

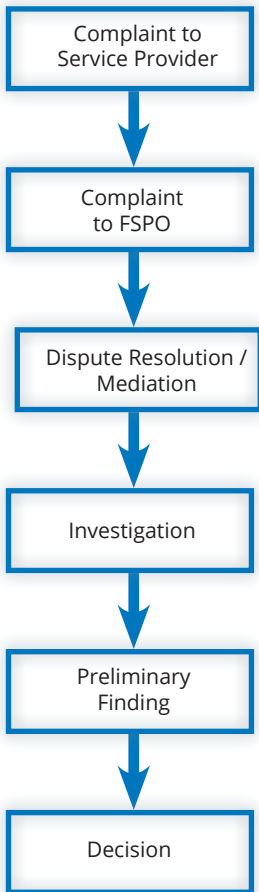
LITIGATION, DISPUTE RESOLUTION AND INVESTIGATIONS

Emerging Trends in Complaints to the Financial Services and Pensions Ombudsman

May 2020

The Financial Services and Pensions Ombudsman (FSPO) published its annual [Overview of Complaints](#) in March 2020 which reports on complaints handled in 2019. In this briefing, we reflect on some emerging trends in complaints in the banking, insurance, investments and pensions sectors.

Life Cycle of an FSPO Complaint



Majority of Complaints Resolved through Mediation

There has been a continued uptake in parties availing of the FSPO's informal dispute resolution service to resolve complaints. This service was established in January 2018 and uses mediation techniques to resolve complaints. Of the 4,969 eligible complaints received in 2019, 2,154 were resolved through this informal process with 983 complainants receiving redress and/or compensation.

The FSPO's informal dispute resolution service is voluntary, confidential and can bring a number of advantages including that the parties self-determine a resolution to the complaint rather than having a solution imposed. It also typically means that complaints can be resolved more quickly. However, not all complaints are suitable for resolution through this process (with pension complaints in particular often unsuitable in practice) and any party may elect not to continue their participation at any stage.

Majority of Complaints Decided by the FSPO Not Upheld

Where a complainant does not elect to avail of the informal dispute resolution service or where a complaint cannot be resolved in this way, it is referred to the FSPO's formal investigation process. Over the course of 2019, the FSPO issued 439 decisions which are outlined in greater detail in its [Digest of Legally Binding](#)

[Decisions](#). Of the complaints decided following investigation, 201 were upheld to some extent and 238 were not upheld. Decisions of the FSPO are legally binding and can be appealed by either party to the High Court within 35 days.

Financial Services Complaints: Increased Focus on Fairness and Conduct of Providers

The FSPO has a broad jurisdiction to deal with financial services complaints which fall outside "the realm of contract law, the law of negligence, or other defined legal rights or principles" (see the High Court decision in [O'Donoghue v Office of the FSPO](#)). The FSPO can uphold a claim if he finds that the conduct, of the financial service provider complained of, was unreasonable, unjust, oppressive or improperly discriminatory. In addition, the FSPO can uphold such a complaint if the application of a practice, law, or regulatory standard was unreasonable, unjust, oppressive or improperly discriminatory in its application to a complainant, or if the conduct complained of was based wholly or partly on an improper motive, an irrelevant ground, or an irrelevant consideration. The FSPO also has a power to look to the conduct complained of and to and to consider if it was "otherwise improper".

This focus on the fairness and conduct of financial service providers when engaging with customers is evident in many of the FSPO's decisions from 2019.

- In one such decision, the FSPO directed the financial service provider to pay €30,000 in compensation where it considered that the bank's "complete absence of communication" meant that it had not acted in the best interests of the complainants who were in arrears on their mortgage. The FSPO awarded this compensation notwithstanding its acknowledgement that the bank was contractually entitled to enforce the loan.
- The FSPO also held in a separate decision that a financial service provider's actions displayed a failure to "understand the seriousness and impact of its conduct". The provider had agreed to amend the complainant's Irish Credit Bureau record but then failed to do so and, upon receiving the complaint, made an offer of €100 in compensation. The FSPO stated that the bank's conduct towards the complainant was "extremely unfair" and directed the financial service provider to pay €15,000 to the complainant.

Banking Products Generate Most Complaints

Of the 4,969 eligible complaints received in 2019, the majority (58%) related to banking products; 33% of complaints related to insurance, with 5% and 4% relating to investment products and pension schemes respectively.

Mortgages continue to be the largest product type complained about at 53% of all banking complaints, with complaints regarding bank accounts representing the second largest product type at 26%. In terms of banking conduct complained of, customer service and maladministration make up close to 40% of such complaints, with the application of tracker mortgage interest rates accounting for only 10%.

The majority of insurance complaints relate to motor insurance, representing

27% of all insurance claims, followed by health insurance and life insurance. Refusal of the insurer to pay the claim is the most common complaint.

Investment complaints represent 5% of all complaints received in 2019, with general investments and personal pensions making up 51% and 43% respectively of these complaints. Of the 214 pension scheme complaints received in 2019, the products complained of included public and private occupational pension schemes, trust RACs and PRSAs. 77% of these 214 complainants alleged a loss of pension scheme benefits due to a miscalculation of pension benefits and/or maladministration.

Tracker Mortgage Interest Rates

The FSPO handled a number of complaints relating to tracker mortgages in 2019 and issued 25 decisions which are outlined in greater detail in its [Digest of Legally Binding Decisions – Tracker Mortgage Interest Rates](#). Of the 25 decisions made by the FSPO relating to tracker mortgage complaints in 2019, 17 were not upheld and 8 were upheld to some degree (either fully, substantially or partially).

- In 3 complaints, the banks had restored the complainants' correct tracker mortgage rate from the correct date and at the correct rate. However, the FSPO found that the compensation offered by the banks was insufficient and directed an increase in the compensation to be paid.
- In 1 complaint, the FSPO directed the bank to restore a tracker interest rate on the mortgage, repay overpaid interest and pay compensation. As the underlying loan had been sold by the bank to a third party financial service provider, the FSPO directed the bank to "make arrangements with the purchaser of the loan to ensure the complainants

continued to benefit from the correct tracker rate of interest for the remainder of the mortgage."

- In 1 complaint, the FSPO found the bank had delayed in offering the complainant a tracker portability mortgage and directed €3,000 in compensation.
- In 2 complaints, while the FSPO found that the complainants were not entitled to a tracker interest rate on their mortgages, he found the quality of the information given to the complainants was "lacking" and directed the bank to pay €2,500 in compensation in one case and €3,000 in another.
- In 1 complaint, the FSPO found that the complainants were not entitled to a tracker interest rate on their mortgage, however, the FSPO indicated that he "was concerned that the bank did not appear to be aware of its obligations under the Central Bank's Consumer Protection Code in relation to the retention of records" and directed the bank to review and change its practice in relation to maintaining consumer records.

The majority of tracker mortgage related complaints decided in 2019 were not upheld. The FSPO predicts that this trend will continue commenting that "I believe it is likely that it will continue to be the case that a large number of complaints relating to tracker interest rates on mortgage loans will not be upheld. This is because some complainants have unrealistic expectations, believing that their desire to have a tracker interest rate provides a basis for requiring their bank to grant them one. There seems to be a lack of understanding, by some complainants, that for a person to have an entitlement to a particular tracker interest rate there must be some contractual or other obligation on their bank entitling them to such a rate."

We would like to thank Amelia Walsh for her contribution to this briefing.

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