



Isle of Man Office of Fair Trading

**FINANCIAL SERVICES
OMBUDSMAN SCHEME**

**ANNUAL REPORT
2013/14**



Isle of Man
Government

Reiltys Ellan Vannin

VERSION 1.0

Financial Services Ombudsman Scheme Report at 31st March 2014

Contents

1. Introduction
2. Data
3. Comment on Trends in Complaints
4. Case Studies as Determined by Adjudicators
5. Scheme Update
6. Extension of the Scheme Remit
7. Scheme Accreditation
8. Contact Details

1. Introduction

Welcome to the annual review of the Financial Services Ombudsman Scheme ('the Scheme') which covers the period from 1st April 2013 to 31st March 2014.

The Scheme, which is currently free to both consumers and financial providers, is managed by and operates out of the Isle of Man Office of Fair Trading (OFT). It is established under Schedule 4 of the Financial Services Act 2008.

The aim of the Scheme, where possible, is to put the complainant in the position they would have been in had the relevant act or omission not occurred. It is not to seek betterment for the complainant or to punish the financial provider.

Where a complaint is found to be within the Scheme remit, case officers provide the first stage of complaint handling, offering a conciliation and mediation service. The involvement of case officers with an impartial viewpoint can help the parties see the complaint in a different light and resolve the matter with mutual agreement. In cases where mediation of a complaint fails, it can be referred to an Adjudicator for formal investigation and determination.

Where, after consideration, a complaint is declined, the reasons why are always explained to complainants and they are given the opportunity to respond if they disagree. Wherever possible, we will inform the complainants of any alternative courses of action which may be available to them.

The Isle of Man Appointments Commission nominates and maintains a panel of six Adjudicators who work independently from the OFT. As part of their consideration of the complaint, the Adjudicator will take into account the relevant law, statutory regulations, regulators' rules, guidance and standards and codes of practice. If the Adjudicator upholds the complaint, they can make binding awards of up to £150,000.

If either party disagrees with the final determination of an Adjudicator, they can ask for the complaint to be reviewed by the Senior Adjudicator who will consider the complaint and either uphold the original determination or issue their own.

If a complainant is dissatisfied with the determination of an Adjudicator, they cannot take their complaint on to court. Awards made by the Adjudicators are binding on both parties, subject only to appeal to the High Court on a point of law.

2. Data

Overall, we handled 490 initial enquiries and complaints from consumers. A complaint is recorded when the Scheme receives a complaint form and the matter is investigated. In the case of an enquiry, a completed complaint form is not received but some discussion may take place with the client regarding their concerns and further communication may be necessary.

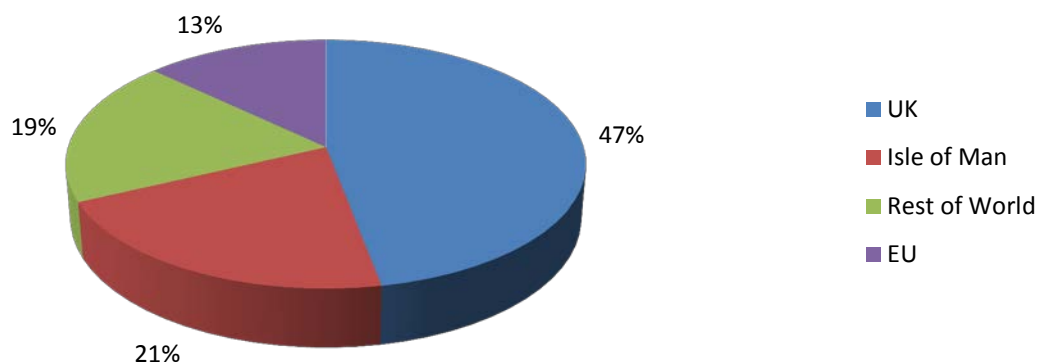
2.1 Numbers of enquiries and complaints received over the year

Year	2012/13	2013/14
Complaint forms received	285	277
Enquiries received	282	213

2.2 Residence of Complainants

Where the complainant lives	2012/13		2013/14	
	No.	%	No.	%
UK	127	45	129	47
Isle of Man	87	30	58	21
Rest of World	35	12	54	19
EU	36	13	36	13
Total	285		277	

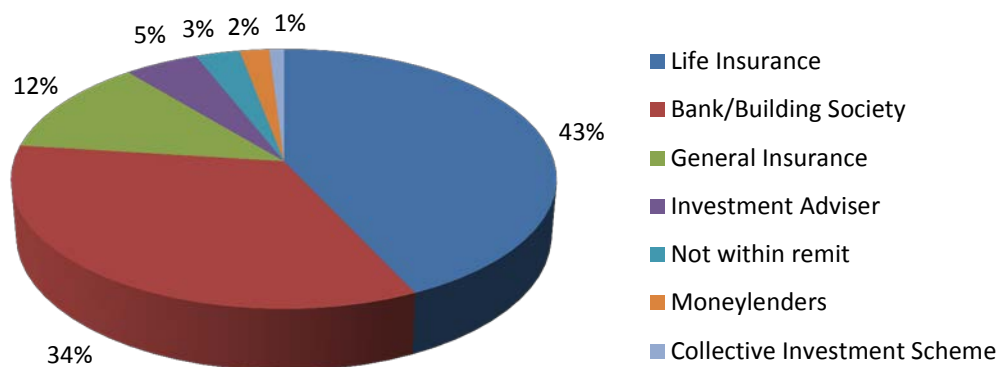
Residence of Complainants 2013/14



2.3 Provider Type

Type of provider complained about	2012/13		2013/14	
	No.	%	No.	%
Life Insurance	101	36	119	43
Bank/Building Society	119	42	93	34
General Insurance	18	6	32	12
Investment Adviser	19	7	14	5
Not within definition of financial service	4	1	9	3
Moneylenders	14	5	7	2
Collective Investment Scheme	10	3	3	1
Total	285		277	

Provider Type 2013/14



2.4 Closed complaints

Outcome of complaints	2012/13	
	No.	%
Outside scope of the Scheme	140	50
Resolved through mediation	61	22
No financial loss through provider error	60	22
Fair offer made by provider	15	5
Determined by Adjudicator	3	1
Total	279	

2.4.1 Reasons why complaints were outside the scope of the Scheme

The Scheme, after initial enquiries and investigations, declined in accordance with the legislation, to give further consideration to 50% of the complaints received. A breakdown of the reasons for decline is shown in the following table:

Reason Scheme declined 2013/14	No.	%
Out of time: <i>Complaint is received more than two years after the act or omission giving rise to it came, or ought reasonably have come, to the knowledge of the complainant; and in any case, more than six years after that act or omission.</i>	59	42
Commercial judgement: <i>A reasonable assessment has been made by the financial services provider of risk, or of financial or commercial criteria or of character.</i>	31	22
Not an Isle of Man provider: <i>The financial provider is not operating in or from the Isle of Man.</i>	24	17
No financial service provided: <i>The service provided is not covered by the Scheme.</i>	9	7
Not an individual: <i>The Scheme is unable to consider complaints received on behalf of a body corporate.</i>	8	6
Investment performance: <i>Movements on the financial markets have affected the value of an investment rather than the actions of the supplier.</i>	7	5
Better dealt with in court: <i>The dispute would be more suitably dealt with by a court.</i>	2	1
Total	140	

2.5 Closed enquiries

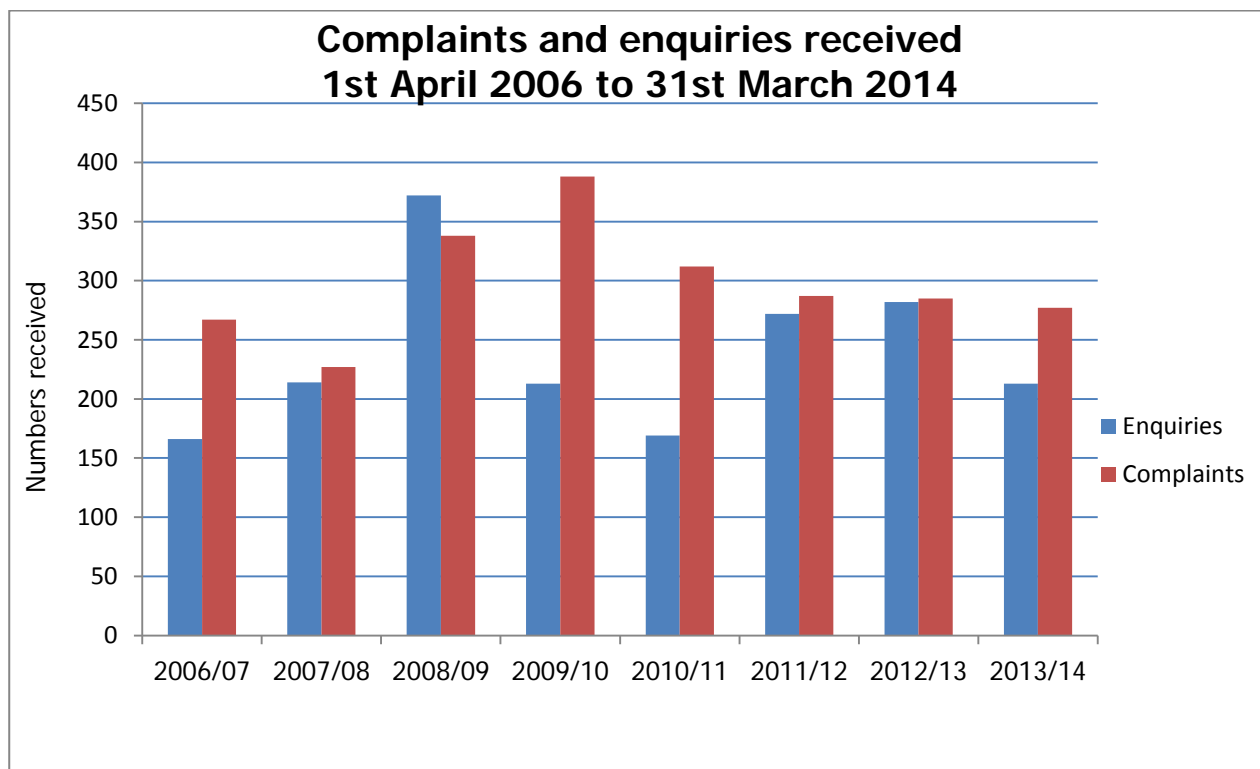
Outcome of enquiries	2013/14	
	No.	%
Advice & assistance provided to complainant on initial contact with no further action required.	137	67
Found to be outside the remit of the Scheme	60	29
Resolved through Scheme intervention. The case worker has contacted the provider on behalf of the client and the complaint has been resolved without the need for a complaint form.	9	4
Total	206	

2.6 Work in progress

Active complaints open at 1st April 2014	
Awaiting response from complainant	89
Under investigation	26
Awaiting response from provider	23
Total	138

3. Comment on Trends in Complaints

Overall, the Scheme received 490 initial enquiries and complaints from consumers. The number of complaints remained very similar as handled the previous year but the number of enquiries fell by 25%.



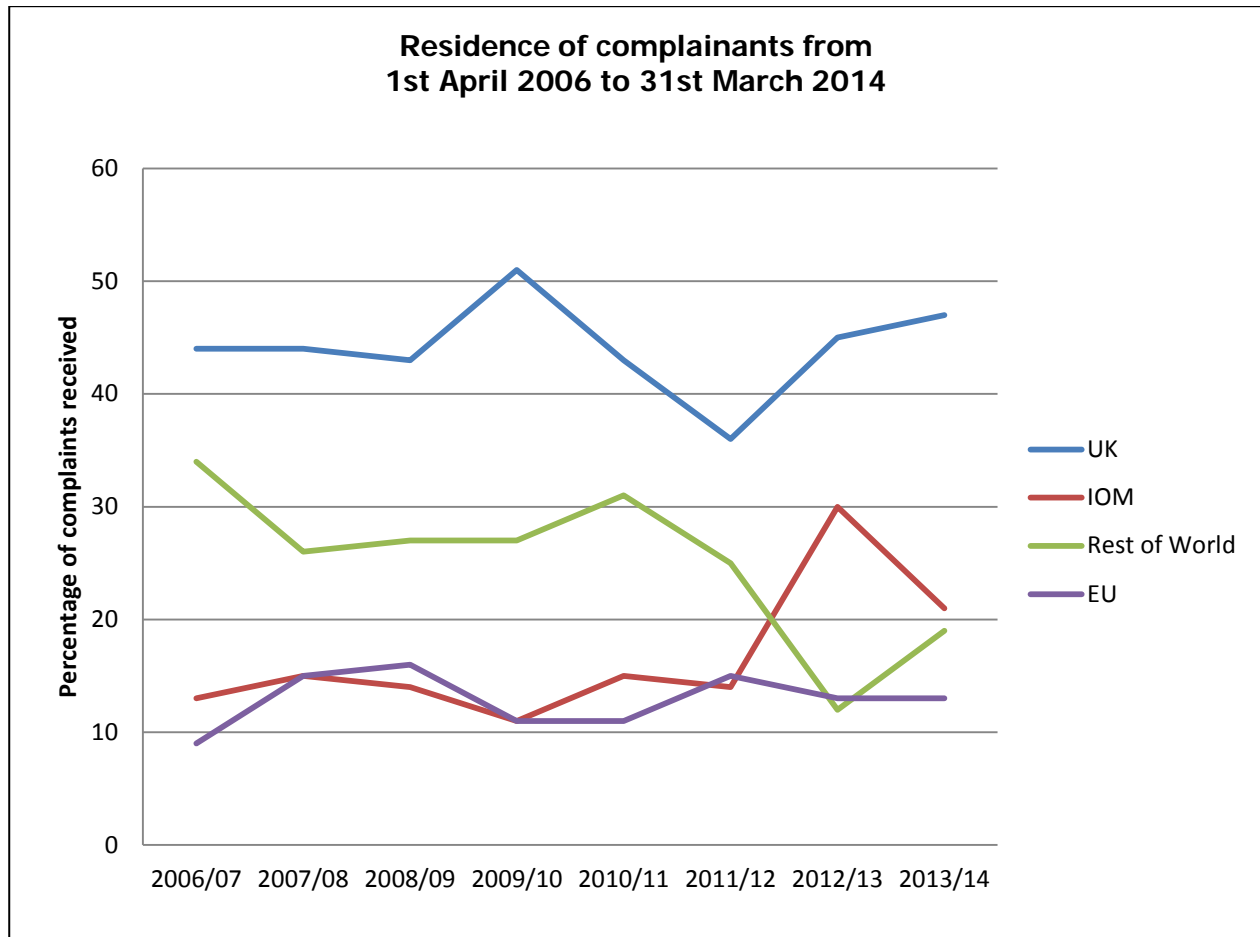
As in previous years, the life insurance companies and banks account for the highest numbers of complaints received, representing 43% and 34% respectively, compared with 36% and 42% of complaints received in 2012/13. The percentage of complaints against banks and moneylenders fell and this was largely due to a reduction in the number of complaints the Scheme received about the mis-selling of Payment Protection Insurance (PPI).

The percentage of complaints made against life insurance companies rose and this was partly due to a number of property funds which were suspended following the financial crash in 2008. Although some investors accepted the suspension of funds in the short term, they are becoming increasingly nervous about the prospects of the funds' reactivation and the return of their investment.

During the investigation of a number of complaints, it has become apparent to case officers that complainants do not fully understand how a number of life insurance products work and the separate, differing responsibilities of the life insurance companies and the fund managers. These should have been made clear to the complainants by their financial adviser at the time of investment, but regrettably this is not always the case.

2013/14 also saw an increase in complaints about general insurance relating to an insurance-backed warranty and this continues to be the cause of an increasing number of complaints being brought to the Scheme for investigation.

Although the number of complaints found to be outside the scope of the Scheme did not change year on year, the number declined as being 'out of time' reduced by 35%, a result of the reduced number of PPI complaints received.



The reduction in numbers of PPI complaints received by the Scheme was also a factor in the fall in numbers of complaints received from Isle of Man residents. In 2012/13, 30% of complainants resided in the Isle of Man but by 2013/14 this figure had fallen to 21%. Consideration of the country of residence of complainants gives an indication of the global nature of the financial industry on the Isle of Man. Whilst 81% of complainants live within Europe, the spread of the remaining 19% is worldwide, with complaints being received from the Middle and Far East, as well as both North and South America.

4. Case Studies as Determined by Adjudicators

Three complaints were determined by the Adjudicators in the period 1st April 2013 to 31st March 2014 and these are detailed below.

1. Mis-sale of Louis Group product

Complaint made to the Scheme

The Complainants reside in the Isle of Man and alleged that the advice they received from the Supplier to invest into a Louis Group Property Investment & Cession of Securities Agreement (PICS) was not suitable for their needs or requirements.

Summary of complaint

In September 2007, the Complainants received advice from the Supplier which led to the Complainants investing £145,000 into a PICS which had a maturity date of 1st November 2012. At the time of the investment, the Complainants made it clear that they required a low risk product.

Interest in the sum of £10,400 was received in each of the years 2008; 2009 and 2010 and a cash balance of £342.88 was returned, however no further interest was received and the PICS defaulted on payment at its maturity.

The PICS is an unregulated product, the structure of which caused the Complainants to make a loan to a Louis Group BVI based company, now in provisional liquidation. The loan was secured against shares held in an unregulated Louis Group experienced investor fund, which itself invested into property via mezzanine financing.

The investment comprised a substantial portion of a Complainants' capital assets (excluding the value of their home).

Findings

The Director of the Supplier who recommended this investment knew the Complainants socially.

After consideration of all the evidence, it was determined that this was a complicated and risky investment which was not in line with the Complainants' risk profile. Furthermore, the Director of the Supplier was not in a position to give independent advice as his involvement with the Louis Group created a conflict of interest. He did not have a dispassionate and analytical approach to this investment.

There was no evidence of any product information regarding PICS being produced or supplied to the Complainants. There was no evidence that the Supplier understood the product, therefore the Supplier was unable to ensure that the Complainants were made aware of, and understood, the risks of the investment. However, the Supplier knew that the investment was unregulated and unprotected by any Statutory Compensation Scheme in the event of failure, but failed to inform the Complainants accordingly, despite the fact that the previous investments made through the Supplier firm since 2001 had always been mainstream, low-risk, regulated and covered by a Statutory Compensation Scheme.

It was not possible therefore for the Complainants to make an informed decision regarding investing in this product. Accordingly the complaint was upheld.

Award

The Complainants were entitled to compensation for the loss of £145,000 minus the interest payments and cash refund, plus interest on the balance in recognition of the fact that the capital sum could have been invested elsewhere. However the amount of compensation was capped at £100,000 this being the maximum sum which can be awarded in respect of an act or omission giving rise to a dispute occurring prior to 1 April 2012 pursuant to paragraph 6(2)(b) of Schedule 4 of the Financial Services Act 2008.

2. Incorrect advice from insurance intermediary

Complaint made to the Scheme

The Complainant resided in the Isle of Man but regrettably died during the course of the complaint, which was then continued by his son, being the Complainant's appointed representative and who resides in the UK. The Complainant alleged that because of advice received from the insurance intermediary, his residence was uninsured during his absence from the property and hence when a claim for water damage was made it was rejected by the insurer.

Summary of complaint

The son, acting as his father's agent, contacted the Supplier by telephone in late June 2010 to advise that his father, the Complainant, had suffered a stroke and been admitted to hospital. It was not known when / if he would return to his home in Douglas, the household and contents insurance on which had been arranged by the Supplier.

The son stated that during the telephone call, he had been advised by the Supplier that his father's property could be left unoccupied for an extended period of more than 60 days and would remain insured as long as it was regularly visited.

The Supplier stated that, during the telephone call, reference was made to the insurance policy and the son was advised that if the property was left unoccupied for more than 60 days cover would be reduced, the insurer would need to be advised and possibly a new insurance policy taken out.

The property was placed on the market on 1st July 2010 through a local estate agent who visited the property with potential purchasers on a frequent basis, the longest period when it was not visited being 58 days. The Complainant never returned to occupy the property.

A visit to the property was made on 4th January 2011 by the estate agent when it was found that the water tank had leaked and caused water damage to both the Complainant's property and that of the adjoining property. On discovery of the damage, the son advised the insurance company and made a claim for the costs associated with the same. Such claim was declined by the insurer in accordance with the policy terms as the property had been unoccupied for more than 60 days.

The son stated that he was given incorrect advice by the Supplier and in settlement of the complaint, requested a payment from the Supplier of the actual and consequential financial losses suffered by the same. These were calculated by the son to amount to £33,743.00, the majority of which figure represented the reduced value of the property due to water damage.

Further aspects of the son's complaint related to the Supplier's procedures for handling matters such as this and its failure to manage an ex-gratia claim when the original claim was declined by the insurer.

Findings

There was no recording of the disputed telephone call of June 2010, but the Adjudicator found, on the balance of probabilities, that within the same the son was given poor advice by the Supplier. By calling the Supplier the son had properly disclosed information about the property status which information the Supplier should then have immediately disclosed to the insurer. The Supplier was found to be negligent in such matter.

In regard to the other aspects of the complaint the Adjudicator found that the Supplier failed to follow its own complaints procedure but the Supplier was not negligent in failing to manage an ex-gratia claim.

Award

The Supplier was ordered to pay the sum of £16,671, together with interest thereon, to the son which sum reflected the under-insurance of the property. The Supplier was also ordered to pay the sum of £250.00 to the son in recognition of the distress and inconvenience caused in such matter.

Appeal to the Senior Adjudicator

On review the complaint was dismissed, as it was found that the financial service provided by the Supplier as an 'insurance intermediary' was not within the remit of the Scheme.

3. Recall of fraudulent cheque

Complaint made to the Scheme

The Complainant, who resided in the UK, relied on assurances given to him by his Bank that a credit of £6,000 to his account by a third party could not be subsequently withdrawn by that person. On receipt of the advice the Complainant released a Rolex watch worth £6,000 to the third party. It was later found that the credit had been made using a cheque that was stolen and the funds were withdrawn from the Complainant's account. The Complainant holds the Supplier liable for his loss and requested the return of the £6,000 plus interest.

Summary of Complaint

In June 2011 the Complainant offered a Rolex watch for sale via e-Bay which a third party agreed to buy for £6,000. The transaction was concluded and payment was made outside the e-Bay payment system and a cheque for such sum was paid into the clearing banking system for credit to the Complainant's account with the Supplier on 22nd June 2011 and actually credited (as uncleared funds) 23rd June 2011.

On 23rd June 2011, the Complainant telephoned the Supplier to check that the funds had been credited and to enquire whether the monies could be withdrawn by any person. The Supplier confirmed receipt of the funds and advised that no person could take the funds out of his account unless so instructed by the Complainant.

On receipt of the above advice, the Complainant then released the watch to a third party acting as a representative of the buyer. It was then found that the cheque for £6,000 was stolen and the funds were subsequently debited from the Complainant's account on 28th June 2011.

The Complainant reported the incident to the Police who made some enquiries but ultimately the Police file was closed with no reparation being made to the Complainant for his watch or the value of the same.

The Complainant advises that it was only on the advice of the Supplier, that the funds of £6,000 could not be withdrawn by a person from his account without his instruction, that he released the watch to a third party and hence the Complainant holds the Supplier liable for his loss.

The Supplier defended the claim as the funds were not withdrawn by any person rather the cheque was returned unpaid by the issuing Bank and therefore the Supplier stated that the advice it provided to the Complainant was correct. The Supplier also felt that the Complainant had been negligent by not insuring the watch, by giving the watch to a representative of the buyer and in not utilising the e-Bay payment system which provides some security for such transactions.

Findings

The transcript of the telephone call which was made by the Complainant to the Supplier on 23rd June 2011 revealed that the Complainant did not ask a series of complicated questions. His request was simply, 'have the funds arrived and can they be removed'? The answers of the Supplier's customer service agent gave the impression that the funds could not be removed without the consent of the Complainant. There was no mention that the funds were uncleared and the Complainant could not rely on them until the end of the sixth working day. If he had been advised correctly, the Complainant would no doubt have acted differently. As a result, the Complainant was found to be £6,000 out of pocket as a direct consequence of poor or wrong advice from the Supplier.

Award

The Supplier was ordered to pay to the Complainant the sum of £6,000. The Adjudicator did not exercise his discretion about whether interest had to be paid as he felt that the Complainant had in part been the author of his own misfortune.

5. Scheme Update

Following on from the customer survey undertaken in early 2013, the OFT has sought to improve the information issued to consumers who may have a complaint against a financial provider. In 2013/14, the explanatory guide, frequently asked questions sheet and the complaint form were updated and redesigned to improve the information given to consumers and the ways in which the Scheme can help them. These improvements may be a contributing factor to the fall in numbers of enquiries to the Scheme.

Before making a complaint to the Scheme, the consumer must first give the business the opportunity to resolve their complaint and financial providers are required to try and resolve complaints at the earliest opportunity. Since the inception of the Scheme, financial providers were allowed twelve weeks in which to respond to a complaint. To improve customer service, the time allowed for providers' internal complaints procedure was reduced from twelve weeks to eight weeks with effect from 1st January 2014.

6. Extension of the Remit of the Scheme

The Scheme is established under Schedule 4 of the Financial Services Act 2008. This Act allows for the extension of the Scheme remit to include types of financial services not previously included.

In 2011 the Board of the OFT proposed that the Scheme be extended to include aspects of complaints made about Self Invested Personal Pensions not already covered by the UK Pensions Ombudsman and it is anticipated that this addition will come into effect in 2015.

The Board is also considering the addition of services provided by insurance intermediaries to the Scheme, an anomaly which came to light during consideration of the complaint detailed in section 4.2 of this report.

7. Scheme Accreditation

In November 2013, the Chairman and Secretary of the Ombudsman Association (OA) visited the OFT. One of the agenda items for their visit was to collect further information and discuss the revalidation of the Financial Services Ombudsman Scheme as an 'ombudsman' category of membership of the OA. The Executive Committee of the OA has unanimously approved the Scheme's re-validation as an Ombudsman Member.

8. Contact Details

If you have any questions about the operation of the Scheme, a specific issue or feedback on this report, please contact us using the details below.

Isle of Man Financial Services Ombudsman Scheme
Office of Fair Trading
Government Building
Lord Street, Douglas
Isle of Man
IM1 1LE
British Isles

Telephone: +44 (0)1624 686500

Fax: +44 (0)1624 686504

E-mail: ombudsman@iomoft.gov.im

Website: www.gov.im/oft