Financial Services Ombudsman
Annual Report 2012

Financial Services Ombudsman Annual Report 2012
Presented to the Oireachtas under Section 57BR of the Central Bank and Financial Services Authority of Ireland Act, 2004

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Our mission is to adjudicate on unresolved disputes between Complainants and Financial Services Providers in an independent and impartial manner thereby enhancing the financial services environment for all participants.

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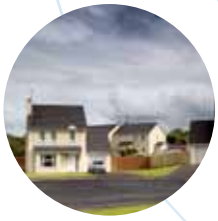
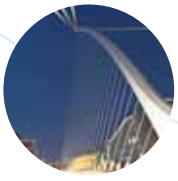




Chairperson's Report

I am pleased to present this, my fifth report as Chairperson of the Financial Services Ombudsman Council which commenced its term on 29 October 2008.

The statutory functions of Council prescribed by the Central Bank and Financial Services Authority of Ireland Act 2004, are:

- to prescribe guidelines under which the Ombudsman is to operate;
- to determine the levies and charges payable for the performance of services provided by the Ombudsman;
- to appoint the Ombudsman and all deputy Ombudsmen;
- to keep under review the efficiency and effectiveness of the Office and to advise the Minister for Finance, either at the Minister's request or at its own initiative, on any matter relevant to the Ombudsman's operation, and
- to advise the Ombudsman on any matter on which he seeks advice, and
- to carry out such other activities as are prescribed by Part 57BD.-(1).

8,000
complaints received in
2012

This has been a significantly demanding year for the Bureau and Council. We continued to maintain a high priority over this past year in ensuring that the greatest level of essential resources were allocated and directed toward both the effective management of current caseload and the efficient elimination of the older unresolved caseload carrying forward.

In addition, the means by which industry providers, through change of internal practice or procedure, could stem and reduce those levels was determinedly continued across from last year through Council and Bureau activities.

The long awaited proposed amendment to the Central Bank Act 1942 by way of Central Bank (Supervision and Enforcement) Bill 2011, to allow the Bureau to detail the type and number of complaints for specific firms and within which the Ombudsman will be guided, will complete its passage through the Oireachtas before the Summer recess. I must reiterate how the enactment of this amendment, a longstanding wish of this Council and its predecessor, will flow directly across the strategic Bureau engagements but, most importantly, will, when necessary, place a spotlight on industry providers who lack the essential commitment to an internal process of quality dispute resolution and management.

The public profile and reliance upon the office remains at a high and trusted level by consumers of the service and this is reflected in the fact that the 8,000 complaints received in 2012 was the highest ever recorded since the establishment of the Bureau. Again, this only goes to highlight to Council the necessity for sufficient resources to permit appropriate flexibility to the Ombudsman and Bureau to effectively manage its caseload.

In addition, there must be regulatory efficiency in operation that supports the quality of the process and procedure in ensuring consistency of complaint handling.

A matter of serious concern to Council, the remaining legislative procedure for final establishment of the Financial Services Ombudsman Bureau Superannuation Schemes, continues to be an outstanding work in progress. We will continue our positive work with the Minister and his Department to complete the process with the diligence and urgency warranted.

I wish to express my high regard of and gratitude to all of my fellow Council Members who each gave of their very significant expertise with professionalism and consideration. I would mention also how appreciative we are of the significant input from the Secretary to the Council.

I also wish to pay tribute to the Minister for Finance and the staff of his Department, for their continued support.

In closing I must offer my gratitude and congratulations to the Ombudsman, Deputy Ombudsman, Heads of Investigation, Legal and Administration and all of the staff for their exceptional individual and combined efforts. It is those efforts that have again ensured the continuing high level of appreciation and regard from the consumers of this very crucial service.

In my previous report I indicated how Council focus must, of urgent necessity, turn to the change and cost implications upon infrastructure that will result from the proposed integration of the services of the Pensions Ombudsman with those of the Bureau. There is now consideration that such a restructuring would be completed within the next two years. The implications are numerous and complicated and I have indicated to the Minister, in a submission to him of the Bureau Strategy Statement and Business Plan for 2012-2014, that we remain unable to commence what will be intense and demanding planning to realise the integration in such a time-frame.

We shall continue, however, in what is the concluding term of this Council, to explore to the best of our ability, and through engagement with the Departments of Finance and Public Expenditure and Reform, what will be the effects and costs of such integration in the short, medium and long term for the Bureau, the Office of the Pensions Ombudsman and for the consumers who do and will demand our services in such increasing and worrying numbers.

The Council and I look forward to supporting and working with the Ombudsman and his staff in our combined commitment to continuous enhancement of the service and its quality for the needs of all who have, or will have, cause to contact his office.

Dermott Jewell
Chairperson Financial Services Ombudsman Council
July 2013

The Financial Services Ombudsman Council

Mr. Dermott Jewell, Chairperson

Mr Jewell (B.Sc. Mgmt (Law)(Trinity College Dublin), (ClArd.) is Chief Executive of the Consumers' Association of Ireland. His representations include the Consumer Advisory Group of the Central Bank of Ireland, Chairperson/Director of the European Consumer Centre (ECC) Ireland, Director of Investor Compensations Company Limited (ICCL) and member of the National Standards Authority for Ireland (NSAI) Certification Oversight Committee. He is Ireland's representative alternate on the Consumer Consultative Group (ECCG) of the European Commission.

Mr Jewell is a trainer/lecturer on the Management, Leadership and Finance Modules of the European Commission-DG Sanco TRACE Training Projects for consumer organisations.

Mr. Michael Connolly

Mr Connolly (B.B.S Trinity College Dublin / F.I.B) is a Financial Services Consultant specialising in bank lending / distressed loans. He is a Director of PMI Europe Holdings and Chairman of the Risk Committee. He is also a Director of Oakfield Trust and a former Director of NAMA and Chairman of its Credit Committee. In his executive career he was a General Manager with Bank of Ireland Group which included responsibility for business banking, credit control, international banking, asset finance, group insurance. He also served as Chairman of Bank of Ireland Group Investment Committee and a Bank Pension Fund Trustee.

Mr. Anthony Kerr

Mr Kerr, M.A. (Dub.) LL.M (Lond.) BL (Kings Inns), is a Statutory Lecturer in the School of Law, University College Dublin and Associate Dean for Graduate Studies. He is author of a number of books including The Civil Liability Acts (4th ed., 2011) and is the vice-chair of the Employment Law Association of Ireland.

Mr. Paddy Leydon

Mr Leydon is the previous Chairperson of the Credit Institutions Ombudsman voluntary scheme which was subsumed into the Financial Services Ombudsman Bureau in 2005. A Regional Business Manager with Bank of Ireland and based in the North West, Mr Leydon a Fellow of the Institute of Bankers in Ireland and a Member of the Institute of Certified Public Accountants in Ireland.

Ms. Caitríona Ní Charra

Ms Ní Charra was appointed as a member of the first Financial Services Ombudsman Council and was reappointed. She has worked with the Money Advice and Budgeting Service (MABS) for 15 years. She has particular interest in debt and poverty issues, as well as financial literacy. She has worked as an independent researcher and trainer.

Ms Ní Charra also worked for the Health Service Executive (HSE) and the Department of Social and Family Affairs. She was a former Director and Company Secretary of Consumer DebtNet, a European umbrella group for money advice services.

Mr. Frank Wynn

Frank Wynn is Head of Group Compliance and Operational Risk with the Irish Life Group. He is an accountant (FCCA), an Associate of the Chartered Insurance Institute, and an Associate of the Irish Institute of Pension Managers. He is a Board member of the Association of Compliance Officers in Ireland (ACOI) and Chairman of the ACOI's Technical Committee.

Mr. Jim Bardon, Secretary to the Council

Mr Bardon worked in various positions in Bank of Ireland between 1966 and 1988 including Manager of Internal Audit and Senior Manager in Group Executive Office. He was Director General of the Irish Bankers Federation from 1988 to 2004, during which time he chaired the Executive Committee of the European Banking Federation for two years. He is chairman of the Investor Compensation Company Limited.

Function of the Council

The Financial Services Ombudsman Council (the Council) is appointed by the Minister for Finance. Its main functions are to:

- Appoint the Financial Services Ombudsman (the Ombudsman) and any Deputy Ombudsman;
- Prescribe guidelines under which the Financial Services Ombudsman's Bureau (the Bureau) is to operate;
- Determine the levies and charges payable for the performance of services provided by the Ombudsman;
- Keep under review the efficiency and effectiveness of the Bureau and to advise the Minister for Finance, either at the Minister's request or at its own initiative, on any matter relevant to the Ombudsman's operation;
- Advise the Ombudsman on any matter on which he seeks advice.

Members of the Council

The Council is appointed by the Minister for Finance. In October 2008 the Minister appointed the following as members of the Council for a 5 year period.

- Mr Dermott Jewell (Chairperson)
- Mr Michael Connolly
- Mr Tony Kerr
- Mr Paddy Leydon
- Ms Caitríona Ní Charra
- Mr Frank Wynn

Mr Jim Bardon is Secretary to the Council.

Council Subcommittees

Audit Committee Members

- Mr Michael Connolly (Chairperson)
- Ms Caitríona Ní Charra
- Mr Noel O'Connell

Finance Committee

- Mr Frank Wynn (Chairperson)
- Mr Dermott Jewell

Governance Committee

- Mr Paddy Leydon (Chairperson)
- Mr Dermott Jewell
- Mr Tony Kerr

Meetings

Council: During 2012, the Council held 7 formal meetings. Attendance was as follows

	Meetings
Mr Dermott Jewell (Chairperson)	7
Mr Michael Connolly	7
Mr Tony Kerr	6
Mr Paddy Leydon	7
Ms Caitríona Ní Charra	6
Mr Frank Wynn	7

Council Subcommittees;

- The Audit Committee met on 4 occasions.
- The Finance Committee met on 2 occasions.
- The Remuneration and Governance Committee met on 2 occasions.

Council Remuneration / Expenses

The Minister for Finance decides the level of annual fees to be paid to the Council members; €12,600 is paid to each member with €21,600 to the Chairperson.

Claims for reimbursement of travel and subsistence expenses at current public service rates are submitted quarterly. In that regard, the following expense claims were submitted.

Mr Paddy Leydon	€1,755.72
Ms Caitríona Ní Charra	€2,068.40

Ombudsman's Foreword

Ombudsman's Foreword

2012 was a very challenging year for the Bureau. The Office once again finds itself at the centre of attempting to resolve the legacy issues connected with the financial crisis.

In 2012, this Office received 8,135 complaints, the highest number of complaints received since the establishment of the Office (and up 12% from complaints received in 2011). This has had an effect on the workload of the Office at all levels: 7871 cases were concluded during the year, 2990 of which were concluded by Findings issued by the Office. By the year's end, the Office had more complaints in investigation than at any time since its establishment.

The sources of the increase in complaints to the Office are by now very familiar. Complaints concerning Payment Protection Insurance (PPI) increased by 216% over 2011 levels and now comprise almost a third of all insurance complaints.

Banking complaints increased by 15% overall from 2011. Within the Banking sector, complaints about accounts increased by 51% from 2011. Mortgages and mortgage arrears continue to be a significant problem and complaints about mortgages account for 36% of all banking complaints.

Complaints concerning investments decreased and this is consistent with past experience. Simply explained, the greatest investment losses took place during 2006 – 2008 and most complaints concerning those losses have already been made.

This increased workload of the Office takes place in a very challenging legal environment. The Office must observe a level of legal formality unique in the international ombudsman community and this presents a challenge given the increase in numbers of complaints and the continuous demand for expeditious dispute resolution. The need to maintain and even increase decision making volumes in this legal environment is the primary challenge faced by the office.

In this context, it is encouraging to note that increased numbers of complaints are being resolved by settlements between the complainants and the providers. The Office does everything it can to facilitate such settlements. It has long been my view that the only way to effectively deal with the financial crisis is for the providers to fully

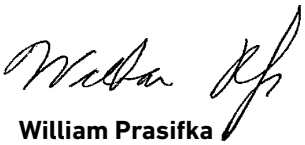
complaints about **mortgages** account for **36%** of all banking complaints

engage with their own customers with a view to resolving all issues. We are seeing some signs that this is being done. However, much more will be required, if we are to successfully deal with and indeed reverse the growing trend of an ever increasing number of complaints.

However, I must also note a very unfortunate development that we have seen in the past year – an increased number of financial service providers who have exited the market and have sold off their businesses to entities that are not regulated in Ireland. The implications of this for customers can be very severe since this office has no jurisdiction to deal with complaints against unregulated entities. The increase in the number of customers affected by these developments is noted and is expected to only increase. Clearly it is better for customers to have an effective remedy for action in breach of the Consumer Protection Code and, at the very least, financial providers who are exiting the market should exit in such a way that provisions are made for continued customer protection.

The year closes on a note of some uncertainty. The amalgamation of the Pensions Ombudsman with the Financial Services Ombudsman has been raised, although, at this time, no decision has yet been made. Both offices have seen a very significant increase in complaint numbers and the management of such an amalgamation will be critical to the future success of any new body. In addition, the Office awaits the clarification of certain legal issues from the Supreme Court pending the hearing of two appeals. The resolution of these institutional and legal issues will greatly assist the Office in meeting its statutory objectives of dealing with complaints efficiently, effectively, fairly and in an informal and expeditious manner.

Finally, I must pay tribute to the staff of this Office and the outgoing Deputy Ombudsman, Mr Tom Comerford. The financial crisis has increased the demands on this office considerably in terms of numbers of complaints, complexities of issues and personal distress on complainants. It is the staff of this Office who are on the front line in resolving these matters and I express to them, on behalf of the public, my gratitude.



William Prasifka
Financial Services Ombudsman
July 2013

Organisation / Staff Structure

Management

Name	Title
William Prasifka	Financial Services Ombudsman
MaryRose McGovern	Head of Investigation
Diarmuid Byrne	Head of Administration
Tom Finn	Head of Legal Services

Investigation Unit

Name	Title
Michael Brennan	Principal Investigator
Sinead Brennan	Senior Investigator
Conor Cashman	Senior Investigator
Sophie Hart	Senior Investigator
Anthony O'Riordan	Senior Investigator
Kathleen O'Sullivan	Senior Investigator
Dermot Dempsey	Investigator
Iseult Doherty	Investigator
Alison Gillett	Investigator
Dermot McCole	Investigator
Colette O'Beirne	Investigator
Anne Slowey	Investigator

Pre-Investigation Unit

Name	Title
Meagan Gill	Principal Case Manager
Marta Piekarz	Senior Case Manager
Tomás Murray	Case Manager
Des Butler	Case Officer
Dale Hayes	Case Officer
Paul Heffernan	Case Officer
Linda Kavanagh	Case Officer
Lorraine Maher	Case Officer
Eoin Fallon	Case Administrator
Shane McKiernan	Case Administrator

Finance Department

Name	Title
Evelyn Moore	Finance Officer

HR Department

Name	Title
Patricia Heffernan	HR Administrator

Support Staff

Name	Title
Sylvia Costello	PA to Ombudsman
Joan McGuinness	Investigation Administrator

Administration Unit

Name	Title
Ann-Marie Dent	Reception
Julianne Fitzpatrick	Reception
Mary Hamilton	Reception
Emma Ryan	Reception
Jim Bardon	Secretary to Council

01 | Complaints

Complaints

Our Role

The Financial Services Ombudsman can investigate, in an impartial and independent manner, complaints from individual customers and small businesses who have unresolved disputes with Financial Service Providers who are regulated by the Central Bank. The Act, under which the Financial Services Ombudsman was created, provides that the Ombudsman must be independent in the execution of function relating to the adjudication of complaints and decisions of the Ombudsman are binding, subject only to appeal to the High Court. The Ombudsman can direct a Financial Service Provider to rectify the conduct complained of and award compensation of up to €250,000 where a complaint is upheld.

Complaints Overview

The overview comprises of a summary of the work throughput of the Bureau for 2012. It compares the Bureau's figures for 2011 and 2012 in relation to Complaints closed pre-investigation and by way of Finding, complaints received by Sector for 2012 and 2011, a comparative study of Complaints received by Provider Type for 2012 and 2011 and an analysis of complaint trends on key Products types from 2007 to 2012. Complaints have risen by 12% on 2011 figures.

During 2012:

- 8135 new complaints were received.
- 4064 complaints were made against the Insurance Sector, 840 against the Investment Sector, 3087 against the Banking Sector and 144 against non-Financial Service Providers; (please note that non-Financial Services Provider refers to complaints sent to this office regarding airlines, hired cars, garages, mobile phone companies etc; these Complaints are referred to the relevant body who deals with same.)
- 7871 cases were concluded during 2012; this included 4876 which were closed prior to a formal investigation by this office, 2990 Findings were issued and 5 complaints were successfully mediated.
- A comprehensive breakdown of the Complaint type, Product type and Findings issued by Sector can be found in the Bi-Annual Review 2012.

Summary of work throughput for 2012

Summary of Complaints Received and Complaints Closed 2012

Complaints on Hand 1st Jan 2012	3697
New Complaints Received	8135

Complaints Closed

Complaints Closed prior to Investigation	4876
Complaints Closed by way of Finding	2990
Complaints Closed by way of mediation	5
Total Closed	7871
Complaints on Hand 31 December 2012	**3961**

Complaints Received by Sector 2012 and 2011

Barchart 1

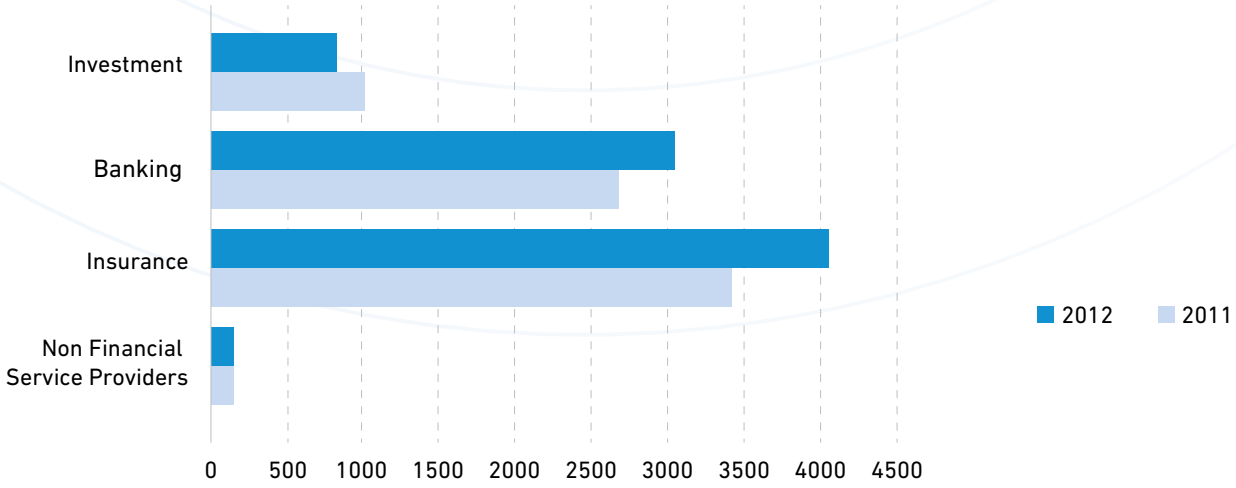


Table 1

Complaints Received by Sector 2012-2011

Sector	Number of Complainants received	
	2012	2011
Investment	840	1024
Banking	3087	2680
Insurance	4064	3443
Complaints regarding non Financial Service Providers	144	140
Total	**8135**	**7287**

The Bureau records the manner in which cases are closed in two main categories: the first being complaints closed pre-investigation following this office's involvement and secondly, complaints closed by way of a Finding.

Reasons Complaints Closed Pre-Investigation 2012 and 2011

Barchart 2

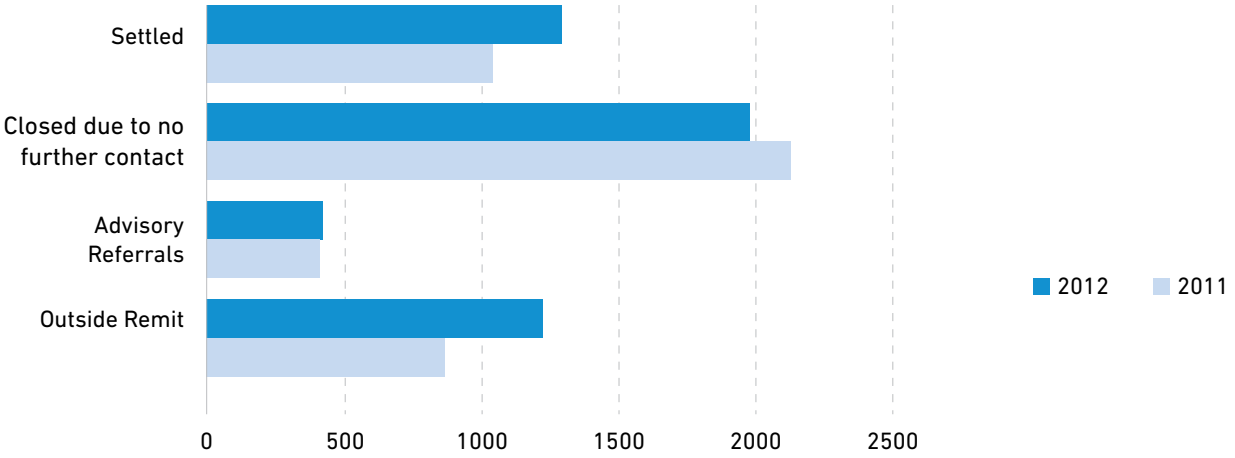


Table 2

Reason Complaints Closed Prior to Investigation 2012-2011

Year	2012	% of complaints closed pre-investigation	2011	% of complaints closed pre-investigation
Settled	1282	26%	1024	24%
Closed due to no Further Contact	1968	40%	2112	48%
Advisory Referrals	413	8%	409	9%
Outside Remit	1213	26%	859	19%
Total	**4876**	**100%**	**4404**	**100%**

Complaints Closed by way of Finding

(Complaint Upheld, Partly Upheld or Not Upheld)

Bar chart 3

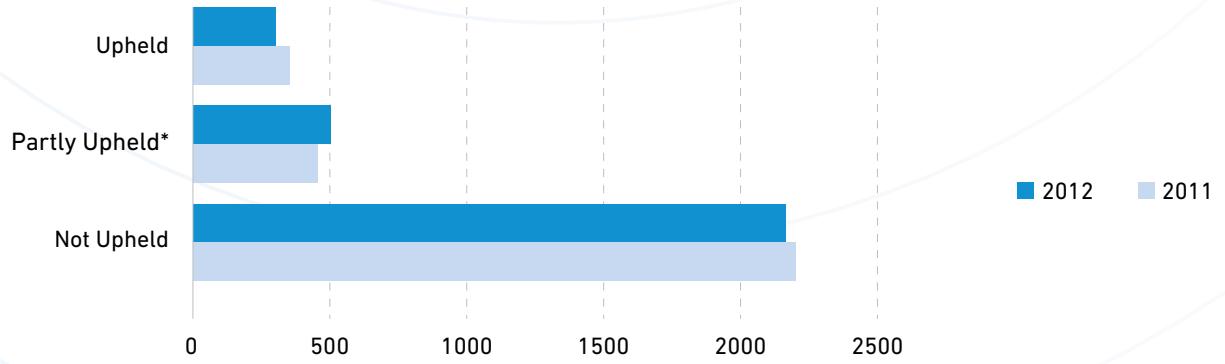


Table 3

Complaints Closed by way of Finding

(Complaint Upheld, Partly Upheld or Not Upheld)

Year	2012	% of Findings issued	2011	% of Findings Issued
Upheld	302	10%	361	12%
Partly Upheld	505	17%	467	15%
Not Upheld	2183	73%	2212	73%
Total Issued	**2990**	**100%**	**3040**	**100%**

Table 4

Complaints Received by Provider Type

This office receives complaints regarding a variety of Provider Types including, but not limited to, Insurance Companies, Banks, Credit Unions and Intermediaries.

	2012	2011
Insurance Company Life	1066	1190
Insurance Company Non Life	1626	1866
Health Insurance Company	308	351
Intermediaries	314	331
Banks	4156*	2846
Building Societies	199	189
Credit Unions	82	49
Stockbroker	46	84
Mortgage Intermediary	32	57
Bureau de Change	0	1
Money Lender	8	13
Finance Provider	1	5
Intermediary Other	30	80
Non Applicable	267	225
Total	**8135**	**7287**

*of the 4156 complaints received against banks 1280 relate to the alleged mis-selling of an insurance product Payment Protection Insurance – Banks, in this instance, would have been acting as Insurance Intermediaries when selling the policies but in the interest of accurate reporting they have been placed in the Banking sector. In all other aspects in this report and other reports from this office such complaints are categorised as insurance complaints.

Complaint Trends on Key Products Types from 2007 to 2012

Mortgage Complaints for the period 2007-2012

Mortgage complaints consist of 36% of all Banking complaints. Given the current climate and with such difficulties facing home owners, it is of no surprise that the complaints submitted to this office are in relation to repayment terms imposed by banks and engagement with banks regarding arrears.

Graph 4

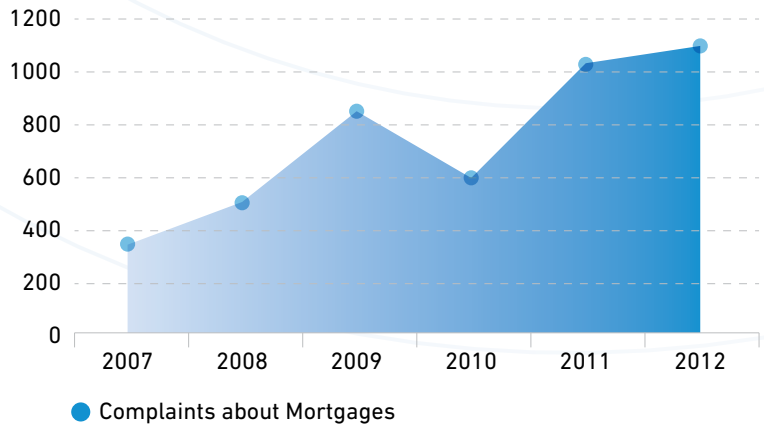


Table 5

Year	
2007	348
2008	517
2009	850
2010	595
2011	1038
2012	1098
Total	**4446**

Payment Protection Insurance Complaints 2007- 2012

The economic downturn has necessitated consumers to submit claims under their protection policies for their loans on motor vehicles, personal loans and credit cards. The majority of the complaints relate to the alleged mis-selling of the product by Insurance Intermediaries.

Graph 5

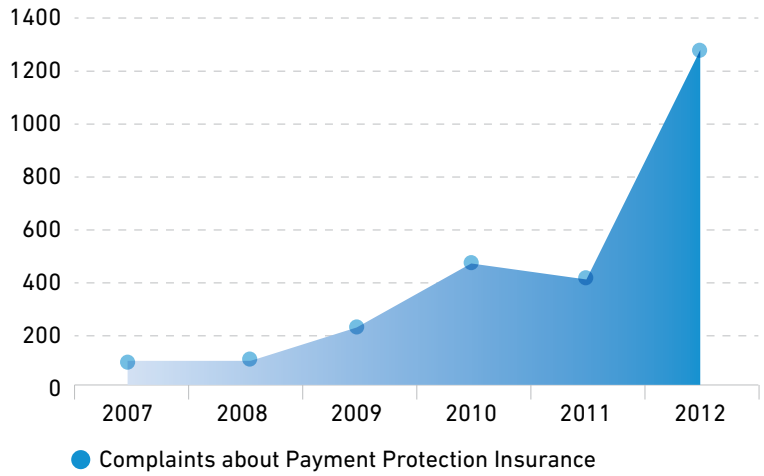


Table 6

Year	
2007	93
2008	100
2009	216
2010	460
2011	405
2012	1280
Total	**2554**

Accounts Complaints 2007- 2012

Complaints regarding banking accounts rose by 51% on 2011 figures. The majority of the complaints relate to customer service issues, the introduction of fees and charges and the removal of certain products from the banks suite of products.

Graph 7

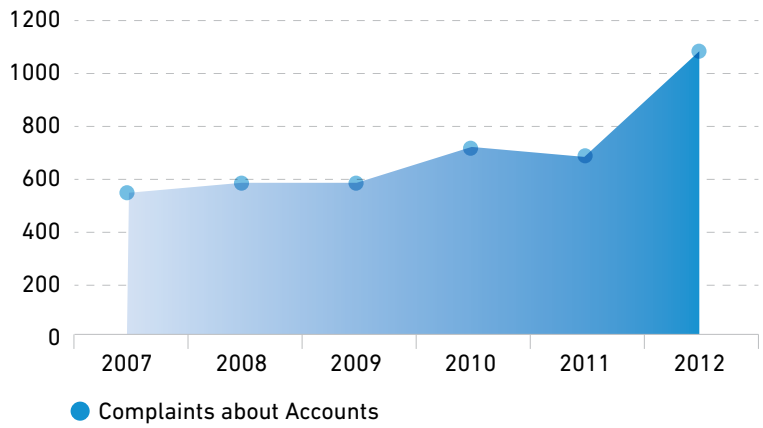


Table 7

	Year
2007	588
2008	617
2009	620
2010	745
2011	712
2012	1078
Total	**4360**

02 Legal Matters

Legal Matters

The Financial Services Ombudsman possesses a unique legal jurisdiction which is acknowledged and frequently commented upon by the Courts. There now exists a significant body of case law involving the Financial Services Ombudsman. All Findings must be legally sound, but there are also legal requirements that the Ombudsman must act in an informal manner and without regard to technicality or legal form.

The Bureau accordingly follows well-established, yet evolving, procedures regarding how it deals with complaints. Those procedures come from a variety of sources; legislation, received, practice, experience and from decided court cases.

Those procedures, and the manner in which Findings are arrived at, inevitably give rise to on-going legal interpretation and development and so are kept under continuous review. Each complaint is dealt with on its own merits on an individual case-by-case basis and the Bureau does not operate a system of precedent Findings similar to precedent Judgments used in a Court of Law. The Ombudsman has greater flexibility and choice in fashioning an appropriate remedy in cases which come before him.

The Ombudsman also has a broad statutory discretion for deciding whether or not a complaint is within his jurisdiction. The Ombudsman regularly exercises this discretion and, consequently, not every complaint made to him can or will necessarily be investigated.

High Court Appeals/Judicial Review

Findings of the Ombudsman are subject to appeal and/or judicial review to the High Court. In the course of 2012 a number of appeals were decided upon by the High Court with a number of *ex tempore* and written Judgments delivered. Copies of approved Judgments to date are available on the Bureau's website.

As of 31st December 2012, there were 41 High Court appeals and 1 Judicial Review on hand i.e.; Court proceedings were in being and either were awaiting hearing or had been heard and were awaiting Judgment.

Appeals are brought by both Complainants and Financial Service Providers depending on the issues arising from the Finding under appeal. Virtually all appeals tend to be in respect of the merits of the Finding rather than Judicial Reviews. An appeal on the merits does not involve a complete *de novo,* re-hearing of all issues by the High Court, rather, for an appeal to succeed, an appellant must show a significant error or series of errors by the Ombudsman in arriving at his Finding. A number of appeals are settled prior to hearing, which may include the Bureau agreeing to have a case remitted to the Ombudsman for re-consideration. It is the policy of the Bureau to seek and pursue legal costs in all appropriate cases.

While most of the Court Judgments have no wider application beyond the individual appeals themselves, the Court's continued recognition and consideration of the

Ombudsman's unique statutory function continues to be a recurring theme in Judgments.

Supreme Court Appeals

As of the 31st December 2012 there were 4 appeals pending before the Supreme Court awaiting a hearing date. Of these four appeals, three are of note:

Lyons & Murray –v- FSO & Bank of Scotland plc 2011 22 MCA

The High Court Judgment of 14th December 2011 was delivered by Mr. Justice Hogan. Issues arise from the Judgment which are likely to very significantly and materially impact upon the work of the Bureau. These issues concern the application of fair procedures, the holding of oral hearings and the scope of the FSO's jurisdiction. The FSO has lodged an appeal to the Supreme Court against the Judgment of the High Court.

Irish Life & Permanent plc t/a permanent tsb –v- FSO & Thomas & Healy 2011 264 MCA (2 related appeals)

The High Court Judgment of 3rd August 2012 was delivered by Mr. Justice Hogan. The Judgment related to 4 related appeals and raised issues regarding what are the duties owed by a bank to a customer seeking advice in relation to a mortgage product. The Complainants switched out of fixed-interest "tracker" mortgages to variable interest rate mortgages and found subsequently on the expiration of the original fixed period that they could not switch back to tracker mortgages. The Appellants in the High Court; Irish Life & Permanent plc lodged an appeal to the Supreme Court in respect of two of the High Court Appeals.

Enforcement Cases

In a very small number of cases the Ombudsman, pursuant to his statutory powers, engages in enforcement proceedings against Financial Service Providers who fail to comply with Findings of the Ombudsman.

Appeal/Judicial Review Statistics 2012

High Court Appeals On Hand at 01 January 2012	37
Judicial Reviews On Hand at 01 January 2012	-
Supreme Court Appeals On Hand at 01 January 2012	1
New High Court Appeals received in 2012	41
New Judicial Reviews received in 2012	1
High Court Appeals Resolved in 2012	37
Appeals Heard of which :	13
Appeals Dismissed	9
Appeals Allowed	4
Appealed to Sup Ct (1 subsequently withdrawn)	4
High Court Appeals withdrawn pre-hearing	10
High Court Appeals remitted on consent	10
High Court Appeals closed for other reasons	4
High Court Appeals on hand at 31 Dec 2012	41
Judicial Reviews On Hand at 31 Dec 2012	1
Supreme Court Appeals On Hand at 31 Dec 2012	4

03 External Relations

External Relations

Co-operation with Pensions Ombudsman, Central Bank

The Financial Services Ombudsman is an arbiter of disputes between customers and institutions, but is not a regulator. There is a Memorandum of Understanding between the Financial Services Ombudsman's Bureau, the Central Bank and the Pensions Ombudsman. If a matter arises during an investigation by the Financial Services Ombudsman which he feels is indicative of some kind of pattern, he will inform the Central Bank so that appropriate regulatory action may be taken. He also co-operates with the Pensions Ombudsman so as to avoid unnecessary overlap in pensions' area. Quite apart from the Memorandum, the three offices have enjoyed, and continue to enjoy, close co-operation. Meetings between the three parties were held regularly and when deemed necessary in 2012.

FIN-NET / Cross Border Co-operation

This Office is a member of FIN-NET, a financial dispute resolution network of national out-of-court complaint schemes in the European Economic Area countries responsible for handling disputes between consumers and Financial Service Providers. The network was launched by the European Commission in 2001.

Within FIN-NET, the schemes co-operate to provide consumers with easy access to out-of-court complaint procedures in cross-border cases. If a consumer in one country has a dispute with a Financial Service Provider in another country, this Office's role is to put the consumer in touch with the relevant out-of court complaint scheme and provide the necessary information about it.

Presentations

- Insurance Institutes – Nationwide
- Credit Institutions
- Professional Insurance Brokers Association
- LIA
- Free Legal Advice Centres
- Law Society
- Central Bank
- The Institute of Bankers
- Finuas Network

Meetings / Conferences

- Irish Banking Federation
- The Central Bank
- Insurance Brokers Association
- National Consumer Agency
- Professional Insurance Brokers Association
- Mortgage Arrears Information Helpline
- Other public information
- Media interviews
- Website updates
- Bi-annual reviews

Visits to the Office

- Pensions Ombudsman
- Financial Services Ombudsman Scheme, Jersey and Guernsey
- Financial System Mediator of Armenia
- The Georgian Financial Ombudsman
- Central Bank of Armenia

04 Organisational Matters

Organisational Matters

Risk Strategy

It is the policy of the Financial Services Ombudsman's Bureau to comply with best practice governance and accountability obligations. This includes the requirement of the Code of Practice for the Governance of State Bodies and Risk Management Guidelines for Government Departments and Offices.

Strategy Statement

The Strategy Statement for 2012 was approved by the Financial Services Ombudsman Council and published on our website. Its targets and objectives are under constant review by the Management Team.

Environmental Policy Statement

In 2010, the Financial Services Ombudsman's Bureau began to make efforts to reduce energy use in line with the Department of Communications Energy & Natural Resources goals of improving energy efficiency in the public sector as a whole by 33% by 2020; as outlined in its requirements under SI No 542/2009 – European Communities (Energy End Use Efficiency and Energy Services) Regulations 2009.

The primary means of energy consumption by the Bureau is in relation to the running of the office on the third floor of the five-storey Lincoln House Building. In 2012, 83,239KWh of electrical energy was used by the Bureau. This represents an overall drop in electrical energy used of 2,629KWh (3.1%) from 2011, when the Bureau used 85,868KWh and an overall decrease of 6.1% since 2010.

overall drop in electrical energy used of 2,929 KWh (3%) from 2011

This illustrates that the continued energy saving initiatives that were undertaken in 2012 have had a positive effect in reducing overall energy consumption of our office.

The energy efficiency initiatives that were implemented in 2012 which assisted in achieving this decline include:

- The increased use of energy efficient lighting in the office with the installation of further LED and CFL lighting together with supplementary motion activated light sensors;
- The introduction of an energy efficient boiler and a low energy water purifier to the staff canteen; and
- The continued promotion of responsible energy usage.

The Bureau has also taken steps to improve other aspects of the overall environmental footprint. These measures include:

- The monitoring of paper usage for printing and photocopying purposes;
- Encouraging the responsible use of paper by promoting double-sided printing and the use of electronic documentation;
- The introduction of default double-sided printing on all communal printers in the office;
- The provision of recycling facilities in the staff canteen; and
- The completion and roll out of electronic communications with both Complainants and Regulated Providers.

In 2013, the Bureau plans to further expand upon the means by which we can reduce our energy consumption and reduce the Bureau's environmental footprint. These plans will include:

- The further introduction of socket timers on various high output electronic devices resulting in the automatic shutdown of these units at night time and weekends;
- The introduction of night-time and weekend monitoring of electric energy usage in order to identify further savings;
- The promotion of increased use of digital correspondence.

It is expected that with the expansion of the Bureau floor plate, to encompass office space on the 4th Floor of Lincoln House, the Bureau will experience a substantial increase in office energy use. However, it is hoped that, through the use of effective monitoring of the electricity usage, continued per square-metre reductions in energy use can be maintained.

Staff Training

The Financial Services Ombudsman's Bureau recognises the importance of ongoing professional development for all staff members. In this regard the Bureau encourages and supports staff to develop their knowledge and skills at all stages of their careers.

Performance Management and Development Systems (PMDS)

Staff members' performances for 2012 were reviewed by the manager and suitable training and development plans agreed.

Finance

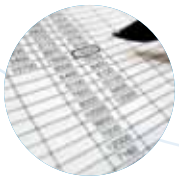
Legislation under which the Bureau operates provides that levies are payable by the Financial Service Provider to enable the Bureau carry out its statutory function. The levy amounts are prescribed by the Council with the consent of the Minister for Finance.

Compliance with Legislation

The Office complies with statutory requirements in the areas of Health and Safety, Equality, Parental Leave and in other areas as follows:

- Ethics in Public Office Acts, 1995 – 2001;
- The office complies with the provision of the Acts and to the Standards in the Public Office Commission's Guidelines for Office Holders;
- Official Language Act, 2003, standard letters and documents are translated into Irish and the website also has an Irish section;
- Data Protection Acts, 1998 and 2003;
- Prompt Payments of Accounts Act, 1997.

05 Financial Statements



Financial Statements

Comptroller and Auditor General

Report for presentation to the Houses of the Oireachtas

Financial Services Ombudsman's Bureau

I have audited the financial statements of the Financial Services Ombudsman's Bureau for the year ended 31 December 2012 under Central Bank Act 1942 as amended by the Central Bank and Financial Services Authority of Ireland Act 2004. The financial statements, which have been prepared under the accounting policies set out therein, comprise the statement of accounting policies, the income and expenditure account, the balance sheet, the cash flow statement and the related notes. The financial statements have been prepared in the form prescribed under Section 57 of the Central Bank Act 1942 as inserted by Section 16 of the Central Bank and Financial Services Authority of Ireland Act 2004, and in accordance with generally accepted accounting principles.

Responsibilities of the Ombudsman

The Ombudsman is responsible for the preparation of the financial statements, for ensuring that they give a true and fair view of the state of affairs of the Financial Services Ombudsman's Bureau and of its income and expenditure, and for ensuring the regularity of transactions.

Responsibilities of the Comptroller and Auditor General

My responsibility is to audit the financial statements and report on them in accordance with applicable law.

My audit is conducted by reference to the special considerations which attach to State bodies in relation to their management and operation.

My audit is carried out in accordance with the International Standards on Auditing (UK and Ireland) and in compliance with the Auditing Practices Board's Ethical Standards for Auditors.

Scope of Audit of the Financial Statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements, sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of

- whether the accounting policies are appropriate to the circumstances of the Financial Services Ombudsman's Bureau, and have been consistently applied and adequately disclosed
- the reasonableness of significant accounting estimates made in the preparation of the financial statements, and
- the overall presentation of the financial statements.

I also seek to obtain evidence about the regularity of financial transactions in the course of audit.

In addition, I read all the Bureau's annual report to identify material inconsistencies with the audited financial statements. If I become aware of any apparent material misstatements or inconsistencies I consider the implications for my report.

Opinion on the Financial Statements

In my opinion, the financial statements, which have been properly prepared in accordance with generally accepted accounting practice in Ireland, give a true and fair view of the state of affairs of the Financial Services Ombudsman's Bureau at 31 December 2012 and of its income and expenditure for 2012.

In my opinion, proper books of account have been kept by Financial Services Ombudsman's Bureau. The financial statements are in agreement with the books of account.

Without qualifying my opinion I draw attention to note 9 of the financial statements which outlines the uncertainty regarding the ultimate financing and recognition of the pension liability.

Matters on which I Report by Exception

I report by exception if

- I have not received all the information and explanations I required for my audit, or
- my audit noted any material instance where money has not been applied for the purposes intended or where the transactions did not conform to the authorities governing them, or
- the information given in the annual report of the Financial Services Ombudsman's Bureau is not consistent with the related financial statements, or
- the Statement on Internal Financial Control does not reflect the Financial Services Ombudsman's Bureau compliance with the Code of Practice for the Governance of State Bodies, or
- I find there are other material matters relating to the manner in which public business has been conducted.

I have nothing to report in regard to those matters upon which reporting is by exception.

Patricia Sheehan

Patricia Sheehan

For and on behalf of the
Comptroller and Auditor General

15 July 2013

Statement of Responsibilities of the Financial Services Ombudsman

Sections 57 BP and BQ of the Central Bank Act, 1942 as inserted by Section 16 of the Central Bank and Financial Services Authority of Ireland Act, 2004 require the Financial Services Ombudsman to prepare financial statements in such form as may be approved by the Financial Services Ombudsman Council after consultation with the Minister for Finance. In preparing those financial statements, the Ombudsman is required to:

- Select suitable accounting policies and then apply them consistently;
- Make judgements and estimates that are reasonable and prudent;
- State whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements;
- Prepare the financial statements on the going concern basis unless it is inappropriate to presume that the Bureau will continue in operation.

The Ombudsman is responsible for keeping proper books of account, which disclose in a true and fair manner at any time the financial position of the Bureau and which enable it to ensure that the financial statements comply with Section 57 BQ of the Act. The Ombudsman is also responsible for safeguarding the assets of the Bureau and for taking reasonable steps for the prevention and detection of fraud and other irregularities.

William Prasifka
Financial Services Ombudsman
2nd July, 2013

Statement on internal financial control

The Financial Services Ombudsman (Ombudsman) acknowledges as Ombudsman that he is responsible for the Financial Services Ombudsman's Bureau (Bureau) system of internal financial control.

The Ombudsman also acknowledges that such a system of internal financial control can provide only reasonable and not absolute assurance against material error.

The Ombudsman sets out the following key procedures designed to provide effective internal financial control within the Bureau:

- As provided for in Section 54B of the Central Bank Act, 1942 as inserted by Section 16 of the Central Bank and Financial Services Authority of Ireland Act, 2004 the Ombudsman is responsible for carrying on, managing and controlling generally the administration and business of the Bureau. The Ombudsman reports to the Financial Services Ombudsman Council (Council) at their meetings which are generally held on a bi-monthly basis.

- The Council and the Bureau have adopted and implemented a "Code of Practice for the Governance of the Financial Services Ombudsman Bureau" based on the Department of Finance "Code of Practice for Governance of State Bodies".

- The Ombudsman and Council review bi-monthly income and expenditure statements with analysis of major income and expenditure categories.

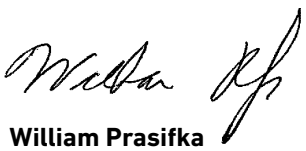
- The Ombudsman via the Finance Committee reviews the annual budget through a comprehensive budgeting system.

- The work of Internal Audit is informed by the analysis of the risks to which the Bureau is exposed and the Internal Audit plan is based on this analysis. Action was taken to ensure that the identified potential risks were being managed in an appropriate manner. A detailed internal audit programme of work was agreed and completed in 2012. The Audit Committee reports to the Ombudsman and Council. The Committee met on four occasions in 2012. The Ombudsman monitors and reviews the efficiency of the system of its internal procedure.

Review of Internal Controls

I have reviewed the internal audit reports, the minutes of the audit committee meetings and the effectiveness of the system of internal financial controls. Where control deficiencies were highlighted these have been addressed.

I also note that an internal audit programme of work has been agreed for 2013 and I will implement any necessary improvements to correct any deficiencies it may bring to light.



William Prasifka
Financial Services Ombudsman
2nd July, 2013

Statement of Accounting Policies

The significant accounting policies adopted in these financial statements are as follows:

Basis of Accounting

The financial statements are prepared under the accrual method of accounting, except as indicated below, and in accordance with generally accepted accounting principles under the historical cost convention.

Levy Income

Council regulations made under the Central Bank and Financial Services Authority of Ireland Act, 2004 prescribe the amount to be levied for each category of financial service provider. Levy income represents the amounts receivable for each service provider calculated in accordance with the regulations and based upon providers identified by the Bureau and information supplied to it. Bad debts are written off where deemed irrecoverable.

Expenditure Recognition

Expenditure is recognised in the financial statements on an accruals basis as it is incurred.

Tangible Fixed Assets

Tangible fixed assets are stated at cost less accumulated depreciation. Depreciation, charged to the Income and Expenditure Account, is calculated in order to write off the cost of fixed assets over their estimated useful lives, under the straight-line method, at the annual rate of 5% per annum for building refurbishment, 33 1/3% for computer equipment and 25% for all other assets. A full year's depreciation is charged in the period of the acquisition and none in the year of disposal.

Capital Account

The Capital Account represents the unamortised value of income used for capital purposes.

Superannuation

For certain staff members the Bureau is in discussion with the Department of Finance regarding the future financing and management of a defined benefit superannuation scheme. Pending a decision on the matter a provision calculated as a percentage of relevant salaries has been made. (See note 8) Pending finalisation of the proposed pension arrangements, pension and lump sums are not charged as expenditure but are set against the pension credit balance.

For other staff members the Bureau makes contributions to a defined contribution scheme. (See note 8). These amounts are charged to the Income and Expenditure Account as they fall due.

Income and Expenditure Account

For the year ended 31 December 2012

	Notes	2012	2011
		€	€
Income Receivable	2	5,414,976	3,880,269
Transfer (to)/from Capital Account	3	32,251	32,707
		5,447,227	3,912,976
Administration Costs	4	(5,667,886)	(5,505,850)
Surplus/ (Deficit) for the year		(220,659)	(1,592,874)
Balance at 1st January		925,118	2,517,992
Balance at 31st December		**704,459**	**925,118**

William Prasifka
Financial Services Ombudsman
2nd July, 2013

The Bureau has no gains or losses in the Financial Year other than those dealt with in the Income & Expenditure Account.

The Statement of Accounting Policies and notes 1 to 15 form part of these Financial Statements.

Balance Sheet

As at 31 December 2012

	Notes	2012	2011
		€	€
Fixed assets			
Tangible assets	5	393,917	426,168
		393,917	**426,168**
Current assets			
Bank and Cash		497,308	524,879
Bank Deposit Accounts		4,946,532	4,182,832
Debtors and Prepayments	6	76,429	67,729
		5,520,269	**4,775,440**
Creditors (amounts falling due within one year)			
Creditors and accruals	7	3,499,065	3,172,342
Provision for Legal Services	8	1,316,745	677,980
		4,815,810	**3,850,322**
Net current assets		**704,459**	**925,118**
Creditors (amounts falling due after one year)		-	-
Net assets		**1,098,376**	**1,351,286**
Represented by			
Capital Account	3	393,917	426,168
Accumulated surplus at 31 December 2012		704,459	925,118
		1,098,376	**1,351,286**

The Statement of Accounting Policies and notes 1 to 15 form an integral part of these Financial Statements.

William Prasifka
Financial Services Ombudsman
2nd July, 2013

Cashflow Statement

For the year ended 31 December 2012

	2012 €	2011 €
Reconciliation of deficit to net cash inflow from operating activities		
Deficit for the year	(220,659)	(1,592,874)
Transfer to capital account	(32,251)	(32,707)
Depreciation charge	76,341	83,780
Interest received	(56,666)	(72,401)
(Increase)/decrease in debtors	(8,700)	38,632
Increase/ (decrease) in creditors	965,488	713,401
Net Cash Outflow from Operating Activities	**723,553**	**(862,169)**

Cash Flow Statement

Net cash flow from operating activities	723,553	(862,169)
Return on Investments and Servicing of Finance		
Interest received	56,666	72,401
Interest paid	-	-
Capital expenditure	(44,090)	(51,073)
Financing	-	-
Increase/ (Decrease) in cash	**736,129**	**(840,841)**

Reconciliation of Net Cash Flows to Movement in Net Funds

Increase/ (Decrease) in cash in the year	736,129	(840,841)
Changes in net funds resulting from cash flow		
Net funds at beginning of the year	4,707,711	5,548,552
Net funds at the end of the year	**5,443,840**	**4,707,711**

The Statement of Accounting Policies and notes 1 to 15 form an integral part of these Financial Statements.

William Prasifka
Financial Services Ombudsman
2nd July, 2013

Notes

(Forming part of the financial statements)

1. Establishment of the Council and Bureau

The Financial Services Ombudsman's Bureau, established under the Central Bank and Financial Services Authority of Ireland Act 2004, is a corporate entity and consists of the Financial Services Ombudsman, the Deputy Financial Services Ombudsman and the staff. It is a statutory body funded by levies from the financial service providers. The Bureau deals independently with complaints from consumers about their individual dealings with financial service providers that have not been resolved by the providers.

The Financial Services Ombudsman Council is appointed by the Minister for Finance. Its functions as laid down in the Act are to:

- appoint the Ombudsman and the Deputy Ombudsman;
- prescribe guidelines under which the Ombudsman is to operate;
- determine the levies and charges payable for the performance of services provided by the Ombudsman;
- approve the annual estimate of income and expenditure as prepared by the Ombudsman;
- keep under review the efficiency and effectiveness of the Bureau and to advise the Minister for Finance on any matter relevant to the operation of the Bureau;
- Advise the Ombudsman on any matter on which the Ombudsman seeks advice.

The Council has no role whatsoever regarding complaints resolutions.

Council and Bureau Expenses

The expenses of the Council are met from Bureau Funds see note 14.

2. Income Receivable

Income Levy

Section 57 BD of the Central Bank Act, 1942 as inserted by the Central Bank and Financial Services Authority of Ireland Act 2004 provides for the payment of an income levy by financial service providers to the Bureau on terms determined by the Financial Services Ombudsman's Council. The Central Bank Act 1942 (Financial Services Ombudsman Council) Regulations, 2011 set the actual rate for the year ending 31 December 2012.

In 2011, in order to reduce the surplus being carried by the Bureau, the levy due from Financial Service Providers was reduced by 30% on the amount levied in 2010, subject to a minimum levy as prescribed in SI No 576 of 2010. This reduction could not be maintained for future levies which resulted in the increase in the 2012 levy income.

Bank Interest

Bank interest is the amount received and accrued by the Bureau on the deposit accounts. Interest earned on the pension bank accounts is not treated as Bureau income (see note 8).

Income for the period is as follows:	**2012**	**2011**
	€	**€**
Levy	5,355,818	3,807,868
Other Income	2,492	-
Bank Interest	56,666	72,401
Total	**5,414,976**	**3,880,269**

3. Capital Account

		2012		**2011**
		€		**€**
Opening balance		426,168		458,875
Funds allocated to acquire fixed assets	44,090		51,073	
Amortisation in line with depreciation	(76,341)		(83,780)	
Transfer from/ (to) Income and Expenditure account		(32,251)		(32,707)
Balance at 31 December		**393,917**		**426,168**

4. Administration Costs

	2012	2011
	€	€
Salaries and Staff Costs*	2,000,147	2,068,287
Legal Fees	1,440,709	1,386,255
External Case Handlers	924,018	794,088
Staff Pension Costs	426,485	426,947
Rent and Rates	170,600	183,951
Information Activities	85,003	63,598
Council Remuneration	84,600	95,100
Depreciation	76,341	83,780
Other Administration Costs**	69,949	65,628
Stationery Costs	64,867	59,014
Memberships, Subscriptions and Communications	49,975	56,276
Contractors	38,629	39,177
Recruitment	35,519	-
Maintenance	31,724	23,274
Insurance	31,589	33,096
Staff Training	26,344	38,590
Bad Debts	23,251	5,098
Cleaning	21,891	22,767
Other Staff Related Costs	17,861	14,983
External Audit	14,476	12,925
Conference and Travel	11,700	16,486
Internal Audit	10,427	10,237
Council Legal & Consultancy	6,673	-
Council Expenses	5,108	6,293
Total	**5,667,886**	**5,505,850**

Other Administration Costs include

	2012	2011
	€	€
Service Charge	41,358	42,076
Storage Charges	18,877	14,371
IT Purchases	7,416	6,796
Courier	1,208	1,267
Bank	804	1,051
Miscellaneous	286	67
	69,949	**65,628**

Staff Numbers

The number of persons employed as at 31 December 2012 was 33 (34 in 2011).

Salaries and Staff Costs

Ombudsman	**2012**	**2011**
	€	**€**
Salary	176,800	176,800
Pension Contributions	44,200	44,200
	221,000	**221,000**

Outgoing Deputy Ombudsman (18th December 2012)	**2012**	**2011**
	€	**€**
Salary	113,107	119,795
Pension Contributions	-	29,814
	113,107	**149,609**

Additional Payments

The above payments represent the total remuneration received by the Ombudsman and Deputy Ombudsman; no other payments were received by them.

Pension Related Deductions

€97,512 (2011: €115,986) pension levy has been deducted from staff members and paid over to the Department of Finance.

5. Tangible Fixed Assets

	Computer Equipment	**Office Fitting, Furniture & Equipment**	**Building Refurbishment**	**Total**
Cost	**€**	**€**	**€**	**€**
At 1 January 2012	**302,733**	**226,399**	**512,593**	**1,041,725**
Additions during period	39,296	4,794	-	44,090
At 31 December 2012	**342,029**	**231,193**	**512,593**	**1,085,815**
Accumulated Depreciation				
At 1 January 2012	**268,375**	**198,922**	**148,260**	**615,557**
Charge for period	36,535	14,176	25,630	76,341
At 31 December 2012	**304,910**	**213,098**	**173,890**	**691,898**
Net Book Value				
At 31 December 2012	**37,119**	**18,095**	**338,703**	**393,917**
At 31 December 2011	**34,358**	**27,477**	**364,333**	**426,168**

6. Prepayments and Accrued Income

	2012	2011
	€	€
Debtors	13,655	4,420
Prepayments	62,774	63,309
	76,429	**67,729**

7. Creditors (Amounts falling due within one year)

	2012	2011
	€	€
Trade creditors and accruals	105,552	223,599
Pension Contributions	3,393,513	2,948,743
	3,499,065	**3,172,342**

8. Provision for Legal Services

	2012	2011
	€	€
Opening Provision	677,980	495,083
Additional provision during period	1,275,486	640,500
Paid during period	(636,721)	(457,603)
Closing Provision	**1,316,745**	**677,980**

9. Superannuation

In accordance with Section 57BN of the Central Bank Act 1942, as inserted by Section 16 of the Central Bank and Financial Services Authority of Ireland Act 2004, the Council have submitted a pension scheme for the approval of the Minister for Finance and the draft scheme is being revised in light of comments made by the Department. The scheme is a contributory defined benefit superannuation scheme based on the Department of Finance Model Public Sector Scheme. Pending legislative confirmation of the pension finance arrangements, we present this information required by FRS 17 by way of a note only. The scheme is being operated on an administrative basis with the consent of the Minister.

The Ombudsman proposed to the Department of Finance that the liability for benefits paid under the Scheme should be assumed by the State in return for payment annually of a percentage of the salaries of scheme members. The Department of Finance then sought advice from the Office of the Attorney General on this issue and is satisfied that a legislative amendment will be required before it progresses the matter. In view of this requirement the Department has proposed a legislative amendment to the Central Bank (Supervision and Enforcement) Bill, 2011.

The contributions to be paid over to the Exchequer will be at a level where the Exchequer is not exposed to liabilities in excess of the revenues accruing over the years to the Exchequer. The Minister reserves the right to adjust the rate of contribution in the future in line with future actuarial adjustments on costs. The Department of Finance also indicated that this overall approach to funding the superannuation scheme is consistent with the principle accepted that the overheads associated with establishing a funded scheme is not justified where the number of staff is relatively small.

In addition, staff who transferred from the former Insurance and Credit Institutions Ombudsman offices on the date of establishment could opt to continue with their existing defined contribution scheme. These schemes, which include life cover benefit, are administered by private pension providers. Once employee and employer contributions are paid over the Bureau has no further liability. Alternatively, transferred staff could opt to become members of the Bureau scheme from the date of transfer. In these cases the Bureau received amounts on surrender of the employee's entitlements under the defined contribution schemes. The amount will be used for the purchase of added years under the Bureau scheme in accordance with the provisions of Department of Finance Model Public Sector Scheme.

Employee contributions and amounts received in respect of entitlements surrendered by transferred employees are retained by the Bureau pending a decision by the Minister for Finance as to how the scheme should be managed.

The Pension liability at 31 December 2012 is €4,900,000 (€4,600,000:2011). This is based on an actuarial valuation carried out by a qualified independent actuary using the financial assumptions below for the purpose of FRS 17 in respect of Bureau staff as at December 2012. Under the proposed pension funding arrangements this liability would be reimbursed in full, as and when these liabilities fall due for payment.

The main financial assumptions used were:

	31-Dec-12	31-Dec-11
Discount rate	5.5%	5.5%
Rate of increase in salaries	4.0%	4.0%
Rate of increase in pension	4.0%	4.0%
Inflation	2.0%	2.0%

Creditor Pension Account

Pending the introduction of legislation as outlined above, amounts have been held for pay over to the Department of Finance and are analysed as follows.

	2012 €	2011 €
Opening Balance	2,948,740	2,511,422
Employee Contributions	122,615	120,250
Employer Contributions	406,713	390,771
Bank Interest (Pension Account)	53,919	53,657
less: pensions paid	(138,477)	(127,360)
	3,393,513	**2,948,740**

10. Financial Commitments

There are no capital commitments for capital expenditure at 31 December 2012.

11. Contingent Liabilities / Legal Actions

Findings of the Ombudsman are regularly appealed to the High Court or more occasionally are the subject of a Judicial Review. The FSO defends all such appeals or Judicial Reviews and these are dealt with either by a Judgment of the High Court, by settlement between the parties or withdrawal of the appeal. The number of such appeals varies but during 2012 the usual number of ongoing appeals was 35-41, with 41 appeals on hand at year end. Apart from such appeals, there is one set of proceedings against the FSO and others where the Plaintiff has opted to challenge a Finding and procedures of the FSO by way of plenary proceedings. A provision totalling €1,316,745 has been provided for at year end to allow for the estimated outlay of the above legal actions.

12. Council Members – disclosure of interests

The Council adopted procedures in accordance with guidelines issued by the Department of Finance in relation to disclosure of interests by Council members and these procedures have been adhered to in the period. There were no transactions in the year in relation to the Council's activities in which the Council members had any beneficial interest.

13. Operating Leases

Accommodation

The Bureau operates from a single premise - 3rd floor Lincoln House, Lincoln Place, Dublin 2, on which they have a 20 year lease (commenced 2006).

The annual cost of the lease excluding service charge is €165,100 (2011:€177,965)

14. Council Remuneration

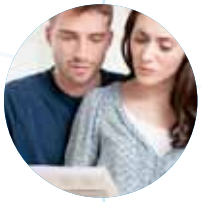
		2012 €	2011 €
Dermott Jewell	Chairman	21,600	21,600
Anthony Kerr	Council Member	12,600	12,600
Caitríona Ní Charra	Council Member	12,600	12,600
Frank Wynn	Council Member	12,600	12,600
Michael Connolly	Council Member	12,600	12,600
Paddy Leydon	Council Member	12,600	12,600
Paddy Lyons	(resigned October 2011)	-	10,500
		84,600	**95,100**

Travel and meeting expenses paid to the Chairman and Council Members are broken down as follows;

	2012 €	2011 €
Travel Expenses	3,824	5,237
Meeting Expenses	1,284	1,056
	5,108	**6,293**

15. Approval of Financial Statements

The Financial Statements were approved by the Financial Services Ombudsman on 2nd July, 2013.



06 Case Studies

Case Studies

Case Study 1

Maladministration by broker – failure to respond in timely manner

This complaint related to the Complainant's broker's action in respect of a claim that was submitted to the underwriters of a buildings insurance policy. The complaint was that the Provider did not supply, in a timely manner, written details of the underwriter's repudiation of their claim as requested.

A claim was submitted in relation to damage caused to the Complainant's business premises as a result of frost damage. The Complainant supplied the broker with details of the claim and supporting documentation and it was argued that the broker failed to respond in a timely manner. The only communication with regard to the claim was a telephone call advising that the underwriter was not covering the claim. The Complainant sought from the broker, a written reply with regard to the repudiation of the claim and also sought details of cover. It is argued that the Provider failed to respond to these requests.

The issue for adjudication was whether the Provider, i.e. the Complainant's broker, correctly dealt with the claim that was submitted to it and in particular, whether the broker correctly communicated the insurance company's response to the claim.

There were a number of parties involved in the processing of this claim and they were the insured, the broker, the insurance company, the loss assessor and the loss adjusters appointed by the insurance company.

The claim was first submitted by the Complainant directly to the broker. The claim was duly submitted to the insurance company and the broker appointed a loss assessor to deal with the claim on its behalf. The insurance company appointed a loss adjuster and for the most part the claim communications were between the loss adjuster and the loss assessor. The eventual declinature of the claim was communicated by the loss adjuster to the loss assessor. The loss adjuster concluded his correspondence to the loss assessor with the words "*we trust you will advise the insured accordingly*". The loss assessor accordingly communicated matters to the broker, however, the only communication on the matter that the Complainant received, was a verbal communication which gave rise to the complaint. It was the broker's case that its procedure was that the appointed loss assessor would issue written notification directly to the Complainant but this did not happen in this case and on the complaint being made, the broker admitted he was aware of the Complainant's need for a written communication from the insurance company and policy details, but these were not actioned.

Having regard to all of the circumstances of the case, particularly the lapses in customer care outlined, the Financial Services Ombudsman found that a substantial customer care award was merited and in order to do justice between the parties, he directed the Provider to pay the Complainant €1,000 in full and final settlement of the dispute.

Case Study 2

Commercial insurance complaint of maladministration and delays in handling the claim

The complaint related to a claim in respect of malicious damage to a public house. The complaint was that the Company unreasonably delayed the settling of the claim.

The Complainant pointed out firstly that the Company declined the claim and then later instructed a loss adjuster to re-open its file and conclude the claim in the normal manner. The Complainant and his loss assessor considered that they had co-operated fully with the loss adjuster in all requests for information - some took longer to provide than others – but as far as they

were concerned, the claim stood as presented. The Complainant's loss adjuster requested that interest be added over and above the amount already claimed and a modest fee be paid for the loss assessor to take into account the delays.

It was the Company's case that it was clear that while there had been delays in the handling of the claim, these had occurred as a result of the Complainant and his loss adjuster's failure to co-operate with the Company's investigation of the loss and to provide the necessary documentation to enable validation of the large loss that had taken place. It was the Company's contention that the Complainant's duties in this regard were conditions precedent to any liability on the part of the Company to make any payment on foot of a claim and that the failure to adhere to the policy requirements was also in breach of the general conditions of the Complainant's policy.

The correspondence between both parties took place over an extended period of time with final documentation being received 26 months after the initial contact. At the time of the Financial Services Ombudsman's Finding being issued, the Company was still awaiting a signed statement from the insured before processing the matter further.

The Ombudsman noted that insurers are entitled to investigate every claim presented and request supporting documentation or require a statement to be provided to ensure that it has all of the necessary evidence it needs in order to assess a claim under the policy of insurance. It was evident that delays had occurred on all sides in this case. The fact remained that while the protracted dispute had been ongoing between the Company and the Complainant's representative, the Complainant's claim for payment had, unfortunately for him, not been finalised. However, it was clear from the numerous requests made by the Company, and the specific conditions applicable to the policy, that the Complainant and his representatives had not fully, or adequately co-operated and provided the assistance necessary, to conclude the investigation of this claim.

The Ombudsman was satisfied that the Company's attempts at settlement of the claim had been fair and reasonable and in accordance with the policy terms and conditions. The complaint was not upheld.

Case Study 3

Farm insurance - Non-Disclosure relating to a fire damage claim

Two related complaints were made to the Financial Services Ombudsman following a fire damage claim under an insurance policy covering a farm. One complaint was that the underwriters incorrectly repudiated the claim for non-disclosure of material facts. The facts said not to have been disclosed were previous claims with another insurer. The insurance had been taken out through an independent intermediary. The Complainant stated that the intermediary had completed a proposal form on his behalf, but had not asked him any questions about prior claims and convictions and had not informed him that cover could be refused in the event of not disclosing those details.

The second provider in this case was a broker and the second issue for investigation and adjudication was whether that provider had correctly arranged cover for the Complainant. As the policy had been taken by this intermediary, the underwriters were not responsible for any alleged act or omission of the intermediary.

Whilst investigating this claim, the underwriters discovered that the Complainant had two losses on his previous insurance policy. This information had not been disclosed on the proposal form and subsequently the policy had been cancelled with effect from inception date, due to the non-disclosure of material facts.

The Ombudsman was satisfied that there is a responsibility on a broker to alert the insured to the need to make a full disclosure when completing a proposal. In this case, while the broker stated that it had done so, the Complainant argued that he had not been alerted to these matters. It was noted by the Ombudsman that the Complainant in this case had over 20 years' exposure to the workings of insurance policies and in the particular circumstances, the Ombudsman could not therefore accept that he would not have been familiar with the requirement to make a full disclosure of material facts. Disclosure can be necessary, even without being asked about all the material circumstances. This case highlighted the importance of a person reading over a proposal document before signing it. It was the responsibility of the person(s) seeking insurance to read over the questions and information on the application, to ensure it was correct before signing. The argument was that it had not been fully understood by the Complainant that there was a need to disclose claims which had been made against another insurer or that there would be a consequence in those circumstances. Leaving aside that the application form and policy documentation would alert a person to this fact, there did not appear to have been any great enquiry from the Complainant about these requirements. It may have been a lack of understanding or forgetfulness on his part, but the position was that the previous claims were relevant and should have been specifically disclosed. Unfortunately, once non-disclosure takes place, for whatever reason, the legal effect of that can operate harshly.

On the evidence submitted by the parties, the Ombudsman found that the underwriters were entitled to repudiate the claim made under the policy, on the basis of the non-disclosure. He found that all relevant material facts had not been disclosed at the application stage and the evidence did not either support a finding against the broker owing to the particular history and circumstances. Neither of the complaints was upheld.

Case Study 4

Mortgages and buy-to-let interest only

This dispute concerned mortgage facilities, referred to as residential investor (buy-to-let) mortgage facilities regarding two apartments. The evidence indicated that the properties were re-mortgaged through the Provider at a tracker rate.

The complaint was that, despite the Complainants applying for two separate mortgages, the Bank had unilaterally when offering the facilities, combined both into one mortgage and had then more recently instructed the Complainants to come off interest-only or alternatively transfer to an interest-only variable rate, neither of which the Complainants could afford. It was further argued that by combining both loans this restricted the Complainants' options for managing their debt and the Bank had not entertained requests to find alternative solutions.

The Complainants requested separation of facilities for the properties as per their original application, the ability to sell or dispose of either property independently and a reasonable extension to the interest-only period to allow them to manage their finances.

The Bank stated that the applications it had received for separate mortgages were submitted through a broker. It argued that these were processes and its underwriters decided to issue one loan for the greater amount combining both applications. It argued that the broker would have been notified of the decision and approval had issued on this basis which was accepted and signed by the Complainants.

With regard to the Complainants' reference to the grouping of the mortgages, the Provider stated that at the application stage, the Complainants had been represented by independent mortgage advisors and a separately regulated mortgage intermediary. The Provider stated that the Complainants' decision to appoint a solicitor had been their own decision. The Ombudsman noted that it was impossible to ignore the fact that the application had been presented through an independent broker. Furthermore, there was merit to the Bank's argument that legal advice provided was a matter between the Complainants and their advisors.

In this case there was no evidence to suggest that the Bank had acted incorrectly. The basis on which the Bank was willing to provide lending was clearly set out in the documentation issued after receipt of the applications. This documentation had been clear as to the rate, facilities and the security attached. It was for the Complainants, having taken advice from the relevant parties, to accept or reject the terms offered. By signing the acceptance, they had agreed to be bound by the terms put forward.

Turning to the interest-only matter, the Ombudsman noted that the contract signed by the parties allowed the Bank to review the mortgage and "*require the repayment of principal and interest … so that principal and interest will be discharged within the existing term of the loan*". While noting the Complainants' submissions as to the wording of the documentation, he concluded that there was no evidence of a commitment by the Bank that the mortgage could be serviced through interest-only payments for the duration of the mortgage facilities.

The approval letter referred to the loan type and to interest-only but specific contractual conditions were attached. The Bank was entitled to review that interest-only arrangement and this was set out in a concise manner in the agreement. The signed documentation placed the Complainants on notice that the Bank would be entitled to review the interest-only basis.

This option had occurred in this case. He also noted that the basis on which the Bank offered to allow the Complainants remain on interest-only payments was by converting to a variable interest rate.

On balance, having considered the entirety of the submissions and the complaint put forward, the Ombudsman found that the complaint had not been substantiated. The Bank had provided a reasonable justification for its actions by reference to, *inter alia*, the mortgage conditions.

Case Study 5

Investments - Incomplete Fact Finds

This complaint concerned a €50,000 investment purchased in 2006 with the funds split between an Irish property fund (60%) and a managed fund (40%). The investment in the managed fund had been subsequently switched to cash in November 2011 and the Irish property fund element had been switched to cash in May 2012 following a 6 month deferral period. The Complainant had suffered a 50% loss on his investment.

The dispute concerned the nature of the investment, the fact find, the Complainant's circumstances and advice received from the Provider, including advice after the Complainant received a valuation statement showing a substantial fall in investment value. The Complainant in this case had received, on retirement, a lump sum of €66,000. A meeting had been arranged with a financial consultant at which he said he had explained his personal circumstances. He submitted that he did not recall taking part in the Fact Find and that this Fact Find was inaccurate, contained errors and was not a credible document. He submitted that it could not have been carried out in his presence as there were too many inaccuracies.

The Provider stated that the product was suitable and had been sold after a full and accurate recording of the Complainant's circumstances and financial needs. It detailed the "*fact find*", including recommendations, check list, warnings and definition of medium risk as per the attitude to risk assessment. It submitted that risk had been clearly explained and documentation had also confirmed the non-guaranteed nature of both options. It referred to the definition of medium risk in the context of both funds involved and the risk statement. The Provider claimed that the funds had been suitable and the nature of same had not been misrepresented at the time. It stated that the investment had matched the Complainant's objective, preferred term and attitude to risk at that time. It argued that the funds had been categorised as medium risk and a capital guarantee did not apply.

The Ombudsman pointed out that while he had some concerns as to the medium risk categorisation of the property fund, for the most part, the documentation

in this case had made it clear that the Complainant was investing in a product which was subject to value fluctuations and which did not contain guarantees. The documentation set out how the products operated, including the possibility of a deferral period applying and switches to other funds being available.

While he expressed concerns regarding the apparent inaccuracies in the fact find, and noted that copies of same, submitted during the investigation, did not appear to have been signed, nevertheless he did not however consider that the level of inaccuracies were such as to represent a fundamental flaw in the sales process.

The issuing of documentation, signed application forms, and the provision of cooling off periods had to be acknowledged. However, the inaccuracies were a concern and added weight to the Complainant's submission as to the fact find document not being credible.

The Ombudsman also had concerns regarding the risk attitude as per the fact find, the medium risk definition and the classification of the property fund. There were problems with the Provider's reliance on the fact find wording in the context of the property fund. The Ombudsman did not accept its effort to link geographical diversification within an asset type, i.e. Irish property with a medium risk definition as outlined in the fact find. He did not accept its effort to rely on the phrase "*are likely to be diversified*" (as opposed to "*will be*" or "*must be*") with regard to the definition.

A fact find definition is a description of a type of fund involved when compared to other risk levels and funds available. Therefore, it was only reasonable to interpret medium risk funds as having at least some spread across asset classes. In this case, the evidence showed that despite the medium risk definition, 60% of the Complainant's investment had been placed in a fund which, in effect, only contained one asset type. This raised an issue as to terminology in describing the fund, considering medium risk funds seem to have comprised only two funds at the time.

Having considered all the details relevant in this case, the Ombudsman concluded that there were not enough grounds to justify the extent of rectification that the Complainant requested, and therefore the majority of the complaint has not been substantiated.

Having taken account of the entirety of documentation and that 40% of the investment had not been in the property fund, the Ombudsman found that the complaint had been partly substantiated and a compensatory award was justified.

The evidence suggested that the investment remained in place. It was therefore for the Complainant to consider his options in that regard and he might wish to take independent advice. However, on the basis that the complaint was partly substantiated, the Ombudsman directed the Provider to pay the Complainant by way of cheque, a compensatory figure of €5,000.

Case Study 6

Fees levied before investment made

In this case the Complainant was introduced to an investment opportunity by a bank official and was given an Information Memorandum and a copy of the Bank's terms of business.

The issue to be determined in this complaint was whether the management fee should only have been charged annually from the date of the investment or whether it could be charged for the entire year in which the investment had been made.

In determining this complaint, the Ombudsman believed that the principles governing the construction and the interpretation of agreements should be applied. What was clear from the evidence presented in this case was that the management fee was to be calculated, i.e. it was not dependent on actual fees or expenses incurred in managing the investment vehicle.

The management fee was based on the value of the higher of either the amount of the investment made or the average of the opening and closing net asset value by reference to the year for which the management charge was to be calculated. The Ombudsman believed that if the purpose of the management fee had been to recoup the actual cost of managing the fund, he might understand why fees would be collected in arrears. However, in circumstances where the amount was based solely on the amount of the investment, and in circumstances where

all other fees had been advised to the Complainant prior to the investment, he did not believe that on any objective analysis, the Bank had proper grounds to backdate a management fee. It was very clear in the Information Memorandum that the management fee would be charged per annum. This understanding of the everyday use of the term "*per annum*" was per year or annually. He was satisfied that the proper interpretation to be placed on the agreement between the parties was that the management fee of 1.5% in this case would be charged for each year and therefore he accepted the Complainant's submission that the fees could not be levied before any investment had been made. It was clear that the Complainant had invested a lump sum with the Bank on a date in March of 2008. He therefore directed that the Bank return to the Complainant, the proportion of the annual management fee paid by the Complainant between when the fund was set up and that date in March 2008.

Case Study 7

Critical Illness – a cessation of benefit

The Company initiated a monthly payment of benefit to the Complainant in April 2006 and wrote to the Complainant in June 2007 advising that it was ceasing payments of benefit to the Complainant, giving 3 months' notice. The Company subsequently reinstated the benefit with effect from the date of cessation but subsequently it again ceased benefits in July 2011.

The Company claimed that the Complainant had advised that she was suffering from a number of conditions which resulted in constant fatigue, pain and decreased mobility. In order to be eligible for benefit under the scheme a scheme member must be "*totally incapable by reason of illness or injury of following his normal occupation*".

Significant volumes of medical evidence were submitted as part of the investigation. It was clear on the basis of the evidence submitted that the Complainant had been diagnosed with a debilitating Syndrome in 1993 and had subsequently been diagnosed with breast cancer in 2007. The Complainant had not been in employment as a secondary school teacher since 2006 and had been in receipt of benefit pursuant to the terms and conditions of the policy from April 2006 to July 2011.

Having reviewed the contents of the medical evidence submitted, the Ombudsman was satisfied that the Company incorrectly took the decision in April 2011 to cease the payment of benefits pursuant to the terms and conditions of the policy.

The report from the medical practitioner arising from the independent medical assessment did not confirm that the Complainant was no longer totally incapable by reason of illness or injury of following the occupational duties of a secondary school teacher on that date. The doctor merely stated that there was no reason for this patient to be permanently unable to work.

The Ombudsman took the view on the basis of the information and documentation before him that the medical evidence available to the Company did not establish that the Complainant was no longer "*totally incapable by reason of illness or injury of following the occupational duties of a secondary school teacher*" when the Company decided to cease payment of benefits to the Complainant. The Company's decision in that regard was not borne out by the evidence submitted in this case for the purpose of the investigation of this complaint.

He upheld the complaint and directed that the Company re-commence payment of benefits and backdate payments to the date of cessation, pending further reviews of the Complainant in accordance with the policy provisions.

Case Study 8

Income protection policy - claim for cessation of benefit

The Company received a claim form in November 2008 for income protection benefit under a scheme. The Complainant's claim was admitted in March 2009 and backdated (to the Complainant's benefit) to a date in January 2009, the expiry of the deferred period. The Company ceased paying benefit to the Complainant pursuant to her policy from November 2010, based on the objective evidence at that time, that the Complainant was fit to resume her normal occupation and did not meet the definition of disablement, as required by the policy.

In arriving at this opinion, the Company said it had thoroughly assessed the claim from a number of different perspectives. At the time of her claim, the Complainant had been employed in a sedentary position in a bank, working 21 hours per week in an office. The Complainant was reporting symptoms of Fibro Myalgia, a condition of unknown cause, where a person complains of profound fatigue and joint pain and which is not directly caused by or linked to any other medical conditions. The Company pointed out that in order for a diagnosis of Fibro Myalgia to be made, the diagnosing physician is reliant on the self reports of the patient. There are no recognised available tests to confirm the diagnosis and it is a diagnosis of exclusion. Furthermore, there is no recognised medical treatment for this condition apart from a mixture of cognitive behavioural therapy and a graded exercise programme, together with some medication.

A substantial amount of documentation was exchanged between the parties to this complaint, including medical reports and video evidence totalling 36 minutes in length indicative of the Complainant's level of mobility and activity as witnessed during the course of observation.

The Ombudsman noted that the terms and conditions of the Complainant's policy clearly and unambiguously stated that in order to be eligible for benefit, the Complainant was required to be disabled and therefore

"*unable to carry out the duties pertaining to a his/her normal occupation by reason of disablement arising from bodily injury sustained or sickness or illness contracted*".

In light of the contents of the evidence submitted, he was not of the opinion that the Complainant was unable to carry out the duties pertaining to her normal occupation. Despite the Complainant's failure to provide clear and unambiguous evidence to support her case, he noted that the Company had offered to pay 50% of the full benefit payable pursuant to her policy for a period of 6 months to allow her to engage in a phased return to work as recommended by her own specialist. In those circumstances the Ombudsman was of the opinion that the Company had acted in a fair and reasonable manner in endeavouring to resolve this dispute to the satisfaction of the Complainant.

The complaint was not upheld.

Case Study 9

Investment mis-selling – alleged capital guarantees

This complaint related to a feature of a capital security provided by an investment policy sold by the Life subsidiary company of a bank. The Provider had confirmed that the capital security remained in force and would continue to remain in force unless the guaranteeing bank was unable to meet its obligations to its life subsidiary (the Provider). The Provider had advised the Complainant that only in these circumstances could the Complainant lose all or some of the amount invested and/or any return on the investment at maturity date.

The Complainant stated that she had taken out this investment on the understanding that it was guaranteed and she was distressed that it was now being suggested that it was not in fact guaranteed.

The complaint was therefore that the Complainant had been mis-sold the investment by the Provider and she sought a return of her capital.

The Ombudsman noted that the Complainant had taken out a guaranteed investment policy with an investment of €50,000 in a guaranteed bond with a term of 5 years and 6 months. The policy maturity date was April 2015. The policy had a promised gross return at maturity of 20% and the promised gross maturity value was €60,000.

The Complainant stated that she had invested on the basis of assurances given to her by the bank as to the capital security of the product.

The Complainant stated that, to her horror, she had received an annual statement from the Provider in 2011 which contained a note to the effect that if the bank could not meet its commitment to the Provider at maturity of the investment, the Complainant might lose some or all of the amount invested and/or any return on investment at the maturity date which, in the Complainant's case, was April 2015. The Complainant stated that at no time in the sales process, and nowhere in the documentation she received, had this ever been explained to her.

The complaint was therefore:

that the Provider gave the Complainant misleading and confusing information from the beginning which had led her to purchase an investment which the Complainant now stated was not safe or guaranteed;

that the Provider had failed to provide the Complainant with all relevant documentation pertaining to the investment at the point of sale.

The Provider in its response confirmed that the policy continued to provide capital security as requested by the Complainant during the sales meeting with the Insurance and Investment Manager concerned. The Provider stated that the guarantee remained in place and submitted that the Complainant had been provided with completed documentation which demonstrated that she was aware of how the guarantee would operate.

The Provider referred to terms and conditions in the Complainant's policy document which, *inter alia*, outlined that in order to provide a maturity value, the Provider would purchase an asset from the parent bank. If the bank was unable to meet their commitments to the subsidiary company at maturity date then the investor could receive less than the original single contribution or less than the maturity value. The Provider stated that the note for investors contained at the foot of the annual statement received by the Complainant reinforced information already provided to her during the sales meeting and in the policy documentation provided to her.

It was the Ombudsman's view that, having been identified and confirmed to be a 100% capital secure investor, requiring her maturity value to be no less than her original investment, a policy which involved a risk, seemingly unquantified, or losing not just the return of the investment but also part of the original capital investment sum itself (in circumstances where the consequence of this materialising had not been explained until after the sales process was complete) could not be considered an investment suitable or appropriate to the customer's needs. He was satisfied therefore that the investment policy was mis-sold owing to the failure of the Provider to outline and quantify the risk to the Complainant's capital before she proceeded with the investment. The Complainant had made it clear that she needed capital security and the Ombudsman was satisfied that the Provider's failure in that regard denied the Complainant the opportunity to make an informed consent when electing to proceed with the investment.

The complaint was upheld and the Ombudsman was of the opinion that the Complainant should now be given the option, either to proceed with her investment and to leave it in place until maturity, thereby benefiting from a potential 20% return (but in the knowledge that there was a risk to her capital, which remains unquantified) or else take back her original investment of €50,000 within a period of 30 days from the Finding with no interest and forfeit this potential return.

Case Study 10

Motor insurance maladministration – car scrapped

The Complainant had a policy of motor insurance with the Provider. The Complainant reported a claim under the policy following the attempted theft of her car from outside her home in February 2011. The car had been damaged during the attempted theft and was removed by the Provider to its repair centre for an estimate to be prepared. The car was subsequently found to be uneconomical to repair and was destroyed later in February 2011.

The Complainant's complaint was that the Provider wrongfully destroyed her car without her knowledge or consent.

Following the attempted theft, the car was towed away from the Complainant's house at the request of the Provider. Thereafter she received a telephone call from the Provider advising that to replace the car would cost approximately €2,200. The Complainant stated that she had instructed the Provider to do nothing with her car until she had received a written estimate for repairs. The Complainant stated that she never received this estimate from the Provider and that the car had then subsequently been crushed 4 days later, without her knowledge or consent. The Complainant acknowledged that her car was 18 years old but stated that it had been in excellent condition and in working order and that she had no intention of changing it.

The Complainant believed that the Provider held no right to destroy her car and that by doing so without prior notification or consent, she had been deprived of the opportunity to obtain her own independent motor engineer's assessment of the damage to the car, and in addition had been deprived of the opportunity to avail of the Government Scrappage Scheme, under which she believed she would have been entitled to a minimum allowance of €3,000. The Complainant wished to be reimbursed with a cost of replacement parking permits destroyed with the vehicle, for the cost of her road tax, for the cost of hiring a tow truck, for a failed attempt to collect the vehicle before she discovered that it had been destroyed, and for the cost of a replacement vehicle of similar condition and size (€4,500). The Complainant had since purchased a replacement car for €6,200. The Complainant also sought a sum of €1,300 for distress and inconvenience. The total compensation sought was €5,800.

The Provider accepted that the Complainant's claim had not been handled in a satisfactory manner and that it had not communicated correctly with the Complainant and that the car had been destroyed before the Complainant had been given the opportunity to recover it. The Provider offered the Complainant a sum of €1,000 representing the pre-accident value of the car, and an additional €1,500 for the inconvenience, delays and poor customer service experienced by the Complainant.

While the Complainant sought compensation in the sum of €5,800, she indicated that she was prepared to accept no less than €5,000.

The Ombudsman noted that under the terms of the Complainant's policy, the Complainant was entitled to be reimbursed "*the market value*" of her car at the date of loss. The market value cost constitutes the cost on the public market of a replacement vehicle of similar make, model, age, condition and mileage. The market value of the vehicle was not necessarily its purchase price nor the value of the vehicle when the policy was originally effected. Deductions would be made for wear and tear and depreciation of the vehicle.

In the case of the Complainant's claim, the Provider initially placed a pre-accident value of €500 on the insured vehicle, subsequently increasing this figure to €1,000. While the Complainant purchased a replacement car for a higher amount as she was entitled to do, she was only entitled under the policy to be reimbursed for the market value of her own damaged vehicle.

Having regard to the make, age and model of the Complainant's damaged vehicle, the Ombudsman was of the opinion that a valuation of €1,000 placed on it by the Provider's motor assessor was a generous one.

Nevertheless, he was of the view that the overall settlement offer of €2,500 made by the Provider should be increased to €3,000 to reflect the particular circumstances of this complaint, the age and poor health of the Complainant and her brother, and the evident degree of distress caused by the sudden and unexpected destruction of the insured vehicle.

While the Ombudsman noted that he could not award the level of compensation sought by the Complainant principally on the grounds that the Complainant was not entitled under the policy to be reimbursed more than the market value of the lost vehicle, he found that it was appropriate that the Provider should pay the Complainant a sum of €3,000 in settlement of this matter and he directed accordingly.

The complaint was upheld.

Case Study 11

Home insurance – non-disclosure of buy-to-let status

The Complainants purchased a Section 23 property in 2004 and insured it with the Provider. In 2006 the Complainants re-brokered the insurance cover with an on-line insurance intermediary. The Complainants stated that at no time did they change the usage of the premises which was for short term rental on an ongoing basis. The Complainants stated that the intermediary re-brokered the insurance contract from year to year and that cover was in place with the Provider when the claim occurred in 2010.

The Complainants stated that, in their view, any confusion regarding cover was between the intermediary and the Provider. Furthermore, the Complainants were of the

view that the Provider had been negligent in taking 10 months to advise that it was refusing the claim.

The Provider for its part stated that the property was insured on its books as a standard homeowner's policy and had the Provider been made aware that the property was let without a lease to a third party, the policy would not have been incepted by the Provider. It refused the claim due to the non-disclosure of a material fact. The Provider stated that had this fact been disclosed the proposal would not have met the underwriters' acceptance criteria and the policy would not have been put in place.

The complaint was that the Provider had unreasonably refused the claim and acted negligently in delaying matters for over 10 months. The Complainants sought payment of the claim from the Provider to enable them to rebuild the house and also for compensation on rent lost.

In declining the claim, the Provider relied on the fact that the loss adjusters appointed by the Provider ascertained, during the claim investigation, that the property was not owner occupied, but rented to a third party. The loss adjusters' report clearly stated that there appeared to have been confusion regarding the statement relating to the Property Usage, which recorded that the property was "*owner occupied*".

The loss adjusters were of the view that "*the schedule as presented may well have been in error*" given the fact that there were two addresses on the intermediary's file and that the original proposal was done by 'phone.

The loss adjusters went on to state that "*in light of the above, we now consider that the insurers must deal with this loss as no proofs are available in relation to misrepresentation of the usage of the property*". The Complainants' loss assessor had referred to the above recommendation in his submission on behalf of the Complainants and further stated on their behalf, that any errors regarding the rental status of the property were a matter between the intermediary and the insurer.

In reviewing all submissions in this case, the Ombudsman found that there was one weakness in the argument put forward contained in the correspondence sent to the Complainants by the intermediary on 30 August 2009. This letter and the statement of fact document which accompanied it, was of major significance in that the intermediary's letter clearly stated:-

> *Please find enclosed – "Statement of Facts" – this forms the basis of the contract between you and the insurer. You should satisfy yourself that it is absolutely accurate. It reflects the information provided by you to us. You should only return it if it needs to be amended in any way.*

The Statement of Facts document under property details on Page 2 clearly recorded that the property was owner occupied.

The above information in itself appeared to leave the Complainants in a serious predicament. However, the Ombudsman considered it necessary to give consideration to and take into account the tied agency relationship between the intermediary and the Provider. In this instance, under the intermediary's own terms of business document, the relationship between the intermediary and the Provider was described as that of a tied agent. This meant that the intermediary was acting as a direct agent of the Provider and that any information in its possession was, in effect, in the possession of the Provider. In this instance the intermediary was acting as the Provider's tied agent and this brought with it obligations on the Provider to ensure that its tied agent acted efficiently and effectively at all times in carrying out business transactions on its behalf. In this case the intermediary was aware of the two addresses appearing on the policy schedule and was corresponding at all times directly with the Complainants at their Dublin address which implied that the intermediary, acting as a tied agent on behalf of the Provider, was aware that the risk address was not "*owner occupied*".

On balance it was the Ombudsman's view that the loss adjusters' assessment of this case was probably an equitable one in that the policy schedule and Statement of Facts reflected an error during the completion of the proposal over the telephone between the intermediary as the tied agent of the Provider and the Complainants.

On the evidence presented he found that the Provider was responsible for the actions of its tied agent in recording and administering risk information incorrectly on the Provider's behalf. His finding was that there was insufficient evidence from the tied agent proving there

had been non-disclosure by the Complainants. This was further supported by the fact that the intermediary, as tied agent of the Provider, was unable to show proof to the loss adjusters that misrepresentation had occurred. The complaint was upheld, and the Provider was directed to admit the claim in respect of the repairs to the property and reimburse the loss of rent suffered by the Complainants due to the delay in having this case resolved.

Case Study 12

Mortgage Protection Scheme – repudiation of claim

The Complainant joined a local authority mortgage protection scheme in September 2002 and signed a declaration stating that she was in Good Health. In August 2009 the Complainant submitted a claim to the Company through an intermediary seeking the payment of benefit under the scheme. On investigation of the claim by the Company, it was found that the Complainant had undergone a pancreatic and kidney transplant in 2000 and was receiving ongoing medical reviews and medication from that date.

The Company repudiated the claim on the basis that the Complainant's medical condition would have excluded her from being eligible to join the group scheme in 2002.

The Complainant was of the view that the Company knew, or ought to have known, through its servants or agents that she had a complicated and difficult medical history which involved a double kidney and pancreatic transplant. She stated that she had disclosed all her medical history to the County Borough in September 2002 when applying for a social housing scheme and that all relevant parties were on actual notice of that medical history. She submitted that she was in good health at the time she completed the declaration to the local authority mortgage protection scheme. The Complainant submitted that as she was admitted to the affordable housing scheme, she automatically was part of the master insurance policy which she paid her premiums into on an ongoing basis. She stated that she had disclosed her complicated medical history to the County Borough who were organising the life cover and that the Company had an express or an implied obligation to inform themselves with regard to the background and circumstances of those individuals, from whom it was accepting premiums.

The Company in its defence claimed that it had not been made aware by the Complainant or any other party that she had received a double pancreatic and kidney transplant in 2000. Had this information been disclosed the Company stated, the Complainant would not have fulfilled the medical criteria of being in good health and would not have been accepted for insurance under the group master local authority mortgage protection plan.

On the basis of all medical information available to it, the Company refused the claim on the basis that the Complainant did not meet the eligibility conditions contained in the local authority mortgage protection scheme and could not, in the medical opinion of the Chief Medical Officer, have been in "*good health*".

The question that arose in this case was whether the Company or its agents had conveyed at any stage, to the County Borough, its obligations to forward to the Company any relevant medical information that might impact on the Company's underwriting criteria. On further examination of the Borough's loan offer, it was quite explicitly stated that the mortgage protection insurance would be arranged by the County Borough subject to the individual being on the date of this agreement (i) over 18 years of age, but under 55 years, (ii) gainfully employed, (iii) in good health. As this was a group life scheme, no other medical examinations other than the above declaration were asked for in the application process. On examination of the policy conditions, the Company had not defined Good Health and had only provided a definition in the course of the claim investigation. In the Ombudsman's opinion, a definition of Good Health may be measurable to some extent by one's ability to attend work on a regular and normal basis.

He reviewed the employment record of the Complainant at the time of proposing for this insurance which was in September 2002 and found that her absenteeism in work due to her medical condition was significant in the period 2000 – 2003 (252 days). Much of this however, the Complainant stated was due to her need to attend clinics in Dublin, rather than being out sick. In the years following from 2004 – 2008, the Complainant had been absent 30 days per annum on average. The question

here is would a reasonable and prudent person regard this amount of annual sick leave as indicative of a person in good health? On balance, in the opinion of the Ombudsman, the evidence pointed in the direction that the Complainant was not in good health at the time she proposed for the insurance in 2002.

It was clear that the Complainant had fully disclosed her medical history at the time of application to the County Borough and the Borough had confirmed in writing that it was organising the insurance cover.

While the Complainant's and the Company's definition of Good Health differed, the fact that the term was not defined in the policy contract left the Company somewhat exposed. In drafting the policy, the Company was the professional and should have defined good health in the interests of clarity for all involved. Given the serious medical condition of the Complainant, she may well have felt in good health relative to her previous medical experience. The Company should also, in the Ombudsman's opinion, have issued express instructions to the County Borough through its administrative agents as to its requirement for considering lives with a higher risk profile. There should at least have been an understanding that any official medical information submitted by a prospective group life member should have been relayed to the Company.

In the Ombudsman's opinion the Company had been unprofessional in drafting its own contract and negligent in not putting in place a robust set of procedures to protect both itself and its prospective policyholders. In this instance his finding was that the Company had a case to answer in that its drafting of the policy was not explicit enough to ensure ambiguity was avoided. Secondly, the operation of the application process was flawed in that the County Borough, whilst stating that life cover was a condition of the loan offer, was offering loans without referring critical medical information in its possession, to the Company.

In this case, the Complainant, in good faith, fully disclosed her medical information to the relevant authority. The fact that the Company was not given this information was a matter between the Company and the County Borough. In this instance, the Company did not apply its normal standards of underwriting. The Company has based its morbidity and mortality actuarial ratings on the assumption that the group risk would even out, based on the large number of insured members.

In this case it was the Ombudsman's view that given the full disclosure by the Complainant at the outset to the relevant authority and the payment of premiums in good faith by her over the intervening years, that the Company had, at this stage, an obligation to admit the claim and also reinstate the Complainant as a member. He directed the Company to initiate payment of the disability benefit to the Complainant for the period referred to. He also found that the Complainant should be re-admitted to the group life scheme with immediate effect at the normal group life cover premium rate and he directed accordingly.

Case Study 13

Breach of Account Mandate

A complaint was made in respect of a current account set up with a two signature mandate, that one signatory only had been permitted to withdraw money on a number of occasions over an 11 month period, contrary to the contractual arrangements in place. The Bank pointed out that the Complainant had raised no objection until 18 months later, notwithstanding that Bank statements issued on a monthly basis. The Bank pointed to the Terms and Conditions requiring the account holder to examine account statements carefully and immediately report any errors or omissions, in writing. The Bank also suggested that the withdrawals made to the account on the basis of one signatory only had been made for the purposes of the joint account holders' business.

Having considered the parties' submissions at length, the Ombudsman took the view that the fundamental issue was that the Bank had acted in breach of the contractual mandate. In addition he noted that the Terms and Conditions for the account made it clear that payments from a joint account would only be made in accordance with the latest signing instructions governing the operation of the account. For this reason, the complaint against the Bank was substantiated. Whilst an offer of some €8,000 had been made by the Bank, the Ombudsman considered that this was not adequate and

in circumstances where he noted a number of cheques made payable to the signatory who had withdrawn the funds, he instead directed a compensatory payment from the Bank to the Complainant in the sum of €20,000, in order to conclude.

Case Study 14

Cancelled Holiday

When booking a holiday, the Complainant incepted a travel insurance policy and disclosed that she had leukaemia. The Company agreed to issue cover on the basis that a policy exclusion would be in place for leukaemia.

Shortly before the holiday commenced, the Complainant was diagnosed with oesophageal cancer as a result of which the holiday was cancelled and a claim was made to the Company.

The Complainant suggested that there was no connection between the two conditions and was annoyed that the Company had never specified that new cancers would not be covered by the policy. The supporting evidence submitted by the Complainant's doctors suggested that there was no link between the two conditions.

In declining the claim, the Company maintained that the Complainant had been scheduled for further investigations with the haematology department of the treating hospital and had been under constant review both prior to and after the insurance was purchased. The Company took the view that the General Practitioner was not in a position to confirm that the oesophageal cancer was not linked to the existing leukaemia and, therefore, the Company believed that the claim arose either directly or indirectly from the Complainant's pre-existing medical condition, which was not covered.

The Ombudsman noted the policy conditions which made it clear that no cover would be provided in respect of any existing medical condition as defined by the policy. The claim form submitted to the Company verified the reasons for the cancellation of the holiday as cancer of the oesophagus affecting lymph nodes with a tumour on one kidney.

In considering the complaint, the Ombudsman reviewed the medical evidence in detail and took the view that there was no medical evidence available to support the Company's conclusion that the Complainant's two conditions of leukaemia and oesophageal cancer were linked in any way. The Ombudsman noted that the Complainant had clearly disclosed her leukaemia and had been informed by the Company that this particular condition was therefore excluded from cover.

The Ombudsman gave detailed consideration also to the medical screening call transcript and formed the opinion that it was clear that the Company had advised the Complainant that leukaemia was excluded from cover but had advised "*that's the only thing that will be excluded*". The Ombudsman noted that it had never been advised to the Complainant that any claims arising directly or indirectly from the leukaemia would neither be covered. The Ombudsman noted that the Company was correct that the Complainant remained under constant review but took the view that the reviews were themselves consistent with an individual of the Complainant's age who had previously suffered leukaemia, which was in remission. The Ombudsman noted that the Complainant's first attendance with her General Practitioner regarding the symptoms which ultimately led to a diagnosis of oesophageal cancer, took place two months after the travel insurance policy had been put in place.

The Ombudsman therefore took the view that on the basis of the evidence before him, there was no indication that the oesophageal cancer was pre-existing to the inception of the policy, or that the oesophageal cancer was directly or indirectly related to the Complainant's leukaemia. For this reason he upheld the complaint and directed the Company to pay the cancellation claim.

Case Study 15

Critical Illness

A complaint was made to the Ombudsman in respect of the refusal by insurers to pay benefit under a critical illness policy. The Complainant had sustained a head injury with injuries to the cervical spine and made a claim to the Company for benefit under the heading of "*Loss of Independence*".

To qualify for such a benefit the Complainant was required to demonstrate that she could not successfully perform at least 3 of 6 specified activities of daily living, without the assistance of another person. The Complainant made the case that she was unable to perform almost all of the activities without assistance and furnished supporting medical evidence as to the impact which the accident had had on her life in relation to everyday activities such as personal hygiene, dressing and mobility. The Company took the view however that the Complainant failed only 1 of the 6 activities listed pursuant to the policy.

The Ombudsman considered the medical evidence in detail and the reports of an Occupational Therapist and noting that the Complainant agreed that she could successfully complete 1 activity and that the Company agreed that she was unable to perform another activity, he gave detailed consideration to the remaining 4 criteria. In respect of "*mobility*" the Ombudsman accepted that given the documented issues with the Complainant's spine, coupled with the dizziness and imbalance experienced and the practical evidence as to the assistance required by the Complainant to move from room to room, the Complainant was unable to perform this function.

The activity of "*transferring*" required an examination of the ability to move from an upright chair to a bed, or *vice versa,* the Ombudsman accepted that the Complainant required assistance when getting up from her chair and required considerable assistance in sitting up in bed. Issues of stability were also noted as a result of the Complainant's imbalance and dizziness and the Ombudsman took the view that it was inappropriate to suggest that the Complainant was capable of performing this function, on the basis that she had not yet fallen.

In relation to the activity of "*washing*", the Ombudsman noted that the evidence made it clear that the Complainant was unable to wash her entire body unassisted and indeed he noted the Company's acceptance that the Complainant was unable to bend. In those circumstances, he was of the opinion that the Company had reached an incorrect conclusion that the Complainant could maintain a reasonable level of hygiene.

In those circumstances, the Ombudsman upheld the Complainant's grievance against the Company on the basis that the Company's decision to refuse the claim was not adequately supported by the available evidence and was, therefore, unreasonable.

The Ombudsman also relied, if necessary, on Section 57CI (2)(c) of the Central Bank & Financial Services Authority of Ireland Act 2004 which permits the Ombudsman to substantiate a complaint where although the conduct complained of is in accordance with the law or an established practice, that practice or standard is, or may be unreasonable, unjust or oppressive in its application to a Complainant.

He directed the Company to admit the claim and to immediately pay the benefit amount pursuant to the policy.

Case Study 16

Breach of privacy

The Ombudsman received a complaint from a mortgage holder that statements she had requested from the Bank had been directed to an incorrect address. When the Complainant telephoned the Bank she noted that the postal address held on file was her former address which had been changed a number of years previously.

The Complainant was annoyed as she had previously encountered similar difficulty two years earlier and following an apology by the Bank and a compensatory payment and reduction in her mortgage interest rate, she had understood the matter to be concluded.

The Bank admitted the error and apologised for the inconvenience and distress which had been caused and sought to resolve the dispute with the Complainant by offering a lump sum compensatory payment. It also offered assurances that an extensive review of the IT systems had ensured that all address details had been updated correctly throughout, in order to assure the Complainant that no future difficulty would arise.

The Ombudsman noted the Bank's open confession of the error which had arisen and the acknowledgement of its fault which had not been adequately remedied when it had been originally brought to its attention.

He also noted the Bank's completion of an extensive review of its IT systems to ensure that the correct correspondence address had been captured throughout, and steps taken by the Bank to re-number the Complainant's mortgage account and the reporting of the matter by the Bank to the Data Protection Commissioner. In noting the breaches which had occurred of the general principles and common rules of the Consumer Protection Code, the Ombudsman considered nevertheless that the compensatory measure previously offered by the Bank to the Complainant was at a satisfactory level and accordingly he directed payment of the figure previously offered, in order to conclude the matter.

Case Study 17

Tracker mortgage sought

A Complainant held a tracker mortgage with a bank and 3 years after drawdown, he opted to fix the interest rate for a period of 5 years. He complained to the Ombudsman that he had understood that after the expiry of the fixed rate period, if he did not choose another fixed rate, he would go back to the original tracker rate. The Bank pointed to the original mortgage agreement which the Bank said made it clear that once a mortgage holder opted to switch away from the tracker mortgage there would be no future option to switch back to the tracker rate and consequently any new agreement would supersede the original tracker agreement.

The Ombudsman gave detailed consideration to the parties' contractual arrangements. The original agreement indicated that the tracker mortgage would remain at a certain margin above the ECB Repo Rate for the entire duration of the loan. Further provision however specified that once the mortgage holder elected to opt out of the tracker mortgage, it would not be possible to switch back to this rate option. The Ombudsman noted that the Complainant had agreed in writing to these terms and his signature appeared below a written confirmation that he understood the workings of the tracker mortgage rate, and wanted to enter into the agreement on that basis. The Ombudsman took the view that the tracker rate application form was set out in clear and concise terms. He noted that the loan offer included an important note in relation to tracker mortgages which specified that prior to the loan cheque issue, the rate would alter to the tracker mortgage rate then on offer and if no tracker mortgage rate was available, the prevailing variable rate would apply.

He noted that 3 years after the mortgage had been drawn down the Complainant made a decision to switch the account to a fixed rate of interest and in that context executed a signed document to implement the switch confirming specifically that he understood that "*when this fixed rate period has expired the loan will convert to the applicable variable rate then prevailing*".

The Ombudsman was satisfied that at the original mortgage application stage, the Complainant was on clear notice that if he decided to move away from the tracker rate to an alternative interest rate, he would effectively be barred from re-availing of the tracker rate. He also took the view that the fixed rate application form did not contain any commitment that the Bank would apply a tracker rate to the mortgage on expiry of the fixed rate term and, rather, on the contrary, the fixed rate application form made it clear that after the fixed rate period, the loan would convert to the applicable variable rate then prevailing.

The Ombudsman did not accept the Complainant's suggestion that he was never made aware that he could "*lose my tracker mortgage*", or that he was of "*the full understanding that at the end of the 5 year fixed rate I would either revert to my tracker or choose another fixed rate term*". The Ombudsman formed the opinion on the basis of the evidence before him that this contention on the part of the Complainant was not borne out. In those circumstances, the complaint against the Bank was not upheld.

Case Study 18

Unauthorised Transactions

The Complainant was in Dublin City Centre on the evening of 17 March and on the following day at lunchtime she realised that her debit card was missing. She immediately reported the theft of the card to the Bank and to the Gardaí. She discovered that fraudulent transactions on her account had taken place shortly after her card had been stolen, both before and after midnight. Further fraudulent transactions had taken place in stores across Dublin on the morning of 18 March giving rise to total unauthorised debits in the order of €3,800. The Complainant maintained that she had complied with all of the Terms and Conditions of her account and suggested that the Bank ought to have noticed the unusual pattern of spending and this should have triggered a temporary stop on the card.

She suggested in her complaint to the Ombudsman that the investigation carried out by the Fraud Section of the Bank had been inadequate. She made a complaint that the Bank had wrongfully refused to refund her the monies withdrawn from her account as a result of these disputed transactions.

The Bank made the case that the Complainant was responsible for the safeguarding of her card and PIN and pointed to its contractual obligation when presented with the correct combination of electronic signals unique to the combined use of the card and PIN, to pay the sums demanded unless it had reason to suspect fraud or unless the Bank had knowledge that the card had been lost or stolen. The transactions in question had been "*Chip & PIN Verified*". The Bank advised that whilst it monitors transactions for fraud patterns, the particular transactions had occurred on a genuine card with the correct PIN and therefore the activity did not raise a fraudulent alert.

The Ombudsman noted that it remained unclear as to who had obtained the Complainant's card and PIN or indeed how they had managed to do so.

The Bank maintained that the Complainant had initially advised that she had given her card to an employee of an identified bar, to pay for drinks but could not recall ever having the card returned. The Complainant disagreed and maintained that she had "*got the card back*" and had been pick-pocketed after that transaction.

She put the case that the thieves had possibly used a 'phone to photograph her as she was keying in the PIN or had been looking over her shoulder. The Ombudsman noted the Bank's internal notes recording that the "*customer was most probably the victim of a crime which resulted in her legitimate debit card and legitimate PIN being used fraudulently*".

The Ombudsman considered the contractual relationship between the parties whereby the Bank may only debit a customer's account where it has an express mandate to do so. When a debit card is used, together with the correct PIN, a series of electronic signals is sent, to which the Bank is obliged to respond, as this represents the mandate for debiting the account.

The Ombudsman noted that the Terms & Conditions specified that the cardholder must tell the Bank as soon as a theft is discovered and the cardholder may be liable for some of the spending that arises from a loss, theft or copying of the card in the period before the Bank is notified. The conditions also specified that if the cardholder acts fraudulently, knowingly or without reasonable care in relation to the use, loss, theft or copying of the card and/or PIN and/or Internet Password or any security code on the account, the cardholder may be liable for all losses. The Ombudsman also noted that the General Terms & Conditions pointed out that notwithstanding those obligations the Bank will:-

> *"in accordance with our obligations under the Payment Services Directive … refund to you the amount of any payment or withdrawal debited to your account which was not authorised by you … where you are a consumer …"*

The Terms & Conditions went on to specify that:-

> "*if the unauthorised payment resulted from the loss or theft of any card, PIN, … you will be liable for the first €75 of loss suffered by you*"

and

> "*we will have no liability under this Condition for any loss suffered by you where you have acted fraudulently have intentionally or because of your lack of reasonable care, not used or failed to keep safe and secure any card, PIN, … have intentionally or because of your lack of reasonable care, failed to notify us without undue delay …*"

The Ombudsman also gave consideration to the Terms & Conditions of the account placing an obligation on the cardholder to take all reasonable steps to keep the card safe and not to disclose or divulge the PIN to any other party or record it in a manner that would be intelligible or otherwise accessible to any third party.

The Ombudsman noted that in addition to the Terms & Conditions of the account which bound the parties, the parties were also bound by any applicable legislation. He noted that the Provider had agreed that the transactions which were the subject of the dispute were subject to the European Communities (Payment Services) Regulations 2009.

Although the Bank maintained that the transactions in dispute were PIN verified and on that basis contended that this was evidence that the Complainant had not taken all reasonable steps to keep the PIN safe, nevertheless he noted that pursuant to Regulation 73(2) of the 2009 Regulations, evidence of Chip & PIN transactions is not necessarily sufficient to establish that a transaction was "*authorised*" or that the cardholder had failed to fulfil her obligations to keep the security features of her card safe. He took the view in those circumstances that he had not been provided with sufficient evidence that the Complainant had failed to use her card and PIN in accordance with the Terms & Conditions or that she had failed to take "*all reasonable steps to keep its personalised security features safe*" as required pursuant to Regulation 70 of the 2009 Regulations.

He noted that pursuant to Regulation 75 (2) the Complainant was liable to "*bear all the losses relating to the unauthorised payment transaction*" if she acted "*fraudulently*" or failed "*intentionally or by acting with gross negligence, to fulfil*" her obligations under Regulation 70. He took the view however that he had not been furnished with any evidence that the Complainant had acted "*fraudulently*" or failed "*intentionally or by acting with gross negligence*" to fulfil her obligations under Regulation 70.

Although he noted that the Bank's branch staff contended that the Complainant had told them she could not remember getting her card back from the staff at the bar, that contention had been vehemently denied by the Complainant and he was conscious of the Bank's internal "*report on fraud case*" which recorded that it "*fully accepts that the customer has been the victim of a crime*" and had not suggested anything other than that.

In those circumstances, the Ombudsman was not satisfied that the Bank had submitted any adequate evidence to establish that the Complainant was guilty of gross negligence or that he had been provided with evidence that the Complainant had acted with a "*lack of reasonable care*" as required for the Bank to avoid liability under the Terms & Conditions of the account, to make a refund of the disputed transactions. Accordingly, taking into account the provisions of the European Communities (Payment Services) Regulations 2009 and the Terms & Conditions of the account, the Ombudsman upheld the complaint and directed the Bank to immediately pay the Complainant the total sum in respect of the disputed transactions, less the figure of €75 in respect of which she was liable.

The Bank brought an appeal to the High Court seeking to strike down the Ombudsman's Finding. In April 2013 the High Court refused the appeal and confirmed the Finding. The Bank was granted liberty to appeal to the Supreme Court.

Case Study 19

Variation of lending terms

The Complainant held a number of loans with the Bank and in 2006 he entered into a borrowing with the Bank which he maintained was agreed, from the outset, to be "*for a project of variable duration*".

This was because the scope of the project had not been finalised in full. The monies were drawn down but following the elapse of the 5 year period specified, the Bank indicated that it would be necessary to enter into a new agreement in respect of any continuing borrowing.

The Complainant maintained that he was entitled to rely on the Bank's representation to him that notwithstanding the 60 month term referred to in the loan document, the term of the loan would be subject to a variable timescale. A complaint was made to the Ombudsman that the Bank had failed to comply with this undertaking. The Bank contended that the loan documentation clearly identified a 5 year term for the loan and although the Bank was willing to make a new offer to the Complainant, it rejected any assertion that it was under an obligation to extend the term of the original agreement, on the same terms, as asserted by the Complainant.

In considering the complaint, the Ombudsman noted the Complainant's submission that it simply made no sense to embark on the project without having put the appropriate finance in place encompassing terms which would apply for the full duration of the project. It was suggested that the Complainant would not have entered into an agreement which might give rise to more onerous terms being imposed on a later date. He noted however that the loan Terms & Conditions specified in the clearest and most unambiguous of terms, that the loan was for a duration of 5 years. The Ombudsman took the view that it is common for the terms of a contract to be discussed, considered and negotiated before being finally committed to a written format. He pointed to the parol evidence rule that when parties put their agreement in writing, all prior and contemporaneous oral or written agreements merge into the writing. He noted that Courts do not permit integrated or written contracts to be modified, altered, amended or changed in any manner by prior or contemporaneous agreements that contradict the terms of the written agreement.

In those circumstances, he did not consider that it would be legally sound for him to deviate from that rule. Consequently, the loan offer and its acceptance formed the basis of the contractual arrangement between the parties. In circumstances where the offer made by the Bank in clear and precise terms was for a loan of a 5 year duration, and that offer had been accepted by the Complainant without the application of any inducement or pressure by the Bank, the Ombudsman took the view that no prior discussion or negotiations could displace the clear terms of that written agreement and consequently the complaint was not substantiated.

Case Study 20

International transfer of funds

In order to facilitate the purchase of a motorbike, the Complainant requested that a bank transfer Stg. £12,000 from his account with the Bank, to an account in England. To facilitate the transfer the Irish account was debited in the sum of €13,902. The purchase subsequently fell through and the Complainant requested that the transfer of funds be cancelled. Eight days after the original transaction had been sought, the account in England was debited with Stg. £12,000 and the Complainant's Irish account as a result was credited in the amount of €13,327. The Complainant was unhappy with the loss of a substantial figure of €575 which the Bank explained by reference to a combination of charges applicable to the transaction, and the prevailing foreign exchange rates on the days the transactions were carried out.

Essentially, the fall in value of the Euro in the 8 day period had resulted in the customer losing almost €600. A complaint was made to the Ombudsman that the Bank had unfairly and unreasonably sought to have the Complainant absorb the loss when the international transfer was cancelled.

The Bank pointed out that the Complainant had not in fact cancelled the transfer through the Bank and therefore it asserted that it could not be held responsible for any losses incurred as a result of the transaction.

In considering the evidence, the Ombudsman noted that the original transaction had never been cancelled and rather, the Bank had, without notice, received Stg. £11,993 (after the UK bank had deducted its fee) some days after the transaction had been instructed. Consequently it credited the Complainant's account with the amount received, but in order to complete the transfer back to the Complainant's account, it was necessary for the Bank to convert the funds to the Euro equivalent.

When the daily conversion rate was applied, this gave rise to a loss as the exchange rate applied had altered in the 8 day period since the transaction had been instructed. The Bank pointed out that apart from the commission fee applied, the Bank had not profited in any manner from the transaction.

The Complainant made the case that he was not experienced in such matters and signed whatever the teller had requested him to sign.

He pointed out that at no stage had he been informed either orally or in writing that Terms & Conditions would apply or indeed what those Terms & Conditions might be or thirdly, where those Terms & Conditions might be available for him to familiarise himself with, before he executed the required documentation.

He made the case that in asking him to sign the form which was handed to him without explanation, this was in effect sharp practice on the part of the Bank.

The Ombudsman noted that the Terms & Conditions applicable to the transaction advised of the fact that in certain circumstances currency conversion using a foreign exchange rate will apply and that the relevant exchange rates are subject to change at any time. He took the view that the Terms & Conditions contained adequate notice regarding the potential exposure to external forces which might affect the value of the funds. He did not accept the argument that such matters were of such a complexity as to place someone without specialist or financial knowledge, at a disadvantage. Whilst he noted that the Complainant was critical of the fact that he had not had sight of the Terms & Conditions prior to signing the relevant transfer request, the request form made it clear that the Terms & Conditions were available at any branch or on line and the Complainant had signed the form acknowledging that he had read and agreed to be bound by those terms. In those circumstances the Complainant's suggestion that he was never informed either orally or in writing that there were Terms & Conditions, or wasn't advised what those Terms & Conditions were, was not supported by the documentary evidence in the form of the request form he had signed.

The Ombudsman accepted on the basis of the evidence before him that the loss had been sustained owing to a refund of the monies 8 days after the transfer had been requested, as opposed to as a result of the cancellation of the original transaction. He noted however that the loss could have arisen from a variety of events and the Terms & Conditions set out the duties and obligation of both parties in a variety of circumstances. In his opinion it was not reasonable to expect the Bank to go through every possible eventuality with each customer, prior to completing a foreign transfer transaction.

The Complainant in his opinion, was obliged to ensure that he was familiar with the content of the Terms & Conditions prior to agreeing to proceed and he could have raised any query if any element of those Conditions was not understood. The Ombudsman rejected any contention of sharp practice on the part of the Bank and the complaint was not substantiated.

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