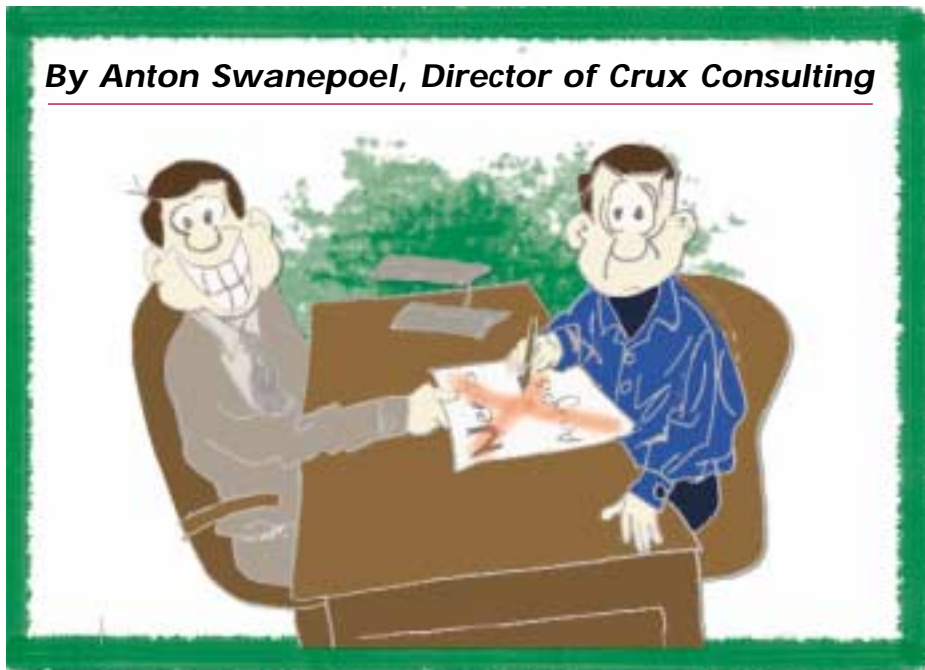


# A full needs analysis versus a holistic one

*Are financial services providers obliged to do a holistic needs analysis for every client in terms of FAIS and how does a holistic needs analysis differ from a full needs analysis in practice?*

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**I**n the matter between *Alan Robert Stephenson versus Nedbank Limited*, the FAIS Ombud, Charles Pillai, held that the client may not

waive the benefit of having a needs analysis done before being advised by a financial services provider. Section 21 of the General Code of Conduct clearly supports this decision:

*“No provider may request or induce in any manner a client to waive any right or benefit conferred on the client by or in terms of any provision of this Code, or recognise, accept or act on any such waiver by the client, and any such waiver is null and void.”*

While this reference is technically correct, the practical implications for advisers, intermediaries and their clients are significant. Consider the following scenario:

A client, Mr. Jones, approaches provider/representative X with a specific need to take out bond cover. X informs the client that in order to do that, he/she needs to do a full needs analysis in terms of the General Code of Conduct. However, Mr. Jones will have to pay a fee of R750 (excluding VAT) for such an analysis. Mr. Jones is taken aback by this attitude and repeats his appeal. “Maybe you did not understand my request. All I want you to do is to provide me with a quotation or quotations in order to take out life cover for my bond.”

Section 8 (1) of the General Code requires that the provider must, prior to providing a client with advice-

(a) take reasonable steps *to seek from the client appropriate and available information regarding the client’s financial situation, financial product experience and objectives* to enable the provider to provide the client

with appropriate advice;  
(b) *conduct an analysis*, for purposes of the advice, based on the information obtained;

Furthermore, in terms of section 8 (4):  
Where a client-

(a) has not provided all information requested by a provider furnishing advice, as part of the analysis referred to in subsection (1)(b), or where the provider has been unable to conduct such an analysis because in the light of the circumstances surrounding the case, there was not reasonably sufficient time to do so, the provider must fully inform the client thereof and ensure that the client clearly understands that-

(i) a *full analysis* in respect of the client referred to in subsection (1)(b) could not be undertaken;  
(ii) there may be limitations on the appropriateness of the advice provided; and  
(iii) the client should take particular care to consider on its own whether the advice is appropriate considering the client’s objectives, financial situation and particular needs.

The client insists: “All I want is a policy to cover my bond. I do not want a full needs analysis and, what is more, I do not want to pay R750 (plus VAT) for a full needs analysis. If you cannot help me I will go to someone else.”

This leads to a situation where the adviser/intermediary who wants to comply with the Act loses the business. The client goes off in search of some salesperson (acting as his/her own compliance officer) who is not too familiar with FAIS and couldn’t

care to comply with the provisions of the Act. What’s more, in these circumstances there is a very slim chance that such obscure sales people will ever be held to account.

Financial advisers and intermediaries will know that this case study is a very real example of a situation that presents itself every single day. It creates a number of difficulties, as advisers/intermediaries have to meet all the obligations under the Act as well as its subordinate measures, while clients seem to blame advisers/intermediaries for complicating matters. Consumers, in general, also seem to think that advice should be available to them at no cost. These are some of the issues that will have to be addressed in order to establish a fair playing field for adviser and consumer alike.

## **Important considerations**

Although the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act) prescribes that a needs analysis has to be done, it does not state that it has to be done for free. The adviser is entitled to charge a reasonable fee for a full needs analysis. If the client is not willing to pay for this service, an alternative option should be available to both parties. It does indeed appear that certain sections in the General Code of Conduct provide us with another option. Apart from the practical implications as we discussed above, this could also lead to an interesting legal debate.

Section 3(1) (d) of the Code of Conduct states that:

“the service must be rendered in accordance with the *contractual relationship and reasonable requests or instructions* of the client, which must be executed as soon as reasonably possible and *with due regard to the interests of the client*, which must be accorded appropriate priority over any interests of the provider; whereas Section 8(1)(c) requires that the provider must, prior to providing a client with advice- “identify the financial product or products that will be appropriate to the client’s risk profile and financial needs, subject to the limitations imposed on the provider under the Act *or any contractual arrangement.*”

### **Question that deserves serious consideration:**

How does one deal with the freedom to contract as implied in sections 3(1)(d) and the General Code of Conduct on the one hand and, on the other, the obligation of financial advisers/intermediaries to do a full needs analysis in terms of the same Code? For example:

A client instructs an adviser to prepare a quotation for a life policy for purposes of his/her bond. When confronted with the obligation of the adviser to do a full needs analysis, the client makes it very clear that he/she is instructing the adviser to do particular tasks only, which specifically excludes a needs analysis (inter alia because the client does not want to pay for this service).

The request is reasonable and the instruction/order should be clear. The client therefore wants nothing more and nothing less.

In terms of section 3(1)(d) the adviser’s service must be rendered in accordance with this instruction from the client. From a legal point of view a contractual relationship is established between adviser and client when the instruction is accepted by the adviser.

If there is a conflict between sections 21 and 3(1)(d) of the General Code of Conduct, the current position needs to be reviewed and - if not - the industry will have to come to grips with how to deal with this issue.

In my view, the best way to solve the dilemma would be to firstly assess what exactly is meant by a full needs analysis and whether it is the same as a holistic financial needs analysis. It is the practical application of these exercises that is of great importance.

In view of the fact that “full needs analysis” is not defined in the Act or in the General Code of Conduct, one has to determine what the normal meaning of the words is.

The following definitions or descriptions from the Oxford Dictionaries may help us in this regard:

#### *1. Full<sup>(1)</sup>*

Abundantly supplied, *complete*, up to or beyond the need, with no room for more, satisfying, perfect, deep and clear.

#### *2. Holistic<sup>(2)</sup>*

*As a whole, as distinct from an analysis of the results of its constituent parts.*

#### *3. Needs<sup>(2)</sup>*

A *want, a requirement*; Circumstances requiring some course of action, require, want; Stand in want of, requirement.

#### *4. Analysis<sup>(3)</sup>*

Action a resolution into simple elements; Lead or guide resolution into simpler elements by analysing/*statement of results after all due consideration*; Activity or manner of directing or managing a detailed examination of elements or structure/*statement of the result of this.*

In my experience, *holistic financial planning* consists of the following generic disciplines:

- Financial planning, with specific reference to budget planning;
- Estate planning, with specific reference to providing dependents with sufficient capital and/or income after death;
- Investment planning, which refers to generic investment objectives;
- Planning for retirement, which refers to a specific need that requires specific planning and advice;
- Planning at retirement, which refers specifically to planning for income needs, the preservation of retirement capital and capital growth over the period after retirement;
- Health care needs, which refer specifically to medical aid insurance needs;
- Medical aid pre-funding, which refers to the funding of medical insurance benefits before retirement that will sustain the benefits after retirement;
- Short-term insurance needs, which refer to the protection of assets against unforeseen events like fire and theft; and
- Business insurance needs, which refer to

the protection of business interests if one or more of the partners or shareholders should die or become disabled.

I am of the opinion that all of these disciplines will fall under holistic financial planning needs.

When the outcome leads to the recommendation and/or the purchase or investment in a financial product as defined in the Act, FAIS applies. Therefore, when one is required to do a holistic financial planning exercise, it would mean that all the aforementioned disciplines need to be analysed as a whole.

In light of the aforementioned description of *full needs analysis* it is thus clear that it does not have the same meaning as *holistic needs analysis*.

### **Conclusion**

It must be noted that there is a difference between a financial services provider that offers advice versus one that only renders an intermediary service.

When a client has a specific request or instruction pertaining to a specific financial need, such as a bond (life) policy in our example, a needs analysis must be done by the adviser/intermediary in terms of the General Code of Conduct<sup>(4)</sup>. In the event where the FSP presents a quotation to the client, this would constitute a proposal.

Therefore, this act falls within the definition of advice – not intermediary service. If a full needs analysis (applicable only to the specific request in question) is not done, the financial services provider will thus always be at risk as a result of the general provisions of the General Code of Conduct<sup>(5)</sup>, which states that:

“A provider must at all times render financial services honestly, fairly, *with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.*”

In the absence of a needs analysis I am convinced that the Office of the FAIS Ombud will be able to question whether the aforementioned section has been complied with.

However, “the full needs analysis” refers expressly to the specific financial discipline or product that was highlighted in the client request or instruction <sup>(7)</sup>. It is this right that may not be waived by the client in terms of section 21 of the General Code of Conduct. In my view there is no obligation on financial services providers

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or their representatives to carry out a holistic financial needs analysis for every client in terms of FAIS, unless it is specifically required by the client, or when the adviser/intermediary proposes that an analyses be done in order to determine the client's financial needs as referred to in section 8 of the General Code of Conduct and the client accepts this proposal.

#### References

<sup>(1)</sup> *The Pocket Oxford Dictionary* p 331; *The Oxford Dictionary for the Business World* p 329

<sup>(2)</sup> *The Pocket Oxford Dictionary* p 534; The

*Concise Oxford Dictionary* p 677; *The Oxford Dictionary for the Business World* p 559

<sup>(3)</sup> *The Pocket Oxford Dictionary* p 166 and 26; *The Concise Oxford Dictionary* p 196 and 31; *The Oxford Dictionary for the Business World* p 170 and 26

<sup>(4)</sup> Section 8 (1)(a) refers to reasonable steps to seek from the client appropriate and available information...

<sup>(5)</sup> See section 2 of the General Code of Conduct

<sup>(6)</sup> My emphasis

<sup>(7)</sup> See section 3(1)(d) of the General Code of Conduct