

# Annual Review 2017



Financial Services  
Ombudsman



# 1 | Ombudsman's Overview of 2017

The year under review involved considerable change, challenge and achievement. 2017 was a year of major legislative reform which brought important changes to the consumer protection framework in which the Financial Services Ombudsman operates.

During the year, we engaged with the Department of Finance and the Oireachtas in relation to the Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017 and the Financial Services and Pensions Ombudsman Act 2017. We adapted our services in order to give full effect to the legislative changes enacted in July in relation to the extension of time limits for submission of complaints, the new categorisation of findings and the revised time limits for High Court appeals.

As well as this, we completed our programme of change, which commenced in 2016, in order to deliver a faster, simpler and more informal dispute resolution service. The conclusion of this programme of change also saw the introduction of preliminary findings in the adjudication process. These changes were delivered while also managing an increased number of contacts and complaints including enquiries and complaints relating to tracker mortgages. Additional staff were recruited in 2017, and our offices were reorganised to provide better facilities and additional services for our customers.

In preparation for the enactment of the Financial Services and Pensions Ombudsman Act 2017, a project team, comprised of staff from both organisations, was tasked with making the necessary arrangements for the dissolution of the Financial Services Ombudsman (FSO) and the Financial Services Ombudsman Council (FSOC) and the amalgamation with the Office of the Pensions Ombudsman (OPO) by 31 December 2017, in advance of the establishment of the Financial Services and Pensions Ombudsman on 01 January 2018.

## Legislative Changes

Two of the most significant legislative developments since the establishment of the FSO over 12 years ago took place in 2017.

In July, the Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017 was enacted. This legislation extended the period within which consumers of long-term financial service products could take complaints to the FSO. This allowed some complainants to submit complaints to this office, including some with tracker related complaints, which may previously have been time barred under the 6-year rule.

Of major significance for the FSO during 2017 was the commencement of the Financial Services and Pensions Ombudsman Act 2017, which, when enacted by the Minister for Finance on 01 January 2018, dissolved the FSO which now ceases to exist. This development occurred owing to the Government's decision to merge the FSO with the OPO. The legislation established the office of the Financial Services and Pensions Ombudsman, now known as the FSPO. All complaints that remained open with the FSO were transferred to the FSPO on its establishment.

Further details of these important development are set out in the Legal Overview section on page 21.

## Managing Complaints

Since the introduction of our new Dispute Resolution Service in February 2016, this service has resolved just under 5,000 complaints, 2,370 in 2017 and 2,421 in 2016. This can be a very quick way of resolving disputes and 57% of these complaints were resolved within three months.



### Complainant Feedback

“We are glad we have sorted this matter out, we would like to thank you and your office for a great service provided to the public and have nothing but praise for the service you provide the people who don't know where to turn.”



## Complainant Feedback

“I just want to say a sincere thank you for putting my case to the bank and helping us resolve the dispute. I was delighted to hear from you today and as you said, I can now put this behind me.”

Mediation, by telephone and email and through meetings, became the first and preferred option for resolving complaints. By engaging with the parties directly, it was possible to achieve a timely and satisfactory resolution. Of those who engaged in this process in the last two years, over 75% have successfully resolved their complaints.

Where these early interventions did not resolve the dispute, we continued to use our extensive powers to investigate and adjudicate complaints in a fair and impartial manner. This is a more formal and a lengthier process as all the evidence must be gathered and exchanged in accordance with fair procedures before the submissions are considered and a legally binding determination is issued to both parties. In addition, the adjudication of a complaint will sometimes require an oral hearing where evidence is taken under oath.

The issuing of preliminary findings as an additional step in the adjudication process was introduced in 2017. A preliminary finding sets out the proposed final determination and provides parties with a final limited opportunity to correct any potential or perceived errors of fact or bring to light other evidence that was not previously made available, before a legally binding determination is issued.

If the parties make no further submissions in response to the preliminary finding, a legally binding finding, in the same terms is issued. If either or both parties make further substantive submissions that identify possible errors of law or significant additional points of fact, these submissions are reviewed, and are made available to the parties where necessary, before a legally binding finding is issued.

Because of the increased number of complaints resolved through the Dispute Resolution Service the number of complaints requiring formal investigation and adjudication reduced significantly in 2016 and 2017. A total of 171 legally binding findings issued in 2017.

The lower number of findings issued is also a consequence of the diversion of resources to the new Dispute Resolution Services in 2016 and early 2017. This meant that, in some instances, we were unable to prioritise the investigation and adjudication of complaints as we would have wished. Towards the end of 2017, we deployed additional resources in this area with the aim of significantly improving the timeliness of the investigation and adjudication

processes. However, given the need to ensure fair procedures, including the exchange of evidence and submissions, it will always be the case, where a legally binding determination is necessary that the process will take time and will be determined by the number of submissions received from the parties.

A legally binding finding can be appealed to the High Court. In 2017, 10 findings, some relating to findings issued in previous years, were the subject of appeal proceedings.

When we introduced the new process we already had more than 2,000 complaints at various stages of our “old” process. These complaints had to be managed in addition to the 4,334 received in 2016 and the 4,538 received in 2017. At the end of 2017 we had 3,134 complaints on hand which have since transferred to the Office of the Financial Services and Pensions Ombudsman.

I am happy to report, as can be seen from some of the comments reproduced in this document, that we continue to receive positive feedback on our service, and recognition by consumers of how important it is to them to be able to have their disputes resolved. We will continue to listen to all feedback and use it to continuously improve our service. The main priority for 2018 will be to improve the timeliness of our investigation and adjudication service.

## Mortgage Complaints

Complaints by consumers about the conduct of their financial service provider in relation to mortgages made up the largest category of complaints received in 2017 at 1,174 or 26% of all eligible complaints received. Tracker mortgage complaints comprise a large element of these. At the end of December we had just under 600 tracker mortgage complaints on hand. More details in relation to mortgage complaints including tracker mortgage complaints are set out on page 18.

## Improved Facilities

The changes we introduced have resulted in an increase in parties visiting our offices, mainly for mediations. We had limited facilities to hold mediations or oral hearings on site. For this reason, we undertook a reorganisation of our offices in 2017 and we now have a dedicated suite of rooms available to parties engaged in mediations and oral hearings.

## Case Studies

This document contains case studies that we hope will assist consumers and financial service providers to gain an understanding of the types of complaints we deal with and how they are resolved. The aim is also to demonstrate the conduct and service that customers are entitled to expect. These examples are drawn from complaints that have been resolved through mediation, and investigation and adjudication. They indicate the type of solutions and redress available when standards are not met by service providers and where complaints are not resolved by the provider. While they are based on actual complaints, we have taken care to protect the confidentiality of the parties and the processes, and real names have not been used.

## Engagement with Stakeholders

We have considerable interaction with a wide range of stakeholders. During 2017, we continued to engage with the Department of Finance and Oireachtas committees, consumer representative bodies and advocates. In addition, we engaged with industry representatives.

We continued our close co-operation with the Central Bank of Ireland, with a particular focus in 2017 on tracker-related issues.

As part of a European Commission initiative called FIN-NET, we co-operated with other financial services ombudsman schemes in the European Economic Area to provide consumers with easy access to out-of-court complaint procedures in cross-border complaints across the EEA.

We also continued to participate in the International Network of Financial Services Ombudsman Schemes (INFO Network) which is the worldwide association for financial services ombudsman schemes and other independent offices operating as out-of-court dispute resolution mechanisms in the financial sector. We were successful in a bid to host the INFO conference 2018, the highlight of the INFO Network's annual calendar, which we expect will attract over 100 delegates from around the world to Dublin in September 2018.

## End of an Era

Of course the most significant event for the Financial Services Ombudsman, the Financial Services Ombudsman Council and the Financial Services Ombudsman's Bureau in 2017 was the dissolution of all three on 31 December. With the enactment of the Financial Services and Pensions Ombudsman Act 2017 these three bodies, together with the Office of the Pensions Ombudsman, were dissolved and the Office of the Financial Services and Pensions Ombudsman and the Financial Services and Pensions Ombudsman Council were established to replace them on 01 January 2018.

The FSO opened its doors for business on 01 April 2005 following the appointment of the first statutory Financial Services Ombudsman, Mr. Joe Meade. The former voluntary ombudsman schemes for the credit institutions and insurance industry were subsumed into this new statutory scheme and the remit was expanded significantly. Mr. PJ Fitzpatrick took up the role as Interim Financial Services Ombudsman for a period following the retirement of Joe Meade in December 2009, prior to the appointment of Mr. Bill Prasifka as Financial Services Ombudsman, in 2010. I was appointed Financial Services Ombudsman in 2015 and Pensions Ombudsman in 2016. On commencement of the Financial Services and Pensions Ombudsman Act on 01 January 2018, I became the Financial Services and Pensions Ombudsman.

From the outset, significant statutory powers were given to the Financial Services Ombudsman including the power to make legally binding findings that are appealable only to the High Court. The Ombudsman could direct compensation of up to €250,000, direct rectification and direct a financial service provider to change a practice.

In 2013 provision was made in legislation for the Ombudsman to publish a report naming financial service providers which had more than three complaints upheld or partly upheld in a year.

Between April 2005 and December 2017, when it ceased to exist, the FSO had received over 73,000 complaints, 3,134 of these, which remained open at 31 December 2017 were transferred to the Financial Services and Pensions Ombudsman in January 2018.

## Acknowledgements

In this, the last Annual Review of the Financial Services Ombudsman I want to thank and pay tribute to all those who contributed to the work of the organisation over its lifetime.

A very considerable body of work was undertaken by the FSO in its 12-year history. The organisation has made an important difference in the lives of many consumers.

Some of those who joined the FSO as part of the first amalgamation in 2005 continued to play key roles throughout the lifetime of the FSO and are now part of the FSPO. Some have come and gone over the 12 years while other new faces joined and are now with the FSPO. All played a key role in the delivery of a very important service and I want to take this opportunity to thank all of them for their contribution to the establishment and operation of the FSO over the years. I believe they can be very proud of their achievements.

For our achievements in 2017, I want to thank the current Deputy Ombudsman, Elaine Cassidy, the directors of services, managers and all the staff for their continued dedication and commitment to ensuring we provide the best possible service. Staff have gone above and beyond the call of duty on many occasions in what was a very busy and challenging year. I would also like to thank the staff of the Office of the Pensions Ombudsman for their co-operation and support.

In January 2017, the Minister for Finance made a number of appointments to the Financial Services Ombudsman Council. He appointed Maeve Dineen as Chairperson, Don Gallagher, as member, and he reappointed Dermott Jewell and Elizabeth Walsh as members. They joined Valerie Bowens, Ken Murnaghan and Deborah Reidy who were appointed the previous year. I want to thank the Chairperson and members of Council for their support and assistance throughout 2017.

I also want to thank the former Council Chairpersons and all past members of the Financial Services Ombudsman Council for their commitment and support to the organisation.

I would also like to thank the complainants and financial service providers who continue to co-operate with the new processes and make them work in the best interest of all concerned.

We had considerable interaction with the Minister for Finance and his officials in 2017 owing to the important legislative programme and other changes. I want to express my appreciation to the Minister and his officials for their ongoing support and co-operation.

Finally, I would like to thank those who take the time to provide us with feedback. This feedback is central to how we design and deliver our processes and is of considerable assistance to us as we continue to improve our services.

As the curtain comes down on the chapter that was the Financial Services Ombudsman and the Pensions Ombudsman I'm happy to report that the new Office of the Financial Services and Pensions Ombudsman is up and running and open for business with a renewed commitment to providing the highest standards of customer service.



**Ger Deering**

Financial Services Ombudsman



## 2 | How We Managed Complaints in 2017

A total of

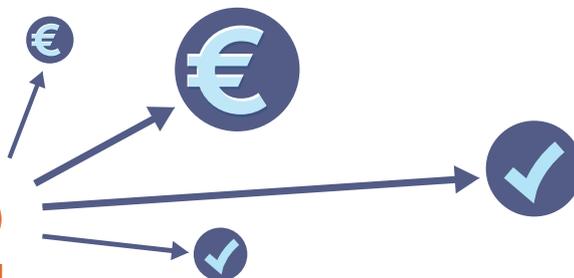
# 3,867

complaints were closed during 2017, of which:



In 2017

# 1,482



complainants received some form of compensation, rectification or financial redress.



## Complaints closed through Information Services

### What do these categories mean?

**Complaints closed after registration, referral and follow up:** These are complaints which are received by us but which have not been fully completed by the complainant. Usually this is because the complainant has not notified their financial service provider of the issue, as required by the legislation. Our Information Services team contact the complainant and explain how to complete the complaints process. Following this, if we do not hear from the complainant, we will re-engage to check whether they wish to proceed with their complaint, and then either progress or close the complaint.

**Ineligible Complaints:** These are complaints which are intended for a different Ombudsman or relate to products and services or service providers that do not fall within the remit of this office. Where possible, the complainant is redirected to the appropriate body.

### Outcomes

Closed Reason	Number of Complaints
Complaints closed after registration, referral and follow up	1040
Ineligible complaints	162
<b>Total</b>	<b>1202</b>



### Complainant Feedback

“Thank you so much for the excellent service you provided to us, your promptness and clarity of communications has been a pleasure to deal with.”

## Case Study

Ann gave her Bank an international cheque to lodge to her account. The Bank told her it would take four to six weeks for the cheque to clear. Ann made contact with the Bank on several occasions as the funds were not received in her account. On the eighth week the Bank told her they had lost the cheque and that she would need to cancel it. Ann then lodged a complaint with the FSO.

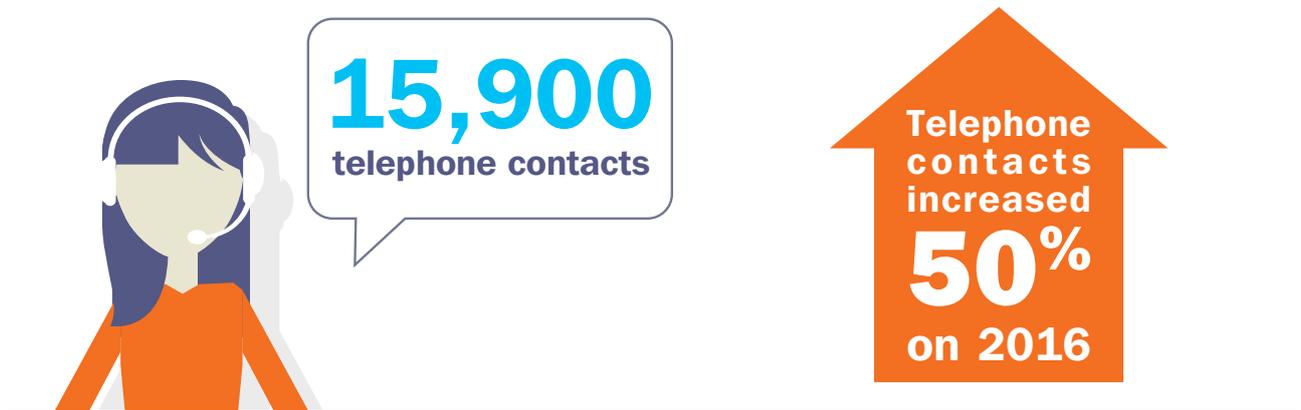
In the first instance, Ann was informed by us that she must exhaust her provider's internal complaint process as required by legislation. It was explained to Ann how to effectively complain to her bank.

When Ann made a complaint to her Bank they carried out their own internal review; on completion they offered an apology and €500 in compensation for their error. Ann was satisfied with this outcome and withdrew the complaint from the FSO.

## Contact management and customer service supports through Information Services

Our dedicated Information Services team responded to over 15,900 telephone contacts in 2017. Our telephone service continues to play an essential role in assisting our customers in several ways. Firstly, we are a primary point of contact for a significant number of callers who are seeking information on how best to engage with their financial service provider to make a complaint. We also support callers in the initial stages of preparing their complaint for submission to this office.

We also handle a significant number of email queries – some 8,000 general information queries were dealt with in 2017.



## Complaints closed through Dispute Resolution Service



### What do these categories mean?

**Dispute Resolution settlement:** These are complaints which are resolved by agreement reached between the parties through mediation where the complainant receives redress and/or compensation.

**Dispute Resolution clarification:** These are complaints which are resolved by agreement reached between the parties through mediation where the complainant accepts a clarification of the matters at issue.

**Withdrawn/outside settlement:** These are complaints which have been notified to us as withdrawn while in the Dispute Resolution Service. Some are withdrawn because a settlement is agreed between the parties directly.

### Outcomes

Closed Reason	Number of Complaints
Dispute Resolution settlement	1303
Dispute Resolution clarification	970
Withdrawn/outside settlement	97
<b>Total</b>	<b>2370</b>



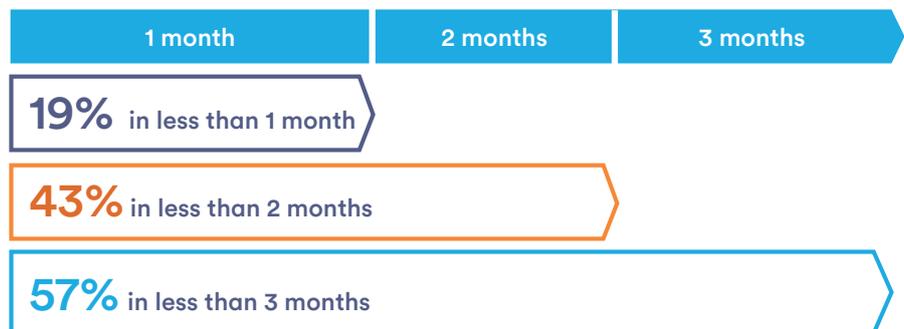
### Complainant Feedback

“I want to thank you for your manner and approach during the mediation. After I had sent in the complaint to the FSO, I wasn’t sure what to expect really, but I never thought I’d be dealing with somebody so friendly and human, and to me that counts for so much!”

The Dispute Resolution Service is proving to be a very fast method of resolving complaints



### Time taken to resolve complaints through the Dispute Resolution Service



## Case Studies from our informal dispute resolution process

Mediation provides a flexible and innovative approach to complaint resolution. This approach achieves outcomes relatively swiftly compared with formal investigation and adjudication, which can often be a lengthier process. Examples of complaints resolved through mediation in 2017 include:

### Blocked debit card while travelling abroad

- While travelling abroad, Niamh had a block placed on her debit card as a precaution by her bank. When she rang to request that her card be unblocked, Niamh failed to answer the security questions correctly as the current account linked to the debit card was jointly owned and the provider had mistakenly entered the other party's details as those of Niamh's. Mediation led to a settlement where Niamh accepted an apology for being left without access to her funds and €1,000 in compensation.

### Delay in international transactions

- The bank's failure to process an international electronic payment led to a delay in paying Maureen's supplier which meant her goods were not delivered and her company, an SME, lost revenue. She spent a considerable amount of time phoning the bank and making the hour-long journey to her nearest branch to pay a transaction fee. Mediation resulted in the bank processing the payment and paying Maureen €1,000 in compensation.

### Restoration of health insurance benefits

- Having been advised in 2016 that he was covered for specialist in-patient treatment, Cormac was subsequently refused cover as he had downgraded his health insurance plan in 2012. During mediation he agreed to pay the difference between the premium levels pre- and post-2012 and the company backdated the higher level of benefits to enable Cormac to lodge a claim. The medical bill, and subsequent claim value, was over €27,000.

### Cancellation of motor insurance policy due to non-disclosure

- Yolanda's car insurance was cancelled due to non-disclosure when she was applying for the policy. The non-disclosure related to whether or not Yolanda had been involved in an accident, regardless of blame, in the past three years. As a result of the cancellation, Yolanda struggled to afford insurance premiums, and it negatively affected her business. As part of the mediated agreement, the provider decided to rescind the cancellation on the basis that Yolanda may not have fully understood the questions because English was not her first language. She also received a refund of the premium loading applied during the period in question. Although this was not a large sum, Yolanda felt this was a significant result as it provided financial freedom and the ability to shop around for new cover.
- On renewing her car insurance Sarah confirmed, when asked, that her occupation, as a gardener, had not changed. Following an accident, she submitted a claim in which she stated that she was unemployed. The provider declined the claim on the grounds that Sarah had not disclosed that she was unemployed at the time of renewal. Sarah claimed that the information she provided upon renewal was accurate, as she had been working as a gardener in the community on a voluntary basis, and that she had provided the information in the interests of full disclosure. During mediation, the provider agreed to assess her claim and subsequently paid her over €4,000

### Disputed transactions

- Shortly after her father's death, Geraldine discovered unexpected activity on his bank account. She questioned why, when he was not computer literate, he had online access and had been paying bills online. It was established that a third party had access to Geraldine's father's account and had misappropriated his funds. The FSO mediated between Geraldine and the bank, which answered her questions, apologised for its error, and paid €8,000 as compensation for causing additional distress at a difficult time.

### Income protection claim rejected based on fitness to work

- Fergal's claim for long-term illness benefit had been refused. During mediation the parties discussed the medical evidence requirements under Fergal's policy. He realised his medical evidence was not sufficiently strong to justify his claim and he therefore opted to withdraw his complaint.

### Discontinuation of income protection payments

- During Áine's absence from work due to a stress-related mental health issue, her provider discontinued income protection payments on the grounds that she was fit to return to work which was contradicted by Áine's employer's doctor. At the time of mediation, Áine was attending a mental health service as an in-patient. Following mediation, and on the basis of further medical evidence provided, the provider reversed its decision and backdated payments to the date on which they had been discontinued, providing her with an interim payment to ensure she could continue her treatment as an in-patient.



## Complaints closed through Investigation, Adjudication and Legal Services

### What do these categories mean?

**Findings issued:** These are complaints where a full investigation and adjudication takes place and a legally binding finding issues. Where the complaint is upheld, substantially upheld or partially upheld, the Ombudsman may direct rectification or compensation, or both, in respect of all or some of the matters complained of.

Where the Ombudsman upholds, substantially upholds or partially upholds a complaint he can direct a financial service provider to pay compensation of up to €250,000 and he can also direct rectification. Such rectification can be very significant as it can involve putting a person back to a position where they previously were, before the complaint arose. This, in some instances, may potentially be more important for the complainant than compensation.

**Jurisdiction declined:** These are complaints where complex jurisdictional issues may arise, and are considered by Legal Services, and a decision is reached that the FSO does not have jurisdiction to deal with the complaint.

**Withdrawn/Settlement:** These are complaints which have been notified to us as withdrawn. Most of these are withdrawn because settlements are agreed between the parties directly, including at an advanced stage in the adjudication process. In some instances, settlements are reached on the convening of an oral hearing.

### Outcomes

Closed Reason	Number of Complaints
<b>Findings issued</b>	<b>171</b>
Upheld	14
Substantially / Partly / Partially Upheld*	80
Rejected	77
<b>Jurisdiction declined</b>	<b>51</b>
<b>Withdrawn/outside settlement</b>	<b>73</b>
<b>Total</b>	<b>295</b>

*\* Revised Categorisation of Findings*  
The commencement of the Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017 revised the categorisation of findings. Prior to July 2017, outcomes now referred to as either 'substantially upheld' or 'partially upheld' were categorised under the broader heading of 'partly upheld'. The revised categorisation will allow for more detailed reporting in future.



### Complainant Feedback

“I would just like to express my thanks for the time and effort taken by you and your staff in dealing with my complaint. Obviously, a preferential outcome would have been beneficial to my situation; however, I fully understand the reason and justification for your decision in this adjudication process not to uphold my original complaint. Again, I would like to thank you for your timely consideration and deliberation in this matter.”

## Case studies from our formal investigation and adjudication process

These findings were issued after formal investigation and adjudication leading to legally binding findings.

### Failure to set up direct debits on switching account - UPHELD

- After the closure of Stephen's current account, the bank failed to transfer all direct debits and standing orders to his newly opened account. One of the direct debits related to a life assurance policy. A third party, Nadine, had been appointed to act on Stephen's behalf due to his ill health. It was only discovered upon Stephen's death that the direct debit in respect of his life assurance had not been set up under the new account. A substantial payment of €62,500 in compensation was directed by the Ombudsman due to the bank's failure to communicate with Nadine, when it was closing Stephen's bank account.

### Rejection of household insurance claim and cancellation of policy - REJECTED

- Colette did not tell her provider about claims under her previous household insurance policy. The Ombudsman accepted that previous claims should have been disclosed to the insurance company and recorded on the application for the new policy. The wording of the proposal form was deemed to be clear enough to prompt a prudent consumer to disclose claims made in the previous three years. It was concluded that the insurance company acted within its rights under the terms of the policy in not meeting the claim and voiding the policy.

### Failure to rectify Irish Credit Bureau (ICB) record - UPHELD

- As a result of its error relating to Éamon's credit card account, the provider had agreed in 2014 to remove adverse entries on his record with the Irish Credit Bureau (ICB). Éamon argued that the provider's failure to correct his ICB record resulted in a third party bank declining his mortgage application in 2015. Although it was not the reason for the declined mortgage application in this complaint, the Ombudsman directed the provider to make a compensatory payment of €12,500 on the basis that there can be serious implications to having an adverse ICB rating.

### Failure to pay death benefit - SUBSTANTIALLY UPHELD

- David asserted that his Credit Union failed to pay a benefit of €3,250 under death benefit insurance, where he and his late wife Emma held a joint account. While it was determined that the terms and conditions of the policy made it clear that the insurance was only available to the first named party to the account, the Ombudsman directed the Credit Union to make a compensatory payment of €1,500 for failing to clearly highlight the important condition of death benefit insurance regarding joint accounts. The complaint was substantially upheld and the Credit Union amended the information on its website, improving its method of communicating the important condition regarding death benefit insurance contained in the terms and conditions of the account.

### Disputed residual payment on personal loan - PARTIALLY UPHELD

- Ciarán's personal loan was repayable over 84 months, and he was unhappy that increases in variable rates of interest during the term of the loan resulted in an outstanding balance on the scheduled expiry of the loan, and an adjustment to the number of repayments required to clear the loan. The Ombudsman accepted that Ciarán had been put on notice at the start of the loan period that it was a variable rate loan, and that the terms and conditions entitled the bank to seek an additional or residual payment. The Ombudsman considered that, in failing to provide Ciarán with timely written notification of the change to the period of his loan and the additional repayments required, the bank had failed to act in Ciarán's best interests. The Ombudsman directed a compensatory payment of €750.

### 3 Reporting on Named Financial Service Providers

The table below identifies regulated financial service providers who, in 2017, had at least three complaints against them upheld, substantially upheld, or partially / partly upheld. Service providers are listed in order of the number of complaints upheld followed by number of complaints substantially upheld or partially / partly upheld. The names listed are the official names by which financial service providers are detailed in the Central Bank of Ireland's Register of Regulated Entities. The name of the business group is provided where the financial service provider is a member of a business group.

Name of Regulated Provider	Member of Business Group	Upheld	Substantially upheld	Partially/ Partly Upheld	Total
Ulster Bank Ireland DAC	Royal Bank of Scotland Group	2	1	6	9
Danske Bank A/S trading as Danske Bank	Danske Bank Group	2	0	2	4
Irish Life Health DAC	Great West Lifeco Group	1	1	1	3
FBD Insurance plc	FBD Holdings plc	1	0	4	5
EBS DAC	AIB Group	1	0	3	4
Friends First Life Assurance Company DAC	Achmea	1	0	2	3
Irish Life Assurance plc	Great West Lifeco Group	0	2	4	6
The Governor and Company of the Bank of Ireland	Bank of Ireland Group	0	0	7	7
Permanent TSB plc trading as Permanent TSB	Permanent TSB Group Holdings plc	0	0	4	4
RSA Insurance Ireland DAC	RSA Group	0	0	3	3



#### Complainant Feedback

“I wish to express my sincere gratitude to you and your office for the highly professional role you have carried out in the investigation of my complaint.”

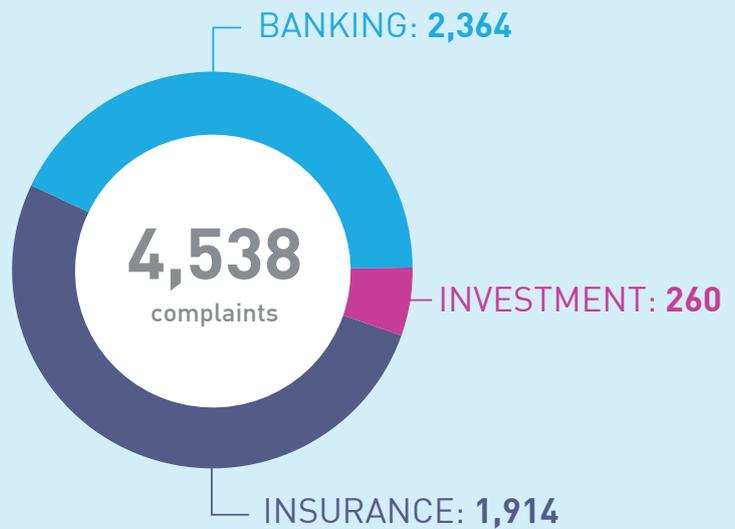
# 4 Sectoral Analysis of complaints received in 2017

This section sets out details of the complaints received in 2017 in the three financial sectors; insurance, banking, and investment, by the type of product complained about.

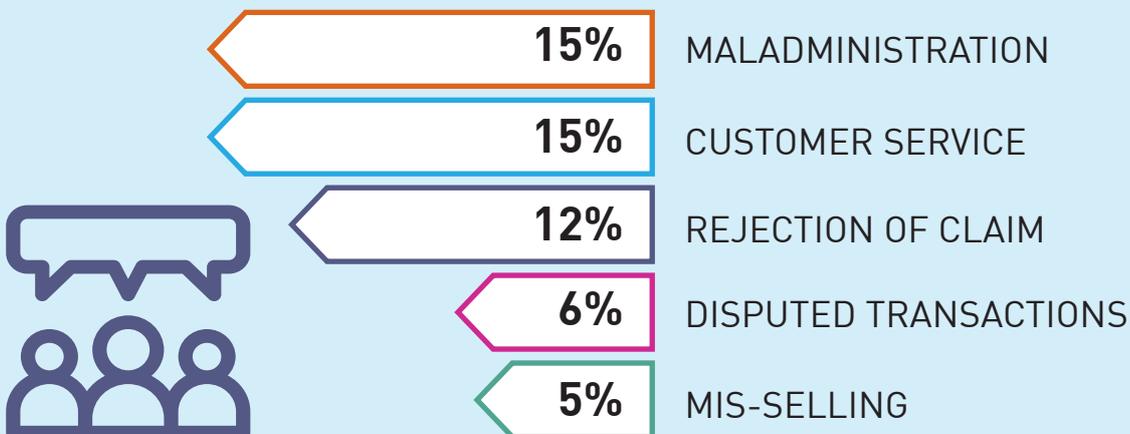
A total of 4716 complaints were received by the office in 2017, which compares to 4513 complaints received in 2016. The 2017 total included 178 ineligible complaints, leaving a balance of 4538 eligible complaints.

Complaints are considered to be ineligible where they are intended for a different Ombudsman or relate to products and services or service providers that do not fall within the remit of this office. Where possible, the complainant is redirected to the appropriate body.

Of the 4538 eligible complaints received in 2017, 52% related to banking products and 42% related to insurance. The remaining 6% concerned investment products and services.



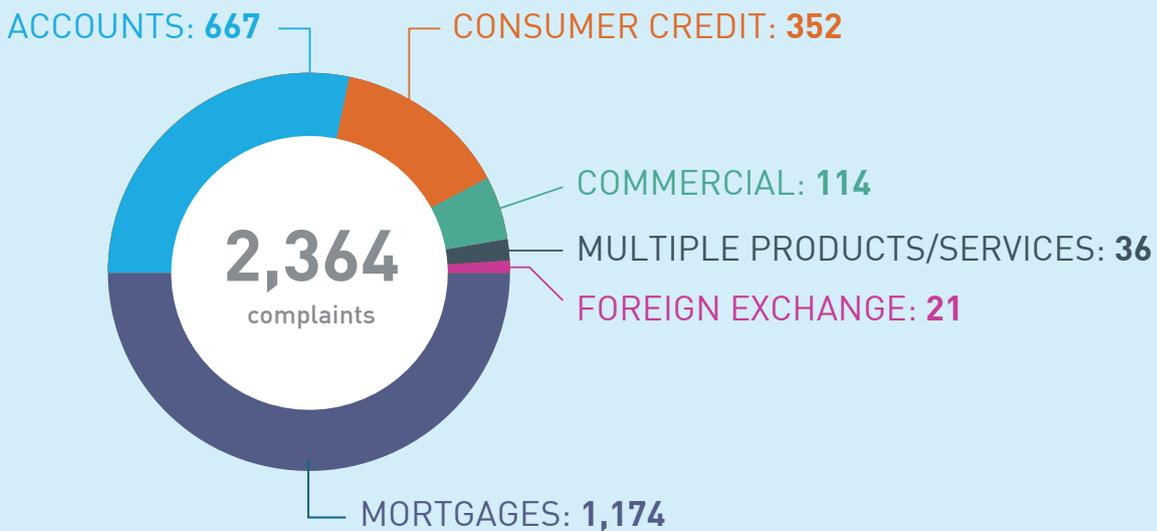
## Top 5 conducts complained of



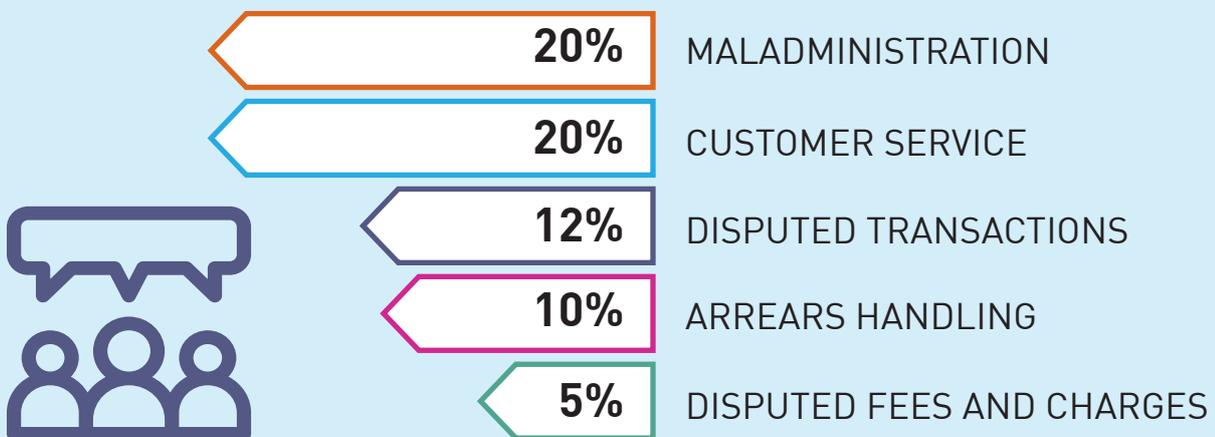
## Banking Complaints Received

Banking complaints represent 52% of all complaints. In line with previous years, mortgages continue to be the largest product type complained of in the banking sector and in 2017 it represented the largest product type of all sectors. Our focus on mortgages on page 18 provides further analysis of this key area that represents 50% of banking complaints received. Similar to 2016, complaints regarding bank accounts are the second largest group representing 28% of all banking complaints.

### Products complained of

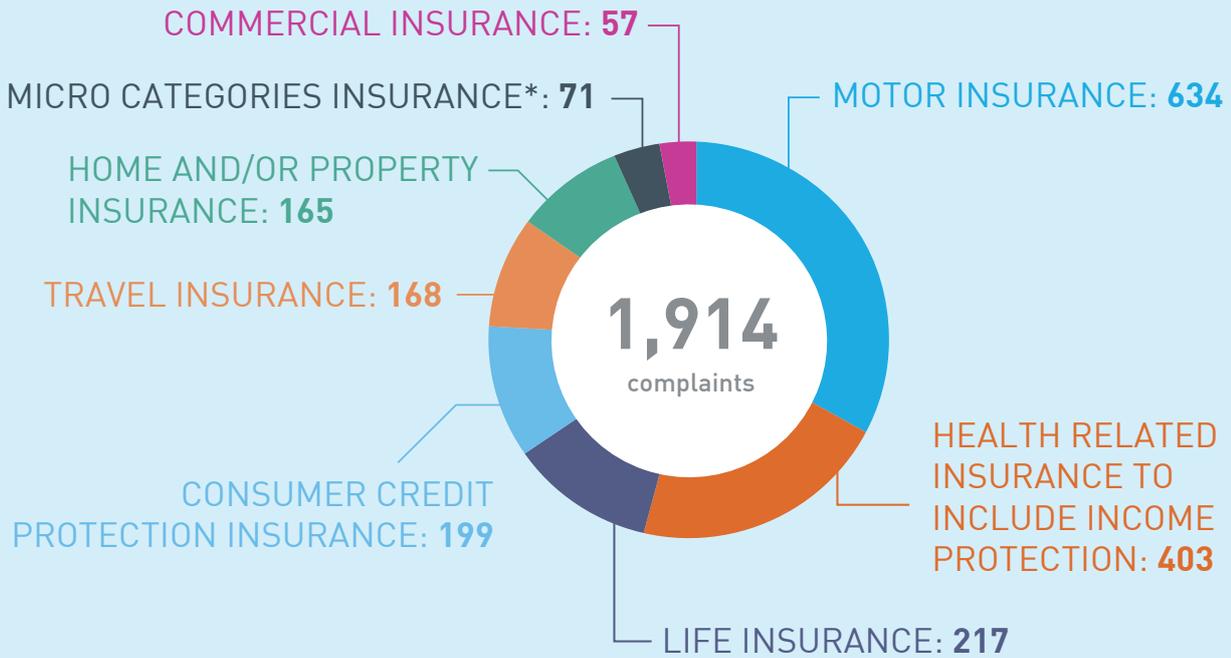


### Top 5 banking conducts complained of



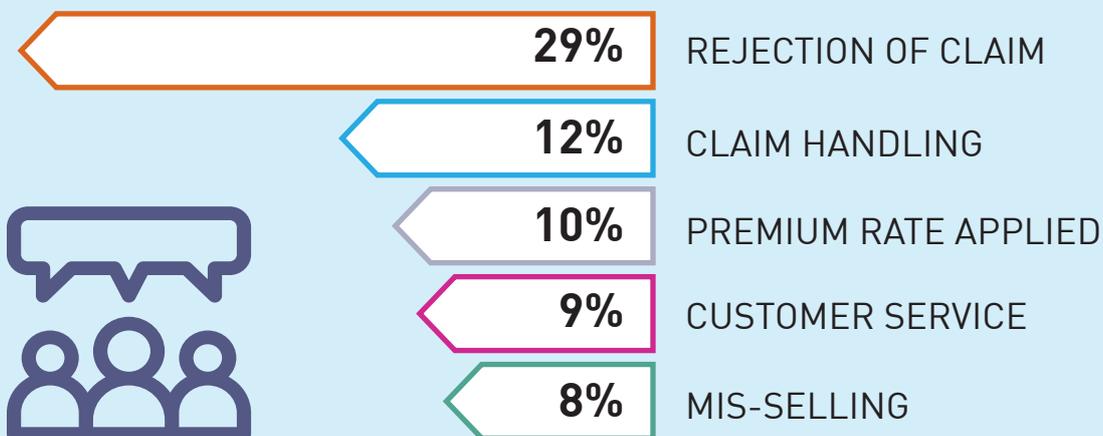
## Insurance Complaints Received

Complaints about insurance products and services accounted for 42% of all complaints received in 2017. Similar to 2016, motor insurance was the main product type complained about, representing 33% of insurance complaints.



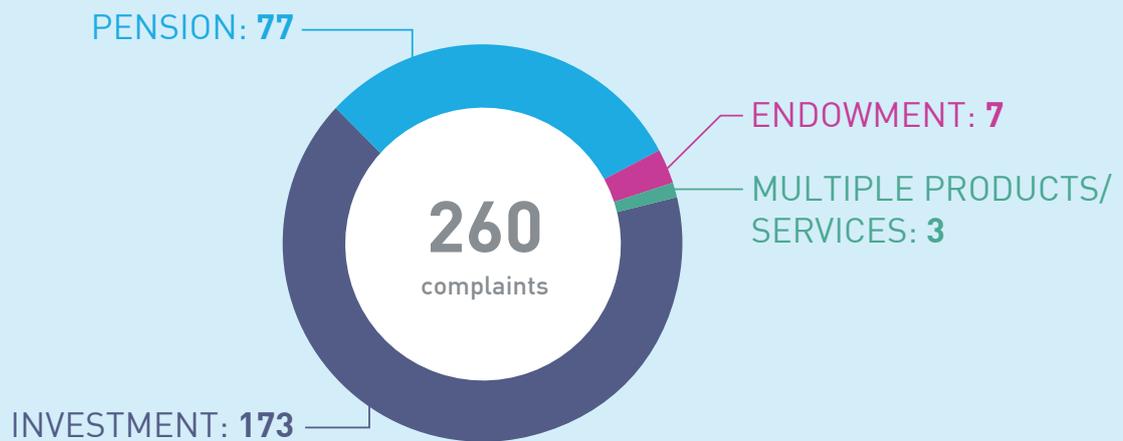
\* Micro categories include insurance products not readily falling into the above categories and could include, for example, marine, farm, gadget, computer, mobile phone and pet insurance.

### Top 5 insurance conducts complained of

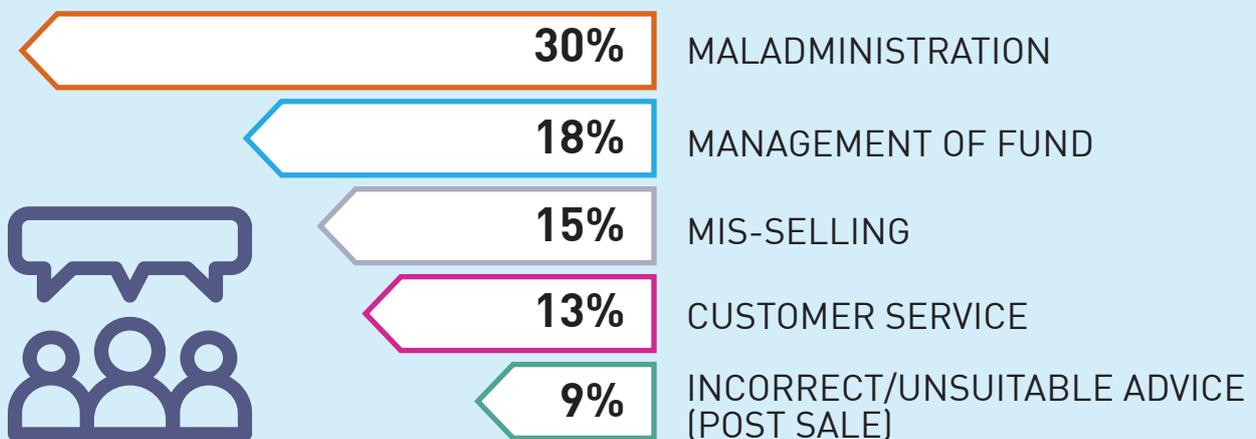


## Investment Complaints Received

A total of 260 complaints relating to investment products were received in 2017. Complaints relating to investment products are a small part of the overall complaint type received. General investments remain the largest portion of these complaint types at 67%.



### Top 5 investment conducts complained of



## Focus on Mortgages

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Complaints by consumers about the conduct of their financial service provider in relation to mortgages made up the largest category of complaints received in 2017, at 1,174 or 26% of all eligible complaints received.

The conduct complained of includes complaints about maladministration, arrears handling, customer service, provision of information and the application of interest.

Tracker mortgages comprise a large element of the complaints received. At the end of December 2017 we had just under 600 tracker mortgage complaints on hand.

The FSO has been dealing with tracker complaints since 2009 and has issued over 600 findings. The adjudication of these complaints provided the FSO with an insight into some of the complex issues surrounding the application of various tracker mortgage rates. For this reason, we have invested considerable time and resources over the last two years in assembling the data available within the FSO in relation to tracker mortgage complaints, and have worked in close co-operation with the Central Bank to ensure that consumers wrongly denied tracker mortgages have them returned in the most efficient and effective way possible. We believe that the best, and most efficient way for financial service providers to ensure that customers wrongly denied tracker rates of interest on their mortgages receive appropriate redress and compensation is for the providers to co-operate fully with the examination directed by the Central Bank.

It was for this reason that, in 2015, we undertook an analysis of tracker mortgage complaints decided by the Office between 2009 and July 2015. The main aim of the analysis was to inform the Central Bank of the various issues the FSO had encountered in relation to tracker mortgages. This information was of assistance to the Central Bank in scoping its current industry-wide examination of tracker mortgage-related issues, which it directed all lenders to conduct.

In the initial stages of the Central Bank examination, we became aware that some banks had indicated that they would not include customers who had received findings from the FSO, in the examination. We were firmly of the view (a view which was shared by the Central Bank) that no mortgage holder who had made a complaint to this office should be treated any differently, with regard to the examination, by virtue of the fact of having made such a complaint, irrespective of the outcome.

The Ombudsman wrote to the CEOs of each of the banks informing them of this view and asked them to confirm that no mortgage holder who had made a complaint to this office would be treated any differently, with regard to the examination by virtue of the fact of having made a complaint to the FSO, irrespective of the outcome. He received this commitment, in writing, from all the banks.

Given that it is our view that the most effective and efficient way to provide redress and compensation to borrowers who have been wrongly denied tracker mortgages is for the banks to co-operate fully with the Central Bank examination, we believe that the best course of action is for this office to put tracker mortgage complaints on hold pending the outcome of the examination.

We have communicated with all complainants who currently have tracker mortgage complaints with this office explaining why we have taken this course of action.

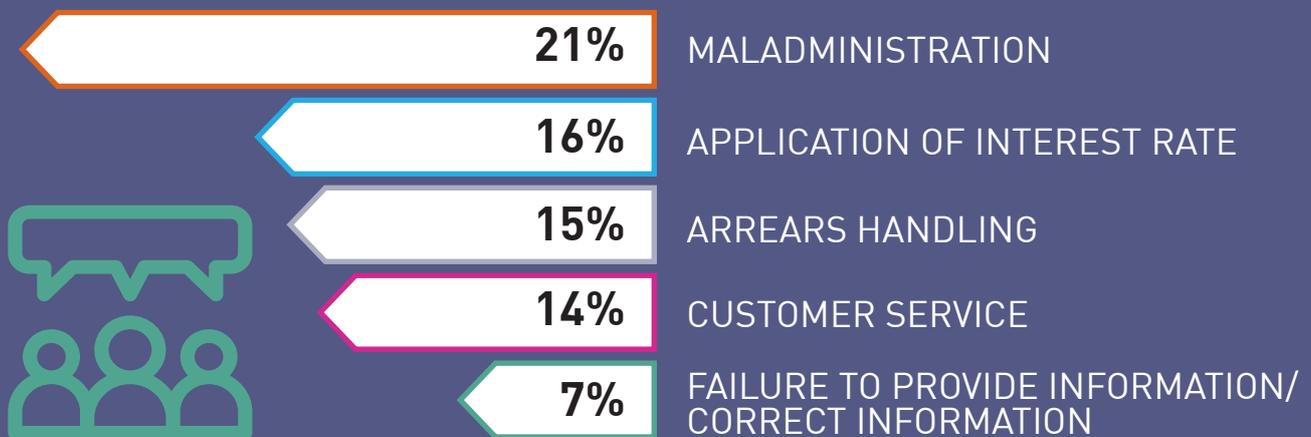
We will continue to work closely with the Central Bank throughout the examination process in order to achieve the best outcome for those wrongly denied tracker rates of interest on their mortgages.

Complaints will remain on hold until the various financial service providers have completed the Central Bank examination and received the necessary assurance from the Central Bank in respect of individual borrowers. If at that stage there are people who believe that their bank has not provided the redress and compensation that they believe they are entitled to, or they are unhappy with the response they have received from their financial service provider, then they can progress their complaint with this office. We will look at each complaint on its individual merits and consider the person's unique circumstances.

We are conscious that many of the people who believe they have been wrongly denied tracker rates of interest on their mortgages have been waiting a considerable length of time and may have suffered considerable hardship. For this reason we will endeavour to prioritise tracker-related complaints as soon as possible after the examination directed by the Central Bank is complete in respect of individual borrowers and groups of borrowers.

We have put in place a tracker team with a dedicated telephone number **01 567 7077** and email **[tracker@fspo.ie](mailto:tracker@fspo.ie)** to deal with people who have tracker-related enquiries and to progress tracker-related complaints.

### Top 5 mortgage conducts complained of



## Case studies of mortgage complaints

### Formal investigation and adjudication process

These findings were issued after formal investigations and adjudication leading to legally binding outcomes.

#### Appointment of receiver on investment property - UPHELD

- Brendan and Joanne asserted that their bank had failed to offer them an opportunity to restructure the loan on their residential investment property and had wrongfully appointed a receiver, resulting in the sale of the property at a very low price, leaving them with a large residual debt. The Ombudsman found that the bank had acted within its strict legal entitlements but its decision to appoint a receiver was unfair because, although there were significant arrears on their family home, Brendan and Joanne's level of arrears on the investment property was very low. The sale of the property by the receiver for €35,000 yielded net proceeds of less than €21,000, leaving them with a substantial outstanding balance of €80,000 on the mortgage account. The Ombudsman directed the bank to reduce the debt by €75,000 with no interest accruing on the balance for 60 days from the date of the finding. He also directed the bank to facilitate the transfer of the remaining debt of €5,000 to Brendan and Joanne's principal private residence mortgage account, to enable them to discharge the debt over the remaining term of the family home mortgage.

#### Poor communication regarding mortgage arrears - UPHELD

- Deirdre and Conor complained about poor communication from their bank. While the Ombudsman could not investigate the details of the repayment capacity or sustainability of the commercial terms of a mortgage, he found that better communication was required from the bank in relation to several areas including: Conor and Deirdre's proposal to sell the property; the bank's position on a shortfall sale; whether the Mortgage Arrears Resolution Process applied; and whether a receiver had been appointed over the property. A payment of €15,000 in compensation was directed for the provider's failings.

### Informal dispute resolution process

Mediation provides a flexible and innovative approach to complaint resolution.

#### Restructuring of a commercial loan

- Darragh was endeavouring to restructure the repayment of a commercial loan amid business difficulties. With no progress despite several mediation calls, the complaint was about to move into adjudication when the dispute resolution officer opted to use Skype to facilitate video mediation. This removed the need for travel to Dublin by Darragh and representatives of the financial service provider when expectations for a resolution were low. After two hours of video mediation the parties agreed a detailed mediation agreement to restructure the outstanding debt.

#### Restructuring of mortgage arrears

- Róisín, who was living abroad and had sold her property in Ireland several years previously, was advised that arrears had accrued on the residual balance of her mortgage loan outstanding. During the mediation process, just as she proposed a payment to settle the residual balance on her mortgage, the loan was sold to a third party. This presented additional challenges and prolonged the mediation process but the bank and Róisín arrived at a resolution which involved a payment of €2,500 to Róisín to help settle the arrears. Separately from this, with the assistance of the FSO's Dispute Resolution Services, Róisín managed to secure a suitable deal with the third party to settle the loan.

#### Overpayment of interest due to mortgage misclassification

- When John and Mary took out a principal dwelling house (PDH) mortgage in 2005, it was incorrectly classified by the bank as an investment mortgage. When the couple discovered the error and complained, the bank agreed to make a limited refund of interest overpaid. However, it was not until the matter reached mediation that the bank provided John and Mary with a full refund of €18,000 for the interest overpaid and changed their loan to a principal dwelling house (PDH) mortgage.

## 5 | Legal Overview

### Appeals to the Superior Courts

During 2017, any complaint which was not resolved through informal processes, including the use of mediation techniques, and which was considered to be within jurisdiction, was subsequently formally investigated and adjudicated. The terms of the Ombudsman's finding were legally binding on both the complainant and the financial service provider, subject only to an appeal to the High Court.

In the event of an appeal to the High Court, all of the evidence put forward to the Financial Services Ombudsman (FSO) for the purpose of the adjudication is examined to assess whether the Ombudsman came to the decision correctly, and whether the procedures offered to the parties were fair in the course of that decision making process. Should the Court take the view that a finding of the FSO was unsound, the complaint is remitted back to the FSO for a fresh consideration of the complaint.

	Complainant	Financial Service Provider	Total
<b>High Court</b>			
<b>At 31 December 2016</b>	4	-	4
<b>Initiated in 2017</b>	7	3	10
<b>Withdrawn/ Struck out/ Adjourned Generally</b>	(4)	(1)	(5)
<b>At 31 December 2017</b>	7*	2	9

\* In 2017, 7 appeals were issued to the High Court by 5 complainants, 2 of whom had 2 complaints and therefore 2 appeals.

At the beginning of 2017, the FSO was dealing with 4 active appeals to the High Court, one matter in the Court of Appeal (appealed in 2013 but not listed) and one in the Supreme Court where a judgment had been delivered at the end of 2016, but where the costs element had been carried over to 2017.

During 2017, 10 new appeals were received, 3 from financial service providers and 7 from 5 complainants. Of the 10 new appeals initiated in 2017, 2 were withdrawn (one from a complainant, and one from a provider). During the year, 3 long-standing appeals from complainants were withdrawn, or struck out, or adjourned generally.

On 31 December 2017, the FSO had one matter still remaining in the Court of Appeal, but not yet listed for hearing. In addition, the FSO had 9 High Court appeals on hand, 2 from providers and 7 from 5 complainants.

In any litigation, the FSO in all appropriate cases seeks recovery of its legal costs by applying to the Court for an Order for Costs against such parties to the litigation. During 2017, the FSOB recovered €73,047.38 in legal costs, against a number of parties.

### Legal Proceedings initiated by the FSO in 2017

With the approval of the relevant complainant, the FSO made an application to the High Court to strike down its own finding issued in 2012, as an inaccuracy in relation to the written submissions furnished by the financial service provider in the course of that investigation had subsequently come to its attention. The inaccuracy was acknowledged by the provider which agreed to discharge any legal costs incurred by the FSO in applying to the High Court to have the finding struck down. The complaint was then remitted to the FSO for a fresh consideration.

On one occasion in 2017, the FSO found it necessary to bring enforcement proceedings against a financial service provider where the compensation directed in a finding had not been paid to the complainant.

## Key Legislative Developments

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In 2017, there were very significant legal developments in the operation by the FSO of its functions and powers. On 25 July 2017, the Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017 was signed into law. This had a number of effects on the operations of the FSO, as outlined below.

### Time Limits

Before the amending legislation, a complainant could make a complaint to the FSO, only in respect of conduct which had occurred in the previous 6 years. This time limit was strict in its application, and was not affected in any way by any absence of knowledge on the part of a complainant. The amending legislation changed this time limit, to permit an alternative period in respect of any complaint about a “long-term financial service” to enable a complaint to be made to the FSO within whichever of the following periods was the last to expire:-

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

It should be noted that in circumstances where subsections (a) and (b) prescribe very specific timeframes for the making of such complaints, the discretion of the FSO referred to in subsection (c) required the FSO in that context, to exercise that discretion in a manner which was just and equitable, in all of the circumstances, having formed the opinion that there were reasonable grounds to extend the period beyond the timeline prescribed by subsections (a) and (b).

The term “long-term financial service” can be loosely explained as (i) a product or service with a fixed term of 5 years and 1 month or more, or (ii) a product or service meeting the definition of “life assurance”.

The legislation made it clear that this expanded time limit related to any complaint received by the FSO which had not already been assessed as to its suitability for consideration, and also to any complaint made to the FSO, before the amending legislation came into being, which had been previously refused as being outside the applicable time limits. The amending legislation also required a complaint to meet certain conditions in order to fall within the new time limits for complaints about a “long-term financial service”, in particular that the conduct complained of, occurred during or after 2002.

This amendment to the governing legislation gave rise to a significant volume of queries from complainants where elements of complaints previously received by the FSO had fallen outside the jurisdiction of the office because of the 6-year limitation period.

The amending legislation also increased the timeframe, from 21 to 35 days, for appeals to the High Court seeking to strike down a finding of the FSO.

## Dissolution of the Financial Services Ombudsman and establishment of the Financial Services and Pensions Ombudsman

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A subsequent and very significant legal development for the FSO during 2017 was the fact that it ceased to exist. This development occurred owing to the merger of the FSO with the Office of the Pensions Ombudsman, which was facilitated on 01 January 2018, by the commencement of the Financial Services and Pensions Ombudsman Act 2017, thereby creating the office of the Financial Services and Pensions Ombudsman, now known as the FSPO.

All functions which immediately before the commencement date, were vested in the Financial Services Ombudsman or vested in the Pensions Ombudsman were, on 01 January 2018, transferred to the FSPO.

Consequent upon this development, complaints can now be made to one office, about the conduct of financial service providers and the conduct of pension providers. Decisions which the Courts have delivered over the years, in litigation or appeals involving the Financial Services Ombudsman or the Pensions Ombudsman, will continue to inform the FSPO in the exercise of its statutory powers and functions.



An tOmbudsman Seirbhísí  
Airgeadais agus Pinsean

Financial Services and  
Pensions Ombudsman

## NEW ORGANISATION – BUSINESS AS USUAL

**Financial Services and Pensions Ombudsman (FSPO)  
On 01 January 2018 the FSPO was established**

The Financial Services Ombudsman's Bureau and the Office of the Pensions Ombudsman have merged to become the Financial Services and Pensions Ombudsman.

The merger took place because of the enactment of the Financial Services and Pensions Ombudsman Act 2017.

Please note our new contact details and visit [www.fspo.ie](http://www.fspo.ie) for more information.

### CONTACT DETAILS

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