



**An Roinn Airgeadais**  
Department of Finance

# **Periodic Critical Review of the Financial Services and Pensions Ombudsman**

**June 2023**



## Executive Summary

### Financial Services and Pensions Ombudsman

The Financial Services and Pensions Ombudsman (FSPO) is an independent statutory body established by the Financial Services and Pensions Ombudsman Act 2017. Its remit is to resolve complaints from consumers, including small businesses and other organisations, against regulated financial service and pension providers, where those complaints have not previously been resolved.

### Oversight

The FSPO is a State body under the aegis of the Department of Finance ('The Department') and is subject to the terms of the *Code of Practice for the Governance of State Bodies (2016)* ('The Code'). The Code requires that non-commercial State Bodies shall be subject to Periodic Critical Review (PCR) no later than every 5 years, with a focus on the ongoing business case for each entity, its performance and efficiency and effectiveness, and its governance arrangements.

### Review

Periodic reviews provide assurance and challenge about the continuing need, efficiency and good governance of public bodies. The PCR is part of a wider strategy for Government expenditure, to ensure that it is targeted, subject to evaluation and delivering against its original objectives. The review focussed on three central themes, with the report structured in a similar manner:

- External Context
- Organisational Capacity
- Organisational Performance

The review consulted key stakeholders and considered a range of evidence including desk-based research and documentation published by the FSPO. This report was produced by the Corporate Governance Unit in the Department. To assist with the review process, a Stakeholder Steering group was established to oversee the direction of the review, provide expertise and give advice to the Department as the work progressed<sup>1</sup>.

The findings within the PCR are in the low to medium range.

### Appreciation

Corporate Governance Unit in the Department of Finance would like to thank the FSPO for its excellent engagement throughout the review, including members of the senior management team and the Chairperson of the Council, and for the time and effort they committed to this review. We also acknowledge the significant contribution and feedback from the members of the Stakeholder Steering Group throughout the review process.

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<sup>1</sup> See Appendix 1 for Steering Group membership

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## 1. Introduction

### 1.1 Context

The *Code of Practice for the Governance of State Bodies (2016)* requires that Government Departments review each non-commercial State body under their aegis at least once in every five-year period<sup>2</sup>. Such reviews are called Periodic Critical Reviews (PCRs)<sup>3</sup>.

This report outlines the PCR that has been completed for the FSPO, as a non-commercial State body under the aegis of the Department of Finance.

As required by the Code, the PCR focussed on the ongoing business case for the entity, its performance and efficiency, and its governance arrangements.

### 1.2 Background to the Financial Services and Pensions Ombudsman

The Financial Services and Pensions Ombudsman (FSPO) was established on 1<sup>st</sup> January 2018 following the merger of the Financial Services Ombudsman Bureau (FSOB) and the Office of the Pensions Ombudsman (OPO). The role of the FSPO is to resolve complaints from consumers, including small businesses and other organisations, against regulated financial service providers and pension providers. It provides an independent, impartial, confidential and free service to consumers, to resolve complaints through either informal mediation, leading to a potential settlement agreed between the parties, or formal investigation and adjudication, leading to a legally binding decision.

The FSPO is funded through two distinct sources - the financial services complaints are funded by a levy on the financial services industry and the pensions complaints are funded by the Exchequer. It is subject to annual audit by the Comptroller and Auditor General.

At the end of 2022, the FSPO employed 84 staff.

During the review, a new Ombudsman was appointed who will have responsibility for implementing the review's recommendations.

### 1.3 Governance arrangements for the PCR

The Department of Finance has responsibility for carrying out the PCR.

To assist with the process and as set out in The Code, a Stakeholder Steering Group was established to oversee key aspects of the project.

The Steering Group was chaired by the Department and had the following membership:

- Representatives from the Department of Finance
- A representative from the following:

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<sup>2</sup>Available at [gov.ie](http://www.gov.ie) - [Code of Practice for the Governance of State Bodies \(www.gov.ie\)](http://www.gov.ie)

<sup>3</sup> Available at [8e7325be-5da7-45ea-8d0a-b94cbe63290b.pdf \(www.gov.ie\)](http://www.gov.ie)

- FSPO
- the Department of Social Protection
- Banking & Payments Federation Ireland (BPFI)
- The Competition and Consumer Protection Commission (CCPC)
- Insurance Ireland

The group met twice and documentation was provided for observations prior to meetings. Project documentation and terms of reference were agreed and thereafter, the members assisted with completion of the stakeholder questionnaires and development of the report. In addition to the Steering Group meetings and completion of the questionnaires, additional meetings were convened with each of the consumer representative bodies and the FSPO so as to gather a full body of evidence.

#### 1.4 Objective of the review

The overarching objective of the PCR process is primarily to secure improvements in accountability, efficiency and effectiveness while considering the case for rationalising and consolidating the FSPO in light of changing requirements, demands and priorities. It is part of a wider strategy for Government expenditure, to ensure it is targeted, subject to evaluation and delivering against its original objectives.

In line with the Code, the review examined the way in which the FSPO currently operates, focussing on the external context, organisational capacity and organisational performance with a view to determining whether the service is still needed and whether the organisational structure continues to be appropriate.

#### 1.5 Gathering evidence

We carried out the review by convening meetings with FSPO officials and the Chairperson of the FSPO Council as well as with external stakeholders, sought information by means of questionnaires to all stakeholders and by reviewing relevant FSPO documentation.

## 2. External Context

### 2.1 Purpose of this section

This section considers the political, economic, technological and legislative environment in which the FSPO operates. It discusses how the organisation and its strategic environment have evolved since its establishment in 2018, and assesses how it is delivering on its statutory mandate.

### 2.2 Role of the FSPO

The FSPO was established on 1 January 2018 by the Financial Services and Pensions Ombudsman Act 2017 ('the Act'). Its establishment entailed the merger of the former Financial Services Ombudsman's Bureau (FSOB) and the Office of the Pensions Ombudsman.

The role of the FSPO is to resolve complaints from consumers, including non-personal customers, businesses and other organisations, about the conduct of regulated financial service providers and pension providers.

The Ombudsman has wide-ranging powers to deal with complaints against financial service providers. A financial service provider can be directed to rectify the conduct that is the subject of the complaint. There is no limit to the value of the rectification that can be directed. The Ombudsman can also direct a financial service provider to pay compensation to a complainant, of up to €500,000. In addition, the Ombudsman publishes legally binding decisions issued in relation to complaints against financial providers, suitably anonymised, and publishes the names of every financial service provider that has had three or more complaints against it upheld, substantially upheld, or partially upheld in a calendar year.

In terms of dealing with complaints against pension providers, the Ombudsman's powers are more limited. While the Ombudsman can make direction as is considered necessary or expedient for the satisfaction or resolution of a complaint, the legislation governing the FSPO sets out that such rectification shall not exceed any actual loss of benefit under the pension scheme concerned. Consequently, the Ombudsman cannot direct a pension provider to pay compensation to a complainant who has suffered an indirect financial impact, as a result of the wrongful conduct of a pension provider. The legally binding decisions issued in complaints against pension providers cannot be published in the same way as the decisions issued to complaints against financial providers. Instead, the Ombudsman publishes case studies, suitably anonymised. In addition, the name of any pension provider cannot be published by the Ombudsman, irrespective of the number of complaints it may have upheld, substantially upheld, or partially upheld against it, in a calendar year.

Formal investigation of a complaint by the FSPO is a detailed and impartial process carried out in accordance with fair procedures. The FSPO calls for certain questions to be answered and requests relevant documents and audio evidence. The FSPO's established procedures, for the formal investigation of complaints, ensure that both the complainant and the provider receive a copy of all information submitted by both parties and held on file, and are given

every reasonable opportunity to offer comments and observations on the contents of such evidence.

Having regard to the commitments in the Programme for Government – *Our Shared Future*<sup>4</sup>, the Department’s Statement of Strategy 2021-2023<sup>5</sup> seeks to lead on the achievement of the Government’s economic, fiscal and financial policy goals. The FSPO’s current strategic priorities are strongly aligned to Goal 3 of this Statement, which seeks to achieve a well-regulated, sustainable banking and financial sector.

### 2.3 The external environment

Since establishment on 1 January 2018, the FSPO and its strategic environment has evolved significantly. While the overarching purpose and remit of the FSPO has not changed, the financial services market has undergone a period of enormous disruption and transformation, and complaints have continued to become more complex. Such complexity arises from a number of factors, including but not limited to the number and regulatory status of financial service providers, jurisdictional issues such as time limits for making a complaint and EU regulation of occupational retirement provision.

#### An evolving strategic environment

The following demonstrates the complexity of the FSPO’s strategic environment and how it has evolved over time:

- The financial services industry is undergoing a fundamental digital transformation with radical changes taking place not only in the services themselves but in the business model and company structures operating across multiple geographic and regulatory environments. While more traditional providers continue to have their place, the impact of new methods of delivery, new products, services and new providers has been significant. The way that many people manage their personal finances has changed. New modes of delivery and new technology platforms raise additional considerations in terms of the regulatory status of providers and the ability of customers to make complaints to the FSPO.
- The withdrawal of providers from the Irish banking market is resulting in a period of consolidation. This raises questions about the current customers of these providers and how their financial services will be provided, either by established entities, or new entrants, and how those additional customers who transfer to new providers, will be adequately resourced.
- For some consumers, the impact of technology itself gives rise to difficulties in interacting with providers. The move towards more distant methods of communication means that for some, making complaints is becoming more challenging. Technology has the potential

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<sup>4</sup> Available at: [gov.ie - Programme for Government: Our Shared Future \(www.gov.ie\)](http://www.gov.ie)

<sup>5</sup> Available at: [gov.ie - Statement of Strategy \(www.gov.ie\)](http://www.gov.ie)



to impact on financial capability and some technological advances may lead to or exacerbate financial exclusion.

- Since the FSPO was established, complaints have continued to become more complex. Such complexity can arise due to jurisdictional considerations, such as time limits for making a complaint, or the involvement of a multiplicity of providers, some of which may not be regulated, and thereby fall outside the jurisdiction of the FSPO. Other complexities arise where a financial service provider is regulated in another member state, and operates on a freedom of service basis, with contractual arrangements governed by the laws of another country.
- As providers offer and consumers acquire innovative products and services, this can lead to consumers entering into arrangements with unregulated providers, or with providers which are regulated, but which offer a product suite of both regulated and non-regulated products.
- The recent EU Crowdfunding Regulation, which establishes a regulatory regime for crowdfunding service providers will have implications for the FSPO's work. While small businesses sourcing cash flow by way of crowdfunding will now be afforded protections, this will not protect an investor operating outside of a trade, business or profession. This has the potential to be very confusing to complainants, who meet the definition of a consumer for the purpose of the FSPO's jurisdiction, but who nevertheless are excluded from the protections of the Crowdfunding Regulation.
- In addition, while the European Commission proposes a supervisory regime for markets in crypto assets, pending new developments, crypto assets present significant risks for consumers given their volatility, and also given the current absence of consumer protection. As the common market for financial services becomes more and more integrated, this may lead to higher numbers of consumers outside Ireland making complaints about providers regulated in Ireland. In addition, Irish consumers may find that their complaints about the conduct of crypto asset providers which are regulated in another member state, and which operate on a freedom of service basis, may not fall within the jurisdiction of the FSPO and may be referred instead to the more appropriate Alternative Dispute Resolution body in another country.
- The EU Directive (IORP II) on the activities and supervision of institutions for occupational retirement provision will drive considerable remodelling within the pension landscape over the next number of years, making significant changes in the governance and administration obligations of trustees of pension schemes and trust Retirement Annuity Contracts. In addition, the introduction of regulated Pan-European Pension Products (PEPPs) from March 2022 offers options to PEPP purchasers, both domestically and cross-border, to facilitate portability of a pension when an individual moves between member states. The PEPP Regulation anticipates a framework for the resolution of complaints and the entitlement of an individual to progress that complaint in their country of residence, irrespective of where the infringement may have occurred.

In response, the FSPO's methods of service delivery have evolved to more efficiently meet the changing needs of its customers (both complainants and providers) and wider stakeholders. A central pillar of the FSPO's Strategic Plan for the period 2021-2024 *Connecting*

*and Innovating*<sup>6</sup> is Connecting and Engaging, whereby the FSPO has committed to connecting with consumers, providers, regulatory bodies and others to help build a better understanding of what it does, and how people can best access and make use of its services.

## 2.4 Raising awareness

Raising awareness of its services is embedded in the FSPO's Strategic Plan *Connecting and Innovating*. It employs a range of methods to increase awareness of its role, and is committed to connecting and engaging with consumers, providers, regulatory bodies and others to help build a better understanding of what it does and how people can best access and use its services should they need it. It has developed a Communications and Engagement Strategy to enable and drive delivery of this objective, which focuses on increasing awareness of the FSPO's services through digital and traditional methods. In H1 2022, it ran its first digital marketing campaign.

The FSPO has carried out omnibus market research to determine public awareness of the FSPO and awareness and understanding of its functions. Some of the key learnings from the research were that roughly 1 in 6 people have made a complaint about a financial service provider, and half of those complaints were not resolved to the consumer's satisfaction. Awareness levels of the FSPO were lowest among younger people and those in certain social classes. The results of the survey were a key input into the FSPO's communications activities in 2021 and in the development of the FSPO's communications and engagement strategy.

In aiming to enhance understanding of its processes and outcomes when investigating complaints, the FSPO publishes anonymised decisions in financial services complaints, case studies of pension complaint decisions, case studies of mediated settlements and investigation resolutions. In addition, the development of *Digests of Decisions*<sup>7</sup> and the annual publication of the *Overview of Complaints*<sup>8</sup> enables the FSPO to share insights regarding the trends and patterns of complaints received, and the issues that contribute to the generation of complaints.

In 2021 and 2022, the FSPO produced new information leaflets, 'How to make a complaint to the FSPO', 'What to expect during mediation in our Dispute Resolution Service' and 'What to expect during the formal investigation process'. As well as being available in hard and soft copy, they can be accessed on the FSPO's website and through stakeholders' channels.

In addition to the information leaflets, the FSPO has produced four information videos to explain the services it offers and how those services operate.

During 2022, the FSPO also took the opportunity to engage on a face-to-face basis with consumers, by having a stand at the Tullamore Show, which is the biggest one-day agricultural

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<sup>6</sup> Available at: <https://www.fspo.ie/publications/strategic-plan.asp>

<sup>7</sup> Available here: <https://www.fspo.ie/publications/>

<sup>8</sup> Available here: <https://www.fspo.ie/publications/overview-of-complaints.asp>

event in Ireland, attracting some 60,000 visitors. Based on the success of this event, the FSPO is examining other options to engage on a face-to-face basis, with the public.

The FSPO is committed to making its website accessible to meet the needs of its users and stakeholders. Over the course of 2021, it carried out a self-assessment and made changes to the website to improve the customer journey. The FSPO saw a significant increase in the use of its online complaint form over the course of 2021, with submissions increasing from 58% in 2020 to 74% in 2021, with a further increase to 80% in 2022.

The FSPO seeks to adapt and evolve its services to anticipate and respond to the changing needs and expectations of all of its customers. Such aspects of service provision are monitored on an ongoing basis by the Senior Management Team in order to target suitable enhancements, as appropriate.

The FSPO has a social media presence which provides it with additional opportunities. A particularly positive development is the increased social media presence that the FSPO has gained in recent years. This provides the organisation with additional opportunities to reinforce the key messages from its work, for example through making topical interventions that link back to previous publications.

#### **Recommendation:**

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| <ol style="list-style-type: none"><li>1. The FSPO to further consider its social media presence to provide it with additional opportunities to develop public awareness of its service, particularly among certain types of consumers such as young people and those in certain social classes.</li></ol> |
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#### **2.5 Communicating with Stakeholders**

The FSPO engages with a wide range of stakeholders, both domestically and internationally. As a State body under the aegis of the Department of Finance, there is a high level of engagement with the Department. While the FSPO is independent in the performance of its statutory functions, there is frequent contact between members of the FSPO Senior Management Team (SMT) and the liaison unit in the Department, primarily on governance issues. Governance meetings are held on a quarterly basis, with agendas agreed in advance. Trends in complaints to the FSPO are included as a standing item to ensure the Department is informed on the operations of the organisation.

The governance arrangements currently in place between the Department and the FSPO are effective, with good relations on a personal level between the Department's liaison Unit and the FSPO SMT and Council, and the quarterly meetings are a regular checkpoint for both sides to flag any issues of concern. Timeliness in the provision of required information is important. The annual estimates process is an example where established timelines are important. For the Exchequer-funded aspect of the FSPO's budget, the Department requires an accurate estimate from the FSPO in line with the established estimates process deadlines. While it is acknowledged that development of a budget is a time-consuming and arduous task, and the

prior approval of the draft budget by the FSPO Council is required before being submitted to the Department, equally the Department needs to be afforded adequate time in which to review the draft budget.

Overall, the relationship between the Department and the FSPO is considered to be appropriate in terms of the balance between autonomy and responsiveness/accountability.

At an industry level, the area of complaints is of significant importance to providers in working to ensure satisfaction with the financial services provided to consumers, and the service provided by the FSPO further supports this aim through its work to independently review and resolve consumer complaints. Engagement at an industry level continues to evolve, in particular given the move to hybrid working. In the past two years, this has accelerated the move to electronic files as a way of financial service providers sharing information with the FSPO, and this is seen by industry as a welcome development.

Financial service providers believe that publication of the FSPO Annual Overview of Complaints, along with the Ombudsman's Digest of Decisions, has provided valuable insights into the basis for industry-wide FSPO decisions, which has knock-on implications for the service provided to consumers by way of revised procedural changes. In addition, the service provided by the FSPO has served to improve engagement with consumers in a more meaningful way, through the help of an independent and impartial FSPO Mediator.

General feedback from consumers to financial service providers would indicate satisfaction with a process that is seen as an independent, impartial and cost-effective means of resolving a dispute. Any complaints expressed in relation to the process generally relate to the length of time needed to investigate and adjudicate on complaints and the lack of update to complainants while the process takes its course.

Evidence gathered during this review process indicates that the relationship between the FSPO, consumer and financial services representative bodies and their members is overall a constructive one, with the SMT of the FSPO generally very willing to engage and being very generous with their time.

### **Recommendations:**

2. To further develop the existing governance arrangements in place between the FSPO and the Department, consideration to be given to the FSPO senior management team formally meeting with relevant members of the Department's Executive Board on an annual basis to ensure there is an understanding of the Department's strategic priorities and to discuss key issues and challenges. An opportune time would be when the Oversight Agreement/Performance Delivery Agreement is being reviewed each year.
3. Acknowledging that the Council may not be in a position to approve the FSPO's draft budget until later in the estimates process each year, the FSPO and the Department to agree a process, whereby the estimate of the FSPO's Exchequer funding

requirement is provided to enable the Department to feed into the estimate process in a timely manner and to avoid seeking revisions to funding.

4. To enhance transparency and communication with complainants during the processing of their complaints, the FSPO is to consider facilitating a process whereby complainants and financial service providers could track electronically the stage their complaint has reached and when the next action/step is due.

## 2.6 Legislative Framework

The FSPO's legislative framework has allowed it to evolve its operation and strategic priorities over time. It is conscious of the possible implications of other legislation, for example the new EU Directive on the activities and supervision of institutions for occupational retirement provision (IORP II Directive) and the Pan-European Personal Pension Product (PEPP). For that reason, the FSPO engages with the Department through the established governance structure to consider potential implications of new legislation and Regulations for the FSPO's mandate.

## 2.7 Statutory Mandate

The Act provides for a strong statutory mandate and powers in the delivery of that mandate. The FSPO's statutory mandate is to provide an avenue of resolution for those complaints against regulated financial service providers and pension providers, which have not previously been resolved through the provider's internal dispute mechanism.

Delivery of priorities identified by the Council and the FSPO, during the strategic planning process, is monitored on an ongoing basis by the SMT and reported against to the Council, in support of its statutory role to keep under review the efficiency and effectiveness of the Ombudsman.

When the FSPO commenced its operations, it inherited 3,178 complaints from its predecessor bodies. In the first five years of operation, the FSPO received an additional 25,801 new complaints and concluded 24,862 complaints during that period.

### Financial Services and Pensions Ombudsman (Amendment) Bill 2023

In April 2021, the Supreme Court found that the Workplace Relations Commission is administering justice, within the meaning laid down by the Constitution of Ireland (*Zalewski v An Adjudication Officer & Ors* [2021] IESC 24).

The FSPO could also be considered by the Supreme Court to be a legislative body which administers justice, in a manner which is limited in scope, as anticipated by Article 37 of the Constitution.

The proposed Financial Services and Pensions Ombudsman (Amendment) Bill 2023 amends the Financial Services and Pensions Ombudsman (FSPO) Act 2017 to take account of the ruling in *Zalewski v An Adjudication Officer & Ors* [2021] IESC 24, and to update elements where the FSPO could be viewed as administering justice. These amendments will improve legal clarity

as they reinforce the statutory basis of the FSPO, which is a key element of the consumer protection framework in Ireland. Following agreement by Government, the General Scheme of the Bill was published on 9 April 2023.

While it is a matter for the FSPO to determine how the recommendations in this report are to be implemented, progression of the Financial Services and Pensions Ombudsman (Amendment) Bill 2023 could provide an opportunity to progress relevant recommendations, where appropriate.

## 2.8 International Organisations

### INFO Network

The FSPO is a member of a worldwide association of financial services ombudsmen, the International Network of Financial Services Ombudsman Schemes (INFO Network). The objective of the INFO Network is to develop the expertise in dispute resolution of member schemes and offices, through exchange of experience, knowledge and ideas.

The INFO Network assigns a categorisation to each member, based on each organisations level of budget. The FSPO is considered part of the “large” category for the purposes of the INFO Network; the other Ombudsman Schemes within this category are those of Australia, the UK, Canada, India, the Netherlands, USA and Saudi Arabia. While the governance structures vary among the “large” category members, their remits are somewhat similar. The FSPO’s remit is, however, currently somewhat unique amongst the ombudsman scheme members, which typically hold powers to issue recommendations only, rather than the power to impose binding directions.

### FIN-NET

The FSPO is a member of the European Union’s FIN-NET, which is a network of national organisations responsible for settling consumers’ complaints in the area of financial services out of court. In a constantly evolving landscape, the FSPO has seen an increase in the level of cross-border service provision over recent years, with cross-border passporting creating challenges for consumers across the EU, including in Ireland. For example, if an entity that is regulated by a competent authority in another EU member state passports into Ireland and offers banking services, it may be the case that the FSPO has to refer a complaint to a different alternative dispute resolution (ADR) body in the relevant member state if the contract is governed by the laws of that member state. In such a situation, the FSPO will put the consumer in touch with the appropriate FIN-NET body.

The FSPO has been working with the Department of Finance on this issue. Towards the end of 2022, the European Commission opened a public consultation to help assess the implementation of the Alternative Dispute Resolution (ADR) Directive (2013/2011) and the Online Dispute Resolution Regulation (EU) No. 524/2013. The FSPO made a formal submission to the consultation on the ADR Directive, and was supported by the Department of Finance which also made a submission to the Commission on the ADR Directive. In May 2023, the

FSPO led a FIN-NET survey, to gather member state ADR data, to inform the evolution of the EEA framework for cross-border dispute resolution, and led discussions amongst FIN-NET members, to explore the challenges created by consumer contracts which are governed by the laws of a country where the consumer does not reside.

### **Conclusion**

The FSPO provides an independent, fair, impartial and free service to resolve complaints about the conduct of regulated financial service providers and pension providers. There are currently no alternative ways of achieving the same objectives in a more cost efficient manner.

Maintaining public confidence in the FSPO is critical. It is important that the statutory function of the Ombudsman is maintained as part of the consumer protection framework. Based on the evidence and stakeholder engagement, the FSPO's current form is the most appropriate for the delivery of its functions and the safeguarding of its independence. As such, the FSPO should continue to operate in its current form as an independent State body at arm's length from the financial services industry and providers of occupational pension schemes, under the aegis of the Department of Finance.

## 3. Organisational Capacity

### 3.1 Introduction

This section looks at the capacity of the FSPO across areas such as governance, HR management, financial management and other organisational linkages.

The FSPO has a strong record of keeping its internal organisational structures and processes under regular review and of putting into effect the recommendations of such reviews.

### 3.2 Governance

The powers, roles and responsibilities of the Office, the Ombudsman and the Council are set out in the enabling legislation, the Financial Services and Pensions Ombudsman Act 2017. The SMT is responsible for the day-to-day operational management of the organisation. The Council has no responsibility, under the legislation, in relation to the day-to-day delivery of that service.

Responsibility for staffing the Office and the setting of terms and conditions of staff rests with the Ombudsman, with Ministerial approval and consent, rather than the Council. The Ombudsman is the Accountable Officer and is responsible for the regularity and propriety of all of the Office's transactions and for the economy and effectiveness of how it uses its resources.

A Service Level, Oversight and Performance Delivery Agreement is in place between the Department and the FSPO, which is reviewed annually. The Agreement documents an agreed level of service and performance and assists the Department in monitoring the FSPO's performance.

The FSPO's corporate policies are reviewed in accordance with its defined review schedules; these reviews involve a comparison against key legislative and other guidance to ensure the policies are kept up to date in accordance with current requirements and best practice. Corporate Governance matters are included among the standing items at the monthly SMT meetings.

The Internal Audit function, which is provided by an external service provider, reviews governance documents as part of its audit of key areas. Since 2018, the Internal Audit function has reviewed an extensive range of control areas including internal financial controls, corporate governance, HR management, measuring efficiency, quality assurance systems and the COVID-19 response. The implementation of internal audit recommendations is a standing item at Council Audit and Risk Committee meetings.

#### 3.2.1 The Council

The FSPO Act 2017 sets out the structure of the FSPO Council, with a Chair and members, with no less than five and no more than seven in total. Following a recent recruitment campaign, the Council has a full complement of seven members. Members of the Council are appointed



by the Minister for Finance, with one member nominated by the Minister for Social Protection. The Minister for Finance appoints the Chairperson from among the members of the Council. The term of office of Council members shall not exceed five years; members whose term has expired may be re-appointed. The Council meets 6-7 times per annum.

The Council has two main areas of responsibility; firstly, it is responsible under the legislation for setting the levy to be paid by financial service providers; and secondly it has certain oversight responsibilities in relation to the work of the Office, including its responsibilities in relation to:

- a) approval of the Office's annual budget;
- b) approval of the Office's strategic plan; and
- c) keeping under review the efficiency and effectiveness of the Ombudsman.

The Council has no role in the manner in which the Ombudsman deals with a particular complaint. The legislation does not enable the Chair of the Council to attend an Oireachtas Committee, with, or instead of, the Ombudsman in relation to the general administration of the Office. There are Terms of Reference in place for the Council, the Audit & Risk Committee and the Finance Committee which are reviewed annually. All members of the Council and its Committees have adopted a Code of Conduct, which sets out the rules and policies governing the business practice of the Council.

An external independent evaluation of the Council and its committees was conducted in 2021. The evaluation was conducted by an independent board consultancy firm, Board Excellence. The evaluation looked at the Council's effectiveness, performance and compliance with relevant legislation, governance standards and Council/Board best practices. A number of recommendations were made in the Report across areas such as the Council's composition and succession planning, induction and training, corporate governance, Council dynamics and strategy development.

The PCR has not replicated the comprehensive work undertaken by Board Excellence, given in particular how recently that review was undertaken, however we agree with the recommendations put forward by Board Excellence in their final report, including:

- The recruitment of a *digital native* Council member with a strong track record in the ICT and Fintech areas.
- A key emphasis to be placed in future succession planning on the appointment of a second Consumer-Advocate background Council Member and if possible, to explore improving the socio-economic diversity of the Council in this appointment.
- Develop a formal FSPO Council Member Induction Process.
- Council Secretary to lead a formal process each year working closely with the Council Chair and Members to identify their training needs and develop an appropriate training plan.
- Develop a Council Meeting action log and a Committee meeting action log that formally tracks the progress of execution of all actions taken at Council and Committee meetings.

- Council Chair and Committee Chairs to issue the draft meeting minutes within 2 weeks of the Council/Committee meeting, asking all Council/Committee/Executive Members to formally review the minutes and confirm that they are happy with the minutes.
- Enhance the FSPO website to add full bios and photos for the Council and Executive members.
- The Council Chair and Ombudsman to encourage the Executive members to increase their use of the Council members as a friendly sounding board to get their thoughts on a particular area of importance, benefit from their independence of mind in terms of not being involved day-to-day in the FSPO operations as well as their decades of experience and judgement in a wide range of areas.
- Introduce an annual strategy away-day for the Council and Executive irrespective of where the FSPO is at in terms of its three-year strategy cycle.

### **Council Structure**

<b>Council Member</b>	<b>Role</b>	<b>Date Appointed/Reappointed*</b>
Maeve Dineen	Chairperson	8 January 2022*
Don Gallagher	Member	8 January 2022*
Valerie Bowens	Member	20 January 2021*
Ken Murnaghan	Member	20 January 2021*
Mick McAteer	Member	20 January 2021
Ann Duffy	Member	20 January 2021
Peter Rossiter	Member	17 April 2023

### **Council Committees**

#### **Audit and Risk Committee**

The Audit and Risk Committee (ARC) comprises three Council members, with one member appointed as Chairperson. The role of the ARC is to support Council's statutory role to keep under review the efficiency and effectiveness of the FSPO, advising the Council on the strategic processes in place for risk, internal control and governance. The ARC reports to the Council after each meeting and formally in writing annually. The ARC reviews any relevant items at the request of the Council or Ombudsman and provides observations rather than assurance or oversight on risk management, controls, audit, compliance or governance processes or procedures operated by the Ombudsman/Office.

#### **Finance Committee**

The Finance Committee currently comprises two Council members, with one member appointed as Chairperson. The role of the Finance Committee is to advise the Council on the setting of the financial services industry levy and any issues in relation to its collection, and the ongoing financial position of the organisation. The Finance Committee reports to the Council after each meeting and formally in writing annually.

## **Recommendation:**

5. The Council to put in place an action plan to implement recommendations of the Board Excellence Report in a timely manner.

### **3.2.2 Ombudsman**

The Ombudsman is responsible for receiving and investigating complaints received by the Office in relation to the conduct of regulated financial service providers and pension service providers. The legislation enables the Ombudsman to fulfil the requirement to investigate via informal means, mediation, formal investigation or a combination of these approaches. The Ombudsman is the Accountable Officer. In terms of the strategic direction of the Office, the Ombudsman is responsible for preparing and implementing a strategic plan for a three-year period and submitting it to the Council for approval. When it has approved the plan, the Council is responsible for delivering it to the Minister for Finance ('the Minister').

It is worth noting at this point that the position of Ombudsman was vacant from early in 2022. For the duration of the vacancy, the Deputy Ombudsman was appointed Acting Ombudsman in line with the Act. Following an open recruitment process which was managed by the Public Appointments Service, the Minister appointed a new Ombudsman with effect from 1 December 2022.

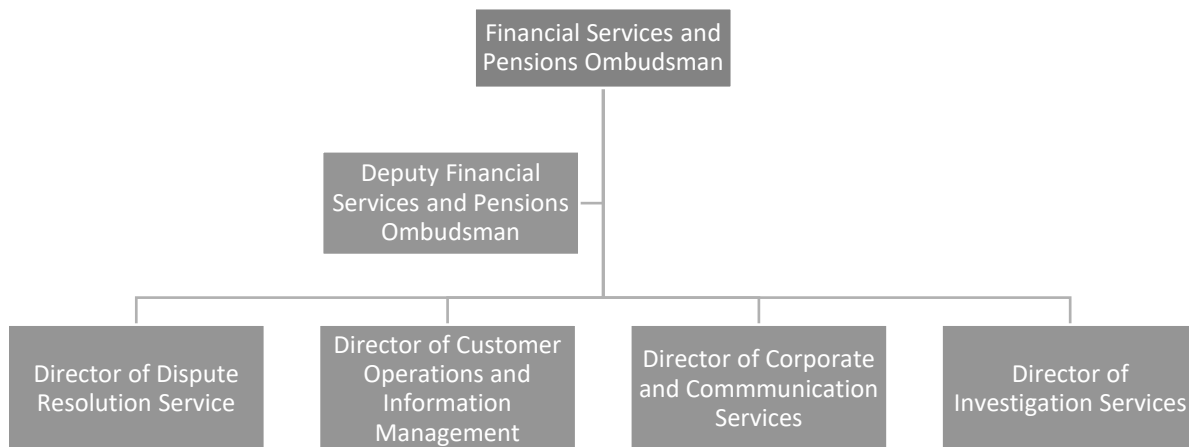
### **3.2.3 Deputy Ombudsman**

Within the scope of the authority conferred on the Ombudsman under the Act, the Deputy Ombudsman may perform any of the functions conferred on the Ombudsman. There may be one or more Deputy Ombudsmen. Since 2018, there has been one Deputy Ombudsman appointed.

### **3.2.4 Senior Management Team**

The Senior Management Team (SMT) is the Executive structure that is responsible for the strategic and operational leadership of the Office of the FSPO. The SMT is the principal mechanism for directing the operations of the FSPO, subject to the statutory functions reserved for the FSPO Council, the position of Ombudsman as Accountable Officer, and the statutory functions reserved for the Financial Services and Pensions Ombudsman and Deputy Financial Services and Pensions Ombudsman under the Act. The SMT has an approved Terms of Reference. All staff of the FSPO, including the SMT, are required to adhere to the Civil Service Code of Standards and Behaviours.

The reporting relationships within the SMT are shown below:



### 3.3 Human Resources Function

Since its establishment in 2018, the FSPO has grown and matured as an organisation. It is responsive to the external strategic environment and continues to monitor emerging demands for its services and identifying resource needs as they arise. In addition to its current Workforce Plan in place until 2023, the FSPO launched its first People Strategy in 2022. Significant change in the FSPO HR environment and the impact of staff turnover were among the key drivers in developing the strategy. HR matters, including staff numbers and recruitment, are a standing item at the monthly SMT meetings.

The FSPO has a well-developed HR function with relevant policies and procedures in place. These policies and procedures are reviewed regularly to ensure compliance with relevant legislation and Government circulars as well as in the context of any identified HR risks and opportunities. An internal audit of HR management and succession planning has concluded that controls in place provide a satisfactory level of assurance regarding the effective and efficient achievement of the FSPO's objectives.

The HR Unit is supported by the FSPO's governance advisory services contractor, with specific expertise in pension administration and payroll. HR functions are further supported by the services of an external payroll services provider and pension services provider. Headcount as at end 2022 stood at 84.

#### Superannuation

The majority of the FSPO's staff are members of the Single Public Service Pension Scheme (Single Scheme). The FSPO also operates two defined benefit pension schemes, both of which are based on the Department of Public Expenditure, National Development Plan Delivery and Reform (pre-single scheme) Model Public Sector Scheme (the "Model Scheme").

The Department of Public Expenditure, National Development Plan Delivery and Reform has recently conveyed sanction to the Department for the pension liabilities in respect of the Model Schemes to be met from the Department's Vote, subject to a number of conditions. The Department is engaging with the Department of Public Expenditure, National Development Plan Delivery and Reform and the FSPO in relation to the satisfaction of these conditions. Employee and employer pension contributions and employees Purchase of Notional Service payments are being held by the FSPO at present while the funding arrangements for the schemes are being finalised.

The Office of the Comptroller and Auditor General has noted in its management letter each year that the situation regarding the pension liabilities has not yet been resolved, and separately it has noted that in recent years the introduction of negative interest rates by the FSPO's bank has resulted in a reduction in the value of the pension account.

**Recommendation:**

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| <p>6. A legislative amendment was made in the Central Bank (Supervision and Enforcement) Act 2013 which provides for Oireachtas funding to be provided for the two Model Schemes. While the matter of the pension liabilities has progressed recently following the sanction from the Department of Public Expenditure, National Development Plan Delivery and Reform, any issues attaching to the conditions of this sanction to be progressed as a matter of priority.</p> |
|--|

**3.3.1 Staff Engagement**

The FSPO People Strategy prioritises staff communication and identifies staff engagement as a key enabler of the delivery of the organisation's strategic priorities. Staff engagement appears to be strong, with both formal and informal arrangements in place to promote such engagement and staff feedback. A number of staff surveys have been conducted since 2020, primarily relating to the post-COVID-19 phased return to on-site and hybrid working. The FSPO has maintained a number of supports for staff that were either introduced at the onset of the pandemic or where a further focus was brought to these areas as a result of the pandemic. Such supports include provision of an Employee Assistance Service, and ergonomics and resilience training. The organisation has a Wellbeing Committee, which, at the onset of the pandemic in 2020, developed a programme of accessible initiatives aimed at encouraging and supporting physical activity and a healthy diet.

In 2021, staff were invited to take part in workshops as part of the development of both the FSPO's Strategic Plan 2021-2024 and the People Strategy 2022-2025. As part of the annual business planning process, the setting of Key Performance Indicators (KPI) involves all staff, as managers consult with their teams and bring this input to the wider management consideration of KPIs for the year in question.

Minutes of monthly SMT meetings are made available to all staff on the FSPO's intranet and Directors brief their teams on matters discussed at SMT and organisation developments at

regular team meetings. A Performance Management and Development System is in place, that was most recently reviewed in 2021.

### 3.3.2 Learning and Development

In the context of considerable recruitment since the establishment of the FSPO in 2018, significant resources have been allocated to ongoing training and development, commencing at induction. All newly recruited staff attend an extensive induction programme, which includes a meeting with the Ombudsman. Staff are also required to undertake a mandatory ethics training session, typically within 4-6 months of their commencement date at a time when they have become familiar with the daily work of the FSPO.

Expenditure on training and development has substantially increased in the years 2018-2021 as follows:

2018	€27,828
2019	€51,487
2020	€51,887
2021	€75,808
2022	€51,744

The FSPO developed a Learning and Development (L&D) Strategy 2019-2021. A review of the policy was postponed, to align with the launch of the new People Strategy in 2022. A number of L&D actions have been committed to in the People Strategy 2022-2025, including the establishment of an L&D Working Group to conduct cross-functional training needs analysis and the development of a Mentoring Programme.

In addition to external training provided, in-role training has been enhanced thorough the initial placement of newly recruited staff, as appropriate, in the Registry & Assessment team for a period. In this way, new staff can become familiar with the FSPO's processes concerning the intake of complaints, deepening their understanding of the relevant factors to a complaint and becoming familiar with the FSPO's core systems and processes.

#### **Recommendation:**

7. The FSPO is committed to fostering a learning and development environment and, as demonstrated above, has increased expenditure on training and development as well as developing a People Strategy. In order to reinforce and demonstrate its inclusive approach to training and development, as well as garnering greater levels of staff engagement, the FSPO to put in place a new Learning and Development Strategy.

### 3.4 Financial Management/Internal Controls

#### 3.4.1 Introduction

The FSPO utilises the services of an external accountancy service provider for certain financial management services, procured through an established Office of Government Procurement (OGP) framework. The OGP framework ensures that the service provider has the appropriate

financial management skills and qualifications. The activities undertaken by the appointed service provider include preparation of the FSPO's annual financial statements.

### 3.4.2 Internal Controls

The financial statements of the FSPO are audited by the Comptroller and Auditor General. The FSPO has an approved Financial Procedures Manual in place, which provides management and staff with a framework, comprising policies and specific procedures, to enable the implementation and delivery of best practice financial management and decision making within the organisation. The manual is reviewed regularly. An external review is also carried out by the outsourced accountancy service provider. Financial procedures, and the FSPO's adherence to these procedures, are examined as part of the annual audit of financial statements by the Office of the Comptroller and Auditor General and as part of the annual internal audit review of internal financial controls.

The Finance Committee monitors expenditure through reviews of the monthly management accounts. As part of the Internal Audit Plan, the FSPO's Internal Auditors conduct an annual review of the internal financial controls. Since establishment, these reviews have elicited low-level findings which have been addressed and reduced year-on-year.

The agenda for the monthly SMT meetings includes the management accounts as a standing item. The SMT, of which the Ombudsman is a member, reviews the monthly management accounts, including the performance against budget.

## 3.5 ICT

### 3.5.1 Introduction

In 2019, an independent review of the FSPO's ICT infrastructure was undertaken. The outcome of this review is the FSPO's dedicated ICT Strategy 2020-2024. It is a business-driven strategy centred on modernising and adding resilience to the FSPO's IT Unit and IT systems. An ICT Steering Committee, which is chaired by the Financial Services and Pensions Ombudsman, is in place whose purpose is to guide and govern the best possible use of ICT to effectively meet the organisation's business goals and to review and prioritise new projects across the organisation to bring technology solutions to the forefront of the FSPO's operations.

### 3.5.2 ICT Infrastructure & New Projects

The ICT Strategy 2020-2024 outlines how ICT will enable the delivery of the FSPO's strategic priorities. The ICT Steering Committee ensures appropriate governance for all ICT strategy and projects. ICT Projects and Procurement were the subject of an Internal Audit review in 2021. This review determined that the controls in place in relation to IT Project Governance and Procurement provide a satisfactory level of assurance regarding the effective and efficient achievement of the FSPO's objectives.

In implementing its ICT strategy and in accordance with the arrangements for the oversight of digital and ICT related initiatives in the Public Service, the FSPO has engaged in extensive discussions with the Department on the progression of two ICT projects for (i) procurement of a Managed Service Provider and (ii) delivery of a new website and digital marketing service.

The FSPO uses an external Managed Service Provider which provides support services to the FSPO's ICT team and staff on specific ICT matters, and has recently procured a new Managed Service Provider. Among the benefits of this project will be a more secure ICT environment, increased access to the support of a skilled IT resource pool and addressing the key person risk identified in the ICT Strategy. Following discussions with the Department and the Office of the Government Chief Information Officer (OGCIO) on the urgent need for an updated website, it was decided that the best approach was to go to tender for a new website contract for a set period, and this process is in train.

The Complaint Management System (CMS) has reached its End of Life and the delivery of a replacement is a key priority in the ICT strategy. The CMS currently used by the FSPO is a bespoke system which was built in 1999 and was designed for use by 25 – 30 staff of the Office of the Insurance Ombudsman. Since then, it has had multiple upgrades which added significant functionality. It was adapted to facilitate the merger of the Insurance Ombudsman of Ireland with the Ombudsman for Credit Institutions, to form the Financial Services Ombudsman (FSO) in 2005. It was further expanded and developed to accommodate the merger of the FSO and the Pensions Ombudsman to form the FSPO in 2018. Development of a new CMS commenced in 2022, with the project to run through to 2025.



## 4. Organisational Performance

### 4.1 Introduction

This element of the report considers the financial viability, efficiency and effectiveness of the FSPO. It also considers the suitability of the FSPO's performance measurement, value for money and the nature of its relationship with the Department and other stakeholders.

The FSPO's Strategic Plan for the three-year period to 2024, *Connecting and Innovating*, provides a framework to deliver and review its work programmes. The framework outlines the FSPO's strategic priorities and its projected progress over the three-year period. The framework also identifies the resources required for the delivery of the strategy. A Service Level, Oversight and Performance Delivery Agreement is in place with the Department, which monitors the delivery of the Strategic Plan at regular intervals.

### 4.2 Financial Viability

The FSPO Council approves the FSPO's annual budget. This annual budget is then funded through two distinct sources - the financial services complaints are funded by a levy on the financial services industry and the pensions complaints are funded by an Exchequer grant, through the Department of Finance.

The Council is responsible under the legislation for setting the levy to be paid by financial service providers. In 2018, the Council engaged an external consultancy firm to carry out a review of the levy administration process. The review resulted in a number of key recommendations including that on an annual basis, the average most recent three-year claims experience is calculated for each category of complaints and the levy for the following year allocated on that basis. The use of the most recent three years' claims experience ensures that there are no major annual swings in the proportion of funding that is to be paid either through the Exchequer grant, or the financial services industry levy, due to possible spikes in certain complaints in any one year. This methodology, the pensions cost allocation model, has resulted in the proportion of funding requested through the Exchequer grant reducing year on year, from 6% in 2021, 5% in 2022 and 4% in 2023. As this movement is in accordance with the number of pension complaints received by the FSPO in each relevant three-year period, the pensions cost allocation model results in an effective and appropriate funding model. The Financial Services and Pensions Ombudsman (Amendment) Bill 2023 proposes to put this three-year methodology on a statutory footing.

In the context of recent changes in the financial services sector, the FSPO is seeing significant changes in the types of complaints being made both in terms of the category of the financial service provider and the jurisdiction in which that provider is regulated. Furthermore, the use of flat fees for certain categories of provider requires consideration, particularly in the context of fluctuating complaint numbers in relation to certain categories, and the risk arising from a high level of market presence. During this Strategic period, a review of the Financial Services Industry Levy will be commenced by the FSPO to consider these matters and ensure that the current levy processes and approaches continue to ensure an effective and appropriate funding model.

The issue of the administrative burden in the levy collection process was raised during the review process. The CCPC, in particular, would be supportive of engagement with the FSPO in order to consider eliminating administrative time and costs to both organisations along with all of the financial firms in Ireland who are levied.

#### Appeal Mechanism

An appeal mechanism is in place, whereby a financial service provider may appeal to the Ombudsman within 21 days of issue, to change the amount of the levy assessed where it considers that the amount assessed is incorrect. Appeals of this kind must be in writing to the Ombudsman, setting out the grounds for the appeal in detail and must be accompanied by the amount of the levy contribution that is not in dispute. After consideration of any such appeal, the Ombudsman will advise the appellant and the Office in writing of his decision.

The appeal mechanism has not been used by any financial service providers. There are, however, several instances each year of failure to pay in certain categories. There are many queries raised by financial service providers, which are reviewed, with clarifications issuing to providers, as appropriate, to facilitate levy payments for the year in question. On an annual basis, the FSPO publishes a document, *Understanding the Financial Services Industry Levy*<sup>9</sup> to provide information on how the levy is determined, calculated and collected.

#### Levy Debtors policy

The FSPO approved a Levy Debtors Policy in October 2020, which gives effect to the legislative provision outlined in Section 43 of the FSPO Act. It sets out how the FSPO will apply the proportionate penalties prescribed in the Council regulations and the escalation procedures that will be implemented in respect of levies that are not paid within the 30-day payment term.

In cases where the amount of an invoice is disputed or if a financial service firm disputes the application of the levy regulations, these procedures will not be implemented until such time as the matters have been clarified and a decision is reached by the FSPO in relation to the amount of the levy that is due to be paid. Once this has been clarified to the firm in question, the 30-day payment term will begin.

#### **Recommendation:**

8. Given the significant impact of new methods of delivery, new products, services and new providers, as well as the considerable need for consumer supports, an increase in the budget to provide greater benefits to consumers to be considered by the FSPO Council.

### 4.3 Overview of Complaint Management Process

As mentioned earlier in this report, complaints can be investigated through informal mediation, formal investigation or a combination of these approaches.

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<sup>9</sup> Available here: [Funding | Financial Services and Pensions Ombudsman \(fspo.ie\)](#)

## Informal Mediation/Dispute Resolution

Dispute resolution is a confidential mediation service. It is a process whereby the FSPO aims to help a Complainant and a Provider design and agree to a solution to a complaint that satisfies both parties. This process is voluntary and confidential and normally takes no longer than 12 weeks. A key aspect to maintaining the confidentiality of the process is that any records relating to the mediation process are not shared beyond that process.

The mediation process enables the parties to make informed decisions about the best way forward for them, based on their own particular needs, so that together they can design a solution that is acceptable to both. As mediation progresses, the Dispute Resolution Officer assigned to the complaint works with the parties to establish which of the following options is the route they want to take:

- A mutually agreed Mediation Settlement
- The complainant closing the complaint as they now have a greater understanding of the situation and/or views regarding potential success in any formal investigation
- The complainant requesting the complaint to be sent for formal investigation by the Ombudsman.

In 2021, 65% of complaints that concluded the mediation process were resolved in mediation. In 2022, this rose to 70%. Very often, a jointly agreed mediation settlement provides a suitable resolution to the issue for both parties.

## Formal Investigation

The FSPO reviews complaint files to ensure they are suitable for formal investigation. The formal investigation process is a detailed gathering and examination of all relevant evidence, and typically takes between 9 and 18 months from when the investigation process begins.

On commencement of an investigation, the FSPO issues a Summary of Complaint document to the financial services provider. This document asks questions about the issues that have led to the complaint and calls for certain items of evidence, which may include documents and audio evidence. On receipt by the FSPO, the provider's response is shared with the complainant. Any comments a complainant makes on the provider's formal response or evidence is shared by the FSPO with the provider. Similarly, any comments or evidence the provider submits will be shared by the FSPO with the complainant. The sharing of documents/comments between the parties continues until the complainant or provider have no further comments to make. The complaint will then proceed for adjudication.

When considering its adjudication, the FSPO may need to ask a complainant or the provider to provide oral evidence. An oral hearing is not required for every adjudication; the Ombudsman decides if oral evidence is needed. Once concluded, the transcript of evidence is shared with the parties.

When a complaint has been fully investigated, the FSPO issues a Preliminary Decision, after which the following can happen:

- Both parties accept the preliminary decision and the Ombudsman’s decision becomes a Legally Binding Decision after 15 working days
- Either or both parties believe that the FSPO made a mistake in the preliminary decision. If so, the parties will then have 15 working days to write to the FSPO informing them of the perceived mistake. Any comments made by either party will be exchanged. The Ombudsman then considers all submissions and issues a Legally Binding Decision. Decisions made by the Ombudsman are legally binding on both parties. Decisions can be appealed, by either party, only through a statutory appeal to the High Court.

**Recommendation:**

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| 9. | In order to identify issues on an ongoing basis, the FSPO to keep the processes of the Office under review. |
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**4.4 Relationships with the financial services industry and Regulatory Authorities**

The FSPO engages extensively with individual financial services providers and representative bodies in the performance of its functions. This includes regular engagement with individual providers to promote positive complaint handling. Engagement with representative bodies enables the FSPO to share knowledge and foster the concept of complaint handling; regular engagement with representative bodies is through meetings, training events and conferences.

Feedback from the financial services industry demonstrates a positive working relationship with the FSPO. From evidence gathered during the review process, this is an area where the FSPO is very strong – responsive engagement throughout the complaint management process.

The FSPO Council and the Ombudsman cooperate with the Central Bank of Ireland, the Pensions Authority and the Competition and Consumer Protection Commission (collectively, the regulatory authorities). This cooperation is with a view to ensuring that the governing legislation operates in a way that contributes to promoting the best interests of consumers and actual or potential beneficiaries of financial or pension services, and to the efficient and effective handling of complaints.

The FSPO has a very positive working relationship with the regulatory authorities, with dedicated points of contact, regular engagement, mutual assistance and close cooperation, supportive of the respective functions of each organisation, within the consumer protection framework.

In general, the FSPO Council does not encounter issues with financial service providers and/or the Central Bank during the annual process of determining the financial services industry levy. As part of the review process, the FSPO Council acknowledged the support and cooperation

of the Central Bank, in particular, in the provision of relevant and timely information which supports the annual calculation of the levy and the implementation of the FSPO's Levy Debtors Policy.

In the main, financial service providers report a positive working relationship with the FSPO, appropriate to the impartiality of the FSPO. Stakeholder feedback, however, indicates that some financial service providers have no engagement with the FSPO during the annual process of determining the financial services industry levy.

**Recommendation:**

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| 10. From an equity viewpoint and to allow for any challenges to be proactively considered, including challenges in the levy collection area, the FSPO to accommodate additional consultation with provider representatives as necessary. |
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#### 4.5 Satisfaction levels with service provided by the FSPO

Engagement between stakeholders and the FSPO has evolved since its establishment in 2018, in particular with the move to more remote working in the past couple of years. This has accelerated the move to electronic files as a way of sharing information. This is seen by stakeholders as a welcome development, achieving greater efficiency in the system and contributing to a reduction in the overall timeline for the resolution of complaints.

Information gathered in this review indicates that consumers are satisfied with the complaint resolution service provided by the FSPO and view the process as an independent, impartial and cost-effective means of resolving a dispute. The independent view of the FSPO reassures consumers that the outcome has been fair and impartial. Any complaints expressed generally relate to the length of time needed to formally investigate and adjudicate on complaints to deliver a legally binding decision, and a lack of update to complainants while the process takes its course.

In relation to engagement with the FSPO on updates on the status of complaints, one stakeholder suggested that consideration could be given to the FSPO facilitating a process whereby complainants could track at what stage their complaint has reached and the next action/step due. This would lend itself to more enhanced communication with complainants, and is recognised by the FSPO as a tool of considerable value, planned to be included in its future case management system.

**Recommendation:**

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| 11. To improve information sharing and the elimination of paper records, the FSPO and stakeholders to further enhance the use of electronic file management. |
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The relationship between the FSPO and financial services industry representative bodies and their members as well as regulatory bodies is deemed to be positive and constructive. While engagement with the FSPO can vary on an organisational basis, ranging across areas of

strategy/policy development, complaints process handling and sharing of expertise on emerging issues, all stakeholders report positive interaction with representatives of the FSPO.

By way of illustration, engagement between Insurance Ireland and the FSPO tends to be on policy and regulation. Prior to the COVID-19 pandemic, Insurance Ireland would run an event that involved the FSPO presenting findings/complaints to insurance firm representatives – usually around the time of publication of the annual complaints report. During 2022, the FSPO delivered several presentations to members of industry groups.

Evidence obtained indicates that the independent and free service offered by the FSPO is a critical part of the consumer protection framework. A stakeholder commented on the ability of the FSPO to mediate in disputes where, in most instances, a consumer is at a significant disadvantage in terms of understanding and resources.

While the FSPO service is considered to be a valuable resource for consumers, some of the services that are considered to be especially valuable include:

- Early Jurisdictional Assessment (EJA) during the Registration stage – stakeholders consider this stage to be very useful in ensuring that complaints which are outside the FSPO’s jurisdiction are identified early in the process
- Dispute Resolution – this stage in the process is a meaningful, engaging and efficient process for the resolution of complaints
- Publications – publication of the FSPO’s Annual Overview of Complaints and its Digest of Decisions are particularly valuable in terms of the insights they provide for policy and advocacy activities, as well as guidance for consumers who may be in similar situations

While stakeholders are satisfied with the complaints resolution service provided by the FSPO, it is possible that greater efficiencies could be achieved in some aspects of the service.

**Recommendation:**

12. Resolution timelines to be reviewed and related information to be published, regarding the journey times for complaints moving through the different stages of the process.
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In adjudicating on complaints, some decisions, with a very similar set of facts, vary in their outcome which can lead to difficulties when assessing the wider implications of a decision, as providers are obliged to do. Financial service providers are required under wider consumer protection obligations to assess the outcome of each complaint and to determine if the decision should be applied across a broader number of consumers. An inconsistent decision from the FSPO can mean that customers with similar circumstances do not all receive the same treatment, depending on the decision in question. In assessing their broader consumer protection obligations, providers are also required to be mindful of prior engagements with the Central Bank on the same or similar issues as those covered by FSPO decisions.

A further inconsistency considered by providers at formal investigation stage relates to directions of financial compensation to consumers. Providers report cases where it was felt the amount offered far exceeded what may have been deemed reasonable when the impact

to the consumer was factored in and conversely, there have been cases where the direction for compensation was less than envisaged.

On these issues, it should be noted that the clarity of the amount of compensation is as set out in an individual decision explaining why a specific complaint is upheld, and what loss, expense or inconvenience has been identified in the particular circumstances in line with Section 60(4)(d) of the Act. It is only appropriate to take account of the factors identified by the legislation. These factors will be different in each complaint.

**Recommendation:**

13. To increase the level of transparency in how it works, the FSPO to liaise with the Department of Finance to consider a legislative amendment to extend the annual Section 25 reporting of upheld decisions to also include details of the number of decisions received by each provider, where the complaint was rejected.

#### 4.6 The FSPO Adding Value

It is clear from the stakeholder consultation that the independent and free service provided by the FSPO is considered by the financial services industry to be an integral part of the consumer protection framework, providing consumers with a means to complain and seek redress if they feel there has been a failing in any aspect of those consumer protection requirements, in an independent and impartial way.

In addition, given the critical nature of the service provided by the FSPO, the levy is considered at industry level to be delivering value for money.

In responding to the stakeholder questionnaire, the BPFi commented that the area of complaints is of significant importance to its members in working to ensure satisfaction with the financial services provided to consumers, and the service provided by the FSPO further supports this aim through its work to independently investigate and resolve consumer complaints. The wide-ranging impact of the Ombudsman's decisions has been very significant, and it is worth noting that there are many consumers who never make a complaint to the FSPO, who have nevertheless benefitted from the FSPO's interventions and investigative work. This was particularly evident in 2020 when more than 7,000 consumers received rectification or compensation on foot of a small number of the Ombudsman's tracker mortgage decisions; this highlights the importance of the work carried out by the office.

#### 4.7 Measurement of Performance

In the period since 2018, the FSPO has evolved in its organisational structures and processes, to better and more efficiently meet the needs of its customers. One of the ways it measures its performance is through the number and nature of customer service complaints received. In 2021, the FSPO recorded 65 customer complaints it received about its service, representing a 15% decrease, compared to 78 customer service complaints received in 2020. Similarly, in 2022, the FSPO received and responded to 58 customer service complaints, regarding the

operation and services provided by the FSPO, which represents a 12% decrease in the number of customer service complaints received in 2021. While delays, or timelines for the conclusion of complaints, remains the predominant cause of customer service complaints, the complexity of the work undertaken by the FSPO and the human-resource intensive processes involved in complaint-handling and dispute resolution must be acknowledged. The FSPO has segregated the management of customer service complaints from operational directorates involved in the management of financial service and pension complaints, allocating responsibility for these reviews to an entirely separate and independent strategic process.

A Service Level, Oversight and Performance Delivery Agreement is in place with the Department, and is renewed annually. The FSPO's performance is monitored by the Department against the commitments in the key deliverables which are set out in the Agreement, having regard to the statutory role of the FSPO. In addition, as part of the quarterly governance meetings with the Department, the FSPO provides a report on progress in reaching targets and performance indicators. Trends in complaints to the FSPO are also included as a standing item on the agenda, to ensure the Department is kept up to date on the operations of the organisation.

#### Key Performance Indicator Framework

To measure progress against its strategic pillars, the FSPO's Strategic Plan *Connecting and Innovating* is supported by a detailed framework of Key Performance Indicators (KPIs) which are reported on monthly at the SMT meetings. In addition, focussed KPIs are reviewed regularly by the FSPO Council. The key driver of the development of this framework from 2020 was the need to reduce a backlog of cases that had started to develop.

Acknowledging that throughput and process progression are as important as the end point, the FSPO developed a set of targeted KPIs, specifically aimed at eliminating backlogs in the informal process and, improving the average processing times at key pressure points and operationally important milestones aligned to the strategic objective at that time of "Improving the Customer Experience".

In the development of the 2021 KPI framework, it was agreed that the evolution of the framework should encompass more of the end-to-end process, to provide enhanced KPIs analysis to the Council in support of its function to keep under review the efficiency and effectiveness of the Ombudsman. The enhancements also provided greater operational insight to the SMT. KPI Review is a standing item on the SMT meeting agendas.

#### Evolution of the KPI Framework

Preparation for each new iteration of the KPI framework commences in Q4 each year when the SMT commences analysis and reviews management information for the year-to-date.

At the end of 2021, the FSPO reflected on the increased transparency and operational visibility provided by the data from the expanded KPIs and considered whether changes were useful or necessary to further demonstrate the FSPO's accountability to its stakeholders. It was concluded that the main organisational KPIs were functional and provided valuable and



appropriate information to enable the Council to keep under review the effectiveness and efficiency of the Ombudsman.

New 'live' KPI reports for Council reporting were developed in 2022 to allow for the routine management, monitoring and impact analysis against each KPI, facilitating increased granular analysis to team and individual resource level, complaint progression trend analysis and resolution rate by business process. Such reports are also of considerable value to business areas. The KPI framework in 2023 has matured to offer excellent operational data to support early interventions and operational strategy development.

### Management of complaints

It should be noted that on its establishment in 2018, the FSPO inherited 3,178 complaints from its predecessor bodies and the number of complaints "on hand" increased until 2020. Since then, the FSPO has driven down the number of "on hand" complaints. This reduction in the number of "on hand" complaints has been facilitated by the application of targeted resources, to drive the closure of more complaints annually, than complaints received. It recognises that there is progress to be made in terms of the speed of the resolution of complaints. While acknowledging that delays, or timelines for the conclusion of complaints, are the predominant cause of customer service complaints, factors such as the complexity of the work undertaken by the FSPO, the human-resource intensive processes involved in complaint-handling and dispute resolution as well as a staff turnover, in common with other public sector bodies, must be borne in mind.

As an example, during 2020 and 2021, the FSPO faced and met the significant challenges posed by the COVID-19 pandemic. This included developing and implementing a new COVID-19 complaint management strategy, which was operational within weeks of receiving the first COVID-19 related complaints. By the end of 2021, the FSPO had received 875 complaints arising from the pandemic, with 682 of these complaints concluded by the end of 2021. The FSPO's complaint management strategy included the prioritisation of complaints concerning business interruption insurance, in recognition of the importance to policy holders of achieving a swift understanding as to whether they were entitled to benefits or payments.

The potential volume of complaints received by the Office arising as a result of withdrawal of financial service providers from the Irish banking market was recognised in 2022, as having potentially very significant resourcing and budgetary implications for the organisation. Building on its experience of managing Tracker Mortgage complaints, and complaints arising from COVID-19, in July 2022, the FSPO commenced "tagging" complaints identified as arising from market exit. This enabled the FSPO to share categorisation data with relevant stakeholders, to inform efforts to resolve complaints at the earliest possible stage. The FSPO received less than 100 complaints in 2022, identified as arising from market exit.

As the FSPO continues to monitor complaint trends arising as a result of the withdrawal of banks from the Irish market, it may, if deemed necessary, establish specific specialist complaint handling teams or increased resourcing to respond to such complaints. The Office and the Council monitors the FSPO's operating environment, monitoring emerging demands for its services and identifying resource and skills needs, as they arise.

## Specialist Teams

The FSPO has previously created specialist teams to target specific complaint types. In 2018, it created a specialist team to address a growing number of tracker mortgage complaints, which required formal investigation and adjudication, in the context of the Central Bank's Tracker Mortgage Examination coming to a conclusion. The FSPO inherited over 600 tracker related complaints from the FSOB and, in the years 2018-2021, received over 2,000 new tracker mortgage interest rates complaints. Utilising these dedicated resources, the FSPO has driven the investigation of complaints against financial service providers relating to tracker rates on mortgage loans. The wide-ranging impact of the Ombudsman's decisions has been significant, in complaints of this nature, and, as demonstrated earlier in this report, there are many consumers who never make a complaint to the FSPO, who nevertheless benefit from its interventions and its work. At the end of 2021, the FSPO had successfully reduced the number of tracker mortgage complaints, year on year, by 7%. While the volume of tracker mortgage interest rate complaints received by the FSPO in 2022 shows a reduction on previous years, as providers conclude their actions to remediate their customers, the Office anticipates that tracker mortgage interest related complaints, will nevertheless continue to comprise a considerable portion of its work.

Building on the positive experience of its effective work on tracker mortgage complaints in 2020, the FSPO adopted the same approach for complaints received arising out of COVID-19. Using its enhanced tools for management information, the FSPO quickly identified that complaints concerning declined insurance claims for business interruption insurance benefits, should be prioritised, so that businesses could be placed in a position where they could better assess their future potential for trading. Dedicated resources were applied to these business insurance complaints and the first preliminary decisions issued from November 2020. The FSPO's work in this area has contributed to many policyholders, who never made a complaint, securing policy benefits. This is because certain providers, which had complaints upheld, responded immediately indicating a willingness to apply those decisions to other policyholders with similar circumstances. The FSPO welcomes such an approach from a provider, as it contributes to an environment of trust, where customers secure their entitlements and complaints are prevented from arising.

## 4.8 External Communications

### Media Engagement

The FSPO has an established media presence. The primary drivers of its media presence are the publication of the annual Overview of Complaints and Digests of Decisions, which has resulted in positive media coverage. The FSPO has seen considerable growth in online news coverage, which accounts for quite high levels of reach.

Since March 2022, the FSPO has utilised an enhanced media relations strategy for the publication of its annual Overview of Complaints, with the FSPO issuing press releases with details of complaints received by county. As a result, in addition to a significant national media

performance, the Overview has gained considerable traction in regional media, which represented 45% of all FSPO media coverage in March 2023. The focus on regional media has significantly increased the overall volume of media coverage for the Overview over the last two years, growing from 16 pieces of national media coverage only in March 2021, to 59 pieces of national and regional coverage in March 2022, and 56 pieces of national and regional coverage in 2023.

#### FSPO Website ([www.fspo.ie](http://www.fspo.ie))

The FSPO has a good website and the feedback from stakeholders is that publications such as the Annual Overview of Complaints and the Digest of Decisions provide invaluable insights into the FSPO's legally binding decisions. These publications are also a source of guidance for consumers who may be in similar situations. Decisions are uploaded monthly, after the period for appeal has elapsed, and once they have been the subject of further internal review to ensure that they are suitably anonymised, to meet the requirements of section 62(2) of the legislation. The website page displays the date when the database was last updated.

However, while it is a valuable repository of information for consumers and stakeholders, the website is in need of an overhaul to better serve its visitors. Redevelopment and delivery of a new accessible, contemporary website will enable the FSPO to deliver against its statutory mandate and continue to improve its services. In this regard, and as mentioned earlier in this report, the FSPO is in the process of tendering for a new website contract for a set period.

The database on the Ombudsman's Decisions provides an especially valuable service as it includes a filtering option as well as an infographic on how to search the decisions. If known, the database can also be searched by Decision Reference Number.

The FSPO is committed to making its website accessible, in accordance with European Union (Accessibility of Websites and Mobile Applications of Public Sector Bodies) Regulations 2020. The website is partially compliant with the Web Content Accessibility Guidelines 2.1 level AA due to some content that is non-accessible for a number of reasons. The FSPO is committed to ensuring all of its content is as accessible as possible, and is undertaking work to improve its website, including the development of a new, fully accessible website.

Queries and complaints about accessibility are dealt with by the FSPO's Access Officer, whose role is to provide or arrange for, and coordinate assistance and guidance to persons with additional needs accessing the services of the FSPO.

#### **Recommendation:**

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| 14. To improve the functionality of the online database of decisions, a key word search to be explored as part of the FSPO's IT work planning. |
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## 5. Recommendations

Below is a list of the recommendations set out in the various chapters of the report, on foot of the review undertaken.

### **Section 2 – FSPO External Context**

1. The FSPO to further consider its social media presence to provide it with additional opportunities to develop public awareness of its service, particularly among certain types of consumers such as young people and those in certain social classes.
2. To further develop the existing governance arrangements in place between the FSPO and the Department, consideration to be given to the FSPO senior management team formally meeting with relevant members of the Department’s Executive Board on an annual basis to ensure there is an understanding of the Department’s strategic priorities and to discuss key issues and challenges. An opportune time would be when the Oversight Agreement/Performance Delivery Agreement is being reviewed each year.
3. Acknowledging that the Council may not be in a position to approve the FSPO’s draft budget until later in the estimates process each year, the FSPO and the Department to agree a process, whereby the estimate of the FSPO’s Exchequer funding requirement is provided to enable the Department to feed into the estimate process in a timely manner and to avoid seeking revisions to funding.
4. To enhance transparency and communication with complainants during the processing of their complaints, the FSPO is to consider facilitating a process whereby complainants and financial service providers could track electronically the stage their complaint has reached and when the next action/step is due.

### **Section 3 – Organisational Capacity**

5. The Council to put in place an action plan to implement recommendations of the Board Excellence Report in a timely manner.
6. A legislative amendment was made in the Central Bank (Supervision and Enforcement) Act 2013 which provides for Oireachtas funding to be provided for the two Model Schemes. While the matter of the pension liabilities has progressed recently following the sanction from the Department of Public Expenditure, National Development Plan Delivery and Reform, any issues attaching to the conditions of this sanction to be progressed as a matter of priority.
7. The FSPO is committed to fostering a learning and development environment and, as demonstrated above, has increased expenditure on training and development as well

as developing a People Strategy. In order to reinforce and demonstrate its inclusive approach to training and development, as well as garnering greater levels of staff engagement, the FSPO to put in place a new Learning and Development Strategy.

#### **Section 4 – Organisational Performance**

8. Given the significant impact of new methods of delivery, new products, services and new providers, as well as the considerable need for consumer supports, an increase in the budget could provide greater benefits to consumers and is to be considered by the FSPO Council.
9. In order to identify issues on an ongoing basis, the FSPO to keep the processes of the Office under review.
10. From an equity viewpoint and to allow for any challenges to be proactively considered, including challenges in the levy collection area, the FSPO is to accommodate additional consultation with provider representatives as necessary.
11. To improve information sharing and the elimination of paper records, the FSPO and stakeholders are to further enhance the use of electronic file management.
12. Resolution timelines to be reviewed and related information to be published, regarding the journey times for complaints moving through the different stages of the process.
13. To increase the level of transparency in how it works, the FSPO to liaise with the Department of Finance to consider a legislative amendment to extend the annual Section 25 reporting of upheld decisions to also include details of the number of decisions received by each provider, where the complaint was rejected.
14. To improve the functionality of the online database of decisions, a key word search to explored as part of the FSPO's IT work planning.

## 6. Conclusion

The review of the FSPO described in this report examined the way in which the FSPO currently operates, focussing on the external context, organisational capacity and organisational performance with a view to determining whether the service is still needed and whether the organisational structure continues to be appropriate.

### **Consultation**

While the FSPO is a State body under the aegis of the Department of Finance, the Ombudsman is independent in the performance of his statutory functions and the FSPO interacts with many other organisations. Accordingly, this review involved a consultation process which included financial service representative bodies, consumer focussed and regulatory bodies and the FSPO liaison unit within the Department of Finance. This process was key to the review. The quality and depth of responses received demonstrated a sector-wide acknowledgement of the importance of having an avenue of redress as an alternative to the Courts, for consumers whose complaints about the conduct of financial service providers and pension providers remain unresolved, and the FSPO as an integral part of the consumer protection framework.

### **Overall**

One of the main roles of the Ombudsman is to investigate, mediate and adjudicate complaints about the conduct of service providers or pension providers. The FSPO was established to provide an alternative to the Courts for consumers who have unresolved disputes with a financial or pension service provider and all investigations by the Ombudsman are free of charge to the consumer. Subject only to an appeal to the High Court, a decision of the Ombudsman in respect of a complaint is legally binding on all parties.

The office has an important role in redressing the balance of power between an individual consumer and a provider. The FSPO does this by making its service as informal and accessible as possible. It mediates between the parties and where necessary it investigates and issues legally binding decisions. The Ombudsman has the power to direct a financial service provider to pay compensation of up to €500,000 to a complainant. He can also direct that a financial service provider rectify the conduct that is the subject of the complaint. There is no limit to the value of rectification he can direct.

The review found that the current model of the FSPO as a State body under the aegis of the Department of Finance is still the most appropriate, that the FSPO plays a vital role within the overall financial architecture, providing an independent, impartial and cost-effective means of complaint resolution for consumers and that its functions are still required.

While low to medium level recommendations are set out across the areas reviewed, evidence obtained demonstrates that the FSPO is effective and efficient in the delivery of its responsibilities and that it enjoys the confidence, support and respect of the public.

## Appendix 1: Membership of Steering Group

Scline Scott (Chair) - Department of Finance

Mary McCarthy - Department of Finance

Patrick McCabe - Department of Finance

Rose O'Connor - Department of Finance

Carmel Dobson - Department of Social Protection

Maeve Dineen – Financial Services and Pensions Ombudsman Council (Chairperson)

Áine Carroll/MaryRose McGovern - Financial Services and Pensions Ombudsman

Michelle Byrne – Banking & Payments Federation Ireland

Gráinne Griffin – The Competition and Consumer Protection Commission

Jacqueline Thornton – Insurance Ireland



**An Roinn Airgeadais**  
Department of Finance

