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# 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. This Office 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 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 in a year.

In terms of 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. This Office can only publish case studies in relation to pension decisions (not the full decision), nor can it 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 in a 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 | Message from the Ombudsman



It is the FSPO's mission 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. The important statutory role of this Office provides consumers, including small businesses, with an avenue of redress, in sometimes challenging and difficult circumstances where their complaints against financial service providers or pension providers, remain unresolved. Against this background, this Office strives to provide the best possible services to all our customers and to effectively and efficiently manage every complaint we receive.

In 2021, we received 4,658 new complaints. As detailed in this publication, we closed 5,010 complaints – this is an important indicator, as over the last two years, we have succeeded in closing more complaints than we received. This enables us to continue to reduce the number of complaints on hand, to conclude complaints more quickly and respond to the changing needs and expectations of all our customers.

The outcomes for those who bring complaints to this Office can be significant. During 2021:

- 1,153 complainants achieved a mediation settlement through our Dispute Resolution Service, with the value of those settlements, totalling more than €4.6m
- The combined value of compensation directed in legally binding decisions following the formal investigation process was €941,328
- An additional €944,167 was paid to complainants by providers to resolve complaints during the FSPO's formal investigation process, and
- A further €667,993 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.

### Customer Service

It is notable that 23% of the complaints made to this Office in 2021, were complaints about poor customer service from financial service providers. It is clear that many customers experience frustration with the level of customer service available from their provider when the customer is seeking to engage, and it seems that a more responsive service from providers could avoid many such complaints arising.

### Growing complexity – know who you are dealing with

During 2021, the services of this Office continued to evolve in response to the needs of our customers and the nature of the complaints we received. As recognised in our Strategic Plan 2021–2024, “Connecting and Innovating”, the financial services environment continues to change. It is increasingly difficult for some consumers to understand precisely who they are dealing with or who they are agreeing a contract with, when they are purchasing financial services or pension products.

This can cause problems for customers, particularly when things go wrong, and they need to make a complaint.

These difficulties arise because the financial landscape is constantly evolving. Confusion can be caused by branding and re-branding, and by the complex relationships and arrangements in place between some providers, together with the increased role of technology firms that provide gateways to products and services which are provided by other entities.

From dealing with complaints that arise in these circumstances I am conscious of the confusion and detriment that can result for consumers.

For example, the use of co-branding, or even the use of a word or an acronym which is recognised as a familiar, trusted brand, can encourage consumers to purchase products or services associated with that brand. Therefore, the use by a provider of its branding to promote or sell a service or product supplied by another entity, can cause very considerable confusion and unrealistic expectations, regarding the identity of the provider which the consumer is actually contracting with, to buy a product or service.

In addition, the role of intermediaries is not always clear or understood. Sometimes, a customer may not know that the intermediary they are dealing with is only selling and not providing the product or service. This can cause particular difficulties, for example with insurance policies. If the intermediary does not collect the required information during the sale of a policy, this can lead to the insurer rejecting an insurance claim or voiding a policy, or both, at a later stage.

Difficulties can also arise when providers outsource some of their activities, including complaints handling, to another entity, as this can also make it difficult for a consumer to know who is responsible, when something goes wrong, or if they wish to make a complaint.

Examples of where these types of situations have caused problems can be seen from case studies in this Overview, including [one decision](#) which was referred to the Central Bank of Ireland because of the difficulty

experienced by the customer in being able to identify the entity which was supplying health insurance cover. Other examples are found in our [Digests of Decisions](#) and amongst more than 1,500 decisions in our [Database of Decisions](#).

Because of our concern about these matters we have shared our views regarding these confusing aspects of service provision, by making submissions to the Central Bank of Ireland, in the context of its ongoing review of the Consumer Protection Code. [Our submissions](#) can be accessed on our website.

I believe it is critically important that information is provided to consumers in a manner that makes it very clear who they are purchasing a product or service from, and whether that product or service is regulated.

### **Investment fraud and cryptocurrency - know the risks**

The increased availability of financial services online, creates opportunities for consumers to shop around and gain access to a wide variety of financial products. This online availability however also carries significant risks, if a consumer is not familiar with the financial service provider they are dealing with, or if the consumer does not understand whether that provider is regulated, and whether the protections afforded by the consumer protection framework, are in place.

Knowing whether or not a product or service is regulated, is key to making an informed decision but it can be difficult where a regulated financial service provider which makes regulated products available to the public, also sells unregulated products or services. It is most important that regulated providers comply with their regulatory obligations to ensure the suitability of any product offerings, before introducing or recommending them to consumers, whether or not such products are regulated.

When a consumer purchases an unregulated product, they will not have the protections afforded by regulation and they may not be able to make a complaint to this Office about that unregulated product or service.





Consumers should be mindful of the risks posed by investing in unregulated activities, such as cryptocurrency trading, which very often carries a higher risk and level of volatility, than regulated product offerings.

During 2021, there was a noticeable increase in the number of complaints made to the FSPO in the area of investment fraud and cryptocurrency. Global advances in technology across the digital world over the last ten years have, unsurprisingly, left many consumers at a disadvantage in terms of their digital knowledge. This has unfortunately led to an increase in fraud incidents, particularly in the area of online trading and cryptocurrency.

This publication contains case studies that illustrate these risks in stark terms. [Philippa borrowed €20,000](#) to make a further investment in what she believed was cryptocurrency and later discovered it was a scam. [Pavel borrowed €20,000](#) through an overdraft and an online loan, after a fraudulent investment company told him his investment had grown to €5,000, and he needed to lodge €20,000 to retrieve it. [Cathal invested up to €20,000](#) with a fraudulent cryptocurrency investment. [Tom lost €60,000](#) over a period of 3 months, when he instructed his bank to transfer funds to what he believed was an investment platform, but which transpired to be a fraudulent company. [Noah lost €29,000](#) when he was tricked into using an incorrect IBAN, for his transfer of funds. In each of these complaints, the financial and personal impact of these fraud incidents was very significant.

### Ongoing impact of COVID-19

As for all organisations, the impact of COVID-19 continued in 2021 and I want to pay tribute to our staff whose dedication to our work and our customers continued in spite of the many personal challenges during the year, for them and their families and friends. Throughout the year, we were very conscious of the ongoing significant impact of the pandemic for our customers, and where complaints arose as a result of the pandemic, we continued to ensure the efficient management of these new complaints, with minimal impact on the management of existing complaints.

During 2021, we continued to receive complaints where the complainant introduced COVID-19 as an element of their complaint. In addition to 600 complaints received in 2020, a further 275 new complaints of this nature were received in 2021.

During 2021, we continued to prioritise complaints concerning business interruption insurance, in recognition of the importance to policyholders of achieving a swift understanding as to whether they were entitled to benefit payments. In July 2021, we published a [Digest of Decisions relating to complaints from businesses](#). This Digest contained summaries of decisions issued in 2020 and 2021, including summaries of 12 decisions relating to business interruption insurance claims. The publication of the Digest, as well as the full text of the decisions of this Office within our [Database of Decisions](#), assist policy holders in understanding how particular complaints are dealt with by this Office and the outcome of the adjudication process in relation to specific matters.

### Tracker mortgage interest rate complaints

During 2021, 250 new tracker mortgage interest rate complaints were received, with a further 29 tracker mortgage complaints reopened during the year. It is notable that we continue to receive tracker mortgage interest rate complaints, 12 years after the first complaints of this nature were received in 2009 by the FSPO's predecessor, the Financial Services Ombudsman's Bureau.

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 of the FSPO. Throughout 2021, 370 tracker mortgage interest rate complaints were closed and by the end of 2021, there were 1,115 tracker complaints remaining on hand, of which 1,017 were classified as active complaints. Over the course of 2021, we reduced the volume of open tracker mortgage interest rate complaints by 7%. However, as it is likely that tracker mortgage interest complaints will continue to be received, such complaints will continue to account for a substantial proportion of the work of the FSPO, for some time to come.



## Information sharing

Our governing legislation, the Financial Services and Pensions Ombudsman Act 2017, as amended ('the Act') requires us 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. In this regard, the Act facilitates the sharing of information by the FSPO with the regulatory authorities. Sharing information is a crucial part of ensuring the effective operation of the consumer protection framework, alerting regulatory authorities to potentially systemic issues which may warrant further consideration by those authorities.

During 2021, in addition to the thirteen legally binding decisions that were referred by this Office to the Central Bank of Ireland, we also shared a copy of every legally binding decision issued, concerning a complaint about a tracker mortgage interest rate with the CBI. The same approach was adopted for legally binding decisions issued in complaints concerning declined insurance claims for business interruption losses.

## Acknowledgements

I would like to thank all those who contributed to delivering for our customers and delivering the results we achieved in 2021.

In particular, I want to thank the Chairperson, Maeve Dineen, and members of the Financial Services and Pensions Ombudsman Council for their ongoing support and guidance. I also want to express my thanks to the Council for championing our role and guiding the development of our Strategic Plan 2021–2024. It was a significant achievement to develop this ambitious plan to evolve and innovate our services and focus on our customers, external stakeholders, and audiences.

I also want to express my appreciation to the Minister for Finance and his officials for their ongoing support and cooperation. During 2021, the Minister launched our Strategic Plan 2021 – 2024 and I am most grateful to the Minister, on behalf of the staff of the FSPO, for his support for the strategy we have set out for this period.

I have already made reference to the extraordinary commitment demonstrated by the entire FSPO team in 2021. I want to thank my colleagues on the Senior Management Team, Diarmuid Byrne, Director of Dispute Resolution, Tara McDermott, Director of Customer Operations and Information Management, Áine Carroll, Director of Corporate and Communication Services and Úna Gately, Director of Investigation Services and all the FSPO team, for their continued hard work and dedication.

Finally, on behalf of the staff of the FSPO, I would like to pay tribute to Mr. Ger Deering, whose tenure of almost seven years as Financial Services and Pensions Ombudsman, ended in February 2022. One of his many lasting contributions was his championing of our values of fairness, integrity, independence, accessibility and effectiveness. These values are at the very heart of how we approach our daily work and interactions with our customers and as we continue to strive to enhance and evolve our services, we will ensure that these values continue to guide all that we do.



**Mary Rose McGovern**

**Financial Services and Pensions Ombudsman  
(Acting)**

March 2022





# 3 | FSPO's referral of complaints to the regulatory authorities during 2021

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 2021, 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 143 tracker mortgage decisions were sent by the FSPO to the CBI.

The same approach was adopted for legally binding decisions issued in complaints concerning declined insurance claims for business interruption losses. During 2021, copies of 46 business interruption decisions were sent by the FSPO, to the CBI.

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 2021, were referred by the FSPO to the regulatory authorities.

Any decision of the FSPO referred to the regulatory authorities, which has since become the subject of a statutory appeal to the High Court, is not included in the details below.

**Table 3.1 - Complaint issues referred to the Pensions Authority during 2021**

Decision Reference	Issues raised by the complaint
<a href="#">Case Study*</a>	The level of the provider's communication, and the unacceptable manner in which such communications with the complainant were recorded
<a href="#">Case Study*</a>	Delays in issuing of annual pension benefit statements

\* In accordance with section 62(2) of the Financial Services and Pensions Ombudsman Act 2017, the Ombudsman shall publish case studies in relation to complaints concerning pension providers. The full decisions are not published in these complaints.

Table 3.2 - Complaint issues referred to the Central Bank of Ireland during 2021

Decision Reference	Issues raised by the complaint
<a href="#"><u>2020-0483</u></a>	Issues created by a person switching from one health insurer to another, during an accounting period.
<a href="#"><u>2021-0566</u></a>	The provider's failure to supply very important and relevant information and its inability to acknowledge the unreasonable nature of its conduct
<a href="#"><u>2021-0156</u></a>	The provider's dispute of its obligation to ensure clarity in documents sent to customer – and the potential impact on other customers
<a href="#"><u>2021-0181</u></a>	The provider's offer of convertible options within a policy that were ultimately not available during final months of policy
<a href="#"><u>2021-0213</u></a>	The provider's conduct in refusing to meet its obligations to respond to and supply evidence for the FSPO's investigation of a complaint
<a href="#"><u>2021-0227</u></a>	The provider's failure to adequately explain a change of calculation methodology, which resulted in an immediate decrease of some €15,000 in a customer's arrears balance, which was difficult to reconcile
<a href="#"><u>2021-0246</u></a>	The position of customers who remain unable to secure household insurance, a decade after an issue of non-disclosure.
<a href="#"><u>2021-0274</u></a>	The potential for other accounts managed by the provider to be impacted by its method of crediting accounts
<a href="#"><u>2021-0326</u></a>	Serious concerns about the provider's ability to ensure the security and confidentiality of its customers' information, and potential impact on other customers, given its apparent condoning of the practices involved.
<a href="#"><u>2021-0342</u></a>	The provider's failure to adequately explain a change of calculation methodology, which resulted in an immediate decrease of some €44,000 in a customer's arrears balance, which was difficult to reconcile and failure to clearly or adequately explain this to the customer.
<a href="#"><u>2021-0327</u></a>	The provider's failure to adequately explain a change of calculation methodology, which resulted in an immediate decrease of some €25,000 in a customer's arrears balance, which was difficult to reconcile and failure to clearly or adequately explain this to the customer.
<a href="#"><u>2021-0369</u></a>	The provider's continuous use of an incorrect description for a policy as a "serious illness policy", even though no cover was included for any serious illnesses.
<a href="#"><u>2021-0333</u></a>	The difficulty experienced by the customers in identifying the entity supplying their health insurance cover, and serious risk of potential difficulty for other customers, owing to the practice of the provider during the sale of its international health cover.

# 4

## Complaints received by location

Fig 4.1 – Complaints received by county 2021

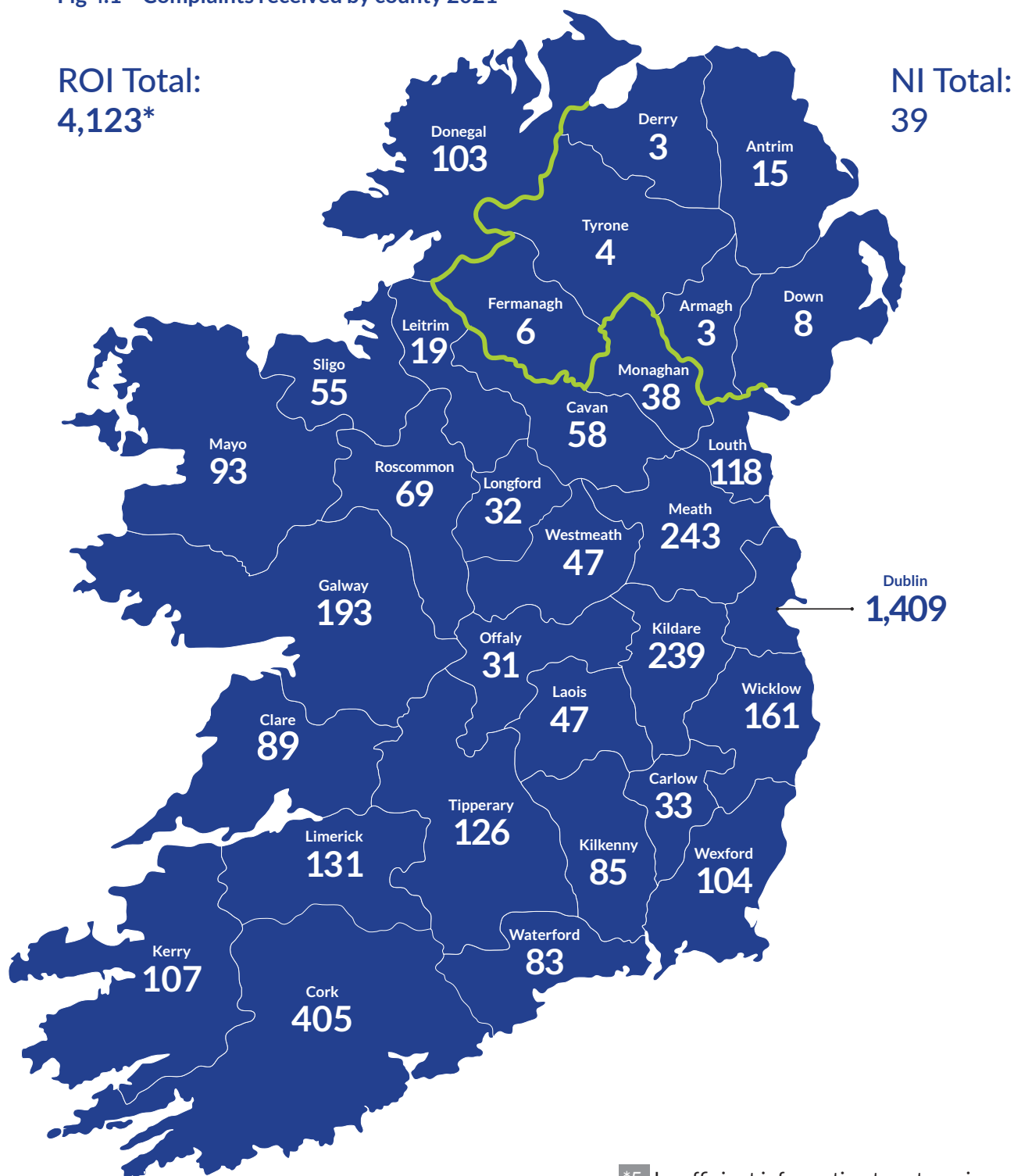


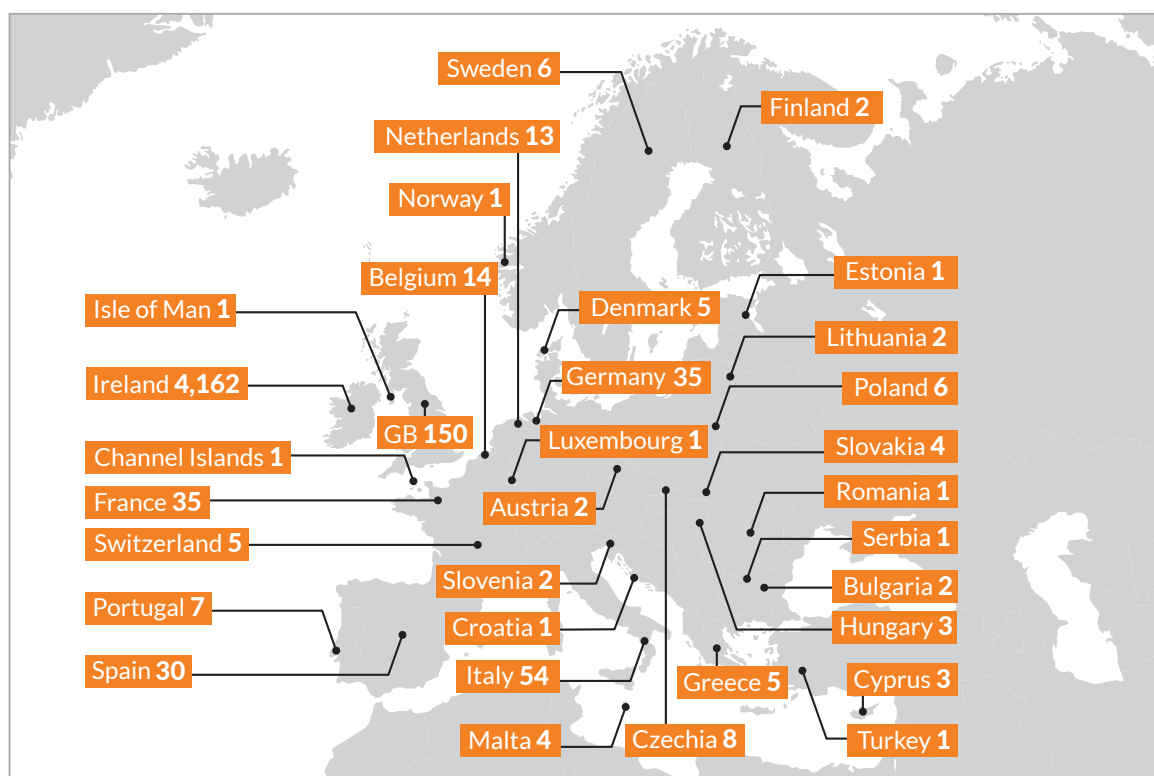
Fig 4.2 – Complaints received by global area 2021

Global  
Total  
4,658



### Close-up detail of European complaints received

European Total: 4,568



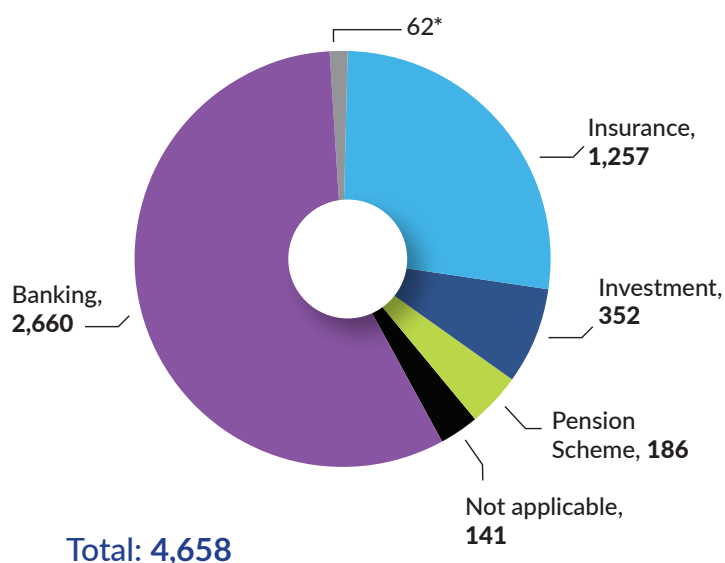
# 5 | Sectoral Analysis

This section sets out details of the complaints received in 2021 in the three financial service sectors; banking, insurance, and investment, along with details of complaints about pension schemes by the type of product complained about. A total of 4,658 complaints were received by the office in 2021. When 130 complaints later found to be ineligible were deducted, 4,528 complaints were received. Complaints are considered to be ineligible where they are intended for a different Ombudsman or relate to non-financial products and services, or service providers that do not fall within the remit of this office. Where possible, the complainant is redirected to the appropriate body.

Of the 4,658 total complaints received in 2021, 57% related to banking products, 27% related to insurance and 8% related to investment products. 4% concerned complaints about pension schemes.

The remaining 4% consisted of complaints which were yet to have a sector assigned at the end of December and complaints where a sector was not applicable.

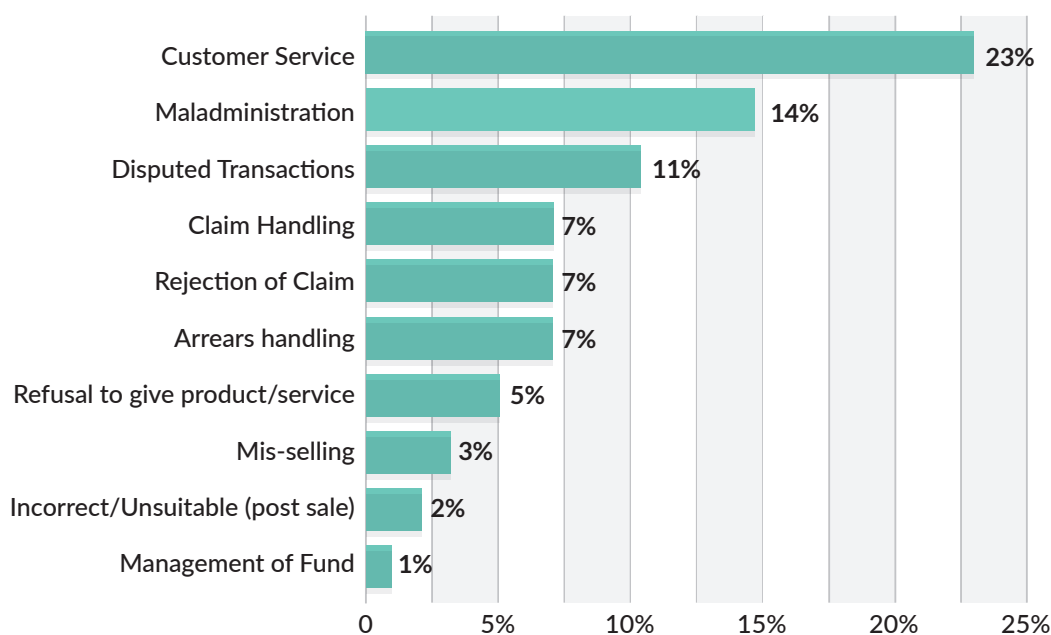
## Complaints by sector



Total: 4,658

\*No confirmed sector at 31 Dec 2021

## Top 10 conducts complained of:

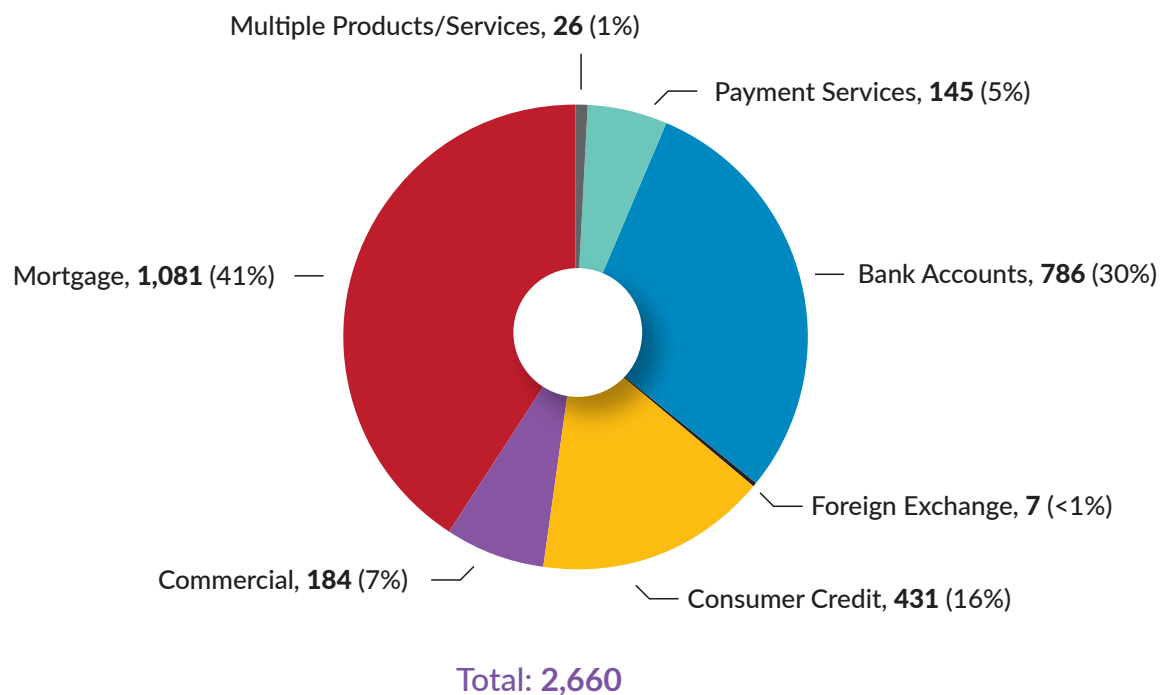


Percentages are rounded above and in the following charts on pages 12 to 15.

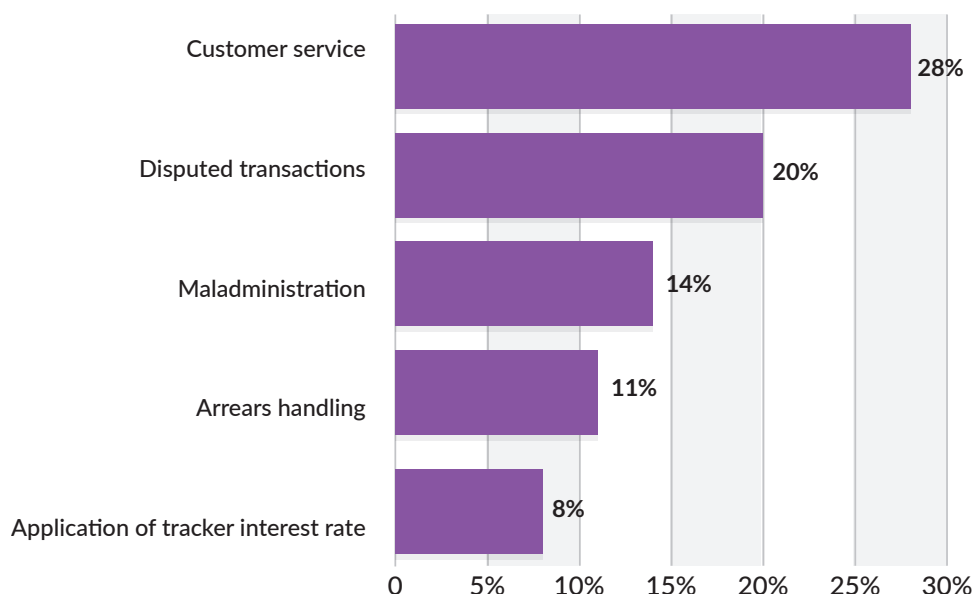
# Banking Complaints

Banking complaints represent 57% of all complaints received in 2021. Mortgages were the product type most complained of in the banking sector, accounting for 41% of banking complaints in 2021 and they were also the product accounting for the largest number of complaints across all sectors. Complaints regarding bank accounts are the second largest group in the banking category, representing 30% of all banking complaints.

## Banking Products



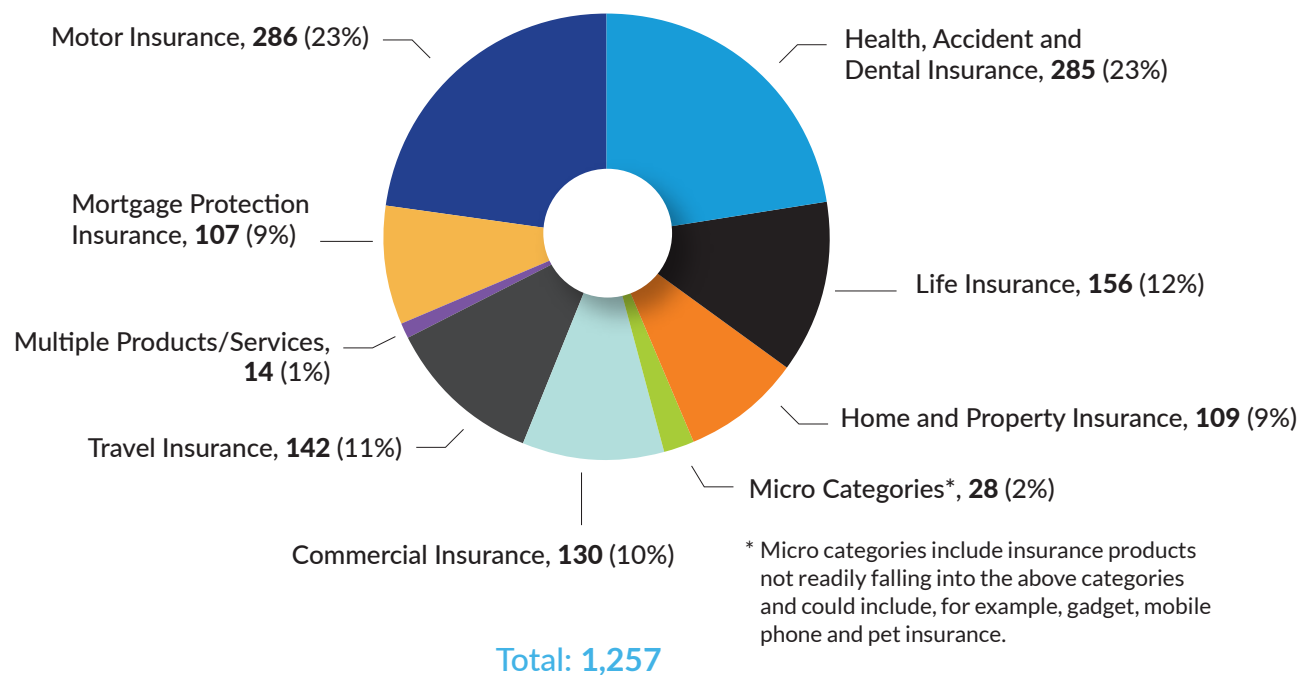
## Top 5 banking conducts complained of:



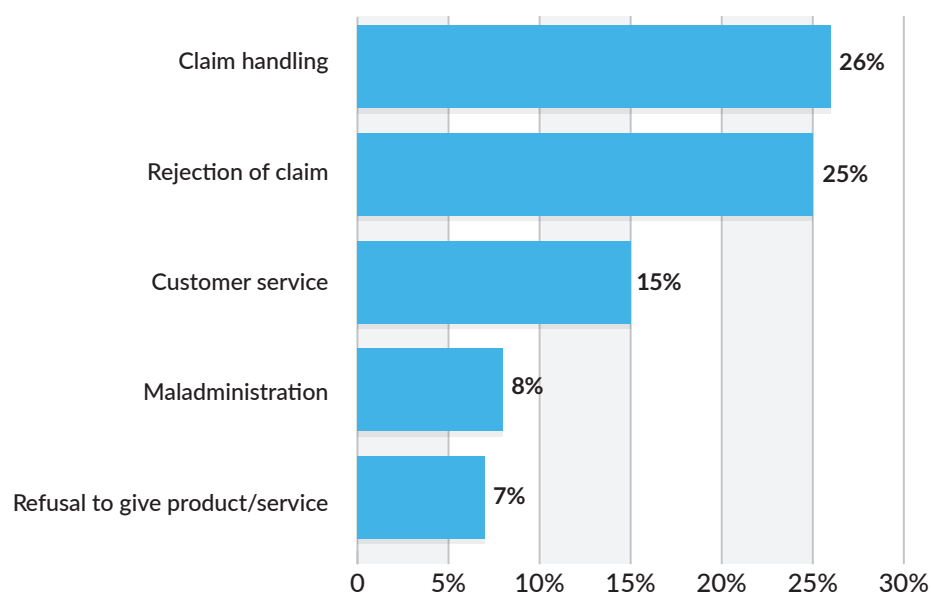
# Insurance Complaints

Complaints relating to insurance products and services represent 27% of all complaints received in 2021. The two categories of insurance products most complained about in 2021 were motor insurance and Health, Accident and Dental insurance policies.

## Insurance Products



## Top 5 insurance conducts complained of:

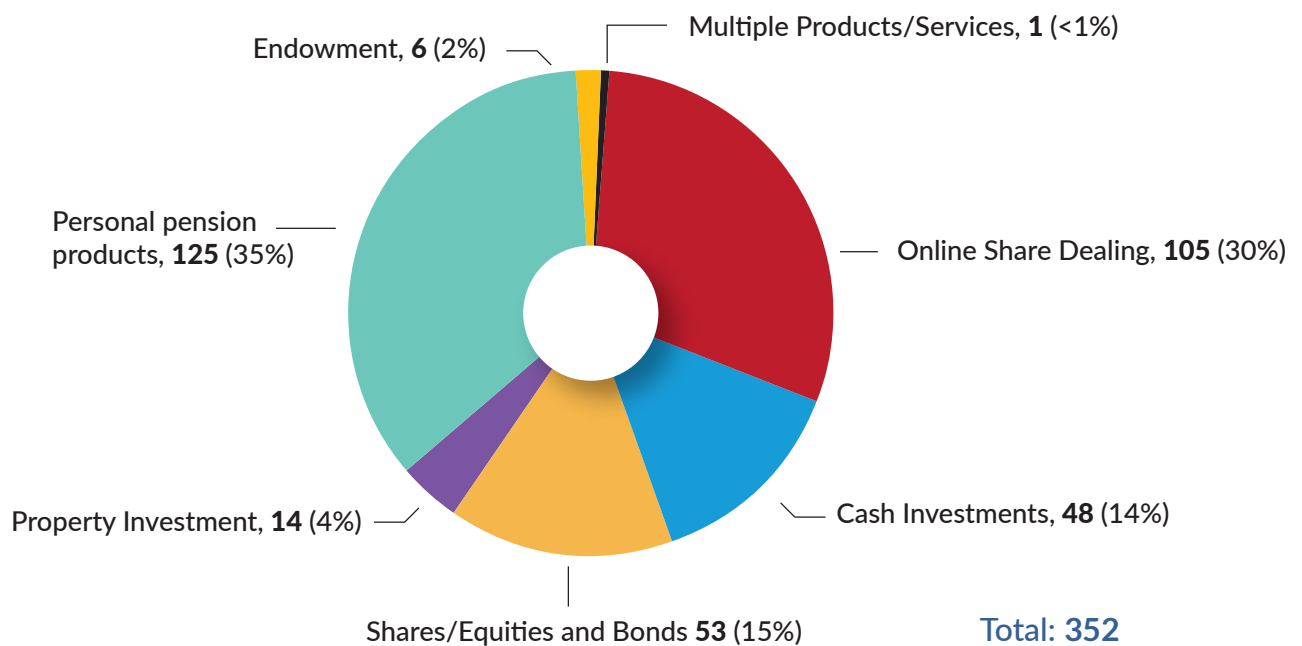




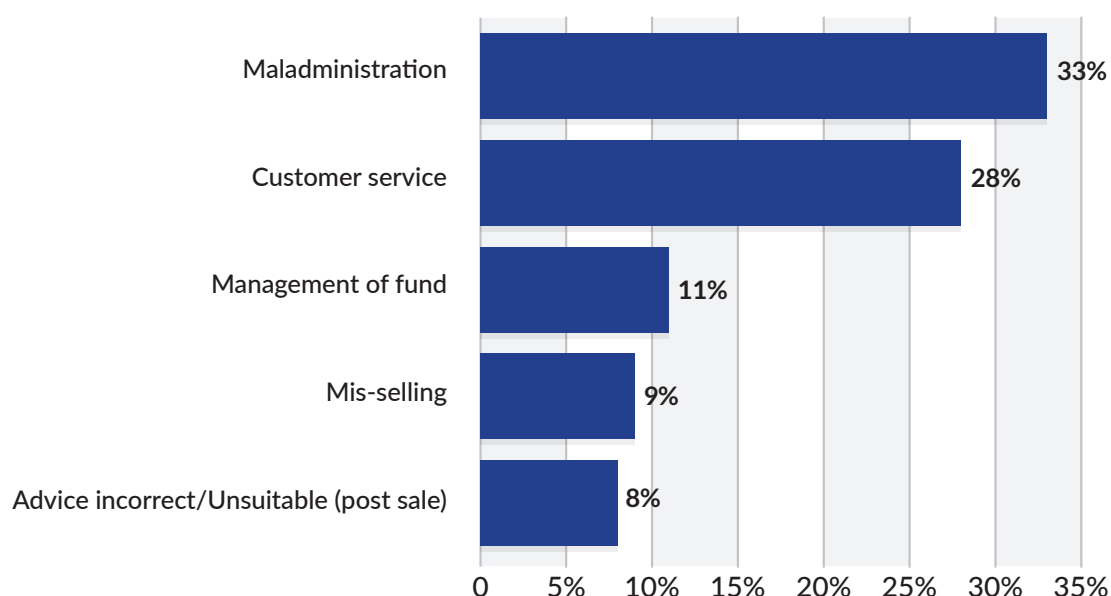
# Investment Complaints

Investment complaints represent 8% of all complaints received in 2021, a slight increase on 2020. Personal pension products represented the largest portion of these complaint types, at 35%, closely followed by online share dealing at 30% of investment complaints.

## Investment Products



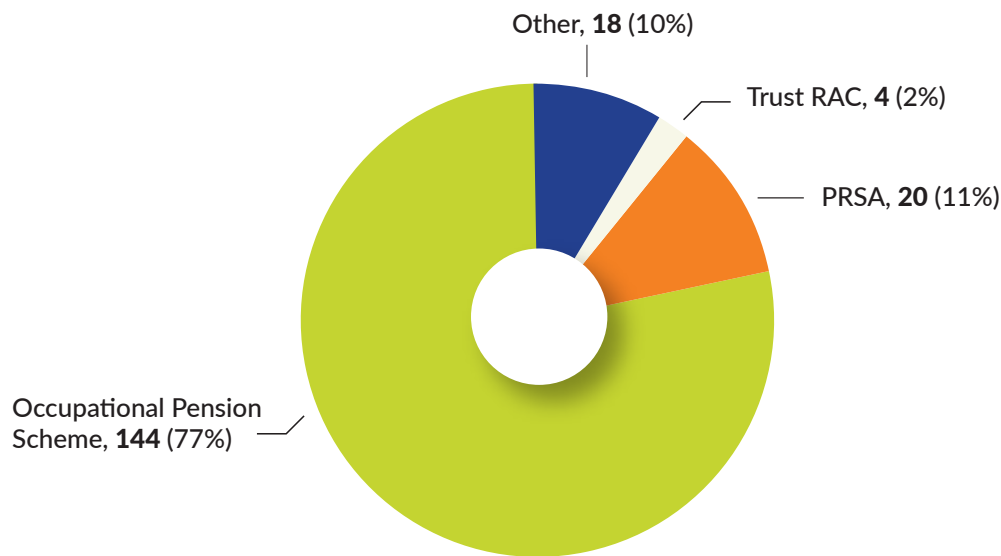
## Top 5 investment conducts complained of:



# Pension Scheme Complaints

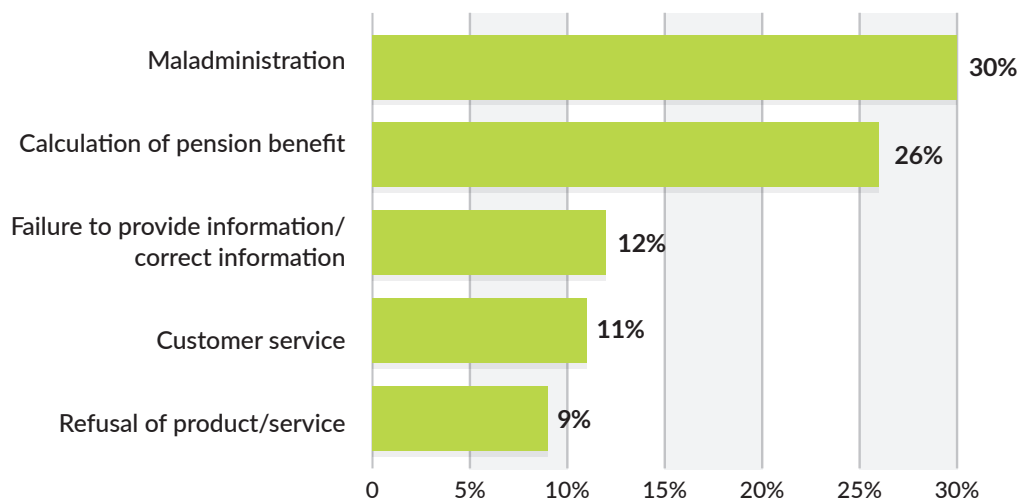
Pension scheme complaints represent 4% of all complaints received in 2021. Pension scheme complaints may be made to the FSPO by an actual or potential beneficiary of the scheme who believes they have suffered loss of pension scheme benefits because of maladministration of the scheme. These complaints relate to public and private occupational pension schemes, trust Retirement Annuity Contracts (trust RACs) and Personal Retirement Savings Accounts (PRSAs).

## Pension Schemes



Total: 186

## Top 5 pension conducts complained of:



# COVID-19 related complaints

In March 2020, the FSPO began to receive complaints arising from the circumstances surrounding the COVID-19 pandemic and by the end of 2020, 600 complaints had been received where the complainant introduced COVID-19 as an element of their complaint. The FSPO received an additional 275 complaints in this category by the end of 2021.

The monthly trend at fig 4.1 on the following page shows that the number of COVID-19 complaints received in 2021 decreased over the course of the year, as the pandemic continued. Of these 275 complaints received, 75 related to business interruption and 36 related to payment breaks.

Due to a number of measures put in place during 2020, to ensure the efficient management of these new complaints, the FSPO managed the complaint volumes with minimal impact on the management of existing complaints.

## These measures included:

- Prioritisation of complaints concerning business interruption insurance, in recognition of the importance to policy holders of achieving a swift understanding as to whether they were entitled to benefits or payments.
- Early engagement with complainants to provide clarity on steps required to progress complaints as quickly as possible, including the need to provide a final response letter from the provider and proof of turnover where the complainant was a small business.
- Specialist teams were established to deal with COVID -19 related complaints.
- Establishment of a COVID-19 Complaints Management Group and development of specific reporting to ensure early visibility and analysis of complaints.

Figure 5.2 (page 17) shows that by far the largest number of complaints received with a COVID-19 element in the complaint were in

the insurance sector, followed by almost one third of complaints in the banking sector.

It is evident from the COVID-19 related decisions [published in 2021](#), that the circumstances surrounding COVID-19 related business interruption claims were exceptionally difficult for many of those businesses that brought their complaints to us. Businesses outlined the impact being experienced from their loss of the ability to trade, loss of stock and loss of rental income.

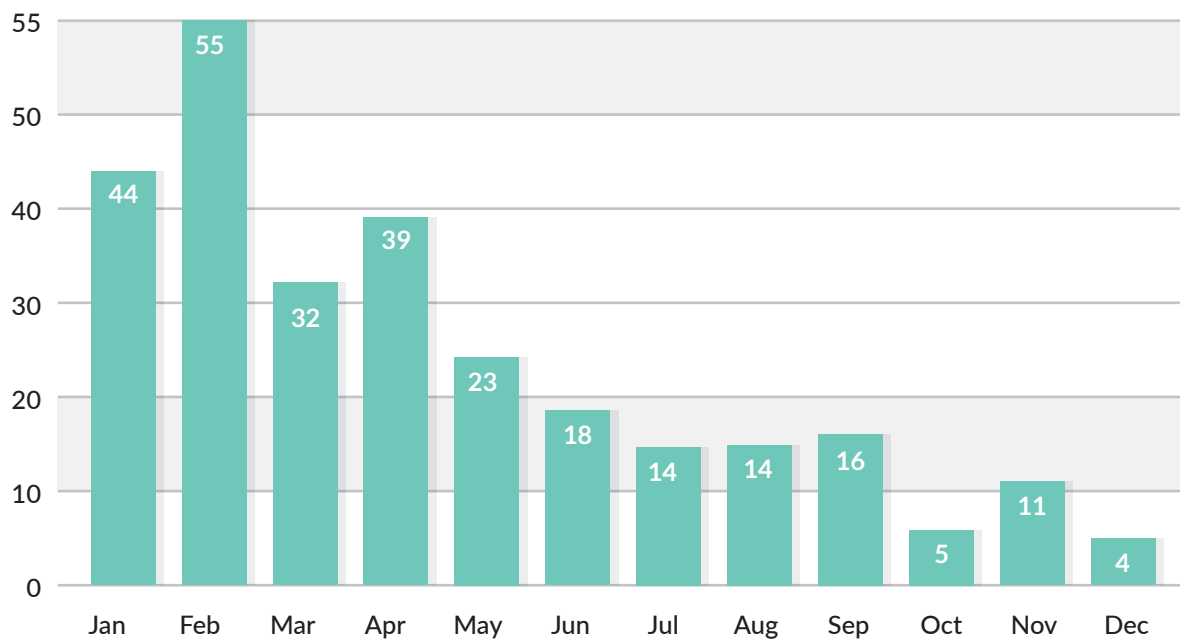
As with all insurance claims, it is important to remember that the success of a claim is dependent on the cover provided under the policy. Some complainants believed that their claim would automatically be covered following the closure of their business due to Government restrictions. However, the decisions issued highlighted the importance of the wording within each policy for these circumstances. In some cases, full indemnity was provided, whereas in others, there was none.

One example of a decision (reference [2021-0052](#)) the Ombudsman upheld, centred on the wording in the policy of, 'any occurrence of a notifiable disease within a radius of 25 (twenty five) miles of the premises'. The Ombudsman concluded that the reasonable interpretation of the clause in the complainant's contract was that any occurrence of COVID-19 within the 25-mile radius was enough to trigger cover once it could be shown to have caused interruption to the business.

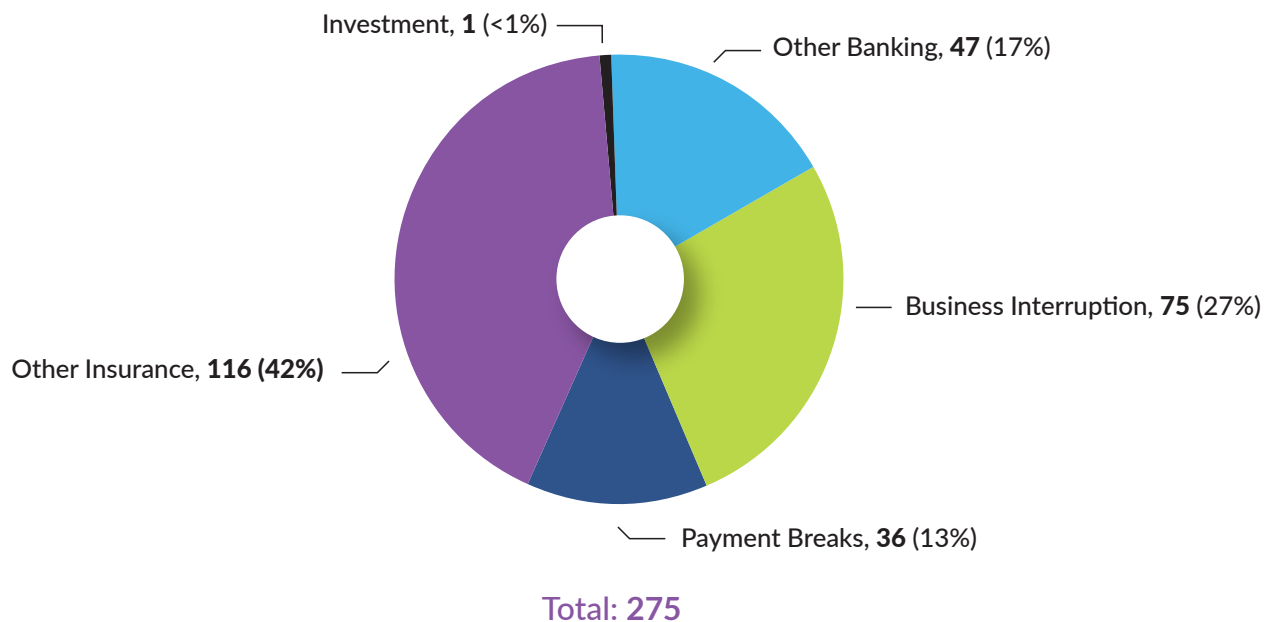
In another decision, ([reference 2021-0072](#)), the policy wording referred to 'Loss of income and/or increased cost of working as insured by this section incurred by you as a result of interruption or interference with the business caused by: an outbreak of any notifiable disease occurring at the premises.' In this decision, the complainant did not supply any evidence of an outbreak of COVID-19 at the business premises itself. Therefore, the Ombudsman accepted that the insurer had not acted wrongfully in its decision to decline the claim and the complaint was not upheld.



**Fig 5.1 – 2021 COVID-19 complaints received by month**



**Fig 5.2 – 2021 COVID-19 complaints received by sector**



# Tracker Mortgage Complaints 2021

In 2021, complaints identified as relating to a tracker mortgage interest rate, continued to comprise a considerable amount of the work of the FSPO. This Office received 250 new tracker mortgage complaints during the year with 370 tracker mortgage complaints closed in the same period.

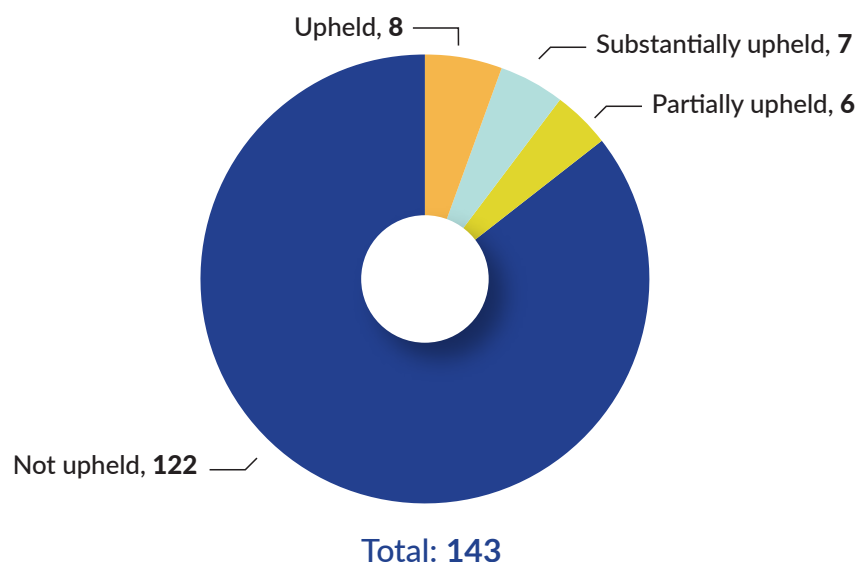
Of these 370 tracker mortgage complaints closed:

- > 143 were closed following a formal investigation and the issuing of a legally binding decision
- > 115 were closed following mediation by the FSPO's Dispute Resolution Service
- > 37 were closed during formal investigation, prior to adjudication, as there was an outside settlement, the complaint was withdrawn, or the provider made an on the record offer which was accepted by the complainant
- > 18 were closed during Legal Services assessment
- > 34 were closed at an early stage during the FSPO registration process
- > 23 were closed across the FSPO's processes for other reasons, primarily due to a lack of response from the complainant leading to the complaint being deemed to be withdrawn

Of the 143 complaints where the parties were issued with a legally binding decision, 21 were upheld, substantially upheld or partially upheld and 122 were not upheld.

- > In the 21 complaints which the Ombudsman upheld, substantially upheld or partially upheld in 2021, the total value of compensation directed to be paid to complainants amounted to €265,750. This compensation directed is separate from the value of rectification in certain legally binding decisions, whereby a provider may have been directed to restore a particular tracker mortgage rate to a complainant's account, and to recalculate the mortgage account balance accordingly and refund any overpaid interest.
- > In 23 of the 122 decisions issued which were not upheld, the Ombudsman did not uphold the complaint because a reasonable offer had been made by the provider earlier in the investigation, which was still available to the complainants to accept. The value available to the complainants, noted in these 23 decisions, amounted to €456,623.

Fig 5.3 – Tracker decisions issued in 2021



It is evident from the numbers in Fig. 5.3 above, 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 are common arguments raised in complaints to the FSPO, and the details below include links to decisions addressing those complaints in the particular circumstances in which they were made, as a result of which the complaints were not upheld:

- I have an entitlement to a tracker interest rate because tracker interest rates were available when I took out my mortgage loan. (Decision [2021-0033](#))
- I was selling my property which was subject to a tracker mortgage rate and I was purchasing a new property. The Bank said I had to take out a new mortgage for the new property. I wanted to keep my current loan on the tracker rate and just change the property and the term and the Bank would not let me. ([Decision 2021-0313](#))
- I previously held a mortgage loan with a Bank which was subject to a tracker mortgage rate. I decided to redeem that mortgage loan and apply for a mortgage loan with another Bank. My new Bank said that I was not entitled to a tracker rate of interest on my new mortgage loan. ([Decision 2021-0160](#))
- I have an investment property which was in arrears and the Bank changed the interest rate from a tracker interest rate to a variable rate, as part of an alternative repayment arrangement. I signed the agreement, but I now want the tracker back as I feel it should never have been taken away from me. ([Decision 2021-0089](#))

The decisions issued in these complaints illustrate that there is no general obligation on a financial service provider to offer a tracker interest rate mortgage loan, just because a

product of that nature was available from the provider at the time when the relevant mortgage loan was originally applied for with the provider. Further, where a mortgage holder is seeking the agreement of the financial service provider to any changes to the existing terms of a mortgage loan agreement which is in place with that provider, such as a change to the property securing the loan, there is no obligation on the provider to agree to these changes to the existing loan agreement whilst also maintaining the tracker interest rate. Where a customer is seeking to switch to a new lender, there is no general obligation on that new lender to agree to enter into a new mortgage loan with the customer on the same interest rate as was agreed with the original mortgage provider.

The former Ombudsman, Mr Ger Deering, published a Tracker Mortgage Decision Digest in February 2020, and he commented at that time, that there seemed to be a lack of understanding by some complainants, that for a person to have an entitlement to a particular tracker mortgage interest rate, there must be some contractual or other obligation on their bank, entitling them to such a rate.

In certain complaints we investigate, complainants may have received a tracker mortgage interest rate, but they may believe that the wrong margin has been applied, or that the amount of compensation paid to them arising from the Central Bank of Ireland directed Tracker Mortgage Examination, was insufficient for their particular circumstances. It is important to note that not all tracker mortgage related complaints concern the application of the interest rate margin. It is also important for complainants to be aware that compensation can only be directed for loss, expense and inconvenience sustained by the complainant as a result of the conduct of the provider, which is complained of. The FSPO is not the appropriate forum to consider claims for damages for personal injuries and such claims can only be made to a court of law.

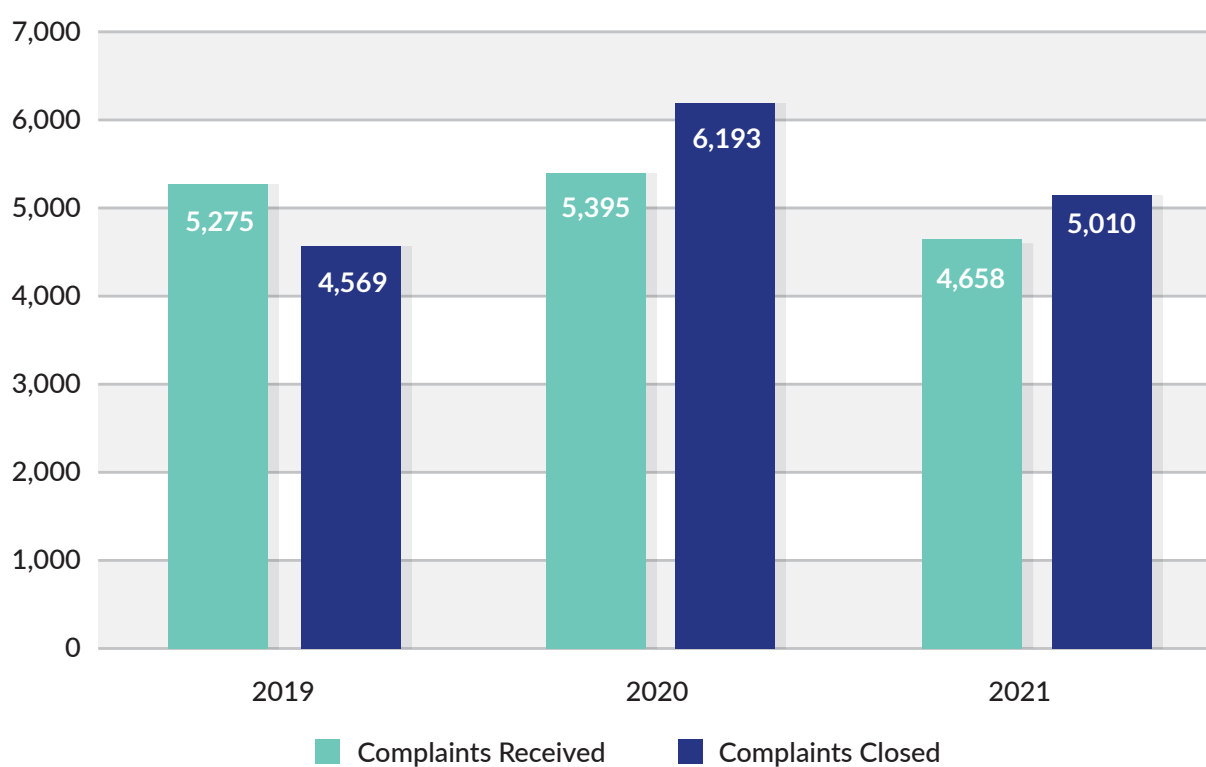
During 2021, the FSPO received 250 new tracker mortgage related complaints. At the end of 2021, there were 1,115 tracker mortgages on hand, in comparison to 1,200 tracker mortgage complaints on hand at 31 December 2020, a reduction of 7%.

## 6

# How we managed complaints in 2021

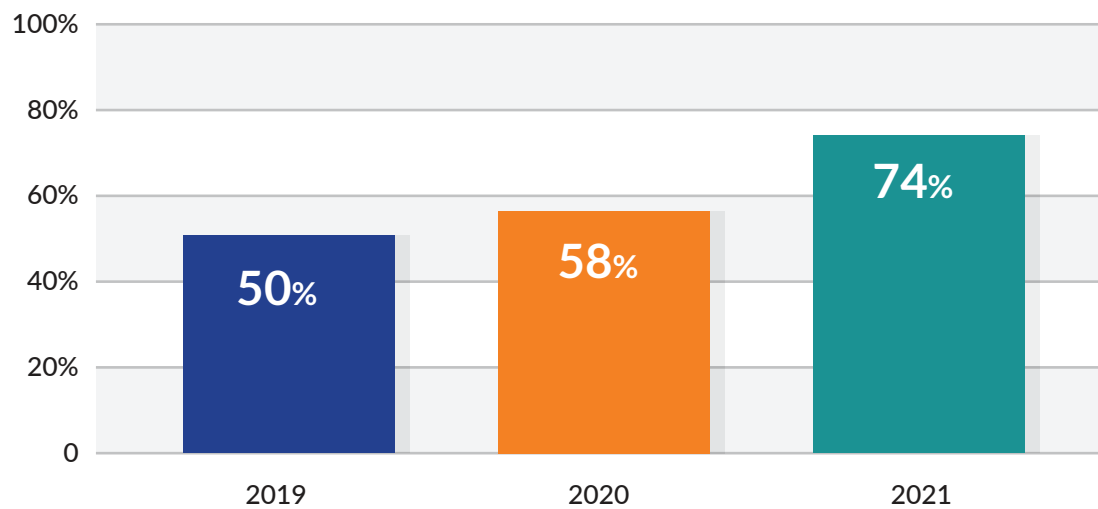
In 2021, the FSPO received 4,658 complaints and successfully closed 5,010 complaints including 130 found to be ineligible.

**Fig 6.1 – Complaints received and closed - annual comparison**





**Fig 6.2 – Percentage of complaints received online 2019-2021**



**Fig 6.3 – Complaints on hand by date 2019-2021**

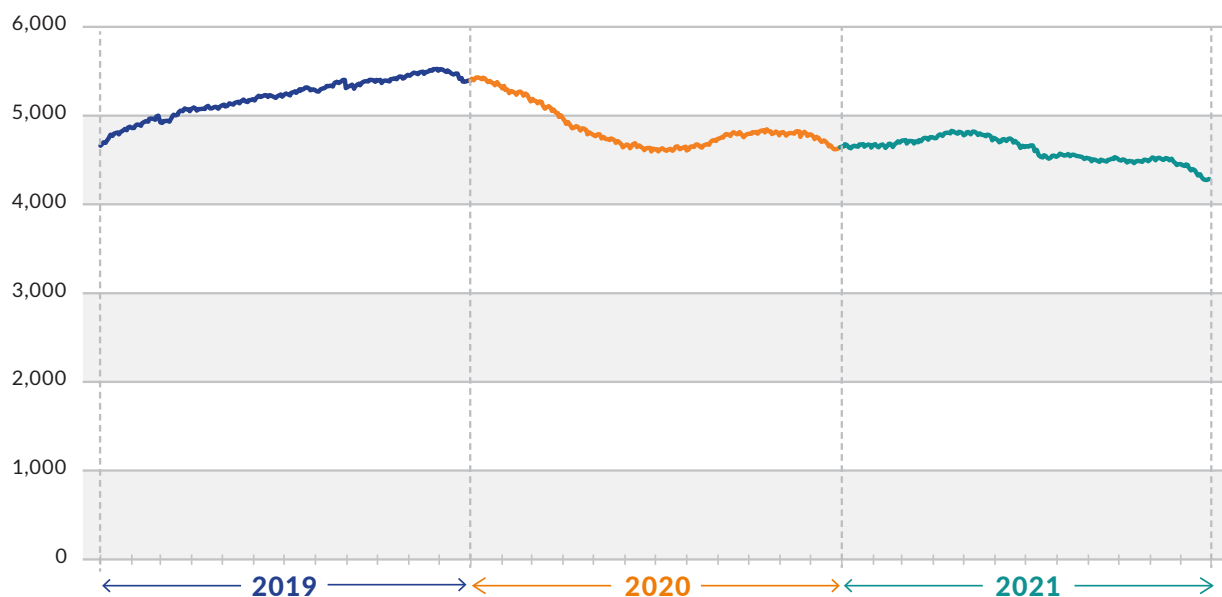


Figure 6.3 shows the number of complaints on hand over the last three years. In 2021, we continued to improve the quality of our service and many complaints were successfully resolved at various stages throughout the FSPO's process, ensuring that the number of complaints on hand continued to fall over the course of the year.

Fig 6.4 – How we managed complaints in 2021

Total number of complaints closed and how and why they were closed in 2021

5,010



### Ineligible complaints

Of the above figures, 130 complaints were closed in 2021 as they were found to be ineligible. Ineligible complaints include those for providers outside Ireland and for services that are not financial services.

### Withdrawn complaints

249 complaints were withdrawn at various stages of our processes in 2021. The reason for withdrawal of a complaint can vary depending on the stage at which the complaint is withdrawn and is set out in further detail in the following chapters.

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 put the complaint on hold for a time if appropriate.

# Customer Operations and Information Management

2,169  
complaints  
closed

When a complaint is received, the Registry and Assessment team of Customer Operations and Information Management (COIM) reviews and assesses it. This initial assessment provides an opportunity for the FSPO to determine if the complainant has provided all the necessary information that we require 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 by COIM to confirm that it is eligible for the statutory jurisdiction of this Office. 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 relevant parties, or we may need to check if a financial service provider is regulated.

In some circumstances, the team may need to refer a complaint to our Legal Services team for a detailed legal review.

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 service, ensuring the complainant is informed early on in the process, if their complaint falls outside the FSPO's remit.

Once the team has completed its process, the complaint is either referred to Dispute Resolution for mediation, or, where the complaint cannot progress any further, it will be closed.

Of the 4,658 complaints received by the FSPO in 2021, 130 complaints were closed within COIM because they were found to be ineligible. This was mainly because these complaints were related to businesses that were not financial service providers or were for providers that operated outside Ireland. Where appropriate, the FSPO will refer a complainant to the appropriate Alternative Dispute Resolution (ADR) body in another country. 140 complaints were withdrawn and 160 complaints were resolved without the need for further investigation.

A further 1025 complaints were closed in COIM at an early stage in the process. In some cases the complainant did not provide enough information to proceed. In others, the complainant had not completed their provider's internal complaints process and once we re-directed the complainant back to the financial service provider, they were able to get their complaint resolved.

714 complaints were closed in COIM due to legal issues. For example, 158 complaints were closed in COIM as it was determined they would be more appropriately dealt with by the Courts. 123 complaints were closed because they were complaints concerning a non-regulated financial service provider, or a company which wasn't providing a financial service. 131 complaints when assessed were outside the time limits for making a complaint and 127 complaints were closed as the person or entity making the complaint did not meet the definition of a complainant under the Financial Services and Pensions Ombudsman Act 2017, or did not have the right to make a complaint. The remaining 174 were considered more appropriately dealt with by another forum and there was 1 outside settlement.

## Rejection of travel insurance claim

Anne and her partner had booked flights for their holiday in early July 2021, but due to emergency surgery, Anne's doctor certified that she was unable to travel. As the cost of the flights was not refundable, Anne made a claim for a refund under her travel insurance policy.

Anne complained to the FSPO when her claim was rejected. The company responsible for handling claims stated that this was because it did not have the required information to assess the claim – specifically, a medical certificate from Anne's medical practitioner.

Anne felt that the claim handler had not taken appropriate care when assessing her claim. She asserted that it had not properly checked the documents she had provided, as her doctor's certificate had been included with her claim.

On initial assessment by the FSPO it was noted that Anne had been liaising with the claim handler acting on behalf of the insurance company responsible for claim decisions, and with Anne's permission, the FSPO contacted the insurance company directly and requested its response to the complaint.

On review of the complaint under the applicable terms and conditions of the insurance policy, the previous decision to reject the claim was overturned by the insurance company. It decided that the claim would be accepted and paid. In addition, in light of the customer service issue with the claim handler, as a gesture of goodwill, the insurance company instructed that the claim excess be waived.

Anne was very happy with this outcome, and as the matter was resolved, the FSPO file was closed.





## Case Study: Customer Operations and Information Management

### Change of interest rate on a mortgage account

Denis and his partner were paying a fixed rate of interest on their mortgage, when they saw a lower fixed rate advertised, and asked the bank if their mortgage could be changed to it. The bank confirmed that this could be arranged, but that the mortgage would be put on a (higher) variable rate until the application was fully processed. Having completed the required paperwork in September 2020, the bank confirmed to Denis that the application was being processed.

Denis received an annual mortgage statement from the bank in April 2021 showing that the mortgage was still being paid at the higher variable interest rate since October 2020 and he complained to the bank.

The bank noted that the application for the lower fixed rate had not been processed. It stated that it would not return the difference in interest paid unless Denis and his partner signed a new 2-year fixed rate contract. It also declined to tell them how much additional interest they had paid to date on the higher rate and provided no formal response to their complaint.

Denis and his partner were very unhappy with this and brought the complaint to the FSPO which wrote to the bank requesting a final response to their complaint without further delay.

Having reviewed the complaint, the bank apologised for the “*human error*” which caused the issue with the processing of the application, refunded the additional interest paid in the period, and confirmed that the lower rate contract would expire in October 2021 as requested by Denis and his partner.

## Specified illness insurance plan claim

Rory made a claim in December 2015 under his specified illness insurance plan, as he had been diagnosed with chronic lung disease. His insurer declined his claim, stating that he did not provide evidence of meeting the conditions of cover as set out in his plan terms. Rory appealed this decision and informed the insurer that he would submit the required evidence from his consultant medical specialist.

Separately, while the claim decision appeal remained open with the insurer, Rory's plan was due for review. This had already been delayed pending the outcome of the appeal, however, the insurer was concerned that further delay to the plan review, might impact Rory's options "more severely". From March 2017, for reasons of premium affordability, Rory elected to pay a lower premium to reduce the benefits payable to him under the plan from €20,000 to approximately €10,000.

In April 2017, on receipt of a further report from Rory's consultant, the insurer reiterated its decision not to admit his claim for benefit. However, it acknowledged that Rory's condition was progressive in nature and offered an ex-gratia payment of €5,000, which would be deducted from his specified illness cover benefit. Rory accepted this payment in May 2017.

Less than 4 weeks later however, Rory's consultant wrote to the insurer with the required evidence that meant Rory fulfilled the conditions for payment of full benefit in relation to the claim still under appeal. The appeal was finalised, and the remaining benefit of approximately €5,000 was paid to him in settlement of the claim.

Rory complained to the FSPO in 2021 as he remained dissatisfied with the claim outcome. He was unhappy that his plan benefits had been reduced following review so shortly in advance of his claim appeal being finalised and felt "cheated" by the insurer. He contacted the FSPO.

The FSPO contacted the insurer seeking its response to the complaint. In its final response letter, the insurer stated that while the benefit paid in settlement of the claim was correct, it appreciated that the timing of the plan review and engagement with Rory's consultant were "extremely unfortunate", as it was clear that Rory met the conditions for full payment of benefit very shortly after the plan was altered. As a gesture of goodwill, the insurer offered Rory a further ex-gratia payment of approximately €10,000 to allow payment of the original sum assured of €20,000.

Rory was happy with the result, and accepted this payment in settlement of his complaint, which was then closed by the FSPO.



## Case Study: Customer Operations and Information Management

### Joint signatories on a mortgage loan account

The Irish Credit Bureau (ICB) provided a credit rating service until 30 September 2021. It deleted its credit records once it stopped providing the service.

The Central Credit Register (CCR) operated by the Central Bank of Ireland currently maintains a similar service.

Naomi complained to the FSPO because she was very unhappy that her bank was refusing to stop reporting a personal loan to the Irish Credit Bureau (ICB), which she had jointly taken out with her ex-husband some years ago.

She stated that as part of her judicial separation and family law proceedings, “the judge said [she is] no longer liable for the loan” and she submitted a copy of the Court documents in support of her complaint. However, the bank was not a party to those proceedings, and so was not bound by them. The bank’s response was that Naomi remained jointly and severally liable for the debt with her ex-husband, and that it would continue to report this to the ICB.

Following initial assessment by the FSPO, this complaint could not be progressed because Naomi could not obtain the signed consent of her ex-husband to the FSPO’s investigation of the complaint.

Although he could choose not to take any active part in how the complaint investigation was conducted, the consent of Naomi’s ex-husband to the FSPO’s investigation of the complaint was required, as he also has rights, entitlements (and potential liabilities) arising in relation to the jointly held personal loan account, and the reporting of this debt to any credit rating service.

This requirement of consent applies equally to any settlement of a complaint in the FSPO process during confidential mediation, or to any legally binding decision following formal investigation by the FSPO, either of which would be binding on both Naomi and her ex-husband jointly. In addition, certain data protection issues arise because Naomi’s ex-husband must understand that the FSPO would hold and process his personal data in line with our privacy policy.

As Naomi was unable to contact her ex-husband to obtain his consent to this complaint, the FSPO file was closed. The FSPO informed Naomi that if circumstances changed and she was able to obtain the consent of her ex-husband to the complaint at a later date, we could then re-assess the complaint with a view to progressing an investigation.



## Time limits affect investigation of complaint

Dhafir invested in a fund in 1999, which he chose because it had a “straight-forward and upfront charging policy”, which the investment company reiterated to him with every subsequent investment or encashment over 21 years. In 2020, Dhafir queried the charges on his investment with the investment company, and was “totally shocked” to discover that they were greater than he was initially made aware of.

In its response to his formal complaint, the investment company’s position was that the charges applied to the investment account had been transparent from the start, and that Dhafir had been kept informed of these charges in the documentation made available to him over the course of the investment. Dhafir was not satisfied with this response and brought his complaint to the FSPO.

On assessment, the FSPO team identified 3 elements of complaint:

1. Dhafir maintained that the investment company had given him incorrect information in relation to the applicable charges when the investment was taken out in 1999
2. He said the investment company had over-charged him since then
3. Dhafir said the investment company had failed to provide clear information relating to the charges since it was taken out in 1999, to the present time.

As complaints to the FSPO must be made within certain time limits set out in the Financial Services and Pensions Ombudsman Act 2017, the FSPO wrote to Dhafir to explain that the first element of the complaint could not be investigated. This is because the complaint about incorrect information given in 1999, occurred before 2002 and was therefore outside the FSPO’s time limits.

However, as the other two elements of complaint were ongoing (or ‘continuing in nature’) and met the FSPO time limits on that basis, Dhafir confirmed that he was happy for the FSPO to proceed to investigate these two elements only.

The complaint was referred to the FSPO’s Dispute Resolution Service and was resolved to Dhafir’s satisfaction with a mediated settlement arising from confidential mediation between the parties. The FSPO complaint file was closed.



# Dispute Resolution Service

Complaints closed through mediation



Number of complaints closed  
through Dispute Resolution Service

**1,820**



**1,153**

Mediation  
settlement



**599**

Clarifications  
accepted

**11**

Settled between  
the parties  
outside DRS

**32**

Withdrawn



**25**

Other

This includes where contact  
was made with complainant only/  
complaints intended for another  
ombudsman or where the  
complainant resolved their  
issue without the provider

**€4,627,514**

Value to  
complainants

# Dispute Resolution Service

1,820  
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 and as informally as possible.

We commence this process by talking to and listening to both parties about the complaint and understanding it from each party's point of view.

The Dispute Resolution Officer mediates between the parties with the aim of facilitating the parties in reaching an agreement. Mediation is informal and totally confidential. Most mediations take place by phone.

Possible outcomes of mediation are:

- The complaint is resolved where the complainant and the provider come to a mutually acceptable agreement to resolve the complaint.
- Issues are clarified where the matters that gave rise to the complaint are made clear and the complainant accepts the explanation offered and closes their complaint.
- Agreement or clarification is not reached, and the complaint is not resolved and moves to a formal investigation.

In 2021, the FSPO resolved 1,820 complaints through this process. 1,153 complaints reached a mediation settlement where the complainants received redress and/or compensation. A further 599 complaints were settled where a clarification was accepted by the complainant.

A small number of complaints (7) were closed through engagement with the complainant only. This can occur if the complainant has already reached an agreement with their provider before starting mediation.

A total of 11 complaints were closed when the parties reached a settlement themselves and 32 were withdrawn by the complainant.

The remaining 18 were closed within the Dispute Resolution Service as they were intended for another Ombudsman, needed to be re-directed back to the provider to finish the provider's internal complaints process, or the complainant did not provide enough information to proceed.

The dispute resolution process using mediation provides a flexible and innovative approach to complaint resolution. The case studies in this section are illustrative of the type of complaints resolved through mediation during 2021.

There has been a noticeable increase in the number of complaints made to the FSPO in the area of investment fraud and cryptocurrency. The unprecedented global advancement in technology in the digital world over the last ten years, has unsurprisingly, left many consumers at a disadvantage in terms of their digital knowledge. This has unfortunately led to an increase in successful fraud incidents, particularly in the area of cryptocurrency.

Although the FSPO cannot investigate accusations of fraud, as these are more appropriately dealt with by An Garda Síochána, there have been a number of instances where customers have made complaints about the conduct of their financial service provider in authorising financial transactions to a fraudulent investment company, or not reversing certain transactions through the banking 'chargeback' system.

In these case studies, certain details including names and locations, have been altered in order to protect the identity of the parties as mediation is a confidential process.



## Case Study: Dispute Resolution

### Chargeback requested to reverse cryptocurrency investment

Phillipa invested \$250 in Bitcoin with a company she found online. Her investment of \$250 appeared to yield rewards which were transferred to her bank account. An investment manager then asked if they could set up remote desktop software on Phillipa's computer which allowed the investment manager to remotely access her computer. The investment manager used this remote access to set up a SEPA payee.

The investment manager then encouraged Phillipa to invest €50,000 based on her success with \$250. As she did not have access to €50,000, Phillipa was encouraged to borrow it. She was reluctant to borrow money for investment, but was encouraged by the investment manager. When Phillipa was turned down for a loan of €50,000 her investment manager encouraged her to try again and apply for €20,000. Phillipa did this, telling the bank that the loan was to cover home improvements and the loan was granted.

Phillipa transferred the €20,000 to the trading company but then started to hear things about it that worried her, so she asked it to give her the money back. It told her that it was a very bad time to cash out as there was an "open trade underway". When she insisted on getting the money back the trader showed her a trading screen (using remote desktop software) that showed her investment dropping dramatically. She was told that she needed to give it another €10,000 to save her account. The trading company offered to go 50/50 and would put up €5,000 if she did. Phillipa was then told that her investment had risen again, but to get hold of it she would need to deposit over €5,000 in an escrow account. Phillipa was very concerned at this stage and contacted the relevant authorities who confirmed it was a scam.

Phillipa wanted her bank to try to get back all the money. She had used her credit card for some of the investments and wanted the bank to use the chargeback system to dispute them (a way of disputing unauthorised transactions on a debit or credit card, or transactions where the supplier did not deliver the goods or services paid for). The bank accepted there were service issues around its implementation of the chargeback process and offered to give Phillipa back the money she had spent from her credit card account where she had used it to pay off some of the loan.

However, the bank said there was nothing it could do about the money transferred by SEPA as it had no chargeback rights and it had been authorised by Phillipa using her online banking. Both parties agreed to this resolution, by mediation settlement in full and final settlement of the dispute.

## Bank loan requested to cover cryptocurrency investment

Pavel's children lived outside Ireland and he felt isolated from them and depressed about not being able to help them and his grandchildren financially.

He saw an ad for investing in cryptocurrency suggesting that he could start with as little as \$200. Pavel thought this would be a good way to get money to give to his family and contacted the company who said it would set up a trading account for him. Pavel felt that the account looked legitimate.

Pavel tried to buy cryptocurrency with his bank card, but it was rejected, as his bank did not allow the purchase of cryptocurrency with a card. When the payment failed, Pavel rang his bank to see why it had not gone through and it explained that investing in cryptocurrency is risky and that there was a lot of fraud in this area. The bank asked if Pavel was sure he was not dealing with fraudsters. Pavel told the bank he would get his son to check but never did, as he wanted the money to be a surprise.

Pavel's investment company told him his investment had now grown to €5,000. When Pavel asked it for some of the money, the company said that as Pavel did not have a very long banking history, he would need to send them €20,000 in order to get the €5,000. Pavel had exhausted his funds so he applied for an overdraft and an online loan, both of which were granted by the bank. He sent the money to the investment company in order to have access to his returns. When he didn't get any money back, he realised it had all been a scam.

Pavel was devastated and realised he had been naïve. Some of his family members stopped speaking to him and he was so affected by the situation that his work suffered and he could not earn enough to make the loan repayments. The loan went into arrears and he incurred increasing charges for bounced payments.

The bank said that Pavel himself had authorised all payments to the fraudsters. However, it acknowledged it should not have authorised an overdraft and a loan when it was aware that Pavel was intending to invest in cryptocurrency. It offered to clear the loan and the overdraft on the condition that Pavel would agree to meet with a bank official to discuss the protection of his future banking. Pavel agreed to this offer in full and final settlement of his complaint.





## Case Study: Dispute Resolution

### Suspicious cryptocurrency investment transactions on an account

Cathal spotted a tractor on an online private sales platform and sent money to England to buy it. It turned out to be a scam and he received neither the tractor, nor a return of his money. Cathal wanted to make up for his loss and was attracted by an ad promoting investment in cryptocurrency. The company he used turned out to be a fraudulent company and despite investing up to €20,000, Cathal received no returns. At one point the company told Cathal that he would receive €60,000 if he sent them €6,000 which was not true. Cathal continued to engage with the fraudsters, after he had made a complaint to the FSPO.

Cathal's bank said it could not get a return of his funds as he had correctly authorised the transactions through his online banking. The bank also said that it had questioned Cathal on some of his transactions, but that he insisted they were legitimate. However, on reviewing Cathal's banking history the bank decided that it could have intervened more strongly at an earlier point to stop the ongoing fraud. For this reason, it offered Cathal €5,000 on condition that he meet the bank to discuss his vulnerability and the protection of his future banking. Cathal accepted this offer in full and final settlement of his complaint.

## Case Study: Dispute Resolution

### Fraudulent transactions on a bank account

Isabella and Adam are a couple in their seventies with a joint bank account that was only used for the lodgement of a small pension and to pay an insurance premium once a month. Over a two-month period there were multiple transactions on the account (206 in total), some as small as €2.29 going up to around €100. Some days there were up to 20 transactions. Isabella and Adam did not use online banking and relied on bi-monthly statements to monitor the account. Their bank's fraud department looked at the transactions as they were happening and decided that they were legitimate, as the money was going to legitimate merchants. The bank reviewed the transactions a second time and again decided that the payments were legitimate, even though they were unlike the normal banking activity of the account. The bank did not contact Isabella and Adam to check that the transactions had been authorised by them. The two months of spending totalled approximately €2,000, emptying the account. When the account was empty, the premium for the insurance policy failed and the insurance company contacted Isabella to tell her she owed it a payment. This was when Isabella and Adam became aware of the activity on their account.

The bank focused on whether Isabella and Adam had given anyone access to their bank cards and account. However, Isabella and Adam felt very strongly that the activity on the account and the merchants paid were completely out of character for them, and that most of the money could have been saved if the bank had contacted them to check if the payments were authorised by them or not.

During mediation, the bank came to share this view and agreed to pay Isabella and Adam any payments that had not already been refunded to them. Isabella and Adam agreed to accept this in full and final settlement of their complaint.

## Critical Illness Cover

In the 1990s, Ian and Maeve had taken out life insurance that included Critical Illness Cover. They made several complaints about their policy to the FSPO. Ian had made a claim under the Critical Illness section which had been rejected and they felt the premiums were increasing far more than they expected, so they stopped paying them. A year later, Ian and Maeve decided to cash in the policy and access the fund that had built up from their premiums. They were shocked to find that the policy had not been cancelled when they stopped paying for it and the funds available had been used up paying the premiums.

Ian and Maeve's insurer said that without an instruction to cancel the policy from the policy holders, the fund would be used to pay the premiums.

Ian had claimed for critical illness cover for angioplasty in 2015. His claim was rejected because the policy did not cover angioplasty. Several years later, Ian complained to the insurer about this rejection. The final response he got from the insurer noted that the claim had not been fully assessed at the time, as Ian had not provided it with the name of his specialist. Ian disagreed and said he had already done this. Following back and forth conversations in mediation, Ian agreed to give the insurer the name of his specialist and the insurer agreed to reassess Ian's critical illness claim.

On further assessment, it turned out that Ian had not, in fact, had angioplasty. He had actually suffered a heart attack, which was covered under his critical illness policy. The insurer agreed to pay the full Critical Illness benefit, plus a refund of the critical illness premiums Ian had paid from the time of the heart attack to when all payments ceased, plus a refund on the life insurance premiums paid from the time of his illness to when the payments fully ceased. This equated to approximately €180,000.

Ian and Maeve accepted this outcome in full and final settlement of their complaint.





## Case Study: Dispute Resolution

### Complaint regarding a tracker mortgage interest rate

Alice and Joe took out a tracker mortgage in 2005 and subsequently switched to a 5-year fixed rate in 2006. When the fixed rate period ended in 2011, their mortgage rate reverted to a variable rate of 4.75%, and they were not offered their previous tracker rate of 1.85% over the ECB rate.

Alice and Joe found the variable rate too high and refinanced with a different lender in 2012 in order to get a lower interest rate.

Under the Central Bank directed Tracker Mortgage Examination, Alice and Joe's original mortgage was deemed to have been impacted, as they were not offered a tracker mortgage interest rate at the end of their fixed rate period. They were awarded compensation of €5,600 by their bank to cover the period between 2011 and 2012 when they moved their mortgage.

However, Alice and Joe were of the view that the impact of the bank's error went right up to the present day, as the only reason they had moved lender in 2012 was because they could not afford the bank's variable rate of 4.75%.

On review in mediation, the bank concluded that Alice and Joe had been impacted by the bank's error beyond February 2012 and it offered compensation for the additional interest costs incurred from February 2012 up to the present day (approximately €55,000), plus the option for Alice and Joe to re-finance their remaining mortgage with it on the original tracker rate. This option was subject to a successful new credit application and both Alice and Joe and the bank, ultimately considered this an uncertain resolution. The bank then made a second offer to compensate Alice and Joe for the additional interest costs incurred from February 2012 up to the date of the full term of the mortgage in 2028 (approximately €85,000). Alice and Joe accepted the second offer in full and final resolution of their complaint.

## Case Study: Dispute Resolution

### Request for a chargeback on a bank account

Sally paid for an online product that advertised "100% satisfaction guaranteed". When she got access to the product, she found it to be of a very poor quality and she asked the merchant for her money back. The merchant refused, directing her to the terms and conditions that said no refunds will be made. Sally drew the merchant's attention to the 100% satisfaction guarantee, but the merchant repeated that they did not give refunds.

Sally approached her bank and asked it to make a chargeback request, as Sally did not think the merchant had supplied her with quality goods. Sally provided her bank with the terms and conditions of the purchase, plus the 100% satisfaction guarantee. Her bank decided that Sally had no chargeback rights based on quality of service, due to the terms and conditions of the purchase and it twice refused to request a chargeback from the merchant.

Sally complained to the FSPO and during mediation, Sally's bank agreed to request a chargeback which was successful and resulted in the merchant refunding Sally's money. The bank apologised for refusing the initial requests for chargeback and Sally closed the complaint.

## Misinformation on a private health insurance plan

David was recommended medical treatment and rang his health insurer to see if he was covered for it by his policy. He was told his policy did not cover this particular treatment. He asked if this treatment was covered by any policy offered by his health insurer and he was told it was not.

He approached the hospital offering the treatment, to be told that the treatment was covered by some policies offered by his health insurer. He contacted his insurer again and this time was told that his existing policy covered the treatment, so he organised for treatment to start. On the day of the first session, he asked his health insurer for written confirmation that his treatment was covered and it informed him that a mistake had been made and that he was, in fact, not covered for the treatment in question.

David went ahead with the treatment paying the €5,000 cost himself. He appealed the decision of his health insurer and ultimately brought a complaint to the FSPO. During mediation, the health insurer admitted that communication with David had been very poor and that expectations of cover had been raised, so it offered David a goodwill gesture which would cover his expenses. David accepted the offer and the complaint was closed.

## Poor customer service on a bank account

Faith said she went into a bank branch and asked to open a savings account. The bank said that Faith filled out a form to open a current account. English is not Faith's first language. The account was opened and Faith was issued with an ATM card. Faith thought the card related to her savings account and that any charges that appeared on her account related to the cost of the use of the ATM card. As these charges started rising, Faith asked the bank what they were for and was told they were the normal charges on a current account. Faith explained many times on the phone and in person in the branch, that she thought she had asked for a savings account and not a current account. Faith says that she asked for the current account to be closed many times, but that the account was not closed and the fees accumulated.

The bank said it needed a written instruction from Faith and the outstanding fees to be paid, in order to close the account. Faith said she had not been told that a verbal request to close the account was not sufficient and that she could not afford to clear the fees in order to close the account.

During mediation, the bank remained of the opinion that Faith had requested the opening of a current account but accepted that communication about closing the account could have been clearer and made earlier, before the fees got so high. It agreed to remove the fees so that Faith could close the current account and the complaint was resolved on that basis.



## Case Study: Dispute Resolution

### Mortgage arrears handling

Bernadette and Conor had a mortgage on a rental property. Around the time of the recession, they recognised that they were going to run into difficulty paying this mortgage, so they contacted their lender seeking a short-term arrangement – such as 6 months interest only. They filled out the Standard Financial Statement (SFS) that was required for an assessment of their financial situation and their ability to pay their debts. However, their bank delayed in assessing the SFS, which expired after three months and they had to complete it again. Their SFS then got passed around different departments within the bank and a decision on it was not made. Eventually the bank wrote to Bernadette and Conor asking for additional information, but it sent the letter to the vacant rental property by mistake.

When Bernadette and Conor did not send the bank the information it was looking for (as they had not received the letter) the bank declared them “not co-operating” under the Code of Conduct on Mortgage Arrears (CCMA). The CCMA allows for this if a borrower fails to provide information relevant to their financial situation within the timeline specified. Being declared “not co-operating” removes some protections from the borrower around the steps a lender can take.

Arrears built up on the Buy to Let mortgage. When they reached €15,000 the bank appointed a receiver in order to sell the property. The property was sold, leaving an outstanding balance of around €15,000. As Bernadette and Conor could not pay this off, it kept accumulating interest and resulted in bad credit reports.

Bernadette and Conor felt they had been proactive in dealing with their debt, but that their property had been sold (leaving an outstanding debt) because of the bank’s failure to engage with them clearly and in a timely manner and declaring them “not co-operating” due to an error made by the bank.

As a result of the parties mediating, the lender offered Bernadette and Conor €21,500 in redress and facilitated them having a dedicated point of contact to deal with the residual debt. Bernadette and Conor accepted this offer in full and final settlement of their complaint.

# Investigation Services

**856** Complaints closed through Investigation Services

**53**

Upheld



**33**

Substantially  
Upheld



**89**

Partially  
upheld



**91**



Not upheld because  
the provider made  
a reasonable offer at  
an early stage

**311**

Not upheld on  
the merits of  
the complaint

**136**

Settled during  
investigation on foot  
of an on the record  
offer from the provider

**97**

Withdrawn or  
otherwise closed

**46**

Outside settlement



**€2,553,488**

Value to complainants

# Investigation Services

856  
complaints  
closed

The FSPO resolves the 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 the formal Investigation Service.

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 the complaint is not resolved and a formal investigation is required.

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 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 of 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 of those 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. If the evidence before the Ombudsman does not disclose wrongdoing by the provider, the Ombudsman will not uphold the 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 actual loss of pension benefits 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.

In the case of some complaints, the financial service provider may respond early in the investigation process to make a formal offer to the complainant on the record, of compensation or rectification, either with an admission of wrongdoing, or by way of ex-gratia payment. 136 such complaints were resolved in this way in 2021, providing a significant level of compensation or rectification to complainants, amounting to €944,167. If the complainant does not accept such an offer, the investigation will continue to a legally binding decision.

During 2021, the Ombudsman issued 577 legally binding decisions. Of these, 175 complaints were upheld, substantially upheld or partially upheld. Of the 402 complaints not upheld, the Ombudsman decided on 91 occasions that the legally binding decision should not uphold the complaint, because in each of those complaints, the early offer of redress from the provider, which remained open to the complainant to accept, was

reasonable and adequate to redress the conduct giving rise to the complaint. As a result, it was not necessary to make any further direction.

Although these 91 complaints are recorded as not upheld, the total value of the offers of redress made by the financial service providers to their customers in these matters was significant, amounting to €667,993. In all other cases, the Ombudsman did not uphold the complaint based on the merits of the complaint at hand.

As can be seen from the graphic on page 38, the value to complainants from the investigation process is very significant, amounting to €2,553,488. This value includes compensation directed by the Ombudsman in decisions where the complaint is either upheld, substantially upheld or partially upheld, on the record offers and the monetary value where complaints were not upheld because the provider made a reasonable offer at an early stage, which was still available to the complainant. In addition to compensation directed, where rectification is directed, the true value of that rectification is often unknown.

The Ombudsman regularly 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 created an online database of the Ombudsman's legally binding decisions. This database currently holds the full text of about 1,500 of the Ombudsman's decisions in relation to complaints against financial service providers, issued by the FSPO since January 2018.

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

The most recent [Digest, Volume 7](#), published in February 2022, contains a summary of

20 decisions made by the Ombudsman in complaints concerning travel insurance.

All published decisions are available at [www.fspo.ie/decisions](http://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 60.

The Ombudsman 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 in a calendar year. Details of the providers that have had at least three complaints upheld, substantially upheld, or partially upheld during 2021 are set out on page 69.

While the FSPO encourages settlements at the earliest stage, a settlement at any stage is always encouraged and welcome.

In some cases, during the investigation process, the provider will make an undisclosed offer to the complainant and where the settlement is accepted by the complainant the file is closed, recorded as an outside settlement and no decision issues.

During 2021, 46 complaints were settled during the investigation process as an outside settlement. The value to complainants for these settlements is unquantifiable, but nevertheless provides an undoubtedly satisfactory outcome for the complainant and the provider.

- > Value of complaints not upheld due to reasonable offer made, €667,993
- > Value of complaints settled during investigation on foot of an offer from the provider, €944,167
- > Total compensation directed in Ombudsman's legally binding decisions, €941,328

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



## Case Study: Resolved during investigation

### Request to reverse transaction to fraudulent IBAN

On 2 March 2020, Noah attended his bank to transfer €29,000 to the UK in a same day transfer. The next day, he realised that the IBAN he used in the transfer form was not correct and in fact it was fraudulent.

Noah phoned his bank at 17:16 on 3 March to stop or freeze the transfer. He spoke to a bank agent who said that the fraud department were not available after 17:00 and someone would contact him next day. The bank agent recommended he email customer service with the details.

At 22:30 on the same day, Noah contacted the receiving bank in the UK, which stated that he should have his own bank's fraud department contact them directly. Noah had left a message with his bank's branch manager earlier at 18:00 and at 23:00 he spoke to an agent, who again advised Noah that the Fraud Department were not available until the next day.

On 4 March 2020 at 08:52, Noah made multiple attempts to contact the branch manager by phone, email and text, without response.

Following this, Noah phoned the bank and was unable to connect to the fraud department. Noah then phoned customer service and was told the matter had been sent to the receiving bank. Noah's bank rang him at 09:30 to inform him of the name of the fraud agent who was investigating the issue. Noah could not contact the fraud agent, so he went to his bank's headquarters, where a member of the Financial Crime Department met Noah and advised him that they had contacted the receiving bank.

On 22 April 2020, Noah was advised by his bank that €824.55 had been lodged to his account two days earlier and that further refunds were unlikely. Noah then discovered a further €8,929 had been refunded to him 4 days earlier without notice to him.

Noah complained to the bank regarding its customer service and requested that the remaining amount of €19,246.45 be refunded to him.

Noah's bank explained that upon notification of the fraudulent transfer on 02 March 2020, it had contacted the receiving bank in the UK by phone to attempt a SWIFT recall at 17:34, via email at 17:51 and by phone again at 18:00. The bank received a replying email the following day stating that the account had been frozen and a recommendation that an indemnity be sent. The bank responded 9 minutes later to confirm the wording required and it provided this wording at 15:52 and the formal indemnity was issued at 16:43.

The bank also outlined that there is no agreement or legislative basis for interbank recalls for fraud between Ireland and the UK. The bank explained that it acted in good faith when processing the payment and had no way of knowing that the IBAN details it had been given, were fraudulent.

In rejecting Noah's complaint, the Ombudsman was satisfied that the bank had acted promptly and within 37 minutes upon being advised of the fraud by Noah. The following day the bank had actively followed up with the UK bank and had responded to the UK bank's emails each time, within 9 and 51 minutes respectively. The Ombudsman was satisfied this was an adequate and reasonable service.

The Ombudsman stated that there was no delay by Noah's bank in seeking to impose the account freeze. The Ombudsman also noted that Noah's bank would not have access to the names of account holders in other banks and as a result, it could not identify that these details did not match the IBAN.

The Ombudsman did not uphold the complaint.



## Request for chargeback after investment scam

Between June 2017 and August 2017, Tom fell victim to a UK-based scam, in which a company claimed to be an investment platform. Tom invested €60,000 with the UK company by way of wire transfers and payments from his credit card. Tom subsequently realised that his €60,000 had not been invested, but had been stolen by the company. Tom contacted his bank in Ireland and requested that all the payments he made to the company in the UK, be recalled.

Tom maintained that the banking community in the UK and EU was aware of the status of the company, and under Prudential Regulation Authority rules, his bank was liable for any breach of contract by the UK company. Tom maintained that as the company did not offer him a service, it had breached its contract with him and therefore Tom's bank was liable for the breach of contract. Tom quoted the Visa Core Rules and in particular the rule that provides that before allowing a company to accept payments by debit card or credit card, there must be a physical inspection by the bank, of the listed premises of the business. Tom also quoted the SWIFT payment rules which require a similar inspection. Tom stated that he had proof the company's premises was empty and so it was clear that no inspection of the premises had been undertaken by Tom's bank, before it allowed the company to accept payments by credit/debit cards.

Tom's bank refused to issue the requested chargebacks for €60,000, so Tom made a complaint to the Ombudsman.

The bank submitted that Tom had provided all of his information to the fraudulent company and had created the accounts with them, agreeing to their terms and conditions. The bank outlined that Tom had authorized and willingly participated in the transactions. The bank also clarified that although it was Tom's card issuer, it was not the UK company's bank. Accordingly, it said that all it could do, was to advise a customer to contact the relevant authorities or regulators, if there were doubts about a merchant's legal standing or regulatory status.

The Ombudsman considered the terms and conditions applicable to Tom's account, together with the Visa Core Rules and Visa Product and Service Rules identified by Tom. The Ombudsman noted that the company that Tom had transferred his €60,000 to, was registered in the UK. The Ombudsman noted that Tom sought to rely on the rules and bylaws of the Prudential Regulation Authority at the Bank of England and the rules and bylaws of the Financial Conduct Authority in the UK. However, the Ombudsman outlined that whilst these rules and bylaws may be applicable to the operations of the company, given that it was based in the UK, they are not applicable to Tom's bank, being a bank operating and regulated in Ireland, and subject to the laws and regulatory framework of Ireland.

Regarding the Visa Core Rules, the Ombudsman outlined that these did not form part of the terms and conditions of Tom's account, which governed the relationship between Tom and his bank, but that they are relevant. Despite this, the Ombudsman also noted that Tom had fallen outside the relevant time limits for seeking a chargeback under the Visa Core Rules. Equally, in respect of the rule Tom referred to, which required an inspection of a merchant's premises before providing card payment facilities, the Ombudsman noted that this rule did not apply to Tom's bank but it applied instead to the UK company's bank.

Continued on page 43







## Case Study: Resolved during investigation

### Continued from page 42

The Ombudsman noted that Tom had not identified any term or condition which his bank had breached. The Ombudsman also pointed to the fact that the bank relied on Section 50(b) of the terms and conditions of Tom's account, which sets out that the time limit within which a claim for a chargeback can be brought is 8 weeks from when the funds are debited. The bank confirmed that Tom did not raise a complaint with the bank, within this period.

In respect of Tom's claim that the bank should have vetted the scam company and warned Tom not to proceed with the transactions, the Ombudsman concluded that it would be unreasonable and impractical to impose such a duty on a bank to carry out the vetting suggested by Tom.

The Ombudsman did not uphold Tom's complaint.

## Request to bank to adjust credit rating

Arnold had a €2,000 overdraft loan and a €3,000 term loan with a bank. In November 2017, he had an accident at work, following which, he could not work due to injury. He made an agreement with the bank for a six-month moratorium on the loans, after which the two loans would be combined and if he had any difficulty meeting the loan payments due to illness, he could defer payments again for an agreed period.

Arnold applied to the bank for a loan top-up in July 2018 to carry out car repairs and the bank declined the loan. He then applied to a different bank for the loan, which also declined and was advised that the Irish Credit Bureau (ICB) register had details of missed payments on his loan. Arnold disputed he had missed payments and that rather, he had only deferred them by agreement with his bank.

Arnold arranged another moratorium on loan payments with his bank in October 2018, which lasted 3 months. In February 2019, he received a letter from the bank that the loan account was in arrears of three months, commencing November 2018.

Arnold then contacted the bank in August 2019 to complain that his credit history was not correct. He says the bank referred him between different departments and some months later he was referred to the department he had first complained to, which he contends then re-sent him the original decision on his complaint.

Arnold stopped making payments on his loan in an attempt to get the bank to change his credit history with the ICB. As a result, the bank closed his current account. Arnold made a complaint to the FSPO regarding the closure of his current account, and the bank's refusal to correct his credit rating.

During the investigation of the complaint, the FSPO, through its Summary of Complaint, sought information regarding the restructure and payment arrangements put in place on the loan by the bank. The FSPO also queried the bank's credit control records on the account, the bank's handling of the complaint and the bank's communications with Arnold.

Written negotiations followed between Arnold and his bank through the FSPO. The bank offered to correct Arnold's credit history. The bank accepted that there were a number of service failures on its part, in relation to poor and unclear communications. The bank apologised and offered to settle the outstanding balance of just over €4,000 on the loan account. In addition, it offered to open a new current account for Arnold and offered him a goodwill payment of €1,500. Arnold accepted the bank's offer and the complaint was closed.



## Case Study: Resolved during investigation

### Delay on release of funds

Philip decided to surrender an investment fund held with a life insurance company. He made a request (through his financial advisor) to surrender the investment and transfer the funds. The units were sold on 1 May 2020 and the insurance company was obliged to make the funds available to Philip within three weeks of his request.

Philip selected an alternative fund to invest in while waiting for the funds to be paid out by the insurance company. On 15 June 2020, some six weeks later, the insurance company released the funds to his account. Philip felt he had lost out financially due to the insurer's additional three-week delay. During this time the alternative investment fund had a 2.9% gain in value, and he calculated a loss of €1,318 which he would have gained had he been able to invest earlier. Philip later submitted evidence from his advisor that indeed the funds were to be directed to the alternative investment in May 2020.

Philip complained to the insurance company which acknowledged there had been a delay but did not accept that it was liable for losses that may have arisen from Philip's inability to invest the surrendered funds sooner. The insurance company offered €150 in respect of the 'interest lost' over the 3-week period delay in payment. Philip did not accept this and submitted a complaint to the FSPO in October 2020.

The complaint was not resolved during mediation at the FSPO and the complaint was transferred to formal investigation. During the investigation process a Summary of the Complaint was issued to the insurance company. Philip requested that the insurance company compensate him for the calculated loss incurred (€1,318) and for the inconvenience it had caused him.

The insurance company responded to the Summary of Complaint and agreed to offer Philip a full and final payment of €1,318 and €250 for inconvenience caused.

Philip accepted the insurance company's total offer of €1,568 and the complaint was closed.

## Claim for storm damage rejected

Francois and Marjory held a house insurance policy and submitted a claim to their insurer following storm damage to their roof. The storm damage caused a leak that resulted in water running down the kitchen walls and the roof needed repair.

Francois and Marjory explained that tiles and slates on the roof lifted and this was caused by *“windy, stormy weather”*. They stated that upon notifying the insurance company of the leak, the *“person on the phone didn’t see any problem with our claim”*. Francois and Marjory also stated that they made a request to the insurance company for an assessor to assess the leak, but that it did not arrange for this to happen.

Francois and Marjory stated it was their belief that the leak must have been there for some time as the *“roofer said the timbers were in a bad state when they stripped the roof back”*. They also highlighted that as there have been a quite a few storms over the past couple of years, they weren’t sure exactly when the damage occurred.

The couple’s claim was rejected by the insurance company. In the insurer’s final response letter, it submitted that the onus was on the policyholder to prove that the damage being claimed for, was caused by an insured peril under the policy and that *“in this instance, no evidence has been provided by yourself or your contractor to verify that an insured peril caused this damage”*. Francois and Marjory disagreed with the insurance company’s position and brought their complaint to the FSPO.

The complaint was not resolved during mediation at the FSPO and a formal investigation was initiated, by issuing a Summary of Complaint to the insurer. The insurance company’s formal response to the Summary of Complaint was furnished to Francois and Marjory for their consideration and upon reviewing the formal response, the couple submitted a further document for consideration.

This document was shared with the insurance company and, upon review, the insurer responded and confirmed it would cover the cost of the claim. Francois and Marjory were happy with this outcome and thanked the FSPO *“for all your help over the past few months”*. The FSPO closed the complaint.



## Case Study: Resolved during investigation

### Travel insurance claim declined

Sinéad purchased a travel insurance policy from the insurance company in January 2020. Sinéad travelled to her destination country in February 2020, with a scheduled return date for March 2020. Sinéad stated that her pre-booked return flight was cancelled due to the COVID-19 pandemic.

Sinéad researched her options and discovered that the only available flight home was on 30 March 2020, with a new airline and twelve days after the date of her original planned flight home. On 14 April 2020, Sinéad registered a claim with the insurance company to cover the additional expenses of accommodation and the repatriation flight. Sinéad stated that her claim was declined by email in June 2020.

Following this, Sinéad made a complaint to the insurance company in relation to the declined claim and the insurer issued its final response letter. Sinéad acknowledged that the insurance company partially upheld the claim relating to customer service failings, but it allowed no benefit for the cost of the flight home or additional accommodation expenses incurred.

The insurance company stated it declined cover as the return flight was outside the agreed terms and conditions of the policy definition for the section 'Additional expenses if you are stranded on your return journey home'. Sinéad argued it was unfair her claim was classified under '*natural catastrophe*' as COVID-19 was not classified as a global pandemic until after Sinéad had purchased the policy on 20 January 2020.

The complaint was not resolved in mediation and the FSPO commenced a formal investigation, issuing its formal Summary of Complaint. Prior to issuing its full response, and upon fresh review of the dispute, the insurance company noted that the claim was incorrectly declined under the wrong policy section.

The insurance company wished to settle the matter with Sinéad amicably and offered Sinéad €1,703 in full and final settlement of the complaint. Sinéad accepted the insurance company's offer and the file was closed, noting the settlement achieved between the parties.

## Customer service failings

Ted engaged the services of a solicitor but maintained the solicitor did not carry out the services he paid for. Ted asked his bank to perform a chargeback on the two payments he had made to his solicitor of €1001 and €1500.

Ted provided the bank with evidence of the transactions in July 2021. The bank did not advise Ted that it could not carry out a chargeback in relation to online payments and no follow up call was made to Ted. As a result, Ted resubmitted all of his evidence to the bank again in August 2021.

Following this, the bank advised Ted that as his transactions were online bank transfers and not payments made by debit or credit card, no chargeback payment option was available. Ted was informed that he needed to attend his local branch, which would request a refund from his solicitor's bank, but it could not guarantee a refund. Ted was unhappy with the response and he made a formal complaint to the bank in September 2021.

The bank issued a final response letter to Ted in October 2021 and stated it could not refund the online transfers as requested. The bank believed that it acted in line with its terms and conditions and regulatory obligations.

The complaint was not resolved in mediation and the FSPO commenced a formal investigation, issuing a Summary of Complaint. The bank issued its full response and stated that on fresh review of the dispute, it wished to settle the matter with Ted amicably. The bank made an offer on the record to resolve the complaint by way of a payment of €1,250 in full and final settlement of his complaint, acknowledging customer service failings. Ted accepted the bank's settlement offer and the file was closed.





## Case Study: Resolved during investigation

### Restructuring of a loan requested

Ruairí and Maja had a home loan and two residential investment property loans with a bank. Ruairí advised he had assumed responsibility for the bank loans as part of a marriage separation agreement with Maja. Ruairí was experiencing some financial difficulties, so he appointed a Debt Management Consultant to represent them both in negotiating an Alternative Repayment Arrangement with the bank.

Ruairí stated that in August 2017, their representative made a verbal agreement with the bank, which he later confirmed in writing, on restructuring the two investment property loans. He contended the bank did not respond and arrears continued to accrue on the loans. In December 2017, their representative wrote to the bank and enclosed completed Standard Financial Statements for both Ruairí and Maja. In August 2018, they were informed by the bank that it was selling the two investment property loans to a new loan owner.

Ruairí and Maja asserted that due to the loans being in arrears, they thought the new loan owner was likely to seek repayment of the entire outstanding loan balances, so Ruairí borrowed €40,000 from a relative to clear the arrears before the sale went through. Ruairí explained that this would not have been necessary, had the bank implemented the requested restructure in August 2017.

Ruairí and Maja complained to the FSPO that they wanted the bank to give a detailed explanation as to why the restructure proposal was not progressed in August 2017 and why the bank maintained that it had not received the Standard Financial Statements submitted by their representative in December 2017.

During the investigation of the complaint, the FSPO, through its Summary of Complaint, sought information regarding the bank's compliance with the Consumer Protection Code 2012 and the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) Lending to Small and Medium-Sized Enterprises Regulations 2015. The FSPO also examined any failure in communications between the parties.

Six months after the formal investigation commenced, the bank communicated that having reviewed the matter further, it had decided to offer €7,500 to Ruairí and Maja in full and final settlement of the complaint. Ruairí and Maja accepted this offer and the complaint was closed.

## Failure to transfer funds

Sylvie withdrew funds from the account that she held with an online betting merchant and received confirmation from the merchant that the payments were successfully released to her bank account.

Sylvie subsequently received a letter from the bank informing her that it does not accept '*betting money*' and that it had returned the payments to the merchant's bank account. However, the merchant bank wouldn't accept the money and kept trying to send it back to the bank. The bank also informed Sylvie that she should contact the merchant to resolve this. When Sylvie contacted the merchant, she was informed that the reference numbers supplied by the bank were invalid.

Sylvie made a complaint to the FSPO as the bank returned her funds to the merchant, on numerous occasions without providing her with any assistance to help her resolve the problem.

Sylvie's complaint was not resolved during mediation and the FSPO commenced a formal investigation. A Summary of Complaint was issued and the bank was given the opportunity to formally respond to the Schedule of Questions and Schedule of Evidence Required, within 20 working days.

Prior to the deadline to submit its formal response to the FSPO, the bank requested some additional time to provide a comprehensive response, as it wanted to ascertain the current location of Sylvie's funds and to establish whether Sylvie recently contacted the merchant. An extension was agreed and the FSPO subsequently coordinated and shared all correspondence between the parties.

Shortly afterwards, the bank discovered that Sylvie's funds were with the merchant and agreed the money could be returned to her bank account, however, Sylvie was required to initiate contact with the merchant to instruct the return of her funds. When Sylvie subsequently contacted the merchant, her funds were returned to her bank account in full. Sylvie was satisfied with this outcome and the complaint was closed.







## Case Study: Resolved during investigation

### Incorrect loadings applied to policy

Ben took out a unit-linked life insurance policy in his sole name, in the late 1980s. As a smoker, a 75% loading should have applied to his premiums, however, due to an administrative error by the insurance company this loading was not applied.

Five years later, Ben's wife Edel was added to the policy.

Due to another administrative error by the insurance company, it applied a loading of 75% to both Ben and Edel at this time. This error resulted in a lower value accumulating in the investment fund linked to the policy.

Ben stated that this was rectified by the insurance company in 2019 when it added a cash amount for the sum of €21,835 to the investment fund linked to the policy. Ben subsequently requested that the insurance company provide him with the calculation spreadsheets that its actuaries used to calculate this amount, as he wanted the figures independently checked on his side. The insurance company did not provide him with these calculations and, as a consequence, Ben and Edel made a complaint to the FSPO.

Ben and Edel's complaint was not resolved during mediation at the FSPO and subsequently the FSPO commenced a formal investigation. A Summary of Complaint was issued, and the insurance company was given the opportunity to formally respond to the Schedule of Questions and Schedule of Evidence Required.

In its formal response the insurance company sincerely apologised to Ben and Edel for its errors and included, as part of the Schedule of Evidence, details of the calculations completed by its actuarial department.

The insurance company offered Ben and Edel the sum of €10,000 in full and final settlement of their complaint, as a result of its errors.

Ben and Edel accepted this offer, and the complaint was closed.

## Pet insurance claim denied

Eliza held a pet insurance policy with an insurer. Before taking out the policy, Eliza's pet had collapsed and it had to visit the vet. Following the vet visit, Eliza took out the pet insurance policy.

The insurer accepted the claims which Eliza submitted each time her pet collapsed. In 2016, the insurer left the pet insurance business and Eliza's pet insurance policy was transferred to another pet insurance company.

Eliza's pet had to attend a veterinary practice in March 2017 following multiple episodes of collapse. Eliza submitted a number of claims to the new insurance company in early 2018. The new insurer declined one of these claims for what was described as *"Treatment and Investigation of Collapsing Episodes."*

Eliza and her vet submitted an appeal to the new insurance company. Eliza's vet suggested the reason for the treatment in March 2017 was due to a heart condition and was not related to the previous episodes of collapse. Eliza requested the new insurance company pay a vet bill of €2,000 and pay the costs of the pet's continuing medical expenses related to the previously declared condition. The new insurance company maintained its position in its final response letter explaining that it would not cover the claims as Eliza's pet had suffered from the condition before Eliza took out the policy.

Eliza explained to the FSPO that *"when I took out the policy I informed [the insurer] that [the pet] had pre-existing conditions"* and that she *"assumed that all previous claims and medical history would transfer to [the new insurer] with the transfer of the policy."*

Following a formal investigation by the FSPO, the new insurance company offered to settle Eliza's claim. Given the passage of time since the claim was first submitted, the total cost of the vet bill which the new insurance company agreed to settle, amounted to almost €8,979.

Eliza accepted this offer, writing to the FSPO to *"sincerely thank you for your patience with this matter and your endeavours to resolve same."* The FSPO closed Eliza's complaint in light of the claim settlement.





## Case Study: Resolved during investigation

### Customer service issues with mortgage application

Hans and Lenka applied for a mortgage loan with a bank in late 2019 to buy a house. They explained they gave the required documentation to the bank, following which they received 'approval in principle' in early January 2020. Based upon the 'approval in principle', Hans and Lenka began to search for a property. In February 2020, Hans and Lenka made an offer on a property and notified the bank of their progress.

The bank then requested further documents such as proof of funds ready, credit report, all credit card debt to be cleared, gift letter, bank statements, recent payslips, solicitor name, valuation options and deposit for property evidence. Hans and Lenka gathered the documentation and gave it to the bank. They stated they were tenants in a rental property at this time and were "under pressure to exchange the contract and move to the new house".

Hans said he "constantly" rang the bank for updates, however "delays were always an issue." In Spring 2020, the bank then sought a letter from Hans' employer "confirming no change in circumstances" and confirming his employer does "not envisage any change to the terms and conditions of employment in the foreseeable future".

Hans' employer declined to provide such a letter "as they have never issued such letter before." The couple say the bank used this to reconsider their situation and their "whole dream of buying this property just collapsed". Hans and Lenka's property purchase fell through, and they submitted a formal complaint to the bank.

The bank initially outlined that it had sought confirmation from Hans' employer that both his income and employment had not been impacted by the COVID-19 pandemic.

The FSPO issued a Summary of Complaint with a Schedule of Questions and a Schedule of Evidence Required to the bank. Following this, the bank offered a goodwill gesture of €5,000 in response to the distress the ordeal had caused Hans and Lenka.

Hans and Lenka accepted this gesture in full and final settlement of the matter and contacted the FSPO to say: "Thank you very much for everything you did for us." The FSPO closed the complaint.

## Incorrect information provided by bank

Laura explained that large sums of money had been transferred from her bank account to an online, third-party investment company that she understood at the time to be a legitimate company. The funds were transferred through a crypto-exchange company by way of a beneficiary bank in another EU country. Laura later discovered that this investment company had misrepresented itself, and that it was not a regulated investment company, and while it took her money, it did not actually invest it. Laura explained that the bank should have known that the investment company with which she had engaged was unregulated, and she wanted the bank to return the disputed payment transactions to her bank account.

The bank stated that Laura had initiated and executed two international payment transfers totalling €7,400 and €10,000, to the crypto-exchange company, using the bank's online banking service. The bank stated that Laura had required a unique security code from a card reader to complete each of these transactions.

As the complaint was not resolved in mediation, the FSPO began a formal investigation. A Summary of Complaint was issued to the bank by the FSPO in April 2021.

In its response to the Summary of Complaint, the bank acknowledged that in its initial attempt to recall the payment of €7,400, it had mistakenly entered an incorrect code on the Swift Messaging system, which resulted in the beneficiary bank not actually receiving this recall request.

The bank also acknowledged that it had supplied Laura with inaccurate information by informing her that the beneficiary bank had not responded to its Swift Message recall request regarding the transfer payment of €10,000, when in fact the beneficiary bank had responded and had informed the provider that the funds had already been withdrawn by the recipient.

The bank acknowledged that it delayed in responding to one of Laura's letters querying the matter. The bank acknowledged that during a telephone conversation in April 2020, it had incorrectly informed her that she could only seek a chargeback for payments made using her credit card, within 60 days of the payment, instead of the correct period of 120 days.

The bank offered Laura €3,500 in full and final settlement of this dispute in recognition of the time and effort taken by her to pursue this complaint and in acknowledgement of the service issues identified. Laura accepted this offer.





## Case Study: Resolved during investigation

### Customer service complaint against bank

Charlene's complaint concerned disputed transactions on her bank accounts. She was contacted in October 2019 by a phone caller claiming to be "bank security" from her bank who informed her that 'hackers' were attempting to take money from her bank accounts. She states that she was led to believe that the 'bank security' needed to access her online banking system to prevent this from happening. Charlene says that she was not asked for any account numbers or her pin number, but rather asked to log into her online banking to check her account. She says that she was asked if she had a card reader, which she did, and she was then told that she would be assisted with the use of a card reader on her accounts.

Following this interaction, Charlene says that she believed that something was not right, and she informed the bank of this incident within an hour of the fraudulent call. She was notified that two transactions had taken place totalling €9,840.

Charlene argued that the bank made no effort to assist her and simply told her that her money was gone. Charlene believes that by failing to take immediate action during this first call, the bank deprived her of any opportunity to get her money back.

Charlene said that the bank informed her that as she had authorised the transactions with her card reader and that there was no bank error, the bank can only recover the funds on a best endeavour basis. Charlene made an official complaint with her bank as she believed that it failed to act with due care and diligence in relation to the management of her accounts and to apply suitable governance, and to adequately guard against unauthorised activity being perpetrated.

Since the complaint was not resolved in mediation, the FSPO commenced a formal investigation. The FSPO issued its formal Summary of Complaint, and the bank responded prior to issuing its full response with a settlement proposal of €9,840 to Charlene in full and final settlement of the matter. This offer was made as a gesture of goodwill to resolve matters amicably and not as an admission of liability by the bank. Charlene accepted the bank's settlement offer and the file was closed.

## Travel insurance claim refused

Martin and Gillian, a father and daughter, made a complaint against their insurance company in late 2019, after their travel insurance claim was refused.

Martin said that in November 2019, while travelling with Gillian abroad, the airline announced that no carry-on baggage would be allowed on their flight. Martin stated that Gillian did not want to give up her carry-on luggage as it contained prescription drugs which were vital to her health.

Martin said that Gillian was being treated for certain medical conditions which required her to take medications on a regular basis and could not be reduced or discontinued except on the advice of her physician. Martin added that Gillian was assured that the carry-on baggage would be returned to her after the flight.

On arrival at their destination, they discovered that their baggage was missing and immediately Martin made a lost luggage claim. They also attended a medical clinic for consultation by an on-duty doctor. However, Martin said that although the doctor wrote a prescription for two drugs which were available, he believed that these were not drugs that would control Gillian's conditions.

Martin explained that Gillian was feeling distinctly unwell the following day and he decided to immediately return home to guarantee that Gillian would receive her correct medication. Martin explained that he did not call the insurer's helpline as their mobile phones were inoperative, and Gillian was in medical difficulty.

On return home, Martin made a claim on the policy for expenses incurred in relation to the early curtailment of the trip.

The insurance company stated that, in line with the policy conditions, the claim was refused because Martin and Gillian had not supplied the required evidence in support of the medical necessity to curtail the trip, and that Martin had not contacted the emergency medical assistance team to explore the options available.

Since the complaint was not resolved in mediation, the FSPO commenced a formal investigation. The FSPO issued its formal Summary of Complaint, and the insurance company issued a formal response which contained a settlement proposal of €3,649 to Martin and Gillian as a gesture of goodwill, and in settlement of the complaint. Martin and Gillian accepted the insurance company's settlement offer and the file was closed.





## Pension Case Study: Resolved by legally binding decision

### Miscommunication concerning pension lump sum entitlements

Charlotte was employed by a company from 1978 to 1994, which provided an occupational pension scheme.

In 1994, Charlotte left the company and took voluntary redundancy. As a result of her voluntary redundancy, Charlotte received a severance package of around IR£30,000. At this time, Charlotte signed a waiver form for Revenue, whereby she received an additional lump sum payment of IR£10,000 in her severance payment, knowing this would affect her lump sum payment at retirement age.

Two years before Charlotte reached her normal retirement age under the scheme, Charlotte wrote to the employer in January 2017 requesting information and clarification regarding her pension scheme.

The employer responded to Charlotte, noting that she had given up her right to 'commute a portion of her pension in exchange for a lump sum at retirement' and directly below this, it gave instructions on how to calculate a tax-free lump sum.

Charlotte was confused by the wording of this letter and called the employer to clarify the facts. On the basis of this call, Charlotte understood that she was actually due a lump sum at retirement.

The employer argued that it was clear from its letter to Charlotte that she had given up her right to a lump sum at retirement.

In November 2018 (2 months prior to Charlotte's retirement) the employer sent Charlotte a letter confirming that Charlotte had waived her right to a lump sum. Charlotte emailed the company in return, referring back to the letter dated February 2017, which she said indicated that she was entitled to a lump sum at retirement. Charlotte stated she wished to lodge a complaint in relation to the misinformation provided; however, no complaint was recorded by the employer, although it did apologise for including the lump sum calculation formula in the February 2017 letter which confused her.

Charlotte made a complaint to the FSPO that the misleading information given to her by her previous employer caused her to make an uninformed decision to leave her then, current employer.

The Ombudsman noted that although Charlotte did not dispute the contents of the agreement she signed in 1994, the Ombudsman considered the letter issued to Charlotte in February 2017 was confusing. On the one hand the letter outlined that no lump sum was due on the basis that she had given up a right to commute a portion of her pension at retirement, yet on the other hand the letter outlined how Charlotte could calculate her lump sum payment.

The Ombudsman noted the employer's argument that Charlotte should have sought further clarification in relation to the lump-sum issue following receipt of the letter dated February 2017, which caused her confusion. However, Charlotte had called the employer.

Continued on page 58

## Pension Case Study: Resolved by legally binding decision

### Continued from page 57

Although this call wasn't recorded and the employer disputed the content of the call, the Ombudsman was of the view that the very fact that Charlotte had to make such an enquiry by way of a phone call ought to have been sufficient evidence to the employer that they needed to clarify the position regarding the lump sum to Charlotte in writing, and to at least make a note of the call on its system, which the employer did not do.

The employer argued that it did not have the opportunity to investigate the complaint itself and issue a final response letter. The Ombudsman found that the employer should have initiated its formal complaints procedure following receipt of Charlotte's complaint in her email of 12 November 2018 and there was no evidence provided that the employer had advised Charlotte that it would do so. The Ombudsman noted that if the employer had wished to raise an issue of not having had an opportunity to issue a final response, it could have done so at any point in the investigation.

The Ombudsman upheld Charlotte's complaint that she was given misleading information by her employer, but noted that the Office could only direct a pension provider to correct the financial loss experienced by a member under a scheme. However, the employer had made an offer of an ex-gratia payment of €500 to Charlotte, which was still open for her to accept. The Ombudsman also referred the decision to the Pensions Authority for any action it found necessary.





## Pension Case Study: Resolved by legally binding decision

### Delays in issuing annual pension benefit statements

Finn started a new job in 2014. By January 2020, Finn had not received any annual pension benefit statements as required by section 43(2) of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012. Despite various requests to his employer for his annual statements, and contact being made with the Pensions Authority, they were not forthcoming.

Finn outlined that the employer's failure to provide him with these annual statements had left him unable to make any additional voluntary contributions (AVCs) to his pension for those years, as he did not have sufficient information to make a decision on whether to make AVCs. Finn explained that this would have a negative effect on his pension.

Finn first contacted his employer in June 2019 by email, requesting statements for the years 2014-2018. His employer replied the following day outlining that the section dealing with such queries had only just been set up and that his query would hopefully be dealt with soon. Finn followed up again in September 2019 and when no statements were provided, he made a complaint to the FSPO.

It wasn't until September 2020 that Finn's employer sent him a copy of his Single Pension Scheme Statements from 2013-2019. The employer acknowledged that it was obliged to provide annual statements and that it had failed to do so. The employer pointed to the fact that its website contained an estimator tool which provides members with an estimate of their retirement benefit and argued that the delay in issuing annual statements would not have any impact on Finn's future pension benefits.

In upholding Finn's complaint, the Ombudsman stated that it was clear that the employer was obliged to provide scheme members with a statement each year, which had to issue to the member within 6 months of the end of the year. The Ombudsman noted the employer did not dispute this fact.

However, in considering Finn's claim that he suffered financial loss as he was unable to make AVC's to his pension, the Ombudsman found that whilst the situation was inconvenient for Finn in terms of future planning, the Ombudsman did not accept that the absence of these statements prevented Finn from making AVCs, only that it prevented him making an informed decision on making AVCs.

The Ombudsman explained that the Office did not have the power to provide compensation for loss of opportunity, as had occurred to Finn in this instance, as opposed to actual loss of benefit entitlements under the scheme. The Ombudsman understood the frustration that this would cause to Finn and noted that he would be frustrated that statements were still not being issued regularly and on time.

The Ombudsman upheld Finn's complaint and referred the decision on to the Pensions Authority for any further necessary actions to be taken against the employer.

# How to search our decisions on [www.fspo.ie](http://www.fspo.ie)

## Accessing our database of decisions

Our database of legally binding decisions is available online at [www.fspo.ie/decisions](http://www.fspo.ie/decisions).

To refine your search, you can apply one or a number of filters.

### 1 Applying filters to narrow your search

To filter our database of decisions, you can firstly select the relevant sector:



**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

**Filter our Database**

Financial Services Sector:

- All
- ☒ Banking
- Insurance
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Product / Service:

Foreign Exchange

Conduct Complained Of:



✓ Product / Service

**To narrow your search, you may also**

Product / Service:

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

All

✓ Conduct complained of

**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



Once you have found the decision you are looking for, click **View Document** to download the full text in PDF.



The functions and powers of the Ombudsman are prescribed by the Financial Services and Pensions Ombudsman Act 2017, as amended (the 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. Our Early Jurisdictional Assessment team assess complaint eligibility at the earliest possible stage. See page 23 for further information on this 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 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 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.

In some cases, a provider may make an offer to the complainant during the investigation process. If this offer is accepted, the FSPO will note the settlement and close the complaint, marking it as settled. This occurred in 2 complaints during 2021, with agreed compensation or rectification to the complainants, amounting to €91,756. One complaint was closed in Legal Services as a result of an outside settlement between the complainant and the provider, the terms of which were not disclosed to the FSPO.

The following case studies from 2021 provide examples of the types of jurisdictional issues which can arise. In some instances, it was determined that the complaints could not proceed to investigation as they did not come within the Ombudsman's remit. In other instances, some or all elements of the complaint were determined to be eligible for progression by way of a formal investigation of the merits.

## E-money payment provider declines consent for investigation under Irish law

Bobby made a complaint to the FSPO in November 2021.

Bobby said he had an e-money payment account with an e-money payment provider. He said that he got a text on his mobile phone from the payment provider saying that his account had been temporarily frozen, and he should access a link to keep it open. Bobby said that he tapped the link, as he had received similar text messages before. He said that he noted that two separate transactions had taken place on his e-money account of €100 and €57, to a named crypto payment provider.

Bobby explained that most payments from his e-money account require his authorisation, but authorisation had not been requested on this occasion, so he automatically cancelled his card and was able to stop the transactions. Bobby says that he asked the e-money payment provider to block the crypto payment provider, but its staff were unhelpful, and he had to speak to many representatives and keep repeating details of what had happened.

Bobby stated that 3 days later, a delayed transaction of €100 from the same crypto payment provider, was deducted from his account. Bobby submitted a chargeback form to the e-money payment provider, which he said it rejected, even though he had told the payment provider immediately that the payment was not authorised by him and had asked for the crypto payment provider to be blocked.

Bobby's complaint was assessed by the FSPO and it was noted that the standard user agreement for Bobby's account stated that it was governed by the laws of another EU member state.

The FSPO wrote to the e-money payment provider to explain that the FSPO cannot adjudicate a complaint pursuant to the laws of a foreign jurisdiction. The FSPO requested the e-money payment provider's written confirmation of its willingness to permit the adjudication of Bobby's complaint, under the laws of Ireland. The FSPO explained that an agreement to proceed with the adjudication on that basis would not alter the underlying terms of the parties' contract, except to permit this office to adjudicate the complaint, according to Irish law.

The e-money payment provider did not consent. Accordingly, Bobby was informed that the FSPO could not proceed with the investigation of the complaint. Before closing the file in November 2021, the FSPO gave Bobby details of the alternative dispute resolution body in the e-money payment provider's relevant EU member state, so that he could pursue his complaint through that body.





## Case Study: Legal Services

### Parties to complaint give consent to investigation under Irish law

[George and Gina](#), who are husband and wife living in Northern Ireland, made a complaint to the FSPO in May 2020.

Their complaint related to an investment bond which they held with a life assurance company, which was regulated by the Central Bank of Ireland.

George and Gina said that a surrender request was submitted to the insurer on their behalf on 16 March 2020 and this request was received by the insurer on 17 March 2020. They said that they received a communication from the insurer on 18 March 2020, explaining there had been a downward price adjustment in the fund that their bond was invested in. George and Gina were unhappy with this and asked the insurer for confirmation that the surrender price would be that of 17 March 2020. The insurer confirmed that the 17 March 2020 price would apply.

George and Gina said that they anticipated receipt of approximately £535,064 GBP, based on the amount quoted for surrendering the policy on 17 March 2020. However, on 06 April 2020, the insurer transferred a payment of £474,609.79 GBP to their account. George and Gina were shocked by this and made a formal complaint to the insurer.

The insurer responded to their complaint explaining that because 17 March 2020 was a bank holiday in Ireland, no prices were available on that date and the price at 18 March 2020 had to be applied. The insurer acknowledged that its staff should have noted that 17 March is a bank holiday, and apologised for giving George and Gina incorrect information, and for a delay in responding to them.

The couple were not happy with this and complained to the FSPO. During the formal investigation of the complaint, the FSPO requested and received a copy of the contract between the couple and the insurer. It was noted by the FSPO that the clause in the contract documentation, governing the relationship between George and Gina and the insurer, confirmed that the policy was governed by the laws of England and Wales.

The FSPO wrote to the insurer and to the couple in February 2021 explaining that the FSPO cannot adjudicate a complaint governed by the laws of another country, for the purpose of issuing a legally binding decision. The FSPO explained that the express consent of both parties would be required for the FSPO to proceed to adjudicate the complaint in accordance with the laws of Ireland.

The insurer and George and Gina gave their express consent to an adjudication in accordance with the laws of Ireland, whilst acknowledging their understanding that the underlying governing law of the contract would remain the laws of England and Wales. Both parties further acknowledged that the decision of the FSPO is legally binding, subject only to a statutory appeal to the High Court within 35 days of the decision issuing. Following the adjudication, the Ombudsman partially upheld the complaint and directed the insurer to pay compensation of £250 GBP to the couple, for its poor communication.

## Investigation of complaint discontinued due to allegations of fraud and forgery

XY Schemes Limited held accounts with a bank, and in 2014, it moved its daily banking account to another bank. However, one of the company's two directors, Mark, was unaware that a separate company account remained open with the first bank.

After a number of years, in 2019, Mark discovered that this account had remained active, although he had not seen any bank account statements. Mark said that his co-director had forged his signature on the bank mandate and the bank had sent company bank statements to Mark's co-director at the address she provided, and not to XY Schemes Limited's registered office. Mark realised that payments had been made from the account, to the co-director, that he had never known about.

Mark was informed by the FSPO that the Courts have confirmed that the FSPO is not the appropriate body to investigate fraud, which is a criminal offence and that such matters are more appropriate for the Courts or An Garda Síochána.

Mark confirmed that An Garda Síochána was involved and investigating the matter.

Mark submitted that XY Schemes Limited's complaint was that the bank had failed to comply with its own verification procedures on the bank mandate, thereby facilitating the fraud. Mark said that XY Schemes Limited was not asking the FSPO to investigate any fraudulent activity. However, despite this, Mark also maintained that the bank was being "*untruthful*" and suggested that it was "*misleading*" the FSPO. Mark further suggested that someone in the bank may have been complicit.

The FSPO, having considered the submissions in detail, concluded that it would be impossible to investigate XY Schemes Limited's complaint without also considering whether or not the signature relied upon by the bank was, as Mark asserted, forged.

In addition, the FSPO noted that it was established for the purposes of dealing with complaints against financial service providers and pension providers and it was not in a position to investigate a complaint made by a company which essentially involved a dispute between two directors.

The FSPO declined to investigate the complaint.





## Case Study: Legal Services

### Complaint unable to progress because the company making the complaint no longer existed

Simon was one of four directors of a limited company.

In February 2017, the company applied for an overdraft facility and entered into a credit agreement with its bank. As a condition of the facility, the four directors each supplied a personal guarantee to the bank.

The directors made monthly payments towards clearing the overdraft until February 2018, when they became unable to meet the repayments. Simon contacted an advice service, looking for assistance.

The company was wound up in late 2018. Simon was dissatisfied that the bank sought to pursue him regarding the outstanding amount owed, as he believed he was not liable for the company's debt.

Simon made a complaint to the FSPO in April 2019, that at the time when the overdraft facility was granted, the bank had wrongfully insisted that Simon and the other directors sign personal guarantees.

The FSPO explained to Simon that any complaint about the company's liability to the bank, must be made by the company, which was a separate legal entity. This was because Simon and the other directors were not the customers of the bank for that overdraft facility and instead, the company was the bank's customer. The provision of a personal guarantee by Simon to the bank, as a condition of a facility to the company, was an issue that only the company could complain about.

Simon was informed that any complaint about the overdraft or the conditions attaching to it, could only be made by the company and this was not a matter that he could complain about.

As the company had been wound up and no longer existed, the complaint could not be progressed, and the file was closed.



## Time limits prevent the investigation of a complaint concerning a mortgage payment protection insurance policy

Martina complained that her bank mis-sold her a mortgage payment protection insurance policy in 2005. Martina said that at that time, the bank had not explained to her that the policy was not mandatory for her mortgage application to be successful.

In August 2013, while conducting a review of her finances, Martina discovered that payment protection insurance was optional and it had been optional in 2005. She wrote to the insurance company to cancel her policy. Martina then contacted her bank expressing her dissatisfaction with the way in which the policy had been sold to her in 2005.

The complaint was received by the FSPO on 10 January 2020, approximately 15 years after the product had been sold to Martina in 2005. As a result, the complaint did not meet the 6-year time limit set out in the Financial Services and Pensions Ombudsman Act 2017 (the Act).

The FSPO examined whether the complaint met the alternative time limit, which allows complainants to make a complaint within 3 years of their date of awareness of the conduct complained of.

The FSPO noted that Martina had become aware in 2013, that the policy was optional. She had a period of three years from that time to make her complaint to the FSPO, but she did not do so until 2020, so her complaint did not meet the alternative time limit.

As Martina's complaint was not made within the required time limits laid down within the governing legislation, the FSPO determined that her complaint could not proceed.





## Active Statutory Appeals and Judicial Reviews

The FSPO recognises the right of a complainant or a provider to maintain a statutory appeal to the High Court, to challenge a legally binding decision of the Ombudsman, in accordance with the provisions of Section 64 of the Financial Services and Pensions Ombudsman Act 2017 or to seek a judicial review of the FSPO's jurisdictional determinations.

A current list of [active statutory appeals](#), court applications and judicial reviews to which the FSPO is a party is available on the FSPO website with the date of last update.

The following is a list of statutory appeals, court applications and judicial reviews to which the FSPO was a party, on 31 December 2021.

**Table 6.5 - Active Statutory Appeals 31 December 2021**

Court	Court Record Number	Title of proceedings
Court of Appeal	2014 996	Carr -v- Financial Services Ombudsman & notice party
Court of Appeal	2021 47	The Financial Services & Pensions Ombudsman -v- Utmost Pan Europe DAC
Court of Appeal	2021 106	O'Connell -v- The Financial Services & Pensions Ombudsman
Court of Appeal	2021 2	O'Connell -v- The Financial Services & Pensions Ombudsman
High Court	2020/12 MCA	Liberty Corporate Capital Limited [For and on behalf of Syndicate 4472] -v- Financial Services & Pensions Ombudsman
High Court	2020/49 MCA	Utmost Pan Europe DAC -v- Financial Services & Pensions Ombudsman
High Court	2020/70 JR	Farrell, O'Connor, Keaney, Irish Pensions Trust Ltd, Farrell, Kavanagh as Trustees of Vodafone IRL Pension Plan -v- Financial Services & Pensions Ombudsman
High Court	2020/188 MCA	Lloyds Insurance Company SA -v- Financial Services & Pensions Ombudsman
High Court	2021/1 MCA	Suarez -v- Financial Services & Pensions Ombudsman
High Court	2021/126 MCA	Independent Trustee Company Limited -v- Financial Services & Pensions Ombudsman
High Court	2021/128 MCA	Hiscox SA -v- Financial Services & Pensions Ombudsman
High Court	2021/137 MCA	Ulster Bank Ireland DAC -v- Financial Services & Pensions Ombudsman
High Court	2021/144 MCA	Friel & Friel -v- New Ireland Assurance Company PLC T/A Bank of Ireland Life
High Court	2021/145 MCA	Financial Services & Pensions Ombudsman (Ulster Bank Ireland DAC and C&B)
High Court	2021/173 MCA	Ulster Bank Ireland DAC -v- Financial Services & Pensions Ombudsman
High Court	2021/174 MCA	Ulster Bank Ireland DAC -v- Financial Services & Pensions Ombudsman
High Court	2021/304 MCA	Permanent TSB PLC -v- Financial Services & Pensions Ombudsman
High Court	2021/907 JR	Baynes & Anor -v- Financial Services & Pensions Ombudsman
High Court	2021/290 MCA	Chubb European Group SE [Irish Branch] -v- Financial Services & Pensions Ombudsman

### Notable developments in the context of litigation during 2021 included:

- Three appeal matters were concluded by way of High Court judgment in 2021, as follows:
  1. Danske Bank A/S -v- The Financial Services and Pensions Ombudsman & Anor [2021] IEHC 116 (Appeal dismissed)
  2. Molyneaux -v- The Financial Services & Pensions Ombudsman & Anor [2021] IEHC 668 (Appeal allowed and complaint remitted to the FSPO for a new adjudication)
  3. Billane & Anor -v- The Financial Services and Pensions Ombudsman & Anor [2021] IEHC 726 (Appeal dismissed)
- [Judgments](#) are published on the FSPO website.
- Four appeal matters were settled or withdrawn during 2021. Three of these matters were at very advanced stages when they were settled or withdrawn.
- Of the eight statutory appeals initiated during 2021, seven were issued by a financial service provider and one was issued by a complainant.
- One Judicial Review pursued by a financial service provider, was withdrawn in early 2021. The [FSPO issued a statement](#) on this matter on 18 February 2021.
- During 2021, two judicial review applications were brought to the High Court by complainants seeking

to challenge the jurisdictional determinations made by the FSPO in those individual matters. As of 31 December 2021, judgment was awaited in one of those matters

- The Court of Appeal heard three appeals during 2021, with judgment reserved in one. The Court of Appeal dismissed the other two appeals, and the appellant subsequently during 2021, sought leave to appeal to the Supreme Court. These matters are not concluded, pending the outcome of the application to the Supreme Court, which had not yet been determined, as at year-end.
- As of 31 December 2021, five matters had been assigned hearing dates during 2022.

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. During 2021, the FSPO recovered €93,832 in legal costs against a number of parties.

**Table 6.6 - Active matters during 2021**

	High Court	Court of Appeal
Active at 1 Jan. 2021	12	1
Initiated during 2021	11	3
Concluded during 2021	8	-
Active at 31 Dec. 2021	15	4

## 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 2021, 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.

**Table 7.1 - Report on named financial service providers 2021**

	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
	The Governor and Company of the Bank of Ireland T/A Bank of Ireland	Bank of Ireland Group	5	3	8	16
	Permanent TSB	Permanent TSB Group Holdings plc	1	1	10	12
	FBD Insurance plc	FBD Group	6	0	4	10
	Ulster Bank Ireland DAC	Ulster Bank Group	4	5	1	10
	Bank of Ireland Mortgage Bank Unlimited Company	Bank of Ireland Group	4	1	2	7
	Irish Life Assurance plc	Great-West Lifeco Group	1	2	4	7
	AIB Bank	AIB Group	1	1	5	7

	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
	QBE Europe SA/NV	QBE Group	6	0	0	6
	Elips Versicherungen AG* T/A Laya Healthcare	Swiss Re Group	2	1	1	4
	New Ireland Assurance Company PLC T/A Bank of Ireland Life	Bank of Ireland Group	2	1	1	4
	Derek Kane T/A Kane Financial Services		0	2	2	4
	Aviva Life & Pensions Ireland DAC T/A Friends First Life	Aviva Group	0	1	3	4
	Start Mortgages DAC T/A Start Mortgages		0	0	4	4
	Aviva Insurance Ireland DAC	Aviva Group	1	0	2	3
	VHI Insurance DAC	VHI Group	1	0	2	3
	RSA Insurance Ireland DAC	RSA Group	0	1	2	3
	KBC Bank Ireland plc T/A KBC Homeloans	KBC Bank Group	0	0	3	3
	MAPFRE Asistencia Compania Internacional De Seguros y Reaseguros, SA T/A MAPFRE Assistance Agency Ireland	MAPFRE Asistencia Group	0	0	3	3
	Prudential International Assurance plc T/A Prudential International	Prudential International Group	0	0	3	3

\*Known in the English language as Elips Insurance Limited

# Customer service feedback

From time to time our staff receive compliments which we believe demonstrates the value of our service to our customers. These are some of the comments our staff received in 2021.

"I wish to reiterate my profound thanks to you personally, and to the office of the FSPO. It is a totally vital and professional and excellent service you provide, and it is up there with the most impressive series of interactions I have ever had with a service provider in my lifetime. As always, it comes down to people, and I wish to state that you [officer] & [officer] have been the truly excellent & class personnel I have corresponded & worked with for the duration of this."

"... We would like to thank you very sincerely for your time and efforts. I was often distressed and emotional during our conversations and this was not easy for you to deal with. It really did help to be listened to and I genuinely appreciate your unending patience and kindness..."

"It was wonderful to receive your email confirming that you have reached a decision in my favour for which I am very grateful. I am hoping that [the provider] will accept your findings and we can get this dispute finalised. Thank you for all your help and time in reading all the letters and medical information, trial results etc. in order to understand my condition and come to your decision."

# Customer service feedback

"We wish to thank you and the others in your office from the bottom of our hearts who have worked so hard on this case in detail and put so much time and effort into analysing all the material involved and dealing with it all so professionally".

"Thank you so much for your help. Your organisation is a god send to people like my mother living out of the country! Go raibh maith agat".

"I'd like to thank you for your help with this, you were always prompt and informative in your responses and I don't believe I would have achieved the desired outcome without the Ombudsman's help".

"I'd like to give you feedback on the way that the Dispute Resolution Manager dealt with my dispute. I found them very professional, easy to understand and to talk to. I found their approach respectful but also professional, particularly on matters where I had a different view."

"I wish to express my thanks to you and your office, because I feel without having your support, I may not have had such a successful outcome"



# 3 Steps to making a complaint about a financial service provider or pension provider



1

## Contact your financial service provider or pension provider and make your complaint formally.

You should speak or write to the person you usually deal with, or ask for the complaints manager to make a complaint.

Before bringing your complaint to the FSPO, you must give your provider a chance to sort out the problem.



### What information should you give them?

- ☒ Make it very clear that you are making a complaint.
- ☒ Explain your complaint.
- ☒ Suggest how the provider should put it right.



## Before making a complaint to the FSPO, you must give your provider a chance to sort out the problem.

However, if you think you may be approaching the time limit for making a complaint to us, please contact us.

2

## Be patient and persistent



**The provider should deal with your complaint through its complaint handling process.** The provider may take up to 40 working days to deal with your complaint.



**When you complain to the provider be persistent.** If nothing happens, call the provider to check on the progress of your complaint.



**The provider should fully investigate your complaint,** in accordance with its internal dispute resolution process. This is known as IDR.

At the end of IDR, the provider will let you know its position regarding your complaint, so that either:

The provider issues a final response letter and you are satisfied with the resolution of your complaint.

The provider issues a final response letter and you are not satisfied with the resolution of your complaint.

3

## Contact the FSPO

If you are not satisfied after receiving your final response letter, you may contact the FSPO. To progress your complaint, we will need:



A

**A fully completed complaint form**



&

B

**A copy of your final response letter.**

If you are having difficulty getting the final response and 40 days have passed please contact us.

### A final response letter

should set out what the provider has done to investigate your complaint through its internal dispute resolution process. It should advise you to contact the FSPO as your next step, if you are not satisfied.







An tOmbudsman Seirbhísí  
Airgeadais agus Pinsean

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