

# Financial Services Ombudsman Scheme

## Report at 31<sup>st</sup> March 2009

Welcome to the annual review of the Financial Services Ombudsman Scheme which covers the period from 1<sup>st</sup> April 2008 to 31<sup>st</sup> March 2009.

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## 1. Data

Overall we handled 710 initial enquiries and complaints from consumers, an increase of 61% compared to 2007/08. A complaint is recorded when the Scheme receives a complaint form and the matter is investigated. In the case of an enquiry, a completed claim form is not received but some discussion may take place with the client regarding their concerns and further communication may be necessary.

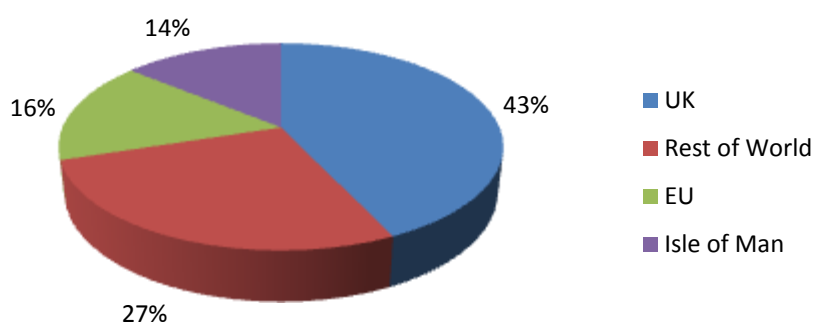
### 1.1 Growth in enquiries and complaints received over the year

Year	2007/08	2008/09
Complaints form received	227	372
Enquiries received	214	338

## 1.2 Residence of Complainants

Where the complainant lives	2007/08		2008/09	
	No.	%	No.	%
UK	100	44	158	43
Rest of World	59	26	102	27
EU	34	15	59	16
Isle of Man	34	15	53	14
<b>Total</b>	<b>227</b>		<b>372</b>	

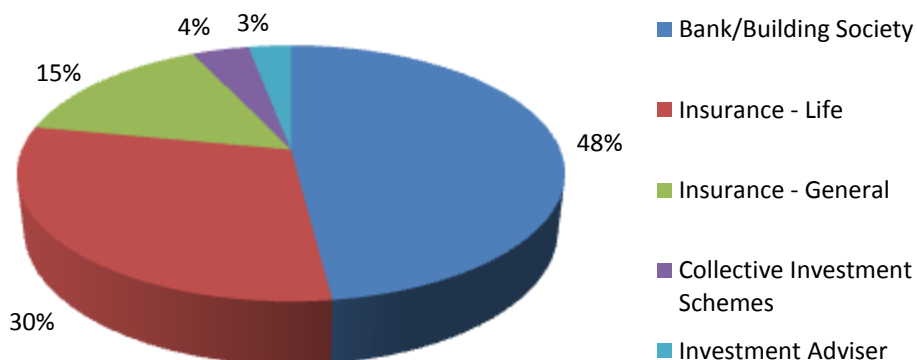
### Residence of Complainants 2008/09



## 1.3 Provider Type

Type of provider complained about	2007/08		2008/09	
	No.	%	No.	%
Bank/Building Society	82	36	177	48
Insurance - Life	102	45	112	30
Insurance - General	25	11	56	15
Collective Investment Schemes	3	1	15	4
Investment Adviser	15	7	12	3
<b>Total</b>	<b>227</b>		<b>372</b>	

### Provider Type 2008/09



## 1.4 Completed complaints

Outcome of complaints	2007/08		2008/09	
	No.	%	No.	%
Found to be outside the remit of the Scheme	205	77	181	66
Resolved through mediation	55	21	87	33
Determined by Adjudicator	3	2	3	1
<b>Total</b>	<b>263</b>		<b>271</b>	

## 1.5 Completed enquiries

Outcome of enquiries	2007/08		2008/09	
	No.	%	No.	%
Advised - no further action required	93	59	189	66
Found to be outside the remit of the Scheme	60	38	76	26
Resolved through mediation	5	3	22	8
<b>Total</b>	<b>158</b>		<b>287</b>	

## 1.6 Active complaints

Active complaints at 1 <sup>st</sup> April 2009	
Awaiting response from complainant	89
Under investigation	81
Awaiting response from provider	30
<b>Total</b>	<b>200</b>

Complaints completed during 2008/09 include cases carried forward from previous years. *Since the publication of version one of this report it has been noted that 50 cases reported as 'ongoing' had also been counted as completed. The active complaints table has been amended accordingly.*

## 2. Comment on Trends in Complaints

Complaints have again been received against all types of financial provider falling within the remit of the Scheme whether regulated by the IPA or by the FSC.

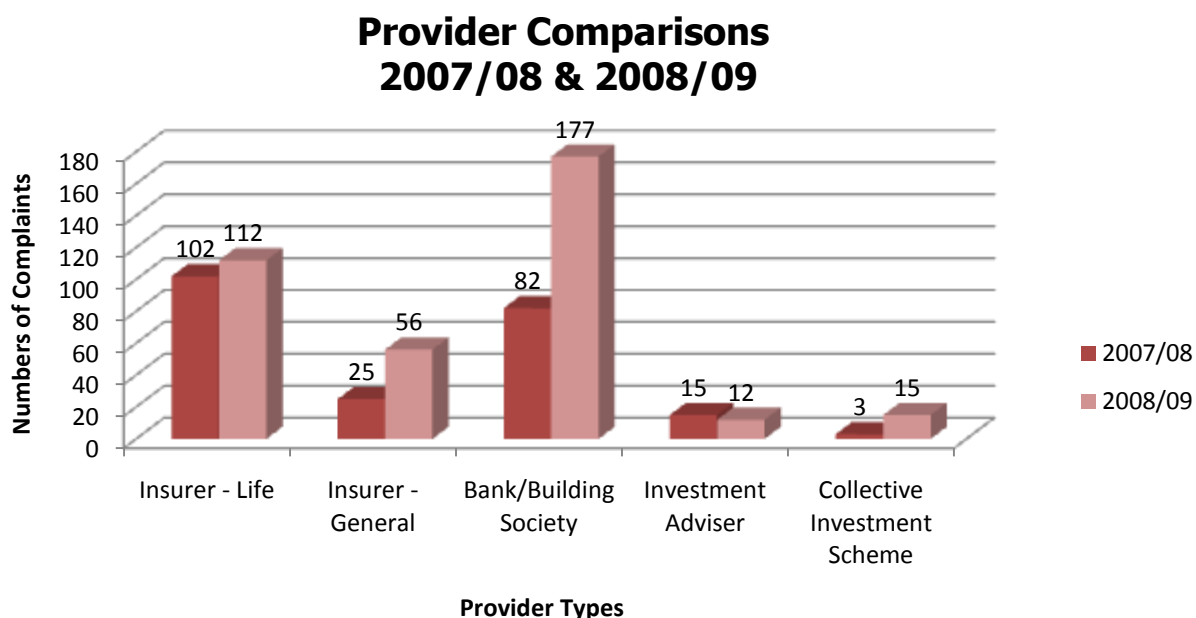
One notable change this year is the rise in the proportion of complaints made against banks and building societies which accounted for nearly half of all the complaints received. This may in part be due to the turmoil felt in the banking sector during 2008/09 but more generally it appears to be caused by poor administration within some of the larger clearing banks. The initial problem experienced by the customer with the banks is then compounded by poor complaint handling.

This type of complaint is more easily resolved by mediation without the necessity for an in depth investigation. It is a factor in the increase in the total number of cases which the Scheme has mediated over the year.

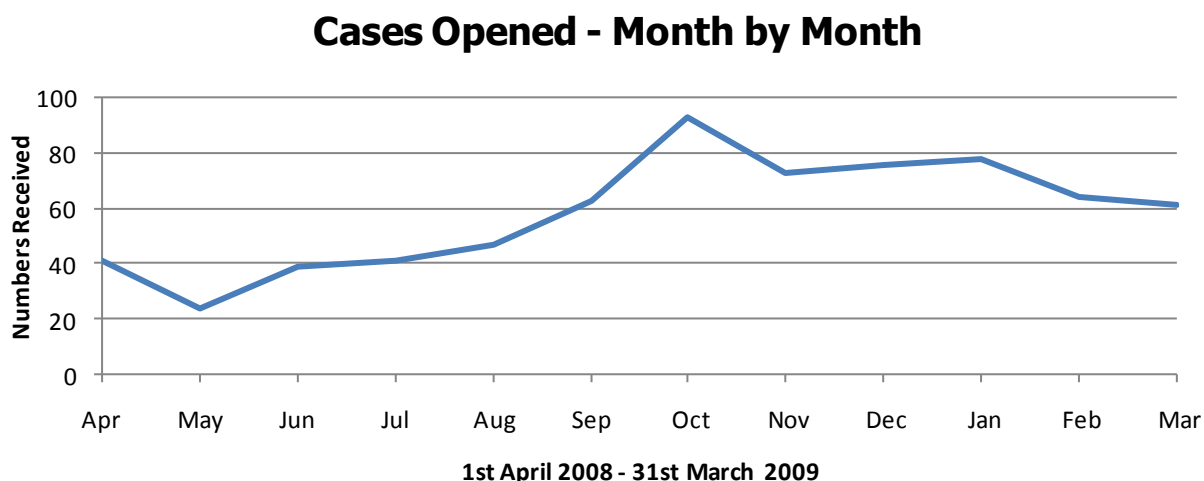
The number of complaints against general insurers increased significantly in 2008/09. This was due mainly to a breakdown in the relationship between a local provider and their agent which now appears to have been resolved.

Complaints about collective investment schemes have risen five fold over the last 12 months. In general the complaints relate to issues such as redemption delays and penalties and fund suspensions. These issues all relate to the liquidity of the schemes in question caused by the downturn in both financial and property markets.

The chart below illustrates how complaint numbers have risen for each type of provider except investment advisers where there has been a slight fall.



There was a sharp increase in complaints and enquiries received towards the end of the year with a notable peak in October 2008 when Kaupthing Singer & Friedlander (IOM) Ltd was placed into provisional liquidation. The graph below illustrates the workload over the year.



The number of complaints mediated by the case workers increased from 21% to 33% resulting in a positive outcome for the complainant. Improvements to the information issued to clients about the Scheme are planned for 2010 to further assist complainants as to whether their complaint falls within the remit of the Scheme.

### **3. Case Studies as Determined by Adjudicators**

If mediation of a complaint by the case worker fails or has no reasonable prospect of succeeding it can be referred to an Adjudicator for formal investigation and determination. The Adjudicator will take into account the relevant law, statutory regulations, regulators rules, guidance and standards, codes of practice and whatever they consider to have been good practice at the time the complaint arose. Just three complaints were referred to the Adjudicators in the period from 1<sup>st</sup> April 2008 to 31<sup>st</sup> March 2009 and these are detailed below.

#### **1. Monitoring of Exchange Rate on Bank Account**

##### Complaint made to Scheme

Complainant had two bank accounts with provider, one in Sterling (£) and one in Australian Dollars (A\$). A 'monitor' was put in place by the provider to convert and transfer the balance of the £ account to the A\$ account when the exchange rate reached 2.50. After a period, the 'monitor' was cancelled by the provider as its forecast was that the rate requested of 2.50 would not be achieved, although subsequently the £/A\$ exchange rate did reach 2.50.

When the complainant became aware that the rate had reached 2.50 he contacted the provider by telephone and requested that the conversion be made at that point, by which time the rate had dropped, and that the provider should compensate him for the difference between the rate obtainable at that time and the rate of 2.50. The provider did not make the conversion and refused any compensation.

The complainant believed that the provider should have continued to 'monitor' the exchange rate and made the conversion when the rate reached the level of 2.50. Failing this action being taken the complainant believed that the provider should have made the conversion when the complainant became aware that exchange rates had reached 2.50 and gave his verbal instruction to the provider to make the conversion.

The provider believed it had acted correctly at all times.

##### Finding

Whilst it was held regrettable that there were no written terms and conditions for the exchange rate monitoring service it was clear that such service had been cancelled and that the complainant had been advised of the same. As such monitoring service had been cancelled it was found that there was no obligation on the provider to advise the complainant when the exchange rate reached 2.50 or to make any conversion at that point without further instructions from the complainant.

It was also found that although such a verbal instruction to convert had been given by the complainant subsequent to the cancellation of the monitoring service, such instruction was wider than simply making the conversion and required the provider to make both the conversion and pay compensation for the difference in rates. The two instructions were viewed to be linked and as such the provider was entitled to consider that the making of the conversion was conditional upon payment of the compensation. As the provider was not prepared to pay compensation it did not have an instruction to action the conversion and it was found reasonable that the provider should require clarification and further instruction from the complainant prior to making any conversion, neither of which were received.

The complaint was not upheld.

The Final Determination on this complaint was appealed by the Complainant to the Senior Adjudicator who upheld the Determination.

## **2. Notification of possible claim to insurer**

### Complaint made to Scheme

Complainant had an insurance policy which catered for the demands of those who wished to ensure access to alternative means of transport in the event of being prevented from driving through disqualification due to speeding or accumulated convictions. The policy application was originally made in January 2006 and renewed annually thereafter, and was processed via an intermediary, through the internet. After acceptance of the application the complainant was issued, by the intermediary, with a policy schedule, policy conditions, key facts and the terms of business existing between the intermediary and insurer.

The complainant advised that in June 2007 he received a letter of intended prosecution from the police regarding a possible motoring conviction. Soon after receipt of the letter the complainant contacted the intermediary by telephone to advise of the same and the complainant maintains that in such conversation he was advised that any claim resulting from the effects of a prosecution would almost certainly be upheld. No further action was taken by the complainant until the policy renewal in January 2008 at which time the complainant wrote to the intermediary and formally advised that he had received a notice of intended prosecution.

In February 2008 the complainant was disqualified from driving and so wrote to the insurer claiming for his transport costs during the period of disqualification.

The insurer declined to pay such claim as the complainant had not notified them in writing within 30 days of receiving the letter of intended prosecution as was required by the policy conditions.

The complainant maintained that the policy conditions were unclear about the insurer's requirements and as he had notified the intermediary of the notice of intended prosecution, and been reassured that the claim would be met, he had fulfilled his obligations and his claim should be met.

### Finding

It was held that the policy conditions were not 'user friendly' or easy to read and it was therefore understandable if the complainant failed to appreciate the relevant sections of the same. However it was also held that the key facts issued to the complainant were very clear, clearly defined who the policy insurer was and clearly advised policyholders to notify the insurer in writing within 30 days of any incident which may give rise to a claim under the policy. In addition the letter from the intermediary, under cover of which the documents/ key facts had been issued to the client, was clear in that any queries regarding making a claim should be referred to the insurer directly and contact details for the provider were supplied.

As such it was found that the complainant ought to have known of the requirement to notify the insurer of any incident which may give rise to a claim and that as he failed to comply with such requirement the provider was correct to decline the claim.

The complaint was not upheld.

### **3. Legal Expenses insurance claim - dates of notification of claim and knowledge of same**

#### **Complaint made to Scheme**

Complainants ran a business from premises which they held on a leasehold basis and under the lease the landlord was responsible for the maintenance of the structure (including the roof). Commencing in or around 2000/2001 damage was suffered to the premises by leaks from the roof, such damage occurred again in 2002/2003 and 2005. In recompense for the damage the landlord agreed to a number of rent free periods.

In August/September 2006 the complainants premises were subject to a rent review and the independent surveyor advised the complainants at a site meeting of 19<sup>th</sup> September 2006 that 'the landlord was presumably in breach of his repairing obligations as there were signs of weather penetration into the property'. The surveyor advised the complainants to seek legal advice as to their position.

Towards the end of September the complainants contacted their normal insurance broker and arranged for legal expenses insurance cover. On 1<sup>st</sup> November 2006 the complainants met with solicitors regarding their claim against the landlord for damages resulting from breaches of the lease. At this consultation, according to the solicitors, the complainants advised that they would check to see whether they had any legal expenses insurance cover and the solicitors were subsequently advised that such cover would be put in place.

The legal expenses insurance policy was put in place with a start date of 1<sup>st</sup> August 2006 although it is unclear why this start date was used as the premium for the same was not paid until 14<sup>th</sup> November 2006. The complainants maintain that they made initial enquiries about legal expenses cover with their insurance broker in August, hence it being dated 1<sup>st</sup> August 2006 and the insurance broker has confirmed that it is their standard practice to backdate all insurance policies to the date of first contact although they are unable to provide any documentation to confirm such contact.

The complainants' solicitors then contacted the insurance provider to advise of the claims action and to request an indemnity under the legal expenses policy for the costs of the same. Such contact was initially made by telephone via the complainants' insurance broker with written advice of the action being made to the insurance provider's agent on 18<sup>th</sup> May 2007. In their notification the solicitors confirmed that the complainant's date of knowledge of the dispute with their landlord which might lead to court action and a claim being made under the legal expenses policy was 1<sup>st</sup> November 2006.

The insurer's agent and subsequently insurance provider declined to provide indemnity under the policy as written notification of any possible claim had not been given within the prescribed timescales and the complainants had knowledge of the dispute prior to the inception of the Policy.

## Finding

It was held that the wording on the policy is clear in that it requires written notification to be made to the insurers immediately any dispute which might give rise to a claim is known and if such notification is not provided within 180 days from the date of knowledge of such dispute by the insured then the event will not be covered.

The complainants' solicitors argued that their initial telephone contacts should be regarded as formal notification of the dispute.

However as the date of knowledge was stated to be 1<sup>st</sup> November 2006 and written notification of the same was not provided until 18<sup>th</sup> May 2007 it was held that as the elapsed time was greater than 180 days the solicitors had not complied with the policy conditions.

In addition it was held that the complainants must or should have realised before 2006 that the damage suffered through the poor maintenance of the premises was the responsibility of the landlord and that if the lease was breached then court action could be taken. In particular it was noted that the rent free periods given to the complainants were indicative of the landlord's responsibilities in this area and that in December 2003 a further rent free period had been accepted by the complainants in 'full and final settlement' of their claim. At that time the complainants were made aware by their then solicitors that if the matter was not settled by negotiation then legal action against the landlord would be pursued.

The adjudicator held that the date of knowledge when the complainants became aware of the possible claim for damages was prior to the date the insurance policy was started (regardless of what the policy start date should have been) as the damage had been an intermittent problem and ongoing since 2000/2001.

The complaint was not upheld.

## **4. Revised Legislation**

The Isle of Man Financial Services Ombudsman Scheme was originally established under section 21A, 21B and 21C of the Financial Supervision Act 1988 (as amended by the Fair Trading Amendment Act 2001). With effect from 1<sup>st</sup> August 2008 the Scheme is provided for in Schedule 4 of the Financial Services Act 2008.

Many of the changes made to the legislation, as it refers to the Scheme, were minor and will have little impact on people bringing complaints to the Scheme. However one significant change gives both the complainant and the financial provider the right of appeal to the senior adjudicator if they are unhappy with a final determination issued by an adjudicator. Whilst this right was only introduced on 1<sup>st</sup> August 2008 one case has already been appealed to the senior adjudicator (see the first Case Study detailed above).

Under the previous legislation the panel of adjudicators were selected and appointed by the Office of Fair Trading. As the adjudicators are independent from the Office of Fair Trading the new Act passes the responsibility to recruit and appoint adjudicators for the Scheme to the Appointments Commission. Since the new Act was passed four new adjudicators have been appointed to form a panel of five adjudicators overseen by a senior adjudicator.



The new Act allows for the extension of the remit of the Scheme to include types of financial services which were not covered under the previous legislation without the necessity to change the primary legislation. The possibility of extending the remit of the Scheme will be actively considered during 2009/10.

## **5. Contact Details**

We hope that this review is informative and helpful but any comments, questions or feedback is welcomed.

### **How to contact us:**

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