

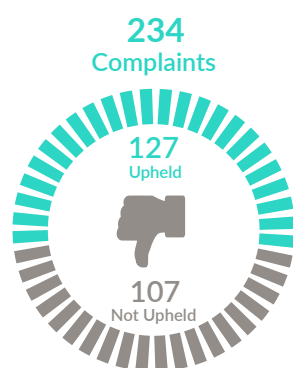
On 24 January 2019 the Financial Services and Pensions Ombudsman (**FSPO**) published 228 legally binding decisions from 2018. The FSPO indicated that the aim in publishing the decisions was to enhance transparency and understanding of the powers and services of the FSPO.

The powers of the FSPO are extensive – it can award compensation of up to €500,000 and it can also direct a regulated provider to rectify the conduct that is the subject of a complaint. There is no limit on the value of the rectification that can be directed.

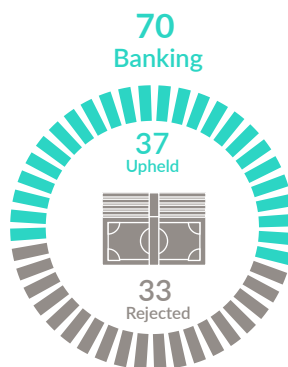
Mediation

The FSPO noted that it successfully resolved the vast majority of complaints (approximately 2,300) through mediation. This is consistent with the approach the FSPO has taken over the past few years which is to encourage parties to avail of mediation in an attempt to resolve complaints.

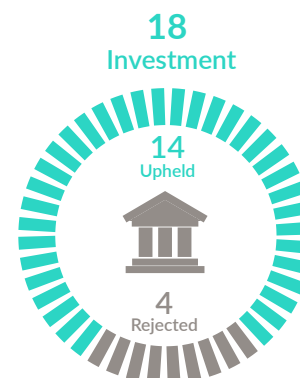
Decisions



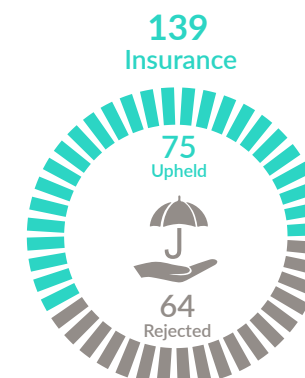
Of the 234 complaints that the FSPO formally investigated 127 were fully, substantially or partially upheld while 107 were not upheld



70 of the binding decisions related to banking matters, of which 37 were upheld or partially upheld, and 33 rejected



18 decisions related to investment matters, of which 14 were upheld or partially upheld, and 4 rejected.



139 decisions related to insurance, of which 64 of which were rejected and 75 of which were upheld or partially upheld

A significant proportion of the decisions deal with complaints related to mishandling, maladministration and poor communication. In a number of the decisions the FSPO held that the provider was entitled to take the steps that they did under the particular contract, but compensation was awarded for the manner in which the complainants were dealt with by the provider. The FSPO indicated in one of its decisions, that the provider should arrange appropriate training for its agents in how to deal with customers who are suffering financial distress.

Only one financial provider had not carried out a direction of the FSPO given in a 2018 decision. The decision in question ordered a debt management agency to pay €1,450 in compensation to a complainant. The FSPO has commenced enforcement proceedings in respect of that complaint.

The decisions are anonymised. The FSPO does not have power under the legislation to publish decisions relating to pension providers so three decisions in this area were not published but case studies of these decisions were included in a digest of the decisions. Two decisions under appeal to the High Court were not published along with one decision with very distinctive facts which might have identified the parties.

Case Studies

Compensation awarded in the decisions ranged from €100 to €90,000.

The following are a sample from the binding decisions:-

- The largest sum of compensation awarded was €90,000 to a couple where the FSPO held that the mortgage provider had adopted an unhelpful and obstructive approach after they fell into arrears with a buy-to-let mortgage. The borrowers were attempting to resolve the situation with a sale of the property and the Ombudsman found that the couple were treated in an unreasonable, unjust and oppressive manner. It also found that the provider had misrepresented conversations that had taken place with the couple. The mortgage provider had offered compensation of €1,000 which the Ombudsman regarded as wholly inadequate.
- €15,000 was awarded to borrowers who had made an offer to a provider to settle their loan. The offer was accepted however, the provider ultimately sold the loan to a third party. The Ombudsman held that the provider had acted in an unreasonable and unjust manner and criticised the lack of communication with the borrowers.
- The FSPO directed that compensation of €7,000 be paid and that an individual's Irish Credit Bureau rating be corrected after the lender failed to inform the borrower that his loan had not been fully paid off despite it ceasing the collection of direct debit payments;
- The FSPO ordered a reduction of payments demanded on a loan in circumstances where, approximately 17 months before the expiry of a ten year loan, the lender indicated that the loan would not be repaid by the expiry date due to increases in interest rates. The lender sought an additional €11,000 to clear the loan. The lender argued that the terms of the loan stated that the interest rate may vary and notice of the increases was published in national newspapers and in annual statements. While the Ombudsman accepted that the terms and conditions made it clear that the interest rate was variable, he was not satisfied that the increases in interest rates were adequately communicated. In particular, the Ombudsman was unconvinced that a newspaper advert was an appropriate method of communicating a rate increase. The Ombudsman found the conduct of the lender to be unreasonable and directed the lender to reduce its demand from over €11,000 to €2,000.
- Compensation of €10,000 was awarded to a customer whose credit card was blocked when he accidentally underpaid by €19. The Ombudsman found that while the lender was entitled to block the card based on the terms and conditions of the account, it was disproportionate and unreasonable when the underpayment was just €19 and there was no evidence of previous arrears on the account. Furthermore, the Ombudsman found that the lender failed to comply with European Communities (Payment Services) Regulations 2009 by not unblocking the credit card once the correct payment was made.
- Compensation of €250 was paid to an individual whose travel insurance policy automatically renewed and who was refused a refund when she sought to cancel the policy.
- Compensation of €3,750 was paid to a customer whose bank opened a new account without her consent or knowledge.

Comment

There is no doubt but that the publication of the binding decisions will assist regulated entities in the handling of complaints. The decisions provide an insight into the workings of the FSPO and the levels of compensation being awarded.

It is also clear from the 2018 decisions that the way providers handle complaints will have an impact on the approach taken by the Ombudsman and the levels of compensation awarded.