ARBITER FOR FINANCIAL SERVICES

ANNUAL REPORT 2022

Enquiries relating to this Report are to be addressed to:

The Chairman
Board of Management and Administration
Office of the Arbiter for Financial Services
St Calcedonius Square
Floriana FRN1530, MALTA

www.financialarbiter.org.mt
www.arbitrufinanzjarju.org.mt

Freephone: 80072366

Telephone: +356 21249245
Whatsapp: +356 79219961

E-Mail: complaint.info@asf.mt

Wherever used herein, the use of the masculine gender shall include the feminine and/or neuter genders and the singular shall include the plural and vice versa, unless the context clearly indicates otherwise.

Any use of words or phrases to similar effect shall have no significance in the interpretation of this Report, such use being solely for the sake of convenience.

The cut-off date for information about appeals to decisions delivered by the Arbiter is 10 June 2023.

ARBITRU GĦAS-SERVIZZI FINANZJARJI
ARBITER FOR FINANCIAL SERVICES

19 June 2023

The Hon Clyde Caruana BCom (Hons), MA (Econ), MP
Minister for Finance and Employment
Maison Demandols
South Street
Valletta VLT 2000

Dear Minister

Submission Letter

Pursuant to Article 20 of the Arbiter for Financial Services Act (Cap. 555), I am pleased to transmit to you the Annual Report and Financial Statements of the Office of the Arbiter for Financial Services for the year 2022.

Yours faithfully

Alfred Mifsud
Arbiter for Financial Services

The Office of the Arbiter for Financial Services in Malta:

Providing an independent and impartial mechanism of resolving disputes outside of the courts' system, filed by customers against financial services providers authorised by the Maltese financial services regulator.

Scan to download the Arbiter for Financial Services Act

Competence and Powers of the Arbiter for Financial Services

Functions

The Arbiter for Financial Services operates independently and impartially, free from external influence or control. According to the law, the Arbiter has the authority to fairly and reasonably assess and resolve complaints based on each case's specific circumstances and merits. Complaints are handled in a procedurally fair, informal, efficient, and prompt manner.

During the complaint review process, the Arbiter will appropriately consider applicable laws, rules, and regulations, including those governing service providers. This includes guidelines from national and European Union supervisory authorities, industry best practices, and the reasonable expectations of complainants with reference to the time when it is alleged that the facts giving rise to the complaint occurred. The Arbiter possesses extensive powers under the Act, including summoning witnesses, administering oaths, and issuing interlocutory orders.

Adjudication and awards

The Arbiter has the authority to resolve disputes and issue awards of up to €250,000, other than interest and other costs, to each complainant for claims arising from the same conduct. If the Arbiter deems it necessary to provide fair compensation exceeding the awarded amount, he may recommend that the financial services provider pay the remaining balance, but the provider is not obliged to comply with the recommendation The Arbiter's decisions are binding on both parties, with the possibility of appeal to the Court of Appeal (Inferior Jurisdiction).

Collective redress

The Arbiter has the discretion to consolidate individual complaints submitted to the Office if they share intrinsic similarities in nature.

Highlights

- The year in review signifies the completion of the sixth full year of operation for the OAFS. The report offers a retrospective overview of the past year's accomplishments and sets the stage for a smooth transition to the incoming Arbiter.
- Preparations were underway to introduce two amendments to the Act. The first amendment allows consumer associations to file complaints with the Arbiter for Financial Services. The second amendment empowers the Arbiter to decide the language used during the complaint procedure. Both amendments are expected to be enacted in the first half of 2023.
- 638 enquiries were processed in 2022. Approximately 66% of enquiries originated from consumers in Malta. Email accounted for over 47% of enquiries, followed closely by online portal submissions. In line with the previous year, most enquiries and minor cases received by the OAFS related to banking and payment services.
- In the past year, our Customer Relations Officers observed growing customer frustration with the difficulty of contacting their bank and increasing concern over intrusive due diligence checks conducted for anti-money laundering compliance. They equally noted that the use of sophisticated and unreported scams, particularly on smartphones, appears to be on the rise, posing challenges in detection.
- The OAFS registered 151 new formal complaints. 68% of complaints (102) were lodged online, while 32% (49) were submitted via mail and email.
- Investment-related complaints accounted for 47% of the total, with a nearly 50% increase compared to the previous year. Private retirement plans and crypto assets were the most common issues. Insurance-related complaints decreased by 48% compared to the previous year, with a focus on life insurance policy maturity values. Banking services and payments accounted for 25% of registered complaints, with a notable number related to suspected irregular activities.
- The Arbiter delivered 85 decisions, of which 13 were preliminary or clarifications, and 72 were final. Eight complaints were upheld, 22 were partially upheld, and 42 were rejected. Only 6 decisions were appealed, while the remaining 66 cases became binding and *res judicata*.

2022

Acronyms / Abbreviations

Act	Arbiter for Financial Services Act (Chapter 555 of the Laws of Malta)
ADR	Alternative Dispute Resolution
AML	Anti-Money Laundering
ASF	*Arbitru għas-Servizzi Finanzjarji* (Arbiter for Financial Services)
CBM	Central Bank of Malta
CRO	Customer Relations Officer
EEA	European Economic Area
EU	European Union
IDR	Internal Dispute Resolution
IBAN	International Bank Account Number
IT	Information Technology
KYC	Know Your Customer
MFSA	Malta Financial Services Authority
MiFID	Markets in Financial Instruments Directive (Directive 2014/65/EC)
OAFS or the Office	Office of the Arbiter for Financial Services
PIN	Personal Identification Number
PSD	Payment Services Directive (Directive [EU] 2015/2366)
QROPS	Qualifying Recognised Overseas Pension Scheme
RSA	Retirement Scheme Administrator
SEPA	Single Euro Payments Area
SL	Sanction Letter
T&Cs	Terms and Conditions
TTA	Trusts and Trustees Act (Chapter 331 of the Laws of Malta)
UCITS	Undertakings for the Collective Investment in Transferable Securities
VFA	Virtual Financial Assets

Contents

Figures & tables

Annex 2 - Enquiries and minor cases' statistics for 2022

Annex 3 - Formal complaints' statistics for 2022

Report by the Outgoing Arbiter

Dr Reno Borg

This year's report is my final one as Arbiter for Financial Services because my seven-year term expired on 28 April 2023. My last contribution to the Annual Report is an exercise that takes me down memory lane.

In 2016, at the top of the Acropolis in Athens, I received a phone call from the Minister for Finance Professor Edward Scicluna, offering me the Arbiter for Financial Services post. At the time, I was actively engaged in my legal profession, and initially, I had doubts about whether I should terminate a career I had been building for over thirty years. However, the thought of a new challenge and the possibility of creating a new entity for consumer justice gave me the impetus to accept the Minister's offer. The splendid legislation establishing the Office of the Arbiter for Financial Services (OAFS), passed unanimously through Parliament, offered a solid basis for building an adjudicating forum to dispense justice informally and efficiently.

According to Act XVI of 2016 (Chapter 555 of the Laws of Malta), the Arbiter has to be independent, impartial, and to act fairly, equitably and in the parties' best interest and justice. Since my independence was guaranteed by law, I understood that I was in a position to start a new chapter in the administration of justice in the financial services sector, offering new hopes to consumers who were cheated into buying inappropriate investments and losing their life savings in the process; to consumers who had their legitimate insurance claims unjustifiably rejected by their insurer; to the banks' clients who had their bank account unjustifiably closed and to other consumers of financial services that suffered an injustice which could not be adequately addressed elsewhere.

Luckily, we did not encounter the obstacle of raising funds since, right from the start, the Ministry for Finance provided us with complete financial and logistical assistance, which has remained uninterrupted throughout the past seven years. However, we had other challenges. The first task was to plot the organigram and to chart the roadmap of our operations. We hired a limited number of employees to save public funds and to foster a close-knit working environment where members could concentrate on their tasks within a professional and dedicated setup. Our approach proved to be successful; today the OAFS is composed of a professional team that can continue to consolidate the success we have achieved so far and to face new challenges.

We began accepting complaints immediately, even without the necessary staff, to prevent complaints from being barred by prescription.

Since we are a codified country with an old legal tradition, there is always the temptation of converting administrative tribunals into ordinary courts of justice. Our first challenge was therefore to establish the OAFS as an entity which guarantees fairness outside

the judicial system. The Act stipulates that proceedings must be fair, economical, and informal. To reach these goals, we kept bureaucracy to the bare minimum. Consumers could contact us via telephone or email or just write a simple letter explaining their complaint. In today's rush towards digitalisation, we have to be mindful of a large sector of our population that is either deprived of the necessary technology or else lacks the knowledge to operate in the digital world, rendering them unable to interact with their service provider and condemning them to a helpless situation. In my previous annual reports, I had highlighted this problem and now sincerely hope financial institutions continue to provide a personal retail service to the most vulnerable section of our society who needs additional help.

The reporting year was not one of the most challenging years because we had already laid down the foundations during the previous years; we could concentrate more efficiently on our core business and better satisfy the legitimate expectations of our stakeholders.

During our national conference in February 2023, my contribution was titled: Informal Justice: An Effective Way of Addressing Consumer Concerns. During our short journey of seven years, we constantly believed that people not only have disputes with their service providers but also have concerns that disrupt their daily lives. We had the legal and moral obligation to address their worries. We needed to deliver a solution to their problems. As the numbers clearly show, our Customer Relations Officers dealt with these concerns (and minor cases) most efficiently. Up to the reporting year, they had dealt with more than 5600 cases.

The investigative and adjudication stages of the proceedings are essentially a quasi-judicial function. Though the law establishes an informal procedure, it also emphasises the need for the Arbiter to act independently, impartially, with integrity and within the confines of equity and the law. I found my legal experience a great asset; but, most of all, I needed the comfort of a quiet conscience which is the driving force behind a just and honest adjudicator. The Arbiter should not only understand the law he is applying but must also serve as a moral beacon to the financial services industry with the earnest ambition to assist them in conducting their dealings with consumers in a just, fair and equitable manner.

The outcome of an Arbiter's decision will invariably displease the losing party. Still, my satisfaction over the years has been that nobody questioned the integrity or the quality of our process and decisions. The Court of Appeal judgements also vindicated the soundness of our thinking and deliberations.

I also hope that, through the hundreds of decisions that the Office has given so far, we managed to establish some guiding principles to serve the industry in better dealing with their customers in a fair, expedient and just way.

As expected, at the beginning of our journey, service providers wanted to test the soundness of our decisions by taking a good

number of them to the Court of Appeal. Since the vast majority of our decisions were confirmed on appeal, the number of appeals started to decline. During the reporting year, only six decisions were appealed.

Even the simplest of cases need much thought, but the more complex ones require substantial research, which is time-consuming. We had to strike a balance to deliver quality decisions without sacrificing the sacred ethical principle that justice should not be delayed so that it would not be denied.

As expected, each year, we had a new influx of cases which had to be decided together with those of the previous year. The law requires the Arbiter to decide cases fairly and informally, and to secure expediency. In this regard, we ensured compliance with the law and upheld our commitment to the parties by resolving cases as expeditiously as possible.

This was also true during the challenging years brought about by the COVID pandemic. Since we already had the technology to deal remotely with cross-border cases, we employed the existing infrastructure to deal virtually with local cases. Our work was not interrupted by the pandemic, and we offered our service to stakeholders even during those challenging times.

I am leaving the position of Arbiter for Financial Services with a heavy heart. However, I am also filled with satisfaction knowing that, alongside the OAFS team, we successfully established an efficient entity. This entity effectively addressed the concerns raised by consumers of financial services and provided them with appropriate remedies. Starting as a small office with modest ambitions, the OAFS team developed an entity that has catered for hundreds of complaints from consumers from each corner of the globe.

I feel it my duty to conclude my final report with a few merited thanks. First of all, I thank the dedicated staff who, throughout our journey, supported me unconditionally with great integrity and respect. They went the extra mile to help our customers in a friendly and professional manner. They were also my other family, whom I will miss forever. The chairman of the Board of Management and Administration was of untiring support so that the administration of the Office would move smoothly and efficiently. The other members of the Board also gave their valid contribution.

Finally, I thank the Ministry for Finance for supporting us financially and logistically. Without its help, we would not have travelled so far.

I augur the OAFS every success for the future.

Report by the Incoming Arbiter

Alfred Mifsud

I wish to start my address by thanking my predecessor for passing the baton smoothly upon my appointment on 28 April 2023 and for agreeing to comment on the operations of the Office of the Arbiter for Financial Services (OAFS) in the Annual Report for 2022, during which period he was the Arbiter in charge.

I found a well-oiled machine with competent personnel at all levels of the process, from the initial contact with the complainant, solving small issues at source, helping customers to file their complaint, attending to mediation if the parties agree to It, and finally in the process of hearings, analysis and other considerations which make the Arbiter's role of making fair and equitable decisions more productive.

I look forward to continue making the OAFS much more relevant to those who feel that service providers in the financial service industry owe them reparations for failing them. The decision library this Office has built over the seven years since its inception will no doubt help complainants form realistic expectations about the solutions they can expect from the OAFS and possibly make the mediation process much more effective. This would help the Arbiter to focus on cases where mediation fails.

I plan to shorten the decision-making time. Whilst the 90 days indicated in the law from the filing of the complaint to a final decision is in most cases unrealistic, it should be quite realistic to expect that in most cases an average of 90 days from final submissions to decision is possible and more in line with the spirit of the law.

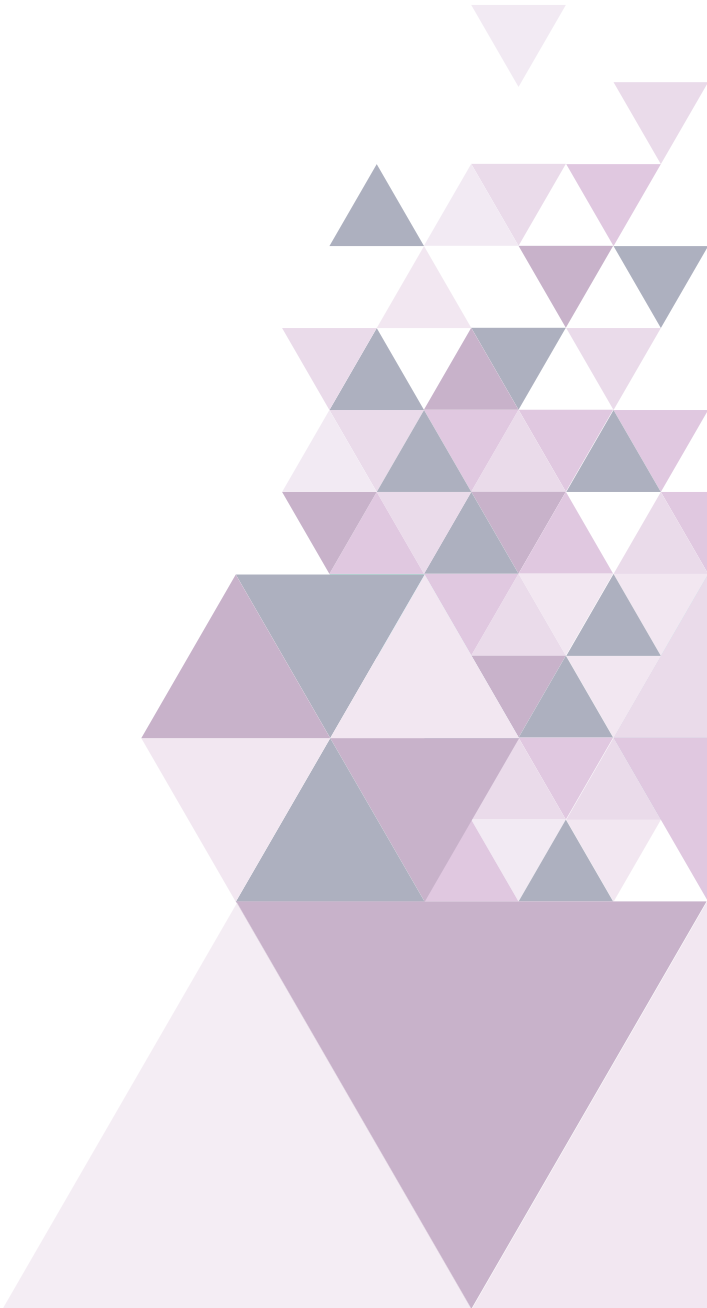
It is also my objective to make decisions more readable based on substantive narrative rather than legalistic language as I believe this will help parties to understand that the Office of the Arbiter is different from a court of law, and that equity, rather than legal contours and overtures, is the basis of the Arbiter's decisions.

It is also my intention to deal with preliminary pleas expeditiously before entering into the merits of the case. I believe that if complaints fall outside the parameters within which the Arbiter can adjudicate in terms of the law, then the parties ought to know it as soon as possible so that they can take their case before a more competent court or tribunal.

I also plan to start sharing, where relevant, decisions taken with those authorities that need to be made aware that some complaints happen because such authorities may not be sensitive to problems that some of their policies are causing at ground level. The Arbiter cannot interfere with the internal procedures of such authorities, but raising their awareness should help guide them to review their policies where and when possible.

Finally, there is scope for considering whether the scope of the OAFS can be extended to matters not presently provided for in our establishing Act. Such widening of scope, which will obviously require additional resources, will make the OAFS more relevant to more financial services users. Discussions for this purpose with the relevant authorities have already started.

As the OAFS during the term of my predecessor transitioned gracefully from creation and handling of initial backlog to more business-as-usual mode, with the backing of a rich library of decisions, it is my intention, with the help of my capable personnel, to take the OAFS to new levels serving more customers better.



Chairman's Statement

Geoffrey Bezzina

This annual report, the sixth since the Office of the Arbiter for Financial Services was established, provides detailed information about the Office's operations and accomplishments.

Since its establishment, the OAFS has been dedicated to delivering exceptional and reputable public service. We uphold this commitment by providing a service of high standards, prioritising transparency, and fostering the capability of our staff.

In the year under review, we have built upon previous successes, identified areas for improvement, and achieved numerous objectives. Our progress would not have been possible without the dedication, diligence, and teamwork of our staff members. I thank the Board members for their valuable advice and unwavering support in achieving our goals and enhancing our service standard.

As a redress mechanism for consumers of financial services, the OAFS must maintain consistent communication about its services and ensure that consumers have accessible channels to seek assistance, information, and redress whenever needed.

We acknowledge that progress has been made in recent years to improve our accessibility. However, we also recognise that more work still needs to be done. We are committed to exploring additional ways to effectively achieve our accessibility goals thereby ensuring that more consumers find it easy to find us and access our informal redress mechanism.

The OAFS is mindful that many consumers are not computer literate, that they are vulnerable, or prefer to talk to someone in person. We fully acknowledge that the ability to talk through a problem with another human being, rather than a screen, can be very important for some consumers. Therefore accessibility, including the ability of complainants to communicate with us through their chosen method, will remain a key value which will influence the technological changes that the OAFS has embarked upon in very recent years.

We have made it easy for consumers to lodge an enquiry or a formal complaint online through our portal. However, our online portal also houses a comprehensive collection of over 550 decisions delivered so far by the Arbiter, all of which are easily searchable. These decisions hold immense significance for our stakeholders. They serve as valuable references, providing insights into the Arbiter's rulings on various financial services. Stakeholders can analyse and study these decisions to gain a deeper understanding of legal interpretations, the application of regulatory frameworks and how complainants expect their financial services providers to deal with the substance of a dispute in a fair and reasonable manner. Furthermore, these decisions offer researchers a rich resource for conducting in-depth studies, enabling them to assess trends, identify patterns, and contribute to the advancement of

knowledge in the field of financial services. We therefore actively encourage further engagement by academics and students in this field, as their involvement will significantly benefit and advance the financial services industry.

In mid-2022, we were delighted to welcome a new member to our Board, Mr Antoine Borg, whose experience expands and complements the broad range of skills on the Board. We would also like to express our deep gratitude to the outgoing member, Dr Anna Mallia, whose wise counsel and experience during her five-year term were most appreciated.

At year-end, preparations were in full swing for a national conference that the OAFS was organising in early 2023. We therefore, thought it befitting to include salient aspects of this conference's proceedings in this publication.

The annual report is being prepared and published during a significant transition for the OAFS. In April 2023, Mr Alfred Mifsud was appointed Arbiter for Financial Services, succeeding Dr Reno Borg, whose seven year tenure expired in the same month.

On behalf of the Board, we express our gratitude and appreciation to Dr Borg for his leadership and forward-thinking approach that elevated the OAFS's reputation. His commitment resulted in the establishment of ombudsprudence, recognised in various court judgments and international fora.

Simultaneously, we extend a warm welcome to Mr Mifsud, who will serve as the Arbiter for the next seven years. We eagerly anticipate collaborating closely with him to further enhance the OAFS's standing as a distinguished public service institution.

Board of Management and Administration

From left: Valerie Chatlani, Peter Muscat, Geoffrey Bezzina, Antoine Borg

Chairman
Geoffrey Bezzina *(reappointed on 2 June 2022)*

Members
Peter Muscat *(reappointed on 2 June 2022)*
Dr Anna Mallia *(term expired on 28 April 2022)*
Antoine Borg *(appointed on 12 July 2022)*

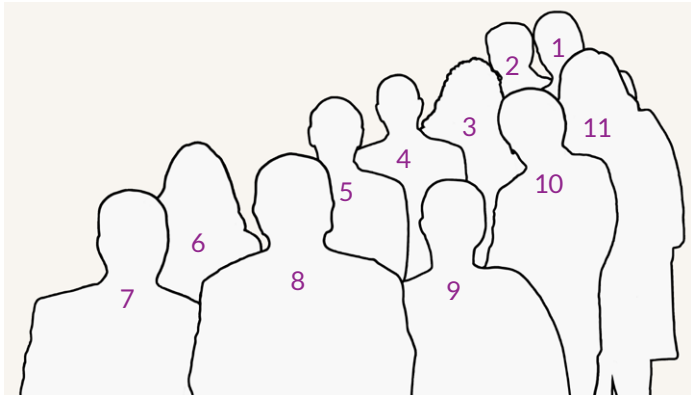
Secretary
Valerie Chatlani

The Minister for Finance and Employment appoints the Board of Management and Administration. Its functions include providing support in administrative matters to the Arbiter in the exercise of his functions. The Board is not involved in the complaint process.

On an annual basis, the Board, in consultation with the Arbiter, is required to prepare a strategic plan as well as a statement with estimates of income and expenditure for the forthcoming financial year. The Strategic Plan for 2023 was presented to Parliament and is available on the Office's website. The Board is also responsible for the preparation of the OAFS's annual report.

All members attended the five meetings that were held in 2022.

Staff Complement



1 - Paul Borg - *Front Desk Officer*
2 - John Francis Attard - *Customer Relations Officer*
3 - Samantha Sultana - *Case Analyst*
4 - Robert Higgans - *Senior Case Analyst*
5 - Francis Grech - *Officer in charge of Mediation*
6 - Rita Debono - *Registrar (Investigations & Adjudications)*
7 - Geoffrey Bezzina - *Chairman, Board of Management & Administration*
8 - Alfred Mifsud - *Arbiter for Financial Services*
9 - Ruth Spiteri - *Administrative Assistant*
10 - Gaetano Azzopardi - *Maintenance Officer*
11 - Valerie Chatlani - *Customer Relations Officer*

Overview

The legislative framework

The Office of the Arbiter for Financial Services was established in April 2016 through the enactment of Act XVI of 2016, known as the Arbiter for Financial Services Act (Chapter 555). This Act provides a comprehensive framework for the Office's administrative, operational, and jurisdictional aspects. It outlines the roles, responsibilities, and accountability of the Office, as well as the appointment, functions, powers, and competence of the Arbiter. Additionally, provisions are included for the appointment of a Substitute Arbiter when necessary.

The Act underwent several amendments to reflect diverse requirements as they arose. It also underwent amendments to provide greater clarity in defining financial services providers. These amendments enable the Arbiter to make more informed determinations regarding whether a particular service, subject to a complaint, falls under the category of financial service or not. The improved definition not only caters to the evolving nature of the financial services industry but also aims to restrict the submission of complaints unrelated to financial services.

Furthermore, the law prohibits the consideration of complaints that have already been or are currently being reviewed by an Alternative Dispute Resolution (ADR) entity in another jurisdiction, initiated by the same complainant and involving the same subject matter. Previously, the Act prevented the Arbiter from addressing complaints that were or had been the subject of legal proceedings before a court or tribunal initiated by the same complainant and on the same subject matter. However, the Office has received complaints where the merits may have been or are subject to review by ADR mechanisms in other jurisdictions that do not fall under the definition of a "Court" or "Tribunal". This amendment aims to prevent double jeopardy and minimise the possibility of conflicting decisions that could lead to legal uncertainty for the parties involved.

During the year under review, preparations were in hand to introduce two further amendments to the Act. The first amendment will broaden the definition of 'consumer' and 'eligible consumer' to include consumer associations. This effectively means that consumer associations can file a complaint with the Arbiter for Financial Services, which is not allowed under the Act as it currently stands. The amendment would fully transpose article 14 of the Insurance Distribution Directive (Directive 2016/97). The second amendment will provide the necessary legal and procedural certainties to the Arbiter to decide which of the two official languages of Malta will be used during the complaint procedure in each case's particular circumstances. Both amendments are expected to be enacted during the first half of 2023.

Designated financial Alternative Dispute Resolution entity

Through the enactment of Legal Notice 137 of 2017, known as the Arbiter for Financial Services (Designation of ADR Entity) Regulations, 2017, the Minister for Finance, serving as the competent authority for the ADR Directive, appointed the Office of the Arbiter for Financial Services as the designated ADR entity for financial services in Malta. This appointment ensures that Malta fully complies with the requirements of Directive 2013/11/EU and aligns Malta with other certified ADR bodies in the EU and EEA that possess similar competences in handling financial services complaints.

The OAFS is part of a network of alternative dispute resolution bodies established in Europe and worldwide. These bodies allow consumers to have their complaints resolved swiftly, cost-effectively, and fairly, while still retaining their right to approach the courts if they so choose.

International participation

The OAFS actively participates in two international networks comprised of out-of-court dispute resolution bodies that handle financial services complaints.

Since 2017, the Office has been a member of FIN-NET, which is a network facilitating cross-border resolution of financial disputes between consumers and financial services providers within the EU and EEA. Established by the European Commission approximately 20 years ago, FIN-NET promotes cooperation among national consumer redress schemes in the financial services sector and ensures consumers have accessible avenues for alternative dispute resolution in cross-border disputes. With 60 members across 27 countries, FIN-NET plays a crucial role in facilitating consumer resolution of financial disputes.

We also actively participate in the Steering Group, which is chaired by the European Commission (DG FISMA) and is responsible for setting the agenda for FIN-NET's bi-annual plenary meetings. These meetings offer an opportunity for redress mechanisms to exchange insights and experiences regarding common complaint trends. Additionally, participants receive briefings from EU officials on various legislative and non-legislative financial services developments in the EU.

Furthermore, our Office is a member of the International Network of Financial Services Ombudsman Schemes (INFO Network). This network serves as the global association for financial services ombudsmen and other out-of-court dispute resolution schemes that address consumer and, in some cases, small businesses complaints against banks, insurers, and other financial services providers. The INFO Network facilitates collaboration among its members, fostering the exchange of experiences to enhance expertise in external dispute resolution.

Enquiries and minor cases

The OAFS offers two ways for consumers to submit a grievance against a financial services provider. The first is an informal process, and the second is a formal process.

The informal process is for minor cases and enquiries. It uses information, negotiation, and conciliatory techniques to resolve the issue amicably. A significant component of this process is providing customer information, especially about the formal complaint-handling mechanism. This latter mechanism is discussed in more detail in the next section of the Annual Report.

During the year, the OAFS's Customer Relations Officers (CROs) actively engaged with financial services providers to facilitate the resolution of minor cases and enquiries informally. This section includes examples from several enquiries processed by the CROs during the reporting year. The scope is to highlight how the OAFS approached different situations in which it was asked to intervene.

Further analysis of the type of enquiries and minor cases processed in 2022 is available in Annex 2.

The Role of CROs

A team of experienced CROs handles enquiries and minor banking, investment, private pensions and insurance cases. They also provide information about the Office's complaints procedure.

The CRO may recommend a possible remedy or course of action, depending on the situation. This response is typically based on similar experiences brought to the Office's attention by other customers in previous enquiries.

The CRO will provide essential information that the customer can consider when dealing with the provider. The CRO makes use of the working relationships developed with compliance or complaints officers at various financial institutions; they are the CROs' first point of contact following a customer's request for assistance.

In many cases, the CRO will volunteer to contact the financial services provider for its initial reaction. This approach is typically taken when the enquiry is particularly uncommon or complex.

The initial enquiry will need to be followed by an email (or a letter, in the rare instance where the customer does not have email access) to allow the customer to provide further details and supporting documentation related to the issue under review.

Before contacting the relevant financial services provider, the CROs will assess the enquiry's merits and identify and recommend a practical solution. The CROs may also intervene to resolve the situation with the provider. Many providers are willing to cooperate with the CROs, especially if their informal intervention can lead to a favourable resolution.

Some cases are too complex to be resolved informally. Here the CROs will work with the customer to develop a specific course of action, and this may include seeking legal or other professional help.

A case may be escalated to the next stage, which is a formal complaint. This is a more adversarial process that can take longer to resolve cases.

Some customers appoint a professional to help them file a complaint, while others do so independently. The OAFS promotes using the online complaint submission system available through the OAFS portal.

Analysis

Our preferred method of customer communication is by phone, WhatsApp or email. However, we understand that physical visits to our offices may sometimes be necessary. In these instances, we take the necessary precautions to ensure the safety and well-being of all parties involved.

case study

Bank Cards

Recovered use of expired vouchers

In 2020, a local bank held a promotion for its customers when using their credit cards. Frank received €125 in vouchers from a computer supplier as a reward for using his card. When he tried to use the vouchers in 2022, he was told that the vouchers had expired. Frank insisted that the bank's marketing representative had told him there was no expiry date, but the bank said the vouchers were only valid for one year, as stated in the terms and conditions.

Frank brought the bank's refusal of his request to use his vouchers to the OAFS. He continued to contend that the bank's representative had misled him, but he was willing to accept an alternative solution that would be acceptable to the bank.

The OAFS approached the bank and pointed out that the value attributable to the vouchers was still on the bank's books but had remained unclaimed.

The bank eventually credited Frank's account with €125.

ATM Deposit

A delayed deposit and a ruined anniversary celebration

case study

John deposited €830 in cash into a local ATM a few days before a public holiday. The ATM screen displayed a note for a few seconds stating that the deposit was cancelled and that the ATM would not accept any further deposits.

Since John had to make another deposit, he went to another ATM belonging to the same bank and deposited €210 in cash. When John checked his app, only the second deposit was displayed as being credited to his account.

He called the bank's helpline and was told they would investigate his complaint, but it would take a few days as there was a public holiday in between. John pointed out that he needed to secure the deposit of the first amount into his account immediately as he had to pay for a hotel booking which was an anniversary surprise for his wife. The bank official explained that since replenishing the ATMs was outsourced, they could not expedite the investigation into his first deposit. The delay caused John to cancel his booking with the hotel. A few days later, he filed a complaint with the OAFS as the bank was taking a prolonged time to investigate the whereabouts of his first deposit.

The OAFS contacted the bank and recommended that they reimburse John for what was rightfully his and offer him compensation as a goodwill gesture. The next day, the bank credited €830 into John's account and offered €50 for disrupting his anniversary celebration. John was satisfied with the outcome.

In 2022, the CROs processed 638 enquiries, a drop of 22% from the previous year. Such decline belies the CROs' efforts to resolve complex issues. The complexity of the CROs' enquiries and the necessary follow-up calls and emails to reach a final solution often go unnoticed despite the significant effort and expertise required.

Around 66% of enquiries were made by consumers residing in Malta. The remaining 34% were made by consumers outside Malta, mainly from the UK and the USA. Over 47% of enquiries were made by email, followed closely by enquiries posted through our online portal. Telephone and walk-in enquiries dropped dramatically to no more than 10% of all enquires received in 2022.

Generally in line with previous years, in 67% of the cases, the OAFS provided general information to the customer. 29% of all enquiries received required the CROs to intervene, and customers appeared satisfied with the outcome or level of service provided. On average, it took around 44 days for enquiries to be resolved, although insurance-related enquiries tend to take the longest for their resolution (averaging 80 days).

It is encouraging to note that, in many cases, our office was able to resolve enquiries informally with service providers. This was to the satisfaction of both parties and avoided the need to escalate the issue to a formal complaint.

During the reporting year, we encountered several cases where local consumers were involved in disputes with EU-authorised financial firms providing products or services online in Malta. This is a common occurrence, as financial services licensed in the EU are permitted to operate across the region without requiring individual licenses from each host Member State. While we cannot accept complaints against these firms (as the financial services regulator in Malta does not authorise them), the CROs inform consumers of their right to seek assistance and lodge a complaint with the appropriate redress mechanism where the financial services provider is authorised. In such situations, we provide consumers with the necessary contact details of the relevant redress body and highlight provisions in the applicable terms and conditions that specify the applicable redress mechanism.

Several firms authorised in Malta are also passporting their products and services cross-border in many EU countries. During the year under review, the OAFS received several cases from its counterpart established in such countries. Several cases were mostly related to insurance complaints, where the issues at stake ranged from personal health matters to material property damage and non-refunded premiums for cancelled policies. The CROs referred to and discussed these cases with the insurers in Malta, where the outcome was generally to the consumer's satisfaction.

Banking and payment services

In line with the previous year, most enquiries and minor cases received by the OAFS related to banking and payment services. This amounted to 261, or 41% of all enquiries. Besides requiring general information, many enquiries related to poor service, delays, charges and payment transfers.

This report highlights several aspects, particularly regarding issues consumers raise with CROs.

In the past year, our CROs have observed a trend in customers expressing frustration over the difficulty of contacting their bank, mainly through call centres. Many customers contend they spend significant time waiting for someone to answer their call. While some banks have attempted to manage the volume of calls by directing them through a central line, this approach may have resulted in a bottleneck, leading to further frustration for customers who previously contacted their local branch directly. Understandably, this can be an incredibly frustrating experience for consumers, which banks are aware of and addressing. On several occasions, our CROs received calls from irate consumers requesting their assistance to reach out to their bank on their behalf. In such cases, the CROs notify the providers to contact the customer who made the original inquiry. Our communication with providers has been consistently respected. Although we may not always receive direct feedback from customers, providers ensure that our CROs are regularly updated on their efforts. It's noteworthy that most cases are resolved quickly when customers initially engage with the Office.

The CROs have again observed numerous customer concerns about the periodic Know Your Customer (KYC) checks that banks must conduct in line with Anti-Money Laundering (AML) rules. Customers have expressed dissatisfaction with the process, citing their overly intrusive nature in their financial affairs. They also find some questions irrelevant, especially when banks ask about financial holdings with other banks or financial institutions.

The CROs further received complaints from elderly customers who claimed they had to answer numerous questions and provide various documents when trying to close their accounts, which the bank may have initiated due to account inactivity. Some customers have also raised concerns about the consequences of potential data breaches or information leaks, as banks hold vast amounts of data about them.

case study

Bank Transfer

Money goes missing in bank transfers

Betty made an online payment of €20,000 from her local bank to another local bank. However, the recipient did not receive the funds, even though Betty's account had been debited. Betty's bank confirmed they had sent the funds, but the receiving bank claimed they never received the remittance.

After four weeks of communicating with both banks without resolution, Betty filed a complaint with the OAFS, which contacted both banks. However, they both stuck to their respective stories.

The OAFS then contacted the intermediary bank responsible for routing the payment between the two banks. This bank discovered that an upgrade to their system had caused the amount to be misplaced. The intermediary bank credited the receiving bank, which then credited the recipient.

Betty was relieved to learn of the positive outcome.

Inheritance

Heirs struggle to close bank accounts

case study

The heirs of two deceased bank customers could not close their parents' savings accounts after eight months of trying. They had engaged a notary and filed all the required documents with the bank, but the bank was dismissive of their request and referred them back to their notary.

The heirs contacted the OAFS, which investigated the matter. It was discovered that the bank had only received scanned copies of the documents, which were insufficient for the bank. The heirs lived in Australia, so they had sent the scanned copies from there.

The OAFS contacted the bank's legal department and provided them with the heirs' contact information. The OAFS also requested the heirs to verify if the original documents had to be notarised before being sent to the bank's Legal office. The heirs then sent the original documents to the bank by courier. The bank was able to close the accounts shortly after that.

The heirs were grateful to the OAFS for its help in resolving the matter and its willingness to advocate for consumers.

These concerns are valid and can be addressed through active education and continuous informational campaigns. Banks must take a more empathetic approach and explain the KYC process to customers, including why certain information is requested. Banking staff must not assume that consumers know AML rules and regulations. Although we understand that banks must follow the rules and regulations, it is essential that specific procedures are tailored according to the account's usage and risk level, and that customers are not unnecessarily inconvenienced where transaction monitoring poses a low risk.

In the 2021 annual report, it was observed that many consumers were surprised and frustrated by unexpected charges and account restrictions on inactive accounts, with several claiming a lack of prior and effective notification. To address these concerns, it was recommended that banks must notify their account holders about any changes to procedures or practices. While some banks may use social media channels for marketing, personal communication is vital when conveying significant changes to standard terms or conditions. One cannot presume that a bank's responsibility is discharged by just merely posting a blog or a banner on social media.

During the review period, consumers continued to report inadequate communication from their banks regarding charges or changes to practices, with some claiming that paper communication did not reach them and others reporting issues with notifications on their banking app, which disappear after a number of days, thus preventing referral to such communication in the event of a dispute. These are valid concerns, and banks need to agree on similar procedures for informing banking customers. The objective is for all banks to share best practices based on years of experience and adopt a horizontal standard of practice, irrespective of one's bank custom.

The 2021 report also noted that the OAFS had received notifications of various scams affecting vulnerable and informed consumers. Some scams involved payments to online investment platforms for risky investments or undelivered services and products. The OAFS encountered cases where customers were deceived into sending money to fraudulent websites designed to look authentic, often using logos of reputable organisations. Some customers also received SMS messages that led them to fake websites, resulting in multiple unauthorised transactions. Smartphone usage has made it challenging to detect such scams since users tend to respond quickly to messages received on their phones. While card payments and bank transfers can be refunded in some instances, the return of all funds may not always be possible.

Many scams go unreported, especially when customers have lost substantial amounts. In many jurisdictions, estimates of substantial losses arising from scams are reported, but the actual figure will never be known.

In recent years, there has been an increase in the use of sophisticated scams that are difficult to detect. There are regulatory requirements and voluntary best practices that banks and financial institutions are adopting and following to protect their customers, including strong multi-factor authentication, providing regular customer education on security measures and raising awareness about common scams.

While fraud prevention measures are critical, it is also essential for financial institutions to quickly and efficiently address any instances of fraud. This includes providing timely and accurate information to affected customers, conducting thorough investigations to determine the incident's root cause, and implementing measures to prevent similar incidents from occurring in the future.

Financial institutions mustn't solely focus on detecting and mitigating vulnerabilities. They must also adopt a collaborative approach with regulators, law enforcement agencies and other private and public stakeholders to exchange information and identify emerging threats proactively to ensure a more robust and effective response to potential threats, safeguarding customers' interests and promoting a safer financial environment.

Insurance

The number of enquiries relating to insurance matters amounted to 152, around 24% of all enquiries received. Statistically, travel insurance-related issues topped the list, followed by home and motor (third-party) cases.

Regarding travel insurance, the several cases handled by the OAFS can be distinguished into two separate categories: issues raised by local policyholders against local Insurers and cases presented by foreign policyholders against foreign insurers.

In the latter instance, the involvement of the OAFS would once again result from the fact that the insurer concerned is locally domiciled and authorised by the MFSA.

Though the pandemic gradually receded during the final part of the year under review, the unavoidable cancellation of planned trips abroad continued to trigger claims for the compensation of non-refundable expenses incurred by the policyholders. Such claims were plagued by a misunderstanding about the extent of the policy coverage or by insufficient supporting medical documentation.

Though the reduction in air travel resulted in the equally reduced take-up of such policies, the OAFS continued to

case study

E-Commerce
Sale proceeds wrongfully blocked

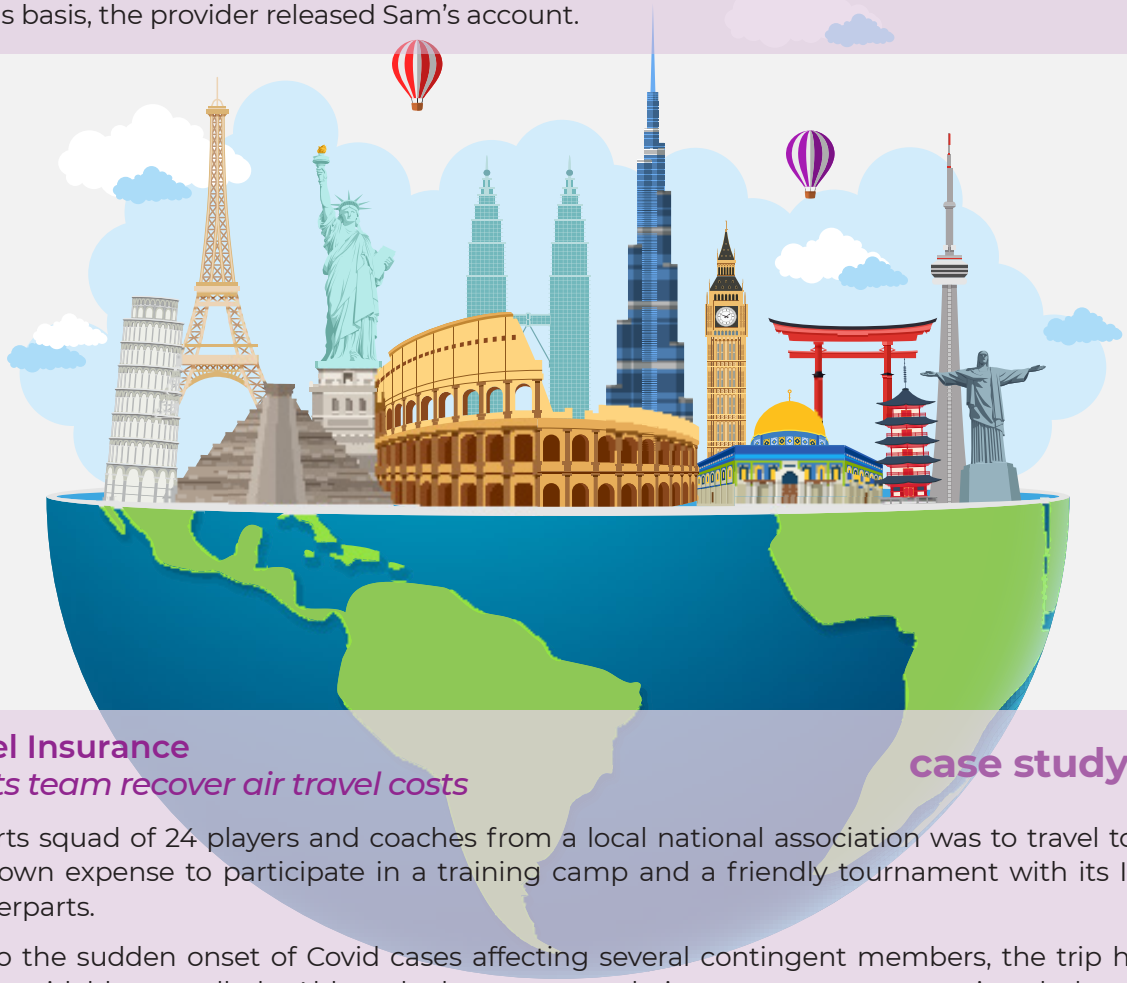
Sam was engaged in selling tickets for international events through an online platform operated by a local service provider. This activity had netted him €9,000.

However, when he tried to withdraw this amount from his online account, Sam found it was unavailable since the service provider had blocked it.

Sam insisted that he had provided all the explanatory documentation and information requested by the provider, but this had not brought about any tangible result.

The OAFS's continued monitoring of the case prompted the service provider to do a thorough background check on Sam and his business, which found nothing wrong.

On this basis, the provider released Sam's account.



Travel Insurance
Sports team recover air travel costs

case study

A sports squad of 24 players and coaches from a local national association was to travel to Italy at its own expense to participate in a training camp and a friendly tournament with its Italian counterparts.

Due to the sudden onset of Covid cases affecting several contingent members, the trip had to be unavoidably cancelled. Although the accommodation expenses were retrieved, the airline concerned declined to refund the air ticket costs.

The resulting claim initially elicited only a lukewarm reaction from the travel insurer, which offered only partial compensation for the overall expense incurred by the contingent. It cited insufficient medical documentation and inadequate information submitted by the claimants in support of its refusal to honour the claim.

The assessment carried out by the OAFS established several instances of misunderstanding in the correspondence exchanged with the travel insurer, apart from missing documentation. These were righted as required, to the satisfaction of both parties.

The OAFS maintained its monitoring of the case, repeatedly exchanging correspondence with both parties to bring the matter to a close.

Its persistence brought about the successful conclusion of the claim with a settlement of €2,308, which was to the claimants' complete satisfaction.

receive cases relating to the usual staple cause: damage to luggage in transit.

In the home insurance segment, the several cases handled by the OAFS resulted from the continued development of this class of insurance as more and more homeowners opted to insure their property.

The mentioned cases are related to diverse and wide-ranging domestic accidents. Typical examples include storm damage, theft, entry of water from neighbouring premises, damage to property in the open (such as photovoltaic panels), and damage sustained due to construction work in progress near the insured property.

The major bone of contention between motorists and insurers continued to centre on the market value of accidented vehicles in the motor insurance sector. This was triggered by the insurers' increasing practice of declaring seriously accidented vehicles beyond economical repair. The insurer concerned would then offer the claimant a cash settlement for the wreck based on its estimate of the vehicle's pre-accident market value.

This approach usually generates never-ending discussion between the claimant and the insurer concerned, particularly in cases where the damaged vehicle's unrevised insured value would be more significant than the settlement being offered. In turn, the latter would fall short of the expense required to repair the seriously damaged vehicle or to purchase a replacement.

In the case of severely damaged vehicles where the driver's and the passengers' safety (as well as that of other road users) may be prejudiced, the insurer concerned insists on the vehicle being scrapped before the cash settlement is paid out.

During the year under review, this Office grew increasingly concerned about the failure of numerous drivers to obtain insurance coverage for their vehicles. This resulted from the increasing practice among local motor insurers to withhold cover due to an adverse claims record registered over several years. Some declinatures occurred even after a single large claim. The OAFS cannot challenge such underwriting decisions made by the insurer(s) concerned. Unwarranted consequences for bona fide road users can occur if such an issue is not adequately addressed by all stakeholders concerned.

Another component of the motor insurance segment is related to rental vehicle insurance. This stems from the practice by (local and foreign) holidaymakers who prefer to enhance their vacation through the availability of a car which would enable them to do away with the need for local transport to access places of interest in the visited country.

Though the providers regularly insure such vehicles according to the compulsory legislation requirements, the said providers usually offer the hirers the possibility of purchasing an additional policy that would compensate for any shortfall in the cover provided by the compulsory policy.

The disagreements between policyholders and insurers in this segment tended to focus on the delays in reimbursing the expense already incurred relating to the repair cost of a damaged rental vehicle, which amount would have been debited to their credit card account by the rental vehicle service provider on returning the car.

Investments and pensions

In the year under review, there were 149 enquiries relating to investment (23%). Most enquiries focussed on issues arising from capital losses and products relating to crypto and forex trading platforms.

Worldwide stock markets and bonds significantly impacted investor portfolios in 2022. Several factors contributed to this: rising interest rates, inflation and the war in Ukraine. Many investors called our offices querying the decline in their asset values. We explained that these declines were 'paper losses', which are drops in values that have not been realised but reflect market values at that time. If investors withdrew money from their portfolios, these losses would be crystallised and thus lead to investors suffering actual losses. In such situations, we directed investors to discuss their portfolios with their financial advisers, who could tailor such information to the investors' requirements.

Crypto assets saw a wild fluctuation in pricing, with a substantial loss in value. The rise of this new financial industry set unknown risks for consumers. One of the most significant risks is the prevalence of scams linked to crypto platforms, such as fake investment schemes, fraudulent exchanges, and other scams. The victims would sustain considerable financial losses, which, in many instances, may not be recoverable.

The Arbiter tackled various cases relating to crypto and scams. In his decisions, the Arbiter observed that crypto investments come with high risks, such as the lack of a regulatory regime, the prevalence of scams and the lack of education for retail consumers in this area. The Arbiter believed that service providers should be more proactive in improving consumer knowledge and protection in this area.

case study

Motor Insurance

Car lockout costs recovered after breakdown service provider fails to show up

Terry's vehicle was insured on a comprehensive basis.

While in Gozo, accompanied by her senile father, Terry accidentally locked her car keys inside the vehicle. She promptly sought the assistance of the insurer's breakdown service provider, which, however, failed to show up at the incident site. Terry, therefore, had no viable option but to seek the services of a private contractor, thereby incurring a cost of €236 to regain access to her vehicle. The insurer, however, rejected her claim for a refund.

The OAFS discussed the case with the insurer concerned to identify a practical solution. It turned out that the terms and conditions of the breakdown service provider's site intervention had been changed while Terry's policy was in force. This led to the insurer's initial declinature of the compensation claim.

The OAFS insisted that this change could not be applied retroactively but would come into force only at Terry's next policy renewal. It, therefore, highlighted the existing policy wording that appeared to cover the complainant for the financial expense she had reluctantly incurred.

The OAFS persisted in its polite but firm approach to the insurer until it agreed to settle the total amount.

Household Insurance

Damages resulting from third-party water ingress

case study

Sonya sought the assistance of the OAFS regarding what she perceived to be the incorrect handling of her claim for compensation for the damage sustained to her residence due to the alleged ingress of water from third-party premises.

When reviewing the features of the case, the OAFS determined that the insurer believed that the complainant's policy did not cover the accident in question. It had already paid almost €400 in fees to investigate the case but was not prepared to proceed.

In its continued assessment of the case, the OAFS was not in disagreement with the insurer's stance. However, it was determined to find a fair solution to satisfy both parties. This was because it was confident that Sonya's claim was genuine, as was the accident at her home.

Through its unstinting efforts, the OAFS succeeded in brokering an agreement between the parties in contention whereby the insurer agreed to a settlement offer of €1,000 as a goodwill gesture. The complainant happily accepted this, and the case was closed.

Dealing with Vulnerable Consumers and the Elderly

Over the years, our office has received several enquiries from vulnerable and elderly consumers. These consumers often require special attention, especially when dealing with banks. Financial institutions must comprehend the distinct necessities of this group and guarantee that they do not experience any sense of exclusion.

Banks and financial institutions must ensure they are not leaving vulnerable and elderly consumers behind. One crucial step is to provide clear and accessible information about their products and services. This should be available in both Maltese and English, in different formats, and it should be easy to understand. It is this no longer deemed acceptable that consumers should only be provided with documentation drawn up in one language (i.e.in English) and, many a times, only via a website. Cost should no longer be an excuse from providing accessible and dual-language information, especially when the speed and quality of translation have improved tremendously over the years. Financial institutions should make an effort to use plain language in product documentation, avoiding technical jargon that can confuse consumers.

Many financial institutions have transitioned to digital channels, significantly increasing online banking, mobile apps and other digital services. Technology can positively impact all consumers' lives; online and mobile banking can help consumers manage and access their finances online.

However, not everyone is savvy with such modern applications and processes. Technology may also be of detriment to consumers. For example, they may be more vulnerable to fraud and identity theft and have difficulty using complex or unfamiliar technology.

While digital financial services will continue to evolve, all financial institutions should not abandon the concept of physical branches. For many consumers, especially those uncomfortable using online or mobile applications, branches provide a personal touch that can be particularly helpful for consumers who need assistance with complex financial matters.

Mobile applications should not diminish the standard of service consumers expect from call centres, typically the first point of contact for assistance or information. Call centres should respond quickly and efficiently to enquiries, with knowledgeable and helpful representatives available to answer questions and resolve customer issues promptly.

Banking processes can often be bureaucratic and difficult for consumers. Simplifying and streamlining processes should make it easy for customers to do business with financial institutions. Investing in employee training to better understand and address the distinct needs of these consumers is thus important.

Essentially, financial institutions should work together to develop best practices for serving vulnerable and elderly consumers. In several foreign jurisdictions, banks have established voluntary conduct codes for this purpose. These voluntary conduct codes serve as a starting point for promoting fair and inclusive banking practices. Actively collaborating with regulators and consumer stakeholders to ensure that the needs of vulnerable and elderly consumers are consistently met should thus be a priority.

case study

Travel insurance

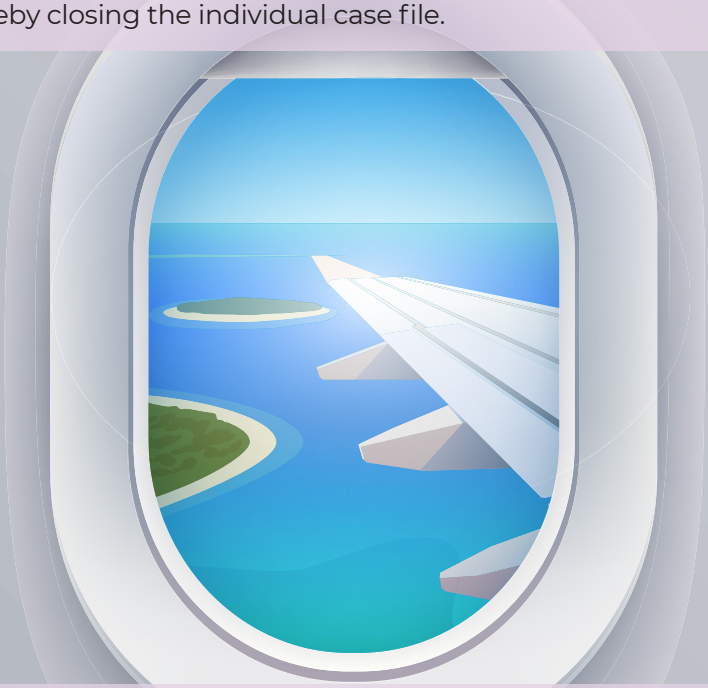
Air travel costs recovered following trip cancellation

Paula was aggrieved at the declinature of her claim for compensation following the unavoidable cancellation of a planned trip abroad due to her son contracting Covid. This resulted in the non-recovery of the air ticket cost.

The OAFS intervened in the status quo between her and the travel insurer. It examined the documentation of the case and the chronological sequence of the emergence of Covid positivity. This prevented the son from travelling; consequently, his accompanying mother had to equally cancel her trip.

With the facts of the case, the OAFS engaged in a lengthy discussion and negotiation with the travel insurer. This was supported by medical documentation, which had been inexplicably retained by Paula and not brought to the insurer's attention and consideration.

The intervention of the OAFS shed new light on the case. As a result, the insurer agreed to settle the amount of €434, thereby closing the individual case file.



Travel Insurance

Claim settled following unexplained delays

case study

Tracy was aggrieved at the time that the insurer was taking to settle her claim. She contended that she had initially submitted the said claim, together with all the relative supporting documentation, more than two months before. However, it was still unresolved since the insurer had not responded.

Tracy was at a loss whether her claim was covered under the policy and whether she would be receiving any compensation. Despite her repeated enquiries, she argued that the insurer kept extending the deadline for its response to the case.

Tracy was seeking the recovery of the non-refundable expenses incurred following the unavoidable cancellation of a planned trip abroad due to medical reasons.

The review by the OAFS of this case and its supporting documentation determined that the complainant was justified in her stance and that the policy in question covered the claim in full. It, therefore, approached the insurer to expedite the settlement of the case.

The intervention of the OAFS brought the matter to a head. The insurer promptly reviewed the claim file, and an agreement was reached on a settlement of £1,720.

Additionally, the insurer's complaints department apologised for the unwarranted delay in the processing and settlement of the case. It compensated Tracy with a £50 redress.

The Formal Complaints Process

Consumers who encounter unresolved issues with their provider or whose complaint is complex and requires investigation can complain to the Office formally. In contrast to the enquiry/minor case complaint process discussed earlier, this complaint procedure consists of four phases: registration, mediation, investigation, and award.

While we refer to these complaints as 'formal' in this report, it is essential to note that the procedure is designed to be straightforward and as informal as possible, aligning with the Act's requirement for informality and the consumer-oriented nature of our forum.

For a more in-depth analysis of the formal complaints received and the decisions made by the Arbiter in 2022, please refer to Annex 3.

Initial review of newly submitted complaints

While the Act does not specify a mandatory format for submitting a complaint, we provide a structured complaint form to elicit all the information and help customers present their arguments effectively. Eligible customers can either utilise a fillable PDF form (to ensure that it is legible) or, preferably, access our website to submit their complaint online. Our online platform enables users to upload documents in popular formats like PDF or images for convenience in order to substantiate their case.

All newly received complaints undergo an initial review assessment before being officially registered. The administrative staff, along with the CROs, promptly evaluate such submissions and interact with the complainant to ensure that the complaint is comprehensive and fulfils the legal prerequisites. This means, therefore, that the complaint description and the remedy requested by the provider are clearly outlined, as is the correct name of the financial services provider(s) against whom the complaint is being lodged.

In some cases, the complaint review process may experience a temporary delay in registration if the complainant has not initially raised the issue directly with the financial services provider before submitting a complaint to the OAFS. The law requires that the provider is given a reasonable opportunity to address the complaint before it is escalated to the OAFS. In such situations, our staff will request the complainant to utilise the internal dispute resolution (IDR) mechanism offered by the provider before proceeding further with the complaint. If the IDR process has been followed, we will ask for a copy of the complaint letter to the provider and any response received (if available) as part of the complaint documentation.

Key documentation in support of the complaint – such as policy wordings and schedules, proposal and application forms, contract notes or other legal documents – may usually be requested.

During the year under review, the OAFS registered 151 new formal complaints. This is around 10% lower than the number of complaints registered in 2021, and around six per cent less than the average number registered between 2016 and 2021.

Just under 68% of complaints (102) were lodged online. The remaining 49 complaints (32%) were submitted by mail and email (as a scanned copy of the pdf complaint form).

There were 71 investment-related complaints, representing 47% of the total complaints received during the reported year. This represents a nearly 50% increase in complaints in the same sector over the previous year. Slightly more than 30 cases were related to private retirement plans, followed by 24 cases relating to crypto assets.

Insurance-related complaints amounted to 42 cases (28%), which represents a drop of 48% compared to the previous year. Most of them concerned maturity values of life insurance policies, indicating a continuation of the trend seen in previous years.

Complaints related to banking services and payments accounted for the lowest number among the three sectors, comprising 38 (25%) of the total registered complaints, which remained consistent with previous years. A considerable number of complaints were associated with suspected irregular activities concerning payments.

Complaint registration

Conducting an early assessment of complaints has allowed the OAFS to provide improved consumer service. This assessment ensures that complainants are fully informed about the investigative powers granted to the Arbiter through legislation.

When complainants raise issues similar to those addressed in previous decisions issued by the Arbiter, they are directed to review these decisions. This empowers complainants to make informed choices regarding whether to proceed with their complaint or withdraw it. By incorporating outcomes from decisions into the initial review stages of the complaint process, the OAFS ensures that similar cases are addressed promptly, and customer expectations are effectively managed.

A customer eligible to complain with the OAFS must either be a consumer of a financial service, or to whom the financial services provider has offered to provide a service, or who has sought the provision of a financial service from a provider. During the reviewed period, the Arbiter rendered several decisions that specifically addressed the scope of competence in cases involving the eligibility of complainants to file a complaint with the OAFS in accordance with the Act. The Arbiter can only investigate complaints filed by customers who have a direct relationship with a financial services provider. Depending on the specific case, a complainant may not have a juridical relationship with a payment services provider if the provider's involvement was limited to processing a payment on behalf of a merchant or trader. The OAFS will also refuse complaints related to motor insurance third-party liability or home damage disputes involving insurers of third-party wrongdoers.

The Office is unable to accept complaints against providers authorised in EU member states other than Malta, even if the service has been provided in Malta on a cross-border basis or through a locally established branch under freedom of establishment. In such instances, complainants are advised to contact the financial redress mechanism in the jurisdiction where the respective provider is licensed or based.

Both natural persons and micro-enterprises – which the Act includes in its definition of 'eligible customers' - may complain with the Office. A micro-enterprise is an enterprise that employs fewer than ten persons, and whose annual turnover and/or balance sheet total does not exceed €2,000,000.

The Office cannot consider complaints that have already been the subject of a lawsuit before a court, tribunal, or alternative dispute resolution mechanism in any other jurisdiction initiated by the same complainant on the same matter. If this is identified during the initial assessment, the complainant is notified that the complaint cannot be pursued further.

Throughout the reporting year, a total of 74 submissions did not progress to the registration stage due to various reasons. A significant number of these submissions involved entities that lacked authorisation from the Maltese financial services regulator. These entities were authorised in another EU jurisdiction and were conducting their activities in Malta on a cross-border basis, particularly online.

Furthermore, several submissions were rejected upon initial analysis of the contract's terms and conditions, revealing that the provider to which the consumer was bound was neither located nor authorised in Malta, despite operating under a distinctive international brand name that may have prompted such consumers into thinking it operated solely from Malta. Additionally, some submissions were rejected because complainants failed to pursue their complaints following preliminary observations provided by OAFS staff.

Furthermore, there were 29 additional submissions in which the Customer Relations Officers (CROs) proactively contacted the service provider to address the complainant's case during the preliminary stage without the need for formal registration. The CROs' early intervention in these cases proved effective, successfully resolving the complaints.

According to the law, the Arbiter cannot assess complaints unless the financial services provider has been given a fair chance to review the customer's concerns before the customer files a complaint with the Office. To comply with this requirement, customers should first communicate their contentions in writing to the financial services provider and allow a reasonable period of time (15 working days) for a written response. The customer's letter and the provider's response should be included with the complaint to the OAFS. However, the Office may consider complaints even if the provider has been allowed to review the customer's complaint but fails to respond within the specified reasonable timeframe.

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

Once the Office accepts and processes a complaint, it is transmitted to the provider by registered mail for its reply. The provider has 20 days from the delivery date to submit its reasoned response to the Office.

Once the OAFS receives the response, it is sent to the customer. At the same time, both the complainant and the provider are encouraged to consider mediation as a means to resolve the case. The law emphasises the importance of resolving cases through mediation, whenever feasible.

Throughout the year, the majority of complaints were filed by individual persons, with a total of 123 complainants. An additional 24 complaints were jointly lodged, and four were submitted by micro-enterprises.

Out of all the complaints, 54% (82) were filed by non-residents, mainly originating from the UK, while residents of Malta lodged 46% (69).

Approximately 63% (95) of complainants opted not to seek external assistance during the complaint procedure. It is important to note that the decision to receive assistance or proceed independently is entirely at the discretion of the complainant.

Mediation

Mediation is provided to all complainants as an alternative avenue to seek resolution for their disputes.

Mediation is a collaborative process in which the parties involved in a complaint work towards finding a mutually agreeable solution with the assistance of a mediator. It is widely recognised that resolving disputes at an early stage is beneficial for all parties involved. The Office actively promotes and encourages parties to consider mediation, appointing a dedicated officer to oversee and facilitate this process.

Mediation is an informal and confidential procedure conducted in a private setting. If pursued, the parties' legal positions will not be compromised if mediation fails to yield a resolution. However, it is important to note that mediation can only proceed if both parties willingly agree to participate. It is not mandatory, and either party has the right to decline. In such cases, the complaint file is then transferred to the Arbiter for the subsequent stage of the complaint procedure.

Mediation encompasses more than just cases involving demands for compensation. It can also be used as a means for both parties involved in a dispute to obtain additional information from each other, particularly from the provider, regarding the issues being raised. Often, complaints arise due to insufficient communication or the parties' lack of active engagement during the early stages of the complaint process. Notably, several successful mediation sessions took place throughout the year, serving as a platform for parties to engage in informal discussions and seek resolution by finding common ground. However, when any of the parties involved were unwilling to reconsider their position, mediation proved less effective in achieving a resolution.

If the complainant and the provider reach a mutually agreed settlement during mediation, the terms of the

agreement will be documented and communicated to the Arbiter. Once both parties have signed the agreement and the Arbiter has accepted it, it becomes legally binding for both the complainant and the provider. This marks the resolution of the dispute, thereby concluding the complaint process. Additionally, the complainant will be refunded the complaint fee of €25.

Mediation sessions during 2022 continued to be held remotely. Alternative arrangements to conduct mediation via teleconferencing are also in place to cater for the possibility that the parties would not have internet access.

Compared to previous years, the cases referred to mediation in 2022 continued to increase, although the number of cases resolved during such process remained in line with that in the previous year. Of the 94 cases referred to mediation, 36 were successfully mediated after an agreement between the parties was reached, while seven cases were withdrawn following mediation. There were several cases at year end which were either pending an appointment for mediation or where parties were still undecided about which avenue to pursue following a mediation session.

The figures above relate only to outcomes in 2022 and include 26 cases that were brought forward from 2021. Mediation for a number of cases lodged in 2022 were carried forward to 2023. Additional information regarding the outcomes of resolved complaints during the mediation stage can be found in Table 3 of Annex 3.

Investigation and adjudication

If mediation is declined or proves unsuccessful, the Arbiter will initiate the procedure for reviewing the complaint.

As stipulated by law, at least one oral hearing is conducted for each case referred to the Arbiter. Throughout the reporting period, all hearings were conducted remotely using web-conferencing software. This approach ensures efficient use of time and resources without compromising the fairness of the process. The hearings are recorded, resulting in more detailed summaries, which prove beneficial during the subsequent investigation stage.

The parties present their cases, supported by oral and/or written evidence. They also have the option to present witnesses and submit final written submissions. All documents are exchanged and submitted electronically. Hearings can only be conducted in English and Maltese.

During the first hearing, the Arbiter listens to the complainant's perspective, including their oral and written evidence, and conducts cross-examination. In the second hearing, the provider presents its evidence and undergoes cross-examination. Both parties may make final submissions. The entire process is typically concluded within a few weeks before the case is adjourned for a decision.

The Arbiter has the authority to grant compensation up to a maximum limit of €250,000 and any additional amounts for interest and other costs. In cases exceeding this limit, the Arbiter may provide recommendations.

Findings and awards

The Arbiter's final decisions are accessible on the Office's website, except for the complainants' pseudonymised identity. The parties to the complaint are invited to a sitting where the Arbiter delivers the decision, although they are not obliged to attend. The OAFS sends both parties a copy of the decision on its delivery day.

Either party may request the Arbiter to clarify the award or to correct any computation, clerical, typographical or similar errors within 15 days of the decision date. A clarification or correction is issued by the Arbiter within fifteen days from receipt of a party's request.

Decisions reached by the Arbiter may be subject to appeal by either party to the complaint, submitted to the Court of Appeal (Inferior Jurisdiction). Appeals must be filed within 20 days from the date of the Arbiter's decision or from when clarification or correction is issued by the Arbiter, as applicable. Details of the parties to appealed decisions are published on the Court of Justice website.

When either party does not appeal, the decision taken by the Arbiter becomes final and binding on all parties concerned.

The Arbiter may sometimes be required to issue a preliminary decision, usually at the early stage of a case hearing. Such preliminary decisions deal with legal pleas, such as when the service provider alleges that the Arbiter does not have jurisdiction to hear the case.

The Arbiter delivered 85 decisions concerning 86 cases in the reporting year (two cases were delivered collectively as both concerned issues that were intrinsically similar). This includes 13 preliminary decisions or clarifications.

Of the 72 final decisions, eight complaints were upheld, 22 were partially upheld, and 42 were rejected. Almost an equal number of decisions were rendered in English and Maltese, with 37 decisions issued in English and 35 in Maltese.

Only 6 decisions were appealed, with the remaining 66 cases becoming binding on the parties and res judicata.

The average duration of cases

The establishment of the OAFS aimed to provide consumers of financial services with a platform for expedited case resolution, in line with the objectives of the ADR Directive and the Act.

While some cases can be resolved swiftly, complex cases necessitate thorough research and careful consideration before a final decision can be reached and published.

A few cases required a longer period to convene hearings, primarily due to the parties submitting extensive supporting documentation that necessitated considerable review time. Consequently, the issuance of a decision in such cases took longer compared to other cases, highlighting the challenge of balancing the Arbiter's desire for prompt decisions with the need for comprehensive details in the final decision.

When evaluating the timeline for decisions in accordance with the ADR Directive, the average number of days from the completion of the case file to the issuance of a decision was 170 days for banking-related complaints and 134 days for insurance-related complaints.

In the year under review, of the 26 decisions relating to investments, 11 related to private retirement schemes. These cases prove particularly complex in nature, where the merits and the voluminous information that is submitted at review stage take quite some time to review. Such complaints took an average of 264 days for the final decision to be issued, which is an improvement compared to that noted the previous year for such a segment of complaints. The remaining 15 investment-related complaints took an average of 276 days.

Every effort will be made to shorten the duration between the finalisation of the hearing(s) and the date of decision.

Highlights of Decisions Delivered by the Arbiter

Arbiter's decisions online

Our internet portal offers complete access to the Arbiter's decisions, allowing users to search through over 600 available decisions. Users have the flexibility to narrow their search utilising various filters such as the name of the financial services provider, decision language, decision year, decision date, sector, decision outcome, and whether an appeal has been made.

In the published version of the decision, the complainants' names are excluded and replaced with unrelated alphabetical letters.

The Arbiter's decisions database is periodically updated with relevant case reference numbers of appeals made to the Court of Appeal (Civil Inferior). Users can further refine their search based on appealed or non-appealed decisions.

The objective of the database of decisions is to serve as a comprehensive research tool for academia, the financial services industry, consumers, and other stakeholders contributing to the expanding body of retail financial services jurisprudence in Malta.

A selection of case summaries

The OAFS is required by the Act to publish a summary of the decisions made by the Arbiter. In the year under review, the Arbiter delivered 72 final decisions.

This section presents highlights of 30 decisions about banking, insurance, investments, and private pensions. The summaries aim to outline the main aspects and observations made by the Arbiter in his decisions. If the appeal judgement is published by the time this annual report is being prepared, the case summary will also reference the judgment's outcome.

For the definitions of acronyms and abbreviations used in this report, please refer to page 6.

BANKING & PAYMENT SERVICES CASES

Reasons for the closing of a bank account (ASF 155/2021)

COMPLAINT REJECTED

Good industry practice; consumer protection; due diligence; possible effects of account closure; the reasons behind the bank's decision; consumer's rights and obligations.

The complainant held an account with the provider, a bank, for around five years. In 2022, the bank formally informed him that it would close his deposit account, but not his loan account. In his complaint, the complainant stated that:

a) He had engaged in protracted correspondence with the bank to elicit the actual reasons behind such a decision, which was expected to cause him detriment, inconvenience and prejudice. In its communication, the bank advised that its decision was based on considerations resulting from periodic reviews of the bank's business and risk appetites.

b) In addition to being an arbitrary, unjust and discriminatory decision in his regard, he claimed that when he had held the account with the bank, there were no issues with how the account was operated. He had always been diligent in his obligations and had respected the bank's requirements.

In its reply, the provider referred to the explanation given by the bank's legal representative, which confirmed that the risk posed by the complainant was not aligned with that desired by the bank. It also held the view that the complainant was using his personal bank account to deposit funds belonging to his business, apart from the fact that the complainant had failed to provide information to the bank on time.

In his decision, the Arbiter noted the following:

1) When considering a case, due regard must be given not only to the law but also to other instruments that govern a provider's conduct, such as good industry practice, which the law does not define.

2) In several foreign jurisdictions, banks implemented self-regulatory initiatives (such as codes of banking conduct) that outline good practices with which they agree to abide when dealing with their customers. The basic premise of such codes is that a professional relationship between a bank and a customer should uphold the latter's best interest with integrity and professionalism. Such codes provide a framework of additional and complementary principles to existing legislation, further ensuring that consumers are treated fairly and professionally at all times.

3) An account with a bank goes beyond merely depositing excess funds but is an instrument through which an account holder may spend and receive funds. The decision to close a payment account should therefore be the last resort that a bank should take as the effect of such a decision is likely to have repercussions on the accountholder.

4) The accountholder should therefore be given all reasonable opportunities to get in line with the bank's requests and to address any shortcomings if these are not in conformity with the law and any contractual obligations that bind the parties.

5) This is a fair, equitable and reasonable approach, particularly if one were to consider that the accountholder is rarely in a position to negotiate any terms of service with the bank, apart from the expertise that the latter enjoys and which often leads to an imbalance in the negotiation ability of a consumer.

6) There should also be an acceptable margin of tolerance by the regulator for any minor shortcomings committed by the consumer, as long as these do not cast serious doubt on transactions that may raise suspicions of money laundering or financing of terrorism. The due diligence process should undoubtedly address the obligations arising from the law but be proportionate to the client's particular circumstances.

7) The bank's terms and conditions gave the bank the right to close an account 'for a valid reason'. Although the evidence provided by the bank, in this case, was scarce, a bank official had testified that the complainant had deposited funds from his business into his personal account and had also failed to provide the bank with documentation within the time requested by the bank.

8) The bank appeared aware of several business transactions deposited into the complainant's account. The bank did not reject these transactions and was aware that all VAT receipts and invoices were presented for each transaction. In such a situation, the bank could have either refused the deposits or alerted the complainant to its standards and procedures, in addition to inviting him to take the necessary action for the situation not to recur. However, as the bank did not reject the transactions, there was no valid reason to support the closure of an account.

9) The complainant was requested to provide

important information supporting the bank's requirement to establish its account holders' source of funds/wealth. Despite various reminders, such documents were presented to the bank only after the account's closure. Indeed, these were presented during the case's mediation stage. The complainant took more than ten months to submit such necessary documentation to the bank, which was unreasonable, given that such information was already in the complainant's possession.

On such a basis, the bank had a valid reason to close the account, and the Arbiter rejected the complaint. The Arbiter, however, recommended that the bank reconsider its position and offer the complainant the opportunity to re-open the personal account and open a business account, as long as the bank's requirements were met in full and on time. Such a recommendation was, however, not binding on the bank.

The decision was not appealed.

Processing of payments to a suspected scam (ASF 119/2021)

COMPLAINT REJECTED

Jurisdiction; definition and application of the term 'eligible consumer'; the juridical relationship between a customer and a service provider; unregulated investment activities; fraudulent investment online platform.

The complainant claimed he had been approached by representatives of a firm purportedly offering online investment trading. The online platform did not contain any information about its owner/operator, except that multiple jurisdictions were mentioned regarding its location. In his complaint, he further stated that:

a) The online platform contained misleading information about the merchant being a professional broker qualified to trade with regulated financial tools. The persons communicating with the complainant impersonated themselves as qualified financial brokers with the relevant skills and certifications to provide financial advice.

b) Between April and August 2019, acting in good faith and relying on the information and statements on the same platform, he made various payments in favour of the merchant/website amounting to € 174,989.

c) Based on the information disclosed to him, all transactions were processed by the service provider in its capacity as an acquiring payment institution providing payment services. The non-fulfilment of major and substantial regulatory obligations by the service provider led to the processing of payments in breach of applicable laws and the eventual loss of his money. Had the service provider diligently fulfilled all major regulatory obligations, the payments in question would not have been processed and hence not credited to the merchant's account.

Thus, he requested compensation from the service provider amounting to €174,989 being the sum remitted to the online platform.

The service provider rebutted all claims the complainant made as unfounded in fact and in law. It explained that:

a) The complainant was not an 'eligible customer' in terms of the Act, and there was no direct relationship between itself and the complainant.

b) Based on the definition of article 2 in the Act, the complainant was never its client and never sought the provision of a financial service from the service provider. Neither did it offer to provide a financial service to the complainant.

c) According to the complaint, it was evident that it neither had a contractual relationship with the complainant nor with the merchant referred to therein, which it had never onboarded as a client.

d) It was being targeted because the complainant could not retrieve the monies from the rightful defendant. The service provider contended that it should not answer for the wrongs of others.

Based on the submissions made by the provider, the Arbiter sought first to determine whether he had the competence to look into the complaint. In his decision, he noted that:

1) The Act dictates whether the Arbiter enjoys jurisdiction in a particular case.

2) The Arbiter can only deal with complaints within his competence. To be eligible to file a complaint, a customer must be a consumer of a financial service, to whom the financial services provider has offered a financial service, or who has sought the provision of a financial service from a financial services provider.

3) The Arbiter will determine whether a complaint falls within his competence upon receipt of the complaint. If the complaint does not fall within the Arbiter's competence, he will dismiss the complaint. If the complaint does fall within the Arbiter's competence, he will investigate the complaint and decide on its merits.

4) In his complaint form, the complainant stated that in 2017, he was approached by representatives of a firm acting through an internet platform. However, the complainant declared he had made substantial payments to the firm/internet platform using his bank card and regular wire transfers. To him, that platform conducted all kinds of investments.

5) It also resulted that the complainant was not even cognisant of the provider's existence, let alone having any contractual relationship with it.

On such basis, it was evident that there was no juridical relationship between the service provider and the complainant, apart from the fact that there was no provision of a financial service to the complainant by the provider.

Accordingly, the complainant could not be deemed an 'eligible customer' under article 2 of the Act.

The complaint was rejected, and the decision was not appealed.

Payment to an alleged investment broker (ASF 053/2021)

COMPLAINT REJECTED

Competence; jurisdiction; relationship with the service provider; eligible customer.

The complainant claimed to have been a victim of fraud by an online broker allegedly holding an account with the service provider. She claimed that:

a) In June 2020, she created an account with an online broker and provided all the required verification documents. €300 and €1700 were deposited with the broker in June 2020 and August 2020, respectively, in favour of an investment service provider. Whilst doing such transactions, she was guided by the broker with whom she also communicated regularly. After a month, the said broker severed all communications with her, and she could not retrieve her money.

b) She informed the provider, who urged her to seek recourse against the online broker. Her claim with the service provider for a refund sent to the online broker was rejected, and she was told that her request was unfounded at law.

In its reply, the provider dismissed the claims raised by the complainant. It claimed that it was not responsible for the complainant's negligence. It also emphasised that it had no obligation to reimburse the complainant for acts or omissions carried out by third parties and denied all allegations presented by the same complainant.

During the evidence-gathering stage, the complainant confirmed that a broker who claimed he was representing the online broker had given her an IBAN issued by the provider. The online broker requested her to send funds to a third company with purported links to the broker, using that IBAN. She said that she needed to find out who the third company was. She also confirmed that she was not a customer of the financial services provider. The provider claimed that although the third company was their client, it had no relationship with either the broker or the complainant.

Given the information provided during this stage, the Arbiter was required to examine his competence in terms of the Act. This was because the complainant confirmed that she had no relationship with the provider but that any relationship arose when the broker asked her to deposit money to be sent to the provider in the account of the third company.

The Arbiter could only investigate complaints filed by customers who have a direct relationship with a financial services provider. A customer is considered eligible if they have purchased a financial service from the provider, been offered a financial service by the provider, or sought to buy a financial service from the provider.

Based on the complainant's statement and the service provider's declarations, which were not contested, the Arbiter determined that he lacked the competence to deal with this complaint. This was on the basis that the complainant was not 'a customer who is a consumer' of the provider, neither had the provider 'offered to provide a financial service' to the complainant, nor that the complainant 'has sought the provision of a financial service from the provider for the purposes of the Act'.

Accordingly, the complainant could not be deemed an 'eligible customer' in terms of article 2 of the Act. The complaint was thus rejected, and the decision was not appealed.

Request for release of funds held with a bank in administration (ASF 114/2021)

COMPLAINT REJECTED

Bank administration; payment to creditors; scheme of distribution; the role of the controller; competence of the Arbiter.

The complainant submitted that he was a company director that held funds in an account with a bank under administration. He explained that the funds were 'players funds' which the company had collected when it operated a gaming licence. At the start of 2021, it started the process of relinquishing its licence with the gaming authorities, which involved the return of funds to the players. He further claimed that, for over two years, he had been constantly contacting the financial regulator and the administrator/controller to release the funds which belonged to the players, but he had not been successful.

The reply from the provider was submitted by its bank's controller appointed by the financial regulator. The controller confirmed that:

a) The complainant company had a balance with the bank.

b) However, the latter was bound to follow the legal provisions of Chapter 383 of the Laws of Malta (Controlled Companies (Procedure for Liquidation) Act) for the liquidation of its assets in order to release all deposits as outlined in the same law.

c) The process to pay creditors had to be carried out in accordance with a scheme of distribution which was still being drawn up. Payment to creditors was only possible following the publication of a report drawn up by the controller and a process of appeals to a Board of Appeal constituted in terms of the same law.

d) Thus, the Arbiter for Financial Services was not competent to investigate the complaint.

In his decision, the Arbiter observed that:

1) The bank was under the administration and control of a controller and thus, Chapter 383 of the Laws of Malta applied in such circumstances.

2) That law provided for a detailed procedure to be followed by the controller before distributing funds to bona fide bank creditors. Before that stage, the controller was required to draw up a detailed report and a scheme of distribution, which was then required to be submitted to the finance minister.

3) Once such a report was finalised and published, anyone aggrieved by its contents had a right to appeal to a Board of Appeal set up under the same law, and the law also established a procedure for doing so.

4) The controller was preparing the report as required in terms of the Act.

As the Act established the procedure of appeal concerning the controller's role, the Arbiter did not have the competence to look into the complaint.

The complaint was thus rejected, and the decision was not appealed.

Delay in the execution of a payment transfer (ASF 143/2020)

COMPLAINT REJECTED

Anti-money laundering and terrorist financing obligations; reputational damage; request to expunge 'without prejudice' documents; consumer's right to lodge a complaint and seek redress; payment execution time frames; deprivation of funds; verification of transactions; insufficient evidence.

The complaint against the provider concerned the late execution of a payment transaction. The complainant, a micro-enterprise, claimed that the provider had failed to promptly execute a transfer of €50,000 from its account with the provider to a named third party within a reasonable time limit. The complainant further explained that:

a) For most of the bank transfers it had instructed from its account, the service provider – on the pretext of anti-money laundering obligations – had requested supporting documents, but without a real legal basis for such requests. Although it had always complied with the provider's requests, the provider had failed to process the transfers within the legal periods established by law.

b) Although this had happened several times, it had finally decided to submit a formal complaint concerning the last order for a SEPA transfer of €50,000 made on 30 September 2020.

c) It claimed that although it provided the service provider with the documentation on order date, the service provider took five days to request further documentation. Overall, the provider took 16 days – between the transaction order and execution date – to evaluate less than five documents to support a transaction, with constant reminders being sent to the provider given the urgency of the payment.

d) It claimed that this delay infringed several EU directives, such as those on payment systems and anti-money laundering.

The complainant requested compensation and legal interest for late payments, apart from non-pecuniary costs for reputational damage.

In its reply, the service provider essentially submitted the following:

a) The claim should be considered as frivolous and vexatious. Additionally, correspondence sent by both parties was explicitly sent on a 'without prejudice' basis and, accordingly, such correspondence should be inadmissible before a court or tribunal.

b) As to merits, the complainant had been notified through electronic messages to his back office that the documents provided to justify the transactions were insufficient and that it required additional justification for the transaction. In addition, the service provider had kept the client informed to the extent allowable at law at all times during the processing of its order, whilst in the meantime remaining vigilant and compliant with all its anti-money laundering obligations.

c) It was justified at law in delaying, including non-executing, a payment transaction if additional information was required especially if money laundering or terrorist financing was suspected.

d) It claimed that all time frames were respected to the fullest extent provided at law, and that all allegations brought forward by the complainant were incorrect and unjustified.

Before addressing the merits of the case, the Arbiter first dealt with two legal pleas raised by the provider, as follows:

1) The Arbiter rejected the service provider's plea that the complaint was frivolous and vexatious. The complainant had a legitimate right to request an examination of the service provider's conduct in connection with the execution of the transaction being the subject of this case, and to seek redress if an injustice or an unfair practice had occurred.

2) The Arbiter also rejected the request made by the provider to have all documents marked 'without prejudice' removed from the complaint file. He observed that the Maltese courts had reiterated that correspondence containing information about negotiations between parties is privileged and should not be included in a judicial process, as it discourages amicable settlement of disputes. What is agreed between parties is the law between them, and the state values compromise as a way to bring disputes to a finality. However, the court had also acknowledged that the rule against 'without prejudice' documents can have limitations. Documents that do not impinge on the negotiation may be allowed and considered by the court. The court expunged documents related to negotiations but allowed others that were not, based on the specific circumstances of each case.

3) In examining the correspondence exchanged between the parties and marked 'without prejudice', the Arbiter noted that this correspondence did not form part of any attempt to negotiate or reach a compromise. Such correspondence was just a repetition of what the parties have submitted in this case which did not add anything to the arguments that the Arbiter was being asked to consider.

The Arbiter then investigated whether the service provider's time to execute the transaction was reasonable and whether the service provider's actions resulted in any losses for the complainant. In his decision, the Arbiter observed the following:

1) No sufficient evidence emerged that the disputed transaction was an ordinary one, reflecting the complainant's customary activity. During proceedings, the complainant did not elaborate on the nature of the disputed transaction, did not produce important documentary evidence, and failed to explain if and how the transaction fitted with or reflected its regular activity and, thus, whether the disputed transaction was typical of the purpose for which the account with the provider was used.

2) The service provider had every right to consider its legal obligations to assess any unusual transaction and take the necessary time to ensure that this was bona fide in terms of law. The complainant did not prove that the time taken by the service provider - while considering any potential contrast with anti-money laundering laws and regulations - caused any real damage to the complainant.

3) Neither had the complainant provided evidence that it had actually suffered damages from the alleged deprivation of the use of its own money during the period when the payment order was under consideration by the service provider until executed.

The Arbiter thus rejected the complaint, and the decision was not appealed.

Early termination of a fixed-term account (ASF 082/2021)

COMPLAINT REJECTED

Maturity date; 'exceptional circumstances'; discretion; application of terms and conditions; interpretation of terminology; purchase of property; exercise of one's choice.

The complainant held three fixed deposit accounts with the bank, maturing at different future dates. She had requested the bank to terminate the three fixed deposit

accounts to purchase the property, but the bank refused. In her complaint, the complainant claimed that:

a) When seeking a loan from another bank, which happened to be her employer, she was informed that a down payment of 20% on the property's purchase price was required, rather than 10%.

b) The bank refused to break the term of the accounts, contending that it could only favourably consider such a request in 'exceptional circumstances', such as for medical cases. She claimed that the term 'exceptional circumstances' in the terms and conditions were too wide as everyone's circumstances are unique.

She requested the Arbiter to order the bank to release the fixed deposits prematurely and amend its terms and conditions to be more specific regarding the conditions in which the bank could allow the early release of such deposits.

The bank, in its reply, contended that:

a) The relative terms and conditions for the term accounts precluded access to the account holder of the allotted funds until maturity. The account's duration of the agreed term was the account holder's choice.

b) Moreover, the applicable terms and conditions clearly stated that early termination of term accounts was allowed only in exceptional circumstances and at the bank's discretion. The bank did not consider the property purchase to be an exceptional circumstance.

c) In addition, the bank's discretion was not exercised lightly as it had carefully considered the request and communicated with the complainant. It provided her with a detailed reply explaining the reasons for its decision to enable her to consider her options accordingly.

In his deliberations, the Arbiter observed the following:

1) The nature of a fixed-term account is unlike that of a savings account. Through a term account, banks can manage funds in a way that would render a better return overall such as investing them in higher-yielding instruments or providing a loan to other customers at a rate higher than that paid on such accounts.

2) That enabled banks to earn net interest income. The incentive for a consumer to tie his funds for a longer period and temporarily be disallowed access to such funds until the account's maturity was the interest rate, which is higher compared to a savings account.

3) Only at the bank's discretion can an accountholder withdraw his funds, in full or in part, but that also depended on the respective account's terms and conditions. It was important to write the terms in a clear manner so that consumers can understand them easily. Additionally, explaining the terms to consumers before they open the account was necessary. It was also crucial for the terms and conditions to be fair and comply with consumer laws.

4) The complaint was not about the bank's conduct at the time the account was opened or the application of terminology during discussions.

5) The terms and conditions of this account gave the bank discretion on whether to allow early withdrawal of capital from a term account. But the bank's discretion could only be exercised in exceptional circumstances. According to the same terms, it was the same bank that determined such circumstances.

6) Although the complaint held the view that the purchase of property was an exceptional circumstance, such an argument was insufficient for the bank to justify the early termination of a term account, even if the terms and conditions allowed the bank discretion in this regard. The complainant failed to specifically explain whether the purchase of such property was linked to a particular circumstance. When the bank asked her for such an explanation, she claimed that she was under no obligation to explain why she wanted to purchase such property. The complainant did not disclose any exceptional reason for wanting to acquire the property – the purchase of the property was not an exceptional circumstance but the exercise of one's choice.

7) The bank was not arbitrary during its dealings with its client. Moreover, the complainant was employed with another bank and was in a position to understand the nature of such fixed deposit accounts.

The complaint was rejected, and the decision was not appealed.

Refund to a victim of a suspected smishing attempt (ASF 014/2022)

COMPLAINT UPHELD

Online fraud; scam; reasonable person; authorised / unauthorised transactions; refund; extent of negligence; application of relevant EU directive.

On 10 December 2021, the complainant paid USD73.97 using her bank card to purchase two hoodies. This was her first online purchase. Shortly after payment, she realised that the seller did not deliver to Europe. She wrote to the seller enquiring if arrangements could be done to deliver to Malta or refund her the amount paid. On 5 January

2022, she received a message on her mobile informing her that a packet had been withheld pending payment of €2.59 to the local postal company. The message, with the livery of the local postal company, included a reference that her parcel would be home-delivered once the payment was affected.

As soon as she made the payment of €2.59, she received three messages from her bank that claimed that two payments totalling €5000 had been debited to her account. A subsequent attempt had failed.

When she raised the matter with the bank, she was told that she would only be compensated for 75% of the funds that had been withdrawn from her account, as the bank contended that it had sent her a text message instructing her to refrain from divulging information to third parties. She had not seen such a message and as she was waiting for a parcel to arrive, and the message included the logo of the local parcel company, she had proceeded to effect payment for the parcel's delivery.

She requested the Arbiter for a full refund of the €5000 withdrawn from her account.

In its reply, the bank largely confirmed the complainant's timeline of events, while noting that:

a) The complainant had received three messages, the first two relating to purchases amounting to €5000 and an unsuccessful attempt to withdraw €2000 from her bank account. Without admitting liability, the bank had reimbursed the complainant the sum of €3750.

b) However, it was not true that the complainant did not receive its warning message as part of such text message was reproduced by the complaint herself in her submissions. The text message read: 'Your XXX card certification code is personal and should not be disclosed to anyone or inserted on any website or other app. The code is 374220'.

c) What the complaint had failed to mention was that the bank had advised and directed its cardholders to register their card on the appropriate bank application/ website, and this to strengthen the bank's security for its cardholders. It was in this context that the bank had sent the complainant that text message in which the bank directed its clients not to divulge the number contained therein or input it on any website unless it belonged to the bank.

d) According to the bank's records, not only had the complainant ignored the bank's advice but instead she had followed instructions in a text message emanating from a foreign number and divulged the code on another site. When she inputted the code on such other website, a reference to an Asian website came up, as was evident from the submissions made by the complainant.

The bank claimed the complainant's disregard for its warnings constituted 'gross negligence' and it was on this basis that it rejected the complainant's claim for a refund.

In his deliberations, the Arbiter observed that this was yet another case of international fraud which not only occurred in Malta but also in other jurisdictions. He additionally observed the following:

1) The law obliges the Arbiter to consider a wide spectrum of laws and rules that may apply to the circumstances of a case. In this case, the European Directive on payment services (PSD2) would be applicable. This Directive was transposed into Central Bank of Malta Directive 1 (CBM Directive).

2) According to article 50 of the CBM Directive, the consumer would have to be liable for any losses on his card if he acted fraudulently, with intention and in gross negligence. In such a situation, the customer would not be entitled to a refund. But in the case of withdrawal, if the cardholder were to misplace his card or in the event of its misappropriation, only the first €50 would be withheld, with the remaining amount being reimbursed. This however would not apply if the loss, theft, or misappropriation of a payment instrument was not detectable to the payer before a payment, except where the payer has acted fraudulently.

3) The Arbiter was morally convinced, even by looking at the events as they unfolded, that the complainant did not act fraudulently but rather it was she who was defrauded. Neither had she the intention not to carry out her obligations under the card's T&C, nor was she 'grossly negligent'.

4) Gross negligence is a serious legal term that means a person acted with reckless disregard for the safety of others. In the context of scams, a person would have given their personal information to a scammer when knowing it was a scam. Banks may argue that their customers were grossly negligent if they gave their personal information to a scammer, but this is a high bar to clear. Banks must consider the environment created by the fraudster and the sophistication of the scam before they can argue that a customer was grossly negligent.

5) In this case, the complainant genuinely thought her parcel had arrived. The fraudster used all tactics to convince the complainant that the payment request was credible. She had made an e-commerce transaction for the first time and paid for the goods as requested. Once she learned that the seller did not despatch to Europe,

she asked the seller for more information or to provide a refund, and the seller did not reply. Once she received an sms asking to pay an additional fee for postage, she did what a reasonable person would have done in such circumstances, and proceeded to pay.

6) In this case, the payment effected by the complainant was related to her online order and was not an ill-intended outright payment to a fraudster.

In this case, the transactions effected through her card had not been authorised by her, and she only authorised payment of €2.59. As she did not authorise the subsequent transactions, she should be refunded the sum of €5000 in full, less any amounts the bank had already reimbursed.

The decision was not appealed.

Closure of a bank account (ASF 016/2022)

COMPLAINT UPHELD

Bank account termination; good business practice; terms and conditions; valid reasons; engaging with accountholders; changes to the bank's practices.

The complainant held a savings and a current account with a bank, which she had always operated diligently. However, the bank terminated her accounts without a valid reason. In her complaint, she claimed that:

a) During a routine review of accounts, the bank requested her to provide information and documentation. After addressing the bank's requests, she had heard nothing until she was informed that her accounts were to be terminated.

b) She claimed that the bank's decision was unjust as there were no reasons for the bank to close her accounts.

c) She further claimed that the bank had failed to provide her with a valid reason as to why she had failed the bank's review. She claimed that when she had opened her accounts with the bank, a due diligence test had been conducted and since then, nothing had changed to justify the bank's account termination.

d) She thus requested the Arbiter to order the bank to re-open her accounts as their closure was unwarranted.

In its reply, the bank referred to its email to the complainant in response to her request for the reasons that determined the bank's decision. It said that the complainant was no longer aligned to the bank's current risk appetite and thus its decision was irreversible.

In his decision, the Arbiter observed the following:

1) Although the bank grants itself powers to close an account at its discretion and in terms of the applicable terms and conditions binding it with the complainant, it was also acknowledged that such powers were conditional and there had to be a valid reason for the bank's actions.

2) Even though the bank produced some witnesses, none explained as to how the complainant did no longer fit within the bank's risk appetite. Although the bank provided documentation relating to the account, the bank did not identify any deficiencies in the manner the account was operated.

3) A mere simple declaration by the bank was not sufficient to convince the Arbiter that the bank did have a valid reason to terminate its banking relationship with the complainant. The complainant validly argued that when she had opened her account, the bank onboarded her based on the due diligence that it had carried out. There were no changes that affected her status since then.

4) Good business practice that is adopted in many jurisdictions requires the bank to open a dialogue with the consumer if there are any shortcomings which require proper and timely action on the latter's part. Closing an account is a draconian measure which should always be taken as a last resort and subject to the bank's anti-money laundering and anti-terrorist financing obligations. Here, too, the bank had failed as it never engaged with the complainant as to the manner the accounts were being operated.

On this basis, the Arbiter determined that the bank had failed to provide sufficient reasons in support of its decision to terminate the complainant's accounts, an obligation it was required to follow in terms of its general terms and conditions.

The Arbiter thus ordered the bank to reinstate the complainant to her original position before the account closure and also ordered the bank to change its current practice such that, in similar cases, it dialogues with accountholders prior to taking similar action.

The decision was not appealed.

Disagreement over loan amount repayment (ASF 089/2021)

COMPLAINT REJECTED

Loan repayment amount; moratoria; misunderstanding; access to information.

The complainant alleged that the bank gave her incorrect information about the amount of money she owed on her loan upon termination. She explained that:

a) In March 2014, the complainant was given a loan to purchase her property. In November 2019, she decided to sell the house and asked the bank for the outstanding loan amount still due on balance. She was told that the amount due was in the region of €98,000. She signed the initial paperwork to sell her house a few days after visiting the bank.

b) In March 2020, she asked the bank for a moratorium on her interest repayments as she had financial difficulty. The bank acceded to this request and gave her till September 2020 to regularise herself. As a result of COVID, the promise of sale was extended to the end of October 2020. At that point, she was told that the amount due by her to the bank was €97,217, including a personal loan. The promise of sale deed was extended again up to the end of December 2020. She enquired with the bank if extending the moratorium would result in additional fees, which she would have passed on to the buyer of her house. She was told, however, that no further charges would have been incurred.

c) The final contract was signed on 14 April 2021, and two days before the actual signing, she asked the bank for the balance due. She was told that the amount due would have been €95,818.52.

d) On the day of the contract, she was informed that the amount due was €100,613.31. She disputed the amount, stating that two days prior, she had been told the amount due was €95,000. She argued that the additional €4,600 the bank claimed could not be correct.

e) When she enquired with the bank, the manager told her that the difference was attributed to the moratorium. The complainant claimed that the bank had given her erroneous information throughout.

f) She complained that the bank failed to provide her with correct information and that she was also given incomplete information when she asked about charges. She was requesting the bank to pay her €4600 in compensation.

The provider rejected the complainant's statements and claimed that there were no errors when its staff provided to her information about the loan balances. It also claimed that:

a) Officials at the branch had explained how the moratorium works, and this on at least two occasions.

b) In two separate letters in which the bank had confirmed its acceptance for a moratorium on her loan, the adjusted monthly payment amounts after taking account of the moratoria had been clearly explained. In those letters, the bank had also informed her that no charges were being levied.

c) The bank launched a specific page on COVID-19-related issues on its website. The application form for moratoria was available, as was an explanation of how the moratorium worked.

d) All transactions effected by the complainant, including those related to the moratoria, were visible on her Internet banking services. During the moratoria, the complainant frequently accessed her balance through on the said services. The bank also provided a list of all logins.

e) The complainant was conversant with moratoria as the bank had already granted her such a facility in August 2017. During the moratoria, the bank did not charge any interest.

f) The bank also provided a detailed breakdown of capital and interest balances due by the complainant on her loan accounts, which amounted to €100,108.09. The difference of €4600, which she claimed was the amount that her branch had not disclosed to her, was mainly attributed to interest on her loan accounts, most of which charged at particular intervals.

In his deliberations, the Arbiter observed the following:

1) The complainant visited her branch often to seek information about her balances due to her inability to read and interpret the information on the bank's Internet banking service. The bank, however, provided ample evidence to suggest that the complainant had regularly made use of such service, which provided all transactions and balances due to the bank. There was nothing complex in that – it was simply adding up the balances on the account.

2) The documentation that was presented by the bank correctly specified the two amounts, one that was mentioned by the complainant (€95,000) and the amount that the bank claimed was due on all loan balances (€100,108.09). The former amount covered the Home Loan Account, the Personal Loan account and the second home loan account, and the latter amount includes balances on all the accounts. The difference between the aforementioned two amounts is the interest on the home loan, personal loan, balance on the flexible loan account and interest on the whole duration of the moratorium (home and personal loan). This amounted to €4,289.57.

3) The discordant figures communicated to her just two days before the signing of the final contract could have been attributed to the fact that what the complainant was asking the official at the branch to provide were figures to close all her accounts. The bank officials may not have understood this request correctly, giving only information on loan account balances, in which case the information relayed was still correct.

4) There was no evidence suggesting that bank staff failed to provide her with information each time this was requested.

5) As to her claim that she could have asked the buyer to pay a further €4600 with the final consideration had she been told that this amount was also due to the bank, the Arbiter observed that such affirmation was hypothetical as she was not in a position to extend the contract date even further; apart from the fact that the final sale figure was already on the promise of sale deed. In addition, the amounts that she had outstanding with her bank were of no concern or relevance to the buyer.

At no time did the complainant contest the figures that the bank presented, so much so that she refrained from asking any questions to the bank during the hearings. Moreover, there was no evidence that the amount claimed by the bank was wrong or that it asked for more payment than what was due.

The complaint was not upheld, and the decision was not appealed.

Objection to the conversion of an overdraft and credit card into a single loan (ASF 125/2021)

COMPLAINT REJECTED

Overdraft facility; credit card; loan facility; waiver of charges; financial distress; repayment programme; restructuring.

The complainant claimed that, for over five years, he had been availing himself of an overdraft facility (with a limit of €10,000) and a credit card (with a limit of €5000). However, the bank wanted to convert these two accounts into a loan facility, but the bank's representatives refused to waive the applicable charges. He explained that:

a) His relationship with the bank started in 2014 when bank representatives visited his retail outlet and offered him an overdraft and a credit card.

b) In 2017, he closed his outlet and switched to selling his products online, an activity which he continues to pursue. He, however, had parallel employment in the tourism sector. As a result of the pandemic, his revenue had declined substantially, and he was on a wage supplement. The bank had also extended his facilities.

c) Although he had agreed to the bank's proposal to convert the two accounts into a loan facility, he had requested that the bank waive any charges and additional interest. He had started effecting some deposits until he was informed that his request was declined. He claimed to have always honoured his obligation, and the bank was not providing a valid reason for rejecting his request. He requested the bank to re-establish his two facilities and allow him to terminate them at his discretion.

In its reply, the bank confirmed that it had offered the complainant a business overdraft and a card account but, given that the nature of his work had changed, it could no longer offer such services. It further explained that:

a) The complainant had been experiencing financial distress impacting his ability to keep up with the repayment programme. Indeed, at one stage, the limits on the overdraft were exhausted.

b) The measure the bank wanted to implement, that is, to convert both accounts into a loan facility, was one it was empowered to take in terms of its agreement with the complainant in a default scenario. Over several months, the bank attempted to reach an amicable agreement with the complainant for a workable repayment programme.

c) The complainant failed to sign the agreement, even if he intended to. The complainant then asked the bank to waive any additional interest and charges. However, the bank rejected such request; and this in accordance with the conditions agreed between the parties when the two accounts were opened.

In his deliberations, the Arbiter observed the following:

1) The bank was willing to re-open discussions with the complainant for a repayment programme that meets his requirements but could not accede to his request for the two accounts to be reinstated or to waive any additional interest or charges.

2) The bank, through several witnesses, explained that the complainant's financial situation was in distress and could not meet with his repayment programme. It also noted that the complainant exhausted limits on both accounts and had commitments with other banks. The small amounts he used to deposit in his accounts were insufficient, and the complainant himself was withdrawing them for personal needs.

3) The facility they had recommended to him was the longest possible (seven years), with fewer charges than the original overdraft. His delay in accepting and signing the agreement caused him to incur interest of €1300 on the card and a further €1700 on the loan.

4) The bank could have taken legal action to recover the debts but preferred an amicable solution, especially given that a close relative of the complainant required urgent medical care.

5) The complainant did not contest any of the statements made by the bank officials. Based on the presented evidence, it appeared that the bank's approach towards the complainant was somewhat accommodating, given the particular circumstances of his case. The restructuring that was proposed to him was not capricious in nature, but rather a workable and proportionate solution which was aimed towards reducing the financial burden on the complainant and not allowing further problems to pile up had legal action been taken.

The evidence did not indicate that the bank's conduct was wrong or unprofessional in the complainant's regard. Although the complaint was rejected, the Arbiter still recommended the bank assess which charges could be further reduced if this could assist with hastening the acceptance of the restructuring programme.

The decision was not appealed.

INSURANCE CASES

Payment of financial penalty on policy surrender (ASF 018/2021)

COMPLAINT REJECTED

Policy terms and conditions; market practice; early policy surrender; alternative options.

The complainant held a 25-year savings plan with the provider concerned. Though this was due to mature in 2033, he had decided to surrender it after 13 years. He was aggrieved at the fact that the insurer wanted to impose a financial penalty of €914.47 upon surrender.

The complainant insisted, when purchasing the policy, that the insurer's representative had explicitly informed him that no such penalty would apply after the policy had been in force beyond ten years. This was even borne out by the illustration given to him by the said representative.

Therefore, the complainant requested the Arbiter to order the bank to withdraw its financial penalty and allow him to surrender his policy free of charge.

On its part, the insurer contended that:

a) While considering the purchase of his plan, the complainant had been provided with a copy of the policy terms and conditions, which provided a clear and complete picture of the product. These expressly stated that a surrender penalty would apply if the policy were terminated before its maturity date.

b) This concept was supported in the notes to the illustration, which defined the surrender value as the value of the policy account minus a surrender charge set by the company's actuary.

c) The complainant himself had also signed the illustration. This showed a marked difference between maturity and surrender values, implying that a penalty would apply if the product were terminated before its due date.

d) In another document provided to the complainant containing notes to the policy account, it was further stated that charges/deductions would apply on the surrender of a policy.

e) The payment of the surrender penalty could be circumvented if the complainant took up one of two alternative options already provided in his policy; namely,

i. A premium holiday, which could be taken for a maximum of five years; or

ii. The paid-up policy option.

In his deliberations, the Arbiter made the following observations:

1) A 'surrender charge' or 'surrender fee' is charged when a policy is cancelled by the policyholder, for reasons of his own, ahead of its maturity date.

2) The illustration document stated clearly that it was valid for 30 days from its issue date. Hence, the complainant's contention that he had decided to purchase his policy on the strength of this document was baseless since the terms it contained had limited validity.

3) Applying a surrender charge on the early termination of a policy was an established market practice and was not imposed by the insurer solely on the complainant.

4) Article 18 of the policy defined surrender value as "the value of the policy account less a surrender penalty".

5) As contended by the insurer, the complainant's policy already provided him with two alternatives that would enable him to avoid such charges: a five-year premium holiday or a paid-up option.

6) The surrender charge was a deterrent intended to dissuade policyholders from terminating their respective policies before their due date. This is because a considerable number of such withdrawals would result in needless confusion and crisis in the sector.

The Arbiter did not uphold the complaint, and the decision was not appealed.

Life insurance - A shortfall in with-profits policy maturity value (ASF 048/2021)

COMPLAINT PARTIALLY UPHELD

Complainant's reasonable and legitimate expectations; use and meaning of the terms 'estimate' and 'approximate'.

The joint complainants were aggrieved at what they perceived to be a drastic shortfall in the maturity value of their 23-year endowment with profits life policy. They highlighted that, at its purchase stage, they had been promised a maturity value of €23,749, whereas the provider was offering only €10,922.

They contended that throughout the currency of the

policy in question, they had fully respected their duty to pay the respective annual premium in full. They drew attention to the fact that their initial decision to purchase the policy was based on the maturity value which had been promised to them. Otherwise, they would have invested their funds elsewhere.

Therefore, the complainants requested the Arbiter to award them the amount of €23,749.

On its part, the provider contended that:

a) The amount requested by the complainants was entirely based on a quotation (estimate or illustration) issued before the policy purchase. The said terms had to be understood in their ordinary meaning. However, the complainants' mistaken interpretation of them implied that the quoted amount was guaranteed.

b) The quotation issued to the complainants was entirely based on the investment return available to the insurer at the time. The maturity value quoted was an estimate based on this data. Its actual attainment would depend on the performance of the underlying investment(s) during the currency of the policy.

c) The fact that the maturity value was not guaranteed emerges clearly from the separate quotations issued to the complainants, which exhibited a considerable variance between one and the other.

d) The only certain amount provided by the policy was the amount of €6,664, payable on the first death (of one of the two policyholders) while the policy was in force. In this case, this amount was explicitly qualified by the term 'guaranteed' in the policy document.

e) The separate quotations issued to the complainants clearly stated that they were for illustration purposes only and did not confer any rights. Furthermore, the quotations were backed overleaf by notes that the recipients were explicitly instructed to read. Among other things, these stated clearly that bonus rates might fluctuate and that the award of a terminal bonus depended on the investment performance while its actual award was entirely at the provider's discretion.

f) The return from the investment markets had reduced drastically during the term of the policy in question; and this as a result of the international recession. Nevertheless, the quotations issued to the complainants were equally correct, based on the financial information available at the time, proving that the insurer had acted in good faith.

g) Despite not being guaranteed, the shortfall between the quoted and the actual maturity value merely reflected the life fund's investment performance during the currency of the policy. Nevertheless, the policy had still provided a respectable investment return of 3.05% which compared favourably with other investment products available to the complainants at the policy's purchase stage.

In his deliberations, the Arbiter noted that:

1) In her testimony, one of the complainants stated that they had been initially approached by the provider's representative, who assured them that they would receive Lm10,000 (€23,749) at the end of the policy's 23-year term. Their trust in him and the insurer concerned was such that they had subsequently purchased two additional policies, and their daughter had also purchased a policy for herself.

2) The complainant insisted that they had always paid the policy premium in full despite the financial hardship which affected her family when having to survive solely on the husband's wage (as a handyman) since she was not employed. Whilst acknowledging that the policy's maturity value was an estimate, she contended that this did not signify that they would eventually receive about half the amount promised.

3) The provider's representative, who had sold the policy in question to the complainants, had submitted a sworn statement stating that he used the same sales strategy with every prospective client and that the complainants were no exception to this approach. He insisted that his sales talk explained that the quotations provided were not guaranteed but were mere indications, and this was because the investment returns might change over time. His approach would be backed up with a standard graph reflecting the policy's growth.

4) The representative further stated that he sourced the figures for his quotations from a booklet supplied by the provider. Furthermore, he intentionally never concluded a sale during the first meeting with the prospective clients and this so that they had sufficient time to think about his proposal before a second meeting, during which he would then endeavour to conclude the matter. In his view, the complainants had understood his explanation and knew what product they were purchasing.

5) The testimony given by the representative was comparatively less credible than that given by the complainants, and this for the following reasons:

- While stating that he used the same sales talk with all the prospective customers and could not recall what he had told the complainants so many years before,

his statement included two instances quoting what he had told them.

- His statement that he had provided the complainants with a standard graph was not credible, because such a graph would vary from client to client since it would have to cater for such variables as the proposer's age, the premium chosen, the term of the policy and the respective maturity value.

- This document did not contain the term 'estimated' nor any indication that the quoted maturity value was not guaranteed but could change. There was similarly no indication that the said maturity value could decrease but only that it could increase. Yet it contained the words "Tax-Free" written boldly. The steadily rising graph conveyed the image of a steadily increasing investment return till the quoted maturity value was attained. It did not include the possibility of a shortfall in the maturity value (this would have required a different graph).

- The fact that the representative sourced his quotations from a booklet provided by his principal showed that the latter was confident that the quoted maturity values could be attained.

6) The quoted maturity value was undoubtedly the selling point of the policy in question. It created a robust legitimate expectation in the complainants that they would receive the respective amount quoted. They trusted the representative, and his principal, to the extent that they subsequently purchased other policies.

7) Such legitimate expectations had to be respected. This was borne by a decision of the Appeals Court, which explicitly stated that such expectation had to be honoured in the same way as any other contractual obligation unless a specific disclaimer was made.

8) The maturity value quoted by the representative was not qualified by any disclaimer. Therefore, it had to be paid in line with the expectation created in the complainants. The latter had stated that the term 'estimate' applied to the maturity value meant 'approximate' but certainly not one-half (as the provider offered them).

In light of the foregoing, the Arbiter upheld the complaint and ordered the service provider to pay €21,000 to the complainants.

The decision was not appealed.

Life insurance - Drastic shortfall in with-profits policy maturity value (ASF 145/2021)

COMPLAINT PARTIALLY UPHELD

Maturity value; legitimate expectations; provision of quotations; information provided during the sale of policy; sales talk.

The complainants contended that the provider's representative had initially offered them a policy which would provide a substantial return on their investment. The representative had insisted that such a return would be considerably better than placing their investment in a bank.

As an example, they had been told that a daily investment of just Lm1 (€2.33) would generate a return of Lm30,101 (€70,135) after 25 years, whereas a bank investment of the same amount would yield Lm8,300 (€19,334) less.

The complainants had therefore opted to invest Lm400 (€932) annually in the said policy; in respect of which the provider's representative had indicated a return of Lm33,891 (€78,966).

The complainants contended that they felt cheated when, at the policy's maturity stage, the provider had informed them that they would be getting only €33,710, effectively less than 50% of the amount promised by the representative. They insisted that the representative had never informed them that the quoted amount was not actual but a mere estimate.

The complainants, therefore, requested the Arbiter to revise the maturity value offered by the provider. In their view, this should not be less than €63,000; that is, 80% of the amount promised to them by the representative.

On its part, the provider contended that:

a) The complainants had been supplied with sufficient information about the policy to make an informed decision.

b) The amount requested by the complainants as compensation is based on the representative's two quotations. As indicated by the respective designation, these amounts were simply estimates and illustrations.

c) The estimates initially quoted to the complainants before their policy purchase were based on the investment returns prevailing at the time. The performance of such underlying investments had deteriorated throughout the currency of the policy.

d) That the maturity value quoted to the complainants was not guaranteed was borne out by the wide variance between the two alternative projected amounts, namely, €57,414 and €78,944.

e) The shortfall between the projected and the actual maturity value was merely the reflection of the performance of the life fund and its underlying investments during the currency of the policy. Nevertheless, the investment element of the said policy had still performed well in providing a return of 4.33%; this translated into a tax-free profit of €18,036 for the complainants.

In his deliberations, the Arbiter noted that:

1) The provider was entirely bound by the actions of its duly authorised representative. This concept applied not just to any policy sale explanations but also to any documentation provided.

2) In this case, the said representative had delivered a leaflet on which he had based his sales talk to the complainants and through which he had persuaded them to purchase the policy. The format of this document and its content appeared to be specifically designed to secure the reader's trust and to persuade the latter to buy the policy.

3) It was unclear whether the said leaflet had been vetted by the provider or not. Furthermore, it is to be noted that it did not contain any disclaimers, and the maturity values mentioned were definite, without any qualifying reference about their possible volatility.

4) The leaflet projected a very positive picture and can be rightly considered the main selling point of the entire transaction. It had been backed up with a written quotation, similarly delivered by the provider's representative to the complainants, which unequivocally stated that the annual premium payment of Lm400 (€932) would yield a maturity value of Lm33,891 (€78,966).

5) It is to be noted that the line in the written quotation titled 'estimated maturity value' had been left blank. Their limited educational background led the complainants to believe that the separate maturity values written therein were not estimated but actual amounts.

6) The complainants had testified that they had based their policy purchase decision on the said leaflet and the written quotation. Their legitimate expectations were therefore based on the financial figures outlined therein.

7) In the complaint form, the complainants had specifically requested that the compensation awarded not be inferior to €63,000; this equalled 80% of the maturity value they believed they had been promised.

In light of the foregoing, the Arbiter upheld the complaint and ordered the service provider to pay the amount of €63,000 to the complainants.

The decision was not appealed.

Business interruption insurance – The extent to which COVID-19 was deemed as a notifiable disease (ASF 068/2021)

COMPLAINT REJECTED

Policy wording; endorsement; interpretation; closed list of notifiable diseases.

The complainant, a micro-enterprise, contended that the onset of COVID-19 had considerably affected its turnover between 2019 and 2020. It claimed to have suffered a £296,000 decrease in sales, equating to a reduction in profit ranging between £73,400 and £90,800.

It had therefore sought compensation under the business interruption policy it held with the insurer. However, the latter had declined the claim contending that the pandemic did not fall within the definition of a 'Notifiable Disease" integrated in the policy wording.

The complainant contended that such a stance contrasted with the fact that the UK Government had formally listed Coronavirus as a 'notifiable disease'.

The insurer contended that the policy specified a closed list of the notifiable diseases whose respective risks could be assessed and which it was prepared to cover. COVID-19 was not included in such a list since there was no underwriting intention to compensate business interruption losses resulting from a pandemic whose consequences were unknown.

In his deliberations, the Arbiter referred to the judgement delivered by the UK Supreme Court in the test case instituted by the Financial Conduct Authority against several insurers to determine whether compensation for business losses stemming from the pandemic was payable. He noted that the Court had stated that due weight had to be given to the specific policy wording.

The Arbiter further noted that:

1) When receiving the policy documentation, the complainant had been expressly advised to read it

carefully to ensure that it met its requirements and to highlight any shortfall immediately to the provider.

2) The policy definition of "notifiable disease" included a list of 34 specific diseases, but COVID-19 was not one of them.

3) The complainant had rested its case on the generic definition of a notifiable disease initially contained in the policy at the outset of the cover. It had omitted to mention that such a definition had subsequently been amended through a specific policy endorsement which restricted the cover to 34 specified diseases.

4) In the light of case law, the list of such diseases can be considered exhaustive. This meant that the insurer would compensate for the consequences of such diseases only and of no other.

5) COVID-19 was not included in this list.

6) In line with case law, the policy wording should not be interpreted through a lawyer's eyes but through the eyes of a reasonable man who would have been in the same position as the litigating parties.

7) The policy in question had been purchased by the complainant just five days after the World Health Organisation had formally announced the onset of COVID. It would therefore have been impossible for the insurer to change its policy wording abruptly to include COVID.

8) The insurer clearly did not intend to include COVID in its policy cover.

The Arbiter did not uphold the complaint, and the decision was not appealed.

Home insurance - Property damage claim (ASF 075/2021)

COMPLAINT UPHELD

Late notification; conditions precedent; utmost good faith; duty of care; fair treatment; pre-notification.

The complainant had become aware that the water level in his well had been constantly receding, even though it was the rainy season, and he had topped it up with water delivered by a bowser.

Concerned at the fact that this continued leaking would damage the foundations of his property, he had therefore prioritised the repair of the well and, compounded by the fact that he had to travel abroad on business, a compensation claim was submitted to the insurers only after the required repairs had been completed.

The providers declined the claim, contending that they had been faced with a fait accompli.

Therefore, the complainant requested the Arbiter award him the repair cost of the well, which amounted to €2,626.

On its part, the provider contended that:

a) The complainant was insured under a bank's buildings block policy which covered its account holders.

b) The complainant could not provide an architect's report on the damage, which it had reasonably requested to assess the claim, and this was because the repairs had already been completed when the claim was notified to it.

c) The complainant had breached a specific policy condition requiring prompt notification of a possible claim under the policy after sustaining damage. Failure to comply with such conditions might invalidate the policy.

d) The complainant's breach of the policy condition had prejudiced the underwriters' position.

In his deliberations, the Arbiter made the following observations:

1) There are two types of policy conditions: 'mere conditions' whose breach does not invalidate a policy, and 'conditions precedent', which may invalidate a policy and even lead to the refusal of a compensation claim.

2) The prevalent school of thought in US case law was that a condition precedent had to be specifically spelt out as such in the policy wording.

3) The said case law held that the late notification of a claim does not confer on the insurer concerned an automatic right to decline a claim. The insurer can opt for rejection only if it can prove that it had actually (not possibly) been prejudiced by such untimely delay.

4) The policy wording itself stated that late notification of a claim might invalidate a policy. This was not an emphatic statement, as with a fraudulent claim where the policy wording specifically stated that the policy should be invalidated, and all claims shall be forfeited.

5) Had the insurer wanted to refute a claim based on its late notification, it should have specified this in the policy wording as it had done for fraudulent claims. It should also have qualified this as a condition precedent.

6) This approach would have enabled any policyholder to clearly understand that the breach of the claim notification condition would invalidate the policy and entitle the insurer to decline a compensation claim.

7) The complainant's late notification of his claim was a genuine mistake not resulting from carelessness or negligence. Instead, it had been triggered by his grave concern at the possible ulterior damage caused by the constantly leaking well. The delay had been compounded by the fact that he had to travel abroad for business reasons.

8) The complainant had provided the insurer with a report and photographs detailing the damage in the well before the commencement of repairs. Through its appointed experts, the latter could evaluate the damage's extent and whether an insured peril had caused it while determining the repair cost.

9) During the proceedings, the insurer did not even try to prove that the late notification had prejudiced it. Hence, the mere possibility of such (unproven) prejudice was not sufficient to decline the claim.

10) The established principle of utmost good faith requires an insurer to look for reasons to compensate a claim and not for reasons to deny it. The said insurer had a duty of care and to treat any claim fairly.

11) In the case under review, the insurer had failed on both counts, and it had not even given the complainant the benefit of the doubt but simply took the easy way out of refuting the claim from its outset.

The Arbiter upheld the complaint and ordered the provider to pay the sum of €2,626 to the complainant.

The decision was not appealed.

Home insurance claim – Theft of an expensive wristwatch (ASF 083/2021)

COMPLAINT UPHELD

Theft, delays to handle a claim; utmost good faith; duty of disclosure; proper underwriting exercise.

The complainant was aggrieved that his claim for compensation, following the theft of valuable personal items and cash from his insured residence, had been pending for 24 months without any tangible progress towards its settlement.

He contended that, when insuring his home, he had supplied the insurer concerned with all the material data that he was aware of, including the fact that he did not have a safe.

He further contended that he had supplied all the supporting documentation requested by the insurer in connection with his claim. Yet his repeated and continued chasing of the pending claim had been to no avail; other than that, he was informed that the theft of an expensive branded wristwatch was being refuted.

On its part, the provider stated that:

a) The only pending issue between the parties related to the stolen wristwatch. The respective compensation had been withheld in view of the specific policy warranty requiring that it be kept in a locked safe when it was not being worn or handled.

b) Though the complainant had declared when purchasing the policy online, that he did not have a safe installed at his residence, the extent of cover provided by the policy had equally been made clear to him from the outset.

c) Before purchasing a policy, each customer was required to tick a box confirming that he had read and agreed to its terms and conditions, which had been provided for consideration. These included the requirement of a safe for the protection of valuable items. The complainant should have been fully aware of the extent of the theft cover and its limitation in the absence of a safe.

d) The premium charged to the complainant had taken into consideration the fact that no cover would be in force on high-value items if kept outside a safe. Otherwise, it would have been substantially higher.

In his deliberations, the Arbiter noted that:

1) At the initial purchase stage of the policy, the complainant had indeed declared that he did not have a safe at his residence. Yet the insurer had equally proceeded to insure him.

2) The complainant stated that, since he had purchased his policy quite some time ago, he could not recall the requirement to click his acceptance of the policy's terms and conditions, which included a limitation of the theft cover in the absence of a safe.

3) An insurance contract is based on the utmost good faith of the contracting parties, who should honourtheir respective obligations to the highest degree

for the whole duration of the contract. While the insured is obliged to disclose all the material facts and to pay the premium, the insurer is similarly obliged to honour a claim promptly and fairly. It should give a claimant the benefit of the doubt while looking for reasons to pay a claim, not for reasons to deny it. It should not view a claim procedure as an insurer versus insured process but as honest partners to the same contract.

4) Of relevance to the complaint under review is the concept of post-claim underwriting, whereby an insurer awaits the submission of a claim to make underwriting decisions which should have been made at the proposal stage and not after a policy was issued. This approach would facilitate the insurer's ability to refute a claim, thereby acting in bad faith.

5) The correspondence between the parties showed that the insurer, or its appointees, had not handled the claim within a reasonable time frame. The complainant had in fact been offered £100 in compensation for the manifest delay in dealing with his claim.

6) Neither party to this complaint had presented the insurance policy document, precluding the safe warranty verification.

7) The insurer had raised concerns about the absence of a safe only when it received the claim. Had the complainant been informed that no theft cover would apply in its absence, he could have decided whether to purchase a safe, accept a higher premium, or contact an alternative insurer.

8) An insurer's underwriting of a risk must be carried out before the inception of a policy and not after the submission of a claim.

9) The complainant exercised his duty of disclosure diligently and transparently. Once the insurer accepted his proposal form, it simultaneously accepted all the risks it entailed. It had the option of refusing cover or charging a higher premium. When paying the premium on the insurer's acceptance of his proposal, the complainant had the right to assume that the absence of a safe would not weigh against him in case of theft. He, therefore, had a reasonable expectation that the insurer would compensate him in case of theft.

10) The insurer was dutybound to act fairly and reasonably in handling a claim, especially when its insured had no opportunity to negotiate the policy terms and conditions. It could not be absolved from its obligation to carry out a proper underwriting exercise before cover inception when it could have checked the acceptability of the complainant's proposal form, which had made the absence of a safe amply clear.

11) It was not reasonable for the insurer to accept the complainant's premium while knowing about the absence of a safe and to highlight this shortcoming after a claim was submitted. This deprived the complainant of possibly obtaining cover from another insurer and exposed him to the theft risk he reasonably expected to be covered when his premium was accepted.

The Arbiter upheld the complaint. Though the complainant had indicated the replacement value of the wristwatch as £19,000 (which had not been contested by the insurer), he noted that the policy had a capping of £10,000.

He, therefore, ordered the provider to pay this latter amount to the complainant. The decision was not appealed.

Home insurance - Undetectable water leak (ASF 120/2021)

COMPLAINT PARTIALLY UPHELD

Burst water pipe; underfloor damage; wet rot; gradual cause; structural damages; loss adjuster.

The complainant had sustained water damage to his residence due to a burst water pipe in the kitchen. Ten days after he had carried out the necessary repairs, he noticed that the kitchen and the adjacent bathroom floors had started caving in. Holes also appeared on the floor.

A site inspection by the insurer determined that the damage was due to a slow water leak beneath the floor which was impossible to detect. A second opinion, obtained by the complainant at the insurer's request, similarly confirmed that the leak was impossible to see. Yet the provider still denied the claim.

The complainant contended that the policy covered the damage sustained, which had been compounded by the time elapsed while he disputed with the insurer.

While insisting that his was a legitimate claim, the complainant requested that his property be restored to the same condition before the damage.

On its part, the insurer contended that:

a) Its appointed loss adjuster had reviewed the claim for the underfloor damage and recommended its declinature as the leak had been going on for quite some time. He had also advised that the leak would have been known to the complainant due to the length of time and the noticeable damage sustained. Yet, he had refrained from taking any remedial action.

b) In both the kitchen and the bathroom, the leaks had been happening for a substantial time. The lack of remedial action caused significant damage and rot to the tiled floors. The complainant had offset the collapsed flooring in his bathroom and kitchen by covering it with plywood so he could still walk over the area.

c) As for any insurance policy, the cover provided was subject to certain limitations and exclusions. In the case under review, the policy expressly excluded loss or damage caused by wet or dry rot or any other gradually operating cause.

d) An inspection of the damaged property determined that a one-time water leak did not cause the damage and rot. Instead, the latter had been allowed to persist for a substantial period, and such damage was not recoverable under the complainant's policy.

In his deliberations, the Arbiter made the following observations:

1) The complainant had resided at the premises in question for 34 years, during which he had not sustained any water damage. He was not at his house when the kitchen water pipe burst due to the COVID lockdown. When the kitchen floor flooded, and he had done the necessary repairs, he thought the incident ended there. However, a few days later, the flooring had caved in, and holes had appeared.

2) The second firm, which had inspected the residence, had confirmed that a leak had originated beneath the floor and would have been impossible to detect until the damage it caused became catastrophically evident.

3) The complainant did not report the water leak to the insurer. He contended that the repair cost of the resultant damage (estimated at £15,000 to £20,000) should be compensated since his policy covered loss or damage caused by the escape of water.

4) The loss adjuster appointed by the insurer had never visited the property but had based his verdict solely on the pictures supplied by the complainant.

5) The insurer contended that the two experts it had appointed to assess the incident separately had both concluded that there had been an escape of water taking place over a long time and gradually worsening. The rot had not been caused by a one-off water leak but by a long-standing one. This peril was not insured by the policy, regardless of whether the complainant could have spotted it or not.

6) A compensation of £5,000 had been offered to the complainant in respect of the unrelated one-off fortuitous burst pipe event which had taken place in the kitchen. This would have sufficiently reinstated the affected property before the subsequent floor caving and the rot onset several days later.

7) There were two contrasting technical reports on the cause of the sustained damage: one by the firm appointed by the complainant and the other by the firm chosen by the insurer. Of the two, the latter was the more credible.

8) The extensive damage under the flooring was not the result of a sudden fortuitous event. Instead, it bore the hallmarks of a water leakage which had been going on for a considerable time and eventually rotted the flooring and its supports.

9) The policy in question compensated damage caused by the escape of water; the burst kitchen water pipe fell within this category. The insurer concerned had offered to pay the policy limit of £5,000 for such damage.

10) The policy expressly excluded loss or damage caused by wear and tear, wet or dry rot or any other gradual cause—the damage under the flooring pertained to this category.

The Arbiter partially upheld the complaint. The policy covered the damage caused by the burst kitchen pipe, and the insurer was ordered to pay £5,000 to the complainant. However, the policy did not cover the extensive underfloor damage, so no compensation was due. The decision was not appealed.

Marine craft policy – Claim denied due to breach of warranty and non-disclosure (ASF 190/2018)

COMPLAINT REJECTED, BUT OVERTURNED ON APPEAL

Utmost good faith; proposal form; criminal record; material fact; breach of warranty; false declaration; damages.

The complainant was upset that the insurer denied his claim for compensation for his sunken boat. The insurer initially indicated that the claim would be covered by instructing the complainant to recover the boat, and the complainant contended that:

a) He supplied the documentation requested by the insurer to process his claim.

b) He was subsequently informed that his policy was being cancelled ab initio and that the premium was being fully refunded. The insurer claimed that he had withheld his criminal conviction for an offence in the respective proposal form and that the craft was being used as a houseboat (thus breaching a policy warranty). However, he had returned the refund to the insurer through registered post.

c) The insurer's employee completed the proposal form over the phone, and he had merely called at the office to sign it while paying the premium. At no stage during such completion had he been asked about any criminal record, nor had the proposal form been read to him before he signed it.

d) He denied that the craft's skipper resided onboard.

e) His criminal conviction was for a minor offence, for which he had been given a suspended two-year sentence. The Court's verdict was issued in 2008, and he signed the proposal form in 2013. Therefore, the insurer unreasonably used outdated acts to avoid settling his claim.

f) He had no intention of withholding any information from the insurer. When specifically asked about his claims experience, he provided all the information which had been duly inserted in the proposal form.

g) Another person had gone through the same criminal proceedings and received the same suspended sentence, but the insurer concerned (on being notified by the person) had opted to retain his policy without changing its terms and conditions.

The complainant, therefore, requested the Arbiter to order the insurer to pay him the amount of €73,475 for his craft and an additional €2,277 for the rental cost for the boat's storage.

On its part, the service provider contended that:

a) The complainant had been instructed from the outset to act as a prudent uninsured while the insurer investigated the claim. Hence the request to recover the sunken craft. Such investigation had revealed the non-disclosure of a material fact and a breach of policy warranty.

b) The complainant had been found guilty of bribing an official to obtain a nautical licence without attending the relative training course. He had been fined €2,000 and been given a one-year prison sentence, suspended for two years. He had also been disqualified from obtaining a nautical licence for one year.

c) This showed a fraudulent and dishonest attitude by the complainant. The insurer had every right to be informed about the complainant's character before deciding whether to insure him.

d) The principle of utmost good faith (between the contracting parties) was at the basis of every insurance policy and its respective proposal form. This concept was integrated in local legislation and case law.

e) The said principle forbade the contracting parties from concealing what is privately known to them to draw the other party into an agreement from its ignorance of the facts and its belief to the contrary. The characteristics of a risk to be insured lie, for the most part, solely within the proposer's knowledge. He must therefore provide all the relevant information (known as a 'material fact') without concealing anything that would cause the insurer to make an incorrect assessment of the risk.

f) The term 'material fact' refers to information which would influence an insurer's judgement in deciding whether to insure a particular risk and, if so, what terms to apply.

g) It is not up to the proposer or the insured to determine what information is material; he must disclose the information in its entirety and then let the insurer form its own opinion.

h) The fact that the proposal form contained a specific question about the proposer's criminal record showed that the respective information was a material fact for the insurer concerned.

i) The complainant's decision to withhold his criminal record was a false declaration about a material fact that would logically lead to the cancellation of the respective policy from its inception.

j) The complainant's contention that the insurer had retained another client with the same criminal record was baseless. The other client had voluntarily informed the insurer of his criminal record so that it could assess his case with complete information. On the other hand, the complainant had intentionally misguided the insurer in assessing his risk.

k) The proposal form and its content were read to the complainant (in person) while at the insurer's office by the employee concerned; his signature on the document confirmed such content. The complainant had also signed a separate document confirming that he had been

provided with a copy of his signed proposal form and his agreement to its content.

l) The validity of the policy had been further prejudiced by the breach of a warranty precluding the insured craft from being used as a houseboat; and this was because its skipper had been living on board for the preceding three years.

In his deliberations, the Arbiter noted that:

1) Local case law requires the proposer to provide his prospective insurer solely with the information elicited by the proposal form. The proposer is not required to assume what additional information the insurer might need.

2) The claimant's contention – that the insurer's employee completed the proposal form over the phone and that he had merely signed it on trust without reading its content – is directly contradicted by the employee's sworn testimony.

3) The employee had testified that he had completed the proposal form in the presence of the complainant, entering the replies to the several questions asked. The complainant had read it carefully and even proposed some amendments, which had been accepted.

4) This testimony was more credible than the complainant's contention. Moreover, the responsibility for the proposal form's content rested entirely with the proposer who signed it.

5) The complainant's denial that the craft was being used as a houseboat was contradicted by the skipper, who had testified that he had resided aboard the craft until one week before it sank. Such residence was confirmed by the complainant's lawyer in his letter to the insurer, which stated that the skipper had been living on board for the preceding three years.

6) The complainant's contention – that the insurer had retained another person on its books despite the same criminal proceedings – was contradicted by the insurer's testimony which stated that the person concerned had only informed it that he had been fined €500 for using his craft without a nautical licence. A subsequent investigation then established that such information was untrue.

7) The proposal form was an integral part of the policy; hence, a false declaration in the former equated to a false declaration made under the latter. As borne out by local case law, this would entitle the insurer concerned to void a policy from its beginning even if this was unrelated to such residence.

8) The skipper's residence on board breached a specific policy warranty, thereby exonerating the insurer from settling the claim made under the policy.

9) The statements made by the complainant about his criminal record and the skipper's habitual residence on the insured craft were manifestly false declarations, which contrasted with the utmost good faith that he was legally required to maintain in an insurance contract.

In light of the foregoing, the Arbiter concluded that the insurer had sufficient valid reasons to decline the complainant's compensation claim and thus rejected the complaint.

The Arbiter's decision was overturned by the Court of Appeal (Inferior Jurisdiction), which, on reviewing the case, made the following observations:

a) It had not been conclusively proven that the proposal form had been completed in the complainant's presence. It could have equally been completed and modified as necessary by the insurer's employee during his telephonic exchange with the complainant.

b) The testimony given by the employee was quite detailed, even though the proposal form had been completed a full six years previously. Moreover, it did not confirm that the implication of specific questions – which could have been easily misunderstood by an ordinary person – had been clearly explained to him.

c) The insurer had treated the admission made by the other policyholder, who had undergone the same proceedings as the complainant, in a somewhat lenient and light manner without investigating it properly. This showed that the matter was not a material fact to it. Yet it had cited the same concept when processing the complainant's claim.

d) The insurer's priority appeared to be the acquisition of new business without any particular regard for the honesty of prospective policyholders and the veracity of their statements. The necessary checking and verification were carried out only on the submission of a claim.

e) Nothing prevented the insurer concerned from verifying the information presented in the proposal form before incepting cover. As a minimum, it could have verified the honesty of the complainant by requesting his good conduct certificate. This, together with the lenient manner in which it had treated the other policyholder, cast severe doubt on the importance accorded by the insurer to a client's trustworthiness.

f) The insurer's contention that the vessel was being used as a houseboat by its skipper appeared to omit that such habitation had ceased before the accident leading to the craft's foundering.

In the light of the foregoing, the Court upheld the appeal and ordered the insurer to pay €73,475 to the complainant, from which a residual wreck value of €10,000 was to be deducted, plus the amount of €2,277 in respect of the rental cost for the craft's storage.

INVESTMENT CASES

Alleged bad advice (ASF 109/2021)

COMPLAINT REJECTED

Investment advice; risk profile; funds; monthly interest; investment portfolio; unrealised / realised losses.

The complainant alleged that the provider had provided bad advice when it encouraged him to invest in a specific fund (a euro income bond fund). He was therefore claiming reimbursement of the amount initially invested in such a fund. He further explained:

a) In January 2018, he invested in the fund; such investment had generated €17 in monthly interest. He also claimed that the interest payable every June or July was supposed to be higher, rendering the return from his investment more worthwhile.

b) Upon noticing that the return had remained constant at €17 monthly, contrary to what the adviser had told him, he contacted the provider for an explanation.

c) Although the provider's official had repeatedly assured him that he would look into the matter, he did not receive an adequate response and reported the official to his superiors.

d) In January 2021, he requested full redemption of his investment, but he was told that upon doing so, he would crystallise a loss of €400. Rather than withdrawing from this fund, it would have been possible for him to redeem other funds from his portfolio.

e) He rejected such a suggestion and continued arguing that he had been given bad advice before investing in the fund.

As a remedy, he therefore requested the Arbiter to order the provider to refund him his initial investment of €9979.60, contending that he had been badly advised.

The provider rejected the complainant's contentions and made the following submissions:

a) The complainant had been offered and accepted an advisory service. According to its records, the complainant had knowledge and experience in bond funds, other income funds, and complex instruments, including callable bonds. A list of investments carried out by the complainant with the provider was also provided.

b) The contested investment was a UCITS fund, considered non-complex and suitable for retail clients such as the complainant. His investment objective was denoted as 'aggressive', and he sought income from his investments.

c) The investment had a risk profile of 3 (on a scale of 1 to 7, with 1 being the least risky and 7 being the riskiest), and its objective was to invest actively in euro-denominated bonds with the prospects of generating higher returns over time. As the complainant required monthly payment of interest, the options available to the investor were limited compared to other funds which paid annually or quarterly or semi-annually, where the choice was much broader.

d) It claimed that its advisors could not have declared upon advice that the fund would always pay interest monthly at €17 and capital in June.

e) He had also been provided with all documentation relating to the fund.

f) It thus rejected the complainant's claim that it had provided erroneous advice to the complainant but was willing to refund €195.68 in fees and appoint another financial planner to service him.

The Arbiter considered several aspects before reaching his decision:

1) Between 2011 and 2021, the complainant made several investment transactions. As to the contested investment, between February 2018 and August 2021, the investor received monthly dividends averaging €643 (net of tax and charges).

2) Although the fund's value had deteriorated somewhat compared to when it was purchased, such loss had not been crystallised as it was still part of the complainant's portfolio. The fund was still in operation, and it was impossible to give compensation for a fund that was still active, apart from the fact that the complainant had not suffered any actual losses.

3) Although the complainant claimed he had been promised additional interest, which had not been paid, the Arbiter did not have concrete evidence to sustain such a claim. The interest that the complainant was due had been paid to him, as indicated by the statements presented by the provider as evidence.

4) No evidence was provided that supported the complainant's assertion of 'additional or extra monthly dividends'.

5) As to the nature and risk profile of the investment, there was no evidence to suggest that it was unsuitable for the investor's requirements or that the advice given was inappropriate. Its risk profile was three (out of seven, being the highest risk), and it paid monthly interest as the investor requested.

On this basis, the Arbiter rejected the complaint but recommended that the provider honours its promise of refunding €195 in charges.

The decision was not appealed.

Transfers to a fraudulent merchant through a crypto exchange (ASF 158/2021)

COMPLAINT REJECTED

Cryptocurrency; scam; blockchain; irreversible transactions; crypto wallets; victims of scams; industry standards.

The complainant, who lost digital assets in a cryptocurrency scam, sought compensation from a financial services provider. He explained that:

a) He made various transfers of his digital asset using an app offered by a services provider licensed in Malta under the VFA Act. The transfers were made to external wallet addresses allegedly used by a fraudster. The complainant realised that the third-party trading platform was a scam when he tried to withdraw money but was unsuccessful.

b) The complainant, among other things, claimed that the provider had failed to carry out suitable due diligence, failed to adhere to anti-money laundering (AML) measures, know your client (KYC) requirements, and countering the financing of terrorism procedures, and never warned him about transfers to anonymous wallets. The complainant further noted that he had no idea at the time that the money being transferred utilising the provider's services would never reach his so-called 'trading account' but instead go directly to the scammers' anonymous wallets.

c) The complainant also stated that he asked the service provider to reverse his transactions and sought reimbursement from the financial services provider for its failure to prevent, stop or reverse the payments he made to the fraudster.

On its part, the financial provider claimed that it had no responsibility for the payments made by the complainant. It claimed that:

a) It is the complainant's responsibility to verify the transaction information in accordance with the app's terms of use. The provider couldn't revoke or reverse the crypto withdrawal once the transactions were done on the blockchain.

b) Cryptocurrency transactions were irreversible, and the service provider had no control over them after they had been appropriately authorised. The technology behind cryptocurrencies differed substantially from that used by the banking industry.

Having considered the particular circumstances of the case, including the submissions made and evidence provided, the Arbiter considered that there was no sufficient basis on which he could uphold the complainant's request for the reimbursement by the service provider of the sum the complainant himself transferred to external wallets from his crypto account. The Arbiter's decision was based on the following considerations:

1) No sufficient evidence had emerged to substantiate the claims against the service provider given the nature of the transactions involving crypto assets, the type of service provided, and other reasons as outlined below.

2) The disputed transactions commenced around five days after the account was opened and continued for over one-and-a-half-month until the end of July 2021. Given the limited transaction and operating history of the account held with the provider and the nature of the transactions involving purchases and transfers of crypto assets, there was an insufficient basis to suggest that the transactions were out of character and necessitated the immediate intervention of the service provider.

3) The exchange of fiat currency into crypto and withdrawals from one's crypto account, including transfers to an external wallet are part of the specific services provided to millions of users by operators in the crypto field. The service provider was no exception.

4) The transfer was indicated to have been done to external wallets. Hence, the service provider had no information about the third party to whom the complainant was transferring his crypto asset.

5) A warning by the service provider concerning the dangers associated with transfers to an anonymous wallet, as suggested by the complainant, would not have stopped the complainant from proceeding with the disputed transactions, given the sophisticated nature of the scam where the complainant was craftily groomed over a period of time by the fraudulent party to invest in afake platform; moreover, the reservations raised by his family and friends were not sufficient to convince the complainant from not sending further funds to the scammers. The complainant had also produced over 100 pages of chats he had with the scammer

6) No clear and satisfactory evidence had been

brought forward to corroborate the allegation that the service provider had failed to follow applicable obligations, either contractually or arising from the VFA regulatory regime applicable to its business.

7) It was clear that the complainant has unfortunately fallen victim to a cruel and sophisticated scam, which is alarmingly estimated to have caused billions in losses to victims worldwide in 2021 alone.
As cryptocurrency was a relatively new area, the Arbiter added the following observations:

8) The increasing and alarming volume of scams and fraud in the crypto field, emerging from recent statistics, was of great concern. Such scams and fraud were leaving devastating effects on many retail customers and their families.

9) One could not help but notice the inadequate, or lack of, knowledge and awareness that many retail consumers have concerning the various risks applicable to the crypto field and how to protect themselves better, despite the rush by many to join and participate in this sector.

10) Consumers need to, more than ever, be extra vigilant and take appropriate and increased measures to safeguard themselves to avoid and minimise the risk of falling victim.

11) Genuine service providers can also actively contribute to improving the consumers' awareness of the particular risks, including fraud and scam education, relevant to this sector.

12) Cryptocurrency scams and fraud are rising, and their victims suffer devastating losses. Cryptocurrency service providers are encouraged to develop voluntary mechanisms to help prevent these scams and to support their victims better. By taking these steps, leading cryptocurrency service providers can help to improve consumer protection standards in this industry.

The decision was not appealed.

Failure to provide valuation statements (ASF 159/2021)

COMPLAINT REJECTED

Unrealised losses; execution only; frequency of reporting; reverse split; valuation statements; regulatory compliance.

The complainant requested that the service provider repay losses he suffered following an investment made in a security he claimed had been recommended by the same provider. The complainant alleged that the provider had failed to provide him with valuation statements for the past two years and had failed to provide updates on the investment's performance. He further stated:

a) The provider was asked for an updated valuation statement, as his latest statement was dated March 2020. When comparing the two statements, he noticed that in the 2020 statement, he held 343 units in the investment, but this had dwindled to a mere 13 units as of September 2021.

b) Upon further enquiries, he was told that the issuer of the security had done a reverse split (a type of corporate action that consolidates the number of existing shares of holdings into fewer [higher-priced] shares) and was given a link on the internet for further information.

c) Upon meeting with the provider's managing director, it also transpired that a fraction of his shares, which were not subject to the reverse split, were exchanged into cash but had not been paid to him. The matter was resolved subsequently, but he was still expecting an explanation as to why the provider failed to provide him with periodic valuation statements as required in terms of the current rules. As a result of such shortcomings and the provider's inaction, he suffered losses.

d) As a result, he requested compensation amounting to €5400, which was the difference between the market value as of the end of 2019 (€6,259.16) and the value as of 22 September 2021 (€864.19).

The provider rejected the complainant's contentions and explained that:

a) It disputed the complainant's claim that he had suffered losses for the past two years, stating that the complainant had been losing money for several years. He had selected the investment in the first place, apart from the fact that he had declared to the provider that he would monitor the security's value daily. It rejected any responsibility as the security was purchased on an execution only. It further claimed to have provided the complainant with all information he requested.

b) There was no nexus between his allegation of non-receipt of the valuation statement and the loss he claims to have suffered during the period in which, as he claims, no valuation statements had been received.

In his deliberations, the Arbiter observed the following:

1) Forms compiled at the time that the investment had been acquired indicated the complainant's preference for execution-only transactions,

2) The complainant purchased 220 units in the security in July 2015 and a further 466 units in October 2015. The investment formed part of a more extensive portfolio held with the provider under nominee. The complainant's attitude to risk was categorised as 'Adventurous'. According to the issuer's website, the nature and risk of this investment were particularly high, and investors were urged to monitor the value of the investment frequently during the day. The investor had the ability to monitor the investment himself.

3) In January 2017, the issuer announced a reverse stock split, during which a share for every two shares held was issued. As a result, the complainant's holdings came up to 343 units. During proceedings, it resulted that a further stock split occurred in 2020, but no further details were provided. Upon further research by the Arbiter, a 1:25 stock split was carried out in April 2020. This explained why from 343 units at the end of 2019, the complainant ended up with 13 units, as reflected in the valuation statement issued in September 2021. The holdings were still held under nominee.

4) Although the security value had deteriorated between 2019 and 2021, the complainant had not suffered any actual losses as the investments were still in his possession. The loss he claimed to have suffered was still unrealised, and the value could change.

5) No evidence was provided of any damages allegedly suffered by the complainant due to the provider's alleged shortcomings. Neither was there any specific evidence of attempts by the complainant to sell all or part of his holdings during 2020 and up to September 2022 had he possessed the valuation statements. It was not the first time that the value of the investment had changed drastically following the acquisition of holdings in 2015. Indeed, as of the end of September 2018, the investment was valued at USD10,628.45, but just three months later, the paper value was USD3,978.89. At the time, the complainant did not make any complaint to the provider.

6) The provider did not contest the validity of the complainant's assertions that it had not provided the complainant with a valuation statement in 2020 and during the first nine months of 2021. It had indeed confirmed that the notification relating to the share slips had not been sent to the complainant.

The complaint was rejected. However, it was also confirmed that the provider was obliged to send the complainant periodic valuation statements in terms of regulatory standards. Indeed, in 2020 and until September 2021, the provider was obliged to send a valuation statement at least every quarter.

In this regard, the Arbiter directed the provider to change its practice and ensure that all its clients receive valuation statements according to the time and frequency required by the MFSA rules.

The decision was not appealed.

An alleged loss of value upon portfolio transfer (ASF 013/2020)

COMPLAINT REJECTED

Investment portfolio, capital loss; suitability report; gains on disposal; interest earned on investments.

The complainants submitted that their portfolio suffered a loss in value when it was transferred to another provider, apart from the fact that such provider had failed to give them adequate information about such portfolio. They explained that:

a) Following the transfer of their portfolio to another provider in 2018, the new provider (that is, the current service provider against which they were complaining) made a few transactions which affected the value of their portfolio to the extent that interest payments had fallen dramatically compared to previous payments.

b) They met with their new adviser on three occasions. On each occasion, their new financial adviser asked them to sign documents without explaining their contents. After complaining about how their provider handled their account, they were provided with a new adviser. Still, even here, the incumbent had failed to address their concerns regarding the loss in value of their portfolio.

c) They claimed that at one time, their portfolio had been valued €272,000, but it was now worth €253,000.

d) The complainants asked for compensation to cover losses they claimed they sustained due to the new provider's handling of their portfolio and the lack ofinformation regarding their bond holdings in the same portfolio.

The provider rejected the complainant's contentions. It claimed that:

a) It could not understand the basis of the complaint and the basis on which compensation was requested.

b) The provider and its representatives had met several times with the complainants, including in the presence of their professional advisers. All their questions were answered, and all documents requested were provided. Moreover, the firm had also discussed the complainants' issues with their lawyers directly, and there were several recorded conversations attesting this. A valuation detailing the movements in the portfolio was also provided to the complainants.

c) Transferring the portfolio to the new providers was transparent, and all information on the values upon transfer was provided. The complainants held two portfolios; one made up of a UCITS fund while another was in bonds, which had not yet matured.

d) The investment's value loss at the end of 2018 was related to market forces and not to a mistake of the financial adviser.

In his deliberations, the Arbiter observed the following:

1) The investors were considered as retail investors. They availed themselves of two types of services from the same provider: for some investments, the provider had a discretionary mandate, while for others, the service was advisory.

2) Two portfolios were transferred to the new provider. Valuation statements were provided for each portfolio at the end of 2017, when the portfolio was still held with the previous provider and at the end of March 2018, when the portfolio was transferred to the new (current) provider. The difference in value between the two portfolios was attributed to the movement in market prices of the various underlying investments in the respective portfolios. Some investments had sustained gains, but there were also losses in others.

3) In 2018, following the transfer to the new provider, the complainants made a number of transactions (buy/sell). Suitability reports were signed by the investors, which they did not contest. It was observed that further transactions occurred in one of the portfolios in 2019 and 2020, which the complainants also did not contest.

4) As to the losses the complainants alleged they had suffered, they claimed during one of the hearings that they were expecting compensation amounting to €5000, representing their loss in portfolio value. The Arbiter observed that the complainants could not quantify precisely the losses they claimed to have suffered, even if they had been provided with statements and schedules explaining their transactions.

5) As the investors had not quantified the loss, they asked the Arbiter to come up with a figure based on equity, justice and reasonableness.

6) To consider whether the complainants had suffered a loss in market value, the Arbiter assessed the value of investments purchased in 2018 when the portfolio was transferred to the new provider. Of the funds purchased, it was evident that no actual losses had been suffered as these investments were still part of the complainants' portfolio. The funds also paid interest, which the investors did not contest.

7) The Arbiter then assessed whether there were losses for the two funds sold by the investors in 2018. Although a minor capital loss was made, this was compensated by the interest that the funds had paid during the period they had been in their portfolio. Moreover, the investors had been made aware of the losses they would have sustained upon sale, as documented in the suitability reports they had been asked to sign. The minor loss was, therefore, not attributable to the provider's shortcomings or lack of information to the investors.

Based on such evidence, the Arbiter determined that the case was not proven and the complaint was therefore rejected.

The decision was not appealed.

Mis-selling of a structured investment subsequently converted into shares (ASF 089/2020)

COMPLAINT UPHELD, AND CONFIRMED ON APPEAL

Equity-linked structured note; suitability and appropriateness test; value of underlying shares; capital losses; investment advice; execution only; regulatory obligations.

The complainants claimed that they suffered losses upon redemption of shares which came about following conversion from holdings they initially held in an equity-linked structured note with an autocall option. In their case, the complainants claimed that:

a) The merits of their case were intrinsically linked to a complaint they had made initially with the Arbiter (ASF 045/2018, reported in the Annual Report 2020).

b) When the equity-linked structured note matured, the value of the underlying shares of the investment dropped lower than 50% of the initial spot price compared to the final observation date. As a result, they received a proportionate number of shares issued by this low-

performing company following a formula contained in the product documentation.

c) Following the Arbiter's decision regarding their 2018 case, they liquidated their holdings in such shares. Upon redemption, they claimed to have suffered capital losses and requested compensation from the provider. They attributed the losses to the provider's negligence for not acting in their best interest and by the regulatory framework at the time.

The provider, on its part, mainly contended that:

a) It never failed in its obligations towards the complainants, as required by the applicable regulations.

b) It should not be held responsible for any losses suffered upon the sale of the shares as advice for such action was given by third parties. It claimed that pending the Arbiter's decision, there were several occasions when the price of the shares was better than that at which they sold their investment, thus claiming that their sale was ill-timed.

In his decision, the Arbiter observed the following:

1) The first case submitted by the complainants was determined on a procedural aspect. In that decision, the Arbiter observed that the shares distributed on the equity-linked investment's maturity held value and were still being traded. On that basis, the complainants' case was lodged prematurely as they did not prove to have suffered any losses. Although that case was rejected, the investors' future rights were not prejudiced. Indeed, the new complaint related to the mis-selling of the investment product – an issue to which the first complaint did not refer.

2) There were conflicting versions as to the type of service that was given to the complainants. The provider claimed that the service rendered to the complainants was execution only, while the complainants contended that it was advisory. Whilst the former type of service may have been less onerous regarding the provider's regulatory obligations, the same could not be said for the latter type, as the provider would have had to compile a suitability test.

3) Evidence on file indicated that, except for the investment in the structured notes, all other investments (namely shares and bonds) held by the complainants with the same provider were on an advisory basis. The Arbiter held the view that the reason why the provider denoted the sale of these structured notes as execution only was to release itself from any inherent responsibility. The complainants' version of how the structured product had been offered and sold to them was more credible. It was akin to the provision of investment advice, thus requiring a suitability test to be undertaken.

4) Even though an appropriateness test appears to have been made, the information contained therein was poorly collated, and whatever information it held pointed to the fact that the complainants barely had any knowledge and experience in structured notes, even if such holding was just 7% of their entire investment portfolio with the provider.

5) Documented and verbal evidence also indicated that the complainants were quite cautious in their investment approach and were more inclined to preserve the value of their capital. The structured note had particular risks which rendered it vulnerable to capital erosion if a barrier on the price of the underlying assets was breached, as had happened. The structured investment was thus unsuitable for the particular requirements of the complainants.

6) The Arbiter disagreed with the provider's claim that the sale of the shares had been ill-timed, as the share price had been higher during previous intervals but not so when it was sold. However, independent research by the Arbiter showed that the share price was at its highest during the five years it was held, from when they had been allocated to the complainants to when they had been sold.

The complaint was upheld, and the Arbiter ordered compensation be paid to the complainants for the losses suffered after considering the purchase of the structured investments, the proceeds from the sale of the shares and any dividends paid therefrom.

The Arbiter's decision was confirmed on appeal.

Losses over a failed investment (ASF 030/2021)

COMPLAINT REJECTED

Bond default; communication to investors; competence; time limit to complain.

The complainant requested that she be paid back her original capital, which she invested in 2015 and 2016 in a bond that subsequently defaulted. She explained that:

a) A written complaint was sent to the service provider in December 2020, to which she received a reply around three weeks after in January 2021. Further various verbal complaints with the same firm were also made.

b) Investments in the bond were made on three occasions: €8000 in January 2015, €10,000 in March 2015 and €18,000 in June 2016.

c) Requests to her provider for her investment to be sold were made repeatedly but to no avail. However, she was told that the service provider could only sell her bonds in multiples of 100,000.

d) Documentation alerting her that the investment had defaulted had not been sent to her, contrary to what the service provider had claimed.

She therefore claimed repayment of her invested capital.

The provider claimed, in response, that the Arbiter did not have the competence to look into the complaint. It further claimed that:

a) The complainant had first become aware of the matters being complained of in May 2018, as was disclosed in her complaint form.

b) The investment was made on an execution-only basis as the complainant had failed to provide sufficient information to the provider that would have enabled them to conduct a suitability or appropriateness test.

In his deliberations, the Arbiter noted the following:

1) The service provider had raised a plea relating to the Arbiter's competence to look into the complaint under article 21(1)(c) of the Act. According to the provider, the complainant became aware of the matters she was complaining about on 21 May 2018, and thus her complaint was not made within the time limit set out in the law.

2) This article states that the Arbiter has the competence to look into complaints if a complaint is registered in writing with the provider not later than two years after the date on which the person lodging the complaint would first have knowledge of the matters complained of. The Act came into force on 18 April 2016.

3) During hearings, the provider submitted several letters in relation to the bond's restructuring, which, as the service provider claimed, had been sent to investors since 1 February 2016. The complainant claimed she had not received any of these communications, while the Arbiter noted that each communication was undated and not personalised.

4) However, the complainant had indicated the date of '21/05/2018' when she became aware of the matters being complained of. The date reflects the date in the letter issued by the service provider concerning the bond issuer's default, bearing the date 21 May 2018. According to the service provider, that letter had essentially confirmed that the bond was valueless.

5) During proceedings, the complainant's daughter confirmed that in April 2016, she was already aware of the problems relating to the bond issue. Indeed, it was established that the daughter had acquired the last tranche of investment (€18,000), which she then transferred to her mother.

6) No evidence was presented concerning the complainant's claim that she had repeatedly asked the service provider to sell the investment or contacted the service provider periodically. Indeed, the complainant could not even recall if she had ever done so.

7) Based on the presented evidence, the complainant complained in writing to the provider on 12 December 2020. The service provider also confirmed this when it replied to the complainant's letter.

Based on article 21(1)(c) of the Act, the complainant had to register her complaint with the service provider no later than 21 May 2020. As the complaint to the provider was made in December 2020, the Arbiter accepted the service provider's claim that he had no competence to look into the complaint.

The complaint was thus rejected, and the decision was not appealed.

Alleged losses suffered on two different portfolios (ASF 039/2020 and ASF 040/2020)

COMPLAINT REJECTED

Investment portfolio; investment approach; net income; foreign currency investments.

The spouses lodged separate complaints against the same service provider concerning their respective investment portfolios. As both complaints were intrinsically similar, the Arbiter issued one decision for both. Both spouses contended that they suffered losses on their respective investment portfolios, and they explained that:a) Their respective investment accounts were opened in 2014. One spouse claimed that she deposited €80,000 into her investment account in July 2016, while her husband invested €250,000 into his account in March 2017.

b) Both contended that they had not been made aware of the risks associated with their investments. They also claimed they never received any valuation statements

and were unaware they held investments denominated in foreign currency.

c) They further claimed that they only became aware of such circumstances when in March 2020, they were asked to withdraw their holdings as the value of their investments had fallen; otherwise, they would have lost all of whatever was remaining.

d) She claimed that she suffered a loss of €12,262.08 (around 15% of her original sum), while he claimed to have lost €55,783.60 (around 22% of the original amount invested).

e) They claimed that the provider had abused their lack of investment knowledge, by providing them with reassurances that their portfolio was performing well.

Separately, both complainants requested €12,262.08 and €55,783.60 in compensation for the losses they alleged to have suffered in their respective portfolios.

The provider disagreed with the complainants' contentions and claimed they had willingly used its services without coercion. Moreover, as their account opening forms indicated, they had requested an aggressive investment approach and chose an execution-only level of service. Both spouses had a secondary education level and could understand both Maltese and English. They wanted capital growth from their investments and indicated familiarity with investment and non-investment grade bonds, equities and funds. They were provided with all information and copies of contract notes and valuation statements throughout their relationship.

In his deliberations, the Arbiter observed the following:

1) Since the parties disagreed as to whether the complainants had indeed suffered losses (as they alleged) or otherwise (as the provider was claiming), he independently assessed the investment portfolio of both investors, together with all income received and withdrawals effected during the whole period of the complainants' professional relationship with the provider. The provider had also submitted its calculations for both portfolios.

2) The complainants did not explain how they arrived at the value of losses they alleged to have suffered from their investment. However, it was evident that the losses – €12,262.08 and €55,783.60 respectively – were the difference between the total amount invested in their respective account and the amounts received from the provider when they sold their investment in March 2020.

3) Based on an analysis of all transactions carried out on both portfolios, Spouse A had received a total net income of €11,327 on the total amount invested of €80,000. As to Spouse B, he received a total net income of €10,263.59 on the total amount invested of €250,620.

4) Although both portfolios had investments in foreign currency, such investments did not suffer any losses even when converted into euros. Neither spouse contested any of the figures that were presented during the proceedings.

It was therefore evident that the spouses had not suffered any investment losses, as they had alleged. On this basis, the Arbiter rejected the complaint.

The decision was not appealed.

Best execution on the sale of an investment (ASF 121/2020)

COMPLAINT UPHELD, AND CONFIRMED ON APPEAL

Perpetual bond; record-keeping; consideration; best-execution policy; rulebook; custody charges; order allocation policy; price limits; minimum transaction limits.

The complaint stemmed from the sale of a perpetual bond which, according to the complainant, was redeemed at a lower price than that agreed to. The complainant claimed that:

a) The provider had indicated to him that the price of the perpetual bond was trading in the 'nineties', but upon receipt of the sale contract notes, the price indicated therein was €0.8505.

b) His friend had sold the same bond held with the same provider at a better price, even though such sale has been made after his. This confirmed that the price at which the sale order was made was indeed in the 'nineties'. He claimed the provider should have informed him that the price had fallen and not proceeded with the transaction.

The complaint asked to be compensated for the amount of €2585, which was the difference between the consideration of his holdings and that of his friend.

The provider contended the following:

a) The complainant had consented to give orders via email, phone or fax. He was a long-standing client of the firm, and at no stage did he ever give any price limits when selling investments. The complainant was conversant in marketable financial instruments and carried out several transactions. The company also held him in high esteem,

to the extent that it discounted brokerage and custody charges valued at around €24000. Between 2009 u 2020, the complainant (whose portfolio was held jointly with his wife) received a net return of €115,000 from the various investments they had acquired and sold.

b) At the beginning of March 2020, the complainant telephonically instructed the sale of seven financial holdings. He initiated the sale and set no price limits on any one of the investments, as was the case for all investments he sold over the 11 years with the provider. The complainant raised the issue regarding the price four months after receipt of the contract note and encashment of the sale consideration.

c) The complaint held 47,000 units in a bank-issued perpetual bond, which he had initially acquired on two dates. The sale order was placed with other orders the provider had received from other clients holding the same instrument. The provider explained that this perpetual bond could only be traded in multiples of 10,000. The amount held by the complainant could not be sold in one transaction, and the provider had to wait for other orders to be aggregated accordingly. The complainant was aware of this as he had gone through similar processes in the past in respect of other holdings. Moreover, the complainant's original decision was to purchase several holdings, which could not be disposed of in one batch unless aggregated into other holdings.

d) The provider confirmed that a friend of the complainant held the same financial instrument as his, but at a nominal amount of 50,000; this facilitated the sale of the entire amount in one whole transaction and rendered the situation somewhat different from the complainant's.

The Arbiter considered the parties' submissions and deliberated as follows:

1) The investments in the perpetual bond were purchased in March and April 2019 for a consideration of €43,841.71. A custodian bank held the holdings.

2) The sale order was done telephonically, and the sale was made a week later. A loss of €2083.75 was registered on the sale.

3) The complainant claimed that following his order to the provider, he called his friend and told him about the order he had just made. His friend, in turn, called the same provider and instructed it to sell his holdings in the same bond too. His friend's holdings were sold shortly after, while his were sold a week later.

4) According to the provider, the complainant could have opted to sell the investment in equal batches of 10,000, but he (the complainant) preferred not to as it would not have been economical. The provider also claimed it was irrelevant to compare the complainant's sale order to his friend's as the circumstances were dissimilar. Indeed, the custodians of the two sets of holdings were different. The provider also claimed that even if the two transactions had been carried out concurrently, the probability of a price difference would still have been possible.

5) The crux of the matter was whether the provider executed the sale order within a reasonable timeframe and whether it had obtained the best possible return for the complainant based on the particular circumstances and the applicable rules. The Arbiter referred extensively to the financial regulator's conduct rulebook on 'Execution of Client's Orders' ('rulebook').

6) According to the rulebook, the provider was obliged to have in place a best execution policy, but this document was never presented during the hearings.

7) Neither was evidence provided that orders were promptly and accurately recorded and executed or that the complainant was informed about any material difficulty relating to the proper and prompt implementation of orders. Neither did the provider present an order allocation policy to justify how the complainant's order had been allocated compared to other investments.

8) On this basis, there was no convincing evidence to justify the delay in the execution or the lack of partial execution of the complainant's sale order when there was a sale of identical instruments at a better price than that attained by the complainant.

9) The fact that there was a minimum fee or other charges in the event of a partial transaction sale was not enough reason to delay the execution.

10) The provider also failed to provide documented evidence of the exact date when the order was provided and by which method or a recording or transcript of the telephone conversation regarding the sale order. That, too, was in breach of the provider's record-keeping obligations in terms of the same rulebook.

Based on all available evidence, the provider failed to provide the best possible result to the investor. However, the Arbiter did not uphold the full refund of €2,585 as requested by the complainant, as further charges would have had to be incurred if additional transactions were required. In that scenario, the complainant would not have received the total amount he requested as a remedy. The Arbiter exercised discretion as allowed by law and determined that compensation due to the complainant should amount to €2,084.

The decision was confirmed on appeal.

PRIVATE PENSIONS CASES

Outgoing and incoming trustees fail to protect retirement savings (ASF 024/2021)

COMPLAINT PARTIALLY UPHELD

Breach of trust; significant exposure to investments; responsibility of outgoing and incoming trustees; suitability of investments comprising a retirement scheme.

This complaint related to a personal retirement scheme (the scheme) established as a trust and administered by the service provider as its current trustee and retirement scheme administrator (RSA). Initially, the complainant's scheme was under the trusteeship and administration of another trustee (the "Outgoing Trustee") who voluntarily surrendered its licence with effect from 5 October 2018 and was struck off from the official register with effect from 31 January 2020.

The service provider acquired the business of the Outgoing Trustee and subsequently took over as the trustee and RSA of the scheme, including that of the complainant.

The complainant claimed that:

a) The service provider allowed all his pension to be invested in an opaque, high-risk, unregulated, illiquid investment. He alleged further that the service provider had failed to conduct adequate checks about the investment.

b) Over four years, he had communicated with several people, including the service provider, where he was given numerous excuses for the delay in redeeming the investment in which his scheme was invested.

To put matters right, the complainant requested the service provider to reinstate his pension to the value it was at the commencement of the transfer, together with an adjustment for the loss of growth since the transfer.

In its reply, the service provider essentially submitted the following:

a) The complainant had been aware of the nature of the investment he had selected and the impact that it was having on his investment planning since April 2017, which was a few months following the complainant's request to transfer out from the Outgoing Trustee. In this regard, he should have complained by 20 April 2019 and not in 2020. The complaint was thus time-barred, and the Arbiter should tehrefore refuse to handle it.

b) That it was not the legitimate defendant in this complaint. It claimed that, in terms of the Trusts and Trustees Act, it should not be responsible for a breach of trust that occurred before it was appointed if it was committed by someone else. In that regard, no order of redress can be issued against the service provider as requested by the complainant.

The Arbiter considered the service provider's legal arguments that he was not competent to hear the case and that the service provider was not the proper defendant. He also considered the merits of the case, including the choice of underlying investment for the scheme.

The Arbiter noted that there were several exchanges of emails and letters up to August 2020. However, in one particular letter dated 13 August 2020, the service provider expressed concerns regarding the underlying investment of his scheme. During the hearing, the complainant reiterated that the letter triggered his formal complaint. The letter confirmed that the service provider had been trying to get information about the failed investment since they took over the scheme's administration from the Outgoing Trustee. However, they only approached the complainant with their concerns on that date, even though they had already identified material concerns about the outlook and prospects of the investment. The evidence submitted by the service provider did not sufficiently corroborate its arguments that the complaint ought to have been lodged earlier than 13 August 2020.

As to the service provider's argument that it was not the legitimate defendant in this complaint, the Arbiter observed that:

1) He refused the argument by the service provider that it was not the legitimate defendant because the complaint concerned issues occurring when the Outgoing Trustee was administering the scheme. He observed that the service provider did not merely replace the Outgoing Trustee but that it acquired its business.

2) Article 30 (3) of the TTA stated: "*A trustee shall not be liable for a breach of trust committed prior to his appointment, if some other person committed such breach of trust. It shall, however, be the duty of the trustee on becoming aware of it to take all reasonable steps to have such breach remedied.*" The Arbiter argued that allowing trustees to transfer pension schemes without liability to the members could lead to financial system abuse. If that were to be allowed, the retiring trustee could dispose of the scheme to the new trustee at an advantageous price, knowing that the new trustee would not be liable for any shortcomings of the retiring trustee. That would be unfair to the scheme's members while ensuring that trustees are held accountable for their actions.

3) In any case, the deed of the new trustee included a provision whereby the parties agreed for the new retirement scheme administrator to take over all the assets, duties, powers, and responsibilities of the retiring scheme administrator. On that basis, it was reasonable, justifiable and equitable in this case to expect the new trustee/RSA to review the complainant's pension scheme when it acquired the business to be able to comply with its obligations.

As to the merits of the case, pointedly relating to the type and exposure of the investments comprising the complainant's scheme, the Arbiter observed that:

1) At inception in 2014, the scheme was invested into four cells (sub-funds), forming part of a protected cell company.

2) The investment into the four cells of such company amounted to GBP280,538.45, representing 95% of the scheme's investible amount (of approximately GBP295,000). This scheme and its cells had several distinguishing features, such as being closed-ended with no entitlement to redemptions, tailored for long-term investment, tight and restrictive exit strategy and not subject to regulation in the jurisdiction where it was set up.

3) There were also concerns regarding the adequacy of such investment and how this fitted and satisfied the scope of the retirement scheme and the applicable investment principles and restrictions. The exposure to the said funds lacked the prudence, diligence and attention of a bonus paterfamilias required out of the scheme's trustee.

4) It should have been evident to both the outgoing and incoming trustees that there were issues with this investment and that the trustee was obliged to undertake its proper independent assessment.

5) The Outgoing Trustee allowed the complainant's investment portfolio to comprise the four funds. When the service provider took over as trustee and RSA, it failed to question the portfolio's compliance with existing investment principles and regulatory requirements.

6) The funds were inappropriate, and one could not understand why neither trustee/RSA had ever raised any issues about the incompatibility and inadequacy of such investment within the scheme. In addition, the service provider had failed to raise issues until nearly two years after it took over as trustee when the Outgoing Trustee had already been dissolved.

The complainant suffered damages due to the identified breaches and inadequate protection. The Arbiter ordered the service provider to compensate the complainant for 70% of the value invested in the funds and, as part of the compensation being awarded, waive or reimburse its exit fees that may be applicable in case of a transfer out of the scheme.

The decision has been appealed and the appeal process is ongoing.

A policy switch within a retirement scheme attracts hefty charges (ASF 028/2021)

COMPLAINT PARTIALLY UPHELD

Duty of care; fees; surrender charges; due diligence; structured notes; loss in policy value.

The complainant held a private retirement scheme in the form of a trust which the service provider administered as its trustee and retirement scheme administrator. The complainant, a 75-year-old, inexperienced retail consumer of financial services, claimed that:

a) In November 2012, he appointed a firm as his financial adviser. His private pension was moved into a Qualifying Recognised Overseas Pension Scheme (QROPS) serviced by the service provider. The scheme, in turn, purchased an underlying policy issued by a company (Company A) for £120,648, paying a monthly pension of around £750.

b) In March 2015, on his financial adviser's recommendation, he switched his underlying policy to another policy held by a different company, Company B.

c) He claimed to have informed the service provider that he wanted low and cautious-risk investments.

d) The complainant noted that his investment pool had depleted to such an extent that he could no longer draw a pension.

e) He claimed that the service provider should not only have identified Company B's policy as inappropriate but, had it paid due regard to his client profile, it would have raised questions about its risk element. He explained that when he agreed to the transfer from Company A to Company B, he had consented to enter into an alternative scheme with terms equivalent to the scheme from which he was exiting. He would have expected the service provider to ensure that this was the case.

The complainant claimed payment of his initial

investment with Company B less the sum of €12,000 that he withdrew in 2017.

In its reply, the service provider essentially submitted the following:

a) The service provider confirmed that the amount transferred to Company B was GBP75,926.14, equivalent to €105,037.08. The policy comprised several underlying investments, some intended to cover the complainant's periodic withdrawals. From the date the policy transfer to Company B was made, the complainant withdrew €31,316.26 in pension benefits.

b) In 2016, the complainant elected to receive a one-off withdrawal of €12,000 and quarterly payments of €1,000.

c) As to the investments, a profit of GBP4,636.30 was envisaged if the last pending structured investments were held to maturity and current market conditions prevailed at that time. Even if the investments held in the policy were complex products, the structured notes were prospectively suitable for clients with a cautious/ balanced profile. It, therefore, held that the performance of the investments did not account for the reduction in the value of the complainant's portfolio.

In his deliberations, the Arbiter noted the following:

1) Essentially, the complaint related to alleged losses and depletion of the complainant's pension fund and the claim that the service provider failed in its duty of care and due diligence to safeguard his pension, given that the underlying investments within the scheme were outside the complainant's cautious risk profile and preference for low-risk investments. The policy placed with Company B was inappropriate for him, was not a regular retail pension plan for an individual personal pension and was not comparable to the original scheme with Company A.

2) The acquisition by the complainant of a policy issued by Company A in October 2012 commenced with a premium of €137,822.40. Following the surrender of this policy in January 2015, the new underlying policy, issued by Company B, and acquired in March 2015, commenced with a premium of €105,037.08. The Company B policy's value as of 20 December 2020 stood at €36,243.34.

3) It was evident that the value of the complainant's underlying policy, as of December 2020, was substantially lower than the initial value with which the complainant initially commenced his pension plan.

4) Based on detailed calculations by the Arbiter, the complainant had not realised a loss overall on the structured note investments that comprised his policy and thus the Arbiter did not enter into the merits of the allegations made on the suitability or otherwise of such investments.

5) The Arbiter noted that multiple significant withdrawals occurred from 2015 to 2022. Up to early April 2022, there were cumulative withdrawals amounting to €43,976.25 and GBP5,696.78 between the Company B policy inception and April 2022. The complainant did not contest this.

6) The complainant also referred to the impact of fees on his pension plan, including management fees, quarterly service fees and dealing charges on each transaction. He admitted that upon the switch from Company A, early redemption charges and other commissions would also have possibly reduced the value of his fund.

7) It transpired that the fees paid by the complainant did have a material bearing on the scheme's performance, as was also acknowledged by the service provider itself.

8) The policy issued by Company A was redeemed just after two years after its purchase, and this led to considerable early surrender charges being applied. The total surrender costs of the Company A policy amounted to €9,541.04, around 8% of the policy value at the time. This was in addition to other charges applied for the period in which Company A policy was held.

9) As to the Company B policy, various fees were charged. Over seven years, from April 2015 to March 2022, the charges applied and accumulated on the Company B's policy amounted to €14,306.75, just under 14% of the initial premium invested in this policy. Upon exit, a further surrender charge would have become applicable.

10) The fees on the two policies accounted for 17.30% of the complainant's original premium of €137,822.40, resulting in material adverse implications on the value of the scheme.

11) It was unclear why the trustee had not raised concerns and permitted the transfer of his policy from Company A to Company B when both policies had similar features and aims. There were also expensive surrender charges which, besides being payable on exit from Company A, a further administration charge would also become payable on the Company B policy.

12) The Arbiter found no apparent benefit or justification for the complainant's policy transfer. The transfer was not in the complainant's best interests, and

it was not normal for such a transfer to occur after two years.

The Arbiter partially accepted the complaint and ordered the service provider to pay the complaint the amount of €11,710 for the damages suffered by him as a result of the lack of protection provided to safeguard his pension scheme. The amount represented the surrender fees paid on the Company A policy and the administration fees paid on the Company B policy since the end of December 2020.

The service provider was also required to pay any surrender fees applicable to the Company B policy if the complainant decided to surrender.

The decision was not appealed.

Substantial exposure of a retirement plan to a high-yielding investment (ASF 080/2021)

COMPLAINT PARTIALLY UPHELD

Loan notes; exposure to an investment; unregulated investments; diversification; due diligence; loss in value; default.

In her complaint, the complainant – a beneficiary of a private retirement scheme – claimed that the service provider (who was both the trustee and the retirement scheme administrator) had acted negligently and failed in its fiduciary duty as it allowed her scheme to be disproportionately exposed to an underlying investment, a loan note, that was unsuitable with lack of proper diversification and due diligence. She claimed that the loan note went into liquidation and held no value. The loan note investment represented approximately 70% of the complainant's pension. The complainant requested that the service provider reinstate her to her original position before the investment and claimed a total of GBP113,638.50 (capital and interest) as a remedy.

In its reply, the service provider essentially submitted the following:

a) The complainant had invested GBP55,000 of her QROPS into a loan note which had since become insolvent and had failed to redeem the capital when it became due in November 2019. The complainant acquired the investment in April 2019. The issuer of the loan note went into liquidation, and it had filed a notice of claim with the liquidators.

b) It rejected the complainant's contention that it had failed to complete the issuer's due diligence. Before any investment was made, it had confirmed that the group that issued the loan note had the apparent resources to undertake the proposed transaction. It claimed that, in 2011, the group that issued the loan note had a solid business plan and an eight-year track record in managing and developing such projects.

c) It submitted that the complainant had not demonstrated that the investment losses arose from the service provider's fraud, wilful misconduct or gross negligence. On the contrary, the service provider had acted in good faith and had kept the complainant informed of its actions.

The Arbiter made the following observations before reaching a decision:

1) According to the official documentation produced by the service provider, on 30 April 2015, the complainant invested GBP55,000 in a secured loan note to mature in 2019, having an 'average 13.8% fixed rate'.

2) Ultimately, the security of the interest payments and capital repayments depended on the success of the group's projects renovating several listed buildings. This was indeed described as one of the significant risks of such investment.

3) The investment of GBP55,000 into the loan note constituted 70% of the investible amount available in the retirement scheme. The allocation of the retirement plan's assets to a single product was disproportionate and did not reflect the plan's purpose, which was to provide a lifetime income to its members. The plan's assets were required to be invested prudently, and this allocation did not meet that requirement.

4) He was unconvinced that the loan note, and the extent to which the complainant's scheme was exposed to such a product, could be considered acceptable. The loan note was an unlisted, unregulated, alternative and a non-traditional illiquid investment product with a long-fixed investment term. It also had a high-risk investment element, as reflected in the high rate of return of 12% per annum.

5) The scheme's portfolio was not diversified because 70% of its investment was in the loan note. This made the scheme heavily reliant on this one investment's performance, which led to significant losses when the loan note failed. This lack of diversification violated the requirements of prudence and liquidity.

6) Notwithstanding that a third-party regulated investment adviser provided the advice to invest in theloan note, the service provider could not claim it had

no responsibility. The service provider had a key and essential monitoring function regarding the scheme to ensure that it was operated in line with its scope and the applicable requirements and to safeguard the scheme's assets.

7) As trustee, the service provider was accordingly duty-bound to administer the scheme to high standards of diligence and accountability.

8) Although the complainant indicated a high attitude to risk on the scheme's application form, this did not justify creating a pension investment portfolio with such a high level of risk that jeopardised the purpose for which the retirement scheme was created. Pension schemes are intended to provide a lifetime income, not to be speculative investments. Therefore, the risk profile indicated in the application form should be evaluated within the context of a pension product rather than a regular investment account.

9) The Arbiter did not find comfort in the service provider's statements that it verified the issuer's ability to undertake the proposed transaction. This was because there was a high counterparty risk involved with the issuer. The 2011 financial statements used for verification were outdated for the April 2015 investment into the loan note that was made over three years later. Therefore, proper due diligence was indeed lacking.

The Arbiter considered that, in this case, it was fair, equitable and reasonable for the service provider to compensate the complainant for 70% of the value invested in the loan note, amounting to GBP38,500.

The decision has been appealed and the appeal process is ongoing.

Delay in submitting a complaint to the provider (ASF 091/2021)

COMPLAINT REJECTED

Losses on investment; time limit to submit a complaint; conduct being complained of; Arbiter's competence.

This complaint related to a retirement scheme established in Malta in the form of a trust administered by the service provider as its trustee and retirement scheme administrator. Essentially, the complainants – who were beneficiaries of the scheme – alleged that the service provider had not undertaken adequate due diligence in respect of their investment adviser and that it had also failed to carry out the necessary checks of the underlying investment of their respective scheme, in which they had invested GBP100,000 for each of their respective trusts.

Had these been done correctly, the massive losses in their investment would not have occurred.

They requested the Arbiter to order the service provider to compensate them GBP100,000 each, the amount invested, plus interest.

The service provider rejected the submission of the complainants and held that:

a) The issuer of the loan notes, in which the complainants' funds were invested, was incorporated to raise finance for its four overseas subsidiaries. The service provider submitted that due diligence was undertaken by it on the loan notes in late 2014 and early 2015.

b) It claimed that financial irregularities within the group, the insolvency of the subsidiaries and adverse publicity had a high impact on the issuer's ability to trade, ultimately resulting in the issuer being put into administration on 26 February 2018.

c) The service provider claimed that the complainants were notified of this development in an email dated April 5, 2018. The email also stated that the administration would likely result in a capital loss and that only a significantly lower amount would likely be paid to investors.

d) As the complaint was made more than two years after the critical dates of 26 February 2018 (the date at which the issuer was put into administration) and 5 April 2018 (the date of the email sent by the complainant's advisers), the complaint fell outside the competence of the Arbiter in terms of article 21(c) of the Act.

e) The service provider claimed that between the date on which the complainants were first informed of the failure of their investments in the loan notes and the time they initially chose to write to the service provider seeking compensation (that is, over three years later), they tried to seek a remedy from their investment advisers but failed.

f) Although they acknowledged that the position in which the complainants find themselves was unfortunate, their complaint was time-barred by statute and thus, the Arbiter did not have the competence to look into it.

The Arbiter's decision was primarily focused on the legal plea made by the provider in which the Arbiter's competence was being challenged given the late submission of the complaint by the complainants to the provider. This delay contradicts the provision of article 21(c) of the Act.

In his decision, the Arbiter observed that:

1) The 5 April 2018 email did not downplay the seriousness of the matter and the significant likelihood of a substantial or complete loss of the investment. A subsequent email to the complainants by the service provider, dated 29 June 2018, made explicit reference to the liquidation process and named the liquidators appointed for this purpose.

2) The claims made by the complaints that they became aware of the massive losses during or after August 2019 could not be sustained as in 2018, they had already been given specific information about the looming losses to their investment. Their reference to August 2019 concerned a report issued in that month on various investigations relating to the issuer for the possibility of any recoveries. Much of the information contained in that report had already been disclosed in prior communications.

As the complainants filed a formal complaint with the service provider on 26 February 2021, more than two years from the day on which the Arbiter considered the complainants to have had first knowledge of the matters complained of, their complaint was dismissed for lack of competence in terms of article 21(1)(c) of the Act.

The decision was not appealed.

The Office of the Arbiter for Financial Services:

Informal Justice as an Effective Mechanism in Dispute Resolution

Proceedings of a Conference organised by the OAFS

Hon Clyde Caruana, Minister for Finance and Employment, addressing the conference.
Panel (from left): Prof Dr Kevin Aquilina, Prof Dr Christopher Hodges, Prof Dr Stefaan Voet and Dr Reno Borg

On Thursday 23 February 2023, the Office of the Arbiter for Financial Services (OAFS) hosted their first conference highlighting the importance of informal justice as an effective mechanism in dispute resolution. Held at the Aula Magna (University of Malta Valletta Campus), the conference brought together industry leaders and experts from academia to share their experiences and discuss the best practices for conflict resolution.

Informal justice refers to the resolution of conflicts and disputes outside of formal Court systems, often using techniques such as conciliation, mediation, and arbitration. Established in 2016, the OAFS is one such out-of-court and informal redress mechanism specifically set up to investigate and adjudicate on disputes relating to financial services activities provided by entities that are licensed in Malta.

The event was addressed by Finance Minister Hon. Clyde Caruana, "We all know that in a society the most important institution that needs to be effectively running is an effective judicial system." He continued, "the excellent way the Arbiter has conducted his job throughout the past six years should serve in a way as an example for the other institutions that we have within the financial industry. Because if we want our industry to continue to thrive and our economy to prosper, we have to ensure that the quality of service that we offer is of the outmost quality."

In his presentation titled "Informal Justice: Effective Remedies to Consumer Concerns", the Arbiter for Financial Services Dr Reno Borg highlighted how informal justice can effectively and more efficiently redress justice to consumers of financial services. He gave practical examples of how the Office of the Arbiter for Financial services has, over the years, addressed customers' concerns ranging from minor cases to complex cases decided by the Arbiter involving the loss of thousands of euros by consumers. "People have concerns," Dr Borg stated, "they have concerns about their investments, their bank statements and they had nowhere to go. So we wanted to provide them with a simple solution of having a freephone - to also reach vulnerable people who do not have internet at home or do not know how to send an email." Among various aspects, the Arbiter emphasized that informal justice had the advantage of less complex procedures leading to a more efficient outcome to consumers' complaints.

In his delivery on the role of the ombudsman in a modern market context, keynote speaker Prof. Dr Christopher Hodges OBE, Emeritus Professor of Justice Systems and Head of the Swiss Re Research Programme on Civil Justice Systems at the Centre for Socio-Legal Studies added that, "fairness is the basic criterion because we all want to see fair practice, we want to see fair outcomes and fair behaviour between traders, so the consumers are supported. The word fairness is everywhere […] because it's a basic human value and we want markets to be fair, we want traders and consumer behaviour to be fair. And we want to identify problems and fix them quickly." He continued, "but we also want to provide protection because protection is the ultimate explanation and justification for regulation."

"There is no doubt that informal justice processes have served the country well and, overall, have performed well," said Prof. Dr Kevin Aquilina, another keynote speaker at the conference and the former Dean of the Faculty of Laws of the University of Malta. "However, more consideration needs to be given as to how informal justice processes can dovetail with formal justice processes. One of the aspects that needs further consideration is the transfer of certain disputes from the formal justice system to the informal justice system so that court backlog is reduced, and delays are shortened." He added that, "the judiciary needs to be trained as to the workings of informal justice system so that they would exploit it more by requesting parties to first resort to informal justice processes before, if need be, initiating court litigation that is not of an urgent nature."

The panel engaging with conference attendees on a range of financial consumer protection issues (from left: Dr David Fabri, Dr Francesca Galea Cavallazzi and Dr Ivan Paul Grixti)

Prof. Dr Stefaan Voet, Professor of Law at University of Leuven, discussed the European developments that are currently ongoing regarding the consumer ADR Directive, "The concept of the ADR directive […] was to establish a binding and a more robust framework for Consumer ADR. It was successful in two ways: on the one hand it allowed European consumers to bring their complaints out of court and on the other hand, […] I have noticed that it has led to a mind shift in the sense that not only consumers can use this instrument but it is also something positive for traders if they can give recourse to their consumers to efficient and effective ADR."

He then added, "the more information you give, the more transparent you are, the more certainty there is regarding the outcome of the process and the more trust consumers have. Some of the best practices that we have discovered is the publication of previous decisions, the rate of acceptance of proposed solutions and the consistency of decision making and alignment of ADR outcomes with judgements."

Attendees had the opportunity to learn from keynote speakers who are leaders in their field and interact with a panel discussion on consumer protection in the financial services that ensued. As the panel moderator, Dr David Fabri, Senior Lecturer in financial services regulation and consumer protection at the University of Malta, was joined by panelists Dr Francesca Galea Cavallazzi, Senior Associate at Camilleri Preziosi Advocates and Dr Ivan Paul Grixti, Senior Lecturer in accountancy at the University of Malta.

The Arbiter for Financial Services Dr Reno Borg closed the conference by thanking the team, speakers, and participants for making the OAFS' first conference successful.

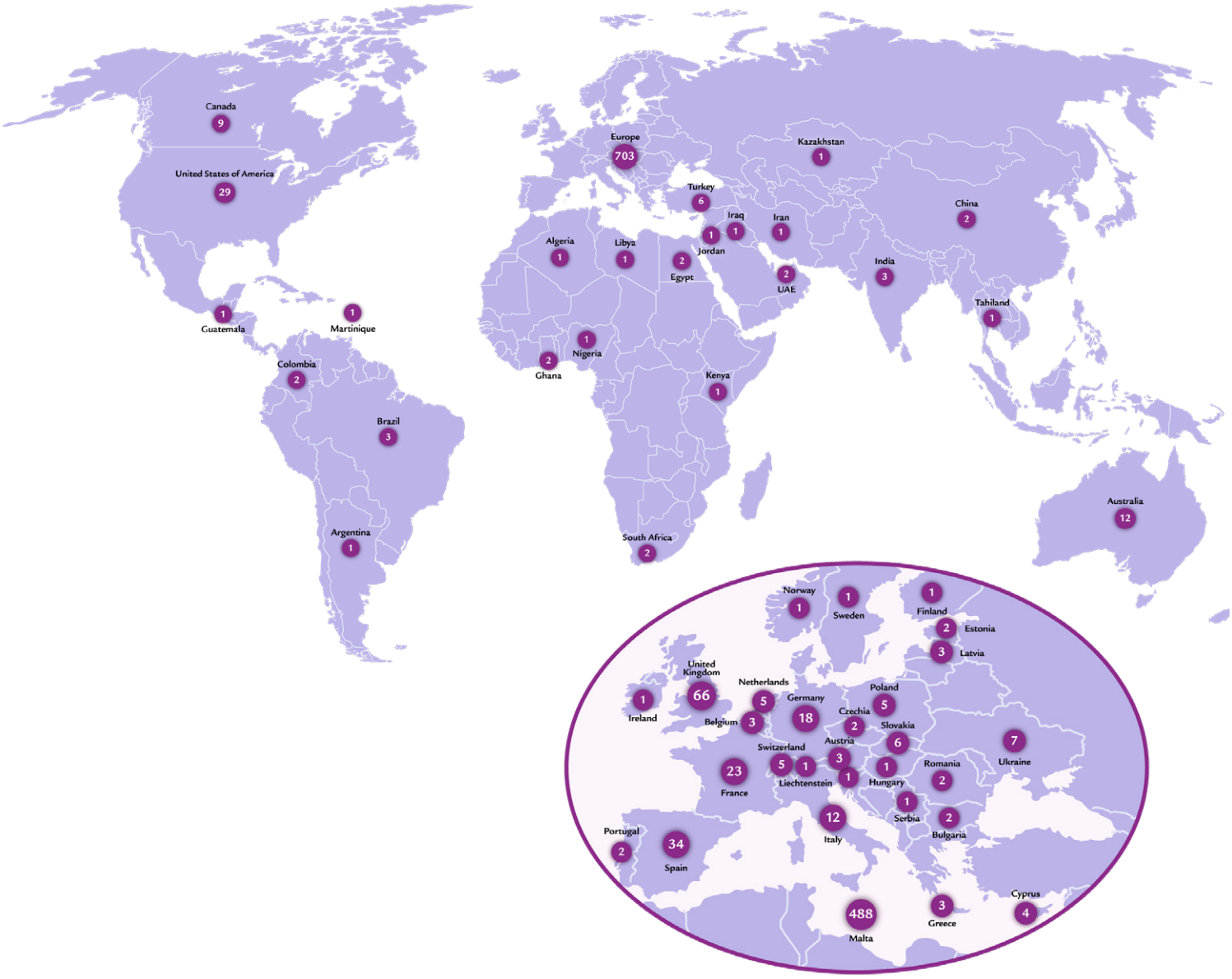
The diverse group of professionals who attended the OAFS conference

Scan to download the conference proceedings

Annex 1

Origin of OAFS complainants in 2022

The jurisdiction of the Office of the Arbiter for Financial Services covers complaints lodged by eligible customers anywhere in the world against financial services providers licensed in Malta. The heat map presented here showcases the international scope of the OAFS's operations and highlights the global presence of Malta's financial services industry, as it represents all consumers who engaged with the OAFS in 2022 through both enquiries and formal complaints.



Annex 2

Enquiries and Minor Cases' Statistics for 2022

Figure 1 - Total enquiries and minor cases (2016-2022)

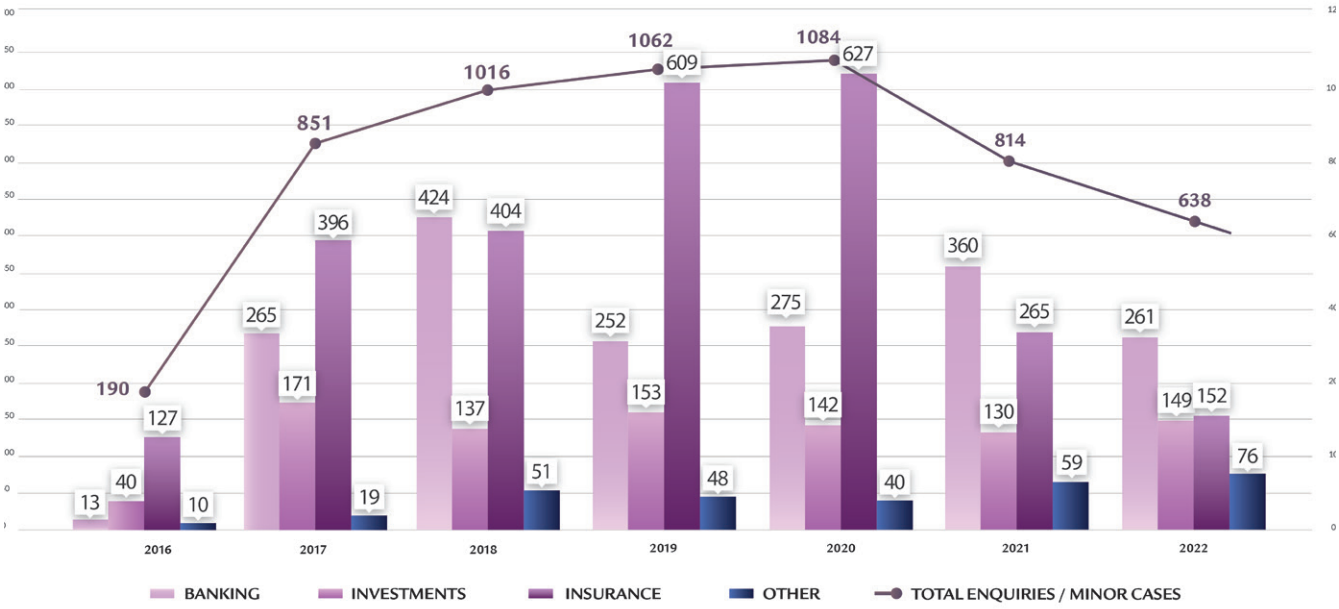


Figure 2 - Enquiries and minor cases (by origination)

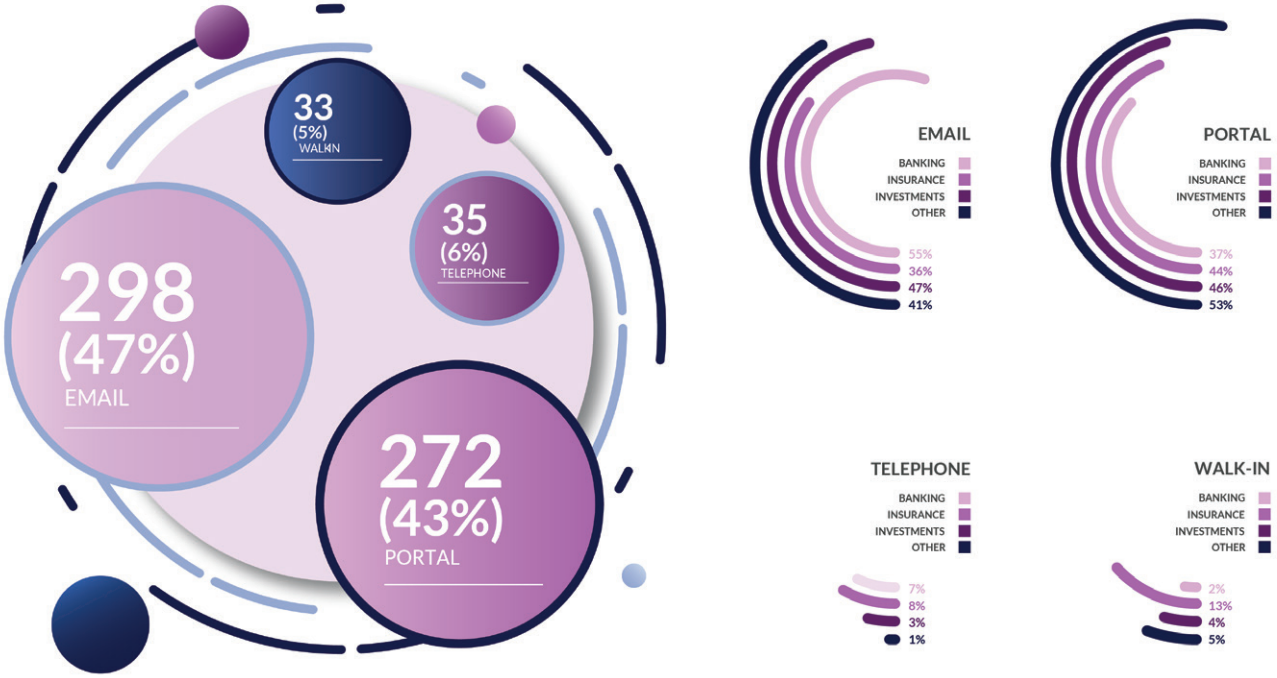


Figure 3 - Enquiries and minor cases (by outcome)

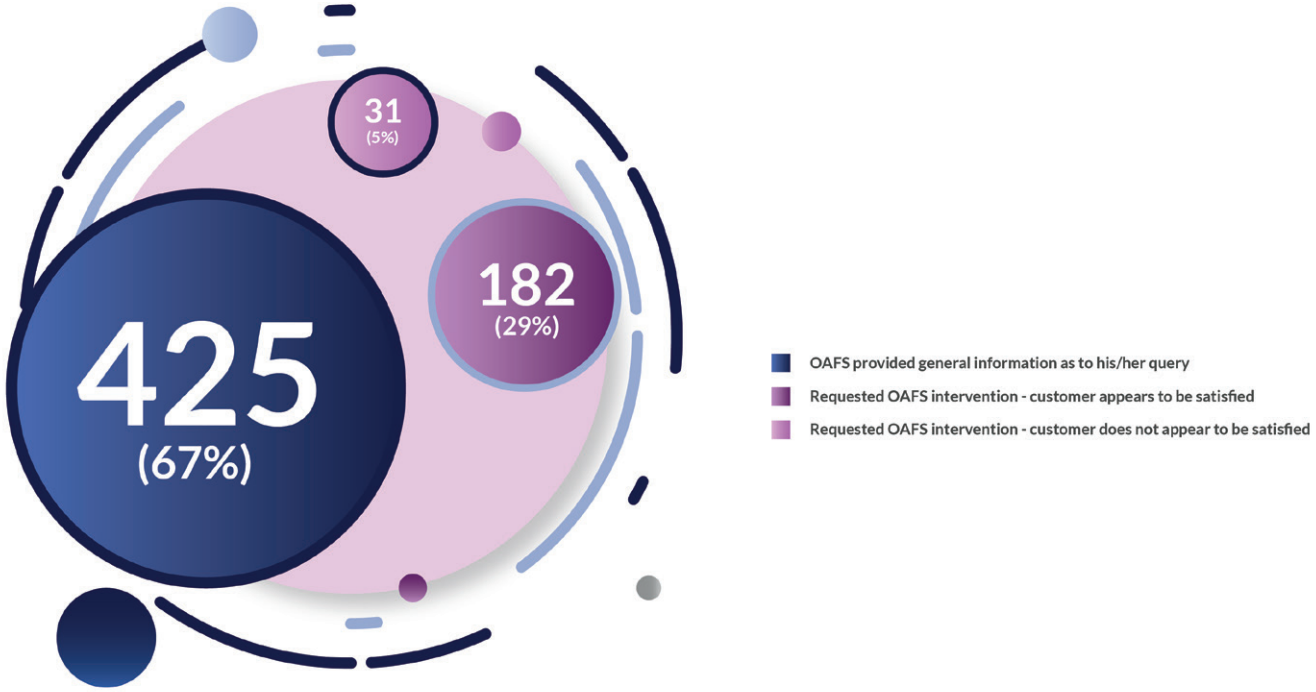


Figure 4 - Enquiries and minor cases (by sector and outcome)

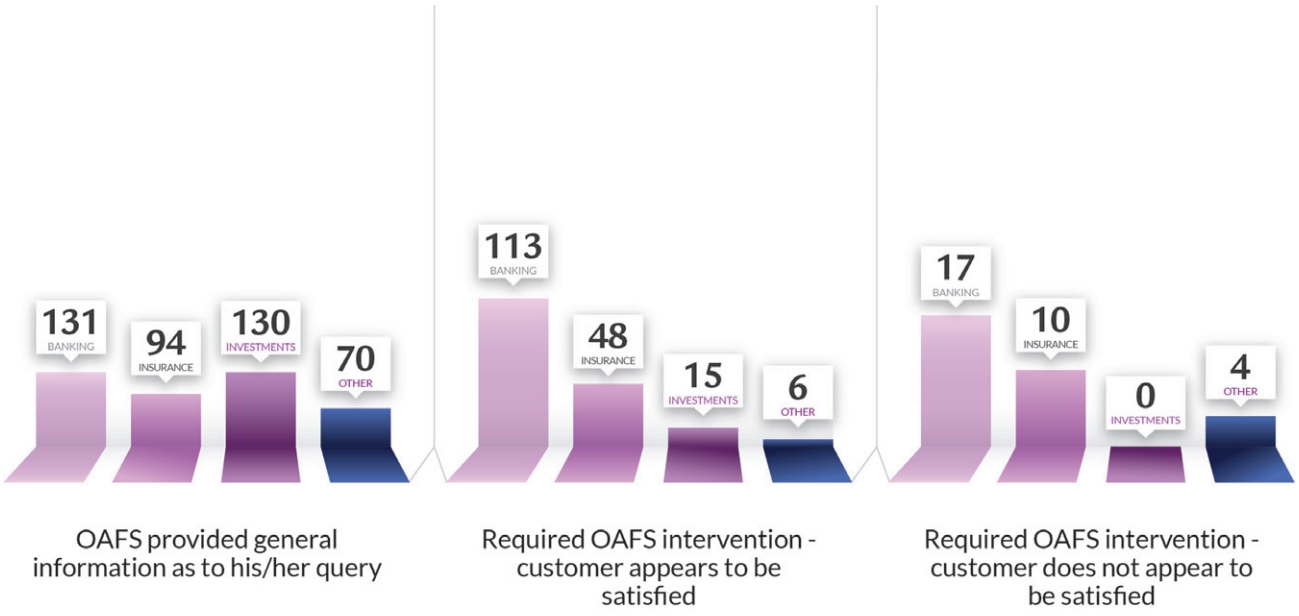
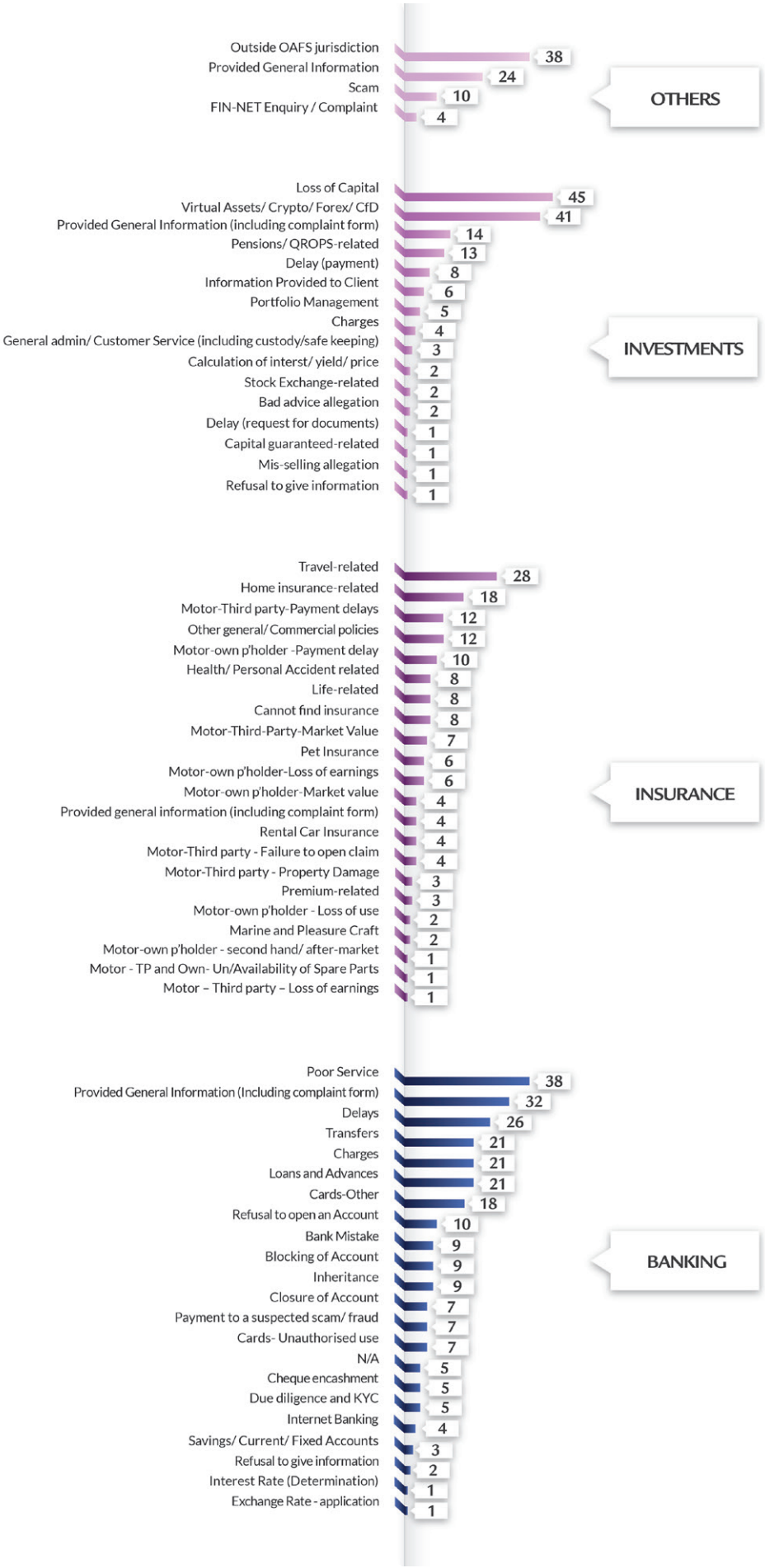


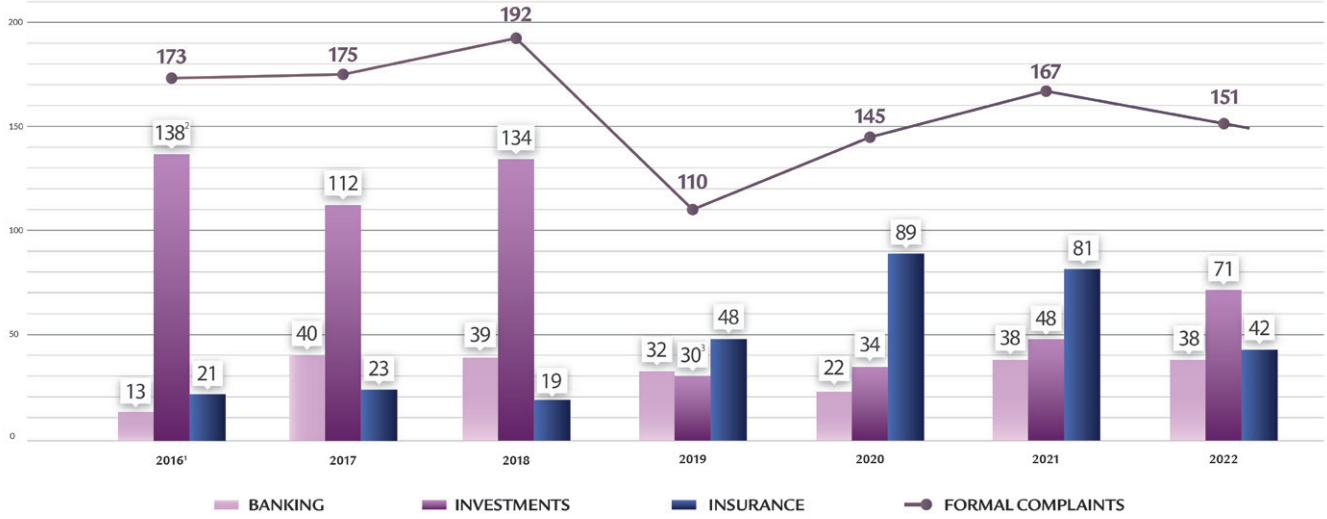
Figure 5 - Enquiries and minor cases (by type)



Annex 3

Formal Complaints' Statistics for 2022

Figure 6 - Total number of formal complaints (2016-2022)



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

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

[3] One complaint is made up of 56 individual complainants as their merits are intrinsically similar in nature.

Table 1 - Complaints registered (by product and issue)

BY PRODUCT	BANKING AND PAYMENT SERVICES	INSURANCE	INVESTMENTS	GRAND TOTAL
Pension-related			32	32
Life-related		28		28
Crypto/ Virtual Financial Assets			24	24
Savings/Current/Term Account	13			13
Cards	11			11
Transfers	11			11
Miscellaneous (securities and funds)			8	8
Forex dealing/CfD / Binary Options			5	5
Home (Building Contents)-related		4		4
Pet-related		3		3
Other Business Lines		2		2
Marine Pleasure Craft-related		2		2
Other Loans and advances	2			2
Other Funds/ Unit-Linked Investments			1	1
Health-related		1		1
Basic Payment Account	1			1
Travel-related		1		1
Portfolio Management			1	1
Motor- Own p'holder		1		1
Total	**38**	**42**	**71**	**151**

BY ISSUE	BANKING AND PAYMENT SERVICES	INSURANCE	INVESTMENTS	GRAND TOTAL
Administration/Management/Custody			51	51
Value at maturity		26		26
Suspected irregular activity	17			17
Rejection of claim		12		12
Opening/Closure	11			11
General admin/customer service	1	1	7	9
Delays	4		2	6
Charges	1		4	5
Mistake / Incorrect application	2		1	3
Calculation of price/interest			2	2
Loss of earnings		2		2
Inappropriate product/service	1		1	2
Misselling / Suitability			2	2
Opening/Closure			1	1
Refusal to incept/renew		1		1
Other	1			1
Total	**38**	**42**	**71**	**151**

Table 2 - Complaints registered (by provider and sector)

	BANKING AND PAYMENT SERVICES	INSURANCE	INVESTMENTS AND PENSIONS	TOTAL
APS Bank plc	4			4
Argus Insurance Agencies Limited		1		1
Bank of Valletta plc	15			15
Blevins Franks Wealth Management Limited			1	1
BNF Bank plc	5			5
Bonicci Insurance Agency Limited, Mapfre Middlesea plc		1		1
BOV Asset Management Limited			1	1
Building Blocks Insurance PCC Limited		3		3
Calamatta Cuschieri Investment Services Limited			3	3
EM@NEY plc	2			2
Finance Incorporated Limited	1			1
Foris Dax MT Limited			20	20
GasanMamo Insurance Limited		3		3
Global Shares Execution Services Limited			1	1
HSBC Bank Malta plc	5			5
HSBC Life Assurance (Malta) Limited		1		1
Integrated-Capabilities (Malta) Limited			1	1
ITC International Pensions Limited			1	1
Lazarus Long Limited	4		2	6
LifeStar Insurance plc		1		1
M.Z. Investment Services Limited			1	1
Mapfre Middlesea plc		1		1
Mapfre MSV Life plc		26		26
Mapfre MSV Life plc, Bank of Valletta plc		1		1
MC Trustees (Malta) Limited			1	1
MeDirect Bank (Mlata) plc			1	1
MIB Insurance Agency Limited		1		1
Momentum Pensions Malta Limited			18	18
MPM Capital Investments Limited			1	1
MPM Capital Investments Limited, The Optimus Retirement Benefit Scheme No 1			1	1
Multitude Bank plc	1			1
Oanda Europe Markets Ltd.			1	1
QIC Europe Limited		1		1
Riverstone Insurance (Malta) Ltd.		2		2
Sovereign Pension Services Limited			1	1
STM Malta Pension Services Limited			7	7
The MCT Malta Private Retirement Scheme, MC Trustees (Malta) Limited			1	1
TMF International Pensions Limited			2	2
Triton Capital Markets Limited			1	1
Trive Financial Services Malta Limited			2	2
Truevo Payments Limited	1			1
XNT Limited			2	2
Zillion Bits Limited			1	1
Total	**38**	**42**	**71**	**151**

Table 3 - Complaint outcomes

Agreement was reached at mediation	18
Withdrawn prior to mediation	17
Withdrawn following mediation	15
Parties agreed to settle prior to commencement of mediation	2
Withdrawn and/or agreement reached prior to case hearing	1
Withdrawn following case hearing	1
Agreement reached during hearing before Arbiter	3
Cases in respect of which a decision has been issued by the Arbiter for Financial Services (includes one decision incorporating 60 complainants)	85

Table 4 - Decisions of the Arbiter (by sector)

		Banking and payment services	Investments	Insurance
Preliminary and Clarifications	13		12	1
Upheld in full	8	2	1	5
Partially upheld	22	0	8	14
Rejected	42	21	17	4
Res judicata	66	23	21	22
Appealed	6	0	5	1

Table 5 - Decisions delivered by the Arbiter in 2022 (breakdown by financial services provider)

The table below provides a breakdown of the type and nature of decisions by financial services provider during 2022, and whether the final decision has been appealed.

Financial Services provider	Sector	Final Decisions	Preliminary & Clarifications		Upheld	Partially Upheld	Rejected		Appealed	Not Appealed	
APS Bank plc	Banking & Payments	2		2			2	2	1	2	2
ArgoGlobal SE	Insurance	3		3	1	1	1	3		3	3
Bank of Valletta plc	Banking & Payments	3		3	1		2	3		3	3
BNF Bank plc	Banking & Payments	4		4	1		3	4		4	4
Bonnici Insurance Agency Limited & MAPFRE Middlesea plc	Insurance	1		1	1			1		1	1
Building Blocks Insurance plc	Insurance	1		1	1			1		1	1
Calamatta Cuschieri Investment Services Limited	Investments & Pensions	3		3			3	3		3	3
Dominion Fiduciary Services (Malta Limited)	Investments & Pensions	1		1			1	1	1	1	1
EM@NEY plc	Banking & Payments	1		1			1	1		1	1
Foris DAX MT Limited	Investments & Pensions	7	3	10			7	7		7	7
Global Capital Financial Management Limited	Investments & Pensions	1		1			1	1		1	1
HSBC Life Insurance (Malta) Limited	Insurance	1		1			1	1		1	1
ITC International Pensions Limited et	Investments & Pensions	1		1			1	1		1	1
Mapfre MSV Life plc	Insurance	14	2	16	1	13		14		14	14
MIB Insurance Agency Limited	Insurance	2		2	1		1	2	1	1	2
Michael Grech Financial Services Limited	Investments & Pensions	1		1	1			1	1		1
Momentum Pensions Malta Limited	Investments & Pensions	2	1	3			2	2		2	2
MPM Capital Investments Limited	Investments & Pensions	2		2		1	1	2	1	1	2
Papaya Limited	Banking & Payments	1		1			1	1		1	1
Phoenix Payments Limited	Banking & Payments	5		5			5	5		5	5
Satabank plc	Banking & Payments	2		2			2	2		2	2
Sovereign Pension Services Limited	Investments & Pensions	3		3		2	1	3		3	3
STM Malta Pension Services Limited	Investments & Pensions	5	4	9		5		5	3	2	5
Truevo Payments Limited	Banking & Payments	3		3			3	3		3	3
Trust Payments (Malta) Limited	Banking & Payments	3		3			3	3		3	3
TMF International Pensions Limited	Investments & Pensions		2	2				0			
Zillion Bits Limited	Banking & Payments		1	1				0			
		72	13	85	8	22	42	72	6	66	72

Data featured under "Preliminary & Follow-up" includes decisions on initial legal pleas (such as if the service provider is contumacious), any clarification requests that the parties to a complaint might have requested the Arbiter to issue following delivery of a decision, as well as decisions referred back by the Court of Appeal (Inferior Jurisdiction) following delivery of an appeal judgement. When this happens, the Court of Appeal would request the Arbiter to revalue the compensation award to the complainant regarding a financial instrument or instruments that would be subject to the dispute.

Data featured under the "Appealed" column has been obtained from the eCourts website and is subject to change as cases might have been decided or ceded following publication of this report.

This page is intentionally left blank.

Office of the Arbiter for Financial Services

Audited Financial Statements as at 31 December 2022

National Audit Office
Notre Dame Ravelin
Floriana FRN 1600
Malta

Phone: (+356) 22055555
E-mail: nao.malta@gov.mt
Website: www.nao.gov.mt
www.facebook.com/NAOMalta

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 2022, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year 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 2022, of its financial performance, changes in equity and cash flows for the year then ended in accordance with International Financial Reporting Standards as adopted by the European Union, and comply with Act XVI of 2016 and 2017 of the Laws of Malta.

- signed -

Auditor General
6 June 2023

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 2022.

Objects

The Office of the Arbiter for Financial Services is an 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 income statement is set out on page 3.

Review of the period

The Board reports a surplus of €73,714 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 year.

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	2022 €	2021 €
ASSETS			
Property, Plant and Equipment	6	**14,751**	**17,150**
Intangible Asset	7	**13,275**	**26,550**
		28,026	**43,700**
Current assets			
Trade and other receivables	8	**14,202**	**3,158**
Cash and cash equivalents	9	**292,742**	**196,645**
		306,944	**199,803**
TOTAL ASSETS		**334,970**	**243,503**
EQUITY AND LIABILITIES			
Equity			
Accumulated Funds		**304,450**	**230,736**
		304,450	**230,736**
Current liabilities			
Trade and other payables	10	**30,520**	**12,767**
		30,520	**12,767**
Total liabilities		**30,520**	**12,767**
TOTAL EQUITY AND LIABILITIES		**334,970**	**243,503**

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:

Date: 25 May 2023

Mr Geoffrey Bezzina
Chairperson

Income Statement

	Notes	2022 €	2021 €
Income	3	**679,164**	**678,187**
Administrative expenses	4	**(605,088)**	**(608,288)**
Financial costs	5	**(361)**	**(414)**
Surplus for the year		**73,714**	**69,485**

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 Jan 2020	**90,877**	**90,877**
Surplus for the year	70,374	70,374
Balance at 31 December 2020	**161,251**	**161,251**
Surplus for the year	69,485	69,485
Balance at 31 December 2021	230,736	230,736
Surplus for the year	73,714	73,714
Balance at 31 December 2022	304,450	304,450

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

Statement of cash flows

	Note	2022 €	2021 €
Operating activities			
Surplus for the year		**73,714**	**69,485**
Adjustments to reconcile profit before tax to net cash flows:			
Non-cash movements			
Depreciation of fixed assets		**18,691**	**18,208**
Working capital adjustments			
Increase in trade and other receivables		**(11,044)**	**(452)**
Increase in trade and other payables		**17,753**	**3,291**
Net cash generated from operating activities		**99,114**	**90,532**
Investing activities			
Purchase of property, plant and equipment		**(3,017)**	**-**
Purchase of Intangible Asset		**-**	**-**
Net cash used in investing activities		**(3,017)**	**-**
Cash and cash equivalents at 1 January		**196,645**	**106,113**
Net increase in cash and cash equivalents		**96,097**	**90,532**
Cash and cash equivalents at 31 December	9	**292,742**	**196,645**

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 year ended 31 December 2022 were authorised for issue in accordance with a resolution of the members. Office of the Arbiter for Financial Services is a Goverment 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.

Intangible assets

An acquired intangible asset is recognised only if it is probable that the expected future economic benefits that are attributable to the asset will flow to the entity and the cost of the asset can be measured reliably. An intangible asset is initially measured at cost, comprising its purchase price and any directly attributable cost of preparing the asset for its intended use.

Intangible assets are subsequently carried at cost less any accumulated amortisation and any accumulated impairment losses. Amortisation is calculated to write down the carrying amount of the intangible asset using the straight-line method over its expected useful life. Amortisation of an asset begins when it is available for use and ceases at the earlier of the date that the asset is classified as held for sale (or included in a disposal group that is classified as held for sale) or the date that the asset is derecognised.

The amortisation of the intangible asset is based on a useful life of 4 years and is charged to profit or loss.

Amortisation method, useful life and residual value

The amortisation method applied, the residual value and the useful life are reviewed on a regular basis and when necessary, revised with the effect of any changes in estimate being accounted for prospectively.

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.

	2022	2021
	€	€
Government Funding	675,000	675,000
Complaint Fees	4,164	3,187
Total Income	679,164	678,187

4. Expenses by nature

	2022	2021
	€	€
Staff Salaries	489,314	492,839
Office maintenance & Cleaning	12,792	12,517
Car & Fuel Expenses	15,590	17,538
Advertising (Recruitment costs)	1,923	2,178
Telecommunications	7,867	7,057
Professional Fees	9,298	11,513
Depreciation charge for the year	18,691	18,208
Other expenses	49,614	46,438
Total administrative costs	605,088	608,288

Notes to the financial statements (continued)

4. Expenses by nature (continued)

Average number of persons employed by the office during the year:	2022	2021
Total average number of employees	**11**	**12**

5. Financial costs

	2022 €	2021 €
Bank and similar charges	**361**	**414**

6. Property, plant and equipment

	Furniture, Fixtures & Fittings €	Office Equipment €	Computer Equipment €	Total €
Net book amount at 1 January 2021	17,165	3,017	1,901	22,083
Additions	-	-	-	-
Depreciation charge for the period	(2,819)	(1,094)	(1,020)	(4,933)
Net book amount at 31 December 2021	**14,346**	**1,923**	**881**	**17,150**
Additions	-	-	3,017	3,017
Depreciation charge for the year	(2,819)	(1,036)	(1,561)	(5,416)
Net book amount at 31 December 2022	**11,527**	**887**	**2,337**	**14,751**
As at 31 December 2022				
Total cost	28,194	8,686	20,220	57,100
Accumulated depreciation	(16,667)	(7,799)	(17,883)	(42,349)
Net book amount at 31 December 2022	**11,527**	**887**	**2,337**	**14,751**

Notes to the financial statements (continued)

7. Intangible Asset

	Website and Case and File e-Solution	Total
	€	€
Net book amount at 1 January 2022	26,550	26,550
Additions		-
Depreciation charge for the period	(13,275)	(13,275)
Net book amount at 31 December 2022	**13,275**	**13,275**

8. Trade and other receivables

	2022	2021
	€	€
Prepayments	**9,483**	**3,158**
Other receivables	**4,719**	**-**
	14,202	**3,158**

9. Cash and cash equivalents

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

	2022	2021
	€	€
Cash at bank and in hand	**292,742**	**196,645**

10. Trade and other payables

	2022	2021
	€	€
Other payables	**16,458**	**931**
Accruals	**14,062**	**11,836**
	30,520	**12,767**

Administrative expenses

	2022 €	2021 €
Staff Salaries	**489,314**	**492,839**
Training	**696**	**1,114**
Office Consumables	**1,566**	**772**
Cleaning	**9,685**	**8,341**
Office Maintenance	**3,107**	**4,176**
Printing and Stationery	**3,983**	**4,118**
PC/Printer Consumables	**370**	**615**
Other Office Costs	**1,901**	**1,978**
Other Office Equipment	**499**	**-**
Telecommunications	**7,867**	**7,057**
Website Expenses	**13,612**	**18,532**
Postage, Delivery & Courier	**1,349**	**2,517**
Insurance - Health	**14,602**	**11,106**
Insurance - Travel	559	**-**
Insurance - Business	**356**	**257**
Memberships & Subscriptions	**1,710**	**1,220**
General Expenses	**124**	**75**
Vehicle, leasing and fuel expenses	**15,590**	**17,538**
Travelling Expenses	**4,153**	**-**
Advertising (Recruitment)	**1,923**	**2,178**
Professional Fees	**9,298**	**11,513**
Accounting Fees	**4,134**	**4,134**
Depreciation Charge	**18,691**	**18,208**
	605,088	**608,288**

ARBITER FOR FINANCIAL SERVICES

Office of the Arbiter for Financial Services
First Floor, St Calcedonius Square
Floriana FRN 1530
Malta

Freephone 80072366
Telephone +356 2124 9245
Whatsapp +356 79219961
www.financialarbiter.org.mt