



BANCA D'ITALIA
EUROSISTEMA

The Banking and Financial Ombudsman Annual Report Abridged Version





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FOREWORD

With the Report on the Activity of the Banking and Financial Ombudsman (Arbitro Bancario Finanziario, ABF) the Bank of Italy fulfills its obligations under Credit Committee Resolution 275 of 29 July 2008 and the provisions on alternative dispute resolution relating to banking and financial transactions and services (ABF Provisions).¹

The Report gives an account of the Banking and Financial Ombudsman's activity in 2013 and is published on www.arbitrobancariofinanziario.it, where further general information can be found on how the system works and the related laws and regulations.

The Report is divided into five sections. The first, preceded by a brief introduction to the role of the Banking and Financial Ombudsman, illustrates how the system works. A description is given, in relation to the Ombudsman fourth year of activity, of the composition and functioning of the panels, the tasks carried out by the Bank of Italy's support structures, including external communications, new legislation, and links with other alternative dispute resolution systems at the European level.

Section 2 gives statistical information on appeals, the decisions and activities of the panels in 2013 and in the first half of this year. Section 3 describes the most important issues addressed in 2013 and some questions dealing with the limits of the Ombudsman's jurisdiction. Preliminary information on 2014 cases is contained in Section 4.

To facilitate the dissemination of the decisions, already published anonymously on the ABF's website, Section 5 illustrates some of the decisions issued in the course of 2013 in relation to the main banking and financial products and services. There are also boxes on the decisions of the Coordinating Panel. The Report concludes with a Statistical Appendix on the appeals to the Ombudsman during the year, and some charts that summarize the composition of the regional panels and the Coordinating Panel.

This abridged version contains the first two sections.

(1) Provision of the Governor of 18 June 2009 as amended.

1. THE ACTIVITY OF THE BANKING AND FINANCIAL OMBUDSMAN

The Banking and Financial Ombudsman: What it is

In 2009 the Bank of Italy instituted the Banking and Financial Ombudsman (Arbitro Bancario Finanziario, ABF), implementing Article 128-*bis* of the Consolidated Law on Banking, a provision introduced by Law 262/2005, in the framework of the initiatives promoted by the European Union concerning alternative dispute resolution systems.

The Banking and Financial Ombudsman provides a simple, rapid and effective means of settling disputes between intermediaries and their customers. It performs its functions autonomously and has complete and exclusive decision-making powers for the matters within its competence.

The Bank of Italy is entrusted with regulatory tasks, appoints the members of the decision-making body and is responsible for certain auxiliary activities, for which it makes means and resources available, including through technical secretariats established at the branches of the Bank where the Ombudsman's panels operate.

In disputes regarding banking and financial services, including payment services, customers can file an appeal with the ABF for an extremely modest fee and without the assistance of a lawyer. The appeal may be presented only after the customer has sent a written complaint to the intermediary.

Italian intermediaries entered in the registers kept by the Bank of Italy and foreign intermediaries operating in Italy that do not participate in a scheme belonging to the European financial dispute resolution network, Fin-Net, are required to participate in the system.

The disputes are submitted to a decision-making body composed of three territorial panels. Each panel is composed of five members appointed by the Bank of Italy, of whom three (including the chair) selected by the Bank and two designated by the associations representing, respectively, intermediaries and customers (see the charts in the Appendix for the panels' current composition).² Appointees must satisfy specific requirements of expertise, independence and impartiality.

(2) For consumers, the members are designated by the National Consumer Council; for professionals/business owners, they are designated by Confindustria acting in agreement with Confcommercio, Confartigiano and Confagricoltura; for intermediaries, they are designated by the Banking and Financial Conciliator.

Decisions are taken on appeals within a maximum of 105 days, of which 45 are allotted for the intermediary to submit a defence brief³ and 60 for deliberations, save in the case of periods of suspension. The parties are notified of the decision and the grounds for it within 30 days.

The Ombudsman is a decision-making alternative dispute resolution scheme: disputes are resolved through the decision of a third party that examines the case exclusively in the light of the documents presented by the parties and decides on the basis of the questions raised by the customer. In addition, the Ombudsman may make recommendations to the intermediary with a view to improving customer relations.

Decisions, which are left completely and exclusively to the panels, are taken on individual cases according to law, by applying the statutory and regulatory provisions that govern the matter of dispute and the general principles of civil and trial law.

The Ombudsman's decisions are not legal judgments: they are not legally binding on the customer or the intermediary and they do not affect the possibility of submitting the dispute to the civil courts.

The cogency of the ABF's decisions lies in their authoritative quality and impartiality. If an intermediary refuses to comply with a decision, notice of its non-compliance is published on the ABF's website.

The Ombudsman's activity is aimed not only at restoring balance to the individual relationships in which disputes arise, but also at fostering the efficiency and competitiveness of the financial system. Effective mechanisms for settling disputes encourage respect for the principles of transparency and correctness in customer relations, strengthen public confidence in the providers of banking and financial services, and constitute a useful means of controlling legal and reputational risks, to the benefit of the stability of intermediaries and of the financial system as a whole.

Analysis of the panels' decisions enables banks' complaints offices to perform their duties with a view to resolving disputes already during the complaints-handling stage. It offers intermediaries' governing bodies, internal audit departments and compliance officers elements for assessing the legitimacy and correctness of their institutions' operational practices.

The activity of the Banking and Financial Ombudsman supplements the information available to the Bank of Italy in the performance of supervision, in conformity with the principle of mutual independence between the Bank and the Ombudsman.

(3) The intermediary must transmit its defence brief to the competent technical secretariat within 30 days of receipt of the appeal. If the intermediary is a member of a qualified trade association, it has the same time limit of 30 days to transmit its defence brief to that association, which within 5 days of receiving it must forward it to the technical secretariat.

The Bank of Italy’s commitment to supporting the work of the Ombudsman is significant and includes the human resources and technical means it makes available. The Bank’s attention to the Ombudsman and to consumer protection is confirmed by the importance assigned to the Ombudsman within a new directorate, the Consumer Protection and Anti-Money Laundering Directorate, established during the recent reorganization of the supervisory function.

The Bank has also assigned specific importance to the activity of the ABF as part of its 2014-16 Strategic Plan, undertaking to improve the working of the system.

The variety of cases that the Ombudsman has dealt with and the large number of decisions it has issued form a rich body of information that can be tapped by research in a diversity of fields. The Ombudsman’s decisions are published in the leading law reviews and have been closely examined in particular by scholars of banking law.

The statistical tables and the charts that complete this Report provide quantitative data on the disputes considered by the Ombudsman and show their geographical distribution. Together with the review of the ABF’s main decisions, they can be of use to intermediaries, jurists, trade associations, customers and the general public.

The fourth year

In its fourth year of operation the ABF registered another substantial expansion of activity, confirming that it is highly appreciated by customers as an alternative dispute resolution mechanism. The technical secretariats at the main branches of the Bank of Italy in Milan, Rome and Naples performed intensive auxiliary and preparatory activity for the Ombudsman’s three decision-making panels, without prejudice to the complete independence of the ABF in making its decisions.

Territorial jurisdiction of the ABF panels



The Ombudsman received 7,862 appeals, 39 per cent more than in 2012. More than 650 customers a month submitted appeals to it for a decision on complaints

against a bank or other financial intermediary for improper dealings or disputes on mutual rights, obligations, and prerogatives.

More than 6,300 appeals were decided in 2013, an increase of 2,000 on the previous year. In 70 per cent of the cases the outcome was favourable to the complainant; in 36 per cent the panel decided for partial or total acceptance of the complainant's request, and in another 34 per cent it declared the dispute settled by agreement between the parties, obviating the need for a decision.

The data make it clear that there is scope for favouring the resolution of disputes before an appeal to the Ombudsman is filed.

Although the Ombudsman's decisions are not legally binding, there is a very high rate of compliance with them on the part of intermediaries. This has fostered the significant increase in recourse to the alternative dispute resolution system, thanks to the steady increase in customers' awareness of the ABF. The power of the decisions, that is, stems from the authoritative status of the system and the reputational damage deriving from the public announcement of an intermediary's non-compliance.

Make-up and functioning of the territorial panels and the coordinating panel

The membership of the panels changed again in 2013. At the designation of the National Consumer Council (Consiglio nazionale dei consumatori e degli utenti), six members of the territorial panels (two effective and four alternate) were appointed to new three-year terms.

In the early part of 2014 the appointments of two effective members were renewed – one designated by the Bank of Italy and one by Confindustria in concert with Confcommercio, Confartigianato and Confagricoltura. In addition, six alternates were named, one designated by the Bank of Italy, three by Confindustria and two by the Banking and Financial Conciliator (Conciliatore Bancario Finanziario); the terms of two alternates designated by Confindustria and one designated by the Conciliator had expired, and two other alternates, one designated by the Bank of Italy and one by Confindustria, had resigned.

The appointments are posted on the websites of the Bank of Italy⁴ and the ABF.⁵

At present the panels consist of 58 members (21 regular members and 37 alternates). Of these, 22 (9 regular members and 13 alternates) were designated by the Bank of Italy. The rest were designated by the Banking and Financial Conciliator (6 regular members, 10 alternates), by the National Consumer Council (3 regular members, 8 alternates) and by Confindustria (3 regular members, 6 alternates).

(4) www.bancaditalia.it/media/notizie.

(5) www.arbitrobancariofinanziario.it.

The Coordinating Panel – operational since 2012 to ensure greater uniformity in the panels’ decisions and to limit interpretative divergences – is composed of the chairs of the three territorial panels plus one member representing intermediaries and one representing customers, chosen annually by lot. The panel is chaired by the most senior of the three territorial panel chairs.⁶

For better specification of the procedure for submitting cases to the Coordinating Panel, the regulation governing the operation of the decision-making bodies was amended. In particular, it was determined that the case must be submitted to the Coordinating Panel when the actual or potential divergence concerns procedural or jurisdictional questions.

The Coordinating Panel met twice in 2013 and made 24 decisions, which were published on the ABF website. The most important matters dealt with interest rates that became legally usurious subsequent to the signing of the loan contract, safekeeping obligations for credit cards and passwords, the conditions that can be applied to postal savings certificates, and the ABF jurisdictional rules.

The pronouncements of the Coordinating Panel help ensure more uniform practices on the part of the ABF and also foster more consistent, uniform handling of complaints on the part of intermediaries.

The technical secretariats and the central coordinating unit at the Bank of Italy

The technical secretariats of the three panels of the ABF’s decision-making body, established at the Bank’s Milan, Rome and Naples main branches, carry out the procedural activities for the appeals in their respective jurisdictions. In particular, they: (a) collect the appeals; (b) check that the documentation submitted by the parties is complete and in order, and that the time limits are complied with; (c) request additional information, if necessary; (d) notify the parties and prepare a technical report for the members of the panel.

The technical secretariats also perform the formalities necessary to the functioning of the panels: they prepare the calendar and the agenda of the panels’ meetings for approval by their respective chairs and transmit the notices calling the meetings. Lastly, they attend the meetings of the panels and draw up the minutes.

Once decisions are taken, the technical secretariats file them in the electronic archive of decisions, verify due compliance and arrange for the forms of public notice in the event of non-compliance.

The technical secretariats also respond to requests for information from complainants and other entitled persons.

(6) Where seniority of service is equal, the older person is deemed to be senior.

In 2013 and the first few months of 2014, the staff of the technical secretariats was increased by 15 members to 61: 25 in Milan, 19 in Rome and 17 in Naples.

Thirty new graduates in law have completed six-month internships at the technical secretariats and the central coordinating unit, to supplement their university training with practical experience in the Ombudsman.

Appeals to the Ombudsman may be filed at all of the branches of the Bank of Italy, which forward the documentation to the competent technical secretariat.

The central coordinating unit, currently part of the Customer Protection and Anti-Money Laundering Directorate, acted as liaison office for the technical secretariats and the panels and helped solve problems of IT support.

Legislative developments

The ADR Directive. – The European directive on alternative dispute resolution of consumer disputes (ADR Directive)⁷ and the related regulation on online dispute resolution for consumer disputes (ODR Regulation)⁸ were approved on 21 May 2013.

The directive aims at ensuring that ADR entities satisfy harmonized quality requirements, in line with the basic principles laid down in the European Commission's recommendations for the handling of consumer disputes,⁹ while the regulation aims at creating a European online dispute resolution platform that consumers and professionals can access directly.

ADR systems and the ODR platform are interconnected and complementary instruments: the ODR platform will provide a single access point for online dispute resolution through affiliated ADR entities.

The time limit for transposing the directive is 9 July 2015.¹⁰ The regulation will apply starting 9 July 2016 except for a number of specified provisions, which will apply earlier.¹¹

The purpose of the legislation is to strengthen consumer confidence in the proper functioning of the internal market. To this end, it seeks to eliminate the main shortcomings that compromise the effectiveness of ADR schemes, including: (a) their inadequate sectoral and geographical coverage within the European Union; (b) insufficient information concerning the competent scheme; and (c) the failure of many ADR entities to satisfy the quality requirements specified by the Commission.

(7) Directive 2013/11/EU of 21 May 2013.

(8) Regulation (EU) No. 524/2013 of 21 May 2013.

(9) Recommendations 98/257/EC of 30 March 1998 and 2001/310/EC of 4 April 2001.

(10) The procedure for transposition of the directive was begun with the presentation of the draft law of European delegation 2013 (second semester).

(11) The provisions already applicable with effect from July 2013 include that providing for the development of the ODR platform by the European Commission (Article 5, paragraph 1).

The directive establishes that the persons in charge of ADR entities must satisfy requirements of expertise, independence and impartiality, and that ADR must observe the principles of transparency and fairness in dispute resolution.

To guarantee the effectiveness of ADR, member states must ensure that it is available and easily accessible by both parties. The outcome of a dispute must be notified within 90 days of the date of receipt of the appeal.

The directive also envisages the creation of a system for monitoring the functioning of ADR entities, entrusted to an authority designated by each member state for verifying national ADR entities' compliance with the quality requirements.

The ODR Regulation calls for the creation of a website that will allow complaints to be presented at no cost by means of an electronic form available in all the official languages of the Union's institutions, which, when completed, will be transmitted automatically to the competent ADR entity.

Alternative dispute resolution of cross-border cases: Fin-Net

Fin-Net is a network promoted by the European Commission in order to assist the development and cooperation of ADR schemes in Europe. The ADR schemes of Europe's banking, financial and insurance sectors participate in Fin-Net. Italy's Banking and Financial Ombudsman has been a member of Fin-Net since 2011.

The network allows consumers who have a dispute with an intermediary in another member state to turn to their national ADR scheme, which, with the assistance of the network, will put them in touch with equivalent scheme in the country where the intermediary operates.

Fin-Net currently has 56 member ADR schemes from the countries of the European Union plus Iceland, Liechtenstein and Norway.

Under the aegis of the European Commission, the network organizes periodic meetings on issues of common interest. The meetings permit ADR scheme operators to exchange information and experiences, thereby fostering the dissemination of international best practices. The meetings also examine the latest regulatory and legislative developments concerning financial services and consumer protection.

In 2013 the Fin-Net meetings were held in Brussels in March and London in November; discussion centred on the ADR Directive and the ODR Regulation, which were approved during the year.¹²

Appeal to the Ombudsman

The Banking and Financial Ombudsman can decide on all disputes regarding banking and financial transactions and services, provided the amount of the claim

(12) More information on Fin-Net is available, in English, at ec.europa.eu/internal_market/fin-net/index_en.htm. In addition, the European Commission publishes an annual report on the network's activity.

does not exceed € 100,000. No limit applies as to amount if the request is only for the ascertainment of rights, obligations and prerogatives.

Before presenting an appeal to the Ombudsman, it is necessary to send a written complaint to the intermediary; if the intermediary does not respond or its response is unsatisfactory, the customer may lodge an appeal with the Ombudsman within twelve months.

The Ombudsman cannot decide when the dispute: (a) is not within its competence (for example, it concerns investment services and activities or in any case involves goods or services other than banking and financial services); (b) concerns transactions or conduct before 1 January 2009; (c) is already under examination by the judicial authorities; (d) has already been submitted to arbitration or where a conciliation or mediation procedure is pending (in the latter case, recourse to the ABF is possible only if the procedure fails).

In addition, an appeal is inadmissible when: (a) it is filed more than 12 months after the complaint was presented to the intermediary; (b) the customer or the intermediary is indeterminate or the appeal is lodged against agents that are not intermediaries; (c) the complaint filed with the intermediary is lacking; (d) the appeal is not presented using the proper form or is not signed.

For details on the procedure for presenting appeals, see the Practical Guide available on the ABF's website.

2. DATA ON APPEALS AND OPERATIONS

Overview

The data on the appeals submitted to the Banking and Financial Ombudsman in 2013 confirm the pattern observed in 2012. That is, the number again rose sharply, although the 39 per cent increase represented a slowdown from the 58 per cent increase of 2012. The monthly average rose from 471 to 655. The increase reflects stepped-up utilization by customers and, more generally, the expanding role of the Ombudsman among Italian alternative dispute resolution mechanisms.

There were 164 panel meetings in 2013, deciding an average of 39 cases per meeting, up from 28 in 2012.

The tables in the statistical appendix describe the characteristics and geographical distribution of the appeals. Under the provisions governing the ABF, data are also given on the procedures involving each intermediary during the year, including instances of non-compliance and the number of decisions against it.

The statistical data

The statistics on appeals, outcomes and the activities of the panels are given below.

Aggregate

The Ombudsman received 7,862 appeals in 2013. The largest number was submitted to the North panel, while the sharpest increase was recorded by the South panel.

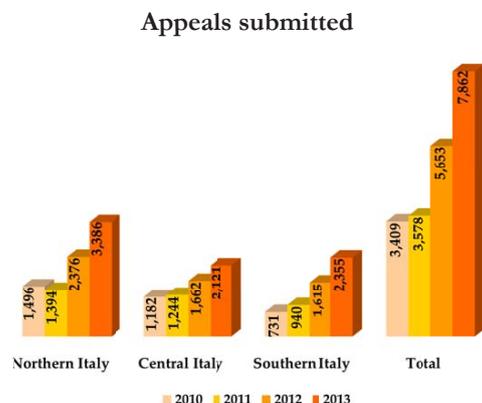
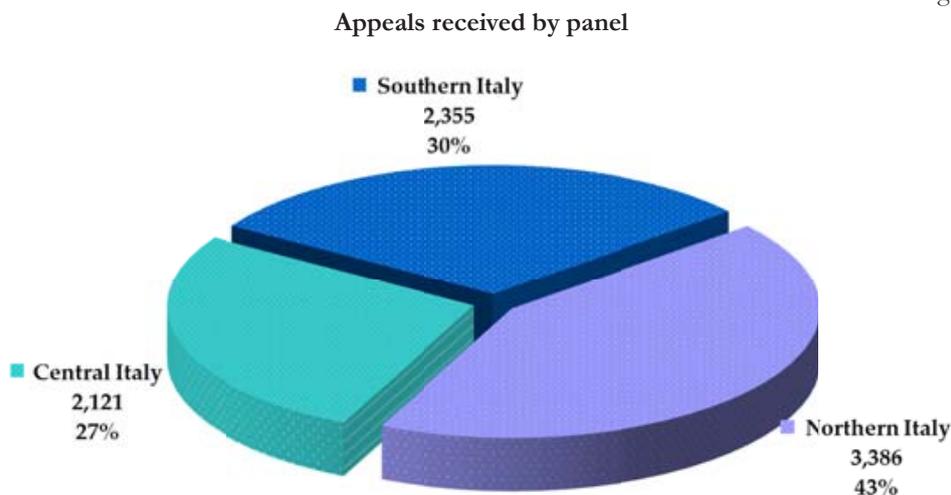


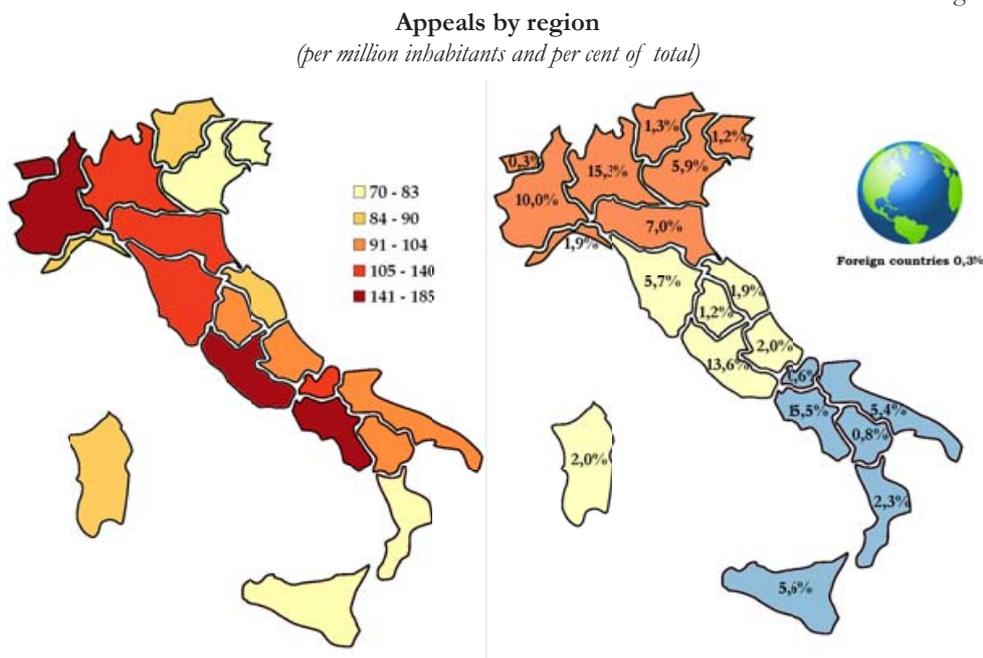
Figure 3

Figure 4



The regions where the most appeals were lodged with the Ombudsman were Campania and Lombardia. In proportion to population, four regions registered more than 140 appeals per million inhabitants: Campania, Lazio, Piemonte and Valle d'Aosta.

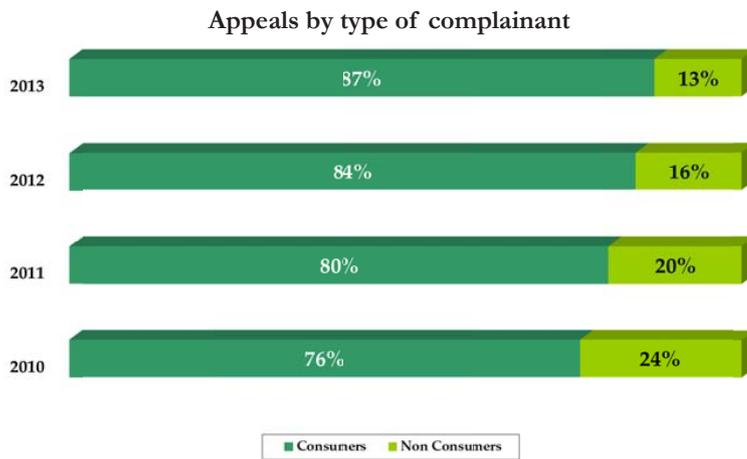
Figure 5



In submitting their appeals, complainants preferred to go through the Bank of Italy technical secretariats and their branches. The number of appeals submitted via certified e-mail also increased.

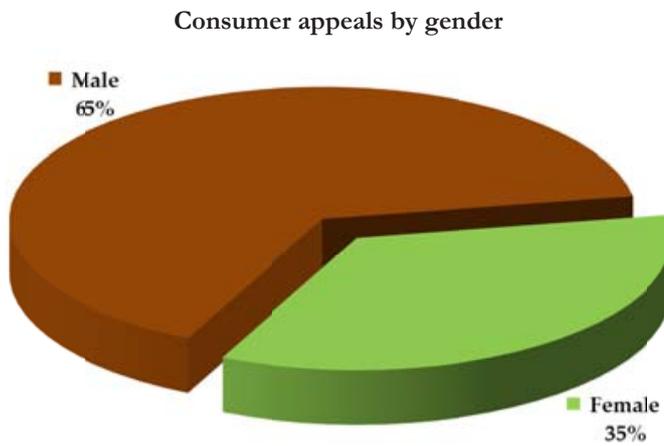
Again last year appeals by consumers were predominant, their share increasing by 3 percentage points compared with 2012.

Figure 6



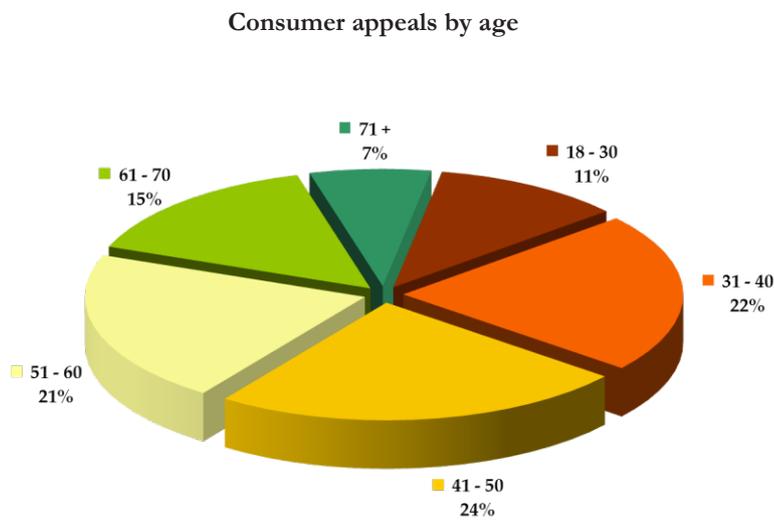
Most of the complainants were men. Their average age was 48.

Figure 7



By age group, the largest number of appeals was presented by persons aged 41-50.

Figure 8

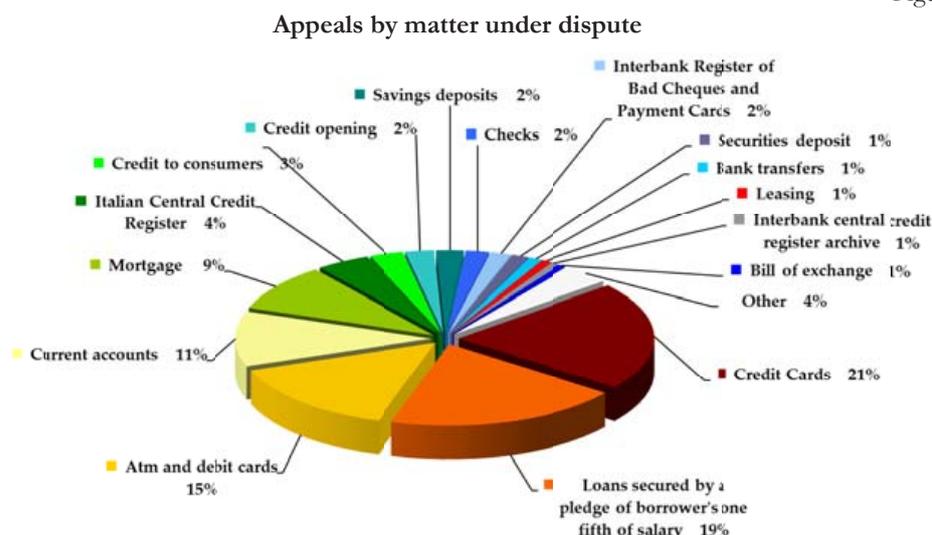


The matter under dispute

Again in 2013 appeals to the panels concerned a wide variety of matters, with some changes in their distribution by type of banking or financial service.

Appeals involving credit cards, debit cards and other payment cards accounted for 36 per cent of the total.

Figure 9



There was a significant increase in the number of appeals concerning loans secured by a pledge of one-fifth of the borrower's salary. These outnumbered appeals involving debit and credit cards and those involving current accounts. The latter constitute a smaller proportion of appeals than the other matters considered.

Figure 10

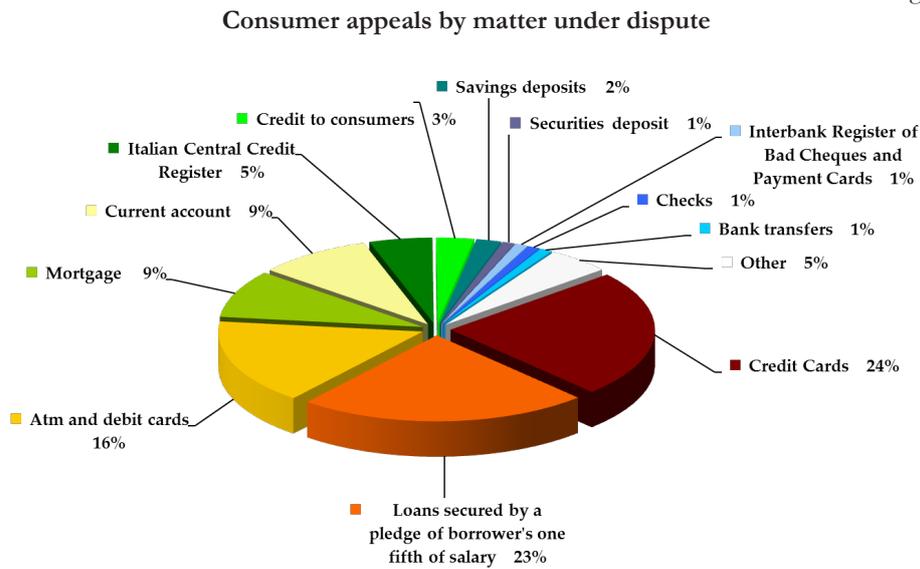
Appeals by matter under dispute: comparison with previous year

2013	2012	Issue of dispute	2013		2012	
			unit	% on total	unit	% on total
1	(1)	Credit cards	1,603	21.4	1,100	21.4
2	(4)	Loans secured by a pledge of borrower's one fifth of salary	1,458	19.4	543	10.6
3	(2)	ATM and debit cards	1,108	14.8	815	15.9
4	(3)	Current accounts	813	10.8	741	14.4
5	(5)	Mortgage	697	9.3	510	9.9
6	(6)	Italian Central credit register	331	4.4	246	4.8
7	(8)	Credit to consumers	216	2.9	182	3.5
8	(11)	Credit opening	177	2.4	116	2.3
9	(13)	Savings deposits	167	2.2	109	2.1
10	(9)	Checks	143	1.9	170	3.3

The distribution of appeals by matter differs between consumers and non-consumers.

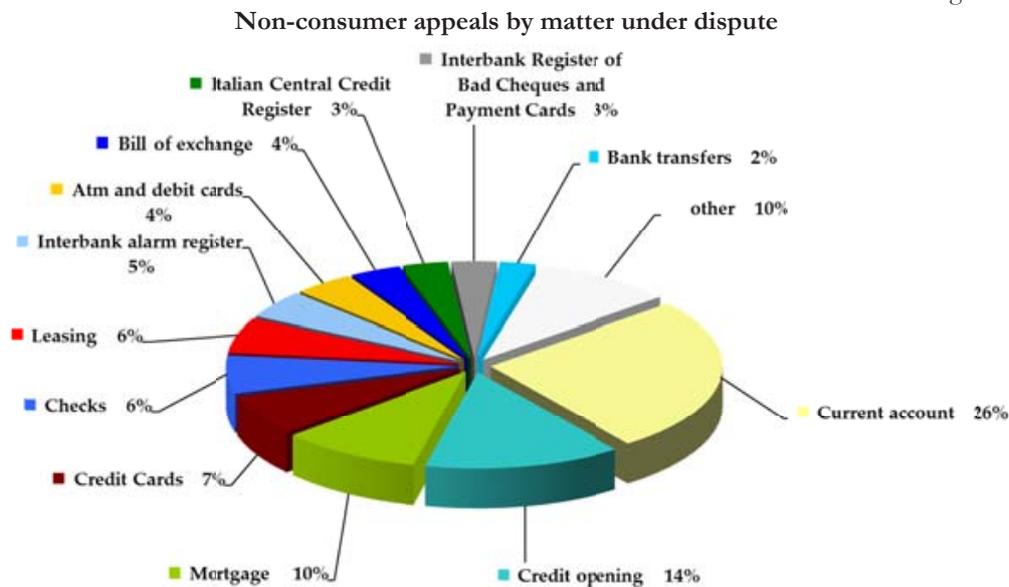
Nearly half of the appeals from consumers concern credit cards and loans secured by a pledge of salary.

Figure 11



Appeals by non-consumers (which increased from 888 in 2012 to 1,020 in 2013) mainly involve current accounts, lines of credit and loans.

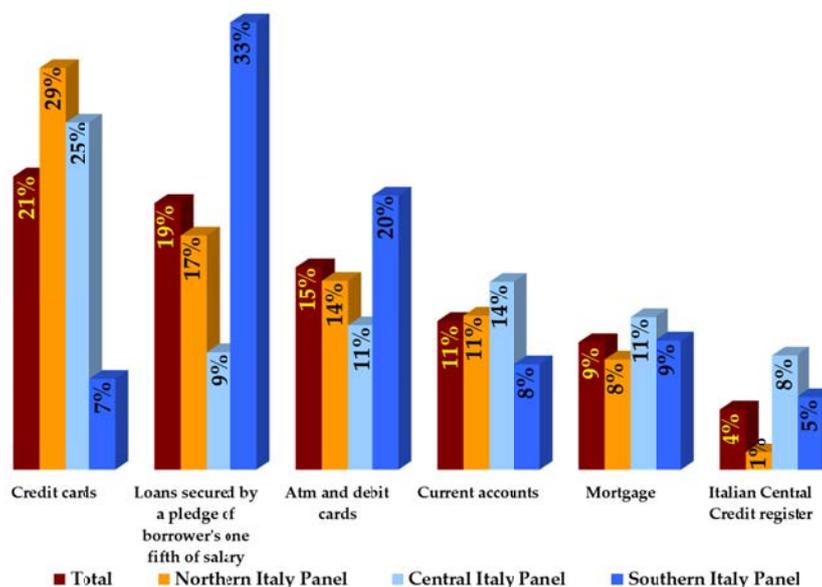
Figure 12



The distribution of appeals by matter also differs according to geographical area. Appeals involving credit cards accounted for 29 per cent of the total at the Northern Italy panel, 25 per cent at the Central Italy panel and 7 per cent at the Southern Italy panel. Those concerning loans secured by a pledge of salary accounted for 33, 17 and 9 per cent respectively.

Figure 13

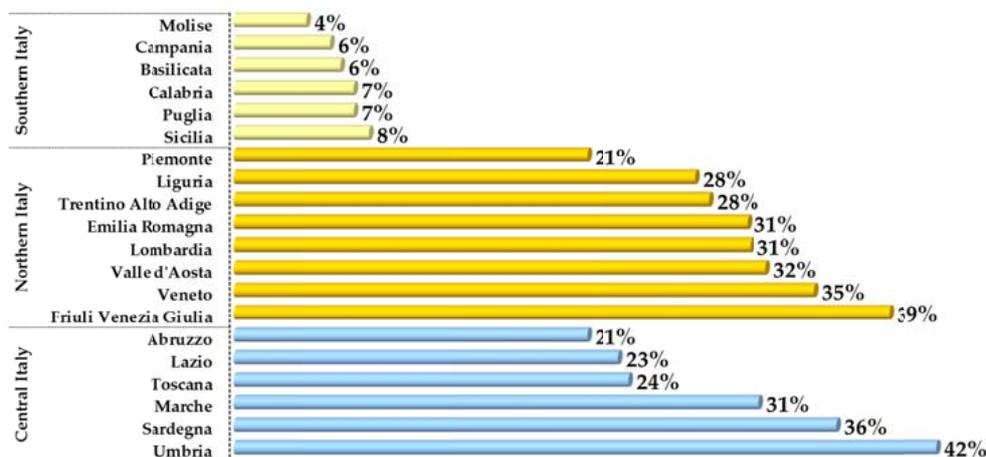
Appeals by matter under dispute and geographical area



By single region, the relative importance of disputes involving credit cards and loans secured by a pledge of salary differed significantly (Figures 14 and 15).

Figure 14

Credit cards: share of appeals by region
(per cent)



The relative importance of the various matters under dispute also varies with type of intermediary. Appeals seeking redress from financial companies registered pursuant to Article 106 and Article 107 of the Consolidated Law on Banking¹³ mostly involved

(13) For financial companies, reference is to entry in the general register pursuant to Article 106 or the special register pursuant to Article 107 of the text currently in force, pending amendment with the completion of the reform initiated by Legislative Decree 141/2010.

questions relating to loans secured by a pledge of one-fifth of salary (88 per cent for Article 106 and 60 per cent for Article 107 intermediaries). Appeals in respect of banks are more evenly distributed.

Figure 15

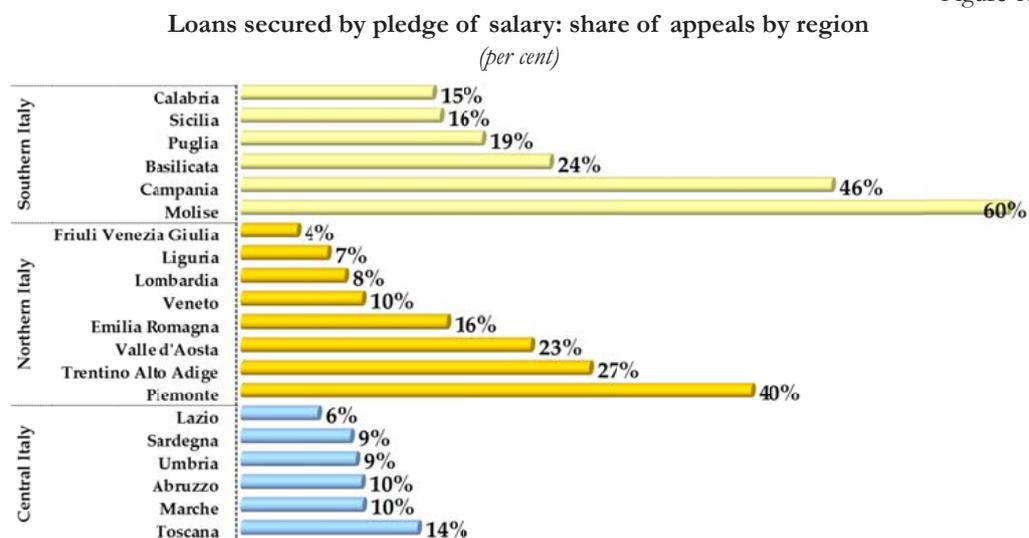


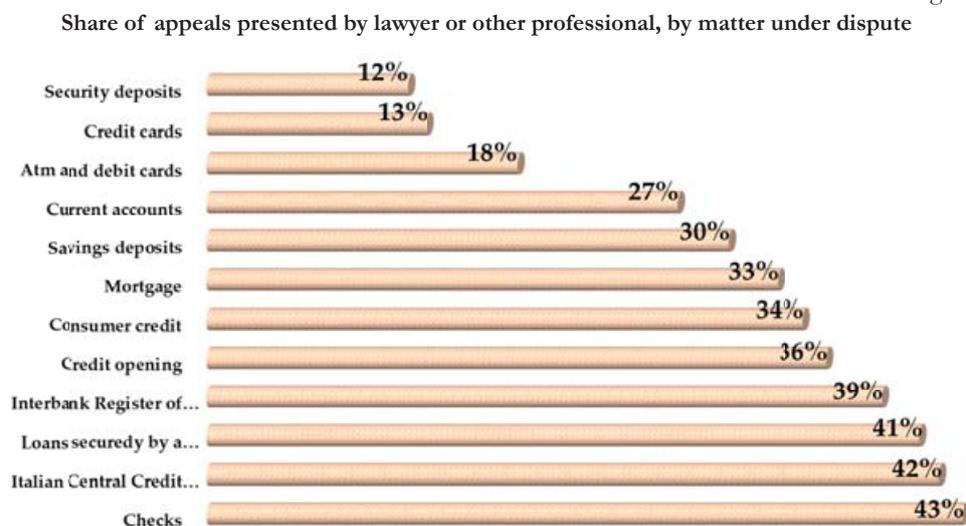
Figure 16

Matter under dispute by type of intermediary
(per cent)

Issue of dispute	System	Bank	Article 107 intermediary	Payment	Article 106 intermediary
Credit cards	21	8	4	82	0
Loans secured by a pledge of borrower's one fifth of salary	19	16	60	0	88
Atm and debit cards	15	13	0	5	2
Current accounts	11	15	0	6	0
Mortgage	9	17	2	0	3
Italian Central Credit register	4	5	12	3	0
Consumer credit	3	2	10	0	3
Credit opening	2	4	0	0	0
Savings deposits	2	1	0	0	0
Checks	2	3	0	0	0
Other	10	15	12	5	3
Total	100	100	100	100	100

Of the appeals submitted in 2013, 28 per cent were presented on behalf of the complainants by lawyers or other professionals, up from 22 per cent in 2012.

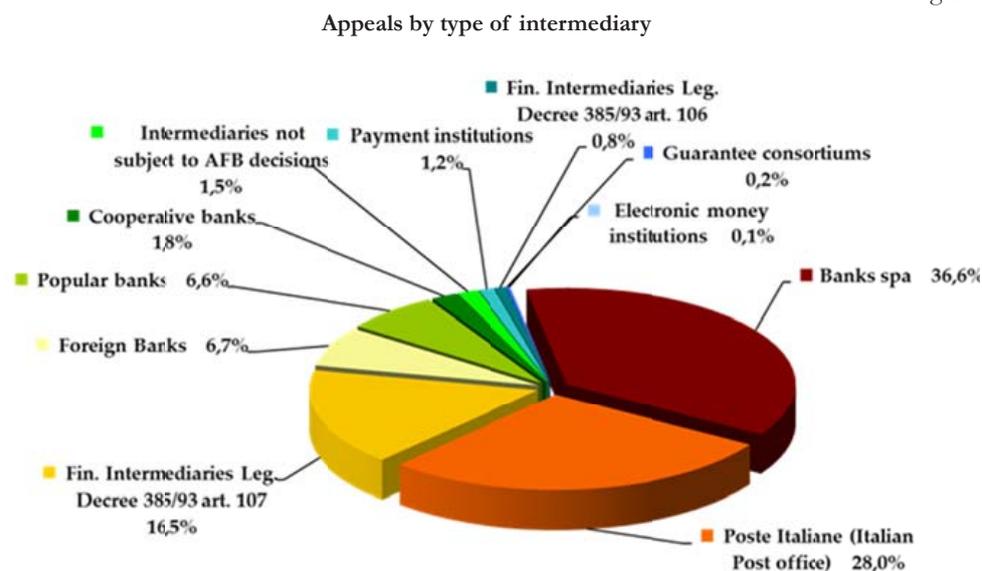
Figure 17



Types of intermediary

Again in 2013, the largest number of appeals to the Ombudsman came against banks incorporated as limited companies, although their share fell to 37 per cent from 41 per cent in 2012. The percentage of appeals filed against Article 107 intermediaries, instead, rose from 13.2 to 16.5 per cent. The share of appeals against Poste Italiane was unchanged.

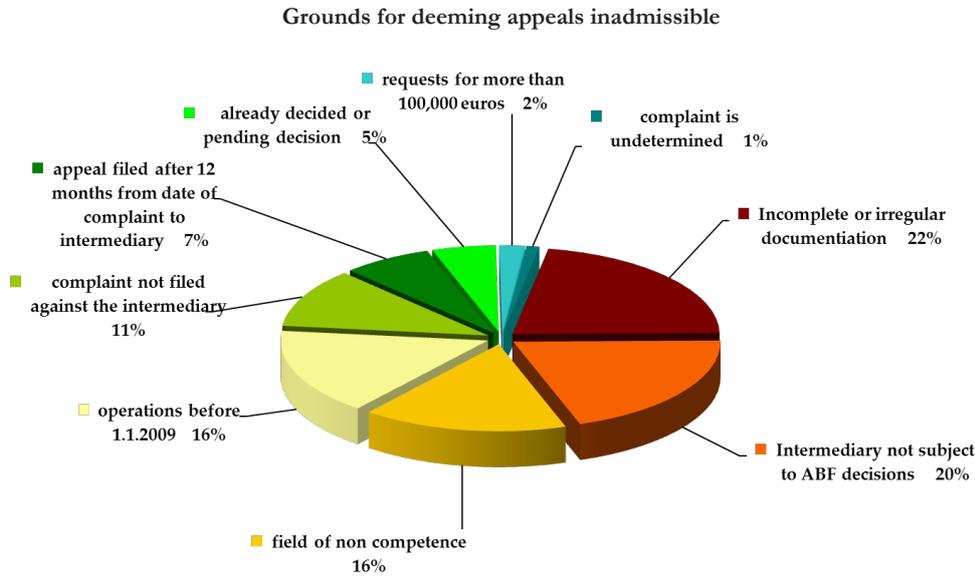
Figure 18



Outcomes

In 2013, 4.7 per cent of the appeals submitted to the Ombudsman were dismissed as not admissible, down from 6.5 per cent in 2012. Figure 19 shows the distribution of the grounds for such dismissal.

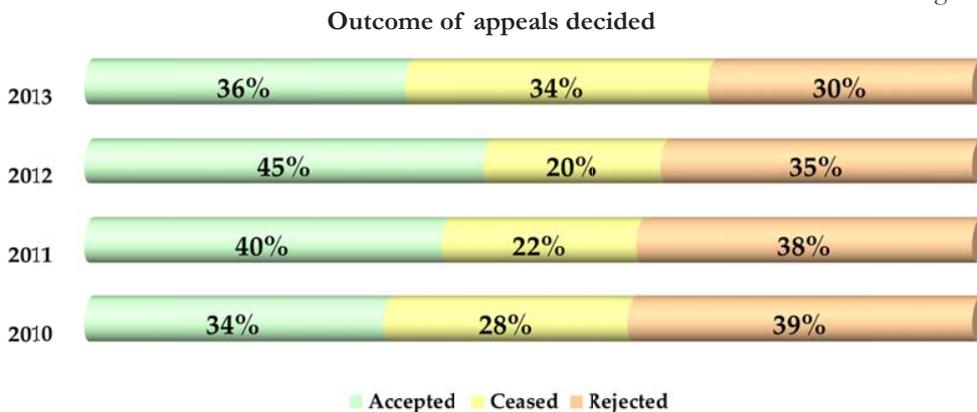
Figure 19



On average, the panels decided 39 cases per meeting, up from 28 in 2012.

Seventy per cent of the cases decided had outcomes substantially in favour of the complainant, compared with 65 per cent in 2012; in 36 per cent the panel ruled partially or totally in favour of the complainant, and in the other 34 per cent the dispute was settled by an agreement between the parties before reaching the decision phase. The panels rejected 30 per cent of the appeals, either because the customer's case was unfounded or not adequately proven or on procedural grounds.

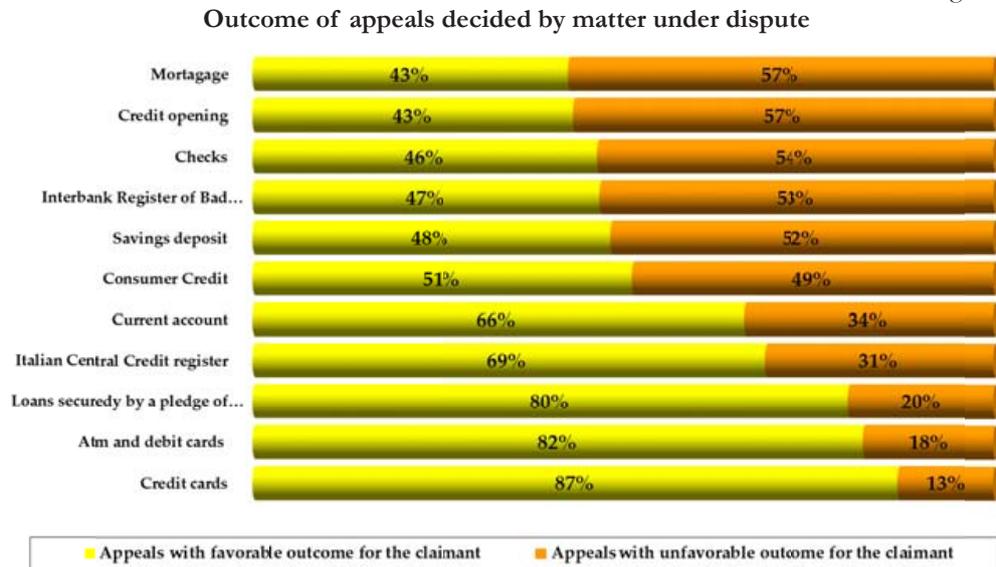
Figure 20



In any event, outcomes differed significantly depending on the matter under dispute. The percentage of decisions in favour of the customer is lower for appeals

involving loans or lines of credit, extremely high for appeals concerning credit and debit cards.

Figure 21



Of the 2,296 decisions in favour of the complainant during the year, there were 27 cases of non-compliance with the Ombudsman’s decision. The non-compliant institutions were three Article 107 intermediaries and two Article 106 intermediaries (one of which no longer entered in the general register).

In considering the breakdown of appeals outcomes in each panel according to type of customer (consumer or non-consumer), we find that in all three panels the percentage of positive outcomes (decisions upholding the appeal and settlements by agreement between the parties) is higher for consumers than for non-consumers.

Figure 22

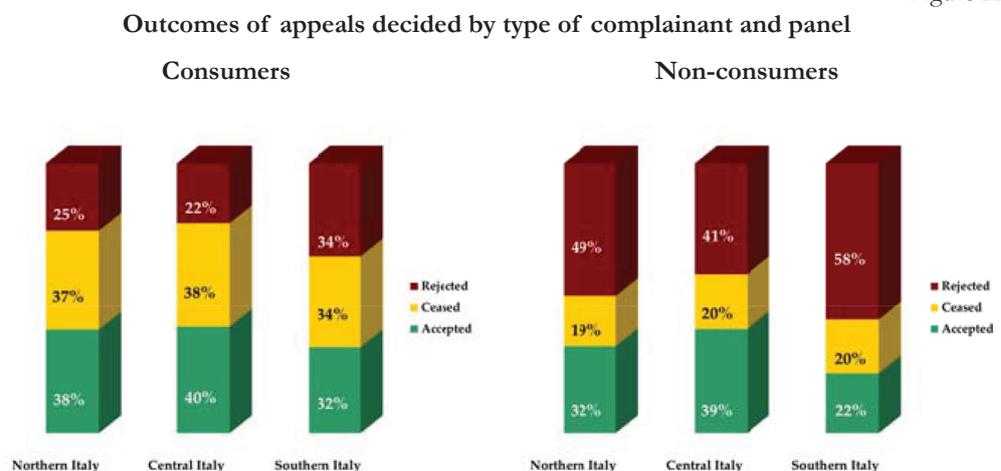
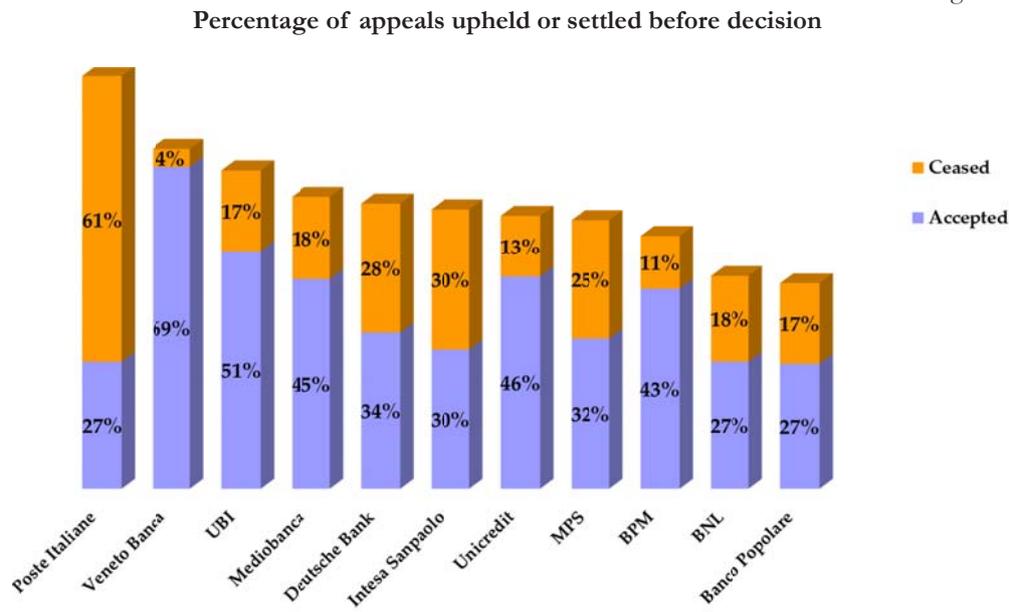


Figure 23



Data on the first half of 2014

The first six months of 2014 confirm the continuing increase in recourse to the Ombudsman, with 5,817 appeals compared with 3,764 in the first half of 2013, an increase of 55 per cent. At this rate we can project a total of over 10,000 appeals for the year. A good part of the increment is accounted for by the 95 per cent increase in appeals to the Naples panel.

By matter under dispute, the largest category was cases involving loans against pledge of salary (32 per cent); the share involving credit cards declined to 13 per cent.

The share of appeals lodged by consumers rose to 90 per cent; the share in which the customer was represented by a lawyer or other professional also rose, to 39 per cent.

