

# DÁIL ÉIREANN

---

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

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

---

*Dé Máirt, 16 Eanáir 2018*

*Tuesday, 16 January 2018*

---

Tháinig an Comhchoiste le chéile ag 2 p.m.

The Joint Committee met at 2 p.m.

---

Comhaltaí a bhí i láthair/Members present:

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

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

*The joint committee met in private session until 2.30 p.m.*

### **Tracker Mortgages: Discussion**

**Chairman:** We propose to deal with the tracker mortgage issue first so the Minister's opening statement should deal with that. Then we will deal with the reform piece and the Minister should read an opening statement related to that issue. We have to finish at 4.45 p.m. and the new politics means our activity is confined. In the interests of democracy, our discussion is cut back and we cannot have full engagement or an engagement for as long as we like. We need more committee rooms.

I have been asked by members to tell the Minister that we are disappointed to have only just received his statement. It is not good enough. The clerk had made numerous phone calls to try to get the Minister's statement before the meeting but we have only just received it this minute.

**Minister for Finance (Deputy Paschal Donohoe):** My apologies for that. I will make sure that, in all my other appearances before the committee in the coming year, the members will get my statement when they need it and when I have seen it, as has been the case in the past.

I thank the committee for the opportunity to be here to deal with both the tracker mortgage issue and the Our Public Service 2020 initiative. I acknowledge the work of the committee in all its efforts to bring the tracker scandal to the fore and the progress it has made, in particular by taking testimony from people who have been significantly harmed by the unacceptable actions of banks. I assure committee members and the public that the Government is treating this matter very seriously and is determined that the situation be resolved to the satisfaction of impacted customers as quickly as possible. Owing to the work of the Central Bank, particularly in its implementation of the industry-wide tracker mortgage examination, it has been clearly demonstrated that mortgage lenders failed significantly in their regulatory and contractual responsibilities to many tracker mortgage borrowers. The failure of the banks in this regard has imposed significant harm on their customers. It is now their responsibility to put that right and to do so without further delay.

The fair treatment of consumers is a key requirement of the financial services regulatory frameworks and the Central Bank consumer protection code. The code requires all residential mortgage lenders to act fairly and honestly in the best interests of their customers and not to mislead their customers about the products they provide. It also requires lenders to make full disclosure of all relevant information to a consumer in a way which seeks to inform the consumer and to enable a consumer to make an informed decision before entering into or changing a loan or other financial services agreement. Through their treatment of some of their mortgage customers, lenders have shown a complete disregard for the code and have demonstrated that within these financial institutions ethical and cultural issues remain that need to be addressed. The Central Bank has for some time made clear to lenders that they had and have a duty to act in the best interests of their consumers when recommending that a borrower switch a tracker mortgage to another type of mortgage product.

Prior to the commencement of the industry-wide tracker investigation, the Central Bank identified and pursued a number of tracker-related failings with a number of mortgage lenders. These failures related to issues ranging from a lack of transparency for the borrower, a failure to fully inform customers of the consequences of switching from a tracker mortgage, the

application of incorrect tracker rates and a failure to afford customers their contractual entitlements to specified tracker interest rates. At the same time, the Financial Services and Pensions Ombudsman was receiving individual tracker mortgage-related complaints. The Ombudsman adjudicated on these cases. In addition, some of these cases came before the courts. The growing number of issues relating to tracker mortgages raised concerns in the Central Bank that there may have been other tracker-related issues. As a consequence of this, the Central Bank announced in October of 2015 that it had commenced a broader industry-wide examination of tracker mortgage-related issues.

The system-wide review was intended to cover, among other things, the transparency of communications with and the contractual rights of tracker mortgage borrowers. This has become the most complex and significant consumer protection review ever undertaken by the Central Bank. It covered 15 lenders who may at the time have sold a tracker mortgage product, from the time the lender commenced selling tracker mortgages until December 2015, and involved the review of more than two million accounts by lenders. As such, it covers both banks and other related mortgage lenders and also includes lenders who no longer provide new mortgage credit. It also covers mortgages which have been redeemed and borrowers whose tracker mortgages have been transferred to another creditor. The industry-wide examination requires all lenders to examine the extent to which they have been meeting their contractual obligations to their tracker mortgage customers or their compliance with their obligations under the Central Bank's consumer protection code.

The Central Bank has published a number of update reports since it began its work, the latest of which came last December. The latest update in the case showed that approximately 26,600 customers have been identified as having been impacted pursuant to the industry-wide examination. This is an increase of 13,600 on the position as outlined in the earlier update in October. The acceptance of further impacted tracker mortgage accounts by lenders, such as the 6,000 additional impacted accounts accepted by the Bank of Ireland in December, is proof that the Central Bank's strategy of continuously challenging lenders is having important benefits for consumers. In total, 33,700 customers have been identified as having been impacted owing to mortgage failures. This includes the 7,100 impacted tracker borrowers that were identified prior to the commencement of the industry-wide examination. The Central Bank now believes the vast majority of impacted tracker mortgage customers have been identified. It will continue to review, challenge and verify the work undertaken by lenders. Following the Central Bank's October progress update, and owing to my and the Government's concern on the very slow progress on the provision of revision and compensation to impacted customers, I met with the CEOs of the five banks and made clear to them that all affected customers are to be identified and provided with appropriate redress and compensation as a matter of urgency. While some payments had been made at that time, they were small in number, they were too low, and many impacted borrowers were still unclear as to whether they would hear from their lender. Following these meetings, the banks in question made certain and specific commitments with regard to the payment of redress and compensation to impacted customers. I note that in December, the Central Bank confirmed that the five main mortgage lenders were on course to meet their October commitments, and that known issues around disputed groups in respect of certain lenders had been resolved to the satisfaction of the Central Bank.

As of the end of December, approximately €250 million in redress and compensation has been paid to 12,900 customers, as identified from the examination. This includes payments to 3,700 impacted accounts identified since last September. This is in addition to the €47 million awarded in compensation and redress. This payment to outstanding impacted borrowers is a

key requirement, and it must be a practical demonstration of the regret that banks are now expressing for the harm they have inflicted on their impacted tracker borrowers.

The level of compensation offers are in the first instance a matter for the individual mortgage lender. It is the lenders that caused the harm to their customers, and therefore the primary responsibility for putting that right should rest with the lenders. The level of compensation should be proportionate to the harm and stress caused, and individual lenders should have regard to this when they make compensation payments to their customers. The provision of fair and appropriate compensation offers upfront will minimise the risk of causing further inconvenience and hurt to impacted customers and will go some small way towards giving a practical expression to the words of regret heard in recent months. Of course, in more difficult cases, such as those where people lost their homes, the lender will need to consult closely with the impacted borrowers on the level of detriment which has occurred and, therefore, the total level of redress and compensation which is appropriate in their particular circumstances. However, urgent consideration should be given to these cases by the banks and they should not be deferred and put to the end of the line for payment.

It is also important to have an independent appeals process in place to deal with the customers who are dissatisfied with any aspect of the redress package they receive from lenders, and the Central Bank tracker redress framework provides for this process. This will give any customer the right to challenge any aspect of the redress and compensation offered. This can in the first instance be the appeals panel provided for under the tracker framework but impacted tracker borrowers also have the right to take their case to the Financial Services Ombudsman or ultimately to the courts.

A fundamental element of the redress and compensation process is that the upfront payment by a lender cannot be reduced in any subsequent appeal made by the borrower, either through the appeals process under the tracker examination framework, or ultimately the ombudsman or the courts. The detailed appeals process set out in the Central Bank's framework for conducting the tracker examination allows borrowers to take the matter further without risk to themselves if they consider that the level of upfront payment is not appropriate in their particular case. This appeals process will also allow the individual borrower to set out the full individual circumstances and to set out in detail the full harm imposed by them on the lender and consequently why a higher level of payment may be appropriate.

In terms of enforcement, I believe the existing supervision and enforcement powers of the Central Bank are strong and should be used to punish wrongdoing when supported by evidence. The Central Bank has also demonstrated that it is willing to use the full extent of its powers, as evidenced by its imposition in 2016 of a monetary penalty of €4.5 million on Springboard Mortgages Limited for serious failings. The Central Bank has also advised that it is pursuing enforcement investigations in relation to Permanent TSB and Ulster Bank and has commenced another enforcement investigation. The Central Bank has stated that it expects that all the main mortgage lenders will face enforcement investigations in due course. The Central Bank also has statutory reporting obligations to the Garda Síochána, or another relevant statutory agency where information obtained by it, at any stage prior to, during or after an investigation gives rise to a suspicion that a criminal offence may have been committed.

In light of this appalling behaviour, I have taken a number of further actions. I have mandated, under section 6A of the Central Bank Act 1942, the Central Bank to prepare a report on the current culture and behaviour and the associated risks in the retail banks and actions that banks may take to ensure that customer interests are better prioritised in the future. On foot

of this report, the Government will determine whether any additional legislative and regulatory changes are needed to enhance accountability in the banks. In addition, I announced two further measures, namely, to double the level of compensation to €500,000 that the Financial Services and Pensions Ombudsman may award to a consumer who has been adversely affected by the action of a financial services provider and to appoint two new members to the Central Bank Commission who have a strong consumer protection profile.

I also note and welcome the initiative from the banking industry to establish an Irish banking standard board to broadly mirror the approach adopted in the UK. However, this is an initiative from the banking sector and it will not minimise or reduce any existing or proposed legislative or regulatory change.

The examination has laid bare the facts that very poor cultural and governance issues still exist within lending institutions in Ireland post the banking crash and that if banks are to regain the trust of consumers, they must be prepared to change their attitude significantly. Customers of these lenders have been treated appallingly and, in some cases, have lost their homes, either directly or indirectly, due to the shameful behaviour of their lenders. This behaviour is simply unacceptable.

The Government will continue to support the Central Bank in its efforts to complete the tracker examination as soon as possible and I will receive a further update at the end of March of this year. If further sufficient progress regarding the payment of redress and compensation to impacted customers has not been made at that point, the Government will be prepared to consider further possible actions.

**Deputy Michael McGrath:** The Minister and his officials are very welcome to this meeting. At the end of last September, 13,000 customers were identified as being affected as part of this examination, bearing in mind that this was almost two years on from the announcement by the Central Bank of this examination. In the following period of fewer than three months prior to the end of December, that number had more than doubled from 13,000 to 26,600. An extra 13,600 were identified on top of the 13,000 in the first two years of the examination. Therefore, something changed within a very short period. The Central Bank has not minced its words and it is to its credit that it has engaged in straight talking, of late at least, on this issue. The evidence from the Central Bank indicates that the banks have had to be dragged kicking and screaming to identify the right customers to whom to provide redress and compensation. In the Minister's view, what led to such an about-turn and such a dramatic increase in the number of customers identified? Some 13,000 were identified in two years and in the following period of less than three months, another 13,600 were identified.

**Deputy Paschal Donohoe:** In answering the Deputy's question, I will reiterate a point I made when I debated this matter with him and the rest of the committee towards the end of last year, namely, that there are two issues that I find unacceptable about the way this matter has been handled to date. The first is the root cause of this, that is, the behaviour that led to people being treated wrongly and unfairly at great cost to themselves, both financially and from a health perspective. The second matter that was of equal concern to me was the reaction of the banks to the Central Bank probe and the difficulties to which the Central Bank referred on a number of occasions towards the end last year.

The Deputy is correct that the number of affected accounts went up from 13,000 to 26,600. Since we last engaged on this matter and since last September alone, a further 13,600 customers have now been accepted by the lenders into the redress and compensation scheme. I said then

that what was of equal concern to me in treating fairly the people who have been identified is identifying who else was treated unfairly by the banks.

As for what changed, I believe the Central Bank's investigation was making progress at the time. The banks were dealing with the investigation. It became clear to them the degree to which the Central Bank was determined to complete its work and unearth the scale of this issue and I believe my efforts, and those of the committee, were of assistance in making that happen.

**Deputy Michael McGrath:** I would agree with that but I would also highlight the courage of those affected, the customers, in speaking out both here and in the media generally, some of whom the Minister has met. They are largely responsible for the dramatic change in emphasis in the attention that was being given to this issue. Their human stories probably spoke louder than any words any politician, banker or central banker could come up with. However, even according to the last update from the Central Bank in December, there are still 13,700 - presumably the number has not changed dramatically - identified affected customers who await redress and compensation. Redress is them being paid the money they were overcharged, that they should never have been overcharged, and then there is the compensation, which can vary by 10%, 20% or perhaps 30%. Many of them will want to know from the Minister, who is the person with ultimate responsibility, when every customer affected by the tracker mortgage scandal will get their money back and be appropriately compensated.

**Deputy Paschal Donohoe:** On the deadline I have set in regard to conclusion of the matter overall, I have referred to March in the different statements I have made on the matter but I stress that my strong view is that everybody should be given both redress and an initial offer of compensation as soon as possible. From the information I have received from a number of the banks, they are meeting the deadlines set with them by the Central Bank. There is one bank in particular, Ulster Bank, as well as KBC, whose payments will continue into this year. I want everybody to be repaid and compensated as soon as possible but the March report will give me the point at which I will evaluate whether those commitments have been met.

I should have said, and I agree with the Deputy's point, that when I referred to the committee it was not just the efforts of the committee members here but that some of the hearings here over a prolonged period crystallised the distress that many people were feeling. However, what our efforts collectively have shown is that the issue has grown. While I do not expect the total number of people who have been affected to grow by the same quantum the Deputy has just raised with me, when I get the figures from the Central Bank in March there is the possibility that they could be higher than the figures he has referred to because there is an investigation under way. However, I would be gravely disappointed if it was a change of the magnitude I have just outlined to him.

**Deputy Michael McGrath:** People who watch these proceedings and observed this scandal evolve over recent months will have to ask whether the Minister believes that anyone ultimately will be held accountable. Will there be any individual accountability for what happened? For example, does he believe it was an accident that all the main mortgage lenders in the State happened to make the same mistake and deny their own customers their contractual rights in a manner which was advantageous to the bank and very disadvantageous to their customers? Is it the Minister's view that this was an accident, and does he believe there will be and should be individual accountability for anyone within the institutions whose actions, inaction or decisions led to that outcome?

**Deputy Paschal Donohoe:** I am speaking as a Minister who has a particular responsibility

for the agency that is carrying out the investigation into this matter, namely, the Central Bank, which is independent of me. What I cannot do at this stage is prejudge the ruling or findings it may make but I will make two points. On foot of all I have seen on this matter in recent months, as well as my engagement with the banks and the Central Bank in its aftermath, I believe this was a collective failure on the part of the banks in respect of their behaviour. The way they have treated customers recently has been appalling. I will not be handing out credit in any way for the fact that these deadlines are being met. This issue should never have happened in the first place. The Central Bank has the power to carry out an investigation, which it is doing. It has the power to sanction both organisations and individuals and from engaging with the Central Bank extensively on the matter, I have no doubt at all that if it reaches a finding of either collective or individual failure over which it can stand confidently, it will sanction accordingly.

**Deputy Michael McGrath:** Can the Minister bring the committee up to date on the situation surrounding public interest directors representing him as a shareholder on the boards of the banks that we hold shares in, that is, AIB, Bank of Ireland and Permanent TSB? Can he give us the numbers? Are there vacancies at present in those public interest director posts? Moreover, does the Minister, as Minister and as shareholder, have any contact with those public interest directors regarding the role they are fulfilling or are meant to be fulfilling in that capacity?

**Deputy Paschal Donohoe:** The two remaining State-appointed directors on the Bank of Ireland and AIB have recently retired. I have not had engagement with those directors on this issue. On this issue I engage directly with the chairs and chief executives of the banks, because I believe this is an issue of such importance that I will communicate directly with the chairperson of the board and the chief executive of the board.

On my approach to the new appointments to the boards of the banks in which we have a stake, I will now begin a process that will involve advertising for those posts through the Public Appointments Service. I would like to use this as an opportunity to encourage people who have the kind of expertise they believe would allow them to serve well in these banks to apply for these roles, because I want to appoint individuals who are independent and who have experience of the wide impact that Irish banks can have on our economy and society.

**Deputy Michael McGrath:** Perhaps the Minister could go through the three lenders. I am sure they are on the information note. Do we have any directors at AIB currently?

**Deputy Paschal Donohoe:** We do not have directors on the boards of AIB or Bank of Ireland.

**Deputy Michael McGrath:** Since when has that been the case?

**Deputy Paschal Donohoe:** My recollection is that this has been the case since the end of last year. However, I will come back to the Chairman if I am wrong in that recollection.

**Deputy Michael McGrath:** What about Permanent TSB?

**Deputy Paschal Donohoe:** We do not have a director there. This was a decision that was made by my predecessor. We did not replace the previous public interest director on the board of PTSB. I cannot give the committee the date on which that post became vacant.

**Deputy Michael McGrath:** We currently have no public interest directors in any of the banks. Apart from advertising the appointments and putting them through the Public Appointments Service, is the Minister changing or redefining the role or giving it any legal recognition?

As directors, they will have fiduciary responsibilities to their board and to their shareholders. What responsibilities will they have to the Minister? What will distinguish them as public interest directors from other directors on the boards of the banks?

**Deputy Paschal Donohoe:** The primary interests of individuals on the boards of these banks is to meet their obligations to that bank as directors. I will be defining the terms of reference of those director roles myself, because I have a strong view on the kind of individuals required and the needs we must meet on the board. We will then advertise for these roles, as I have said. I also plan to make use of other things that may be open to me to identify people who may be able to do this work but who might not be aware of these opportunities. I am sure the Deputy is aware that as part of their appointment process, these individuals must also be approved by the Single Supervisory Mechanism. It is not just a decision for the Government. We can put forward names that are accepted by the nomination committee of the banks but they have a final hurdle to clear in the form of the Single Supervisory Mechanism of the ECB. I have to keep that in mind when I am identifying individuals. That is why I have said that I am going to take steps to see if I or my Department can identify such individuals, because these are really important roles and I want to see them well filled.

**Deputy Michael McGrath:** Perhaps the Minister might send a note to the committee about each of the three institutions and when the resignations occurred.

**Deputy Paschal Donohoe:** Yes, I will do so.

**Deputy Pearse Doherty:** I want to take up that point. Is it not the case that we cannot appoint public interest directors because the legislation that allowed us to appoint them was tied in with the banks having funds guaranteed by the State, which is no longer the case so the option of public interest directors is no longer available, and that because the Government did not make appointments when other resignations occurred, we simply will not have the option anymore and the Minister will be appointing directors?

**Deputy Paschal Donohoe:** That is the case. When I responded to Deputy McGrath, I used the word “directors”. The public interest directors were tied into emergency legislation, as the Deputy correctly noted. What I am looking to do is appoint directors who are nominated by the Government to the boards of these banks.

**Deputy Pearse Doherty:** It was a major failing on the part of the Government not to have public interest directors in respect of the roles public interest directors could have played during this crisis but having said that, even when we had them, the Government or the Minister at the time did not use public interest directors with regard to directly reporting to him. This was a major failing as well because we have had public interest directors and this scandal has been going on for years. Many public interest directors have been former Ministers or Members of this House who did not lift the phone to contact the Minister and raise issues about what was happening within the banks. There are serious questions here because these individuals were paid quite handsomely by the Irish State to the tune of €70,000 or €80,000 per annum and we are led to believe that they did not raise an eyelid regarding this issue or at least did not bring it to the attention of the Minister.

**Deputy Paschal Donohoe:** There was an inherent tension between these roles that was exposed or, I should say, tested on a number of occasions in that as the country moved out of a very acute crisis, there was a tension between the duties of a director to the company upon whose board they served and the wider expectations the Oireachtas, the Government and in-

deed the public had of anybody serving on these boards to whose job the words “public interest” were attached. There was a tension there. Even if it was not the case with the emergency legislation to which I referred, it is in the best interests of all that we are appointing so-called normal directors. I will not be appointing people who are retired Members of this House. It is not to say that I do not believe former politicians cannot perform very valuable roles but these roles must be cleared by the Single Supervisory Mechanism. Because of that, I will be taking a very careful approach with the names I put forward.

**Deputy Pearse Doherty:** The Minister made the point, which Deputy McGrath picked up on, regarding the role played by the victims of the tracker scandal and the committee and the role played by the Minister after the meeting with the leaders of the five institutions in October. It is important to recognise that the Minister did play a positive role at that point in time. I challenged the former Minister and the former Taoiseach to call in the bankers in January of last year. Knowing the pain and suffering the victims of the tracker mortgage scandal have endured, does the Minister regret that the Government did not do that and waited another nine months? Does he regret that the Government did not act at that time and indeed earlier?

**Deputy Paschal Donohoe:** Last January, I did not have the privilege of being in this role but if I looked at January a year ago when Deputy Noonan was Minister, I know that at that point, the briefings he would have received from the Central Bank were that the investigation was ongoing and that it was dealing with the matter with the banks. In my view, it was only towards the latter part of last year, and Deputy Doherty and other members of this committee did play a role in it as did the hearings, that the difficulties regarding defining the numbers of people who are affected by this really began to sharpen. It was at that point that I decided to get involved. In answer to the question, I do regret the length of time for which this has gone on. I have been very careful not to meet victims until the actions that I committed to last year, after the issue became so sharp, were under way. I met people and was very clear with them that I am limited in what I can do because of my relationship with the Central Bank. I had met people who were affected by this issue before I became Minister for Finance. I privately met with a number of families who have been affected by it. It has continued to reaffirm to me that not only was the development of this issue completely wrong but the way in which it was handled by the banks was disgraceful. That is why I supported the Central Bank in the way I did last year.

**Deputy Pearse Doherty:** While the Minister has not met victims to engage directly on this issue, he has met them many times because one out of every 60 households was affected by this scandal, this theft on a massive scale. That leads me to ask whether this is going to present itself again. It will not be a tracker mortgage scandal, a scandal around payment into protection insurance or an over-charging scandal. It will be some other scandal. Why do I say that with such conviction? I say it because the bankers are getting away with it. They are getting away with the biggest theft in the history of the State.

What I would like to do now is forget about our political allegiances. Let us forget which parties we represent and our ideology. Let us put the interest of Irish citizens first and foremost. What are we going to do to make sure this never happens again? What are we going to do to make sure that if bankers try to steal money from their own customers like this again, they will face long terms in prison? They should be as afraid as the woman in Cork who stole a bottle of perfume worth €70 and is spending time in prison. They need to know there will be repercussions to their actions. What do we do in terms of legislation, oversight or powers provided by the Oireachtas to ensure there will be accountability at the end of this? What is the Minister’s plan? I am willing to work with him. I hope to publish legislation this week - it was with the

Ceann Comhairle's office before Christmas - that will see bankers going to prison if they provide false or misleading information to the Central Bank. There is a lacuna in the law here, which the Central Bank highlighted to the Minister's predecessor a number of years ago. There has still been no action on it. What are we going to do to make sure that accountability will ring loudly through the corridors of banks throughout this State, to make sure they will never get away with this type of behaviour ever again?

**Deputy Paschal Donohoe:** Before I respond, allow me to offer some context. I do not approach this issue on the basis of political allegiance and nor do I believe that either Deputy Pearse Doherty or any of his colleagues does so. What happened to these victims was wrong. It was unacceptable. As I have said previously, as disturbing as the development of this issue a number of years ago is the more recent difficulty in defining who had been affected by this. The fact that I am before the committee now, talking about figures which have gone from 9,900 in March 2017 to 26,600 by the end of last year, shows the scale of this behaviour. It was wrong.

With that in mind, how are we going to address it? There are three elements to our response. The first is that we need to support the Central Bank in completing its investigation and ensuring the right levels of redress and compensation are paid to those who deserve it. This is the largest investigation of its kind. The way this investigation is carried out and concluded will send clear signals to the banking industry about what will and will not be accepted. I have requested a report from the Central Bank on the current culture in our banks. I will receive this report later this year and I expect it will contain recommendations of actions that I might need to take to address current issues.

Third, I engaged with the Central Bank on this matter during November and December to see if its view was that additional power was needed. The Central Bank told me it felt it had sufficient powers. I am now aware that it made submissions and public statements, which it is entitled to and I support, saying that further powers may be needed. Once it has made its submission to the Law Reform Commission, and I have engaged with it on this, I will legislate to deliver additional powers as the Central Bank shows me they are needed.

**Deputy Pearse Doherty:** I hear everything the Minister has said about waiting for the investigation to be completed and let us see what it says about the culture of the banks and whether the Central Bank says it needs additional powers, but my view is this is a criminal matter. I was raising this three or four years ago and calling it theft. I believe that it is theft but it probably is not considered theft under our laws. We make the laws and this and the previous Oireachtas have decided that this type of behaviour is not theft, whereas if this was in Iceland it would be considered theft. If it was America, bankers would be walked out of their institutions wearing handcuffs. What are we going to do to ensure that it is deemed theft? We are talking about €1 billion. This is a huge amount of money that has been taken wrongly and unlawfully from these customers, yet the banks are going to get away with it.

Many people have said that they would like class action legislation. My colleague, Deputy Donnchadh Ó Laoghaire, and I have drafted class action legislation based on recommendations of the Law Reform Commission. It has passed Second Stage and it is before a committee and is awaiting a money message. Can the Minister tell the victims of the tracker mortgage scandal that he, as a senior member of Government, will ensure that a money message will be provided? Only the Government can provide this. Will he allow that legislation to proceed to Committee Stage in the Select Committee on Justice and Equality?

**Deputy Paschal Donohoe:** The legislation on that matter is handled by the Minister for

Justice and Equality, not me. I cannot give the Deputy an answer to that question now because up to this point it has not been an area of policy responsibility for me. My current view is that the legal framework is in place to deal with this matter. The test of that will be the work done by the Central Bank. I have indicated how strongly I feel about this matter to the Deputy. It deserved, and I wanted to give it, the focus it had last year in recognition of all the suffering it has caused. However, for me to go any further than that risks undermining an investigation that is being carried out by an institution for which I have responsibility. The way this issue has been handled falls way short of all the standards that I expect to be implemented in our economy by our banks.

**Deputy Pearse Doherty:** I believe the Minister has sympathy and compassion for the victims, but a section of them want to pursue a class action. They want to come together and take on the banks in the courts. In the event of a future scandal, they want to have that ability. It is about levelling the playing field. The Dáil has passed Second Stage of the legislation and in the normal course of action it would now be before the Select Committee on Justice and Equality where it would be scrutinised. That committee wants to scrutinise it but the Government must provide the money message. I know that the Minister does not have direct responsibility but as a Minister who is completely *au fait* with the suffering of those victims, does he support allowing this legislation to go to the next Stage as a tool that could be used to address the wrongs inflicted on many individuals who want to pursue legal action?

**Deputy Paschal Donohoe:** I have not yet had the opportunity to consider that legislation because it is being handled by the Minister, Deputy Flanagan. It is not legislation that is specific to financial services or banking. It is to do with all of our country and economy and, as such, the policy recommendation on the Bill must come from the Minister, Deputy Flanagan. On foot of this hearing I will ask for a copy of the legislation and I will read it to form a further view on it. I engaged with individuals on this matter towards the end of last year. With regard to the people I have met so far, the only thing that would give them a sense of recognition for all they have suffered is getting their money back, which means compensation and an adequate level of redress. To date, none of them has raised the new legal framework the Deputy referred to. That is not to say some do not want it. I will get a copy of the legislation. I will read it and form a view on it then. I will not offer the Deputy a view on legislation I have not read.

**Deputy Pearse Doherty:** That is fair enough. I have one last question. There are many people who not only want adequate compensation and to get the money that was wrongly taken from them back but they want accountability. They want somebody to pay the price. They want somebody to be held responsible. They do not want this swept under the carpet.

That takes me to the final question on the issue of compensation and of being put back on the appropriate tracker rate. We had a motion passed in the Dáil. I tabled an amendment to Deputy McGrath's motion in the Dáil, which proposed to "ensure all customers are put back onto the rate applicable as per their contract". I am sure the Minister knows, because the committee knows, there are countless people out there who have been offered redress and compensation but are being put back on a rate they completely and utterly dispute. There is an issue with the prevailing rate at the time. In some cases, rates are 2% and 3% above what they believe should have been the tracker rate at the time.

Mr. Kissane, who comes in before the committee, has been a leading light in this and has argued this point very passionately. Is this Minister dealing with the issue? Is he willing to take on the issue of the prevailing rate on behalf of customers and also the pathetically inadequate level of compensation being offered to victims when one considers the suffering they and their

families went through? It is 10%, 15% and even 20%, and €2,000 or €3,000 is being offered in compensation for money that was taken from people at a time of deep austerity. I will not rehearse what these families went through because we all know these individual stories. The type of compensation being offered by these financial institutions to their victims is pathetic. Will the Minister be the person to take on the five institutions, particularly AIB and Permanent TSB, on the issue of the prevailing rate? Will he also make sure there is adequate compensation or will we just draw a line under this by saying everybody is getting their money back, there is a bit of compensation and hope the issue will disappear in 2018?

**Deputy Paschal Donohoe:** I have no interest in sweeping this matter under the table or allowing it to disappear. What happened was wrong. The numbers of people who were affected by this and the suffering that was caused was unconscionable. That is my view on the matter. On the specific questions the Deputy has put to me, to date the issue of the rate of interest and the individuals and victims it will go back to has not been raised with me. Most of the dealings I have had on the matter have been about people not knowing where they stand in the process. Clearly the decision that is made on that matter is a matter for the regulator. It is a matter for the Central Bank because I engage with it on this matter regularly.

On the second question regarding accountability and individuals and organisations being seen to be held accountable for what happened, that is what I want to see happen. In order for me to allow that to happen, I have to be conscious of the fact the institution doing this work at the moment is the Central Bank which I have responsibility for. I do not want to say anything in this hearing that will undermine its ability to implement any sanctions which it judges are needed in the future. From my extensive engagement with the Central Bank on the issue, I am clear it will see this matter concluded and see it dealt with well.

**Deputy Paul Murphy:** I will start with the cause of this. A lot of people, the Minister included, have referred to a culture in the banks. I agree with it but it does not go very far in terms of explaining things. It covers a multitude of sins. When Philip Lane spoke to this committee, he was more specific about it. He spoke about a culture of seeking profitability to the detriment of the banks' customers. Does the Minister think that is the cultural issue at the root of this?

**Deputy Paschal Donohoe:** Will the Deputy give me the quote from Governor Lane?

**Deputy Paul Murphy:** He said there was a culture of seeking profitability at the detriment of their customers.

**Deputy Paschal Donohoe:** I agree with the Governor's assessment on that matter.

**Deputy Paul Murphy:** Where does the Minister think that culture comes from?

**Deputy Paschal Donohoe:** The culture of any organisation comes from a combination of a number of things: the long-term history of the company, the leadership traits that are rewarded in the company and the external circumstances it deals with.

**Deputy Paul Murphy:** Okay, that is fine.

**Deputy Paschal Donohoe:** The Deputy is asking me if it is due to the functioning of capitalism or something like that. I do not believe it is. We have organisations that develop and sustain cultures that might work for them internally but have consequences that can be harrowing for other people. This is the kind of issue the Central Bank will give me a view on later this year.

**Deputy Paul Murphy:** Victims are quite clear on their understanding. I met a guy yesterday who thankfully did not lose his home or anything like that but estimates his family is down about €60,000. He is based in Kildare. He was very clear he believed it was a conscious decision by the banks and that it was the culture within the banks to do this to people to maximise their profits. That is, effectively, a similar thing to what Governor Lane is saying. What the Minister said earlier about a potential tension between the perceived responsibilities of public interest directors, their responsibilities to the banks and the public interest was illustrative because for some reason banking interest is not identical to public interest. It is separate. Banking interest exists to maximise their profit. That is their drive and that is where their culture comes from.

**Deputy Paschal Donohoe:** That is the case in any private sector company. I support a mixed economy. I have worked in the private sector and I am a strong supporter of putting in place the right policies to sustain the private sector in Ireland. The role of public sector companies and privately owned companies is to deliver their own objectives inside the legal and regulatory frameworks set by the Government of the day.

**Deputy Paul Murphy:** There are two points there. This is quite central to capitalism. It is quite central to the idea of private for-profit corporations; the very nature of their existence means they seek profitability even if it is to the detriment of their customers. That happens right across the market in many different ways but it is particularly extreme in the banks. The other point is that AIB and PTSB are not privately held companies; they are publicly owned companies. They are publicly owned companies without public interest directors or any directors from the State currently operating on them. Throughout the course of this time, the Government and the State and the public had ownership of a large portion of the banking sector in Ireland and did absolutely nothing with it. It did not do anything with the public interest directors or the fact we own the banks. Is that not a fundamental flaw? The culture of running the banks for profit came from the Government which owned the banks and which said it wanted them to return to profitability. I do not mean that the Government wanted them to screw the customers in the way that happened with tracker mortgages. I do not think it wanted that but I think it told them it wanted them to maximise profits and return to profitability.

**Deputy Paschal Donohoe:** I disagree with the Deputy. I do not believe the cultural issues we are referring to here came from the identity of the shareholders. The amount of time in which the Irish taxpayer has either owned entirely or owned a stake in our banks in Ireland is a short period relative to the existence of all of these entities. I believe the cultural issues we are referring to are separate to the issue of who the shareholder was at any point in time. Where I agree with the Deputy - and it might surprise him to hear me say this - is that it is the role and the nature of private sector organisations to see how they can maximise profit. Some do it at a different pace. Some look at where they are in a quarter; some look at where they are in a year and beyond that. In order to hit the kind of balance the Deputy is referring to, we need strong regulation and independent institutions like the Central Bank. Where banks are different from many other companies is their viability and that what they do is fundamentally interwoven into modern economies. We need banks that are able to lend and to sustain economic activity. When banks are in difficulty it has profound consequences for the economy within which the bank is located, as we know to our cost.

**Deputy Paul Murphy:** My question is why did the public ownership of large portions of the banking system over this period of time not alter the culture? Why did the culture remain unchanged or largely unchanged and focused on profit? It was because it was a Government

decision to continue to run the banks on a for-profit basis. It was not the Minister's Government's decision but it was a Government decision.

**Deputy Paschal Donohoe:** The reason there was a decision made at that point to focus in on the profitability of the banks is because at that point in time the scale of losses at the banks posed an existential threat to the Irish economy. If a pathway to profitability was not identified and the pathway embarked on, the long-term consequences for the economy would have been profoundly negative. It is not just the long-term consequences; the short-term consequences when our banks were unprofitable and unable to fund themselves did huge damage to our economy and changed the nature of our country. As such, there was a focus on trying to get the banks back to profitability but I reject entirely the view that the Government between 2008 and 2011 or the last Government played a role as shareholders in creating the issue we are dealing with now.

**Deputy Paul Murphy:** My point is the shareholders and the Governments did not do anything to alter the culture of the banks because successive Governments were committed to private for-profit ownership and running of the banks. They continued with that same model of running the banks even when they were in public ownership. Let us remember the banks got into difficulty when they were private and run on that model and rescued by the State. Does the Minister not agree that that and the subsequent scandals mean the private sector model of banking ownership has failed and that the tension that exists between the public interest and the banking interest is a fundamental problem? The way to overcome those interests is to have actual public democratic ownership of the banks, bring together public and banking interest and run the banks to assist the economy and society as a whole as opposed to allowing the banks to rob, steal and profit from the economy and people within the economy.

**Deputy Paschal Donohoe:** In the immediate aftermath of the financial crisis from 2008 and 2009 and 2010, the then Government looked to tackle the culture that existed in the banks then. That approach was maintained by successive Governments. That was done by changes that happened at senior leadership levels in the banks. It was done by changes we made in remuneration. It was done by changes in the regulatory environment. For example, the amount of resourcing that is available to the Central Bank has now doubled versus where we were in 2009 precisely because of our efforts to tackle cultural change. My view is what we were doing then is talking about a set of cultures that led our banks to lend in a way that was not sustainable. Efforts were made to tackle and change that. What I am talking about is another dimension of that which is to balance the rights of the consumer and the profitability of a bank. That is one of the issues I expect the Central Bank to address when it comes back to me later in the year. I do not accept the antidote to the difficulties we are talking about is democratically owned banks. Private sector banks that are able to fund themselves and able to lend out money, which is not taxpayer money, for lending and investment is an essential element of a mixed economy, which we need.

**Deputy Paul Murphy:** I have another issue. After meeting with the banks on 25 October 2017, the Minister in his statement referred to a range of policy measures available if the Central Bank deemed progress on this issue had not been sufficient or acceptable. One of those was amending tax law in a targeted way. Would the Minister care to expand on what he meant by that? What options were potentially available?

**Deputy Paschal Donohoe:** None beyond what I have outlined in that statement already. If I do not see the deadlines met in March, I outlined a number of options that I will take, particularly in banks in which the Irish taxpayer has a share.

**Deputy Paul Murphy:** If progress slows, stalls etc., would the Minister consider changing tax law? I refer to those banks which have been re-privatised and effectively can avoid paying corporation tax for decades as a result of the losses suffered in the course of the crisis and paid for by the taxpayer but which they can bring over into future years. Can that tax law be amended in a specific way in terms of the banks?

**Deputy Paschal Donohoe:** In the aftermath of the Finance Bill that passed through this committee, I made a commitment that early this year, we would produce a paper for this committee. It would outline the consequences if we were to change the tax treatment of deferred losses within the Irish banks. I will check to see where that paper is and that we can get it to the committee in a speedy manner. That will outline some of the consequences we would face by virtue of making that policy change. That is not what I plan or intend to do as it would have consequences that would create difficulty for us elsewhere. As I have said in the statement that I made that day, there are options that are open to me, both as Minister for Finance and as a shareholder, apart from a measure like that and I will be willing to take them.

As for the mechanism for it, however, it is important to be clear that it will not be a case of me deciding whether the banks have met their obligations or targets or even, with respect, the committee. It will be the Central Bank. It will report back to me to give me a view on where this issue stands and I will be guided by its assessment.

**Deputy Paul Murphy:** Returning to how this happened and in a more specific way than the issue of culture, does the Minister have an opinion about how multiple financial institutions, all at the same time, took the same approach in terms of denying people their rights in respect of tracker mortgages to which they were entitled? Either Governor Lane or his assistant answered to the effect that this was just an issue of the culture being so widespread across the banks that they all jumped at the chance. I thought that stretched credibility and the meaning of culture. Does the Minister have an opinion as to how that happened?

**Deputy Paschal Donohoe:** Yes, I have an opinion on the matter. I was intimately involved in the issue in November and December and I have reflected a lot on it since then because it cuts to the heart of the social contract that governments must be able to maintain with their citizens if one is trying to maintain support for the mixed economy approach that I talked of earlier. What I want to see happen first, before I share my views on the matter, is for the Central Bank to conclude its investigation. If I were to offer that view now, it would be damaging to the vital work it has under way.

**Deputy Paul Murphy:** I thank the Minister.

**Senator Rose Conway-Walsh:** I thank the Minister for his presentation. I want to get back to the individual accountability aspect. Has the Minister checked with the Central Bank that there is no legislative impediment to holding individuals to account, even if they have retired and been paid bonuses and all of that?

**Deputy Paschal Donohoe:** Yes, I have checked. I engaged in this matter in the second half of last year with the Governor of the Central Bank. He informed me that the Central Bank was satisfied with the legislative powers available to it. It has made statements since then regarding broader issues and powers it believes are merited. Those views may well have been formed by the work it did in November and December. Those views were expressed independently of me. I will take account of what it has said but I did ask the question directly last year and that was the answer that I received.

**Senator Rose Conway-Walsh:** Therefore, we will not find ourselves in a situation in the future where we are being told we cannot do this because of something legislative. Has the Minister examined the Icelandic model where I believe 27 bankers were jailed? What are the variables in comparison with how we responded?

**Deputy Paschal Donohoe:** I have not looked at Iceland. First, we can only prosecute people in accordance with the law that is available to us now. I asked the Central Bank if it is satisfied with the powers that are available to it. The answer was “Yes”. I cannot speculate on what difficulties the Central Bank may or may not have in the future in dealing with this matter. However, I have asked that question and that is the answer given to me.

**Senator Rose Conway-Walsh:** Has the Minister, or someone within his Department, examined the Iceland model as a matter of interest? Does he think it might be worthwhile?

**Deputy Paschal Donohoe:** No, I have not looked at Iceland for a while. I remember for a period that everyone was encouraging Ireland to go the way of Iceland. Then lots of people changed their minds on that topic-----

**Senator Rose Conway-Walsh:** It has not been-----

**Deputy Paschal Donohoe:** The Senator has asked me a question. Please let me answer. I remember lots of people saying that Ireland should go the way of Iceland, ignoring the fact that Iceland is not a member of a single currency zone like we are. The Icelandic economy is also fundamentally different in scale and composition to the Irish economy. We are significantly bigger and have a far more varied economy than has Iceland. I have not looked at it for a while for all of those reasons. I will have a look again on foot of this conversation. However, the key difference is that Iceland is not subject to EU banking rules like we are. Iceland may choose a particular course of action that is open to it but that may not be open to us because we are part of a banking union that is supervised by the Single Supervisory Mechanism.

**Senator Rose Conway-Walsh:** Yes, I think we should examine it just to see what the variables are. I take on board what the Minister is saying about the differences but we need to examine it more forensically. We need to be fully equipped regarding what is coming down the line in terms of the current Central Bank approach and what may need to be done in the future. It will not be acceptable to Irish citizens that people get off on technicalities or whatever else it might be.

How many times in 2016 did the Minister meet the chief executive officers of the main banks?

**Deputy Paschal Donohoe:** In 2016 I was then the Minister for Public Expenditure and Reform and did not have responsibility.

**Senator Rose Conway-Walsh:** Sorry, I refer to the Minister’s Department.

**Deputy Paschal Donohoe:** Is the Senator asking about the Department of Public Expenditure and Reform?

**Senator Rose Conway-Walsh:** What I am trying to get at is how often does the Department of Finance meet the chief executive officers of the banks as a matter of course, whoever the Minister in charge may be at the time?

**Deputy Paschal Donohoe:** I intend to meet the chief executive officers of the banks di-

rectly and formally perhaps every four to five months. That is the frequency I have for it. Informally, at events, I meet some of them more frequently than that. However, I aim to have formal bilateral meetings with the Irish banks at least twice a year. I will be aiming to meet the chief executive officers of all of the banks again in the coming months.

**Senator Rose Conway-Walsh:** Does the Minister meet the vulture funds as well or do they request meetings with the Department?

**Deputy Paschal Donohoe:** Other banks may have requested to meet me but I have not met them.

**Senator Rose Conway-Walsh:** Why has the Minister not met them?

**Deputy Paschal Donohoe:** A wide variety of financial entities are operational here in Ireland at present. Their oversight and management sits with the Central Bank. Were I to spend time engaging with every financial organisation in Ireland, I would not be able to fulfil other duties. While some of those organisations are subject to stringent ongoing scrutiny and regulation from the Central Bank, I judge it appropriate that the main point of contact they have is with the Central Bank and not me.

**Senator Rose Conway-Walsh:** That is what I am concerned about. There are so many refusals by the vulture funds to requests to come before the committee that I would not like them to have a pathway to be able to selectively meet with whosoever they wish within the Department of Finance. I find it disconcerting that the impact of the behaviour of so many of the vulture funds concerned is so negative for many citizens who, ultimately, we are there to protect.

**Deputy Paschal Donohoe:** They do not have that pathway and they certainly do not have it to me.

**Senator Rose Conway-Walsh:** One thing was stark in terms of quantifying the amount of money that was owed to citizens as a result of this scandal. I think the Central Bank put it at about €1 billion.

**Deputy Paschal Donohoe:** I am not aware of the origin of that figure but what has happened is that colleagues on the committee and those analysing this situation have extrapolated the amount of money that has been paid out against the number of people who have received it against the total number of people who have now been identified. While that process would get to a figure of between €800 million and €1 billion, it is not a figure I have used or a figure that, to the best of my knowledge, the Central Bank has used.

**Senator Rose Conway-Walsh:** If it is that amount or even higher, what it says to me is that this is the variance between the ECB rates and what is being charged here. With regard to the extortionate rates people are charged for mortgages here compared with those in Germany, which has far lower percentage rates, is there anything the Minister can do to address that or are we at the mercy of the banks in terms of the rates they set?

**Deputy Paschal Donohoe:** The two issues are separate and I will not accept them being conflated by the banks or other forces dealing with this matter. When we talk about the money relating to all of this, it is important that the Senator is clear about how I perceive this matter, which is that the people who are receiving money are receiving what was their own money in the first place. They should not have been moved on to the different rates. In many cases, some people incurred a degree of financial loss and for some citizens, the financial loss was gigantic

and life changing. While our banks will have to account for it on their balance sheets and with their investors as they deal with this matter - a number of them already have - that needs to happen. This issue must be dealt with because where people have been treated wrongly, we must ensure that it is recognised and dealt with.

On the separate issue put to me by the Senator regarding the difference between the standard euro area mortgage rate or lending rate and the rate in Ireland, there are other factors driving that difference. One of the largest of them is that we still have an amount of non-performing loans in our economy that are having an effect on the balance sheets of the banks, which in turn is having an effect on the rate of interest at which banks can lend out. That matter needs to be dealt with carefully by the banks during the coming period. They are subject to supervision by the Single Supervisory Mechanism in respect of this. In respect of the second factor, which I would like to see change in the future, I would like to see as much competition in our banking sector as possible because that is an antidote to rates being offered to people who might be very high.

**Senator Rose Conway-Walsh:** Does that not indicate it is the consumer who pays at the end of the day? Right across the board, all banking customers are paying for this scandal and indeed the tardiness of Governments in dealing with it, which I find concerning. It does not just concern the interest rates people are paying, which is something that must be addressed soon, but also relates to the treatment of banking customers. I know of a person who, in the days running up to Christmas, went in to get that customer's own money out of the bank. The person travelled 50 miles to do that because so many of the banks have been allowed to close down. The customer was told that it would not be possible to take money out of the bank because this had to be done on a certain day between certain times. That is not looking after the consumers. What concerns me is that the culture we talk about is, if anything, getting worse, not better. Could the Minister speak to the Irish banking standards board that has been set up and tell me what benefit this might be to these people who either cannot get their money out or who do not have a bank anywhere near them?

**Deputy Paschal Donohoe:** Before I comment on the first part of what the Senator said to me, the short answer to her last question is that the Irish banking standards board, which the banks have indicated they want to move ahead with, will play a number of different roles. It will look at what are the correct ethical standards for our banks and how we can improve culture, set and champion good and best practice and have a single industry code. I see the establishment of this organisation fitting in with the report I will receive on banking culture in the middle of the year. I see it as part of how we respond to the intangible issues that contribute to difficulties we want to be improved and tackled.

On the first part of the Senator's question, we need banks that are competitive, profitable and sustainable in Ireland because if we do not have them, we will not be able to meet the investment and lending needs of our economy to meet the aspirations that I, and I am sure, the Senator have for it in the future. As I deal with this and other matters, I am always aware if that is an issue. One thing I want to be clear on is that I would not accept in any way that there is a link between dealing with this issue and the journey toward competitive interest rates within the Irish economy. This matter must be dealt with in the context of the balance sheets of banks. I support other initiatives which, over time, will allow interest rates in Ireland to move towards the EU average, although they are driven by issues to which I have already referred in terms of the quantity of non-performing loans and the fact that, historically, we have had quite a concentrated banking market in Ireland compared with other countries.

**Senator Rose Conway-Walsh:** Does the Minister agree with the AIB plan regarding VAT reduction in the sector that was mooted at the weekend in the media?

**Deputy Paschal Donohoe:** Can I come back-----

**Senator Rose Conway-Walsh:** Has AIB presented the Minister with that plan?

**Deputy Paschal Donohoe:** No, it has not.

**Senator Rose Conway-Walsh:** If it were to present the plan to the Minister in terms of VAT reduction, is it something-----

**Deputy Paschal Donohoe:** I will get more information and come back to the Senator. I was not aware of that until I saw it in a newspaper at the weekend.

**Senator Rose Conway-Walsh:** Addressing the supply side is very important because it speaks to us in terms of the developers again trying to get in and do what they want. This means that vested interests, no more than the banks, are in the middle of it. The latter would be of huge concern to me if I were Minister for Finance.

**Deputy Paschal Donohoe:** I assure the Senator that the only entities that set tax policy are my Department and me. I was not aware of that idea. I was reminded of what it is a moment ago and I find it interesting that people are already talking about budget 2019 when we are only in the second week of the implementation of budget 2018. That idea was not presented to me. Other versions of that idea were presented to me by different organisations and I have no interest in implementing them.

**Senator Kieran O'Donnell:** I welcome the Minister and his colleagues. In the context of when the banks came before him - perhaps this has been reported, why is Ulster Bank so far behind the line? KBC is a much smaller institution. Why is Ulster Bank so far behind the line in terms of the timeframe and dealing with the tracker mortgage issue?

**Deputy Paschal Donohoe:** As I answer this question, I am not defending Ulster Bank. It is not my role to do that; it is a matter for the bank. According to the information I have received, it will take Ulster Bank longer than the other banks to conclude this process as a result of the systems it operates. That has been verified by the Central Bank. I want everybody, regardless of the institution with which they bank, to be paid back as soon as possible.

**Senator Kieran O'Donnell:** My main reason for making that observation is that, with the exception of KBC, the other institutions appear to be trying to rectify the matter much more quickly than Ulster Bank. Ulster Bank appears to be a long way behind. Regardless of whether someone is a customer of Ulster Bank, AIB, Bank of Ireland or any of the other institutions, he or she should not have to wait so long. Obviously, however, that is the reason that has been given.

The second question I want to ask picks up on two points that were raised. Will the roles of the public interest directors appointed to the banks differ from the roles of those appointed under the emergency legislation?

**Deputy Paschal Donohoe:** Yes. Formerly, public interest directors had a specific set of roles that they were meant to perform and they were tied into the emergency legislation that was then in place. I intend the Government to appoint these banks directors and they will have to meet the normal requirements of company law.

**Senator Kieran O'Donnell:** As such, will these directors be there purely on the basis of the State holding shares in the respective institutions?

**Deputy Paschal Donohoe:** Yes, the Senator is correct. The reason we are making these appointments is that we have a certain share in these banks which allows us to put people on their boards.

**Senator Kieran O'Donnell:** Will their role differ from that of public interest directors?

**Deputy Paschal Donohoe:** Yes.

**Senator Kieran O'Donnell:** The Minister made a very interesting observation on the interest charged by the banks. He made reference to non-performing loans. It is a new observation in our dealings with the banks. I have two questions. When the banks reach the point at which they have dealt with the non-performing loans, how much difference will that make to the interest they charge relative to European norms? Moreover, how does the Minister regard the current financial state of the banks in which, on behalf of the Irish taxpayer and the Government, he has a substantial investment? Those are the two questions which arise from the points the Minister raised.

**Deputy Paschal Donohoe:** In regard to the impact of the banks dealing with non-performing loans and how they would pass that on to their customers via rate reductions, so many variables would come into play that I am not in a position to answer. There are more non-performing loans in the Irish economy and our banks than is the case in other countries with which we would compare ourselves. The improvement of the balance sheets of our banks, due to the impacts of economic growth and non-performing loans being carefully dealt with, should have an effect on interest rates offered to new and existing customers. However, at that point other things will come into play. For example, the level of competition in the banking sector at that point will be a factor. Towards the end of last year, there were renewed signs of competition in the interest rates offered to new customers. That is a positive development in helping people buy their own homes, but we and the banks have much work to do in this area.

**Senator Kieran O'Donnell:** We welcome the great work the Minister has done in meeting the banks in respect of the tracker mortgages issue. How does the Minister regard the current financial state of the institutions in which we are invested?

**Deputy Paschal Donohoe:** I believe that their condition is positive and continues to improve as the prospects of the economy stabilise. As I said, I have met all of the CEOs and chairpersons of our existing banks. I have also met with banks that are not present in Ireland. As the prospects for the Irish economy have begun to stabilise at rates of growth that look positive, and as the kind of employment figures that we saw today begin to develop, there has been a massively positive effect on the balance sheets of our banks.

**Senator Kieran O'Donnell:** Representatives of AIB came before the committee before Christmas. The CEO of AIB expressed the view that selling the State's stake in AIB should be considered. I read the interviews the Minister gave over Christmas. What is the Minister's strategy for the State to divest itself, over a period, of its share in various institutions? Does he have a view or a strategy? As much as anything else, I am squaring the circle on this particular matter.

**Deputy Paschal Donohoe:** It is a matter for any shareholder to decide when to divest their own shares. While it is helpful to hear the views of others, as Minister for Finance it is for me

to take a recommendation to Government. Before last summer, I made such a recommendation on the disposal of more than a quarter of AIB. That proved to be a very successful floatation for AIB and a very positive transaction for the Exchequer. Regarding future opportunities that are open to me, I keep market conditions for the three banks in which we have shares under ongoing review. I have assigned very important sections in the Department of Finance to tracking this matter and monitoring our shares within those banks on an almost daily basis. If there is an opportunity for good value to be realised for the taxpayer, I will recognise that and take a recommendation to the Government. However, it is a matter for ongoing tracking. I will not give any indication of my future plans, because if I did that it could impact the value of the shares we have at the moment.

**Senator Kieran O'Donnell:** I thank the Minister.

**Senator Gerry Horkan:** I thank the Minister for his responses so far. Many of the points I would have raised have been covered. Following the point made by Senator Conway-Walsh, if about 35,000 people have been affected, and the average payout to date was about €30,000, that adds up to approximately €900,000 million, which is roughly 30,000 multiplied by 30,000. That may be where the range of €1 billion originated. Does the Minister have any sense of the range of compensation that is being paid out? On foot of a committee meeting several months ago, somebody contacted me out of the blue. They said they were absolutely sure that the compensation and redress in their particular case would be in excess of €200,000. Does the Minister have any sense of what has been paid out to date, or what is likely to be paid out?

**Deputy Paschal Donohoe:** I do not have that information. This may be information that the Governor of the Central Bank can provide. From my engagement on the matter since then, I have had a mixed experience of the issue. While I have always been very clear about the powers that are available to me and those that are not, I have heard some express a degree of satisfaction with the way in which the issue has been handled. I have seen others express the opposite. I want to couch all that by saying that when I refer to satisfaction, or when I say that people feel they are getting an offer, it is all with the understanding that this should never have happened in the first place. That is my assessment of the matter at the moment.

Perhaps it is too early for me to make an adjudication on that matter because offers are still being made to people and payments are being made.

On compensation and redress, if people feel that what they have been offered is not satisfactory, the Central Bank has designed an appeals process that it has tried to make agile to allow people to go through it quickly. People can enter that if they so wish, but it will not get in the way of money they have already received. If people have received a payment - even if they are not happy with it - they are entitled to do with that payment as they see fit. I have also made a change, or will be making a change, to the level of the awards that the Financial Services and Pensions Ombudsman can increase; I have doubled that to €500,000.

**Senator Gerry Horkan:** Before Christmas, when the Minister met representatives of the banks, he was hoping it would all be resolved by Christmas. Obviously, it was not all resolved by Christmas. Does the Minister believe that the vast bulk of it will at least be significantly addressed? I take on board the Minister's point that people will be made offers, take their cash, bank it and try to move on with their lives, but they may still want to challenge the final outcome. From his interaction with the chief executives and chairpersons of boards, and notwithstanding Ulster Bank's responses, does the Minister get a sense that the vast number of people identified as being affected will be dealt with by March?

**Deputy Paschal Donohoe:** I am satisfied, and I expect that the deadlines I have set with the Central Bank on this issue will be met. I wish to make two concluding points. I will not be the person to make the adjudication on that; it will be the Central Bank. It will make an assessment on the issue and report back to me.

I would be very cautious about expressing a view that collective resolution of the issue will happen for the following reason. We are now dealing with just under 34,000 different life stories. The question of resolution will be different for each of those people. We have to respect that there is a huge variety of different circumstances. That is why I am using this as an opportunity to remind people of the process. It would be very difficult ever to say that this matter is resolved overall because resolution will vary by individual. In looking at that matter, I will use the recommendation the Central Bank makes to me later in the year.

**Senator Gerry Horkan:** The Minister referred to almost 2 million tracker mortgages having been examined. While we can ask the Central Bank, I take this opportunity of the Minister being here to ask if he is familiar with the review process that took place. There are 2 million accounts, involving documentation on individual files. We have talked about 34,000 life stories; this is almost 2 million family life stories probably affecting much more than 2 million people, if 2 million mortgage accounts have been reviewed. Was that a computer iterative process or did people physically take out everybody's file in every branch of every institution?

We need to bear in mind that accounts have been moved from institutions such as Bank of Scotland, which is no longer here, to other institutions. I presume a lot of stuff is in archives. I presume many of the staff involved at the time are not necessarily still there. We are in a really complicated position. I do not expect the Minister to know the in-depth analysis of it all, but as the Minister for Finance he is ultimately the person people look to for comfort on their tracker mortgages. I am sure some people who took out mortgages with Bank of Scotland and who may have switched to another institution and paid off their mortgage still do not know whether they were affected. Will there be a process where every person with a mortgage is told: "Your account was examined. We don't believe there was anything wrong with it." This examination was done by the Central Bank, which looked at 2 million mortgage accounts. Can we get confirmation that all the other people - outside the 34,000 - have they been told that their account was reviewed and found to be okay?

**Deputy Paschal Donohoe:** There are two different parts to the Senator's question. On the work involved, the work has been described to me from both the point of view of the regulator and the point of view of the banks themselves. Many hundreds of people have been involved in doing this work. In many cases the work involved going through individual bank records of people to assess whether they had been affected by the issue.

**Senator Gerry Horkan:** That was all done by Central Bank staff as opposed to by internal bank people.

**Deputy Paschal Donohoe:** No. It would have been done by the banks, but auditors would also have been involved.

**Senator Gerry Horkan:** Therefore, we are relying on the bank staff in the relevant banks subject to audit. Audit is a test process, as the Minister knows. We are relying on Bank of Ireland and AIB to inform us as to how many of their customers were affected, subject to a testing of their systems. Is that the case?

**Deputy Paschal Donohoe:** No. This is a part of a concern I had in the second half of last year. The figures for those who were affected by this issue had to be agreed by the Central Bank. When the figures were presented to the Central Bank, it ultimately decided if the figure was too low. That involved the Central Bank looking at the audit trails, its own staff engaging with the staff of the four banks and then the Central Bank making an adjudication as to whether the figures were correct. That is why at the time when I was speaking on this matter in here and elsewhere in the Oireachtas, I said on a number of occasions that just as important to me as dealing with the people who have been identified - and know they have been identified - is all those people who do not know yet that they were a victim of this.

The word “cohort” was used to identify this. In many technical ways “cohort” is the right word for this. For me “cohort” is just a different word for lots of people’s lives. The figures Deputy Michael McGrath used in opening his questions to me gives a sense of the number of people affected by this now.

**Senator Gerry Horkan:** The Minister mentioned the four banks. I believe representatives of four or five banks have appeared before the committee. I believe the Minister referred to 15 other providers in his opening speech. What processes took place for all those banks, some of which are no longer here? In some cases there are legacy managing agents, managing out those mortgages, but they are not looking for new business. They may not be as concerned about their reputation as institutions that want new business and which are embedded in the Irish economy. Is the Minister confident that the records of every mortgage holder who could be affected by this have been examined thoroughly? Would it be beneficial if people were told one way or another, “You have a mortgage and we think it is okay.” or, “You have a mortgage and we have identified it as not being okay.” Is the Minister confident that there are not people in the system who have not been identified because they may have switched from one bank to another or have resolved their mortgage and it is paid off? They still might have been affected. Is the Minister confident that everybody has been found and everybody has been told that they have an issue if they have?

**Deputy Paschal Donohoe:** I am confident we will know the full answer to that question in March when the Central Bank reports back to me with its final adjudication on the numbers of people affected. Regarding my confidence on the figure now, it is possible the figure will increase. However, I do not believe it will increase to the extent that it increased between March and December last year. While it may change, I anticipate that that change will be incremental as opposed to this very substantial change we saw last year. Even if that increment is 100 people, it is still 100 people too many.

On the first question put to me by Senator Horkan on how the Central Bank is engaging with the issue, there are six other affected lenders dealing with what the Central Bank believes to be the vast majority of other cases outside the five banks we have discussed so far, namely, ACC, Bank of Scotland, Danske, IBRC, Springboard Mortgages and Stepstone Mortgages. The total number of impacted cases emerging from that work is approximately 300. This is just under 1% of the total number of cases we have dealt with. I am satisfied that the Central Bank has put in place the right kind of verification process to deal with this. Currently, five of those banks have commenced their own payments of redress and compensation, four of the banks were expected to complete this work before the end of last year and the fifth bank is expected to conclude the work by the end of this month.

**Senator Gerry Horkan:** That figure of 300 is relatively very small. Is that because this is the level of business the banks did, as a percentage, or is it that these banks were not as guilty

and as involved with the scandal as the main banks seem to have been? Did these banks manage to not make the same mistakes as everybody else or was their volume of business much lower in the first place, which has resulted in roughly the same percentage of mistakes?

**Deputy Paschal Donohoe:** That is a matter for the Central Bank. Clearly, a numerical fact that will kick in is that the quantity of activity in which these banks were engaged is a fraction of the activity of the other banks. The root causes of it and any company-specific causes are a matter for the Central Bank to draw conclusions.

**Senator Gerry Horkan:** I thank the Minister. I have a final question on the new directors the Minister intends to appoint. These will be normal bank directors, presumably, and like other bank directors on the board, they will be there to represent the shareholders in line with normal corporate governance and to try to do their best for the bank and ultimately for the shareholder - in these cases we are a 71% shareholder in AIB and hold various other percentages of shares in other banks. Do we have the appropriate level of directors to represent these shareholdings on the boards of the banks we are involved with?

**Deputy Paschal Donohoe:** We will when I have completed this process.

**Senator Gerry Horkan:** Does this suggest, in the context of AIB, that we would have an interest of around 71% of whatever the number of directors currently is? I accept there are executive and non-executive directors and other reasons people may be on boards, but will the number of directors on the boards be proportionate to our shareholding?

**Deputy Paschal Donohoe:** It varies by bank depending on what is our relationship with the bank. I will come back to the Senator with the numbers of vacancies, per bank, that we are looking to fill.

**Senator Gerry Horkan:** Will the Minister clarify that these directors will be doing their best - as all directors are supposed to do - within the legislative process and within the law on behalf of the shareholders?

**Deputy Paschal Donohoe:** Yes, but the additional layer is the responsibilities they have due to the activities of the Single Supervisory Mechanism, SSM. There are very rigorous responsibilities that they have to fulfil. I look forward to appointing people to do this work who will be independent and challenging directors.

**Senator Gerry Horkan:** Yes, but they will be doing what all directors do, as opposed to being separate. There is no public interest status this time around and they will be doing what directors are supposed to do; looking after the company, on behalf of the shareholders and within the law.

**Deputy Paschal Donohoe:** That is correct.

**Senator Gerry Horkan:** I thank the Minister.

**Chairman:** I wish to ask the Minister about the tracker mortgage numbers. At various stages during these committee hearings, members were assured that the peak had been reached in relation to case numbers, and that "This was it", only to be told a short time later of the huge increases in the number of those affected. We are now at the level of numbers that had been predicted by Padraic Kissane when he appeared before the committee. This was a figure that had not been accepted by the banks. As we commence 2018 and these hearings, I will give a

flavour of the correspondence I have received by email. This individual was put back on to a tracker mortgage in 2016 and continued to contact the bank to find out when the bank would repay the money, when compensation or redress would be paid and so on. Ulster Bank kept on telling this person that it could not tell as it did not know. This email is dated 11 January. No one could tell her and no one could answer the questions. I have received another email from another bank customer who was put back on a tracker mortgage by KBC when the person was confirmed last week as being an impacted case. This only happened after this customer turned up in the Public Gallery here when the bank was before this committee. This person has two other mortgage accounts with KBC and these have not yet been confirmed as being impacted or not. It is important to note that on the date KBC was before the committee, the bank told us nothing. It refused to tell the committee anything. From the emails that are starting to come in now at the beginning of 2018, we can see there is ongoing frustration and anger with the banks in not dealing with all of the cases. This is the fear I have. There is also a continued reluctance on the part of the banks to show any sign of co-operation. They have had to be dragged kicking and screaming to this point. With regard to the banks and the Central Bank, is the Minister provided with minutes of the board meetings?

**Deputy Paschal Donohoe:** My Department is provided with minutes of the board meetings due to the relationship framework we have agreed with the banks. The shareholder management unit of the Department of Finance receives the minutes. I do not see a copy of them myself.

**Chairman:** From what banks?

**Deputy Paschal Donohoe:** The banks in which we have shareholdings.

**Chairman:** Does the Central Bank share its meeting minutes with the Department?

**Deputy Paschal Donohoe:** No, it does not. I want to make sure that I am clear on the bank to which the Chairman is referring. Did the Chairman refer to the Central Bank?

**Chairman:** Yes.

**Deputy Paschal Donohoe:** No, I do not receive-----

**Chairman:** Bank of Ireland and AIB-----

**Deputy Paschal Donohoe:** Those commercial banks-----

**Chairman:** Does the Minister get those?

**Deputy Paschal Donohoe:** -----share the minutes of their board meetings with the shareholder management unit of my Department but I do not see them.

**Chairman:** What does that unit in the Department do with the minutes? Does the unit examine them thoroughly? Does it bring matters from those minutes to the attention of the Minister or are they just filed away?

**Deputy Paschal Donohoe:** The unit examines them. In truth, if there are any issues relating to the banks that are important to me as Minister, they are flagged to me, even in advance of them being discussed at board meetings.

**Chairman:** Was anything found in the minutes from the banks we are currently speaking

about that gave any indication of cartel-like activity under way in the context of the tracker issue, dating back from that time?

**Deputy Paschal Donohoe:** No. I have engaged in this matter to look at how we have managed our relationship with the banks. If one looks at the engagement we have had with the boards of the banks through the minutes that are shared with me, it did not give an indication of the kind of evolution of this issue we are now seeing.

**Chairman:** Would that unit-----

**Deputy Paschal Donohoe:** I hope the Chairman will not mind me saying that I am certain, and am aware, that if there had been an indication of this issue developing and if it had been discussed at the boards and recorded in the minutes of the boards, it would have been alerted to me by my Department.

**Chairman:** Does the Minister's officials in the unit who read the minutes feel they are getting the full picture, in the minutes, of the bank meetings? Is there an indication that they are getting just barely the amount of information to satisfy the fact that they have to give the minutes to the Department?

**Deputy Paschal Donohoe:** No. My Department is satisfied that the board papers we receive record the issues that are discussed in the board meetings.

**Chairman:** I want to put on record my support for Deputy Pearse Doherty's view that until such time as cases are taken against individuals within the banks over what happened with the tracker mortgage issues, the public will not be satisfied and the banks will not clean up their act or their culture. From dealing with the banks in this committee it seems to me that as they get more profitable and back on their feet, they are becoming as arrogant as they were prior to the crash. That is a frightening scenario to be developing within our banks because it clearly means that they have learned nothing and that they are still confident they can get away with whatever they want to do.

**Deputy Paschal Donohoe:** I have engaged with the chief executives and the chairpersons of the banks in the way that the Chairman is aware of. I am confident that at a leadership level, there is a commitment from the banks to make sure that their organisations have a culture that is fit for purpose and that reflects what we should have learned from the past and gives us all the best prospects of a better collective future in the economy. To look at this matter, I have requested the report that I identified in my opening statement because I want to give the committee more than my judgment on the matter. I believe the matter cuts to the heart of both the challenges and opportunities that we have with the banks. I assure the Chairman I will be able to come back and discuss that report with the committee when I receive it.

**Chairman:** Until we get banking and banker accountability and transparency, we will not know what is going on within those banks and what arrangements they are making. Is there any merit in having an ethical officer appointed within each of the banks by the Minister and paid for by the banks, as one would have in similar institutions in the financial services sector?

**Deputy Paschal Donohoe:** When I have engaged on this matter with the banks, I have met individuals who are charged with those kind of duties in the banks where their job is to speak up for the consumer and to speak up in those instances where there is a tension between the right thing to do in the short term and the right thing to do in the long term. I have met individuals who are doing that work in the banks already. I met some of them in the context of the meetings

that I had there last November. I am open to looking at this issue properly this year because the piece of work that we have under way with the Central Bank looking at the culture of the banks will result in recommendations and this is a matter we can look at in that light.

**Chairman:** We will have an opportunity to engage with the Minister again on this issue.

**Deputy Paschal Donohoe:** Definitely.

**Chairman:** The same applies to the Central Bank, in terms of how it conducts its business. We set out legislation for risk officers. One such risk officer was Mr. Jonathan Sugarman and we met the Central Bank recently on this. Mr. Sugarman reported breaches of the regulations to the Central Bank and he followed the letter of the law in terms of the legislation. He was the one who found himself being the victim at the end of all of this and is still trying to fight his case. I am taking one individual case but it is one that it is well known publicly and was before some of the European committees and before the Central Bank. It would appear that the complaint was made in terms of the issues raised at that time and it was suggested that the Central Bank did little or nothing about it, but Mr. Sugarman was the one who suffered at the end of the day. Whatever changes are made within the banks, such as the appointment of ethical officers, the legislation has to be strong enough to ensure that that person is protected.

The Minister answered partially the question on the meeting with the vulture funds in the context of whether he met them. We got a list from the Department of the number of times that officials and the Minister's predecessor met the vulture funds. There was quite an extensive list of meetings with an extensive range of vulture funds. What I want to clarify is, while the Minister may have not met them, do they continue to meet with the Minister's officials?

**Deputy Paschal Donohoe:** I am not aware that they do in any meaningful sense at present.

**Chairman:** What about Capita and Pepper and the agents that would manage on their behalf?

**Deputy Paschal Donohoe:** I am not aware of it.

**Chairman:** Okay. I want to ask the Minister a question on foot of that. Any of the vulture funds that we have invited here have refused to come before us. Capita and Pepper are considering the invitation. As they are regulated entities working on behalf of the vulture funds, I would like to see the Department in any exchanges it might have with them insisting that they take up the invitation to be accountable to the public in a forum like this. In the case of Capita, in particular, the experience Members of the Houses have had in dealing with it is frightening. To find young men and women in the banking sector being encouraged to go down the route they are going in how they deal with customers is shocking in itself. It will leave a legacy in our banks, that may well employ these people, that will continue this attitude towards customers. It has been and continues to be very difficult for people to engage with them. We are at a stage now within the economy where people are having to engage with these organisations. In whatever way we can we should consider legislation that would force them to look at customers' rights and their obligations to ensure those rights are protected. That does not happen; in fact it is quite the opposite. I know a number of Members who have acted on behalf of customers with these agencies and they have come away in complete shock. I am not easily shocked but when I saw the younger people coming on in Capita who were doing that work, it disturbed me that this would be going on in Irish society and our economy. It will be interesting to see if they accept our invitations but we must be far more aggressive to ensure they comply with the law;

we should introduce new laws if necessary where we see gaps in the existing laws.

**Deputy Paschal Donohoe:** We do not have - and I do not have - engagement with those organisations. The Chairman spoke about this matter when I came before the committee in December. These organisations, as is the case with any bank or financial entity regulated in Ireland, should be meeting people in a way that reflects the letter and spirit of the law. I have asked my Department to examine this issue as it has been raised with disturbing frequency throughout November and December. It seems the Chairman and other committee members have examples of this behaviour and they may wish to share them with me, not in this public meeting but afterwards. I expect people to be treated with the respect that should be accorded to them. I know discussions between customers and their banks can be very difficult at times but they can be conducted in a proper manner. That is why I have approached the tracker mortgage issues in the way I have. Both I and the Central Bank have standards that we expect to be met. The leaders of our banks do, I believe, want to see change in their cultures and to renew the way in which customers are dealt with. As Minister for Finance, I see the management of this issue being at the heart of the relationship economies have with banks. I am not satisfied with how this has been handled to date and the tracker mortgage issue is the most glaring example of that.

**Chairman:** It is good to hear that, Minister. I will put on record again the need for organisations such as Capita and Pepper to consider our invitations to give their side of the story because we need to understand what is happening within their organisations as well.

**Senator Kieran O'Donnell:** I had a case before Christmas involving one of the mainstream banks. I do not want to get into it in detail but this was a young lady with a young family who rang me at approximately 6.30 p.m. a week or so before Christmas. An individual had called on behalf of the bank to serve papers on her, and to say she was petrified would be an understatement. I put her straight onto someone who is involved in this area to deal with the bank. There is a problem, however, and the banks will have to change their mode of operation. The banks have to realise that they cannot go back to dealing with individuals as they previously did. That is one instance of a case which involved a mainstream bank.

What is now happening is that the banks are reviewing a lot of cases. While there may be a rule book and codes in place, I suspect that there is pressure on individuals at management level in banks to get loans in and people are cutting corners. They are not taking into account individual circumstances, as was the case with this particular lady, who is doing everything in her power to pay her mortgage although she just could not pay the full amount. I do not generally speak about these matters because they are private but this is an example of a mainstream bank dealing with a customer in a completely inappropriate way. The bank was dealing with her as a back street moneylender or whatever one might want to call it would do. A mob-style approach was adopted in dealing with this particular lady who lives on her own. It was a dark winter's evening and what was done was highly inappropriate. This needs to be fed back into the banks. This is about the person at the top who dictates the type of attitude and regime of the institution. I do not buy the theory about individuals. The banks need to deal with their customers in a legal fashion but also in a caring fashion. They should not be coming out to people in the dead of night.

**Chairman:** I will touch on the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015. One of the modules we intend to touch on will be on how banks and vulture funds are dealing with loans in the SME sector. The financial ombudsman is prohibited from dealing with a case which involves an SME with a turnover of more than €3 million. In Europe, an SME is considered to be anything up to €50 million. Does the Minister intend to review that

in light of the changing circumstances and the fact that so many SMEs have performing loans which have gone, for example, through the global restructuring group, GRG, with Ulster Bank and have been sold on to vulture funds? If the €3 million limit was increased, it would mean that those SMEs could engage with the financial ombudsman, which they cannot do at the moment. When these loans are transferred to vulture funds, the loan is often then owned by, for example, Goldman Sachs or an organisation that is substantially bigger than the client with the loan. These clients simply cannot compete on legal fees while at the same time running a business and answering unreasonable questions. What are the Minister's views on the Act?

**Deputy Paschal Donohoe:** To date, all of the feedback and evidence I have seen points to the effective operation of the Act. I imagine that the key provision the Chairman is pointing to in the Act is that which provides the protections available to the person associated with the loan are not changed if the owner of the loan changes, particularly if it moves from a bank to an entity that is not a bank. It has not been flagged to me to date that the cap the Chairman referred to is an issue. However, on foot of the Chairman raising it, my Department will now examine the matter. I know that conversations that happen between customers and banks can be very difficult at times but we have expectations, and I, as Minister for Finance, have expectations regarding standards that should be met when those discussions should be happening. I am satisfied that the protection that is currently in place is robust but I will seek a report on the cap issue to which the Chairman referred.

**Chairman:** I am suggesting that the cap be changed because the Central Bank cannot deal with individual cases and the ombudsman is confined to dealing with cases where the amount involved is under €3 million. Where a business that is thriving and repaying its loans finds itself tied up with a vulture fund, there are often competing organisations in those vulture funds. In other words, competitors may be owned by the same fund. In order to protect themselves, their businesses and their employees, they have nowhere to turn to except the courts. An SME is then fighting the likes of a giant vulture fund which has the money and the ability to chase them and make their lives miserable. Therefore, instead of running the business, these SMEs are spending most of their time in the legal process and trying to sort out their affairs with a vulture fund. It is not right.

**Deputy Paschal Donohoe:** I will meet the chairperson of the Credit Review Office tomorrow afternoon. As the Chairman has been raising the matter, I have got a copy of the consumer protection code 2012. The Chairman is correct that the definition includes persons or groups of persons and incorporated bodies with a turnover of less than €3 million. I imagine that what is driving this is that it is a consumer protection code as opposed to a protection code relating to businesses, for example. I have not been advised of the kind of gap to which the Chairman refers but I will have a good opportunity to investigate the matter tomorrow afternoon. Conversations on resolving issues relating to non-performing loans are always difficult.

**Chairman:** I understand that and so does the SME sector. Those involved are well able to have those conversations. I am talking about the difference between a massive vulture fund that can almost treat the likes of those agencies here, in terms of the regulation of credit servicing, as puppets. They just move them around. Within their organisations, as they describe it, they have Chinese walls but there are competition issues within those vulture funds between the various properties that they have purchased. There is an issue in that those who raised the loan in the first place cannot devote the type of time and money to getting their rights. The law is weak in that area for the SME sector. As I said, €50 million is the limit applicable to SMEs in the European Union, yet it is €3 million here. If it is driven by something else, perhaps we should

examine the need for the figure to be raised. This is a major issue for companies and there is a huge danger in terms of employment. In that context, will the Minister examine the matter?

**Deputy Paschal Donohoe:** I have said I will so I will.

**Chairman:** Thank you very much. On page 29 of the programme for Government, there is a commitment on protecting small and medium enterprises, SMEs, and those with loans transferred to non-regulated entities. There was a commitment given regarding the first year of Government, with certain matters to be dealt with in that context.

**Deputy Paschal Donohoe:** I am sorry but I missed the question.

**Chairman:** What progress has been made on that commitment in the programme for Government? If the Minister does not have the answer today-----

**Deputy Paschal Donohoe:** I do not have the answer.

**Chairman:** You might come back to us on that.

**Deputy Paschal Donohoe:** I will.

**Chairman:** Loan owners are not directly regulated. Is that correct?

**Deputy Paschal Donohoe:** I have been informed that credit servicing companies provide credit to loan owners and they are regulated.

**Chairman:** It is the credit entity. What about regulating the loan owners? Why was that wording in the Bill?

**Deputy Paschal Donohoe:** Is the Chairman referring to the Finance Bill?

**Chairman:** I am referring to the Act of 2015.

**Deputy Paschal Donohoe:** I would be happy to come back here to discuss the consumer protection Bill at another point. The Chairman is asking a set of detailed questions I am not in a position to answer. If the Chairman wishes to furnish me with a set of questions relating to that Bill or the code, I will write to the committee with the answers and come in again. I was very happy to come in and deal with all the matters relating to tracker mortgages, for which I am prepared and able to deal with. There are other areas and the Chairman deserves answers on them. If he furnishes the questions, I will revert with the answers.

**Chairman:** I do not want to be unfair to the Minister.

**Deputy Paschal Donohoe:** I am glad to hear that.

**Chairman:** I will furnish the questions to the Minister. We have come to the end of this session, unless there are any other matters relating to tracker mortgages. We will reschedule the reform end of it.

**Deputy Paschal Donohoe:** I would appreciate it if I could have the opportunity to come back in again and speak about public servants and reform. My Department has done more work in this area than we sometimes have the opportunity to inform the Oireachtas about. Perhaps the committee could give me the opportunity to come back in again soon, assuming there is time available. I would like to do so.

16 JANUARY 2018

**Chairman:** That is grand and good to hear. We will leave it at that. I thank the Minister and his officials.

The joint committee adjourned at 4.45 p.m. until 9.30 a.m. on Thursday, 18 January 2018.