



Annual Report | 2005  
TUARASCÁIL BHLIANTÚIL



Financial Services  
Ombudsman

Financial Services Ombudsman Bureau

# Our role at a glance

As Financial Services Ombudsman I can investigate, in an impartial and independent manner, complaints from individual customers and small businesses who have unresolved disputes with financial service providers who are either regulated by the Financial Regulator or are subject to the terms of the Consumer Credit Act 1995.

I can award compensation of up to €250,000 where a complaint is upheld. Unlike the former voluntary ombudsman schemes for the credit institutions and insurance industry my decisions as Ombudsman are binding on both parties subject only to an appeal by either the complainant or the financial service provider to the High Court.

My role is therefore a quasi-judicial one and whether a complaint can be upheld or not is determined on the basis of evidence furnished, examined and reviewed.



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## Foreword from the Financial Services Ombudsman

I am pleased to present to the Financial Services Ombudsman Council (the Council) the first report of the Financial Services Ombudsman's Bureau (the Bureau) detailing its activities for its initial nine month period from 1 April to 31 December 2005. I took up duty as Ireland's first statutory Financial Services Ombudsman on 16 May 2005.



**Joe Meade**  
*Financial Services Ombudsman*

### OVERVIEW

The Financial Services Ombudsman's Bureau is the corporate entity of the new statutory scheme and consists of the Financial Services Ombudsman, each Deputy Ombudsman and the staff. Its efficiency and effectiveness are kept under review by the Council.

The Bureau was established on a statutory basis under the Central Bank and Financial Services Authority of Ireland Act 2004 and it began operations, by order of the Minister for Finance, on 1 April 2005. It is completely separate from, and independent of, the Financial Regulator. The existing voluntary ombudsman schemes for the credit institutions and insurance industry were subsumed into my role as Ombudsman from 1 April 2005 but the remit was expanded significantly from their roles. As Financial Services Ombudsman I can investigate, in an impartial and independent manner, complaints from individual customers and small businesses who have unresolved disputes with financial service providers who are either regulated by the Financial Regulator or are subject to the terms of the Consumer Credit Act 1995. It is important to note that a complainant must have exhausted the internal complaints procedure of his provider before he<sup>1</sup> comes to me. All told some 7,800 providers are subject to my remit.

I can award compensation of up to €250,000 where a complaint is upheld. Unlike the former voluntary ombudsman schemes for the credit institutions and insurance industry my decisions as Ombudsman are binding on both parties subject only to an appeal by either the complainant or the financial service provider to the High Court. My role is therefore a quasi-judicial one and whether a complaint can be upheld or not is determined on the basis of evidence furnished, examined and reviewed.

### CHALLENGES AND OPPORTUNITIES

As a new statutory function many matters had to be put in place at a very early stage. We have made considerable progress since the Bureau commenced operations on 1 April 2005. This has not been without challenges and matters are still being reviewed and refined. Some of the challenges faced were as follows:

- ④ The Bureau is financed by means of levies on the financial service providers as prescribed by the Financial Services Ombudsman Council with the consent of the Minister for Finance. The statutory levies did not become operational until the end of June 2005 and the Bureau had no seed capital either. The early months of the Bureau's operations were funded by advance

1 The use of the masculine pronoun in this text denotes both genders.

*The period April to December 2005 showed a substantial increase in our workload. 2604 complaints were received comprising 1734 for the insurance sector and 870 for credit institutions. This was an increase of 23% on the same period in 2004 with a 25% increase for credit institutions and 21% for insurance complaints.*

levies from members of the two pre-existing voluntary schemes as well as by bank overdraft facilities secured from our bankers, although as it transpired the overdraft facilities were not drawn down. I wish to express my gratitude and appreciation to the insurance sector, the credit institutions and indeed our bankers for enabling the Bureau to function in the absence of the statutory levy. I am also pleased to record that the collection of the statutory levies thereafter was both efficient and timely with some €2.8m collected overall.

- ⌚ The Bureau did not have the benefit of a lead-in period between the cessation of the old voluntary schemes on 31 March 2005 and the coming into effect of the new statutory scheme for all providers on 1 April 2005. Accordingly a phased timetable for dealing with the new large area of work was implemented with Council approval. I am pleased to record that by year end complaints against the additional providers brought within my remit were being investigated.
- ⌚ From the outset the staff of the former schemes were, and remain today, housed in two separate buildings as they could not be accommodated in

either of the existing buildings. This has had implications from the point of view of implementing unified working systems and structures and has required the existing staff to adapt quickly and with a degree of flexibility to the demands of the new statutory office and its statutory appeal procedures. While obtaining a new centralised office for all staff of the Bureau has been a high priority it was not possible, despite the best efforts of the Office of Public Works, to locate a suitable building until late January 2006. We aim to be in our new premises by the end of June 2006 at the latest. In light of these difficulties compensatory measures were taken to ensure that a cohesive approach was taken by all staff in the meantime.

- ⌚ The period April to December 2005 showed a substantial increase in our workload. 2604 complaints were received comprising 1734 for the insurance sector and 870 for credit institutions. This was an increase of 23% on the same period in 2004 with a 25% increase for credit institutions and 21% for insurance complaints. 161 new complaints in total against credit unions (23), intermediaries (119) and stockbrokers (19) were received as these are now subject to my remit and

were not covered under the former voluntary schemes. Despite this increase and taking into account the 779 cases transferred from the voluntary schemes on 1 April 2005, 1368 complaints were concluded following investigation by me up to 31 December 2005 while a further 1339 were referred to the internal complaints procedures of the providers for appropriate action. The highest compensation awarded by me was €56,000 against a credit institution and €32,000 against an insurance sector provider. In general, I found in favour of 50% of the complaints that were investigated while others were settled amicably.

- ⌘ The workload of the Bureau is indeterminate due to the number of complaints it may receive and the ever increasing complexity of them. I decided not to employ any permanent staff in addition to the staff that transferred from the voluntary schemes for the first year but to rely on short term contract and temporary staff until the workload settled down and proper estimates of staff needs going forward could be made. This has worked satisfactorily but its effectiveness has to be reviewed during 2006. Our operating costs for the period to the end of December 2005 were €1.8m.
- ⌘ Revised administrative systems for levy collection, superannuation schemes and overall office procedures were necessary and indeed had to be put in place in a short time period. In addition the new providers coming under my remit had to be advised and informed as to my role and their responsibilities. This was administratively taxing but it was a necessary and successful overhead to bear.

## MEETING OUR OBJECTIVES

Expectations about my function have been high in the public mind from day one, yet my precise statutory role was not fully understood by some people and organisations. Our aim is to be an effective and friendly service to everyone who comes in contact with us. I believe we are meeting that objective in general. We are reaching the targets we have set ourselves while also providing a valuable public service in as efficient and effective a manner as is humanly possible in a nine month period. In this regard I am pleased to record that:

- ⌘ New information leaflets and guides for complainants were published and our website was live by mid-June 2005;
- ⌘ Levies on the financial service providers were operational by the end of June 2005. The estimates of the Bureau's income and expenditure for 2006 were submitted for approval to the Council by the statutory date of 30 September 2005. This enabled the Council to set the levy rate for 2006 at its October meeting and for the Bureau to start collecting this levy in early 2006 after the levy order had received the consent of the Minister for Finance in December 2005. The estimates, funding allocation for providers and the levy rates payable for 2006 were published on our website by December 2005 also;
- ⌘ Appropriate case handling and appeals procedures to take account of the new statutory position were in place by the end of May 2005;
- ⌘ Our Strategy Statement and Business Plan was required to be submitted to Council before 30 September 2005. It was submitted to Council on 16 September 2005 following detailed input and consideration by all staff;
- ⌘ Complaints trends, significant decisions made on complaints and statistics illustrating the Bureau's

workload were published on the website in October 2005;

- Ⓢ The main heads of a Memorandum of Understanding between the Financial Services Ombudsman, the Financial Regulator and the Pensions Ombudsman were agreed by year end 2005;
- Ⓢ Excellent cooperation and liaison took place between the Bureau, the Department of Finance, the Financial Regulator, the Pensions Ombudsman and the Public Sector Ombudsman;
- Ⓢ It was possible to attend and contribute to international conferences, the British and Irish Ombudsman's Association and FIN-NET, the EEA-wide out of court complaints resolution network;
- Ⓢ A number of issues were referred to the Financial Regulator for appropriate regulatory and consumer action;
- Ⓢ In September 2005 I set up two review groups to report by year end. The Bureau's complaints handling procedures were reviewed and in January 2006 I began the implementation of approved changes to make our operations more efficient. In addition the other review group's report on structures and staff conditions was approved by the Council in January 2006 and its recommendations are being phased in during 2006;
- Ⓢ Good corporate governance structures were a key priority from day one. The Department of Finance code was gradually put in place from June 2005 onwards and the Council and senior officials attended a seminar run by the Institute of Public Administration specially tailored to our needs. A management committee was put in place in October 2005 while statements of interests by Council members and senior management staff were

submitted by July 2005. An internal audit function was also put in place following a public tender in July 2005 with an Audit Committee being established in October 2005. Though compliance with the provisions of the Ethics in Public Office legislation were not required of the Council and Bureau until 2006 their provisions were, in principle, applied throughout the period;

- Ⓢ The Bureau has maintained good contact with the media and has fostered awareness and dissemination of information through presentations within the financial services industry and to the general public;
- Ⓢ All of our staff are being encouraged and given the opportunity to participate in relevant training and development courses. Regular staff briefings take place also while a Partnership Committee and Performance Management Development Systems are being implemented in early 2006.

## APPRECIATION

I acknowledge and appreciate the sound foundations and methods already put in place by the former voluntary schemes which have been of great help to the Bureau from the start. Naturally they have been refined and built on when deemed necessary. None of the success of the Bureau could have been achieved without the commitment of its staff whether they transferred on 1 April 2005 from the former schemes or commenced employment since then. I compliment and thank all the staff for making the transfer a seamless one overall while above all ensuring that the new procedures worked well and effectively. I also personally express my appreciation not alone of the wholehearted support but also the sound advice and good counsel I have received since being appointed from the two former voluntary ombudsmen who now are Deputy Financial Services

*My aim as Financial Services Ombudsman is to have a Bureau which will provide a practical, efficient, timely, fair, impartial and independent service to the public and financial service providers.*

Ombudsmen.

I extend my thanks to the financial service providers, representative bodies, complainants, the Department of Finance, the Financial Regulator and the Pensions Ombudsman and members of the public for their assistance and cooperation.

Finally, I want to acknowledge in a special way the preparatory and other work undertaken by the Chairperson of the Financial Services Ombudsman Council, Dr. Con Power, and his fellow Council members since its establishment in October 2004 and to acknowledge their continuing guidance, support, collaboration and cooperation with me at all times. It has been an effective and mutually beneficial operation overall. At all times the Council has been scrupulous in ensuring that it has no role whatsoever regarding complaints resolutions. It recognises and appreciates that it is my sole independent function.

## THE FUTURE

My aim as Financial Services Ombudsman is to have a Bureau which will provide a practical, efficient, timely, fair, impartial and independent service to the public and financial service providers. I believe that we have started well and have made good progress, during the first nine months of our existence, in achieving many of the objectives we set ourselves in our Strategy Statement and as are statutorily required. However much remains to be achieved. Our progress will be subject to constant review by the Bureau staff and the Council as we continue to refine our systems but I am confident that we can only improve in the future.



**Joe Meade**  
*Financial Services Ombudsman*

12 May 2006

# Chairperson's Report

The Financial Services Ombudsman Council was established on a statutory basis under the Central Bank and Financial Services Authority Act of Ireland 2004 with effect from 1 October 2004. The Council was appointed by the Minister for Finance for a two-year term and comprised Dr Con Power, Chairperson, John Colgan, Deputy Chairperson, Crozier Deane (resigned 31 December 2005), Dermott Jewell, Paul Joyce, Paddy Leydon, Paul Lynch, Paddy Lyons, Jim McMahon and Caitriona Ni Charra.

The main functions of the Council under the Act are: -

- (a) to prescribe guidelines under which the Ombudsman is to operate, and
- (b) to determine the levies and charges payable for the performance of services provided by the Ombudsman, and
- (c) to appoint the Ombudsman and each Deputy Ombudsman, and
- (d) to keep under review the efficiency and effectiveness of the Bureau and to advise the Minister, either at the Minister's request or at its own initiative, on any matter relevant to the operation of the Bureau, and
- (e) to advise the Ombudsman on any matter on which the Ombudsman seeks advice, and
- (f) to carry out such other activities as are prescribed by this part. [Section 57BD(1)]

The inaugural Council was responsible for putting in place the arrangements for the statutory Financial Services Ombudsman to deal with complaints against financial institutions from 1 April 2005. The Council was charged with setting the terms for the Ombudsman and overseeing the appointment process as well as making industry levies to fund the office of the Ombudsman (the Bureau).

The legislation envisaged that the two voluntary Ombudsman Schemes in existence at the time, the Ombudsman for the Credit Institutions and the Insurance Ombudsman of Ireland, would, along with their staff, be subsumed into the new scheme. In addition, members of Credit Unions and customers of brokers, all other regulated financial service providers, and such other financial service providers as are designated by Regulations made by the Minister for Finance, are brought into the statutory scheme.

The Council held its first meeting on 12 October 2004 and met on eight other occasions before the formal launch of the statutory scheme on 5 April 2005. In addition, it established five committees, Audit, Finance, Human Resources, Operations and Corporate Governance, to which various appropriate tasks were delegated and the recommendations of these committees were subsequently brought back to Council for decision.

The Bureau opened for business on 1 April 2005 and was formally launched on 5 April 2005. Before that date Council made a number of important decisions.

- ④ The Ombudsman is entitled to make awards up to limits prescribed from time to time by Council and in this regard Council prescribed an award limit of €250,000.
- ④ Council defined the term "eligible consumer" to include all natural persons, limited companies with a turnover of €3 million or less (SMEs), and all unincorporated bodies, including clubs, charities, trusts, partnerships etc.
- ④ The Council engaged the Public Appointments Service (PAS) to conduct a competition for the post of Ombudsman. Mr Joe Meade, the then Data Protection Commissioner, was recommended to Council by PAS as the most suitable candidate and Council appointed Mr Meade as Financial

Services Ombudsman with effect from 16 May 2005.

- ④ The Minister for Finance designated the existing Ombudsmen from the voluntary schemes (Gerry Murphy and Caroline Gill) as Deputy Ombudsmen designate of the statutory scheme and Council duly appointed them as Deputy Ombudsmen with effect from 1 April 2005.
- ④ Council appointed Ms Caroline Gill as Acting Financial Services Ombudsman for the period from 1 April to 16 May 2005.
- ④ All staff from the private schemes were given appropriate public sector grades and scales, and a single staff structure was implemented.

Neither the Council nor the Bureau received any funding from the State. As the Bureau only came into being on 1 April 2005 it was not possible to legally raise funds before that date. The Council is indebted to the previous voluntary schemes and their sponsors, the members of the Irish Bankers Federation and the Irish Insurance Federation, for their willingness and generosity in funding the Council and the Bureau on a voluntary basis, pending the promulgation of the relevant statutory instruments. Without this assistance, which was freely given, the Bureau could not have operated.

The Ombudsman, Mr Joe Meade, took up duty on 16 May 2005 and set about the task of merging the existing schemes and arranging to expand the statutory scheme to encompass the new sectors falling within his remit.

Since that date the Council has met on a further six occasions. It has prescribed by regulation the levies payable by the financial institutions for the nine-month period to the end of 2005. In addition, it has approved the Ombudsman's strategic plan and budget for 2006 and prescribed the levies for 2006.

Arrangements were made to accept complaints, from eligible consumers, against

the newly designated financial service providers on a phased basis. This process is now complete and eligible complaints are now accepted in accordance with the terms of the Act.

In the light of experience gained from the operation of the legislation, Council has made proposals to the Department to amend the Act in a number of significant ways. These proposals have the full support of the Ombudsman.

This Council's term of office expires at the end of September 2006. By that time, all Bureau staff will be under one roof and there will be a single integrated accounting and management information system for the Bureau.

## CORPORATE GOVERNANCE ISSUES

- (1) The Bureau retained the tenancy of the buildings occupied by the voluntary schemes. The Ombudsman decided, and Council concurred, that all staff should be housed in one building and that neither of the existing premises was suitable for that purpose. The Insurance Ombudsman of Ireland Scheme building in Merrion Street had a let-out clause and notice was served to enable the building to be vacated by the end of January 2006. New premises have been identified and will be occupied by June 2006. In the meantime, the occupants of Merrion Street moved to temporary premises.
- (2) While a single accounting system is being implemented, the existing financial reporting arrangements remain in place. The Internal Audit function has been contracted out to a specialist firm, a risk assessment carried out and a three-year programme put in place. Procurement and asset disposal procedures, in line with Departmental guidelines are in place.

- (3) The Council has overall responsibility for the Bureau's system of internal financial control and for monitoring its effectiveness. These systems are designed to provide reasonable, but not absolute, assurance against material mis-statement or loss. In order to discharge this responsibility in a manner which ensures compliance with laws and regulations, an organisational structure with clear operating and reporting procedures, lines of responsibility, authorisation limits, segregated duties and delegated authority has been put in place. An Audit Committee was established on 3 October 2005, to assist Council and the Ombudsman in fulfilling their responsibilities relating to the financial reporting process, the internal audit process, the statutory audit process and the Bureau's process for monitoring compliance with laws and regulations.
- (4) A risk assessment has been undertaken and risk areas identified are being addressed.
- (5) The Code of Business Conduct for Staff is in place.
- (6) Government policy on the pay of the Ombudsman and all Bureau staff is being complied with.
- (7) Government guidelines on the payment of Council member fees and expenses are being complied with.
- (8) The guidelines for the Appraisal and Management of Capital Expenditure Proposals are being complied with.
- (9) Council has adopted the Code of Practice for the Governance of State Bodies and is in the process of implementing its terms. To this end Council members attended a workshop on Corporate Governance presented by the Institute of Public Administration. The Code of Business Conduct for Directors is being put in

place and all Council members have made declarations under the Ethics in Public Office Act, 1995.

## ACKNOWLEDGEMENTS

I wish to take this opportunity to thank: -

- ☞ Firstly, my colleagues on the Council who gave unstintingly of their time and expertise to ensure that the Bureau was up and running on the due date of 1 April 2005.
- ☞ Secondly, Caroline Gill and Gerry Murphy for the exemplary manner in which they embraced the changes inherent in moving from voluntary stand-alone schemes to a statutory scheme and overcame all the potential difficulties involved.
- ☞ Thirdly, the staff of the voluntary schemes for their enthusiastic commitment to making the statutory scheme a success.
- ☞ Finally, Joe Meade, who has brought his enthusiasm, experience, knowledge and professionalism to the role of Financial Services Ombudsman.



**Dr Con Power,**  
Chairperson

12 May 2006

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# *Part I*

## *The Bureau in Context and its Work in 2005*

# What Is the Role of the Financial Services Ombudsman?

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An Ombudsman scheme is an independent and impartial means of resolving disputes outside the courts. There have been voluntary ombudsman schemes in Ireland both for the credit institutions and the insurance sector since the early 1990s; recognition by the sectors that a complaints resolution process outside the Courts was necessary and appropriate. However, not all financial service providers were covered by these schemes.

While the voluntary schemes worked well it was felt in the late 1990s as part of the overall enhanced regulatory framework for the financial services sector, including the establishment of the Financial Regulator, that a statutory Ombudsman scheme for **all providers of financial services** with enhanced statutory powers was necessary, as suggested by the McDowell Report.<sup>2</sup> This is now the position and is enshrined in legislation.<sup>3</sup>

The Financial Services Ombudsman's Bureau is the corporate entity of the new statutory scheme and consists of the **Financial Services Ombudsman**, each Deputy Ombudsman and the staff. It is a statutory body funded by levies from the financial services providers and became operational on 1 April 2005.

The existing voluntary schemes were subsumed into the Bureau and the number of financial service providers covered by its remit was expanded considerably. All financial services providers including:

- ④ *Banks*
- ④ *Building Societies*
- ④ *Insurance companies both life and general*
- ④ *Credit Unions*

- ④ *Mortgage, Insurance and other credit intermediaries*
- ④ *Stockbrokers*
- ④ *Pawnbrokers*
- ④ *Moneylenders*
- ④ *Bureaux de change*
- ④ *Leasing companies*
- ④ *Credit sales companies*
- ④ *Hire Purchase providers*
- ④ *Health Insurance companies*

are now subject to the Ombudsman's remit.

The **Financial Services Ombudsman** is a statutory officer who deals independently with complaints from consumers about their individual dealings with all financial services providers that have not been resolved by the providers after they have been through the internal complaints resolution systems of the providers. **The Ombudsman is therefore the arbiter of unresolved disputes and is impartial.** Broader issues of consumer protection are the responsibility of the Irish Financial Regulator.

2 Report of the Working Group on Financial Services 1999

3 The Central Bank and Financial Services Authority of Ireland Act 2004 - section 16 and schedules 6 and 7.

All personal customers, limited companies with a turnover of €3,000,000 or less, unincorporated bodies, charities, clubs, partnerships, trusts etc. can complain to the Ombudsman.

The Ombudsman offers a free service to the complainant.

### COMPLAINTS WHICH MAY/MAY NOT BE INVESTIGATED

The Ombudsman may investigate any type of complaint by a customer who is dissatisfied about

- Ⓢ *The provision of a financial service by the financial service provider*
- Ⓢ *An offer by the provider to provide such a service*
- Ⓢ *Failure by the provider to provide a particular financial service that has been requested.*

However, a consumer is not entitled to make a complaint if the matter complained of

- Ⓢ *Is or has been the subject of legal proceedings before a court or tribunal*
- Ⓢ *Occurred more than six years before the complaint is made*
- Ⓢ *Is within the jurisdiction of the Pensions Ombudsman.*

A complaint may not be investigated by the Ombudsman if in his opinion

- Ⓢ *It is vexatious or frivolous or not in good faith*
- Ⓢ *The subject matter is trivial*
- Ⓢ *The conduct complained of occurred at too remote a time to justify investigation*
- Ⓢ *Other redress means were available*

- Ⓢ *The Complainant has no interest or an insufficient interest in the conduct complained of.*

### THE OMBUDSMAN'S DECISIONS

The Ombudsman, after an investigation, can direct the financial services provider to do one or more of the following:

- Ⓢ *rectify or change the conduct complained of or its consequences*
- Ⓢ *provide reasons or explanation for that conduct*
- Ⓢ *change or modify a practice relating to that conduct*
- Ⓢ *pay compensation up to a maximum of €250,000 or €26,000 annuity*
- Ⓢ *take any other lawful action*

The Ombudsman has extensive legal powers to require the financial service provider to provide information, including the power to require employees to provide information under oath. If necessary the Ombudsman can enter the premises of providers and demand the production of documents etc. In the event of non-compliance the Ombudsman may seek a Court Order. Anyone who obstructs the Ombudsman commits an offence and is liable to a fine of up to €2,000, imprisonment for three months, or both.

### TIMETABLE FOR DEALING WITH COMPLAINTS AGAINST ALL PROVIDERS

Complaints received under the schemes for insurance and credit institutions were transferred to the statutory scheme on 1 April 2005. On 1 April 2005 the statutory scheme dealt with complaints against insurance companies and banking institutions.

The Financial Services Ombudsman Council approved a proposal by the Ombudsman that complaints against all other financial services providers should be handled by 31 December 2005 at the latest and the timetable for dealing with these complaints was as follows

- ☎ Credit Unions: 1 August 2005
- ☎ Insurance and Mortgage Brokers: 1 October 2005
- ☎ Moneylenders: 1 November 2005
- ☎ All other categories: 1 December 2005

### COOPERATION WITH THE PENSIONS OMBUDSMAN, THE FINANCIAL REGULATOR AND EEA MEMBER SCHEMES

There is close cooperation between the Bureau, the Financial Regulator and the Pensions Ombudsman. Complaints that are proper to the Ombudsman's area will be referred to him and if a matter arises during an investigation by the Ombudsman which he feels is indicative of some kind of pattern he will inform the Regulator so that appropriate regulatory action may be taken. **The Financial Services Ombudsman is essentially an arbiter in disputes between customers and institutions and is not a regulator.** He also cooperates with the Pensions Ombudsman so as to avoid unnecessary overlap in the area of pensions.

A Memorandum of Understanding was agreed between the Financial Regulator, the Financial Services Ombudsman and the Pensions Ombudsman in October 2005 and finalised and signed by the three parties in February 2006. Quite apart from the Memorandum the three offices have enjoyed and continue to enjoy a close cooperation. Meetings between the three parties are held regularly and when deemed necessary. The aim is to ensure that no consumer will "fall between two stools" and that matters appropriate to each body will be referred accordingly.

The Bureau, like the pre-existing voluntary schemes, is also a signatory to the Memorandum of Understanding on a Cross-border Out-of Court Complaints Network for Financial Services in the EEA (FIN-NET). The Bureau has an obligation under FIN-NET to ensure efficient exchange of information between European ombudsmen and other comparable schemes.

If the Ombudsman receives a complaint about a financial service provider regulated by a Regulatory Authority in another EEA member state, which is comparable to the Financial Regulator here, the Ombudsman may refer that complaint to the Ombudsman Scheme of the appropriate EEA member state to be dealt with there. For example, if a complaint is received about a UK financial service provider regulated by the Financial Services Authority in the UK, such a complaint may be referred to the Financial Ombudsman Service in the UK for investigation.

### LOCATION

At the commencement of the Bureau's operation on 1 April 2005, the two pre-existing schemes, the Credit Institutions' Ombudsman Scheme, and the Insurance Ombudsman of Ireland Scheme, were housed in different buildings.

As neither of the existing locations was suitable to house the Bureau in its entirety, it became necessary to find new premises.

It had been hoped to locate such premises by the end of 2005. Unfortunately, this proved more difficult than anticipated, and despite the best efforts of the OPW a suitable building was not located until late January 2006. We expect to be in the new building by the end of June 2006.

## STAFF

Twenty staff members were employed by the Bureau on a permanent basis in 2005 while four were employed on a contract or temporary basis.

As already outlined, at the commencement of operations on 1 April 2005, the two pre-existing bodies were located in different buildings, had different work practices and working environments.

Notwithstanding the difficulties created by such a situation, the staff of the Bureau have to be congratulated for their efforts and dedication in achieving a relatively seamless transition to a unified body.

This was helped by regular informal meetings, at which the staff could become acquainted with one another and with their new working environment.

A single location, unified procedures and IT systems, will make their task of creating an efficient and effective Bureau much easier.

Ongoing staff training is taking place, giving the staff the opportunity to develop new skills.

The staff of the Bureau have managed to overcome the problems created by being located in different premises in carrying out the day to day work of the Bureau, and in the absorption of the extra work engendered by the incorporation of the expanded sectors into the Scheme.

## DISSEMINATION OF INFORMATION

Much work has been done to improve levels of awareness amongst both consumers and the Financial Service Providers as to the services provided by the Bureau.

A website has been set up which incorporates :-

- ④ extensive information about the Bureau and its role;

- ④ advice to consumers on the complaints procedure;
- ④ a Complaint Form for the use of consumers;
- ④ financial information;
- ④ sample case studies;
- ④ complaint statistics;
- ④ details of addresses by the Ombudsman to various bodies.

The website is kept under constant review and new information posted to it on a regular basis. Complaints can now be made online over a secure site.

Leaflets containing information about the Bureau have been distributed to all the Financial Service Providers for display in their outlets, and to other interested groups, such as Citizen Information Centres, Money Advice and Budgeting Services, Free Legal Advice Services.

The Ombudsman has addressed several of the representative bodies of Financial Service Providers and other relevant bodies.

Details of information dissemination are at Appendix III.

## CHANGE OF ENVIRONMENT

### *Complaints Procedures*

While both of the two pre-existing schemes dealt with issues arising from consumer problems with member Financial Service Providers, they had developed differing work practices and procedures for dealing with complaints. Furthermore a new appeals procedure had to be put in place from 1 April 2005 to comply with the new statutory appeals requirement. Unlike the former voluntary schemes either party has a right of appeal against the Ombudsman's decisions.

Much work has been done in the development of common work practices. A unified complaints procedure has now been prepared and will be phased in on an approved manner during early 2006. Details of this complaints procedure can be found in **Appendix I**.

### *IT and Case Management Systems*

The development of a unified and effective IT and case management system comprising the best elements of the pre-existing systems has had to be put on hold since it depends on the Bureau being located in a single premises.

The IT and case management systems of the existing schemes, while very different, are each effective and are capable of both case management and the production of case statistics.

## FUNDING THE BUREAU

The Central Bank and Financial Services Authority of Ireland Act 2004, section 57BF, provides that levies are payable by financial service providers to enable the Financial Services Ombudsman's Bureau carry out its statutory functions. The levy amounts are prescribed by the Financial Services Ombudsman Council with the consent of the Minister for Finance.

Three statutory instruments were promulgated in 2005 governing levies to fund the Bureau:

- ☞ *S. I. No. [329] of 2005: Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2005 – Interim Funding Levies*
- ☞ *S. I. No. [330] of 2005: Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations (No.2) 2005 – Levies Payable to December 31 2005*

- ☞ *S. I. No. [828] of 2005: Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations (No.2) 2005 – Levies Payable in 2006.*

There was no seed capital at the start up date of 1 April 2005. As the necessary statutory instruments to determine levies payable for 2005 had not been enacted, the Bureau was financed by advance payments made by the members of the former schemes.

The Bureau is indebted to the two previous voluntary ombudsman schemes for the advancing of funds to the Bureau to facilitate a seamless transfer from the two pre-existing schemes to the statutory scheme and a smooth running of the Bureau until such time as its own levies had been collected.

€2.8million was collected and accounted for in the period 1 April to 31 December 2005. During the period, the running costs of the Bureau and Council were €1.8million and are outlined in the audited accounts as published at Appendix V.

The 2006 estimates, funding allocation and levy payable were published on our website in December 2005.

## GOVERNANCE STRUCTURES

### *Strategy Statement*

In accordance with section 57BU of the Act, three months before the beginning of this financial year, the Financial Services Ombudsman must prepare for the year ahead a Strategic Plan and submit it to the Council for approval. Once approved, the Council submits the Plan to the Minister for Finance who lays it before both Houses of the Oireachtas. The Plan is then published.

The Strategy Statement and Business Plan 2005-2006 was submitted to the Council on 16 September 2005 and approved by it at the October meeting of the Council. It is reproduced in full on the Bureau's website. In compliance with the Act of 2004 the Strategic

Plan specifies

- (a) the objectives of the activities of the Bureau for the financial year concerned;
- (b) the nature and scope of the activities to be undertaken;
- (c) the strategies and policies for achieving those objectives;
- (d) targets and criteria for assessing the performance of the Bureau; and
- (e) the uses for which it is proposed to apply the Bureau's resources.

The objectives are under constant review and are being implemented in accordance with the timeframes outlined in the Strategic Plan.

#### **Management Committee**

To facilitate the implementation of the Strategic Plan and to effect best practices in corporate governance a Management Committee was established in October 2005. The Committee comprises the Ombudsman, the two Deputy Ombudsmen and the Head of Administration.

#### **Audit Committee**

The role of the Audit Committee is, as part of the ongoing systematic review of the Control Environment and Governance procedures within the Bureau, to oversee the Internal Audit function and advise the Ombudsman in relation to the operation and development of that function.

The Audit Committee comprises two members of the Financial Services Ombudsman Council and the Head of the Local Government Audit Service. An external firm of internal auditors was appointed following a public tender in July 2005. Its reports are submitted to the Ombudsman and to the Council.

## **COMPLIANCE WITH LEGISLATION**

The Bureau complies with all statutory requirements in the areas of Health and Safety, Equality, Parental Leave and others:

#### ***Ethics in Public Office Act 1995***

The terms of the Ethics in Public Office Act 1995 did not apply to the Bureau or the Council until 2006, although the Bureau complied with its terms during 2005. The Bureau is committed to adhering to the Standards in Public Office Commission's Guidelines for Office Holders on Compliance with the Provisions of the Ethics in Public Office Acts, 1995 and 2001.

#### ***Official Languages Act 2003***

The Bureau is fully compliant with the Official Languages Act 2003. Standard letters and documents are translated into Irish and the website has an Irish section also.

#### ***Data Protection Acts 1988 and 2003***

The Bureau adheres to the provisions of the Data Protection Acts 1988 and 2003 and will constantly review this adherence. Due to the sensitive nature of the information the Bureau receives it is necessary that access to data is available only to those who are involved in the investigation of complaints.

#### ***Freedom of Information Acts 1997 and 2003***

The Freedom of Information Acts do not currently apply to the Bureau but may apply to administration aspects of the Bureau in future. Investigation files cannot be made available under FOI due to their statutory quasi judicial nature.

## MEDIATION

Under section 57CA of the Act of 2004 the Financial Services Ombudsman shall, as far as possible, try to resolve the complaint by mediation in the first instance but may abandon an attempt to resolve a complaint by mediation on forming the view that the attempt is not likely to succeed. If an attempt to resolve a complaint by mediation is unsuccessful, the Financial Services Ombudsman shall deal with the complaint by adjudication.

## ADJUDICATION

Evidence may be oral or written. It must be remembered that many years ago people bought financial products informally from insurance agents. In such situations obtaining clear evidence of what advice was given at the point of sale, what induced the consumer to buy the product, what assurances were given to the consumer about the performance of the product etc can be difficult and time-consuming and in some cases evidentially impossible. The Financial Services Ombudsman's finding is the conclusion of an assessment of the documentary evidence submitted by both parties to a complaint. In certain circumstances, and in the absence of express documentary evidence, the Ombudsman is empowered by virtue of section 57CE of the Act of 2004 to summon any officer, member, agent or employee of the financial service provider to attend before the Ombudsman, and examine on oath any such officer, member, agent or employee in relation to any matter that appears to the Ombudsman to be relevant to the investigation or adjudication. This power is exercised solely at the discretion of the Financial Services Ombudsman and only where he deems it necessary for the adjudication of any complaint. In the majority of cases adjudication will be made on the basis of the documentary evidence submitted by both parties to the complaint.

# Part II

## Complaints

## Complaints Trends

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The core business of the Bureau is complaints investigation and resolution. During 2005

- ④ **2604 complaints were received** comprising 1734 for the insurance sector and 870 for credit institutions. This was an **increase of 23%** on the same period in 2004 with a 25% increase for credit institutions and 21% for insurance complaints,
- ④ **779 cases were carried forward** to the Bureau on its establishment from the pre-existing voluntary ombudsman schemes,
- ④ **161 new complaints in total** were received against those Financial Service Providers comprising the expanded sectors which are now subject to the Ombudsman's remit and were **not covered under the pre-existing voluntary schemes**
  - credit unions (23)
  - intermediaries (119)
  - stockbrokers (19)
- ④ **1368 complaints were concluded** following investigation by the Ombudsman while a further 1339 were referred to the internal complaints procedures of the providers for appropriate action,
- ④ The highest compensation awarded by the Ombudsman was €56,000 against a credit institution and €32,000 against an insurance sector provider.

In general where complaints were investigated an average of 50% were upheld.

Many of the complaints concern extremely complex issues and with a possible appeal to the High Court resolution of complaints can take some time.

Rather than publish significant cases in the Annual Report, it was decided that they be published on the website on a six monthly

basis. This was done on 5 October 2005 for the period April 2005 to end September 2005 and in February 2006 for the later 2005 period. Details of significant cases can be found at **Appendix IV**.

It should be noted that before an investigation is carried out by the Bureau, a complaint must have been through the internal complaints procedures of the Financial Service Provider concerned.

Full details of the statistics and trends can be found in the Complaints Report at **Appendix II**.

## Significant Issues

Certain issues arose from the investigation of complaints in 2005 which warrant mention here in addition to the material published at **Appendix IV**.

### SIX YEAR TIME LIMIT

Under section 57BX of the Act of 2004:

“(3) A consumer is not entitled to make a complaint if the conduct complained of –

*(b) occurred more than 6 years before the complaint is made”.*

A substantial number of complaints were received by the Bureau in 2005 about the alleged mis-selling of endowment policies many years ago and other complaints which could not be investigated as they did not fall within the six year time limit.

In his submission to the Joint Oireachtas Committee on Finance and the Public Service in December 2005 and in his evidence to the Joint Committee on 18 January 2006, the Ombudsman addressed the question of endowment mortgage complaints with particular reference to the six year time limit.

The Ombudsman’s consideration of complaints takes account of the following matters and three issues arise.

#### *(a) Individual Policies held to Maturity*

The Financial Services Ombudsman will consider complaints from consumers arising from the provision of endowment mortgages which are held to maturity. If the complaint is that the product was mis-sold at a date which is more than 6 years before the complaint is made, then the complaint falls outside the Ombudsman’s **statutory** remit [57BX(3)(b) of the 2004 Act].

However, if the complaint is that on the maturity of the policy the Provider

failed, neglected or refused to pay out monies in accordance with the contractual promises, then the allegation against the Provider is one of breach of contract on the maturity of the policy. In this situation, provided the complaint is made within 6 years of the maturity of the policy, the Financial Services Ombudsman will investigate, make a ruling and direct an appropriate remedy by way of compensation or otherwise.

#### *(b) Individual Policies Surrendered or Sold in Advance of Maturity*

Where individual policies have been surrendered or sold by the consumer in advance of maturity, no final shortfall has crystallised and therefore a complaint to the Ombudsman alleging failure to pay out in breach of contract **may be difficult to sustain**. In the circumstances of early surrender or sale, the Financial Services Ombudsman will consider complaints of maladministration which are alleged to have taken place within the 6 years prior to the complaint being made, but the Ombudsman cannot investigate or rule on what might have happened had the policy run its full course.

#### *(c) Individual Policies Which Have Not Yet Matured*

Investigation of complaints about endowment mortgage policies which have not yet matured and which were sold more than six years ago will be limited to an assessment of whether the financial service provider concerned administered the policy in accordance with the terms and conditions of the policy and in compliance with its obligations under s.133 of the Consumer Credit Act 1995.

Under the Consumer Credit Act an insurer underwriting an insurance policy in respect of an endowment loan shall within 5 years of the policy being issued and every 5 years thereafter, until such time as the endowment loan is repaid, issue or cause to be issued to the borrower, a statement setting out the value of the policy as estimated by the insurer, at such date together with a comparison of this valuation to the valuation at such date projected at the time the policy was first written, and a revised estimate of its valuation at maturity.

The Life Assurance (Provision of Information) Regulations 2001 impose a requirement on both the insurer and insurance intermediary to provide certain policy information in writing to a client, before the client signs a proposal or application form, in relation to projected benefits, *commission and charges*, policy reviews, early encashment and taxation issues.

## HEALTH INSURANCE EXCLUSION PROVISIONS

There have been a growing number of complaints from members of Vhi in relation to the following policy provision:

*“Rule 3) Joining Vhi Healthcare*

...

*d) No benefits are payable for medical conditions the date of onset of which is determined on the basis of medical advice to have been prior to the date the member was included on the contract, unless the member has been insured continuously for a minimum period of time. The minimum period is as follows:*

MEMBER'S AGE WHEN HE/ SHE IS INCLUDED:	MINIMUM PERIOD
<i>Under 55</i>	<i>5 years</i>
<i>55 to 59</i>	<i>7 years</i>
<i>60 or over</i>	<i>10 years”</i>

Vhi explained to the Bureau that when considering whether a condition has pre-existed the date of inception of the Insured's contract of Insurance, it has particular regard to the date of onset of the condition as opposed to the date of diagnosis or onset of symptoms or signs. While the Vhi accepts that the Insured may not have been aware of or had any knowledge of his or her condition at the time of joining the Vhi, under the terms of the contract, no benefit is payable in respect of the costs incurred when the date of onset of the condition is determined on the basis of medical advice to have been prior to the date of inception of the insurance contract.

The Bureau's primary concern is whether the provision is sufficiently clear to communicate to the Insured at the time of inception of the policy that the material date is the date of onset of the condition and not the date of diagnosis of the condition or the date of onset of the symptoms. Complaints would show that this information is disclosed to the Insured by Vhi when dealing with a claim, by which time the Insured has already entered in to the insurance contract, making it difficult for him to argue against the terms of the policy.

There is considerable argument from various medical professionals consulted over the interpretation of Rule 3(d) by Vhi and the Ombudsman felt that clarity was needed.

In light of the worrying trend in complaints in relation to this policy provision and in light of the independent advice received from leading medical practitioners, the Financial Services Ombudsman met with Vhi in early March 2006 to seek a satisfactory resolution for all parties concerned. The meeting had a positive outcome.

## VHI UNDERTAKINGS

Vhi will only pay medical expenses claims where there may be a recovery of the amount from a third party if the member signs an undertaking beforehand. This arises where there has been an accident between the member and a third party and a physical injury is sustained. The undertaking is as follows:

*"In consideration of Vhi discharging the eligible hospital and medical expenses of my/our client, I/we hereby undertake to include as part of my/our client your claim, the monies so paid by Vhi (details of which will be supplied to us by Vhi) and subject to any court order to the contrary, to repay to Vhi – out of the proceeds that come into our hands – all such monies paid by Vhi.*

*I/We have obtained written instructions from my/our client to provide Vhi with this undertaking and are authorised to negotiate the settlement to include monies owing to Vhi.*

*I/We further undertake to keep Vhi fully informed of both the status, and any developments in, my/our client's proceedings.*

*I/We agree that, subject to any court order to the contrary, to refund the monies paid out by [the Company]. In return for this a non-negotiable undertaking fee of €380.92 (inclusive of V.A.T) will be paid to the undersigned in full and final payment. This undertaking will then be considered to have been discharged."*

Many complaints were received from solicitors that this wording was unfair and that Vhi should only demand repayment of recovered damages and not the final amount of medical expenses. **The Financial Services Ombudsman in reply indicated that he does not have jurisdiction to intervene in the dispute between Vhi and the Law Society of Ireland.** When investigating a complaint about this undertaking the Ombudsman is concerned solely with the Complainant's complaint against the Insurance Company, the handling of the claim(s) under the terms of the insurance policy and the impact of the terms and provisions of that policy upon the claim.

Every case is different and investigated differently. In the Ombudsman's opinion it is clear from the policy exclusion clause that Vhi will not pay benefits for expenses which a member is entitled to recover from a third party. Nonetheless, he notes that Vhi agrees to pay these expenses in order to facilitate the member in the discharge of medical expenses incurred pending the outcome of what may be lengthy proceedings against a third party, **but**

on the condition that these expenses are included in the claim against the third party and on the condition that the member undertakes to repay these monies **in full** from the sum recovered, subject to a court order to the contrary.

**It is the view of the Financial Services Ombudsman that Vhi is entitled to make full repayment by the member, unless a Court orders to the contrary, a condition of the payment of medical expenses for which it bears no liability under the terms of the contract.** Vhi has to take reasonable measures to protect its assets. The Ombudsman trusts that the matter will be resolved by the Law Society as otherwise unnecessary hardship is being caused to policyholders.

## CONSULTANTS REPRESENTATIONS TO PATIENTS

An increasing number of complaints have come to the attention of the Bureau whereby the Complainant alleges that, when submitting a claim for medical expenses under his insurance policy while in hospital, he was given assurances by his treating Consultant that such a claim would be admitted. When, for any one of a variety of reasons, such a claim is declined, the consumer feels that he had a legitimate expectation that the claim would be met based on the assurances given him by the Consultant. The Ombudsman would point out that the only representations on which a consumer under a medical expenses policy may reasonably rely are those of the insurance company itself. The treating Consultant is not privy to the contract of insurance between the consumer and the insurance company and is, therefore, not the appropriate party to make such representations.

**The Ombudsman would caution Consultants in making such representations to their patients and requires that this be brought to the attention of Consultants by the relevant health insurance companies.**

## TRAVEL INSURANCE

The Financial Regulator has confirmed to the Bureau that travel agents do not come within the scope of the European Communities (Insurance Mediation) Regulations 2005 and, accordingly, complaints about travel agents and tour operators fall outside the jurisdiction of the Bureau.

The Commission for Aviation Regulation is responsible for regulating aspects of travel agents and tour operators while the Office of the Director of Consumer Affairs is responsible for enforcing the Package Holidays and Travel Trade Act, 1995 and the Consumer Information (Advertisements for Airfares) Order, 2000.

Travel insurance policies are offered by both travel agents and tour operators but complaints received by the Bureau about these policies cannot be investigated.

**While the Regulator has general advice on its website about the necessary cautions to be exercised by consumers when purchasing travel insurance the Ombudsman strongly advocates the establishment of a Code of Practice for Travel Agents selling travel insurance in Ireland similar to that already existing in the UK. The Regulator to review this area.**

## AN POST

The Public Sector Ombudsman has jurisdiction to deal with complaints about An Post. An Post, when trading as One Direct, is regulated by the Financial Regulator as a Multi-Agency Intermediary and as a Mortgage Intermediary and as such any complaints about One Direct fall within the jurisdiction of the Financial Services Ombudsman's Bureau. The provision of financial services by An Post, however, is not regulated by the Financial Regulator and therefore is not within the jurisdiction of the Bureau.

The Financial Services Ombudsman believes that all aspects of An Post activity as a financial service provider should be brought within the remit of the Bureau and that responsibility for complaints in relation to the "small savings products" activities of An Post should be transferred to the Financial Services Ombudsman by way of Ministerial Regulation.

In addition to the activities of One Direct, and agency activities on behalf of the National Treasury Management Agency, An Post offers a range of other financial services such as foreign exchange drafts, gift vouchers, money transmission to pay bills, etc. (Some of these services are provided on an agency basis for AIB). The Financial Services Ombudsman is of the view that all of these activities should also come within his remit.

Because An Post is acting as agent for NTMA the issue of complaints arising in relation to "small savings products" as a result of the activities of NTMA rather than An Post also falls to be considered. In line with the overriding philosophy that all consumer complaints regarding the provision of financial services should fall within the remit of the Financial Services Ombudsman, logic dictates that the role of NTMA as a provider of "small savings products" should also come within the remit of the Financial Services Ombudsman.

This matter has been drawn to the attention of the Department of Finance. **The Department has been asked to consider whether a legislative amendment to bring the provision of financial services by An Post within the jurisdiction of the Bureau would be appropriate.**

## MORTGAGE PROTECTION INSURANCE

There have been situations where consumers who incepted mortgage protection insurance redeemed their mortgages early while the mortgage protection insurance, instead of being cancelled when the mortgage was redeemed, remained in place. While this operates as a less expensive form of life

insurance, the consumer involved should be given the clear and unambiguous option of keeping the policy in place or cancelling it. Historically this has not always been the case. The Financial Regulator has been notified in order that he may take whatever action he deems appropriate.

### PAYMENT PROTECTION INSURANCE

A substantial element of complaints concerning Payment Protection Insurance relate to the alleged mis-selling of such policies by banks and other financial institutions acting in the capacity of insurance intermediaries. Such policies are sold to the consumer upon approval by the financial institution of credit agreements with the consumer. Complaints have been made that payment protection policies were sold to consumers with little or no regard to the suitability of such policies and without the requirements for eligibility to claim having been explained to the consumer prior to sale. The Bureau and the Regulator are working closely on resolving this situation.

### CREDIT CARD PAYMENT DUE DATES

A cash payment made to the credit of a credit card account on the due date was charged four days' interest. Although the Financial Service Provider had acted in accordance with the Terms and Conditions of the contract, the Ombudsman found that it was unfair and awarded €500 compensation. The Ombudsman referred the issue to the Financial Regulator for him to consider whether any regulatory action was appropriate.

### VARIABLE INTEREST ON CREDIT CARDS

The Ombudsman referred a case to the Regulator concerning the situation where a Credit Card Provider had reduced the

standard variable interest rate, but had not made existing customers aware of this fact. The Ombudsman took the view that the failure of the Bank to notify its existing customers that they could apply to avail of a reduced variable rate amounted to an unfair practice.

### THIRD PARTY COMPLAINTS

Section 57BA of the Act states that an 'eligible consumer' in relation to a regulated financial service provider, means a consumer -

- "(a) who is a customer of the financial service provider, or*
- (b) to whom the financial service provider has offered to provide a financial service, or*
- (c) who has sought the provision of a financial service from the financial service provider."*

The conduct of a third party financial service provider is occasionally referred to the Bureau. This conduct is not investigated as there is no contractual relationship or duty of care between the parties in such a complaint situation and the Complainant is not a consumer of the third party financial service provider as stipulated by s. 57BA.

### TECHNICAL ADVICE SOUGHT WHERE APPROPRIATE

During the course of investigating a complaint, the evidence submitted by both parties is carefully examined and assessed. Such evidence is often very persuasive, relevant and wholly supports the contentions of one or other of the parties. On occasion where the evidence is of a technical and specialised nature, it has at times been necessary to consult independent practitioners for their advice on the issues raised. Each independent practitioner consulted is an expert in his field and the advice given has proven an invaluable tool in aiding the Ombudsman in making his Finding. Experts consulted included:

- ☎ An Oncologist – advice was sought on the rate of growth of a particular

cancer, whether such cancer was slow-growing or aggressive and whether such cancer could be said to have been “invasive” or “in situ”.

- ④ A Cardiologist – advice was sought on whether a particular treatment was for a congenital heart condition or for a transient cerebrovascular accident.
- ④ A Neurologist – advice was sought on whether a brain tumour could have been present in the patient prior to the date of inception of her policy, despite the fact that the patient was asymptomatic.
- ④ A Geotechnical Engineer – advice was sought on whether damage to the Complainant’s dwelling was as a result of subsidence or settlement. In this case it was necessary for the Engineer to conduct a site visit and examine the soil conditions present.
- ④ Legal Counsel – while the staff of the Bureau possess considerable legal expertise it has been necessary to consult outside Legal Counsel on occasion, particularly in relation to complex cases which warrant another perspective.

(3) *An appeal under this section must be made*

- (a) *within such period and in such manner as is prescribed by rules of court of the High Court, or*
- (b) *within such further period as that Court may allow.*

The Bureau considers a time limit similar to that applicable to the Office of the Pensions Ombudsman, as prescribed by the Pensions Act 1990 (inserted by the Pensions (Amendment) Act 2002), to be appropriate for the efficient working of the Bureau, that is 21 days. He so informed the Department of Finance who, after consulting the Attorney General, advised the Ombudsman to request the Superior Court Rules Committee to make the necessary order. This was done in January 2006 and the decision of the Rules Committee is awaited.

## TIME LIMIT FOR LODGING APPEAL TO THE HIGH COURT

As is evidenced below the Act does not prescribe a time limit for such an appeal to the High Court. Section 57CL provides as follows

- (1) *If dissatisfied with a finding of the Financial Services Ombudsman, the complainant or the regulated financial service provider concerned may appeal to the High Court against the finding.*
- (2) *The Financial Services Ombudsman can be made a party to an appeal under this section.*

# *Part III*

## *Financial Statements*

# Report of Comptroller and Auditor General for presentation to the Houses of the Oireachtas

I have audited the financial statements of the Financial Services Ombudsman's Bureau for the year ended 31 December 2005 under the Central Bank Act, 1942 as amended by the Central Bank and Financial Services Authority of Ireland Act, 2004. The financial statements, which have been prepared under the accounting policies set out therein, comprise the Accounting Policies, the Income and Expenditure Account, the Balance Sheet and the related notes.

## RESPECTIVE RESPONSIBILITIES OF THE OMBUDSMAN AND THE COMPTROLLER AND AUDITOR GENERAL

The Ombudsman is responsible for preparing the financial statements in accordance with the Central Bank Act, 1942 as amended by the Central Bank and Financial Services Authority of Ireland Act, 2004, and for ensuring the regularity of transactions. The Ombudsman prepares the financial statements in accordance with Generally Accepted Accounting Practice in Ireland. The accounting responsibilities of the Bureau are set out in the Statement of Responsibilities of the Financial Services Ombudsman.

My responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK and Ireland).

I report my opinion as to whether the financial statements give a true and fair view, in accordance with generally Accepted Accounting Practice in Ireland. I also report whether in my opinion proper books of account have been kept. In addition I state whether the financial statements are in agreement with the books of account.

I report any material instance where moneys have not been applied for the purposes intended or where the transactions do not conform to the authorities governing them.

I also report if I have not obtained all the information and explanations necessary for the purposes of my audit.

I review whether the statement on Internal Financial Control reflects the Bureau's compliance with the code of practice for the Governance of State Bodies and report any material instance where it does not do so, or if the statement is misleading or inconsistent with other information of which I am aware from my audit of the financial statements. I am not required to consider whether the statement on Internal Financial Control covers all financial risks and controls, or to form an opinion on the effectiveness of the risk and control procedures.

## BASIS OF AUDIT OPINION

In the exercise of my function as Comptroller and Auditor General, I conducted my audit of the financial statements in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board and by reference to the special considerations which attach to State bodies in relation to their management and operation. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgments made in the preparation of the financial statements, and of whether the accounting policies are appropriate to the Bureau's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations that I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements.

## OPINION

In my opinion, the financial statements give a true and fair view, in accordance with Generally Accepted Accounting Practice in Ireland, of the state of the Bureau's affairs at 31 December 2005 and of its income and expenditure for the period then ended.

In my opinion, proper books of account have been kept by the Bureau. The financial statements are in agreement with the books of account.



**John Purcell**  
*Comptroller and Auditor General*

6 June 2006

## Statement on the system of internal financial control

The Financial Services Ombudsman (Ombudsman) acknowledges as Ombudsman that he is responsible for the Financial Services Ombudsman's Bureau (Bureau) system of internal financial control.

The Ombudsman also acknowledges that such a system of internal financial control can provide only reasonable and not absolute assurance against material error.

The Ombudsman sets out the following key procedures designed to provide effective internal financial control within the Bureau:

As provided for in Section 57BP of the Central Bank 1942 as inserted by Section 16 of the Central Bank and Financial Services Authority of Ireland Act 2004, the Ombudsman is responsible for carrying on, managing and controlling generally the administration and business of the Bureau. The Ombudsman reports to the Financial Services Ombudsman Council (Council) at their meetings which are generally held on a bi-monthly basis.

The Council and the Bureau have adopted a "Code of Practice for the Governance of the Financial Services Ombudsman Bureau" based on the Department of Finance "Code of Practice for Governance of State Bodies".

The Council have adopted "Rules in relation to the Procedure and Business of the Meetings of Financial Services Ombudsman Council" for their meetings.

The Ombudsman has also put in place a set of Financial Procedures setting out the financial instructions, notes of procedures and delegation practices. An Audit Committee was established in 2005 to take an overview of financial procedures generally. Its reports are also made available to the Council. The Committee met on two occasions in 2005.

The Ombudsman carried out a risk assessment analysis of the Bureau and its business during 2005. The firm who was selected to carry out the internal audit function were engaged to carry out this analysis and to identify and prioritise potential risks. The financial implications of any such potential risks were

evaluated and reviewed in 2005. It was agreed that the identified potential risks were being managed in an appropriate manner. Following the completion of the risk assessment analysis in late 2005, a detailed internal audit programme of work has been put in place for 2006.

The Bureau has put in place a computer software system incorporating an accounting package and a payroll package to facilitate the internal financial controls of the Authority.

The Council and staff of the Bureau while not designated until January 2006 complied with all requirements under the Ethics in Public Office Acts, 1995 and 2001.

I confirm that I reviewed the effectiveness of the systems of internal control in place in 2005 at a meeting in February 2006.



**Joe Meade**  
*Financial Services Ombudsman*

**1 June 2006**

## Statement of Responsibilities of the Financial Services Ombudsman

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Sections 57 BP and BQ of the Central Bank Act 1942 as inserted by Section 16 of the Central Bank and Financial Services Authority of Ireland Act 2004 require the Financial Services Ombudsman to prepare financial statements in such form as may be approved by the Financial Services Ombudsman Council after consultation with the Minister for Finance. In preparing those financial statements, the Ombudsman is required to:

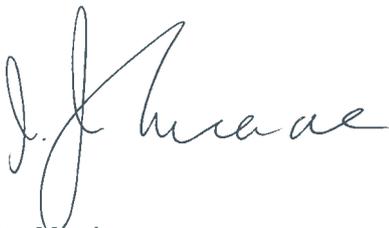
Select suitable accounting policies and then apply them consistently;

Make judgements and estimates that are reasonable and prudent;

State whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements;

Prepare the financial statements on the going concern basis unless it is inappropriate to presume that the Bureau will continue in operation.

The Ombudsman is responsible for keeping proper books of account, which disclose in a true and fair manner at any time the financial position of the Bureau and which enable it to ensure that the financial statements comply with Section 57 BQ of the Act. The Ombudsman is also responsible for safeguarding the assets of the Bureau and for taking reasonable steps for the prevention and detection of fraud and other irregularities.



**Joe Meade**  
*Financial Services Ombudsman*

1 June 2006

# Statement of Accounting Policies

The significant accounting policies adopted in these financial statements are as follows:

## BASIS OF ACCOUNTING

The financial statements are prepared in accordance with generally accepted accounting principles and under the historical cost convention and comply with the financial reporting standards of the Accounting Standards Board.

## LEVY INCOME

The levy income represents the amount estimated by the Financial Services Ombudsman (Ombudsman) as collectable in respect of the period. This takes account of payments made to the Financial Services Ombudsman's Bureau (Bureau) in accordance with the Council regulations made under the Central Bank and Financial Services Authority of Ireland Act 2004 and the reasonableness of this figure is checked against the expected levy income based on the Ombudsman's profile of the financial services providers.

## EXPENDITURE RECOGNITION

Expenditure is recognised in the financial statements on an accruals basis as it is incurred.

## TANGIBLE FIXED ASSETS

Tangible fixed assets are stated at cost less accumulated depreciation. Depreciation, charged to the Income and Expenditure Account, is calculated in order to write off the cost of fixed assets over their estimated useful lives, under the straight-line method, at the annual rate of 33 1/3% for computer equipment and 25% for all other assets. A full year's depreciation is charged in the period of the acquisition. On 1 April 2005 the Bureau began operations by availing of existing

premises and office equipment supplied by the former voluntary schemes. While the operating costs were then met no formal reassignment of leases took place and there was no residual value in the fixed assets, mainly office equipment.

## CAPITAL ACCOUNT

The capital Account represents the unamortised value of income used for capital purposes.

## FOREIGN CURRENCIES

Transactions denominated in foreign currencies are converted into euro during the year and are included in the Income and Expenditure Account for the period. Monetary assets and liabilities denominated in foreign currencies are converted into euro at exchange rates ruling at the balance sheet date and resulting gains and losses are included in the Income and Expenditure Account for the period.

## SUPERANNUATION

For certain staff members the Bureau is in discussion with the Department of Finance regarding the future financing and management of a defined benefit superannuation scheme. Pending a decision on the matter a provision of 16.66% of relevant salaries has been made. (see note 8)

For other staff members the Bureau makes contributions to a defined contribution scheme. (see note 8)

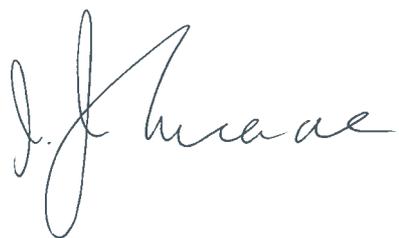
These amounts are charged to the Income and Expenditure Account as they fall due.

## Income and Expenditure Account

FOR THE NINE MONTHS ENDED 31 DECEMBER, 2005

32

	Notes	2005 €
Income	2	2,751,322
Transfer (to)/from Capital Account	5	(31,056)
		<hr/> 2,720,266
Administration Costs	3	1,812,430
		<hr/>
Excess of income over expenditure		907,836
Accumulated Surplus at end of period		<hr/> 907,836



Joe Meade

*Financial Services Ombudsman*

1 June 2006

The Bureau has no gains or losses in the Financial Year other than those dealt with in the Income & Expenditure Account.

The Statement of Accounting Policies and notes 1 to 12 form part of these Financial Statements.

# Balance Sheet

AT 31 DECEMBER, 2005

	Notes	2005 €
<b>Fixed assets</b>		
Tangible assets	4	31,056
<b>Current assets</b>		
Bank and Cash		43,411
Bank Deposit Accounts		1,542,920
Prepayments and accrued income	6	155,304
<b>Total</b>		<b>1,741,635</b>
<b>Creditors (amounts falling due within one year)</b>		
Creditors and accruals	7	833,799
<b>Net current assets</b>		<b>907,836</b>
<b>Net assets</b>		<b>938,892</b>
<hr/>		
<b>Representing</b>		
Capital Account	5	31,056
Accumulated excess income over expenditure		907,836
		<b>938,892</b>



**Joe Meade**  
*Financial Services Ombudsman*

1 June 2006

The Statement of Accounting Policies and notes 1 to 12 form part of these Financial Statements.

# Notes (forming part of the financial statements)

## 1. ESTABLISHMENT OF THE COUNCIL AND BUREAU

**The Financial Services Ombudsman's Bureau**, established under the Central Bank and Financial Services Authority of Ireland Act, 2004 is a corporate entity and consists of the Financial Services Ombudsman, each Deputy Financial Services Ombudsman and the staff. It is a statutory body funded by levies from the financial service providers. The Bureau deals independently with complaints from consumers about their individual dealings with financial service providers that have not been resolved by the providers. It began operations on 1 April 2005 in line with the provisions of Statutory Instrument 455 of 2004. The existing private sector ombudsman schemes for the Insurance and Credit Institutions were subsumed into the Bureau on 1 April 2005.

**The Financial Services Ombudsman Council** comprises a Chairperson and nine other members appointed by the Minister for Finance in September 2004. Its functions as laid down in the Act are to:

- ④ appoint the Ombudsman and the Deputy Ombudsman
- ④ prescribe guidelines under which the Ombudsman is to operate
- ④ determine the levies and charges payable for the performance of services provided by the Ombudsman
- ④ approve the annual estimate of income and expenditure as prepared by the Ombudsman
- ④ keep under review the efficiency and effectiveness of the Bureau and to advise the Minister on any matter relevant to the operation of the Bureau
- ④ advise the Ombudsman on any matter on which the Ombudsman seeks advice.

The Council has no role whatsoever regarding complaints resolutions.

### *Council and Bureau Expenses*

The expenses of the Council are met from Bureau Funds. The Council was established on 1 October 2004. From that date until 1 April 2005 the existing Office of the Insurance Ombudsman of Ireland and the Ombudsman for Credit Institutions continued to function. The Bureau did not come into existence until 1 April 2005. On that date staff of the Insurance Ombudsman of Ireland and the Ombudsman for Credit Institutions were transferred to the Bureau. In the interim the Irish Bankers Federation and the Insurance Federation of Ireland each advanced €50,000 to the Council to meet its start up expenses. Any surplus at 1 April 2005 was transferred to the Bureau and the €100,000 has been classed as a levy advance payment. These accounts reflect the full cost of Council expenses from 1 October 2004 to 31 December 2005 and the Bureau's expenses for the nine month period ending 31 December 2005.

## 2. INCOME LEVY

Section 57 BD of the Central Bank Act 1942 as inserted by the Central Bank and Financial Services Authority of Ireland Act 2004 provides for the payment of an income levy by financial service providers to the Bureau on terms determined by the Financial Services Ombudsman's Council. The Central Bank Act 1942 (Financial Services Ombudsman Council) Regulations, 2005 set the actual rate for the income levy for the nine month period ending 31 December 2005.

Income for the period is as follows:

Levy	€2,746,200
Bank Interest	€5,122
<b>Total</b>	<b>€2,751,322</b>

### 3a. Administration Costs

	€
Salaries and staff costs	999,136
Staff Pension costs	117,265
Staff Training	6,001
Council Remuneration	173,073
Council Legal / Miscellaneous Expenses	85,064
Rent and Rates	136,250
Maintenance	32,178
Conference and Travel	18,671
Consultancy Fees	33,319
Information Activities	59,882
Cleaning	14,029
Legal Fees	10,000
Insurance	3,842
Stationery Costs	46,616
Other Administration Costs	51,660
Audit	12,000
Depreciation	13,444
<b>Total</b>	<b>1,812,430</b>

Council Remuneration / Legal /Miscellaneous Expenses include an amount of €52,705 which relates to Council expenditure incurred in the period 1 October 2004 to 31 March 2005.

**3b. Staff Numbers**

The number of persons employed (permanent) in the financial year 2005 was 22. This total includes 5 permanent part time staff.

**4. TANGIBLE FIXED ASSETS**

	Computer Equipment €	Office Fitting, Furniture & Equipment €	Total €
<b>Cost At 1 April 2005</b>			
Additions during period	27,826	16,674	44,500
At 31 December 2005	<b>27,826</b>	<b>16,674</b>	<b>44,500</b>
<b>Depreciation</b>			
At 1 April 2005			
Charge for period	9,275	4,169	13,444
At 31 December 2005	<b>9,275</b>	<b>4,169</b>	<b>13,444</b>
<b>Net Book Value</b>			
At 31 December 2005	<b>18,551</b>	<b>12,505</b>	<b>31,056</b>

**5. CAPITAL ACCOUNT**

	2005 €
Opening balance	Nil
Transfer from/(to) Income and Expenditure Account Funds allocated to acquire fixed assets	44,500
Amortisation in line with depreciation	(13,444)
Balance at 31 December 2005	<b>31,056</b>

## 6. PREPAYMENTS AND ACCRUED INCOME

	2005 €
Accrued income	87,624
Prepayments	67,680
	<b>155,304</b>

## 7. CREDITORS (AMOUNTS FALLING DUE WITHIN ONE YEAR)

	2005 €
Trade creditors and accruals	35,359
Levy advance payments 2005	360,642
Pension Contributions	437,798
	<b>833,799</b>

## 8. SUPERANNUATION

In accordance with Section 57BN of the Central Bank Act 1942 as inserted by Section 16 of the Central Bank and Financial Services Authority of Ireland Act 2004 the Council has drafted a superannuation scheme which has been submitted to the Minister for Finance for approval. The scheme is a contributory defined benefit superannuation scheme based on the Department of Finance Model Public Sector Scheme. Pending approval, the scheme is being operated on an administrative basis with the consent of the Minister.

The Bureau is in discussion with the Department of Finance regarding the future management and financing of the scheme. The Bureau has proposed that the liability for benefits paid under the Scheme will be assumed by the State in return for payment annually of 16.6% of the salaries of scheme members. Pending a decision on the matter a provision of 16.6% of relevant salaries has been made.

In addition, staff who transferred from the former Insurance and Credit Institutions Ombudsman offices on the date of establishment could opt to continue with their existing defined contribution scheme. These schemes, which include life cover benefit, are administered by private pension providers. Once employee and employer contributions are paid over the Bureau has no further liability. Alternatively, transferred staff could opt to become members of the Bureau scheme from the date of transfer. In these cases the Bureau received amounts on surrender of the employee's entitlements under the defined contribution schemes. The amount will be used for the purchase of added years under the Bureau scheme in accordance with the provisions of Department of Finance Model Public Sector Scheme.

Employee contributions and amounts received in respect of entitlements surrendered by transferred employees are retained by the Bureau pending a decision by the Minister for

Finance as to how the scheme should be managed. These amounts are included in creditors (see note 7).

The provisions of FRS 17 have not been complied with pending a decision by the Minister for Finance as to how the scheme is to be managed.

## 9. CAPITAL COMMITMENTS

There are no capital commitments for capital expenditure at 31 December 2005.

## 10. CONTINGENT LIABILITIES

There were no contingent liabilities at 31 December 2005.

## 11. COUNCIL MEMBERS – DISCLOSURE OF INTERESTS

The Council adopted procedures in accordance with guidelines issued by the Department of Finance in relation to disclosure of interests by Council members and these procedures have been adhered to in the period. There were no transactions in the year in relation to the Council's activities in which the Council members had any beneficial interest.

## 12. APPROVAL OF FINANCIAL STATEMENTS

The Financial Statements were approved by the Financial Services Ombudsman on 1 June 2006.

# Appendices

# Appendix I

## Procedures for Dealing with Complaints

### 1. ADMINISTRATION

#### 1. Initial Contact

- (a) By Telephone/In Person

Caller's name and address is logged on call log.

- (b) Written – (by letter, fax or e-mail)

Complainant's name and address are entered on Case Management System and Reference Number generated.

#### 2. Complaint Form Issued

Complainant is sent Complaint Form, Guide for Complainants and Explanatory Leaflet, as per the Bureau's Website. The Complaint Form must contain a warning to the Complainant that if the Bureau does not receive a completed Complaint Form within **28 days**, the Complainant's case will be closed.

### 2. INITIAL COMPLAINT

#### 3. Determine whether Complaint within Remit

Once the Complaint Form has been returned, the complaint is assessed to determine whether it falls within the remit of the Bureau, as delineated by the provisions of the Act. It may be necessary to request further information from the Complainant at this point.

#### 4. (a) Procedural Letter

Once it has been determined that the complaint falls within the Bureau's remit, the Procedural Letter is sent to the Complainant. The Procedural Letter contains a brief outline of the Bureau's procedures and a request to the Complainant to write to a nominated member of Senior Management in the Financial Service Provider, outlining his complaint and requesting a response. The Financial Service Provider must respond, proposing a resolution to the complaint and stating that in the event that the Complainant is not satisfied with the response, he may treat it as sufficient grounds to refer the complaint to the Bureau. If the Complainant is satisfied with the Financial Service Provider's response, he must inform the Bureau and his case will be recorded as "**Settled**". If he is dissatisfied with the response, he must submit it to the Bureau as the Financial Service Provider's Final Response. The Procedural Letter must contain a warning to the Complainant that the Financial Service Provider's Final Response must be submitted to the Bureau within **28 days**.

**(Each Financial Service Provider must nominate to the Bureau one designated person to issue the Financial Service Provider's Final Response. The Financial Service Provider's Final Response letter may be signed by this person or on his behalf. Where it is signed on behalf of the nominated person, the author must stipulate this).**

The Complainant will receive one prompt letter at this point for a further **14 days** only.

**(b) Notification of Complaint to Financial Service Provider**

On the same date of issue of the Procedural Letter to the Complainant, the Notification of Complaint letter is sent to the Financial Service Provider, informing it that a complaint has been lodged with the Bureau. A copy of the completed Complaint Form is attached to this letter.

The Procedural Letter and its prompt, together with the Notification Letter, must contain the following warning:-

**If the Financial Service Provider fails to issue a Final Response to the Complainant within 28 days, the Bureau may intervene at this point. If, however, the failure to submit a Final Response is by the Complainant's own omission, the case will be closed.**

**The Bureau may take the Financial Service Provider's failure to respond to the complaint within the designated timeframe into consideration when adjudicating upon the complaint.**

Stages 4 (a) and 4 (b) will be implemented simultaneously.

**5. Determine whether Formal Investigation Warranted**

Once the Bureau is in receipt of the Complaint Form from the Complainant and the Final Response of the Financial Service Provider, they must be assessed to determine whether a Formal Investigation of the complaint is warranted.

If it is determined that the response of the Financial Service Provider was reasonable under the circumstances, the complaint will not proceed to investigation. At this point a View will be issued to both parties based ONLY on the information contained in the Complaint Form and the Final Response letter. This View will be subject to the Review and Appeal procedures of the Bureau.

If the View is appealed, it will be reviewed by the Deputy Ombudsman.

If the Deputy Ombudsman decides that a Formal Investigation is warranted, the complaint will be assigned to an Investigator and both parties will be notified.

If the Deputy Ombudsman decides that the View should stand, the View becomes the Deputy Ombudsman's Finding, which is subject to the Review and Appeal procedures of the Bureau.

## 6. *Formal Investigation*

If it is determined that a Formal Investigation of the complaint is warranted, the Complainant will be informed that his case is proceeding to investigation. The Financial Service Provider will be required to submit all papers on the Complainant (relevant to the complaint), to enable the Bureau to investigate and adjudicate upon the complaint. (Should the Investigator feel it necessary, a Summary of Complaint will be forwarded to the Financial Service Provider). The Financial Service Provider will be given a maximum of **30 working days** within which to comply with this request. The Complainant must be informed at this point that the investigation should, in general, take at the most **60 working days**. However, for certain cases supplementary information will be necessary, which may cause the 60 working days to be extended.

When the relevant papers are received by the Bureau, the case will be assigned to an Investigator.

## 3. INVESTIGATION

### 7. *Finding of the Deputy Ombudsman*

The Bureau may attempt to negotiate a settlement between the parties at this point. Failing this, the Deputy Ombudsman issues a Finding on the matter. Each party is given **25 working days** to accept or appeal the Finding.

Where the 25 working days have lapsed and no appeal has been submitted by either party, the Finding becomes a Final Decision and is binding on both parties.

### 8. *Final Decision of the Ombudsman*

Where an appeal is submitted by either party, the Financial Services Ombudsman will review the Finding of the Deputy Ombudsman and the appeal submission, and then issue a Final Decision on the matter.

The Final Decision of the Ombudsman will, in general, be issued within **15 working days** after the expiration of the appeal period.

Where no new issues are raised in an appeal submission, the Financial Services Ombudsman may deem that the Finding issued by the Deputy Ombudsman is the Financial Services Ombudsman's Final Decision. The Complainant is informed of this by way of letter from the Financial Services Ombudsman.

The Final Decision is binding on both parties, subject to further appeal by either party to the High Court.

## Appendix II

### *Report by the Financial Services Ombudsman under Sections 16 and 57 BS of the Central Bank and Financial Services Authority of Ireland Act 2004.*

The Act provides that the Financial Services Ombudsman shall publish a report within three months after the end of each financial year containing

- ④ a summary of all complaints made during the previous financial year and of the results of the investigations into complaints
- ④ a review of trends and patterns in the complaints.

The Act also provides that the Ombudsman may publish such a report more frequently than once a year if the Ombudsman thinks it would be in the public interest to do so. In that regard some complaints trends data for the period 1 April to 30 September 2005 were already published in October 2005.

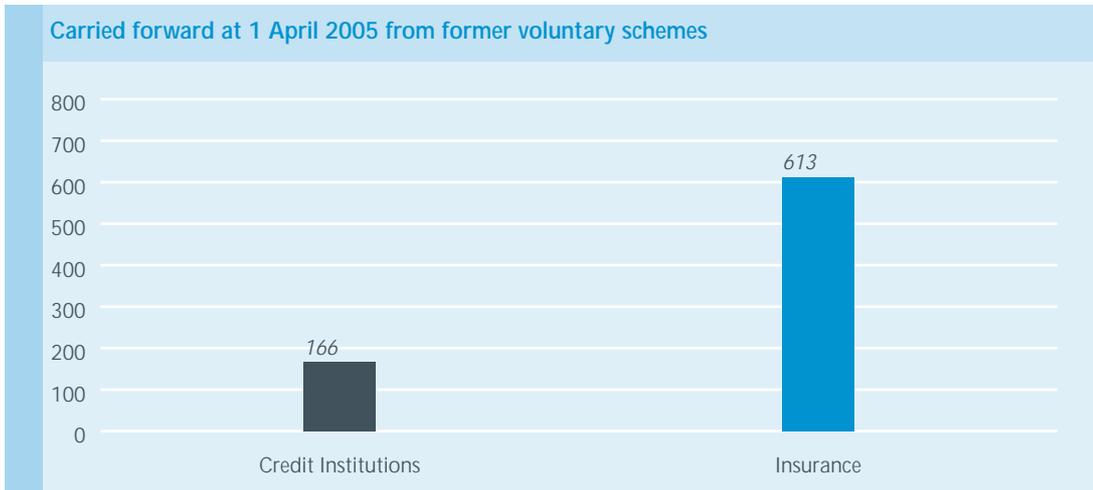
As the Financial Services Ombudsman's Bureau began work on 1 April 2005 this report fulfils the requirements of the Act at the end of the first financial period - 1 April to 31 December 2005.



**Joe Meade**  
*Financial Services Ombudsman*

19 January 2006

## 1. Cases for investigation since 1 April 2005



Total cases for investigation 3383

## 2. COMPARISONS WITH PRIOR PERIOD

### Complaints received

	INSURANCE	CREDIT INSTITUTIONS	TOTAL
April 2005 – December 2005	1734	870	2604
April 2004 – December 2004	1428	692	2120
Increase	306	178	484
	21%	25%	23%

## 3. CASES INVESTIGATED IN THE PERIOD 1 APRIL TO 31 DECEMBER 2005

### (a) Cases concluded

Insurance	1000	
Credit Institutions	368	1368

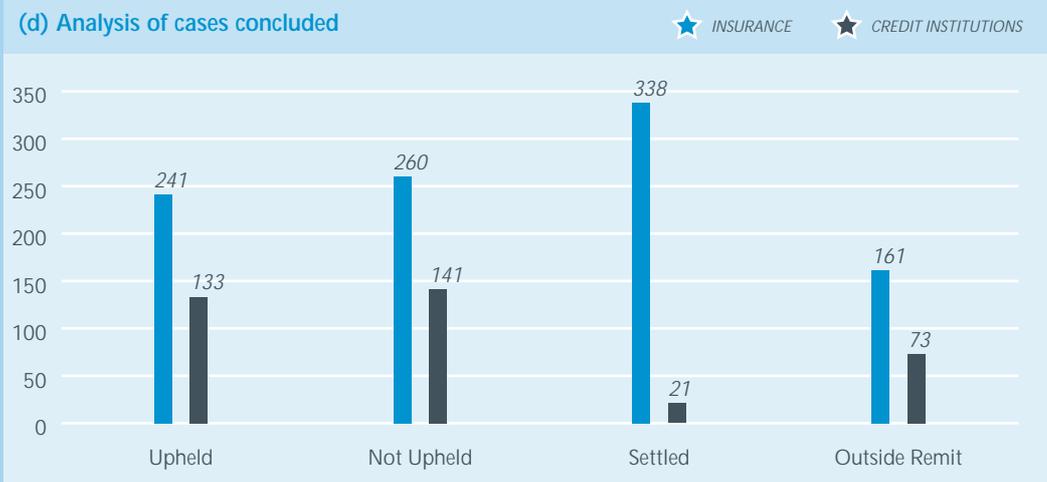
### (b) Cases referred to financial service providers internal complaints procedure

Insurance	886	
Credit Institutions	453	1339

### (c) Cases under investigation at end December 2005

Insurance	461	
Credit Institutions	215	676
		3383

### (d) Analysis of cases concluded



#### 4. COMPLAINT TRENDS AND PATTERNS SINCE APRIL 2005

##### (A) AREA OF BUSINESS

	CREDIT INSTITUTIONS	
Account Transactions	206	24%
Various Lending Problems	157	18%
Credit Card Disputes	134	15%
Mortgage Issues	131	15%
Investment Performance Disputes	125	14%
Service Issues	45	
ATM Disputes	42	
Foreign Exchange	28	14%
Miscellaneous	2	
		<b>870</b>

##### INSURANCE

##### Non Life (57%)

Travel	323	
Motor	281	
Household contents and Buildings	146	
Saving policy / SSIA's	15	
Payment / Loan protection policy	91	
Mobile phones	13	
Miscellaneous	126	<b>995</b>

##### Medical (6%)

Medical expenses	102	<b>102</b>
------------------	-----	------------

### Life (37%)

Life Assurance	180	
Investment policy	136	
Endowment policy	96	
Critical / serious illness	50	
Permanent Health	18	
Pensions	63	
Mortgage Protection	59	
Salary Protection / Income Continuance	35	
		<b>637</b>
		<b>1734</b>

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### (B) NATURE OF COMPLAINT

	CREDIT INSTITUTIONS		
Maladministration	317	37%	
Unfair treatment	255	29%	
Breach of contract	108	12%	
Negligence	83	9%	
Fees and charges	61	7%	
Misrepresentation	29	3%	
Breach of confidentiality	12		
Interest rates	3		
Other	2	3%	<b>870</b>

## INSURANCE

Repudiation of claim	484	28%	
Maladministration	201	12%	
Customer care	177	10%	
Claim handling	158	9%	
Mis-selling	119	7%	
Pre-existing condition	72		
Policy terms	67		
Premium rates	57		
Lapse/cancellation of policy	54		
Policy review	46	17%	
Misrepresentation	41		
Settlement amount	37		
Non disclosure	35		
Surrender value	23	8%	
Pre accident value	15		
Premium collection	15		
Declined quotation	12		
No claim bonus	11		
Subrogation	8	3%	
Miscellaneous	102	6%	173

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# Appendix III

## Public Information Role

### PRESENTATIONS

Consumer Credit Association of Ireland  
Broker's Federation of Ireland  
Info Ireland 2005  
Insurance Institute Dublin  
Insurance Institute Cork  
Irish Life and Permanent Compliance Officers  
Treating Customers Fairly Conference  
Irish Bankers Federation - Retail Council  
Mortgage Council of Ireland  
Institute of Bankers Compliance Conference  
Insurance Federation Annual Lunch

### INTERNATIONAL

German Consumer Delegation Visit to Ireland  
Eastern European Regulators Visit to Ireland  
Poland Insurance Ombudsman Conference  
Canadian Ombudsman Conference of  
Common Law Jurisdictions

### MEETINGS

Professional Insurance Brokers Association  
League of Credit Unions  
Consumer Credit Association of Ireland  
Irish Insurance Federation  
Irish Bankers Federation  
Irish Stock Exchange

### MISCELLANEOUS

Articles in many consumer and financial  
service providers magazines  
Media interviews  
Over 50s show at RDS  
Graduate website competition for transition  
year students

## Appendix IV

### Major Decisions Published on the Bureau's Website Relating To Decisions Made in the Period April – December 2005

#### CREDIT INSTITUTIONS

- ⌘ **Elderly Couple's unsuitable High Risk Investment- €56,000 compensation**
- ⌘ **Fall in investment value of 80 year old person's joint investment - not upheld**
- ⌘ **Inappropriate Investment Advice - €20,000 compensation**
- ⌘ **Fee of €25,000 on transfer from fixed to variable rate of interest - not upheld**
- ⌘ **Endowment Mortgage shortfall - not upheld**
- ⌘ **Direct debits and technical problems in bank - €750 awarded**
- ⌘ **ATM card withdrawals – not upheld.**
- ⌘ **Building Society had to repay €29,000 to a couple who switched their commercial mortgage as a fixed early redemption fee of six month's interest was charged. The Ombudsman has directed the society to change its policy to the actual loss incurred**
- ⌘ **Nature of derivatives investment was not explained and €6,500 awarded**
- ⌘ **Olympic Games - excessive hire of cars by credit card not upheld**
- ⌘ **Complaint of €23,000 allegedly missing from a credit union account not upheld**
- ⌘ **Credit Union did not inform a member of his rights and €250 compensation awarded**
- ⌘ **Credit card anti fraud measures are appropriate even when they cause inconvenience**
- ⌘ **Bank was wrong to withhold title deeds and €5,000 compensation was awarded.**

#### INSURANCE

- ⌘ **Life Assurance - Customer care issue - partly upheld and €1,000 compensation.**
- ⌘ **Travel Insurance - replacement passport – €50 awarded**
- ⌘ **Income Protection Policy - Policy voided for non-disclosure - not upheld**
- ⌘ **Mortgage Protection Policy - Complaint partly upheld and Financial Regulator informed for industry wide action.**
- ⌘ **Travel Insurance - definition of "close relative" - not upheld**
- ⌘ **Loan Protection policy –trouble in settling case - €200 and apology**
- ⌘ **Medical Expenses Insurance Policy – Repudiation of claim on grounds of pre-existing condition - complaint not upheld**
- ⌘ **A complex total permanent disability and critical illness claim for €100,000 was initially rejected by the insurance company but a mediated settlement of €33,000 was reached by the Ombudsman.**

- ⓕ Payment Protection Plan, including Disability Benefit – **Benefit reinstated** as complaint upheld.
- ⓕ Medical Expenses Insurance - Following a review by the Ombudsman **the cost of surgery undertaken outside of Ireland** was met, without admission of liability, at an amount that would have been paid if it was carried out in Ireland.
- ⓕ Medical Insurance – a claim for the **cost of a hip replacement** was not upheld but the particular policy exclusion needs clarity.
- ⓕ **Stolen motor vehicle** – Ombudsman increased valuation offer by €1,000 to €3,700.
- ⓕ Household Buildings Policy – Alleged **Storm Damage of €80,000** not upheld.
- ⓕ Life Assurance – A with profits Endowment Policy should not have been issued and accordingly the **premiums paid had to be refunded**.
- ⓕ Whole of life policy **allegation of misleading information** - compromise settlement agreed.

## Appendix V

### Financial Service Providers subject to the Financial Services Ombudsman remit

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(a)	<b>Regulated by the Financial Regulator</b>	
	Credit Institutions	79
	Life Insurance Companies	53
	Non Life Insurance Companies	135
	Investment Business Firms	1,100
	Retail Intermediaries	2,400
	Collective Investment schemes	3,000
	Fund Service Providers	230
	Credit Unions	435
	Bureaux de Change	14
	Moneylenders	50
	Stock Exchange and members	14
	Finex Trading members	38
	Futures and options exchanges	2
	Money brokers	6
	Approved Professional Bodies	3
(b)	<b>Voluntary Health Insurance Board</b>	1
(c)	<b>Consumer Credit Act regulated firms including pawn brokers, hire purchase firms and others</b>	200
	<b>Total</b>	<b>7,760</b>

# Appendix VI

## Council Details

### 1. MEMBERS OF COUNCIL

Dr Con Power	Economic Consultant, Chairperson.
Mr John Colgan	Independent Consumer Advocate, Former Chairman, Consumers Association of Ireland Ltd, Deputy Chairperson.
Mr Crozier Deane	Chairman, Insurance Ombudsman Board. (Resigned 31-12-2005).
Mr Dermott Jewell	Chief Executive, Consumers Association of Ireland Ltd.
Mr Paul Joyce	Barrister, Free Legal Aid Centre.
Mr Paddy Leydon	Head of Business and Personal, Midlands, National Irish Bank.
Mr Paul Lynch	Chief Executive, Irish Brokers Association
Mr Paddy Lyons	Former Chairman, the Competition Authority
Mr Jim McMahan	Irish League of Credit Unions.
Ms Caitriona Ni Charra	Co-ordinator, Money Advice and Budgeting Centre.
Mr Frank Wynn	Head of Compliance, Irish Life Assurance. (Appointed 1-3-2006)

**Secretary to the Council** Mr Jim Bardon.

### 2. COUNCIL SUB-COMMITTEES

#### *AUDIT COMMITTEE*

**Members:** Paddy Lyons, Convenor, Dermott Jewell, Noel O'Connell

#### *CORPORATE GOVERNANCE COMMITTEE*

**Members** Dr Con Power, Convenor, Mr John Colgan.

#### *FINANCE COMMITTEE.*

**Members:** Paddy Lyons, Convenor, Caitriona Ni Charra, Dermott Jewell, Paul Lynch, Dr Con Power.

#### *HUMAN RESOURCES COMMITTEE*

**Members:** Dr Con Power, Convenor, John Colgan, Dermott Jewell, Paddy Leydon, Paul Joyce.

**OPERATIONS COMMITTEE**

**Members:** John Colgan, Convenor, Crozier Deane (resigned 31-12-2005), Paddy Leydon, Paul Lynch, Jim McMahon

**3. MEETINGS****1. COUNCIL**

The Council held 16 formal meetings from commencement in October 2004 until December 2005. Two of those meetings were adjourned and reconvened at a later date bringing the number of times Council met to 18. Attendance were as follows:-

	MEETINGS
Dr Con Power	18
Mr John Colgan	16
Mr Crozier Deane	15
Mr Dermott Jewell	13
Mr Paul Joyce	18
Mr Paddy Leydon	15
Mr Paul Lynch	15
Mr Paddy Lyons	18
Mr Jim McMahon	16
Ms Caitriona Ni Charra	12

**2. COUNCIL SUB-COMMITTEES****AUDIT COMMITTEE**

Met twice during the period under review.

**CORPORATE GOVERNANCE COMMITTEE**

Established December 2005. No meetings during period under review.

**FINANCE COMMITTEE**

Met on seven occasions during the period under review.

#### *HUMAN RESOURCES COMMITTEE*

Met on two occasions during the period under review.

#### *OPERATIONS COMMITTEE*

Met on four occasions during the period under review.

### 4. COUNCIL REMUNERATION

Under the terms of the Central Bank and Financial Services Authority of Ireland Act 2004 which established the Bureau, the Minister for Finance decides the level of fees to be paid to Council members. On 14th January 2005, the Minister approved the following as the appropriate level of fees which should be paid annually to Council members.

€10,157.90 for each of the members, and

€15, 236.86 for the Chairperson.

These fees took effect from the date of establishment of the Council, i.e. 1 October 2004. The amounts are consistent with the Category 2 classification of the Bureau and the fees payable to Chairpersons and non-executive directors of other Category 2 Bodies throughout the public sector.

Fees are paid quarterly and are taxable through the PAYE/PRSI system of the Bureau. No additional fees are payable to any member of Council.

### 5. EXPENSES PAID TO COUNCIL MEMBERS

The Bureau is a statutory body and does not have the autonomy of commercial semi-state bodies, and, accordingly, is bound by public service rates for expenses. Claims for reimbursement of travel and subsistence expenses at current rates and for other appropriate expenses are submitted quarterly to the Chairperson for approval.





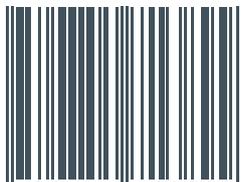
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