

**Financial Services Ombudsman**  
Annual Report 2011

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



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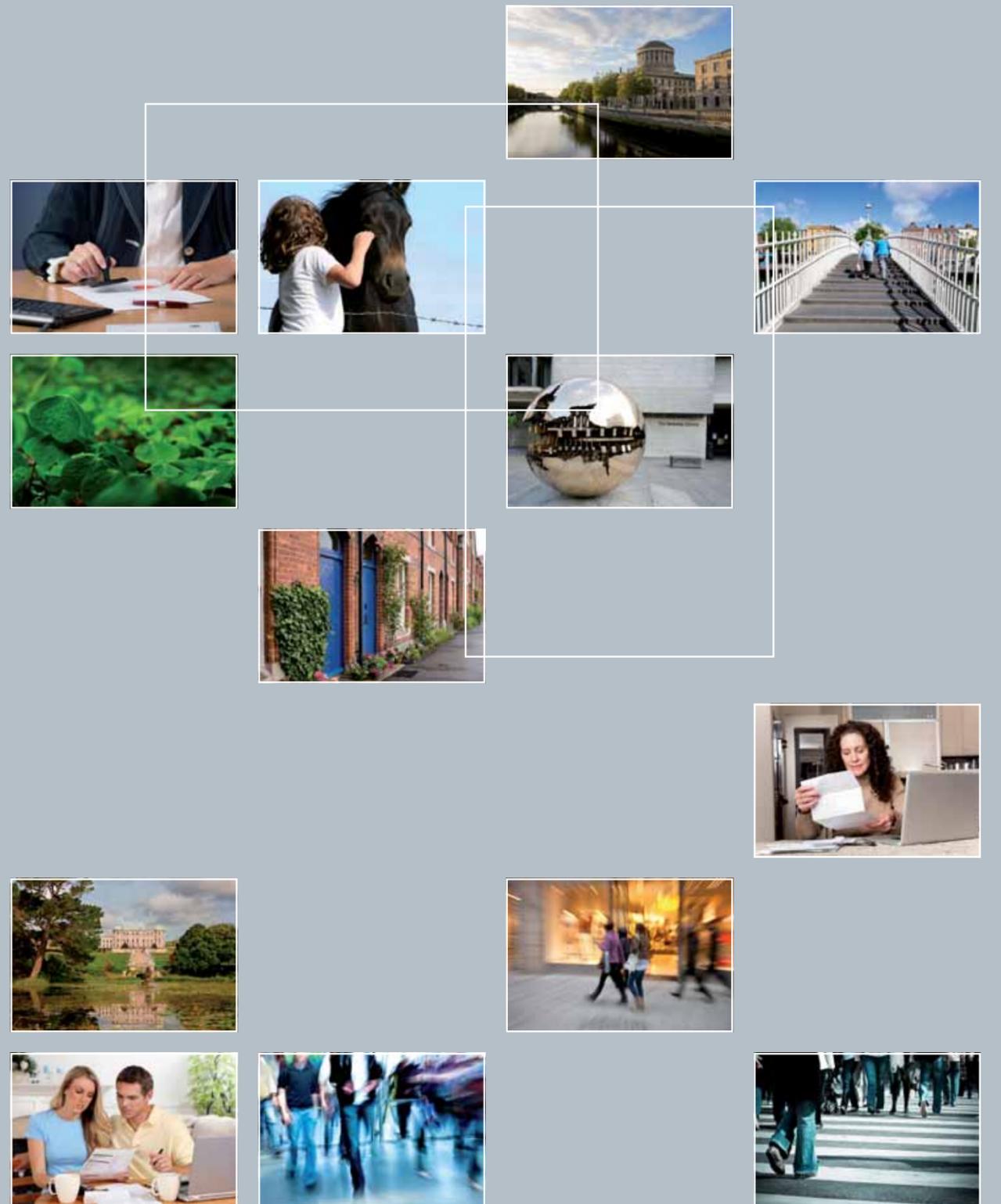
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## Chairperson's Report

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

The statutory functions of the 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, and
- to advise the Ombudsman on any matter on which he seeks advice, and
- to carry out such other activities as are prescribed by Part 57BD.-(1).

Last year I outlined how the Council has no role regarding complaints resolution, as this is statutorily the independent function of the Financial Services Ombudsman. However, it has been a Council priority over this past year to ensure the greatest level of essential resources were allocated and directed toward both the that effective management of current caseload and the efficient and significant reduction / close-out of the older unresolved caseload carrying forward.

In addition, the means through which industry providers, by change of internal practice or procedure, could stem and reduce those levels was determinedly followed through by Council and Bureau activity. That process of direct dialogue and interactive engagement, while providing many immediate positive results, really holds significant value in the potential for long-term proactive commitment to best practice across the industry.

The proposed amendment to the Central Bank and Financial Services Authority Bill 2011, to allow the Bureau to detail the type and number of complaints for specific firms is a significant and consumer positive breakthrough and comes following many years of intensive lobbying. Crucially, it flows perfectly well into these strategic Bureau engagements and will, when enacted, hopefully work to ensure less likelihood of such occurrences in the future while, when necessary, placing a spotlight on industry providers who lack the essential commitment to an internal process of quality dispute resolution and management.

The Council will actively engage with the Department in the coming months in an effort to bring forward the best possible provisions under this Bill and within which the Ombudsman will be guided.

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The public profile and reliance upon the office remains at a high and trusted level by consumers of the service. This highlights to Council that, whilst always recognising the need for careful, efficient and prudent control of costs, there must be the sufficiency of resources to permit appropriate flexibility to the Ombudsman and Bureau to effectively manage its caseload. In addition, there must be regulatory efficiency in operation that supports the quality of the process and procedure in ensuring consistency of complaint handling.

With that firmly in mind and in the exercise of our statutory function, Council has now commenced exploration and evaluation of those regulations and resources in terms of case handling, but also notably and immediately, with consideration in terms of the necessitated change to and cost implications upon infrastructure that will result from the proposed merging of the services of the Pensions Ombudsman with those of the Bureau. The implications, for example, upon levy computations in the short, medium and long term must, of necessity, be a primary consideration here.

The final legislative procedure for final establishment of the Financial Services Ombudsman Bureau Superannuation Schemes continues to be an outstanding issue. As a matter of serious concern to Council, we will continue our positive work with the Minister and his Department to complete the process with the diligence and urgency warranted.

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

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

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

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



**Dermott Jewell, Chairperson**  
Financial Services Ombudsman Council

June 2012

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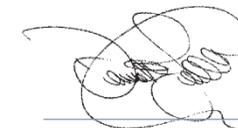
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Financial Services Ombudsman Council

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## The Financial Services Ombudsman Council

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### 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 alternate on the Consumer Consultative Group (ECCG) of the European Commission.

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



### Mr. Michael Connolly

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



### Mr. Anthony Kerr

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

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**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 and is a Fellow of the Institute of Bankers in Ireland and a Member of the Institute of Certified Public Accountants in Ireland.



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**Ms. Caitriona 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.



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**Mr. Frank Wynn**

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



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**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.



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## 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;
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## Members of the Council

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

- Mr Dermott Jewell (Chairperson).
- Mr Michael Connolly.
- Mr Tony Kerr.
- Mr Paddy Leydon.
- Ms Caitríona Ní Charra.
- Mr Frank Wynn.
- Mr Paddy Lyons (resigned October 2011).
- Mr Jim Bardon is the Secretary to the Council.

## Council Sub-Committees

### Audit Committee Members

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

### Finance Committee Members

- Mr Frank Wynn (Chairperson).
- Mr Dermott Jewell.

## Governance Committee Members

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

## Meetings

- a) Council: During 2011, the Council held 7 formal meetings. Attendance was as follows:

	Meetings
Mr Dermott Jewell (Chairperson)	7
Mr Michael Connolly	6
Mr Tony Kerr	6
Mr Paddy Leydon	7
Ms Caitríona Ní Charra	5
Mr Frank Wynn	7
Mr Paddy Lyons	5

- b) Council Sub-Committees:

- The Audit Committee met on 4 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: €94.31  
Ms Caitríona Ní Charra: €2,127.03  
Mr Paddy Leydon: €2,512.75

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## Foreword

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The ongoing effect of the financial crisis meant that 2011 was, once again, a very challenging year for the Bureau. We dealt with 7,287 new complaints and closed 7,464. Of that amount, 3,040 were closed by way of Findings with the balance closed for a variety of other reasons which are detailed in Table 1.

The level of new complaints received each month appears to have stabilised at a consistent level but they remain nonetheless high by historical standards. This office has reworked some of its existing processes to ensure that we now consistently close off more complaints than new complaints received, and in so doing have dramatically reduced the number of cases awaiting adjudication.

In the Banking sector complaints regarding Mortgages comprised 40% of total Banking complaints received. Over the past 18 months there has been substantial new legislation introduced in relation to the Mortgage issue. In the last year, these new legislative requirements have been absorbed into this office and are considered when investigating relevant complaints.

It is also worth noting that, in the Banking sector complaints about conducts of accounts make up 28% of the total of Banking complaints reflecting perhaps the pressure that household budgets are facing.

Insurance continues to be the sector that accounts for the most complaints, with over 47% of all complaints received in 2011. Payment Protection and Mortgage Protection complaints remain high; with the profile of percentage complaints upheld very slightly above the average for the sector as a whole.

Motor insurance is the most consistently complained about product, accounting for 16% of Insurance complaints. In 2011, we noted a reduction of 28% in Household Building complaints reflecting the relatively clement weather conditions prevalent during the year.

Investment cases are at a lower level than previously reported but we did note a 6% increase in complaints for this sector in the second half of 2011.

Much of the focus in 2011 was directed towards managing our caseload processes and adjusting these to ensure we optimise case output. In April we had 1,142 cases waiting to be assigned to investigators and by year's end this was substantially reduced to 473. This reduction in our backlog will reduce the wait times for cases going into investigation to 8-10 weeks.

In the face of our continuing workload we continue to meet a number of objectives additional to caseload management and throughput. The complexity of issues complained of remains complex; we devote significant time to making industry and public presentations on the work we do; we constantly engage with a number of interested stakeholder groups; and we keep abreast of emerging challenges, legislations and trends facing us.

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I am, as always, grateful to the support the Bureau receives from Council. Council steadfastly supports and challenges the Bureau across a range of issues ensuring that we remain at the forefront in terms of efficiency and quality of output.

I would also like to thank the Department of Finance for their continued engagement of, and support to, the Bureau. 2012 promises to be another year of challenge and we look forward to working with the Department to enhance the environment for all consumers particularly as to enhancing our progress to publish the complaints records of Financial Services Providers.

Our relationship with the Central Bank and the Pensions Ombudsman continues to flourish under our Memorandum of Understanding and we look forward to a close working relationship with both in 2012.

Finally, I would like to thank and pay tribute to the management and staff of the Bureau. Every day we together face a very stretching and sometimes hostile set of challenges. They continue to meet these face-on with great commitment, fortitude and good humour. With their assistance I expect that the Bureau will once again continue to flourish and make further progress to delivering in full its statutory mandate.



William Prasifka  
Financial Services Ombudsman

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William Prasifka  
Financial Services Ombudsman

June 2012

## 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
Tom Finn	Head of Legal Services

### Investigation Unit

Name	Title
Michael Brennan	Principal Investigator
Sinéad Brennan	Senior Investigator
Conor Cashman	Senior Investigator
Joanne Cronin	Senior Investigator
Derek Finnegan	Senior Investigator
Sophie Hart	Senior Investigator
Anthony O'Riordan	Senior Investigator
Kathleen O'Sullivan	Senior Investigator
Cairen Power	Senior Investigator
Dermot Dempsey	Investigator
Iseult Doherty	Investigator
Shane Lyster	Investigator
Dermot McCole	Investigator

## Organisation / Staff Structure

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William Prasifka	Financial Services Ombudsman
Tom Comerford	Deputy Financial Services Ombudsman
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Diarmuid Byrne	Head of Administration
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### Investigation Unit

Name	Title
Michael Brennan	Principal Investigator
Sinéad Brennan	Senior Investigator
Conor Cashman	Senior Investigator
Joanne Cronin	Senior Investigator
Derek Finnegan	Senior Investigator
Sophie Hart	Senior Investigator
Anthony O'Riordan	Senior Investigator
Kathleen O'Sullivan	Senior Investigator
Cairen Power	Senior Investigator
Dermot Dempsey	Investigator
Iseult Doherty	Investigator
Shane Lyster	Investigator
Dermot McCole	Investigator

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### Pre-Investigation Unit

Name	Title
Meagan Gill	Principal Case Manager
Marta Piekarz	Case Manager
Kevin Fleming	Case Manager
Des Butler	Case Officer
Dale Hayes	Case Officer
Paul Heffernan	Case Officer
Tomás Murray	Case Officer
Paul O'Connor	Case Officer
Lorraine Maher	Case Administrator
Linda Kavanagh	Case Administrator

### Finance Department

Name	Title
Evelyn Moore	Finance Officer

### HR Department

Name	Title
Patricia Heffernan	HR Administrator

---

### Pre-Investigation Unit

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

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Name	Title
Julianne Fitzpatrick	Reception
Mary Hamilton	Reception
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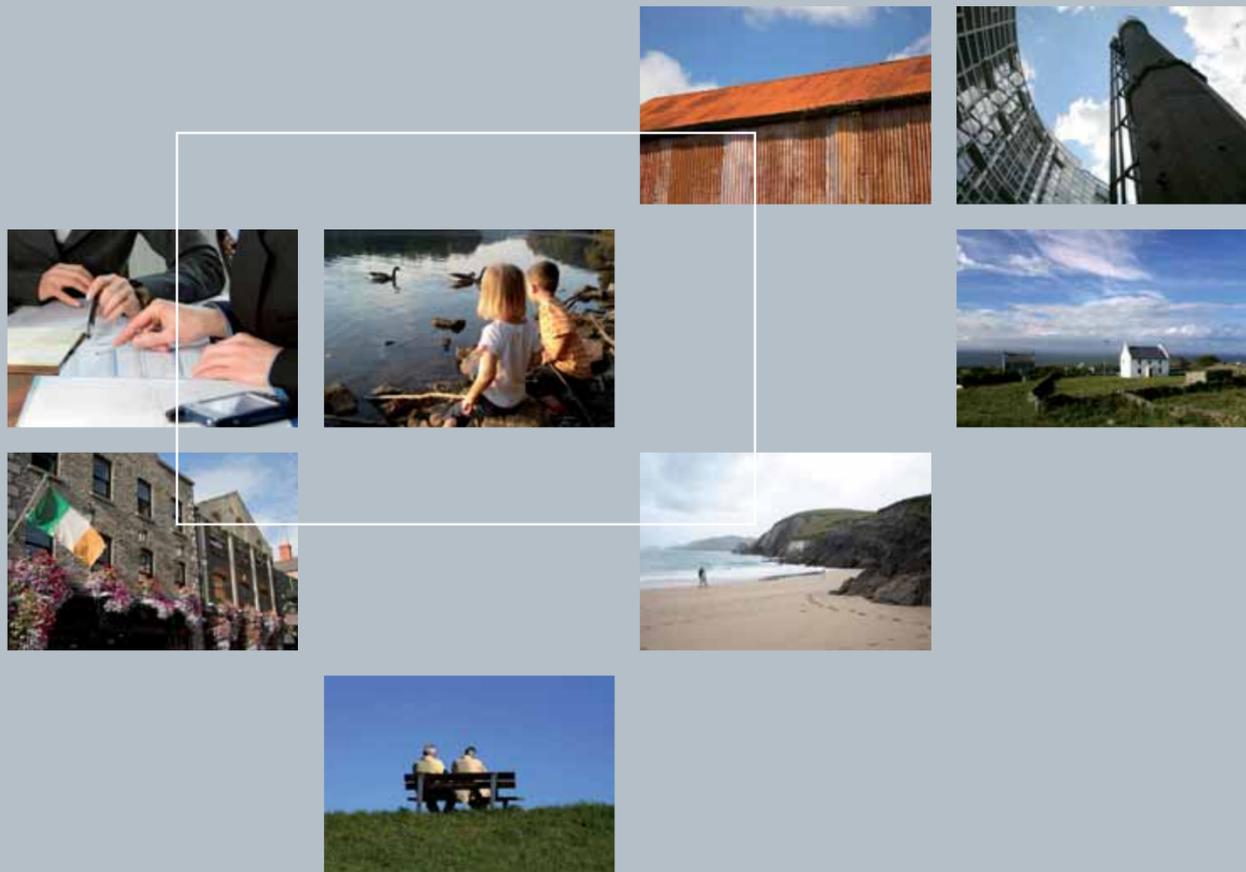
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# Part One



# Part One



## Part One Complaints

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### Our Role

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

### Complaints Overview

The overview is comprised of a summary of the work throughput of the Bureau for 2011. It compares the Bureau's figures for 2011 and 2010 in relation to complaints closed pre-investigation and by way of Finding, complaints received by Sector for 2011 and 2010, a comparative study of complaints received by Provider Type for 2011 and 2010 and an analysis of complaint trends on key Product types from 2007 to 2011.

### During 2011

- 7,287 new complaints were received;
- 3,443 complaints were made against the Insurance Sector, 1,024 against the Investment Sector, 2,680 against the Banking Sector and 140 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.
- 7,464 cases were concluded during 2011; this included 4,424 where after this office initially referred a complaint to the Financial Service Provider, no further contact was received from the Complainant and mediated complaints;
- 3,040 Findings were issued.

A comprehensive breakdown of the Complaint type, Product type and Finding issued by Sector can be found in the Bi-Annual Review's for 2011, published on our website [www.financialombudsman.ie](http://www.financialombudsman.ie)

## Part One Complaints

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### Summary of work throughput for 2011

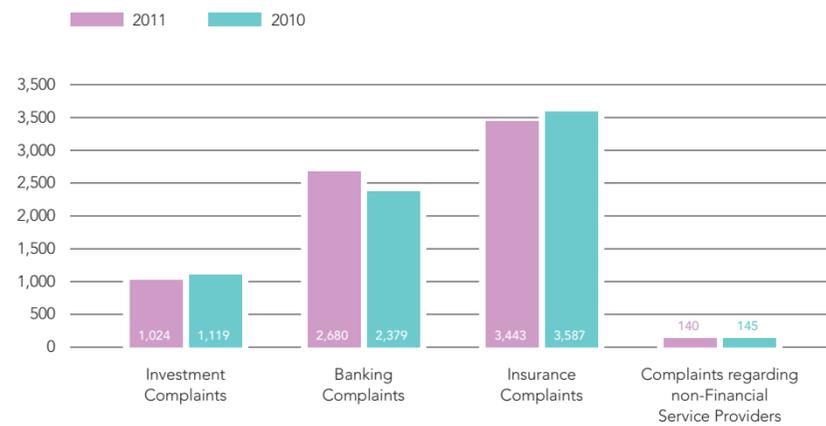
Table 1: Summary of Complaints received and complaints closed 2011

Complaints on Hand 1st Jan 2011 *	3,784
New complaints received	7,287
Complaints Closed	—
Complaints closed prior to Investigation	4,424
Complaints closed by way of Finding	3,040
<b>Total Closed</b>	<b>7,464</b>
Complaints on Hand 31 December 2011	3,607

\* The number of cases on hand at the 31 December 2010 was 3,737 which differs by 47 cases on hand on 1 January 2011. This is accounted for by the re-opening of closed cases in the last 6 month period.

### Complaints Received by Sector 2011 and 2010

Chart 1: Complaints Received by Sector 2011 and 2010



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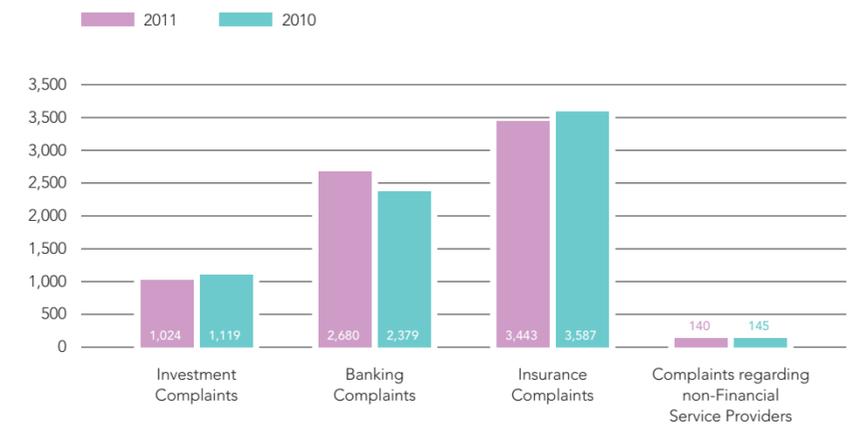


Table 2: Complaints Received by Sector 2011 and 2010

Sector	Number of Complainants received	
	2011	2010
Investment	1,024	1,119
Banking	2,680	2,379
Insurance	3,443	3,587
Complaints regarding non-Financial Service Providers	140	145
<b>Total</b>	<b>7,287</b>	<b>7,230</b>

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

### Reasons Complaints closed Pre-Investigation 2011 and 2010

Chart 2: Reasons Complaints closed Pre-Investigation 2011 and 2010

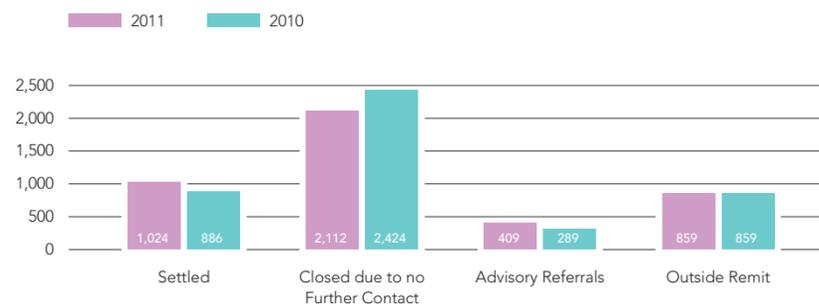


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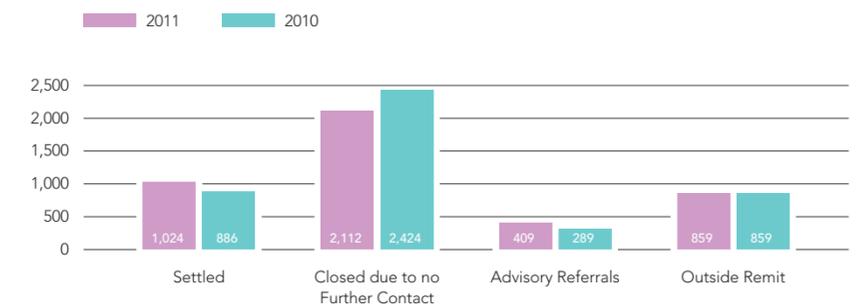


Table 3: Reasons Complaints closed Pre-Investigation 2011 and 2010

Year	2011	% of complaints closed pre-investigation	2010	% of complaints closed pre-investigation
Settled	1,024	24%	886	20%
Closed due to no Further Contact from Complainant	2,112	48%	2,424	54%
Advisory Referrals	409	9%	289	7%
Outside Remit	859	19%	859	19%
<b>Total</b>	<b>4,404</b>	<b>100%</b>	<b>4,458</b>	<b>100%</b>

### Complaints Closed by way of Finding (Complaint Upheld, Partly Upheld or Not Upheld)

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

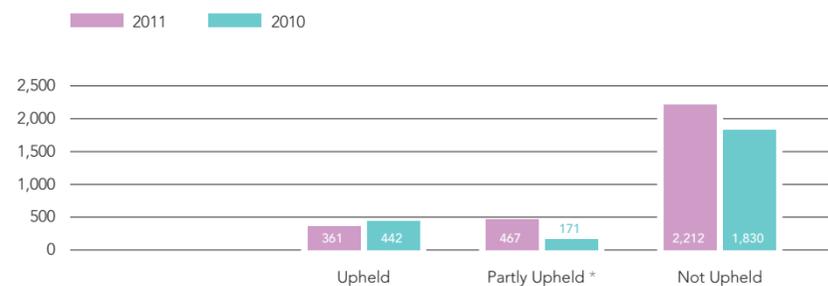


Table 4: Complaints Closed by way of Finding (Complaint Upheld, Partly Upheld or Not Upheld)

Year	2011	% of Finding issued	2010	% of Finding issued
Upheld	361	12%	442	18%
Partly Upheld *	467	15%	171	7%
Not Upheld	2,212	73%	1,830	75%
<b>Total Issued</b>	<b>3,040</b>	<b>100%</b>	<b>2,443</b>	<b>100%</b>

\* 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).

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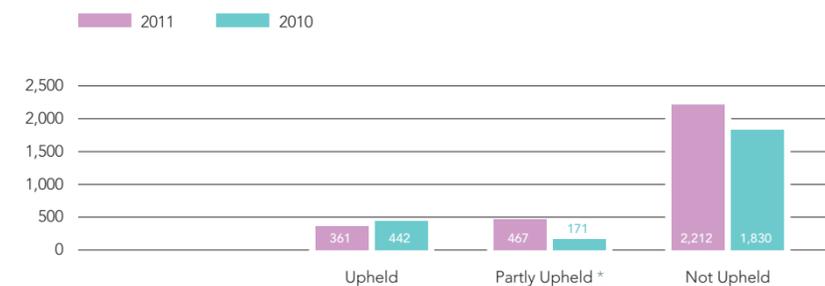


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### Complaint Received by Provider Type

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 2011 and 2010.

Table 5: Complaints Received by Provider Type

	2011	2010
Insurance Company Life	1,190	1,215
Insurance Company Non-Life	1,866	2,254
Health Insurance Company	351	223
Intermediaries	331	447
Banks	2,846	2,584
Building Societies	189	127
Credit Unions	49	60
Stockbroker	84	76
Mortgage Intermediary	57	75
Bureau de Change	1	1
Money Lender	13	13
Finance Provider	5	10
Intermediary Other	80	—
Non-Applicable	225	145
<b>Total</b>	<b>7,287</b>	<b>7,230</b>

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### Complaint Trends on key Products types from 2007 to 2011

#### Mortgage and Lending Complaints for the period 2010 to 2011

Mortgage complaints spiked hugely in 2011 almost double the complaints received for 2010. It is of note that 14% of all complaints received related to Mortgages. The tables and graph below shall detail the numbers and complaint types relates to mortgage complaints.

Chart 4: Mortgage and Lending Complaints for the period 2007 to 2011



Table 6: Mortgage and Lending Complaints for the period 2007 to 2011

Year	Number of Mortgage Complaints Received	Number of Lending Complaints Received
2007	348	272
2008	517	358
2009	850	507
2010	595	457
2011	1,038	442
<b>Total</b>	<b>3,348</b>	<b>2,036</b>

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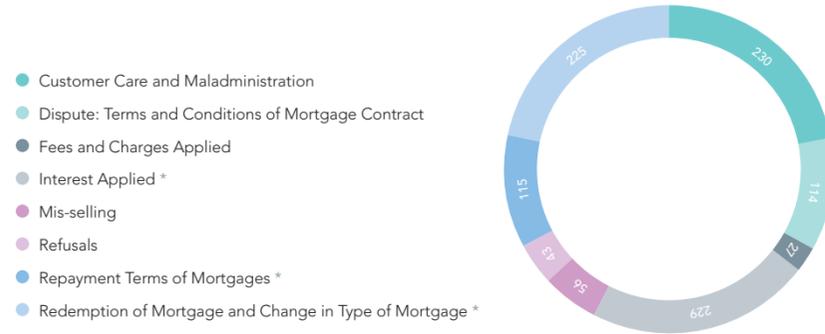


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## Complaint Types for Mortgages

Chart 5: Complaint Types for Mortgages



The complainant types listed above are self-explanatory however the ones with asterisks have been explained in greater detail below.

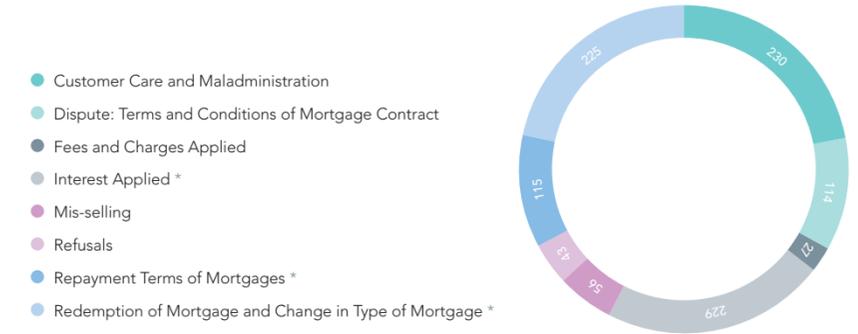
**Interest Applied** relates to complaints on interest only mortgages, changes of mortgages from interest only to interest and capital, Tracker mortgages and interest rates applied in general to mortgages.

**Repayment Terms of Mortgages** relates to complaints from complainants who are currently unable to meet their mortgage repayments and complaints regarding the repayment terms imposed by Lenders. This includes complaints made by complainants in arrears, potentially in arrears and undergoing the MARP process.

**Redemption of Mortgages and Changes in Type of Mortgage** relates to the redeeming of mortgages and breakage fees, and similar to interest Applied above these complaints include complaints regarding tracker mortgages and the change from one interest rate to another which can be considered a change in mortgage (e.g. from Fixed to Variable to Tracker).

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### Household Building and Household Contents Complaints 2007 to 2011

The bad weather experienced in 2009 and 2010 is represented in the rise of complaints regarding home insurance. As demonstrated on the graph this has declined slightly in 2011 and with the clement weather experienced in the 2011 winter it is expected that Household building insurance numbers shall drop further in 2012.

Chart 6: Household Building and Household Contents Complaints 2007 to 2011

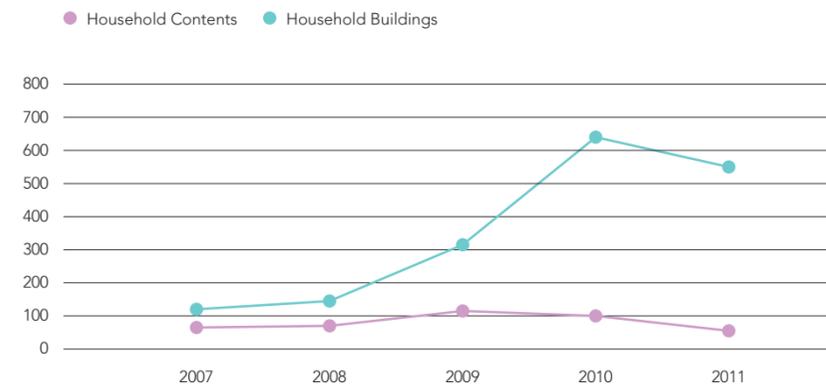


Table 7: Household Building and Household Contents Complaints 2007 to 2011

Year	Number of Household Buildings Complaints Received	Number of Household Contents Complaints Received
2007	126	72
2008	156	85
2009	325	115
2010	639	98
2011	555	62
<b>Total</b>	<b>1,801</b>	<b>432</b>

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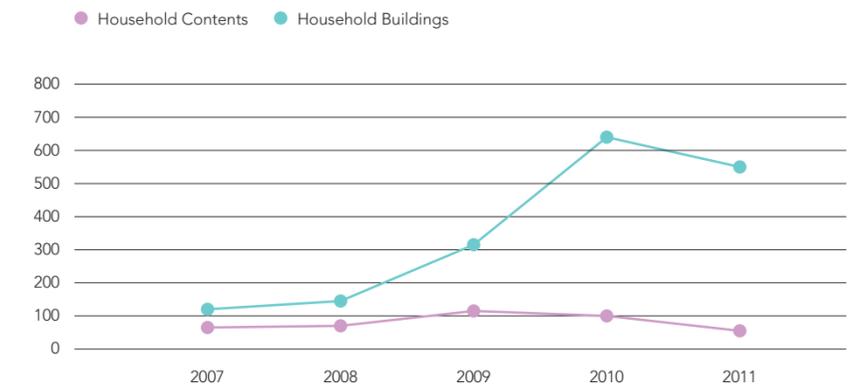


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### Payment Protection and Mortgage Protection Insurance Complaints 2007 to 2011

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 spiked in 2010 and dropped slightly in 2011.

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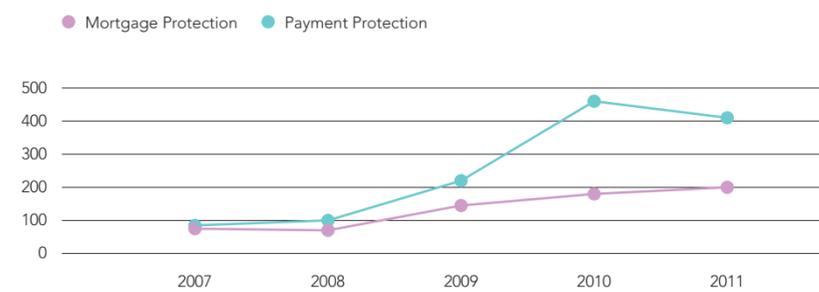


Table 8: Payment Protection and Mortgage Protection Insurance Complaints 2007 to 2011

Year	Number of Payment Protection Complaints Received	Number of Mortgage Protection Complaints Received
2007	93	90
2008	100	79
2009	216	135
2010	460	183
2011	405	199
<b>Total</b>	<b>1,274</b>	<b>686</b>

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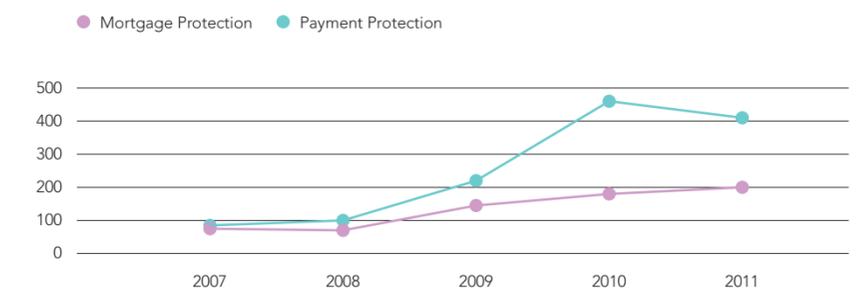
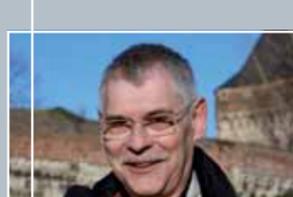


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# Part Two



# Part Two

## Part Two

### Legal Setting

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The Financial Services Ombudsman possesses a unique legal jurisdiction which is acknowledged and frequently commented upon by the Courts. 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.

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.

#### High Court Appeals

Findings of the Ombudsman are subject to appeal and/or judicial review to the High Court. In the course of 2011 a number of appeals were decided upon by the High Court with a number of *ex tempore* and written Judgments delivered. Copies of approved Judgments are available on the Bureau's website.

As of 31st December 2011, there were 40 High Court appeals pending, i.e. Court proceedings were in being and either were awaiting hearing or had been heard and were awaiting Judgment.

Appeals are brought by both Complainants and Financial Service Providers depending on the issues arising from the Finding under appeal. 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 re-submitted to the Ombudsman for re-consideration. It is the policy of the Bureau to seek and pursue legal costs in all appropriate cases.

While most of the Court Judgments have no wider application beyond the individual appeals themselves, the Court's continued recognition and consideration of the Ombudsman's unique statutory function continues to be a recurring theme in Judgments.

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### 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.

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# Part Three



# Part Three

## Part Three

### External Relations

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#### 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. This memorandum was reviewed during 2011. If a matter arises during an investigation by the Financial Services Ombudsman which he feels is indicative of some kind of pattern, he will inform the Central Bank so that appropriate regulatory action may be taken. He also co-operates with the Pensions Ombudsman so as to avoid unnecessary overlap in pensions' area. Quite apart from the Memorandum, the three offices have enjoyed, and continue to enjoy, close co-operation. Meetings between the three parties were held regularly and when deemed necessary in 2011.

#### 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.

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#### FIN-NET / Cross Border Co-operation

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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.

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## Public Information Role

### Presentations

- Insurance Institutes – Nationwide;
- Credit Institutions;
- Professional Insurance Brokers Association;
- LIA;
- Insurance Companies;
- Serbian Delegation in the Central Bank;
- Europe Direct Network, FIN-NET;
- Consumer Day Conference.

### Meetings / Conferences

- Irish Banking Federation;
- Individual Financial Service Providers;
- Insurance Institutes – Nationwide;
- Credit Union Managers Association;
- FIN-NET;
- The Law Society;
- The Association of Chief Executives of State Agencies;
- The Central Bank;
- British and Irish Ombudsman Association Conference;
- Transparency Ireland;
- Equality Authority;
- Society of Actuaries;
- Professional Insurance Brokers Association;
- Insurance Brokers Association;
- Financial Services Ireland;
- International Financial Services Ombudsman's Conference Vancouver;
- The Irish Association of Investment Managers.

### Other public information

- Media Interviews;
- Articles in Consumer and Financial Service Providers Magazines;
- Website Updates;
- Bi-Annual Reviews.

### Visits to the Office

- Saudi Arabian Monetary Agency;
- Pensions Ombudsman.

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# Part Four



# Part Four



## Part Four

### Organisational Matters

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#### Risk Strategy

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

#### Strategy Statement

The Strategy Statement for 2011 was approved by the Financial Services Ombudsman Council and published on our website. Its targets and objectives are under constant review by the Management Team.

#### Environmental Policy Statement

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

The primary means of energy consumption by the Bureau is in relation to the running of the office on the third floor of the five storey Lincoln House building. In 2011, 140,320 KWh of energy was consumed consisting of:

- 85,868 KWh of Electricity in 2011, in comparison to 88,676 KWh in 2010
- 54,452 KWh of Fossil Fuels (Gas Heating) in 2011, in comparison to 59,760 KWh in 2010

The figures above show that the overall energy consumption of the Bureau has decreased by 8116 kWh in 2011 in comparison to 2010. This illustrates that the energy saving initiatives that were undertaken in 2011 had a positive effect in reducing the overall energy consumption of our office.

The energy efficiency initiatives that were implemented in 2011 which assisted in achieving this decline included:

- The increased use of energy efficient lighting in the office with the installation of further LED & CFL lighting together with supplementary motion activated light sensors.
- The holding of a day lecture on energy efficiency and a poster campaign in the office to encourage the switching off of lighting and electronic equipment when not required together with the issuing of a monthly update to all staff on the energy use of the office for that month together with further advice on how to reduce energy use.
- The addition of the facility for Complainants to have correspondence sent to them by email rather than by post by means of requesting same on the complaint form. Take up of this option by Complainants has been substantial and has had the effect of reducing the energy use of the office in relation to the printing and posting of letters.

## Part Four

### Organisational Matters

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In 2012, the Bureau plans to further expand upon the means by which we can reduce our energy consumption. This will include:

- The introduction of socket timers on various peripheral computational equipment resulting in the automatic shutdown of these units at night time and weekends.
- The increased use of digital correspondence with the introduction of the forwarding of Complainants documentation to providers by secure encrypted email. This process is currently in a trial phase and once fully implemented is sure to have a strong and positive effect on reducing energy use in comparison to the old system of printing out documentation and sending it by post.
- The addition of the facility for Complainants to have correspondence sent to them by email rather than by post by means of requesting same on the complaint form. Take up of this option by Complainants has been substantial and has had the effect of reducing the energy use of the office in relation to the printing and posting of letters.
- Despite the increased use of email in the office there still is a large use of paper for filing. To tackle this, the Bureau will introduce default double-sided printing on all communal printers in the office.
- As the Bureau is a tenant to a Third Party in the Lincoln House Building we are restricted from making any major structural changes. However, despite this, we have begun consultations on having double glazing installed so as to reduce the energy requirements to heat the office. It is hoped that internal double-glazed windows will be installed in certain parts of the office with the ambition to fully install said windowing over the next few years.

The overall environmental impact of the Bureau is always under review and in that regard the Bureau has identified the requirement to improve our recycling facilities. Currently the general waste that is collected on site is sorted and recycled off site. However, in order to encourage staff to have a more environmentally sensitive mindset, the Bureau has decided to implement on site separation of recyclable waste. We hope to begin implementation of this facility in 2012 giving staff the opportunity to acknowledge that they are being pro-active about recycling rubbish.

### Staff Training

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

### Performance Management and Development Systems (PMDS)

Staff member's performances for 2011 were reviewed by their manager and suitable training and development plans agreed.

### Finance

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

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### Compliance with Legislation

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

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

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# Part Five



# Part Five

## Part Five 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 2011 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 circumstances of the Financial Services Ombudsman's Bureau, and have been consistently applied and adequately disclosed
- the reasonableness of significant accounting estimates made in the preparation of the financial statements, and
- the overall presentation of the financial statements.

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

In addition, I read all the 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 2011 and of its income and expenditure for the year then ended.

In my opinion, proper books of account have been kept by the 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 Annual Report of the Financial Services Ombudsman's Bureau 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

22 June 2012

## Part Five Financial Statements



**Comptroller and Auditor General**  
Report for presentation to the Houses of the Oireachtas

### Financial Services Ombudsman's Bureau

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#### 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.

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

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

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

#### Scope of Audit of the Financial Statements

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

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

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

In addition, I read all the 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 2011 and of its income and expenditure for the year then ended.

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**Andrew Harkness**  
For and on behalf of the  
Comptroller and Auditor General

22 June 2012

### 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

8<sup>th</sup> June 2012

### Statement on internal financial control

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

- The Ombudsman also acknowledges that such a system of internal financial control can provide only reasonable and not absolute assurance against material error.
- The Ombudsman sets out the following key procedures designed to provide effective internal financial control within the Bureau:
- As provided for in Section 54B of the Central Bank Act, 1942 as inserted by Section 16 of the Central Bank and Financial Services Authority of Ireland Act, 2004 the Ombudsman is responsible for carrying on, managing and controlling generally the administration and business of the Bureau. The Ombudsman reports to the Financial Services Ombudsman Council (Council) at their meetings which are generally held on a bi-monthly basis.
- The Council and the Bureau have adopted and implemented a "Code of Practice for the Governance of the Financial Services Ombudsman Bureau" based on the Department of Finance "Code of Practice for Governance of State Bodies"
- The Ombudsman and Council review bi-monthly income and expenditure statements with analysis of major income and expenditure categories.
- The Ombudsman via the Finance Committee reviews the annual budget through a comprehensive budgeting system.
- The work of Internal Audit is informed by the analysis of the risks to which the Bureau is exposed and the Internal Audit plan is based on this analysis. Action was taken to

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- The Ombudsman via the Finance Committee reviews the annual budget through a comprehensive budgeting system.
- The work of Internal Audit is informed by the analysis of the risks to which the Bureau is exposed and the Internal Audit plan is based on this analysis. Action was taken to

ensure that the identified potential risks were being managed in an appropriate manner. A detailed internal audit programme of work was agreed and completed in 2011. The Audit Committee reports to the Ombudsman and Council. The Committee met on four occasions in 2011. The Ombudsman monitors and reviews the efficiency of the system of its internal procedure.

### Review of Internal Controls

I have reviewed the internal audit reports, the minutes of the audit committee meetings and the effectiveness of the system of internal financial controls. Where control deficiencies were highlighted these have been addressed. I also note that an internal audit programme of work has been agreed for 2012 and I will implement any necessary improvements to correct any deficiencies it may bring to light.



William Prasifka  
Financial Services Ombudsman

8<sup>th</sup> June 2012

### 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. In order to reduce the surplus being carried by the Bureau, the levy due from Financial Service Providers was reduced by 30% on the amount levied in 2010, subject to minimum amounts as prescribed in S.I. No. 576 of 2010.

#### Expenditure Recognition

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

#### Tangible Fixed Assets

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

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### Capital Account

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

### Superannuation

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

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

### Income and Expenditure Account

For the year ended 31 December 2011

	Notes	2011 (€)	2010 (€)
Income Receivable	2	3,880,269	5,325,628
Transfer (to)/from Capital Account	3	32,707	12,283
		<b>3,912,976</b>	<b>5,337,911</b>
Administration Costs	4	(5,505,850)	(4,413,985)
<b>(Deficit)/Surplus for the year</b>		<b>(1,592,874)</b>	<b>923,926</b>
<b>Balance at 1st January</b>		<b>2,517,992</b>	<b>1,594,066</b>
<b>Balance at 31st December</b>		<b>925,118</b>	<b>2,517,992</b>



William Prasifka  
Financial Services Ombudsman

8<sup>th</sup> June 2012

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.

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Administration Costs	4	(5,505,850)	(4,413,985)
<b>(Deficit)/Surplus for the year</b>		<b>(1,592,874)</b>	<b>923,926</b>
<b>Balance at 1st January</b>		<b>2,517,992</b>	<b>1,594,066</b>
<b>Balance at 31st December</b>		<b>925,118</b>	<b>2,517,992</b>



William Prasifka  
Financial Services Ombudsman

8<sup>th</sup> June 2012

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 2011

	Notes	2011 (€)	2010 (€)
Fixed assets			
Tangible assets	5	426,168	458,875
		<b>426,168</b>	<b>458,875</b>
<b>Current assets</b>			
Bank and Cash		524,879	421,200
Bank Deposit Accounts		4,182,832	5,127,352
Debtors and Pre-payments	6	67,729	106,361
		<b>4,775,440</b>	<b>5,654,913</b>
<b>Creditors (amounts falling due within one year)</b>			
Creditors and accruals	7	3,850,322	3,136,921
		<b>3,850,322</b>	<b>3,136,921</b>
<b>Net current assets</b>		<b>925,118</b>	<b>2,517,992</b>
<b>Creditors (amounts falling due after one year)</b>		—	—
<b>Net assets</b>		<b>1,351,286</b>	<b>2,976,867</b>
<b>Represented by</b>			
Capital Account	3	426,168	458,875
Accumulated surplus at 31 December 2011		925,118	2,517,992
		<b>1,351,286</b>	<b>2,976,867</b>

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



William Prasifka  
Financial Services Ombudsman

8<sup>th</sup> June 2012

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	Notes	2011 (€)	2010 (€)
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William Prasifka  
Financial Services Ombudsman

8<sup>th</sup> June 2012

### Cashflow Statement for the year ended 31 December 2011

	2011 (€)	2010 (€)
Reconciliation of deficit to net cash inflow from operating activities		
Deficit for the year	(1,592,874)	923,926
Transfer to capital account	(32,707)	(12,283)
Depreciation charge	83,780	100,274
Interest received	(72,401)	(67,348)
(Increase)/decrease in debtors	38,632	(50,803)
Increase/(decrease) in creditors	713,401	108,506
<b>Net Cash Outflow from Operating Activities</b>	<b>(862,169)</b>	<b>1,002,272</b>
Cash Flow Statement		
Net cash flow from operating activities	(862,169)	1,002,272
Return on Investments and Servicing of Finance		
Interest received	72,401	67,348
Interest paid	—	—
Capital expenditure	(51,073)	(87,991)
Financing	—	—
<b>Increase/(decrease) in cash</b>	<b>(840,841)</b>	<b>981,629</b>
Reconciliation of Net Cash Flows to Movement in Net Funds		
<b>Increase/(Decrease) in cash in the year</b>	<b>(840,841)</b>	<b>981,629</b>
Changes in net funds resulting from cash flow		
Net funds at beginning of the year	5,548,552	4,566,923
<b>Net funds at the end of the year</b>	<b>4,707,711</b>	<b>5,548,552</b>

### Cashflow Statement for the year ended 31 December 2011

	2011 (€)	2010 (€)
Reconciliation of deficit to net cash inflow from operating activities		
Deficit for the year	(1,592,874)	923,926
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The Statement of Accounting Policies and notes 1 to 14 form an integral part of these Financial Statements.



William Prasifka  
Financial Services Ombudsman

8<sup>th</sup> June 2012

## 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, 2010 set the actual rate for the year ending 31 December 2011. In order to reduce the surplus being carried by the Bureau, the levy due from Financial Service Providers was reduced by 30% on the amount levied in 2010, subject to minimum amounts as prescribed in S.I. No. 576 of 2010.

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#### 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:

	2011 (€)	2010 (€)
Levy	3,807,868	5,257,430
Other Income	—	850
Bank Interest	72,401	67,348
<b>Total</b>	<b>3,880,269</b>	<b>5,325,628</b>

### 3 Capital Account

	2011 (€)	2010 (€)
Opening balance	458,875	471,158
Funds allocated to acquire fixed assets	51,073	87,991
Amortisation in line with depreciation	(83,780)	(100,274)
Transfer from/(to) Income and Expenditure account	(32,707)	(12,283)
<b>Balance at 31 December 2011</b>	<b>426,168</b>	<b>458,875</b>

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<b>Balance at 31 December 2011</b>	<b>426,168</b>	<b>458,875</b>

<b>4 Administration Costs</b>	<b>2011 (€)</b>	<b>2010 (€)</b>
Salaries and Staff Costs	2,068,287	1,566,003
Staff Pension Costs	426,947	322,297
Staff Training	38,590	33,649
Bad Debt Write Off	5,098	2,651
Council Remuneration	95,100	97,200
Council Expenses	6,293	7,638
Rent and Rates	183,951	190,819
Maintenance	23,274	41,533
Conference & Travel	20,474	16,249
Contractors	39,177	42,584
External Case Handlers	794,088	682,198
Information Activities	69,716	78,920
Cleaning	22,767	21,708
Legal Fees	1,386,255	886,207
Insurance	33,096	31,835
Stationery Costs	59,014	59,123
Other Administration Costs	126,781	208,728
External Audit	12,925	8,119
Internal Audit	10,237	16,250
Depreciation	83,780	100,274
<b>Total</b>	<b>5,505,850</b>	<b>4,413,985</b>

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Depreciation	83,780	100,274
<b>Total</b>	<b>5,505,850</b>	<b>4,413,985</b>

#### Staff Numbers

The number of persons employed (permanent) as at 31 December 2011 was 34 (32 in 2010).

Salaries and Staff Costs	2011 (€)	2010 (€)
<b>Ombudsman Salary</b>		
Salary	176,800	154,928
Pension Contributions	44,200	33,887
	<b>221,000</b>	<b>188,815</b>
<b>Deputy Ombudsman Salary</b>		
Salary	119,795	2,249
Pension Contributions	29,814	562
	<b>149,609</b>	<b>2,811</b>

#### Additional Payments

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

#### Pension Related Deductions

€115,986 pension levy has been deducted from staff members and paid over to the Department of Finance.

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## 5 Tangible Fixed Assets

	Computer Equipment	Office Fitting, Furniture & Equipment	Building Refurbishment	Total
Cost	€	€	€	€
<b>At 1 January 2011</b>	<b>269,958</b>	<b>208,101</b>	<b>512,593</b>	<b>990,652</b>
Additions during period	32,775	18,298	—	51,073
<b>At 31 December 2011</b>	<b>302,733</b>	<b>226,399</b>	<b>512,593</b>	<b>1,041,725</b>
Accumulated Depreciation				
<b>At 1 January 2011</b>	<b>230,202</b>	<b>178,945</b>	<b>122,630</b>	<b>531,777</b>
Charge for period	38,173	19,977	25,630	83,780
<b>At 31 December 2011</b>	<b>268,375</b>	<b>198,922</b>	<b>148,260</b>	<b>615,557</b>
Net Book Value				
<b>At 31 December 2011</b>	<b>34,358</b>	<b>27,477</b>	<b>364,333</b>	<b>426,168</b>
<b>At 31 December 2010</b>	<b>39,756</b>	<b>29,156</b>	<b>389,963</b>	<b>458,875</b>

## 6 Pre-payments and Accrued Income

	2011 (€)	2010 (€)
Debtors	4,420	5,489
Prepayments	63,309	100,872
	<b>67,729</b>	<b>106,361</b>

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Prepayments	63,309	100,872
	<b>67,729</b>	<b>106,361</b>

## 7 Creditors (Amounts falling due within one year)

	2011 (€)	2010 (€)
Trade Creditors and Accruals	901,579	625,499
Pension Contributions	2,948,743	2,511,422
	<b>3,850,322</b>	<b>3,136,921</b>

## 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 has proposed a legislative amendment to the Central Bank (Supervision and Enforcement) Bill, 2011.

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

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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 2011 is €4,600,000 (€4,800,000:2010). 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 2011. 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-11	31-Dec-10
Discount rate	5.5%	5.5%
Rate of increase in salaries	4.0%	4.0%
Rate of increase in pension	4.0%	4.0%
Inflation	2.0%	2.0%

#### Creditor Pension Account

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

	2011 (€)	2010 (€)
Opening Balance	2,511,422	2,540,413
Employee Contributions	120,250	98,688
Employer Contributions	390,771	304,206
Bank Interest (Pension Account)	53,657	46,230
Less: Pensions Paid	(127,360)	(478,115)
	<b>2,948,740</b>	<b>2,511,422</b>

## 9 Financial Commitments

There are no capital commitments for capital expenditure at 31 December 2011.

## 10 Contingent Liabilities / Legal Actions

Findings of the Ombudsman are sometimes appealed to the High Court or, more occasionally, are the subject of a Judicial Review. The FSO defends all such appeals or Judicial Reviews and these are dealt with either by a Judgment of the High Court, by settlement between the parties or withdrawal of the appeal. The number of such appeals varies but in 2011, the usual number of ongoing appeals was 35-40. There are no legal actions against the Ombudsman/Bureau other than such appeals of Findings.

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### 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 €177,965 (2010:€180,000)

### 13 Council Remuneration

		2011 (€)	2010 (€)
<b>Dermott Jewell</b>	Chairperson	21,600	21,600
<b>Anthony Kerr</b>	Council Member	12,600	12,600
<b>Caitríona Ní Charra</b>	Council Member	12,600	12,600
<b>Frank Wynn</b>	Council Member	12,600	12,600
<b>Michael Connolly</b>	Council Member	12,600	12,600
<b>Paddy Leydon</b>	Council Member	12,600	12,600
<b>Paddy Lyons</b> (resigned October 2011)	Council Member	10,500	12,600
		<b>95,100</b>	<b>97,200</b>

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

	2011 (€)	2010 (€)
Travel Expenses	5,237	3,844
Meeting Expenses	1,056	3,794
	<b>6,293</b>	<b>7,638</b>

### 14 Approval of Financial Statements

The Financial Statements were approved by the Financial Services Ombudsman on 8<sup>th</sup> June 2012.

### 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 €177,965 (2010:€180,000)

### 13 Council Remuneration

		2011 (€)	2010 (€)
<b>Dermott Jewell</b>	Chairperson	21,600	21,600
<b>Anthony Kerr</b>	Council Member	12,600	12,600
<b>Caitríona Ní Charra</b>	Council Member	12,600	12,600
<b>Frank Wynn</b>	Council Member	12,600	12,600
<b>Michael Connolly</b>	Council Member	12,600	12,600
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# Part Six



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### Case Studies

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#### Case Study 1: Disability Payment under an Income Protection (Upheld)

The Complainant was in receipt of Disability Benefit from the Company. The Complainant received a compensatory amount from the Employment Appeals Tribunal (EAT). The Company decreased the monthly benefit payable to the Complainant in accordance with the terms of the policy.

The relevant Clause sought to reduce the benefit payable to the policyholder by deduction inter-alia of *"payments one of which is the annual equivalent of any award made to the insured person by Court of Law or Arbitration Tribunal or Settlement lump sum or ex gratia payment received by the Insured Person in respect of loss of earnings from any action relating to Disability"*.

The issue to be determined in this instance was whether the award made by the EAT in favour of the Complainant was *"an award made ... by [an] Arbitration Tribunal ... in respect of loss of earnings from any action relating to Disability"*. The case taken by the Complainant against her employer to the EAT was one of constructive dismissal. The Complainant contended that the award was not relating to disability and therefore that the Company has been incorrect in reducing her disability payment under the Policy.

The Ombudsman considered both the Terms of the policy and the provisions of the Unfair Dismissals Act 1977. The Ombudsman was satisfied that the Determination of the Tribunal was based on the circumstances which led to the Complainant being forced to leave her employment, namely the "abandonment of fair procedures" and was not based on any consideration of the Complainant's disability or otherwise.

The Ombudsman accordingly decided that there had been no evidence adduced which would substantiate the contention that the award made by the EAT was in any way related to disability as is required under the policy in order to reduce a disability benefit being paid to a policyholder.

The Ombudsman found that the payment made by the EAT to the Complainant could not be equated with: *"... any award made to the Insured Person by a Court of Law or Arbitration Tribunal or settlement lump sum or ex-gratia payment received by the Insured person in respect of loss of earnings from any action relating to Disability"* and therefore the Company could not use this award to reduce the Disability Benefit payable to the Complainant.

#### Case Study 2: Critical illness claim (Not Upheld)

The Complainant in this case had been diagnosed with a large tumour and underwent surgery. The complaint related to the Provider's decision to decline the Complainant's subsequent critical illness claim on the grounds that the tumour was benign and not cancerous, and therefore not covered by the terms of his policy. Instead, the Provider made a 10% payout on the basis that the Complainant's claim met the definition for surgical procedure to the spinal cord.

The Complainant disputed the Provider's assessment of her claim. She argued that her tumour might not have been cancerous but that it was serious and life threatening, and had prevented her from working for a period of six months.

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The Ombudsman found that the payment made by the EAT to the Complainant could not be equated with: *"... any award made to the Insured Person by a Court of Law or Arbitration Tribunal or settlement lump sum or ex-gratia payment received by the Insured person in respect of loss of earnings from any action relating to Disability"* and therefore the Company could not use this award to reduce the Disability Benefit payable to the Complainant.

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The Complainant disputed the Provider's assessment of her claim. She argued that her tumour might not have been cancerous but that it was serious and life threatening, and had prevented her from working for a period of six months.

The Ombudsman examined the terms and conditions of the Complainant's policy and was satisfied that these terms and conditions clearly set out the benefits in detail. The Complainant's claim fell to be assessed under a clause which stated that Benefit "consists of the payment of a lump sum to you if an insured life is diagnosed as having one of the specified medical conditions or undergoes one of the specified operations as listed ....".

It was noted that Cancer was included in the list of medical conditions covered and that the term "cancer" was defined at (iii) as follows:

*Cancer, being a malignant tumour characterised by the uncontrolled growth and spread of malignant cells and the invasion of tissue. This includes leukaemia and Hodgkin's disease but excludes non-invasive cancers in situ, tumours on the presence of HIV or skin cancer other than malignant melanoma.*

The Ombudsman studied the medical evidence submitted by both parties to the complaint and found that it was not disputed that the tumour which had been removed from the Complainant's spine was benign, i.e. not malignant.

He noted that the Provider was obliged to make payment of benefit to the insured under the policy only in accordance with the terms and conditions of the policy. In the circumstances of this case, based on the medical evidence submitted, the Complainant's tumour did not meet the definition of cancer specified by the Complainant's policy and accordingly the Provider was not obliged to make payment to the Complainant of the full amount of Benefit.

The Ombudsman noted that the Provider had correctly made payment of a sum representing 10% of the Living Cover Benefit on the basis that the Complainant underwent a surgical procedure to her spinal cord, in accordance with the relevant sections.

### Case Study 3: Critical illness – Claims handling issues (Upheld)

The Complainant, who held an Accident Disability policy with the Company, was involved in a farm accident on 25th October 2009 where he broke a femur. The Complainant was hospitalised for 24 days.

The Complainant submitted a claim to the Company, who paid some €2,000 on 1st February 2010. This payment represented 57 days' benefit, up to 22nd December 2009. The Complainant stated that the Company included a letter that indicated the payment was an interim payment, and a continuing claim form was included.

The Complainant completed the continuing claim form and returned it to the Company, who acknowledged receipt on 27th March 2010. The Company then wrote to the Complainant on 8th April 2010 stating that any further claim would be declined as maximum benefit had been paid.

The Complainant appealed the decision, submitting a note from his GP showing that he was still disabled and using crutches. The Complainant stated that his Summary of Benefits showed that he should be covered for 6 months at full benefit and 1 month at half-benefit.

The Company acknowledged that it had initially delayed in examining the claim and offered €100 to the Complainant as a gesture of goodwill. The Company affirmed its decision not to continue the claim in its final response letter.

However, in responding to this Office, the Company indicated that it should have sought clarity from the Complainant's medical representatives rather than asking the Complainant to prove his further disability. The Company identified that further benefit of €4,664.40 should in fact be paid to the Complainant, and it offered the additional benefit of €4,664.40

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However, in responding to this Office, the Company indicated that it should have sought clarity from the Complainant's medical representatives rather than asking the Complainant to prove his further disability. The Company identified that further benefit of €4,664.40 should in fact be paid to the Complainant, and it offered the additional benefit of €4,664.40

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plus €500 goodwill. The Company stated that this payment would be made to the Complainant within 14 days.

In the course of the adjudication of the complaint, it became clear that the Company had not made this payment to the Complainant. It was now 18 months since the claim had been originally made to the Company. The complaint was upheld that the Company had been incorrect to refuse to pay further benefit.

The Company were directed to pay the remaining benefit of €4,664.40 to the Complainant plus an ex-gratia payment of €1,000 to conclude.

#### **Case Study 4: Refusal to provide any policy (Not Upheld)**

The complaint in this case was that the Company unfairly refused to provide a policy of Income Protection Cover to the Complainant.

At application stage, the Company conducted a tele-interview with the Complainant wherein he disclosed his medical history to the Company in compliance with the requirements for an application of this nature. The Company further sought medical details from the Complainant's GP. On foot of all the information available, the Company, in consultation with the Chief Medical Officer, declined to offer cover and confirmed the position to the Complainant.

While the Complainant pointed to one aspect of his health as preventing the Company from offering cover, the Ombudsman was satisfied that this illness was not the only aspect of his health which caused the Company to decline to accept the application. In its letter of declination of cover the Company had provided the Complainant's GP with confirmation of this position.

On the evidence submitted, the Ombudsman found that the Company processed and assessed the Complainant's Application in a fair and reasonable manner. The Complainant made a full disclosure of his medical history and having regard to that information the Company had explored all avenues with regard to providing cover - including seeking an opinion from a Reinsurer in respect of the application. Having regard to all the medical conditions disclosed by the Complainant, the Ombudsman was satisfied that it was not possible for the Company to offer cover. However, the Company did agree to review the matter in 5 years time.

Underwriting and rating matters are, in general, matters which are at the commercial discretion of the Company. Underwriting and rating matters concern the decision by an insurance company as to whether a proposal for insurance should be accepted, and, in that event, the amount of premium and the terms and conditions that will apply.

As there was no evidence of any wrongdoing by the Company, relative to the underwriting process, the Complaint was not upheld.

#### **Case Study 5: Income Continuance (Not Upheld)**

The complaint in this case related to a claim under an Income Continuance Plan. The complaint was that the Company incorrectly assessed the claim and was wrongfully withholding payment of benefit under the policy.

The issue for investigation and adjudication was whether the Complainant satisfied the policy criteria for payment of benefit for the period commencing at the end of the relevant deferred period under the policy, up to the date the Complainant returned to work. The Policy had the

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plus €500 goodwill. The Company stated that this payment would be made to the Complainant within 14 days.

In the course of the adjudication of the complaint, it became clear that the Company had not made this payment to the Complainant. It was now 18 months since the claim had been originally made to the Company. The complaint was upheld that the Company had been incorrect to refuse to pay further benefit.

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As there was no evidence of any wrongdoing by the Company, relative to the underwriting process, the Complaint was not upheld.

#### **Case Study 5: Income Continuance (Not Upheld)**

The complaint in this case related to a claim under an Income Continuance Plan. The complaint was that the Company incorrectly assessed the claim and was wrongfully withholding payment of benefit under the policy.

The issue for investigation and adjudication was whether the Complainant satisfied the policy criteria for payment of benefit for the period commencing at the end of the relevant deferred period under the policy, up to the date the Complainant returned to work. The Policy had the

following definition of Period of Disability: "A period throughout which a Member is totally unable to carry out his Normal Occupation due to a recognised illness or accident".

To meet the criteria of this definition the Complainant needed to be totally unable, by reason of a recognised sickness or accident, to perform the functions of her own occupation.

The Ombudsman reviewed the medical reports from the Employer's Medical Officer, the Complainant's GP and an Occupational Physician whom the Complainant attended at the Company's request, as part of the assessment of the claim.

The Company received two reports from the Employer's Medical Officer. The first report outlined that a number of medical conditions were preventing the Complainant from returning to work and it was anticipated that the Complainant would be fit to do so in a further 4 weeks. The second report indicated a medical condition preventing a return to work and that the Complainant's GP felt the Complainant was not in a position for full time work but did suggest that the Complainant was fit for a 4 day week. Following the review with the Company appointed Occupational Physician, it was indicated that the Complainant was reasonably independent in her daily life with few limitations. A minor ailment was noted, but the Complainant was otherwise healthy. The Occupational Physician was of the opinion that the Complainant had a number of symptoms which did not represent any sinister underlying disorder. The Occupational Physician was of the opinion that the Complainant's medical complaints did not render her disabled or unfit for work and the decision to work a 4 day week was not required on medical grounds.

After carefully considering the evidence, it was the Ombudsman's Finding that the complaint was not upheld as the weight of the evidence did not support the Complainant's assertion that she was totally unable to carry out her normal occupation.

#### Case Study 6: Insurance on a Holiday Home (Not Upheld)

The Complainant had a holiday home insured with the Company. The policy was effective from April 2009 to April 2010. The insured property suffered water damage due to a burst pipe in November 2009. The Complainant submitted a claim in respect of the damage caused to the property by the escape of water. The Company declined the claim on the basis that the policy conditions were not met, namely that the Complainant had not complied with the following policy provision:

*"HOLIDAY HOME UNOCCUPANCY ENDORSEMENT (used by You only)*

*Where the Home is used as a holiday home used by You only*

- 1) *We will not cover loss or damage arising from freezing escape or overflow of water from within any plumbing or heating system, fixed water apparatus or fixed domestic appliance during the period 1. November to 31st March annually unless:*
  - i) *the water supply is turned off at the mains and all water is drained from the system, or*
  - ii) *the central heating system is left in full operation 24 hours a day to maintain a minimum temperature of 10C/50F throughout the home."*

The Ombudsman found the claim submitted by the Complainant fell to be assessed under the terms, conditions, exclusions and endorsements of the policy contracted into by both parties. The Ombudsman was satisfied that the Complainant had not complied with the relevant policy provisions i.e. the water supply had not been turned off and drained from the system, or the central heating system had not been left in full operation 24 hours a day at a minimum temperature. Consequently, the complaint was not upheld as the Company had acted correctly in declining the claim.

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### Case Study 7: Tracker Mortgage (Upheld)

The Complainant had a mortgage with the Bank, drawn down at a 'tracker' interest rate in 2006. In mid-2007 he decided to fix the interest rate for 3 years. When the fixed interest rate period expired, the mortgage was put on the Bank's standard variable interest rate, not the 'tracker' rate.

The Complainant brought a complaint to the FSO, stating that he should have been allowed to go back to the original 'tracker' rate when the fixed rate expired.

He argued that when he signed up for the fixed rate he was not told he would not have the 'tracker' rate option when the fixed rate expired; he was only told about this as the fixed rate period neared completion.

He stated that documentation used when he signed up to the fixed rate referred to the Bank's home loan rate applying at expiry of the fixed rate and he presumed that this meant the home loan 'tracker' rate for which he had first signed up in 2006. He argued that the documentation never referred to a standard variable rate.

He submitted that the Bank, in response to the complaint, argued that the home loan rate meant standard variable rate. In that regard, he stated that the mortgage terms and conditions and the document signed when fixing the rate never mentioned this point.

The Complainant requested that he be allowed go back to the 'tracker' rate as originally detailed in the mortgage.

The Bank stated that it had administered both the account and interest rate in accordance with the documentation and that the documentation was clear and concise as to what would happen at expiry of the fixed rate period.

It argued that the document signed when the Complainant fixed the interest rate referred to the home loan rate at expiry of the fixed rate period. It argued that its home loan rate is also known as its standard variable rate.

It submitted that by, signing the documentation when he fixed the interest rate, the Complainant had consented to fixing the rate subject to the conditions in the documentation and confirmed that he clearly understood the process when the fixed rate period expired.

The FSO looked at all evidence and submissions, with particular regard to the documentation. This included the mortgage terms and conditions, signed in 2006, and the document signed by the Complainant when he decided to fix the interest rate in 2007. It was noted that the 2007 document referred to the wording of the mortgage terms and conditions, i.e. the documentation of 2006.

The FSO asked the Bank if it considered that sufficient information had been provided to allow the Complainant make an informed decision as to the mortgage and interest rates which would apply following expiry of the fixed rate period.

Having considered the documentation, and the submissions of the Bank and the Complainant, the FSO expressed concerns with the terms used to describe interest rates contained in the documentation. The FSO stated that there was a lack of clarity and consistency as to what type of interest rate certain terms referred to and that confusion could have arisen regarding this wording. Reference was made to the wording of the general conditions of the mortgage and the wording of the document signed by the Complainant when he fixed the interest rate.

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The FSO stated that there is a duty on the Bank to provide clear and straightforward information. Ultimately, the Bank produced documentation on which it sought to rely and on which the Complainant reasonably relied when making his decision to fix the rate. An issue as to the clarity of that documentation arose.

It was concluded that the Complainant had substantiated his complaint. The Bank was directed to allow the Complainant opt for the 'tracker' rate and to backdate this to the expiry of the fixed interest rate period.

### Case Study 8: Tracker Mortgage (Upheld)

The Complainants took out a mortgage with the Bank in October 2006. In October 2007 the Complainants decided to reduce the period of their mortgage and fix the interest rate for a period of 3 years on a portion of their mortgage.

Towards the end of their fixed interest rate period, the Complainants approached their branch of the Bank to enquire as to what options were open to them at the end of their fixed interest rate period.

The Bank informed the Complainants that three options were provided in their loan agreement and these were: take a further fixed interest rate term, switch to a variable interest rate or switch to a tracker interest rate. The Bank pointed out that the loan agreement stated this choice was subject to the prevailing interest rates.

The Bank went on to advise that it had ceased to offer tracker interest rates in 2008 and that consequently, the Complainants could not switch the portion of the mortgage on the fixed interest rate to a tracker interest rate as the tracker interest rate was not a prevailing rate.

The Complainants were unhappy with this decision as they felt contractually entitled to avail of a tracker rate.

While the Ombudsman accepted that the Bank was entitled to stop offering tracker rates as a product, he noted that the Complainants had only switched a portion of their mortgage to a fixed rate. The remaining portion of the Complainants' mortgage had remained on a tracker interest rate. Consequently, as part of the Complainants' mortgage was subject to a tracker interest rate, the Ombudsman was satisfied that this was a prevailing rate within the terms of the loan agreement.

Accordingly the Ombudsman directed the Bank to place the relevant portion of the mortgage onto the tracker rate currently applicable to the remaining portion of the mortgage, backdated to expiry of the fixed interest rate term.

### Case Study 9: Tracker Mortgage (Not Upheld)

The Complainant took out a mortgage with the Bank in 2007. The complaint was that the Bank did not act in the Complainant's best interests in advising her to move to a fixed rate of interest from her tracker rate in 2010.

The Complainant advised that the terms of her mortgage included a fixed rate of interest for two years, thereafter moving to an interest rate of ECB +1.15% tracker. The Complainant stated that at the end of the two-year period she and her husband received a letter from the Bank confirming that their mortgage was to move to a standard tracker rate which was then 2.15%, which she subsequently availed of. The Complainant alleged that she then received numerous letters and calls from the Bank to switch back to a fixed rate.

The FSO stated that there is a duty on the Bank to provide clear and straightforward information. Ultimately, the Bank produced documentation on which it sought to rely and on which the Complainant reasonably relied when making his decision to fix the rate. An issue as to the clarity of that documentation arose.

It was concluded that the Complainant had substantiated his complaint. The Bank was directed to allow the Complainant opt for the 'tracker' rate and to backdate this to the expiry of the fixed interest rate period.

### Case Study 8: Tracker Mortgage (Upheld)

The Complainants took out a mortgage with the Bank in October 2006. In October 2007 the Complainants decided to reduce the period of their mortgage and fix the interest rate for a period of 3 years on a portion of their mortgage.

Towards the end of their fixed interest rate period, the Complainants approached their branch of the Bank to enquire as to what options were open to them at the end of their fixed interest rate period.

The Bank informed the Complainants that three options were provided in their loan agreement and these were: take a further fixed interest rate term, switch to a variable interest rate or switch to a tracker interest rate. The Bank pointed out that the loan agreement stated this choice was subject to the prevailing interest rates.

The Bank went on to advise that it had ceased to offer tracker interest rates in 2008 and that consequently, the Complainants could not switch the portion of the mortgage on the fixed interest rate to a tracker interest rate as the tracker interest rate was not a prevailing rate.

The Complainants were unhappy with this decision as they felt contractually entitled to avail of a tracker rate.

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The Complainant states that she was advised to move to the fixed rate for a further period of time and she decided to take the advice and moved back to the fixed rate of interest. The Complainant submitted to the FSO that this was bad advice and subsequently discovered that after the fixed rate period would expire, the loan would not revert to the standard tracker rate but to a variable rate, which had not been advised to her by the Bank.

The Bank stated to the FSO that its staff members can only provide customers with sufficient information regarding the interest rate products in order to allow them make an informed decision, which best suits their needs. Any final decision reached rests solely with the customer. The Bank stated that it had issued the Complainant with a fixed rate authority form which clearly outlined the implications of amending the interest rate of a house mortgage. The Bank contended that the Complainant was under no obligation to amend the interest rate of her house mortgage.

The Ombudsman referred to the covering letter issued by the Bank to the Complainant in March 2010 as part of the fixed rate authority form and this clearly stated:

*"Please note if you opt for a further fixed rate and your current default interest rate option is a tracker rate, at the end of this new fixed rate period the tracker Interest-rate option will no longer be available, and your mortgage will default to a Standard Variable Rate".*

The Ombudsman found that this letter unequivocally put the Complainant on notice as to the fact that she would lose her tracker rate indefinitely in fixing her interest rate. The Complainant received this letter and accompanying fixed rate authority form in March 2010 and returned it to the Bank in April 2010, which the Ombudsman concluded provided the Complainant with ample opportunity to consider her options in relation to her mortgage interest rate. The Ombudsman further determined that the Complainant made the independent decision to fix her interest rate, based on her circumstances at the time. The Ombudsman did not find any evidence in this case that the Bank actively encouraged the Complainant to switch rates or pressurised her in any way.

There was no evidence in this case to support the Complainant's allegation that she received numerous calls and letters from Bank representatives encouraging her to switch from her tracker rate to a fixed rate. The complaint was therefore not upheld.

#### **Case Study 10: Motor Insurance – Subrogation (Not Upheld)**

The Complainant had a motor insurance policy with the Company in question. The complaint related to a dispute over the Company's settlement of a Third Party claim on the Complainant's policy.

Regarding the incident, which gave rise to the Third Party claim, the Complainant claimed that the Third Party backed into him and admitted liability but subsequently changed her mind. The Complainant stated that he had witnesses, but that the Company failed to act or follow up on same. As the Company decided to settle the claim the Complainant's premium has since increased by €3,000, which he was not happy about.

The Complainant's case was that the Company settled the Third Party claim without fully investigating the incident.

The Company provided details of its assessment of the claim and confirmed that it appointed a Motor Assessor. Following its investigations it decided to settle both the Complainant's claim for the damage to his own vehicle for the amount of €2,275.00 and also settled the claim from the Third Party for their damage.

The Complainant states that she was advised to move to the fixed rate for a further period of time and she decided to take the advice and moved back to the fixed rate of interest. The Complainant submitted to the FSO that this was bad advice and subsequently discovered that after the fixed rate period would expire, the loan would not revert to the standard tracker rate but to a variable rate, which had not been advised to her by the Bank.

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The Company provided details of its assessment of the claim and confirmed that it appointed a Motor Assessor. Following its investigations it decided to settle both the Complainant's claim for the damage to his own vehicle for the amount of €2,275.00 and also settled the claim from the Third Party for their damage.

The Company referred to the General Conditions of the motor insurance contract, which it stated allow it to take over and carry out the defence or settlement of the claim.

The Ombudsman determined that when the Complainant took out this motor insurance policy he entered into a legally binding contract with the Company. Both parties to this contract must abide by its terms and conditions. The Ombudsman had to have regard to the terms and conditions of the policy in addition to the regulatory requirements for insurance companies when handling insurance claims.

The Subrogation Clause is one of the main conditions and it allows an Insurance Company to take over and either contest or settle a claim on behalf of the insured. This means that if a Third Party submits a claim against the policyholder or other insured stating that the policyholder damaged his/her vehicle or that he/she incurred personal injuries following an incident with the policyholder, the Company may decide, under their subrogation rights, to settle the case. Insurance companies generally do not need the permission of the insured to do this under the terms of the Subrogation Clause.

In the Complainant's case this Subrogation Clause stated that the Company "...will be entitled to take over and carry out in your name (or in the name of any other insured person) the defence or settlement of any claim..... we will be able to decide how any proceedings or settlements are handled."

The Ombudsman found that the Company complied with the requirement of the Consumer Protection Code that once a claim is settled against a Third Party, the policyholder must be informed in writing of the final outcome of the claim and the final settlement figure.

The Ombudsman found that, having regard to the Company's subrogation rights under the motor insurance contract, the complaint against the Company could not be upheld.

### Case Study 11: Motor Insurance (Not Upheld)

The Complainant held a comprehensive motor insurance policy with the Company which commenced in February 2010. The Complainant was involved in a one car collision on 23 August 2010. The Complainant submitted a claim to the Company in respect of the damage caused to the vehicle. The Company declined the claim on the basis that the Complainant had breached the policy conditions by not maintaining the vehicle in a roadworthy condition.

The relevant condition of the policy provided:

*"Care of Vehicle*

*The insured shall take all reasonable steps to safeguard the insured vehicle against loss, damage or breakdown. The insured vehicle must also be maintained in an efficient and roadworthy condition...."*

*General Exceptions and Conditions,*

*Exceptions:*

*The insurer shall not be liable in respect of any claim arising while the insured vehicle is being used or driven:*

*To the knowledge of the insured in an unsafe or unroadworthy condition. ..."*

The evidence submitted to the office established that at the time of the incident at least one of the vehicles tyres was below the legal tread depth requirement – the requirement being a minimum of 1.6mm for the full tyre width. The parties disagreed in respect of the tread depth of a second tyre.

The Company referred to the General Conditions of the motor insurance contract, which it stated allow it to take over and carry out the defence or settlement of the claim.

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The Ombudsman found that there had not been due observance or fulfilment by the Insured of the policy terms and conditions; the vehicle had not been kept in a roadworthy condition. Consequently, the complaint could not be upheld, as the Company was entitled to decline the claim.

### Case Study 12: Employers' Liability Claim (Not Upheld)

The Complainants in this case were sole traders. They held an insurance policy underwritten by the Provider providing cover for public/products liability, personal accident and employers' liability.

The complaint referred to the Ombudsman related to a claim under the employer's liability section of the policy, following a personal injury claim against the Complainants by a former employee. The Provider had declined liability for the claim on the grounds that the Complainants breached two conditions precedent to liability under the policy by (a) failing to notify the Provider within a reasonable period of time of the potential claim under the policy and (b) in so doing, failing to observe and fulfil the conditions of the policy.

The Provider maintained that both of these General Conditions were precedent to the underwriter's liability for any claim under the policy. The Provider stated that, despite these requirements, it was not notified of the incident until over 3 years after the accident occurred, by which time its position had been significantly prejudiced.

Without commenting on the cause or nature of the accident in question, it did not appear to be disputed by the parties that a former employee of the Complainants had sustained an injury in the workplace in the Spring of 2001. It was a condition of the Complainants' policy that the policyholder must "as soon as reasonably practicable" notify the Provider in writing about any incident "which may give rise to a claim" under the policy, and furnish the Provider with any information required in this regard. The policy document was clear and unambiguous in this regard.

The submissions supported the Complainants' case that they had not been formally notified of the personal injury claim being brought against them in the High Court until the Spring of 2004. However, the submissions also showed that the Complainants had been aware of the accident when it occurred, some three years earlier. Whatever the Complainants' own opinion at that time about the nature or cause of the accident or the likelihood that it might give rise to a claim, from an examination of the evidence submitted, the Ombudsman's view was that it would have been reasonable for the Complainants to anticipate that the incident might give rise to claim against the employers' liability section of their insurance policy. In these circumstances, the policy required that the Provider be notified as soon as reasonably practicable of the incident. The Provider was not notified of the incident until three years after it occurred. The Complainants thereby failed to adhere to, and acted in breach of, the terms and conditions of their insurance policy, and in so doing, prejudiced the Provider's ability to adequately investigate and defend the action.

In these circumstances, the Ombudsman found that the Provider was entitled to decline liability for the Complainants' claim. The complaint was not upheld.

### Case Study 13: Retail Foreign Exchange (Upheld)

The Complainant wanted to change \$61,630 into Euros. The Complainant sought the advice of the Bank and was advised to open a Demand Dollar account which she did on 2 July 2010. The Complainant was then able to monitor the exchange rates and make the decision to change the funds held from Dollars to Euros when the best exchange rate was available. The Complainant sought the advice of a number of the Respondent

The Ombudsman found that there had not been due observance or fulfilment by the Insured of the policy terms and conditions; the vehicle had not been kept in a roadworthy condition. Consequently, the complaint could not be upheld, as the Company was entitled to decline the claim.

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Bank's employees in this regard at various branches and claimed that she had received conflicting advice.

The Complainant submitted that she had no knowledge of foreign exchange and therefore was at the mercy of the Bank's staff. The Complainant's main goal was to be given a rough idea as to when it was a good time to complete the exchange. The Complainant stated that she received so many conflicting views that it confused her. The Complainant asked the Bank to calculate the lowest and the highest rates and claimed that because of the poor training given to the Bank's staff she lost approximately €3,500 in the transaction.

The Bank stated that it provided the exchange rate to the Complainant when she attended at the Bank but did not give any advice regarding the best exchange rate. The Bank submitted that, due to the fact that the Foreign Exchange rates fluctuate on a daily basis, it is not the practice of the branch staff to advise customers of possible future rates.

The Complainant submitted that she did not seek advice from the Bank in order to speculate on dollar/ euro exchange rates in order to profit from the funds. The Complainant stated, *"All I wanted to know was do you sell when the rates are high or low that's all. I did not want any member of staff to predict the movement of the world's financial economy but that's how they have twisted this scenario"*.

The Complainant had made withdrawals between 5 July 2010 and 30 September 2010 and claimed that, on the advice of the Bank, she had exchanged the dollars when the conversion rates were high when in fact it would have been more beneficial if she had decided to sell the dollars when the conversation rates were low.

It was clear from the submissions that, when the Complainant approached the Bank and sought its advice in relation to the most appropriate manner in which to lodge dollars, the Bank had advised the Complainant of the benefits of opening a US Dollar Demand Account as she did not intend to immediately convert the Dollars to Euro. At the time the Complainant opened the account, the Bank was of the view that it was her intention to monitor the rates on offer at regular intervals and then complete the exchange. The Bank submitted that it had indicated to the Complainant at the outset that she would need to monitor the rates, as it is not the Bank's policy to advise on the fluctuation of rates, due to the frequency with which exchange rates change.

The Ombudsman accepted that the Bank's policy is that branch staff do not give specific advice or guidance in relation to the conversion or exchange of foreign currency. However, he accepted that the Complainant had only sought general guidance on whether it was best to sell when the dollar was strong or when it was weak. This was different from seeking specific advice on whether to sell at a particular identified daily rate, which would clearly be contrary to the Bank's stated policy.

The evidence established that the Complainant had continually made withdrawals when the conversion rate was high. The Complainant made the case that she made the decision to conclude the transactions on these dates, based on information received from the Bank. The Ombudsman was satisfied that, at the time the Complainant opened the account, she intended to make ongoing withdrawals in order to avail of the most favourable rates and continually concluded transactions when the exchange rates were high. The Complainant's assertion that she made this decision after receiving information from the Bank was in keeping with the pattern of the transactions. However, the manner in which the information was sought was not clear. The enquiries made of the various staff members appeared to have been informal and if information was provided, which it appeared it was, the Ombudsman did not believe it was furnished by the Bank in a formal manner on foot of an express request. This was supported by the fact that the Complainant sought advice from numerous members of staff and received conflicting replies.

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The Ombudsman was satisfied that the Bank provided information to the Complainant in reply to general enquiries about whether she should sell when the dollar was strong or weak. He took the view that the Complainant was therefore entitled to receive some compensation for the loss incurred as a direct result of relying on this information. However this needed to be balanced against the fact that the information was sought in an informal way. While the informality of the enquiry lessens the degree to which the Bank breached its own code of practice, Bank employees providing information must always exercise care when doing so in a professional capacity, even if done on a less formal basis. The fact however that the Complainant, by her own admission, received conflicting information and did not seek to clarify which position was incorrect, also reduced her entitlement to receive compensation for the full amount of the loss.

The Complainant stated that the Bank had assessed the value of the loss at approximately €3,500 but this was based on the Complainant concluding the transaction at the optimum value on each occasion and the assessment had been made with the benefit of hindsight when considering the value of the dollar on any given date.

When this fact, together with the Complainant's failure to clarify which form of information was correct and her failure to seek formal advice from the Bank, was taken into account the Ombudsman was of the view that €750 was an appropriate level of compensation for the loss suffered by the Complainant and accurately reflected the Bank's influence on the decisions made by the Complainant.

#### Case Study 14: Investment Mis-selling (Not Upheld)

The Complainant was sold a geared investment by his Bank. The Complainant stated that he was never advised of any risk which was associated with the investment.

The Complainant stated that his Bank sold him an inappropriate and incorrect financial product resulting in consequential financial loss. The Complainant stated:

- He did not have an opportunity to review the documents which he signed during the investment meeting and;
- A named Bank Official had already completed various documents either at or before the investment meeting and simply asked the Complainant to apply his signature.

He was never advised of the risks associated with the geared investment.

On investigation of the complaint, the Bank determined that the Complainant received an investment commensurate with his financial needs and objectives. The Bank stated that the Complainant had been issued with all relevant investment documentation and that he had not availed of the cooling-off period which could be interpreted to mean that the Complainant had been satisfied with the investment.

The evidence showed that:

- a) There was no evidence that a named Bank Official had already completed various documents either at or before the investment meeting and that the Complainant was asked to apply his signature to completed documents.
- b) The Complainant freely and voluntarily signed both the Fact-Find and the relevant investment product application.
- c) The features of the investment, as well as any risk involved, were most likely explained to the Complainant and were certainly outlined in the documentation which was issued to the Complainant.

The complaint was not upheld.

The Ombudsman was satisfied that the Bank provided information to the Complainant in reply to general enquiries about whether she should sell when the dollar was strong or weak. He took the view that the Complainant was therefore entitled to receive some compensation for the loss incurred as a direct result of relying on this information. However this needed to be balanced against the fact that the information was sought in an informal way. While the informality of the enquiry lessens the degree to which the Bank breached its own code of practice, Bank employees providing information must always exercise care when doing so in a professional capacity, even if done on a less formal basis. The fact however that the Complainant, by her own admission, received conflicting information and did not seek to clarify which position was incorrect, also reduced her entitlement to receive compensation for the full amount of the loss.

The Complainant stated that the Bank had assessed the value of the loss at approximately €3,500 but this was based on the Complainant concluding the transaction at the optimum value on each occasion and the assessment had been made with the benefit of hindsight when considering the value of the dollar on any given date.

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#### Case Study 14: Investment Mis-selling (Not Upheld)

The Complainant was sold a geared investment by his Bank. The Complainant stated that he was never advised of any risk which was associated with the investment.

The Complainant stated that his Bank sold him an inappropriate and incorrect financial product resulting in consequential financial loss. The Complainant stated:

- He did not have an opportunity to review the documents which he signed during the investment meeting and;
- A named Bank Official had already completed various documents either at or before the investment meeting and simply asked the Complainant to apply his signature.

He was never advised of the risks associated with the geared investment.

On investigation of the complaint, the Bank determined that the Complainant received an investment commensurate with his financial needs and objectives. The Bank stated that the Complainant had been issued with all relevant investment documentation and that he had not availed of the cooling-off period which could be interpreted to mean that the Complainant had been satisfied with the investment.

The evidence showed that:

- a) There was no evidence that a named Bank Official had already completed various documents either at or before the investment meeting and that the Complainant was asked to apply his signature to completed documents.
- b) The Complainant freely and voluntarily signed both the Fact-Find and the relevant investment product application.
- c) The features of the investment, as well as any risk involved, were most likely explained to the Complainant and were certainly outlined in the documentation which was issued to the Complainant.

The complaint was not upheld.

### Case Study 15: Irish Credit Bureau (Upheld)

The Complainant arranged a personal loan with the Bank to be repaid in 48 instalments.

The Complainant was unable to meet his repayments and he was contacted by a Third Party on behalf of the Bank who wished to collect the outstanding loan amount. The Complainant agreed to make a one-off payment to settle the account. After the account was settled, the Complainant discovered that the Provider had recorded with the Irish Credit Bureau that the Complainant had missed a series of payments and defaulted on his account.

The Complainant disputed the information recorded by the Bank with the Irish Credit Bureau.

As part of his investigation the Ombudsman requested a copy of the loan agreement from the Bank. However, the Bank was unable to produce a copy of the Complainant's loan agreement.

In such circumstances the Ombudsman was concerned that if the Bank could not locate the Complainant's loan agreement it could not say how, or even if, the Complainant had breached the terms of his agreement with the Bank. Consequently, if the Bank could not say what breaches of the loan agreement the Complainant had made, the Ombudsman did not see how it was fair that the Bank could record such breaches with the Irish Credit Bureau.

The Ombudsman noted that Chapter 2.49 of the Consumer Protection Code provides that *"a regulated entity must maintain up-to-date consumer records containing at least the following...f) all documents or applications completed or signed by the consumer...Details of individual transactions must be retained for 6 years after the date of transaction. All other records required under a) to h), above, must be retained for 6 years from the date the relationship ends"*.

In absence of the loan agreement the Ombudsman found that the Bank was not entitled to record that the Complainant was in arrears or that he defaulted on payment of the loan.

The Complaint was upheld.

The Ombudsman accordingly directed the Bank to remove the record of this loan agreement in its entirety from the Irish Credit Bureau database.

### Case Study 16: Life Policy (Not Upheld)

The Complainants incepted a life policy with the respondent Company in June 2009. The Complainants' policy was an open-ended unit-linked plan.

The Complainants submitted that the Company had recently reviewed their policy and, as a result of this review, the Complainants' premium increased by 200% for the same level of cover.

The complaint was that the Company wrongfully increased the Complainants' premium in respect of their cover, in circumstances where their level of cover remained the same.

The review clause in the Life Policy document stated as follows:

*"At each Policy Review Date the Company's Actuary will:*

*Review the Policy Fee and may adjust it to the level compatible with the scale then being charged by the Company for similar policies or to such level as the Company's Actuary deems appropriate."*

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*Review the Policy Fee and may adjust it to the level compatible with the scale then being charged by the Company for similar policies or to such level as the Company's Actuary deems appropriate."*

Having carried out a review of the Complainants' policy, the Company informed the Complainants that their monthly premium plus their attaching fund value would be unable to maintain their Life Cover benefits until the next scheduled Plan Review Date on 1 June 2016.

The Ombudsman found that as the Complainants' premium was not sufficient to maintain their current level of life cover, the Company was correct in requesting the Complainants to either increase their premium or reduce their level of cover.

### Case Study 17: Pension Transfer Values (Partly Upheld)

The Complainant held five pension policies with Life Assurance Company. The Complainant engaged the services of another Life Assurance Company to advise on the establishment of a separate pension plan for his retirement. The Complainant was advised by his new Life Assurance Company to transfer his pension funds from his original pension plan to a newly established pension plan. Transfer values were obtained from the Complainant's original Life Assurance Company and the transfer was completed. However, the Complainant subsequently discovered that the transfer was completed on the basis of lower transfer values leaving a shortfall of €15,000.

The complaint was that the Respondent had failed to apply the correct transfer values to the transfer of the Complainant's pension policies. The Complainant stated that he held audio recordings to support his assertion.

On investigation of the complaint, the Life Assurance Company contended that the correct transfer values had been used when transferring the pension funds to the Complainant's new pension fund. The evidence showed that:

- a) The telephone recordings, unfortunately, did not provide much assistance in clarifying the issue.
- b) The parties demonstrated through their conduct and correspondence (including telephone conversations) that a strict application of the terms and conditions of the policies would not apply.
- c) The terms and conditions of the original pension policies were unclear as to the applicable transfer date and value.
- d) There was a lack of clarity in the communications (written and verbal) between the parties.

In an effort to do justice between the parties in what was not a clear cut issue, it was decided by the Ombudsman that the difference between the two disputed transfer values be shared equally between the parties. This complaint was partly upheld.

### Case Study 18: Pet Insurance (Upheld)

On 3 June 2006 the Complainant incepted a Pet Insurance Policy for her Rottweiler; the dog tore its right cruciate ligament in November 2009. More than 3 years earlier in June 2006, and within the first 14 days of the policy, the dog, then a puppy, had injured its left cruciate ligament, but no difficulties had been experienced in between these two separate incidents.

The Company declined the Complainant's claim for benefit on the basis that the dog's right hind lameness in 2009 was linked to the left hind "cruciate disease" which the Company said dated from June 2006. The Company referred to the policy provision which stated that no cover would be provided for:

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*“Any illness which is the same as, or has the same diagnosis or clinical signs as an illness that first showed clinical signs within 14 days of your pet’s cover starting; or, an illness that is caused by, relates to or results from a clinical sign that was first noticed within 14 days of your pet’s cover starting no matter where, in or on your pet’s body, the clinical signs were noticed”.*

The Company maintained that, as the left hind cruciate injury had been discovered within the 14 day period referred to in the policy clause, and the 2009 right hind lameness was linked to this earlier incident then, unfortunately, no cover could be provided to the Complainant’s dog.

The Company also sought to maintain its position on the basis of certain studies referred to indicating that *“cruciate ligament rupture is the manifestation of a chronic degenerative disease of the stifle joint in the dog and as a bilateral condition affecting both limbs. A very tiny number of cruciate tears are seen in animals that have suffered a severe traumatic injury, such as a road traffic accident. In these cases, no osteoarthritic changes are present in the joint and you would not expect to see the condition in the other leg”.*

Having considered the evidence at length, the Ombudsman took the view that the Company had incorrectly formed the opinion on the basis of the information and forms completed by the relevant veterinary surgeons that the two injuries were *“similar”* or *“related”*. The Ombudsman took the view that the manner in which the 3-way question was posed on the form was anything but clear and the spacing provided by the Company on the form to be completed by the vet, was such that the information given might well relate to any portion of the question which had been posed. The Ombudsman was unimpressed with the manner in which the question had been drafted, utilising wording which was not the wording referred to in the relevant policy condition, and failing to query specifically whether the injury being claimed for was *“caused by, related to or resulting from”* the animal’s history.

The Ombudsman noted that the medical notes dating from 2006 did not show a previous diagnosis of any cruciate rupture at that time. He took the view that the Company, in assessing the claim had confused an accepted pre-disposition to injury of the cruciate ligament, in certain breeds, with specific evidence, or absence thereof of a previous diagnosis of a cruciate rupture in 2006. The Ombudsman found that it would be unduly harsh to interpret the policy provisions so as to exclude the Complainant’s claim for the injury to the dog in November 2009, owing to a reference in the medical notes to nothing other than a *“slight give”* in the cruciate of the other leg 3½ years earlier (which had healed without intervention). The Ombudsman upheld the complaint and directed the claim to be admitted and assessed for payment in the usual manner.

### **Case Study 19: Property Investment (Upheld)**

This complaint related to the sale of a property based investment. The complaint was that due to the Policyholder’s age (73) and circumstances (ill-health) the investment had been mis-sold to her by the Company.

The issues for investigation and adjudication were (i) whether the property investment was mis-sold and (ii) whether the Company correctly dealt with the complaint when it was brought to its attention.

The documentary evidence showed that the investment product was not a guaranteed product and its value was therefore subject to the rises and falls in the market. The Ombudsman found that the policy information supplied to the Complainant made this clear. Policyholders must play their part in the investment process by taking time to read the policy and supporting documentation, mindful of their needs, objectives and responsibilities. However, the Ombudsman held that while the policy documentation and

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what was contained therein is important, the sales process must also be robust. There is a responsibility on a financial provider to make sure, as far as possible, that the products and services it offers match the policyholder's requirements. There is also a duty to explain the main features of the products and services that it offers. He was not satisfied that all that could have been done with this sale was done to the highest degree.

The following were the concerns that the Ombudsman had, and he found that they merited a finding in the Complainant's favour:

- No comparison or detailed advice was recorded in the financial review documentation as having been given to the Complainant, on retaining the Guaranteed Product that she already had or entering a similar product type as opposed to investing in the Property Investment.
- There was not enough evidence of the advices given regarding diversification of funds at the initial investment stage or when the Complainant later expressed her concerns about the falling value of the Property Fund. No alternative options were given when the Complainant first expressed her concerns.
- On the Financial Review, the Agent entered the fund choice as being 100% diversified but in the free text box he advised that the customer was investing 100% in Property. This clearly was contradictory and something that was likely to mis-lead the policyholder.
- Although not selecting the investments recommended by the Advisor, the Complainant's attitude to risk had not been altered on the review form. It was found that more detailed information should have been supplied to the Complainant at this stage to highlight what effect the change from what had been recommended by the Advisor had or the risks she was facing. More attention should have been drawn to the possibility of greater losses on her initial capital sum, should the investment not perform as expected or indicated.
- The Company accepted that it failed to send the Final Response Letter within the 25 day timeframe and it apologised for this.
- The Company did not suggest that it offered the option of having somebody else present at the investment meeting and the Complainant confirmed that this option was not offered. At the very least, the Ombudsman considered that such an option should have been offered.
- It was considered that some detail of what was involved with a property fund investment in comparison to other types of investment should have been included in the sale documentation, but was not. This would have included the possibility of the introduction of a 6 month waiting period for exits from the fund. The absence of this information weakened any claims from the Company that such matters were explained in detail.
- It was found that there was little detail in the Financial Review of what explanation was given by the Financial Advisor on what were the benefits to the Complainant of investing in the recommended products over and above other investments and without evidence of such information having been shown to have been discussed, the Ombudsman was not satisfied that a person with little experience of investing could make an informed decision on what investment to choose.
- Upon reviewing the Complainant's letters (outlining her circumstances i.e. that she was terminally ill), the Company accepted it should have made contact to query whether she needed to avail of an "advance", other than the automatic income payment paid every year, while awaiting the end of the six month notice period.

Having reviewed the case, the Company felt that when taking the Complainant's age into account that there was a potential vulnerability and while it was satisfied the Advisor had advised her about the capital protected products and warned despite its strong performance, that property did contain a level of risk, that it would offer to refund the original investment, less any withdrawals made. The Company also offered to provide an additional amount of money which the Complainant could have earned if she had been invested in a secure fund.

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In conclusion and based on the points outlined above, the Ombudsman found that the Complainant could have been better advised at point of sale about the investment she was entering into. While the documentation that was provided explained the nature and workings of the investment, the Ombudsman was not satisfied that the fullest explanation of the product had been verbally given at point of sale. He also found that the Advisor's opinion of the non-suitability of the chosen product mix (i.e. he was said not to have recommended the 100% investment in property, but later suggested a 75% property / 25% equity split) could have been better set out for the Complainant's consideration.

While advanced age does not preclude such investments to an older person and the independence of a person of full mind and body to make their own decisions must always be respected, the Ombudsman considered that such a discrete measure as offering the option to the policyholder of having another person accompany her when making such important decisions, would not have been out of place.

Having regard to all of the above, it was found that the complaint was upheld and the Company was directed to refund the original investment, less any withdrawals made, together with an additional amount of money which the Complainant could have earned if she had been invested in a secure fund. The Company was also directed to pay the additional compensatory amount of €2,500. This amount was awarded particularly in light of the Company's failings when the matter was first brought to its attention and upon it being advised of the Complainant's terminal illness.

#### Case Study 20: Leisure Craft (Not Upheld)

The complaint in this case was that the Provider had wrongfully declined to settle the Complainant's claim under her insurance policy for water damage to the engine of her speedboat caused by the accumulation of rainwater. The Provider had declined the claim on the grounds that the Complainant had breached the policy conditions by failing to remove the drain plugs when the vessel was taken out of the water.

It was a condition of the Complainant's policy that the Provider would only provide indemnity if the insured had taken all reasonable steps to maintain and keep her boat and all its gear and equipment in good condition and the insured had taken all reasonable steps to protect her insured property from loss or damage. The observance by the insured of this general policy condition relating to a duty of care was a condition precedent to any liability of the Provider.

The Complainant argued that, during the winter in question, she had stored her speedboat ashore on its road trailer under two protective covers and that she inspected it there regularly. The Complainant argued that there was no condition under the policy compelling removal of the drain plug during storage. The Complainant sought full settlement of her claim on the basis that she had taken all reasonable steps to store the boat safely under cover, to protect the boat and to prevent loss.

The only report submitted in relation to the cause, nature and extent of the damage to the Complainant's boat was the report of the marine consultant who had inspected the damaged speedboat on behalf of the Provider. The marine consultant noted that *"the vessel has a bronze screw type drain plug in the transom. This plug should be removed when the vessel is lifted from the water as this permits any rain water to drain immediately"*. The report went on to identify the cause of loss as follows: *"There is only one possible cause of loss in this incident. The insured failed to ensure that the drain plug was removed when the vessel was placed in storage. If it had, the problem with the covers lifting would not have caused the engine to be submerged"*.

In the absence of any report to contradict the marine consultant's findings as to the cause of the damage to the Complainant's boat, the Ombudsman accepted these findings.

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Thereafter the issue to be determined was whether the Complainant's failure to remove the drain plug when the vessel was placed in storage, excluded the Complainant from claiming under the policy. In other words, was it reasonably foreseeable that, by failing to remove the drain plug, the damage complained of might have occurred? His view was that the Complainant's failure to remove the drain plug increased the risk that the insured vessel would sustain rain water damage in the event that the covers became untied.

Accordingly, he found that the Complainant did not take all reasonable steps to protect her property from loss or damage and that on these grounds the Provider was entitled to decline liability for the claim. For this reason the complaint was not upheld.

### Case Study 21: Health Insurance (Upheld)

A woman who was suffering from bowel cancer, held a policy with a healthcare provider. She had previously undergone surgery to address her medical issues and 18 months later her Consultant requested that she undergo a PET-CT scan. When the Complainant sought to recover benefit from the healthcare provider for the cost of the scan, the claim was declined on the basis that the claim for benefit failed to satisfy the policy criteria to be met.

In responding to the Ombudsman's investigation the healthcare provider sought to rely upon data from the National Comprehensive Cancer Network to the effect that a PET-CT scan is not routinely recommended.

When the Ombudsman considered the terms of the policy he noted that the policyholder had been referred for the scan by her Consultant, she had arranged to have the procedure carried out at an approved location and the reason indicated on the Claim Form for the scan was the "re-staging of colorectal cancer"; the policy's Schedule of Benefits specified that a PET-CT scan is provided, for "diagnosis, staging or re-staging of colorectal cancer".

The Ombudsman noted that the internal memos of the healthcare provider stated that there was no evidence of recurrence of the cancer and therefore the claim did not meet the criteria. The Complainant however relied on a letter from her Consultant explaining that the scan was required as the cancer was high risk, being node positive and requiring chemotherapy. In addition, owing to a number of cysts in the Complainant's liver, the Multi-Disciplinary Team concurred that a PET scan would be reassuring. With the benefit of the scan having been undergone, the Consultant also made the point that two abnormalities would not have been discovered had the Complainant not undergone the scan in question; the healthcare provider suggested that it was likely that these abnormalities would have been identified by way of CT scan.

When the matter was considered by the Ombudsman he noted that the list of circumstances relied upon by the healthcare provider, in which it would provide benefit for a PET-CT scan, made it clear that benefit would be provided when it was suspected that conventional investigations would be insufficient for the clinical management of the patient. He noted that the healthcare provider stated that this aspect was not satisfied in this instance.

The Ombudsman took the view that the healthcare provider had been unreasonable in its approach to the assessment of the Complainant's request for pre-approval of the benefit. In his opinion it was irrelevant as to whether PET scans were routinely performed in such circumstances. What mattered in this instance is that both the Treating Consultant and the Multi-Disciplinary Team had formed the view that the PET scan was warranted in the particular circumstances. He upheld the complaint and directed payment of the claim in full together with an additional compensatory benefit in the sum of €700.

Thereafter the issue to be determined was whether the Complainant's failure to remove the drain plug when the vessel was placed in storage, excluded the Complainant from claiming under the policy. In other words, was it reasonably foreseeable that, by failing to remove the drain plug, the damage complained of might have occurred? His view was that the Complainant's failure to remove the drain plug increased the risk that the insured vessel would sustain rain water damage in the event that the covers became untied.

Accordingly, he found that the Complainant did not take all reasonable steps to protect her property from loss or damage and that on these grounds the Provider was entitled to decline liability for the claim. For this reason the complaint was not upheld.

### Case Study 21: Health Insurance (Upheld)

A woman who was suffering from bowel cancer, held a policy with a healthcare provider. She had previously undergone surgery to address her medical issues and 18 months later her Consultant requested that she undergo a PET-CT scan. When the Complainant sought to recover benefit from the healthcare provider for the cost of the scan, the claim was declined on the basis that the claim for benefit failed to satisfy the policy criteria to be met.

In responding to the Ombudsman's investigation the healthcare provider sought to rely upon data from the National Comprehensive Cancer Network to the effect that a PET-CT scan is not routinely recommended.

When the Ombudsman considered the terms of the policy he noted that the policyholder had been referred for the scan by her Consultant, she had arranged to have the procedure carried out at an approved location and the reason indicated on the Claim Form for the scan was the "re-staging of colorectal cancer"; the policy's Schedule of Benefits specified that a PET-CT scan is provided, for "diagnosis, staging or re-staging of colorectal cancer".

The Ombudsman noted that the internal memos of the healthcare provider stated that there was no evidence of recurrence of the cancer and therefore the claim did not meet the criteria. The Complainant however relied on a letter from her Consultant explaining that the scan was required as the cancer was high risk, being node positive and requiring chemotherapy. In addition, owing to a number of cysts in the Complainant's liver, the Multi-Disciplinary Team concurred that a PET scan would be reassuring. With the benefit of the scan having been undergone, the Consultant also made the point that two abnormalities would not have been discovered had the Complainant not undergone the scan in question; the healthcare provider suggested that it was likely that these abnormalities would have been identified by way of CT scan.

When the matter was considered by the Ombudsman he noted that the list of circumstances relied upon by the healthcare provider, in which it would provide benefit for a PET-CT scan, made it clear that benefit would be provided when it was suspected that conventional investigations would be insufficient for the clinical management of the patient. He noted that the healthcare provider stated that this aspect was not satisfied in this instance.

The Ombudsman took the view that the healthcare provider had been unreasonable in its approach to the assessment of the Complainant's request for pre-approval of the benefit. In his opinion it was irrelevant as to whether PET scans were routinely performed in such circumstances. What mattered in this instance is that both the Treating Consultant and the Multi-Disciplinary Team had formed the view that the PET scan was warranted in the particular circumstances. He upheld the complaint and directed payment of the claim in full together with an additional compensatory benefit in the sum of €700.

