

# DÁIL ÉIREANN

---

## AN COMHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH

### JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH

---

*Déardaoin, 8 Nollaig 2016*

*Thursday, 8 December 2016*

---

The Joint Committee met at 9.30 a.m.

#### MEMBERS PRESENT:

Deputy Peter Burke,	Senator Paddy Burke,
Deputy Pearse Doherty,	Senator Rose Conway-Walsh,
Deputy Michael McGrath,	Senator Gerry Horkan,
	Senator Kieran O'Donnell.

DEPUTY JOHN MCGUINNESS IN THE CHAIR.

## **Central Bank (Variable Rate Mortgages) Bill 2016: Central Bank of Ireland**

**Chairman:** We are now dealing with the scrutiny of the Central Bank (Variable Rate Mortgages) Bill 2016. I welcome Mr. Ed Sibley, director of credit institutions supervision, Mr. Bernard Sheridan, director of consumer protection and Mr. Mark Cassidy, head of the financial stability division from the Central Bank of Ireland.

In accordance with Standing Order 141(2), the committee will continue its scrutiny of the provisions of the Central Bank (Variable Rate Mortgages) Bill 2016. It is a Private Members' Bill in the name of Deputy Michael McGrath. As members are aware, the European Central Bank, ECB, has issued an opinion of the Bill that has been circulated to members. We have considered its opinion, as well as other aspects of the Bill with the assistance of the Central Bank.

Before we begin I ask everyone to turn off their mobile phones or keep them out of reach of the microphones.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the joint committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

Apologies have been received from Deputy Sean Sherlock.

I invite Mr. Sibley to make his opening statement.

**Mr. Ed Sibley:** I thank the Chairman and committee members for the opportunity to appear here today to discuss the Central Bank (Variable Rate Mortgages) Bill. The Governor of the Central Bank is at the Governing Council of the ECB today. He sends his apologies in advance of his attendance before the committee on 20 December.

As the potential effects of the Bill are relevant from consumer protection, financial stability and prudential supervision perspectives, I am joined today by the Central Bank's director of consumer protection and the head of financial stability.

The Central Bank's mission of safeguarding stability and protecting consumers is at the heart of all that we do. It encapsulates the dual and interdependent priorities for the bank in delivering on its mandate. Effective regulation and supervision driving well-governed and well-managed firms, which support economic growth and employment in Ireland, are outcomes that are in consumers' long-term interests. Similarly, the fair and equitable treatment of consumers is obviously fundamentally important in its own right but also in supporting the long-term viability of regulated firms and financial stability more generally.

The public debate surrounding Irish mortgage rates is understandable, as are the objectives

of the Bill. A cursory comparison shows that some variable interest rates in Ireland remain among the highest in the euro area, despite recent reductions. However, the root causes of this are complex. In my opening remarks, I will discuss some of the main features of the Irish private dwelling home, PDH, mortgage market, outline how some of the associated issues are affecting mortgage pricing in Ireland, and show that there has been significant progress in addressing these issues. I will summarise why the Bill may not achieve its stated aims and may have negative unintended consequences.

Let us consider the Irish mortgage market. As with the wider housing market, it is recovering but it is still suffering the effects of the crisis that beset Ireland and from the mortgage lending that took place in the period leading up to 2008. Since the onset of the financial crisis, many mortgage holders have struggled to keep up with repayments. While the situation is improving, it is still acute, both at system level and also for individual borrowers in distress. The Central Bank has worked to ensure that the appropriate protections are in place for these borrowers who are in difficulty and to ensure that the banks have the financial and operational resources with which to resolve the problems.

At the end of June 2016, there were 740,834 PDH mortgage accounts in Ireland. Of these, 57,500 are in default. In other words, they are more than 90 days in arrears on their payments. Of the 57,500, nearly 35,000 are more than two years in arrears. A little over 120,000 PDH mortgage loans have been restructured, primarily due to repayment difficulties.

The Central Bank has utilised its legislative powers to protect consumers by imposing a number of codes of conduct and requirements on regulated firms, including the consumer protection code, the code of conduct on mortgage arrears, or CCMA, and the minimum competency code. While the Central Bank does not have a statutory function to regulate mortgage rates, we continue to prioritise the protection of mortgage holders.

A central element of the CCMA is that arrangements to solve mortgage arrears must be sustainable and based on a full assessment of the individual circumstances of the borrower, and that repossession should be used only as a last resort. Under the CCMA, a regulated entity may commence legal proceedings for repossession of a PDH only where it has made “every reasonable effort” to agree on an alternative repayment arrangement with the borrower and where other clear requirements are adhered to. The introduction of mortgage arrears resolution targets, MARTs, in 2013 drove a material change in the mix of restructures agreed, with a shift away from interest-only-type arrangements to more sustainable solutions. As a direct consequence of these actions, together with improvements in the Irish economy, mortgage arrears are reducing, while every effort is being made to keep mortgage holders who are struggling to meet their payment obligations in their homes. Mortgage arrears have fallen for 12 successive quarters and by 43% from peak, with more than 120,000 mortgage holders having their loans restructured, although note this is not necessarily a cheaper option for those borrowers.

Nonetheless, mortgage lending is evidently riskier in Ireland than in other eurozone countries. Furthermore, due to the economic and social policy choices that have been made, being able to effect the security that underpins the loan is more challenging in Ireland in the event of a default than in many other eurozone countries. To illustrate this point, between 2009 and June 2016, just over 6,000 PDH properties have been repossessed in Ireland, two thirds of which were either voluntarily surrendered or abandoned by the borrower. Approximately one in five mortgages is or has been in default, and fewer than one in 300 has lost possession of a house through the courts.

Let me move on to interest rates. The stock of mortgages in Ireland can be broadly divided into fixed-rate mortgages and floating-rate mortgages, and the latter category can in turn be divided into standard variable rate mortgages, SVRs, and tracker rates. More and more variable rate mortgages are priced according to loan-to-value considerations. For the moment, I will stick with using SVR as a catch-all for non-tracker variable rate mortgages.

Currently, around 90% of outstanding mortgage loans for primary dwellings are on floating rates. About 50% are SVRs, with the remainder being trackers. Consequently, 90% of PDH mortgage borrowers are exposed to interest rate risk, and are vulnerable to interest rate rises.

Turning to mortgage interest rates themselves, the average interest rate across mortgage products in Ireland has fallen over recent years, and currently stands at 2.64%. This is quite close to that of the weighted average in eurozone countries at 2.55 % and is an exceptionally low level in historical terms for Irish borrowers, albeit that the average interest rate excluding tracker mortgages is 3.78%, despite having declined in recent years.

In the same way as it is an oversimplification to refer only to one average interest rate for Irish mortgages, there are perils in oversimplifying our comparison with other eurozone mortgage rates given the different characteristics of housing and mortgage markets in different member states, including home ownership, the history of default and the balance between fixed and variable rate mortgages.

I will now move on to the factors affecting mortgage rates. In May 2015, the Central Bank published a paper on influences on standard variable mortgage pricing in Ireland. This paper set out the range of factors which affect the margin that banks charge on variable rate mortgages, including the cost of funds, the credit risk associated with the lending, operational costs of running a bank, the cost of capital and the market structure and the competitive environment faced by each bank.

With regard to credit risk, despite considerable recent progress European Banking Authority, EBA, stress test data show that Ireland's mortgage default rate is more than ten times higher than that in many other eurozone and European Union countries. In other words, as I touched on earlier, mortgages are higher risk in Ireland than in the majority of those countries with which mortgage rates are compared. The EBA stress test data also show banks operating in Ireland need to hold significantly more capital for Irish mortgages on average per euro of mortgage lending than other European banks, with associated higher costs, and hence mortgage rates. The low level of repossessions I referred to creates uncertainty on the recoverability of collateral. Cross-country comparative research shows that increased recovery time is associated with lower availability of credit and higher interest rates.

A further determinant of bank lending margins, and hence pricing, is the degree of competition in the market. The crisis resulted in considerable structural changes to the Irish banking sector, including increased concentration. We have seen some nascent signs of restoration in competition, with the reductions in variable rates, some increasing product differentiation and potentially some small new entrants, but this is not of a significant scale at this stage.

The ability and willingness of consumers to switch mortgage products is vital to ensure a well-functioning market. The level of switching of mortgages in Ireland is low, and much lower than before the crisis. In this context, the additional transparency measures announced by the Central Bank in July, and which will come into effect from 1 February 2017, are aimed at increasing transparency and facilitating consumer choice. This has become more important

as we have started to see greater differentiation in product offerings and mortgage pricing.

The vast majority of SVR borrowers in positive and negative equity could benefit from either switching to another provider or to another product with the same provider. Switching offers the dual benefits of potentially reducing monthly costs or the length of the mortgage, or both, with potential savings of tens of thousands of euros. The more people who start to switch, the less ability the banks will have to differentiate between new borrowers and existing ones.

The Central Bank is also examining what additional measures it can take to address any impediments to switching, notwithstanding that there is a material difference between switching current account or utility provider and entering into an arrangement involving lending a customer sizeable sums on a 20-plus year basis.

Turning to our assessment of the Bill, it is far from certain it will be successful in delivering its understood aims. We are concerned that the Bill focuses on the symptoms of a complex problem and may, therefore, not only be unsuccessful but run the risk of being counter-productive as it may have damaging side effects affecting the functioning of the market.

From both financial stability and consumer protection perspectives, it is essential that banks have sustainable business models that take into account the risks that are inherent in their lending practices. There is a risk that capping interest rates will result in an under-pricing of credit risk, as was experienced in Ireland and internationally to such dangerous effect in the past. Alternatively, were this legislation to be introduced, lenders may adapt their credit standards and offer variable mortgage loans only to new customers with a low risk profile, ultimately reducing credit availability. Lenders could also raise interest rates on other loans, and increase fees and commissions, in order to maintain or achieve sustainable capital generation.

It is important that banks have the ability to generate capital to transition towards full implementation of new regulatory capital requirements. Adequate capitalisation is essential for a properly functioning banking system and to ensure sufficient availability of credit for businesses and households, in addition to strengthening the resilience of banks to future shocks. Additionally, the proposed legislation may have the unintended effect of stifling competition and innovation and dissuade entry of new participants to the Irish market. International evidence indicates that competitive financing markets are important for the choice, quality and pricing of financial products, which are all in the interest of the consumer. Furthermore, with regard to the interest rates charged on existing SVR mortgage loans, they are subject to existing contracts and contract law, which only a judge could override, not a public body such as the Central Bank.

We are also concerned about the extension of the bank's statutory functions to encompass the regulation of competition, which is a function already carried out by the Competition and Consumer Protection Commission, CPCC. We also note the European Central Bank's concerns raised in its opinion on the Bill, to which I referred, and the European Commission's view, as articulated in the summary of the post-programme surveillance statement issued last week.

I appreciate that the positions I have outlined today are arguments against what might be perceived as a quick action to reduce SVR mortgage rates, which are low by historical standards, albeit higher than in countries with much lower default histories. Material improvements have been recorded in many of the factors underlying mortgage rates in recent years, most notably lower household indebtedness, lower numbers in negative equity, lower numbers in arrears or default, improved resilience of the banking sector, and ultimately a gradual progression from

impaired functioning of our banking system so that it can support economic growth, employment, and incomes. These improvements have coincided with some reductions in SVR rates. Further progress is expected in the coming years as the impact of the measures taken continue to feed through to the mortgage market and financial system, and as the economic recovery continues.

The issues in the mortgage market are complex and rooted in the crisis. Clear economic and social policy choices have been made in managing the crisis and navigating a path out of it. Short-term fixes may have long-term negative consequences for consumers. Decisions to intervene legislatively in the mortgage market, as with any market, should be taken with due cognisance of the market, the factors that lead to the perception of market failure, the underlying causes, and the risks associated with the action and the likely outcomes. Notwithstanding these concerns, as the Governor has previously stated, if these powers are conferred upon the Bank, we will do as we always do and strive to deliver to the best of our abilities the duties and mandate that are given to us. The Central Bank remains focused on delivery of its full mandate. It is committed to working with all stakeholders to support the continued normalisation of the Irish mortgage market.

**Deputy Michael McGrath:** I thank Mr. Sibley and his colleagues from the Central Bank for attending. I also thank him for his opening remarks.

As Mr. Sibley will know, the Bill passed Second Stage unopposed in the Dáil last May. We are now approaching the end of the pre-legislative scrutiny phase that takes places before embarking on a detailed analysis of the Bill on Committee Stage. I have always acknowledged and put on the record on a number of occasions that it would be better if legislation was unnecessary. There has been some progress on variable rate pricing but in my view there has not been enough progress. I have acknowledged the need for banks to have sustainable business models, to be profitable and to have adequate capital levels and compared that with how a certain cohort of customers have been treated. My party and I have reached the conclusion that variable rate customers have been and are being treated unfairly. We have concluded that they have been discriminated against. We have concluded that there is no economic justification for the types of rates that continue to be charged in the Irish market on variable rate mortgage products.

My first question relates to the consumer protection code of 2012 that requires regulated entities or banks to act honestly, fairly and professionally in the best interests of their customers and the integrity of the market. Is it fair, as is required under the code, for certain banks to treat their existing variable rate mortgage customers very differently from how they treat their new customers? For example, Permanent TSB applies a significant price difference of 0.5%. Is it fair that a pillar bank like the Bank of Ireland has openly said it will keep its variable rate pricing high to encourage customers to sign up to fixed-rate products? Does Mr. Sibley and the Central Bank view those types of practices as being fair on consumers in the Irish market?

**Mr. Ed Sibley:** I will start by talking about the market. We operate in a market economy where we hope there is competition in the market. The Bill refers to market failure and the need for competition. In a competitive market there will be a choice of products. At any given moment there will be a differentiation between products and their price. Over a period the choices and experiences of consumers will vary greatly if the market works in a competitive manner.

Is it fair to have a situation whereby two borrowers who live next door to each other in identical semi-detached houses but one householder is on an SVR while the other is on a tracker rate? One borrower could be in sizeable negative equity having paid a lot more for the same

house. Is that fair? One borrower could be in very significant mortgage arrears and not contributing to mortgage payments relative to the other one. Is that fair? I am not sure it is for the Central Bank to opine on whether there is a degree of wisdom or luck in the choices made by consumers. The Central Bank is responsible for making sure that there is clear transparency, and that there is consistency in terms of products and how the terms and conditions are articulated and applied. Over time that will result in differences in terms of the experiences of consumers.

My colleague, Mr. Sheridan, will comment on the CCPC point.

**Deputy Michael McGrath:** Before Mr. Sheridan comments I wish to state that the Central Bank is the ultimate judge of what is fair, under the consumer protection code, in terms of mortgage pricing. Mr. Sibley has given a number of examples and asked whether it is fair. We are talking about existing customers and new customers availing of the same product but being given different offers. Clearly, inaction by the Central Bank on that issue deems the process to be fair. The Central Bank does not seem to have an issue with this practice.

**Mr. Ed Sibley:** I cannot talk about individual banks. If I look at the banks that heavily differentiate between fixed rate and variable rate pricing in terms of the products offered to both new and existing customers, then north of 97% of SVR customers can switch from their current mortgage rate to a lower one. They have that choice. One of the banks has clearly articulated that choice at this committee and it is also the case with the other banks. Customers do have a choice. They are not being discriminated against in terms of that choice. They have exactly the same ability as a new customer to move to a much reduced rate relative to the one that they have today. In terms of market functioning and competitiveness there is choice.

**Deputy Michael McGrath:** A fixed-rate product is very different and confers different rights and obligations on the borrower. There will be a loss of flexibility, for example. If the variable rate falls below the fixed rate the borrower cannot avail of same. If he or she wants to make a lump sum payment or move house and switch the mortgage penalties will be incurred. Mr. Sibley's answer is not good enough.

**Mr. Ed Sibley:** We talking about the one, two, three, five and ten-year fixed products that are available.

**Deputy Michael McGrath:** Yes.

**Mr. Ed Sibley:** A one-year fixed product does offer a significant amount of flexibility because it is only for one year. I will allow my colleague to respond.

**Mr. Bernard Sheridan:** The code focuses on how banks and lenders treat their customers. In terms of issuing the loan in the first place our priority is to make sure that the banks ensure the loan is affordable. That is a key point in the code. If people get into difficulty the code requires that the banks try to work with the borrower to ensure that an arrangement is put in place.

In terms of fair pricing, the committee is aware of our role in pricing. In the past there was a standard variable rate contract. The name gives it away as the rate was standard. In many ways the market was more transparent and simpler because new borrowers and existing borrowers would get the SVR and people could compare them more easily. As members will be aware, banks have moved away from an SVR by introducing lower rates to encourage borrowers to switch.

One of the reasons that we have introduced new measures in the code is because the market has become more complex. The lenders say they have made the lower rates that were available to new customers available to existing customers. However, the customer must take action to avail of the lower rates. Our new requirements impose an obligation on the lenders to inform the borrowers if there is a better product available and one that is better value for the borrower. I agree with the Deputy that the market has become more complex but that is one of the reasons we have introduced new measures.

**Deputy Michael McGrath:** The Central Bank's 2015 report entitled Influences on Standard Variable Mortgage Pricing in Ireland sets out all of the factors that feed into the rate that is charged to the borrower. Taking all of that into account, is it the view of the Central Bank that variable rate mortgages in Ireland are appropriately priced, in particular the cost of funds, capital and risk of default? I accept that it is not a function of the bank to have a view on whether they are appropriately priced. However, does it have a view in that regard and where does the bank see them going? As I said, there has been some progress in terms of an increase in product offerings and reductions in rates but does the Central Bank believe the current rates are appropriate?

**Mr. Ed Sibley:** There is a range of products and pricing in the market. There is a degree of differentiation in bank strategies in that some are still heavily lending at variable rates with others, as mentioned already, being more focused on a fixed-rate perspective. An important factor in terms of pricing of mortgages, which is not touched on in the Bill, is credit risk. Credit risk in Ireland is very elevated because of the very high levels of default and, from a secured lending perspective, the difficulty in terms of effecting that security, which is at a much lower rate in Ireland than in the majority of other eurozone countries. This causes problems from a secured lending perspective. Unsecured lending rates in Ireland are much higher than secured lending rates. There are now options available to the vast majority of borrowers. I would strongly encourage borrowers to look at the options available to them. This is part of the work that the Central Bank is doing in regard to the measures that come into force on 1 February next. Borrowers will have the ability to choose to save money on their mortgages today. As I said, overall in terms of SDI borrowers more than 80% of them can save money by switching. This could have a material affect and save them tens of thousands of euro over the lifetime of the mortgage.

**Deputy Michael McGrath:** Borrowers who can switch should switch and should shop around in that regard. I strongly support that. Will the Central Bank help borrowers by publishing a code of conduct on mortgage switching, for example, to make that process easier?

**Mr. Bernard Sheridan:** The Deputy will be aware of the measures being introduced by the bank from 1 February. We want borrowers to be aware that if their existing lender has a better option within its suite that could benefit them they should be made aware of it. From 1 February lenders will also have to make available to borrowers information on the Competition and Consumer Protection Commission's website, which provides a mortgage tool that allows borrowers to see what is available in the market. We are working to ensure lenders promote the benefits of switching to their borrowers. We are currently undertaking further research in regard to what additional measures we can introduce to help borrowers switch. We are also looking to other countries to see what they have done and while each market is slightly different and so it is difficult to see what measures would work here we are getting some good ideas from the process. To inform our work, we are talking to consumers around their experiences of the switching process and we plan to introduce additional measures in 2017.

**Mr. Ed Sibley:** In 2008, 19% or one fifth of mortgage drawdowns, were switchers from



bank to bank. In 2014-16, the percentage number of switchers was 2% and it is expected to be 8% for 2016. The level of switching pretty much collapsed in part because of the issues that borrowers were facing and, to a degree, the level of trackers in the system and the level of competition and differentiation in the market. That differentiation is growing now and so the opportunity for borrowers to switch and the benefits of doing so are becoming more relevant. The Competition and Consumer Protection Commission website provides an excellent switching tool which allows borrowers to compare their current mortgage offering with those available in the market.

**Deputy Michael McGrath:** If a bank or a non-regulated loan owner such as a vulture fund is currently charging a customer 4% or 4.5% and it decides to double the charge to 8% or 9% and the customer is not in a position to switch because he or she may be in negative equity or in different financial circumstances and so on, what can the Central Bank do about that? If such a lender decides to charge, say, 10%, does the Central Bank have any powers to deal with that?

**Mr. Bernard Sheridan:** That is a very good question. It is one of our concerns, particularly in relation to unregulated loan owners because we do not regulate their activities. While we regulate the banks we do not regulate the interest rates by virtue of the fact that the regulation of lending into the market is in itself a self control. That is one of our concerns in terms of the unregulated sector and interest rates therein. We monitor what they are doing in terms of loans that have been transferred to them. We do that through the servicing agents they have all appointed. To date, there has been no sign of interest rates on mortgages being increased post sale but we are keeping a close eye on that. If we see that the behaviour is such that would not be tolerated by regulated companies we can go back to Government on the matter. It is more difficult for us in that sector.

**Deputy Michael McGrath:** Is Mr. Sheridan saying that as of today if a vulture fund decided to charge 10% on a mortgage for an existing customer there is nothing the Central Bank can do about it?

**Mr. Bernard Sheridan:** There is nothing to stop a vulture fund from doing that. The issue is whether that would be unfair. There is legislation in place such that if rates are exorbitant and a borrower cannot move from a particular loan owner because he or she is in negative equity or an arrears situation, the Central Bank would be concerned and would not sit idly by.

**Deputy Michael McGrath:** What powers does the bank have to do something about it?

**Mr. Bernard Sheridan:** The bank's powers are limited but it can go back to Government if, as I said, the behaviour of these entities-----

**Deputy Michael McGrath:** I am inquiring what powers the bank currently has to deal with that type of situation.

**Mr. Bernard Sheridan:** As the Deputy will be aware, the bank's powers are limited in terms of the specific rates they charge.

**Deputy Michael McGrath:** Is it that the bank's powers are limited or does it have any powers in this regard?

**Mr. Bernard Sheridan:** Other than what is available under unfair terms and consumer contracts legislation the bank's powers are limited. We have no specific codes or regulations in place.

**Mr. Ed Sibley:** In terms of protections for those borrowers, the bank pushed hard for and was successful in ensuring those borrowers are protected by the CCMA. There is a backstop in terms of the fair treatment of borrowers who are potentially more vulnerable or in distress and that is the application of the CCMA.

**Deputy Michael McGrath:** In regard to the European Central Bank's opinion on the Bill, in regard to which the witnesses made a number of similar arguments in their presentations today, it was interesting to note that the ECB has acknowledged that in a number of member states there are restrictions on interest rates charged in respect of property. For example, in regard to mortgages, there are restrictions in place in Belgium, Bulgaria, France, Croatia, Hungary, Italy and Poland. One of the ECB's main observations in regard to the Bill is that it does not believe the Central Bank should have a role in competition. That is a point that can be teased out.

However, the ECB also makes the point that in the aforementioned countries the cap on the interest rates is enshrined directly in legislation and that the role of a Central Bank is to come up with a reference or benchmark rate as opposed to what is provided for in this Bill which gives the power to the Central Bank to set a cap following a market assessment. We already have caps on interest rates in Ireland in relation to credit unions, the rate for which is 12% per annum. The Central Bank also has to set a cap in respect of each moneylender's licence. I understand the bank is co-sponsoring a study with Social Finance Ireland on how more restrictions could be placed on the interest rates that can be charged by the money lending sector. There does not seem to be any ideological opposition to having caps on interest rates because they are already in place in some sectors of the economy. If the Central Bank did not have the competition role as set out in the Bill - which can be dealt with by way of amendment - and instead was tasked with devising a methodology for arriving at a reference rate would the bank's position be different and more supportive of the objectives of the Bill?

**Mr. Ed Sibley:** I do not fundamentally have an issue with the objectives of the Bill. We very much want to see the functioning of the mortgage market improve. There is no disagreement from the Central Bank that the market is not functioning as it should be. It is better than it was and continues to improve but it is not where it needs to be. There are caps in place and we are aware of them. As the Deputy stated these are set by legislation but an alternative might be to designate the Central Bank as the competent authority in that regard.

In terms of setting reference rates, the danger in going down that path is that there could well be a tendency to migrate towards them. To use an analogy, with the macro-prudential mortgage measures that were implemented, we have seen there is a tendency to treat those in an incorrect way potentially as targets rather than necessarily banks making individual decisions from a risk basis. We would not necessarily rule it out but the concerns we have about this Bill are around the side effects and unintended consequences of it. If other things are being looked at, that is fine, but we need to make sure we are focused on the outcomes we want, the factors that are causing the problem that we perceive and then legislate if we are going to legislate on that basis.

**Deputy Michael McGrath:** Does the Central Bank currently have any live licence applications from potential new entrants in the mortgage market in Ireland?

**Mr. Ed Sibley:** In my area, from a prudential supervision perspective, there is engagement with at least one potential new entrant but, as I said earlier, it is a relatively small one. In terms of the mortgage market, competition and the concern about rates in Ireland, if there was a degree of unfairness, overcharging or abnormal profits being made, where are those new entrants? With European Union legislation, there is not a necessity for Central Bank authorisation. A

big bank with lower funding costs, without a drag from non-performing loans or from tracker mortgages and in a stronger position underneath the Irish banks could branch in here, under freedom of establishment or freedom of services, and it would not even need to have an operation here. It could lend at much lower rates than the Irish banks, but why does that not happen? One of the reasons is that we still have uncertainty in the Irish market, as shown by the high level of non-performing loans.

**Deputy Michael McGrath:** It is also a tiny market where we have a huge percentage of tracker mortgages and we have those who on variable rates, very many of whom are not in a position to switch because of negative equity and so on, and the amount of new lending is very modest.

**Mr. Ed Sibley:** The market is certainly smaller than that in many jurisdictions but in terms of negative equity it is down 60% in the past three years and it will continue to fall. Also, the level of tracker mortgages in the market will continue to fall, as they are paid off and redeemed.

**Deputy Michael McGrath:** Mr. Sibley mentioned that there have been an engagement but has the Central Bank applications from new entrants to lend in the mortgage market?

**Mr. Bernard Sheridan:** In terms of non-banks, we have one. We have had, as the Deputy will have seen, a new entrant in the market from an existing firm that was already here, as such, but there is no queue. At this stage, I am not aware of other potential entrants in the non-banking sector.

**Deputy Pearse Doherty:** To follow up on the previous question, when was that application received?

**Mr. Bernard Sheridan:** I am not in a position to start discussing individual applications. These firms all have to go through an authorisation process. We have set out on our website the timelines that we apply to processing applications. Clearly, it depends on the firms providing information that we need to process the applications.

**Deputy Pearse Doherty:** I appreciate that. Obviously, it is a two-way street. Mr. Sheridan referred to competition and we have heard from other people who appeared before the committee about the need for greater competition in the market. What is the average time it would take to process an application for a new entrant to enter the mortgage market?

**Mr. Bernard Sheridan:** My area regulates the non-banks, the retail credit firms, as we call them. Prior to the crisis we had some of these lenders coming into the subprime area, which is not necessarily what we want. Since the crisis firms that were already here and which had stopped lending have not expressed any interest in getting back into the market. It is only now we seeing new interest coming from that firm, that applicant.

**Mr. Ed Sibley:** With a typical application process, there is a degree of engagement with, say, a bank seeking to enter the market. There would be a degree of engagement, discussion and ongoing fact finding, both from the bank perspective and from the regulatory perspective. That can take quite a long time. It depends how quickly the bank wants to move but from the point that the application is received in the Central Bank, the process is relatively quick. It is typically a matter of months. However, in terms of when one would start the clock running, it is difficult to say because there could be an initial discussion and quite a long time may elapse before an application is submitted.

**Deputy Pearse Doherty:** Is the Central Bank treating any expression of interest with the urgency that is required in light of the mortgage market we have? It has been reported that there has been an expression of interest in entering the market for well in excess of a year, yet we have not seen anything happen. I appreciate it is a two-way street and we are not privy to the details, but does Mr. Sibley believe the Central Bank is sufficiently resourced and gives the priority required to new applications or expressions of interest, particularly given the increased interest in licensing as a result of Brexit and the additional resources that will be allocated to the Central Bank next year to deal with that? Do he believe that the mortgage market will also get the same type of priority?

**Mr. Ed Sibley:** In short, yes. We will act as we always do in trying to deliver our mandate to the best of our ability. That includes dealing with potential and actual authorisations and applications. We have a key role as a gatekeeper to make sure, both from a consumer protection and financial stability perspective, that those firms that are seeking to come here are suitably robust and have minor management here, but there will not be any favouritism in terms of potential new entrants that are Brexit-related relative to those that are seeking to serve the domestic market. We will prioritise and allocate resources to make sure that we are dealing with these issues. We have resourcing challenges, as was reported again today, but we will make that the authorisation process is done in a timely fashion in line with our publicly stated standards.

**Deputy Pearse Doherty:** How many people in the bank would deal with an application of this nature?

**Mr. Ed Sibley:** It is difficult to say precisely because it would very much depend on the size and scale of the operation. The most recent application and authorisation from the bank's perspective was Credit Suisse and that was a third-country branch. We had a large number of people involved in that authorisation because there is a degree of complexity with the business model and it cuts across two different supervisory areas. We also had to think about it from an authorisation, policy, risk and financial stability perspective. Multiple numbers of people could be involved at a given time.

**Deputy Pearse Doherty:** I appreciate that it cuts across a number of areas but who heads it up in the bank? Is there a clear division? If I am interested in entering the Irish market as a mortgage provider, is there somebody within the Central Bank that would be responsible for my application to see it through from start to fruition? Who is the senior person responsible for that?

**Mr. Ed Sibley:** Ultimately, in terms of authorisations for which the Central Bank is responsible, an authorisation would come to the deputy governor and he would set up an authorisation committee to give the authorisation. I note that from a banking perspective that any new authorisation is the responsibility of the ECB, under the Single Supervisory Mechanism. Most of the work would be done locally but the decision point is with the ECB.

**Deputy Pearse Doherty:** Okay.

**Mr. Ed Sibley:** In terms of banks, it would be my responsibility to make sure that was driven through in an appropriately speedy fashion.

**Mr. Bernard Sheridan:** I am responsible, ultimately, for the authorisation of non-banks. That comes within my area. We have sufficient resources at this stage to cope with new applications and with current applications. I have no concern there. If a large number of new applica-

tions come in, which would be pleased about on the mortgage side, we would have to look at moving resources into the area, but there is no concern there at the moment.

**Deputy Pearse Doherty:** If I am correct, Mr. Sibley stated that the Central Bank shared the objectives of the Bill. I would argue that the objectives of the Bill are to secure a reduction in variable rate mortgages. Does the Central Bank share that objective?

**Mr. Ed Sibley:** What I said was that I certainly had no issue with the objectives of the Bill in terms of variable rate pricing coming down. That would indicate that the mortgage market is continuing to return to a degree more of functionality than it had last year, two years ago, three years ago and today. There is, therefore, no objection on that basis. The concern around the Bill is that it is treating the symptoms. There is a symptom now in terms of variable rate mortgage pricing being higher relative to other eurozone countries. As I noted, there are dangers in that comparison if it is overly simplified. What we are really saying, however, is that the underlying factors - the causes of the difference between mortgage rates in Ireland versus other eurozone countries - are the things on which we should focus. These are the things on which the Central Bank is focusing and is continuing to try to address.

**Deputy Pearse Doherty:** I understand what Mr. Sibley is saying. He spoke about the difficulty in respect of repossession, which I will allude to later. Does the Central Bank believe there is currently scope for interest rates to be reduced further by the financial institutions?

**Mr. Ed Sibley:** Interest rates have reduced and there is clear daylight between some providers. Banks are making commercial decisions as to how they structure pricing across their books and there is now greater choice for consumers as to the type of mortgages and the mortgage products they have and the price they pay for those mortgages.

**Deputy Pearse Doherty:** We appreciate and recognise that interest rates are reducing. Someone who takes out a mortgage with a loan-to-value ratio of 50% will not present a serious problem as the mortgage does not involve risk. Are the variable interest rates being charged for such mortgages excessive or appropriate given the risks at this point? They are much higher than those applied by our competitors in the rest of Europe.

**Mr. Ed Sibley:** They are much higher for the reasons I have given. The level of defaults in Ireland is up to ten times higher than in other eurozone countries. The figures are in the table I circulated. The mortgage market here has other differences when compared with other countries. There are, therefore, fundamental reasons.

**Deputy Pearse Doherty:** Even if there is a default on the mortgage for a property where the loan-to-value ratio is 50%, the bank will not lose anything. How could a bank lose in such a scenario given that it could repossess the property secured on the loan? Unless property prices had declined by in excess of 50%, it would receive the loan back in full.

**Mr. Ed Sibley:** One of the issues in the mortgage market today is that if we want a secured lending market, security must mean something. There is a degree of uncertainty or fracture between the secured part and the lending part. There is a higher risk here as it takes a lot longer to effect the process to which the Deputy referred than it does in other jurisdictions.

**Deputy Pearse Doherty:** That is interesting because Mr. Sibley stated we need to deal with the underlying issues. He has just repeated the point made in this opening statement about the length of time, difficulty or uncertainty associated with dealing with the repossession of the secured property. Is the Central Bank saying we need to make it easier to repossess properties

and give the banks more security? Mr. Sibley stated that the only protection available to people in terms of vulture funds increasing interest rates to 10% was the code of conduct on mortgage arrears. Is the code of conduct causing uncertainty for banks? Where does the Central Bank stand on this matter because it appears to be sending out different messages? On the one hand, the code of conduct on mortgage arrears provides security for borrowers, while on the other, it is causing difficulties for lenders.

**Mr. Ed Sibley:** I am absolutely not saying that the Central Bank is seeking for there to be more repossessions. What I have tried to set out in my opening statement and subsequent remarks is an explanation of the reasons mortgage rates are higher in Ireland than in other jurisdictions. If I look at the mortgage market today, it has definitely improved in terms of the level of arrears. However, there are sizeable numbers of borrowers who are greater than two years past due on their payments. We are not looking necessarily for an increase in repossessions. I am setting out an explanation as to why variable rate pricing might be higher in Ireland where we have that circumstance. The Central Bank has worked really hard-----

**Deputy Pearse Doherty:** All the banks have provisioned for losses in respect of those who are more than two years in arrears. One cannot apply a high variable rate to new or existing customers to try to claw back money that has already been provided for the banks. In fact, the banks are taking some of this money back onto their books because circumstances have changed and improved. As such, the argument made on this issue does not stack up. The only argument that could stack up is in respect of the uncertainty about the length of time involved in securing repossession, an issue Mr. Sibley has repeatedly raised.

**Mr. Ed Sibley:** Banks should be pricing according to the risks associated with lending. These include credit risk, which includes, to a degree, interest rate risk, to which I referred earlier, and other costs such as funding and operational costs, for example, the continued operations that are required to deal with mortgage arrears and so on. In terms of what this means in practice, the capital the banks are required to hold in Ireland relative to other eurozone countries is much higher because the probability of default is much higher here and the loss given on default is much higher.

The Central Bank has worked very hard to ensure there are protections in place for borrowers. As a result of that, 120,000 borrowers, the vast majority of whom were in payment difficulties, have had sustainable solutions put in place. Of these, 88% are meeting the terms of those arrangements. This has been effective in terms of bringing down arrears and has ensured there is a minimal amount of repossessions in the system. However, this has not been a free choice.

**Deputy Pearse Doherty:** I would take issue with Mr. Sibley's assertion that the Central Bank has put in place protections for borrowers. We have been questioning bankers on the tracker mortgage scandal. For four years the Central Bank sat on its hands and showed an absolutely disgraceful attitude on this issue. We now know 9,000 people had their tracker mortgages removed or did not have them reinstated when it was appropriate to do so. Even after the High Court decision in the matter, the Central Bank did nothing, which is a disgrace. Mr. Sibley may respond to my comments but I wish to move on to questions on the Bill on which this meeting is focused.

Mr. Sibley said in his opening statement, "Furthermore, with regard to the interest rates charged on existing SVR mortgage loans, they are subject to existing contracts and contract law, which only a judge could override, not a public body such as the Central Bank." Is this statement based on a legal opinion received by the Central Bank or an assessment done by the

Central Bank?

**Mr. Ed Sibley:** I will answer the Deputy's question first. That is an internal view discussed with our internal legal team. It is important that we talk about the tracker redress work as the Deputy has raised it.

**Mr. Bernard Sheridan:** Over the years, we have been dealing with individual institutions on various tracker issues leading to conclusions where borrowers were having their tracker rates reinstated. We saw, however, that these issues kept arising and we decided we needed to do a system wide review. It is the largest review the Central Bank has ever done on the consumer protection side and it is very comprehensive. The banks must look back at any tracker mortgage they have sold since tracker mortgages entered the market. We are determined to make sure that everyone who has been impacted is appropriately redressed with compensation. We have, therefore, been working hard on this issue for the past few years, which is the reason we implemented the tracker examination.

**Deputy Pearse Doherty:** With respect, I disagree. The joint committee wrote to the Central Bank on foot of a request from the Irish Mortgage Holders Organisation asking it to carry out a system wide review. The Central Bank did this around this time last year. Four years prior to that, individuals were taking cases to the Financial Services Ombudsman and their cases were upheld. Cases were taken to the High Court where they were also upheld, yet the Central Bank did nothing. When the case was before the Supreme Court the Central Bank said nothing publicly in regard to the issue. It was not the Central Bank that identified the problem. It never identified the issue even though hundreds of millions of euro were taken from customers. Customers identified the issue more than five years ago. They were forced to go through all the different systems and the Central Bank, which was supposed to protect the customer, regulate the banks properly and deal with inappropriate behaviour within the institutions did nothing publicly until last year. Serious questions arise. I do not direct what I say personally but at the institution. Given the situation from which we have emerged, I question the *laissez-faire* attitude to bankers stealing hundreds of millions of euro from their own customers, amounting to 9,000 individuals and, as a result, took homes from customers in some cases and bankrupted others. I have said that straight up to the bankers. It is absolutely appalling. The Central Bank did nothing until last year about the issue.

Questions must be asked. If memory serves me, approximately 86 cases were before the Financial Services Ombudsman and many others made requests. The Financial Services Ombudsman said it would wait until the Supreme Court made a decision on the test case before it. The situation dragged on for years. The Central Bank had the ability at any time during those years to step in and to give some protection to those individuals. It is the bankers who were responsible for the situation not the Central Bank but at any point during that period the Central Bank could have brought an end to the pain, suffering and mental health breakdowns that affected individuals. The Central Bank had the ability and responsibility to step in and demand that the banks would explain what was happening. Now we find that 9,000 individuals were dealt with by the banks in that way right across the system. All the banks made the same mistake. It was robbery and now it is dressed up as a redress scheme. It is like somebody burgling a house, taking a flat screen TV, getting caught and walking in the next day and saying "I'm sorry. Here is the redress scheme. I am giving you your flat screen TV back." That is what happened with the bankers. That is what they are doing. It is called something else because they are wearing pinstripe suits and doing it behind leather cushioned desks. The Central Bank had the responsibility and obligation to step in and deal with the situation five years ago not last

year when it was asked to do so by this committee and by external groups acting on behalf of mortgage holders.

**Mr. Ed Sibley:** I fundamentally disagree that we have done nothing. We also very recently took enforcement action on this very issue. The engagement on this issue by the Central Bank goes back many years.

**Mr. Bernard Sheridan:** We did take firm, specific actions before the Permanent TSB case. On that specific case, the appeals to the High Court and Supreme Court certainly made it difficult for us to progress the issue but we have been taking action and we have signalled that we will take further enforcement action against other entities for what they have done. We recognise that this is a very serious issue and we are putting the resources into it. That is the reason we are undertaking this examination and we will continue to use our supervisory and enforcement powers where we feel we have to.

**Deputy Pearse Doherty:** I hope in future the Central Bank will not wait five years when customers bring to its attention that they are being fleeced by their banks. That is the point. The bankers would not have owned up to the wrongdoing had the Central Bank not called for an industry-wide review. I appreciate that but the fact that it is being led by the banks themselves is wrong. The Central Bank should be carrying out the review. It is relying on the institutions to come forward with data and the Central Bank is supervising the review but it is a problem that it is not leading the review.

We will come to discuss the issue again because Governor Lane will be before this committee. The events occurred before his time but what was allowed to happen to customers by the Central Bank is disgraceful. It had a responsibility to regulate the institutions concerned and to intervene on behalf of customers. The Central Bank took action but it did so far too late.

I wish to return to the Bill because it is very important.

**Chairman:** Before Deputy Doherty moves on to that topic, I wish to ask a question of the witnesses. What do they think of two banks appearing before an Oireachtas committee and saying that because of what they did 14 families lost their homes? What would they say to them? The banks openly admitted they did wrong and that what they did caused the loss of homes in 14 cases.

**Mr. Bernard Sheridan:** To go back to the previous point, I am not sure they would even be saying that if we were not carrying out this review. The question is whether they would have identified the issue. For me, it is a disgrace. This is one of the real big fallouts from the tracker examination, namely, that people have lost their homes because of what the banks have done.

**Chairman:** What will the Central Bank be able to do in each of those cases to address the fact that 14 families lost their homes? That is just one bank which is still conducting its review so there may be more cases. Will the Central Bank insist on the bank giving them back their homes?

**Mr. Bernard Sheridan:** We will insist that there will be full compensation paid to reflect the hurt that has been caused to those people, whatever that takes.

**Chairman:** Who will measure that? Will it be the Central Bank or will it allow the banks to measure the hurt?



**Mr. Bernard Sheridan:** We are overseeing the situation. To come back to the previous point, this review is being led by the Central Bank. We are overseeing how the lenders are carrying out the review.

**Chairman:** Will the Central Bank not allow a bank, in particular where a family has lost a home – I accept there are other issues – to decide how the issue is to be addressed? The Central Bank will decide it.

**Mr. Bernard Sheridan:** We are overseeing the framework the banks will put in place to make sure they deliver what is right.

**Chairman:** Who will decide on whether the compensation received by those families who have lost their homes in particular is appropriate?

**Mr. Bernard Sheridan:** There are two aspects to that. Each lender sets out its redress scheme and we see it before it is implemented. It is a framework within which we have to be satisfied, but the bank has to come up with the redress and compensation that is appropriate for their customers.

**Chairman:** If it is not good enough, will the Central Bank send the bank back to the drawing board?

**Mr. Bernard Sheridan:** Yes, exactly. We will challenge the bank until we are satisfied with the scheme. The second point is that we have built in an appeals process for individuals within the framework if people are not happy. Ultimately, if people are still unhappy they can go to the Ombudsman or further. We are not precluding people from taking further action but we are trying to make it easy so that people do not have to do that by ensuring the redress and compensation are adequate in the first place.

**Chairman:** To make it easy for them would be to be generous in terms of the compensation and to understand the difficulties encountered. Deputy Doherty referred to the trauma, mental health and other health issues people had to go through because they were left to fend for themselves up to now. I am sorry for the interruption.

**Deputy Pearse Doherty:** There is much more we could say on the issue. It infuriates me that this has happened. I know some people personally who were affected and what they have gone through.

Returning to the Bill, as Deputy Michael McGrath said, it has passed Second Stage and there was unanimous support for it. There might have been a bit of reluctance from some of the Government parties but the majority of the Members in the Dáil are very much in support of not only a reduction in standard variable rates but to introduce a type of system which would empower the Central Bank to introduce caps. That will only work if the Central Bank will use the power. Our responsibility in the Houses of the Oireachtas is to provide the toolkit for the Central Bank and then allow it to decide which tool it wishes to use to deal with whatever issues arise. The concern is that if we pass the legislation that the Central Bank will send a signal to the institutions that it will never use those powers. I share Deputy Michael McGrath's view on the Bill because we tabled legislation of a similar nature ourselves. We also tabled legislation on moneylenders and had it debated. Legislation is not the best way to deal with the issues that arise. What we want to do is force the financial institutions to start to reduce their interest rates to a more acceptable level. We do appreciate that has happened to some extent in the past year. If the Oireachtas passes the legislation will the Central Bank use it?

**Mr. Ed Sibley:** The Governor has been clear previously and I have been clear in my opening statement. If powers are conferred on us by the Oireachtas, then we have a duty to use those powers and to deliver the mandate given to us. We have deep reservations about the Bill for the reasons we have outlined, not because of the objectives but because of concern over whether it will be effective and the potential side effects or unintended consequences. However, if the Bill is passed, then it is of course an instruction or additional mandate for the Central Bank.

**Deputy Pearse Doherty:** Earlier, a question was asked about vulture funds increasing rates to 10% and so on. The question was dealt with by other witnesses. The question need not apply only to a vulture fund; it could be a regulated entity such as AIB or Bank of Ireland. The limited powers the Central Bank has basically amount to no powers in this regard. Mr. Sibley can correct me if I am wrong, but if the Central Bank had this tool at the moment, it would not use it because the bank has a different view of how to address this issue. Where is the tipping point? When would the Central Bank start to introduce or use these tools? Let us suppose a vulture fund applied a 6% interest rate on mortgages. Would the Central Bank use these tools?

**Mr. Ed Sibley:** If the Bill was passed, it would need to be very clear that it applies to non-bank and bank scenarios. I would not use the precise term Deputy Doherty has used. However, we would absolutely discharge what is required under the Bill. The Bill refers to a quarterly assessment of the market to determine whether there has been market failure. We would undertake that assessment and make a determination based on that assessment. We have not done an assessment in the way the Bill articulates at this stage. As I noted earlier, there is no reference to credit risk in the Bill and that is an absolutely fundamental driver of pricing in Ireland.

**Deputy Pearse Doherty:** That is a valid point and I imagine the select committee can deal with that on Committee Stage.

Mr. Sibley raised the question of unintended consequences. This is my final issue. I do not have the statement before me, but Mr. Sibley has suggested that the banks could raise interest rates in other areas and that they could raise fees and so on. Has the Central Bank received any indications from financial institutions that this is an approach they may look at if the powers in the Bill were to come in?

**Mr. Ed Sibley:** In our thinking about the Bill and the matter of unintended consequences, there is a degree to which we are looking forward. We are looking into the future but we do not have a 100% accurate crystal ball. We are raising concerns about potential conflicts in terms of the mandate of the Central Bank, about potential side effects that could arise because of the Bill and about whether contract law would supersede the Bill. We have concerns with the Bill as it is written today. Deputy Doherty asked about discussing explicitly with firms what they would do in circumstances where it was passed. I do not think it would necessarily be appropriate for us to do so.

**Senator Paddy Burke:** Is there any precedent under which the Central Bank intervened to lower interest rates?

**Mr. Ed Sibley:** Does the question relate to Ireland or other jurisdictions?

**Senator Paddy Burke:** I am referring to Ireland.

**Mr. Ed Sibley:** Not that I am aware of. I do not think it has happened for mortgages.

**Deputy Michael McGrath:** The Central Bank representatives should give a fuller answer

and explain that interest rate caps are in place in certain sectors. That should be explained.

**Mr. Ed Sibley:** Certainly, although we were discussing the mortgage market. Deputy McGrath referred to these this morning. There are caps in place in terms of moneylenders and credit unions.

**Senator Paddy Burke:** It only applies to credit unions and moneylenders. Is that the case?

**Mr. Ed Sibley:** Yes.

**Senator Paddy Burke:** There is no reason, therefore, that it could not extend to mortgages as well. In some cases, I presume, credit union mortgages have been granted for an extension to a house or have been used for house purposes.

**Mr. Ed Sibley:** Yes, the cap for credit unions is 12% and for moneylenders it is higher. Credit unions can engage in mortgage lending in line with certain limits.

**Senator Paddy Burke:** Therefore, there is precedent. Is that correct?

**Mr. Ed Sibley:** There is precedent in terms of legislation or requirements not to go above a certain rate.

**Senator Rose Conway-Walsh:** The Central Bank representatives are citing that Ireland is riskier than any other country. Is there a point in future when the Central Bank envisages Ireland will be less risky? Has the risk been consistent since 2008? We are supposed to have full employment now and GDP of 27%. Do these factors not suggest that the environment is less risky and that this should be reflected somehow in the margins? These figures do not tally with the use of margins and the profitability of the banks in the sense of their costs being continuously reduced. Yet their margins and profitability are increasing.

**Mr. Mark Cassidy:** This is an important link. It is the link between the key indicators of economic performance, the degree of credit risk in the economy and the borrowing rates the banks are charging. We are suggesting that there is a link between credit risk and lending rates in the economy. It is certainly the case that the key indicators of credit risk have been improving in recent years. In particular, I wish to highlight the indicators of household indebtedness, the numbers of households in negative equity, the amount of arrears in the economy and the unemployment rate.

The rate of household indebtedness has fallen from 200% of household disposable income in 2012, which was the worst position, to approximately 150%. This is a material improvement. The trend is continuing in the right direction. However, this rate remains the fourth highest in the European Union. Negative equity is where the value of the loan is greater than the value of the house. Some 40% of all loans were in negative equity at the end of 2012. The figure is now down to 15%. This is still an extremely high number. The current trend of house price increases and amortisation mortgages suggests that this will continue to reduce significantly in future years. The trends in arrears have been mentioned already. In value terms, they have declined from approximately 17% at the peak in 2013 to approximately 11.5% now. Unemployment is a particularly important indicator. Unemployment has fallen from 15% at the end of 2011 and is now at 8%. We expect the rate to continue to fall. Let us put this change in context. When we had numbers close to full employment, unemployment fell to approximately 4%.

The overall situation is that all these indicators have been improving. This has coincided

with the reduction in interest rates and lending rates during the past two years. It has also coincided with more competition, because as household indebtedness falls and as households come out of negative equity, they are in more of a position to switch mortgages either within the same institution or a different institution. All these indicators remain particularly high by European standards. We are still in a riskier position than other European countries.

**Senator Rose Conway-Walsh:** The concern I have is that so much emphasis is placed on switching and the ability to switch. However, the main cohort of people that I am concerned about are those who have been paying at the higher rate. They have endured financial stress as a result. They are then in a situation whereby they have arrears or their loans have been restructured. Can the Central Bank representatives tell me what percentage of switchers cited were in arrears or in a restructured arrangement?

*Senator Kieran O'Donnell took the Chair.*

**Mr. Ed Sibley:** Mortgage restructuring has been done or should have been done in line with our guidelines about what makes a sustainable restructured arrangement. This is an individually tailored restructured arrangement. In many circumstances – approximately 40% across the system – those borrowers are on lower repayments. It could be because they have a split mortgage where a large part or part of the loan has been warehoused and no interest is being charged on it.

**Senator Rose Conway-Walsh:** They are not necessarily on a lower rate once it has been restructured.

**Mr. Ed Sibley:** Not necessarily, but each borrower should have been assessed from an individual circumstances perspective to ensure the restructure is sustainable and suitable to their needs. In a significant number of cases, and it is approximately 40% across the system, that would result in lower repayments, through a split, potentially some type of concession, a part interest and capital repayment or an interest-only payment.

**Senator Rose Conway-Walsh:** The witness said 50% are on lower-----

**Mr. Ed Sibley:** It is 40%.

**Senator Rose Conway-Walsh:** That would suggest 60% are on a higher percentage after a restructure.

**Mr. Ed Sibley:** It would certainly imply that they are on a rate consistent with what other borrowers are being charged in the bank, which might be entirely appropriate. For example, a borrower might have had some shocks, such as temporarily losing his or her job or going through a period of time when he or she was unable to pay the mortgage, but that person is now back in employment and his or her circumstances have improved to a point where the borrower is now comparable with where he or she was previously. There is the issue of dealing with whatever the legacy was in terms of the period when the borrower was in difficulty, and there are arrangements in place to deal with that. However, the borrower's ongoing repayment capacity might be similar to or the same as it was at the time he or she took out the mortgage.

**Senator Rose Conway-Walsh:** His or her arrears are then put into the capital amount of the mortgage.

**Mr. Ed Sibley:** Potentially, or the terms could be extended. The important point is that the

individual circumstances of each borrower are assessed to ensure that the solution he or she is put on is sustainable.

**Senator Rose Conway-Walsh:** The representatives of all the banks who have appeared before the committee have told us that they have sold portfolios of mortgages to vulture funds, and they could not give a commitment that they would not do so in the future. Will the Central Bank stop loans being sold to unregulated vulture funds? Is there any mechanism available to the Central Bank to stop that happening?

**Mr. Ed Sibley:** No, not directly. I am not saying that this is necessarily the path the country would wish to take, but there are jurisdictions where legislation has been introduced to prevent that. Greece, for example, has passed legislation to prevent PDH loans being sold to non-bank entities. The Central Bank does not have powers to prevent that. However, it is important to point out the work colleagues did to ensure the protections associated with being within a bank in terms of the code of conduct on mortgage arrears, CCMA, are applicable to borrowers whether they are with a bank or a non-bank.

**Senator Rose Conway-Walsh:** In its consumer protection role, is the Central Bank saying that it does not need any extra legislation to protect mortgage holders from their mortgages being sold to unregulated lenders?

**Mr. Ed Sibley:** We certainly have not sought that in the past.

**Mr. Bernard Sheridan:** We advocated for a certain regime to be put in place. The legislation introduced something slightly different. It is too early at this stage to say how effective that will be. Essentially, we are regulating the credit servicing firms and we have ensured the mortgage arrears code, for example, will continue to provide protections for people after the loan is sold. However, it is early days yet in terms of how that will work because we regulate the intermediary who is acting on behalf of the loan owner. We must be notified if a loan is going to be sold by a regulated firm and we have requirements in place to provide that borrowers must be informed about what is happening as well. Clearly, however, a borrower goes into a different situation after a loan is sold. One day they are the customer of a bank and the next day they have an account with a fund from abroad. Their circumstances change but we have tried to ensure, in terms of how the borrower is treated, that if they are struggling to keep up repayments, the protections continue to apply.

**Senator Rose Conway-Walsh:** That is the problem I have. The banks' representatives have told us that once the loans have been sold, they have no further interest in what happens in the relationship between the buyer and the mortgage holder. The witness is saying the Central Bank has enough teeth to be able to protect those home owners.

**Mr. Bernard Sheridan:** We have achieved the fact the codes will continue to provide the protections after the loan is sold. Regarding the banks, when the loan is sold, they might say they have no further interest in it, but in the tracker examination, for example, we have put the onus on the banks that originated those loans to look back at the loans to see if people were treated appropriately. Therefore, it is not a complete ability to walk away from their actions and how they treated those people before the loan was sold.

**Senator Rose Conway-Walsh:** It does not fill me with confidence about how mortgage holders will be protected into the future. There is a great deal of emphasis on the contract. What role does the Central Bank play in the composition of the contract to ensure there is

enough flexibility for people to switch and do whatever else might be required and that there is consumer protection in the contract?

**Mr. Bernard Sheridan:** We do not review individual mortgage contracts, although in the context of the tracker examination we have been looking in detail at the various tracker contracts that were on the market. The ability to switch is available to people. Clearly, with fixed rate mortgages there are penalties for switching, so there would be terms regarding the penalty that would be applied if one switches before the end of the fixed term. Generally, there is no prohibition on switching with standard variable rate mortgages and others. In reality, however, if somebody gets into arrears or has negative equity, the ability to switch is impacted, but not necessarily by the contract *per se*.

**Mr. Ed Sibley:** It is important to point out in that regard that there might be some impediments to switching provider, but that does not necessarily mean there is an impediment to switching product within the existing provider.

**Senator Rose Conway-Walsh:** I thank the witnesses.

**Acting Chairman (Senator Kieran O'Donnell):** I wish to take up a few points. Mr. Sheridan, you said earlier that the Central Bank had limited powers if mortgages are bought by a vulture fund. Let us say you are dealing with a mortgage holder with one of the pillar banks who has an issue with that institution and, at the same time, you are dealing with a mortgage holder who has a similar mortgage with a vulture fund who has the same issue, be it over the rate they are being charged, the terms and conditions or how they are being enforced. How do you deal with both queries? Under the code of practice on mortgage arrears, when dealing with mortgage holders, how are they different in terms of your powers? I am seeking a practical example rather than you saying you have limited powers.

**Mr. Bernard Sheridan:** It is a good question. It is something we thought about when we were given these new powers to regulate something that is the servicing agent rather than the loan owner. Our powers with the banks and the other regulated credit firms are that we can talk directly to the CEOs, we can go to board meetings and we can engage at the highest level.

**Acting Chairman (Senator Kieran O'Donnell):** That is with any of the banks.

**Mr. Bernard Sheridan:** It is any of the banks or any of the other regulated retail credit firms.

**Acting Chairman (Senator Kieran O'Donnell):** Is it regardless of whether the State has an investment in them?

**Mr. Bernard Sheridan:** Yes, that is irrelevant. However, with the loan owners we must work through the credit servicing firms. People have come to us with issues and we have had to go to the credit servicing firms rather than the loan owner.

**Acting Chairman (Senator Kieran O'Donnell):** That would be a body such as Certus.

**Mr. Bernard Sheridan:** Exactly.

**Acting Chairman (Senator Kieran O'Donnell):** Certus might be managing home loans for Cerberus or the like. If there was an issue where somebody had a query about a rate in AIB, Bank of Ireland or Ulster Bank - I have probably left some of the banks out - you can pick up the telephone and ring the bank. What powers do you have at that point?

**Mr. Bernard Sheridan:** We have a range of powers. There are various codes in place. If it is an issue with arrears, the mortgage arrears code applies. If it is generally about how they are being treated we have this consumer protection code. They are obliged to comply with all of those requirements, including how they handle complaints and such like. All those rules now apply to the credit servicing firms.

**Acting Chairman (Senator Kieran O'Donnell):** If there is a query over the interest rate they are charging, what can be done?

**Mr. Bernard Sheridan:** If, for example, it is not clear what the interest rate is, that is usually dealt with by the credit servicing firm. If it concerns the rate that is being imposed, that is a decision for the loan owner. Some of these credit servicing firms-----

**Acting Chairman (Senator Kieran O'Donnell):** I just want to deal with AIB or the normal banks, including the Bank of Ireland and Ulster Bank. What can the Central Bank do on the interest rate there?

**Mr. Ed Sibley:** I shall step in for a moment. There is a sequencing here, so in the event that a borrower has a concern in terms of how they are being treated by a particular bank I would not necessarily expect at that initial point that they would be picking out the Central Bank.

**Acting Chairman (Senator Kieran O'Donnell):** No, I do not mean that.

**Mr. Ed Sibley:** The Financial Ombudsman's Service can make a determination. It is only at the point where a very serious question is raised and there is a need for potential intervention that we would step in. We take the information we get from the public very seriously.

**Acting Chairman (Senator Kieran O'Donnell):** The Central Bank can go directly to the lender.

**Mr. Ed Sibley:** Of course, yes.

**Acting Chairman (Senator Kieran O'Donnell):** Whereas, in terms of vulture funds, the Central Bank is required to go to the administrator of the loan as distinct from the lender. Is that correct?

**Mr. Mark Cassidy:** That is correct.

**Acting Chairman (Senator Kieran O'Donnell):** Why is that the case?

**Mr. Bernard Sheridan:** They are the firm that is regulated by us. At the moment the credit servicing firms are applying for authorisation to us, and we are going through the process of vetting those to see if they meet our standards. We will be looking at the boards of those firms.

**Acting Chairman (Senator Kieran O'Donnell):** They take their policy and direction from the lender.

**Mr. Bernard Sheridan:** I agree. Some of them have discretion, while others do not, but the discretion is obviously coming from the loan owner. This is one of the issues we have highlighted in that it presents a challenge for us.

**Acting Chairman (Senator Kieran O'Donnell):** What needs to be done? Is it fair to say therefore that if I am a mortgage holder with one of the normal institutions here and my loan is sold on to a vulture fund, the Central Bank can deal directly with the lender where it is the nor-

mal lender, but in terms of a vulture fund purchasing it, the Central Bank cannot deal directly with the lender? Is that correct?

**Mr. Bernard Sheridan:** We have no direct supervisory responsibility for the unregulated loan owner in that circumstance.

**Acting Chairman (Senator Kieran O'Donnell):** Do Mr. Sheridan and Mr. Sibley regard that as a weakness?

**Mr. Bernard Sheridan:** We have highlighted this concern. First, one's terms and conditions have not changed, so if a customer keeps up his or her repayments there should not be an issue. If one falls into arrears, one has the protections in place as if one was a customer of a bank. The issue is around other treatment, for example, the interest rate. We have less visibility of exactly what those loan owners' strategies are.

**Acting Chairman (Senator Kieran O'Donnell):** From the advice he has taken, does Mr. Sibley believe it is possible through regulation or legislation, where loans are sold on to a vulture fund, to allow the Central Bank to deal with the owner of the loan?

**Mr. Ed Sibley:** We pushed hard to ensure that the protections for mortgage holders that existed within the banks would transfer with them. The determination in terms of the legislation that was passed focused on the activity of credit servicing firms, rather than the loan owner. That has relatively recently happened so we are working our way towards authorising those firms. As regards being able to say definitively whether or not it is working, it is probably a little bit early to say. However, it does not preclude us from potentially approaching the loan owners. We have had a degree of engagement with the loan owners.

**Acting Chairman (Senator Kieran O'Donnell):** Does the Central Bank have any supervisory role?

**Mr. Ed Sibley:** We do not have teeth in that regard.

**Acting Chairman (Senator Kieran O'Donnell):** Okay. If there is a difficulty with a particular property, I go to the landlord rather than the letting agency. Has the Central Bank put anything to the Department of Finance as to how this measure could be amended? From my perspective, there is a weakness if effectively there is a line of defence for the vulture fund from dealing with a mortgage holder and dealing with the mortgage regulator in Ireland, which is the Central Bank. Has the Central Bank put forward any measures to ensure that it can follow the lender?

**Mr. Ed Sibley:** There has been a high degree of engagement between the Central Bank and the Department on this matter, in terms of what we thought would be appropriate legislation and how we would deal with this issue. The credit servicing firms are being authorised and are expected to operate as authorised and regulated entities. Both in terms of the letter of the law, the culture and their responsibility to their customers we would expect them to behave responsibly and to ensure that the instructions they got from the loan owner were appropriate for them to deliver.

**Acting Chairman (Senator Kieran O'Donnell):** I suspect they are paid on commission. They are not being paid on how the loan is performing directly, they are effectively being paid for going out and collecting. They are basically collection agencies for the primary lender.



**Mr. Ed Sibley:** There is a variety of arrangements in place and there is probably a variety of strategies that loan owners have.

**Acting Chairman (Senator Kieran O'Donnell):** Let me put a direct question. Would the Central Bank like to see legislation in place to allow it to be able to follow the loan when loans are sold on to vulture funds, and to be able to deal directly with the lender as distinct from the agent?

**Mr. Bernard Sheridan:** We are working with the role that we have been given. Part of that is monitoring what these loan owners are doing. As part of the legislation, if we identify practices which would not be acceptable from a regulated entity, we can go back to the Government and the Department.

**Acting Chairman (Senator Kieran O'Donnell):** The Central Bank has no teeth at the moment for following vulture funds.

**Mr. Bernard Sheridan:** No teeth, but we can monitor. As recently as last week, I met a representative body that has members whose loans have been transferred over. They have been discussing the treatment with us.

**Acting Chairman (Senator Kieran O'Donnell):** Could a way around this be to ensure that anyone who purchases a loan is required to operate as an entity in the jurisdiction in which they purchased the loan? For instance, if it is a large company like Cerberus, which comes to mind, instead of giving it out to an agent to manage it, they would be required to manage it themselves within the jurisdiction and thereby be subject to the regulation. Effectively, this would allow the Central Bank to provide the mortgage holder with the same legal and regulatory comforts they had when they were with the first institution.

**Mr. Bernard Sheridan:** The legislation has achieved a lot in terms of consumer protection. All the protections remain there. The Government made a decision on the appropriate framework. We will monitor the effectiveness of that and if we have concerns we will be flagging those.

**Acting Chairman (Senator Kieran O'Donnell):** Is the Central Bank seeking to do a report or review on that in a number of months' time?

**Mr. Bernard Sheridan:** There is no report planned. It is an ongoing thing, as I said. We meet with those who represent people whose loans have been transferred over, so it is an ongoing process.

**Acting Chairman (Senator Kieran O'Donnell):** Where does Mr. Sibley see the mortgage market in Ireland over the next three years in terms of competition, new entrants, and the profile of mortgages - tracker versus variable? Does he believe that the current banking institutions in Ireland have the financial fitness to be able to lend the appropriate amount of loans? We have a major shortage of homes in this country. I note that at the foundation of the State, at one stage, the banks were not lending. The Government moved in the early 1920s and told the banks that if they did not lend they would be nationalised. It is not quite akin to that, but the Central Bank is in the cockpit. Do we have a banking system that is fit for purpose that can provide lending to enable hard-pressed young people to buy starter homes? There is a lost decade, people who would traditionally have purchased in their twenties but are now in rented accommodation in their 30s. They are worried that by the time they are in their 40s they will not qualify for a mortgage.

**Mr. Ed Sibley:** There is a lot in that question.

**Acting Chairman (Senator Kieran O'Donnell):** It is a relevant question.

**Mr. Ed Sibley:** Conditions are improving in the mortgage market. The health of the banks is improving but there is still a degree of fragility as in the mortgage market and there is a degree of vulnerability in the banks as well. They are not in rude health. They are certainly much stronger and more resilient than they were. There is evidence that there is strong momentum to address mortgage arrears and bring their levels down. They will continue to fall, absent any significant shock which we hope will not happen. I would envisage that trend continuing and I hope differentiation and competition in the market will continue to improve. There is potential for new entrants and perhaps they could be encouraged by some of the underlying factors we talked about being further addressed.

In terms of the capacity of the banks to fund the 25,000 homes, or whatever the number might be in reality, we are working on that. It is not just a question of mortgage lending but of where the funding comes from for the developers. There are many difficulties in the housing market which go well beyond the Central Bank's responsibility. Many of those need to be considered.

**Acting Chairman (Senator Kieran O'Donnell):** When does the Central Bank expect to conclude that work?

**Mr. Mark Cassidy:** The work involves creating various macroeconomic scenarios, including a key scenario for the future homebuilding requirements of the economy. Everybody understands that there is a long-standing problem with supply, which partly reflects the legacy of the crisis. The number of houses being supplied is perhaps half our long-term requirements. There are many issues outside the control of the Central Bank. Many measures have been taken in respect of housing supply which we in the bank regard as the key challenge relating to the housing sector.

There is an issue in respect of the banking sector's capacity to finance economic development and homebuilding. The Economic and Social Research Institute, ESRI, produced an analysis of this earlier this week. Our analysis is under way. We have produced macroeconomic scenarios in financial stability and with our colleagues on the economic modelling side and those on Mr. Sibley's side we are analysing the impact on the banking sector. A well capitalised banking sector is essential to ensure the sufficient supply of credit to the real economy. This is why we are concerned with the capitalisation and viability of the banking sector, for the flow of funds to consumers, borrowers and the housebuilding sector.

The ESRI study finds, and we agree, that there are additional channels to channelling the deposits of Irish citizens which can become limited in respect of the needs of the economy. These additional possible sources of funding include the issuance of covered bonds and the possible entry of foreign banks into the Irish retail sector. These are important because these foreign banks generally have access to stable medium to long-term funding through their parent bank and are therefore not reliant on the domestic deposits. Without labouring the point, the issue of new entry underlines the importance of the open and competitive market alongside very strong prudential management. We need to avoid a situation where as the economy develops new competition leads to excessively risky spending.

**Acting Chairman (Senator Kieran O'Donnell):** Thank you. I look forward to the Central

Bank's analysis of how mortgages purchased by vulture funds are working. We will bring it back before the committee because there appears to be a major gap or shortfall for mortgage holders whose mortgages are now held by vulture funds. Although the terms and conditions should follow the emphasis is on enforceability. People are coming to us about this and it needs to be dealt with.

**Senator Paddy Burke:** How far back can the Central Bank go to investigate situations such as arose with Permanent TSB, PTSB, Ulster Bank and Bank of Ireland customers? Are some cases statute barred?

**Mr. Bernard Sheridan:** In that example, we introduced our consumer protection code in 2006 and that is the basis for how banks should deal with their customers. We are able to go back that far. It depends on the issue. We have to investigate whether firms comply with the various requirements and that is linked to when the requirements first came in. For the tracker problem we are going back to when trackers first came into the economy. We are not time barred other than looking back to 2006.

**Senator Paddy Burke:** Where does the money from the fines imposed on the institutions go? Does it go to the Central Bank?

**Mr. Ed Sibley:** It effectively goes back to the Exchequer.

**Senator Paddy Burke:** Any fines imposed on the banks went straight to the Exchequer.

**Mr. Ed Sibley:** Yes.

**Senator Paddy Burke:** In some cases the fines were more than the funding that was returned to the individuals.

**Mr. Bernard Sheridan:** The fine is determined by how egregious the issues were and the appropriate punishment for that. The redress is a different matter because we want people to get back what they should always have had and compensation. The two are not necessarily directly linked.

**Mr. Ed Sibley:** There is typically a cap on the level of fine we can issue and if we look across the system I would expect that the level of redress and compensation would be higher than the fines issued.

**Senator Paddy Burke:** The Central Bank seems to be slow to act on the way mortgage holders were treated by PTSB, Ulster Bank and so on. How did the Central Bank pick up the issue?

**Mr. Bernard Sheridan:** There have been tracker issues for some time in individual institutions, from the time people were moved onto fixed rates because rates were going up and people thought it would be better to fix in 2007 and 2008. We have been dealing with specific issues since then. We did feel that because issues continued to emerge we needed to undertake this system-wide review. The review is looking back to when trackers first issued.

**Senator Paddy Burke:** The borrowers had to go to the High Court and Supreme Court. The Central Bank was very slow to act.

**Mr. Bernard Sheridan:** In that specific case because the firm was not willing to accept the situation it was appealing to the highest court in the land. That did impact on the timing of our

actions.

**Senator Paddy Burke:** Were the fines imposed only after that?

**Mr. Bernard Sheridan:** After that we were able to take the enforcement action that is continuing against the various firms.

**Senator Paddy Burke:** The Central Bank could not have imposed the fines before that.

**Mr. Bernard Sheridan:** The issue itself was before the courts so for us to go ahead of that was not possible.

**Mr. Ed Sibley:** In terms of the timing of our work in that specific example, it was impacted by the court process having to be gone through including with the firm and all the way up to the highest court in the land as Mr. Sheridan has said. To ensure that we are clear, we have been working really hard, led by consumer protection but also supported by our enforcement colleagues and banking supervision, to ensure that this issue is dealt with, that no more harm is caused and that consumers and customers are put right. We are identifying where there have been issues and then addressing redress and compensation as appropriate and ensuring that there is an appropriate structure and framework to go through which is suitable and at the right level for the harm that has been caused to the borrowers. We are identifying a mechanism in place for those borrowers to appeal and to get free independent advice on what they have been offered and beyond that into the courts if appropriate. That has worked reasonably well. The fine in terms of enforcement action is likely to either run alongside or come after that. It is not the fines first. The most important thing for us is to stop the harm to consumers and ensure that they are put right. Alongside that, we are then running enforcement investigations to see what the root cause of the issue was and to take the appropriate penal action in terms of the banks.

**Senator Paddy Burke:** The Central Bank knew all along that the banks were out of order completely but it let people go to court. Could it not have stepped in and asked the banks not to put people through that hardship, indicating that it intended to issue fines?

**Mr. Ed Sibley:** That is not precisely what has happened. Maybe Mr. Sheridan can explain this again.

**Mr. Bernard Sheridan:** I am reluctant to get into firm specific issues but the Senator can rest assured that we push institutions as far as we can. If they refuse to actually-----

**Senator Paddy Burke:** The Central Bank failed in this case.

**Mr. Bernard Sheridan:** The opposite. We have taken and are taking the appropriate action to ensure that borrowers are put back and that firms are appropriately sanctioned for the actions they have taken.

**Senator Paddy Burke:** The courts did that.

**Mr. Bernard Sheridan:** The role of the courts is not to oversee the behaviour of the lenders.

**Senator Paddy Burke:** I appreciate that.

**Mr. Bernard Sheridan:** The courts dealt with specific-----

**Senator Paddy Burke:** The Central Bank is the watchdog over the banks-----

**Mr. Bernard Sheridan:** Pardon?

**Senator Paddy Burke:** The Central Bank is the watchdog for the banks.

**Mr. Bernard Sheridan:** Yes.

**Senator Paddy Burke:** As such, the Central Bank failed in this case.

**Mr. Ed Sibley:** To be clear, in one particular case there was an ongoing court case where, and this is in the public domain, the bank took an action to dispute the issue legally. We had to let that run its course to a degree before we could intervene with that particular bank on this particular issue. That does not mean we have not been intervening on this issue and engaging with the banks and driving them to prevent the problem back as far as 2009 and 2010 if not before. As well as that, we have, since the review commenced, been making sure the issue is addressed, put to bed and that the harm done to consumers is addressed.

**Senator Paddy Burke:** Okay.

**Acting Chairman (Senator Kieran O'Donnell):** I thank Senator Burke. Deputy Michael McGrath to conclude.

**Deputy Michael McGrath:** I just have a few questions on the discussion that evolved.

**Acting Chairman (Senator Kieran O'Donnell):** It is the Deputy's Bill.

**Deputy Michael McGrath:** The discussion evolved, so I avail of that flexibility if I may.

**Acting Chairman (Senator Kieran O'Donnell):** Fine. The Deputy has that flexibility.

**Deputy Michael McGrath:** I ask Mr. Sheridan about the issue of the credit servicing legislation. He wrote to me in August when I raised my concerns on that with him and made it clear in his letter that the preferred approach of the Central Bank was that the loan owners would be regulated. That would be the subject of the legislation. It was a policy decision of Government to go down the route that was travelled in the end whereby the intermediaries were regulated under the credit servicing legislation. My view is that there is a gap there because it is ultimately the owner of the loan who makes the critical decisions, as the Acting Chairman indicated, around interest rates, agreeing to restructure loans and, indeed, around enforcement and calling in a loan ultimately. Given the inability of the Central Bank to engage directly, it is just the intermediary like Pepper or whomever is regulated. Mr. Sibley said the Central Bank can contact them but there is no obligation on them to have any contact whatsoever. That is a real gap and it will play itself out over time. Mr. Sheridan has answered some questions on it there but if one takes the area of mortgages, there are now 10,000 PDH family home mortgages which are owned by unregulated loan owners and there is a real exposure there.

On the retail credit firms, can Mr. Sheridan clarify who they are typically? Is it credit unions? Who are the retail credit firms?

**Mr. Bernard Sheridan:** This is a small sector of regulated mortgage lenders, including personal loans or whatever. It is firms like Pepper, for example, lending in their own right. They are not banks and the same standards do not apply as apply to banks. However, there are specific standards we impose.

**Deputy Michael McGrath:** Can Mr. Sheridan give me examples of who they are? They

hold 26,000 mortgages. Who are the retail credit firms?

**Mr. Bernard Sheridan:** We have people who would have been in the market before like Start Mortgages, Pepper, Avon, Stepstone and those firms that actually have small books.

**Deputy Michael McGrath:** Some of them would have been sub-prime.

**Mr. Bernard Sheridan:** They would have been sub-prime in the past before the crash.

**Deputy Michael McGrath:** They are fully regulated entities.

**Mr. Bernard Sheridan:** They are fully regulated, subject to our regulation and supervision and they have to be authorised by us. They are subject to the same codes as banks in terms of consumer protection.

**Deputy Michael McGrath:** However, they are in a different category to credit institutions like banks.

**Mr. Bernard Sheridan:** They are in a different category, yes, but they are in a different category to the credit servicing firms in the unregulated-----

**Mr. Ed Sibley:** For example, they do not take retail deposits. They are funded in a different way and have a different business model, but they are offering mortgages.

**Deputy Michael McGrath:** It is a separate licence to be a retail credit firm.

**Acting Chairman (Senator Kieran O'Donnell):** Are they regulated? Is the same level of control applied to their business activities as to normal institutions?

**Mr. Bernard Sheridan:** Yes.

**Acting Chairman (Senator Kieran O'Donnell):** There is no difference.

**Mr. Bernard Sheridan:** No.

**Mr. Ed Sibley:** In terms of our expectations, to be careful-----

**Acting Chairman (Senator Kieran O'Donnell):** I am talking about prudential regulation.

**Mr. Ed Sibley:** From a prudential regulation and prudential supervision perspective, it is not as intensive perhaps with these firms as with the larger banks, from a proportionate perspective. I want to make that clear in terms of expectations. However, they are regulated in the same way and they are supervised.

**Acting Chairman (Senator Kieran O'Donnell):** Is that into less regulation?

**Mr. Ed Sibley:** No, not regulation, but ongoing supervision.

**Acting Chairman (Senator Kieran O'Donnell):** Typically, how often is the Central Bank in with the larger banks? Is it on premises at all times?

**Mr. Ed Sibley:** Pretty much, yes.

**Acting Chairman (Senator Kieran O'Donnell):** With what has traditionally been regarded as sub-prime but in respect of which there is a slightly different incarnation now, how often

is the Central Bank in there?

**Mr. Bernard Sheridan:** Until recently, these firms have not been carrying out any activities *per se* except for maintaining what they had or selling off loan books. So, their activities have been minimal up to now. We recognise that they are becoming more active and we will focus on that. However, it is done on a thematic basis across the sector. That is how we supervise them. If we identify-----

**Acting Chairman (Senator Kieran O'Donnell):** What does "thematic" mean?

**Mr. Bernard Sheridan:** It means we supervise the sector as a whole with one team rather than with one team per specific institution.

**Deputy Michael McGrath:** If that is the case why then was the Central Bank of the view and why does it continue to be of the view that the actual loan owners should be regulated directly?

**Mr. Bernard Sheridan:** Our concern is our visibility and ability to engage directly with the loan owners. We have less sight of their strategies and policies. That is one of our concerns. However, we have said that we are working with the legislation we have been given. As I said earlier, we will monitor their activities. We will do the best we can under the regime we have been given.

**Deputy Michael McGrath:** But it is not ideal.

**Mr. Bernard Sheridan:** No.

**Deputy Michael McGrath:** Can Mr. Sheridan clarify for me whether there are any restrictions now on who can buy a bundle of loans? If I were a wealthy individual, could I buy a bundle of mortgages and engage Pepper as a credit servicing firm to administer them and act as the contact point?

**Mr. Bernard Sheridan:** I am not aware of any restrictions on who can purchase those.

**Deputy Michael McGrath:** If one carries that over to the SME sector, it opens up all sorts of issues. We have had a lot of loans bought by unregulated funds from NAMA, the IRBC special liquidator and the banks. Those business loans are now owned by funds which will churn them. They will turn them over within a three to five-year horizon. My concern is vulture funds to one extent but this has played out in other economies in the past with loans sold on again and again and they may end up in some pretty unsavoury hands in the end. Ultimately, this is what happens and the entities in question are completely unregulated, although they are required to appoint an intermediary under the credit servicing legislation. I have heard of cases in Dublin involving offers being made and people being asked if they were interested in particular bundles of loans. While it is properties that are being touted, it is loans that are being sold. If I am a hotelier and I know the hotelier down the road has a loan with a fund, I could make an approach to buy his loan with nothing but destructive intentions as regards the other hotelier's business. Will Mr. Sheridan comment on this? Where will loans end up when they are repeatedly sold and what are the exposures?

**Mr. Bernard Sheridan:** The Deputy is right; it is not just about mortgages, which are only one small element of what is being sold. Small and medium enterprise and commercial loans are being sold. The benefit of the legislation we have is that irrespective of who the owner is,

the protections in place for those who are with a bank or whatever continue after the loan has been sold, in other words, irrespective of who is the owner of the loan. The provisions of the code on mortgage arrears and the code for small and medium enterprises continue to apply. I am not saying the relationship and risks have not changed for the borrower but at least the protections have been, if one likes, embedded.

**Acting Chairman (Senator Kieran O'Donnell):** With respect, the Central Bank does not have the teeth to enforce those codes against a vulture fund. Is that correct?

**Mr. Bernard Sheridan:** That is true but the borrower is dealing with the credit servicing firm in terms of interactions.

**Acting Chairman (Senator Kieran O'Donnell):** If policy, lending practice and interest rates are dictated to the intermediary managing the loans on behalf of the vulture fund and an issue arises, the Central Bank can deal with the representative or agency in Ireland but cannot enforce any of the codes against the vulture fund.

**Mr. Ed Sibley:** That is true, but in terms of how the borrowers are-----

**Acting Chairman (Senator Kieran O'Donnell):** That puts the lender, be it a mortgage holder, home owner or small or medium enterprise, in the lap of the Gods, depending on to whom the loan is sold. This area also appears to be unregulated. If a loan is sold to a vulture fund and it decides to flip it on to another vulture fund, my understanding is that the Central Bank has no part to play in that process. Is that correct?

**Mr. Ed Sibley:** In terms of the sale of a loan, we do not have powers to intervene. Where we have powers and responsibility under the recent changes is to make sure the codes and protections the borrowers have, namely, the SME code, code of conduct on mortgage arrears and so on, travel with the borrower. The regulated firms that deal with and service the borrower have an absolute responsibility to make sure they adhere to those codes.

In terms of the strategy that is being followed by the ultimate owner, they will be takers of that provided it is not in conflict with the codes. I do not disagree that there are risks and potential issues around that. Without delving too far into the issue, there are also potential benefits for having these types of operations. In the circumstances of Ireland, for example, they have enabled the National Asset Management Agency, which was mentioned, to clean up its books and move on to being able to service the economy again. There are upsides and downsides to that. The Acting Chairman highlighted some of the risks. There are some upsides in terms of the strength of the banking system and its ability to serve the economy and customers' needs in future. I accept there are risks.

**Acting Chairman (Senator Kieran O'Donnell):** Are there any other jurisdictions in which a central bank is able to regulate vulture funds outside the jurisdiction?

**Mr. Ed Sibley:** The term "vulture fund" is not one we would use. Some of these entities are regulated in some jurisdictions for some of the activity they carry out. However, they are not necessarily regulated here. They are very different animals in different jurisdictions and in different circumstances. As we discussed, some of the entities here are both servicing firms and loan owners. It is difficult to say with precision that there is one particular rule or type.

**Deputy Michael McGrath:** The example I will give may be an extreme one. If somebody takes a loan from a bank which is subsequently sold to a fund and sold on several more times, it



could end up in the hands of a semi-organised crime gang. This gang may then appoint a credit servicing firm as an intermediary and instruct it to shut down all the businesses involved and call in the loans. This can be done provided it complies with the terms of the codes. There is a real exposure in such a scenario.

**Mr. Ed Sibley:** In that circumstance, I would hope there would be some money laundering teeth to deal with what was happening, although I take the Deputy's point. In such circumstances, the Central Bank does not have teeth.

*Senator Gerry Horkan took the Chair.*

**Deputy Michael McGrath:** When the legislation was being introduced we put it to the Government that the owner of the loan should always be a regulated entity. The argument used by the Government was that such a requirement would restrict the origination of new loans from non-bank lenders and with the sources of finance in the economy broadening, which is a good thing, it would cause problems if the entities involved had to be regulated. The Central Bank could insist that a sale of a loan could only be executed where the purchaser of the loan was a regulated entity. That would not prevent the origination of new sources of finance from non-bank sources. Do the witnesses wish to comment on that?

**Mr. Ed Sibley:** It is clear what we sought in terms of legislative change. What we have is legislation that we are working with now. At this time, there are risks but we have not identified specific issues where there are problems or concerns associated with it. We are working with what we have and trying to make it work as best we can. If it transpires that the risks to which the Deputy refers start crystallising, there will be a role for either the Central Bank or someone else to step in and address the issues that arise. We are trying to work to the best of our abilities with what we find.

**Deputy Michael McGrath:** Is it fair to state that from a data point of view, the Central Bank does not have any oversight of loans that are sold on more than once? In other words, a fund could sell on a bundle of loans to somebody else and the Central Bank would not even know about it.

**Mr. Ed Sibley:** We work very hard to ensure that, from a statistical perspective, we have a full picture of, say, the mortgage market in Ireland. This includes making sure we are getting information from all entities that have loans. I have checked with my colleague and that is the case.

**Deputy Michael McGrath:** On the tracker address programme, when will the Central Bank announce the outcome of the programme on an industry wide basis?

**Mr. Bernard Sheridan:** Is the Deputy referring to the final announcement?

**Deputy Michael McGrath:** Yes, when will we have the detail bank by bank?

**Mr. Bernard Sheridan:** We will give an update before the end of the year but it will be towards the end of 2017 before there is a final outcome. The banks are at various stages in the process, with some at a more advanced stage than others. Our priority is to get this done as quickly as possible, albeit in a robust way that deals with the issue in terms of identifying-----

**Deputy Michael McGrath:** Will the update provided before Christmas be on a lender-by-lender basis?

**Mr. Bernard Sheridan:** No.

**Deputy Michael McGrath:** What are the maximum penalties open to the Central Bank under current legislation?

**Mr. Bernard Sheridan:** Is the Deputy referring to the enforcement element?

**Deputy Michael McGrath:** Yes.

**Mr. Bernard Sheridan:** The penalties are up to €10 million or 10% of turnover. We have a new, higher-----

**Deputy Michael McGrath:** Will the higher of the two figures apply?

**Mr. Bernard Sheridan:** Yes.

**Deputy Michael McGrath:** Vacancy rates in the Central Bank were mentioned. The Minister for Finance provided information on this issue in reply to a parliamentary question I tabled during the week. In the section of the Central Bank that deals with regulating credit institutions, the staff vacancy rate stands at 12%. The vacancy rate in the area of insurance supervision is 9%, while the vacancy rate in the area of consumer protection is 10%. The number of staff vacancies across the Central Bank stands at 149. Clearly, the bank is experiencing a major problem attracting and retaining key staff across its functions. What impact is the situation having on the Central Bank's ability to perform its functions? What is the rationale? Is it remuneration and terms of conditions? What is the problem?

**Mr. Ed Sibley:** We have had some degree of success because we have, across the bank, increased our head count this year by the net figure of 115. I mean in terms of actual people employed by the Central Bank. At the same time we have experienced a higher degree of turnover than we would like in certain areas. We are managing, I think. We are endeavouring to and succeeding in terms of delivering our responsibilities and mandate. We have to prioritise where we have vacancies. There are risks associated with losing staff. In particular, where we lost experienced staff we have to replace them with less experienced staff or allow time for new staff to come up to speed. At this stage the staff situation is being managed.

There is a lot to be said for working for the Central Bank in terms of the variety, interests and importance of what we do. There are great opportunities for staff to develop, which we strongly advocate. We also try very hard to ensure that the proposition we have for staff is rounded and that we deliver all of those benefits that potential staff could expect. Having said that, we are in a position where the market, particularly for front-line supervision staff and the legal and enforcement perspective, has moved on a great deal from the limits that we operate in within the Central Bank. I would always expect that there will be a bit of a gap between what the Central Bank can pay and perhaps what is available in the private sector. That is not inappropriate but the gap is quite sizeable now and does cause us problems both in terms of attracting people and retaining our key skill sets and that we need in order to discharge our function. To date, we have continued to deliver. There are risks associated with high turnover rates and vacancies.

**Deputy Michael McGrath:** I thank Mr. Sibley.

**Vice Chairman:** On the basis that no other speakers have indicated a wish to speak, I thank Mr. Sibley for his opening remarks and thank all of the witnesses for their contributions.

The joint committee will adjourn until 2.30 p.m. on Tuesday, 13 December. I remind Depu-

8 December 2016

ties that the select committee will meet today at 12 noon.

The joint committee adjourned at 11.45 a.m. until 2.30 p.m. on Tuesday, 13 December 2016.