

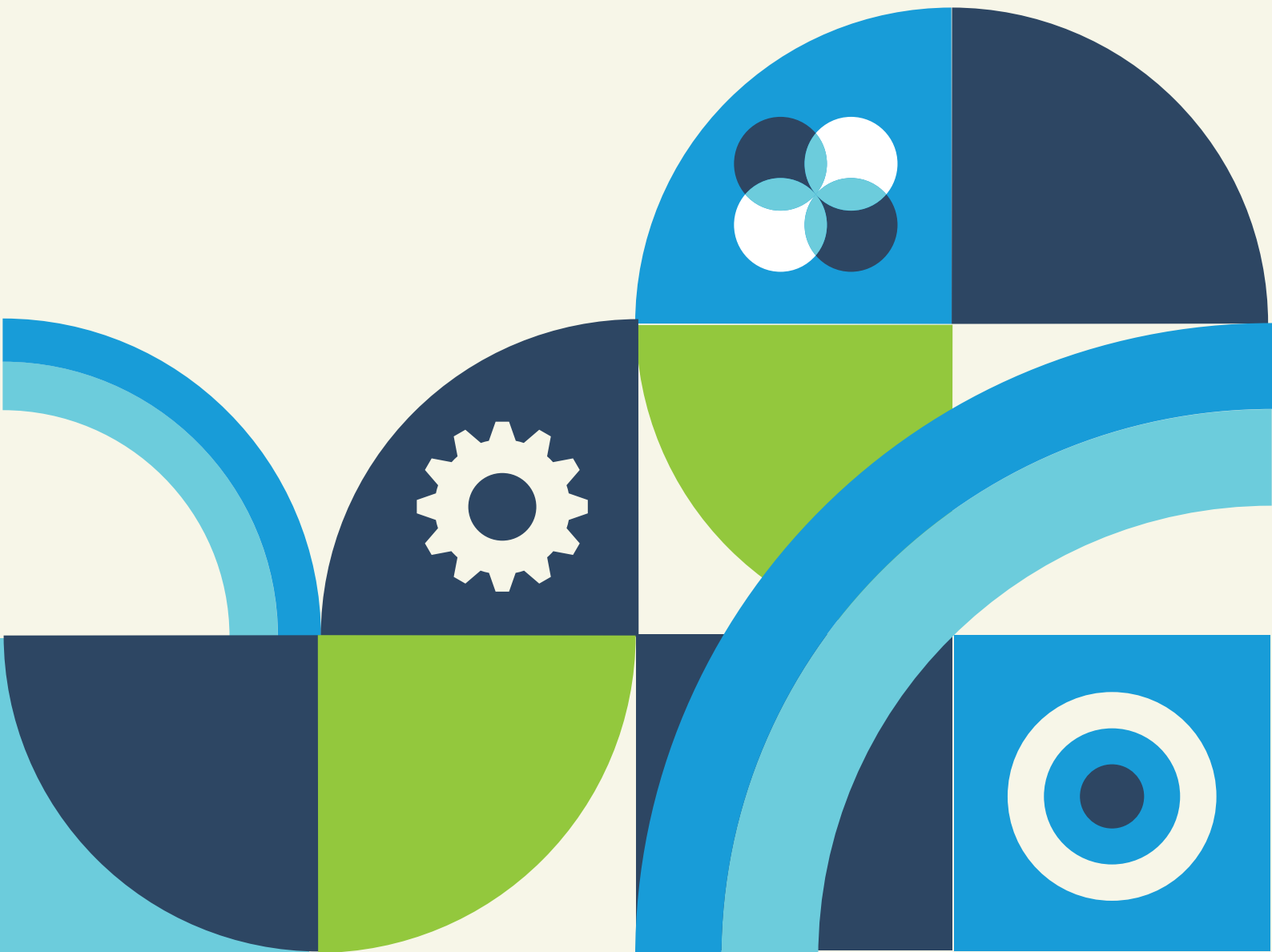


An tOmbudsman Seirbhísí
Airgeadais agus Pinsean

Financial Services and
Pensions Ombudsman

Published March 2024

Financial Services and Pensions Ombudsman **Overview of Complaints 2023**





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Acronyms/Abbreviations

AVCs	Additional Voluntary Contributions
CBI	Central Bank of Ireland
CCR	Central Credit Register
COIM	Customer Operations and Information Management
CPC	Consumer Protection Code 2012
DRS	Dispute Resolution Services
FSPO	Financial Services and Pensions Ombudsman
IS	Investigation Services
LS	Legal Services
PRSAs	Personal Retirement Savings Accounts
The Act	Financial Services and Pensions Ombudsman Act 2017
The Examination	Central Bank of Ireland directed Tracker Mortgage Examination
The regulatory authorities	The Central Bank of Ireland, the Competition and Consumer Protection Commission, and the Pensions Authority.
Trust RACs	Trust Retirement Annuity Contracts



1 | The Financial Services and Pensions Ombudsman (FSPO)

The FSPO was established in January 2018 by the Financial Services and Pensions Ombudsman Act 2017. The role of the FSPO is to resolve complaints from consumers, including small businesses and other organisations, against financial service providers and pension providers.

We provide an independent, fair, impartial, confidential and free service to resolve complaints through either informal mediation, leading to a potential settlement agreed between the parties, or formal investigation and adjudication, leading to a legally binding decision.

When any consumer, whether an individual, a small business or an organisation, is unable to resolve a complaint or dispute with a financial service provider or a pension provider, they can refer their complaint to the FSPO.

We deal with complaints informally at first, by listening to both parties and engaging with them to facilitate a resolution that is acceptable to both parties. Much of this informal engagement takes place by telephone. Where these early interventions do not resolve the dispute, the FSPO formally investigates the complaint and issues a decision that is legally binding on both parties, subject only to a statutory appeal to the High Court.

The Ombudsman has wide-ranging powers to deal with complaints against financial service providers. The Ombudsman can direct a provider to rectify the conduct that is the subject of the complaint. There is no limit to the value of the rectification that can be directed. The Ombudsman can also direct a financial service provider to pay compensation to a complainant of up to €500,000. In addition, the Ombudsman can publish anonymised decisions and can also publish the names of any financial service provider that has had at least three complaints against it upheld, substantially upheld, or partially upheld during a calendar year.

When dealing with complaints against pension providers, the Ombudsman's powers are more limited. While the Ombudsman can direct rectification, the legislation governing the FSPO sets out that such rectification shall not exceed any actual loss of benefit under the pension scheme concerned.



Furthermore, the Ombudsman cannot direct a pension provider to pay compensation. The Ombudsman can only publish case studies in relation to pension decisions (not the full decision) and cannot publish the names of any pension provider irrespective of the number of complaints it may have had upheld, substantially upheld, or partially upheld against it during a calendar year.

Formal investigation of a complaint by the FSPO is a detailed, fair and impartial process carried out in accordance with fair procedures. For this reason, documentary and audio evidence and other material, together with submissions from the parties, is gathered by the FSPO from those involved in the dispute and exchanged between the parties.

Unless a decision is appealed to the High Court, the financial service provider or pension provider must implement any direction made by the Ombudsman in a legally binding decision. Decisions appealed to the High Court are not published while they are the subject of an appeal.

2

Ombudsman's Message



I am very pleased to publish this Overview of Complaints for 2023. The FSPO's mission is to provide an impartial, accessible, and responsive complaint resolution service that delivers fair, transparent and timely outcomes for all our customers, and enhances the financial services and pension environment. This Overview serves as a resource for all those who can have an impact on the financial services and pension environment, and I would encourage providers to reflect on the nature of the complaints brought to this Office, and what I consider to be missed opportunities in some situations, to have resolved those complaints internally, at an earlier stage.

I will begin by thanking the entire FSPO team for their hard work and commitment throughout the year. Due to their concerted efforts, the FSPO closed 5,184 complaints in 2023. This is a 12% increase on the number of complaints closed in 2022. In doing so, we delivered outcomes worth over €4.7 million to consumers.

At the same time, we received a record number of complaints. In 2023, the FSPO received a total of 6,182 complaints, representing a 29% increase on the number received in 2022.

It is clear that we need to further grow the capacity of the FSPO to meet the growing challenges. In this regard, 2023 was an important year for the organisation, as the Minister for Finance provided sanction to increase our workforce by 42% from 90 to 128. This increase in resources, combined with our work to continuously increase efficiency will significantly impact on the capacity of the Office to deliver for our customers.

It is also important for providers to consider what measures they can take to reduce the number of complaints arising. An increase of almost 30% in the number of complaints being made to the Financial Services and Pensions Ombudsman in just one year, should be a cause for reflection amongst providers.

Where appropriate, the FSPO will do what we can to assist providers in their work to reduce complaints. We meet with providers and their representatives and discuss trends in complaints received. We have published over 2,300 legally binding decisions in relation to complaints against financial service providers.



Our annual Overview of Complaints and our Digests of Decisions, which provide analyses and examples of complaints and decisions are also useful resources for both providers and consumers.

In addition to encouraging providers of financial services and pension products to work to reduce the number of complaints arising, I also encourage them to adopt an approach of seeking, where possible, to resolve complaints quickly with their customers. It is clear that many of the consumers making complaints to this Office could have had their complaints addressed by their provider, at an earlier point in time.

Even after a complaint has been made to the FSPO, there continue to be opportunities for providers and consumers to resolve their complaints informally. Mediation has been central to our efforts to resolve complaints at the earliest stage and since the introduction of mediation as the default complaint resolution process used by the FSPO, we have achieved very considerable success in facilitating the resolution of complaints by agreement, directly between providers and their customers. Typically, more than 70% of complaints referred to mediation are successfully resolved through the mediation process.

Outcomes

The outcomes for those who bring complaints to this Office can be significant. During 2023, 5,184 complaints were closed, and the outcomes of these complaints included the following:

- 1,275 complainants achieved a mediation settlement through our Dispute Resolution Service, with the value of those settlements totalling €2,943,493.
- A further €1,271,754 was paid to complainants by providers to settle complaints during the FSPO's formal investigation process.
- The combined value of compensation directed in legally binding decisions following the formal investigation process was €321,330.
- An additional €175,543 in redress from providers was noted by the FSPO as available for acceptance by complainants, leading to legally binding decisions where those complaints were not upheld because the offer in question was reasonable and adequate to redress the conduct giving rise to the complaint, and no formal direction by the Ombudsman was required.

These outcomes do not include the very significant but unquantifiable benefits of redress by rectification, secured by complainants, through a legally binding direction of the FSPO. Examples of such rectification outcomes are detailed on [page 62](#).



Timelines

Although the number of complaints received increased considerably in 2023, many of these complaints were resolved early on in our processes. I would encourage both consumers and providers to take advantage of the swift resolutions that can be achieved through our informal dispute resolution process. Mediation has proven to be an effective and timely method of resolving complaints to the satisfaction of all involved.

In 2023:

- 85% of complaints that closed in 2023, were closed within 12 months of the complaint being made. This was mainly through resolution in our Dispute Resolution Services (mediation) and early-stage assessments and interventions in our Customer Operations and Information Management department. This includes when a complaint was resolved directly between the parties, or if a complaint fell outside the jurisdiction of the FSPO.
- For all complaints that closed in 2023, including tracker mortgage complaints, the average time from receipt of complaint to closure, was 8.6 months.
- For non-tracker mortgage complaints that closed in 2023, the average time from receipt to closure, was 7 months.

Certain more complex complaints, including those requiring a formal adjudication process or formal jurisdictional assessment, or both, take longer to resolve. This reflects the fact that adjudications by the Ombudsman are legally binding and accordingly, it is important that every decision arrived at, has followed due process and allowed both parties to make submissions and offer observations on the evidence and on the other party's submissions, as appropriate.



2023

6,182
complaints received



29%



85%

of complaints that closed, were closed within 12 months

Complaints that closed



8.6 months

Average time to closure

Non-tracker mortgage complaints closed



7 months

Average time to closure



€2,943,493

Value to the complainant of our Dispute Resolution Services



24%

of banking complaints involved disputed transactions.



€321,330

Total compensation directed in legally binding decisions



42% increase

Workforce plan approved. Staff to increase from 90.2 to 128



Referrals to the authorities

I had cause to formally refer 9 legally binding decisions to the Central Bank of Ireland (CBI) during 2023. Referrals take place for a variety of reasons including in circumstances where a complaint raises the possibility of a potentially systemic issue, which may warrant consideration by the regulatory authorities.

For example, I referred two decisions where I was concerned that there appeared to be a shortfall in the guidance available to regulated financial service providers under the Central Credit Register framework, in situations of bankruptcy, or insolvency arrangements (decision [2023-0082](#) and decision [2023-0083](#)).

In another decision, I noted the provider's incorrect approach to its Central Credit Register reporting obligations, in relation to accounts where the card had been revoked, and I was concerned that this may well have impacted other customers (decision [2023-0256](#)).

In addition to these 9 decisions formally referred, I shared copies of 107 tracker mortgage decisions, and 26 decisions issued in complaints concerning declined insurance claims for business interruption losses, with the CBI in 2023.

Sharing information and our perspective, with the regulatory authorities is a vital part of our stakeholder engagement and ensures that potentially systemic issues are raised for consideration with the appropriate regulatory body, for such action as may be appropriate.

Customer Service

Customer service remains the primary source of complaints made by consumers to this Office in 2023, representing 24% of all such complaints. Complaints relating to customer service issues can include a provider's failure to provide information, and accessibility and communication issues. It is also common for complainants to reference failures during the provider's internal complaint handling process. I believe that a more responsive service from providers to their customers, could avoid many of these complaints arising.



Complainants referencing fraud

The upward trend continues in the number of complainants referencing fraud. Financial fraud is becoming more sophisticated, and as technology moves ahead in leaps and bounds, it can often result in even the savviest of consumers falling prey to seemingly legitimate, but fraudulent, schemes and scams.

It is important to note that the FSPO cannot investigate instances of fraud, as that is a matter for An Garda Síochána. However, the FSPO can investigate a complaint which relates to suggested service failings of the financial service provider in dealing with a customer who suspects fraud on their account, and any complaint about disputed transactions.

This Overview highlights some of these complaints, through the use of anonymised case studies, where the customer came to the FSPO because they felt their bank had not dealt with their issue appropriately.

One case study highlights the case of [Diana](#) who complained to her bank after she had transferred €2,720 to an online trading platform, which she said was then transferred to a fraudulent investment company. Diana hoped her bank could recover her money through the chargeback process. Although the bank still held Diana liable for the transactions, it noted some service issues with the handling of her complaint. The bank noted that Diana had been credited €1721.23 by the online trading company and offered to refund Diana an additional €1,720 as a gesture of goodwill.

In another case study, [Marie](#) was the victim of a scam, which was carried out by fraudsters claiming to be from the Department of Social Protection and An Garda Síochána. Marie was informed by the fraudsters that someone had stolen her identity, and that this person was suspected of money laundering. She transferred €17,000 to a foreign bank account before she realised it was a scam. Although the bank emphasised it was not responsible for Marie's loss, it did acknowledge that its customer service fell short of its standards. It offered Marie €4,000 in full and final settlement of her complaint, which she accepted.

[Eileen](#) was an elderly lady who sent a total of €82,000 to a care worker abroad, as a result of an ad she had seen online. She finally realised that she had been the victim of a scam when there was no sign of the care worker coming to Ireland. Eileen's bank said that Eileen had authorised all of the payments herself, so it was not responsible for the loss. However, Eileen said that the bank staff member never queried why an 80-year-old woman was sending so much money, so often, to a very distant country. The parties resolved the dispute in mediation and on that basis, the bank agreed to refund Eileen's money.



Market Exits

It is important to note one area of success in efforts to limit the number of complaints arising. The departure of two major financial service providers from the Irish market, posed the potential for a high volume of complaints to be made to this Office, given the number of impacted customers. During 2023, this Office received 236 complaints identified as relating to market exit, though not all of these complaints were in relation to the conduct of those providers leaving the market. A total of 162 complaints relating to market exit were closed during the year, mainly through our Registration and Assessment or Dispute Resolution Services.

It is very positive that, to date, for the vast majority of impacted consumers, the departure of two major banks has not given rise to issues leading to a complaint being made to this Office. This outcome was achieved through the work of many stakeholders, including providers and their representatives. The FSPO contributed by collaboratively engaging and sharing information with stakeholders within the Irish banking sector, including with the providers leaving the market.

In 2022, we began tracking complaints relating to market exit in order to identify market exit complaints from the time they were received. We engaged with those providers leaving the market, regarding their processes and plans for resources to address both current and future complaints. We identified trends and patterns and shared insights with relevant internal and external stakeholders. This enabled earlier intervention to better manage issues, as appropriate, thereby preventing new complaints arising and facilitating earlier resolution of complaints. Complaints in relation to market exit were assessed and progressed, as appropriate, in the same way as other ongoing complaints.

Tracker Mortgage related complaints

During 2023, the FSPO received 74 complaints relating to tracker mortgage interest rates. This represents a significant decline from the 139 such complaints received in 2022 and is significantly lower than in 2020, when the number of tracker mortgage interest rate complaints received peaked, at 492 in the year.

These complaints continue to comprise a considerable portion of the work of the FSPO, as they progress through both the informal dispute resolution process and the formal investigation process. In 2023, this Office closed 224 tracker mortgage related complaints, with 892 tracker mortgage complaints on hand at the end of the year.



I directed €38,000 in total compensation in 4 legally binding decisions concerning tracker mortgages, which were either substantially upheld or partially upheld in 2023. A total of 103 tracker mortgage complaints were not upheld.

This Overview contains links to some of the decisions issued on [tracker mortgage interest rate complaints](#) which may be of benefit to consumers who may be considering making a complaint, to their representatives and to providers.

My first full year as Financial Services and Pensions Ombudsman has been rewarding, and I look forward to another year ahead, working to deliver on our mission of providing an impartial, accessible, and responsive complaint resolution service that delivers fair, transparent and timely outcomes for all our customers, and enhances the financial services and pension environment.

Financial Services and Pensions Ombudsman (Amendment) Bill 2023

I welcome the publication of the Financial Services and Pensions Ombudsman Bill 2023. The Bill aims to copperfasten the protection of consumers in their access to the Financial Services and Pensions Ombudsman (FSPO) to make complaints about the conduct of financial service providers which have left the Irish market. The Bill also introduces legislative amendments to ensure the Financial Services and Pensions Ombudsman continues to discharge its statutory functions in line with the Constitution, following a Supreme Court Decision regarding the Workplace Relations Commission. In the context of the Bill, discussions have also included the jurisdiction of this Office with regard to complaints about the conduct of credit servicing firms and loan owners, prior to 2019. This Office will continue to engage with the Minister and the Department in relation to these matters as the Bill continues its passage through the Oireachtas.

Acknowledgements

I am grateful to all who contributed to the work of the Financial Services and Pensions Ombudsman over the course of 2023.

I have already referenced the hard work and commitment of all of my colleagues in the FSPO. Their continued dedication to our values of fairness, independence, effectiveness, accessibility and integrity is greatly appreciated. I wish to thank my colleagues on the Senior Management Team, MaryRose McGovern, Deputy Financial Services and Pensions Ombudsman, Diarmuid Byrne, Director of Dispute Resolution, Tara McDermott, Director of Customer Operations and Information Management, Úna Gately, Director of Investigation Services and Áine Carroll, Director of Corporate and Communication Services for their hard work and dedication.



I would also like to thank the Chairperson, Maeve Dineen, and members of the Financial Services and Pensions Ombudsman Council for their support, guidance and assistance during 2023.

Finally, I wish to express my appreciation to the Minister for Finance, Michael McGrath TD, and his officials for their ongoing support and cooperation.

Liam Sloyan

Liam Sloyan

Financial Services and Pensions Ombudsman
March 2024



3

FSPO's referral of complaints to the regulatory authorities during 2023

Section 18 of the Financial Services and Pensions Ombudsman Act 2017 (the Act), as amended, requires the Ombudsman to cooperate with the Central Bank of Ireland, the Competition and Consumer Protection Commission, and the Pensions Authority (the “regulatory authorities”) in a way that contributes to promoting the best interests of consumers and actual or potential beneficiaries of financial or pension services, and to the efficient and effective handling of complaints. The Act facilitates the sharing of information by the Ombudsman with the regulatory authorities, for the purpose of the performance of the functions of the Ombudsman, under the Act.

During 2023, the FSPO shared a copy of every legally binding decision issued, concerning a complaint about a tracker mortgage rate of interest, with the Central Bank of Ireland (CBI). Copies of 107 tracker mortgage decisions were sent by the FSPO to the CBI.

The same approach was adopted for 26 legally binding decisions issued in complaints concerning declined insurance claims for business interruption losses.

In addition to those decisions, the FSPO also refers other legally binding decisions to the regulatory authorities, with a view to promoting the best interests of the consumer protection framework. Referrals take place for a variety of reasons including in circumstances where a complaint raises the possibility of a potentially systemic issue, which may warrant consideration by the regulatory authorities. The table below sets out the complaints which, during 2023, were referred by the FSPO to the Central Bank of Ireland for those reasons.



Fig. 3.1 - Complaint issues referred to the Central Bank of Ireland during 2023

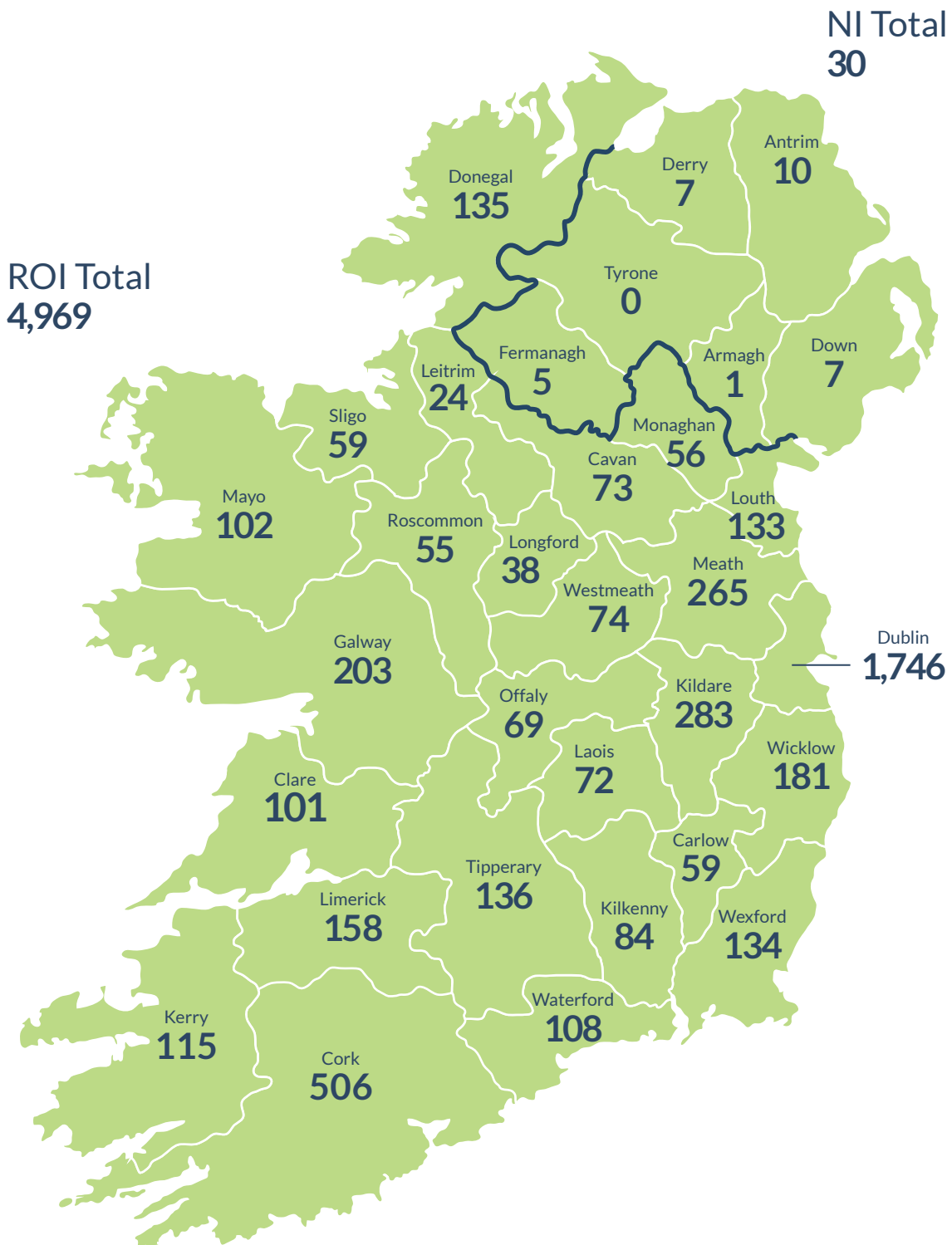
Decision reference	Issue raised by the complaint
<u>2023-0160</u>	The Ombudsman was concerned at the provider's reliance on a policy exclusion in its claim decision which was no longer applicable, and which the provider had acknowledged was an error. This raised a potentially systemic issue in the provider's claim decisions.
<u>2023-0082</u>	The Ombudsman was concerned about an apparent shortfall in the guidance available to regulated financial service providers under the Central Credit Register framework, in situations of bankruptcy, which can include complex sets of circumstances, such as in the background to this complaint.
<u>2023-0083</u>	The Ombudsman was concerned about an apparent a shortfall in the guidance available to regulated financial service providers under the Central Credit Register framework, in situations of bankruptcy, or insolvency arrangements, such as in the background to this complaint.
<u>2023-0091</u>	The Ombudsman was concerned that the terms of an insurance policy in the section outlining the cover and in the section outlining exclusions, taken together made the policy confusing and made it difficult for a consumer to understand the nature and the limits of such cover, because of the interplay between the policy wording. This created a potentially systemic issue arising from the likely confusion caused.
<u>2023-0032</u>	The Ombudsman was concerned at the poor record keeping practices of the provider demonstrated in its response to this complaint and the potential impact of this on other customers.



Decision reference	Issue raised by the complaint
<u>2023-0024</u>	The Ombudsman was concerned that the interplay between two separate policy provisions failed to meet the provider’s obligation under Provision 2.6 of the Consumer Protection Code, to make relevant material information available to its policyholder, in a way that seeks to inform, and that this issue could be systemic in nature.
<u>2023-0023</u>	The Ombudsman was concerned about the provider’s failure to comply with all of its obligations pursuant to Chapter 2 of Consumer Protection Code, which the Ombudsman was satisfied constituted conduct contrary to law within the meaning of Section 60(2)(a) of the Financial Services and Pensions Ombudsman Act 2017, relating to errors in dealing with the claim, in circumstances where the policy offered no cover or policy benefits for the policyholder’s situation.
<u>2023-0256</u>	The Ombudsman was concerned that the provider’s incorrect approach to reporting accounts where the card had been revoked, may have impacted other customers.
<u>2023-0254</u>	The Ombudsman was concerned about the likely confusion caused by policy provisions which included a definition of “gross profit” that deviated from its well-established and generally understood meaning, without that significant difference being adequately highlighted.

4

Complaints received by location







5 | Sectoral Analysis

This section sets out details of the complaints received in 2023 in the banking, insurance and investment categories, as well as complaints related to pension schemes.

A total of 6,182 complaints were received by the FSPO in 2023, a 29% increase in comparison to 2022, where 4,781 complaints were received.

Banking complaints were the highest category of complaints received, with 3,850 complaints, or 62% of all complaints received falling into this category. This represents a significant increase in banking complaints to the FSPO in 2023. In 2022, 2,640 complaints received were in the banking sector.

The FSPO received 1,446 (23%) complaints relating to the insurance sector, which accounted for the second largest category of complaints received. This compared to 1,129 complaints received in this category in 2022.

The number of complaints received in both investment and pension categories also rose in 2023. 461 investment complaints were received, and 336 pension complaints were received. This compared with 366 and 233 complaints received in these categories respectively, in 2022.

This year, the FSPO also began collecting figures for non-regulated entities and 74 complaints made about the conduct of such entities, were received.

13 complaints were labelled 'not applicable'. This occurs where there is not enough detail given by the complainant to assign a sector before closing the complaint, or where the complaint was not for the financial sector. At year end, two complaints received had not yet been assigned to a sector. This happens when we are waiting for further information from the complainant to enable us to correctly determine the sector.



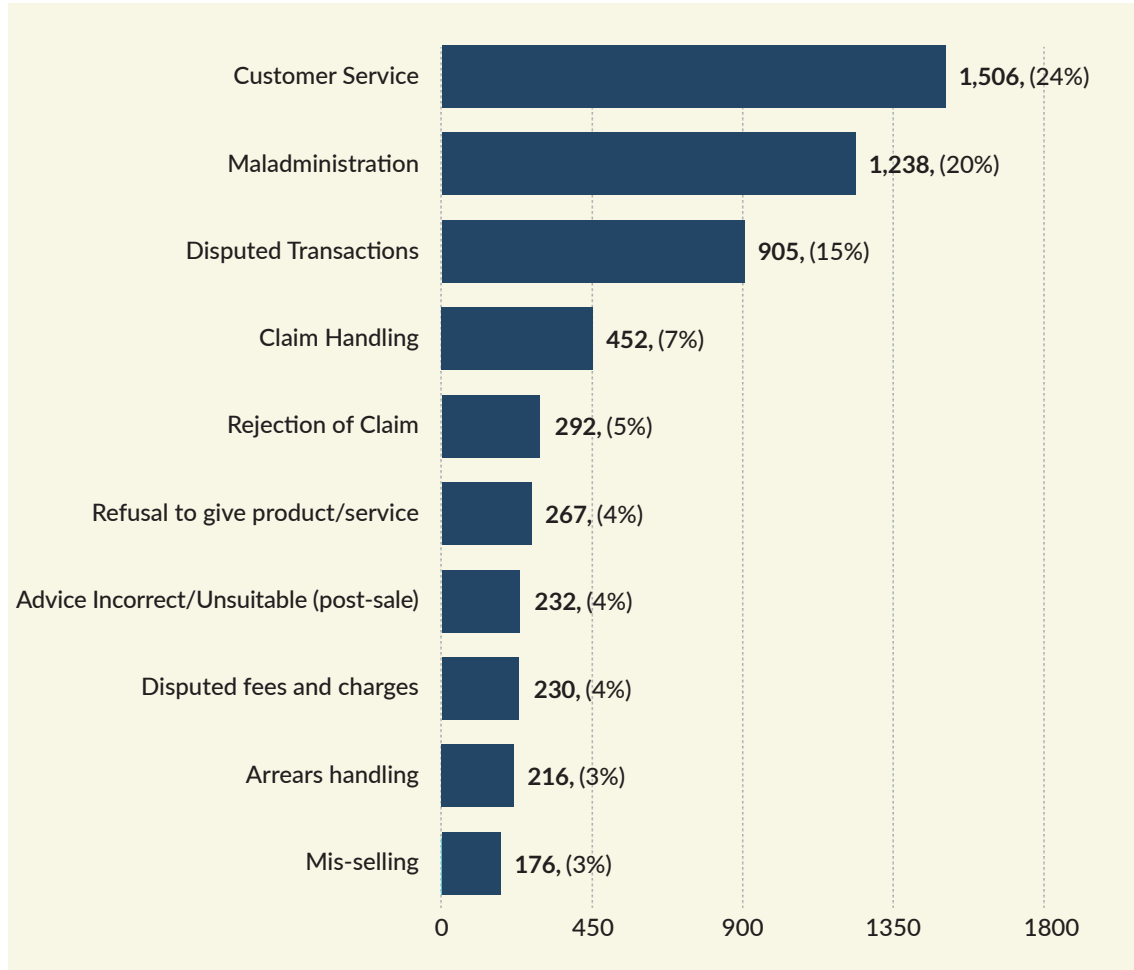
Fig. 5.1 Complaints received by sector 2023





As in 2022, customer service was the conduct most complained of in 2023, with 24% of complaints relating to this conduct. Customer service complaints relate to complaints which include issues such as communications, complaint handling, account access issues and the failure to provide information.

Fig. 5.2 – Top 10 conducts complained of:

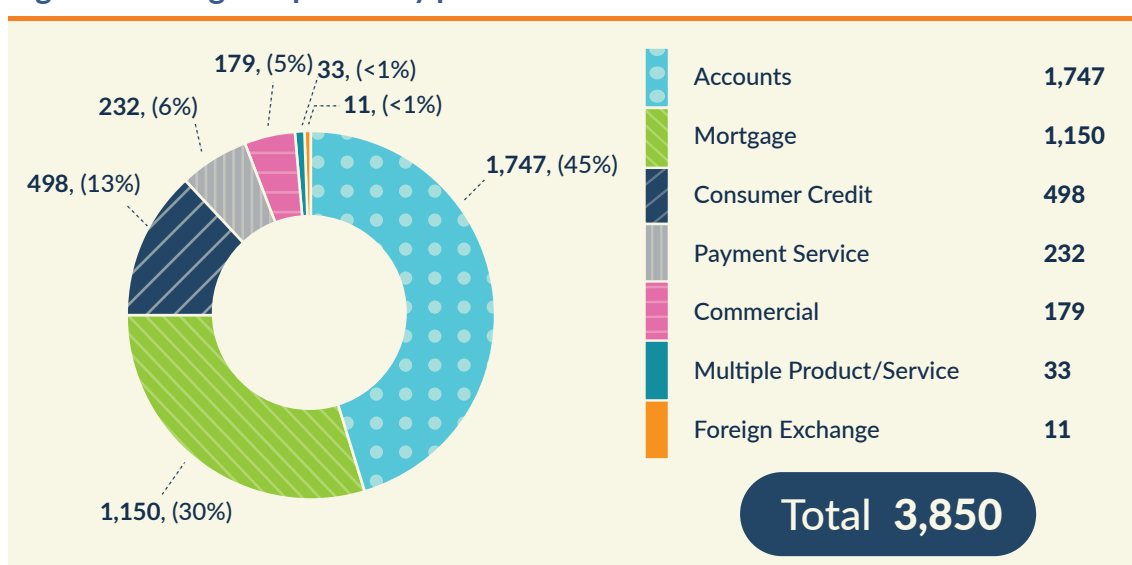


Banking Complaints 2023

The FSPO received 3,850 banking complaints in 2023, a 46% increase from the 2,640 classified as banking complaints in 2022. Banking complaints accounted for 62% of all complaints received, an increase of seven percentage points from 2022 when banking complaints accounted for 55% of all complaints received.

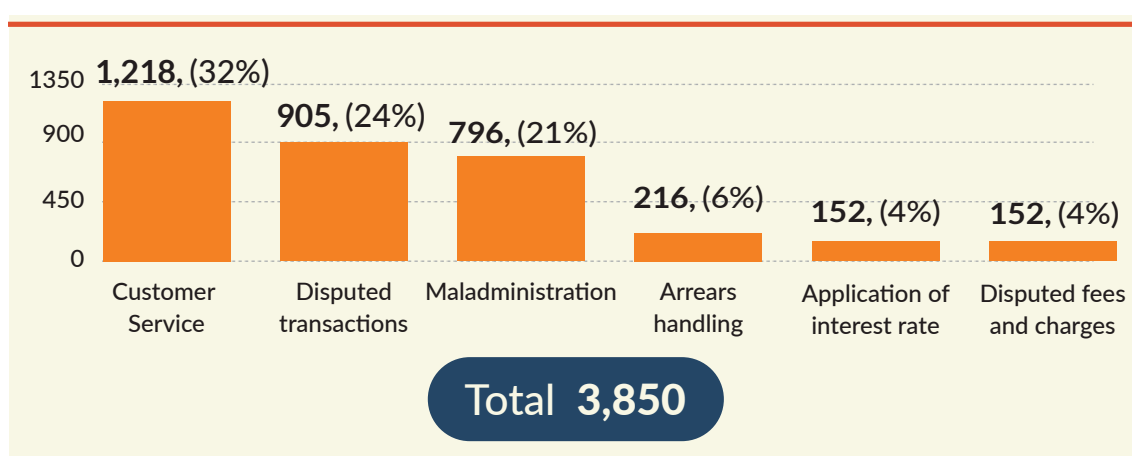
The majority of banking complaints concerned bank accounts (1,747), followed by mortgages (1,150) and then other consumer credit (498). These three products were also the three products most complained of in 2022.

Fig 5.3 Banking complaints by product 2023



Customer service was the conduct which featured most in complaints about banking services in 2023, as was the case in 2022. Customer service covers a range of issues, including issues such as communications, complaint handling, account access issues and the failure to provide information. Complaints concerning disputed transactions and maladministration were the second and third most common conducts respectively, featuring in complaints in the banking sector.

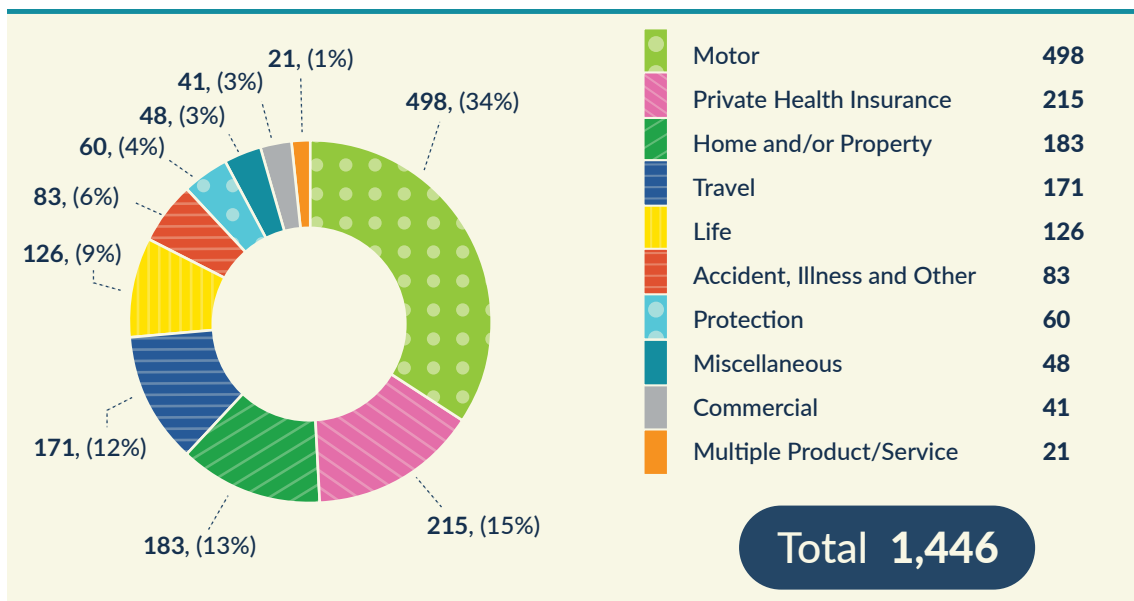
Fig 5.4 – Top 6 primary Banking conducts complained of 2023



Insurance Complaints 2023

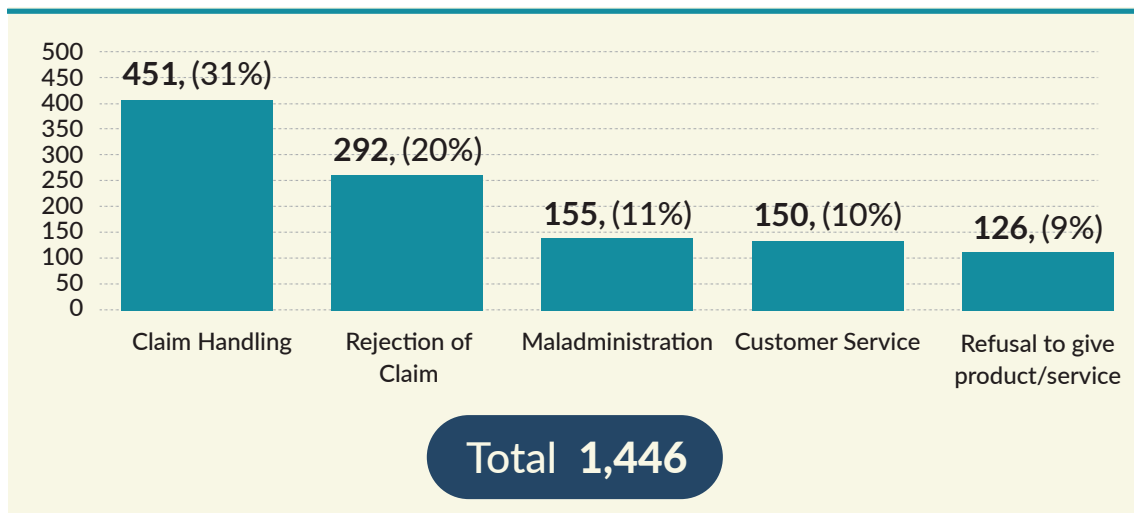
The FSPO received 1,446 complaints related to insurance products in 2023. This represents a 28% increase from the 1,129 complaints classified as insurance complaints in 2022. Insurance complaints account for 23% of all complaints received, an decrease of 1 percentage point from 2022, when insurance complaints accounted for 24% of all complaints received. The largest number of insurance complaints received related to motor insurance (498 complaints), followed by private health insurance (215 complaints).

Fig 5.5 Insurance complaints by product 2023



Most insurance complaints received in 2023 concerned claim handling (451 complaints) followed by complaints concerning the rejection of a claim (292 complaints). Notably, complaints concerning the conduct of 'refusal to give product/service', appear fifth in the top 5 conducts in 2023, having increased from 62 complaints in 2022 to 126 complaints in 2023.

Fig 5.6 - Top 5 Insurance conducts complained of 2023



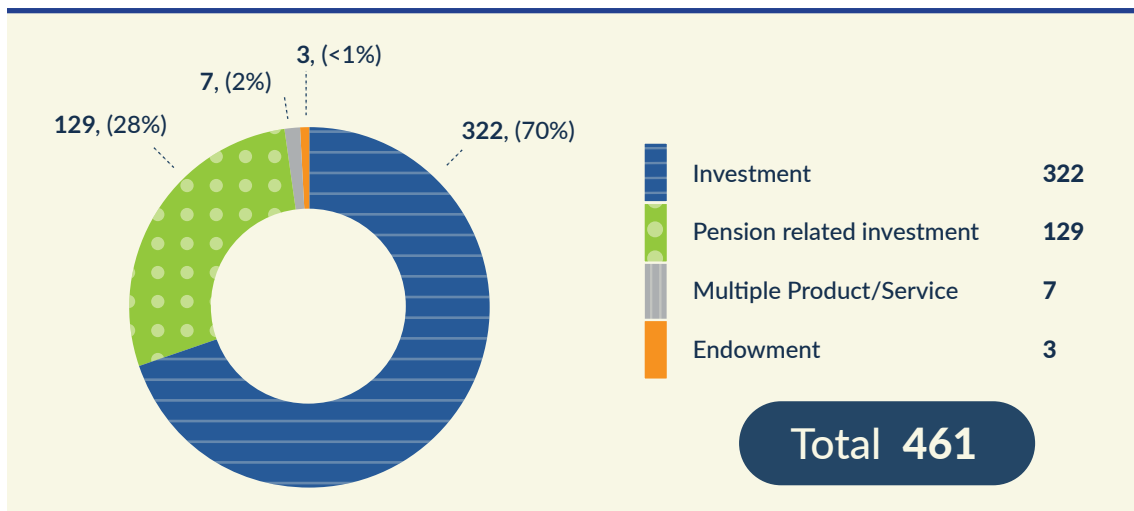


Investment Complaints 2023

The FSPO received 461 investment related complaints in 2023, a 26% increase from the 366 classified as investment complaints in 2022. Investment complaints accounted for 7% of all complaints received in 2023, a decrease of one percentage point from 2022 when investment complaints accounted for 8% of all complaints received.

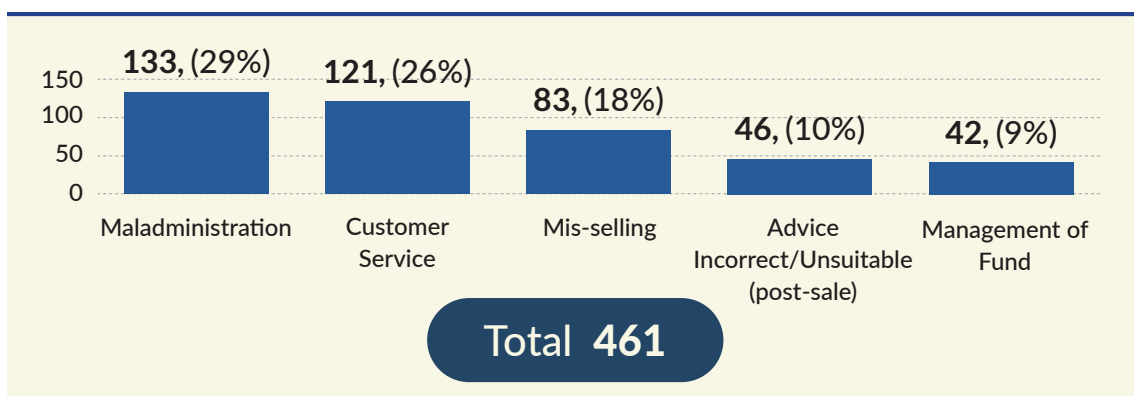
The investment category includes not only investments, but also pension-related investment products, a category for multiple products, and endowments. Some products involve investments which are put in place to make provision for a person's retirement such as AVCs (Additional Voluntary Contributions), but a product of that nature is not a "pension scheme" within the meaning of the FSPO's governing legislation. As a result, these products fall within the investment products category.

Fig. 5.7 Investment complaints by product 2023



The conducts most complained of in investment complaints were maladministration (133 complaints) and customer service (121 complaints). Investment complaints relating to Mis-selling increased by 77% since 2022 (83 complaints in 2023).

Fig. 5.8 Top 5 Investment conducts complained of 2023





Pension Scheme Complaints 2023

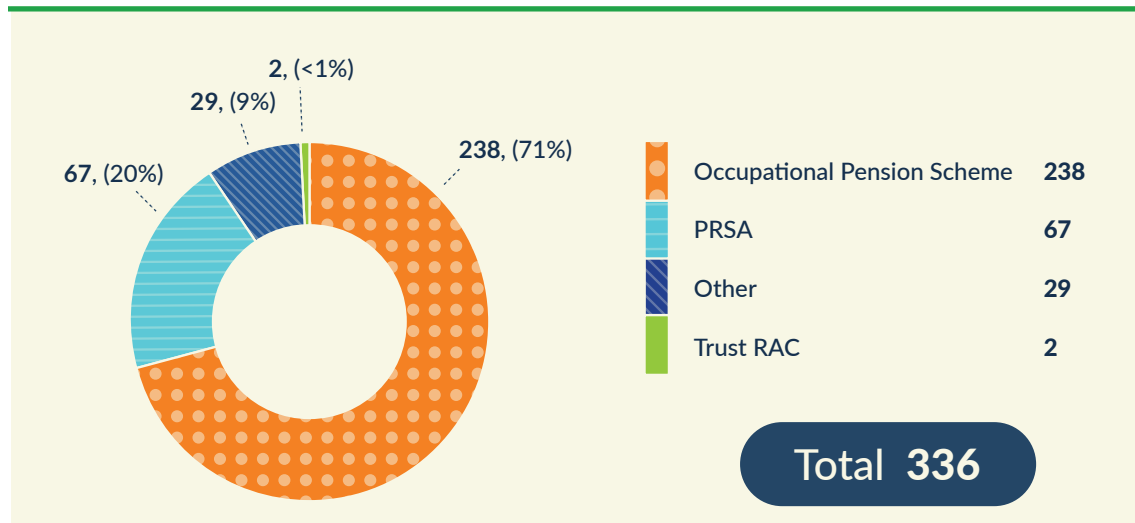
The FSPO received 336 pension scheme complaints in 2023 in comparison with 233 complaints in 2022, an increase of 44%. The majority of complaints relating to pensions in 2023, related to occupational pension schemes (71%; 238 complaints).

Occupational pension schemes are schemes set up by an employer to provide retirement and/or other benefits for employees. This includes both public sector and private sector occupational pension schemes.

PRSAs (Personal Retirement Savings Accounts) are pension savings accounts, normally paid for by personal contributions, although employers can pay contributions to these plans too. They accounted for 20% (67 complaints) of complaints in 2023.

Trust RACs (Retirement Annuity Contracts) are schemes established under trust and approved by the Revenue Commissioners. They are for the benefit of individuals engaged in, or connected with, a particular occupation and which provide retirement annuities for them, or benefits for their dependents.

Fig. 5.9 Pension scheme complaints by product 2023

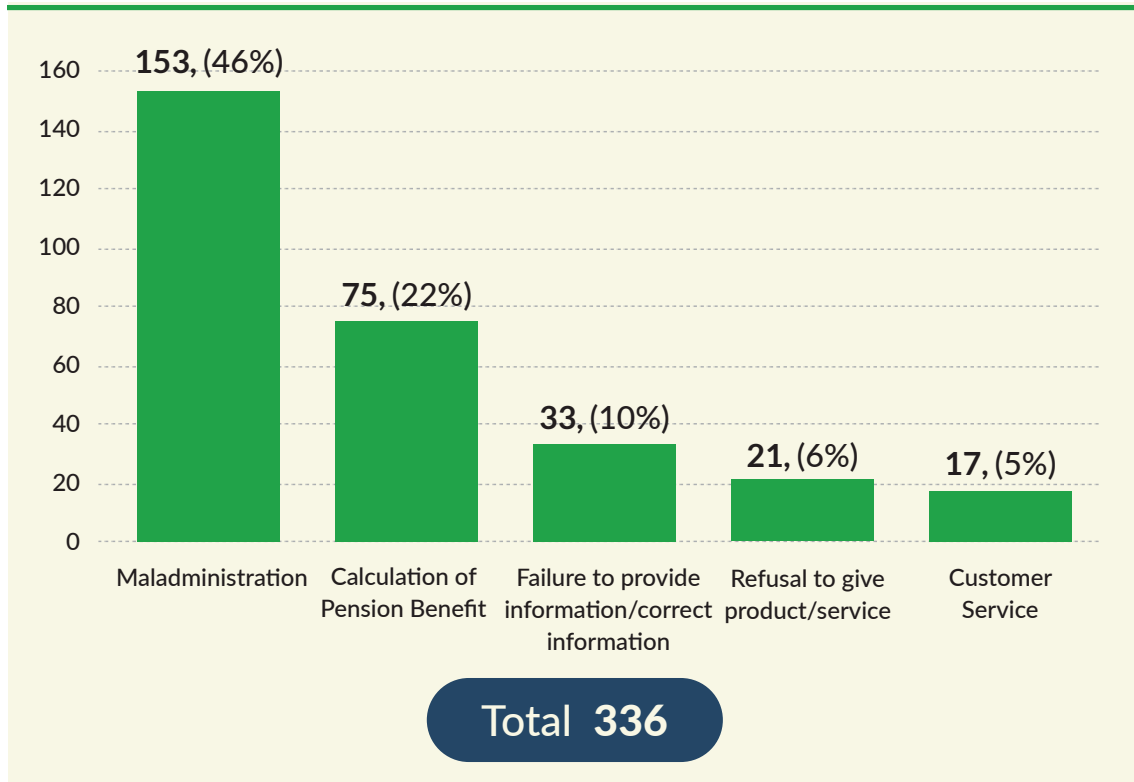


The conducts most complained of in relation to pensions were maladministration (46%; 153 complaints) and calculation of pension benefit (22%; 75 complaints).

Although the Ombudsman can direct rectification in pension complaints, the legislation governing the FSPO sets out that the value of such rectification shall not exceed any actual loss of benefit under the pension scheme concerned. For that reason, the Ombudsman cannot direct a pension provider to separately compensate for acts of maladministration.



Fig. 5.10 Top 5 Pension scheme conducts complained of 2023





Market Exit Complaints 2023

The departure of two major financial service providers from the Irish market in 2022 posed the potential for a high volume of complaints to be made to this Office, given the number of impacted customers. On 1 June 2022, the FSPO began tracking complaints relating to market exit, and sharing data and insight with our stakeholders.

The FSPO contributed to the low volume of complaints by collaboratively engaging and sharing information with stakeholders within the Irish banking landscape, including with the providers leaving the market, ensuring that our stakeholders were aware, on an ongoing basis, of the experience of the impacted customers, as communicated to this Office.

In 2023, the FSPO received 236 complaints which were tagged with the keywords 'market exit', though not all of these complaints were in relation to the conduct of those providers leaving the market. A total of 162 complaints relating to market exit were closed in 2023. 55 complaints were closed at an early stage within our Customer Operations and Information Management (COIM) department, where either the complainant was re-directed to the financial service provider, where information had not been provided by the complainant in order to progress the complaint, where a resolution had been reached, or the complaint had been withdrawn.

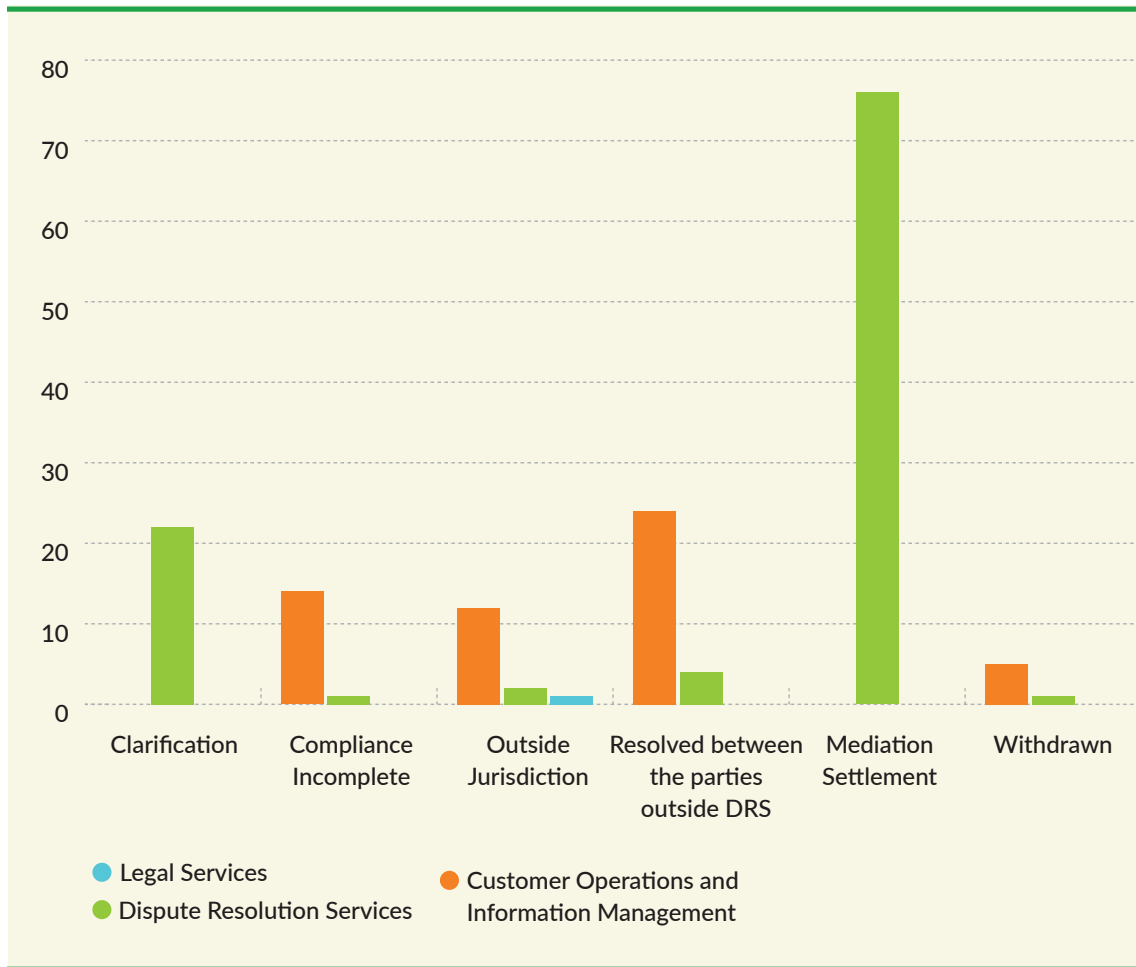
A further 106 complaints were concluded within our Dispute Resolution Service (DRS) for a variety of reasons, including where a settlement was agreed between the parties, where a clarification was issued, where a resolution had been reached outside of DRS, where the matter was noted to be best dealt with by an alternative forum and where information had not been provided by the complainant in order to progress the complaint.

One complaint was closed in Legal Services (LS) as it was outside the jurisdiction of the FSPO. A complaint can go to Legal Services at any point in our processes, but ideally in the early stages, should there be a jurisdictional query.

It is very positive that, to date, for the vast majority of impacted consumers, the departure of two major banks has not given rise to issues leading to a complaint being made to this Office. The FSPO contributed to this outcome by collaboratively engaging and sharing complaint categorisation information with relevant stakeholders within the Irish banking landscape, including with the providers leaving the market.



Fig. 5.11 Market Exit related complaints concluded by FSPO directorate during 2023





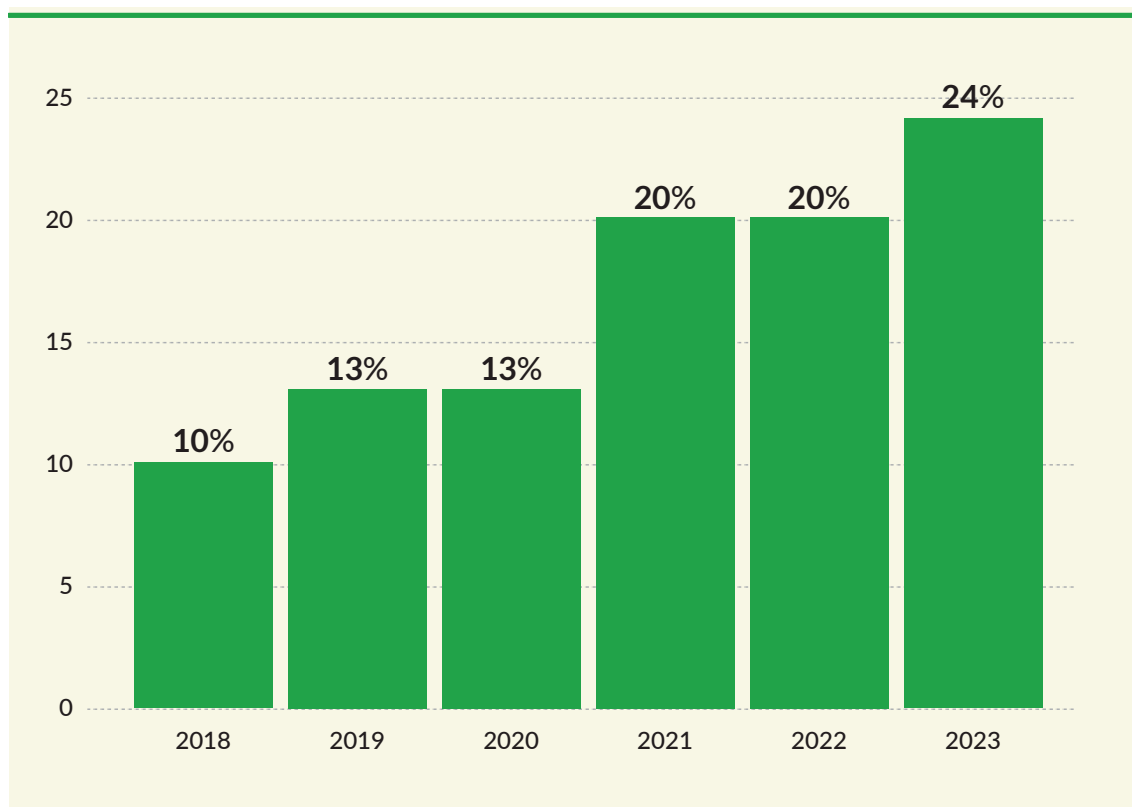
Disputed Transactions

There has been a steady increase in the number of complaints received by the FSPO in relation to disputed transactions, since 2018. Disputed transactions include fraudulent transactions, unauthorised withdrawals, a failure to provide security on an account and non-receipt of money.

It is important to note that the FSPO cannot investigate instances of fraud, as that is a matter for An Garda Síochána. However, the FSPO can investigate a complaint which relates to service failings of the provider in dealing with a customer who suspects fraud on their account, and any complaint about disputed transactions.

In 2023, nearly a quarter of all banking complaints included the conducts grouped under the heading of Disputed Transactions. Conducts complained of within the grouping include disputed transactions, fraudulent transactions, failure to provide accurate account information or balances, failure to provide security measures, non-receipt of money, and unauthorised withdrawals.

Fig 5.12 Disputed transactions as a percentage of all banking complaints received 2018-2023





The increase in disputed transactions within the banking sector complaints reflects a distressing increase in fraud, particularly impacting vulnerable customers. As digital transactions become more commonplace, those who may be less familiar with online security measures are often targeted by fraudsters, but anyone can fall for the clever tricks that criminals use.

Phishing attempts are where fraudsters, masquerading as trusted contacts, dupe the customer into revealing their account security details. This results in disputed transactions and may lead to a complaint to the FSPO if the customer believes their bank hasn't dealt with the issue appropriately.

There are a number of case studies within this Overview which demonstrate the kind of scams that customers fall victim to. For example, [Diana](#) complained to her bank after she had transferred money to an online trading platform, which she said was then transferred to a fraudulent investment company. Diana felt the bank should have started the chargeback process to recover her money.

In another complaint, [Marie](#) was the victim of a scam, which was carried out by fraudsters claiming to be from the Department of Social Protection and An Garda Síochána. Marie was informed by the fraudsters that someone had stolen her identity and that this person was suspected of money laundering. She transferred €17,000 to a foreign bank account, hoping to “protect” her money, before she realised it was a scam.

[Eugene](#) lost €5,000 when his phone was hacked whilst on holiday on a cruise ship. Eugene complained to his bank as he felt they could have done more to prevent the transactions being completed.

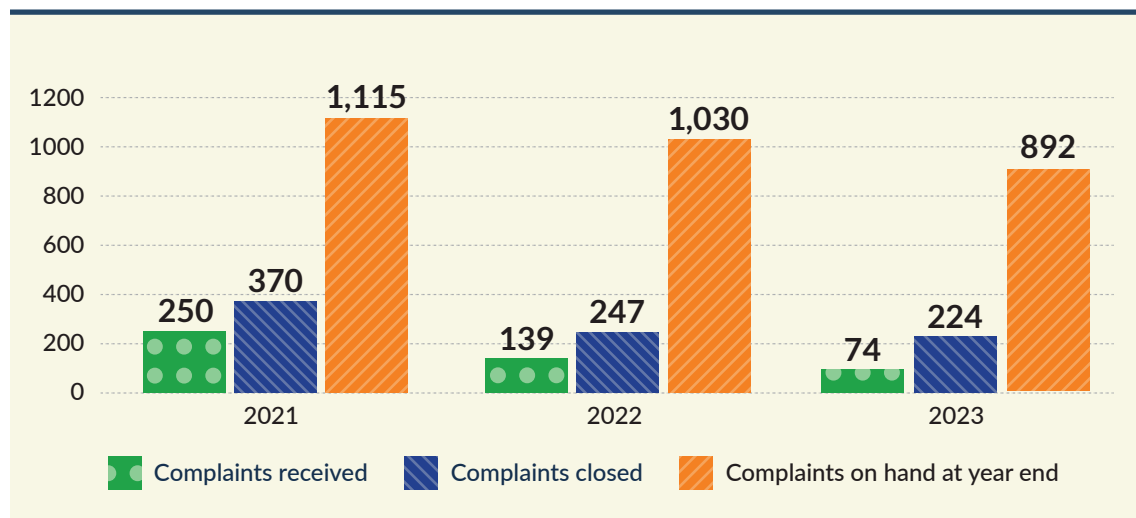
[Olive](#) was another customer who believed she was signing up to a regulated online trading platform to buy shares in a well-known company, when in fact, she had signed up to an unregulated online trading platform where her investment was sent to an unregulated fraudulent company. Olive said she lost a total of €41,000 that she had placed with the platform. Olive said that the bank failed to anticipate, prevent or notify her of the fraudulent nature of the online trading platform.

Tracker Mortgage Complaints 2023

The FSPO received 74 tracker mortgage related complaints in 2023. As can be seen from figure 5.13, the number of tracker mortgage complaints received each year continues to decline.

At the end of 2023 we had closed 224 tracker mortgage complaints and had 892 on hand.

Fig. 5.13 – Tracker mortgage interest rate related complaints 2021-2023



The Ombudsman issued 107 tracker mortgage interest rate related legally binding decisions in 2023. Three of these decisions were partially upheld, with a total value of €28,000 directed to be paid to the complainants. One complaint was substantially upheld, and the Ombudsman directed an amount of €10,000 to be paid in compensation in this instance.

The remaining 103 complaints where a legally binding decision was issued, were not upheld.

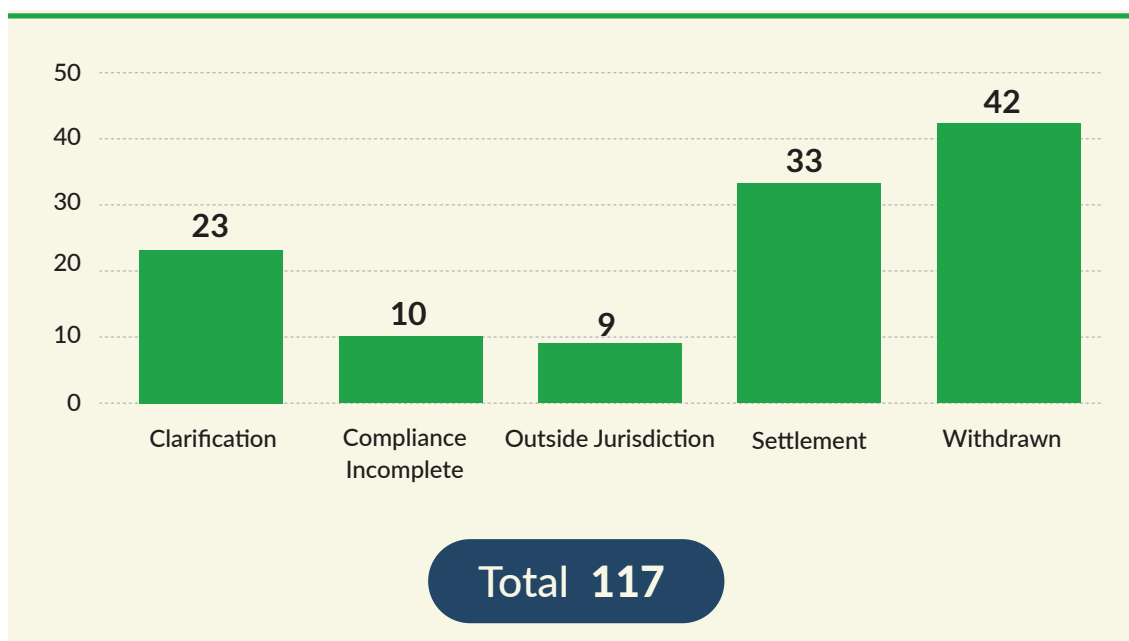


Fig 5.14 – Tracker mortgage interest rate decisions issued in 2023

Decision outcome	Number of decisions	Overall value of directions issued in tracker decisions
Upheld	0	€0
Partially Upheld	3	€28,000
Substantially Upheld	1	€10,000
Not Upheld	103	€0
Total	107	€38,000

An additional 117 tracker mortgage complaints were closed for a variety of reasons, without a legally binding decision being issued. In 23 complaints a clarification was issued, allowing the complaint to close. 10 complaints closed where information had not been provided by the complainant in order to progress the complaint. In 9 complaints, the FSPO determined the complaints were outside its jurisdiction. 33 complaints closed on the basis of a settlement agreement between the complainant and the provider, and 42 complaints were withdrawn.

Fig 5.15 Tracker mortgage complaints closed without a legally binding decision in 2023





It is evident from the outcomes of the tracker mortgage decisions issued, that we continue to receive a considerable number of complaints from people whose complaint about a tracker mortgage rate is not upheld, following an investigation of the complaint. Many people remain of the belief that they are entitled to a tracker mortgage interest rate, either from the time when they took out the mortgage loan or from a date during the life of the mortgage loan, even though they have no contractual or other entitlement to such a rate.

The following case studies of certain decisions issued by the FSPO in 2023, offer an insight into some of the arguments raised in tracker mortgage complaints made to the FSPO. The details below include links to the individual decisions which are published on the FSPO website. Each decision addresses the individual complaint made in its individual circumstances, as a result of which the complaints below were not upheld:

Case Study 1

Eloise and Jean drew down a mortgage loan with the bank in 2004 and took out a separate top-up loan with the bank in 2008. The bank offered them a variable interest rate in respect of both loans, and they were advised by the bank that a variable interest rate was the best option at the time.

As time passed, Eloise and Jean realised that the bank never discussed tracker interest rates with them when they applied for their mortgage loan finance. They believed they were entitled to a tracker interest rate in respect of both mortgage loans, because they felt that they were not properly advised by the bank in relation to their interest rate options, and they believed that they were misled by the bank into accepting the variable interest rate that was offered to them. ([Decision 2023-0236](#))

Case Study 2

Fabio and Mia took out a mortgage loan with the bank in 2005 which operated on a tracker interest rate of ECB + 1.1%. They approached the bank for additional borrowings in 2008 as they decided to sell their existing home and purchase a new home. Fabio and Mia had to fully redeem their existing mortgage loan when selling their existing mortgaged property and the bank offered them a new mortgage loan commencing on a one-year discount loan-to-value variable interest rate.



Case Study 2

One of the special conditions in the mortgage loan agreement for Fabio and Mia's new mortgage loan provided that at the end of the discount interest rate period, was that they could choose an interest rate which was then being offered by the bank and in the absence of any selection by them, a variable interest rate would apply "which may be a tracker variable rate". When the discount variable interest rate expired, the bank only offered them a range of fixed interest rates and an LTV (loan-to-value) variable interest rate. Fabio and Mia selected the LTV variable interest rate at the time.

They believed they had an entitlement to a tracker interest because the reference to a tracker interest rate in the special conditions of the mortgage loan agreement guaranteed that they had a contractual entitlement to a tracker interest rate on the expiry of the discounted variable interest rate period. ([Decision 2023-0135](#))

Case Study 3

Evelyn and Finn drew down a mortgage loan with the bank in 2006 when they bought their home. This mortgage loan operated on a tracker interest rate. In 2013, their property was in negative equity, and they decided to sell the house and purchase a new property. In doing so, they had to redeem their original mortgage loan, which was subject to a tracker interest rate, and they then drew down a new mortgage loan on a variable interest rate. At this time, in 2013, the bank did not allow them to transfer the tracker interest rate on the original mortgage loan, to their new mortgage loan.

After drawing down the new mortgage loan in 2013, Evelyn and Finn learned that the bank intended to launch a new tracker portability product in the first quarter of 2014. This tracker portability product allowed customers to move home and keep the existing tracker interest rate that applied to their primary mortgage, plus an additional 1%.

Evelyn and Finn felt they were entitled to a tracker interest rate, because if the bank had notified them that it intended to introduce a tracker portability product, they would have waited to sell their home and they could have retained the tracker interest rate that applied to their original mortgage loan. ([Decision 2023-0188](#))



Case Study 4

Maedhbh's mortgage loan account was considered by the bank as part of the Central Bank of Ireland directed Tracker Mortgage Examination (the "Examination"). The bank identified that a failure had occurred on her account because, on the basis of the terms and conditions of her mortgage loan agreement, she may have had an expectation that she would be given the option to avail of the bank's then prevailing tracker interest rate, when the fixed interest rate period on her mortgage loan account expired. Maedhbh's mortgage loan account was deemed to be impacted under that Examination.

The bank offered Maedhbh compensation, but she was not happy with the amount offered because she considered it inadequate, so she appealed this to the bank's Independent Appeals Panel, but her appeal was unsuccessful.

Because Maedhbh was not satisfied with the decision of the Independent Appeals Panel and she felt that a tracker interest rate should have been applied to her mortgage loan account, she decided to make a complaint to the FSPO. Maedhbh's complaint was subsequently placed on hold for a number of months. This was because of an investigation by the FSPO in respect of another complaint against the same bank, which dealt with similar issues to those arising in Maedhbh's complaint. When the legally binding decision issued in relation to that other complaint (see [decision 2020-0103](#)), the bank indicated that it accepted that legally binding decision in full and that it intended to apply the FSPO's approach and compensatory direction to other mortgage loan account holders who were also affected by that particular conduct of the bank. Maedhbh was one of these mortgage account holders.

As a result, the bank offered Maedhbh further redress and compensation to include applying a 12% reduction to her mortgage balance and an interest refund based on the interest charged on the 12% balance reduction, from the date her fixed rate period ended.

After engaging the services of a third-party representative, Maedhbh informed the FSPO that she was no longer seeking a tracker interest rate to be applied to her mortgage loan account and was satisfied that a 12% reduction had been applied to the mortgage balance. However, Maedhbh was not satisfied with the interest refund offered by the bank. In this regard, she was of the view that she was entitled to an increased interest refund, because the bank incorrectly calculated the interest refund on a simple interest basis, instead of on a compound interest basis. ([Decision 2023-0268](#))



Case Study 5

Senan was employed by the bank and was therefore able to avail of a staff preferential interest rate in respect of a certain portion of his overall borrowings. To facilitate this, Senan drew down two mortgage loans with the bank in 2008. He availed of a staff preferential interest rate in respect of the first mortgage loan, and he opted for a tracker interest rate in respect of the second mortgage loan. The staff preferential interest rate was more beneficial to Senan at the time, because it was lower than the available tracker interest rate.

In 2009, the bank moved Senan's first mortgage loan to its standard variable interest rate when the staff preferential interest rate became less advantageous. The bank gave Senan the option to opt out of this "switch" by choosing to remain on the staff preferential interest rate, or by choosing to switch to one of the fixed interest rates on offer from the bank at the time. Senan was not offered a tracker interest rate at this time. He did not opt out of the "switch" and therefore his mortgage loan was moved to the standard variable interest rate.

The terms and conditions of Senan's mortgage loan agreement that related to fixed interest rate loans, stated that he would be given the option to avail of the bank's then prevailing tracker interest rate when his mortgage loan account came off a fixed interest rate period. Senan was of the view that the bank should have offered him a tracker interest rate when the staff preferential interest rate was removed from his mortgage loan account because he understood that the staff preferential interest rate was a fixed interest rate, rather than a variable interest rate. ([Decision 2023-0111](#))



Case Study 6

Lenka previously had a mortgage loan with the bank which she held jointly with her former spouse, secured on their home. This mortgage loan account was on a tracker interest rate. After their relationship broke down, Lenka took over the monthly mortgage loan repayments. She requested the bank to transfer the mortgage loan into her sole name, but the bank refused to do this. Instead, Lenka had to fully pay off the jointly held mortgage loan and make a new application for a loan in her sole name. The bank informed her at the time that it had to carry out an assessment of her affordability, before offering her a loan facility in her own name. At the time when Lenka applied for the new mortgage loan, tracker interest rates had been withdrawn from the market, and were no longer available as part of the bank's product offering. As a result, Lenka was offered a mortgage loan commencing on a three-year fixed interest rate which she accepted.

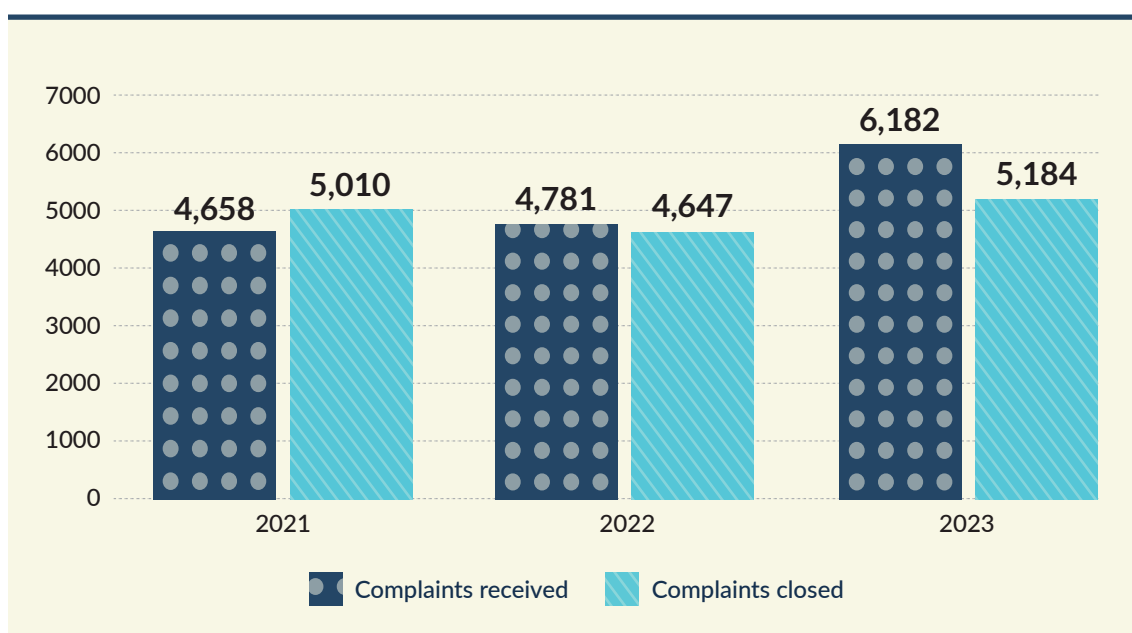
Lenka felt she should have been allowed to keep the tracker interest rate when she applied to have the joint mortgage loan put into her sole name, because she did not want to change any other details of the mortgage loan or apply for any further borrowings. Lenka simply wanted to remove the name of the other borrower from the mortgage loan. ([Decision 2023-0070](#))

6

How we managed complaints in 2023

In 2023, the FSPO received 6,182 complaints, a significant increase of 29% in comparison to the number of complaints received in 2022. We also closed more complaints during this period (5,184 complaints), 12% more than in 2022 (4,647 complaints).

Fig 6.1 – Complaints received and closed 2021-2023



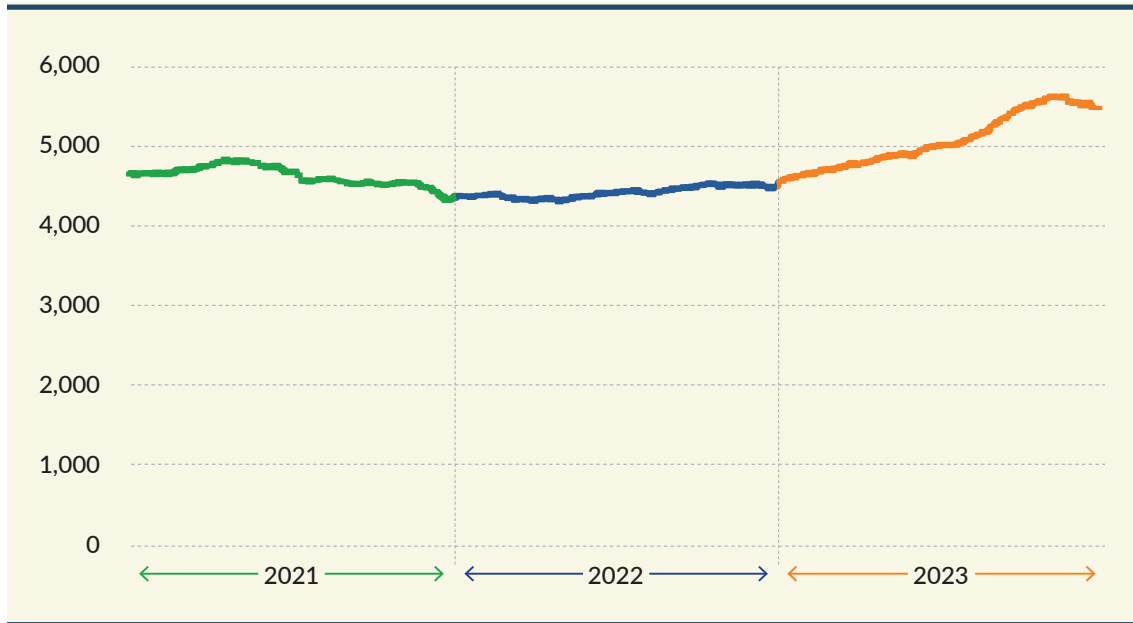
Despite closing more complaints than in each of the preceding two years, we ended the year with more complaints on hand than in the same period in 2022, due to the significant increase in the volume of complaints received over the course of 2023.

Complaints on hand are the number of active complaints on any given day. Closed complaints may be reopened due to new information being received at any point in the year, so the number of complaints on hand shows the volume of complaints over the time period.

Following the approval of the FSPO’s Workforce Plan in December 2023, the sanctioned staff complement in the FSPO was increased from 90.2 to 128. Arising from this approval of the Workforce Plan there are 35 further roles to be recruited in 2024. This recruitment process has commenced, and we estimate these roles will be filled by September 2024.

These additional resources will assist us in addressing the rising number of complaints received, as well as supporting our strategic ambition to evolve and innovate our services and the organisation, with a strong focus on our customers and external stakeholders and audiences.

Fig 6.2 – Complaints on hand by date 2021-2023



The proportion of complaints received through the FSPO’s online complaint form in 2023, fell from 80% received in 2022 to 74%. This was due to a significant number of complaints coming through as email queries, which our staff then set up directly on our complaint system.

Fig 6.3 – Percentage of complaints received online 2021-2023

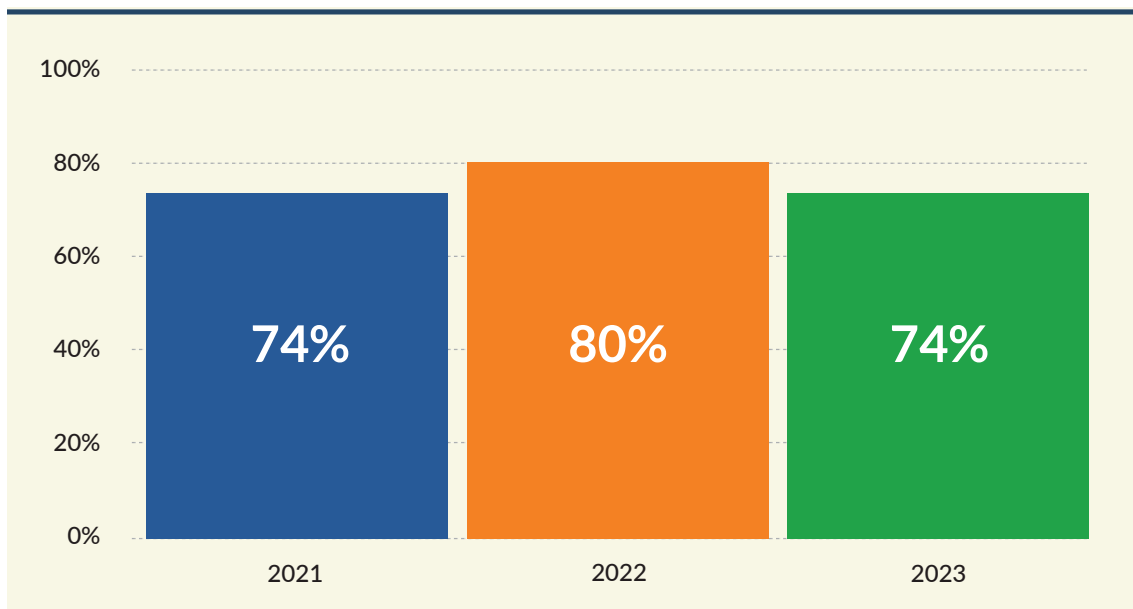
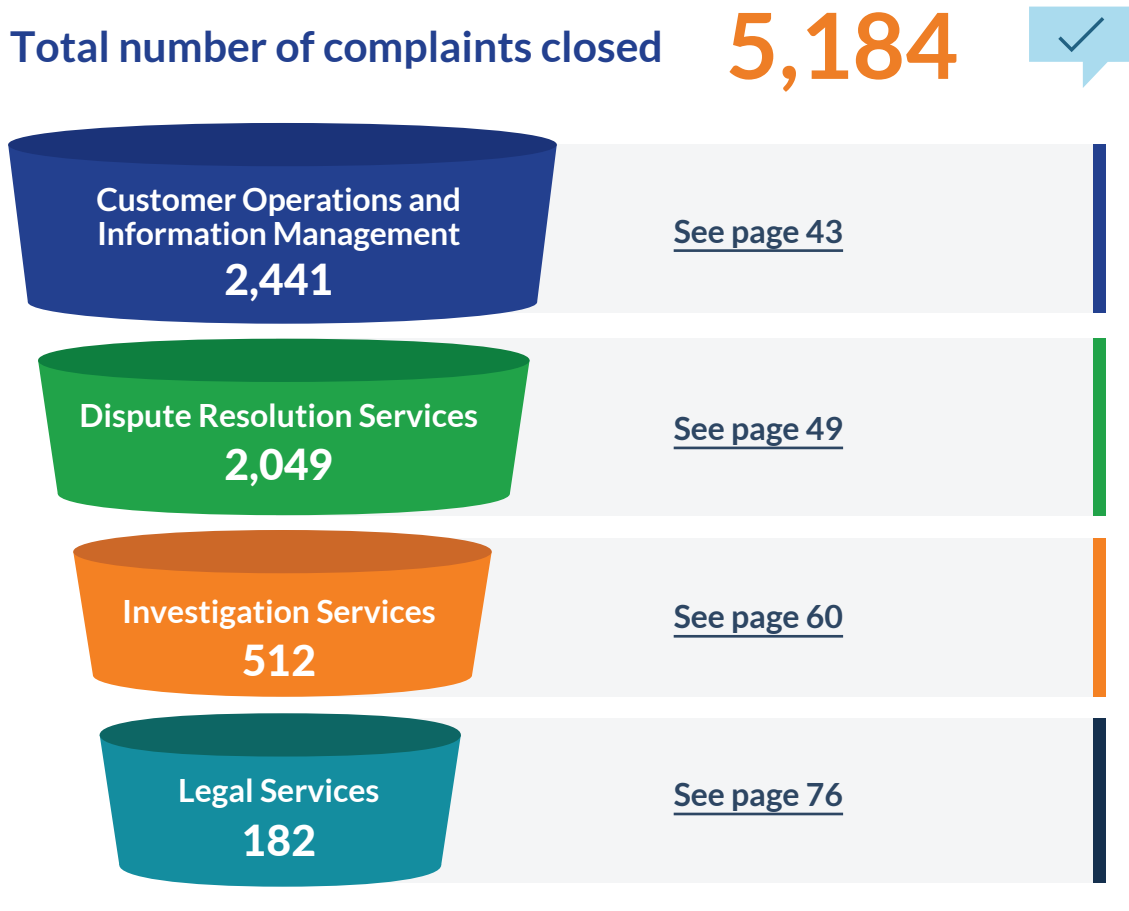




Fig 6.4 – How we managed complaints in 2023



Withdrawn complaints

247 complaints were withdrawn at various points in our processes in 2023. The reason for withdrawal of a complaint can vary depending on the stage at which the complaint is withdrawn. A common theme, regardless of the stage at which a complaint is withdrawn, is where the complaint has been resolved to the complainant's satisfaction by the provider. While the FSPO encourages settlements at the earliest stage, a settlement at any stage is always encouraged and welcome. Complainants may also withdraw their complaint due to a change in life circumstances. The FSPO is always willing to take such matters into consideration and may offer to put the complaint on hold for a time instead, if appropriate.



Customer Operations and Information Management

2,441 complaints closed

When a complaint is received, the Registry and Assessment team reviews and assesses it. This initial assessment provides an opportunity for the FSPO to determine if the complainant has provided all the necessary information to progress the complaint and to ensure the provider has been given the opportunity to resolve the complaint first. In many cases, this preliminary work allows the complaint to close, if the complainant is subsequently satisfied with the provider's resolution of the complaint.

The complaint is assessed to confirm that it is eligible for the statutory jurisdiction of the FSPO. Not all complaints are eligible for investigation by the FSPO and so the assessment of the complaint's eligibility takes place at the earliest possible stage. This may include determining whether the conduct complained of falls within the statutory time limits, checking that consent has been provided by all of the account or policy owners, or we may need to check if a financial service provider is regulated.

This early assessment service has enabled the FSPO to use its resources in the most efficient manner. More importantly, this service has enabled the FSPO to provide a greatly improved customer experience, ensuring the complainant is informed early on in the process if their complaint falls outside the FSPO's remit.

In some circumstances, the Customer Operations and Information Management (COIM) team may need to refer a complaint to our Legal Services team for a detailed legal review. Once the COIM team has completed its assessment the complaint is either referred to Dispute Resolution Services for mediation or, where the complaint cannot progress any further, it will be closed.

In an effort to get the most meaningful data from our complaints, a set of new closure codes for our complaint management system was introduced at the end of 2023. The purpose of these new closure codes is to better describe the reasons for closing a complaint, as well as to provide a more integrated set of codes which can be used by the organisation as a whole. This will enhance our reporting on complaint outcomes going forwards.



Fig. 6.5 – COIM complaint closure reasons 2023

Closure reason	Number of complaints closed
Outside jurisdiction	844
Compliance incomplete	766
Resolved	628
Withdrawn	177
Other	26
Total	2,441

COIM closed 844 complaints during 2023 as they were outside the jurisdiction of this Office. Examples of this would be where the provider is not regulated within the European Economic Area, where the provider was not providing a financial service, or the complaint was outside the time limits allowed for investigation of the complaint. The FSPO received an increased number of complaints relating to disputed transactions in 2023, (380 more complaints were received in 2023 under this conduct heading than in 2022), which includes the category of fraud. Where fraud was the only conduct complained of, this complaint was closed and labelled as ‘outside jurisdiction’, because the FSPO cannot investigate matters of fraud, as this is a matter for An Garda Síochána.

In 766 instances where the complaint was closed, the complaint was closed as ‘compliance incomplete’. In these complaints, the complaint could not proceed to an investigation as there was information outstanding from the complainant, or in some cases the complainant could not be contacted.

In many cases, complainants make a complaint to the FSPO without having first made a complaint to their provider. It is important to ensure the provider has been given the opportunity to resolve the complaint first, as it is only when a complainant has been unable to resolve their complaint or dispute with a financial service provider or a pension provider, that they can refer their complaint to the FSPO. During 2023, 628 such complaints were made to the FSPO, where subsequent notification to the provider of the existence of a complaint, allowed the complaint to be resolved to the customer’s satisfaction.

In addition, 177 complaints were withdrawn by the complainant at this early stage.



Customer Operations and Information Management Case Studies

Customer Operations and Information Management: Case Study 1

Customer falls victim to scam text

Following receipt of a scam text message, Sophia had €1,000 taken from her bank account, as a result of fraud. When Sophia contacted her bank, it said it would investigate the matter. Following its investigation, the bank said it could not do anything, as she had authorised the transaction herself. Sophia then submitted a complaint to the FSPO.

As part of the registration and assessment of the complaint, the Registration Team contacted the bank and asked for further information. The bank carried out a further review of the complaint and made the decision to refund the full amount to Sophia.

Sophia said:



I have just been refunded the full amount from the fraud scam I fell victim to. I would like to sincerely thank you for your help with this matter, it is appreciated enormously.



Customer Operations and Information Management: Case Study 2

Credit Union apologises for poor customer service

Rita took out a loan with her credit union. Rita said she had been unable to get a statement on her loan, despite asking for it three times. Rita also said that despite always paying her loan, she was contacted excessively by her credit union, and funds from her savings, which she had received following the death of her father, had been used by the credit union to pay off her loan, without her approval.

As a result, Rita submitted a complaint to the FSPO. On receipt of Rita's complaint, the Registration and Assessment Team contacted Rita's credit union to request information. On receipt of the request, the credit union began a further investigation into Rita's complaint. The credit union said it had not previously received a complaint from Rita and it arranged to meet her. This resulted in the resolution of the complaint.

Rita contacted the FSPO, explaining that the credit union had refunded the money her father had left her, fixed her credit rating and apologised.



Customer Operations and Information Management: Case Study 3

Bank continued to incorrectly report customer to Central Credit Register

Sergey went through the bankruptcy process and was discharged from bankruptcy in 2017. Despite being discharged, his bank continued to report Sergey's credit rating to the Central Credit Register (CCR). Sergey believed this to be incorrect and it resulted in him being unable to obtain credit from any financial institution. Sergey said this also impacted his wellbeing. Sergey said he had contacted his bank but was told that nothing could be done.

Sergey submitted a complaint to the FSPO. The complaint was referred to the Registration & Assessment team, who contacted the bank to request a final response letter from it. In its final response, the bank agreed to request the deletion of the records from the CCR.

Sergey was happy with that outcome and said: "It [the complaint] was closed as the FSPO communicated with the lender on my behalf and got the result we wanted in a short space of time, so the case was closed.



Thank you to the FSPO, I couldn't have done it without you guys so many thanks.



Customer Operations and Information Management: Case Study 4

Customer complains regarding lack of contact from her bank

Pamela used her credit card to book a holiday. The travel company Pamela booked with ceased trading at short notice, so Pamela requested a refund but was unsuccessful. Pamela engaged with her bank, seeking a chargeback, but this was declined.

Pamela submitted a complaint to her bank but had difficulty in getting a response to her complaint. She then submitted a complaint to the FSPO. Following a review of the complaint, the Registration and Assessment team wrote to Pamela's bank and asked it to review the complaint and issue its final response within 10 working days. The bank reviewed the complaint and then offered Pamela a refund in addition to a gesture of goodwill for the lapse in service.

Pamela wrote to us to say:

“ I am so grateful to you for getting such a comprehensive, satisfactory and prompt reply from [my bank] for me.

They have acknowledged the difficulties and exasperation I experienced hence I will accept their offer of goodwill...



Dispute Resolution Services

2,049 complaints closed



Our Dispute Resolution Service is a voluntary and confidential service that aims to resolve complaints against financial service providers or pension providers as quickly as possible through mediation.

We begin this process by discussing the complaint with the complainant and the provider and explore how both consider it could be resolved with an aim to helping them to reach an agreement. The Dispute Resolution Officer mediates between the parties with the aim of facilitating the parties in reaching an agreement. Mediation is informal, voluntary and totally confidential. Most mediations take place by phone. Possible outcomes of mediation are:

1. A mediation settlement is agreed between the complainant and the provider.
2. The complainant receives clarification from the provider around the issues raised, which resolves the complaint.
3. If a resolution is not reached, the complaint may be transferred within the FSPO to formal investigation.

Our Dispute Resolution Service closed 2,049 complaints in 2023, representing 40% of all complaints closed. 62% of all complaints closed in DRS reached a mediation settlement (1,275 complaints), which closed the complaint. The total value to complainants of mediated settlements in 2023 was €2,943,493. Mediation continues to be an effective way for complainants and providers to resolve complaints in a timely manner.

In some complaints, a clarification was provided to the complainant, and this allowed the complaint to close. This occurred in 622 complaints.

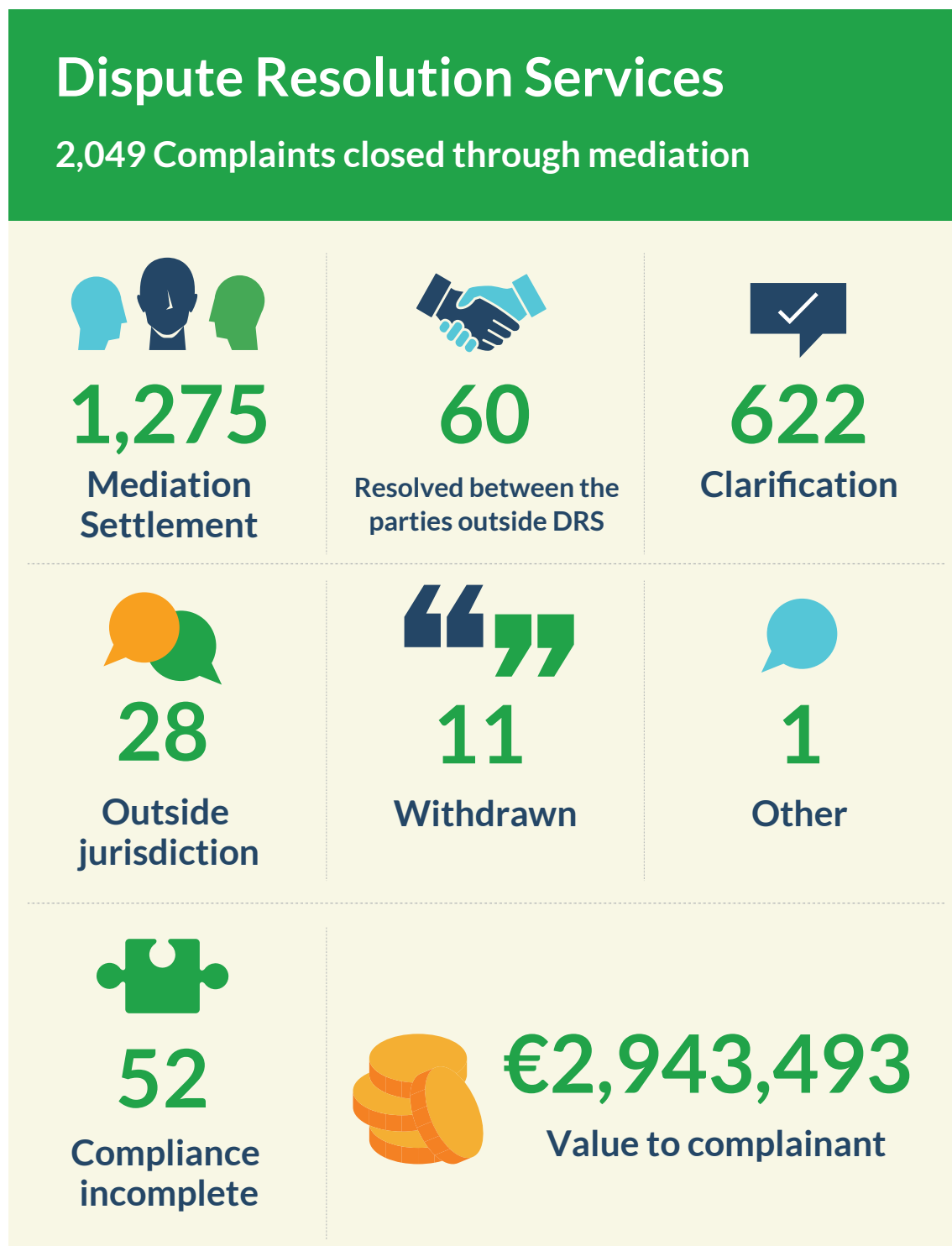
In 52 complaints categorised as 'compliance incomplete', there was information outstanding from the complainant, or the complainant could not be contacted and the complaint had to be closed.

60 complaints were closed when the parties resolved the complaint themselves but provided no other details and 11 were withdrawn by the complainant. 28 were categorised as outside the jurisdiction of the FSPO.



This can occur for example, when the provider is not regulated within the EEA, where the complaint is outside the time limits set for investigating a complaint, or where the complaint relates to fraud, which is a matter for An Garda Síochána to investigate.

Fig. 6.6 – DRS complaint closure reasons 2023





Dispute Resolution Services Case Studies

Dispute Resolution Services: Case Study 1

Lack of access to a fixed interest rate on a mortgage account

Robert and Colm bought a house together in the 2000s. The bank they borrowed from left the Irish market and their mortgage was sold to a non-banking lender. They believed that they were told that nothing would change in the Terms and Conditions of their loan due to its sale to a non-bank lender.

At this point in their lives, Robert and Colm had each separately bought a family home.

When standard variable interest rates increased, Robert and Colm asked their loan owner if they could avail of a fixed interest rate. At this stage the mortgage loan balance owed, had reduced to about 60% of the value of the property.

Their loan owner replied that the sale of Robert and Colm's mortgage to it had not impacted their applicable legal and regulatory protections. However, because the new loan owner was not involved in new residential lending, it did not offer a range of mortgage products like fixed interest rates.

The loan owner suggested that Robert and Colm move their mortgage to a bank lender to have access to a fixed rate option. Robert and Colm said that as they also had mortgages on their personal family homes, no lender would offer them another mortgage, even though they were actively paying their mortgage.

After an exchange of views in mediation, Robert and Colm decided to close their complaint.



Dispute Resolution Services: Case Study 2

Management of a loan in arrears

Ronan took out a student loan for €30,000 on an interest rate of 8.5%. Whilst he was studying, Ronan only had to pay the interest due on the loan – monthly payments of approximately €200. When Ronan qualified, the payments would jump to €650 per month in order to pay the loan back on time.

The COVID-19 pandemic started when Ronan was due to move to full payments. His lender gave him a full COVID-19 loan break for six months and took no payments at all. At the end of the 6 months, Ronan had work, but his income was unpredictable. He and his lender agreed that for the next 6 months he would make payments as high as he could, when he could. Ronan managed to make payments of approximately €400 per month.

Ronan's lender reached out again to come to an agreement about getting the loan back on track. Ronan was busy and ignored the communication. In the meantime, Ronan had increased his income and was making payments of various sizes – usually more than €650 per month, but on an ad hoc basis. Not hearing from the lender, Ronan thought “no news is good news”.

However, not having heard from Ronan for 100 days, his lender sent the debt for collection and called in the full amount of €30,000 plus interest. Ronan was of the opinion that his payments constituted “contact” with his lender and in protest he stopped making any payments at all. Ronan was also dismayed by how much he still owed on his loan, given that he had taken it out 4 years previously. He felt his lender must be overcharging him and must have given him bad advice during the pandemic.

During mediation, Ronan had the opportunity to listen to all the phone calls he had with his lender when he had all his loan repayments explained to him. He was able to understand that only paying interest for two years, followed by no payments at all for 6 months, followed by reduced payments and then no payments again, was not going to reduce the money owed in any substantial manner. In mediation, his lender withdrew its request for the full repayment of the loan and both parties entered local negotiations on repayment with a new level of understanding and trust. The complaint was resolved on that basis.



Dispute Resolution Services: Case Study 3

Customer complains of time taken to assess emergency procedure claim while on holiday

Floyd took out travel insurance for a trip to a tropical environment. Whilst there, Floyd had a serious accident and needed surgery. He contacted his travel insurance provider to see if he was covered for the surgery. His insurer said it needed to investigate the situation before giving permission. Floyd was in a lot of pain that would only be relieved by surgery.

Floyd said that it took the insurer 9 days to assess whether he was covered for the medical treatment or not. In the meantime, in order to relieve Floyd's pain, his doctor went ahead with the surgery. The cost of the medical treatment totalled approximately €24,000.

After assessment, the insurance company said that Floyd was not insured for his accident, as his own behaviour had been reckless. It provided photographs from the location of the accident to back up its point of view.

Floyd felt that it was very unfair of the insurance company to take so long to assess his claim when he needed treatment, was alone, was traumatised and in pain. The insurance company said that it needed to have medical reports translated and it needed to get evidence from the location of the accident to establish whether Floyd was covered or not. It felt that these were legitimate requirements.

In mediation and listening to call recordings, the insurance company stood over the conduct of its medical emergency team's investigation but admitted that it probably should have directed Floyd to his own private health insurer earlier in the process.

For this part of the complaint, it offered a goodwill gesture which Floyd accepted, and the complaint was resolved on that basis.



Dispute Resolution Services: Case Study 4

Customer requests mortgage interest rate changed from investment to home loan rate

Jack held several mortgages with his lender – some for properties that he rented out and one for his own home. Due to financial constraints, Jack sold his home and moved into one of his rental properties. Jack told his lender that this property was now his home and he expected it to reduce the interest rate from a Residential Investment Loan rate to a lower Home Loan rate.

When Jack informed his lender that this rental property was now his Principal Private Residence, the lender applied the protections of the Code of Conduct for Mortgage Arrears to the mortgage loan. This meant that there were now greater protections on Jack's borrowing if it fell into difficulties than if it was still a rental property. However, it did not reduce the interest rate on the mortgage.

Jack thought this was very unfair as this house was now his home. He regularly asked for his interest rate to be reduced and backdated to the day he moved into the property. When his lender did not agree to this, he made a complaint to it and appealed the outcome to the FSPO.

In mediation, Jack's lender referred him to his mortgage contract with it which it said was for a Residential Investment Loan with an agreed rate and not a Home Loan. It said that there is a process to extend the protections of the Code of Conduct for Mortgage Arrears to the loan now that it was for his home, but that the Terms and Conditions of his signed loan contract would not change.

Jack's lender did identify some unnecessary delays in his complaint journey for which it offered a good will gesture. After consideration, Jack accepted the offer and closed his complaint.



Dispute Resolution Services: Case Study 5

Claim for stolen car refused

Niamh was selling her car. A potential buyer test drove the car with Niamh. They said they wanted to buy the car. Niamh gave them her bank details for payment and the buyer acted as if they were transferring the funds and showed Niamh the screen of their phone where it looked as if the funds had been paid.

Niamh handed over the keys and the buyer drove off. However, the funds never arrived in Niamh's account. Niamh reported the car as stolen. Niamh's insurer would not pay her claim as it said that she had broken her contract by not safeguarding her car.

After looking at all her options in mediation, Niamh decided to close her complaint.



Dispute Resolution Services: Case Study 6

Elderly woman falls victim to overseas scam

80-year-old Eileen was caring for her disabled husband at home. Through social media, she found a care worker in a distant country who agreed to move to Ireland to live with Eileen and her husband and look after them both. However, the care worker said she needed financial help to come to Ireland, money for her passport, travel etc.

Eileen used the kiosk in her local bank to transfer money to the carer abroad. Eileen had difficulty using the screen in the kiosk so every time she used it, she had to ask for help from staff in the bank lobby. Eileen transferred money 22 times to this distant country and each time got assistance from bank staff to answer questions on the screen, though she always completed the transaction herself.

Eileen sent a total of €82,000 to the care worker, but she finally realised that she had been the victim of a scam when there was no sign of the care worker coming to Ireland. Eileen reported the scam to her bank, who tried to get the payments back, but it was unsuccessful.

Eileen's bank said that Eileen had authorised all of the payments herself, so it was not responsible for the loss. However, Eileen said that the bank staff member never queried why an 80-year-old woman was sending so much money, so often, to a very distant country. The parties resolved the dispute in mediation and on that basis the bank agreed to refund Eileen her lost savings.



Dispute Resolution Services: Case Study 7

Fraudsters clone website and defraud customer of €16,000

Joe said he was approached by an investment company – he could not recall exactly how. He said he researched the company and it seemed legitimate. However, it turned out that someone had cloned the legitimate company's website, so Joe was seeing a false set-up. Over six months, Joe made investments of approximately €16,000. He did this by adding the investment company as a beneficiary on his online banking profile and he received an authorising "one time passcode" (OTP) from his bank, which he used every time he instructed it to make a payment.

Joe said that the investment company was always very helpful and attentive, ringing him regularly. However, he said that when he decided to withdraw his investment, the company disappeared, and he realised he had been the victim of fraud.

Joe then approached his bank and told it that he thought it should refund him his lost money as, in his opinion, the bank should have done background checks on the account into which he was transferring his money and checked that the company he was sending his money to, was regulated, and authorized.

Joe's bank explained that the only information it received from him that it could check, was the IBAN, and it pointed to the Terms and Conditions of his bank account which stated that he permitted the bank to act on any instruction he gave them, and that he understood that the bank did not make any further security checks.

Joe and his bank discussed all of these issues in mediation. Joe was very unhappy not to have the money given to him by his bank but he chose not to opt for formal investigation at that time. The complaint was closed.



Dispute Resolution Services: Case Study 8

Customer loses €22,000 in purchase of vehicle

When online, Julia saw what she thought was a legitimate company based in Ireland selling vehicles and machinery. She contacted it, asking about buying a vehicle that she needed for her work. Through text messaging, she told them what she wanted and negotiated a price of €22,000 for a vehicle to be delivered to her west of Ireland home.

At first, the selling agent talked of the vehicle being delivered before payment so that Julia could check its quality. However, after a lot of pressurised messages from the selling agent, it was agreed that Julia would transfer a deposit of €5,000 and then the outstanding balance of €17,000 a few days later and the vehicle would then be delivered to her. The bank details for payment given to Julia were for a bank in an eastern European country.

No vehicle was delivered to Julia, and she then lost contact with the selling agent. She said she realised she was a victim of fraud. This was devastating for Julia – she had lost her savings, and it had a very profound effect on her mental health.

Julia made complaints to both her own Irish bank and the bank of the fraudulent sales agent. Julia's Irish bank tried to recall the money but there were no funds left in the receiving account.

In mediation, Julia's bank explained to her that as she had made the payments and authorised them herself, it believed it had done nothing wrong so it would not be giving her the missing €22,000.

Julia felt very strongly that her bank should have checked to see if the company she was sending the money to was regulated and legitimate, and that it should have warned her about sending money abroad.

Whilst Julia's bank was very sympathetic to her situation, it explained that it had no role in checking the status of any person or company its customers send money to and that it can only check the IBAN.

Julia accepted that she had authorised the payments and that she would not be getting the money back from her own bank and she pursued the fraud through the Gardaí. The complaint was closed.



Dispute Resolution Services: Case Study 9

Bank fails to locate property deeds

Gerard and Lucy wanted to sell a property that they owned. They asked their solicitor to get the property deeds from their lender. Over a two-year period, Gerard and Lucy's lender failed to reply to their solicitor's letters and ultimately could not locate the deeds for the property which prevented its sale.

Gerard and Lucy could prove that their solicitor had sent the deeds to the lender several years earlier. Gerard and Lucy believe they lost out on several possible sales due to the lack of deeds and that it prevented them from moving on with their life plans.

As a result of mediation, Gerard and Lucy's lender agreed to pay to have the deeds reconstituted, in full and final settlement of their complaint. It also agreed to pay the legal bills for the solicitor's work in pursuing the deeds from it, and gave Gerard and Lucy €5,000 compensation for any losses incurred by the 2-year delay. The couple accepted this settlement and the complaint was closed.

Dispute Resolution Services: Case Study 10

Car stolen from outside owner's house

Kate was woken by the Gardaí who told her that her car had been stolen from her driveway and crashed. Kate made a claim on her insurance. Her insurance company refused to pay her claim, saying that there was no evidence of the car being broken into and that the key was needed to start the car. It quoted Kate's contract that stated that she was obliged to protect her car.

Kate said that she always checks that her car is locked and that a key was missing from her home. Kate said there was no discussion about how the car was stolen and she said the wing mirrors of her car would not close in if she had not locked it and she believes they were closed in.

There was a lot of discussion in mediation about whether Kate was responsible for leaving the car vulnerable or not. In mediation, the parties agreed to share the cost of the loss and the complaint was resolved on that basis.



Investigation Services

512 Complaints closed through Investigation Services



15

Upheld



14

Substantially Upheld



26

Partially Upheld

208

Not upheld on the merits of the complaint

33

Complaint not upheld due to reasonable offer made and available to the complainant

€175,543

Value of complaints not upheld due to reasonable offer made and available to the complainant



58

Withdrawn



44

Outside settlement



€ 1,271,754

Value of complaints settled during investigation on foot of an on the record offer from the provider

114

Number of complaints settled during investigation on foot of an on the record offer from the provider



€321,330

Total compensation directed in Ombudsman's legally binding decisions



The FSPO resolves a majority of complaints at an early stage through mediation within the Dispute Resolution Service. When a complaint is not resolved through mediation, it may be transferred to a formal investigation.

When this happens, no details of the engagement which took place between the parties during the confidential mediation are available for the formal investigation process. This is to ensure that the engagements between the parties during mediation can cause no prejudice to either party if a formal investigation is required.

Subject to any issues of suitability, the investigation process begins with the FSPO issuing a formal Summary of Complaint to the provider. This document identifies the conduct of the provider which has given rise to the complaint, and it asks targeted questions of the provider, which are designed to gather information regarding the issues. The FSPO also seeks certain specified items of evidence from the provider. Sometimes the complainant will also be asked, separately, to clarify an aspect of their complaint or may be required to supply further documents.

The processes of the FSPO for formal investigation ensure that all information and evidence gathered from the complainant and the provider during the investigation, is shared between the parties. This ensures that both have possession of all the evidence, and each party can take the opportunity to offer any comments or observations regarding the evidence and records made available to the FSPO.

When the parties have concluded their submission of evidence and observations, all details are taken into account in the adjudication of the complaint, which leads to a legally binding decision.

The Ombudsman may uphold, substantially uphold or partially uphold a complaint.

The Ombudsman has wide-ranging powers when adjudicating complaints. If a complaint against a pension provider is upheld, redress can be directed, limited to the value of any actual loss of pension benefit under the pension scheme.

If a complaint against a financial service provider is upheld, a financial service provider can be directed to rectify the conduct complained of, whatever the value of that rectification.

In addition, the financial service provider can be directed to make a compensatory payment to a complainant, up to a maximum of €500,000, or in the case of annuities, up to €52,000 per annum.



During 2023, the Ombudsman issued 296 legally binding decisions, which included the following outcomes:

- A combined value of compensation directed in 55 legally binding decisions where the complaint was upheld, substantially upheld or partially upheld, was €321,330.
- A further €175,543 in redress from providers, noted by the FSPO as available for acceptance by complainants, across 33 complaints. This resulted in the complaints in those legally binding decisions not being upheld, because the offer in question was reasonable and adequate to redress the conduct giving rise to the complaint, and no formal direction by the Ombudsman was required.
- An additional € 1,271,754 was paid to complainants by providers across 114 complaints, to resolve them before a decision was issued by the Ombudsman. Often, during our investigation of a complaint, the investigation can clarify matters leading to the parties being satisfied to agree a settlement before the outcome is decided through a legally binding decision. The FSPO encourages early settlements at any time during our processes, as an early conclusion to a complaint is always appreciated by both parties.
- 12 legally binding decisions, where the Ombudsman made a direction for rectification of the conduct complained of. This may have been in addition to compensation, or instead of compensation. The financial value of a direction for rectification, whilst potentially very significant, is difficult to quantify and, on occasion, remains unknown. Examples include:
 - A direction to the provider of an accident and sickness policy, to admit the claim and make a payment of 60% of the cost to the complainant of hiring a replacement farmhand, over the seven-week period when he was unable to work (in addition to compensation of €3,000) ([Decision 2023-0061](#)).
 - A direction to the health insurance provider to admit and pay the complainants' historical claims for outpatient expenses ([Decision 2023-0173](#)).
 - A direction to the health insurance provider to admit and pay the claim for the cost of the treatment abroad ([Decision 2023-0209](#)).
 - A direction to the provider to review and correct the information filed with the Central Credit Register (in addition to paying compensation of €1,000) ([Decision 2023-0176](#)).



- A direction to the health insurance provider to re-assess the complainant's claim, to determine if the treatment was for a pre-existing condition, by examining the relevant medical records from the period of 6 months before the inception of cover (in addition to paying €3,000 in compensation) ([Decision 2023-0275](#)).

The Ombudsman publishes the legally binding decisions issued in complaints against financial service providers. The Ombudsman also publishes case studies of the legally binding decisions issued in complaints against pension providers.

To ensure transparency and ease of access to these decisions, the FSPO has an online database of the Ombudsman's legally binding decisions. This database holds the full text of the vast majority of Ombudsman's decisions in relation to complaints against financial service providers, issued by the FSPO since January 2018. These decisions have been anonymised to protect the confidentiality of the parties.

In addition to publishing the full decision in complaints against financial service providers, the Ombudsman also publishes periodic Digests of Decisions which include short summaries of a selection of those decisions and can also include additional case studies of decisions made in complaints against pension providers.

All published decisions are available at www.fspo.ie/decisions. Information on how to access decisions and how to search for topics or decisions of specific interest in the decisions database, is included on [page 96](#).

The Ombudsman must also publish the names of any financial service provider that has had at least three complaints against it upheld, substantially upheld, or partially upheld in a calendar year. Details of the providers that have had at least three complaints upheld, substantially upheld, or partially upheld during 2023 are set out on [page 95](#).

While the FSPO encourages settlements at the earliest stage, a settlement at any stage is always encouraged and welcome. During 2023, 158 complaints were settled during the formal investigation process. This number includes those which were closed as a result of an on-the-record offer by the provider and those which closed as an outside settlement.



An outside settlement occurs where, during the formal investigation process, the provider makes an undisclosed offer to the complainant which is accepted by the complainant and when the FSPO is notified, the file is closed. These closures are recorded as an outside settlement and no decision issues. The value to complainants for these settlements is unquantifiable, but nevertheless provides an agreed outcome for the complainant and the provider.

The following case studies provide examples of complaints resolved during the formal investigation process.



Investigation Services Case Studies

Investigation Services: Case Study 1

Bank settles complaint concerning excessive communications

Mary and Ann had a mortgage loan account. They opted to make manual payments to it, rather than make their monthly repayments by direct debit.

They submitted several examples of what they felt were contacts from the bank that were “not proportionate and very excessive” in the period from 2014 to 2021. In total, Mary and Ann made four complaints to the bank about excessive contact between 2014 and 2021.

In relation to one particular day in June 2021, Mary and Ann received six contacts starting at 9:34am. In a phone call to the bank the following day, Mary was told that the account was completely up to date. After this telephone call, Mary received a text message telling her that the mortgage loan account was in arrears.

Another example quoted by Mary and Ann was in July 2021, when two texts and two telephone calls from the bank were sent to Mary in relation to arrears. On the same date she was told by the bank that the account was completely up to date. She was told that the system was “automated” and that this was why the texts were sent to her.

The FSPO requested evidence from the bank that it had complied with certain provisions of the Code of Conduct on Mortgage Arrears 2013 (as amended), in particular the regulatory obligation to ensure that the level of communications with borrowers was not aggressive, intimidating or harassing. The bank was also asked to provide evidence that it had regard to the Consumer Protection Code 2012 (as amended) (“the CPC”) in relation to managing Mary and Ann’s complaints and ensuring that “the issue would not happen again.” It was also asked to explain the basis for an automated system sending arrears messages after it had been confirmed that the account was not in arrears.

The FSPO issued its Summary of Complaint to the bank to start its investigation. At this time, there was already an on-the-record offer from the bank of €2,500, which had been rejected by Mary and Ann. Before issuing its formal response to the Summary of Complaint, the bank offered Mary and Ann an enhanced settlement offer of €5,000 in full and final settlement of all issues referred to in the complaint. In the bank’s offer it accepted that there were some service issues and it was making the offer in the spirit of resolution. Mary and Ann accepted this offer, and the complaint was resolved on that basis.



Investigation Services: Case Study 2

Victim of fraud requests chargeback from bank

Diana decided to make some investments. Between October and November 2020, she transferred a total of €2,720 to an online trading platform, using her bank debit card. She said the money was then transferred from the online trading platform to a fraudulent investment company.

In February 2021, Diana contacted her bank to tell it she had been a victim of a fraudulent scam and asked it to return her money by starting a chargeback process.

A chargeback is a way in which a card issuer can sometimes reverse a payment made by card to the seller/supplier, when the customer wants to challenge the payment for some reason. There are strict rules and timelines for the process.

As Diana did not get her money back, she lodged a complaint with the bank. In July 2021, the bank responded to her complaint with a final response letter. It let her know, that the online trading platform was the beneficiary of the transaction she made using her debit card, and she had not made any payment to the investment company. Therefore, a chargeback to get her money back from the investment company was not possible.

The bank let Diana know that if she felt she was a victim of fraud she could report it to An Garda Síochána. It also explained that it had acted on Diana's instructions and that was the reason it would not refund her.

Diana believed the bank failed in its duty of care to protect her from such fraudulent scams. She felt the chargeback process should have been started to settle this dispute. As a result, Diana made a complaint to the FSPO relating to the bank's failure to protect her account from such activity and its failure to return the money she had lost.

The complaint was not resolved in mediation, so the FSPO began a formal investigation, by sending a Summary of Complaint to the bank. The bank responded and although the bank still held Diana liable for the transactions, it noted some service issues with the handling of her complaint. The bank noted that Diana had been credited €1721.23 by the online trading company and offered to refund Diana an additional €1,720 as a gesture of goodwill. Diana accepted the bank's offer in full and final settlement and the complaint was resolved on that basis.



Investigation Services: Case Study 3

Bank fails to notify customer of card block in a timely manner

On 11 July 2021 Gerard used his credit card to buy goods online. Gerard did not know that the card payment had been blocked by his bank.

On the 18 July 2021 he used his card again to buy goods online. This time the payment was declined. He believed the declined payment to be a fault with either the third-party vendor or the payment service provider. This led to several exchanges between himself and these firms to find out what went wrong. While trying to sort out the issue, he was annoyed and embarrassed to be told by the payment service provider that the card had been blocked by his bank on 11 July 2021.

Gerard contacted his bank who told him that the first transaction on 11 July 2021 had been blocked due to suspected fraud. The bank tried to call his mobile phone and landline number but was unable to contact him. It also sent a letter, which did not arrive to his address until two weeks later.

Gerard submitted a complaint to his bank and it apologised, explaining that his contact phone numbers had been incorrectly recorded on its records. It offered a €100 'gesture of good will', saying that this would be credited to his account. This gesture was not credited to his account.

On 26 April 2022, Gerard experienced a similar event with his bank, when it blocked his second credit card. He was unaware of the bank's actions until he received a letter on 8 May, alerting him to possible fraudulent activity on the account.

He contacted his bank again to complain that he was not contacted on the day the card was blocked and was only informed 12 days later by an automated letter. The bank said it had tried to call Gerard on 26 April 2022, but it was unsuccessful and although it apologised, it did not agree that it had made any errors in its security checks and claimed it had followed its own contact procedures.

Gerard was not happy with this response and made a complaint to the FSPO. His complaint file was sent for formal investigation and a Summary of the Complaint issued to his bank.



On receipt of contact from the FSPO the bank reviewed Gerard's accounts. It confirmed that it had noted his mobile and landline telephone numbers incorrectly on its records, and although when Gerard first complained, it realised the error and updated the first account details, it did not correct his second account's details. His bank also discovered that it had not credited Gerard's account with €100 as promised in July 2021.

The bank apologised for its lapses in service and offered €6,000 in settlement of Gerard's complaint. Gerard accepted this offer and his complaint was resolved on that basis.

Investigation Services: Case Study 4

Loss in value of pension after transfer

Mark contacted his investment advisor to transfer the value of his existing pension plan to another pension plan held with another provider. When he made the request, he took note of the value of his existing pension plan on the dashboard of his online pension portal.

Mark said that it took some time for the transfer to take place because the investment company delayed in executing his request to transfer funds to the new pension plan. He said the value of his existing pension plan had fallen by the date of the ultimate transfer, and was far lower than on the date when he had checked the online portal and first made the request. Mark said the delays resulted in a loss in value to his pension.

During the investigation of the complaint, the FSPO issued its Summary of Complaint and sought information in relation to the delay in executing Mark's transfer request. Following receipt of the Summary of Complaint the investment company conducted a review of the events that led to Mark's complaint. It acknowledged that the process of requesting a transfer from the existing pension plan to the new the pension plan was not as clear as it could have been. The investment company offered an amount, in full and final settlement of the complaint, which represented the difference between the first estimated transfer value shown to Mark on the online portal and the amount ultimately transferred to the new plan. Mark accepted this offer, and the complaint was closed.



Investigation Services: Case Study 5

Customer transfers €10,000 to fraudulent third-party

Carmel said she fell victim to a scam and transferred a total of €10,000 to a fraudulent third-party. The transactions to the third party were conducted by way of an online bank transfer. Carmel said that the funds were transferred through means of coercion and under false pretences.

Carmel considered that if the bank had looked at the wider circumstances of the disputed transactions, it would have prevented the transfer. Carmel argued that the bank had reasonable grounds to suspect that the transaction was fraudulent, and it should not have carried out the payment instruction, until it got further information.

The bank's position was that Carmel had initiated an online bank transfer to the third party and she had verified the payment request through the required verification codes.

The bank stated that because of the large monetary amount of the transaction, its fraud team had contacted Carmel by telephone to confirm that she had authorised the transaction. The bank said that Carmel hung up and that a re-attempt to contact Carmel was also unsuccessful.

In the bank's final response letter to Carmel, it had stated: "At the time that you made these transfers they did not alert." However, when submitting its response to the complaint to this office, the bank accepted that the transfer did trigger an initial alert, resulting in the telephone call to Carmel.

While noting it maintained its position that it correctly monitored the transaction, the bank made a goodwill gesture of €1,000 in respect of the misinformation furnished in its letter to Carmel, and she accepted the goodwill gesture and the complaint was resolved on that basis.



Investigation Services: Case Study 6

Customer experiences poor customer service from bank following scam

Marie had a current account with a bank. Marie explained she was the victim of a scam, which was carried out by fraudsters claiming to be from the Department of Social Protection and An Garda Síochána. Marie was informed by the fraudsters that someone had stolen her identity and that this person was suspected of money laundering. Marie was then told that as a result, she was suspected of a serious crime and could not leave Ireland.

Marie said that the scammers impersonated the Department of Social Protection and transferred her call to a supposed Garda station on a few occasions. Marie said that the fraudsters made her believe the money laundering accounts were linked to her bank account, and she was in danger. She explained they manipulated her into transferring all her savings to another 'safe' account.

Marie's complaint to the FSPO was that the bank's agent assisted her to transfer €17,000 to a foreign bank account and only asked a limited number of security questions, failing to anticipate or prevent her from transferring her money to a fraudster. She said the bank cancelled her credit card and set up another card, without her consent. Marie stated that she was also given poor customer service and the bank demonstrated inadequate complaints handling. Lastly, Marie did not receive the €150 compensation offered to her by the bank, when she complained.

The FSPO issued a Summary of Complaint to the bank to start the investigation. In response, the bank acknowledged that it could have actioned the recall request on the day that it was received instead of the next working day. While the bank stated it operated within the timeframe set out in the Payment Investigations Team's Service Level Agreement, it acknowledged any perceived delay in recalling the money.

The bank accepted that it delayed in informing Marie about the outcome of the recall request, which should have happened as soon as the bank was notified of it, and it noted the additional stress experienced by Marie as a result.

The bank also acknowledged the inconvenience caused to Marie as a result of its error in ordering her a new debit card when she had not requested one. Additionally, the bank admitted its failure to credit Marie's account with the €150 offered in respect of this error.



The bank accepted that the information imparted to Marie regarding the status of the fraud investigation would have been confusing. In particular, the bank noted that the uncertainty regarding “whether the investigation [was] now closed” (as conveyed to Marie), would have had the unfortunate and unintended effect of prolonging Marie’s stress and anxiety around the investigation and the bank stated it sincerely regretted this. It also regretted that it did not have any record of a follow up contact being made with Marie in response to her initial contact.

While the bank strongly emphasised that the above errors represented lapses in its customer service rather than errors that caused Marie’s loss, it acknowledged it fell far short of the high standard of customer service to which it holds itself. The bank concluded that as an acknowledgement of its regret, and as a gesture of goodwill, it was making an offer to Marie of €4,000 in full and final settlement of the complaint. Marie accepted this settlement offer and the complaint was closed.

Investigation Services: Case Study 7

Customer complains of losing €41,000 to fraud

Olive held a savings account and credit card with her bank. Olive said she was a victim of fraud. Olive stated she believed she was signing up to an online trading platform to buy shares in a well-known company.

Olive said the first contact was made by the trading platform in early 2021, via a pop-up advertisement in which she was invited to buy shares to “earn a regular side income.” Olive stated that once she registered her interest, she immediately received a telephone call. On this telephone call she was advised that “investing €500 would increase [her] monthly income”.

Olive said that she was also told that she would have to take no further steps and that everything would be done on her behalf by the online trading platform. Olive stated that she “was happy with that because [she] had no experience of dealing with stock and shares.” Olive explained however, that this was untrue. Olive placed €500 with the trading platform and received another call from an adviser who told her that once her paperwork was submitted, she could begin trading. Olive stated that she “was happy with that because [she] had no experience of dealing with stock and shares.” Olive explained however, that this was untrue.



Olive placed €500 with the trading platform and received another call from an adviser who told her that once her paperwork was submitted, she could begin trading.

Olive later placed €10,000 from her savings account into her account with trading platform. Olive's account with the trading platform registered a €108 profit two days later and Olive lodged this profit back into her own bank account. Olive subsequently made further large payments to the account on the advice of the trading platform's representative over the telephone.

Olive explained that she could see her investments rising and falling on the online trading platform, but she proceeded to lose almost all of her money.

Olive contacted her bank to report a fraud and then submitted a complaint. Olive stated that her attempted transactions using another credit card were stopped by the bank. Olive questioned why the bank did not apply this same level of due diligence to her first card.

Olive argued that her bank failed to anticipate, prevent or notify her of the fraudulent nature of the company that she was transferring funds to. Olive estimated her overall loss as €41,000.

The bank's position was that the transactions were completed by Olive using her card details and a valid password which was delivered to her by text. The bank states that Olive agreed to its terms and conditions, that unless she advised the bank in advance that the card or password details were lost, stolen or in the possession of someone else, then, when the card was used with the password to make a transaction, the bank could conclude that the transaction was made by her.

That said, the bank acknowledged some customer service issues. The bank also accepted it did not notify Olive of the information it received in response from the merchant when the bank emailed the merchant about the transactions in dispute. The bank made an offer of €1,000 in full and final settlement of the complaint. Olive accepted this offer, and the complaint was closed.



Investigation Services: Case Study 8

Customer credited €5,000 due to bank's failings in dealing with fraudulent transactions

Eugene was travelling on a cruise ship outside of the EU. On the first day of the holiday his phone was hacked, and an electronic card payment app was activated on his bank account. The bank tried to contact him by text on this date.

Eugene was unaware of this, until he received a text message from his bank a few days into his trip, alerting him to potentially fraudulent transactions on his credit card account. Access to his bank account on his mobile phone was difficult as the available wi-fi was unreliable at times, as the ship travelled at sea.

Eugene managed to call his bank a few days into the holiday and was asked if certain transactions relating to booking a hotel and car rental payments were his. He confirmed that these payments sounded authentic, but advised his bank that he could not access his full account online, due to where he was at the time. The bank proceeded to release the card block on his account.

It was not until later that evening when the ship was in port, that he saw the full list of unauthorised transactions. He immediately rang the bank and could see numerous charges to his credit card which he did not recognise. The bank placed a second stop on the account and told him that he should see the amounts being credited back to him within 7 days.

When Eugene arrived home, he received notification from the bank that it was declining any chargebacks for fraudulent transactions. Eugene was advised to report it to the Gardaí, which he did, but he was not happy with his bank's response. He felt that the nature of the transactions, one after another, were suspicious and that the bank should have stopped the card without delay, as they had been initially unable to contact him while he was travelling.

Eugene submitted a complaint to the FSPO. The complaint was not resolved in mediation and the FSPO issued a Summary of the Complaint to the bank and it was asked to respond within 4 weeks. The bank reviewed Eugene's complaint and decided that its agent, who first spoke with Eugene on the ship, could have acted 'more appropriately' and potentially prevented the additional number of transactions being applied to his account. The bank offered to reimburse Eugene's credit card account by the amount of money lost, totalling almost €5,000. Eugene accepted this offer and the complaint was resolved on that basis.



Investigation Services: Case Study 9

Customer's car insurance cancelled in error

Bernard held a car insurance policy with an insurance company. He received a notification from the insurance company to say his direct debit had not gone through and his policy had fallen into arrears. Bernard was an existing customer of the insurance company and had recently renewed his policy. He had always paid for his policy by direct debit and his banking details had not changed.

He contacted the insurance company and confirmed the correct bank details were on file and he was told 'not to worry' as the direct debit would be taken the following month. However, Bernard received a letter from the insurance company stating that his policy was going to be cancelled and the Gardaí would be notified that he would be driving without valid insurance.

Bernard was very upset at the content of the letter as the error was on the part of the insurance company and he had previously contacted them to ensure the correct bank details were on file with them for the monthly direct debits. In its final response letter, the insurance company offered Bernard a customer service award of €100 for the service experienced.

Bernard complained to the FSPO. The complaint was not resolved in mediation and the FSPO commenced a formal investigation, issuing its formal Summary of Complaint. The insurance company responded to this with an increased settlement offer of €500. Bernard accepted this offer and the complaint was resolved on that basis.



Investigation Services: Case Study 10

Insurance company declines claim for criminal damage to trucks

Brian held an insurance policy covering several trucks. In October 2021, three of these trucks were parked in a warehouse yard, having been prepared for use earlier in the day, when unknown persons entered the yard and set fire to them.

The trucks in question were considered a total loss due to the damage and with the assistance of a legal representative, Brian made a claim on his insurance policy.

The insurance company declined the claim as it was its belief that Brian breached the policy's warranties by having the trucks parked in the secured yard of the warehouse, rather than inside the physical warehouse itself.

Brian commented that this position was not reasonable, because the trucks were still held in a secured area and the criminal act that damaged the truck was not, in his view, a foreseeable event.

Brian made a complaint to the FSPO in March 2022 about the insurance company's decision on his claim. The complaint was not resolved in mediation and the FSPO issued a Summary of Complaint to the insurance company, which responded to the points raised and engaged with Brian regarding his outstanding queries.

After some communication between the parties, facilitated by the FSPO, the insurance company reached out to Brian and they came to an acceptable settlement on a confidential and final basis. The complaint was closed.



Investigation Services: Case Study 11

Customer discovers he has poor credit rating on the Central Credit Register

In 2020, when seeking credit from several institutions, Charles discovered he had a poor credit rating on the Central Credit Register (CCR), which he was surprised by, having previously had a good credit rating.

On investigation, Charles discovered a bank he had held a corporate account with previously, had reported this account to the CCR. However, Charles maintained that because this was a corporate account, it was not personal debt and should not have been reported as such. Charles also noted that the company this card was attached to had been liquidated some time earlier and the debt written off as a bad debt and then repaid in full.

When trying to engage with the bank regarding the issue Charles found it difficult to achieve any resolution and eventually felt that he had no option but to refer the matter to the FSPO. The complaint was not resolved in mediation and the FSPO issued a Summary of Complaint to the bank in July 2023.

In response, the bank acknowledged that its communication regarding the reporting of debt to the CCR fell short of its standards, although it maintained the reporting itself was in line with the regulatory codes under which it must act. In its communication to Charles, the bank was not clear that it had actually reported the issues with the account to the CCR.

The bank made an offer of €10,000 to Charles in full and final settlement of the complaint, which he accepted and the complaint was resolved on that basis.



Legal Services

182 complaints closed

The functions and powers of the Ombudsman, and the limits of those functions and powers, are prescribed by the Financial Services and Pensions Ombudsman Act 2017, as amended (the FSPO Act). When a complaint is received, it is initially assessed to confirm that it is eligible for the statutory jurisdiction of this Office.

Not every complaint is eligible for investigation by the FSPO and therefore the assessment of a complaint's eligibility takes place at the earliest possible stage. When a complaint is received, the Registry and Assessment team of the Customer Operations and Information Management Division (COIM) reviews and assesses it. This may include determining whether the conduct complained of falls within the statutory time limits, checking that consent has been made available by all of the product owners, or we may need to check if a financial service provider is regulated. Further information on this process is outlined on [page 43](#) for Registry and Assessment.

This Office must ensure that we do not act outside of our statutory remit, and we must remain alert to the possibility of eligibility issues arising at any point during our complaint investigation processes. In some instances, eligibility issues may not be immediately apparent when the complaint is received, and such issues may come to light during the dispute resolution process or the formal investigation process.

Where an issue arises, which requires a more detailed legal assessment, the matter is referred to the Legal Services team for a formal jurisdictional assessment, to determine whether the complaint, or certain elements of the complaint, can proceed to investigation.

The FSPO makes every effort to assist the parties in understanding the extent and limits of the Ombudsman's statutory jurisdiction, being mindful that the legislation contains some provisions which are complex. The parties to the complaint are invited to offer their comments and to submit all relevant details during this assessment process, before the FSPO's final determination on jurisdiction is ultimately confirmed to the parties.



The following case studies from 2023 provide examples of the types of jurisdictional issues which can arise. In some instances, it was determined by the FSPO that the complaint could not be progressed, because it did not come within the Ombudsman’s statutory remit, and therefore the complaint file was closed. In other instances, some or all elements of the complaint were determined to be eligible for progression by way of a dispute resolution, to explore whether a mediated settlement could be achieved, or by way of a formal investigation of the merits of the complaint, leading to a legally binding decision.

The first two cases studies concern loan accounts which were sold by the customer’s bank to a “non-bank” owner. Prior to 2015, such entities were not regulated providers and, accordingly were outside of the jurisdiction of the FSPO. In July 2015, the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 introduced a new credit servicing framework to enhance the protections available to consumers in such circumstances. The framework provided that many activities in respect of such loans could only be carried out by regulated entities. The framework introduced in 2015 did not provide that the loan owner needed to be regulated. From that time, a number of complaints (estimated at less than 50) fell outside the jurisdiction of the FSPO, until January 2019, when the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018, deemed non-bank loan owners to be regulated, thereby ensuring that every element of a customer’s complaint became eligible for the jurisdiction of the FSPO. There has been some discussion in respect of this matter in the context of the Financial Services and Pensions Ombudsman Bill 2023, and this Office will continue to engage with the Minister and the Department of Finance as appropriate.



Legal Services Case Studies

Legal Services: Case Study 1

Complaint regarding a credit servicing firm and a Special Purpose Vehicle loan owner, where only part of the complaint could progress.

Jerry took out a commercial loan with a bank. The loan fell into arrears, and Jerry's bank sold the loan to a non-bank entity known as a Special Purpose Vehicle. As the Special Purpose Vehicle was not regulated by the Central Bank of Ireland, it was legally obliged to appoint a credit servicing firm to manage the day-to-day operations of the loan, and it did so.

Jerry became dissatisfied by the way in which the credit servicing firm managed his loan account between 2017 and 2018. He made a complaint to the FSPO, that the credit servicing firm:

1. delivered poor customer service to him, and,
2. unfairly hindered his efforts to sell the property securing the loan, by taking an excessive amount of time to consider the offer he had received from a potential buyer.

Bearing in mind that:

- The FSPO can only investigate the conduct of a regulated financial service provider as defined by the FSPO Act.
- The Consumer Protection (Regulation of Credit Servicing Firms) Act 2015, in defining "credit servicing" specifically excludes the "maintenance of control over key decisions" in relation to a portfolio of credit agreements.

Therefore, the FSPO can investigate the first element of the complaint, because the credit servicing firm was regulated by the Central Bank of Ireland, and the conduct that is the subject of the complaint is that firm's suggested customer service failings to Jerry.

The FSPO cannot however investigate the second element of the complaint because the conduct at the heart of the complaint is the delay by the loan owner in making a "key decision" regarding the approval of a potential sale of the property. At the relevant time in 2017/2018, that loan owner was not a regulated financial service provider, and therefore this element of the complaint falls outside the FSPO's remit.



Legal Services: Case Study 2

Complaint regarding a credit servicing firm and a Special Purpose Vehicle loan owner where a separate complaint could progress against each regulated financial service provider.

Tammy entered into three loan agreements with her bank to purchase buy to let properties. In August 2018 ownership of these loans was transferred to a Special Purpose Vehicle, at which point a credit servicing firm began servicing the loans on its behalf.

Tammy made a complaint to the FSPO that in June 2019, the Special Purpose Vehicle had wrongfully appointed a receiver to sell the properties securing the loans. Tammy also complained that she had received poor customer service throughout the period when the Special Purpose Vehicle owned the loans.

The conduct complained of, spans the period when changes were made to the credit servicing regime in Ireland, by the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 and the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018.

The credit servicing firm was regulated by the Central Bank of Ireland, during the period of the conduct complained of. However, the Special Purpose Vehicle only obtained transitional authorisation during the final months before the receiver was appointed.

Consequently, the complaint in relation to customer service failings can be maintained against the credit servicing firm, for conduct which occurred before the Special Purpose Vehicle obtained its transitional authorisation.

Once the Special Purpose Vehicle became regulated by the Central Bank of Ireland, it became responsible to Tammy for any customer service issues from that date, even if it delivered that customer service through the agency of another provider.



This is because, since the commencement of the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 a loan owner is responsible for the conduct of credit servicing firms, acting on its behalf.

Consequently, two separate FSPO complaints can proceed to investigation:

1. a complaint investigation against the credit servicing firm for the suggested customer service failings, in the period before the new loan owner became a regulated entity, and
2. a complaint investigation against the Special Purpose Vehicle for suggested customer service failings after it obtained its transitional authorisation, and also for the suggested wrongful appointment of the receiver in June 2019, at a time when it was regulated by the Central Bank.

Legal Services: Case Study 3

Complaint not made within the time limits.

Mary entered into a commercial loan with the bank in 2008. As she encountered difficulties with the repayment of the loan, the bank took possession of the property securing the loan, and sold it in 2011, and the loan account was cleared and closed.

In 2021, after a meeting with her accountant, during which she reviewed the loan paperwork, Mary made a complaint to the FSPO that the bank had not followed the required procedures some ten years earlier, when taking possession of the secured property.

The FSPO examined whether the complaint about the bank taking possession of the property in 2011, had been made within the time limits set out in section 51 of the FSPO Act. Because the repayment term for the loan had been agreed for a period of 2 years, the loan did not fulfil the criteria to fall within the definition of a “long-term financial service” within the meaning of the FSPO’s governing legislation, which requires a financial service or product to have a duration of at least 5 years and 1 month.



As the loan was not a “long-term financial service”, any complaint had to be made within a period of six years from the date of the conduct complained of. The FSPO noted that the date of the conduct complained of was in 2011, and because the complaint was not received by the FSPO until 2021, some ten years later, the complaint did not fall within the legislative time limit, set out at section 51 of the FSPO Act.

As the complaint had not been made within the time limits which apply to complaints to the FSPO, no complaint investigation could proceed, and the file was closed.

Legal Services: Case Study 4

Elements of complaint about the conduct of a receiver outside the jurisdiction of the FSPO

Seán took out a loan with his bank in 2010. Seán experienced difficulties in meeting the loan repayments and, in 2018, the bank appointed a receiver to the property securing the loan.

Seán made a complaint to the FSPO about the conduct of the bank. He submitted that the bank had miscalculated arrears on his account, that it had wrongfully appointed the receiver, and that the receiver has sold the property, for less than its market value.

The FSPO noted that, while Sean’s complaints in relation to the actions of the bank in 2018 could be investigated, the FSPO could not examine the conduct of the receiver.

A receiver is not a regulated financial service provider as defined by the FSPO’s governing legislation and therefore the FSPO could not investigate the receiver’s conduct. Similarly, the FSPO could not examine the complaint against the bank about the conduct of the receiver appointed by that bank, because, in the normal course, under a Deed of Mortgage/Charge, a receiver is the agent of the mortgagor (i.e. the agent of the borrower/s).

As a result, the FSPO concluded that it could not investigate the complaint that the receiver has sold the property for less than its market value. The FSPO confirmed however, that it could investigate the complaint that the bank had miscalculated arrears on Seán’s account, and his complaint that it had wrongfully appointed the receiver.



Legal Services: Case Study 5

Complaint was the subject of legal proceedings and could not be investigated by the FSPO without an order from the court, under s49 of the FSPO Act, to stay those legal proceedings.

Michael and Mairéad jointly took out a mortgage loan with a bank in 2004 to purchase a property. As they could not keep up with the repayments, in 2015, the bank repossessed Michael and Mairéad's property.

In 2018, the bank wrote to Michael and Mairéad to inform them that, following the Tracker Mortgage Examination process directed by the Central Bank of Ireland, it had discovered that it had applied the wrong interest rate to their mortgage loan. It enclosed a cheque for €35,000, representing its redress and compensation to Michael and Mairéad.

As they were dissatisfied with the bank's redress, Michael and Mairéad issued legal proceedings against the bank in 2020, seeking damages for breach of duty. Subsequently, in 2021, Michael and Mairéad also made a complaint to the FSPO, in relation to the bank's failure to offer an appropriate level of compensation for its error when applying the interest rate to their mortgage loan.

The FSPO noted that the matters that Michael and Mairéad raised in their complaint to the FSPO, were the very same matters that had been pleaded to the Court as part of their legal proceedings against the bank. Consequently, the FSPO concluded that their complaint fell outside the jurisdiction of the FSPO, and it would not be possible to progress their complaint by way of formal investigation, because the subject matter of their complaint had been the subject of legal proceedings pursuant to sections 44(2)(a)(i) and 50(3)(b) of the FSPO Act.

The FSPO explained that, without a Court order to formally stay the proceedings, pursuant to section 49 of the FSPO Act, the Ombudsman could not proceed with an investigation of the complaint. Because Michael and Mairéad did not secure such an order from the court, the investigation could not proceed, and the complaint file was closed.

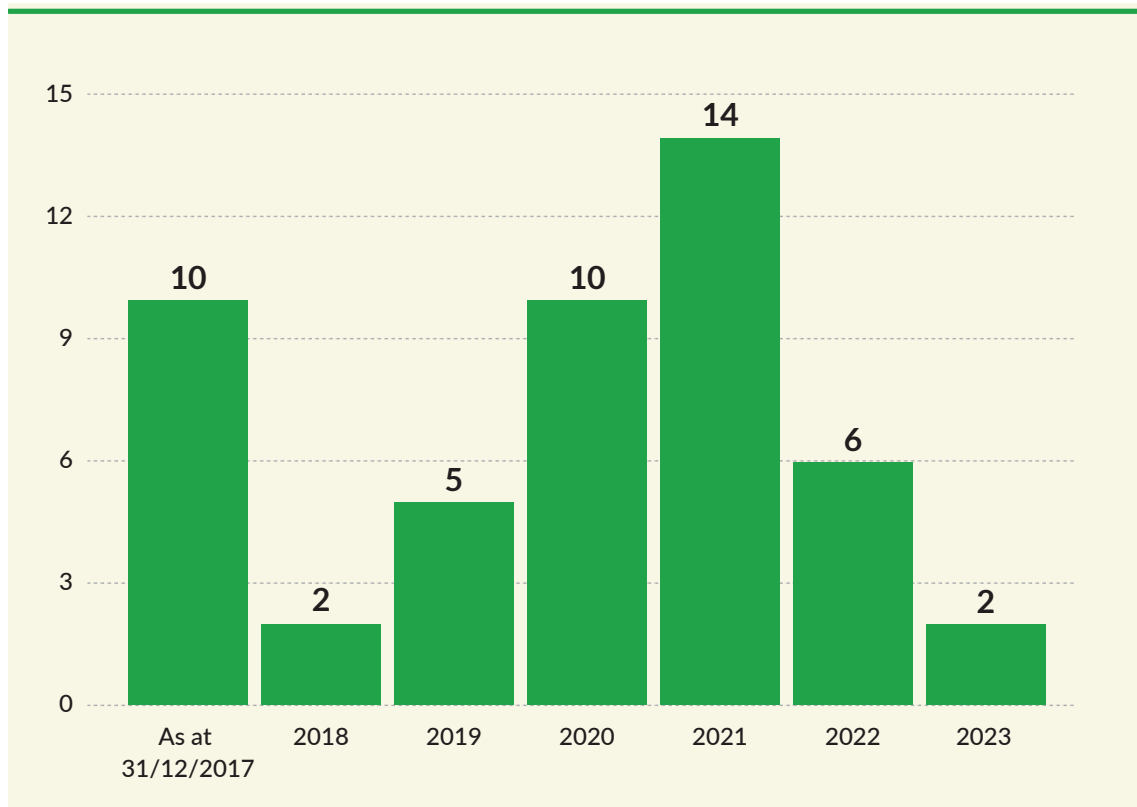


Active Statutory Appeals and Judicial Reviews

At the conclusion of a formal investigation of the merits of a complaint, a decision is issued to the parties, by the FSPO. Although the Ombudsman’s decision on the merits of the complaint, is legally binding on the parties, it is open to the complainant or the provider to pursue a statutory appeal to the High Court, to challenge that legally binding decision. A statutory appeal can proceed in accordance with the provisions of Section 64 of the Financial Services and Pensions Ombudsman Act 2017. Similarly, a complainant or a provider may seek a judicial review of the FSPO’s jurisdictional determinations which are made regarding the eligibility of complaints.

Since the FSPO came into being on 1 January 2018, there have been several such challenges as outlined below:

Fig. 6.8 Volume of statutory appeals and judicial reviews involving the FSPO 2018-2023



The **[list of active statutory appeals](#)**, court applications and judicial reviews to which the FSPO is a party, is available and kept up to date on the FSPO website.

The following is a list of statutory appeals, court applications and judicial reviews to which the FSPO was a party, as at 31 December 2023.



Fig. 6.9 Active statutory appeals and judicial reviews as at 31 December 2023

Court	Court Record Number	Title of proceedings
Court of Appeal	2014 996	Carr v The Financial Services Ombudsman
High Court	2020/49 MCA	Utmost Pan Europe DAC -v- Financial Services & Pensions Ombudsman
High Court	2021/304 MCA	Permanent TSB PLC -v- Financial Services & Pensions Ombudsman
High Court	2022/17 MCA	Permanent TSB PLC -v- The Financial Services & Pensions Ombudsman
High Court	2022/19 MCA	Ryan & Anor -v- The Financial Services & Pensions Ombudsman
Court of Appeal	2023/256	Ulster Bank Ireland DAC -v- The Financial Services & Pensions Ombudsman
High Court	2023/768 JR	Lawn & Anor -v- The Financial Services & Pensions Ombudsman

During 2023, some notable litigation developments included:

- Nine judgments/determinations delivered in substantive matters and costs/ final orders. There were seven High Court judgments, one Court of Appeal judgment and one Supreme Court determination, eight of which can be accessed under [Court Judgments](#) on the FSPO website. (One ex tempore High Court judgment has yet to be published by the Courts).
- Seven statutory appeals and related matters were concluded by way of High Court judgment, as follows:
 - [Chubb European Group S.E. -v- The Financial Services & Pensions Ombudsman \[2023\] IEHC 74.](#)
 - [Friel -v- The Financial Services & Pensions Ombudsman \(ex temp judgment\).](#)
 - [KBC Ireland PLC. -v- The Financial Services & Pensions Ombudsman & Anor \[2023\] IEHC 234.](#)



- **Ulster Bank Ireland DAC -v- The Financial Services & Pensions Ombudsman [2023] IEHC 350.** (Four High Court matters heard together by the Court and the subject of a single judgment)
- One judicial review was concluded by way of High Court judgment: **Donnelly -v- The Financial Services and Pensions Ombudsman [2023] IEHC 228.** The application for leave to judicially review the FSPO was granted in May 2023, and the ex-tempore judgment on the substantive judicial review, was delivered in October 2023. The ex-tempore judgment has not yet been published and will appear on the FSPO's website as soon as it is available for publication. The judgment relating to the leave application is available at the link above.
- Two appeals were concluded by way of agreement to quash the FSPO's legally binding decisions and for those decisions to be remitted to the FSPO, for a fresh adjudication.
- Two High Court litigation matters were initiated during 2023, as follows:
 - One statutory appeal was initiated by a complainant. This appeal was subsequently withdrawn by the appellant/complainant.
 - One application for judicial review of a jurisdictional determination of the FSPO was commenced by a complainant.
- One appeal was initiated to the Court of Appeal, by Ulster Bank. In respect of the same matter, Ulster Bank sought leave from the Supreme Court to appeal directly from the High Court. The Supreme Court refused this application. The Court of Appeal matter remained live as of 31 December 2023 and the **Determination in the Supreme Court** matter is available on the FSPO's website.
- One Court of Appeal matter, originally initiated in the High Court in 2013, was re-listed by the Court and assigned a hearing date of 21 March 2023, having previously been adjourned generally by the court in 2022, with liberty to re-enter.
- One Court of Appeal judgment was delivered, in **Lloyds Insurance Company S.A. -v- The Financial Services and Pensions Ombudsman [2023] IECA 122.**
- As of 31 December 2023, two Court of Appeal matters, and three High Court matters had been assigned hearing dates in 2024.



During 2023, as outlined in the table below, the overall number of active statutory appeals and judicial reviews reduced from a total of fifteen matters, to seven, including two new High Court matters initiated during the calendar year.

Fig. 6.10 FSPO litigation developments during 2023

	High Court	Court of Appeal	Running Total
Active as at 1 Jan 2023	14	1	15
Initiated during 2023	2	1	18
Re-entered during 2023	0	1	19
Withdrawn during 2023	1	0	18
Remitted to FSPO by consent during 2023	2	0	16
Judgment delivered during 2023	8	1	7
Position as of 31 December 2023	5	2	7



In any litigation, the FSPO in all appropriate cases, seeks recovery of its legal costs by applying to the Court for an order for costs against the appropriate parties to the litigation.

The [Court Judgments](#) page on the FSPO website includes copies of the judgments delivered by the Courts in the statutory appeals and judicial reviews to which it is a party. Summaries of certain notable Court judgments are also included below:

Judgment 1: A High Court challenge to the FSPO's decision to uphold a complaint on the grounds that the provider's conduct was unreasonable, unjust, and improper in refusing to remediate the damage claimed for under the complainants' insurance policy.

Lloyd's Insurance Company SA -v- The Financial Services and Pensions Ombudsman [2022] IEHC 290; [2023] IECA 122

Judgment delivered on 19 May 2022 (High Court):

Judgment delivered on 22 May 2023 (Court of Appeal):

The complaint made to the FSPO was that the provider had wrongfully declined an indemnity to the complainants for structural defects to their house. In July 2020, the FSPO issued a legally binding decision upholding the complainants' complaint on the grounds that the conduct of the provider was unreasonable, unjust and improper. The FSPO relied on the grounds in s.60(2)(b), (c) & (g) of the Act. The FSPO directed the provider to remediate the damage from which the complaint had arisen and directed the provider to pay compensation of €20,000 to the complainants.

High Court

The provider appealed to the High Court and submitted that the Ombudsman had fallen into serious and significant error in directing the provider to indemnify the complainants, where there was no breach of contract in the provider's declination of the complainants' claim. Further, the provider contended that the Ombudsman, in making findings pursuant to s.60(2) and specifically directing relief on the basis that the conduct complained of was in accordance with law but nonetheless unreasonable, unjust and improper conduct, had exceeded his jurisdiction by treating a refusal of indemnity - which was permitted under the terms of the policy - as unjust or unreasonable or improper.



Lastly, the provider challenged the entitlement to compensation and the quantum of the compensation directed, saying that it was disproportionate to any inconvenience suffered by the complainants.

In delivering judgment, the High Court noted that there is a high threshold to be met for the Court to intervene to set aside decisions of the Ombudsman. The Court was of the view that it should only intervene where the Court was satisfied that the decision reached was vitiated by a serious and significant error. The Court also stated that, in respect of the decision made by the Ombudsman, it was required to be satisfied that the Ombudsman had not erred in law, in identifying the statutory parameters of his jurisdiction under s. 60(2) of the Act, so as to deprive himself of jurisdiction.

The Court found that the provider fell short of establishing a serious and significant error to vitiate the Ombudsman's decision. Further, the Court found that there was evidence before the Ombudsman that he was entitled to rely on, to arrive at the decision reached as to the cause of damage.

In respect of the Ombudsman's decision to rely on s. 60(2)(b), (c) & (g) of the Act, the Court found that the FSPO had failed to properly have regard to the different circumstances in which its jurisdiction under those sub-sections arose.

The sub sections provide that:

“(b) the conduct complained of was unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;

(c) although the conduct complained of was in accordance with a law or an established practice or regulatory standard, the law, practice or standard is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;

...

(g) the conduct complained of was otherwise improper”

The Court held the Ombudsman was entitled to rely on s. 60(2)(b) and (g) in making the decision as it flowed from the terms of the decision that the Ombudsman considered the conduct unreasonable and unjust (S.60(2)(b)) and also that the provider's delays and refusal of cover were considered improper (S.60(2)(g)).



The Court also held that s.60(2)(c) should not have been relied upon by the Ombudsman in arriving at the decision. In order to rely on s.60(2)(c), the Ombudsman's decision would have to have included a finding that there was no breach by the provider of a legal requirement of the contract. In this complaint, the Ombudsman found that the provider's conduct, in declining cover, was not in accordance with the terms of the policy. The Court found that where it is quite clear from the terms of the Ombudsman's decision that it found that the damage was covered under the policy of insurance on a proper interpretation of the policy, it follows that the Ombudsman improperly relied on a jurisdiction under s. 60(2)(c).

However, the Court further held that where a proper jurisdictional basis for the Ombudsman's decision exists and has otherwise been identified, an error in incorrectly identifying a further jurisdictional basis, is not a material error because the complaint was properly upheld on other grounds i.e. (s.60(2)(b) and (g)).

In respect of the compensation directed, the Court noted the wide discretion the Ombudsman enjoys, and it held that the provider had not demonstrated that that the Ombudsman fell into serious and significant error in the level of compensation directed.

Court of Appeal

The provider appealed to the Court of Appeal and submitted that the High Court had erred in upholding the decision of the FSPO on foot of contradictory findings, on the one hand, per s. 60(2)(b) and (g) that the appellant was in breach of policy in not providing cover, and on the other, a finding that the appellant acted in accordance with law for the purposes of s.60(2)(c). The Court noted that the argument the provider had relied on in the High Court, was that all of the other grounds available to the Ombudsman under s.60(2) were precluded, by the reliance or invocation of the Ombudsman of s.60(2)(c).

The Court of Appeal held that the High Court could not have upheld the decision of the FSPO on contradictory findings in circumstances, where in fact, it upheld the Ombudsman's decision on two of the three grounds invoked by the Ombudsman (s.60(2)(b) and (g)). The Court of Appeal dismissed the appeal.



Judgment 2: A High Court challenge to the FSPO's decision to uphold a complaint on the grounds that the provider's conduct breached provisions of the Consumer Protection Code (CPC), was contrary to law, was unreasonable and was otherwise improper, and that it came within s.60 of the Act.

KBC Ireland PLC -v- The Financial Services and Pensions Ombudsman [2023] IEHC 234

Judgment delivered by the High Court on 5 May 2023:

The complaint arose from the interest rate that applied to a deposit account held by the complainant with the provider. The complainant complained that the provider had failed to notify him of the periodic rate decreases it had applied to the interest rate on his deposit account. The complainant said that although the rate was at 0.30% in April 2018 when he opened the account, the provider had reduced this on four separate occasions up to March 2020, when the rate then stood at 0.01%.

On 18 January 2022, the Ombudsman issued a legally binding decision upholding the complaint on the grounds that the provider's conduct breached a provision of its contract with the complainant. The Ombudsman further found that the provider's conduct breached provisions of the Consumer Protection Code, was contrary to law, was unreasonable and was otherwise improper, within the meaning of s.60 of the Act.

The provider appealed the decision to the High Court and submitted that the decision of the Ombudsman was vitiated by a series of significant and serious errors.

The provider submitted that the Ombudsman had erred in its interpretation of a notice requirement clause in the contract. The Court noted that the interpretation of clauses in a contract is a mixed question of law and fact and that the Court does not have to show curial deference to issues of pure law that arise when the Ombudsman is interpreting the terms of a contract.

The Court held that the Ombudsman had erred in interpreting a clause of the contract by concluding that because certain methods of notification had been encompassed in a non-exhaustive list in some clauses, and not repeated in the clause at issue, that this somehow limited the wide discretion of the clause in question.



In this regard, the Court further held that the Ombudsman had erred in having regard to the CPC when considering the correct interpretation of the clause in question. The Court noted that the CPC is not a statute that overrides, or even influences, the terms in a contract entered into between a service provider and a customer, unless it is specifically incorporated into the terms of the particular contract.

The provider submitted that the Ombudsman had erred in refusing its request to hold an oral hearing. The Court also rejected this and noted that the Ombudsman has a wide discretion in this regard and that the authorities have established that it is only necessary for the Ombudsman to hold an oral hearing, where there are disputed issues of fact, on a question that is material to the determination of the complaint, which the Court held did not arise in this matter.

The provider submitted that the Ombudsman had not afforded the provider an adequate opportunity to make submissions on the issue of loss suffered by the complainant. The Court rejected this and found that ample opportunity had been provided.

The provider submitted that the Ombudsman had erred in directing the provider repay the complainant the difference in the interest rates between the initial rate applied and the reduced rate applied. The Court rejected this and held the Ombudsman was entitled to direct this.

The provider submitted that the Ombudsman erred in failing to provide adequate reasoning in his decision. The Court rejected this and noted that while the Ombudsman has to provide a reasoned decision, it is not expected that he provide a decision akin to a judgment of the Superior Courts.

The Court ultimately held that the provider had not demonstrated that the decision of the Ombudsman was vitiated by a serious and significant error, or a series of such errors and the Court dismissed the appeal.



Judgment 3: A High Court challenge to the FSPO's decision, which rejected the complaint against the provider but nevertheless contained findings that were potentially prejudicial to the provider.

Chubb European Group S.E. -v- The Financial Services and Pensions Ombudsman [2023] IEHC 74

Judgment delivered on 21 February 2023:

The complaint made to the FSPO was that the provider has wrongfully or unfairly declined an insurance claim made by the complainant for business interruption losses. On 04 October 2021, the FSPO rejected the complaint against the provider.

The provider appealed to the High Court on the grounds that the Ombudsman had made findings, in respect of the interpretation of the insurance policy, that could have future adverse effects for the provider. The Ombudsman submitted that the appeal was inadmissible and that to allow an appeal by a successful party would run contrary to the purpose of the statutory scheme.

The Court noted that the nature and extent of a statutory appeal in any particular instance will depend on the wording of the relevant legislative provisions. The Court held that the statutory right of appeal against a decision of the Ombudsman is not confined to an appeal against the overall outcome of the investigation of a complaint, but also allows for an appeal against the grounds relied upon in making the decision and an appeal against a direction to the provider. However, the Court also noted that it has an inherent discretion to dismiss an appeal as frivolous and vexatious. Further, the Court noted that an appeal by a party who has been successful on the outcome may be dismissed if that party is not at least potentially prejudiced by the decision.

The Court found that the Ombudsman's decision contained a number of findings that were, potentially at least, prejudicial to the provider's position. In this regard, the Court noted that a published decision of the Ombudsman which has reached conclusions on the interpretation of a particular form of policy wording will, at the very least, represent a persuasive precedent in respect of other complaints based on similarly worded policies. Furthermore, the Court accepted that the decision had the potential to trigger obligations for the provider under the Central Bank's supervisory framework.



The Court held that the Ombudsman made a serious and significant error in his approach to contractual interpretation in that it did not apply the established legal principles. Further, it was held that the decision was vitiated by serious and significant errors, as the Ombudsman's findings were in breach of fair procedures due to the Ombudsman not properly engaging with the various submissions made by the provider and failing to provide reasoning for not following those submissions. The Court also noted that for an error to be "serious and significant", it must be material to the decision-making process but that an applicant need not demonstrate that the outcome of the investigation of the complaint might have been different if the error had not been made.




The Court also considered whether it should interpret the insurance policy itself. The Court noted that the right of appeal is an important safeguard against serious error but is not intended as a *de novo* appeal, and that the Court must resist the temptation to embark upon its own *de novo* consideration of the merits of the complaint. The Court further noted that the rights of the parties will normally be vindicated by a setting aside of the impugned decision but that the Court could, if appropriate, make an order for remittal directing the Ombudsman to reconsider the matter and reach a decision in accordance with the opinion of the court.

The Court set aside the Ombudsman's decision and in circumstances where the complaint had not been upheld, it did not make an order for remittal of the complaint.

7

Report on named financial service providers

In accordance with Section 25 of the Financial Services and Pensions Ombudsman Act 2017, the table below identifies every regulated financial service provider, which, in 2023, had at least three complaints against it upheld, substantially upheld, or partially upheld. This table excludes any decision upholding a complaint, if that decision is the subject of a statutory appeal at the time of publication. Financial service providers are listed in order of the combined total number of complaints upheld, substantially upheld or partially upheld. The name of the business group is provided where the financial service provider is a member of a business group.

	Name of Regulated Provider (to include any trading name if different)	Member of Business Group (where applicable)	Complaints Upheld	Complaints Substantially Upheld	Complaints Partially Upheld	Total
	Ulster Bank Ireland DAC	Ulster Bank Group	1	2	4	7
	AXIS Specialty Europe SE		2	0	2	4
	Elips Versicherungen AG* t/a Laya Healthcare	Swiss Re Group	2	1	1	4
	Permanent TSB Public Limited Company t/a Permanent TSB		0	1	2	3

*Known in the English language as Elips Insurance Limited



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1 Applying filters to narrow your search

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Filter our Database

Financial Services Sector:

- All
- Banking
- Insurance
- Investment

Product / Service:

2 Having filtered by sector, the search tool will then help you to filter our decisions further by categories relevant to that sector such as:

- ▶ product / service
- ▶ conduct complained of

✓ Sector ✓ Product / Service ✓ Conduct complained of



Filter our Database

Financial Services Sector:

- All
- Banking
- Insurance
- Investment

Product / Service:

Foreign Exchange

Conduct Complained Of:

To narrow your search, you may also filter by:

Product / Service:

- All
- Accounts
- Commercial Banking
- Consumer Credit
- Foreign Exchange
- Mortgage
- Multiple Banking Product/Service
- All

Conduct complained of:

- All
- Advice Incorrect/Unsuitable (post sale)
- Application of interest rate
- Arrears handling
- Customer Service
- Disputed Fees and charges
- Disputed Transactions
- Failure to provide information/correct information
- Maladministration
- Miscellaneous
- Mis-selling
- Refusal to give product/service

3 You can also filter our database of decisions by year, and by the outcome of the complaint, i.e. whether the Ombudsman Upheld, Substantially Upheld, Partially Upheld or Rejected the complaint.



Outcome:

- All
- Upheld
- Substantially upheld
- Partially upheld
- Rejected



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