



Financial Services Ombudsman

Bi-Annual Review 2013

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Part 1 - Executive Summary

In the second half of 2013 there was a significant decrease in the number of complaints made to the office. 3,042 complaints were made to the office in the second half of 2013, compared to 4,680 complaints made to the office in the first half of 2013 – a decrease of 35%. This is the first significant recorded decrease in the number of complaints made to this office since the onset of the financial crisis in 2007.

The reason for this decrease in the number of complaints requires some explanation.

On 1 September of this year, changes were introduced to the way this office conducts business. Firstly, the office acquired the ability to report on the complaint record of individual Financial Service Providers (FSPs). This report is the first opportunity to publish that information which is set out in section 1.1. It has been our experience since that date, that many FSPs have sought to more actively manage their complaints handling as a result of our ability to identify the complaints record of individual FSPs. This is a positive outcome for consumers and is to be welcomed.

Secondly, also on 1 September, this office introduced a new procedure, well flagged to all stakeholders in advance, of accepting a complaint only where there is evidence that the Complainant has already communicated the substance of the complaint to the FSP and that the FSP has been given a reasonable opportunity to respond. This change in our internal procedures was driven by a need to ensure that the best possible use be made of resources of the office, in circumstances where the number of complaints being made to the office continued to increase. This approach is consistent with our statutory framework and the overall philosophy of the office to do everything it can to facilitate the resolution of complaints by the intensive engagement of the FSPs in the complaints handling process. This

new approach encourages effective engagement between a consumer and the FSP at an early stage, before a complaint is submitted to this office. As a result, there is some limit on the number of consumers who progress to being 'complainants'. Whilst the number of complaints received has reduced, there has not been a corresponding reduction to date in the number of complaints going into formal investigation.

It is our view that the principal reason for the reduction in the total number of complaints made to this office, in the second half of this year, is as a result of the second change as outlined above. As stated above, complaints reduced by 35% in the second half of the year compared to the first half of 2013. For the year ended 2013 overall, complaints are down by 5% from 2012. It remains to be seen what the medium and longer term consequences will be to complaint numbers as a result of the new internal procedures adopted by this office.

Following full formal investigation of complaints, in 2013 this office issued 2,983 Findings in total. Complaints upheld were 7%, 16% were partly upheld and 77% were not upheld. The percentage of Findings not upheld or partly upheld increased from 76% to 78% between the two periods. The most significant improvement occurred in the Banking sector where the percentage of Findings not upheld or partly upheld increased from 69% to 76%. It is our view that a significant driver in the improvement of performance of FSPs in relation to Findings in the second half of the year was as a result of the introduction of the new legislation to provide the office with the ability to report on the complaint record of individual FSPs.

The two major challenges facing this office in 2013 were issues relating to the Mortgages Arrears Resolution Process (MARP) and mis-selling of Payment Protection Insurance (PPI). In the Banking sector MARP related complaints comprised 50% of the total complaints

received for the year. We expect complaints in this area will continue to be a major challenge to this office for the foreseeable future. The second largest source of complaints in the Banking sector concerned issues in relation to the management of Accounts, amounting to 28% of complaints received in this sector. During a period which saw a substantial decrease in complaints across the board, one area of complaints saw a net increase in the period – complaints made in the banking sector concerning repayment terms. Here, complaints increased 32% reflecting consumer concerns about repayment terms relating largely to mortgages.

The Insurance sector was dominated by PPI mis-selling complaints which made up 45% of all Insurance Complaints. Here, complaints received in the second half were down by 31% from the first half of the year. Again, it remains to be seen whether the overall numbers of complaints to be received by this office in relation to PPI will continue to decrease in the coming period.

Overall, the office is satisfied with the changes to its operations that it introduced in 2013 and with the effect that it has had on stakeholder performance during the most recent period. We have engaged extensively with the FSPs and encouraged them to adopt this office's methodologies. It is our view that a significant driver in the improvement of performance of FSPs in relation to Findings in the second half of the year was as a result of the introduction of the new legislation to provide the office with the ability to report on the complaint record of individual FSPs.

Of course, no definitive conclusion on the longer term effects of these changes can be made until further periods have concluded.

It should be emphasised that a reduction in numbers of complaints received does not necessarily indicate a proportionate reduction in the amount of work which must be undertaken by the office. In terms of complaints received for the year, comparing 2013 to 2012 the reduction is 5%. A more accurate measure of workload of the office is the number of cases that require full investigation – and this has increased by 8% on 2012 figures. Accordingly, the office must continue to monitor its workload and procedures in the coming period to ensure that our limited resources can be used most effectively.

1.1 Reporting on named Financial Service Providers

During 2013, Section 72 of the Central Bank (Supervision and Enforcement) Act, 2013 provided for the Central Bank Act 1942 (as amended) to be amended to give the Financial Services Ombudsman (FSO) the power to publish reports identifying regulated Financial Service Providers who, in the preceding financial year, have had at least three complaints against them substantiated or partly substantiated. This power came into effect on 1 September, 2013. The reporting period for the new powers for the purpose of this Bi-Annual Review will be the 1 September 2013 to the 31 December 2013.

Financial Services Providers where the number of complaints against them is greater than or equal to 3 substantiated (upheld) or partly substantiated (partly upheld) between 1 September, 2013 to 31 December, 2013.

Name of regulated provider (to include any trading name if different)	Member of Business Group (where applicable)	Number of complaints	
		Substantiated	Partly Substantiated
Avant Tarjeta EFC S.A.U. trading as AvantCard	Avant Tarjeta EFC S.A.U.	6	27
Allied Irish Banks plc	AIB Group	5	19
Permanent TSB plc	Permanent TSB Group Holdings plc	5	7
Ulster Bank Ireland Limited	Royal Bank of Scotland Group	3	12
Bank of Ireland	Bank of Ireland Group	3	11
New Ireland Assurance Company plc	Bank of Ireland Group	3	2
Bank of Scotland plc	Lloyds Banking Group	2	13
Danske Bank	Danske Bank Group	2	4
Financial Insurance Company Ltd trading as Genworth Financial	Genworth Financial Inc	2	4
Voluntary Health Insurance Board trading as VHI Healthcare	—	2	1
Irish Life Assurance plc	Great West LifeCo Inc	1	9
White Horse Insurance Ireland Ltd	Thomas Cook Group plc	1	8
Aviva Life & Pensions Ireland Ltd	Aviva Group Ireland plc	1	5
Canada Life Assurance (Ireland) Ltd	Great West LifeCo Inc	1	2
Ark Life Assurance Company Ltd	AIB Group	0	4

Note 1: The chart & table is set in order of the number of complaints substantiated for a FSP followed by number of complaints partly substantiated.

Note 2: Where a complaint is partly upheld, it usually means that the substantive complaint has been set aside and in the main, a customer service issue has occurred.

Note 3: Name of Regulated Financial Service Provider: 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.

Note 4: Business group: this is detailed where the Financial Service Provider is a member of a business group.

1.2 Reporting on Financial Service Providers by product type/issue complained about by sector

Financial Services Providers where the number of complaints against them is greater than or equal to 3 substantiated (upheld) or partly substantiated (partly upheld) between 1 September, 2013 to 31 December, 2013 – broken down based on the product type / issue complained about.

Note 5: The sectors referred to below and throughout this document relate to the FSO's internal categorisation of complaints. Currently the FSO has determined three sectors, Investment, Banking and Insurance to which complaint types are allocated..

1.2.1 Investment Sector (* Note 5 above)

Name of regulated provider (to include any trading name if different)	Product Type /Issue Complained About	Number of complaints	
		Substantiated	Partly Substantiated
New Ireland Assurance Company plc	Pension	1	0
	Investment	1	1
	Total	2	1
Irish Life Assurance plc	Investment	0	2
	Pension	0	1
	Total	0	3
Ark Life Assurance Company Ltd	Investment	0	1
	Total	0	1

1.2.2 Banking Sector (*Note 5 above)

Name of regulated provider (to include any trading name if different)	Product Type /Issue Complained About	Number of complaints	
		Substantiated	Partly Substantiated
Allied Irish Banks plc	Accounts	2	1
	Lending	0	3
	Mortgages	3	6
	Total	5	10
Permanent TSB plc	Accounts	2	2
	Credit Cards	2	0
	Lending	0	2
	Mortgages	0	2
Total	4	6	
Bank of Ireland	Accounts	1	1
	Credit Cards	0	1
	Mortgages	2	0
	Total	3	2
Bank of Scotland plc	Credit Cards	0	2
	Lending	0	1
	Mortgages	2	8
	Total	2	11
Ulster Bank Ireland Limited	Accounts	0	2
	Credit Cards	0	1
	Lending	1	2
	Mortgages	1	6
Total	2	11	
Danske Bank	Accounts	2	4
	Total	2	4
	Total	2	4
Avant Tarjeta EFC S.A.U. trading as AvantCard	Credit Cards	2	1
	Total	2	1

1.2.3 Insurance Sector (*Note 5 above)

Name of regulated provider (to include any trading name if different)	Product Type /Issue Complained About	Number of complaints	
		Substantiated	Partly Substantiated
Avant Tarjeta EFC S.A.U. trading as AvantCard	Payment Protection Policy	4	26
	Total	4	26
Financial Insurance Company Ltd trading as Genworth Financial	Mortgage Protection	0	2
	Payment Protection Policy	2	2
	Total	2	4
Voluntary Health Insurance Board trading as VHI Healthcare	Medical Expenses	2	1
	Total	2	1
White Horse Insurance Ireland Ltd	Travel	1	8
	Total	1	8
Irish Life Assurance plc	Income Protection and Permanent Health	0	2
	Life	1	2
	Mortgage Protection	0	2
	Total	1	6
Aviva Life & Pensions Ireland Ltd	Life	1	5
	Total	1	5
Canada Life Assurance (Ireland) Ltd	Life	1	2
	Total	1	2
New Ireland Assurance Company	Critical / Serious Illness	0	1
	Income Protection and Permanent Health	1	0
	Total	1	1
Permanent TSB plc	Payment Protection	1	0
	Life	0	1
	Total	1	1

1.2.3 Insurance Sector (*Note 5 above) - Continued

Ulster Bank Ireland Limited	Mortgage Protection	1	0
	Payment Protection Policy	0	1
	Total	1	1
Allied Irish Banks plc	Payment Protection Policy	0	8
	Mortgage Protection	0	1
	Total	0	9
Bank of Ireland	Payment Protection Policy	0	9
	Total	0	9
Ark Life Assurance Company Ltd	Life	0	3
	Total	0	3
Bank of Scotland plc	Payment Protection Policy	0	2
	Total	0	2

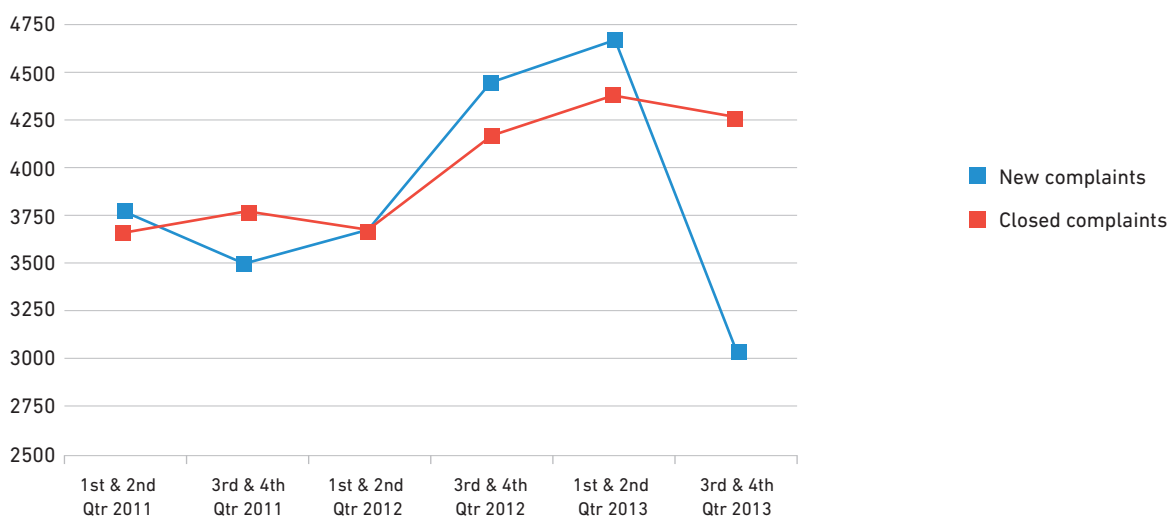
Part 2 : Trend Analysis

2.1 Summary of trends - 1st/2nd Qtr compared to 3rd/4th Qtr 2013

1. Complaints received for the second half of 2013 are down 35%
2. Investment complaints have decreased by 63%
3. Insurance complaints have decreased by 34%
4. Banking complaints have decreased by 27%
5. 2012 versus 2013 there is an overall reduction of 5% of complaints received
6. Year on year, the complaints going into investigation in comparison with 2013 were up by 8%.

2.2 Overall number of new complaints received and complaints closed

Overall number of new complaints received and complaints closed

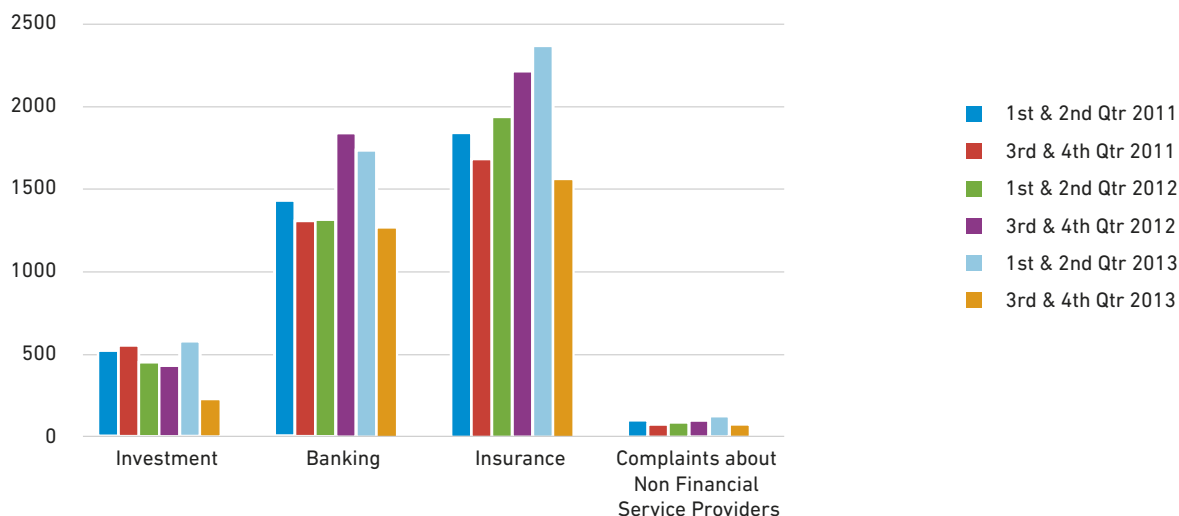


Overall number of new complaints received and complaints closed

	1st & 2nd Qtr 2011	3rd & 4th Qtr 2011	1st & 2nd Qtr 2012	3rd & 4th Qtr 2012	1st & 2nd Qtr 2013	3rd & 4th Qtr 2013
New complaints received	3780	3507	3682	4453	4680	3042
Complaints closed	3677	3787	3686	4185	4363	4276

2.3 Complaints received by sector 2011 - 2013

Complaints received by sector [Investment; Banking; Insurance]



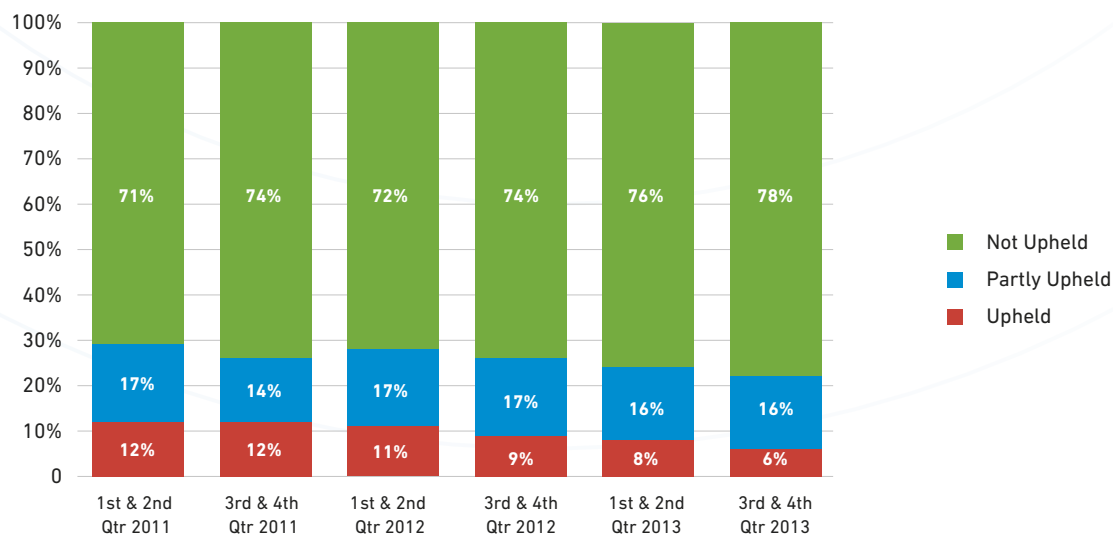
Complaints received by sector 2011 - 2013

	1st & 2nd Qtr 2011	3rd & 4th Qtr 2011	1st & 2nd Qtr 2012	3rd & 4th Qtr 2012	1st & 2nd Qtr 2013	3rd & 4th Qtr 2013
Investment	496	528	428	408	562	208
Banking	1403	1277	1283	1799	1695	1230
Insurance	1803	1640	1889	2169	2316	1519
Complaints about Non Financial Services Providers*	78	62	68	77	107	85
Total	3780	3507	3668	4453	4680	3042

*Non-Financial Services Provider - this relates to complaints sent to this office regarding airlines, hired cars, garages/service stations, mobile phone companies etc. These complaints are referred onwards to the relevant body for action.

2.4 Finding outcomes

Finding outcomes 2011 - 2013



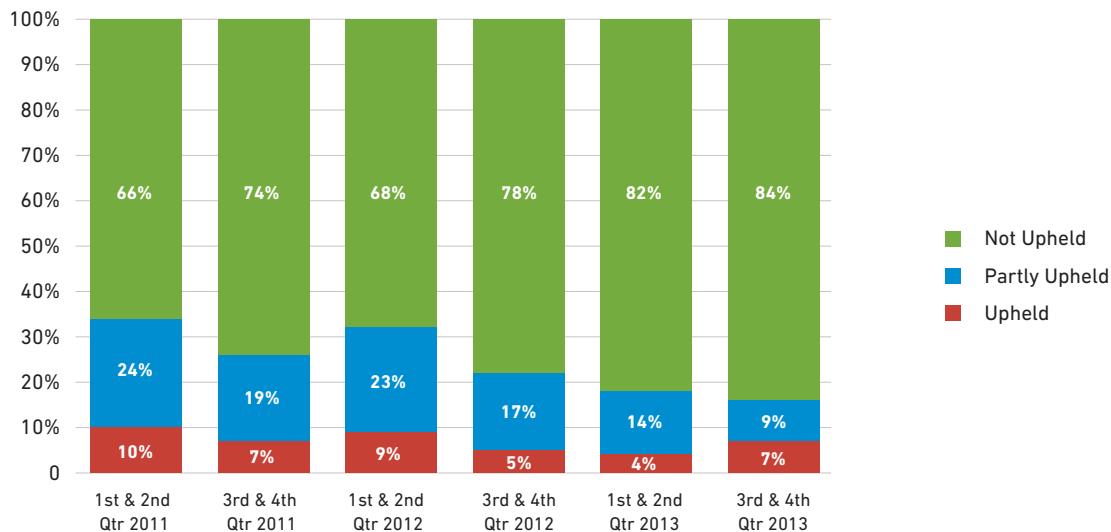
Finding outcomes 2011 - 2013

	1st & 2nd Qtr 2011	1st & 2nd Qtr 2011	1st & 2nd Qtr 2012	3rd & 4th Qtr 2012	1st & 2nd Qtr 2013	3rd & 4th Qtr 2013
Upheld	172 (12%)	189 (12%)	173 (11%)	129 (9%)	118 (8%)	84 (6%)
Partly Upheld	241 (17%)	226 (14%)	274 (17%)	231 (17%)	238 (16%)	234 (16%)
Not Upheld	1025 (71%)	1187 (74%)	1165 (72%)	1018 (74%)	1147 (76%)	1162 (78%)
Total	1438 (100%)	1602 (100%)	1612 (100%)	1378 (100%)	1503 (100%)	1480 (100%)

2.4.1 Finding outcome by sector and compensation awarded

Outcome of Investment findings

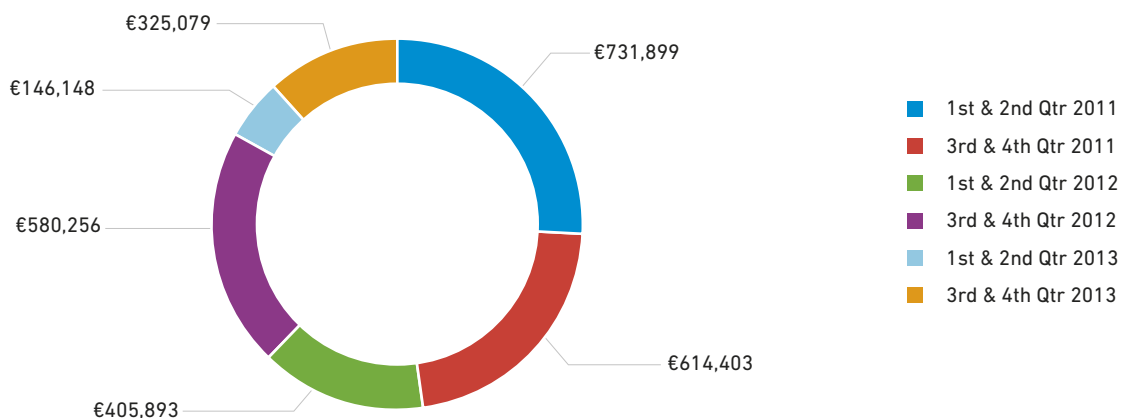
Outcome of Investment findings



Outcome of Investment findings

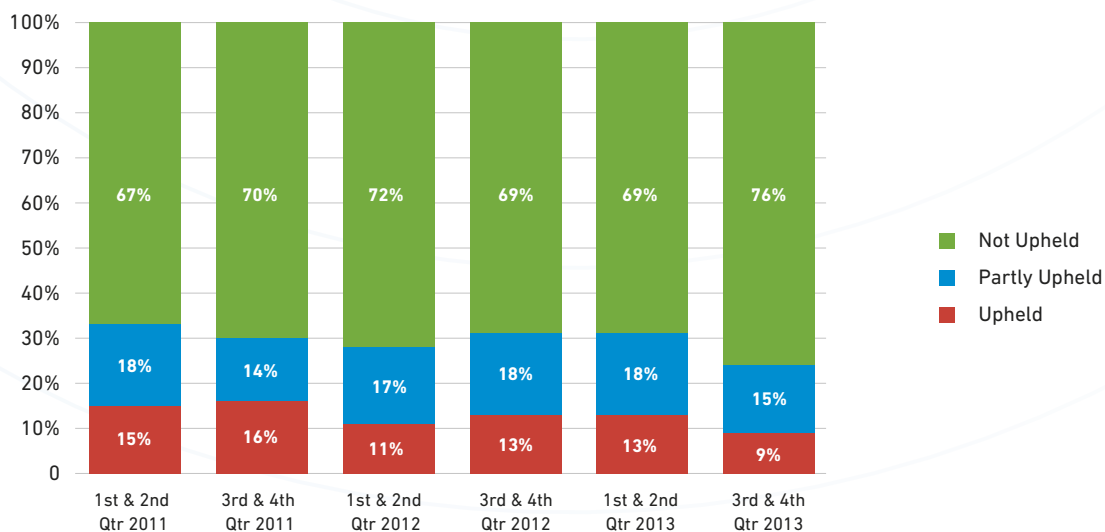
	Upheld	Partly Upheld	Not Upheld
1st & 2nd Qtr 2011	34 (10%)	84 (24%)	239 (66%)
3rd & 4th Qtr 2011	20 (7%)	52 (19%)	203 (74%)
1st & 2nd Qtr 2012	28 (9%)	70 (23%)	211 (68%)
3rd & 4th Qtr 2012	13 (5%)	43 (17%)	203 (78%)
1st & 2nd Qtr 2013	10 (4%)	32 (14%)	186 (82%)
3rd & 4th Qtr 2013	10 (7%)	14 (9%)	125 (84%)

Compensation awarded - Investment



Outcome of Banking findings

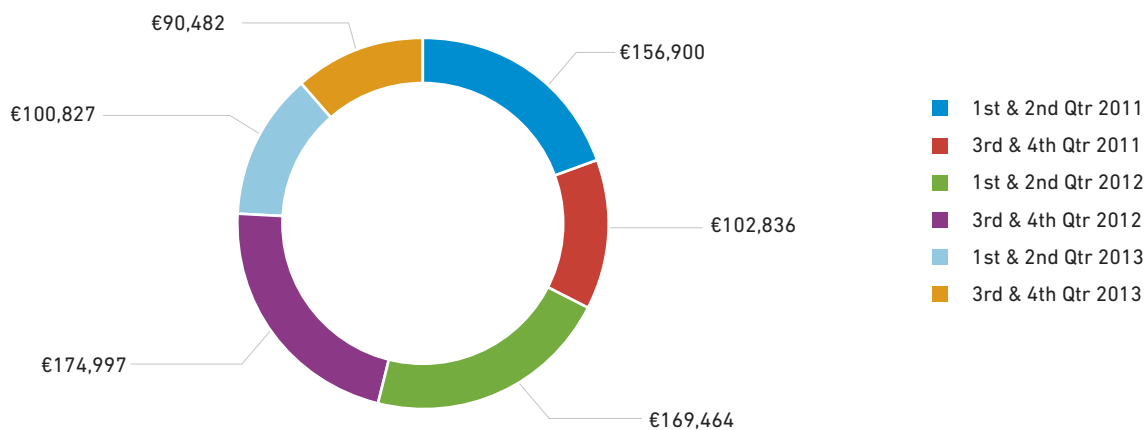
Outcome of Banking findings



Outcome of Banking findings

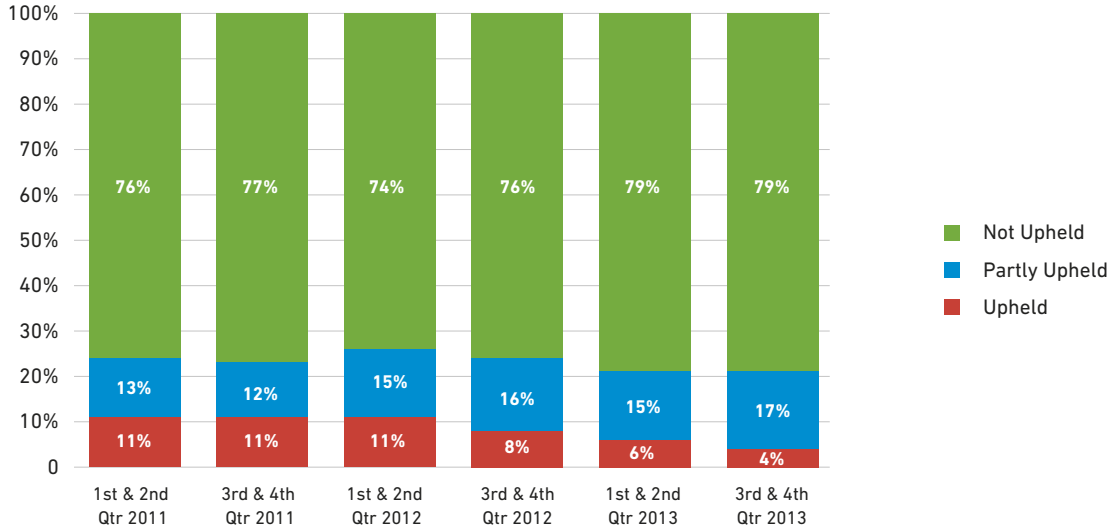
	Upheld	Partly Upheld	Not Upheld
1st & 2nd Qtr 2011	64 (15%)	73 (18%)	274 (67%)
3rd & 4th Qtr 2011	77 (16%)	72 (14%)	347 (70%)
1st & 2nd Qtr 2012	45 (11%)	73 (17%)	308 (72%)
3rd & 4th Qtr 2012	63 (13%)	83 (18%)	326 (69%)
1st & 2nd Qtr 2013	61 (13%)	88 (18%)	339 (69%)
3rd & 4th Qtr 2013	42 (9%)	76 (15%)	369 (76%)

Compensation awarded - Banking



Outcome of Insurance findings

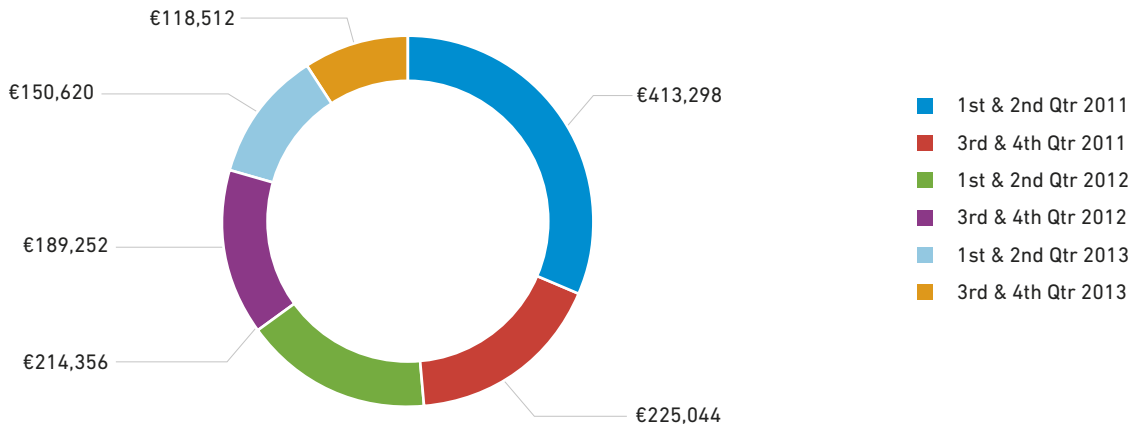
Outcome of Insurance findings



Outcome of Insurance findings

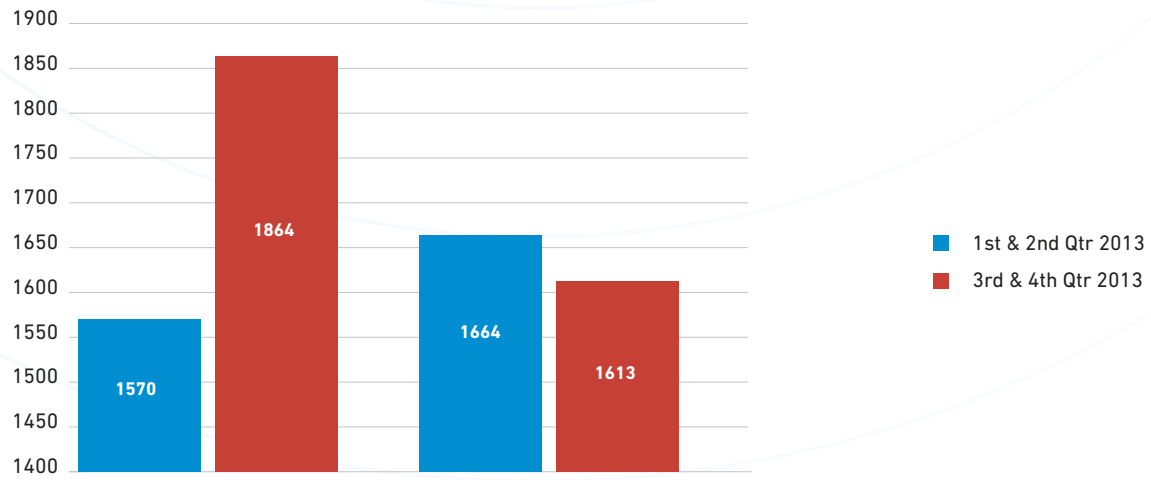
	Upheld	Partly Upheld	Not Upheld
1st & 2nd Qtr 2011	74 (11%)	84 (13%)	512 (76%)
3rd & 4th Qtr 2011	92 (11%)	102 (12%)	637 (77%)
1st & 2nd Qtr 2012	100 (11%)	131 (15%)	646 (74%)
3rd & 4th Qtr 2012	53 (8%)	105 (16%)	489 (76%)
1st & 2nd Qtr 2013	47 (6%)	118 (15%)	622 (79%)
3rd & 4th Qtr 2013	32 (4%)	144 (17%)	668 (79%)

Compensation awarded - Insurance



Complaints requiring full investigation

Complaints requiring full investigation



Part 3 - Summary of Complaints

3.1 Summary of complaints received and complaints closed

Summary of complaints received and complaints closed 3rd & 4th Quarter 2013

	3rd & 4th Qtr 2013
Complaints on hand 1st July 2013	4384
New complaints received	3042
Complaints closed	4276
Complaints on hand 31 December 2013	3150

* Complaints on hand on the 31 December, 2013 differ by 39 complaints to the closing figure of the 30 June 2013. This is due to the re-opening of complaints closed in 2013 in the six month period between 1 July, 2013 to 31 December, 2013.

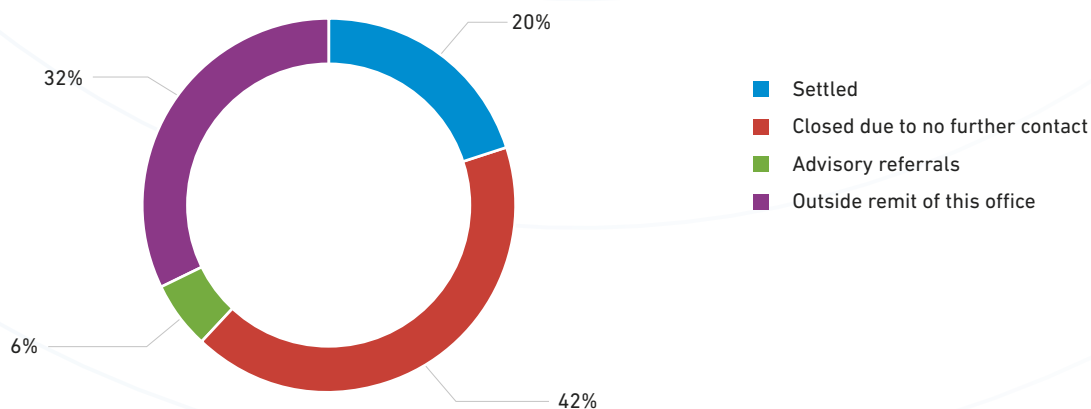
3.2 Complaints & enquiries received via telephone and website

Complaints & enquires received

	1st & 2nd Qtr 2013	3rd & 4th Qtr 2013
Telephone queries	11,500	10,221
On-line contact (website hits)	44,240	44,211

3.3 Complaints closed prior to investigation

Complaints closed prior to investigation



Reasons why complaints closed prior to investigation

	1st & 2nd Qtr 2013	3rd & 4th Qtr 2013	Total	%
Settled*	596	514	1110	(20%)
Closed due to no further contact	1084	1318	2402	(42%)
Advisory referrals **	194	143	337	(6%)
Outside remit of this office	986	817	1803	(32%)
Total	2860	2792	5652	(100%)

* Settled refers to complaints amicably resolved between the Complainant and the Provider

** Referred onwards to another appropriate body

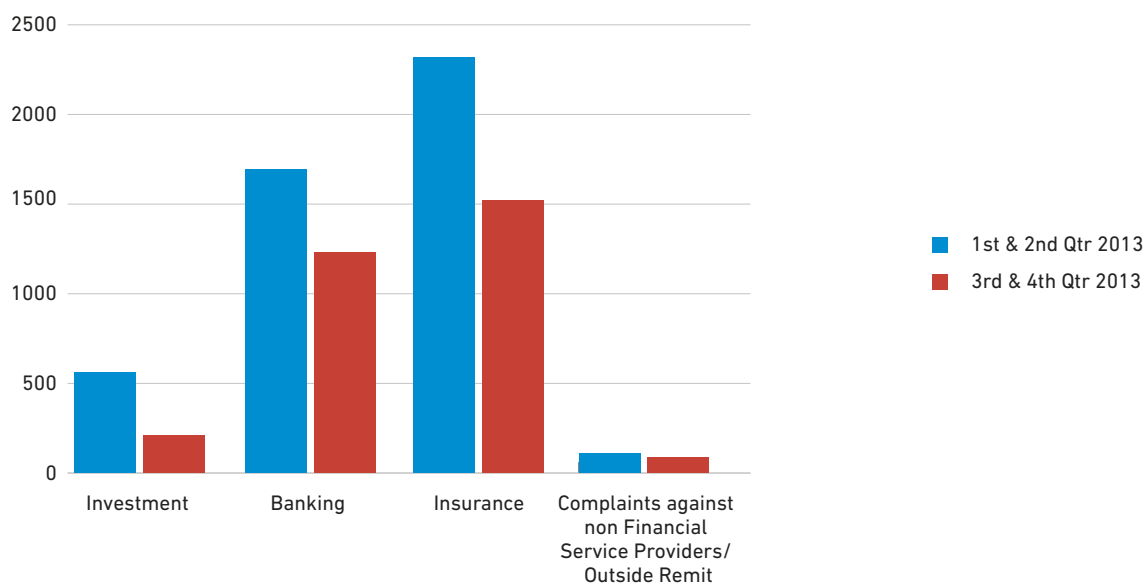
Part 4 - What Complaints were about

(Product Types and Complaint Types)

The Bureau receives complaints covering three broad sectors; Insurance, Banking and Investment. Each sector is divided into two sub categories, (1) product complaints by sector and (2) issues complained about by sector.

4.1 Overall complaints received by sector

Complaints received by sector



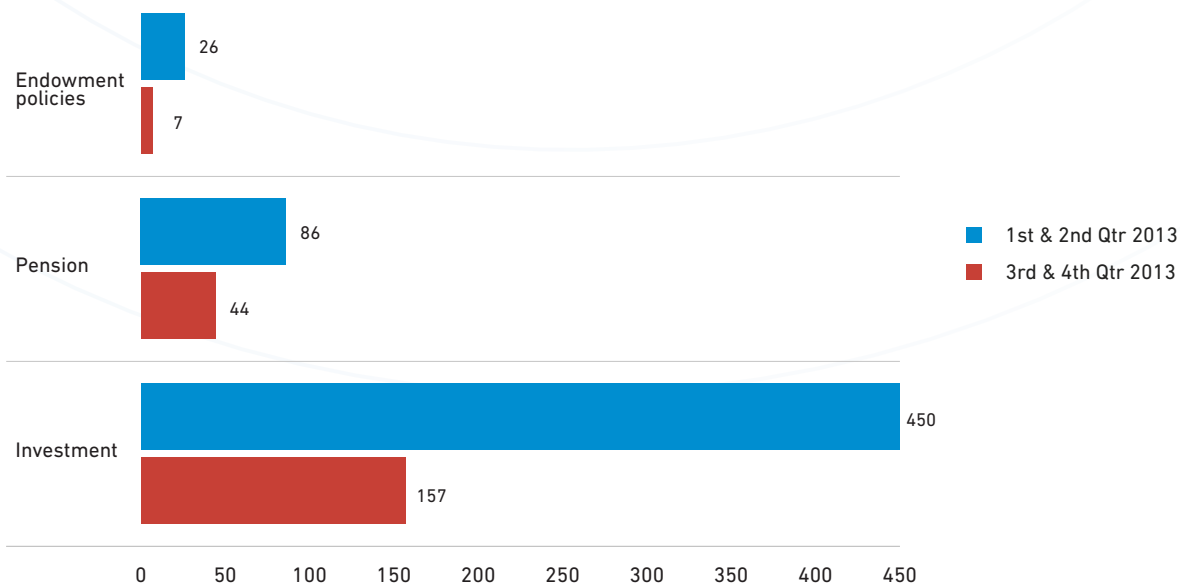
Complaints received by sector

Sector	1st & 2nd Qtr 2013	3rd & 4th Qtr 2013	Total	%
Investment	562	208	770	(10%)
Banking	1695	1230	2925	(38%)
Insurance	2316	1519	3835	(50%)
Complaints against non Financial Service Providers/Outside remit	107	85	192	(2%)
Total	4680	3042	7722	(100%)

4.2 Product complaints by sector

Investment Products

Product complaints - Investment

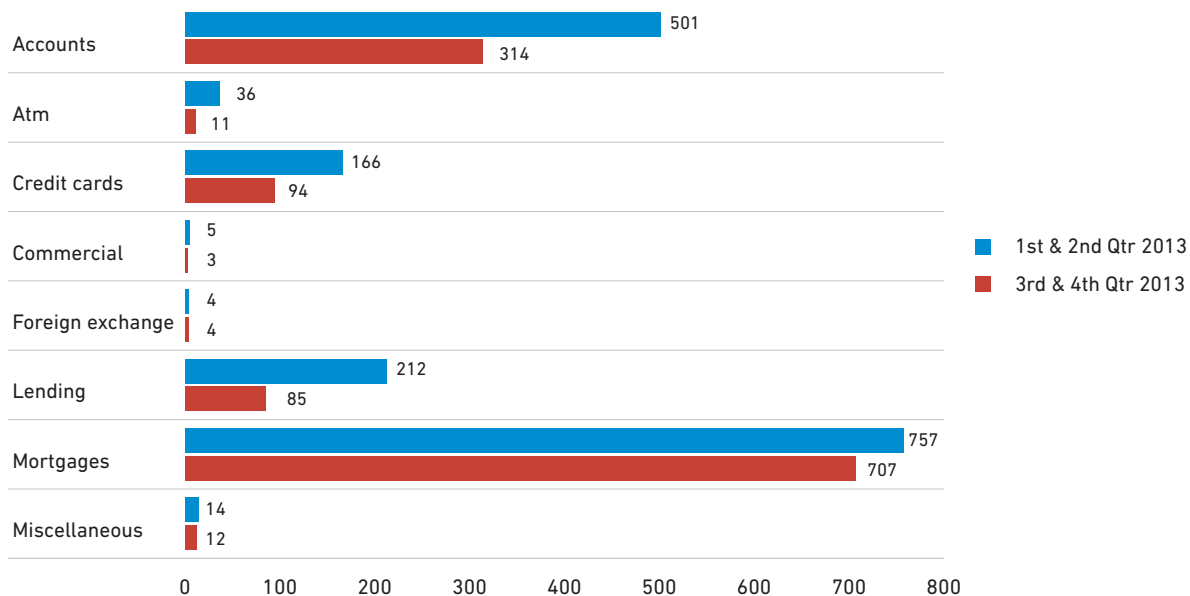


Product complaints - Investment

Product Type	1st & 2nd Qtr 2013	3rd & 4th Qtr 2013	Total	%
Endowment policies	26	7	33	(4%)
Pension	86	44	130	(17%)
Investment	450	157	607	(79%)
Total	562	208	770	(100%)

Banking Products

Product complaints - Banking

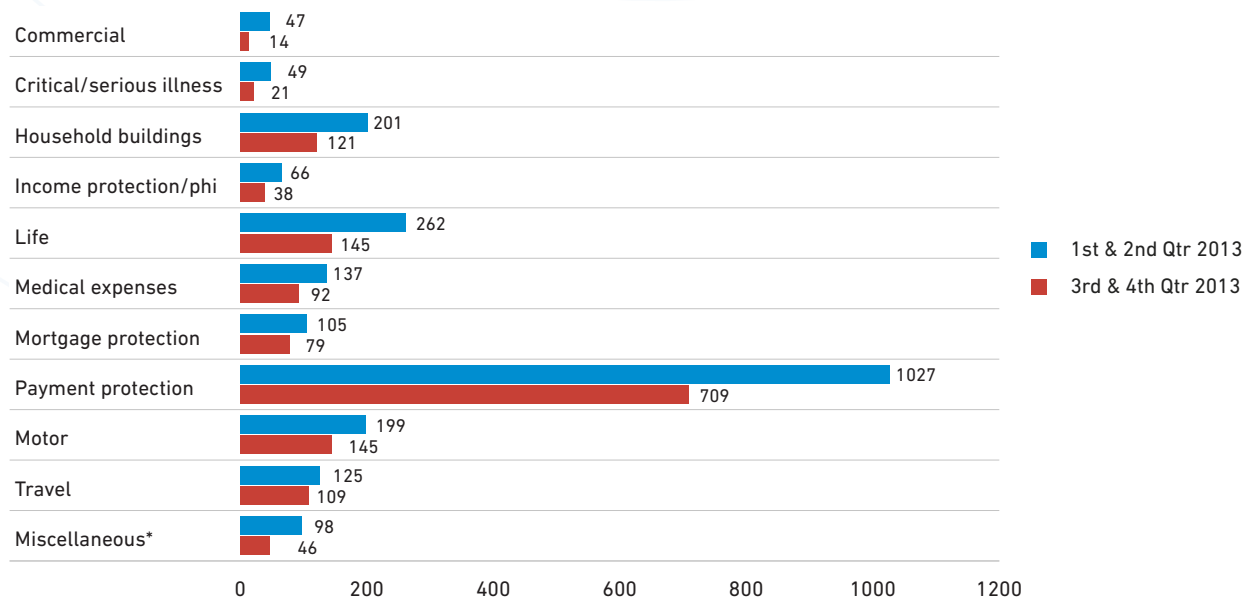


Product complaints - Banking

Product Type	1st & 2nd Qtr 2013	3rd & 4th Qtr 2013	Total	%
Accounts	501	314	815	28%
ATM	36	11	47	2%
Credit cards	166	94	260	9%
Commercial	5	3	8	0.5%
Foreign exchange	4	4	8	0.5%
Lending	212	85	297	9%
Mortgages	757	707	1464	50%
Miscellaneous	14	12	26	1%
Total	1695	1230	2925	100%

Insurance Products

Product complaints - Insurance



Product complaints - Insurance

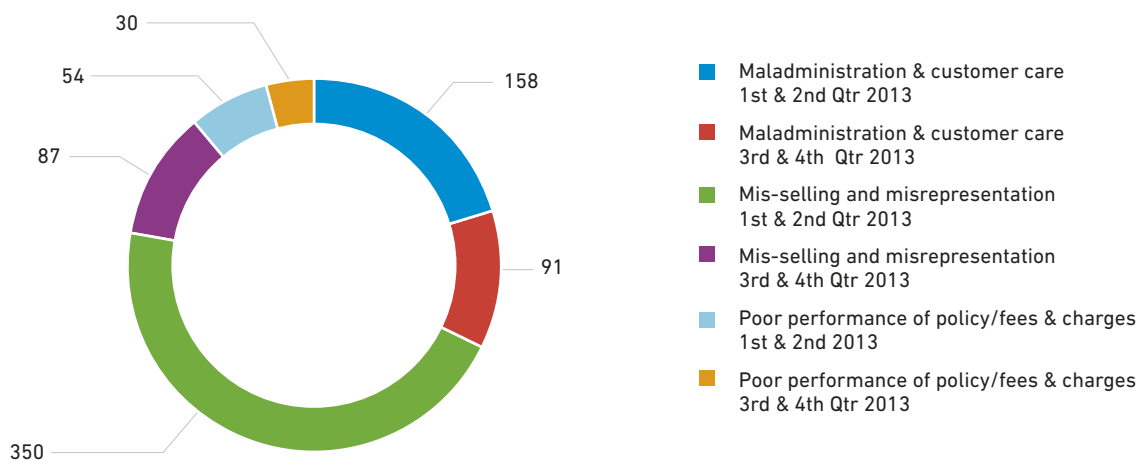
Product Type	1st & 2nd Qtr 2013	3rd & 4th Qtr 2013	Total	%
Commercial	47	14	61	2%
Critical/serious illness	49	21	70	2%
Household buildings	201	121	322	8%
Income protection/PHI	66	38	104	3%
Life	262	145	407	11%
Medical expenses	137	92	229	6%
Mortgage protection	105	79	184	5%
Payment protection	1027	709	1736	45%
Motor	199	145	344	9%
Travel	125	109	234	6%
Miscellaneous*	98	46	142	3%
Total	2316	1519	3835	100%

*Miscellaneous relates to products, including but not limited to, marine, farm, computers, mobile phones and pet insurance where less than ten complaints were received per percentage figure

4.3 Issue complaints by sector

Investment

Issues complained about - Investment

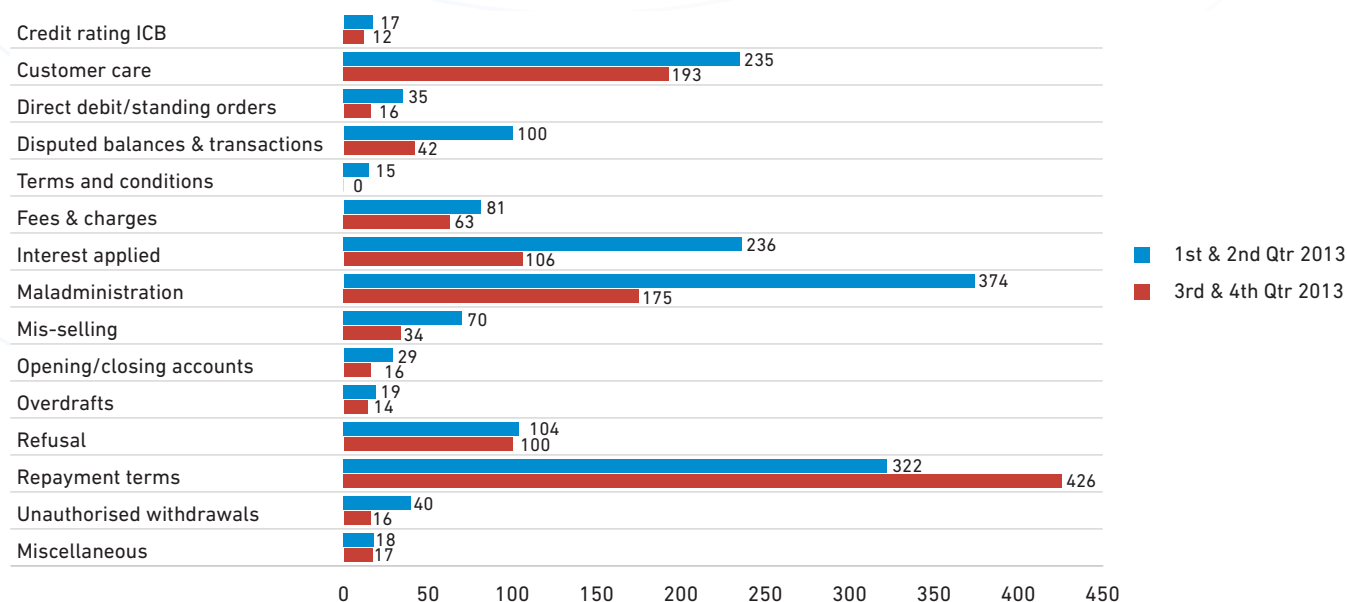


Issues complained about - Investment

Product Type	1st & 2nd Qtr 2013	3rd & 4th Qtr 2013	Total	%
Maladministration & customer care	158	91	249	32%
Mis-selling and misrepresentation	350	87	437	57%
Poor performance of policy/fees & charges	54	30	84	11%
Total	562	208	770	100%

Banking

Issues complained about - Banking



Issues complained about - Banking

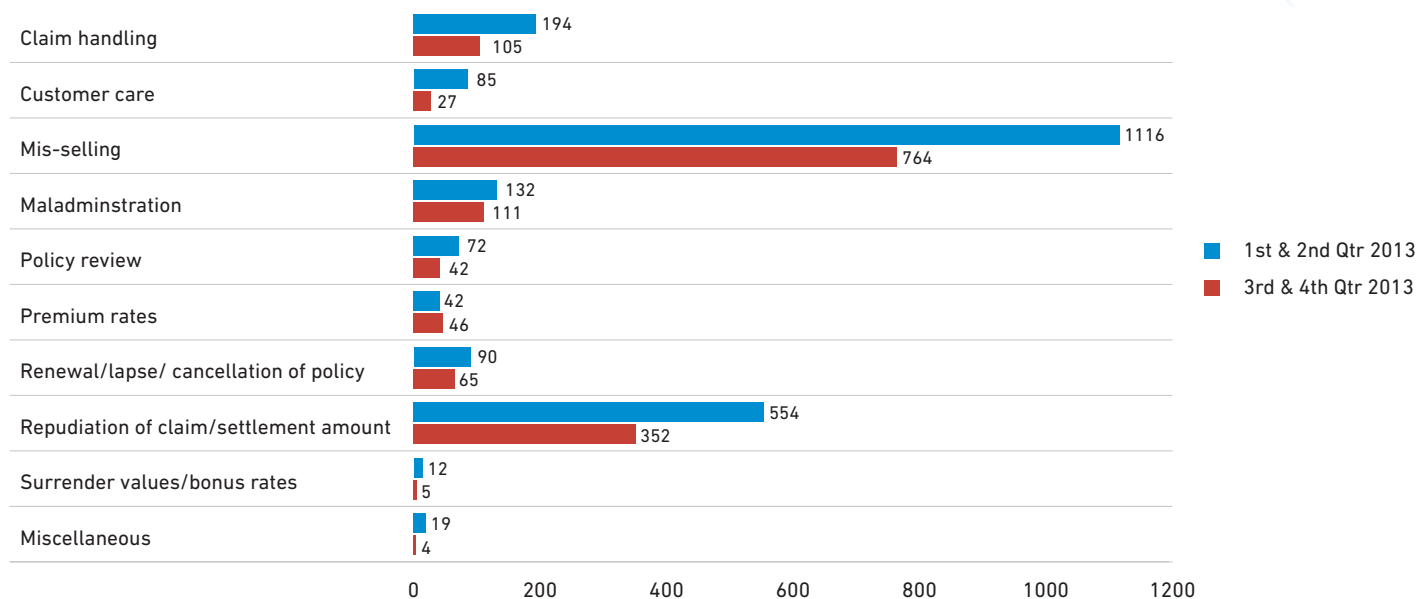
Complaint Type	1st & 2nd Qtr 2013	3rd & 4th Qtr 2013	Total	%
Credit rating ICB	17	12	29	1%
Customer care	235	193	428	14%
Direct debit/standing orders	35	16	51	2%
Disputed balances & transactions	100	42	142	5%
Terms and conditions	15	0	15	1%
Fees & charges	81	63	144	5%
Interest applied	236	106	342	11%
Maladministration	374	175	549	19%
Mis-selling	70	34	104	4%
Opening/ closing accounts	29	16	45	2%
Overdrafts	19	14	33	1%
Refusal	104	100	204	7%
Repayment terms*	322	426	748	25%
Unauthorised withdrawals	40	16	56	2%
Miscellaneous	18	17	35	1%
Total	1695	1230	2925	100%

* Repayment terms as a complaint type refers to Complainants who are in dispute regarding the repayment terms applied to mortgages, loans and credit cards.

Of the 748 complaints received in this complaint type, 607 were MARP (Mortgage Arrears Resolution Process) complaints; over 81%.

Insurance

Issues complained about - Insurance



Issues complained about - Insurance

Complaint Type	1st & 2nd Qtr 2013	3rd & 4th Qtr 2013	Total	%
Claim handling	194	105	299	8%
Customer care	85	27	112	3%
Mis-selling	1116	764	1880	49%
Maladministration	132	111	243	6%
Policy review	72	42	114	3%
Premium rates	42	46	88	2%
Renewal/lapse/ cancellation of policy	90	65	155	4%
Repudiation of claim/settlement amount	554	350	904	24%
Surrender values/bonus rates	12	5	17	0.5%
Miscellaneous	19	4	23	0.5%
Total	2316	1519	3835	100%

5. Mediation, Finding and Awards

5.1 Summary

The total Findings issued in 2013 were 2,983.

With every complaint, mediation is offered prior to any formal investigation taking place. During 2013, ten mediations were facilitated, of which six were resolved during this process.

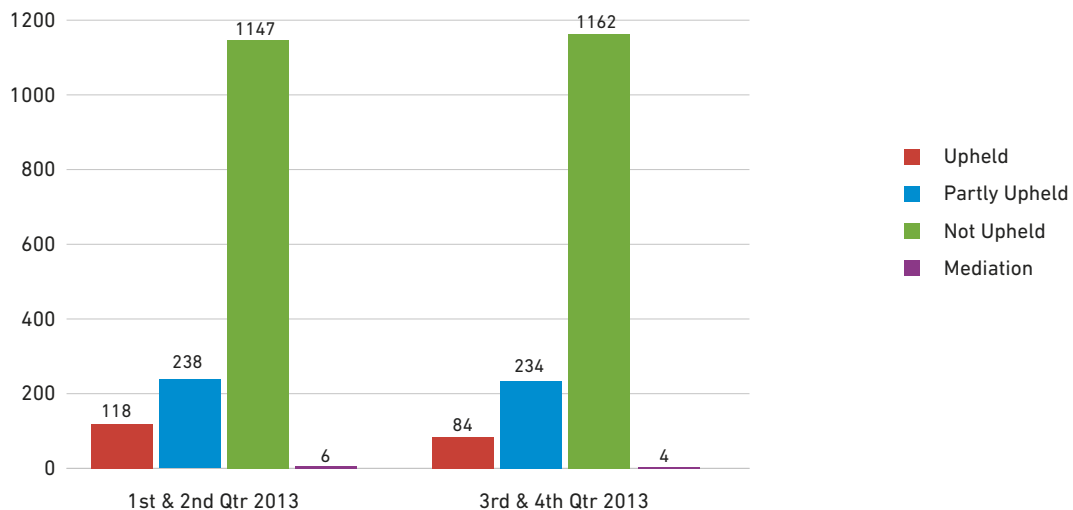
The total amount of compensation awarded, including where rectification was directed by the Ombudsman was €534,073, during the period from the 1 July to the 31 December 2013, broken down as follows:

Banking	€ 90,482
Investment	€325,079
Insurance	€118,512
TOTAL	€534,073

For the full year 2013, the total amount of compensation awarded, including where rectification was directed by the Ombudsman, was €931,668.

5.2 Outcome of findings and mediation all sectors

Outcomes of findings all sectors

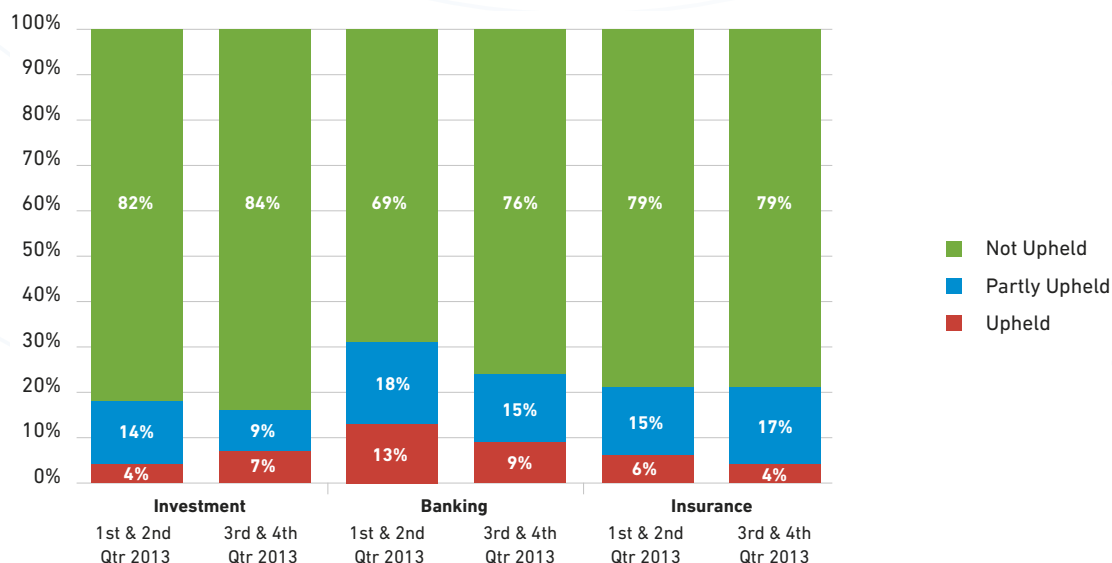


Outcomes of findings all sectors

Finding Outcome	1st & 2nd Qtr 2013	3rd & 4th Qtr 2013	Total
Upheld	118	84	202
Partly Upheld	238	234	472
Not Upheld	1147	1162	2309
Mediation	6	4	10
Total	1509	1484	2993

5.3 Outcome of findings issued by sector

Outcome of findings issued by sector



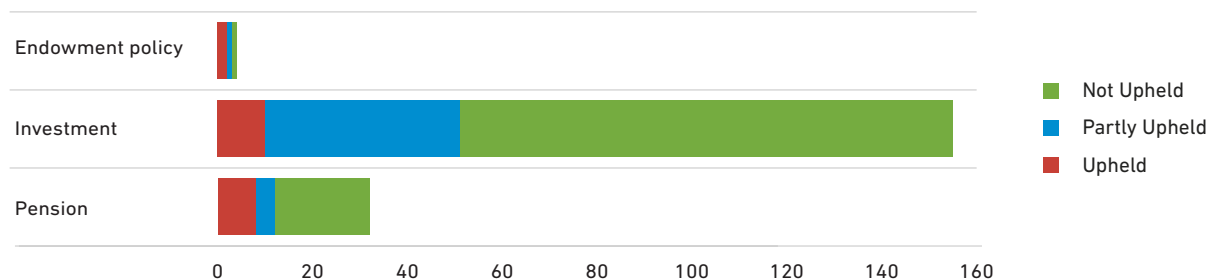
Outcome of findings issued by sector

Outcome of Finding	1st & 2nd Qtr 2013		3rd & 4th Qtr 2013		1st & 2nd Qtr 2013		3rd & 4th Qtr 2013		Total
	Upheld		Partly Upheld		Not Upheld				
Investment	10	10	32	14	186	125			377
Banking	61	42	88	76	339	369			975
Insurance	47	32	118	144	622	668			1631
Total	118	84	238	234	1147	1162			2983

5.4 Outcome of findings issued by product type by sector

Insurance

Outcome of findings issued by product type by sector - Investment

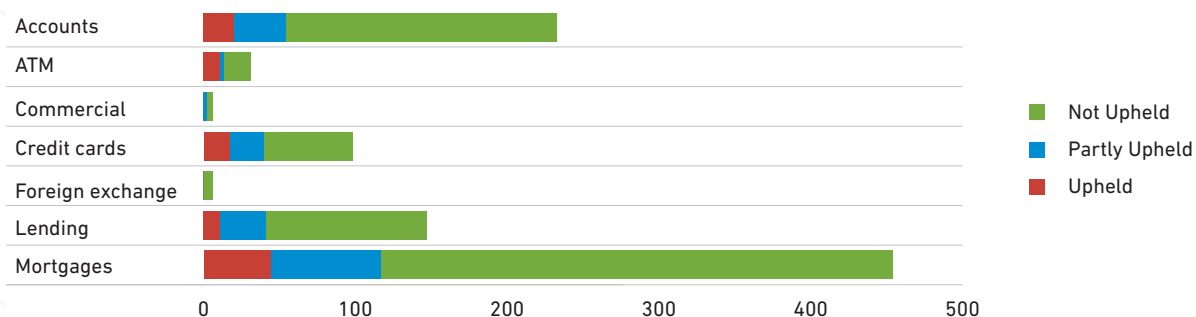


Outcome of findings issued by product type by sector - Investment

	3rd & 4th Qtr 2013			Total
	Upheld	Partly Upheld	Not Upheld	
Endowment policy	2	1	1	4
Investment	10	41	104	155
Pension	8	4	20	32
Total	20	46	125	191

Banking

Outcome of findings issued by product type by sector - Banking

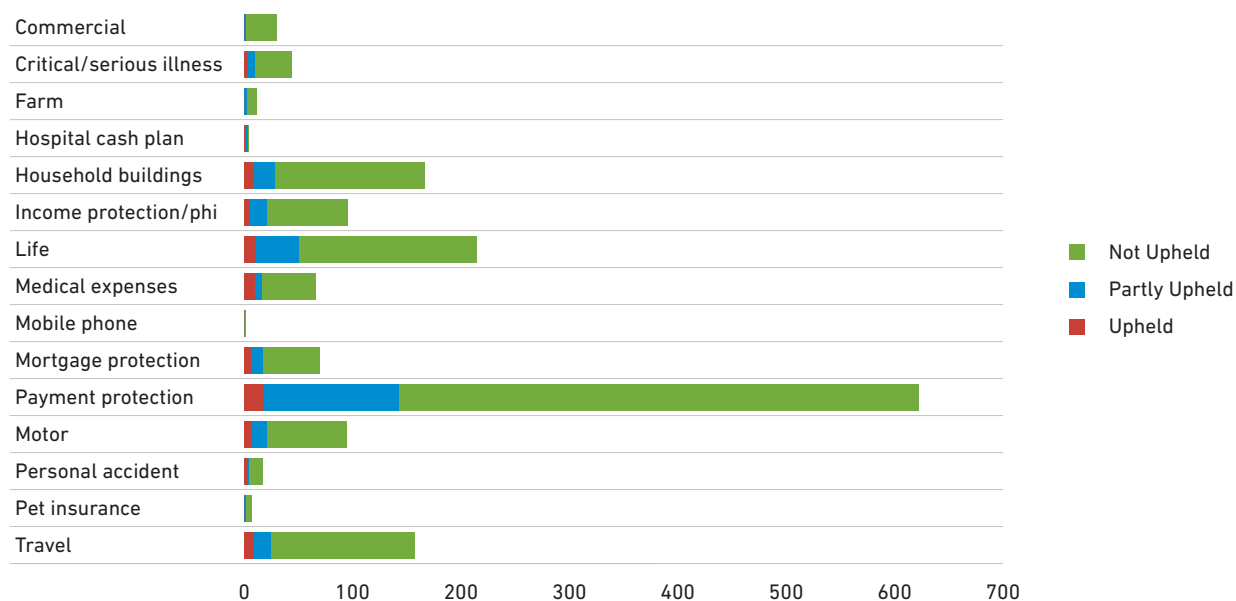


Outcome of findings issued by product type by sector - Banking

	3rd & 4th Qtr 2013			Total
	Upheld	Partly Upheld	Not Upheld	
Accounts	20	34	179	233
ATM	11	2	18	31
Commercial	0	2	4	6
Credit Cards	17	23	58	98
Foreign exchange	0	0	6	6
Lending	11	30	106	147
Mortgages	44	73	337	454
Total	103	164	708	975

Insurance

Outcome of findings issued by product type by sector - Insurance



Outcome of findings issued by product type by sector - Insurance

	3rd & 4th Qtr 2013			Total
	Upheld	Partly Upheld	Not Upheld	
Commercial	0	1	29	30
Critical/serious illness	2	8	34	44
Farm	0	2	10	12
Hospital cash plan	1	2	1	4
Household buildings	8	20	139	167
Income protection/phi	4	17	74	95
Life	11	39	165	215
Medical expenses	10	6	50	66
Mobile phone	0	0	1	1
Mortgage protection	6	11	53	70
Payment protection	18	125	479	622
Motor	7	14	73	94
Personal accident	3	1	13	17
Pet insurance	0	1	6	7
Travel	9	15	133	157
Total	79	262	1260	1601

6. CASE STUDIES

This year we are taking the opportunity to include case studies within this bi-annual review.

The purpose of including them is to highlight principal issues that the office is dealing with and to provide information on how we determine our findings. All personal information has been removed and the studies are provided in a synopsis manner.

During the period from 1st July, 2013 to 31st December, 2013, the two product types which were the subject of the most complaints to this office, were Mortgages and Payment Protection Insurance Policies. The following case studies are representative of the types of complaints during that period, in which formal Findings were issued by this office, following full investigation.

We hope that this information is helpful.

Note: In the case studies below, the 'Complainant' refers to the person making the complaint and the 'Provider' refers to the regulated Financial Services Provider.

Case Study 1

Payment Protection Insurance (PPI)

Policy sold with home loan product – complaint was that policy wasn't asked for and wasn't required, premiums weren't obvious on statements and the complainant states they weren't made aware of the features of the policy and the fact that the uptake of the product was optional.

Finding **Complaint not upheld**

A complaint was made in respect of a Payment Protection Policy sold in August 2008 offering cover for a Home Loan. The Complainants said that they had discovered the existence of the Policy, having never asked for it and never required it. They indicated that the features of the Policy were never explained to them, nor the fact that it was optional. They contended that they had other Policies in place at the relevant time, so that when one of them had been unable to work, a successful claim had been made pursuant to that other Policy. The Complainants indicated that the premium had never appeared on their bank statements as it had been incorporated into their monthly statements.

The Provider relied upon the Complainants' Application Form for the product recording that the

product was optional and it pointed out that following drawdown of the loan, which took place four months later and after the application for cover, an Evidence of Cover Booklet had been sent to the Complainants outlining all relevant terms and conditions, including the 30 days period during which the Policy could be cancelled without cost. The Provider pointed also to the annual mortgage statements confirming the existence of the Payment Protection Insurance and naming both Complainants on the Policy. The Provider also contended that it had never been its policy to make the approval of a loan conditional upon any customer taking out Payment Protection Insurance.

In considering the complaint, the Ombudsman noted the very clear note on the Application Form that the product was optional and the instruction on the form to complete either Option 1 or Option 2 as applicable, depending upon whether or not the mortgage applicants required Payment Protection Insurance. The Ombudsman accepted that the optional nature of the product had been made clear to the Complainants and that, having opted to incept the Policy, the Complainants, after drawdown of the loan four months later, were then notified that the Policy had been put into place, with the Policy Schedule which issued to the Complainants, detailing the level of cover incepted.

The Ombudsman noted that the existence of the Complainants' other policies might well indicate now, looking back retrospectively, that they had held sufficient cover at the relevant time. He noted however that in addition to those other policies, the particular Policy complained of, had also offered valuable benefits in the event of a valid claim. The Ombudsman noted that the evidence did not bear out the Complainants' contention that they had been obliged to accept this insurance product or had been put under pressure to do so.

The complaint was not upheld.

Case Study 2

Payment Protection Insurance (PPI)

Business complainant – policy was put in place to cover start-up loan – subsequent claim on policy was rejected – challenge of mis-sale of policy due to fact that benefit would never have been payable and whether eligibility was considered and appropriate from the outset.

Finding **Complaint upheld**

In mid 2007 the Complainant Company drew down a Start-up Business Loan and the Directors agreed to give the Provider personal guarantees in relation to that

borrowing. The Provider's records indicated that a Payment Protection Policy to cover the Start-up Loan was to have been incepted at the relevant time but was in fact put in place late, approximately 18 months after the Loan Agreement had been entered into. The Directors of the Company subsequently made a complaint that the Policy had been sold on the basis that it was intended to protect their exposure on foot of their personal guarantees. They had understood that for an additional cost representing 10% over and above the loan repayments, they would be personally protected in the event of the business failing. The Provider maintained that the terms and conditions had been explained at the time of selling the Policy and that all relevant Policy Documentation had been furnished in accordance with its standard practice. The Provider also submitted that the Policy had been suitable in the circumstances although it pointed out that any benefit for involuntary unemployment due to "Business Failure" had not existed in 2007 at the time of the drawdown of the Loan. The Provider acknowledged however that when the Policy came into being, later than originally intended, a more up to date booklet had been sent to the Complainants which included "Business Failure" as a benefit.

The evidence showed that when the Directors of the Complainant Company had sought to claim on foot of the Policy, they had been sent a Claim Form for Compulsory

Redundancy. This was explained by the Provider on the basis that there was no specific "Business Failure" claim form at the time.

In considering the parties' dealings, the Ombudsman noted that the entity which had drawn down the borrowing was entirely separate from the Directors of that Company who had personally guaranteed the borrowing in question. No evidence was available to establish how the Provider had complied with its regulatory requirements to furnish the Policy Documentation to the Policyholders, nor indeed as to which particular Policy Document had been issued, if at all. The Ombudsman also noted that it remained entirely unclear as to how benefit would ever have become payable in respect of any claim for "Business Failure". He was also concerned, having reviewed the "Terms of Eligibility" section of the Policy that no provisions were noted to indicate how any corporate entity, as opposed to a natural person, would in fact satisfy the eligibility criteria of the Policy which had been complained of.

The insurable interest in the Policy had rested with the Complainant Company, rather than with the Guarantors who held only a contingent liability in the event of non-payment by the Complainant Company, but who had nevertheless been given to understand that they were "covered". He was not satisfied therefore that the Complainant

Company's needs had been met by the sale of the Policy and he was of the opinion that the Provider failed in its obligations pursuant to the Financial Regulator's Consumer Protection Code to ensure the suitability of the product to the Complainant Company and/or its Directors. He noted the Complainants' expectations at the time they had agreed to incept the Policy retrospectively, that they would be personally protected in the event that the Complainant Company had "failed" affecting its ability to repay the liability to the Provider.

It was unclear in the event as to why the Provider had sought to have the Complainants make a claim for Compulsory Redundancy in circumstances where they were merely guarantors for the monies drawn down by the Company.

The Ombudsman was satisfied that the Policy had been mis-sold and he directed

- (i) Notification to the insurers of the cancellation of the Policy ab initio and the reimbursement of the premium to the Complainant Company's account, together with all associated interest accrued on the premium from the date of payment.
- (ii) The crediting by the Provider of the Complainant Company's account with a figure representing 12 months' benefits at the expected level.
- (iii) Payment of a further compensatory payment of

€1,000 to each of the guarantors personally.

- (iv) The writing off of all interest on the Complainant Company's account from the date of the claim to the insurers, until three months from the date of the Ombudsman's Finding, in order to facilitate the parties in the negotiation of suitable repayment terms, for the remaining liability.

The complaint was upheld.

Case Study 3

Payment Protection Insurance (PPI)

Mis-selling complaint re PPI added to Credit Card account – documentation showed that complainant had option to add or decline PPI when applying for product and had opted to make the purchase – mis-selling aspect not upheld, however provider had not retained records appropriately, hence a partly upheld finding.

Finding **Complaint partly upheld**

A complaint of mis-selling was made to the Ombudsman in respect of a Payment Protection Insurance Policy incepted on a Credit Card Account in December 2008, on the basis that the Complainant had believed that the Policy was compulsory. The Provider indicated that the Complainant had applied online for the Credit Card facility and in the course of

the application, she had selected an option to have PPI added to the account.

In reviewing the documentation the Ombudsman noted that the online Application Form indicated that the applicant must complete either Option 1 or Option 2 and it was clearly noted that the Payment Protection Plan was an optional product; he noted that the Complainant had opted to put the Policy in place. With particular reference however to the Provider's obligations pursuant to the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004, which apply to every distance contract for the supply of a financial service, the Ombudsman was not satisfied that the Provider was in a position to provide adequate evidence that the Policy Documentation had been sent to the Complainant on the inception of the Policy in December 2008, or that it had subsequently issued updated Policy Documentation to her. The evidence submitted to the Ombudsman was in the form of blank and undated template correspondence which in the Ombudsman's opinion was unsatisfactory and contrary to the Provider's regulatory obligations.

The Ombudsman took the view that the substantive complaint that the Policy was mis-sold to the Complainant in December 2008, could not be upheld on the basis of the evidence before

him. In circumstances however where the Provider was unable to provide evidence that it had fully met all of its obligations in respect of retention of records, he considered that it was appropriate to partly uphold the Complainant's complaint and he directed compensation of €150 to be paid to the Complainant within 30 days.

The complaint was partly upheld.

Case Study 4

Payment Protection Insurance (PPI) Not Incepted

Complaint that policy not put in place to protect borrowings – claim that responsibility of provider to insist on alternative repayment facility in the event of non-payment of loan from normal means. Not upheld as complainant was aware of PPI policies being available but had made informed decision not to avail of this optional product

Finding **Complaint not upheld**

The Complainant in this case drew down a Loan in December 2008 with Payment Protection Insurance in place to provide cover. Approximately a year later a further borrowing was agreed with the Provider but, in this instance, no Payment Protection Policy was put in place.

The Complainant contended that it was incorrect for the Provider to provide him with the loan facilities without taking into account his ability to repay the loans in the event of unemployment and without advising on or providing him with Payment Protection Insurance in respect of the borrowing. He maintained that the Bank had failed in its duty to inform him of the risks involved in proceeding with the loans without PPI in place and that therefore he was essentially mis-sold the loans, because PPI had not been put in place to cover those borrowings. He sought to have PPI cover retrospectively applied to his borrowings, to enable him to make a claim pursuant to the cover which he considered should have been in place.

The Provider maintained that the Complainant had not wished to protect either loan and it noted that the Complainant had initially held PPI in respect of one of the borrowings but had subsequently made a decision to cancel it. The Provider contended that on taking out the second loan the Complainant chose not to purchase PPI and he signed the relevant payment protection waiver, at that time.

In considering the Complainant's grievance, the Ombudsman noted the Complainant's contention that based on his salary at the time and given that he had no other means to repay the loans, the responsibility was on

the Provider to ensure that he could make the repayments if he became unemployed. The Ombudsman did not however accept that the Provider bore this responsibility. He noted that the Complainant had accepted the loans which he had applied for and indeed his written application to the Provider had confirmed his expectation of an increase in salary in the short-term.

The Ombudsman was satisfied that at the relevant times, the Complainant had made a fully informed decision to enter into both borrowings with the Provider and he was of the opinion that the Complainant had been made aware on both occasions as to the availability of PPI cover. In circumstances where PPI was an entirely optional product, the decision as to whether or not to accept the Policy was one for the Complainant alone to make and, in this event, he had elected to proceed without PPI in place.

The complaint was not upheld.

Case Study 5

Mortgage – Request for “Interest Only” Repayments

Provider refused a request for ‘interest only’ repayments on Mortgage account on the basis that similar requests had been allowed in the past but despite this, the situation had deteriorated further. Only option now was to consider voluntary sale or surrender of the property. Ombudsman cannot direct the Provider to exercise its commercial and lending discretion in any particular manner, but can ensure that the Provider abides by the Code of Conduct on Mortgage Arrears. In this case the Code was complied with, however the reasoning behind the decision was not communicated appropriately to the complainant and the complaint was partly upheld with compensation of €300 being directed, as a result.

Finding **Complaint partly upheld**

A complaint was made to the Ombudsman in relation to a Mortgage Account in circumstances where the Provider refused to facilitate a request by the Complainant to be placed on “interest only” repayments for five years. The Complainant's proposal was to facilitate a repayment of other debts and some works to the mortgaged property and he indicated that after the five year period his intention was to repay the

entire mortgage debt or alternatively, repay the principal by way of periodic lump-sum payments.

The Provider pointed out that previous forbearance had been granted to the Complainant and given the period which had elapsed since the repayment difficulties had first come to light, it was unwilling to approve any ongoing forbearance. It suggested instead that the Complainant consider voluntary sale or surrender of the property.

The Ombudsman noted that the loan was drawn down on a repayment basis but the Provider had previously, on six prior occasions, offered forbearance to the Complainant in the form of interest only periods or a moratorium. He also noted that the Complainant had sufficient income to meet the full repayments, but was unwilling to do so, as this would necessitate the freeing up of other assets held. The Ombudsman noted that the Complainant was in effect seeking to enlist the Provider as a joint investment partner in the maintenance and restoration of the mortgaged property. He took the view that the Complainant was not entitled to hold the Provider responsible for his personal circumstances which had delayed the necessary works to the property during recent years and he was not entitled to insist that the Provider forego its legal right to full repayments for a period, so as to enable the Complainant to renovate the property whilst protecting his other investments and allowing him to discharge other debt.

The Ombudsman noted that the Provider cannot be compelled to exercise its commercial and lending discretion in any particular manner; the Ombudsman can simply consider whether the Bank has complied with its legal obligations to the mortgage holder and in particular under the Code of Conduct on Mortgage Arrears. In this instance the documentation illustrated ongoing and detailed engagement by the Provider with the Complainant in relation to his request for an extended interest only period. The Ombudsman was satisfied that the Provider had met its obligations pursuant to the Code of Conduct on Mortgage Arrears and in those circumstances the substantive complaint was not upheld.

In circumstances however where the evidence before him disclosed a failure by the Provider to properly communicate its reasoning to the Complainant, and a particular letter had recorded an incorrect conclusion in respect of the level of income available, the Ombudsman took the view that a compensatory payment of €300 should be made to the Complainant, to be offset against the arrears on the mortgage account.

The complaint was partly upheld.

Case Study 6

Mortgage Arrears / Inappropriate Lending

Two mortgages in respect of a home had fallen into arrears. Complaint was that the provider had not entered into a mutually acceptable solution, had been reckless in its lending in the first place and that options had not been explored under the Central Bank Code of Conduct on Mortgage Arrears. After examining the evidence before him the Ombudsman was unable to uphold any of the complaints cited.

Finding

Complaint not upheld

The Complainants in this case held two mortgages in respect of their principal private residence, both of which had fallen into arrears. A complaint was made to the Ombudsman that the Provider had failed (i) to enter into a proposed resolution / mutually acceptable solution, (ii) to take responsibility for its part in enabling the Complainants' loans (due to an overvaluation of the property) and (iii) to explore and document all options for alternative repayment arrangements pursuant to the Central Bank's Code of Conduct on Mortgage Arrears and the associated Mortgage Arrears Resolution Process. The Complainants requested that the Provider "write-down" the balance on their accounts, taking into account the reduction of the

value of the mortgage which the Complainants suggested was primarily caused by the initial inflated valuation placed on the security by the Provider's auctioneer and valuer. The Provider indicated that it was not its policy to accept any sum less than the full redemption balance and on appeal by the Complainants, its Appeal Board reiterated that it does not adjudicate on debt forgiveness. The Provider contended that it had complied with the Provisions of the Code of Conduct on Mortgage Arrears and had engaged with the Complainants pursuant to its MARP.

In examining the evidence before him the Ombudsman noted that the valuation referred to by the Complainants dated from 2006 and on its face, indicated that it was for mortgage purposes only, and that no inspection of the property had been undertaken. The valuation also indicated that it was not for the use or benefit of any third parties, whether they had an interest in the property or not. He also noted that the General Mortgage Loan Approval Conditions made it clear that the valuer's report was required by the Provider solely for its own use.

The Ombudsman was satisfied on the basis of the evidence, that the valuer's report had been procured by the Provider solely for mortgage purposes, and for its own use only. With regard to the Complainants' submissions in respect of the

facilitation of their borrowings, he noted that this was in essence an allegation of reckless or inappropriate lending. Although the Financial Services Ombudsman's Bureau is a non-judicial forum for the investigation, mediation and adjudication of certain complaints, the Ombudsman noted that the existence or not of an actionable wrong of "*reckless lending*" had been the subject of a High Court decision in January 2010, when the Court had indicated, inter alia, that "*...more fundamentally, the argued for tort of reckless lending does not exist in law as a civil wrong. It is not within the competence of the Court to invent such a tort.*". The Ombudsman noted that prior to borrowing the monies, the Complainants had been advised to take legal advice and this was noted in their signed acceptance of the loan offer, in 2006. He was satisfied therefore that the evidence available did not support the Complainants in their assertion of any wrongdoing on the part of the Provider in respect of the facilitation of the borrowings.

The Ombudsman also considered the conduct of the Provider in the context of the Code of Conduct of Mortgage Arrears which outlines the necessary steps to be taken by a Provider in considering any forbearance requests from a borrower. He took the view that the Provider had endeavoured to assist the Complainants and had agreed to certain forbearance measures

over a number of years in relation to the particular borrowings. The Ombudsman indicated that the consideration of any write-down was entirely at the Provider's discretion and fell outside the Mortgage Arrears Resolution Process. He was satisfied that the Provider had complied with the Code of Conduct on Mortgage Arrears and that the evidence disclosed no wrongdoing on the Provider's part.

The complaint was not upheld.



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