

DÁIL ÉIREANN

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

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

Déardaoin, 19 Deireadh Fómhair 2017

Thursday, 19 October 2017

Tháinig an Comhchoiste le chéile ag 9.30 a.m.

The Joint Committee met at 9.30 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Pearse Doherty,	Paddy Burke,
Michael McGrath,	Rose Conway-Walsh,
Paul Murphy.	Kieran O'Donnell.

I láthair / In attendance: Senator Michelle Mulherin.

Teachta / Deputy John McGuinness sa Chathaoir / in the Chair.

The joint committee met in private session until 9.55 a.m.

Engagement with the Central Bank of Ireland

Chairman: No. 5 on the agenda is engagement with the Central Bank of Ireland. Professor Philip Lane, Governor of the Central Bank, and his colleagues are very welcome.

I wish to advise witnesses that 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 committee. 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, persons or 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 members 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.

I invite Professor Lane to make his opening statement. It has been agreed that in order to structure the meeting properly, the tracker mortgage issue will be dealt with first. Perhaps as part of his opening statement, he might just deal with that issue and then we can come back to the rest. It might make for better management of the meeting.

Professor Philip Lane: Sure.

I welcome the opportunity to appear before the committee. In my introductory statement, I will focus on how our mission to safeguard stability and protect consumers is demonstrated through our work on the tracker mortgage examination, Brexit, the banking sector, the insurance sector, and the macroprudential mortgage measures.

I am joined by Ms Sharon Donnery, the deputy governor for central banking; Mr. Ed Sibley, the deputy governor for prudential regulation; and Ms Derville Rowland, the director general for financial conduct. This reflects the reorganisation of the Bank's financial regulation functions in recent weeks into two pillars. Mr. Sibley is in charge of prudential regulation and Ms Rowland is in charge of financial conduct, which includes consumer protection. Mr. Sibley is now responsible for the supervision of credit institutions, banks and credit unions, insurers and the asset management industry. He represents the Central Bank on the supervisory board of the European Central Bank under the Single Supervisory Mechanism, SSM, and on the boards of the European Banking Authority, EBA, and the European Insurance and Occupational Pensions Authority, EIOPA. On the financial conduct side, Ms Rowland is responsible for the financial conduct of firms in relation to their customers and clients. This includes consumer protection, securities and markets supervision and enforcement. She is a member of the board of supervisors of the European Securities and Markets Authority, ESMA. The reason we did this reorganisation is to reflect the evolution of the European System of Financial Supervision, ESFS, including the centralisation of prudential supervision of systemically important banks under the SSM. It also recognises the dual regulatory approach by which the Central Bank is responsible

both prudential regulation and financial conduct regulation.

I turn to our consumer protection role. Our vision is for a well-functioning, well-managed and well-regulated financial services system that safeguards stability and protects consumers. This is best delivered by a strong culture of compliance, with firms and individuals within firms acting in the best interests of customers. However, this needs to be reinforced by comprehensive and enforceable legislation, intrusive risk-based supervision, a credible threat of enforcement and powers of redress when consumers have suffered detriment. As was harshly illustrated by the financial crisis, a fundamental protection for consumers lies in ensuring that the financial system is stable and that individual financial firms are subject to prudential regulations which require them to be sound and solvent, that is, to maintain substantial capital and liquidity buffers to guard against risks. Our oversight of the system includes the authorisation of firms - the gate-keeper role - a fitness and probity regime and other governance-related requirements. It also includes a regime to manage the resolution or closure of firms in the event of failure. Finally, our macroprudential measures seek to build resilience across the financial system, for example, through the limits on mortgage loans to guard against over-lending and over-borrowing.

The national consumer protection framework is formed by us the Competition and Consumer Protection Commission, CCPC, and the Financial Services Ombudsman, FSO. In addition, we actively participate in European and international bodies that work to safeguard the interests of consumers. Our role as the national resolution authority also contributes to both our stability and consumer protection mandates. We are responsible for the orderly resolution of failing credit institutions, credit unions and certain types of investment firms. For example, members will be aware of the recent appointment of provisional liquidators to Charleville Credit Union. We took this action to protect the savings of members, which are underpinned by the deposit guarantee scheme. The Central Bank is conscious that there is a demand for the services of a credit union in the local area and is committed to ensuring credit union services are available in the community.

I will now turn to the tracker mortgage examination. The examination is focused on ensuring that lenders provide fair outcomes for all debtors damaged by unacceptable failings in the handling of tracker mortgages, which has caused considerable suffering for many of those affected. It is clear that all lenders did not sufficiently recognise or address the scale of those unacceptable failings until Central Bank intervention. We have had to repeatedly challenge certain lenders and push to the limits of our powers in order to drive them to identify and remedy affected customers in an appropriate manner. This is a basic reason the examination has required significant time to progress. If certain lenders had conducted their reviews in line with the requirements of the framework and offered better initial proposals in respect of redress and compensation, the examination would be at a more advanced stage. We recognise the hurt and damage the actions of lenders have caused for many debtors. This is evident in the calls we receive to our helpline and the powerful testimony from the brave individual who appeared in public before this committee last week. As I will outline, we are pushing the limits of our powers to ensure affected customers are remedied appropriately.

The examination is the largest, most complex and most significant conduct review that we have undertaken to date in the context of our consumer protection mandate. Unusually for a live supervisory investigation, we publish regular updates on the examination as our work progresses, precisely because we realise customers and, indeed, the wider public need information. The latest one was published in the past few days, which the committee has received. We have also set out principles for lenders to pay appropriate redress and compensation to affected

customers, commensurate with the consumer detriment. Among other important aspects, the principles provide for an up-front payment to enable borrowers to take independent advice regarding the redress and compensation offers made to them. The appeals process ensures that customers have the option to challenge any aspect of the redress and compensation. Importantly, the customer can accept the offer while still making an appeal and the offer cannot be reduced by virtue of lodging such an appeal. In addition, customers have retained the option to bring a complaint to the FSO and-or to initiate court proceedings.

The examination is being conducted in phases. Phase 2 required lenders to conduct a review of their mortgage loan books, identify affected customers, as well as those deemed to have been in-scope but not impacted, and submit a report of their findings. All relevant lenders have provided phase 2 reports to the Central Bank. As our latest update shows, by the end of September, lenders had identified approximately 13,000 affected accounts . Approximately 60% of these cases arise as a result of customers not receiving a tracker product, and the balance relates to customers not receiving the correct tracker margin. As of end-September, lenders have rectified the interest rates applied to approximately 7,700 affected accounts. This represents 98% of customers identified by lenders as requiring rate rectification. The submission contains a table outlining the progress comparing the March update to the September update. The table also indicates that the total payout so far is €120 million to 3,300 customers. With regard to the payouts, lenders are required to categorise affected customers by reference to the type and level of detriment suffered. The types of loss identified range from overcharging as a result of the application of incorrect interest rates up to loss of ownership of mortgaged properties. Where home or property loss has occurred, a lender is further required to conduct a causation analysis to determine whether loss of ownership resulted from its failings. To date, lenders have reported that as a result of their failings, loss of ownership has occurred in respect of 23 homes and 79 buy-to-let properties. As the analysis continues, we anticipate that more such cases will be identified.

As the overall reviews by lenders are subject to ongoing assurance work and challenge by the Central Bank, it is possible that more accounts may be identified more generally as the examination progresses. We will publish a further update in early 2018. Our assurance work involves challenging the findings of the reviews by each lender through on-site inspections, reviewing materials and meeting with the directors of these banks. We also are receiving information directly from customers which has informed our approach and focus in particular institutions. While assurance work is ongoing in a number of lenders, the Central Bank is concerned from the work completed to date that two lenders may have failed to identify populations of impacted customers or failed to recognise that certain groups of their customers have been affected by their failures.

We are of the view that some of these customers have been affected and, accordingly, are entitled to redress and compensation. We have challenged these two lenders on these issues and they will report back to us by the end of October. As the Central Bank progresses this work, other lenders will be challenged in a similar way. Where we believe there are customers who may have been wrongly excluded by lenders, we will, using our statutory powers as appropriate, require those lenders to inform them of their decision and of the recourse options available.

The framework has been designed so that the phases can run concurrently within lending institutions in order that each lender can be dealt with as quickly as possible. This means that third and fourth phases - the calculation and payment, respectively, of redress and compensation - can begin while the assurance work continues.

In respect of redress and compensation, the Central Bank does not have the statutory power to compel lenders to implement redress and compensation in respect of failures that occurred prior to 1 August 2013. Having said that, we have made our expectations very clear to lenders and published principles for redress so that people are aware of what is expected of their lenders. However, initial proposals from certain lenders fell materially short of our expectations. Examples of material deficiencies included: failing to offer compensation for certain affected cohorts of customers; unacceptably low offers of compensation; unacceptably low payments for independent advice; and failing to recognise certain types of detriment sustained by customers for compensation purposes, including customers who may have switched lenders as a result of being on the incorrect interest rate.

As a result of our repeated challenges, lenders have significantly improved their redress and compensation proposals and appeals processes. To the end of September, €120 million had been paid out in redress and compensation under the examination. Prior to the launch of our examination, under the separate mortgage programme for Permanent TSB and Springboard Mortgages Limited, there were payouts of €36.8 million and €6.2 million, respectively. This was required by the Central Bank as part of that previous process.

We expect all relevant lenders to have initiated redress and compensation by the end of 2017. In the meantime, our work continues. We are also liaising with other State agencies, including the CCPC, the FSO and An Garda Síochána.

Finally, we have two enforcement cases open, two more are in train and I expect more to follow. We will continue to provide updates to the public on our examination and enforcement actions as this work continues.

Chairman: To assist members with their questions, will Professor Lane respond generally to the various points in his opening statement regarding the limit of the Central Bank's powers? Does he identify this as an issue? Will he respond to the Taoiseach's comments yesterday on the possibility that further legislation may be required to improve and strengthen the hand of the Central Bank? Has Professor Lane considered that? Will he outline for the members what he means by those points in his opening statement?

Professor Philip Lane: The basic limitation is the typical legislative restriction on retro-spection. To expand, there was a significant shift in 2013. We now have the power to impose redress in respect of any damage or episodes that occurred after August 2013. We can insist that the banks offer a redress scheme in these types of cases. As most of the damage involved in the tracker mortgage examination occurred before 2013, we have to operate under the legislation which was in effect before 2013. Any new powers for the future would not help us deal with the scenario which existed before 2013. We had the powers to compel the banks to produce the information contained in the second stage reports but, in terms of consequences and offering redress and compensation payments to the debtors, we have to use moral suasion and point out to the banks that they are better off putting forward these schemes on a voluntary basis. Otherwise, they will be dealing with this issue for a long time through the ombudsman and the courts system.

If they are consumer-focused, they should recognise that it is much better to put forward a decent scheme now, rather than forcing people to go to the ombudsman and the courts. The redress and compensation schemes currently being introduced are not being put in place under any powers of compulsion the Central Bank has. We are essentially using our regulatory powers to point out that we have this information and that we can tell that there has been significant

loss to consumers. We are pointing out that the banks should not be asking consumers to be going forward wholesale to the ombudsman and the courts, but rather that they should be voluntarily putting schemes in place. We are also telling them what we expect from those schemes.

I will ask Ms Rowland to add to that.

Ms Derville Rowland: I can add to that in more specific ways if the committee wishes. When this issue arose, the framework of the examination was developed in the context of the enforcement investigation into Springboard Mortgages limited and Permanent TSB, which the members will be familiar with. It emerged in that way. As we were going through the investigation, it crystallised for us that the tracker matter would have a very severe effect on people if we looked at the consequential impact downstream. As the investigation progressed, we have seen loss of home ownership, loss of buy-to-let properties and all of the devastation that has wrought on people, particularly in the context of the recession which everybody was living in.

We are, as the committee will know, the systemic regulator and we have many powers. Since 2010 and the reform of the Central Bank after the crisis, there has been significant amplification of our powers. I want to be very clear about that. We have used the powers given to us under section 22 of the Central Bank (Supervision and Enforcement) Act 2013 for information-gathering purposes. We have extensive powers to require, on deadline and demand, the provision of specific documents and information. We used that power when carrying out the first phase of the reports, when we demanded information to scope out and plan this enormous exercise. We are talking about more than 2 million accounts and a great volume of information has to be acquired. I am sure that every member of the committee understands that we would be here for decades if we had to deal with 2 million accounts on a case-by-case basis. We had to come up with a structure which would move us through such a large-scale piece of work in an intelligent way which would be constructed to cut through the data, but which had strong degrees of assurance drilled in. The section 22 powers have therefore been used to good effect to meet the deadlines. The deadlines for the first phase have been met and, contrary to what may have been said in other appearances before the committee, all the deadlines imposed for the second phase have also been met. As an aside, we were not necessarily happy with the content of what was provided and some lenders have been told to go back and do better.

We are now coming to the third and fourth phases. In plain terms, it was our view that having an impact on people at the tail-end of the process would be going about it the wrong way around. The most important thing was to deal with the detriment imposed on people. The first thing we did in that space was to put out a signal and a requirement that no repossessions were to occur until there was a totally gated procedure to ensure that the cases in question were not contaminated by this difficulty. The second thing we did was to get the lawyers together so that we could confer in respect of what we thought fair and reasonable tortious principles to assist people might look like. We knew that this was outside the strict scope of our powers but, looking at the scale of this problem, we thought it might offer a reasonable, quick, up-front payment alternative in addition to the normal infrastructure the State has to deal with such issues. As the committee well knows, recourse to the FSO is available on a case-by-case basis after complaints have been dealt with through the lending institutions. That is the normal course. For the more serious matters, cases may progress to the courts. Since we were dealing with such scale, we thought that this additional option of compensation, which is not a typical power for a systemic regulator to even wish for or seek, might be useful in this case.

We also demanded that any limitation period arguments would be held in abeyance by the lenders. Very importantly, we could not look at everything on a case-by-case basis or we would

be here for decades but we stood firm about the quality of the scheme and having a good appeal mechanism in place so people could bring personal information forward before independent arbiters would assist. That is a very important part of the framework. We have moved into an unusual space.

There is a statutory power in the 2013 Act to order redress. However, that power is prospective and does not capture the harm that has accrued in this instance because most of said harm predated the creation of that power. In fact, what has happened in a regulatory context was that when the supervisors in consumer protection became aware of these issues, they actually moved to close the gaps and strengthen the provisions in the codes. This is one of the main reasons it cuts off at an earlier period.

What we are doing is pursuing enforcement investigations in detailed, forensic ways. There is a full suite of enforcement powers. The committee may be aware there have been five significant court litigations challenging the constitutionality of the powers. There have been many judicial reviews all the way to the Court of Appeal. We have successfully defended the right of the Central Bank to use its enforcement infrastructure to support proper and effective regulation. However, none of this delivers an answer to individuals sooner rather than later. It is for this reason that we thought this was a good additional option. From a conceptual perspective - let us forget the law for a moment because it is a tool to be pressed into use when necessary - this is an opportunity for lenders to show that they are different culturally to what was the case during the crisis and that consumer protection is something they can proactively consider. They can also show, in instances where they have caused harm, that they can take the burden off the individual, on a voluntary basis, and afford him or her reasonable redress and compensation. This will allow lenders to demonstrate that they are capable and able to put consumer protection at the heart of their consideration and just do the right thing.

We have moved into this space, which is unusual. It is the result of a timing issue; it brings the monetary sums upfront. This may not be a complete answer to the harm that has been done to people, but it is something and it is better than letting the matter pass. We have taken the time to challenge them and it has taken longer for people, which I fully accept. However, I think it is worth it because to come to us with proposals of no appeal is utterly unacceptable given that decision-making about appeals is the point at which the nuances will be heard. It is really very important. To deny the fact there is consequential impact is just not acceptable. As we move in to look at this under our authorised officer powers, we will find more disagreement and we will commit to using those powers. This has already started with one of the lenders. We are demanding that the two with which we are not happy - we will find we are not happy with more - to come back and answer us. We have imposed deadlines in this regard. We believe that the disagreement has probably reached the stage with some of them whereby there is no point in continuing an inconclusive conversation any more.

If people are left out of the scope and we think they should be included, we do not have the power to deliver them into the compensation and redress scheme on a voluntary basis because the decision lies with the lender and not with us. What we do have is the power to direct a lending institution to identify, by name, the specific individuals about whom we are concerned and to notify them in writing of its decision not to include them and to tell them of their right of redress to the FSO and to the court. The reason we need this to be done is so people are on specific notice of their rights and can assert them. In this context, we have been in touch with the FSO to discuss the very welcome amendment to the limitation period, which enables cases to be brought in a longer time span and that is not a difficulty. This is very welcome, and the

ombudsman also sees the benefit of the normal infrastructure working. If this happened today - I hope it will not but, in the context of financial services across the globe, consumer protection issues do arise - a key feature of the system is to be able to fix those problems. We have redress powers. We do not have compensation powers, which are different, but one would think that is usually a matter for the courts because of the specific consideration, but we do have redress powers that would apply today so we would be in a somewhat different position. I hope this is of assistance.

Deputy Pearse Doherty: I want to pick up on Ms Rowland's final point. Given that tracker mortgage victims are being overcharged, does the Central Bank not have the power under the Act to impose redress and compensation for the overcharging that has happened since 2013?

Ms Derville Rowland: As far as I am aware, from the information in the update - if I need any additional information I will ask my colleague - the Deputy is referring to current overcharging and speaking about rectification of rates with respect to mortgages that are in place at present.

Deputy Pearse Doherty: The Central Bank is of the view that certain populations of individuals should have been afforded or offered tracker mortgages but they are not on such mortgages and, therefore, they are and have been paying higher interest rates in the period post-2013. Does the Central Bank not have the powers, given the fact this is happening in real time, to impose sanctions or impose redress and compensation on the institutions?

Ms Derville Rowland: There are some timing issues. Within the population of customers who have been identified as being impacted by this issue, rate rectification has occurred in nearly all instances. There is a figure of 98% in the documentation. Within the balance, there may be a very small population to still obtain rate rectification, which is occurring and which should be complete very soon, but the remainder of the balance relates to cases that were rectified previously. In such circumstances, we never expect that number to increase to 100%. We are looking at the 2% region because they were on the wrong rate for a short period and it was already fixed earlier. Another group of people no longer have tracker mortgages.

Deputy Pearse Doherty: Perhaps Ms Rowland can clarify the position in order to assist us. She has given information to the committee to the effect that the Central Bank is in dispute with two individual banks about groups of people who should be in scope. The banks in question are disputing this with the Central Bank.

Ms Derville Rowland: Yes.

Deputy Pearse Doherty: I imagine that there is no rate rectification in the context of those two populations.

Ms Derville Rowland: I understand. The Deputy is speaking about a different group.

Deputy Pearse Doherty: Yes. There is no rate rectification for them-----

Ms Derville Rowland: At the moment.

Deputy Pearse Doherty: -----because the banks deny they are in scope. Given the fact that this overcharging is happening in real time, post-2013, does the Central Bank not have the powers under the Act to ensure that the money the banks in question are wrongly taking from those customers is put back into their accounts and compensation afforded to them for the harm

the banks have done during that period?

Ms Derville Rowland: The difficulty is that this is in dispute. If it crystallises as a clear dispute, then it will be a matter to be dealt with in the context of enforcement cases.

Deputy Pearse Doherty: No. Does the Central Bank have the power? I know the Central Bank and the banks are in dispute over the matter. When that conversation is finished, and if there is still a dispute under the 2013 Act, does the Central Bank have the power, given that this is happening now - in the post-2013 period - to go in and ensure that the money is transferred back into customers' accounts and that compensation is provided?

Ms Derville Rowland: What has to happen in those issues of dispute is that it would have to be resolved before the legal power could be used. We would have to have it out on a factual, argued basis about the use of that power. It would never be a question of ordering it to happen or of the lender in dispute being obliged to completely obey it without a full legal argument about the matter. Rate rectification can happen quickly where there is agreement. If there is a full dispute about it, any use of any legal power would have to be subject to the full rigours of the law and the dispute they would bring to bear on that.

Deputy Pearse Doherty: The witness gives the impression of the dispute with the two lenders and what happens if there is a satisfactory outcome. I ask her to name the two lenders - I do not know if there is any reason they are not being named at this point. Has the Central Bank not indicated to the lenders that it has power under the 2013 Act, given that the overcharging is happening now, as the banks are taking excess money from the customers in 2017? Has the Central Bank not examined the powers it has under legislation and indicated that it has and will use those powers? The witnesses give the impression today that the Central Bank will look for names and tell them to go to the Financial Services Ombudsman or the courts. The Central Bank was given power in 2013, where a bank is overcharging customers, to ensure money can be recompensed to the individual and adequate compensation given.

Ms Derville Rowland: There is no power to order compensation in the 2013 Act so we cannot make a lender compensate a party. There is a power of redress in the 2013 Act. That is subject to the use of full legal procedure where it is disputed. We should consider our full suite of powers. The matter has not-----

Deputy Pearse Doherty: Is the Central Bank willing to use the powers given by the Oireachtas to the Central Bank in 2013 to ensure the money wrongly taken from those customers will be transferred back to their accounts?

Ms Derville Rowland: Let me be clear. The Central Bank received a full suite of powers in the 2013 Act and we have moved to use them on every single occasion. That was sometimes for the first time and these powers are not exactly clear until they have been tested. I hope members see we have demonstrated through the actions already taken that the Central Bank is willing to move not just to the full extent of its powers but beyond those to seek to deliver a reasonable answer for those people who have been detrimented. Right now we are in a position where we have not yet fully crystallised the dispute with the lending institutions but we think we are moving into that space. We have already used statutory powers to deliver answers to this. We will consider the full suite of our powers with respect to what delivers the answer at the earliest point. Of course we will consider the use of our powers.

Professor Philip Lane: With respect, let me reinforce this point. The reality of our enforce-

ment power is that it would cause much delay if we took the route of saying we would use those powers to deliver outcomes. This has been seen with other cases where the bank is disputing the matter. Where the lender argues it is adhering to and in line with the contracts in question, any adversarial process would take a long time before somebody would be paid out. Our strategy now is not to get into a legal dispute that will take a long time to resolve. It is much better to persuade the banks to on a voluntary basis make a good and decent upfront offer. Those powers are in reserve. It is not a case that we can dictate, saying we believe a certain account and the banks must immediately change the charging policy.

Many cases are being picked up where banks are conceding points, indicating they will rectify, make redress and apply compensation in those cases. That is instead of going down a legalistic route. There remains cohorts where we believe banks should be conceding further but it will be much quicker if this process of engagement continues. If they review their positions and concede, it will be the quickest way to get a result.

Deputy Pearse Doherty: If it can be resolved that way and if banks are made to acknowledge what they did wrong, it would be the test outcome for everybody.

Professor Philip Lane: Yes.

Deputy Pearse Doherty: We have limited time and there is much I would like to go through but I am stuck on this question. I am absolutely shocked that the Central Bank has come here, acknowledged its view that certain people are being overcharged or denied tracker mortgages, this is happening in real time and being disputed by banks and the Central Bank is telling us that if the dispute is not resolved, the Central Bank has the power to direct the bank to supply the names of the customers. The Central Bank will write to customers and tell them to go to the Financial Services Ombudsman. That is in itself a lengthy process and the decision of the ombudsman would most likely be appealed by the financial institutions, and this can happen all the way up to the Supreme Court. It is a very drawn-out process.

Under the 2013 Act, the Central Bank has the powers for redress where overcharging is currently happening. The Central Bank is of the view that overcharging is currently happening. I have not heard from the Central Bank that it is willing to use the 2013 powers. Instead, it is basically saying that these people should go to another agency of the State. I put it to the witnesses that this is letting down the customers of the institutions and it is a dereliction of its duties relating to consumer protection.

Professor Philip Lane: I totally disagree. The current strategy is delivering for many people considerable payments for 2008 to 2013. There are many years before 2013 and if we just consider that period, much compensation due to customers would not be pursued. Our strategy is to consider the entire matter, from the issue of contract to now. It is going to deliver for many people. Yes, it will be too slow and I fully accept that. We think the strategy has worked with respect to some lenders already to a large degree. With respect to other lenders, it is coming soon. With the remaining cases, the first best option is for the bank to agree and accept that where there is ambiguity, it should be resolved in the favour of the consumer. That will be the most pragmatic and practical way to ensure people receive these payments.

Deputy Pearse Doherty: We are focusing on a matter and I am disputing the use of moral suasion and other powers of the Central Bank to deal with this. The point was echoed by the Central Bank this morning and it sends a terrible signal to financial institutions that if they continue to deny the fact that the Central Bank believes a certain number of people should be within

the scope of this investigation, the powers used will only be to write to affected customers and ask them to go to the Financial Services Ombudsman.

We should be clear. Does the Central Bank have the power, under the 2013 Act and where customers are currently being overcharged, to impose a redress position on those bank? If it has those powers, why is it asking the customers, many of whom do not have experience or wherewithal to take a complaint to the Financial Services Ombudsman, to go in that direction? In this case, it is the dog that will not bark and the Central Bank is sending a terrible signal to the financial institutions to continue the way they are going. The reality is that many people will not take a case to the Financial Services Ombudsman and the institutions of the State that exist to protect customers are failing them in this case.

Professor Philip Lane: Again, we think more would be paid to more people using our strategy because much of the harm happened before 2013. If we used the power to zero in on the harm from 2013 onwards, it would be a legal process between us and the banks. I agree that is preferable to forcing individuals to take cases. We are not yet at that point. The banks are currently reviewing the excluded cohorts and this is the back-and-forth happening now. The banks are saying that they have legal advice to the effect that they can win a court case on this, but we are responding that we believe this is so ambiguous that there is a lack of preference for the consumer case that it would be much better if they accepted that these people should receive redress and compensation. If the banks continue to point to their legal advice and we to our legal view, the result will be a legal conflict which would delay a lot of payments and would only address harm from 2013 onwards. I appreciate that there is a lot of frustration around this but I would like to point to the following. First, in the case of various lenders, a lot is being paid out now relating to the whole duration of the damage and not only post-2013. This is a success of the examination. Second, we are pushing back. With the pushback there has been a lot of movement over the course of the year in various cases. It is true to say that more remains to be done. We do reserve the option of taking cases to the ombudsman and the courts. As there is no longer a time limit on the harm, it means that the pre-2013 losses will be subject to rectification and compensation by the ombudsman. That is very important. Our strategy is to look at the lifetime of the damage, not just 2013 onwards. If we focus only on 2013 onwards, in most cases not enough would be paid out. Our aim is to maximise the protection for consumers.

Deputy Pearse Doherty: How many individuals has the bank identified in those two populations of customers?

Professor Philip Lane: In some cases, we have an idea of the numbers and they are significant. There are categories that we believe should be included, but the banks have not yet engaged with that cohort. I do not think we can give too much guidance beyond saying there are significant numbers involved.

Deputy Pearse Doherty: Will Professor Lane indicate if that number is in the hundreds or thousands?

Professor Philip Lane: Again, I accept this is a frustrating situation to be in. We cannot disclose too much. We have the aggregated numbers which we do publish in the reports. The number of enforcement actions has increased over recent years. On the conclusion of those enforcement actions, we publish the name of the bank and so forth.

(Interruptions).

Chairman: Deputy Doherty can come back in a second time. We must move on.

Deputy Pearse Doherty: To be clear, the Central Bank is not going to give us any indication of the number of individuals it believes should be included in the tracker mortgage examination and it is also not going to name the two banks which are subject to the examination. I presume it will also not name the two banks that are allowed to issue addendums to the stage 2 reports. Is that the case?

Professor Philip Lane: Under the legal framework with which we work, we are able to obtain considerable information from banks, including through on-site inspections of their files, on the basis of confidentiality. That is a universal principle of financial regulation. What is important, and this is not universal, is that when we take enforcement action and it concludes, we announce that we have concluded an enforcement action against a specific institution and we provide a narrative as to the reason we are fining the institution. We institute the administrative sanctions procedure not only against institutions but also against individuals. We have published the names of individuals in recent years in situations where we have a process concluded against them. We do publish once we have arrived at the appropriate time to do so. Legally, we cannot discuss the inside information of individual banks. The work of the committee is helpful in terms of assisting the public in understanding what is going on. Through its interrogation of the banks, the banks in their testimonies can disclose, but we cannot. That is the gap.

Deputy Michael McGrath: I welcome the Governor of the Central Bank, Professor Lane, and his colleagues to the committee. It is important to put the scale of this issue in context. Professor Lane has identified 13,000 customer accounts as being impacted in this examination. Prior to 2015, there were 7,100 accounts identified, which means more than 21,000 are already confirmed. The cost of this phase, in terms of redress and compensation, is €120 million across 3,300 customers. On a *pro rata* basis, upwards, the overall cost of this examination will be €500 million, and this is likely to rise as more customers are identified and the Central Bank starts levying fines. It is fair to characterise this as one of the great consumer rip-offs in our State's history. What people want to know is when this nightmare will end for the customers affected. In regard to the people who have still not been repaid the money that was wrongly taken from them and have not received compensation, will Professor Lane say this morning when they will get that money?

Professor Philip Lane: Several lenders have already virtually completed redress and compensation. Others have started the process in that they have agreed the nature of their schemes and brought them before their boards. To commence redress and compensation, the banks also have also to set up their appeals process. We think that payout for all of the other schemes will begin by the end of the year. I do not think that will be the end of this because some people will choose to appeal, which is perfectly appropriate, and if the appeal is not to their liking, they may turn to the ombudsman and the courts. As such, there will be further action. In cases where a bank or banks decide they are not going to include a certain cohort, this will lead to further processes relating to those cohorts.

Deputy Michael McGrath: Let us deal with the ones we know about. We can talk about the additional cases later. There are now almost 10,000, of which the Central Bank and the banks are aware, who awaiting repayment and compensation. Will Professor Lane give people a timeline as to when they can reasonably expect to be repaid and compensated? That is the number one question that those affected want to have answered.

Professor Philip Lane: We think a lot is going to happen between now and the end of 2017 and the first few months of 2018. I must emphasise that it is the responsibility of the banks to deliver in this regard. We are pressing the banks to move as quickly as possible. It is for the banks to ensure that they satisfy their customers as quickly as possible. In these cases, a lot will happen in the next few months. It is not arbitrarily foreign to the future. A lot will happen in the next few months. We have already seen from the schemes that have moved forward that many cases can be handled within a number of months. A lot has happened up to now. As we mentioned in our statement, in the case of some lenders it has taken far too long for them to recognise what a proper redress and compensation scheme should look like and what a proper appeals system should like. In most cases, the schemes are now being brought to the boards of the banks and they will be up and running soon. For most cases, a lot will happen in the next few months.

Deputy Michael McGrath: Who in the banks is the Governor dealing with? Is it bank executives? Is it lawyers? Who is the contact with the banks on behalf of the Central Bank?

Professor Philip Lane: It is at several levels. At the working level, there is going to be one level. Mr. Sibley, who is the head of prudential regulation - like Mr. Cyril Roux before him - meets the chief executive officers or the chairmen on a frequent basis and this is a constant topic. I will ask Mr. Sibley to explain.

Mr. Ed Sibley: We meet the chairmen and chief executive officers of the main banks typically on a quarterly basis; sometimes it is a little longer than that. At every meeting we have, we are holding them to account on this issue so they are being pushed hard.

Deputy Michael McGrath: What about lawyers? Is there much legal correspondence between the banks and the Central Bank on this examination?

Ms Derville Rowland: I will take that question because I took up a new role from 1 September. Prior to that, I worked in enforcement. It has been my experience that there is extensive legal engagement with entities, either directly with their in-house lawyers or one can always tell when letters are ghost-written by the law firm. That does not appear on the face of the record but one knows it is the lawyers' advice. It is also my impression, through the expert structuring of the negotiations - I perceive the supervisory engagement to be a legal negotiation - that although at the working level, we are dealing with the lenders, they are very well advised.

Senator Paddy Burke took the Chair.

Deputy Michael McGrath: Just to clarify, in some cases the correspondence from the banks is from their legal teams and, in others, it is from the banks but Ms Rowland suspects that, essentially, it has been written by those legal teams.

Ms Derville Rowland: Or with the assistance of their legal advisers, for sure.

Deputy Michael McGrath: Is it fair to say that it has become a very legalistic process?

Professor Philip Lane: Let me differentiate on that. That is definitely the baseline. The banks will look and say, "Well, what is our legal obligation?" This is essentially why we think our examination process is the most effective way to deal with this. There will be areas of ambiguity because of the fact that these banks, when dealing with customers over the years there was the original contract, marketing material, advertisements, broker communication-----

Senator Kieran O'Donnell: Can we pause the meeting because there is a lot of interference with the sound system?

Professor Philip Lane: I turned off my phone but I just realised my iPad had not been powered off. I have powered that off now.

Deputy Michael McGrath: Will Professor Lane characterise the approach of the banks to this issue so far? I ask him to please be straight, frank and honest. Have they been helpful, co-operative or obstructive? What has their approach been to date?

Professor Philip Lane: Let me differentiate. It would not be correct to say that there is a collective, uniform approach on the part of the banks. As we have indicated, the redress and compensation is virtually complete in some cases. This indicates telling that some banks have moved forward. They have fully respected the intent of the examination and they put enough resources or a lot of resources into dealing with this matter. In other cases, there is a lot more resistance and that is why we say in the update that they initially had a narrow view of who was affected. Even where they agreed, there are cases of them not offering proper redress and compensation or not offering proper appeals processes. We have had the full spectrum of generally reasonable efforts to comply versus their saying, "We do not think this is a big issue".

Deputy Michael McGrath: Of the 15 lenders within the scope of the examination, how many have customers that have been impacted upon?

Professor Philip Lane: This goes back to the system-wide issue. It is nearly all of them. In those cases where they are not in scope, it is basically because they were not particularly offering trackers.

Deputy Michael McGrath: Is it nearly all or all of them?

Professor Philip Lane: It is not all because not all of them had significant numbers of, or any, trackers. A total of 11 of the 15 lenders have some degree-----

Deputy Michael McGrath: Would that effectively represent all that were engaged in lending in a significant way and that had tracker mortgage books?

Professor Philip Lane: That would be a fair characterisation.

Deputy Michael McGrath: In effect, all of those who were affected. I do not believe this was an accident. I do not believe that all the main lenders just happened to make the same mistake, which was against the interests of their customers. They wanted to get customers off their tracker mortgages and people are looking to the Central Bank to get an answer as to how this happened. How is it that all the main institutions involved in mortgage lending that were offering tracker products happened to have the same problem? Will the Central Bank get an answer to that question? Is it going back to look at board minutes, minutes of management meetings and other documentation? Is part of the scope of the examination to discover how this happened in the first place?

Professor Philip Lane: I will ask Ms Rowland to comment on the enforcement dimension of the question in terms of looking at files. Even someone who does not know anything about the individual banks or the details, that is, the man on the street, can point to a number of basic issues. One is culture and, fundamentally, this comes back to a lot of our concerns. We think there is a common culture across the banks, which is that if there is any ambiguity or area of

doubt about how to interpret a contract, to interpret it in the bank's favour rather than the customer's favour. That was a common dynamic across the system. Second, as the Deputy said, given the movements in funding costs and in interest rates, the economic incentive for these banks was essentially to interpret any possibility of making their own profitability higher to the detriment of customers. There are common factors there. In a similar situation, there is a common culture, which comes back to many things about the banks. In addition, there were the internal decision-making and other processes of individual banks. Ms Rowland will comment on the information we are gathering.

Deputy Michael McGrath: Will our guests please answer a direct question? Is it within the Central Bank's scope to find out in each case how this happened and why?

Ms Derville Rowland: There are two enforcement investigations open and we have named the institutions and there are two more in train. The Deputy can expect more to follow. In each case, there will be specific investigations into regulatory requirements where the suspicion is that they have been breached. To bring that case through, there will be acquisition of all relevant documents that inform that investigations, interviews with individuals to get the witness narratives about those issues, and scrutiny of board minutes and meetings. All the relevant evidence within the confines of that investigation will certainly be examined in the enforcement investigations to bring the cases through to completion.

Deputy Michael McGrath: Has the bank found any evidence so far that would invoke its statutory obligations to report certain behaviour or practices to other authorities, including the Garda, or any practices, behaviours or decisions that would invoke fitness and probity provisions under its regulations?

Ms Derville Rowland: Thus far, no invocation of the fitness and probity framework has been launched. Fitness and probity can only apply when people remain in the system. If people are not in the system, it cannot be applied. As a result of the significance and importance of this issue, the Deputy might recall that we previously went on the record to state that we had met An Garda Síochána. We have met other agencies as well to open dialogues because we take very seriously our statutory obligations under section 33AK to report suspicions of criminal offences to other agencies. Matters under the Criminal Justice (Theft and Fraud Offences) Act fall within the purview of An Garda Síochána. We would not necessarily always be experts on the competence or area of investigation of other agencies or investigation of competition matters. We have met other agencies for that reason and because they may have other lines of evidence available that they would not be able to share with us. My colleagues recently met An Garda Síochána and we discussed, at a high level, what we have seen and the fact that we are not making a report, but we indicated that we stand ready to assist the Garda with any information or add to information that it may have. We have made no formal section 33AK reports of suspicions to other relevant agencies but we have met them and shared our information with them to assist them in their considerations.

Deputy Michael McGrath: What is the current advice for customers who have not heard anything from their bank and believe that they are impacted but would not appear to be within the scope of what the banks are doing? We hear from many of them.

Ms Derville Rowland: I am very glad to be asked that. The focus on this by the committee is very helpful. It brings into the public domain and people's consciousness that it is very important that they make a complaint to their lenders, because lenders are obliged to write back to tell people what is happening. I understand that many people are frustrated with being in

limbo, waiting to hear. As part of the framework, we required all of the lending institutions to set up a special area for handling communications with people who may be affected. They will ultimately write to people who are in scope, setting out the offer and terms of redress.

Deputy Michael McGrath: So they should complain.

Ms Derville Rowland: As discussed, for people who may not be in scope, we will require anyone about whom we have concerns to receive a bespoke letter. We will use the full suite of our powers. Everybody who complains will receive a reply. That is something committee members could do, namely, telling their constituents that, if they are at all worried, they should write a letter of complaint and they will receive a reply.

Deputy Michael McGrath: To their banks? Okay.

Ms Derville Rowland: If there are any difficulties or issues with communications, we have provided the benefit of that assistance before, and we ask committee members to let us know. We take steps and actions on that.

Deputy Michael McGrath: Another issue for many customers is the prevailing rate debate, particularly in AIB where customers have been put back on a tracker rate of 3.67%. In Permanent TSB, customers have been put back on a tracker rate of 3.25%. I have looked at the documentation and think it is clear cut. The tracker rate comprises the European Central Bank, ECB, rate, which is variable and the margin is fixed at the point that the person entered into the mortgage on a tracker rate. If banks determine that those customers are entitled to go back to a tracker rate, then they are entitled to go back on the terms of the tracker mortgage that they originally had. Is that a live issue being considered by the Central Bank for both AIB, at 3.67%, and Permanent TSB, at 3.25%?

Professor Philip Lane: We cannot get into detail of named institutions but, in general, this issue of what is meant in these contracts is fully within what we look at. I will re-emphasise a few things. What we do is in addition to the normal options available to those affected. Regardless of what the banks decide they will accept under this process, it remains the case that those affected can go to the ombudsman and it is to be hoped that enough, but there is also the option of going to the court system. There are many ambiguities in the volume of different materials received by customers. When there is ambiguity, a reasonable person might say what it reads as to him or her.

Deputy Michael McGrath: Is it in scope? People want to know if the appropriate prevailing rate is in scope in the examination being led by the Central Bank.

Professor Philip Lane: That topic is part of what we are looking at.

Deputy Michael McGrath: Professor Lane says in his report that he is concerned that two lenders failed to identify populations of impacted customers. That really concerns me because that is not a matter of finding a customer here and there but of finding groups of customers. I suspect some may be people who switched their mortgage or who had redeemed or repaid their mortgage in full. Will Professor Lane give us a sense of where this is going? Will he give us examples of when banks have not identified groups or cohorts of customers as being impacted?

Professor Philip Lane: There are two levels to this. Depending on when a person took a tracker mortgage, whether April 2006, March 2007 or so on, the nature of the paperwork that person would have received from a given lender will differ. There might be what we call a

population, which comprises those who took out a mortgage at the same time and have the same paperwork, and the bank might say the paperwork indicates that there is no issue. We say that we think there is an issue. Before starting to open individual files, one notes that these people all have the same contract or set of paperwork, so there is a yes-no decision as to whether people are in or out. That is what we mean by excluded populations, where a bank might be saying that it thinks its reading of the paperwork is that there is no issue. We say to look again at the evidence and that it should be part of what is redressed and compensated. That may include scenarios where people have left one lender for another. The examination is deliberately universal and comprehensive to try to capture every possible case.

Senator Rose Conway-Walsh: I am not filled with confidence after listening to the witnesses. I thought there would be much clearer answers. It seems that the whole process is dogged by ambiguity, inconsistency and outright obstruction of the Central Bank's attempts to deal with this. It can hardly fill people with confidence. I think people will really despise the way the term "common culture" is used as a fancy term to dress up what many of us would see as systematic fraud and collusion to remove millions from individuals and families. Maybe we can get to the bottom of a few things here. I will address the matter of people who were told, maybe several years ago, that they were out of scope. They received a letter from the bank, thought that was the end of it and did not take further action. What will these people do now? Does the Central Bank advise them to go back to their banks, or what else? Can the Central Bank intervene for them?

Ms Derville Rowland: They are in scope. Anyone who was told previously that they were not in scope is, on our insistence, in that group of people covered by the large examination framework and is in scope. What I said previously about writing a letter of complaint stands as good general advice to anybody because the lender will have to answer the person in this phase if the person does that. That is a good, general default position for people to set to protect themselves.

Senator Rose Conway-Walsh: So people write to the institution and then the institution writes back? Can people request that they be included in this redress scheme?

Professor Philip Lane: Our examination involves looking at everything again. Regardless of what a bank may have said to anyone at any time, that does not give the bank a reason to exclude that case from the examination. All cases are being investigated. What remains helpful from the point of the view of the customer receiving information is to write to the bank to ask about his or her position in a process. We hope the examination and the way cases are handled will accelerate. It really has no standing within examination the fact that someone was told, at some point, they are out of scope.

Senator Rose Conway-Walsh: So people must start the process again and write to the their bank so they can be included.

Professor Philip Lane: Again, regardless of whether one writes or not, they are included. If they want, as of today, to tell us what is going on with their case, then that is helpful for them to write. Essentially, the banks will write to those who will receive redress and compensation. We are talking about scenarios where, hypothetically, there may be a cohort where we cannot reach agreement and the bank says it will not pay them compensation. We are saying we will force them to write to those customers saying: "The bank has decided not to compensate you but, by the way, you can still go to the ombudsman."

Senator Rose Conway-Walsh: That is fine.

Professor Philip Lane: Yet further, there may be other cases where there is no communication unless the customer writes to the bank.

Senator Rose Conway-Walsh: How many staff does the Central Bank have working uniquely on this issue now?

Professor Philip Lane: We have 26 people in the bank working on this matter. The way it is set up is as follows. The first line burden is on the banks themselves to have sufficient staff to work through these cases. They also have the obligation to have an independent adviser to, if one likes, do quality control on their work. On our side, we have 26 members of staff plus our own advisers to help, which is essentially the challenge process, the on-site inspection process and so on. The bulk of the work is inside the banks and we have that kind of auditing and inspection dimension to it.

Senator Rose Conway-Walsh: Who appoints the independent adviser?

Professor Philip Lane: Each bank has its own independent adviser.

Senator Rose Conway-Walsh: Does the Central Bank approve the independent adviser?

Professor Philip Lane: Yes, we do. Importantly, he or she does not come from the firm that provides auditing services to the banks. It is an arm's length dimension.

Senator Rose Conway-Walsh: Has the Central Bank refused to appoint an independent adviser that had been selected?

Professor Philip Lane: No.

Mr. Ed Sibley: Clear criteria were laid out in terms of what was expected in terms of the independent advisers before they were appointed.

Senator Rose Conway-Walsh: Is the Central Bank not concerned about the fact that independent advisers are paid by the banks?

Professor Philip Lane: I know. The reputation of native professional services firms would be damaged if they were seen as being captured by their client.

Senator Rose Conway-Walsh: We saw that with the auditing companies-----

Professor Philip Lane: Yes.

Senator Rose Conway-Walsh: -----in the banks and the banks collapsing. I want to move on to a couple of other matters.

Professor Philip Lane: To accept there are remedies to that there is some of the principle of, as far as one can, not using the same firm for consulting as for auditing services as that would be a basic conflict.

Senator Rose Conway-Walsh: Smoke and mirrors.

Professor Philip Lane: This process does rely on the professional services firms.

Senator Rose Conway-Walsh: I need to raise a couple of matters that have been discussed

briefly. I am not sure about on-site inspections. How many on-site inspections have taken place to date?

Ms Derville Rowland: They are our assurance work. Our assurance work has been done on-site and off-site, and has looked at files. As a result of that we deeply looked into the issues and that crystallises the two issues that we have discussed with the committee. We are very unsatisfied with some of the decisions. There will be more and all of that will be complete. The system, as the Senator will have heard, depends on review by the lender, review then and oversight by its independent adviser, and the Central Bank, using its statutory powers or authorised officer powers. There is a pyramid of checks. We should be complete with every one of those lenders by Q1 2018.

Senator Rose Conway-Walsh: I need to really understand this matter, and I know our time is very limited. My perception of an on-site inspection is that the Central Bank would go in without notifying the bank. Is that right? Is that how the Central Bank operates an on-site inspection? Is the bank given prior notice?

Ms Derville Rowland: We would have to notify them or we would not be able to get the right paperwork or documentation and look at the things that we want to look at.

Senator Rose Conway-Walsh: Is the Central Bank legally required to give notification?

Ms Derville Rowland: The practical perspective is as follows. If we want to go in and look at a specific area of work on a particular floor in a particular building then we have to notify them and we do. That is the practical business of getting in to scrutinise the documentation.

Senator Rose Conway-Walsh: I understand the practicalities. Legally the Central Bank does not have to give prior notification. Legally the Central Bank could turn up on a bank's door in the morning and say, "I have whatever and we want whatever".

Ms Derville Rowland: Yes, that is absolutely right.

Senator Rose Conway-Walsh: But the Central Bank has not done that to date.

Ms Derville Rowland: That is right.

Senator Rose Conway-Walsh: Does the Central Bank envisage it may have to do it in the future if there is no co-operation?

Ms Derville Rowland: That is something we would always consider in the right circumstances, and the appropriate circumstances. It is something that enforcement would be well used to doing in that dimension of the work. For now, the approach we have taken is to let the institutions know that we are coming so that the documentation and information that we need is available to us.

Senator Rose Conway-Walsh: I am surprised by that. Everything here smacks of collusion by the banks in terms of making the same mistake at the same time across the same number of accounts. To me, where there is a suspicion of collusion then one would imagine that there would be a mass unnotified inspection of files that might not be available to the Central Bank were it to make the arrangements to go in. We have seen instances where arrangements have been made to arrest people at a particular time. In terms of dealing with this banking crisis, I ask the witnesses to speak on this matter for a minute. Does the Central Bank suspect that the banks may have colluded?

Mr. Ed Sibley: The Senator has asked a couple of questions.

Senator Rose Conway-Walsh: Yes.

Mr. Ed Sibley: In terms of what records we would look at, it would be board minutes and committee minutes where the practical decisions are being taken and recorded within banks.

Senator Rose Conway-Walsh: Is the Central Bank, or any of its 26 people, examining board minutes?

Mr. Ed Sibley: My colleague has answered that question already. The last part of the question is part of the enforcement work and, to a degree, retrospective.

Senator Rose Conway-Walsh: Is the Central Bank only looking at the board minutes for two banks? I want to tease out this matter.

Mr. Ed Sibley: In terms of the Senator's concern that there would be some degree of doctoring of records, we have been very actively looking at board decisions, at risk committee decisions, executive committee, ExCo, decisions and so on. We have a long record ourselves of those meetings already. In terms of us undertaking a snoop in the morning to take those kinds of records, there is not a danger of them being doctored, as of today, because we have the records ourselves for those key committee meetings, key board meetings, key ExCo meetings already.

Senator Rose Conway-Walsh: Does that apply to two banks?

Mr. Ed Sibley: No.

Ms Derville Rowland: That is for all of the system.

Mr. Ed Sibley: That would be for the whole system.

Ms Derville Rowland: I shall speak specifically to these issues. The team go in, our team and some of the professional assistants we have procured to assist us with this to get the job done quicker, under authorised officer powers that the Central Bank has to go in and acquire information. I have confirmed that these are on notice. We take very seriously any non-cooperation. Obstructing authorised officer powers is a very serious matter and one that has not arisen thus far in these two lenders.

In terms of the information that the team is scrutinising, this is a very complicated issue that underlies the examination with many manifestations of a tracker problem. Some of them are contractual. We look at the actual contract and the actual review that was done to make the decision about whether that is in or out. We look at all the associated paperwork and all the decision-making around that to come to our own view on whether we agree or disagree with the decision. The other manifestation of this problem is what is called a transparency issue. If the contract was not exactly clear, there may be some ambiguity. In such circumstances, we look at all the documentation from the time the decision was taken. The level of detail involved might be such that there are 70 influencing factors to be considered individually. The team looks in detail at factors like television advertisements and what was done and said at the time to ascertain whether they are in accordance with the decision that was made.

Senator Rose Conway-Walsh: I would be interested to know whether the 70 factors are analysed to try to identify who was responsible within the bank.

Ms Derville Rowland: The team looks primarily at the decision-making issue. The identification of the cohorts is the primary driver. All of the examination material is brought into, and informs, the enforcement investigations, which look in a different way and from a different dimension at the causes of the breaches of the rules. One informs the other.

Senator Rose Conway-Walsh: What does Ms Rowland mean by “the primary driver”? If she means there is a focus on those who are being responded to, I find it surprising that the focus is not on those within the banks who are accountable for making the decision to move people off-----

Ms Derville Rowland: I am sorry. To be clear, the supervision team is primarily responsible for running the examination. This assurance work has a key core focus on the correct identification of the people who were affected by the decision. The information arising from that process results in the challenge to the substantive decision - we have been talking about that - and is passed on to the enforcement team, the specific role of which is to examine forensically breaches of regulatory requirements, acquire all of the evidence and look in detail at the specific underlying causes.

Senator Rose Conway-Walsh: Okay.

Ms Derville Rowland: These two complementary strands of work have complementary but different objectives.

Senator Rose Conway-Walsh: Sure.

Ms Derville Rowland: The enforcement investigation takes all the information that has been acquired to go deeper again.

Senator Rose Conway-Walsh: If the enforcement process uncovered evidence that a bank official, director or chief executive officer had wilfully and knowingly denied tracker rates to customers, or contributed to this scandal in any way, would the law allow such an individual to be arrested for theft or any other related crime?

Ms Derville Rowland: I could not say. I do not think it would be right for me to comment on offences like theft and fraud from the perspective of An Garda Síochána. Its powers of arrest are a matter for it. We make statutory reports to the relevant agencies as we are obliged to do. We have to meet a low evidential threshold in order to trigger the need for a statutory report. It is not anything like a high burden or standard of proof. Some objective evidence of the issue is required. We would always err on the side of caution in this respect. Even today, we are meeting and opening lines of discussion with the Garda and all the relevant agencies so they can assist us in making our report based on what we know. We acknowledge that they may know things from other dimensions that we do not know.

Senator Rose Conway-Walsh: Is a dedicated Garda team working with the Central Bank? If so, how many meetings have taken place?

Ms Derville Rowland: I cannot talk about the Garda or a dedicated team. I can say we have regular liaison points with the Garda. We have met the Garda twice on this specific issue. The enforcement team has a very good working relationship with the Garda. They meet regularly.

Senator Rose Conway-Walsh: Okay. Has the Central Bank discussed this issue with the Competition and Consumer Protection Commission?

Ms Derville Rowland: Yes. The team has met the commission to discuss this issue and to apprise it of the current position.

Senator Rose Conway-Walsh: What is the absolute deadline for the banks? Has the Central Bank told the banks that they need to have all of this sorted out by a certain deadline?

Professor Philip Lane: The deadline we could compel, and back up with sanctions in the event of violation, was the deadline for the information-gathering exercise, which concluded with the stage 2 reports. Stages 3 and 4 relate to redress and compensation, as we have been discussing. We have no power to compel in respect of those stages because engagement with them by the banks will essentially be voluntary. Having said that, we have regulatory and persuasive powers to make sure this is done as quickly as possible. There are deadlines. We expect this to happen by date X, Y or Z, depending on the bank. The banks complied with our deadlines for the stage 2 reports. They all did comply. We expect these further deadlines to be met.

Senator Rose Conway-Walsh: I think the word “comply” is a bit ambiguous in this case, given that other information is having to be submitted all the time. What penalties will be imposed on the banks if they miss any of these deadlines?

Ms Derville Rowland: As all the statutory deadlines have been met, no penalties have arisen for failing to meet them. In the case of the redress and compensation scheme, we have no power to order the compensation, but we have a timeline that we will continue to pressurise and challenge. It is in our interests to move this on as quickly as possible. I suggest it is also in the interests of the lenders. We have taken the time to challenge and to make sure the proposals that have been made and approved by the boards of directors of the lenders are the best they can be. I stand firm in my belief that we should continue to challenge the quality of those proposals. We expect that all the compensation schemes will be up and running before the end of this year. Some of them will have been completed by the end of the year. We expect the lenders to move through this process at pace. It is important for them to get it right as well as getting it done quickly. We expect most of the compensation and redress to be paid this year and into next year. We will have a further update for the committee early next year.

Senator Rose Conway-Walsh: I understand.

Deputy Paul Murphy: I thank the Governor and his colleagues for attending today’s meeting. The explanation given for the system-wide issue was that it was an issue of culture. It was suggested that culture explains how 11 different banks pushed people off tracker mortgages or did not allow people back on to tracker mortgages. Unless culture operates like telepathy, that is not really a full explanation. Does Professor Lane think it is possible that there were interactions between the banks on these issues during the period in question?

Professor Philip Lane: I suppose we would keep an open mind and have an evidence-based view on that. As I said earlier, even if there was no interaction, they shared a common set of incentives on the basis that it was expensive for them to fund these trackers. If they were re-reading contracts and determining that certain scenarios were not really catered for in the way those contracts were written, they may have interpreted in light of that ambiguity that the correct rate should be X, or that certain customers should not be returned to trackers after the expiration of a fixed period. They may have been using the legal ambiguity in the understanding that they could stand over such an interpretation, even if customers might have a very different interpretation. The fair-minded person on the street might think it is surely obvious that the natural interpretation is that the tracker rate should be the original rate, as the Deputy suggested

earlier, or that it is obvious that the customer has a right, but the legalistic interpretation might be different. Essentially, much of the dispute centres on the gap between what one might be able to base a court case on and what needs to be done to put the customer first.

Deputy Paul Murphy: I still think it is a stretch that it would happen in the different banks in the same period of time. The witnesses might come back on that. Even accepting the point about culture or that culture is an important element of this, which I think it is, what does it say about the culture that operated then in the banks and does a different culture operate now?

Deputy John McGuinness resumed the Chair.

Professor Philip Lane: Let me make several points about that. One is that in many of these institutions there has been significant internal turnover. The management teams are different and the banks themselves, under the pressure of their leadership, have had to take a big look at how they operate. A basic issue is poor documentation and being unclear to their customers and themselves about what exactly a product means. It is not just us. The European momentum is to have much clearer contracts and a greater amount of information provided. It is to recognise that the circumstances of the world can change and that we should be crystal clear about what people understand going into a contract. That basic systems-and-clarity issue is important. It is also the case that a great deal of our consumer protection work these days is about bringing to the attention of boards the fact that part of the work of a board relates to governance and that ensuring staff on the front line who are designing these products and interacting with customers take seriously their obligation to put the customer first. That is an ongoing engagement. Ultimately, the culture issue is being pushed partly by us. It is definitely in the long-term interests of the banks to elevate the protection-of-consumers agenda within organisations. In this process, many hundreds of millions are going to be spent, not just in payouts but in the internal costs of running it. Not just here, but around the world, there have been so many conduct scandals in recent years that it creates a major incentive for the banks to change their ways. We have seen in this process, however, that they have relied on lawyers to narrow down the scope of the examination, which indicates that this is far from a revolution in how the banks operate.

Deputy Paul Murphy: That is precisely where I was going with the next question. Is it the case that the response of at least some of the more reticent banks demonstrates there is no significant change in culture? The interactions at the committee here have been very frustrating. It is like being on a treadmill. Last year, they came in and said it would be sorted by Christmas and the same is happening this year. It is just going around and around. Is it fair to say that some of them are engaged in foot-dragging?

Professor Philip Lane: It is important to differentiate. We just said there was a common, system-wide source of this. It is important to emphasise that over the duration of the examination, there have been sharp differences across the banks. Some banks get it and say they appreciate that this is the most efficient way to resolve it while others are at the more minimalist end. It is helpful that the committee has been interrogating each individual bank. It remains an important issue that there is this variation.

Deputy Paul Murphy: In reply to the original question posed by Deputy Pearse Doherty, Professor Lane said the Central Bank legally had the power to use its powers in respect of 2013 onwards where there are these two populations. The reason it does not use the power is that relatively speaking, it is a relatively small amount of money compared with all the money that is pre-2013 and which it does not want to endanger. The missing piece in the logic is that the Central Bank is saying that if it were to take legal action in respect of ongoing problems, it

thinks that banks would withdraw co-operation with regard to the pre-2013 period.

Professor Philip Lane: This is why it is a bit early to give a final answer to that. In some of these cases, the banks are saying they think they are fine and that these people are not entitled to compensation and redress. Currently, we are in a situation where there is a whole category which, if the banks concede, can be dealt with within the examination in one go. If the banks decide to resist paying compensation and redress, the next most effective course is for the individuals to go to the ombudsman and the courts, which can compensate for the whole lifetime of the damage, not just post-2013. As for the post-2013 category, the legal process will be very cumbersome, albeit it will eventually work out. We could eventually deliver that if the system works, but it will take a long time and it is not the preferred option at this point. Ms Rowland may be able to add to that.

Ms Derville Rowland: I think that is right. Subject to thresholds and dispute, if proved down the line, it may deliver a partial subset of the answer. The people would then have to experience two procedures, one after the other. The full and complete answer being arrived at once is a far better outcome than one lengthy legal dispute procedure delivering a partial fragment of an answer, which may be the lesser part of the damage to the individual, which must then be followed up with a different one. It does not seem to be the way to go.

Deputy Paul Murphy: If the 2013 legislation was 2008-2009 legislation, the relative options may be different.

Ms Derville Rowland: Differently balanced, maybe.

Deputy Paul Murphy: Okay. At the moment, 13,000 customer accounts have been identified. There are obviously higher figures. The Central Bank may have mentioned 20,000 in one of the documents. How high is it possible to go in terms of how many people are affected?

Professor Philip Lane: Before this examination began, there was a prior case with Permanent TSB and Springboard. There were other cases before that which we disclosed in our March report. Prior to the examination, there were 7,100 cases. The 20,000 figure is, therefore, a hard number. That is already done. It is possible that there will be more because we are continuing to challenge the banks. However, it is not productive to speculate except to say the numbers are substantial.

Deputy Paul Murphy: That is substantial numbers on top of the 20,000 we know about.

Professor Philip Lane: Yes.

Deputy Paul Murphy: I thank the witnesses.

Chairman: We will now take Senators Kieran O'Donnell, Colm Burke and Mulherin, in that order.

Senator Kieran O'Donnell: Many of those 13,000 people are looking in here today. They want closure brought to the issue. Frankly, they will not believe there is an end in sight given what we have heard to date. As such, I want to go back over a couple of areas. Professor Lane spoke about the 2013 legislation. If a customer was on the wrong rate after 1 August 2013 - let us say it was September 2013 - is there an entitlement legally to seek redress under the Act back to when the incorrect rate arose?

Professor Philip Lane: No. It is only from August 2013 onwards.

Senator Kieran O'Donnell: That is even though the person is being charged at a specific moment in time.

Professor Philip Lane: Exactly. As with all legislation, the Act is forward looking, which means the harm from August 2013 onwards was covered, not before.

Senator Kieran O'Donnell: What about the consumer protection code that existed prior to 2013? Does the Central Bank have a legal entitlement to pursue the banks on that level?

Professor Philip Lane: Violations of the code may lead to sanctions for a bank, but that does not lead to redress for the individual cases.

Reference was made to the 13,000 cases. The good news for the 13,000 people involved is that they were the ones identified as being affected. They will receive compensation. Although it is true that only a small number of lenders have moved a long way in that regard, the others have a process in train; it will happen soon. The 13,000 cases have been confirmed and will be redressed and those involved compensated in the near future. I agree that it is not soon enough, but the scheme is in train and on track and it will happen. Apart from what we have been talking about, it is also about the others who have not been identified by the banks as being affected.

Senator Kieran O'Donnell: In dealing with the 13,000 cases that will be redressed does the Central Bank anticipate that it will have to compel the banks to have the compensation scheme in operation by the end of the year?

Professor Philip Lane: I repeat that we do not have powers of compulsion, but we have pushed for redress and compensation. There has been finalisation of the design of the scheme which is subject to the banks' internal processes and the appeal mechanism being in place, but we do not have powers of compulsion. I do not believe that is the fundamental issue because they are going to do it. We believe the scheme will be in place by the end of the year.

Senator Kieran O'Donnell: With due respect to Professor Lane, I have limited time and want to get to the heart of the issue which has been ongoing for two years. I really want to find out the answer to this question. What powers does the Central Bank need to ensure it can get the redress and compensation scheme under way for all of the banks by the end of the year? Ms Rowland has said the Central Bank has no compensation powers. Why is that the case? What powers does it need? This is the problem. It appears from what we are hearing that in cases prior to 2013, when the bulk of the wrong tracker interest rates were imposed, the Central Bank can do absolutely nothing. Effectively, from what I can see, it has no legal powers to put a redress and compensation programme in place. What needs to be put in place by way of legislation to give the Central Bank the power to seek redress and compensation for those who were affected prior to 2013 and to ensure it can dictate to the banks that under a certain measure customers who have been impacted on should be dealt with? Ms Rowland has said the Central Bank requires the banks to write to individuals to state they believe they have not been impacted on and that they will have to go to the FSO. It appears that in the case of the banks and the Central Bank, the tail is wagging the dog. The Central Bank has not included in its update that under existing legislation it did not have the power to do anything in cases prior to 2013. What powers does it need from the Oireachtas to enable it to solve this problem? I acknowledge that 13,000 cases have been identified in the investigation, but there are many more homeowners who need to be identified also. Not only must they be identified, they must also receive compensation in a timely fashion. They have put their lives on hold for up to eight or nine years.

Professor Philip Lane: Despite the Central Bank not having full powers to insist on redress and compensation in cases before 2013, it is delivering and will deliver for a lot of customers. We have been able to push to the limit and beyond what we can do legally to convince the banks that it is in their interests and those of customers to make payments on a voluntary basis, even though they could have taken a legalistic approach by stating they were not going to do it.

Senator Kieran O'Donnell: That is not what I am asking Professor Lane.

Professor Philip Lane: In retrospect, if the legal issues-----

Senator Kieran O'Donnell: I am asking Professor Lane what powers the Central Bank needs to ensure it will happen. It looks to me as though it is dealing with it as if it was the banks' problem, which it is, but it is also a problem with regulation. The Central Bank regulates the banks. Do the delegates realise the impact this issue has had on people's lives? If a person has a mortgage of €200,000, he or she could be paying an extra €4,000 a year based on the tracker versus the variable rate. He or she could end up paying an extra €100,000 over the term of the loan, or nearly half of the initial principal amount. It is having a real impact on people's lives in terms of the education of their children and in their personal lives. Professor Lane is saying the banks will address the issue of redress, but that is not good enough. I do not believe they will do it on a voluntary basis. One has to have the necessary powers. I am, therefore, asking Professor Lane what powers he needs. He has said the Central Bank has no powers of compulsion when it comes to the payment of compensation. If powers were to be provided for the Central Bank, would Professor Lane be able to use them? There were changes to the remit of the FSO to deal with cases over an extended period. If Professor Lane was given those powers, would he use them?

Professor Philip Lane: Retrospection will be a fundamental issue in dealing with any legislation. I will leave it to the members to decide whether retrospective legislation is something the Oireachtas could deliver.

Senator Kieran O'Donnell: With due respect to Professor Lane, if a person has been on the incorrect interest rate since 1 August 2013, a wrong is being done. Surely, common law should enable us to right the wrong from the period when it arose.

Professor Philip Lane: The Senator has phrased it correctly. The process is to try to accelerate and enlarge the number of people who do not have to invoke common law and who do not have to go to the FSO or the courts to receive what they are due. We have added this additional process to try to deal with the thousands of cases which the Senator has correctly said are so damaging for so many. It does not in any way remove the normal route whereby the FSO has the power to order redress and compensation. It would be atypical for a regulator to move into the courts-----

Senator Kieran O'Donnell: This could potentially be the biggest consumer scandal in the history of the State. It has echoes of the DIRT scandal when the banks had to be dragged kicking and screaming to deal with it. As Governor of the Central Bank and the regulator of the banks, the ordinary person puts trust and faith in Professor Lane to play these roles. Are there powers that need to be provided for the Central Bank to enable Professor Lane to carry out his roles to seek proper redress and compensation for the 13,000 people involved and to enable the bank to insist on the banks dealing with the customers who have been impacted on? Will Professor Lane, please, answer that question directly?

Professor Philip Lane: Short of retrospection to change the legislative environment pre-2013 - that is for the Oireachtas and the advisers to consider - normal legislation operates on a “go forward” basis. For cases post-2013 we have the legal framework and, as we have explained, for cases pre-2013 we are succeeding. It will deliver redress and compensation for many of those involved. We are using our regulatory influence to deliver a lot and save many people from having to invoke the FSO and the courts. We do not claim that every single case will be dealt with satisfactorily. There will be decisions that will have to be appealed, perhaps to the Financial Services Ombudsman and possibly the courts, but this process will deliver a lot.

Senator Kieran O’Donnell: With due respect, payments have commenced to one third of the 13,000 impacted on tracker mortgage holders and with only three of the 11 providers. Does Professor Lane regard it as satisfactory progress where he will now look for another eight mortgage providers to come to the table before the end of the year?

Professor Philip Lane: It would have moved a lot more quickly if some of the hold-out banks had done a better job in designing schemes and properly assessing the cases they had. The delay until now essentially has been due to the inadequacy of how some banks have dealt with the issue. At this point, we think a lot will happen in the months before Christmas and early 2018 because of the work already done. This concerns the 13,000 cases which the banks have accepted have been damaged. We are continuing to work on other cohorts where the-----

Senator Kieran O’Donnell: We will take it that the Central Bank will look to have the redress and compensation scheme up and running by the end of the year for the 13,000 cases identified. For the other cohort of impacted on customers, does the Central Bank have the powers, as regulator, to compel the banks to deal with them, even though they might claim they have not been impacted on?

Professor Philip Lane: The enforcement power we have would involve a legal process which would take a long time to complete. It is available in dealing with the harm done after August 2013. If these cases are not to be covered by the redress and compensation scheme, the next most effective step is for the cases to go to the FSO who-----

Senator Kieran O’Donnell: There is a contradiction.

Professor Philip Lane: There is not

Senator Kieran O’Donnell: There is. Professor Lane is saying that if the Central Bank identifies a cohort of impacted on customers and the banks do not agree, the only recourse is to tell them to write to the individual customers.

Professor Philip Lane: No, we are not saying that. The first and most effective strategy is for those cases to go to the FSO and the courts. That could cover the lifetime-----

Senator Kieran O’Donnell: I understand that.

Professor Philip Lane: We think that is the most effective course to take. We still retain the enforcement power.

Senator Kieran O’Donnell: No, in the limited time available, does the Central Bank have the power to dictate to the banks on the other cohort? Some claim that it could involve up to 30,000 cases, which means that there could be an extra 10,000 or more cases on the existing 13,000. Does the Central Bank have the power to tell the banks to deal with that group of cus-

tomers?

Professor Philip Lane: We have the power to bring an enforcement case. That will not be a diktat to tell the banks to deal with the issue immediately. It will be a legal process which will take considerable time to complete.

Ms Derville Rowland: There is a difficulty. The enforcement process drives at proving breaches of regulatory frameworks and holding the lender, as well as any person concerned in management who is responsible, to account. There are sanctions at the end of the process, including fines and disqualifications, but there are other options available. However, it is an elongated legal process, the object of which is not always about the individual but about the behaviour of the financial services industry in that environment. In all conventional systems, the set-up, in this country and others, is for individual cases, where it is entirely about the person, to be brought case by case basis to the FSO. That is when they can look at compensation and all aspects of the issue of detriment.

Senator Kieran O'Donnell: When will the Central Bank insist on the banks writing to the customers who have been impacted on?

Ms Derville Rowland: We have already started it with one lender because we have taken the judgment that the problem has crystallised. We have made a significant investment in dealing with the challenge because it brought about change.

Senator Kieran O'Donnell: What is the deadline date?

Ms Derville Rowland: The first deadline date has already been imposed on them under statutory powers by which they must come back with their final answer and identify the people by name.

Senator Kieran O'Donnell: Will they be written to by the end of the year?

Ms Derville Rowland: The next step is to get a change of mind; then it will not have to go any further, which is the best answer. If we do not get a change of mind, we have to move to the next phase of a legal procedure. It is my intention to press hard on that issue.

Senator Kieran O'Donnell: Will that happen by the end of the year?

Ms Derville Rowland: I cannot give a deadline because if there are legal challenges, it will affect deadlines. I can only say it will be as short a timeframe as possible. I am committed to doing that. We have taken time to challenge because it has actually brought about change in the offers, appeals and others parts of the process. It is only now, when we have reached this phase of the examination, that the issues are crystallising. Before, we were in challenge mode. There is, however, a point at which where one changes one's mind or moves on. We are at either the change one's mind or move on stage. We have effected considerable improvement in all of those positions to date. We are completely committed to using our powers to the fullest extent available to us.

Senator Kieran O'Donnell: It was reported in the media this morning that the two institutions with which the Central Bank was having difficulty were Bank of Ireland and KBC. Is that the case?

Professor Philip Lane: We operate under the restriction that we have to maintain confidentiality in our regulatory-----

Senator Kieran O'Donnell: Is Professor Lane denying it?

Professor Philip Lane: I am not going to respond to the comment because we have to-----

Chairman: What about the customer's position?

Professor Philip Lane: It is not a universal practice among regulators, but when we take enforcement actions, at their conclusion, we publish information on the institutions and individuals. We are committed to the transparency and power of public signals. It is, however, in the context of enforcement actions. In terms of the normal legislative environment, it is done on a confidential basis.

Senator Kieran O'Donnell: In his updated report Professor Lane stated engagement with other bodies on tracker mortgage-related issues continued as appropriate and that since the March report, the Central Bank had also met the Competition and Consumer Protection Commission and An Garda Síochána. Has the Central Bank made formal complaints to An Garda Síochána about criminal activities in specific institutions?

Ms Derville Rowland: We have not made a formal statutory section 33AK report to any of the other agencies, pursuant to law, which we are obliged to do. There is an evidential threshold which must be met. As we are conscious of the wider considerations that they may have sources of information on other avenues, we recognise the seriousness of this issue and the importance of keeping that channel of communication open and sharing with those agencies our information and perspective in order that we can be of any and every assistance to them. We have had discussions on these issues with them and will continue to do so throughout this matter to ensure we can offer all and every assistance to them.

Senator Kieran O'Donnell: Have they brought any information to the Central Bank's attention?

Ms Derville Rowland: The relationship would be in that context and when it is about their considerations, we would tell them what we know. They may know many things, but they would not be able to tell us. It is important for us to share the information we have and discuss matters with them but in the knowledge that they may know things which for the same reason of confidentiality they cannot tell us.

Senator Kieran O'Donnell: Does the Central Bank anticipate that it will be making section 33AK reports to An Garda Síochána?

Ms Derville Rowland: We will keep that matter under constant review. We will make them, if the conditions arise.

Senator Paddy Burke: I welcome Professor Lane and the staff from the Central Bank. Is the Central Bank dependent on the banks giving it the information on the people involved with tracker mortgages?

Professor Philip Lane: Yes, but subject to the fact that we can make inspections and challenge.

Senator Paddy Burke: Is that because the Central Bank does not have the manpower to do it? It has the power but not the manpower. Is that the case?

Professor Philip Lane: The power to-----

Senator Paddy Burke: The power to go in and investigate.

Professor Philip Lane: We do that.

Senator Paddy Burke: It is dependent on the banks to tell it the names of the people involved in the tracker-----

Ms Derville Rowland: We are dealing with a problem that has 2 million accounts in scope.

Senator Paddy Burke: The witness has outlined that. Is it not the case that the Central Bank is dependent on the banks to give it the information on the people involved?

Ms Derville Rowland: It is true that the way this has been structured-----

Senator Paddy Burke: Why does the bank not allow the people to write to it and pick some of them to investigate and go into the bank and do its own investigation?

Ms Derville Rowland: In the course of this examination, considerable information has been provided to us by professional advisers who are working for individuals, not for the Central Bank, who have been of great assistance to us. I have met some of those professional advisers. My colleagues have certainly met them on successive occasions. We have a lot of information given to us by members of the public. All of that is brought into our consideration of the materials that we scrutinise. We have a lot of information feeds. It is not that the only feed is asking questions of the lenders and receiving information. We gather information from them. We have been using our statutory powers. Then we go in and scrutinise. We take information sources from the FSO and many other avenues.

Senator Paddy Burke: The Central Bank is taking information from people other than the banks, is that the case?

Ms Derville Rowland: Yes.

Senator Paddy Burke: Is it satisfied with that? I have letters from several people going back to 2003 who do not know whether they are in or out. They have been waiting for months and years for communication and some of them think that they will never know.

Ms Derville Rowland: I certainly think that is a problem for people who have been really affected by this, particularly in the circumstances of this country and the hard impact of the financial crisis on people's lives. Not knowing is really difficult. We have asked and required in the framework that the banks set up specific communications facilities so that they are in a position to communicate with the public. If there are difficulties with that, and we have had some assistance before from information provided to us, they could send those letters to us so that we can check to make sure those systems are working. We clarified our expectations on communications. I can only say we consider all avenues of information that we receive and where they identify difficulties, we take those on board.

Professor Philip Lane: This is a universal examination. The fact that someone may have received a letter years ago saying "we do not think you are affected" is not relevant. Those cases are within the scope of the examination. It remains the case that it is helpful to write to the banks because they are required to reply. There is no harm in individuals who may be discouraged. The examination does not require people to write in. These cases are being considered. In many cases they will be included and will receive redress and compensation. There may be cases where that does not happen. It is important that they write to the bank and they can move

forward to the ombudsman and the courts and so on. In no sense is there any kind of prior exclusion of any case from this process.

Senator Paddy Burke: Some of those loans in the meantime have been sold to vulture funds. Not alone have the banks sold the loans to vulture funds, but they have also given the private information of those individuals, which the banks have held, to them. Do the witnesses think that is correct? Is it allowed?

Mr. Ed Sibley: I think that is a separate point. The scope of the investigation is in respect of all mortgages that were written during the period. Wherever they have ended up they are within the scope of the investigation.

Ms Derville Rowland: The focus of the examination is on the originator of the issue. It is a question of whether people were entitled to a tracker or is there a contractual or transparency issue. It is not a question of where loans have ended up downstream. It is about the originator and that is the focus.

Senator Paddy Burke: I am sure it will be part of the redress. Would it not?

Professor Philip Lane: That is with the original lender. The fact that, as a result of how an individual case proceeded, the loan might have been sold at some point does not reduce the liability of the original lender to have dealt with this properly. The liability is not just within the timeline of being with the original bank; it is the total harm.

Ms Derville Rowland: One of the challenges we had was to demand that they accept that after a loan may have been redeemed, for whatever reason, with that lending institution, or moved on, that there might be consequential impacts for which it had to remain responsible.

Senator Paddy Burke: Ms Rowland said it is clear that all lenders did not sufficiently recognise or address the scale of those unacceptable failings until the Central Bank intervention. The FSO failed the majority of those people. It has been said quite openly here by people who have come to other meetings. It was the courts that brought it to the attention of the Central Bank. It failed them as well. It failed many of those people. Was it not the courts that brought this to the attention of the Central Bank? People had to go to the courts to get some form of redress.

Ms Derville Rowland: I do not accept that it was the courts that brought this to the attention of the Central Bank. I am aware of a case that nearly went to a full hearing in the Supreme Court and did not proceed at a late stage in advance of that hearing. That certainly represents the difficult legal terrain that some of these cases sit within because that is representative of a hotly disputed issue, going all the way to the highest court in the land to be withdrawn at a late stage.

I make no comment about the FSO save to say that we have had very good current engagement with that office and it stands ready to do the right thing by dealing with complaints brought to it. From our perspective, considerable work was done on the tracker matter and I know that the enforcement investigations were open in advance of that Supreme Court decision and we were committed to pursuing them. We would have continued. That case presents difficulty but we had started the enforcement case before that and we are fully committed to bringing it forward.

Senator Paddy Burke: Ms Rowland says that time limits should not be the defence for any

financial institutions. Is she asking that the banks would cast aside the statute of limitations?

Ms Derville Rowland: There are two dimensions to that. In a civil court action, a limitation period exists to prevent people bringing cases after a certain length of time. In the legal mechanism of a court case that is a defence someone can raise. If it is not raised as a defence it will not become an issue in the case. It is different for the ombudsman because that is a statutory filter it has to apply in considering complaints. It has been very helpful that the limitation period for the ombudsman has been varied from a statutory perspective. It sweeps away any difficulty there is with long-dated cases coming forward for complex financial products. That has been very beneficial. It acts to assist people who want to bring cases that have been in existence for a long time before the courts without acting as a barrier to their doing so. It operates in two different ways, depending whether it is the statutory ombudsman scheme or it is litigation in courts.

Senator Paddy Burke: Ms Rowland is saying if those people write to the FSO, the statute of limitations can be waived if the case is outside the limitation.

Ms Derville Rowland: It is a different reason now. It postdates that agreement. We were concerned at the time that agreement was made about a pile of things.

Senator Paddy Burke: Is that laid down in law?

Ms Derville Rowland: It is as a result of changes that have been made more recently, in law, with regard to the limitation period for the Financial Services Ombudsman. One of the first things I did when I took up my new role was meet him on 18 September to discuss connectivity and an infrastructure that works for people. It is very helpful and is to be welcomed .

Professor Philip Lane: The best or most likely result is that many people will receive redress and compensation as a result of the tracker examination, which also encompasses an appeals process. There are extraordinary situations, such as those the committee heard about last week, where the severity of loss may be such that the affected customers may reasonably want to test whether the amount of compensation is sufficient by bringing their case to the ombudsman and, if they are still not satisfied, to then resort to the courts system. There are many options for those affected but the hope is that, although the examination process is still too slow, it will deliver an upfront payment sooner rather than later. Approximately 3,000 people have already received a payment and approximately 13,000 more will be paid in the coming months. This in no way damages or restricts a person's option to take the payment and still bring his or her case to the ombudsman and the courts. Consequently, this gives many layers of redress or recourse for those affected. We are not saying that people should immediately go to the ombudsman. They should consider the redress and compensation offer they receive from the bank, take the independent advice, which will be paid for under this mechanism, and at that point make a decision. I imagine the independent advisers, who have been very involved in helping people deal with this issue, will be able to help people work out if the offer is sufficient or if they should go to the ombudsman to seek more compensation.

Senator Paddy Burke: I am not quite clear on the process and members of the public will be less clear. Professor Lane said that lenders will undertake not to raise any time limit defences. Will that be the case in respect of all financial matters during the crash or tracker mortgage period? The Statute of Limitations has stopped some cases going ahead.

Professor Philip Lane: The discussion has been in respect of the tracker mortgage situation.

Senator Paddy Burke: Yes.

Professor Philip Lane: It is not more general than that. This examination is in respect of tracker mortgages. If there are other problems, such as for small and medium-sized enterprises, SMEs, or other types of loans-----

Senator Paddy Burke: SME loans could be trackers.

Professor Philip Lane: We expect the banks not to raise a Statute of Limitations defence in respect of tracker mortgages.

Senator Paddy Burke: SMEs could have tracker mortgages.

Professor Philip Lane: If the loan is a tracker mortgage, it is covered as part of this examination.

Senator Michelle Mulherin: Ms Rowland stated that the Central Bank is in the process of crystallising the extent of the dispute in respect of tracker mortgages with lending institutions. I wish to address overcharging and sharp practices in respect of commercial loans to SMEs. Such a loan could be a tracker mortgage or a similar financial product such as a rate swap product involving a bank inducing a company that is trying to trade out of trouble onto another product which would cost it more money, or unilateral rate changes involving the cost of funds plus a margin. Banks have their own formula for calculating the cost of funds and that is a moveable feast. Banking sources have indicated that there are SMEs in similar situations to private citizens in that they have suffered enforcement actions by banks following non-performance of loans into which banks tricked their SME customers either by removing them from a tracker or putting them onto some similar financial product to their detriment. The particular cases of which I have heard suggest this does not solely concern enforcement action and overcharging but also extreme situations involving the closure of businesses, loss of jobs and personal fallout for those involved.

I raise this issue in regard to SMEs and tracker mortgages in particular. Members know that SMEs do not have access to the financial ombudsman in the same manner as a private citizen. Their recourse for remedy is to the courts and they do not have the same avenues of recourse that Professor Lane said are available for private customers. In view of information I have been given and cases that have been brought to my attention, I wish to know the extent to which the Central Bank has been investigating or assessing the impact on SMEs as part of its assessment and crystallisation of the dispute in respect of tracker mortgages and similar financial products. How many such cases has the Central Bank discovered within that assessment process? What provision are the banks making for compensation in such cases? To what extent are SMEs included in the tracker redress scheme? This is another cohort that is not being talked about. I have heard of cases, even from people within the banking community who have dared to come forward, which indicate there is an equal and perhaps even more devastating problem in this area because although the focus is on people and their homes, and there is a clear reason for that, some small businesses have been devastated by the overcharging, sharp practices and possibly illegal activities of banks, although the latter remains to be proven. I want to know about this particular area of lending.

Professor Philip Lane: I will let Ms Rowland respond to that question.

Ms Derville Rowland: Any tracker-related issue, whether that be a buy-to-let on a commercial basis or otherwise, is within the scope of this examination. The Senator made reference

to other types of products or different dimensions and those are not in the scope of the tracker examination. Mr. Sibley may want to address other aspects of the question.

Mr. Ed Sibley: If the Senator has specific information or concerns, she should share them with us. We would examine and investigate them very seriously because what she has outlined are serious accusations. We have looked into any issues raised with us regarding SME or commercial loans. As Ms Rowland said, those issues are not in the scope of this tracker examination because they are not mortgage products. If they were, they would be in scope. However, if the Senator wants to share specific information for us to examine, we will do so because the accusations she has outlined are very serious.

Senator Michelle Mulherin: Is the Central Bank aware of the issue regarding SMEs and has it been assessed?

Mr. Ed Sibley: Issues have been raised in respect of the treatment of SMEs in distress by specific institutions and some of the products that were sold to SMEs over a period and the Central Bank is absolutely engaged on that issue. If the Senator has specific information she can share with the Central Bank that would help us with any work we need to do, we would be very interested to receive it and would pursue it to the full extent of our powers.

Senator Michelle Mulherin: The witnesses have not answered my net question. We are trying to quantify an issue. Is the Central Bank operating on a case-by-case basis as people come forward with issues regarding SME loans or has it another method whereby it is ascertaining the number of cases where the banks have acted in this fashion in respect of commercial tracker loans?

Professor Philip Lane: Let me clarify. A commercial loan that is secured on, for example, a home is within the scope. There is probably an overlap. If a firm funded itself with a tracker mortgage on a home, that is within the scope and will be covered. Of course, there are many types of loans to SMEs and there are other products that are not covered by this examination. The Senator has raised an interesting question about whether there were other violations of our codes in respect of SMEs. As Mr. Sibley mentioned, we are aware of various risk factors, but there is no comprehensive examination like the tracker examination.

Senator Michelle Mulherin: What sort of provision has each bank been required to make in its books in order to address this issue?

Professor Philip Lane: Is the Senator referring to SME lending or the trackers?

Senator Michelle Mulherin: Both.

Mr. Ed Sibley: In terms of the public accounts, what has been published from a provisional perspective is similar to the amount that Deputy Michael McGrath mentioned, that is, approximately €500 million for trackers.

Professor Philip Lane: That is specific to trackers. There is a range of non-performing loans in the Irish banking system, many of which are SME loans that are in trouble. For every non-performing loan, there is a process for provisioning. Perhaps Mr. Sibley might discuss the general principles of provisioning for non-performing loans.

Mr. Ed Sibley: To the extent that this matter relates to the question, banks are required to set aside provisions where loans will not be repaid.

Senator Michelle Mulherin: The witnesses referred to non-performing loans as distinct from people who have got into difficulty with their tracker mortgages.

Chairman: Does the Senator need a moment?

Senator Michelle Mulherin: I am sorry. I had a thought-----

Chairman: The Senator is thinking of constituents.

Senator Michelle Mulherin: Yes.

Chairman: It is amazing what comes first.

Senator Michelle Mulherin: It is gone from me. The concern is that, while the issue of individuals' loans is in focus and being discussed by us, there has been considerable abuse by the banks of their position of power in negotiating terms and conditions, unilaterally changing interest rates and encouraging people to switch financial products to their detriment. However, financial considerations and the fact that they have little recourse to remedy the situation means that SMEs must go to the courts. Are the witnesses satisfied that adequate mechanisms are in place to assist SMEs that have legacy issues with the banks?

Mr. Ed Sibley: There are specific codes of conduct in place for dealing with SMEs, covering lending and other products, dating from 2009 and updated in 2015. There are clear protections, particularly for those SMEs that are in distress. If there are breaches of those codes, we hold the banks to account through our enforcement actions. If the Senator has specific information that we do not, we would be keen to see it and would act on it.

Senator Michelle Mulherin: My final question is on the Central Bank's enforcement powers and its ability to get a handle on this situation and ensure that the banking system and banks are held to account. Regarding enforcement, penalties and fines, it would seem that, notwithstanding what the country has gone through and the backlash against banks, they still seem to believe that they do not need to adhere to the same standards as other professions. If someone's solicitor is fined, the solicitor does not turn around and send a fee note to a different client telling him or her to help pay the fine. With the banks, however, whatever financial penalties the Central Bank imposes on them just seem to be passed on to customers. How are they paying?

This speaks to the issue of the banks' culture. Some members have outlined a litany of incidents, namely, the bogus non-resident accounts, the DIRT scandal, systematic overcharging of customers by NIB, the tracker loan scandal involving all of the banks, general governance issues at Anglo Irish Bank and INBS, AIB and Allfirst, the PPI situation and endowment mortgage sales. These are just the headline issues. In terms of culture, what sanctions will make a difference to bankers' thinking? They do not operate like human beings at all. This is what is constantly reported back by people who have had encounters. As a country, taxpayers and a Government, everyone had to stretch to save the banking system for public interest reasons. As such, that professionals within the banks have not been held to account seems to be a major issue.

The greatest impact the Central Bank could have is to tell banks that if they breach a certain threshold of behaviour, it will consider revoking their operating licences. That is what will hit them. They will pass on fines and the like. That is what they do. They are like a machine that swallows up fines and grabs that money from somewhere else.

Chairman: Time, Senator.

Professor Philip Lane: Let me make several responses. We can and do hold individuals to account. We have an administrative sanctions procedure. For example, a number of those involved in the running of INBS are in that process now. Even though someone might say that what happened at INBS was years ago, we have to persist. Where we believe there to be a case, we will pursue it. There has been a significant turnover in the banks. The current management is not the management that was in place during the crisis. We remain concerned about the banks even with their new teams in place.

In terms of the principles of pursuing financial penalties and individuals, the fitness and probity regime is a part of the process of holding individuals to account and shareholders care about the costs. There is a large bottom-line cost in the running of the operation, the redress and compensation and the fines. The financial calculations are not purely passed along. There is a cost to those involved in financing these banks.

Ms Derville Rowland: Most of what the Senator says is well observed. We have all lived in this country and seen successive scandals. For that reason, it is important that the banks be held to account by means of a strong, clear regulatory framework, that we be robust in our challenge to them and that we demand high standards. I do not just mean in terms of financial regulation but also in the context of the entire system of accountability. Transparency is a part of that. It is my impression that having more information about the outcome of enforcement cases - we have attempted to be as transparent as possible within the requirements of confidentiality - is to the benefit of pressurising the system.

Conduct risk was not on the table in boardroom discussions. It may be that they knew very well about liquidity provisions or other prudentially focused provisions. However, there is something about requiring the people who run the lending institutions to discuss the impacts on their customer base of the products they design and sell. The incentives must be considered because they help as a driver for better culture. We have been in an after-the-event compliance environment, historically, in respect of our approach to these things. Scandals occur and are followed by aftermaths and clean-ups. There always will be difficulties and scandals, I think. I am experienced enough in financial regulation to be somewhat pessimistic about it. However, someone has to keep dropping in the medicine. We have got to have high standards, expect more and keep driving for that challenge. We must work together to bring about a more proactive consideration of consumer impact. I wonder how often anyone in a boardroom discussed impact on consumers before products were sold. I think they are discussed after things happen. We have to foster a more incentive-based, structured, forward-looking approach. I do not say that will solve everything but the time to have the conversation is certainly before it happens, not afterwards. In fact, we probably will always need to have both.

In respect of the conditionality on banking licences, I can perfectly understand the Senator's observation. That is a legal matter that would have to be very carefully done, although I certainly accept the sentiment of the remarks.

Senator Michelle Mulherin: I have a final question. How will the SMEs I have described get redress, apart from going to the courts?

Professor Philip Lane: The courts system will be the venue for commercial disputes between a bank and a commercial enterprise. That is the system.

Senator Michelle Mulherin: Professor Lane does not see a role for the Central Bank similar to that which it is undertaking in other contexts. I am talking about small businesses, not multinationals.

Mr. Ed Sibley: I am aware that there is engagement on this with a particular institution. As I said earlier, it would be helpful if the Senator were to provide specific information. We would look at and investigate it within the full compass of our powers. There is always that backstop of the court process.

Chairman: If the Senator wishes, we can provide that information through the committee and will insist on getting a response.

Senator Michelle Mulherin: I thank the Chairman.

Chairman: Going back to Ms Rowland's remark that this is an opportunity for lenders to show they are different from what they were before, does she think they are showing signs of this?

Ms Derville Rowland: Let us wait and see.

Chairman: No. I am asking Ms Rowland, out of her experience in dealing with those banks, if she detects any difference in culture or attitude from them.

Ms Derville Rowland: To be balanced and fair in the report card the Chairman is asking me to give, some have been proactive and open and have moved to reasonable proposals at an earlier stage. Others are slower to come to that. I would give a mixed report back. In any event, the proof of the pudding is in the eating. Some of these schemes are up and running but we want to see the ones with which we are in dispute or do not agree - they still have an opportunity.

Chairman: That is the problem. We can sit in these meetings for a long time and I feel we almost become conditioned again to the role of the Central Bank as it is. We are invited by the exchange almost to forget the human consequences that families have suffered. Following the long exchanges in today's meeting, I might forget the previous hearings we have had, but I will not do so. I will not forget the human consequences and carnage left after this event. Last night, I said to Deputy Pearse Doherty that at one stage at a meeting here I felt he was way over the top in his comments. Having read into it, I have to say he was spot on and could have said a lot more. Today I agree with him.

The question Senator Mulherin raised is about a licence. The Central Bank issues the licences to the banks. Is that fair to say?

Professor Philip Lane: Let me turn to Mr. Sibley on that.

Mr. Ed Sibley: In terms of banking authorisations now, that competency is under the European Central Bank.

Chairman: Under the ECB?

Mr. Ed Sibley: Yes.

Chairman: But the Central Bank issues these banks with their licences.

Mr. Ed Sibley: The authorisation and revocation of authorisations is a competency of the ECB and the Single Supervisory Mechanism now.

Chairman: So it is the ECB, then, that we should be asking whether it is proud of these banks and the fact that they hold licences. Is that correct? Or is it the Central Bank?

Mr. Ed Sibley: The Central Bank is part of the Single Supervisory Mechanism. I am sorry this is a long answer. The competence for authorising and revoking authorisations is an ECB competence under the Single Supervisory Mechanism.

Chairman: Okay. If I go into a licensed premises and drink after hours, I will be in court and fined for breach of the licensing laws. If I go into a shop and steal a pair of socks, I probably will be in court the following Tuesday. I have the newspapers in front of me and can give the witnesses a sample of the headlines about the banks: “Tracker Scandal Litany of Shame”, and “Why Nobody Will Stand Up to Our Bullying Banks”. That is what the people think about this.

What steps can the Central Bank or the ECB take to ensure that some form of restriction or sanction is put on the banks for failing to do things honestly? Has Mr. Sibley looked at it from that perspective? The banks were dishonest in what they did. They stole money from people which they have not repaid. Whether they did it before or after 2013, they still stole the money and have not given it back. I would not consider it to be a moral or legal issue. I would consider that they did wrong and should give it back. Is that the way the Central Bank would look at it?

Professor Philip Lane: We are acting here at several levels. The first level is to accelerate and do as much as we can so that payments are made to those affected. Equally, however, there is the Chairman’s question about the implication for the banks over and beyond making payments to those affected. If they have violated our codes, they will be subject to enforcement actions. That already happened pre-examination with PTSB, we already announced the settlement, the enforcement, for Springboard, which is now owned by PTSB, and that is the administrative sanction in terms of violations of our codes. If we see evidence that we think should be passed on to the Garda in respect of fraud and theft, it is for the Garda to make that decision.

Chairman: Is that not what the banks did? They took people’s money fraudulently. The banks made people pay back money to them for which they were not entitled to ask. On request, they did not return that money. After a number of years, we could describe it as the bank stealing the money from the people and not returning it. Is that not the basic position? It is not a question of legislation, morals or anything else. It is a question of grand theft from thousands of people and the money remains in the banks. Let us just look at the human side of that for one second. Professor Lane spoke earlier about how the banks behave and about what they are doing. As for the woman who wrote to the committee who had three children, two of whom have Asperger’s; the woman who wrote that a whole ten years were gone from her life; the man who had a stroke; the houses that were repossessed; and the 79 buy-to-let properties which were lost, how can Professor Lane stand over any of it? Why can he not tell the banks involved in those individual cases, for example, that they stole these people’s money and demand they are put back on the correct payments, whether the cases date from 2013 or before?

Professor Philip Lane: This is a scandal.

Chairman: We do not need Professor Lane to tell us that.

Professor Philip Lane: I know but-----

Chairman: It is how we are dealing with the scandal that worries me.

Professor Philip Lane: We are doing what we can. We think we are quite successful, and

will be successful, in delivering redress and compensation for many thousands of people. It will always be like this. We had it before with the banking crisis. The natural interpretation of the phrases the Chairman has used is a universal issue-----

Chairman: That does not make it right.

Professor Philip Lane: -----which will ultimately require a legal process.

Chairman: No, it does not. Professor Lane has to understand this. I am tired of listening to the Central Bank telling us all of these things. I understand them. I understand Ms Rowland's difficulties in respect of the law and everything else. The fact of the matter, however, is that when one goes back to it, these banks did wrong by their customers, before 2013 and after. They went to the courts and failed. Mr. Kissane told the committee at one stage that he had won court cases and the banks still fought similar cases, rather than conceding. Forgetting all the talk about the legal framework and everything else, although that is required, people are asking what are the banks' responses, on a human level, to the theft they have conducted and to what they have done. Professor Lane has said that he has challenged them. Does he still have to challenge them? Are they still absolutely reluctant to deal with what they have done to a considerable number of their customers?

Professor Philip Lane: I will emphasise again that we have gone over and beyond. We agree with the Chairman that referring only to the legal framework is not sufficient. That is why we have gone beyond that framework in respect of our regulatory powers to push the banks into developing redress and compensation schemes, which will mean that more people will receive redress and compensation than would have been possible had we just left it to the ombudsman and the courts system to deal with this matter. We fully agree that it is not sufficient just to resort to legalistic interpretations. The motivation is strong within the Central Bank to ensure that our processes are not just *pro forma*. We are pushing back in order to ensure that as many people as possible receive reasonable redress and compensation payments.

It is very important to recognise that there is variation. Some banks have proactively signed up and conducted themselves in a reasonable manner. That is seen in the fact that thousands of cases have already been concluded in terms of redress and compensation. Other banks were slower but we have now pushed them into a situation in which we believe more redress and compensation schemes will be initiated very soon. We have also signalled that various cohorts of populations remain in dispute. It is not a one-size-fits-all response. We believe a lot of progress was made this year to get us to our current position. We should not have been required to push the banks to get this far. I do not want the message to be that not much has happened in respect of this situation. A lot has happened. There has been a lot of progress and much of it will crystallise into more payments to more people in the coming months. There remain outstanding issues.

Chairman: If I was a customer I would like to hear that, but do I believe it? No, I do not. I will tell Professor Lane why. Some of the banks which have appeared before the committee told us that customers would not be paid until next year, perhaps even late next year. One bank brazenly told us that it would not meet the deadlines. Its representatives sat there and told us that the bank would not meet the deadline and it would not give us the figures we asked for. They told us that, in fact, the bank would not tell us anything until this thing was over. That is the kind of respect it showed for the Irish Parliament. That bank is licensed in this country. I do not have great faith in it.

The other issue is that in 2016, the Central Bank spend €7.3 million on legal fees. I wonder how much will be spent in 2017. I am not critical of the Central Bank spending the money - it has to - my criticism is that it has to. My criticism is that the banks are forcing the Central Bank and the Irish taxpayer to pay even more money in the course of 2017 to try to resolve this issue. It will cost even more money. In terms of professionals, did Professor Lane ever ask the auditors or the legal advisers in those banks about this particular tracker issue? Did they know about it? Surely if they audited the books in the way in which they should, they would have known about it. Is it not amazing that every single bank had the same problem at the same time? They all had tracker issues. It has happened to them all and they are all fighting it in the same way. Can we not call it what it is? It is a cartel. It was an arrangement. They were going to dump on the customers and remove their rights to trackers. That is what they did right across the board.

Professor Philip Lane: We remain open-minded and if we saw any evidence of that type of cartel behaviour we would act on it. It does not require cartel behaviour, however. If they all have the same common incentives and common culture, they will behave in a similar fashion. I do not disagree, that is possible. We have not seen it but we remain-----

Chairman: Is it not obvious, however, that something was going on here when they all suddenly arrived at this point in respect of their trackers? I mean-----

Professor Philip Lane: To the extent that they were facing the same-----

Chairman: These are the questions which people in the street ask me.

Professor Philip Lane: I know, but as I have said, if there is a collective crisis and all the banks face the same funding problems and the same set of issues in respect of the expense of trackers, the fact that they may have behaved in a similar fashion might just be driven by the fact that they were facing the same situation.

Chairman: That does not justify it.

Professor Philip Lane: It absolutely does not justify it.

Chairman: Therefore, it was a collective theft from the Irish people by the banks. It was a fraud. It was all sorts of thing which can be described within the law, yet they seem to get away with it.

Professor Philip Lane: First, we are running this examination to stop the harm and get redress and compensation to those affected as quickly as possible. Second, for violations of our codes the course of action for us is enforcement. We have already concluded one such action. Third, as Ms Rowland said, the evidence threshold we need to reach to pass information to An Garda Síochána is not high. Were we to see evidence on which An Garda Síochána would act in respect of theft and fraud, it would be passed along. As members will know, there will be different verdicts when it comes to judging what is criminal and what is civil.

Chairman: Did the Central Bank talk to the auditors?

Professor Philip Lane: I do not have an instant answer to that and will get back to the Chairman.

Chairman: Do the witnesses know if the Central Bank had spoken to the auditors of these banks or to professionals? This is just to see if these highly educated, well-paid people came across evidence at an early stage to make them think there was something wrong and they ought

to report it. Do the witnesses feel this should have been reported?

Professor Philip Lane: I will ask Mr. Ed Sibley to speak on the relationship between auditors and regulators.

Mr. Ed Sibley: Before answering that, there is no question as to our concern for the human cost in this case. We have deep concern around it which is why we are taking the action we are.

On the specific question around auditors, the external auditors of the banks are responsible for signing off on accounts, that is, that they represent a true and fair view of the position of the bank. They have pretty high materiality thresholds.

Chairman: These are the same auditors who were there when the banks went bust.

Mr. Ed Sibley: That is a fair criticism. I would not expect them to look at matters from the perspective of conduct other than where they are potentially material and in fairness, they are material now. They will make sure that the banks are provisioning in an appropriate way to ensure that the costs are-----

Chairman: Who audits the governance compliance within the banks? Who would the Central Bank expect to have seen this issue? Who would it have expected to have reported on the issue?

Mr. Ed Sibley: The auditors are responsible for looking at the overall control framework within the bank. If there were control failings within the bank, one would expect the auditors to find them. To the best of my knowledge, there were no audit findings. Certainly, none have been reported to me.

Chairman: Did the Central Bank ask them? Does it have any formal reports from the banks to say that it is short of governance here?

Mr. Ed Sibley: For the very large banks, we meet the external auditors annually at least, sometimes twice a year. To the best of my knowledge, no issue was raised to us by the auditors.

Chairman: Did the Central Bank raise it with the auditors? Did they tick any box? It is amazing; if a customer ticks the wrong box on this tracker issue, he or she is penalised - we heard the case of one woman who ticked the wrong box - but if the bank ticks the wrong box, that seems to be okay. Did the auditors report anything to the Central Bank about governance or did the Central Bank ask them anything on the matter?

Mr. Ed Sibley: Yes, we would have conversations about governance with the auditors. Specifically, I am not aware of tracker mortgages being raised during these conversations but we can follow that up.

Professor Philip Lane: This remains part of what we are looking at. We are looking at the minutes of the risk committee, the board committees and so on. We are looking and will continue to look to see how this came about. I guess the auditors, in terms of their governance work, also would be examining these kinds of minutes. It is a reasonable line of inquiry for us to continue to examine.

Chairman: Has the Central Bank any message for the Taoiseach and the Minister for Finance before they meet the banks? Is there anything it would like to say to them with regard to legislation for the future or for the present that the Central Bank has come across and that might

be short in respect of giving the Central Bank some muscle to deal with these people?

Professor Philip Lane: We think the post-2013 legislative framework is sufficient for now. It will not deal with the retrospective issue.

Chairman: We understand that.

Professor Philip Lane: For now, the Central Bank thinks that what it has at present is sufficient.

Chairman: What action can be taken by the legislators here or by the Central Bank to bring this matter to an early conclusion? What can we do?

Professor Philip Lane: It has been helpful that this committee has been holding the banks to direct account. As we have repeatedly said, the Central Bank operates on a highly intensive and confidential basis with the banks. The fact that this committee and the Minister have a public mechanism to engage with the banks will assist the banks in working out a conclusion as soon as possible, if they are genuinely minded to serve the interests of their customers. That is the message the Central Bank is sending them in our engagement but this is reinforced in meetings with the Minister and the work of this committee is helpful.

Chairman: We will return to this. We might take a break.

Deputy Michael McGrath: There is a vote in the Dáil.

Chairman: As there is a vote, we will suspend the meeting.

Sitting suspended at 12.55 p.m. and resumed at 2.40 p.m.

Chairman: I apologise to the witnesses for the delay. However, with new politics and the voting block, such delays cannot be avoided. I invite Deputy Pearse Doherty to begin.

Deputy Pearse Doherty: We have been using the words “fraud” and “theft” for a number of years to describe the scandal with tracker mortgages. Will Professor Lane outline the amount of customers’ money that remains in the banks’ accounts according to the Central Bank? My estimate is that €300 million of customers’ money, which should be returned to them, remains with the banks.

Professor Philip Lane: The Deputy will have seen in our report the average payout for the approximately 3,000 people who have received payouts to date. If one extrapolates the figures from that to the larger number, it is going in the direction the Deputy has indicated. All the redress and compensation schemes have not been processed yet so let us see the final number. However, from what we know now, the indications from the extrapolation are consistent with what the Deputy is saying.

Deputy Pearse Doherty: We refer to “redress” but that is just a fancy word to cover what is customers’ money. Bank customers and many members of the public are irritated because approximately €300 million of their money is resting in the banks’ accounts when they are experiencing financial distress as a result of the banks not returning their money to them.

I will now focus on the compensation scheme. When the representatives of the Central Bank appeared before the committee last year, I made the point that the schemes the bank had to sign off on were inadequate. I welcome the fact that the bank has challenged two of the

schemes. When a person has been overcharged by €30,000 on a tracker mortgage, that money is stolen from him or her. I know some individuals in this position. I have sat in their houses and listened to their concerns. They have cried in front of me when they told how their children's childhoods were taken from them and how matters were made worse when they did not have the money to cover medical procedures. Some people blame the financial distress this caused them for the breakdown of their marriages and no longer having access to their children on a 24-7 basis. A person who has had €30,000 stolen from him or her by a bank is being offered €3,000 compensation, which amounts to €1 for every day he or she did not have access to his or her money. In Professor Lane's view is that level of compensation adequate?

Professor Philip Lane: The compensation process works within a framework. Compensation is proportionate and we would expect higher rates for the more severe scenarios. The backup is that one can appeal the level of compensation within the framework. The circumstances of every individual are different. The lender is supposed to take into account the circumstances of the individual when making the initial offer. If, however, the initial offer is not enough, then the independent appeals process provides a mechanism to challenge it. If the outcome of the independent appeals process is not to the satisfaction of the customer, then the ombudsman stands ready to take his case. Finally, there are the courts. In cases where the losses have been really severe, I would expect that these other mechanisms to kick in when the initial offer of the bank is not enough. I will ask my colleague Ms Rowland to elaborate.

Deputy Pearse Doherty: Representatives from a number of banks have appeared before the committee and informed us that compensation is, on average, 10%. In other banks, the average compensation is 12%. I would like to understand how our guests think that is an adequate level of compensation.

Professor Philip Lane: The intention is that there is a differentiation, so the average figure does not indicate a universal approach. There is differentiation within the schemes. Ms Rowland will elaborate on that.

Ms Derville Rowland: I fully accept that, long after the event, mere money cannot repair the harm done to people. The framework that was put in place had a set of principles or high levels that the lenders were required to adhere to or to consider. The compensation scheme's amounts and proposals are approved by the banks and the lenders and it is they who put them forward. They were required to look at the groups of people affected from the viewpoint of different experiences that they had, from the gravest which is the loss of home ownership and loss of property and all the horror that brings. Certain proposals are being made by lenders. Another variant is that the proposals are not uniform, because it is the boards of the lenders that are approving the offers. I am sure the Deputy heard different information about various categories from the lenders that appeared before the committee so he knows very well that they vary. That is at the most severe. Taking legal proceedings has an impact. One makes choices on whether to enter into legal proceedings on the overpayment. One may decide not to take legal proceeding because of the money. Responsibility for signing off on the schemes rests with the lenders.

Deputy Pearse Doherty: The Central Bank had a role in this process as well.

Ms Derville Rowland: I will come to that. Some of the discussion we have had today is about the frustration with the progress and why we are not further down the line. This is because the Central Bank team did an enormous amount of work in challenging the banks in respect of all sorts of dimensions of their proposals. Proposals came to the Central Bank to the effect that there was no need at all for an appeals mechanism because whatever compensation

the banks were putting forward was enough. The team successfully challenged that. Then more of the proposals were, “Yes, that person is in scope and they are impacted but nothing really bad happened so there is no compensation at all”. The team successfully challenged that. Over time, the team successfully took the time, which was a good investment of their energy, to challenge those proposals to bring them up from where they were.

Deputy Pearse Doherty: I am focused on the ones that are happening now. We know three banks are issuing redress payments.

Ms Derville Rowland: Yes, three schemes.

Deputy Pearse Doherty: The Central Bank has signed off on them and, on average, customers are getting 10% of the money that was stolen from them in compensation.

Ms Derville Rowland: It is important to emphasise that three schemes are up and running but the lenders sign off on these schemes. The Central Bank put the framework in place, challenges and pushes, and does not allow the worst excesses of unacceptable, but the lender’s board decides the scheme. Given that we knew this was the scenario that was being built, that is the reason none of them is allowed to even start without the appeals mechanism. People might be forgiven for saying: “Why bother with that appeal part of it at all because it does not deliver a monetary sum?” However, these are supposed to be starting level amounts and some of these were proposed to us as closed amounts that would not be varied or improved. We see the appeals process as a way by which a lot of more detail about personal circumstances, if needed, can be brought forward. One of the benefits of the scheme is that people get the payment upfront so they have it and there is no disincentive-----

Deputy Pearse Doherty: Some of my colleagues can pick up on how the internal appeals process is simply not working. With regard to the hundreds of millions of euro that has been wrongly taken from customer accounts by the banks, does the Central Bank believe that was done unlawfully?

Professor Philip Lane: This still comes back to the enforcement issue. The strategy has been to try to get payments to those affected as quickly as possible, but that will be backed by the enforcement-type investigations assessing what has happened here and what codes were violated. There are issues to do with our codes and the sanctions that can be imposed. If we see evidence - again there is a low threshold of evidence - that triggers by a report by us to the Garda, we will do that. Those are the different steps in this process but there is not a blanket answer. I emphasise, coming back to why this examination is taking place, we are going beyond the legal issues.

Deputy Pearse Doherty: We understand the history and why it is taking place. Is the Central Bank two years into this examination process of the view that the money taken from customer accounts, amounting to almost €500 million, was taken unlawfully or not?

Professor Philip Lane: There is not going to be a universal answer to that because, in some cases, there is a clear and absolute breach of contract and, in others, it is about ambiguity. The lawyers on their side may argue, “We think this is legal”, but we are saying that is an arguable issue and to do what is right on behalf of the consumer is to put that to one side and accept that a reasonable person would say a harm was done and make payments on that basis. It is, therefore, not only about the legal issues.

Deputy Pearse Doherty: Let me rephrase the question. Does the Central Bank believe

that any of the €500 million that was taken from customer accounts wrongly by the financial institutions was taken unlawfully?

Ms Derville Rowland: We have two enforcement investigations open, two more are in train and more will follow. Those investigations pursue within the responsibility areas of the Central Bank breach of regulatory requirements-----

Deputy Pearse Doherty: Is that a “Yes”?

Ms Derville Rowland: -----and when those cases come to a conclusion, the decision about whether it was wrong or right will be taken. If we were to answer the Deputy now, we would fall into the difficulty of being seen to prejudge those cases.

Deputy Pearse Doherty: Enforcement action has been taken in respect of two institutions. Was the money taken unlawfully in those cases?

Ms Derville Rowland: They are open.

Deputy Pearse Doherty: Permanent TSB and Springboard.

Ms Derville Rowland: Springboard is concluded.

Deputy Pearse Doherty: Was that money taken-----

Ms Derville Rowland: It was taken in breach of regulatory requirements.

Deputy Pearse Doherty: Was that unlawful?

Ms Derville Rowland: That broke the regulatory-legal financial services framework.

Deputy Pearse Doherty: Was it against the law?

Ms Derville Rowland: It was against the financial services regulation, yes.

Deputy Pearse Doherty: The Central Bank has said it is trying to use moral suasion. If one closed one’s eyes, one could think that it was Mr. Patrick Neary that was sitting before us. The response is that this is about moral suasion, the bank does not have the powers and all the rest. Was the phase 2 deadline, which was September 2017, moved or extended? Was there an earlier deadline for the completion of phase 2, which was the examination of all the tracker mortgages and the identification of those that were in scope and of the people from whose accounts money was wrongly taken by the banks?

Ms Derville Rowland: I am sorry. I had to check because I took over this role on 1 September. I appeared before the committee during the previous hearing. As far as I know, back then and now, we say that this was, is and has been the deadline.

Deputy Pearse Doherty: I refer to the framework for carrying out the tracker mortgage examination which was published in December 2015. It is available on the bank’s website. It talks about the framework, examination, what is in scope, the regulatory framework, segmentation, influencing factors, transparency considerations, redress, assurance and then reporting timelines. Paragraph 8.3 states:

A final report, following completion of Phase 2 of the Examination, to be submitted to the Central Bank by no later than close of business on 30 September 2016, along with assur-

ance and sign off from the external independent party with regard to all aspects of the work carried out by the lender during Phase 2 of the Examination.

Ms Derville Rowland: I am sorry; I would have to ask my team about that.

Deputy Pearse Doherty: Does Ms Rowland have the document?

Ms Derville Rowland: I have the document but I do not have the information to answer the Deputy's question immediately to hand.

Chairman: Can Ms Rowland consult?

Ms Derville Rowland: Yes, if the Chairman would allow me a moment.

When this was published in 2015, the indicative date the team thought phase 2 could be achieved by was 30 September 2016. They tell me that when they moved into looking at the enormity of the scale and size of their work, that changed and the date of September 2017 is and has been the date since the end of 2016.

Professor Philip Lane: A number of institutions reported well before then and we have seen their intent in some cases. There was no barrier to the banks moving forward with redress and compensation as soon as they could. This goes back to differentiation. Some banks moved a lot earlier to implement those schemes. The 30 September 2017 deadline was the universal hard deadline but the banks could have moved a lot earlier and, in many cases, we had to push back in terms of what they were trying to submit. It is not the case that they were all waiting until 30 September 2017 to issue these reports but the hard enforcement deadline was the end of September.

Deputy Pearse Doherty: Let us examine this in some detail. First, eight of the financial institutions had not issued a penny in redress by the deadline and, therefore, it is not the case that they were all waiting. Even though they were entitled to and the redress element was supposed to run concurrently, they have simply not done so. Instead, a year into the examination, the Central Bank extended the deadline by 12 months. When exactly was it extended?

Ms Derville Rowland: I am told the deadline was moved at the end of 2016, when the enormity of the amount of work that had to be done became clear.

Deputy Pearse Doherty: After the original deadline of 30 September 2016 was not met by the majority of banks, it was extended by another year. One of the few powers the bank has, and is willing to use, is to direct banks to issue reports. In December 2016, the Central Bank did this. It set clear timeframes for phases 1 and 2 but despite all we have heard to the effect that the Central Bank was pushing the banks, it gave them another 12 months to come up with a figure of how many customers they had taken money from. That is simply unacceptable. I am sure the individuals before us are upstanding people and are trying to do the best for the country and for the individuals affected but I know some of these people personally and I know their stories. I do not understand why they allowed the banks another 12 months and it flies in the face of the witnesses' claims that they are trying to push the banks into action. The banks have strung their customers out and three quarters of those identified have not yet had a penny in redress.

Professor Philip Lane: One can either have an early deadline and a bad job or look at the practicalities of what can be achieved while delivering a comprehensive outcome, which is why the September 2017 deadline was given. Various banks moved ahead of that but various others

resisted the scale of the cohorts to be included, as well as the nature of redress and compensation. There was a long and continual engagement with the banks on the final deadline but a lot was also done before that. It was not that nothing happened before 30 September 2017. Some banks moved as quickly as possible and others less so.

Deputy Pearse Doherty: The banks are taking a hand to the Central Bank. In 2010, the Central Bank wrote to the financial institutions on the tracker mortgage issue. It stated that it would take administration sanctions but, seven years on, we still do not know how many people are affected. We know that, seven years after the Central Bank issued the letter, at least 13,000 customers have been identified. The banks are taking a hand to the Central Bank because the latter is a dog that is refusing to bark, never mind bite.

Professor Philip Lane: There was a lot of activity after 2010 and there were interventions in the 7,100 cases to which we referred earlier. There have been changes to the codes to reinforce the importance of handling these mortgages correctly and these may have avoided even more cases during the period in question. It is disappointing that, despite these interventions, this went on in such a comprehensive way. We are now trying to push the banks to offer redress and compensation as quickly and as comprehensively as they can and we are proactively trying to hold the banks to their promises in this regard. Some 13,000 cases have been accepted. In 3,000 cases, there has been an initial payment and we think a lot has been done. If we could have done more at an earlier point, it would have been better, but a lot was done in the initial phase. In 2014, the enforcement against Springboard happened and this examination was unprecedented in the way we pushed the banks to do the right thing within what we could legally do.

We are doing a lot to sort out the problem. We believe there are banks which should have moved more quickly. Some banks did comply and engaged with the process fully from the word “Go” but we want to get to the end of the process now. We want to show the degree to which this examination process will yield good results for those who have been affected while allowing people to turn to the traditional mechanisms to get satisfaction if necessary. This has been effective to a degree and there is more to come. It is important to reassure those affected that a lot will be delivered by this examination and saying we have been ineffective does not send out the right message. We are pushing the banks quite a lot. A lot will be achieved that would not have been achieved if we had not intervened. We are working on behalf of those affected and this is the most effective way to deal with it.

Ms Derville Rowland: I have been pointed in the direction of some information about the deadline that I did not have to hand when the question was asked. A fairly detailed report was published by the Central Bank in March this year and the answer to the issue of the deadline lies on pages 6 and 12 of that report. Phase 2 of the examination is said to be ongoing, and in regard to meeting the December 2016 deadline, on page 6 it states that nine lenders had submitted the phase 2 reports with the remainder being engaged in phase 2 reviews. It goes on to explain the use of powers and on page 12 it explains that the timelines have been set but continue to be monitored on a lender-by-lender basis because they have to take account of the size of the relevant lender’s loan book, the scale and complexity of issues and the complexities associated with a thorough review being completed. The original deadline was met by nine institutions but the quality of the work being done was an issue and this explains the extension.

Deputy Pearse Doherty: I do not have time to tease that out. Had the nine institutions submitted their final report by the original date? Ms Rowland said that no repossessions were allowed to take place in the examination period. I had a lengthy conversation with an individual

last night who lost his property on 16 January 2016, at the start of this examination and when the Central Bank told the banks to examine their tracker mortgage issues. He is one of the 100 or so people who lost their property and the bank has now put its hands up and admitted it was wrong. He should have been on a tracker all the time, but the property is lying empty. There is no electricity, gas or heating and what the banks have done is ridiculous. Ms Rowland tells us that nobody should have lost their property during this process.

Ms Derville Rowland: That is correct and we take the information supplied by the Deputy very seriously. I would appreciate it if he would share it with us bilaterally so that we can look into it. When a live issue is unfolding as this did, one has to stop any further harm being done to people.

Deputy Pearse Doherty: The Central Bank is attempting to convince the committee and the public that it is doing everything in its power. Maybe the expectations we have of the Central Bank are unrealistic but if it needs additional powers it would be pushing at an open door and we would provide them. We would welcome any request to this committee in that regard.

I cannot understand this for the life of me. This was the biggest financial swindle in the history of the State to the value of €500 million. People have taken their own lives as a result of it and many others have contemplated it. There have been mental health breakdowns, marital breakdowns, health implications and all the stolen years from so many people. It is not just the account holders but their families and how the situation affected their extended family. After all of this is done and dusted, nobody will lose their job and nobody will go to prison. There is no accountability whatsoever. What we hear from the Central Bank is that letters were sent in 2010 and an examination was set up two years ago. There were only two on-site inspections although 15 institutions are involved. What the public would expect is that the Central Bank would be in there going through not just the assurance by the banks that they have identified the right tracker mortgage victims, but who was responsible. Is it correct that the only on-site inspections in terms of institutions are those that have already gone through enforcement proceedings?

Ms Derville Rowland: I am sorry, but I might raise two things. The first is that we welcome the reference to additional powers. To be clear, we will consider that very carefully and keep that under review. We will take that very seriously and look at the powers that we have, the way they can be used and see if there is something that we should ask for or could consider that would be in addition to the increase in powers that the Central Bank received in 2013. That is very important to say and we welcome it.

When we were discussing on-site scrutiny of documents and paper assurance, that is entirely and only in the confines of this examination. I left outside of that discussion any talk of what goes on inside enforcement investigations because we normally do not talk about those until they come through to conclusion. That does not talk about what happens in enforcement. Enforcement involves interviewing individuals in the institutions, acquiring the information and looking at the minutes, so it does not cover what is involved in the forensic enforcement approach, which is running separate to the examination. There is a twin-track approach.

Deputy Pearse Doherty: So the Central Bank is doing the assurance part of the process where there are two on-site inspections----

Ms Derville Rowland: We are here in the main talking about the methodology and the approach which focuses on getting redress and compensation to customers, if I could call it the

supervisory approach. However, separate to that, there are two enforcement investigations open and under way, the names of which are in the public domain. There are two more that are in train and more are going to follow. They follow their own particular methodology which involves document acquisition and witness interview in the way that an investigation requires.

Deputy Pearse Doherty: In how many of the 15 institutions have we seen the Central Bank go in? A total of 26 individuals being assigned to this task is not enough. I know the Central Bank is under-resourced. More people are working in my corner shop than are working on this €500 million fraud. I feel really sorry for the individuals who have this huge burden of expectation that the Irish public has that those 26 staff will deliver this. How many financial institutions has the Central Bank gone into for the purpose of enforcement where it has gone in and looked at the minutes, seized documents, tried to find out who was responsible, whether a cartel was in operation, if directors made a decision, if there were internal whistleblowers and if there were issues of dissent within the banks?

Chairman: I will take that as Deputy Doherty's first question.

Ms Derville Rowland: I have told Deputy Doherty there are two investigations open, that have been named, two more are under way and more will follow. The answer to the question is that there are four enforcement investigations at various stages. I do not want to discuss the details of the enforcement investigations until they come to fruition, which they will.

Professor Philip Lane: Let me just say that this twin-track approach is important. In these reports we are focusing in on how we are trying to deliver redress and compensation to those affected because all of those individual families require and deserve that as soon as possible. Our normal way to make sure our regulations are upheld and that violations are sanctioned is through enforcement and that is ongoing. The reality of the enforcement process is that it takes a long time and it will be ongoing.

Ms Derville Rowland: I wish to briefly clarify from the point of view of the supervisory work, two of those on-site assurance inspections are complete but there are nine ongoing. That is 11 in total.

Deputy Michael McGrath: I will finish up on that point. Two enforcement investigations are ongoing and they were named in the update – Permanent TSB and Ulster Bank. Two more investigations are in train, according to the term used. In relation to enforcement investigations, is it the case that there are a number of on-site visits and investigations in general?

Ms Derville Rowland: The enforcement work scrutinises very closely all the kinds of things members were talking about earlier, namely, risk committee minutes, board minutes and a lot of the paper. It does so through the use of compulsory powers and it supplements that with face-to-face interviews with people, either as witnesses, who will have information about that or subjects of the investigation as well. Some of that is done on-site in the Central Bank where we have facilities for tape-recording of interviews and where one is required to attend for formal interview. If necessary, the officers would go to the institution but quite often the paper or the data are acquired from the computer systems.

Deputy Michael McGrath: To clarify, what was the reference to nine inspections? We have two names.

Ms Derville Rowland: I am sorry. I will clarify. In the course of the on-site assurance, in the examination there was talk of there just being two of those investigations but two are com-

plete and nine more are under way, so there are 11 of those.

Deputy Michael McGrath: What do they involve?

Ms Derville Rowland: They involve the use of authorised officer powers, going in checking and looking at the documents.

Deputy Michael McGrath: So it would be wrong to say taking this in the round that the Central Bank has gone into two banks.

Ms Derville Rowland: That is correct. We have completed going into two banks and we are looking at nine others in terms of assurance and that work has already started.

Deputy Michael McGrath: That is the 11.

Ms Derville Rowland: Yes.

Deputy Michael McGrath: It is important to be clear. On the question of powers, we have gone through the 2013 issue. Aside from the 2013 Act is it the case that the Central Bank had the powers and retained the powers to do an enforcement investigation outside of the 2013 Act? Is it the case that the administrative sanctions procedures are available outside the 2013 Act so the bank has the power to go into banks, do investigations outside of that Act but what it did not have was the power to impose redress?

Ms Derville Rowland: That is the case. In 2004, the Central Bank was given enforcement powers for the first time. It is called the administrative sanctions procedure. Members will recognise it from television and living in the world. It is a normal, legal-based investigation where one acquires all the relevant documentation so one can prove the underlying breaches and then there is a very comprehensive system for hearings to determine in the usual way whether those facts are made out and if a breach can be proved and if one moves into that stage then there is a possibility of imposing sanctions, both with respect to regulated entities, the lenders, and with respect to persons concerned in the management of those regulated entities. Since the crisis in 2010, the Central Bank has done some considerable investigations of scale and size and for the first time into INBS and Quinn and we have been involved in High Court litigation on five occasions to secure the use of those and the constitutionality of those powers. To date, we have settled or concluded more than 100 cases, bringing in more than €60 million in fines. We have disqualified individuals and fitness and probity powers have come on stream also. There was a very big increase in enforcement powers, and fitness and probity powers, before the 2013 Act.

Deputy Michael McGrath: Do section 22 requests under the 2013 Act, whereby the Central Bank can require documents and information from regulated entities, apply even in respect of matters that were pre-2013?

Ms Derville Rowland: Yes.

Deputy Michael McGrath: The Central Bank was given that power in the 2013 Act, but can the Central Bank invoke it in respect of documentation that relates to a tracker issue in 2009 or 2010?

Ms Derville Rowland: Yes. The issue of retrospectivity applies to certain types of powers and not others.

Deputy Michael McGrath: Yes.

Ms Derville Rowland: We have information-gathering powers and we have extensive authorised officer powers under the same Act, which are also used. The assurance work is being done under the authorised officer powers, which are very comprehensive. Because the Central Bank has the benefit of a big increase in the powers available to it, we have moved to use them. We also now have an enforcement-order power, that we used for the first time a number of years ago in the High Court. We have lots of new powers-----

Deputy Michael McGrath: That is fine. So the answer is “yes”.

Ms Derville Rowland: -----and they work for us.

Deputy Michael McGrath: As part of this examination, has any of the institutions threatened legal action or threatened to go to court on the specific powers, or the execution of the powers, or the Central Bank’s approach to the issue?

Ms Derville Rowland: I cannot talk about the details of-----

Deputy Michael McGrath: I am not asking Ms Rowland to name anyone.

Ms Derville Rowland: -----the cover of these. I am told the answer is not formally.

Deputy Michael McGrath: Does that mean they did informally? Is that a “yes”?

Ms Derville Rowland: There certainly was discussion about the powers.

Deputy Michael McGrath: I take that to mean it was certainly raised or threatened. What is the big stick the Central Bank has ultimately in terms of sanctions against institutions? Will Ms Rowland put them on the record in terms of fines? I know some are turnover based and some are nominal. What can the Central Bank do ultimately?

Ms Derville Rowland: The fines have changed over time and it depends. This goes back to retrospectivity. The fines are now, I believe, 10% of turnover at its highest or €10 million, whichever is higher, but that came into effect when the law was changed. I cannot remember the exact year the change came in. Prior to that, it was €5 million. There are also disqualifications and other powers. There is another perspective to this, which is a very powerful tool, as the Central Bank absolutely believes transparency and publication is more important, or just as important. Not just in Ireland but throughout the world, if one speaks to other regulators or has discussions in other jurisdictions, it is often the case that fines are one dimension to measure what went wrong but reputation is very important. Transparently publicising in as much detail as possible the outcome of enforcement cases is a very important tool in achieving regulatory compliance within the institution that was the subject of the case itself. It sends a very important message across all of the institutions, not just in that area but in all of the other areas of the markets. The Central Bank of Ireland has committed completely to that perspective in its enforcement approach, in so far as we are able to within the confines of the law. After cases are concluded one will see all of the information we are able to put into the public domain about those cases. I believe there was a discussion at one of these hearings about one of those very cases. We put this into the public domain and it is a very important tool.

Deputy Michael McGrath: Just to be clear, does the maximum penalty of up to 10% of annual turnover or a fine of €10 million apply going back to the tracker issue, which may, in the case of an institution, have come to a head in 2009, 2010 or 2011?

Ms Derville Rowland: It may. There would be an apportionment of timelines with regard to what penalties were in place at the time breaches occurred, and they are the ones that will apply with respect to the timeline.

Deputy Michael McGrath: On the question of the populations of customers whom the Central Bank believes are impacted but certain banks have so far said they are not impacted, Ms Rowland said the Central Bank can require the bank to write to those customers alerting them to the fact the bank has come to the conclusion they are not impacted and that they have the right to go to the ombudsman and court. Is the Central Bank able to convey to those people its view that they have been impacted? Those customers receive a letter from the bank stating it has looked at their cases and decided they are not impacted but that they can go to the ombudsman, and meanwhile the Central Bank believes the people have been impacted but it cannot tell them.

Ms Derville Rowland: We are fully committed to using all the available powers to best effect we can and we will continue to do so. As we move through this process and come up against issues, we will look at them with our powers and seek to solve them. Requiring institutions to write to individuals makes sure they are on specific notice of their situation, and that is very important. The Deputy is referring to the big information asymmetry between individuals and lenders and the Central Bank. We are certainly going to look at doing the most we can to assist with this to the fullest extent possible. We have already met the FSO and opened a dialogue on exactly this, and we will look to be of maximum assistance.

Deputy Michael McGrath: Taking the particular issue I have raised, at a minimum the Central Bank would have to come out and have some form of public information or awareness to say a certain category of customer may be informed by the bank it has not been impacted but the Central Bank would advise those customers to pursue it and challenge it. We cannot have a situation where a bank is writing to customers telling them they are not impacted, but the regulator knows they have been impacted and the customers do not know this. Ms Rowland has to see this point and I ask her to consider it.

Ms Derville Rowland: I hear what the Deputy is saying, and we will be open to considering all that we can do. We will consider it.

Deputy Michael McGrath: I ask the Chairman if I may briefly raise an issue that is separate to the tracker issue.

Chairman: Yes.

Deputy Michael McGrath: It is in relation to mortgage pricing. What are the views of the Central Bank on prohibiting any discrimination by lenders between new and existing customers? The Governor may say it does not apply anymore and, to be fair to most lenders it does not, but there are cases where different treatment still occurs. If we take, for example, Permanent TSB's existing customers, when it comes to a fixed-rate offering the lowest offer they will receive is 4.2%, irrespective of their loan-to-value ratio. New customers can get a rate as low as 3.2%. This is one example of clear discrimination between new and existing customers.

The CCPC did a paper on mortgage options and looked at the issue of cashback offers in the mortgage market. It made the point these offers and their marketing are potentially exploitative of consumer biases and may result in consumers making decisions for short-term gains that over the medium or long term are not in their best interests. It has recommended that a joint working group examine the issue further. The focus groups that have been done have found

that many consumers are confused and unable to really assess what is in their best long-term interests. What is the Central Bank's view of prohibiting these cashback offers?

Professor Philip Lane: On discrimination, ultimately if the Oireachtas wanted to write down laws it is definitely within what it could do. It is a feature of many markets and not just financial markets that this type of differentiation takes place. As long as we have a commercial banking system, if some lenders chose to make that differentiation, short of writing the law the Deputy is suggesting what is open to those existing customers comes back to the general switching debate. We exhort everyone who has a mortgage on a regular and repeated basis to take a look at and ask what else is out there. We currently have our consultation document on mortgage switching. We advocate the switching process. Already there are lots of gains to be had. The suggestions we have in the consultation document will make it even better. We advocate greater ability to switch. That is absolutely the case.

Deputy Michael McGrath: There are customers who cannot switch and they are trapped. They are looking at a new customer coming in to the same bank as them in the same circumstances on a better rate. That is unfair. From a consumer protection point of view, it cannot be stood over. I ask the Governor's view on that.

Professor Philip Lane: From the perspective of those customers who are in that situation, the perception of unfairness is there but in the end, this is a commercial market. It is a commercial mortgage market where we advocate, through consumer protection, having as much transparency as possible, as much information as possible, and extra protections for those in arrears. One now sees in the mortgage market all sorts of different offers which, I do not disagree, are hard to process. How does one compare all of these different offers? There is definitely a challenge in that regard but that is the nature of a commercial mortgage market.

On the cash back, no doubt there is a potential risk to some consumers. For others, there is a value. People's lives are different, for instance, there is the value of saying that one accepts one will pay more over the long run but one accepts that because one's short-run needs are such that the cash back is valuable to him or her. In other words, there is a trade-off that maybe it would protect some types of households who are genuinely making an error and not properly calculating the cost, but others can make that calculation and with full eyes open decide cash back is their preference. There is a global debate about behavioural finance, not only in terms of paternalism but in terms of at least ensuring there is enough information and transparency, and having online calculators so that people can plug the numbers in as easily as possible. That is where the balance is. Maybe Mr. Sibley will add something.

Mr. Ed Sibley: I have just a couple of comments. In the circumstance when an existing customer is in the same position as a new customer, the point Deputy Michael McGrath makes has a degree of validity to it. If that is the decision that is taken, we would adhere to it.

There are differences in how different banks market and price their products. As in any commercial system, there is a reliance on a degree of inertia between new and old. The precise circumstance the Deputy describes, which suggests that there are customers who are in exactly the same position and are offered different things, is-----

Deputy Michael McGrath: There are very few examples left. To be fair, there are some.

Mr. Ed Sibley: -----worthy of being looked at. Certainly, when we have looked at this previously we have not seen that circumstance. We have seen the circumstance where there

is a reliance on inertia which is a different matter and that customers have the ability to switch internally even where they do not have the ability to switch externally, for example, if they have or have had arrears. That is a different circumstance.

Deputy Michael McGrath: What is Mr. Sibley's view on the cash back? Is it good to have market differentiation with lenders making different offerings or are customers being exploited?

Mr. Ed Sibley: There is a very long history of product provision where products are designed for a specific purpose and for a specific cohort of customers - I refer to a broad sweep of history - that then get overused and are used inappropriately in certain circumstances or with customers that they do not suit. The cash-back product absolutely is a valid product in that, as the Governor has referred to, there are circumstances where borrowers, because they have just moved in and they have got to buy furniture or whatever it might be, value that cash back upfront. There is validity in the product. However, it is being used in circumstances to protect the back book by not having to re-price the entire book when they are looking to compete on price.

Deputy Michael McGrath: How does one deal with that?

Mr. Ed Sibley: There is some risk associated with that product. Whether it warrants a complete outright ban or whether there is some way to address that in a different way, it is certainly something we are cognisant of and we are looking at.

Senator Rose Conway-Walsh: I have a number of questions and I would appreciate it if I could get some succinct answers to them. First, did the Central Bank find any dissenting voices within all its examination of the documents in the various banks? Were there any voices that expressed concern from within those documents that the Central Bank picked up on?

Ms Derville Rowland: Within the documents-----

Senator Rose Conway-Walsh: Whether they be board minutes or whatever else the Central Bank examined, did it find such voices in all of the documentation within the banks? Was anybody within the banks expressing concerns about what was happening in relation to trackers?

Ms Derville Rowland: The enforcement investigations are going through at present and I do not want to discuss the evidence in that context. In terms of the supervisory work, certainly there is a significant degree of challenge found when we go in and do our own thinking in that. I do not know if that is of any assistance to the Senator.

Senator Rose Conway-Walsh: This does not break any confidences, codes or anything. Explicitly, what I am want to know, in the context of all that the Central Bank is looking at, is whether there were dissenting voices? Were there personnel within the banks, whether that be one, ten or 20, saying that what was happening here was not right and voicing concerns about it?

Ms Derville Rowland: We have had dissenting voices share views with the Central Bank but maybe not specifically or necessarily from that particular source.

Senator Rose Conway-Walsh: I refer to within the bank and the processes rather than people or whistleblowers coming in now. I am talking about in the documentation itself.

Ms Derville Rowland: I am told I cannot say.

Senator Rose Conway-Walsh: That is not acceptable. I will move on to some of the other questions. Since 2013, has the Governor ever asked the Minister for extra powers or extra resources to deal with this scandal?

Professor Philip Lane: Let me make two points there. As we have indicated, the 2013 Act has given us a lot of powers on a forward-looking basis. We are independent in terms of resourcing and we make our own decisions. We are expanding and have expanded quite a bit in recent years. That is an independent decision that we make about how many staff we want to employ.

If I may come back to this 26 number, this is reinforced by having additional input from various consultants, etc. That is not the full scale of the people we are using to pursue this investigation and examination.

Senator Rose Conway-Walsh: We will get to the powers, but the Governor has not made any request outside of the 2013 Act to the Minister to change powers to in some way enable the Governor to fulfil either his consumer protection role or investigative role in a better manner. The Governor has not asked. That is a “yes” or “no” answer. The Governor either has asked or he has not.

Professor Philip Lane: All the time, there are new European regulations and directives which then have a domestic counterpart, and there is movement. For example, there is a new mortgage directive that came in. There is the markets in financial instruments directive, MiFID, coming in. There are new regulations about product oversight. Quite a lot is happening but that is essentially the routine roll-out of new European initiatives which are all in the direction of providing more information and more transparency for consumers and investors. They all require us to revise our codes on a regular basis.

Senator Rose Conway-Walsh: What is beyond that?

Professor Philip Lane: Behind that is the question of the enforcement-type powers. That goes back to the 2013 Act.

Senator Rose Conway-Walsh: Did the Central Bank have much input into the 2013 Act? At that time the Central Bank would have been in the middle of understanding the extent of this problem. Did the Central Bank flag to the Government concerns as to how the lack of retrospective action would prohibit the Central Bank from doing what it was trying to do?

Ms Derville Rowland: The Central Bank put a lot of effort into working with the Legislature to obtain the new sets of powers in 2013. It is not a matter for us to draft them in the final analysis. However, we certainly made significant and extensive suggestions for regulatory and supervisory powers to ensure that the regulatory framework in the future would be comprehensive with a strong set of powers, and that was done.

It is not for the Central Bank to opine on whether it is permissible at all, pursuant to law, for a new power with a punitive aspect to it to operate retrospectively; it is a matter for the courts. They have made very clear decisions about that type of thing. When new powers of that type come in, that is the situation. The courts have made the decision about that.

Senator Rose Conway-Walsh: Okay; they cannot be retrospective.

The phase 2 reviews indicate that a final report will be done. At the same time the Central

Bank has stated it has facilitated lenders to submit further information. How can the Central Bank have a final report when it is still accepting information?

Ms Derville Rowland: All the phase 2 reports have been received. We used our authorised officer powers to go on site in two of those. We have found that we have a difference of view about the conclusions in those reports. As a result, we have decided to further challenge those conclusions with the hope that those lenders might change their view on that, which would be to the advantage of the people who would get the benefit of that.

Senator Rose Conway-Walsh: Therefore it is not final, final-----

Ms Derville Rowland: The final reports have come in. If we were to step over that and say that is the end of it, it would be leaving people behind. We do not think we should do that just yet; we think we should challenge that. That is what we are doing. We are doing that through the assurance work and we think it is the right thing to do. They have met the deadline and sent in their reports.

Senator Rose Conway-Walsh: I really want to get at this. The common thread in all the correspondence to the committee is the lack of information. Given the Central Bank's consumer protection role, does it have a number of people to engage with the public? I acknowledge the witnesses have said that transparency is profoundly important to the Central Bank but people feel they are being kept in the dark on all this. They would really appreciate some transparency in the ongoing process and clearly outlining their options. Does the Central Bank have provision to carry out that consumer protection role in engagement with-----

Ms Derville Rowland: The Central Bank has a public contacts unit, whose role is to communicate with the public. That has to be understood. We are very happy to take contact from people and to answer them as best we are permitted. I fully appreciate the perception that the Central Bank is not sharing the information. The Central Bank operates under a strict rule of confidentiality as the regulator of the regulated firms; that is a fact. I can understand how frustrating that is. Where we can be transparent, it is really important to be transparent. We have been quite different in this case and these cases from every other case. The Senator and her colleagues will normally hear responses from the Central Bank to the effect that it cannot say or that it is a live supervisory matter. That is the norm. To the most we are able to do so, we have made a big effort. It may not feel like it is enough. We have pushed ourselves to be as transparent as we can because we recognise the importance of and interest in this by publishing reports and updates. We have done this in two ways, both through live supervisory work, which puts the legal decisions and the approaches under scrutiny, which is not always the best thing to do, together with trying to be open about the enforcement cases as well.

Professor Philip Lane: Let me come back to the individual-----

Senator Rose Conway-Walsh: I have one further question. Is the Central Bank examining the quality of the communications? I am concerned that reports are being submitted to the Central Bank with banks claiming to have had six engagements with customer A in the past 12 months. When we examine those engagements, they say absolutely nothing. People who telephone get robotic responses. Is the Central Bank examining the quality of the communications from the banks or is it just taking it as read if they claim to have had six communications?

Ms Derville Rowland: I accept is frustrating for people not to know. Part of that is in this phase. We have received information about the communications and we have acted upon that.

After getting information previously, we issued an edict to them about their communications. If the Senator has information for us, we would be happy to look at that. If that points us in a particular direction or highlights a particular deficiency we can do something about, we would be very willing to do so.

Senator Rose Conway-Walsh: People want to be able to engage with a human being at a sensible level in the branch. People have been extremely patient to the detriment of their mental health and many other things that were outlined earlier. They have run out of patience.

Ms Rowland mentioned “punitive”. When punitive comes to mind, I think of the punitive charges and interest rates that banks charge to consumers, particularly if they overrun and money is owed to the banks. How long does it take to make very simple calculations without looking at the compensation and just the redress element? If somebody is owed €10,000, it cannot take much time for somebody in a bank to calculate the interest and to be able to tell the person that while the bank has not yet looked at the compensation element in terms of quantifying the impact it has had on the person’s life, this is the figure for redress being offered. Why can that not be done promptly on a large scale across all these accounts?

Professor Philip Lane: It is open to the banks to disclose that kind of regular update. My guess is that they are holding back until they are more certain about what exactly they are offering to the individuals. Rectification has happened in the vast majority of cases where somebody was on the wrong rate; that needed to be fixed as soon as possible. In the case of roughly 3,000 individuals, redress and compensation has been paid and they have received that. As more of these schemes are close to being triggered, a lot will happen in the months to come. I agree it has been frustrating. The bigger issue is about who is included. In other words-----

Senator Rose Conway-Walsh: Does the Central Bank have a database of the people who are included in this scheme as it is now? Is it entitled to a database of it from the banks?

Ms Derville Rowland: No, we do not have a database of those clients.

Senator Rose Conway-Walsh: However, the Central Bank could have if it wanted. Is there any legal impediment to it having it? I am just talking about somebody having a direct communication with these people to outline the options for an appeals process etc.

Ms Derville Rowland: It is important that the banks do that. That is part of the structured communication requirement.

Senator Rose Conway-Walsh: They are not doing it. How will the Central Bank ensure they do it? This is the problem.

Ms Derville Rowland: If the Senator has information to show that they are not doing what they should be doing, we will act.

Senator Rose Conway-Walsh: Has Ms Rowland had sight of any communication from a bank to a consumer in which all of the options, including the appeal process, is outlined in detail? In the cases of all of the consumers I am dealing with, I have never seen such a communication.

Ms Derville Rowland: Is the Senator saying she has not seen the communications?

Senator Rose Conway-Walsh: I have not seen a communication from a bank to an individual consumer outlining what are all of the options.

Ms Derville Rowland: In my previous role, I was very involved in the communication design of the Permanent TSB communications, which was not related to this examination or redress scheme. We were very conscious that it was important that proper and full communication be given to people so that they do understand their options.

Senator Rose Conway-Walsh: It needs to be done.

Professor Philip Lane: The letter regarding redress and compensation would also include comprehensive information on the appeals mechanism and so on. Before that point, banks are choosing to wait until they know exactly what they are going to offer. The guidance is for them is that they need to be as comprehensive as possible at that point.

Senator Rose Conway-Walsh: My query is on communication as to whether an individual's mortgage is included in the examination.

Professor Philip Lane: I understand that. This is where the banks are choosing to wait until they have a decision.

Senator Rose Conway-Walsh: The problem is that the banks are choosing everything. It is within their gift to choose what they send to consumers and how they behave towards them, which is worrying. There are too many choices for the banks and none for the consumer. Years down the line, all consumers are getting is bland letters, robotic phone calls and no information.

Professor Philip Lane: The goal of the examination, recognising the legal framework and so on, is to push the banks to make these redress and compensation offers as quickly as possible, providing within that process for an appeals mechanism while respecting the rights, without penalty, of the affected customers to take a case to the ombudsman and the courts. It is frustrating: there is no doubt about that.

Senator Rose Conway-Walsh: It is.

Professor Philip Lane: Once an individual gets to that point, the information will be transmitted. We have developed expectations about what banks tell people at that point. We have also said in our report, and in our statement this morning, that even in those cases where a bank is deciding not to include a cohort, we will be requiring them to write to that cohort. This will be a major signal that there is a dispute and that the individual should consider going to the ombudsman.

Senator Rose Conway-Walsh: I understand what Professor Lane means by "cohorts" but we are talking about people, human beings, who are at the end of their tether.

Professor Philip Lane: Of course.

Senator Rose Conway-Walsh: I do not need to repeat for Professor Lane the impact all of this has had on people.

Professor Philip Lane: We may use bureaucratic language but staff of the Central Bank are public servants and our motivation is to serve the public as best we can. This examination is a massive effort by the Central Bank to do what we can. There can be no questioning of the commitment of the staff of the bank to pursue this matter.

Senator Rose Conway-Walsh: I do not think the Central Bank has sufficient resources. If the Central Bank believes that a person is impacted but the bank will not agree, then the

customer can go to the FSO. In a situation where a previous ombudsman has ruled against a person, is that legally binding? Can the FSO go through a process a second time? Perhaps Ms Rowland would address that specific question.

Ms Derville Rowland: At the beginning of this examination, lenders were required to disclose all cases, including those where the FSO may have found against somebody. I have no specific information about any case in which there was a finding against an individual and this situation arising. I have not yet come across that scenario. In that circumstance, we will consider all that can be done. That might be a matter for the FSO to look at from its own perspective. It is something we will consider as these issues crystallise between us. We are hopeful that this may not follow that pathway and that the banks might just do the right thing.

Senator Rose Conway-Walsh: Perhaps the witnesses would seek clarification on that issue for the committee. If the ombudsman has ruled against a person, can one go through the process a second time?

Ms Derville Rowland: I would be happy to but it may be that I could not answer for the ombudsman's process. The ombudsman might be obliged to answer about his own legal competence and process. While we would be happy to revert to the Senator, I could not opine on its process; it would opine on its own.

Senator Kieran O'Donnell: On the €120 million being provided by way of redress and compensation, what is the breakdown between redress and compensation?

Professor Philip Lane: These schemes are ultimately the schemes of the banks *vis-à-vis* their customers. Members will have heard from several banks that have given them some indication but it is for the banks and not for us to disclose the information requested by the Senator.

Senator Kieran O'Donnell: Professor Lane disclosed the total amount, which is €120 million. I would like to know the compensation amount as a percentage of the redress amount.

Professor Philip Lane: It would be safest for us to follow up on that point, having worked out the extent to what we can disclose on the compensation-redress ratio.

Senator Kieran O'Donnell: It is critical that we get that breakdown. Based on all of the discussion on this issue, it appears as though the compensation amount is approximately 10% of the redress amount. Perhaps Professor Lane would deliberate on the issue with his colleagues while I am asking my other questions.

Professor Philip Lane: The average has a differentiation behind it because it is not a proportional compensation. For those who suffered severe loss the absolute amount of compensation should be greater than in the case in respect of which the harm was less. It is just a fixed fraction in each case.

Senator Kieran O'Donnell: Taking it in crude terms, the total is €120 million and there are 3,300 customers involved, which equates to approximately €36,500 per customer.

Professor Philip Lane: With massive variation.

Senator Kieran O'Donnell: I accept that. To put it in context, it is above the average industrial wage, which shows the magnitude of this particular rip-off by the banks. I would like to discuss a number of issues with Ms Rowland. There are 15 banks involved, all of which came back with proposals by 30 September. The Central Bank has deemed 11 of those banks to have

been providers of tracker mortgages. Is that correct?

Ms Derville Rowland: Yes.

Senator Kieran O'Donnell: Am I correct also that the Central Bank has carried out on-site inspections of two of the 11 banks?

Ms Derville Rowland: Two have been concluded and nine are under way.

Senator Kieran O'Donnell: Are the two banks that have been inspected the same two banks with which the Central Bank is in dispute?

Ms Derville Rowland: Yes.

Senator Kieran O'Donnell: Was there a particular reason the Central Bank chose to inspect those two banks first?

Ms Derville Rowland: It was in the course of the examination.

Senator Kieran O'Donnell: What is the status of the inspections of the other nine banks?

Ms Derville Rowland: They are under way and we think that, as they develop, there may be more disputes.

Senator Kieran O'Donnell: Is it fair to say it is not the case that, of the 11, the Central Bank has a specific issue with two but rather that it just so happens it carried out inspections in those two?

Professor Philip Lane: No. The right way to think about it is as follows. Where the most obvious differences of opinion were, they were the first places on which to focus. We think there will be more zones of disagreement, but where it was most obvious was where the first effort was made.

Senator Kieran O'Donnell: Of the two, what percentage of additional cases were impacted on which the banks were not willing to accept? If it was 2,000 from the banks and the Central Bank reckoned it was 400, it is roughly 25%.

Ms Derville Rowland: I cannot say because it is a number of groups or cohorts and I do not have a percentage to give to the Senator. However, we have a line of sight on issues on which we do not agree. However, these issues relate to groups of people.

Senator Kieran O'Donnell: My question is about the two which were impacted on and which the banks do not accept. Were the numbers that were impacted on in the banks a significant proportion of the groups they accepted?

Ms Derville Rowland: I cannot give the Senator that information because it is a live issue that we are exploring. As we work through it, we will ensure every person in the group is identified. When that is done, it will yield the Senator's answer because he will know the number and what to do. We are working through the identification of all of that detail.

Senator Kieran O'Donnell: The Central Bank has put it in the public domain that it anticipates that the figure could go from 13,000 to 20,000. Does it stand over that figure?

Professor Philip Lane: The figure of 20,000 is simply what we already know. It includes

the 13,000 in the examination, plus the 7,000 prior cases. There is no signal beyond it, but I think there will be a substantial number beyond it.

Senator Kieran O'Donnell: Professor Lane is willing to confirm that there will be a substantial number above the 20,000 that will be impacted on that the banks have not recognised as such to date.

Professor Philip Lane: Let us see what happens through the challenge process. We are hopeful the banks will recognise and accept that the correct course is to reconsider and include these cases. We are hopeful and continuing to push. Let us see what happens in the coming weeks.

Senator Kieran O'Donnell: Three banks have started to make payments and two have progressed to the end. They are not the two in respect of which the on-site inspection was carried out.

Ms Derville Rowland: I cannot say.

Senator Kieran O'Donnell: They are not. What I am getting at is that I am more interested in knowing about the two banks which have started to make payments. Will the delegates accept redress and compensation schemes being put in place prior to the carrying out of an on-site inspection?

Ms Derville Rowland: There is nothing wrong with schemes running concurrently with the identification of groups of people. We always said they could run earlier. As one identifies more groups, so long as the scheme-----

Senator Kieran O'Donnell: The purpose of the inspections is to identify impacted groups which the banks have not identified.

Ms Derville Rowland: Yes. The schemes could always run at a much earlier stage. If a perfectly excellent scheme was run early, it could have been approved early and then run at the same time as groups of people were being identified, but that has not turned out to be the case. However, the scheme was always designed with a view to get it moving forward more quickly.

Senator Kieran O'Donnell: How long will it take the Central Bank to conclude the on-site inspections of the nine of the 11 it has yet to carry out?

Ms Derville Rowland: Our aim is to have the balance of the nine on-site inspections concluded by the end of the first quarter of 2018. However, I have to be clear that if we find a lot more problems than we anticipate, the Senator can understand how it might take longer. We have a timelined plan. The nine inspections are under way and we hope to have all of that work done.

Professor Philip Lane: It is not stopping the banks.

Ms Derville Rowland: It is not stopping the payment of compensation.

Senator Kieran O'Donnell: I accept that.

Professor Philip Lane: Where cases have already been identified, the banks can move forward. The assurance work is in the direction of expanding the pool of people who can be covered.

Senator Kieran O'Donnell: Professor Lane said 26 in-house staff were working on this issue. How many external advisers and staff are working on it? What is the total?

Ms Derville Rowland: I cannot give the Senator a number because there are two firms engaged to assist in the examination. It scales up according to the size of the job. A lot of people will come in to do jobs and then go back.

Senator Kieran O'Donnell: Would it not make more sense to do it all concurrently and try to have the compensation and redress schemes, plus the impacted groups, dealt with by the end of the year? The Central Bank is looking at the groups the banks are unwilling to accept are impacted and stating that it will take until the end of quarter-----

Professor Philip Lane: That is not the way to think about it. There is one set of exchanges on the cohorts we think should be included. That could conclude at any time if the banks reconsider and accept-----

Senator Kieran O'Donnell: The only conclusive approach is for the Central Bank to go out and engage in on-site inspections.

Professor Philip Lane: I disagree because some of it is categorical identification of a group of contracts or cases which are similar. We either say they are in or they are out. It is a "yes-no" kind of thing. The bank could reconsider. It might state it could choose to fight us legally but in the end agree that it is better to resolve the matter now in the consumer's interest.

Senator Kieran O'Donnell: Then there would be no on-site inspection.

Professor Philip Lane: No, but there would still be inspections. The follow-up is always going to be equally with the banks and this is the quality assurance work. The banks will state "Here are the cases" and we will still go and check.

Senator Kieran O'Donnell: Will that involve looking at the minutes of board meetings?

Ms Derville Rowland: Where necessary, but it depends on the issue involved. If it involves a difference of opinion on a legal contract, an on-site inspection will not add a lot of value to the formulation of one's opinion. If it is a matter of checking decision-making on underlying documents or something else, on-site inspections have a very valuable role. One uses the right tools for the right issue. It is really important to know that there is nothing in the way of the redress and compensation schemes being run, which is a priority for us, while the challenge piece takes place in the background. They are concurrent and one does not get in the way of the other. It is really important to understand this.

Senator Kieran O'Donnell: Does Professor Lane accept that he believes there will be a substantial number of impacted on tracker mortgages which the banks have yet to agree on or identify?

Professor Philip Lane: Yes, I agree, but it is not over yet.

Senator Kieran O'Donnell: I have been critical of the fact that the Central Bank has come to the table very late. It issued warning letters to the banks as far back as 2008 about how they had dealt with tracker mortgages. It issued notice letters and carried out various investigations with the Bank of Ireland and Permanent TSB during the years. That is as it may be, but if this investigation had not been carried out, what would the banks have done about the tracker mortgage scandal?

Professor Philip Lane: That scenario is where people may have gone to the Financial Services Ombudsman with their individual cases. One would have to see how the Financial Services Ombudsman would have adjudicated in these cases. Given the scale, one could probably predict that it would have been an overwhelming task for the Financial Services Ombudsman. What we are trying to do is to add the fact that we are the regulator and have information-gathering powers-----

Senator Kieran O'Donnell: Is it not fair to say the banks would have stated "See no evil; hear no evil; speak no evil"? This scandal would have gone into the annals and remained hidden for decades.

Professor Philip Lane: Ultimately, we did what was necessary. The only institution with the size and scale to address this system-wide issue is the Central Bank and that is what we have been doing. We have been trying to do as much as we can to push the banks to do the right thing by offering redress and compensation on a large scale rather than forcing individual cases to go to the Financial Services Ombudsman.

Senator Kieran O'Donnell: Did the Central Bank ever look at doing it using a universal standard? Redress should be standard, because redress is basically putting people in the position they had been in. It should be cut and dried. It should be based on the rate they should have been on versus the rate they were on. It should be straightforward. Compensation is more arbitrary. Did the Central Bank not consider coming up with standard measurements or metrics on how to calculate compensation, such that we would not have this arbitrary over-and-back with the banks?

Professor Philip Lane: It is a responsibility. That idea was mooted by the industry, but that would flip responsibility onto us. It is their responsibility. These banks have created this situation. It is up to the banks. They cannot have a get-out-of-jail option by saying the Central Bank told them a given amount was all they could offer. It is up to the banks to offer appropriate compensation. If it is not accurate, the appeals process is available and the Financial Services Ombudsman is available. For the most extreme cases, the courts system may have to be invoked. It would be a digression or sidestepping of where the responsibility is to yield-----

Senator Kieran O'Donnell: Yet the Central Bank would have to approve any scheme the banks put forward. Such schemes have to get the approval of the Central Bank. Is that correct?

Professor Philip Lane: That phrasing is not quite correct. It comes back to this point about perception. If it turns out there is a general perception that the compensation is inadequate, the people who will have approved it are the boards of those banks. They cannot then turn around and say that it is not their responsibility because the Central Bank told them to do it. It is the responsibility of these banks. These banks are the ones that should be held to account.

Senator Kieran O'Donnell: If a bank comes up with a proposal and the amount being put forward for compensation is derisory, will the Central Bank tell that bank as much?

Ms Derville Rowland: We have done, but what is really important to know is that we did not stop the banks giving more.

Professor Philip Lane: It is not a cap. We are not saying "This is it."

Ms Derville Rowland: We did not ask the banks to keep it at a given level. We certainly did not do that. Others gave more.

Senator Kieran O'Donnell: Yet, there is a threshold below which the Central Bank will not allow it. Is that correct?

Ms Derville Rowland: There is a threshold below which we could not countenance it.

Senator Kieran O'Donnell: Good.

Ms Derville Rowland: Certainly, the banks approve the schemes. Are the schemes adequate? Could an applicant get more on appeal? Could an applicant rightly be awarded more on appeal? Perhaps. It is not about a maximum. It is about a minimum level that is derisory or unacceptable, one that we could not countenance. However, these are schemes of the banks. I keep coming back to the appeal mechanism. It is a really important feature.

Senator Kieran O'Donnell: Let us go on to the appeal mechanism. That will be within each bank itself. Is that correct?

Ms Derville Rowland: They are independent.

Senator Kieran O'Donnell: Who sits on the appeals body?

Ms Derville Rowland: This is why the framework to set it up was really important.

Senator Kieran O'Donnell: Who sits on it?

Ms Derville Rowland: There is a variety of people, some of whom are external. There is a majority of independent people.

Senator Kieran O'Donnell: Will there be anyone from the bank itself sitting on that board?

Professor Philip Lane: There could be. There is a role.

Senator Kieran O'Donnell: Such people will not be the majority. Is that correct?

Professor Philip Lane: They will not be the majority. There is a reason they could be on such a body. A person could be employed by a bank who becomes expert at checking and re-checking calculations and so on. Having someone like that in the appeals process can be helpful. However, the majority have to be truly arm's length independent.

Senator Kieran O'Donnell: I have two final questions. The Central Bank set a deadline for phase 2 for the banks to put in proposals. Yet it set no deadline for phase 3, which covers redress, or phase 4, which covers compensation. Why not?

Professor Philip Lane: There is a difference between what we can compel banks to do, which applies to information gathering in phase 2, versus what is, in the end, voluntary by the banks, which applies to redress and compensation. We cannot compel these measures.

Senator Kieran O'Donnell: Is that not a weakness in legislation and Central Bank policy?

Professor Philip Lane: This goes back to the discussion about pre-2013 and post-2013. Even post-2013 the redress is all we can manage. This comes back to the fact that it is such a system-wide large-scale situation. One might say the natural way to work out compensation is through the Financial Services Ombudsman and the courts. We are trying to accelerate this by saying that we know compensation would normally only be through the ombudsman process or court process. We are asking the banks not to require people to go through that. We are asking

them to make reasonable offers now to avoid thousands of people having to seek compensation through the normal mechanisms. In normal times for normal disputes between banks and customers the ombudsman framework is in place. However, in this scenario we are making a call to avoid or minimise that by the banks awarding voluntary compensation.

Senator Kieran O'Donnell: Is it fair to say that if someone-----

Professor Philip Lane: Let me just finalise this. We cannot have statutory deadlines. There are timelines and deadlines, but the answer to whether we can back it up with enforcement is "No". There are expectations about when these are set up.

Senator Kieran O'Donnell: Are there any deadlines for redress?

Professor Philip Lane: There are deadlines for all of this but not on a statutory basis. We expect it.

Senator Kieran O'Donnell: What are they?

Ms Derville Rowland: I do not have that information to hand. What we have shared with the committee is that we expect-----

Senator Kieran O'Donnell: All we are looking for is a deadline.

Ms Derville Rowland: They are all different because there are schemes up and running now and they are all getting away. What we expect is that every scheme is up and running by Christmas.

Senator Kieran O'Donnell: Would it be fair to say, then, that there will be schemes up and running by Christmas? Is it fair to say that by then we will have letters going out from the banks to people they believe not to be impacted? Moreover, the Central Bank will have a final report by the end of quarter 1, 2018 with the full number of impacted customers. Is that correct?

Professor Philip Lane: Let me make two corrections to that. First, let us see if it becomes necessary. It is still a live issue in respect of whether we think these groups are impacted. Let us see whether it proves necessary to go along that line or whether the banks reconsider.

We are saying that we will provide an update by the end of quarter 1, 2018. However, given that it is possible we may uncover more cases and so on, we cannot say that is the absolute deadline. We are trying to do as much as we can as quickly as we can. Let us suppose it arises that we find more. We may have to say that, to meet our deadline, we will have to declare that we are no longer going to press banks on these cases. We will continue to press. It may well be the case that some cases go beyond that.

Senator Kieran O'Donnell: Will the Central Bank write to the committee as a matter of urgency with the additional legislative powers it requires?

Chairman, I believe it is vital that, as we come nearer the end of the year, we should consider getting a further update from the Central Bank as to where we stand on tracker mortgages.

I would like the banks to be sitting before the committee today. We really only have half the equation. We have the Central Bank – the regulator. The more I think about the banks, the angrier I get. Most of these banks were bailed out by the taxpayer. I suspect that if this investigation, late and all as it was to start, had never unfolded, then the banks would have pretended

this was not going on. I have had people come to me in Limerick with various cases involving these institutions. They have sought documentation. They were being switched from tracker to fixed mortgages and from fixed to variable mortgages. Most of the time they cannot even find out precisely what the arrangement is. Many people were getting so worn down that they were going away by stealth. Manners must be put on the banks.

The banks cannot expect that things are back to normal. I remember in July 2008, the banks came before this committee. Many of them said there were no problems. One of the institutions, Bank of Ireland, said there were problems. A short time later they were back with the begging bowl looking for taxpayers' money with a night-time raid on Government Buildings. The problem is that they are having it both ways. Let us consider the people on tracker mortgages. The banks are getting their money - I was going to say that it was resting in the banks' accounts. The banks are taking customers' money from over-charging them. Second, they are taking the same customers' money from the hard-paid taxes they have paid for services. That money ended up going into these banks. It was double jeopardy for the ordinary punter or tracker-mortgage holder.

I expect that the Central Bank would apply the firm arm of the regulator to ensure this matter is resolved post-haste by the end of the year.

Professor Philip Lane: We are absolutely committed to pushing this forward. Much of it has been completed in some banks. In others, we think the deadline is for it to be up and running by the end of the year but not all cases will be finalised. If we see more cases, we will have to push them more.

Many banks offer mortgages here. It would be too narrow to restrict it to just the banks that were covered by the bailout. Other banks are involved in this process and it is important to have that broad focus.

Senator Kieran O'Donnell: It is ironic that the major banks that received serious funding, bar perhaps one, are in the middle of this tracker mortgage scandal.

Professor Philip Lane: This goes back to the fact that it is a genuine system-wide issue which all banks, whether domestically-owned or foreign-owned, involved in offering tracker mortgages were finding-----

Senator Kieran O'Donnell: The majority of these 13,000 tracker mortgages are in the institutions that were covered and that were given taxpayers' money. Is that a fair comment?

Mr. Ed Sibley: That is fair but there is a scale issue here. Approximately 87% of tracker mortgages in the system are in the remaining domestic banks.

Senator Kieran O'Donnell: Yes.

Mr. Ed Sibley: The bulk of the remaining domestic banks are those that were bailed out with taxpayers' money. The number of tracker mortgages in those banks is proportionate to the scale of the mortgage market. It is inevitable that one will see more cases because they are larger.

Senator Kieran O'Donnell: I accept that. My general point is that taxpayers' money-----

Professor Philip Lane: We have a double mandate. We have the financial stability mandate under that framework to keep this banking system alive.

Senator Kieran O'Donnell: Prudential.

Professor Philip Lane: Right. We also have a conduct mandate to protect consumers. There is no hierarchy in the bank between those two mandates.

Senator Kieran O'Donnell: Can the Central Bank deal with both mandates?

Professor Philip Lane: We do.

Senator Kieran O'Donnell: Can it do so effectively?

Professor Philip Lane: Absolutely, and this examination proves the value of having both those functions in the same institution.

Senator Kieran O'Donnell: Why?

Professor Philip Lane: The level of understanding of what happens in the banks is reinforced by having both functions in the same institution. Our regulatory powers go beyond what one can legally insist on with regard to rectification and redress. The power of being a single regulator with the full range of regulatory powers gives us much leverage on banks. Splitting away conduct would greatly diminish that, which I think is experienced in other countries where the conduct regulator is split away and has less influence.

Chairman: I thank Senator Kieran O'Donnell. I return to a question asked by Senator Conway-Walsh about whether there are dissenting voices. Ms Rowland said she cannot answer that. The Senator was not asking for names but simply if there was a dissenting voice or a number of dissenting voices.

Ms Derville Rowland: I am aware that the Senator was not asking for names.

Chairman: Why can Ms Rowland not answer?

Ms Derville Rowland: I am told I would have to come back to the committee about that.

Chairman: Is the voice in Ms Rowland's ear telling her that? Why? I think it is a reasonable question. There were either dissenting voices or there were not.

Ms Derville Rowland: I do not have the personal information. I have been in my current role from 1 September. I was previously in a different role, from which I know all about what was going on in the enforcement area.

Chairman: Would the person giving Ms Rowland the information know?

Ms Derville Rowland: I have been talking to my team and there are a number of issues. My team does not know, with respect to the line of confidentiality, what can be said. I am happy to come back to the committee on that.

Chairman: The framework for conducting the tracker mortgage examination was to be submitted to the Central Bank by no later than the close of business on 30 September 2016. We now know that that was changed to September 2017. What made the Central Bank decide that? Some 2 million accounts are involved and it is a big job. Did the banks push to make that decision or did the Central Bank go to them to say that it was a big job and they would be given 12 more months.

Ms Derville Rowland: I apologise. I have to get that information from my colleagues because I was not in this role at the time so I do not have personal knowledge of it. I am told that the framework document was authored in 2015.

Chairman: In-----

Ms Derville Rowland: December 2015.

Chairman: That is the date on this document.

Ms Derville Rowland: That is the date on the document that the Chairman is reading out, with the deadline nine months from that date. I am told that, as they moved through the process and the scale of the number of accounts and detail of the work became apparent, it became obvious that some, though not all, lenders would require more time because of something to do with, perhaps, the proportion of accounts and lenders in scope in the institutions, and they needed more time.

Chairman: So the lenders came to the Central Bank.

Ms Derville Rowland: I was not in the role until recently.

Chairman: Then to whoever was in the role would know. I do not care who was in the role, really, I just want to know if the banks came to the Central Bank.

Professor Philip Lane: Perhaps it is important to emphasise that the report-----

Chairman: Sorry, Professor Lane. Did the banks come to the Central Bank and say that it was a big job and that they needed a further 12 months?

Ms Derville Rowland: The assessment was made by lenders themselves about the scale of the job. They had to submit plans detailing exactly what that scale involved and the number of accounts under review. Based on that-----

Chairman: So the banks came to the Central Bank.

Ms Derville Rowland: -----information, a decision would have been taken about whether enough time was given for a proper job to be done or whether more was needed.

Chairman: So the banks came to the Central Bank?

Ms Derville Rowland: That is what I am told.

Chairman: The banks came to the Central Bank. They were given a further 12 months and, even at the end of that period, there are banks that have still not given the Central Bank the information for which it asked.

Ms Derville Rowland: Nine lenders adhered to the original deadline.

Deputy Pearse Doherty: When did they submit the initial reports?

Professor Philip Lane: Nine lenders made submissions for phase 2 in December 2016. It was not September 2016 but was still within 2016. With the deadline of the end of September 2017, that allowed for all banks to make submissions. In that process, there was much communication back and forth in developing the expectations of the redress and compensation schemes and who should be included. Nine submitted the phase 2 reports but that is not the

final answer because if we say that we do not agree, then it goes back and forth.

Chairman: I am not asking Professor Lane to make excuses for the banks, I am trying to clarify something. The document states that phase 2 submissions were due no later than September 2016. The banks came forward and said there was a substantial amount of work to do and that they needed more time. The date was then set for September 2017. Am I right so far?

Professor Philip Lane: Nine submitted-----

Chairman: Am I right about the dates?

Ms Derville Rowland: I thank the committee for the time to consult. In March 2016, the phase 1 plans came in. Those are the plans in which the institutions would have scoped their proposals to do the job. This was subject to scrutiny and third-party assurance regarding the reasonableness of the proposals in the context of the scale of the job in hand.

Nine institutions submitted their phase 2 reports, not in September 2016 but by December 2016. Two further lenders had to have a longer period in which to submit their phase 2 reports. I am told that was done subject to scrutiny of the reasonableness of that request given the size and scale of their job. They did submit their phase 2 reports. One was submitted in March 2017 and the other in June. The Central Bank will have challenged and checked, and it has completed on-site assurance work with respect to the two institutions involving the biggest zones of difference, and this work is ongoing for the balance of the nine.

Chairman: It is now September 2017. Are all the phase 2 reports in?

Ms Derville Rowland: They are in.

Chairman: We were told by a bank that it missed the deadline, however.

Ms Derville Rowland: I am fully aware of that fact. That is wrong.

Chairman: It misled the Dáil.

Ms Derville Rowland: That is not factually correct. What is factually correct-----

Chairman: If the bank-----

Ms Derville Rowland: May I complete that? It is important to be clear and specific. The particular lender submitted a phase 2 report in compliance with the deadline. The particular lender has been told to examine it again. It is doing so. It will submit another report but it met the original deadline.

Chairman: From how many other lenders is the Central Bank seeking further information relative to the phase 2 reports?

Ms Derville Rowland: Right now, I can say we have reached an issue with a different lender. We have used a statutory power to obtain more information with regard to that separate lender. If the Chairman does not mind, I will confer with my colleagues.

Chairman: Are there only two lenders involved?

Ms Derville Rowland: Yes, because they have come to the head, as it were. On the other nine, we predict the assurance inspections will yield more difficulties.

Chairman: Having given the banks a further 12 months, to September 2017, there is still information that has not been submitted.

Ms Derville Rowland: We are not in agreement.

Senator Kieran O'Donnell: May I make a point? Nearly a year ago, nine of the 11 phase 2 submissions were in. Is that correct?

Ms Derville Rowland: Yes.

Deputy Pearse Doherty: Were they final submissions?

Ms Derville Rowland: They were phase two reports. It is based on whom they say are impacted.

Senator Kieran O'Donnell: What was the Central Bank doing with those nine reports for the past nearly 11 months? Why did it not carry out the on-site inspections of the nine banks in that period? When we read the Central Bank's up-to-date report, we got the impression that the submissions deadline was September of this year.

Ms Derville Rowland: That is the law.

Deputy Kieran O'Donnell: We now find nine of them were submitted last December. Since the Central Bank received nine of the 11 reports ten months ago, why have only 25% of the 13,000 trackers been subject to redress and compensation schemes?

Chairman: I want to come back to the issue.

Professor Philip Lane: In the report, we have indicated that in some cases the process moved along and redress and compensation schemes were set up. There were 3,000 cases where a payout happened.

Deputy Kieran O'Donnell: When was the first of those redress or compensation payments made?

Ms Derville Rowland: The first scheme started paying towards the end of last year.

Professor Philip Lane: It is a matter of the pushback. We are saying in our report that the reports were inadequate in a number of cases and have required a to-and-fro exercise, all in the direction of making them better. The reports were submitted and we said in our report that some banks should have done a much better job in terms of specifying more generous redress and compensation schemes, appeals mechanisms and so on. Those phase 2 reports that were submitted have required a lot of pushback from us to bring the banks along with a view to making better schemes. The delay is because we did not accept the banks' initial proposals. The delay, as we have indicated in our report, is where we do not accept the original proposals made by the banks.

Chairman: This is the kernel of the problem in regard to people's perception of the Central Bank. It set deadlines but neither September 2016 nor September 2017 were actual deadlines. When the Central Bank examines reports or engages in pushback, as it calls it, it should note that if the banks were as afraid of the Central Bank as their customers are of them, they would have given the Central Bank 100% of the information asked for. They would have made it possible for the Central Bank to engage in less challenging and pushing back. The reason the banks

feel they can challenge the Central Bank and push it around, just as they bully and push around their customers, is because the deadlines keep slipping. This is how the bank officials, who are hard-nosed individuals, see it. That is the difficulty I have with the dates. If the Central Bank lets little things like this happen, the banks will take more and more time. That is the part that is not acceptable. If the Central Bank used the powers it has, it would be a lot easier to bring the banks into line.

Professor Philip Lane: What is the point of this examination? The point is to achieve redress and compensation for those affected. We have been trying to be as effective as we can in the interest of the affected customers. This means the balance between imposing short deadlines, on the one hand, and saying we do not accept what is happening and pushing back, on the other, must be struck in the interest of those harmed. The pushback is in the interest of those harmed. That is one dimension.

A second dimension, on which I agree with the Chairman, is that some banks did not take this sufficiently seriously. This has been a big negative in the behaviour of some of the banks, but we continue-----

Chairman: If those banks that Mr. Lane states did not take this seriously enough were known, why were they not fined? Why was some sanction not introduced to indicate that if the banks were not going to play ball with the Central Bank and meet the deadlines, which are pretty loose, they would be fined?

Professor Philip Lane: As we have indicated, there are various enforcement actions either ongoing, in planning or yet to come. The enforcement process is a process by which the sanctions in question can be imposed but we cannot preview the outcome of those enforcement actions. By their nature, we can report on them only at their conclusion.

Chairman: Let us mark it down as a difference of approach between the Central Bank and the members of the committee, certainly me. Other members of the committee referred to it earlier but when we see this as a human tragedy, hear it explained and realise what the banks do to the people who are their customers, it is completely different from how the Central Bank treats the banks in question. Those banks treat the Central Bank as something that can be pushed around. As the witness indicated, they are forcing the Central Bank to challenge them in the context of how they understand the Central Bank's intentions of ensuring the wrong is put right. This goes back to what I said earlier. If the banks were wrong after 2013, they were wrong before it. Some mechanism must be found to ensure the banks are brought to heel. That does not seem to be working.

Professor Philip Lane: I have to disagree. We are ultimately agreeing that a wrong was done here. The fact that a wrong has been done means we are going beyond what might be adjudicated in a court of law as being possible. We are saying that even in scenarios where banks think they have a legal defence, they should look beyond it at consumer interest so as to put forward redress and compensation schemes in a generous and wide-scale process. That is instead of forcing those who are damaged or affected by this to go to the ombudsman and the courts.

Chairman: They will sign off on that.

Professor Philip Lane: Yes. Coming back to the regulatory set-up, this is why it is more effective to recognise the redress power - it is redress and not compensation - only applies from 2013 onwards. We share and identify the same set of concerns as the members regarding the

damage done to so many individuals. This is why we think we are right in what we are doing in pushing the banks to set up these schemes in advance of invoking the kind of legal framework of the ombudsman and the courts. We want them to move more quickly, generously and broadly. I will not disagree with the Chairman as the moral case for these banks comes not just from us as the regulator to push them. The work of the committee is proving to be effective and the Government can say what it is like for these customers. Consumer groups are also involved. All the attention should be directed to the decision makers in these banks, as they are responsible for-----

Chairman: It should not be on the basis of their morals. Morals and banks do not sit easily together in my mind. Has this scandal been raised at the meetings Professor Lane attends in Frankfurt and the ECB?

Mr. Ed Sibley: In short, yes.

Chairman: The long answer would probably come from asking what is being said about it.

Mr. Ed Sibley: The ECB is the prudential regulator but it does not have the dual mandate we have. The discussion would tend to focus on the prudential perspective but it would also be a leading indicator in terms of governance arrangements within a firm. It is looked at both from a governance perspective and also from a safety and soundness perspective. There is also consideration of the business models. If we think about what the firms are saying about the primacy of the customer and whether that transpires in their behaviour, it is a legitimate question for a prudential supervisor to ask as to whether they are operating in a sustainable fashion. That is where we are trying to push very hard in our interaction with the banks.

The groups of people with known disputes arise typically where the bank sought legal advice and indicated they are on legally solid footing in deciding there is no need to offer any redress or compensation. We are pushing on the basis that whereas that might be legally correct, it is the wrong outcome for the customer. It is inconsistent with the statement-----

Chairman: What support is received from the ECB for the challenges with the banks here? Is it sitting on one side watching this?

Mr. Ed Sibley: There is a very long answer to that question taking in how banking supervision works now. The ECB is responsible overall for the supervision of the banking system within the eurozone. It is directly responsible for the prudential supervision of what are called the “significant” banks, or the biggest banks operating in a particular country. The heads of teams that supervise banks, again from a prudential perspective, are employed by the ECB and the teams are staffed by both ECB staff and, in the case of Ireland, Central Bank staff.

Chairman: Has it shown an interest in what the Central Bank is doing? Does it support what is being done and has it asked to provide support, perhaps bringing in some European Union regulation or rule in support of the customer? Does the ECB think the banking system in Ireland is manned by cowboys?

Mr. Ed Sibley: It is fair to say there are still very significant legacy issues in the banking system in Ireland with impact both from the prudential and conduct perspective.

Chairman: We understand that. We are asking about the customers out there.

Mr. Ed Sibley: As part of the single supervisory mechanism and the banking supervisors,

the ECB understands that position.

Professor Philip Lane: There is the observation that banks across the advanced economies in Europe have essentially repeatedly shown themselves through various conduct scandals not to be serving consumers. There is a legislative process and there are all sorts of European regulations and directives to try to improve the way financial services are provided to consumers. That is led by the European Parliament, the Commission and national frameworks. That is an ongoing trend to try to bring about improvement. They are called financial services but are they providing services to consumers and small businesses?

Year-by-year and all the time there are efforts to improve the framework under which these banks operate. The legislative process, including directives and regulations, is ongoing in trying to improve this. In the US, under the previous administration, there was a big push to elevate consumer protection. Within our bank we have a dedicated financial conduct pillar and we have been very active in developing our consumer protection framework. There is much there to try to hold banks to account in terms of putting the consumer first. This examination is a crucible, and it is critical as it goes beyond the narrow legal interpretation of various contracts and paperwork. It goes back to what we can do and what the public spotlight can do in convincing the boards of these banks that the right action is to solve this once and for all, draw a line under it and focus on delivering a better job in future.

Chairman: I have some short questions on tracker mortgages sold by the banks to vulture funds. Is there a figure on this or how would a figure come about?

Professor Philip Lane: We did a mortgage arrears report for the Minister in December that gives much detail on the fractions of mortgages held by non-banks, investment funds and so on.

Mr. Ed Sibley: This is a slightly dated figure as it is from the end of 2015 but 87% of tracker mortgages in the system reside in the main five retail banks operating in Ireland today. That does not necessarily mean the other 13% have been sold as there are banks-----

Chairman: With the mortgages that have been sold, what redress would there be?

Professor Philip Lane: The original lender is responsible. These are definitely in scope.

Chairman: Even though the original lender is responsible, and even though some individuals have written to the Financial Services Ombudsman and there has been no decision yet, the tracker has still been sold to the vulture funds.

Professor Philip Lane: Right. In line with the way in which this examination is being conducted, however, it does not matter who now holds the loan. If the original lender put someone on an inappropriate rate or refused to put them back on a tracker mortgage after fixes and so on, it is that original lender who is responsible and who will have to offer redress and compensation.

Chairman: That leads me to the question of repossessions. If some of the loans sold to vulture funds are now under pressure to honour the increased payments, then the next step is eviction and some have been threatened. Is this the kind of repossession that the Central Bank will insist the original lender, in contact with the vulture fund, act to stop? We said earlier on that there would not be repossessions.

Professor Philip Lane: Yes. The credit servicing firms that handle these mortgages on behalf of the investment firms are operating under the same instructions that there should not be

repossessions in cases where this tracker mortgage issue is in dispute.

Chairman: If the dispute is in the courts they should not be doing that then. How many of the redress proposals from the banks have been rejected? Have there been many?

Ms Derville Rowland: Three have been approved by their board itself. A further three can be expected to be approved very shortly by their boards. The balance should be approved by their boards before Christmas. All of them then will be in flight by Christmas.

Deputy Michael McGrath: Is that a matter of compensation rather than redress?

Ms Derville Rowland: Both. This also applies to the appeals boards because one cannot be allowed to go without the other.

Chairman: I come to the matter of communications with the banks, where individual customers write to the banks looking for information or trying to get their paperwork or whatever the issue might be. I noted earlier that the Central Bank officials look at paperwork in the banks they go into. It has been widely reported that customers have been told that documents are missing and that conversations in particular years have not been recorded. What would the Central Bank expect of the banks with regard to their paperwork and to these recordings in particular?

Ms Derville Rowland: I will confine my answer to the tracker mortgage examination seeing as that is what we are talking about here. In the course of this examination the banks have been clearly instructed that any area of doubt, any lack of paperwork, or any ambiguity should be resolved in favour of the customer.

Professor Philip Lane: It is the burden of proof. If a bank tries to claim that it does not accept a particular case because it cannot find documentation or because something is missing, then we reverse that and refuse to accept it as a barrier to a customer receiving due redress and compensation. Our approach is, I agree, different from a court case where lack of information poses a problem. In our examination, however, our approach is that if there is a doubt then that doubt should be resolved in the customer's favour.

Ms Derville Rowland: If the bank's paper records are missing as a result of its own difficulties, we have been very clear that this absence is not to be held against the customer. It should in fact be put in the customer's favour.

Chairman: Many customers have written in to say that they cannot get their paperwork or the particular recording-----

Professor Philip Lane: This goes back to what we in the Central Bank can do. This is why this has been, and will continue to be, a much more effective way to resolve this matter than asking individuals to go to the FSO or to the courts. The Central Bank can, through its regulatory influence, impose many expectations on the banks. If any individual were to run this in a bilateral dispute then there might be difficulties. Given that this is a system-wide examination, however, we can make our expectation clear that these situations go in favour of the customer.

Chairman: I come to my last question on this issue. In its examination of paperwork, has the Central Bank ever come across a situation where a bank was running a second account in the name of a customer without that customer knowing about it? I refer to a second internal account, a shadow account, as it were, which the bank might claim only exists for internal purpos-

es. This account would be identified in the customer's name and designated for the payment of fees, professional and otherwise, in that name. The bank denies the customer any statements or background to the bank account. Is that a common kind of account or is it an unusual situation?

Ms Derville Rowland: I do not have first-hand knowledge of this but I have been told by colleagues that some banks run a second or "shadow" account for post-transaction payments. I believe it is an administrative matter and purely for the posting of transactions.

Chairman: Would that not form part of the paperwork that the customer should receive? Why would a bank run shadow accounts to run payments in and out of accounts without making this known to the customer?

Ms Derville Rowland: It should be for internal administration purposes.

Professor Philip Lane: Another way of thinking of it is as a label on an account. The name of the customer is a label on an internal account; it does not mean that it is the customer's account. It is a label for the bank's internal administration.

Chairman: It is described as "a current account for internal purposes, to discharge legal, professional and other fees accumulated in relation to the bank's management of the account". It is described as a current account. If it is a current account, as I understand it, then the holder of that account should at least be given information about it.

Mr. Ed Sibley: Could the Chairman provide us with further details? We will look into this matter and provide a full answer.

Chairman: I will do so. I understand that the witnesses may already have it but I will send it on anyway.

Deputy Michael McGrath: How many mortgage accounts were examined in total by all of the banks within the scope? Approximately 13,000 accounts have now been identified as having been affected by this. What is the global figure?

Ms Derville Rowland: A total of 2 million accounts were in scope, which then came down to approximately 100,000.

Professor Philip Lane: Approximately 36% of total mortgages were in scope, amounting to 719,000. There might be something going on with a further 112,000. Some trackers look exactly the same today as they did at origin so they are fulfilling their original contract. We zeroed in on 112,000 accounts. These were the focus.

Deputy Michael McGrath: The total of 719,000 then is the global figure?

Professor Philip Lane: That figure covers all trackers.

Deputy Michael McGrath: Over what total period of years?

Professor Philip Lane: From whenever the first tracker was issued in the early 2000s.

Deputy Michael McGrath: The figure seems high. The mortgage arrears statistics list total private dwelling home, PDH, mortgages as-----

Professor Philip Lane: Those figures refer to live, existing mortgages, as opposed to mortgages that would have been issued and since redeemed.

Deputy Michael McGrath: To some extent, then, there would have been an examination of those 700,000-plus mortgages, but that was then narrowed down to 112,000 relevant cases.

Professor Philip Lane: Exactly.

Deputy Michael McGrath: I have some further questions. I received an email from somebody who was clearly following these proceedings. It is important that Professor Lane clear this matter up. The caller certainly got the impression that because the harm was done to that person before 2013, the caller will not get redress or compensation.

Professor Philip Lane: No.

Deputy Michael McGrath: What reassurance can Professor Lane give people, in the absence even of certain statutory powers, that they will not be left behind?

Professor Philip Lane: Again, this is why we launched an examination, namely, to ensure that over the lifetime of these contracts, the cumulative financial harm would be redressed, plus compensation, even though legally, we could only go back to 2013. The Deputy's contact should therefore be reassured that this examination is providing a mechanism by which the banks will make these offers to those affected while they still have the option - again, thanks to the legislation that Members passed - to seek compensation and redress through the ombudsman over the lifetime of the contracts if the offer from the bank and the appeals process is not to the satisfaction of those affected. This goes back to the fact that what we are doing is quite unusual. We will not just do the legal minimum; we are pushing the banks to do the right thing and telling them to introduce these schemes even if we can agree that the issue does not involve legal compulsion.

Deputy Michael McGrath: Professor Lane is saying the customers have legal recourse anyway to the ombudsman-----

Professor Philip Lane: Exactly

Deputy Michael McGrath: -----for the entire period.

Professor Philip Lane: This is all an extra layer. It is intended to accelerate and move forward the day on which a payment is made to the customer while not preventing anyone going forward-----

Deputy Michael McGrath: Regarding the issue the Chairman raised about loans being sold on, I am concerned that where loans have been sold on, the people involved will not be contacted. Ulster Bank, for example, gave us its figures: it has identified 3,500 impacted customers, 2,500 of whom have been restored onto the correct rate, while 1,000 have redeemed or switched lenders. That is quite a high proportion. Close to a third of its impacted customers are no longer mortgage customers of the bank. Furthermore, many of the 15 lenders in scope sold on their entire book, which may have been sold on again. What confidence does the Central Bank have that contact will be made with the end customers who were affected? Is there not a risk that many of these people will fall through the cracks and never be contacted?

Ms Derville Rowland: We have demanded that the lenders adopt a very rigorous approach to seek to contact customers and the money will be preserved for those customers. It will not disappear or go away. We will expect very rigorous attempts to be made to find all customers who will have moneys due to them arising out of this scheme. Even if they must hire experts

to find people, I think that can be done in this country and-----

Deputy Michael McGrath: I encourage the witnesses to pay particular attention to this issue. There is undoubtedly potential there for people to miss out. It is important.

Ms Derville Rowland: It is important.

Deputy Michael McGrath: Finally, the two enforcement investigations are under way. The witnesses have named the banks involved: Permanent TSB and Ulster Bank. To clarify, these enforcement investigations do not concern the way in which impacted customers are being dealt with and offered redress and compensation. Do the enforcement investigations relate to the origin of the problem, that is, how people were wrongly denied tracker rates?

Ms Derville Rowland: The starting point of the enforcement investigations is the origin of the issue but where any other regulatory breaches come into the frame in an enforcement investigation, they are also included. That is always the case. An enforcement investigation will start with an examination of the cause of the issue, whether a regulatory breach is involved, the evidence of that, who caused it, who was responsible and when it occurred. As one moves through this process and procedure, any other breach in the storyline, as I call it, is always taken into account.

Deputy Michael McGrath: It can be added in.

Ms Derville Rowland: It is - regularly.

Senator Kieran O'Donnell: I have a number of very brief questions. To clarify, of the 11 institutions, how many is the Central Bank satisfied with at this stage in respect of the redress and compensation proposals put forward?

Ms Derville Rowland: Three proposals have been approved by the institutions' own boards. It is very important that-----

Senator Kieran O'Donnell: That is fine.

Ms Derville Rowland: I keep phrasing it that way because it is really important to understand that the institutions' boards approve their proposals. We expect three more boards to approve their institutions' proposals very soon-----

Senator Kieran O'Donnell: That makes six.

Ms Derville Rowland: -----and the balance of proposals will be approved by the relevant boards before Christmas in order that all schemes are up and running before Christmas.

Senator Kieran O'Donnell: That is outside the two that are under-----

Ms Derville Rowland: Their schemes will be up and running as well, but we will disagree with them about those extra people-----

Senator Kieran O'Donnell: Regarding the substance of what is being offered in terms of money, redress and compensation, can the Central Bank say it is either satisfied or not in disagreement with the proposals being put forward by the various institutions?

Professor Philip Lane: I will not use either phrase because, in the end, we are not putting any limitation on the boards of these banks to be as generous as possible. The way to phrase it,

however, is we have pushed back on schemes that are below some minimum threshold. In that sense, these schemes meet some degree of proportionality but that does not mean we endorse them.

Senator Kieran O'Donnell: The point I am making is that, as of now, there is no reason for the schemes proposed by the banks not to be in operation or for payments not to start to be paid before the end of the year.

Ms Derville Rowland: Our expectation is that all the schemes should be up and running before the end of the year.

Senator Kieran O'Donnell: I have one final question. Professor Lane spoke about 719,000 mortgages being in the original scope for tracker mortgages and said the Central Bank zeroed in on 112,000. What are those 112,000 cases?

Professor Philip Lane: They are cases in which we think there was some movement over the lifetime of the mortgage - in other words, that the tracker rate on day one is not the rate over the lifetime of the relationship between the debtor and the bank. This would trigger questions as to why that was and whether it was perfectly okay or whether there was some problem with them.

Senator Kieran O'Donnell: Is it not fair to say that 13,000 is approximately 12% of that figure, which seems a very low proportion?

Professor Philip Lane: Again, let us see what the final number is.

Senator Kieran O'Donnell: Does Professor Lane accept that it is very low?

Professor Philip Lane: In some cases people made a decision to move from a tracker to something else, so it is not the case that every single tracker has led to a problem.

Senator Kieran O'Donnell: There was an explosion of trackers in the 2000s, many of which would still have been live in 2008 and 2009. Does one in eight trackers being affected not strike Professor Lane as a very low proportion? Is 13,000 not a low figure? Is it not the case that substantially more will be impacted?

Professor Philip Lane: We do not think 13,000 will be the final number, so we will agree that more will be involved but it is also the case that it would not be a correct representation to say every single tracker-----

Senator Kieran O'Donnell: I did not say that.

Professor Philip Lane: Yes, I know. Let us see what the final number is. We will work through the process and see where it lands.

Senator Kieran O'Donnell: Professor Lane agrees it will probably be substantially more than 13,000.

Professor Philip Lane: That is what we have indicated, but I do not think it is productive at this point to put a limit on those numbers.

Deputy Pearse Doherty: I have a number of brief questions before we move on to the next session. Regarding decisions taken in the courts, I refer to an example in which an individual decides to take a bank to court. The judge rules that the bank was negligent and took the indi-

vidual's money - or perhaps a company's money - unlawfully and issues an order that it must restore those funds to the individual. In some cases this may amount to tens of thousands, in other cases it could be in excess of €1 million or so. Is there an automatic reporting line between what happens in the courts and its judgments and the Central Bank?

Ms Derville Rowland: The judgments in court?

Deputy Pearse Doherty: Yes.

Ms Derville Rowland: There is not an automatic reporting line to us from court but judgments are publicly available.

Professor Philip Lane: Let me make a distinction. One can read court judgments.

Ms Derville Rowland: Yes.

Professor Philip Lane: We can read those judgments. Settlements are a classic issue. If some case is privately settled before a judgment is made, then that will be private between the-----

Deputy Pearse Doherty: I am talking about the public ones.

Professor Philip Lane: Yes.

Deputy Pearse Doherty: There have been numerous instances. There was one case that we had before the committee where a €1.2 million order was made against ACC Bank. What is the interaction between that order and regulatory action by the Central Bank? How is that court order discovered? Does the Central Bank have someone in the courts? How does the Central Bank find out whether a bank that it regulates has broken the law in this State? What action does the Central Bank, as the regulator, take in such instances? I know the case I referred to is before the Governor's time but I just cited it as an example.

Professor Philip Lane: Yes.

Ms Derville Rowland: Different practices will exist across the bank. Different parts of the organisation certainly keep a very close eye on legal judgments, as relevant to their business areas. I do not know if Mr. Sibley wants to talk about banking supervision. I know our legal or enforcement department and divisions will all keep a close eye on things relevant to their areas and the portfolios they work with.

Deputy Pearse Doherty: How does the Central Bank keep a close eye if a case is not reported in the newspapers? I am quite surprised at this, and also in the context of trackers.

(Interruptions).

Deputy Pearse Doherty: Many hundreds of individuals are taking cases to the courts and a certain number of decisions have already been issued. Legal representatives who are acting on behalf of in excess of 100 clients have contacted members of the committee and there are other representatives involved. Is there not automatic reporting when the courts decide that institutions have broken Irish law? Is the Central Bank notified in that instance so it can take regulatory action? If not, the situation needs to be rectified very quickly.

Mr. Ed Sibley: To the best of my knowledge, there is no automatic notification in that cir-

cumstance. Where we would see that, from a supervision or prudential regulation perspective, is from an operational risk perspective. Where firms have litigation issues, that would be something that we would be actively engaged in from an operational risk perspective. Whether they win or lose when the case comes to court, it would be something that they should be actively managing from an operational risk perspective.

Deputy Pearse Doherty: The Central Bank would not see that in terms of the bank breaking the law. Does Mr. Sibley know what I mean? There was illegal activity within the bank but the regulator will be blind to that idea unless it is observant. I understand that the Central Bank is stretched to its limit.

Mr. Ed Sibley: Yes.

Professor Philip Lane: Yes.

Deputy Pearse Doherty: There needs to be a direct line of reporting, particularly now that we are entering an era where there will be a large number of court cases about tracker mortgages. In that instance, courts may decide that bankers and financial institutions that are regulated by the Central Bank either individually or collectively broke the law.

Professor Philip Lane: There will be a high degree of awareness of a significant number of court cases that involve regulated institutions. We would be aware of those. I think the Deputy asked if there was an automatic trigger and if the court finds that the bank was at fault, should that not automatically trigger a regulatory action. I do not think there is an automatic connection. I would say that how enforcement cases are initiated would be based on any information that comes to the bank, whether it is supervisory information or public information such as a court decision. That information would be relevant to how we think about enforcement actions. There is not a mechanical link but I think it is a reasonable-----

Deputy Pearse Doherty: Does the Governor believe there should be some type of responsibility, whether on the financial institutions or the Courts Service, to report cases where they have found that an institution has broken Irish law?

Professor Philip Lane: The Deputy has asked a reasonable question. I think it is probably best if we answer him in a written format.

Deputy Pearse Doherty: That is fine.

Professor Philip Lane: The Deputy has asked a very interesting question.

Deputy Pearse Doherty: In terms of enforcement actions, we know that two cases have been completed and there are two cases ongoing. Can we expect that all 11 banks will be subject to enforcement action by the Central Bank?

Ms Derville Rowland: One can expect more enforcement actions but I do not want to say how many more.

Deputy Pearse Doherty: That is fine.

Ms Derville Rowland: One can expect numerous more actions.

Deputy Pearse Doherty: I have a question on the process. The Central Bank has a lot of documentation, including the stage two reports, etc. Given that the Central Bank expects there

will be more enforcement actions, why has it taken so long to make a decision on whether the other seven banks are subject to enforcement action?

Ms Derville Rowland: I talked about a two-pronged approach earlier and the information being garnered in the course of the supervisory examination. I tried to make it clear that the supervisor's focus is on getting the reports in, looking at the numbers of groups that are identified in those reports, looking at the schemes and their quality, and challenging and externally checking those details. All of that yields quite a lot of information but it does not yield the full picture. All of that feeds into the enforcement case as the starting point for what regulatory breaches one thinks may or may not have occurred. One platforms from that because then one has to go deeper in a different direction. It would slow the supervisor down if he or she had to do that level of a forensic acquisition of information because he or she would not get to looking after getting the redress for people. The supervisor would have to stay in the data, the data analytics and that information trawl for longer so it is best to have two teams. All of the information that is yielded by the examination is very fruitful for the basis of the enforcement case.

Deputy Pearse Doherty: Yes.

Ms Derville Rowland: Then the enforcement team platforms from that. They move forward then into looking at this issue and what caused it in the context of the enforcement case. We deal with a lot of data and data sources at a scale that is now regarded as the norm in enforcement work in these types of institutions. It is not what one would recognise as being small or involving just a few pieces of paper.

Deputy Pearse Doherty: The Central Bank has put it on the record that there are about 30,000 documents.

Ms Derville Rowland: It is very large-scale work.

Deputy Pearse Doherty: Can the witnesses indicate when we will reach a position when we will know that the enforcement action has been concluded? I do not mean an inaction but that the Central Bank has finished making decisions. I refer to a decision having been made to take enforcement action or not take enforcement action against the seven remaining institutions.

Ms Derville Rowland: We will tell the committee, as the updates come, where we are.

Deputy Pearse Doherty: I want an answer. Will we ask the same question in 2019, 2020 and 2021? When does the Central Bank expect it will be in a position where it has closed off the matter and made decisions about enforcement actions?

Ms Derville Rowland: I will tell the Deputy. The approach is to make sure that we are able to run quite a number of the cases concurrently. It would be unfortunate for everybody if one case were to come after the other and it would mean we would be here for a very long time. Enforcement cases take a long time.

Deputy Pearse Doherty: I understand.

Ms Derville Rowland: Litigation cases take a long time, which is normal. One works in a different timescale because of the close nature of the work.

As we come through the system, decisions will be made. We are now set up in enforcement to run a number of large-scale cases concurrently in this area. As we make these decisions, there will be more updates, and we will give the committee more updates. I do not want to

come here three or four years from now to say that we are opening cases. I want to be able to say that the decisions are being taken in the next period of time, and a reasonable period of time. I am not talking two years or anything like it. I am saying as that information comes through and we are working through it-----

Deputy Pearse Doherty: That is great.

Ms Derville Rowland: -----early next year. If we are in heavy challenge or heavy litigation territory-----

Deputy Pearse Doherty: I understand that would stall proceedings.

Ms Derville Rowland: -----it will have a different kind of impact on the timelines, which will become very long.

Deputy Pearse Doherty: The IBRC was within scope as it had a large number of tracker mortgages. Does the Central Bank have any information on the matter?

Ms Derville Rowland: The liquidator has gone on public record with regard to that matter-----

Deputy Pearse Doherty: Yes.

Ms Derville Rowland: -----to say that anybody impacted in the scheme will be an unsecured creditor. That is the situation.

Mr. Ed Sibley: To be clear, there is a small matter. That does not mean that the issue is not there but there is a small number of trackers within the IBRC from the INBS. The IBRC did a lot of other things, but what the IBRC did not do a lot of was tracker mortgages.

Deputy Pearse Doherty: Will customers get their money back?

Mr. Ed Sibley: This is a different territory from all of the others. We are in a liquidation scenario so they will be unsecured creditors within that liquidation. It is a different case for the IBRC.

Deputy Pearse Doherty: How is the level of fines determined? The public will be cheering the Central Bank on and may give the witnesses the freedom of the city if they take out the bata mór when they are levelling fines on banks following the enforcement action. How does the Central Bank determine the appropriate level of fine to be levied on an institution when some are recording profits of €1 billion and will not have to pay tax on profits for approximately 20 years because of changes in the law? How does the Central Bank determine an appropriate fine for the amount of payments-----

Professor Philip Lane: I will let Ms Rowland answer that. There is a maximum we can levy and within that-----

Deputy Pearse Doherty: For example, 10% of a bank's turnover would be a massive fine.

Ms Derville Rowland: The Deputy is correct that the law has changed. There has been much discussion today of retrospective law but it is very important to know, as I am sure the Deputy does, that the new law on fines is prospective, not retrospective. The law change came into effect on 1 August-----

Deputy Pearse Doherty: 2013.

Ms Derville Rowland: -----2013 but the increased fining power cannot be used for any breach that occurred prior to that date. Instead, one has to use the fining powers that were in place at the time the breach occurred. The fining powers from 1 August 2004 to 1 August 2013 had a cap of €5 million and involved several different fines. Under the new fining regime there is a ceiling of whichever of 10% of turnover or €10 million is the higher and that is the high-level consideration when one considers apportionment. On our website, we have published at a high level and in detail the factors taken into consideration in deciding the components of a fine. Those factors are the nature, scale and gravity of the breach, the demeanour, any rectification of the issue, whether the breach was systemic or on a large scale, criminality, how the breach was fixed and how the bank behaved in that rectification, along with any other relevant consideration. There are other factors. One considers in a legal sense the nature of the breach, the gravity of the matter, the impact on the public, the reputation of banks and the system, the bank's conduct in terms of whether it self-reported or was brought to heel over the matter and whether it did the right thing on a voluntary basis or by anybody it may have hurt. Those are relevant considerations in calibrating an appropriate penalty.

Deputy Pearse Doherty: Perhaps the Central Bank should seek victim impact statements from members of the public before it issues the fines because those stories-----

Ms Derville Rowland: In the right circumstances, that could be a very reasonable component part of considering the fine for something that had a large consumer detriment impact.

Sitting suspended at 5.25 p.m. and resumed at 5.48 p.m.

Chairman: I invite Deputy Pearse Doherty to speak.

Deputy Pearse Doherty: I wish to raise the issue of Brexit and how it could impact on financial institutions in the State. I understand that the financial stability division of the Central Bank has carried out an assessment into the risks for Irish banks with UK market portfolios in the context of three different gradations of a hard Brexit and has assessed potential falls in the property market, unemployment rates and other factors. Will Professor Lane outline the level of exposure of the Irish banks to the UK mortgage market under the different Brexit scenarios?

Professor Philip Lane: I will let Mr. Sibley take this.

Mr. Ed Sibley: It is difficult to answer precisely because of the very small number of Irish banks that are very active in the UK. Bank of Ireland is by far the biggest bank operating in the UK. AIB has a much smaller operation. It is similar in size in Northern Ireland but in terms of Great Britain, Bank of Ireland is easily the biggest. I cannot really talk about specific outcomes of stress testing on a UK mortgage book without really referring to one institution, which I am limited in doing.

We are broadly comfortable with the approach that the Irish banks are taking now in respect of Brexit in terms of making sure that they have considered it from a stress case perspective, to make sure they are sufficiently capitalised to address a severe stress associated with Brexit. Where I have more concern is in other sectors such as insurance, where the level of preparation is not as high and the organisational arrangements are different. For example, there are not always separate subsidiaries in terms of the UK operation. Both AIB and Bank of Ireland operate a separate subsidiary in the UK. They are both well capitalised and have high capital requirements set by the UK Prudential Regulation Authority, with which we interact along with

our ECB colleagues. From a capital adequacy perspective, we are satisfied they have sufficient capital at this stage.

Deputy Pearse Doherty: We need to take the Central Bank at its word in this matter. I would expect that Mr. Sibley would be able to provide us with some picture of high-level exposure in respect of Irish banks. Without going into the individual institutions, which would be counterproductive in terms of market sensitivities and so on, under the three scenarios of the Central Bank's assessment, can he give us a sense of just how exposed the financial sector is to UK mortgages? Is this something not to worry about at all? Is that what the report concludes? Is there anything to worry about here?

Mr. Ed Sibley: I do not have the precise figures with me but we can provide them.

Deputy Pearse Doherty: I am sorry, what can the witnesses provide?

Mr. Ed Sibley: I do not have the precise figures in terms of balance sheet exposure with me today but I can certainly provide them. Bank of Ireland UK has a balance sheet in excess of £20 billion. Its main lending activity is mortgage lending in the UK. There is some level of unsecured lending also. From memory, AIB is in the region of about £6 billion. It has a different mix within that, different proportions, with some mortgage lending in Northern Ireland as well as some SME and other lending. In the North of Ireland, Bank of Ireland has a similar model but in terms of Great Britain, it is primarily in mortgages. That is the exposure. We have done stress testing and the previous stress tests from a European Banking Authority perspective were published in 2016. They showed significant losses associated with the Irish banks but that was mainly to do with the Republic of Ireland book.

Deputy Pearse Doherty: What loan default rate has been assessed under the three different scenarios?

Mr. Ed Sibley: I will have to come back to the Deputy on that. I do not have to hand the specific details of the stress tests.

Deputy Pearse Doherty: Are we looking at single digits in the most adverse scenario?

Mr. Ed Sibley: I think it is best if I come back to the Deputy on that in terms of the precise methodology used for the stress testing.

Deputy Pearse Doherty: I am not looking for the methodology. I am looking for the conclusions. The Central Bank has assessed, under the different scenarios, what the likely loan default rate would be in respect of UK mortgages for Irish financial institutions. What type of rate are we looking at? Potentially, how many accounts could go into default under the three different scenarios?

Mr. Ed Sibley: I can certainly provide details of the assumptions that were used in stress testing. However, stress testing is in no way a forecast. The way I would look at stress testing is that it gives a degree of sensitivity analysis. It shows how sensitive a bank is to different scenarios or issues emerging, rather than giving one, two or three definitive answers.

Professor Philip Lane: Given the small number of banks involved in the UK, I do not think it would be wise to focus in on loan default rates. The basic message and the overall judgment here is that these banks have enough capital to withstand the kind of stresses we see in these scenarios. If we give out the individual numbers, it could be easily inferred that they were

bank-specific and we cannot do that given the small population of banks involved in the UK.

Deputy Pearse Doherty: It is because there are only two players in the market, is that what Professor Lane is saying?

Professor Philip Lane: That is too small a number to convey some kind of indication. It would basically just indicate the precise scenarios for individual banks.

Deputy Pearse Doherty: I accept this is projection and forecasting, looking at different scenarios, which is exactly what the Central Bank should be doing and I welcome that. However, the Central Bank has the data based on the models it has used under the three different scenarios of WTO, Norway, Sweden and so on. Are the witnesses telling the finance committee that there is nothing to worry about in respect of the most adverse scenario in Britain in terms of the exposure of Irish banks, that they can comfortably withstand the most adverse scenario that is painted out in the Central Bank's assessment?

Professor Philip Lane: One has to interpret what that means. When we say a bank is well capitalised, the bank may make losses which will reduce its equity value and in turn that may also raise funding challenges for the bank. It is not to the degree where we think they would violate the minimum levels of capital that we would require. In other words, it is not something that I think would cause an existential crisis but of course it would be damaging to these banks if they made significant losses on UK lending. It is a concern. We are concerned and that is why we make sure ourselves in respect of the subsidiary in the UK that there is enough capital to be able to absorb losses, even though the investors would lose out on them, without threatening the underlying existence of the institution.

Deputy Pearse Doherty: Brexit is obviously not the only risk on the horizon for financial institutions. Let us assume - I hope it does not materialise - that the most adverse scenario from the Central Bank's assessment comes to pass and that we will see capital being used up in respect of those loan defaults. Is it Professor Lane's view that the capital remaining within the institutions would be sufficient, or would there be a requirement for the bank to raise additional capital? On foot of this assessment carried out by the Central Bank, will it require or encourage financial institutions with exposure to the UK mortgage market to increase their capital levels?

Professor Philip Lane: The best way to capture this is to talk about the 2016 EBA stress test, which is more severe because it is across the whole book. Perhaps I can explain how the Irish banks were dealt with in terms of the 2016 test.

Deputy Pearse Doherty: Before Professor Lane deals with that, the Central Bank has carried out an important analysis of three different Brexit scenarios. In the event of the most adverse scenario materialising, does Professor Lane believe that Irish banks would need to raise additional capital? On foot of that assessment, would Professor Lane be encouraging the banks to increase their capital levels because of the risk that has been identified - it has not materialised - within the system?

Professor Philip Lane: The core of the questions concern the relationship between the stress tests and how we think about the capital levels required by the banks. This is consistent with the EBA approach.

Mr. Ed Sibley: I will come to the specific question but, as I did earlier, I will provide some background. We operate as part of a European system of banking supervision. Setting capital levels for banks, which are what are called significant institutions and include the main Irish

retail banks, takes place within the SSM. We, as part of that mechanism, with the ECB and the other competent authorities across the eurozone, make the determination as to the appropriate level of capital to be held within any bank that is deemed significant. We have an important and active role to play in terms of the execution of the work, the methodologies that are used and the final decision-making process. Every year we complete our risk assessment taking into account the issues the banks face today as well as on a forward-looking basis. We consider what are reasonably plausible stress scenarios. We would expect the banks to be undertaking their own capital planning, including stress testing, as well. We use that to set up minimum capital requirements for banks to hold.

We also issue capital guidance which we expect them to hold over and above the hard requirement. In theory, the banks have some degree of choice as to whether they hold it but in practice they are all above it. Typically, capital requirements are set towards the end of the year. We are coming to the very end of that process now and are setting capital requirements for all of the Irish retail banks. These will take in all our considerations as to the risks they face on a forward-looking basis, whether it is Brexit-related, the conduct risk that we have thought about or other factors. That sets a minimum capital requirement. We have a small buffer on top as guidance. In reality, we expect the banks to hold a bit more above that. We do not like to see banks that are just on the surface or with very little margin between the regulator requirements and the requirements they hold. That will capture the Brexit risk.

Deputy Pearse Doherty: As a result of the assessment carried out by the financial stability division of the Central Bank on the risk relating to Brexit, are we likely to see additional capital requirements on at least a number of the Irish institutions?

Mr. Ed Sibley: How I can answer that is somewhat limited. If we look across the European system, historically - and this is partly driven by our experience in the crisis - the level of capital that we require banks in Ireland to hold would probably be slightly higher than is the case in other jurisdictions. There has been a degree of normalisation of that through the consistency and level playing field that is trying to be driven through banking union. Inbuilt in the capital requirements, as of last year and into this year, was the outcome of the 2016 EBA stress test. As referred to by the Governor, that was a severe stress test, particularly for the Irish banks, because it brought in comparisons with historical loss levels that had been incurred by banks in the recent past. Where banks were operating in systems whereby they had high loss levels, which was evidently the case in Ireland, the stress test outcome was more negative than that in those jurisdictions which did not have a history of credit losses. That would also have influenced the capital levels which would have been set coming out of the EBA stress test in 2016 and, broadly speaking, what we expect to see in terms of capital levels and capital requirements this year is for them to be consistent with those that were set in 2016. There are perhaps different drivers underneath that, but overall we expect capital levels to be broadly the same.

Professor Philip Lane: Many different factors influence capital levels. Brexit is one factor but there are many others. Some of them drive down capital levels and some of them drive those levels up. The overall net outcome is relative stability.

Deputy Pearse Doherty: I get that there are moving factors and that it may remain the same because some go up and down. If we just look at the Brexit component of what made up the capital requirement in the previous year, on foot of the assessment that was carried out, does Professor Lane believe that the Brexit component of the capital requirement will be increased?

Professor Philip Lane: It would be a mistake to say that there is a kind of spreadsheet

which indicates that the capital requirement is one number for Brexit and another for-----

Deputy Pearse Doherty: I know that.

Professor Philip Lane: It is a holistic, overall number.

Mr. Ed Sibley: I am satisfied that the capital requirements being set for the banks operating in Ireland are appropriate and that those banks meet and exceed those requirements as of today. That does not mean they are immune from all eventualities. However, I am satisfied that the capital requirements-----

Deputy Pearse Doherty: I thank Mr. Sibley for clearing that up. I hope we will not be dragging the witnesses over the coals in a couple of years regarding why these banks have-----

Mr. Ed Sibley: I sincerely hope so too. The other aspect that we look at is resolution planning. Work has been done locally in terms of resolution planning. There is also work on a European stage. That includes ensuring that there are sufficient eligible liabilities to bail in were a bank to get into difficulty.

Chairman: We are running out of time.

Deputy Pearse Doherty: I would love to go into that part of it in detail but I cannot because the Chair is anxious that I move on. This is my final question. In correspondence that was released to me following a freedom of information request, the Central Bank diplomatically told the Minister that certain insurance companies had lied to the Central Bank. Does Professor Lane believe that to be a fair assessment?

Professor Philip Lane: Does this refer to correspondence from the previous Governor?

Deputy Pearse Doherty: Yes.

Professor Philip Lane: I do not have the letter in front of me. As the report indicates, insurance in this country has been a major headache. There was volatility due to underpricing, lack of proper assessment of risk and so on, which, in turn, led to the surge in premia in recent years. I totally agree with the general story that the insurance market has been dysfunctional. I will ask Mr. Sibley to deal with the behaviour in individual firms.

Mr. Ed Sibley: This goes to an earlier point. Where we have come across obstruction or dishonesty in a regulated firm, we would take action. We would take a very dim view of that.

Deputy Pearse Doherty: I do not want to be rude but I am not clear about this. I have discussed a number of letters at this committee about the dysfunctionality of the insurance industry. One letter from the Central Bank to the Minister for Finance states that an insurance company provided false information to the Central Bank. It goes on to state that the Central Bank was powerless to act in this regard. There is a lacuna in the law as a result.

Professor Philip Lane: We can come back to the Deputy on this after we have learned exactly what the previous Governor, Professor Honohan, was referring to. As the system of insurance regulation is fundamentally shifting with Solvency II, the requirements in terms of the data we receive are far more general than previously. In insurance we now get a huge amount of data from firms but I will have to come back to the Deputy on the precise scenario in the letter to which he referred.

Deputy Pearse Doherty: Must the institution itself be found guilty of an action before a decision or action can be taken by the Central Bank relating to an individual? It seems that, if an individual supplied false and misleading information to the Central Bank on insurance reporting matters, the Central Bank would have no powers to act because it would have to establish that the company itself was deliberately providing false information and this provides a veil of protection for the individual who provided the false information.

Mr. Ed Sibley: Under Solvency II, insurance firms have very onerous regulatory reporting requirements in terms of the information they must provide to us. This is undertaken on a regulatory footing so if there is a failure to report or inaccurate reporting, it would be a matter for enforcement. Over a number of years, we have taken action relating to firms that have misreported.

Deputy Pearse Doherty: The Central Bank can only take action on foot of a statutory request for information, not on the basis of voluntary information.

Mr. Ed Sibley: This is my point. Under Solvency II, insurance firms have to undertake regulatory reporting and if they fail to do so, or report inaccurately, we can and would take enforcement action. The insurance firms themselves would say the requirements are onerous and they certainly are a significant uplift in terms of the data and the quality thereof they must submit.

Professor Philip Lane: This is the current regime. The former Governor, Professor Honohan, was writing before the introduction of Solvency II.

Ms Derville Rowland: That is correct. Solvency II came into force after that letter was written. The Central Bank has a significant selection of powers but the Deputy is correct that unless they are used in the first instance, in the case of information provided to the Central Bank not on foot of a statutory request, the bank cannot then action its powers on false or misleading information. Those powers have to be invoked in the first instance. Notwithstanding that, strong information powers have been put into Solvency II.

The Deputy is right about the construction of the administrative sanctions procedure. Unless the individual is proved to be participating in a breach committed by the regulated entity, it would fall away. That is a matter of legal construction. There might also be fitness and probity considerations but that would be rare.

Deputy Pearse Doherty: It happened a couple of years ago.

Ms Derville Rowland: The fitness and probity aspect should be capable of curing that defect because if an individual, even on a frolic of his or her own, provides the Central Bank with false or misleading information one would have to consider that he or she was not the kind of person of integrity that should be in the system. One can come at this problem in a number of ways.

Deputy Pearse Doherty: I raised this because I have drafted legislation to close the lacuna in the law and it will come before the finance committee in due course. We will have to discuss it at that time.

Senator Rose Conway-Walsh: What is the current balance of the insurance compensation fund, ICF?

Professor Philip Lane: In the Irish system the compensation fund is run on a rolling basis. There is a deficit but funding is provided each year as needed. There are different ways to run a compensation fund. One can pre-fund it or fund it as needed.

Senator Rose Conway-Walsh: Professor Lane cannot say how much is the deficit.

Professor Philip Lane: I am told there is a severe deficit but that is not the issue. We can provide the annual report for the Senator if she does not have it. The State has many liabilities which are not pre-funded and the income required to satisfy the needs of the fund is provided on a rolling basis.

Senator Rose Conway-Walsh: Does the forthcoming legislative change make it more likely that the insurance levy will be extended? For how long has the bank calculated this? Has it looked at it?

Ms Derville Rowland: It is under consideration by the Department of Finance.

Senator Rose Conway-Walsh: Is the Central Bank sure there will not be another case like that of Setanta?

Mr. Ed Sibley: It is impossible to say with certainty that there will not be another case like that of Setanta. We operate within a European framework, where firms have the freedom to establish or to provide services across the EU. There is an increasing degree of convergence of supervisory practices and rules but there is still a degree of inconsistency out there. There are hundreds of firms that have the authorisation to provide services into Ireland so we cannot say definitively that there will not be another case like that of Setanta. We undertake active supervision in order that we can understand what firms operate here and, while we do not have prudential responsibility for a firm which is not incorporated in Ireland but provides services into Ireland, we seek to engage with European forums and bilaterally with the home regulator whenever we have any concerns.

Senator Rose Conway-Walsh: There is still a lot of uncertainty in the market and this is a reason given by insurers for increased premiums. How many new competitors have come into the market?

Professor Philip Lane: Is the Senator asking about motor insurance?

Senator Rose Conway-Walsh: Yes.

Mr. Ed Sibley: There are approximately 40 firms currently authorised to provide car insurance in Ireland. They are a combination of firms incorporated here, firms established here as a branch and firms that can provide through freedom of services. About two thirds of the market is serviced by those firms that are incorporated here. The rest is through freedom of services and freedom to establish.

Senator Rose Conway-Walsh: What I am trying to get at is the uncertainty preventing new competitors coming into the market. How many new competitors are there? Are there new competitors coming into the market all the time?

Mr. Ed Sibley: The number of firms operating in Ireland or who have the authorisation to provide motor insurance in Ireland is quite high. There are more than 40. A smaller number of firms are looking to become authorised and incorporated in Ireland. About 13 are domestically regulated here.

Senator Rose Conway-Walsh: Are additional staff being recruited within the Central Bank?

Professor Philip Lane: Over the past number of years and including this year, we think there has been about a 5% expansion in staff each year. We are expanding. Insurance is one area in which we have expanded. There is a commitment to increase staffing levels. It is not the case that the supervisory system is somehow compromised or at risk as a result of a lack of staff. We want more staff, especially in insurance for Solvency II and so on. We have a big insurance sector here. There is not a mission-critical lack of staff. We are growing and we want to grow more. It would be wrong to say there is a severe gap between what we need and what we have. We are fulfilling our responsibilities as the insurance regulator and as the regulator for other sectors. With more staff and also with the accumulation of experience by existing staff more can be done over time. We are absolutely fulfilling the requirements as the insurance regulator and regulator of other sectors.

Senator Rose Conway-Walsh: Is the Central Bank's internal report saying it has sufficient numbers of staff to do what it needs to do?

Mr. Ed Sibley: What we have been supported in, from a regulation perspective, is approval to increase the number of staff we have, particularly in the context of Brexit and recognising that more firms are coming and there is more complexity in some of them. It will have a cross-sector impact. There is a gap between where we are today in terms of our current headcount versus the approved headcount. A good part of that is recognising we need to grow as more firms come in. It is not preventing us from doing the work we have today. We need to continue to grow to meet future demand. We have looked forward in terms of what we think we need based on what we think will come from Brexit and other factors.

Senator Rose Conway-Walsh: That is across all sectors. How many does Mr. Sibley think will be needed across all sectors, projecting into the coming months and years?

Mr. Ed Sibley: I will talk about the actual numbers. From a prudential regulation perspective, we currently have around 430 staff.

Senator Rose Conway-Walsh: How many?

Mr. Ed Sibley: We have 430. We have an approved headcount of 484. We have increased by approximately 26 to date this year, which is a 6% increase, and we are actively trying to recruit more. We have what we think we need overall in some kind of steady state and we will get up to over 480. There is a difference there. That is part of the fact of growing. It takes time to grow and to grow safely and to make sure we have the right skills and capabilities that we are bringing in.

Senator Rose Conway-Walsh: How much is the difference, just to give me an idea?

Professor Philip Lane: For the bank overall, we are roughly at 1,700 now. At the end of August, the number was 1,682. September is a natural time to expand staffing. The approved total is 1,857 so there is roughly a 10% gap. That total is, in part, forward-looking. We are saying we know from what we see in some areas that requirements that are not there now will be there in future. We know we will be rolling out new requirements over the next year or two so we are staffing now in anticipation of that. With regard to Brexit, we know as firms come in we will need more staff. The fact is we are continuing to expand. If one goes back in time to 2014 or so, there was probably more of a severe gap but we have grown by 5.5% between 2015 and

2016 and by 5% already this year since 2016. We think there is more to come this year. A lot of time and resources are involved in those net increases. We also recognise that we lose people all the time because lots of other people want to hire our staff. If one looks at our website and human resources, one will see the effort we make and the videos we put out. We are doing a good job of recruiting within the framework of being a public service organisation.

Senator Rose Conway-Walsh: Has an internal report been done on the capacity needed?

Professor Philip Lane: There is a big internal planning process. In addition to the internal planning process saying what the basic requirements are, we have a reactive response when new challenges such as Brexit come along. As firms come along with Brexit, we will make the assessment of the net increase we need.

Senator Rose Conway-Walsh: So there is an internal report and that reflects what Professor Lane is saying here today about the bank's capacity.

Professor Philip Lane: When we increase our staff, it is consequential. We will increase our staff to the extent needed to fulfil our mandate. In various parts of the public sector, there is a moratorium or restriction on hiring but we do not have that. We make our decision about how many staff we need. We have that independence. It is our responsibility to staff in proportion to what is needed. There has been a big increase in staff and it is ongoing. I do not think it will be forever. It is in response to the scale of the industry.

Senator Rose Conway-Walsh: What is Professor Lane's view on the public banking system? We heard here from the Sparkasse bank. Will Professor Lane give us his view on that?

Professor Philip Lane: I will say two things. At one level we are neutral. If they meet the conditions coming forward, we will authorise them. We recognise that for public banking to be introduced, such as the Sparkassen or Kiwibank model in New Zealand, which is quite interesting to study, it requires some public entity to capitalise those banks. Ultimately, it will be a policy decision somewhere in the State system that it wants to capitalise a bank. The Sparkassen provides one example; Kiwibank provides another. Around the world there are various State-owned banks. In one scenario, such as that of Kiwibank, in case the commercial banking system goes into crisis, it is important there remains a bank which is available.

Senator Rose Conway-Walsh: Just in case.

Professor Philip Lane: Yes. It is essentially so there is a spare wheel of a public bank operating. That is the case for having public banks. We would be perfectly open-minded regardless of what type of entity owns a bank. If a bank comes forward and meets our authorisation conditions-----

Senator Rose Conway-Walsh: Does Professor Lane believe, as his predecessor did, that there needs to be a middle tier, whatever form it might take or whatever model it is? Is it the Central Bank's position to recognise the need for a middle tier? In Professor Lane's engagement with the Department of Rural and Community Development, was the need for a middle-tier banking system contained in the Central Bank's input?

Professor Philip Lane: I will turn to Mr. Ed Sibley in a minute. Ultimately what the banking system should look like is not a question for the regulator. The Central Bank is the regulator; we do not set the rules. It is in part a commercial decision, with the firm deciding if it wants to enter commercially. On top of that, it is a public policy decision where public policymakers

make decisions on the types of entity they want to have. Essentially, we are neutral in the sense that if an entity meets the authorisation conditions laid out, it will be authorised. I ask Mr. Sibley to add to what I have said.

Senator Rose Conway-Walsh: Is there a gap in the market?

Professor Philip Lane: It is clear and consistent with a lot of the concerns many members of the committee have that having this hyper-concentrated banking system is problematic. I will not disagree. As we move forward one way to have more competition is through the record of profitability in this country which may trigger commercial entry. Another way is if there is a starter bank with other objectives beyond just commercial values. That is where public policy comes in. It would be possible for an entity to decide its goal was not to satisfy some private shareholders but to have wider community objectives.

Mr. Ed Sibley: The banking market in Ireland is changing again. There is a degree of recovery in the retail banks. We are seeing expansion again in what I would describe as the internationally focused banks. They do not spend a lot of time serving the Irish economy and Irish customers, rather they enter Europe. Credit unions obviously have an important role to play across the country, particularly from a financial inclusion perspective. The sector faces some challenges, but we are supportive of credit unions in trying to deal with the viability challenges they face.

Something at which we look very closely is the uncertainty surrounding financial innovation and potentially a degree of fragmentation in banking-like services being provided. Specific niche entities are coming in. We see it particularly with the providers of payments services. What we have not seen to date - this is the ultimate aim of banking union - is more cross-border activity across the eurozone. What has happened post-crisis is there has been a continued degree of retrenchment from international to national-focused banks. The aim of banking union is to expand this out. There is also capital markets union which aims to better serve SMEs.

Professor Philip Lane: This is where I disagree with some of the comments made by the representatives who appeared before the committee in the last session. The evidence from the United States is that once cross-state banking was permitted there, banks became much more efficient and could be a cheaper provider of credit because of the diversification. A community bank which raises funding and lends locally has positives but also has the negative of exposure only to that region. If a region in Ireland is reliant on an industry that gets into trouble, the local bank will get into trouble because it is so concentrated in a locality. There are pros and cons in having these locally focused banks.

In the end I ultimately agree with my predecessor. We need a variety of banks. With consolidation in Europe, there will be some large banks which will be hyper-efficient because they will have the scale and technology to run the underlying systems cheaply and at the same time perhaps supplement them - this is a public policy decision - with some more locally focused banks.

Senator Paddy Burke: I apologise that I had to step out to attend another meeting earlier.

The Central Bank is putting considerable pressure on the major banks to sell off loans - good and bad loans - perhaps bundled to get their books in order.

Professor Philip Lane: Let me refine that comment. It is absolutely true - this is a pan-European issue - that we are putting renewed pressure on the banks to deal with their non-per-

forming loans, but that does not mean that we are saying the way to do it is through selling these assets. Part of the solution could be restructuring these loans. The solution to non-performing loans is not necessarily just to sell them off, even though that may be part of it. I will ask Mr. Sibley to outline our strategy for dealing with non-performing exposures.

Mr. Ed Sibley: As Professor Lane described, our main concern is about the outcome, which, to put it simply, is twofold. Non-performing loans need to be reduced in a sustainable fashion for the banks operating in Ireland, while at the same time those customers in distress need to be protected to ensure the solutions put in place for them are sustainable.

Senator Paddy Burke: Will all of the loans associated with the tracker mortgage fiasco be excluded and have to be held on the banks' books? I am referring to any that have not already been sold or transferred. Should the banks hold on to these until they are sorted out or does the Central Bank agree that they could be sold off to vulture funds?

Mr. Ed Sibley: At this stage I am not aware of any proposed sale of tracker mortgage books by banks that are operating banking licences here.

Chairman: I gave an example earlier.

Mr. Ed Sibley: I am not aware of any retail bank that is operating here that is proposing to sell-----

Chairman: Some of the banks have sold their tracker mortgages to vulture funds. That was the point I made earlier.

Mr. Ed Sibley: That was not the question as I understood it, but perhaps-----

Professor Philip Lane: In this renewed wave of tackling non-performing exposures, there are no current plans to sell tracker mortgages. It may have happened in the past, but we have tried to emphasise that it does not remove the responsibility of the loan originator to deal with these tracker mortgages. The fact that a loan might have been sold in the past does not affect the responsibility of the originator to fully redress and compensate those who are affected.

Senator Paddy Burke: I understand that part. However, for the new sales of loans by banks, will they not sell any of these loans that have been uncovered recently or are going to be-----

Professor Philip Lane: We are saying two things. First, we are not aware of any current plan to sell tracker loans. Even if that were the case, it would not remove the responsibility of the originators of these loans to comply in an examination.

Senator Paddy Burke: Senator Michelle Mulherin asked about SMEs, some of which had buy-to-let loans. I was disappointed by the answer the representatives of the Central Bank gave that they did not think the banks were making contingency plans for those loans.

Professor Philip Lane: That is not what we are saying. We are saying that if the loans to these enterprises are based on a tracker mortgage, it is within the scope of the examination. More generally, non-performing SME loans will form part of what we will be looking at in terms of how the banks are handling their arrears.

Senator Paddy Burke: Does that mean that those loans that have not been sold so far, that none of them will be sold in the new sales the banks are preparing?

Professor Philip Lane: We do not know of any current plan to sell tracker loans. I will ask Mr. Sibley to respond on whether SME loans are being sold. The core point is that even if there were such a sale, the responsibility to fulfil expectations in the tracker loan examination would remain.

Mr. Ed Sibley: I distinguish between owner-occupier loans, PDH as we describe them, and buy-to-let loans. Certainly, I am not aware of any plans to sell any owner-occupier tracker mortgage loans by any of the banks operating in Ireland today. There are discussions around potential portfolio sales which, I think, potentially will include buy-to-let loans. I would expect that they would not include loans that are in the scope of the tracker redress programme but we will check that to make sure it is definitively the case.

Senator Paddy Burke: Some of those might not be uncovered at all yet in the review.

Professor Philip Lane: It remains the case that if it is an in-scope tracker, the original lender is responsible. Regardless of whether any such loan ends up being sold on, the responsibility is with the original lender to make good on any losses and compensation incurred.

Senator Paddy Burke: The Central Bank is putting pressure on the banks to clean up these loans or whatever and it is also putting pressure on them to sort them out. The bank could sell the loans and say it did not realise they were in the scope at that stage.

Professor Philip Lane: That is not an answer. They will be responsible. I can assure the Senator that the scope of the tracker examination includes all loans-----

Senator Paddy Burke: Professor Lane is saying the scope is finished.

Professor Philip Lane: No, this is why there is the open-ended aspect to it. We will pursue any cases that we think should be in scope and will press the banks to deal with them. Also covered in the report, and in our discussion earlier, is that in those scenarios where the bank concludes it is not going to entertain them, we will be insisting that the banks inform those cases of the decision which, in turn, may invite or trigger consideration by individuals of going to the ombudsman or, in a business case, it could involve initiating court proceedings.

Senator Paddy Burke: On the SMEs that Senator Mulherin mentioned, is Professor Lane aware of any problem? Are provisions made in the banks to make things right in respect of some of the SMEs or do they have to go through the courts themselves? Does the Central Bank know of a problem there?

Mr. Ed Sibley: It is in the public domain that issues have been raised with RBS's treatment of distressed commercial and SME lending. We are engaging with Ulster Bank on that issue, and have been for some time, in respect of whether there are similarities between the issue that impacted RBS's UK customers and issues here. There was an engagement on that particular point. I asked the Senator earlier to pass on any specific information that she has which we currently do not have, as we would be very keen to understand it and would obviously follow it up.

Senator Paddy Burke: Is there a problem with or issues in the other banks in respect of the same thing? Mr. Sibley said the issue with Ulster Bank's parent company is in the public domain.

Mr. Ed Sibley: I am not aware of any systemic issue in respect of other banks similar to the one that is in the public domain.

Senator Paddy Burke: The Central Bank would not have received any complaints from customers about the way they may have been treated by the banks as regards being taken off a particular rate, or taken off a tracker and put on a different rate? Has there been no correspondence?

Professor Philip Lane: To be precise, any tracker-related issue is part of the tracker examination.

Senator Paddy Burke: Senator Mulherin mentioned a specific rate, let us say a rate that is tied or fixed, and that the borrower was moved off it, outside the tracker.

Mr. Ed Sibley: The Senator talked about a number of things, including products that have been sold and more complex products than mortgage lending. There is a very clear code of conduct in place to protect SMEs. It was first issued in 2009, I think, and updated in 2015. If banks were to operate in breach of that code, then we would take action. I am not aware at this stage of any significant issues in the banks. There is an open engagement, which is in the public domain, in respect of RBS. We continue to make sure that we fulfil our mandate from a consumer protection perspective.

Senator Paddy Burke: I would like clarification on the statute bar. The previous ombudsman ruled on a lot of cases in a manner that was not very favourable to the people who were in bother. In a lot of the cases people were not deemed to have been impacted upon. Those cases will still come within the scope - is that what the witnesses said?

Ms Derville Rowland: Yes. Previously decided cases from-----

Senator Paddy Burke: That is because the Central Bank has written to the banks, is it, to say they could not use the statute bar? Or is it up to the banks themselves to write to the Central Bank to say they will not be using that instrument?

Ms Derville Rowland: There are a couple of things in that. First of all, I think the Senator is referring to the fact that the ombudsman made decisions prior to all of this, which fell either side of the pro and the con for consumers. They won some and they lost some. When we started the examination, we were aware of that. We have a very good line of information between the consumer protection area in the Central Bank and the ombudsman. Since we were aware of it and thought it should be looked at again in a wider way, we put it in as one of the requirements of the framework. We have tried to be really clear about it and started at zero again. Every tracker-related issue was put inside this examination. That is why it is so huge. We did not want to come back and have to gather up parts of this again and say it was problematic. It started at the widest possible parameter and moved in to any kind of tracker-related issue or mortgage where a change had happened - we set out quite a degree of detail about that. Inside of those criteria also would be the cases from the ombudsman, notwithstanding that the ombudsman may have found against those people. The lenders were told to look at the cases again within this wider lens. That is what is happening. I hope that answers the Senator's question.

The issue of the limitation period is actually something different. What we had in mind was time delay for long-tailed cases. It is important that if they are very serious cases, they could be permitted to be brought before the court without difficulty and in addition to the ombudsman's office. The matter has been subsequently amended to the benefit of people and therefore seems to have dealt with itself.

Senator Paddy Burke: Was it the Central Bank that told the banks not to use the instru-

ment?

Ms Derville Rowland: Yes.

Senator Paddy Burke: By diktat, letter or whatever?

Ms Derville Rowland: Yes, absolutely. It was something we thought of in the enforcement investigations and we rolled it out and continued-----

Senator Paddy Burke: Did they all write back and say they accepted it?

Ms Derville Rowland: They all signed up to the framework and it is in that.

Senator Paddy Burke: The Central Bank gets a monthly report from the banks. Could they be published?

Professor Philip Lane: To which reports is the Senator referring?

Senator Paddy Burke: Is there a monthly report on trackers and the framework?

Ms Derville Rowland: We cannot publish that information. At the end of this exercise, we will encourage and look for the banks to put as much information as possible about their schemes and everything into the public domain. We certainly will also seek to publish as much as we can in conclusion. We cannot publish information from regulated entities that we receive in the course of our supervisory work.

Senator Paddy Burke: It was brought to my attention that some people wrote to the Central Bank about their mortgages going back over the years and they had no response at all. Should they write again?

Ms Derville Rowland: I am not aware of that. We have a public contact unit which deals with correspondence from the public and we do seek to write back. If the Senator has information, I ask him to provide it to us and we would ensure that people receive a response.

Senator Paddy Burke: On the German bank that would like to set up here in conjunction with the credit unions or whatever, has the Central Bank looked at the model? The name of the German bank has escaped me. The Chairman tells me it is Sparkasse.

Chairman: The Governor answered that in detail.

Senator Paddy Burke: Does the Central Bank have any objection to the credit union movement investing in it? Does the European Central Bank, ECB, have restrictions on where credit unions can invest their funds?

Mr. Ed Sibley: It is a Central Bank competency, not an ECB one. We are responsible for the regulation of the credit unions. We have recently consulted on credit union investment rules with a view to expanding somewhat those entities in which they can invest. Subject to certain criteria, for instance credit rating and the type of investment they are making, there is a degree to which we are loosening a little bit to allow them to invest in other financial entities other than bank bonds or bank deposits in which they are currently heavily concentrated. We are reviewing the feedback we have had and we will issue a policy statement in due course.

Senator Paddy Burke: Has the policy changed yet?

Mr. Ed Sibley: The policy has not changed as of today because we consulted on policy changes. We took feedback from around 70 different entities. We have considered that and we are going through our final deliberations.

Senator Paddy Burke: Can we expect a policy change soon?

Mr. Ed Sibley: Yes, with regard to our investment rules.

On the specific point raised by the Senator, it would depend on what the arrangement was and whether it met the criteria we are laying out. We have clear and transparent authorisation standards which are being well road-tested with Brexit. We are completely open to engaging with any firm that is prepared and has a well-thought through proposal to seek authorisation, whatever the sector. We will go through our normal standard approach to authorisation in the circumstances where someone approaches us with a well-thought proposal.

Senator Paddy Burke: Has there been a shift in the rules because of Brexit?

Mr. Ed Sibley: I apologise if I have confused the Senator. He might be conflating two slightly different issues.

On his question on whether credit unions can invest in different entities, the answer, subject to the final policy decision we are making, is that there is a degree of opening up somewhat different options for credit union investments. With the consultation paper, we consulted on allowing them to invest in approved housing bodies, for instance, which they would not have been allowed to do previously. We are considering the feedback we got on that consultation paper. That will then become a policy statement, which will then issue. At that point, the policy and requirements change.

There is also a question around authorising or allowing a different type of firm to come into the State. In that circumstance, it would have to go through an authorisation process, presuming it would undertake regulatory activity. We have a clear, robust, transparent and well-tested authorisation process to deal with all manner of firms. If, in this particular circumstance, it had a well-thought through proposal, we would be happy to engage with the entity.

Senator Paddy Burke: I welcome that.

Chairman: I refer to a letter received by the committee - I believe it was brought to the attention of the Governor - from the Garda Commissioner's office, which dealt with queries raised during the hearing the committee had with Jonathan Sugarman. The letter from the Commissioner's office stated that liquidity ratios are set by the Central Bank in its role of economic governance. It continued that in 2012 and 2013, the Central Bank notified An Garda Síochána, in accordance with its statutory function, that it intended to deal with these breaches of liquidity ratios with the bank in question, Unicredit Bank Ireland plc, through administrative sanction procedures. What happened? What were those sanctions?

Mr. Ed Sibley: We did take enforcement actions against Unicredit Bank.

Chairman: This is relevant to the testimony received from Jonathan Sugarman. He specifically said at this committee that he had reported the matter to gardaí at Rathmines. They, in turn, had noted it in the station book. Afterwards, the detective unit informed him a banking specialist would be in touch but that did not happen. When the committee asked the Garda Commissioner's office to comment on this and explain at what stage the inquiry was, we were

told the Central Bank had suggested it was dealing with it and that it would be dealt with through administrative sanction procedures.

I presume from that letter that the bank was in some way sanctioned by financial penalty or whatever for this breach, which apparently was 20 times more than what was allowed. In response to the Garda Síochána's letter, what was the sanction?

Professor Philip Lane: We have publicly discussed this situation before. In August 2007, the original notification came in. There was an inspection by the Central Bank in early October 2007 and the investigation concluded that the reported breach did not suggest a wider and more systematic erosion of overall liquidity and that the bank was back in compliance within the limits within 24 hours.

Additional claims were made in 2010, both in the media and the Seanad, that there had been numerous breaches of liquidity by the firm in question. A further investigation was undertaken at the instruction of the Central Bank. An independent third-party firm was engaged to check compliance with the liquidity requirements. This investigation did not highlight any further breaches.

There was significant investigation of the issues raised and the matter is closed. More generally, the overall message reflected in the letter cited by the Chairman is that if there are liquidity breaches, the correct way to deal with them is through investigation. If an investigation establishes a systematic regulatory violation, the administrative sanctions procedure would be invoked. The general answer is correct. If we see systematic breaches, that is how it would be handled.

In this case, the initial breach was closed quickly and did not suggest a wider or more systematic erosion of overall liquidity. That was double-checked because not only did the original investigation take place, a further investigation took place, including a cross-check from an independent firm. There was no indication that any further breaches had taken place.

Chairman: It is difficult to go into this case at this hour having had a full day's session. I cannot accept, however, what the Governor just said. The legislation at the time referred to a breach. A breach is a breach. Every single breach on each day was a breach. Accordingly, it was a breaking of the law in the context of the legislation at the time. I have the analysis here in front of me.

The breach in question was 20 times the limit and, as I recall, involved a substantial amount of money. The letter from the commissioner's office is specifically about the Jonathan Sugarman case and how he had reported the breach. From the letter, it is clear to me that this liquidity breach was to be dealt with through administrative sanctions, according to the Central Bank at the time. I find it unacceptable that a bank of that size breached the legislation and broke the law such that the individual concerned took it upon himself to report it to the Central Bank. Despite that breach and breaking of the law, no action was taken. The commissioner, however, has said someone within the bank had to have communicated some form of message to the bank, on the Jonathan Sugarman issue, to say it would be dealt with through administrative sanction procedures.

Mr. Ed Sibley: I will answer the specific point and Ms Rowland will address the general approach to enforcement.

We take whistleblowing very seriously. If we receive information through a whistleblower,

we take it very seriously in trying to ensure the protection of the whistleblower. This instance is in the public domain and was thoroughly investigated twice. We formed a view on the seriousness of the issue associated with the allegations raised by the whistleblower. We follow up in a proportionate manner. There are a number of tools we can use in dealing with breaches. They relate to the proportionate approach, the seriousness of the breach, its persistence and so on. Some of these actions may be private in nature such as the giving of a supervisory warning, while some may be more public in nature. This applies in areas such as those when we talked about transparency.

Ms Derville Rowland: The approach to enforcement in this and other jurisdictions such as the United Kingdom is not to have a zero-tolerance approach. Not all breaches across the regulatory spectrum will end up as an enforcement case. One would not be able to bring that volume of cases. We have a strategy of targeted and reactive enforcement. Reactive enforcement occurs in the most serious cases and we make the space to give resources to bring them forward. The tracker loan issue is a very good example of that approach. We also have targeted enforcement where we predefine areas where we see that compliance levels are low and it is very important to bring them up. We take a targeted set of enforcement measures to improve them. Transaction reporting in the markets area was another example. During the years we have taken quite a number of prudential focused cases in different areas that were very important. To be clear, from the very beginning of the enforcement strategy, as stated in 2010 until now, there has not been a total zero-tolerance threshold for every single breach across the spectrum of regulated areas. We may take one or two of a particular type where we see non-compliance in an area and may take more. There are other regulatory tools in the escalation pyramid that are also used as enforcement measures to complement it. That is the general approach. We also have supervisory warnings as an enforcement tool which are private between the entity and the regulator. As the breaches move up the threshold, the procedures become full enforcement.

Professor Philip Lane: We can come back to the specific letter cited by the Chairman. It is best if we come back to the relationship with that letter in terms of how we handled the case.

Chairman: Will Professor Lane provide the committee with the minutes of meetings? If I give information to him that I have received as Chairman rather than go through it now, will he give me a written response to the queries raised in the letter? A liquidity breach nearly 20 times over the limit is significant. There were a number of other breaches and nothing seems to have been done about them. This goes back to the earlier point that it sends all the wrong signals. A risk manager - in this case Mr. Sugarman - went to the bother of doing what he did and the answer from the Central Bank was that there was "nothing to see here, move on". There was proof - it is here - that the liquidity requirement had been breached and there were serious questions to answer. I want to know, rather than delay the delegates, if I give Professor Lane all of this information which is in the public domain, will he respond comprehensively to the committee on this matter?

Professor Philip Lane: Within the limits of what we can convey.

Chairman: That is fine.

Professor Philip Lane: It would not be the correct interpretation to say the report on the liquidity breach did not trigger considerable action very quickly. In early October there was an inspection by the Central Bank and the conclusion was that the breach did not suggest wider or more systematic erosion of overall liquidity regulations. I accept that there might be a difference of views on this investigation and the beliefs of Mr. Sugarman. There was a second wave

that involved not just our own understanding of the issue when, as a cross-check, an independent third party firm was engaged to go over it again. There have been two waves of investigation, but the conclusion was that there was not a systematic breach of liquidity regulations. To underline this, we considered the particular case to be closed at the time. We will undertake to respond. If the committee writes to us, we will, of course, always write back.

Chairman: Has Professor Lane met Mr. Sugarman? Has he interrogated or interviewed him on the information he has available?

Professor Philip Lane: Again, we are not going to disclose any meeting that involved any named individual. It is correct to say that following contact by a third party we had a meeting with that person to discuss the matter.

Chairman: I will be taking up that matter further with Professor Lane because I will not let it go. I will come back to it.

Senator Rose Conway-Walsh: Is there a legal impediment to the Central Bank publishing the report that was produced by the third party once the breach had been ascertained?

Professor Philip Lane: The third party had access to the confidential information that we as the regulator would have received. All of this is covered by the confidentiality restriction.

Senator Rose Conway-Walsh: Is Professor Lane saying that, even if he had to redact some parts, it is legally impossible for him to publish the report that would give details of the breach and what happened?

Mr. Ed Sibley: We will aim to look at the letter and come back to the committee as comprehensively as we can. I want to make sure-----

Chairman: Would the delegates meet Mr. Sugarman?

Professor Philip Lane: I can always take a meeting. If the committee asks for a meeting with Mr. Sugarman, I can take a meeting.

Mr. Ed Sibley: To be clear, where we identify breaches - whether through our own work, whistleblowers or some other means - we take them incredibly seriously. We have a robust approach to enforcement. Our entire supervisory framework is underpinned by the credible threat of enforcement. I think I am right in saying that since the crisis there have been more than 100 enforcement cases. On the number of breaches that one would see, whether by oversight which might be small and momentary at one end through to very serious breaches which we have spent a lot of time talking about today, we cannot take enforcement action on every single one. We take a proportionate approach to the breaches which are most serious and warrant public sanction and our whole supervisory framework is underpinned by that. We have teeth and we use them. In this circumstance, the issue was thoroughly investigated, not once, but twice. We will come back to the committee with a comprehensive response in terms of-----

Chairman: Professor Lane has agreed to a meeting and to accept the correspondence that I have. The reason I am pushing this is that it sends out the wrong signals. I do not know this individual. He had no motive other than to do the right thing. What would other whistleblowers or risk managers in the banks say when looking at the example of Mr. Sugarman, who is now not employed, in extremely poor health and so on? He questions the approach of the Central Bank and cannot fathom why the issue with such a large bank that was 20 times over the limit

was not addressed.

Professor Philip Lane: It was addressed.

Chairman: No.

Professor Philip Lane: It was addressed. Our conclusion was that the breach was temporary and did not last longer than a day. We checked that there was no persistent or systematic ongoing issue. Mr. Sugarman may disagree with that assessment but that was the assessment made by the bank and our conclusion.

Chairman: It might have been said by a member or, indeed, it might have been said by Mr. Sugarman, but the comparison was made to a person driving at 100 mph, even if it was for five minutes, where the speed limit was 80 mph. That person is breaking the speed limit. If the Garda stopped him within that five minutes, he got a ticket. It goes back to the same thing as before.

Professor Philip Lane: It goes back-----

Chairman: Just one second. In this instance, for more than five minutes, it was 20 times over the limit and nothing was done. It sends out the wrong message. It is the complete wrong message. Mr. Sugarman came here and gave a convincing submission to this committee. He would contradict some of the things Professor Lane would say. I believe that a meeting relative to that case with Mr. Sugarman might bring some closure to it. However, I cannot understand why the bank was not sanctioned.

Professor Philip Lane: Earlier on, Ms Rowland explained our thinking on sanctioning, including the potential damage of a breach and the consequences. Perhaps we can rehearse those.

Chairman: Those kinds of breaches wrecked the country.

Professor Philip Lane: I profoundly disagree with that point.

Chairman: Of course they did.

Professor Philip Lane: The retail banking system is separate to Unicredit. Unicredit, if one likes, is part of the international banking sector here and is not feeding into the local banking system. There are entirely different issues. Unicredit is an international banking group, of which there is one unit here. That has not really too much read-across to what was going on to the Irish banking system, which had liquidity issues, insolvency issues and so on.

Chairman: I am talking relative to regulation.

Professor Philip Lane: Again, the proportionality issue is-----

Chairman: They broke the regulation. They broke the law.

Professor Philip Lane: When there is a *prima facie* breach of regulation, we consider issues such as whether it was self-reported, how long it lasted and how consequential it is. The liquidity of one subsidiary within an international banking group is different from the liquidity of a retail bank operating here. If one likes, it is not as simple as the speed limit in traffic law. There is a wide range of factors here that are taken seriously. Two investigations are taking place. Going back to the issue, the administrative sanctions procedures is not the only type of sanction. There could be supervisory, supervisory warnings, remediation programmes and so

on. Many things can happen when there is a breach but the conclusion in this case was that the breach was temporary, not systemic and not persistent, and the bank stands over that assessment.

Chairman: I will leave it at this for the moment. The risk manager reads the legislation and the law and understands fully his obligation. He is so frightened by what is happening in the bank about not just one case one day, but a number of them, that he decides to risk his job and tell the Central Bank that there is something wrong. He went to the Garda and said that he had broken the law and told them to arrest him. He could be imprisoned for up to five years. However, nothing happened to satisfy the fact that he had reported this wrongdoing. He lost his health and he lost his job. He did it pursuant to the obligation on him under legislation to report to the Central Bank. If the Central Bank does not want these international banks that are here to bother looking at the law, why would we have the law?

Professor Philip Lane: That is a total misdescription of how we think about the situation.

Chairman: I am just telling Professor Lane what happened.

Professor Philip Lane: It was investigated. The conclusion of the bank was that it was a temporary breach and that it was not systematic or recurrent, which I agree-----

Chairman: If one breaks the law temporarily, one breaks the law. When one breaks the law, in accordance with the banking rules, regulations and legislation, there are sanctions and penalties. This is why questions are always asked about the Central Bank and how it behaves towards bigger banks and what it expects of individuals in the bank. That individual and individuals like him also deserve the protection of the Central Bank because they are an arm of the Central Bank. They are reporting to it where necessary.

Ms Derville Rowland: I wish to make an important point. Taking the point that a meeting has been agreed with Mr. Sugarman and the Chairman, which is very good, we are now in 2017. These events date back to, I believe, 2007 and that time. Since then, in this jurisdiction, significant whistleblowing legislation has been passed and brought into force. There has been more than one type. It is a really important signal of confidence in the Central Bank and its current whistleblowing and listening obligations. As Mr. Sibley has already stated, we take those obligations extremely seriously. We have a whistleblowing desk. We take the information in. Employment law protections are now built into the system in this jurisdiction which I do not believe were there before, so the legislative framework is different. We have a dedicated whistleblowing function so that when information comes into the Central Bank it is sent immediately to the line supervisors, as they are the experts with regard to the institutions that they supervise, so that they can assess that information and action is taken. That is an important point to make in terms of the structure of the system now and the formulation of whistleblowing legislation and how it has been brought in as an important part of the infrastructure in this jurisdiction. It is not, I believe, just in financial services, but right across the board, and it is right that it is. It is right that I am clear about our support for that and the importance we place on it.

Chairman: I am very much aware of that legislation and so are a number of others who turned out to be whistleblowers. Therefore, in the spirit of that legislation and in arranging this meeting with Mr. Sugarman, we need to explore all of that. I am prepared to park this part of the questioning until we meet, but I will come back to it.

I also want to send the Central Bank some information on the Consumer Credit Act 1995

and some questions arising from that Act relative to the banks and the information that they collect to get a general view on the questions. I will not go into them now. It would take too long.

The final matter I will ask Mr. Sibley about which was raised here is GRG. Is that ongoing? On the last occasion, we questioned the bank concerned. Has the Central Bank an investigation ongoing concerning GRG?

Mr. Ed Sibley: We are actively engaged with the bank.

Chairman: If the Central Bank has, fine. I will not go into it in detail.

Mr. Ed Sibley: We continue to be actively engaged with the bank to ensure that it is following through in terms of addressing the issue in the public domain which primarily seemed to have impacted its parent more than the Irish subsidiary. There is a process being put in place in terms of addressing complaints or concerns of Irish customers. I am aware that there are some refunds. The bank has been in communication with all its potential impacted customers. There is an independent third party involved. We are continuing to engage with the bank as well as that independent third party.

Chairman: Is the Central Bank made aware of where it is found a bank overcharged a customer - I refer to a substantial sum of €1.2 million - or how is its attention drawn to such an issue? Does a complaint have to be made directly to the Central Bank where in a court case it was found a bank had overcharged its customer by €1.2 million, which is a significant sum?

Ms Derville Rowland: This was discussed a little earlier. The fact of the matter is there is no automatic feed into the Central Bank from judgments.

Chairman: I did not realise it was raised.

Ms Derville Rowland: In another dimension, of course, we keep an eye out on significant cases with our legal department, enforcement and the line supervisors. We are aware there can be significant litigation cases going on. However, some judgments are not always published in full and complete. In answer to the question about there being an automatic notification to the Central Bank on the outcome of all legal judgments relating to regulated entities, there is not an automatic feed.

Chairman: I might come back on that in correspondence.

There are these last few housekeeping matters. I will send on to the Central Bank the information that I have identified. Having been here for a long day, the officials might reflect on the range of issues that we have discussed. Maybe there is a better arrangement that we the committee and the Central Bank can come to on hearings such as this because we are trying to get to the details of parts of the Central Bank's wide remit. For example, insurance was not even discussed here and it is an issue on which all members want to have an engagement with the Central Bank. Maybe there is a more regular way of dealing with this in shorter meetings where we can set out the issues and the Governor can give his view on how we might deal with this range of issues.

Professor Philip Lane: We can engage with the secretariat.

Chairman: I sent a lot of correspondence to the Central Bank. The Central Bank sent me a general response because it does not deal with individual cases. I understand that now. However, I and some of those who asked me to send the information would have hoped that the

Central Bank would let us have a separate acknowledgement so that I would know the position, merely in terms of the Central Bank having received the correspondence. Many people write to me here and then ask if I sent the correspondence to the Central Bank. I sent out the Central Bank's reply but I would like to be able to tell them specifically that I did and that the Central Bank does not deal with specific cases, but at least acknowledges them.

Ms Derville Rowland: Sorry, we did. I thought in the opening of the letter we stated that we had acknowledged the correspondence had gone to all those individuals.

Chairman: It is merely a point about individual cases.

On this International Credit Union Day, I indicate my support for the credit unions and the desire of Sparkasse to see that type of model, incorporating An Post and the post offices. It is something on which maybe we can engage with the Governor at a different time. Lastly, in terms of vulture funds and how they manage accounts, I asked the Governor about the general communication from banks. I have to tell him that in dealing with some of the vulture funds, such as Capita, and their managers, it is unacceptable the rounds that one has to go to to get the information relevant to one's case. For instance, they do not return calls as efficiently or quickly as they should because they are dealing with a party on the other end who is stressed in more ways than one. In attending the meetings I was taken aback by the attitude, as I stated today in the Dáil, to sit opposite one of these, Capita, and to hear staff tell the borrower that he or she should get the money from parents, brothers, sisters, neighbours or the local credit union, but that it wants the money. I am taken back by the general attitude within Capita to the management of its different property loans, etc. It does not give the individual a chance. It is only by intervention of outside help that individuals get the basic information that they are entitled to. It is not acceptable for that message to be sent out through them. The Central Bank should take note of the type of attitude that individuals are experiencing when they come up against the big monied well-armed legal people, such as the one I have dealt with so far, Capita. It is shocking.

Professor Philip Lane: Under the legislation, the credit servicing firms have to comply with the code on mortgage arrears just as much as any other lender. As is often the case, when the Chairman receives information it is helpful if he writes giving the particular details because that helps us to build the profile of what we have to deal with in assessing compliance with our codes. I would encourage the Chairman to send forward those cases because it will be helpful to us.

Chairman: I will because I was so disgusted by their attitude.

Ms Derville Rowland: It is very important. Unregulated funds have got to be in partner with their regulated entity. There is an authorisation procedure going through. This information is very important and I would welcome it.

Chairman: In conclusion, I ask members to consider that because the Minister for Finance is meeting the banks, we should meet the Taoiseach and the Minister for Finance, maybe in an informal setting, to discuss the various meetings that we have had here with banks, individuals, etc. It would help the process.

I return to the Governor's opening statement. Professor Lane read part of it into the record and I presume that we can publish his full statement as part of the record of the meeting.

Professor Philip Lane: Yes, please.

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Chairman: Following this long session, I appreciate the fact that the Governor has been here for the full day. There are so many other issues that can be addressed and maybe a better structure can be agreed on how we approach this for the future-----

Professor Philip Lane: Let me emphasise it is important that we are held accountable by the Oireachtas. We welcome these opportunities because, although we issue all sorts of reports, etc., nothing can substitute for the role of this Oireachtas committee in going through the issues with us. It is part of our commitment. We try to publish as much as we can on the web, but this back and forth is a very important part of holding us accountable. Certainly we would welcome it if we could work out the most efficient way of getting through all of the issues; we did not cover a lot today.

Chairman: We can adjourn the meeting until next Tuesday at 6 p.m.

The joint committee adjourned at 7.30 p.m. until 4 p.m. on Tuesday, 21 November 2017.