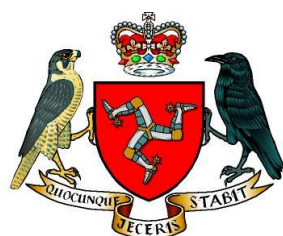




**Isle of Man Office of Fair Trading**

**FINANCIAL SERVICES  
OMBUDSMAN SCHEME**

**ANNUAL REPORT  
2012/13**



**Isle of Man  
Government**

*Reiltys Ellan Vannin*

**VERSION 1.0**



# **Financial Services Ombudsman Scheme Report at 31<sup>st</sup> March 2013**

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## 1. Introduction

Welcome to the annual review of the Financial Services Ombudsman Scheme ('the Scheme') which covers the period from 1<sup>st</sup> April 2012 to 31<sup>st</sup> March 2013.

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 ('the Office'). 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.

The Isle of Man Appointments Commission nominates and maintains a panel of six Adjudicators who work independently from the Office of Fair Trading. 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

All contacts with the Office are discussed and recorded as enquiries. These contacts are defined as complaints upon receipt of a completed complaint form.

### 2.1 Change in numbers of enquiries and complaints received over the year

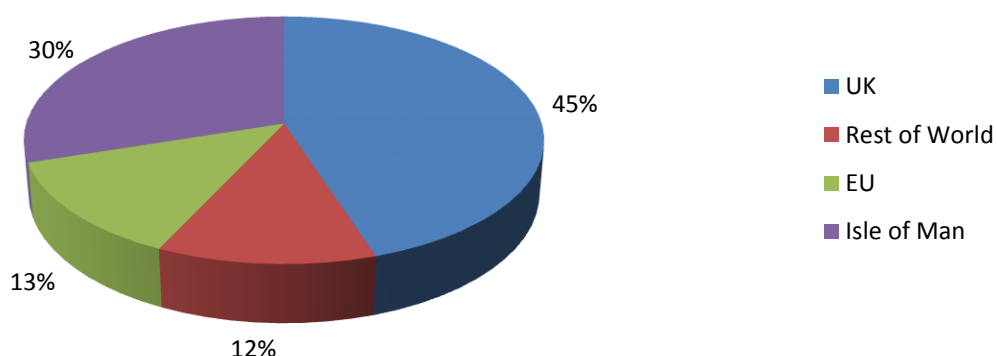
| Year                     | 2011/12 | 2012/13 |
|--------------------------|---------|---------|
|                          |         |         |
| Complaint forms received | 287     | 285     |
| Enquiries received       | 272     | 282     |

A total of 567 contacts were made with the Office during 2012/13 of which 285 were recorded as complaints.

### 2.2 Residence of Complainants

| Where the complainant lives | 2011/12    |    | 2012/13    |    |
|-----------------------------|------------|----|------------|----|
|                             | No.        | %  | No.        | %  |
| UK                          | 103        | 36 | 127        | 45 |
| Rest of World               | 72         | 25 | 35         | 12 |
| EU                          | 43         | 15 | 36         | 13 |
| Isle of Man                 | 69         | 24 | 87         | 30 |
| <b>Total</b>                | <b>287</b> |    | <b>285</b> |    |

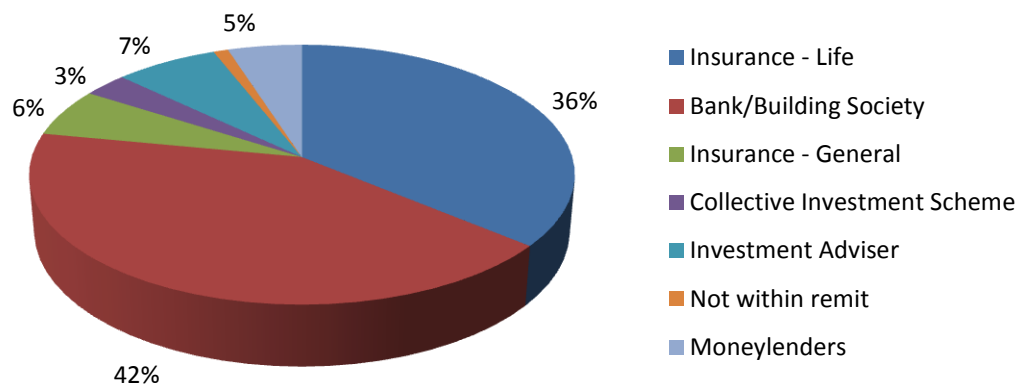
### Residence of Complainants 2012/13



## 2.3 Provider Type

| Type of provider complained about          | 2011/12    |    | 2012/13    |    |
|--|------------|----|------------|----|
|  | No.        | %  | No.        | %  |
| Bank/Building Society                      | 114        | 40 | 119        | 42 |
| Insurance - Life                           | 101        | 35 | 101        | 36 |
| Insurance - General                        | 20         | 7  | 18         | 6  |
| Investment Adviser                         | 20         | 7  | 19         | 7  |
| Collective Investment Scheme               | 12         | 4  | 10         | 3  |
| Moneylenders                               | 13         | 5  | 14         | 5  |
| Not within definition of financial service | 7          | 2  | 4          | 1  |
| <b>Total</b>                               | <b>287</b> |    | <b>285</b> |    |

### Provider Type 2012/13



## 2.4 Closed complaints

| Outcome of complaints                    | 2011/12    |    |
|--|------------|----|
|  | No.        | %  |
| Outside scope of the Scheme              | 162        | 50 |
| Resolved through mediation               | 67         | 21 |
| No financial loss through provider error | 64         | 20 |
| Fair offer made by provider              | 17         | 5  |
| Determined by Adjudicator                | 8          | 3  |
| Referred to Pensions Ombudsman           | 2          | 1  |
| <b>Total</b>                             | <b>320</b> |    |

### 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:

| <b>Reason Scheme declined 2012/13</b>  | <b>No.</b> | <b>%</b> |
|--|------------|----------|
| Out of time: <i>Complaint is received more than two years after the act or omission giving rise to the complaint ought reasonably have come to the knowledge of the complainant or more than six years after that act or omission.</i> | 90         | 55       |
| Not an Isle of Man provider: <i>The financial provider is not operating in or from the Isle of Man.</i>  | 27         | 17       |
| 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>   | 23         | 14       |
| Not an individual: <i>The Scheme is unable to consider complaints received on behalf of a body corporate.</i>  | 12         | 7        |
| No financial service provided: <i>The service provided is not covered by the Scheme.</i>   | 4          | 3        |
| Better dealt with in court: <i>The dispute would be more suitably dealt with by a court.</i>   | 4          | 3        |
| Investment performance: <i>Movements on the financial markets have affected the value of an investment rather than the actions of the supplier.</i>  | 2          | 1        |
| <b>Total</b>   | <b>162</b> |          |

### 2.5 Closed enquiries

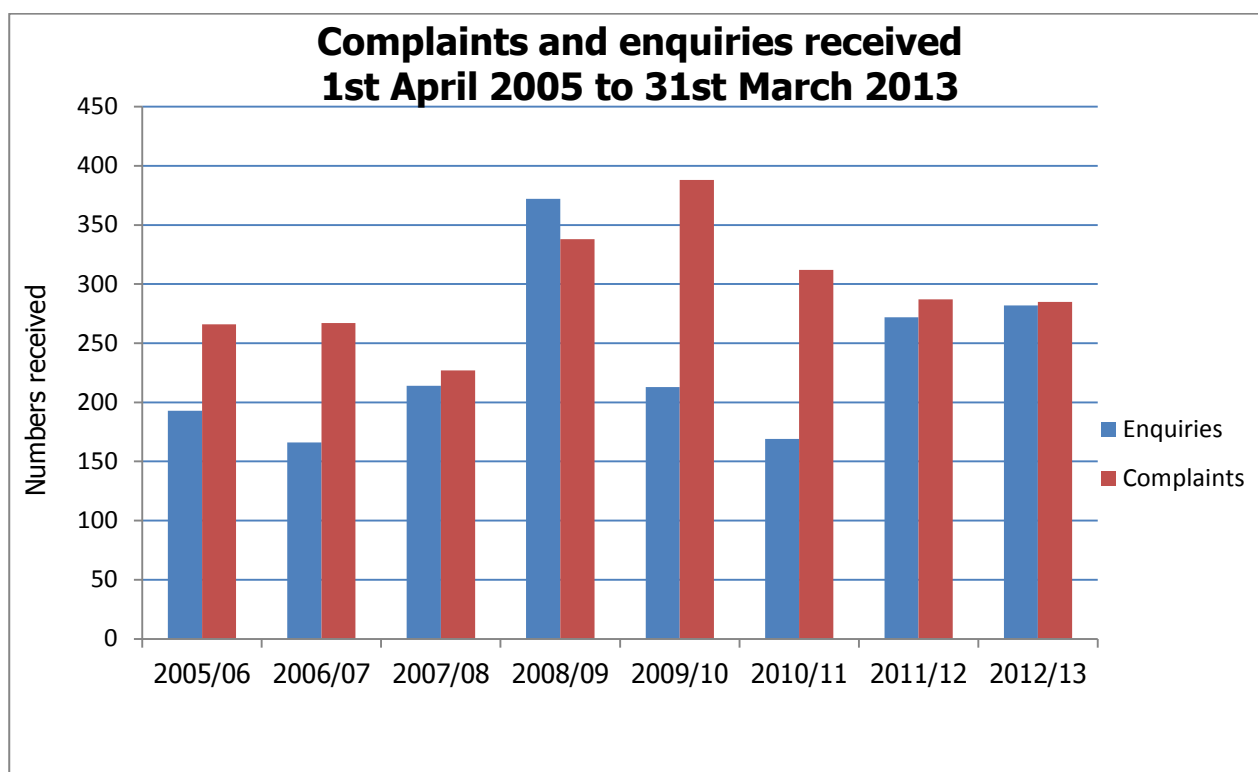
| <b>Outcome of enquiries</b>   | <b>2012/13</b> |          |
|---|----------------|----------|
|   | <b>No.</b>     | <b>%</b> |
| Advice & assistance provided to complainant on initial contact with no further action required.   | 202            | 73       |
| Found to be outside the remit of the Scheme   | 61             | 22       |
| 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. | 14             | 5        |
| <b>Total</b>  | <b>277</b>     |          |

### 2.6 Work in progress

| <b>Active complaints open at 1<sup>st</sup> April 2013</b> |            |
|--|------------|
| Awaiting response from complainant                         | 86         |
| Under investigation  | 33         |
| Awaiting response from provider                            | 14         |
| <b>Total</b>   | <b>133</b> |

### 3. Comment on Trends in Complaints

Overall the Scheme received 567 initial enquiries and complaints from consumers, almost exactly the same number as handled the previous year which reflects the continued confidence in the financial markets and their performance.



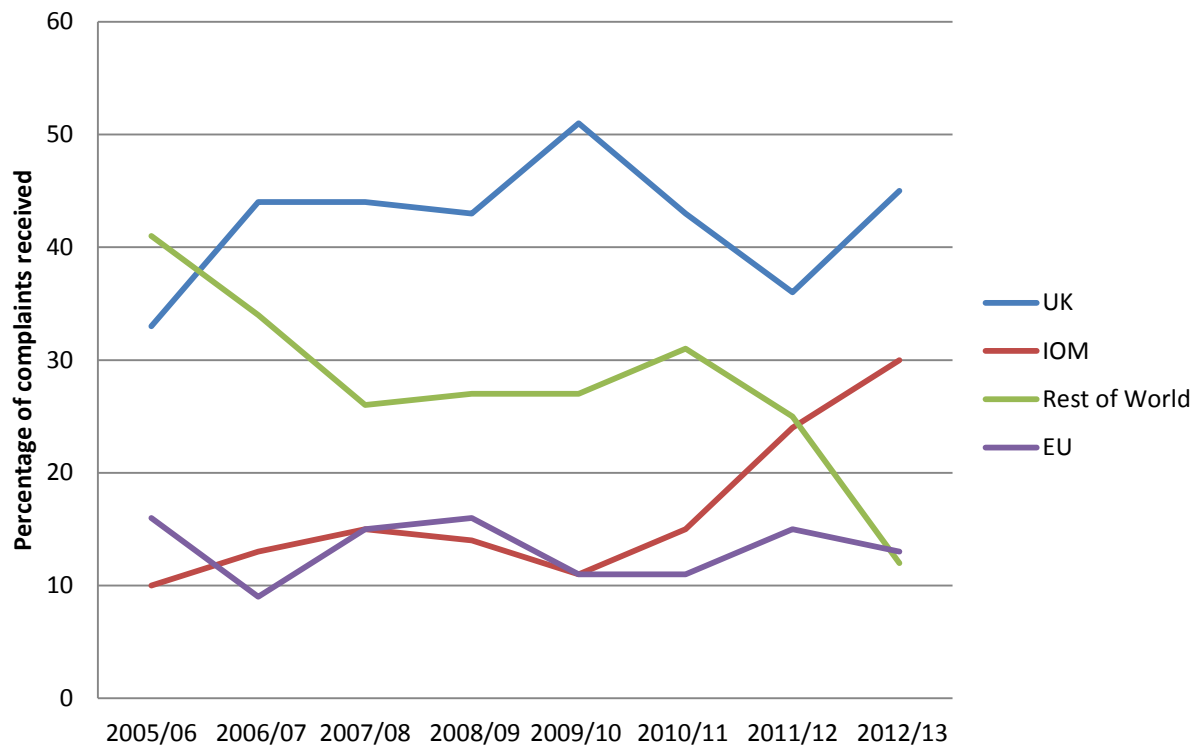
As in previous years the banks and life insurance companies account for the highest numbers of complaints received representing 42% and 36% respectively compared with 40% and 35% of complaints received in 2011/12. Complaint numbers received for other types of providers have also remained similar to the previous year.

Complaints about Personal Payment Insurance (PPI) continue to be received although not in the same volumes as our neighbours in the UK and Ireland. The case workers were able to settle the majority of PPI complaints through mediation but one PPI complaint was determined by an adjudicator and is detailed later in this report. Regrettably a number of complaints received could not be investigated as the loans to which the PPI were attached had been taken out more than six years prior to the complaint having been made to the Scheme.

PPI complaints were a factor in the rise in numbers of complaints received from Isle of Man residents. In 2010/11, 15% of complainants resided in the Isle of Man; by 2012/13 this figure had doubled to 30%. Another contributor to this increase was the collapse of a local investment product provider. Also significant is the drop in the number of complainants from the 'Rest of the World' category which accounted for 41% of complaints received in 2005/06 but had dropped to 12% of complaints received in the year 2012/13. The following chart illustrates the variance in complaint numbers received by residence of complainant since 1<sup>st</sup> April 2005.



**Residence of complainants from  
1st April 2005 to 31st March 2013**



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 alternatives which may be available to them.

## 4. Case Studies as Determined by Adjudicators

Eight complaints were determined by the Adjudicators in the period 1<sup>st</sup> April 2012 to 31<sup>st</sup> March 2013 and these are detailed below.

### **1. Mis-sales of various Louis Group (LG) products x 5**

The Scheme received a number of complaints about sales of products issued by the Louis Group both pre and post the liquidation of the relevant LG companies. The products were sold via independent financial advisers both in the Isle of Man and other jurisdictions or directly via the LG financial adviser arm.

Of the complaints received within the remit of the Scheme, five cases were submitted to and determined by the Adjudicators during the year.

#### Summary of complaints

All the complaints about mis-selling had common themes that the risk profile of the product did not match the Complainants, limited product information was supplied to the Complainants at the time the advice was provided and the complex and unregulated nature of the products had not been explained to or fully understood by the Complainants.

Common themes used to defend the complaints by the various Suppliers were that the risk profile of the products was in line with that of the Complainants, that the Supplier was entitled to rely upon the risk rating determined by the product provider and that sufficient information had been supplied or the Complainants were of sufficient experience to understand and accept the complexities and risks of the product.

#### Findings and awards

The Adjudicators' determinations for each case were as follows:

1. IOM resident, invested £50,000 into a LG secured loan note in October 2008.

Complaint upheld and award made for £50,000 plus interest at 4% to a defined date. Determination upheld by Senior Adjudicator.

2. IOM resident, invested £93,000 into a LG secured loan note in December 2008.

Complaint upheld and award made for £93,000 plus interest at 3% capped at a maximum payment of £100,000 being the Scheme award limit. Determination upheld by Senior Adjudicator.

3. Swedish resident, invested £11,000 and €14,000 into LG secured loan notes in October 2008.

Complaint upheld and award made for £11,000 plus interest at 7.42% for a defined period and €14,000 plus interest at 5.79% for a defined period.

4. IOM resident, invested £90,000 into a LG Property Investment & Cession of Securities Agreement in May 2008.

Complaint upheld and award made for £90,000 plus interest at 3% capped at a maximum payment of £100,000 being the Scheme award limit. Determination upheld by Senior Adjudicator but award amended to reflect the interest of £12,139.08 already paid out on the product during its term.

5. IOM resident, invested €10,000 into a LG property syndicate in November 2007 and £10,000 into a secured loan note in April 2009.

Complaint upheld in part :

- a) Sale of secured loan note was determined to be a mis-sale and award made for £10,000 plus interest at 3%.
- b) Sale of property syndicate was determined to be superseded by later advice provided to Complainant which clarified the investment risks and offered to refund the capital. Thereby as Complainant was in a position to make an informed decision to continue with the investment or accept the offer of a refund, and the Complainant had decided to continue with the same, this part of the complaint was not upheld.

## **2. Mis-sale of Payment Protection Insurance (PPI).**

### Complaint made to the Scheme

The Complainant resides in the Isle of Man and works part time as well as receiving a pension from his former employer. The Complainant alleges that he was sold PPI by the Supplier which he neither needed nor required and what he was sold was not appropriate to his circumstances.

### Summary of complaint

The Complainant contacted the Supplier by telephone in March 2007 as he wanted to borrow £6,500 to finance the purchase of a vehicle. The loan was agreed in principal over the telephone and the Complainant was asked to call in to the Supplier's office to complete the transaction. The Complainant stated that he was given the impression, both on the telephone and in person, that the granting of the loan was conditional on him taking out some level of PPI and in particular Critical Illness and Life cover. The cost of the PPI, £702.20, was added to the amount borrowed.

At the time of purchasing the PPI the Complainant stated he had sufficient Life cover from a number of other policies including an endowment policy and he did not need Critical Illness cover as he was already in receipt of a pension from his former employer. In addition the Complainant had a part time job.

The Supplier responded to the complaint by stating the loan had been agreed in principal over the telephone and a quote without PPI was provided. When the Complainant visited the Supplier's office to complete the transaction he was asked by a member of staff if he had adequate insurance in place. The Supplier stated the Complainant responded by saying he did not need full income protection as he received a pension; he had already repaid his mortgage but had no Life cover. The Supplier stated that the member of staff then supplied the Complainant with a quote for Life cover with Critical Illness and explained the terms & conditions to him. At this point the Supplier stated the Complainant agreed to take the cover so the Loan Agreement form was reprinted to include PPI. This Agreement was signed by the Complainant.

## Findings

The Supplier was unable to provide a recording of the telephone conversation with the Complainant and did not have any contemporaneous notes of the call or subsequent meeting. The Adjudicator in his Determination stated that in reaching his decision he had to rely on the parties' recollection of events four or five years after they had taken place because the Supplier had no records apart from the signed Agreement and copies of the Complainant's bank statement which he had provided. The Adjudicator felt the Complainant made a more credible witness because he was not shaken in his memory of the events and was consistent throughout. The Supplier however frequently contradicted itself in correspondence and had no evidence to support its assertions that the PPI had not been mis-sold.

Given the lack of supporting documentation the Adjudicator did not accept the version of events put forward by the Supplier. As the Supplier is a professional entity the Adjudicator felt it should understand the requirements to keep proper records of advice given and the reason for that advice, including what it ascertained from a customer before providing that advice. The Adjudicator determined that the fact the Complainant had signed the Loan Agreement, including Life and Critical Illness cover, did not mean he had been advised that the PPI cover was optional.

## Award

The Adjudicator ordered the Supplier to repay the PPI premiums to the Complainant with interest payable to the date the award was paid.

## **3. Decline of an insurance claim**

### Background to the Complaint

The Complainant lives in the UK and took out a specialist motor insurance policy to cover his racing car and trailer. When both items were subsequently stolen the Complainant's claim against the policy was declined.

### Summary of the complaint

In March 2008 the Complainant, whose hobby is track racing, purchased on the internet, a storage and transit insurance policy. The Policy, (underwritten by the Supplier) provided 12 months cover for the Complainant's BMW Mini Cooper ('the Mini') valued at £25,000 and a trailer valued at £3,000. The cover included theft of these items subject to the terms and conditions of the Policy. A track was booked for the 12<sup>th</sup> June 2008 to test the Mini. The Complainant loaded the Mini onto the trailer and the trailer to the towing van using straps and two chains. The trailer had the usual tumbler key operated hitchlock and there was a wheel clamp to the driver's side.

On the way to the track, the Complainant parked the van and trailer in a supermarket car park and went to the cafe for breakfast; the vehicle could not be seen from the cafe. The Complainant returned about 30 minutes later to find that the trailer and Mini had gone. Despite efforts by the Police and the Complainant these items have not been recovered.

The Supplier rejected the Complainant's claim under the Policy on the grounds that:

- (a) The Complainant failed to comply with warranties contained in the Policy with regard to the security methods used on the vehicle and trailer;

(b) Non-disclosure as the Complainant failed to disclose previous claims made in the name of the Complainant's girlfriend, namely thefts of two vehicles in separate incidents.

The Complainant says that the Supplier has:

- (a) No grounds for rejecting his claim under the Policy; and
- (b) Taken an excessive amount of time in dealing with the claim causing him distress and inconvenience.

#### Findings re: warranties

A breach of a warranty in a contract of insurance discharges the Insurer from liability as from the date of the breach provided the circumstances of the loss are connected with the breach. The burden of proof is on the Insurer. Neither party provided expert independent objective evidence regarding the means used to secure the car and trailer. Having failed to prove on the balance of probabilities that the Complainant was in breach of the warranties, the claim was upheld.

#### Findings re: non-disclosure

If a customer fails to disclose a material fact (one which would induce the Insurer to accept the risk) the Insurer may void the contract from the outset. However the modern law provides that the Insurer must ask clear questions about the material fact(s) at the outset and can only void if the non-disclosure is deliberate or reckless rather than innocent. In this case no questions were asked of the Complainant regarding previous claims history at the time he took out the Policy. In any event it was not reasonable to expect the Complainant to disclose previous claims made by his girlfriend regarding thefts from their home address which was different from the address where the trailer and van were being stored.

Accordingly the claim was upheld.

#### Award

The Supplier was ordered to accept liability under the Policy for the theft of the Mini and the trailer.

Despite the delay on the part of the Supplier no award was made for distress and inconvenience, nor was interest awarded as it was considered reasonable (given the circumstances of the claim) for the Supplier to have carried out extensive enquiries.

### **4. Incorrect advice on pension arrangements**

#### Complaint made to the Scheme

The Complainant, an Isle of Man resident and retired from full time employment, had been advised to surrender a UK personal pension plan and place the proceeds into an Isle of Man Self Invested Pension Plan which advice the Complainant believes to be incorrect.

#### Summary of complaint

The Complainant sought advice from the Supplier in July 2009 in regard to her pension arrangements; this advice led her to surrendering a UK personal pension plan (the Plan) and transferring the proceeds into an Isle of Man Self Invested Pension Plan (SIPP).

On maturity the Plan guaranteed a minimum level of annuity of which fact neither the Complainant nor the Supplier were aware when the advice to surrender the Plan was provided. The Complainant advises that if she had been made aware of such guarantee she would not have surrendered the Plan nor invested into the SIPP.

A further aspect of the complaint referenced the performance of the assets linked to the SIPP and the costs incurred by the same.

### Findings

The Supplier accepted that it was unaware of the guaranteed annuity level within the Plan but maintained that the Complainant was adamant that she did not wish to continue with the Plan (with resultant annuity) and desired pension arrangements with a greater potential to increase in value and which would continue after her death. Therefore the Supplier felt that even if the fact of the guarantee had been known the correct advice was provided, in accordance with the Complainant's requirements, to surrender the Plan and transfer the proceeds to the SIPP.

The Adjudicator found that the Complainant was not given adequate information about the guaranteed benefits of the Plan to make an informed decision about its surrender. In addition it was found that the Complainant had not been given adequate information about the costs of the SIPP or the underlying investments.

### Award

In her complaint form the Complainant asked to be put in the position she would have been in had the Plan not been surrendered. However such was not actually possible as the Plan could not be re-established and the Complainant had indicated during the course of her complaint that she was prepared to accept a lump sum in settlement of the same.

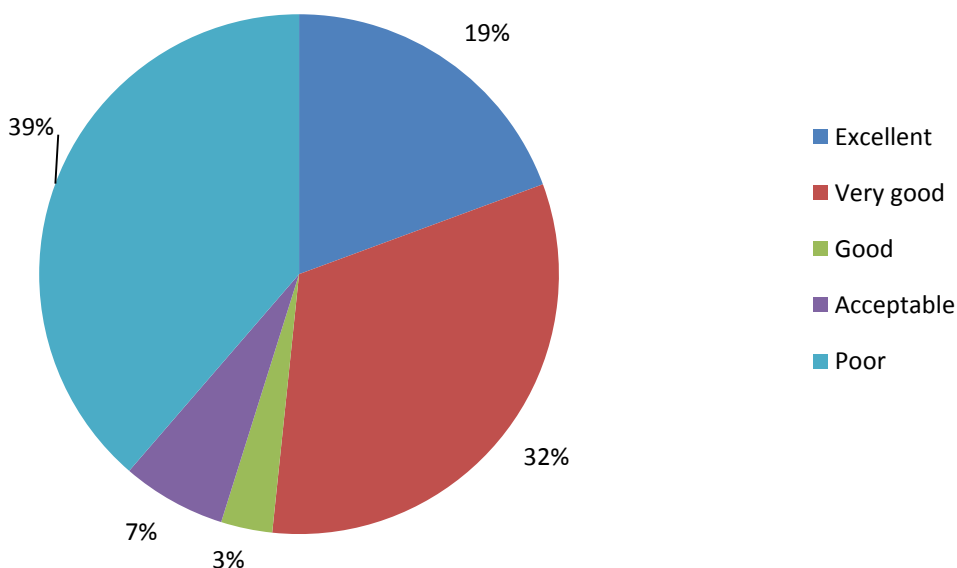
Therefore a lump sum award of £12,000 was made, representing £8,500 compensation for the loss of the Plan guarantee and £3,500 for the charges incurred in the establishing of the SIPP.

## 5. Customer Survey

In order to measure our standards of service we issued customer satisfaction questionnaires to a number of clients who used the service during the year. Respondents were asked to rate the service and the results reflected complainants' experiences of the Scheme.

Overall the outcome of the survey was positive in that those customers whose complaints fell within the remit of the Scheme expressed positive experiences with 71% rating the service as 'Excellent' and 29% as 'Very Good'. However the overall results were disappointing as they were heavily swayed by customers whose complaint was either outside the scope of the Scheme (see 2.4.1) or where the Scheme found in favour of the Supplier. Inevitably those who the Scheme was unable to assist were much less positive. The overall results are detailed in the chart below.

**How would you rate the service overall?**



A detailed examination of the responses suggested two particular problem areas in the responses from those complainants whom could not be helped:

- (a) Where complaints fell outside the Scheme as defined under the enabling legislation customers blamed the Scheme for being unable to assist – they believed that the Scheme should help everyone regardless.
- (b) Customers felt that the Scheme failed to champion their complaint with the provider. However, the role of mediation is to act as impartial broker and not to take sides and be a consumer champion.

Areas of improvement have been identified and steps taken to address the concerns raised by the respondents. In particular we will look at ways to make the Scheme more accessible and take steps to enhance the information issued to clients to further clarify the remit of the Scheme. As part of this process a new Explanatory Guide was published in April 2013.

## 6. 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.

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