

THE FINANCIAL SECTOR CONDUCT AUTHORITY

DIRECTIVE IN TERMS OF SECTION 144(1), (2) and (8) OF THE FINANCIAL SECTOR REGULATION ACT, 9 OF 2017

1. Definitions

- 1.1. “**Hernell Funerals**” means **Hernell Funerals (Pty) Ltd**, a private company with limited liability, duly incorporated and registered in accordance with the company laws (Companies Act No. 71 of 2008, as amended) of the Republic of South Africa.
- 1.2. “**Mr Peterson**” means Mr Shaun Andre Peterson, director and key person of Hernell Funerals.
- 1.3. “**Mrs Peterson**” means Mrs Carol-Ann Peterson, director and key person of Hernell Funerals.
- 1.4. “**Effective date**” means the date on which this directive becomes enforceable which is upon signature by a duly authorised officer acting on behalf of the Authority.
- 1.5. “**FAIS Act**” means the Financial Advisory and Intermediary Services Act No. 37 of 2002, as amended.
- 1.6. “**FSR Act**” means the Financial Sector Regulation Act No. 9 of 2017 as amended.
- 1.7. “**Insurance Act**” means the Insurance Act, No. 18 of 2017
- 1.8. “**The Authority**” means the Financial Sector Conduct Authority.

Executive Committee:

Commissioner: U. Kamlana | Deputy Commissioners: A. Ludin | K. Gibson | F. Badat

- 1.9. **“Tribunal”** means the independent Financial Services Tribunal, a statutory body established in terms of section 219 of the FSR Act, with its principal place of business at Kasteel Office Park, Orange Building, 546 Jochemus street, Erasmuskloof, Pretoria, Gauteng.
2. **Directive to Hernell Funerals, Mr Shaun Andre Peterson (Mr Peterson) and Mrs Carol-Ann Peterson (Mrs Peterson)**
- 2.1. The Authority in terms of section **144(1)**, **144(2)** and/or **144(8)** of the Financial Sector Regulation Act, No. 9 of 2017 (FSR Act) directs Hernell Funerals (a financial institution), Mr Peterson, Mrs Peterson and all key persons, key individuals, and representatives, to:
- 2.1.1. immediately cease acting as financial service provider (FSP) and insurer and/or advertising and/or holding themselves out as such in contravention of section 7 of the FAIS Act and section 5 of the Insurance Act;
- 2.1.2. immediately cease conducting any new business in relation to financial services as defined in section 1 of the FAIS Act and insurance business as defined in section 1 of the Insurance Act;
- 2.1.3. immediately cease to accept new clients and/or process new client applications;
- 2.1.4. immediately cease offering insurance benefits and receiving premiums from clients;
- 2.1.5. pay out to all clients all valid claims owing to such clients irrespective of the basis for the liability, upon request from such clients within 2 working days from the date of the request from the client;
- 2.1.6. disallow any new policies to be entered into between existing clients and Hernell Funerals;

2.1.7. fully inform all its clients, within three days of receiving this Directive, of the current state of affairs of Hernell Funerals;

2.1.8. Hernell Funerals must in consultation with the clients, authorised FSP and insurer, within seven days from date of this directive, transfer all clients to such authorised FSP and insurer in a manner that will be in the best interest of the clients and must copy the Authority with all such communications and correspondence; and

2.1.9. to provide proof to the satisfaction of the Authority, in the form of a weekly written report, from the date of this Directive, that paragraphs 2.1.1 to 2.1.9 were complied with.

2.2. The reasons for the Directive are set out below.

3. **Reasons for the intended directive**

3.1. This intended directive is issued pursuant to an investigation conducted in respect of Hernell Funerals, Mr Peterson and Mrs Peterson, in terms of the FSR Act.

3.2. The Authority investigated alleged contraventions of certain financial sector laws, which included section 7(1) of the FAIS Act and section 5(1) of the Insurance Act during the period 1 April 2021 to 31 October 2023.

3.3. The reasons for the directive discussed below are a summary of the report, not exhaustive and should be read in conjunction with the report, and its annexures. The reasons, as set out below, are some of the factors that the Authority considered regarding this directive.

3.4. During the period from 1 April 2021 to 31 October 2023, Hernell Funerals, Mr and Mrs Peterson rendered financial services (advice) to approximately 3000 clients in respect of life insurance policies (funeral cover).

- 3.5. Hernell Funerals, Mr and Mrs Peterson were not authorised as a Financial Services Provider (FSPs), or a juristic representative/ representative of any authorised FSP and therefore contravened section 7 of the FAIS Act.
- 3.6. Whist advising approximately 3000 clients, Hernell Funerals, Mr and Mrs Peterson offered these clients insurance benefits in respect of life insurance policies (funeral cover). Hernell Funerals, Mr and Mrs Peterson were not licensed insurers or underwritten by a licensed insurer. Therefore, during the period from 1 April 2021 to 31 October 2023, they contravened section 5(1) of the Insurance Act.

4. **Statement of reasons to issue the Directive without delay**

- 4.1. The objective of the Authority is to protect financial customers. To achieve this objective, the Authority must regulate and supervise, in accordance with the financial sector laws, the conduct of financial institutions.
- 4.2. The Authority dispenses complying with section 146(1)(b) because any delay may prejudice financial customers by not being treated fairly and/or prevent the Authority from protecting financial customers.
- 4.3. In addition to what has been stated above the Authority's statement of reasons for issuing the Directive with immediate effect are that:
 - 4.3.1. During the investigation, Hernell Funerals, Mr and Mrs Peterson were requested on 9 different occasions to comply with section 7(1) of the FAIS Act and section 5(1) of the Insurance Act.
 - 4.3.2. Formal meetings were held on 30 March 2023, 8 June 2023, 12 June 2023, 27 July 2023, 11 August 2023, 30 August 2023, 18 September 2023, 26 October 2023 and 18 January 2024, requesting Hernell Funerals, Mr and Mrs Peterson to comply and they failed to comply with section 7(1) of the FAIS Act and section 5(1) of the Insurance Act.
 - 4.3.3. In addition, Hernell Funerals failed to comply with Enforceable Undertaking requirements.

4.3.4. Hernell Funerals, Mr and Mrs Peterson are conducting their business in contravention of certain financial sector laws, it will be irresponsible for the Authority to allow Hernell Funerals, Mr and Mrs Peterson to continue with its business whilst clients continue suffering losses. The Authority also needs to be satisfied that all client funds are properly accounted for.

4.3.5. The ceasing of business activities is urgently required. Complying with consultation requirements in section 146(1) will result in further prejudice to the affected clients.

4.3.6. The object of the Directive is to ensure that all clients are protected. This objective will be defeated by the delay.

5. **Opportunity to make submissions**

5.1. In terms of section 146(5)(b) of the FSR Act, Hernell Funerals, Mr and Mrs Peterson are afforded one month from the date of this Directive to make submissions with regard to the Directive.

6. **Internal remedy**

6.1. The Authority draws to the attention of Hernell Funerals, Mr and Mrs Peterson the provisions of sections 228, and 230 of the FSR Act. Any person aggrieved by a decision of the Authority may apply to the Tribunal for a reconsideration of the decision. In terms of section 231 of the FSR Act, neither an application for a reconsideration of a decision, nor the proceedings on the application, suspends the decision of the decision-maker unless the Tribunal so orders.

6.2. Hernell Funerals, Mr and Mrs Peterson may submit a reconsideration application to Ms Kim Host, the secretary of the Tribunal, at Applications@fstribunal.co.za.



Gerhard van Deventer
Divisional Executive: Enforcement
Directive dated **2 May 2024**