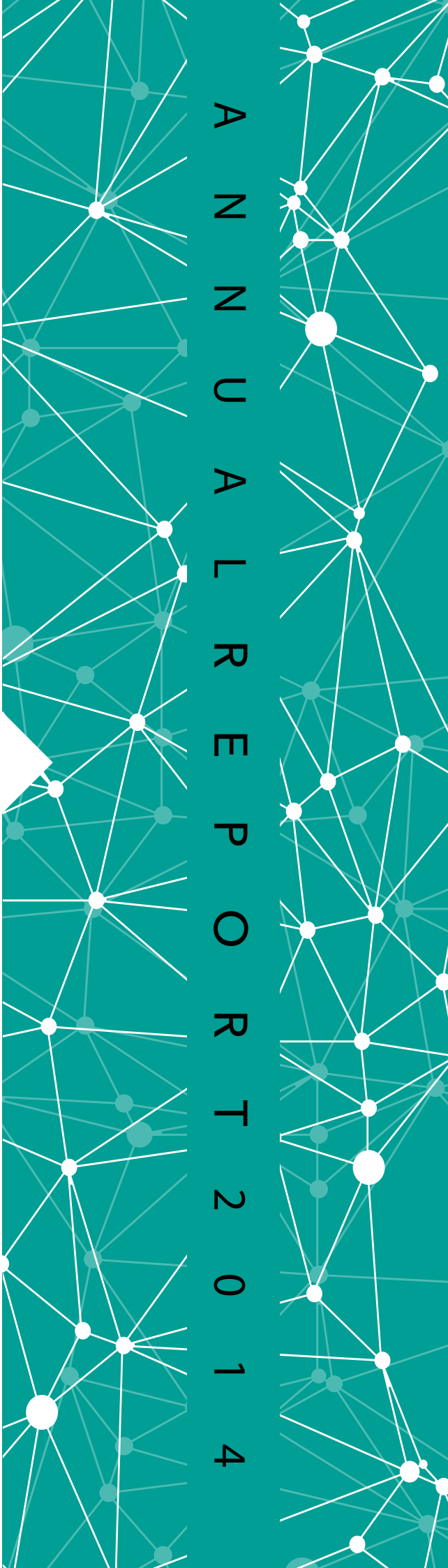
MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSUMER COMPLAINTS UNIT

ANNUAL REPORT 2014



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CHAIRMAN'S STATEMENT

Over the course of the years, since the office of the Consumer Complaints Manager has been setup, I could not but observe a common trait which underlies the various cases handled by the Unit.

Behind each and every complaint there is a human element, in some cases a truly touching story. A complaint could feature circumstances of a person who feels aggrieved by a situation which, despite his best efforts, ended up badly or which failed to meet his needs or expectations. There could be situations where the person is suffering as a result of a situation over which he had no control or feels powerless to challenge a situation which resulted through no fault of his own.

In some cases, the complainant might not have suffered any pecuniary loss but still feels aggrieved because the system ended up giving him a sour deal. In other situations, the complainant could well be suffering from a huge financial loss which might have resulted from a collapse of a financial investment or a serious injury following a car accident.

When reporting cases in annual reports, we have to be very careful to preserve the identity of the person complaining and the licence holder against whom the case is lodged. However, the key elements of the complaint have always remained unaltered.

The purpose of documenting complaints in the annual report is to give a flavour of the different types of situations the Unit comes across. They are not likely to highlight the grievance which some complainants endure or the frustration which they experience, and which brought them to make a complaint with the Authority.

Even though, statistically, a number of cases are not upheld, the procedures followed by the Unit to investigate complaints reflect the Authority's commitment to maintain its dispute resolution mechanism impartial throughout the whole investigation process and that all parties concerned are given every opportunity to put forward their opinion.

More importantly, however, is the fact that the redress mechanism gives dignity to the complainant and provides him/her with a detailed assessment of the review undertaken into the complaint, whether upheld or not. Indeed, even if complainants would have preferred a positive outcome for their complaint, the fact that they know that their complaint has been investigated exhaustively and diligently can go a long way to ease frustration and inconvenience.

At times, when a case is not clear-cut or when a fault cannot be established outright, the Unit attempts to reach a compromise, perhaps meeting half-way the requests which are made or expected by the complainant. Sometimes, the situation might not be strong enough for a compromise to be recommended. However, there have been several occasions where there was blatant disregard by financial service providers to the fundamental right of a consumer to be treated in his best interest. In these situations, the Unit has not held back from recommending what it ought to be a legitimate right for the complainant to be reinstated financially for the losses he suffered.

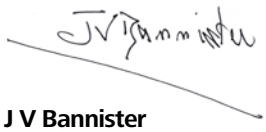
The Unit works hard to expedite review of complaints. However, cases relating to mis-selling can take substantial time to conclude. Expressing rash decisions or observations without a careful review of a complaint can not only prejudice the situation of the parties involved but it could also seriously undermine the very process of fairness and impartiality of which the Unit attributes great importance.

The same applies to licence holders. The MFSA expects its licensees to treat their customers with respect at all times. This means therefore that the Authority expects firms to look beyond procedures of proper record keeping, disclosure, training and other regulatory requirements and instil a credible culture of placing the very best interest of the client at the forefront throughout the process.

Beyond complaint procedures, it is expected of firms to carefully assess the implications of their policies and procedures. Profits matter but not at any cost. Mis-selling complaints may well be triggered by product failures but it so happens that investments are often sold, rather than bought. There is place for a wider range of products to serve customers, but not any product can or should be sold. Intermediaries whose monthly salary depends on the up-front commissions they receive could be tempted to sell irrespective of whether the product is needed by the customer or not. Properly-compiled product documentation is imperative but should not serve as a liability shield for the firm.

Compliance officers should not form, and be perceived to be, part of a firm's selling team. They should be given a mandate to unearth the truth, apply rigorously the rules and allowed scope and freedom to go beyond the rules' application. Companies should be willing to admit mistakes and agree to compensate if they have erred.

This is, after all, what treating customers fairly and with dignity is all about.



J V Bannister

RESPONSIBILITIES OF THE CONSUMER COMPLAINTS UNIT

The Consumer Complaints Unit is empowered to investigate complaints from private individuals relating to any financial services transaction in a fair and impartial manner. The Unit cannot give advice to or act on behalf of consumers in any dispute with a licensed person. Its main responsibility is to liaise with consumers and licence holders with a view to assist in the solution of any consumer dispute that may arise between them.

The Unit has an educational role in which it provides consumer education and information about financial services. Moreover the Unit handles different queries from the public on financial services matters and financial products. The Unit also assists the Authority's Supervisory Units to identify any new issues that require prompt attention as they may lead to consumer detriment.

In addition, the Consumer Complaints Manager, who is the director of the Unit, provides administrative support to and is also the secretary of the Compensation Schemes Management Committee, which administers the Depositor Compensation Scheme (established under the Banking Act) and the Investor Compensation Scheme (established under the Investment Services Act). The Manager is also secretary of the Protection and Compensation Fund (established under the Insurance Business Act).

THE LEGAL FRAMEWORK

The office of the Consumer Complaints Manager was formally established on 1 October 2002 with the coming into force of the Malta Financial Services Authority Act. In terms of article 4 of the Act, the MFSA is tasked to promote the general interests and legitimate expectations of consumers of financial services and to promote fair competition practices and consumer choice in financial services.

The duties of the Consumer Complaints Manager are established in article 20 of the MFSA Act. The Manager investigates complaints from individual private consumers arising out of, or in connection with, any financial services transaction. Where required, cases may be referred for consideration to the Authority's Supervisory Council.

The legislation authorises the Consumer Complaints Manager to communicate with a consumer, whose complaint is being investigated, and request information concerning any matter which may have come to his cognizance in the course or as a result of an investigation into a complaint.

The Consumer Complaints Manager can also encourage the parties to a dispute to reach a settlement whenever circumstances so warrant. The MFSA may only issue a recommendation in respect of a complaint which has been investigated by the Consumer Complaints Manager. A consumer who refers his complaint to the MFSA may still use other mechanisms to seek redress. The type of complaints which are usually referred to the Unit may not necessarily require judicial intervention to be resolved.

In addition, the Manager is required, to the extent possible, to assist and cooperate with bodies of other EU and EEA States responsible for the resolution of consumer complaints to settle local and cross border consumer disputes concerning financial services.

Article 26 of the Financial Institutions Act empowers the Complaints Manager to investigate complaints from payment services users arising out of, or in connection with, any alleged infringement by a service provider authorised to provide payment services activities in terms of the said Act.

The Complaints Manager is also required to inform the complainant of his right to seek independent professional advice, especially if he is not satisfied with the outcome of the complaint. For cases related to payment services, the Complaints Manager is required to inform the complainant of the possibility of having the dispute settled through arbitration proceedings (in terms of the Malta Arbitration Act) without

prejudice to the right of the consumer, as defined in the Consumer Affairs Act, to submit a claim to the Consumer Claims Tribunal or to exercise any other rights under that Act.

SHARING OF INFORMATION WITH REGULATORY UNITS

When a matter arises during a case review which may be indicative of any kind of pattern or suspected regulatory breach, the supervisory Unit concerned with the licensing and supervision of the relevant entity is informed so that appropriate action can be taken. During the year, the Unit has also referred a number of cases to the Authority's Enforcement Unit.

PROCESSING OF CLAIMS ON BEHALF OF THE INVESTOR COMPENSATION SCHEME

On 11 August 2014 the MFSA made a determination to the effect that Maltese Cross Financial Services Limited – an investment services firm - was unable, for the time being, to meet its obligations arising from claims made by its investors for reasons directly related to its financial circumstances.

In view of the MFSA's determination, the Investor Compensation Scheme published notices in all major newspapers informing eligible investors on how they may apply for compensation from the Scheme.

The Unit was responsible for answering queries made by clients of the failed firm in relation to the claims process and also for assessing claims made by the firm's clients in accordance with the Scheme's rules and procedures. Eligible investors were informed by the Scheme about the payments process and the subrogation of their rights in favour of the Scheme. Claimants who were not eligible were provided with a reasoned opinion as to the Scheme's decision.

The Unit reviewed all claims by December 2014, however the Scheme requested the MFSA to extend the claims period to 31 January 2015 to allow investors of the failed firm who had not yet submitted their claim to do so.

It is envisaged that the claims process will be finalised during the first semester of 2015.

TRANSPOSITION AND IMPLEMENTATION OF THE PAYMENTS ACCOUNT DIRECTIVE

The Consumer Complaints Unit will be responsible for the transposition of the Payments Account Directive (PAD). The Directive, which was published in September 2014, aims to provide consumers with the right to access payment accounts, to facilitate switching of bank accounts, and improve the transparency and comparability of payment accounts' fees. The Directive leaves flexibility in certain areas in order to adapt to the existing diversified legal and economical landscapes in the Union. Transposition measures should be consistent with existing measures which transposed directives applying to this area, in particular Directive 2007/64/EC (Directive on payment services) and Directive 2005/60/EC (Directive on the prevention of the use of the financial system for the (Directive on payment services) purpose of money laundering and terrorist financing). Member States have two years to adopt national legislation transposing the PAD. This means that the national measures should be adopted, published and notified to the Commission by September 2016. The Directive foresees the issuance of guidelines by the European Banking Authority and the adoption of successively one regulatory technical standard and two implementing technical standards. Structured meetings with the Malta Bankers' Association in regard to transposition aspects which will affect banks and with the Financial Intelligence Analysis Unit on due diligence are expected to take place during 2015 and 2016. Wider consultation is also envisaged.

REVIEW OF BANK INTEREST AND CHARGES APPLIED TO SMALL FIRMS

Following the announcement by the Minister of Finance in the 2014 Budget Speech for a review of bank interest and fees as applied by banks for small and medium-sized enterprises, the Unit requested the five major retail banking institutions in Malta to provide data regarding revenue streams from interest and non-interest charges, as well as detailed information as to the manner non-interest charges are set by the respective institutions. The information gathered by the Unit was handed over to the MCCAA for analysis in terms of competition rules. As part of this review, officials from the Unit held several discussions with the MCCAA regarding practices employed and tariffs charged by local banks. Work on this analysis is ongoing.

CONSUMER EDUCATION

MYMONEYBOX – THE CONSUMER EDUCATION PORTAL

On a daily basis, consumers are required to take decisions about their financial well-being, such as obtaining a loan to finance a home, acquiring an insurance policy (motor, life or property), paying bills or saving for the future. A constantly evolving financial market has brought with it a significant increase in the products and services on offer and, more often than not, consumers have poorer access to and understanding of the information about the products than the firms selling them.

mymoneybox
MALTA FINANCIAL SERVICES AUTHORITY
http://mymoneybox.mfsa.com.mt
Freephone: 800 74924

The Authority's consumer web portal "MyMoneyBox" provides comprehensive and impartial information to consumers about an extensive range of financial products and services and is the only reference point in Malta for this information. The portal was launched in 2009 and each month, new material is posted to enhance the quality and depth of the information provided to consumers.

Information on the portal is mainly split between the three broad categories of banking, investment services and insurance. In addition, the portal contains additional sections comprising four calculators, warnings or scams, a comparative database of bank and brokerage charges, a comparative database of motor insurance policy features and also a dedicated section answering cross-sectoral frequently asked questions.

Throughout the year the Unit constantly updates the section 'Your Questions' with specimen case studies taken from the substantial amount of complaints it receives. The aim of these case studies is to provide consumers with quick and useful information about the many common queries received from consumers on a daily basis. Access to this part of the website has increased significantly as consumers have learnt to refer to it prior to seeking information from anywhere else.

A section on pooled nominee services offered by firms has been included under the 'Investment' area to explain how this service may be offered to investors and by whom. Many investors hold investments under nominee but some may not necessarily be aware of the advantages and disadvantages of holdings securities under nominee.

Through its electronic newsletter which is sent to all subscribers of the portal at the end of each month, the Unit continues to keep consumers updated on the prevailing affairs in financial services. Mymoneybox is also very active on Facebook (facebook.com/mymoneybox) reaching out to a very wide audience.

Complainants may also lodge a formal complaint online in a secure environment with the added benefit that documentation may be uploaded and attached to the complaint form.

The on-line database of tariffs and charges relating to a number of financial products and services offered in Malta remains the most accessed section of the portal. The comparative database on features of motor insurance policies offered in Malta is also gaining attention from consumers. Both online databases are updated as and when the need arises.

The comparative databases are in line with the Authority's role to promote the general interests and legitimate expectations of consumers of financial services and to promote fair competition practices and consumer choice in financial services.

RADIO AND TELEVISION

The Unit dedicates substantial time and resources to prepare different material on a wide range of financial services to be presented live on TV and radio programmes. Broadcasting media has proved to be a valuable method to educate and inform consumers in Malta of their rights when purchasing financial products and services and to explain the main features of key financial products.

From October to June, Unit staff participated in three television programmes and four radio broadcasts almost on a weekly basis. Through active media participation, staff from the Unit engage with consumers about various subjects and promote the use of the mymoneybox portal.

In addition, the Unit has produced its own radio programme on Campus FM, the University of Malta's radio station. These programmes are being re-transmitted on the radio station operated by the Public Broadcasting Services.

CORE PRINCIPLES FOR OUT-OF-COURT SETTLEMENT OF CONSUMER DISPUTES IN PRACTICE

The Consumer Complaints Manager is an active member of FIN-NET and is required to comply with all the seven principles set out in European Union Commission Recommendation (98/257/EC) on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes. The Consumer Complaints Manager and other managers within the Unit follow these principles when reviewing complaints:

1. INDEPENDENCE

The Unit considers each case impartially, on its own merits, after due process with the parties concerned, and does not automatically take the side of either the consumer or the financial entity.

2. TRANSPARENCY

The MFSA requires each financial entity to have its own internal complaints-handling procedure and to make this available to its clients.

Generally speaking, an entity has to give the client a final response within a reasonable time of receiving the complaint. In normal circumstances, an entity should be in a position to respond within two months of receipt of the complaint.

In the event that the client does not accept the redress proposed by the financial entity or that his complaint has not been upheld, the entity is required to notify the complainant that he may lodge a complaint with the Consumer Complaints Manager. In their final response letter, financial entities must give all relevant details of the MFSA's redress mechanism.

The Unit will accept a complaint for formal consideration when it appears that the financial services entity has already sent the customer a final response to the complaint; or the entity has not settled the complaint within the two month timeframe; or the complainant's case is of utmost urgency and requires immediate consideration (in this instance, the Complaints Manager will decide whether the case is urgent or not).

The Unit generally investigates complaints based on the information supplied by the complainant and the financial services entity. The complainant is required to provide a declaration that the Unit may request a financial entity and/or a third party to provide copies of any documentation or information relating to his case. A signed copy of this declaration will be sent to the financial entity or third party as applicable.

3. ADVERSARIAL

In many instances, a financial entity is able to sort out complaints satisfactorily without requiring the Unit's involvement. Essentially, the financial entity should engage with the complainant to resolve a complaint expeditiously and, preferably, meeting the complainant's legitimate expectations. The complainant is at liberty to take up any offer made by the financial entity, after being given the opportunity to review the offer and any conditions which may be imposed by the entity.

The Unit will not initiate an investigation before the financial entity has been given the opportunity by the consumer to solve the complaint. Neither can the Unit provide advice to a complainant on any settlement which may be offered.

4. EFFECTIVENESS

The Unit generally investigates complaints based on the information received from the complainant and the financial services entity. The Unit may request meetings with the consumer and representatives of the entity, separately or jointly. Complaints can be determined within a short timeframe. However, certain complaints may take longer to be concluded especially if the review process involves scrutiny of multiple

documents and several exchanges of correspondence with the financial entity. In addition, regulatory issues may need to be investigated in parallel. These could prolong the review process.

5. LEGALITY

The Unit ensures that any recommendation does not deprive the complainant from exercising his rights under consumer protection legislation or bringing an action before the courts for settlement of a dispute.

As part of the complaint review process, the Unit requests clarifications, explanations and copies of documentation from those parties involved in the dispute. In the final report to the complainant, the Unit provides a detailed description of the review process and would normally provide a copy of any relevant documentation used by the Unit to reach a conclusion. The Unit will also provide details regarding any recommendation made to the financial entity. Any information which is provided to the Unit with a request that it remain confidential is not disclosed or copied to a complainant.

6. LIBERTY

A financial entity or a consumer may or may not accept a recommendation of the MFSA, and the Authority cannot enforce such a recommendation on either party. A complaint submitted to the MFSA does not have the effect of depriving the consumer or the financial entity of the right to bring an action before the Courts or any other entity established by law for the settlement of complaints, should either party refuse to accept the MFSA's recommendation.

A complainant is informed of the outcome of his complaint and is also advised of his right to seek independent professional advice if he is not satisfied with the outcome.

7. REPRESENTATION

Complainants would not usually need to seek professional, legal or financial advice to bring a complaint to the MFSA, but the Authority cannot preclude them from being assisted by an adviser when making representations on their complaint. The Authority does not charge fees to complainants. Any fees payable to advisers are solely at the complainant's responsibility.

COMPLAINTS' HANDLING – AN OVERVIEW

A set of procedures are in force to ensure consistency in the manner consumer complaints are handled.

The first set, "Internal procedures for MFSA", lays out detailed procedures to be followed internally by the Authority for the handling of consumer complaints.

The second set, "Procedures for financial services providers", lays out a number of procedures for all MFSA financial services licence holders when handling consumer complaints.

An "Information note for consumers", in the form of a Question and Answer, is also available (in English and Maltese).

All three documents have been amended during these past years as a result of amendments to the legislation which extended the role of the Consumer Complaints Manager (MiFID and the PSD, for example).

In recent years the Authority extended the time frame within which complainants may lodge a complaint with the Complaints Manager. The procedures have been amended to ensure that financial entities would cooperate with the Complaints Manager regardless of the time which may have elapsed when the complaint is submitted for review. As the Complaints Manager is also bound to refer these complaints to the Authority's Supervisory Council for its consideration, there may be complaints which, regardless of when the transaction complained of occurred, could require a regulatory solution.

THE CONSUMER COMPLAINTS MANAGER

- Acts independently of the parties concerned;
- Reviews each case impartially and on its own merits;
- Does not charge fees for reviewing complaints;
- Considers any relevant legislative aspects, rules, industry practice and other previously reviewed cases;
- Can only make a recommendation, which consequently may be rejected by the complainant and/or the financial entity;
- Would not normally accept to review a case if the financial entity has not been given the opportunity to first review the client's contentions;
- Would commence review of a complaint once the financial entity has issued a final letter to the complainant outlining its review or if the financial entity fails to issue a final letter within two months from the date of the complainant's letter;
- Generally does not reject to review a complaint, even if a case appears to be time-barred;
- Would normally inform a complainant if, on the basis of an initial review, his case is unlikely to be upheld or any requests being demanded may not appear to be legitimate;
- Would always recommend parties to a dispute to reach an amicable solution. If a financial entity offers a settlement, the Unit would normally recommend the complainant to seek professional advice before signing any agreement to that effect. The Unit does not provide legal or financial advice and is not responsible for any decision taken by the complainant in this regard;
- Always informs the complainant of his rights at law so that he may pursue legal action if he remains dissatisfied with the outcome of the Unit's review into his complaint;
- Endeavours to finalise a review of a complaint within a short period of time. However, this may not always be possible, especially if the review involves several exchanges of correspondence with the financial entity for documentation and clarification, or when the issues brought up by the complainant are likely to result in regulatory breaches, in which case a parallel review by the supervisory Unit concerned with the financial entity's activities may need to be carried out.

THE FINANCIAL ENTITY

- Must have in place a complaints handling mechanism which is communicated to all its staff;
- Is required to make its procedures readily accessible to its clientele in a language which is easily understood;
- These procedures should be available online and made available on request to a complainant;
- Is required to maintain an internal complaints register;
- Must inform complainants of their right to submit a complaint to the MFSA if their complaint is not resolved to their satisfaction;
- Must handle complaints within two months of receipt of a complainant's request. If more time is required, the financial entity is required to inform the complainant that it requires more time to review the case;
- Should not allow cases to escalate unnecessarily and should attempt to arrive at an amicable resolution for the benefit of all parties concerned. Whenever a financial entity rejects a complaint, it should clearly explain why it has refused the client's contention;
- Is at liberty to reach a settlement during or following the conclusion of the Complaints Manager's investigations. The entity would be expected to make the terms of the settlement available to the complainant prior to concluding an agreement.

THE COMPLAINANT

- May not necessarily have his complaint resolved by verbally communicating his dissent;
- In most cases, a client can only explain matters properly if he makes contentions in writing;
- Should never use abusive or arrogant language when submitting a complaint in writing;
- Should express his views to the financial entity first – and not to the MFSA. He may submit a copy to the MFSA however, this is not a requirement. He should provide all relevant details to the financial entity and express himself to the best of his abilities;
- The letter of the complainant should also include a request to the financial entity to acknowledge receipt thereof. The complainant should keep a copy of any correspondence sent to the financial entity. It is preferable if the complainant requests the name (and e-mail address) of the person to whom he should address his complaint prior to lodging a complaint to avoid unnecessary delays;
- May lodge a complaint with MFSA if he remains dissatisfied with the financial entity's response or two months have elapsed and the financial entity fails to respond;
- Should use the complaint form for this purpose. This is available online or on request. Complaint forms are available in both Maltese and English. Internet users may also lodge a complaint online;
- May file a complaint directly with the MFSA, and is not required to seek assistance from a professional adviser;
- Will be provided with a final letter outlining the Unit's review process into his case. He will be given a period of time to respond to the Unit's conclusions. If he remains dissatisfied with the outcome of his/ her complaint, the complainant has a right to initiate legal action against the financial entity;
- At any time during or following conclusion of an investigation, the complainant may be approached by the financial entity with an offer to conclude the case. The complainant is free to discuss and accept the offer after taking professional independent advice. The complainant should be given the opportunity and allowed time to review any agreement which the firm may require the complainant to sign in order to settle the complaint. The Authority is unable to provide advice on the offer and is not responsible for any decision which the complainant may take in this regard;
- He may also lodge a complaint with the Office of the Ombudsman if he feels aggrieved by the manner in which his complaint had been handled by the Unit.

INTERNATIONAL PARTICIPATION

FIN-NET

The Consumer Complaints Manager is a member of FIN-NET, the European out-of-court network for the resolution of disputes between consumers and financial services providers.

FIN-NET was established by the European Commission in February 2001. It links over 50 out-of-court Alternative Dispute Resolution (ADR) schemes that deal with complaints in the area of financial services and covers the European Union, Norway, Iceland and Liechtenstein (EEA). Within this network national ADR schemes assist consumers who have disputes with financial service providers based in another Member State in identifying and contacting the ADR scheme which is competent to deal with their complaint.

The FIN-NET's Memorandum of Understanding outlines the mechanisms and other conditions according to which members of FIN-NET cooperate and exchange information in handling cross-border complaints. Access to the Memorandum of Understanding is open to any scheme which is responsible for out-of-court settlement of disputes between consumers and service providers in financial services, provided it complies with the principles set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes. Adherence to this Recommendation is particularly important since the structure, nature and competence of different FIN-NET members vary.

FIN-NET needs to be put in the broader context of the European Commission's efforts to encourage Member States to promote and setup ADR schemes in various other sectors (other than financial services). There are over 750 ADR schemes in the EU today. There scope and remit is different. Some schemes are mandatory and set up by the state, while others are set up by the industry.

In some countries, ADR schemes cover only specific consumer disputes (e.g. for financial services, energy supply and transport) while in others they cover all consumer disputes.

On 18 June 2013, the ADR Directive and the ODR Regulation were published in the Official Journal of the European Union which entered into force on 8 July 2013. Member States are required to transpose the ADR directive in 2015.

The ADR Directive seeks to promote ADR in the consumer sphere across the EU by encouraging the use of approved ADR entities that ensure minimum quality standards. In particular, it requires Member States to ensure that their approved ADR entities are impartial and provide transparent information about their services, offer their services at no or nominal cost to the consumer, and hear and determine complaints within 90 days of referral. The ADR Directive will ensure that consumers can turn to quality alternative dispute resolution entities for all kinds of contractual disputes that they have with traders; no matter what they purchased and whether they purchased it online or offline, domestically or across borders.

The ODR Regulation provides for an EU-wide online platform to be set up for disputes that arise from online transactions. The platform will link all the national ADR entities notified by Member States to the Commission and will operate in all EU official languages.

The use of ADR entities or the ODR platform will require the agreement of both the consumer and the trader. Indeed, neither the Directive nor the Regulations impose any form of mandatory ADR on any party.

With regard to financial services, it is expected that ADR will be given a revamped impetus within the EU as up to now, the setting up of such redress mechanisms has been essentially voluntary. Certain EU

legislation in the area of financial services contains provisions encouraging the creation of ADR schemes in certain fields of financial services. The new ADR directive will ensure that all financial services would be covered by an out-of-court redress body in all Member States.

In 2014, 33 cross-border complaints were handled by the Unit. A selection of these cases is described in more detail in this annual report.

EU COMMITTEES ON CONSUMER PROTECTION AND FINANCIAL INNOVATION

EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

The European Insurance and Occupational Pensions Authority (EIOPA) was established in consequence of the reforms to the structure of supervision of the financial sector in the European Union. Article 9 of Regulation 1094/2010 requires EIOPA to take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market. This Regulation also requires EIOPA to establish as an integral part of the Authority, a Committee on financial innovation, which brings together all the relevant competent national supervisory authorities with a view to achieve a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and provide advice for the Authority to present to the European Parliament, the Council and the Commission. For this purpose, EIOPA established the Committee on Consumer Protection and Financial Innovation (CCPFI) in January 2011 which replaced the Committee on Consumer Protection (CCP) set up in March 2008.

To fulfil its mission, during the past year, EIOPA undertook proactive work in relevant regulatory requirements, in particular, the recast Insurance Mediation Directive (IMD2); contributed to the consumer protection aspects of the work of the Task Force on Personal Pensions; stared work on the assessment and categorisation of the requirements in terms of consumer protection of pension scheme members and beneficiaries and followed-up on the 2013 Good Practices Report on Comparison Websites.

In the area of financial innovation, EIOPA undertook an analysis of life insurance product structures with a view to enhancing consumers' choice and followed-up on the 2013 opinion on Payment Protection Insurance and cooperated actively with the Joint Committee of the ESAs on the development of common disclosure rules applicable to Packaged Retail Investment Products (PRIPs) and convergence of selling practices for these products led by the sub-structure on PRIPs. It also lived up to its annual commitment to issue a report on consumer trends based on information collected from Member States.

EIOPA publicly announced its readiness to further contribute to the assessment of the need for a European network of national insurance guarantee schemes.

The Committee also entered into collaboration with the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) to hold a joint Consumer Strategy Day.

EUROPEAN BANKING AUTHORITY (EBA)

The European Banking Authority (EBA) was established by Regulation (EC) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010.

The EBA promotes a transparent, simple and fair internal market for consumers in financial products and services. The EBA seeks to foster consumer protection in financial services across the EU by identifying and addressing issues which may lead to consumer detriment. The role and tasks of the

EBA relate to consumer protection and financial activities include: collecting, analysing and reporting on consumer trends in the EU; reviewing and coordinating financial literacy and education initiatives; developing training standards for the industry; contributing to the development of common disclosure rules; monitoring existing and new financial activities; issuing warnings if a financial activity poses a serious threat to the EBA's objectives as set out in its funding Regulation; and temporarily prohibiting or restraining certain financial activities, provided certain conditions are met.
The Standing Committee on Consumer Protection and Financial Innovation (SCConFin) within the EBA is actively assisting, advising and supporting the EBA in fulfilling its mandate in the areas of financial innovation and consumer protection, as described in article 9 of EBA regulation.

In 2014 the EBA's consumer protection and financial innovation Unit continued to collect, analyse and report on consumer trends and analysed banks' activities in structured products and the manner they are offered to the public.

It also pursued several mandates assigned to it by the Payment Accounts Directive and the Mortgage Credit Directive.

EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA)

ESMA's mission is to enhance the protection of investors and reinforce stable and well-functioning financial markets in the European Union. As an independent institution, ESMA achieves this mission by building a single rule book for EU financial markets and ensuring its consistent application and supervision across the EU.

In order to support the achievement of ESMA's objectives, the Board of Supervisors established the Investor Protection and Intermediaries Standing Committee (IPISC) which has responsibility for ESMA's work relating to the provision of investment services and activities by investment firms and credit institutions under MiFID.

The IPISC gives particular regard to investor protection, including the conduct of business rules, distribution of investment products, investment advice and suitability. In terms of policy, the Standing Committee is responsible for developing and providing technical advice to the European Commission, and for preparing technical standards, guidelines and recommendations relating to the provisions of the Markets in Financial Instruments Directive (MiFID) applicable to investment services and activities. This includes, for example, the authorisation of investment firms and conduct of business.

As set out in Article 9(4) of the Regulation No. 1095/2010 of the European Parliament and of the Council of 24 November 2010, ESMA is also obliged to have a 'Committee on financial innovation'. ESMA's Financial Innovation Standing Committee ('FISC') coordinates the national supervisory authorities' treatment and response to new or innovative financial activities and provides advice to ESMA on when to act. In monitoring financial activities, FISC may advise ESMA to adopt guidelines and recommendations with the aim of promoting regulatory convergence, to issue alerts and warning or conduct any regulatory action needed to prevent financial innovation from causing customer detriment or threatening financial stability. As part of its activities, FISC also collects, analyses and reports on investor trends.

ESMA's investor corner, which forms part of its web portal, is addressed to those who have invested or are planning to invest in financial products. Targeted to retail investors, it contains information useful at the onset of investing, information about charges and how to find out if a firm is regulated as well as tips on the effective complaint mechanism, information about compensation schemes, and national contacts that may be able to assist retail investors.

STUDY VISIT AT THE IRISH FINANCIAL OMBUDSMAN

Officials from the Unit were hosted by the Irish Financial Services Ombudsman for a week-long study visit in Dublin.

The scope of the visit was to obtain an insight into the funding, operations, complaints handling, legal and administrative setup of the financial ombudsman in Ireland.

In addition, meetings were held with officials from the Central Bank of Ireland (which is responsible for consumer policy and conduct of business), the National Consumer Agency (responsible for consumer education), and Insurance Ireland (the Trade Association of Insurers in Ireland).

Furthermore, a meeting was setup with the compliance and complaints handling department of one of Ireland's major insurance companies to get an industry insight of the manner in which the industry relates with the operations of the ombudsman, the feedback which feeds into the manner the industry implements recommendations and judgements of the ombudsman, as well as the processes and procedures they employ when handling consumer complaints.

The Unit reviewed and concluded 106 formal cases, which include a number of complaints carried forward from previous years.

REPORTING OF COMPLAINTS AND ENQUIRIES

COMPLAINTS' REVIEW

During the year, a total of 127 formal complaints and 251 enquiries were received. The Unit reviewed and concluded 106 formal cases, which include a number of complaints carried forward from previous years. A number of cases, amounting to 200, remain pending and their review will be carried forward to 2015.

ANALYSIS OF COMPLAINTS AND QUERIES HANDLED IN 2013 AND 2014

	Cases Received		Cases Closed*		Cases Pending*		Enquiries Received		Queries Received	
Complaints related to:	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013
Banking	38	19	23	14	18	6	65	32	448	469
Insurance	36	52	36	39	13	16	57	43	663	597
Investments	53	125	47	65	169	160	126	124	1319	891
Others	0	0	0	0	0	0	3	2	86	51
Totals	127	196	106	118	200	182	251	201	2516	2008

*Includes cases received in previous years

Out of the 127 complaints received, 33 were cross-border. Eight of these complaints were from policyholders who acquired an insurance policy from companies authorised in Malta but operating in another EU member state under Freedom of Services. The other ten complaints related to investment services while another 15 complaints were in relation to banking services. The majority of these complaints were received directly from the complainants with only six complaints being referred to the Unit by the financial ombudsman or mediator of the complainants' country of residence.

COMPLAINTS RECEIVED BY SECTOR

Compared to previous years, investment-related complaints received in 2014 decreased by more than 50 per cent. Nevertheless, the basis of the complaints received remained unchanged from the previous year as consumers continue to suffer losses from failed investment products – most of which complex in nature – which had been sold to them by various financial firms. Insurance related complaints decreased by almost 31 per cent while banking-related complaints doubled from the previous year.

Most of the complaints which remained open at end of year are related to investments, which in itself shows the complexity of the subject matter and which unfortunately also reflects, to some extent, to the lack of cooperation from a few companies against whom the complaints were made to provide timely feedback and documentation. The figure below shows the number of complaints carried forward to next year by sector.

A total of 106 cases were reviewed and concluded, which include a number of cases carried forward from previous years. Of the cases that have been concluded, 13 per cent were upheld while 47 per cent were rejected. In another six per cent of cases, the Unit concluded that the firm against whom the complaint was being made generally treated the consumer complaint fairly but it still agreed to a goodwill payment. In the remaining cases the Unit simply provided clarification or further information to the complainant or referred back to the complainant or entity but feedback was not provided following several attempts.

ENQUIRIES

During the year, the Unit registered 251 cases as 'enquiries'. Normally, these are complaints which are awaiting a formal outcome by the financial entity and which the Complaints Manager may investigate if the conclusions of the financial entity are rejected by the consumer. The Complaints Manager can only start investigating a complaint if the financial entity against whom a complaint has been made, was given sufficient time to review the customer's contentions. A financial entity is expected to be able to review and send a final letter to a complainant within two months from receipt of its customer's formal notification of a complaint. If a firm does not submit a final response within those two months, the Consumer Complaints Manager would commence formal review of that case. Enquiries would at times also include cases which the Complaints Manager considers as 'urgent' and which require an early intervention or cases which can easily be resolved with the licence holder over the telephone or through a short exchange of e-mails. However, if the matter becomes complicated, the complainant would be requested to submit a formal complaint in writing.

The Unit saw a 25% increase in the enquiries it registered, mainly relating to banking and insurance matters. Enquiries on banking issues doubled in number whilst those on insurance tripled. On the contrary, enquiries on investment matters decreased by slightly more than 50% when compared to the previous year.

FORMAL CASES CLOSED IN 2014 BY CLASSIFICATION

When the review of a formal complaint is concluded, the Unit sends a final letter to the complainant and the respective case is closed and classified according to the outcome. The table below gives a summary of the classifications made by the Unit on the 106 cases closed in 2014. A more detailed analysis is available in Appendix I.

CASES CLOSED BY CLASSIFICATION

Classification Code	Decription	Totals
(A)	Outside MFSA jurisdiction (in these instances and following any investigation undertaken, the consumer is requested to seek redress with the appropriate competent authority or redress system as applicable)	1
(B)	Consumer withdrew complaint	6
(C)	Referred to entity or consumer – no feedback	21
(D)	Entity has not treated the consumer complaint fairly – complaint upheld by the Consumer Complaints Unit. Entity accepts recommendation.	8
(D)(i)	Entity has not treated the consumer complaint fairly – complaint upheld by the Consumer Complaints Unit. Entity did not accept recommendation.	6
(D)(ii)	Entity has not treated the consumer complaint fairly – complaint upheld by the Consumer Complaints Unit. Entity partially accepts recommendation and offers a goodwill payment.	1
(E)	Entity has treated the consumer complaint fairly – complaint not upheld by the Consumer Complaints Unit.	50
(F)	Entity has generally treated the consumer complaint fairly but it still agrees to a goodwill payment or improved settlement.	7
(G)	General query – provided information/clarification.	6
	Total Complaints Closed:	*106*

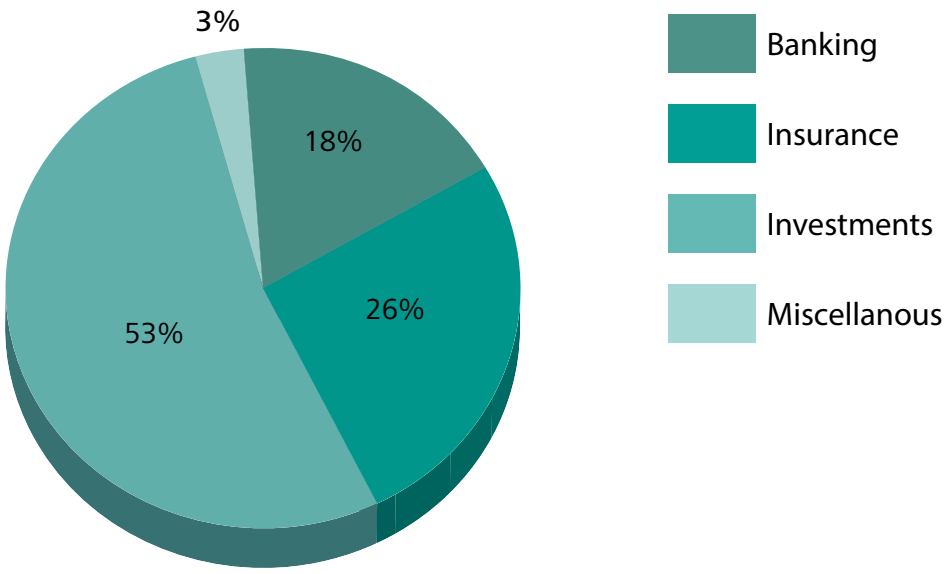
QUERIES MADE VERBALLY

There has been a significant increase of over 25 per cent in the number of telephone calls received by the Unit. Excluding phone-calls related to complaints which were under review by the Unit, over 2500 phone calls from consumers enquiring on various subjects have been received (please refer to Appendix II for a detailed breakdown of the type of queries received).

Nearly half of the calls received (1,319) were in regard to general investment queries while 663 calls related to insurance matters. In regard to the latter, calls relating to motor insurance claims remain the most frequent. Calls received in relation to banking issues amounted to 448, where most of the queries related to the depositor compensation scheme or bank charges. Most of the calls received (44%) were rapidly dealt with and lasted for five minutes or less. Other more technical calls required more time, with 35% taking between six and ten minutes to be resolved and the remaining 21% taking over eleven minutes to resolve.

The chart below shows the nature of calls received on a cross-sectoral level.

TELEPHONE CALLS BY SECTOR



REVIEW OF COMPLAINTS

With a financial environment that is constantly changing, consumers' expectations too have evolved. The Unit's role and process for investigating complaints in a fair and effective manner has however remained the same over the years. Every complaint is treated impartially and on its own merits. Both the complainant and the licence holder are given the opportunity to state their viewpoint in writing before a final decision is reached by the Unit.

When consumers suffer financial loss, being either loss of capital from an investment gone bust or due to other events which might occur in their lives, such as a car accident, or perhaps even worse, a personal injury, consumers can go through substantial inconvenience to sort out those issues that have gone wrong.

A consumer who has taken up a problem with a financial intermediary and does not receive a level of service which fails to meet his expectations may become even more frustrated. For this reason, the Unit strives to make its complaints handling procedures as simple as possible. Whilst we endeavour to resolve all complaints within a period of no longer than three months, this is not always possible.

In relation to investment-related complaints, the Unit has been unable to finalise review of a number of complaints as a result of severe delays in the submission of comments and documentation, as well as lack of cooperation from some firms against whom the complaint had been lodged. In regard to some cases, the Unit had to write directly to the investment firm's board of directors to secure a higher level of cooperation from the firm. In many cases, the Unit has flagged the attention of the supervisory Units concerned as to poor compliance procedures within a number of firms against which complaints had been made.

The sections that follow present a cross-sectoral review of the diversity of complaints received and reviewed by the Unit during the year. Names and particular situations have been changed to preserve confidentiality.

INVESTMENT SERVICES

GENERAL OBSERVATIONS

Financial education for consumers is of vital importance. In order to make well-informed decisions, consumers need knowledge about financial products. Each year, the Unit endeavours to improve the way it reaches out to consumers to help them make informed decisions when buying financial products. Despite significant efforts, however, complaints about financial services are continuous and year after year the same types of complaints feature repeatedly.

The challenge faced by retail consumers in this context is that many financial products are complex or structured in a way which makes them difficult to understand. At the same time, consumers looking to work around their financial situation may have to make the inevitable decision to acquire such financial products which appear to meet their needs. In regard to investment, for instance, this can become a vicious circle because a consumer, even after committing to purchasing the product, may not be able to determine whether the investment choice was the best in the circumstances (until after a problem strikes where it can be too late to do anything).

Although for some consumers the financial crisis appears to be tapering off, from a micro perspective, its aftershock is still being felt today. Investors, blinded by high interest investments in an environment of persistent low interest rates, might have lost focus of the issuers' inherent risks possibly because of the geographic and economic environment in which such issuers operate. The principle that potential return rises with increased risk is widely known, but many investors might underestimate the risk of default if the investment is designed in a manner which could lead to a false sense of security in regard to the issuer's financial position. Some investors might not afford to lose their capital following

failure of an issuer, a situation which can worsen if such capital cannot be recouped and constitutes a substantial part of one's portfolio.

The outcome of the Unit's investigation into a substantial number of complaints, involving a diverse range of investment products, seem to suggest that the use of terms such as "guaranteed" and "protected" have been loosely used by some financial intermediaries to describe the resilience of savings products and the issuers.

While many consumers can go that extra mile to find that ideal investment with a better return on their lifetime savings, some financial services providers are becoming ever so innovative in an attempt to increase their market share which they have seen shrinking over the past years due to increased competition, sometimes at the expense of consumers' best interest. Circumstantial evidence seems to suggest that at times some financial intermediaries continue to abuse of the trust that is placed with them by bona fide savers. Some particular financial products – which paid lucrative upfront commissions to intermediaries – have been sold widely even if these products were far from appropriate for retail investors.

Such behaviour tarnishes the reputation of the sector and erodes the confidence which consumers ought to have in the system. Upfront commissions received by service providers give rise to conflict of interest. This is a problem which has been highlighted by the Unit on several occasions, even in previous annual reports.

To be fair, some consumers can sometimes take risky chances with their hard-earned savings. Others may be influenced by greed or other irrational behavioural straits which often lead them to make wrong decisions. Some consumers have learnt the hard way, because even though mis-selling stories have made headlines for many years, a person needs to go through personal experiences to learn and understand the consequences of his actions. However, mis-selling scandals should have also served as an eye-opener for financial intermediaries who are expected to act rationally and in the best interest of the clients.

MIS-SELLING CASES INVOLVING COMPLEX AND STRUCTURED INVESTMENTS – OBSERVATIONS

During 2013, the Unit received a number of complaints alleging mis-selling of a number of structured investment products by various licence holders. Many of these complaints were carried forward to the year under review mainly due to the lack of cooperation by licence holders to provide the Unit with the requested information and documentation. There were however a number of cases which required time to resolve given their complexity

Review of a number of cases in relation to one particular investment was suspended following a decision taken by the Authority to appoint external auditors to review all investor files held with an investment firm relating to a contentious complex investment. This affected review of a number of other case files, relating to the same investment, but which had been sold by other investment firms.

Concurrently, this same investment was the subject of a review in the UK as to the manner it had been promoted to investors and which subsequently led to investors being given the opportunity to apply for compensation from the UK's compensation scheme. Some cases which had been lodged with the Unit in regard to this investment were subsequently withdrawn following receipt of compensation by the complainants.

However, a number of cases remain pending against the respective firms as, other than this particular investment, complaints were made following default of additional investments. The complaints relate to the manner these products had been represented and subsequently recommended to investors.

SELECTION OF COMPLAINTS

CANCELLATION OF FOREX PROFITS FOLLOWING BREACH OF TERMS AND CONDITIONS – COMPLAINT NOT UPHELD

Mr T, a foreign national, had regularly engaged in forex (foreign exchange) trading using a particular trading platform offered by a firm licensed and authorised in Malta. Since starting trading in 2011, his transactions were considered to be regular apart from one occasion when he was investigated due to alleged breach of trading rules because his IP address (internet address attached to an internet user) was allegedly host to several accounts, in breach of the firm's rules. At the time, the firm could not substantiate the claim and in his defence, Mr T had pointed out that his internet service provider did not offer static IP addresses. The firm had accepted that the "problem" was caused by a technical issue rather than his trading practices.

The same problem resurfaced in 2014 when Mr T tried to redeem some of the profits he had made. This time round, the firm refused to transfer the proceeds as, according to further analysis, his IP address again featured for multiple users. The firm claimed that that it had improved its monitoring system and was able to support its claim for breach of conditions. Mr T however insisted that this was not the case and approach the Unit for an investigation into the firm's allegations.

From the Unit's investigation and discussions with the firm, it emerged that the firm had been suspicious of Mr T's transactions from the beginning. It did not however, at the time, have the necessary monitoring tools to detect and prevent what it termed "fraudulent transactions" and could not forfeit any profits made or stop him from trading on its platform. It however explained that its systems had been upgraded and in fact provided the Unit with technical logs detailing each of the individual transactions made by Mr T over the years.

The log included information such as the IP address and the MAC address (a number unique to a particular computer much like the chassis number for vehicles) for each transaction. This allowed the firm to verify whether the same IP address was being used from more than one computer which would otherwise indicate that the user was trying to manipulate the trading system by opening multiple accounts using different computers. Such manoeuvres would have put other traders at a disadvantage.

Indeed, Mr T's IP address featured for a number of user names which meant that multiple users were based in the same place (same IP but different MAC address, i.e. computers). The logs also showed that even if the IP was dynamic (it changed), in the case of Mr T, it changed for all computers meaning that the computers were located in the same place.

On the basis of this information, Mr T's trading was clearly in breach of the terms and conditions set by the firm and the complaint could not be upheld.

FAILURE OF CORPORATE BONDS – COMPLAINT NOT UPHELD

Mrs X and Mr Y had purchased various foreign corporate bonds from a local investment firm. At a point in time, some of the bonds' issuers were facing problems which in turn caused a severe downturn in the price of the bonds. The couple complained with their financial advisor about this drop in price but did not get any redress. Subsequently they referred their complaint to the Unit, maintaining that their financial advisor had enticed them to purchase the bonds on the premise that the capital was guaranteed. They also stated that they were not made aware of the downturn that had commenced some months back, further claiming that the choice of bonds was defective from the onset.

The Unit sought a copy of the correspondence between the claimants and the investment firm. The Unit found correspondence sent by the entity to Mrs X and Mr Y informing them that some of the bond issuers were facing financial difficulties and had to seek protection in the courts of the respective jurisdictions in an attempt to protect bondholder rights. In view of this, bondholders were unable to sell their holdings.

The Unit requested copies of the fact finds that had been raised since the commencement of the relationship to establish the basis of advice. These fact finds illustrated that the risk profile of the investors was medium to high. It was apparent that Mrs X and Mr Y were familiar with investment transactions, in particular investments in bonds, and they were acquainted with financial advice.

Other ancillary documentation that was furnished to the Unit also showed that the couple had an inclination for high yielding bonds (an indication of higher risk).

The documentation clearly indicated that Mrs X and Mr Y were advised of the repercussions should corporate bonds fail, both in terms of coupon and redemption of the pertinent capital. The Unit deemed that the documentation served as sufficient warning in regard to the risks pertaining to high yield bonds that were outlined in the course of advice. The Unit also considered that Mrs X was particularly seeking to maximise income generation despite the extent of risk.

The Unit therefore found no solid basis to uphold the complaint.

INVESTMENT IN ALTERNATIVE ASSET CLASSES – COMPLAINT UPHELD

Mr A contacted the Unit claiming that he had relied on the services of a licensed firm for the provision of investment services. He claimed that the firm urged him to purchase investments that were manifestly unsuitable for his risk profile – which was documented as low – as from the onset of the relationship. Mr A also complained that he had never received any statements exhibiting his holdings and that he was only contacted by the firm after problems had surfaced on the issuer of the investments following alleged fraudulent activities.

Following detailed analysis of Mr A's documentation provided by the investment firm, it transpired that Mr A had been a client of the firm since 2005. Originally, he had invested GBP45,000 into a Unit-linked investment whose underlying asset classes comprised property and natural resources.

The firm explained that funds were switched regularly across a span of five years with Mr A being exposed to a diverse range of asset classes which entailed property, emerging markets, natural resources and money-market funds. The entity therefore maintained that Mr A was exposed to and aware of the capital risk involved. When questioned about the substantial number of switches, the entity claimed that such switches were justifiable in view of the turbulence existing in the markets.

Upon termination of the Unit linked investment, the investment firm liaised again with Mr A suggesting that a partial sum from the proceeds is routed into a property fund. After some months, further sums were eligible for re-investment and Mr A took the financial advisor's suggestion to invest into a structured professional investor note and another fund which was an experienced investor fund. No fact finding was compiled by the adviser before the placements of these investments, although a file note purportedly drawn up by the financial adviser at the time he had advised the sale lacked the client's signature. Mr A, who was seeking assurances of capital guarantees, exchanged several emails with the financial adviser. The financial advisor duly provided assurances in this regard but solely in the context of the structured note (and not the experienced fund).

Further liaisons with the complainant elicited that he was not advised prior to the switches taking place and was in turn asked to sign the relative documentation when such switches had already been executed. Mr A reiterated that he devoted his trust into his financial advisor and did not question such formalities.

Mr A claimed that he had no knowledge that the three investments he had been advised to acquire were alternative asset classes aimed at professional/experienced investors. When he had questioned whether these investments carried any "capital guarantees", the information that he was provided was framed in a context that all three investments would have returned capital in full on maturity.

The Unit expressed concern at the lack of adherence to MFSA rules as to the compilation of a suitability test at the time the three investments had been advised to Mr A. It remarked that the first fact find was not only dated but that it lacked information which was expected to be maintained by the financial adviser in view of enhanced investment rules.

The Unit deemed that the financial adviser failed to prove that, at the time he had advised Mr A to acquire the investments, Mr A possessed the expertise necessary to assimilate the risks of the products that were being proposed. The Unit also maintained that the category of asset classes which comprised Mr A's Unit-linked policy could not have possibly rendered Mr A as knowledgeable or experienced to invest in alternative asset classes or experienced investor funds.

The Unit held the view that Mr A's financial and personal circumstances could not have possibly remained the same compared to 2005 and the absence of proper documentation was detrimental for the investor. On the basis of the Unit's analysis, it recommended reinstatement of the funds invested in the three investments since it was deemed that advice in favour of these products was not in the best interests of Mr A.

The investment firm declined the Unit's recommendation and stated that it did not feel the need to compile a fresh fact find as the advice furnished was in context of an ensuing relationship and the type of underlying assets held in the Unit-linked policy were "similar in nature" to the three funds advised to Mr A.

PORTFOLIO DIVERSIFICATION, ELIGIBILITY AND SUITABLITY – COMPLAINT NOT UPHELD

Mr A and Mrs B filed a complaint with the Unit following a fall in value of an investment product whose underlying assets consisted of life insurance policies. Mr A and Mrs B deemed that, with hindsight, this product was not suitable for their circumstances in view that they had declared themselves as having a cautious risk tolerance.

The investment was geared to be retained for a five year term with the possibility of gaining 40% of capital invested upon maturity. The couple claimed that the shift into the contested product had ensued following a meeting with a financial advisor who enticed them to divest from an experienced investor fund (at a profit of 25%) to route funds wholly into the new investment product. Mr A and Mrs B claimed that they were assured that the new investment carried high levels of security and that they would only be penalised if they elected to sell their investment prior to maturity.

From the fact find it was apparent that at the time of acquisition of the contested investment, the advisor acknowledged that the complainants had a cautious to medium risk profile and didn't want to take unnecessary risks with their money. They also expressed their preference for capital growth.

The documentation did reflect however that upon the purchase of the experienced investor fund, the couple had signed a declaration that they were eligible to invest in the said fund in view that they had invested an amount over USD50,000 over a span of five years preceding the purchase of the fund. No specific information was available in regard to other holdings or previous investments held with the same firm or with others.

Preliminary findings were communicated to the complainants who still disputed the extent of advice and suitability and maintained that the sale of the first investment (the experienced investor fund) was also incongruous. While the Unit deemed that due consideration should have been given to the experienced investor declaration form, it considered it opportune to contact two banks mentioned in the fact find and with which the complainants claim to have had deposits and some investments, to establish the extent of dealings executed by the complainants in the term of years prior to the purchase of the experience investor fund and before the shift into the contested product.

It transpired that the couple were very active investors, seeking to capitalise on gains registered on investments and diversifying across a myriad of investments. The Unit therefore felt that the shift into the new investment was reflective of the character of the investors i.e. to diversify in other asset classes.

The findings were again provided to the claimants who sought financial counsel and reverted disputing the extent of analysis conducted by the Unit. Due consideration was given to the entire relationship with the contested licence holder reassessing the extent of suitability and the test conducted by the financial advisor at the onset of the shift into the new investment. The documentation at the licence holder and the Unit's ancillary findings attested the complainants' knowledge and experience. In regard

Many investors might underestimate the risk of default if the investment is designed in a manner which could lead to a false sense of security in regard to the issuer's financial position.

to their investment objectives, the product was, at maturity, aiming to generate the capital growth the complainants wished for. Furthermore, having invested in an experienced investor fund, Mr A and Mrs B had the necessary knowledge and experience to understand the risks involved in the contested product.

In the light of the foregoing the Unit was unable to uphold the complaint.

INSURANCE

GENERAL OBSERVATIONS

In an era where interest rates are at very low levels, the Unit is still coming across illustrations for with-profits life insurance policies which show three potential return scenarios ranging between 3% and 7% per year. This might have been acceptable some decades ago when market interest rates were high and savers could possibly earn similar rates from a fixed bank account. When examining the reversionary bonuses (yearly return declared by life insurance companies on their with-profits policies) declared by life insurance companies during the past few years however, one realises that even a best-case scenario depicting a return of 5% could potentially mislead expectations.

The low interest rates being offered by local banks make these life policies more attractive but one should remember that a life policy is a long-term contract and therefore before entering into such a transaction, savers need to weigh carefully their decision as exit fees may apply if one decides to exit the contract before a particular term. While life policies, containing an investment element are likely to be an opportune way to save, they might not be suitable for everyone.

Life policies are long-term contracts and therefore whoever is authorised to sell such policies should not only be adequately qualified to do so but, most importantly, place the policyholder before any remunerative incentives which are payable for every policy sold. Life insurance companies should not merely keep their staff up-to-date with information on new products but should also provide training to enable them objectively assess suitability of such products to particular target markets. It is unacceptable, therefore, for life companies to permit the sale of long-term (say 15, 20 or even 30 years) life policies to persons who are reaching or have reached retirement.

SELECTION OF COMPLAINTS

NON-DISCLOSURE OF FEES RELATED TO A LIFE INSURANCE POLICY – COMPLAINT NOT UPHELD

In her complaint letter, Ms V explained that following an initial meeting with the insurer, she decided to invest in a Unit-linked policy on the basis that she could have instant access to capital if required. Flexibility to withdraw the capital invested without incurring any penalties was an essential feature of her investment needs. In addition, the complainant also maintained that she was promised an annual return of around 5% and low operating costs. Ms V insisted that at the time she met with the insurer's representative, there was no mention of any additional fees which may be applicable during the course of the policy although she admitted she was provided with a detailed summary of her policy before committing to the purchase.

Ms V became aware about the extent of some fees when she demanded to withdraw some funds from the policy. Initially, she only withdrew a small amount, but for reasons relating to her personal health, she had to withdraw all the remaining funds and terminate the policy. It was at this stage that the insurer informed her that €20,000 were due in early termination fees. Ms V felt that is was unfair that the officer who sold her the policy gave her the impression that the capital could easily be accessed but had not informed her that an early termination fee applied. Furthermore, her policy did not perform as promised and returns were much lower than anticipated.

From a detailed examination of the documentation provided by both the insurer and the complainant, it was clear that all the information related to the life policy, including any applicable fees, had been provided at quotation stage. Furthermore, an explanation of the applicable fees in the event of early

termination of the policy took up a whole section of the policy document. The Unit explained to Ms V that it is always the consumer's responsibility to be aware of the terms of the product. Although the verbal explanation is important, firms are required to provide a written document showing all the terms and the firm clearly complied with this requirement.

During the Unit's investigation, it transpired that there was a discrepancy in the method of calculation shown on the initial summary and that shown on the policy document. The firm was informed of this error and immediately confirmed that the method of calculation most advantageous to the client would be used, which resulted to be that shown on the policy. Such resolution was deemed to be satisfactory to the Unit.

With regard to the issue relating to the product's performance, the Unit pointed out that the amounts noted on the quotation were only indicative and based on the past performance of the product. Unfortunately, during the period the policy was in operation, financial markets were hit by the global recession which impacted on the overall value of Ms V's investment. Performance on life policy contracts is usually calculated on the assumption that the policy would be kept for a long-term rather than a short term. Therefore by redeeming the policy way before the maturity date, the policy performance was negatively affected. The company was not seen to have acted unfairly towards Ms V and the complaint could not be upheld.

LIFE INSURANCE – BALANCE IN A LIFE POLICY ACCOUNT - COMPLAINT NOT UPHELD, BUT COMPANY STILL OFFERED GOODWILL PAYMENT

Mr and Mrs A purchased two endowment with-profits policies, covering the life of their two daughters. Both policies had the same sum assured, which included an inflation element, and were due to mature on the same date. After some years, upon receiving the renewal notice, they noticed that although they had opted for the same benefits under the two policies and had been paying the same premiums since policy inception, there was a difference in the premium due for that particular year. Mr and Mrs A discussed the matter with the insurer who explained that the variance between the two premiums was due to the difference in their daughters' ages, and that the eldest daughter presented a higher risk to the company.

It also resulted that, without the complainants' consent, the inflation element in one of the policies was discontinued. In this respect, Mr and Mrs A were requested to pay the difference in premium caused by the inflation element and another amount which represented any bonuses for the past years. Spouses A settled these additional payments but to their surprise they were again approached by the insurer who requested further payments. Mr and Mrs A refused to settle this additional amount on the basis that since they were paying the same premium for both policies, they expected that the balance in the policy account would be the same for the two policies.

The Unit discussed the matter with the insurer, who in turn clarified the matter. The two policies provided an inflation premium increase option, which allowed the insured to increase the annual premium paid by the official inflation rate. Since both policies purchased by Mr and Mrs A were taken out with such option, the premium payable increased over time. It resulted that Mr and Mrs A were required to pay the same amount of premium in respect of both policies for the first five years. Due to an oversight by the insurer, the premium increase was discontinued on one of the policies without the policyholders' consent. Therefore the amounts which they were required to pay following the discussions with the insurer were to make up for the differences in the premium paid.

Mr and Mrs A's main concern was the discrepancy between the balances in the two policy accounts. The insurer explained that this resulted from various factors, with the main one being the Risk Charge, referred to as the 'Cost of Life Cover' or 'Mortality', which is deducted from each premium paid, and reference to which was made in the policy wording. This cost usually varies with the applicable mortality rates, which varies in line with the age of the person covered. Since Mr and Mrs A's daughters were not of the same age, a different risk charge had been applied to each policy, and hence the different policy account balances.

Following the Unit's review, the complaint was not upheld. Notwithstanding the Unit's decision, the insurer adjusted the policies so as to reflect the same balance in the policy account as a sign of goodwill. The insurer reminded Mr and Mrs A that regardless of this adjustment, the premium allocated to the investment element from other future premiums would not be the same due to the different risk charge being applied. Therefore, to some extent or another, the account balances of the two policies over the years up to maturity would not remain equal. The complainants accepted this explanation.

LIFE INSURANCE – COMPLAINT UPHELD (COMPANY REJECTED THE UNIT'S RECOMMENDATION BUT OFFERED AN EX-GRATIA PAYMENT)

Mr and Mrs F purchased a life insurance policy for a duration of 32 years. From each premium payment, two main types of fees were being deducted, with one being quite high in the initial years. Spouses F claimed that had they been advised of such fees, they would not have opted for such policy.

As is customary, the Unit contacted the insurer for information and copies of the related documents. Prior to concluding the contract, Mr and Mrs F were presented with a life insurance quotation, which provided a summary of the plan together with the estimated maturity and surrender values. The quotation illustrated the premium payable each year and also provided three scenarios of the estimated balance in the policy account at various bonus rates, assuming all premiums were paid for the whole duration of the policy.

From the Unit's investigations, it resulted, that although there had been indirect reference to the 'policy fee' and the 'expense charge', it was not immediately evident that the complainants were directly informed of the amount that had to be deducted from the premium payable. It also resulted that the policy schedule, which explains the terms and conditions of the policy, makes particular reference to the premium payments but again, no reference to any applicable charges was mentioned. This implied that, by referring to the policy schedule, Mr and Mrs F were made to believe that the amount which was being allocated to the policy was the full amount that they were paying in premiums.

Based on further analysis of the documentation provided by the insurer, the Unit argued that such information was presented on a different document which explains how the plan works, and thus makes reference to the applicable charges and the allocated rates calculated in accordance with the premium less policy fees. However, it emerged that this document was enclosed with the Statutory Notice - a document which is given after the agreement had been concluded. As is required in long-term contracts, a thirty day cooling-off period is allowed after conclusion of the contract. However, the Unit argued that, irrespective of the fact that spouses F could have withdrawn from the contract during this period, the insurer was still obliged to provide full information prior to the purchase.

On this basis, the Unit was of the firm view that Mr and Mrs F had been misguided when presented with the life insurance quotation as no reference to the charges had been made. Although these charges were listed in the policy document, together with other provisions, complainants were not expected to double check the figures presented to them on the quotation for any fees. The Unit insisted that the information presented should have been full, clear, and unequivocal which would have enabled the policyholders to understand how the policy works. In addition, the Unit also held the view that the policy schedule was also misleading and a distinction should have been made between the premium payable and the premium allocated, whilst including reference to the two main applicable fees.

Following various arguments raised with the insurer in this regard, the Unit was informed that the latter was willing to offer a payment as a gesture of goodwill so as to settle the matter amicably. It resulted that the amount which was being offered represented the amount in respect of one of the two applicable fees that had been deducted from the premium payments made throughout the duration of the policy. The Unit did not deem this offer to be fair because it was of the view that Mr and Mrs F should be refunded with the other charge as well. In fact, further submissions to the insurer were made, but which were rejected. Although this latter recommendation for additional refund was refused, the insurer's initial offer remained valid and the complainants accepted this offer in full and final settlement.

REJECTION OF EXTENDED WARRANTY CLAIM – COMPLAINT NOT UPHELD

Ms H, an EU citizen, contacted the Unit through her lawyer following an issue with an insurer registered in Malta but operating in another EU country. She had purchased a second hand vehicle in 2011 and agreed to the continuation of an extended warranty subscription. When the vehicle was nearing the 60,000km mark, she started hearing a noise in her engine. She went to an authorised repairer to carry out a maintenance check. This was however refused by the repairer.

Seeing this lack of assistance, Ms H opted to invoke her extended warranty policy. The vehicle was subsequently towed to a different garage when the mileage was already 58,128km. Serious damages to the motor were discovered with subsequent repairs amounting to circa €13,000. The issue with the local insurer started when cover under the policy was refused due to a breach of a policy condition requiring vehicle maintenance at 30,000; 60,000; 90,000; and 120,000km. Ms H insisted that this condition was being citied unfairly because she had always carried out all the necessary maintenance on the vehicle ever since it was in her possession.

The Unit immediately started communication with the insurer's local offices to obtain additional information and documentation on the case. The company confirmed that Ms H's vehicle had a requirement to be serviced every 30,000km or every two years, whichever was the earlier. The firm insisted that according to their records, maintenance had not been carried out. A full service history was provided in support of their decision.

In fact, the insurer confirmed that the first repairer she approached did not attend to the repairs given the breach of contract by Ms H. The records clearly showed that the previous owner had not maintained the vehicle in accordance with the terms of the policy. Ms H should have been aware of this fact given that the maintenance history was made available to her when she bought the vehicle. Thus she could have easily verified if the necessary maintenance had been done by the previous owner and that there might have been a breach of policy conditions.

The complaint was not upheld by the Unit and the complainant, through her lawyer, was informed accordingly.

FAILURE TO REFUND PREMIUM ON EXTENDED WARRANTY – COMPLAINT NOT UPHELD

Mr C, an EU citizen, had made an extended warranty subscription when he purchased his new car. After a couple of years, Mr C decided to sell his vehicle to a third party and following the sale, he requested a pro-rata refund of the premium on the extended warranty on the basis that he would never be able to make a claim under this policy. The insurer failed to refund him the premium and stated that the sale of the vehicle did not constitute a termination of the policy but rather a transfer of policy from one owner to the next and hence no refund was possible.

The Unit contacted the insurer who explained that one of the terms and conditions of the policy stated that a refund of premium was only allowed in the circumstances where the contract was cancelled within seven days of purchase or when the vehicle is written off or stolen and not recovered. Nevertheless, upon inspection of the contract, the Unit noted that another clause specified that if an insured decided to cancel the extended warranty, the premium paid but not utilised, should be refunded on a pro-rata basis. In turn, the insurer argued that the contract had already been tested in the Courts of the country where it was offering the extended warranty and, as it was completely in line with national regulation and the conditions were clear, it did not feel compelled to cancel the contract.

Whilst the Unit was not completely satisfied with such an explanation, it couldn't fail to note that another clause in the terms and conditions made it clear that the sale of a vehicle covered by an extended warranty policy did not lead to the termination of the policy, but rather all the benefits of the policy become transferable to the new owner who will then have to register his interest with the dealer for the policy to continue running.

The complaint was not upheld.

REJECTION OF MOTOR INSURANCE CLAIM FOLLOWING STORM DAMAGE – COMPLAINT NOT UPHELD

Mr X approached the Unit as a result of damage to his vehicle following a hailstorm which hit Malta during January 2014. He explained that initially, he was under the impression that the damage was minimal but in April of the same year, whilst polishing his vehicle he discovered that the damage was worse than he had presumed. Mr X lodged a claim with his insurer at the time (some four months after the incident occurred), but was informed that the excess was high and it may not be worth opening a claim as his No Claim Discount could also be affected.

Later on that same year Mr X took the vehicle to a panel beater who informed him that the repairs would amount to over €1,500. Mr X went again to his insurer to open a claim which was immediately rejected on the basis of late notification. He complained that he was treated unfairly since he had spoken to one of the company's representatives immediately after the extent of damage had been established but he was, at the time, discouraged from opening a claim.

The Unit immediately contacted the insurers to obtain their version of events. They replied that the claim was rejected because it had not been lodged within a reasonable time. Even when he approached their offices the first time, it was already too late for them to verify the source of damage due to the lapse in time. Also, they insisted that no valid justification was ever provided by Mr X which could have justified the delay in notifying them of the claim. The fact that the damage was not noticed, even if the vehicle in question was used on a daily basis, was not acceptable to the insurer.

The Unit also consulted with the applicable policy wording which clearly noted, under the Claims Conditions, that the insured was required to give notice as soon as reasonably possible of any accident, injury, loss or damage and send the insurer every letter or other information in the insured's possession without delay. The insured was therefore bound to inform straightaway the insurer of the damage, even if such damage was minor and irrespective of the possibility that no claim would ultimately be lodged. This would have allowed the insurer to verify any damages.

The Unit was of the view that the insurer could not be held at fault for invoking the policy conditions. Even if, for the sake of argument, Mr X had been discouraged from claiming when he first reported it, four months had passed from the date of damage and this was considered to be prejudicial for the insurer.

The case was therefore not upheld by the Unit.

UNDER-INSURANCE IN A HOME POLICY – COMPLAINT PARTIALLY UPHELD BUT UNIT STILL RECOMMENDED A GOODWILL PAYMENT. ENTITY REJECTED PART OF THE RECOMMENDATION

While on holiday, Mrs Z's house had been broken into. Upon her return to Malta the matter was reported to the police. A considerable amount of jewellery and other personal possessions were reported as missing. Damage to the property and its contents had also been sustained.

A claim was lodged under her home insurance policy. Mrs Z had purchased the policy through an insurance agent. Initially, the insurer paid for some of the damages sustained on the property so as to minimize losses, but failed to reimburse Mrs Z with the full amount claimed on the basis that some of the damages sustained were not as a result of the theft, but resulted from the poor upkeep of the house. Mrs Z claimed that the amount which had been offered to her in respect of the claim was much lower than the actual amount claimed. Mrs Z was dissatisfied with the insurer's approach and referred her complaint to the Unit.

The Unit requested copies of all the documentation held on file in relation to Mrs Z's claim. Primarily, the insurer advised that, as is customary in the event of a claim for stolen items, proof of the alleged stolen items was required. An architect was also appointed to determine the extent of damages sustained from the same break-in. The insurer also advised that other than the list of items mentioned in the police report and those mentioned to the architect upon inspection, Mrs Z was continuously informing the insurers of further items which she kept finding missing. When the list outlining the stolen items

was presented to the insurer, Mrs Z was informed that she might not be covered for all the items on the list under the contents section of her home insurance policy if the valuations exceeded the sum assured.

Nevertheless, the insurer still requested an additional list detailing all the alleged stolen jewellery items, but Mrs Z failed to substantiate such list with proof and valuations.

As part of the review, the Unit requested a copy of the policy schedule on the basis of the architect's report and the list of stolen items presented to the insurer. It was evident that Mrs Z was "under-insured" (a situation which arises when the sum insured is less than the total value at risk). During the Unit's various conversations with Mrs Z, she reiterated that she was in continuous discussions with the agent, from whom the policy had been purchased, regarding the items that had to be insured under the same policy. At other instances, Mrs Z affirmed that she was never advised that the policy had to be continuously updated on renewal to reflect the actual value at risk.

The Unit requested the insurer to provide a specimen of the annual renewal notice in order to determine whether Mrs Z was, in one way or another, informed of her obligations to review/update the sum insured for contents in case of any changes/additions. It resulted that the specimen renewal notice issued by the company did not make any reference to updated values, but it did include details of the respective sums insured. However, such renewal notice was accompanied by a covering letter containing statements reminding the policyholder to adjust the sum insured and to make sure that all sums insured adequately reflect the value of the items being insured. In addition, changes made to the sum insured throughout the duration of the policy, in respect of the buildings section, clearly implied that Mrs Z was aware of her obligations to revise the sum insured.

In the case of under-insurance, average condition applies, and thus Mrs Z had to bear a proportion of the loss sustained. On the basis of its review, the Unit did not consider the amount offered by the insurer to Mrs Z as being justified and hence a recommendation was made to the insurer to improve the settlement offered and offer an additional ex-gratia payment for any inconvenience caused. Regrettably, this latter recommendation was rejected.

MISREPRESENTATION AT THE TIME OF CLAIM FOLLOWING A CAR ACCIDENT – COMPLAINT NOT UPHELD

Mr H had his motor insurance policy cancelled by the insurer on the basis that the information provided to his insurer at the time a claim was submitted had been false. When Mr H notified his insurer about the accident, he stated that his wife, whilst accompanied by their son, was driving Mr H's vehicle and hit a parked vehicle.

Initially, the parties had agreed not to lodge a claim with their insurer and resolve the matter amicably. Notwithstanding, Mr H contacted his insurer's office to obtain more information on how to proceed and what options were available. At that time, Mr H was informed that the third party had already contacted his insurer and notified them of the incident for which his son, whilst driving his (Mr H's) vehicle, was liable.

The insurer cancelled Mr H's policy because at the time of claim Mr H tried to change the version of events and affirmed that at the time of notification of the claim, he was not aware that his son, rather than his wife, was driving the vehicle. The matter was referred to the Unit as Mr H disagreed with the insurer cancelling his motor policy on the basis of providing false information at the time of claim.

As is customary, the Unit contacted the insurer for information and copies of documentation. The recorded conversations between the insurer and Mr H were also requested. From the documents provided, it resulted that only Mr and Mrs H were authorised to drive the vehicle. The insurer advised that Mr H contacted the claims department a few days after the occurrence and he had clearly stated that whilst his wife was driving the vehicle, with their son as a passenger, she was involved in a collision. However, it then came to light that the driver of the vehicle at the time of the accident had in fact been his son, rather than his wife.

When evaluating further the recorded conversations and other documents which had been exchanged between Mr H and the insurer it resulted that Mr H was fully aware of who the driver was at the time of the accident.

The policy was cancelled on the basis of the insured deliberately providing false information (misrepresentation) at the time of the claim. The Unit justified the insurer's decision for cancellation and the complaint was not upheld.

REJECTION OF CLAIM UNDER A TRAVEL INSURANCE POLICY – CLAIM NOT UPHELD

Mrs W travelled to Orlando on holiday and prior to returning to Malta she planned to stop in London for a couple of days. Mrs W was supposed to take a flight from Orlando to New York but her flight was cancelled due to bad weather conditions. Consequently she missed her interconnecting flight from New York to London. The airline gave her an alternative free flight departing two days after and hence she had to spend another two nights in Orlando. There was no immediate flight available from New York to London either, which meant that Mrs W had to spend an extra two days in a New York hotel. Unfortunately, due to these delays, Mrs W had to forgo her short stay in London which she had already paid for and in fact she arrived in London just in time for her flight to Malta.

Upon her return to Malta Mrs W submitted a claim under her open travel insurance policy which came bundled with her credit card. The insurer refused to pay her the additional expenses she incurred and for the London accommodation she had paid for but did not use. The insurer quoted from the policy which stated that the company was only liable to pay the additional cost of accommodation and travel expenses incurred from the final departure point to Malta if the booked means of transport failed to deliver her to such point of departure on time. In Mrs W's case, however, the missed flight was from New York to London and hence it was not the "final departure point" to Malta. Mrs W was not satisfied with the insurer's decision and referred her complaint to the Unit.

After inspecting the policy document, the Unit explained to Mrs W that under the 'cancellation and curtailment' section of the policy, she was not covered for cancellation due to extreme weather conditions. Coverage for cancellation of a booked trip due to extreme weather conditions was only covered by the policy if an insured purchased the "Trip Cancellation Extension", an optional extension that covers the insured for the cost of additional expenses incurred for travel and accommodation and other charges already paid but not used in the case that a booked trip is cancelled due to extreme weather conditions. Unfortunately, Mrs W did not check her travel policy before travelling (a common mistake done by many) and as a result she did not purchase such optional extension and thus her claim could not be honoured by the insurer. On this basis, the Unit could not uphold the complaint.

MISSED DEPARTURE DUE TO TRAVELLER FAINTING – COMPLAINT NOT UPHELD

Ms A and Mr B were booked to travel for their honeymoon but on their way to the ferry from Gozo to Malta, Ms A felt sick and consequently fainted. As a result, upon Ms A and Mr B reaching the airport, they could not board the aeroplane as the gates had already closed.

The couple still went ahead with their trip, deciding to take a flight to Gatwick airport in the UK to proceed with their original plans but having missed their first flight, all their subsequent bookings were cancelled. The couple then decided to re-book all the flights to maintain their itinerary.

The couple filed a claim under Ms A's open travel cover in combination with her premium card but their claim was rejected. Ms A and Mr B claimed that they were expecting at least a partial payment of the cost incurred as a result of rebooking all the flights and the extension of four days of their original itinerary.

The insurance broker responsible to evaluate the claim stated that the claim could not be entertained in view that the policy solely catered for missed departure on inbound trips returning to Malta, when in this case the missed flight was from Malta to Gatwick.

The Unit proceeded to liaise with the broker, the principal insurers and the bank in an attempt to establish whether Ms A was properly notified of the terms and conditions binding on the insurance policy.

The insurance broker maintained that the missed departure section of the relative policy provided cover for the additional transport costs incurred from the final departure to Malta if these means had unavoidably failed to deliver a traveller to his point of departure on time. The broker maintained that the case scenario was unfortunate since it was not the final point of departure to Malta and that it could not be attributable to the means of transport being unavailable.

In regard to the claim under another section within the policy – the Cancellation and Abandonment - the case scenario did not entail that Ms A and Mr B had to cancel their holiday. Neither was it attributable to a cancellation as a result of "accidental bodily injury, serious illness or quarantine". The unfortunate 'temporary' illness did not constitute a serious illness as indeed Ms A and Mr B still attempted to proceed with their holiday. The broker also maintained that Ms A did not corroborate her circumstances via a medical report or certificate. The broker also made the Unit aware that due scrutiny of the case was made by the principal insurers who reaffirmed the brokers' position.

The Unit also liaised with Ms A's bankers to check on the provision of the policy document. The bank supplied the Unit with a specimen letter sent to all premium cardholders on the importance that they refer to the travel insurance booklet prior to travelling. The Unit could again establish that the policy wording had constantly included a provision which stated that outbound missed departures are excluded under the policy. The Unit did not uphold the complaint since the incident could not qualify as a valid claim within the parameters of the policy as set.

BANKING

GENERAL OBSERVATIONS

Over the next two years, bank customers are likely to be inundated with additional layers of information aimed towards enhancing different aspects relating to their bank accounts.

In 2015, all deposit accounts will have to be accompanied with an information sheet relating to the scope and extent of cover of the depositor compensation scheme. The new directive is required to be transposed and implemented in mid-2015.

In 2016, with the coming into force of the Payment Accounts Directive, banks will be required to provide standardised documents aimed towards enhancing transparency and comparability of fee information: the Fee Information Document (FID) and the Statement of Fees (SOF). The FID must include a list of the most representative services that are linked to payment accounts and the cost of each of those services. Banks, as well as other payment services providers, must provide consumers with the fee information document before entering into a contract for a payment account. As to the SOF, consumers who have a payment account must receive statements of the fees they have paid for the services linked to their account as well as interest charged/earned on it.

SELECTION OF COMPLAINTS

ISSUE WITH CHARGES FOR BANK TRANSFER FROM THE UNITED STATES TO MALTA – COMPLAINT NOT UPHELD

In his complaint form, Mr R explained that he was planning on returning back to live in Malta after working for five years in the US. He therefore decided to transfer US dollars he had in a US bank to a US dollar account with a local bank. It so happened that during the transfer, the US dollars were at some point converted to Euro and then back to US dollars leading to hefty conversion losses in the meantime. Mr R felt that this was unfair since his was a transfer between two US dollar accounts and the loss, as well as charges, were unnecessary.

When Mr R contacted the Unit, it was suggested to Mr R that apart from a complaint against the local institution, he should also seek to complain against the US bank. The Unit could only offer limited assistance in that regard.

With respect to the complaint against the local bank, a meeting was setup to obtain more information as to how the transfer had been made. The bank confirmed that the payment originating from the bank in the US had been routed through a bank in London with whom the Maltese bank did not hold a US dollar clearing account.

As a result, the Maltese bank confirmed that the bank in London had no other option but to convert the amount into euro in order to proceed with the remittance of funds to the Maltese bank. The Maltese bank then acted upon the instructions received and converted the same funds bank into the original currency.

The US bank was denying liability for the losses sustained by the consumer as it insisted that it could not be expected to be aware which correspondent relationships the local bank (i.e. the ultimate beneficiary bank) held. The Payment Services Directive did not cater for such occurrences given that the payment originated from outside the EU. Nevertheless, the directive follows international practices which state that in the event of an incorrectly executed payment transaction, the first point of call for the payer would be the remitting bank. Other competent authorities consulted by the Unit, without disclosing the complainant's personal details, were of the same opinion.

The Unit was made aware that it is market practice for banks to consult a database which lays down the respective correspondent banks in regard to various currencies. On the presumption that the correspondent bank and the currency are identified, the remitting bank would then route the payment accordingly. There should be no conversion involved when a payment is requested in a particular currency for the credit of a same currency account, if remittance is routed through the correct correspondent/intermediary bank. In fact, had the database been consulted, it would have been clear to the US bank that a bank in Italy, rather than in London, had to be used as the correspondent bank.

The case against the local bank was not upheld by the Unit but Mr R was encouraged to continue with the complaint process against the US bank. Although the Unit could not get directly involved, it offered its support and technical assistance as required.

LOSS ON EXCHANGE DUE TO CURRENCY CONVERSION RESULTING FROM A BANK TRANSFER – COMPLAINT NOT UPHELD

Mr R visited a local bank and requested a new GBP account with the intention to transfer a substantial sum of money from his sterling account in the UK to this new account. After Mr R gave the details of this new account to the British bank and ordered a bank transfer, he decided however that it was more viable for him to exchange this amount of money into euro. Mr R instructed the British bank to transfer the converted euro amount to his local bank and the following day he asked his local bank to open a euro account instead. The British bank transferred this euro amount in accordance with Mr R's original instructions to credit the GBP account held at the local bank. Upon receiving the funds, the local bank exchanged the euro amount to GBP as the account was denominated in sterling. In consequence, Mr R suffered a loss of more than £4,000 on conversion. Mr R felt that that the bank should not have credited his GBP account if the amount received was in euro. After his complaint was turned down by the local bank, Mr R referred his complaint to the Unit.

The Unit requested copies of electronic messages which are usually exchanged between remitting and beneficiary banks when fund transfers are made. The funds were remitted to the local bank on the same day of Mr R's original instructions – hence prior to him having the opportunity to open the euro account. The local bank explained that bank details (such as IBAN and beneficiary details) were correct to the extent that Mr R's account was immediately credited without manual intervention. Hence the branch could not have known that Mr R's GBP account had been credited with the amount received when Mr R eventually visited the branch to open the euro account.

On this basis, the Unit was satisfied that the local bank had adhered to the instructions received from the British bank and since such a transaction was processed automatically by the local bank's system, without requiring any manual intervention, the local bank was not in a position to reverse the funds. It was Mr R's obligation to amend the SWIFT transfer instructions given to his British bank. The complaint was therefore not upheld.

CHARGES INCURRED DUE TO POSTPONEMENT OF PROMISE OF SALE AGREEMENT ON PROPERTY BECAUSE OF FURTHER DOCUMENTATION REQUESTED BY BANK – COMPLAINT NOT UPHELD

Mr X signed a preliminary agreement to buy a property from a vendor. The duration of the agreement was for three months. He later applied for a home loan from his bank to cover the cost of purchase and necessary finishes.

When the agreement was nearing its term, Mr X called his bank to check that everything was in order for him to sign the final contract. The bank seems to have informed Mr X that although his file was still under review, everything appeared to be in order for the parties to sign the agreement. Following an inspection by the bank's architect made a few days before the expiration of the preliminary agreement, the bank requested Mr X to hand in a copy of the compliance certificate issued by the Malta Environment and Planning Authority to ensure that the property was built and finished according to national regulations. Mr X argued that it was impossible for him to get this document on time but the bank explained that without such document it would not be able to grant the loan.

After several discussions with the bank, Mr X had no other option but to request the vendor to renew the preliminary agreement and postpone the signing of the contract for a future date. The vendor however refused to renew the agreement unless Mr X paid him €3,000, being commitment fees charged to him by the turnkey contractor carrying out the finishes. Mr X paid this amount to the vendor as he was afraid to lose the property but then demanded this extra payment from the bank claiming that it was through the bank's negligence that this charge had been incurred. The bank turned down Mr X's request and the complaint was referred to the Unit.

As part of its review, the Unit requested a copy of the preliminary agreement and the sanction letter. The Unit noted that the preliminary agreement gave Mr X the right to oblige the vendor to renew the agreement without any form of compensation if the works listed in this agreement were not completed by the vendor on time. Notwithstanding, Mr X decided, apparently without obtaining independent legal advice, to pay the amount requested by the vendor. The bank confirmed that Mr X did not provide any receipts in confirmation of the vendor's claim of commitment fees incurred by him with third parties.

Furthermore, one of the conditions listed in the bank's sanction letter clearly stated that for the home loan to be issued, the bank had to be satisfied that the property being hypothecated is built according to the regulatory requirements. The Unit concluded that the bank therefore had the right to refuse to make the first drawdown on the loan amount if the property was not finished in a way acceptable to the bank. On this basis the Unit was unable to conclude that the bank had acted negligently or unfairly in Mr X's regard and the complaint was not upheld.

TRANSFER OF MONIES IN THE WRONG CURRENCY – COMPLAINT NOT UPHELD

Mrs A, a resident in the UK, decided to sell property she had inherited in Malta. Mrs A earned €74,000 from the sale and she instructed her notary, through a power of attorney, to transfer the funds to her bank in the UK.

Mrs A claimed that she liaised with her bankers in the UK to open an account in euro to facilitate the transfer of funds. Mrs A claimed that when the notary, on her behalf, liaised with the local bank in this respect, the latter converted the sum under consideration from euro to sterling, in error, and then converted the sterling back into euro. As a result, Mrs A received €71,500 in her UK account. The notary

complained with the local bank which agreed to refund circa 50% of the difference (as a gesture of goodwill), being the commission it realised upon converting the euro into sterling. The bank however refused to compensate Mrs A for the exchange loss charged by the UK bank. Mrs A was still short of €1,250 and claimed that she had provided all the correct details for the transfer to proceed.

The local bank confirmed that, initially, the instructions were for euro to be transfered to an account held with a UK bank. Despite provision of an IBAN and a SWIFT code by Mrs A, it transpired that the SWIFT code was not precise. Therefore officials at the local bank had to first establish the correct SWIFT code. Further, in view that the payment in euro was being made to a bank in the UK, the local bank was unable to determine the currency of the recipient's account given that Mrs A had not clearly indicated this fact. The notary was guided by the local bank to establish the currency base of the account.

The notary tried to reach her client to confirm the denomination of the account but was unsuccessful. Although the notary was inclined to stop the transaction a number of times, he instructed the local bank to remit the equivalent of €74,000 in pounds sterling, with £57,600 being the actual amount remitted to the UK. The notary claimed that the official at the local bank had assured him that Mrs A's account in the UK was denominated in pounds sterling. The local bank denied that this was the case.

The Unit concluded that from the information supplied to the local bank by the notary regarding Mrs A's account, bank officials in Malta could not be in a position to determine the currency of the account. Other verifications that the Unit conducted elicited that one could not establish the currency of an account from the IBAN.

Further the Unit deemed that since the instructions signed by the notary as given to the bank in Malta were in favour of remittances in sterling, it did not appear that the local bank had executed the payment in contravention to such instructions and hence the complaint was not upheld.

FAILURE TO HONOUR CREDIT CARD TRANSACTION ON BOARD A CRUISE SHIP – COMPLAINT UPHELD

Mrs B filed a complaint with the Unit claiming that her bank failed to honour transactions she attempted to make on board a cruise ship. She maintained that all her accounts were in order and in fact she had managed to pay with her credit card for other purchases made in a number of stops during excursions. The bank attributed the fault to the cruise liner's credit card system but the cruise liner rebutted this claim.

Mrs B stated that, following a complaint she lodged with the bank, she was offered €100 in compensation. Mrs B elected to accept this sum on a without prejudice basis claiming that the sum tendered was not comparable to the extraordinary inconvenience she had to endure for the whole duration of the cruise. Mrs B deemed a compensation sum of €600 to be acceptable and reasonable.
It later came to light that her card could not be processed as a result of a technical issue at the bank's end. Indeed, in its replies to the Unit, the bank reiterated that as a result of such technical issue, card transactions on board could not be processed but other transactions at different ports of call (including ATM withdrawals) were not affected.

The bank deemed that €100 was sufficient enough for the inconvenience that had been experienced.
Seeking copies of credit card statements, the Unit could establish that seven unsuccessful attempts had been registered on the card in question. An additional card in possession of Mrs B's husband suffered the same fate.

The Unit deemed it opportune to recommend to the bank to reconsider its original amount of compensation in view that, on the basis of information available, the contested card was amply funded and the declined attempts were certainly not the cardholder's fault. In view of this, the bank conceded to pay a further €200 but Mrs B persisted in her claim being eligible for the full €600 originally claimed.Further communications on the part of Mrs B with the Unit confirmed that the bank proceeded to pay a further €300 bringing the sum of compensation in line with Mrs A's original claim for compensation.

ACCOUNT MISTAKENLY OPENED IN ANOTHER PERSON'S NAME – COMPLAINT PARTIALLY UPHELD

Mrs V approached the Unit claiming that her late mother, Mrs AB, had a savings account with a local bank with a balance of approximately €1,500 as at 31 December 2013. Mrs AB passed away earlier that year and the bank seems to have closed off this account on the premise that this account was mistakenly linked to the name of Mrs V's late mother while in actual fact it belonged to another Mrs AB who happened to have similar personal details to those of Mrs V's late mother.

Mrs V however insisted that her mother was receiving account statements on a regular basis and this was enough proof that the account effectively belonged to her late mother and hence the balance should have been transferred to her name given that she was the sole heir.

Amongst the various documents requested, the Unit scrutinised the 'opening of account form' which revealed that the savings account was mistakenly opened using Mrs V's late mother ID card number but the form itself was signed by a different Mrs AB. The signature perfectly matched with that showing on the other Mrs AB's ID card and the specimen signature held by the bank.

The initial deposit receipt also illustrated that the initial deposit into the said savings account was made through a bank transfer effected by a relative of the other Mrs AB. This was the only transaction ever made into the account.

It appeared that the bank noticed this mistake when the other Mrs AB, the true owner of the account, enquired at one of its branches why she was not been receiving any account statements since opening the account.

All the documentation available clearly showed that the account belonged to the other Mrs AB. The mistake made by the bank was genuine and a case of misfortune because Mrs V's late mother and the other Mrs AB, apart from having the exact same name and surname, also lived in the same town and street.

Although the Unit could not recommend to the bank to return the closing balance in the account to Mrs V, it acknowledged that the bank's mistake had caused her distress and inconvenience and on this basis the Unit recommended the bank to pay Mrs V the sum of €100 as a gesture of goodwill. The bank and Mrs V immediately accepted the Unit's recommendation and the case was closed.

APPENDICES

APPENDIX I

FORMAL COMPLAINTS BY CLASSIFICATION

	A	B	C	D	D(i)	D(ii)	E	F	G	TOTAL
Banking										
Charges			1				1			2
Cheque encashment							2			2
Bank Mistake		1	1				4			6
Refusal to give information							1	1		2
Unauthorised card transaction		1					3			4
Determination of interest rate							1			1
Loans and Advances							1	1		2
Bank Transfers							3			3
Provided info or General query									2	2
Investments										
Bad advice allegation		1	1				1			3
Calculation of interest/yield/price							1			1
Capital guaranteed-related										0
Charges		1					1			2
Mis-selling allegation			12	5	5		5	1	2	30
Suitability of product							1			1
Other		1	1				1			3
Execution of order on behalf of clients							2			2
Portfolio Management							2			2
Information provided to the client (e.g. poor disclosure)			1				1			2
Unauthorised business being offered or carried out							1			1
Insurance										
Health-related							1			1
Home related							1	1	1	3
Life-related			1	1			2	1		5
Travel-related							3	1	2	6
Motor - Own policy - Claims				1	1		6			8
Motor - Own policy - Liability				1			2			3
Motor - Own policy - Loss of use							1			1
Motor - Third-party - Liability	1					1				2
Motor - Third-party - Loss of use			1							1
Refusal to give information			1							1
Motor - Third-party - Delay in claim/ payment		1	1					1		3
Local company passporting in EU							1			1
Grand Total	1	6	21	8	6	1	49	7	7	106

Classification Code	Decription
(A)	Outside MFSA jurisdiction (in these instances and following any investigation undertaken, the consumer is requested to seek redress with the appropriate competent authority or redress system as applicable)
(B)	Consumer withdrew complaint
(C)	Referred to entity or consumer – no feedback
(D)	Entity has not treated the consumer complaint fairly – complaint upheld by the Consumer Complaints Unit. Entity accepts recommendation.
(D)(i)	Entity has not treated the consumer complaint fairly – complaint upheld by the Consumer Complaints Unit. Entity did not accept recommendation.
(D)(ii)	Entity has not treated the consumer complaint fairly – complaint upheld by the Consumer Complaints Unit. Entity partially accepts recommendation and offers a goodwill payment.
(E)	Entity has treated the consumer complaint fairly – complaint not upheld by the Consumer Complaints Unit.
(F)	Entity has generally treated the consumer complaint fairly but it still agrees to a goodwill payment or improved settlement.
(G)	General query – provided information/clarification.

APPENDIX II

TYPE OF QUERIES RECEIVED

Category	Total
Banking - Any financial institution	2
Banking - Bank commercial decision	16
Banking - Cards	36
Banking - Charges	54
Banking - Cheque encashment	11
Banking - Delays	3
Banking - Depositor compensation scheme	108
Banking - Other	184
Banking - Refusal to give information	6
Banking - Transfers	26
Banking - Use of exchange rate	2
Insurance - Boat insurance	5
Insurance - Cannot find insurance	5
Insurance - Choice of garage/repairer	1
Insurance - Health related	7
Insurance - Home insurance related	32
Insurance - Increase in premium	3
Insurance - Life related	89
Insurance - Non-claims discount	8
Insurance - Other	65
Insurance - Other 'Commercial' policies	1
Insurance - Own policy - claims	42
Insurance - Own policy - liability	13
Insurance - Own policy - loss of use	26
Insurance - Own policy - Market value	39
Insurance - Own policy - Use of spare parts	27
Insurance - Poor service (delays etc.)	27
Insurance - Refusal to give information	1
Insurance - Third party - failure to open claim	20
Insurance - Third party - liability	45
Insurance - Third party - loss of use	45
Insurance - Third party - market value	47
Insurance - Third party - use of spare parts	20
Insurance - Travel related	95
Investments - Bad advice allegation	7
Investments - Calculation of interest/yield	7
Investments - Capital guaranteed-related	2
Investments - Charges	21
Investments - Complex product	6
Investments - Delays (payments and other docs)	5

Investments - Intermediary-related	7
Investments - Mis-selling allegation	16
Investments - Other	1206
Investments - Refusal to give information	5
Investments - Suitability of product	30
Investments - Use of Exchange Rate	1
Investments - Use of fact-find	6
Miscellaneous - Any other type of scam	18
Miscellaneous - Listed company on the Borza	2
Miscellaneous - Lottery Scam	6
Miscellaneous - Other	60
Total	**2516**

APPENDIX III

ABBREVIATIONS

ADR	Alternative Dispute Resolution
CCPFI	Committee on Consumer Protection and Financial Innovation
EBA	European Banking Authority
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
ESMA	European Securities and Markets Authority
EU	European Union
MCCAA	Malta Competition and Consumer Affairs Authority
MFSA	Malta Financial Services Authority
MIFID	Markets in Financial Investments Directive
ODR	Online Dispute Resolution
PRIPS	Packaged retail and insurance-based investment products
PSD	Payment Services Directive
SCConFin	Standing Committee on Consumer Protection and Financial Innovation
IMD2	Proposal for a revision of the Insurance Mediation Directive

EU AND MALTESE LEGISLATION

Alternative Dispute Resolution Directive (Directive 2013/11/EU)

Banking Act (Cap. 371)

Commission Recommendation on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (98/257/EC)

Commission Recommendation on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries - C(2010)3021 final

Consumer Affairs Act (Cap. 378)

Directive on payment services in the internal market (2007/64/EC)

Financial Institutions Act (Cap. 376)

Insurance Business Act (Cap. 403)

Investment Services Act (Cap. 370)

Malta Arbitration Act (Cap. 387)

Malta Financial Services Authority Act (Cap. 330)

Mortgage Credit Directive (Directive 2014/17/EU)

ODR Regulation (Regulation (EU) 524/2013)

Payment Accounts Directive (Directive 2014/92/EU)

Regulation of the European Parliament and of the Council establishing a European Supervisory Authority (European Banking Authority) – (1093/2010)

Regulation of the European Parliament and of the Council establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) – (1094/2010)

Regulation of the European Parliament and of the Council establishing a European Supervisory Authority (European Securities and Markets Authority) – (1095/2010)

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