

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

**Taoiseach**

**By Ger Deering**

**Financial Services Ombudsman and Pensions Ombudsman**

**2 March 2017**

Good morning Chairman, Deputies and Senators. I am pleased to have the opportunity, together with the Deputy Financial Services Ombudsman, Elaine Cassidy, to engage with you here this morning in relation to our 2017 Strategic Plan. I also welcome the opportunity to engage with the Committee in relation to tracker mortgages.

Firstly, I will give a brief outline in relation to our Strategy. We have just commenced the second year of an ambitious three-year Change Programme. During 2017 we will continue to adapt our processes in response to feedback received from service users. The three-year Change Programme was devised following the completion of an independent Strategic and Operational Review into the operations of the offices of the Financial Services Ombudsman and the Pensions Ombudsman. This Review was commissioned jointly by myself and the then Pensions Ombudsman.

This Review Report (available on [www.financialombudsman.ie](http://www.financialombudsman.ie) or at this [LINK](#)) recommended that we should adopt a more proportionate, informal and preventative approach to dispute resolution.

Having consulted widely with stakeholders, including those who had made complaints against financial service providers, the Review delivered a number of key recommendations at the end of 2015 which we commenced implementing in February 2016.

This involved commencing a major Change Programme in February 2016. This has delivered significant changes in how we manage complaints. Because of these changes, we now undertake considerably more direct interaction with both consumers and providers to deliver a faster, more efficient and effective service.

Our 2017 Strategy will continue to raise the bar on consumer protection and complaint handling through the use of mediation techniques and, where disputes are not resolved by agreement between the parties, through fair and impartial investigation and adjudication.

I am happy to report high levels of satisfaction from those using this new service. A structured survey of both complainants and Providers who used the new Dispute Resolution Service has provided a positive endorsement of the effectiveness of the service. The results prove that the newly implemented processes are working well and that changes have had a positive impact. The feedback shows us that we have laid very strong foundations on which we can continue to develop our service and improve how we interact with our stakeholders. Our strategy for 2017 seeks to build on that firm foundation as we continue to improve our service into the future.

As you are aware, the Government has decided to amalgamate the offices of the Financial Services Ombudsman and the Pensions Ombudsman. We engaged with the Committee in October last year, as part of the Pre-Legislative Scrutiny, of the Financial Services and Pensions Ombudsman Bill which, when enacted, will provide the legislative basis for the merger. We also engaged with the Committee on Deputy Doherty's Private Members Bill in relation to the Financial Services Ombudsman on that occasion.

I was appointed Financial Services Ombudsman in April 2015 and I was appointed Pensions Ombudsman in May 2016 under the Social Welfare and Pensions Act 2015. I currently hold both of these offices in separate capacities under the relevant legislation.

My Colleague, Ms Cassidy, was appointed Deputy Financial Services Ombudsman in January 2016. She is Deputy Ombudsman Designate for Pensions. As the current legislation does not provide for a Deputy Pensions Ombudsman, she will not assume that element of her role until the necessary legislation is enacted.

We look forward to fully amalgamating both offices when the legislation is enacted. We also look forward to the enactment of other legislative measures that would bring greater protection to consumers.

In advance of the enactment of the legislation necessary for the merger, our 2017 Strategy commits us to doing everything we can to make the amalgamation a success. Both Offices are now co-located and work in close co-operation, albeit under separate legislative provisions. We are actively working with the Department of Finance and the Department of Social Protection to ensure a smooth amalgamation and successful delivery of services.

Our core objectives as set out in our Strategic Plan for 2017 are:

1. To operate an efficient, effective and fair dispute resolution process that mediates, investigates and adjudicates on consumer complaints.
2. To provide excellent customer service.

3. To raise awareness of our work among the public and our stakeholders and promote compliance by financial service providers with best practice in the provision of products and services.
4. To support and develop the skills and competencies of our staff in order to offer the best service to our users.
5. To support the Financial Services Ombudsman Council in its work and liaise with the Central Bank of Ireland, the Department of Finance, Oireachtas Committees and other relevant bodies in order to improve the financial services market for consumers.

For each of these Objectives our 2017 Strategy sets out key performance indicators identifying the timelines and critical success factors. The 2017 Strategic Plan has been developed by focusing on 2017 while also bearing future years in mind.

We are happy to engage with the Committee and answer questions that Members have in relation to our 2017 Strategic Plan.

Before that, in the remaining time available to me I would like to provide the Committee with some information on our role in relation to the tracker mortgages.

I would like to start by pointing out that the long and well established role of an ombudsman is to seek to redress the difference in power and resources between the individual or citizen and a large institution, when resolving disputes. This is particularly important when dealing with the inequality of arms that exist between a consumer and a financial service provider.

A time limit of six years for making complaints to the Financial Services Ombudsman is set out in the current legislation. Both the Financial Services and Pensions Ombudsman Bill and Deputy Doherty's Private Members Bill which were considered by the Committee in October last year propose an extension of the time limits for complaints. We would very much welcome such an extension. Such an extension could be particularly beneficial in respect of complaints relating to mortgages or financial products with a medium to long-term lifespan.

Where I uphold a complaint I have a wide range of powers available to me. I can direct a financial service provider to pay compensation of up to €250,000 and I can also direct rectification. Such rectification can be very significant as it can involve putting a person back to a position where they previously were, before the complaint arose. This, in some instances, such as where a person was denied a tracker mortgage or where an incorrect interest rate was applied, may potentially be more important for the complainant than compensation.

The Office of the Financial Ombudsman has played an important role in the tracker issue to date and I can assure the Committee that I will use the extensive powers available to me to ensure that customers of financial service providers who do not receive their entitlements or who are treated unfairly have access to redress.

I will not be found wanting in using these powers as they were intended by the Oireachtas where I find the conduct of the financial service provider to be contrary to law, unreasonable, unjust, oppressive or improperly discriminatory.

I think it would be beneficial to provide you a brief background in relation some of the key events and timelines.

The FSO first began to receive complaints regarding tracker mortgages in 2009. Indeed, the 2009 Annual Report, of the then Financial Services Ombudsman included a case study involving a borrower who had wrongly been denied their entitlement to return to a tracker rate following a period on a fixed interest rate.

In 2009, 2010 and 2011 the Financial Services Ombudsman upheld a number of complaints and directed financial institutions to put the complainants back on tracker mortgages.

Some of these findings were challenged in the High Court. Of particular note, PTSB appealed four Findings of the FSO to the High Court in 2011. All four of these Findings, issued by the FSO in July and August 2011, had directed the Bank to reinstate the complainants' tracker mortgages. In August 2012 the High Court delivered judgment in all four cases. Two of the complaints were remitted back to the FSO for further consideration while the Bank was unsuccessful in the remaining two appeals. In October 2012 the High Court gave PTSB leave to appeal to the Supreme Court against those two FSO Findings .

These two appeals were listed for hearing by the Supreme Court on the 16<sup>th</sup> of February 2015. However, when they came for mention to the court on the 5<sup>th</sup> of February 2015, they were withdrawn by the Bank.

It was around this time that the Central Bank had commenced an enforcement investigation of PTSB, which resulted in some customers being returned to tracker mortgages and receiving redress.

Shortly after I was appointed in 2015, I commenced a comprehensive analysis of tracker mortgage complaints which had been decided by the FSO between 2009 and July 2015. The aim of this analysis, which covered almost 500 Findings over that period, was to inform the Central Bank of the various issues which the FSO had encountered in relation to tracker mortgages.

We worked in co-operation with the Central Bank, in line with the Memorandum of Understanding in place between the two organisations, and I presented the Analysis to the Central Bank in November 2015. This information was, I understand, of assistance to the Central Bank in scoping the Examination currently underway in all banks.

As the Committee is aware the objective of the Examination directed by the Central Bank is to ensure that lenders conduct a complete review of their mortgage loan books to assess compliance with both contractual and regulatory requirements relating to tracker mortgages, and in situations where customer detriment is identified from the Examination, provide appropriate redress and compensation so as to ensure fair outcomes for customers of those lenders.

I fully support this objective of the Central Bank and my Office has worked in close co-operation with the Central Bank to ensure any information that we hold that is useful to it in achieving its objective, is made available to it.

I became aware, early in 2016, from correspondence sent to a complainant who had received a finding from the FSO, by her bank, that at least one bank proposed to exclude customers who had brought complaints to the FSO from the Examination.

On becoming aware of this I wrote to the CEOs of all the banks informing them that I was firmly of the view, a view which is shared by the Central Bank, that no mortgage holder who has made a complaint to the FSO should be treated any differently, with regard to the Examination, by virtue of the fact of having made such a complaint, irrespective of the outcome.

I secured confirmation from each Bank that no mortgage account holder, coming within the scope of that Examination, would be treated any differently by that bank, because a complaint has been made to FSO.

Prior to and throughout the Examination process we have worked closely with the Central Bank. We are also in ongoing communication with complainants, who have complaints with our office regarding their bank in relation to tracker mortgages.

We are currently dealing with approximately 400 complaints relating to tracker mortgages. In the vast majority of these the mediation/investigation/adjudication of the complaint has been put on hold pending the outcome of the Central Bank Examination. The reasons for this are twofold. Firstly it will ensure that the FSO will have the fullest information available for the investigation and adjudication of the complaints. Secondly it will ensure that complainants have the right to have their complaint considered by the FSO if they are unhappy with the outcome of the Examination as it relates to them.

If, having had their complaint on hold with the FSO, a complainant receives a proposal from their bank and the complainant advises the FSO that they are satisfied with that offer we will note that the matter has been settled and our file will be closed.



If on the other hand, having put the complaint on hold with the FSO, a complainant receives a proposal from their bank that is not acceptable or no proposal is offered, we can progress the complaint.

There are a number of potential complaints that may arise following the completion of the Examination process, which the FSO may have to deal with. These could include complaints that a person was not returned to a tracker mortgage at all, or that they were not returned to a tracker mortgage at the correct time or indeed that they were not returned to the correct tracker margin. Further, a complainant may be returned to their tracker at the right rate and time but they may not be satisfied with the level of compensation offered. There may also be complaints about the process itself, for example, the manner in which claims for redress were dealt with as part of the Examination.

I would remind the Committee of the assurance that I gave here last October that I am, together with the Deputy Ombudsman and our entire team, fully committed to using any powers afforded to the Financial Services and Pensions Ombudsman, including any enhanced powers, by the Oireachtas, to the fullest extent possible.

I can assure the Committee that together with my Team, I will play my part in providing redress for complainants to the FSO where I am of the view that the conduct of their financial service provider was contrary to law, unreasonable, unjust, oppressive or improperly discriminatory.

Thank you for the opportunity to engage with you here today. Ms Cassidy and I are happy now to deal with any questions arising.