

Presentation to the Joint Committee on Finance, Public Expenditure and Reform, and

Taoiseach

By Ger Deering

Financial Services and Pensions Ombudsman

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## Background

Good afternoon Chairman, Deputies and Senators. I am pleased to have the opportunity, together with my colleagues Ms MaryRose McGovern, Director of Adjudication and Legal Services, Mr Diarmuid Byrne, Director of Dispute Resolution and Ms Tara McDermott, Director of Customer Operations and Information Management, to engage with you today in relation to the work of my office. In particular, I note the Committee's interest in complaints relating to tracker mortgage interest rates and our co-operation with the Central Bank of Ireland in this regard. I also note the committees' interest in the practice of "dual pricing" in relation to insurance.

The Office of the Financial Services and Pensions Ombudsman (FSPO) was established on 1 January 2018 by the *Financial Services and Pensions Ombudsman Act 2017 (the Act)*. The establishment of the FSPO involved the merger of the former offices of the Financial Services Ombudsman (FSO) and the Pensions Ombudsman (PO).

We provide a free service for consumers to resolve complaints about the actions of their pension provider or financial service provider. Our goal is to redress the balance of power between the individual consumer and provider. We do this by making our service as informal and accessible as possible. We mediate between the parties and where necessary we investigate and issue legally binding decisions.

## Dealing with Complaints

The FSPO inherited 3,178 complaints from its predecessor bodies and received 5,692 complaints in 2018. We closed 4,443 complaints in 2018 leaving a balance of 4,427 complaints on hand at the end of 2018.

Of the 4,443 complaints closed in 2018,

- we resolved 2,331 complaints through our informal mediation process
- we issued 234 legally binding decisions
- we closed a further 1,639 complaints at registration and referral stage
- 139 complaints were either settled or withdrawn during the adjudication process
- 100 complaints closed through Legal Services following consideration of jurisdictional issues.

Mediation, by telephone and email and through meetings is the first and preferred option for resolving complaints. By engaging with the parties directly, we try to achieve a timely and satisfactory resolution. Where these early interventions do not resolve the dispute, we use our extensive powers to investigate and adjudicate complaints in a fair and impartial manner. Full details of how we managed complaints in 2018 are set out in our *Overview of Complaints 2018* available on our website, [fspoi.ie](http://fspoi.ie).

Dealing with such high volumes of complaints causes us to be unable to process complaints as quickly as we would wish to. Our Strategic Plan recognises the increasing number of complaints and anticipates a further increase in the coming years. The overall objective of the Plan is to ensure that the organisation can deal efficiently with this increase and to enhance the experience of our customers by delivering our services faster and better.

In order to deliver the objectives in our Strategic Plan we submitted a Workforce Plan to the Minister for Finance and were very pleased to receive approval to recruit an additional 35 staff. We have been proactively recruiting to fill these posts. However, similar to many public sector bodies, the current buoyant job market is making it difficult for us to retain staff.

This is mainly because our highly trained staff are much sought after in both the public and private sector. The FSPO inherited 53 staff from its predecessor bodies in January 2018. However, despite recruiting and appointing additional 43 staff since then, we currently have 60 staff. We will have additional staff joining us before the end of the year and will continue to recruit and train quality people to assist us to deliver on our mandate. In the meantime our dedicated team are working hard and endeavouring to provide the most effective and efficient service possible.

#### **Time Limits**

I am conscious that there has been considerable interest in the time limits for taking complaints to my office and, in particular, the impact this has had on our ability to deal with certain tracker mortgage related complaints. Therefore, I would like to address this issue.

In July of 2017 the *Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017* was enacted. This legislation extended the period within which consumers of a long-term financial service could take complaints to the then FSO. A similar provision was included in the *Financial Services and Pensions Ombudsman Act 2017*. This allows some complainants to submit complaints to this office, including some tracker related complaints, which may previously have been time barred under what was previously a very strict six-year time limit. However, it is important to note that certain time limits still apply.

The legislation setting out the jurisdiction of this office in relation to time limits for bringing complaints against financial service providers is now very complex.

Before the formal investigation of each individual complaint can commence, this office must assess whether the complaint has been made within the time limits set out in Section 51 of the 2017 Act.

Where a complaint relates to the conduct of a Provider in relation to a "long-term financial service", that complaint must be made to this office within one of the time limits set out in s51 of the 2017 Act in order for this office to be in a position to investigate that complaint. The definition of a "long-term financial service" was amended in October 2018, by **Section 9 of the Markets in Financial Instruments Act 2018** and the definition now includes additional provisions. This somewhat complex statutory amendment now forms an integral part of any assessment of the time limits.

Once it has been established that the complaint relates to a long-term financial service, the complaint is examined in light of Section 51 of the 2017 Act which provides that the complaint must be made, within whichever of the following periods is last to expire;

- (i) 6 years from the date of the conduct giving rise to the complaint;
- (ii) 3 years from the earlier of the date on which the Complainant became aware or ought reasonably to have become aware, of the conduct giving rise to the complaint;
- (iii) Such longer periods as the Ombudsman may allow where it appears to him that there are reasonable grounds for requiring a longer period and that it would be just and equitable, in all of the circumstances to extend the period.

This can be a lengthy process as, in many instances, an objective consideration must be given to the Complainant's date of knowledge and this may require scrutiny of all relevant historical communications. Both parties are given the opportunity to make all evidence available to that end, and all such evidence is shared between the parties so that any jurisdictional determination is conducted in a way which is transparent and fair to both.

We also take into account Section 54(2) of the 2017 Act which suspends those time limits for the period during which a complaint is being dealt with under the Provider's Internal Dispute Resolution procedure.

In relation to the exercise of my discretion, I must point out that not only must reasonable grounds exist, that is, there must be a particular reason to extend the time but, in addition, it must be just and equitable, in all of the circumstances, to both parties to do so. This provision cannot be exercised simply because the complaint relates to the application of a tracker interest rate on a mortgage loan account.

Section 52(4) of the 2017 Act, provides as follows:

*“The Ombudsman shall determine a complaint under s44 to be inadmissible where it was made after the expiry of the time limits specified in section 51.”*

The wording in this provision means it is not possible for a party to the complaint or the Ombudsman to simply “waive” the time limits. The use of the word “shall” in this provision mandates me to make the determination that a complaint is inadmissible where it was made after the expiry of the legislative time limits.

Some providers had taken an approach, in relation to tracker mortgage related complaints, that the complaint was made within the time limits. In such circumstances, a full formal assessment of whether the complaint was made within the time limits may not be necessary and the complaint can proceed to investigation.

In advance of, or during a full assessment of the time limits, it is open to a provider to express a view that the complaint was made within the time limits in s51 of the 2017 Act. The Provider may be in a position to do this at an early stage, taking into account the historical documentation which it holds. Some providers had taken this approach from the outset in relation to a large number of tracker mortgage interest rate complaints. This is then taken into account in making a determination on the application of the time limits.

However, where a provider puts forward a view that the complaint was made to this office outside the time limits in s51 of the 2017 Act, and the assessment and evidence supports this view, I must, in accordance with the legislation, determine that the complaint is inadmissible for investigation by this office.

Since the change in time limits, my office has been required to spend a considerable amount of time carrying out jurisdictional assessments on a large number of files, including in relation to tracker mortgage related complaints, in recent months. However, this is no longer the case for tracker mortgage related complaints.

This is because all main lenders are now taking the approach in the vast majority of tracker mortgage related complaints, that the complaint was made within the time limits, thus eliminating the need, in those instances, for a full assessment as to whether the complaint was made within the time limits to be conducted.

### **Tracker Mortgage Related Complaints**

Shortly after I took up office as Financial Services Ombudsman in April 2015, it became evident to me that the loss of tracker mortgages for certain people who had wrongly been denied tracker mortgages had the potential to cause serious hardship for these people. It was also clear to me that the FSO and its successor FSPO would have a key role in resolving the problem, both for individual borrowers and for larger groups of borrowers through co-operation with the Central Bank of Ireland. Because of this, we invested considerable time and resources in assembling the data available within the FSO in relation to tracker mortgage complaints and in working in close co-operation with the Central Bank to ensure that consumers wrongly denied tracker mortgages have them returned in the most efficient and effective way possible.

The FSO had built up a considerable body of information in relation to tracker mortgages. However, this information was contained in hundreds of individual complaint files. Realising how valuable the information contained in these files could be, we undertook an analysis of tracker mortgage complaints decided by the Office between 2009 and July 2015.

We engaged with the Central Bank to establish what information would be of assistance to it. We worked in close co-operation, in line with the Memorandum of Understanding in place between the FSO and the Central Bank and presented the findings of our analysis to the Central Bank in November 2015.

I believe this information was of assistance to the Central Bank in scoping its industry wide Tracker Mortgage Examination.

The objective of the Examination directed by the Central Bank was to ensure that lenders conducted a complete review of their mortgage loan books to assess compliance with both contractual and regulatory requirements relating to tracker mortgages. In situations where customer detriment was identified from the Examination, banks were expected to provide appropriate redress and compensation in line with the Central Bank's 'Principles for Redress', so as to ensure fair outcomes for customers of those lenders.

In the initial stages of the Examination I became aware that some banks had indicated that they would not include customers who had received decisions from the FSO, in the examination.

I was firmly of the view (a view which was shared by the Central Bank) that no mortgage holder who had made a complaint to the FSO should be treated any differently, with regard to the Examination, by virtue of the fact of having made such a complaint, irrespective of the outcome.

I wrote to the CEOs of each of the banks informing them of my view and asking them to confirm that no mortgage holder who had made a complaint to the FSO would be treated any differently, with regard to the Examination by virtue of the fact of having made a complaint to the FSO, irrespective of the outcome.

I received this commitment, in writing, from all of the banks.

It has always been my view that the most effective and efficient way to provide redress and compensation to borrowers who have been wrongly denied tracker mortgages was for the banks to co-operate fully with the Central Bank Examination.

For this reason, we communicated with each complainant who had a tracker mortgage complaint with us, explaining why I believed that it was in their best interest to put their complaint on hold with the FSO, pending the outcome of the Examination being undertaken.

Given that the Central Bank Examination has resulted in over 40,500 customers being identified as entitled to redress and compensation and over €690 million paid out to customers, I believe that we took the correct approach.

As the various financial service providers each completed the Central Bank Examination in respect of individual borrowers, we commenced progressing complaints against those lenders.

Where complainants inform us that they have agreed a settlement with their financial service provider, we close the file. Where complainants have not been offered redress or compensation by their lender or where complainants are not satisfied with an offer of redress or compensation from their financial service provider, or do not receive any offer from their financial service provider, then the mediation, investigation and adjudication processes of this office are, in most cases, available to them.

At the end of October 2019 we were dealing with 1,174 complaints relating to tracker mortgage interest rates. These complaints may include that the complainant:

- Did not receive a tracker rate of interest and still believe they are entitled to one
- Received a tracker rate of interest but believe the wrong margin has been applied
- Received a tracker rate of interest but believe it has been applied from the wrong date
- Believe that the compensation offered to them by the Examination or appeals process is inadequate



As of end October 2019, of those 1,174 tracker mortgage related complaints, 1,004 were actively being progressed, with only 170 remaining on hold.

The complaints that remained on hold mainly relate to complainants who have received offers of redress and compensation but have appealed to their lender under the tracker mortgage Examination appeal process. If these complainants reject the outcome of that appeals process it will be open to them to pursue their complaint with the FSPO.

We registered 347 new tracker mortgage related complaints between January and October 2019 and closed 455. Of the 455 complaints closed, we resolved 234 complaints through our informal mediation process, 146 were closed during the investigation, adjudication and legal services process, we closed 43 complaints at registration and assessment stage, while 24 were deemed withdrawn and 8 were noted to be outside the jurisdiction of the FSPO because of the time limits. I will be happy to provide further details on each of these processes and categories should the Members wish, in our discussions later.

I have recently issued fifteen legally binding decisions on tracker mortgage complaints. Two of these were upheld, two were substantially upheld, three were partially upheld and eight were not upheld. I have also issued six preliminary decisions. Now that the time limit issue has largely been resolved for tracker mortgage complaints, I expect we will progress the vast majority of complaints. We hope to continue to resolve the majority of complaints through mediation. However, I also expect to issue a considerable number of legally binding decisions in the coming months.

I will be publishing all of the decisions issued in 2019, including the tracker mortgage related decisions, no later than January 2020. I will also publish a Digest of these decisions similar to the Digest of 2018 Decisions that I published which includes a short summary of selected decisions.

I very much welcome the power to publish my decisions provided by the Oireachtas in our governing legislation. Publishing these decisions not only enhances the transparency and understanding of the powers of the Office and of the service we provide, but it also plays an important role in providing enhanced protection for consumers.

I believe these decisions will be of assistance to consumers and their advocates and also to financial service providers, in both avoiding and resolving disputes. I am confident that the publication of these decisions in our online Database of Decisions ([www.fspo.ie/decisions](http://www.fspo.ie/decisions)) will help to improve the quality of services and protections available to consumers.

### **Dual Pricing in the Insurance Industry**

I note you have indicated that the committee wishes to discuss the issue known as dual pricing in the insurance industry with us. My understanding of dual pricing is that it involves a practice whereby some insurers profile their customers to identify price sensitive customers who may shop around for the best price and move. Such customers may then be quoted a lower renewal fee, or a discount, compared to loyal customers who are profiled as being less price sensitive as they do not shop around and are therefore quoted a higher rate or not offered a discount.

Insurers, like all financial service providers, have a responsibility to treat their customers fairly. Fairness is at the heart of what we do. Being fair means not improperly discriminating against a person or a body. The Oireachtas has specifically provided that I can uphold a complaint against a financial service provider where I believe the provider's conduct in respect of a complainant was improperly discriminatory.

In that regard, Section 60 (2) of the **Financial Services and Pensions Ombudsman Act 2017** provides a number of grounds on which I can uphold, substantially uphold or partially uphold a complaint. These include:

60 (2) (b) the conduct complained of was unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant and;

60 (2) (c) although the conduct complained of was in accordance with a law or an established practice or regulatory standard, the law, practice or standard is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant.

My Office will not interfere with the commercial discretion of a financial service provider when it is exercised in a fair and reasonable manner. This means that we will not interfere with how a provider charges for its services if the conduct involved is not unreasonable, unjust, oppressive or improperly discriminatory.

For charges not to be improperly discriminatory, I would expect that the same criteria would be applied consistently and fairly to customers. Establishing whether the conduct of a provider in charging consumers for its services is fair and reasonable can be very challenging. This is particularly so, given the range of data used by providers together with the complex and opaque pricing techniques sometimes applied. Understanding the factors that inform decisions of financial service providers is becoming even more difficult with the increased use of artificial intelligence and machine learning and the manner in which personal data and data from external sources is used to profile consumers. Indeed, even identifying or recognising a potential dual pricing issue can present a challenge, as the complainant would not necessarily recognise it or present it as such, and also because a renewal quote will not necessarily be based on the exact same set of circumstances as the previous year.

I believe two of the main methods of combatting dual pricing is for insurers to provide consumers with clear and accurate information when they renew or incept insurance policies and for consumers to shop around regularly before taking out or renewing an insurance policy.

Where consumers believe the conduct of a provider has been unreasonable, unjust, oppressive or improperly discriminatory they can make a complaint to my Office.

### **Conclusion**

The Oireachtas has provided me with significant powers. I can direct compensation of up to €500,000 and I can also direct rectification – which could, for example, involve directing a financial service provider to reinstate a tracker mortgage rate or directing it to change the margin or the date from which a particular rate was applied.

As Financial Services and Pensions Ombudsman, I look beyond the contractual terms and consider the fairness and reasonableness of the conduct complained of.

I want to assure the Members that, together with my Management Team here today, and all my staff, I will continue to use the powers the Oireachtas has given me, in an impartial manner, to ensure a fair outcome in respect of complaints made to my office and we will continue to cooperate with the Central Bank in achieving better outcomes for consumers generally.

Thank you for the opportunity to engage with you here today. My colleagues and I are happy now to deal with any questions you have.

**Ger Deering,**

**Financial Services and Pensions Ombudsman**

**19 November 2019**