MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSUMER COMPLAINTS UNIT

ANNUAL REPORT 2013

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CHAIRMAN'S STATEMENT

Since 1999, some years before the Consumer Complaints Manager had later been set up in 2002, the Authority had in place an informal structure which handled consumer queries and more importantly, implemented a number of consumer education initiatives relating to financial services.

The opening up of our retail markets for financial products and the creation of investment funds which could be sold from local bank branches, brought about new investment opportunities for Maltese consumers. This meant that the manner in which financial products were being marketed and sold to consumers required close attention.

Many investors, familiar with fixed deposit accounts, were being offered investments promising better returns. Marketing information, which at times wrongly compared equity or bond funds to fixed deposit accounts, led many investors to acquire investments which were not at all suitable for their circumstances. There is evidence to suggest that inherent risks had not been adequately explained to investors. Many investors bought these products simply because they trusted the financial planners, who unfortunately had only received basic training about sales techniques with perhaps very little consideration for investors' real needs.

Since 1999, the Authority has been very active in the field of financial education. The various publications, media participation and online presence have been seminal in the creation of awareness of the existence and role of the Authority in consumer affairs. Investment diversification, as well as risk-reward weightings have featured as common themes in consumer awareness campaigns, along with other key messages relating to investments.

There is scope in trying to understand and analyse why therefore many investors, who I am sure that at some stage or another, came across the Authority's consumer education initiatives, had been convinced to invest substantial amounts of their savings in particular investments which were complex in nature, identifiable simply by leafing through the glossy brochures prepared by product manufacturers. Clearly, many investors who feel that they have been deceived and mis-sold an investment product would have placed extreme trust in the financial providers. Investors should not be chastised for doing so.

It may be easy to identify the roots and causes of the alarming number of mis-selling cases that the Consumer Complaints Unit has been asked to review during these past five years. It is equally more disturbing to learn about the approach and conduct of a number of financial entities, and some of their employees, which have completely disregarded the very essence of the regulatory regime that the Authority has in place: the obligation to act in the best interests of clients.

Many investors have been provided with products that failed to perform as firms have led them to expect. The majority of these investors were not provided with clear information on the terms of the contract before they committed themselves to purchasing these products and only got to know about the true risks attached to these products when problems started to emerge. The Consumer Complaints Unit has also encountered

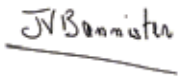
a number of investors who were sold complex investments or investments which were only suitable for those who were experienced in the investment field, while other investors thought they were receiving advice but then, when it was too late, learnt that they were signing paperwork which stated the contrary.

As a consequence, the Authority took severe regulatory action against firms which had mis-sold investments.

Through its impartial and fair assessment of a wide range of complaints, the Consumer Complaints Units has over the years given valuable input to the Authority's regulatory structures about the manner some financial firms have operated and sold products to consumers.

The Authority has embarked on a thorough review of the current framework of conduct of business which now needs to take into account the evolving needs and expectations of financial services consumers. The Authority will be consulting widely on a revised code which should set out the mandatory requirements that all financial services providers are obliged to satisfy when dealing with clients. The dichotomy between differing conduct rulebooks will end and market players have to play by the same rules, while respecting the legislative and regulatory sectorial frameworks at European Union level.

Naturally, the Authority will continue to actively pursue its role in financial educational as part of its overall responsibility to take care of the legitimate expectations of consumers and to restore their confidence in the provision of financial services.



J V Bannister

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

RESPONSIBILITIES OF THE CONSUMER COMPLAINTS UNIT

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

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

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

THE LEGAL FRAMEWORK

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

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

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

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

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

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

The Complaints Manager is also required to inform the complainant of his right to seek independent professional advice, especially if he is not satisfied with the outcome of the complaint. For cases related to payment services, the Complaints Manager is required to inform the complainant of the possibility of having

the dispute settled through arbitration proceedings (in terms of the Malta Arbitration Act) without prejudice to the right of the consumer, as defined in the Consumer Affairs Act, to submit a claim to the Consumer Claims Tribunal or to exercise any other rights under that Act.

SHARING OF INFORMATION WITH REGULATORY UNITS

When a matter arises during a case review which may be indicative of any kind of pattern or suspected regulatory breach, the supervisory unit concerned with the licensing and supervision of the relevant entity is informed so that appropriate action can be taken.

During the year, the Unit has also referred a number of cases to the Authority's Enforcement Unit.

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

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

1. INDEPENDENCE

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

2. TRANSPARENCY

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

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

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

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

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

3. ADVERSARIAL

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

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

4. EFFECTIVENESS

The Unit generally investigates complaints based on the information received from the complainant and the financial services entity. The Unit may request meetings with the consumer and representatives of the entity, separately or jointly. Complaints can be determined within a short timeframe. However, certain complaints may take longer to be concluded especially if the review process involves scrutiny of multiple documents and several exchanges of correspondence with the financial entity. In addition, regulatory issues may need to be investigated in parallel. These could prolong the review process.

5. LEGALITY

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

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

6. LIBERTY

A financial entity or a consumer may accept or reject a recommendation of the Complaints Manager, who 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 solely at the complainant's responsibility.

COMPLAINTS' HANDLING – AN OVERVIEW

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

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

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

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

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

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

THE CONSUMER COMPLAINTS MANAGER

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

THE FINANCIAL ENTITY

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

THE COMPLAINANT

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

INTERNATIONAL PARTICIPATION

FIN-NET

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

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

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

FIN-NET needs to be put in the broader context of the European Commission's efforts to encourage Member States to promote and setup ADR schemes in various other sectors (other than financial services).

In June 2013, the ADR Directive and the ODR Regulation were published in the Official Journal of the European Union. Both will enter into force on 8 July 2013 but Member States have until 2015 to transpose the directive into their laws.

The ADR Directive seeks to promote ADR in the consumer sphere across the EU by encouraging the use of approved ADR entities that ensure minimum quality standards. In particular, it requires Member States to ensure that their approved ADR entities are impartial and provide transparent information about their services, offer their services at no or nominal cost to the consumer, and hear and determine complaints within 90 days of referral. The Directive applies to domestic and cross-border disputes concerning complaints by a consumer resident in the EU against a trader established in the EU.

The ODR Regulation provides for the EU Commission to establish a free, interactive portal through which parties can initiate ADR in relation to disputes concerning online transactions. National ADR entities will receive the complaint electronically and seek to resolve the dispute through ADR, using the ODR platform exclusively if they wish.

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

EU Member States are required to bring into force the legislation and administrative provisions necessary to comply with the ADR Directive by July 2015 at the latest. The ODR Regulation, which is binding on Member States directly, will take effect from 9 January 2016 in respect of the bulk of the provisions.

With regards to financial services, it is expected that ADR will be given a revamped impetus within the EU as up to now, the setting up of such redress mechanisms has been essentially voluntary. Certain EU legislation in the area of financial services contains provisions encouraging the creation of ADR schemes in certain fields of financial services. The new ADR directive will ensure that all financial services would be covered by an out-of-court redress body in all Member States.

In 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.

It is only natural that policyholders holding policies offered by entities 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.

In 2013, 21 cross-border complaints were handled by the Unit. A selection of these cases is described in more detail in this annual report.

EU COMMITTEES ON CONSUMER PROTECTION AND FINANCIAL INNOVATION

EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

EIOPA was established in consequence of the reforms to the structure of supervision of the financial sector in the European Union. Article 9 of Regulation 1094/2010 establishing 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. This Regulation also requires EIOPA to establish, as an integral part of the Authority, a committee on financial innovation, which brings together all the relevant competent national supervisory authorities with a view to achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and provide advice to 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.

During the past year, the CCPFI endeavoured to finalise its work on the Guidelines on Complaints Handling by Insurance Intermediaries. In view of the fast development in the various online instruments which are being used to promote insurance products, during the first quarter of the year under review, the Committee also carried out a mapping exercise on the use of comparison websites and issued a good practices report in this regard. The aim of this report is to regularise the market with a view to enhance consumer protection. Furthermore, the Committee sought to progress its work on good supervisory practices regarding knowledge and ability requirements for distributors of insurance products.

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

Finally, the Committee also published a Report on the Consumer Trends identified in the insurance and occupational pensions markets in the year 2012. The Committee also sought to enhance the methodology for identifying consumer trends going forward and worked to revise and improve the templates used to collect this data from Member States.

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 ongoing tasks and responsibilities from the Committee of European Banking Supervisors (CEBS). The EBA promotes a transparent, simple and fair internal market for consumers in financial products and services. It seeks to foster consumer protection in financial services across the EU by identifying and addressing issues which may lead to consumer detriment. The role and tasks of the EBA related to consumer protection and financial activities include: collecting, analysing and reporting on consumer trends in the EU; reviewing and coordinating financial literacy and education initiatives; developing training standards for the industry; contributing to the development of common disclosure rules; monitoring existing and new financial activities; issuing warnings if a financial activity poses a serious threat to the EBA's objectives as set out in its funding Regulation; and temporarily prohibiting or restraining certain financial activities, provided certain conditions are met.

The Standing Committee on Consumer Protection and Financial Innovation (SCConFin) within the EBA is actively assisting, advising and supporting the EBA in fulfilling its mandate in the areas of financial innovation and consumer protection, as described in article 9 of EBA regulation.

Amongst the diverse initiatives taken by the SCConFin during the year under review, the EBA published a warning on virtual currencies and a joint warning with ESMA on Contracts for Differences. SCConFin also provided the groundwork for the publication of Opinions on Good Practices for the Treatment of Mortgage Borrowers in Payment Difficulties, for Responsible Mortgage Lending and Risk Management of Exchange Traded Funds.

EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA)

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

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

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

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

ESMA's investor corner, which forms part of its web portal, is addressed to those who have invested or are planning to invest in financial products. Targeted for 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 making a complaint, information about compensation schemes, and national contacts that may be able to assist retail investors.

COMMONWEALTH SECRETARIAT CONFERENCE ON FINANCIAL CONSUMER PROTECTION HELD IN SRI LANKA

The Commonwealth Secretariat invited the Consumer Complaints Manager to deliver a presentation on financial services consumer protection as well as conduct a training session at the Asia Conference on Financial Inclusion that took place in Sri Lanka during the first quarter of the year.

The conference brought together heads and senior officials from various Ministries, regulatory authorities and financial sector organisations, civil societies and NGOs across the Asian region including Sri Lanka, India, Maldives, Malaysia, Bangladesh and Pakistan. The discussion focused on the development, enhancement, and implementation of programmes in financial inclusion and literacy; sought to mobilise commitment and partnerships for the support and expansion of such programmes and develop strategies for the way forward.

The MFSA was particularly identified by the Commonwealth Secretariat for its comprehensive approach to consumer protection that recognises the roles of government, providers and consumers in the adoption of the G20 High-Level Principles of Financial Consumer Protection.

Among various subjects, the conference discussed measures aimed at enhancing financial consumer protection such as having a robust complaints-handling mechanism. The meeting reviewed financial ombudsman and mediator schemes or the formal procedures set up to address complaints from financial services consumers.

The Complaints Manager gave a general overview of the setup of his office as well as the MFSA's role in financial education. During the presentation, he also provided a description of the various education initiatives undertaken by the Authority, especially the use of radio and television as a cost-effective way to engage with consumers. Indeed, participants were actively interested to learn about the use of the media (such as local radio stations) to get across consumers.

During a Train the Trainers session, the Complaints Manager actively engaged with around 60 teachers and youth officials about various consumer education initiatives. He also discussed various online financial consumer education initiatives taken at EU level.

The discussions during breaks and social events provided for a healthy exchange of experiences and best practices and helped participants identify the gaps in their own country frameworks and motivated

commitment for improvement. It also allowed the Secretariat to take stock of the progress of programmes in member countries, and identify strengths and areas in need of assistance.

The Commonwealth is a voluntary association of 53 independent countries and home to 2.2 billion citizens. It includes some of the world's largest, smallest, richest and poorest countries, spanning five regions. Thirty-one of its members are small states, many of them island nations. Malta is a member of the Commonwealth.

STUDY VISIT AT THE UK FINANCIAL OMBUDSMAN SERVICE

During the year a member of the Consumer Complaints Unit was given the opportunity to attend for a five-day study visit at the UK Financial Ombudsman Service (FOS). The timing of this visit aligned perfectly with the proposal to strengthen or restructure the framework of resolution for financial services complaints in Malta and provided some insight on how in reality the mechanism of adjudicators and ombudsmen operate within the FOS.

This study visit enabled the Unit to be in a better position to understand the approach taken by the FOS at the different stages of a complaint. Technically speaking the approach taken by the Unit and the UK FOS to handle complaints is very similar except that the MFSA's Consumer Complaints Manager can only seek to reach an amicable solution whilst an Ombudsman's decision is binding on the licence holder if it is accepted by the complainant.

The Unit member also had the chance to spend some time with the adjudicators and ombudsmen involved in handling complaints on Payment Protection Insurance (PPI), a major mis-selling scandal in the UK resulting in thousands of complaints being submitted to the FOS on a weekly basis. Although problems with PPI have not been experienced in Malta, the Unit did meet with circumstances where it had to stretch its resources to deal with a significant number of complaints in relation to mis-selling of investment products and hence these meetings provided the Unit with a good insight on how complaints on a mass scale can be handled. Whilst the engagement of new employees by the FOS was critical in the review of complaints, the key to a successful system lies however, and without any doubt, in the effective communication between the various departments within the FOS but also with the regulators, businesses and stakeholders.

Although the FOS's website provides substantial detail about the work that is carried out and explains how and why certain decisions are made in the resolution of complaints, study visits are a very good way to learn and personally evaluate the system and practices used by other ADR entities throughout their daily operations. By comparing its operational system with that of the FOS, the Unit can gauge what level of service is being provided to Maltese consumers and improve where necessary.

The financial entity should not allow cases to escalate unnecessarily and should attempt to arrive at an amicable resolution for the benefit of all parties concerned

CONSUMER EDUCATION

MYMONEYBOX – THE CONSUMER EDUCATION PORTAL

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

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

The section on life cycles has been revamped to include specific information relevant to the different life stages consumers go through. In particular, information was added to the section of 'young adulthood' with the aim to help consumers within this age bracket to financially prepare themselves for taking out a loan, getting married and even to start a family. New material was also added to help parents engage in efficient budgeting and teach their children about the importance of this concept. A new section has been added to help consumers going through divorce or separation, given that this circumstance might also create financial burden.

During the year under review the Unit endeavoured to target students and promote financial literacy at this very early stage. Teachers are the closest influential figures to students and for this purpose a dedicated teacher's corner has been created on MyMoneyBox to help them in this learning process. This page provides teachers with a portfolio of websites which can be used not only to gather ideas to include in the annual syllabus but also offers them the possibility to interact with other teachers within the EU to exchange views and share consumer education news and experiences.

The monthly electronic newsletter which is sent to all subscribers of the portal remains a flexible tool to report on the prevailing affairs in financial services. Plans are underway to consolidate certain sections of the website and restructure other sections to facilitate accessibility. Work is in progress to launch a mobile and tablet app. Mymoneybox is also very active on Facebook (facebook.com/mymoneybox) reaching out to a very wide audience.

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

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

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

RADIO AND TELEVISION

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

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

In addition, the Unit is also producing its own radio programme on Campus FM, the University of Malta's radio station. The entire series is available as a webcast on the radio station's site.

REPORTING OF COMPLAINTS AND QUERIES

COMPLAINTS' REVIEW

During the year, a total of 195 formal complaints and 191 enquiries were received. The Unit reviewed and concluded 115 formal cases, which include a number of complaints carried forward from previous years. A number of cases, amounting to 159, remained outstanding.

Table 1: Analysis of complaints against licence holders and queries handled in 2012 and 2013

	FORMAL COMPLAINTS						Enquiries		Oral Queries	
	Cases Received		Cases Closed*		Pending Cases					
Complaints related to	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012
Banking	18	22	12	25	5	8	20	63	469	516
Insurance	55	48	23	58	7	14	41	64	597	570
Investments	122	636	80	798	147	187	120	68	891	518
Other	0	2	0	3	0	0	10	17	51	111
Total:	195	708	115	884	159	209	191	212	2008	1715

*Includes cases carried forward from previous years.

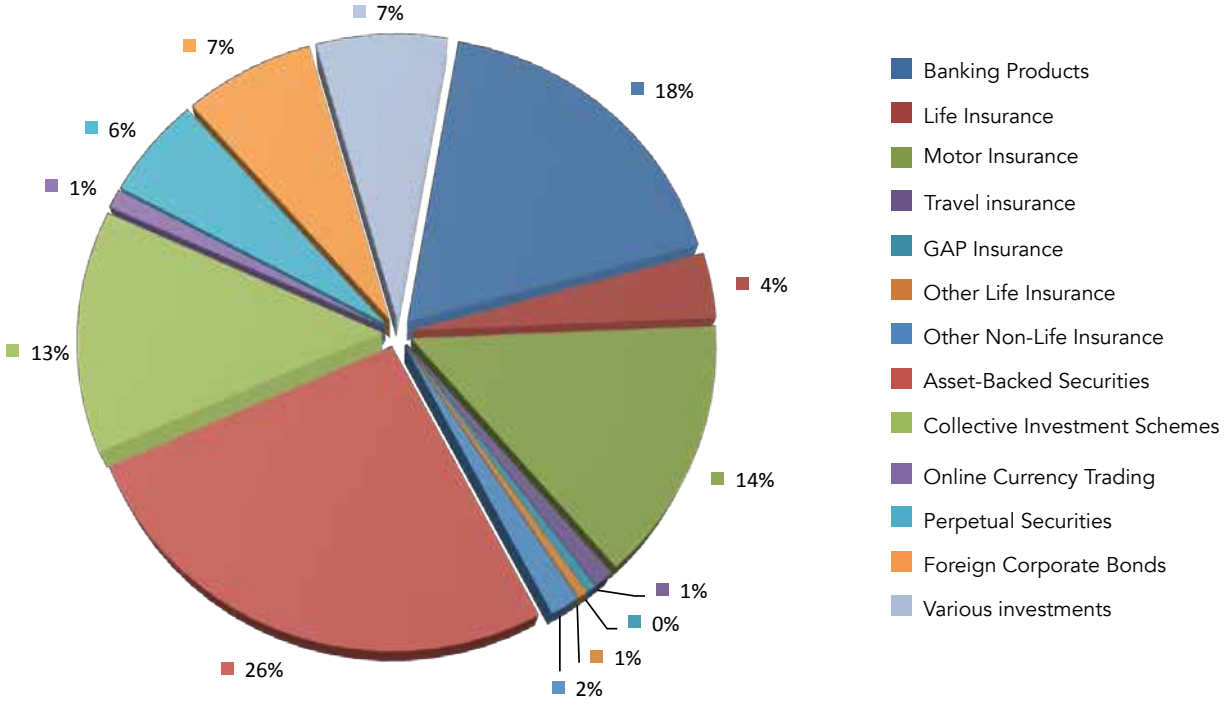
Source: Malta Financial Services Authority

Complaints lodged directly by consumers or through their relatives or friends amounted to 130, compared to 33 submitted through a third party (such as persons from the legal profession), 19 received through a licence holder and 13 received through another ADR scheme.

During 2013, the Unit processed 21 cross-border complaints, 15 of which were from policyholders who acquired an insurance policy from companies authorised in Malta but operating in another EU member state under Freedom of Services. The majority of these complaints were referred to the Complaints Manager by the ADR scheme of the policyholders' country of residence.

Complaints received by product-type

Similarly to the last few years, investment-related complaints represented a substantial part (61 per cent) of the number of complaints received, and processed, during 2013. In the main, complaints were related to claims of mis-selling of various complex and structured investment products by a number of financial firms. The chart across the page shows the number of complaints received by type of product.



Enquiries

During the year the Unit registered 191 cases as 'enquiries'. Normally, these are cases which are awaiting a formal outcome by the financial entity and which the Complaints Manager may investigate if the conclusions of the financial entity are not accepted by the consumer. The Complaints Manager can only start investigating a complaint if the financial entity against which a complaint has been made, was given sufficient time to review the customer's contentions. A financial entity is expected to be able to review and send a final letter to a complainant within two months from receipt of its customer's formal notification of a complaint. If a firm does not submit a final response within those two months, the Consumer Complaints Manager would commence formal review of that case. Enquiries would at times also include cases which the Complaints Manager considers as urgent and which require an early intervention or cases which can easily be resolved with the licence holder over the telephone or through a short exchange of e-mails. However, if the matter becomes complicated, the complainant is requested to submit a formal complaint in writing.

Formal cases closed in 2013 by classification

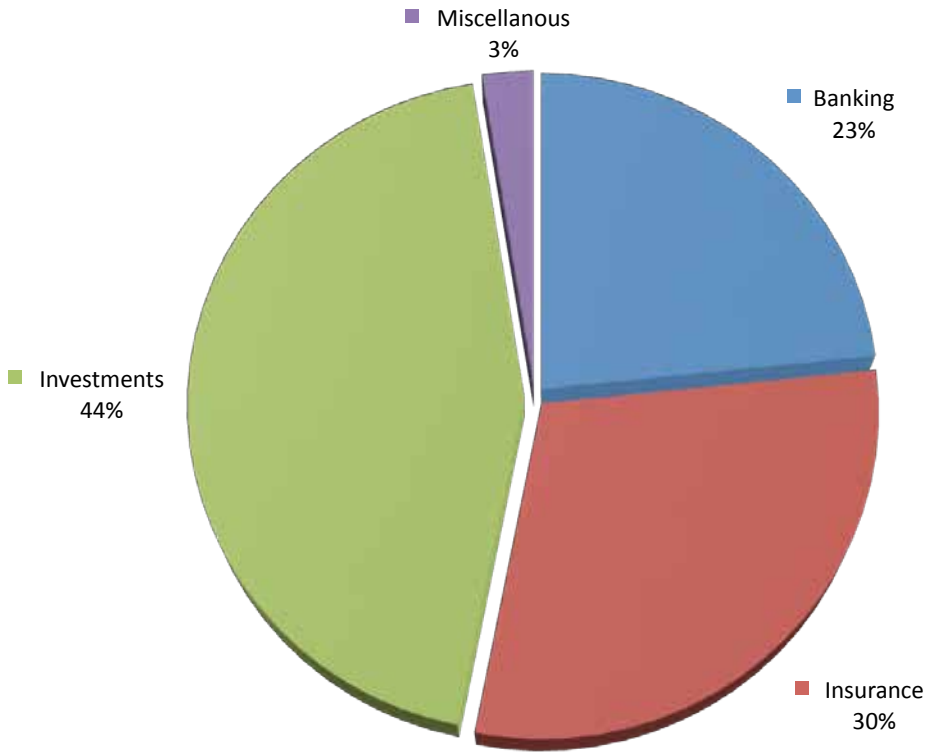
When the review of a formal complaint is concluded, the Unit sends a final letter to the complainant and the respective case is closed and classified according to the outcome. The table below gives a summary of the classifications made by the Unit on the 115 cases closed in 2013. A more detailed analysis is available in Appendix I.

(A)	7	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)	2	Consumer withdrew complaint
(C)	11	Referred to entity or consumer – no feedback
(D)	12	Entity has not treated the consumer complaint fairly – complaint upheld by Consumer Complaints Unit. Entity accepts recommendation.
(D)(i)	8	Entity has not treated the consumer complaint fairly – complaint upheld by Consumer Complaints Unit. Entity did not accept recommendation.
(D)(ii)	1	Entity has not treated the consumer complaint fairly – complaint upheld by Consumer Complaints Unit. Entity partially accepts recommendation and offers a goodwill payment.
(E)	61	Entity has treated the consumer complaint fairly – complaint not upheld by Consumer Complaints Unit.
(F)	7	Entity has generally treated the consumer complaint fairly but it still agrees to a goodwill payment or improved settlement.
(G)	6	General query – provided information/clarification.

Oral queries

The Unit also received around 2000 phone calls from consumers enquiring on various subjects (please refer to Appendix II for a detailed breakdown of the type of queries received) with just under half of the telephone calls taking less than five minutes to conclude. Other calls involved more complicated enquiries and required more time. Almost 900 of the calls received were in regard to general investment queries while nearly 600 calls related to insurance matters, in particular motor insurance claims. Half of the 469 calls received in relation to banking issues concerned queries on the depositor compensation scheme. Of the calls received, 46% were up to five minutes in duration, 30% were between six and ten minutes, while 24% were eleven minutes and over.

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



During the year under review, all members of staff in the Unit attended a one day seminar specifically to identify improvements in the manner consumer enquiries are handled. The aim of the course was in fact to refresh the Unit's general communication skills and brush up on the technical skills in order to be able to understand consumers' wants and needs and tackle them more efficiently and effectively.

REVIEW OF COMPLAINTS AND QUERIES

The uneasy situation which continues to linger in international financial markets coupled with actual and perceived perception that some financial firms may not be acting in consumers' best interests has certainly fuelled the number of complaints and phone calls received by the Unit. Some consumers, particularly pensioners, strive to make ends meet and feel betrayed by their financial planner when their investments fail, despite promises to the contrary. Such consumers are more likely to complain when something goes wrong and are even more willing to pursue that complaint to preserve their rights.

Rebuilding consumers' trust is vital for the proper functioning of financial markets. This issue is at the heart of the MFSA's complaints handling procedures. The procedures require consumers to lodge a complaint with the financial entity from which they acquired the product or service before referring the matter to the Consumer Complaints Unit. This means that by the time consumers contact our offices to investigate their complaint, they would have already had their complaint rejected by the financial entity. For this reason, the principles of fairness and impartiality are an integral part in the way the Unit handles disputes.

Through experience, the Unit has concluded that many complaints arise because there is a misunderstanding between financial entities and consumers which, with some more attention and better communication, can be avoided altogether. Sometimes complainants come to the MFSA aggrieved by the way they have been treated by their financial entity, especially if they have been loyal customers for a number of years. Entities have to understand that financial wellbeing is not the only thing that matters for consumers and above all consumers expect to be treated with dignity and respect rather than being seen as just a number.

The Unit is aware that when consumers submit a complaint they expect an immediate resolution to their complaint. Although the Unit endeavours to conclude a review of most cases within not more than three months, it may not be able to do so in regard to every complaint especially if other matters come to light which require further investigation.

The Consumer Complaints Manager investigates complaints by looking at the facts and not at how well the arguments are put forward. While it is appreciated that not all consumers feel comfortable writing a letter of complaint, the background of a complaint from the consumers' point of view needs to be known. The complaints procedure has been designed with the consumer in mind and over the years it has been modified to be as simple as possible so that consumers do not need to engage the services of a professional person in order to submit a complaint. As clearly explained in the 'Information Leaflet for Consumers', if consumers decide to be represented by a professional person, then they are more likely to incur hefty costs and they cannot expect to get these costs back from either the Authority or the financial entity, even if the Complaints Manager decides that the complaint is valid.

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

INVESTMENT SERVICES

General observations with regard to complaints and queries handled by the Unit

When things go wrong in the financial sector, either because of financial disturbance in economic markets or due to shortcomings or misconduct in the strategies of financial firms, consumers' lives are affected because more often than not financial losses are incurred. Over the years the Unit has witnessed the collapse of various foreign firms or products and encountered circumstances where there was a startling mismatch between the risk investors were willing to take on and the risk inherent in the products they were sold.

Impacted by the low interest rate environment, consumers intensified their search for products offering higher returns. However, consumers who have been blinded by higher yields may have misunderstood the investment risks they have assumed when placing their savings in products such as asset-backed securities or other structured products, conveniently disguised by some financial firms as being low risk. This has left many investors, who were expecting extraordinary returns high and dry, with most of them also losing the capital invested.

When consumers speak to financial advisers at their bank or investment firm in search of investment advice, they often put their mind at rest that their adviser will only give them investment products that equate with their investment objectives, risk attitude and personal circumstances. The Unit has met various complainants following the financial crisis who admitted that they did not even read through the (limited) product information documents provided to them at point of sale. Some investors were shocked when the Unit explained to them how the investment actually worked and what type of risk they had assumed.

Geared towards increasing their sales commissions, some firms have exploited the information asymmetries existing between them and their customers to develop selling practices which put the interests of consumers far from the centre of their business models. These asymmetries can be seen in some of the most prominent recent examples of poor conduct in the financial sector.

The Unit has throughout the years seen many consumers who either because of lack of motivation and attitude, or out of fear that their skills and knowledge about financial products is deficient, tend to remain attached to their existing products and do not shop around for better offers which might suit their needs more appropriately. The cautious terminology such as "safe", "secure" and "protected" which were used to describe these products made consumers even more reluctant to leave their comfort zones. Consequently, many consumers have found themselves in a situation where almost all of their life savings had been invested in just one or two investment products and when these products or the firms issuing these products entered into financial difficulties, consumers saw their investments being wiped out completely with very poor prospects of recovery.

Indeed, one would have expected a trustworthy financial adviser to warn these consumers to increase diversification between investment products and also amongst industry sectors and not let them place all the eggs in one basket. Carefully structured forms created by these financial advisers to discharge themselves from any responsibility revealed that these transactions had been carried out on 'execution only' or 'promote and sell' basis. When the Unit met with these investors, however, it was not very difficult to establish that they did not possess the knowledge and experience to carry out investments into such complex products without advice being received. As a result of reviewing one complaint file after another the Unit has learnt that some financial advisers were promoting particular products, regardless of differences in consumer needs and demands, only because these products may have left more commission in their pockets.

Unfortunately financial incentives have increased the misalignment between firms and consumers and exacerbated poor conduct and conflicts of interest inherent in firms' sales structures and processes, consequently undermining the integrity of the local financial retail market and leading to consumer detriment.

Having a very narrow base, the Maltese financial market certainly needs more effective competition to enhance market efficiency and help ensure consumers get good quality products without having to pay exorbitant up-front commissions. The mis-selling scandals taking place both in Malta and abroad have also been a costly warning sign that stricter regulation is needed to restore the trust and confidence of consumers.

Mis-selling cases involving complex and structured investments - Observations

Since the financial crisis, the majority of complaints received and processed by the Unit have been investment-related. During 2013, the Unit received a number of complaints relating to the mis-selling of various complex and structured investment products by various licence holders. Although many of these complaints were similar in nature, with many complainants being relatives and friends who were encouraged by the intermediaries to introduce family and acquaintances, each complaint was considered separately on the basis of its own merits.

In each case, the investigation concentrated on two main aspects:

- a thorough review of the documentation compiled at the time the investment was sold to investors including the source of funds and pre-contractual documents provided at the time; and
- a review of the complainant's investment experience, knowledge and risk attitude.

Review of documentation involves a detailed analysis of any fact finds and file notes compiled on behalf of investors at the time the investment was being offered to investors, as well as receipts, cheque images and other documentation related to the initial sale. Depending on the nature of the transactions, the type of investment as well as the circumstances which led an investor to lodge a complaint, the Unit would normally request the financial entity to procure all the documentation held by it on file as well information of the reasons behind the adviser's recommendations. There were also several complaints where the Unit had to request documentation and information from entities that, at some key stages, held or sold financial products belonging to the complainant.

This process was particularly pursued in those complaints where investors had existing life policy arrangements and were "encouraged" to take out a policy loan, incurring a hefty interest rate on the loan balance, to invest the proceeds in complex and structured investments.

The second part of the investigation concentrated on the analysis of investors' transaction history and lists of assets and liabilities found on the fact finds provided by the financial entity. When this information was not provided in the fact find, for example in instances where this was the first transaction with the licence holder, the complainants were asked to provide documents showing their previous investments, including those with other licensees.

The Unit also analysed how the relationship between the licence holder and complainants commenced and noted that, in some particular cases, the sequence of events was very similar. Complainants were asked to describe the type of investment relationship they had with the licence holder, whether meetings were held at the licence holders' offices or at their private residence and also to make a recollection of how the product had been described to them. Again, a certain pattern emerged and this was taken into consideration by the Unit in its review of complaints.

In the majority of complaints, it became evident that the complainants had a longstanding relationship with the licence holders and an element of trust between the parties had been built over the years. Furthermore, a large number admitted to having met licence holders' officials at their (the investors') private residence, a practice regarding which the Consumer Complaints Manager had voiced his concern in previous annual reports.

The majority of complainants confirmed that the products had been described to them as strong, safe and secure with a number of in-built safeguards to make sure that the money invested would always be protected. The complex features of such investments were rarely described in detail and the simple explanation given by licence holders at investment stage may have misled a number of complainants. A number of complainants

were not given any product documentation or brochures and those who did were not given enough time to examine them or even go through them and this led many investors to make rushed uninformed investment decisions.

Although complex investment products may be sold to retail investors, they could not be considered suitable unless the investor clearly understood their complexity and the risks these entailed. The Unit believes that it is only after a properly drawn up suitability test can an investment adviser establish whether a complex product should be offered to an investor. This goes beyond the mere ticking of boxes and procuring the signatures of investors. When giving advice on a particular complex product to a retail investor, the financial adviser – who is obliged to act in the investor's best interest – has to be certain that the product is suitable and meets the investor's objectives.

There are indications that some financial planners might have lured investors into a number of complex products by promoting them as an alternative investment opportunity with higher rates of return than banks' interest rates, very low risk, no entry charge (as opposed to other traditional investments such as funds and life policies), and possibly tax exempt. According to statements presented by investors, the risks inherent in these products were downplayed significantly by some licence holders. In fact, during various meetings held with different complainants, it became evident that during the sales process, more emphasis was made on the historic returns of the products (with colourful graphs and charts being shown to complainants) rather than on the risks involved in obtaining the advertised returns.

For an investor to be considered eligible to invest in these complex and other alternative structured investment products, he or she must have the necessary knowledge and experience to appreciate and understand the risks involved. There are many factors which can play an important part in this important process, such as the investor's current and previous employment, previous investment history as well as risk attitude. If a licence holder is unable to convince the Consumer Complaints Manager that these factors had been taken into account during the process which lead to the eventual sale of the investment, the product would be considered as having been mis-sold and the financial entity requested to place the investor back to the original financial position prior to the investment.

In their statements, the majority of complainants reported that they had received advice from the licence holder to invest in such complex investment products. However, the documentation provided by the licence holder showed that the majority of these products were sold on an 'execution only' or 'promote and sell' basis, rather than on advice. This basically implies that the licence holder merely explained the features of the product without expressing an opinion on its suitability (in the case of "promote and sell") or the investment transaction was made at the initiative of the client with the licence holder simply executing the order (in the case of "execution only"). Meetings with complainants revealed that at the time of purchase, investors were not able to determine what level of service they were being provided by their financial planner, that is, whether it was advice or merely a sale. A number of investors became aware of the type of service they had been given when the Unit discussed this issue with them during the investigation.

When the Unit encountered certain irregularities in the sales process, such as where different investors took out loans on their existing life policy arrangements in order to reinvest the proceeds or when the bulk of one's savings was placed into a single complex product following the sale of highly liquid and conservative investments, the Consumer Complaints Manager issued an interim letter to complainants and licence holders alike asking for a justification in respect of this particular action.

In the large majority of complaints involving proceeds of policy loans and conservative investments being placed in complex and structured investments, the Complaints Manager determined that the financial planner had most certainly failed to act in the investor's best interest and mis-sold the investment.

If a complainant is found to have made repeated investments in the same product without any concern for diversification, it would be unlikely for the Consumer Complaints Manager to uphold that consumer's complaint.

Although a number of the complaints received during 2013 were closed, the majority are still under investigation mainly due to delays from licence holders to provide the Unit with replies and documentation. The Unit adopted a consistent methodology when reviewing complaints and requested clarifications on various aspects through several letters and e-mails to all parties involved. This inevitably increased the review time on complaints as replies are sometimes drawn out. The methodology adopted by the Unit, however, ensures a fair review process for both licence holders and complainants.

Selection of complaints

UNSUITABILITY OF ADVICE – COMPLAINT NOT UPHELD

Mr X invested in a foreign unsecured direct bond, also classified as a complex security in terms of MiFID, following advice from an investment firm. After a few years, the issuer of the bond entered in financial distress and the investment firm advised Mr X to sell his holdings. Mr X incurred a loss on the sale. Sometime later the issuer of the bond was declared bankrupt. Mr X wrote to the Unit complaining that the features of this bond had not been adequately and correctly explained to him at the time when financial advice had been provided. On this basis, Mr X declared that this security was not suitable for his circumstances. Mr X claimed that he had always made it clear to his investment firm that he would prefer to earn a lower rate of interest rather than putting his capital at risk.

The Unit requested the investment firm to provide a number of documents in relation to Mr X's portfolio. The documentation illustrated that Mr X's portfolio was quite diversified and, in fact, prior to his investment in the bond on which he was complaining about, he had already invested in four other securities which had very similar features and were also complex in nature. Mr X was not complaining about the other four securities. Mr X explained to the Unit that since the other four bonds were giving a return, he did not feel it was opportune to submit a complaint in this regard.

As Mr X deemed the bond on which he incurred a loss as unsuitable for his circumstances, the Unit initially held the view that the other four securities, which were very similar in nature to the former, were also unsuitable. From the documentation procured, it also came to light that Mr X's wife had also invested in this security but she had redeemed the investment in good time prior to the issuer default and, indeed, made a small gain. The documentation illustrated that one of the main reasons which appeared to have enticed Mr X to purchase this security was the relatively low market price compared to other securities available on the market at the time.

In view of Mr X's statement that he would have preferred to invest in an investment which gave him less interest but preserved his capital, the Unit compared the overall return on Mr X's whole portfolio with the investment company to the return he would have received had he placed his savings in a fixed deposit account. In aggregate, Mr X did not suffer any financial loss from his portfolio of investments (on the contrary he had made a good return) and therefore there was no basis for requesting the firm to pay him any compensation.

The complex features of such investments were rarely described in detail and the simple explanation given by licence holders at investment stage may have misled a number of complainants

DISPUTING THE LEVEL OF BONUSES DECLARED ON AN INVESTMENT BOND – COMPLAINT NOT UPHELD

Mrs A wrote to the Unit disputing the level of bonuses declared by her insurance company on an investment bond. She claimed that, after placing a hefty sum and devoting her loyalty to the firm for a stretch of years, the bonus levels were not justifiable. Mrs A's policy matured mid-year and she contested that the insurance company unfairly calculated the level of bonuses declared for the final six month term of the policy instead of for a full calendar year with the result of her getting a meagre sum by way of terminal bonus.

The Unit reverted to the insurance company concerned and requested a report indicating the allocations made into the investment bond along with the charges applicable. Unfortunately the report received lacked the total transactions over the life of the investment bond. The Unit was made aware that an estimated interim bonus was calculated on a daily basis and allocated to the investment bond once a month. The insurance company explained that the interim bonus rate for each financial year was based on the previous years' actual final bonus declared by the company. Once the actual investment returns were established by the insurance company at the end of a calendar year, the company declares (at its discretion) a final bonus attributable to that financial year and then an adjustment is made upwards or downwards depending on whether the final annual bonus was higher or lower than the interim bonus.

In its review, the Unit pointed out that according to the policy document which encompasses the terms and conditions regulating the investment bond, all investment risks were borne by the policyholder and the investment bond had no inherent investment guarantees. Annual bonuses were not guaranteed and were payable at the discretion of the company – however once declared, these cannot be retracted and accrue on the policy account.

Terminal bonuses were likewise not guaranteed. These were payable at the discretion of the company and once declared accrue on the policy account. All bonuses declared by the company were accumulated on the policy account.

The Unit did not find any evidence to suggest that the insurance company was negligent in its procedures or that the computation of bonuses was erroneous. There was no obligation on the part of the insurance company to maintain the same level of bonuses year on year.

PROFITABLE TRADES MADE FROM AN ONLINE CURRENCY TRADING PLATFORM FORFEITED – COMPLAINT NOT UPHELD

Mr B traded foreign currency using an online currency trading platform. Following a number of profitable trades he decided to withdraw the funds and close the account. The company operating the platform refused to allow Mr B to effect this withdrawal and informed him that his account was being investigated by its compliance department. The compliance department concluded that Mr B had been engaging in off-market trading and consequently decided to return to Mr B the amount he originally invested and made him forfeit any profits he had accumulated. Mr B felt that the company's action was unfair and lodged a complaint with the Unit.

The Unit contacted the licence holder's compliance team who explained that the company had a security system in place to identify suspicious trading. These accounts would be monitored for some time but no action would be taken unless there is clear evidence of unfair exploitation of the system by the user. If a trader submits a request to withdraw the funds while an investigation is ongoing, the company would temporary block the respective accounts until the investigation is concluded following which it will either give the green light or decline the withdrawal request.

In this case, the licence holder discovered that Mr B was using an ingenious piece of software to manipulate prices and exchange rates, thus giving him an unfair advantage over other users. It became evident that Mr B was using off-market pricing which incidentally was always skewed in his favour. The Unit was satisfied with the evidence provided by the platform operator which amongst other things included transaction logs and graphs from which doubtful activity could easily be identified. The complaint was not upheld and Mr B was informed accordingly.

INSURANCE

The Unit continues to recieve a reasonable number of disputes from third party claimants who are not being provided with a replacement vehicle for the time during which parts were being sourced in order to repair their vehicle. The Unit is of the view that if the car is not fit to be driven and the claimant has done his utmost to keep the cost of the damages at a minimum, then the insurer should not deprive a claimant from the use of a temporary vehicle. Maltese Courts have made this very clear in different judgements but some insurers continue to ignore such case law.

The Unit also received complaints relating to repairs on motor vehicles following the hail storm damage experienced by various policyholders at the beginning of the year. The Unit was inundated with a diverse number of queries and complaints following this freak happening. Some complaints related to unsatisfactory repairs carried out by specialised repairers - appointed by the insurance company itself - who were using relatively new methodology (for Malta) to affect the repairs compared to the conventional methods used by local authorized repairers. Some policyholders also complained about the fact that they were not allowed to repair their vehicle at their own trusted repairer and were "forced" to take their vehicle to the repairers appointed by the insurance company on the basis that this new methodology was cheaper and more effective. Other complaints related to a number of rejections by insurance companies of claims which were made after a number of weeks or months following the storm on the basis of late notification.

Selection of complaints

TERM POLICY DISCOUNT – COMPLAINT NOT UPHELD

Mr A and Ms B had purchased a term policy through a bank's life assurance representative. This policy was intended to serve as collateral for the banking facilities they held in joint names.

Mr A had in his possession the documentation which was provided to him by the bank's life assurance representative at the time he and his partner were considering the insurer's proposition. This documentation illustrated that the initial premium was computed at €67 with a subsequent manual amendment – suggested by the same bank's life assurance representative – altering the amount of the premium down to €50.

The conditions of this life policy enabled policyholders to receive their total outlay of premia (the "cashback" element) at the end of the term, unless a death claim was submitted.

Mr A and Ms B argued that despite the premia being altered on the illustration document raised by the bank's life assurance representative, the cashback amount was not duly amended to reflect the revised sum of €28,000 receivable on the lapse of the policy. Rather, the amount of €33,000, computed on the original premium of €67, was still shown on the illustration document which featured the date of the first meeting

between Mr A, Ms B and the bank's life representative. They claimed that the correct amount of the cashback should have been €33,000 as computed on the original premium.

The insurer maintained that the insured was entitled to full premium cashback at policy maturity, in other words, the policy promised to return the total amount of premia paid by the policyholders between policy inception and maturity. The insurer insisted that the policyholders should refer to the revised amount of €28,000 as indicated on the policy schedule and not the illustration document as this latter document was not binding.

The Unit requested clarification from the insurer as to the application of a discount on the premium originally quoted at the onset of the sale. The insurer confirmed that during discussions with the bank's life assurance representative, Mr A and Ms B had made the representative aware that they were contemplating on procuring life cover from a competitor insurer and, therefore, the bank's life assurance representative sought permission to discount the premium originally quoted. This prompted the Unit to seek confirmation from the insurer on the way the discount was computed.

The insurance company explained that it was empowered to apply discounts at its discretion on the basis of sound business. In this regard, to maintain the applicants' custom, the company applied a discretionary 25% discount to the premium originally quoted. This discount effectively brought the premium down to €50. Despite the discount, the sum assured payable on death remained constant and was based on the computation of the original premium.

Following a review of the complaint, the Unit concluded that it was justifiable on the part of the life assurance company to compute the cashback element (€28,000) on the revised premium, representing the total amount of premium Mr A and Ms B had actually paid into the policy throughout the term of the policy. It therefore rejected Mr A and Ms B contentions.

ADDITION OF A SECOND LIFE ASSURED ON A LIFE POLICY WITHOUT NOTIFICATION – COMPLAINT NOT UPHELD

Mr D claimed that his late father had been sold an investment bond and the financial intermediary had instigated his father to name him as the second life assured without his knowledge.

The Unit requested copies of the original and amended application forms compiled by Mr D's late father.

It transpired that three years following the sale, the financial intermediary proposed Mr D's father to consider the possibility of nominating any person (such as a member of the family) as a second life assured on his policy.

The financial intermediary proposed this course of action to enable the heirs to avoid potential early encashment charges which could be incurred if the death of the primary life assured (Mr D's father) occurred during the early encashment period applicable on the investment bond. Mr D expressed his dismay in being added as the second life assured without being notified, further noting that his father's will clearly stated that the proceeds of the investment bond were to be divided between the heirs.

When Mr D attempted to sell the underlying investments of the investment bond following the demise of his father, he was advised that he would incur a hefty surrender charge given that the policy was being surrendered in the early encashment period.

Mr D once again contested that this addition was decided by his father without him ever being consulted. The complainant further alluded to the levying of extensive charges on the remaining holding in the bond citing in particular the annual management charges.

The financial intermediary reiterated the advantages of adding a second life assured, further referring to steps being taken by the intermediary itself to recommend to all clients invested in this bond category to add a second life assured.

The financial intermediary further maintained that the heirs had exercised their personal choice by proceeding to surrender the policy despite having the option to keep it and maintained that they were in no way disadvantaged by Mr D's late father decision to add a second life assured.

The intermediary reiterated the position that it did not advise the father to nominate specifically Mr D as a second life assured. The decision was left solely at his discretion and the intermediary was not obliged to divulge this information to a third party. The entity was barred from disclosing clients' volitions to any third party.

During the review process of the complaint, Mr D informed the Unit that he had sold a substantial part of the underlying investments comprising the investment bond, to the extent that hefty penalty charges had been triggered. Mr D complained that, other than these charges, the heirs had also suffered a capital loss. It transpired that Mr D executed the redemption transactions out of his own volition and without seeking advice.

On the basis of its extensive review, the Unit was unable to establish that the entity had acted negligently throughout its professional relationship with Mr D's late father. In this regard, the Unit was unable to uphold the complaint.

NON-DISCLOSURE OF MATERIAL INFORMATION ON LIFE INSURANCE WITH DISABILITY BENEFITS (CROSS-BORDER COMPLAINT) – COMPLAINT NOT UPHELD BUT ENTITY AGREES TO A GOODWILL SETTLEMENT

Ms T took out a personal loan to purchase some new furniture for her residence and her bank obliged her to take out a life policy as security against her loan. Voluntarily, Ms T decided to add a disability benefit to her policy to have peace of mind since she was the sole wage earner in the household.

A few years later Ms T suffered from a heart problem and was hospitalised for a few days. The doctor advised Ms T to stop working for at least a couple of months as she had to undertake treatment in relation to her medical condition.

Consequently Ms T lodged a claim with her insurer for disability benefits in order to cover her monthly loan repayments for the duration of her disability. Sometime later Ms T received a letter from her insurance company informing her that after taking into consideration the events that led to her medical condition, it would not be honouring her claim. Her claim had been rejected on the basis of a false declaration of health at application stage.

When completing the application form for her insurance policy Ms T had declared that in the previous three years she had not taken any regular medical treatment. The insurance company sustained that from the medical information obtained for the assessment of the claim it was evident that Ms T had made a false declaration. The insurance company explained that, as the medical history was material to the declaration made, it was unable to accept the claim.

When the medical records of Ms T were examined, it resulted that Ms T had suffered from acute chest pains two years prior to her claim. It appeared that Ms T had also received physiotherapy treatment and was, as at the date of the claim, still attending to stress therapy sessions. Ms T was also a heavy smoker (another aspect which she did not disclose in the proposal form).

The insurer's medical doctor was of the view that Ms T's medical history presented a significant health risk and proposed a rating of +100% on the premium. The insurer, however, rather than rendering the policy void due to non-disclosure, decided to invoke the proportionality principle. This effectively meant that the insurance company would apply the +100% rating and consider a proportionate payment subject to the company having the right to obtain expert medical opinion to check that the disability stated was and remained justified.

The Unit was of the view that the offer that had been made by insurance company was fair and reasonable given the circumstances surrounding the claim.

MOTOR INSURANCE CLAIM REJECTED DUE TO ALLEGED MISREPRESENTATION (CROSS-BORDER COMPLAINT) – COMPLAINT NOT UPHELD BUT COMPLAINANT DIRECTED TO CONSIDER LODGING A COMPLAINT AGAINST THE INSURANCE BROKER

Ms L, who resides in another European member state, purchased a motor insurance policy issued and underwritten by a Maltese insurance company, through her local insurance broker. She lodged a complaint with the MFSA after a claim she made with her Maltese insurer was rejected.

Ms L filed a claim with her insurer following an accident involving her vehicle which was being driven by her sister Ms M. The insurer rejected the claim on the basis of misrepresentation by Ms L at policy inception. According to the insurer, the vehicle was actually owned by Ms M, who held a provisional driving licence. Ms L was named as the main driver and insured under the policy. According to the insurer, Ms L was already insured as a first driver on her own vehicle and therefore had no insurable interest under this vehicle (which was owned by her sister).

Ms L disagreed with the views of the insurer and insisted that her sister used the car occasionally, mostly during weekends and that she was the main driver of the vehicle. Furthermore, she claimed that neither the insurer nor the broker ever informed her that she could not be the main driver on two separate policies and therefore such an arrangement should have been rejected by the insurer in the first place.

As part of the investigation, the Unit requested a copy of the completed proposal forms for both Ms L's and Ms M's cars. The insurer informed the CCU that had the car been insured directly in Ms M's name, the premium would have been much more expensive. It so happened that Ms L was named as the main driver so that Ms M benefits from her sister's 'experienced driver discount'. The insurer confirmed that it acted on information received directly from the broker appointed by Ms L.

Following an examination of the documents, it was clear that the same experienced driver discount was used twice to incept the two policies and, indeed, the policy covering Ms M's vehicle had also benefited unfairly from the experienced driver discount. As the insurer's system could not match the data of the two policies, the insurer simply acted on the information contained in the proposal forms and completed by the broker.

The Unit discussed its findings with Ms L and Ms M and explained why it deemed the complaint against the insurer had no grounds to be justified. Ms L confirmed that she had also initiated a complaint against her broker with the financial ombudsman in her country and was awaiting the outcome of his investigation. Additionally, the Unit informed the ombudsman of its findings and agreed with its views that the insurer acted

on the information provided by a third party, in this case the broker, who was at the time representing the complainant. The complaint was not upheld.

DAMAGE TO VEHICLE FOLLOWING REPAIRS UNDERTAKEN BY THE INSURER'S APPOINTED REPAIRERS – COMPLAINT PARTIALLY UPHELD

Mr C's car was flooded following a heavy storm. Mr C filed a claim under his comprehensive motor insurance policy and his insurer directed him to a repair garage of its choice. All was well until after a couple of weeks later the car stopped functioning. Mr C immediately contacted the garage, at which the repairs had been done and he was informed that in order for his vehicle to be serviced, a charge of €200 would apply. Finding this excessive, Mr C contacted his own repairer who opened the vehicle's gearbox and confirmed that it had not been checked during the last repair works and was still full of rain water. This had caused his vehicle to stall.

Seeing that the insurer's appointed repairers may be at fault, Mr C instructed his repairer to stop the work so that he could inform the insurer. When contacted, the insurer refused to send a surveyor to Mr C's repairer since works had already started without its authorisation and consequently denied any liability. The insurer argued that since Mr C had contacted his repairer rather than the insurer's appointed garage, he prejudiced their position. Mr C found this to be unfair.

The Unit immediately contacted the insurer to try and find an amicable solution. The insurer refused to accept liability and reiterated its position that Mr C had breached the policy condition which required the policyholder to inform the insurer of any damage for which it may be liable. Nevertheless, the insurer agreed to make a goodwill payment equivalent to the cost of purchasing a second hand gearbox, given that the existent gearbox was also second hand, but excluding labour costs given the breach of condition.

The Unit agreed that the insurer's offer was fair and reasonable. The complainant therefore obtained the cost of the parts but had to pay for labour.

ALLEGED MIS-SELLING OF HEALTH AND SICKNESS POLICY (CROSS-BORDER COMPLAINT) – COMPLAINT UPHELD

Mr M, an EU national, was looking to change his health and sickness insurance provider and was interested in an offer by X Insurance Ltd (a Maltese registered entity operating in another EU member state under freedom of service). The insurance company promised that the entire premiums paid under his health and sickness policy would be refunded if no claim was made within the first 12 years of the policy. Enticed by this offer, Mr M purchased the policy and he arranged to pay the monthly premium by direct debit.

Two years after inception, he received a letter from the insurer informing him that there would be a premium increase of 30%. Mr M was aware of the financial turmoil at the time and since he was happy with the cover he decided to pay what seemed to be a one-time increase in premium. However, a couple of months later the insurer informed Mr M that the company could not honour the promise it had made at policy inception. It offered Mr M three possibilities, from which he was invited to select one. The first offer consisted of a reduction in premium if the initial 12 year cash back offer is forfeited; the second offer was to maintain a similar premium to the one Mr M was paying on his existing policy but only 50% of all the premiums paid would be refunded if no claim was submitted in the first 12 years and the third offer was to choose another policy with better benefits but which offered no cash back option.

The Consumer Complaints Unit received several calls and complaints relating to repairs on motor vehicles following the hail storm damage in January 2013

Mr M decided to ignore the offers made to him by the insurer and maintained his existing cover. The following year however his premium was again increased, this time by a further 30% with another 15% increase the following year. Mr M saw this as unfair as he was never told that the premium could increase at such a high rate for no justifiable reason. He argued that the selling point of the policy was always the fact that he would receive back the premiums paid after 12 years claims free and if premiums continued to increase at that rate he would no longer afford to keep the policy. Following an unsatisfactory outcome of the complaint lodged with the insurer, Mr M decided to complain directly with the Unit.

The Unit initiated discussions with the insurer and requested a copy of all the documents and marketing material provided to Mr M at the time the policy had been sold. It was immediately clear that the focus of the marketing material was the cashback element on the 12th anniversary rather than on the actual cover. A copy of the full terms, which made reference to a possible increase in premium, was only provided to Mr M after the policy was purchased. It was also evident that although Mr M had been given a key features document - which admittedly was quite clear in the way it explained the policy's advantages and characteristics – there was no indication that revisions to the premium were possible at the discretion of the insurer. In fact, such discretion was only included in a particular clause in the terms and conditions.

The Unit found the insurer's sales pitch to be unfair as well as its unilateral discretion to increase premium and renege from the promise to repay full premium on the 12th anniversary. In addition, the Unit was of the view that selling a health and sickness policy on the basis of a cashback rather than the actual cover was misleading. The Unit therefore upheld Mr M's complaint and the company accepted to refund all premiums Mr M had paid. The policy was also terminated.

UNFAIR REPUDIATION OF EXTENDED WARRANTY CLAIMS – COMPLAINT NOT UPHELD

Ms Z purchased a second hand vehicle in 2011 which came with an extended warranty subscription acquired by the previous owner. When the vehicle was nearing the 60,000 km mark, she started hearing a noise in her engine and took her car to an authorised dealer for a service.

The dealer refused to service the vehicle as he noticed that the engine had some damages. Not being adequately assisted, Ms Z opted to invoke the extended warranty certificate and contacted another authorised repairer. The vehicle was subsequently towed to a different garage.

Serious damages were discovered in the engine and repairs in relation to such damages amounted to approximately €13,000. At this stage, Ms Z was informed that the repairs would not be covered by the policy as the damages resulted in consequence to lack of maintenance. Ms Z denied that she did not look after her vehicle as required by the policy and decided to lodge a complaint.

The insurance company provided the Unit with all the necessary documentation, including policy documents and service sheets and explained that every car has its particular routine maintenance requirements which need to be adhered to for the extended warranty policy to remain valid. This was made clear by the sales person who assisted Ms Z and, more importantly, was well explained in the policy document.

Upon examination of the documents provided, it was clear that when Ms Z purchased her vehicle in 2011, she was required to carry out two maintenance services up to 2013 but had only done one in 2011 a few months after purchase. From the vehicle's service history, the unit confirmed that no other services had been performed on the vehicle in the meantime. This was clearly in breach of the terms and conditions set out in the policy and the complaint could not be upheld.

GAP INSURANCE POLICY – COMPLAINT UPHELD

Mr C took out a loan with the intention of purchasing a new car and the bank obliged him to take out a Gap Insurance policy which would cover him for the difference between the actual cash value of the vehicle if it were destroyed and the balance still owed to the bank. A couple of months after taking out the loan, Mr C was involved in an accident and his car was declared a total loss.

The total loan amounted to €12,000, €10,000 of which were allocated to the purchase of the vehicle and the other €2,000 reserved to pay for the policy premium for seven years, being the duration of the loan. Given that Mr C was not at fault, the third party insurance reimbursed Mr C with the value of his car. Mr C was still obliged to pay the amount of €1,800, being premium for the Gap Insurance and the interest due on the balance. Mr C found this to be unfair as he had to pay for a policy under which he could never claim since his car had been written off.

The Unit contacted the insurance company which underwrote the Gap Insurance policy to obtain more information and documentation on Mr C's case. The company provided the documents and informed the Unit that it was looking into the case afresh and would provide feedback in due course.

The contract terms were clear in that the premiums were still due and had to be paid. Nevertheless the company contacted Mr C directly and offered to waive the premiums due and refund him the excess he had paid under his policy and related costs to acquire the police report. Mr C accepted the company's offer and the case was closed.

UNAUTHORISED CLAIM PAYMENT BY INSURER – COMPLAINT UPHELD

Mr Y parked his vehicle in the parking area of a shopping mall he usually frequented. A couple of days later, he was informed that a third party had opened a claim against his insurer following damage to his vehicle allegedly caused by Mr Y on the day he went to the complex. Mr Y was instructed to complete and submit an accident report on the matter.

An assessor was appointed to inspect the car but it was clear that there was no sign of any damage on Mr Y's vehicle and photographic evidence altogether showed that the damage had been caused by an opening of the passenger's door rather than the driver's door. Mr Y complained with the Unit stating the insurance company should never have accepted to settle the claim on his behalf without giving him the opportunity to express his views.

Following a number of exchanges between Mr Y and the insurer, the mistake was rectified and the No Claims Discount was reinstated. However, the insurer did not delete this incident from Mr Y's claims history. Mr Y argued that this was prejudicial in his regard as it may affect his ability to apply for insurance with another company in the future or make it more expensive to do so.

When contacted, the insurance confirmed the events as detailed by Mr Y and confirmed that due to an administrative oversight the claims history was not amended. Consequently, the insurer issued an amended document expunging the claim from Mr Y's claims history and promised to grant Mr Y a discount on his next renewal premium as a gesture of goodwill for the inconvenience caused.

ITEMS BELONGING TO THE INSURED SCRAPPED WITH THE VEHICLE BY THE INSURER WITHOUT PRIOR AUTHORISATION (CROSS-BORDER COMPLAINT) – COMPLAINT UPHELD

Mr G, a resident in an EU country, purchased a motor insurance policy from an insurer established in Malta and which was providing such insurance products under freedom of service.

In his complaint form, Mr G explained that the insurer disposed of his vehicle without his permission and while he was still the legal owner of the vehicle. He explained that the claim process with his insurer had not yet been settled when this happened. The insurer had initially told Mr G that he could eventually buy back his vehicle, only for this proposition to be subsequently reversed as the vehicle had already been scrapped.

The main issue of Mr G's complaint was the fact that he was not given the opportunity to salvage anything (including personal belongings) from his car. He explained that the aftermarket audio equipment installed in his vehicle was also scrapped. Mr G insisted that this was unfair and asked for his audio equipment to be replaced as this was not damaged when he collided in another vehicle (and which subsequently led to the claim with his insurer). He insisted that the aftermarket audio equipment was insured separately under his policy.

The Unit contacted Mr G's insurer who immediately confirmed that a survey had been carried out and the vehicle was classified as a write-off. Fault for the accident was also attributed to Mr G and the claim was handled accordingly. The insurer also confirmed that according to its policy terms and conditions the owner was not allowed to buy back the vehicle.

The surveyor who inspected the vehicle had established a pre-accident value for the vehicle, incorporating the audio equipment. The surveyor sustained that the audio equipment could not be considered as a personal belonging since it was permanently fixed to the vehicle. Furthermore, the request to dismantle the audio equipment was made after the insurer had made a settlement offer, at which point the vehicle had already been transferred to a claims management company.

The Unit pointed out to the insurer that the salvage from a car remains the policyholder's property until settlement has been agreed. Insurers were not entitled to dispose of the salvage without the policyholder's express permission. Where there is some unusual delay in reaching an agreement, as happened in this case, the insurer would be obliged to ask for the policyholder's permission to dispose of the salvage.

Furthermore, the vehicle had been classified as a write-off, which effectively meant that although it was uneconomical for the insurer to repair the car, the car was in fact repairable. It was therefore clear that the insurer had rushed matters and should have never sent the vehicle for scrapping before it obtained consent from the insured.

The insurer agreed with the views put forward by the Unit but could not refund the amount being asked by Mr G for the audio equipment as this had not been substantiated with receipts. An agreement was finally reached for a goodwill payment of €350 which was accepted by the complainant.

LATE NOTIFICATION OF HAIL STORM DAMAGE CLAIM – COMPLAINT NOT UPHELD

During a storm in January 2013, Ms V's car was parked in her drive-in and, similarly to other vehicles, suffered damage. Initially she thought that the damage was minimal but whilst cleaning her car around April she discovered that the damage was worse than she had originally presumed. She lodged a claim with her insurer but was informed that the excess on her policy was high and it may not be worth opening a claim as her No Claims Discount would also be affected.

Later on that same year she took her vehicle to a panel beater who informed her that repairs would amount to over €1,200. She therefore decided to open the claim but her insurer refused to reimburse her on the basis of late notification. She decided to lodge a complaint with the Unit because she was of the view that, as she had already raised the matter with her insurer in April but was discouraged from claiming, the insurer's decision to refuse the claim was unfair.

As part of its investigation into Ms V's complaint, the Unit had several exchanges with the insurance company which was instructed to look into the case and revert with feedback. In the meantime, the Unit also asked for photographic evidence to be provided and had a number of meetings with Ms V to clarify the reason for the delay. It transpired that although it was clear from the evidence provided that the car had been damaged, Ms V had no proof of the origin of the damage and, given that quite some time had passed, the insurer rejected her photographic evidence.

In fact, the insurer confirmed their original stance to reject Mr V's claim because it was not lodged within a reasonable time. The insurer argued that even if it had to take into consideration the first time Ms V approached the company with the intention to claim, she had delayed in informing the insurer three months from the date of the alleged damage. The insurer quoted the terms of the policy which clearly stated that a policyholder is bound to inform his insurer immediately of any circumstances which may give rise to a claim. Therefore, this was clearly in breach of policy conditions. Furthermore, the insurer argued that it could not verify the source of damage due to such lapse in time and refused to send a surveyor to inspect the vehicle. This delay could also have increased the repair costs for the insurer without any justification.

On the basis of incomplete information on the part of Ms V, the complaint could not be upheld.

REPAIRS FOLLOWING HAIL STORM DAMAGE – COMPLAINT UPHELD BUT COMPLAINANT REFERRED CASE TO MANDATORY ARBITRATION

Mr X was the owner of a vehicle which was insured under comprehensive cover. During the hail storm, Mr X's car was extensively damaged. He lodged a claim with his insurer for his vehicle to be repaired. The company instructed Mr X to take the car to a repairer of his choice and instructed the surveyor to assess damages. A few days after the survey had been carried out, Mr X was informed that a survey report would not be issued because the insurer – following a number of identical complaints – brought in foreign repairers to apply a new methodology for damages caused by hail which was, apparently, more cost-effective compared to traditional repair works.

The insurer informed Mr X to take his vehicle to a specific repairer but he refused claiming that, as he was insured on a comprehensive basis, he had the right to repair the car at a garage of his choice citing that the repairers proposed by the insurer were of an inferior standard. On the other hand, the insurer invoked a policy condition which gave them discretion in regard to the manner and extent a vehicle may be repaired.

The insurer rejected Mr X's opinion and Mr X lodged a complaint with the Unit.

The insurer confirmed that a survey report had actually been prepared and damages had been quantified at around €2,500.

The insurer claimed that the new methodology for repairing hail damages carried a two year guarantee and would not impinge on the market (resale) value of the vehicle as no hard metal and repairer paint will be used.

Mr X refused to take his vehicle to one of several garages which were offering similar repair works using the new methodology.

During the Unit's review of the complaint, it transpired that at the time the survey had been carried out, the insurer had not yet been instructing claimants to repair hailstorm damages at particular garages. Its website also confirmed that policyholders holding comprehensive cover could decide where they wish to have their vehicle repaired and inform the company.

The Unit, following lengthy considerations, recommended that Mr X's repairs should be carried out at a garage of his own choice. If the insurer offered a cash settlement, the amount should reflect the estimate in the first survey. The insurer rejected the Unit's recommendations.

Although it suggested that a meeting between Mr X and the insurer be held for the purpose of reaching a solution acceptable to both, Mr X decided to refer the case to mandatory arbitrage.

BANKING

The challenges posed initially by the global financial crisis, and at a second stage, by the EU sovereign debt crisis have left many EU countries striving to survive the storm. The domestic banking sector weathered these challenges with economists giving credit to the domestic macroeconomic conditions and prudent banking practices. Despite the many articles featuring in the media appraising Malta's financial resilience as compared to other EU countries receiving bailout, depositors were still anxious about the security of their local deposits. Not unexpectedly, telephone calls about the guarantee level offered by the depositor compensation scheme increased. Rather than evaluating the individual risk of banks as the basis for their deposit, depositors simply want to put their mind at rest that there is a scheme in place to cover their losses if things go wrong. This practice, as repeatedly stated by the Unit in previous annual reports, may lead to moral hazard.

In the year under review, the Unit – along with the Malta Bankers' Association and the Central Bank of Malta – promoted the use of non-cash payment instruments, including credit and debit cards, credit transfers and direct debits. The Unit also dedicated a number of TV and radio programmes to explain the use of the IBAN and BIC for electronic payments. A specific section, dedicated to payment instruments on the consumer portal 'mymoneybox', was updated with new content about such payment services.

It has been argued that electronic payment services are more efficient and more cost effective than the traditional cheque payments. While the Unit highly supports the use of these electronic services as a means of payment, it is also critical of the unreasonable high charges that are being levied by banks on customers making use of these services. Statistically, electronic payments (such as bank-to-bank transfers as well as card payments) in Malta have increased exponentially during these last few years, with the use of cheque payments decreasing on a year-to-year basis. However, charges for payments by bank transfer have not really decreased much since 2007. It is noted that there is not much difference on such bank charges between the core retail banking institutions in Malta. The banks in Malta may have been active in the promotion of alternative banking methods; however, they have certainly failed to review their rather high and outdated tariff frameworks for these services.

Selection of cases

ALLEGED BANK MISTAKE IN CALCULATION OF AMOUNT DUE – COMPLAINT NOT UPHELD

Spouses G decided to transfer their banking facilities to another bank. Since spouses G held a number of savings accounts with their bank apart from their loan, they decided to set-off these amounts and in fact met with the bank's notary and agreed that the final amount due to their bank was €110,000.

A couple of days after the transfer of their facilities was registered, spouses G were contacted by their former bank and were informed that another €2,500 were due. The bank also informed them that unless the amount due was paid immediately, the life policies held by the bank as pledge would not be released to the new bank. The complainants thought that this was very unfair since they had already settled all amounts due which, for all intents and purposes, had been agreed to by the bank's notary. Spouses G further maintained that the bank's actions might prejudice the relationship with their new bank as the latter was requesting a pledge on the life policies.

The Unit contacted the bank and setup a meeting in order to discuss the complaint in detail. It transpired that the amount due of €110,000 was calculated on the day the contract was signed, but a day before that, and in the morning prior to the signing of the contract, spouses G had carried out a number of ATM withdrawals and online purchases using their debit cards and the transactions were not showing on the statements as at the date when the contract to transfer all banking facilities was signed. Apparently, the bank's systems were not real time and it relied on the services of a third party to update, on a daily basis, its core banking system.

This delay was clearly noted on the bank's terms and conditions, indicating that it could take up to three working days for transactions to feature on the statement. Furthermore, the delay in the bank's system was one of the reasons cited by spouses G to justify the termination of their relationship with the bank thus confirming that they were aware of how the system worked. The Unit had no other choice but to reject the complaint and confirm that the amount of €2,500 was due by the complainants.

APPLICATION OF CHARGES TO TRANSFER INTEREST EMANATING FROM A FIXED DEPOSIT – COMPLAINT NOT UPHELD

Mr A approached the Unit seeking redress in regard to the application of a charge by a local commercial bank for the outgoing transfer of interest accrued on a fixed deposit held with the same bank to a foreign bank.

Mr A complained that he engaged on a fixed term deposit for five years with the local bank because at the time the bank was offering a very attractive interest rate. Mr A claimed that when he finalised the fixed term deposit, this was on the understanding that there would be no charges during the five year contract, further maintaining that the local bank had not notified the altered interest rates or new charges.

The Unit became aware that the local bank was instructed by Mr A to transfer the interest earned from the fixed deposit to a savings account held with a foreign bank and hence the contested charge was applied to the savings account in the name of Mr A and not on the fixed deposit account. The local bank paid interest on the five year fixed deposit on a yearly basis and the bank indeed confirmed that the contract stipulated for the funds to be held for the full five years at an agreed rate. The dispute that had arisen was around a €2 fee which the local bank had introduced, three years following the opening of the fixed deposit account, for the transfer of funds from a savings account to an account held with a foreign bank.

The local bank deemed that it was within its right to assess its costs and have these covered - as long as these are notified to its customers. The local bank admitted however that the introduction of a €2 fee was not duly notified to Mr A and the bank conceded to refund this fee but clarified that any future outgoing payments would trigger charges.

The Unit maintained that charges applicable on the transfer of monies to or from the savings account are extraneous to the contract signed in respect of the fixed term account. Furthermore a savings account, which is in effect a payment account, is regulated under the Payments Services Directive (PSD) and hence can become subject to a tariff of charges that a local bank may apply and amend from time to time, binding the bank to notify its customers two months prior to the application of such charges.

WITHDRAWAL OF LOAN AND PAYMENT OF PROCESSING FEES – COMPLAINT NOT UPHELD

Mr S inherited a plot of land when his parents passed away. Mr S wanted to develop this plot to build his residence and he applied for a bank loan. His request for finance was approved by the bank and a sanction letter explaining the terms and conditions of the loan was issued. As per normal practice, the bank charged the legal and processing fees on the same day it issued the sanction letter. The sanction letter was, however, issued on the condition that planning permits and approved plans over the plot being purchased were to be verified to the satisfaction of the bank.

Mr S was informed that despite the bank's effort to carry out all possible Land Registry searches, it still could not verify the title over the plot of land. It appears that the plot in question had been purchased many years before and no proper records existed at the time. Consequently, the contract of sale could not be signed as the bank had reserved the right to withdraw from the loan contract if it was not given a Land Registry Certificate of Title attesting to good title over the property.

The bank withdrew the offer for finance and therefore the loan was not availed of. Mr S felt that this was unfair and he asked the bank to reimburse him with the processing and legal fees which had been deducted from his account. The bank initially refused to refund these charges on the basis that details of such charges were clearly indicated on the loan quotation, the European Standard Information Sheet (which is a pre-contractual information document given to clients before signing the loan application form) and also on the sanction letter itself. Nevertheless, the bank then decided to refund Mr S a part of the charges as a gesture of goodwill. Mr S was not satisfied with this and he referred his complaint to the Unit.

Upon careful consideration of all the paperwork and the fact that there was no obligation by the bank to reimburse Mr S with any of the processing and legal fees charged, the Unit felt that the compensation given to Mr S constituted a just and fair settlement. The Unit explained to Mr S that verification of searches involve a lot of administrative work and ultimately even if the loan is not availed of, the bank could still be entitled to charge the processing fees. The complaint was not upheld.

APPENDICES

APPENDIX I - FORMAL COMPLAINTS BY CLASSIFICATION

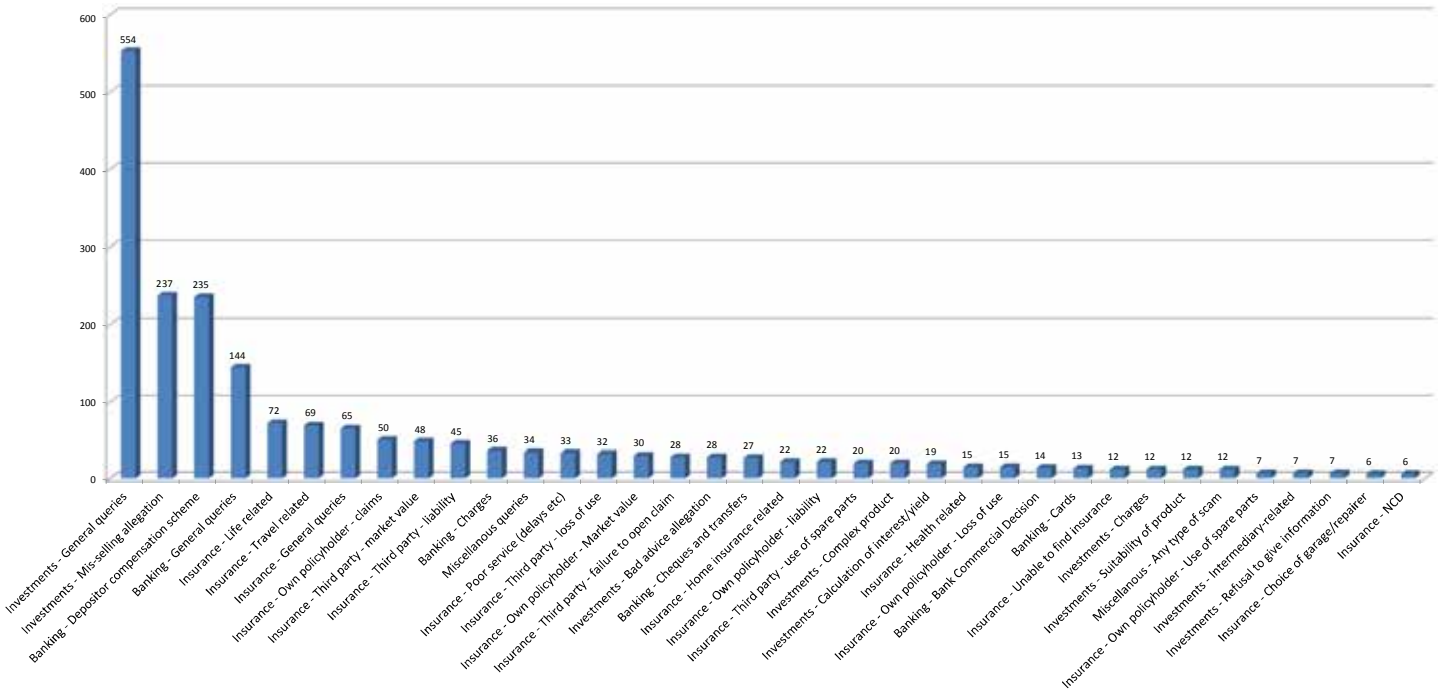
	A	B	C	D	Di	Dii	E	F	G	TOTAL
Banking										
Charges	1						2			3
Cheque encashment							2			2
Bank Mistake							2	1		3
Loans and Advances			1				1	1		3
Provided info or General query							1			1
Investments										
Bad advice allegation							1			1
Calculation of interest/yield/price							1			1
Capital guaranteed-related							1			1
Charges			2		1					3
Mis-selling allegation	5		4	9	4	1	23	1	4	51
Suitability of product							1			1
Other		1					1			2
Delay (payments and other docs)					1					1
Information provided to the client (e.g. poor disclosure)							1			1
Insurance										
Health-related			1				2	1		4
Increase in premium				1						1
Life-related				1			7	1		9
Travel-related		1					1			2
Motor - Own policyholder - Claims			1		1		7	1		10
Motor - Own policyholder - Market Value				1			3			4
Motor -- Third-party - Failure to open claim									2	2
Motor - Third-party - Use of spare parts							1			1
Motor - Third-party - Loss of earnings	1									1
Motor - Third-party - Delay in claim/payment			1							1
Motor - Third-party - Choice of garage					1					1
Local company passporting in EU			1				1			2
Provided info or General query							2	1		3
Grand Total	7	2	11	12	8	1	61	7	6	115

CLASSIFICATION

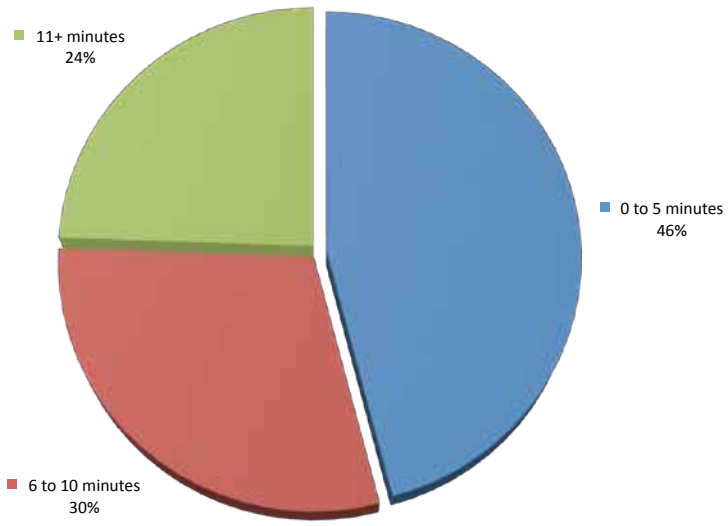
(A)	7	Outside MFSA jurisdiction (in these instances and following any investigation undertaken, the consumer is requested to seek redress with the appropriate competent authority or redress system as applicable.)
(B)	2	Consumer withdrew complaint
(C)	11	Referred to entity or consumer – no feedback
(D)	12	Entity has not treated the consumer complaint fairly – complaint upheld by Consumer Complaints Unit. Entity accepts recommendation.
(D)(i)	8	Entity has not treated the consumer complaint fairly – complaint upheld by Consumer Complaints Unit. Entity did not accept recommendation.
(D)(ii)	1	Entity has not treated the consumer complaint fairly – complaint upheld by Consumer Complaints Unit. Entity partially accepts recommendation and offers a goodwill payment.
(E)	61	Entity has treated the consumer complaint fairly – complaint not upheld by Consumer Complaints Unit.
(F)	7	Entity has generally treated the consumer complaint fairly but it still agrees to a goodwill payment or improved settlement.
(G)	6	General query – provided information/clarification.

APPENDIX II

TYPE OF QUERIES RECEIVED



DURATION OF PHONE CALLS



APPENDIX III

ABBREVIATIONS

ADR	Alternative Dispute Resolution
CCPFI	Committee on Consumer Protection and Financial Innovation (EIOPA)
CCU	Consumer Complaints Unit
EBA	European Banking Authority
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
ESMA	European Securities and Markets Authority
EU	European Union
FISC	Financial Innovation Standing Committee (ESMA)
FOS	Financial Ombudsman Service (United Kingdom)
MIFID	Markets in Financial Investments Directive
MFSA	Malta Financial Services Authority
NCD	No Claims Discount
ODR	Online Dispute Resolution
PSD	Payment Services Directive
SCConFin	Standing Committee on Consumer Protection and Financial Innovation (EBA)
SEPA	Single Euro Payments Area
SMSU	Securities and Markets Supervision Unit

EU AND MALTESE LEGISLATION

Directive on Consumer ADR (Directive 2013/11/EU)

Banking Act (Cap. 371)

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

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 on Consumer ODR (Regulation (EU) 524/2013)

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