CONSUMER AFFAIRS UNIT

ANNUAL REPORT 2012

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

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CHAIRMAN'S STATEMENT

The year under review marks the tenth anniversary since the Consumer Complaints Manager had been appointed by the Authority to review complaints from private consumers against financial firms. Over the years, the Complaints Manager has reviewed various issues and practices which were detrimental to consumers of financial products and services.

The financial sector has always thrived when the products and services brought to the market met the needs and expectations of the consumer. However, various cases of alleged misconduct have arisen as a result of dubious selling practices and low consumer awareness.

The review of cases relating to alleged mis-selling of certain types of financial products appear to have arisen from inherent factors that are often present in the mistaken choices people make when reviewing a financial product. Consumers tend to focus and make their decisions by comparing a possible outcome with one or more situations they feel they are familiar with. The choices people make are sometimes influenced by similar situations and past mistakes, but unconscious factors – such as biases, preferences and personal loyalties – are often at play during the decision-making process and may significantly lead to poor outcomes.

Unlike many other choices, a single investment decision may have long-lasting and costly implications to the consumer. Some consumers do not have the luxury of learning from multiple financial transactions. For instance, some consumers may only be required to take out a home loan or life policy once in their entire life. For others, their first entry in the investment world might occur after long years of savings. Their natural inability to make decisions will lead them to seek assistance from firms which can guide them through the process. They expect these firms to select a product which best suit their needs, after assessing their requirements, risk profile and expectations.

Unconscious biases and other personal factors have led consumers to make poor financial decisions and there may be situations where losses cannot be recouped. While consumers can often make poor decisions because of ill-informed risk assessments, some firms may have exploited low consumer awareness of risks associated with high yield products or provided inaccurate or misleading information about risk/return assessment to these consumers.

Understanding how and why consumers make certain choices can be difficult and complex to assess. This is why it is important for the industry to always remain focused on consumers' legitimate needs and expectations. Consumers expect the industry to create products and services which bring real value to them, without necessarily shifting on to them undue risk. The industry is therefore expected to compete by creating products which do not come bundled with unnecessary add-ons and unreasonably high exit charges and which are accessible without restricting the ability of the consumer to switch to another investment. Consumers also expect the industry to shed their inexplicable urge to complicate financial products through misleading and complicated documentation.

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In the coming months, the Authority will carry out detailed analysis of a number of issues which have been brought to light by the various complaints being reviewed by the Consumer Complaints Manager and the staff of the Unit. The Authority needs to understand how consumers behave and will strive to address weaknesses in its regulatory framework, without stifling product innovation and weakening quality services levels. The Authority is mindful that consumer confidence is key towards the development of a healthy financial sector. It is committed to address those risks which are detrimental to such confidence.

Finally, I wish to thank the staff within the Consumer Affairs Unit for their hard work and their fairness and impartiality during reviews of complaints.

Prof Joe V Bannister
Chairman

"When a matter arises during an investigation 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 is taken."

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RESPONSIBILITIES OF THE CONSUMER AFFAIRS UNIT

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.

The Consumer Complaints Manager is empowered to investigate complaints from private individuals relating to any financial services transaction in a fair and impartial manner. The Director of the Consumer Affairs Unit, who is also the Consumer Complaints Manager, heads the Unit which is responsible for investigating complaints and answering queries from the public on financial services matters and financial products.

The Unit has two core complementary functions – an "investigative" and an "educational" role. In this latter role, the Unit provides consumer education and information about financial services. The Unit also handles different queries from the public on various aspects relating to financial services.

The Unit also assists the Authority's Supervisory Units identify any new issues that require prompt attention as they may affect consumer confidence in financial services.

In addition, the Unit Director 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). He is also Secretary of the Protection and Compensation Fund (established under the Insurance Business Act).

THE LEGAL FRAMEWORK

In terms of article 4 of the MFSA 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 functions 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 empowers the Consumer Complaints Manager to communicate with a consumer, whose complaint is being investigated, information concerning any matter which may have come to his cognisance in the course or as a result of an investigation into a complaint. However, the Manager is unable to give advice on any particular matter or to act on the complainant's behalf in any dispute with a licensed person, except where this is provided for by law.

The Manager can also encourage the parties to a dispute to reach a settlement whenever circumstances so warrant. 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.

In addition to complaints relating to payment services activities from private consumers, the Complaints Manager's mandate has also been extended to include the handling of complaints from interested parties, as defined in the Payment Services Directive as well as complaints from consumer associations.

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The Complaints Manager is also required to inform the complainant of his/her right to seek independent professional advice, especially if he/she 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 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 an investigation 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 is taken.

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 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 analysts within the Consumer Affairs Unit follow these principles when reviewing complaints:

1. INDEPENDENCE

The Unit considers each case impartially, on its own merits, after due discussion 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 clientele.

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 Authority's 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.

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3. ADVERSORIAL

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/her 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 on which basis the Unit may have reached 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 remains 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. Fees payable to advisers are the complainant's responsibility.

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COMPLAINTS' HANDLING

AN OVERVIEW

A set of procedures are in force to ensure consistent methodology in the way 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 financial services licence holders of the MFSA when handling consumer complaints.

An "Information note for consumers" is also available (in English and Maltese).

The 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 2012, the Authority felt it opportune to ease restrictions by which time complainants may lodge a complaint with the Complaints Manager. The procedures have been amended to ensure that financial entities would not be able to refuse to cooperate with the Complaints Manager by invoking potential prescription periods which may have elapsed by the time the case has been submitted for review. As the Complaints Manager is also bound to refer such cases to the Authority's Supervisory Council for its consideration, apparent time-barred complaints could nonetheless lead to regulatory issues which may need to be addressed.

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 during reviews 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 if the financial entity has issued a final letter to the complainant outlining its review or 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/her 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 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 s/he may pursue legal action if s/he remains dissatisfied with the outcome of the Unit's review into his/her 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.

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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/her complaint resolved by verbally communicating his/her dissent;
- In most cases, a client can only explain matters properly if s/he makes contentions in writing;
- Should never use abusive or arrogant language when submitting a complaint in writing;
- Should express his/her views to the financial entity first – and not to the MFSA. S/He may submit a copy to the MFSA, however, this is not a requirement. S/He should provide all relevant details to the financial entity and express her/himself to the best of his/her 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 s/he should address his/her complaint prior to lodging a complaint to avoid unnecessary delays;
- May lodge a complaint with MFSA if s/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 seek assistance from a professional adviser to submit a complaint;
- Will be provided with a final letter outlining the Unit's review process into his/her case. S/He will be given a period of time to respond to the Unit's conclusions. If s/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 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;
- May also lodge a complaint with the Office of the Ombudsman if s/he feels aggrieved of the manner his/her complaint had been handled by the Unit.

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REPORTING OF COMPLAINTS AND ENQUIRIES

In 2010, the European Commission published a recommendation on the use of a harmonised methodology for implementation by complaint handling bodies in the EU for classifying and reporting consumer complaints and enquiries.

Information provided by these bodies which voluntarily accept to adopt this recommendation and submit statistical data to the Commission according to prescribed classification, is used (by the European Commission) to improve monitoring of consumer markets and national consumer policies. Information that is submitted to the Commission is subject to confidentiality and excludes any personal information about the complainant and the entity against whom the complaint has been made.

The Authority adopted this recommendation in 2011 and a new web-based case management system was designed and implemented in-house by the Authority's Information Technology and Systems Development Unit. The system, which went live at the start of the reporting year, provides the Unit with the necessary IT structure to register and update enquiries and formal complaints. The system is in itself a document management system whereby all documentation pertaining to each case is archived electronically. The new system includes a range of fields which assists the Unit when drawing up various qualitative and quantitative reports such as those required by EIOPA, ESMA and the EBA.

The Unit continues to use a legacy case management system, which has been used since 2005, for any outstanding complaints registered until end 2011.

COMPLAINTS' REVIEW

During the year, the Unit received 708 formal complaints and 212 enquiries.

A total of 884 cases were reviewed and concluded, which include a number of cases carried forward from previous years. A number of cases, totalling 209, remain pending.

Analysis of complaints against licence holders and queries handled in 2011 and 2012

	FORMAL COMPLAINTS									
	Cases Recieved		Cases Closed*		Pending Cases		Enquiries		Queries	
Complaints related to	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011
Banking	22	28	25	26	8	10	63	48	516	466
Insurance	48	63	58	74	14	17	64	105	570	471
Investments	636	277	798	30	187	344	68	116	518	493
Other	2	6	3	10	0	1	17	51	111	90
Total:	708	374	884	140	209	372	212	320	1715	1520

*Includes cases carried forward from previous years.

Complaints lodged directly by consumers or through their relatives or friends amounted to 618, compared to 28 submitted through a third party (such as persons from the legal profession) and 64 received through a licence holder.

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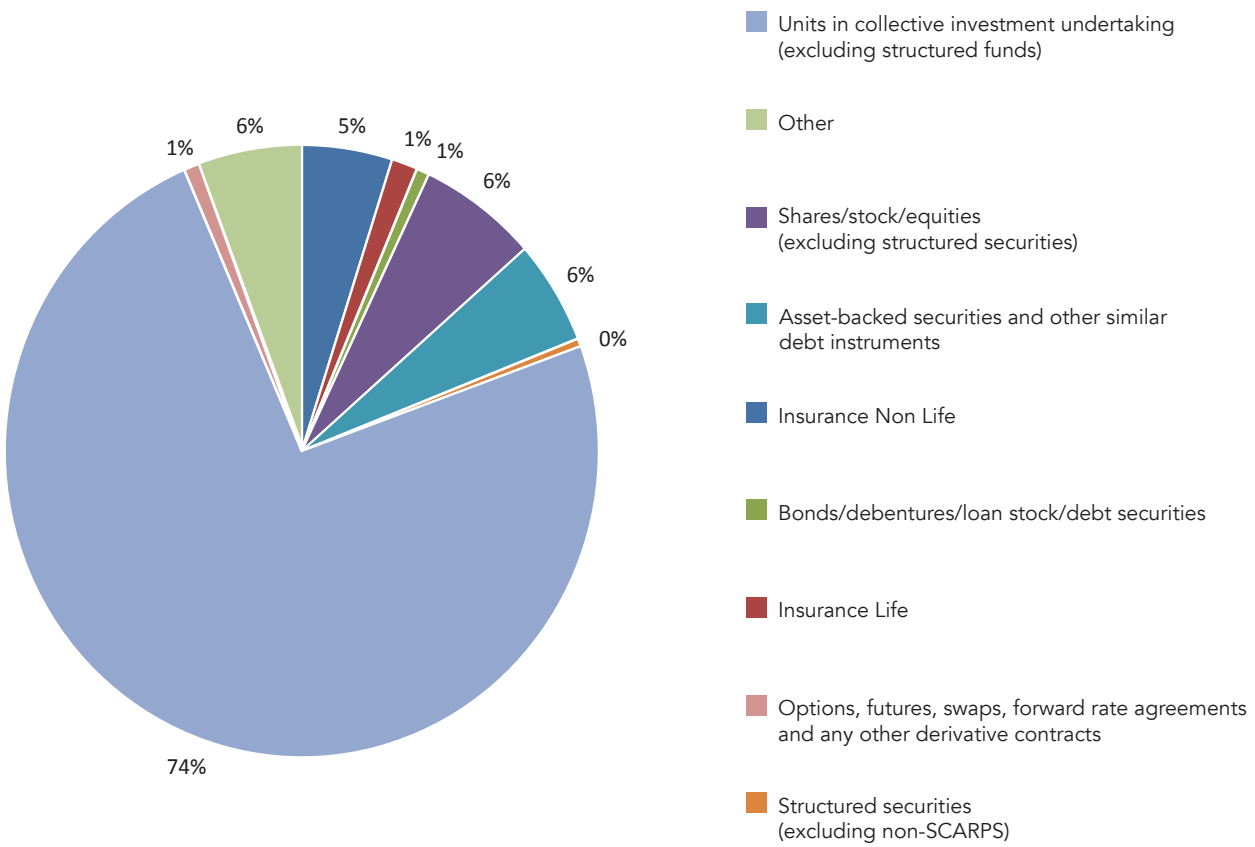
During 2012, the Unit processed 19 cross-border complaints, 10 of which were from policyholders who acquired an insurance policy from a company authorised in Malta and which passported its products in an EU member state. The majority of these complaints were referred to the Complaints Manager by the financial ombudsman of the policyholders' country of residence.

Complaints received by product-type

Of the 708 complaints received in 2012, 526 (74 per cent) complaints were specifically related to the manner a property fund had been sold to them. A further 80 complaints were received by investors complaining as to the manner a structured investment product or/and asset-backed security had been sold to them. The figure below shows the number of complaints received by type of product.



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Enquiries

The Complaints Manager will only consider a complaint if the financial entity, against which a complaint has been made, has been given sufficient time to review the customer's contentions. Usually, a financial entity should be in a position 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. It is worth noting that over 200 cases have been registered by the Unit as "enquiries". In the main, these are cases which are awaiting a formal outcome by the financial entity and which the Complaints Manager will investigate if the conclusions of the financial entity are not accepted by the consumer. In a number of cases, the Complaints Manager had not been required to intervene.

Formal cases closed in 2012 by classification

When review of a formal complaint is exhausted and a final letter to the complaint is issued by the Unit, the respective case is closed and given a classification. The table below gives an overview of the manner the Unit has classified the 884 complaints in 2012. A more detailed analysis is available in Appendix I.

(A)	10	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)	5	Consumer withdrew complaint
(C)	8	Referred to entity or consumer – no feedback
(D)	39	Entity has not treated the consumer complaint fairly – complaint upheld by Consumer Affairs Unit. Entity accepts recommendation.
(D)(i)	17	Entity has not treated the consumer complaint fairly – complaint upheld by Consumer Affairs Unit. Entity did not accept recommendation.
(D)(ii)	12	Entity has not treated the consumer complaint fairly – complaint upheld by Consumer Affairs Unit. Entity partially accepts recommendation and offers a goodwill payment.
(E)	435	Entity has treated the consumer complaint fairly – complaint not upheld by Consumer Affairs Unit.
(F)	347	Entity has generally treated the consumer complaint fairly but it still agrees to a goodwill payment or improved settlement.
(G)	11	General query – provided information/clarification.

Oral queries

The Unit also received over 1700 phone calls from consumers enquiring on various subjects, an increase of over 10 per cent over the amount of phone calls registered in the previous year (please refer to Annex II for a detailed breakdown of the type of queries received). It is interesting to note that, similarly to 2011, just over 320 calls were received in regards to general investment queries and just over 300 calls were received in regard to queries on the depositor compensation scheme.

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INTERNATIONAL PARTICIPATION

FIN-NET

financial dispute resolution network

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).

During the last quarter of 2012, an agreement between the European Parliament and the European Council was reached on two legislative proposals put forward by the European Commission in 2011 on ADR and Online Dispute Resolution (ODR). The rules on ADR 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. According to the ODR Regulation, an EU-wide online platform will be set up for handling consumer disputes that arise from online transactions. The platform will link all the national alternative dispute resolution entities and operate in all official EU languages. The new legal framework – which is expected to be formally approved by the summer 2013 – will need to be adopted in all Member States within two years from publication in the Official Journal of the EU.

ADR for financial services across the EU will be given a revamped impetus within the EU as up to now, the setting up of an ADR mechanism has been essentially voluntary. Some EU legislative acts in the area of financial services contain provisions encouraging the creation of and provide information about ADR schemes in certain fields of financial services. Only three Directives and a Regulation relating to financial services specifically required the setting up of an ADR scheme. For this reason, consumers could only exercise their right to dispute resolution in particular fields of financial services. The eventual directive on ADR will ensure that all financial services would be covered by an out-of-court redress body in all Member States.

In Malta, a number of companies (mainly providing insurance products) are branching out in a number of EU Member States and providing policies of insurance under the EU's freedom of services or establishment. Although complaints relating to the way the policy is sold would fall under the competence of the ADR scheme in the Member State where the policy has been offered, complaints relating to the interpretation of the terms and conditions of the policy or the way a claim has been handled would, for all intents and purposes, fall under the competence of the Consumer Complaints Manager.

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It is only natural that policyholders holding policies offered by companies passporting from Malta would refer their complaint to the ADR which they would know best – that is the ADR of the country of residence. That scheme would then channel any documentation (such as the complaint letter or form) to the Complaints Manager who would have the competence to review the complaint.

EU COMMITTEES ON CONSUMER PROTECTION AND FINANCIAL INNOVATION

European Insurance and Occupational Pensions Authority (EIOPA)

EIOPA was established in consequence of the reforms to the structure of supervision of the financial sector in the European Union. The Regulation which establishes EIOPA requires the Authority to take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market. It also requires EIOPA to establish, as an integral part of its structures, a committee on financial innovation, which brings together all relevant competent national supervisory authorities with a view to achieving a co-ordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing 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.

In 2011 the CCPFI, as part of its mandate, started work to collect, analyse and report on the various consumer trends identified in the insurance and occupational pensions markets. During the year under review, the Committee endeavoured to refine the methodology for collecting the data and requested Member States to analyse their respective markets and analyse the top three trends. Initial collation of data is planned for March 2013. In the year previous to the one under review, the Committee had also published a report setting out Best Practices for Complaints-Handling by Insurance Undertakings and a stock taking exercise to analyse whether Member States are complying with these Guidelines has now also been carried out. Most Member States are or will be compliant with the Guidelines. An edited and tailor-made version of these Guidelines has been extended to cover also insurance intermediaries. An impact assessment has been carried out on the costs and benefits of these Guidelines for Insurance Intermediaries and Member States generally agreed that these Guidelines should be adopted.

In the first quarter of the year under review, the Committee carried out a mapping exercise in relation to industry training standards with a view to reporting on good supervisory practices regarding knowledge and ability requirements for distributors of insurance products. Finally, at the end of the year the Committee organised the second 'Consumer Strategy Day' with the aim to brief professional stakeholders and consumer protection experts about the work that EIOPA has been carrying out and to give them the opportunity to express their own views on various consumer issues.

European Banking Authority (EBA)

The EBA was established by Regulation (EC) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010. The EBA has officially come into being as of 1 January 2011 and has taken over all existing and on-going tasks and responsibilities from the Committee of European Banking Supervisors.

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The EBA acts as a hub and spoke network of EU and national bodies safeguarding public values such as the stability of the financial system, the transparency of markets and financial products and the protection of depositors and investors. The EBA has some quite broad competences, including preventing regulatory arbitrage, guaranteeing a level playing field, strengthening international supervisory coordination, promoting supervisory convergence and providing advice to the EU institutions in the areas of banking, payments and e-money regulation as well as on issues related to corporate governance, auditing and financial reporting.

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.

During the year under review SCConFin acknowledged that its consumer protection work will be focused on developing guidelines on responsible mortgage lending, and on arrears handling and forbearance in the mortgage market, and regulatory technical standards on professional indemnity insurance.

In the area of innovative products, the Committee endorsed work in the area of analysis and addressing concerns related to banks' activities in structured products and the retailisation thereof as well as those related to Contracts for Differences. It also promoted on-going research on innovative products or innovative use of existing products with the potential to harm the European banking system, credit institutions and/or investors due to insufficient risk identification and/or insufficient risk mitigation.

The EBA held its first day on Consumer Protection in October 2012 in London gathering some 135 representatives of the banking industry, national supervisory authorities, consumer organisations and academia. The conference provided an opportunity for a stimulating forum to present issues related to consumer protection and financial innovation at the European level and to foster discussion on the evolving challenges being faced by the banking sector. A delegate from the Consumer Affairs Unit, who is a member of SCCONFIN, attended this meeting which presented the audience with an opportunity to debate issues revolving around consumer indebtedness, retailisation of complex financial products and consumer trends in the EU retail banking.

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.

ESMA's investor corner inherent in 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 effective complaining, information about compensation schemes, and national contacts that may be able to assist retail investors.

As a national contact, during the year under review, the Unit's web portal uploaded content as formulated by ESMA (such as the "Guide to Investing" published in October 2012).

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CONSUMER EDUCATION

MYMONEYBOX – THE CONSUMER EDUCATION PORTAL

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

Freephone: 800 74924

"MyMoneyBox" is the Authority's consumer portal and possibly the only website in Malta which provides impartial information to consumers about an extensive range of financial products and services.

Information on the portal is divided in thematic pages under the three broad categories of banking, investment services and insurance. In addition, the portal contains additional sections relevant to specific life cycles, four calculators, warnings or scams and a comparative database.

The portal, made up of over 150 pages, undergoes constant changes and additions throughout the year. Plans are underway to consolidate certain sections and restructure some sections to facilitate accessibility. A mobile and tablet app are also planned to be launched in 2014.

For the third year running, a monthly electronic newsletter to all subscribers of the portal has been published.

In line with the Unit's ethos to reach as wide an audience as possible, an interactive page has also been created on Facebook to promote and disseminate MyMoneyBox (facebook.com/mymoneybox).

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. Plans are underway for complainants who lodge a complaint online to be able to follow action taken by the official tasked with reviewing the complaint.

For another consecutive year, the most accessed section of the portal is the on-line database of tariffs and charges relating to a number of financial products and services offered in Malta. In 2012, the Unit widened the scope of the comparative database to include comparative features of motor insurance policies offered in Malta.

The database excludes details of the premium paid by policyholders, or in the manner in which premium is calculated. The aim of the project is primarily that of facilitating comparison of all motor insurance policies available in Malta. To do so, insurance companies were requested to respond to a standard and exhaustive questionnaire on all features of the insurance policies they offer. The replies submitted by the insurance companies were analysed and fed into the online database which is searchable by insurer or type of cover.

The comparative databases are in line with the Authority's remit 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 online databases are updated as and when the need arises. Plans are underway to prepare and publish a database of travel insurance policies.

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RADIO AND TELEVISION

The importance of TV and radio as means to educate and inform consumers in Malta cannot be underestimated. The Authority has used these media since 1999 in conjunction with the launch in Malta of a first-ever guide for financial services consumers on investments.

Since then, the MFSA has maintained a presence on key programmes to disseminate information about the rights of the consumer when acquiring a financial product or service, and to explain the mechanics of key financial products.

From October to June, Unit staff participated in four television programmes and two radio programmes discussing a wide range of financial subjects and issues relevant to the rights of consumers when purchasing financial products. During these programmes, viewers/listeners had the opportunity to ask questions on the topic being discussed. In addition, the Unit is also producing its own radio programme on a private radio station.

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REVIEW OF COMPLAINTS AND QUERIES

Statistically, the number of complaints and phone-calls received in the reporting year has been, by far, the greatest in terms of volume since the setting up of the office of the Consumer Complaints Manager ten years ago. However, 2012 has been an important year not only because of the varied nature of cases the Unit had been asked to review but also on account of the multi-faceted issues which have been brought to light in regard to the non-binding nature of recommendations which can be issued by the Complaints Manager. Indeed, the limited powers of the Complaints Manager have generated debate as to whether the Authority should strengthen or restructure the framework of resolution for financial services complaints.

Even if statistically the number of complaints relating to investment services has been substantially higher than the number of complaints received in regard to insurance and banking, one should not lose sight of the fact that over these past years the Complaints Manager used the annual report to highlight various aspects affecting all consumers of financial services. While one should not attempt to diminish the importance of the many cases alleging investment mis-selling – of which only a small fraction have been exposed publicly in the media - there are certainly many other issues of no less importance which also require equal attention.

This annual report enables the Unit to share aspects of its workload with all stakeholders and provides an opportunity to discuss and bring to the fore issues of concern which arise from the varied cases in which it is asked to investigate. As in previous years, this annual report will feature some important cases reviewed by the Unit. Names and particular situations have been changed to preserve confidentiality.

INVESTMENT SERVICES

Investment-related complaints constituted a substantial part of complaints received and processed during 2012. In the main, these largely concerned allegations made by investors with regard to the mis-selling by a credit institution of a property fund targeted to experienced investors and to a much lesser extent mis-selling of products by other financial intermediaries.

Between 2011 and 2012, the Unit received over 700 complaints from investors who alleged that the property fund they invested in was not suitable for their circumstances as they should not have been considered as "experienced investors".

In terms of the fund's supplementary prospectus, an investor who satisfied one of three criteria would have been eligible to invest in the fund. Many investors claimed that, during the process of advice, they were not informed about these criteria.

In June 2012, the Authority imposed a fine on the credit institution for breaching the licence conditions applicable at the time it sold units in the fund and also issued a Directive which required the bank to cooperate with a review by an independent professional services firm, engaged by the Authority, of all client files of investors in the fund. The independent firm finalised its report at the end of 2012.

Investors who were not eligible to invest in the fund as identified from the client file review were compensated. All investors, clients of the bank, received a letter from the bank informing them of the outcome of the assessment made of their respective file. Investors who lodged a complaint with the Unit also received a final letter, confirming closure of their case, together with a Question and Answer guide addressing many queries raised by investors during the review.

In the meantime, a review of complaints lodged with the Unit in regard to the manner other financial intermediaries had sold the same fund to investors is also being carried by the Consumer Complaints Manager.

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As reported in the 2011 annual report, the Unit has been processing a number of complaints lodged by investors against a credit institution in relation to allegations of bad advice and non-disclosure of information concerning certain securities, including perpetual and other preferred securities issued by Lehman Brothers, Royal Bank of Scotland, HBOS and others. A number of new complaints were received during 2012 in relation to the same type of securities. Each case was reviewed in detail and, where justified, the Unit recommended that the credit institution pays the original amount invested in the disputed securities. A small number of complaints remained outstanding as at the end of 2012.

The Unit has also received a number of complaints in relation to the manner in which a number of complex structured investment products had been sold to investors. These investment products also failed to meet expectations of promised guarantees on income and capital. Each case was reviewed on the basis of its own merits and, where justified, the Unit recommended the reinstatement of the capital invested in these products.

The Enforcement Unit, in conjunction with the Securities and Markets Supervision Unit (SMSU) and the Consumer Affairs Unit, has intensified the review of a complex investigation into the manner a structured fund, meant to be sold to professional investors, had been sold to a number of retail investors in Malta.

OBSERVATIONS WITH REGARD TO CASES HANDLED BY THE UNIT

Over these past ten years, the Unit has reviewed hundreds of complaints from investors. The varied nature of these complaints feeds into the Unit's work of educating consumers, drawing from people's experiences and the outcome of its reviews. The Unit has met and helped several consumers from all strata of society. It has spent substantial time meeting complainants worried at the loss of their capital following several events, such as the collapse of the markets in the last quarter of 2008.

In theory, an investor who diligently reviews the documentation he is presented with at time of investment is less likely to be mis-sold a financial product, compared to someone who merely accepts what he is told and blindly signs the documents. In practice, however, consumers are generally unclear about the true nature of their investment until it is too late to act. Action is often triggered when something goes wrong. It is true that an investor should exercise caution and take decisions rationally and responsibly. However, it is a known fact that many consumers are far from rational and are often ill-prepared to make sound financial decisions especially when faced with complex financial products, a long-term investment horizon and expert advice which is perceived to being given in their best interest.

Diversification and the promise of returns

The Unit, in its financial education campaigns, has used a range of methods to explain the importance of portfolio diversification. The number of portfolios it has come across concentrated into one or two single investments. This might not be representative but is still startling. The Unit has repeatedly informed investors that high income essentially means high risk. It has come across portfolios invested in securities paying yearly coupons in excess of average bank deposit rates or financial products which promise 10 per cent or more annually. The Unit has also confronted investors with the forms they had signed at the time of investing. The majority had no recollection whatsoever of what they had signed and did not bother to ask for a copy of the documents they had signed.

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Retail financial services in Malta have evolved considerably over these past ten to twelve years. Up to a few years ago, the choice for savers in Malta was predominantly fixed term accounts and, depending on the risk appetite of an investor, shares and bonds (the latter being mostly sovereign bonds carrying high coupon rates). The development of a local retail fund industry marked a clear departure from simple bank accounts. Investors were attracted to prospective better returns from nascent funds, compared to low interest rates on deposits. Slick and constant marketing generated interest for such products although many investors might not have been prepared or made sufficiently aware that investments do actually go down as well as up and there could be future instances which might potentially lead to erosion of capital.

The relatively long period of very low interest rates and the disappointing returns from particular investments generated a demand by investors for higher yielding products. Certain local financial planners were quick to offer a number of financial products to retail investors which, in terms of potential returns, were quite attractive but which also had inherent complex risk structures making them more suitable for professional rather than retail investors. The many complaints received by the Unit suggest that the risks inherent in these products were downplayed by the financial officers who heavily promoted these products. Sales targets for financial planners, high up-front commissions for the financial provider coupled with an environment whereby consumers had limited time to absorb the complexities of these products created a ticking time-bomb which left investors unprepared for what was yet to come.

The experience of reviewing many complaints relating to investing over these past ten years has shown that financial literacy and education may not always be effective. Consumer investment decisions are sometimes not based on rational decisions but rather influenced by processes of persuasion, personal interaction and the trust placed in financial planners. Many financial products are not easily understood and it is only natural that a prospective investor would approach a financial planner for advice prior to investing. Consumers are not only financially challenged but some also lack basic literacy and education. Providing documentation entirely in English to consumers who cannot read or write, or who even fail to read in their native language, is unfair. These consumers are, unfortunately, a prime target of dubious selling practices by a number of financial planners.

Unsophisticated investors cannot be expected to do research, to read a prospectus or to question what their financial planner is telling them. Although gullibility and greed may describe the action taken by some investors when investing in certain structured and complex investment products which promise high returns, they belie one's understanding of the relationship between the financial planner and the investor. Investors expect their financial planner to be trained and to give them honest advice in their best interest. The number of mis-selling cases that the Unit has been asked to investigate reveal a level of personal interaction which led investors being persuaded or influenced by financial planners. It is of little comfort that the failure of certain advisors to act in the best interest of investors is a feature of the industry in many jurisdictions.

There is also a clear indication that investors were not able to determine what level of service they were being provided by their financial planner – i.e. whether it was advice or merely a sale. Many investors rightfully claim that they sought the services of a financial planner for advice and not to be merely sold a product. This is a situation which previous annual reports had referred to and which featured again in a substantial number of complaints the Unit had been asked to investigate. It would be naïve to think that an investor is able to draw a clear distinction between advisory and non-advisory transactions (such as promotion and selling or execution only). Neither can an investor be able to identify if the financial planner is restricted from giving advice and is only allowed to sell a product purely on the basis of a brief in-house training session at the firm, and the biases this process comes packaged with.

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Sales processes

The Unit has also encountered instances where advisers took the highly questionable stance of pushing securities and financial products without advice and, without the investors' knowledge, recording the transactions as if they had been carried out on execution only or promote and sell basis. Ironically, some investors became aware of the type of service they had been given when the Unit discussed with them the progress of the review following receipt of the documentation from the firm. The Unit has also come across many instances where investors were simply not given a copy of the documentation because they signed off such basic right on the same documentation they had been asked to sign. Such situations undermine the trust consumers have in the financial services sector.

Over the past few years, some segments of the local market have been characterised by a range of products with complex risk structures (unbeknown to investors). In a circular sent to financial entities in 2009, the Authority had been very clear about the selling of such products. In that same year, the Unit had also published adverts in the media alerting consumers to exercise caution when investing in the same types of products. In a scenario of economic and financial turmoil, complex products promising high returns were simply too good to be true. Yet, the sale of such complex instruments continued and investors believed that investments which were "low risk and high return" do exist. During these last few years, a number of these investments have failed and a sizeable amount of Maltese wealth was simply wiped out with very little expectation of full recovery.

The Unit's review of each and every complaint is based on the documentation that is provided by the financial entity. However, the outcome of the complaint is not solely based on this documentation. For some investors, the purchase of a complex product would be the first experience. There have been occasions where the Unit requested other financial providers to provide details of investments held by the complainant, if the intermediary's information is disclosed in the documentation. The purpose of this exercise was to establish whether the investor had sufficient knowledge and experience to understand the complex nature of the product he had been offered.

Certain financial providers argue that a consumer should, at one stage of his investing life, purchase a complex investment even if there is sufficient evidence that the investor is cautious, wants to preserve capital at all costs and his foray in savings and investments has been related only to fixed term accounts and sovereign bonds. The sale of complex instruments is carried out against the background of an appropriateness test. The Unit has come across cases where this test was evidently used by the financial planner as a mere regulatory formality rather than an exercise to veritably establish if the investor truly understood the risks of the product, which unlike the promised returns were as complex to understand as the product structure itself.

The Unit's stance in these cases is that it would generally uphold a complaint in favour of the investor if the financial entity fails to convince the Complaints Manager that, at the time the product had been sold, it had established that the investor had the knowledge and experience to invest in a complex product.

The Unit has also come across instances where the purchase of an investment was concluded at the investor's residence. Many investors made the Unit aware that they found themselves in an awkward position to refuse to proceed with an investment given that the financial planner took the bother to visit them in the comfort of their own home. The Unit is also concerned to note that financial planners/advisers from local banks are also visiting potential customers at home to open accounts and collect deposits – apart from the risks this may entail, it creates an environment which, for some consumers, may appear a point of no return. Proper safeguards should be in place in those instances where this service may be provided.

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Names and features of certain investment products are likely to make investor decisions prone to error and biases. At times, this is not the fault of the investor. Over the course of these past years, the Unit has come across a significant number of investment products which made prominent claims that the investment was "secure", "safe" or "protected" or that it included similar terminology to describe its specific characteristics. The use of this terminology may sometimes be misleading for it implies a relatively high degree of safety (such as full payment of capital) for the investor which may not always be the case. There has also been a prevalent increase of products where the investor has been attracted by an attractive rate and then tied in for a number of years until maturity. These investments paid a very high return during the first two or three years of the product life but no interest for the remaining period. If one were to equate the interest payable during these years over the whole period of the investment, one would immediately realise that the investor would have been better off placing his money in a term deposit account rather than in such a structured product. The problem would surely compound itself if the payment of capital on maturity is also tied to an underlying market index, technically eroding the possibility of a full return of capital.

There is certainly scope for more competition and innovative products to be offered in the retail market. However, not all innovative products are suitable for retail investors. Consumers are sometimes criticised for basing their decisions on herding instincts. However, there is ample evidence to suggest that herding is also true of financial providers, especially in regard to products on which they may earn lucrative up-front commissions irrespective of the performance of the product. The mis-selling horror stories which have made the headlines in Malta and abroad should be an eye-opener to all.

SELECTION OF CASES

Sale of perpetual securities

In December 2011, the Authority imposed an administrative penalty of €175,174 on Bank of Valletta plc for regulatory breaches related to disclosure of information and suitability of financial instruments sold to the general public. The penalty was the culmination of a lengthy investigation triggered off by a number of complaints on the manner in which certain securities had been sold to investors, including perpetual and other preferred securities issued by Lehman Bros, Royal Bank of Scotland, HBOS and others.

Investigations started in 2009, when a number of investors lodged complaints with the Complaints Manager requesting a review of the manner in which such preferred securities had been offered to them. The complaints had largely been driven by the collapse of Lehman Brothers in September 2008.

Following the press release issued by the Authority in relation to the sanction imposed on the bank, the Complaints Manager received several new complaints which again alleged mis-selling and bad advice. During the course of its initial investigations, the Authority carried out extensive research about the nature and risks relating to these securities. This background research enabled the Authority to review the new complaints as swiftly as possible. Although there were some similarities between the new cases and those lodged up to December 2011, the Unit treated each new case on its own merits. The nature of certain complaints was more complex than others, for instance, and required several exchanges of correspondence and meetings with a number of bank officials and complainants.

"Providing documentation entirely in English to consumers who cannot read or write, or who even fail to read in their native language, is unfair."

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The Authority encountered a number of cases where the investment in preferred securities had been purchased on an 'execution only' basis, whereby on the basis of the documentation the bank would not have provided advice on the suitability of these transactions and consequently was not obliged to make an assessment of the investor's overall financial circumstances. In the cases where the documentation was fully in order and no particular irregularities were identified in the way the transaction had been carried out, the Authority could not accept the complaint as valid. There were a few instances, however, where the Authority was not fully convinced that the documentation reflected the sequence of events at the time the preferred securities had been sold, and on this basis, the Authority recommended the bank to compensate the aggrieved investors.

The bank eventually reached a private settlement with the investor and the amount of compensation given to the investor reflected the Unit's recommendations, which in some cases the bank had originally rejected. In a number of other cases, the bank disagreed with the Authority's findings and recommendations claiming that there were insufficient reasons for it to justify revisiting its decision to reject the complaint.

When the investment in the preferred securities was a result of the advice provided by the bank, the Unit scrutinised the client fact find, a document compiled by a financial adviser to assess and record the investment objectives and requirements of the investor, and on which a tailor-made investment recommendation was made, to ascertain that the advisor highlighted the features and risk characteristics of the preferred securities and that such securities were suitable for the circumstances of the investor. In a substantial number of cases the bank could not trace any record or note for file recording the recommendation given to the investor.

In certain cases, the Authority concluded that the investment in perpetual or preferred securities was not in line with the investor's cautious risk attitude. In these and also other cases where the investor was willing to take on investment risk, the Unit generally concluded that the bank had not adequately disclosed the nature of the risks associated with these securities and did not provide investors with sufficient information to enable them to take an informed investment decision based on correct and factual information. In the majority of cases, the Unit recommended the bank to make the necessary arrangements to compensate these investors and to reinstate them in the same financial position they were in prior to investing in the perpetual or preferred securities. In some instances, the bank accepted the Unit's recommendation and met with the complainants to reach an amicable settlement, while in other cases it rejected the Unit's recommendation.

In the case of a consumer complaint, the MFSA is only empowered to make recommendations. The bank and the complainant may choose not to accept the MFSA's recommendation, in which case the matter could be pursued through other legal means.

Publication of incorrect fund prices

Mrs M had purchased units in a local collective investment scheme marketed by a local bank and retained the fund for around three years. Being an accumulator fund, a fund that automatically reinvests and accumulates any interest payable by the underlying securities, Mrs M was not receiving regular income and therefore she was hoping the market price to increase and sell the fund at a profit. For some time, therefore, Mrs M had been following the prices published in a local newspaper by the fund's manager and when the increase in the market price persisted, she decided to sell her units at a profit.

The sale of the fund required Mrs M to visit her bank in order to compile a sale order form. Mrs M did not ask the bank official for an indication of the market price on the day she went to sell her units as she had already checked the prices published by the Malta Stock Exchange in the newspaper. The sales transaction took around two to three days to be dealt with due to certain cut-off times as outlined in the fund's prospectus.

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Mrs M received the sale contract note a few days after she gave the selling instructions to her bank and to her surprise the sale price at which her transaction was executed was much lower than that which had been published in the local newspaper. Consequently she filed a complaint with her bank to claim for the difference in price but her complaint was rejected on the basis that the price records held by the bank, which were also published on its website, showed that the sale price on her contract note was correct. Mrs M, who was not an internet user, did not accept the bank's justification and therefore referred her complaint to the Complaints Manager.

The Unit requested various clarifications from the bank, including the discrepancies between the prices published on the bank's website and those published on the local newspaper. It resulted that the bank had a fault in its system and consequently for a number of days the bank was passing on an incorrect set of prices to the Malta Stock Exchange. The prices which were published in the newspaper were also the erroneous ones.

The Unit held the view that Mrs M was not to suffer any financial losses as she was acting on public information, which in the end was sourced from the bank itself. The Unit therefore recommended the bank to reimburse Mrs M with the difference in the price as published on the newspaper on the day when Mrs M went to sell her units in the fund and the actual selling price. The bank accepted the Unit's recommendation.

Bad advice allegation

Mr P had just inherited a generous sum of money and as he was nearing his retirement age, he was anxious to invest this capital sum for regular income in order to supplement his pension. Mr P had limited financial knowledge and rarely followed financial markets and hence he thought it would be appropriate to pay his stockbroker a visit to see how best to invest this money.

The stockbroker advised Mr P to diversify his money between various local and foreign bonds and distributor funds. Barely two months after Mr P purchased various investment products, the stockbroker informed him that one of the foreign companies in which he had invested was being liquidated and the possibility of Mr P recovering his capital was very remote. Mr P was not happy with the situation and complained with his broker who refused his complaint.Perturbed by the broker's response, Mr P asked the Unit to investigate this matter.

The Unit requested the stockbroker to provide it with various documentation including any weekly recommendations and reviews issued by the stockbroker's research unit which gave a detailed opinion on the various securities listed on the most popular stock exchanges. The Unit noted that the stockbroker's research unit had published a negative review on this particular security during the same week that Mr P was advised to purchase. This review also highlighted that the future prospects of the issuer were deteriorating.

In order to get a detailed picture on the matter, the Unit searched for information on the expectations of the market on this foreign security at the time it was sold to Mr P. The Unit discovered that the prices of the issuer's shares and bonds had fallen drastically at the time he had been given investment advice, apart from various newspaper articles and other clear indications that the issuer had serious financial problems and bankruptcy was looming.

The Unit therefore came to the conclusion that the broker was expected to be more abreast of the financial circumstances surrounding the issuer of this security and consequently it should have exercised more caution before recommending such a security to Mr P. The Unit recommended the stockbroker to reimburse Mr P for the capital loss he incurred by investing in this security. The broker subsequently accepted the Unit's recommendation.

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New evidence leads to re-opening of a case

In 2010, Mr and Mrs Y had lodged a complaint with the Unit in which they claimed that an official with a financial firm had recommended them a portfolio of three funds which, it later transpired, were not what they originally wanted: i.e. a safe investment with no risk and that the capital invested would not be prejudiced.

For over four years and until 2009, the performance of their portfolio was reviewed several times and they seemed to be satisfied with its performance. Returns emanating from the funds were reinvested or cashed and both Mr and Mrs Y re-invested a substantial sum in one of the funds.

The financial and economic crisis which persisted in 2009 prompted the couple to check on their investments again and were shocked to learn that their investment had gone down in value. They were also immensely perturbed as they felt that they were misguided and more so in view of their lack of knowledge and level of education.

The Unit did not find any evidence of bad advice and the fact that the values of their investment had fallen sharply did not lend itself to being sufficient to justify their claim for compensation.

The person who had given them advice had left the firm in 2008 and the firm's managing partner was the Unit's interlocutor. At the time the Unit reviewed the complaint, it was not deemed necessary to interview the person who gave advice as the firm remained ultimately responsible for the level of service its staff gave to its clients.

After more than 15 months from closure of the couple's file, Mr and Mrs Y managed to track their adviser and out of his own volition, made a declaration that at the time he gave the couple advice, he might not have disclosed that the funds were not risk-free.

Mr and Mrs Y requested the Unit to intervene again on their case on the basis of the adviser's declaration. The managing partner of the firm was informed about the declaration which could not be declined.

The managing partner was initially reluctant to take responsibility for his former employee's declaration. However, the Unit argued that the firm should discuss the declaration with their former employee and reach a fair settlement with the couple.

The couple, which were then being assisted by a legal professional, requested losses suffered on their portfolio to be the Maltese Liri equivalent in euro of the amount they had originally invested despite knowing that the funds had been spread across three different currencies.

The firm accepted to reimburse the losses sustained by the couple on the original amount invested after taking into account diverse payments of interests made by the funds during the time of their investment.

Reversal of transaction on online foreign exchange trading platform (cross-border complaint)

Mr X, an online currency trader, opened an account with a forex trading firm licensed in Malta. On a particular day, he noticed that the online forex trading platform he got accustomed to using was operating slower than usual. He continued trading as normal, closing and opening new positions and making a few gains in the process.

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All seemed well until the following day when he noticed that his positions were reversed in their entirety, and any gains he had made cancelled out. Following his complaint with the forex firm, he was informed that its servers suffered a serious technical problem and it decided to reverse all traders' positions to that prior to the system outage. Mr X did not agree with the outcome and lodged a complaint with the Unit.

From the initial investigation, it transpired that the provider was aware of the issues with the platform and had in fact advised the MFSA of these issues, as any licensee was required to do. The Unit, however, agreed that the operator failed to contact the traders in sufficient time and therefore it had no right to reverse the transactions, whether in favour or against their clients. The Unit also pointed out that although technology failures may be unavoidable it should not be the client to carry the burden but the company that provides the service.

The company agreed with the Unit's views and reached a direct settlement with their client.

Malfunctioning of an online trading platform (cross-border complaint)

Company X, a financial services firm licensed in Malta, provided an online foreign exchange trading platform under the freedom to provide services across many EU Member States. Miss Y, based in an EU member state, had used the trading platform for a number of transactions but one day she noticed that – in regard to a particular transaction – something was not in order with the online trading platform. Miss Y explained that the platform kept "freezing" after a few positions. She knew, from experience, that when the platform encountered similar problems, the only way to test if it was functioning correctly was to close or open a few positions. The platform accepted her order following multiple attempts. She continued trading normally making a profit in the process. In the morning, Miss Y noticed that the transactions and profits were reversed.

She immediately called an official of the firm who advised that there was an outage and therefore any trading that occurred at off-market prices had to be reversed. She deemed this reply as a mere excuse as such outage occurrences were common with online forex platforms and there was no way for the user to know when the system suffered an outage or not. She complained to the firm but the firm failed to reply within two months as was required by complaint handling rules set for firms. Miss Y contacted the Complaints Manager for redress.

The compliance team at the firm confirmed that, at the time of the transactions, the system was experiencing highly volatile trading following a speech by the president of the European Central Bank. They also confirmed that there were two outages. The team claimed that they informed the regulatory authority about this outage, as was required of them in terms of their licence. They also confirmed that the complainant had followed their internal complaints procedure but no decision had been taken from their end. The Complaints Manager substantiated the user's complaint by raising certain issues as regards the firm's obligation to inform its customers prior to reversing any money from their account, something which the firm did not do, as well as its responsibility to ensure the smooth running of its systems during and after any outages.

On the basis of the Complaint Manager's submissions, the firm proposed an amicable solution to Miss Y who accepted in full and final settlement of the complaint.

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INSURANCE

Over these past years, the insurance sector in Malta has taken a number of pro-active stances to improve the manner in which it imparts information to the public (such as motor vehicle values) and ensure a harmonised manner in regard to how insurance companies handle third party claims.

Increasing competition in the local insurance market is healthy and should be encouraged. However, there are issues which the sector should willingly accept to address.

For instance, one fails to understand why the insurance sector seems reluctant to publish updates of its bi-annual survey of motor vehicle values which is still a guiding reference point for insurers when settling claims. Moreover, the sector needs to carefully assess and engage with all stakeholders in regard to the entitlement of a replacement car to third party claimants where liability has been ascertained. During the year under review, the Unit received a number of objections (and even complaints) from third party claimants as to the manner in which they were treated by their insurance company in regard to their entitlement for a temporary replacement vehicle until the time that parts were sourced and repairs commenced.

Some insurers claim that they should not shoulder the financial burden of providing a temporary vehicle to an innocent third party if there are delays in sourcing of parts which are not available in Malta and which have to be shipped on order (in a number of instances, parts took more than two months to be shipped). The Unit believes that it is definitely unreasonable and unfair for a third party to be deprived of a temporary vehicle if the damaged vehicle is not road-worthy until repairs are made and if the insurer is responsible for procuring replacement parts. Some insurers select the cheapest option, and procure the delivery of parts by surface delivery. If the insurer refuses to procure a replacement vehicle, the inconvenience to the third party increases considerably.

Until such time that the sector determines a fair way forward in the manner the issue of a replacement vehicle should be implemented across the entire sector, many bona fide third party claimants continue to be deprived of their rights which the courts have upheld in their favour and which some insurers fail to implement with no justification.

SELECTION OF CASES

Misleading contract terms in relation to early surrender charges

Mr Y had a life policy which he had purchased some years back through a local bank with a view to save money by investing in the policy. Due to unforeseen circumstances Mr Y was forced to terminate the policy prior to its maturity as he was in need of funds. The life insurance company (which issued the policy) informed Mr Y that in order to terminate the policy early, he would have to incur an early surrender fee which would reduce the value of his policy by 10%. Mr Y contested the insurer's decision on the basis that he had not been informed of such a charge at the time he purchased the policy. Mr Y however appreciated the fact that, since he was terminating a long-term contract prematurely, a charge might be applicable but, in his opinion, only a charge ranging from 1% - 2% could be considered as fair in the circumstances and given that policy maturity was less than six years.

The insurer, however, insisted that the set of pre-printed documents made available to Mr Y prior to signing up for the policy indicated that in the case of an early termination of the policy, a surrender charge would have been applicable. This documentation also carried Mr Y's signature. The insurer also made reference to the quotation that was given to Mr Y at policy inception which included the term 'surrender value factor' and

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which according to the insurer was a clear indication that the policyholder would not receive the full policy account value in the case of early surrender. The insurer also provided the Unit with a copy of a mailshot sent to all policyholders, some years after the policy had been in force, explaining certain terms and conditions of the policy including the obligation to pay a surrender charge in case of early termination.

As part of its review into Mr Y's complaint, the Unit reviewed the product brochure which had been provided to the client. In the Unit's view, the brochure only listed the benefits of the policy and did not illustrate or give examples of the circumstances when a policy is surrendered before maturity. In fact, in the policy document, there was no reference to any charges (whether initial, administrative or surrender). Furthermore, the quotation given to Mr Y at policy inception excluded any explanatory notes as to how the surrender values would have been calculated or what the term "surrender value factor" meant. Consequently, a policyholder had to first discover that the surrender value was less than the accumulated premia and maturity value, and then attempt to analyse how a surrender charge is calculated.

In the Unit's opinion, the wording used in the documentation, especially in the application form and the policy document, was vague and subject to interpretation. On this basis, the Unit recommended the insurer to re-evaluate the surrender penalty and re-issue a revised surrender value to that it originally proposed to Mr Y. The insurer accepted the Unit's recommendation.

Partial withdrawal from the accumulated value of an endowment policy

Mr Y had an endowment life policy into which he had been paying over a relatively long span of time. Mr Y was being chased by his bank to settle part of a rather substantial loan and, as his business was not generating enough liquidity, he tried to release €5000 from the accumulated value of the endowment policy which, at a particular moment in time, stood at €6500.

Mr Y discussed his intentions with his branch manager who requested one of his aides to send a request to the life company which issued the policy. A month after the request was made, Mr Y was advised by the bank that his request had been partially accepted by the life company. The life company allowed Mr Y to withdraw €2500 only but would accede to his request to withdraw €5000 on condition that his bankers – which were pledgees of the policy – were to accept a reduction in the sum assured in view that the policy value would have been eroded considerably. The insurer claimed that, if it allowed withdrawal of the amount requested by Mr Y, the life value of the policy would have been undermined and affect the bank's collateral. The life company referred Mr Y to a special condition in the policy documentation to this effect.

Mr Y objected to the manner in which the bank had seemingly misled him to believe that there were sufficient accumulated funds in his life policy and claimed that the documentation he held did not indicate that partial withdrawals were at the insurer's discretion.

The Unit investigated Mr Y's case. It transpired that there was a serious breakdown of communication between the bank and Mr Y. On the day Mr Y had discussed his intentions with the branch manager, he claims he had been led to believe that the request made to the insurer was a fait accompli. The fact that the branch manager had not communicated anything to him within a short period of time gave him the impression that the partial withdrawal was accepted and finalised. It so happened that the request made by the branch's aide was purely for information and although the insurer replied within 24 hours of the request, the branch manager failed to communicate the terms under which the insurer would have allowed partial withdrawal.

"It is imperative that a copy of the insurance policy is given to policyholders, making them aware that the original is kept by the bank in its capacity as pledgee."

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The bank seemed to be unclear because not only was it refusing to allow withdrawal, as in doing so would have otherwise prejudiced its rights under the life policy but that the partial withdrawal which the insurer was willing to release without prejudicing the policy would not have improved Mr Y's loan position.

It also transpired that Mr Y was trying to prove his point in regard to his right to withdraw from the policy by quoting from a document which the bank did not seem to have on file. It emerged that, while Mr Y was quoting from a product information documentation which, he claimed, was given to him at proposal stage, the bank and the insurer were quoting from the actual insurance policy, which Mr Y claimed he was unaware of even if he had been paying the insurance premium for more than 15 years.

The life company informed the Unit that the original policy had been sent to the bank at inception given that the latter held a pledge on it. The Unit was of the view that, in regard to the rights of the policyholder to surrender partial or full amounts from the policy, the information document appeared to differ somewhat from the actual policy document. Indeed, when the Unit informed Mr Y of the policy document, he requested a copy thereof, claiming he had never been made aware of the existence of such a document.

The Unit observed that there were no obstacles for the bank to provide Mr Y with a copy of the policy document. Given that the issue of partial surrender had been in deliberation for a long time, one would have expected all parties to clearly make reference to the policy document during negotiations. Regrettably the bank seemed to have forgotten about the existence of the policy – which explained why Mr Y might have been given a false sense of security when the branch manager informed him of the request to the insurer without actually assessing whether the policy allowed such partial withdrawal.

Although such administrative mishaps were, in the Unit's opinion, avoidable, there was not enough reason to uphold and justify Mr Y's request to withdraw the amount he wanted without prejudicing his life cover. It is a known fact that the pre-contractual documentation does not replace the policy document, with the latter binding the interested parties.

The Unit did, however, remind the bank that it was imperative that a copy of the insurance policy is supplied to the policyholders, making them aware that the original is kept by the bank in its capacity as pledgee.

A pre-existing medical condition unjustly excluded

During 2011, Mr Y was admitted to an urgent operation to his right inguinal hernia. Prior to the operation, a hospital employee completed a form in which he erroneously noted that Mr Y had had a similar operation two years before. However, his previous operation was to the left rather than the right inguinal hernia and that was more than five years before this second operation.

The insurer rejected the claim on the basis that Mr Y failed to disclose the first operation on the proposal form. Mr Y contended that the proposal form only asked for operations in the previous five years and was thus not obliged to disclose it to his insurer at proposal stage. In addition, the second operation was not due to a pre-existing condition as the insurer was insisting.

In its investigation, the Unit relied on letters and documentation provided by medical professionals wherein they confirmed that, from previous scarring, the operation was actually conducted more than five years before the second operation. They also confirmed that although similar, the second operation was unrelated to the first condition.

The correspondence sourced by the Unit was forwarded to the insurer with a recommendation for reimbursement in favour of Mr Y. The insurer accepted the Unit's recommendation.

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Disagreement on the market value of the vehicle

Following the theft of her vehicle, Ms V lodged a claim with her insurer. Initially the insurer offered her a car of similar make and model. However, Ms V rejected the insurer's offer. The insurer, on the basis of the policy conditions, issued a cheque in full and final settlement of her claim. Ms V disagreed with the value offered by her insurer as the vehicle had been insured for a higher amount.

The insurer insisted that as the (second-hand) vehicle had been imported from the United Kingdom, a replacement could be bought for the amount it was offering. In addition, the vehicle it had offered her, which had been purchased in Malta, could be bought for the same amount. Ms V disagreed with the insurer's explanation and approached the Unit's offices.

During the Unit's investigation, the insurer was requested to provide documented evidence of the values it had been quoting to Ms V. It transpired that the insurer had been accessing various United Kingdom websites for a vehicle of the same make, model, year and mileage as that of Ms V in order to make a fair comparison. The insurer also checked the tax charged and shipping costs for a like with like comparison. The insurer provided a dossier containing quotations and photos of vehicles similar to Ms V, which were made available to Ms V for her consideration.

On the basis of this information, it was evident that the insurer had acted fairly towards Ms V and her complaint was not upheld by the Complaints Manager.

Alleged non-disclosure of material fact by the insured (cross-border complaint)

Mr S, residing in the United Kingdom, purchased an insurance policy online, underwritten by an insurance firm authorised and based in Malta. He was involved in a traffic accident and subsequently submitted a claim under his comprehensive insurance policy. The claim was rejected by his insurer on the basis of non-disclosure of a material fact. It transpired that in both the proposal and claim form, Mr S occupation was given as builder. The insurer insisted that, from its investigations during that period, Mr S was also working as a motor mechanic and that according to its underwriting criteria, it would not have insured him.

In his complaint form, Mr S noted that his occupation was that of a builder. He explained that he was made redundant and decided to establish himself as a mechanic. This was, however, after the date of accident and thus there was no "non-disclosure" on his part at policy inception.

Several points were raised by the Unit with the insurer including the fact that the online proposal form did not include any questions regarding the qualification, hobbies or part-time occupation undertaken by the applicant. In addition, the insurance was a personal lines cover and thus an applicant with no knowledge of insurance could not reasonably understand that the occupation was a material fact to the underwriter. The Unit also raised the point that according to legal precedent, if an insurer does not ask a specific question, it is understood that the insurer had waived its right for that information.

In addition, from the signed lease agreement provided by Mr S, there was enough proof to show that the contract for the mechanic work permit was only signed after the date of the accident. Therefore, in actual fact, there was no form of non-disclosure on the part of Mr S. The insurer accepted the Unit's views and paid the claim in full.

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Stolen mobile phone (cross-border complaint)

Mr Y was on holiday in Spain when his mobile phone was reported stolen. His insurance claim was rejected on the basis that the circumstances under which his phone had been stolen were not covered under his mobile phone insurance policy. He first complained with the mobile telephone firm in his home country. The mobile telephony firm directed Mr Y to lodge a claim with the insurance firm which underwrote the policies, a company established in Malta. He complained with this firm, but it rejected the claim on the basis of the circumstances leading to the theft of his phone. He claimed that this was unfair on the basis that when he purchased the policy, he was assured that the policy would provide cover for all circumstances, including theft.

The Unit contacted the insurance firm in Malta which confirmed that the internal complaint procedure had already been followed. Upon examination of the policy document it transpired that claims for "theft" were only accepted in circumstances noted under a specific clause in the policy which stated that "The damage that is the result of theft with signs of forced entry and violence or the threat of violence is compensated."

In addition the policy contained an exclusion stating that "Not covered if damage is caused by: theft, loss, misplacement and pickpocketing." In this case, there was neither forced entry nor was violence used when the phone had been stolen, as the complainant admitted that he was distracted when the phone was stolen from his rear trouser pocket. Such situations were excluded under the policy.

With regards to Mr Y's complaint that, at the time he had been sold the policy, he was not given correct information about situations under which he could claim, the Unit confirmed that, in principle, the responsibility lies with the insured to read the policy document. The Unit was also unable to establish the veracity of his claim that, at the time of sale, he was told that "all circumstances of theft are covered by policy". If this was the case, it was likely that he had been mis-sold the policy.

Although the sales process did not fall under the jurisdiction of the Complaints Manager, the official handling his complaint checked whether the law in the home country covered the sale of insurance process. Unfortunately, Mr Y's telephone provider was not in fact covered by legislation. The Complaints Manager, however, advised Mr Y to seek advice in his home country to obtain proper confirmation and establish whether alternative means of redress, if any, were available to him.

The complaint was rejected.

Keys left in car (cross-border complaint)

Ms J purchased a motor insurance policy from a Maltese company passporting insurance services in another EU member state. Ms J's car was stolen from outside her home as the car was parked in the driveway. It appears that due to the very cold temperatures at the time, Ms J left the house slightly early so that she could defrost her car in order to drive to work. Whilst defrosting her car, Ms J realised that she had forgotten work papers at her house and went inside to fetch these papers. On coming back outside she found that her car had been stolen. This incident was reported immediately via a telephone call made by her husband to the police. Eventually a claim was submitted to the insurance company.

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Sometime later Ms J received a letter from her insurance company informing her that after taking into consideration the events surrounding the theft of her car, it would not be honouring her claim. Her claim had been rejected on the basis of the declaration given by her husband, Mr K, to the police wherein he stated that the keys were left in the car. As is common in motor insurance policies, Ms J's policy had a clause which excluded payment if "loss of or damage to your car by theft or attempted theft if your car has been left unlocked, left with the keys in it or left with a window or roof open".

The Unit requested a copy of the recording of the telephone call made by Mr K to the police to determine how the insurance company came to the conclusion that the keys were left in the car. During this telephone call Mr K expressly stated that his wife had gone out to defrost the car and after a few minutes went back into the house to get the papers and when she went back out she found that the car was gone. When the police officer asked him whether they still hold the keys of the car, Mr K clearly stated that they were left inside the car. The Unit rejected Ms J's complaint.

BANKING

In 2007, the office of the Consumer Complaints Manager carried out a detailed review of non-interest bank charges in respect of the two largest banking institutions in Malta. The review assessed the components of the banks' non-interest income over a number of years. Also reviewed were certain bank practices and proposals for concrete measures for these practices to be modified and/or abolished were also made.

This was the first time that the MFSA had embarked on such a detailed project to assess bank charges. Although a number of measures had been implemented by the two banks, there is ample scope for a wider review to be carried out to assess if competing forces within the local banking sector are reflected in the various tariff structures of the respective banks, and why increased activity in regard to some services have not achieved economies of scale resulting in a reduction in costs for the bank and, ultimately, consumers.

For instance, statistical data indicate quite clearly that bank transfers processed by local banks have increased substantially over these past few years. Yet, tariffs for payments in euro seem to be stuck at the same levels they were at the time they had been introduced when SEPA (Single Euro Payments Area) came into force a few years ago. Charges for payments in other European currencies (such as sterling) remain artificially high.

Card usage too has increased substantially and although banks have invested in a short marketing campaign to encourage users to use electronic means to make payments, there seem to be very few incentives for retailers to accept local debit cards without incurring the relatively high fees charged by banks for processing local card payments.

In addition, there is also ample scope to review certain bank charges which appear to be abnormally high and not commensurate with the level of service which a bank might normally incur for the provision of such a service (e.g. charges applicable for processing a deceased's estate).

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SELECTION OF CASES

Request to sign a blank surrender form for a pledged insurance policy

Ms T had two life insurance policies which were pledged in favour of her bank in regard to a family business loan. Following discussions with her bank, she reached an agreement to release one of the pledged policies. In fact, the bank wrote to the insurer confirming that it was no longer interested to keep a pledge on one of the policies. However, on the day Ms T met the bank to finalise the necessary paperwork, she was asked to sign a blank surrender form in regard to the other policy which was still pledged. Ms T disagreed and following insistence and disagreement with the bank, she lodged a complaint with the Unit.

During discussions with the bank, the Unit agreed that as a matter of principle, a bank can exercise the right not to release any security pledged until the full amount of credit is repaid. The bank's decision to release one of the policies appeared to have been based on a relatively small balance due on her loan and on which the bank was more than adequately covered from the other life policy.

The Unit objected, however, to the bank's decision to request Ms T to sign a blank surrender form in regard to the policy it wanted to maintain on pledge as a pre-condition for the release of the second policy. During the Unit's review, it transpired that the bank's procedures required the loan officers to request the debtor to sign a life policy surrender form in blank to facilitate release of funds in the bank's favour in the event of death of the life assured (the debtor). The Unit noted that this procedure was not followed at the time the loan had been granted to Ms T and it now wanted to rectify the situation on what it appeared to be a ''take it or leave it'' situation.

The Unit not only objected to this apparent attitude but also criticised the bank for its procedure to request a blank life policy surrender form when the pledge it held on the policy gave it all the legal means necessary to exercise its rights.

The Unit urged the bank to forego its illegitimate request and to release the other policy as long as it still wanted to exercise its discretion to release it.

The bank rejected the Complaint Manager's recommendation claiming that Ms T seemed to be negotiating credit facilities with another bank and that, therefore, it was entitled to preserve its rights by requesting a blank surrender form. It also confirmed that such a procedure (to sign a blank surrender form) was market practice. The Unit retained its position on the bank's decision to request blank surrender forms but could not force the bank to release the first policy (even if this had been the bank's decision). The bank, however, reiterated its view that it was willing to release all securities if the outstanding amount on the loan was paid up. Ms T terminated her relationship with the bank and transferred her business to another institution.

Fraudulent withdrawal following card theft from the workplace

Mr F and Mrs Y had two credit cards issued by the same bank. The main card was on the husband's name and the supplementary card was issued on the wife's name.

Mrs Y's card was stolen and various ATM withdrawals had been affected before the theft of the card had been reported to the bank. Furthermore, the PIN had been successfully entered for the ATM withdrawals. The bank, on the basis of its systems, noted that the card withdrawals could only have been successful had the PIN been successfully entered at the ATM where the card was inserted. It rejected Mrs Y's pleas that the PIN had not been kept with the card and quoted its standard card conditions as the basis for rejecting a refund.

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In their complaint with the Unit, Mr F and Mrs Y also blamed the bank for their loss because they claimed that it failed to send them SMS alerts to make them aware that the card had been used.

During review of the complaint, the bank exhibited correspondence wherein the supplementary card holder had confirmed that both the PIN and the card had been held together in her handbag. Furthermore the bank had checked its records and had confirmed that Mr F and Mrs Y had never applied for SMS alerts on the supplementary card.

What was particularly interesting was the manner in which Mrs Y's card had been stolen. According to Mrs Y's statement, she and her husband had finally managed to change their residential address for all the bank accounts they held with three different banks. However, for some reason, her supplementary card was sent at the address of her in-laws (Mr F and Mrs Y were newlyweds) and she first went to collect her card from them, then proceeded to collect the PIN from the branch. With both card and PIN, in her handbag she proceeded to her place of work, which was a mobile office on a construction site.

On that same day, Mrs Y claimed that an intruder had entered her workplace and stolen her handbag. Sometime had passed until she noticed that her handbag went missing and called immediately the bank to report the theft. She also went personally to her branch and spoke to a bank representative to make sure that all her cards and the cheque book were stopped.

Mrs Y requested the bank to investigate the CCTV footage installed at the ATM were the alleged fraudulent withdrawals took place. The footage was deemed useless as the alleged fraudster covered the keyhole camera with a piece of black tape.

The bank confirmed that the withdrawals had been affected and approved by means of the customer's card. The encrypted data on the chip signalled that the correct PIN had been used at time of withdrawal. The bank claimed that the loss of the card was reported to the bank around 50 minutes after the fraudulent withdrawals allegedly took place.

The Unit tried to convince the bank to waive part of the hefty loss on the basis of the unfortunate circumstances which led to this incident. The bank, however, stood its ground and replied that Mrs Y was negligent by keeping (even momentarily) card and PIN together and leave her personal belongings unattended in a busy on-site office.

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APPENDICES

APPENDIX I - FORMAL COMPLAINTS BY CLASSIFICATION

	A	B	C	D	Di	Dii	E	F	G	TOTAL
Banking complaints										
Use of exchange rate								1		1
Bank Mistake	2			2			4			8
Refusal to give information		1					1	1	1	4
Unauth. Credit Card TX							3		1	4
Interest Rate [Determination of]							1			1
Loans and Advances	1				1		1	1		4
Bank Commercial Decision							1	1		2
Transfers							2			2
Insurance complaints										
Unable to find insurance			1				1			2
Motor - Own p'holder - Market Value							1			1
Motor -- Third-party - Failure to open claim	2		2	1			1		1	7
Motor - Third-party - Liability			1				1	1		3
Motor - Third-party - Loss of use				5	1					6
Motor - Third-party - Market Value								1		1
Motor - Third-party - Use of spare parts					1					1
Health-related				1				1		2
Motor - Third-party - Delay in claim/payment				2	1			1	1	5
All Commercial Policies							1			1
Marine Cargo Insurance									1	1
Home insurance-related				1			1	1		3
Life-related			1	2			2	1	1	7
Travel-related				1			2	1		4
Local company passporting in EU	3	1					3	1		8
Motor - Own policyholder - NCD							1	1		2
Motor - Own policyholder - Claims			2				1			3
Motor - Own policyholder - Liability									1	1

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	A	B	C	D	Di	Dii	E	F	G	TOTAL
Investment services complaints										
Bad advice allegation				3	4		5	2		14
Calculation of interest/yield/price							2	1		3
Charges				1			2			3
Intermediary Mistake	1	1		2			1	1		6
Mis-selling allegation	1	1		15	9	9	307	151	2	495
Suitability of product		1		1		2	82	176	1	263
Refusal to give information							1	2		3
Other							3	1		4
Delay (payments and other docs)							1			1
Exceution of orders on behalf of clients						1				1
Information provided to the client (e.g. poor disclosure)				1						1
General admin/customer service (including custody/ safekeeping services)							1			1
Provided info or General query							2			2
Others										
Scam									1	1
Trust - Mismanagement			1							1
Trust - Mistake				1						1
Grand total	10	5	8	39	17	12	435	347	11	884

CLASSIFICATION

(A)	10	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)	5	Consumer withdrew complaint
(C)	8	Referred to entity or consumer – no feedback
(D)	39	Entity has not treated the consumer complaint fairly – complaint upheld by Consumer Affairs Unit. Entity accepts recommendation.
(D)(i)	17	Entity has not treated the consumer complaint fairly – complaint upheld by Consumer Affairs Unit. Entity did not accept recommendation.
(D)(ii)	12	Entity has not treated the consumer complaint fairly – complaint upheld by Consumer Affairs Unit. Entity partially accepts recommendation and offers a goodwill payment.
(E)	435	Entity has treated the consumer complaint fairly – complaint not upheld by Consumer Affairs Unit.
(F)	347	Entity has generally treated the consumer complaint fairly but it still agrees to a goodwill payment or improved settlement.
(G)	11	General query – provided information/clarification.

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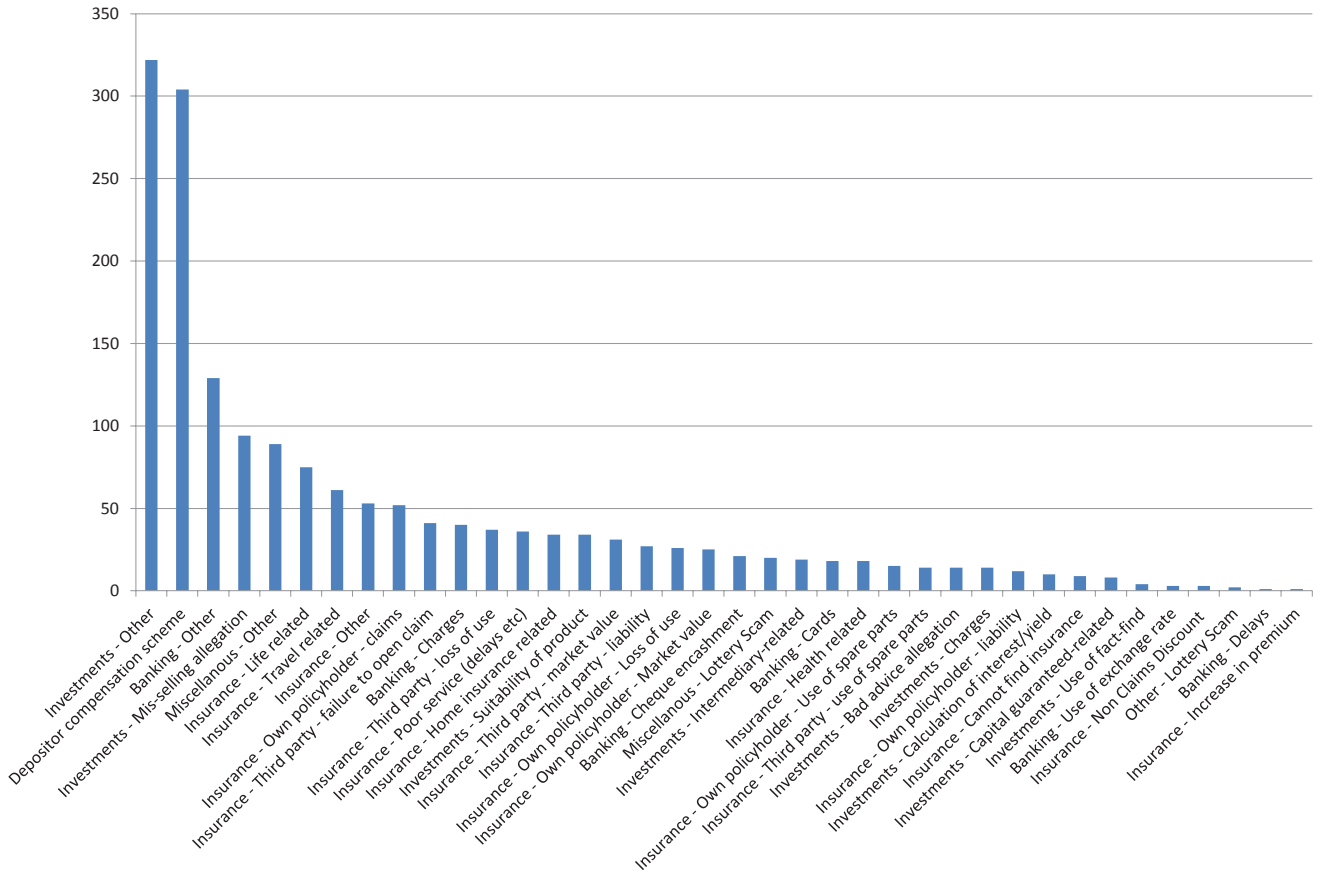
APPENDIX II - PHONE CALLS RECEIVED BY THE CONSUMER AFFAIRS UNIT (ORAL QUERIES)



DURATION OF PHONE CALLS

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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
MIFID	Markets in Financial Investments Directive
MFSA	Malta Financial Services Authority
ODR	Online Dispute Resolution
PSD	Payment Services Directive
SCConFin	Standing Committee on Consumer Protection and Financial Innovation
SEPA	Single Euro Payments Area
SMSU	Securities and Markets Supervision Unit

EU AND MALTESE LEGISLATION

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)

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

MFSA

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