

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

**Taoiseach**

**By Ger Deering**

**Financial Services Ombudsman and Pensions Ombudsman**

**7 December 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 the work of my office in relation to tracker mortgages and our co-operation with the Central Bank of Ireland in this regard.

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

This office has been dealing with tracker complaints since 2009. To date we have received 1,838 complaints. Findings have issued in respect of 683 complaints. Of these 115 (17%) were upheld, 59 (9%) were partly upheld and 509 (74%) were not upheld. A number of these findings directed financial service providers to restore tracker mortgages to complainants. In addition, 311 complaints relating to tracker mortgage interest rates have been resolved through the acceptance of settlement offers made by financial service providers after the engagement of this office.

We currently have 540 open tracker complaints. The remaining 304 were either out of jurisdiction or were withdrawn. However, as a result of the recent legislative changes made by the Oireachtas, some of these complaints may now come within jurisdiction and we are ready to accept complaints from consumers in those circumstances.

PTSB appealed four of the Financial Services Ombudsman's 2011 decisions to the High Court. These decisions had directed the bank to return customers to their tracker mortgages. These four FSO decisions were linked and dealt with by Judge Hogan in a single High Court case. He delivered his decision in August 2012 – one year after the FSO decisions had been issued. Judge Hogan affirmed two of the four decisions and he remitted the other two to the FSO for further consideration.

PTSB appealed the two cases that were affirmed by the High Court to the Supreme Court. While these appeals were on-going (for one year) in the High Court (and over two further years in the Supreme Court) all PTSB tracker complaints were put on hold by the FSO. The FSO kept in regular contact with these complainants while their complaints were on hold.

In February 2015 – almost four years after the original FSO decisions PTSB withdrew its Supreme Court Appeal which was listed for hearing some days later.

By February 2015 the Central Bank had commenced an enforcement investigation action with PTSB and the PTSB Tracker Redress Programme was put in place.

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

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

The aim of the analysis, which considered 437 files in which findings issued over that period, was initially to inform myself of the issues concerned. However, it became evident at an early stage of the analysis that this information would also be useful to the Central Bank in its broader regulatory and enforcement role.

For that reason, I engaged with the Central Bank to establish what information would be of assistance to it. As a result of this interaction, the objective of my analysis was broadened in order to inform the Central Bank of the various issues the FSO had encountered in relation to tracker mortgages.

I worked in close co-operation with the Central Bank, in line with the Memorandum of Understanding in place between the FSO and the Central Bank and presented the findings of my analysis to the Central Bank in November 2015.

I believe this information was of assistance to the Central Bank in scoping its current industry wide examination of tracker mortgage-related issues which the Central Bank directed all lenders to conduct.

The information gleaned from the analysis which was provided to the Central Bank included the following:

- The various triggers which caused complainants to transfer from or lose their tracker interest rates
- The various reasons provided by the financial service providers for the failure or refusal to allow the complainants to move to, or revert to, a tracker interest rate

- Details of the instructions signed by complainants relating to transferring between rates
- The various contractual conditions relied on by the financial service providers
- Details of relevant conditions in loan offer letters

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. In situations where customer detriment is identified from the examination, banks are expected to provide appropriate redress and compensation in line with the Central Bank's 'Principles for Redress', so as to ensure fair outcomes for customers of those lenders

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

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

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

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

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

For this reason, I have communicated with each complainant who currently has a tracker mortgage complaint with this office explaining why I believe that it is in their best interest to put their complaint on hold with this office pending the outcome of the Examination currently being undertaken.

I have worked closely with the Central Bank throughout the examination process and I will continue to work in close co-operation with it to achieve the best outcome for those wrongly denied tracker mortgages.

I have carefully considered the Central Bank's October Report in relation to the progress of the examination. I am particularly conscious of their concern that some lenders have failed to identify impacted customers or failed to recognise that certain customers have been impacted by their failures.

When the various financial service providers have completed the Central Bank Examination in respect of individual borrowers, if there are people who believe that their bank has not provided the redress and compensation that they believe they are entitled to, then they can make a complaint to my office. This option may also be available, in certain circumstances, to people who have made a complaint to us in the past. The service is free and individual consumers do not require legal representation to use our service. We stand ready and able to take these complaints and we will look at each complaint on its individual merits and consider the person's unique circumstances.

As soon as the various financial service providers complete the examination in respect of certain customers or groups of customers, who have tracker related complaints in my office we will communicate with those complainants. Where complainants inform us that they have agreed a settlement with their financial service provider, we will close the file.

Where complainants are not satisfied with an offer of redress from their financial service provider, or do not receive any offer from their financial service provider, then the mediation, resolution, investigation and adjudication processes of this office will be available to them.

Complaints may include that the complainant:

- Did not receive a tracker rate of interest and still believe they are entitled to one
- Received a tracker rate of interest but believe the wrong margin has been applied
- Received a tracker rate of interest but believe it has been applied from the wrong date
- Believe they were not treated fairly or reasonably during the examination or appeals process

I am conscious that many of the people who have wrongly been denied tracker mortgages have been waiting a considerable length of time and may have suffered considerable hardship. For this reason we will prioritise tracker related complaints as soon as the examination directed by the Central Bank is complete in respect of individual borrowers and groups of borrowers.

We have put in place a dedicated Tracker Team with a dedicated telephone number 01 587 7077 and email, [tracker@fspo.ie](mailto:tracker@fspo.ie) to deal with people who have tracker related enquiries and to progress tracker related complaints.

I want to assure Members that, together with my Management Team and Staff, I will continue to work closely with the Central Bank in relation to tracker mortgages and I want to take this opportunity to outline our services and some of the significant powers available to me to assist in this regard. As I have pointed out, our objective is to redress the balance between an individual and their financial service provider. Our service is free to consumers and we have been making significant changes over the

last two years to make the service more accessible and easier for consumers to use. We now have an informal mediation service which gives consumers the chance to be listened to and have their complaint resolved in a faster and less legalistic way. Where that does not work, we formally investigate and seek responses from the financial service provider and we thoroughly consider all of the evidence surrounding the complaint before delivering a fair and impartial decision.

In July of this year the Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017 was enacted. This legislation extended the period within which consumers of long-term financial service products can take complaints to my office. This will allow some complainants to submit complaints to this office, including some with tracker related complaints, which may previously have been time barred under the six-year rule.

The Oireachtas has also provided me with powers which are different from the courts. I can direct compensation of up to €250,000 and I can also direct rectification – which could, for example, involve directing a financial service provider to re-instate a tracker mortgage rate or direct them to change the margin or the time from which a particular rate was applied.

The legislation also provides that my decisions are appealable by way of a statutory appeal to the High Court, which means that it is my office which defends the case if a financial service provider appeals my decision to the High Court. Therefore, consumers who take a complaint to the Ombudsman do not need to worry about any financial risk if their financial service provider appeals my decision to the High Court.

As Financial Services Ombudsman, I also have the power to look beyond the contractual terms and consider the fairness and reasonableness of conduct complained of.

I want to assure the Members that I will not be found wanting in using the powers the Oireachtas has given me, in an impartial manner, to ensure a fair outcome in respect of complaints made to my office.

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

**Ger Deering,**

**Financial Services Ombudsman and Pensions Ombudsman**

**December 2017**