INFO Network E-Bulletin
August 2016



**Warm welcomes**

To new member, the Ombudsman Scheme for Investments Funds, Germany and its Chief Ombudsman Dr h.c. Gerrd Nobbe and Managing Director Timm Sachse.

And to new member representative, Dr Theodore Koutsoumpas, who took up the role of Hellenic Ombudsman for Banking – Investment Services in June 2016.

**INFO Network updates**

**2016 Annual General Meeting**

Our 2016 Annual General Meeting (AGM) will be convened in Yerevan at 8am on Tuesday 20 September. Please watch for the AGM papers. They will be emailed to each member's senior representative by Monday 5 September 2016.

**2017 activities**

Many thanks for your responses to our survey about possible activities for 2017. Your preferences are being collated for use at the AGM. If you have not contributed yet, please move quickly so your preferences are included!



Less than a month!

Our hosts are ready.
Our speakers are preparing.
For last minute questions: info@fsm.am
[Website](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-j/)
See you in Yerevan!

**Member views and news**



Ger Deering, Financial Services Ombudsman
Financial Services Ombudsman's Bureau
Ireland

It's good to talk ...

In response to the rapidly changing nature of the financial services industry — set within a landscape recovering from an international financial crisis — the Irish Financial Services Ombudsman (FSO) has revolutionised how it deals with complaints to provide a faster, less formal, more user friendly service.

The changes were prompted by a Strategic and Operational Review in January 2016 of the operations of the FSO (available at this link [Strategic & Operational Review](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-d/)). Feedback from the review indicated that users of the service found it to be very formal and legalistic, lacking a ‘personal touch’ and that it was taking a long time to get complaints through the system. All stakeholders said they wanted a faster, less formal way to resolve their disputes.

Our response was sweeping changes from February 2016 — the most innovative being the introduction of the new Dispute Resolution Service which has delivered mediation, both face-to face and by telephone/email, as the default option. While mediation has always been available at the FSO, financial service providers, almost universally, rejected it as an option. This meant that most complaints went through a full investigation and formal adjudication.

Mediation is now at the very heart of our service. The aim is to resolve disputes between complainants and financial providers at an early stage with the minimum of formality. Talking — whether on the telephone or in person with the consumer or the provider — is the essence of the way the mediation process now works at the FSO. So, once we receive a complaint, the process begins with a phone call to the complainant. Communication with the provider follows, and the process of supporting both sides in their understanding of the real issue behind the dispute is encouraged.

Members of the Dispute Resolution Team use mediation techniques to work out mutually agreeable settlements between the parties — steering them away from the blame game of who is technically right or wrong. Whether the complaint is one where the value concerned is more one of principal than money, and in the case of the latter, whether the amount is large or small — all are given the same importance by the team.  And resolving a dispute can often be as simple as clarifying a situation for the person with the complaint. Of course where disputes cannot be resolved, the FSO continues to provide a fair and impartial investigation and adjudication service that delivers decisions that are legally binding on both parties.

Early indications are that the new service is working well. So far the feedback from consumers and providers is encouraging. As one person who recently used the service said in the evaluation survey … “I was surprised that the service exceeded my expectations.” People rightly have high expectations — if we can continue to exceed them, we’ll do well.



Dr Theodoros Koutsoumpas, Ombudsman
Hellenic Ombudsman for Banking – Investment Services
Greece

News from HOBIS

In December 2015, the Hellenic Ombudsman for Banking – Investment Services (HOBIS) was notified to the European Commission as a qualified Greek ADR entity under the Directive on consumer ADR (Directive 2013/11/EU) and, as from January 2016, participates in the ODR platform established under Regulation on consumer ODR (Regulation (EU) 524/2013). On 1 June 2016, I was appointed as Ombudsman, replacing Mr Demetrios Pavlakis who successfully held the office during the past four years.



Jeremy Lee, Chief Executive Officer
Ombudsman for Financial Services
Malaysia

Name change

I am pleased to advise our name change from Financial Mediation Bureau to Ombudsman for Financial Services (OFS) was approved by the Companies Commission on 20 June 2016. Bank Negara Malaysia (the Central Bank of Malaysia who is the regulator and supervisor of the financial institutions in Malaysia) has appointed OFS as the Operator of the newly approved Financial Ombudsman Scheme (FOS). The FOS is a mandatory scheme for persons licensed and approved under the Financial Services Act 2013, Islamic Financial Services Act 2013 and the Development Financial Institutions Act 2002. We are still waiting for Bank Negara Malaysia to determine and announce the FOS’ implementation date. We will keep you posted.



Nicola Sladden, Banking Ombudsman
Banking Ombudsman Scheme
New Zealand

Developments at the Banking Ombudsman Scheme

This bulletin coincides with our end-of-year wrap-up. This year, we reviewed the organisational structure, implemented changes to the terms of reference and improved the dispute resolution function. Now, the priority is to further develop our prevention strategy, as well as resolve disputes quickly, fairly and cost-effectively.

The drop in disputes received during the past two quarters suggests we may be starting to see the benefits of our early-resolution and prevention strategy. We are reviewing our resources to manage volatility of demand, in particular, by redeploying existing resources to strategic projects. We have begun work on the following initiatives — a knowledge management system, an enquiries review, a culture development programme, and a communications and engagement strategy and plan.

The New Zealand Government has recently completed its review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

In New Zealand, there are four approved dispute resolution schemes. The Government sought feedback on the effects of the existence of multiple dispute resolution schemes, and any evidence of the negative impacts of competition. The Government has approved a package of changes intended to improve access to, and the quality of, financial advice and ensure access to redress. The Government considers the dispute resolution regime is functioning well overall, although there is potential for regulations to standardise scheme rules and ensure consumers are provided information about independent dispute resolution at the time of a complaint.



Susan Taylor, Chief Executive Officer
Financial Services Complaints Limited
New Zealand

New initiatives

We have recently made a short animated video for consumers to describe in very simple terms who we are and what we do. The video can be viewed on our website:  [www.fscl.org.nz](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-n/)and is being distributed to a number of consumer organisations. We hope the video will assist in raising consumer awareness of our role. So far the feedback has been positive.

We recently held our first office Open Day for scheme participants. This was an opportunity for any scheme participant to call in and meet our staff and attend rolling workshops that we had during the day, including a mock conciliation. Again we had excellent feedback and will likely make the Open Day an annual event.



Holly Nicholson, Executive Director
OmbudService for Life & Health Insurance
Canada

A new website, with some new tools

What’s new?

* [Submitting a complaint](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-x/) is just a few clicks away. We are Canada’s only financial services OmbudService accepting document submissions online, using e-signature technology.
* Old insurance policy? No problem – we will help the consumer find out which company now holds the policy. OLHI is the only place in Canada that offers this information on[mergers, acquisitions or renaming of old companies](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-m/).

What’s been improved?

* [Finding insurance](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-c/) has a new look and feel. It is the same great service. OLHI is the only place in Canada that offers this comprehensive list of member companies and the products they sell.
* We remain Canada’s only service that [searches for policies](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-q/) of a deceased person. Consumers can now submit their search requests online.

Why did we do this?

We want a website that Canadians can navigate with ease, while improving overall visitor experience as it relates to: interactivity; intuition; plain language; and search.



Caroline Wayman
Chief Ombudsman and CEO
Financial Ombudsman Service, UK

Fighting fraud

We recently published our latest edition of [ombudsman news](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-f/) which focuses on scams — a scam being a fraud where the consumer has been tricked or deceived. Unfortunately, scams are a fact of daily life — and when daily life changes, scams evolve with it. In particular, new technologies — which should make life easier — inevitably come with new risks. So while some people continue to receive fake investment opportunities through their letterbox, others are falling victim to 'number spoofing' on their mobiles — or finding business banking threatened by malware.

Regardless of the type of scam – or the amount of money that’s been lost — the ordeal of being scammed may be distressing, and even life-changing. From our conversations with financial businesses, we know that protecting customers is high on their agenda. And it makes sense that part of the solution will be ensuring that technology and other safeguards keep one step ahead of the scammers.

But in the face of ever-more sophisticated crime, what else can be done? Like so many other financial problems, awareness plays a huge role in prevention. So to me, it’s essential that everyone with an insight, shares that insight. That goes as much for individual people talking to their neighbours as it does for organisations like ours — which, in dealing with large volumes of complaints and concerns, can see the bigger picture and identify worrying patterns and trends.

At the ombudsman, we’ll continue to share what we’re seeing whenever we can — as we did with our report on [phone fraud](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-z/) last year. And in this edition, you’ll see that experts from other organisations in the UK have also shared their perspectives on scams with us in the ombudsman focus section. You can read the latest edition of ombudsman news [on our website.](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-v/)



Shane Tregillis, Chief Ombudsman
Financial Ombudsman Service
Australia

Contributing to two financial services reviews

We welcomed the August 2016 release of [Terms of Reference](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-s/) for a review of external dispute resolution in the Australian financial system, endorsing the work of the independent expert panel and the key considerations set out to guide the review. FOS is committed to the principles of fair, open and simple resolution of financial disputes, and strongly supports reducing complexity for consumers in accessing effective independent dispute resolution. The three-person independent panel is chaired by Professor Ian Ramsay, the Director of the Centre for Corporate Law and Securities Regulation in the University of Melbourne Law School. The panel will deliver its final report to the Federal Government by the end of March 2017.

In another review announced by the Federal Government, FOS is working with the Australian Securities and Investments Commission (ASIC) on a possible extension of our jurisdiction covering disputes involving small business. The Government requested that ASIC work with FOS to review, among other things, financial limits that apply to dispute claims and compensation. As part of this work, we opened [stakeholder consultation](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-g/) on 12 August 2016. The FOS Board called for feedback from a wide range of stakeholders about how FOS could effectively expand its jurisdiction, manage the risks in doing so, and overcome some of the challenges such an expansion would present.



Clive Pillay, Ombudsman
Ombudsman for Banking Services
South Africa

Complaints about securitisation of mortgage bonds

In the recent past we have received a number of complaints against banks relating to the securitisation of mortgage bonds. At its most basic, securitisation is the financial practice of converting various contractual debts, such as mortgage bonds into a marketable security and then selling it onto investors. The allegation then being that the investor is the new legal owner of the mortgage bond. When a borrower falls into arrears with payment of the mortgage bond instalments and the bank sues the borrower for payment, the borrower raises the defence of securitisation. This defence challenges a bank’s standing (locus standi) or title to foreclose on the loan. The defence is based on the allegation that the debt was securitised by the bank meaning that the bank is not the legal owner of the mortgage bond and therefore no longer has standing to enforce the claim. The defence of securitisation was considered in a number of court cases and in each case the defence was found to be without merit.

**Background**
All the complaints against banks emanate from loans granted by the bank on the security of a mortgage bond over immovable property. The borrower falls into arrears with payment of the mortgage bond instalments. The bank claims that the borrower is in breach of the home loan agreement and the mortgage bond which entitles the bank to repayment of the full amount loaned, since the bond contains an acceleration clause, and to an order declaring the property executable. The borrower resists the bank’s claim and raises the defence of securitisation. None of the allegations against the banks contain a denial that the bank had advanced the money to the borrower and that the borrower acquired the property on the strength of the mortgage loan.

**The gist of the defence of securitisation**
The borrower claims that:

* The bank participates in the practice of securitisation whereby various types of contractual debts such as mortgage bonds, are sold as bond securities or mortgage obligations to investors.
* The bank has sold its rights in terms of the mortgage bond to a special purpose vehicle (SPV).
* The bank has ceded its rights in terms of the mortgage bond to a third party and accordingly lacks standing in the proceedings.
* It is the SPV that is the new legal owner of the asset, and the bank loses title to foreclose on the loan.
* The bank, upon selling the bond and/or the debt, loses the right to enforce the claim.

**Court Findings**
The defence of securitisation was considered in a number of decided cases and the courts collectively, inter alia, held that:

* It is unlikely that a transaction such as securitisation (assuming it has taken place) would be structured in such a manner that it permanently divests the mortgagee bank of its right to institute legal proceedings against the defaulting mortgagor.
* Even if the rights under the mortgage bonds had been ceded, should the borrowers pay the amount presently claimed by the bank and should the 'true' holder of those rights at some stage in the future emerge and claim payment of the same debt from the borrowers, they would have a solid defence that the debt has already been extinguished.
* The defendants adduced no evidence to support a conclusion that the bank had transferred, sold or ceded its rights in terms of the relevant mortgage bonds to a third party.
* The defence of possible or actual securitisation, where there is no actual proof, only a suspicion that securitisation has taken place, has no prospects of success.

**Term of Reference (ToR) of the Banking Ombudsman**
In cases of securitisation there are considerable disputes of fact between the bank and the borrower. The appropriate forum to deal with disputes of this nature is a court of law. The ToR limits the OBS’ jurisdiction. The OBS may not consider a complaint or dispute that 'would more appropriately be dealt with by a court of law or through any other dispute resolution process'.

**Conclusion**
The fact that a number of court challenges have already been brought (reinforcing the view that the appropriate forum for disputes of this nature is indeed a court of law) coupled with the limitation on jurisdiction imposed on the OBS by its ToR, led us to conclude that we should not entertain complaints of this nature.

**Decision of the OBS**
Disputes of this nature are more appropriately dealt with by a court of law. The OBS should not and accordingly, will not, entertain any complaints of securitisation against banks.

More responses to our 'getting to know you' survey

Thank you to the following members for taking part.
You will find all of the completed surveys in our [Ombudsman Intranet](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-yd/).



**Ombudsman for the Banking System of**
**Republic of Srpska, Bosnia and Herzegovina**
INFO Network Member since 2012
Vladimir Rudic, Ombudsman
[Website](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-yk/)

About our Ombudsman scheme

**Which financial services/products does your scheme cover?**
Banking, micro-credits and leasing services,non-bank credit
**Which financial services businesses?**
All businesses of this type in the Republic of Srpska, apart from the foreign-owned ones; services provided by these businesses for customers anywhere in the world
**How was your scheme established?**
By law
**Who can make a complaint to your scheme?**
Consumers and small business customers — small business customers include entrepreneurs and small farmers.
**Must they complain to the financial services provider first?**
Yes
**How long does the provider have to resolve the complaint before it can be escalated to your scheme?**
30 days
**Are financial service providers required to tell complainants about your scheme?**
Yes
**Does the complainant have to pay a fee/deposit to have a complaint handled by your scheme?**
No
**Which forms of dispute resolution does your scheme provide?**
Mediation/conciliation and recommendation; parties' settlement agreement binds both parties; it is executive titulus by law.
**Are your decisions subject to appeal or oversight?**
No
**Is there a maximum amount you can award?**
No
**Can you make awards for non-financial loss?**
No
**About how many enquiries and complaints does your scheme receive each year?**
About 250 - 300 enquiries and 120 - 160 complaints
**How many staff does your scheme have?**
2



**General Insurance OmbudsService, Canada**
INFO Network Member since 2011
Brian Maltman, Executive Director
[Website](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-jl/)

About our Ombudsman scheme

**Which financial services/products does your scheme cover?**
Home, auto and business insurance
**Which financial services businesses?**
All the businesses of this type in Canada, both national and foreign-owned
Over 95% of the business (by premium volume) transacted in Canada
**Does that include 'intermediaries'?**
No
**How was your scheme established?**
Insurance companies are required by law to be a member of an independent ombuds organisation. GIO is the organisation of choice for the industry.
**Who set it up?**
Independent directors and first Board Chair
**Who can make a complaint to your scheme?**
Anyone who holds a policy of insurance with a member company
**Must they complain to the financial services provider first?**
Yes
**How long does the provider have to resolve the complaint before it can be escalated to your scheme?**
As soon as reasonably practical
**Are financial service providers required to tell complainants about your scheme?**
Yes
**Does the complainant have to pay a fee/deposit to have a complaint handled by your scheme?**
No, all services are free of cost to the consumer
**Which forms of dispute resolution does your scheme provide?**
Mediation/conciliation; recommendation (non-binding)
**Are your decisions subject to appeal?**
None of GIO's services affect the rights of either party
**Is there a maximum amount you can award?**
No
**Can you make awards for non-financial loss?**
No
**About how many enquiries and complaints does your scheme receive each year?**
3,800+ enquiries last year; 89 – 92% complaints
**How many staff does your scheme have?**
8



**Financial Ombudsman Scheme, Isle of Man**
INFO Network Member since 2008
Norman Teare, Senior/Chief Adjudicator
[Website](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-jy/)

About our Ombudsman scheme

**Which financial services/products does your scheme cover?**
Banking, non-bank credit, insurance, investments, pensions/superannuation
**Which financial services businesses?**
All businesses of this type in the Isle of Man, both national and foreign-owned, including fee-based financial advisers; services provided by these businesses for customers anywhere in the world
**How was your scheme established?**
By law by the Isle of Man Government
**Who can make a complaint to your scheme?**
Consumers, and small businesses and charities that are not limited liability companies
**Must they complain to the financial services provider first?**
Yes
**How long does the provider have to resolve the complaint before it can be escalated to your scheme?**
8 weeks
**Are financial service providers required to tell complainants about your scheme?**
Yes
**Does the complainant have to pay a fee/deposit to have a complaint handled by your scheme?**
No
**Which forms of dispute resolution does your scheme provide?**
Mediation/conciliation; decision that binds both parties
**Are your decisions subject to appeal or oversight?**
Appeal to the High Court only on point of law, not on interpretation of the facts; petition of doleance
**Is there a maximum amount you can award?**
Yes, £150,000
**Can you make awards for non-financial loss?**
Yes, only scheme limit
**About how many enquiries and complaints does your scheme receive each year?**
About 275 enquiries and 267 complaints
**How many staff does your scheme have?**
2.8 fte



**Office of the Banking Adjudicator, Botswana**
INFO Network Member since 2008
Gabriel A.K. Maotwanyane, Banking Adjudicator
[Website](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-jt/)

About our Ombudsman scheme

**Which financial services/products does your scheme cover?**
Banking
**Which financial services businesses?**
Investment and Commercial banks that are members of the Bankers' Association of Botswana
**How was your scheme established?**
By voluntary participation of the members of the Bankers' Association of Botswana
**Who can make a complaint to your scheme?**
Consumers of banking services
**Must they complain to the financial services provider first?**
Yes
**How long does the provider have to resolve the complaint before it can be escalated to your scheme?**
14 working days under the Banking Act
**Are financial service providers required to tell complainants about your scheme?**
Yes. They should use their websites, product brochures, publish notices in the banking halls, etc.
**Does the complainant have to pay a fee/deposit to have a complaint handled by your scheme?**
No
**Which forms of dispute resolution does your scheme provide?**
Mediation/conciliation; recommendation (non-binding); decision that binds the financial business if the complainant accepts it; decision that binds both parties
**Are your decisions subject to appeal or oversight?**
No
**Is there a maximum amount you can award?**
Yes. Up to P500,00-00 equivalent to USD 70,000.00
**Can you make awards for non-financial loss?**
Yes. Up to P6,000-00 equivalent to USD 1,000.00
**How many staff does your scheme have?**
3 members (officials)

News grabs

[**Public awareness**](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-ji/)
In the context of a Legal Ombudsman, discussion of whether a lack of signposting by firms under jurisdiction contributes to a general reduction in Ombudsman awareness

[**Pragmatic approach paying off**](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-jd/)
Assessment that the new UK Pensions Ombudsman's change in approach to dispute resolution has enabled the service to resolve a greater number of complaints without a corresponding increase in delays

[**Moving to a more pro-active role in appeals**](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-jh/)
Pensions Ombudsman announces a more pro-active participation in appeals

[**Industry wary**](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-jk/)
Industry backs Pensions Ombudsman taking a more active role in pension disputes that reach the courts but raises concerns about how it will use its greater legal powers

[**Questioning a bank tribunal**](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-ju/)
Australia's major consumer groups take their concerns about a mooted bank or financial services tribunal right to the top in a letter to the Australian Prime Minister

[**Call for 'retrospective' fund for financial victims**](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-tl/)
A Supreme Court case in Australia involving a financial planner raises calls for a fund of last resort for people who have lost money through poor financial advice

[**Disputes about derivatives**](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-tr/)
Reporting that the Financial Ombudsman Institution has announced that it will take on cases involving disputes on 'complex high-risk financial derivatives

[**Financial Ombudsman - Azerbaijan**](http://infonetwork.createsend1.com/t/t-l-hrklthk-ilditultj-ty/)
Reporting that the Azerbaijan Banks’ Association (ABA) has a Financial Ombudsman for out-of-court settlement of minor disputes between banks and customers

A monthly e-bulletin for INFO Network members

To keep you informed of INFO Network developments
To share Ombudsman news items
To point you to updated information on the INFO Network website
To contribute, email your links, news items, articles to the Secretariat at any time