



**MFSA**

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**MALTA FINANCIAL SERVICES AUTHORITY**

Consumer Complaints Unit  
Annual Report 2007

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# Chairman's Statement



2007 was marked by sustained progress in establishing the Consumer Complaints Unit on a sound footing in order to deliver a high quality public service to consumers of financial services. The year was marked by an increase in the number of enquiries, visits to the website, direct contacts and number of complaints.

Coping with this demand is a major challenge, which has been met by increasing the staff complement and by identifying more effective ways of managing the increased workload. The Unit has also focussed on anticipating future requirements in order to plan accordingly. This has entailed working closely with the industry and licence holders in order to obtain more in-depth-knowledge on likely complaint trends.

The public has become more aware of the role of the Consumer Complaints Unit which has gradually evolved from an informal alternative preliminary means of redress, to becoming an accepted framework for resolving financial complaints fairly, speedily and independently.

This is the second Annual Report of the Consumer Complaints Unit, published separately from the main Annual Report of the Malta Financial Services Authority. It presents a record of hard work and notable achievements. The Authority is pleased with the impact being made by the Unit with consumers, the financial services industry and the country in general.

I wish to express my appreciation to the staff of the Unit for the commitment and professionalism which they have displayed to date.

A handwritten signature in black ink that reads "JV Bannister". The signature is written in a cursive, slightly stylized font.

**Prof. Joe V. Bannister**

# Consumer Complaints Unit

## Aims

The Consumer Complaints Unit is empowered by law to investigate complaints made by private individuals relating to any financial services transaction in a fair and impartial manner. It also assists the Malta Financial Services Authority (MFSA) to identify any new issues that require its prompt attention and which may affect consumer confidence in financial services.

The Unit is also responsible for providing consumer education and information about financial services and to answer queries from the public on financial services in general.

## Legal basis

Legislative changes which came into force in 2002 widened the MFSA's responsibilities to include consumer protection in the financial services sector.

In terms of article 4 of the Malta Financial Service Authority Act (Cap 330), the MFSA is tasked to promote the general interests and legitimate expectations of consumers of financial services and to promote fair competition practices and consumer choice in financial services. The functions of the Consumer Complaints Manager are established in article 20 of the Act. The Manager investigates complaints from individual private consumers arising out of, or in connection with, any financial services transaction. Where required cases may be referred for consideration to the Supervisory Council.

The legislation allows the Consumer Complaints Manager to communicate to a consumer – whose complaint may have been investigated – information concerning any matter which may have come to his cognisance in the course, or as a result of, an investigation into a complaint. However, the Manager is unable to give advice on any particular matter or to act on the complainant's behalf in any dispute with a licensed person, except where this is provided for by law.

During 2007, two provisions relating to out-of-court dispute resolution in the Markets in Financial Instruments Directive (2004/39/EC) were transposed in article 20 effectively extending the role of the Consumer Complaints Manager beyond products and services falling under this Directive. The Manager is now able to encourage the parties to a dispute to reach an out-of-court settlement whenever circumstances so warrant. In addition, the Manager is required to the extent possible, to assist and cooperate with bodies responsible for out-of-court settlement of consumer disputes in Member States and EEA States in the resolution of local and cross-border consumer disputes concerning financial services.

## Operational aspects

The Consumer Complaints Unit deals with complaints through mediation and/or investigation. The MFSA does not charge for this service. Complaints are reviewed on their particular merits and the issue is discussed with the parties concerned with a view to arriving at a fair and reasonable arrangement.

The Unit can only make non-legally binding recommendations. This means that the complainant and the financial entity may choose not to accept the Unit's recommendation. When the Unit considers that the financial entity has treated the customer fairly or is already offering adequate redress or compensation, it will advise the customer accordingly. However, if after an investigation, the Unit does not uphold a complaint or the financial entity refuses to accept the Unit's recommendation, the complainant is advised to seek professional help.

Complainants do not usually need professional, legal or financial help to bring a complaint to the MFSA. However, they are not precluded from being assisted by any person when making representations on their complaint. The complainant is responsible for fees payable for such professional help. The Unit does not consider a complaint if it is being or has already been decided by the courts or any other redress mechanism set-up under the laws of Malta or elsewhere.

Every financial entity is required to have its own internal complaints-handling procedure and to make such procedure available to clients. An entity has to give the customer a final response within two months of receiving the complaint.

The final response should:

- include a summary of the complaint, and of the outcome of the entity's investigation;
- set out the entity's final view on the issues raised in the complaint;
- include details of any redress that is being offered, if appropriate;
- advise the customer about his right to refer the dispute to the MFSA's Consumer Complaints Unit if he considers the outcome to be unsatisfactory.

Unfortunately, a number of financial entities continue to disregard the final response and even fail to inform the complainant about the MFSA's redress mechanism.

The Unit does not usually review complaints if the financial entity was not given the opportunity to carry out its own investigations in the first instance. In such cases, the customer is directed to discuss his complaint with the financial entity concerned. If the matter remains unresolved, the customer may still approach the MFSA to have his case reviewed. However, there may be instances where the complainant may ask the Unit to contact the financial entity on his behalf. In these situations the financial entity will be asked to check the complainant's file and contact the customer directly as required. The complainant would be informed accordingly.



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Complainants are encouraged to fill in a complaint form (available in English and Maltese) which assists them in formulating their case step-by-step. Where necessary the Unit also provides assistance with the completion of the form. An information sheet explaining the role of the Consumer Complaints Unit is also available. Most frequently, the complainant contacts the Unit by telephone and gives a description of the case.

In a number of cases the Unit may already have a good indication of the possible issues involved, especially if these are of a recurring nature (e.g. relating to the same product or service or where other complainants fielded similar questions). The complainant may be informed of the possible outcome but the Unit would still proceed with discussing the issue with the financial entity involved. All legislative aspects, rules, industry practice and other cases previously reviewed are taken into account when a complaint is being investigated. A financial entity may be required to provide a copy of any relevant documentation in respect of the complainant's case. This may be subsequently provided to the complainant unless the entity restricts its circulation for confidentiality purposes. On the basis of the review of documentation and discussions with the parties concerned, the Unit would normally be able to arrive at a conclusion about the case. The complainant would be invited to express his views on such conclusions.



*More information about the MFSA's Consumer Complaints Manager is available on [www.mfsa.com.mt/consumer](http://www.mfsa.com.mt/consumer)*

### Sharing of information with regulatory units

When a matter arises during an investigation which may be indicative of any kind of pattern or suspected regulatory breach, the regulatory unit concerned is informed so that action is taken as deemed appropriate.

As part of their work, regulatory units conduct periodic on-site visits at financial entities. The Consumer Complaints Unit provides information about complaints lodged against the particular entity being inspected to the respective unit to enable it to assess complaint-handling procedures.

### Co-operation with government bodies

The Unit receives complaint referrals from the Information and Client Affairs Directorate within the Consumer and Competition Division at the Ministry for Competitiveness and Communications and occasionally referrals are also made by the Ministry of Finance.

### Public information role

The mediation service offered by the MFSA has so far proved successful. However, its continued success is largely dependent on increased awareness among the public. Staff from the Unit took part in various television and radio programmes to ensure that the public continues to be informed on the nature of the service provided by the Consumer Complaints Unit.

Coupled with the Unit's role to educate consumers about financial services, the MFSA believes that its role in the media is effective as it constantly engages

with different sections of society. Such focus on consumers will continue in the coming year to ensure that public awareness continues to remain high. The Unit has also been invited to deliver lectures organised by private organisations on investor education and consumer rights on financial services.

### Publication of comparative tables

During the first half of the year, the Unit updated a set of four comparative tables and issued a new table showing fees, charges and other information to help consumers compare and select a number of banking products and services.

The five comparative tables are:

1. Debit and Credit Cards available from banks in Malta;
2. Savings and Current Bank Accounts in Maltese and foreign currency;
3. Paying and receiving money by cheque;
4. Transferring money from a local bank account to another;
5. Cross border payments in foreign currency.

The tables have been designed to provide consumers with a tool to help them widen their search for available products, identify the differences and, where possible, narrow down to a shortlist or to a particular product provider. They are not meant to inform a consumer whether a product is suitable for his requirements and would not replace the list of tariffs which a financial services entity is obliged to provide to its clients.

In addition, the tables include appropriate guidance so that consumers who do not understand the information in the table as represented can seek further explanations and examples. The Unit publishes regular updates of these tables and intends to issue new tables for other financial services sectors. The tables can be downloaded from the MFSA's consumer website and are also available on request.

### The European dimension

The Consumer Complaints Manager is an observer on FIN-NET, a network of out-of-court dispute resolution bodies in the EU. A formal application has been made to the European Commission for the MFSA's Consumer Complaints Manager to formally become a member of FIN-NET.

The Complaints Manager is also a national representative on the Government Expert Group on Retail Financial Service (GEGRFS) established by the European Commission to assist in the policy development of retail financial services and the follow-up to the Green Paper on Retail Financial Services in the Single Market.

During the year, the Complaints Manager was invited to give a presentation about Alternative Dispute Resolution in the European Union organised by the Polish Insurance Ombudsman in Warsaw. He was also a speaker on a panel which discussed feedback and accessibility in respect of out-of-court redress schemes during an international conference for out-of-court dispute resolution bodies for financial services organised by the Financial Services Ombudsman in the United Kingdom.

# Review of Non-interest Charges in the Banking Sector



During the year, a detailed review of non-interest bank charges was carried out in respect of the two largest banking institutions. This project, which is on-going, assessed the components of the banks' non-interest income over a number of years. Also reviewed were certain bank practices and proposals for concrete measures for these practices to be modified and/or abolished were presented to the two institutions.

This was the first time that the MFSA has embarked on such a detailed project to assess bank charges in Malta. Its remit to carry out this review arises from article 4 of the Malta Financial Services Authority Act, namely:

- (b) to promote the general interests and legitimate expectations of consumers of financial services, and to promote fair competition practices and consumer choice in financial services;
- (c) to monitor and keep under review trading and business practices relating to the supply of financial services to private and other persons, and to provide relevant information and guidelines to the public;
- (f) to investigate allegations of practices and activities detrimental to consumers of financial services, and generally to keep under review trading practices relating to the provision of financial services and to identify, and take measures to suppress and prevent, any practices which may be unfair, harmful or otherwise detrimental to consumers of financial services.

A detailed confidential report of the MFSA's findings was drawn up with a substantial number of recommendations and the two respective banks were asked to provide the MFSA with their comments. During the last quarter of the year, the MFSA held a number of separate meetings with senior officials of the two banks. The Authority is pleased to note that the banks will be adopting some of its recommendations during 2008. However, it believes that there are other recommendations that should also be implemented.

In the MFSA's opinion, the measures proposed in the report are considered to be reasonable and practicable. The MFSA believes that in order to preserve and enhance the level of banking competition in Malta, the banks should take action to ensure that customers: have a better understanding of the costs relating to any accounts they hold; have a better appreciation of the way their accounts are maintained; have the resources in hand to compare costs between the limited number of banking institutions operating in Malta; and to have the opportunity to shop around for products and services which suit their needs. The MFSA is convinced that increased transparency of charges and practices should lead to enhanced levels of competition.

The MFSA does recognise that the measures proposed will not be a panacea for all complaints and issues which consumers may raise from time to time. Neither will its intervention replace the benefits which will accrue from more active and widened competition in the local banking sector.

Nevertheless, the MFSA will continue to be vigilant to ensure that consumers reap the maximum benefits of a liberalised banking sector in Malta.



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# Complaint Trends

Table 1 represents the complaints handled by the unit in 2007. Table 2 and Figure 1 represents a classification of the formal cases resolved in 2007.

**Table 1 – A comparison of the analysis of complaints and queries handled in 2006 and 2007**

	Formal Complaints						Verbal Complaints		Queries	
	Cases Received		Cases Closed		Pending Cases		2006	2007	2006	2007
	2006	2007	2006	2007	2006	2007				
Banking	34	39	32	42	5	2	7	15	24	45
Insurance	121	148	117	137	13	28	62	36	116	145
Investments	30	39	39	38	8	10	10	8	34	48
Others	5	21	5	15	2	6	6	4	37	21
Total Complaints	190	247	193	232	28	46	85	63	211	259

The Consumer Complaints Manager distinguishes between ‘formal’ complaints, where the complainant submits his complaint in writing, and ‘verbal’ complaints, normally received over the telephone. If the issue raised by the complainant requires contacting a licensed entity, the entity is contacted by e-mail or over the telephone for any comments. However, if the matter becomes complicated, the complainant is requested to submit the complaint formally in writing.

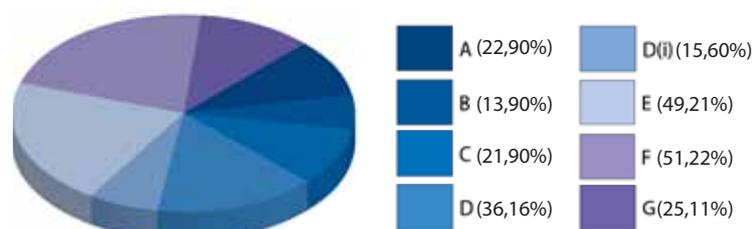
Throughout the year, data was collected for the number of queries received from consumers on a wide range of issues relating to financial services. Comments or replies on these queries were given immediately over the telephone, without the need to contact the licensed entity concerned.

A detailed breakdown of Tables 1 and 2 is available in Appendices 1 and 2.

**Table 2 – Formal cases closed in 2007 by classification**

- (A) 22 Outside MFSA jurisdiction (in such instances and following any investigation undertaken, the complainant is requested to seek redress with the appropriate authority as applicable.)
- (B) 13 Customer withdrew complaint
- (C) 21 Referred to entity or consumer – no feedback
- (D) 36 Entity has not treated the customer’s complaint fairly – complaint upheld by Consumer Complaints Unit. Entity accepts recommendation.
- (D)(i) 15 Entity has not treated the customer’s complaint fairly – complaint upheld by Consumer Complaints Unit. However, entity did not accept recommendation.
- (E) 49 Entity has treated the customer’s complaint fairly – complaint not upheld by Consumer Complaints Unit.
- (F) 51 Entity has generally treated the customer’s complaint fairly but it still agreed to a goodwill payment or improved settlement.
- (G) 25 General query – provided information/clarification.

**Figure 1 – Formal cases closed in 2007 by classification**



# Recurring Issues

The Unit has seen a growing trend of consumers approaching the MFSA to ask questions about financial services or to enquire about their rights. Many do so because they feel that the financial entity they are dealing with might not have offered them a service which meets their expectations. Others may want to double-check what their financial entity recommended while others want the Unit to direct them to more information about a product or service. This trend is very encouraging and the Unit will continue to make its presence felt among the public to encourage more people to ask questions and to learn about financial services.

The Unit assesses each case on its own merits without taking sides. Resolving complaints is very complicated, not only because of the nature of the product or service in dispute but also because of the human element involved. Some consumers express disappointment when the Unit does not find sufficient evidence to uphold their claim even after considering the facts relating to the dispute and the proof submitted during the investigation.

Financial services products continue to remain complicated. Even if, in some instances, documentation explaining products or services is written in fairly simple words, it is human to perceive these documents as being too technical and difficult to comprehend. Legislation which is supposed to increase consumer protection does not necessarily make it easier for consumers to understand better the products or services they are buying. The explanatory literature and contracts may discharge a financial entity's responsibility but offer no reassurance that they are read and understood by consumers.

Since 2002, when the Consumer Complaints Unit was set up by the MFSA, a number of recurring issues have been observed. This section outlines some of these issues and provides the MFSA's views about them.



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### Insurance – practices and procedures

The MFSA's 2006 Annual Report emphasised the importance of having insurance information readily available to policyholders without having to ask for it. For example, the Motor Vehicle Market Value Guidebook is an important reference for market values for a wide range of motor vehicles and not always easily accessible to the public. The MFSA's suggestion for such information to be made easily accessible has been taken up by the insurance association in Malta. Their website, [www.maltainsurance.org](http://www.maltainsurance.org), is a positive tool for policyholders to find recent market values for their vehicles. The website also lists approved motor surveyors and other valuable information. It is now up to the respective insurance entities to inform their customers about it.

The Unit's 2006 Annual Report dedicated a substantial part to motor insurance complaints which continue to be the largest sector of complaints the Unit dealt with in 2007. More specifically, the issues which were raised dealt with the rights of the third party in the event of a claim. Despite the fact that there is legislation protecting the rights of the third party in motor claims, the problem is in the detail and the procedures which insurers implement. The insurance sector has, in fact, agreed to a voluntary code of best practice when handling third party motor liability claims. The code, which comes into effect on 1 January 2008, may well be work in progress. However, the MFSA expects this code to be made available on the industry's website as it clearly lays out the obligations of insurers towards third party claimants. The MFSA also expects other industry groups to take similar initiatives with the ultimate aim of providing more information to consumers.

### Motor insurance – loss of use/right to a rented vehicle

Some insurers offer their policyholders, who have either a Third Party Fire & Theft or Comprehensive Cover, a courtesy vehicle for the number of days while their vehicle is being repaired. Such benefit may either be part of the benefits in a motor policy or purchased additionally to a standard motor policy. The cash value of such benefit is set out in the policy.

A third party's vehicle which has suffered damages as a result of a collision is also entitled to a courtesy car from the insurer of the party which has caused the damage. This is, however, not an automatic right. In the first instance, liability has to be ascertained. This means that the party which has caused the damage has clearly and unequivocally accepted fault. If liability has not been ascertained, the case may need to be sent to arbitration. Normally the insurer of the party who is likely to be at fault will send a surveyor to assess damages and a report is submitted to the insurer. Assuming the vehicle can be repaired, the number of days allocated for repairs is also estimated in the surveyor's report.

Third party owners of damaged vehicles ask: is it their right to expect a rented vehicle for the period they are waiting for their car to be repaired? What happens if there are no spare parts available?

Sometimes, the third party's damaged vehicle could still be in a roadworthy condition. In this case the insurers' voluntary code states that when a vehicle can still be driven, a third party is not entitled to a rented vehicle for the period the car is waiting to be repaired. The code, unfortunately, does not adequately address situations where there are delays as a result of unavailability of spare parts.

Although each case should be treated on its own merits, it is important to point out that loss of use is financial loss which a person actually incurs as a result of being deprived of the use of his own vehicle. The Maltese Courts have established that an injured party (i.e. the party whose vehicle has been damaged) should be reinstated in full and rightfully is able to recover his losses and to restore his property to its pristine original state from the guilty party. The Courts also established that a victim should always minimise his losses and not be saddled with additional expenses.

This may mean that the injured party of a vehicle which is still road worthy and which therefore can be driven safely and in respect of traffic rules may not automatically be eligible for a rented vehicle except for those days when the car is being repaired. The overriding principle is for an insurer to deal with claims fairly and promptly. There have been cases where the insurer took weeks to admit liability or find suitable replacement parts, which can create inconvenience to the injured party. In these situations, the insurer's responsibility to provide a rented vehicle to an injured party whose vehicle is not roadworthy until commencement of repairs is not discharged.

The Unit believes that the duty to determine whether a vehicle is road worthy or not lies with the insurance company and its appointed surveyor. The injured party may disagree with the surveyor's conclusion and has every right to independently assess his vehicle's roadworthiness. This is important especially when the injured party decides to rent a vehicle with the intention to claim reimbursement from the insurer. In this case, he may also need to prove that renting a vehicle was indeed necessary and that every attempt has been made to minimise losses (such as unnecessary delays for repairs to commence). The Unit always recommends that the injured party should keep an insurer informed of any actions relating to car hire as these may affect arbitration or tribunal proceedings.

In terms of the code, the owner of a vehicle considered to be beyond economic repair (or total loss) is not entitled to a courtesy car. However, the insurer should not take more than five days, from the date it has been so declared, to inform the vehicle's owner about this.

Many cases involving loss of use are complicated. An injured party can always claim reimbursement for loss of use by instituting proceedings against the party who caused the accident and/or his insurer. In these cases, legal advice should be sought.

### Motor insurance – delay in repairs

If a repairer takes longer to carry out repairs than he would have agreed with the surveyor then a vehicle owner should ask the appointed repairer to contact the surveyor to explain the delay. If the surveyor finds the repairer's explanation justifiable, the survey report would be amended and the number of days increased accordingly. This situation arises, for example, when the repairer while actually repairing the vehicle comes across some other damage that was not evident while carrying out the survey. In this instance, as well, if the surveyor confirms damages the report will be amended to include extra days for such additional repairs. On the other hand, if the repairer started working on the vehicle and stopped work in order to work on other vehicles, it is not justified and insurers cannot be held responsible for a repairer's disregard to a job.

### Motor insurance – failure to lodge a claim

In terms of the legislation, a party involved in an accident is obliged to inform his insurer of the accident within two weeks of the event or two weeks from the event first coming to the insured's knowledge, if he was not present at the accident. Whenever an insurer believes that there are reasonable grounds that his client may be liable for the accident and therefore obliged to pay a claim to an injured party, the insurer is obliged to treat the event as if a claim has been made, whether the insured has notified the accident or not. If the insurer is of the opinion that liability is to be admitted, whether in full or in part, then the insured must be notified of the intention to pay the claim and the proposed settlement amount. The notification should also include an explanation of the consequences the insured might be liable to if he objects to the payment. An insurer is entitled to recover legal costs and interest from the insured who had objected to the payment.

Insurers have recognised that many of their clients are at best intransigent and fail to file a claim or even respond to requests to file a claim. This is not acceptable and insurers are obliged to ensure that the word and spirit of the law is respected. Insurers are legally obliged to send these notifications in writing and by registered mail. However, in the Unit's view, these notifications should be sent without delay following the lapse of the statutory two weeks notification period from the date of the event/accident, or when the third party notifies the insurer, whichever is the earlier. A policyholder who receives a notification is understood to have agreed to the payment of the claim unless, within ten days of receipt of the notice, he informs the insurer of his objection to the payment.

If a customer objects, the insurer is duty bound to inform the third party of his customer's objection. In this case, the third party would be entitled to challenge the objection through litigation (generally through arbitration if the value of the claim does not exceed €11,640 and no persons had been injured).



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### Motor insurance – the right to be kept informed

Many complainants feel that some insurers do not keep them informed about progress relating to their claim. The claimant not only enjoys the right to be informed but should also be given guidance regarding the whole claim process and settlement. For instance, a claimant has the right to be informed of the name and function of the surveyor, claims handling company or a loss adjuster appointed by the insurer.

Many insurers are reluctant to provide a copy of a surveyor's report to a third party claimant although there is nothing which precludes the third party from viewing and discussing the report with the insurer as ultimately a copy of the surveyor's report is passed on to the repairer who is appointed by the third party.

The Unit does not determine cases relating to liability and policyholders would be required to go to arbitration for this purpose. It is certainly useful if policyholders are given information about arbitration proceedings and how this works.

### Motor insurance – damages suffered by an innocent third party

There are situations where a third party unconnected to an accident suffers damages caused by two or more vehicles colliding. If the injured party is covered by comprehensive insurance, he could easily claim from his policy, leaving his insurer to proceed legally, if need be, for reimbursement of claims and reinstatement of the non-claims discount.



Problems may, however, arise if the unconnected/innocent party is not covered for own damage expenses. The insurers of the parties which caused the damage are sometimes reluctant to settle damages to the unconnected third party because they claim that, in doing so, they might either prejudice the rights of their clients or may be unable to reclaim any funds paid if the case is not sent to litigation. Insurers also claim that the law is silent in these situations.

According to the insurers' code referred to above, the insurers involved must strive to handle and settle the claim of the unconnected/innocent party without delay. If there is a problem about liability, insurers must make a proposal for a provisional payment "without prejudice" to the claim of the unconnected third party by sharing the payment equally between them. The insurers are obliged to inform their respective policyholders of this and require them to agree to arbitration. Some insurers may be reluctant to settle with the innocent party if their clients object or fail to agree to arbitration (as they would not be able to have the right to reclaim expenses from their client).

The law and industry practice should always be on the side of the unconnected/innocent third party who, after all, is not to blame for the whole affair. An innocent third party rightfully expects insurers to handle such cases expeditiously and without the need to seek legal redress to prove their rights.

### Motor insurance – use of spare parts

A car owner rightfully expects that his vehicle is repaired within the norms and practices of the repair industry and that any parts used for repairs should be of good quality. Some insurers apply a policy that non-original or recycled second-hand parts should be used to repair a vehicle which is older than five years. The principle of indemnity, that is the obligation of putting the victim to his original position, is also applicable in this instance.

Essentially it is up to the surveyor to determine the type of parts to be used. There should be no discussion about the quality of the parts – car owners should reject any parts which are of inferior quality and which impinge on the driver's and passengers' safety. A second hand or non-OEM part may still be of good quality. In addition, a seven or eight year old vehicle may still be well maintained but that does not automatically qualify it as being "old" and therefore meriting non-original parts. The insurer-appointed surveyor should ensure that his assessment and recommendations constitute a fair and just resolution of repair works.

### Motor insurance – refund of premium

Policyholders who wish to terminate their motor policy before it matures should first consult their policy document regarding refund of premium. Many insurers apply stepped reducing rates (sometimes referred to as "short period rates") for refunds the closer the request for refund is to the maturity date. The situation is different when starting a new policy where pro-rata premium is calculated. Some insurers set out these stepped reducing rates in their policies. Others merely make a reference to the rates "as applicable by the company from time to time". The Unit expects these rates to be transparent and publicly available.

During the past year, some insurers have also started applying an administration fee which was not disclosed in the policy document. Charging administrative fees, unless these are fair, transparent and made known to the policyholder in writing when cover has been initiated, is considered unfair.

### Health insurance – the right to know and be informed

Many policyholders are members of a health insurance scheme as part of their employment benefits. Some policyholders complain that they are not given a copy of the full policy document (even if a "Summary of Cover" and/or the list of monetary benefits is provided). The provision of a policy document for any type of insurance cover should not be an option but rather an obligation of the insurer. Policyholders should demand a copy of the policy and this should be provided immediately and without cost.

Some employers organise information seminars for their employees in which officials from health insurance companies are invited to explain procedures relating to their policies. A number of queries and complaints received by the Unit could have easily been solved if employees were provided guidance about their policy and given full information about claims and policy exclusions, for example.

Also health insurers have a list of consultants who do not accept direct settlement and request payment directly from the policyholder. When claiming for inpatient benefits, it is incumbent upon a health insurer to inform policyholders. It is also incumbent on health insurers to inform policyholders who make an out-patient claim for reimbursement of consultation fees at a private clinic or hospital that they are not entitled for reimbursement of the clinic fee for the use of the waiting facilities.

### Travel insurance – fee to obtain a travel visa

If a visa is obtained for a specific trip and the trip is cancelled for a situation which would have been covered for reimbursement under the cancellation and curtailment section of the policy, a claim may be made for the reimbursement of the fee paid to obtain the visa. If on the other hand, the visa is valid for a number of months or years and may be used for future trips then the right to claim reimbursement of the fee is not appropriate.

### Cross-border complaints

During the past two years, a number of insurance companies have set up offices in Malta with the purpose of offering particular products and services to consumers in other EU member states. These companies which are duly authorised and regulated by the MFSA “passport” their services to other member states. In their documentation to consumers these companies are also required to outline their complaints procedure and redress mechanisms.

The remit of the Consumer Complaints Unit extends also to complaints from non-resident individuals who purchase products and services offered by these insurance companies. Indeed, the Unit received a number of queries and complaints from foreign consumers who had purchased such insurance products.

The Unit has also assisted Maltese consumers with queries and complaints relating to financial services entities in other Member States. In these situations, the Unit will channel the query or complaint to the out-of-court redress scheme in that other Member State but will continue to assist the complainant as appropriate.

### Investments – consumers should exercise caution

The maxim that financial products are mostly sold rather than bought may hold true for a number of investments especially capital secured products. These are products which have a wide appeal because capital is repaid after a number of years although income may not necessarily be guaranteed. The majority of these products have been bought on execution only basis, in the sense that no advice was provided by the financial intermediary to the investor. Documentation clearly indicates this and is signed by the investor. Whether or not investors are aware of what they are signing is another matter.

Those who have complained about poor performance of a capital secured or protected product may find no comfort in the fact that it is difficult for the Unit to uphold a complaint on the basis of alleged mis-selling when the



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documentation would show that a customer, at the time of the investment, confirms that he understood the workings of the product without advice but on the basis of his reading and understanding of the product documentation which was provided at the time of sale.

Consumers should take time to read the contract and supporting documentation mindful of their needs, objectives and responsibilities. Consumers complain about persistent sales pitches from over-eager staff. Financial entities are more aware than ever that such misuse of customer's trust is no longer sustainable, indeed acceptable. Customers should not feel intimidated if they prefer not to be approached.

In addition, there should be greater effort for product documentation to be written in simple language, preferably also in Maltese.

### Financial products – “cold calling”

Every so often, the Unit receives complaints regarding banks' practices of phoning customers for the purpose of marketing their investment products. This straddles two issues: data protection and “cold calling”. Cold calling (visiting a person or contacting him by telephone without being expressly invited to do so) is not prohibited as long as a number of stiff criteria are met each time a cold call is made.

As to data protection, financial entities are able to use information which they have about their clients for direct-marketing purposes without an explicit prior consent. In other words, unless a customer objects in writing to his information being used by the financial entity for direct marketing purposes, the financial entity could on the basis of an implicit consent contact a customer at home about the opportunity of a higher return in a new investment in lieu of an idle savings account or a maturing fixed account.

One rightfully expects those financial entities which actively use information about their clients for direct marketing to invest a little time and resource to make their customers' aware of their rights in terms of law.

The practice in itself is not wrong. What is certainly wrong is the undue pressure on consumers by over-eager sales persons urging for a meeting to discuss “the new investment” and more importantly the lack of awareness of consumers' rights that they can select not to be contacted by a simple letter to the financial entity. Similar hard-sell techniques may be aggravated by financial incentives offered to sales persons, should they reach certain targets. The conflict of interest in such situations is quite obvious. Although the Unit will continue to educate consumers on this issue one rightfully

expects those financial entities which actively use information about their clients for direct marketing to invest a little time and resource to make their customers' aware of their rights in terms of law.

### Banking – compensation for distress

Increasingly, customers are filing complaints whenever they feel aggrieved by an error of a bank or its employee. In the majority of cases, where the customer suffers financially the entity would reimburse the customer for the loss. The issue gets complicated where the customer does not incur any financial loss as such but feels that he should be compensated for the inconvenience suffered as a result. Moreover, the demands which are made for such non-financial loss may either be exorbitant or alternatively cannot be quantified by the customer. Each case is treated on its own merits but the amount of compensation recommended by the Unit does not normally exceed €115 (consumer law allows up to €233 for moral damages in cases brought before the Consumer Claims Tribunal).

### Scams

Many consumers have learnt that the best way to treat letters or e-mails announcing too-good-to-be-true winnings in some lottery stake without ever taking a lottery ticket is to ignore them. It is encouraging that people ask questions about these types of scams. The Unit has met a few consumers who parted with a few hundred (even thousands) of euros in the hope of receiving the promised million which never materialised. There is little the Unit can do when funds have been sent except perhaps reporting to the enforcement authorities.

However, there is more that can be done. Certainly, the Unit will continue to educate consumers on this issue. Financial entities which offer payment services should also play their part and be as alert as ever when confronted with a transaction which looks dodgy.



# Case Studies

Several of the complaints reviewed by the Unit concern extremely complex issues and despite efforts to have them resolved without undue delay some cases can take substantial time to resolve. This section provides a short summary of a selection of important cases dealt with by the Unit in the year under review. The names of the individuals involved and the particular situations have been changed to preserve confidentiality.

## Insurance – a lapsed life policy with a twist (complaint upheld)

Mr P came to MFSA in 2006 with a rather complicated case relating to two insurance policies he had purchased, one in the late 60s (a whole of life policy) and another, an endowment policy, in the late 70s. Mr P brought a pile of documents to MFSA, some of which unopened, of communication he had received from the two insurance companies. Mr P, who could not read or understand English, was unable to recall from whom he had purchased the policies.

The first policy denominated in sterling was issued by a UK company. There was no record how premium was paid to the company and it was not clear whether the policy was still effective. The second policy bought in the late 70s, was an endowment policy in Maltese Lira issued by another UK company. Mr P was under the impression that this last policy was to mature on his 61st birthday and would pay out a hefty amount. He arranged with his bank for the annual premium to be paid by means of a standing order from his savings account every October, to an account held by a local company which seems to have been the same company which sold the policy to Mr P.

The second policy matured in 2006 and a relative of Mr P wrote to the UK company asking for the maturity money. The company replied saying that the policy had been paid up since 1981. Neither Mr P nor his anxious family were aware of what 'paid up' meant. From the bundle of documents, it transpired that in 1980 and 1981 the UK company had sent a number of reminders to Mr P requesting payment of premium but Mr P ignored them possibly because he assumed the standing order instructions would cater for that.



The matter became complicated even further when the local bank provided the Unit with copies of correspondence relating to the standing order. Sometime after 1981, the UK company merged. The original standing order instructions were amended in the mid-1980 in favour of this newly merged UK insurance company. A new bank account was provided to the bank. Some five years later, the bank received a letter from the insurance company requesting a clarification about the annual premium as the name and policy number did not agree with their records. The bank, possibly acting on instructions from Mr P, confirmed that the policy number had been changed to that of the first insurance policy (the whole of life policy). Whether that was correct or not was anybody's guess. Ten years after, the UK insurer appointed a local entity as its 'run-off' agent.

In the meantime, the annual premium continued to be deducted from Mr P's savings account without it ever reaching the UK insurer. The local company in which the original standing order instructions had been paid for a span of around 12 years had been liquidated. Its liquidator had died some time after the company was declared defunct.

A substantial amount of premium (around €2,043) was unaccounted for. However, a further €1,770 (representing 14 years of premium) was traced to the account of the entity which was appointed as the 'run-off' agent. The entity never questioned why the bank was paying this amount. It so happened that the bank had changed its systems and the details of Mr P's policy in the standing order went missing. The entity managed to locate all the paid funds which had been allocated to a suspense account as 'unclaimed'. After various discussions with Mr P, his relative and even the Consumer Association, payment of the amounts held by this entity was made with compound interest. Regrettably the value which accrued on the endowment policy was rather minimal and no trace of any value on the whole of life policy could be found.

After 27 years, the standing order was stopped in 2006, the year Mr P celebrated his 61st birthday.

### Insurance – pairs and sets clause (complaint upheld)

Ms A purchased a travel insurance for a skiing holiday. While abroad, one boot was damaged. Some days after returning home, Ms A made a claim and presented a receipt for a brand new pair of ski boots she purchased while abroad. The insurance company informed Ms A that they would only pay for the equivalent of one ski boot as the other boot was not damaged. Ms A argued that ski boots are bought in pairs and it would be impossible to buy solely one ski boot to replace the damaged boot.

The relevant clause in the insurance policy stated thus: "we will pay for individual damaged or lost items forming part of a set or pair but not for companion pieces which were not damaged or lost." The Unit held the view that in an insurance loss settlement involving a pair or set the value of the loss is based on the reasonable and fair proportion that the lost or damaged item bears to the



*The insurance company informed Ms A that they would only pay for the equivalent of one ski boot as the other boot was not damaged.*

total value of the pair or set. The application of the insurance clause may be reasonable but only in instances where the remaining item does not reduce the value of the pair or set to zero – such as in this case where there was no value in the remaining shoe.

The insurance company concerned appreciated the fact that a settlement for only one ski boot would be unreasonable as it was accepted that there was no residual use or value in the remaining, undamaged ski boot. Ms A accepted payment for the full cost of the ski boots, less a small element of depreciation.

### Investment – one complaint benefits all (complaint upheld)

Two particular funds had been under-performing for quite some time. Despite the fund promoter's efforts to revive the two funds there was clearly little hope that new investors would be drawn to invest in the fund. Following discussions with the MFSA, the funds were wound down and investors were informed by letter of the mandatory redemption of all the shares in the fund in accordance with the funds' constitutional documents. Specific time frames were indicated and a particular date was earmarked as to when the mandatory redemption of the fund would take place.

Some investors left it to the last day of mandatory redemption to exercise their option. An investor noticed that a member of his family, who exercised the option a week or so before, obtained a far better value for his investments – even if there were no dramatic changes to the values of the underlying investment. This investor was not at all happy with the situation and complained to the licence holder who in turn promised to investigate. In the meantime, the investor contacted the Unit seeking further explanation. He was advised by the licence holder that the regulator was constantly being informed of the fund's actions and that the fund had sought approval prior to its mandatory winding down.



*The MFSA commenced a thorough review of the circumstances leading to the dramatic fall in the fund's value in the last few days before redemption, which was attributed, among other things, to an accounting quirk for a particular expense.*

The MFSA commenced a thorough review of the circumstances leading to the dramatic fall in the fund's value in the last few days before redemption, which was attributed, among other things, to an accounting quirk for a particular expense. Following further discussions between the fund and the MFSA, all investors in the fund who received less than what should have been actually attributed to them were approved an ex-gratia payment based on their respective holdings.

### Investment – calculation of return of a capital protected investment (complaint rejected)

Ms D purchased an investment which promised the repayment of the capital in full on maturity and a potential return linked to the growth of the FTSE 100 share index. When the investment matured, Ms D claimed that the bank in question had applied a method of calculation which was in contradiction with the method of calculation found within the brochure's terms and conditions. The investor confirmed that given her 'experience' in dealing with banks and investments, she was to be considered as an investor capable of handling personal financial matters her own way. A file note provided by the bank indicated that the investor refused to sign the standard form it required clients to sign in respect of investments.

The investor claimed that the way the explanation about potential return was written constituted an unfair contract term. The brochure was made up of two parts – a general descriptive part and a second part which contained detailed terms and conditions.

The investor claimed that had the bank applied the methodology in the first part as compared to that in the terms and conditions the return would have been higher. The Unit reviewed the product documentation in detail and found that in the descriptive part there were references – by way of an asterisk – prompting the reader to refer to the terms and conditions. The first part, therefore, had to be read and construed in conjunction to the terms and conditions which amplified on the methodology the bank intended to use.

A mathematical computation with different scenarios, prepared by the Unit, concluded that there could have been instances in which the investor would have actually been worse off had the 'methodology', which the investor claimed would have rendered a better return in the first descriptive part, been used.

The Unit held the view that for the methodology in the terms and conditions to be considered as unfair (compared to the general descriptive part), it had to assess whether the investor would have always been worse off had the bank used the methodology in the second part whichever way the index performed.

A mathematical computation with different scenarios, prepared by the Unit, concluded that there could have been instances in which the investor would have actually been worse off had the 'methodology', which the investor claimed would have rendered a better return in the first descriptive part, been used. The complainant's contentions were not upheld on the basis that there was no conclusive evidence that the bank's literature was unfair.

### Investment – an internal statement which caused trouble cross-border (complaint upheld)

An investor residing in another Member State held an investment with a financial intermediary located and regulated in Malta. The investment product was issued by a company domiciled and regulated in another EU jurisdiction.

Sometime during 2006, the investor instructed the intermediary in Malta to liquidate his investment. A few days after the transaction was completed, the investor received details of the redemption transactions by mail from the company which issued the product, giving the sale price in dollars and the conversion rate to sterling, together with the total yield in sterling of the transaction. About four weeks after the initial transaction the investor received by mail another redemption instruction from the same company but with a different exchange rate and a total yield some £Stg600 lower than the first document. The complainant alleged false reporting.

The investor following enquires with the local intermediary was informed that the rate of conversion from dollars to sterling in the first statement was only indicative. The actual rate which was used for the transaction was that disclosed in the second statement. It transpired that, although instructions to redeem the investment were sent to the company within one day, by the time the investor's request was actually processed by the company the rate which was applied for the transaction had actually deteriorated. The intermediary explained that the investor should not have received the first statement as this was an internal document which the company used for accounting purposes. According to the intermediary, the incorrect schedule had been released to the investor and that this was purely an administrative error. The intermediary produced a record of the actual deal undertaken by the company with its bankers which confirmed that the exchange rate in the second statement reflected the correct surrender proceeds.

The Unit was satisfied that the investor did not suffer any financial loss although it found it unacceptable that the company could manually change the rate which had already been issued on a statement only to resend a 'revised' statement nearly four weeks after the first had been issued. The investor was not in a position to determine which statement was correct as both were identical – except for the exchange rate. There was no indication whatsoever that the rate in the first statement was an estimate nor was the follow-up statement properly accompanied by any statement regarding the exchange rate used. This constituted improper disclosure.

The Unit noted that the intermediary offered its apologies for the company's mistake but nevertheless suggested compensation on the basis that the company's "mistake" caused unnecessary distress to the investor. However, as the company was not a licence holder authorised by the MFSA, the Unit offered to contact the regulator of the company for its views about the latter's apparent 'mistake'. The investor agreed to this.

A few days after the foreign regulator submitted the complaint to the company, full reimbursement of the 'notional' difference of £Stg600 was paid ex gratia to the investor in full and final settlement.

### **Banking – unauthorised withdrawals – payment of compensation (partially upheld)**

Upon checking his bank statements, Mr F noticed that a number of withdrawals were effected from a joint account he held, without his approval. He lodged a complaint with his bank. The bank noticing its mistake refunded the amount in full.

Mr F was not satisfied with the outcome and lodged a complaint with MFSA. He claimed that the bank was not right in withholding information regarding the unauthorised person who had provided the co-signature for the withdrawals.

Due to the sensitive nature of the case, the Unit informed Mr F that the bank was right in not divulging information about third parties and the whereabouts of those funds. It also informed Mr F that, although he rightfully had a duty to know that the bank took action to reclaim back those funds which were withdrawn without his co-authorisation, it was not his prerogative to know the details of any arrangements which the bank made with the other joint holder for the amount to be repaid.

The Unit, however, felt that although the bank refunded the account to restore it with the balance it had prior to the unauthorised withdrawals, the bank was duty bound to ensure that such mistakes do not recur. It recognised that Mr F suffered inconvenience as a result of the bank's mistake. Mr F, in fact, was claiming a hefty amount in compensation which was substantially higher than the amount which had been withdrawn. The Unit explained to Mr F that it had no remit to impose a decision on the bank to compensate for moral damages. If he wanted to pursue the matter in court Mr F was at liberty to do so. The Unit explained that Mr F had to have a strong legal basis to sustain his argument that the level of compensation he was requesting was fair and reasonable in the circumstances.

After long discussions with Mr F and the bank, an amount which did not exceed €175 was awarded in full and final settlement.

## APPENDIX 1 – Formal complaints by Classification

Description	Classified Cases by Category								TOTAL
	A	B	C	D	D1	E	F	G	
Banking complaints									
Charges		2	2	1	1	2	3		11
Cheque encashment						2	1		3
Delays				1			2		3
Use of exchange rate					1			2	3
Transfers			1						1
Bank mistake	1	1	1	4		6	2	2	17
Refusal to give information	2	1							3
Unauth. Credit Card TX					2	1			3
Commercial decision	1								1
Provided info or General query						1		1	2
Investment complaints									
Bad advice allegation		1	1			4			6
Other	1					1			2
Delays (payments and other docs)	1			1		1			3
Calculation of interest/yield/price		1	2			4	1	1	9
Charges				3		1			4
Mis-selling allegation			2		1	2	1		6
Use of exchange rate								1	1
Provided info or General query								3	3
Insurance complaints									
Cannot find insurance				2			1	1	4
Motor – Own policyholder – Market Value			1			2		3	
Motor – Own policyholder – Use of spare parts					2		2		
Motor – Third-party – Failure to open claim	2		2	3		2	5	3	17
Motor – Third-party – Liability	6		2	1	1	2	1	2	15
Motor – Third-party – Loss of use				1	2	1	1		5
Motor – Third-party – Market Value	1			1		3	4		9
Motor – Third-party – Use of spare parts		1		1	1		2	1	6
Refusal to give information							1		1
Intermediary-related				1					1
Health-related		1	1	1	2	6	1		12
Motor – Third-party – Loss of Profit								1	1
Insurer Concerned	1	1						1	3
Motor – Third-party – Delay in handling claim/payment		1	3	1		1	1	7	
Motor – Third-party – Choice of garage				1			1		2
All Commercial Policies	1								1
Motor – Third-party – Property Damage						1			1
Home insurance- related			1	3	1	1	5	1	12
Increase in premium		1			1		2		4
Life-related		2		1		1	4	4	12
Travel-related			1	3		4	6		14
Local Company passporting in EU						1			1
Motor – Own policyholder – NCD				1		1			2
Motor – Own policyholder – Claims	2		2	2	1	1	2		10
Motor – Own policyholder – Liability	3		1						4
Others		1	1						2
	22	13	21	36	15	49	51	25	232

### Classification

- (A) Outside MFSA jurisdiction (in such instances and following any investigation undertaken, the complainant is requested to seek redress with the appropriate authority as applicable.).
- (B) Customer withdrew complaint.
- (C) Referred to entity or consumer – no feedback.
- (D) Entity has not treated the customer's complaint fairly – Complaint upheld by Consumer Complaints Unit. Entity accepts recommendation.
- (D)(i) Entity has not treated the customer's complaint fairly – Complaint upheld by Consumer Complaints Unit. However, entity did not accept recommendation.
- (E) Entity has treated the customer's complaint fairly – Complaint not upheld by Consumer Complaints Unit.
- (F) Entity has generally treated the customer's complaint fairly but it still agreed a goodwill payment or improved settlement.
- (G) General query – provided information/clarification.

## APPENDIX 2 – Verbal complaints and queries

	Verbal complaints	Queries
Banking		
Charges	4	12
Cheque encashment	2	5
Delays	1	4
Use of exchange rate		6
Transfers	2	3
Bank Mistake		2
Refusal to give information		
Unauthorised Credit Card TX	1	
Interest Rate		6
Bank Commercial Decision	4	3
Provided info or General query	1	4
Banking Total	15	45
Investments		
Bad advice allegation		5
Calculation of interest/yield/price	1	1
Capital guaranteed-related	2	8
Charges		4
Intermediary mistake		3
Mis-selling allegation		2
Suitability of product		1
Use of fact-find		1
Use of exchange rate		5
Refusal to give information	1	
Other	1	
Delays (payments and other docs)		3
Provided info or General query	3	15
Investments Total	8	48
Insurance		
Cannot find insurance		3
Health-related		6
Home insurance- related	1	4
Increase / Refund of premium		4
Life-related	1	7
Travel-related	1	5
Motor – Own policyholder – NCD	2	9
Motor – Own policyholder – Claims	2	6
Motor – Own policyholder – Liability	2	8
Motor – Own policyholder – Loss of use	1	10
Motor – Own policyholder – Market Value	1	4
Motor – Own policyholder – Use of spare parts	1	4
Motor – Third-party – Failure to open claim		13
Motor – Third-party – Liability	4	12
Motor – Third-party – Loss of use		11
Motor – Third-party – Market Value	4	9
Motor – Third-party – Use of spare parts	1	9
Motor – Third-party – Delay in handling claim/payment	1	4
Motor – Third-party Choice of garage		2
Independent Insurance – related	11	7
Provided info or General query	3	8
Insurance Total	36	145
Others		
General	3	3
Scam	1	15
Listed Company on the MSE		3
Others Total	4	21
Grand Total	63	259

**MFSA**

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