

Financial Services Ombudsman
Annual Report 2010



Financial Services Ombudsman Annual Report 2010

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Financial Services Ombudsman

Annual Report 2010

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 sectors.



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Chairperson's Report



I am pleased to present this, my third report as Chairperson, which reflects on an exceptionally busy and challenging year for this current Financial Services Ombudsman Council which commenced its term on 29 October 2008.

The statutory functions of Council are prescribed by the Central Bank and Financial Services Authority of Ireland Act 2004, and 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;
- 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).

Council, acting on the advice of the Minister for Finance, has overall responsibility for accounting standards. To that end the Council:

- ensured that Government policy on the pay and conditions of service of the Ombudsman, Deputy and all staff members has been monitored to ensure compliance;
- ensured Government guidelines on the payment of Council Members' fees and expenses was followed;
- provided that appropriate Corporate Governance principles were also reviewed and monitored for effectiveness in their application;
- ensured Council adherence to the Standards and Ethics in Public Office legislation and that the appropriate Statements of Interests were made by both the Council members and the relevant staff of the office of the Ombudsman.

The Council has no role regarding complaints resolution, as this is statutorily the independent function of the Financial Services Ombudsman. However, the Council cannot ignore the constant and not insignificant increase in the Bureau caseload, the complexity of the matters the Ombudsman and Bureau staff has had to contend with and the resultant increased levels of complaints on hand at year end. The causes for increasing numbers in particular areas of complaint and the potential for industry providers, by change of internal practice or procedure, to stem and reduce those levels has received considerable Council and Bureau consideration.

The Ombudsman, with the assistance of Council, has embarked on a program aimed at significantly reducing the backlog. This will be delivered through a combination of increased resources, more efficient and effective internal procedures and direct dialogue with service providers to ensure a more proactive response to complainants. This will remain a constant priority on the agenda of Council business.

The public profile of the office is held at a significantly positive and trusted level by consumers of the service. This is also the case for the providers and regulators of the sector as it plays a crucial role in providing much needed confidence in the industry. Council will input all possible effort therefore to ensure, at minimum, a continuation of that trust. Industry has a role to play here also and so all interactive opportunities for enhancement will be explored.

When considering the 2011 budget Council was conscious of the need for careful and prudent control of costs. This was balanced with the



essential provision of sufficient funds to permit appropriate flexibility to the Ombudsman and Bureau to effectively manage the increased and complex caseload and, where warranted, introduce measures to increase efficiency and engagement.

The final legislative procedure for final establishment of the Financial Services Ombudsman Bureau Superannuation Schemes remains an outstanding issue as we close the year. The delays in finalising these schemes are a matter of serious concern to Council and we will 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 significant expertise with true professionalism in what was an especially active, demanding and challenging second year. I would mention also how appreciative we are of the significant input of the Secretary to the Council, Jim Bardon.

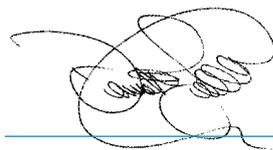
I also wish to pay tribute to the Minister for Finance and the staff of his Department, for their continued support.

Change is inevitable and progress is essential and so we complete this year by bringing the Bureau into a period of enhanced leadership and management by welcoming the new

Deputy Ombudsman Tom Comerford and Head of Legal Affairs Tom Finn to the management team and wishing them every success in their increasingly important efforts. Thanks must also extend to the Heads of Administration Diarmuid Byrne, Investigation Mary Rose McGovern and all of the staff for their individual and combined efforts.

Those efforts have ensured that the Bureau continues to deal with the increasing demand from the consumers who regard and appreciate its professional and independent adjudication of their complaints.

In closing I wish to refer to the outstanding contribution from Bill Prasifka in what was his first and particularly demanding year as Ombudsman. The Council and I look forward to supporting and working with him in our combined commitment to continuous improvement of the service for the needs of all who have cause to contact his office.



Dermott Jewell, Chairperson
Financial Services Ombudsman Council

May 2011



The Financial Services Ombudsman Council

Mr Dermott Jewell (Chairperson)

Mr Jewell (B.Sc. Mgmt. (Law)(Trinity College Dublin), CI Arb.) 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 the Investor Compensation Company Limited (ICCL) and member of the National Standards Authority for Ireland (NSAI) Certification Oversight Committee. He is Ireland's representative 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 / Small Business Consultant. He is a Director of the National Asset Management Agency (NAMA) and a Director of PMI Europe Holdings Ltd. He was a former General Manager with Bank of Ireland Group which included responsibility for business banking, credit control, international banking, finance and group insurance. He also served as Chairman of Bank of Ireland Group's Investment Committee and as a Bank Pension Fund Trustee.



Mr. Anthony Kerr

Mr. Kerr is a graduate of Trinity College Dublin and the London School of Economics and is a Statutory Lecturer in the School of Law, University College Dublin. He was called to the Irish Bar in 1989 and is the author of a number of books including The Civil Liability Acts (3rd Ed., Thomson Round Hall, 2005). He is the vice chair of the Employment Law Association of Ireland and a member of the executive committee of the International Society for Labour and Social Security Law.



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 based in the North West he is a Fellow of the Institute of Bankers in Ireland.



Mr. Paddy Lyons

Mr. Lyons holds a B.A. in Economics and M. Litt in Economic Statistics from Trinity College Dublin. He was a lecturer in Economics in Trinity College from 1965 to 1991. He was a member of the Fair Trade Commission / Restrictive Practices Commission from 1970 to 1991 and Chairman of the Competition Authority from 1991 to 1996. He was a member of the EU and OECD Committees on Competition from 1973 to 1996, a member of the National Prices Commission from 1978 to 1986 and a member of the Financial Services Ombudsman Council from 2004.

Mr. Lyons has worked as a Competition Consultant since 1996. He was an External Director on the Board of the Irish Music Rights Organisation from 1997 to 2006.



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

Mr Wynn is General Manager, Group Compliance and Operation Risk with Irish Life and Permanent Plc. 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 member of the Technical Committee of the Association of Compliance Officers in Ireland and a former Council Member of the Insurance Institute of Dublin.



Mr Jim Bardon, Secretary to the Council

Mr. Bardon worked in various positions in Bank of Ireland between 1966 and 1988 including Manager 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
- Mr Paddy Lyons
- Ms Caitriona Ní Charra
- Mr Frank Wynn
- Mr Jim Bardon is the Secretary to the Council

Council Sub-Committees

Audit Committee

Members: Mr Paddy Lyons (Chairperson), Mr Noel O'Connell, Mr Michael Connolly

Finance Committee

Members: Mr Paddy Lyons (Chairperson), Mr Frank Wynn, Mr Dermott Jewell, Ms Caitriona Ní Charra.

Remuneration & Governance Committee

Members: Mr Dermott Jewell (Chairperson), Mr Paddy Leydon, Mr Frank Wynn, Mr Tony Kerr.

Meetings

- a) Council: During 2010, the Council held 7 formal meetings. Attendance was as follows:

	<u>Meetings</u>
Mr Dermott Jewell (Chairperson)	7
Mr Michael Connolly	6
Mr Paddy Leydon	7
Mr Tony Kerr	7
Mr Paddy Lyons	7
Ms Caitriona Ní Charra	3
Mr Frank Wynn	7

- b) Council Sub-Committees:

- The Audit Committee met on 3 occasions
- The Finance Committee met on 2 occasions
- The Remuneration and Governance Committee met on 1 occasion

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 Dermot Jewell: €210.44
Ms Caitriona Ní Charra: €797.55
Mr Paddy Leydon: €2,250.20



Foreword



2010 was a very challenging year for the Financial Services Ombudsman Bureau.

The continuing financial crisis had the predictable effect on the workload of the Bureau. The Bureau received 7,230 complaints during the course of the year, a complaints total comparable to the previous year which had been at record levels.

Moreover, the types of complaints received are reflective of the financial distress that many consumers find themselves in during these challenging times. Complaints in relation to payment protection insurance and mortgage protection insurance continued to increase. In addition, during the second half of the year, there was a significant increase in complaints in relation to mortgages – a trend we expect to continue in 2011.

While noticeable trends were discernible in relation to complaints received, trends in relation to our findings are less apparent. The Bureau continues to uphold (either in full or in part) approximately 25% of complaints received. Total compensation awarded in relation to complaints for the year came to circa €2.6 million with little sign of this amount abating.

In the face of this challenging workload, the Bureau has had to simultaneously meet conflicting objectives: it must increase the number of complaints it resolves while improving the quality, consistency and transparency of its decisions. Progress was made on both fronts in 2010. Increases were recorded in the number of complaints resolved and considerable effort was put into increasing the quality of our decision making. This was achieved in spite of vacancies in senior staff throughout the year (the vacancies were filled at the end of December).



Our legal environment continues to be a challenge to the effective and efficient operation of the Bureau and consumes a significant amount of our time and resources. During the first quarter of the year, the Bureau had at one point 38 High Court and 2 Supreme Court actions pending. It is simply a fact that the Irish courts take a more active role in reviewing our work than do the domestic courts of our foreign equivalents. This makes it even more imperative that we invest in the quality of our decision making and adjust our internal processes to take account of our judicial experience.

Going forward, it is clear that in order for the Bureau to fulfil its mission of enhancing the market for financial services in the State, it is not enough for the Bureau to simply adjudicate more and more complaints. In addition, it is necessary that financial service providers themselves must do more to resolve complaints. Simply put, our complaints experience indicates that the world has changed. The public is under greater financial distress and is making more demands of the providers. The providers must respond accordingly

and move to a higher level of service if trust with the public is to be restored. Clearly, the Bureau must play its full part in assisting the providers to adjust to this paradigm shift and this will be a key objective in the coming year.

I am grateful for the support of Council during the year. Council has steadfastly supported the work of the Bureau to improve the quantity and quality of our decision making and has through the levy given the Bureau the resources to accomplish these goals. In addition, we have built up a very productive working relationship with the Central Bank and this will be to the advantage of both organisations.

Finally, I would like to pay tribute to the staff of the Bureau. Their expertise and dedication in the face of a very challenging environment is the foundation of all of our success to date. They must continually deal with very difficult technical issues and frequently find themselves in difficult circumstances having to provide an efficient and fair service to parties who face considerable financial and personal pressures. With their full assistance, I expect the Bureau to make further progress towards achieving its full statutory mandate in the year ahead.

William Prasifka
Financial Services Ombudsman

May 2011

Organisation / Staff Structure

Management

Name	Title
William Prasifka	Financial Services Ombudsman
Tom Comerford	Deputy Financial Services Ombudsman
Mary Rose McGovern	Head of Investigation
Diarmuid Byrne	Head of Administration / HR and Finance
Tom Finn	Head of Legal Services

Investigation Unit

Name	Title
Michael Brennan	Principal Investigator
Sinead Brennan	Senior Investigator
Conor Cashman	Senior Investigator
Joanne Cronin	Senior Investigator
Erin Dougan	Senior Investigator
Derek Finnegan	Senior Investigator
Sophie Hart	Senior Investigator
Darragh King	Senior Investigator
Anthony McGrath	Senior Investigator
Anthony O'Riordan	Senior Investigator
Kathleen O'Sullivan	Senior Investigator
Cairen Power	Senior Investigator

Pre-Investigation Unit

Name	Title
Meagan Gill	Principal Case Manager
Marta Piekarz	Case Manager
Kevin Fleming	Case Manager
Des Butler	Case Officer
Tomas Murray	Case Officer
Paul Heffernan	Case Officer
Paul O'Connor	Case Officer
Dale Hayes	Case Officer
Lorraine Maher	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 the Ombudsman
Joan McGuinness	Investigation Administrator

Administration Unit

Name	Title
Julianne Fitzpatrick	Reception
Mary Hamilton	Reception
Linda Kavanagh	Reception
Jim Bardon	Secretary to the Council





Part 01
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 either regulated by the Financial Regulator or are subject to the terms of the Consumer Credit Act 1995.

The Act under which the Financial Services Ombudsman was created provides that the Ombudsman must be independent in the execution of functions 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.

The role is therefore a quasi-judicial one and whether a complaint can be upheld or not is determined on the basis of evidence furnished, examined and reviewed.

Complaints Overview

The overview comprises of a summary of the work throughput of the Bureau for 2010, a comparative study of Complaints closed pre-investigation and by way of Findings issued in 2010 and 2009, Complaints received by Sector for 2010 and 2009, a comparative study of Complaints received by Provider Type for 2010 and 2009 and an analysis of complaint trends on key Products types from 2007 to 2010.

During 2010

- 7,230 new complaints were received this is a decrease of 5.1% over 2009;
- 3,587 complaints were made against the Insurance Sector, 1,119 against the Investment Sector, 2,379 against the Banking Sector and 145 against non-Financial Service Providers; please note that non-Financial Services Provider relates 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;
- 6,901 cases were concluded during 2010; this included 2,424 where after this office initially referred a complaint to the Financial Service Provider no further contact was received from the Complainant;
- 2,443 findings were issued.

A comprehensive breakdown of the Complaint type, Product type and Findings issued by Sector can be found in the Bi-Annual Review 2010 issued on the 21 April 2011

Summary of work throughput for 2010

Summary of Complaints received and complaints closed 2010

Complaints on Hand 1st Jan 2010 *	3,408
New complaints received	7,230
Complaints Closed	—
Complaints closed prior to Investigation	4,458
Complaints closed by way of Finding	2,443
Total Closed	6,901
Complaints on Hand 31 December 2010	3,737

* Please be advised that the figure of the Cases at Hand at the end of the year in December 2009 in the Annual Report 2009 of 3697 changed to a figure of 3408 for Cases at Hand at the beginning of the year January 2010 in Annual Report in 2010 due a data clean up. The data clean was undertaken in 2010 to rectify historical inconsistencies in reporting and it affected the statistical recording of Complaints for 2009.

Bar Chart 1: Complaints Received by Sector 2010 and 2009

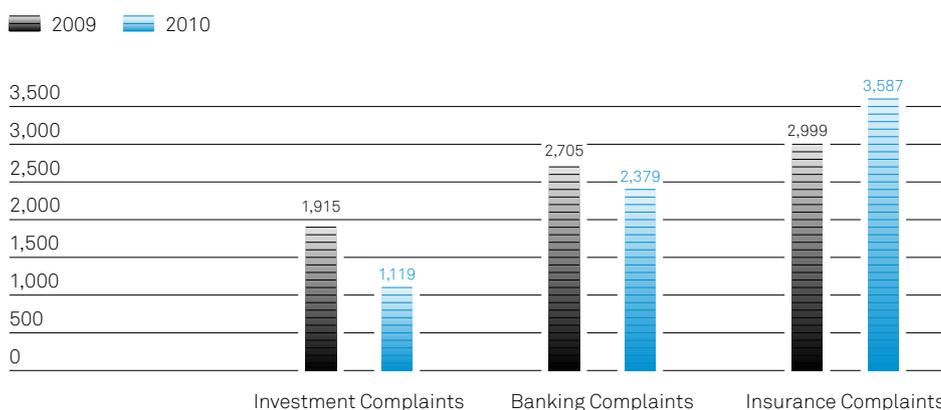


Table 1: Complaints Received by Sector 2010 and 2009

Sector	Number of Complainants received	
	2010	2009*
Investment	1,119	1,915
Banking	2,379	2,705
Insurance	3,587	2,999

* Cases recorded by Sector for 2009 differ from 2009 Annual Report as in 2010 this office began to record, in its database, an additional Sector; Investments. Any complaint in the Banking or Insurance Sector in relation to Investments in 2009 were re-classified and placed in the Investment Sector. This included 246 investment complaints from Banking and 1,669 (investment complaints 1,309, pension complaints 244 and endowment policy complaints 116) from Insurance.

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.

Bar Chart 2: Reasons Complaints closed Pre-Investigation 2010 and 2009

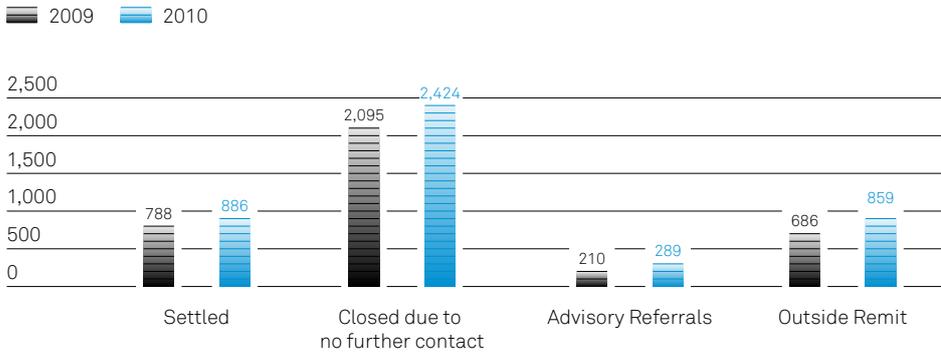


Table 2: Reason Complaints closed Prior to Investigation 2010 and 2009

Year	2010	Percentage of complaints closed pre-investigation	2009	Percentage of complaints closed pre-investigation
Settled	886	20%	788	21%
Closed due to no further contact	2,424	54%	2,095	55%
Advisory Referrals	289	7%	210	6%
Outside Remit	859	19%	686	18%
Total	4,458		3,779	

Bar Chart 3: Complaints Closed by way of Finding (Complaint Upheld, Partly upheld or Not Upheld)

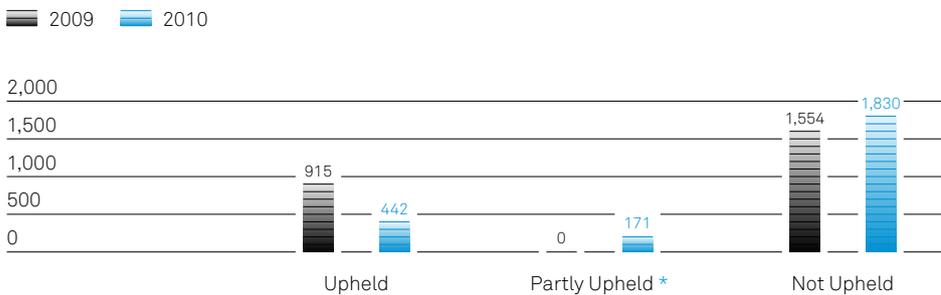


Table 3: Complaints Closed by way of Finding (Complaint Upheld, Partly Upheld or Not Upheld)

Year	2010	Percentage of findings issued	2009	Percentage of findings issued
Upheld	442	18%	915	37%
Partly Upheld	171	7%	— *	
Not Upheld	1,830	75%	1,554	63%
Total Issued	2,443		2,469	

* In the 3rd Quarter of 2010, this office began to record in its database an additional Finding Category: Partly Upheld. This is where a complaint is upheld but only in part (as provided for in the applicable legislation).

Table 4: Complaint 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; Table 4 sets out who Complaints were about in 2010 and 2009.

	2010	2009
Insurance Company Life	1,215	1,976
Insurance Company Non Life	2,254	1,762
Health Insurance Company	223	184
Intermediaries	447	630
Banks	2,584	2,461
Building Societies	127	189
Credit Unions	60	64
Stockbroker	76	56
Mortgage Intermediary	75	119
Bureau de Change	1	—
Money Lender	13	15
Finance Provider	10	9
Other	—	131
Non Applicable	145	76
Total	7,230	7,619

Complaint Trends on key Products types from 2007 to 2010

The bad weather experienced in 2009 and 2010 is represented in the rise of complaints regarding home insurance. Complaints about Household Building and Content Insurance made up 21% of Non life Insurance Complaints received in 2010.

Line Graph 4: Household Building and Household Contents Complaints 2007-2010

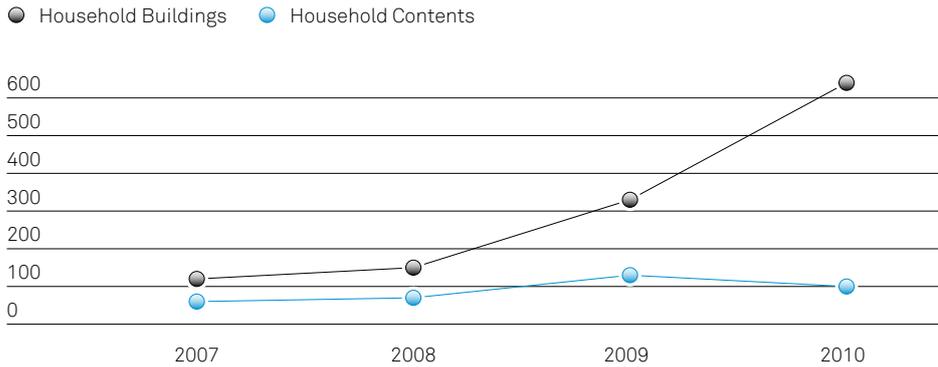
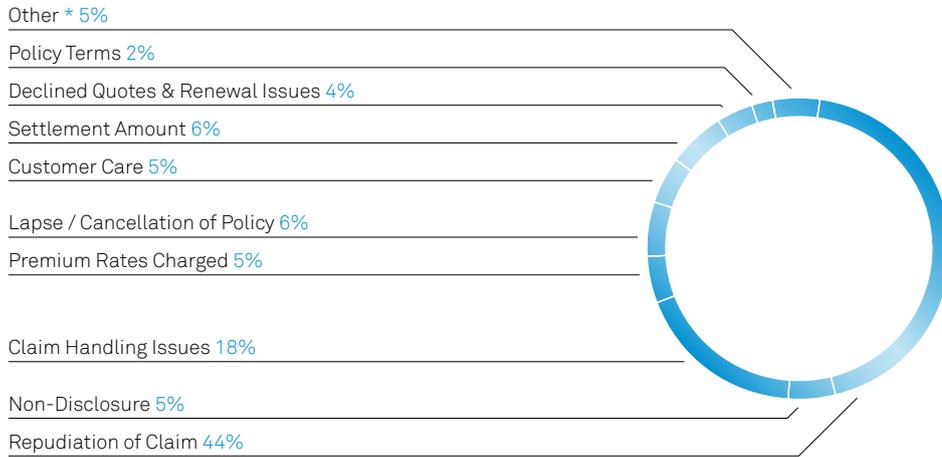


Table 4: Household Building and Household Contents Complaints 2007-2010

Year	Household Buildings	Household Contents
	Number of Complaints received	
2007	126	72
2008	156	85
2009	325	115
2010	639	98
Total	1,246	370



Pie Chart 5: Overall % Complaint types for Household Buildings & Household Contents Insurance for the Period 2007-2010



* Other refers to complaints types where less than 10 complaints were received; this includes complaints about issues with direct debit on household policies, complaints about third party insurers, general advice queries etc.

Payment Protection and Mortgage Protection Insurance Complaints 2007-2010

The economic downturn has necessitated consumers to submit claims under their protection policies for their loans on motor vehicles, personal loans and mortgages. As evidenced in graph 6; there has been a corresponding rise in complaints concerning both payment protection and mortgage protection. These complaints have increased by 18% in 2010.

Line Graph 6: Payment Protection and Mortgage Protection Insurance Complaints 2007-2010

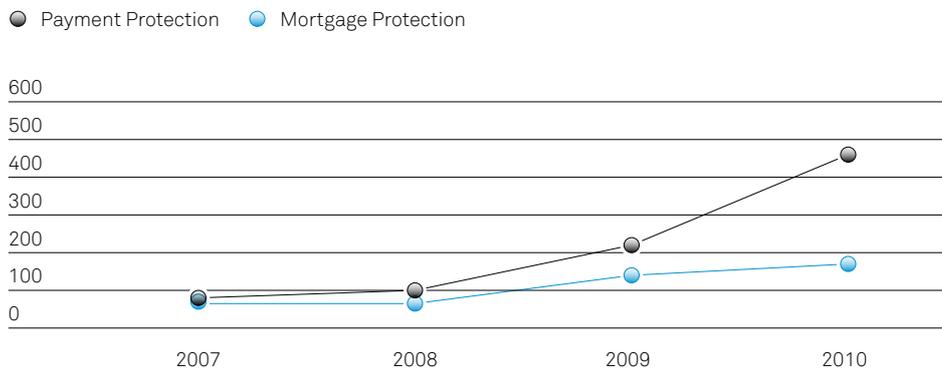
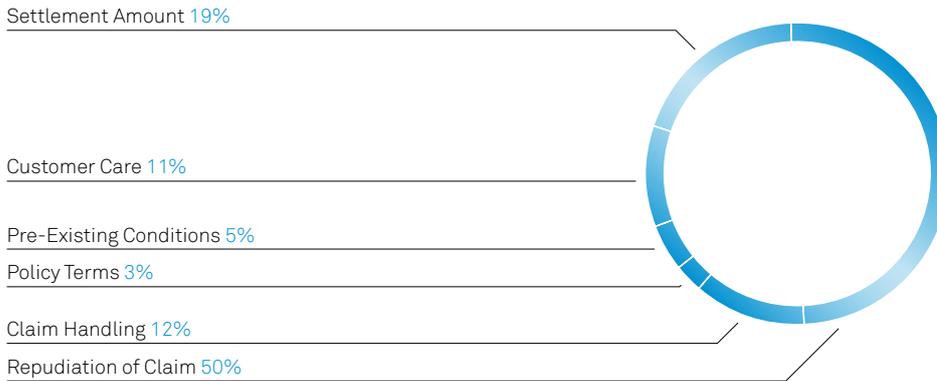


Table 6: Payment Protection and Mortgage Protection Complaints 2007-2010

Year	Payment Protection	Mortgage Protection
	Number of Complaints received	
2007	93	90
2008	100	79
2009	216	135
2010	460	183
Total	869	487

Pie Chart 7: Overall % Complaint Types Payment Protection and Mortgage Insurance Complaints for the Period 2007-2010



Line Graph 8: Mortgage and Lending Complaints for the period 2007-2010

Mortgage and Lending complaints have declined slightly in 2010 however they remain a source of concern for consumers. The majority of complaints received relate to Repayment Terms imposed by the Provider which amount to 27% of all Mortgage and Lending complaints received in the period. Complaints regarding the interest rates applied and type of interest rate applied to loans/mortgages amount to 26%. Complaints regarding the interest rate applied focus mainly on Tracker Mortgages.

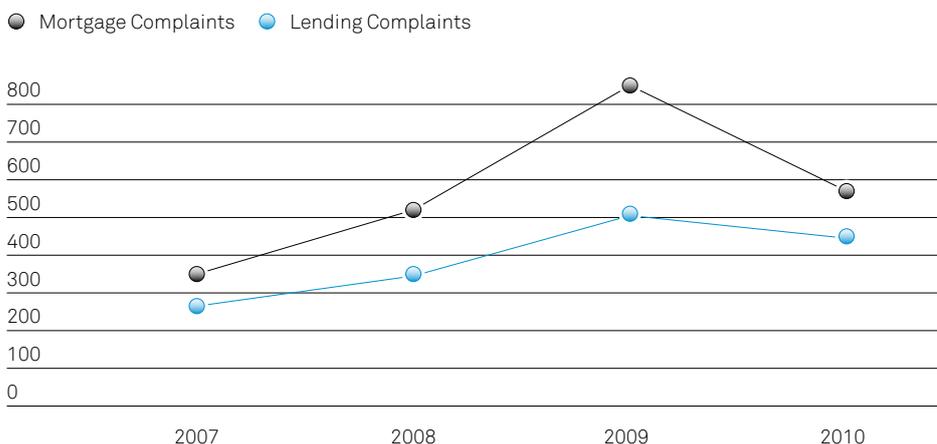
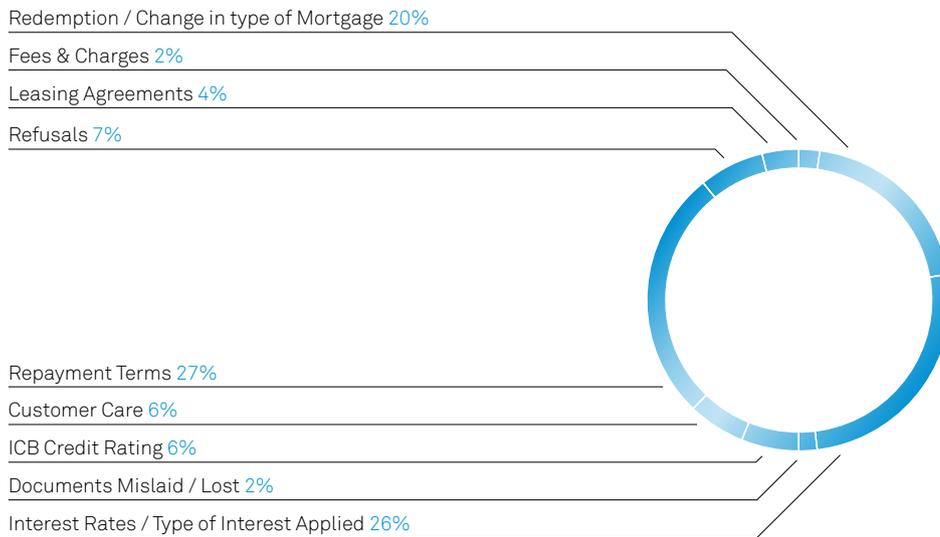


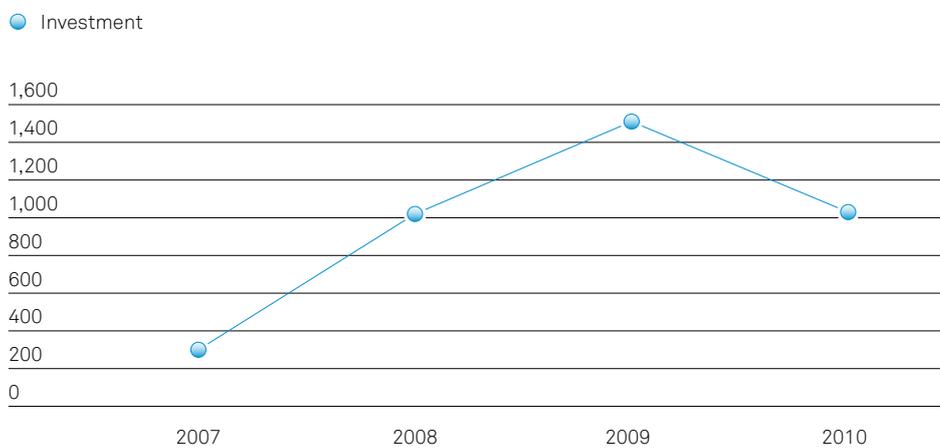
Table 8: Mortgage and Lending Complaints 2007-2010

Year	Mortgage	Lending
	Number of Complaints received	
2007	348	272
2008	517	358
2009	850	507
2010	595	457
Total	2,310	1,594

Pie Chart 9: Overall % Complaint Types Mortgages and Lending Complaints for the Period 2007-2010



Line Graph 10: Investment Complaints for the Period 2007-2010

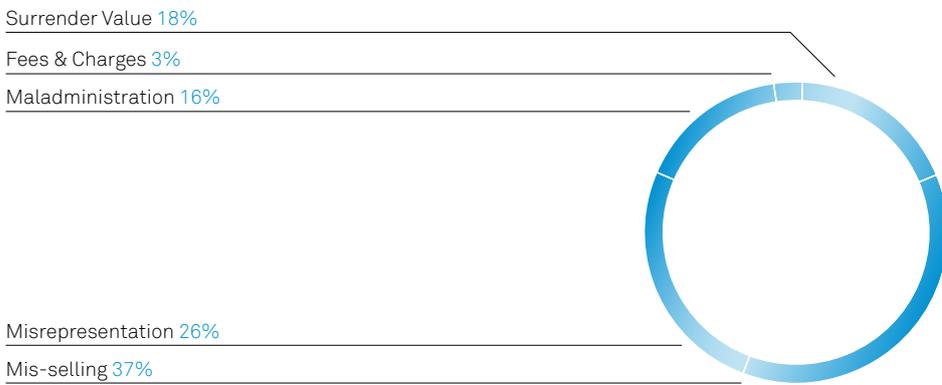


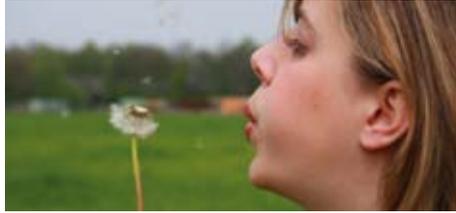
The current economic climate has affected many consumers across the range of complaints received, however it is most pointedly seen in the complaints regarding investments products. The main area of complaint with regards to investments is the alleged mis-selling of these policies. This complaint type accounted for over 37% of investment complaints for the period 2007-2010. The majority of complaints relate to the consumers' contention that they were sold unsuitable products.

Table 10: Investment

Year	Number of Complaints received
2007	346
2008	1,034
2009	1,555
2010	1,119
Total	4,054

Pie Chart 11: Overall % Complaint Types Investment for the period 2007-2010





Part 02
Legal Setting

The Financial Services Ombudsman possesses a unique legal jurisdiction which is acknowledged and frequently commented upon by the Courts. 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, practice and 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 can or will necessarily be investigated.

An in-house Head of Legal Services was appointed in December 2010 to advise upon and manage legal affairs on behalf of the Bureau.

High Court Appeals – Findings of the Ombudsman are subject to appeal and/or judicial review to the High Court. In the course of 2010 a number of appeals were decided upon by the High Court with a number of *ex tempore* and written Judgments delivered.

As of 31st December 2010, there were 32 High Court appeals and 1 High Court Judicial Review pending, i.e. Court proceedings were in being and either were awaiting hearing or had been

heard and were awaiting Judgment. During 2010, 2 Supreme Court appeals were dealt with; Judgment was delivered in one (Davy Case below), and one was withdrawn.

Appeals are brought by both Complainants and Financial Service Providers depending on the issues arising from the Finding under appeal. The majority of 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, there is a recurring theme running throughout Judgments of the Court's continual recognition of the Ombudsman's unique statutory function.

J&E Davy t/a Davy Stockbrokers –v- FSO, Ireland & the Attorney General and Enfield Credit Union – Supreme Court Judgment May 2010 – This Judgment is of particular importance to the Bureau and worthy of individual note. The Supreme Court delivered its Judgment on 12 May 2010 on the appeal and cross-appeal brought by the Ombudsman and Davy respectively, against the July 2008 High Court Judgment of Mr. Justice Charleton. The High Court had granted a judicial review of the

then Ombudsman's Finding, quashing the decision and remitting the matter back for re-investigation and adjudication. As set out in the 2009 Annual Report, a re-investigation and adjudication did not ultimately arise as Enfield Credit Union withdrew its complaint during August 2008.

In its Judgment the Supreme Court upheld some of the findings of the High Court and overturned others. Significantly, there is much in the Judgment which supports the approach of the Bureau and confirms the Bureau's view of the unique jurisdiction of the Ombudsman. The Judgment confirms the informality of the Bureau's procedures, the guiding principle of fairness and the lack of necessity to mimic court procedures. The Judgment brought judicial clarity to a number of important matters affecting the Bureau and the handling of complaints. The procedures of the Bureau had already been revised in 2008 following the High Court decision and no further revisions were required as a result of the Supreme Court Judgment. These revised procedures are in line with the Supreme Court decision and continue to be employed.

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.



Part 03
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 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 the pensions' area. Quite apart from the Memorandum, the three offices have enjoyed, and continue to enjoy, close co-operation. Meetings between the three parties are held regularly and when deemed necessary.

Currently the Memorandum of Understanding is being reviewed by all parties.

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.

Public Information Role

Presentations

- Age Action Ireland Seminar
- Credit Union Presentations
- FIN-NET
- Insurance Institutes – Nationwide
- Institute of Bankers
- Irish Brokers Association
- Life Insurance Association Seminars – Nationwide
- National Financial Abuse of Older Persons Working Group
- National Centre for the Protection of Older People
- Over 50s Trade Show, Dublin
- Professional Insurance Brokers Association

Meetings / Conferences

- Annual Compliance in Finance Conference
- British and Irish Ombudsman Association Autumn Seminar
- Elder Abuse Seminar, UCD
- European Information Exchange Group
- FIN-NET
- IBEC, Minimising Risk in Today's Business Environment
- Irish Brokers Association
- Irish Banking Federation
- Individual Financial Service Providers
- Individual Consumers
- Public Service Excellence Awards
- Report Launch, The Neglect of Older People in Ireland

Other public information

- Media Interviews
- Articles in Consumer and Financial Service Providers Magazines
- Article / Interview in Dublin Solicitors Bar Association 'Parchment' Newsletter
- Website Updates
- Bi-Annual Reviews

Visits to the Office

- Czech Vice Arbiter
- Credit Review Office
- Mortgage Arrears and Personal Debt Group



Part 04
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 including the requirement of the Code of Practice for Governance of State Bodies and Risk Management Guidelines for Government Departments and Offices.

In 2010 in conjunction with the IPA and all the staff, the Bureau undertook a Risk Management review and the establishment of a Risk Register. The Categories of Risk were identified as follows:

- Operational.
- Reputation.
- Personnel.
- Inter-Agency.
- Information and Communications.

The Risk Register sets out how the Bureau will ensure that the culture, process and structures are directed towards the effective management of potential risks and opportunities. Risk Management arrangements are aligned with the strategy statement, strategic goals and objectives.

Environmental Policy Statement

As part of the Financial Services Ombudsman's Bureau's requirements under SI No. 542/2009 – European Communities (Energy End Use Efficiency and Energy Services) Regulations 2009 and its commitments to reducing its energy requirements 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, the Bureau is actively seeking to reduce the energy use of our office.

Energy consumption by the Bureau, as a whole, can be primarily attributed to the running of the office on the third floor of the five storey Lincoln House building.

In 2010, 148,436KWh of energy was consumed consisting of:

- 88,676 KWh of Electricity.
- 59,760 KWh of Fossil Fuels (Gas Heating).

As part of our efforts to reduce our energy use the Bureau undertook a number of initiatives to help improve our energy efficiency in 2010 which included:

- The mandatory shutdown by staff of all computers, bar the main server, at night time which considerably reduced the energy consumption in this area.
- The expanded use of digital correspondence (e.g. email) over

traditional postage reducing printer/paper/postage energy use.

- Support for the bike purchase scheme and the purchase of annual commuter tickets, both of which have been availed of by a number of members of staff.

In 2011, the Bureau plans to further expand on its obligations in relation to reducing its energy consumption. This will include:

- The increased use of energy efficient lighting in the office where possible together with the installation of motion activated light sensors at specific locations around the office which will help reduce energy consumption in this area.
- The holding of a staff awareness campaign which will include a day lecture on energy efficiency in the office with the hopes of educating staff on helping reduce the office's overall energy consumption.
- The nightly shutdown of peripheral office equipment in addition to the computers, which includes photocopiers, scanners, postage franking machine etc.

- The continued expansion of the use of digital correspondence (e.g. email).
- As tenants to a third party the Bureau is restricted from making any major structural changes to the building however, in consultation with the landlord, the Bureau will be actively pursuing the implementation of improved insulation in the building.

In line with our efforts to reduce our energy consumption the Bureau also hopes to improve the office's overall environmental impact. Currently there is a comprehensive paper shredding/recycling facility in the office that is required for the sensitive nature of the correspondence that we handle and also a printer cartridge recycling facility. Refuse which is collected in the office is also divided and recycled offsite at a recycling facility. It is envisaged that the recycling facilities available in the office will be expanded upon in the coming year, which will include the provision of a food waste recycling facility.



Performance Management and Development Systems (PMDS)

The Office introduced PMDS in 2007 which was continued and further developed during 2008, 2009 and 2010. A review of PMDS commenced in 2010, for roll out during 2011.

Staff Training

The Office acknowledges that staff members are a key resource and works with staff members to provide training for further development of knowledge and skills. During 2010 the Office assisted staff in taking advantage of further (legal and financial services) education opportunities.

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:

- Freedom of Information Acts 1997 and 2003.
- The Freedom of Information Acts apply to the administration aspects of the Office.
- Ethics in Public Office Acts 1995 and 2001.

- The Office complies with the provisions of the Acts and to the Standards in Public Office Commission's Guidelines for Office Holders.
- Official Languages Act 2003.

Standard letters and documents are translated into Irish and the website has an Irish section also.

Data Protection Acts 1998 and 2003

The Office adheres to the provisions of the Data Protection Acts 1998 and 2003. Due to the sensitive nature of the information the Office receives it is necessary that access to data is available only to those who are involved in the investigation of complaints.

Prompt Payments of Accounts Act 1997

The Office complies with the provision of the Prompt Payments of Accounts Act 1997.





Part 05
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 2010 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 reporting framework that has been applied in their preparation is applicable law and Generally Accepted Accounting Practice in Ireland.

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 Financial Services Ombudsman's Bureau circumstances, 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 financial and non-financial information in the 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 2010 and of its income and expenditure for the year then ended.

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 8 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 moneys have 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 Financial Services Ombudsman's Bureau Annual Report for the year for which the financial statements are prepared is not consistent with the 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.

Andrew Harkness

For and on behalf of the
Comptroller and Auditor General

6 May 2011

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

28th April 2011

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 has also put in place a set of Financial Procedures setting out the financial instructions, notes of procedures and delegation practices. The Audit Committee reports to the Ombudsman and Council. The Committee met on three

occasions in 2010. The Ombudsman monitors and reviews the efficiency of the system of its internal procedure.

- 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 2010.

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 2011 and I will implement any necessary improvements to correct any deficiencies it may bring to light.



William Prasifka
Financial Services Ombudsman

28th April 2011

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, 33.33% 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 pension lump sums are charged as expenditure. 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 2010

	Notes	2010 (€)	2009 (€)
Income Receivable	2	5,325,628	5,922,820
Transfer (to)/from Capital Account	3	12,283	68,365
		5,337,911	5,991,185
Administration Costs	4	(4,413,985)	(5,131,945)
Surplus/(Deficit) for the year		923,926	859,240
Balance at 1st January		1,594,066	734,826
Balance at 31st December		2,517,992	1,594,066



William Prasifka
Financial Services Ombudsman

28th April 2011

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 14 form part of these Financial Statements.

Balance Sheet at 31 December 2010

	Notes	2010 (€)	2009 (€)
Fixed assets			
Tangible assets	5	458,875	471,158
		458,875	471,158
Current assets			
Bank and Cash		421,200	359,208
Bank Deposit Accounts		5,127,352	4,207,715
Debtors and Prepayments	6	106,361	55,558
		5,654,913	4,622,481
Creditors (amounts falling due within one year)			
Creditors and accruals	7	3,136,921	3,028,415
		3,136,921	3,028,415
Net current assets		2,517,992	1,594,066
Creditors (amounts falling due after one year)		—	—
Net assets		2,976,867	2,065,224
Represented by			
Capital Account	3	458,875	471,158
Accumulated surplus at 31 December		2,517,992	1,594,066
		2,976,867	2,065,224

The Statement of Accounting Policies and notes 1 to 14 form an integral part of these Financial Statements.



William Prasifka
Financial Services Ombudsman

28th April 2011

Cashflow Statement for the year ended 31 December 2010

	2010 (€)	2009 (€)
Reconciliation of deficit to net cash inflow from operating activities		
Surplus for the year	923,926	859,240
Transfer to capital account	(12,283)	(68,365)
Depreciation charge	100,274	123,510
Interest (received)	(67,348)	(31,299)
(Increase)/decrease in debtors	(50,803)	48,214
Increase/(decrease) in creditors	108,506	69,221
Net Cash Inflow from Operating Activities	1,002,272	1,000,521
Cash Flow Statement		
Net cash flow from operating activities	1,002,272	1,000,521
Return on Investments and Servicing of Finance		
Interest received	67,348	31,299
Interest paid	—	—
Capital expenditure	(87,991)	(55,145)
Financing	—	—
Increase in cash	981,629	976,675
Reconciliation of Net Cash Flows to Movement in Net Funds		
Increase in cash in the year	981,629	976,675
Changes in net funds resulting from cash flow		
Net funds at beginning of the year	4,566,923	3,590,248
Net funds at the end of the year	5,548,552	4,566,923

The Statement of Accounting Policies and notes 1 to 14 form an integral part of these Financial Statements.



William Prasifka

Financial Services Ombudsman

28th April 2011

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 13).

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, 2009 set the actual rate for the year ending 31 December 2010.

Other Income

This amount represents the total income generated on the disposal of fixed assets.

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:

	2010 (€)	2009 (€)
Levy	5,257,430	5,891,521
Other Income	850	—
Bank Interest	67,348	31,299
Total	5,325,628	5,922,820

3 Capital Account

	2010 (€)	2009 (€)
Opening balance	471,158	539,523
Funds allocated to acquire fixed assets	87,991	55,145
Amortisation in line with depreciation	(100,274)	(123,510)
Transfer from/to Income and Expenditure account	(12,283)	(68,365)
Balance at 31 December 2010	458,875	471,158

4 Administration Costs

	2010 (€)	2009 (€)
Salaries and Staff Costs	1,566,003	2,547,055
Staff Pension Costs	322,297	437,125
Staff Training	33,649	21,346
Bad Debt Write Off	2,651	45,952
Council Remuneration	97,200	100,800
Council Expenses	7,638	8,994
Council Legal Fees	—	122,298
Rent and Rates	190,819	190,902
Maintenance	41,533	33,348
Conference & Travel	16,249	57,395
Contractors	42,584	48,508
External Case Handlers	682,198	544,075
Consultancy Fees	—	14,463
Information Activities	78,920	86,368
Cleaning	21,708	26,392
Legal Fees	886,207	438,552
Insurance	31,835	33,241
Stationery Costs	59,123	60,007
Other Administration Costs	208,728	161,991
External Audit	8,119	13,750
Internal Audit	16,250	15,873
Depreciation	100,274	123,510
Total	4,413,985	5,131,945

Staff Numbers

The number of persons employed (permanent) as at 31 December 2010 was 32 (27 in 2009).

Salaries and Staff Costs	2010 (€)	2009 (€)
Ombudsman Salary		
Outgoing Ombudsman (retired 2nd January)	—	239,105
Interim Ombudsman (January – March)	19,381	—
Incoming Ombudsman (March)	135,547	—
	154,928	239,105
Ombudsman Pension Contributions		
Outgoing Ombudsman (retired 2nd January)	—	67,243
Interim Ombudsman (January – March)	—	—
Incoming Ombudsman (March)	33,887	—
	33,887	67,243
Deputy Ombudsman Salary		
Outgoing Deputy Ombudsman (December 2009)	—	205,513
Incoming Deputy Ombudsman (December 2010)	2,249	—
	2,249	205,513
Deputy Ombudsman Pension Contributions		
Outgoing Deputy Ombudsman (December 2009)	—	51,378
Incoming Deputy Ombudsman (December 2010)	562	—
	562	51,378

Pension Related Deductions

€91,627 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 2010	262,227	185,249	485,000	932,476
Additions during period	37,546	22,852	27,593	87,991
Disposals during period	(29,815)	—	—	(29,815)
At 31 December 2010	269,958	208,101	512,593	990,652
Accumulated Depreciation				
At 1 January 2010	210,748	153,570	97,000	461,318
Charge for period	49,269	25,375	25,630	100,274
Disposals	(29,815)	—	—	(29,815)
At 31 December 2010	230,202	178,945	122,630	531,777
Net Book Value				
At 31 December 2010	39,756	29,156	389,963	458,875
At 31 December 2009	51,479	31,679	388,000	471,158

6 Prepayments and Accrued Income

	2010 (€)	2009 (€)
Debtors	5,489	5,374
Prepayments	100,872	50,184
	106,361	55,558

7 Creditors (Amounts falling due within one year)

	2010 (€)	2009 (€)
Trade creditors and accruals	625,499	488,002
Pension Contributions	2,511,422	2,540,413
	3,136,921	3,028,415

8 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 proposes to introduce a legislative amendment at the next appropriate opportunity. 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 are 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 2010 is €4,800,000 (€4,900,000:2009). 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 2010. 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-10	31-Dec-09
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 payment to the Department of Finance and are analysed as follows.

	2010 (€)	2009 (€)
Opening Balance	2,540,413	2,016,741
Employee Contributions	98,688	151,864
Employer Contributions	304,206	421,925
Bank Interest (Pension Account)	46,230	46,993
Less: Pensions Paid	(478,115)	(97,110)
	2,511,422	2,540,413

9 Financial Commitments

There are no capital commitments for capital expenditure at 31 December 2010.

10 Contingent Liabilities / Legal Actions

A number of the Ombudsman's findings were appealed or are the subject of a Judicial Review to the High Court and the Ombudsman is defending these actions. The Financial Services Ombudsman's Bureau is awaiting a hearing date on these actions.

11 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.

12 Operating Leases

Accommodation

The Bureau operate from a single premises – 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 €180,000 (2009:€180,000)

Car Spaces

The Bureau has one commitment of an operating lease on car spaces. It is a 2 year 6 month lease which commenced in September 2008. The annual cost of the lease is €10,819 (2009:€10,902)

13 Council Remuneration

		2010 (€)	2009 (€)
Dermott Jewell	Chairperson	21,600	22,400
Anthony Kerr	Council Member	12,600	13,067
Caitríona Ní Charra	Council Member	12,600	13,067
Frank Wynn	Council Member	12,600	13,067
Michael Connolly	Council Member	12,600	13,067
Paddy Leydon	Council Member	12,600	13,067
Paddy Lyons	Council Member	12,600	13,067
		97,200	100,800

Travel and meeting expenses paid to the Chairperson and Council Members are broken down as follows:

	2010 (€)	2009 (€)
Travel Expenses	3,844	6,379
Meeting Expenses	3,794	2,615
	7,638	8,994

14 Approval of Financial Statements

The Financial Statements were approved by the Financial Services Ombudsman on 28th April 2011.



Part 06
Case Studies



The FSO is not bound by precedent; each case is considered on its individual merits. The legislation which founded the FSO allows matters to be considered on a fair and equitable basis. The following case studies are examples of individual cases examined by the FSO.

Complaints Substantiated

1 Accident Cover for Community Employment Scheme employee

A Complainant was a member of a soccer team. He was in receipt of Disability Benefit from March 2007, following a workplace accident, but had been deemed fit enough to play soccer with his team.

The Complainant sustained an injury while playing for the team in October 2009. At the time, the Complainant was still in receipt of Disability Benefit from the Department of Social Protection, but he was also employed on a Community Employment Scheme for 20 hours a week, as was his entitlement. This Scheme was a 12 month contract. The Company would not recognise the Complainant's participation on the Scheme as employment, and did not consider him to be unemployed, due to him claiming Disability Benefit as opposed to Jobseekers Benefit.

In response to the complaint, the Company stated that the Complainant was not in full-time gainful employment as prescribed in the definition of temporary disability under the policy. The Company also stated that the policy defined an unemployed person as someone who is not in gainful employment and is claiming unemployment assistance or benefit from the Department of Social Protection.

The Deputy Ombudsman, having investigated the matter, found that the Company did not apply the full definition for temporary disability in regard to the Complainant. The definition for temporary disability also included that the policy would only cover loss of earning, less any Social Welfare/ Revenue contributions that would result in the claimant being in a equal, not better, situation, so that the accident would not have affected his earnings.

The Deputy Ombudsman noted that there was evidence to show that the Complainant suffered a loss, i.e. his weekly wage under the Scheme, and that he also paid a PRSI contribution. The Complainant was let go from the Scheme because the accident resulted in him breaching a sick leave condition with the Scheme, and he was issued with a P45 on the termination of his Contract.

The Deputy Ombudsman found that the Complainant had a clearly defined loss, and that his participation on the Scheme was in line with other characteristics of employment and that the Company should pay benefit to the Complainant in line with other policy conditions.

The Complainant was awarded €1,813.60.

2 Serious Illness Cover – Disclosure of Information

The complaint in this case related to a claim under a Serious Illness Policy. The Ombudsman had to make a Finding on whether a full disclosure was made of a pre-existing medical condition when the policy was incepted. In the Ombudsman's assessment of the case particular regard was had to (i) the Complainant's knowledge of his condition (ii) his account of his meeting with the Company Agent (iii) the Agent's account of the meeting and (iv) the documentary evidence.

It was the Complainant's case that he did disclose to the Agent that he previously had a tumour, but same was not malignant and it was the Agent who completed the Application Form and did not include this information. The Agent merely stated in his account of the sale that: "*There was never any mention of malignant growth*".

With regard to the Complainant's knowledge of his medical condition it was noted that the Complainant had made an insurance claim in 2002 with another Insurance company. That claim was declined on the basis that his medical condition did not meet the policy definition of cancer. The Complainant's Consultant Surgeon confirmed that position as follows: "*The Complainant had superficial bladder tumor which had not reached the stage of invasive bladder cancer*". From the evidence it was reasonable to assume that the Complainant's knowledge of his medical condition was that he had a bladder tumor and nothing more. The Agent's account did not contradict this, but merely confirmed that there was never mention of a malignant growth.

The Ombudsman also had some concerns about the completion of the Application Form. The evidence pointed to the Application Form having been altered after the Complainant had signed it. Any alteration to an Application Form should be initialled by the Proposer showing agreement to same. The Ombudsman found that this error or omission in the completion of the Application Form was the responsibility of the Company.

On the basis of all the evidence submitted, the Ombudsman found that a disclosure of the 2002 medical condition was made by the Complainant. Therefore, a legally binding contract was created in 2005 and the Benefit Claim made under same was incorrectly repudiated by the Company. Therefore, the Ombudsman directed the Company to (i) assess the claim and pay the benefits to the Complainant and (ii) pay the Complainant a compensatory payment of €1,500.

3 Personal Accident / Business Travel Insurance Policy

The complaint in this case related to a claim under a Personal Accident / Business Travel Insurance Policy.

The Policyholder (a commercial company with business dealings abroad) had the policy in place for a number of years. The Policyholder's foreign based employee was covered under the policy. The employee died abroad in 2007. The Insurance Company paid for the repatriation of his body to his home country. The Insurance Company refused to pay the Death Benefit under the policy on the ground that it believed the employee's death was not by accidental means. The Policyholder relied on a letter from the Investigating Judge in support of its case. The letter stated that the deceased was murdered and that there was an advancing investigation in relation to his death. In his report the Insurance Company's Claims Investigator had stated that he received the same information from the Judge in his meeting with him in 2008. In his report the Insurance Company's Claims Investigator questioned the Judge's logic of investigating the death as murder as opposed to that of suicide. The Claim Investigator further

questioned the Judge's motives for continuing with that line of investigation.

The issue that had to be decided was whether the Insurance Company correctly dealt with the claim under the policy.

The Ombudsman found that one must accept the official finding of an Investigating Judge as being just that *official* and that the Complainant was entitled to have the claim assessed on that basis. Under the Finding, the Company was directed to assess the claim on the basis that the Insured Person was murdered and to convey its decision as quickly as possible to the Complainant. The Complainant later confirmed with the Bureau that the Company had duly settled the death benefit claim.

4 Alleged Mis-selling of an Investment

The complaint was that the Company acted negligently and in breach of contract by failing to explain the investment in full and sold an investment which was inappropriate for the Complainant. On the recommendation of the Company, the Complainant invested €38,000 in a medium risk investment, on 30th August 2007. Due to volatile market conditions, the Complainant's investment decreased in value and she lost approximately €9,500.

The Complainant's husband died in March 2006 and he always dealt with financial matters as the Complainant claimed she had literacy difficulties due to the fact that she left school at primary level. Following the death of her husband in 2006, the Complainant received a lump sum of €53,000. The money was on deposit with the Bank and the Complainant claimed it was for any need that may arise, in particular relating to her own health. The Company approached the Complainant regarding the funds she had on deposit. The Complainant informed the Company that she wished that her funds be instantly accessible when needed and stated she was not interested in making any money but wanted her money to be safe.

The Complainant's representative claimed that the Complainant's literacy problems meant that she would not have understood the information presented to her during the financial review and sales process. The Complainant's representative does not expand on the extent of the Complainant's literacy problems, but states that she would have been unable to comprehend either the content of the review process or the workings of the product that was sold to her, and would not have been able to complete the paper application without the assistance of the Insurance and Investments Manager. The Complainant argued that she was unaware that her money was invested and thought it was in a secure fund. The Complainant believed that the Bank failed to act in her best interest and did not establish an understanding of her needs. The Complainant sought the return of her original investment of €38,000.

During the investigation, the Ombudsman noted the Complainant's circumstances, namely, that she was recently widowed at the time she made the investment; that she had no prior experience of investments and that the Fact Find conducted by the financial adviser demonstrated that her assets consisted of her home worth €125,000 and savings and deposits totalling €58,000. The Ombudsman noted the Complainant's claim that her literacy difficulties meant that she would not have fully understood the product. However, the extent of the Complainant's literacy difficulties were not proven by evidence and indeed one of her submissions indicated that she was actually aware of some degree of risk attaching to the product.

Whilst the Ombudsman noted the Company's claim that it was unaware of the Complainant's literacy difficulties, it was aware that at the time of the sale that

the money, which the Complainant would be using to invest constituted two-thirds of her savings. The Ombudsman was particularly concerned with the contents of the Personal Financial Review or Fact Find, which the financial adviser undertook at the sales meeting in August 2007. The Review made no mention of the Complainant's intended investment timeframe or her access requirements. The Review noted that the only income the Complainant was receiving at the time was a Social Welfare benefit. Important information about the Complainant's income was omitted from the Personal Financial Review with no notes or explanation as to why this was done. The Ombudsman stated that he was not at all happy with a Recommendation and Reasons Why document, which is simply a pre-printed, generic document and doesn't provide reasons specific to that investor of why a particular product is being recommended and referred in this regard to the relevant statutory and regulatory requirements, including the requirements of the Financial Regulator's Consumer Protection Code. An investment product of the nature of the one recommended to the Complainant, would be considered somewhat complex to the uninitiated investor. Therefore, in the Ombudsman's opinion, the Complainant should have been provided with a more detailed 'Reasons Why' statement, including all of the reasons why this particular product was suitable for her, to enable her to consider whether she agreed.

The Ombudsman concluded that the Company did not act in the Complainant's best interests. Given the Complainant's circumstances at the time of the investment in August 2007, her complete lack of investment experience and her concerns about having access to her money, it was found that the Company recommended an unsuitable investment to her in August 2007.

The complaint was substantiated and the Ombudsman returned €7,500 of the Complainant's €9,500 loss as her indication that she was aware of some level of risk was taken into consideration.

5 Salary Protection Scheme

The complaint in this case related to a disability claim under a Salary Protection Scheme. The Complainant was in receipt of benefit for a number of years. The complaint was that the disability benefit was incorrectly stopped by the Company.

Having considered all the evidence, the Ombudsman found that the Complainant could carry out the duties of his employment, but not to the fullest extent. The Ombudsman considered that a person could show improvement in health when removed from the environment that caused the ill health. However, the risk of the illness recurring was more likely to happen if that person was to return to that environment, without the necessary supports. The Ombudsman found that this would be particularly so where stress was the cause of the illness. It was the Complainant's contention that the Company should have quantified his incapacity and assessed its impact on his employment duties. It was noted that the medical reports submitted to the Company suggested a "rehabilitation programme", "opportunity to re-train" or "cognitive type support, aimed to facilitate a return to the workplace". From the evidence submitted, the Company did not offer to facilitate any of these measures.

The Ombudsman found that the Company's interpretation of the policy was not correct. The Ombudsman held that the policy provisions did not mean that a person had to be unable to carry out all of the duties involved in their occupation to qualify for benefit. To be covered under the policy a Member must be totally incapable by reason of illness or injury of following the occupational duties associated with the job. The policy definition of "Member" that applied to the Complainant was a Member who was a "full-time employee". The policy definition of "Occupation" that

applied to the Complainant was the actual occupation in which he was employed before becoming disabled, i.e. a full-time Employee of the Company.

The Complainant's occupation was not part-time based, but involved all that needed to be done in the list of duties which embraced the role of a full-time employee. In other words, the occupational duties of a full-time employee went beyond those which the Complainant was able to do because of his illness. Accordingly, the Ombudsman was satisfied that the Complainant was still disabled within the meaning of the Policy and that he was entitled to be paid Benefit from the date of its termination. The Ombudsman directed the Company to pay the Complainant the disability benefit from the date of termination.

6 Switching mortgage interest rates – Tracker Mortgages

The Complainant drew down a mortgage in January 2005 with the interest rate being the European Central Bank's rate plus 1% (i.e. a 'tracker' mortgage). In late 2005 the Complainant decided to fix the interest rate for a 4 year term. A dispute arose as to the interest rate that would apply to the mortgage at the end of the 4 year term; the Bank no longer offered tracker rate mortgages and therefore advised that the Complainant could only avail of its standard variable interest or a fixed interest rate mortgage.

The Complainant referred the dispute to the FSO. She argued that the consequences of availing of a fixed rate term were not made clear, through the documentation or advice received from the Bank. She stated that she believed she could revert to a 'tracker' rate at the end of the fixed rate term and that the Bank was in effect ignoring the terms of the mortgage. The Bank rejected this and stated inter alia that allowing a fixed interest rate period was incompatible with the original 'tracker' mortgage agreement.

The FSO examined all the documentation involved, including the mortgage agreement and the Mortgage Form of Authorisation concerning the rate to which the Complainant's fixed rate would revert to upon expiry. The FSO considered whether sufficient information was made available to the Complainant when deciding to move from a 'tracker' to a fixed interest rate and whether or not the Bank provided sufficient, clear information to allow her make an informed decision.

The FSO acknowledged the Bank's commercial discretion to remove 'tracker' products from the market. However, having considered the documentation available at the time of the Complainant opting to move to a fixed interest rate, the FSO found that she could have reasonably expected to revert to the 'tracker' rate upon expiry of the fixed rate period. The FSO stated that the documentation was not clear and the consequences (good or bad) of moving from the tracker to the fixed interest rate for a set term were not sufficiently set out in the documentation.

The complaint was substantiated and the FSO directed the Bank to place the mortgage on a 'tracker' rate backdated to the point at which the fixed interest rate period expired.

7 Alleged Mis-selling of an Investment Bond

The Complainants in this case took out an investment with the Company in June 2006 of €30,000. The Complainants maintained that they were led to believe by the Company that the investment was capital guaranteed at the end of its term. The Complainants stressed that they met only with one female advisor of the

Company's tied agent, who gave them limited information about the investment. The Complainants also alleged that they did not complete a financial review with an advisor of the Company, as maintained by the Company. The Complainants maintain that neither of them met this second advisor of the Company in relation to this investment. The investment subsequently lost several thousand.

Under the circumstances of two conflicting version of events in relation to the initial investment meeting of the 9th June 2006, the Ombudsman called an oral hearing, requesting the Complainants and the two company advisors to attend.

The Ombudsman was satisfied from his consideration of the evidence given by the Company, at the Oral Hearing, that the substance of the second advisor's evidence on oath on behalf of the Company, is that the financial review document did not accurately reflect the advice or information given to the Complainant at the advisory meeting. Instead a predetermined record of advices and recommendations was automatically generated by the Company's systems and subsequently signed off by the advisor. The Ombudsman found that this casts serious doubt over the advices and options that this advisor alleges to have given to the Complainants. Having considered the Company advisor's testimony as to whether he met with the Complainants, it is clear that he holds a certain level of doubt as to whether he had met them at the investment meeting on the 9th of June 2006.

In the absence of any suitable evidence to validate the sales process in respect of the Complainants' investment policy, the Ombudsman was satisfied that the investment policy was indeed mis-sold to the Complainants. In those circumstances, the Ombudsman directed the Complainants to assign the Bond to the Company, and for the Company to refund the Complainants their initial investment of €30,000.

Due to the serious apparently systemic issues concerning the Company's sales process raised by the investigation of this complaint, the Ombudsman also referred this case to the Financial Regulator.

8 Direct Debit

The Complainant stated that his Bank refused to honour a direct debit which was to have been paid to the Revenue Commissioners. The direct debit was presented for payment but was rejected by the Bank. The Complainant discovered, from the Revenue Commissioners, that the direct debit had not been paid despite the Complainant having had sufficient funds in his account to meet the expected payment to the Revenue Commissioners. The Complainant stated that his accountant, and not the Bank, organised the re-presentation of the direct debit to the Revenue Commissioners. The Complainant stated that the Bank failed to meet a direct debit payment resulting in inconvenience and stress. The Complainant was also particularly concerned that the Bank would re-present a direct debit in contravention of the terms of the original direct debit mandate. The Bank apologised and stated the reason for the non-payment was that a direct debit had not been presented in over 13 months and thus any future direct debits were considered as being dormant and were not paid.

In considering this case, the Ombudsman was satisfied that the Bank had accepted full responsibility for the circumstances which had given rise to this dispute.

The Bank explained that a dormancy rule which had been had been incorporated into its systems in error. This meant that if a direct debit had not been presented in over a year it was viewed as dormant and rejected if presented. The Ombudsman

accepted that the process was automatic and occurred without any human intervention. The Ombudsman also appreciated that the subject matter of this complaint was attributable to an automatically generated computer error, but nevertheless noted that the Bank must take responsibility for the consequences of any such error, as the failure to implement a direct debit in accordance with its mandate can potentially, have serious consequences for the Bank's customer.

The Ombudsman noted that the Bank did not pro-actively explain (once it became aware of the error) to the Complainant, that his original direct debit had not been processed and would have to be re-presented for payment to the Revenue Commissioners. While the Ombudsman accepted that the Bank eventually made its position clear, there was an obligation on the Bank to provide the Complainant with full information about its dealings with him in relation to the payment of the direct debit to the Revenue Commissioners. The Ombudsman was of the view that the Bank should have contacted the Complainant once it became aware of the failure to make the direct debit payment. The failure by the Bank to immediately inform the Complainant of the issue had the potential to cause concern, anxiety and uncertainty for the Complainant who was informed by the Revenue Commissioners, of the failed direct debit payment.

The Ombudsman was satisfied that the conduct complained of did not have a financial impact on the Complainant but it was nevertheless the case that the Bank was responsible for creating the original problem and for failing to subsequently address the Complainant's concerns when he raised same with the Bank. The Ombudsman found that the Bank was in breach of Chapter 1 (2) & (8) of the Consumer Protection Code regarding the requirements to act with due skill, care and diligence in the best interests of its customers and to properly address complaints and he directed the Bank to pay the Complainant €200.

Complaints Partly Substantiated

1 Pension Policy

The complaint in this case related to the drawdown of a Retirement Pension. The complaint was that the Company had not processed the drawdown of the pension benefits in a timely manner.

With regard to drawdown of the pension, it was clear from the evidence submitted that there were a number of steps involved for the Complainant to avail of the pension benefits. Those steps involved the Complainant informing the Company of when she wanted to take her pension, what way she wanted to take the pension and also involved the completion of a number of Forms. The following lapses by the Company were noted:

- The Company wrote the Complainant 11 weeks prior to the retirement date. At this time an incomplete letter was sent. The Company was to revert to the Complainant after a further 6 week period but did not.
- The Company was not able to deal with the Complainant's telephone queries. It was the Company's case that its telephone operator was not qualified to give advice.
- After the Complainant informed the Company of her option to take a taxed lump sum, it took 11 days for the Company to send the required forms for this option. The Complainant had to telephone the Company in the interim period regarding the delay.
- The premiums ceased to be payable and the direct debit mandate for the premiums was cancelled, but the Company wrote to the Complainant requesting payment of premiums again. The Company later admitted that no further premiums were required and that this letter was sent in error.

- When the Complainant made her complaint to the Company she did not receive a response until one month later. In the interim period the Company had received the Complainant's completed forms which the Company stated needed verification. This verification from a senior member of staff was received, but a further delay ensued. The Company stated that due to a high volume in applications the application was overlooked. The Company then advised the Complainant that it still needed her birth and marriage certificates. However, the Complainant had offered the birth and marriage certificates to the Advisor from the outset, but he had said they were not required.

The Ombudsman found that while some of the delays involved may have been contributed by postal delays and not all documentation was supplied by the Complainant when it should have been, he found that the Company could have communicated with the Complainant in a more timely and efficient manner. With regard to the provision of information to a consumer, the Ombudsman noted that under the Financial Regulator's Consumer Protection Code a regulated entity must supply information to a consumer on a timely basis and in doing so the regulated entity must have regard to the following: (a) the urgency of the situation and (b) the time necessary for the consumer to absorb and react to the information provided.

It was the Ombudsman's Finding that in order to do justice between the parties the Company was to pay the Complainant a compensatory award.

2 Endowment Policy

The complaint in this case related to a Unit Linked Endowment Policy. The complaint related to (i) the advices received in 2007 and 2008 that the policy was on target to meet the mortgage repayment (by the maturity date the fund value had dropped by a substantial amount) (ii) the non-implementation of instructions to increase the level of cover and (iii) the delays by the Company when communicating with the Complainant.

On the first issue, the Ombudsman found that the projections / estimates quoted by the Company over the years were not guarantees. The Company made this clear in all of its communications with the Complainant. The policy was unit linked. The value was determined by the value of the underlying assets in the unit funds. Guaranteed returns were never provided in the policy documentation or in any of the written communication sent to the Complainant. The volatile market conditions would have impacted on the performance of the policy.

On the second issue, the Ombudsman found that a request was made to alter the level of cover under the policy, but this was not implemented by the Company. The Company incorrectly advised the Complainant that this increase had not been requested. However, the Company later apologised for saying this and quoted a premium that would go to achieve the requested target amount. The Complainant did not take up the offer to increase the premium.

On the third issue, the Ombudsman found that there were delays by the Company when corresponding with the Complainant.

It was the Ombudsman's finding that on the substantive issue (i.e. the performance of the fund) that the complaint was not substantiated, but in relation to the non implementation of the increase in cover and the communication delays, the Ombudsman awarded the compensatory award.

3 Customer Service

The Complainant, who lives abroad, holds several accounts with the Bank. In August 2007, the Complainant visited the Bank's Kildare branch to ensure that his accounts were in order. The Complainant produced his passport and driver's licence to a Bank official who photocopied same. The Complainant was subsequently advised that his accounts were dormant and that he would have to present a utility bill, proof of address and identification documents to reactivate his accounts. The Complainant states he was never advised at any time before this that his accounts had been declared dormant. The Complainant was not satisfied with the Bank's request that he present specified documents in order to reactivate his accounts. Furthermore, the Complainant stated that his accounts should not have been declared dormant as there were transactions on his accounts.

The Ombudsman was satisfied that the Complainant had provided substantial evidence which indicated that the Bank had failed to advise him of the possibility that his accounts could be declared dormant after only three years of no customer initiated transactions. The Ombudsman found that the Bank's interpretation of the Dormant Accounts Act, 2001 was incorrect. In this regard, the Ombudsman referred the Bank to Section 2(1) of the Dormant Accounts Act, 2001 which defines dormancy as meaning a "period of not less than 15 years". The Ombudsman noted that it was not that the Bank did not clearly explain the reason for declaring the Complainant's accounts "Dormant", it was more accurate to say that the Bank did not provide the Complainant with an explanation as to why his accounts were declared dormant outside of the provisions of the Dormant Accounts Act, 2001.

Having examined the evidence, in particular the terms and conditions of the Complainant's accounts, the Ombudsman found that there was no provision stipulating that the Bank may declare an account "dormant" after a period of only 3 years. There was an absence of advance warning to a customer that their accounts could be declared dormant if there has not been a customer generated transaction within a period of 3 years. The decision by the Bank to declare accounts "dormant" after a period of only three years was at variance with the provisions of the Dormant Accounts Act, 2001. Statutory provision is in place to declare accounts dormant and the Ombudsman found it inappropriate that a Bank would require an account holder to provide identification and proof of address merely because the account has not had a customer generated transaction for a period of 3 years.

The Ombudsman was of the opinion that it was prudent that the Bank monitors accounts for transaction activity and that it places dormant account flags on accounts. However, it is completely inappropriate to restrict access to an account in circumstances where the Bank has not put its customers on notice of the fact that accounts can be declared "dormant" (for internal Bank purpose only) where no customer initiated transactions have occurred for three years. It is of particular concern that the Bank would not advise its foreign resident customers (as is the case for the Complainant) that they may be required to produce identification and more importantly proof of address (i.e. a utility bill) if they wish to re-activate their accounts if there has not been a customer initiated transaction in the previous three years.

This could have serious ramifications for a customer who requires access to their funds but does not have immediate access to identification or proof of address. The Ombudsman was of the opinion that the Bank failed to comply with Chapter 1 (2) of the Consumer Protection Code (regarding the requirement to act with due skill, care and diligence in the best interest of its customer) when it failed to advise the Complainant of the possibility that a dormant account restriction which is internal to the Bank could be applied to his account. The Ombudsman directed that the Bank increase its gesture of goodwill from €200 to €500.

Complaints Not Substantiated

1 Variable interest rate personal loans

The Complainant entered into a personal loan agreement with the Bank for a sum of €25,000. The interest rate applied to her loan was variable but the monthly repayments were fixed at €600 over 48 months. Due to the fluctuations in the variable interest rate over the loan's term there was a balance outstanding on the loan of €1,000 after the last fixed payment was made.

The Complainant made a complaint to the FSO stating that the Bank should have adjusted the monthly repayment amount to reflect the fluctuations in the interest rate. She stated that the Bank did not act in her best interests in that regard and referred to the Consumer Protection Code.

In examining the matter, the Ombudsman looked at the terms of the loan agreement, the relevant regulatory codes and the Bank's conduct. While the Ombudsman noted the Complainant's points, he found that the terms and conditions were very clear; the interest rate could vary during the loan's term and if this occurred the Bank could adjust the final repayment amount due or the number of repayments on the loan itself. The final repayment amount reflected the variable rate of interest that applied to the loan during its term.

The Ombudsman concluded that the terms and conditions were clear and straightforward. He found that the Bank was not being unreasonable in requesting the final payment, which was in accordance with the loan agreement, and the Complainant was on notice of the possibility when she signed up to the agreement.

2 House Insurance

This case related to a claim under a House Insurance Policy. The complaint was that the Company incorrectly repudiated a storm damage claim.

In order to succeed in an insurance claim the policyholder must have notified the Insurer on discovery of the damage. Thereafter, it is necessary for the policyholder to prove that the loss or damage was caused by an insured event.

It was the Complainants' case here that having reported the claim to the Company, the Company failed to investigate it in a prompt manner. This is alleged to have left the Complainants with no option but to proceed with repairs to avoid further damage.

It was the Company's case that once repair work had commenced the evidence of what caused the loss was interfered with. The Company argued that its position was prejudiced from the moment the builder commenced stripping the roof.

The policy provisions specifically stated that:

"In the event of any occurrence which may give rise to a Claim Under This Policy (a) the Insured shall forthwith notify the Company in writing with full particulars."

The Policy further stated that:

".. so far as practicable no alteration or repair shall without the consent of the Company be made to any premises after any occurrence covered by this Policy until the Company shall have had an opportunity of making an inspection."

The damage was first discovered by the Complainants in late 2008 and remedial work was carried out on the roof then. In early 2009 the damage persisted and further remedial works were commenced. No contact was made with the Insurance Company on discovery of the initial damage or prior to the commencement of either repair work.

The Ombudsman found that by starting to repair the roof before an inspection by the Company prejudiced the Company's ability to determine the cause of damage. The Company was not able to establish whether the damage was caused by the operation of an insured peril, or otherwise. The opportunity to inspect the roof as to the cause of damage was lost once the roof tiles were removed. The complaint was not substantiated.

3 Non-disclosure on proposal for Household Insurance

The complaint related to a home insurance policy incepted with the Company in August 2009. Two months after they took out the policy with the Company the Complainants' sewage pumping system broke down requiring a new electric pump. They submitted a claim but were informed that the policy was deemed void from inception "*due to a serious misstatement made in connection with the arranging of the...policy*". The complaint was that the Company's decision to void the Complainants' home insurance policy due to non-disclosure meant that they were unable to obtain cover elsewhere.

The Complainants' argued that they simply forgot to disclose a previous claim and believed that the Company's behaviour in cancelling their policy was excessive. The Company's case was that whilst the Complainants may have simply forgotten the previous claim when they proposed for cover, it still constituted non-disclosure of a material fact and it was therefore entitled to cancel the policy.

The Ombudsman noted that the Complainants completed a proposal form in August 2009. The proposal form contained a question about previous insurance history which asked in relation to property insurance specifically, had any of the insured parties had any claims or issues in the past three years. The answer provided was 'no'. The Complainants signed a proposal form and returned it to Company who set up the policy on the basis of the information contained in the proposal form.

The proposal form contained a warning to disclose material facts and that the failure to do so could invalidate the insurance. The Ombudsman pointed out that this complies with one of the fundamental doctrines of insurance, *uberrimae fidei*, i.e. utmost good faith in disclosing all facts. The Ombudsman also noted that the policy document states that the Company "*will only have to make a payment under this policy if: a) all the answers in the proposal and declaration for this insurance are true and complete as far as you know and the proposal and declaration form the basis of the contract*".

The Complainants may not have remembered the claim at the time of proposal but this does not alter the fact that there was a non-disclosure of a material fact. Accordingly, the Ombudsman found that the Company was entitled under the contract of insurance to invalidate the policy as there was a non-disclosure of a material fact, that is, the previous claim. The complaint was not upheld.

The Ombudsman stated that as for the other insurers, it was a matter of commercial discretion whether or not they offered the Complainants a quote for home insurance.

4 Investment – Geared Property Fund

In April 2005, the Complainant invested €350,000 in the Bank's Geared Property Fund. On 15 September 2005, the Complainant stated that her business partner/associate received a telephone call from an Official from the Bank advising of "great news", that the sale of Geared Property Fund was a "done deal" and that she "would receive a minimum 25% return after costs in the investment" and that he "had the next big fund ready for her to invest in".

The Complainant asserted that it was on the strict understanding that the Geared Property Fund was a "done deal" that she invested €500,000 (by way of a 100% loan taken out with the Bank) in the Bank's new Geared Property Fund (Second Fund). The Complainant stated that she understood that she would roll her original geared investment profit into the new second geared Fund. The Complainant was adamant in her contention that under no circumstances would she have invested in the new geared fund unless the sale of the original geared fund was a "done deal". The Complainant contended that she was mis-sold the second geared fund by the Bank on the basis of an alleged misrepresentation that the sale of the original geared fund was a "done deal".

Subsequent to the Complainant's investment in the second geared fund, the Complainant states that she was advised by the Bank that the sale of the original geared fund had not closed. Ultimately, the Complainant was of the view that the representation from the Bank was false and in breach of the Consumer Protection Code. In order to resolve this matter, the Complainant demanded that she be allowed exit the second geared Fund with repayment in full of his initial investment of €500,000 along with all interest monies paid by the Complainant on the €500,000 loan to date.

From the outset, the Ombudsman was satisfied that the Complainant had been provided with comprehensive documentation in relation to the investment in the second geared fund. Furthermore, the Ombudsman noted that that the Complainant received sufficient explanation of the second geared fund to enable her to make an informed decision as to whether or not the product was suitable for her specific needs. It was noted that the Complainant did not meet with the Bank during the cooling-off period to either query any of the details of the second geared fund or to advise that she would like to cancel her investment. In the absence of evidence to the contrary, the Ombudsman was compelled to conclude that the suitability of the sale of the second geared fund was assessed in the context of the Complainant's recorded attitude to risk, investment objective, and affordability.

The Ombudsman noted that had the Complainant been advised that original geared fund was a "done deal" then she should have stipulated that her second investment was predicated on the sale of the original geared fund and if that did not take place, then her investment would be cancelled. The Ombudsman found that the course of dealing between the parties indicated that the Complainant did not act in reliance on the sale of the original investment in making the second investment. The Ombudsman considered that the evidence established that the Complainant voluntarily and freely decided to invest in the second geared fund and he was satisfied that that the features of investment were properly outlined in the documentation which was issued to the Complainant. The Complaint was not substantiated.

5 Motor Insurance Claim burden of proof in relation to a claim

The complaint was that the Company would not make any offer in settlement of the Complainant's motor insurance claim. The Complainant had her car insured with the Company. On 23rd October 2008, her car was burned out, outside her home and she submitted a claim. The Company declined her claim stating that it was unable to verify the validity of the Complainant's claim and therefore was not in a position to make any offer in settlement. The Company stated that it believed the Complainant had exaggerated her claim as she was unable to provide evidence of the price she paid on purchase in January 2008. The Company referred to the conditions of the motor insurance contract with regard to exaggerated claims.

There were other issues with this particular case in that the Company claimed the Complainant did not have valid NCT at the time of the loss and was in breach of the policy conditions and that she failed to disclose the address at which the vehicle was normally kept, which constituted a non-disclosure of a material fact. The Ombudsman stated that whilst it is a legal requirement to have a valid NCT Certificate, unless a motor insurance policy specifically references this requirement in the policy conditions, an insurer could not invalidate the policy on this basis alone, although the requirement of the policyholder to keep the vehicle "*in a roadworthy condition*" is a standard condition of motor insurance policies.

On the issue of the alleged non-disclosure, the Ombudsman found that the Complainant provided only a correspondence address and not the address at which the vehicle was normally kept despite being specifically asked this question on the proposal form. Accordingly, the Ombudsman found that the Complainant was in breach of the duty to disclose all material facts at proposal.

The substantive reason for the repudiation of the claim by the Company was based on its belief that the Complainant exaggerated the claim. The Company did not accept that the Complainant's vehicle was purchased for €14,000 given that she had failed to provide proof of same and that the vehicle was a former Garda car which had been sold at auction 13 months earlier in December 2006 for the amount of €1,200.

The Complainant disputed that she exaggerated the claim and stated that she was unaware that the vehicle was an ex-Garda car. She explained why she did not have a receipt, namely, that she purchased the vehicle in a cash sale. The Complainant stated that she had new tyres fitted to the vehicle after purchasing it and provided a number of receipts as evidence that she spent approximately €1,700 on new tyres and extra features for the vehicle. The Complainant claimed for the cost of these additions to the vehicle in addition to the claimed value of €14,000.

The Ombudsman pointed out that proof of loss is always a condition precedent to liability, whether expressly contained in the policy or not. The policyholder must prove that an insured peril has operated and that it has resulted in a loss. This means that, ultimately, the onus to prove a valid claim lies with the insured.

The Complainant was obliged under the terms and conditions of her motor insurance contract to support the validity of her claim. The Complainant did not provide sufficient evidence to support her claim by way of proof of purchase of the vehicle or other such proofs which would demonstrate that the claim was valid. In addition, the Ombudsman noted that she claimed that the vehicle was purchased at a figure more than 10 times the value which had been paid for it on the open market more than a year earlier. The complaint was not substantiated.

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