



An tOmbudsman Seirbhísí  
Airgeadais agus Pinsean

Financial Services and  
Pensions Ombudsman

# Financial Services and Pensions Ombudsman Overview of Complaints 2019



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# 1

# The Financial Services and Pensions Ombudsman (FSPO)

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

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

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

We deal with complaints informally at first, by listening to both parties and engaging with them to facilitate a resolution that is acceptable to both parties. Much of this informal engagement takes place by telephone.

Where these early interventions do not resolve the dispute, the FSPO formally investigates the complaint and issues a decision that is legally binding on both parties, subject only to an appeal to the High Court.

The Ombudsman has wide-ranging powers to deal with complaints against financial service providers. He can direct a provider to rectify the conduct that is the subject of the complaint. There is no limit to the value of the rectification he can direct. He can also direct a provider to pay compensation to a complainant of up to €500,000. In addition, he can publish anonymised decisions and he can also publish the names of any financial service provider that has had at least three complaints against it upheld, substantially upheld, or partially upheld in a year. The 2019 list of such providers is set out on page 31 of this document.

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

Furthermore, he cannot direct a pension provider to pay compensation. He can only publish case studies in relation to pension decisions (not the full decision), nor can he publish the names of any pension provider irrespective of the number of complaints it may have had upheld, substantially upheld, or partially upheld against it in a year.

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

Unless a decision is appealed to the High Court, the financial service provider or pension provider must implement any direction given by the Ombudsman in his legally binding decision. Over 600 decisions relating to complaints against financial providers are available on our database of decisions on [fsp.ie](http://fsp.ie).

# 2 | Message from the Ombudsman



This document sets out a detailed overview of the activities of my Office for 2019. While we continued to receive a high volume of complaints during the year, I am happy to report that in December 2019 for the first time since the establishment of the FSPO, we closed more complaints than we received. This was due to a very welcome increase in staff numbers combined with improved processes.

Our Strategic Plan, 'Enhancing the Customer Experience', sets out the vision of the Council and the FSPO to 2021. The Plan commits us to improving the quality and efficiency of our services, making better use of information technology and providing new and easier ways for our customers to interact with us. We made significant progress in delivering on these key aims in the latter part of 2019. Continuing to improve the customer experience by delivering our services faster and better, remains our key focus.

In 2019, we received 4,969 eligible complaints against financial service providers and pension providers and closed 4,569 complaints. A sectoral analysis of the complaints we received in 2019 is included on page 33.

The case studies included in this Overview of Complaints demonstrate the solutions and redress achieved through the services of the FSPO. In 2019, 1,399 complainants received redress and/or compensation through the services of the FSPO, 983 through mediation, 215 during investigation and 201 through legally binding decisions issued.

We deal with complaints informally at first, by listening to the parties and engaging with them to facilitate a resolution that is acceptable to both parties. Much of this informal engagement takes place by telephone. In 2019, we resolved

2,154 complaints through our Dispute Resolution Service using informal mediation methods. Details of the complaints closed through our Dispute Resolution Service are set out on page 8.

Where these early interventions do not resolve the dispute, we formally investigate the complaint. Formal investigation of a complaint is a detailed, fair and impartial process carried out in accordance with fair procedures. Documentary and audio evidence, and other material, together with submissions from the parties, is gathered from those involved in the dispute, and exchanged between the parties. This is carefully considered before a preliminary decision and ultimately a legally binding decision is issued. We issued 439 legally binding decisions in 2019. On 13 February 2020, I published 394 of these decisions. In addition to publishing the full decisions, I also published a second Digest of my legally binding decisions, which includes a short summary of 33 selected decisions. Details of the decisions I issued in 2019 are set out on page 15.

Unless a legally binding decision is appealed to the High Court, the financial service provider or pension provider must implement any direction given in the legally binding decision. Of 439 legally binding decisions issued in 2019, five were appealed by the parties to the High Court.

Dealing with the complexities in our governing legislation continues to require a significant amount of time and resources. In particular, the definition of a "long-term financial service" can prove challenging. We make every effort to assist parties in understanding these provisions as they relate to each individual complaint. Details of the work of our Legal

Services in relation to a range of matters including jurisdiction and appeals is set out on page 24.

We made considerable progress in dealing with complaints relating to tracker mortgage interest rates during 2019. We have been in ongoing communication and interaction with over 1,800 complainants and their providers in relation to tracker mortgage complaints since the establishment of the FSPO in January 2018. This work was undertaken while at the same time managing more than 5,000 other complaints that did not relate to tracker mortgages. We closed 516 tracker mortgage complaints in 2019. Of these, we resolved 264 complaints through our informal mediation process, 174 were closed during the investigation, adjudication or legal services process, and 78 were closed at registration and assessment stage. At the end of 2019, we had 1,152 tracker mortgage complaints on hand. On 27 February 2020, I published 25 legally binding decisions relating to tracker mortgage interest rate complaints on our Database of Decisions. I also published a Digest of my legally binding decisions relating to tracker mortgage interest rates, which includes a short summary of 16 tracker mortgage decisions that had been issued at that time.

We had significant engagement with a broad range of stakeholders throughout 2019. This included engagement with the Department of Finance, members of the Oireachtas, consumer representative bodies and advocates. In addition, we engaged with industry representatives. We worked in close cooperation with the Central Bank of Ireland, with a particular focus on tracker mortgage-related issues. As part of a European Commission initiative, FIN-NET, we cooperated with other financial services ombudsman schemes in the European Economic Area (EEA) to provide consumers with access to a cross-border complaints resolution service across the EEA. We also continued our participation in the International Network of Financial Services Ombudsman Schemes (INFO Network).

For their hard work and commitment in 2019, I want to thank my colleagues on the Senior Management Team, MaryRose McGovern, Director of Investigation, Adjudication and Legal Services, Diarmuid Byrne, Director of Dispute Resolution and Tara McDermott, Director of Customer Operations and Information Management and all the managers and staff, for their continued dedication and commitment to ensuring we provide the best possible service. Staff have continued to show great commitment in delivering our services and to providing a quality customer service.

I would also like to thank the Chairperson, Maeve Dineen, and members of the Financial Services and Pensions Ombudsman Council for their support, guidance and assistance throughout 2019. I am grateful also to the complainants and financial service providers who cooperate with our processes on an ongoing basis. I want to express my appreciation to the Minister for Finance and his officials for their ongoing support and cooperation.

Our service is a key element of the consumer protection framework of the country. We are committed to fulfilling this role by providing a robust, independent and fair service to resolve disputes and by constantly improving the quality of our service.

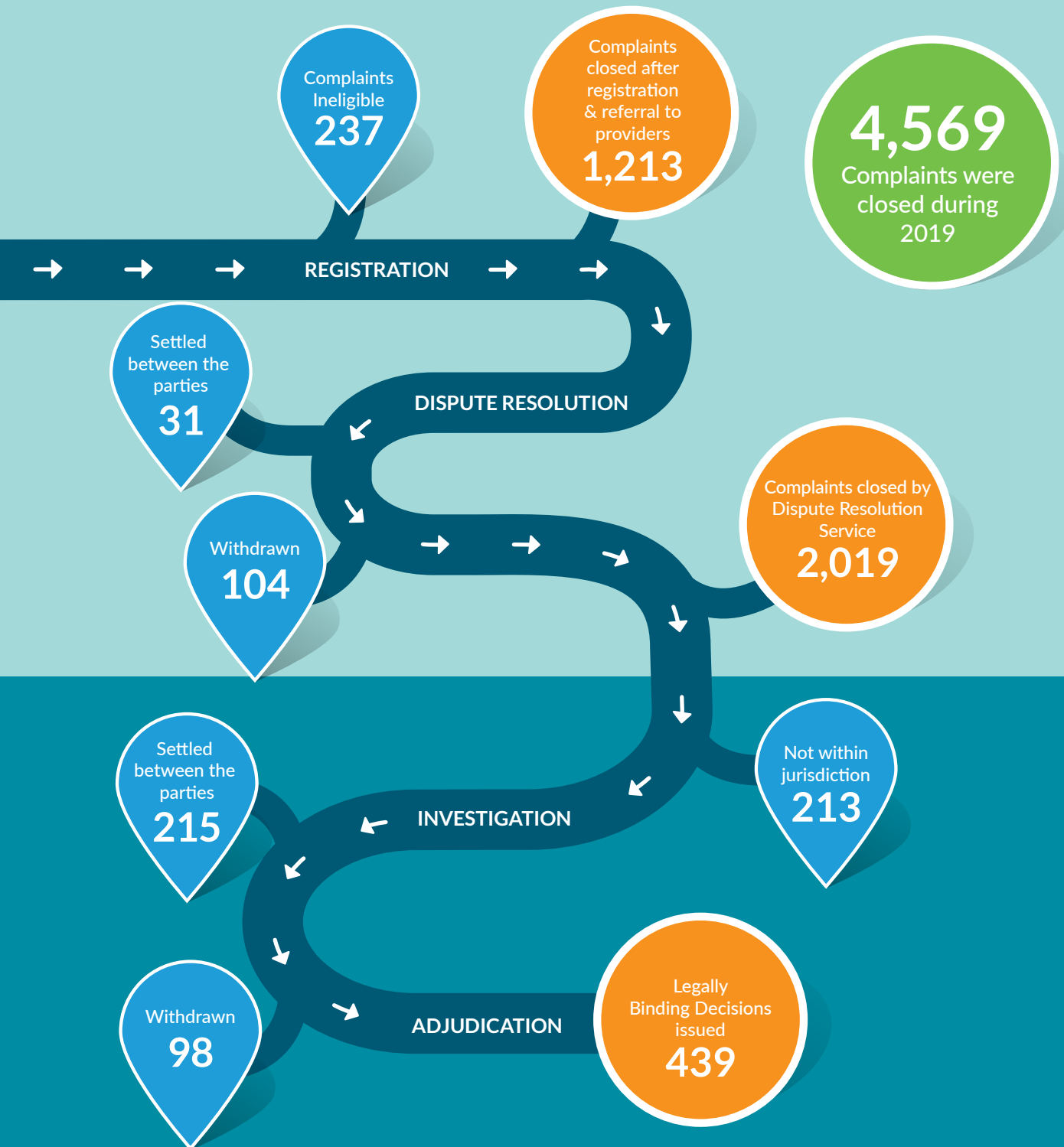


**Ger Deering**  
**Financial Services and**  
**Pensions Ombudsman**

31 March 2020

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# 3 | How we managed complaints in 2019



Formal Informal

# 4

## Registration and Assessment Service

1,450  
complaints  
closed

During Registration and Assessment, information is provided to our customers on how to engage with their financial service provider in order to make a complaint to the provider. Information is also given on how to submit a complaint to the FSPO and how it will be dealt with by the FSPO. This sometimes involves the FSPO dealing directly with a financial service provider, in order to secure a “final response” to the complaint for the consumer in circumstances where that provider has not engaged sufficiently with the complainant.

In 2019, the FSPO received and registered 5,275 complaints. We closed 1,213 complaints after registration, referral to the provider and follow up. While a number of these complainants resolved their complaint directly with their provider, we closed 237 complaints at this stage of the process because they were ineligible. This was mainly because these complaints were intended for a different Ombudsman or related to products, services or service providers that do not fall within the remit of the FSPO. As part of our service, we redirect customers to the appropriate body where possible.

### Case Study: Registration and Assessment

#### Cancelled insurance policy

Frank called the FSPO to complain that his insurance company had cancelled his insurance as a result of miscommunication between the broker and the insurance company.

We informed Frank that he should first go back to his broker and lodge a complaint and give it the opportunity to resolve the issue.

Frank contacted the FSPO at a later date and explained that, on foot of the information given to him by the FSPO, he had been able to resolve the issue with his broker, and his policy was reinstated with the insurance company.



#### Complainant feedback

“Thank you so much for your very kind and quick response. The training you give your customer service staff is absolutely amazing. Every person I have spoken to has been very caring and helpful. I will let you know if I have any issues going forward”.



Our Registration and Assessment team responded to 19,888 telephone enquiries in 2019.

Telephone Enquiries:

19,888



We dealt with 12,800 general, informal email queries in 2019

Email Queries:

12,800



Visits to [www.fspo.ie](http://www.fspo.ie)

131,244

Complaints

5,275

of which 50% were received online



# 5

# Dispute Resolution Service

2,154  
complaints  
closed

We deal with complaints informally at first through our Dispute Resolution Service by listening to the consumer and the provider and facilitating a mediated agreement that is acceptable to both parties. We resolve the majority of complaints through this informal process. In 2019, we resolved 2,154 complaints through this process. 983 complaints reached a settlement where the complainants received redress and/or compensation. 944 complaints were settled where a clarification was provided. 92 complaints were closed through engagement with the complainant only and 31 were closed when the parties reached a settlement themselves and 104 were withdrawn.

Closed Reason	Number of complaints
Settlement reached	983
Clarification provided	944
Withdrawn	104
Contact with complainant only	92
Settled between the parties	31
<b>Total</b>	<b>2,154</b>

The dispute resolution process using mediation provides a flexible and innovative approach to complaint resolution. The case studies below are illustrative of the type of complaints resolved through mediation during 2019. Names and locations, have been altered in order to protect the identity of the parties as it is a confidential process.

## Case Study: Dispute Resolution

### Refusal to provide insurance

Joe wanted to set up a new business. He needed to buy and operate particular equipment to run the business. Prior to buying the equipment he got a quote from an insurance company. He told the company the nature of the business and the level of public liability cover he needed. The insurance company told Joe it would insure him based on the information given. On this understanding Joe bought the equipment and returned to the insurance company to set up the policy. The insurance company then told him it did not insure that type of business and that it would not offer cover to the level required for licensing of the business. On review the insurance company agreed to re-offer cover but it refused to match the cover to the level needed for Joe to get a licence to trade. Joe found himself in a position where he had spent money on equipment and insurance, but he could not trade. During mediation, the insurance company agreed to increase the cover to the required amount for a slightly higher premium and Joe was able to start his new business.

## Case Study: Dispute Resolution

### Effect of accident on complainant's 'no claims bonus'

Anne's husband, Rory was insured to drive her car as a named driver. Rory was also insured on his own policy to drive other peoples' cars. Unfortunately, he had an accident which resulted in damage to Anne's car and a claim was made by the driver of the other car.

When they made a claim, Anne's insurance policy registered an "own damage" claim and Rory's insurance policy registered a third party claim. Anne was told that this "own damage" claim would not affect her "no claims bonus" but when she went to renew her policy it had impacted on her "no claims bonus" and her premium had increased substantially. When she shopped around for alternative cover the reference to her claim was visible on her "no claims bonus" and had an adverse effect on the quotes she was given by other companies. Anne was very unhappy with the situation as it appeared to her that one accident led to both her insurance policy and her husband's policy being adversely affected by the same accident. She argued that if her husband had not had an insurance policy of his own, only her policy would have been affected.

The insurance company explained that the Irish motor insurance industry has an agreement known as the "Dual Indemnity Undertaking" which has been agreed with Insurance Ireland. This agreement comes into play when a driver is entitled to third party insurance under two policies, as in this case where Rory was insured for third party under Anne's policy and separately under his own policy. It explained that under this agreement the third party claim is dealt with under the driver's personal policy (Rory's policy) and the "own damage" is dealt with by the insurer of the vehicle (Anne's policy). The insurance company also pointed out that the "driving other cars" policy held by Rory was on a third party basis only so the "own damage" had to be claimed for on Anne's policy.

On the issue of the increase in the premium on renewal, the insurance company demonstrated that the increase was not due to the claim but other factors. It explained that Anne's "no claims bonus" was protected and the claim was not the reason for the increase in the quote from it. However, it stated that it had to make the claim visible on the "no claims bonus" and that it could not control how other insurance providers would interpret this information.

Anne accepted the insurance company's clarification and closed her complaint.

## Case Study: Dispute Resolution

### Claim refused due to health insurance upgrade waiting periods

Patrick rang his health insurance company to renew his policy. During the call he decided to upgrade from his basic policy. Patrick was due to have a procedure in the near future and said he asked the agent several times if he would be covered for it. Patrick said that the agent confirmed he would be covered.

The day before the procedure the hospital rang Patrick to let him know how much he would have to pay the next day. Patrick rang the insurance company who said it would take three to five days to investigate the issue. The hospital told Patrick that he would have to pay the full cost of the procedure if he cancelled with such short notice so Patrick went ahead with the procedure. On investigation, the insurance company said the call between Patrick and the agent had not been recorded due to a technical fault on the day, but it was certain that its agent would have told Patrick he would have a waiting period before he could claim for treatment under the upgraded cover. It also pointed out that this was outlined in Patrick's policy document and that he should have given the insurance company the treatment code to seek approval for cover.

Patrick accepted that he had not read the policy in detail and that he did not give the agent a procedure code. In the absence of the call recording the insurance company agreed to pay 90% of the claim on the understanding that Patrick would observe his upgrade waiting period from then on.

## Case Study: Dispute Resolution

### Claim on an income protection insurance policy

John took out several insurance policies through a broker. One of those policies was an income protection policy. Unfortunately, when the application was processed the direct debit was not fully set up by the broker and the insurance company. As John had several new direct debits going out of his account for the different policies he had just taken out, he did not notice that the income protection insurance was not being paid. John's broker withdrew from that line of business and transferred its customers to another broker. The new broker did not notice that one of the policies had not been properly completed. Unfortunately, John then needed to make a claim on his income protection policy only to find that the policy was not set up and his claim was rejected. This had serious consequences for him financially. Both brokers and the insurance company participated in the mediation with John. The three providers agreed to pay John's claim and share the cost.

## Case Study: Dispute Resolution

### Refusal of insurance claim for damage to a holiday home

Aggi and Nowak have a holiday home that was used on a weekly basis. Unfortunately, they suffered €57,000 worth of damage when water pipes burst after a particularly cold spell while the house was unoccupied for two days. Their insurance claim was rejected because the house was unoccupied and they had not turned the water off in their absence as required by the terms of their policy. They had complied with every other action required by the policy to ensure the safety of the house – for example keeping the temperature at the minimum required and leaving the loft door open. Aggi and Nowak argued that the house was not unoccupied as outlined in the policy because it was not unoccupied for more than 30 days, and they could produce invoices that showed use of utilities during the period around the two days. However, they did accept that they had not turned the water off at the mains. Before mediation the insurance company had paid €14,500 of the €57,000 claim. The insurance company agreed that its definition of "unoccupied" could have been clearer and that it has since changed the wording of its policy. Aggi and Nowak accepted they should have turned the water off. The parties agreed a settlement on the basis that the insurance company would pay a further contribution of €20,000 towards the claim.

## Case Study: Dispute Resolution

### Insurance policy cancelled for non-disclosure of claim

Bernadette took out a new insurance policy for her home and business through a broker at a trade fair. She had made a small claim four years previously for some damage to her house. The application form for the new policy asked if she experienced any 'accident or loss'. As she didn't view her earlier claim as either an accident or loss, she didn't realise she needed to disclose it. Bernadette's home was then extensively damaged by flooding. When she made a claim the insurance company discovered the earlier, small claim and cancelled her policy from the beginning, stating that she had failed to tell it about important information. This left Bernadette in a very difficult situation as she was now without insurance on her home and business and she could not source insurance from any other company. This would have long-term consequences. Bernadette felt the relevant question in the application form was unclear and difficult for a customer to understand. She said she did not intentionally hide any information. The insurance company believed its question was very clear and easy to understand and that Bernadette had a responsibility to inform it of all previous claims. During mediation it was agreed that the company would put her back on cover if she withdrew her claim and accepted an increased excess.

### Case Study: Dispute Resolution

#### Insufficient added years on pension

Due to ill health, Adedayo had reduced his working hours through job share. He later retired early because of his poor health. At the time of retirement he was too ill to give consideration to the lump sum payment he received. When his health improved he looked at the calculations and was of the view that he had not been awarded sufficient added years based on his service. He requested more information from his employer over a number of years but did not receive a reply. Frustrated with the lack of response, Adedayo brought his complaint to the FSPO. It was established during mediation that Adedayo had not been awarded sufficient added years and his employer agreed to pay him an extra €4,000.

### Case Study: Dispute Resolution

#### Purchase of service for pension

Jill worked part-time in two separate sections of the Civil Service. Neither posts qualified for a pension. Jill then became permanent in the Civil Service. When it became possible for Jill to buy back service she enquired how to do so. She did not receive a response for a number of years. When Jill was eventually informed how to buy back service she was given three months in which to do so. She borrowed money to do this. However, some years later Jill was advised that a mistake had been made and she had actually only bought 50% of the service she needed to buy. It was necessary for Jill to make a further payment. During mediation the employer agreed to pay half of the cost of the underpayment.

### Case Study: Dispute Resolution

#### Eligibility for membership of a pension scheme

As a part-time employee, Peter was considered not to be eligible to become a member of his employer's pension scheme. His employer made this argument based on the Circular 0025 of 2008 which states that a part-time employee can only get a pension if there is also a comparable full-time employee getting a pension. There was no comparator in Peter's place of employment. However, the circular also states that if the part-time employee was appointed before the date of the circular letter, then a person in this situation is eligible for pensionable service and superannuation benefits. It was accepted by the employer during mediation, that Peter should be given the opportunity to become a member of the scheme by giving up his entitlement to a non-pensionable lump-sum and making payments of any contributions due, given that he had been appointed before the date of the circular.

### Case Study: Dispute Resolution

#### Request to move to a fixed rate mortgage

Khalid took out a mortgage in the early 2000s. In 2006 he opted for a tracker rate. Khalid was of the view that eight months into the tracker rate the bank sent him a list of fixed rates to choose from. He chose a 10-year fixed rate from the list and returned the signed request to the bank. Khalid was considered to be in scope for the tracker mortgage examination directed by the Central Bank as his mortgage had not been put back on the tracker rate when his 10-year fixed rate ended in 2016. Khalid believed that he had been actively encouraged off the tracker rate by the bank in 2006. However, during mediation it was established that Khalid had gone into his local branch himself to specifically ask for fixed rates, as the tracker interest rate was increasing on a regular basis during this period. When he was shown the notes of his interaction with the bank Khalid remembered that it was his own choice at the time. Based on this clarification he closed the complaint.

## Case Study: Dispute Resolution

### Advice given on the sale of a mortgage

Mary applied for a mortgage in 2008. She said she asked for a tracker rate on the mortgage but was advised by the bank to opt for a different rate. Mary recalled handwritten correspondence between her and the bank staff member advising her of which rate to choose. The bank was of the view that its staff never give advice about rates and that it could find no such written record. However, during mediation, a note, handwritten by the bank's staff member, was discovered by the bank on the file. This note recommended a particular rate. As a result Mary's mortgage was then considered impacted as part of the Examination directed by the Central Bank. She was restored to the appropriate tracker mortgage interest rate back-dated to the start of the mortgage and paid the sum of €52,000 in interest overcharge refunds and compensation.



### Complainant feedback

“Just want to let you know that (named provider) rang to tell me that they've refunded the money. I want to use this opportunity to thank you so much for your immense help in recovery of this amount. I am so grateful to you and your office for making it possible when I lost all hopes. Thank you once again”.

## Case Study: Dispute Resolution

### Request for a tracker interest rate on a top-up mortgage

Henry and Annabel applied for a top-up mortgage in 2006 in order to complete home improvements. They asked if the top-up mortgage could be on a tracker interest rate. The bank said this was not possible. When the couple became aware of the tracker mortgage examination directed by the Central Bank Henry and Annabel complained to the bank about not being offered a tracker interest rate on the top-up mortgage in 2006. During mediation, the bank furnished evidence that demonstrated that the type of mortgage that Henry and Annabel took out in 2006 was never eligible for a tracker rate. Henry and Annabel accepted this clarification and closed their complaint.

## Case Study: Dispute Resolution

### Dispute regarding a number of mortgages

Jean and Robert had several mortgages with their bank. One of the mortgages had been considered impacted by the tracker mortgage examination directed by the Central Bank and they were given approximately €42,000 in refunds and compensation. However, there remained a significant disagreement about whether a second of their mortgages should have been restored to a tracker interest rate, what rate applied to a third mortgage also and other areas of conduct around a fourth mortgage. During the mediation, Jean and Robert and their bank resolved the complaint with a settlement from the bank of €36,000.



## Complainant feedback

“Thank you so much. You have no idea how much of a weight has been lifted off me. Actually I’m still in the realm of disbelief! Now, at last I can look forward to a financially secure future. I am so impressed with the way in which my case has been dealt with.”

### Case Study: Dispute Resolution

#### Refusal to offer a tracker interest rate on a new mortgage

Siobhán and Philippe started enquiring about a mortgage in early October 2008. They were not offered a tracker interest rate on their mortgage and they felt this was very unfair. However, during mediation the bank furnished evidence that they had actually completed the application form and the ‘Letter of Offer’ after the bank had stopped offering tracker mortgages. Siobhán and Philippe accepted this clarification and closed their complaint.

### Case Study: Dispute Resolution

#### Delay in releasing title documents

Pavel was selling his buy-to-let property. He engaged with his lender in order to get everything in place to enable the sale and pay off his mortgage. The lender needed certain things from Pavel in order to release the title documents, but it appeared to ask for the required information in an incomplete manner and it took six months to request everything required. This caused Pavel and his wife huge stress as they believed it put the sale of the property in jeopardy. The lender said it was unable to meet its deadlines as it was experiencing a large volume of business at that time. During mediation, it accepted it could have done things better and offered €4,000 compensation, which was accepted by Pavel.

### Case Study: Dispute Resolution

#### Interest rate applied to mortgage

Josephine owned one property in Ireland and had it rented out. She lived in another property herself which she did not own. The bank incorrectly assumed the property she owned was an investment property, as it thought Josephine owned the house she lived in. The bank classified the mortgage at a commercial interest rate rather than a lower, primary residence interest rate. Unfortunately, Josephine got into arrears with the mortgage. Having deemed the property an investment property, Josephine was not offered the protection of the Mortgage Arrears Resolution Process (MARP), which is available to all mortgage holders in respect of primary residences and the bank appointed a receiver to the property. In mediation, Josephine was able to prove that the property in question was the only property she owned in the State. The bank stood down the receiver, paid Josephine approximately €28,000 in interest adjustment for incorrectly charging her a higher commercial rate and gave her approximately €18,000 in compensation.

### Card Fraud

Thomas did not use online banking and when he received his statements in the post he noticed unfamiliar payments. They totalled approximately €1,500. He immediately went to his local bank branch to report the fraud. He said he was advised in the branch not to contact the Gardaí until the bank's fraud department had contacted him. The bank also told Thomas that it would get a new card out to him as soon as possible. Thomas did not hear from the fraud department for 15 days. The bank said it did not believe it was fraud, as all the transactions had been authorised using the correct pin and it believed that Thomas was in breach of his account's terms and conditions by giving someone his card and pin. Thomas said he did not share his card and pin and he believed the bank should have been suspicious of such large transactions happening at one time on a rarely used account. Thomas then contacted the Gardaí who said he should have contacted them straight away as it would be very difficult to get CCTV footage given the delay in reporting the fraud. The bank also failed to send Thomas his new bank card as it had indicated it would. During mediation, the bank reviewed its conduct and decided it had not given satisfactory service or advice and it refunded all of the fraudulent transactions to Thomas' account.



### Complainant feedback

“On a personal note I just want to thank you for all your hard work and effort to get this dispute resolved. It wasn't a simple complaint and was only resolved in large part due to the professionalism, calmness and integrity shown by you and for that I am deeply grateful.”



# 6

## Investigation and Adjudication Service

While we resolve the majority of complaints through informal mediation, where this does not prove possible, complaints are referred to our formal investigation process. Formal investigation of a complaint by the FSPO is a detailed, fair and impartial process carried out in accordance with fair procedures. For this reason documentary and audio evidence, and other material, together with submissions from the parties, is gathered by the FSPO from those involved in the dispute, and exchanged between the parties.

The Ombudsman has wide-ranging powers when adjudicating on complaints. He can direct that a provider rectify the conduct that is the subject of the complaint. There is no limit to the value of the rectification he can direct. He can also direct a financial service provider to pay compensation to a complainant of up to €500,000.

Having considered all of the evidence and submissions the Ombudsman issues a decision that is legally binding on both parties, subject only to an appeal to the High Court. The FSPO issued 439 legally binding decisions in 2019. Of these 201 were upheld to some extent and 238 were not upheld.

The Ombudsman can publish his decisions. In order to provide the maximum possible access to the Ombudsman's decisions we have created an online database of legally binding decisions. This database now holds the full text of more than 600 of the Ombudsman's decisions in relation to complaints against financial service providers, issued by the FSPO since January 2018.

In addition to publishing the full decision, the Ombudsman has also published a number of Digests of Decisions which include short summaries of a selection of decisions in relation to complaints against financial service providers and case studies of decisions in relation to complaints against pension providers.

Upheld:

63

Substantially Upheld:

40

Partially Upheld:

98

Not Upheld:

238

Total:

439

The Ombudsman's Digest of Decisions Volume 2 published in February 2020 contains summaries and case studies based on decisions issued between January and December 2019. Volume 3 also published in February 2020 contains summaries of decisions in relation to tracker mortgage interest rate complaints, which issued between January 2019 and January 2020.

Each of the digests and all published decisions are available at [www.fspo.ie/decisions](http://www.fspo.ie/decisions). Information on how to access decisions and search for areas or decisions of specific interest in the decisions database is included on the next page.

The Ombudsman can also publish the names of any financial service provider that has had at least three complaints against it upheld, substantially upheld, or partially upheld in a year. Details of the providers that has had at least three complaints upheld, substantially upheld, or partially upheld in 2019 are set out on page 31.

# How to search our decisions on www.fspo.ie

## Accessing our database of decisions

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

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

### 1 Applying filters to narrow your search

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



**Filter our Database**

Financial Services Sector:

- All
- Banking
- Insurance
- Investment

Product / Service:



### 2

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

- ▶ product / service
- ▶ conduct complained of



#### ✓ Sector

**Filter our Database**

Financial Services Sector:

- All
- Banking
- Insurance
- Investment

Product / Service:

Foreign Exchange

Conduct Complained Of:

#### ✓ Product / Service

**To narrow your search, you may also filter by:**

Product / Service:

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

All

#### ✓ Conduct complained of

**To narrow your search, you may also filter by:**

Conduct complained of:

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

### 3

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



**To narrow your search, you may also filter by:**

Outcome:

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



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



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

At all stages of the process, the FSPO facilitates interactions between both parties to the complaint and the complaint can be settled between the parties. While the FSPO encourages settlements at the earliest stage, a settlement at any stage is always encouraged and welcome.

In 2019, 215 complaints were settled during the investigation process, where the provider made an offer on the record and the complainant was happy to accept the offer without the requirement to proceed to a legally binding decision.

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

### Case Study: Resolved During Investigation

#### Damage to a car caused by rats

Declan's complaint was that he had purchased "full comprehensive insurance" from the provider, an insurance intermediary, in February 2017 but that he didn't receive any booklet for the policy, because the provider had none in stock. In his complaint, Declan stated that he had been told by the provider that the policy he purchased was "the best value comprehensive insurance going".

Declan explained that during a routine car service in February 2018, it was discovered that the vehicle's wiring had been damaged by vermin. He made contact with the provider which agreed to send out an assessor but subsequently, he received the policy booklet in the post, together with a letter explaining that the policy offered no cover for vermin.

The provider submitted that it had made a request to the policy's underwriter to take a "sympathetic approach" to Declan's claim for damage caused to the vehicle by rodents. The provider nevertheless informed Declan that the underwriter continued to decline the claim because damage from rodents was excluded under the policy.

Declan contended that the provider had sold him a motor insurance policy that was not fit for purpose, because damage caused by vermin was excluded. Furthermore, he pointed out that the provider had failed to give him the policy booklet at the time when he purchased the policy and, as a result, he was unaware that damage by rodents was excluded.

As Declan's complaint was not resolved during mediation, the FSPO commenced a formal investigation in March 2019.

After the formal investigation commenced and the FSPO issued its formal Summary of Complaint, the provider made contact advising that while it was certain that a policy booklet had been provided to Declan at the time when he incepted the policy, it had some sympathy for his position and offered him a "good faith payment" of €3,000 in order to resolve the complaint. Declan accepted this offer and the complaint was noted to have been resolved on that basis.

### Loss of currency exchange rate

Leah's complaint concerned the transfer of funds abroad after the sale of her property. Leah sought to transmit money to a foreign exchange account and from there subsequently to her account within the UK. She said that she experienced very poor customer service and maladministration from the provider, which resulted in a financial loss to her of more than £9,800 GBP and also led to a delay in her being able to purchase a new property abroad.

Leah explained that certain specific information was required of her by the provider which she furnished to them but she accidentally omitted the last two pieces of information. The provider failed to notice this omission and bring it to her attention until 8 days later.

Leah also described a subsequent delay in transferring the funds, some days later, *"because the person who had the paperwork [was] off sick"*. On the following day, she was told that the funds had been transferred but subsequently this was corrected, noting that the relevant deadline had been missed by the provider and the funds would be transferred the following day.

Leah accepted that the provider was not responsible for exchange rate fluctuations, but nevertheless she pointed out that because she had been told that the transfer would occur on a certain date, and it did not, she had suffered a financial loss. She took the view that the provider had failed to follow its own policies and procedures in effecting her instructions.

The complaint was not resolved in mediation, so in August 2019 the FSPO commenced a formal investigation.

When the formal investigation was commenced, the provider pointed out that Leah had been duly compensated €50 for any costs and inconvenience encountered during the transfer of funds.

The FSPO issued its formal Summary of Complaint, and the provider, on review of the summary, made an offer on the record to resolve the complaint by way of a payment of €3,500 compensation. Leah turned down this offer and the provider subsequently indicated a willingness to increase its offer and sought a copy of the payment confirmation receipt, showing the amount received when the transfer was effected.

In November 2019 Leah accepted the provider's on-the-record settlement offer of €9,855.45, and the file was closed noting the settlement achieved between the parties.

### Legal fees applied to the complainant's mortgage account

Rob and Victoria's complaint concerned their mortgage loan account. They had been in mortgage arrears between 2013 and 2014 and were designated by their provider as "not cooperating" within the meaning of the Code of Conduct on Mortgage Arrears (CCMA).

By February 2015 the mortgage arrears had risen to more than €25,000. With the help of family members, Rob and Victoria cleared the arrears by way of two substantial payments in February and March 2015, together with a number of agreed instalments to address the remaining residual balance, which were cleared by December 2015.

In June 2016 Rob and Victoria were notified of certain outstanding legal fees, but on request, details of the figures were not provided by their provider. Rob complained that he did not get access to the solicitor's invoices until January 2017 and he explained that the provider had never advised him of those fees which it had designated as "arrears" and capitalised, thereby causing the fees to attract interest charges for the remainder of the mortgage term.

The complainants pointed out that they were not given the opportunity to pay the fees or the opportunity to dispute liability. They also referenced other issues of maladministration which had contributed significantly to the difficulties they had experienced. They referred to emails which went unanswered by the provider and to excessive phone calls which they considered to be harassing. In addition, correspondence sent by post was not received and subsequently, when collected from the branch, a number of enclosures were missing.

As Rob and Victoria's complaint was not resolved by way of mediation, the formal investigation commenced in November 2018.

The provider responded formally to the complaint and, thereafter, the parties exchanged a number of submissions and observations. In February 2019 the provider made an offer on the record to settle the dispute which was accepted by Rob and Victoria. The FSPO noted that this settlement included the refund of legal fees of €802.02 together with interest of €91.98, and a general compensatory figure of €10,000.

## Case Study: Resolved During Investigation

### Partial surrender of international bonds

Sally's complaint related to the surrender of an investment. In December 2016, Sally emailed her provider advising that she wished to effect a partial surrender of her investment, to the amount of £125,000 GBP. The provider responded noting that this transaction would trigger a "chargeable event" and the provider stated the potential gain would be between a minimum of £14,600 GBP and a maximum of £63,000 GBP. Sally instructed the provider to proceed with the partial surrender on the basis of "the minimum gain option that you outline".

Sally said that subsequently she received three chargeable gain certificates illustrating a chargeable gain of some £33,000 GBP. When she requested that the provider rectify the paperwork, this was refused and she was advised that the chargeable gains were correct, because the payment had been made by way of two separate transfers. Sally pointed out that if she had been made aware that the payment of the funds by way of two separate transfers would result in the effective doubling of her tax liability, she would never have agreed to this. In its response the provider indicated that its main priority had been to release the money, as per Sally's request, though it acknowledged that it ought to have informed her of the variation to the chargeable gain, arising from the transfer of funds in two instalments.

Sally sought recovery from the provider of the additional tax liability she had incurred, being 45% of the difference in the taxable gain figures, which she calculated at £8,351 GBP.

Sally's complaint was not resolved by way of mediation, so the formal investigation of the complaint was commenced in August 2019.

Two weeks after commencing the formal investigation, the FSPO was notified that Sally had agreed to an offer from the provider of an ex-gratia payment of £8,351 GBP in order to resolve the matter.

## Case Study: Resolved During Investigation

### Cost of in-patient admission

Deirdre had been admitted to hospital on the instructions of her treating consultant for the purpose of undergoing a number of tests. Her complaint was that her health insurance provider had refused to meet the cost of €2,600. Deirdre sought to have the provider settle the account directly with the hospital.

As Deirdre's complaint was not resolved by way of mediation, a formal investigation was commenced by the FSPO in March 2019.

When the FSPO issued the formal Summary of Complaint, a response was sought from the provider regarding the position as outlined by Deirdre's consultant, details of which had been furnished to the parties.

Three weeks after the formal investigation was commenced, the provider communicated that having reviewed the matter and in particular having reviewed the contents of an email from Deirdre's consultant, it had decided to allow the benefit payment for the admission period in question. It was noted that the provider's panel of medical advisors had not previously had sight of this information.

The FSPO noted that the claim was being sent for payment and the file was closed on the basis of the resolution of the complaint directly between the parties.

### Motor vehicle extended warranty

In 2016, Dominic purchased a 2011 motor vehicle and at that time, he bought an extended warranty cover from the provider to last for a period of 2 years. Later in 2016 he made two claims under the extended warranty. He subsequently encountered further difficulties with the vehicle in April 2017 and March 2018 respectively, prior to the expiry of the 2-year extended warranty cover.

There were conflicting findings by an electrical specialist, a diesel specialist and the main dealer. Dominic had to purchase a new vehicle but he complained that he had been left with a vehicle with a reduced value, but which still had an undiagnosed problem.

He sought a settlement figure of €1,000 from the provider which would facilitate him in having the problems properly diagnosed and repaired.

The provider stated that it was unable to determine cover under the warranty policy, until a definite failure had been diagnosed. It also argued that at that point, the warranty had expired and it noted that a number of repairs had already been covered under the terms of the policy, to the value of almost €5,000. It was willing to offer a goodwill gesture of €500, but this had been declined by Dominic.

Dominic's complaint was not resolved in mediation so a formal investigation was commenced by the FSPO in August 2019.

The complaint against the provider was that it had wrongfully declined to make any further payment under the terms of Dominic's extended warranty policy, in respect of an additional fault that had arisen during the time when the policy had been in force. In early October 2019 the provider issued its formal response to the FSPO's Summary of Complaint and the parties then made a number of submissions and observations. The evidence submitted included recordings of 54 telephone calls between the parties.

Having considered the extent of the evidence available, Dominic notified the FSPO in November 2019 that he was willing to accept the provider's without prejudice offer of €500, in order to settle the complaint, and the matter was resolved on that basis.



#### Complainant feedback

“I would just like to record my gratitude for all the hard work that the adjudication of the above complaint required. The painstaking investigation and analysis of the detail as evidenced in your letter is much appreciated and especially in the context of what I am sure is an extremely high demand for the Ombudsman service. I am very grateful for the comprehensive and clear explanation of the decision”.

## Complaint regarding free travel insurance offer and subsequent claim

When Mark's health insurance policy fell for renewal in January 2017, his health insurance provider offered him the option of a free travel policy from a third party financial service provider. Mark decided to accept the offer and he made a claim on the policy, after he became ill while abroad, the following month.

The health insurance provider refunded Mark some of his expenses which were covered by his health insurance policy. He was unhappy however, because the travel insurance provider refused to reimburse him for his remaining expenses, because the policy in question provided cover for emergency medical and associated expenses incurred overseas, but only if the cost of the treatment was in excess of €100,000 or the medical treatment related to an injury sustained whilst taking part in winter sports. In Mark's case, the amount claimed for was approximately €3,000, and as a result he was well under the threshold for a claim.

Mark pointed out that the free travel insurance offer he had received through his health insurance provider was difficult to understand. He made clear his thoughts that the concept of a travel insurance policy which did not provide cover for a flight that was missed for a genuine reason, did not make sense to him.

Mark's complaint was not resolved during mediation and the FSPO commenced a formal investigation.

In the course of the investigation of the complaint, the FSPO, through its Summary of Complaint, sought information regarding the provider's role in promoting the offer of the free travel insurance to customers who were renewing their health insurance. The provider explained that it had given assurances to the Central Bank of Ireland in September 2017 that it would *"in no way provide any advice or guidance in respect of the travel insurance policy and would refer all queries to the travel insurance provider."*

Notwithstanding this, the provider advised the FSPO that it believed that Mark had not received the highest standard of customer service and it offered him a "customer service payment of €1,124" being the total of his expenses for procedures, radiology and his re-scheduled flight. Mark accepted this offer in settlement of his complaint against his health insurance provider, and he also withdrew his separate complaint against the travel insurance provider.



## Refund of interest

In March 2019 the FSPO commenced a formal investigation into a complaint from a company that an incorrect rate of interest had been applied to a loan over a period of time between 2015 and 2017. The company believed that this had led to an overcharge on the account of approximately €9,000. The company was also unhappy with the absence of detailed statements showing how the provider had calculated the interest. The company also took the view that the provider was guilty of significant delay in addressing its grievances thereby adding to its difficulties, for more than a year.

The company sought to have the provider resolve the issue of calculations, provide an apology and make a compensatory payment to it in the sum of €20,000.

It did not prove possible to resolve this complaint by way of mediation and the complaint progressed to formal investigation.

After the FSPO issued its formal Summary of Complaint, the provider subsequently advised that while it was preparing its formal response, it wished to make a proposal with a view to resolving the complaint. Written negotiations followed between the parties through the FSPO and the matter was resolved on the basis of an arrears write-off of €15,000, a goodwill cash payment of €5,000 and the recapitalisation of the remaining arrears of €25,000 which remained on the loan balance.



# 7 | Legal Services

The FSPO was established by statute and operates in accordance with fair procedures. The FSPO is required to take into account a range of EU and national legislation, and case law, when adjudicating on matters in dispute between consumers and financial service providers and pension providers. In particular, the FSPO must operate in accordance with its governing legislation *the Financial Services and Pensions Ombudsman Act 2017*, (the Act) as amended.

One of the more complex issues the FSPO deals with relates to the time limits for bringing a complaint to the FSPO. The relevant provisions are set out at *Section 51* of the *Financial Services and Pensions Ombudsman Act 2017*, as amended by the *Markets in Financial Instruments Act 2018*.

The FSPO makes every effort to assist the parties in understanding these complex provisions as they relate to each individual complaint. Assessing whether a complaint meets the requirements of the statutory time limits remains a significant part of the work undertaken by the FSPO. These time limit assessments include, where requested, a review of complaints which previously fell outside the jurisdiction of the Financial Services Ombudsman, in order to examine whether such complaints now come within the jurisdiction of the FSPO in light of the changes in the legislation. In some instances, establishing whether or not a complaint comes within the time limits can take longer than an investigation of a complaint.

Complaints to the FSPO (including complaints previously made to the Financial Services Ombudsman) must be made within a period of 6 years.

There are alternative time limits for pension complaints and also for complaints about a “*long-term financial service*” within the meaning of the Act, details of which can be viewed on our website [www.fspo.ie/legal-references/](http://www.fspo.ie/legal-references/)

Such complaints can be made within:

- (i) 6 years from the date of the conduct giving rise to the complaint;
- (ii) 3 years from the earlier of the date on which the person making the complaint became aware, or ought reasonably to have become aware, of the conduct giving rise to the complaint;
- (iii) such longer period as the Ombudsman may allow where it appears to him or her that there are reasonable grounds for requiring a longer period and that it would be just and equitable, in all the circumstances, to so extend the period.

For that reason any complaint against a pension provider, or about a “*long-term financial service*”, can be made not only within a period of 6 years of the date of the conduct complained of, but also within a period of 3 years of a certain “*date of awareness*” as prescribed within the Act.

In addition, the Ombudsman has a statutory discretion regarding such complaints, to extend the time if there are reasonable grounds for requiring a longer period and it would be just and equitable in all of the circumstances to do so. The case studies on the following pages provide examples of where the “*date of awareness*” was examined by the Ombudsman or where he exercised his discretion to extend the time for a complaint to be made.

## Assessment of time limits in a complaint concerning mis-selling of an investment policy

David made a complaint to the Financial Services Ombudsman (FSO) in February 2013 regarding an investment policy which he believed had been mis-sold to him in November 2006 and in which he had invested €200,000. The money used for the investment arose from personal injury litigation, following a road traffic accident many years earlier, when David had sustained extensive injuries, including a significant brain injury. The FSO was unable to proceed with an investigation of this complaint at the time it was originally made to the FSO, as the conduct complained of had occurred 6 years and 3 months before the complaint was received and therefore the complaint did not meet the strict 6-year time limit set out in the legislation governing the FSO at that time.

David's representative made contact with the FSO again in August 2017, within weeks of a legislative change to the time limits. The matter was taken over by the FSPO following its establishment on 1 January 2018.

Considerable enquiries were made, including consideration of David's medical records relating to the relevant period. In the course of the time limit assessment, the definition of a "long-term financial service" was amended by Section 9 of the *Markets in Financial Instruments Act 2018* which came into effect on 29 October 2018, and therefore the eligibility of David's complaint was further examined in the light of that legislative amendment.

As the investment product was considered to be a "long-term financial service" within the meaning of the relevant legislation, as amended, the FSPO therefore considered that the alternative time limits were applicable.

The medical evidence furnished to the FSPO made it clear that due to the nature of David's acquired brain injuries, it would not be possible for the FSPO to establish the date on which he "ought to have become aware" of the conduct giving rise to the complaint. Accordingly, the Ombudsman considered whether he should exercise his discretion to extend the time limits under Section 51(2)(iii) of the Act.

The FSPO carefully examined the submissions of both parties, including all medical reports, particularly those from 2006, 8 months before David purchased the investment in question. The FSPO took the view that the medical evidence clearly established that David had been assessed as having reduced cognitive ability and the medical reports were persuasive in illustrating the extent of his cognitive abilities at that time. The Ombudsman noted that the provider believed that at the time of the investment, David did not suffer from a reduced cognitive function to the extent that he suffered a "disability" in the legal sense. The provider put forward the view that if such a disability had been suffered, a Wardship application to the Court would have been necessary.

The Ombudsman was of the opinion that the medical evidence available was pertinent in demonstrating David's circumstances, in or about the time he purchased the investment from the provider, and in September 2019, the Ombudsman determined that these critical factors constituted "reasonable grounds" for the purpose of Section 51(2)(iii) of the Act.

Having reached this conclusion, the Ombudsman then considered whether it would be just and equitable in all of the circumstances to extend the time for David to make his complaint regarding the suggested mis-selling in 2006.

*(continued)*

The Ombudsman noted the provider's argument that this matter was quite historic and that complaints should be made and disposed of within a reasonable period, and in this instance the provider had noted that the conduct complained of had occurred many years earlier and the provider had at all times disputed the complaint on its merits.

The Ombudsman noted however that the legislature had taken the view that there will be instances where it will be appropriate for the FSPO to extend the time, albeit that this will give rise to complaints coming to the FSPO for adjudication, outside of the normal period during which complaints might be expected to do so by a financial service provider. The Ombudsman came to the view that, in light of David's special and particular cognitive circumstances, it was essential to balance the rights of the provider against those of David. Noting that the complaint had originally been received a little more than 3 months outside of the previous time limit, the Ombudsman was of the opinion that the extension of time required was not unreasonable and that it would be just and equitable to allow David's complaint to be progressed by way of formal investigation.

Although the formal investigation of the complaint was due to commence, both parties indicated a willingness to engage in the FSPO's confidential, informal and voluntary dispute resolution process. Following a face-to-face mediation in October 2019, the complaint was resolved by way of confidential agreement between the parties.

### Assessment of whether a complaint of mis-selling was made within three years of the date of awareness

Ferdia made a complaint to the FSO in *March 2011* that he was mis-sold an investment in a property fund in *January 2005*. He explained that he now understood that the investment was one which was “*high risk*” and therefore, it had been unsuitable for his needs in 2005.

At the time when the complaint was received by the FSO in 2011, the Ombudsman was unable to investigate the complaint of mis-selling, because the complaint had been received 6 years and 2 months after the date of the sale of the investment, and therefore the complaint did not meet the strict 6-year time limit set out in the legislation governing the FSO at that time. During the period 2011 to 2012, the FSO undertook the investigation of part of the complaint that did fall within jurisdiction; that the financial service provider had failed to communicate with Ferdia correctly or appropriately, throughout the period of his investment.

In January 2018, Ferdia resubmitted his complaint to the FSPO, referring to the expanded time limits which had come into effect in July 2017. At that point, the *Financial Services and Pensions Ombudsman Act 2017* had been commenced, thereby creating the FSPO and carrying over the more expansive time limits that had been put in place in July 2017. Ferdia contended that at the time he made the complaint to the FSO in March 2011, this had been within 3 years of him becoming aware of the conduct giving rise to the complaint. Ferdia argued that he had only become aware in October 2010, that the investment was mis-sold, when he received a letter from the provider which stated that the value of his investment was nil. The provider disagreed, stating that it had made Ferdia aware of the failure of the investment in December 2008, when it wrote to him about the investment and explained the catastrophic effect of the financial crisis since 2007.

The FSPO reviewed the documentation available and determined that there was no evidence to show that Ferdia had become aware of the conduct complained of, at any date prior to *December 2008*.

If the provider was correct and he had first become aware that the investment was high risk and unsuitable for him in *December 2008* (when he received the particular investment update), the complaint was nevertheless made within the 3 year alternative time limit, as the complaint had been received by the FSO in March 2011.

As a result, the Ombudsman determined that Ferdia made his complaint within the time limits set out in the FSPO Act 2017, and the complaint of mis-selling in January 2005, proceeded to a formal investigation.

## Assessment of whether a complaint of poor performance of an investment was made within three years of the date of awareness

Niamh and Norbert purchased a tracker bond investment in December 2010, incorporating an investment of €60,000 in a 3-year fixed rate deposit account attracting 7% gross CAR (compound annual rate), with the remaining €140,000 placed in the 6-year tracker bond arrangement.

In December 2017 they made a complaint to X that they had been led to believe by the provider, during the sales process, that they would achieve a positive return, in line with market trends. However, they received a gross return of about 2%, which they believed was not in line with market trends. It was noted by the FSPO that there were two elements to Niamh and Norbert's dissatisfaction, being firstly what they believed to be a total lack of transparency regarding how the investment would work, and secondly the investment return achieved.

The definition of a "long-term financial service" includes a product or service which has a fixed term of 5 years and 1 month or more. As one portion of the investment product purchased by the complainants in 2010 had a fixed period of 6 years, the Ombudsman noted that the investment in question met the definition of a "long-term financial service" within the meaning of the Act.

For that reason, the Ombudsman examined whether the complaint had been made within a period of 3 years of the date when Niamh and Norbert became aware, or ought reasonably to have become aware, of the conduct which gave rise to their complaint.

The historic correspondence between the parties was examined. This included a letter to Niamh and Norbert from the provider in October 2013 advising that in relation to the tracker bond, the indicative performance, as of March 2013, stood at 0%. This triggered a complaint directly to the provider shortly afterwards. The Ombudsman also noted the contents of 2 subsequent letters to Niamh and Norbert from the provider in January and July 2014 making it clear that there was no guarantee of any positive return on the tracker portion of the bond, and that any interest on the investment would be dependent on the relevant market index on the specified final observation date, prior to maturity.

In those circumstances, the FSPO determined that Niamh and Norbert ought reasonably to have become aware of the conduct which was at the source of their complaint, at the time of receiving the relevant correspondence in 2013 and again in January and July 2014. However, the complaint was not received until December 2017, which was not within a period of 3 years of when they ought to have become aware (the date of awareness) of the conduct giving rise to their complaint.

In those circumstances, the Ombudsman determined that this complaint was not made within the time limits specified at Section 51 of the FSPO Act 2017 and could not be investigated by the FSPO.

## Complaints to the FSPO and related legal proceedings

Section 50(3) of the Act prohibits the FSPO from investigating a complaint where the issues arising are, or have been, the subject of court proceedings. The Act also provides an avenue for one of the parties involved to make an application to the Court, so that the FSPO can be permitted to proceed with the investigation of the complaint. Such a decision is entirely a matter for the Court and may involve the Court determining whether the issues raised in the litigation and in the complaint are so interlinked that it may be best for the Court to deal with all aspects of the matter. Alternatively, the Court may be willing to permit the investigation of the complaint by the FSPO, prior to the issues in the litigation then being progressed.

The FSPO has no discretion in such matters as the governing legislation makes it clear that it is for the Court to make that decision.

Where the Court is disposed to permitting the investigation of the complaint by the FSPO, the FSPO will require sight of the relevant "Section 49 Order" made by the Court.

## Appeals to the High Court challenging a legally binding decision of the FSPO

When a complaint proceeds to a formal adjudication and a decision is issued by the FSPO, the terms of that decision are legally binding upon the parties, subject only to an appeal to the High Court within 35 calendar days. In the event of an appeal to the High Court, all of the evidence put forward to the Ombudsman for the purpose of the adjudication, is examined to assess whether the Ombudsman came to the decision correctly, and whether the procedures offered to the parties were fair, in the course of that decision-making process. Should the Court take the view that the decision of the Ombudsman is not sound, any such decision can be amended as is considered appropriate by the Court, or the complaint may be sent back to the Ombudsman for a fresh consideration of the issues.

In any litigation, the FSPO in all appropriate cases, seeks recovery of its legal costs by applying to the Court for an order for costs against the appropriate parties to the litigation. During 2019, the FSPO recovered €42,238 in legal costs against a number of parties.

The number of ongoing appeals during 2019 are set out in the tables below:

	Complainant	Provider	FSPO	Total
<b>High Court Appeals</b>				
At 1 January 2019	4	-	-	4
Initiated in 2019	1	3	1	5
Settled	-	-	1	1
Withdrawn	-	1	-	1
Dismissed by the Court	1	-	-	1
At 31 December 2019	4	2	-	6

	Complainant
<b>Court of Appeal</b>	
At 1 January 2019	1
Initiated in 2019	-
At 31 December 2019	1

### Other notable developments, involving Legal Services, during 2019 included:

- › One appeal received from a provider was withdrawn prior to the FSPO incurring any legal costs.
- › One ongoing appeal by a complainant which had been commenced against the FSPO in 2017 was dismissed by the High Court. Access to this High Court judgment is available on our website at <https://www.fspo.ie/decisions/Court-Judgments/>
- › The FSPO itself initiated an application to the High Court to modify the terms of a legally binding decision. This action was required in order to address a typographical error and the application was dealt with by the High Court on consent of the relevant parties.
- › Of new appeals initiated in 2019, 3 were brought by the financial service provider and 1 was brought by a complainant.
- › An ongoing appeal which had been listed before the Court of Appeal was transferred for hearing by the Supreme Court, but on the application of the complainant appellant for an adjournment, the matter was returned to the Court of Appeal to be listed for hearing again in 2020.

On 31 December 2019 the FSPO had 6 High Court appeals on hand where no hearing dates had yet been listed, 4 from complainants and 2 from financial service providers. In addition, the FSPO was awaiting the hearing of an ongoing appeal which was originally dismissed by the High Court, and appealed to the Court of Appeal in 2013.



# 8 | Reporting on named financial service providers

In accordance with Section 25 of the *Financial Services and Pensions Ombudsman Act 2017*, the table below identifies regulated financial service providers who, in 2019, had at least three complaints against them upheld, substantially upheld, or partially upheld. Service providers are listed in order of the combined total number of complaints upheld, substantially upheld or partially upheld.

The name of the business group is provided where the financial service provider is a member of a business group.

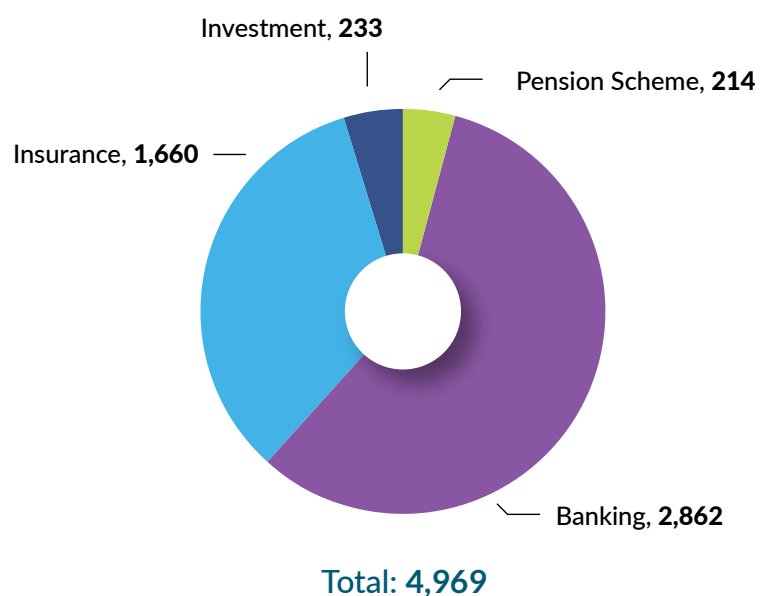
	Provider	Member of Business Group	Complaints Upheld	Complaints Substantially Upheld	Complaints Partially Upheld	Total
	Ulster Bank Ireland DAC	Ulster Bank Group	11	3	7	21
	Irish Life Assurance plc	Great West Lifeco Group	5	4	11	20
	Permanent TSB plc t/a Permanent TSB	Permanent TSB Group Holdings plc	2	3	8	13
	The Governor and Company of the Bank of Ireland	Bank of Ireland Group	2	1	8	11
	EBS DAC	AIB Group	2	3	3	8
	Allied Irish Banks plc	AIB Group	2	0	5	7
	Bank of Scotland plc	Bank of Scotland	2	1	4	7
	Bank of Ireland Mortgage Bank t/a Bank of Ireland Mortgages	Bank of Ireland Group	0	1	4	5
	Pepper Finance Corporation (Ireland) DAC, t/a Pepper Asset Servicing, Pepper Homeloans and Pepper Money	Pepper Group	2	2	1	5

	Provider	Member of Business Group	Complaints Upheld	Complaints Substantially Upheld	Complaints Partially Upheld	Total
	AA Ireland Ltd, t/a AA Insurance, AA Business Insurance and AA Select	Not applicable	2	0	2	4
	Aviva Life & Pensions Ireland DAC t/a Friends First Life (formerly Friends First Life Assurance DAC) (formerly Aviva Life & Pensions UK Limited T/A Aviva Life & Pensions Ireland)	Aviva Group	2	0	2	4
	Irish Life Health DAC	Great West Lifeco Group	0	1	3	4
	New Ireland Assurance Company plc t/a Bank of Ireland Life	Bank of Ireland Group	0	2	2	4
	Tesco Personal Finance plc t/a Tesco Bank	Tesco Ireland	0	1	3	4
	AIG Europe S.A. t/a AIG Europe S.A.	AIG inc.	2	0	1	3
	Inter Partner Assistance S.A.	AXA Partners (UK) group	2	0	1	3
	KBC Bank Ireland plc t/a KBC Bank plc, KBC Ireland plc and KBC Homeloans	KBC Group	1	0	2	3
	Utmost PanEurope DAC t/a Utmost PanEurope DAC (formerly Generali PanEurope DAC)	Utmost Group	2	0	1	3
	White Horse Insurance Ireland DAC t/a White Horse Insurance Ireland DAC	Not applicable	1	1	1	3
	Zurich Life Assurance plc	Zurich Insurance Group	0	1	2	3

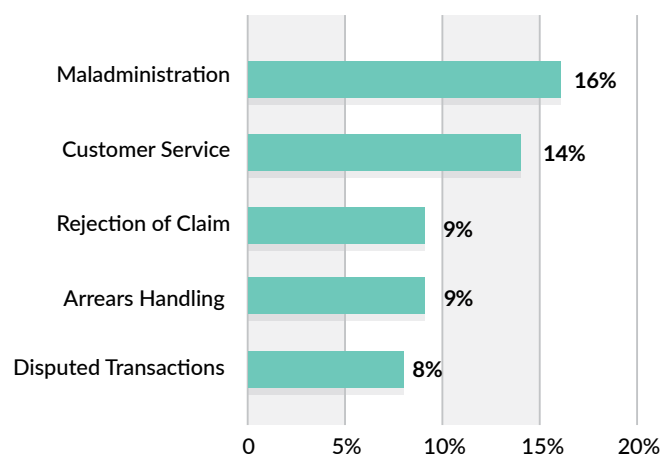
# 9 Sectoral analysis of complaints received in 2019

This section sets out details of the complaints received in 2019 in the three financial sectors; insurance, banking, and investment, along with details of complaints about pension schemes by the type of product complained about. A total of 5,275 complaints were received by the office in 2019. When ineligible complaints were deducted, 4,969 complaints were received. Complaints are considered to be ineligible where they are intended for a different Ombudsman or relate to products and services or service providers that do not fall within the remit of this office. Where possible, the complainant is redirected to the appropriate body. Of the 4,969 eligible complaints received in 2019, 58% related to banking products, 33% related to insurance, 5% related to investment products. The remaining 4% concerned complaints about pension schemes.

## Complaints by sector



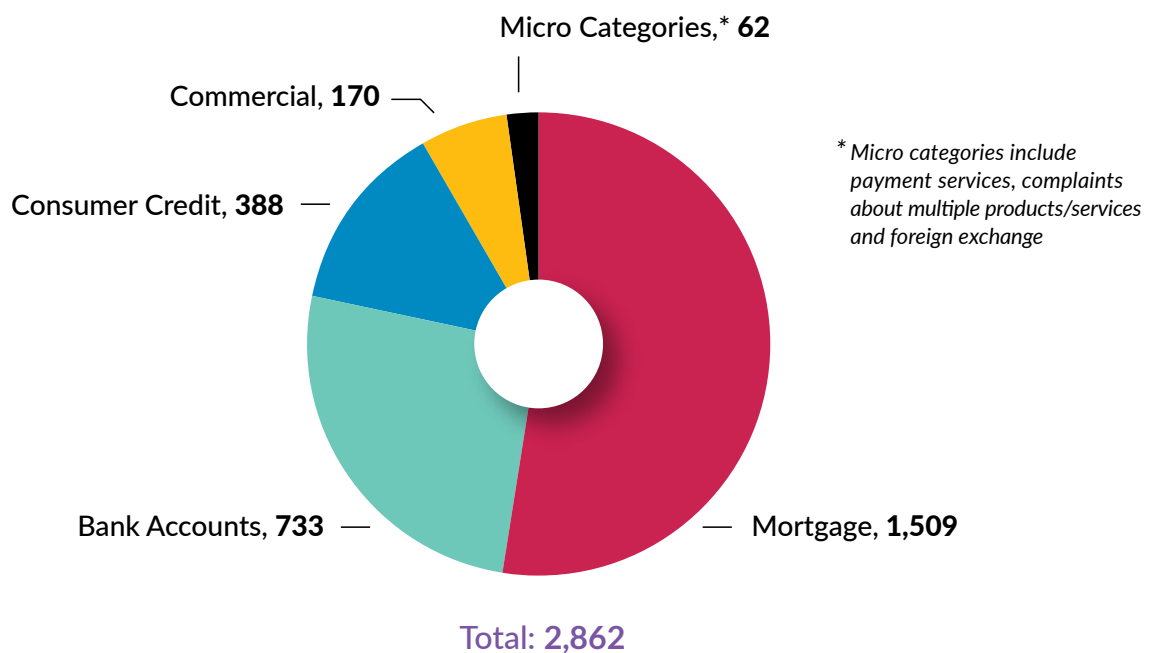
## Top 5 conducts complained of:



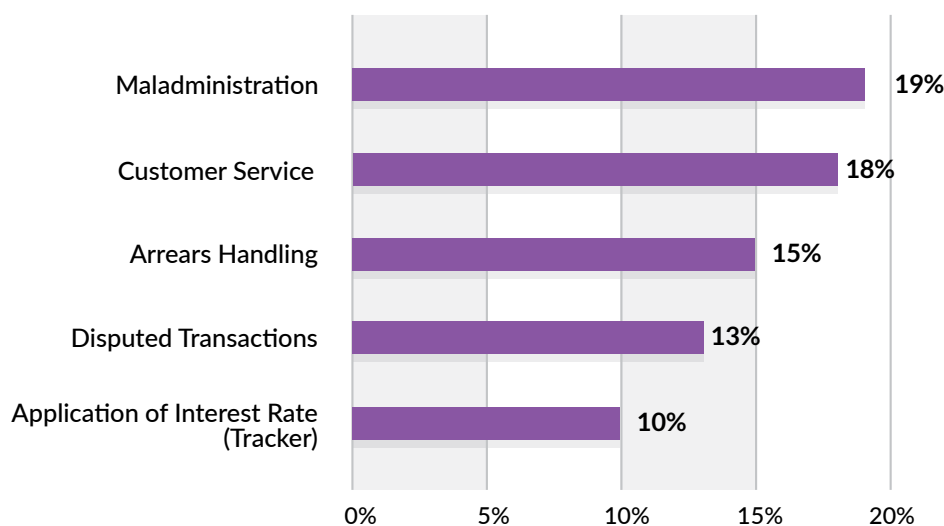
# Banking complaints received

Banking complaints represent 58% of all complaints received in 2019. Mortgages continue to be the largest product type complained of in the banking sector at 53% of banking complaints and in 2019, mortgages represented the largest product type of all sectors. Complaints regarding bank accounts are the second largest group representing 26% of all banking complaints.

## Products complained of Banking Products



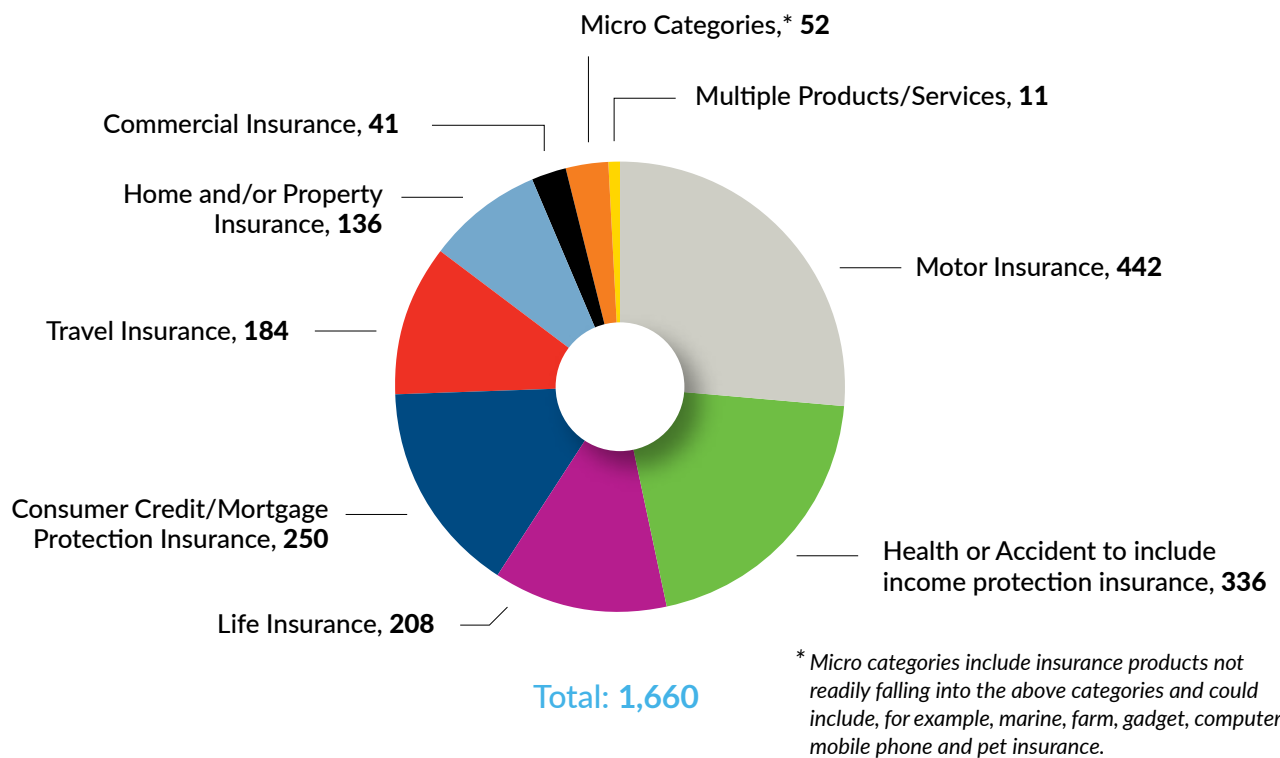
## Top 5 banking conducts complained of:



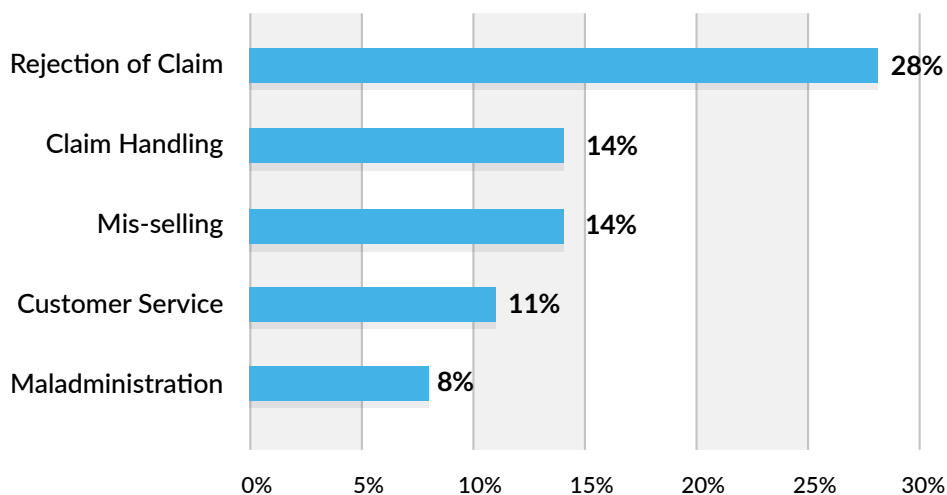
# Insurance complaints received

Complaints relating to insurance products and services represent a third of all complaints received in 2019. Motor insurance was the main product type complained about, representing 27% of insurance complaints.

## Products complained of Insurance Products



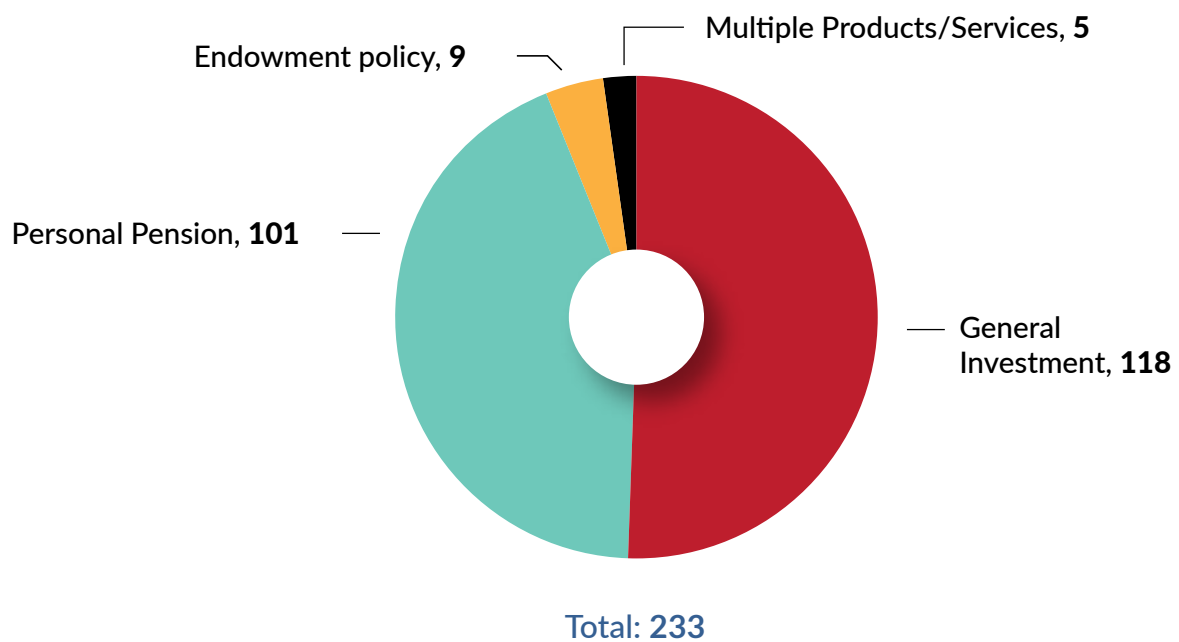
## Top 5 Insurance conducts complained of:



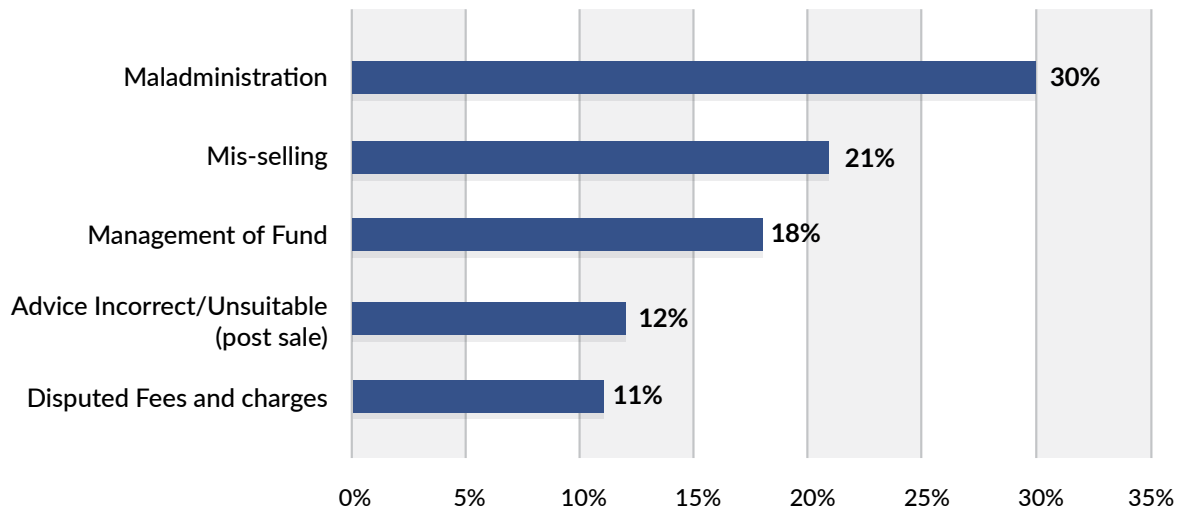
# Investment complaints received

Investment complaints represent 5% of all complaints received in 2019. General investments represented the largest portion of these complaint types, at 51%. Pension complaints in this category relate to personal pensions.

## Products complained of Investment Products



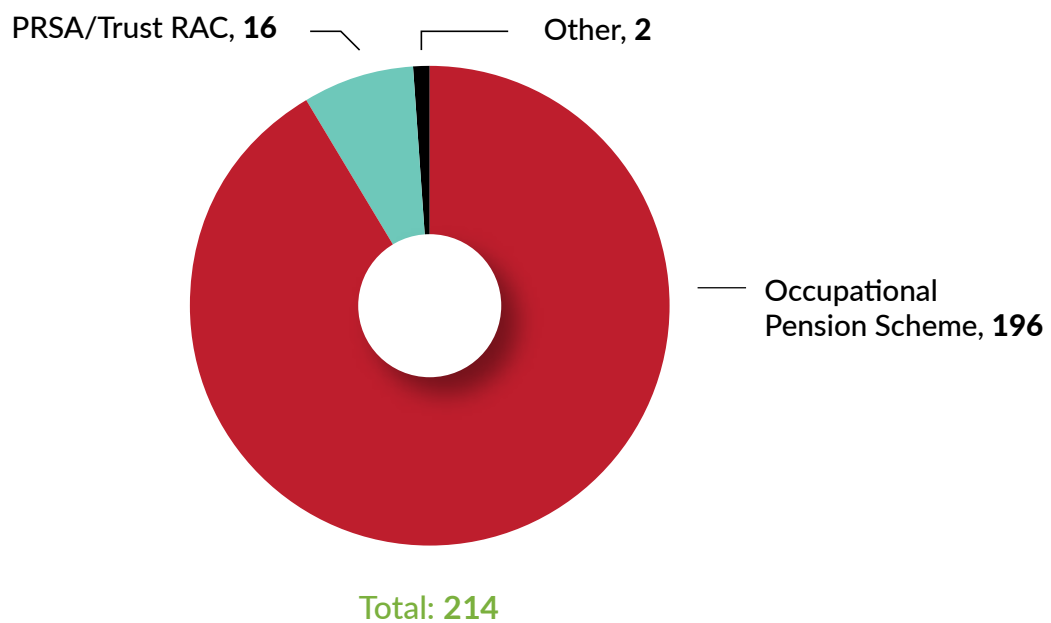
## Top 5 Investment conducts complained of:



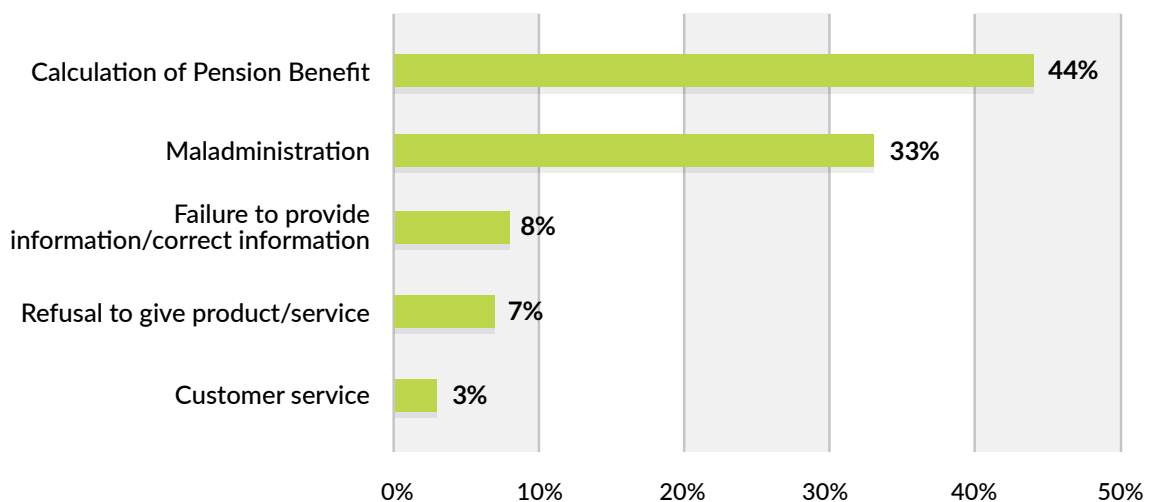
# Pension scheme complaints received

Pension scheme complaints represent 4% of all complaints received in 2019. Pension scheme complaints may be made to the FSPO by a consumer who believes they have suffered loss of pension scheme benefits because of maladministration of the scheme. The complaints relate to public and private occupational pension schemes, trust Retirement Annuity Contracts (trust RACs) and Personal Retirement Savings Accounts (PRSAs).

## Products complained of Pension Schemes



## Top 5 Pension conducts complained of:



# 3 STEPS to making a complaint to the FSPO

1

## Contact your provider

You should make your complaint with whoever provided the service or product to you, this could be your bank, insurance company, credit union, money lender etc.

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

### What information should you give them?

- ✓ Make it very clear that you are making a complaint.
- ✓ Explain your complaint.
- ✓ Suggest how they should put it right.



**BEFORE MAKING A COMPLAINT TO THE FSPO, YOU MUST GIVE YOUR PROVIDER A CHANCE TO SORT OUT THE PROBLEM.**

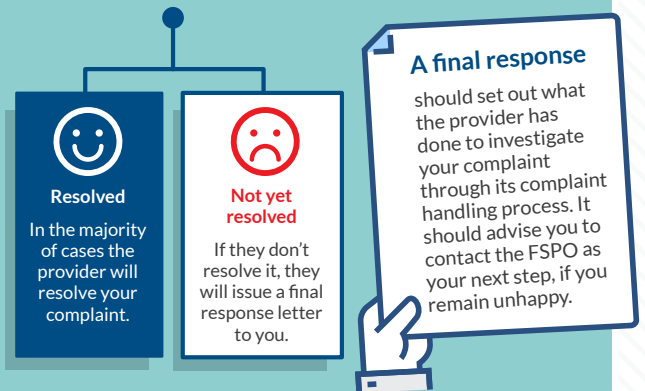
2

## Be patient and persistent

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

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

The provider should fully investigate your complaint.



3

## Contact the FSPO

If you remain unhappy after receiving your final response letter, you may contact the FSPO. To progress your complaint, we will need:

**A** A completed complaint form

&

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

If you are having difficulty getting the final response and 40 working days has passed or if your provider is not engaging with you please let us know and we will follow up on the complaint for you.











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