# **Memorandum of Understanding between the Central Bank of Ireland, the Financial Services Ombudsman and the Pension Ombudsman**

**Note:  this MOU will require further update post the amalgamation of the FSOB and the PO offices [2015]**

## **Introduction**

The purpose of this Memorandum of Understanding (“**MoU**”) is to provide a framework for the relationship between, the Central Bank of Ireland **(**“**the Bank**”) the Financial Services Ombudsman (“**FSO”**) and the Pensions Ombudsman (“**PO”**). Each of the FSO and the PO is referred to herein as an “**Ombudsman**”. It reflects the fact that while each of these three bodies is independent of each other and has a distinct function; they will need to co-operate and communicate constructively with each other in order to carry out their functions effectively. This MoU refers to these three parties as “the **Co-operating Authorities**” or a “**Co-operating Authority**”, when referring to one party alone.

Terms not defined in this MoU shall have the meaning given to such terms by the Central Bank Act, 1942 (as amended) *(“***the Act”*).***

## **General structure**

The Bank was established under Part II of the Act.

The Financial Services Ombudsman was established as part of the Financial Services Ombudsman’s Bureau, under Part VIIB of the Act.

The Pensions Ombudsman was established under Part XI of the Pensions Act 1990.

The Co-operating Authorities enter into this MoU pursuant to Section 57CQ(3) of the Act, setting out the terms under which the Co-operating Authorities agree to give effect to the provisions of Section 57CQ relating to:

1. co-operation between the Co-operating Authorities with a view to ensuring that the provisions of Part VIIB of the Act operate in a way that contributes to promoting the best interests of consumers of financial services and to the efficient and effective handling of complaints;
2. the receipt by the  Bank of recommendations made by the Financial Services Ombudsman and the Financial Services Ombudsman’s Council pursuant to Section 57CQ(2) of the Act with respect to measures that the Bank might take so as to:
	* effectively deal with persistent patterns of complaints made against specified regulated financial service providers or against a specified class of those financial service providers;
	* improve the way in which regulated financial service providers deal with complaints that are made against them; or
	* effectively deal with any other matter relating to promoting the interests of consumers of financial services.

The Co-operating Authorities also desire to enter into this MoU in order to regulate the supply of information between them and to maintain controls on the uses of and the confidentiality of any information thus shared.

## **Roles of the Cooperating Authorities**

The respective roles of the Bank, the Financial Services Ombudsman and the Pensions Ombudsman are summarised below:

### ***The Bank***

The Bank is responsible for the prudential supervision of individual financial service providers, conduct of business, including protection of consumer interests, and the stability of the financial system overall.

### ***Financial Services Ombudsman***

The primary role of the Financial Services Ombudsman is to deal with complaints made by eligible consumers about the conduct of regulated financial service providers that have not been resolved by the providers, except for complaints that are within the jurisdiction of the Pensions Ombudsman. The Ombudsman is therefore the arbiter of unresolved disputes and is impartial.

### ***Pensions Ombudsman***

The role of the Pensions Ombudsman is to investigate and decide in an independent and impartial manner, on complaints and disputes concerning occupational pension schemes, Personal Retirement Savings Accounts (PRSAs) and Trust RACs, involving maladministration and financial loss, and to grant redress where appropriate.

## **Jurisdiction for purposes of handling complaints**

Any complaints relating to financial service providers that are received from consumers by the Bank will be recorded on its database system. The Bank will consider the nature of the complaint and whether it appears to come within the remit of the Financial Services Ombudsman or the Pensions Ombudsman. If a complaint does appear to come within the remit of either Ombudsman, subject to the provisions of Section 43 of the Central Bank (Supervision & Enforcement) Act, 2013, it will be referred without delay to the appropriate Ombudsman by the Bank, and the Bank will issue an acknowledgement letter informing the complainant of this.

Upon receipt of a complaint from a consumer by either Ombudsman, one of the first decisions that has to be made is whether the matter can be investigated by him.
The Financial Services Ombudsman and the Pensions Ombudsman each have sole responsibility for deciding whether a complaint falls within their jurisdiction.

If either the Financial Services Ombudsman or the Pensions Ombudsman decides that a complaint he has received does not come within his jurisdiction and therefore cannot be accepted for investigation by him, he will consider whether the complaint seems to come within the remit of the other Ombudsman. If he feels it does, he will refer it to that Ombudsman and at the same time will inform the consumer of the reason(s) why he is unable to investigate the matter and that he has referred it to the other Ombudsman.

Broader issues of consumer protection are the responsibility of the Bank and, if such issues are brought by consumers to the attention of either Ombudsman, the Ombudsman will refer them to the Bank for consideration and will inform the consumers accordingly.

In cases of uncertainty, the Co-operating Authorities will liaise to decide which Co-operating Authority (if any) is the correct forum to deal with a complaint or issues arising from a complaint and to ensure that the complaint is properly dealt with.

The role of the Bank under this MoU shall be managed and overseen by the Director of Consumer Protection.

## **General co-operation**

The Co-operating Authorities will seek to maintain strong and constructive relationships with each other in order to contribute to promoting the best interests of consumers of financial services and to the efficient and effective handling of complaints.

The Co-operating Authorities recognise that close co-operation and communication with each other will be of particular importance, because their functions are closely related.  In particular, it is recognised that there will be mutual benefits in ensuring that systemic and/or serious patterns of complaints are acted upon at the earliest opportunity, to improve the general position of consumers of financial services.

If an Ombudsman feels during his investigation of a complaint that a matter indicates an issue that may be of concern to the Bank, he will inform the Bank.  He will also co-operate with the other Ombudsman so as to avoid unnecessary duplication of work.

## **Information sharing and consultation**

The Co-operating Authorities have agreed that they should seek to observe the following principles:

* There should be consultation at an early stage on any issues that might have significant implications for them. This is desirable in order that there should be no surprises and that each should be aware of, and have the opportunity to comment on, any proposed action or initiative which might be relevant to the other.
* Seek to achieve consistency of approach and avoid confusion or misunderstanding as to their respective roles.
* Where appropriate, the Co-operating Authorities should exercise their respective responsibilities in a complementary fashion to address issues and problems that affect consumers and financial service providers.
* The Co-operating Authorities will bring to the attention of each other issues that might impact on them, and have consultations in relation to measures that might be taken to deal with persistent, systemic and/or serious patterns of complaints, to improve the way in which regulated financial services providers deal with complaints.

The Co-operating Authorities will seek to act in accordance with these principles by ensuring that there is an appropriate and timely flow of information between them. This exchange of information should take place on a regular and routine basis and, as the circumstances demand, on a one-off specific basis.

## **Confidentiality/Permissible uses**

The Co-operating Authorities recognise that the exchange of information between them will be an important dimension contributing to the efficient and effective handling of complaints.  They are equally conscious of the need for discretion and for the adoption of procedures that protect (i) the interests of individual complainants, (ii) the confidential nature of certain information, and (iii) the professional secrecy obligations of the Bank  under Section 33AK of the Act and EU law, to which the terms of this MoU are subject (where applicable).

They consider it prudent for them to commit to a level of confidentiality between them as regards the exchange of non-public information, including information concerning individual complaints or the actions of a Co-operating Authority in an individual instance and who has responsibility for a particular complaint. They are able to assist each other through the sharing of certain information as provided for under the relevant statutory provisions (Section 57 CO of the Act and, in the case of the Bank, Section 33AK (5) of the Act).

Where one Co-operating Authority (the “Requesting Authority”) requests information from another Co-Operating Authority (the “Requested Authority”), the Requesting Authority shall state in its request the purpose for such request and the proposed use by the Requesting Authority of such information. The Requested Authority may demand that such request be set forth in writing.

Subject to Section 57CQ(1A) of the Act, where one Co-Operating Authority provides information to another Co-Operating Authority (whether pursuant to a request or otherwise), the Co-operating Authority receiving such information shall only use such information for a purpose agreed with, or consented to by, the Co-operating Authority providing such information.

A Co-operating Authority shall not disclose third party non-public information received from another Co-operating Authority (whether pursuant to a request or otherwise) except with the consent in writing of the Co-operating Authority that provided such information, or pursuant to a legally enforceable demand or obligation. A Co-operating Authority that is subject to such demand or obligation shall inform the other Co-operating Authorities of the legal provision(s) that require such disclosure within a reasonable time of such Authority becoming aware of such demand or obligation.

### ***Regular and routine information sharing***

In accordance with Section 57CQ(1A), the Financial Services Ombudsman shall, whenever asked to do so by the Bank, provide the Bank with records or copies of records, or information, dealing with matters, or matters of a kind, specified by the Bank from time to time, relevant to the performance of the Bank’s functions.

In particular and without limitation to the above paragraph, the Financial Services Ombudsman will provide the Bank with:

1. Briefing and, as required, records or copies of records, or information dealing with matters, or matters of a kind, specified by the Bank from time to time as being relevant to the Bank’s functions and access to more specific details if this appears to the Bank to be necessary from consideration of the briefing and records supplied;
2. Statistical information about their complaints-handling activities on a bi-annual basis, setting out key trends and details on complaints received by product and complaint type, by sector and by institution and qualitative feedback on top ranking complaint trends;
3. Public reports e.g. annual, and bi-annual; reports on the number of complaints made to the Bureau, and their outcomes and endeavour to provide an advance copy no later than 1 working day in advance of publication.
4. The Bank will also endeavour to provide an advance copy of any complaints data no later than 1 working day in advance of publication;
5. When requested, following a decision to decline to investigate a complaint, or to discontinue an investigation of a complaint, a copy of the relevant decision;
6. Statistical and qualitative information about declined cases on a bi-annual basis, setting out trends on declined cases by product and declined complaint type, by sector and by institution.

The Financial Services Ombudsman shall provide a copy of any recommendations to which Section 57CQ (2) of the Act applies (whether of the Financial Services Ombudsman or of the Financial Services Ombudsman’s Council) to the Director of Consumer Protection, having marked on such copy whether such recommendations are addressed to the Bank and/or the Registrar of Credit Unions, so that the Director Consumer Protection may distribute such recommendations within the Bank appropriately.

Subject to its duties of confidentiality and professional secrecy, the Bank will provide to the Financial Services Ombudsman and the Pensions Ombudsman:

1. Briefing on regulatory action taken which is likely to affect them in the exercise of their functions.
2. Briefing on any proposed changes to codes of practice, orders, rules or guidance of the Bank relating to complaints handling.
3. Statistical and qualitative information arising from consumer research or related activities of relevance to their functions.

### ***Specific information sharing***

Without limitation to the above, the Financial Services Ombudsman will provide the Bank with further detailed and specific information relating to a complaint (or complaints) for its general consideration:

1. Where the circumstances of the case appear to call into question:
	* a financial service provider’s fitness and probity;
	* or whether any specified person may not be a fit and proper person to carry on a relevant function;
	* or if it appears that a criminal offence or a serious regulatory contravention has occurred.
2. If it appears that a complaint or a series of complaints may give rise or are giving rise to issues of regulatory relevance to the Bank (whether or not the financial service provider  has itself drawn the issues to the attention of  the Bank).
3. If it appears that it would be desirable and appropriate for the Bank to consider using one or more of its regulatory tools, including the exercise of its investigative and other enforcement powers, the making of rules or the giving of guidance to financial service providers.
4. In response to a request from the Bank where it is, or is contemplating, using any of its regulatory tools in relation to the subject matter of the request.
5. Where it appears that a regulated entity has failed to comply with an award, determination, or direction (or equivalent thereof) made by an ombudsman, or a court order in respect thereof.
6. Where it appears that a financial service provider has, without reasonable excuse, failed to comply with a requirement to provide information or to produce documents to an ombudsman.
7. If it appears that it may be necessary for the Bank to exercise its powers to address shortcomings in a financial service provider’s complaint handling procedures.

Where, in the course of investigating a complaint or dispute, the Pensions Ombudsman becomes aware of any of the matters covered by paragraphs (a) to (g) above, and which in his opinion may be of interest to the work of the Bank, he will furnish the Bank with the information in his possession which will enable the Bank to investigate the matter in question.

Where the Bank considers that issues of regulatory relevance have arisen that may also be under consideration as disputes before them, it will alert the Financial Services Ombudsman or the Pensions Ombudsman, as the case requires, to the issues and discuss any proposed action.

The Co-operating Authorities will seek to coordinate communication with consumers and with financial service providers where the circumstances of a complaint, or complaints, give rise to regulatory action by the Bank, and where it is likely that steps will be taken to address the generality of the problems and concerns which may have arisen in a financial service provider or a number of financial service providers.

## **Meetings**

The Co-operating Authorities will meet regularly (at appropriate levels of seniority) and not less than annually, to discuss matters of mutual interest and will communicate routinely between meetings on such matters of shared interest that may arise in the course of day-to-day business.

## **Memorandum Not Binding**

Except for the paragraph next following, this MoU does not create legally binding relations between the Co-operating Authorities. This MoU shall not be construed so as to restrict the performance by any Co-operating Authority of its functions or exercise by it of its powers.

This MoU shall not operate to make a Co-operating Authority (or any employee, officer or agent thereof) liable to any person in damages or otherwise for anything done or omitted for which such person would not otherwise be so liable.

## **Implementation and review**

This Memorandum of Understanding has been reviewed in January 2015 and the Co-Operating Authorities have re-signed the MoU with effect from 2 March 2015.   The Co-operating Authorities will continue to monitor the operation of this Memorandum of Understanding and will review it from time to time as necessary.

### **SIGNED by:**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**
*William Prasifka*

FINANCIAL SERVICES OMBUDSMAN

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

### **SIGNED by:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**
*Paul Kenny*

PENSIONS OMBUDSMAN

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

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### **SIGNED by:**

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*Bernard Sheridan*

Director, Consumer Protection

THE CENTRAL BANK OF IRELAND

Date: \_\_\_\_\_\_\_\_\_\_\_\_