



Financial Services  
Ombudsman

# Annual Review 2016



## Mission Statement

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To resolve disputes between consumers and financial service providers in a fair, timely and impartial manner and to contribute to enhancing the financial service environment for all consumers.

### Access to financial services

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Access to certain financial services in the banking and insurance sectors is not a luxury. For most people, this is an essential part of everyday living. For this reason I was concerned to note, in a number of complaints to this office, the manner in which some banks denied access to online banking, did not process certain transactions or froze or closed bank accounts in an unreasonable manner. I am fully aware that financial institutions have to comply with certain requirements in relation to anti-money laundering and countering financing of terrorism. However, it is important that these measures are applied in a fair and reasonable manner, and do not go beyond the limits of those requirements.

It is also extremely important that people are able to insure their homes or property. Where a person has an insurance policy cancelled due to alleged non-disclosure this can have the most serious implications and render it very difficult, and in some instances almost impossible, for that person to get any sort of insurance cover subsequently. Insurance companies should ask questions on proposal forms in a clear manner and ensure that customers are clear on what they are being asked and the consequences of answering incorrectly. Furthermore, insurance companies should exercise caution and prudence when considering cancelling an insurance policy and should not take steps which might reasonably be considered disproportionate.

Similarly with travel and health insurance it is essential that insurance companies explain clearly what they consider to be "pre-existing conditions" prior to the inception of an insurance policy so that insured people are clear on what is and what is not covered by a policy of insurance.

I will continue to pay particular attention to the conduct of banks and insurance companies in relation to the denial or curtailment of services to customers in order to ensure that their conduct is fair, reasonable and proportionate.



**Ger Deering**  
Financial Services Ombudsman

# 1 Ombudsman's Overview of 2016

## A Year of Significant Progress

The year under review has been tremendously challenging but also very successful. We have listened intently to our stakeholders who told us that they wanted a faster, simpler and more effective service. This is what we are now delivering.

This valuable feedback came from an independent review of our operations that we commissioned in 2015. It involved considerable engagement with a broad range of stakeholders; particularly those who had used our services to make a complaint against a financial service provider. The replies indicated that our service had become overly formal, complex, legalistic and lengthy.

In response, we began a three-year change programme on the 1st of February 2016. The main focus for 2016 was on the introduction of a new dispute resolution service. In 2017, the change programme will focus on the new investigation and adjudication processes and next year will focus on outreach and awareness.

Separate surveys indicate that the newly implemented processes are working well and that the changes have already had a positive impact. The feedback also shows us that we have built strong foundations on which we can continue to develop the service and improve how we manage complaints. We will continue to survey users of our service to monitor satisfaction levels.

In addition to the formal structured feedback provided by the surveys, we were heartened to receive thank you notes and emails throughout the year from complainants. In many respects, these messages tell the story behind the numbers in this report. The real people with real complaints for whom the work of this office makes an important difference in their lives. For this reason we have reproduced, on an anonymous basis, some of the comments received throughout this report.

We also publish case studies that assist consumers and financial service providers to fully appreciate the conduct and service that customers are entitled to expect. These examples show the redress available when standards are not met and where complaints are not resolved by their financial service provider. These are published on our website [www.financialombudsman.ie](http://www.financialombudsman.ie)



### Complainant Feedback

I will never be able to put into words how grateful I am to you and all your colleagues for all your hard work. Everyone I have spoken to has been so kind, sincere and non-judgemental. After today's resolution, I can breathe a little easier than I have for a very long time. Never under estimate how important your work is. I will be forever grateful."

August 2016



## Complainant Feedback

Now that it's concluded I feel it appropriate to thank you for your hard work through what was a very stressful time for me”

June 2016

### A New Dispute Resolution Service

Following the feedback, we introduced a dedicated dispute resolution service on the 1st of February 2016 to resolve disputes through mediation at an early stage and with the minimum formality necessary. This is what the vast majority of complainants want. It means we now undertake more direct interactions with both consumers and providers to deliver a faster and more effective service.

Mediation, by telephone and email and through meetings, is now the first and preferred option for resolving complaints. By engaging with the parties directly, and quickly, it is possible to achieve a timely and satisfactory resolution most of the time.

A total of 2,378 complaints were resolved through mediation between the 1st of February and the end of 2016. In addition to being more user friendly, mediation is also quicker. 46% of those who successfully resolved their complaint through the dispute resolution service had their complaints resolved within two months and 56% in less than three months.

### Investigation and Adjudication – Findings Issued

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

A total of 727 legally binding findings were issued in 2016. Out of this total, 101 complaints were upheld, 216 were partly upheld and 410 were not upheld. A legally binding finding can be appealed to the High Court. In 2016, ten findings, some relating to findings issued in previous years, were the subject of appeal proceedings.

### Dealing with Legacy Complaints

We are very conscious that not all those who use our service have benefitted from our new processes. When we introduced the new process we already had more than 2,000 complaints at various stages of our “old” process. As it was not possible to deal with these complaints through the new process we continued to manage those 2,000 complaints in addition to the 4,500 new complaints we received in 2016. It has been challenging to run two parallel processes. However, with the dedication of our staff and the patience and understanding of complainants and financial service providers we have managed to run the new and old systems and to make significant progress with both. This can make it difficult to compare figures for different years but by the end of our three-year change programme, we aim to have fully transitioned to our new dispute resolution model and reporting system.

We had 2,198 active complaints at the end of 2016. This included almost 400 tracker mortgage complaints - most of which are on hold pending the outcome of the examination being carried out by banks at the direction of the Central Bank.

### Seirbhís na hoifige ar Fáil as Gaeilge

Le linn na bliana seo, tá béim curtha freisin ag foireann na hoifige, ar chonas feabhas a chur ar an seirbhís a chuirtear ar fáil don phobal, as Gaeilge.

Cuirtear fáilte i gcónaí roimh Gaeilge, agus faoi láthair, tá ceathrar no cúigear ball foirne ag tabhairt faoi chúrsaí Gaeilge, ag iarraidh feabhas a chur ar a gcuid Gaeilge féin.

Cibé as Béarla nó as Gaeilge, táimid an-bhróduil as an seirbhís neamhspleách agus neamhchlaon a chuirtear ar fáil don phobal, nuair a bhíonn cabhair á lorg, ag baint le aighneas faoi tháirge airgeadais nó seirbhís airgeadais.



## Complainant Feedback

I would like to thank you for the brilliant and efficient service in resolving matters in an amicable manner. Same is much appreciated.”

March 2016

### Co-operation with other bodies

We have considerable interaction with a wide range of stakeholders. During 2016 we engaged with consumer representative bodies and advocates including the Citizens Information Board, the Competition and Consumer Protection Commission, the Money Advice and Budgeting Service, and the Free Legal Aid Centre. In addition, we engaged with industry representatives through organisations including the Banking and Payments Federation Ireland, Insurance Ireland, broker representative bodies and educational bodies such as the Insurance and Banking Institutes and the Life Insurance Association.

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 cases across the EEA.

We have a Memorandum of Understanding with the Central Bank in relation to the sharing of information. We meet with their representatives and share information where we believe it will assist in the protection of consumers. For example we are currently liaising closely with them in relation to the examination of tracker mortgage-related issues.

### Amalgamation of the Financial Services Ombudsman and the Pensions Ombudsman

The Government has decided to amalgamate the offices of the Financial Services Ombudsman (FSO) and the Pensions Ombudsman. This will require enabling legislation. The Department of Finance, together with the Office of the Attorney General, are currently progressing the drafting of this legislation.

In the meantime, provision was made in statute to appoint the holder of the post of Financial Services Ombudsman to the post of Pensions Ombudsman. I was appointed Financial Services Ombudsman in April 2015 and Pensions Ombudsman in May 2016. While I hold both posts under separate legislation, both offices co-operate closely and are co-located in the one building.

### Acknowledgements

As I have said, this has been a successful year for us. That success would not have been achieved without the commitment and support of quite a few people.

Management and staff demonstrated huge flexibility and commitment to quality customer service during what has been an extraordinarily busy and productive period of change. I want to thank the Deputy Ombudsman, Elaine Cassidy, the directors of services, managers and all the staff for their extraordinary dedication and commitment to ensuring we provide the best possible service. I would also like to thank the staff of the Office of the Pensions Ombudsman for their co-operation and support.

I also thank the former Council Chairperson Dermott Jewell and current Chairperson Maeve Dineen and the past and present members of the Financial Services Ombudsman Council for their commitment and support.

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

I want to express my appreciation to the Minister for Finance and his officials for their on-going support and co-operation.

Finally, I would also like to thank all who took the trouble to complete our various surveys and provide us with feedback generally. This feedback has been central to the design and operation of our new processes in a way which will assist us to provide the best possible service to users in the future.

As we say as Gaeilge, “*Tús maith, leath na hoibre*”. We have made a very good start to our change programme. With the continued commitment of all concerned, I believe we can continue to improve the service we provide in the coming years and I look forward to implementing the next phases of our change programme.

**Ger Deering**  
Financial Services Ombudsman

March 2017



## 2 Feedback on the New Service

### Complainant Feedback Survey Results

We undertook Service User Feedback Surveys in 2015 to find out if we needed to change. In 2016 we checked back to see what service users thought of the changes we made. The objective of the surveys was to capture the ‘voice of the customer’, establish a baseline, understand the impact of the new processes and capture feedback to support continuous improvement initiatives.

The 2016 survey, which provides an early snapshot, was completed by 114 Complainants who had had their complaint handled by the new Dispute Resolution Service between 1st February and 1st August 2016. These results were compared with survey results relating to the service available prior to the introduction of the new Dispute Resolution process.

#### Top terms chosen to describe the FSO:

- > Accessible and easy-to-use
- > Independent and Impartial
- > Approachable
- > Respectful and Sensitive
- > Consumer-Focused
- > Fair

In 2015 the terms “Formal, Legalistic and Industry Focused” all featured in the top six. In 2016 these were replaced with the terms above.

Overall, this feedback can be considered a positive endorsement of the newly enhanced FSO Dispute Resolution Service. Based on these results, it can be said that strong progress has been made in delivering a more people-centered and accessible service, leading to a better experience for complainants. The results show that the FSO has built strong foundations on which to continue developing the service.

Results 2016	
> <b>75%</b> agreed that the service they received matched their expectations.	UP <b>27%</b> from 2015
> <b>90%</b> agreed that they received regular communications from the FSO.	UP <b>33%</b> from 2015
> <b>81%</b> were satisfied with the length of time the FSO took to deal with their complaint.	UP <b>25%</b> from 2015
> <b>76%</b> were satisfied with how their complaint was handled by the FSO.	UP <b>14%</b> from 2015
> <b>76%</b> felt that the FSO acted in an impartial and fair manner in dealing with their complaint.	UP <b>15%</b> from 2015
> <b>94%</b> thought the individuals who managed their complaints were polite and courteous.	UP <b>4%</b> from 2015
> <b>84%</b> felt that the individuals who had handled their complaint had clearly explained the complaints process to them.	UP <b>23%</b> from 2015
> <b>86%</b> thought that the individuals who handled their complaint were knowledgeable about financial products and services.	UP <b>28%</b> from 2015
> <b>82%</b> believed the individuals had demonstrated a good understanding of their complaint.	UP <b>27%</b> from 2015



The service I received exceeded my expectations. My complaint was taken seriously and I wasn't made to feel like the issue was solely mine.

survey respondent, 2016

## Provider Feedback Survey Results

The objective of the Provider Feedback Survey conducted in 2016 was to capture the perspective of financial service providers, understand the impact of the new Dispute Resolution Service from their perspective and capture feedback that will contribute to continuous improvement initiatives.

A total of 106 Provider representatives responded to the survey request, with 84 respondents completing the survey in full. The breakdown of respondents was: 27% Banks, 21% Insurance – Non-Life; 14% Insurance – Life; 12% Insurance – Intermediary; 10% Insurance – Health; 4% Finance Provider; 4% Credit Union; 1% Bureau de Change; 2% other banking; 1% other insurance; 4% other.

All 84 respondents had experienced the new Dispute Resolution Service since 1st February 2016, with 67% of respondents participating in telephone mediation, 3% participating in face-to-face mediation and 30% participating in both telephone and face-to-face mediation.

### Results:

- > **98%** agreed that the service was well suited to resolving complaints between customers and financial service providers.
- > **89%** agreed that the service matched their expectations.
- > **91%** agreed that they received regular communications from the FSO when complaints were made against their organisation.
- > **87%** were satisfied with the length of time the FSO took to deal with the complaints against their organisation.
- > **84%** were satisfied with how the complaints were handled by the FSO.
- > **77%** felt that the FSO acted in an impartial and fair manner in dealing with complaints against their organisation.
- > **99%** thought the individuals who managed complaints against their organisation were polite and courteous.
- > **90%** felt that the individuals who had handled complaints had clearly explained the Dispute Resolution / mediation process to them.
- > **89%** thought that the individuals who handled complaints were knowledgeable about financial products and services.
- > **93%** believed the individuals had demonstrated a good understanding of complaints made against their organisation.

Providers were asked if they had made changes to their internal complaints-handling process since February 2016 due to their experiences with the FSO: 69% confirmed they had.

Providers were also asked to choose three terms they would associate with the FSO, based on their experience of the Dispute Resolution Service.

#### The top six terms chosen were:

- > **Consumer-Focused**
- > **Independent and Impartial**
- > **Accessible and easy-to-use**
- > **Approachable**
- > **Fair**
- > **Confidential and Trustworthy**

These results are very similar to the 2015 results, with one key difference – in 2016, the term “Approachable” replaced the (previously third most popular) term “Formal” from 2015.

The positive feedback received from providers demonstrates that the new process delivers a positive experience for providers as well as complainants.



I found the service very reassuring, supportive and fair. It was consistent in what was promised and within the time frame and I found it to be a relief to me.

survey respondent, 2016

# 3 Consumer Service & Communications

## Contact management and general customer service supports

Our dedicated information service team responded to over 10,000 telephone contacts in 2016. Our telephone service continues to play an essential role in assisting our service users 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. Separately, we inform and refer callers on to other information or redress channels as appropriate.

We also handle a significant number of email queries – some 8,000 general information queries were dealt with in 2016.

Our public office also provides assistance to callers on a regular basis, including support to those with literacy or other specific requirements. This is also a very useful means of receiving user feedback on our information and processes.

### Online activity 2016

Our website continues to receive a significant volume of visitors, with over 67,000 unique visitors and approximately 95,000 website sessions in 2016.

We received over 1,500 complaints online in 2016. This corresponds to approximately a third of all complaints received. Increasingly we find that complainants wish to submit their complaints on line and have the matter dealt with through email. This is something we are very happy to facilitate and we hope to see a continued increase in the use of on-line and email services in 2017.



## 4 | How We Managed Complaints in 2016

A total of

# 4,323

complaints were closed during 2016, of which:

**972**

were closed following registration, referral and follow up with the complainants.

**2,421**

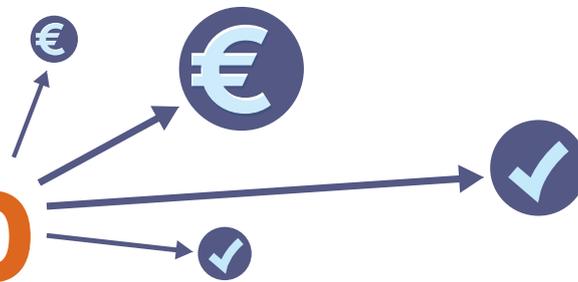
were closed through the Dispute Resolution Service

**930**

were closed through Adjudication and Legal Services.

In 2016 over

**1,800**



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



## Complaints closed through Dispute Resolution Services

**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.

Closed Reason	Number of Complaints
Dispute Resolution settlement	1,370
Dispute Resolution clarification	1,008
Withdrawn/outside settlement	43
<b>Total</b>	<b>2,421</b>

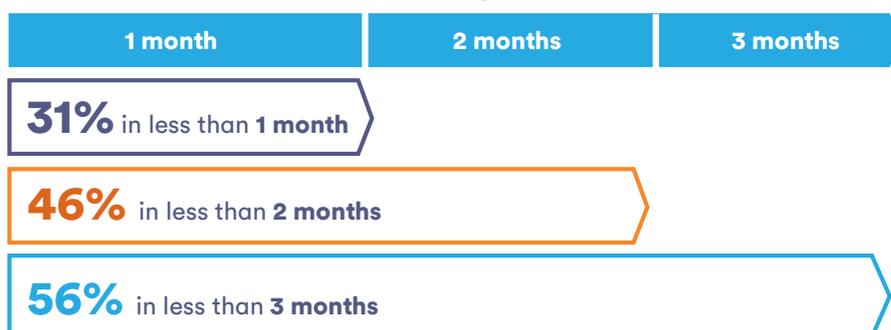
Some examples of rectification or compensation provided through **mediation**:

- > The complainant’s insurance company voided a home insurance policy and refused a claim on the basis of non-disclosure. In Dispute Resolution the company accepted that this was an innocent non-disclosure and reinstated the policy and agreed to pay a percentage of the claim.
- > The complainant was unable to service their mortgage. The Bank sought to repossess their home. In Dispute Resolution, both parties agreed to participate in the Mortgage-to-Rent scheme and the Complainant was able to remain as a tenant in their original home.
- > The complainant’s motor insurance policy was renewed by a close relative who did not know the number of penalty points on the complainant’s licence. The complainant was involved in a claim which was rejected on the basis of non-disclosure and the policy was cancelled by the company. In Dispute Resolution, the insurance company accepted that the relative did not intentionally fail to disclose the penalty points. The insurance company reinstated the policy and paid a percentage of the claim and insisted that the complainant personally renew their policy in future.
- > A person who had lost their No Claims Discount on their car insurance had it restored through Dispute Resolution.
- > An insurance claim had been refused due to non-disclosure and the policy cancelled. In Dispute Resolution, the provider returned the premiums paid and agreed to quote cover under a new policy with certain exclusions related to the issues which led to the refusal to pay the claim.
- > The complainant took out a bank loan over several years which was paid back in full in 2013. On looking to take out a mortgage, his ICB record did not show that the loan was repaid, and the mortgage application was in jeopardy. Through mediation with the bank, a technical issue was rectified and the ICB record was corrected by the bank to show the loan was closed on the date it was repaid. The Complainant also received financial compensation for the inconvenience caused.
- > Many complaints are also resolved through Dispute Resolution by the payment of customer service award, goodwill gesture or compensation payments.
- > An example of a dispute resolved through clarification is where following interaction with the Dispute Resolution Service, the complainant set out in full detail their concerns regarding arrears on their mortgage account. The bank supplied a very detailed response which explained how the arrears had accrued. The complainant understood and accepted the bank’s position.

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





## Complaints closed through Adjudication and Legal Services

**Findings issued:** These are complaints where a full investigation and adjudication takes place and a legally binding finding issues.

**Jurisdiction declined:** These are complaints where complex jurisdictional issues may arise and are considered by Legal Services where 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 while in Adjudication or Legal Services. 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.

Closed Reason	Number of Complaints
Findings issued	727
Jurisdiction declined	39
Withdrawn/outside settlement	164
<b>Total</b>	<b>930</b>

### Outcome of Findings

Following the investigation and adjudication of a complaint, a legally binding finding is issued to both of the parties. Where the complaint is upheld or partly 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 or partly 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. We directed financial service providers to pay compensation totalling €1,569,571 to complainants in 2016. This is in addition to any rectification directed.

Finding outcome	Number of Complaints	%
Upheld	101	14%
Partly Upheld	216	30%
Not Upheld	410	56%
<b>Total</b>	<b>727</b>	<b>100%</b>

Some examples of rectification or compensation provided through **adjudication**:

- A direction that €100,000 be paid to a person who had a specified illness claim unreasonably declined.
- A travel insurance policy complaint partly upheld where there was a dispute in relation to “pre-existing conditions” and a direction that a sum of €30,000 be paid towards the complainant’s medical costs.
- Compensation of €6,000 directed, and an apology to be issued for the embarrassment caused, to a person who had their bank account frozen in unfair, unreasonable and embarrassing circumstances.
- Compensation of €10,000 directed and an apology to issue to a person whose record was mistakenly and embarrassingly reported negatively to the Irish Credit Bureau.
- A direction that on-line banking be provided and €4,000 compensation and a refund of fees be paid to a person who was unreasonably denied access to on-line banking.
- A direction that a claim for damage be admitted and paid, and the insurance policy to be reinstated, plus compensation of €3,000 to be paid to a person who had their home insurance claim denied and insurance policy cancelled unreasonably.
- A direction to the Provider to rectify the conduct complained of by immediately buying back an investment, that had been mis-sold for the original amount of €250,000 together with a direction for payment of an additional sum of €7,000 in compensation.



## Complaints closed through Information Services

**Complaints closed after registration, referral and follow up:** This category covers those complaints which are sent to us before being completed by the consumer. Usually this is because the consumer has not notified their financial service provider of the issue, as required by the legislation. Our Information Services Team contacts the consumer and explains how to complete the complaints process. The complaint is followed up by the Team on at least two further occasions before being closed if it remains incomplete.

**Ineligible Complaints:** This category includes complaints which are ineligible because they are intended for a different ombudsman, relate to products and services or service providers that do not fall within the remit of this office or are on-line complaints intended for a different country. Where relevant, the consumer is redirected to the appropriate body.

Closed Reason	Number of Complaints
Complaints closed after registration, referral and follow up	759
Ineligible complaints	213
<b>Total</b>	<b>972</b>



### Complainant Feedback

Thank you so much for all your help and hard work, kindness and humanity during a very difficult time for me. (Named Provider) have accepted me as a customer and I should be back on the road shortly, I am delighted!! Thanks again”

July 2016

## 5 Reporting on Named Financial Service Providers

The Table below identifies regulated Financial Service Providers who, in 2016, had at least three complaints against them upheld or partly upheld. Service providers are listed in order of the number of complaints upheld followed by number of complaints 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.

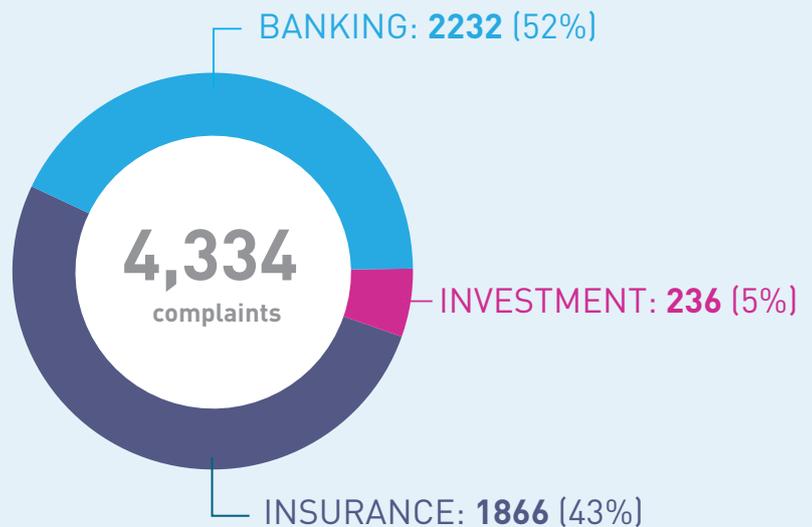
<b>Name of Regulated Provider</b> <i>(to include any trading name if different)</i>	<b>Member of Business Group</b> <i>(where applicable)</i>	<b>Number of Complaints Upheld</b>	<b>Number of Complaints Partly Upheld</b>
<b>Ulster Bank Ireland Limited</b>	Royal Bank of Scotland Group	18	21
<b>Irish Life Assurance plc</b>	Great West Lifeco Group	9	34
<b>AIB Bank</b>	AIB Group	7	13
<b>New Ireland Assurance Company PLC t/a Bank of Ireland Life</b>	Bank of Ireland Group	5	12
<b>Bank of Ireland Mortgages</b>	Bank of Ireland Group	5	8
<b>Permanent TSB</b>	Permanent TSB Group Holdings plc	5	3
<b>Bank of Ireland</b>	Bank of Ireland Group	4	12
<b>KBC Bank Ireland plc</b>	KBC group	3	9
<b>EBS</b>	AIB Group	3	3
<b>Prudential International</b>	Prudential Group	3	6
<b>Bank of Scotland plc (General complaints)</b>	Lloyds Banking Group	2	4
<b>FBD Insurance plc</b>	FBD Holdings plc	2	4
<b>Tesco Personal Finance t/a Tesco Personal Finance Ltd</b>	Tesco Ireland	2	3
<b>123 Money Ltd t/a 123.ie</b>	RSA Group	2	1
<b>Friends First Life Assurance Ltd</b>	Achmea	2	1
<b>AvantCard Limited t/a AvantCard</b>	Avant Tarjeta EFC S.A.U.	1	4
<b>Cornmarket Group Financial Services Ltd.</b>	Great West Lifeco Group	1	4
<b>Inter Partner Assistance S.A</b>	AXA Group	1	4
<b>White Horse Insurance Ireland dac</b>	Thomas Cook Group plc	1	4
<b>Danske Bank</b>	Danske Bank Group	1	3
<b>First Merchant Processing (Ireland) Ltd, t/a AIB Merchant Services</b>		1	2
<b>Irish Life Health dac</b>	Great West Lifeco Group	1	2
<b>Lloyds of London</b>	Lloyds of London Group	1	2
<b>Provident Personal Credit Limited t/a Provident.</b>		0	5
<b>RSA</b>	RSA Group	0	4
<b>Zurich Insurance Plc</b>	Zurich Insurance Group (Zurich)	0	3
<b>Zurich Life Assurance plc</b>	Zurich Insurance Group (Zurich)	0	3

# 6 Sectoral Analysis of complaints received in 2016

This section of the Report sets out details of the complaints received in 2016 in the three financial sectors; Insurance, Banking and Investment, by the type of product complained about.

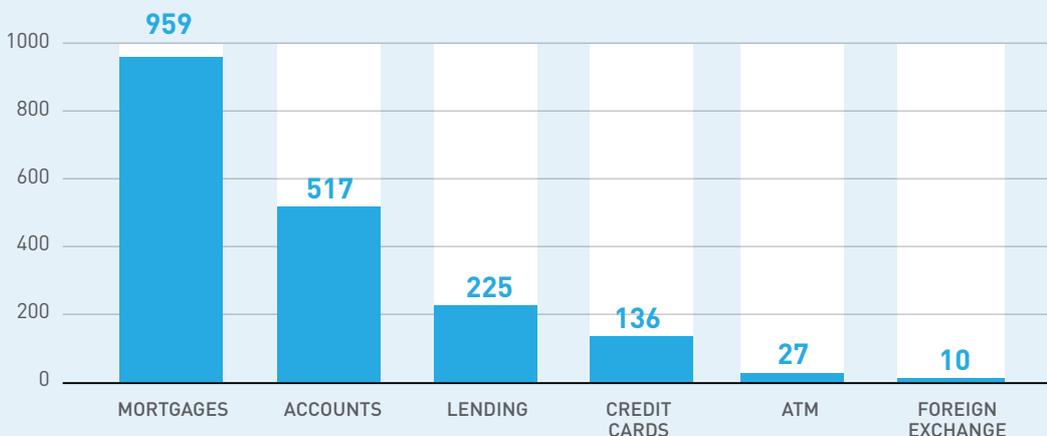
A total of 4,513 complaints were received by the office in 2016, this compares to 4,872 complaints received in 2015. The 2016 total included 179 ineligible complaints, leaving a balance of 4,334 valid complaints. Complaints are ineligible because they are intended for a different ombudsman, relate to products and services or service providers that do not fall within the remit of this office or are on-line complaints intended for a different country. Where relevant, the consumer is redirected to the appropriate body.

Of the 4,334 valid complaints received in 2016, 52% related to Banking products and 43% related to insurance. The remainder related to investment at 5%.



## Banking Complaints Received

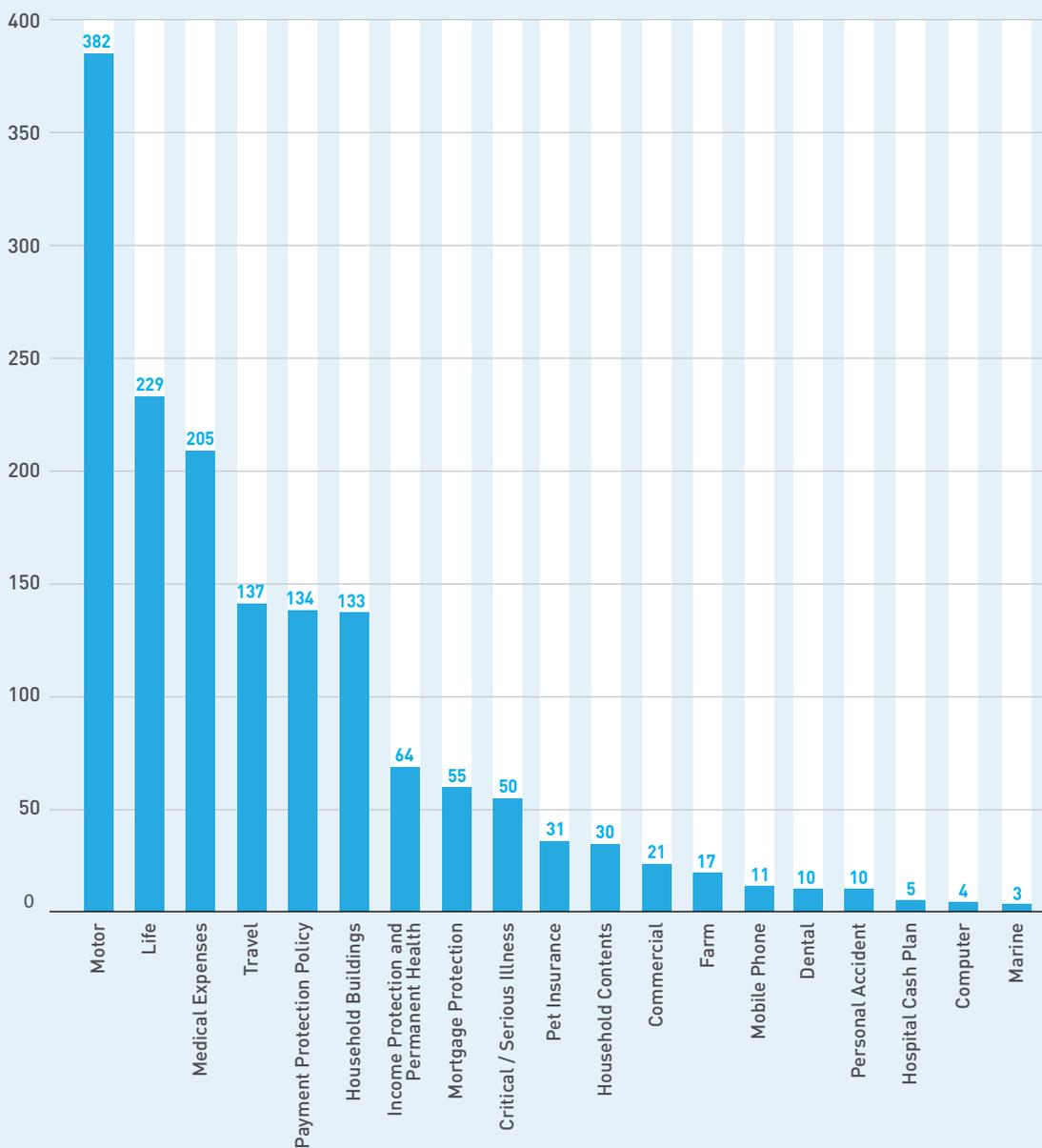
Banking complaints represent 52% of all complaints. In line with previous years, mortgages continue to be the largest product type complained of in the Banking Sector and in 2016 it represented the largest product type of all sectors. Similar to 2015, complaints regarding bank accounts are the second largest cohort representing 28% of all banking complaints.



An additional 358 complaints, which related to banking generally, were received. As these complaints were incomplete the product types were not defined.

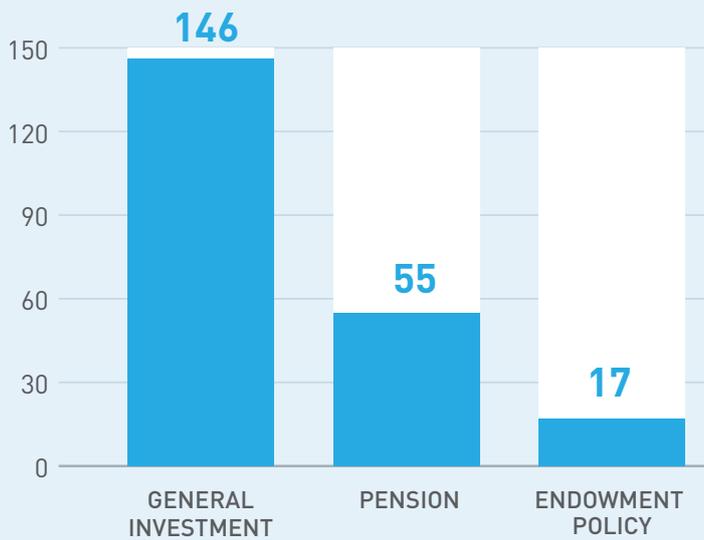
## Insurance Complaints Received

Complaints about insurance products and services accounted for 43% of all complaints received. Similar to 2015, motor insurance was the main product type complained about with motor insurance complaints making up a large portion of insurance complaints at 25%. The number of complaints regarding payment protection insurance continued to decline on previous years.



An additional 335 complaints, which related to insurance generally, were received. As these complaints were incomplete the product types were not defined.

## Investment Complaints Received



A total of **236** complaints relating to investment products were received.

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 62%.

An additional 18 complaints, which related to investment generally, were received. As these complaints were incomplete the product types were not defined.

## “Complainant Feedback

I wish to express my appreciation to your office for the investigation and determination of my complaint. A donation has been made to the (named charity) in appreciation of same”.

December 2016

# 7 | Legal Review

## Overview

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If a complaint is not resolved by mediation, the Financial Services Ombudsman will undertake a formal investigation and the matter will then proceed to adjudication. At the conclusion of any adjudication, a Legally Binding Finding is issued by the Financial Services Ombudsman to the parties, the terms of which are legally binding on both the Complainant and the Financial Service Provider, subject only to an appeal to the High Court.

The Court does not offer a fresh hearing of the complaint, involving the taking of evidence either orally or in writing. Instead it will examine all of the evidence put before the Financial Services Ombudsman for the purpose of the adjudication and it will 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.

If the Court takes the view that the Finding is unsound because of a serious or significant error, the Court will remit the complaint back to the Financial Services Ombudsman for a fresh consideration of the complaint, by a person who played no part in the original adjudication.

At the start of 2016, the Financial Services Ombudsman was dealing with 13 on-going High Court appeals, together with three additional matters in the Court of Appeal and two matters in the Supreme Court (18 matters in total). During 2016, 10 new appeals (nine from complainants and one from a financial service provider) were issued against Findings of the Financial Services Ombudsman. These included two applications to the Court to extend the permitted timeframe to appeal Findings which had been issued in 2012.

Of those 10 new appeals in 2016, three were withdrawn almost immediately, two were struck out by the Court, two were remitted by the Court to the Financial Services Ombudsman for further consideration and three are on-going before the Courts. In addition, during 2016, the Supreme Court dismissed one matter<sup>1</sup> and refused the Appellant leave to appeal to the Supreme Court in the other. The Court of Appeal also dismissed two appeals. At the end of 2016, there were four High Court matters remaining and one remaining matter in the Court of Appeal.

The decisions of the Courts offer useful and welcome guidance to the Financial Services Ombudsman as to the extent of, and also as to the limitations of, the powers made available to the Ombudsman pursuant to the Central Bank Act 1942, as amended. Some of the notable decisions of the Courts in 2016 are set out below.

### Time limits for bringing appeals to the High Court

Of some significance during 2016 were two separate applications to the Court by Appellants in unrelated matters, both seeking an extension of time from the Court in order to be permitted to appeal against a Finding issued by the Ombudsman some four years earlier, in 2012. The time limit for bringing appeals against a Finding of the Financial Services Ombudsman is set by the Rules of the Superior Courts which provide that a Statutory Appeal shall be issued within a period of 21 calendar days, or within such further period as the Court may allow. Whilst one such matter was struck out on consent of the parties, the High Court considered the second application in *Connors v Financial Services Ombudsman [2016/220 MCA]*. In delivering an ex tempore decision on 28 July 2016, O'Regan J. held that there had been "enormous" delay in seeking to appeal the Ombudsman's Finding and that if an extension of time were to be granted, it would "fly in the face" of the Financial Services Ombudsman's statutory process. In those circumstances, the Court refused to extend the time.

<sup>1</sup> The appeal was dismissed on 21 December 2016, with the costs aspect carried over to January 2017

## Time Limits for bringing complaints to the Financial Services Ombudsman

**Section 57 BX – (3) (b)** of the **Central Bank Act 1942**, as amended, provides that “a consumer is not entitled to make a complaint to the Financial Services Ombudsman, if the conduct complained of occurred more than six years before the complaint is made”. During 2016, the High Court came to examine that provision in some detail. Delivering Judgment in *Stowe v. FSO and another [2014/109MCA]* on 18 April 2016, Twomey J, noted the decision of the FSO to decline to examine an alleged representation of the Financial Service Provider, alleged to have occurred on a date outside the six year period before the complaint was made to the FSO. The Court confirmed that this did not amount to “a serious and significant error” by the FSO. In the opinion of the Court, the alleged representation was not “evidence” of the conduct complained of and/or a parol term of the mortgage agreement and consequently, it did not fall for consideration by the FSO. The Court took the view that, to consider the alleged representation to be “evidence”, would circumvent the clear wording of the 1942 Act. The Court noted that:-

*“The imposition of limitation periods, such as in this case, can lead to unavoidable hardship in certain cases because by their very nature there has to be a cut-off point at some stage, e.g. a claimant might be one day on the wrong side of a cut-off date or be unaware that they have a complaint until it is too late. Despite this hardship, there are good reasons for having limitation periods, since otherwise, a dispute resolution body, whether the Courts or a body like the FSO, could be open to claims and challenges ad infinitum. Indeed, in the context of limitation periods for other claims, six years for complaints to the FSO is a relatively long period. Unfortunately, it means that consumers like the Stowes may, through no fault of their own, fall on the wrong side of the limitation period.”*

The Court also noted in that instance, that a decision had been made by the consumer to complain to the FSO, rather than proceeding to litigate through the Courts. The Court indicated that a complaint to the FSO should not be viewed by a Complainant as a “free go” before then proceeding onwards to the Courts. Twomey J indicated that:-

*“It is important for consumers to realise that an appeal from a Finding of the FSO is not a true second bite of the cherry, unlike say an appeal from the Circuit Court to the High Court. In a Circuit Court Appeal, there is a complete re-hearing of all the facts and the Judge can make a decision based on this re-hearing. ... In contrast, it could not be said that an Appeal of the decision of the FSO to the High Court has the exact same chance of success as the initial case before the FSO and consumers need to be aware of this fact before undertaking the expense of a High Court Appeal of the decision of the FSO.”*

Consideration is currently being given by both the Government and the Oireachtas to amending legislation that would extend the six year limitation that applies for bringing complaints to this office.

## Dealing with complaints where fraud is alleged

It has at all times been the stated position of the Financial Services Ombudsman, that where an allegation of fraudulent activity is made by a Complainant or a financial service provider, the matter falls outside the statutory remit of this office and is more appropriate for an alternative forum. On 8 April 2016 Noonan J. of the High Court delivered Judgment in *Coleman v FSO and another [2015/13MCA]* and having noted that the Complainant had alleged that the Bank was involved in a “crooked scheme”, the Court rejected the appeal and confirmed that:-

*“Clearly the FSO cannot make determinations of criminal liability as to do so would impinge unconstitutionally on the function of the Courts”.*

and

*“It would clearly have been well outside the remit of the FSO to arrange to have various witnesses from the Bank called to be asked if they had mis-appropriated the Appellant’s funds”: That is clearly not a matter upon which the FSO could have embarked. Such an issue would be one for An Garda Síochána were a complaint to be made by the Appellant”.*

In any instance where a Complainant expresses concerns in relation to potential conspiracy, fraud or forgery, the limitations of the jurisdiction of the FSO are explained in detail, to that Complainant, to enable a decision to be made as to how best that matter can be progressed.





## Financial Services Ombudsman

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