

Section 27(3)(a) of the FAIS Act states:

The following jurisdictional provisions apply to the Ombud in respect of the investigation of complaints:

(i) The Ombud must decline to investigate any complaint which relates to an act or omission which occurred on or after the date of commencement of this Act but on a date more than three years before the date of receipt of such complaint by the Office.

(ii) Where the complainant was unaware of the occurrence of the act or omission contemplated in sub-paragraph (i), the period of three years commences on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first.

The Financial Services Tribunal (FST) said the FAIS Ombud and Old Mutual Insure (OMI) pegged the date of the incident (the collapse of the wall) as the date on which the three-year period referred to in section 27(3)(a)(i) starts.

Both “misconstrued” the “act or omission” referred to in section 27(3)(a)(i) as “the happening of [the] event which may result in a claim under [the] policy” (clause 7(a) of the General Conditions and Exceptions of the policy).

The FST said the “act” or “omission” referred to in section 27(3)(a)(i) and (ii) must be identified with reference to the definition of a “complaint” in the FAIS Act and not the insurance policy.

The complaint the ombud is required to investigate relates to an act or omission by an FSP, not the insured.

It said the reference to “an act or omission” in section 27(3)(a)(i) is not a reference to the event that may result in a claim under the policy, nor is it a reference to an act or omission on the part of the insured – in this case, the applicant. It is a reference to an act or omission committed by Old Mutual – the rejection of the applicant’s claim.