ARBITER FOR FINANCIAL SERVICES

ANNUAL REPORT 2023

Enquiries relating to this Report are to be addressed to:

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

Any use of words or phrases to a similar effect shall have no significance in interpreting this report; such use is solely for convenience.

The cut-off date for information about appeals to decisions delivered by the Arbiter is 30 April 2024.

ARBITRU GĦAS-SERVIZZI FINANZJARJI
ARBITER FOR FINANCIAL SERVICES

17 June 2024

The Hon Clyde Caruana BCom (Hons), MA (Econ), MP
Minister for Finance
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 the Annual Report and Financial Statements of the Office of the Arbiter for Financial Services for 2023.

Yours faithfully

Alfred Mifsud
Arbiter for Financial Services

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

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 concerning 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 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 over the aforementioned 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 can consolidate individual complaints submitted to the Office if they share intrinsic similarities.

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 aligns Malta with other certified ADR bodies in the EU and EEA with similar competencies in handling financial services complaints.

Highlights

- In 2023, the OAFS registered 224 new formal complaints, a significant increase (48%) from 151 in 2022. The Banking/ Payment Services sector saw a substantial rise in complaints, with 122 cases in 2023 compared to 39 in 2022. Most of these complaints were lodged against one particular financial entity that subsequently faced regulatory action.

- 137 final decisions were issued in 2023, with 81 cases not upheld, 50 partially upheld, and six fully upheld. The Arbiter awarded €809,000 in total compensation, excluding interest and costs. Of the 81 cases not upheld, 14 were rejected on legal merits, 20 were outside the Arbiter's competence, 45 had unproven merits, and two were frivolous and vexatious.

- The average time taken to issue a decision once a case file was completed significantly decreased in 2023 compared to previous years. Banking-related complaints took an average of 106 days (down from 170 in 2022), whilest Insurance-related cases took 88 days on average (down from 134 in 2022).

- The OAFS held 80 mediation sessions in 2023, with 30 cases successfully resolved through mediation. A further 21 cases were withdrawn before mediation, and 12 cases were withdrawn following mediation. Cases not resolved at mediation proceeded directly to the Arbiter, along with other cases in which the parties did not wish to refer their case to mediation.

- The Arbiter developed a model for allocating responsibility between Payment Service Providers (PSPs) and Payment Service Users (PSUs) in cases of payment fraud scams; this has been well-received and adopted by Malta's largest banks.

- The OAFS actively engaged with various stakeholders to provide an overview of its dispute resolution process and share insights into frequently handled complaints.

- Amendments to the Arbiter for Financial Services Act were proposed to enhance the OAFS's operational efficiency, improve consumer protection, and provide legal clarity on prescription interruption. These amendments were enacted in the first half of 2024.

- To enhance its visibility and accessibility, the OAFS launched weekly posts on its Facebook and LinkedIn profiles to raise awareness of its services, share case summaries, and provide 'lessons learned' from the Arbiter's decisions. The OAFS also engaged with the public through regular radio slots in popular programmes aired during prime time.

2023

Acronyms / Abbreviations

Act	Arbiter for Financial Services Act (Chapter 555 of the Laws of Malta)
ADR	Alternative Dispute Resolution
ADR Directive	Directive on consumer ADR (Directive 2013/11/EU)
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	EuropeanUnion
FCA	Financial Conduct Authority (UK)
FSCS	Financial Services Compensation Scheme (UK)
KYC	Know Your Customer
MCA	Malta Communications Authority
MCCAA	Malta Competition and Consumer Affairs Authority
MFSA	Malta Financial Services Authority
MiFID	Markets in Financial Instruments Directive (Directive 2014/65/EC)
MVR	Market Value Reduction
NAO	National Audit Office
OAFS or the Office	Office of the Arbiter for Financial Services
PSD	Payment Services Directive (Directive [EU] 2015/2366)
PSP	Payment Service Provider
PSU	Payment Service User
QROPS	Qualifying Recognised Overseas Pension Scheme
RSA	Retirement Scheme Administrator
TTA	Trusts and Trustees Act (Chapter 331 of the Laws of Malta)
VFA	Virtual Financial Assets

Contents

Figures & Tables

Annex 2 - Enquiries and minor cases statistics for 2023

Annex 3 - Formal complaints statistics for 2023

Arbiter's Report

In my address in the OAFS Annual Report for 2022, as an incoming Arbiter, I had set the following targets for 2023:

1. Shorten the decision time from conclusion of evidence/final submissions to 90 days.

2. Deliver more readable decisions based on substantive narrative rather than legalistic language.

3. Deal with preliminary pleas expeditiously before analysing the merits of complaints.

4. Conduct effective dialogue with regulatory authorities to render them more sensitive to problems at the operational level.

I am pleased to report progress on these objectives, which remain relevant.

In the last eight months of 2023, following my appointment in April, 116 decisions were delivered, largely addressing the backlog of cases, some of which had been frozen for several months. At the end of 2023, only eight cases were awaiting final decision, compared to 66 at the end of April 2023. These cases were then decided by the end of April 2024.

Complaints received in 2023

Of all the 224 cases filed in 2023 (excluding 75 cases against a common service provider, which cannot be adjudicated while regulatory action is in progress against the licensee), only 15 cases were still in process as of April 2024. Of these, 11 cases were in the evidence submission stage of the adjudication process and 4 cases where evidence collection was closed and were awaiting final submissions. We estimate that by the mid-year point, most of these cases would have been decided so that we can then focus on issuing decisions for new complaints filed in 2024 in the second half of the year.

We strongly believe that in future, we can, in most cases, shorten the decision time lag from the conclusion of evidence even further to deliver timely justice. We also strongly believe that many complaints can be resolved through effective pre and post-complaint procedures and mediation processes without the need for adjudication by the Arbiter.

By far, most of our decisions are accepted without recourse to appeal. Of the 137 decisions issued in 2023, only 16 were appealed. According to our mandate, our decisions are based on reasonableness, fairness and equity. We often need to uphold complaints only partially, recognising that there are contributory factors on both sides. Sometimes, appellants challenge the inclusion of equity in our analysis and decision. Equity often goes beyond the strict word of the law, which rules over normal legal proceedings, and the legislator included equity in our mandate specifically to provide real justice in an informal setting.

Alfred Mifsud

Communication initiatives

Recently, OAFS embarked on an active media strategy to communicate with the public and raise awareness about our functions. This helps in two ways:

a. Render the public aware of their rights where any service provider has failed them.

b. Approach such rights with realistic expectations for compensatory remedy.

We have seen the benefit of this approach in two types of common complaints.

We received several complaints about long-term life assurance with-profit policies that were issued decades ago and where the initial maturity value illustration based on the then-current interest rate scenario raised expectations among the insured for maturity values much greater than those actually delivered. In our decisions, we have compensated the complainants based on an element of reasonable expectation but not to the extent expected. We have argued that it was unreasonable, even for unsophisticated investors, to assume that the high rates of interest prevailing at the time of inception of the life policy would persist through the long-term currency of the policy, often between 20 and 30 years. This has helped to put expectations within a clearly defined framework and facilitated the amicable settlement of many complaints at the mediation stage.

We had a similar experience with several complaints about fraudulent payments through social engineering scams, often in the form of SMS phishing, technically

called "smishing". In these cases, fraudsters penetrate the SMS channel banks use to communicate with their clients who use internet banking and then dupe the latter into revealing their log-in credentials. With such credentials, fraudsters would then make online transfers from the victim's account to the fraudster's own account.

The issue of whether the bank or the client is responsible for the losses revolves around the definition of what constitutes 'gross negligence'. EU legislation provides that banks refund their customers for all unauthorised payments, except when the client is grossly negligent.

While each case has its circumstances and peculiarities, we devised and published a framework model which takes account of the circumstances of each case and allocates responsibility between the parties, as in many instances there is contributory negligence on both sides.

The publication of this framework model has helped to raise awareness among fraud victims that they may qualify for recovery. At the same time, the allocation model helped to define expectations, facilitating the resolution of complaints at mediation.

The model has also gained the attention of peers in other countries we communicate with through EU organs and international organisations. We are being invited to explain our thinking and procedures. Clearly, fraudulent payments are becoming a problem everywhere, and we are more than happy to share our experiences with peers.

Complaints received in the first four months of 2024

In the first four months of 2024, 94 new complaints were registered, compared to 56 in 2023. This possibly results partially from better media activity, making the public more aware of the OAFS. Many of these complaints are being resolved without adjudication at the post-complaint procedure or mediation stage. Those who come to adjudication will be heard and decided with due despatch to make the OAFS more relevant to people's lives.

Reflections and recommendations

It is with regret that, in some cases, decisions went against complainants due to legal prescription, even where there was prima facie evidence of merit in the complaint. Prescription is a hard legal rule which cannot be decided in terms of equity and fairness. This underlines the need for complainants to act promptly once they become aware of matters triggering their complaint and to seek proper advice, especially where considerable financial amounts are involved.

The Arbiter notes that there is often a substantial imbalance between complainants who present themselves unassisted and service providers who come assisted by several professionals. In such cases, the Arbiter does his best to restore balance as provided for in Article 25(3)(d) of the Act. However, this is not always possible, especially when the service provider invokes matters of legal prescription.

In several instances, the Arbiter's decision was accompanied by recommendations, which, though not legally binding, carry weight and increase awareness of the required changes.

In insurance-related cases, it was recommended that in the case of travel insurance contracted through a tied intermediary that is also the group tour operator, insurance companies should directly communicate with the insured to explain policy conditions, especially concerning the disclosure of pre-existing medical conditions. We are seeing several complaints where insurers refute claims based on exclusion provisions, which are not properly explained at the contracting stage, especially when senior citizens are involved.

We have also made recommendations about the need for legislation to allow disclosure by service providers in camera, under strict confidentiality rules, to explain their behaviour, which, if disclosed in public, would infringe their obligations under other legislation, especially related to Anti Money Laundering. The Arbiter avoids decisions that would present service providers, especially banks and financial services operators, with a forced choice of appealing or breaking some other law.

Another area of concern is where losses are suffered by retail investors who are duped by fraudsters to participate in get-rich-quick schemes that involve the purchase and transfer of crypto assets via a Virtual Financial Asset (VFA) exchange. Complainants try to recover their losses by blaming VFAs for not protecting them from their follies. Current legislation does not provide similar protection in the crypto payments area as that applicable for payments under normal currency payments through licensed banks and financial intermediaries. The Arbiter has recommended that VFAs, at the onboarding stage, make more rigorous KYC procedures, especially where unsophisticated investors are involved, and even bring to their attention the high risks of fraud schemes via crypto payments by referring them to cases decided by the Arbiter.

OAFS is blessed with a very capable and dedicated team, and I rely on them tremendously to reach our objectives. Now that we have moved to new modern offices, we can plan better our human resources to ensure continuity and growth.

We have also effectively piloted small changes to the Act that regulates our existence (which is commented upon separately in this Report), and we are pleased to have established a legal framework for the necessary consultations with financial regulators. This helps to provide feedback for better regulation, leading to improved decision-making by the Arbiter.

Going forward, the Arbiter is currently involved in intense discussion to widen the scope of our service to certain types of business-to-business complaints related to credit applications. We expect to have tangible results to report this year.

We look forward to continuing to be of service to the community.

Chairman's Statement

It is my pleasure to present the eighth annual report of the Office of the Arbiter for Financial Services (OAFS). This report provides a detailed overview of our activities and achievements in 2023 as we continue to deliver on our commitment to provide an accessible, fair, and effective dispute resolution service for consumers of financial services in Malta.

The OAFS is an autonomous and independent body established to mediate, investigate, and adjudicate customer complaints against financial services providers licensed and regulated in Malta. As an out-of-court redress mechanism, we aim to resolve complaints between consumers and financial services providers in a fair, informal, efficient and prompt manner, taking into account applicable laws, regulations and the reasonable expectations of complainants.

The year under review was particularly busy for our office. We registered a significant increase in the number of new complaints and enquiries received; this was coupled to an increase in the number of decisions delivered by the Arbiter. These results highlight the significant role we play in the financial services sector in Malta.

Despite the challenges posed by this influx of cases, our motivated team worked tirelessly to ensure that each complaint was handled efficiently and fairly, in accordance with our mandate.

Through the numerous enquiries and complaints we received during the year, we also identified instances of systemic issues. In such cases, we engaged in discussions with the relevant regulators to address these concerns and ensure that consumers' interests were safeguarded. This collaborative approach enhances our commitment to resolve individual disputes and contribute to the financial services sector's stability and integrity.

Enhancing visibility and accessibility is a key priority for our office. We actively engaged with the public through weekly social media posts, sharing valuable information about our services and highlighting important case studies. Additionally, our participation in radio and TV programmes helped raise awareness about the OAFS and the support we offer to consumers.

We are committed to making the complaint process more user-friendly for all parties involved. In this regard, we invested further in IT tools and infrastructure to improve our efficiency and service delivery. These enhancements allowed us to streamline our processes and reduce response times. Further investments in technology are being planned.

Consistent staff training is crucial for delivering high-quality services and for responding effectively to the evolving needs of consumers. The OAFS has provided its staff with regular opportunities to participate in internal and external training. This included keeping abreast of changes in the financial services and legislative landscape and holding regular staff meetings on customer service standards.

Geoffrey Bezzina

We continued to be active participants in FIN-NET and the INFO Network. These engagements provided valuable opportunities for knowledge sharing, best practice exchange, and collaboration with our counterparts in other jurisdictions, ultimately benefiting the consumers we serve.

After months of careful planning, our office successfully relocated to new premises in Msida in the first two months of 2024. This move provides us with a more modern and conducive working environment and allows us to better service the growing needs of our stakeholders.

I would like to express my sincere gratitude to the Arbiter for his leadership and to the members of the Board for their valuable advice and unwavering support in achieving our goals and enhancing our service standard.

Our progress would not have been possible without the dedication, diligence, and teamwork of our personnel. Their commitment and hard work have been instrumental to our achievements.

Finally, I would like to thank the Ministry for Finance for its continued support and the technical assistance provided when required. This support has enabled us to carry out our functions effectively and efficiently.

As we look ahead, we remain committed to building on the constant progress made during 2023 and during the years since our establishment in 2016. We shall continue investing in our resources to enhance our services and ensure that the OAFS remains a trusted and accessible avenue for resolving financial disputes, a key component of a robust and reliable financial services sector.

Board of Management and Administration

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

Chairman
Geoffrey Bezzina

Members
Peter Muscat
Antoine Borg

Secretary
Valerie Chatlani

Board of Management and Administration

The Minister for Finance appoints the Board of Management and Administration. Its functions include supporting the Arbiter in exercising his functions in administrative matters. 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 2024 was presented to Parliament by the Minister for Finance in December 2023. The Plan is also available on the Office's website. The Board is also responsible for preparing the OAFS's annual report.

All members attended the five meetings that were held in 2023.

Issues discussed during Board Meetings

During the year, the Board discussed the following main items:

1. The Board received a comprehensive update on the physical relocation of the OAFS offices from Floriana to Msida, scheduled for February 2024. This briefing covered all logistical and administrative details for the move's planning and execution. Additionally, the Board was briefed of the Ministry's agreement with the Lands Authority, which now secures the open space adjacent to the new premises, enhancing the facility's accessibility and utility for all members of staff located within the building (comprising the OAFS, the Malta Fiscal Advisory Council and the Residual Balances Fund) and their respective visitors.

2. For the past four years, the OAFS has held Public Liability Insurance, Employers' Liability Insurance, and Group Personal Accident Insurance. The Board approved the continuation of negotiations with the current insurers as the policies were due for renewal.

3. In May 2023, the Board discussed and approved the audited accounts for the financial year ending 2022. The National Audit Office (NAO) issued a clean Management Letter, which was also communicated to the Ministry for Finance.

4. During his first meeting with the Board following his appointment, Mr Alfred Mifsud, the Arbiter, provided a detailed update on the 66 cases awaiting a decision and expressed his intention to resolve them as soon as possible. He also made several suggestions that would enable him to perform his duties more efficiently. These recommendations included creating additional dashboards with real-time information and hiring a law student to analyse and draft recommendations on comparatively less complicated cases within the boundaries of case law to assist the Arbiter in making final decisions.

5. A number of amendments to our enabling Act were discussed and approved for consideration by the Minister for Finance.

6. At the meeting held in November 2023, the chairman provided a summary of the cases received in each sector during the first 10 months of the year and compared the changing trends within each sector. He also discussed a few specific cases that were of a systemic nature and provided an overview of the measures that had been taken, as well as the next steps being proposed.

7. As a result of the Covid-19 pandemic, remote work become a prevalent practice among staff members. Remote-working guidelines aimed at preventing any potential misuse of this work arrangement were approved and became effective in 2024. Further initiatives were also taken to improve staff welfare and well-being.

8. The Strategy for 2024 was discussed and approved for onward transmission to the Minister for Finance.

Staff Complement

From left:
John Attard - *Customer Relations Officer*
Samantha Sultana - *Case Analyst*
David Chetcuti Dimech - *Junior Case Analyst*
Rita Debono - *Registrar (Investigations & Adjudications)*
Geoffrey Bezzina - *Chairman, Board of Management & Administration*
Alfred Mifsud - *Arbiter for Financial Services*
Robert Higgans - *Head (Case Reviews)*
Pauline Muscat - *Front-Desk Officer*
Paul Borg - *Operations Support Officer*
Valerie Chatlani - *Customer Relations Officer*
Francis Grech - *Officer in charge of Mediation*
Ruth Spiteri – *Administrative Assistant*

Administrative Report

Amendments to the Arbiter for Financial Services Act

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 appointing a Substitute Arbiter when necessary.

Several amendments were made to the Act over the past seven years to address diverse requirements and improve clarity. During the year under review, the Office made submissions to the Minister for Finance to amend and insert several provisions to align the Act with a provision in the ADR Directive that had not been transposed, enhance the operational efficiency of the Office, improve consumer protection through timely complaint handling, and provide legal clarity on when prescription is interrupted. The Minister considered and adopted the proposed changes, as summarised below:

Widening of the Arbiter's jurisdiction

The definition of a 'financial services provider' has been revised to expand the Arbiter's competence to address complaints against entities not necessarily licensed or authorised by the MFSA. Previously, the Arbiter's authority depended on the financial service provider being actually licensed or authorised by the MFSA to offer the relevant service. This concept has been enhanced to include entities only required to inform the MFSA of their intention to provide a specific service in Malta.

These providers are not authorised by the MFSA but are authorised by the law itself (though they are still under the MFSA's supervisory jurisdiction). Consequently, the Arbiter's competence now depends on the legal authorisation of the service provider to offer the service, regardless of whether an authorisation from the MFSA is necessary. Examples include notified securitisation vehicles, notified professional investor funds, and notified alternative investment funds.

Strategic Plan

On an annual basis, the Board was required to submit a Strategic Plan to the Minister for onward transmission and tabling to parliament. However, it was generally felt that an annual plan offered a comparatively limited timeframe for its realistic accomplishment. To this end, the Strategic Plan will now be drawn up every three years, enabling long-term strategic thinking, with goals, priorities and resources allocated more pragmatically.

Chapter 555 did not impose time limits on the service provider to issue an official response to a complaint made to it. A new provision was introduced to regulate this aspect of the service provider's conduct. Therefore, the time limit for the service provider to reply to a complaint has been set at 15 working days from the date of its receipt.

A provider is justified in not sending a final response within 15 working days only when the delay is due to exceptional circumstances outside the provider's control. In these situations, the provider must exercise prudence and foresight, inform the customer about the delay and its reasons, and indicate when a final response can be expected.

However, the provider must always provide its final response within not more than 35 working days from the date of receiving the complaint.

These time limits, applicable to the entire financial services sector, largely reflect the provisions of paragraph 2 of Article 101(2) of Directive (EU) 2015/2366 (PSD2).

Duties of service providers in dealing with complaints

Legal clarity

The law requires the submission of complaints to the Arbiter to be made in writing, among other requirements. To ensure legal clarity and codify the current practice, the official date assigned to a complaint will be when it is formally registered; this may differ from when it is originally submitted. This accounts for situations where required supporting documentation or information is missing, meaning the complaint cannot be internally processed and registered until all necessary documents and details have been provided.

Cooperation between entities

A new provision has been added to provide for the cooperation and exchange of information between the OAFS, MFSA, CBM, MCCAA, and any other authority as the Minister may, by regulation, prescribe, on issues that, in the Arbiter's opinion, are likely to have wider regulatory implications. This could include issues that affect multiple customers of one or more financial services providers. The Arbiter can also direct the Board of Management of the OAFS to enter into memoranda

of understanding with such entities. Any information divulged or exchanged will remain confidential and can be disclosed only if permitted by prior written consent. This new provision will transpose Article 17 of the Directive (EU) 2013/11 (ADR Directive).

The changes described above have been adopted and entered into force in April 2024.

Enhancing accessibility and visibility

The OAFS is pivotal in offering consumers an accessible, informal, cost-effective alternative to court proceedings for resolving financial disputes. Beyond its primary function as a redress mechanism, the OAFS is dedicated to constantly disseminating information about its services and ensuring the necessary infrastructure for consumers to seek assistance, information, and redress.

Consumers can learn about the OAFS through various channels, including word of mouth, media appearances by OAFS officials, internet searches and public authority helplines. Financial service providers also play a vital role in informing consumers about the OAFS and the latter's right to file a complaint when responding to consumer complaints in writing.

Acknowledging the need to enhance its visibility, accessibility, and educational outreach, the OAFS had outlined plans in its 2023 Strategic Statement about how to achieve these objectives and attract more eligible customers to its informal dispute resolution system. During the last quarter of the reporting year, the OAFS posted weekly on its Facebook and LinkedIn profiles to raise awareness of its services and share case summaries based on the Arbiter's decisions. Various posts on Facebook, written in English and Maltese, also provided 'lessons learned' from the Arbiter's several decisions.

In addition to these initiatives, the OAFS proactively engaged with the general public through regular radio interventions. During these programmes, the OAFS shared valuable insights and lessons drawn from the enquiries and cases it handles. This approach allows consumers to learn from others' experiences, fostering a more informed and financially literate public.

Stakeholder engagment

The OAFS functions within a broader network of regulatory agencies and stakeholders, contributing to the generation and dissemination of valuable information and intelligence. By handling consumer complaints, the OAFS gains unique insights into the practices and conduct of financial services providers whilst identifying emerging trends in consumer issues.

During the year, the OAFS held meetings with the Malta Bankers' Association and the Malta Chamber of SMEs. The OAFS provided an overview of its dispute resolution process, emphasising its role as an independent and impartial mechanism for resolving disputes between customers and financial services providers outside of the court system. The Office also shared insights into the types of complaints it frequently handles, such as those related to banking services, insurance products and investment advice.

Sharing of information with regulatory authorities

Article 27(6) of the Act allows matters to be referred to the competent authorities if, in the Arbiter's opinion, there is substantial evidence of significant misconduct by the provider or any of the parties to the complaint.

The table below outlines the decisions, delivered during 2023, that the OAFS referred to the regulatory authorities and stakeholder bodies during the year, as directed by the Arbiter and for the specified reasons. Each decision mentioned below is summarised in the relevant section of this annual report that includes case summaries of several decisions made by the Arbiter in 2023.

CASE REFERENCE	ISSUES RAISED BY THE COMPLAINANT	ARBITER'S DECISION AND REASON FOR REFERRAL
063/2022	The complaint was about a bank's decision to block €123,420.78 in an account held by the complainant for over five years without proper explanation. The complainant filed the complaint on behalf of his company, but the Arbiter ruled that the complainant was not an eligible customer under the relevant law.	The Arbiter acknowledged that in cases related to anti-money laundering or financing of terrorism investigations, banks are obliged by regulation not to disclose information to customers. However, the Arbiter emphasised that authorities must be sensitive to customers' rights and conduct investigations quickly so banks can either release funds or properly explain to clients why they remain blocked. The Arbiter directed that a copy of the decision be sent to the Malta Bankers Association, the Malta Financial Services Authority (MFSA), and the Financial Intelligence Analysis Unit.
042/2022	The complainant alleged that the service provider failed to return the money he had invested with them in two perpetual bonds despite repeated promises (from the provider) over several years that he would get his money back. The complainant was seeking the return of his invested capital plus interest due.	The Arbiter dismissed the complaint, finding no sufficient basis for the compensation sought by the complainant. The Arbiter, however, recommended that if one of the perpetual bonds yields a return exceeding the fees due to the provider, the excess should be sent to the complainant. This recommendation was discretionary for the provider and non-binding. The decision was copied to the MFSA for any necessary follow-up actions
112/2022	The complainant alleged that she was the victim of fraud, which resulted in the transfer of €5,119 from her bank account to a fraudster on 22 August, 2022. She claimed the bank did not act promptly to stop or recall the payment when she reported the fraud on the same day, and this delay allowed the funds to be withdrawn by the fraudster before they could be recovered.	The complaint was partially upheld to the extent of a symbolic refund of 10% of the loss suffered by the complainant. The Arbiter also made a strong recommendation that, in a context where fraudsters are always showing new creativity in the ways they deceive, banks, should introduce systems where the daily payment limit (the amount that an account holder can send to a recipient by way of a bank transfer) is realistic for the particular customer, and that the customers are informed of this daily limit and what to do if they need to change it. This is in addition to a clear explanation of the risks entailed if a customer maintains a high daily limit. The Arbiter remarked that, if faced by similar cases, the percentage that banks have to bear as part of the loss may increase if they fail to adopt this recommendation within a reasonable time. The Arbiter directed that an anonymised copy of the decision be communicated to the MFSA and the Central Bank of Malta.

CASE REFERENCE	ISSUES RAISED BY THE COMPLAINANT	ARBITER'S DECISION AND REASON FOR REFERRAL
006/2022	The complaint was about the alleged lack of adequate service provided by a trustee and a retirement scheme administrator (RSA) in the handling of the complainant's retirement plan. The complainant claimed the trustee/RSA delayed and failed to reply to his requests for information and to undertake his requested transfer out of the scheme. He asked for his money to be moved out of the scheme and back to the UK and was seeking compensation for adverse market movements and for stress and inconvenience.	The Arbiter rejected the complaint as he found no sufficient basis to accept the complainant's requests due to a lack of evidence substantiating the claims. However, the Arbiter recommended that the trustee/RSA provide the complainant with a detailed update on the status of his pension scheme and underlying investments. The Arbiter also directed that a copy of the decision be communicated to the MFSA for any further appropriate action according to law.
010/2022	The complaint concerned a pension scheme member who suffered significant financial losses after transferring his pension to a local trustee/RSA in 2014 on the advice of an entity. The complainant blamed the trustee/RSA for failing to protect his pension investments. The complainant filed a complaint with the trustee/RSA in 2022 and with the Arbiter for Financial Services in 2023.	The complaint was dismissed because it was filed more than two years after the complainant became aware of the matters complained about. The Arbiter recommended that the trustee/RSA consider acting voluntarily to provide appropriate redress in this specific case and in cases similar to the complainant's, which the Arbiter cannot hear due to reasons of prescription. This recommendation aligns with practices in other countries, such as the UK, where financial service providers are encouraged to address systemic issues proactively, even if every affected consumer has not made a direct complaint. The Arbiter directed that a copy of the decision be sent to the MFSA.
048/2022	The complaint concerned a VFA exchange not fully honouring their announced buyback of particular tokens. The complainant deposited his tokens for the 12-month buyback, but after four instalments, the provider switched from paying in USDT to XC tokens. The complainant sought the remaining eight instalments worth USDT 48,063.90 that the provider failed to pay as originally promised. The provider claimed the buyback only applied to originally subscribed tokens, which the Arbiter found to be an invalid defence.	The complaint was upheld. The Arbiter ordered that the decision be communicated to the MFSA for its consideration as the regulatory body responsible for supervising licensed institutions. This action was taken due to allegations by the complainant that the service provider conducted three token public offerings on its official website without obtaining regulatory permission and published unregistered white papers. Additionally, the complainant claimed that the service provider made forcible exchanges of tokens into illegal XC-tokens, which were not reported in the account statement submitted to the OAFS but were evident in the transaction history submitted with the complaint suggesting that the service provider might have hidden evidence to evade regulatory penalties.

Stakeholder engagment - Continued

Reporting of a systemic case to MFSA

The OAFS alerted the MFSA about several enquiries and complaints concerning a licensed payment institution's inability to process client withdrawals. These complaints were consistent with customers of this institution reporting blocked access to their funds for an extended period which prompted concerns over the firm's operations.

The situation worsened as the firm received negative feedback from several customer feedback websites, and many customers expressed their frustration about the firm's lack of cooperation. The OAFS made several attempts to engage with the firm but faced difficulties in doing so, such as uncollected complaint forms and a lack of response from the firm's representatives.

In response to these developments, the MFSA took action by suspending the institution's licence and appointing a competent person to oversee its operations. The competent person's primary objectives were to gain access to the firm's systems, update financial records, confirm arrangements for safeguarding customer assets, and obtain information from financial institutions holding the firm's funds.

Given the MFSA's regulatory action, the OAFS temporarily suspended its review of complaints against the firm to allow the competent person to assess the payment institution's operations and finances. In a communication addressed to all complainants, the OAFS stated that this suspension was necessary to enable a thorough investigation and resolution of the issues by the competent person. However, it acknowledged that such suspension might cause delays for customers seeking to resolve their complaints.

The OAFS is committed to helping complainants and will continue the review once the competent person's work is completed.

International engagement

The OAFS actively engages with two international networks composed of out-of-court dispute resolution bodies that handle complaints related to financial services.

Since 2017, the Office has been a member of FIN-NET. This network facilitates the cross-border resolution of financial disputes between consumers and financial services providers within the EU and EEA. Established by the European Commission roughly 20 years ago, FIN-NET promotes cooperation among national consumer redress schemes in the financial services sector and ensures that consumers have easily accessible avenues for alternative dispute resolution in cross-border disputes. With 62 members across 30 countries, FIN-NET plays a vital role in facilitating the resolution of consumer financial disputes.

The OAFS also actively participates 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 allow 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.

Additionally, the OAFS 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 complaints and, in some cases small businesses, 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 gives eligible customers two options for complaining to a financial services provider. The first is an informal process, whilst the second is a formal one.

The informal process is intended for minor cases and enquiries. It employs information, negotiation and conciliatory methods to resolve the matter amicably. A key element of this process is providing customer information, particularly regarding the formal complaint handling procedure. The following section of the Annual Report covers this latter procedure in greater detail.

Over the year, our Customer Relations Officers (CROs) actively worked with financial services providers to enable the informal resolution of minor cases and enquiries. This section contains examples of several enquiries handled by the CROs during the reporting year. They illustrate how the OAFS handled various situations in which it was requested to intervene.

Annex 2 further analyses the nature of the enquiries and minor cases handled in 2023.

The functions of CROs

Our experienced CROs manage queries and minor cases involving banking, investments, private pensions and insurance. They also offer guidance on the Office's complaint-handling procedure.

The CRO might recommend a potential remedy or action plan, depending on the specific circumstances of the case. This advice often draws on similar past experiences reported to the Office by other clients.

The CRO provides crucial information that customers will consider when interacting with their service provider. Utilising established relationships with compliance or complaints officers at various financial institutions, these officers usually serve as the initial contact after a customer seeks help.

Frequently, the CRO proceeds to reach out to the service provider concerned to gauge its preliminary response, especially when the query is notably unique or intricate.

Before approaching the relevant financial service provider, the CROs evaluate the merits of the query in order to identify a viable solution. They may also mediate with the provider. Many providers are cooperative, particularly if such informal interventions lead to a positive outcome.

Throughout the past year, the CROs encountered numerous cases where local consumers had disputes with EU-authorised financial firms offering online products or services in Malta. This situation is not unusual given that licensed financial services providers within the EU can operate throughout the region without needing separate licences from each Member State. Although the OAFS cannot process complaints against these firms directly (as Malta's financial services regulator does not authorise them), our CROs ensure consumers know their rights and direct the complainant to the appropriate entity where the complaint can be lodged. In these cases, we equip consumers with the contact information of the relevant redress authority and point out the specific terms and conditions inherent in the available redress mechanisms.

Additionally, several Malta-authorised firms extended their services across many EU countries through passporting rights. Over the review period, the OAFS received several cases from its counterparts in these countries, predominantly concerning insurance disputes. These ranged from personal health issues to material property damage and disputes over non-refunded premiums for cancelled policies. Our CROs engaged with the respective insurers regarding these matters, often achieving outcomes that satisfied the consumers involved.

Some issues can be too complex for informal resolution. Similarly, there may be instances where the provider will not agree to an informal resolution for various reasons. In these situations, the CROs will explore potential remedies with the customer, which may involve filing a formal complaint. While some clients opt to enlist professional help for this process, others choose to handle it independently.

Customers and their professional representatives are strongly encouraged to submit complaints through the OAFS complaint portal, as this facilitates streamlined handling and automated follow-up communication.

Eligible customers can reach out to the OAFS directly by phone, WhatsApp or email. However, there may be instances when a visit to our offices is required,

particularly if a customer is not IT literate or cannot provide the necessary scanned supporting documents for their enquiry or formal complaint.

In 2023, the OAFS made significant steps forward in its efforts to constantly improve the standard of the service it provides to the general public and to enhance the growing awareness of the latter about its redress service.

One can safely state that consumers, ranging from individuals to corporates, are increasingly reverting to the OAFS, seeking assistance in sorting out their respective issues with the relative service provider concerned.

Such an efficient approach to the early resolution of a dispute enhances the cost-effectiveness of the service provided by the OAFS by avoiding the escalation of an initial enquiry to a formal complaint, thereby saving time and money for the parties involved in the case.

In 2023, the CROs processed 795 enquiries, representing a 25% increase over the previous year. Banking/Payment Institutions-related enquiries increased by 79% to 467 (from 261 in 2022), representing around 60% of the total enquiries received during the year.

Just under 56% of enquiries were made by consumers residing in Malta. The remaining 44% were made by foreign consumers mainly from the UK, France and Romania. Around 51% of enquiries were submitted online through our portal, followed by 39% by email. Telephone and walk-in enquiries dropped dramatically to no more than 10%; this is in line with the data for the previous year.

In 87% of the enquiries, the OAFS provided general information to enquiring customers. The remaining 13% were enquiries in which the CRO was required to intervene with the service provider concerned. On average, it took around 19 days for enquiries to be resolved (a substantial improvement compared to the previous year). Insurance-related enquiries tend to take the longest to resolve (averaging 47 days).

It is encouraging to note that, in many cases, our office was able to resolve enquiries informally with service providers and this to the satisfaction of the parties concerned.

Banking and payment services

During the year under review, the OAFS has witnessed a growing trend of bank account hacking by third parties, reflecting a problem that has become increasingly prevalent worldwide. Scammers employ sophisticated tactics, such as using the bank's identity, including its standard customer care mobile number or website, to deceive account holders and elicit vital data that enables them to access the account and withdraw funds, sometimes repeatedly. According to data provided by the police, over 1,000 individuals in Malta have fallen victim to such scams, resulting in a loss of €20.8 million over two years (2022 and 2023). These scams were diverse, ranging from emails claiming to be from the victim's clients to online purchases gone wrong and even emotional manipulation that left victims financially and psychologically distressed.

The financial losses encountered by the OAFS in dealing with different cases resulting from these scams are often significant, ranging from a few hundred euros to several thousand. Unfortunately, the banks' efforts to retrieve the fraudulently withdrawn money rarely succeed, leaving victims in a difficult position. This situation often prompts account holders to turn against their banks, arguing that they should have a 'structure' in place to alert customers about the dangers of engaging with hackers.

Faced with many such cases, the Arbiter devised a model to apportion liability for the financial loss sustained between the bank and the account holder. This model is further explained on page 29 of this annual report.

As scams continue to evolve and become more sophisticated, it is crucial for consumers to remain vigilant and for banks to implement robust security measures to protect their customers. Investment fraud, particularly those involving cryptoassets, has significantly risen in recent years, with scammers exploiting the hype surrounding these technologies to deceive investors.

Scammers are also increasingly targeting younger demographics, with social media platforms serving as a breeding ground for various types of fraud. The recovery of funds lost to scams remains a daunting task for victims, with the irreversible nature of certain transactions, such as those involving cryptoassets, making it particularly difficult to retrieve stolen money. As a result, consumers need to exercise caution when engaging in online transactions, be wary of unsolicited offers or requests for personal information and immediately report any suspicious activity to the appropriate authorities.

Scammers constantly evolve tactics, staying one step ahead of the industry and its regulators. To combat this growing threat, stakeholders must adapt and develop new anti-fraud strategies to protect consumers. Financial and regulatory bodies should collaborate

case study

International Bank Transfers

Fraudulent transaction and fund recovery efforts

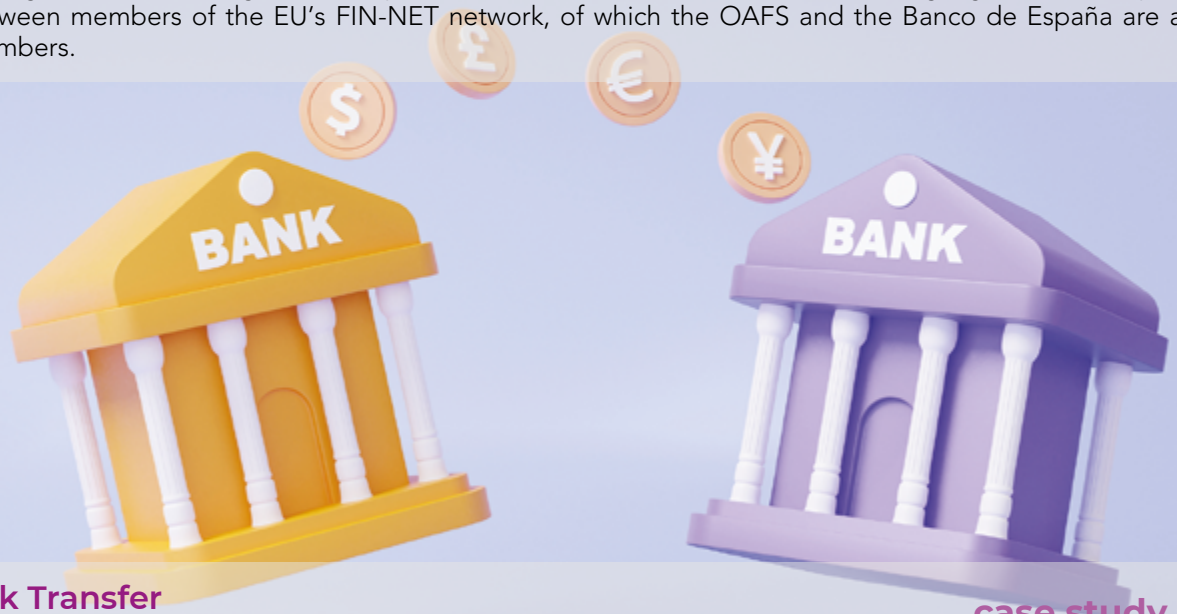
A complainant fell victim to a fraudulent transaction but recovered some of the lost funds. The incident began when the complainant contacted the OAFS to inquire about a Belgian company claiming to sell farm tractors. The company had requested a €5000 deposit to export a tractor to the complainant. The OAFS's CRO advised the complainant to be extremely cautious as the company's identity could not be easily verified online.

Despite this warning, the complainant proceeded with the transfer. About two weeks later, he called the OAFS again, explaining that after making the payment, the company had ceased all communication and never dispatched the tractor. Documents related to the transaction were subsequently identified as potentially fraudulent. The complainant filed a police report in Malta, and his local bank attempted unsuccessfully to recall the funds.

Investigations revealed that the account receiving the funds did not belong to the intended company but appeared to be held by an individual at a bank in Spain. The OAFS contacted the customer conciliation service at the Banco de España, Spain's central bank, requesting they intervene with the relevant Spanish bank for a possible return of the funds.

The Spanish bank conducted its own internal investigation of the incident upon being alerted. It managed to recover €4,129.80, which was then returned to the complainant's originating bank account. The bank explained that European banking regulations do not require banks to check if the name provided by the payer matches the account holder's name associated with the IBAN, as long as the IBAN itself is correct. This regulatory gap allowed the fraudulent transaction to proceed unnoticed at the transfer time.

Although the funds were not fully recovered, the partial recovery (82%) relieved the complainant and highlighted the receiving bank's responsiveness when alerted to fraud. It also highlighted the cooperation between members of the EU's FIN-NET network, of which the OAFS and the Banco de España are active members.



Bank Transfer

System error leads to payment delay

case study

The complainant wanted to remit some funds to a client. This was a return payment since the complainant could not provide the required service for reasons beyond his control. Both parties had their respective bank accounts in different financial institutions.

The assessment of the case carried out by the OAFS established that the agreed refund had, in fact, been carried out. However, there was no trace of it in the receiver's account. Essentially, the former account had been duly debited, while the latter account had not been credited.

As the intermediary between the two banks, the correspondent bank also demonstrated that it had correctly transmitted the funds to the beneficiary bank.

In light of the foregoing, the OAFS focused its attention on the beneficiary bank. During its investigation, it transpired that the latter had suffered a system error. Thus, the payment in question was not correctly flagged for action and processing due to incorrect formatting. Once the payment was traced, the beneficiary was credited accordingly.

further to share information about emerging scams, implement effective preventive measures and raise public awareness about fraud risks. By working together proactively instead of just reacting after scams occur, the industry can better safeguard consumers against financial fraud.

Another common source of complaints tackled by the OAFS involves banks refusing to provide prospective clients with a savings or other payment account. These cases often feature contrasting versions of the facts, with the complainants contending that they provided all the required supporting documentation or claiming eligibility in view of their nationality, employment or other economic condition. On the other hand, the bank would refuse the application citing own internal customer acceptance or risk policies.

The Know Your Client (KYC) procedure is meticulous and requires time to be completed satisfactorily. As a result, the OAFS sometimes must address complainants' exasperation at what they perceive to be unwarranted delays in the bank's assessment of their requests.

On the other hand, the OAFS also handled complaints where banks decided to terminate their banking relationship – often spanning a considerable number of years – with an account holder. In such cases, account holders are formally notified and given a 60-day window to transfer their funds elsewhere. Although this action may seem to contradict a bank's business objective of increasing its portfolio, the OAFS's assessment usually identifies one specific reason: the bank's uncertainty and dissatisfaction with the actual source of the wealth deposited in the account.

Insurance

Many of the insurance enquiries handled by the OAFS during the year revolved around travel insurance. These were directed against both local and foreign insurers. The latter were domiciled locally and authorised by the MFSA.

Several aspects arise from these cases. The OAFS is concerned about the increasing trend fuelled by travel agents, acting as licensed intermediaries of established insurers and selling such policies as a simple 'add-on' to the holiday package purchased by the person concerned.

This sale is usually done without the required paperwork, such as completing a proposal form, which would elicit several material facts for the insurer's consideration.

Furthermore, no proper explanation may be provided of the terms of the policy, such as pre-existing medical conditions, which unless declared may be excluded, and the procedure to be followed when submitting a compensation claim. Meanwhile, the product is presented as the solution to any accident that might happen to the traveller.

This results in a growing misunderstanding among policyholders about the extent of insurance protection actually provided.

The OAFS is equally concerned that senior citizens, who in this day and age are still quite active in their travels and may require insurance protection more than other persons, are finding it increasingly difficult to purchase adequate travel insurance protection.

In all probability, such unavailability of cover stems from their advanced age. However, this is offset by the fact that such persons are still in a good state of health (otherwise, they would not embark on an overseas journey), and they are usually quite adept at 'staying out of trouble', thereby avoiding the possibility of eventually submitting an insurance claim.

Motor insurance cases continue to account for a substantial proportion of the total caseload in this sector. This can be explained as the practical consequence of the fact that motor insurance is the single biggest constituent of the local insurance industry. Its legally compulsory nature, coupled with the steady increase in the number of vehicles on the local roads (which statistically tops 400,000), accounts for just over €139 million in annual premium turnover.

In this sector, motorists and insurers regularly disagreed about the 'proper' market value of seriously accidented vehicles. This is the consequence of the motor insurers' general operational practice of categorising seriously accidented vehicles as beyond economical repair. The motorist would then be served by the insurer concerned with a cash settlement offer and left to his own devices to determine how to repair the vehicle with the money provided, which would be inferior to that required by the repairer.

The preceding would usually be compounded by a divergence in views about which party will retain the damaged vehicle. Insurers may allow a motorist to retain it, but only in exchange for a decrease in the cash settlement offer intended to offset the residual market value of the damaged vehicle.

Such a dual approach fuels a never-ending discussion between the two parties; any compromise solution that may eventually be identified would displease both sides.

Another significant feature of the year under review was the increasing number of motorists who failed to secure vehicle insurance coverage.

This is the direct result of the growing practice among local motor insurers to decline the renewal of a policy after a negative claims record comprising several road accidents in which the motorist concerned was at fault. Though such accidents may usually have been registered over several years, the OAFS is aware of some cases where a policyholder was rejected after a single large claim.

case study

Cheque Deposit

Failure to provide mandatory details leads to an unallocated deposit

In 2022, the complainant deposited a cheque amounting to €120, payable to her husband, in her account through an ATM. However, she missed some mandatory details while filling out the deposit envelope, which included the destination account where the cheque had to be deposited. It is noted that, by Directive 19 of the Central Bank of Malta, the cheque concerned could only be encashed by her husband or deposited in his account. The latter was also obliged to endorse the back of the cheque before this was presented to the bank for deposit or encashment.

The case was brought to the attention of the OAFS in 2023, but the cheque had expired by then. Meanwhile, the bank advised the complainant to contact the cheque issuer for a replacement. However, the complainant had difficulty identifying and tracing the issuer of the expired cheque.

The intervention of the OAFS brought to the fore the bank's admission that it could have made a greater effort to contact the depositor and not simply assign such cheques internally to a suspense account for unallocated deposits.

At the end of its investigation, the OAFS successfully resolved the case, with the bank agreeing to credit the complainant's account with €120 from its own funds. A recommendation from the OAFS to the relative head of the department to introduce a procedure to reach out to a depositor in such cases was also duly accepted.

Cheque Processing Error

Funds credited to the wrong account

case study

The complainant had issued a cheque in favour of a specific company but mistakenly mailed it to a different company. The latter deposited the cheque in its account. Essentially, the cheque had been duly processed by the complainant's bank, but the funds were credited to someone else. The rightful receiver of the cheque, who had never received the funds, raised various complaints with the complainant and the bank concerned but with no positive results. A police report was also filed.

The protracted intervention of the OAFS brought the matter to a positive conclusion. The bank concerned agreed to provide the complainant with a back-dated refund, satisfactory monetary compensation and a formal apology letter.

Though the OAFS appreciates and understands the underwriting logic triggering such declinature decisions, it cannot refrain from expressing its serious concern at the possibility that they may be indirectly increasing the number of uninsured vehicles on the local roads, and this to the detriment of other road users.

Equally important, policyholders are unaware that multiple claims in a year can lead to an insurance company refusing to renew cover. Although insurers are free to refuse a risk, it is equally incumbent on them to inform policyholders —before the renewal stage—that multiple claims may lead to refusal at the next renewal. There cannot be a presumption that consumers know their insurers' risk appetite.

Investments

In this sector, the OAFS received several complaints which alleged that the investment product sold to the complainant concerned was entirely unsuited to the latter's risk profile.

After its initial assessment, the OAFS identified several instances where novice investors, or investors with limited investment know-how and experience, were 'persuaded' by the service provider concerned to invest their hard-earned savings in complex products primarily intended for professional investors.

These cases were usually compounded by the fact that the investment concerned either failed or did not meet the performance that the investor was led to expect.

The latter instance indirectly reflects an increasing number of cases in which the complainant laments the shortfall in return on his investment compared to what he alleges was 'promised' to him when initially purchasing it.

The initial assessment of such cases tends to highlight the fact that the complainant concerned is either oblivious to the fact that investments can fluctuate, positively or negatively, over time, or the complainant may prefer to disregard this basic investment maxim entirely.

Another area that drew the OAFS's concern was the number of complaints alleging that the terms of the investment product were not properly explained at the purchase stage.

Typical examples of this aspect were the repeated complaints that focussed on the operation of the market value reduction clause in single premium life assurance policies, which are considered investment/savings products by several consumers.

The operation of such a clause resulted in the imposition of a significant financial penalty on policyholders who, for personal reasons, had decided to terminate their respective policies before the due term.

The policyholders concerned consistently contended that they were never made aware of such a clause and its implications at the initial purchase stage.

case study

Travel Insurance

Denial of claim for unrecoverable expenses due to sudden health deterioration

The complainant was aggrieved at the denial of a travel insurance claim for unrecoverable expenses incurred due to the unavoidable cancellation of a planned holiday abroad because of the sudden health deterioration and death of a close family member who was a travelling companion. The insurer had declined to settle the claim, citing a pre-existing medical condition of the deceased.

The complainant had purchased the policy from a tied insurance intermediary of the insurer and contended that when the holiday was booked, there was no indication of any forthcoming deterioration of the travelling companion's health. At no stage during the policy purchase proceedings was a proposal form provided for completion and signature; this health aspect would have been identified in one of the questions to be answered on the form. The terms and conditions of the travel insurance policy were never explained. Instead, the intermediary had merely proposed the purchase of the policy and quoted the respective cost, which was accepted and paid in full. Though immediately issued with a payment receipt, the policy document was actually delivered to the complainant on a subsequent date following the purchase.

In light of the foregoing, the OAFS took over the case and engaged in lengthy correspondence and discussion with the insurer. It produced a medical document issued by a specialist in family medicine, which specifically backed the complainant's contention. The document stated that at the time of booking the holiday, the travelling companion was leading a very normal life, and that the subsequent health deterioration was fulminant and entirely unexpected. The OAFS noted that the insurer had not provided conclusive evidence contradicting the complainant's contentions.

After extensive discussion, the insurer offered the complainant a 50% settlement. However, given the latter's determination to raise a formal complaint against the insurer for the Arbiter's adjudication, the OAFS successfully persuaded the insurer to relent on its earlier proposal and settle the complainant's claim in full (€995), albeit on an ex gratia basis.

Travel Insurance

Issue of dual excess charges on cancelled flights

case study

The complainant had duly booked a trip to an overseas country. However, since the outward flight landed at one airport and the return flight departed from another airport in the same country, the airline considered and booked them as separate flights, not as a single return trip.

Due to a serious and unexpected illness, which was medically proven, the complainant could not travel and, therefore, cancelled both flights. A claim for compensation for the airline ticket cost was then submitted under the insurance policy, which the complainant had prudently taken out.

The insurer accepted the claim and proceeded to its settlement. However, it levied the claim excess of €250 twice, opting to consider the flights as two separate and distinct trips.

The OAFS noted the complainant's concern about this proposed settlement and discussed it with the insurer to identify a practical solution.

During the discussions, the OAFS repeatedly highlighted the fact that, despite the difference between the departure airports of the outbound and inbound flights, the complainant was still essentially undertaking one single return trip to the same country. Furthermore, the airport distinction was purely a consequential administrative matter of the airline.

At the end of the discussion, the OAFS successfully persuaded the insurer to revise its earlier decision. It secured a refund of €250 for the complainant and an additional €50 compensation for the inconvenience.

case study

Joint Savings Account

Account blocked due to outdated residential address

The complainant was aggrieved that he had tried to withdraw funds from his account during the weekend, but the ATM had declined to give him any cash even though the amount to be withdrawn was less than the amount held in the account.

The complainant was further irritated by the fact that his credit card had been declined when he had tried to use it in a shop to make a purchase. His attempt to contact the bank was unsuccessful, as it was a weekend.

The assessment of the case carried out by the OAFS established that the complainant held a joint account with his wife. It further established that the bank concerned had repeatedly tried to contact the wife, even sending her letters to the address on their system. In the absence of any response, the bank blocked the joint account.

During its investigation, the OAFS discovered that the complainant and his wife had sold their house and failed to inform the bank of the new residential address. As a result, all correspondence from the bank was being delivered to an unoccupied house and was not being returned to the bank.

Recognising the situation's urgency, the OAFS immediately arranged an appointment for the complainant with the bank to update the KYC form. The successful outcome of such a meeting unlocked the joint savings account and promptly resolved the issue.

Home Insurance

Unfair premium increase after water damage claims

case study

The complainant expressed concern that the insurer had imposed a 100% premium loading on the renewal premium of his home insurance policy. The insurer based this decision on the complainant's recent submission of a substantial claim following water ingress at his residence.

The assessment of the case carried out by the OAFS established that the complainant initially had a small water leak in his property, for which he had submitted a claim. The insurer settled the matter by appointing a plumber to rectify the problem.

A major water leak occurred a few weeks after this comparatively minor incident. It emanated from the same place where the appointed plumber had performed the first incident's remedial work. This major leak caused significant damage to the property and its furnishings.

The insurer had settled both claims under the terms of the policy. However, it intended to offset the overall payment by imposing a 100% loaded renewal premium for the respective policy.

The discussion held by the OAFS with the insurer revealed that its underwriting department was entirely unaware of the actual circumstances in which the two claims had originated. Its decision to impose a premium loading had been triggered by the complainant's internal claim statistical data, and it had not delved into the facts which led to the two consecutive losses occurring in a few weeks.

At the end of the discussion, the OAFS secured the insurer's agreement to withdraw its intended premium loading (€216.50) in its entirety. Therefore, the complainant could renew the policy for another twelve months at its unamended premium.

case study

Motor Insurance

Unavailability of courtesy car due to age restrictions

The complainant approached the OAFS seeking assistance after reaching an impasse with the insurer regarding his claim.

It turned out that his parked car had been hit by a falling stone from a nearby property, causing the breakage of its windscreen and rendering the vehicle unroadworthy. The complainant's advanced age necessitated the availability of a replacement car. Although the insurer acknowledged this need, they appeared to be delaying the case.

The OAFS swiftly and satisfactorily concluded the matter with the insurer, addressing the complainant's evident need. However, the insurer conclusively demonstrated that its repeated efforts to source a courtesy vehicle had been unsuccessful due to the complainant's mature age, which precluded hired vehicle garages from providing a car because of their respective insurance's driver age restrictions.

The complainant's own efforts in this regard had similarly reached a dead end. In concluding its discussion with the insurer, the OAFS secured the latter's agreement to offer a cash settlement (€200), which the complainant could utilise to hire taxis until his vehicle was repaired and returned to the road.

Marine Craft Insurance

Non-disclosure of material fact leads to initial claim rejection

case study

The complainant sustained the loss of his marine craft, which he used regularly as a relaxing hobby. The said craft sank in heavy weather and was unrecoverable.

The insurer concerned declined to provide compensation and justified its decision by citing the non-disclosure of a material fact. It pointed out that the craft's year of manufacture, as stated on the proposal form, differed substantially from the actual one. The insurer contended that, had it been properly informed (through the completed and signed proposal form) of the exact year of build, it would have insisted on the submission of a survey report. Depending on its content, it may have charged a higher premium than what was actually charged. It might even have refused to insure the craft altogether.

The insurer further insisted that a marine craft's correct year of build was a material fact that would have directly influenced its decision whether to accept the risk or not and, if so, at what terms.

The intervention of the OAFS in this case established that the claimant's broker had completed the proposal form. Furthermore, the craft's year of manufacture was not altogether clear in the respective registration document issued by Transport Malta. The OAFS further highlighted the fact that the craft's loss at sea was due to the heavy weather and was entirely unrelated to its year of manufacture.

Protracted discussions with the insurer persuaded the latter to reconsider its earlier outright rejection of the complainant's claim for compensation. Finally, an agreement was reached on a settlement of €2,900. This was affected net of the policy excess and on a without prejudice basis.

case study

Motor Insurance

Steering rack replacement dispute after accident

The complainant's car sustained front right wheel damage in a road accident. The insurer's assessor identified the required repairs and instructed a garage to carry them out at the insurer's expense. However, after the repairs, the complainant experienced extreme steering rack shudder at certain speeds, persisting despite additional repair attempts.

The complainant referred the vehicle to a specialist repairer, whose diagnostic investigation revealed excessive wear on the right front wheel thread and excessive steering wheel play, necessitating steering rack and pinion replacement due to the earlier accident. The complainant argued that the insurer's assessor had erroneously and unprofessionally failed to identify this serious damage from the outset. He sought compensation for the required repairs while expressing concern about driving an unsafe vehicle due to the insurer's mishandling of his case.

The insurer was willing to cover only part of the repair cost, claiming the specialist repairer's labour time was excessive. After lengthy discussions, the OAFS successfully negotiated a 'without prejudice' €2,500 settlement from the insurer. The OAFS focused on the specialist repairer's documentation, clearly explaining the damage caused, the required repair extent, and the necessary professional execution time, underlining that such repairs were essential for the vehicle's safety and roadworthiness. Despite the insurer's contention that the compensation sought was unreasonable, the OAFS secured its agreement to the settlement.

case study

Motor Insurance

Renewal declinature due to recent claims history

The case revolves around an individual who encountered difficulties renewing his motor insurance policy. The issue at hand was the initial refusal by the insurance company to renew the policy, a decision that prompted the individual to seek assistance from the OAFS.

The reason for the insurance renewal declinature, as communicated by the insurance company, was primarily based on the individual's recent claims history. Despite being insured by the company for only three years, the individual filed two at-fault claims in consecutive years. This pattern of claims led to the initial decision not to renew his policy.

The OAFS intervened on the individual's behalf, highlighting several critical aspects for reconsideration. The OAFS pointed out that the individual had a previously unblemished claims history until the two recent incidents. It was argued that these incidents, involving the individual reversing on a third party, should not solely justify the non-renewal of his policy. Furthermore, the OAFS raised concerns about potential discrimination based on age and economic status, as the individual, at 77 years old, also faced difficulties securing insurance from alternative providers.

In response to the intervention by the OAFS and after protracted discussions, the insurance company agreed to revise its position. The insurer offered the individual a motor policy renewal for the forthcoming year subject to certain conditions: coverage on a Third Party Fire and Theft basis, a premium loading, a higher excess of €350, and an updated medical report including an eye test.

The individual accepted the new renewal terms of cover.

A model for allocation of responsibility between Payment Service Provider (PSP) and Payment Services User (PSU) in case of payment fraud scams

The Arbiter for Financial Services has developed a model for allocating responsibility between Payment Service Providers (PSPs) and Payment Service Users (PSUs) in cases of payment fraud scams. In response to the increasing sophistication of fraud schemes, this model is designed to provide a clear framework for resolving disputes and ensure fairness, consistency and transparency in the complaints process.

Defining Gross Negligence

The Payment Services Directive (PSD2) states that a PSU is responsible for authorised payment transactions only if it acted with gross negligence. However, the Arbiter maintains that the choice between ordinary and gross negligence is not binary. There exists a spectrum of responsibility between the two, where allocation depends on the particular circumstances of each case.

The Arbiter emphasises that assuming an authenticated payment is also authorised by the PSU is not automatic. The PSP must prove that the PSU has been grossly negligent in making its payment access credentials available to fraudsters.

Criteria for allocating responsibility

The model outlines the following criteria and weightings for determining the allocation of responsibility between PSPs and PSUs:

- Unquestionable gross negligence by PSU: 100% PSU responsibility.
- Reduction of gross negligence due to fraudsters using normal PSP communication channels: -50% PSU responsibility.
- Addition, if PSU actively participated in the fraud payment authorisation beyond disclosure of the first entry credentials: +30% PSU's responsibility.
- Addition to PSU responsibility if PSP notified PSU directly to beware of scams: +20% for the last three months, +10% for the last six months.
- Reduction of PSU responsibility if special circumstances apply that would make the fraud less suspicious: -20% PSU responsibility.
- Reduction if PSU made no similar genuine payments in the last 12 months or payment amount is atypical: -20% PSU responsibility.

While serving as a general guideline, the model is not rigid. In recognition of the unique circumstances that may arise, the Arbiter reserves the right to depart from it in specific cases.

Recommendations for PSPs

When publishing the model, the Arbiter strongly recommended that banks voluntarily apply the responsibility allocation model not only to complaints escalated to the OAFS but also to cases reported directly to the banks that have not been formally complained about to the Arbiter. Specifically, the Arbiter encouraged banks to revisit complaints from the past few months and proactively apply the model, potentially enabling reasonable reimbursements where warranted. Proactively applying this framework and re-evaluating previous offers would prevent unnecessary escalation of complaints to the OAFS and build goodwill through fair reimbursements in deserving cases.

The Arbiter made additional recommendations for PSPs to enhance consumer protection:

- Remove or reduce standard tariff charges for recalls in cases of fraud payments, especially where less than 100% gross negligence applies.
- Conduct more effective and frequent educational campaigns warning of fraud payment scams, particularly using direct communication channels with PSUs.
- Apply the model for effecting refunds to fraud payment cases reported to the PSP but not necessarily to the OAFS.

- Establish comparatively lower online transaction limits than the usual daily limits, especially for retail customers.

- Adopt more sensitive transaction monitoring systems to detect unusual transactions and confirm directly with PSUs before processing.

- Introduce stricter verification processes for changes in contact details or registering new devices.

- Limit apps meant to generate authentication codes to only one device.

Adoption and international interest

The responsibility allocation model developed by the Arbiter has been well-received and adopted by Malta's largest banks. The model's effectiveness is evident because most new cases are being resolved without formal adjudication, either at the pre-mediation or mediation stages, as banks proactively apply the model's principles. The only instance where an appeal was lodged involved a case where the Arbiter deviated from the model's recommendations. The model suggested a 90% refund to the PSU in this case, but the Arbiter awarded a 100% refund instead (see case summary below).

The model has also attracted interest from financial ADR forums across Europe and internationally. The Arbiter has been invited to present the model to these forums, showcasing its effectiveness in resolving payment fraud complaints fairly and consistently.

Applying the model to the circumstances of each case

In assessing the merits of each case that was referred for his consideration and adjudication, the Arbiter carefully examined the detailed timeline and sequence of events to determine how the fraudulent payments occurred. This included looking at when the complainants received the fraudulent SMS, when and how they interacted with it, and the exact times when the fraudulent payments were executed.

In assessing the evidence, the Arbiter considered factors like whether the fraudulent message was received on a channel normally used by the bank, to what extent the complainant cooperated with the fraudster's instructions beyond just disclosing credentials, and whether the bank had sent any direct warnings to the complainant about such scams in the recent months.

The Arbiter also evaluated the robustness of the banks' security systems, transaction limits and monitoring mechanisms. He checked if the complainants had a history of making similar genuine online payments, which would make the fraudulent ones seem less suspicious to the banks' monitoring systems.

A key observation was that the fraudulent payments were all executed within a very short time window of the complainants interacting with the fraudulent link, indicating that their credentials were compromised in real time to authorise the payments, with or without their knowledge.

In his analysis, the Arbiter emphasised that just because a payment is authenticated doesn't automatically mean the customer authorised it. The bank must prove the customer was negligent in enabling the specific payment, not just disclosing credentials.

The model that apportions responsibility between the bank and the customer in fraud cases considers various mitigating and aggravating factors. The exact apportionment depends on the specific circumstances of each case, with banks expected to have robust systems and customers expected to exercise due caution.

The following three case summaries provide insight into the practical application of the model.

Case 1 - Fraudulent payment complaint (ASF 085/2023)

COMPLAINT PARTIALLY UPHELD

Fraudulent payment, negligence, authentication, authorisation, communication channels, security credentials

The complaint relates to a fraudulent payment made to a third party from the complainant's account held with the service provider. The complainant claimed that:

a) She received a fraudulent message via SMS on the mobile channel usually used by the service provider while travelling in Europe.

b) Thinking it was a genuine message, she clicked the link and entered a website that appeared identical to the service provider's.

c) She only entered her six-digit USER ID code and password, providing no other information. However, the next day she noticed €2,500 had been taken from her account without authorisation.

d) She did not receive an SMS confirmation of this payment, as the service provider sometimes does for such payments.

The service provider contested that:

a) For the payment to be made, the complainant's mobile app must have been used to register the amount and authorisation code.

b) This app was only on the complainant's mobile device, so she must have followed all the fraudster's

instructions step-by-step, entering the details to make the €2,500 payment.

c) The payment was made to the fraudster's bank account in Lithuania, with instructions for it to be done on a 'same day' basis.

d) The payment deceptively indicated the beneficiary had a London address and was named Dylan Jordan, stating it was for 'giving back the money he gave me'.

The Arbiter made several observations. Firstly, the service provider's version that the complainant must have continued cooperating with the fraudster to specifically approve the disputed payment was more credible than her claim of only entering the USER ID and password before everything happened automatically. Evidence showed the payment could only have been approved via the complainant's mobile app, with insufficient time for the fraudster to download the app to another device. The service provider had a specific certificate for the device from which payment authorisation was made, maintained to be the complainant's mobile app.

Applying the proposed model for allocating responsibility, the complainant was found to bear 60% of the burden and the service provider 40%. For the payment to proceed, the complainant must have continued cooperating with the fraudster by filling in the amount and last 5 digits in the app's signatures, generating a specific 6-digit code to authorise the disputed payment. This level of negligence increased her share of responsibility. The model only excused her for not receiving a direct warning from the service provider about such fraudulent schemes in the preceding months, offering 20% compensation, and a further 20% for not making similar third-party payments in the previous 12 months.

The Arbiter ordered the service provider to pay the complainant €1,000 within five working days, with legal interest applicable thereafter until effective payment. Each party was to bear its own costs as responsibility was allocated between them.

Case 2 - Fraudulent payment from customer's account (ASF 036/2023)

COMPLAINT PARTIALLY UPHELD

Fraudulent payment, *smishing*, *spoofing*, *social engineering scams*, *two-factor authentication*, *payment authorisation*, *gross negligence*

This complaint related to a fraudulent payment of €3259 made to a third party from the complainant's account with the service provider. The Arbiter noted that he had several similar complaints before him, which varied in certain details but had many commonalities:

a) The payment was generally for an amount below €5,000 to avoid being withheld due to exceeding the agreed 'daily limit' for retail customers.

b) The fraudster fraudulently penetrated the normal communication channel between the service provider and the customer, usually via SMS or email.

c) The fraudster provided a link in their message and invited the customer to click on it to perform 'validation' or 're-authentication' of their account.

d) Despite various warnings issued by banks and the regulator not to click on links as the service provider does not send links in its messages and that the customer should only communicate with the service provider through the official app and website using the credentials provided, the customer negligently clicked on the link.

e) From then on, the fraudster somehow managed to penetrate the customer's account and make a transfer of funds, usually on a 'same day' basis, which went into the fraudster's account, typically in a Baltic country, from where it was almost impossible to make an effective recall of funds once the customer reports the fraud to their bank.

f) As a result, a disagreement arose between the service provider and the customer about who bears the burden of the fraudulent payment.

The service provider maintained that for the payment to be made, the complainant must have continued to cooperate with the fraudster to approve the disputed payment. The service provider presented logs proving that the transaction could only be approved from the mobile app in the complainant's possession. The payment was made within a few minutes, which would not have been possible even if the fraudster had somehow downloaded the mobile app onto another device. The service provider argued that the complainant was grossly negligent in making their access credentials for payment (provided by the service provider as part of the contractual relationship) available to the fraudster.

The Arbiter determined that the complainant should bear 80% of the burden and the service provider 20% for the following reasons:

1. The complainant received the fraudulent message on the channel normally used by the service provider, giving a clear impression it was genuine communication, which reduced his gross negligence by 50%.

2. The service provider's version was found to be more credible - that for the payment to be made, the complainant must have continued to cooperate with the fraudster by filling in the amount and last five digits in the app's signatures, which he was familiar with as he had made this type of payment in the previous 12 months. This increased the complainant's gross negligence by 30%.

3. There was no evidence the complainant had received a direct warning from the service provider about such scams in the 3 or 6 months prior.

4. There were also no special mitigating circumstances or absence of similar genuine payments by the complainant in the previous 12 months to reduce his responsibility further.

Therefore, the Arbiter ordered the service provider to pay the complainant the sum of €651.80.

Case 3 - Fraudulent payments from customer's account (ASF 116/2023)

COMPLAINT UPHELD

Fraudulent payments, SMS fraud, smishing, spoofing, social engineering scams, device registration, transaction monitoring, unauthorised payments, negligence

The complaint concerned fraudulent payments from the complainant's account with the service provider to third parties. The complainant received a message on the same SMS number normally used by the service provider, clicked on a link in the message, and provided login credentials on a website mirroring the service provider's online domain. The complainant was defrauded €19,150 through two fraudulent payments. Three other fraudulent payments were made from the complainant's account, but these were returned and re-credited to the complainant's account.

The service provider argued that the complainant acted with gross negligence by giving away credentials that facilitated the fraudster's access to the account. As a sign of good faith, the service provider offered a settlement of 66% of the loss incurred, which the complainant refused.

In assessing the merits of the case, the Arbiter made the following observations:

1. The fraudster managed to register a new device with full access to make payments from the complainant's account without further involvement of the complainant, using the credentials procured fraudulently and the One Time Password.

2. The service provider attempted to contact the complainant only after all five payments were executed and three were credited back. The recall of the two fraudulent payments covered by the complaint proved unsuccessful.

3. The service provider changed the procedure for changing one's device after the incident, involving direct contact with the client before unlocking full functionality to the new device.

4. The service provider changed the daily transfer limit applicable to the complainant from €25,000 to €5,000 after the incident.

5. The service provider remained indifferent even when it knew its clients suffered fraud attacks and did not do much to protect them. The actions taken by the service provider post-incident show that it acknowledged the failure of its systems at the time of the incident.

6. The complainant acted out of character when she gave away her credentials, facilitating the fraudster's access to her account. However, the case involved special circumstances which made the fraudulent message less suspicious.

After considering various factors, the Arbiter attributed an initial 90% responsibility to the service provider for the fraudulent payments based on the framework model. A clear description of how this initial responsibility was calculated is explained below:

1. The Arbiter initially considered the complainant's gross negligence, which would typically result in 100% responsibility for the complainant. However, this was adjusted due to several mitigating factors.

2. The fraudster used the same SMS channel normally used by the service provider, making the fraudulent message appear genuine. This reduced the complainant's responsibility by 50%, shifting it to the bank (50% bank, 50% complainant).

3. The complainant was in regular contact with the service regarding a home loan application, which made the fraudulent SMS less suspicious. Additionally, the complainant was travelling abroad, which further reduced her suspicion. These special circumstances reduced the complainant's responsibility by another 20%, shifting it to the bank (70% bank, 30% complainant).

4. The complainant had not made similar genuine payments in the previous 12 months, which indicated that the bank's monitoring systems should have flagged the transactions as suspicious. This reduced the complainant's responsibility by another 20%, shifting it to the bank (90% bank, 10% complainant).

However, the Arbiter found sufficient grounds to award the complainant a full 100% refund, considering the service provider's system deficiencies and the particular circumstances of the case.

The decision has been appealed.

The Formal Complaints Process

Consumers who encounter unresolved issues with their provider or whose complaint is complex and requires investigation can formally complain to the Office. In contrast with 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 redress mechanism.

For a more in-depth analysis of the formal complaints received and the decisions made by the Arbiter in 2023, please refer to Annex 3.

Initial review of newly submitted complaints

The Act does not specify a mandatory format for submitting a complaint. However, we provide a structured complaint form to help customers present their arguments effectively and provide all the necessary information. Eligible customers can use a fillable PDF form to ensure legibility or access our website to submit their complaints online. Our online platform allows users to conveniently upload documents in popular formats, such as PDFs or images, to support their case.

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

If a complainant has not initially raised an issue directly with the financial services provider before submitting a complaint to the OAFS, there may be a temporary delay in the complaint review process. The law requires that the provider be given a reasonable opportunity to address the complaint before it is escalated to the OAFS. In such situations, our staff will ask the complainant to use 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 request a copy of the complaint letter to the provider and any response received (if available) as part of the complaint supporting documentation.

Key documentation supporting the complaint will be requested; such as policy wordings, schedules, proposal and application forms, contract notes, or other legal documents.

During the year under review, the OAFS registered 224 new formal complaints, a significant increase in the number of complaints accepted when compared to 2022. Indeed, the trend in the number of complaints accepted from 2021 to 2023 shows an initial decrease from 2021 to 2022, followed by a significant increase in 2023. Specifically, the complaints accepted were 167 in 2021, decreased to 151 in 2022, and then increased to 224 in 2023.

Web-based complaints consistently accounted for the highest percentage across all three years, with a notable increase in 2023 (90.63%). Walk-in complaints decreased from 19.16% in 2021 to 8.04% in 2023. Email complaints significantly reduced in 2023 (0.89%) when compared to 2021 (11.38%) and 2022 (13.25%).

The banking / payment services sector saw a significant increase in complaints in 2023 (122) when compared to 2021 (38) and 2022 (39). In 2023, the 'E-Money' category under the banking / payment services sector saw a significant increase in complaints compared to 2022. Most complaints in this sector were lodged against one particular financial entity,

against which the financial regulator subsequently took regulatory action.

The insurance sector experienced a decrease in complaints from 2021 (81) to 2022 (42) but increased again in 2023 (65). The 'Life-related' category under the insurance sector consistently had the highest complaints in 2022 and 2023.

The investments sector had the highest number of complaints in 2022 (70) but decreased in 2023 (36). The 'Crypto / Virtual Financial Assets' category under the investments sector experienced a decrease in complaints from 2022 to 2023.

Early complaint assessment

Conducting an early assessment of complaints has enabled the OAFS to improve its consumer service by ensuring complainants are fully informed about the investigative powers granted by legislation. If complainants raise concerns that have already been addressed in decisions made by the Arbiter, they are advised to review those decisions. This allows complainants to decide whether to progress or withdraw their complaint. By drawing attention to the previous Arbiter decisions during the initial review stages of the complaint process, the OAFS ensures that cases with similar issues are dealt with promptly and customer expectations are managed effectively.

During the past year, 68 submissions did not advance to registration for various reasons. Many of these involved entities authorised in another EU country but operating in Malta without authorisation from Malta's financial regulator, especially online.

Some submissions were rejected after an initial review of contract terms revealed the provider was not based or authorised in Malta, despite using an international brand name that may have misled consumers. Other submissions were dropped because complainants did not follow up after receiving preliminary feedback from the OAFS.

In 29 additional cases, the CROs proactively contacted the provider during the preliminary stage and successfully resolved the complaints prior to their formal registration. The CROs' early intervention proved effective in these instances.

Eligibility to lodge a complaint

A customer must have a direct relationship with a financial services provider in order to be eligible to file a complaint with the OAFS. This includes being a consumer of a financial service, being offered a service by a provider, or seeking a financial service from a provider. The Arbiter issued several decisions, during the year under review, specifically addressing the eligibility of complainants to file a complaint in terms of the Act. In some cases, a complainant may not have had a legal relationship with a payment services provider; for example, if the provider only processed a payment on behalf of a merchant or trader.

The term 'financial services provider' refers to an entity granted a licence or authorisation by the Malta Financial Services Authority, the financial regulator in Malta, as per the Malta Financial Services Authority Act or any other relevant financial services legislation.

This definition includes providers offering a wide range of investment, payment, banking, pensions and insurance services. However, the Act allows the Arbiter to determine other types of services that may also be considered to fall under the broad definition of "financial service".

To this end, the Arbiter has determined that services provided by Corporate Service Providers (CSPs) also fall under this definition. As a result, the Office's competence now includes complaints lodged by eligible customers against these entities. CSPs are entities or individuals who provide corporate services, such as registering companies, directorship or company secretary services, and providing registered office, business, or correspondence addresses for businesses.

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 through a locally established branch under freedom of establishment or on a cross-border basis. In such cases, we recommend the financial redress mechanism in the jurisdiction where the respective provider is licensed or based.

Eligible customers, which include natural persons, micro-enterprises and consumer associations, have the right to file a complaint with the Office. The Act defines

a micro-enterprise as a business that employs less than ten individuals and has an annual turnover and balance sheet total that does not exceed €2,000,000. In terms of the Consumer Affairs Act, Consumer associations are 'voluntary bodies of persons whose principal objective is the promotion of consumer protection or education'.

Starting from the current reporting year, the Office is now accepting complaints in both Maltese and English, regardless of the complainant's nationality. In previous years, the Office required complaints by Maltese citizens to be written solely in Maltese. However, the Office has now removed this restriction and allows consumers to articulate their complaint in either one of the two languages which is most convenient for them.

Conditions for eligibility

In terms of the Act, the Arbiter cannot investigate disputes unless the financial services provider has been given a fair opportunity to review the customer's issues before the customer complains to the Office. To comply with this requirement, customers must first communicate their complaints in writing to the financial services provider and allow 15 working days for a written response. A provider is justified in delaying a final response beyond 15 working days only in exceptional circumstances entirely beyond their control. In such cases, the provider should promptly inform the customer of the delay and its reasons and indicate when a final response can be expected.

Nonetheless, the final response must still be provided within not more than 35 working days of receiving the complaint. Both the customer's letter or email and the provider's written response are to be integrated in the supporting documentation of the complaint submitted to the OAFS.

If a complaint has already been the subject of a lawsuit in any court, tribunal, or alternative dispute resolution mechanism in any other jurisdiction initiated by the same complainant, the Office will be unable to consider it. If such a situation is observed during the initial assessment, the complainant will be notified from the outset that the complaint cannot be progressed further.

Throughout the year under review, the Arbiter has encountered several cases in which complainants have applied for or received compensation from foreign compensation schemes due to losses incurred as a result of a provider's misconduct. In such cases, the Arbiter would examine the agreement signed by the complainant during the application process for compensation, as in many instances, applying for compensation to a compensation scheme would subrogate, either fully or partially, the complainant's rights to the compensation body. As a result, the complainant may no longer be eligible to proceed with the complaint.

To file a complaint with the Office, a fee of €25 is required. The fee will be reimbursed completely if the complainant withdraws the complaint or if the parties agree to a dispute settlement before the Arbiter issues a decision.

Once the Office registers 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 copied to the complainant. 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 under review, most complaints were filed by individuals (natural persons), totalling 195 in all. An additional 21 complaints were jointly lodged, and eight were submitted by micro-enterprises.

Of the 224 complaints registered in 2023, 56.25% (126) were filed by non-residents, while residents of Malta lodged 43.75% (98). A closer analysis of the data reveals that Europe had the highest number of complaints with 210, followed by Asia with 8, North America with 3, Oceania with 2, and South America with a single complaint.

Approximately 65% (145) of complainants opted not to seek external assistance during the complaint procedure. This is generally in line with the data in the previous year. It is important to note that the decision to receive help or proceed independently is entirely at the discretion of the complainant.

Mediation

Mediation is offered to all complainants as an alternative method of resolving their disputes.

Mediation is a cooperative approach where the parties involved in a complaint strive to find a mutually satisfactory compromise solution with the help of a mediator. Recognising the benefits of early dispute resolution, our Office actively promotes mediation, assigning a dedicated staff member to manage and facilitate the process.

This confidential and informal process occurs privately, ensuring that parties' legal positions remain unaffected if a resolution is not reached. Participation in mediation

is voluntary and non-compulsory; either party may opt-out, in which case the complaint progresses to the Arbiter.

The mindset of the parties during mediation is critical. Successful mediation hinges on the participants' willingness to realistically assess and understand their respective situation rather than adhering to preconceived expectations. However, this openness can be hindered by a natural inclination to maintain initial beliefs or desires.

Deciding to refer a case to mediation does not always receive unanimous support. Often, parties have engaged in extensive, unsuccessful discussions before submitting their complaint to the OAFS. A history of strained relations and previous unsuccessful resolution attempts can diminish faith in mediation's effectiveness.

The approach taken by parties to a mediation session greatly influences its outcome. Many are swayed by cases whose decisions would have been published, setting expectations that may limit negotiation flexibility. Conversely, some parties enter mediation with no intention of altering their initial stance, presenting significant challenges to resolution.

At the core of many disputes are complex issues that demand a deep understanding by all involved. The success of mediation depends on the parties' readiness to engage constructively and grasp the underlying issues. For example, in financial disputes, disagreements often centre on the expected versus actual rates of return. Investors must balance their rights with their obligations and responsibilities. Disputes frequently arise from parties signing documents without fully understanding them, leading to misaligned expectations.

Mediation extends beyond compensation claims, providing a platform for exchanging additional information about the issues at stake, particularly from the provider's side. Often, complaints originate from poor communication or inadequate initial engagement. Several successful mediations facilitated informal discussions throughout the year and helped identify common ground. However, a mediation's success was limited when the parties were unwilling to reconsider their positions.

The terms are documented and submitted to the Arbiter if a mutually agreeable settlement is reached. Upon approval and signatures from both parties, the agreement becomes legally binding, marking the dispute's resolution and concluding the complaint process. Additionally, the complainant will be refunded the €25 complaint fee.

Mediation sessions were primarily held remotely during 2023. However, in some cases, parties chose to hold in-person mediation sessions. This was usually because one or both parties had difficulty with technology or if the subject matter being discussed was sensitive.

During the year under review, 80 mediation sessions were held which included cases that were brought forward from 2022. Mediation was successful in 22 cases. A further 21 cases were withdrawn before mediation. A further 12 cases were withdrawn following mediation. At year-end, several cases were pending an appointment for mediation since parties were still undecided about which avenue to pursue.

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. Nearly all hearings were conducted remotely during the reporting period 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.

A few cases were heard in person to accommodate requests made by consumers who did not have access to a computer or who preferred to cross-examine the provider or its agents face-to-face.

The parties present their cases, supported by oral 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 or 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 also be invited to present final submissions in summary form.

The entire process is typically concluded within a few weeks before the case is adjourned for a decision.

Findings and awards

A few days before the Arbiter issues a decision, the parties involved in the complaint are notified of the date the decision will be announced. Although not compulsory, the parties are invited to a hearing where the Arbiter will declare the decision. The decision is then sent to the parties and their representatives, if any, via email.

During the last quarter of 2023, the Arbiter began including a note with the decision outlining the parties' rights to request corrections or clarifications and providing information on the appeals process. Additionally, some decisions now include information regarding the reasonable costs of proceedings that complainants can claim in cases overseen by the Arbiter. It is noted, however, that the Arbiter retains the discretion to decide how costs are apportioned based on the specifics of each case. The applicable professional fees that may be charged are expected to align with tariffs and fees stipulated for civil court proceedings in Malta under the Code of Organization and Civil Procedure.

The Arbiter is empowered to award compensation up to a maximum of €250,000, including additional sums for interest and other costs. For claims that exceed this limit, the Arbiter may issue recommendations.

The Arbiter's final decisions are accessible on the Office's website, although the identities of the complainants are pseudonymised.

Either party can request the Arbiter to clarify the award or rectify any computational, clerical, typographical, or similar errors within 15 days of the decision date. The Arbiter will issue a clarification or correction within 15 days of receiving a party's request.

Either party may challenge decisions made by the Arbiter through an appeal to the Court of Appeal (Inferior Jurisdiction) within 20 days from the date of the Arbiter's decision or from when clarification or correction is issued by the Arbiter, as applicable. The parties' identities in appealed decisions are made public on the Court of Justice website.

If neither party appeals, the Arbiter's decision becomes final and binding on all parties involved.

Occasionally, the Arbiter may need to issue a preliminary decision, often during the initial stage of a case hearing. These preliminary decisions address legal objections, such as when a service provider argues that the Arbiter lacks jurisdiction to hear the case.

The Arbiter delivered 137 final decisions, 90 in English and 47 in Maltese.

The number of complaints which were not upheld was 81; a further 50 complaints were partially upheld while six cases were upheld in full. The Arbiter awarded €809,000 in compensation, excluding interest payment and costs.

A further breakdown of the number of rejected complaints reveals that 14 cases were rejected on legal merits (mostly because the Arbiter determined that the cases were time-barred). In 20 cases, the Arbiter determined that the case fell outside his competence (mostly because the complainant was found not to be an 'eligible customer' as defined and required by the Act). A further 45 cases were rejected because the case's merits were not proven (11 of which were related to crypto assets and scams). An additional two cases were found to be frivolous and vexatious.

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

The average duration of cases

Under the ADR Directive, a final decision must be issued within 90 days of finalising a complaint's investigation process, that is, when the evidence and submissions relating to the case file are declared complete. In certain exceptional cases of a highly complex nature, ADR entities may be able to extend the timeframe for examining the case in question.

The OAFS was established to provide financial services consumers with a platform for expedited case resolution in accordance with the objectives of the ADR Directive and the Act.

While some cases can be resolved swiftly, complex cases require 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 because the parties submitted

extensive supporting documentation that necessitated considerable review time. Consequently, issuing a decision in such instances took longer than in other comparatively less complex cases, highlighting the challenge of balancing the Arbiter's desire for prompt decisions with the need for comprehensive detail in the final decision.

As part of the commitment to ensuring a timely resolution of cases, the Arbiter has prioritised delivering decisions promptly after receiving a case file. This approach helps to minimise delays and provides the parties involved with a clear understanding of the outcome of their case promptly.

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Applying the criteria set in the ADR Directive, the average time taken to issue a decision once the file was complete has significantly decreased compared to previous years.

Regarding banking-related complaints, the average time taken for decisions under this category to be issued was 106 days, down from 170 days reported in the previous year.

The same applies to insurance-related cases, where the average number of days taken fell from 134 in 2022 to 88 days in the year under review.

Investment-related complaints are complex and take longer to determine due to the vast amount of information submitted during the review stage. On average, it took 250 days for this cohort of cases to be determined. However, many cases in this sector related to complaints concerning retirement schemes, which are always voluminous and complex to assess, both from the legal and substantive aspects. Indeed, regarding pension-related cases, the average time taken for decisions to be issued averaged 340 days, compared to an average of 160 days for all other investments-related cases.

On Interest

Apart from costs, the Arbiter is required to direct the payment of interest, in terms of the powers contained in Article 26(3)(c)(iv) of the Act.

During the reporting year, the Arbiter adopted a procedure that benchmarks the interest rate on the rate prevailing at the time and as published by the respective central bank of the jurisdiction. In this regard, where interest on compensation is payable in sterling, the interest rate is set at the Bank of England Base Rate. If the compensation is payable in euro, the rate is that set by the European Central Bank.

In his decisions, the Arbiter also indicates that in the case of an appeal, and depending on the direction given by the Court of Appeal, interest would be payable from the date of the Arbiter's decision.

On Costs

During the reporting year, there were several occasions on which the complainant and the financial services provider, either directly or through their advisers, requested the OAFS to clarify the extent to which the provider was required to pay any fees incurred by the complainant during the complaint procedure filed with the Arbiter. This included fees chargeable by the complainant's lawyer, if appointed. This occurs when the Arbiter directs the service provider to pay all costs the complainant bears upon successful adjudication, and vice versa.

Several complainants, in whose favour a decision was issued, complained to the OAFS after the decision became binding on the parties that the financial services provider was not adhering to the word and spirit of the Arbiter's decisions as they failed to reimburse all the expenses incurred for the procedures. Some complainants claimed that the financial provider simply reimbursed the €25 complaint fee paid upon registration or only a part of the fees that the complainant's advisers had charged them, leaving them out of pocket for a substantial part.

After an Arbiter's decision, the provider similarly requested that the Arbiter clarify some issues related to the extent of costs it would have to bear. Specifically, the provider wanted to know if the legal fees they had to pay to the complainant's advisers were limited to the judicial costs incurred for filing the complaint (€25) or whether they should follow the tariffs set by the courts in Malta since there was no tariff list applicable to proceedings in this Office.

Given the differing interpretations by some providers and their advisers of the Arbiter's direction on adjudicating costs, the Office established a formal response, which was communicated to all those who established contact with the Office on this issue. Apart from that, the same elements of the response started being included in the final decision of the Arbiter, along with another issue that the Arbiter decided regarding the payment of interest (see previous page).

In accordance with Article 26(3)(d) of the Act, the Arbiter has the authority to determine which party bears the costs of the proceedings and in what proportion, taking into account the specific circumstances of each case.

The Act does not set any tariffs on proceedings before the Arbiter. Nor does the Act refer to the cost structure that the Courts in Malta apply.

However, as the OAFS is an ADR entity, the costs associated with proceedings before the Arbiter should be lower than those prevailing in court proceedings in Malta. This aligns with the ADR Directive, which advocates inexpensive proceedings to encourage consumers to seek remedies for their disputes affordably and efficiently. This directive is intended to prevent either party from using the proceedings to impose excessive fees on the other, particularly the consumer.

While the Act does not explicitly define the extent of tariffs and fees for professional or consultancy services rendered to complainants that may be lawfully and reasonably claimed as part of the costs of the proceedings, the Arbiter expects these to be in line with the tariffs and fees stipulated for civil court proceedings in Malta under the Code of Organization and Civil Procedure. This approach ensures costs are reasonable and benchmarked against an established standard.

The costs of the proceedings include not only the applicable filing fee for submitting a complaint to the OAFS (currently €25) but may also encompass reasonable and lawfully incurred professional and legal fees paid by the complainant for work performed during the proceedings. However, such professional fees shall exclude contingency or success-based fees.

Highlights of Decisions Delivered by the Arbiter

Arbiter's decisions online

Our online portal provides comprehensive access to the Arbiter's decisions, enabling users to explore over 700 available decisions. Users can refine their searches using various filters such as: the name of the financial services provider; the language, year date of the decision; the sector involved; the outcome of the decision and the occurrence of any appeals.

In the published versions of the decisions, the names of the complainants are omitted and replaced with unrelated alphabetical characters.

The database of the Arbiter's decisions is regularly updated to include relevant case reference numbers for appeals made to the Court of Appeal (Civil Inferior). Users can also filter their searches to distinguish between appealed and non-appealed decisions. When the appeal judgment is published, it is made available alongside the corresponding Arbiter's decision. The identity of the complaiant(s) would be revealed when an appeal is lodged with the Courts.

This decisions database aims to act as a thorough research tool for academia, the financial services industry, consumers and other stakeholders, thereby contributing to the growing body of knowledge on retail financial services jurisprudence in Malta.

A selection of case summaries

The OAFS is mandated by law to publish summaries of the decisions made by the Arbiter. In the reviewed year, the Arbiter issued 137 final decisions.

This section highlights key decisions related to banking, insurance, investments and private pensions. The summaries encapsulate the principal elements and insights observed in the Arbiter's decisions. If the appeal judgment has been published by the time this annual report is compiled, the summary will also include the outcome of the judgment.

Banking and Payment Services Cases

This section presents a series of case summaries highlighting the diverse disputes encountered in the banking and payment services sector over the past year. The cases provide valuable insights into the complexities of financial transactions, the importance of regulatory compliance, and the evolving landscape of customer service expectations within the sector. From blocked funds and unilateral account freezing to the unreasonable closure of bank accounts, each case underscores the critical need for transparency, fairness and adherence to legal obligations by financial institutions. Through these summaries, the aim is to shed light on the most important decisions made by the Arbiter and the implications for both consumers and service providers, reinforcing the commitment to upholding the highest standards of financial practice and consumer protection.

Fraudulent payment instruction (ASF 112/2022)

COMPLAINT PARTIALLY UPHELD

Fraudulent payment, scam, recall, daily limit, contributory negligence

The complainant filed a complaint relating to a payment of € 5,119 made from her account held with the service provider on 22 August 2022, which she claimed resulted from falling victim to fraud and scam. She submitted that:

a) The payment was not a normal transaction she had ever made in her ten years of holding the account, and it comprised almost all the available balance. This should have raised suspicion to the service provider that the transaction involved fraud.

b) The service provider only informed her on 24 August 2022 that the funds had already been withdrawn, so an effective recall was not possible.

c) The service provider failed to warn about such scams even though she knew other customers had suffered the same fate.

The complainant requested to be compensated for the full amount of her loss.

The service provider submitted that:

a) The complainant fell victim to a scam where third parties convinced her to transfer all the funds to their bank account. The service provider had no control over this transfer as it was made by the complainant herself without the service provider's intervention.

b) The complainant only informed the service provider about the transaction at 6.09 p.m., which was too late to stop the transfer she had authorised earlier that day.

c) The service provider requested a recall to the bank that received the transferred amount, but this was rejected as there were insufficient funds in the account where the transfer was received.

d) The service provider periodically conducts security campaigns to inform its customers and the public to be careful in their banking transactions and avoid falling victim to such scams.

The Arbiter made the following observations and considerations:

1. There was no doubt that the complainant had substantial responsibility for the loss she suffered as she made the transaction herself, followed all the internet banking procedures with two-factor authentication, and only reported her suspicion of fraud to the service provider late in the day.

2. The complainant's claim that the service provider failed because it did not issue public notices against this scam did not stand as this case appeared unique in its form and structure.

3. The claim that the service provider failed because it did not do everything possible for the recall to be successfully executed also did not hold water. Once a payment is processed, a recall can only be effective if there is the recipient's consent for the funds to be returned, which a fraudster is not likely to give.

4. The claim that the service provider could have stopped the transaction from being executed was also weak because once the customer passes the two-factor authentication stage, the service provider would have fulfilled its obligations according to payment regulations.

5. However, the Arbiter felt that the service provider could have possibly implemented additional systems or measures to offer protection to customers that go

beyond the obligations of two-factor authentication, such as having a more realistic daily limit on the value of payments that can be made without the service provider's specific authorisation.

The Arbiter partially accepted the complaint, limiting it to a symbolic refund of 10% of the complainant's loss, amounting to €512. The Arbiter made a strong recommendation that banks should introduce systems where the daily payment limit is realistic for the client concerned and that the client is informed of this daily limit and what to do if they need to change it, along with a clear explanation of the risks if a client maintains a high daily limit. The Arbiter remarked that the percentage that banks have to bear as part of losses in cases like this may increase if they fail to adopt this recommendation within a reasonable time. A copy of this decision (without the complainant's details) was sent to the MFSA and the CBM for their perusal.

The decision was not appealed.

Blocked funds in personal bank account (ASF 097/2023)

COMPLAINT REJECTED

Bank account, blocked funds, professional use, freezing order, compensation

The complaint was filed by a French citizen who was also the CEO of a French company. The complainant opened a personal bank account with the service provider on 7 March 2018, which he intended to use for professional purposes related to his company.

a) On 15 March 2018, the service provider notified the complainant that his bank account had been blocked, restraining funds amounting to €123,420.

b) The complainant tried to resolve the issue amicably with the service provider but was informed that the case was still under study.

c) On 24 April 2019, the complainant filed a claim with the service provider, proposing solutions to end the financial harm caused by the blockage.

d) The service provider responded on 16 July 2019, stating that after further internal controls, the funds would be credited back to the complainant as soon as possible.

e) The situation remained unresolved, and the complainant's counsel sent a formal notice to the service provider on 14 August 2021, demanding the unblocking of the account and crediting the funds.

In its reply to the complaint, the service provider acknowledged that it had not released the complainant's funds, stating that this was due to reasons outside their control, which occurred after the initial blocking of the account on 15 March 2018. Consequently, the service provider could not release the funds, close the complainant's account, or pay damages, as the blocking of funds was outside their control and in accordance with their legal obligations. The service provider requested the Arbiter to reject all the complainant's requests.

On 30 August 2023, the OAFS was informed by the service provider of a freezing order published in the Malta Government Gazette on 29 August 2023, which ordered the attachment of the complainant's funds up to a limit of €123,420.78.

In considering the case, the Arbiter made several observations:

1. The freezing order was recognised and executed in Malta according to Cap. 621 of the Laws of Malta, Legal Notice 180 of 2021 (Mutual Recognition of Freezing Orders and Confiscation Orders Regulations, 2021), and European Union Regulations 1805/2018.

2. The complainant had argued that the freezing order appeared to be recent and unrelated to the initial freezing of funds by the service provider, suggesting that the service provider had held the funds unlawfully for an extended period without proper justification or compliance with Article 32 of EU Regulation 1805/2018.

3. The complainant had maintained that the service provider had exceeded its authority by freezing the funds for over five years without judicial authorisation or providing legal justification. The service provider's actions may have contributed to the decision to freeze the funds again on 28 July 2023.

4. The service provider had reiterated that the blocking of the complainant's funds since 15 March 2018 was due to reasons outside their control, which they were prohibited from disclosing under their legal and regulatory obligations, and that the blocking of funds resulted from these obligations.

5. The Arbiter, while sensitive to the fact that banks are obliged by regulation not to disclose information to their customers in cases related to AML issues, emphasised that authorities need to be sensitive to customers' rights and conduct investigations with the necessary despatch, bringing them to a conclusion so that licensed institutions can either release funds or properly explain to their clients why they are being blocked.

6. Considering the overall circumstances of the case and the submissions made by both sides, the Arbiter could not find fault with the service provider's actions in initially blocking the funds and not disclosing more

than the law permitted it to explain the reasons for the blockage.

7. The Arbiter was satisfied that the service provider's actions complied with their obligations based on PSD 2 and Chapter 373 of the Laws of Malta Prevention of Money Laundering Act and subsidiary legislation.

8. The fact that a Court of Appeal in the complainant's home jurisdiction eventually ordered the freezing of the already blocked funds, which was recognised and executed by the Malta Courts, confirmed that the service provider's actions in stopping the funds were not frivolous or vexatious but were founded on reasonable assumptions.

The Arbiter dismissed the complaint, which was not appealed.

Elderly customer's right to basic payment account (ASF 016/2023)

COMPLAINT UPHELD

Account closure, criminal proceedings, EU regulations, pension, risk management

The complaint revolved around an elderly customer's right to access a basic payment account after his accounts were closed by the bank. The key points of the complaint were as follows:

a) The bank decided to terminate its relationship with the individual due to ongoing criminal proceedings and allegations of corruption, which placed the individual outside the bank's defined risk appetite.

b) Previously, another bank had closed all accounts belonging to the individual, making the current institution the last banking service available to him.

c) The individual argued that closing his last remaining account violated his rights under EU regulations. These regulations guarantee access to a basic payment account for receiving his pension and managing daily expenses.

In response to the complaint, the bank provided several justifications for its decision to close the account:

a) The bank cited the ongoing criminal proceedings against the individual as a significant factor aligned with their policy to avoid maintaining relationships with clients who fall outside their risk tolerance.

b) It argued that the responsibility to provide a basic payment account should not fall on them as they were historically not the individual's primary financial institution.

c) The bank also referenced EU regulations, stating that while every resident has the right to a basic payment account, there are lawful grounds to refuse such a service, especially if the individual poses a high risk of money laundering or terrorist financing, or if they already possess a similar account with another institution.

In evaluating the case, the Arbiter made the following observations:

1. Acknowledging the institution's policy on risk management, it was noted that the presence of criminal charges typically influences a financial institution's decision to discontinue services, which, in this case, was not deemed unreasonable given the circumstances.

2. Despite this, the Arbiter stressed the importance of ensuring that individuals are not left without basic financial services, especially when they involve critical functions like receiving a pension. The risk of an older adult managing large sums of cash was deemed unacceptable, particularly given the public nature of the individual's legal troubles.

3. The argument that another institution should provide the basic payment account was not supported. The Arbiter pointed out that when the individual's accounts were closed at the other institution, he still had an account at the current institution, which therefore bore the responsibility to provide basic banking services once it became the sole provider.

4. The Arbiter recognised the financial burden of monitoring transactions for high-risk clients but emphasised that the institution must manage these challenges without denying basic financial services. Provisions were suggested to simplify monitoring and reduce associated costs.

The Arbiter concluded that the bank must offer the individual a basic payment account. This account should primarily be used to receive his government pension and facilitate daily transactions through a debit card. An exception was made for approximately € 2,700, which the bank held from previously closed accounts; this sum was deemed not to pose a risk and should also be deposited into the new basic payment account. This decision was contingent on the fact that there were no regulatory objections to releasing these funds.

The decision was not appealed.

Bank terminates client's accounts without a valid reason (ASF 123/2022)

COMPLAINT PARTIALLY UPHELD, BUT JUSTIFIED IN FULL ON APPEAL

Account termination, sole trader, due diligence, regulatory obligations, unfair treatment

The complainant filed a complaint against the bank on 21 October 2022. The main points of the complaint were:

a) The bank had acted unprofessionally and unfairly when it terminated the banking relationship and closed her accounts without a valid reason.

b) Several accounts were closed, including a 5-year fixed account opened in 2018, three savings accounts opened when she was a student, another savings account opened in 2019, and a sole trader account opened in February 2020 for her private tuition business.

c) The bank provided vague reasons for closing all the accounts, stating in a letter dated 15 October 2021 that it was no longer in a position to provide services following a review of its internal policies and procedures.

d) The complainant was given until 14 December 2021 to identify an alternative financial services provider.

e) The complainant incurred charges for closing the accounts and lost interest on the fixed account.

f) This action damaged her integrity and business prospects, which she had built at great expense, and prejudiced her chances of winning government and international tenders. In society, such an action is perceived as synonymous with having committed a criminal offence such as money laundering through tax evasion or concealment of illegal sources of funds.

g) Although she had not yet faced the consequences because another bank was providing the services previously provided by the bank in question, there was a risk that if the matter became known or if she was asked if she had ever had a banking relationship terminated, she might have difficulty obtaining personal and business bank accounts.

h) The bank had handled her complaints confusingly, repeatedly requesting documents that had already been provided and never properly explaining why it had reached the drastic decision to close accounts.

The bank submitted its response on 11 November 2022. The main points of the response were:

a) The bank raised two preliminary exceptions: firstly, if the Arbiter upheld this complaint, it would be obliging the bank to act in breach of its legal obligations as a licensed bank; secondly, the Arbiter did not have 'ratione materiae' to determine and decide whether the documentation and information requested by the bank and provided by the complainant is necessary and sufficient in terms of the Prevention of Money Laundering Act.

b) The bank denied that it had failed the complainant or had acted for invalid, untrue, unfair reasons or against any professional banking practice when it decided to terminate the relationship and close the complainant's accounts.

c) The bank requested the Arbiter to reject the complaint with costs.

The Arbiter made several observations and considerations in this case:

1. The Arbiter appreciated that this case presented challenges in conducting proper due diligence for the bank; this was not aided by the fact that the complainant had adopted a rather aggressive attitude towards the bank's requests, which did not help resolve the issues calmly and without undue spite.

2. The Arbiter distinguished between the personal savings and fixed deposit accounts and the sole trader business account designated in the complainant's name, 'trading as XXXX Group'. He noted that most of the problems that had arisen concerned the latter account.

3. The Arbiter felt that the bank had an obligation to conduct due diligence on this account and did not agree that the bank had been overly intrusive in a disproportionate manner in this case. This was because particular factors justified a certain level of intrusiveness.

4. The account had various revenues from both local and foreign sources in individually small but collectively substantial amounts. In 2021, deposits of over €133,000 were spread over about 320 transactions (an average of €415 per transaction), while outflows were only around €34,000, mostly to an external account, making it difficult for the bank to monitor properly who was receiving these payments.

5. A list of self-employed persons providing services to the complainant was provided, but there was no evidence from the bank account of how they were paid. The complainant said they were paid from an online payments provider to avoid bank charges, which the bank had no problem with. However, over time, the bank may have developed legitimate doubts about the business operations or was at least uncomfortable with the costs of complying with the regulatory expectation of transaction monitoring.

6. The Arbiter felt that the volume of transactions in retail-type services would normally justify operating under the umbrella of a commercial company obliged to prepare annual audited financial statements. This would allow the bank to rely on properly audited financial statements, be reassured that they were not being used for tax evasion (now considered a money laundering offence) and reduce the intrusiveness and costs of due diligence and transaction monitoring.

The Arbiter partially upheld the complaint. He ordered the bank to pay the complainant €172 after deducting a 15% withholding tax for the amount claimed in the remedy. All other remedies requested were rejected.

The complainant appealed the decision, and the Court of Appeal (Inferior Jurisdiction) upheld her contentions. The Court did not agree with the Arbiter's decision and said that:

1. The bank was never clear in its communications about what was required but still expected from the complainant to maintain the banking relationship. The bank's requests kept changing and increasing, while its position ironically remained the same from the beginning - that it wanted to terminate the relationship with the complainant.

2. The complainant had every right to be informed where she was falling short so she could remedy the situation. Instead, the bank took extremely harsh action against its client, causing anxiety and causing a loss of time, finances and other precious resources for a person in business.

3. It is not fair and equitable for a bank to make such an extreme decision against its client without good and sufficient reason. A bank certainly has the right to terminate a relationship with a client, but this right cannot be exercised without considering the consequences that the client would suffer.

4. The Court shared the Arbiter's view that a trading account required more commitment from the bank to carry out due diligence but disagreed that the complainant had been aggressive in her reaction to the bank's requests.

5. The Court upheld the complainant's requests. The bank was ordered to reopen the complainant's closed accounts, limit its requests for clarification regarding the trading account, and indicate and allow the complainant to present the necessary documentation to keep the trading account open.

6. The Court also awarded the complainant €1,000 in compensation for the inconvenience and anxiety caused by the situation, to be paid by the bank with interest.

Complaint regarding frozen bank account (ASF 076/2022)

COMPLAINT REJECTED

Frozen account, court order, Financial Crimes Investigation Division, micro-enterprise

The complainant, a micro-enterprise, filed a complaint for the Arbiter's adjudication regarding its bank account with the service provider. The key points of the complaint were:

a) The complainant had approximately €213,000 deposited in the account.

b) Since October 2021, the complainant had been requesting the bank to close the account and transfer the funds, but the bank had not complied.

c) The complainant engaged a lawyer in November 2021, but the bank continued freezing the account.

d) The complainant argued that a frozen account is only allowed when the bank has a Court Order or an order issued by a criminal court.

e) The complainant had been carrying out the same activity for a long time, and the bank never queried its operations.

f) The complainant asked the Arbiter to order the bank to close the account and to transfer the funds.

In its response, the bank stated that:

a) It had advised one of the complainant's directors to visit the Financial Crimes Investigation Division (FCID) on 4 January 2022.

b) The same information had been given to the complainant's representatives on 8 June 2022, and they understood that the order to freeze the account came from the police.

c) The bank acted according to the applicable legislation and directives.

d) The bank was surprised that the complaint was filed against it when all the required instructions had been submitted to the complainant but were disregarded.

e) The bank requested the complainant's legal representatives to set a meeting with the FCID as instructed.

In deciding the complaint, the Arbiter had to consider what was fair, equitable, and reasonable in the particular circumstances and substantive merits of the case. His main observations and considerations were:

1. The bank stated that it had instructions to tell the complainant to contact the FCID before it could accede to the request, but the complainant's legal representatives did not comply.

2. The complainant's representatives claimed they tried to fix an appointment with the FCID through emails but did not receive a reply.

3. The bank confirmed that it had received an order from a 'competent authority' and a communication from the FCID instructing the bank to inform the complainant's representatives to visit the FCID and speak to a specific Inspector.

4. The bank's legal representative informed the Arbiter that the complainant's account had been frozen because they were following a Court Order.

5. A bank is considered to have acted legally, fairly, and reasonably if it freezes an account due to a Court Order, reasonable suspicion of fraudulent actions, lack of compliance with anti-money laundering and counter-terrorism financing laws, or the account holder's death.

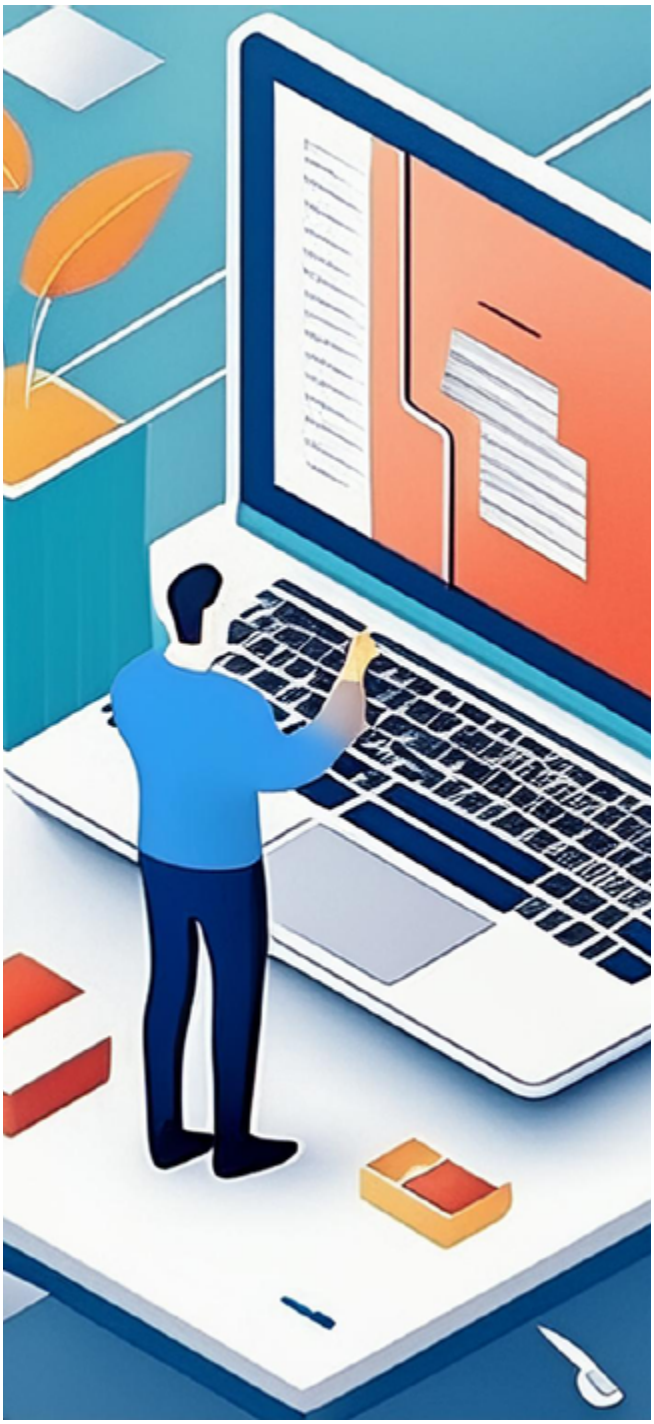
6. The bank sufficiently proved that its action not to release the complainant's funds was because it was obliged to freeze the account through a Court Order.

7. The bank acted fairly and informed the complainant's representatives to physically visit the FCID and talk to a specific police inspector, but they only contacted the police through emails.

8. The Arbiter was convinced that the bank was freezing the complainant's account on a Court Order and could not conclude that the bank had acted unfairly or unreasonably.

The Arbiter decided that the bank's conduct was fair, equitable, and reasonable in the particular circumstances of the case and did not uphold the complaint.

The decision has been appealed.



Insurance Cases

The following case summaries provide an overview of key insurance-related complaints and decisions handled by the Arbiter. They highlight important issues and considerations in cases involving business interruption insurance, travel insurance, life insurance policies, and property damage claims. The Arbiter's decisions in these cases offer valuable insights into the interpretation of policy wordings, the responsibilities of insurers and policyholders as well as the application of principles such as utmost good faith and legitimate expectations. By examining these case summaries, readers can better understand the Arbiter's approach to resolving insurance disputes and the factors influencing the outcome of complaints. The summaries also underscore the importance of clear communication, timely action, and thorough documentation in insurance matters as well as the need for policyholders to carefully review and understand their policy terms and conditions.

Complaint on business interruption insurance claim rejection (ASF 081/2022)

COMPLAINT REJECTED

Business interruption insurance, COVID-19, notifiable disease, policy endorsement

The complaint was filed by a hospitality business owner against the insurance provider. The key points of the complaint were:

a) The complainant's business was forced to close down several times due to government orders triggered by the COVID-19 outbreak.

b) Despite having business interruption insurance, the service provider refused to indemnify the complainant for the sustained losses of over €50,000.

c) The business closure was initially a precautionary measure after a staff member had contracted COVID-19; this was subsequently coupled to a government-mandated closure of the hospitality business.

d) The complainant sought an order from the Arbiter for the service provider to pay for the sustained losses.

The service provider, in its reply to the complaint, stated the following:

a) The complainant submitted a claim in November 2020 for business interruption losses arising from COVID-19, which was handled by a third-party adjusting firm on behalf of the service provider.

b) The claim was initially declined on 12 January 2021, citing that COVID-19 was not covered as a named disease within the policy's definition of 'Notifiable Diseases'.

c) The service provider argued that the policy wording materially differed from the wording in the Financial Conduct Authority (FCA) test case filed in the UK courts.

d) The relevant policy endorsement defined 'Notifiable Disease' as an illness resulting from a specific list of diseases, which did not include COVID-19.

e) The service provider maintained that the policy was issued in March 2020, after the pandemic's start, and the endorsement wording was designed to ensure foreseeable losses would not be compensated.

The Arbiter considered the following points:

1. The Arbiter noted the contrasting interpretations presented by the complainant and the service provider regarding the coverage of COVID-19 under the policy.

2. The Arbiter emphasised the importance of considering the policy's specific wording, as highlighted by the UK's FCA test case judgment.

3. The policy document initially defined 'Notifiable Disease' as 'Human infectious or contagious disease only' and provided additional cover for outbreaks occurring at or within 25 miles of the premises.

4. However, an endorsement which formed an integral part of the policy, changed the definition of 'Notifiable Disease' to a specific list of illnesses that did not include COVID-19.

5. The Arbiter referred to the Rockliffe Hall vs Travelers Insurance Co. case, which held that a closed list of diseases is considered exhaustive.

6. The wording of the endorsement, particularly the phrase 'illness sustained by any person resulting from any of the following', indicated that the list of diseases was intended to be exhaustive and did not include COVID-19.

The Arbiter noted that the parties did not dispute the wording of the endorsement, and since it did not include COVID-19 as a notifiable disease, the complaint could not be upheld.

The decision was not appealed.

Complaint regarding rejected insurance claim for spoiled food products (ASF 062/2022)

COMPLAINT PARTIALLY UPHELD

Insurance claim, power outage, spoiled food, late notification, lack of evidence

The complainant filed a complaint against an insurance company for rejecting his claim for compensation following a power outage that led to food spoilage. The main points of the complaint were:

a) The complainant suffered a loss of meat and food products due to a prolonged power outage caused by the electricity provider.

b) The insurance company refused compensation, despite the fact that the complainant had provided the requested documentation to justify the claim.

c) The complainant felt that the rejection of his claim was unjust, as the service provider had motivated it by the fact that he dad disposed of the spoiled meat before the insurer's inspection. He contended that its retention was not possible due to the perishable nature of the products and the summer heat.

The service provider responded to the complaint, stating its reasons for rejecting the claim. The main points of its response were:

a) The insurance company was notified of the claim late, and by the time it was informed, the complainant had already disposed of the spoiled food, leaving no evidence for inspection.

b) There were discrepancies in the information provided by the complainant, such as the location of the incident and the dates of the power outages.

c) The complainant failed to provide sufficient evidence, such as photographs or videos, of the spoiled food before its disposal.

d) The insurance company argued that there was a misrepresentation of facts and a breach of policy conditions.

The Arbiter made several observations and considerations:

1. The Arbiter acknowledged that the claim could have been more precise but noted that the insurance company rejected the claim without conducting the necessary investigations to establish its validity.

2. The Arbiter considered the case's particular circumstances, recognising that the complainant was faced with a prolonged power outage that led to the spoilage of meat and fish, causing a strong odour and potential health hazards.

3. The Arbiter found that the complainant had provided sufficient evidence to prove that the food spoilage occurred due to the power outage in August 2021, as corroborated by witness testimonies.

4. While the insurance company argued that it was not allowed to inspect the spoiled food, the Arbiter noted that the perishable nature of the products and the potential health risks made it unreasonable to expect the complainant to retain the spoiled food for an extended period.

5. The Arbiter acknowledged that the amount claimed by the complainant (€7,509) was not entirely justified and that the correct amount, as calculated by the service provider's representative, was €4,039.75.

In deciding that the complaint was fair, equitable and reasonable, the Arbiter ordered the insurance company to pay the complainant the sum of €4,039.75.

The decision was not appealed.

Boat insurance claim rejected due to late notification (ASF 027/2022)

COMPLAINT REJECTED

Late claim notification, gradual damage, fraud allegation

The complaint related to the service provider's rejection of an insurance claim for damage sustained by the complainant's boat. The key points of the complaint were as follows:

a) In October 2020, the complainant's boat suffered damage due to improper placement by the person who transported it.

b) The boat yard owner noticed water leaking from the

boat's hull and informed the complainant, who then contacted the transporter to reposition the boat correctly.

c) The complainant undertook repairs, initially estimated at €1,800 but later found to be more extensive.

d) The insurance company rejected the claim, citing late notification, pre-existing damage, and failure to make necessary repairs.

The service provider had rejected the complainant's claim and argued that the request for compensation was unfounded in fact and at law. The main points of the service provider's response were:

a) The complainant had failed to make permanent repairs to the boat as required, contributing to the gradual damage not covered by the policy.

b) The complainant had attempted to defraud the service provider by concealing previous repairs and making an identical claim with another insurance company.

c) The complainant breached several policy clauses.

The Arbiter assessed whether the service provider's rejection of the claim was fair, equitable, and reasonable under the case's circumstances and substantive merits. The key observations and considerations made by the Arbiter were:

1. Regarding the allegation of fraud, the Arbiter found no concrete evidence proving the complainant's intention to deceive the service provider. The surveyor's report only made assumptions about previous repairs, and the complainant's claim with another insurance company did not necessarily imply fraudulent intent.

2. The Arbiter considered the complainant's delay in notifying the claim and whether it prejudiced the insurer. Recent legal developments suggest that the insurer should be able to deny a claim if the delay causes prejudice rather than automatically rejecting late notifications.

3. The Arbiter found the complainant's reasons for the delay, such as believing that the damage was minor and the difficulty in finding a repairer, to be insufficient and invalid. Having worked in the insurance sector, the complainant should have been aware of the correct procedure for promptly notifying claims.

4. The six-month delay in making the claim was deemed excessive and unjustified by the Arbiter, given the policy's requirement to notify the insurer immediately upon becoming aware of an event that may lead to a claim.

The Arbiter decided that the service provider was justified in rejecting the claim due to the complainant's excessive delay in making the claim, which prejudiced the service provider. The Arbiter dismissed the complaint.

The decision was not appealed.

Boat insurance claim rejected for non-disclosure (ASF 035/2022)

COMPLAINT REJECTED

Claim, non-disclosure, utmost good faith, proposal form

The complainant filed a complaint against his insurance company. The key points of the complaint were:

a) The complainant's boat sustained damage while being transported on a trailer from the Msida Marina to a boatyard on 20 September 2021. The complainant alleged that the trailer was not suitable for the size and weight of the boat, thereby resulting in the damage by the craft.

b) The complainant immediately informed the insurance company, and a surveyor was sent to assess the damage.

c) The insurance company rejected the claim and cancelled the policy.

d) The complainant sought compensation of €6,000 from the service provider.

The service provider rejected the claim and provided the following reasons:

a) The complainant had provided incomplete and misleading information on the proposal form and had failed to disclose material facts that occurred a few months before the incident.

b) An investigation revealed that the complainant had previously filed a similar claim with another insurance company; this had been rejected because the damage sustained to the boat was old.

c) The complainant had made superficial repairs to conceal the pre-existing damage before obtaining insurance cover from the service provider.

d) The complainant, an insurance intermediary, knew the importance of completing the proposal form in good faith and with full disclosure.

e) The damage appeared progressive and had been developing for years without proper professional repairs.

The Arbiter considered the legal framework and the principles of insurance contracts as well as the importance of utmost good faith in completing the proposal form. The key observations and considerations made by the Arbiter were:

1. The complainant, having worked in the insurance sector, was familiar with the requirement of correctly answering questions in the proposal form.

2. The complainant failed to disclose a recent claim made with another insurance company, which had been rejected while mentioning an older claim that occurred three years prior.

3. The Arbiter found the testimony of an employee of the service provider to be more credible than the complainant's when she stated that the complainant had not informed her about the previous claim with the previous insurance company.

4. The Arbiter considered the testimony of a service provider representative who stated that it would not have insured the boat if it had been aware of the previously rejected claim.

5. The Arbiter concluded that the service provider had valid reasons to reject the claim based on the complainant's failure to disclose material information and the breach of utmost good faith.

The Arbiter rejected the complaint. The decision was not appealed.

Burst pipe causing drainage system damage (ASF 025/2022)

COMPLAINT PARTIALLY UPHELD

Insurance claim, property damage, burst pipe, drainage system, wear and tear, gradual deterioration

This case concerns a complaint filed by a policyholder, whose key points were:

a) A burst pipe in the policyholder's property caused significant water leakage, damaging the foundations and misaligning the drainage pipes.

b) The entire drainage system needed to be replaced due to the damage caused by the burst pipe incident.

c) The policyholder sought compensation of €8,031 to replace the drainage system and unquantified costs for tile replacement.

The insurance company responded to the complaint as follows:

a) The damage to the drainage pipes was caused by gradual deterioration and wear and tear, as the pipes were old terracotta pipes that had not been replaced since the property was built in the 1960s.

b) The incident was not accidental but occurred gradually over time due to the age and material of the pipes.

c) The insurance company's obligation under its policy was to pay for the repair of the damage, not to replace the entire drainage system.

d) Despite the foregoing, the insurance company had offered to pay the initial claim of €1,780 and an additional 20% of the estimate provided by the policyholder for replacing the entire drainage system, amounting to a total of €3,000, as a goodwill gesture and without prejudice.

In considering the case, the Arbiter made the following observations and considerations:

1. The insurance contract is based on the utmost good faith between the parties, and this requirement applies equally to both parties.

2. When faced with a claim from the insured, the insurer had several obligations, including considering the claim fairly and reasonably, finding reasons to accept the claim rather than to avoid it, giving the insured the benefit of the doubt in case of uncertainty, and processing the claim as quickly as possible.

3. The Arbiter concluded that the policyholder's version of events and the report provided by his appointed expert were more plausible than the insurance company's version.

4. The significant amount of water that leaked due to the burst pipe (38,000 litres) likely caused the material supporting the drainage pipes to give way, leading to the collapse of the pipes, regardless of their age.

5. The insurance policy covered the risk of a burst water pipe, and there was a clear link between the burst pipe incident and the damage to the drainage system.

The Arbiter partially upheld the complaint and ordered the service provider to pay the policyholder €4,417.05, which represented 55% of the requested sum. The Arbiter determined this amount based on what was fair, equitable, and reasonable, considering that the policyholder should not be unjustly enriched by receiving compensation for a completely new drainage system when the old system was made of aged terracotta pipes.

The decision was not appealed.

Disputed claim for storm and water damage (ASF 127/2022)

COMPLAINT PARTIALLY UPHELD

Insurance claim, storm damage, water ingress, blocked drains, policy interpretation

The complainant filed a complaint disputing the insurer's decision to reject a claim for water damage to her insured property in Spain. The key points of the complaint were:

a) The proximate cause of the loss was the escape of water from blocked roof drains, not storm damage.

b) The insurer incorrectly restricted the definition of "escape of water" to a burst pipe, which was not specified in the policy.

c) If the cause was deemed a storm, the repudiation for lack of physical damage to the building was incorrect, as there was no policy definition of "storm."

d) The insurer incorrectly claimed that the terrace waterproofing did not comply with Spanish building regulations, without providing evidence.

e) The insurer alleged defective waterproofing, without providing evidence.

The insurer responded to the complaint through its third-party administrator, maintaining its decision to decline the claim. The key points of the response were:

a) The escape of water cover in the policy requires water to have escaped from fixed water tanks, apparatus or pipes, which did not occur in this case.

b) While storm conditions were present in the area during the relevant period, the insurer concluded that the storm did not cause property damage.

c) The cause of the water ingress was determined to be the poor repair of the property and the failed waterproofing membrane.

d) The "wear and tear" general exclusion was highlighted, and the insurer considered the waterproofing membrane to have deteriorated over time, thus excluding any arising loss under the policy.

The Arbiter examined the complaint, focusing on whether the claim fell under the "Storm or Flood" or "Escape of Water" cover and the relevant exclusions applied by the insurer. The Arbiter made the following key observations and considerations:

1. The existence of a storm during the relevant period was unquestionable and accepted by the insurer.
2. The Arbiter affirmed that the "Storm or Flood" cover under the buildings section of the policy applied in this case.
3. Based on the complainant's statements, which the insurer did not contest, the Arbiter was convinced that the cause of the damage was the blocked drain, which caused water ingress that would not have occurred if the water had not pooled on the roof due to the blocked drains.
4. The Arbiter believed that the insurer's argument regarding the defective roof membrane, cracks in the wall, or air-conditioning cable inlets was not persuasive and did not constitute the main cause of the loss.
5. The fact that no water ingress occurred following the clearance of the accumulated debris, despite no repairs being carried out, further evidenced that the main cause of the escape of water was the drain blockage and not the membrane defect.

The Arbiter ordered the insurer to pay the complainant 90% of the loss adjuster's reported damage cost in financial compensation, with the remaining 10% representing the possible contributory factor for lack of maintenance. The total compensation awarded was €5,063.98.

The decision was not appealed.

Disputed travel insurance claim (ASF 005/2023)

COMPLAINT UPHELD

Travel insurance, COVID-19, trip cancellation, policy interpretation, domestic travel

This complaint related to the rejection of a travel insurance claim. The key points of the complaint were as follows:

a) The complainant had an annual travel insurance policy with the service provider, which included an additional COVID-19 coverage.

b) The complainant's family had to cancel a planned domestic trip due to the son testing positive for COVID-19 shortly before the trip.

c) The service provider had refused to refund the non-refundable accommodation expenses, claiming that the conditions for a refund were not met.

d) The complainant argued that the service provider's reasons for rejecting the claim, such as the trip needing to be outside Malta or requiring specific

transportation methods, were not evident in the policy wording.

e) The complainant believed that all conditions for reimbursement were met, as the policy did not explicitly exclude domestic travel within the Maltese Islands.

In response to the complaint, the insurer concerned provided its perspective. The main points of its reply were as follows:

a) The complainant and three other persons had taken out an annual travel policy from 26 February 2022 to 25 February 2023.

b) The policy was intended to cover round trips starting and ending in Malta during the period of insurance, with a maximum duration of 15 days per trip.

c) The service provider argued that the policy was meant to cover holidays or business trips that commence in Malta and eventually end in Malta, avoiding one-way trips or trips beginning or ending from countries other than Malta.

d) The service provider stated that the policy did not cover travelling from one Maltese village to another and the subsequent loss of local accommodation.

e) The service provider maintained that the complainant's planned trip from Mellieha to Qrendi did not fulfil the conditions of the policy, as it was not a round trip starting and ending in Malta.

The Arbiter, tasked with determining whether the complaint was based on what is fair, equitable, and reasonable, considered the following points:

1. The complaint primarily concerned the interpretation of the annual travel insurance policy wording and whether domestic travel was covered.

2. There was no dispute that the complainant's son had contracted COVID-19, as evidenced by the provided test results, and that the family was insured for such an eventuality under the COVID-19 cover extension of the policy.

3. The Arbiter noted that the Insurance Product Information Document did not explicitly state that the policy did not cover travel within Malta.

4. The policy document defined a "Trip" as a return journey that starts and ends from the insured's normal place of residence or business in Malta and occurs within the period of insurance, and that it did not exceed the maximum duration specified in the schedule.

5. The Arbiter believed that the complainant's planned trip fell under the definition of a "Trip" as per the policy wording; and this since it fully met the foregoing parameters.

6. The Arbiter acknowledged that while the general orientation of the policy wording was towards international travel, there was no specific exclusion regarding domestic travel.

7. Considering the ambiguity in the policy wording and the fact that the complainant's planned trip met the definition of a "Trip" as per the policy document, the Arbiter decided to give the complainant the benefit of the doubt and consider the trip covered for the loss sustained.

8. The Arbiter also noted that due to COVID-19 restrictions, people were travelling less internationally, resulting in fewer travel insurance claims for the service provider, and domestic vacations had gained popularity during this period.

The Arbiter upheld the complaint and ordered the service provider to settle the claim for €147.62.

The decision was not appealed.

Alleged misleading maturity value estimate (ASF 062/2023)

COMPLAINT REJECTED

Investment performance, legitimate expectations, contradictory arguments

The complainant submitted that she was enticed to purchase the policy by the financial services provider's representative, who visited her home. The key points of her complaint were:

a) She was promised that upon maturity, she would receive €58,486; had she known otherwise, she would have invested her money elsewhere.

b) The representative never informed her that the amount the policy would yield could decrease over time.

The financial services provider contested the complainant's allegations, stating that:

a) The complainant took the initiative to purchase the policy, while no one from the provider pressured her to do so.

b) The quotation clearly stated that the maturity value was an estimate based on the current bonus rates, which were not guaranteed.

c) The complainant was informed about the policy's

performance and the investment environment through annual statements.

d) Despite market fluctuations, the complainant gained €20,322.41, equivalent to an average annual return of 6.4% net or 7.5% gross of tax over the policy's 30-year term.

In his deliberations, the Arbiter made several observations:

1. The complainant's arguments were somewhat contradictory. She had implied that she was misled about the guaranteed maturity amount in her complaint. However, during testimony, she had acknowledged that the quoted amount was an estimate and that the return depended on the fund's profits over the years.

2. The complainant had confirmed that she had approached the service provider for information about the policy and had decided to proceed after receiving explanations.

3. The complainant's primary grievance was not about being misled but rather dissatisfaction with the investment's performance, as she expected the provider to invest better over the 30-year term.

4. Considering the entirety of the circumstances over the policy's full term, the overall performance of the policy could not be deemed poor, given the complainant's acknowledged gain of €20,322.41, representing an average annual return of 6.4% net of tax or 7.5% gross of tax.

The Arbiter concluded that the complaint was not fair, equitable, or reasonable under the circumstances and therefore rejected it.

The decision was not appealed.

Market value reduction disputed in surrender of policy (ASF 146/2022)

COMPLAINT REJECTED

Disclosure, investment risk, market value reduction, early policy surrender

The complaint related to the application of the Market Value Reduction (MVR) clause upon surrendering an insurance policy. The key points of the complaint were:

a) The complainant stated that the MVR was never explained to her when purchasing the policy or upon its renewal.

b) She became aware of the MVR when she requested the policy's surrender value and was informed that a significant amount would be deducted from the policy account value.

c) The complainant argued that the service provider had acted unfairly by not properly disclosing and explaining the MVR and its potential implications.

d) She requested that the Arbiter declare the MVR clause unfair and inapplicable as well as order the service provider to pay the full policy account value without applying the MVR.

The service provider contested the complaint, arguing that it had acted fairly, equitably, and reasonably. The main points of the service provider's response were:

a) The service provider stated that it had simply implemented the policy terms and conditions, which included clauses on the right to apply an MVR.

b) It argued that the complainant had been duly informed about the MVR before purchasing the policy, as evidenced by the quotation, the important notes, and the proposal form signed by the complainant.

c) The service provider maintained that the MVR clause was necessary to protect the interests of all policyholders participating in the With Profits Fund and to ensure fairness between those who surrender early and those who remain invested.

d) It also offered the complainant the option to take a loan against the policy to avoid the MVR, but the complainant did not pursue this alternative.

In deciding the case, the Arbiter made several observations and considerations:

1. Various documents provided to the complainant at the point of sale and forming part of the policy contract included references to the MVR and the circumstances under which it could be applied.

2. The complainant had extensive experience with life insurance policies and had chosen a long-term policy, benefiting from certain advantages.

3. The Arbiter found the testimony of the service provider's representative, who stated that the MVR was explained during the sales process, more convincing than the complainant's denial.

4. While acknowledging that the MVR amount was significant, the Arbiter noted that its determination and application were decided between the service provider and the regulator.

5. The Arbiter recognised the extraordinary circumstances of 2022, with the Russia-Ukraine war and the consequent sharp rise in inflation and interest rates, significantly affecting investment returns.

6. The Arbiter considered the MVR a good industry practice to avoid panic surrenders, which could exacerbate problems and spread them to policyholders who did not wish to surrender their policies prematurely.

7. The Arbiter was not convinced that the complainant's desire to surrender the policy was genuinely motivated by a need for liquidity, as she had other savings and did not consider the service provider's low-interest loan offer.

After considering the evidence and arguments presented, the Arbiter rejected the complaint.

The decision was not appealed.

Complaint regarding lapsed life insurance policy (ASF 105/2022)

COMPLAINT PARTIALLY UPHELD

Life insurance policy, lapsed policy, bank loan, premium payments, bank's responsibility

The complainant filed a complaint initially against a life insurer (PS1) but subsequently added a bank (PS2) as a service provider. The key points of the complaint were:

a) In 2009, the complainant and her ex-husband took out a life insurance policy issued by PS1 as part of a home loan process with PS2.

b) The policy was a term assurance with constant coverage and premiums until 2039 for life cover and 2035 for critical illness cover.

c) From 2014, the complainant was living in England, separated from her husband, and the bank was aware of this as they contacted her several times to make loan repayments her ex-husband had failed to pay.

d) After her ex-husband's death, the bank informed the complainant that PS1 was refusing to pay the resultant claim under the policy as it had lapsed due to non-payment of premiums since July 2014.

e) The complainant requested the Arbiter to order PS1 to pay the amount due of €121,400 under the policy after she paid all outstanding premiums, as she was never properly informed that the premiums were not being paid.

PS1 and PS2 responded to the complaint, with the key points being:

a) The insured parties were given a copy of the policy with all relevant terms and conditions.

b) The monthly premium of €118.62, paid by direct debit until April 2014, was an obligation.

c) After April 2014, the direct debit was cancelled, and only one payment was made via cash deposit in July 2014.

d) The policy conditions clearly stated that if the premium remained unpaid for 30 days from the due date, the policy would lapse, and no benefits could be paid.

e) PS1 sent two notifications regarding non-payment of premiums in September and October 2014, addressed only to the ex-husband at the registered address.

f) In 2018, the bank contacted the insured parties to inform them that the policy had lapsed due to non-payment of premiums.

g) The bank confirmed that it had sent regular account statements showing that the premium was not being debited.

h) The bank argued that it had no obligation under the sanction letter or pledge agreement to inform the debtors about the lapsed policy or to pay the premium on their behalf.

The Arbiter made several observations and considerations:

1. The Arbiter considered that the complainant had limited resources and knowledge of banking and insurance procedures, while the service providers were large entities with substantial resources.

2. The Arbiter noted that the service providers relied heavily on their rights under the policy terms and conditions but failed to acknowledge their responsibilities towards the client.

3. The Arbiter found that the bank had a greater responsibility to keep the complainant informed about the lapsed policy, as loan negotiations had been conducted directly with the bank, which was in regular contact with the complainant regarding loan arrears.

4. The Arbiter considered that the bank failed in its obligations towards the complainant by not effectively communicating the lapse of the pledged policy despite being aware that the complainant was living in England.

The Arbiter partially upheld the complaint against PS2 for failing to notify the complainant about the lapsed policy effectively. The Arbiter ordered the bank to pay damages of €40,000, less the pro-rata amount of premiums that should have been paid to keep the policy current (€3,478.48), resulting in a net amount of €36,521.52, subject to legal interest from the date of the decision until the date of effective payment. The complaint against PS1 was rejected, as the remedy requested could not be granted once the policy had lapsed.

The decision was not appealed.

Complaint regarding lapsed life insurance policy (ASF 144/2022)

COMPLAINT REJECTED

Life insurance policy, premium holiday, lapsed policy, policy value, communication

This complaint related to a life insurance policy that had lapsed. The complainant raised the following key points:

a) In early 2019, the complainant contacted the service provider's representative and was informed that premium payments could be temporarily stopped due to COVID-19.

b) The representative did not indicate when premium payments should resume but stated that she would contact the complainant once the situation was under control.

c) After the initial phone call, the service provider never contacted the complainant again.

d) In August 2022, the complainant was informed that the service provider had decided to terminate the policy due to non-payment of premiums.

e) The complainant claimed she was had not been given sufficient time to resume payments and had not been informed about the policy's impending termination.

The service provider contested the complaint, highlighting the following key points in its response:

a) The complainant had chosen to stop paying premiums in October 2018, as evidenced by her signed instructions.

b) Despite receiving annual policy statements, the complainant never informed the service provider of her intention to resume premium payments.

c) Only the complainant could decide to reactivate the policy and resume payments.

d) The policy lapsed due to non-payment of premiums for four consecutive years, during which time the policy value was depleted by charges and the cost of maintaining insurance coverage.

In considering the case, the Arbiter made several observations:

1. The complainant's statement that she stopped premium payments due to the COVID-19 situation in 2019 was inconsistent with the fact that she had signed instructions to place the policy on a premium holiday in October 2018, before the onset of the pandemic.
2. Despite the complainant's assertion that no agreement was signed regarding the premium holiday, evidence showed that she had signed a declaration confirming her instructions to place the policy on a premium holiday until further notice.
3. The policy's value depended on market performance and the value of the funds in which the premium was invested. During the premium holiday, charges for additional benefits were deducted from the policy value, leading to its depletion over time.
4. The purpose of a premium holiday is to temporarily stop payments, with the expectation that the policyholder will eventually resume payments to maintain the policy.
5. The service provider had fulfilled its obligations under the policy by keeping it in force with all the applicable benefits for as long as possible. At the same time, the complainant was responsible for managing her policy and taking action when necessary.

The Arbiter did not uphold the complaint, concluding that the service provider had honoured its obligations under the policy by maintaining coverage until the policy value was exhausted. The complainant was responsible for managing her policy and had failed to take action to resume premium payments despite the passage of four years.

The decision was not appealed.

Investments Cases

The following section presents a selection of important investment-related complaints handled by the Arbiter during the reporting year. These case summaries highlight the diverse issues that can arise in financial investments such as disputed transactions, unauthorised activities, delayed notifications and investment losses. By examining these cases, readers can gain valuable insights into the complexities of the financial services industry and the important role of the OAFS in safeguarding consumers' rights and ensuring the financial system's integrity. The summaries also demonstrate the thorough and impartial approach taken by the Arbiter in adjudicating these disputes based on the evidence presented and the applicable legal frameworks.

Complaint regarding buyback of tokens (ASF 048/2022)

COMPLAINT UPHELD

ZBX tokens, buyback, USDT, XC tokens, secondary market transactions, regulatory breaches

The complainant held an account with the service provider and had participated in an exchange of ZBX tokens on the service provider's exchange in 2019. The complaint can be summarised as follows:

a) In August 2019, the service provider announced a buyback of ZBX tokens, offering token holders the option to sell back their tokens at a price of 0.3 USDT per token, with repayments spread over 12 monthly instalments.

b) The complainant chose this option and deposited 240,325 ZBX tokens within the stipulated time, entitling him to a total compensation of 72,097.5 USDT.

c) The complainant received the first four instalments in USDT as agreed. However, from the fifth instalment onwards, the service provider unilaterally changed the payment terms and forced the complainant to accept XC tokens instead of USDT for the remaining eight instalments worth 48,063.9 USDT.

d) The complainant requested compensation of the remaining 48,063.9 USDT, to be paid to two external wallets.

The service provider responded to the complaint as follows:

a) The buyback offer was limited to the amounts originally subscribed by clients who had legitimately participated in the initial token offering. The complainant had only subscribed to 54,013 tokens at a cost of 6,830.60 USDT.

b) After the buyback announcement, the complainant made 16 deposits and one withdrawal, totalling a net deposit of 186,244 tokens beyond his original subscription. The service provider claimed it could not verify the source of these additional tokens.

c) Despite the complainant subscribing to only 54,013 tokens, the service provider repurchased 80,112 tokens from him for a total of 24,033.60 USDT, representing a 350% return.

d) The service provider argued that engaging with the complainant could implicate them in illegal activities and trigger AML/CFT obligations, as the Chinese authorities had banned all virtual currency-related business activities in September 2021.

In his analysis, the Arbiter made several key observations:

1. The service provider failed to provide the original white paper or buyback announcements to prove that the buyback was limited to original subscribers only. In contrast, the complainant made considerable efforts to procure evidence of these documents.

2. After the fourth instalment, the service provider did not explain or deny the accusation of switching the redemption payments from USDT to less valuable XC tokens.

3. The service provider's acceptance and payment of the first four instalments on the total amount deposited by the complainant, rather than just his initial subscription, undermined its argument that the buyback was limited to original subscribers.

4. The Arbiter found the service provider's argument that the complainant should be satisfied with his 350% profit on the original investment irrelevant as to whether he had rights to the promised redemption of all deposited tokens.

5. The Arbiter noted that the service provider's AML/CFT concerns did not exempt them from honouring their obligations. Such issues should have been raised with the relevant authorities for investigation and guidance.

The Arbiter upheld the complaint, finding it fair and reasonable. He ordered the service provider to pay the complainant the equivalent of 48,063.9 USDT in USD fiat currency to a named account belonging to the complainant. The Arbiter also forwarded the decision to the MFSA for its consideration of the complainant's allegations of regulatory breaches by the service provider.

The decision was not appealed.

Forced closure of CFD positions disputed (ASF 042/2021)

COMPLAINT REJECTED

CFDs, forced closure, liquidity provider, pricing suspension, market loss

This complaint related to the forced closure of three open CFD positions in XRXUS by the service provider, resulting in a material financial loss to the complainant amounting to €4,000. The complainant alleged that the service provider:

a) Failed to provide sufficient notice that the XRXUS CFD would no longer be offered, preventing the complainant from taking appropriate action to minimise losses or to realise gains.

b) Forced the closure of the open positions and misled the complainant by stating that no further trades would be possible in the XRXUS CFD despite later resuming the offering of the instrument.

In response, the service provider justified the closures of the CFD positions by citing extreme market volatility and the need to comply with risk management protocols. Their main points included:

a) The terms and conditions the complainant agreed upon included clauses allowing the service provider to close positions under certain market conditions without prior notice.

b) The service provider claimed that all clients were treated equally and that closures were necessary to avoid greater financial instability for all the parties involved.

c) It was argued that the complainant was aware of the risks associated with trading CFDs, as outlined in the risk disclosure statements.

The Arbiter made several observations and considerations based on the evidence presented during the proceedings:

1. The terms and conditions provided by the service provider did indeed include provisions for closing positions in response to market conditions, which were applicable in the circumstances described.

2. Evidence showed that the market conditions during the closures were exceptionally volatile, justifying the service provider's decision from a risk management perspective.

3. The communication between the service provider and the complainant before the closures was found to be sufficient and by the agreed terms.

4. It was noted that while the closures caused financial losses to the complainant, they had actually resulted from the market risk inherent in CFD trading, which the complainant had accepted when entering into the contracts.

5. The Arbiter considered the service provider's actions to align with industry standards under the circumstances, and no evidence of unfair treatment or misleading information was found.

The Arbiter found no sufficient basis on which the alleged losses could be attributed to the service provider's alleged failures and actions in the case's particular circumstances. The Arbiter determined that the loss incurred by the complainant was a market loss resulting from speculative derivative instruments, which was crystallised by the necessary closure of the positions by the service provider to continue operating within its licence. As a result, the Arbiter did not uphold the complaint.

The decision was not appealed.

Unauthorised bond purchase dispute (ASF 091/2022)

COMPLAINT REJECTED

Unauthorised transactions, bond purchase, investment dispute, remedy request

The complainants had challenged the service provider, asserting that:

a) Bonds were purchased without their consent and at a price not agreed upon.

b) They had not signed any documents authorising the transaction.

c) They requested the service provider to refund the USD 71,400.33 invested in the bonds by crediting it to their account.

In response, the service provider submitted that:

a) The allegations made by the complainants were incorrect.

b) The complainants were experienced investors who had been tracking the performance of the bonds for several weeks and had expressed a desire to purchase them.

c) On 7 April 2022, the complainants verbally instructed the provider, through a recorded phone call, to purchase USD 200,000 worth of the bonds at a price not exceeding USD 40 per bond.

d) The bonds were purchased on the same day from another financial intermediary's trading platform, in accordance with the complainants' instructions.

e) The complainants were informed about the transaction on the following day, 8 April 2022, when the service provider received complete transaction details from the financial intermediary.

The Arbiter made the following observations:

1. There was a robust relationship between the complainants and the service provider, and particularly with the representative handling the complainants' account, evidenced by extensive phone communications.

2. The complainants were indeed experienced investors who sought certain investment risks and had ignored more cautious options offered by the service provider's representative regarding the investment in question.

3. The purchase of the bonds was executed on an "Execution Only" basis, meaning it was done without advice from the service provider.

4. Transcripts of recorded phone conversations provided sufficient evidence that the complainants had indeed given the order to purchase USD 200,000 worth of bonds at a price not exceeding USD 40 per bond.

5. There was no evidence supporting the complainants' claim of difficulty in contacting the service provider to stop the order.

6. The Arbiter was satisfied that the service provider had conducted the transaction properly, at market price, and within the agreed price limit of USD 40.

Based on the observations and considerations, the Arbiter rejected the complaint.

The decision was not appealed.

Complaint regarding lack of service (ASF 128/2022)

COMPLAINT REJECTED

Compensation, disciplinary action, eligible customer, competence

The complainant filed a complaint with the OAFS regarding the alleged lack of service provided by the service provider. The complainant's claims were as follows:

a) The complainant demanded compensation of £1,000 for the lack of service despite admitting to not suffering any financial or material loss.

b) The complainant requested that written warnings be issued by the Human Resources Department of the service provider to two of its employees deemed responsible for the alleged lack of service.

c) In his final submissions, the complainant extended his remedy expectations to include compensation of an additional £2,000 for an estimated additional tax burden. However, no evidence was provided that the tax claim was related to the complaint in question, and this matter was not part of the original complaint.

d) The complainant requested a letter of apology from the service provider's CEO.

e) The complainant sought an acknowledgement of gross misconduct and unprofessional behaviour from an additional service provider employee, apart from those already mentioned in point (b).

The service provider submitted its reply to the complaint, acknowledging that their service fell short of reasonable expectations but refusing the complainant's claims for compensation and other demands. The service provider's response was as follows:

a) The service provider refused compensation claims, as the complainant admitted to not incurring any loss.

b) The service provider considered the other demands, such as disciplinary action against its employees and internal matters, outside the scope of any remedy normally applicable to cases referred to the Office of the Arbiter for Financial Services.

c) The service provider maintained that the complainant was not an eligible customer, as there was no contractual or legal relationship between the complainant and the service provider. The service provider only had a relationship with the complainant's former employer to administer the employer's share option scheme, to which the complainant was no longer entitled upon termination of his employment.

d) The service provider explained that the former employer authorised access to the system administering the employer's share option scheme and automatically removed such access rights upon termination of employment.

The Arbiter considered the particular circumstances of the case and made the following observations:

1. The Arbiter deemed the complainant not to satisfy the requisites of an eligible customer for the Act, as he was essentially not considered to be a consumer of the service provider's services, nor had he been offered a financial service by the service provider, and neither had the complainant sought the provision of a financial service from the service provider.

2. It was noted that even if the complainant were a consumer of the service provider's services (which he was not), the Arbiter would still have no competence to deal with this complaint and would decline to exercise his powers under the Act, given that, in his opinion, the complaint was frivolous and vexatious.

3. The language used by the complainant in making his case was observed to be, in many instances, not only adversarial but offensive. His expectations that the Arbiter should order a service provider to provide written apologies or interfere with its internal disciplinary procedure did not reflect the functions of the Arbiter's Office.

4. It was noted that the remedies requested by the complainant did not fall within the Arbiter's adjudication powers under the Act. Any monetary compensation that the Arbiter may award has to be in respect of any loss of capital, income, or damages suffered by the complainant due to the conduct complained of, and no satisfactory evidence had been provided that the complainant had sustained any such loss or damages.

For the reasons mentioned, the Arbiter dismissed the case. The decision was not appealed.

Delayed notification of tax liability following share split (ASF 148/2022)

COMPLAINT REJECTED

Share split, tax liability, delayed notification, investment portfolio

The complaint relates to a request by the financial services provider for the complainant to pay an outstanding balance of €1,793.25 to cover tax due on a share split of a particular company in September 2021. The complainant's contentions were as follows:

a) The complainant was only notified about this tax liability on 18 July 2022, approximately ten months after the share split occurred.

b) The complainant argued that the service provider would have known about the tax conditions of this split as early as May/June 2021, more than four months before the effective split date.

c) The complainant contended that if he had been notified promptly, he might have been able to take action to save on this tax or to mitigate its impact, allowing him to make a more informed decision.

d) The complainant was seeking a "fair and appropriate solution" but without quantifying his claims, other than that he does not feel he should pay the bill as requested.

The financial services provider maintained that the amount is due as it had already paid it and that the terms of business between the parties make it clear that it does not provide tax advice. Furthermore,

a) The terms of business state that the client should seek tax advice from a qualified professional as the provider does not accept liability for any tax costs resulting from its services.

b) The provider acknowledged that the complainant had been informed late about the tax payment but argued that, even if the client had been notified on time, the tax would still have had to be paid.

c) The provider had received the tax bill from their correspondents in July 2022 and had informed the complainant about it within three working days.

d) Over the past five years, the complainant had bought and sold various shares on an 'Execution Only' basis (i.e., without the provider's advice) and could have obtained information directly from the company's website as early as June 2021, giving him time to decide as he saw fit.

In the Arbiter's view, the main point of this complaint was whether the complainant was informed very late after the split. At the same time, the latter was contending that he should have been informed up to three months before the effective split date; the service provider's fault had therefore caused him to incur unexpected tax costs. Furthermore,

1. The argument about whether the company's shares were under 'advisory' or 'execution only' was irrelevant to this complaint, as neither carried an obligation for tax advice.

2. The complainant's argument was not that he should not pay the tax due but that if he had been notified in June 2021, he might have been able to do something to save or mitigate this tax.

3. Given that the share split was mandatory and not optional, the only real choice the complainant had to avoid paying tax on the share split was to sell the shares before the ex-dividend date, which appears to have been 27 September 2021.

4. However, this does not mean the complainant would not have paid tax on such a sale. If the sale value was €8,145, both before and after the split, and if the original cost in 2012 was €3,554, then there could have been a gain of around €4,500. It is difficult to imagine that someone like the complainant, with an extensive share portfolio, could argue that this would be a non-taxable capital gain.

The Arbiter rejected this complaint because it was not proven that the complainant would have saved any tax if he had taken the only alternative he had, which was to sell the company shares before the split to avoid the tax involved in the split.

However, the Arbiter also felt that there was an exaggerated period of about ten months until the complainant was informed about the tax he had to pay. The complainant could have been notified shortly after the split because the tax had to be paid with the split.

According to Art. 26(3)(c)(iv) of CAP 555, the Arbiter can only award compensation for loss of capital or income or damages suffered. Since it was not proven that the delay caused the complainant any loss or damage, the Arbiter could not award compensation solely for the delay.

However, without the power of a binding decision, the Arbiter recommended that the service provider make a gesture of goodwill by bearing one-third of the burden of the tax bill mentioned as the subject of this complaint.

The decision was not appealed.

Couple loses investment in a bond (ASF 012/2022)

COMPLAINT REJECTED

Investment loss, execution-only service, prescription period

The complainants filed a complaint regarding their investment in a bond which had a coupon of 8.25% and was to mature in 2018, which investment was made through the service provider. The key points of their complaint were:

a) The complainants invested around €5,000 each in separate accounts in the bonds, relying on the service provider's assurances that the investment was secure.

b) They claimed that the service provider's manager contacted them to discuss potential investments. During a meeting, they opted for secure bonds with lower returns due to their limited knowledge of investments.

c) The complainants alleged that the bonds had already started failing when the service provider's manager advised them to invest, resulting in the loss of their entire investment.

d) As a remedy, the complainants requested a total compensation of €10,600, including the invested capital of €10,100 and interest of €500.

The service provider responded to the complaint, raising several points in its defence:

a) The service provider argued that the action against it regarding the investment made on 5 February 2016, was time-barred under Article 2156 of Cap. 16 of the Laws of Malta, as any extra-contractual interaction between the parties occurred before the applicable prescription period.

   The service provider also contended that the action was time-barred under Articles 21(b) and (c) of Cap. 555 of the Laws of Malta, as the complainants failed to file the complaint within the prescribed two-year period.

b) On the merits, the service provider maintained that the complaint was unfounded, as the complainants had prior investment experience, which was contrary to their claims.

c) The service provider emphasised that the service was "execution only", and no investment advice was given, as evidenced by the complainants' declarations on the file notes.

d) The service provider argued that the complainants were fully informed of the high-risk nature of the investment and that any losses were due to credit risk, an inherent risk in financial investments.

The Arbiter considered the preliminary exceptions raised by the service provider and made the following observations:

1. Regarding the first exception under Article 2156 of Cap. 16 of the Laws of Malta, the Arbiter referred to a previous decision in Case ASF 145/2018 against the same service provider. It rejected the exception on the same basis and considerations mentioned therein.

2. For the second exception under Article 21(1)(b) of the Act, the Arbiter noted that the law does not refer to the transaction date but rather the date when the complained conduct occurred. Although the investment was made before the Act came into force, it still existed in the complainants' portfolio held with the service provider after the Act's effective date, as evidenced by the portfolio/account statements.

3. The Arbiter also referred to Article 21(1)(d) of the

Act, which was deemed applicable in this case, stating that conduct that continues in nature is presumed to have occurred when it ceased. Conduct consisting of a series of acts or omissions is supposed to have happened when the last of those acts or omissions occurred.

4. Regarding the third exception under Article 21(1)(c) of the Act, the Arbiter noted that the complainants first became aware of the issues they complained about, i.e., the failure and material loss on their investment, on August 15, 2018. However, more than three years had passed between this date and when the complaint was registered in writing with the service provider in November 2021. Therefore, the Arbiter upheld the third preliminary exception raised by the service provider.

The Arbiter decided that he lacked the competence to consider the complaint under Article 21(1)(c) of the Act and rejected it. This was without prejudice to the complainants' rights to present their case before a court or tribunal not bound by the terms of the cited Article of Cap. 555.

The decision was not appealed.

Investor's claim for refund of investments rejected (ASF 042/2022)

COMPLAINT REJECTED

Investments, bonds, investor claim

The complaint related to the investor's claim to refund his investments made with the financial services provider. The key points of the complaint were:

a) The investor made two investments with the provider in November 2010 and July 2012, investing €5,984 in a 6% perpetual bond and €5,343 in an 11.25% perpetual bond, respectively.

b) Despite several promises over the years that he would be refunded, the investor did not receive the funds he had invested from the provider.

c) The complainant also explained that he had been threatened with the imposition of a daily €25 fine if he failed to transfer his account from the service provider to another financial institution. This measure was communicated as a consequence of not relocating his investments as instructed by the service provider, which was ceasing its investment services. The complainant did not proceed with the account transfer, leading to the fines being applied.

d) As a remedy, the investor requested the refund of the invested amount plus accrued interest.

The financial services provider rejected the claim and provided its reasons in its response. The main points were:

a) The provider had decided to stop offering investment services in early 2020 and informed the investor in April 2020 to transfer his assets to other operators.

b) The provider had appointed a representative to contact the investor and convince him to transfer his account, but the investor failed to do so despite several communications.

c) Due to the investor's failure to transfer and settle overdue amounts, the provider liquidated the investor's holdings, which were insufficient to cover the outstanding balance.

d) The provider also raised the plea that the complaint was time-barred in terms of Article 21(1)(b) and Article 21(1)(c) of Chapter 555 of the Laws of Malta.

The Arbiter made the following observations:

1. The Arbiter noted the provider's decision to stop offering investment services in 2020 and the extensive communications sent to the investor to transfer his investments to another provider. The investor failed to do so despite the service provider's reasonable efforts, thus prejudicing his holdings.

2. The Arbiter found no justifiable and reasonable basis for the investor's behaviour in refusing to transfer his investments, consequently incurring a daily fine which exceeded the value of his holdings.

3. The Arbiter observed that the investor's key allegations of promises of refunds were not substantiated during the case proceedings.

4. It was also noted that the investor had been aware of the negative investment developments since 2012/2013. The Arbiter thus questioned the basis on which the investor was expecting a refund in his complaint filed in February 2021.

5. Finally, the Arbiter found no evidence of any alleged inadequacy of the investments that could justify compensation to the investor, also considering factors such as the investor's aggressive risk profile and the nature of the investments made.

The Arbiter rejected the complaint made by the investor. However, the Arbiter recommended that should there be any future proceeds from the investment in the 11.25% bond issued by a bank (following recent developments) which exceed the amount due to the provider, such proceeds were to be forwarded to the investor, subject to the provider's legal entitlements.

The decision was not appealed.

Private Pensions Cases

The following case summaries provide an overview of key decisions by the Arbiter related to retirement schemes. These cases have been carefully selected to provide a comprehensive overview of the challenges and complexities of managing pension schemes and investment portfolios. Each summary delves into the specifics of the complaint, the response from the service providers and the final decisions rendered by the Arbiter. These cases illustrate broader trends in investment management and fiduciary responsibility, offering valuable insights into the standards of due diligence and the enforcement of regulatory compliance. The decisions underscore the significance of appropriate due diligence, clear disclosures, prudent investment strategies aligned with members' risk profiles as well as timely action to safeguard members' interests. Trustees and administrators must review these cases carefully, learn from the findings and take necessary steps to strengthen their practices to uphold the highest service standards and meet scheme members' reasonable expectations.

Pension transfer delay dispute (ASF 006/2022)

COMPLAINT REJECTED

Transfer out request, illegal pension liberation structure, lack of valuation, investigations, regulatory authorities

The complaint related to the alleged lack of adequate service delivered by the service provider in relation to the complainant's retirement scheme account. The complainant claimed that the service provider delayed and failed to reply to his requests for information and to undertake his requested transfer out of the scheme. He asked for immediate action to transfer his pension on a non-advisory basis. Furthermore, he asked for compensation for any market movement against him and redress for stress and inconvenience.

The service provider submitted that:

a) It had acquired the retirement scheme from a previous provider in June 2021.

b) Based on the information that became known to the previous provider in 2018, it appeared that various third parties, including the investment manager, had set up a complex illegal structure to enable a loan transaction with the principal aim of liberating the members' pension prior to retirement age without the knowledge or involvement of the previous provider.

c) In February 2018, the previous provider informed the complainant of the issue and instructed the investment manager to transfer all assets under management back to the investment platform.

d) The investment manager refused to action the previous provider's instructions, and the matter was reported to the regulator.

e) Due to the complex nature and history of the case, a transfer out of the complainant's pension was impossible; furthermore, the complainant had been kept abreast of the developments since February 2018.

The Arbiter made the following observations:

1. There was a lack of evidence produced or emerging to substantiate the claims made by the complainant.

2. The complainant did not quantify any loss of capital, income or damages he suffered due to the conduct complained of.

3. The remedy requested for the immediate transfer of the pension was not within the Arbiter's competence to enforce unless it was reasonably demonstrated and proven that such a transfer was being precluded in breach of applicable procedures, terms and conditions, regulatory requirements or provisions of law.

4. A request to transfer out depended on the cooperation of parties other than the service provider. Difficulties or delays could arise where such cooperation was not forthcoming investigations by relevant authorities were also involved.

5. The Arbiter noted inconsistencies and conflicting statements arising from both parties during the proceedings.

6. Apart from communications between the parties, no formal documentation was submitted to substantiate

the scheme's structure, investment arrangement as well as the claims and submissions made.

The Arbiter did not uphold the complaint. However, given the case's particular circumstances, the Arbiter recommended that the service provider supply the complainant with a further detailed update on the current status of affairs concerning his Scheme, underlying investments and his request to transfer out. A copy of the decision was communicated to the MFSA. The decision was not appealed.

Pension transfer losses and prescription pleas (ASF 010/2023)

COMPLAINT REJECTED

Investment loss, trustees, retirement scheme, prescription, compensation investment losses, trustee duties, complaint withdrawal

The complainant alleged extensive losses on his pension value following a transfer advised by a third party in March 2014. He blamed the service provider for failing to perform its trustee's and retirement scheme administrator's duties and requested compensation for his losses, which he quantified at £95,188.19 in all.

The service provider refuted the complainant's claims, stating that it had always fulfilled its obligations and that the complaint was anyway prescribed, pursuant to various articles of the law. The service provider also noted that the complainant had joined a class action against life companies before a court in another jurisdiction and submitted that he could not be compensated twice for the same loss. Furthermore,

a) The service provider claimed it did not provide investment advice and that it had observed all applicable laws, rules and guidelines.

b) It argued that the complainant's allegations regarding improper diversification, high-risk investments and non-compliance with regulatory requirements were unfounded.

The Arbiter made the following observations and considerations:

1. The circumstances of this complaint were similar to that of a number of complaints decided upon in July 2020, which the Court of Appeal confirmed in January 2022. However, the key difference was the filing date of the complaints.

2. The Arbiter was obliged to deal with the preliminary pleas of prescription before considering the complaint's merits.

3. The Arbiter determined that the service provider's conduct continued well after the coming into force of the relevant Act in April 2016, making one of the prescription pleas inapplicable.

4. The complainant had registered his first complaint with the service provider in November 2017 but appeared to have withdrawn it in early 2018.

5. The complainant's wife had filed a separate complaint in 2019, which was included in the collective decision of July 2020, whereas the complainant had not filed an official complaint before 2023.

6. The Arbiter noted that, even if the first complaint of November 2017 had not been withdrawn, the five-year prescription barrier would likely cause the complaint to fail.

7. The Arbiter decided that the date of filing the complaint with the service provider for prescription purposes was 24 January 2022, and the date of first knowledge of the conduct complained of was 28 November 2017, as declared by the complainant himself.

8. The Arbiter could not accept the complainant's argument that he had fresh knowledge of the matters complained of once he became aware of the 2020 and 2022 decisions.

The Arbiter upheld the plea of prescription claimed by the service provider, as the complaint was filed more than two years after the complainant first became aware of the matters complained about. Consequently, the complaint was dismissed.

However, the Arbiter recommended that the service provider consider providing appropriate redress in cases with similar features to those previously decided, even without a direct complaint. The Arbiter also directed that a copy of the decision and recommendations be sent to the MFSA for its information.

The decision was not appealed.

Retirement scheme losses (ASF 080/2022)

COMPLAINT PARTIALLY UPHELD

Pension scheme, trustee, negligence, investment losses, structured notes, risk profile

The complaint related to alleged losses suffered by the complainant in her retirement trust due to the alleged negligence and failure of the service provider in its duties as the scheme's trustee and retirement scheme administrator (RSA). The key points of the complaint were:

a) High-risk investments into structured notes were made within the scheme, which did not reflect the complainant's profile, attitude to risk, and investment guidelines;

b) The complainant was not made aware of the applicable cooling-off period;

c) There was a lack of disclosure of fees; and

d) The complainant was treated unfairly and ignored due to the small size of her scheme's account.

The service provider's reply to the complaint was filed outside the prescribed time limits, and the Arbiter considered the service provider contumacious. Consequently, the service provider's reply was not admitted, and the Arbiter ordered its removal from the case file.

The Arbiter made several observations and considerations about the complaint:

1. The complainant was a retail client and her risk profile was indicated as 'medium' in the application form for membership. The annual member statement defined her attitude to risk as 'low'.

2. Most of the complainant's portfolio was invested in structured products. The Arbiter accepted the complainant's contention that these products were high-risk and not reflective of her profile and attitude to risk, as evidenced by the substantial losses experienced on the respective investments.

3. The high collective exposure to structured notes and the high individual exposures to the same issuers within the complainant's retirement scheme did not reflect the requirement for her pension fund to be invested prudently and in her best interests, as the service provider was bound to ensure in its capacity as trustee and RSA of the scheme.

4. The permitted allocation was not reflective of or in conformity with the service provider's investment guidelines and the MFSA's rules applicable at the time.

5. Regarding the other matters raised by the complainant, such as fees, the legal right to cancel, and unfair treatment, the Arbiter considered that there was insufficient evidence to accept the complainant's allegations.

The Arbiter partially upheld the complaint and ordered the service provider to pay the complainant GBP 7,241.62 as compensation, which equated to 70% of the net realised losses sustained by the complainant on her overall investment portfolio in structured products.

Additionally, the service provider was ordered to repay the complainant a sum equivalent to the service provider's annual scheme fees charged since the time the last remaining investment within her portfolio was sold/matured and to repay (or waive) any own exit fees applicable to the scheme if the complainant opted to surrender her retirement scheme upon reaching the permitted age.

The decision was not appealed.

Pension scheme trustee's failure to safeguard assets (ASF 108/2021)

COMPLAINT PARTIALLY UPHELD

Pension scheme, trustee, investments, due diligence, compensation

The complaint related to a personal retirement scheme established as a trust administered by the service provider. The key points of the complaint were:

a) The service provider had failed to meet applicable standards and regulatory obligations by allowing unsuitable high-risk and illiquid investments.

b) The service provider had failed to conduct business with due skill and care, assess the complainant's knowledge and attitude to risk, undertake adequate due diligence on investments and to the complainant's best interests.

c) The complainant, with a modest income and no real assets other than the family home, had lost the money invested as his funds had been invested by the provider in various products that had meanwhile failed.

In its reply, the service provider submitted that it became the trustee of the retirement scheme on 31 August 2018, three years after the matters complained of actually took place. The main points of the service provider's response were:

a) The service provider had not been aware of the matters complained about and had no way of influencing them; moreover, the complainant had not explained why a third party should be held accountable for the acts of the former trustee.

b) The case files passed on to it did not show that the former trustee had acted without regard to any duty of skill or care owed to the complainant.

c) The former trustee had taken into account the complainant's risk profile when making the investments and had carried out due diligence on the said investments. Therefore, the complainant could not assert that the investments were high-risk or that he had lost all his pension due to the former trustee's actions.

The Arbiter considered that a key aspect of the case was whether the service provider had acted properly, adequately and reasonably once it took on its functions as trustee and retirement scheme administrator. The following observations and considerations were made:

1. Article 30(3) of the Trusts and Trustees Act did not provide a blanket waiver of liability for an incoming trustee. Rather, there was an obligation on the new trustee to take all reasonable steps to have a breach remedied upon becoming aware of it.

2. The Arbiter assessed the investments into a SICAV and the ensuing indirect exposure to a loan note, considering the requirements of diversification, prudence and liquidity applicable under the regulatory framework.

3. Given the nature of and the risks associated with such products and the extent of exposure, the service provider should have immediately realised the inappropriateness of the material investment in a SICAV and the substantial indirect exposure to the loan note.

4. The service provider had not raised any concerns or questioned the disputed investment and the high exposure the scheme had to such investment; it had actually defended the actions of the previous trustee.

5. If the service provider had raised issues with the investment portfolio when it took over as trustee in August 2018, the complainant would have been able to seek redress from the former trustee and consider remedies to rectify the breach and to reduce exposure to the inappropriate investment.

The Arbiter considered the complaint fair, equitable and reasonable in the case's circumstances and substantive merits. The service provider was ordered to pay the complainant 70% of the capital invested into the fund, amounting to GBP 25,345.54. Any future proceeds from the fund were to be allocated in the proportion of 30% to the complainant and 70% to the service provider. The Arbiter also recommended that the service provider consider refunding or waiving its fees applicable to the retirement scheme during the period of no active or few investments held within the scheme from the date of the complaint.

The decision was not appealed.

Pension scheme trustee breached duties (ASF 051/2021)

COMPLAINT UPHELD

Pension scheme, trustee duties, investment transactions, member consent, compensation

The complaint related to a personal retirement scheme, of which the complainant was a member. The key aspects of the complaint were:

a) The complainant's cash holdings were converted and invested without his approval into assets, which led to material losses.

b) The disputed transactions occurred after the scheme's trustee and administrator had appointed a new investment adviser, due to regulatory changes.

c) The transactions were undertaken without the complainant's authorisation and notification, despite him having already notified the trustee of his intention to transfer out of the scheme.

In its reply, the trustee, as the retirement scheme administrator, submitted that:

a) Regulatory changes required members to appoint investment advisers meeting certain criteria. Despite being notified, the complainant had not appointed a compliant adviser.

b) Given the scheme's breach of regulations, the trustee had therefore appointed an in-house investment arm as the investment adviser until the complainant would have appointed an alternative.

c) The complainant's portfolio, held entirely in cash, was not adequately diversified as required by regulations. The new adviser had therefore notified the complainant that the portfolio had to be re-balanced.

d) While the transfer out request was being processed, the scheme breaches had to be rectified to ensure compliance with regulations and MFSA instructions.

The following key observations and considerations were made by the Arbiter:

1. The trustee's actions went beyond the terms of the appointment and had been taken without the complainant's consent. The appointed investment adviser's role should have been limited to advice, with the complainant deciding whether to proceed with such advice.

2. There was no evidence that the complainant was adequately informed of the investment transactions recommended to him or to be undertaken, even if he did not revert.

3. The trustee allowed material decisions to be taken within short timeframes without actively discussing them with the complainant, even though it was aware of his request to transfer out of the scheme.

4. No imminent threat to the complainant's holdings had been indicated to justify the trustee's actions, especially when considering his intention to transfer out.

5. The complainant's wish to transfer out had been communicated to the provider before the disputed transactions.

6. The complainant had promptly sold the disputed investments, incurring a realised loss. Considering dividends received, realised gains and transaction fees, a shortfall of GBP 37,014 had resulted when compared to the complainant's original position.

Given these circumstances, where the trustee had acted beyond its authority and without proper consent, failed to communicate adequately, disregarded the complainant's intentions and caused a quantifiable loss, the Arbiter deemed it fair, equitable and reasonable to award the complainant a compensation of GBP 37,014 plus legal interest.

The decision was appealed.

Investment losses claim dismissed (ASF 011/2022)

COMPLAINT REJECTED

Investment losses, due diligence, risk profile, security, financial sophistication

The complainant filed a complaint against the trustee and administrator of his pension scheme, claiming investment losses. The complaint had undergone several revisions (as explained hereunder), with the final claim being for the amount invested in a specific loan note, following the reassignment of rights from the UK's Financial Services Compensation Scheme (FSCS) to the complainant.

The following are the salient features of the case:

a) Initially, the complainant claimed a total loss of GBP 289,686.16, less any amount awarded by the FSCS.

b) In the revised complaint, the claim was reduced to GBP 75,000, excluding the amount invested in a portfolio under discretionary management and the compensation received from FSCS.

c) Finally, the claim was revised to GBP 160,000; that is, the amount invested in a specific loan note, following the reassignment of rights from FSCS to the complainant.

The service provider responded to the complaint, stating that it had relied on the appointed investment adviser to provide suitable advice in accordance with the applicable regulations. It had also conducted due diligence on the investment adviser and the investments, ensuring they aligned with the complainant's risk profile and investment objectives. The service provider also stated that:

a) The complainant had been introduced to it by an FCA-regulated advisor who provided investment advice.

b) The complainant was a financially sophisticated professional, self-defined as a 'Professional Investor' in the "attitude to risk" questionnaire.

c) The service provider, as trustee, was not an investment adviser and had necessarily to rely on the appointed investment adviser to provide suitable advice in accordance with regulations.

The Arbiter made several observations and considerations:

1. The complainant appeared to refrain from the proper disclosure of important facts, bringing into question the genuine nature of the claim.

2. The complainant had failed to disclose the compensation awarded by FSCS and the transfer of rights to claim from other parties to FSCS.

3. The basis of the complaint had shifted from the service provider failing its duties of due diligence to match the risk profile to an accusation that the service provider had invested in a product different from the one advised, with weaker security features.

4. No evidence had been provided to prove that the service provider invested in a different product or that it was responsible for ensuring the proper execution of the security mentioned in the product's documentation.

5. The complainant's financial sophistication and professional status mitigated any alleged failures by the service provider in not refusing the recommendations to invest a significant portion of the portfolio in a single risky product.

The Arbiter therefore dismissed the complainant's claims for compensation, citing the complainant's awareness of the risks and his financial sophistication, the shifting nature of the complaint and the lack of proper disclosure.

However, the Arbiter did recommend that the service provider follow up on its duties as the beneficiary's representative regarding the security indicated in the loan notes agreement that formed part of his scheme and to keep the complainant informed.

The decision was not appealed.

Pension investment dispute (ASF 041/2022)

COMPLAINT PARTIALLY UPHELD

Pension funds, investment platform, due diligence, compliance, compensation

The complainant filed a complaint against a pension services provider. The key points of the complaint were:

a) The service provider had failed to facilitate the investment of the complainant's pension funds held with it in an investment platform, as requested by the complainant's financial advisor.

b) After several months of information requests and due diligence, the service provider had declined to invest the complainant's money, stating that the effort was not worth their time.

c) The complainant claimed that the service provider should have stated its position before the requested due diligence.

As a remedy, the complainant asked for a compensation of €7,783, calculated as the return the investment would have made from 1 September 2020 to 9 December 2020.

In its reply, the service provider raised a preliminary plea and addressed the case's merits. The key points of the service provider's response were:

a) The service provider argued that the complainant had not made a formal complaint with them before filing the complaint with the OAFS.

b) The service provider stated that it was provided with contact details of the investment platform only on 7 July 2020 and it had started the due diligence process on 4 August 2020.

c) Following various exchanges with the advisor and the investment platform, the service provider's management felt it had completed the due diligence procedure sufficiently to recommend onboarding the platform to their investment committee on 20 November 2020.

d) On 9 December 2020, the service provider formally advised the complainant that, as only one case had requested to use the investment platform, it fell outside its business risk appetite apart from a full due diligence process that would have had to be undertaken to approve the platform.

e) The service provider emphasised that it took several months of "drip-feeding" information from the investment platform simply to provide just its onboarding questionnaire and to go through the preliminary due diligence procedure. Moreover, the information submitted was incomplete and incorrect.

The Arbiter made the following observations in deciding whether to meet the complainant's request for compensation:

1. Regarding the first plea, that the complainant had not made a formal complaint with the service provider before lodging a formal complaint with the OAFS, the Arbiter found this argument irrelevant to the case's merits. Instead, the focus should be on whether the service provider had acted within the bounds of reasonable commercial practice and in accordance with its obligations towards the complainant.

2. It was concluded that the service provider's refusal to invest the complainant's funds on the investment platform was related to commercial considerations, which could have been reached earlier than 9 December 2020.

3. The complainant's argument that two months should have been enough time for the service provider to conclude the compliance procedures on the investment platform was questionable; and this as the amount of time compliance procedures take depended not only on the service provider but also on the level of cooperation it gets from the subject of the due diligence process.

4. It was noted that the investment platform took its time attending to the service provider's due diligence requirements, and that it had provided its bank details only on 16 November 2020.

5. Consequently, the Arbiter determined that the compensation cannot be calculated using 1 September 2020 as the starting date, as the complainant had claimed.

The complaint was partially accepted. It was felt that the periods from 16 July 2020 to 4 August 2020 and from 16 November 2020 to 9 December 2020 were irrelevant to the complainant's return on investments. Consequently, only one month was awarded to calculate the compensation due. The Arbiter ordered that compensation (if any) should be calculated jointly by the service provider and the complainant, taking 9 November 2020 to 9 December 2020 as the valuation period.

The decision was not appealed.

Retirement scheme trustee's failure to safeguard members' interests (ASF 049/2022)

COMPLAINT PARTIALLY UPHELD

Retirement plan, marketing fee, excessive charges, pension services, complaint resolution, financial negligence

The complaint related to the alleged failures of the service provider concerning the complainants' retirement scheme and its underlying policy. The complainants alleged that they were not properly informed about a marketing fee associated with their retirement plan, which they found to be excessively high and not reflected in their policy valuations for several years. They further alleged that:

a) They had been advised to transfer their pensions to an offshore retirement scheme in 2013.

b) They were later surprised by a marketing fee not initially disclosed, amounting to significant sums over the years.

c) They claimed that the fee was excessive and that there had been a lack of transparency and due diligence from their financial advisors and the service provider.

The complainants requested a full or partial (75%) refund of the marketing fee.

In response to the complaint, the service provider presented its arguments, maintaining that the fee was justified and disclosed appropriately under the terms of the policy. It contended that:

a) The marketing fee was part of the contractual agreement and had been disclosed in the policy documentation.

b) The complainants were time-barred in lodging the complaint with the Arbiter, as they had been aware of the fee since the policy's inception.

c) The complainants had already negotiated a reduced fee structure with another party involved; this resolved the complaint.

After considering the particular circumstances of the case, the Arbiter made the following key observations:

1. There was no sufficient legal basis on which to accept the service provider's plea that the Arbiter had no competence to hear the case.

2. The service provider, as trustee and retirement scheme administrator, had failed to ensure that the charging structure of the underlying policy was clearly and adequately disclosed to the complainants.

3. Inconsistent information had been provided to the complainants as part of the service provider's welcome pack.

4. No evidence emerged that the complainants had been adequately notified and informed of the material changes in the policy's terms and conditions.

5. The service provider had not sought the complainants' consent to proceed with the revised terms and conditions.

6. The service provider had failed to appropriately safeguard the complainants' interests when the insurance provider decided to apply the marketing fee retrospectively.

7. The service provider had not met the reasonable and legitimate expectations of the complainants, who had placed their trust in its professionalism, duty of care and diligence.

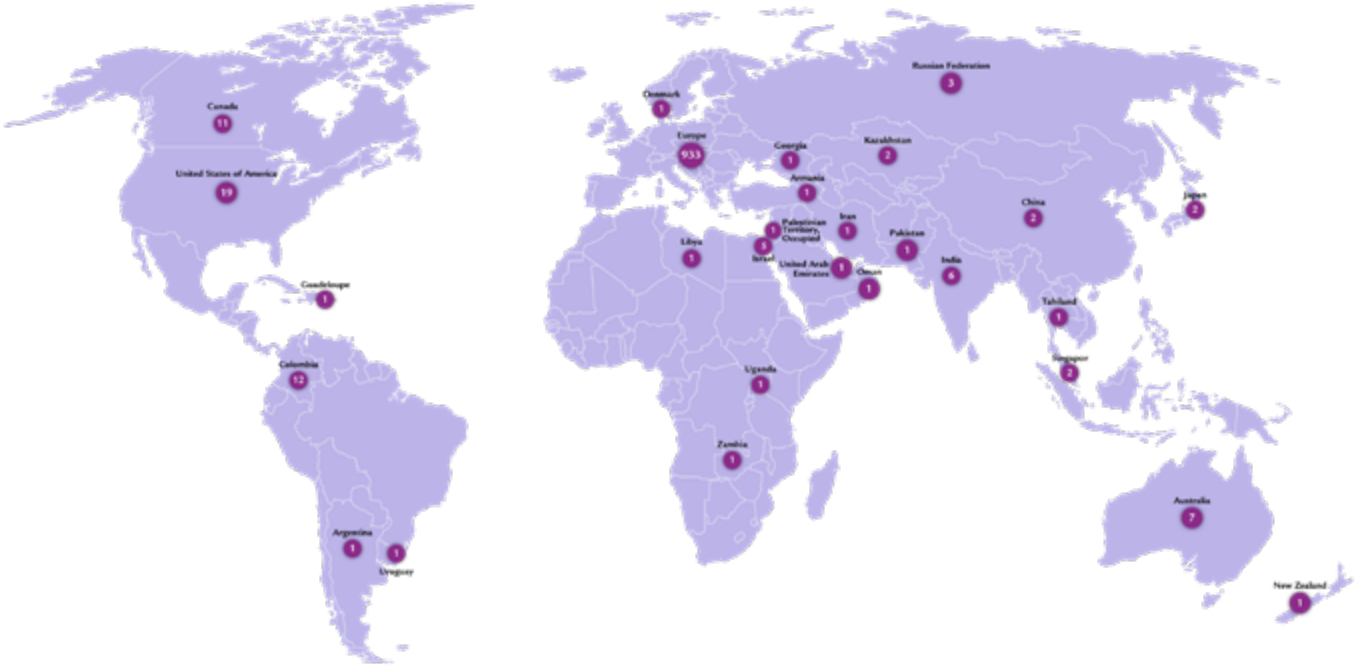
The Arbiter partially upheld the complaint and ordered the service provider to refund the complainants 70% of any marketing fee charged to their underlying policy, with legal interest.

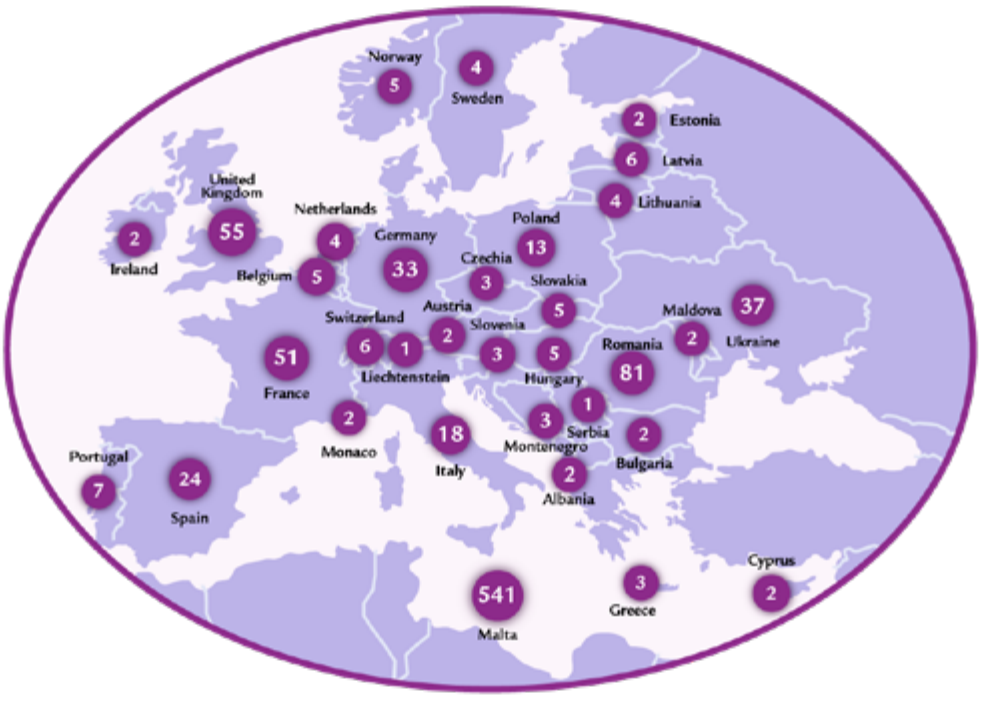
The decision was appealed.

Annex 1

Origin of Enquiries and Complaints in 2023

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 2023 through both enquiries and formal complaints.





Annex 2

Enquiries and Minor Cases' Statistics for 2023

Figure 1 – Total Enquiries and Minor Cases (2016-2023)

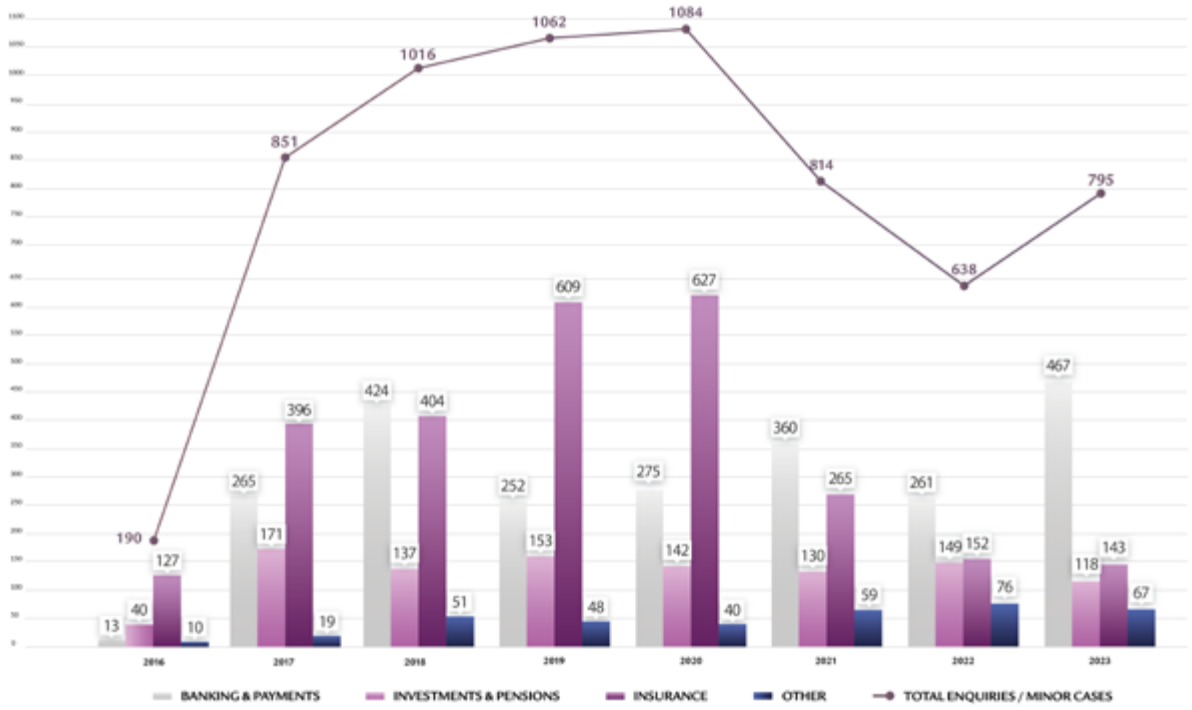
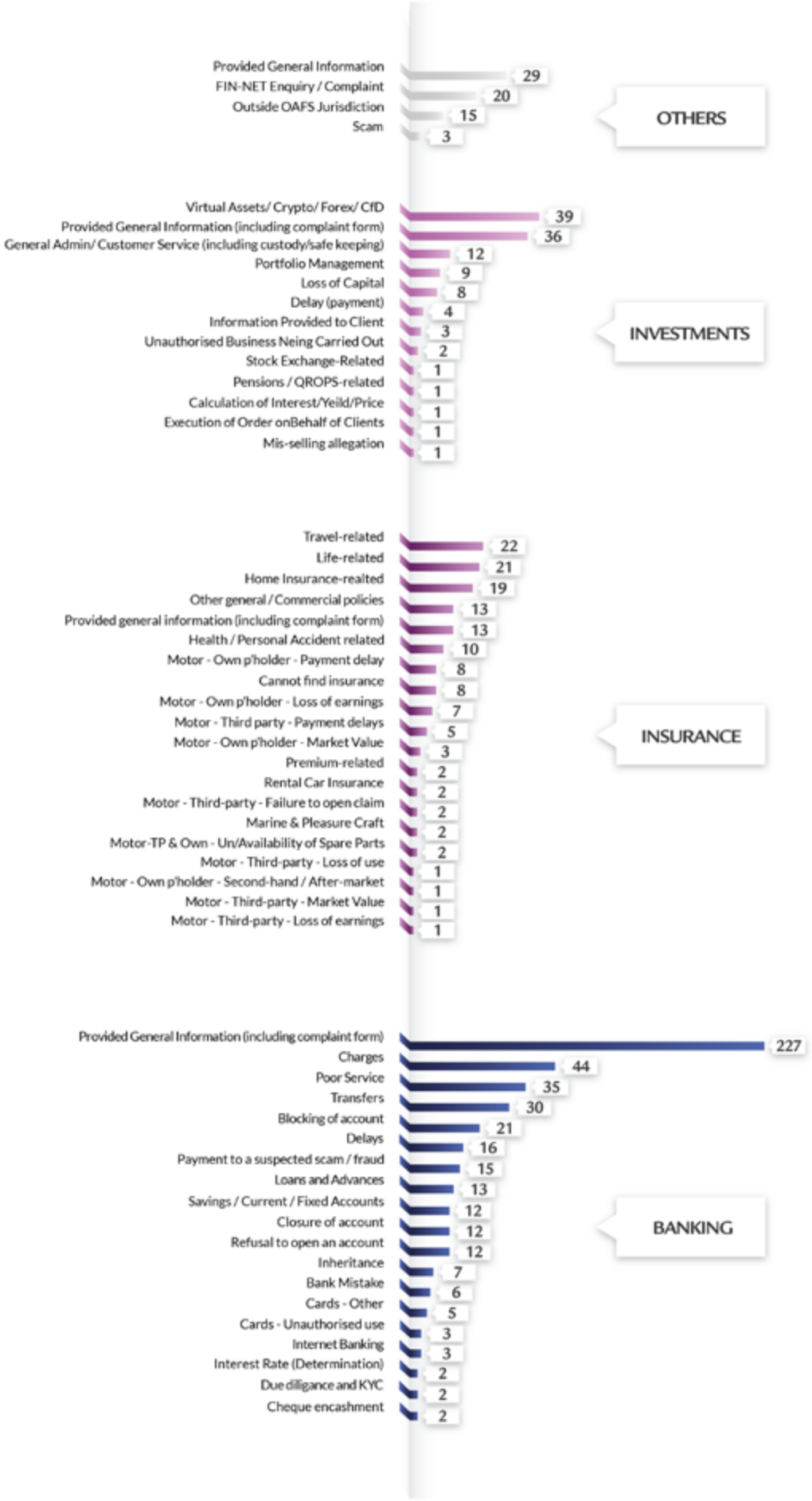


Figure 2 – Enquiries and Minor Cases (by origination)

Figure 3 – Enquiries and Minor Cases (by sector and outcome)

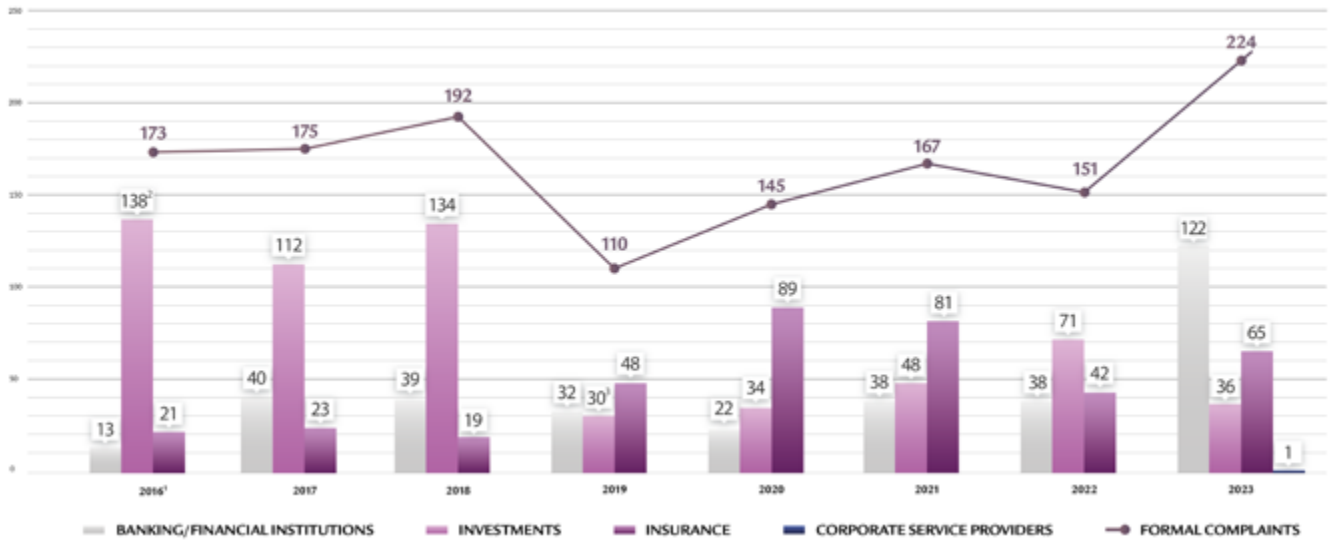
Figure 4 – Enquiries and Minor Cases (by type)



Annex 3

Formal Complaints Statistics for 2023

Figure 5 – Total number of formal complaints (2016-2023)



[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	CORPORATE SERVICES	GRAND TOTAL
E-Money	75				75
Life-related		40			40
Savings/Current/Term Account	28		1		29
Crypto/ Virtual Financial Assets			13		13
Transfers	12				12
Travel-related		12			12
Pensions-related			11		11
Miscellaneous (securities and funds)			7		7
Health-related		6			6
Portfolio Management			3		3
Cards	3				3
Personal Loans	2				2
Home (Building & Contents)-related		2			2
Pet-related		1			1
Rental Car-related		1			1
Other loans and advances	1				1
Home Loans	1				1
Marine & Pleasure Craft-related		1			1
Motor- Own p'holder		1			1
Other personal lines		1			1
Complex/Professional/Experienced/Structured investments			1		1
Contractual Fulfillment				1	1
Total	**122**	**65**	**36**	**1**	**224**

BY ISSUE	BANKING AND PAYMENT SERVICES	INSURANCE	INVESTMENTS	CORPORATE SERVICES	GRAND TOTAL
General administrator/customer service	77				77
Value at maturity		32			32
Suspected irregular activity	22				22
Rejection of claim		19			19
Administration/Management/Custody			18		18
Loss of earnings		10			10
Opening/Closure	8				8
Mistake/Incorrect application	3		4		7
Unauthorised use	5		1		6
Delays	3	1	1		5
General administrator/customer service		1	3		4
Other	2	2			4
Misselling / Suitability			4		4
Refusal to give information	1		2		3
Charges	1		2		3
Inappropriate product/service			1		1
Compliance and Regulatory Matters				1	1
Total	**122**	**65**	**36**	**1**	**224**

Table 2 – Complaints registered by provider and sector

	BANKING AND PAYMENT SERVICES	INSURANCE	INVESTMENTS AND PENSIONS	CORPORATE SERVICES	TOTAL
MTACC Limited	75				75
Mapfre MSV Life plc		38			38
Bank of Valletta plc	18		1		19
APS Bank plc	9		2		11
Foris Dax MT Limited			10		10
HSBC Bank Malta plc	5				5
Mapfre Middlesea plc		5			5
Sovereign Pension Services Limited			4		4
Collinson Insurance Europe Limited		3			3
Lazarus Long Limited	3				3
Momentum Pensions Malta Limited			3		3
Truevo Payments Limited	3				3
Atlas Healthcare Insurance Agency Limited		2			2
Calamatta Cuschieri Investment Services Limited			2		2
OK Coin Europe Limited	1		1		2
Papaya Limited	2				2
Riverstone Insurance (Malta) Limited		2			2
STM Malta Pension Services Limited			2		2
ACT Advisory Services Limited				1	1
AIB Insurance Brokers Limited, Mapfre Middlesea plc		1			1
Atlas Insurance PCC Limited		1			1
Calamatta Cuschieri Investment Services Limited, Crystal Finance Investments Limited			1		1
CCGM Pension Administrators Limited			1		1
Cowen Insurance Company Limited		1			1
Crystal Finance Investments Limited			1		1
Curmi & Partners Limited			1		1
Dlocal Limited	1				1
Eagle Star (Malta) Limited		1			1
Elmo Insurance Limited		1			1
ETI Securities plc			1		1
Finance Incorporated Limited	1				1
GlobalCapital Finance Management Limited			1		1
HSBC Life Assurance (Malta) Limited		1			1
Insurem Insurance Limited		1			1
Integrated Capabilities (Malta) Limited, Optimus Fiduciaries (Malta) Limited			1		1
Lifestar Health Limited		1			1
Mapre Middlesea plc, Antes Insurance Brokers Limited		1			1
Multidude Bank plc	1				1
Novum Bank Limited	1				1
Oney Insurance (PCC) Limited, Oney Life (PCC) Limited		1			1
Riverside Insurance Agency Malta Limited		1			1
Starr Europe Insurance Limited		1			1
Wamo Solutions Limited	1				1
XNT Limited			1		1
Zenith Finance Limited			1		1
Total	**122**	**65**	**36**	**1**	**224**

Table 3 – Complaint Outcomes

Agreement was reached at mediation	22
Withdrawn prior to mediation	21
Withdrawn following mediation	12
Parties agreed to settle prior to commencement of mediation	1
Withdrawn following case hearing	7
Agreement reached during hearing before Arbiter	4
Cases in respect of which a decision has been issued by the Arbiter for Financial Services	137

Table 4 – Decisions delivered by the Arbiter in 2023

		Banking and payment services	Investments and Pensions	Insurance
Preliminary and Clarifications	11	5	6	
Upheld in full	6	2	2	2
Partially upheld	50	10	19	21
Rejected	81	19	54	8
Res judicata	121	24	66	31
Appealed	16	7	9	0

Table 5 – Decisions Delivered by the Arbiter in 2023 (Breakdown by Financial Services Provider)

The table below provides a breakdown of the type and nature of decisions by financial services provider during 2023, and whether the final decision has been appealed.

Financial Services provider	Sector	Preliminary & Clarifications	Final Decisions		Upheld	Partially Upheld	Rejected		Appealed	Not Appealed
AKFX Financial Services Limited	Investments & Pensions		1	1			1	1		1
APS Bank plc	Investments & Pensions		1	1		1		1		1
APS Bank plc	Banking & Payments		5	5		3	2	5	2	3
ArgoGlobal SE	Insurance		1	1			1	1		1
Argus Insurance Agencies Limited	Insurance		1	1		1		1		1
Bank of Valletta plc	Banking & Payments		8	8	2	5	1	8	2	6
BNF Bank p.l.c.	Banking & Payments		2	2			2	2	2	0
Calamatta Cuschieri Investment Services Ltd	Investments & Pensions	1	1	2			1	1		1
Crystal Finance Investments Limited	Investments & Pensions		1	1			1	1		1
Curmi & Partners Limited	Investments & Pensions		1	1			1	1		1
Deriv Investments (Europe) Limited	Investments & Pensions		1	1			1	1		1
Dlocal Limited	Banking & Payments		1	1			1	1		1
Dominion Fiduciary Services (Malta) Ltd	Investments & Pensions		2	2			2	2		2
Eagle Star (Malta) Limited	Insurance		1	1			1	1		1
EM@NEY plc	Banking & Payments		1	1			1	1		1
Finance Incorporated Limited	Banking & Payments		1	1			1	1		1
Foris DAX MT Limited	Investments & Pensions	4	21	25		1	20	21		21
GasanMamo Insurance Limited	Insurance		3	3	1	1	1	3		3
Global Shares Execution Services Ltd	Investments & Pensions		1	1			1	1		1
HSBC Bank Malta plc	Banking & Payments		2	1			1	1	1	0
HSBC Life Assurance (Malta) Limited & HSBC Bank Malta plc	Insurance		1	1		1		1		1
Integrated Capabilities Malta Ltd as subsituted by Optimus Fiduciaries (Malta) Ltd	Investments & Pensions	1	1	2		1		1	1	0
ITC International Pensions Limited et	Investments & Pensions		1	1		1		1		1
Lazarus Long Limited	Banking & Payments	1	6	7			6	6		6
Lifestar Insurance Ltd	Insurance		1	1			1	1		1
Mapfre Middlsea plc	Insurance		1	1			1	1		1
Mapfre MSV Life plc	Insurance		21	21	1	17	3	21		21
MC Trustees (Malta) Limited	Investments & Pensions	1	2	3		1	1	2	1	1
MEDirect Bank (Malta) Limited	Investments & Pensions		1	1			1	1		1
Momentum Pensions Malta Limited	Investments & Pensions	1	17	18		5	12	17		17
MPM Capital Investments Limited	Investments & Pensions		1	1			1	1		1
Multitude Bank plc	Banking & Payments		2	2			2	2		2
MZ Investment Services Limited	Investments & Pensions		1	1			1	1		1
Novum Bank Limited	Banking & Payments		1	1			1	1		1
Oanda Europe Markets Limited	Banking & Payments		1	1		1		1		1
OKCoin Europe Limited	Investments & Pensions		1	1			1	1		1
Optimus Fiduciaries (Malta) Limited	Investments & Pensions		1	1		1		1	1	0
QIC Europe Limited	Insurance		1	1		1		1		1
Sovereign Pension Services Limited	Investments & Pensions	2	2	4	1		1	2	1	1
STM Malta Pension Services Limited	Investments & Pensions		11	11		9	2	11	5	6
TMF International Pensions Limited	Investments & Pensions		2	2			2	2		2
Triton Capital Markets Ltd	Investments & Pensions		1	1			1	1		1
Truevo Payments Limited	Banking & Payments		2	2			2	2		2
XNT Limited	Investments & Pensions		1	1			1	1		1
Zenith Finance Limited	Investments & Pensions		1	1			1	1		1
Zillion Bits Limited	Investments & Pensions		1	1	1			1		1
		11	137		6	50	81		16	

Data featured under "Preliminary & Clarifications" includes decisions on initial legal pleas (such as if the service provider is contumacious) and any clarification requests that the parties to a complaint might have requested the Arbiter to issue following delivery of a decision. 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.

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Office of the Arbiter for Financial Services

Audited Financial Statements as at 31 December 2023

National Audit Office
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Report of the Auditor General

To the Office of the Arbiter for Financial Services

Report on the financial statements

We have audited the accompanying financial statements of the Office of the Arbiter for Financial Services set out on pages 1 to 9, which comprise the statement of financial position as at 31 December 2023, the income statement, 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 2023, 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.

Auditor General
12 June 2024

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 2023.

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 €3,802 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.

- 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	2023	2022
		€	€
ASSETS			
Property, Plant and Equipment	6	**56,677**	**14,751**
Intangible Asset	7	**-**	**13,275**
		56,677	**28,026**
Current assets			
Trade and other receivables	8	**33,391**	**14,202**
Cash and cash equivalents	9	**248,637**	**292,742**
		282,028	**306,944**
TOTAL ASSETS		**338,705**	**334,970**
EQUITY AND LIABILITIES			
Equity			
Accumulated Funds		**308,252**	**304,450**
		308,252	**304,450**
Current liabilities			
Trade and other payables	10	**30,453**	**30,520**
		30,453	**30,520**
Total liabilities		**30,453**	**30,520**
TOTAL EQUITY AND LIABILITIES		**338,705**	**334,970**

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

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

Mr Geoffrey Bezzina
Chairperson

Date: 6 June 2024

Income Statement

	Notes	2023 €	2022 €
Income	3	**675,658**	**679,164**
Administrative expenses	4	**(671,096)**	**(605,088)**
Financial costs	5	**(761)**	**(361)**
Surplus for the year		**3,802**	**73,714**

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 2021	**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
Surplus for the year	3,802	3,802
Balance at 31 December 2023	308,252	308,252

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

Statement of cash flows

	Note	2023	2022
		€	€
Operating activities			
Surplus for the year		**3,802**	**73,714**
Adjustments to reconcile profit before tax to net cash flows:			
Non-cash movements			
Depreciation of fixed assets		**21,007**	**18,691**
Working capital adjustments			
Increase in trade and other receivables		**(19,189)**	**(11,044)**
Increase in trade and other payables		**(67)**	**17,753**
Net cash generated from operating activities		**5,553**	**99,114**
Investing activities			
Purchase of property, plant and equipment		**(49,658)**	**(3,017)**
Purchase of Intangible Asset		**-**	**-**
Net cash used in investing activities		**(49,658)**	**(3,017)**
Cash and cash equivalents at 1 January		**292,742**	**196,645**
Net increase in cash and cash equivalents		**(44,105)**	**96,097**
Cash and cash equivalents at 31 December	9	**248,637**	**292,742**

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 2023 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.

	2023	2022
	€	€
Government Funding	675,000	675,000
Complaint Fees	5,100	4,164
EU Funding Returned	(4,442)	-
Total Income	675,658	679,164

4. Expenses by nature

	2023	2022
	€	€
Staff Salaries	514,373	489,314
Office maintenance & Cleaning	13,146	12,792
Car & Fuel Expenses	25,608	15,590
PR & Marketing	1,425	1,923
Telecommunications Professional	5,202	7,867
Fees	2,089	9,298
Depreciation charge for the year	21,007	18,691
Other expenses	88,246	49,614
Total administrative costs	671,096	605,088

Notes to the financial statements (continued)

4. Expenses by nature (continued)

Average number of persons employed by the office during the year:	2023	2022
Total average number of employees	**11**	**11**

5. Financial costs

	2023	2022
	€	€
Bank and similar charges	**761**	**361**

6. Property, plant and equipment

	Assets under Construction	Furniture, Fixtures &	Office Equipment	Computer Equipment	Total
	€	€	€	€	€
Net book amount at 1 January 2022	-	14,346	1,923	881	17,150
Additions	-	-	-	3,017	3,017
Depreciation charge for the period	-	(2,819)	(1,036)	(1,561)	(5,416)
Net book amount at 31 December 2022	**-**	**11,527**	**887**	**2,337**	**14,751**
Additions	36,870	-	6,444	6,344	49,658
Depreciation charge for the year	-	(2,819)	(2,499)	(2,414)	(7,732)
Net book amount at 31 December 2023	**36,870**	**8,708**	**4,832**	**6,267**	**56,677**
As at 31 December 2023					
Total cost	36,870	28,194	15,131	26,565	106,760
Accumulated depreciation	-	(19,488)	(10,298)	(20,297)	(50,083)
Net book amount at 31 December 2023	**36,870**	**8,706**	**4,833**	**6,268**	**56,677**

Notes to the financial statements (continued)

7. Intangible Asset

	Website and Case and File e-Solution	Total
	€	€
Net book amount at 1 January 2023	13,275	13,275
Additions	-	-
Depreciation charge for the period	(13,275)	(13,275)
Net book amount at 31 December 2023	**-**	**-**

8. Trade and other receivables

	2023	2022
	€	€
Prepayments	**8,823**	**9,483**
Deposits	**19,768**	**-**
Other receivables	**4,800**	**4,719**
	33,391	**14,202**

9. Cash and cash equivalents

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

	2023	2022
	€	€
Cash at bank and in hand	**248,637**	**292,742**

10. Trade and other payables

	2023	2022
	€	€
Other payables	**13,110**	**7,333**
FSS Payable	**9,778**	**9,125**
Accruals	**7,565**	**14,062**
	30,453	**30,520**

Administrative expenses

	2023	2022
	€	€
Staff Salaries	**514,373**	**489,314**
Training	**2,392**	**696**
Office Consumables	**2,319**	**1,566**
Conference Expenses	**8,280**	**-**
Cleaning	**10,543**	**9,685**
Office Maintenance	**2,603**	**3,107**
Printing and Stationery	**6,715**	**3,983**
PC/Printer Consumables	**-**	**370**
Other Office Costs	**5,793**	**1,901**
Other Office Equipment	**-**	**499**
Telecommunications	**5,202**	**7,867**
Website Expenses	**23,940**	**13,612**
Postage, Delivery & Courier	**1,369**	**1,349**
Insurance - Health	**18,586**	**14,602**
Insurance - Travel	**1,825**	**559**
Insurance - Business	**843**	**356**
Memberships & Subscriptions	**2,111**	**1,710**
General Expenses	**940**	**124**
Vehicle, leasing and fuel expenses	**25,608**	**15,590**
Travelling Expenses	**9,121**	**4,153**
PR & Marketing	**1,425**	**1,923**
Professional Fees	**2,089**	**9,298**
Accounting Fees	**4,012**	**4,134**
Depreciation Charge	**21,007**	**18,691**
	671,096	**605,088**

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