor vehicle insurance policy provides indemnification to the insured for loss or damage:-

1. to their own property.
2. Damage to the property of others (3rd parties) who may suffer damage as a result of the wrongful conduct of the insured.
3. Indemnification against claims for bodily injuries sustained by passengers conveyed in the insured vehicle occasioned by the negligence or other wrongful conduct of the insured and to the extent that this liability is not covered by any other form of insurance or protection, such as that offered by the Road Accident Fund Act.

A traditional insurance policy also provides for indemnification from the moment of inception of the policy and provides indemnification against the consequences of the insured's own negligence or wrongful conduct. The insured however does not enjoy indemnification against the consequences of recklessness.

The "*Carprehensive policy*" which is currently extensively marketed on television and in other media and which is underwritten by RMB Structured Products, differs significantly from a traditional comprehensive motor vehicle insurance policy and in reality offers little protection to consumers. This particular product offers consumers a choice of three plans providing for indemnification for a percentage of the vehicle's trade value, based upon the plan selected. The "*trade value*" would represent the value that a dealer would offer as a trade-in on a motor vehicle and should be distinguished from either the market value of the vehicle, or the retail value, which would represent the value for which a vehicle would be sold by a motor vehicle dealer to an end purchaser. There can be a significant difference between the "*trade value*" and the "*retail value*" of a motor vehicle and this may leave a consumer with a large shortfall in the event of total loss.

The cover provided by the "*Carprehensive policy*" extends only to the event of a complete loss of the vehicle through write off occasioned by an accident or through theft or hi-jacking. This policy does not offer any cover to a consumer for damage to the vehicle itself where the vehicle is not assessed as a write off. Furthermore, the insurer's liability is restricted to cases where the repair costs are estimated to be greater than 80% of the vehicle's current trade value and is also greater than an amount of R40 000. Consequently, before a claim can exist against the insurer, the damage to the vehicle must exceed R40 000 and must be greater than 80% of the trade value.

The policy also only provides indemnification for claims by third parties where the value of the claim, or damage to the third party vehicle, exceeds R50 000 and is subject to a maximum of R250 000. This means that consumers will be personally liable to a third party for any damage less than R50 000 and for any amount exceeding the sum of R250 000. Theft and hi-jacking benefits are also only payable after a period of 30 days has elapsed.

The policy is also subject to the highly restrictive provision that cover only commences after three consecutive payments of premium have been paid when due. This means in effect that consumers will have no cover for the first three months of operation of the policy, despite having an obligation to pay premium over this period



of time. This is a very severe limitation. If immediate cover is required then 3 months premiums must be paid upfront.

The Carprehensive policy is also subject to a number of unusual exclusions which are not normally contained in a standard motor vehicle insurance policy, such as driving off-road, exceeding the speed limit (whether or not intentional) and/or violation of any other road traffic laws as well as any action that is in any way unlawful, criminal or negligent in nature. It is also warranted that the tyres of the vehicle will be immediately replaced when the tread is worn below the legal limit of 1.6mm.

The exclusions referred to are of such a nature as to render the cover applicable almost valueless having regard to the fact that motor vehicle collisions are almost invariably caused by negligence on the part of both drivers. Whilst it is possible to be the victim of another's negligence which was the sole cause of the accident, in the vast majority of cases an apportionment of liability will be applicable and in this instance the Carprehensive policy will not provide any cover.

The insurer's liability is also excluded where the vehicle is directly or indirectly damaged as a result of mechanical failure, fire, flood or seismic activity, or where the insured vehicle is more than 15 years old. Critically, the insurer also provides no cover *"for any bodily injury caused to a third party"*. The insurer also has no liability to settle or contribute towards any claim *"where there are indications that the cause of the accident was as a result of the negligence on the part of the designated driver"*, and *"where there are indications of over-indulgence in or abuse of alcohol or non-prescriptive drugs by the designated driver at the time of or prior to a claim arising"*.

The insurer is entitled to any scrap of salvage obtained, despite the fact that it has not provided a full indemnification against the value of the vehicle and that in reality the insured remains a co-insurer of the vehicle. However, of particular concern to the Ombudsman is the apparent disregard for the provisions of the Policyholder Protection Rules in relation to the use of polygraph or voice stress analysis methods in the investigation of claims. The policy provides that *"the insurer may request you or any witness or passenger associated with the claims event to undergo a polygraph/voice stress analysis or similar test"*.

Consumers are encouraged, if they cannot afford traditional comprehensive motor vehicle insurance cover, to consider as an alternative, whether they would not be better served by taking out balance of third party fire and theft cover or third party cover only. The average price for third party fire and theft cover is in the region of R220 per month and third party cover only is available at an average premium of R61. This type of cover has the advantage of being available immediately upon inception and as providing for full indemnification for liabilities to third parties. Fire and theft cover will also provide for indemnification in the event of the vehicle being destroyed by fire or lost through theft or hi-jacking.

In summary, consumers who are not able to afford to act as their own self-insurer for the risk of damage to their vehicle through accidents which do not result in the vehicle being written off, or to carry the cost of paying for the first R50 000 of damage to third parties, or any amount exceeding R250 000, should avoid the Carprehensive policy or any other similar type of product.

It should also be noted that whenever a motor vehicle is purchased on credit through an instalment finance agreement, it is a requirement of that agreement that the motor vehicle be comprehensively insured. The cover provided by the *"Carprehensive policy"* does not qualify as comprehensive insurance. Ensure that the insurance cover you propose taking out satisfies the requirements of the bank or finance house concerned before taking delivery of a vehicle.

In conclusion, consumers are urged to exercise great caution in the purchase of insurance products and only to do so after they have satisfied themselves that they are fully aware of all the potential pitfalls associated with the proposed purchase. Wherever possible, consumers are urged to seek professional advice prior to the purchase of any insurance policy. Speak to your broker, an attorney, or other suitably qualified professional, before agreeing to purchase any insurance product and remember that you get what you pay for.



Yours sincerely,

BRIAN MARTIN

OMBUDSMAN FOR SHORT-TERM INSURANCE

4. Recommended Reading- ASIC research on the impacts of misconduct in the financial services industry. It gives examples of misconduct leading to financial losses, such as inappropriate advice, fraud, defective disclosure and misleading or deceptive conduct...

ASIC

The ASIC yesterday published research on the social impact of misconduct in the financial services industry. It gives examples of misconduct leading to financial losses, such as inappropriate advice, fraud, defective disclosure and misleading or deceptive conduct.

ASIC's Consumer Advisory Panel (CAP) commissioned Susan Bell Research to conduct a study into the social impacts of investors suffering losses due to licensee misconduct in circumstances where the licensee is unable to provide full compensation. It was commissioned to better understand the personal consequences of investors not being fully compensated and to help inform submissions to the Government's review into whether a statutory compensation scheme should be introduced in Australia.

The key findings of the study are:

- investors who suffered the most had invested all their money, had not diversified or went into debt as part of their investment strategy;
- most investors' losses were associated with an underlying product that was either frozen or collapsed;
- The impact of the monetary loss was immediate on investors without a financial buffer, for others the first six months from when they discovered their loss were critical. Most investors received none, or only a few cents in the dollar back;
- investors had little knowledge of existing avenues of redress, such as their financial service provider's internal dispute resolution system or the external dispute resolution scheme they belonged to;
- investors were reluctant to commence legal action to recover their monetary loss, particularly where they blamed themselves;
- Some investors suffered 'catastrophic loss' as their loss was 'so significant their life will never be the same'. Some felt prolonged anger, uncertainty, worry and depression; and
- Investors who suffered monetary loss lacked confidence in the Australian financial system, financial advisers, the government and regulators including ASIC.

ASIC Senior Executive Leader, Consumer, Advisers and Retail Investors, Delia Rickard, said: 'The report highlights the importance of helping clients get proper compensation in these difficult cases, which has been and continues to be a key priority of ASIC. Encouragingly, the report reveals that where ASIC took legal action on behalf of investors, they were compensated more fully in terms of more cents in the dollar back and more quickly.

'Financial advisers must properly respond to complaints, especially when markets are turbulent. Licensees should also advise their clients of the right to complain to external dispute resolution schemes on their websites, in disclosure documents and more crucially when handling complaints. This is part of having a proper dispute resolution system, and failure to do so is a breach of a licensing obligation.

'Investors need help if their investment fails and ASIC is developing clear and concise information on its MoneySmart website about what to do in these situations. This is an important part of fostering confident



and informed investors.'

Chair of ASIC's Consumer Advisory Panel, Jenni Mack, said: 'This research highlights the very real social costs of investor losses following misconduct by financial advisers and will help inform the debate on whether a statutory compensation scheme should be introduced in Australia.'

ASIC encourages financial service providers to review their complaints handling processes against the requirements in Regulatory Guide 165 *Licensing: internal and external dispute resolution (RG 165)*. ASIC also encourages the schemes, the Financial Ombudsman Service Limited and the Credit Ombudsman Service Limited to continue to widely promote their dispute resolution services so all Australian investors are aware of their right to complain to external dispute resolution schemes.

HUMOUR

It began with an I-Phone...

For my wife's birthday I bought her an iRon.

It was around then that the fight started...

What my wife failed to recognize is that the iRon can be integrated into the home network with the iWash, iCook and iClean.

This unfortunately activated the iNag app.



CONTACT COMPLINEWS

0861- CSERVE, EMAIL US VIA THE WEBSITE AT
www.compliserve.co.za /james@compliserve.co.za

CompliNEWS 2011

