



Interim Report  
of the  
Arbitrator for Financial Services

2016/2017

## A. INITIATION

The Office of the Arbiter for Financial Services (OAFS) commenced its operations on the 23 May 2016 setting base in a premises in Floriana assigned to it by the Ministry for Finance. The first formal complaints were filed during the last week of June.

We started literally from scratch, having no staff complement and barely any furnishings. The Office needed to invent itself swiftly but surely.

I was more than conscious that being the first Arbiter for Financial Services, I had to establish a professional structure complimenting a practical, efficient and just adjudication process.

Our indomitable task was to recruit the right personnel possessing not only the appropriate academic qualifications but also the right soft skills to create a pleasant working environment where each member of staff would consider himself/herself part of a team. We have partly succeeded in that but our challenge for the coming year would be to find additional staff especially in the fields of investment analysis and mediation.

## B. PROCEDURE

Act XVI of 2016 provides for the right balance between a just yet flexible procedure. Having spent more than thirty-three years plying from one Court Hall to another, I felt determined to adopt the pluses of our judicial system on one hand whilst ditching burdensome practices that hinder speedy processes on the other.

During the first few weeks in office, I admit having to struggle in convincing practitioners on the benefits of having a specialised Tribunal which is not saddled with an elaborate, pedantic and complex procedure. Indeed, the outstanding advantages of a Tribunal include less formality, the overall abandonment of bureaucracy, the efficiency in determining cases and the prospect of less costly procedures.

## C. PROFESSING ADR

The advantages of an Alternative Dispute Resolution procedure are manifest. First and foremost, contestant parties are actively encouraged to reach an amicable settlement. The law itself burdens the Arbiter with the responsibility to establish a mechanism for effective mediation.

To this effect, an official has been assigned to organise mediation sessions. Nevertheless, I must state that in spite of all the legitimate efforts undertaken by the OAFS, up till now, the concept is yet to sink in with services providers in particular who are being quite resistant to the idea of mediation.

Our aim is to intensify our efforts in this area whilst recruiting other personnel in the process. Hopefully, by time and conviction, respective parties would realise that it pays to achieve a 'less pleasant' but mutually agreed solution, rather than a 'great' decision by the Arbiter.

#### D. TIMEFRAMES

A positive aspect of the law is the onus it conveys on the OAFS to conclude proceedings in a short period of time. In no uncertain terms, our experience so far has shown that the established time-limits may be too short, unrealistic and need to be revisited.

Whilst holding high a very pragmatic approach, this Office notes that a three-month period for the determination of a case from its inception is inadequate. One has only to consider that the service provider alone is allowed a 20 day timeframe to reply to a complaint, a few other weeks allotted for the mediation process, at least one mandatory hearing presided by the Arbiter, time to compile evidence and documentation, time for respective submissions, and time for technical research and contemplation which leads to the final stage being the composition and writing of the actual decision.

In essence, I am not suggesting long timeframes as that would defeat the scope of having an efficient and effective procedure. However, perhaps a more modest way in which the law could be amended is to follow the requirements of the ADR Directive which specifies that, for cases which are not complex, the period of 90 days will start running from the day when the Arbiter has all the required material to form a studied opinion.

#### E. INNOVATION

During the short period of our existence, the OAFS has made full use of technology. In concert with the rest of the team, our Customer Relations Officer has succeeded in addressing a number of cases over the phone. Such is one important service that the Office would like to enhance: issues forwarded by customers being solved to their satisfaction without the actual necessity of them having to come over to our offices. It is to be understood that this service applies only to comparatively small and straightforward cases, which are nevertheless numerous. During its six-month period of operation, this Office managed to solve 162 such cases and queries.

Another innovation is the use of email for the notification of certain acts: an efficient tool being effectively used by professional practitioners among themselves and clients alike.

Furthermore, in order to avert travelling disturbance, hassle and certainly expense to complainants residing abroad, we are even conducting their hearings via Skype.

Moreover, as we shall continue to insist on the strict observance of time-frames in producing evidence and filing of submissions, this Office takes it upon itself to support professionals in the fullest possible way. By managing a detailed database, my assistant serves professionals as an aide memoire, alerting them in anticipation for coming deadlines and time-frames. This coordination is proving its worth and time frames are being respected leading to processes being kept on track.

## F. CASE LOAD

To date, this Office has received 551 complaints, of which a substantial number have been grouped together as one case in accordance with Section 30 of CAP 555 of the Laws of Malta as the merit of their complaint was intrinsically similar. We are also in the process of grouping another batch of 39 complainants into one other single case on the basis of similar pretences.

The majority of cases concern investments. Other cases invoke issues encountered with insurance business and to a lesser extent others relate to banking.

Although this Office is satisfied that in just over a few months, it has already accomplished agreeable results, our ongoing ambition is to achieve even more, for the benefit of both complainants and the financial services industry in general.

The Arbiter's decisions should guarantee a fair deal to customers and service providers alike. As much as the Arbiter is expected by law to arrive at a just, reasonable and equitable decision through a procedurally fair process, I am also conscious of the fact that concurrently with filing of genuine complaints, other complainants may see this Office as an opportunity to have 'a sporting chance'.

## G. LOOKING AHEAD

In its march to reach its first year of operation and thereafter, the OAFS intends holding further meetings with customers' associations and representatives from the financial services industry to establish a clearer common understanding thus enhancing cooperation with our Office. I will also take the opportunity to drive home the advantages of successful mediations.

Our priorities for the coming year shall be inter alia: the recruitment of additional technical staff; a programme for staff training; the establishment of an effective link with MCAST and the University of Malta to encourage them to design courses addressing our needs; and offering their students a window of opportunity.

We also intend to approach the Central Bank of Malta and MFSA to seek cooperation agreements and capitalise on certain areas of their expertise.

The OAFS shall similarly cooperate with the legislator to improve existing legislation and the promulgation of new norms to converge our service with the principle of justice in real time.

On an international level, the OAFS shall maintain its participation in FIN-NET and other ADR associations. This would enrich us in terms of expertise and the sharing of best practices. We shall equally act as net contributors for the dissemination of a culture propagating fairness and effective redress to customers. This objective falls squarely within an environment of consumer protection translating itself to the enhancement and further development of the financial services industry, the latter forming an important component of our economy.

A satisfied customer is a guarantee for economic growth.

I give my assurance that my Office shall continue to work earnestly in an open, transparent and correct manner, embracing constructive criticism. We look forward to embrace and implement sincere suggestions with the primary aim of moulding the Office of the Arbiter for Financial Services into an efficient and effective model to follow.



**Dr Reno Borg**  
*Arbiter for Financial Services*

12 December 2016