

Biúró an Ombudsman um
Sheirbhísí Airgeadais



Financial Services
Ombudsman

The New Complaint Handling Process

Presentation to Society of Financial Planners of Ireland
Thursday, 17th November 2016

Summary of presentation

1. FSOB overview
2. Some statistics
3. Overview of new complaints handling processes
4. Overview of adjudication services
5. Sample case studies
6. Q & A

The Law Provides What We Can Deal With...

The Central Bank & Financial Services Authority of Ireland Act 2004 prescribes the functions and powers of the Financial Services Ombudsman's Bureau and its officers

*Section 57BB establishes the Ombudsman as the authority charged with investigating, mediating and adjudicating complaints made ... about the **CONDUCT** of regulated financial service providers involving:*

- *The provision of a financial service*
- *An offer to provide a financial service*
- *Refusal to provide a financial service*

The legislation sets out how we should deal with complaints, including the following provisions:

- *By **mediation** and, where necessary, by **investigation and adjudication** (S.57BK)*
- *On receiving a complaint, the Financial Services Ombudsman shall, as far as possible, try to resolve the complaint by mediation (S.57CA(1))*
- *In an informal manner and according to equity, good conscience and the substantial merits of the complaint without regard to technicality or legal form S. 57 BK (4)*
- *In an informal and expeditious manner S.57 BB (b)*

Our website provides an overview for consumers and providers alike on our remit as well as topical activities

www.financialombudsman.ie

Who we are

The Financial Services Ombudsman is a statutory officer who deals independently with unresolved complaints from consumers about their individual dealings with all financial service providers. It is a free service to the complainant. We have set up a wide range of general information on our site. If you would like further information we would be delighted to hear from you.

Who can the Ombudsman help?

- Personal customers of financial services providers
- Limited Companies Charities, Clubs, Trusts and Partnerships with turnovers of less than €3 million

Which financial service providers can the Ombudsman investigate?

- | | | |
|--|-----------------------|------------------------------|
| ▪ Banks | ▪ Building Societies | ▪ Insurance Companies |
| ▪ Credit Unions | ▪ Stockbrokers | ▪ Health insurance companies |
| ▪ Money Lenders | ▪ Bureaux de Change | ▪ Hire Purchase providers |
| ▪ Mortgage, Insurance & other intermediaries | ▪ Retail Credit Firms | ▪ Home Reversion Firms |

FAQs

- [How we Handle Complaints](#)
- [Information about repayments whilst complaint is progressing](#)
- [Mortgage Arrears Resolution Process](#)

Recent Publications

- [Annual Report 2015](#)
- [Tuarascáil Bhliantúil 2015](#)
- [Annual Review 2015](#)
- [More...](#)

Eligibility

Not sure if you can submit a complaint? Find out the answers to your questions below.

- ▶ [Can I submit a complaint?](#)
- ▶ [Who can I complain about?](#)
- ▶ [What can not be investigated?](#)

Complaints Process

Learn about the procedure for the investigation of a complaint and how we reach a decision.

- ▶ [Mediation](#)
- ▶ [Investigation](#)
- ▶ [Decision and findings](#)

Codes of Conduct

Read some useful consumers guidance relating to the provision of financial services.

- ▶ [Mortgage Arrears](#)
- ▶ [Consumer Protection Code 2012](#)
- ▶ [More...](#)

I have a complaint What should I do first?

1. You need to make a formal complaint to your financial services provider before making a complaint to this office.

▶ [Helpful information when making a complaint to the provider](#)

2. Once you have completed this step you can submit your complaint to us

[Online Complaint Form](#)

News

- ▶ [Raising the Bar on Consumer Protection - Press Release](#)

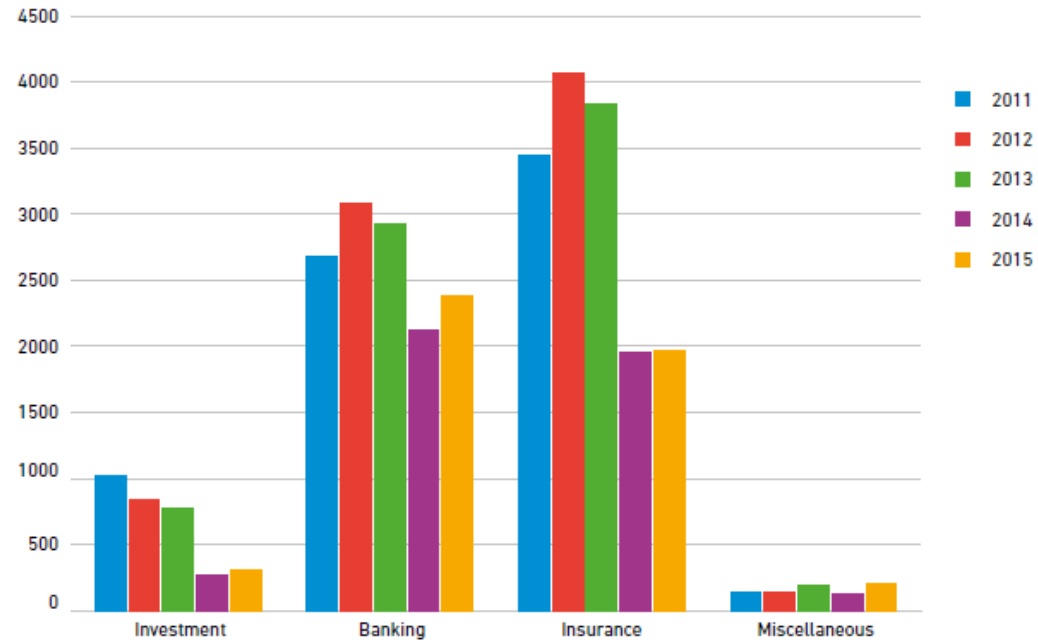
Other Quick Guides

Download our Quick Guides

- ▶ [How we handle complaints](#)
- ▶ [How we mediate complaints](#)
- ▶ [Oral hearing quick guide](#)

Some statistics ...

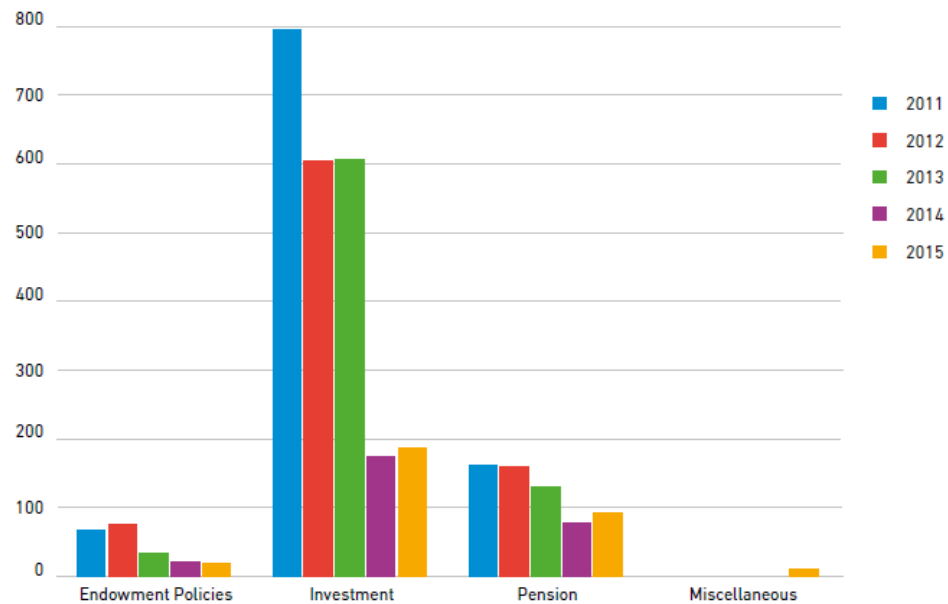
Complaints received in 2015



Sector	2011	2012	2013	2014	2015
Investment	1024	840	770	271	307
Banking	2680	3087	2925	2127	2385
Insurance	3443	4064	3835	1955	1973
Miscellaneous	140	144	192	124	207
Total	7287	8135	7722	4477	4872

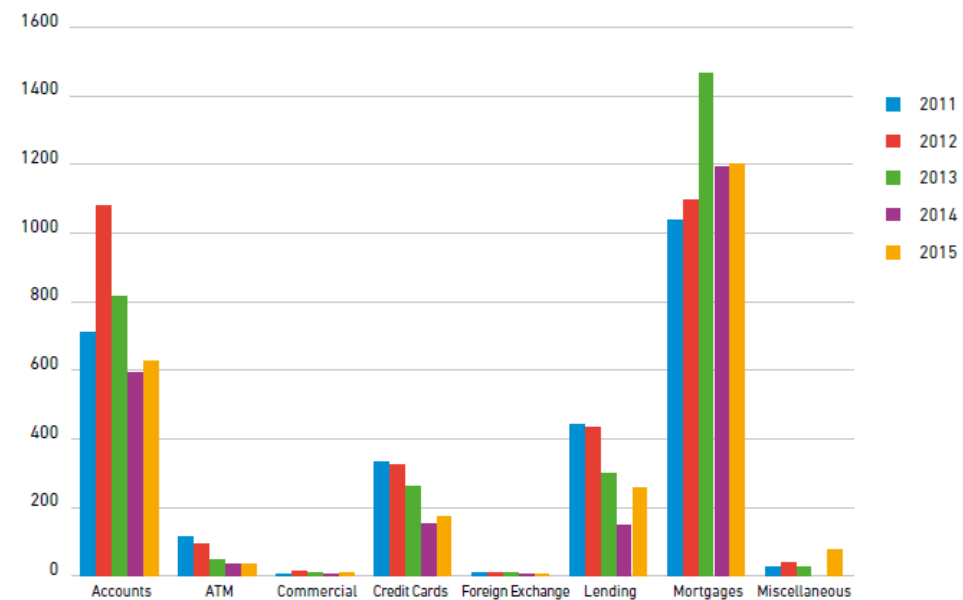
Miscellaneous in the table above includes complaints that do not relate to a regulated financial service product and/or a service provider who is not a regulated financial provider and were therefore referred to another body.

4.1 Investment



Product Type	2011	2012	2013	2014	2015
Endowment Policies	68	75	33	20	18
Investment	795	605	607	174	186
Pension	161	160	130	77	93
Miscellaneous	-	-	-	-	10
Total	1024	840	770	271	307

4.2 Banking



Product Type	2011	2012	2013	2014	2015
Accounts	712	1078	815	591	626
ATM	113	93	47	35	35
Commercial	5	15	8	5	10
Credit Card	332	323	260	153	173
Foreign Exchange	10	10	8	4	7
Lending	442	433	297	146	256
Mortgages	1038	1098	1464	1193	1203
Miscellaneous	28	37	26	0	75
Total	2680	3087	2925	2127	2385

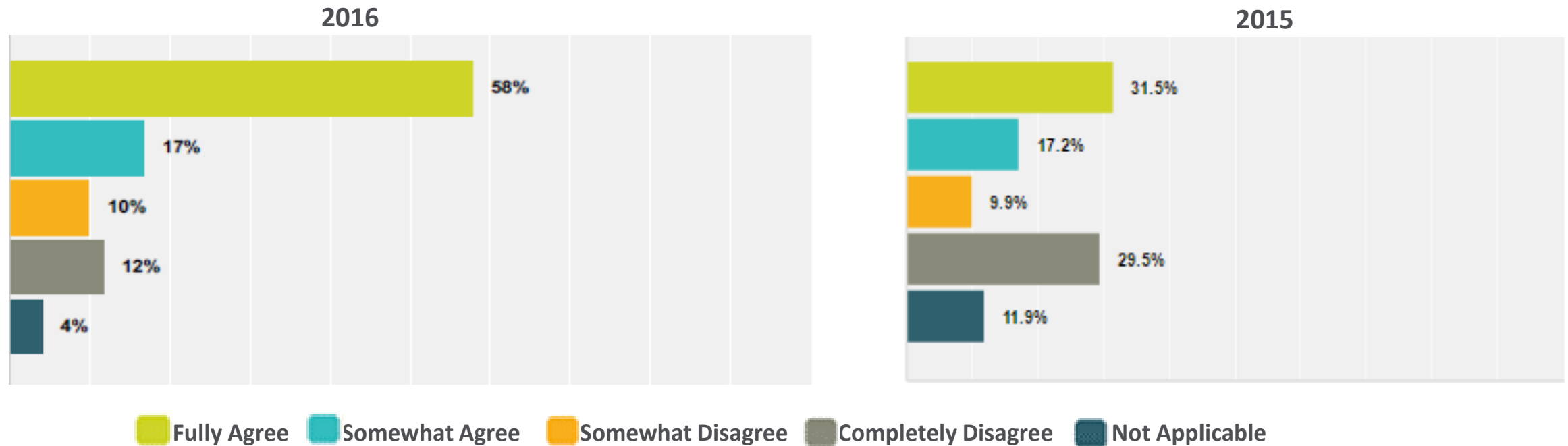
Mediation

- *Voluntary s.57 CA (2)*
- *Confidential s. 57 CA (3)*
- *Can provide flexible and innovative solutions*
- *Can retain customers, save time and money and protect reputation*

Survey feedback: Positive results – strong foundations to build on

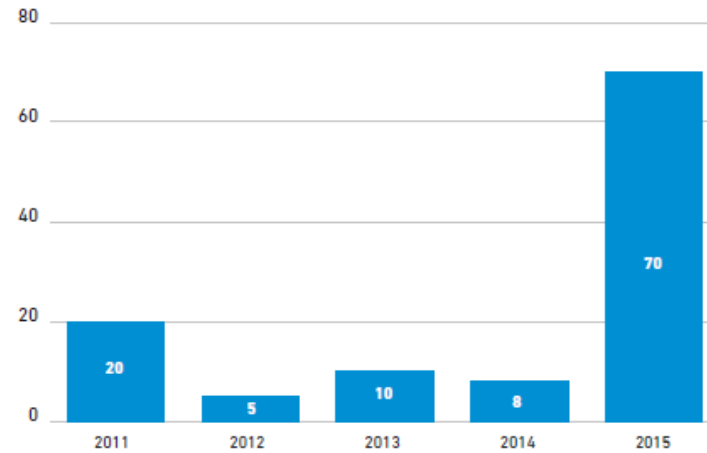
Question:

To what extent do you agree with the following statement: “The service I received from the FSO met my expectations”



- Improvement in the number of complainants who agree that they received a service that matched their expectations, with **75% of respondents indicating that the service had delivered on their expectations**, an increase of **27%** year-on-year.

Number of mediations handled by the FSOB have increased significantly in 2016 as a result of our change programme

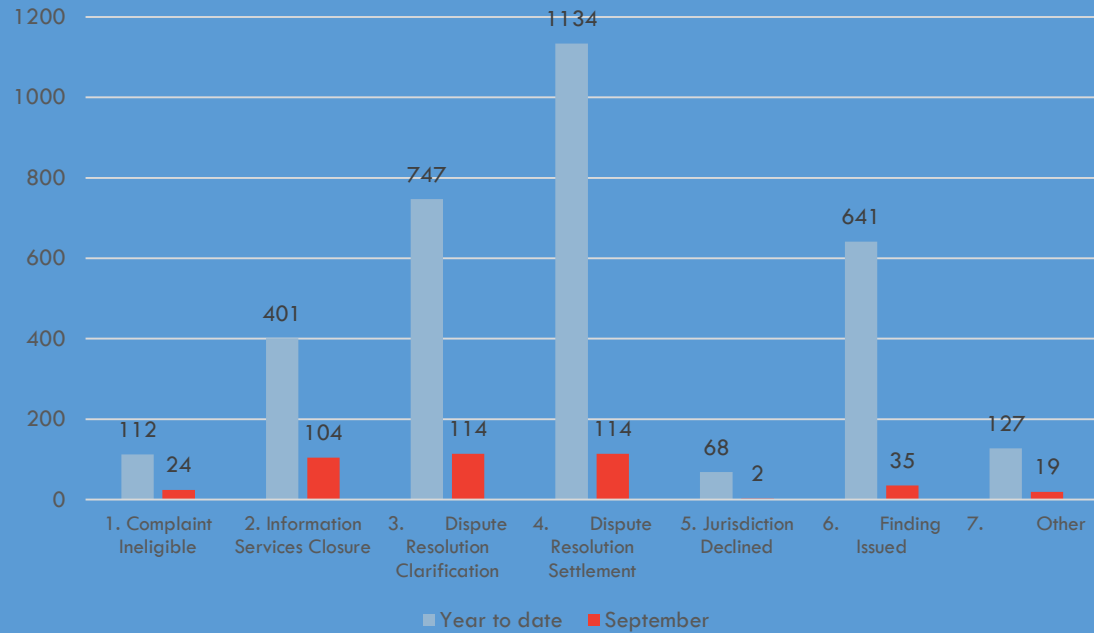


Source: 2015 Annual Review (a

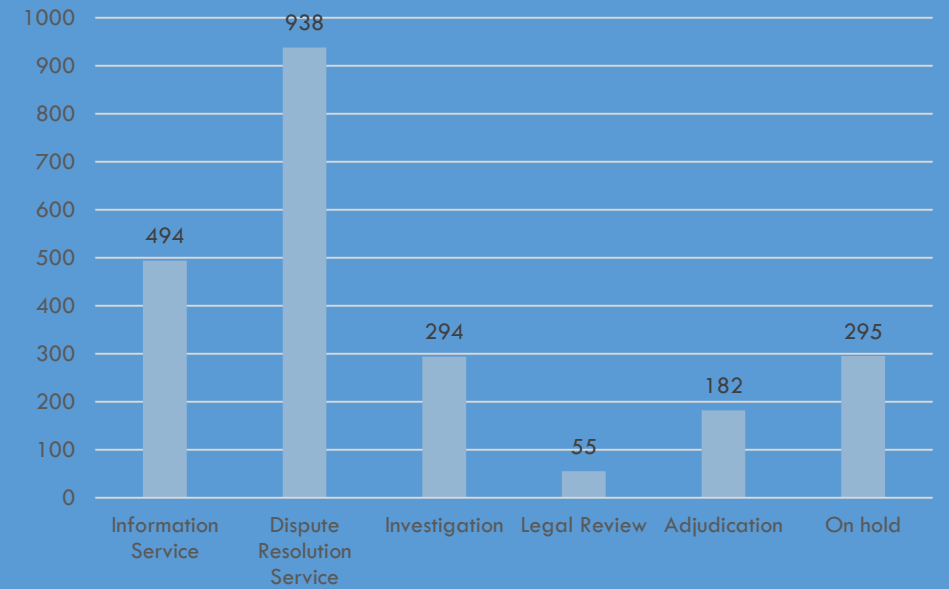
	2011	2012	2013	2014	2015
Mediated complaints	20	5	10	8	70

The new process... in numbers: Our 2016 Metrics at end September

Cases closed [Total 3230]



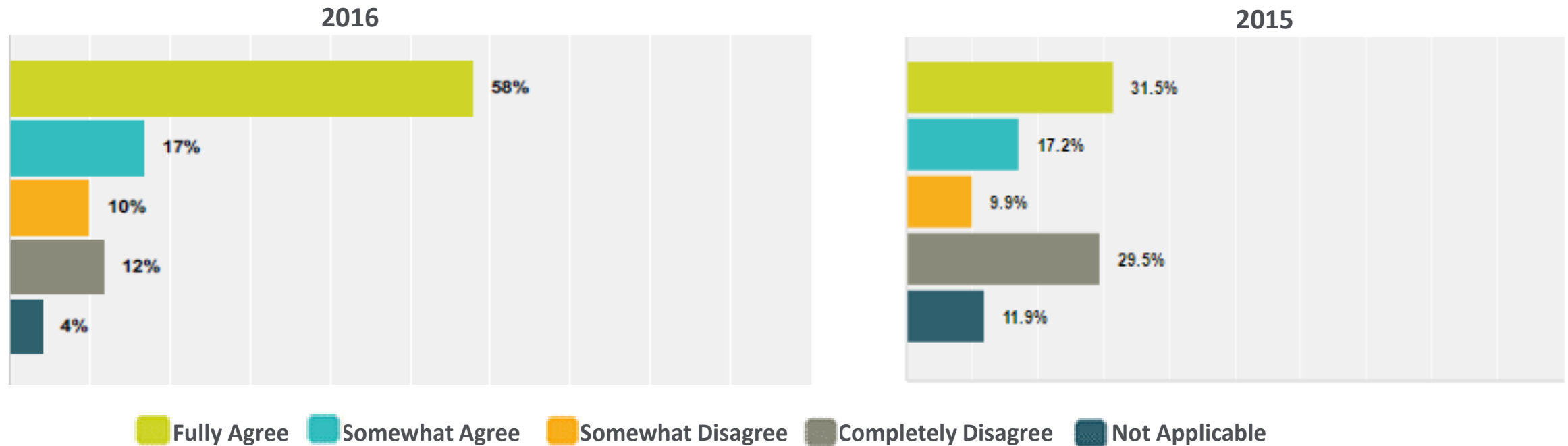
Cases open [Total 2258]



Survey feedback: Positive results – strong foundations to build on

Question:

To what extent do you agree with the following statement: “The service I received from the FSO met my expectations”



- Improvement in the number of complainants who agree that they received a service that matched their expectations, with **75% of respondents indicating that the service had delivered on their expectations**, an increase of **27%** year-on-year.



How we mediate complaints

In the Financial Services Ombudsman's Bureau we handle consumer complaints about their dealings with all financial service providers. Our service is free of charge to you.

We are an independent organisation that offers fair resolution of disputes that providers have not settled. We are required by law to resolve disputes, as far as possible, by mediation.

The complaints process can have up to five possible phases. We may conclude the process at the end of any phase.



Typical stages in our mediation approach

1. Assess complaint
2. Outline mediation process to both parties
3. Confirm acceptance
 - Given voluntary nature, agreement required from both parties
 - (If mediation not accepted, proceedings move to formal investigation)
4. Commence mediation process
 - This can be by phone or face-to-face
 - Mediator's role is to help both parties reach agreed resolution of their differences
 - Mediator is independent and does not act for, or side with, either party
 - Mediator does not propose or impose any solution
 - He or she will facilitate efforts of both parties to find a mutually acceptable solution
5. Confirm solution

Adjudication – The Last Resort

- *Very Substantial Powers*
- *We don't just rely on the evidence the parties volunteer*
- *We actively investigate*
- *Adjudicate based on what is **fair and reasonable** in the circumstances*

Adjudication – The Last Resort

- *Not just about the terms and conditions*
- *Take account of good practice as well as consumer and general law*
- *Regulatory framework – codes of practice – consumer protection codes*
- *Information provided – information not provided – “an explanation for the conduct complained of was not given when it should have been”* 57CI (2) (f)

Adjudication – Wide Range of Powers

- *“although the conduct complained of was in accordance with a law or an established practice or regulatory standard, the law, practice or standard is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant”*

S. 57CI – (2) (c)

- *Award compensation up to €250,000*
- *Direct Rectification*
- *Change a practice*
- *Report to Central Bank*

Case study 1: Settled prior to Formal Investigation taking place

- Complaint related to Bank's handling of a presented cheque
- Cheque presented but declined as Bank was not satisfied with signature
- Complainant stated reputational loss as supplier contacted him for explanation about non-payment
- Mediation offered by Bureau, at which point bank confirmed it was not happy with initial handling of complaint
- Bank agreed to refund unpaid charges and donated a sum, as requested by the complainant, to a charity of his choice
- Complainant confirmed he was satisfied with the outcome

Case study 2: Case settled by formal mediation

- Complainant invested almost €3 million with the Provider, split 70:30 between two funds – subsequent loss of 33% sustained
- Complainant stated following:
 - Investment had been mis-sold as they had been wrongly categorised as a progressive investor when in fact they were very conservative or a low risk investor
 - They were suffering ill-health at time and Provider had failed to adequately take into account decision-making capabilities as result of medical treatment being undertaken
 - Provider failed to take into account the source of funds available for the investment, which were as a result of litigation which had recently been settled arising from her medical issues
 - No adequate assessment of her risk profile had been undertaken by the Provider prior to the investment being sold
- Following commencement of formal investigation, Provider responded in detail to issues raised and parties exchanged a number of additional submissions
- In course of adjudication, Provider suggested a late mediation which was accepted by other party
- Complaint settled after one day of mediation and accepted by both parties

Case study 3: Complaint not upheld

- Complainant responded to phishing email with loss of €4,900 from their account (bank subsequently retrieved €1,006)
- Complainant maintained Bank partly responsible for allowing transaction to take place, and sought for Bank to share responsibility for loss by refunding 75% of unrecovered funds
- Bank contended disputed transaction had been processed using online banking number, internet Password and Personal Access Number
- Bank took view that Complainant had been grossly negligent, given:
 - Their disclosure of personal confidential data
 - A few months previously, the Complainant had answered another phishing e-mail leading to a loss of €1,400 – on that occasion the Bank had refunded the transaction as a gesture of goodwill
 - Numerous warnings had been issued to the Complainant that the bank will never request her personal details by e-mail or text
- In considering the complaint, the Ombudsman noted:
 - The Terms & Conditions of the account warned that all cards, devices, PINs and Passwords should not be disclosed or divulged or in any way made accessible to a third party
 - The provisions of the EC (Payments Services) Regulations 2009 noting that the account holder is to bear all losses relation to an unauthorised payment transaction if such losses are incurred by virtue of the account holder having acted fraudulently or having failed intentionally or by way of gross negligence to fulfil one or more of the account holder's obligations
 - The views of the High Court and Supreme Court in Ireland in relation o the test for gross negligence – namely “a degree of negligence where whatever duty of care may be involved has not been met by a significant margin”
- Finding reached that Complainant had been grossly negligent against the above facts
- Complaint was not upheld on that basis

Some final guidance if you are involved in a dispute that is referred to US ...

- *Provide considered and accurate Final Response Letters*
- **Empower** *the person who signs off the FRL to engage meaningfully with the FSO Dispute Resolution Team*
- *Provide full information when asked – don't drip feed*
- *Retain ownership of your complaints – they are your customers!*
- *Only allow complaints to go to adjudication as a last resort and don't wait for the preliminary finding before engaging*

The Need for plain English

“If at the present Review Date no election by the legal owner or owners of the Policy under and in accordance with this provision has been received by the Company the Policy shall lapse and cease to be in force on the first Relevant Monthly Date on which the Accumulated Policy Value is exceeded by the total of the mortality and expense deductions at such date under the Mortality Deduction and Expense Deduction provisions and any other deductions and charges at such time in accordance with the provisions of the Policy.”

The Need for Plain English and Clarity



Thank you ...

For further information - www.financialombudsman.ie

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Questions?