



**Financial Services Ombudsman**  
**Annual Review 2014**



# Annual Review 2014

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# Part 1 - Executive Summary

This 2014 Review is the first review to set out the number of complaints substantiated/partly substantiated against Financial Service Providers (FSPs) in an entire calendar year.

That information is set out in Section 1.1 in order of number of complaints substantiated. Section 1.2 breaks that information down by provider by product type.

Statutory Instrument 97 of 2014 prescribes the information the Financial Services Ombudsman's Bureau (FSOB) is permitted to report in relation to the complaints record of individual FSPs. This Review sets out that information to the maximum extent permitted.

It is important to put this aspect of the Review in context. The FSOB has long sought the ability to report on the complaint record of individual FSPs. The reason for this has been clear. The FSOB has long had the view that such reporting would lead to an improvement in complaint management by FSPs. To avoid having to report adverse claims, FSPs would settle more claims at an earlier stage in the process and take steps to obviate the need for Complainants to have recourse to the services of this office.

This hope has been borne out by the complaints trends to this office since the coming into effect of the new reporting powers on 1 September 2013.

The FSOB received 4,477 complaints in 2014, compared to 7,722 complaints in 2013, a decrease of 42%. This continued a trend that started in the last quarter of 2013.

Complaints were reduced across all three sectors. The biggest reductions occurred in Investment complaints, which were down 65% compared to the previous year; reductions also occurred in Insurance (decrease of 49%) and Banking (decrease of 27%).

It has now become clear as to the reason for this significant reduction in the numbers of complaints: the changes in policy and powers of the FSOB in September 2013. The FSOB continues to look to Complainants to engage with FSPs prior to investigating a complaint. Furthermore, FSPs have an added incentive to actively manage their complaints given the FSOB's power to publish the outcomes of findings in relation to individual FSPs.

It is hoped that the publication of such information will continue to drive FSPs to provide a better service, change procedures and policies where possible to obviate the need to complain, and to settle cases at an early stage in the process. At the FSOB we have always had the view that we could be said to be doing our work properly if we were able to see evidence that the FSPs were in fact raising their standards of customer service. With this report, we see signs that the industry is less reliant on availing of the services of the FSOB to reach a final conclusion. This is clearly a move of the industry in the right direction and one we hope to see continue in the future.

The reduction in the number of complaints has had an obvious effect on the workload of the office. The number of findings issued in 2014 was 2,238 compared to 2,983 in 2013, a decrease of 25%.

We are required by legislation to describe the outcomes of our formal findings under three headings: Substantiated (upheld); Partly Substantiated (partly upheld) and Not Substantiated (not upheld). The outcomes of complaints have had little change in 2014. Looking only at complaints that resulted in a finding, 78% of complaints were not upheld in 2014 compared to 77% of such complaints not being upheld in 2013. In an environment where FSPs are more actively managing complaints, we hope that more straightforward complaints would be dealt with entirely between the parties with a higher proportion of more complex and contested complaints requiring a formal finding. This will require careful monitoring going forward.

In addition to our legal requirements, this Review has made an effort to more fully report on cases that are settled between the parties, using the services of this office. Hence, we have included case studies in relation to settled cases and included an account of settled cases in the context of total cases closed (See Sections 4.2 and 4.3). For example, when settled cases are taken into account, in 2014 we report that 45% of complaints closed during the year had some form of consumer redress. We believe that this additional reporting provides a more complete account of the work of the office than is provided by reporting on findings alone.

## 1.1 Reporting on Financial Service Providers

Section 72 of the Central Bank (Supervision and Enforcement) Act 2013, gave the Financial Services Ombudsman (FSO) the power to publish reports identifying regulated Financial Service Providers who, in the preceding financial year, have had at least three complaints against them substantiated or partly substantiated.

**Note 1:** The chart and table is set in order of the number of complaints substantiated for a FSP followed by number of complaints partly substantiated.

**Note 2:** Where a complaint is partly substantiated (partly upheld), it usually means that the substantive complaint has been set aside and in the main, a customer service issue has occurred.

**Note 3: Name of regulated Financial Service Provider:** the names listed are the official names by which Financial Service Providers are detailed in the Central Bank of Ireland's register of regulated entities.

**Note 4: Business group:** this is detailed where the Financial Service Provider is a member of a business group as at date of publication of this report.

**Note 5:** The sectors referred to below and throughout the document relate to the FSO's internal categorisation of complaints. Currently the FSO has determined three sectors, Investment, Banking and Insurance to which complaint types are allocated.

## The following table details this report for the period, 1st January 2014 to 31st December 2014

Name of regulated provider (to include any trading name if different)	Member of Business Group (where applicable)	Number of complaints	
		Substantiated	Partly Substantiated
Danske Bank	Danske Bank Group	24	4
Avant Tarjeta EFC S.A.U. T/A AvantCard	Avant Tarjeta EFC S.A.U.	14	43
White Horse Insurance Ireland Ltd	Thomas Cook Group plc	13	12
Ulster Bank Ireland Ltd	Royal Bank of Scotland Group	12	22
Permanent TSB	Permanent TSB Group Holdings plc	7	23
Zurich Life Assurance plc	Zurich Insurance Group (Zurich)	5	8
Bank of Ireland	Bank of Ireland Group	4	67
Allied Irish Banks plc	AIB Group	4	29
Irish Life Assurance plc	Great West Life Co Inc	4	25
Bank of Scotland plc	Lloyds Banking Group	4	12
New Ireland Assurance Company PLC T/A Bank of Ireland Life	Bank of Ireland Group	4	8
First Merchant Processing (Ireland) T/A AIB Merchant Services	N/A	3	2
Allianz Insurance plc	Allianz Group	3	1
RSA Insurance Ireland Limited	RSA Group	3	1
Bank of Ireland Private Banking Ltd	Bank of Ireland Group	3	0
MAPFRE Asistencia	MAPFRE Group	3	0
EBS Limited	AIB Group	2	5
Ark Life Assurance Company Ltd	Guardian Assurance Limited	2	3
Aviva Insurance Ltd	Aviva Group plc	2	2
FBD Insurance plc T/A NoNonsense.ie	FBD Holdings plc	2	2
London General Insurance Company Ltd	The Warranty Group	2	2
Financial Insurance Company Limited T/A Genworth Financial	Genworth Financial Inc	2	1
Ace European Group Ltd T/A Ace Europe and Combined Insurance	Ace European Group Ltd	1	3
Inter Partner Assistance S.A	AXA Assistance Group	1	3
KBC Bank Ireland T/A KBC Homeloans	KBC Group	1	3
AA Ireland Ltd T/A AA Insurance	N/A	1	2
Aviva Life & Pensions Ireland Ltd	Aviva Group plc	1	2
Prudential International Assurance plc	Prudential Group	1	2
Tesco Personal Finance plc T/A Tesco Bank	Tesco Ireland	1	2
Bank of Ireland Mortgage Bank	Bank of Ireland Group	0	5
Voluntary Health Insurance Board T/A VHI Healthcare	N/A	0	4
Friends First Life Assurance Company Ltd	Achmea Group	0	3
<b>Total</b>		<b>129</b>	<b>301</b>

## 1.2 Reporting on Financial Service Providers by product type/sector

Financial Service Providers where the number of complaints against them is greater than or equal to 3 substantiated (upheld) or partly substantiated (partly upheld) complaints, between 1st January 2014 to 31st December 2014 – broken down based on the product type/issue complained about.

### 1.2.1 Investment Sector (\* Note 5)

Name of regulated provider (to include any trading name if different)	Product Type/Issue Complained About	Number of complaints	
		Substantiated	Partly Substantiated
Allied Irish Banks plc	Investment	2	0
	<b>Total</b>	<b>2</b>	<b>0</b>
Ark Life Assurance Company Ltd	Investment	0	1
	<b>Total</b>	<b>0</b>	<b>1</b>
Aviva Life and Pensions Ireland Limited	Pension	1	0
	<b>Total</b>	<b>1</b>	<b>0</b>
Irish Life Assurance Plc	Pension	1	4
	Investment	1	5
	<b>Total</b>	<b>2</b>	<b>9</b>
New Ireland Assurance Company Plc T/A Bank of Ireland Life	Investment	1	2
	Pension	2	0
	<b>Total</b>	<b>3</b>	<b>2</b>
Permanent TSB	Investment	0	1
	<b>Total</b>	<b>0</b>	<b>1</b>
Ulster Bank Ireland Limited	Investment	0	2
	<b>Total</b>	<b>0</b>	<b>2</b>
Zurich Life Assurance plc	Investment	0	1
	Pension	0	1
	<b>Total</b>	<b>0</b>	<b>2</b>

## 1.2.2 Banking Sector (\*Note 5)

Name of regulated provider (to include any trading name if different)	Product Type/Issue Complained About	Number of complaints	
		Substantiated	Partly Substantiated
<b>Allied Irish Banks plc</b>	Accounts	0	5
	ATM	0	1
	Lending	2	5
	Mortgages	0	9
	<b>Total</b>	<b>2</b>	<b>20</b>
<b>AvantCard Tarjeta EFC S.A.U. T/A AvantCard</b>	Accounts	0	2
	Credit Cards	9	12
	Lending	2	0
	<b>Total</b>	<b>11</b>	<b>14</b>
<b>Bank of Ireland</b>	Accounts	2	10
	ATM	0	1
	Commercial	0	1
	Credit Cards	0	2
	Lending	0	3
	Mortgages	1	11
<b>Total</b>	<b>3</b>	<b>28</b>	
<b>Bank of Ireland Mortgage Bank</b>	Mortgages	0	4
	<b>Total</b>	<b>0</b>	<b>4</b>
<b>Bank of Ireland Private Banking Ltd</b>	Lending	3	0
	<b>Total</b>	<b>3</b>	<b>0</b>
<b>Bank of Scotland plc</b>	Credit Cards	0	1
	Lending	0	4
	Mortgages	4	6
	<b>Total</b>	<b>4</b>	<b>11</b>
<b>Danske Bank</b>	Foreign Exchange	1	0
	Accounts	1	0
	Mortgages	22	4
	<b>Total</b>	<b>24</b>	<b>4</b>

### 1.2.2 Banking Sector (\*Note 5) - Continued

Name of regulated provider (to include any trading name if different)	Product Type/Issue Complained About	Number of complaints	
		Substantiated	Partly Substantiated
<b>EBS Limited</b>	Accounts	1	0
	Mortgages	1	5
	<b>Total</b>	<b>2</b>	<b>5</b>
<b>First Merchant Processing (Ireland) Ltd, T/A AIB Merchant Services</b>	Accounts	3	1
	Commercial	0	1
	<b>Total</b>	<b>3</b>	<b>2</b>
<b>KBC Bank Ireland T/A KBC Homeloans</b>	Mortgages	1	3
	<b>Total</b>	<b>1</b>	<b>3</b>
<b>Permanent TSB</b>	Accounts	2	1
	Credit Cards	1	2
	Lending	1	3
	Mortgages	1	13
	<b>Total</b>	<b>5</b>	<b>19</b>
<b>Tesco Personal Finance Ltd T/A Tesco Bank</b>	Credit Cards	1	1
	<b>Total</b>	<b>1</b>	<b>1</b>
<b>Ulster Bank Ireland Limited</b>	Accounts	0	3
	Credit Cards	1	0
	Lending	0	1
	Mortgages	11	16
	<b>Total</b>	<b>12</b>	<b>20</b>

### 1.2.3 Insurance Sector (\*Note 5)

Name of regulated provider (to include any trading name if different)	Product Type/Issue Complained About	Number of complaints	
		Substantiated	Partly Substantiated
AA Ireland Ltd T/A AA Insurance	Motor	0	2
	Travel	1	0
	<b>Total</b>	<b>1</b>	<b>2</b>
Allied Irish Banks plc	Mortgage Protection	0	2
	Payment Protection Policy	0	7
	<b>Total</b>	<b>0</b>	<b>9</b>
Allianz Insurance plc	Household Buildings	1	1
	Motor	2	0
	<b>Total</b>	<b>3</b>	<b>1</b>
Ark Life Assurance Company Ltd	Life	1	2
	Mortgage Protection	1	0
	<b>Total</b>	<b>2</b>	<b>2</b>
Avant Tarjeta EFC S.A.U. T/A AvantCard	Payment Protection Policy	3	29
	<b>Total</b>	<b>3</b>	<b>29</b>
Aviva Insurance Ltd	Commercial	1	0
	Household Buildings	1	2
	<b>Total</b>	<b>2</b>	<b>2</b>
Aviva Life and Pensions Ireland Limited	Income Protection and Permanent Health	0	1
	Life	0	1
	<b>Total</b>	<b>0</b>	<b>2</b>
Bank of Ireland	Payment Protection Policy	1	39
	<b>Total</b>	<b>1</b>	<b>39</b>
Bank of Ireland Mortgage Bank	Life	0	1
	<b>Total</b>	<b>0</b>	<b>1</b>
Bank of Scotland plc	Payment Protection Policy	0	1
	<b>Total</b>	<b>0</b>	<b>1</b>
Ace European Group Ltd T/A Ace Europe and Combined Insurance	Critical / Serious Illness	1	1
	Hospital Cash Plan	0	1
	Income Protection and Permanent Health	0	1
	<b>Total</b>	<b>1</b>	<b>3</b>
FBD Insurance plc T/A NoNonsense.ie	Household Buildings	2	2
	<b>Total</b>	<b>2</b>	<b>2</b>
Friends First Life Assurance Company Ltd	Income Protection and Permanent Health	0	3
	<b>Total</b>	<b>0</b>	<b>3</b>

### 1.2.3 Insurance Sector (\*Note 5) - Continued

Name of regulated provider (to include any trading name if different)	Product Type/Issue Complained About	Number of complaints	
		Substantiated	Partly Substantiated
Financial Insurance Company Limited T/A Genworth Financial	Mortgage Protection	0	1
	Payment Protection Policy	2	0
	<b>Total</b>	<b>2</b>	<b>1</b>
Inter Partner Assistance S.A.	Travel	1	3
	<b>Total</b>	<b>1</b>	<b>3</b>
Irish Life Assurance plc	Life	0	14
	Income Protection and Permanent Health	2	1
	Mortgage Protection	0	1
	<b>Total</b>	<b>2</b>	<b>16</b>
London General Insurance Company Ltd	Payment Protection Policy	2	2
	<b>Total</b>	<b>2</b>	<b>2</b>
MAPFRE Asistencia	Travel	3	0
	<b>Total</b>	<b>3</b>	<b>0</b>
New Ireland Assurance Company Plc T/A Bank of Ireland Life	Critical / Serious Illness	0	1
	Life	1	5
	<b>Total</b>	<b>1</b>	<b>6</b>
Permanent TSB	Mortgage Protection	1	0
	Payment Protection Policy	1	3
	<b>Total</b>	<b>2</b>	<b>3</b>
Prudential International Assurance plc	Critical / Serious Illness	1	0
	Life	0	2
	<b>Total</b>	<b>1</b>	<b>2</b>
RSA Insurance Ireland Limited	Commercial	1	0
	Household Buildings	0	1
	Motor	2	0
	<b>Total</b>	<b>3</b>	<b>1</b>
Tesco Personal Finance Ltd T/A Tesco Bank	Payment Protection Policy	0	1
	<b>Total</b>	<b>0</b>	<b>1</b>
Voluntary Health Insurance Board T/A VHI Healthcare	Medical Expenses	0	4
	<b>Total</b>	<b>0</b>	<b>4</b>
White Horse Insurance Ireland Ltd	Pet Insurance	4	0
	Travel	9	12
	<b>Total</b>	<b>13</b>	<b>12</b>
Zurich Life Assurance plc	Income Protection and Permanent Health	3	3
	Life	0	3
	Personal Accident	2	0
	<b>Total</b>	<b>5</b>	<b>6</b>

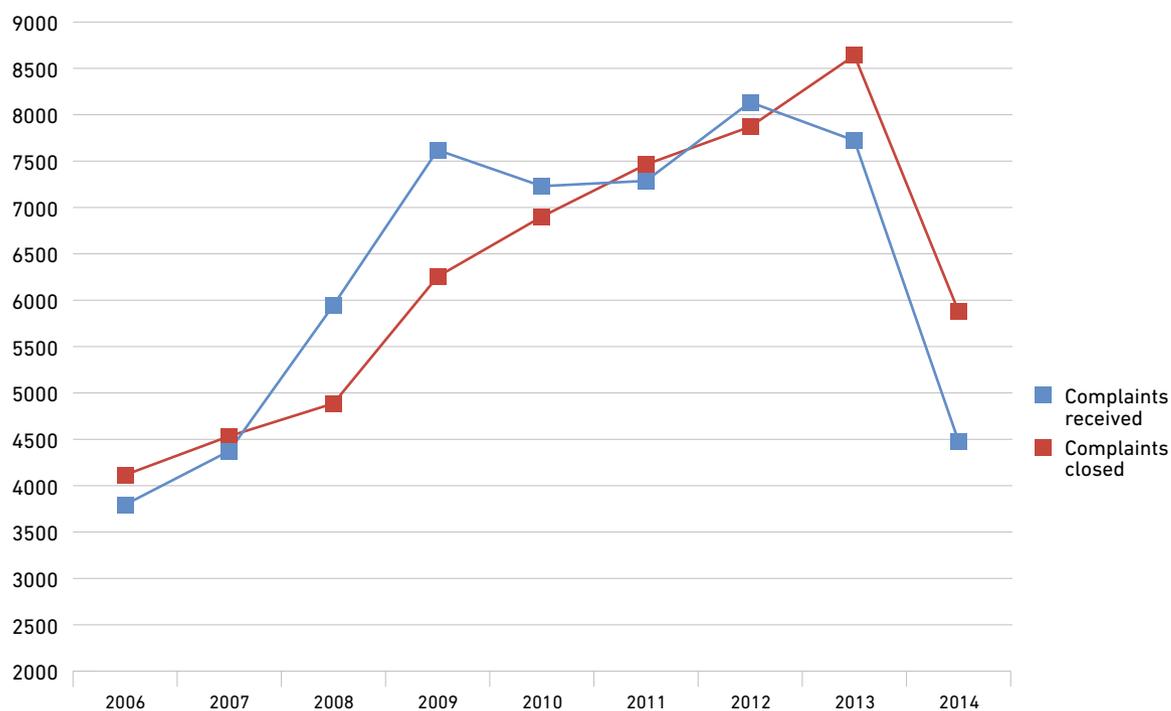
## Part 2 - Trend Analysis

### 2014 at a glance:

- Complaints received for 2014 were 4,477, a decrease overall of 42% year on year.
- 3,166 complaints were closed by way of formal investigation, finding or settlement.
  - 2,238 complaints were closed by way of formal investigation and finding.
  - 928 other complaints, representing 29% of all complaints closed, were settled to the Complainant's satisfaction utilising the resources of the office\* but without the requirement to follow through to a formal finding.
- 45% of complaints closed during 2014 had some form of customer redress.
- Investment complaints have decreased by 65% from 770 in 2013 to 271 in 2014.
- Banking complaints decreased by 27% from 2,925 in 2013 to 2,127 in 2014.
- Insurance complaints decreased by 49% from 3,835 in 2013 to 1,955 in 2014.
- On a product basis, mortgage issues continue to be the highest driver of complaints, representing 28% of all complaints received. Payment protection policy complaints continue to be the main driver of Insurance complaints representing 15% of all complaints. However, payment protection policy complaints dropped significantly from 1,736 to 670, representing a drop of 61% of this type of complaint.
- 38 oral hearings were held by the Bureau in 2014, up from 30 [an increase of 27%] in 2013.

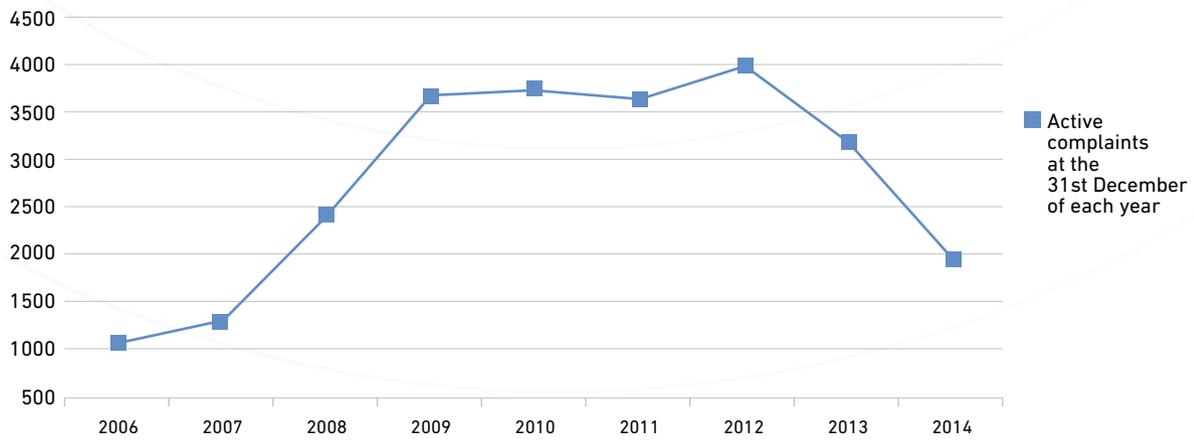
\* Complaints can be settled at any stage of the complaints process and the Bureau encourages and facilitates interaction between both parties at all times [further details in Part 4]

## 2.1 Complaints received and closed



	Reporting Period									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	
<b>Complaints received</b>	3795	4374	5947	7619	7230	7287	8135	7722	4477	
<b>Complaints closed</b>	4116	4534	4887	6255	6901	7464	7871	8639	5878	

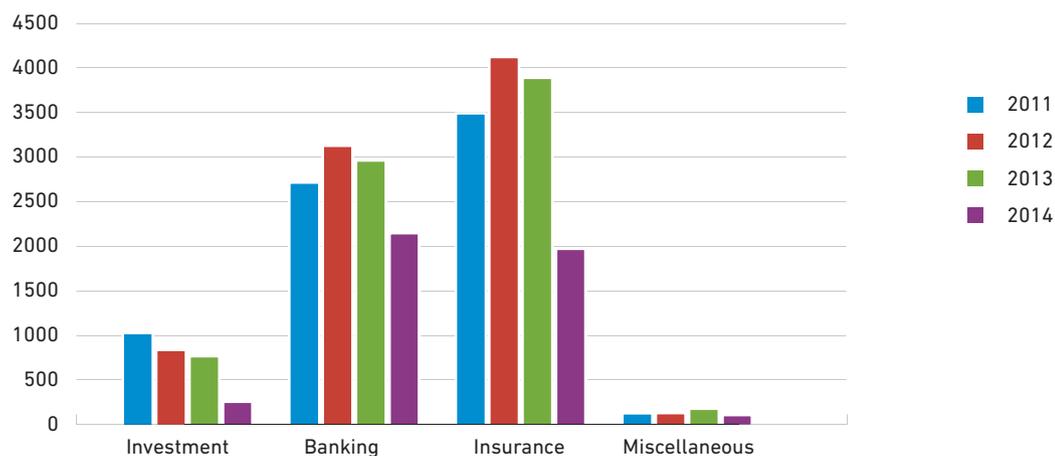
## 2.2 Active complaints at the 31st December of each year



	Reporting Period								
	2006	2007	2008	2009	2010	2011	2012	2013	2014
<b>Active complaints</b>	1053	1280	2340	3697	3737	3607	3961	3154	1893

## 2.3 Complaints received by sector

The Bureau receives complaints covering three sectors; Insurance, Banking and Investment.



	Reporting Period			
	2011	2012	2013	2014
<b>Investment</b>	1024	840	770	271
<b>Banking</b>	2680	3087	2925	2127
<b>Insurance</b>	3443	4064	3835	1955
<b>Miscellaneous*</b>	140	144	192	124
<b>Total</b>	<b>7287</b>	<b>8135</b>	<b>7722</b>	<b>4477</b>

\*Miscellaneous category relates to complaints received which do not come within our jurisdiction and these are referred onwards to the relevant body for action. They could include complaints regarding airlines, hired cars, garages/service stations, mobile phone companies etc.

## 2.4 Telephone, website and online activity

	Reporting Period			
	2011	2012	2013	2014
<b>Telephone calls handled by the office</b>	31,500	21,501	21,721	15,800
<b>Website hits</b>	77,302	82,766	88,451	81,570

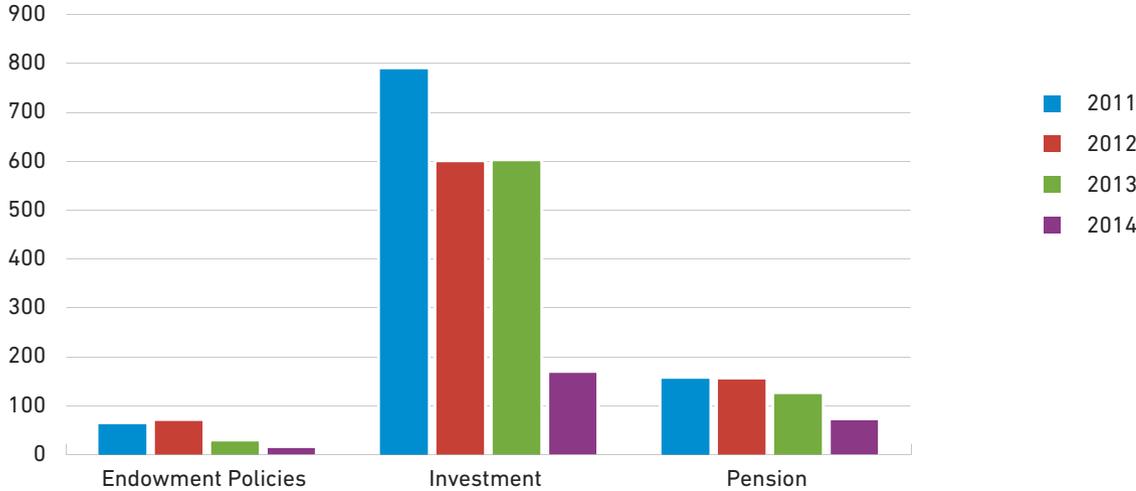
### Online complaint forms

In 2013 we reviewed our online facility to accept complaints. During that year we received 620 online complaint forms.

This increased by 17% during 2014, with 723 complaints received using this facility.

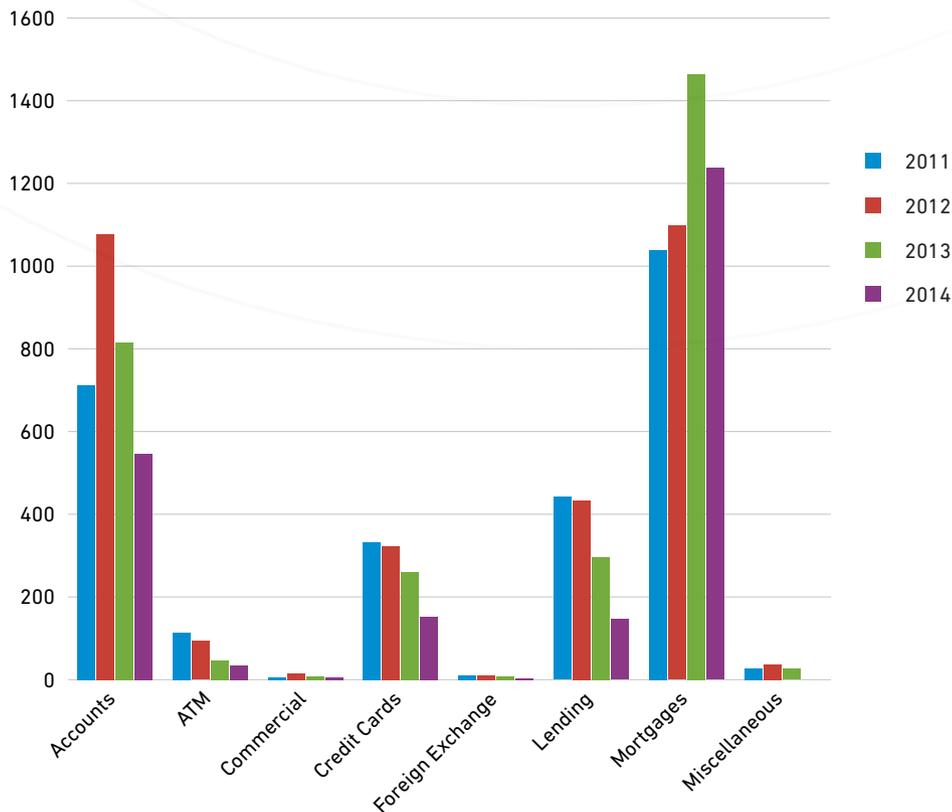
# Part 3 - What Complaints were about

## 3.1 Investment



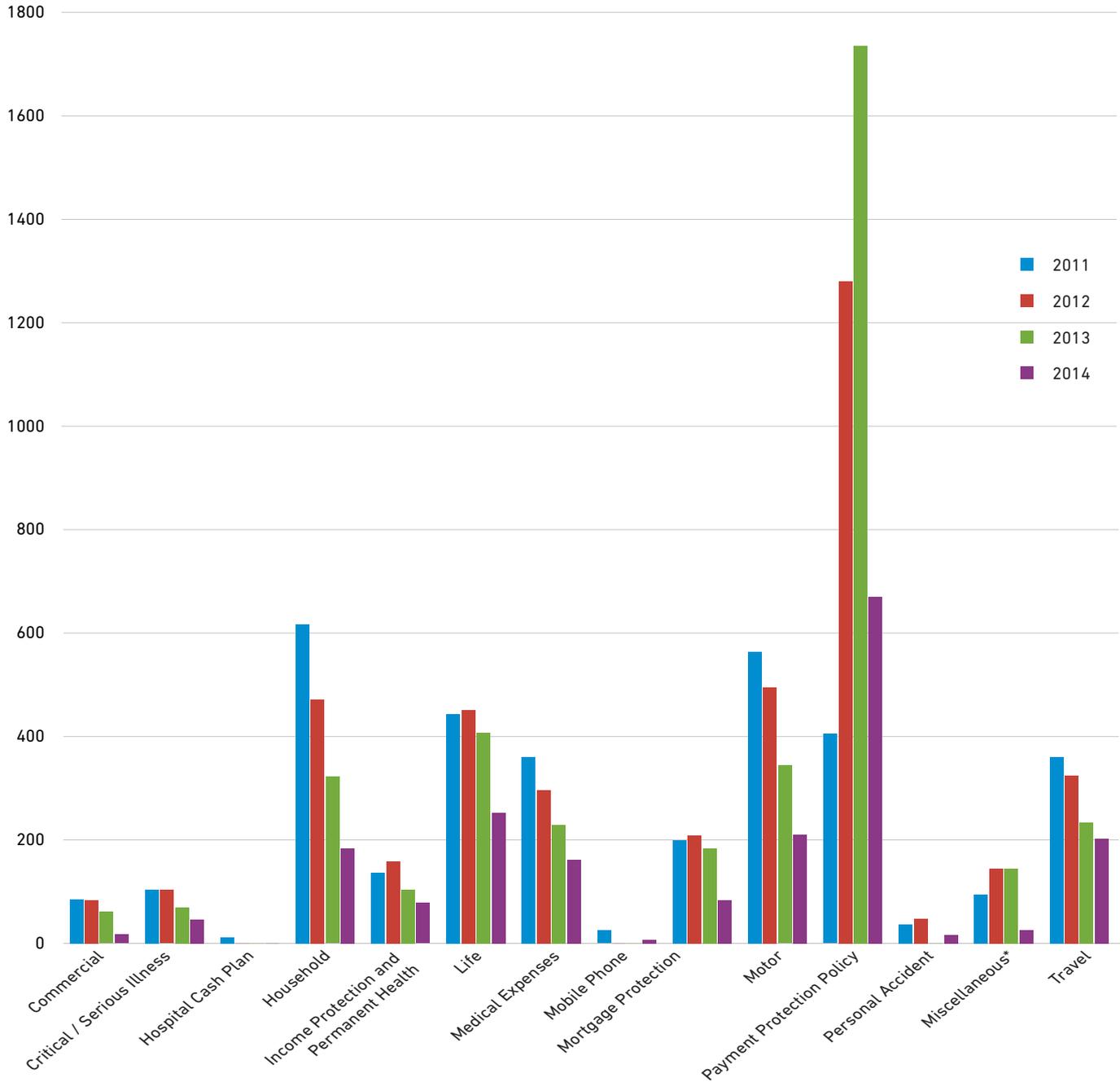
Product Type	2011	2012	2013	2014
Endowment Policies	68	75	33	20
Investment	795	605	607	174
Pension	161	160	130	77
<b>Total</b>	<b>1024</b>	<b>840</b>	<b>770</b>	<b>271</b>

### 3.2 Banking



Product Type	2011	2012	2013	2014
<b>Accounts</b>	712	1078	815	547
<b>ATM</b>	113	93	47	35
<b>Commercial</b>	5	15	8	5
<b>Credit Card</b>	332	323	260	153
<b>Foreign Exchange</b>	10	10	8	4
<b>Lending</b>	442	433	297	146
<b>Mortgages</b>	1038	1098	1464	1237
<b>Miscellaneous</b>	28	37	26	0
<b>Total</b>	<b>2680</b>	<b>3087</b>	<b>2925</b>	<b>2127</b>

### 3.3 Insurance



## 3.3 Insurance - Continued

<b>Product Type</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Commercial</b>	85	83	61	17
<b>Critical / Serious Illness</b>	104	103	70	46
<b>Hospital Cash Plan</b>	11	0	0	0
<b>Household</b>	617	472	322	184
<b>Income Protection and Permanent Health</b>	137	158	104	78
<b>Life</b>	443	451	407	253
<b>Medical Expenses</b>	360	296	229	162
<b>Mobile Phone</b>	25	0	0	7
<b>Mortgage Protection</b>	199	209	184	83
<b>Motor</b>	564	495	344	210
<b>Payment Protection Policy</b>	405	1280	1736	670
<b>Personal Accident</b>	37	47	0	16
<b>Miscellaneous*</b>	95	145	144	26
<b>Travel</b>	361	325	234	203
<b>Total</b>	<b>3443</b>	<b>4064</b>	<b>3835</b>	<b>1955</b>

\*Miscellaneous relates to products not readily falling into the above categories and could include, for example, products dealing with marine, farm, computers, mobile phones and pet insurance.

# Part 4 - Managing Complaints and Outcomes

## Overview

When a Complainant approaches us, we ensure that they have made the complaint in the first instance to their Financial Service Provider (FSP). If the Complainant has done this but has not achieved a satisfactory outcome, then the complaint will be dealt with through our office.

Complaints are initially examined to ensure that they fall within our legislative jurisdiction and that we are the appropriate body to deal with the complaint. We may seek clarification from the Complainant as to the exact nature of the complaint. These are the initial stages of the complaint management process. With every complaint, mediation is offered prior to any formal investigation taking place.

Following that, a summary of complaint is sent to both the Complainant and the FSP. In order to be fair and transparent to both parties, all documentation received from either party is exchanged with the other party. Both the Complainant and the FSP are given an opportunity to comment on each other's documentation and provide evidence. Once this process is complete, the complaint then moves forward to formal investigation.

At all parts of the process, the Bureau facilitates interactions between both parties to the complaint. However, it should be noted that at any stage of the process, the complaint can be settled between the parties. This is welcomed and encouraged by the Bureau, as every settlement is a positive outcome for both parties. For more details on settled cases please see the section titled: Case Studies.

**NB:** The Bureau will only note that a complaint is settled where the **Complainant** confirms to us that they are satisfied with the outcome.

## Summary:

- 3,166 complaints were closed by way of formal investigation, finding or settlement;
  - 2,238 complaints were closed by way of formal investigation and finding,
  - 928 (29% of those closed) were settled to the Complainant's satisfaction utilising the resources of the office, see above, but without the requirement to proceed to a formal finding.
- 2,698 complaints were closed for a variety of reasons, following interactions with the Bureau [see section 4.4].
- Mediation is offered in all cases prior to any formal investigation taking place. In 2014, 13 formal mediations were facilitated, of which 8 were resolved.
- 38 oral hearings were held by the Bureau in 2014, up from 30 [an increase of 27%] in 2013.

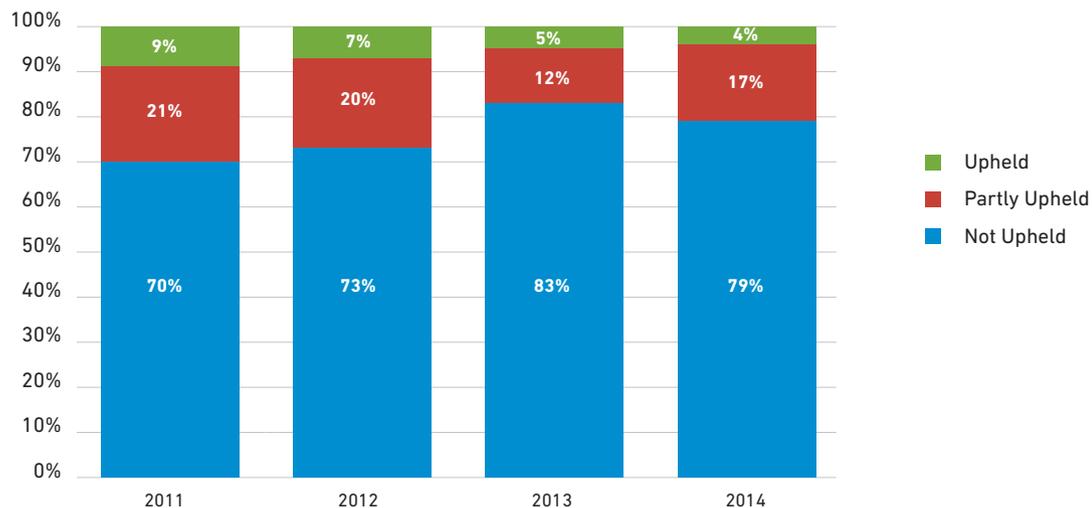
## 4.1 Complaints closed by finding outcome

### Complaints closed by finding outcome (not including settled figures)



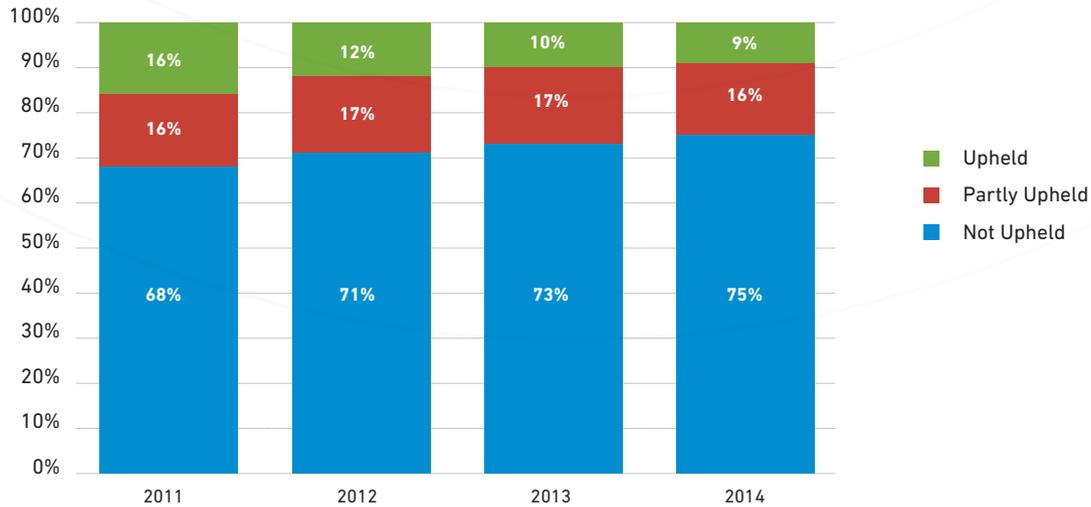
Outcome	2011		2012		2013		2014	
<b>Upheld</b>	361	12%	302	10%	202	7%	147	7%
<b>Partly Upheld</b>	467	15%	505	17%	472	16%	342	15%
<b>Not Upheld</b>	2212	73%	2183	73%	2309	77%	1749	78%
<b>Total</b>	<b>3040</b>		<b>2990</b>		<b>2983</b>		<b>2238</b>	

#### 4.1.1 Investment complaints closed by finding outcome (not including settled figures)



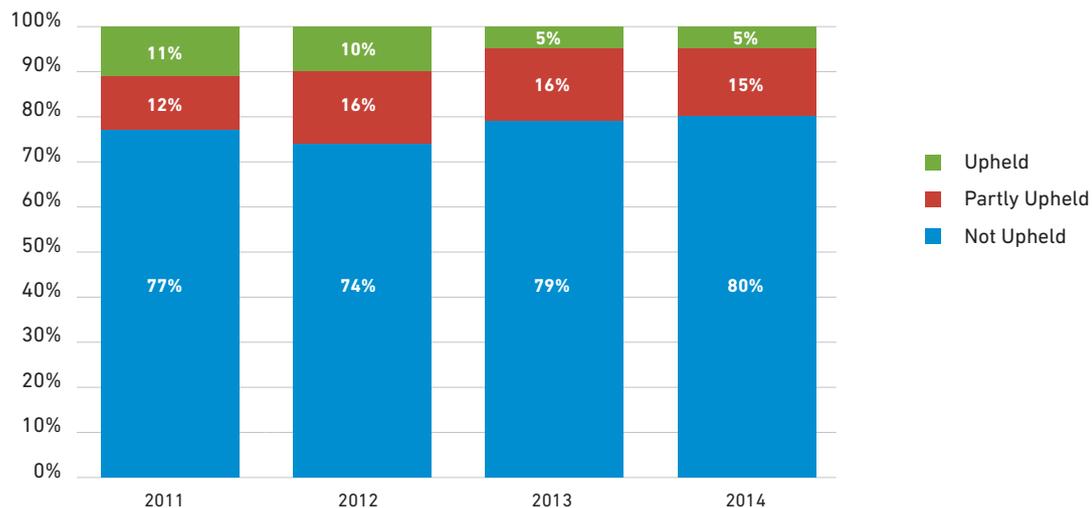
Outcome	2011		2012		2013		2014	
<b>Upheld</b>	54	9%	41	7%	20	5%	9	4%
<b>Partly Upheld</b>	136	21%	113	20%	46	12%	34	17%
<b>Not Upheld</b>	442	70%	414	73%	311	83%	163	79%
<b>Total</b>	<b>632</b>		<b>568</b>		<b>377</b>		<b>206</b>	

#### 4.1.2 Banking complaints closed by finding outcome (not including settled figures)



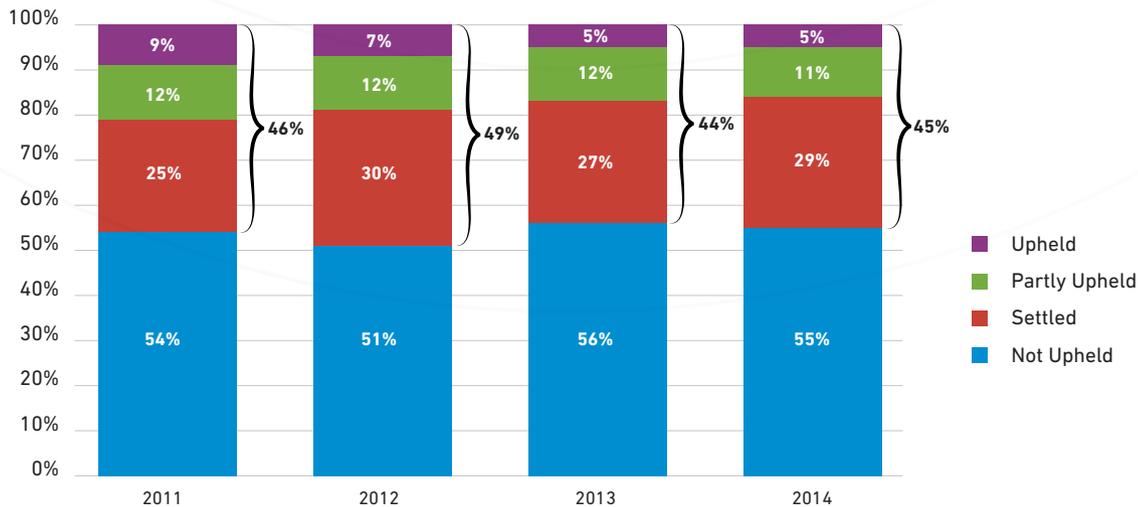
Outcome	2011		2012		2013		2014	
<b>Upheld</b>	141	16%	108	12%	103	10%	76	9%
<b>Partly Upheld</b>	145	16%	156	17%	164	17%	138	16%
<b>Not Upheld</b>	621	68%	634	71%	708	73%	665	75%
<b>Total</b>	<b>907</b>		<b>898</b>		<b>975</b>		<b>879</b>	

#### 4.1.3 Insurance complaints closed by finding outcome (not including settled figures)



Outcome	2011		2012		2013		2014	
<b>Upheld</b>	166	11%	153	10%	79	5%	62	5%
<b>Partly Upheld</b>	186	12%	236	16%	262	16%	170	15%
<b>Not Upheld</b>	1149	77%	1135	74%	1290	79%	921	80%
<b>Total</b>	<b>1501</b>		<b>1524</b>		<b>1631</b>		<b>1153</b>	

## 4.2 Complaints closed by finding outcome and settled



Outcome	2011		2012		2013		2014	
<b>Upheld</b>	361	9%	302	7%	202	5%	147	5%
<b>Partly Upheld</b>	467	12%	505	12%	472	12%	342	11%
<b>Settled*</b>	1044	25%	1287	30%	1120	27%	936	29%
<b>Total complaints with some form of customer redress</b>	<b>1872</b>	<b>46%</b>	<b>2094</b>	<b>49%</b>	<b>1794</b>	<b>44%</b>	<b>1425</b>	<b>45%</b>
<b>Not Upheld</b>	2212	54%	2183	51%	2309	56%	1749	55%

\*Includes those settled at mediation also.

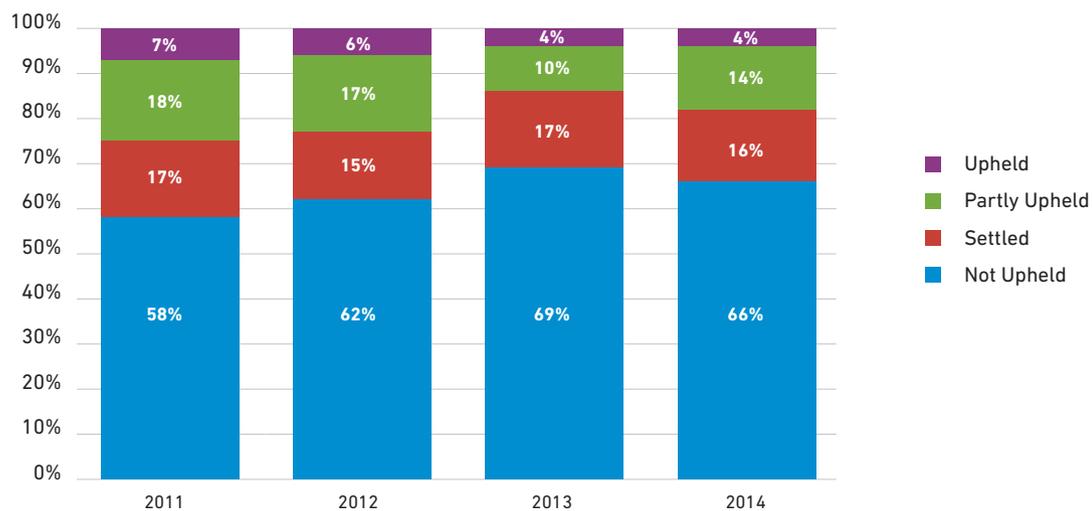
In previous publications we have reported on outcomes where complaints are Upheld (substantiated); Partly Upheld (partly substantiated) and Not Upheld (not substantiated) in line with our legislation. Settlement figures were included elsewhere in the reports.

This year we have amended our reporting to include all these categories in the one graph above. The previous way of reporting for comparison purposes is also included.

Every year, the Bureau allocates considerable resources towards facilitating the Complainant and the Financial Service Providers in achieving a mutually agreeable resolution. We encourage both parties to engage in mediation or alternatively, to explore the possibility of resolving their difficulties by way of direct communications between themselves, which we facilitate. The figures above represent the true efforts of the workings of the office.

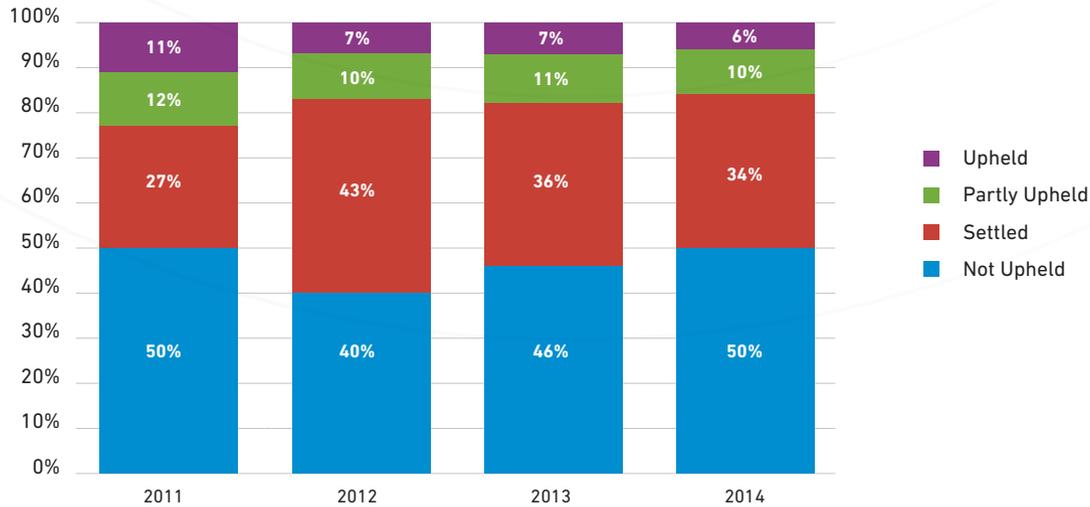
## 4.3 Complaints closed by sector/by finding outcome and settled

### 4.3.1 Investment complaints closed by finding outcome and settled



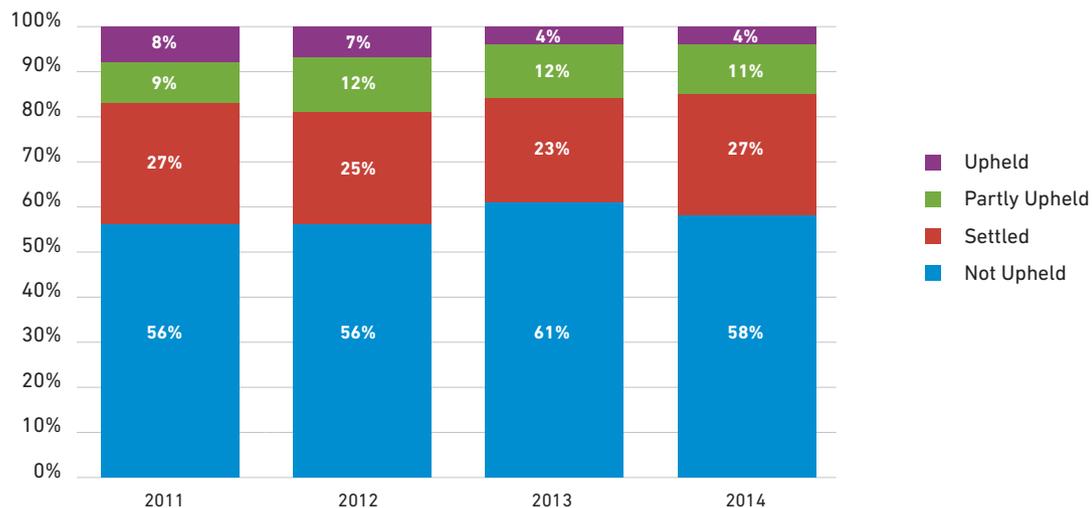
Outcome	2011		2012		2013		2014	
<b>Upheld</b>	54	7%	41	6%	20	4%	9	4%
<b>Partly Upheld</b>	136	18%	113	17%	46	10%	34	14%
<b>Settled</b>	129	17%	97	15%	77	17%	40	16%
<b>Total complaints with some form of customer redress</b>	<b>319</b>	<b>42%</b>	<b>251</b>	<b>38%</b>	<b>143</b>	<b>31%</b>	<b>83</b>	<b>34%</b>
<b>Not Upheld</b>	442	58%	414	62%	311	69%	163	66%

### 4.3.2 Banking complaints closed by finding outcome and settled



Outcome	2011		2012		2013		2014	
<b>Upheld</b>	141	11%	108	7%	103	7%	76	6%
<b>Partly Upheld</b>	145	12%	156	10%	164	11%	138	10%
<b>Settled</b>	338	27%	677	43%	555	36%	447	34%
<b>Total complaints with some form of customer redress</b>	<b>624</b>	<b>50%</b>	<b>941</b>	<b>60%</b>	<b>822</b>	<b>54%</b>	<b>661</b>	<b>50%</b>
<b>Not Upheld</b>	621	50%	634	40%	708	46%	665	50%

### 4.3.3 Insurance complaints closed by finding outcome and settled



Outcome	2011		2012		2013		2014	
<b>Upheld</b>	166	8%	153	7%	79	4%	62	4%
<b>Partly Upheld</b>	186	9%	236	12%	262	12%	170	11%
<b>Settled</b>	557	27%	508	25%	474	23%	441	27%
<b>Total complaints with some form of customer redress</b>	<b>909</b>	<b>44%</b>	<b>897</b>	<b>44%</b>	<b>815</b>	<b>39%</b>	<b>673</b>	<b>42%</b>
<b>Not Upheld</b>	1149	56%	1135	56%	1290	61%	921	58%

#### 4.4 Complaints closed for other reasons (other than by formal investigation and/or where settled)

Complaints are closed for a variety of reasons following interaction with the Bureau. As detailed previously, complaints are initially examined to ensure that they fall within our legislative jurisdiction and that we are the appropriate body to deal with the complaint. In some cases we need to seek further clarification from the Complainant as to the exact nature of the complaint. These are the initial stages of the complaint management process.

The full resources of the Bureau are used to ensure that each complaint receives satisfactory attention. There are a number of reasons as to why complaints may not progress and these are detailed below.

	2011	2012	2013	2014
<b>Advisory Referrals i.e. where complaints are referred onto another appropriate body</b>	447	472	427	347
<b>Decision by FSO not to investigate complaint e.g. issue more appropriate for Court of Law</b>	125	160	477	136
<b>Outside jurisdiction of office</b>	721	1,042	1,317	834
<b>Closed due to no further contact from Complainant *</b>	1,868	1,673	2,047	1,234
<b>Complaint withdrawn by Complainant</b>	219	247	274	147

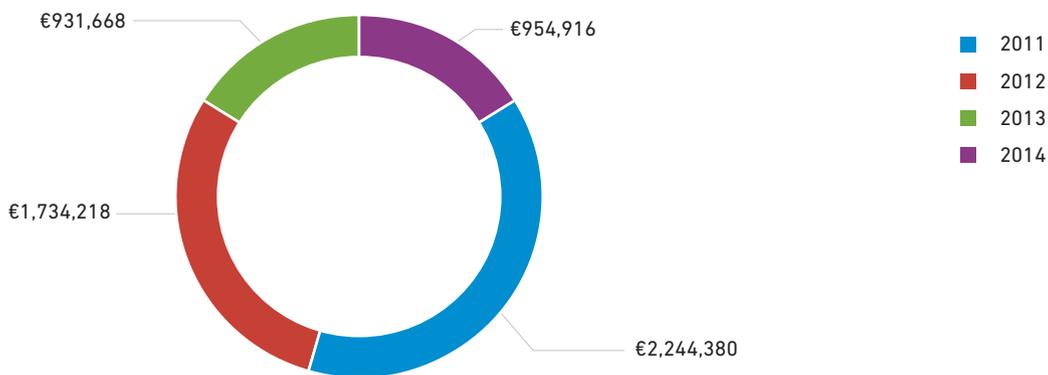
\*In some cases complaints are settled between the provider and the customer during the course of the investigation, however the FSOB will only note a case as settled where the Complainant confirms that this is the case. Although we prompt for responses from the Complainant, unless we hear to the contrary, then the case is 'closed due to no further contact from Complainant'.

## 4.5 Compensation awarded

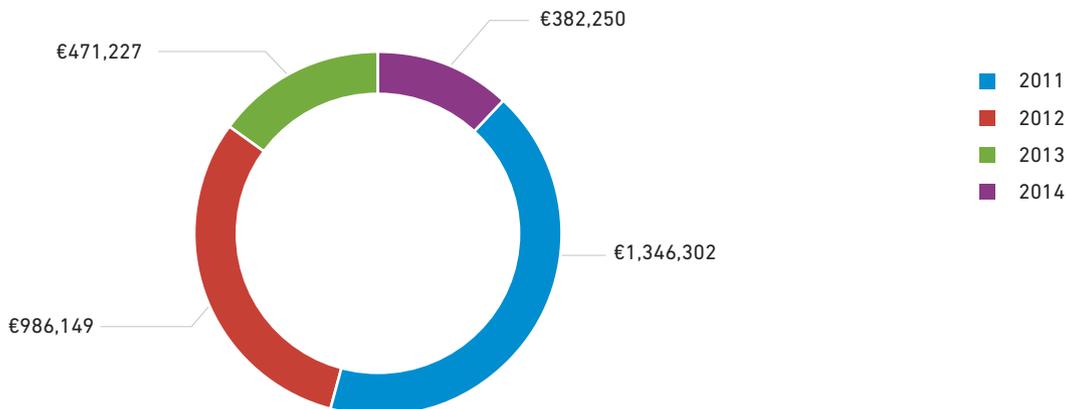
The Act, under which the Financial Services Ombudsman was created, provides that the Ombudsman can direct a Financial Service Provider (FSP) to rectify the conduct complained of and in addition, award compensation of up to €250,000 where a complaint is upheld.

The figures below relate to the level of compensation awarded. It does not include cases where the Ombudsman has directed the FSP to rectify the specific conduct complained about or provide other forms of redress, for example, where a direction is given to reassess an insurance claim.

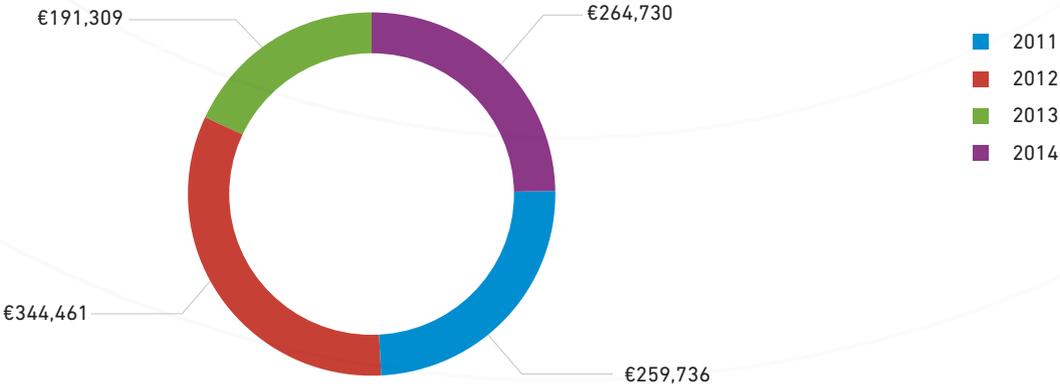
### Overall Compensation Awarded



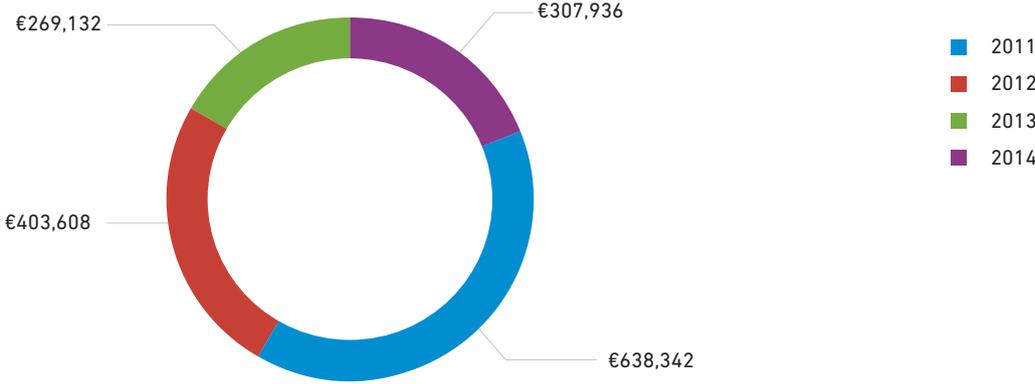
### Investment Compensation Awarded



**Banking Compensation Awarded**



**Insurance Compensation Awarded**



## Part 5 - Case Studies

The Financial Services Ombudsman deals independently with complaints from consumers about issues that are unresolved between them and their Financial Services Provider (FSP). As stated earlier in this document, when a Complainant approaches us, we ensure that they have made the complaint in the first instance to their FSP. If the Complainant has done this but has not achieved a satisfactory outcome, then the complaint will be dealt with through our offices.

Every year, the Bureau allocates considerable resources towards facilitating the Complainant and the FSP in achieving a mutually agreeable resolution. We encourage both parties to engage in mediation or alternatively, to explore the possibility of resolving their difficulties by way of direct communications between themselves, which we facilitate.

At any stage of the process, the complaint can be settled between the parties.

This is welcomed and encouraged by the Bureau, as every settlement is a positive outcome for all. We will only note that a complaint is settled where the Complainant confirms to us that they are satisfied with the outcome.

However, if the parties cannot achieve a resolution, we will adjudicate upon the matters arising and issue a formal Finding which is then binding upon the parties.

For the purposes of this report we have included 'settled' figures with the Upheld and Partly Upheld numbers (see section 4.2). The total of these three outcomes represent where there has been a change in favour of the Complainant and this is in keeping with how other Financial Services Ombudsman offices present their statistics.

The following case studies illustrate a variety of instances where, over different timeframes, complaints were resolved directly between the parties with the assistance of the Financial Services Ombudsman's Bureau, but without the necessity of issuing a formal Finding. We have also included case studies outlining types of complaints where formal investigation was undertaken and findings were subsequently issued by this office.

**\*Note:** In the following Case Studies the 'Complainant' refers to the person making the complaint and the 'Provider' refers to the regulated Financial Services Provider.

## Cases Settled - prior to formal investigation taking place:

### Case Study 1

#### Bank Account Issue

Complaint with Bureau for 3 months

This complaint related to the Bank's handling of a presented cheque. The cheque was presented, but declined as the Bank was not satisfied with signature on cheque. The Complainant stated he was embarrassed as his supplier contacted him for an explanation about the non-payment. Mediation was offered by the Bureau and at that stage, the Bank confirmed it was not happy with its initial handling of the complaint. The Bank agreed to refund the unpaid charges and donated a sum, as requested by the Complainant, to a charity of his choice. The Complainant confirmed he was satisfied with the outcome.

correspondence with both parties and once the Complainant confirmed the matter had been resolved amicably, the case was closed.

offer and awaited payment of same. After a period of two months, the Complainant had not received any payment. The Complainant contacted the Provider, expressing her dissatisfaction with the handling of the matter. The Provider's response to the complaint was that it was entitled to make payments in "stages, on evidence of work being carried out" (in line with the policy's Terms & Conditions). The Complainant submitted a complaint to the Bureau. In response to our enquiries, the Provider acknowledged that its customer service had lapsed and agreed to pay the four figure sum (as agreed with Loss Assessor) and make a donation of €500 to the Complainant's charity of choice, for the delays in dealing with the issue. The Complainant confirmed she was satisfied with the outcome and the file was closed.

### Case Study 3

#### Mortgage Issue – Reinstatement of Tracker Rate

Complaint with Bureau for 3 months

The Complainants had an issue with their mortgage and the Bank's subsequent response to their initial query. The Complainants argued that the Bank erred in not re-instating a tracker rate on the said mortgage after a fixed period had ended. Initial documents were exchanged between both parties and formal mediation was offered by the Bureau. Following this, the Bank contacted this office and proposed a settlement offer, which the Complainants duly accepted.

### Case Study 2

#### Insurance Issue

Complaint with Bureau for 4 months

This complaint related to the Provider's handling of a claim for fire damage to the Complainant's property. The Complainant was unhappy with the Provider's decision to decline the claim and its subsequent handling of the matter. The Bureau, on receipt of the complaint, asked the Provider to address the matter in more detail. From there, both parties engaged. The matter was resolved with the claim being paid. The complaint was actioned within the Bureau over a four month period. During that time the FSOB was in extensive

### Case Study 4

#### Insurance Claim Payment Issue

Complaint with Bureau for 1 month

The Complainant's property was damaged by a burst water pipe and as a result she submitted a claim to the underwriter (through her broker). The Complainant was unhappy with the initial lack of contact from the Provider or its representatives. The Provider's Loss Assessor agreed to settle the matter for a four figure sum to cover the cost of repairs. The Complainant accepted this

## Cases Settled - during the course of formal investigation:

### Case Study 1

#### Investment Complaint – Mis-selling

**Formal investigation closed  
after 11 months – Resolved  
after formal mediation**

The Complainant invested €275,000 with the Provider in 2007, split 70%/30% between two types of Funds. The Complainant made the complaint in May 2013, advising she had sustained a loss of 33%. She took the view that the investment had been mis-sold to her as she had been wrongly categorised as a progressive investor when she was in fact a very conservative or a low risk investor.

In addition, the Complainant pointed out that she was suffering ill-health at the time and the Provider had failed to adequately take into account her decision-making capabilities being compromised, as a result of the medical treatment she was undergoing in 2007. Similarly, the Complainant maintained that the Provider failed to take into account the source of the funds available for investment, which were as a result of litigation which had recently been settled arising from her medical issues. In addition, the Complainant maintained that no adequate assessment of her risk profile had been undertaken by the Provider prior to the investment being sold.

Following the commencement of the formal investigation of the complaint, the Provider responded in detail to the issues raised and the parties exchanged a number of additional submissions. In the course of the adjudication of the complaint a communication was received from the Provider suggesting a late

mediation and the Financial Services Ombudsman agreed to facilitate the parties. Thereafter, the parties and their respective representatives attended our offices for a formal mediation which continued for a full working day and which ultimately achieved a resolution of the dispute between the parties. The file was closed noting that the complaint had been settled between the parties.

### Case Study 2

#### Household Insurance Complaint – Pay out on policy declined

**Formal investigation closed  
after 2 months**

Following gale force winds in late December 2013, a household policyholder complained to the Financial Services Ombudsman in relation to a claim, which had been declined by her insurers, for the cost of storm damage sustained to a domestic shed, when the roof blew away. Her claim had been declined, on the basis that the shed was of non-standard construction. However, the Complainant maintained that the roof had consisted of heavy duty insulated cladding bolted to wall plates and purlins. She contended that these were appropriate materials in the circumstances, which had served their purpose well for 25 years, before the damage occurred.

The formal investigation was commenced by this office in June 2014, raising certain queries with the Provider, in respect of the policy documentation, the contractual definitions and the assessments of the structure, and calling for the production of all contemporaneous

documentation. Four weeks later, the Financial Services Ombudsman was notified that discussions were in train between the parties. We were advised that the dispute was resolved and the file was closed.

### Case Study 3

#### Mortgage Complaint – Restructure request declined

**Formal investigation closed  
after 4 months**

In 2009, the Complainant separated from her husband and secured a loan from the Bank in order to purchase her ex-husband's share of the family home. The loan fell into arrears in late 2013 and at the time of the complaint, there were arrears. The Complainant at that point, was unemployed and in receipt of a disability pension, but was anticipating drawdown of pension benefits in late 2015. In those circumstances she proposed to the Bank that she utilise her pension lump sum as the basis for a mortgage re-structure but the Bank, although originally enthusiastic, ultimately refused the Complainant's proposal. The Complainant, who was represented by MABS, complained that the Bank's response was unreasonable, unjust, oppressive or improperly discriminatory within the meaning of the provisions of the Central Bank and Financial Services Authority of Ireland Act 2004.

The formal investigation of the complaint commenced in June 2014 and a number of questions were put to the Bank in relation to the issues arising. The following month, the Financial Services Ombudsman was notified by the Bank that it wished

to re-engage with the Complainant with a view to exploring the possibilities of resolving the dispute. Communications continued and ultimately the issues were settled between both parties in October 2014.

## Case Study 4

### Investment Complaint – Mis-selling

**Oral hearing cancelled due to settlement – Formal investigation closed after 20 months**

In 2007, the Complainant who was in her 40s, invested €28,000 into a high risk property fund via the Provider's pension policy. At the time of the complaint in 2013, the investment had fallen to nil.

The Complainant maintained that the investment had not been suitable for her and had been mis-sold given her status as self-employed, her limited financial resources, in addition to certain reading difficulties which required her to secure assistance in reading and understanding written documents. The Complainant maintained that she had a very low level of financial knowledge.

The Complainant's pension had been of modest size and up to that point had been managed conservatively. Following a meeting with the Provider's tied agent, the investment proceeded and at the time of the complaint in 2013, the Complainant maintained that she had been pressured into transferring her pension into the investment on the basis that it was risk-free, whereas it was, in fact, a geared property fund categorised as high risk/aggressive. The Complainant disputed the contents of the financial fact find and statement of suitability and maintained that she did not in fact understand the word "gearing".

The formal investigation of the complaint commenced in late 2013

and the parties' submissions and observations in relation to the issues arising, continued until April 2014. In the course of the adjudication of the complaint, the Financial Services Ombudsman determined that the evidence disclosed conflicts of fact which required the taking of oral evidence, for the purpose of the fair adjudication of the complaint. The parties were therefore notified that the Ombudsman intended to schedule an Oral Hearing for the purpose of taking testimony on oath.

The parties were given two months notice of the scheduled date for the Oral Hearing. Four days prior to the Hearing scheduled, this office was notified by the parties that the matter had been settled directly between the parties. The file of the Financial Services Ombudsman was closed on this basis.

## Case Study 5

### Household Insurance Complaint – Settlement of insurance claim not sufficient

**Formal investigation closed after 7 months**

A gentleman complained to the Financial Services Ombudsman that his holiday home had suffered extensive damage from a fire, maliciously set.

Although the Provider accepted liability for the loss, the settlement figure offered was unacceptable to the Complainant. The dispute centred on the Provider's suggestion that the property had been under-insured and the Complainant maintained that the Provider had wrongly included insurance on certain outbuildings in its calculations, thereby reducing the settlement sum. The Complainant maintained that when the premises had been insured, no mention whatsoever had been made of outbuildings and such outbuildings

were never intended to be covered.

The formal investigation commenced in December 2013 and following receipt of the Provider's formal response in January 2014, the parties' submissions continued thereafter until the end of March 2014. The Financial Services Ombudsman commenced the adjudication of the complaint, but in doing so, he noted a number of conflicts in the evidence.

As a result, in May 2014, a number of additional queries were raised with the Provider in relation to various policy definitions and in respect of certain outstanding details concerning assessments and visits to the property by representatives of the Provider.

By way of response, two weeks later, the Provider confirmed that insurers had conducted a full and in-depth review of the file and were now willing to settle the claim directly with the Complainant. Thereafter, the Complainant's representative confirmed settlement of the dispute directly as between the parties and the file of the Financial Services Ombudsman was closed on the basis that the matter had been resolved.

## Case Study 6

### Three Investment Complaints – all linked – Mis-selling

**Formal investigation closed after 11 months**

In 2010, the Complainant invested a sum of €50,000 in a 10 year Bond, attracting a specified annual interest rate. The Complainant maintained that, unknown to him, the Bond carried a high level of risk and he complained that the sale of the investment to him had been totally unsuitable.

In 2011, subsequent to the enactment of the Credit Institutions

(Stabilisation) Act 2010, the Complainant became obliged to sell the Bond back to the Provider at a 75% discount, leading to a loss of €37,500.

The Complainant made complaints to the Financial Services Ombudsman against three individual Financial Service Providers as follows:-

- The Complainant maintained a complaint against the insurance intermediary which sold the product to him in 2010 on the basis that the investment was unsuitable for him and no adequate assessment of his suitability had taken place.
- The Complainant maintained a complaint against another financial service provider (which had facilitated the transfer of funds to and from the Complainant's ARF, by co-signing the fund transfer request instruction) on the basis that the Provider ought to have questioned the suitability of that type of investment for his pension fund when all other investments in his pension fund were capital guaranteed.
- The Complainant maintained a complaint against a third financial service provider which had marketed the Bond, on the basis that this Provider had failed to carry out any assessment of the Complainant's suitability for an investment which was too long term and that the Provider had wrongfully categorised the Complainant as a "retail" client. The Complainant sought to rely on the provisions of the MiFID Directive as implemented by SI No. 60/2007 (European Communities [Market in Financial Instruments] Regulations 2007).

Three separate investigation files were opened and the three individual complaint investigations formally commenced in February 2014. Thereafter, the parties' responses and ongoing submissions and

observations continued at length for a number of months.

On completion of the exchange of documentation, the adjudications commenced. The Financial Services Ombudsman was notified in November 2014 that the Complainant's three individual grievances were being withdrawn, in circumstances where these matters had been resolved directly between the parties.

## Case Study 7

### Farm Insurance Complaint

Formal investigation closed after 6 months

A gentleman complained in relation to a policy of farm insurance taken out in 2009 via the Provider who was an insurance intermediary. He explained that the intermediary had completed the proposal form on his instructions but, contrary to his confirmation, the intermediary had entered the address of his farm, as his residential address, albeit that the farm was twenty miles from where the Complainant lived. When the Complainant subsequently made a claim on the policy he discovered that the policy did not cover the farmland and he was unable to claim for the loss sustained of €50,000.

The formal commencement of the Complainant's grievance against the Provider was commenced by the Financial Services Ombudsman in February 2014. Following receipt of the Provider's formal response in March 2014, the parties' respective submissions continued over a period of three months.

In the course of the adjudication by the Financial Services Ombudsman, a number of conflicts were noted in the documentary evidence received. In particular, queries arose and were put to the Provider in July 2014 in relation to a farm safety

questionnaire, which was missing from the file and in respect of a handling fee referred to in the contemporaneous documentation. In addition, the Financial Services Ombudsman raised certain queries in relation to the Provider's adherence to the Central Bank's Consumer Protection Code with particular reference to the issue of "suitability" and in respect of the notification of certain key features of the policy. Additional queries were also raised in relation to missing/outstanding audio records of telephone calls between the parties dating from 2009.

Subsequently, ten days later this office was notified by the Complainant that the matter had been resolved directly as between the parties. The file of the Financial Services Ombudsman was therefore closed noting that the matter had been settled.

## Case Studies - where a finding was issued following investigation:

### Case Study 1

#### Investment Complaint

Mis-selling of an investment – highly geared property fund. Ombudsman directed that €200,000 be returned to Complainant following investigation, oral hearing and finding.

**Finding** UPHELD

A woman complained to the Ombudsman that shortly after being widowed in 2006, she sought investment advice from the Provider which resulted in an investment of €200,000 into a highly geared property fund. The Complainant was adamant that the huge level of risk involved in this investment had not been explained and the investment sold by the Provider was wholly unsuitable for her in circumstances where she was seeking to invest the proceeds of a life assurance policy in order to provide for the future, taking into account her responsibilities for her three children.

The Provider maintained that alternative investments had been suggested to the Complainant, including one which was capital guaranteed and another which offered a medium level of risk. The Provider maintained that the investment had proceeded on an execution-only basis and that the *"suitability letter"* had issued in error to the Complainant, when it was not in fact necessary.

An issue arose as to the beneficial ownership of the investment, although by August 2012 the investment had a nominal value of €0. At the Oral Hearing, the Complainant confirmed that in late 2006 the figure invested represented approximately 25% of the overall

funds available for investment. The Provider's representative confirmed that in late 2006 this particular geared investment product had been categorised as *"medium"* risk. It further came to light that no financial fact find had been carried out and no investment meetings or discussions had taken place between the parties. The Provider's representative confirmed that, in this instance, the investment proposal had been communicated to the Complainant through her brother who was connected to the Provider. It was further noted that the *"investment proposal"* document which the Complainant received, referred to a *"low-risk profile"*.

The evidence from the Complainant at the Oral Hearing clarified that it was her funds alone which were invested in the product in late 2006. The evidence also confirmed that the recommendation letter, which included an explanation that the maximum loss was restricted to the entirety of the amount invested in the fund, was not signed by the Complainant until more than two months after the commencement of the investment.

Having considered the evidence, the Ombudsman rejected the suggestion that the investment had proceeded on an execution only basis. He found a complete failure on the Provider's part to assess the suitability of the product to the Complainant, notwithstanding its knowledge that she was particularly vulnerable at the time. He took the view that there had been a total abdication of responsibility by the Provider and that it had failed in its duty of care to the Complainant and, in particular, it had failed to take into account her complete lack of investment experience, her vulnerable status and the circumstances at the time of the investment, only a number of months after her husband's death.

The Ombudsman found that the investment product had been mis-sold and directed an immediate payment to the Complainant in the sum of €200,000.

### Case Study 2

#### Investment Complaint

Mis-selling of an investment. Ombudsman partly upheld this complaint and directed that a sum of €10,000 be returned to Complainant following investigation, oral hearing and finding.

**Finding** PARTLY UPHELD

This complaint was made by a gentleman who complained to the Ombudsman that the provider had misled him into believing that an investment made for his pension was secure and had failed to furnish information about the extremely low debt ranking of the Bond in which his funds were invested; he had never been told that his pension had invested in a bond issued by a Cayman Islands company. The Complainant also alleged that his portfolio manager was financially incentivised to maximise the income to the broker and that this had given rise to mis-selling and a breach of fiduciary duty to him. The Complainant maintained that he had a risk profile of *"low-medium risk"*.

The Provider, i.e., the broker, confirmed that the Complainant's risk profile was classified internally to indicate a limited exposure to risk, i.e. essentially mid-range. The Provider relied upon the Complainant's decision to select medium-risk therefore eschewing two lower categories of risk options which had been available to him.

The broker also maintained that the transaction had been effected on an execution-only basis, at the request of the Complainant, and as a result, the Provider was not required to determine the suitability of the investment for the Complainant and could not be held liable for any loss suffered as a result. Moreover, the Provider indicated that twice during 2010 a representative of the broker had suggested to the Complainant that the stock in question should be sold, but the Complainant had elected not to sell.

The Ombudsman noted that the Complainant had executed his discretionary terms of business and a discretionary share dealing account had been opened with the Provider/broker for his pension. The Ombudsman called the parties to give evidence at an Oral Hearing at which the Provider maintained that the transactions at issue, had not been initiated or executed by it on behalf of the Complainant and that in fact, rather, it was the Complainant himself who had contacted the portfolio manager to request the specific purchase of the investment for his portfolio.

The Ombudsman noted that various risk factors represented by the investment, were set out in detail in a section of the prospectus covering more than 20 pages. He noted that, after the first element of the investment had been made, the Complainant had then received the prospectus for the Bond, but he had elected not to examine the contents, which would have afforded him the opportunity to determine that the Bond was not suitable for his particular needs. The Ombudsman took the view that the Provider could not be held responsible for the Complainant's failure to read the prospectus, which it seems had arisen owing to the size of the document, which he had received by way of e-mail.

The Ombudsman also noted that the Complainant had rejected other investment opportunities and his

interaction with the Provider was indicative of a client who did not have a "passive" discretionary relationship with the Provider. Bearing in mind the involvement of the Complainant in making investment decisions, the Provider's records indicated that it had suggested to the Complainant that the status be changed to an advisory account, in order to reflect this involvement.

Having considered all of the evidence, the Ombudsman took the view, on the balance of probabilities, that the Complainant had made up his own mind that he wanted to proceed with the investment in question and he had not sought the Provider's advice. The audio evidence from the relevant time also made it clear that the Complainant was in no way a novice investor and there was insufficient evidence to establish that the Complainant's decision had been taken on the basis of any advice he received from the Provider.

The Ombudsman noted that while a discretionary account was in existence at the time of the disputed transactions, the transactions themselves were not discretionary. Although the broker had elected not to rely upon the discretionary remit, nevertheless in the Ombudsman's opinion, the transactions effected were not "execution only" as it was the Provider which had specifically brought the attention of the Complainant to the investment opportunity. He took the view that when the Provider had formed the opinion that it could not make a discretionary investment, because the investment product was one which did not fall within the Complainant's documented risk profile, then, at that point, it should have proactively sought to furnish all relevant investment material (in particular the investment prospectus) to the client in order to afford him the opportunity to make a fully informed investment decision. In this instance the Provider had not furnished any acceptable reason as to why this had not happened, though it was also unclear as to why

the Complainant had not sought investment material from the broker before electing, of his own volition, to proceed with the first element of the investment.

The Ombudsman noted that e-mail communications, two years after the product had been purchased reflected the very substantial losses on the value of the investment, without any complaint or adverse comment whatsoever from the Complainant at that time, and it was not until 2011 when the Complainant first articulated any dissatisfaction.

The Ombudsman partly upheld the complaint, noting that even if the Provider had furnished the prospectus to the Complainant in advance of his first investment in the product, it remained unclear as to whether the Complainant would have reviewed the contents; on the evidence, it seemed most probable that he would not have done so. However, to reflect the failures of the Provider - broker, the Ombudsman directed a compensatory payment in favour of the Complainant in the sum of €10,000.

## Case Study 3

### Phishing Complaint

Complainant responded to a phishing email divulging all necessary details required to access her online banking account. On the basis of gross negligence on the Complainant's part this complaint was not upheld.

**Finding** NOT UPHELD

The complaint to the Ombudsman from this lady was that whilst attempting to access her online banking, a "pop-up" appeared on her screen, which she believed had arisen in order to solve a problem which was blocking her from her account. As a result of the Complainant's entry of her personal details in response to the "pop-up",

€4,900 was fraudulently withdrawn from her account, €1,006 of which was subsequently retrieved by the Bank. The Complainant maintained that the Bank was partly responsible for allowing the transactions to take place and she sought to have the Bank share the responsibility for the loss by refunding her 75% of the remaining funds which had not yet been recovered.

The Bank contended that the disputed transactions had been processed using the Complainant's online banking number, her internet Password and her Personal Access Number in conjunction with the security code. It maintained that the Complainant was responsible for the loss because she had responded to a phishing e-mail, thereby disclosing personal confidential data to the fraudsters. The Bank took the view that the Complainant had been grossly negligent. In this instance, the Bank pointed out that a few months earlier the Complainant had answered another phishing e-mail, leading to a loss of €1,400 from her account. On that occasion, the Bank had refunded the transaction as a gesture of goodwill. The Bank indicated that numerous warnings had been issued to the Complainant that the Bank will never request her personal details, by e-mail or by text.

In considering the complaint, the Ombudsman noted that the Terms & Conditions of the account warned that all cards, devices, PINs and Passwords and other security features should not be disclosed or divulged or in any way made accessible to a third party. He also considered the provisions of the European Communities (Payment Services) Regulations 2009 noting that pursuant to this Statutory Instrument, the account holder is to bear all losses relating to an unauthorised payment transaction if such losses are incurred by virtue of the account holder having acted fraudulently or having failed intentionally or by way of gross negligence to fulfil one or more of the account holder's obligations.

He noted the views of the High Court and the Supreme Court in Ireland, in relation to the test for gross negligence, namely *"a degree of negligence where whatever duty of care may be involved has not been met by a significant margin"*. Having considered all of the evidence, he took the view that the Complainant had been grossly negligent within the meaning of the 2009 Regulations, by responding to a phishing e-mail and inputting her personal details, notwithstanding a number of warnings to her by the Bank that it will never ask for her personal details by e-mail. In those circumstances, the Ombudsman did not accept that the Bank should bear any responsibility for the losses and accordingly he did not uphold the complaint.

## Case Study 4

### Phishing Complaint

Complainant responded to a fraudulent phishing website divulging all necessary details required to access her online banking account. On realising her error she reported the issue to the Bank, however one transaction had taken place by that time. Notwithstanding the fact that the Complainant had divulged her personal details and on the basis that the Bank had incorrectly advised the Complainant that she would receive a refund for all of her transactions the Ombudsman partly upheld the complaint and directed the Bank to refund 50% of the value of the one remaining outstanding fraudulent transaction to the Complainant.

**Finding** **PARTLY UPHELD**

In this case, the Complainant responded to a fraudulent phishing website, leading to a number of fraudulent transactions on her account. Whilst the Complainant was on the phone to the Bank to notify the

Bank of the security breach, some of the transactions in question were carried out. As a result, the Bank refunded most of the transactions but it held the Complainant liable for one transaction to the value of €2,300.

The Ombudsman considered the cardholder's responsibilities pursuant to the Terms & Conditions of the account, not to disclose personal details or security data or Passwords or PINs. He also considered the provisions of the European Communities (Payment Services) Regulations 2009 which provide for an account holder to bear all losses for unauthorised transactions if incurred by virtue of the cardholder failing, whether intentionally or by way of gross negligence, to fulfil one or more of his/her obligations.

In considering the evidence, the Ombudsman also took into account the content of the discussions between the parties when the Complainant telephoned the Bank to report the security breach. He took the view that there were significant deficiencies in the manner in which the Bank had handled the initial communication from the Complainant and indeed, for that reason the Bank had refunded three of the four fraudulent transactions which had occurred while the parties were on the phone. He also noted however from the audio evidence that the Bank's representative had repeatedly assured the Complainant that she would receive a refund for all of the transactions if they were fraudulent. Taking into account the fact that the Bank's representative had inadvertently misled the Complainant and failed to accurately advise her as to how the matter would be handled, the Ombudsman partly upheld the complaint and directed the Bank to refund 50% of the value of the one remaining outstanding fraudulent transaction.

## Case Study 5

### Mortgage Complaint

Dispute between Complainants and Bank regarding request by the Complainants to nominate a third-party account into which the Complainants might receive mortgage Tax Relief at Source. Ombudsman found that the Bank's response to the request had been adequate and in accordance with Revenue guidelines and the complaint was not upheld.

Finding **NOT UPHELD**

A complaint was made to the Ombudsman in relation to a home loan mortgage where the Complainants sought to nominate an account into which they might receive mortgage TRS (Tax Relief at Source). They took the view that the Bank should facilitate their request to transfer the TRS credit into a third-party bank account.

The Bank argued that tax relief at source, since 1 January 2002, is paid by the mortgage provider, thereby avoiding a situation where the customer has to claim back the relief at the end of the tax year. It pointed out that the mortgage interest relief is given at source by the mortgage provider either in the form of a reduced monthly mortgage payment, or as a credit to the funding account. In responding to the complaint, the Bank contended that TRS on mortgage interest repayments is specific to the mortgage and the Bank had met the requirements of the Revenue Commissioners' guidelines, by paying TRS to the nominated funding account each month.

In considering the complaint, the Ombudsman noted the relevant section of the Revenue website, noting that, in addition to the relevant regulatory and contractual obligations governing the relationship between the parties, the Bank is also obliged to adhere

to Revenue requirements regarding TRS. He noted a clear link between the "funding account" and the mortgage and the pre-drawdown requirements for the establishment of a direct debit mandate for mortgage payments. In those circumstances he took the view that the Bank's response to the request had been adequate and had correctly interpreted Revenue guidelines regarding TRS. For this reason, the complaint was not upheld.

## Case Study 6

### Mortgage Complaint

Complaint was about poor customer service by the Bank in relation to drawdown of funds on Complainant's mortgage account.

Finding **UPHELD**

Eight years after drawing down their mortgage, the Complainants were notified by the Bank that a remaining figure of €2,000 was still available for drawdown. The Complainants noted this position and advised the Bank that they did not wish for the €2,000, when drawn down, to be paid to their solicitor's account. In response, they were advised by the Bank that the monies could be paid directly to their own account, subject to providing a final valuation certificate. The Complainants paid for the valuation and delivered the certificate to the branch to be put into the internal post, but a few weeks later, the certificate could not be located.

Subsequently, the Complainants were notified in writing that they should submit a certificate of compliance and structural survey with the final valuation certificate, in order to drawdown the funds. However, having done so, the Complainants were then notified that an amendment certificate was required but when this additional requirement was met, the Complainants were subsequently

notified that the funds had issued, not to their account, but to their former solicitor's account. In circumstances where an issue had arisen between the Complainants and the solicitor, the Complainants' solicitor was unwilling to pass on those funds. In the meantime, the repayments due on the mortgage increased, as a result of the additional drawdown having been applied to the account.

In responding to the complaint, the Bank referred to the note on its systems indicating that the Complainants' solicitor was their representative for the drawdown of the funds. The Bank however accepted that the Complainants had issued specific instructions not to send the funds to their former solicitor. The Bank offered a figure of €2,700 to the Complainants with a view to resolving the complaint and offered to keep the Complainants informed in relation to any action taken by the Bank against the solicitor.

In addition to the ongoing difficulties which the Complainants had encountered, the Ombudsman noted from the audio evidence of the phonecalls that the first Complainant had been put on hold for a very considerable period of time, in the course of a phonecall which had sought to advance the drawdown of the funds.

Having considered the evidence, the Ombudsman took the view that there had been a manifest failure on the part of the Bank to offer any reasonable service to the Complainants. He was of the opinion that to resolve the complaint, a compensatory payment from the Bank to the Complainants was appropriate, comprising the original €2,000 to be drawn down, €200 as a fair approximate figure in relation to interest charged and €1,250 to reflect the very considerable stress and inconvenience which these events had caused to the Complainants. He therefore directed that the Bank issue payment to the Complainants in the sum of €3,450, to conclude.





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