ARBITER FOR FINANCIAL SERVICES

ANNUAL REPORT

AND FINANCIAL STATEMENTS 2017

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ARBITRU GĦAS-SERVIZZI FINANZJARJI
ARBITER FOR FINANCIAL SERVICES

28 June 2018

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Ph.D (Toronto), D.S.S (Oxon) MP
Minister for Finance
30, Maison Demandols
South Street
Valletta VLT 1102

Dear Minister

Submission Letter

In terms of article 20 of the Arbiter for Financial Services Act (Cap. 555), I have the honour to transmit to you the Annual Report and Financial Statements of the Office of the Arbiter for Financial Services for the year 2017.

Yours faithfully

Dr Reno Borg
Arbiter for Financial Services

The Office of the Arbiter for Financial Services in Malta provides the means to an independent and impartial mechanism of resolving disputes filed by customers against financial services providers authorised by the Maltese financial regulator outside of the courts' system.

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ABBREVIATIONS

ADR	Alternative Dispute Resolution
ASF	*Arbitru għas-Servizzi Finanzjarji*
CRO	Customer Relations Officer
EEA	European Economic Area
EU	European Union
MFSA	Malta Financial Services Authority
OAFS or the Office	Office of the Arbiter for Financial Services

REPORT
OF THE ARBITER FOR FINANCIAL SERVICES

Since my last report, the Office of the Arbiter for Financial Services (OAFS) continued in its mission of offering a forum where the parties to a dispute relating to financial services could resolve their differences. This Annual Report covers our operations for a first full year.

The Arbiter for Financial Services Act 2016 gives the OAFS the power to mediate, investigate, and adjudicate complaints filed by a customer against a financial services provider. The need for such an entity is clearly evidenced by the response of the public towards our service. The figures speak for themselves. During 2017, we handled 851 enquiries and minor cases of which 396 related to insurance, 171 to investments, 265 to banking and 19 on other general aspects (such as scams).

Since we attach great importance to the service offered to customers who normally contact us via telephone, without the need to visit our premises, during the year we employed another Customer Relations Officer bringing the compliment to two. They did sterling work as the figures mentioned above illustrate.

Mediation, whether formal or informal, assumes a central position in alternative dispute resolution entities such as ours. As pointed out in last year's report, the mediation 'culture' is slow to build in an environment where the 'litigious habit' has haunted us for many years.

However, we are patiently and consistently trying to convince the parties to grasp the mediation opportunity and solve their differences in an amicable way.

'Informal mediation' led to an amicable settlement in 23 cases while another 6 cases were resolved during 'formal mediation'. Considering the short span of time that our Office has been in existence this is not a bad start indeed. Nevertheless, we need to step up our efforts and try to achieve more in the mediation process, but much depends on the disposition of the parties.

The final goal of an ADR Entity like ours is to resolve as much cases as possible at mediation stage. The adjudication process before the Arbiter should be the exception and not the rule. However, this was not the case in 2017. During the year the Arbiter held an average of two to three sittings weekly basically hearing all the cases filed in 2016 and 2017.

During the year, a lot of energy was devoted to a particular case relating to the La Valette Multi Manager Property Fund filed by 400 complainants. Due to the large volume of documentation presented by the parties and the complexity of the legal issues involved, the Arbiter had to spend long hours on this case. However during the same period 72 decisions were given, 64 of them on the merits of the case, thereby closing the case before the Arbiter.

In this Annual Report, we include a summary of a few of the decisions given during the year. All the decisions given by the Arbiter are found on the OAFS website.

During the year, 175 new cases where lodged. By the end of the year we managed to close 114 of them. We are resolute to continue on this positive trend and enhance our efforts to perform even better.

Since the Arbiter's jurisdiction extends to cases where the parties may not be resident in Malta, during 2017 we dealt with a number of cross-border disputes. This has presented some logistical challenges but owing to the flexibility of procedure allowed by the Act, our task became a lot easier.

In some cases, the OAFS was asked by the parties what professional fees applied. The OAFS had no answer because there seems to be a vacuum in this regard. The Arbiter recommends the introduction of a professional fee structure to eliminate the possibility of unjust charges both to customers and to service providers.

We realise our limitations but we are also conscious and confident in our strengths which we will fully exploit for the future. We consider our sojourn so far as successful, but we are more than conscious that we cannot afford to be complacent and sit on our laurels.

We need to enhance our IT infrastructure, take more new initiatives, increase the expertise of our employees and give a more personalised service to those who seek the assistance of our Office.

It is the Arbiter's role to lead and set strategic goals but the success of an entity depends totally on teamwork. In this regard I want to underline the co-operation given to me by the Chairman and the members of the Board of Management and Administration. Gratitude should be given to all staff members who performed their duties with great diligence, care and professionalism.

Finally, I would like to thank the Ministry of Finance for providing us with the necessary funds and for their full and unconditional co-operation throughout the year.

Dr Reno Borg MA, LLD, ACIArb

MESSAGE

FROM THE CHAIRMAN OF THE BOARD OF MANAGEMENT AND ADMINISTRATION

This is the first annual report issued by the Office of the Arbiter for Financial which covers a full year of operations.

It is the responsibility of the Chairman and members of the Board of Management and Administration to ensure that the Office provides all the necessary administrative support to the Arbiter at all stages of the complaints' handling process.

Not all grievances evolve into a fully-fledged formal complaint. Our setup, ably administered by two experienced customer relations officers, caters for enquiries made by customers on a wide range of financial services issues. Customers expect that in an evolved financial services sector, there is a mechanism which can provide them with assistance and answers to their queries.

There are many situations, however, which go beyond a simple question and answer. Our team intervened in several situations and broke the impasse which might have been created between a customer and a financial services provider. I am grateful for the cooperation that has been afforded by many providers in the handling of these minor enquiries. Providing impartial information to customers may go a long way towards resolving a bitter situation.

At times, this stems from a lack of trust and/or misunderstanding. This is a service which we are pleased to provide without cost to customers whilst remaining impartial throughout the entire process. If the customer remains dissatisfied, we provide information about our complaint process.

The complaint process starts as soon as the Office is in receipt of the complaint form. Each form is checked to ensure that its contents conform to what the law requires and that it clearly includes the correct name of the financial provider against whom the complaint is being made, the reason for the complaint and the remedy that is being sought by the customer. It would be helpful for a complainant to attach copies especially if the contents provide important information of supporting documentation on any issue being raised in the complaint.

The Board will be undertaking preliminary research to assess availability of a robust and comprehensive case management system. This will not only assist with proper electronic filing of complaints-related documentation but will also facilitate the collation and aggregation of complaints data.

I would like to thank the Arbiter and the Board for their support throughout this busy period. I am proud to work with a tight team of highly competent people coming from diverse backgrounds.

It has been challenging, of course, but I am certain that our collective pursuit to offer a professional and efficient redress setup for the financial services customer is an enriching learning experience for all of us and a contribution towards the solution of disputes fairly and economically.

Geoffrey Bezzina BA (Hons.) Banking & Finance, MA European studies

OFFICE OF THE ARBITER FOR FINANCIAL SERVICES

Operational Highlights

- The law which sets up the Arbiter for Financial Services came into force on 18 April 2016. In 2017, the law was amended to provide clarity and new provisions were introduced to enable the Office of the Arbiter for Financial Services to be in full conformity with Malta's ongoing obligations arising from Directive 2013/11/EC of the European Parliament and of the Council on alternative dispute resolution for consumer disputes.

- The Office formally commenced its operations on 23 May 2016 and started accepting complaints during the last week of June 2016. In 2017, 175 new cases were registered. The majority of complaints lodged with the Office concerned allegations of misconduct in relation to advice and sales of investments by financial services providers authorised to provide investment services business.

- Over 100 cases were closed; of which 64 cases were decisions issued by the Arbiter on the merits of the case. A further eight preliminary decisions were issued by the Arbiter relating to the admissibility of the financial providers' late submission of the reply to a complaint.

- An average of two to three sittings a week were convened by the Arbiter for Financial Services. For the benefit of overseas complainants, hearings were also held via video conferencing.

- A substantial number of enquiries and minor cases were handled by the customer relations officers within the Office. The majority of such enquiries relate to providing information on banking issues, investments (advice and/or selling) and travel insurance. However, in a number of cases, the customer relations officers intervened informally by contacting the financial services provider to help solve an impasse.

- Information about the role of the Arbiter for Financial Services is available on the Office's website both in English and Maltese, as well as through the media. A fillable complaint form in Maltese and English is available for customers who would want to lodge a complaint with the Office. There is also a detailed section for financial services providers explaining the Office's complaint handling procedures.

- The Office has a complement of 12 members of staff, including the Arbiter and the Chairman of the Board, an officer in charge of mediation, two officials responsible for customer relations as well as two analysts who assist the Arbiter with the review of cases.

- Sound administrative and governance practices were established from the outset, but continued evolving and improving in pursuit of high standards of governance.

- The Board of Management and Administration met 10 times during the year.

- The Office issued a consultation document on levies and fees that financial services providers will be asked to contribute annually to the Office to fund its operations.

- Statistical information regarding complaints and enquiries is continually captured, updated and periodically reported to the Arbiter and the Board.

- A programme of renovations to the Office's premises, which started in 2016, continued in earnest during the year.

THE ROLE AND POWERS VESTED
IN THE ARBITER FOR FINANCIAL SERVICES

The Arbiter for Financial Services acts independently and impartially of all parties concerned and is not subject to the direction or control of any other person or authority. The law gives him the authority to determine and adjudge a complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case. The Arbiter is required to deal with complaints in a procedurally fair, informal, economical and expeditious manner.

In the review of complaints, the Arbiter will consider and have due regard, in such manner and to such an extent as he deems appropriate, to applicable and relevant laws, rules and regulations, in particular those governing the conduct of a service provider, including guidelines issued by national and European Union supervisory authorities, good industry practice and reasonable and legitimate expectations of customers and this with reference to the time when it is alleged that the facts giving rise to the complaints occurred. The Arbiter's powers under the Act are wide and includes the power to summon witnesses, to administer oaths and to issue such interlocutory orders.

The Arbiter has the competence to hear complaints in terms of his functions in relation to the conduct of a financial service provider which occurred on or after the first of May 2004.

The Arbiter is empowered to mediate, adjudicate, and resolve disputes and, where appropriate, make awards up to €250,000, together with any additional sum for interest due and other costs, to each claimant for claims arising from the same conduct. His decisions are binding on both parties subject only to appeal to the Court of Appeal (Inferior Jurisdiction). The Arbiter may, if he considers that fair compensation requires payment for a larger compensation than such award, recommend that the financial service provider pay the complainant the balance, but such recommendation shall not be binding on the service provider.

The Arbiter would be unable to exercise his powers if the conduct complained of is or has been the subject of a law suit before a court or tribunal initiated by the same complainant on the same subject matter. Neither is he able to accept a complaint if it results that the customer failed to communicate the substance of the complaint to the financial service provider concerned and has not given that financial service provider a reasonable opportunity to deal with the complaint prior to filing a complaint with the Arbiter. A complaint may also be refused if, in the Arbiter's opinion, it is frivolous or vexatious.

The Arbiter may, if he thinks fit, treat individual complaints made with the Office together, provided that such complaints are intrinsically similar in nature.

FUNCTIONS
OF THE BOARD OF MANAGEMENT AND ADMINISTRATION

The Board and the Arbiter convened for the first time shortly after the Arbiter's appointment in May 2016, in the presence of the Minister for Finance. The Board does not in any way intervene as to the manner the Arbiter deals with complaints.

The Board is appointed by the Minister for Finance and its composition remained unchanged in 2017. Its functions include:

- providing support in administrative matters to the Arbiter in the exercise of his functions when the Arbiter so requests;

- keeping under review the efficiency and effectiveness of the Office and advising the Minister on any matter relevant to the operations of the Office;

- recommending and advising the Minister on the making of rules regarding the payment of levies and charges to be paid by different categories of persons to the Office, the amounts of those levies and charges, the periods within which specified levies or charges are to be paid, and penalties that are payable by a person who fails to pay on time or pay in full the amount due; and

- collecting and recovering the levies and charges due.

The Board, in consultation with the Arbiter, is also required to prepare a yearly strategic plan as well as a statement with estimates of income and expenditure for the forthcoming financial year.

The Strategic Plan for 2018 was presented to Parliament and is available on the Office's website.

All members of the Board attended the 10 meetings which were held in 2017.

CHAIRMAN

Geoffrey Bezzina
BA (Hons.) Banking & Finance,
MA European Studies

MEMBER

Dr Anna Mallia
LLD, LLM (Lond.), Dip. Tax (MIT)

MEMBER

Peter Muscat
BA, ACIB (London)

SECRETARY

Bernard Briffa

STAFF COMPLEMENT

The members of staff forming part of the Office consist of the Arbiter for Financial Services, the Registrar to the Arbiter, the Chairman, two Customer Relations Officers (one of officers is also the secretary of the Board), two Case Analysts, an Officer in charge of Mediation, an Administrative Assistant, a Receptionist, a Handyman and a Messenger/Driver.

From left to right: Manuel Rizzo; Paul Borg; Rita Debono; Geoffrey Bezzina; John Attard; Ruth Spiteri; Dr Reno Borg; Robert Higgans; Valerie Chatlani; Samantha Sultana; Bernard Briffa. Missing from the photo: Gaetano Azzopardi.

LEGISLATIVE DEVELOPMENTS

AMENDMENTS TO THE ARBITER FOR FINANCIAL SERVICES ACT

Act XVI of 2016, the Arbiter for Financial Services Act (Cap 555), came into force on 18 April 2016. At the end of June 2016, the Office was already set up to receive the first complaints from financial services customers.

As with a number of legislative instruments, a few aspects in the legislation were identified as requiring improvement to ensure clarity and coherence. The Arbiter and the Board proposed a number of amendments to the Act for the Minister for Finance's consideration. These amendments were accepted and subsequently published by way of Act XVI of 2017.

The following provides a summary of the amendments.

AMENDMENT TO ARTICLE 2

The term in the definition of "financial services provider" as originally published "*… and which offers or has offered its financial services in Malta*" had been interpreted to mean that the qualification ("in Malta") required that financial services had to be offered in such a manner that they could be purchased on the territory of Malta. A mere presence in Malta (such as by virtue of the registration of a Maltese company) with no demonstration of the possibility of, or interest in, the conclusion of sales in Malta would not have satisfied the requirement.

In this regard, customers (mainly those located outside Malta) who purchased products and/or services in their country from providers - registered and authorised in Malta - which did not offer the same products and/or services in Malta were unable to lodge a complaint with the Office. Many of these customers were not able to lodge a complaint with their home ADR scheme as the competence of such bodies did not extend to providers not licensed in their own territory.

The amended definition which now reads "… and which offers or has offered its financial services in and, or from Malta", has the effect of extending the competence of the Arbiter to those complaints lodged by customers from outside Malta who purchased a financial product and/or service from Malta on a cross-border basis.

AMENDMENT TO ARTICLE 26

The law has also been amended such that interest will accrue until the date of actual payment following decision of the Arbiter.

NEW SUB-ARTICLE UNDER ARTICLE 33

A new sub-paragraph has been added to enable the Minister for Finance to make regulations to transpose, implement and give effect to provisions and requirements of Directives, Regulations and any other legislative measures of the European Union.

NEW ARTICLE 34

The Minister for Finance was appointed as competent authority for the purposes of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes (the ADR Directive). More specifically, the Minister was vested with authority for the purpose of determining the ADR entity for financial services in Malta. The said Directive allows a Member State to have more than one competent authority which can determine if an entity qualifies as an ADR entity in terms of the Directive's provisions.

PUBLICATION OF LEGAL NOTICE 137 OF 2017

Shortly after the coming into force of Act XVI of 2017, which included amendments to the Arbiter for Financial Services Act, the Government published Legal Notice 137 of 2017 titled "Arbiter for Financial Services (Designation of ADR Entity) Regulations, 2017".

By virtue of this legal notice, the competent authority for the purposes of the ADR Directive, the Minister for Finance appointed the Office of the Arbiter for Financial Services as the ADR entity for financial services in Malta.

As a result, and in regard to alternative dispute resolution bodies in relation to financial services complaints, Malta is fully compliant with the requirements of the said Directive 2013/11/EU, and has joined several other certified ADR bodies in the EU and EEA with similar competences in financial services complaints.

FIN-NET

THE FINANCIAL DISPUTE RESOLUTION NETWORK OF THE EU

The Financial Dispute Resolution Network (FIN-NET) is a network for the out-of-court resolution of cross-border disputes between consumers and financial service providers in the EU and EEA. FIN-NET owes its existence to the European Commission Recommendation 98/257/EC, of 30 March 1998, on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes. It was set up by the European Commission in 2001 to promote cooperation among national consumer, redress schemes in financial services and provide consumers with easy access to alternative dispute resolution procedures in cross-border disputes about provision of financial services. FIN-NET has 60 members in 27 countries.

The Office of the Arbiter for Financial Services became a member of FIN-NET in 2017 as it qualifies and complies with the principles set out in the ADR Directive.

Any resident of an EU and EEA country wishing to complain about a foreign service provider with its domicile elsewhere within the area can approach the complaints settlement scheme in its home country.

The home scheme will assist to identify the relevant complaints scheme in the service provider's country and indicate the next steps that it should follow. The consumer may choose to contact the foreign complaints scheme directly or else, leave the complaint with its home-country scheme which will pass it on to the respective scheme accordingly.

The Commission has a dedicated website to promote FIN-NET among consumers and financial services providers. For consumers, the website contains information to enable them locate information about the ADR bodies for financial services in every EU and EEA jurisdiction.

Similarly, a promotional campaign to promote FIN-NET, which includes a promotional video and a new logo, has been rolled out in every Member State through the websites of the respective ADR schemes. The Commission's initiatives are part of a broader consumer strategy titled "Consumer Financial Services Action Plan: Better Products, More Choice" published in March 2017.

The chairman of the Board is also a member of the Steering Group, chaired by the European Commission (DG FISMA), which prepares the agenda for FIN-NET's bi-annual plenary meetings.

CONSULTATION DOCUMENT
ON FEES AND LEVIES

In terms of article 8(1)(e) of the Act, the Board is empowered to advise the Minister for Finance on the making of rules regarding the payment of levies and charges to be paid by different categories of persons to the Office, the amounts of those levies and charges, the periods within which specified levies or charges are to be paid, and penalties that are payable by persons who fail to pay on time or pay in full the amount due.

In February, the Office published a document to consult with interested parties in regard to a framework of levies and fees (as applicable) payable by financial services providers to sustain the Office's ongoing expenditure.

The Office received responses from the Malta Insurance Association (MIA), the Malta Bankers' Association, and a joint response from the College of Stockbrokers, Malta Funds Industry Association, the MIA as well as four financial services providers.

There were no outright objections in the responses to the Consultation as to the introduction of a levy and fee structure.

However, certain providers did express differing views as to how and when such a levy should be implemented. Industry representatives commented generally on the timing of the levies, claiming that they had not budgeted for the anticipated levies in their 2017 expenditure forecasts.

The work on the introduction of fees and levies is still in process and such framework will be implemented once the necessary infrastructure is in place.

PROCESSES AND DATA ANALYSIS

ENQUIRIES AND MINOR CASES

Many customers contact the Office to enquire about the complaints process. Although some customers seek the services of a professional person when lodging a complaint with the Office, there are those who choose to submit a complaint unassisted. In such cases, the Office's Customer Relations Officers (CROs) address all enquiries that are made by such customers. CROs normally direct them to visit the Office's website, or alternatively provide them with a complaint form together with a leaflet explaining the OAFS complaints' process in further detail.

Besides responding to customers' enquiries about the Office's processes, an informal yet effective service to customers who may require help or intervention on minor financial services issues is also offered. When an enquiry is made, the CROs ask questions to seek further information about the issues which gave rise to the customer's contact, as well as establish the level of complexity of the customer's claims.

In most cases, an enquiry would be a general query on any aspect relating to financial services. However, at times, it may also be "a minor case" which may require the Office's intervention. Depending on the situation at hand, the Office's CROs may suggest a possible remedy or a course of action. Such response would normally be based on similar experiences also brought to the Office's attention by other customers. The CROs may also contact the financial services provider to seek an initial and informal response or opinion which may then be relayed to the customer. This however depends on the circumstances of the case; following permission of the customer.

In some situations, the CROs may intervene to sort out a situation, however, sometimes they may only be able to propose a course of action to the customer (such as seeking legal help). Some enquiries or minor cases could also lead to a complaint being lodged with the Office.

There have been several instances in which the CROs directed the customer to contact the provider again whilst offering some basic advice which the customer could consider when dealing with the provider.

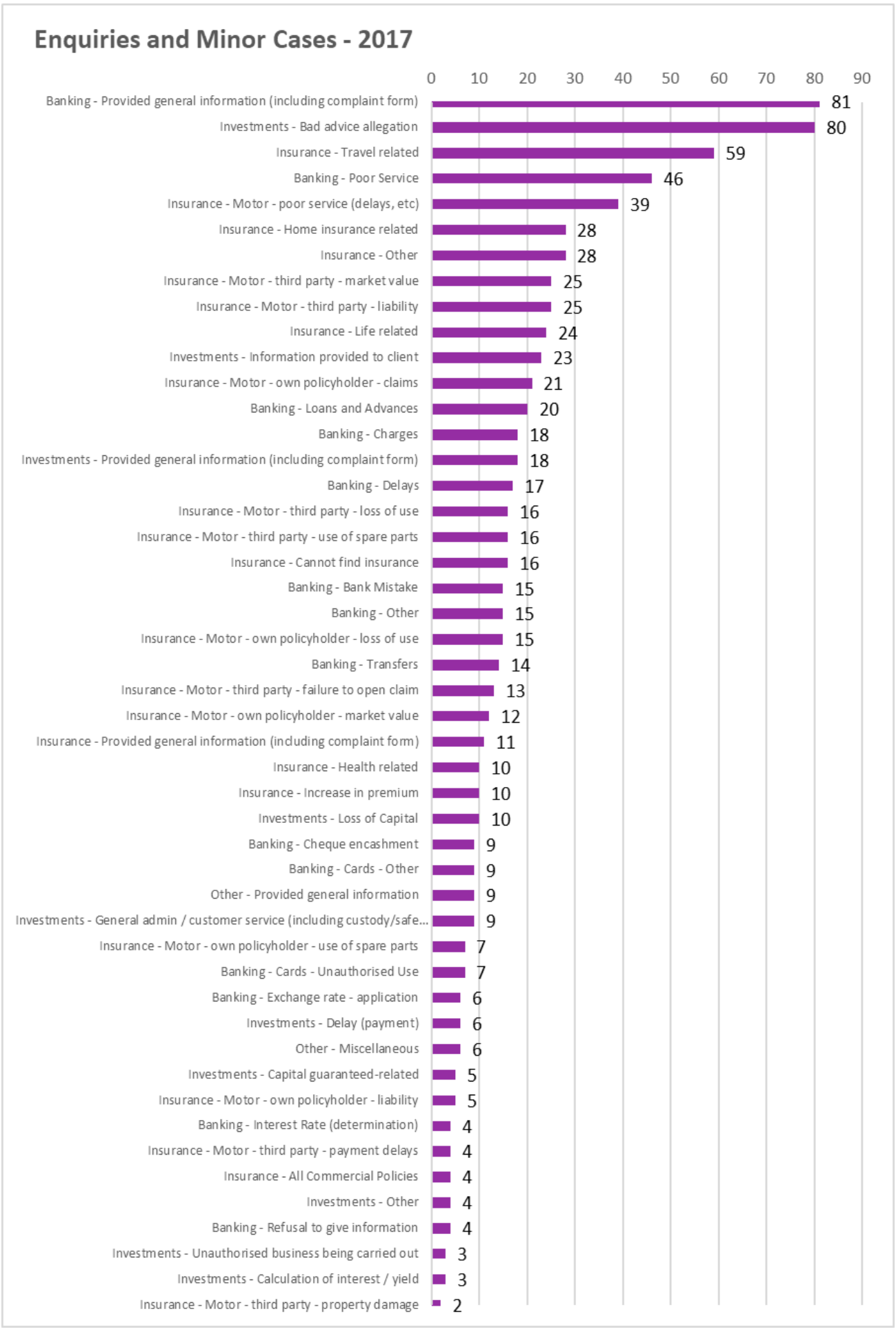
Further discussion can ensue with the customer and the provider, in hope of a compromise. Sometimes, the Office's informal intervention can break an impasse which might have been reached between the customer and the provider. In many instances, the CROs might only be able to offer information for the customer to consider.

A total of 851 enquiries and minor cases were handled during 2017; of which 396 related to insurance, 171 to investments, 265 to banking and 19 on other general aspects (such as scams).

The table overleaf indicates the type of enquiries and minor cases by type.

COMPLAINTS

Broadly speaking, a complaint is an expression of dissatisfaction or displeasure made by an eligible customer concerning the conduct of a financial services provider regarding the type or quality of a product or service given by such provider.


Enquiries and Minor Cases - 2017
0
10
20
30
40
50
60
70
80
90
Banking - Provided general information (including complaint form) 81
Investments - Bad advice allegation 80
Insurance - Travel related 59
Banking - Poor Service 46
Insurance - Motor - poor service (delays, etc) 39
Insurance - Home insurance related 28
Insurance - Other 28
Insurance - Motor - third party - market value 25
Insurance - Motor - third party - liability 25
Insurance - Life related 24
Investments - Information provided to client 23
Insurance - Motor - own policyholder - claims 21
Banking - Loans and Advances 20
Banking - Charges 18
Investments - Provided general information (including complaint form) 18
Banking - Delays 17
Insurance - Motor - third party - loss of use 16
Insurance - Motor - third party - use of spare parts 16
Insurance - Cannot find insurance 16
Banking - Bank Mistake 15
Banking - Other 15
Insurance - Motor - own policyholder - loss of use 15
Banking - Transfers 14
Insurance - Motor - third party - failure to open claim 13
Insurance - Motor - own policyholder - market value 12
Insurance - Provided general information (including complaint form) 11
Insurance - Health related 10
Insurance - Increase in premium 10
Investments - Loss of Capital 10
Banking - Cheque encashment 9
Banking - Cards - Other 9
Other - Provided general information 9
Investments - General admin / customer service (including custody/safe... 9
Insurance - Motor - own policyholder - use of spare parts 7
Banking - Cards - Unauthorised Use 7
Banking - Exchange rate - application 6
Investments - Delay (payment) 6
Other - Miscellaneous 6
Investments - Capital guaranteed-related 5
Insurance - Motor - own policyholder - liability 5
Banking - Interest Rate (determination) 4
Insurance - Motor - third party - payment delays 4
Insurance - All Commercial Policies 4
Investments - Other 4
Banking - Refusal to give information 4
Investments - Unauthorised business being carried out 3
Investments - Calculation of interest / yield 3
Insurance - Motor - third party - property damage 2

It would normally involve a claim by the customer that s/he has suffered, or may have suffered, financial loss. All complaints accepted by the Office have to be in writing and should clearly specify the name of the financial services provider, the reason for the complaint and the remedy that is being sought.

When a completed complaint is received by the Office, it is assessed in line with the Act. Complaints which fall outside our jurisdiction are rejected but, where appropriate, may be referred on to the relevant body which can assist them further. Prior authorisation from the customer would always be sought in such situations.

The Office can only accept complaints against financial services providers which are or have been licensed or otherwise authorised by the Malta Financial Services Authority and which have provided services in or from Malta.

The Office is therefore unable to accept complaints against providers which are authorised in any other EU member state but offer a financial service in Malta on a cross-border basis or through a locally-established branch (under a freedom of establishment basis).

The Office is also unable to accept motor insurance complaints where the complainant is a third party or if liability is being disputed. Neither can the Office accept complaints whose merits are or have already been the subject of a law suit before a court or tribunal initiated by the same complainant on the same subject.

The law does not enable the Arbiter from reviewing complaints if the financial provider has not been given a reasonable opportunity to review the customer's contentions prior to filing a complaint with the Office. In this regard, a customer should write to the financial provider outlining its contentions and allow reasonable time (15 working days) for the provider to respond in writing.

The complainant's letter, together with the financial provider's response, should be attached to the complaint form. The Office may also consider complaints if the provider has been given the opportunity to review a customer's complaint but fails to provide a response within a reasonable time period.

Complaints are required to be lodged in Maltese, except for those submitted by non-native customers. Most importantly, copies of any relevant supporting documentation ought to be attached to a complaint.

The charge for lodging a complaint with the Office is €25 which is reimbursable in full if the complainant decides to withdraw the complaint or the parties to the complaint agree on a settlement of the dispute before a decision is issued by the Arbiter.

Once a complaint is accepted and processed by the Office, it is transmitted to the provider for its comments by registered mail. The provider has 20 days from date of delivery to submit its response to the Office. Failure to do so would likely render the provider contumacious and the Arbiter may decree inadmissible any late submission of such response.

A copy of the provider's response is sent to the customer. Contemporaneously, the complainant and the provider are invited to mediation. It is a requirement of the law that, where possible, cases should primarily be resolved through mediation.

COMPLAINTS ANALYSIS

2016 (June to December)	
New cases	**173**
Closed	**19**

2017	
New cases	**175**
Closed	**114**

COMPLAINTS LODGED (BY SECTOR)

A total of 175 complaints was received by the Office in 2017 (2016: 173 complaints), categorised as follows:

	2017	2016
Banks and Financial Institutions	**40**	13
Investment providers	**112**	138*
Insurance	**23**	21
Others	**-**	1

*This includes nine cases (comprising of 400 complainants) which were treated as one collective complaint (Case 28/2016) given that their merits were intrinsically similar in nature, and a further 38 complaints filed separately by different complainants. In the latter cases, each case is being treated on its merits. All these cases concern a collective investment scheme.

The number of complaints for 2016 (June to December) has been adjusted to reflect the actual number of complaint cases received, rather than the number of complainants collectively making up such cases.

COMPLAINTS LODGED (BY CATEGORY)

Complaints may be lodged against all financial services providers, which are or have been licensed or otherwise authorised by the Malta Financial Services Authority, including but not restricted to investment services, banking, financial institutions, credit cards, pensions and insurance, which is or has been resident in Malta or is or has been resident in another EU/ EEA Member State and which offers or has offered its financial services in or from Malta.

The table below shows a detailed breakdown of the 175 cases received in 2017 by category. Appendix 1 lists the financial services providers against whom complaints have been lodged with the Office in 2017.

Banking	
Bank mistake	**1**
Cards – Unauthorised use	**2**
Cheque encashment	**1**
Deposit accounts	**2**
Exchange rate application	**1**
Home Loans	**2**
Specialised loans and advances	**26**
Poor Service	**1**
Transfers	**2**
Other	**2**
Investment Services	
Bad Advice / Mis-selling	**86**
Delay (payment)	**2**
Related to a particular collective investment scheme	**18**
Pensions-related	**5**
Other	**1**
Insurance	
All Commercial Policies	**3**
Health related	**4**
Life related	**3**
Marine & Pleasure Craft	**1**
Motor – own policyholder – loss of use	**2**
Motor – own policyholder – market value	**1**
Motor – poor service (delays, etc)	**1**
Travel-related	**8**
Total	**175**

TYPE OF COMPLAINANTS

Individual customers	**174**
Micro-enterprises	**1**
Total	**175**

Natural persons and micro-enterprises, referred by the law as "customers", may lodge a complaint with the Office. A micro-enterprise is an enterprise which employs fewer than ten persons and whose annual turnover and/or annual balance sheet total does not exceed €2,000,000.

An eligible customer is a customer from whom the Office may accept a complaint. S/he may either be:

- a consumer of a financial services provider,
- a consumer to whom the financial services provider has offered to provide a financial service, and
- a consumer who have sought the provision of a financial service from a financial services provider.

Around 21% of complainants (36) originated from customers residing outside Malta and who acquired the services from Malta mainly on a cross-border basis. Most of these complainants (30) reside in a Member State of the European Union (UK:26; Netherlands, Poland, Spain and Sweden: 1). The remaining six complaints originated from South Africa, Switzerland, Thailand, Turkey and the USA.

Complainants are not required to be represented when lodging a complaint with the Office. Of the 175 complaints received, 108 (62%) were not assisted. The Act requires the Arbiter to hold at least one sitting for the hearing of a complaint. If only one party is represented or assisted during oral hearings, the Arbiter shall ensure the hearing remains fair to both parties.

TEMPORAL LIMITS

For complaints relating to the conduct of a financial services provider which occurred between 1 May 2004 and 18 April 2016

All complaints which occurred at any time during this period may be looked into by the Arbiter. However, eligible customers have until 18 April 2018 to submit their complaint for consideration by the Arbiter.

For complaints relating to the conduct of a financial services provider which occurred on or after 18 April 2016

The Arbiter shall have the competence to hear complaints if a complaint is registered not later than two years from the day on which the complainant first had knowledge of the matters complained of.

Of the complaints received in 2017, 125 (71%) cases were triggered by an event occurring before 18 April 2016. The remaining 50 (29%) were triggered by an event taking place after 18 April 2016.

The following table gives a further breakdown by category:

	Banking	Investment Services	Insurance
Cases trigerred by an event before 18 April 2016	**26**	**96**	**3**
Cases triggered by an event after 18 April 2016	**14**	**16**	**20**

MEDIATION

All complainants are offered mediation as an alternative method of resolving their dispute. The law states that, whenever possible, complaints should be resolved by mediation. Indeed, the Office strongly encourages parties to a complaint to refer their case to mediation.

Mediation is a process whereby the parties to the complaint try to reach a solution through agreement with the assistance and support of a mediator, rather than through a formal investigation and adjudication of the complaint by the Arbiter.

It is an informal, yet confidential process conducted in private and can only occur if both parties to the dispute agree to participate. It is thus not obligatory and either or both parties may reject it and proceed straight away to the investigative and adjudication stage.

If the complainant and the provider agree on a settlement during mediation, what has been agreed will be written down and communicated to the Arbiter. Once signed by both parties, and accepted by the Arbiter, that agreement becomes legally binding on both the complainant and the provider. This concludes the dispute, thus ending the complaints process. The complainant will be reimbursed the complaint fee of €25.

A party to a mediation cannot be forced to accept a settlement or outcome. The mediator will not impose a decision on the parties. Both parties must voluntarily agree on the outcome. If either party chooses not to engage in mediation, or if the mediation proves unsuccessful, then the complaint will be dealt with by way of investigation and adjudication.

The Office has one dedicated official who is tasked with coordinating and conducting mediation sessions.

In 2017, of the cases submitted to the OAFS, 43 were referred to mediation as follows; five related to banking, 20 related to insurance and 16 related to investments. Six mediations have been successful (one banking-related, four investments-related and one insurance-related). There is clearly substantial scope for parties to agree to submit their case to mediation and reach a common ground without the need to refer the case to adjudication.

Mediation may not necessarily relate to an issue where compensation is being demanded. It has also served for both parties to a dispute to seek further information from each other (mostly from the provider) in relation to the contentions that were being made.

OUTCOME OF COMPLAINTS

Not all complaints lodged with the OAFS require review and adjudication. Some complaints may be resolved at an early stage or after mediation. There may also be situations where the complainant withdraws the complaint for some reason or another.

The table below gives a breakdown of the outcome of 114 complaints closed in 2017.

Agreement was reached at mediation	**6**
Withdrawn prior to mediation	**6**
Parties agreed to settle prior to commencement of mediation	**23**
Complaints withdrawn following mediation	**4**
Does not fall under OAFS competence	**3**
Complaint withdrawn following case hearing	**2**
Complaint withdrawn prior to case hearing	**3**
Agreement reached by the parties during hearing before the Arbiter	**3**
Decided by the Arbiter for Financial Services (further details in the following table)	**64**

THE REVIEW AND ADJUDICATION PROCESS

If mediation is refused or unsuccessful, the Arbiter will commence the process for review of a complaint.

The law requires that at least one oral hearing is convened for each case that is referred to the Arbiter. Depending on the circumstances of the case, the Arbiter may direct the parties to the complaint to submit written submissions by a set date. The Arbiter can also request witnesses to testify, third parties to provide relevant information which may be required as part of the investigation and even carry out inspections at the premises of a provider.

Oral evidence given under oath at a hearing will be forwarded by the Arbiter to both parties to the dispute. Affidavits may be sworn at the OAFS by two of its officials who, at the initiative of the Office, have been appointed by the Minister for Justice, Culture and Local Government as Commissioners for Oaths.

FINDINGS AND AWARDS

Decisions of the Arbiter are accessible on the Office's website in their entirety, except for the complaint's name(s) which are pseudonymised.

The table below provides a breakdown of the cases decided by the Arbiter for Financial Services on the merits of the case:

		Banking	Investment Services	Insurance
Upheld (in full)	**36**	**-**	**31**	**5**
Upheld (partial)	**7**	**-**	**6**	**1**
Rejected	**21**	**6**	**10**	**5**
Res judicata	**38**	**6**	**23**	**9**
Appealed (Court of Appeal Inferior Jurisdiction)	**26**	**-**	**24**	**2**

The Arbiter issued a further eight preliminary decisions (four on cases relating to investment services and four on insurance) relating to the admissibility of the financial provider's late submission of the reply to a complaint.

RES JUDICATA DECISIONS (BY FINANCIAL SERVICES PROVIDER)

The table below lists the number of cases which were not appealed by the service provider or the complainant.

	Number of Cases
All Invest Company Limited	**8**
APS Bank Limited	**2**
Argus Insurance Agencies Limited	**1**
Bank of Valletta plc	**6**
Citadel Insurance plc	**1**
Cordina Insurance Agency Limited	**3**
Crystal Finance Investments Limited	**8**
GasanMamo Insurance Limited	**1**
GlobalCapital Financial Management Limited	**1**
Harbour Pensions Limited	**1**
Hollingsworth International Financial Services Limited	**2**
Mapfre Middlesea plc	**2**
Sovereign Pension Services Limited	**1**
STM Malta Trust and Company Management Limited	**1**

APPEALED DECISIONS (BY FINANCIAL SERVICES PROVIDER)

The table below lists the financial services providers who appealed the decision of the Arbiter.

	Number of Cases
All Invest Company Limited	**1**
Citadel Insurance plc	**1**
Crystal Finance Investments Limited	**11**
GlobalCapital Financial Management Limited	**10**
Hollingsworth International Financial Services Limited	**1**
Mapfre MSV Life plc	**1**
MFSP Financial Management Limited	**1**

AVERAGE DURATION OF CASES

As stated earlier, a number of cases were terminated after agreement between both parties at mediation or just before commencement of mediation. Regarding those cases in which an agreement was reached at mediation, it took an average of 144 days from the date of receipt of a complaint for the case to be concluded. In respect to those cases where the provider agreed to settle prior to commencement of mediation, it took on average of 93 days for such cases to be concluded.

Article 26(2) of the Act requires the Arbiter to proceed to adjudication within 90 days from the date of receipt of the complaint. With regards to complex cases, the law gives the Arbiter one year from the date of receipt of a complaint to deliver his decision and that no nullity shall ensue if such time limit is not met.

A complaint which is referred to the Arbiter for investigation and adjudication (that is when mediation efforts are unsuccessful) cannot possibly be decided within 90 days from the date of receipt of a complaint.

Naturally, it would not be complete in terms of supporting documentation and information. In addition, there is a process whereby the law requires the Office and the Arbiter to follow during a case review. These include: waiting for the financial provider to submit a reply within 20 days from being notified of a complaint, arranging for mediation, convening at least one sitting, requesting parties to submit affidavits and further information, as well as allowing for cross-examination and filing of notes of final submission. Although the Arbiter has insisted on parties' representatives to file brief submissions, the process as is required by law to be followed usurps a substantial part of this period.

Nearly all cases relating to investment services business alleging mis-selling or bad advice are complex in nature and most often require analysis not only of the submissions that are made by the respective parties, but also of the documentation that is submitted as part of the review process such as contract notes, client confidential profiles, appropriate or suitability tests, terms of business agreement and valuation statements. In most of complex cases relating to investment services, the Arbiter conducted his own research into the investment products that were subject of the complaint. This is a process which inevitably takes time to mature and conclude.

If one were to take the measure as set out in the Act (i.e. number of days counted from the date of receipt of a complaint until the date of the decision), an average of around 300 days was taken which, as stated earlier, comprised a period during which hearings were convened as well as an investigative stage following a note of final submission from the parties to the complaint. Very often the parties themselves ask for longer timeframes to file their affidavits and notes of final submission. However, timeframes set by the Arbiter normally reflect the exigencies of a fair trial and rapid closure to the case.

A more meaningful measure would be that as specified by the ADR Directive which requires that dispute resolution proceedings should be concluded within a timeframe of 90 calendar days starting on the date on which the ADR entity has received the complete complaint file including all relevant documentation pertaining to that complaint, and ending on the date on which the outcome is made available. In this case, the number of days taken from when the case file was complete (following a final note of submissions) until the date of the decision averaged 126 days.

GENERAL OBSERVATIONS

REGARDING COMPLAINTS LODGED WITH THE OFFICE

- During the year, the Office received a number of complaints from customers residing in an EU Member State who acquired specialised loans offered online by a provider authorised in Malta and which operated exclusively cross-border in such Member State. The Office actively engaged with the financial provider for early and satisfactory resolution of the complaints. In fact, 23 cases were resolved to the customers' satisfaction and without the need for mediation to be conducted.

- Over 60% of the complaints related to investment services. Generally, these complaints allege bad advice or mis-selling on the part of the financial provider. All cases are complex and require time to review and decide upon.

- Life insurance complaints relate to the payment of the sum assured at maturity. Complainants allege that the performance of their policy was not consistent with what they had been promised at inception.

- Travel insurance complaints concern rejected claims for cancellation or curtailment as a result of unforeseen circumstances.

SUMMARY OF DECISIONS

The following section provides a summary of a number of decisions delivered by the Arbiter for Financial Services in 2017. It is intended to provide an insight of the complaint, the financial services provider's response and the Arbiter's deliberations. Italicised words under each heading indicate themes pertinent to the respective case.

Decisions of the Arbiter are available on the Office's website (www.financialarbiter.org.mt).

INSURANCE COMPLAINTS

INSURANCE CLAIM ON THE VALUE OF AN ITEM LOST IN THE POST (ASF 398/2016)

Postal insurance, claim repudiation, provision of supporting documentation, calculation of "market value" and "insurance value"

The complainant submitted that the service provider had declined to compensate the value of a packet of hand-painted "acrylic eyes" (€450) which had been regularly insured but had been lost in the post on its way to a client.

On its part, the service provider contended that it had declined compensation in view of the claimant's refusal to provide the requested documentation to support the claim.

In his deliberations, the Arbiter found that:

a) The service provider was prepared to compensate solely the cost of the raw material but not the value of the work carried out on it; and this because, in its view, the latter constituted uninsured "profit".

b) The complainant was contending that it was impossible to determine the costing of his work since he imported the raw material in bulk and sold the finished product according to international rates.

c) The service provider had to ensure that the complainant had clearly understood the terminology used and the extent of cover purchased. This did not appear to be the case since the complainant had been provided merely with an information document in fine and barely legible print; the extent of insurance cover had not been explained to him.

d) The information document stated that the value of the insured subject matter was "the market value or the insured value, whichever is the lower"; since the former could not be established precisely, then the latter prevailed.

e) While acknowledging the fact that the service provider could not simply compensate any claim without requesting supporting evidence, the documentation provided by the complainant was sufficient to establish beyond reasonable doubt that the loss had indeed taken place and that the requested compensation was justified.

In the light of the foregoing, the Arbiter decided that the service provider had to settle the reimbursement demand in full, including the insurance cost and the postal charges.

INSURANCE CLAIM TO REPATRIATE REMAINS OF A DECEASED PERSON (ASF 376/2016)

Travel insurance, breach of policy condition, non-disclosure of pre-existing medical condition, burden of proof, provision of insurance documentation, medical expert report, utmost good faith

The complainants submitted that the service provider had declined to compensate the cost, which had been unavoidably incurred (€4,763) for the repatriation of the remains of their deceased brother (the insured), of whom they were the inheritors; the former had died while he was on holiday.

On its part, the service provider contended that:

a) The complainants had not provided adequate proof that they were the legitimate inheritors of the insured.

b) The insured had breached the policy condition that required insured persons to be entirely fit to travel and not to be receiving or awaiting medical treatment.

c) The insured had failed to disclose that he was being treated for Ischaemic Heart Disease.

d) In his report, the medical expert appointed by the Arbiter had stated that:

- The cause of death was Ischaemic Heart Disease,
- This medical condition did not manifest any specific symptoms, and
- The insured's medical records did not show that he suffered from such condition or that he had any other heart problem(s).

e) It could not be reasonably expected of the insured to be aware of the aforementioned medical condition if competent medical practitioners had not diagnosed it prior to his travel.

The Arbiter determined that the insured had not breached the principle of *uberrima fides* by not divulging such medical condition to the insurer concerned and decided that the service provider had to refund in full the claimed amount to the complainants *in solidum*.

UNAVOIDABLE CANCELLATION OF TRAVEL FOLLOWING UNEXPECTED DEATH OF A CLOSE RELATIVE (ASF 390/2016)

Travel insurance, utmost good faith, pre-existing medical conditions, unforeseeable circumstances, provision of insurance documentation

The complainant submitted that the service provider had declined her claim for compensation and this in respect of her unavoidable cancellation of a guided tour following the sudden and unexpected death of her father on the day of departure.

On its part, the service provider contended that:

a) It had not been informed about the father's advanced age (89 years) and medical problems from which he had been suffering for some time.

b) Such requirement was integrated in the "policy sheet" and the "policy summary", which had been provided to the complainant from the outset.

In his deliberations, the Arbiter found that:

a) The text of the two aforementioned documents was not identical; one specified the "illness of a close relative" while the other did not.

b) In terms of the established principle of *uberrima fides*, the service provider cannot deliver two separate documents with contrasting versions and then quote the version that most suited it in order to decline the claim.

c) The father's medical conditions were not terminal and were solely the result of his advanced age; he was living at home in a stable condition. This was supported by the report compiled by a medical expert appointed by the Arbiter.

d) When the complainant purchased the guided tour and the insurance policy, there was no indication that her father would die soon after.

e) While her father was in hospital in the days preceding her departure, the complainant had verified with the ward doctor whether she could still travel abroad; the latter had replied that the patient was not in danger of dying.

f) The complainant could not reasonably be expected to foresee her father's sudden death when this was not foreseen even by experienced medical personnel.

In the light of the foregoing, the Arbiter upheld the complainant's request and decided that the service provider had to refund in full the claimed amount to the complainant.

CLAIM FOR ADDITIONAL COSTS FOLLOWING MISSED DEPARTURE (ASF 405/2016)

Travel insurance and extent of policy coverage

The complainants contended that they had incurred additional costs when – due to the sickness of a friend jointly travelling with them – they missed their return flight to Malta from Munich while forming part of a group guided tour. Therefore, they requested the full reimbursement of such cost.

On its part, the service provider contended that:

a) The tour leader had brought the group to the airport in good time and the check-in was carried out smoothly and unhurriedly. Subsequently, a friend of the complainants felt unwell and was accompanied to the bathroom by her husband and one of the complainants. Consequently, the complainants arrived late at the boarding gate and missed their flight; they had to make their own way back to Malta via Frankfurt and to cover the respective cost.

b) The tour leader was not informed by the complainants about the incident.

c) The travel insurance policy did not compensate such additional cost.

In his deliberations, the Arbiter found that:

a) While allowing for an element of "panic" that may have affected the complainants, one could still not justify their failure to inform the tour leader.

b) Since he was not informed about the incident, the tour leader realised that some tour members had remained in Munich only after arriving in Malta.

c) Even if the tour leader had actually counted the tour members before boarding the flight, it would have been highly unlikely that the aircraft would have waited for the missing persons; and this in such a busy airport.

d) The cover provided by the travel policy did not include the contingency in question.

In the light of the foregoing, the Arbiter rejected the complaint.

CLAIM FOR THE VALUE OF AN IRREPARABLY DAMAGED VEHICLE (ASF 481/2016)

Motor insurance policy, fully comprehensive cover, direct right of action, vehicle value guidebook published by the Malta Insurance Association, beyond economical repair, insured value, market value, wreck value, reinstatement to the position before loss

This complaint was based on the following aspects:

a) The service provider, after initially confirming that it would be importing at its own cost an equivalent car to replace the complainants' comprehensively-insured accidented vehicle which it had declared to be beyond economical repair, had subsequently instructed them to source such vehicle themselves at its own cost.

b) The overall cost of such import amounted to €53,697 of which the service provider was offering to compensate only €46,800 contending that this was the insured value of the irreparably damaged vehicle under its policy.

The complainants therefore claimed the former amount in full settlement of their case.

On its part, the service provider argued that:

a) The relevant legislation (Chapter 104) provided the complainants with a direct right of action against the insurance company of the liable vehicle. By opting to submit their compensation claim directly to the service provider, the complainants were bound to be compensated according to the terms and conditions of its policy.

b) The said policy carried an insured value of €46,800; this amount was compatible with the market value of the written-off vehicle as stated in the Vehicle Value Guidebook published annually by the Malta Insurance Association for its member insurers' internal use.

c) Both its motor assessor and that of the liable vehicle's service provider agreed on the said value and that the vehicle concerned was beyond economical repair.

d) It was precluded, by the terms and conditions of its policy from paying more than the total sum insured specified thereunder.

In his deliberations, the Arbiter found that:

a) The testimony given by one of the complainants contrasted with the statements made in the complaint itself. The deposition stated that the service provider insisted from the outset to compensate only the insured value under its policy whereas the complaint stated that the service provider's intended compensation was made clear only after the replacement vehicle had been imported.

b) Despite being aware that the service provider's intended compensation was comparatively inferior to the overall importation cost of the replacement vehicle, the latter had been equally imported by the complainants.

c) The service provider denied that it had ever offered to import the replacement vehicle itself.

d) In terms of any insurance policy, the complainants were entitled to be returned to the same position in which they were before the loss for which, after all, they were not responsible. Nevertheless, they should not profit from such loss.

e) The complainants had not disputed the fact that the accidented vehicle's insured value was €46,800.

f) The aforementioned two separate motor assessors had concurred on the fact that the market value of the accidented vehicle was €47,000 while its wreck value was €7,500.

In the light of the foregoing, the Arbiter decided that the service provider should pay €47,000 to the complainants plus interest.

CLAIM FOR REFUND OF A HIRED VEHICLE (ASF 035/2017)

Motor insurance policy, delay for the delivery of parts, period for which loss of use is covered under the insurance policy, maximum amount payable, responsibility for procuring parts

In this case, the complainant was requesting the full refund of the expense incurred for the use of a hired vehicle while his own was immobilised awaiting the delivery of the required parts for the necessary repairs to be carried out. This amounted to €692.90; that is, the overall cost (€775.50) net of the amount compensated by the service provider (€82.60).

The said parts delivery took an inordinate time to be carried out; and this because of the provision of incorrect parts by the service provider in two separate consecutive instances coupled to the delayed supply of separate ancillary parts.

The complainant further contended that he kept the service provider and his insurance broker constantly updated but that the former had never replied to his complaint about the said delay, except to merely acknowledge its receipt.

On its part, the service provider contended that:

a) The compensation provided by the policy insuring the complainant's vehicle applied solely to the period during which the said vehicle was being repaired; such period had been established by the motor assessor/surveyor, in agreement with the repairer, to be five days.

b) The delay in sourcing and delivering the required parts was not solely due to its handling of the case.

c) Whilst acknowledging the inconvenience and the extra expense sustained by the complainant, it was prepared to offer €350 in compensation; and this on a "Without Prejudice" basis as well as in full and final settlement.

This was the maximum amount payable under the policy in such instances.

In his deliberations, the Arbiter found that:

a) The insurer concerned had assumed the responsibility of sourcing and delivering the required parts. However, the wrong parts were delivered in two separate instances.

b) The first instance was not the service provider's responsibility; and this because the complainant had not informed the said service provider that his car was equipped with a bumper that was different from the norm.

c) Other ancillary parts (e.g. the bumper "reinforcer") similarly took a long time to be delivered to the repairer.

d) The service provider's suggestion, that the complainant should still drive his car without the damaged bumper, was not realistic or practical since this rendered the vehicle unsafe.

e) The service provider had not provided any proof to rebut or contradict the facts as put forward by the complainant.

In the light of the foregoing, the Arbiter decided that it would not be equitable for the service provider to compensate the first week of vehicle hire; and this because the mistaken delivery of the first bumper was not its fault.

However, the service provider had to pay for the remaining cost.

The Arbiter therefore decided that the service provider was to compensate the amount of €577.40 to the complainant; this represented the net result after the separate amounts of €82.60 (already paid by the service provider) and €115.50 (the vehicle hire cost for one week) were deducted from the overall amount claimed (€775.50).

PROVISION OF IMITATION / SECOND HAND PARTS FOR REPAIRS OF ACCIDENTED VEHICLE (ASF 032/2017)

Jurisdiction of the Arbiter, motor insurance policy, repair works, quality and certification of parts, refund for use of rented vehicle during repair works, reimbursement of costs for garage rental, Handbook of Best Practice for Third Party Motor Liability Claims issued by the Malta Insurance Association, reinstatement to the position before loss, damages for the period in which vehicle was unavailable

In this case, the complainant claimed that his service provider was intending to provide "imitation/ second-hand" parts for the repair of his accidented vehicle.

He contended that such parts were not suitable for the required repair. He further insisted that the source as well as the manufacturer of such parts had to be established and that their condition had to be certified as being of the same standard as the equivalent parts before they were damaged in the road accident involving his vehicle.

The complainant therefore requested the Arbiter to decide that:

- The service provider had to provide original parts for the repair.

- If "imitation/second-hand parts" had to be unavoidably used, the quality of such parts had to be certified as being of the same standard as the damaged parts in their pre-accident condition.

- The service provider had to reimburse the complainant for the expense sustained for the interim hire of an alternative vehicle while his car was in an unrepaired condition.

- The service provider had to reimburse the amount of €1,158 to the complainant; and this in respect of the comprehensive insurance policy premium and the road licence fee that the complainantpaid needlessly to the service provider since his damaged vehicle could not be driven on the road.

- The service provider had to reimburse the complainant for the rental cost of a garage in which the latter had necessarily to keep his damaged vehicle.

- Compensation ("damages") were due to the complainant in respect of the period when he could not use his car.

On its part, the service provider contended that:

a) The complaint *per se* was outside the jurisdiction of the Arbiter; and this because the Arbiter for Financial Services Act was not intended to include motor insurance policies within its parameters. Additionally, the complainant was not an "eligible customer" and the service provider was not a "financial services provider"; and this as per the definition of these two terms in the said legislation.

b) The proceedings had to be conducted in the Maltese language; and this in accordance with Article 21(1) of the Civil Code. The fact that the original complaint had been submitted in English was immaterial.

c) It had accepted to compensate the complainant in accordance with the terms and conditions of his motor policy; in fact, it had already paid the amount of €119.47 to the local council where the accident occurred in respect of the damage caused by the complainant through his negligent driving.

d) The complainant was entitled to be reinstated to his pre-accident position. However, he was not entitled to "profit" from his "loss".

e) The policy specifically stipulates the provision of "imitation/second-hand parts" for the repair of vehicles whose age exceeded five years. This was the prevailing practice among all local motor insurers and was reflected in the "Handbook of Best Practice for Third Party Motor Liability Claims" issued by the Malta Insurance Association. The accidented vehicle was eight years old.

f) With the specific intention of assisting the complainant in the best possible way, it had offered the complainant:

- To pay him a cash settlement equivalent to the cost of the parts and the repairs, so that the complainant could order the parts himself.

- To purchase the original parts itself so that the complainant could benefit from the discounted pricing of which it could avail as a regular client of the parts supplier. The complainant would then have to refund the balance between the cost of the original parts and the cost of the equivalent "imitation/second-hand parts".

g) It had offered to pay the complainant the maximum compensation available under his policy (€235) for the expense related to the use of a hired Car. This, even if the repair period of the accidented vehicle was inferior to the equivalent one covered by such compensation.

h) Its handling of the entire case was in conformity with the law as well as within the guidelines of the Malta Insurance Association as outlined in its "Handbook of Best Practice for Third Party Motor Liability Claims".

In his deliberations, the Arbiter found that:

a) The contentions that the complainant was not an "eligible customer" and that the insurer was not a "financial services provider" were both unfounded. The definition of such terms in Article 2 of the Act was clear and unequivocal; every customer of financial services is an "eligible customer" and every insurance company is a provider of financial services. Furthermore, the sale of an insurance policy is the sale of a financial product. The law itself provides, as an illustrative example, the sale by a financial services provider of an insurance policy.

b) The service provider's contention, regarding the language in which the proceedings are to be conducted, is a frivolous one. The complaint itself, though initially submitted in English, was subsequently submitted also in Maltese. The proceedings so far had already been conducted in Maltese. Hence, there was no doubt whatsoever that the Maltese language was to be used.

c) In the complaint itself, the complainant stated that he was prepared to accept "new original parts or original second-hand parts"; yet the e-mail exchanges with the service provider showed that the complainant insisted on being provided with original parts.

d) In his testimony, the surveyor/motor assessor stated that all the parts supplied were "CE Approved"; hence, they met European Union standards and would not prejudice the roadworthiness of the repaired vehicle. If fitted properly and sprayed well, such parts would not be distinguishable from the equivalent original parts. The surveyor had further stated that he had assured the repairer that he was prepared to authorise the substitution of any part that the latter found to be inadequate or unsuitable.

e) In his testimony, the claims manager had insisted that the service provider's intended settlement of the complainant's claim was in accordance with the policy terms and conditions as well as with the handbook of best practice issued by the Malta Insurance Association. He further insisted that the service provider had gone out of its way to facilitate the task of the claimant; but the latter had consistently refused any settlement proposal made to him. Nevertheless, the complainant/claimant could not be allowed to "profit" from his "loss" by having his vehicle returned to a position that was better than before the accident occurred.

f) In his testimony, the parts supplier stated that second-hand parts were sourced from accidented vehicles that were usually not more than five years old. "Pattern" or "imitation" parts were sourced from specific firms in Europe which produced such parts; they would be brand new and identical to the original equivalent. Their quality and standard would be certified by "TUV". However, the said parts would not have been produced by the vehicle's manufacturer.

g) The complainant had stated that he had never signed the policy; therefore, he was not bound to accept "second-hand" or "imitation" parts. Nevertheless, his correspondence with the service provider concerned, as well as his defence of the case, showed that he was well-educated and knowledgeable in the sector; he could understand the terms of the insurance policy that had been issued to him and had "accepted" it. Therefore, the complainant was not in an inferior negotiating position vis-a-vis the service provider concerned.

h) The policy clearly stated that "imitation parts, non-original parts or recycled second-hand parts" would be supplied for the repair of accidented vehicles that were more than five years old. The vehicle in question had been purchased second-hand by the complainant and was eight years old.

i) The complainant had not contradicted the testimony made by the surveyor and the parts supplier; nor had he provided any contrary evidence.

In the light of the foregoing, the Arbiter decided that:

- In its handling of the case, the service provider concerned had acted correctly and in accordance with the policy terms and conditions; it had treated the complainant in a reasonable manner and had even gone out of its way to "facilitate" the positive conclusion of the case.

- The complainant's request, that the service provider covers the hire cost of a garage where the accidented and unrepaired vehicle was temporarily stored, was to be declined. This was a unilateral initiative undertaken by the complainant whose cost was not to be covered by the service provider; and this because it had provided the required parts in accordance with the policy terms and conditions.

- The time elapsed, between the submission of the complete claim documentation by the complainant and the actual delivery by the service provider of the required parts – just nine days – was a reasonable one.

- There was no evidence or proof available that the complainant could have sourced and delivered the required parts in a shorter period of time.

- The offer made by the service provider, to provide the complainant with the maximum compensation allowable under the policy for the use of an alternative hired car (instead of just the five-day repair period), was an acceptable one.

The Arbiter therefore declined the complaint; and this because, in his view as outlined in the preceding paragraphs, it was not equitable or reasonable in the light of the established facts of the case.

CLAIM FOR THE REPAYMENT OF AN OUTSTANDING HOME LOAN BALANCE (ASF 377/2016)

Life insurance policy, joint/solo policy, lapsed policy following non-payment of premium, revival of policy, pledge on an insurance policy, cancellation instructions, direct debit (mandate), standing order

The complainant claimed that the service provider concerned was refusing to pay the outstanding loan with a bank; and this as per the terms and conditions of a life insurance policy held by the complainant and her late partner with the said service provider.

The complainant contended that the said joint policy had lapsed due to the non-payment of the required premium; and this despite the fact that she could not recall having signed any instruction requesting the relative standing order to be cancelled.

The complainant was therefore requesting that the service provider pays the amount of the outstanding home loan accordingly.

On its part, the service provider submitted that the complaint was unfounded in fact and at law; it should therefore be rejected with costs for the following reasons:

a) The service provider was not given a reasonable amount of time to properly consider the complaint before its filing for the Arbiter's consideration.

b) The complainant is not an "eligible customer" as defined in the Arbiter for Financial Services Act.

c) There are persons who have inherited the complainant's deceased partner and therefore have an interest in these proceedings; the latter cannot proceed without them.

d) The service provider is not the proper defendant. Moreover, it never gave any advice to the complainant concerning the issue of a new policy in her sole name. Therefore, it cannot be held responsible for the consequences of such advice, which was presumably given to the complainant by third parties.

e) It is unclear what the complainant is complaining about as well as how the complaint related to the service provider's conduct.

f) The joint policy, issued by the service provider in the names of the complainant and her partner, lapsed because the agreed monthly premium was not paid even after a thirty-day grace period; and this in accordance with the general policy conditions. The complainant was aware that the required premium payment had not been made. Yet, she still failed to act upon this.

g) Subject to the requirements outlined in the said general policy conditions, the policy could have been revived within the six-month period following its lapse. Yet, the complainant did not submit to the service provider any such request.

h) Following the end of her relationship with her partner, the complainant decided to purchase a new life policy (decreasing term) in her sole name. However, the issue of this policy by the service provider was unavoidably delayed since the complainant failed to provide the medical information requested by the service provider. Though initially intended to incept in December 2011, the said medical information was provided by the complainant in August 2012; the policy therefore incepted on 27 August 2012. The premium payments for this policy ended in October 2013. The policy itself was never pledged to the bank; and this presumably because the bank had declined the complainant's application for a mortgage in her sole name following the demise of her former partner.

i) On 18 May 2016, the complainant submitted a formal complaint to the service provider alleging that "the direct debit on the joint policy had been cancelled prematurely before the sole policy was activated; additionally, the latter had been activated unnecessarily since the bank had declined the mortgage request". On 23 May 2016, the service provider requested the complainant to submit the complaint using its proper complaint form; the complainant complied with this request on 20 June 2016.

j) A meeting was held by the service provider with the complainant's representatives on 4 July 2016 during which it presented its version of the events. Subsequently, while the service provider was still collating all the facts pertaining to the case and before it could take a formal position regarding the complaint submitted to it, the complainant filed proceedings before the Arbiter.

k) Without prejudice, the service provider was prepared to refund only the premium instalments paid in respect of the sole policy.

In his deliberations, the Arbiter found that:

a) The service provider had withdrawn its first plea; namely, that it had not been allowed a reasonable amount of time to properly consider the complaint before its filing for the Arbiter's consideration.

b) The complainant is indeed an "eligible customer"; and this as defined in the Arbiter for Financial Services Act. The service provider's plea was therefore rejected.

c) The service provider had not substantiated with any proof its contention that there are persons who have inherited the complainant's deceased former partner. Moreover, the complainant was seeking compensation in respect of one-half of the sum insured under the joint policy (that is, €38,533). In this way, she was not prejudicing the right of any potential heirs. This plea was, therefore, similarly rejected.

d) The service provider concerned is indeed the proper defendant; and this because it issued the policies in question. Therefore, this plea was also rejected.

e) The plea – that the complaint itself was unclear – is unfounded and is equally being rejected; and this as manifested and contradicted by the service provider's lengthy and detailed reply.

f) The statement of the joint bank account, from which the monthly premium of the joint policy was being regularly paid, contradicts the service provider's contention that the final premium payment was made in November 2011. This because it clearly shows that the December 2011 premium was duly paid to the service provider. Furthermore, the said joint account still had sufficient funds for the payment of the January 2012 premium to be made as well. However, such payment was not made since the service provider had failed to request it in terms of the direct debit mandate set up in its favour by the complainant and her late partner.

g) The service provider had failed to notify the bank, with which the joint policy was pledged, of the premium payment default in January 2012. This, in breach of the terms and conditions in the "Notice of Pledge" binding the service provider and the bank concerned.

h) In its submission, the service provider had repeatedly alleged that the joint policy had been cancelled; and this particularly when the complainant had applied for a sole policy. Yet the service provider had not submitted any tangible proof to substantiate such allegation; for example, any specific policy cancellation instructions issued by the complainant and her late partner or revoking the direct debit mandate.

i) The service provider had not explained why it had not sourced the January 2012 premium in respect of the joint policy; and this even though there were sufficient funds in the joint account of the complainant and her late partner.

j) The service provider had not notified the complainant that the January 2012 premium of the joint policy had not been paid.

k) The complainant had continued with the loan repayments until August 2016, at which date, the sum insured under the joint policy amounted to a total of €73,839.90.

In light of the foregoing and bearing in mind that the complainant was seeking half of the sum insured as compensation, the Arbiter decided that the service provider was to pay the complainant the amount of €36,919.95 in all; this amount was to be used by the complainant to repay the outstanding loan with the bank concerned.

VALUE OF A LIFE POLICY ON MATURITY (ASF 459/2016)

Life insurance, endowment with profits, estimated maturity value, reversionary bonus, policy account statement, final bonus, life assurance quotation, utmost good faith, "Arbitri et boni viri", the reasonable and legitimate expectations of the customer

The complainant stated that, in August 1995, he had purchased a policy whose maturity value was estimated at the time to be more than Lm19,000 (equivalent to €45,000).

When the said policy matured in August 2016, the service provider concerned informed him that he would be getting "only" about €26,000 to €27,000.

After receiving a letter from his lawyer (whom he had specifically instructed to write on the case), the said service provider informed the complainant that it would be paying a maturity value of €26,179.

The complainant insisted that he had purchased the policy because the relative signed estimated maturity value showed an expected payment of €45,000. On his part, he never expected such payment to fall well below €35,000 to €40,000.

On its part, the service provider contended that:

a) The policy in question was an "Endowment with Profits" policy that incepted on 28 August 1995 and matured on 28 August 2016 after a 21 year term.

b) The policy's annual premium amounted to €815.28; of which the amount of €763.20 was invested while the balance provided a life cover with a benefit of €14,195.

c) The total premium paid by the complainant during the policy term amounted to €17,120.88 whereas its maturity value was €26,179.08; this was inclusive of a final bonus (€1,826.49) declared by the service provider on 1 March 2016.

d) During the said 21-year term, the policy account had been credited on an annual basis with reversionary bonuses ranging between 6.75% and 3.15%; this resulted in an average annual return of 3.71%.

e) The life assurance quotation issued to the complainant in 1995 was correct and was based on the prevalent rates of return at the time. Additionally, the quoted maturity value was not guaranteed but estimated. The actual realisation of the said maturity value depended on the performance of the underlying premium investments made by the service provider. During the aforementioned policy term, such performance tended to fall below expectations.

f) Despite the shortfall in the estimated maturity value, the policy was still a valid investment in that it provided an above average rate of return (for investments of this nature) combined with a life assurance cover.

g) During the policy's 21-year term, the service provider had provided the complainant with an annual policy account statement (which showed the progression of the respective policy account) together with a copy of the media release concerning its annual bonus declaration. Therefore, the complainant should have been fully aware of how his policy account was progressing (or otherwise) over the passage of time.

h) The policy's objective was to be a medium-term tax efficient investment providing a tax-free maturity value combined with a guaranteed payment in case of the policyholder's death before the policy matured.

i) There was nothing irregular in the service provider's performance during the policy term; hence, it was not in a position to review or revise the maturity value of the policy in question.

In his deliberations, the Arbiter found that:

a) In his testimony, the complainant insisted that the service provider's sales representative had repeatedly "promised" him (in the presence of his wife) that the policy would deliver a maturity value of Lm20,000 and that he had never mentioned that the said amount was merely a projection or that it was estimated. He had therefore been misguided and tricked by the said representative who had highlighted the positive aspects of the policy but not its negative features. Nor had the representative advised him that an investment of this nature would be subject to fluctuation over time since it could fall as well as rise. Had this been the case, he would certainly have hesitated and would not have purchased a policy of this nature. He expected to be notified by the service provider if the underlying investment was not performing as expected; yet this had not taken place.

b) The complainant had further insisted that, during the policy term, he had never been contacted by the insurer concerned other than by the receipt of an annual statement that he could not understand since it was full of figures and percentages.

c) The complainant had also stated that, when paying his premium, he had drawn attention to the fact that the policy appeared to be falling below its promised financial target; however, the service provider's office clerk had warned him that terminating the policy earlier than its scheduled term would entail the payment of a financial penalty. This would signify a loss in his investment income; he therefore felt that he had no other option but to let the policy run its course.

d) The complainant's wife corroborated his testimony by means of an affidavit.

e) The Chief Operations Officer (COO) of the service provider submitted an affidavit stating that the proceeds of the policy, in terms of its maturity value, resulted from the investment returns of the service provider. The COO drew attention to the fact that the complainant contradicted himself by initially stating that he had never been contacted by the service provider and then admitting that he received annual policy statements. Furthermore, he appeared not to give sufficient weight to the information integrated in such statements.

f) The COO stated that a sales representative was obliged to explain to a prospective policyholder all the policy features in their entirety; that is, both the positive and the less positive ones.

g) The maturity of the policy was an estimated amount that could never be guaranteed since it depended on the investment return of the service provider. This concept appeared to be "supported" by the complainant himself who was requesting compensation in the region of €35,000 to €40,000; thereby indirectly acknowledging that the policy return was subject to the investment market fluctuation.

h) The service provider's investments had naturally sustained the consequences of the international financial crisis that prevailed while he complainant's policy was in force; this, in turn, affected the investment return of such policies.

i) The complainant had never been pressured to purchase the policy; he had also been provided with a "fifteen-day cooling off period" during which he would have had the right to withdraw his proposal.

j) The Chief Executive Officer (CEO) of the service provider, had submitted an affidavit intended to ensure the continued good reputation of his company; in fact, he had repeatedly insisted that this firm had not misguided the complainant in the sale of the policy in question.

k) In their respective affidavits, both the COO and the CEO had stated that they were not present when the said policy was sold to the complainant;

hence, the only "version" available for consideration was that provided by the complainant.

l) The service provider had not summoned its sales representative to testify, even though he would have been the best witness about the policy sale; in fact, the COO had admitted that he had not contacted or spoken to him in any way, despite the receipt of the complaint.

m) The service provider had not contradicted the "version" provided by the complainant; that is, that the sales representative had not explained the dependence of an endowment policy on the service provider's investment return.

n) The policy in question was not a simple straightforward one that could be easily understood by the average customer; hence, the service provider's representative was all the more obliged to provide a clear and understandable explanation of the policy and its related implications to the complainant, who was employed as a pastry chef and was certainly not an insurance expert; and this inclusive of the "risks" inherent in it.

o) The complainant could not have "surrendered" the policy before its maturity date since this would have entailed the payment of a financial penalty, thereby further reducing its investment return; therefore, he had no option but to maintain the policy in force until its intended maturity.

p) The principle of *uberrima fides* binds both parties to an insurance policy; that is, both the insured (who is required to make a full disclosure) and the service provider (which is required to provide a clear explanation of the policy concerned).

In the light of the foregoing, the Arbiter felt that it would not be reasonable to accept the complainant's claim in its entirety; that is, to award the amount of between €35,000 and €40,000.

Nevertheless, he equally felt that some sort of compensation was in order; and this because the policy had not met the complainant's 'reasonable and legitimate expectations'.

Such compensation should properly reflect all the circumstances of this case; inclusive of the fact that the policy's actual return – averaged at around 4% - was not a negative one when compared to alternative market returns. However, the Arbiter underlined that the service provider had the duty not to raise the customer's expectations at the point of sale and fail to honour them on maturity of the policy.

After careful thought as to the amount to be awarded, the Arbiter *arbitri et boni viri* decided to partially accept the complaint and to award the amount of €3,500 to the complainant.

This amount was to be added to the maturity value of the policy (€26,179); the complainant was therefore to receive the amount of €29,679 in all from the service provider, plus interest for the period spanning the date of the decision and the date of the actual payment.

BANKING COMPLAINTS

OFFSETTING A LOAN FROM A CREDIT BALANCE HELD IN A DEPOSIT ACCOUNT (ASF 446/2016)

Loan account, sanction letter, all-in-one account incorporating a deposit account, home loan, current account, overdraft and debit card facility, instructions to bank to offset one account with another

The complainants contended that the service provider had not provided adequate information about its allegedly complex product, an account which combined a home loan, a current and a savings account. Furthermore, they requested the reimbursement of the allegedly unauthorised interest that the service provider had charged them.

On its part, the service provider contended that:

1. The interest charged to the complainants was in accordance with the terms of the "sanction letter" issued to them in November 2014.

2. Such interest was debited at six-monthly intervals; and this in accordance with standard banking practice at the time.

3. No interest was charged unless it was due from the complainants.

4. It had not failed in its duties and obligations towards the complainants in any way.

In his deliberations, the Arbiter found that:

a) The complainants intended to purchase property; they therefore sought to borrow money from the service provider.

b) On being offered two separate products with different interest rates, they had clearly opted for a particular type of product which was an all-in-one account comprising deposits, home loan, current account and overdraft; and this after they had been provided by the service provider with an explanatory summary of each product together with the applicable interest rate.

c) The contention by the complainants about alleged inadequate product information was unrealistic; and this in the light of their educational background and their occupation. The product was certainly within their intellectual reach.

d) The contention about alleged unauthorised interest charged by the service provider was unsupported by the documentation exhibited by the parties in connection with this case. It was noted that, following two separate deposits in the initial month of the loan facility, the complainants had ceased making any other deposit(s) for a number of subsequent months (as they were required to do under the relative sanction letter).

e) The complainants explained such interruption by contending that the hefty deposit made by one of them in the respective personal account should have been utilised by the service provider to offset the financial exposure under the all-in-one account. However, no specific instruction and/or authorisation had been issued by the complainants to the service provider in this regard.

f) After initially monitoring the account through internet banking, one of the complainants had stopped doing so for personal reasons; thereby preventing the receipt of updated information about the account's performance.

In light of the foregoing, the Arbiter declined the complaint.

APPOINTMENT OF TWO BROKERS FOR THE SALE OF THE SAME INVESTMENT (ASF 410/2016)

Redemption instructions, Malta Stock Exchange, legal priority, compensation for distress, financial loss

The complainant contended that, when she decided to sell her investment in a Malta Government Stock (MGS) through a stockbroker on 2 March 2016, she was informed by the latter that the said investment was "frozen" and, therefore, could not be traded or sold.

This contrasted sharply with the information provided to her by the bank stating that her investment had been "released" on 2 February 2016.

The Malta Stock Exchange had confirmed that her investment could indeed be traded until 3 March 2016.

The complainant therefore requested the Arbiter for compensation in respect of *"economic loss; denial of access to my own funds; shock/distress; false*

information; negligence; illegal use of my money; misleading reply".

On its part, the service provider pleaded that:

a) The complainant had not sustained any loss in the sale of €45,000 MGS 2029 since such sale was made at the best possible price.

b) The service provider had been instructed by the complainant on 2 December 2015 to sell the investment at a minimum price of €110.50; such instructions were valid until 2 February 2016.

c) In accordance with the standard market practice, the service provider had registered an "expression of interest" with the Malta Sock Exchange as the broker associated with such sale.

d) Also, in accordance with such established practice, in cases where a client appoints a second broker, the latter would be required to contact the first broker to determine the respective "legal priority".

In his deliberations, the Arbiter found that:

a) The complainant's instructions to the service provider to sell her stock, at a minimum price of €110.50, covered the period spanning from 2December 2015 to 2 February 2016. At the time, the market price for such stock was €107.20.

b) Subsequently, on 2 March 2016, the complainant instructed a stockbroker to sell her stock; however, the transaction did not go through since the service provider's interest as broker was still in force.

c) When the service provider was made aware of this, on 3 March 2016, it immediately withdrew its "interest" in the sale. The transaction was therefore completed by the stockbroker on 4 March 2016.

d) From the supporting documentation submitted, the stock could have been sold on 2 March 2016 at a price of €107.55; this price had improved to €107.62 when the stock was sold on 4 March 2016. Therefore, the complainant did not sustain any pecuniary loss through the "delay" in the sale of her holding.

e) The testimony given by the complainant was inconsistent. Initially, she stated that she wanted to sell the MGS holding because she preferred the proceeds in her bank account. Subsequently, she insisted that she had to sell the said holding since she needed the money. Such unreliable and contradictory testimony indicates the complainant's determination to obtain a financial remedy at any cost.

f) The complainant had requested compensation in respect of:

- Economic cost: this was certainly not the case since the complainant had gained and benefited from a higher selling price.

- Denial of access to own funds: the complainant had not submitted any tangible proof in this regard.

- Shock/distress: the complainant had not submitted any certification, issued by a doctor or by a psychiatrist, to substantiate her allegation that the service provider's handling of her case had caused her some sort of trauma.

- False information: the information provided by the service provider to the complainant, as evidenced by the latter's testimony, was entirely correct.

- Negligence: there is no tangible evidence that the service provider's failure to withdraw its "expression of interest" in the complainant's MGS holding was done negligently. Rather, the service provider was insisting that it was market stock broking practice for such withdrawal to be carried out once the first broker was contacted by a second one appointed in its stead.

- Illegal use of my money: the service provider's retention of its "expression of interest" in no way signifies that it made use of the complainant's money for its gain.

- Misleading reply: the complainant had not submitted any tangible proof of her allegation in this regard.

In concluding his deliberations, the Arbiter stated that the service provider should indeed have withdrawn its "expression of interest" on 2 February 2016.

Despite this, the complainant had not sustained any consequent financial loss. Rather, in the transaction subsequently carried out on 4 March 2016, she had profited; nor had she sustained any other kind of loss.

Therefore, the Arbiter decided that he could not award any compensatory remedy.

SHORTFALL IN AN AMOUNT DEPOSITED AT A BRANCH (ASF 466/2016)

Fixed deposit account, savings account, internal audit, bank mistake

On 8 August 2016, the complainant had visited the service provider's branch to change his wife's fixed account into a savings account, into which he wanted to deposit an additional €2,000 that his wife had meanwhile saved.

The complainant paid this amount in cash to the service provider's clerk on duty and was issued with a receipt for the said amount; the latter had put the money in an envelope on which she wrote the amount (€2,000) before transferring it to another room.

On 9 August 2016, the service provider informed the complainant that the amount deposited was €1,000.

On 7 October 2016, the service provider informed the complainant that the issue was closed.

The complainant was therefore requesting that the service provider should deposit the amount of €2,000 in the account; and this as shown in the receipt it had issued.

On its part, the service provider contended that:

a) The clerk did not count the money handed over to her by the complainant; she relied on the complainant's statement that the money amounted to €2,000 and merely recorded the denominations on an envelope without realizing that these did not add up to €2,000.

b) The denominations were written in front of the complainant, who confirmed them with his signature. The envelope was then sealed by the clerk in front of the complainant and was put in a deposit box situated behind a glass door, enabling the complainant to follow the clerk as she deposited the envelope.

c) When contacted by the service provider over the phone, the complainant had actually admitted that the amount in question was €1,000.

d) The entire process was recorded on the service provider branch's CCTV; this had not been edited in any way, as alleged by the complainant.

e) The complainant had not been provided with a copy of the auditor's report on the case since this was compiled solely for internal purposes. Nevertheless, the complainant was provided with the chance to meet the auditor; and this even though the service provider was not obliged or required to do this.

f) The service provider was not responsible, in any way, for the alleged loss of money.

In his deliberations, the Arbiter found that:

a) Since there are two conflicting versions for the case in question, one should opt for the best possible proof in order to determine what had actually happened; and this was the CCTV recording.

b) The said recording showed clearly the entire deposit procedure by the clerk on duty as well as the fact that the complainant was closely following her every move. Throughout the deposit procedure, nothing was removed from the envelope; its content was therefore the amount deposited by the complainant.

c) The said CCTV footage showed that, when it was opened, the envelope content was made up of a banknote of €100 and two banknotes of €50 as well as a number of €20 banknotes. This contradicts the complainant's version that he had deposited ten €100 banknotes.

d) The internal audit department had carried out a test in which it compared the difference between the "packet size" of 40 €20 notes with one of 90 such notes; this test had concluded that the envelope had contained 40 €20 notes.

e) Another test carried out by the internal audit department focussed on the time required by a counting machine to count 40 and 90 €20 notes; once again, the outcome pointed to the former amount having been deposited.

f) No tangible proof had been submitted to counter the findings of the internal audit department.

g) The discrepancy between the receipt issued by the clerk to the complainant (€2,000) and the amount deposited by the latter (€1,000) was attributable to a genuine human error. After all, the denominations of the several banknotes had been recorded by the clerk on the depository envelope in the complainant's presence; and these denominations clearly totalled €1,000 in all.

h) The service provider had admitted that its employee had committed a mistake.

i) The version of facts as submitted by the service provider was based on objective and scientific evidence; it was comparatively more plausible than that of the complainant.

In the light of the foregoing, the Arbiter rejected the complaint.

SHORTFALL OF FUNDS UPON CONVERSION FROM EURO TO AUSTRALIAN DOLLARS (ASF 421/2016)

Maturity of a term deposit account, application of exchange rate, authenticity of signatures, documentation provided at time of the transaction, audit department

On 9 August 2013, the complainant had "converted" her term deposit account from Euro to Australian Dollars.

When depositing the amount of €13,502.64 in the account, she was informed by the service provider's staff that this was equivalent to approximately AUD 18,000; she was not provided with any documentation for this transaction.

In December 2013, the complainant received the respective transaction documents; however, the aforementioned deposit was shown as AUD 15,962.28.

The complainant was therefore requesting the reimbursement by the service provider of the shortfall together with the relative interest.

On its part, the service provider contended that:

a) The power of attorney, through which the plaintiff was representing the complainant, was not in accordance with the Hague Rules; nor was it

drafted in front of a diplomatic or consular representative of Malta in Australia. Hence, the complainant's plea was inadmissible since the plaintiff was not duly authorised to represent the complainant (as the "eligible customer").

b) The power of attorney itself does not authorise the plaintiff, who was not present in Malta, to submit complaints to the Arbiter or in a court of law.

c) The plea of the complainant was legally and factually unfounded. On 9 August 2013, the complainant (who was in Malta at the time) withdrew the amount of €13,502.64 from her term deposit account (in Euro) which matured on that date. She then deposited the amount of €11,092.90 in another term deposit account (in Australian Dollars); at the exchange rate applicable at the time, this latter amount was equivalent to AUD 15,962.68. The difference between the two Euro amounts was withdrawn by the complainant in cash. All the foregoing transactions are reflected in the documentation signed by the complainant as well as in that was provided by the service to the complainant on the same date; and this in accordance with standard banking practice.

d) The foregoing was in accordance with the legal maxim *contra scriptum testimonium non scriptum non fertur* which was upheld in several instances by the Courts; that is, a written document cannot be contradicted by oral means except for extremely serious reasons. Otherwise, such oral means can only be admissible to clarify the will of the parties signing the document or to clarify any ambiguous text.

e) All the documentation in respect of the aforementioned transactions is clear and unambiguous; hence, no interpretation of such documents is required.

f) The complainant was attempting to instil doubt in the authenticity of the said documents by alleging that her signature had been falsified. This was contradicted by the certificate issued by an expert calligraphist which clearly supported the authenticity of the complainant's signatures.

g) The service provider was formally informed – by the complainant's daughter – of the shortfall on 21 August 2014; that is, more than one year after the completion of the transaction (9 August 2013). Such considerable passage of time cast doubt on the veracity of the notification received by the service provider. Additionally, it did not weaken the service provider's contention that the complainant had been provided with all the documentation relating to the transaction on the completion of the said transaction on the very same date. This was, after all, a very normal transaction in respect of which the service provider had no reason – legal or otherwise – to withhold the respective documentation and to forward it at a later stage, as alleged by the complainant.

In his deliberations, the Arbiter found that:

1. In accordance with the provisions of the Arbiter for Financial Services Act,

a) There is no requirement for an individual, who submits a complaint on behalf of another person, to have a power of attorney.

b) There is no requirement for a complainant to reside in Malta. The ADR Directive allowed the hearing of "cross-border disputes".

c) The Act allowed the Arbiter to hear cases submitted by a foreign complainant, provided this was an "eligible customer" as defined in the Act who had a case with a "financial service provider" as similarly defined in the said Act.

2. Given the two contrasting versions as made by the complainant and the service provider, the overall issue therefore depended on the credibility of the parties as well as of the documents submitted.

3. Documents had been produced by the service provider – which were signed by the complainant – showing that the complainant had withdrawn the amount of €2,409.74 in cash; this amount was equal to the shortfall that the complainant was alleging that she had never received.

4. This was supported by the outcome of the professional investigation carried out by the service provider's audit department.

5. After initially alleging that the signature on the banking transaction documents was not her own, the complainant subsequently withdrew such allegation when she became aware that the Arbiter would be appointing an expert calligraphist to confirm the findings of that appointed earlier by the service provider.

6. After initially alleging that the service provider had not provided her with the transaction documents and that these were received by her at a later stage, the complainant had subsequently changed her testimony and admitted that the service provider might have provided her with "some sort of document" but that this had been lost due to the time that had meanwhile elapsed.

In the light of the foregoing, the Arbiter was of the view that the complainant had failed to prove her case; therefore, he declined the complaint.

INVESTMENT COMPLAINTS

DECREASE IN THE VALUE OF AN INVESTMENT (ASF 001/2016)

Bonds, investment advice, terms of business agreement, jurisdiction of the Arbiter, prescription, credit risk inherent in the investments, knowledge and experience, investment objectives, regular updates on the performance of an investment

The complainants were aggrieved by the drastic reduction in value of the bond investments undertaken on the service provider's specific advice and confirmation of soundness.

They contended that the service provider failed to inform them that their investments had deteriorated and that they became aware of this only through personal investigation.

They were therefore claiming the reimbursement of the invested capital plus interest.

On its part, the service provider contended that:

1. The Arbiter did not have any jurisdiction on the case since the "Terms of Business Agreement" assigned such jurisdiction exclusively to the Maltese Courts.

2. Any action against it was time barred in terms of the relevant legislation.

3. It was precluded from defending itself properly since the grievance raised by the complainants was unclear and did not specify any failure on the service provider's part.

4. It had acted in accordance with the applicable regulations and with the highest diligence required at law.

5. Any alleged investment loss sustained by the complainants was the sole result of an inherent credit risk.

In his deliberations, the Arbiter rejected the preliminary pleas.

As to the plea of lack of jurisdiction, among other reasons, the Arbiter held that at the time of signing of the Terms of Business Agreement, the Office of the Arbiter for Financial Services had not yet been established and consequently the parties could not have excluded the Arbiter's jurisdiction.

As to the plea of prescription, the Arbiter noted that this plea was vague, and the service provider did not even indicate the articles in the Civil Code on which to base its plea of prescription as abundant

case-law had established. Moreover, the service provider did not raise the plea in its reply but tried to raise it in its note of final submissions and in a contradictory and vague way.

The plea of nullity was treated even by the Courts in a very restrictive way because judicial acts should be saved to leave justice take its course. In proceedings before the Arbiter, Chapter 555 of the Laws of Malta established an informal way of filing a complaint before the Arbiter. In this case, the service provider not only understood the complaint but had filed an extensive reply and a note of final submissions.

On the merits of the case, the Arbiter held that the complainants were indeed knowledgeable and experienced in bond investments. They had several investments with separate service providers, in respect of which they had sustained some losses; they were therefore well aware of the risks inherent in such investments. The investment products offered to them by the service provider were in accordance with their investment objectives.

The complainants' contention that, prior to the investment, one of the funds "had been in trouble for some time" had remained unsubstantiated.

In the light of the foregoing, the Arbiter rejected the complaint.

PARTIAL LOSS IN VALUE OF INVESTED FUNDS AND FAILURE TO PAY INTEREST ON A BOND (ASF 478/2016)

Investment advice, terms of business agreement, jurisdiction of the Arbiter, credit risk inherent in the investments, financial loss, knowledge and experience, prescription, investment risk

The complainant raised the fact that the service provider – whom he deemed to be professional and trustworthy investment advisors – had failed to provide him with the interest due in respect of specific bond investments made on its advice and confirmation of soundness; he was also aggrieved at the partial loss in value of the invested funds.

The complainant was therefore claiming reimbursement.

On its part, the service provider contended that:

1. The Arbiter had no jurisdiction or competence on the case since the Terms of Business Agreement specifically assigned any "dispute" to the Maltese Courts.

2. The unclear nature of the complaint, which did not specifically identify any shortcomings on its part, precluded it from properly defending itself.

3. Any financial loss sustained by the complainant was the sole result of the credit risk inherent in the investments made.

4. The complainant was knowledgeable and experienced enough to understand the inherent risk(s) in the investments made; additionally, it had provided him with several "risk warnings" and explanations.

5. Despite being advised to the contrary, the complainant had equally proceeded to integrate his investment spread into a single bond.

The Arbiter held that, at the time of signing of the Terms of Business Agreement, the Office of the Arbiter for Financial Services had not yet been established and consequently the parties could not have excluded the Arbiter's jurisdiction.

In proceedings before the Arbiter, Chapter 555 of the Laws of Malta established an informal way of filing a complaint before the Arbiter.

In this case, the service provider not only understood the complaint but had filed an extensive reply and a note of final submissions.

The Act required that the issue of prescription be raised from the very outset; that is, in the service provider's initial reply and not at any later stage of the proceedings in this case in the note of final submissions. The Arbiter agrees with Court jurisprudence that an important plea like that of prescription cannot be raised in the note of final submissions. Article 19(3)(e) of Chapter 555 of the Laws of Malta clearly specifies that the plea of prescription should be raised in first and not in the last written pleadings of the service provider. Therefore, prescription did not apply.

As to the complaint's merits, the complainant had previously invested in high risk products. Moreover, he had the knowledge and experience to understand the risk involved in each of the underlying investments of the bond portfolio. Regarding the other investment complained of, the complainant was also conscious of the risk so much so that he restricted his investments in such bond.

The Arbiter rejected this complaint.

FINANCIAL LOSSES FOLLOWING INVESTMENT IN A COMPLEX HIGH-RISK FUND (1) (ASF 379/2016)

Previous investment experience, investment advice, failure to explain or provide documentation, capacity to understand inherent risks, retail customers, experienced investors, due diligence of the product, fairness, equity, restitution of originally invested capital

The complainants contended that they had no previous investment experience and that their sole objective was to invest in a low-risk fund whose income would augment their future pensions.

They further contended that they were given bad advice, which resulted in their investing in a complex high-risk fund whose documentation had not even been explained or copied to them.

Therefore, the complainants demanded that their initial investment (€34,991.19) be refunded in full together with the accrued interest that an equivalent more prudent investment would have generated.

On its part, the service provider contended that:

1. Any action against it was time-barred in terms of the relevant Maltese law.

2. It had safeguarded its clients' best interests and fully respected its legal obligations as a licensed intermediary when it sold the product concerned to them.

3. It had not fraudulently abused the complainants' trust; and this because they had signed the relative documentation freely and consciously.

4. The complainants had sufficient experience and the necessary information to understand the risk inherent in the investment product.

5. The investment product itself was not complex or high-risk.

6. It was not responsible for any financial loss or damage sustained by the complainants or for the refund of the invested capital.

7. It had not guaranteed the invested capital or its investment income to the complainants.

8. The investment concerned was made before the greatest widespread financial market crisis since 1930. Hence, the complainants could not assume that a more prudent product would have preserved their capital and its investment income.

In his deliberations, the Arbiter rejected all preliminary pleas. The investment product in question targeted experienced investors whereas the complainants were retail customers, as classified by the service provider itself. Hence, they should have been handled with more caution and care.

The complainants did not understand English and the service provider had them sign the required papers (which were lengthy and technical as well as in English) during a short meeting and without any explanation whilst guaranteeing the invested capital.

The complainants had been classified by the service provider as retail clients and therefore had to be treated with more care than professional investors. The level of protection for retail clients was more onerous on the service provider. No detailed appropriateness test was carried out on the complainants and therefore the service provider was not in a position to sell them this product.

In the light of the foregoing and other reasons, the Arbiter was of the view that it would be equitable if the complainants were returned to the same financial position they were in before making the investment concerned.

Therefore, the Arbiter ordered the service provider to refund the amount of €34,991.19 to the complainants together with interest at the rate of 5% which was to run from the investment date to when the said payment was made.

Any proceeds from the investment concerned are to be in the service provider's favour.

FINANCIAL LOSSES FOLLOWING INVESTMENT IN A COMPLEX HIGH-RISK FUND (2) (ASF 385/2016)

Unsolicited investment advice, capacity to understand inherent risks, prescription, retail customers, experienced investors, due diligence of the product; suitability test, legibility of documents, restitution of originally invested capital

The complainant, in his own name and as the inheritor of his deceased wife, contended that he had received unsolicited advice from the service provider to transfer their existing investment to another product since, in the words of the provider's representative, the former was "going bust". The complainant accepted such advice on trust. It transpired during the proceedings that the said representative was at the time unauthorised by the MFSA to give such advice.

The complainant insisted that his wife and himself had no experience in complex and high-risk investment products.

The complainant requested the restitution of £16,780 plus interest by the service provider.

On its part, the service provider contended that:

1. The complainant had not submitted any proof that he was the inheritor of his deceased wife's estate.

2. Any action against it was time-barred.

3. It had honoured its legal responsibilities and sought its clients' best interests.

4. The characteristics of the product were entirely suitable to the investment profile of the clients concerned.

5. It had never guaranteed the invested capital or its proceeds; moreover, the said investment had been made shortly before the advent of the greatest widespread financial crisis since 1930.

In his deliberations, the Arbiter held that:

a) Adequate proof had been submitted by the complainant that he was indeed the universal inheritor of his deceased wife's estate.

b) The service provider had not proven the plea of prescription. The pleas based on tortuous liability (*azzjoni akkwiljana*) was irrelevant to the case and in the case of prescription based on contract, the prescriptive period had not been proven. Prescription cannot start to run from the date of contract.

In financial services, the client cannot be in a position to initiate legal proceedings from the date he purchases a financial product but rather from the date when certain circumstances verify themselves that make him believe that the service he received was not as proffered.

c) The product concerned was indeed a complex one whose inherent risks could certainly not be properly understood by the complainant and his wife, who were essentially retail investors. It was based on the performance of other products as well as on mathematical assumptions that could remain unrealised.

d) The designation of the product was misleading since it might induce an inexperienced investor to assume that it was secure and/or with a limited risk.

e) It was unclear how the service provider had carried out a "due diligence" exercise to determine the complexity of the product and the extent of risk involved.

f) The "suitability test" required of the service provider was carried out by a representative who was not authorised by the MFSA.

g) The "file note" relating to the case was in small print and barely legible. It had been signed by the complainant's wife on her own at home, without any explanation from the service provider's representative.

In the light of the foregoing, the Arbiter ordered the service provider to refund the amount of £16,780 to the complainant plus 5% interest to run from the investment date.

ADVICE TO SWITCH INTO A "GUARANTEED" INVESTMENT (ASF 411/2016)

Investment advice, prescription, retail customers, suitability test, previous investment experience, analysis of the product's overall investment risk, restitution of originally invested capital net of the recovered amount

The complainant contended that she and her (deceased) husband had been advised by the service provider to transfer their earlier investment in a sterling bond fund to another product.

They had been assured that the latter would not fail because it was guaranteed.

Furthermore, they had been persuaded to augment the proceeds from the sterling bond fund with an additional amount, resulting in an overall investment of £10,389 in the said product. The latter had subsequently deteriorated substantially in value.

The complainants were therefore requesting to be refunded their entire investment with interest; but net of the amount recovered from the product.

On its part, the service provider contended that:

1. The complainant had to prove her legal interest in the investment concerned.

2. Any action against it was time-barred.

3. Any loss sustained by the complainant(s) was the direct result of the widespread financial crisis that affected the investment markets in 2008.

4. Any investment in another product would not have necessarily resulted in the preservation of the invested capital.

5. It had acted simply as an intermediary between the product provider and any investor; and this in respect of a product that it did not manage itself.

6. Any loss in investment value does not necessarily imply its "automatic" responsibility.

In his deliberations, the Arbiter found that there was no doubt that the complainant had a legal interest in the investment concerned, which she had undertaken jointly with her (deceased) husband whose estate she had inherited.

Apart from the fact that the service provider had not proven the plea of prescription, from the facts of the case it clearly transpired that prescription was interrupted by the complainant and the service provider had kept the complainant hoping that the investment could recoup its value till 2016 when she received the final cheque.

As to the merits of the case, the complainants had been "informed" by the service provider's representative that their existing sterling bond fund was deteriorating in value and they had been persuaded by him to switch to the product; and this on the assurance that the invested capital was guaranteed and that the product itself would not fail due to its spread over several "entities". They had signed the respective documentation on trust.

Furthermore, the complainants were not experienced or knowledgeable; the sterling bond fund was the only one in their portfolio, together with some bank accounts. They had every right to rely on an objective analysis, to be provided by the service provider, of the product's overall investment risk; such analysis was not provided. Lastly, it was unclear whether the "suitability test", required of the service provider, was actually carried out.

In the light of the foregoing, the Arbiter decided that the service provider had to refund the amount of £8,208.37 to the complainants in solidum; and this net of the recovered amount (£2,180.63) from the overall investment (£10,389).

ADVICE GIVEN TO AN INEXPERIENCED INVESTOR TO PURCHASE A COMPLEX INVESTMENT (ASF 437/2016)

Investment mis-selling, complex investment, high risk, due diligence of the product, suitability test, restitution of originally invested capital, prescription, investment advice, capacity to understand inherent risks, previous investment experience

The complainant was aggrieved by the investment deterioration sustained. He contended that the service provider had misled him in such investment by availing itself of his inexperience and by not clearly explaining the implications of the complex and high-risk investment proposed.

Furthermore, the service provider had not carried out a proper suitability test on the complainant and a due diligence exercise on the proposed investment.

The complainant was therefore seeking the restitution of his invested capital together with interest.

On its part, the service provider contended that:

1. It was not the legitimate party to the case.

2. Any action against it was time-barred.

3. It was refuting the allegation that it had not properly informed the complainant about the inherent risk of the investment.

4. It had acted simply as an intermediary and, not being involved in the management of the investment, it could not be held responsible for the outcome.

5. The complainant could not assume that an alternative investment would have performed well; and this because the investment in question had been made during a period of widespread crisis in the world's financial markets.

In his deliberations, the Arbiter found that:

a) The service provider was indeed the legitimate party. The documentation submitted unequivocally identified the service provider as offering investment advice to the complainant and investing his funds.

b) The applicable prescription period was not that based on Article 2153 of the Civil Code and this in light of the contractual relationship existing between the complainant and the service provider. The case was not time-barred.

c) In its dealings with the complainant, the service provider was not acting simply as an 'intermediary'; rather, it was acting in its own name as a principal and as an independent financial advisor licensed by the MFSA.

d) Based on the supporting documentation submitted, the investment product in question was of a complex and high-risk nature. This increased the service provider's responsibility as regards the complainant.

e) The service provider had not carried out a proper "due diligence" exercise on the product nor had it kept abreast of the product updates, which clearly highlighted the deterioration of the investment.

f) The complainant (who was aged 26 years at the time) was not an experienced investor who could be deemed to be knowledgeable about the inherent risks of the said product; in fact, this was his very first investment.

g) The said investment was an onerous one; and this in the light of the complainant's comparatively limited financial capabilities. This was not taken into consideration by the service provider.

The Arbiter further held that this was a clear-cut case of "investment misselling".

He therefore decided that the service provider was to reimburse the complainant with the total investment amount (€23,385) plus interest.

ADVICE TO INVEST LIFE SAVINGS IN A PARTICULAR BOND (ASF 357/2016)

Investment advice, knowledge and experience, information and documentation provided at time of advice, competence of the Arbiter, prescription, inherent market risk of financial instruments, suitability test, knowledge and experience, portfolio of investments

The complainants stated that:

- They had not been properly guided by the service provider as to the extent of the investment risk to which they were exposing themselves when they were advised by the latter to invest their life savings in a particular bond, with a coupon rate of 8.25%, which investment was already performing negatively prior to its acquisition by the complainants.

- They did not have sufficient experience for an investment of this nature and should therefore not have been advised to undertake it; and this more so when they had specified their intention to preserve the capital invested.

- The service provider did not inform them that the company issuing the bond was close to insolvency.

- The service provider had not explained the forms which they were required to sign.

- They had not been given any advice about the way they could have recouped their failing investment (or, at least, part of it).

The complainants were therefore requesting the refund of their investment (€11,000) as well as the professional fees paid to the service provider (calculated at the rate of 2%) together with the legal costs.

On its part, the service provider contended that:

1. The Arbiter did not have any jurisdiction on this case; and this because, under the Terms of Business Agreement, the parties had agreed to submit any dispute to the jurisdiction of the Maltese Courts.

2. The action was time-barred in terms of Chapter 16 of the Laws of Malta.

3. It could not defend itself properly because the format of the complaint did not identify any specific shortcomings on its part.

4. It had acted in accordance with the applicable regulatory framework as well as with the highest standard of diligence required by law.

5. The loss sustained by the complainants was the result of the inherent market risk of any financial investment; and this against the background of the widespread financial crisis that affected the investment markets between 2005 and 2015.

6. The product advised to the complainants was suitable to their investment requirements.

7. Despite the loss allegedly sustained, the complainants had made an overall profit from the various investments they had undertaken on the advice of the service provider; and this to the extent of €25,000.

8. The complaint itself is unjustified as well as unfounded based on fact and at law; it should therefore be declined, with costs.

In his deliberations, the Arbiter found that:

a) As to the plea of lack of jurisdiction, the Arbiter held that at the time of signing of the Terms of Business Agreement, the Office of the Arbiter for Financial Services had not been established and consequently the parties could not have excluded the Arbiter's jurisdiction.

b) The Arbiter rejected the plea of prescription on various grounds. The prescription indicated by the service provider was not applicable. Moreover, the prescription had been rightly interrupted.

c) The complainants had adhered to the requirements of Article 22(1) of the Act. They had submitted their complaint in writing and clearly identified the party against which such complaint was being made. They had also specified the reasons for the complaint as well as the remedy that they were seeking. No such nullity was contemplated in Chapter 555 of the Laws of Malta.

d) The complainants had contended that the performance of the product in which they had invested was on the decline even before they had purchased it and that such negative trend continued after the purchase. An analysis of such performance during the period spanning from 1 January 2002 to 24 July 2013 showed no irregular features; it was only after the latter date that the alleged deterioration in value had set in; and this because of the considerable operational losses sustained by issuer of the bond.

e) The investment in question was certainly of a high-risk nature; this was clearly manifested in its coupon, set at 8.25%. Nevertheless, one had to consider also the complainants' disposition towards such risk. Their overall investment portfolio showed their preference for high interest rates. It was certainly not a low risk portfolio but rather a medium to high risk. The investment in question was therefore quite in line with the said investment portfolio and equally suitable to the complainants. One could also state that the complainants did not exhibit any intention to reduce the overall risk of their portfolio. One could equally state that the complainants were knowledgeable and aware of the investment risk to which they were exposing themselves.

However, they seemed to focus more on the coupon than on the extent of risk entailed.

f) The service provider had failed to alert the complainants to the drastic fall in value of the bond when its issuer had issued a public statement about its problems in September 2013. This would have enabled the complainants to decide immediately what to do to minimise their loss. During 2014, there were two specific exchanges between the service provider and the complainants; in both instances, the former made no mention or reference to the latter's bond investment. The service provider had acted differently in respect of three other investments of the complainants; it had monitored their performance and offered alternative investment remedies to the complainants when such performance fell short of expectation.

g) The service provider's actions in this regard appeared to contrast with the "Investment Services Rules for Investment Services Providers" of the MFSA as well as with the MiFID.

Considering the foregoing, the Arbiter acknowledged that the complainants had sufficient investment experience to be aware of the risk to which they were exposed and that they preferred to focus on the investment coupon rather such risk.

The service provider had failed in its obligation to monitor the performance of the product and to alert the complainants immediately once it became aware of its negative trend.

Therefore, the Arbiter decided that the loss - €11,000 (which amount had not been disputed by the service provider) – should be divided equally between the parties.

He ordered the service provider to pay the complainants the amount of €5,500 plus interest at 5% applicable from the date of this decision to the actual payment date.

LOSSES FROM DETERIORATION IN VALUE OF A BOND PORTFOLIO (ASF 089/2016)

Investment advice, jurisdiction of the Arbiter, inherent market risk of financial instruments, prescription, bond portfolio, failure to inform investors in time, acting in the best interest of investors

In this case, the complainants highlighted the following:

- After initially investing in a bond portfolio yielding 5% per year on advice of the financial provider, they were called to a meeting by their advisor who informed them of the drastic deterioration in their investment.

- Such deterioration had caused them to lose about €7,000; this amount had been saved by them over the years.

- They had been clients of the financial provider for several years and had always relied on the advice received since they were not knowledgeable about investments.

- They were therefore requesting the refund of the lost investment – amounting to €6,354 – together with two years' lost interest.

On its part, the service provider contended that:

1. The Arbiter did not have any jurisdiction on this case; and this because, in terms of the "Terms of Business Agreement", the parties had agreed to submit any dispute to the jurisdiction of the Maltese Courts.

2. It could not defend itself properly because the format of the complaint did not identify any specific shortcomings on its part.

3. The action was time-barred; in terms of Chapter 16 of the Laws of Malta.

4. It had acted in accordance with the applicable regulatory framework as well as with the

highest standard of diligence required by law.

5. The loss sustained by the complainants was the result of the inherent market risk of any financial investment; and this against the background of the widespread financial crisis that affected the investment markets between 2005 and 2015.

6. The complaint itself is unjustified as well as unfounded based on fact and at law; it should therefore be declined, with costs.

7. The loss sustained by the complainants was the result of the risk inherent in the type of investment they had undertaken.

8. The complainants had been investing in bonds since 2005; the product offered to them was therefore suitable to their needs.

In his deliberations, the Arbiter found that:

a) As to the plea of lack of jurisdiction, the Arbiter held *inter alia* that at the time of signing of the Terms of Business Agreement, the Office of the Arbiter for Financial Services had not yet been established and consequently the parties could not have excluded the Arbiter's jurisdiction. Hence, there was no doubt that the Arbiter had jurisdiction on this case and could take cognisance of it.

b) The service provider had amply defended itself; and this by means of an initial four-page response as well as a ten-page note of final submissions. Therefore, the service provider's contention (about the unclear nature of the complaint precluding its proper defence) was inadmissible.

c) The prescription period applicable to this case was of five years; and this in accordance with Article 2156 of Chapter 16 of the Laws of Malta since the complainants and the service provider had engaged in a commercial and contractual transaction.

Such period runs from the date when the complainants could have incepted the proceedings; and not from the start of the "business relationship" between the complainants and the service provider.

d) The service provider had failed to alert the complainants in time to the fall in value of their investment. This prevented the complainants from deciding immediately what to do to minimise their loss.

e) The investment in question was of a medium/high-risk nature; this was clearly manifested in its average overall coupon, set at 7.71875%. The coupon of the four subsidiary bonds forming part of the said investment (bond portfolio) ranged from 5.875% to 9.5%.

f) The said four subsidiary bonds, integrated in the bond portfolio at a share of 25% each, were non-investment grade (that is, a low-quality investment where the issuer could default) and highly speculative.

g) One of the said bonds had been repeatedly reviewed and downgraded by Moody's (in five separate instances); it had also expressed its concern over the holding company's ability to actively manage its debt profile.

h) One year prior to the financial provider's offer to the investors of the bond referred to earlier as part of the bond portfolio, Moody's had rated its issuer as having a "Probability of Default"; such rating had never been changed subsequently.

In April 2016, Moody's once again reviewed downwards its rating of the bond; and this following the issuer's announcement that it was deferring the payment of the interest due to bondholders to December 2016.

i) When the bond was initially offered by the financial provider to investors in 2014, its market price stood at 100.62; however, this was followed by a steady decline in price coupled to steadily deteriorating ratings by Moody's. In January 2015, the bond's market price had gone down to 80.89; this further deteriorated to 60.29 by December of the same year. In May 2016, the market price reached an unprecedented low of 30.54; such drastic overall decline, over a period, signified that the performance of the other three bonds comprising the bond portfolio was not sufficient to counteract it, as had been originally intended by the financial provider in setting up the said investment product.

j) The service provider had breached its duty to act in the best interest of its investors; in this case, the complainants who relied exclusively on its advice since it had the means and the expertise to monitor the investment's performance over time.

In the light of the constantly deteriorating performance of the bond, it should have alerted the complainants much earlier than it actually did; and this so as to minimise their investment loss.

This delay on the service provider's part was apparently the result of a specific decision on its part to allow the bond the possibility to recover; nevertheless, such decision was not sensible or justified, given its wholly negative performance and its drastic reduction in value.

In the light of the foregoing, the Arbiter felt that the compensation to be awarded had to be necessarily based on the market value of the bond on the date when the financial provider should have alerted the complainants; that is, on 29 January 2016.

This amount (€13,603.71) was then to be offset against the proceeds obtained from the sale of the bond (€11,646.79), resulting in a balance of €1,956.91 in all.

Additionally, one had to also take into consideration the fact that, in June 2016, the complainants had received the amount of €697.30 representing the interest accumulated over 336 days (from the 9th July 2015 to the 9th June 2016); this worked out at €2.08 daily.

Using the same date (29 January 2016) as a benchmark, the interest due to the complainants on the said date was €422.74; the variance with the amount specified in the preceding paragraph (€274.56) had necessarily to be offset against any compensation awarded.

Consequently, the Arbiter ordered the financial provider to reimburse the amount of €1,682.35 to the complainants.

UNJUSTIFIED CLAIM FOR COMPENSATION FOLLOWING INVESTMENT LOSS (ASF 483/2016)

Market risk, retain/experienced investor, diversification, term sheets, assessment of suitability

In this case, the complainant highlighted the following aspects:

- She had initially invested the amount of €7,968.13; however, from this capital, she had been reimbursed only the amount of €822.95; and this in full and final settlement.

- She was never given any explanation in writing by the service provider of the reason(s) for such a drastic loss.

- She was therefore requesting the reimbursement of the shortfall between the said two amounts; that is, the amount of €7,146.

On its part, the service provider contended that:

1. The loss sustained by the complainant was the result of the inherent market risk of any bond investment.

2. The complainant had conveniently omitted to state that, net of her alleged loss, she had made an overall profit of about €34,000 in the several investments she had made through the financial provider since 2004.

In his deliberations, the Arbiter found that:

a) The investment product in question was a bond paying 8.5% coupon; this was one of three bonds comprising a bond portfolio. The complainant's overall investment in this portfolio amounted to €19,540.89.

b) After 8.5% bond had been hived off on its own by the service provider in July 2015, it had informed its investors (including the complainant) in March 2016 that the coupon due that month was being deferred to 31 May 2016. On 22 September 2016, the service provider had then issued the complainant with a payment of €822.95; and this as confirmation of finality.

c) The complainant contended that she was an unexperienced investor and seemed to give the impression that the bond portfolio was her only investment. However, this was far from the truth. Between October 2004 and July 2015, the complainant had carried out 22 separate investment transactions in Euro and Sterling; these comprised collective investment funds as well as bonds and bond portfolios managed by the financial provider. These transactions had resulted in a profit of €34,736 for the complainant during the said period. This analytical data put the complainant's credibility in serious doubt.

d) The complainant had not denied that the service provider's adviser had repeatedly tried to help her understand the investment process and diversification. The service provider had submitted a number of term sheets in respect of the investments made by the complainant singly, or jointly with her husband; all these documents were duly signed by the complainant or her husband singly or jointly by both of them.

e) The "Assessment of Suitability" carried out on the complainant showed clearly that the investment products provided to her by the service provider were in line with her objective to secure a high yield. Additionally, she was in a sufficiently strong financial position to be able to absorb the risk inherent in her several investments which were spread over portfolios bearing the same medium to high-risk risk level.

In the light of the foregoing, and bearing in mind the complainant's overall risk profile, the Arbiter was of the view that the complainant had sufficient investment knowhow and experience to be aware of the implications of her 8.5% coupon investment.

Consequently, he rejected the complaint.

INVESTMENT MIS-SELLING LEADS TO FINANCIAL LOSS (ASF 403/2016)

Fiduciary duty, vulnerability, prescription, market risk, investment intended for "experienced investors", knowledge and experience, client profile, terms of business agreement, acting in the best interest of the client, investment profile, retail investor, suitability, bonus pater familias, fiduciary obligations

In his submission, the complainant highlighted the following aspects in his "investment relationship" with the service provider:

- After making the service provider aware of the investments he had already made, the latter's representative had repeatedly advised him – on two separate instances; in September 2004 and in November 2006 – to invest a considerable amount of capital in a particular investment product.

In so doing, the service provider had not acted in his best interests and had breached the fiduciary duty it had towards him; and this in term of Articles 1124A and 1124B of the Civil Code.

- The service provider had taken advantage of the vulnerability resulting from his limited educational background (he could not read or write in both Maltese and English) by getting him to sign documents that went against his interests.

The complainant was therefore requesting the Arbiter to declare that the behaviour of the service provider constituted "investment misselling" since the advised investment was wholly unsuitable for him and incompatible with his personal circumstances, bearing in mind his risk appetite and his limited investment experience which precluded him from appreciating the inherent risks entailed in the said investment; all the more so since the investment had been presented to him as "low risk" when in actual fact it was of a complex high risk nature.

The complainant was also requesting the Arbiter to order the service provider to refund the loss in capital sustained from his investment, amounting to $1,956 and £8,305, together with a reasonable and equitable interest rate.

On its part, the service provider contended that:

1) The action was time-barred; and this in terms of Articles 2153 and 2156(f) of Chapter 16 of the Laws of Malta.

2) In the light of the allegations made by the complainant that he had been "tricked" into making investments without his proper consent, the service provider was also invoking a two-year prescription period; and this in terms of Article 1222(1) of Chapter 16 of the Laws of Malta.

3) The complainant's contentions were factually and legally unfounded; they should therefore be rejected with costs.

4) The service provider denied that it had not safeguarded the complainant's interests or that it had breached its legal and fiduciary obligations in his regard.

5) Based on the information available about the complainant as well as about the investment product itself, the latter was suitable to the former's risk profile.

6) The service provider denied that it had carried out any "misselling" or that it had defrauded the complainant in any way.

7) The complainant could not assume that an alternative investment product would have preserved his capital or that he would have profited from such investment.

8) Any financial loss sustained by the complainant was the direct result of the financial crisis that affected the investment markets on a worldwide basis.

9) The service provider could not be held responsible for the loss sustained by the complainant; and this because it was not responsible for the management of the investments, in respect of which it had acted only as an intermediary between the issuer and the complainant.

10) The complainant could not claim compensation in respect of products in which he had deliberately and freely chosen to invest and which, subsequently, he had equally consciously decided to sell.

In his deliberations, the Arbiter found that:

a) The investment transaction between the complainant and the service provider was of a commercial and contractual nature. Hence, the applicable Article to determine whether the action was time-barred or not was Article 2156(f) of the Civil Code that envisaged a five-year prescription period.

b) The service provider was contending that the prescriptive period was to run from the purchase date of the investments; that is, from 16 September 2004 and 16 November 2006 respectively. This was unrealistic and illogical since it was reasonable for an investor to allow sufficient time during which to determine the performance of the product purchased; and this particularly when such performance was naturally subject to market fluctuation. The complainant became aware with certainty in 2012 that his investments were failing. He issued a judicial letter in 2015 and submitted this complaint in 2016. Hence, these actions were well within the five-year prescriptive period.

c) The investment in question was intended for "experienced investors". This is specifically stated and defined in the introductory part of the relative product document by the issuer itself. According to such definition, the investor had to be sufficiently knowledgeable and experienced to understand and appreciate the risk(s) inherent in an investment of that nature. On the other hand, the complainant was contending that the product was wholly unsuitable to his personal risk profile and that he should not have been advised to invest in it.

d) The complainant had a rather basic educational background, having attended school only until the compulsory age requirement. He was unable to read or write, both in Maltese and in English. He was employed as a watchman. The complainant further contended that he had made the service provider's advisor aware of his situation and stressed that he trusted his advice since he was inexperienced. He had also insisted that the capital should be preserved and guaranteed.

e) The service provider had not denied the foregoing contentions by the complainant at any stage of the proceedings.

f) The service provider was aware that its advisor, who had dealt with the complainant, was not authorised by the MFSA to provide investment advice. This was a serious shortcoming on its part.

g) There was an apparent contradiction between the document designated as "Client Profile" and that titled "Terms of Business Agreement". The former defined the service provided as "advisory" while the latter described it as "execution only" signifying that the service provider was not required to verify whether the client's instructions corresponded to the latter's objectives and limitations. Such contradiction showed that the service provider was not acting in good faith and in the best interests of its client. Rather, it seemed to be more interested in "protecting" itself from the outcome of its client's investment.

This is because it was not credible that the complainant would have exonerated the service provider from its responsibilities in this manner when, due to his manifest "vulnerability", he depended entirely on its advice.

h) The "File Notes" signed by the complainant were in fine print and full of technical jargon. Even if they had been read to the complainant, the latter would never have understood their implications due to his poor educational background. Therefore, his signature on these and other documents should not have been used by the service provider to exonerate itself; and this in accordance with the argumentation in a decision of the First Hall of the Civil Court stating that a signature was not binding if the signatory was not aware of what he was signing for.

i) The said documents appear to have been intentionally completed in such a way as to make the complainant appear to be eligible for the investment; but not because he was necessarily so.

j) The aforementioned "File Notes" define the complainant's investment profile as "cautious" whereas the product in question was a complex and high-risk investment which was certainly beyond

the complainant's intellectual reach. Therefore, it was not suitable for him and he should never have been advised to invest in it.

k) The service provider had contended that the complainant was an experienced investor. However, a review of the latter's existing investment portfolio, before he had invested in this investment, showed that he was essentially a retail investor who preferred low-risk investments. None of his existing investments matched the complexity or the high risk of this investment.

l) It was unclear whether the service provider had carried out an assessment to determine the suitability of the product to the complainant. The only witness produced by the former declined to reply, contending that he was not employed with the said provider at the time of the transaction. The witness was similarly evasive when asked whether a "product due diligence" had been carried out by the provider; stating that he had relied on what had taken place before his time.

m) The service provider was bound by a number of legal and regulatory responsibilities. In addition to the general contractual rule that a transaction had to be carried out in good faith, the provider was also bound to act as a *bonus pater familias*; and this all the more so due to the "vulnerability" of the complainant. Furthermore, in accordance with the MFSA's Investment Services Guidelines, it had to act "honestly, fairly and with integrity" as well as "with due skill, care and diligence and in the best interests of its customers". The said Guidelines further specified that the service provider was bound to provide the complainant with "adequate disclosure of relevant material information.... in a way that is fair, clear and not misleading".

In light of the foregoing, the Arbiter was of the view that the service provider had not treated the complainant in an equitable, just and reasonable manner; and this because it had sold the latter a product that was unsuitable to his requirements. Furthermore, it had breached its fiduciary obligations towards the complainant when it had made him sign documents whose content he could not understand.

In the Arbiter's view, this was a clear case of investment misselling which had caused a financial loss to the complainant.

Consequently, in order to return the complainant to the same financial position before he had made his investments, the Arbiter ordered the service provider to reimburse the complainant with separate amounts of USD 1,956 (in respect of the investment made in February 2012) and GBP 8,305 (in respect of the investment made in April 2012), or their Euro equivalent.

DEDUCTION OF FEES AND CHARGES FROM A RETIREMENT SCHEME (ASF 422/2016)

Retirement scheme, provision of terms and conditions, withdrawal/drawdown forms, disclosure of fees, Scheme Particulars/Key Facts

The complainant contested certain fees charged by the service provider in relation to a personal retirement scheme. In this regard, the complainant highlighted the following aspects:

- The fees in question were GBP 750 (Flexi Fee) and GBP 900 (Exit Fee), for the total amount of GBP1, 650; these were unilaterally deducted by the provider from his pension scheme.

- The service provider had never informed him of its intention to apply the disputed fees. This was in breach of the terms and conditions of the retirement scheme.

- The unannounced "introduction" of the said fees constituted a change in the terms and conditions of the said scheme.

- The service provider had more than adequate time (over twelve months) to inform him of such a

major change in the fee schedule. Additionally, such a change should not have just been integrated at the bottom of a withdrawal (drawdown) form.

The complainant was therefore requesting the refund of the fees charged by the service provider (GBP1,650), plus interest.

On its part, the service provider contended that:

1. It refuted the allegation that a breach of contract had occurred; and this because it was entitled to charge fees for providing a flexi-access facility on the retirement scheme, which fees were clearly disclosed to the complainant on the drawdown form.

2. It had acted on the signed instructions of the service provider; and this after it had agreed to discount the fees.

3. It had fulfilled its obligations as it had disclosed the fees to the complainant, seeking his agreement.

4. It had acted, within its powers, as discretionary trustee of the retirement scheme.

In his deliberations, the Arbiter found that:

a) The complainant was aggrieved at the fees charged by the service provider in respect of his withdrawal from the retirement scheme. The matter occurred in 2016, with the complainant initially becoming aware of the issue in February 2016 and subsequently submitting a complaint to the service provider in May 2016.

b) A drawdown request form (meaning a form to withdraw some or all the money out of the retirement scheme) was signed by the complainant on 11 February 2016; it was countersigned by his investment advisor on 14 March 2016. By means of this form, the complainant chose the one-time flexi-access drawdown facility to withdraw the full amount of the fund.

c) The facility to withdraw from the retirement scheme was not available when the complainant had initially joined the retirement scheme in July 2013; it had subsequently become available on 1 January 2016, following changes to UK legislation.

d) When the complainant had asked to avail himself of this facility, the service provider provided the fees, about which it received a complaint. As a sign of goodwill, the service provider waived another applicable flexi payment fee of GBP300 to help with the smooth transfer out of the retirement scheme.

e) On receipt of the drawdown form signed by client in March 2016, which form included the fees of GBP 900 originally agreed by the complainant, the service provider proceeded with the withdrawal of the investment.

f) The complainant subsequently sent a formal complaint to the service provider in May 2016, lamenting about the charges. The service provider replied that the fees were clearly disclosed to the investment advisor of the complainant and equally on the drawdown form signed by the complainant.

g) The complainant had also indicated that the service provider failed to send the Retirement Scheme Particulars on time, that is, within one month of registration; and this in accordance with the pension rules for Personal Retirement Schemes issued by the MFSA.

This would have enabled him to make an informed judgement as to the nature of the scheme.

On its part, the service provider had explained that the "Key Facts" document (which was equivalent to the Scheme Particulars at the time) and the "Terms and Conditions" had been supplied to the complainant upon registration in the scheme.

In the light of the foregoing, the Arbiter was of the view that the complainant's request for the refund of the fees (with interest), related to the drawdown of his investment, could not be fair, equitable and reasonable in the circumstances of the case.

And this on the basis that:

- There was no sufficient evidence that the fees relating to the flexi-access drawdown facility were not notified to the complainant adequately and in advance and for the complainant not to be able to take an informed decision relating to his intended withdrawal.

- The fees relating to the flexi-access drawdown facility were specifically outlined in the drawdown application form signed by the complainant and by his investment advisor; and this in a specific section dealing with the fees that is clearly legible, in an adequate font size and with relevant prominence.

- In the declaration of the duly signed drawdown form, the complainant confirms both the fees payable in connection with the drawdown payment and his understanding of such fees; the complainant's investment advisor countersigned such declaration.

- The complainant had been an independent financial advisor for over 35 years. He could therefore be considered to have been in an adequate position to underst and and query beforehand the applicable fee structure relating to the drawdown; this would have enabled him to reconsider his position prior to submitting the drawdown request form.

- The complainant and his investment advisor were indeed aware that exit fees applied with respect to the drawdown, having also entered discussions with the service provider on the fee structure prior to the actual drawdown being processed.

Consequently, the Arbiter decided to reject the complaint in its entirety.

APPENDIX 1

List of financial services providers against whom complaints were lodged with the OAFS during 2017.

	Number of complaints
All Invest Company Limited	31
All Invest Company Limited / Landoverseas Fund SICAV plc	1
Argus Insurance Agencies Limited	1
Atlas Healthcare Insurance Agency Limited	2
Atlas Insurance PCC Limited	1
Bank of Valletta plc	10
Bank of Valletta plc / Mapfre Middlesea plc	1
Bank of Valletta plc / Valletta Fund Management Limited	17
Blevins Franks Financial Management Limited	3
BNF Bank plc	1
C & C FX Limited	1
Calamatta Cuschieri Investment Management Limited	3
Citadel Insurance plc	2
Cordina Insurance Agency Limited	1
Crystal Finance Investments Limited	24
Custom House Global Funds Services Limited	1
FXDD Malta Limited	2
GasanMamo Insurance Limited	2
GlobalCapital Financial Management Limited	12
Harbour Pensions Limited	1
Hollingsworth International Financial Services Limited	1
HSBC Bank (Malta) plc	3
Island Insurance Brokers Limited	1
Jesmond Mizzi Financial Advisors Limited	1
Mapfre Middlesea plc	6
Mapfre MSV Life plc	3
MFSP Financial Management Limited	9
MIB Management Services Limited / Citadel Insurance plc	2
Michael Grech Financial Services Limited	1
Momentum Pensions Malta Limited	1
Montaldo Insurance Agency Limited	1
Northway Financial Corporation Limited	26
Satabank plc	1
Sovereign Pension Services Limited	1
STM Malta Trust and Company Management Limited	1
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OFFICE OF THE ARBITER FOR FINANCIAL SERVICES

AUDITED FINANCIAL STATEMENTS

AS AT 31 DECEMBER 2017

ARBITER FOR FINANCIAL SERVICES

National Audit Office
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Report of the Auditor General

To the Office of the Arbiter for Financial Services

Report on the financial statements

We have audited the accompanying financial statements of the Office of the Arbiter for Financial Services set out on pages 1 to 9, which comprise the statement of financial position as at 31 December 2017, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the period then ended, and a summary of significant accounting policies and other explanatory information.

The Office of the Arbiter for Financial Services' responsibility for the financial statements

The Office of the Arbiter for Financial Services is responsible for the preparation of financial statements that give a true and fair view in accordance with International Financial Reporting Standards as adopted by the European Union, and for such internal control deemed necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we consider internal controls relevant to the preparation of financial statements of the Office, in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Office of the Arbiter for Financial Services, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements give a true and fair view of the financial position of the Office of the Arbiter for Financial Services as at 31 December 2017, and of its financial performance and cash flows for the period then ended in accordance with International Financial Reporting Standards as adopted by the European Union, and comply with Act XVI of 2016 of the Laws of Malta.

Auditor General
25 June 2018

BOARD OF MANAGEMENT AND ADMINISTRATION REPORT

Board of Management and Administration submit their annual report and the financial statements for the period ended 31st December 2017.

Objects

The Office of the Arbiter for Financial Services is a newly constituted autonomous and independent body setup in terms of Act XVI of 2016 of the Laws of Malta. It has the power to mediate, investigate and adjudicate complaints filed by customers against financial services providers.

Results

The statement of comprehensive income is set out on page 3.

Review of the period

The Board reports an operating surplus of €72,223 during the period under review.

Post Statement of Financial Position Events

There were no particular important events affecting the entity which occurred since the end of the accounting period.

Statement of the Board of Management and Administration responsibilities

In terms of the licensing regulations applicable to Goverment entities, the entity is to prepare financial statements for each financial period which give a true and fair view of the financial position of the Entity as at the end of the financial period and of the surplus or deficit for that period.

In preparing the financial statements, the entity is required to: -

- adopt the going concern basis unless it is inappropriate to presume that the Entity will continue to function;
- select suitable accounting policies and apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- account for income and charges relating to the accounting period on the accrual basis; and
- prepare the financial statements in accordance with International Financial Reporting Standards as adopted by the European Union.

Statement of financial position

	Notes	May 2016 to Dec 2017 €
ASSETS		
Non-current assets	7	26,457
Current assets		
Trade and other receivables	8	1,711
Cash and cash equivalents	9	53,697
		55,408
Total assets		81,865
EQUITY AND LIABILITIES		
Equity		
Accumulated Funds		72,223
		72,223
Current liabilities		
Trade and other payables	10	9,642
		9,642
Total liabilities		9,642
TOTAL EQUITY AND LIABILITIES		81,865

The accounting policies and explanatory notes on pages 6 to 9 are an integral part of these financial statements.

The financial statements have been authorised for issue by the Board of Management and Administration and signed on its behalf by:

Mr Geoffrey Bezzina
Chairperson

Date: 19 June 2018

Statement of comprehensive income

	Notes	May 2016 to Dec 2017 €
Income	3	737,083
Administrative expenses	4	(664,710)
Financial costs	5	(150)
Surplus for the period		72,223

The accounting policies and explanatory notes on pages 6 to 9 are an integral part of these financial statements.

Statement of changes in equity

	Accumulated fund	Total
	€	€
Balance at 1 May 2016	-	-
Surplus for the period	72,223	72,223
Balance at 31 December 2017	**72,223**	**72,223**

The accounting policies and explanatory notes on pages 6 to 9 are an integral part of these financial statements.

Statement of cash flows

	Note	May 2016 to Dec 2017
		€
Operating activities		
Surplus for the year/period		72,223
Adjustments to reconcile profit before tax to net cash flows:		
Non-cash movements		
Depreciation of fixed assets		10,196
Working capital adjustments		
Increase in trade and other receivables		(1,711)
Increase in trade and other payables		9,642
Net cash generated from operating activities		90,350
Investing activities		
Purchase of property, plant and equipment		(36,653)
Net cash used in investing activities		(36,653)
Cash and cash equivalents at 1 May 2016		-
Net increase in cash and cash equivalents		53,697
Cash and cash equivalents at 31 December 2017	9	53,697

The accounting policies and explanatory notes on pages 6 to 9 are an integral part of these financial statements.

Notes to the financial statements

1. Corporate information

The financial statements of the Office for the Arbiter for Financial Services for the period ended 31 December 2017 were authorised for issue in accordance with a resolution of the members. Office for the Arbiter for Financial Services is a public entity.

2.1 Basis of preparation

The financial statements have been prepared on a historical cost basis. The financial statements are presented in euro (€).

Statement of compliance

The financial statements of Office for the Arbiter for Financial Services have been prepared in accordance with International Financial Reporting Standards as adopted by the European Union.

2.2 Summary of significant accounting policies

The accounting policies set out below have been applied consistently to all periods presented in these financial statements.

Property, plant and equipment

Property, plant and equipment is stated at cost less accumulated depreciation and accumulated impairment losses. Such cost includes the cost of replacing part of the plant and equipment when that cost is incurred if the recognition criteria are met. Likewise, when a major inspection is performed, its cost is recognised in the carrying amount of the plant and equipment as a replacement if the recognition criteria are satisfied. All other repair and maintenance costs are recognised in profit or loss as incurred.

Depreciation is calculated on a straight line basis over the useful life of the asset as follows:

Fixtures, furniture & fittings	10 years
Computer equipment	4 years
Office equipment	4 years

Depreciation is to be taken in the year of purchase whereas no depreciation will be charged in the year of disposal of the asset.

Notes to the financial statements (continued)

Summary of significant accounting policies (continued)

An item of property, plant and equipment is derecognised upon disposal or when no future economic benefits are expected from its use or disposal. Any gain or loss arising on derecognition of the asset (calculated as the difference between the net disposal proceeds and the carrying amount of the asset) is included in profit or loss in the year the asset is derecognised. The asset's residual values, useful lives and methods of depreciation are reviewed and adjusted if appropriate at each financial year end.

Cash and cash equivalents

Cash and cash equivalents in the balance sheet comprise cash at bank and in hand and short term deposits with an original maturity of three months or less. For the purposes of the cash flow statements, cash and cash equivalents consist of cash and cash equivalents as defined, net of outstanding bank overdrafts.

Trade and other payables

Trade and other payables are shown in these financial statements at cost less any impairment values. Amounts payable in excess of twelve months are disclosed as non current liabilities.

3. Income

Income represents Goverment funding and complaint fees.

	May 2016 to Dec 2017 €
Government Funding	720,014
Complaint Fees	17,069
Total Income	737,083

4. Expenses by nature

	May 2016 to Dec 2017 €
Staff Salaries	545,840
Office maintenance & Cleaning	20,142
Vehicle, Leasing & Fuel Expenses	23,655
Advertising (Recruitment costs)	7,167
Telecommunications	8,602
Professional Fees	3,698
Depreciation charge for the year	10,196
Other expenses	45,410
Total administrative costs	664,710

Notes to the financial statements (continued)

4. Expenses by nature (continued)

Average number of persons employed by the office during the period:	May 2016 to Dec 2017
Total average number of employees	**10**

5. Financial costs

	May 2016 to Dec 2017 €
Bank and similar charges	**150**

6. Taxation

Being a Government entity, no tax is liable on the surplus earned during the year as per the Income Tax Act.

7. Property, plant and equipment

	Furniture, Fixtures & Fittings	Office Equipment	Computer Equipment	Total
	€	€	€	€
Net book amount at 1 May 2016	-	-	-	-
Additions	19,213	4,314	13,126	36,653
Disposals	-	-	-	-
Cost 31 December 2017	**19,213**	**4,314**	**13,126**	**36,653**
Depreciation charge for the period	(3,411)	(1,079)	(5,706)	(10,196)
Net book amount at 31 December 2017	**15,802**	**3,235**	**7,420**	**26,457**
As at 31 December 2017				
Total cost	19,213	4,314	13,126	36,653
Accumulated depreciation	(3,411)	(1,079)	(5,706)	(10,196)
Net book amount at 31 December 2017	**15,802**	**3,235**	**7,420**	**26,457**

Notes to the financial statements (continued)

8. Trade and other receivables

	May 2016 to Dec 2017 €
Prepayments	1,711

9. Cash and cash equivalents

For the purpose of the cash flow statement, cash and cash equivalents comprise the following:

	May 2016 to Dec 2017 €
Cash at bank and in hand	53,697

10. Trade and other payables

	May 2016 to Dec 2017 €
Trade payables	848
Accruals	8,794
	9,642

Administrative expenses	May 2016 to Dec 2017 €
Staff Salaries	545,840
Hospitality	1,221
Cleaning	10,433
Office Maintenance	9,709
Printing and Stationery	7,802
Letterheads and Other Stationery	3,832
PC/Printer Consumables	2,152
Other Office Costs	7,293
Other Office Equipment	595
Telecommunications	8,602
Website Expenses	410
Postage, Delivery & Courier	4,853
Insurance - Health	5,807
Insurance - Life	62
Insurance - Travel	46
Memberships & Subscriptions	1,285
General Expenses	3,453
Vehicle, Leasing and Fuel Expenses	23,655
Travelling Expenses	2,596
Advertising (Recruitment)	7,167
Meals & Entertainment	949
Professional Fees	3,698
Payroll Fees	454
Accounting Fees	2,600
Depreciation Charge	10,196
	664,710

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