

# Focused on delivering

2012-2013 Annual Review



**FGS**  
FINANCIAL  
OMBUDSMAN  
SERVICE

## About this Review

This Annual Review covers the 2012-2013 financial year (1 July 2012 – 30 June 2013). It follows the reporting requirements for external dispute resolution (EDR) schemes set out in ASIC Regulatory Guide 139. The review is available in hard copy and on the FOS website at [www.fos.org.au/annualreview](http://www.fos.org.au/annualreview). To order print copies, please email [publications@fos.org.au](mailto:publications@fos.org.au).

All the data in this review was correct at the time of reporting.

Minor discrepancies between this and previous annual reviews reflect the outcome of a review of our data and reporting frameworks.

Many of the charts and tables in this review use percentages. All the percentages have been rounded to the nearest whole number. Because of this, the sum of the percentages in a chart or table might not add up to 100%.

The 2012-2013 Comparative Tables, which show disputes data about members of FOS, are available on our website at [www.fos.org.au/comparativetables](http://www.fos.org.au/comparativetables).

## Contents

1	Mission	
3	Year at a glance	
4	Message from the Chair of the Board	
6	Message from the Chief Ombudsman	
8	Our 2012-2015 Strategic Plan	
9	Our performance in 2012-2013	
12	Our People	
16	Organisational chart	
17	Senior Leadership Group	
<b>18</b>	<b>Our Stakeholders</b>	
19	Our members	
23	Stakeholder engagement	
	– sharing our knowledge	
26	Community engagement	
32	Who lodged disputes	
<b>36</b>	<b>Overview of Disputes</b>	
37	How we classify disputes	
45	Our dispute resolution process	
46	How we count disputes	
47	Total disputes received	
49	Total disputes closed	
52	What the disputes were about	
54	Accepted disputes by issues type	
	and sales/service channel	
<b>56</b>	<b>Disputes</b>	
57	Credit disputes	
62	General Insurance disputes	
67	Payment Systems disputes	
69	Deposit-taking disputes	
71	Investment disputes	
75	Life Insurance disputes	
77	Traditional trustee service disputes	
78	Financial difficulty disputes	
82	Legal Proceedings disputes	
85	Natural disaster disputes	
87	Conciliation conferences	
<b>88</b>	<b>Systemic Issues</b>	
	<b>and Serious Misconduct</b>	
<b>93</b>	<b>Code Compliance and Monitoring</b>	
<b>99</b>	<b>Corporate Governance</b>	
<b>105</b>	<b>Glossary</b>	

# Mission



Our mission is to fulfil an important community role by providing an independent dispute resolution service in which people can place their confidence and trust. This involves understanding all sides of a dispute and resolving it fairly and efficiently.

We aim to be:

- › Respectful
- › Efficient
- › Trustworthy
- › Forward thinking

- *FOS is one of Australia's largest external dispute resolution services with more than 16,000 members.*
- *Our focus is on building excellence into everything we do so that we can deliver a more efficient and effective service for our members and consumers.*
- *Our expertise extends across the banking and finance, insurance, investment, financial advice, superannuation and other specialist sectors.*
- *We also play an important role in identifying, reporting and resolving systemic industry issues. We also share our experience to help prevent disputes and raise industry standards.*

## Year at a glance



### About FOS

The Financial Ombudsman Service (FOS) is an external dispute resolution scheme approved by the Australian Securities and Investments Commission (ASIC). Our service is free to consumers.

A not-for-profit organisation, FOS is funded by its members.

Membership of FOS is open to any Financial Services Provider (FSP) operating in Australia.

FOS resolves disputes between consumers (including some small businesses) and FSPs across Australia.

FOS can deal with disputes involving members in the following broad product types: credit, insurance, investments, payment systems, deposit taking, life insurance and traditional trustee services.



32,307

total disputes  
received

33,773

total disputes  
closed

11% ▼

from the previous  
year (page 47)

6% ▼

from the previous  
year (page 49)



24,100

disputes  
accepted

24,968

accepted  
disputes closed

5% ▼

from the previous  
year (page 48)

0%

consistent with  
2011-2012 (24,983)  
(page 49)



5,161

financial difficulty disputes  
accepted – down 22% from  
last year (page 78)

191

investigations of alleged breaches  
of industry codes of practice, with  
116 confirmed breaches (page 97)

234,063

phone calls handled by our  
contact team, up 2% from  
last year (page 25)

37

systemic issues resolved  
(page 89)

16,038 members

down 5% from the previous  
year (page 19)

548,260

visits to our website – down  
5% from 2011-2012 (page 25)

## Total disputes

This includes all disputes received into either the Registration or Acceptance stage of our process (see page 44 for a process diagram).

## Accepted disputes

This includes those disputes that proceeded from the Registration stage into the Acceptance stage or were received directly into Acceptance.



# Message from the Chair of the Board



FOS celebrated its 5th Anniversary in June 2013. The story of the last five years is of an organisation that has had to change, adapt and innovate in response to the many challenges we have faced: a recurring theme in the history of external dispute resolution schemes in the financial sector over the last 20 years.

At the time FOS was formed we anticipated there would be many challenges in successfully bringing together the predecessor organisations of FOS.

What none of us expected was the Global Financial Crisis (GFC) and the series of natural disasters across Australia that, combined with the expansion of our jurisdiction under the national credit law and increased financial difficulty jurisdiction, would lead to such a dramatic increase in the number of disputes lodged.

Pleasingly, for the first time since FOS was created, we saw a reduction of dispute numbers in 2012-2013. However, one of the lessons of the last five years is that the environment in which we operate is both uncertain and volatile.

## **Stakeholder research**

The recent stakeholder research undertaken by FOS reinforces the importance stakeholders place on reducing the time it takes us to resolve disputes, while maintaining consistent quality in our handling of disputes. Another clear message that came through the feedback was that we need to simplify our processes.

The FOS Board appreciates the strong engagement by consumer and member organisations with FOS, their frank feedback and willingness to work with us to improve our dispute resolution services.

Our Three Year Strategic Plan and Business Plan 2013-2014 remain focused on reducing dispute backlogs and improving the time taken to resolve new disputes while maintaining the quality of our dispute processes.

At the same time we are also continuing to build our organisational capabilities to be able to respond to the challenges ahead.

## **New Ombudsmen appointments**

The Board appointed four new Ombudsmen in 2012-2013. Evelyn Halls, Nicole McCutcheon, Justi Tonti-Filippini and Michael Pearce SC all joined FOS in the first half of 2013. All four Ombudsmen have strong legal skills and extensive experience in financial services. They join our existing team of FOS Ombudsmen making decisions on more complex disputes in banking, credit, investments and insurance-related matters.

## **Enhanced organisational risk management**

We have enhanced our risk management framework through a number of initiatives including: putting in place an outsourced internal audit function, improving our internal policy framework and taking steps to strengthen our IT governance arrangements. These changes reflect that FOS has grown rapidly and is now a much larger, more complex organisation than it was five years ago.

## **Significant event response plan**

The natural disasters that have impacted Australia and the collapses of a number of financial firms over the last few years prompted FOS to put together a significant event response plan to ensure we respond effectively when large scale incidents occur. The strategy defines how we will manage disputes during crucial events such as natural disasters, FSPs entering external administration, or investment scheme collapses. It also dictates how we will communicate with stakeholders and ensure effective coordination of all activities associated with such an event.

## **Funding review**

Our current funding model was introduced in January 2010, along with the FOS Terms of Reference (TOR).

**Professor the Honourable  
Michael Lavarch AO**



In 2012-2013 we kept our case fees at the same level for the third consecutive year.

From 1 July 2012, we no longer charged a fee for cases closed at “OTR” (Outside our Terms of Reference) at Acceptance.

We have been undertaking a review of our funding model based on our experience since 2010 of operating under the new TOR. This has included developing a cost-to-serve model to better understand the potential impact on our costs and revenues of changes in dispute numbers, dispute types and complexity and where disputes are closed in our process.

A key challenge is in designing a funding model robust enough to cope with the highly uncertain and volatile environment in which we operate.

We will be consulting on revised fee arrangements in late 2013 for introduction of new fees from 1 July 2014.

#### **Independent review**

As a condition of approval as an External Dispute Resolution Scheme by the Australian Securities and Investments Commission (ASIC), the FOS Board is required to commission a periodic independent review of FOS operations against the ASIC benchmarks of accessibility, independence, fairness, accountability, efficiency and effectiveness. This review will take place from August – December 2013.

The Board considers this a timely opportunity for an independent review of the progress we have made in implementing appropriate organisational arrangements and improved dispute handling procedures under FOS’s single Terms of Reference.

The independent reviewers will look at all aspects of FOS, but will pay particular attention to the timeliness of our dispute handling and the consistency of our processes. The reviewers will also consider issues relating to the scope of our Terms of Reference.

The Board looks forward to receiving the independent reviewers’ report in late 2013 so that we can continue to improve the dispute services we provide our members and the Australian public.

#### **Looking forward**

I would like to thank all FOS staff for their continued contribution, commitment and enthusiasm in another challenging year and I look forward to working with all FOS stakeholders to deliver a better dispute resolution service for consumers and financial services providers in the year ahead.

**Professor the Honourable  
Michael Lavarch AO**  
Chair of the Board

The Board considers this a timely opportunity for an independent review of the progress we have made in implementing appropriate organisational arrangements and improved dispute handling procedures under FOS’s single Terms of Reference.

# Message from the Chief Ombudsman

Our Business Plan goals for 2012-2013 were about improving our dispute resolution process, supported by improved engagement with our stakeholders, and enhancing our organisational capabilities.

We have made good progress in each of these areas. We have revised key aspects of our dispute process, implemented a formal organisation-wide quality review process, continued to build the expertise of our staff, and piloted the electronic exchange of documents with financial services providers (FSPs).

One of the key initiatives we completed in 2012-2013 was a major piece of stakeholder research. The results highlighted the importance our stakeholders place on their relationship with FOS and that FOS staff are considered knowledgeable, approachable, and friendly. The findings also reinforced the areas we have identified in our three-year strategy and business plans where we need to do better – particularly in continuing to improve the timeliness and quality of our dispute resolution process.

While we have achieved a lot in the last 12 months, we recognise we still have much to do to accomplish our overall goal of building excellent service into everything we do.

The FOS Business Plan 2013-2014 builds on these achievements, while taking into account stakeholder feedback on the areas we need to improve further. This year our Business Plan continues our efforts to simplify and add specialist expertise to the earlier part of our dispute process, eliminate the backlog of cases in our specialist dispute teams, and commence the shift to online case correspondence as our primary method of dispute information exchange. We will also continue to enhance the knowledge and expertise of our staff, improve our IT and other organisational capacities, and continue actively engaging with all our stakeholders.



Chief Ombudsman  
Shane Tregillis



The challenge over the next two years is to ensure these initiatives translate into achieving a clear reduction in the time taken to resolve disputes across all dispute areas while at the same time improving the quality of our dispute services for both applicants and FSPs.

#### Looking ahead

As we set out in our Strategic Plan last year, our goals for 2012-2015 are for FOS to be:

- A customer-centric service – an organisation that continually monitors and improves its performance.
- A trusted organisation – an authority on financial services dispute resolution and an influential voice on how to prevent disputes.
- A smart, efficient and responsible business – an organisation with passionate people, effective systems, clear plans and a conscience.

I am confident we are well on track to achieve these goals and deliver a better, more timely dispute resolution service over the next two years of our 2012-2015 Strategic Plan.

I look forward to continuing to work with our Board, staff, consumers, members and industry to achieve these goals, which will enhance the work we already do in providing accessible, fair and independent dispute resolution services to all Australians and their providers of financial services.

A handwritten signature in black ink that reads "Shane Tregillis". The signature is written in a cursive, slightly informal style.

**Shane Tregillis**  
Chief Ombudsman

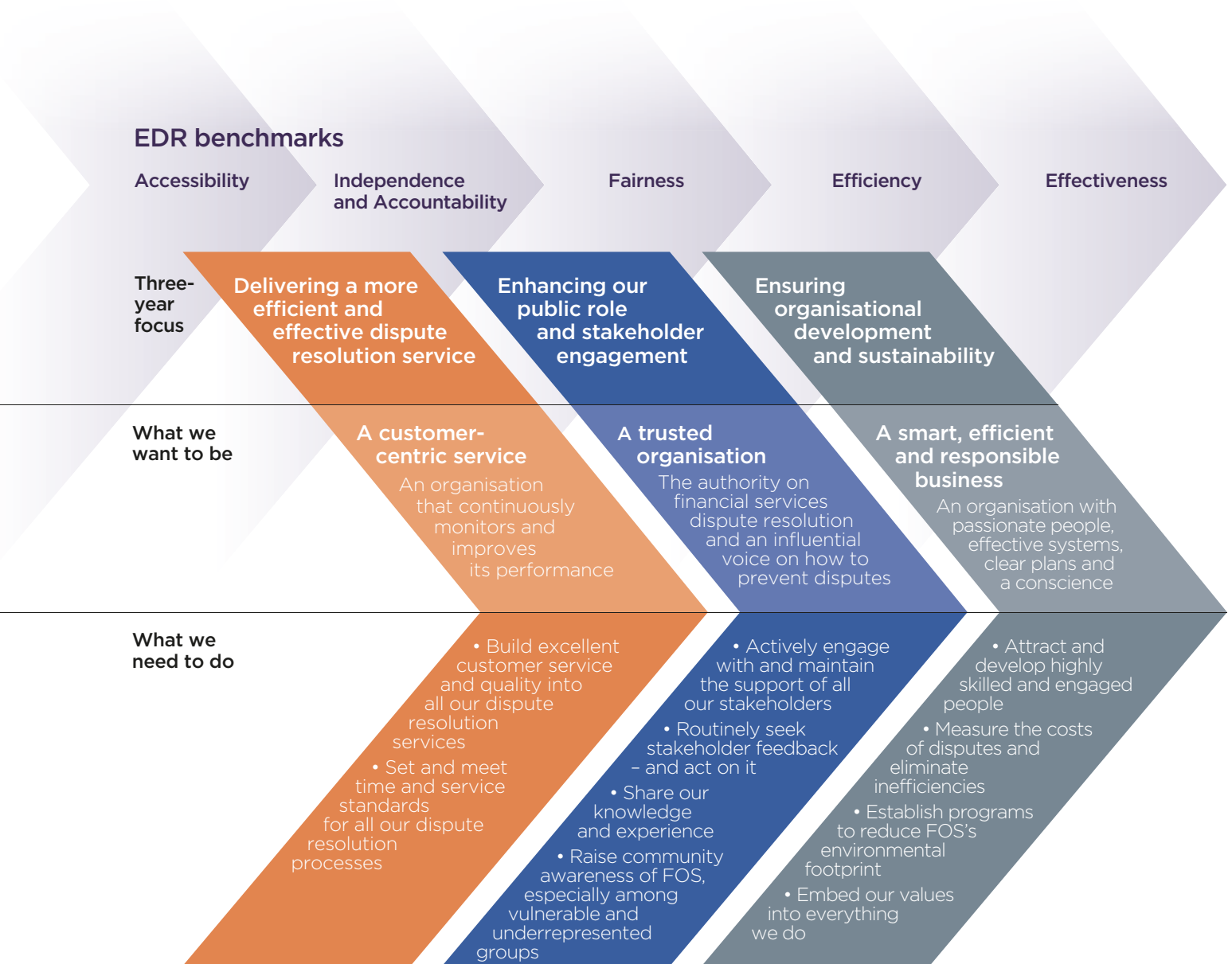
While we have achieved a lot in the last 12 months, we recognise we still have much to do to accomplish our overall aim of building excellent service into everything we do.



# Our 2012-2015 Strategic Plan

In 2012, we developed a three-year Strategic Plan. Our vision for this period is to build excellent service into everything we do.

The following diagram illustrates how our Strategic Plan underpins all our efforts to improve what we do in providing an accessible, fair and independent dispute resolution service in which people can place their trust.





## Our performance in 2012-2013

Our detailed 2013-2014 business plan is available on our website at [www.fos.org.au/businessplan](http://www.fos.org.au/businessplan). Our achievements for 2012-2013 are listed below:

### Delivering a more efficient and effective dispute resolution service

Our 2012-2013 plan	What we achieved
<b>Enhance our dispute resolution operating system to ensure our case-work efficiency.</b>	<p>Key improvements in our case-work systems included:</p> <ul style="list-style-type: none"> <li>➤ Improved volume forecasting to support work projection and planning.</li> <li>➤ A skills matrix to assist managers allocate disputes based on a team member's expertise.</li> <li>➤ Ongoing age profiling of disputes and direct applicant feedback via survey about dispute processes to enhance our service delivery.</li> </ul> <p>Established a FOS-wide quality framework to ensure consistency, quality and continuous improvement.</p> <ul style="list-style-type: none"> <li>➤ Completed extensive Quality Reviews of case handling on closed disputes.</li> <li>➤ Implemented Quality Assurance training for all FOS staff.</li> </ul>
<b>Streamline our early dispute resolution processes (registration and acceptance) to provide early warning of an increase in case loads.</b>	<p>Revised our dispute processes and supporting systems to reduce backlogs and the time taken to resolve disputes.</p> <p>Major initiatives included:</p> <ul style="list-style-type: none"> <li>➤ Implemented triage function in both general and specialist teams to better allocate cases to the most appropriate staff member based on their expertise and the complexity of the case.</li> <li>➤ Introduced three-way telephone conference calls for all parties to define and agree on the issues earlier in the dispute resolution process, clarify and limit the number of document exchanges, and agree on timeframes (part of the Key Process Review).</li> </ul>
<b>Produce a comprehensive significant event plan that enables us to respond rapidly and effectively to events that create spikes in demand for our service (such as natural disasters, financial crises, or other significant events).</b>	<p>Implemented a significant event response plan. This plan helps us manage potential spikes in disputes during crucial events and outlines how we will communicate with stakeholders and ensure effective coordination of all activities associated with any such significant event.</p> <ul style="list-style-type: none"> <li>➤ The plan was used for the Tasmania and New South Wales bushfires in January 2013. It was also triggered for the collapses of Banksia Securities and Gippsland Secured Investments in 2013.</li> </ul>
<b>Further develop the Systemic Issues and Serious Misconduct function.</b>	<p>Revised Systemic Issues investigation processes.</p> <ul style="list-style-type: none"> <li>➤ 1250 referrals from case handling staff to the Systemic Issues team.</li> <li>➤ Identified 128 possible systemic issues. This financial year a total of 37 systemic issues were resolved.</li> </ul>



## Our performance in 2012-2013

### Enhancing our public role and stakeholder engagement

Our 2012-2013 plan	What we achieved
<b>Conduct active and robust engagement with the consumer sector, including better consultation, collaborative projects and educative programs.</b>	<p>Launched a new consumer engagement strategy.</p> <p>Major initiatives included:</p> <ul style="list-style-type: none"><li>➤ Formed a Consumer Liaison Group (CLG) comprised of 10 consumer representatives from around Australia to help ensure we understand the issues that vulnerable and disadvantaged groups experience in accessing our service.</li><li>➤ Launched an online portal for sharing ideas and information with the CLG.</li><li>➤ Held two consumer forums in New South Wales and Queensland.</li><li>➤ Commenced development of an e-learning module for financial counsellors and community lawyers.</li></ul>
<b>Develop a new targeted and enhanced member engagement strategy that tailors our communication, education and dispute analytics information to enhance our relationships with the ultimate aim of reducing dispute flows.</b>	<p>Continued our member engagement which included:</p> <ul style="list-style-type: none"><li>➤ Hosted eight General Insurance open forums in Adelaide, Perth, Sydney, Brisbane and Melbourne. These forums brought industry participants together to discuss FOS decisions and insights.</li><li>➤ Participated in banking and finance industry meetings, professional indemnity (PI) insurers' meetings, upgraded the Secure Services portal on the FOS website to give members dashboard reporting.</li><li>➤ Organised four internal dispute resolution training programs in Perth, Melbourne, Sydney and Brisbane.</li><li>➤ Developed a new member engagement strategy with key initiatives to be rolled out in 2013-2014.</li></ul>
<b>Measure and benchmark stakeholder perceptions of FOS and our service to identify areas to improve our overall service delivery.</b>	<p>Completed a significant piece of qualitative and quantitative stakeholder research.</p>
<b>Further develop the Code Monitoring function.</b>	<p>Developed the Code function within FOS to achieve the Code Monitoring objectives.</p> <ul style="list-style-type: none"><li>➤ A total of 699 financial services providers subscribed to the four codes in 2012-2013. 568 financial services providers were asked to respond to an Annual Compliance Statement relevant to their code's obligations.</li><li>➤ Conducted 191 investigations into allegations that a financial services provider had breached one or more code obligations. There were 116 confirmed breaches across the four codes identified as a result of our investigations.</li></ul>



## Our performance in 2012-2013

### Ensuring organisational development and sustainability

Our 2012-2013 plan	What we achieved
<b>Develop a robust internal risk function, compliant with industry risk management practices.</b>	<p>Implemented a formal risk management framework across the organisation.</p> <p>Major initiatives included:</p> <ul style="list-style-type: none"><li>➤ Reviewed risk frameworks for Occupational Health &amp; Safety (OH&amp;S) and Information Technology (IT).</li><li>➤ Audited 300 policies, procedures and projects to ensure the risk management approach is applied to existing initiatives.</li><li>➤ Developed a FOS-wide policy framework for all new FOS policies.</li><li>➤ Conducted risk training sessions for all managers across FOS.</li><li>➤ Formed an operational risk management committee.</li><li>➤ Appointed an internal audit service to review our framework.</li></ul>
<b>Further develop our IT structures and capabilities to support FOS's three-year strategic plan and beyond.</b>	<p>Introduced a more robust and capable IT infrastructure platform to better support future initiatives.</p> <ul style="list-style-type: none"><li>➤ Piloted electronic document exchange through the Secure Services portal on the FOS website. This will be rolled out widely in 2013-2014.</li><li>➤ Upgraded all system databases to keep FOS in line with IT Best Practice.</li><li>➤ Improved our internal network system security.</li></ul>
<b>Continue to invest in our people's professional learning to ensure that our expertise remains comprehensive and up-to-date at an organisational and industry level.</b>	<p>Implemented a staff learning program to further develop our people's knowledge and expertise in dispute resolution.</p> <ul style="list-style-type: none"><li>➤ Conducted over 250 training sessions that focused on key areas of our service including specialist knowledge, innovation and continuous improvement, personal awareness and effectiveness, sustainable relationships and professional communication.</li></ul>

### Our plans in 2013-2014

Our 2013-2014 business plan continues our efforts to simplify and add specialist expertise to the early stages of our dispute process, eliminate the backlog of cases in our specialist dispute teams and continue the shift to electronic communication as our standard method of information exchange.

Our plans take into account the feedback we have received from stakeholders on where we need to further improve. For a full overview of our detailed 2013-2014 business plan and an overview of the stakeholder survey results please go to our website at [www.fos.org.au/businessplan](http://www.fos.org.au/businessplan).





## Our People



*(from left to right)*

- |                        |                                                                                                 |
|------------------------|-------------------------------------------------------------------------------------------------|
| <b>Michael Ridgway</b> | Executive General Manager<br>– General Resolution Group                                         |
| <b>Sally Davis</b>     | Manager, Systemic Issues                                                                        |
| <b>Nareeza Ali</b>     | Dispute Analyst, General<br>Resolution Group, Financial<br>Difficulty, Early Case<br>Management |
| <b>Adeel Nabeelux</b>  | Registration Officer, General<br>Resolution Group, Registration                                 |
| <b>Keith Atkins</b>    | Case Manager, Specialist<br>Resolution Group, General<br>Insurance                              |
| <b>Suseri Nagasawa</b> | Administration Assistant,<br>General Resolution Group,<br>Administration                        |
| <b>Eric Bobadilla</b>  | Membership Coordinator,<br>Stakeholder Engagement<br>and Communications                         |
| <b>Marita Wall</b>     | Ombudsman and Panel Chair                                                                       |

## About Our People

Expertise is at the heart of what we do and we are dedicated to providing staff with the training and support to perform their roles to the best of their ability. We also place great importance on investing in our people to ensure FOS's mission and values are reflected in the actions of our staff.

FOS has a total workforce of 406 staff (FTE 305). In 2012-2013 we undertook a comprehensive survey to measure staff engagement. Our response rate was very high, with 96% of staff taking part (65% is norm). We now have a baseline measure of staff engagement and can continue to monitor if we are in fact creating a high performing organisation – a place where people feel they can excel and be supported in their career. The results of the recent survey indicate that our people do enjoy working at FOS, with 68% of staff ranking the organisation as 'a truly great place to work'.

Excellence is celebrated and rewarded at FOS and staff wellbeing is a key priority.

## Workforce planning

To respond to dispute resolution demands, we must have an agile and skilled workforce and this has been a key feature of the 2012-2013 FOS Workforce Action Plan. It acknowledges that our workloads are essentially governed by the number and complexity of disputes we receive – a factor that is outside our control. Our workforce planning involves working with our dispute teams to forecast potential workforce and skills shortages and addressing these through the redesign of processes, recruitment and enhanced training.

## Gender equality

Our workforce comprises 233 (57%) women and 173 (43%) men across casual, part-time and full-time roles.

The table below shows the distribution of male and female staff members across management positions in the organisation.

In 2012-2013 FOS submitted a workplace profile to the Australian Government's Workplace Gender Equality Agency (WGEA). The WGEA is charged with promoting and improving gender equality in Australian workplaces. It will use data received from organisations such as FOS to develop educational benchmarks and identify areas for focus, develop improvement strategies and measure companies' performance against peers.

### Gender breakdown across management positions at FOS

Occupational Category	total employees			%
	F	M	Total	F
Middle Management	6	7	13	46.1
Senior Professional/Technical	72	55	127	56.7
Executive Level including Lead Ombudsmen	2	6	8	25.0
Ombudsmen <sup>#</sup>	7	4	11	63.6
Board	3	6	9	33.3
Consumer or industry panel members	12	31	43	27.9

<sup>#</sup> Numbers do not include sessional staff

### Staff recognition

FOS places great importance on recognising and celebrating the achievements of our staff and in 2012-2013 we launched our bi-annual 'Service Excellence Awards' to formally acknowledge staff who deliver service excellence to members, consumers or fellow FOS staff.

In 2012-2013 Service Excellence Awards were presented to:

<b>Virginia Fenner</b>	Dispute Officer in the GI Acceptance team
<b>Elsa Markula</b>	Case Manager in Banking & Finance
<b>Arpad Szilagyi</b>	Case Officer in the Systemic Issues team
<b>Antoin Doyle</b>	Team Leader, Case Support Team (previously File Management Officer for General Insurance)
<b>Anna Mandoki</b>	Manager, Financial Difficulty Case Management team
<b>Phoebe Talbot</b>	Case Manager, Financial Difficulty team

### Ombudsmen

In 2012-2013 our full-time and part-time Ombudsmen were:

**Shane Tregillis**

**Philip Field**

**John Price**

**Katharine Adams**

**Michael Arnold**

**Ronald Beazley (retired July 2013)**

**Ian Dunn (retired June 2013)**

**Evelyn Halls**

**Alison Maynard**

**Denny Meadows**

**Christine McCarthy**

**Nicole McCutcheon**

**Donald O'Halloran**

**Michael Pearce (SC)**

**Justi Tonti-Filippini**

**Marita Wall**



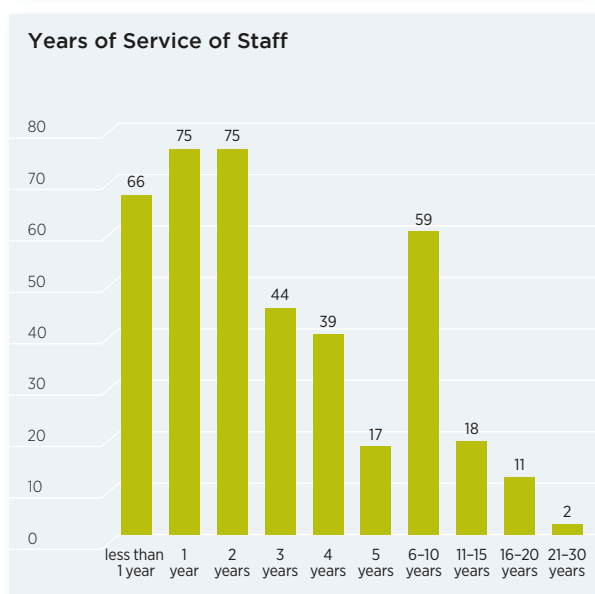
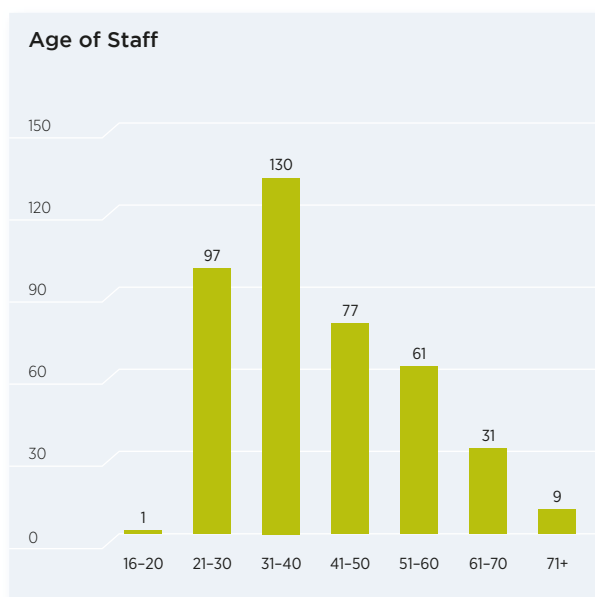
*Service Excellence Winners (from left to right) Phoebe Talbot, Antoin Doyle, Anna Mandoki*

## Recruitment, induction and staff demographics

In 2012-2013 we welcomed 94 new employees to FOS. All of our new staff attended our orientation program, while many also took part in the Launch Pad Induction program that was introduced in August 2012.

The Launch Pad Induction program ensures new staff are provided with the necessary tools to achieve competency in their core roles. The six month, four-stage program includes specialist training programs, mentoring and tailor-made learning pathways for new staff. It provides FOS employees with a robust learning and development framework and career progression.

The majority of staff recruited in 2012-2013 were in the 21-30 and 31-40 year-old age groups. This trend was consistent with the age distribution of our employees across the organisation.



## Learning and Development

We are dedicated to ensuring our staff members have the opportunity to continually improve their skills and knowledge. In 2012-2013 our program focused on the delivery of specialist training programs to assist staff to cross skill and to increase the level of skill and knowledge across the business.

We also started planning for some future initiatives including a new management development program and completing a review of our existing e-learning system.

## Occupational Health and Safety

Staff health and safety continued to be a key focus at FOS in 2012-2013.

Services and initiatives we offered and/or developed to improve staff safety and wellbeing in 2012-2013 included:

- The opportunity to participate in regular individual and team debriefings conducted by a qualified psychologist.
- Compulsory training on the prevention of bullying and harassment in the workplace.
- Participation in the Workplace Health Check Program.
- Free flu vaccinations.
- Implementation of a psychosocial hazard management plan.

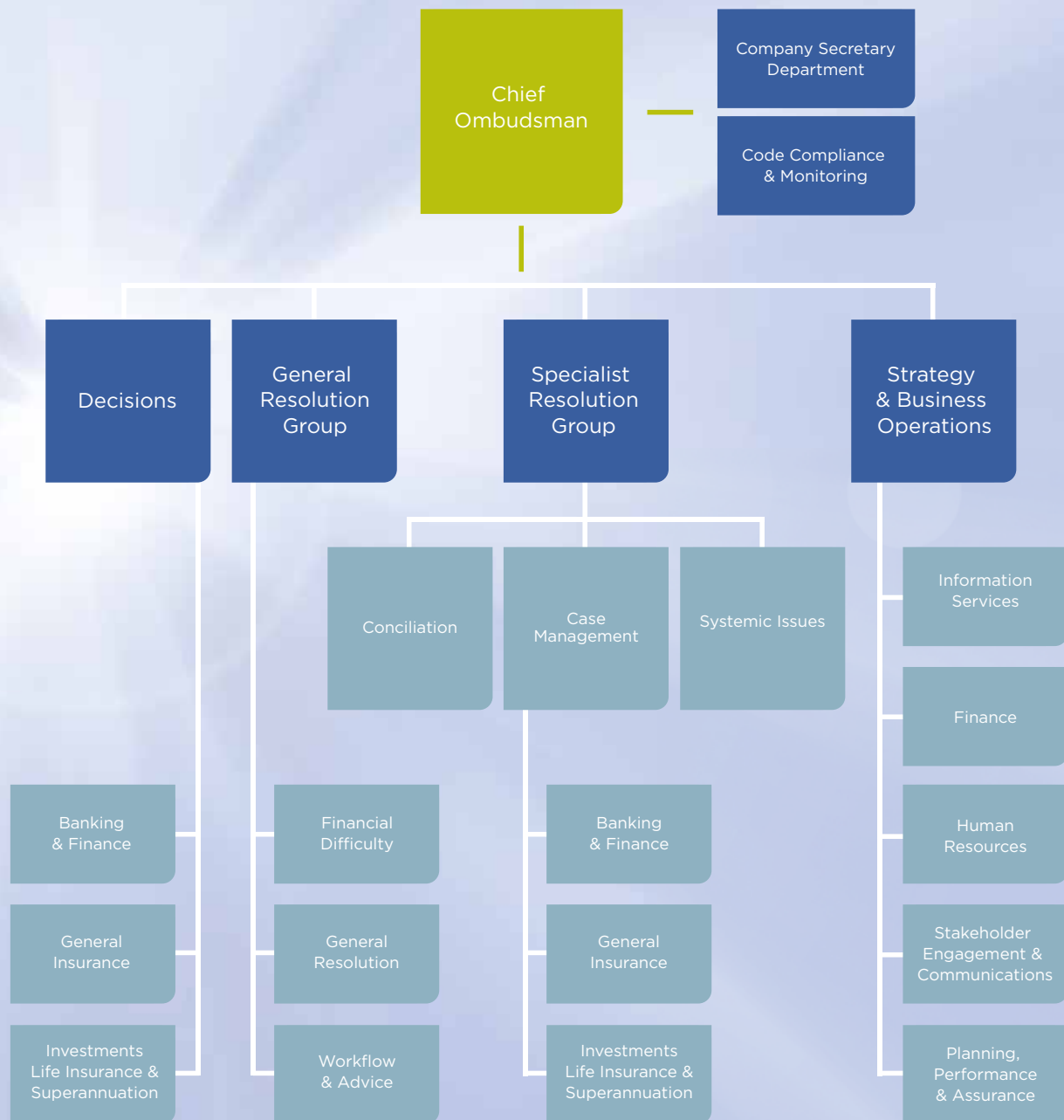
## Psychosocial hazard management plan

FOS implemented a psychosocial hazard management plan in 2012-2013. We are committed to ensuring that our people have the methods, tools and strategies to deal with the pressures and stress of resolving often very complex cases.

Strategies we have implemented as part of this extensive plan include:

- on and off-site debriefing services
- an employee assistance program
- a buddy program for new starters
- crisis intervention and management processes
- stress management and resilience training
- employee wellness programs including: work health checks, a QUIT smoking program and healthy living and exercise programs.

# Organisational chart





# Senior Leadership Group



*(from left to right)*

<b>Michael Ridgway</b>	Executive General Manager – General Resolution
<b>Shane Tregillis</b>	Chief Ombudsman
<b>Jamie Orchard</b>	Executive General Manager – Specialist Resolution
<b>John Price</b>	Lead Ombudsman – General Insurance
<b>Jenny Peachey</b>	Executive General Manager – Strategy & Business Operations
<b>Philip Field</b>	Lead Ombudsman – Banking & Finance



# Our Stakeholders

FOS has a broad range of stakeholders – financial services providers (who are members of FOS), consumer representatives such as financial counsellors and community lawyers, industry bodies, ASIC and other government bodies, and the Australian community as a whole. We engage with all these stakeholders in various ways and in 2012-2013 this included our attendance at more than 300 events and meetings.





## Our Members

FOS has a large membership base comprising 16,038 members. Our members include banks, credit unions, building societies, credit providers, general and life insurance companies and brokers, superannuation providers, fund managers, mortgage and finance brokers, financial planners, stockbrokers, investment managers, friendly societies, time share operators and authorised credit representatives. To see if your financial services provider (FSP) is a member of FOS go to: [www.fos.org.au/member](http://www.fos.org.au/member).

Our members are FSPs who have chosen us as their external dispute resolution scheme (EDR). Every business with an Australian financial services licence or credit licence must be a member of an EDR scheme approved by the Australian Securities and Investment Commission (ASIC).

We are a not-for-profit service and a significant proportion of our funding comes from case fees. The case fees paid by an FSP reflect the number of disputes it is involved in, and the stages the disputes progress to, before resolution is reached. FSPs also pay an annual membership fee.

Our members fall into two categories – licensees and authorised credit representatives (ACRs).

Licensees are FSPs that hold an Australian financial services licence or a credit licence from ASIC.

ACRs are businesses that represent a licensee. Any disputes we receive from a customer of an ACR are referred to the dispute resolution area of its licensee.

### Distribution of disputes across membership base

The majority of our licensees did not have any disputes lodged against them in 2012-2013.

When members did have disputes lodged against them, most had one dispute.

A total of 56 members had more than 100 disputes.

### Distribution of disputes across our membership base in 2012-2013

406 FSPs each had 1 dispute referred to FOS during the year



147 FSPs each had 2 disputes referred to FOS



54 FSPs each had 3 disputes referred to FOS



155 FSPs each had between 4 and 10 disputes referred to FOS



56 FSPs each had between 11 and 20 disputes referred to FOS



26 FSPs each had between 21 and 50 disputes referred to FOS



18 FSPs each had between 51 and 100 disputes referred to FOS



56 FSPs each had more than 100 disputes referred to FOS during the year



## Our members (continued)

### Member numbers

Our total membership base (16,038) at 30 June 2013 was 5% less than in 2011-2012.

The total number of ACRs (11,153) was down 2% on the previous year.

There was an 11% drop in our number of licensee members from 5,460 in 2011-2012 down to 4,885 in 2012-2013.

A number of reasons account for the slight drop in members. One key factor was that there were a considerable number of mergers between FSPs in the last 12 months – particularly in the credit union and general insurance sectors – which means that where there were once multiple memberships, there is now only one.

	30 June 2012	30 June 2013	Change (%)
Licensees	5,460	4,885	-11%
Authorised credit representatives	11,362	11,153	-2%
Total	16,822	16,038	-5%

### Member services

We offer a range of services and resources to assist our members to better understand our dispute resolution process, manage their customer relationships and complaints, and administer their memberships. Services include: training sessions, forums, webinars, individual meetings with our members and participation in industry and group meetings. Furthermore, we offer an online portal, Secure Services, through which members can see, at a glance, all of their disputes and detailed information about each dispute.

In 2012-2013 FOS introduced a range of initiatives designed to make it easier and more efficient for our members to interact with us. These included:

#### Online case correspondence trial

We trialled a new case management process which allows financial services providers (FSPs) to send us documents electronically through our online Secure Services portal. The process has many benefits – it enables FSPs to send us documents that would be too large to send via email, provides a more secure transmission of information and is more efficient. We started the trial in September 2012 with a number of our general insurance members before extending the pilot to other members in mid 2013. The feedback we received from members involved in the trial was very positive. We aim to develop the online case management service into a two-way communication channel and ultimately an exchange hub between the parties to a dispute.



### Dispute activity dashboard

In February 2013 we added a dispute activity dashboard to our range of online reporting services on the Secure Services portal. This new style of reporting provides a versatile snapshot of dispute activity over the day, week, month, quarter and year-to-date. Members can see, at a glance, the number of disputes we have received, reopened and closed, as well as disputes currently open and the age of those disputes.

Quick and easy dropdown menus allow for results to be viewed by individual case status and by a specific contact person.

We also launched a new Secure Services welcome page which enables us to communicate with our members. The content on the welcome page is regularly updated and means we can alert members to key milestones, highlight improvements in our processes, and tell them about upcoming training and events.

### Simplification of business size assessment

All of our members pay an annual membership levy that is calculated on the size of their business compared to other FOS members. To help us work out how much each levy should be, we ask members to complete an annual assessment. The information we collect also helps us to compile our annual comparative tables, which are a measure of how likely it is that a consumer will bring a dispute about a particular FSP and product to FOS. In 2012-2013 we simplified this process for our members.

## Member event highlights for 2012-2013

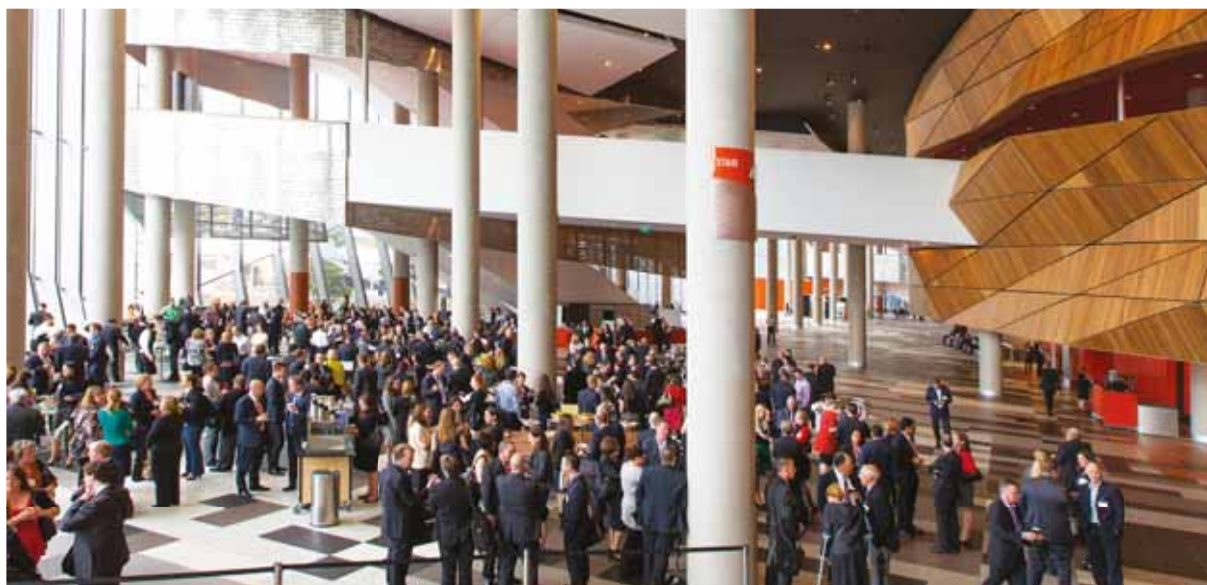
### FOS National Conference 16-17 October 2012

Our 2012 National Conference offered a unique opportunity for members to learn from, and share ideas with, FOS staff and a wide range of industry experts. Consumer advocates who use our service also attended and participated in the conference.

We examined the key trends and challenges in dispute resolution with the aim of helping FSPs to build positive customer experiences and to foster a greater commitment to complaints management within their organisations.

We provided breakout sessions on a range of topics including: lessons learnt from natural disasters, disclosure of risk in financial advice, understanding misleading or deceptive conduct, and financial difficulty.

Attendees also had the opportunity to pose questions to FOS Ombudsmen, industry members and consumer advocates on the issues facing the financial sector, as part of a Q and A dispute resolution panel.





### **ePayments Code seminars**

We held seminars in Melbourne, Sydney and Brisbane on the introduction of the new ePayments Code. These sessions were designed to assist members that were subscribed to the previous EFT Code, to understand the new provisions and what the implications were for them.

### **Professional Indemnity Insurer seminars**

FOS hosted seminars in Melbourne, Sydney and Brisbane for professional indemnity insurer claims staff, underwriters and legal advisors.

The seminars offered attendees the opportunity to hear from FOS, a professional indemnity insurer and a professional indemnity insurance lawyer about efficient and effective handling of investment disputes and to gain insight into improved management of professional indemnity claims when these disputes are being handled by FOS.

### **General Insurance open forums**

In 2012-2013 we hosted general insurance open forums in Adelaide, Perth, Sydney, Brisbane and Melbourne.

These forums brought industry participants together to discuss FOS decisions and share insights.

We encourage participants to nominate the topics and Determinations they would like to discuss ahead of the events. Participants are then given the opportunity to ask questions of the FOS panel at the forum and to share their insights. We find this approach helps facilitate valuable and robust discussion.

### **Internal Dispute Resolution training programs**

FOS, in conjunction with Nina Harding Mediation Services, ran a training program designed to provide customer-facing staff with enhanced skills for managing complaints at the internal dispute resolution (IDR) stage. We ran four courses in 2012-2013 which took place in Perth, Melbourne, Sydney and Brisbane.

Please see page 23 for further initiatives that we have provided to our members.





# Stakeholder Engagement – sharing our knowledge

In our three-year strategic plan released last year, we outlined our commitment to share our knowledge and experience with both our members and the consumer sector. We want to share this information so that everyone can learn from the significant number of disputes we see each year.

Our aim is that more disputes are resolved earlier directly between the parties, with only the more complex and difficult making their way to FOS. If a dispute does come to FOS, we want to do everything we can to help the dispute resolve as quickly as possible.

## The FOS Approach

In 2012-2013 we launched *The FOS Approach* – a new style of document that outlines the way we look at different types of disputes. We have published similar documents before as articles in The Circular, and as bulletins and practice notes through our predecessor schemes. The aim of these documents has always been to provide practical information and explain our approach on substantive issues, but *The FOS Approach* is easier to read and use.

We want to share the way we approach different types of disputes – the issues we will look at, the things we will consider, and the relevant Codes, legal principles, obligations and industry best practice that we will apply – so that members, consumer representatives and consumers can better understand how FOS will deal with their disputes. We will be adding more dispute topics to *The FOS Approach* library of documents in 2013-2014.

**The first in our series of *The FOS Approach* ([www.fos.org.au/approach](http://www.fos.org.au/approach)) focuses on financial difficulty disputes and covers:**

- legal principles, industry codes and good industry practice
- power to vary a credit contract
- issues when loans are held in joint names, when there are guarantors, caveats or second mortgagees
- common issues

## Webinars

FOS delivered two webinars to our members and consumer representatives in 2013: “An overview of Systemic Issues” and “*The FOS Approach* to Financial Difficulty”.



Tim Goss presenting a webinar on financial difficulty

**Other ways we share our knowledge and experience is via:**

## Policy work

We make written submissions to consultations, reviews and inquiries relating to financial services policy and regulation. Through our submissions, we aim to reduce future disputes and strengthen the arrangements for dispute resolution.

In 2012-2013 we made submissions to:

- Treasury, on:
  - > phase 2 of the National Credit Reforms
  - > the compensation arrangements for consumers of financial services and
  - > the *Insurance Contracts Amendment Bill 2013*
- ASIC, to participate in:
  - > its review of the National Financial Literacy Strategy and
  - > its consultations on small business lending complaints, constitutions of managed investment schemes, and duties under the Future of Financial Advice legislation
- the Commonwealth Consumer Affairs Advisory Council's review of the benchmarks for industry-based customer dispute resolution schemes
- the independent review of the General Insurance Code of Practice
- the development of the new Credit Reporting Code of Conduct and
- the review of the Victorian health complaints legislation.

We also contribute to the work of a range of policy groups and committees. For example, in 2012-2013 we worked with other dispute resolution schemes and the Office of the Information Commissioner to develop guidelines for privacy disputes, and continued our work in the Federal Treasury's Future of Financial Advice peak consultation group.

### Media relations

Media provides an important tool in helping us to improve awareness of our service in the community.

FOS averaged more than 30 direct mentions in the media per month in 2012-2013.

We responded to many media queries from regional, metropolitan and national media organisations across online, print and broadcast media.

In addition to mainstream media, we receive many queries from industry publications which tend to be of a more specialised nature.

Our Ombudsmen provided expert insights in interviews with journalists across wide-reaching topics including the impact of floods and other natural disasters, general insurance disputes, financial hardship and investment-related disputes.

### Stakeholder Research

In the first half of 2013, we conducted a major piece of stakeholder research. For the qualitative component, our external researchers interviewed 60 organisations, holding 70 discussions with 113 individuals. For the quantitative component, we sent out 14,000 surveys.

The results indicate that FOS staff are generally well-regarded by our stakeholders. We were considered knowledgeable and approachable, with friendly staff. We also rated well on our interactions with stakeholders through our meetings, training and presentations. Our stakeholders told us they consider their relationship with FOS to be important. FOS was also seen to demonstrate authority in dispute resolution and was generally rated well in terms of being perceived as a trusted organisation. There were, however, a number of respondents who expressed strong views of dissatisfaction on this and other aspects of FOS.

In general, consumer representatives, consumer organisations and industry associations rated FOS more positively than financial services providers (FSPs).

Though there were differing views among FSPs for many reasons (such as different industry sectors and the extent of individual companies' dealings with FOS), there were also some clear and common concerns about the FOS dispute resolution process.

Our Business Plan for 2013-2014 will continue to focus on addressing these issues, which include:

- The overall time taken to resolve disputes.
- The multiple touch points and stages in our current dispute resolution process.
- The volume of unallocated disputes and the period of time those disputes remain unallocated.
- The desire to have more specialised staff dealing with disputes during the earlier part of our dispute resolution process.



We have already taken a number of steps in response to the survey and other feedback. We have launched a significant project to be completed during the coming year to reduce the backlog of disputes at the Recommendation stage for credit, deposit-taking and payment system disputes in the Specialist Resolution Group. As part of this project, we have included more experienced case managers in the earlier stages of our process and reduced the number of steps in the process. We intend to use this project as a pilot, and if successful, it will be implemented more broadly.

We have also taken note of the clear desire to move more quickly to the electronic exchange of all dispute information through the Secure Services portal on our website, and to provide better information about dispute flows and outcomes to our stakeholders. This is a key focus of our Business Plan efforts in the coming year.

Please refer to our 2013-2014 Business Plan on our website for an overview of the stakeholder research results [www.fos.org.au/businessplan](http://www.fos.org.au/businessplan).

## Website

In 2012-2013 we started work on a major redevelopment of our website. Key aims of the project are to improve the functionality and the accessibility of our website. The new site will have dedicated consumer, member and community sections, with more engaging and informative content. Work on the redevelopment will continue with a launch date set for late 2013.

In 2012-2013 we had a total of 548,260 visits to our website. This figure was slightly down (5%) on last year. The number of unique visitors to the website also declined by 5 % to 389,801. We believe one of the reasons for this drop was due to a new filter that we implemented in January 2013. This prevented FOS internal staff IP addresses being counted in the statistics and this may have contributed to the reduction in visits.

## Visits to FOS website

	2010-11	2011-12	2012-13	Change
Visits	441,016	577,616	548,260	-5%
Unique Visitors	303,768	412,881	389,801	-5%

## Publications

We produced a range of publications in 2012-2013 including:

➤ **The FOS Approach** [www.fos.org.au/approach](http://www.fos.org.au/approach)

➤ **The Circular** [www.fos.org.au/circular](http://www.fos.org.au/circular)

We released issues 11, 12 and 13 of our quarterly publication The Circular which includes news on upcoming events, process changes, updates on systemic issues and our approach to specific issues.

➤ **New brochures** [www.fos.org.au/brochures](http://www.fos.org.au/brochures)

We updated our suite of consumer brochures in 2012-2013 through the creation of three new brochures which provide essential information in an easy-to-understand and eye-catching format. The brochures we updated are:

- > How to resolve a dispute with your bank, insurer or other business providing financial services
- > A guide to financial difficulty, and
- > A guide to conciliation conferences.

## Phone calls

Our contact centre received 234,063 phone calls in 2012-2013. This was 2% more than in 2011-2012 and equated to an average of 936 per business day. People can lodge their disputes over the phone and can also call for general information about our process. If we are not the most appropriate agency to provide help, we try to refer the caller to the agency that is.

Phone calls handled by FOS by year







## Community Engagement

FOS staff attend community forums and sessions across Australia when natural disasters occur. These forums are organised by the Insurance Council of Australia (ICA) and are designed to provide on-the-ground support for residents. Information covered includes claims management, claims assessment and dispute resolution. Insurance companies are invited to attend the events and policyholders are given the opportunity to speak directly with their insurer, which means issues can often be resolved early.

In 2012-2013 FOS staff attended community meetings for residents affected by natural disasters in Queensland and Tasmania.

Forums were held in Bundaberg and Maryborough following the floods and extreme weather which impacted the Wide Bay-Burnett region of Queensland. The Insurance Council of Australia (ICA) also organised a community forum, in association with FOS, Legal Aid Tasmania and relevant insurers for residents in Dunalley, near Hobart, which was devastated by bushfires in January.

### Bundaberg Community Flood Forum

FOS Senior Case Manager Dion Newburn and Communications Adviser Julianne McNamara represented FOS at the Bundaberg Community Flood Forum in February.

More than 180 local residents and policyholders attended the ICA-organised event.

The ICA explained the steps of the recovery process and more than 30 representatives of insurance companies handled queries from policyholders which included claims handling and management, claims assessment timeframes, site clean-up, claims settlement options, rebuilding and cash settlement.

Dion provided advice about general insurance and banking and encouraged policyholders to speak directly with their insurers to try and resolve their concerns.

He explained FOS's dispute resolution process and welcomed policyholders to approach him with any questions they had.

"Local residents/policyholders appreciated the opportunity to ask questions directly and we were able to direct a number of people to discuss specific issues with their insurer in the hope they could solve the matter directly," Dion said.

Queensland Legal Aid was also at the forum and provided advice on dispute resolution and how to get assistance.

Attendees were given the opportunity to direct any questions to staff representing the ICA, Legal Aid and FOS.







### Graham Warner profile

The devastation of Cyclone Larry in 2006 was the catalyst for FOS's predecessor scheme, the Insurance Ombudsman Service (IOS) to hold its first community meetings for natural disaster victims.

North Queensland residents were reeling from the cyclone's impact and FOS Dispute Resolution Manager, Graham Warner, who retired this year, saw a need for FOS to step in and help.

"FOS needed to act as an intermediary to bring insurers and their customers together so issues could be resolved before they escalated," Graham said.

"There was a lot of misunderstanding as to what the process was, and at that stage insurers were not good at managing large events –there has been a huge improvement since then."

Thanks to Graham's initiative, hundreds of Australians affected by bushfires, floods, storms and other natural disasters have benefited from similar community meetings.

The model has been adopted by the Insurance Council of Australia (ICA) as part of its catastrophe plan and now FOS works in conjunction with the ICA, community legal centres and local government and continues to attend these meetings.

Graham estimated the meetings can result in a 50-60% reduction of disputes coming to FOS but said the benefits extend far beyond this.



### Consumer Representatives

In 2012-2013 consumer representatives helped Australians to lodge nearly 800 disputes with FOS. Of those people, 54% were experiencing financial difficulty and in urgent need of assistance.

A total of 160 community organisations across Australia lodged disputes with FOS on behalf of applicants in 2012-2013. These organisations provide free, community-based financial counselling, legal aid and casework assistance to support people not only with lodging their dispute, but throughout the entire dispute resolution process.

### New Consumer Engagement Strategy

FOS launched its Consumer Engagement Strategy in July 2012. The strategy outlines our program to educate, consult and collaborate with the consumer sector, with a focus on organisations providing the services described above. The aim of the strategy is to ensure a strong two-way flow of ideas, education and training to improve outcomes for consumers, including the most vulnerable Australians. The strategy encompasses a number of initiatives outlined below:

#### 1. Consumer Liaison Group

An important component of the strategy is our Consumer Liaison Group (CLG). The CLG is comprised of a mix of consumer advocates and representatives from across Australia. It meets with FOS on a quarterly basis.

The purpose of the group is to:

- identify opportunities to make our service more effective, accessible and user-friendly for vulnerable and disadvantaged consumers
- increase and improve engagement between FOS and the community sector
- promote better understanding of key issues that affect the sector with regard to dispute resolution
- provide a formal mechanism of communication between FOS and the community sector.

In 2012-2013 the group comprised a representative from each of the following organisations:

- Indigenous Consumer Assistance Network
- Financial Counselling Australia
- Anglicare WA Financial Counselling
- Legal Aid QLD
- Consumer Credit Legal Centre
- Legal Aid NSW
- Anglicare TAS Financial Counselling
- Uniting Care
- Northern Australian Aboriginal Justice Agency
- Consumer Action Law Centre

#### Consumer engagement – SMS communication trial



Based on recommendations of the CLG, FOS will undertake a pilot trialling SMS communication. It is considered that SMS communication will be particularly useful in contacting applicants who

are in financial difficulty. In the experience of our case-handling staff, people in such circumstances can be difficult to contact by phone. This may be the result of a reluctance to answer calls from a private number (such as ours), which is indistinguishable from collections calls from creditors. It may also be the result of limited or no access to voicemail services.

We expect SMS will help us when we plan to call applicants: we can flag that we will be calling soon. SMS may also be suitable after unsuccessful attempts to call applicants; we can request a call back.

## 2. Consumer Liaison Group Hub

An online portal has been established to enable the CLG to communicate effectively with FOS. The portal includes a forum for open discussion between CLG members and FOS and allows ideas and suggestions to be posted for comment and analysis.

## 3. Professional development

In 2012-2013 FOS attended many educational events and activities for consumer representatives including financial counsellors, community lawyers, healthcare, social and money management workers.

These events included:

- Financial Counselling Australia – External Dispute Resolution forum
- Annual conferences/professional development days:
  - > Financial Counsellors' Association of Western Australia
  - > Money Workers Association of NT
  - > Financial Counsellors' Association of Queensland
  - > Financial Counsellors' Association of NSW
  - > Financial and Consumer Rights Council (Victoria)
  - > South Australian Financial Counsellors' Association
  - > Salvation Army Moneycare Conference NSW

## 4. FOS forums

A key part of our consumer engagement strategy is ensuring we have targeted training to the sector. In 2012-2013 we delivered two FOS forums, one in NSW and one in Queensland to an audience of 135 financial counsellors and legal advocates.

The forums are designed to educate consumer representatives about our dispute resolution process and also to raise awareness of key aspects of financial disputes such as financial difficulty and responsible lending.



### Salvation Army Moneycare conference

FOS's Lead Ombudsman – Banking and Finance, Philip Field, showed his support for the Salvation Army's Moneycare program by delivering a talk at its April conference.

The three-day conference took place in Sydney and was held to celebrate Moneycare's 20 year anniversary of assisting people in financial difficulty and crisis.

Moneycare coordinator Tony Devlin said Mr Field was able to pass on practical and relevant information to the conference delegates who regularly assist clients with FOS matters.

"Moneycare values its good relationship with FOS and appreciates that people with the standing of Philip are able to come to our conferences and speak directly to our financial counsellors and caseworkers. This adds a lot of value to our work and our ability to assist clients".



### Community organisations

More than a third of the disputes which consumer representatives lodged on behalf of applicants in 2012-2013 came from just ten organisations.

Legal Aid NSW lodged the highest number of disputes (65) on behalf of their clients.

Another stand-out organisation was Murwillumbah and Tweed Financial Counselling Service which brought the fifth highest number of disputes to FOS – an achievement made even greater by the fact the service is run by two part-time employees.

The community organisations who lodged the highest number of disputes with FOS were:

Legal Aid NSW (65)

Uniting Care Community, QLD (39)

Consumer Credit Legal Centre NSW Inc (34)

Anglicare Victoria (33)

Murwillumbah and Tweed Financial Counselling Service, NSW (28)

Legal Aid QLD (27)

The Salvation Army MoneyCare, QLD (27)

Djerriwarrh Health Services VIC (24)

Mallee Family Care, VIC (24)

The Salvation Army MoneyCare, NSW (20)



Photo: Scottie Simmonds/APN



## 60 seconds with Phil Powell

**Role:** Financial counsellor/practice supervisor with Anglicare Tasmania and member of FOS's Consumer Liaison Group.

*Phil lives in Devonport and is married with four adult children. He is a passionate supporter of the Richmond Football Club and enjoys walking and gardening. He has been working as a financial counsellor for 15 years.*

**How many clients do you see in a typical month?**

When I was a full-time financial counsellor I would see 60 clients per month but these days I'm primarily supervising so it's a lot less.

**What are some of the key reasons your clients find themselves in financial difficulty?**

A lack of financial literacy within families – many people don't budget and children copy their parents' practices.

I think there's still a "get it now, pay later" mentality. I think people still see credit as extra cash. That's a problem.

**What advice would you give to anyone interested in joining the industry?**

You want to make sure you have a passion to make a difference. You must have empathy and be non judgemental. You have to be prepared to get out of your comfort zone to influence the big picture issues. It can be a very stressful job but also very satisfying because you regularly see what a difference you make.

**Is technology a help or a hindrance in terms of your role?**

It's been a major help. Obviously communications are a lot faster which means you get quicker replies back from creditors. It's helpful with preparation of documents like budgets, accessing information from websites and video conferencing. There are many advantages.

**What's changed for the better in your industry? And what has changed for the worse?**

**Changes for the better:**

The biggest change was probably when the Rudd Government got in first time around and they actually funded a peak body for the sector. This enabled Financial Counselling Australia to be established, staff to be employed and the establishment of a national Financial Counselling diploma.

I also think members of the banking industry are actively looking to be better corporate citizens. Instead of us and them, it's more about how we can help each other these days.

**Change for the worse:**

There's been an increase in high-charging short term lenders.



# Who Lodged Disputes

Our national free service is available to all Australian consumers and certain small businesses\* who are customers of a FOS member.

One of FOS's key priorities is to make our service as accessible as possible to the community. We do this by promoting our service widely – with a particular focus on vulnerable and disadvantaged communities – and by removing any barriers that may deter someone from coming to FOS.

We want all applicants – that is, people who bring disputes to FOS – to feel they have the information and support they need to use our service.

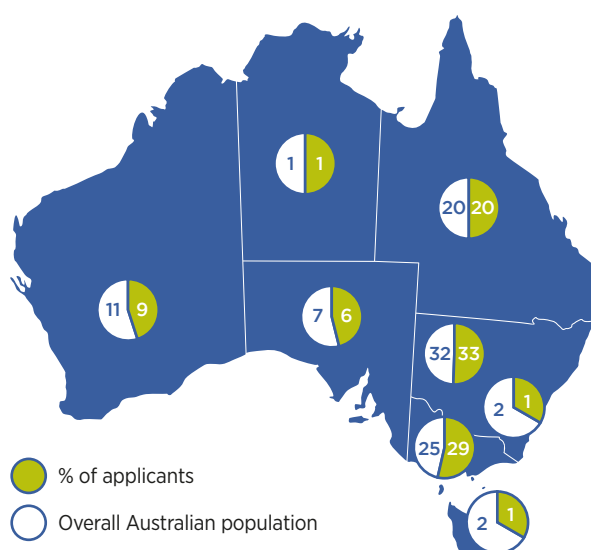
This section presents information about the people and small businesses who lodged disputes at FOS in 2012-2013.

*\* See paragraphs 4.1 and 20.1 of our Terms of Reference for information about which types of small business can use our service.*

## Geographic Location

As a national scheme we handle disputes involving applicants and financial services providers (FSPs) from all across Australia. The geographical distribution of applicants in 2012-2013 was fairly similar to the geographical distribution of the Australian population. It was also comparable with the 2011-2012 distribution of applicants who lodged disputes.

### Geographic distribution of our applicants



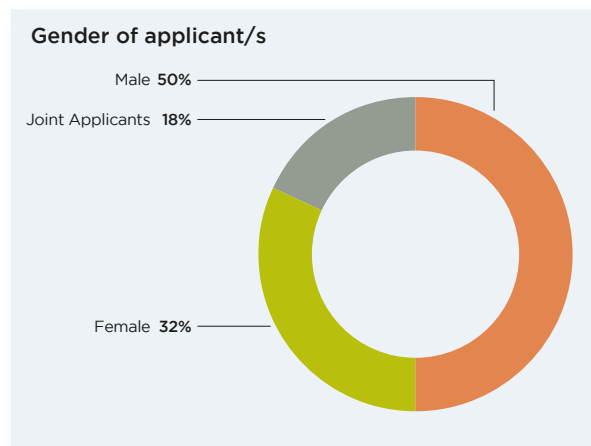
*\* We also had 102 disputes lodged from overseas applicants.*

*\* The applicant's location was recorded for 96% of disputes.*

*\* The overall Australian population is a general proportion of Australia's population per state which has been derived from Australian Bureau of Statistics (2011) data.*

## Gender

The consistent trend since FOS began operating has been for more men than women to lodge disputes with FOS. This trend continued this year as the chart below shows. In 2013-2014 we will investigate further possible reasons for this difference.



*\* Applicant gender was recorded for 98% of disputes.*

## Age

The breakdown by age group of the people who lodged disputes in 2012-2013 was almost identical to last year. As the table below shows, 69% of applicants in 2012-2013 were aged 30-59, even though this age group only makes up 52% of the adult population of Australia.

People aged 30 and above are much more likely to have entered the property market than younger people, as was reflected in the fact that 94% of disputes relating to issues with home loans came from applicants aged 30 and above. Applicants aged 30 and above also accounted for 95% of all disputes relating to home building insurance.

Disputes about comprehensive motor vehicle insurance were most common in the 40-59 year old age group (40%) while this category also had the majority of disputes about personal loans (46%).

People aged 18-24 comprised 5% of all applicants in 2012-2013, lodging a total of 1,014 disputes. Of those, disputes about comprehensive motor vehicle insurance accounted for 14%, followed by personal loans (11%) and credit cards (9%).

Complaints about credit cards (13%) and comprehensive motor vehicle insurance (10%) were the most common reasons consumers aged between 25 and 39 lodged disputes with FOS.

Issues with home loans (12%) were the most common reason the 60-plus age group came to FOS.



### Age of applicants\*

Age	% of applicants	% of Australian adult population**
18-24	5%	13%
25-29	9%	10%
30-39	22%	18%
40-59	47%	34%
60+	17%	25%

\* The applicant's age was recorded for 84% of disputes.

\*\* Australian Bureau of Statistics estimates for July 2011:  
<http://www.abs.gov.au>

### Applicant type

The vast majority (94%) of the disputes lodged in 2012-2013 came from individuals, while almost 6% were from small businesses. Disputes lodged jointly by an individual and a small business accounted for less than 1% of the total.

### Translators

FOS hires translators and interpreters for applicants who need them. Applicants are given the opportunity to request the help of a translator to communicate with us when they lodge their dispute. A translator can help the applicant by explaining the details of their dispute to FOS and can translate all correspondence. Not all applicants who indicate that they might need a translator end up using one, but if one is required at any stage in the process then FOS will arrange and pay for the service.

In 2012-2013, 506 applicants requested the assistance of a translator. Chinese was the language we received the most requests for a translator (115).

### Received Translator request by applicants in 2012-2013

Type	Total
Afrikaans	8
Albanian	2
Amharic	3
Arabic	74
Assyrian	2
Bengali	1
Bosnian	2
Bulgarian	1
Cantonese	31
Chinese (Other than Cantonese And Mandarin)	49
Croatian	4
Danish	1
Dari	8
Deaf-Sign	4
Dutch	1
Estonian	6
Filipino (Tagalog)	6
French	1
Fukenesse	2
German	6
Greek	23
Gujarati	1
Hebrew	1
Hindi	10
Hindi-Fijian	1
Hokkien	1
Hungarian	1
Indonesian (Bahasa)	5
Italian	16
Japanese	1
Karen	1
Korean	15
Lao	1
Lithuanian	1
Macedonian	8
Malay	1
Malayalam	1

## Who lodged disputes (continued)

Type	Total
Maltese	1
Mandarin	35
Nepalese	1
Pakistani	3
Pashto	1
Persian (Farsi)	24
Polish	3
Portuguese	1
Punjabi	12
Romanian	1
Russian	7
Samoan	4
Serbian	16
Sinhalese (Sri Lankan)	1
Spanish	16
Tamil	1
Thai	8
Tongan	2
Turkish	20
Ukrainian	1
Urdu	4
Vietnamese	44
<b>Total</b>	<b>506</b>

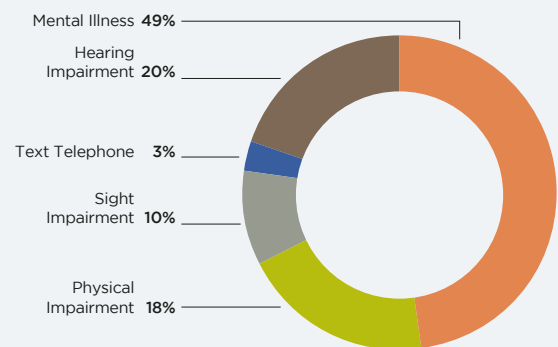
### Special assistance

In 2012-2013 there was a 19% increase in the number of applicants who requested special assistance to use our service. Almost half (49%) of the 530 requests for special assistance related to mental illness.

Applicants (or their representatives) can notify us if they might need special assistance to use our service because of a disability, impairment or illness. One of the services we use to assist applicants who are deaf or who have a hearing or speech impairment is the National Relay Service (NRS). NRS offers a range of services including a 'speak and listen' call service. This enables a person with a hearing/speech impairment to talk directly to one of our staff with an NRS relay officer listening in and re-speaking anything that is not clear. This option may suit someone who can use their own voice or voice output device but can be hard to understand on the phone.

For further details about special assistance, refer to our accessibility guideline which is available at: [www.fos.org.au/access](http://www.fos.org.au/access).

### Special assistance requests from applicants



### How applicants lodged their disputes

The majority of our applicants (69%) chose to lodge their disputes through our website using the online dispute form in 2012-2013. This was up from 63% the previous year and 57% in 2010-11. We have seen a steady increase in the number of disputes lodged online in the last two years, which can probably be attributed to the increased use of the internet.

People can also lodge their dispute over the phone, by letter, email or fax.

### How applicants lodged their disputes

Method applicants used to lodge dispute	Total
Email	2,197
In person	6
Letter	6,329
Phone	1,006
Fax	385
Unknown	25
Web	22,359
<b>Total</b>	<b>32,307</b>

## Representatives

The dispute resolution service FOS provides is a free and accessible alternative to going to court. Applicants do not need legal or financial advice or representation to come to us. We recognise, however, that some applicants may prefer to have someone lodge their dispute for them at FOS or act on their behalf during the dispute resolution process. The applicant must give written authority

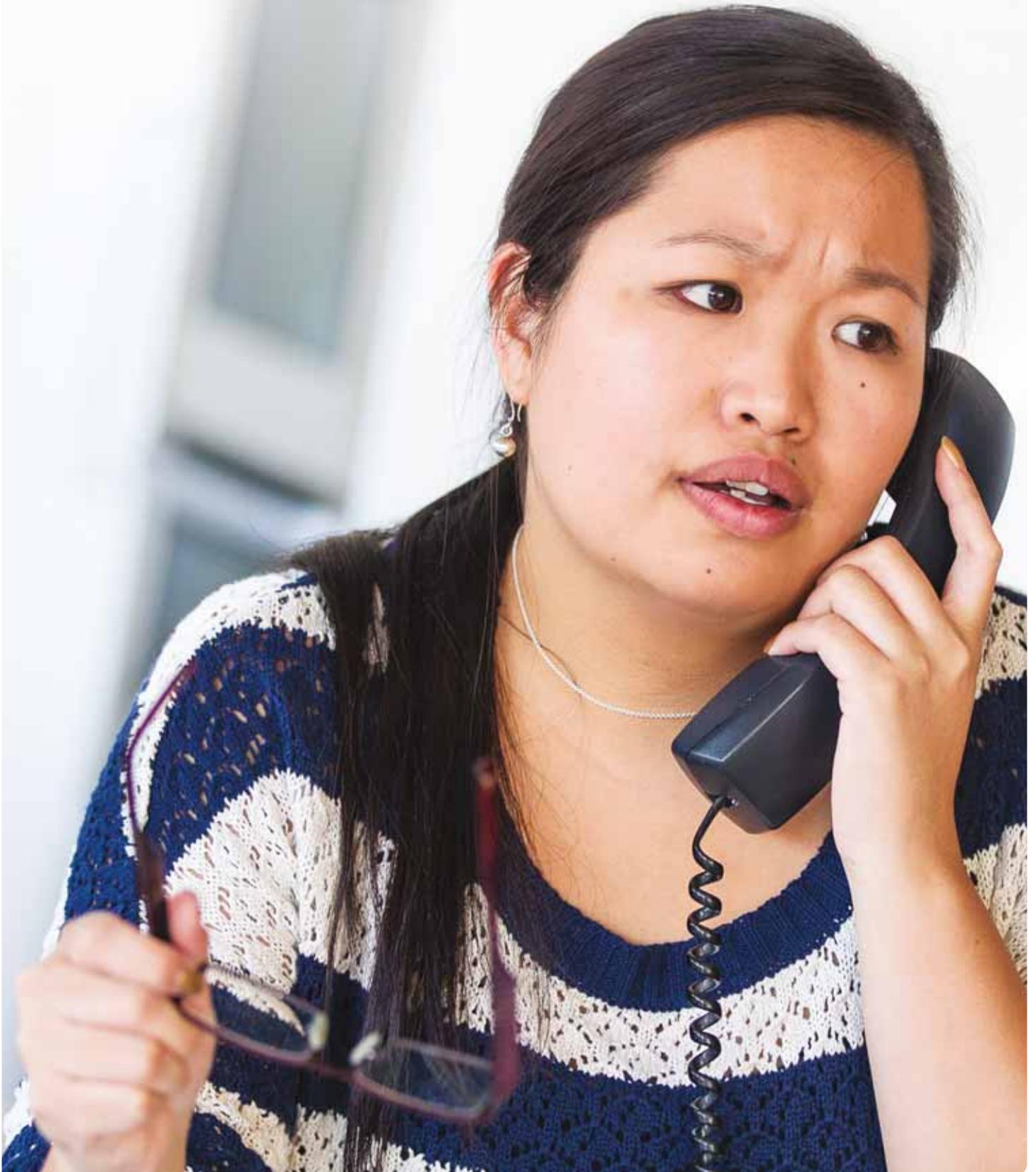
for someone else to represent them. In 2012-2013, 5,716 applicants used a representative in their dealings with FOS. The most common type of representative applicants chose was a family member or friend (40%) followed by solicitors (20%). In 2012-2013, 736 applicants used the services of a dispute resolution agent to lodge their complaint or dispute.



**Jillian Williams**

Director of Legal Practice, Consumer Action Law Centre and member of the FOS Consumer Liaison Group

# Overview of Disputes



## How we classify disputes



We classify disputes according to:

- › the **product/s** the consumer is complaining about
- › the **issue/s** involved in the dispute
- › the **sales** or **service** channel the consumer used to purchase or get advice about the product in dispute
- › the **outcome** of the dispute (once it is closed)

This section details all the classifications within these broad categories.





# An overview of how we classify financial products

## 49% Credit

### Business Finance

- business credit cards
- business loans
- commercial bills
- hire purchases/leases
- letters of credit
- lines of credit/overdrafts
- non-financial product debt

### Consumer Credit

- construction loans
- credit cards
- equity releases
- hire purchases/leases
- home loans
- interest-free finances
- investment property loans
- lines of credit/overdrafts
- non-financial product debt
- personal loans
- short-term finance

### Guarantees

- bank guarantees
- business guarantees
- consumer guarantees

### Margin Loans

## 30% General Insurance

### Domestic Insurance

- consumer credit
- home building
- home contents
- motor vehicle
- personal and domestic property
- residential strata title
- sickness and accident
- travel

### Extended Warranty

- brown goods
- motor vehicles
- white goods

### Professional Indemnity Insurance

- medical indemnity
- other professional indemnity

### Small Business/Farm Insurance

- commercial property
- commercial vehicles
- computer and electronic breakdown
- contractors all risk
- fire or accidental damage
- glass
- industrial special risk
- land transit
- livestock
- loss of profits/business interruption
- machinery breakdowns
- money
- public liability
- thefts

## 7% Payment Systems

### Direct Transfer

- ATM
- bank drafts
- cheques
- counter transactions
- direct debits
- EFTPOS
- electronic banking
- foreign currency transfers
- merchant facilities
- telegraphic transfers

### Non-Cash

- loyalty programs
- non-cash systems
- stored value cards
- travellers' cheques

## 5% Deposit Taking

### Current Accounts

- business transaction accounts
- foreign currency accounts
- mortgage offset accounts
- passbook accounts
- personal transaction accounts

### Savings Accounts

- bank bills
- cash management accounts
- first home buyer accounts
- online accounts
- term deposits

### Safe Custody

## 5% Investment

### Derivatives/Hedging

- contracts for difference
- foreign exchange
- forwards
- futures
- options
- swaps

### Managed Investments

- Australian equity funds
- cash management accounts
- charitable/educational schemes
- film schemes
- horse schemes
- international equity funds
- investor directed portfolio services
- managed discretionary accounts
- managed strata title schemes
- mixed asset funds
- mortgage schemes
- primary production schemes
- property funds
- timeshare schemes
- trustee common funds

### Real Property

### Securities

- bills of exchange
- bonds
- debentures
- exchange traded funds
- promissory notes
- shares
- warrants

### Superannuation

- account based pensions
- approved deposit funds
- corporate funds
- industry funds
- pooled trusts
- retail funds
- retirement savings accounts
- self-managed funds

## 4% Life Insurance

### Income Stream Risk

- consumer credit insurance
- income protection

### Non-Income Stream Risk

- annuities
- endowments
- funeral plans
- scholarship funds
- term life
- total and permanent disability
- trauma
- whole of life

## <1% Traditional Trustee Services

### Estate Management

### Estate Planning

- enduring powers of attorney
- wills

### Trusts

- beneficiary specific purpose



Product Lines

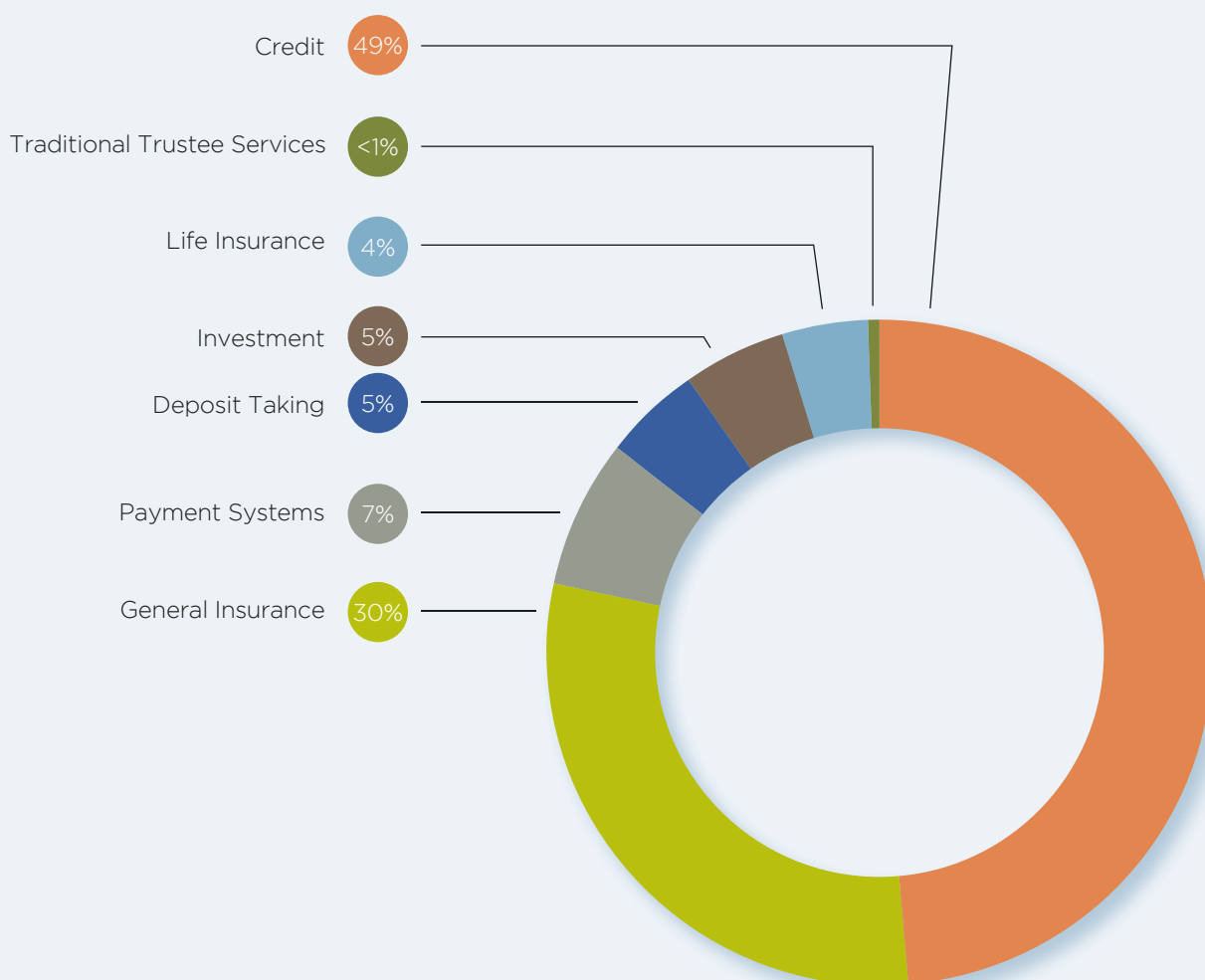
## 1. Products

FOS handles disputes across many different areas of financial services. We have a classification system which divides the disputes we handle into product types. There are seven main types of products which FOS can handle disputes about.

These are: credit, deposit taking, general insurance, investments, life insurance, payment systems and traditional trustee services. There are 23 different product categories within the seven types of products and 121 different individual products.

As the diagram below demonstrates, we receive many disputes about some products, such as credit and general insurance, while we only receive a very small number about other products, such as traditional trustee services.

Accepted disputes by product line in 2012-2013



## 2. Issues

We also classify disputes according to the issues involved in the disputes.

For example, a person may lodge a dispute about a decline of a financial difficulty request (issue) in respect to their home loan (product).

Some issues, such as those relating to financial difficulty, are very common in the disputes we receive, while others are less frequent.

The table below provides the major issue types as well as the specific issues that fall under each type.

<b>Advice</b>	
Failure to provide advice	Denial of variation request
Inappropriate advice	Error in debt collection
Incorrect advice	Inappropriate debt collection action
<b>Charges</b>	Inappropriate margin call notice
Deductible or excess	Interpretation of policy terms and conditions
Incorrect commissions	Maladministration in lending
Incorrect fees/costs	Maladministration in loan management
Incorrect interest added	Product terms – features/service
Incorrect premiums	<b>Instructions</b>
No claim bonus	Delay
<b>Disclosure</b>	Failure to follow instructions/agreement
Incorrect product/service information	Incorrectly processed instructions
Insufficient product/service information	<b>Non-Terms of Reference (non-TOR) issues</b>
Misleading product/service information	
<b>Financial difficulty</b>	<b>Privacy and confidentiality</b>
Applicant rejects FSP decision	Consumer credit reporting
Decline of financial difficulty request	Failure/refusal to provide access
Default notice	Other privacy breaches
FSP failure to respond to request for assistance	Unauthorised information disclosed
Request to suspend enforcement proceedings	<b>Service</b>
<b>Financial services provider (FSP) decision</b>	Delay in claim handling
Cancellation of policy	Delay in complaint handling
Cancellation of refund	Failure to provide special needs assistance
Claim amount	Inappropriate portfolio liquidation
Commercial credit reporting	Incorrect financial information provided
Denial of application	Loss of documents/personal property
Denial of claim	Management of applicant details
Denial of claim – Applicant non-disclosure	Service quality
Denial of claim – Exclusion/condition	Technical problems
Denial of claim – Fraudulent claim	<b>Transactions</b>
Denial of claim – No policy or contract	Dishonoured transactions
Denial of claim – No proof of loss	Incorrect payment
	Unauthorised transactions

### 3. Sales and Service Channels

We also classify disputes according to the sales/service channel, or type of business, the Financial Services Provider (FSP) was conducting in providing the product or service that the dispute concerns.

For example, where a dispute involves a general insurance policy sold through a broker, and the dispute is lodged against the policy issuer, the sales/service channel is “general insurer”. But if the dispute is lodged against the broker, the sales/service channel is “general insurance broker”.

Some FSPs operate through multiple sales/service channels while others operate through a single channel.

The table below shows a full list of the sales and service channels of our members.

Sales and Service Channels
Administration services provider
Bank
Building society
Charity/community fund
Clearing/settlement house
Corporate advisor
Cover holder
Credit provider
Credit reporting agency
Credit representative
Credit union
Custodial and depository service
Debt collector or buyer
Derivatives dealer
Finance broker
Financial advisor/planner
Foreign exchange dealer
Friendly society
General insurance broker
General insurer
Life insurance broker
Life insurer
Make a market

Sales and Service Channels
Managed discretionary account operator
Managed investments scheme (MIS) operator/fund manager
Mortgage aggregator
Mortgage broker
Mortgage manager
Mortgage originator
Non-cash Payment Systems provider
Pooled superannuation trust
Private health insurer
Product distributor
Product issuer
Professional indemnity insurer
Provider of lender of record services
Reinsurer/reinsurance agent
Research house
Securities dealer
Stockbroker
Superannuation fund trustee/advisor
Timeshare scheme operators
Travellers' cheques/foreign currency transfer provider
Trustee
Underwriting agency
Warranty provider

## 4. Outcomes

We use the term 'closed dispute' to refer to a dispute we have finished handling. A dispute can be closed through an agreement between the parties involved, through a decision by FOS, or because the dispute is discontinued or outside our Terms of Reference.

When FOS finishes handling a dispute we classify it according to its outcome and outcome type. The possible outcomes and outcome types are listed in the tables opposite.

**The purple rows** show outcomes that have been reached by agreement between the consumer and the FSP. They can reach agreement either by communicating directly with each other (resolved by the FSP) or with the help of FOS (conciliation, negotiation or assessment).

Conciliation involves a telephone conference between the FSP, the applicant and FOS. This technique allows both parties to talk about the issues of the complaint in an attempt to come up with an outcome both parties agree to. Our conciliators are trained mediators who bring the parties together to guide the conversation to make it easier for everyone to talk about the issues involved.

## Resolved by Agreement

### Assessment

Apology  
Monetary compensation in full  
Monetary compensation in part  
No payment or action  
Not disclosed  
Other product or service  
Policy/contract altered/voided/cancelled

### Conciliation

Apology  
Australian Prudential Regulation Authority (APRA) release  
Monetary compensation in full  
Monetary compensation in part  
No payment or action  
Not disclosed  
Other product, service or commercial resolution provided  
Partial waiver of debt/interest/fees  
Policy/contract altered/voided/cancelled  
Repayment arrangement  
Repayment arrangement and capitalisation of arrears  
Repayment arrangement and partial debt waiver  
Repayment arrangement and timeframe for sale  
Timeframe for sale/surrender of asset  
Variation to contract (capitalisation/interest rate/term)

### Negotiation

Apology  
Australian Prudential Regulation Authority (APRA) release  
Monetary compensation in full  
Monetary compensation in part  
No payment or action  
Not disclosed  
Other product, service or commercial resolution provided  
Partial waiver of debt/interest/fees  
Policy/contract altered/voided/cancelled  
Repayment arrangement  
Repayment arrangement and capitalisation of arrears  
Repayment arrangement and partial debt waiver  
Repayment arrangement and timeframe for sale  
Timeframe for sale/surrender of asset  
Variation to contract (capitalisation/interest rate/term)

### Resolved by financial services provider (FSP)

Apology  
Monetary compensation in full  
Monetary compensation in part  
No payment or action  
Not disclosed  
Other product, service or commercial resolution provided  
Policy/contract altered/voided/cancelled



**The orange rows** show outcomes reached following a Recommendation or Determination by FOS.

A Recommendation is an assessment provided by FOS following a detailed investigation into the dispute. If either the consumer or the FSP reject the Recommendation, or the FSP fails to respond, the dispute proceeds to the final stage in our process. At this stage, an Ombudsman or Panel reviews the dispute and makes a formal decision called a Determination, by which the FSP is bound, if the consumer accepts it.

## Resolved by FOS Decision

Decision in favour of applicant
Monetary compensation in full Monetary compensation in part Monetary equivalent Non-monetary compensation and/or action
Decision in favour of financial services provider (FSP)
No compensation or action
Decision confirming financial services provider (FSP) offer/action
Monetary compensation in full Monetary compensation in part Monetary equivalent

**The green rows** show outcomes that are outside our Terms of Reference (ie not the kind of disputes that FOS can consider) or that are discontinued because the consumer chooses to discontinue their dispute or ceases contact with FOS.

## Discontinued or outside Terms of Reference

Discontinued
Beneficiary legal proceedings Discontinued by applicant Failure to respond
Outside Terms of Reference
4.1 Applicant not eligible 4.2(a) Dispute not under Australian law 4.2(b) Type of dispute outside Terms of Reference 4.2(c) Not a current FOS member 4.3 Excluded general insurance policy 5.1(a) Privacy only 5.1(b) Level of fee/premium/charge 5.1(c) Credit risk assessment 5.1(d) Underwriting/actuarial factors leading to offer of non-standard life 5.1(e) General insurance premium ratings/weightings 5.1(f) Insurance cover refusal 5.1(g) Investment performance 5.1(h) Trustee decision 5.1(i) Management of fund as whole 5.1(j) Allocation of benefit 5.1(k) Dispute previously dealt with by FOS 5.1(l) Dealt with by court/tribunal/scheme 5.1(m) Legal proceedings previously commenced before lodgement 5.1(n) Lodged with other external dispute resolution (EDR) scheme 5.1(o) Claim exceeds \$500K 5.1(p) Related body corporate > 20/100 5.2 General discretion 5.2(a) More appropriate place 5.2(b) Non-retail client 5.2(c) Financial services provider (FSP) practice/policy 5.2(d) Frivolous/vexatious/lacking substance 5.2(e) Legal proceedings commenced 6.2(a) Outside 6 year time limit 6.2(b) Outside 2 year internal dispute resolution (IDR) time limit

# Our dispute resolution process

After a consumer or small business lodges a dispute with us, we try to resolve it using the following process:





# Our dispute resolution process

## Internal and external dispute resolution (IDR and EDR)

The majority of disputes received by FOS are resolved directly between the financial services provider (FSP) and their customer. Once a dispute has been lodged with FOS, we give the FSP the opportunity to resolve the dispute directly with the applicant through its own internal dispute resolution process (IDR). Many FSPs have a dedicated complaints department which consumers can deal with. In most cases, the FSP has 45 days to resolve the complaint with the applicant. They have 21 days in financial difficulty cases. If a complaint is not resolved through the FSP's IDR process, or it has already been through IDR before it is lodged with FOS, it proceeds to FOS which is an External Dispute Resolution (EDR) scheme.

Our role as an EDR scheme, as an independent external party, is to investigate and consider a dispute and assist the FSP and the consumer to resolve the dispute. There are a number of stages to our dispute resolution process- Registration, Acceptance, Case Management and Outcome.

### Step 1

**Registration** – At Registration, the first stage of our process, we refer a dispute back to the relevant FSP to give them the opportunity to resolve the complaint directly with their customer via their own IDR process.

### Step 2

**Acceptance** – If the FSP did not resolve the dispute with its customer through its IDR process then the customer can come back to FOS and we assess whether we can help by checking if the dispute is within our jurisdiction and therefore a dispute that we can consider. If it isn't, we are unable to assist and will try to refer the consumer to another organisation that can. If we can help, the complaint proceeds to Case Management.

### Step 3

**Case Management** – We start considering the dispute in detail. We give the FSP a set period of time to provide a formal response to the dispute. The FSP may also resolve the dispute directly with the consumer in this time. If this does not happen then we review the information provided by both the applicant and the FSP and choose the most appropriate method to resolve the dispute. This may include bringing the parties together using a collaborative approach of a conciliation or negotiation or by making an initial assessment. If an agreement can be reached using one of these approaches, then the dispute is closed at this stage.

### Step 4

**Outcome** – If we don't think a collaborative approach will work, we complete a detailed investigation of the dispute and make an assessment called a Recommendation. If both the FSP and the applicant accept the Recommendation, the dispute is closed at this point. If one of the parties does not accept the Recommendation then an Ombudsman or Panel reviews the dispute and makes a formal decision called a Determination, which the FSP is bound by if the applicant accepts it. If the applicant does not accept the Determination then we are unable to help them any further. They have the option to pursue their dispute through other avenues, such as court.



# How we count disputes

## **What we record about disputes referred for Internal Dispute Resolution (IDR)**

At Registration, we lodge the dispute in our system, record some basic information about the issues in dispute and then send the details to the FSP.

## **What we record about disputes that FOS considers**

In the Acceptance stage of our process, we assess whether a dispute is within our jurisdiction and we record extensive information about it. We classify it according to the product(s) or services(s) it relates to, the issue(s) it raises and the remedy being sought, and the sales or service channels(s) through which the consumer bought the product(s) or service(s) in dispute. Having detailed information helps us to select the most appropriate method to assist the parties to resolve the dispute. It also enables us to report accurately and thoroughly about the disputes we have dealt with. We continue to update our dispute data and information as the dispute progresses.

## **What we record about disputes involving multiple issues or products**

Some of the disputes we receive are about more than one product/service or more than one issue. For example, a consumer might complain both about their residential strata title insurance policy (Product A) and about damaged furniture they believe should have been covered by their home contents insurance policy (Product B) which is separate from their residential strata title insurance policy.

The approach we usually take is to establish one case file but to record the fact that more than one product has been complained about and that more than one issue has been raised. This is an important aspect of both case management and dispute resolution. It ensures all aspects of a dispute are considered and it provides an accurate picture of the causes of a consumer's concerns.

However, it also means that there are two ways that we can count and report on disputes. We can count a dispute that involves multiple products and issues as a single dispute, because it comes from one consumer and we hold one case file on it. Alternatively, we can count it as multiple disputes: one for each product or distinct issue in dispute. Which of these counting methods we use depends on what we are reporting on – as explained further below.

## **Reporting the total number of disputes**

When we report the total number of disputes we received or closed, we count each case as one dispute even if it is about multiple products and issues. This is the best way of presenting FOS's overall dispute input and output in a year. We have used this counting method in the following sections of this review:

- Total Disputes Received (page 47)
- Total Disputes Closed (page 49)
- Who Lodged Disputes (page 32)
- Natural Disaster Disputes (page 85).

## **Reporting about products, issues and sales/service channels**

When we want to analyse the products, issues and sales and service channels involved in disputes, we exclude the cases we received and closed in Registration. We focus on accepted disputes – that is, disputes that reached the Acceptance stage of our dispute resolution process.

Also, for accepted disputes, a case that is about more than one distinct issue will be counted as two disputes; one for each issue. This is the only way we can give an accurate picture of the proportions of disputes that involve each product and issue.

We have used this counting method in the following sections of this review:

- What the Disputes Were About (page 52)
- Credit Disputes (page 57)
- General Insurance Disputes (page 62)
- Payment Systems Disputes (page 67)
- Deposit Taking Disputes (page 69)
- Investment Disputes (page 71)
- Life Insurance Disputes (page 75)
- Traditional Trustee Service Disputes (page 77).

We use both counting methods for the remaining two sections – Financial Difficulty disputes and Legal Proceedings disputes.

## **Presentation of disputes in our Annual Review:**

The category 'Not yet determined' has been used throughout this review to refer to disputes we have only just received and therefore may not have all relevant information captured such as the products, sales and service channel and issues involved.





# Total disputes received

## How many disputes we received in 2012-2013

FOS received 32,307 disputes in 2012-2013, down 11% from the year before. This decline comes after three years of steady increases in disputes – a 27% increase from 2009-2010 to 2010-2011 and a 19% increase from 2010-2011 to 2011-2012.

We believe three key reasons for the decline are:

- There has been a significant drop-off in financial difficulty disputes, which we think is largely due to improvements financial services providers (FSPs) have made to their financial hardship response programs. (see page 78)
- Our investment dispute numbers are continuing to decline as the effects of the GFC diminish. (see page 71)
- A significant drop in natural disaster-related disputes, which is largely due to a much higher prevalence of flood cover, greater consumer awareness about flood cover and improved industry practice. (see page 85)

**Total disputes received by year (case count)**



**Number of disputes received by month**



FOS received an average of 2,692 disputes a month in 2012-2013. Our quietest month was December 2012 (2,117) while August 2012 (3,119) was our busiest.

## Registration and acceptance

The table opposite shows how the 32,307 disputes that FOS received in 2012-2013 entered the FOS dispute resolution process. Refer to step 1 and step 2 of our dispute resolution process on page 45.

Stage disputes entered FOS	Number	%
Registration	15,304	47%
Acceptance	17,003	53%
<b>Total disputes received</b>	<b>32,307</b>	<b>100%</b>

## Total disputes received (continued)

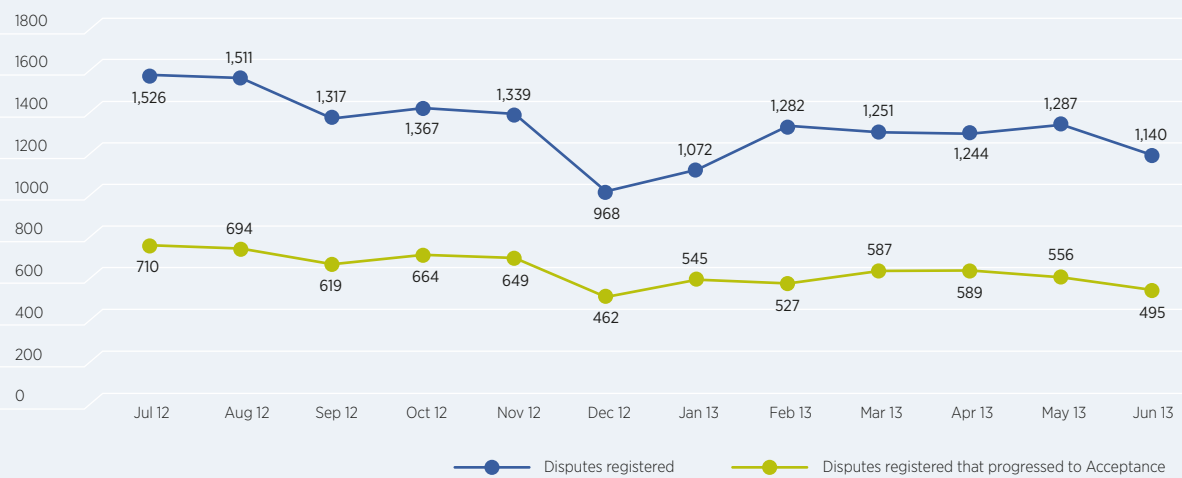
### Registered disputes

We registered 15,304 disputes in 2012-2013, down 17% from the 18,366 we registered last year and in line with our 2010-2011 figure (15,672). The graph below shows how many disputes we registered in each month. It shows we registered 3% more disputes in the first half of the year than the last six months. This was despite the traditional dip in disputes in December.

The graph also shows how many disputes progressed to the Acceptance stage of our process in each month. In total, 7,097 disputes progressed to Acceptance – an average of 591 per month.

Around 54% of the disputes we received at Registration were closed when they were referred back to the FSP and went through the FSP's own internal dispute resolution (IDR) stage (refer to page 45 for an explanation of IDR). These disputes are resolved by the FSP and the consumer working together. This highlights the value of FSPs considering disputes before FOS gets involved.

Disputes registered by month



### Accepted disputes

We accepted 24,100 disputes in 2012-2013, down 5% from the 25,298 we accepted in 2011-2012. The 24,100 accepted disputes consisted of 17,003 disputes that entered directly into our dispute process at Acceptance and 7,097 that progressed to Acceptance from Registration. The peaks were in August 2012 and May 2013 – the only months where we accepted more than 2,200 disputes. It should be noted that some of the disputes that we accept (ie that enter the Acceptance stage of our process) are ultimately found to be outside our jurisdiction – see page 43.

Disputes accepted by month





# Total disputes closed

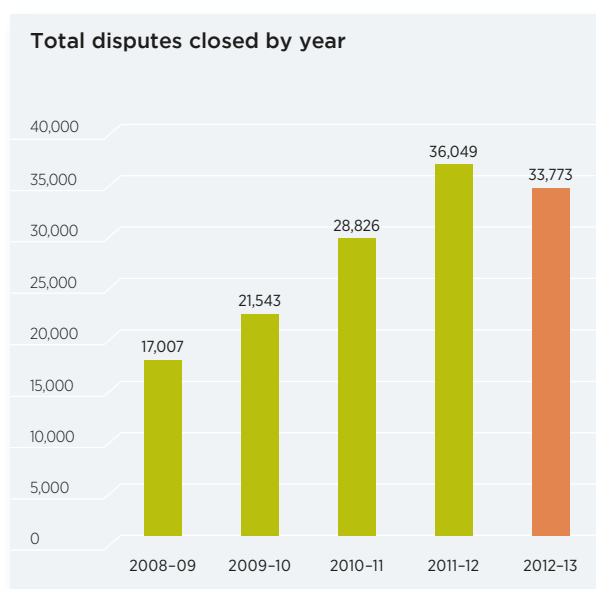
## How many disputes we closed

FOS closed 33,773 disputes in 2012-2013, down 6% from the year before. This is consistent with the drop in the number of disputes received this year.

A dispute can be closed at different stages in our dispute resolution process (see dispute resolution process diagram on page 44). This can be achieved through an agreement between the parties involved, through a decision by FOS, or because the dispute is discontinued or outside our Terms of Reference.

Of the 33,773 disputes we closed in 2012-2013, 8,805 were closed during the Registration stage of our process and 24,968 during or after the Acceptance stage.

FOS actively facilitates a resolution to a dispute during the Acceptance stage and the subsequent stages. (See page 44 for a diagram of the process).



## Stage at which disputes were closed

Stage at which disputes were closed	2010-11	2011-12	2012-13
During Registration stage	9,735	11,066	8,805
During or after Acceptance stage	19,091	24,983	24,968
<b>Total</b>	<b>28,826</b>	<b>36,049</b>	<b>33,773</b>

## Days taken to close all disputes

Days taken to close disputes	2010-11	2011-12	2012-13
0 to 30	10%	12%	15%
31 to 60	40%	40%	40%
61 to 90	10%	11%	11%
91 to 120	8%	8%	7%
121 to 180	12%	9%	8%
More than 180	21%	19%	19%

## Time taken to close disputes

In 2012-2013 there was a 3% increase in the number of disputes closed within 30 days (15%) while 55% of disputes were closed within 60 days and 73% within 120 days.

Reducing the time taken to close disputes has been, and continues to be, a primary focus for FOS.

In 2012-2013 FOS carried out a review of our case management process and implemented significant improvements including:

- streamlining the process for obtaining information from the parties involved in a dispute and for exchanging that information
- increasing direct telephone contact with consumers and FSPs
- relying more on electronic forms of communication
- using issues letters, in conjunction with telephone calls, to clarify issues earlier in the process.

## Outcomes of disputes closed in 2011-2012 and 2012-2013

The possible outcomes of a dispute handled by FOS are listed on pages 42-43. The table below shows the outcomes of the disputes closed in 2010-2011, 2011-2012 and 2012-2013. The chart groups the outcomes into four broad categories – closed by agreement, closed by FOS decision, discontinued, and outside FOS's Terms of Reference.

The proportion of disputes closed by agreement between the applicant (ie the person or small business that lodged the dispute) and the financial services provider (FSP) dropped from 74% in 2011-2012 to 70% in 2012-2013. The percentage of disputes resolved through a FOS decision (because an agreement could not be reached) rose from 8% to 9%.

## Total disputes closed (continued)

Collaborative resolutions are quicker and cheaper than resolutions achieved through a formal decision by FOS. They can be tailored to the specific facts of the dispute and are also more likely to maintain, or even improve, relationships between the consumer and their FSP.

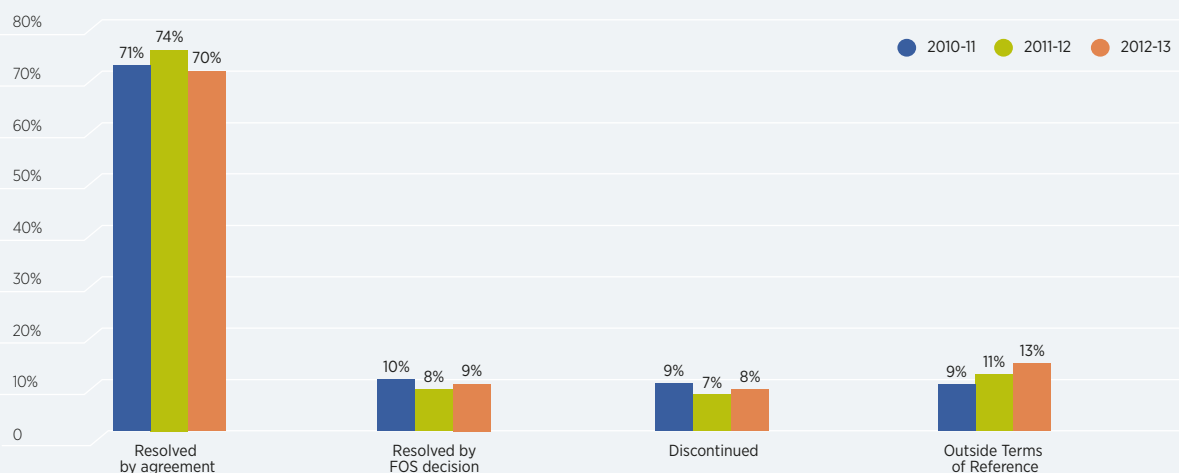
The proportion of disputes that were discontinued increased from 7% to 8% between 2011-2012 and

2012-2013. A dispute is recorded as being discontinued if the applicant decides to discontinue their dispute or pursue alternative means (eg in court), or if the applicant fails to respond to several requests from us for contact and information. We have a follow-up process in place for situations in which an applicant does not respond to communication from us.

### Outcomes of all disputes closed

	2010-11		2011-12		2012-13	
	Number	%	Number	%	Number	%
<b>Resolved by agreement</b>						
Resolved by FSP	18,388	64%	23,699	66%	18,785	56%
Negotiation	962	3%	1,359	4%	2,720	8%
Assessment	375	1%	779	2%	1,274	4%
Conciliation	484	2%	752	2%	857	3%
<b>Resolved by FOS decision</b>						
Decision in favour of FSP	1,529	5%	1,500	4%	1,576	5%
Decision in favour of applicant	1,170	4%	1,234	3%	1,400	4%
Decision confirming FSP's offer/ action	313	1%	280	1%	86	0%
<b>Discontinued or outside Terms of Reference</b>						
Discontinued	2,719	9%	2,497	7%	2,681	8%
Outside Terms of Reference	2,626	9%	3,944	11%	4,391	13%
Other	3	0%	4	0%	3	0%
<b>Total</b>	<b>28,826</b>	<b>100%</b>	<b>36,049</b>	<b>100%</b>	<b>33,773</b>	<b>100%</b>

### Proportion of disputes closed by outcome



## Disputes outside our TOR

Our Terms of Reference (TOR) are available at [www.fos.org.au/tor](http://www.fos.org.au/tor), and explain our jurisdiction – what kinds of disputes we can handle, who can bring disputes to FOS, and which kinds of financial services providers (FSPs) we can handle disputes about.

In 2012-2013, 4,391 disputes were found to be outside our jurisdiction. The table below categorises these disputes according to the reasons we could not consider them.

In 2012-2013 the number of disputes which were outside our TOR increased from 11% to 13%. The largest increases were in the following categories: more appropriate place (up 224), applicant not eligible (up 106), and excluded general insurance policy (up 106).

## Disputes outside our TOR

OTR for new terms of reference by outcomes types (reasons)	Total
4.1 Applicant not Eligible	265
4.2(a) Dispute not Under Australian Law	8
4.2(b) Type of Dispute Outside ToR	496
4.2(c) Not a Current FOS Member	660
4.3 Excluded GI Policy	286
5.1(a) Privacy Only	14
5.1(b) Level of Fee/Premium./Charge	113
5.1(c) Credit Risk Assessment	125
5.1(d) Underwriting/Actuarial Factors leading to offer of Non Standard Life	5
5.1(e) GI Premium Ratings/Weightings	25
5.1(f) Insurance Cover Refusal	27
5.1(g) Investment Performance	5
5.1(h) Trustee Decision	54
5.1(i) Management of Fund as Whole	75
5.1(j) Allocation of Benefit	1
5.1(k) Dispute Previously Dealt With by FOS	108
5.1(l) Dealt With by Court/Tribunal/Scheme	564
5.1(m) Legal Proceedings Previously Commenced before lodgement	9
5.1(n) Lodged With Other EDR Scheme	2
5.1(o) Claim Exceeds 500K	92
5.1(p) Related Body Corporate >20/100	4
5.2 General Discretion	322
5.2(a) More Appropriate Place	776
5.2(b) Non-Retail Client	3
5.2(c) FSP Practice/Policy	162
5.2(d) Frivolous/Vexatious/Lacking Substance	46
5.2(e) Legal Proceedings Commenced	11
6.2(a) Outside 6 Year Time Limit	104
6.2(b) Outside 2 Year IDR Time Limit	29
<b>Total</b>	<b>4,391</b>





## What the disputes were about

### Total number of disputes received by product line and year

In order to provide another level of insight into the kinds of disputes we investigate, we present our data by outlining the number of issues relating to the disputes we accept. Almost half (49%) of the disputes we received in 2012-2013 were about one product line – credit. Common issues within credit disputes included financial difficulty, a decision by the FSP or “FSP decision” and “FSP service” or a dispute about the level of service that an FSP has provided.

As the table below shows, this proportion is similar to last year when credit accounted for 50% of all disputes received.

Refer to pages 57–61 for a detailed analysis of credit disputes.

General insurance disputes comprised 28% of the total we received in 2012-2013 – this proportion was on par with both 2010-2011 and 2011-2012. However, the overall number of general insurance disputes we received (9,468) was down 9% from 2011-2012. Refer to pages 62–66 for an overview of general insurance disputes.

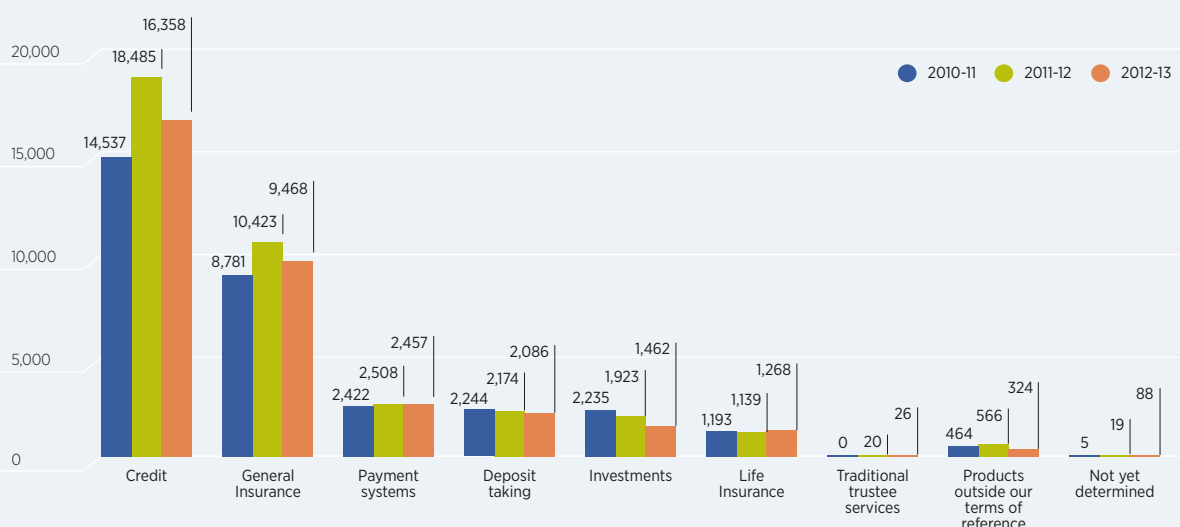
We also saw a significant drop in the number of disputes received about investment products (-24%), however there was an 11% increase in the number of life insurance disputes. Life insurance and Investment disputes are explored in detail from pages 71-76.

### Disputes received by product line and year

Number of disputes received by product line and year	2010-11		2011-12		2012-13	
	Number	%	Number	%	Number of disputes received	%
Credit	14,537	46%	18,485	50%	16,358	49%
General insurance	8,781	28%	10,423	28%	9,468	28%
Payment systems	2,422	8%	2,508	7%	2,457	7%
Deposit taking	2,244	7%	2,174	6%	2,086	6%
Investments	2,235	7%	1,923	5%	1,462	4%
Life insurance	1,193	4%	1,139	3%	1,268	4%
Traditional trustee services	-	-	20	0%	26	0%
Products outside our Terms of Reference	464	1%	566	2%	324	1%
Not yet determined	5	0%	19	0%	88	0%
<b>Total</b>	<b>31,881</b>	<b>100%</b>	<b>37,257</b>	<b>100%</b>	<b>33,537*</b>	<b>100%</b>

\* Note that the total of 33,537 in this table does not match the total of 32,307 in the ‘Total disputes received by year’ chart on page 47. The total in this chart is based on counting cases about multiple products and issues as multiple disputes. For further explanation of this distinction, see ‘How We Count Disputes’ on page 46.

### Disputes received by product line and year



## Accepted disputes by product line and year

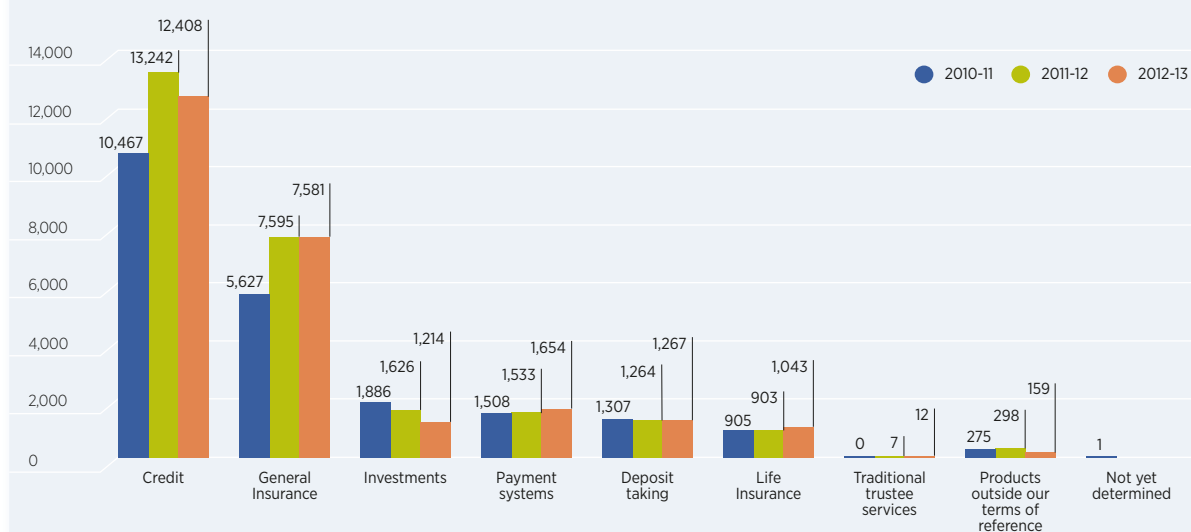
'Accepted disputes' are those that have entered the Acceptance stage of our dispute resolution process (see page 45 for an explanation of this stage). In 2012-2013, credit disputes accounted for 49% of the total, followed by general insurance (30%). These proportions were similar to 2011-2012. The sections from pages 57-77 look at the disputes accepted for each product line in detail.

### Accepted disputes by product line and year

Number of accepted disputes by product line and year	2010-11		2011-12		2012-13	
	Number	%	Number	%	Number of disputes accepted	%
Credit	10,476	48%	13,242	50%	12,408	49%
General insurance	5,627	26%	7,595	29%	7,581	30%
Investments	1,886	9%	1,626	6%	1,214	5%
Payment systems	1,508	7%	1,533	6%	1,654	7%
Deposit taking	1,307	6%	1,264	5%	1,267	5%
Life insurance	905	4%	903	3%	1,043	4%
Traditional trustee services			7	0%	12	0%
Products outside our Terms of Reference	275	1%	298	1%	159	1%
Not yet determined	1	0%				0%
<b>Total</b>	<b>21,985</b>	<b>100%</b>	<b>26,468</b>	<b>100%</b>	<b>25,338*</b>	<b>100%</b>

\* Note that the total of 25,338 in this table does not match the total of 24,100 accepted disputes given on page 48. That total is based on counting each case, even if the case is about multiple products and issues, as one dispute. The total in this table is based on counting cases about multiple products and issues as multiple disputes. For further explanation of this distinction, see 'How We Count Disputes' on page 46.

### Number of accepted disputes by product line and year





## Accepted disputes by issues type and sales/service channel

The majority of disputes we accepted in 2012-2013 were represented by the banking sales and service channel (45%). Of those, financial difficulty and financial services provider decisions were the main issues.

The second largest sales and service channel was general insurance (29%). The main issues within general insurance were 'FSP decision' and 'service'.

### Accepted disputes by issues type and sales/service channel (issues)

Accepted disputes by sales and service channel and issue type	Not yet determined	Advice	Charges	Disclosure	Financial Difficulty	FSP Decision	Instructions	Non ToR	Privacy & Confidentiality	Service	Transactions	Total
Not yet determined	2	13	15	8	154	54	12	6	22	23	14	323
Administration services provider	-	1	4	2	2	7	3	2	-	4	3	28
Bank	2	130	1,112	412	4,096	2,056	1,214	18	542	534	1,353	11,469
Building society	-	-	-	1	2	-	-	-	-	1	1	5
Charity / community fund	-	-	-	-	-	-	-	1	-	-	-	1
Corporate advisor	-	6	-	1	-	-	-	-	-	-	-	7
Cover holder	-	-	-	-	-	1	-	-	-	-	-	1
Credit provider	-	17	175	98	776	429	135	5	291	70	81	2,077
Credit reporting agency	-	-	1	-	1	8	3	-	99	4	-	116
Credit representative	-	1	-	2	-	1	-	-	4	1	-	9
Credit union	-	5	31	14	60	33	23	-	22	11	41	240
Custodial and depository services	-	2	4	-	10	4	2	-	2	4	3	31
Debt collector or buyer	-	-	2	3	177	50	4	-	37	5	1	279
Derivatives dealer	-	3	-	5	-	6	6	-	-	9	4	33
Finance broker	-	2	16	11	32	27	10	1	13	3	1	116
Financial advisor / planner	-	473	60	57	40	82	73	9	11	50	24	879
Foreign exchange dealer	-	1	3	2	-	4	3	-	-	1	10	24
Friendly society	-	1	1	-	-	10	2	-	-	4	-	18
General insurance broker	-	10	11	8	1	130	11	15	1	34	3	224
General insurer	2	37	487	69	23	4,952	82	219	16	1,508	38	7,433
Life insurance broker	-	-	2	-	-	4	1	-	-	1	2	10
Life insurer	-	12	59	34	1	467	40	8	7	146	9	783
Make a market	-	2	1	9	-	12	4	-	-	12	6	46

Accepted disputes by sales and service channel and issue type	Not yet determined	Advice	Charges	Disclosure	Financial Difficulty	FSP Decision	Instructions	Non ToR	Privacy & Confidentiality	Service	Transactions	Total
Managed discretionary account operator	-	-	1	-	-	2	-	-	-	2	-	5
MIS operator / fund manager	1	17	30	17	24	91	34	16	9	35	10	284
Mortgage aggregator	-	-	1	-	1	1	-	-	-	-	-	3
Mortgage broker	-	3	10	9	38	8	2	-	4	4	-	78
Mortgage manager	-	-	11	-	8	13	4	-	-	2	-	38
Mortgage originator	-	1	2	1	4	-	2	-	-	-	1	11
Non-cash Payment Systems provider	-	-	6	6	-	309	20	1	10	30	41	423
Product distributor	-	-	1	1	-	-	4	-	1	1	3	11
Product issuer	-	1	7	3	-	5	2	2	-	5	9	34
Reinsurer / reinsurance agent	-	-	-	-	-	2	-	-	-	-	-	2
Research house	-	2	1	-	1	7	-	-	2	7	-	20
Securities dealer	-	9	5	8	4	26	13	-	2	15	12	94
Stockbroker	-	12	7	5	-	6	7	-	4	16	6	63
Superannuation fund trustee / advisor	-	12	12	4	-	22	14	4	-	18	2	88
Timeshare scheme operators	-	1	-	1	-	1	1	-	-	-	-	4
Travellers cheques / foreign currency transfer provider	-	-	-	-	-	-	-	-	-	-	1	1
Trustee	-	-	-	-	8	5	2	1	1	1	-	18
Underwriting agency	-	-	-	-	-	6	-	-	-	-	-	6
Warranty provider	-	-	-	1	-	2	-	-	-	-	-	3
<b>Total</b>	<b>7</b>	<b>774</b>	<b>2,078</b>	<b>792</b>	<b>5,463</b>	<b>8,843</b>	<b>1,733</b>	<b>308</b>	<b>1,100</b>	<b>2,561</b>	<b>1,679</b>	<b>25,338*</b>

\*Note that the total of 25,338 in this table does not match the total of 24,100 accepted disputes given on page 48. That total is based on counting each case, even if the case is about multiple products and issues as one dispute. For further explanation of this distinction see 'How We Count Disputes' on page 46.

# Disputes







# Credit disputes

**Credit**  
49% of all disputes  
12,408  
disputes  
accepted

The number of accepted credit disputes dropped 6% in 2012-2013 but despite the overall decrease, the number of maladministration in lending cases more than doubled.

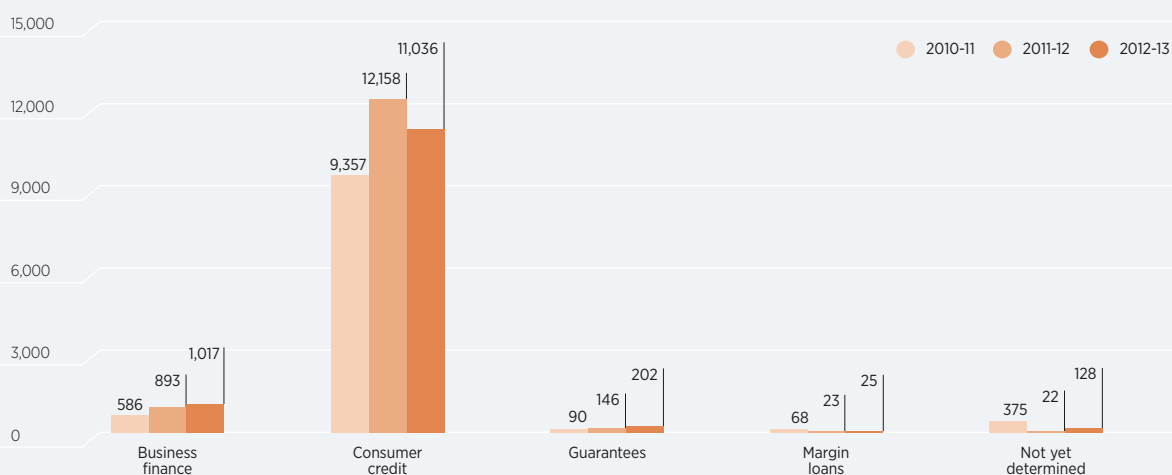
We accepted 12,408 credit disputes, down from 13,242 the year before.

The drop was largely due to a 22% decline in credit disputes involving financial difficulty.

We examine financial difficulty disputes in detail on page 78.

The counting method we use in this section (pages 57–77) focuses on accepted disputes, we exclude the cases we received and closed in registration.

Accepted credit disputes by product category and year



## Credit disputes (continued)

### Business finance

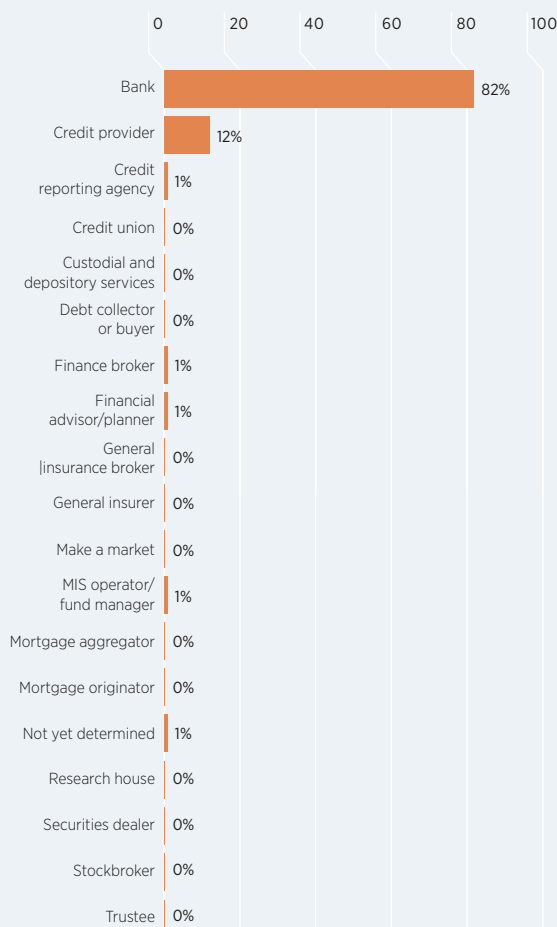
We accepted 1,017 business finance disputes in 2012-2013, a 14% increase from the previous year. The majority of business finance disputes related to business loans (72%), followed by lines of credit/overdrafts (10%), hire purchases/leases (9%) and business credit cards (6%).

Financial difficulty (40%) was the main issue within business finance disputes.

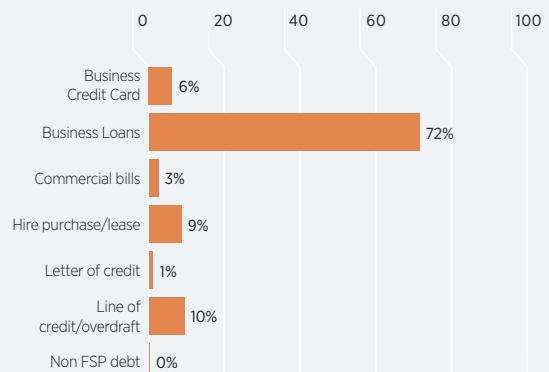
'FSP decision' (23%) was also a common issue within business finance disputes. Decisions not to renew facilities and lines of credit were recurring complaints about FSPs in 2012-2013.

Banks were involved in 82% of disputes relating to business finance.

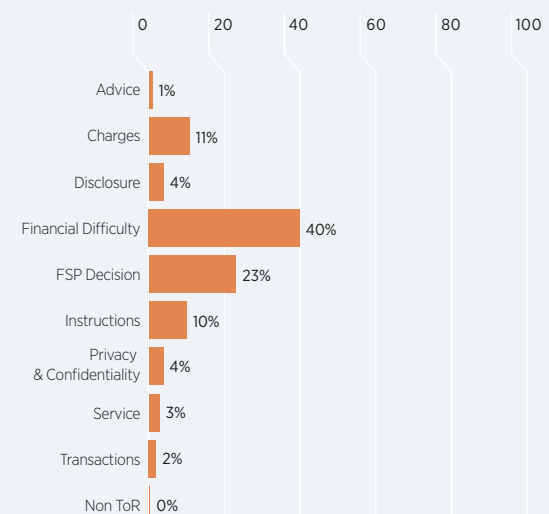
**Accepted business finance disputes by sales/service channel**



**Accepted business finance disputes by product**



**Accepted business finance disputes by issue type**



## Consumer Credit

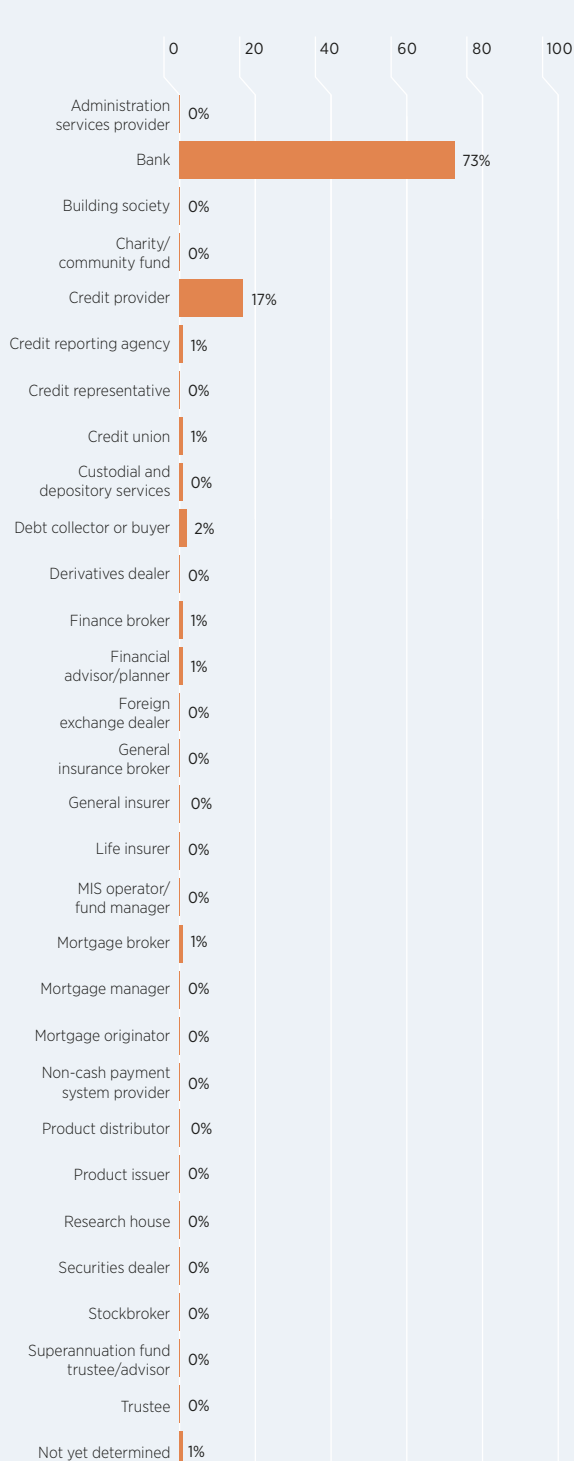
We accepted 11,036 consumer credit disputes in 2012-2013, which was 89% of all the accepted credit disputes.

Of the consumer credit disputes, 38% were about home loans, 35% were about credit cards and 15% were about personal loans.

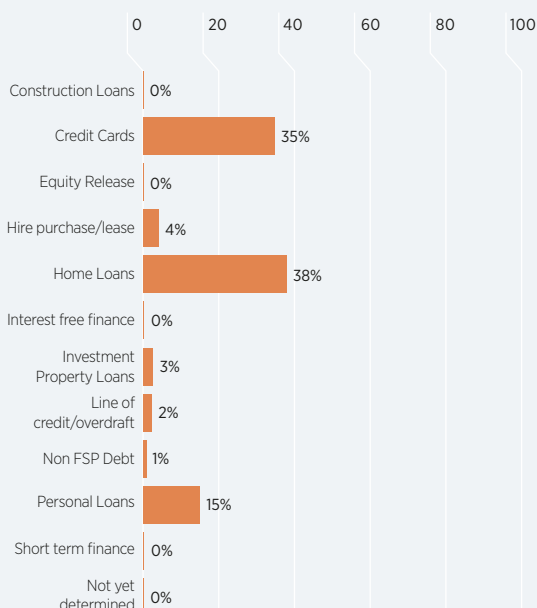
Other products which fall into the consumer credit category include short-term finance and investment property loans.

The percentage of consumer credit cases that were about financial difficulty dropped to 44% compared with 54% the previous year. Banks were involved in 73% of the consumer credit disputes in 2012-2013.

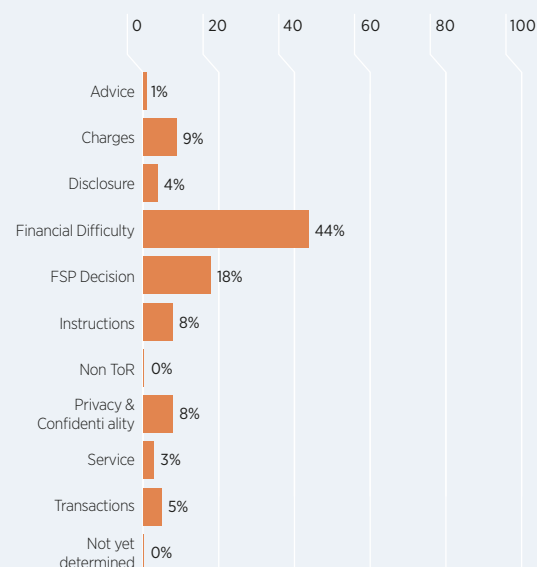
**Accepted consumer credit disputes by sales/service channel**



**Accepted consumer credit disputes by product**



**Accepted consumer credit disputes by issue type**



## Credit disputes (continued)

### Guarantees

In 2012-2013 there were 202 guarantee disputes, up 38% from 2011-2012.

A business guarantee is a guarantee offered by a company or an individual as security for the borrowings of a business. We saw a large (64%) increase in business guarantee disputes this year.

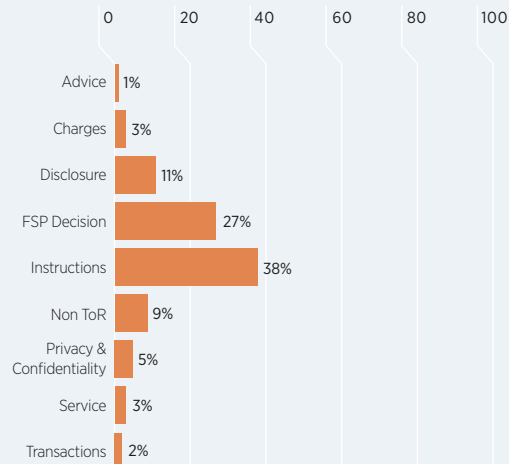
Of the remaining disputes, 77 (38%) related to consumer guarantees and 17 (8%) to bank guarantees.

The consumer or business complained about a decision made by the FSP in 38% of cases while 27% related to financial difficulty.

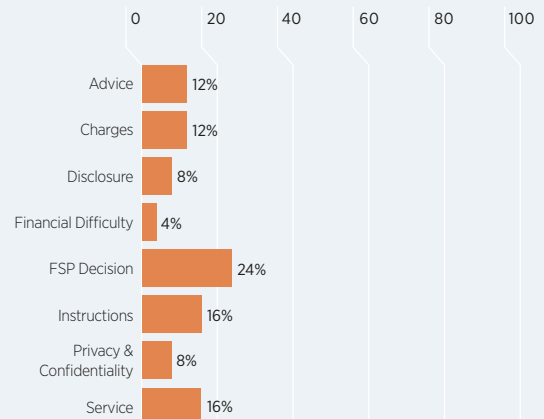
### Margin Loans

There were 25 margin loan disputes in 2012-2013. Of those, 24% related to an FSP's decision, while service (16%), advice (12%) and charges (12%) were the other common issues in disputes involving margin loans. Margin loans are loans which allow an investor to borrow money against the value of listed shares or units in managed funds.

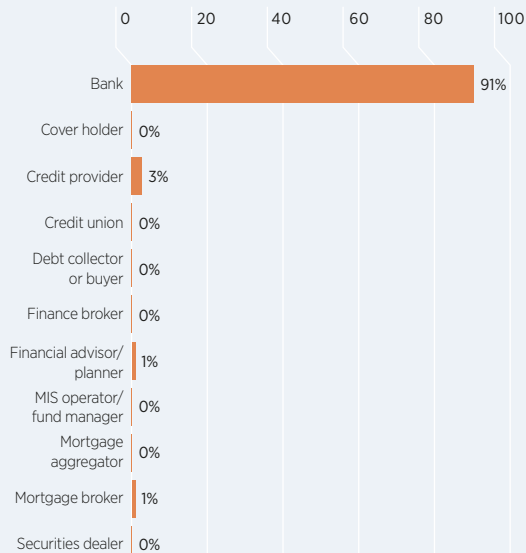
Accepted guarantees disputes by issue type



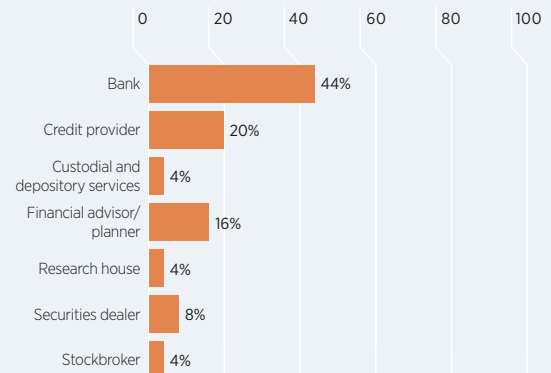
Accepted margin loans disputes by issue type



Accepted guarantees disputes by sales service channel



Accepted margin loans disputes by sales/service channel



## Increase in cases of maladministration in lending

The number of disputes we accepted about maladministration in lending more than doubled in 2012-2013. There were 706 disputes lodged which related to this issue compared to 333 in 2011-2012 and 209 in 2010-2011. FOS also saw a 99% increase in the number of disputes about maladministration in loan management (153). While the reason for the significant increase in maladministration matters cannot be stated definitively, FOS is aware of the increased media coverage about maladministration in lending over the last 12 months. Matters relating to maladministration are complex and require detailed investigation. In each dispute we carefully consider the steps taken by both the FSP and the applicant to ensure both have fulfilled their obligations to the other when applying for and being granted a loan. These complex investigations have had consequences for FOS workflows and resources. In July 2013 we will embark on a pilot program aimed at identifying matters relating to maladministration earlier so that we can deal with them in the most efficient way and reach a decision earlier.

### Case study

#### Maladministration and loss

##### Apportionment of loss

The applicant applied through a mortgage broker to her FSP for a home loan of \$1,200,000 to refinance existing finance obligations of \$1,130,000 secured by her home property and an additional \$70,000 for home improvements.

In support of the applicant's finance application, the FSP was provided with inaccurate income and taxation documents in regard to the applicant's past loan repayment history, employment and income. The applicant was not aware this inaccurate information had been provided to the FSP when the FSP made its loan offer. However, she was aware of the information at the time she was signing the loan contract and the FSP also reprinted her loan application and asked her to confirm that all the information was correct, which she did.

The applicant lodged her dispute with FOS, claiming that she was in financial difficulty and her financial predicament was due to the FSP's maladministration in lending when it made its loan offer. She said she could not afford the loan and therefore should not have to repay it.

FOS concluded that:

##### Maladministration

1. Maladministration in lending had occurred as the FSP had failed to follow its own policies regarding the relevant paperwork necessary in loan applications.

##### Applicant's loss

2. The applicant was liable to the FSP for her refinanced debt with interest. She previously had this liability; it was now merely payable to the FSP rather than her former lender.
3. The applicant was also liable for the additional \$70,000 she had received but without interest. She had used the funds and needed to account for them. But the FSP should not have lent the monies, and therefore should not derive a benefit by receiving interest.
4. Therefore, the applicant's loss comprised the interest on the additional \$70,000.

##### Apportionment

5. FOS considers that a person who applies for a loan should give consideration to their own financial situation and how they believe they will be able to repay the loan.
6. The Applicant failed to protect her own interests when she signed the copy loan application confirming her financial information was correct, and signed the loan contract without due regard to her ability to repay. She should therefore take some responsibility for her decision to enter into the loan contract;
7. In the circumstances, the Applicant should bear half of her loss, namely half of the interest she paid on the additional \$70,000.





# General Insurance disputes

30%

General Insurance  
of all disputes

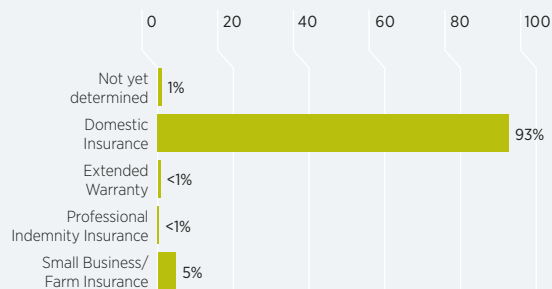
7,581  
disputes  
accepted

General insurance dispute numbers stabilised in 2012-2013 and there were positive signs that we may see a decline in disputes in the future.

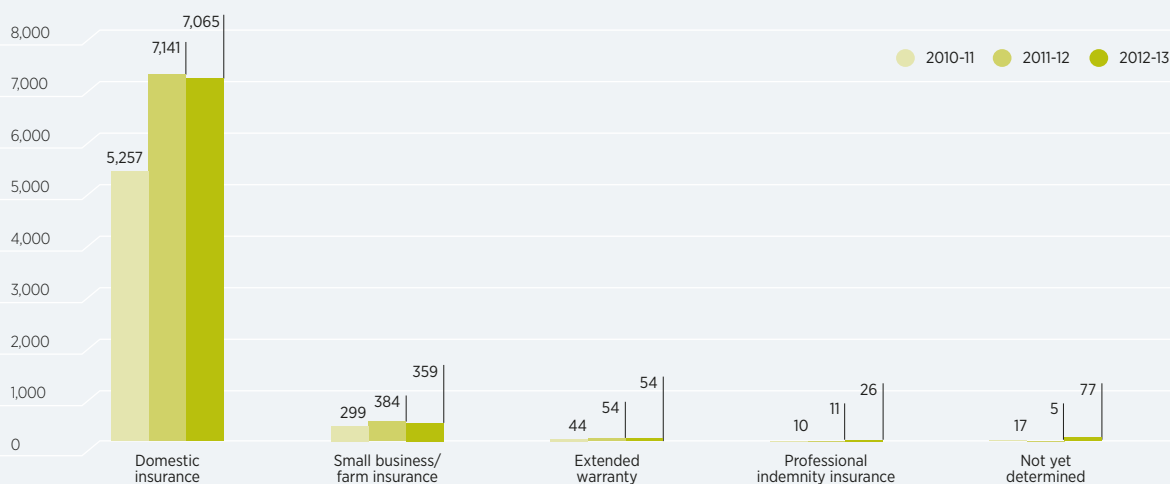
We accepted 7,581 general insurance disputes in 2012-2013, compared with 7,595 the year before.

In keeping with previous years, the majority (93%) of disputes accepted in 2012-2013 related to domestic insurance and the most common issue across all general insurance disputes was FSP decision (67%), which in most cases related to an FSP's decision to decline a claim.

Accepted general insurance disputes by product category 2012-2013



Accepted general insurance disputes by product category and year



## Small business/farm insurance

We accepted 359 small business/farm insurance disputes in 2012-2013.

The majority (67%) related to an FSP decision, followed by service (12%).

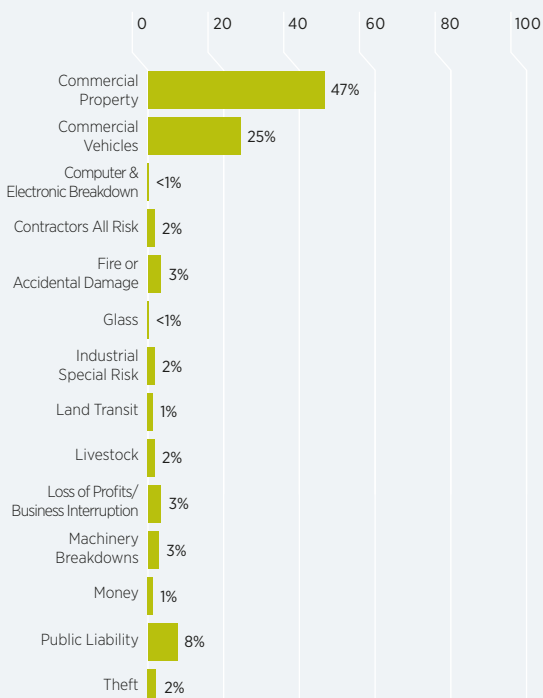
Small business owners and farmers take out insurance policies to cover such things as property and vehicle damage, machinery breakdowns, public liability, thefts and loss of property.

In 2012-2013, the majority of small business/farm insurance disputes came from one of two areas: commercial property (47%) and commercial vehicle (25%).

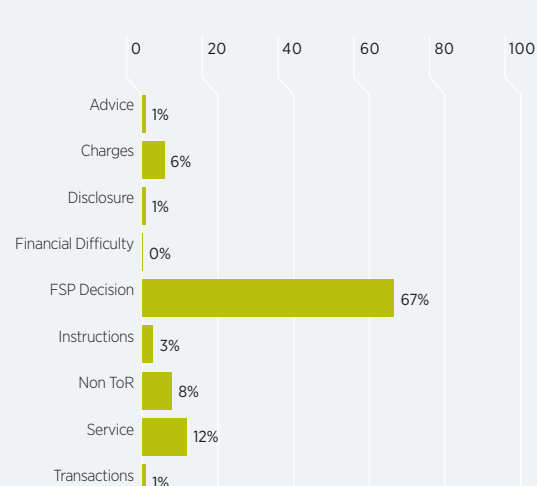
Of the small business/farm insurance disputes, the majority (82%) involved general insurers and their customers while 14% involved general insurance brokers and their customers.



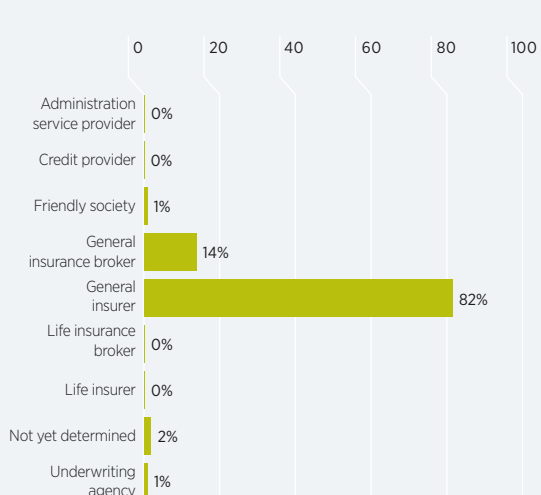
**Accepted small business/farm insurance disputes by product**



**Accepted small business/farm insurance disputes by issue type**



**Accepted small business/farm insurance disputes by sales/service channel**





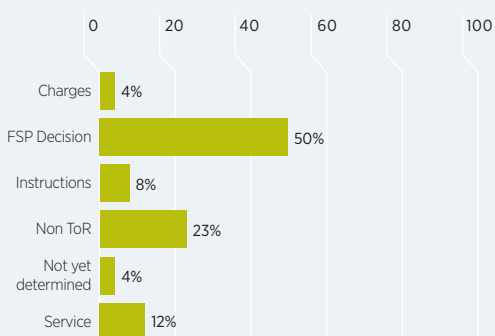
### Professional indemnity insurance

We accepted 26 professional indemnity insurance disputes in 2012-2013, up from 11 in 2011-2012. Half of the disputes were about decisions made by the financial services provider. The majority (20) involved a general insurer.

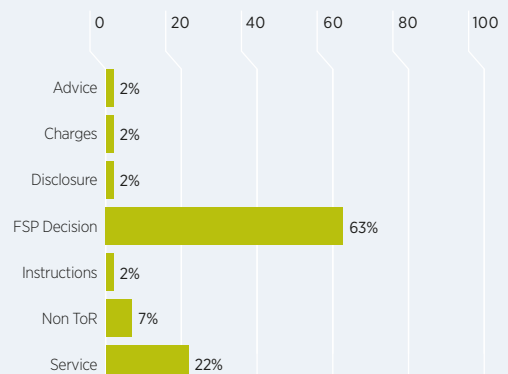
### Extended warranty

Extended warranties are available for motor vehicles, white goods and brown goods (TVs, radios, computers etc). We accepted 54 disputes about extended warranties which was the same number as 2011-2012. The majority (40) involved general insurers and 63% were about decisions made by the financial services provider.

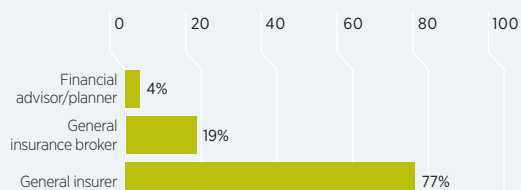
**Accepted professional indemnity insurance disputes by issue type**



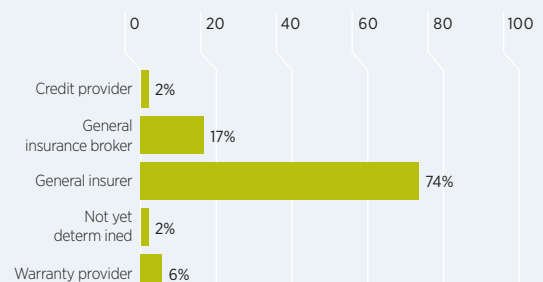
**Accepted extended warranty disputes by issue type**



**Accepted professional indemnity insurance disputes by sales/service channel**



**Accepted extended warranty disputes by sales/service channel**



## Domestic insurance

We accepted 7,065 domestic insurance disputes in 2012-2013. The most common type of insurance policy people complained about was motor vehicle – comprehensive (36%), followed by home building (27%), home contents (12%) and travel insurance (9%).

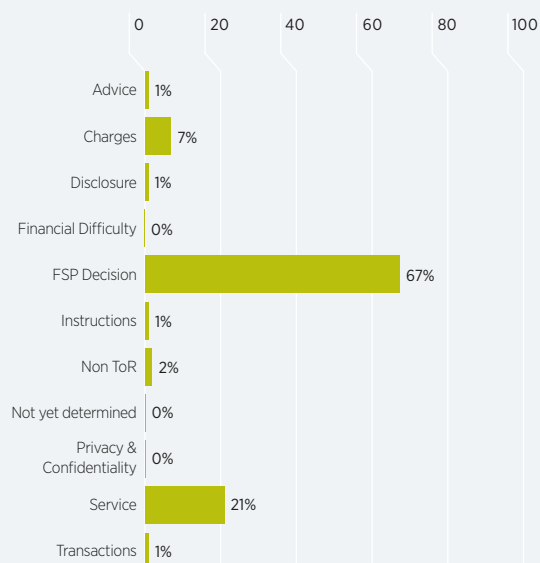
In the majority of disputes (67%) consumers were unhappy with the insurer's decision – the claim amount and denial of claims were the most common issues people had.

There was a significant increase in the number of pet insurance disputes in 2012-2013 with 193 pet owners coming to FOS for assistance with disputes over policies they had taken out for their animals.

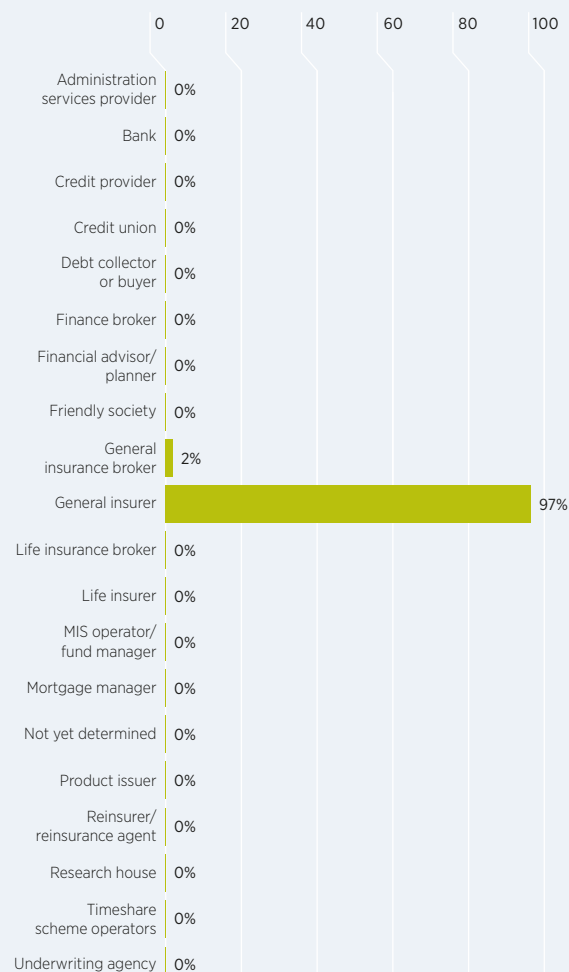
In the domestic insurance category, most (97%) disputes were lodged against an insurance company and 2% involved general insurance brokers.



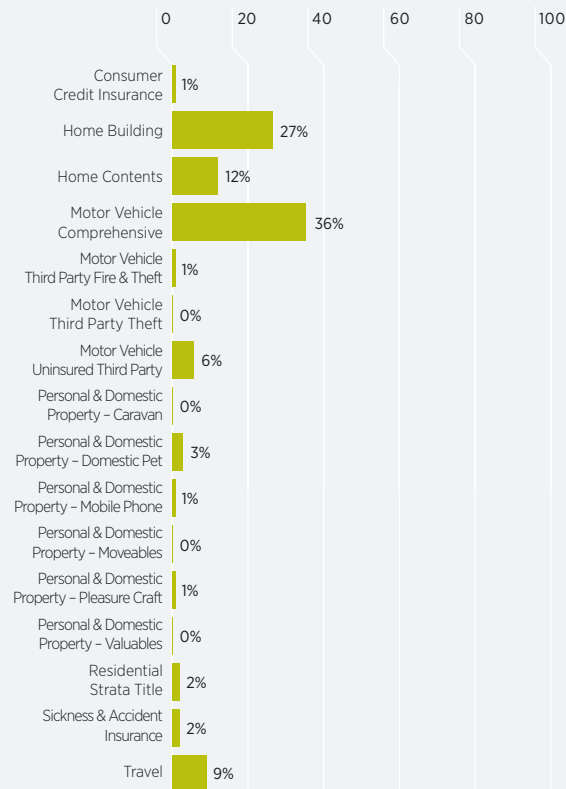
**Accepted domestic insurance disputes by issue type**



**Accepted domestic insurance disputes by sales/service channel**



### Accepted domestic insurance disputes by product



### Disputes involving general insurance brokers

In 2012-2013 there were 195 disputes between general insurance brokers and their customers. This was an increase from last year when we accepted 112.

The main issues in disputes involving general insurance brokers were: claim amount, delay in claim handling, and denial of claim.

The most common products in disputes involving general insurance brokers were home building insurance, home contents insurance and motor vehicle (comprehensive) insurance.

### Emerging issue – advertising of sickness and accident insurance

FOS is concerned about the advertising of certain insurance products. In particular, products that are advertised on the basis that no medical exam is required, yet at the same time contain exclusions within the policy of pre-existing medical conditions. This could mislead customers. We are considering whether it is sufficient to have the exclusions contained in the policy or if a warning needs to be provided at the time of advertising or when people make contact with the insurer.



### Case Study

#### Pet insurance

“Spot” had to have surgery to his eye. The insurer denied the claim as it had a very wide ranging exclusion for pre-existing conditions. Spot had previously had conjunctivitis in the other eye prior to the policy being taken out. The strict application of the exclusion meant any unrelated injury or disease to either eye in the future would be excluded.

We found that the exclusion was unclear and that the extreme interpretation of the exclusion by the insurer would not have been contemplated by the consumer.

To take an extreme example of the application of the relevant exclusion in the contract:

If a dog suffered a cut to his right hind leg as a young pup and was treated with cream to avoid infection prior to the owner taking out a policy, this injury would be deemed to be a pre-existing condition and would preclude the dog from cover for any treatment of the hind legs even if the dog broke his left leg in an accident.

Consequently, the Ombudsman determined that the insurer should meet the costs of the Spot’s operation.





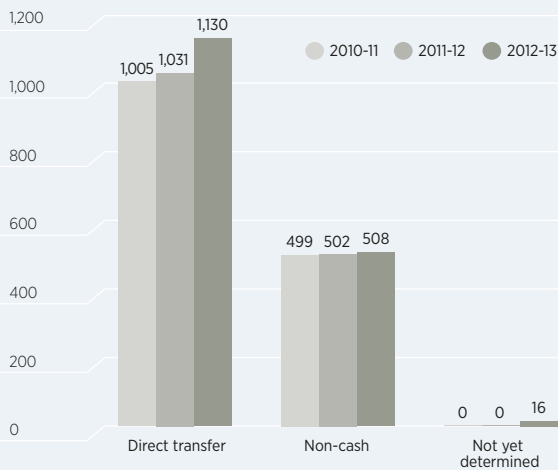
# Payment Systems disputes

7%  
Payment  
Systems  
of all disputes

1,654  
disputes  
accepted

In 2012-2013 we accepted 1,654 payment systems disputes, an 8% increase from 2011-2012. The majority (68%) were about direct transfer systems while the remaining 508 disputes were about non-cash systems.

**Accepted payment systems disputes by product category and year**



## Direct transfer

We accepted 1,130 direct transfer disputes in 2012-2013 up 10% from the previous year.

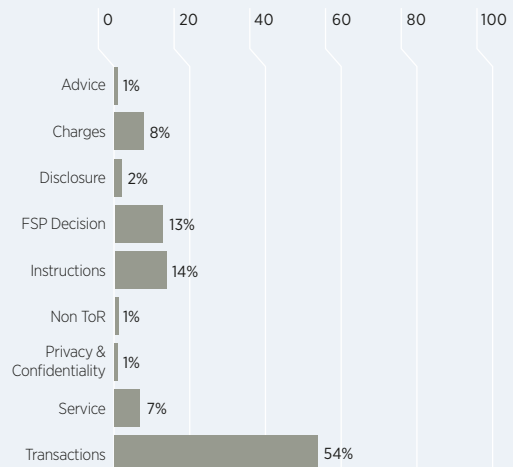
Of the disputes, 36% were about electronic banking, while 15% related to ATM transactions and 11% to merchant facilities.

'Incorrect payment' was the most common issue with electronic banking disputes.

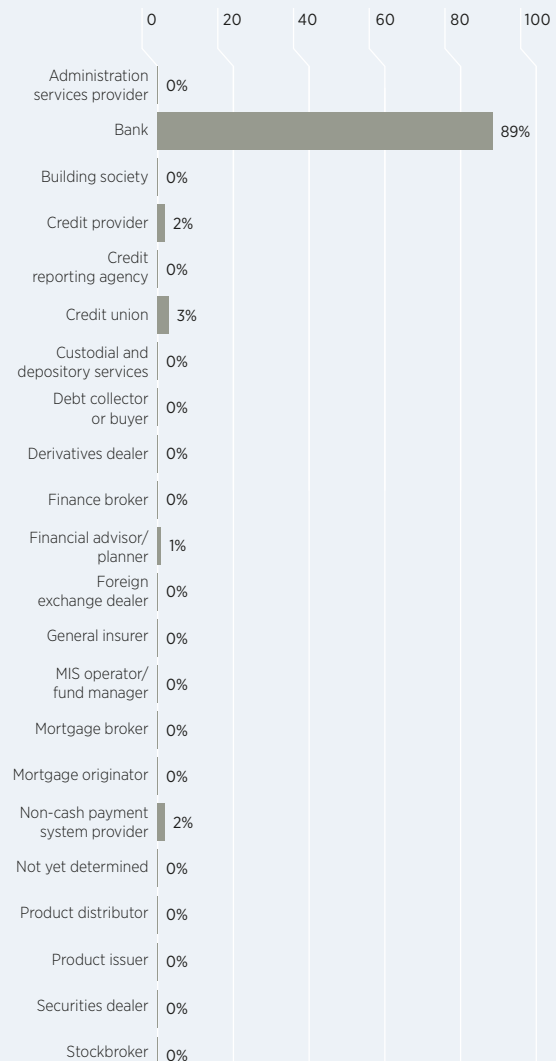
Banks are the primary supplier of direct transfer payment systems and were involved in 89% of direct transfer disputes.

The new ePayments code, which was introduced in March 2013, is expected to have a positive impact on driving electronic payment disputes down. Among other things, the code establishes a regime for recovering mistaken internet payments.

**Accepted direct transfer disputes by issue type**



**Accepted direct transfer disputes by sales/service channel**



## Payment systems disputes (continued)

### Non-cash

The non-cash category includes non-cash systems which are facilities, often internet-based, through which a person makes non-cash payments.

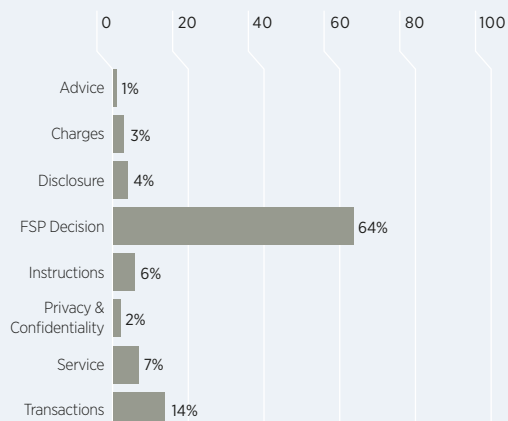
It also includes loyalty programs, stored value cards and travellers' cheques.

We accepted 508 non-cash payment systems disputes in 2012-2013.

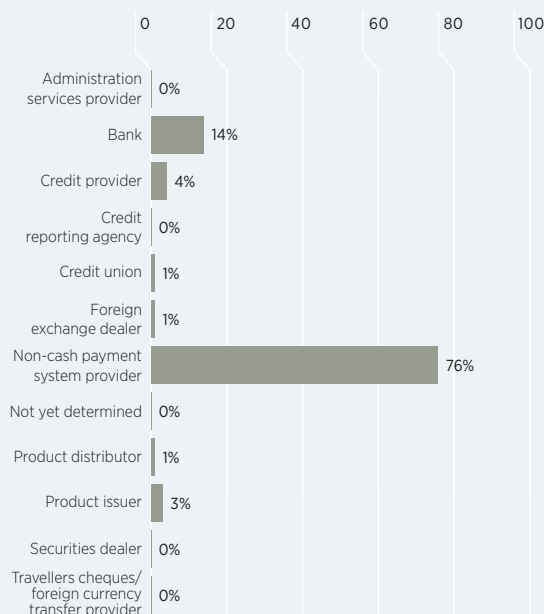
The majority of non-cash disputes (64%) were about an FSP decision. Of the 508 disputes, 80% were about non-cash systems.



Accepted non cash disputes by issue type



Accepted non cash disputes by sales/service channel





# Deposit-taking disputes

5%

**Deposit Taking**  
of all disputes

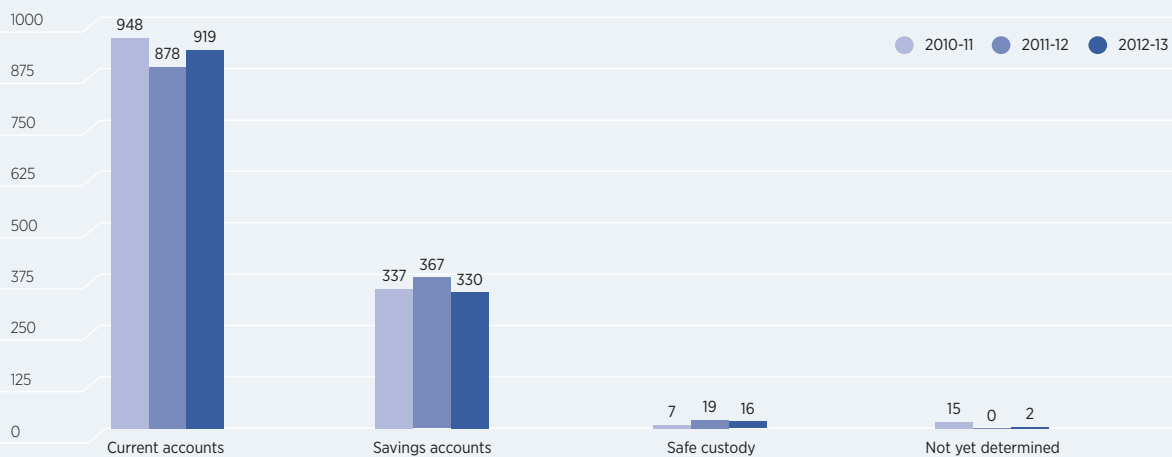
**1,267**  
disputes  
accepted

In 2012-2013 we accepted 1,267 deposit-taking disputes. Deposit-taking disputes comprise of two main product categories – current accounts and savings accounts.

Current accounts include business transaction, foreign currency, mortgage offset, passbook and personal transaction accounts.

Savings accounts include bank bills, which are short-term money market investments, cash management, first home buyer, and online accounts and term deposits.

**Accepted deposit-taking disputes by product category and year**



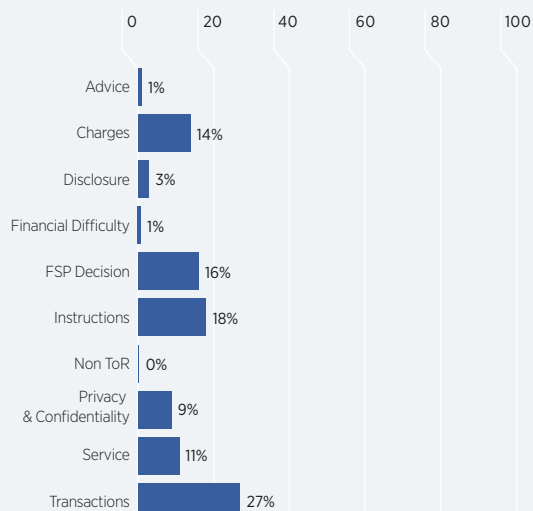
## Current accounts

There were 919 current accounts disputes in 2012-2013, compared to 878 last year.

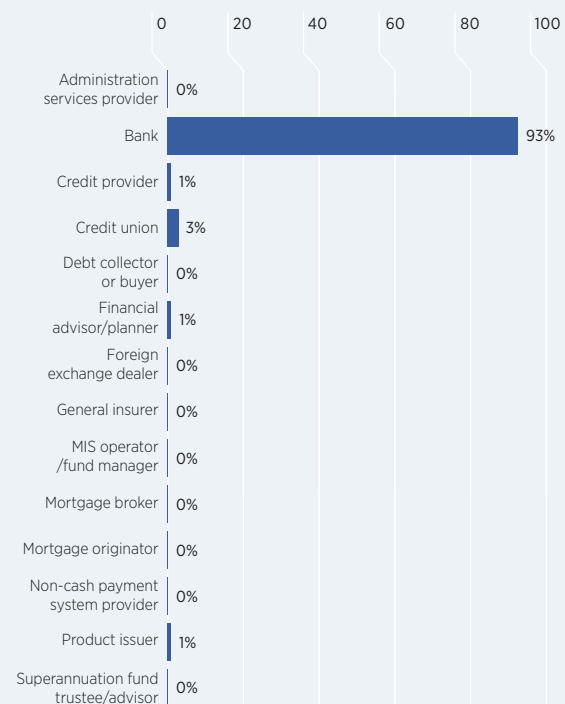
The most common issue related to transactions (27%), followed by instructions (18%) and FSP decision (16%).

The majority (93%) of current accounts disputes involved banks. This is in line with the fact that banks are the main supplier of deposit-taking products.

**Accepted current accounts disputes by issue type**



**Accepted current accounts by sales/service channel**



## Deposit-taking disputes (continued)

### Savings accounts

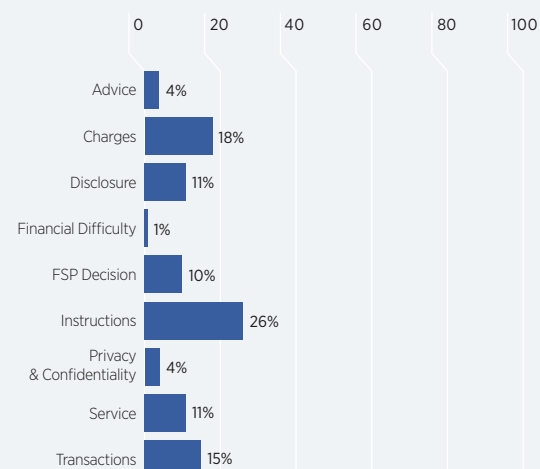
FOS accepted 330 savings accounts disputes in 2012-2013. Of the 330, 26% related to instructions, 18% to charges and 15% to transactions.

The products with which consumers had the most disputes were term deposits (131) and online accounts (119).

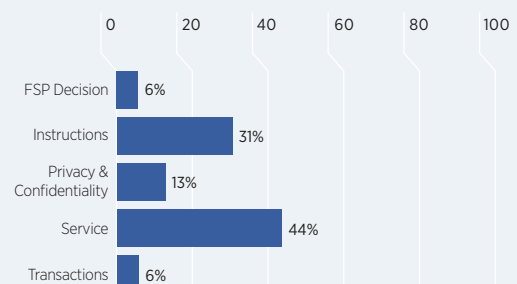
### Safe custody

Safe custody is the storage of valuable possessions, such as jewellery and important documents, in a secure vault at a bank. We accepted 16 safe custody disputes in 2012-2013. In the majority of disputes, the consumer or business claimed there had been service problems – for example, the bank had lost their possessions or that their goods had been accessed without permission.

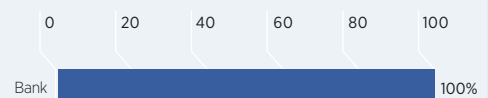
Accepted savings accounts disputes by issue type



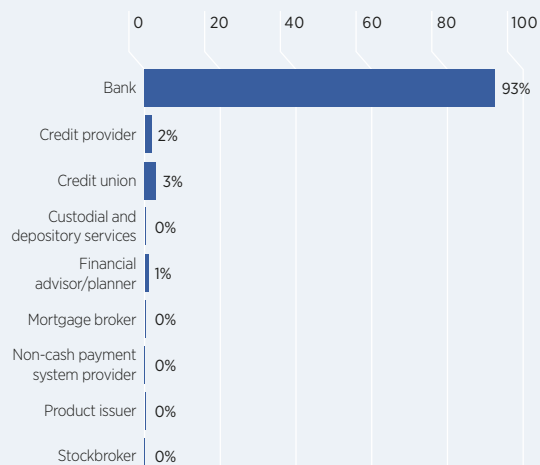
Accepted safe custody disputes by issue type



Accepted safe custody disputes by sales/service channel



Accepted savings accounts by sales/service channel





# Investment disputes

5%

Investment  
of all disputes

1,214  
disputes  
accepted

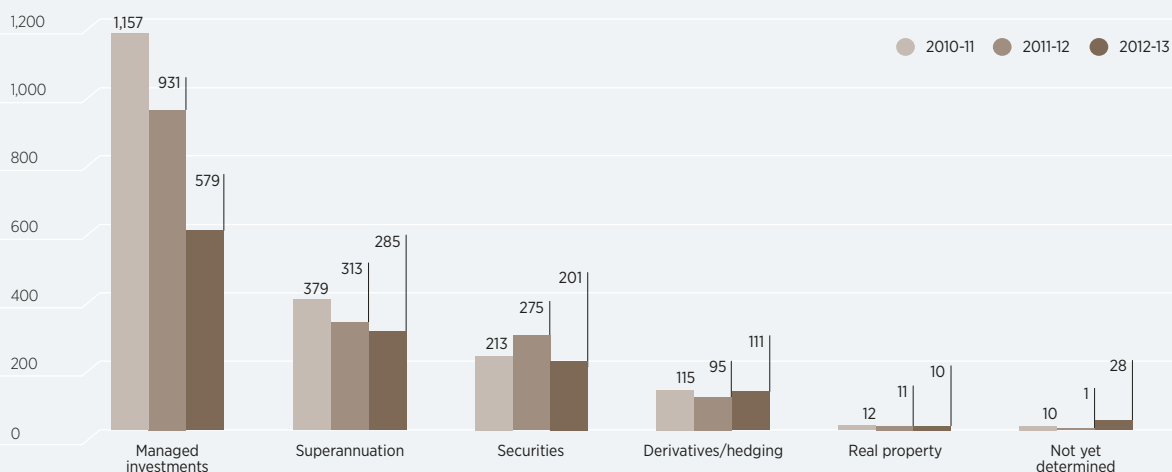
## There was a 25% drop in the number of accepted investment disputes in 2012-2013.

We accepted 1,214 disputes, compared to 1,626 in 2011-2012. Dispute numbers dropped across every product category, and the largest decline (38%) was in the managed investments disputes category.

While the figures suggest that there has been a significant reduction in the number of investment disputes in 2012-2013 compared with the previous year, in 2011-2012 there were 82 disputes which all related to the same issue and involved the same FSP, which inflated that year's figures.

As the graph below shows, we have seen a steady decline in the number of accepted disputes in most investment categories since 2010-2011. One reason for this is that most consumers who sustained significant losses due to the global financial crisis (GFC) are likely to have had their disputes lodged and dealt with by now.

Accepted investment disputes by product category and year



## Managed Investments

We accepted 579 managed investment disputes in 2012-2013. This represented a 38% drop from the year before and was more than half the number we accepted in 2010-2011.

Mixed asset funds continued to be the most common managed investment product which people complained about, with 346 disputes in 2012-2013. This was a significant reduction from the previous year's figure of 613. Mixed asset funds are funds that invest in multiple asset classes, such as cash, bonds, shares and property.

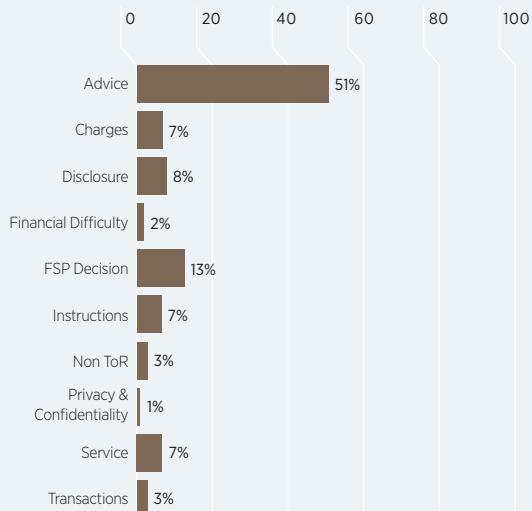
The main issue in managed investment disputes was advice (51%), followed by FSP decision (13%) and disclosure (8%).

Many investors complained the advice they had been given was inappropriate – that it did not properly accord with their financial position, goals and tolerance of risk.

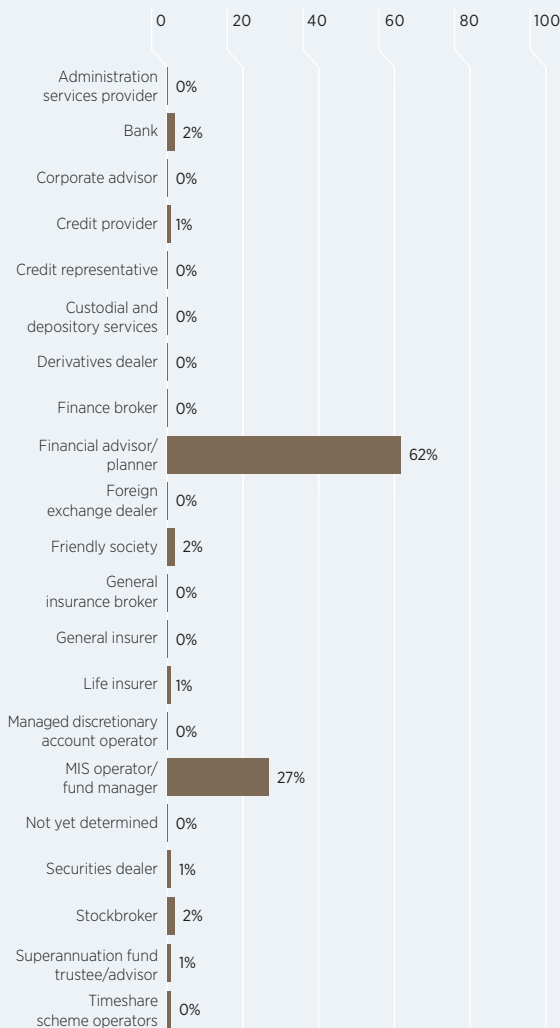
The majority (62%) of managed investment disputes involved a financial advisor/planner or a managed investment scheme operator/fund manager (27%).



### Accepted managed investment disputes by issue type



### Accepted managed investment disputes by sales/service channel



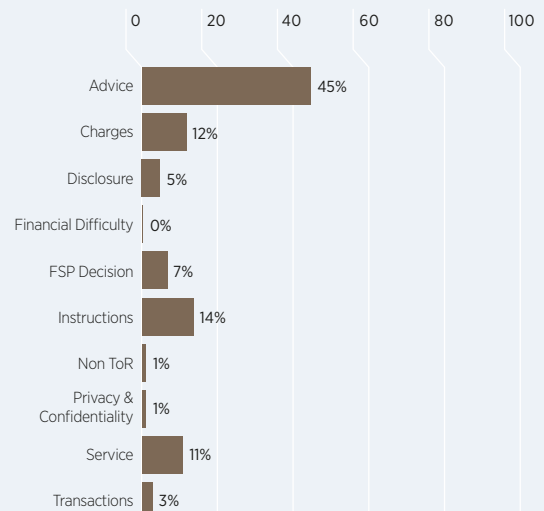
### Superannuation

In 2012-2013 we accepted 285 superannuation disputes – a 9% drop from the year before.

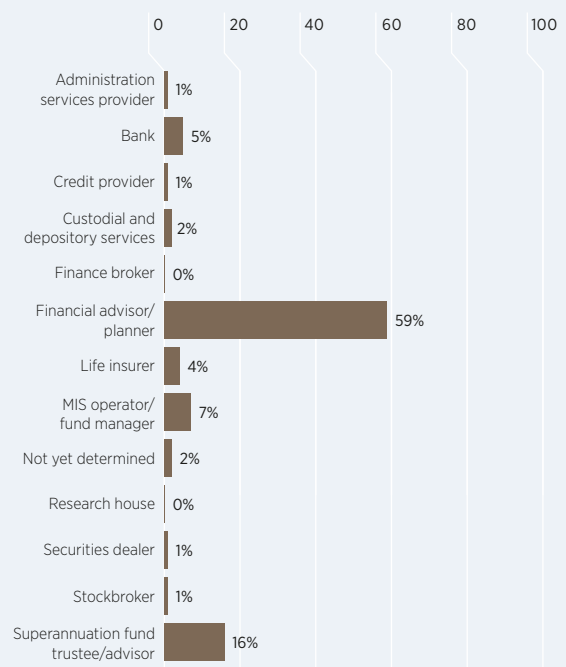
The bulk of disputes were about retail funds (39%) and self-managed funds (38%).

People who lodged disputes about self-managed funds were most likely to complain about inappropriate advice (38%). Common issues in disputes about retail funds were inappropriate advice (20%) and failure to follow instruction (15%).

### Accepted superannuation disputes by issue type



### Accepted superannuation disputes by sales/service channel



## Securities

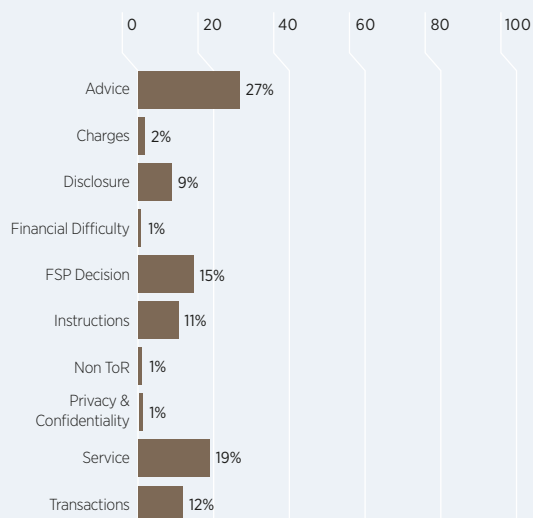
We accepted 201 securities disputes in 2012-2013 – down 27% on the previous year.

The vast majority (182) of disputes accepted related to shares.

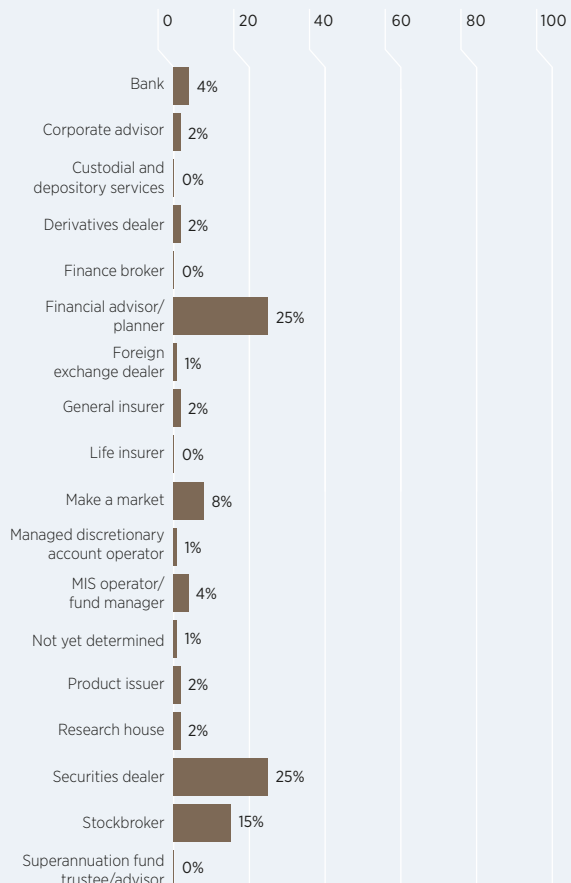
Disputes relating to advice (27%) were most common, followed by service (19%) and FSP decision (15%).

Of the 201 securities disputes, 25% involved a financial advisor/planner, 25% a securities dealer and 15% involved stockbrokers.

Accepted securities disputes by issue type



Accepted securities disputes by sales/service channel



## case study

### Investments

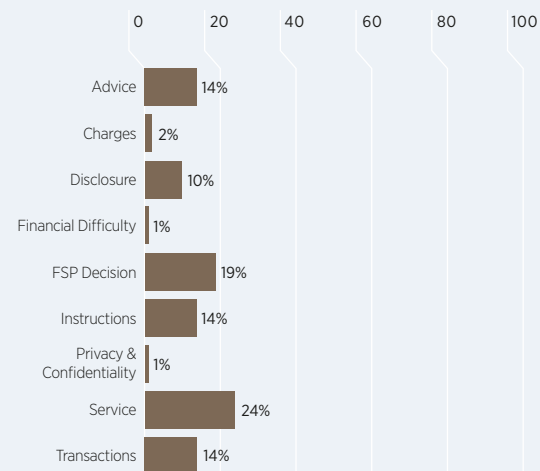
Mr & Mrs M were a single income family with young pre-school children. In early 2006 they sought financial advice from Mr T and told him their objectives were to repay their home loan and other personal debts, create wealth, create a reserve for emergencies, provide taxation relief, to buy a new home for \$350,000 and have a few investment properties. Over the next two years, Mr T recommended Mr & Mrs M borrow \$400,000 to invest in various capital guarantee and agribusiness products. By mid 2008, Mr & Mrs M could no longer service their loans and the investments were performing poorly. They lodged a dispute with FOS claiming Mr T's advice was inappropriate. The Panel found the advice to be inappropriate because, amongst other things, the adviser failed to consider whether Mr & Mrs M had, and would continue to have, sufficient income to meet their loan obligations without suffering financial hardship. The Panel awarded \$180,000 compensation to Mr & Mrs M.

## Investment disputes (continued)

### Derivatives/hedging

Derivatives and hedging products include contracts for difference, foreign currencies, forwards, futures, options and swaps. In 2012-2013 we accepted 111 disputes about these products, up from 95 in 2011-2012. The most common issue within these disputes was service (24%) followed by decisions made by the financial services provider (19%).

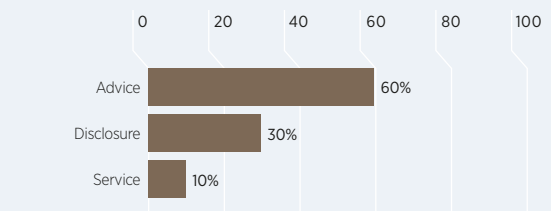
**Accepted derivatives/hedging disputes by issue type**



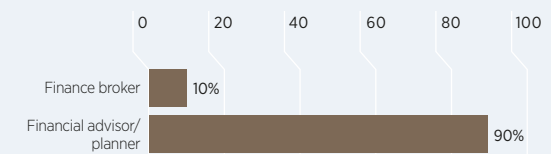
### Real property

'Real property' is land and the residential or commercial property on it. We only accepted 10 disputes about real property in 2012-2013, which was one less than 2011-2012. The leading issue in these disputes was advice (60%).

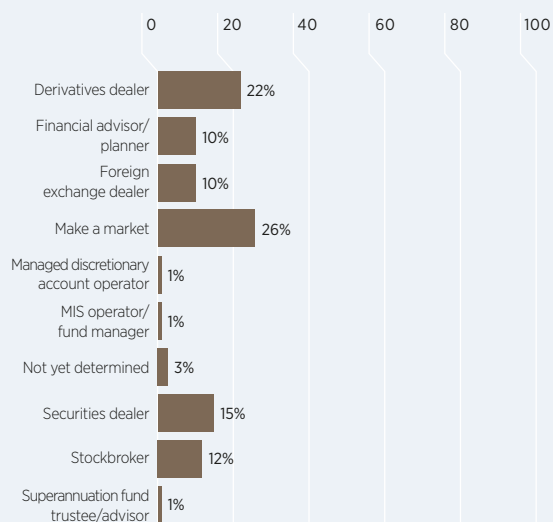
**Accepted real property disputes by issue type**



**Accepted real property disputes by sales/service channel**



**Accepted derivatives/hedging disputes by sales/service channel**





# Life Insurance disputes

4%

Life Insurance  
of all disputes

1,043  
disputes  
accepted

**We saw an increase in life insurance disputes in 2012-2013, as dispute levels across most other areas decreased.**

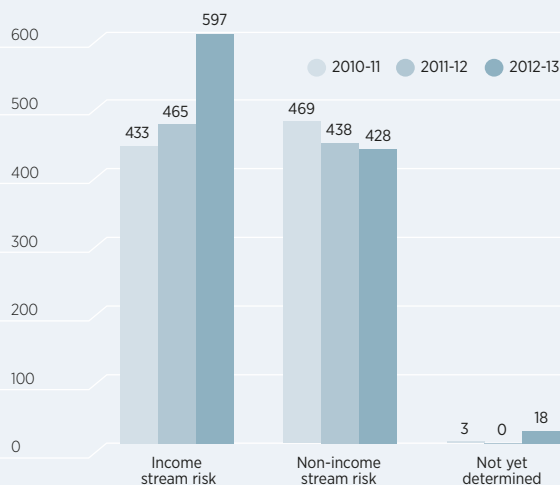
The overall number of life insurance disputes accepted increased by 16% to 1,043 compared with 903 in 2011-2012.

The rise can be attributed to a big increase in disputes about income stream risk products. Disputes about these products rose 28%, with the majority of disputes relating to income protection.

Denial of claims was the most common reason consumers came to FOS with complaints.

Non-income stream risk dispute figures were similar to last year with 428 disputes – 2% less than 2011-2012.

**Accepted life insurance disputes by product category and year**



## Income stream risk

We accepted 597 disputes related to income stream risk products in 2012-2013.

The majority involved income protection insurance. We accepted 469 disputes related to this product, compared to 355 in 2011-2012.

Income protection insurance pays an income in the event that the policyholder is unable to work due to injury or illness as defined by policy conditions.

We accepted 128 disputes about consumer credit insurance in 2012-2013 which was similar to the previous year. Consumer credit insurance is designed to cover the policyholder for their obligations under a loan agreement. Consumer credit insurance protects the borrower in the event

of accident, sickness, involuntary unemployment or death. If the policyholder is unable to work due to accident, sickness or involuntary unemployment, it covers the loan repayments for a stated period of time or until the policyholder is able to return to work.

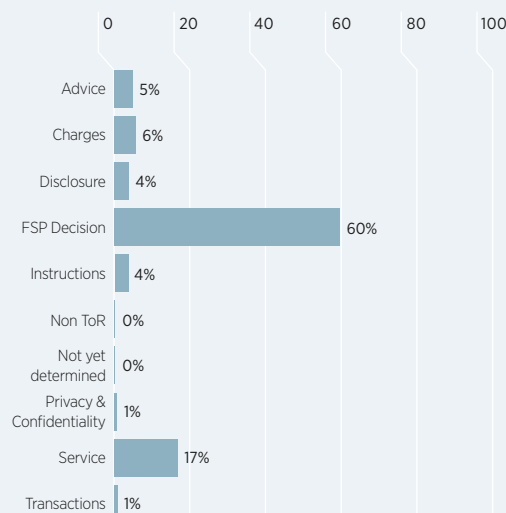
The majority of disputes we accepted about income stream risk products were in relation to 'FSP decision' (60%). Of these, an FSP decision to deny a claim was by far the most common complaint about both income protection and consumer credit insurance. Within these disputes, many applicants complained that the FSP denied the claim by asking for information the applicant was unable to provide.

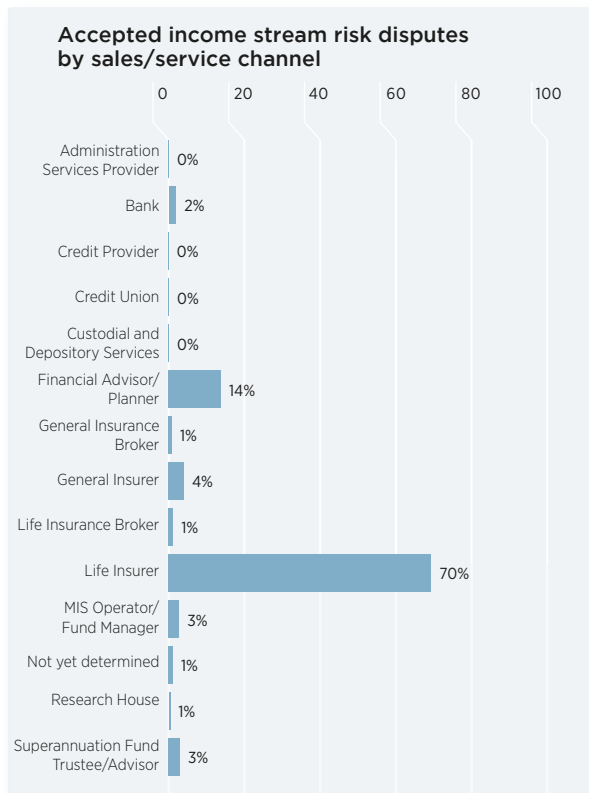
Disputes over claim amounts were common in income protection insurance disputes, with many people complaining they weren't paid the correct amount.

Disputes about unfair policies were also common within income protection insurance. In one case, the applicant realised she could only receive a maximum of \$5,000 for her funeral plan when she had already paid \$6,000 for the policy and continued to pay \$60 per month.

The majority of income stream risk product disputes (70%) were between life insurers and their clients. This is not surprising, as life insurers are the main suppliers of these products.

**Accepted income stream risk disputes by issue type**





### Non-income stream risk

Most disputes (49%) about the non-income stream risk of life insurance related to a decision made by the FSP.

More than a quarter of the disputes we accepted related to one product – total and permanent disability.

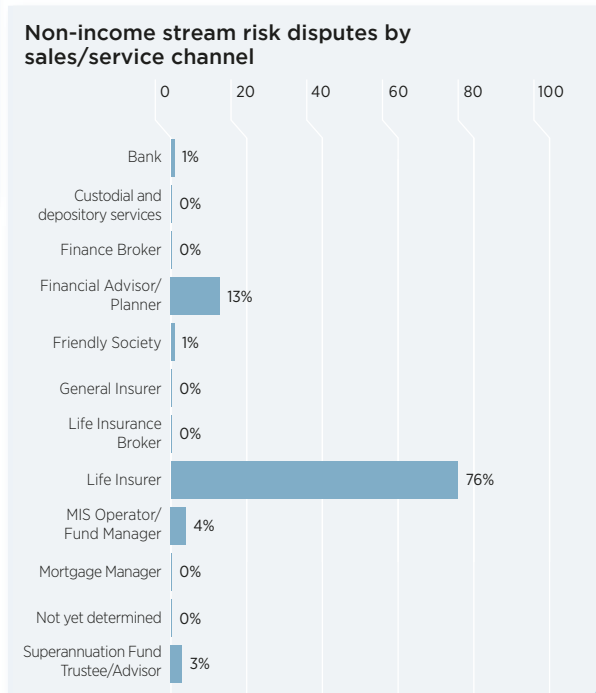
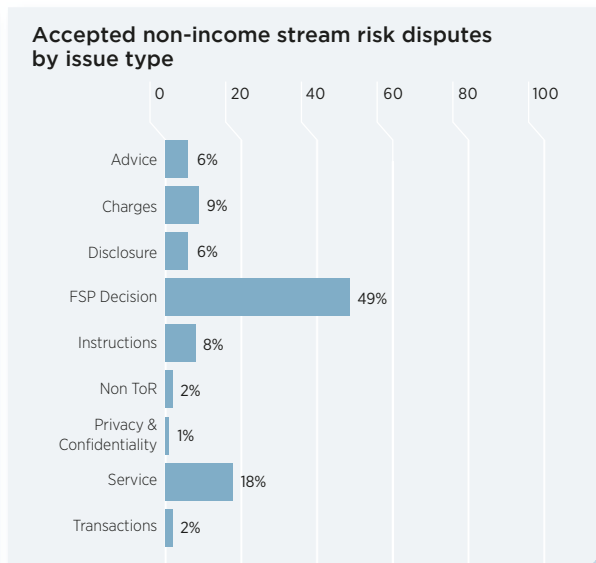
Denial of claim was the most common reason people lodged disputes about this product, followed by complaints about a delay in claim handling.

We accepted 99 disputes relating to term life insurance products in 2012-2013. Some of the most common issues were: denial of claim, failure to follow instructions, incorrect premiums and cancellation of policies.

The third most common non-income stream risk product which people complained about in 2012-2013 was trauma insurance.

Of the 80 issues we accepted relating to trauma insurance products, half related to denial of claim.

The majority of non-income stream risk product disputes (76%) were between life insurers and their clients. As with income stream risk disputes, life insurers are the main suppliers of these products, so this percentage is not surprising.







# Traditional trustee service disputes

<1%

Traditional  
Trustee Services  
of all disputes

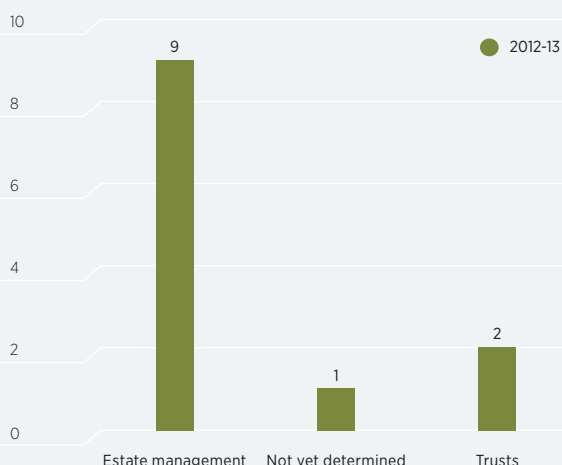
12  
disputes  
accepted

We accepted 12 traditional trustee services disputes in 2012-2013. This was an increase from last year when we accepted 7. Of the 12, 9 related to estate management products. 2012-2013 was our first full year of dealing with traditional trustee service disputes and we have continued to see only a very small number of such matters since our jurisdiction expanded on 1 January 2012.

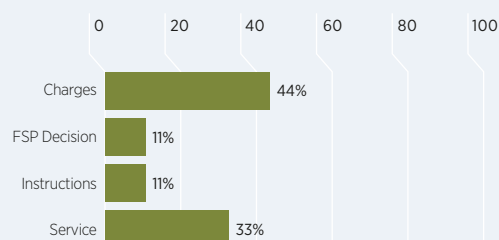
Estate management is administering or managing a trust, deceased estate or other estate of an individual.

Of the estate management disputes, four related to charges and three to service.

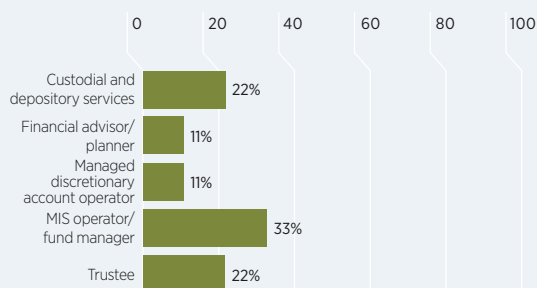
**Accepted traditional trustee service disputes by product category**



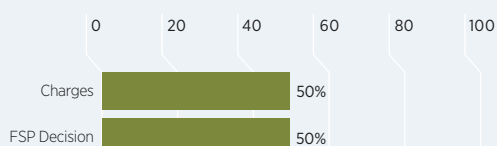
**Accepted estate management disputes by issue type**



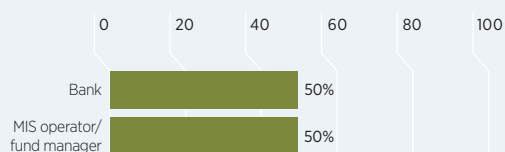
**Accepted estate management disputes by sales/service channel**



**Accepted trust disputes by issue type**



**Accepted trust disputes by sales/service channel**





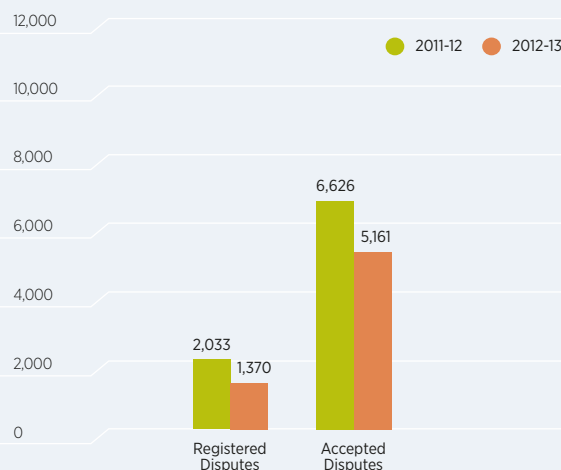
# Financial difficulty disputes

In 2012-2013 we accepted 5,161 disputes relating to financial difficulty which was a 22% reduction on last year.

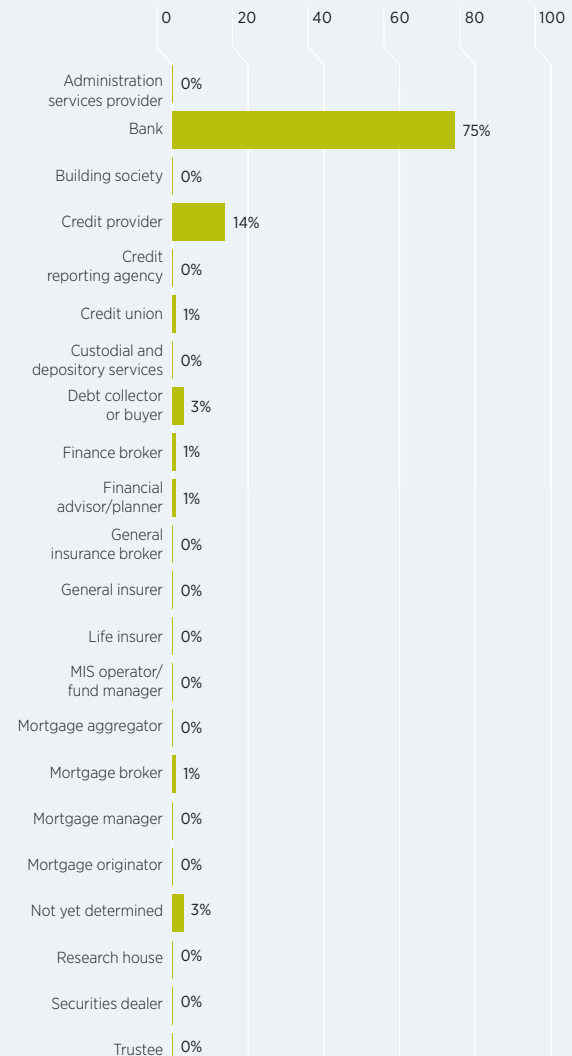
This reduction can be explained by several factors including:

- Financial services providers (FSP) awareness of the financial hardship framework has increased significantly in recent years and several of the major financial institutions have invested to improve their approach to dealing with customers who may be in financial difficulty.
- Industry bodies have also worked closely with their members. The Australian Banker's Association (ABA) released their financial hardship industry guide in 2013, and a revised Code of Banking Practice which includes a greater focus on banks working with their customers to overcome financial difficulty.
- Low interest rates in recent years have reduced repayment pressures for many Australian borrowers.
- The impact of the global financial crisis (GFC) has now largely dissipated.

**Financial difficulty disputes registered and accepted by year**



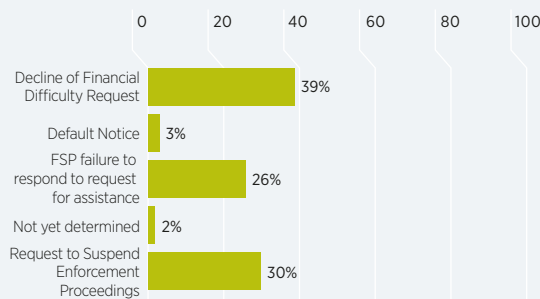
**Financial difficulty disputes accepted by Sales/Service Channel**



We saw decreases in the number of accepted disputes across all issue types involving financial difficulty in 2012-2013.

In 2012-2013 the largest decrease in financial difficulty disputes were those involving an FSP declining financial difficulty assistance. These disputes reduced from 45% in 2011-2012 to 39% in 2012-2013. If an FSP declines a request to provide hardship assistance and the facility is regulated by the National Credit Code, the consumer must be provided with the name and contact details of the FSP's approved EDR scheme. It is then up to the consumer if they wish the FSP's decision to be reviewed. This reduction may reflect a lesser number of consumers requesting financial difficulty assistance from their FSPs or a greater willingness of FSPs to provide financial difficulty assistance if it is requested.

**Accepted financial difficulty disputes by issue type**



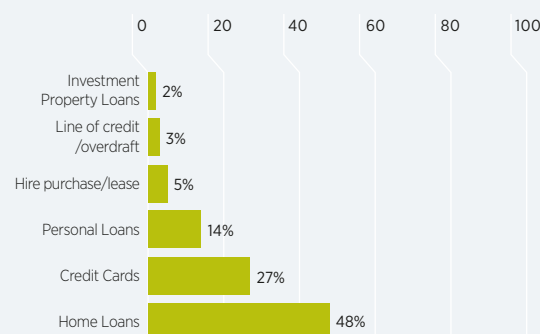
## Financial difficulty – products

### Consumer credit

The majority of financial difficulty disputes accepted related to consumer credit facilities (89%). Of those, most (48%) related to home loans, followed by credit card facilities (27%) and personal loans (14%).

It is not uncommon for applicants to lodge financial difficulty disputes in relation to multiple facilities, either with one FSP or multiple FSPs. For this reason, it is vital that FOS is aware of all the facilities which an applicant holds in order to ensure that options being considered are appropriate and in line with the level of difficulty the applicant may be experiencing. It is also important that applicants are willing to share information about their financial position with their FSPs.

**Accepted financial difficulty disputes by consumer credit product**

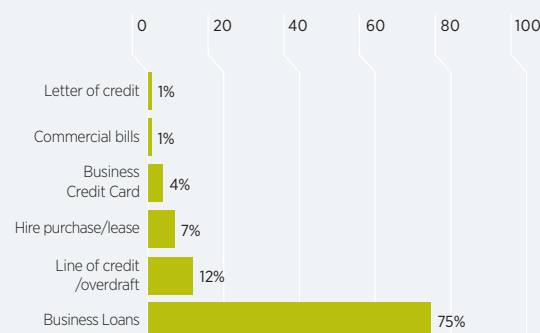


### Business finance

Business finance disputes comprised 8% of all financial difficulty disputes accepted in 2012-2013. Of these, 75% related to business loans and a further 12% to lines of credit/overdraft facilities.

While the volume of financial difficulty disputes involving business facilities was small compared with consumer credit facilities, we have found that dealing with financial difficulty disputes involving business finance facilities is at times more complex. The applicants may represent multiple entities and the value of some facilities may be high.

**Accepted financial difficulty disputes by business finance product**



In the two tables below we use the total number of disputes received and accepted in order to align with the population and age data on pages 32 and 33.

### Financial difficulty disputes – a state-by-state breakdown

New South Wales, Victoria and Queensland residents were the most likely to lodge financial difficulty disputes in 2012-2013.

This is consistent with the overall geographical distribution of disputes received.

Looking at each individual state, we saw:

- a higher proportion of NSW and Queensland applicants lodged financial difficulty disputes compared to other issues
- in Victoria there was a lower proportion of financial difficulty disputes lodged as opposed to other issues.

### Financial difficulty disputes received – a state by state breakdown

State	All Disputes excluding Financial Difficulty*	Financial difficulty disputes^
ACT	1%	1%
NSW	31%	34%
NT	1%	0%
QLD	19%	21%
SA	6%	6%
TAS	1%	2%
VIC	28%	25%
WA	9%	8%
Not provided	4%	3%
<b>Total</b>	<b>100%</b>	<b>100%</b>

\* Represents all disputes received less those received about financial difficulty.

^ Represents all disputes with issue of financial difficulty.

### How applicants in financial difficulty heard about FOS

Over 50% of all dispute referrals to FOS by a charity or church organisation related to financial difficulty while over 60% of dispute referrals by financial counsellors were for reasons of financial difficulty.

The support of trusted family members, carers and other not-for-profit services can also be beneficial for applicants experiencing financial difficulty.

### Overall age of applicants compared with age of financial difficulty applicants 2012-2013

Age group	All disputes excluding Financial Difficulty	Financial Difficulty disputes
0 – 17	1%	1%
18–24	3%	2%
25–29	8%	5%
30–39	19%	17%
40–59	38%	47%
60+	15%	13%
Not Provided	16%	15%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Applicants in the 40-59 age group are over-represented in financial difficulty disputes compared with all other disputes lodged with FOS.

## Financial difficulty outcomes

The most common way that financial difficulty disputes are resolved is through both parties working together with the assistance of FOS to reach an agreement.

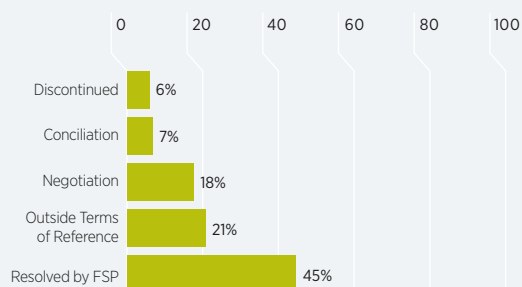
In 2012-2013, 45% of financial difficulty disputes were resolved directly between the financial services provider (FSP) and the applicant, 18% reached an outcome via a negotiation process which was facilitated by FOS, while conciliation was used to reach an outcome in 7% of disputes.

We find positive outcomes are more likely to be reached when an FSP is prepared to tailor a solution to fit an applicant's unique needs and circumstances than when a one-size-fits-all approach is adopted.

Our *FOS Approach* documents include detailed information about dealing with financial difficulty disputes. They can be viewed at: [www.fos.org.au/approach](http://www.fos.org.au/approach).

Disputes determined to fall outside of FOS's Terms of Reference represent approximately 21% of financial difficulty cases. A large portion of these disputes are excluded as a result of debt recovery legal proceedings progressing beyond a point where FOS can consider the dispute. This is also reflected in the legal proceedings disputes section, as the majority of legal proceedings disputes relate to financial difficulty.

Outcome of financial difficulty disputes



## Case study

### Financial difficulty conciliated outcome

The applicants were business people with a number of investment properties that provided rental income of \$30,000 per month. They had two residential loans totalling \$3 million with their financial services provider (FSP), which were secured over their home and one of their investment properties.

The applicants had previously sold a property to clear arrears and reduce their debts. However, their financial difficulty remained.

They wanted a reduction in their repayments – although interest rates had been reducing, the FSP had not reduced the monthly repayments due under the loan. The FSP had previously provided assistance to allow the first property to sell and felt the applicants could not show serviceability. For this reason the FSP was looking for the remaining securitised properties to be sold by the applicants within three months to cover the outstanding arrears.

FOS conducted a telephone conciliation conference to discuss the issues in dispute. At the telephone conciliation conference the following was agreed in resolution of the dispute:

- the FSP would recalculate the monthly repayments based on the lower interest rates
- the applicants would start meeting the recalculated monthly payments
- if the applicants were able to demonstrate serviceability, by meeting seven months of repayments, the FSP would capitalise the balance of the arrears
- the FSP also agreed to waive some enforcement costs.





## Legal Proceedings disputes

Since 1 January 2010 we have been able to consider disputes where legal proceedings relating to debt recovery have been issued prior to the applicant lodging a dispute with FOS. The FOS Terms of Reference had previously excluded such disputes. However, we can only consider legal proceedings disputes where the applicant has not taken a step beyond lodging a defence or a defence and counterclaim in those legal proceedings.

Since our jurisdiction was broadened, we have:

- implemented a process for early identification of legal proceedings disputes
- introduced a process to treat the dispute as urgent and expedite the dispute handling process once FOS becomes aware that a legal proceedings dispute has been lodged.

For more information, refer to our Operational Guidelines, in particular Section 13, which can be found on our website at [www.fos.org.au](http://www.fos.org.au).

### Number of disputes

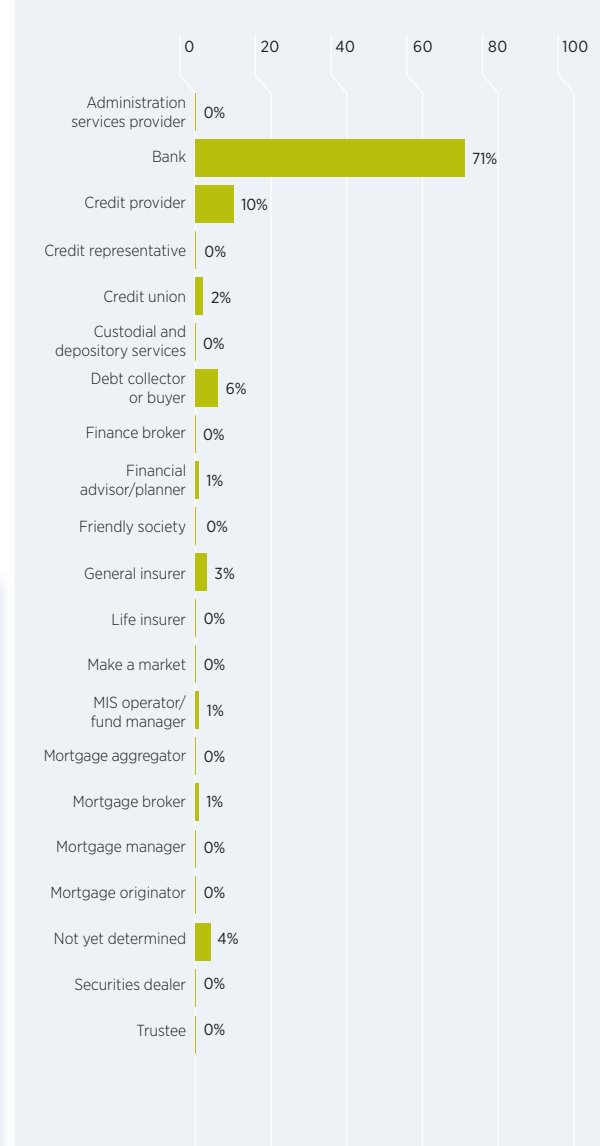
We accepted 1,925 legal proceedings disputes in 2012-2013, which was a 17% decrease from 2011-2012. The predominant issue in legal proceedings disputes was financial difficulty. We have provided an overview of the reasons behind a reduction in financial difficulty disputes on page 78.



### Expedited legal proceedings disputes

To assist in the early identification of legal proceedings disputes, we ask an applicant at the time a dispute is lodged (via the online form or telephone) whether the financial services provider (FSP) has issued legal proceedings against them. We will treat the dispute as urgent and expedite the dispute handling process once FOS becomes aware that a legal proceedings dispute has been lodged.

### Accepted legal proceedings disputes by sales/service channel



## Products and issues

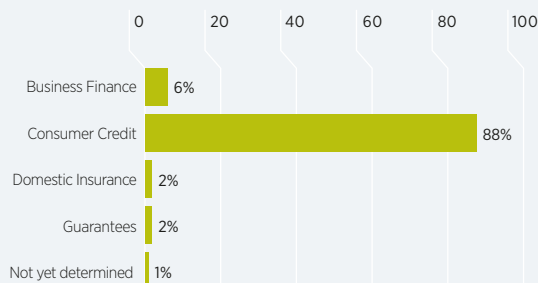
### Products

The majority of legal proceedings disputes accepted concerned credit products (97%), with 88% relating to consumer credit products. Most (60%) of those relate to home loans. In these disputes, the legal proceedings are generally seeking judgment for possession of the family home so that the property can be sold and the proceeds applied to repay the outstanding debt.

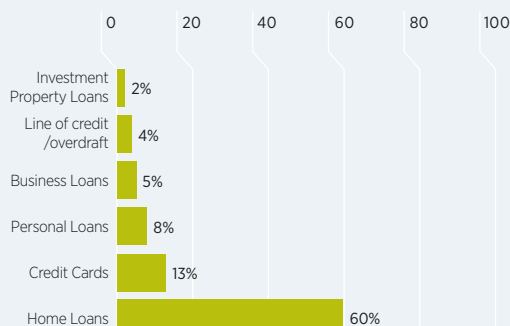
A smaller proportion of legal proceedings disputes relate to unsecured facilities – 13% of legal proceedings disputes relate to credit cards and 8% relate to personal loans (some personal loans may be secured by vehicles or equipment).

Of the legal proceedings disputes FOS accepted, 5% related to business loans and 4% related to lines of credit or overdraft facilities. These products may be held by consumers or small businesses. Many small business disputes which FOS has accepted raise complex issues where multiple facilities secure various properties, including the family home.

**Accepted legal proceedings disputes by product category**



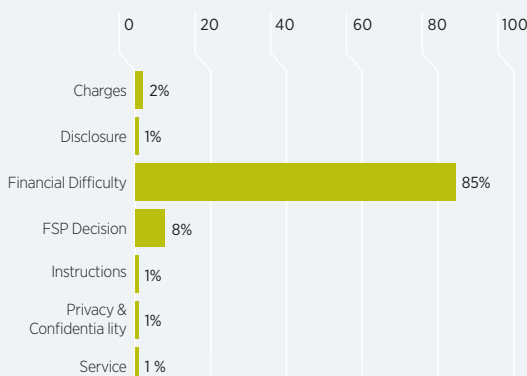
**Accepted legal proceedings disputes by product**



### Issues

Financial difficulty was the most common issue within legal proceedings disputes – it represented 85% of all legal proceedings disputes raised. Of these disputes, 58% represented a request by an applicant to suspend enforcement proceedings and 16% related to an FSP declining a financial difficulty request.

**Accepted legal proceedings disputes by issue type**

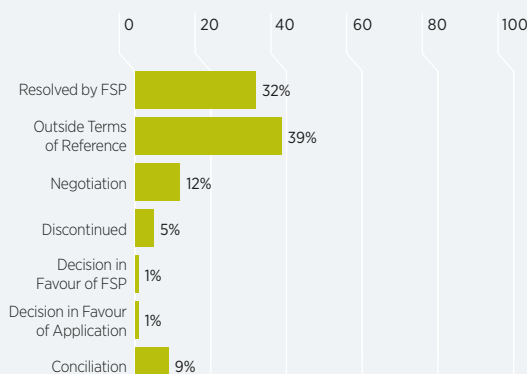


### Outcomes

Of the legal proceedings disputes we closed in 2012-2013, 39% were determined to fall outside our jurisdiction. The most common reason for this was that a court order had been issued prior to the dispute being lodged. For this reason it is important for applicants to quickly contact their FSP if they are experiencing difficulty in meeting the repayment obligations to their loan. If the applicant is unsatisfied with the consideration given by their FSP following this contact, it is equally important that they do not delay in lodging a dispute with FOS.

Of the disputes which FOS can consider, a large number of legal proceedings disputes are resolved between FSPs and applicants (32%), with FOS also facilitating negotiated settlements in 12% and conciliated outcomes in 9% of disputes.

**Accepted legal Proceedings disputes by outcome**



### Legal proceedings disputes and age

People aged 40-59 were most likely to lodge legal proceedings disputes with FOS. This age group represents 59% of legal proceedings dispute applicants whereas they made up 47% of all FOS disputes.

The majority of the disputes which involved this age group related to debt recovery legal proceedings which were seeking to take possession of the family home. This adds a degree of complexity when dealing with the disputes as the timeframe for a loan to be repaid, prior to applicants entering into a retirement phase, is reduced compared with younger age groups.

### Changes to FOS's legal proceedings dispute jurisdiction

During 2012-2013 the Australian Securities and Investments Commission (ASIC) finalised a review of this jurisdiction following a consultation period with all participants including consumer groups, FSPs, industry bodies and EDR schemes. ASIC released Report 348 in June 2013 that outlined a change to Regulatory Guide 139, refining the rules for access to EDR schemes for small business borrowers. From 1 January 2014 FOS will no longer consider 'legal proceedings previously issued' (LPPI) disputes relating to a small business credit contract where the credit contract which is the subject of the dispute exceeds \$2 million. FOS's Terms of Reference will be amended in late 2013 to reflect this change and more information will be available within our Operational Guidelines on our website at [www.fos.org.au/tor](http://www.fos.org.au/tor).





# Natural disaster disputes

There was a significant drop in the number of natural disaster disputes FOS received in 2012-2013, even though there was only small decline in the number of claims lodged with insurers.

The number of natural disaster-related disputes FOS received in 2012-2013 was less than half of the amount we received the previous year.

A key reason for the improvement was the federal government's introduction of a standard definition of flood in June 2012. This has:

- led to a greater uptake of insurance
- raised awareness of the issue of flooding and the importance of flood cover.

A total of 436 disputes were received in 2012-2013. These related to nine different natural disasters dating back to 2010.

The bulk of the natural disaster disputes received in 2012-2013 related to the Queensland floods in 2010-2011 (164) and the Melbourne Christmas Day storms (111).

We received only 23 disputes from both the ex-tropical Cyclone Oswald inundation and the January 2013 storms in Queensland and New South Wales, although a total of 105,012 claims were lodged by customers with their insurers in relation to the events.

By comparison, we received 1,305 disputes relating to the November 2010 and January 2011 Queensland floods from 58,685 general insurance claims lodged in relation to the floods.

In 2012-2013, 92% of home insurance policies purchased had full flood cover (5% of these had optional flood cover). At the beginning of 2011 this figure was around 48%.

## Case Study

### Dispute over water damage

Four units in a rural Queensland town formed part of a commercial strata-title building. The applicant lodged a claim with their insurer after being inundated with water. The land was saturated from previous rain events and when a further storm came through, the local creek flooded, inundating the town. The claim was denied on the basis the damage was caused by flood and was specifically excluded under the policy. The policy wording was clear and unambiguous in relation to the flood exclusion.

An Ombudsman attended the site and met with the applicant and the FSP's hydrologist.

The combination of sections of the hydrologist's report, video footage taken by the applicant, and a witness as to the quantity and direction of the water prompted the Ombudsman to find that the initial inundation (prior to the flood waters entering the property) was most likely storm water, not flood water, and awarded partial settlement of the claim.

FOS received one dispute from the January 2013 Tasmania bushfires. This figure was extremely low considering the scale of the event – residents affected by the fires made a total of 1,787 claims to insurers amounting to a total of \$89.7 million.

Of the 1,787 claims to insurers, only one was denied and the average property claim payout was \$119,978.

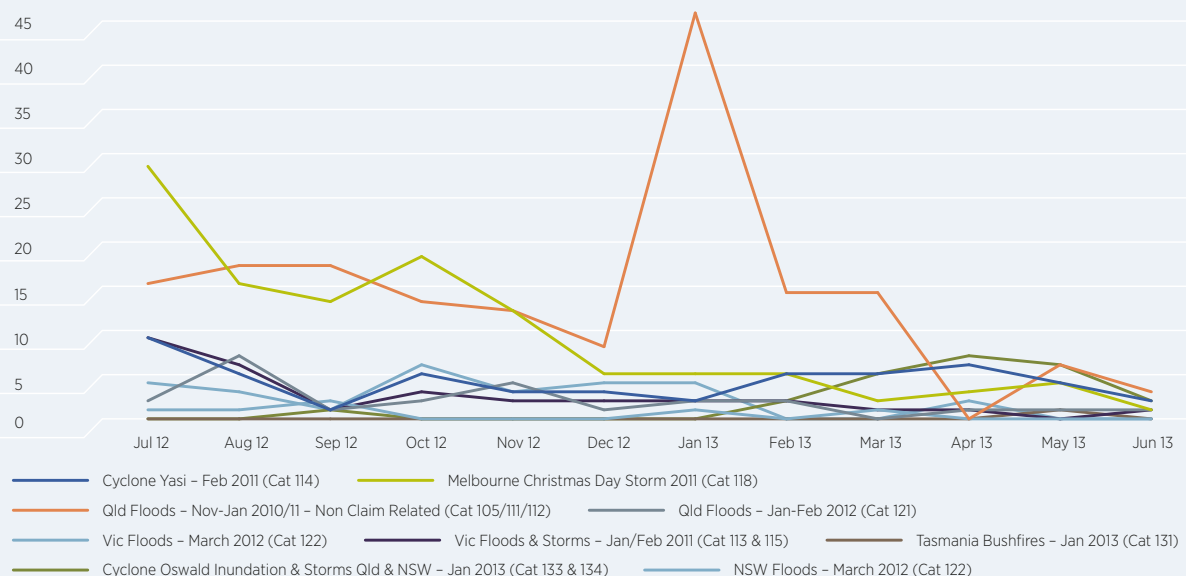


## Natural Disaster Complaints and Disputes (continued)

### Disputes received for each natural disaster

		Cyclone Yasi February 2011 (CAT 114)	Melbourne Christmas Day Storm 2011 (Cat 118)	Qld Floods Nov-Jan10/11- Non Claim Related (CAT 105/111/112)	QLD Floods Jan-Feb 2012 (CAT 121)	Vic Floods March 2012 (Cat 122)	Vic Floods & Storms Jan/Feb 2011 (CAT 113&115)	Tasmania Bushfires - Jan 2013 (CAT 131)	Cyclone Oswald Inundation & Storms Qld & NSW - Jan 13 (CAT 133 & 134)	NSW Floods March 2012 (Cat 122)	Total
Jul 2012	Registration	5	5	1	-	-	1	-	-	1	13
	Acceptance	4	23	14	2	1	8	-	-	3	55
Aug 2012	Registration	1	4	4	-	1	2	-	-	-	12
	Acceptance	4	11	13	7	-	4	-	-	3	42
Sep 2012	Registration	-	3	3	1	2	-	-	1	-	10
	Acceptance	1	10	14	-	-	1	-	-	1	27
Oct 2012	Registration	1	6	2	-	-	1	-	-	1	11
	Acceptance	4	12	11	2	-	2	-	-	5	36
Nov 2012	Registration	-	4	2	-	-	-	-	-	1	7
	Acceptance	3	8	10	4	-	2	-	-	2	29
Dec 2012	Registration	2	2	-	-	-	2	-	-	1	7
	Acceptance	1	3	8	1	-	-	-	-	3	16
Jan 2013	Registration	1	1	1	1	-	-	-	-	2	6
	Acceptance	1	4	44	1	1	2	-	-	2	55
Feb 2013	Registration	-	-	5	2	-	-	-	1	-	8
	Acceptance	5	5	9	-	-	2	-	1	-	22
Mar 2013	Registration	1	-	3	-	-	-	-	4	-	8
	Acceptance	4	2	11	-	1	1	-	1	-	20
Apr 2013	Registration	2	1	-	1	-	1	-	2	-	7
	Acceptance	4	2	-	-	-	-	-	5	2	13
May 2013	Registration	-	2	1	1	-	-	-	-	-	4
	Acceptance	4	2	5	-	-	-	1	6	-	18
Jun 2013	Registration	-	-	-	-	-	-	-	1	-	1
	Acceptance	2	1	3	1	-	1	-	1	-	9
		50	111	164	24	6	30	1	23	27	436

### Disputes received for each natural disaster







# Conciliation conferences

Telephone conciliation conferences are regularly conducted by FOS to resolve disputes involving financial difficulty, general insurance, investments, life insurance, stockbroking, and banking and finance matters. In 2012-2013, FOS conducted 1,186 telephone conciliation conferences, up from 955 in 2011-2012.

Conciliation conferences offer the parties an opportunity to discuss the dispute with the assistance of a FOS conciliator, and look for a way to resolve the dispute by agreement. The resolution rate for telephone conciliation conferences conducted by FOS is approximately 69%. We find that the resolution rate will vary depending on the issues in dispute. Financial difficulty disputes tend to have a higher resolution rate compared with disputes involving other banking and finance products.

If a dispute is a legal proceedings dispute, a telephone conciliation conference is compulsory if a resolution is not reached between an applicant and FSP.

For more information, please see our legal proceedings section on page 82.

## Conciliation conferences for general insurance disputes

During 2012-2013 there was a greater number of telephone conciliation conferences conducted for disputes involving general insurance disputes compared with previous years. In the past 12 months FOS has worked closely with general insurers to show the benefits of telephone conciliation conferences. This education process has resulted in a greater level of understanding and an increased commitment from general insurers to participate in conciliations.

This year we also looked at creative ways to apply the conciliation process. We conducted sixteen in-person conciliation conferences in Queensland, together with a further 14 telephone conferences to help finalise flood cases. All of these disputes were resolved via conciliation and most of the applicants involved went on to reinsure with the same financial services provider (FSP).

## Feedback and peer review

During 2012-2013 FOS has developed several initiatives in relation to conciliations. All participants to FOS telephone conciliation conferences are invited to complete a survey to allow parties to air their views on the process and to measure the level of satisfaction with the process after the conciliation. In 94% of cases respondents to the survey said that the role of the conciliator was positive, in 93% of cases that their

experience during the conciliation conference was positive and in 89% of cases that the overall experience with FOS's conciliation process was positive.

All staff undertaking conciliations complete the course required to obtain mediation accreditation under the Australian National Standard.

## New initiatives

Other quality initiatives introduced during 2012-2013 included our new peer review program, which involves conciliators observing and reviewing conferences to ensure consistency of process and outcome for the parties. We have also introduced telephone coaching sessions, which make use of advanced conflict coaching techniques to allow parties to work through difficult, complex or highly emotional dispute issues in a telephone call with a conciliator, so they can clarify the issues in dispute and the outcome they are seeking.

### Applicant/applicant representative comments

- "I thought the process was extremely beneficial for the clients. I am pleased the bank came up with extra options for resolution."
- "I would commend the FOS for the innovative spirit with which they approached the conciliation conference. Solutions were offered to my clients which went way past our expectations. In many ways this was a difficult case for all concerned and I hope the resolution of it will lead to an improved outcome."
- "I just wish to say how useful the process at FOS is particularly regarding mortgage repossession cases where we have been able to keep people in their homes, and even when they have had to sell the homes, the process is a lot less traumatic than under the Supreme Court system. The trauma is not only less for the consumers but for their advocates as well and contributes to being able to offer a much better service to clients, particularly those from a non English speaking background, who rarely understand our court system."

### FSP comments

- "FOS Staff who attended were well informed, highly skilled and helped the process greatly"
- "We've had great success so far with conciliation and the conciliators help us discuss with the client how policies work, what their rights are and how we can reach an outcome."
- "The telephone conciliation call ran very smoothly. It was a good opportunity to discuss the matter with the applicant and the conciliator allowed the discussion to be frank and open between the parties without interruption."

# Systemic Issues and Serious Misconduct





# Systemic issues and serious misconduct

A *systemic issue* is defined in our Terms of Reference as an issue that will have an effect on people beyond the parties to a dispute. *Serious misconduct* is defined as conduct that may be fraudulent or grossly negligent or may involve wilful breaches of applicable laws or obligations under the Terms of Reference.

In addition to its core business of resolving disputes, FOS is required by ASIC Regulatory Guide 139 to identify, resolve and report on systemic issues and to notify it of cases of serious misconduct. By dealing effectively with these problems, FOS can, among other things, raise industry standards and help consumers to obtain fair compensation for financial losses.

## Our systemic issues process

Our process for identifying and managing systemic issues:

1

### IDENTIFY a possible systemic issue – (1250 referrals in 2012-2013)

While we are handling a dispute, FOS staff consider whether the dispute raises any issues that might be systemic ie could the issues raised within the dispute affect a wider group of people. Identification of a possible systemic issue can occur at any stage of our dispute resolution process.

2

### REFER the issue to the financial services provider (FSP) – (128 cases in 2012-2013)

Once a possible systemic issue has been identified, we refer it to the relevant FSP. We will detail the issue, ask for further information, and invite the FSP to formally respond.

3

### ASSESS whether it is a definite systemic issue – (47 cases were definite systemic issues in 2012-2013)

We assess the FSP's response and determine whether the issue is definitely systemic. Investigations are carried out by our systemic issues staff, in consultation with the relevant Ombudsman.

If we decide that an issue is not in fact systemic (96), then the matter is concluded (though we may reconsider the issue at a later time if new information becomes available). If we decide that it is a systemic issue, then we will manage its resolution in conjunction with the FSP.

4

### RESOLVE the issue through collaboration with the FSP – (37 cases in 2012-2013)

We will work with the FSP to resolve the systemic issue. Resolution of the issue will require the FSP, where appropriate, to:

- identify all affected customers
- compensate the affected customers fairly for any financial loss, and
- implement a strategy to prevent the problem from recurring.

5

### REPORT the issue to ASIC

We provide quarterly reports to ASIC on the numbers of possible and definite systemic issues and on the nature, progress and resolution of definite systemic issues. FSPs are not identified in these reports. FOS only identifies an FSP in a report to ASIC if the FSP has not dealt with a definite systemic issue to the satisfaction of the relevant Ombudsman or if it is a case of serious misconduct.

### Systemic issues and serious misconduct this year

The systemic issues team received 1,250 referrals of possible systemic issues from FOS staff in 2012-2013. This included multiple referrals of the same issues. These referrals came from FOS dispute handling teams.

FOS encourages all dispute handlers to be proactive about identifying possible systemic issues. The systemic issues team applies a thorough assessment process to decide whether a matter should be referred to an FSP for response. This means that only a portion of referrals are escalated.

In 2012-2013 we identified that 128 possible systemic issues were appropriate to refer to FSPs for response.

In 2012-2013, 96 were determined not to be systemic but in many cases a positive outcome was achieved.

This financial year, a total of 37 systemic issues were resolved.

Resolution of the issue will require the FSP, where appropriate, to:

- identify all affected customers
- compensate the affected customers fairly for any financial loss, and
- implement a strategy to prevent a problem from recurring.

Some of the possible and definite systemic issues identified in 2012-2013 were still being investigated at the end of the year.

We reported five cases of serious misconduct to ASIC in 2012-2013, all of which related to failure to comply with the FOS Terms of Reference.

For the 37 systemic issues we resolved this year, we are aware that:

- more than 13,600 customers were identified as having been directly affected by the issues and were compensated for their losses
- over \$2 million was either paid to or set aside to compensate the affected customers
- more than 14,000 incorrectly-made credit listings were either corrected or removed.

Positive outcomes of the systemic issues work extend beyond monetary compensation. Other improvements FSPs made as a result of our investigations include:

- improvements to processes and procedures
- improvements to policies for dealing with customers in financial difficulty
- review of lending guidelines
- improvements to compliance with the duty of utmost good faith
- greater disclosure to customers
- updating of template letters
- rectification of system errors
- provision of updated information and training to staff
- improved access to dispute resolution for customers.

The remainder of this section highlights some of the common issues we have come across in our investigations and provides some case studies.

## Common issues

### 1. Errors in credit listings and inaccurate credit file enquiries

This area continued to be a focus in 2012-2013.

Common problems included:

- credit listings not made in compliance with the National Credit Code (NCC)
- failure to provide proximate warning of a default credit listing
- inappropriate serious credit infringement listings
- failure to carry out upgrade requirements to collections documents and automated processes to ensure they comply with the NCC and the Privacy Act
- credit listing amounts that had not been outstanding for 60 days before the listing (in accordance with the Privacy Act).

### 2. Policies for dealing with customers in financial difficulty

Problems continued to occur in this area in 2012-2013. Common issues included:

- policies and procedures that create unnecessary barriers to access – for example, requirements to provide copious amounts of information or inaccessible medical reports
- inappropriate requirements where a joint debtor will not agree or respond to a hardship application from their estranged co-borrower
- requiring a customer to comply with lender's mortgage insurance requirements before financial difficulty assistance will be provided
- failing to stop debt collection activity while a dispute is with FOS
- misleading and deceptive conduct during the course of debt collection
- failing to provide financial difficulty assistance in relation to all relevant credit products.

### 3. Conduct of employees and authorised representatives

This issue primarily occurs in disputes relating to the provision of financial advice. It relates to the FSP's compliance with its various obligations under the Corporations Act to monitor the activities of its authorised representatives and appropriate record keeping. Where possible, FOS asks the FSP to identify customers who have been affected by the conduct of the employee or authorised representative and to rectify the issue. The FSP will be expected to improve the steps it takes to ensure its employees and authorised representatives comply with the relevant financial services law.

## Case studies

Details of these case studies are taken from systemic issues we have investigated, but none of the case studies reflects the exact circumstances of any one systemic issue.

Even though these case studies include the outcome or resolution of the systemic issue, we work individually with FSPs when we are investigating and resolving a systemic issue. Therefore, resolutions are always formulated case by case.

### 1. Policy interpretation

An applicant lodged a dispute with FOS about the assessment of loss in the comprehensive insurance of his motorcycle. The applicant's motorcycle had been deemed to be repairable on the basis of its agreed value, which was contrary to the wording of the policy. The issue reviewed as systemic was whether the FSP had appropriately interpreted the policy wording. Specifically whether it could treat the vehicle as a total loss only when the repair and salvage costs are likely to be more than the agreed value. The FSP confirmed that it had been assessing total losses based on the sum insured rather than the market value as stated in the policy.

In resolving the systemic issue and reviewing all potentially affected customers, the FSP also improved its training to all staff regarding the relevant application of the policy wording.

### 2. Conduct of employees/authorised representatives

We handled a number of disputes which related to allegations against a former financial advisor of an FSP who purchased and redeemed investments without the applicants' knowledge or authority, and/or without reference to their attitudes to risk. The applicants argued that they suffered financial loss as a result of the purchases and sales from their portfolios.

We investigated whether other customers may have been affected by the representative's actions, and if so, how widespread this may have been. The FSP provided information that indicated that it had already started a review of each client's portfolio which was previously operated by the representative. In its review, the FSP identified 40 clients who had either not authorised the sale or purchase of the equities, and/or had not received adequate statements of advice. These 40 potential cases were referred to an Internal Dispute Resolution (IDR) process the FSP had set up to specifically assess these issues. Of the 40 customers, seven had benefited from the unauthorised sale of equities, and the other 33 were compensated a total of \$1.5 million.



The FSP also confirmed that it had informed ASIC of the representative's actions, and that ASIC has been updated regarding the IDR process.

### **3. Policies for dealing with customers in financial difficulty**

An FSP provided FOS with a copy of its financial difficulty policies and procedures during a FOS investigation into its conduct in assisting a customer in financial difficulty. A review of the document raised concern that the FSP's policies and procedures for dealing with customers in financial difficulty failed to meet the requirements of section 72 of the National Credit Code as well as clause 25.2 of the Code of Banking Practice.

We were concerned that the policies and procedures referenced a prescriptive list of reasons for hardship to be considered when assessing hardship requests from customers. We were also concerned that it appeared that hardship assistance could not be given in a situation where two restructures had already been arranged, thereby affecting long-term loan products in particular.

We also reviewed the FSP's approach to loans where lender's mortgage insurance was held. The FSP's approach was to refer requests for hardship approval to the insurer, who required an extensive list of supporting documentation. We felt this provided an unnecessary barrier to providing hardship assistance.

As a result of our investigation the FSP amended its hardship policies and procedures to clarify that it does not defer decision-making to the entity underwriting its lender's mortgage insurance. It also amended policies to reflect industry best practice in dealing with customers experiencing financial difficulty.





# Code Compliance and Monitoring

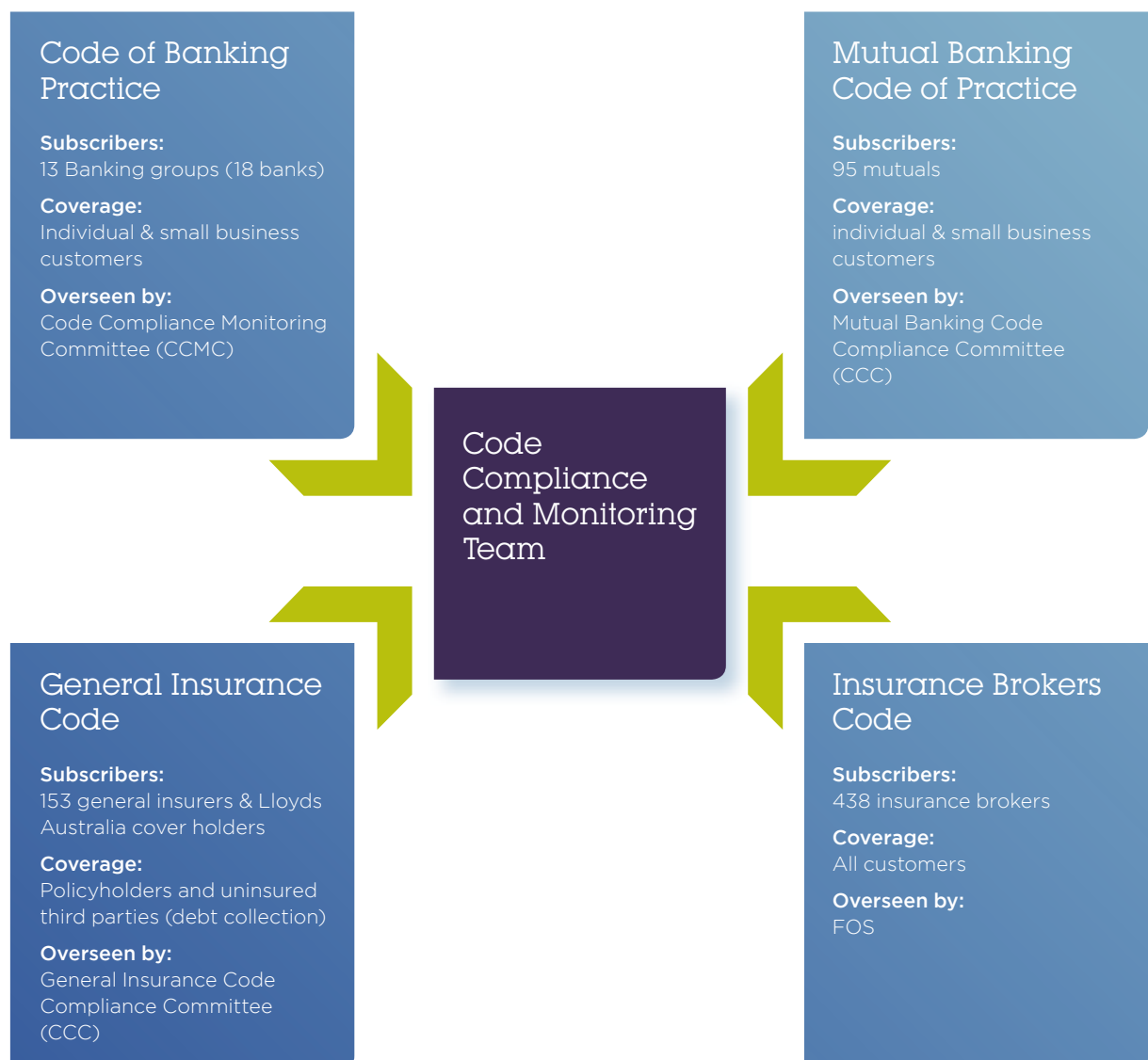




## Code Compliance and Monitoring



The Code Compliance and Monitoring team is a separately operated and funded business unit of FOS. The team administers and monitors compliance with four industry codes of practice: the Code of Banking Practice, the Mutual Banking Code of Practice, the General Insurance Code of Practice and the Insurance Broker's Code of Practice. This work is often undertaken in association with independent Code Compliance Committees. The team's services are paid for by the industry associations who are responsible for the four codes and by their members, pursuant to a range of service level agreements.



In total, 699 financial services providers (FSPs) subscribed to the four codes in 2012-2013. This included 13 banking groups (representing 18 banks), 95 mutual banks and credit unions, 153 general insurers, cover holders and claims administrators, and 438 insurance brokers.

A code of practice sets standards of good industry practice for FSPs to follow when dealing with people who are, or who may become, individual or business customers.

Each code subscriber has made a commitment to:

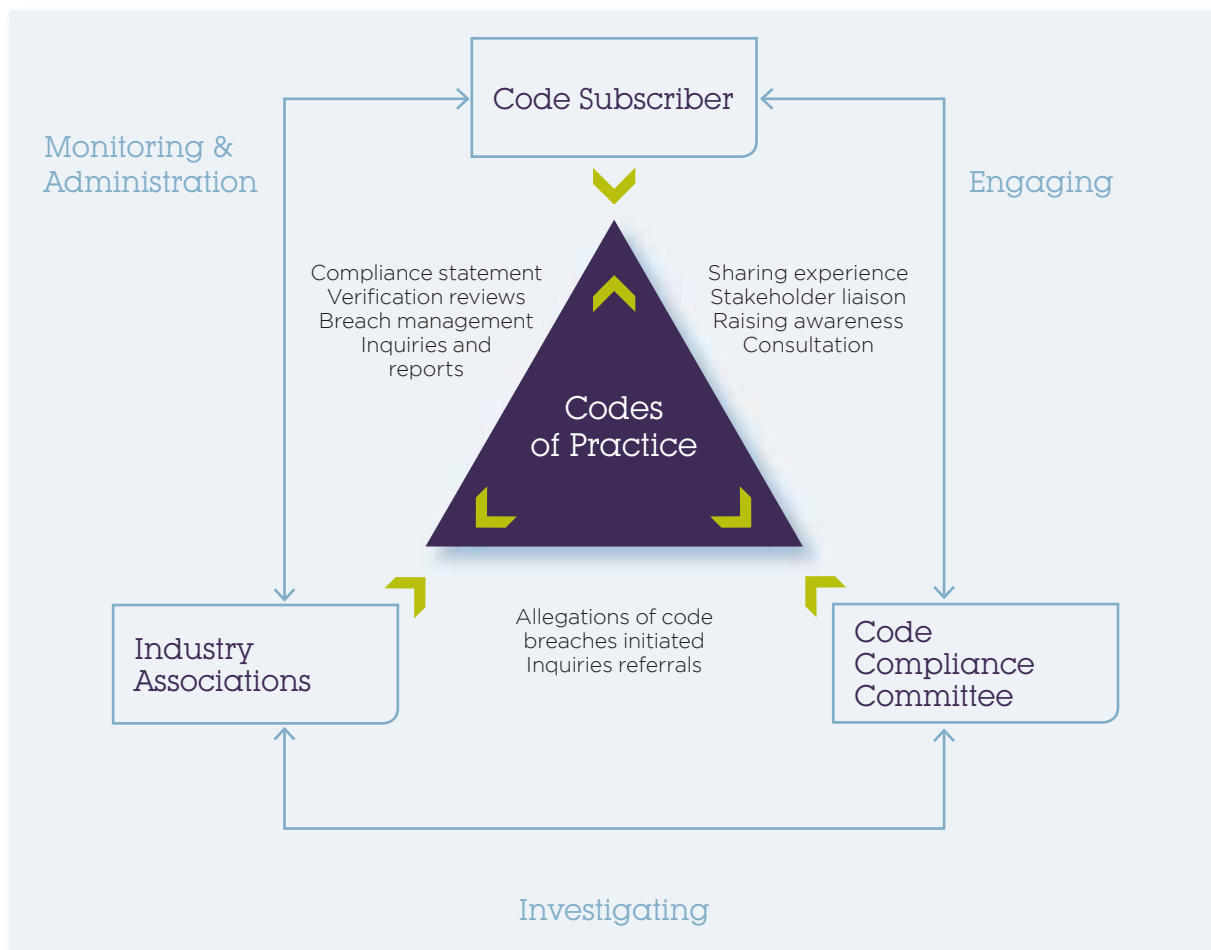
- work to improve the standards of practice and service in their industry
- promote informed decisions about their services
- act fairly and reasonably in delivering those services.

Code monitoring activities in the banking, mutual banking and general insurance sectors are overseen by Code Compliance Committees comprising of an independent Chair, a consumer representative and an industry representative. The committees are independent of the industries that are responsible for these codes and have powers and functions to identify and address breaches of Code obligations. FOS provides secretariat services to each of these committees, which met on 23 separate occasions in 2012-2013.

#### Our activities this year

In 2012-2013, our Code Compliance and Monitoring team, in association with the Code Compliance Committees, undertook four core activities:

- monitoring compliance with the four codes
- investigating alleged breaches of the codes by code subscribers
- engaging with code subscribers and other stakeholders to share our experience of good practice and areas for improvement
- raising awareness of the operation of the code monitoring functions and how both industry and consumers can engage with, exercise and uphold rights and responsibilities under Codes of Practice.



### Monitoring compliance

568 financial services providers (FSPs) were asked to respond to an Annual Compliance Statement (ACS) relevant to their code's obligations in 2012-2013. The questionnaires asked FSPs to report on the operation and effectiveness of the code monitoring frameworks within their organisations. A total of 10,688 breaches of code obligations were self-identified by FSPs during this process. Of these, 24 were assessed as significant. Significant breaches of code obligations usually require a number of customers to have been impacted by the conduct or activity and to have suffered loss. They also require more extensive remedial action to have been undertaken by the code subscriber to correct the non compliant conduct and to reduce the likelihood of recurrence.

Results of the ACS programs and the trends and emerging risks in code compliance were reported back to industry and other stakeholders in the annual reports published for each code between October 2012 and May 2013.

- The team also conducted 22 field visits and 62 desktop audits of code subscribers from across the four code sectors. Field visits allow us to have in-depth, face-to-face discussions with FSPs about code compliance monitoring within their organisation and to verify information received during the year as a result of our other activities. Desktop audits allow us to assess the effectiveness of the code compliance monitoring frameworks of FSPs in more detail.

We also introduced a new three-year compliance monitoring program, comprising self certification, desk top audits and annual return programs, for the General Insurance Code of Practice.

The Code Compliance and Monitoring team was involved in four Own Motion Inquiries into code compliance. The inquiries are targeted reviews to assess how effectively FSPs comply with specific Code obligations. Risk based assessments are carried out to decide whether inquiries should take place. The team asks FSPs to supply them with relevant information to assist the inquiry, while market research, such as mystery shopping, may also be carried out to determine compliance with the obligations. Engagement is also carried out with consumer advocates to better understand issues faced by customers.

Inquiry outcomes are published in de-identified reports and compliance discussions are conducted with individual FSPs. Reports into the findings of the inquiries undertaken by the team in 2012-2013 were published as follows.

### Banks

- *Guarantees* – published at [www.ccmc.org.au](http://www.ccmc.org.au)

The Code Compliance Monitoring Committee conducted an Own Motion Inquiry of 18 subscribing banks into how effectively they comply with their pre-contractual obligations before accepting a Guarantee to secure a credit facility.

The inquiry found banks had appropriate policies and procedures in place to meet their obligations of the Code. However, discussions with financial counsellors demonstrated that there could be considerable impact on consumers when these procedures were not followed. The Inquiry also found some banks provide additional information to consumers to ensure they understand the risks and responsibilities involved with becoming a guarantor, particularly where a potential guarantor could be classed as 'vulnerable'.

The CCMC made recommendations to improve the disclosure of general warnings within the pre-contractual documentation and the identification and treatment of 'vulnerable' potential guarantors.

- *Chargebacks Follow Up Inquiry* – published at [www.ccmc.org.au](http://www.ccmc.org.au)

This inquiry examined if banks had improved their practices regarding the process of providing "chargebacks" following a 2011 inquiry into the process. A "chargeback" is the process by which a financial institution, at the request of a customer, can reclaim a debit on a credit card from a merchant's bank. Effective processing of chargeback requests is important to ensure that consumers are able to obtain a refund of payments where due.

While the Inquiry identified that most banks acted consistently with both the Code and the banks' own Terms and Conditions, some inconsistencies with these obligations were experienced in some calls. The Code Compliance and Monitoring team will work with those banks to ensure code obligations are consistently applied.

## Mutual Banking

- *Review of Code Training* – published at [www.cccmutuals.org.au](http://www.cccmutuals.org.au)

This inquiry examined mutuals' compliance with their Code obligations to adequately train staff, agents and representatives on the requirements of the Code and ensure that they apply their Code obligations in their dealings with members.

The inquiry found most mutuals conduct Code training as part of learning and development programs but the content, frequency and monitoring of the training varies depending on the size of the mutual. It also found that the monitoring and supervision frameworks of some mutuals needs enhancement to ensure that code obligations are applied by staff in a consistent manner. The report recommended:

- embedding key promises in day-to-day practice
- customising staff code training for staff
- tracking and recording of code training
- monitoring the application of code obligations.

## General Insurance

*The operation of the General Insurance Claims handling Standards during the Queensland Floods* – published at [www.insurancecouncil.com.au](http://www.insurancecouncil.com.au) in August 2012.

We conducted a survey of code participants and consumer representatives about the application of the code's claims handling standards, both during and after the Queensland flood events that occurred in 2010–2011.<sup>1</sup>

Our report emphasised that fairness, transparency, accountability and active communications with customers during and after natural disasters are critical to an effective claims handling process.

### Key findings included:

- Insurers' monitoring of their compliance with the code's claims was primarily focused on timeliness. While timeliness is important, other code obligations, such as fairness, are equally significant.
- Those insurers that attempted to follow the code's framework of good industry practice were better placed to engage effectively with customers and this significantly affected the quality of customers' claims experience.

- Insurers need to ensure they actively engage with consumers during natural disasters and catastrophes in order to avoid perceptions of unfairness and lack of transparency in the claims handling process.

The development of guidelines to assist insurers in their interpretation and application of the code may ensure that a more consistent approach to the code's operation and application during natural disasters is achieved across the industry. The code has since been amended by the Insurance Council of Australia (ICA) to enhance claims handling standards. The ICA and Code Participants have also taken significant steps to address many of the issues identified in our review. These initiatives respond to and close some of the gaps in industry practice identified, but some remain. These gaps and our recommendations are now under consideration by the ICA.

## Investigating alleged breaches

The independent investigation of code breach allegations forms part of the financial services industry's overall consumer protection framework. In many cases breach allegations are made either by individual customers or financial counsellors.

In 2012–2013 we conducted 191 investigations into allegations that a FSP had breached one or more code obligations. There were 116 confirmed breaches across the four codes identified as a result of this activity. The Code subscribers responsible for each breach were asked to remedy the non compliance and prevent similar breaches from re-occurring.

The leading causes of non-compliance with the Codes of Practice arising from our investigations were:

- failure by staff to adhere to internal policies and procedures
- breaches of obligations to assist customers who are in financial hardship
- failure to act fairly and reasonably in dealings with customers
- collection of debts
- failure to comply with obligations regarding guarantees.

<sup>1</sup> Flooding in Queensland between 21 December 2010 and 14 January 2011, affecting Brisbane, Toowoomba, Lockyer Valley and rural Queensland.



### Significant breaches of code obligations

The Code Compliance and Monitoring team dealt with 23 breaches of the codes which were assessed as 'significant', 11 in Banking and 12 in General Insurance.

In Banking ten significant breaches were self-reported by banks. In total, banks identified over 350,000 affected customers. While a number of these significant breaches did not result in loss to customers, banks confirmed that over \$1.2 million was refunded in relation to these breaches.

One significant breach of the Code of Banking Practice was identified after a referral to the team from a FOS Ombudsman. While the breach affected 5,000 customers, the bank took steps to ensure that no customer suffered loss.

In General Insurance, seven breaches were self-identified by code participants and five were revealed by compliance investigations and desktop monitoring. In total, 177,000 customers were affected and \$1.8 million was returned by insurers.

### Case study

#### General Insurance Code of Practice

An insurance company reported a significant breach of the General Insurance Code of Practice (the code) as a result of its failure to comply with obligations of the code which require claims handling services to be carried out in an honest, efficient, fair and transparent manner. The breach affected motor vehicle insurance claims lodged over a six year period and involved a failure to refund excesses paid by 219 customers, when a subsequent review of liability revealed the customer did not cause the damage.

An internal audit by the FSP revealed that the failure to repay the refunds had been caused by internal confusion about responsibility for the task.

Steps the insurance company took to address the breach included:

- refunding a total of \$153,000 to affected customers, including interest, averaging \$691 per customer
- introducing a systems solution which automatically triggered an auditable action for the claims consultant managing the file, including exception reporting, to ensure that excess refunds are actioned
- enhancing internal controls at management level to ensure that any exceptions were addressed appropriately and quickly.

### Engaging with industry, consumers and regulators

Our 2012-2013 stakeholder engagement activities included:

- publication of eight information bulletins and nine articles about code compliance and related issues
- maintenance of two websites to raise awareness of code compliance activities and to provide relevant information ([www.ccmc.org.au](http://www.ccmc.org.au) and [www.cccmutuals.org.au](http://www.cccmutuals.org.au))
- five liaison group meetings with banks that subscribe to the Code of Banking Practice
- 15 presentations, webinars and workshops for industry and consumer advocacy groups
- four meetings with the ICA Code Reference Group
- six meetings with ASIC to discuss code-related matters
- meetings with eight financial counselling organisations to discuss counsellors' experience of dealing with FSPs
- training to financial counsellors as part of the Financial and Consumer Rights Council (FCRC) professional development program
- numerous meetings with individual code subscribers and industry bodies.

#### Code Compliance and Monitoring team - The numbers at a glance

4	Codes of Practice
3	Independent Oversight Committees
23	Committee meetings
2	Websites maintained
699	FSPs subscribing to the Codes
5	Annual reports published
568	Annual Compliance Statements completed and reviewed
62	Desktop audits completed
10,668	Breaches of Code obligations self reported by FSPs
23	Breaches assessed as significant
22	Onsite visits
4	Own Motion Inquiries
191	Compliance Investigations
116	Breaches of the Code identified through Investigations
56	Meetings with regulators, industry associations, consumer advocates and other stakeholders
8	Information bulletins issued





# Corporate Governance



# Corporate governance

## Introduction

FOS prides itself on independence, integrity and transparency in all aspects of its operations. As a result, FOS applies the principles of good corporate governance to the running of the company.

## Corporate governance principles

FOS, like many of the financial services providers (FSPs) who are members of the service, has taken the ASX Corporate Governance Principles and Recommendations with 2010 Amendments, issued by the ASX Corporate Governance Council, as being the benchmark for a high standard of corporate governance in Australia. The rest of this section explains how FOS applies the principles and recommendations to its own operations. Where it is not appropriate to do so, we have sought to clearly explain any departure from the relevant recommendation.

## Principle 1: Lay solid foundations for management and oversight

### Functions reserved by the Board and those delegated to management

Since the inception of the company, the FOS Board has adopted a Charter that governs its operations and clearly delineates the responsibilities of the Board and of senior management.

The role of the Board is to monitor the performance of FOS, provide direction to the Chief Ombudsman on policy matters, set the budget, and review from time to time the Terms of Reference, including the jurisdictional limits of FOS. The Board does not get involved in the detail of cases which come before FOS, as that would prejudice the independence of the Ombudsmen. The decisions of the Ombudsmen are free of any interference from the Board.

The Board has also established two committees to assist it in its role:

- the Finance & Risk Management Committee, and
- the Nominations & Remuneration Committee.

## Evaluation of performance of FOS senior management

Since FOS began operating in 2008, all employees of FOS, including senior managers, have been subject to a performance evaluation process. The line manager of an employee conducts the performance evaluation, with the Chief Ombudsman responsible for the performance evaluation of the senior managers reporting to him. The performance evaluation of the Chief Ombudsman is conducted by the Chair of the Board.

The Nominations & Remuneration Committee of the Board is tasked with ensuring a robust system of performance evaluation is in place for Board appointees and the Board itself.

## Principle 2: Structure the Board to add value

### The FOS Board of Directors

The majority of the Directors of FOS have been in office since 1 June 2009, except Robert Belleville, who was appointed on 25 January 2010, and Jennifer Darbyshire and Christopher McRae, both of whom were appointed on 8 June 2012.



**Professor The Honourable Michael Lavarch AO - LLB (QUT)**

Michael Lavarch was appointed a transition director on incorporation of the company, for a term expiring on 31 May 2009, and when

the new Board was formed on 1 June 2009 he was appointed a director and the Independent Chair of the Board. He was re-appointed as Chair of the Board on 1 May 2012 for a further term of office.

Currently, Michael is the Commissioner, Risk Analysis and Investigation for the Australian Skills Quality Authority. Michael was formerly the Executive Dean of the Faculty of Law at the Queensland University of Technology. He is a former Federal Attorney-General and a past Secretary-General of the Law Council of Australia. He has extensive board experience, having held public and private company directorships, and is currently the Chief Adjudicator of the Alcohol Beverages Advertising Code adjudication panel.

In 2012, Michael was appointed as an Officer of the Order of Australia for distinguished service to law, education and human rights.

**Robert Belleville – MBA**

Robert Belleville was appointed an Industry Director on 25 February 2010.

Currently, Robert is a member of the Insurance Manufacturers of Australia (IMA) Board and

is a member of the IMA Board Audit, Risk and Compliance Committee. In addition, he is the Chair of The Innovation Group Pty Ltd's Advisory Board.

He was employed by AAMI for over 37 years, culminating in his appointment as Chief Executive Officer in 2002; shortly thereafter he added the position of Chief Executive of Promina's Direct Division, adding APIA, Shannons and Just Car Insurance to his responsibilities. Following the successful offer by Suncorp to take over Promina, Robert was appointed Group Executive, Personal Lines, which added GIO and Suncorp portfolios to his oversight. Despite retiring in December 2008, Robert stayed on with Suncorp as a part-time consultant until September 2009.

**David Coorey – BA, LLB (UNSW)**

David Coorey was appointed a Consumers' Director on 1 June 2009 and re-appointed for a further term of office on 11 May 2012.

He is currently a senior lawyer with the Consumer Law team of the Civil Litigation section of the Legal Aid Commission of NSW, which he joined in 2002. Since commencing with the Legal Aid Commission, he has been actively involved in policy work in consumer law, with particular interest in policy issues that affect consumers of insurance products.

He previously worked with the law firm Freehills for over three years, including a one year pro bono secondment to Kingsford Legal Centre. He is also a former member of the Insurance Council of Australia Consumer Reference Group. David has worked in various areas of civil law, including insurance, credit, consumer and trade practices litigation, as well as human rights and discrimination law.

**Jennifer Darbyshire – LLB (Hons), BA (Monash), LLM (London), GAICD**

Jennifer Darbyshire was appointed an Industry Director on 8 June 2012.

Jennifer is General Counsel & Company Secretary for National Australia Bank's (NAB's) UK Banking Operations. She previously led NAB's Product Regulation Resolution team, which provides strategic and technical legal advice across NAB's Australian and Asian operations and plays a key role in identifying and managing legal risks. The team also manages major litigation and large-scale non-litigious disputes. Jennifer is Chair of Heide Museum of Modern Art and from 2006 to 2011 was a director of St Vincent's & Mercy Private Hospital.

Jennifer has previously worked in private legal practice (including Mallesons in Melbourne and Linklaters in London) and in major Australian corporations (including Coles Myer). She has a corporate legal and executive background with extensive transactional, governance and regulatory experience.

**Catriona Lowe – LLB (Qld)**

Catriona Lowe was appointed a Consumers' Director on 1 June 2009 and re-appointed for a further term of office on 11 May 2012.

She was formerly Co-Chief Executive Officer of the Consumer Action Law Centre and is the Chair of both the Consumers' Federation of Australia and the ACCC Consumer Consultative Committee. She is also a Consumer Representative on the Telecommunications Industry Ombudsman Council and a member of ASIC's External Advisory Panel.

Before joining Consumer Action, she was a Director in the Australian Competition and Consumer Commission's Policy and Liaison Branch. Catriona was Deputy Director and the first Principal Solicitor of the legal practice at Consumer Law Centre Victoria and spent five years in private practice as a litigation lawyer. She has undertaken consumer advocacy on issues affecting Australian consumers across a range of markets, including financial services, utilities, telecommunications and general consumer products and services. Catriona has also served as a member of the Board of the National Information Centre on Retirement Investment (NICRI), a member of the NAB Social Responsibility Advisory Council, a member of the Insurance Council of Australia Consumer Reference Group and as a member of the Motor Car Traders' Guarantee Fund Claims Committee.





**Jennifer Mack – BA, MALP  
(Administrative Law)**

Jennifer Mack was appointed a transition director on incorporation of the company, for a term expiring on 31 May 2009, and when the new Board was formed on 1 June

2009 she was appointed a Consumers' Director. Jenni was re-appointed for a further term of two years on 11 May 2012.

Jenni is Chair of the independent consumer organisation Choice and of ASIC's Consumer Advisory Panel. She is also a member of ASIC's External Advisory Committee and is leading the effort to establish a new consumer organisation for superannuation consumers. She is an experienced director and sits on the boards of the Food Standards Authority and the Travel Compensation Fund. She is the Deputy Chair of the Advisory Board to the Office of the Migration Agents Registration Authority. In addition, she has been part of the leadership group working with the Commonwealth and States to develop a new front of pack food label to help consumers make healthier food choices.

Jenni is a former executive director of the Consumers' Federation of Australia, the peak consumer body. In the mid 1990s she was the NSW Deputy Legal Services Commissioner, responsible for handling complaints about lawyers, and she has represented the community on the NSW Judicial Commission (which, among other things, deals with complaints about judicial officers).



**Russell McKimm – Dip FP,  
FSIA, MSDIA, FAICD, ADA1  
& 2 (ASX)**

Russell McKimm was appointed a transition director on incorporation of the company, for a term expiring on 31 May 2009, and when

the new Board was formed on 1 June 2009 he was appointed an Industry Director. Russell was re-appointed for a further term of two years on 11 May 2012.

Russell is currently an Adviser with Patersons Securities Ltd, a current panel member for the ASX Disciplinary Tribunal and the ASIC Markets Disciplinary Panel, and a non-executive director of the G.W. Vowell Foundation Ltd.

His previous positions include Director with Shaw Stockbroking Ltd from 2005 to 2007, Director with Tolhurst Noall Ltd from 2001 to 2005 and Managing Director of Ord Minnett Ltd from 1988 to 1991. He holds a Diploma of Financial Planning from Deakin University and has studied at the Securities

Institute of Australia, where he was also a regular lecturer in their Certificate and Graduate Diploma courses before leaving Sydney. Russell is a past President of the Financial Planning Association (FPA) and a former board member of the FPA Complaints Resolution Scheme.



**Christopher McRae – BA,  
LLB (Sydney)**

Chris McRae was appointed an Industry director on 8 June 2012.

Chris is a director of McRae Services Pty Limited, an

incorporated legal practice specialising in financial services law, corporate governance and regulatory compliance, life insurance contracts review, drafting and settlement, stamp duty, superannuation and trustee services, consumer credit law, and financial services dispute resolution.

He is also a consultant to several of the Financial Services Council's (FSC's) larger members. Before establishing his legal consultancy in 2009, Chris held senior legal roles at AMP for over 25 years. He was Specialist Counsel for AMP Financial Services from 1998 to 2008 and Chief Legal Officer for AMP Society Australia from 1988 to 1998. He managed in-house legal teams in his time at AMP and represented AMP on FSC committees and in dealings with APRA and ASIC.



**Denis Nelthorpe – B Juris,  
LLB, AM**

Denis Nelthorpe was appointed a Consumers' Director on 1 June 2009 and re-appointed for a further term of two years on 11 May 2012.

He is the Manager of Footscray and Wyndham Legal Service and is Director of Legal Services with the Brimbank Melton Community Legal Centre. He was appointed Adjunct Professor of Law at Victoria University in July 2012 and is the Chair of the Code Compliance Committee for the Australian Liquid Petroleum Gas Association.

He is a past President of the Consumers' Federation of Australia and a past Chief Executive Officer of the Consumer Credit Legal Service from 1986 to 1991 and the Consumer Law Centre Victoria from 1993 to 1998. He was also the Director of the State Insurance Office Consumer Appeals Office from 1991 to 1992.

Denis was made a Member of the Order of Australia in the June 2011 Queen's Birthday Honours List.

## Independent directors

The Chair is required by the FOS Constitution to be independent and the FOS Board Charter prohibits a single individual from occupying the roles of Chair and Chief Ombudsman.

The FOS Board is comprised of individuals with expertise and knowledge as required by the FOS Constitution and none of the directors are executive directors.

While the directors, with the exception of the Chair, are required to represent the interests of industry or consumers, each understands his or her legal obligation as a director to put the needs of FOS before those of their own 'constituents'.

## Skills available to the FOS Board

The Board Charter states:

*Examples of the core technical competencies which should be found across the Board should include:*

- *Accounting and finance (Directors who have expertise in financial accounting).*
- *Business judgement (Directors who have a record of making good business decisions).*
- *Governance (Directors who understand and keep abreast of good governance practices).*
- *Knowledge of consumers' issues and needs (Directors with appropriate and relevant consumer movement-specific knowledge and experience).*
- *Industry knowledge (Directors with appropriate and relevant industry-specific knowledge and experience).*
- *Knowledge of internal and external dispute resolution.*
- *Human resource management (Directors who have experience and interests in Human Resource Management and staff welfare).*

In addition, if, in order to fulfil their duties under the law, a director believes they need to obtain independent professional advice, then FOS will consider meeting the reasonable costs of this advice, provided that the Chair gives prior approval to obtaining the advice and the advice is shared with all directors.

## Nomination committee

Since 2008, FOS has used a number of sub-committees of the Board to fulfil the functions of a nomination committee. These selection committees, all of which have their own charter, are:

- Board Selection Committee (Advisory Panels)
- Board Selection Committee (Chief Ombudsman)

- Board Selection Committee (Consumer Directors)
- Board Selection Committee (Consumer Representatives to the Panel)
- Board Selection Committee (Independent Chair)
- Board Selection Committee (Industry Directors)
- Board Selection Committee (Industry Representatives to the Panel)
- Board Selection Committee (Ombudsmen)
- Board Selection Committee (Panel Chair).

During the 2012-2013 financial year, the Board approved a formal Charter for, and established, a single standing committee to replace these nine ad-hoc selection committees. The Nominations & Remuneration Committee held its first meeting in December 2012 and meets once per quarter. Michael Lavarch is the Chair of this committee, with David Coorey and Russell McKimm being the other members.

For the 2012-2013 financial year, the following table sets out the meetings and attendances for the Nominations & Remuneration Committee:

	Actual attendance	Eligible to attend
Michael Lavarch	3	3
David Coorey	3	3
Russell McKimm	3	3

## Board performance

Board performance, including the performance of its committees and its individual directors, is evaluated through a combination of confidential self-assessment questionnaires and objective examination of key performance indicators and the achievement of projects listed in the FOS Business Plan.

## Principle 3: Promote ethical and responsible decision-making

Because FOS is an external dispute resolution scheme, its Constitution and Terms of Reference are reviewed and approved by the Australian Securities and Investments Commission (ASIC), in accordance with the principles set out in ASIC Regulatory Guide 139. FOS considers that this process, coupled with the additional transparency arising from its publishing of the Operational Guidelines to the Terms of Reference, adequately explains how FOS will conduct its operations and therefore a specific code of conduct is not required.



## Corporate governance (continued)

The standards of behaviour expected of FOS directors and employees are ingrained in the Board Charter, the FOS Code of Conduct, the FOS brand values and our dedication to integrity, independence and fairness.

### Principle 4: Safeguard integrity in financial reporting

The functions of an audit committee are carried out at FOS by the Finance & Risk Management Committee. Catriona Lowe is the Chair of this committee, with Robert Belleville being the other member.

The qualifications of both are listed above and a review of Recommendation 4.2 has determined that the current composition of the Finance & Risk Management Committee is appropriate to the needs of FOS.

The Committee, since its inception in 2008, has had a formal charter governing its area of responsibility. This Charter was last revised in October 2012 and approved by the Board.

The following table sets out the meetings and attendances for the Finance & Risk Management Committee for 2012-2013:

	Actual attendance	Eligible to attend
Robert Belleville	6	6
Catriona Lowe	6	6

### Principle 5: Make timely and balanced disclosure

This principle applies to companies that are subject to the ASX Listing Rule disclosure requirements, and as such has no direct relevance to FOS.

### Principle 6: Respect the rights of shareholders

As a public company, limited by guarantee, FOS does not have any shareholders. As a result, this principle has no direct relevance to FOS.

However, FOS is committed to respecting the rights of its stakeholders, particularly the FSPs who are members of the scheme and the consumers who use the service.

Information about FOS can be found on our website ([www.fos.org.au](http://www.fos.org.au)), by email ([info@fos.org.au](mailto:info@fos.org.au)), or by telephone (1300 78 08 08 for consumers, 1300 56 55 62 for members).

### Principle 7: Recognise and manage risk

While ultimate responsibility for risk oversight and risk management rests with the full board, the Finance and Risk Management Committee has operational oversight of these activities and the Senior Leadership Group has day-to-day operational responsibility for risk oversight and management.

Given the nature of the material business risks of FOS, the Senior Leadership Group is supported and advised by a Risk Management Working Group, chaired by the Company Secretary and comprised of:

- the Chief Financial Officer
- the Chief Information Officer
- the Manager – Stakeholder Engagement and Communications, and
- the Operations Manager – General Resolutions Group.

A Risk Management Report is presented to the Finance & Risk Management Committee at the end of each quarter, with significant issues being advised as necessary.

In addition, FOS is introducing a robust internal audit function to provide additional assurance in respect of its policies and procedures, particularly in respect of financial, human resources, legal and IT risks and responsibilities.

### Principle 8: Remunerate fairly and responsibly

The Board sets its own remuneration by consensus, in accordance with clause 4.15 of the FOS Constitution and on advice from the Nominations & Remuneration Committee. The Board also sets the remuneration of the Chief Ombudsman.

Responsibility for the company's remuneration, recruitment, retention and termination policies for all other employees has been delegated to the Chief Ombudsman, but significant changes to these policies are still ratified by the Board.

The remaining aspects of this principle are applicable to companies that are subject to the ASX Listing Rules, and as such have no relevance to FOS.



## Glossary

Term	Explanation
accepted dispute	a dispute that has passed through the Acceptance stage of our dispute resolution process – it can either have proceeded from the Registration stage into Acceptance or gone directly into Acceptance (compare to <i>registered dispute</i> )
ACR	authorised credit representative – a business that is authorised to engage in specified credit activities on behalf of a business with an Australian financial services licence or a credit licence from ASIC
ADR	alternative dispute resolution – ways of resolving disputes that do not involve going to court, such as conciliation and negotiation
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
consumer	An individual or small business owner who uses the services of a financial services provider
EDR	external dispute resolution – dispute resolution managed by an independent third party (the Financial Ombudsman Service is an EDR service)
financial difficulty	A consumer (individual or small business owner) may experience financial difficulty if they are unexpectedly unable to meet the repayment obligations on a credit contract
FSP	financial services provider
FSRA	Financial Services Reform Act
GFC	global financial crisis
IDR	internal dispute resolution – every member should have IDR processes in place to handle disputes they receive about their business
member	a financial services provider that is a member of the Financial Ombudsman Service
NCC	National Credit Code (part of the National Consumer Credit Protection Act 2009)
OECD	Organisation for Economic Co-operation and Development
Ombudsman	someone who investigates disputes between aggrieved parties (eg consumers and small businesses) and organisations (eg financial services providers) and mediates a fair settlement or makes a final decision on the matter
outcome	the way in which a dispute has been resolved or finalised
outcome type	the result or consequences of the resolution or finalisation of a dispute
product	a specific type of product within a product category (eg shares are a product within the securities product category)
product category	a group of products within a particular product line (eg securities are a product category within the investments product line)
product line	a broad line of products (eg investments)
registered dispute	a dispute that has entered the Registration stage of our dispute resolution process (compare to <i>accepted dispute</i> )
closed dispute	a dispute is closed once our handling of it is complete – this can be achieved through an agreement between the parties involved, through a decision by FOS, or because the dispute is discontinued or outside our Terms of Reference
RG 139	ASIC Regulatory Guideline 139 – this document sets out the requirements of how an organisation like the Financial Ombudsman Service can become an ASIC-approved EDR scheme and how they have to operate and report to maintain that approval
sales/service channel	the channel a consumer used to purchase or get advice about the product in dispute
TOR	Terms of Reference – the document setting out the broad rules and processes that the Financial Ombudsman Service follows



FINANCIAL  
OMBUDSMAN  
SERVICE

## Contact us

Our website contains comprehensive information about our services. You can also contact us by phone, email or mail.

Website **[www.fos.org.au](http://www.fos.org.au)**

Phone **1300 78 08 08\***

Email **[info@fos.org.au](mailto:info@fos.org.au)**

Mail **GPO Box 3 Melbourne VIC 3001**

*\* 9am–5pm AEST/AEDT. Calls will be charged for the cost of a local call from landlines. Calls from mobile phones will be charged at the applicable rate from your carrier.*

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Sovereign Silk A2 is proudly made FSC certified by Hankuk paper who also carry the ISO 14001 EMS accreditation. Manufactured with elemental chlorine free pulps and now available as optional carbon neutral for an additional extra charge. Full 'cradle to grave' LCA completed according to international standards.