

ISLE OF MAN OFFICE OF FAIR TRADING



**Isle of Man Office of Fair Trading**

**FINANCIAL SERVICES  
OMBUDSMAN SCHEME**

**ANNUAL REPORT  
2017/18**



**Isle of Man  
Government**

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**VERSION 2.0**

# **Financial Services Ombudsman Scheme Report at 31<sup>st</sup> March 2018**

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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 2017 to 31<sup>st</sup> March 2018.

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, nor 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 alternatives 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

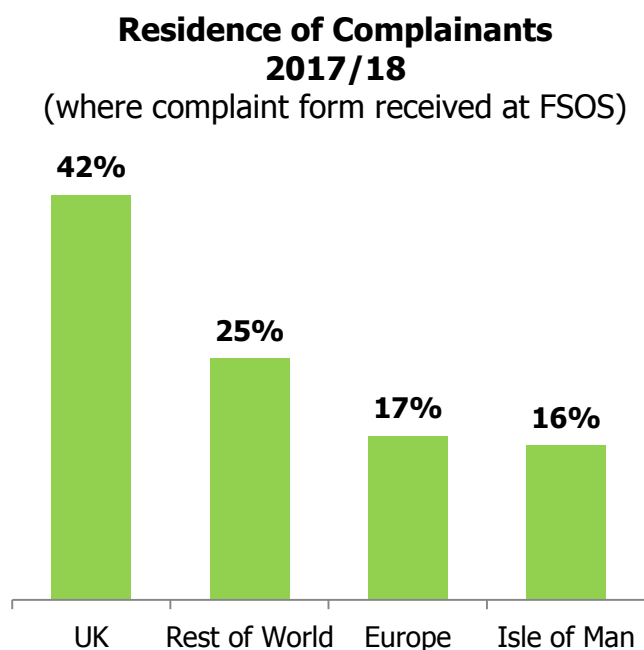
Overall, we received 512 enquiries and complaints from consumers. A 'complaint' is recorded when the Scheme receives a complaint form and the matter is investigated. In the case of an 'enquiry', a completed complaint form is not received, but some discussion may take place with the client regarding their concerns and further communication may be necessary.

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

Year	2016/17	2017/18
Complaint forms received	259	245
Enquiries received	261	267

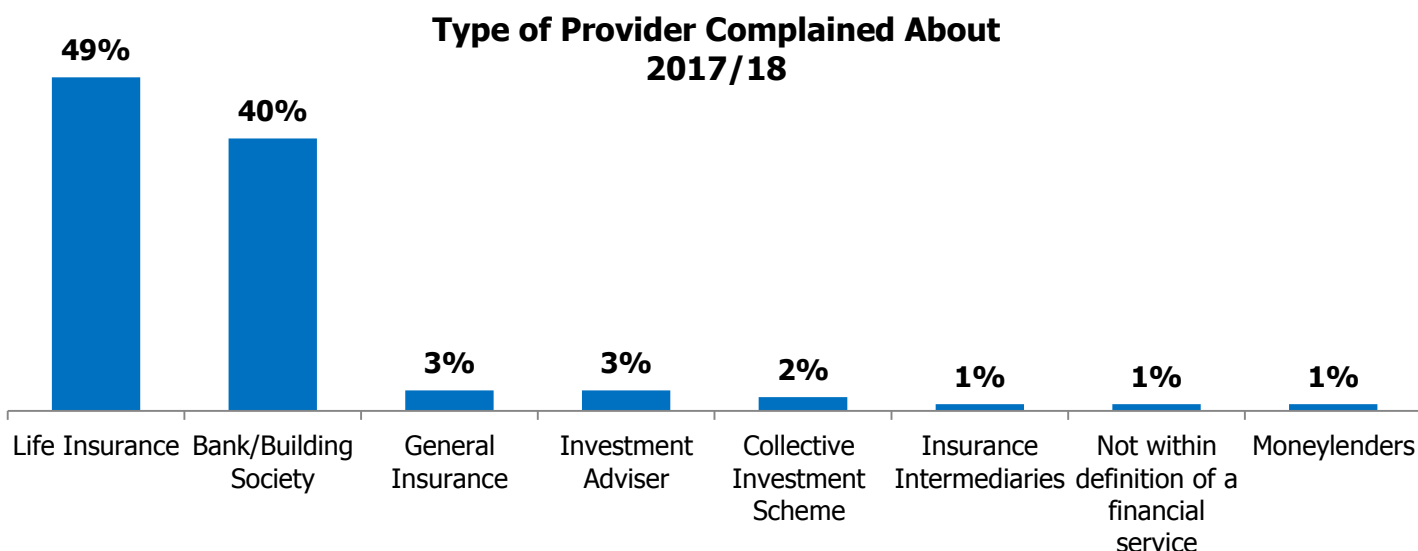
### 2.2 Residence of Complainants (where complaint form received at FSOS)

Where the complainant lives	2016/17		2017/18	
	No.	%	No.	%
UK	110	42	103	42
Rest of World	77	30	61	25
Europe	36	14	41	17
Isle of Man	36	14	40	16
<b>Total</b>	<b>259</b>		<b>245</b>	



**2.3 Provider Type** – (See Section 3 for additional information on the top 2 trends noted below):

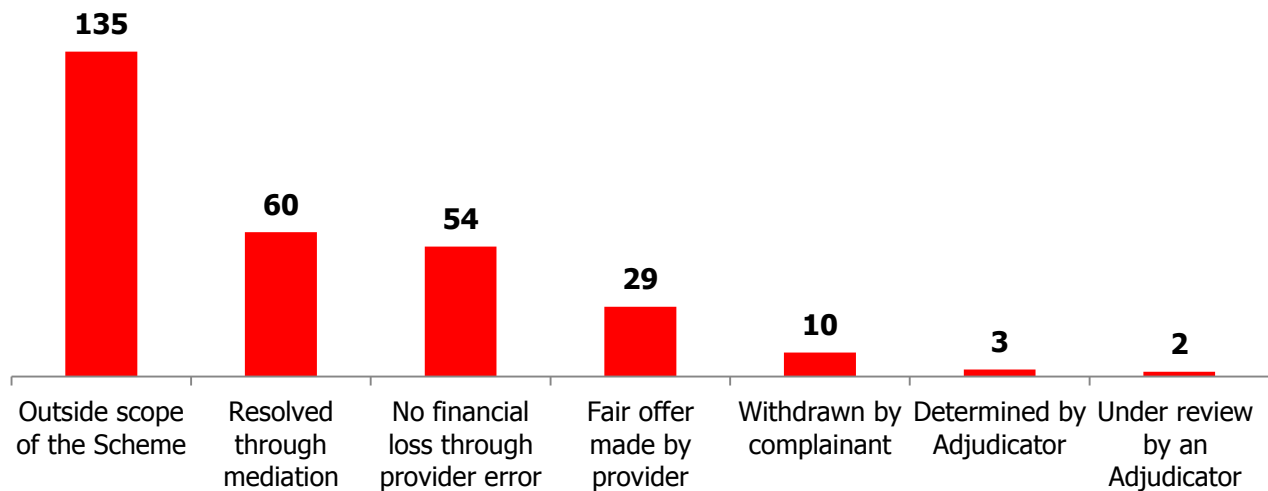
Type of provider complained about	2016/17		2017/18	
	No.	%	No	%
Life Insurance	135	52	121	49
Bank/Building Society	88	34	100	40
Not within definition of a financial service	5	2	9	3
Investment Adviser	8	3	7	3
Collective Investment Scheme	8	3	3	2
Insurance Intermediaries	0	0	2	1
General Insurance	13	5	2	1
Moneylenders	1	½	1	1
Money Transmission Services	1	½	0	-
<b>Total</b>	<b>259</b>		<b>245</b>	



**2.4 Closed complaints** (where complaint form received)

Outcome of Closed Complaints	No.	%
	Outside scope of the Scheme	135
Resolved through mediation	60	20
No financial loss through provider error	54	18
Fair offer made by provider	29	10
Withdrawn by complainant	10	3
Determined by Adjudicator	3	2
Under review by an Adjudicator	2	1
<b>Total</b>	<b>293</b>	

**Outcome of Closed Complaints** (where complaint form received)  
**2017/18**  
(in numbers)



#### 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 46% of the complaints received. A breakdown of the reasons for decline is shown in the following table (*see Section 3 for additional information on the top 2 trends noted below*):

Reason Complaints declined 2017/18	No.	%
<b>Commercial judgement:</b> A reasonable assessment has been made by the financial services provider of risk, or of financial or commercial criteria or of character.	48	36
<b>Out of time:</b> 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.	47	35
<b>Not an Isle of Man provider:</b> The financial provider is not operating in or from the Isle of Man.	19	14
<b>No financial service provided:</b> The service provided is not covered by the Scheme.	7	5
<b>Not an individual:</b> The Scheme is unable to consider complaints received on behalf of a body corporate.	6	4
<b>Investment performance:</b> Movements on the financial markets have affected the value of an investment rather than the actions of the supplier.	3	2
<b>Better dealt with in court or already decided in court:</b> The dispute would be more suitably dealt with by a court or has already been decided in court.	5	4
<b>Total</b>	<b>135</b>	

## 2.5 Closed enquiries (where complaint form not received)

Reason Enquiries closed 2017/18	No.	%
Advice and assistance provided to complainant on initial contact with no further action required.	162	76
Found to be outside the remit of the Scheme	43	20
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.	8	4
<b>Total</b>	<b>213</b>	

## 2.6 Work in Progress - Active complaints and enquiries open at 1<sup>st</sup> April 2018

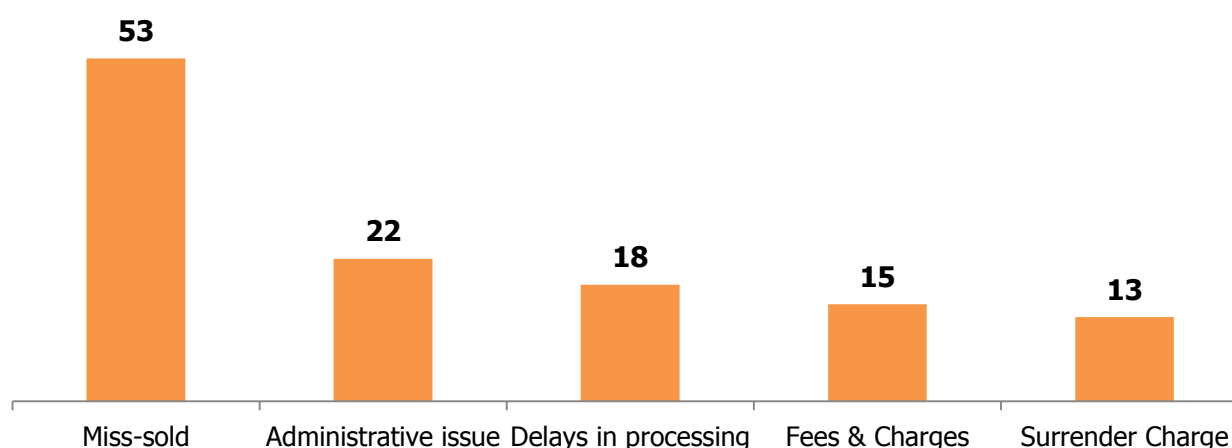
Awaiting response from complainant	52
Under investigation	24
Awaiting response from provider	20
<b>Total</b>	<b>96</b>

## 3. Analysis of Complaints Received

Overall, the Scheme received a total of 512 enquiries and complaints; similar numbers to those received in the previous two years.

The Island's financial sector continues to be dominated by the Banks and Life Insurance companies and this is reflected in the numbers of complaints received in these sectors. In 2017/18, we received 121 complaints against Life Insurance companies and 100 against the Banks.

### Number of Life Insurance Complaints Received 2017/18 (broken down by category)



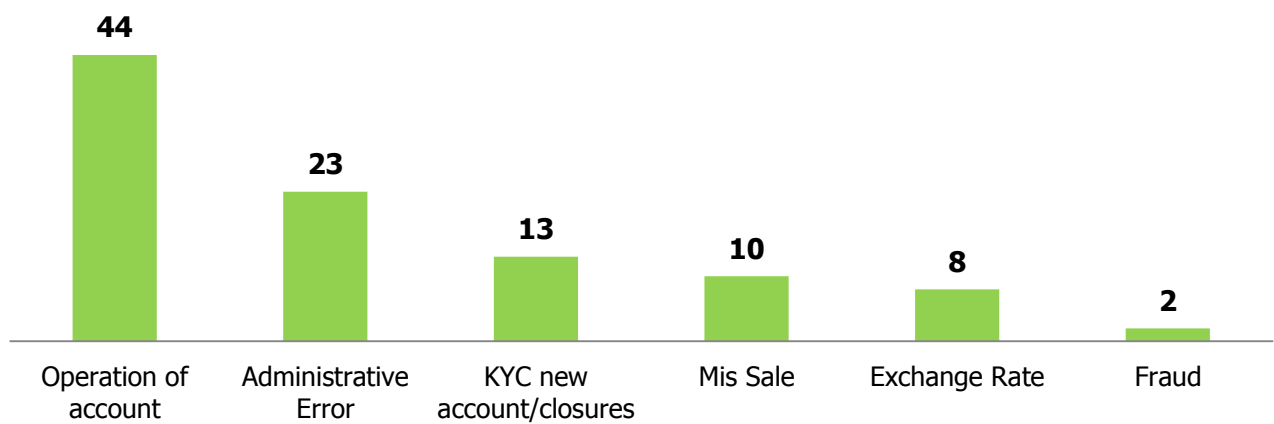
Almost half of the complaints received about **life insurance companies** arose as the complainant felt that their policy had been miss-sold. This is slightly higher than the previous year.

The Isle of Man has robust regulations in place to protect individuals receiving advice from Independent Financial Advisers (“IFA”) based upon the Island. However, there are many overseas jurisdictions where no such protection is in place and complainants have sought advice from unregulated advisers who have placed their savings into investments that are unsuitable. Their clients have then been left without recourse other than via the courts of the relevant jurisdiction from which the advice has been given. The Scheme has no authority to investigate providers based outside of the Isle of Man. In many cases, the client referred their complaint to the Scheme as they believed the IFA to be the agent of the life insurance provider, however, the Scheme considers an IFA to be the agent of the client, not of the provider.

Many complainants have raised the issue of whether providers perform suitable checks on the integrity of IFA’s selling their products. Such checks appear to take place at the outset of the arrangement with the introducer and there is currently no requirement for providers to undertake a further review of the relationship once it has commenced. The onus is therefore upon the individual to undertake the necessary research, to ensure that they fully understand the product that they are investing into and that they are also happy with the current credentials of the IFA from whom they are taking advice.

From January 2019, the Isle of Man Financial Services Authority (“IOMFSA”) will be introducing a Conduct of Business Code for Long Term Insurers, a requirement of which will be for the provider to obtain the investors’ written confirmation that they have read and understood the terms and conditions of the investment that they are making. The Scheme urges clients to ask questions and ensure that they have considered all possible future scenarios prior to committing their funds.

**Number of Banking Complaints Received  
2017/18**  
(broken down by category)



Of the **Banking complaints** received, issues surrounding the operation of the customer’s account and administration errors remained the top trends as compared with 2016/17 when a total of 43 complaints were received in these two categories. Typical themes are delays processing payments, general banking charges and internal procedures.

Exchange rate related complaints have fallen compared with 2016/17 when 18 complaints were received, whereas complaints concerning requests for up to date customer information and identification have increased sufficiently to justify their own category on the graph.



Section 2.4 evidences that, of the complaints which we closed this year which were 'in scope'; the vast majority were resolved through successful mediation. This involves the case officer reviewing the evidence provided and making a recommendation which may be that the provider increases their offer or simply concludes that an offer already made by a provider is fair and reasonable.

36% of our complaints were declined this year as it was deemed by the Scheme that the provider was exercising their own **commercial judgement**. For example, a Bank is entitled to close their customers account without providing a reason (in most cases after providing a period of notice), just as a customer is entitled to close their Bank account without a reason.

Providers are entitled to request information from their customers and the customers have an obligation to provide true information and documents necessary in order to satisfy customer due diligence. Internal security procedures would also fall into this category - this would include following robust identification procedures and adhering to internal procedures; the aim of which is to protect the provider as well as their customers.

The Financial Services Act 2008 sets **time limits** for customers to refer complaints to the Scheme and 35% of complaints were unable to be considered because they were out of time.

A complaint must be brought to the Ombudsman within six years of the act or omission that the customer is complaining about. This means that currently the Scheme cannot look at any complaints which involve events which happened before 2012.

The six year time limit can be reduced to two years if the customer knew or ought to reasonably have known that they had a reason to complain. An example of this could be that a customer had received regular statements which clearly showed that a mistake had been made on their account. The two year time limit would then start to run from the date the first statement was received.

## 4. Case Studies as Determined by Adjudicators

Three cases were determined by Adjudicators in the year and can be found via the following links:

1. November 2017 - Complaint made to the Scheme that a consolidation loan had been mis-sold

<https://www.gov.im/media/1361302/mis-sale-of-a-consolidation-loan.pdf>

2. November 2017 – Claim for losses incurred following incorrect information given by a Supplier.

<https://www.gov.im/media/1360967/financial-loss-due-to-incorrect-information-given-by-a-supplier.pdf>

3. February 2018 - Claim for financial loss incurred following fraudulent withdrawals

<https://www.gov.im/media/1361288/claim-for-financial-loss-incurred-as-a-result-of-fraudulent-withdrawals.pdf>

## 5. Scheme Update

### Ring Fencing

The UK Banking Reform requires large banks to separate their retail banking activity from the rest of their activities, creating what is known as ring fenced banks. In accordance with the new UK rules, a ring-fenced bank cannot have an operation (branch or subsidiary bank) outside the European Economic Area (EEA). Therefore, the Isle of Man operations (and customers of those operations) must be outside of the ring-fenced bank or group. The rules are scheduled to take effect from 1 January 2019, although all the banks affected are aiming to complete their restructuring ahead of this date.

Ring fencing will affect some of the banks located on the Isle of Man as they work to separate their systems from their head office in the UK. Each bank will be communicating with its own customers about ring-fencing and how it will affect them. If you have any further questions, please contact your bank. However, remember to take all the usual precautions when dealing with requests from businesses and banks to provide personal or financial information. This includes never disclosing security details such as PINs or full banking passwords, not automatically clicking on links contained in unsolicited emails, and not assuming an email or phone call is authentic.

### Pension Freedoms

Following the introductions of Pension Freedoms in February's Budget, Scheme staff have worked with the Financial Services Authority ("FSA") to produce a "Pension Matters" leaflet. This highlights the need for individuals to safeguard their future through retirement planning and recognises that most people would need to obtain professional advice prior to making any pension decisions. The FSA maintains a list of professional advisers within the IOM who have been licensed by them to provide advice and further information is available on their website. The Scheme would emphasise the importance of individuals undertaking thorough research prior to making significant investment decisions, to ensure that they fully understand the choices that they make.

## 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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