DÁIL ÉIREANN

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

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

Déardaoin, 18 Eanáir 2018

Thursday, 18 January 2018

Tháinig an Comhchoiste le chéile ag 9.30 a.m.

The Joint Committee met at 9.30 a.m.

Comhaltaí a bhí i láthair / Members present:

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

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

The joint committee met in private session until 10 a.m.

Tracker Mortgages: Central Bank of Ireland

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

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

I invite Professor Lane to make his opening statement.

Professor Philip Lane: I welcome the opportunity to appear before the joint committee to give an update on the progress of the Central Bank of Ireland's tracker mortgage examination. I am joined by Ms Derville Rowland, director general, financial conduct; Mr. Ed Sibley, deputy governor, prudential regulation; and Ms Helena Mitchell, head of consumer protection supervision division.

For most people a mortgage is their most significant financial commitment and they have a right to expect their lender to treat them fairly and honour contractual commitments. The Central Bank's role is to ensure the best interests of consumers are protected in their dealings with financial firms. That is why, after pursuing tracker mortgage issues with a number of individual lenders through extensive supervisory and enforcement work prior to 2015, the Central Bank launched the industry-wide tracker mortgage examination. We did so because the more we learned in our pursuit of individual issues and the more concerns were voiced by customers, consumer advocates and public representatives such as the members of the committee, the more certain we became that an investigation across every lender was required. As the largest, most complex and most significant consumer protection review undertaken by the Central Bank to date, the examination has exposed unacceptable failings by lenders on an industry-wide basis and the lack of a consumer-centred culture in lenders. These failings have had a detrimental and, in some cases, devastating impact on many tracker mortgage customers, up to and including the loss of homes and investment properties. It is clear that lenders did not sufficiently recognise or address the scale of these failings until intervention by the Central Bank. We are using all appropriate powers to force banks to undo the harm caused by their unacceptable failings.

I will give an update on progress to date. Unusually for live supervisory work, we have published regular updates on the examination since its launch in 2015. When we appeared before the committee last October, we reported that at that point the examination had ensured that approximately 13,000 customers would receive redress and compensation as a result of lender failings. This was in addition to the 7,100 cases which had already been resolved through

our prior work in advance of the examination. We also made it clear in our report at the time that more cases would follow as we challenged lenders to include all customers who had been harmed by the mishandling of tracker mortgages. Last month we published a progress report which had been provided for the Minister for Finance. Today we will provide a further update for the committee based on the end-of-December information.

The most recent data show that lenders have been forced to pay €316 million in redress and compensation. More will follow, as the remainder of the 33,700 customers who were denied tracker mortgage products or charged the wrong rates receive redress and compensation and also as claims submitted to the independent appeals processes are adjudicated on.

When we last appeared before the committee, we outlined the phased structure of the examination and that lenders had submitted their phase two reports. We made it clear at that point that we regarded certain reports to be deficient. In particular, we said certain lenders had left out groups of customers who, in our view, had been harmed by their failures and were, therefore, entitled to redress and compensation. We emphasised that we would robustly challenge any such deficiency as we moved through our assurance work. In that work we have scrutinised reports by lenders, undertaken on-site inspections, hauled in lenders' senior management and impressed on them the need to take a consumer-focused approach in complying with the examination. The outcome of this intensive engagement is that the issues surrounding the inclusion of disputed groups of customers have been resolved to the satisfaction of the Central Bank. As a result of our challenge, there has been a large increase in the number of customers who will receive redress and compensation, a further 13,600 customers compared to the number for October. In short, the examination is delivering for consumers.

I acknowledge the work of the committee and the Minister for Finance and Public Expenditure and Reform in shining the public spotlight on the lenders involved in the examination which has added to the sustained pressure we have exerted on the lenders since the outset. Like any regulator, the Central Bank is limited by law in the amount of information it can publicly disclose on any regulated financial institution. Much of the pressure we exert on lenders to protect consumers must necessarily be exerted in private until outcomes are final and announced. Of the initial group of 13,000 customers accepted by lenders up to the end of last September, 74% have received redress and compensation. The majority of the remainder of that group will receive theirs between now and the end of March, with the final balance receiving theirs by the end of June. A total of €181 million has been paid to date to these customers, with more to follow. Of the additional 13,600 customers which the banks have accepted since October, 29% have received redress and compensation of €87.9 million. For these customers, it is an ongoing process which we believe is going to conclude between now and the end of June.

Lenders are counting the cost of this scandal. In addition to the redress and compensation we require them to pay, they must also bear the administrative costs of running the examination in line with our requirements. We can see this in their provisioning statements and staffing levels. If we look at their combined provisions, they add up to €900 million. That sum can be broken down into figures of €600 million for redress and compensation - what they have already paid out and what they are projecting they will need to pay out in the coming weeks - and €300 million in costs. The €300 million is the bottom line cost for the lenders. In terms of scale, one lender has disclosed that up to 500 people are working on the scheme. In addition to the monetary consequences of the failure, the institutions must also repair damaged reputations, not only as a result of the original mishandling of tracker mortgages but also the partial and delayed engagement by some lenders with the requirements of the examination.

While the Central Bank's view is that the vast majority of customers have now been identified and accepted by the lenders for redress and compensation, our work continues. We will continue to review, challenge and verify the work undertaken by the lenders and complete our intrusive on-site inspection programme. The Central Bank is probing lender compliance with all aspects of the examination framework and also gathering evidence to support its enforcement activity. I acknowledge that this work has taken time to complete. I am also conscious of the devastating impact the failures by lenders has had on customers, up to and including the loss of their homes and investment properties. It is essential to acknowledge that no amount of money will ever fully compensate a person or a family for the trauma involved in losing their home or other adverse consequences arising from having to overpay for a mortgage.

The Central Bank has heard many distressing personal testimonies from customers who have contacted it. Our awareness of the harm caused to so many families has underpinned our drive to ensure that all affected customers will receive the appropriate financial redress and compensation and that we will leave no stone unturned in seeking evidence to support enforcement actions. The scale, range and complexity of the examination, in addition to the material deficiencies in the responses given by certain lenders, have required robust and sustained Central Bank intervention which has resulted in many more customers being included and lenders significantly improving both their redress and compensation proposals and their independent appeals processes to the benefit of those affected. While this has meant that the examination has taken longer than expected, the results are evident in terms of the numbers identified as having been affected and the scale of redress and compensation being paid.

In tandem with our supervisory work, enforcement work is ongoing. Four enforcement investigations are under way and we expect all of the main lenders to face enforcement investigations. Such investigations are detailed and forensic and routinely involve the scrutiny of thousands of documents and the conduct of interviews as part of the investigative process to establish the exact circumstances surrounding matters under investigation. In the investigations the Central Bank will consider all possible angles, including potential individual culpability.

While we are investigating, it is important to remember that board members and the senior personnel of lenders have significant legal obligations to report potential regulatory breaches to the Central Bank and certain potential criminal offences to An Garda Síochána under the Criminal Justice Act 2011. In that context, we are writing to board members and the senior personnel of the banks and require signed confirmation from each individual that he or she is aware of his or her legal obligations.

I will turn to the culture within lenders. Our consumer protection code requires lenders to act in the best interests of their customers. While many lenders publicly subscribe to this principle, evidence from the examination firmly suggests otherwise. The examination has exposed the manner in which certain lenders have treated their customers and the degree of regulatory force required to make them rectify such behaviour. It is clear that there are still significant behavioural and cultural issues and challenges in some of the lenders and that customer interests have not been sufficiently protected or prioritised. The Minister for Finance has mandated the Central Bank to report later this year on the issue of behaviour and culture within lenders. We are completing our scoping work and the next step is to commence on-site assessments which will include engagement in each of the lenders at senior management, middle management and staff level to probe behaviour and cultural issues.

It is important to note that culture is about more than behaviour. A partial list includes prioritising the best interests of customers, offering responsible products, reviewing board ef-

fectiveness, committing to diversity and inclusion and having robust internal audit and risk management procedures. A defining cultural test is how a firm deals with adverse situations. Does it make sure the best interests of customers are protected, even if this damages short-term profitability?

The culture review will be underpinned by our enhanced consumer protection risk assessment model which facilitates us in determining how financial firms identify and manage consumer risks, including the risk that a firm's culture does not promote and support the protection of consumers. The behaviour we witnessed in the examination has very much informed the development of the new model. We are working with the Dutch central bank, DNB, a recognised leader in the supervision of behaviour and culture which will participate with us in on-site inspections at the lenders.

The culture of a firm is its responsibility. In particular, the members of its board should constantly be asking questions of themselves and their firm such as what counts for promotions and whether it is high sales figures or high quality interactions with customers; whether the right products are being sold to the right people; how staff incentives and rewards influence product sales and consumer outcomes; whether the interests of customers are taken into account when decisions are being made in the boardroom; and whether the tone from the top signals the right values to staff. These are critical issues which lenders must prioritise and get right if they are to truly reflect a consumer-focused culture.

The Central Bank is using effectively the full range of its powers to deliver for affected customers in the tracker mortgage examination. We keep under constant review the question of whether additional powers would enable us to deliver more effectively on our mission to safeguard stability and protect consumers. In that context, our report on behaviour and culture in lenders will help to identify regulatory enhancements required and whether additional legislative changes are needed. Another example of how we keep our powers under constant review is our response this month to the Law Reform Commission's issues paper on regulatory enforcement and corporate offences.

I will turn to the issue of redress and compensation payments. I stress an important message for customers affected. The key to the examination framework is that it has been designed to ensure affected customers will have extra options if they believe the redress and compensation offered by their lender are insufficient. They can accept the redress and compensation offered and still make an appeal. They can cash the cheque safe in the knowledge that what they have, they will hold. Redress and compensation offers cannot be reduced in the event that a customer makes an appeal.

Lenders have been required to establish independent appeals panels, specifically to deal with customers who are not satisfied with any aspect of the redress and compensation offers they have received from lenders. Together with redress and compensation, affected customers will receive a separate payment which they can use to pay for independent advice on the adequacy of their lender's offer. In line with the State's overall consumer protection framework, all other recourse options remain open to customers such as the Financial Services Ombudsman who will deal independently with their concerns or the courts.

The tracker mortgage scandal is unprecedented in its scale and, naturally, has required an unprecedented regulatory response. Our pursuit of lenders continues to ensure they will include all affected customers and discharge their responsibilities under the framework. This will continue to involve intrusive supervisory scrutiny, which means that we will continue to review,

challenge and verify the work undertaken by lenders and complete our own multifaceted inspection programme. In parallel, our enforcement investigations will continue.

Chairman: I thank Professor Lane. I draw his attention to the fact that the opening statement was received last night at 9.15 p.m. Therefore, it was not circulated to members until this morning. In the future will he ensure documents are delivered earlier?

Professor Philip Lane: We have a good track record of doing better in advance circulation. What we wanted to do this time was to ensure the committee had the most recent numbers, some of which were only verified yesterday. That was the reason for the delay.

Deputy Michael McGrath: I welcome the Governor of the Central Bank of Ireland and his colleagues. It is important to acknowledge there has been progress in the examination, which is to be welcomed. The role of the Central Bank in that regard should be acknowledged and I am happy to do so.

There are some new numbers in Professor Lane's presentation. I have been trying to work my way through them and perhaps he might help me to summarise them. In the update issued in December, if we exclude the 7,100 customers in the pre-examination period, the Central Bank had identified a total of 26,600 customers who were included in the examination. At that stage 12,900 had received redress and compensation. By my calculation, that figure has increased by 600 to 13,500 customers. Is that correct? Is it broadly correct to state approximately 13,000 of the 26,600 customers remain to be paid redress and compensation?

Professor Philip Lane: Yes; that is broadly correct, but let me emphasise that it is January 2018 and the lenders are all working to timelines. What we have said is that there are really two groups. There is the group of approximately 13,000 customers whom we identified before October. With one exception, their cases will conclude by the end of March. Every week the number is moving closer towards zero. With regard to the extra 13,000 customers between October and December, some cases are moving along quite quickly, while in others we think a lot will be done in these couple of months but it will all be done by June. Essentially, there are two groups.

Deputy Michael McGrath: Sure.

Professor Philip Lane: It should be quicker in the case of some lenders, but it is on track in line with the timelines to which we are working.

Deputy Michael McGrath: Overall, approximately 13,000 customers are still awaiting redress and compensation. They include approximately one quarter of the initial group, or approximately 3,400 of the first 13,000 customers. They are still awaiting redress and compensation, even though many of them were identified quite some time ago, over the course of 2016 and 2017. They are still waiting to get their money back.

Professor Philip Lane: That mostly reflects variation across the lenders. We know that some lenders have systems issues and so on. In the grand scheme of things we do not find that acceptable but it is the short-term reality.

As I say, with the exception of one lender, the balance of the initial 13,000 cases will be concluded by the end of March. I am aware that every day counts here. It would be great if everyone could move more quickly but we are keeping a very close eye on this. It is essential that these payments are made as quickly as possible. Many lenders have nearly completed the

programme. In other cases, we know where they are going with the matter.

Deputy Michael McGrath: The quantum of money involved, including the pre-examination cohort, has gone from €297 million to €316 million over recent weeks.

Professor Philip Lane: That is correct, given the Christmas break and so on.

Deputy Michael McGrath: That is the latest position. Is the Governor giving a commitment that the remaining 13,000 people will all have their money back and be compensated by the end of June?

Professor Philip Lane: That is the guidance we have received, which I think is firm guidance.

Deputy Michael McGrath: What does the witness mean by "firm guidance"?

Professor Philip Lane: Considering what the Deputy has just said, I emphasise that we are continuing to check the numbers. We are not ruling out the possibility the numbers of those affected could go up. If we find more people who have been affected, we do not think there should be any delay in putting them into the schemes. I can confirm that we think it will all be done by the end of June in respect of the initial payments. People have timelines for appeal.

Deputy Michael McGrath: I understand.

Professor Philip Lane: Given that people have a number of months to decide whether they want to appeal, it is plausible that some of these appeals will run later than June.

Deputy Michael McGrath: The Central Bank commitment is that all of those who have been identified as of now will be repaid and compensated by the end of June.

Professor Philip Lane: Yes.

Deputy Michael McGrath: The language the Governor has used today is quite strong. He spoke about the lenders being "forced" to pay out €316 million, money which belongs to the borrowers. He spoke about the senior management of lenders being "hauled in". That is not language we normally hear from the Central Bank. He spoke about the material deficiencies in certain lenders' responses. As of today, is the Governor satisfied with the level of co-operation and the work being done by all of the lenders in this examination?

Professor Philip Lane: The Central Bank signalled to this committee that we were not happy in our report in October 2017. We had what we described as disputed groups which we felt should have been part of the scheme, which various lenders were resisting. Up until the middle of December, our work was on bringing those disputed cases to conclusion. We have now concluded that all of the groups of customers who we believe should be in the scheme have been brought in. It remains for the Central Bank to follow up in respect of implementation and check that each case that should be in is in. We are keeping a very close eye and carrying out active, intrusive inspections to make sure that the follow-up occurs. In respect of the pinpointing, all of the groups we think should be in are in. We are now in implementation, execution and follow-up mode.

Deputy Michael McGrath: As of today, is there full co-operation by all of the lenders? Is the witness satisfied with the approach they are taking now?

Professor Philip Lane: I must differentiate between the broad scheme of things, with which I am satisfied, and the micro level of individual niggles, where there is still follow-up work to be done. Until all of those follow-up items are fully concluded, I do not want to say that there is perfect consensus. There is some back-and-forth about minor issues. There is full engagement with the process, but I would not say that every possible issue has been concluded yet. However, the big issues, which determine the big numbers, are concluded.

Deputy Michael McGrath: I want to ask the Governor about the issue of individual accountability, which he touched on in his opening statement. Many people who are watching and who have observed this scandal in recent months want to know if there ultimately will be any individual accountability. If I had to put my hand on my heart and answer that question, I would have to say I do not think so.

Previously, the Central Bank concluded an enforcement investigation in respect of Springboard Mortgages Limited. Under its enforcement powers, the Central Bank issued that company with the largest fine in the history of the State, a sum of €4.5 million. A relatively small cohort of people were affected, with 222 people overcharged an average of €19,000. The quantum ranged between €100 and €68,000. Springboard ended up repaying slightly less than €6 million to those customers.

Springboard Mortgages Limited was the first institution that had come all the way through the process. Apart from the issuance of a fine, what happened at the level of individual accountability?

Professor Philip Lane: I will shortly defer to Ms Derville Rowland. As director general for financial conduct, the pursuit of enforcement actions falls under her direction. Individual accountability has been a recurring theme both in our previous appearance before the committee and in its interactions with others. We operate within the existing legal framework whereby the threshold for establishing individual accountability is different than that for institutional accountability. I will be crystal clear in saying that our forensic examiners have an open mind. We look at everything and we do not rule anything out. Deputy McGrath has stated a prediction of what he thinks is going to happen.

Deputy Michael McGrath: I hope I am wrong.

Professor Philip Lane: We must be very careful about predicting what is going to happen, because in some future court case, such comments could be used to say that we prejudged the issue and so on. I do not want to predict what will happen. We keep an open mind. We know what is possible in regard to individual accountability. Ms Rowland can elaborate on how we go about the evaluation of individual accountability. I remind the committee that while we have said we have a lead role in this, it is also the responsibility of the senior management of the banks. They have individual responsibility to report to us and to the Garda if they see direct evidence of violations of the regulatory code or the criminal law. There is a reporting burden on individuals in the banks. We have just issued letters to remind them of this. They have been instructed to write back to us, confirming they are aware that this is their responsibility.

Ms Derville Rowland: On the question of outcomes in the enforcement case in Springboard Mortgages Limited, I will volunteer that I was the director of enforcement at the time that we brought and concluded that case. The case was brought under the administrative sanction powers the Central Bank has, whereby we are enabled to bring a case against a person concerned in the management of the regulated entity, where there is evidence to demonstrate that he or she

participated in the breach. The Central Bank of Ireland takes the view that it is right to bring individual responsibility and culpability cases as part of the enforcement procedure. However, it can only do so when it has sufficient evidence in a case to sustain that line. Where it does not have sufficient evidence it cannot conclude that.

The Central Bank also takes the view, I think quite rightly, that it is not desirable to go after juniors in a case. There is often a lot of paperwork which is evidence as to who executed a mere task, if I can put it that way. However, that might not be the senior responsible directing mind. I make this as a general observation based on my experience in enforcement cases. I have worked not just in the Central Bank, but in criminal prosecution work in the United Kingdom and in regulatory agencies. It is often easy to find evidence against someone proximate to the issue but that does not get to the directing mind. It does not get to the senior people who are actually responsible and culpable. One needs evidence to link them to the actions of which one is complaining. The evidential link is more obvious and easier to make when it is in respect to the entity because it is obviously on the watch of the entity that the breach occurred. In the particular case that Deputy Michael McGrath speaks of, no individual was held culpable because there was not sufficient evidence to do so. The Central Bank has four enforcement cases open. The Deputy may have heard the representatives of the Central Bank during our previous updates and he definitely heard there were two cases open, but now there are four cases open. Part of the investigations is to look at the roles at corporate level and then at the responsibility levels of individuals from two perspectives. One is the administrative sanctions procedure, which is persons in management participating in the breach under scrutiny and of course from a fitness and probity perspective. The other part of the regulatory framework is that senior officeholders in regulated entities - we call them pre-approval control functions - must have permission to take up those offices from the Central Bank of Ireland. They must be capable, competent and have the requisite integrity to discharge their function. It was in reference to that the Governor referred to the letters being written to the senior responsible role holders in the lenders reminding them that in those roles, they have reporting obligations. In cases where they suspect breaches, it is very important that they are held to account with respect to that. All of that behaviour will be scrutinised in a forensic way with respect to the individual evidence available in each and every case. Where there is demonstrable evidence that senior responsible role holders were responsible and participated in breaches of the regulatory requirements or were in dereliction of their duty and the requirements with respect to fitness and probity, those matters will be pursued on an evidence basis. We are firmly committed to the ideology that it is right to hold individuals to account. The work in taking the Irish Nationwide Building Society cases through the courts and through the inquiries demonstrates that we are committed to that.

Deputy Michael McGrath: I have two other issues. I refer to the overall cost in this regard. The Governor stated the combined provisions made by the lenders runs to €900 million, whereby some €600 million is the amount of money being paid in redress and compensation and the associated costs are running at €300 million. What costs has the Central Bank incurred to date in this examination?

Professor Philip Lane: I will have to revert to the Deputy with that number. Let me reassure the Deputy that all the costs will be paid by the banking system. When we calculate how the levy for the costs of our regulatory functions operates, there are various approaches for various sectors but for banking, all of the cost of regulating the banks is charged back to the banking system. The banks will be paying the costs of the operations.

Deputy Michael McGrath: That is not included in the current €900 million.

Professor Philip Lane: No. This will be put directly on to them.

Deputy Michael McGrath: Will the fines that follow from enforcement also be included?

Professor Philip Lane: That is not in that figure of €900 million either.

Deputy Michael McGrath: We are really looking at a figure well in excess of €1 billion ultimately when one counts the full costs of this.

Professor Philip Lane: I would not want to comment about where the figure ends up.

Deputy Michael McGrath: On the prevailing rate issue that applies in both AIB and Permanent TSB, AIB included in its December update an additional 4,000 customers and AIB is proposing that they receive compensation of €1,000 plus €615 towards independent advice. My understanding is that this is a cohort of customers who were never on a tracker rate but were on a fixed rate of interest for a period and under their mortgage contract, at the end of the fixed rate period they were entitled to go on to a tracker rate at the prevailing rate, which is the term that was used in the mortgage contract. When they came off the fixed rate, however, they were not offered such a tracker rate because the trackers no longer existed or were not being offered by the bank at that time. Nonetheless their mortgage contract entitled them to a tracker rate at the prevailing rate. A tracker, as we all know here, is the ECB rate plus a margin. The margin remains fixed. The ECB varies in line with the ECB base rate. Will Professor Lane talk us through that issue?

Professor Philip Lane: I think it is important to be clear about this. Those contracts specified that when one rolled off the fixed rate, the mortgage holder was entitled to a tracker loan at the prevailing rate. They were not offered a tracker mortgage. That is why they are receiving this flat rate compensation because the option of the tracker was not offered. This is why they are included and they are receiving a payment because they should have received the offer of a tracker and they did not. The second point is - and we have looked at the issue very closely because we appreciate there are many people who are very concerned about this and we are aware of different interpretations of what "prevailing" might mean to different people. Ms Rowland might wish to add to my remarks, having been to the front of concluding an agreement with the banks. There are all sorts of tracker contracts out there. Deputy McGrath mentioned the fact there is a fixed margin. That is not the case for all tracker mortgages. The margin in some of the tracker mortgages could be linked to the cost of funding to the banks. The trackers were not offered, when they should have been offered and then the question is, at what rate would the bank have offered a tracker under these contracts at that time, if they had made the offer? This is where the calculation the Deputy is seeing is that they are being offered trackers at more than 3% because that reflected the cost of funds to the banks after they shot up after the crisis. By the autumn of 2008, if the bank were to offer tracker mortgages at the prevailing rates, they would have offered trackers at significantly higher rates. The point is that these were not trackers that promised a fixed margin over ECB. We went through this in great detail because we were always looking to make sure that from a consumer's perspective we had checked every angle and looked under every corner of this. When we looked through this with our experts, the conclusion was that was what would have happened if they had been offered a tracker. It would have been an expensive tracker. These were not fixed margin over ECB. These were trackers where the margin could vary. This is why we have ended up in this situation. I will make one more point and then I am sure Ms Rowland can add to this. The fact that they are in the examination, are being contacted by the banks and are receiving this offer means that the independent appeals mechanism is open to them. If they believe that this is not adequate, they

have the full access to the independent appeals mechanism to challenge it if they believe this is not sufficient or appropriate. As with all mortgage holders, the ombudsman and the courts remain open. It is essential that we put them into the examination because they are receiving this payment because they should have been offered a tracker and they were not. In addition, if they believe this is not appropriate to their individual case, they can bring forward an appeal. Ms Rowland led this work and maybe she will elaborate.

Ms Derville Rowland: The Governor has described it as it is. Deputy McGrath asked in particular about the AIB case. AIB will be in a better position to tell the Deputy more than I can from its point of view, but there was contractual right to have a tracker offered and that did not in fact happen. We call that a breach of contract. The compensatory payment is for that. Then a second question arises, which is the actual tracker rate. It may be said that some contracts are watertight on these issues because they actually have in print in the contract what that rate is to be and then it is beyond discussion or dispute. They are often called a price promise tracker, where one has a number in the contract document and there is very little argument about those types of contracts. When one has a phrase such as "the then prevailing rate" in a contract, there is a question of interpretation from different points of view. Whether one agrees or not, there is a question of interpretation about what that means. In this instance, not all contracts are as watertight as other contracts but it is very important for customers who are included in the scheme. By being included in the scheme, it means that all the benefits of the framework are available to be used in the scheme. There may be individual circumstances or information people have had in their own sales experience that may not exactly be systemic or it may be peculiar to their own experience when they are entering into the contract that they can bring forward to the appeals mechanism. In fact, the framework was designed precisely to deal with issues where people may have particular information that they can bring forward. That certainly is the case here. These are inside the benefit of the framework and they can bring forward any information that they wish to about that prevailing rate issue if they have extra information.

Deputy Michael McGrath: Has the Central Bank approved the banks' approach to and conclusion on this issue?

Professor Philip Lane: Yes, this is an example. From our work, these are now receiving a payment for contract violation and they are in the examination so they have the right to bring forward appeals. I refer to someone in a situation with a prevailing rate tracker. From a systemic point of view, we have looked at it and said that these prevailing rate trackers did not have the fixed margin promise. If a hypothetical tracker was calculated based on market funding and so on, they would have been expensive trackers if they had been offered in autumn 2008. However, by virtue of being inside the examination, it depends on what an individual was told by his or her bank manager and it depends on what documentation he or she may have received. I am not going to rule out that an individual with a prevailing rate tracker may be able to show to the independent appeals mechanism that in his or her case he or she might have been assured that this meant a cheap tracker or something else. This is the balance that is being struck. In general, this type of tracker did not promise it was going to be at some low fixed margin. Some trackers are expensive. However, because they are in the examination, the individual's circumstances, and his or her individual understanding, can be explored within the appeals mechanism.

Senator Kieran O'Donnell: I welcome Professor Lane and his colleagues. I want to clarify a couple of housekeeping issues. Where precisely do we stand at the moment? I refer to the Central Bank's report that came in at the end of the year, where 26,600 customers were

identified, on top of the 7,100 who were separate. That is a total of 33,700. Of those 26,600 customers, 13,000 of those were identified up to October. That figure virtually doubled within two months. Am I correct?

Professor Philip Lane: Let me focus on the word "identified". We knew that these groups existed. We knew the order of the numbers of people who had not been included in October. That was why we signalled back in October that there were groups of customers that we thought should be included but were not. Essentially, the expansion in the number is the banks ultimately accepting our position that these extra 13,000 people should be in and they were brought in. We have heard from people such as Padraic Kissane and others. It is very much in line with the ballpark figure. Where we are now is in line with where we expected to get to and where other experts on trackers-----

Senator Kieran O'Donnell: I refer to the numbers. Is a line drawn in the sand? Does Professor Lane believe that 26,600 is the full and final number of trackers?

Professor Philip Lane: No, we do not. Let me give two reasons we think the number is going to climb.

Senator Kieran O'Donnell: To what figure?

Professor Philip Lane: We do not think there is going to be any major expansion, compared to where we are now. However, we think it is going to climb. We do not necessarily believe that all banks are perfectly accurate in counting who should be in. We believe we have the categories. All people in such a category should be receiving redress and compensation. We need to check if the banks have counted correctly. Have they forgotten a few files and so on? We have some inquiries outstanding where the bank has accepted the category but it is doing some extra work about how many people are included.

Senator Kieran O'Donnell: Put a figure on it.

Professor Philip Lane: I do not want to. Assurance work and following up work remains to be done.

Senator Kieran O'Donnell: No, but-----

Professor Philip Lane: It is minor. We will not see any-----

Senator Kieran O'Donnell: It is at 26,600 at the moment. Does the Central Bank anticipate that figure will go to 30,000?

Professor Philip Lane: We do not think that it will go that high. We do not believe that there will be that level of increase.

Senator Kieran O'Donnell: The witness believes-----

Professor Philip Lane: We are close to the final number.

Senator Kieran O'Donnell: It will not be above 30,000.

Professor Philip Lane: Let me put it two ways. We do not think so. If it turns out that it goes above that number, that will be because we have found extra problems.

Senator Kieran O'Donnell: When is it anticipated that a point will be reached where the

Central Bank will be able to tell the public and the people who are affected by trackers, that we now know the number of people who are affected by the tracker mortgage scandal?

Professor Philip Lane: We have a situation now where the lenders accept and recognise that these 33,700 need redress and compensation. We are saying-----

Senator Kieran O'Donnell: Can I just clarify one small point? The people are watching this. People are telephoning us and are talking about the detail. Of the 26,600, we know that 13,000 of those were there since October. Another 13,600 have been found since, to the end of the year. Who precisely are the 7,100?

Professor Philip Lane: Let me come back-----

Senator Kieran O'Donnell: There is confusion around that.

Professor Philip Lane: Before I go back to that, Senator O'Donnell used the word "found". These were already there. There is no sense that there was some surprise here about the numbers going from 13,000 under examination. The extra 13,000 people have been included.

Senator Kieran O'Donnell: With respect to the witness, that is like saying when a bomb goes off that we found a bomb. Professor Lane is saying that they were not found and that they were there. However, they would never have come to light unless they were found. The banks would have driven on and said that this was not going on. It was extremely profitable for them to ignore it. The banks were found out. Is it fair to say that if this issue had not been found out, the banks would have ignored and hidden this issue?

Professor Philip Lane: This is exactly why we have been running this examination. From our source of information, and from putting forward this examination, this is how these people are now being included. I have seen in some media that suddenly we have these extra 13,000 people. They did not emerge from nowhere. They were on our radar. It was a question of getting the banks to accept that they needed to be brought into the scheme and they needed to be redressed and compensated. In other words, these are long-standing issues. We have had a long-standing concern. People like Padraic Kissane, and others, and many people here, would be aware that these have been well-known cases for a long time. It was a question of getting them to a point where the banks were going to pay redress and compensation.

Senator Kieran O'Donnell: I want to go into the 7,100. Will the Governor explain who they are?

Professor Philip Lane: Back in the March report we gave a narrative of the individual components of where that 7,100 came from-----

Senator Kieran O'Donnell: In summary.

Professor Philip Lane: Maybe I will hand over to Ms Rowland who has the piece of paper in front of her.

Ms Derville Rowland: The 7,100 are customers who were given trackers back before the commencement of the examination. It includes work done and supervision over a number of years pre-dating this with bilateral issues with different lenders-----

Senator Kieran O'Donnell: Were they----

Ms Derville Rowland: There is a larger number in there which is the enforcement work in Permanent TSB and in Springboard. The enforcement case was referenced earlier. One of the key parts of that was to set up a redress and compensation scheme for the first time. This examination scheme is modelled on the principles of redress that were shaped inside of that-----

Senator Kieran O'Donnell: The total amount of compensation and redress they have been given is €47 million.

Ms Derville Rowland: That is-----

Senator Kieran O'Donnell: On the face of it, that figure looks lower than what is coming-----

Ms Derville Rowland: The €47 million is referable to the customers who were compensated and redressed in the Permanent TSB case and the Springboard case. I think in total, I used to know this number off by heart-----

Senator Kieran O'Donnell: Is it €47 million?

Ms Derville Rowland: It is €47 million. That went to about 1,200 to 1,300 customers. They received the €47 million and the others in that-----

Senator Kieran O'Donnell: Was that based on the same criteria being used in the current review?

Ms Derville Rowland: Yes. The others had been caught much earlier through the bilateral work done in supervision with entities.

Senator Kieran O'Donnell: Can I have some detail on something in the Governor's statement? We have taken figures from the end of year report. Of the 13,000 customers, 9,200 have been compensated and 3,800 remain to be compensated. Of the 13,600, some 3,700 were compensated and 9,900 remain to be compensated, which was 13,600 in total. The Governor slightly updated those figures. How many of the 26,600 remain to be compensated at this time?

Professor Philip Lane: I will turn to Ms Derville Rowland.

Senator Kieran O'Donnell: How many of the 13,000 customers and how many of the 13,600?

Ms Derville Rowland: In aggregate, about 51% of the 26,600 group in the tracker mortgage examination have-----

Senator Kieran O'Donnell: What is the figure?

Ms Derville Rowland: I make it 13,564 people who have received compensation and redress to date.

Senator Kieran O'Donnell: How many remain?

Ms Derville Rowland: If the Senator is better at maths than I am-----

Senator Kieran O'Donnell: We will go to the calculator.

Ms Derville Rowland: It will be a little over 13,000 who have to receive the balance of redress and compensation.

Senator Kieran O'Donnell: Can I get a breakdown of those per the individual institutions?

Professor Philip Lane: We can only disclose aggregate information. The committee will have the banks before it in the coming weeks and they will be able to go through their individual disclosures with the committee. The way the law-----

Senator Kieran O'Donnell: There are 13,036 people who have yet to be compensated and redressed. They are all individual customers. We know that Ulster Bank appeared to be much slower in its redress and compensation scheme than the other banks. That does not mean I am doling out gold stars to the other institutions. It looks to me as though Ulster Bank has redressed and compensated no one. Why is it so much behind the curve compared with the other institutions? Why has the Central Bank allowed that to happen?

Professor Philip Lane: I will make two points about that. It is a very important question which the Senator should ask that institution when it is before the committee. Second-----

Senator Kieran O'Donnell: We had the Minister for Finance in before us yesterday and I asked him the same question. What he said was he was informed by the Central Bank that Ulster Bank explained it by saying its systems were slower. He said the Central Bank accepted that. Is that correct?

Professor Philip Lane: The reality of the situation is that Ulster Bank is on a timeline. Perhaps Ms Helena Mitchell will confirm that. Ulster Bank is following the timeline that has been agreed. It is not the case that they have not paid out anyone. They had a target for what to do in 2017. There is a target for how quickly to complete that. The reality is - it is something we find quite disconcerting - the ability of Ulster Bank in terms of its systems, files and how it operates, is more constrained by the other institutions.

Senator Kieran O'Donnell: Why? Why is it that a customer of AIB or Bank of Ireland will be compensated and redressed possibly up to six months before a customer of Ulster Bank? The ordinary person looking in is asking how that can be because a bank is a bank is a bank.

Professor Philip Lane: We have always said that the tracker examination refers to that one word, "tracker", but behind that word is a huge range of different products and a huge number of different issues across different institutions. Some institutions engaged earlier than others. I will turn to Ms Derville Rowland who is leading the examination.

Ms Derville Rowland: I do not accept anything on behalf of customers and it has not been our habit to accept substandard answers but one can only make a lender do what it is capable of doing, no matter how much pressure one puts on it. I wish it was different. Everybody is deadlined to the maximum of their ability to deliver. I cannot make them deliver faster than they or their systems are capable of. What I can do is make sure everybody is timelined. They are on weekly reporting and I have to be happy with their compliance. We have made our presence felt with the lenders. Ulster Bank's published reporting was that 1,000 customers were to be redressed and compensated before Christmas. That was in its public statement that it published in October. It did it in three tranche commitments. The second one is either 1,000 in quarter one and then maybe 1,500 by June. I might have those numbers reversed. It is in three tranches. There is no part of me or the team that has behaved in a way that allows people to pay late when they can pay much faster and much earlier.

Senator Kieran O'Donnell: Did the Central Bank go in and do some sort of due diligence on its system to establish whether what it is saying is correct?

Ms Derville Rowland: The very diligent hardworking impressive people working in supervision have absolutely pushed and pressed each lender to pay as quickly as possible. Every lender has been pressed to get the money paid over to the customers. If I could explain with respect to the original 13,000, I was really conscious that those people, when we came before the committee in October, had been identified as affected and they had not received their money. That has gone on long enough. It is bad enough and it is not acceptable. One can see the fruits of the labour. It is not good enough but we have put huge effort into ensuring payment gets made over to the people that should receive this money as quickly as possible. Some of the schemes are near finalisation but others are laggards. That is a feature of their own inability to pay faster but everybody has a deadline. The vast majority of those originally identified 13,000 group should be in receipt of their money by March. Week by week, one will see the cash amounts going up. Even since we reported in mid-December, the figures we have given the committee today are as of the end of December and nearly €20 million more has gone out. It is going out.

Senator Kieran O'Donnell: One of the reasons the tracker issue arose was the level of secrecy in the banks around the tracker issue. The Governor and Ms Rowland have informed us there are 13,036 customers still to be redressed and compensated. In the interest of transparency, I find it difficult to see what the issue is with the Central Bank not disclosing and making people aware of which institutions have yet to redress and compensate. This came out of a vacuum of secrecy from the banks. The banks are in no position to retain secrecy on this issue. I find it difficult to understand the basis of the logic the Central Bank is using for not disclosing which institutions have yet to compensate and how many people they have yet to compensate.

Professor Philip Lane: I will make a few points about transparency. As an institution, in the world of central banking and regulators, we are internationally recognised for our commitment to be as transparent as is feasible in terms of what we can do. In terms of transparency, we say it is quite unusual that in the middle of an investigation we are trying to put out real time updates every few months. It is a commitment to transparency. More generally, in terms of how we work we try to put out as much as we can. We disclose as much as we can. We hit a fundamental limit, which is the laws under which we operate. The legal system here has that law and it is a global principle. The basis for obtaining a lot of confidential information from banks remains with us. This is why it is very important that we have an Oireachtas committee that is committed to actively engaging with individual banks.

Senator Kieran O'Donnell: I appreciate the compliments.

Professor Philip Lane: We are talking right now about the tracker examination and when committee members engage with each of the individual banks, they can hold them to account but we absolutely have to remain in a situation where we disclose only aggregate information.

Senator Kieran O'Donnell: Professor Lane will not disclose the breakdown-----

Professor Philip Lane: The committee has a different mechanism to receive the individual information by asking the individual banks. We cannot disclose individual information. We have the information on foot of our regulatory powers to gather it but we are constrained by the fact that we must maintain that information on a confidential basis. The committee will, I am sure, as it engages with the individual banks learn a lot about what each of them is up to.

Senator Kieran O'Donnell: I will move on to the issue of the €316 million that has been given out in compensation-----

Chairman: Senator, your time is up.

Senator Kieran O'Donnell: One moment, please. What is the breakdown between compensation and redress?

Professor Philip Lane: Our calculation at the aggregate level is that compensation is 15%.

Senator Kieran O'Donnell: Some customers were being harassed by the banks. In some cases, customers lives were made a misery when they could not make repayments, while other customers were not even aware of the issue. Is there a difference in the levels of compensation being awarded to different customers?

Professor Philip Lane: Yes, absolutely and this is very important. I know there has been a lot of concern about the amount of compensation. From the word "Go" we have made sure that the banks' schemes had some core principles, one of which is that the amount of compensation increases for the more costly and more damaging cases. At the extreme end, in loss-of-home situations, the compensation will be greatest. We talk about 15% in the aggregate because we have a universal approach. The examination also includes minor cases where customers may have lost €100 through some calculation error, for example. The fraction of compensation for smaller cases is obviously smaller than 15% but in more severe cases, it is larger.

I must heavily emphasise that the appeals mechanism is operational now and there will be a lot more appeals. The appeals mechanism is there for people whose individual circumstances were particularly difficult. Members know from hearings at this committee and from private engagements with constituents that there are many difficult cases where the initial offer will not be the final payment. It is only through the independent appeals mechanism that the details of each individual family's situation can be factored into the final appropriate amount of compensation. It is important to emphasise that the 15% aggregate number does not mean that this figure applies to all cases. There is a lot of variation because we have insisted that compensation levels go up in line with the scale of the harm. The fraction of compensation is going to be a lot bigger in serious cases. Another way of saying this is that for a minor issue, the law says that we can only insist on redress. The principle of the law on redress essentially is that there has been some financial cost but that is it. Compensation is there to reflect all of the other emotional and family costs that have been borne. We have set it up so that the amount of compensation goes up in line with the degree of harm. The independent appeals mechanism is the way to make sure that the full circumstances of each individual case where there was serious harm can be reflected in the final payment.

Chairman: Senator Conway-Walsh is next.

Senator Rose Conway-Walsh: I thank Professor Lane for his presentation. I want to acknowledge the change in pace and attitude towards the tracker mortgage scandal in recent months. While we still have some way to go, I want to acknowledge what has been done to date. If I go into a bank this afternoon to seek a mortgage, how do I know that I am being offered the product that is right for me or the best possible product at the right rate?

Professor Philip Lane: That is a question we welcome because we are doing a lot of work on that exact issue. I will ask Mr. Sibley to take that question.

Mr. Ed Sibley: Ms Rowland would be better placed to answer it.

Ms Derville Rowland: The Senator referred to the right rate as well as to her consumer

protection rights. There are extensive requirements in the consumer protection code that are already in place about suitability and knowing the client. There is also lot of good work being done on disclosure of information to customers so that they can make an informed choice based on the information available to them.

Recently we have been doing work on switching and on transparency for mortgages so that all of the relevant information to help customers to make a good choice is provided. That is all very well and good as long as it is actually happening in fact and that is our clear expectation. My trust has been somewhat tested in the tracker mortgage debacle because I am firmly in the space of that post-crisis regulatory mindset of assertive, risk-based supervision which is "trust but verify". We have got to make sure that is translating into the customer experience and in the main, it is. While I cannot absolutely guarantee that the system is delivering perfectly I certainly know that there are really strong framework protections in place that should make it so. There are really good requirements developed around lenders assessing products as being suitable and affordable and being transparent about that information so that customers can make a good choice.

Senator Rose Conway-Walsh: What sanctions are there for a bank if it offers me a product that is going to cost much more than another one that is available?

Professor Philip Lane: If a person has been mishandled or mistreated by an individual mortgage provider, that is an issue for the ombudsman. In any individual situation with a bank official or a bank, there may be particular problems which the ombudsman can handle. Our job as the systemic regulator is to work on the framework and to make sure that banks show us their documentation and show us the process by which they interact with customers. Our regulations kick in at the level of process, documentation and systems. If any individual is in the unfortunate situation of having been mishandled by an individual lender, that is an issue for the ombudsman.

I would also like to heavily emphasise that post-crisis, the consumer protection framework also includes a consumer information role for the Competition and Consumer Protection Commission, CCPC. I would bet that not a lot of people know that the CCPC has a very good mortgage calculator on its website. A public institution, namely, the CCPC, is there to help people to work out the pros and cons of different types of mortgages. The information function used to be done by the Central Bank but now the CCPC does it. The material on its website is very nice. In the same vein, the HIA has a nice comparison tool for health insurance.

Senator Rose Conway-Walsh: I thank Professor Lane for that information but if the Central Bank found out today that there was a product available that suited a large number of people and best met their needs but that not all of the banks were offering it, what would the approach be and what sanctions would be applied? What would happen if that was the case across the board?

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

Mr. Ed Sibley: Perhaps I have not quite understood the question but we would expect there to be differentiation across products and banks. That represents a degree of consumer choice and is a sign of a healthy system or, at least, a healthier one. Certainly, a couple of years ago one would have seen less choice in the system from a mortgage perspective. That element has improved. There are a number of different products out there, some of which add complexity to the consumer decision that is being made. We are very much pushing the lenders to make sure

that there is very clear transparency around the costs associated with those products so that they can be understood but we have a little bit further to go on that.

Senator Rose Conway-Walsh: I am referring to those people who went into a bank to get a mortgage at the time that tracker mortgages were available but were not told about the tracker mortgage rate or were not offered such a mortgage. Is there any case for those people who were not on a fixed rate but were requesting a new mortgage?

Professor Philip Lane: Over the whole tracker mortgage period, from the early 2000s onwards, clearly there were waves where individual banks might have been pushing certain products. Competition was pretty intense in the mortgage market in the mid-2000s. There is a lot of volatility in this area. A bank might offer a product for a while and might then become overexposed in respect of a certain type of loan and pull back, at which point other lenders come in. Those are the market dynamics of the credit market. One cannot say, therefore, that all lenders can have a fixed set of products that they offer at all times.

Senator Rose Conway-Walsh: When the Central Bank was examining the tracker mortgage situation, did it examine the cases of the new people who took out mortgages at the time in question to determine whether enough information was made available to them and whether there was enough transparency? On the basis of the Central Bank's consumer protection role, do our guests believe that those customers were given the best product? Was this considered?

Mr. Ed Sibley: There will be different circumstances for different borrowers. One can see that in the market today. Some borrowers will value a fixed-rate product for three to five years.

Senator Rose Conway-Walsh: I understand that.

Mr. Ed Sibley: That is perhaps based on their own judgment on the certainty of cost and their view on where interest rates might go. This trend would have been prevalent in the system before the crisis. What we are seeing - Ms Rowland can add to this - is that there was a lack of transparency. There was ambiguity in the contracts that were being used at the time. That has led to many of these issues. We have pushed, through consumer protection work since 2008, to ensure better transparency and less contract ambiguity in order that what is being taken on by the consumer is clearer.

Senator Rose Conway-Walsh: Can the delegates say conclusively that anyone who took out a new mortgage when tracker mortgages were available is not entitled to be included in the compensation arrangement?

Professor Philip Lane: Is the Senator referring to people who know now what they would have got with a tracker at the time in question?

Senator Rose Conway-Walsh: Yes.

Professor Philip Lane: That category would not be included. We are examining the handling of those who had a tracker mortgage or the right to one, not the wider group. It is an interesting question to think about. One must consider how regulators' work evolves. What we are saying now is that while we are all the time trying to reinforce the code in terms of transparency and so on, we now have what is called a consumer risk-assessment model whereby, essentially to cover what the Senator is talking about, our plan is to be much more pre-emptive and in the moment in terms of what is going on. It is a matter of determining whether any new product makes sense and the hidden problems in any new product that might be offered. The goal is to

be a lot more pre-emptive and catch problems before they materialise. Perhaps Ms Rowland can reinforce that.

Ms Derville Rowland: If I understand the Senator's question correctly, it is about whether everybody who had a mortgage and for whom a tracker mortgage would have been a better product at the time should be in the scope of the examination.

Senator Rose Conway-Walsh: Exactly.

Ms Derville Rowland: That is beyond the scope of this examination. The examination is confined to the 2 million accounts. That is where the starting point was. I refer to where the customer might have started on a tracker product or had an interest rate applied to it at any stage, or had an entitlement, or may have had an expectation of an entitlement, through the process they engaged in. It does not go as far as to cover what the Senator referred to. I do not believe it could. I do not know whether Mr. Sibley wants to add to that.

Mr. Ed Sibley: In the market today, a customer can choose to take out a mortgage on a fixed rate for five years or to be on a variable rate. Who knows what the circumstances will be in three to four years? Interest rates might go up, in which case it will benefit the person who has chosen the fixed rate as opposed to the person with the variable rate. Alternatively, interest rates might go down. There is a degree of choice in that regard. As long as it is informed and transparent, it is not an issue.

Senator Rose Conway-Walsh: I understand but just want clarity for the people who believed they were not sold the right product at the time or should have been sold a product that best suited their needs. That is all. I just want a "Yes" or "No" on that.

Professor Philip Lane: Maybe I will make just one more point. The biggest problem was that ECB interest rates fluctuated. When the ECB rate went up in 2006 or 2007, people with tracker mortgages were tempted to move to a fixed rate. The problem was that they did so in the belief that they would go back to the tracker mortgage or-----

Senator Rose Conway-Walsh: I understand.

Professor Philip Lane: In other words, the tracker mortgage has not permanently been the best product. With regard to long-term mortgages, whether tracker mortgages dominate other mortgages depends on interest rates, which I will not predict.

Senator Rose Conway-Walsh: We are not going to get any further with that today. Let me refer to the Page *v.* PTSB case in Roscommon a few months ago. Are our guests aware of it? The customer was not offered the choice of the tracker when the fixed rate finished. The fixed rate had been 5.99%. PTSB settled out of court. In this regard, consider the cases of the 4,000 AIB customers who were given a fixed amount of compensation. The amount that was offered first by PTSB was much less than what the court ruled. I believe it was the first court case on this. I expect there to be others. Does Professor Lane expect many of those who were just offered the fixed amount of compensation to take cases in the courts?

Professor Philip Lane: This always goes back to the systemic element that we addressed in terms of how we were handling the examination versus the individual circumstances of each case. Of course, a court case can fully consider the entire nature of the interaction between the customer and the bank. The customer might have been told something verbally. There will be a range of documents to be considered. At systemic level, the issue of prevailing rates arises.

On the basis of our work and the advice we received, we concluded the prevailing rate, at a systemic level, is the rate applying when a customer goes off the tracker. The conundrum concerned what should have been offered when tracker mortgages were no longer being offered. We are saying the customers in question should have been offered a tracker mortgage. That is why there is compensation. I am referring to cases where the contract did not refer to a fixed-margin tracker but to whatever the bank decided was the tracker at that time. In terms of the calculation of what the tracker amount would have been in autumn 2008, when bank funding was through the roof, it would have been an expensive tracker.

Let me return to the core of how we are doing this. Nothing we do here and no offer of compensation or redress inhibits any individual in any way . First of all, we are saying that, in the examination, the customers have the option to test the appeals mechanism. Second, of course, everyone has the right to go to court if he or she feels the contract was violated.

Senator Rose Conway-Walsh: May I ask for Professor Lane's opinion on such cases? Some can afford to go to court while others cannot. How important is the class-action legislation, particularly with regard to the tracker mortgage scandal?

Professor Philip Lane: I am not a legal expert. We can see how class actions work elsewhere. It is ultimately for the Oireachtas to decide what the law is. Perhaps Ms Rowland, who is a lawyer, will have more insight on this than I do.

Senator Rose Conway-Walsh: Since Professor Lane worked in other jurisdictions, could he give an opinion on it?

Ms Derville Rowland: I confess to never having taken a class action. To comment on the case, an individual can go to court if he or she chooses. The tracker mortgage examination offered extra choice, no more than that. It is not compulsory. If people go through the appeals mechanism for the serious cases, it might be interesting to see what kinds of awards are granted and whether they are better or worse than those of the court. That remains to be seen. If it did work it would be less stressful and quicker for people to go that route. As a lawyer, I know, and I am sure committee members will believe this to be true, that people will go to court to test the boundary of anything when its new to see where the parameters are. That is a normal feature of every system. I am not saying that is good or bad but it is a truth. I listened in to the committee's discussion yesterday on class actions. It is a national level issue. I can see how it could afford benefits to people to club together. I say that not strictly speaking as part of my role but based on my having spent a decade building up supervision in the aftermath of the crisis, doing a lot of the work with my legal colleagues in terms of handing over disclosures to the Director of Public Prosecutions, DPP, for prosecutions etc., and having done a lot of unedifying but important work to try to support the infrastructure of our State in the public interest. Options are always good for people in general terms. One could not be against that. It is for others to consider the policy implications of that in greater detail than us, I would suggest.

Senator Rose Conway-Walsh: I would expect more of these cases to go through the courts and for people to be following them to find out what is offered in terms of settlement by the lenders. Is there a time limit to the taking of cases?

Professor Philip Lane: There is a specified period of 12 months. It is important to make the point that it is not an either-or option. A person can accept the cash payment and also go through the appeals mechanism. It is not the case that this process is inhibiting routes.

Senator Rose Conway-Walsh: I understand that and I think the options available were well-communicated to people. I welcome, as stated in the report, that the Central Bank proposes to do on-site inspections. Will they be announced inspections?

Ms Derville Rowland: Yes. We have been doing them all along.

Senator Rose Conway-Walsh: Has the bank carried out any unannounced inspections?

Ms Derville Rowland: No.

Senator Rose Conway-Walsh: Does it intend to do unannounced inspections and if not, why not?

Ms Derville Rowland: We have been doing on-site inspections throughout the tracker mortgage examination. These have been structured in a particular way. The scale of the job that we are doing is very unusual. It is of a vast scale and there is a particular approach that needs to be taken to get this type of work done and done accurately. This involves pressing into service other people's resources. I referred earlier to a core part of supervision being trust but one also needs to verify. Everything must be checked by authorised officers going on site, acquiring files, checking each page, and verifying them. They then also check the accounts the banks say were not affected to ensure that is the case. One tests the perimeter of all decisions. We have only done announced, on-notice, on-site inspections. I recall us having this conversation at a previous meeting. I will try to clarify why we do announced inspections. It is obvious to us as regulators and to any other regulatory agency that there is a clear and useful role for unannounced inspections. These are typically carried out when it is feared there will be flight, destruction of documents, obstruction and so on. We would be as cognisant of this as any other regulatory agency. However, there are times when one cannot get access to files unless all of the work is lined up. If I want to examine 100 particular files and I need to get my work done in a scheduled way, I need the right people made available to me to ask questions and take notes and I have to inform the entity of the proposed inspection to ensure that the access permissions I need to particular areas and the paperwork ordered are made available to me. I have to ensure the people of whom I need to ask questions are made available to me so that I can be effective on site.

We do a combination of on-site, off-site and desktop inspections. If we needed to do unannounced inspections, we would do those too. We always take cognisance of the situation in which we find ourselves. Some people answer questions better than others and one might think some people are being deliberately unhelpful, obtuse and so on, but that is different from fear of destruction of documents. A feature of our work is on notice and it is appropriately done. If that was not appropriate, we would do something else.

Senator Rose Conway-Walsh: In regard to the investigations carried out thus far, is Ms Rowland satisfied that all the documents she requested were made available to her and that no documents were concealed and so on?

Ms Derville Rowland: There are times when we do not get the documents we require. This may happen because the files are not available or cannot be found. If we have concerns that there was deliberate obstruction or obfuscation of documents in a malicious way, we take that very seriously. Such action would be obstructing the regulator in the execution of its duty. This is one of the actions we would reserve for criminal prosecution. It would be so serious it would need the opprobrium of the full regulatory system to come down on top of it. That would not

be acceptable. We are not in that space at the moment. For example, the enforcement team is very structured in its approach. It takes a robust approach to document acquisition. If those issues arose, the team would be very adept and adroit at dealing with them, but that has not arisen.

Deputy Pearse Doherty: I welcome the witnesses and Professor Lane's statement that the bank will pursue individuals in terms of accountability if evidence presents. I also welcome the work done by the bank over recent months. The witnesses will be well aware that I have been very critical of the Central Bank's role in this issue, not only during Professor Lane's tenure but dating back to 2010. I do not intend to rehash all of that now but I do think it is important to acknowledge the robustness of the Central Bank's challenges of the banks in recent times. As pointed out by Deputy Michael McGrath, the language used in the statement is also helpful. The current communications strategy is welcome because it restores faith in the Central Bank for the people affected, many of whom for a long time felt there was nobody on their side.

Am I correct that there is no cohort of individuals now that are in dispute between the Central Bank and the institutions?

Professor Philip Lane: Correct.

Deputy Pearse Doherty: Are IBRC customers the only ones who will not get their money back?

Professor Philip Lane: I will ask Ms Mitchell to respond to that question.

Ms Helena Mitchell: They are automatically admitted into the scheme as unsecured creditors and they will be paid by quarter 1 but it is not the same redress or compensation scheme as other lenders. They will get a partial dividend by quarter 1.

Deputy Pearse Doherty: They may not get all of the money that was taken wrongly by IBRC from their accounts.

Ms Helena Mitchell: No, they are unsecured creditors caught up in the liquidation process. Those customers do not have to take any positive action because the liquidator will write to them and include them.

Deputy Pearse Doherty: Professor Lane said that the vast majority of customers have been identified but that at this point there are a number of customers on the Central Bank's radar that the banks have not yet agreed are affected. Is it the case that as the examination continues, an additional number of cases could pop up?

Professor Philip Lane: As the examination continues, we may find more files. In some cases there are outstanding questions, such as whether X, Y and Z has been captured, and the banks are co-operating. We do think the numbers will climb a little. We are probing all categories to ensure that the banks are including all customers and in a small number of cases this remains an issue. By and large, we think we are nearly there.

Deputy Pearse Doherty: I hope there will be individual accountability in regard to this issue but I understand the Central Bank is restricted in terms of what it can say. I reiterate, this issue will present again and again until such times as individual bankers are held accountable for their actions. This point was made by a predecessor of Professor Lane on leaving his role in the Central Bank, and I agree with it. They nearly got away with this. The figure is €900 million at the minute but if they got away with, it could have been more than €1.5 billion be-

cause of the duration they would have been overcharging these customers. With regard to the sanctions that can be imposed, the law was amended in 2013 to provide for increased sanctions from €5 million to €10 million for institutions, and from €500,000 to €1 million for individuals, as well as 10% of turnover. The fine for Springboard Mortgages was €4.5 million. The Central Bank has to deal with an issue regarding when the tracker mortgage breaches took place. Were they pre-2013 or were some of them post-2013? Large banks such as Bank of Ireland and AIB had significantly more cases compared with Springboard. Is the maximum fine they could be subject to €10 million? What are the difficulties in this regard? How is the sanction of 10% of turnover applied?

Professor Philip Lane: The Deputy is correct that there is a cap, and because the tracker harm was both before and after 2013, it will be some blend of the rule before 2013, which was the €5 million cap, and the post-2013 cap of €10 million. However, the scale of the harm, of course, is so high and this maps into where the calculation is. Let me turn to Ms Rowland. We have worked out a way we calculate the fine in respect of the list of reasons we bring into it, but Ms Rowland is best placed to go into it.

Ms Derville Rowland: The Deputy is correct that there is an issue about the *pro rata* apportionment of any breach to the timeframe within which the relevant rules apply. Post-2013 and pre-2013 would be bifurcated according to the sanctions in place in law at the time, but it also depends on the breaches being pursued in a particular case. We will look at the scenario in bank X and extract the relevant facts that match the breaches. The breaches are not all the same in each case. We will consider a suite of relevant breaches and then we will look at the facts and match those two together. The duration of the breaches will vary in each case. They might have broad similarity. An answer cannot be given without cutting the breaches according to the evidence in the case. The Deputy will appreciate that breaches may have stopped before 2013 or they may not. There will be a series of cut-offs for different breaches depending on the facts that we can evidence. I do not know, therefore, what sanctions will be capable of applying until I know what the breaches are and their duration, but if they predate 2013, the more limited set of sanctions will apply, and if they post-date it, then it is at large to the higher sanction levels, which is the €10 million or 10% of turnover, whichever is higher.

Professor Philip Lane: So €10 million is the cap.

Deputy Pearse Doherty: Not necessarily.

Ms Derville Rowland: It is €10 million or 10% of turnover, whichever is the higher, for post-2013 breaches.

Deputy Pearse Doherty: So 10% of turnover of one of the larger banks-----

Ms Derville Rowland: Is theoretically a very large amount. The Deputy asked about the policy-----

Deputy Pearse Doherty: I am sorry for interrupting. There is no restriction. It will be 10% of turnover. There is a perception that there is a €10 million cap.

Ms Derville Rowland: I am happy to be corrected but it is written in the Statute Book. I think the phrasing is 10% of turnover or €10 million, whichever is the higher. That is one of the administrative sanction powers in Part 3C of the 1942 Act, as amended.

Deputy Pearse Doherty: Yes, that is my understanding. Prior to the amendment in 2013,

was the cap €5 million?

Ms Derville Rowland: Yes. The cap was €5 million before that date.

Deputy Pearse Doherty: What is AIB's turnover at this point in time, approximately?

Ms Derville Rowland: I do not know that answer off the top of my head.

Mr. Ed Sibley: We can come back to the Deputy on that.

Ms Derville Rowland: We can give the Deputy that. The Deputy's question related to the policy considerations that would inform the 10% of turnover application, and I do not have a definitive answer for him. That would be a matter of careful sentencing law consideration, which would inform the application of that. It is certainly something in terms of our membership of the Single Supervisory Mechanism, SSM, and as part of our prudential regulatory considerations, we work on these matters because that is not a matter that would be taken lightly. Careful, legal sentencing policy considerations would go into the application of that.

Deputy Pearse Doherty: With regard to the Ulster Bank figures, it is disappointing that 3,380 customers who were identified in September, with some having been identified at least a year before that, still have not been repaid. The banks will appear before us again and they have given us answers to prewritten answers. Ulster Bank is an outlier. The progress is absolutely appalling in comparison with PTSB and so on. It is just not acceptable. When we questioned the Minister as to why Ulster Bank is being given until the end of June to make sure all its customers have been paid back and compensated, he said it was the result of the systems the bank operates. Is the Central Bank of the view that the bank does not have the capacity to increase the level of compensation and redress beyond what it has identified because of the systems it operates?

Professor Philip Lane: The unfortunate answer is yes. We have pushed this as hard as we think we can to maximise the pace at which Ulster Bank. and all other lenders for that matter, pay out. This is where we are. There is a phased approach for Ulster Bank because it seems the way its internal files and computer files are such that they create this mechanical, operational constraint. We wish it was different. We have pushed them to what we think is a feasible pace. When Ulster Bank is before the committee, this can be pursued because it does read odd. It is something to ask about.

Deputy Pearse Doherty: We will pursue it. Ulster Bank had the systems error that prevented its customers for accessing their accounts and now we are hearing that its systems are incapable of paying back money that the bank wrongly took from its customers. It is concerning that one of our larger banks does not have appropriate systems months later that can pay back its customers. It can debit its customer accounts if it wants to but it cannot pay back the money in an appropriate timeframe. It is not acceptable and we will pursue that with the bank.

I am disappointed by what Professor Lane has said about the prevailing rate issue. It will be a huge disappointment for hundreds, if not thousands, of customers who are arguing that the bank has put them back on the wrong rate. Other members and I have asked the Central Bank to examine this and Professor Lane has informed the committee that he is satisfied that the prevailing rate the banks are putting their customers are on is correct.

Professor Philip Lane: We put a lot of time and resources into this. Throughout our attitude has been, and we have said previously, that, number one, we want to make sure all custom-

ers that have been harmed are redressed and compensated and, number two, we want to take an expansive definition so that it is not just an issue of a narrow contractual interpretation. We want to ensure a broad range of documentation, a reasonable interpretation and so on. Even with that lens, we put a great deal of effort and expertise into this, but the conclusion was that these contracts are, indeed, different from the fixed margin tracker products and our analysis of them was that, at a systemic level, they would be priced by the banks at the prevailing funding conditions when the fixed rates expired. What happened at the end of 2008 is they just withdrew trackers. We do not think that was appropriate and that is why there is this conversation saying that even if they were going to offer a customer an expensive tracker, they should have offered it. However, the prevailing rate trackers, given the conditions at the time, would have been expensively priced. That is what we think.

Deputy Pearse Doherty: If a prevailing rate tracker was offered by bank X in June 2010 or June 2011, does the Central Bank have a model that says this was appropriate?

Professor Philip Lane: Yes, we have.

Deputy Pearse Doherty: However, is the Central Bank willing to publish that or ask the banks to publish it? It is crucial that people know what the rate is or what the Central Bank and the bank believe.

I will give an example and I will ask the Governor to answer that question. I want to pick up on something Mr. Sibley said. He talked about the ambiguity in the contracts. There is no doubt that there is ambiguity in the contracts and they should never have been allowed to be authorised. The Central Bank at that time should not have allowed this. I will give an example of a contract and a letter of offer with a particular bank. The letter of offer states clearly that it is a tracker rate of the ECB interest rate plus a maximum of 1.1 percentage points. It continues to offer a three-year fixed-term contract. The individual took out the tracker mortgage which was on the letter of offer at 1.1 percentage points above the ECB interest rate and fixed it for three years. However, the contract contained the following terminology, "a tracker mortgage loan and the rate applicable will be the rate appropriate to the balance outstanding at the time of expiry of the fixed-rate period". According to the bank that means what was stated in the letter of offer has no standing whatsoever and that it will apply whatever it wants after the expiry of the fixed-rate period.

I am making a point about ambiguity in contract. Is there not an issue in contract law? If there is ambiguity in a contract, it has to come down in favour of the customer in this case. If somebody has a letter of offer which stated at the top a tracker mortgage of the ECB interest rate plus 1.1 percentage points and allowing them to fix it for three years and then finds this terminology in the terms and conditions of the contract that they signed, it is hard for anybody to understand what that really means. Should the Central Bank not come out and state that that interpretation is not right and that the letter of offer should stand in these cases? This is one of the issues under examination. This is one of the issues the Central Bank has dealt with. I am sure this customer would be disappointed at today's comments from the Central Bank that it believes that what the bank is doing on the interest rate is correct.

Professor Philip Lane: Transparency and reasonable interpretation have been absolutely part of what we have looked at in assessing these individual situations. These different types of legal arguments have been factored in, which in the case of ambiguity is deferring to what is in the consumer interest and so on. If the individual in her interaction with a bank, broker or whatever was guided differently and if there was not sufficient explanation, then that remains

an individual case which can be tested through the appeals mechanism or the ombudsman or the courts. However, at a systemic level the fact that these contracts indicated that at conclusion they would revert to the tracker rate being offered by the banks at that time, that we do see as different from ones where the fixed-----

Deputy Pearse Doherty: I understand that. The issue is with the calculation of that rate.

Professor Philip Lane: Let me come back to the calculation. Basically the banks would have a model showing how they would have priced it given funding costs and so on. We have checked that model. It is the banks' model but we have checked it. I ask Mr. Sibley to expand on that.

Mr. Ed Sibley: As the Governor said, it is the banks' model. They have provided us with details as to how they would have calculated in that period. We have run our own separate independent assessment to check reasonableness. It is not saying we are coming up with a precise number that this should have been the prevailing rate at that time, but it is to check that the banks' model has come up with a reasonable number. Does Ms Rowland want to come in?

Ms Derville Rowland: What the Governor is saying about the Central Bank is really important. I do not want any view that we have taken a decision in support of the banks and against customers on prevailing rates. It is not to be weighted to the benefit of the banks. It is that we did not find enough for us to tip us into systemic action, but that is not a black mark against a consumer who has been put inside the redress and compensation scheme being able to bring their own case forward to say, "This is my prevailing rate. I don't agree with that for my personal reasons and I want you to hear what I have to say." We did not feel able to tip into action to change the scenario, but that is from a systemic perspective, which does not interfere with breach of contract or anything else that a customer would quite rightly want to say on their own part, for example, what he or she believed from his or her customer experience when he or she purchased the product from the bank. We would be a stranger to that and we would not have anything to say, nor could we.

People have every right to bring forward their own information about their view of the correct prevailing rate from their perspective, which may not have a systemic consideration for us, but because they are inside the redress and compensation scheme, they are entitled to do that, and where they feel it is right to do so, they should do that. However, it is from our perspective. We looked at this from systemic action and we did not feel able to tip the balance into interfering with that decision. However, it is not against the consumer, nor is it for the lenders.

Deputy Pearse Doherty: I appreciate that.

Ms Derville Rowland: It was just the regulatory consideration.

Deputy Pearse Doherty: I need to leave because I have a radio interview. I want to ask one question before I go. We have been informed by the Central Bank that a number of whistleblowers have come forward making protected disclosures. Some of them relate to the tracker mortgage issue.

Ms Derville Rowland: Sorry, I have to be really clear. In fact, we did not identify any whistleblower in respect of the tracker mortgage issue. We were very careful not to do so. It would be wrong if we did. There has been trouble in the UK with that kind of thing. Protected disclosures mean that the anonymity of the whistleblowers is very important so that people feel able to come forward.

What we did was to give information that generally we are seeing an increase in protected disclosures, which is to be welcomed in the Central Bank. They have gone up from 50 in the previous year to 93 in 2017. What we identified was that broadly in the sectors where the lenders operate across a whole range of issues - we did not identify any issue - we had 28 protected disclosures. However, they have not been specifically linked to any particular job such as tracker mortgages or otherwise because from our consideration, that might inhibit staff or others from making protected disclosures if they were at all concerned that we would bring forward information that may tend to identify them.

Deputy Pearse Doherty: Okay. Maybe my recollection was not as sharp on a document I have read. Regardless of that, I have previously appealed for whistleblowers to come forward. I again appeal publicly for whistleblowers to come forward to the Central Bank with information.

Would it be appropriate to consider a whistleblower reward programme such as exists in the United States where whistleblowers can, upon conviction or prosecution of individuals or institutions, receive up to 10% or up to 30% of the fine or moneys recouped? Would something like that support the work of the Central Bank in being able to deal with some of the financial institutions that may be breaching regulations? It is very difficult for the Central Bank to be over everything that is happening within the institutions.

Ms Derville Rowland: I am familiar with the existence of those types of programmes. They would need to be very carefully considered in the context of the legal framework within a specific jurisdiction. The concerns might be taint or a perception that the wrong motivation for payment would undermine the credibility of any witness's evidence. That is just something that has to be considered carefully in the context of the legal jurisdiction within which one operates and how evidence is viewed in court in that context. It is not something that should be looked at in isolation. It is because of how it would be treated and it should only be put in place if it will actually improve the system. That is the single biggest policy consideration that would need to be researched and looked at.

Deputy Pearse Doherty: I thank Ms Rowland.

Senator Paddy Burke: I welcome the Governor and his staff. I compliment the Central Bank of Ireland on its work on this issue in recent months. I also compliment the committee and the Chairman because both have played a hugely important role in keeping this issue to the fore. The way ordinary members of the public have been treated by the banks during the years is disgraceful.

I wish to continue on the topic of prevailing tracker mortgage rates. The delegates have provided answers on most of the issues. Are we to understand people may have been paid €1,000, €1,500 or €2,000, as well as some legal costs, but having received that sum they can still appeal? There are significant differences in various tracker mortgage rates. I have received a letter from a man who was being charged an interest rate of 5.1% when the European Central Bank, ECB, rate was 0.2%. At another point, when the ECB rate was at 0%, the tracker mortgage interest rate was 3.67%. Is there a preferred rate the Central Bank believes should be charged? Does it believe there is an ideal rate for the banks to charge? However, a person can make an appeal, regardless of whether he or she has received compensation.

Professor Philip Lane: Yes. That is a very important message which bears repeating as often as possible. We hear about people who receive an offer and fear that somehow cashing

the cheque inhibits them in taking other action. The very clever design of the scheme does not in any way inhibit them in taking further action simply because they have cashed the cheque.

If the scenario outlined by the Deputy falls within the definition of a tracker mortgage, it illustrates that the tracker mortgage universe includes price promise tracker mortgages, in respect of which there will always be a fixed margin above the ECB rate. The rates can also vary over time in line with the bank's funding conditions. The latter departs from what we colloquially understand is meant by the term "tracker". In that case we would have to examine the individual contract. In general, however, if someone believes his or her arrangement is not satisfactory compared to what he or she was promised and he or she can recount how his or her bank dealt with him or her, that provides material for an appeal. The person concerned absolutely can cash whatever has been offered and still pursue the appeals mechanism. The ombudsman and the courts are also available.

Senator Paddy Burke: If the ECB rate is at 0%, do all of the banks charge the same rate, or do they all charge different rates because the value of a property is different? There are many types of contract and it is very difficult for the Central Bank to evaluate every one.

Professor Philip Lane: We are examining the entire universe of tracker mortgages, but there are many tracker mortgage products. They vary depending on the bank involved and the time the contract was issued because the types of tracker mortgage offered changed over time. All of this is included in the examination. Tracker mortgages have been grouped into different categories, but we have worked through all of them to determine the appropriate treatment to provide.

Senator Paddy Burke: Did all of the banks meet their targets for 2017 in making good to their customers?

Professor Philip Lane: Yes. As was said, some have moved more quickly than others. We find it frustrating that for some banks, the target proved to be less of a stretch than for others. It is disappointing that not all of them were able to pay out as quickly as others. However, they are all working to timelines. We prepared timelines for 2017 and the first quarter of 2018. We think a lot can be done in these weeks and that more can be done to virtually bring the matter to a conclusion by the end of June.

Senator Paddy Burke: As such, all of the banks met the targets for 2017?

Professor Philip Lane: Yes.

Senator Paddy Burke: Professor Lane said the institutions also must repair damaged reputations, not only as a result of the original mishandling of tracker mortgages but also due to the partial and delayed engagement of some lenders with the requirements of the examination. The banks are proposing the setting up of a banking standards board. Is this just a move by them to make us all think the culture has changed?

Professor Philip Lane: We welcome that step, but it is only one step. There was a similar initiative in the United Kingdom and it can be helpful. However, I must be clear that it is no substitute for our work. In the coming months we will begin a review of the culture in the banks. More generally, our work on how we regulate and supervise the banks will not weaken or become more casual if they set up a banking standards board. It is good when the industry takes its own initiatives, but they are not a substitute for what we do.

Senator Paddy Burke: What is being set up by the banks is described as a quango.

Professor Philip Lane: I think such entities can play a positive role. Mr. Sibley who has interacted with the British version can comment on the issue.

Mr. Ed Sibley: I echo the Governor's comments. It is not a substitute for regulatory action and will not affect how we approach it. I am sure it will not affect members' view from a legislative perspective. However, it is to be welcomed. It is, at least, a recognition of the need for the banks to do something. I have had a number of interactions with the UK Banking Standards Board on which it is based. That body is having a positive impact in the United Kingdom, but it is not a substitute for anything else. There is a lot of work the banks need to do on culture. There is a lot of work we have been doing for a little while and will continue to do. Part of the work to be done in the next six months and beyond will address the topic of diversity at board and senior management level in banks. An absence of diversity is a leading indicator and cause of some of the foremost cultural issues. It is welcome that the banks at least recognise that there is work to be done, but it is not a substitute for regulatory or legislative action.

Senator Paddy Burke: Is the measure not just a window-dressing exercise on the part of the banks? The Central Bank welcomes it and thinks it is great. The Department of Finance also welcomes it.

Mr. Ed Sibley: To be absolutely clear, there is no impact on our work as a result of the retail banks' announcement that they are to take similar measures to those taken by UK banks. What we have said is it is a welcome development because of their recognition that they need to do something to improve the culture in their organisations. The experience in the United Kingdom, on which it is modelled, is that it has had a positive impact. It has focused not only on what is happening at board and senior management level but also on the culture within an organisation and how staff are incentivised to behave. In that respect, it is a welcome development, but it changes nothing in our determination to ensure the culture within the institutions improves significantly and that this type of issue will not recur.

Senator Paddy Burke: When this debacle has been put to bed, will the Central Bank issue a report on how it has handled the issue?

Professor Philip Lane: Fundamental to the way we work is that we always think of the bank as a knowledge organisation and a self-critical organisation. As such, any project has a review attached. We always look back at various mechanisms and ask if we could have done things better. Lessons will be learned. That is routine. Any project we undertake will involve an after-the-fact review of the lessons learned.

Senator Paddy Burke: When does Professor Lane imagine the report will be completed and published? Will it, in fact, be published?

Ms Derville Rowland: The Governor is right. Any organisation should always look at itself and ask how it can improve. We will report publicly on this issue. We are going to report to the Minister at the end of March about the continued progress on this. We have been mandated to undertake the culture review of the banks, which will result in a thematic report. As part of that, we will look at the culture and behaviour of the banks and as a consequence, part of that report will be a public articulation of the risks that this presents to customers. Another layer of that report will be to look at any recommendations for action arising out of that so that we can minimise or ensure that we address those risks. If at that stage, we also need assistance by

way of legislative improvement or reform, that is another layer of that report. Separately, it was always envisaged by the Central Bank. We keep saying it but it is true. It is a seminal piece of supervisory work with respect to consumer protection and it is right that separate to this, we produce a public report at the conclusion of this drawing all of this together into one place. We have produced a lot of public information on this matter at intervals but it was always our intention to draw it together at the conclusion of this and produce a public report. We will do that as well at the conclusion and that will be after the culture report - perhaps at the end of the summer. As long as we do not hit any road bumps, one would expect that to happen so there is a significant amount of reporting that we will undertake on this issue.

Professor Philip Lane: Can I make a more general point? In addition to the annual report we produce on the overall activities of the Central Bank, we have added a review of our regulatory work. That will be coming out each year so it is routine. It is by legislation. It has been specified that we must report on our regulatory work so we will provide the Oireachtas with public reports on this work.

Senator Paddy Burke: I was thinking that the Governor would throw in the annual report but will the review he said the Central Bank would carry out look at issues like how many complaints were received by the Central Bank over the years relating to the tracker mortgage issue before it took any action? Will it look at issues like that in the report and publish it? Otherwise, we will not see the full value of a report at all. It will be all couched in language and bottled up in the annual report.

Professor Philip Lane: The second part of the March 2017 report detailed from 2008 onwards how we have been intervening with regard to tracker issues. There is a summary in the annex to my opening statement today. A lot of action was taken between 2008 and 2015. What is true is, to use an American phrase, "whack-a-mole" where one sees a problem here and hits it on the head and sees a problem there and hits it on the head. What we did in 2015 was rather than do it problem by problem, we flipped it to a universal approach. There is a continuous thread of action going back to autumn 2008 when this problem arose. We immediately issued a public warning to the banks that if people were rolling off fixed rates, the banks had better handle that correctly. The fact that our code and warnings that this had to be handled in a pro-consumer and transparent way were so explicit to the banks now allows us to hold them to account because they were warned and they did not do it.

From autumn 2008 onwards, which is when this problem arose in its most acute form, the Central Banks has continuously intervened in the tracker issue. Of course, we can always look back and say "if only we had gone faster, if we had known more", but the Senator should be very mindful that, from 2008, the Central Bank was very acutely aware and tried to do what it could with regard to the tracker problem. Eventually, we moved from treating it on a case-by-case basis to using a universal approach. It is important to make clear that throughout this period, the Central Bank's consumer protection team has been working on this issue.

Senator Paddy Burke: What I am asking, and this concerns the Competition and Consumer Protection Commission as well, is whether the Central Bank will produce a report where it will lay bare how it handled this issue, whether it could have acted better, whether it should have acted sooner and how many consumers had to contact the Central Bank before it took any action. Did the Central Bank take action on the first complaint it received or the 100th or 200th? Was it this committee that brought it to its attention? Who brought it to its attention? This is information the public deserves to receive.

Professor Philip Lane: What I am telling the Senator is that throughout this period, the Central Bank was intervening and taking action. We have been reporting all the time about what we are up to. In addition, what I am saying to the Senator is that as this comes to a conclusion, we will carry out a look back. There are different types of look back, some of which, honestly speaking, will be in the nature of internal audit, which is more typically a private report, in order for some issues that might involve private information within a bank to be dealt with. Just as we have been reporting to the committee throughout, we will report to it at the end. We will provide as much information as we can in the public way.

Chairman: I want to intervene here because I do not want to lose the point made by Senator Burke. The Governor said that the Central Bank had been active on this since autumn 2008. The reason I want to pick up on this is because the committee sent the Central Bank the correspondence from Deputy Jim Daly. If the Governor read that correspondence, and I take it that he has, it is clear that the Deputy was raising the tracker mortgage issue. He may not have understood at the time how deep the issue ran within the banks but he certainly was trying to uncover what he saw as an issue. The banks ducked and dived their way through that correspondence. That is absolutely clear so that means that the banks with which the Central Bank was dealing were hoodwinking it. They were presenting information, and they knew what the Deputy was after. He was discussing tracker mortgages. He may have been talking about tracker mortgages in arrears but the banks were not prepared to divulge the information they knew about at the time, which, essentially, is the issue we are confronting today.

That leads me to Senator Burke's question about culture because the issue of culture lies within that reply from the Central Bank regarding Deputy Jim Daly's query and dating back to the autumn of 2008. When the Central Bank investigates the banks relative to their culture, I hope it has a big mirror into which it will look because the language in the Governor's opening remarks is different. It is stronger. Deputy McGrath rightly underlines the phrase "you haul them in" - the Central Bank will hold individuals accountable. It is about time the Central Bank said it. I do not want it to get into a comfort zone here where it is plámásed by Deputies McGrath or Doherty and told it is doing well. I will not judge the Central Bank on its language. I will judge it on the action it is prepared to take on behalf of the customers who have been robbed by the banks and whose lives have been devastated. The Central Bank is coming some of the way and regardless of whether it was this committee or someone else who dragged it to this point, it is not there yet as a regulator in my opinion. Let us see how it all works out. The culture within the banks must change. From my experience of the banks to date, I must say that this culture is as embedded as ever. What we are seeing is not a culture change. It is a combined effort on the part of the banks to provide the appropriate smoke-screen until they can get beyond this. I am sorry for going on but I want to explain this to Professor Lane. The reason I am saying this is because the Central Bank is concentrating on the tracker mortgage issue. It is now looking at the culture. While it is doing so, the next generation of bankers is being educated by the vulture fund managers, such as Capita and others, on how to deal with customers. My experience, and the experience of Members of these Houses who have come to me, indicates that those fund managers or agents are enhancing that culture which makes the customer pay. When Professor Lane refers to them improving and doing things better, they are improving at doing the customer. That is to say, they are robbing them better.

Capita is the leader in this regard in terms of its aggressive approach, in terms of making the customer jump every time it asks and in terms of disimproving the mental health and well-being of people. It refuses to give information and has often asked Members of these Houses to leave its offices. I attended Capita meetings. I have said this here before but I want to make it abso-

lutely clear. Capita is a regulated entity and has refused to come before this committee. It has said directly to me or to customers in front of me that they should get the money they owe from their mothers, fathers, neighbours, friends or the credit union, as long as they give it the money. It just wants the money. Its attitude is shocking to such a degree that no country, parliament or society should accept it. Professor Lane's organisation regulates Capita.

This has to do with trackers because it is all mixed up - the SMEs, the trackers and everything else. Arising from what Senator Paddy Burke said, I want to tell Professor Lane that this culture is alive and well and Capita and others continue to educate people in it so that its life will continue beyond the smoke and mirrors which the banks are presenting. What will Professor Lane do to ensure that Capita and others come before the Houses of the people to be held accountable? We represent the people. What can he do to ensure that the vulture funds adhere to the original conditions of the lender? They are blackguarding people up and down this country.

Professor Philip Lane: The Chairman raises a number of very important points. I assure him that we are very aware of some of the following facts. The nature of what happened here and in other countries post-crisis means that there is a much wider range of firms now involved in dealing with customers. Banks have sold loans on to funds that in turn have these credit servicing funds which try to manage payments and so on. Partly because the Oireachtas passed the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015, we as the regulator have a very broad perspective. The traditional banks are no longer the only game in town. There is a situation where these specialist firms which specialise in debt recovery are in place. The requirements of the code of conduct on mortgage arrears apply to the credit servicing firms. More generally, our conduct requirements are general and they apply. We have the framework and the awareness and we have engagement.

I will come back to a couple of points. As always, if the Chairman, other representatives or other people have individual experiences and information such as that just recounted it should be sent on to us. The more information we receive from every quarter, the more it helps us in holding these firms to account. I am emphatic in saying that, because of the way in which this tracker mortgage examination is set up, no matter who is now the owner of the mortgage, the originator is responsible. My understanding is that is working. No matter who people owe money to now, the redress and compensation is flowing from the originator of that loan. That is working. We have checked it.

To come back to the issue of culture, these culture reports for the banks give a general perspective. No matter who the regulated firms are that are interacting with the customers whom we are dedicated to protecting, our scope is general. Regardless of whether it is banks, insurance companies or these specialist firms, we have a general perspective on the issue and a commitment to deliver.

I will just make two more points. One is about our work and our communication. I fully agree with the Chairman that what matters ultimately is whether we get the job done in terms of protecting consumers. I have said in other ways that it has traditionally been our belief that we should be judged on our actions. Our tradition is to use bureaucratic language. There is a way in which central banks and regulators have communicated. We have always been very precise and careful, but perhaps the core meaning of what we are doing gets lost because people do not understand what we are saying. That may also be reflected in the discussion at our own commission. We have put more effort into this. It is reasonable to expect that we should cut through the bureaucratic language and say what is really going on. The way we have written this report tries to cut through such language. The message is the same. The underlying work is the same.

This work has been continuous and has followed the same strategy, but we encountered this problem of our message being lost. We are trying and interaction with the committee is helping to force us to be clearer in how we communicate what we are doing. We are committed to that.

Chairman: How many of these agents does the Central Bank regulate? How many are there?

Ms Helena Mitchell: How many credit servicing firms? There are eight authorised and there are 11 on our public register.

Chairman: There are eight authorised. Can a list of those be supplied to the committee?

Professor Philip Lane: The public register is publicly available.

Ms Helena Mitchell: There is a list. We can send it to the committee.

Chairman: What does Professor Lane think of the fact that these firms have decided not to come before an Oireachtas committee despite of the fact that his organisation regulates them?

Professor Philip Lane: I am not an expert in the powers of compulsion the committee possesses.

Chairman: We do not have any.

Professor Philip Lane: Short of that, my view is that financial transactions are not just private contracts between firms and individuals. We know from the bailout that the taxpayer and society have an underlying foundational role in enabling the financial system to operate. How these firms behave has a very important social dimension. We would be very disappointed that any firm that has a serious presence here in Ireland would not come before the committee to explain its behaviour.

Chairman: Will Professor Lane tell them that?

Professor Philip Lane: I am saying it to the committee in public and what we say in public we can say at a bilateral level, absolutely. We think that firms with a serious role in the Irish economy have a social responsibility to account for themselves before the committee.

Chairman: Will Professor Lane relate to them that we are on to them and want them here before us?

Professor Philip Lane: That is fair enough. Okay.

Senator Gerry Horkan: I welcome Professor Lane and his team. I take the point that the Chairman and Senator Paddy Burke have made. We have already commented that we only got a link to Professor Lane's opening statement at 8.43 a.m. so we did not have much time before the meeting to study it. However, we have certainly had time to do so since the meeting commenced. The tone of the statement is quite self-congratulatory and phrases such as "lenders have been forced to pay", "hauled in lenders" and "the examination is delivering for consumers" are used. Realistically, however, most people - or at least everyone affected by this, as well as those who are not personally involved but who are watching these proceedings - will ask why it ever happened. It should never have happened. The Financial Regular was part of the Central Bank at the time and has been reunified with it following a period of separation. How did the regulator ever allow this to happen? In any report that comes out in the future, we must get to

the bottom of how every bank managed separately, so we are told, to make the same mistakes with the same customers in the same way. We want to get to the bottom of who is getting their money and when, but has an analysis been carried out in the context of that to which I refer? I accept the argument that when the kitchen is on fire, one puts out the fire before working out what caused it. However, what happened should never have happened. The supervisory mechanisms and processes should have been in place.

This kind of behaviour has almost certainly affected far more than 30,000 households. It will probably have been found to have affected closer to 40,000 before we are finished examining the matter. That number can be multiplied by the large number of people in the families affected. Huge numbers of the Irish population were affected by this. I am sure their extended families ended up having to help out if money was short. The customers in question were paying out huge amounts of their own cash - wrongly, because it was demanded of them - to banks that were not entitled to that money. Professor Lane said the banks have been "forced to pay €316 million in redress". Banks have been forced to give people back their own money. Has there been any analysis as to how every bank did the same thing in the same way in such a slipshod manner? It was clearly not in the interests of their customers, although it may have been in the interests of the banks' profitability in the short term. Obviously, they hoped they would never be found out, even if their profitability in the long term would be damaged by their actions. Has there been any analysis as to how they all managed to make the same mistakes in the same way?

Professor Philip Lane: I think there are different perspectives on this. We can have a discussion describing what happened and say "Here's the different types of violations of what should have happened, happened." We can talk about the fact that our regulatory framework was clear. It was stated on page 1 of our consumer protection code that the best interests of consumers needed to be put first. One can ask where errors occurred - actual errors. For example, one could ask how coders could not code the correct interest rates into the IT system. The lenders might have had lawyers telling them that a certain contract was okay and that they could proceed. However, why did they not have ethical frameworks, cultural frameworks, stating that, technically, they might have got away with these actions in a court, but that it was not in the best interests of consumers and so they should have been making more generous decisions in favour of the consumers? Why was that culture lacking in these organisations? As the Senator says, short-term profitability was prioritised.

There is a long list here. I think the culture reports will help. These banks should also be doing reports on their own histories of this. I think they can do that. There are many lessons to be learned for everyone here. As I said, and I think we have all said this, the priority for us has been to get the redress and compensation. However, there are aftermath issues to sort out regarding the culture that I mentioned and the narrative of how it happened. Simultaneously, it must also be recognised that much of what we did at that time has now proven helpful in enabling us to go beyond just the contracts and to tell the lenders that they violated our code, that they were not transparent and that we told them not to do this. The fact they were given these warnings in 2008 and so on is now helping us to enforce redress and compensation. What we are trying to say in this report is that this should never have happened. However, we must try to make clear that the Central Bank has acted throughout on behalf of the customers. We take our consumer protection mandate very seriously, and throughout we have been working to try to fix this. That is an important part of the way in which regulation works: when problems emerge, they are fixed. The guidance is given through the codes and regulations. We will try to do more and more about pre-empting problems before they emerge, but when a problem does emerge we

try to fix it. That is what has been happening.

Ms Derville Rowland: May I add to Professor Lane's comments? In no way do I want the Senator to take the view that we have been self-congratulatory in our statement today or any other day. I am really sorry this happened and I am sorry money has not been returned sooner to the people affected. However, it is a core driver that responsibility is firmly placed on the listed plcs and the lenders, which are huge in terms of staff, resourcing and responsibilities, and not on the regulator. Front and centre, the responsibility to treat the customer fairly does not, as a first line, rest with the Financial Regulator, which has oversight. I fully accept that the Senator expects to see a competent, strong, intrusive, alert regulator that pre-empts difficulties or, where difficulties arise, addresses them definitively. That is what we expect ourselves to be. However, I say, without any hesitation, that the tracker mortgage scandal was created by those lenders that did not do right by their customers and that full-square responsibility rests with them and the senior people who direct the minds and the conduct of the organisations they run. This is their opportunity. If they were not there in the first place as part of the group of people who took the decisions that caused the problem, they are there now, and what they can demonstrate to us, through their changed behaviour, is that they are different to those who went before them. This is not about being self-congratulatory, but we have a strong expectation that they do the right thing by their customers. I am glad to see movement in this direction - it is no more than that - but it should not have happened in the first instance. The lenders in question are entirely responsible, and no one else, and we should hold their feet to the fire on that. I think the work of the regulator together with the public spotlight has actually done that. It is a pity it has come to that but it is absolutely necessary that we align to ensure we get further change, and I want to see that change continue.

Senator Gerry Horkan: I welcome that Ms Rowland acknowledges it should never have happened and that the banks are at fault - we all know that - but the Central Bank is the regulator-----

Ms Derville Rowland: That is right.

Senator Gerry Horkan: -----and the watchdog or the bloodhound - whatever the word is. It is there to supervise and regulate. Just as internal auditors in banks should have been watching and people should have been fearful of the internal auditors and their external auditors, they should equally have been fearful - to a greater extent than they were, clearly - of the regulator. The witnesses represent the Central Bank. Every advertisement on radio and television states - or used to state - "governed by the regulator", and everyone thinks, "That is great. There must be proper oversight."

I have many other questions to ask. This is important, and I acknowledge Ms Rowland's comment that the opening statement was not as self-congratulatory as I felt it appeared.

Professor Philip Lane: I will make a few points. It is interesting that the Senator brought up the radio advertisements, which do convey that message. A very important principle of all of this is that, because our code is quite directional and states how we expect lenders to behave, if they do not behave in that way, we get them. This is what is happening now. Hundreds of millions of euro have been paid and will be paid to these 33,000 people, mostly not because the lenders violated the law but because they violated our regulatory codes. On foot of the fact that we have a very proactive framework and are quite directional and precise in stating how lenders need to deal with customers, when they do not deal with them that way, they will pay. We think this tracker examination is a watershed because, if lenders had any doubt previously

that we would follow up on their actions and, in Ms Rowland's phrase, hold their feet to the fire, this is proof we did not let go. We have proven that we persisted and ensured all those who we think should have been included were included. Never again can any lender make a calculation that if it delays, the matter will go away. This has not gone away. As we said, the banks have calculated it will cost them €900 million, so our action will have a costly impact. I share that there was regret. Could we have gone faster or done more? However, the fact that we have these codes and issued warnings in 2008 is now coming home to roost in terms of our ability to ensure redress and compensation for those affected.

Senator Gerry Horkan: On the point that it will cost them €900 million, approximately €600 million of it is redress and compensation, and Professor Lane said the compensation is in or around 15%.

Professor Philip Lane: So far.

Senator Gerry Horkan: Therefore, it is not costing them an awful lot. If a taxpayer does not pay the Revenue, typically interest and penalties are more than 100% of the amount the person was trying to not pay in the first place. The penalty here is approximately 15%, plus the staff costs. I accept there are staff costs, whatever they are, and we have acknowledged that some banks have hundreds of people involved at this stage. However, of the €900 million that they are giving back, 100% of the 115% is that €600 million, is the people's own money which they should never have lost in the first place. Therefore, it is not really costing them money. It is costing them money they should never have taken. The narrative is that it is costing them a lot of money but they are paying back money they should never have had, plus the administrative burden for doing it. However, on the compensation payments, as I said about Revenue, if a taxpayer does not do something right, he or she will be hit with interest and penalties of more than the amount that was not paid. I accept that it is an average and the figure will be higher for some people but the banks are being asked to pay 15%, which is not that expensive.

Professor Philip Lane: I will make a few points that might be helpful. That the €600 million should never have disappeared from people's accounts in the first place is a reasonable perspective and a fair point. Another perspective is that, compared to a situation where we had not taken action, at the very least it is going to go back to those people. If they believed that we were never going to pursue them, at that level it is €600 million. We have not yet come to the enforcement stage. Let us see what happens in terms of fines and so on.

The other point is about compensation. The figure of 15% is what we have seen so far. The example about Revenue where it can be harsh-----

Senator Gerry Horkan: That is as a kind of disincentive to doing it in the first place. If the banks think the compensation to be paid will be 15%, why would they not take a chance?

Professor Philip Lane: First, administrative sanctions may come their way. I also think the reputational damage has been severe. Let me come back to the issue of compensation. It is important to note that the appeals mechanism is ongoing. What one might expect to see is a much higher fraction of compensation for those who suffered the most severe harm, that is, loss of home and that kind of thing. In terms of more severe cases that go through the appeals process, let us see where it lands. It will be interesting to see where compensation ends up. The 15% figure is an aggregate for now. It is not the case that it is the final indicator.

Senator Gerry Horkan: To develop that point, has the Central Bank got a breakdown

of the range of compensation and redress payments by amount? Professor Lane spoke about people who might have been overcharged by €100. I tried to get it out of one of the banks if anyone was overcharged by more than €100,000 and they said not really. The following day at 8.30 a.m. I got a phone call completely out of the blue from someone saying that individual's amount will absolutely be more than €200,000. Does the Central Bank have a breakdown, by band, of the amount of compensation paid to the 74% of the first 13,000, to the 29% of the second 13,600, and to the 7,100 in the initial tranche? I am not talking about individuals. Some people were overcharged by less than €1,000, others by less than €10,000, and others again by in excess of €30,000. Some were overcharged by more than €500,000. Do we have those figures?

Professor Philip Lane: The design of each of the schemes is intended to ramp up the importance of compensation depending on the severity. If a person has been overcharged by €100, the amount of compensation will be a small fraction, whereas the design for loss of home is much bigger. I will ask Ms Rowland to explain it.

Ms Derville Rowland: I have some information to assist the committee understand where this has landed. At the entry level, if I may call it that, are some of the marginal cases or cases for a short duration. It may have been an error for a number of weeks and one might end up with small sums. It could be a few hundred euro. That is at the entry level.

The committee has also heard about advice payments. However, everything scales up the more severe the detriment. Then we move into the category where I think most people affected will fall. The range of compensation is between 10% and 15%, depending on what the lender arrived at. Some put floors in the system. For example, there would be a minimum payout of €1,000. Others did not. The minimum ranges might be between €125 to, say, €1,500, but they are in a scale of percentages.

Then we move up to the next level where, at the highest point, we have the loss of one's home. We had to do a huge amount of fighting with the lenders to improve the schemes. We had that conversation in October. My colleagues had in excess of 200 turns of documents to try to keep improving the offers where there was desire not to have any compensation at all, which was utterly unacceptable. It was to push them to minimum levels. By and large, we pushed for a minimum cash payment of approximately €50,000 for everyone who suffered the appalling circumstance of losing his or her home, which should not have happened.

Senator Gerry Horkan: Is that compensation on top of the value-----

Ms Derville Rowland: It is compensation to try to assist with the misery that all of this caused, although there are other elements to it too. Then there are payments for the increase in the property value, if that has occurred since, and any residual debt write-off because people may have been in difficulties. This is where the banks caused the loss of the home ownership, that is, but for the behaviour of the bank they would have been able to pay their mortgage at a lower and correct rate. This is where causation has been accepted by the lenders. It is important to say that we are going to test the banks hard on that. It is very important that they take full responsibility for all of the homes lost as a result of their conduct. That is another feature of our intensive intrusive supervisory stage that we are now entering. We are going to inspect the ones that they do not take responsibility for - not the ones that they do - to be assured about the numbers. Therefore, we might see the number in that category quite rightly increase. If caused by the lenders, they will be forced to take responsibility for it. It is important to say that the scale of legal payments and advisory payments also should quite rightly increase the more the

detriment suffered. There is also provision in the schemes for vouched expenses where it goes beyond the caps. This is important because these things can be complex.

Chairman: Will Ms Rowland go through those headings again? If a customer loses a house valued at €200,000, what is the Central Bank expecting to happen?

Ms Derville Rowland: At a minimum the customer can expect to be properly redressed and compensated for all the impacts and detriment that happened. I am not saying these are ceiling amounts. By and large, one can see across all of the lenders' schemes a minimum that we pushed-----

Chairman: With the house worth €200,000, what can the customer expect?

Ms Derville Rowland: The customer should expect a payment for any increase in the property value since the loss of the home. If the customer should have not lost the home, he or she should be entitled to any uplift in the value of the property. Further, people were left with residual debt with the lenders after this happened and we did not think that was right either. Therefore, we also pushed that it should be written off so that people do not have to deal with the overhang. To try to assist somewhat with the wrong circumstances people find themselves in, we pushed the lenders to accept that they should make a cash payment of €50,000 to families who need it. This is with respect to home loss caused by the lender's conduct.

Professor Philip Lane: That is the situation now. We expect that in the case of anyone who has lost their home, we will test that through appeal.

Chairman: Before the witnesses finish that matter, is it not the case that there are other things? There are vouched expenses.

Ms Derville Rowland: Yes.

Professor Philip Lane: To assist in bringing the appeal or whatever else someone wants to do, the amount of legal support for someone losing his or her home will be much greater than if someone is querying a margin, for instance. There is a mix between having upfront payment to pay lawyers or some upfront payment plus the covering of reasonable expenses such that as the individual submits lawyers' bills, the bank will pay them. There is a range there.

Of course the most acute cases involve the loss of home. The schemes are designed to provide reassurance to those who have been affected that they will have redress, not only in respect of the consequences of losing the home but will also be compensated.

Senator Gerry Horkan: On legal action and the solicitors for which the Central Bank is paying, the banks are ultimately paying for legal people to go in and advocate on behalf of people. They will ensure that in a case where a client lost a house that was worth €400,000 when he or she lost it but which would cost €700,000 now, were the client to try to buy it back, that client would receive €700,000. The Central Bank is not going around buying properties for people but is compensating them to the extent that they could buy them themselves.

Professor Philip Lane: That has to be the case. How else could it be?

Senator Gerry Horkan: That is the question I am asking because until now I did not know that.

Professor Philip Lane: Okay.

Ms Derville Rowland: That is very important. It is the causation. Considering the harm caused to a family by the conduct of the lender where the home was lost to them as a result of that, as well as the consequences that flow from that, it is absolutely right that the banks should stand full square and shoulder that and that a family should be put into the position in which they should have been, had this not occurred to them.

Professor Philip Lane: Plus compensation.

Ms Derville Rowland: Yes. There is all the damage, the emotional and family distress that occurred, which is very important. What is also very important is that the banks treat these families sensitively and prioritise them and progress these claims in order that people are not further distressed by delay. That is something that we are very mindful of and I have been very clear in my communication with the leaders of the banks that we expect that to happen and that families be assisted and dealt with proactively and sensitively.

Senator Gerry Horkan: It is important that we acknowledge that. I was not aware that the system was as has been outlined today, and I am glad to hear that it is, but we still need to acknowledge the mental trauma and anguish, regardless of whatever monetary compensation is put in place, as it should be. We have discussed previously how people have committed suicide and lost family members and how many families have experienced breakdowns. They will never be able to be compensated for what should never have happened and what was not their fault. They were duped by the institutions they trusted to give them a financial product that they were going to repay over a period and were put under such pressure. Regardless of whatever monetary compensation is paid and should be paid - I note much of it is their own money, although I accept that compensation for increased property values is a cost to the bank - it should never have happened in the first place.

I acknowledge the process and thank the witnesses for outlining it but I still wonder if the Central Bank has figures which show the ranges of payments. There are 33,000 clients, of which some 13,000 are unresolved cases and payment has not been made, and then there are around 20,000, including the first 7,100 to whom payments have been made. Does the Central Bank have figures showing, for instance, that so many people were paid below €10,000, €20,000, €30,000 and all the way up? What is the top payment made to anyone as a result of this scandal? Do we know that figure?

Professor Philip Lane: We have given the committee aggregate figures in order that members can work out the average payment. It is a good question to explore with the individual banks as they come in because they will have full sets of their data.

Senator Gerry Horkan: Does the Central Bank have the data?

Professor Philip Lane: We have aggregated data. Remember, ultimately, the banks are responsible. We have provided minimal guidance and told the banks that they must have followed the principles that we have just outlined but we have always made sure to maintain the focus that the ones who are responsible and need to be held to account to ensure that the level of payout is appropriate are the ones who caused the problem, namely, the banks. As the banks come before the committee and through any questionnaires the committee gives them, it may explore not only the aggregate figures but how they have dealt with the full range of cases.

Senator Gerry Horkan: We are a finance committee. We all know that averages can hide as much as they show up. If one divides the €47 million first tranche of compensation by the

7,100 clients, it works out at around €6,000 each. Then it increases to about €18,000 each and the last batch seems to be about €22,000 each, but within that there are people who received €100 and there could be people who received €200,000. Professor Lane is saying that the Central Bank does not have those figures. Is it the case that the banks have not told the Central Bank those figures or that the Central Bank cannot provide them to the committee?

Professor Philip Lane: The Senator may have noticed as this has moved along how, back in October, the 13,000 cases that the banks had accepted were broadly split between wrong margin and being denied a tracker rate. Being denied a tracker rate is much more costly. What we have now is three-quarters of the cases are those who were denied a tracker rate. There are more big cases now compared with earlier.

Senator Gerry Horkan: So what is left is bigger than what was paid out.

Professor Philip Lane: Exactly. We have more big cases coming through.

Senator Gerry Horkan: I have one final brief question, it is a particular case that I was asked to raise. This person was with Bank of Scotland and was under a lot of pressure. The person left Bank of Scotland, sold the house and downsized to a much smaller house. That person does not know whether they were affected because they closed their account. To whom can that person go to ask that question?

Professor Philip Lane: I will ask Ms Mitchell to respond.

Ms Helena Mitchell: The originator in this case was Bank of Scotland and it is under an obligation to review that account. The framework includes accounts that have been redeemed or closed, whether it was voluntary or involuntary.

Senator Gerry Horkan: If this person wants to find out that they were or were not affected, who do they go to?

Ms Helena Mitchell: Bank of Scotland.

Senator Gerry Horkan: Bank of Scotland does not exist.

Ms Helena Mitchell: Sorry. They can go to the current person.

Chairman: We are going to have another round of questions but we are obliged to take a break at this stage. I suggest we take a break until 2.15 p.m. Did Senator Conway-Walsh want to ask about something specific?

Senator Rose Conway-Walsh: It was related to that. What is ironic about all this is that ultimately citizens will pay because of the generous tax write-offs of which each of the banks is in receipt. They will be able to write-off all the costs, the redress and compensation over a 20-year period. Is that true?

Professor Philip Lane: These are costs to the banks. It reduces their profitability and they pay tax on profits. The tax rate is not 100%.

Senator Rose Conway-Walsh: So unless there is individual accountability, in the long term there is no pain to the banks.

Sitting suspended at 12.58 p.m. and resumed at 2.17 p.m.

Chairman: We will resume with Deputy Michael McGrath.

Deputy Michael McGrath: I will stick with the issue of tracker mortgages as I have a few follow-up questions. I would like to revisit the issue of the prevailing rate, about which a number of members, including me, asked questions. I gave Ms Rowland an extract from a contract during the break, which I do not expect her to have read yet. I have some questions on how the Central Bank approaches this issue. The contracts I have seen, including the one I shared with Ms Rowland, do not appear to feature a definition of the prevailing rate. Is it generally the case that the prevailing rate is not defined in mortgage contracts?

Professor Philip Lane: In the work we did on this there was considerable discussion on what is a sustainable interpretation of prevailing rate. I keep making the distinction that the prevailing rate is generally interpreted as the rate the bank would offer at the conclusion of the fixed rate period. To repeat, in any individual case there may be additional documentation and evidence that any individual could bring forward to state it had been conveyed to him or her that prevailing rate meant something different. In general, the interpretation is the rate prevailing at the end of the period of the fixed rate. However, that does not rule out how an individual case might be heard under appeal or to the ombudsman.

Deputy Michael McGrath: We heard that earlier. To repeat my question, is it the case that the prevailing rate was generally not defined in the mortgage contract?

Professor Philip Lane: Yes, that is correct. This is why it has left so much confusion.

Deputy Michael McGrath: That is, therefore, the case. I will take, by way of example, the contract I shared with the witnesses before the meeting resumed. The extract I provided is from an Allied Irish Banks mortgage contract with one of the 4,000 customers in the category identified by AIB as being within scope. I understand the customer in question will receive the compensation offer of €1,000. I just want to give my interpretation of it. When I read clause 3.2 in the contract which deals with what happens after the fixed rate period has expired, it states that at the end of any fixed interest rate period the customer may choose between (a), (b) and (c), where (a) is a further fixed interest rate period, (b) is conversion to a variable interest rate mortgage loan and (c) is conversion to a tracker interest rate mortgage loan. Relating to all of them, it states it is at the bank's then prevailing rates appropriate to the mortgage loan. If the customer does not exercise this choice, the mortgage loan will automatically convert to a variable interest rate mortgage loan. There is no definition of what the prevailing rate is. Professor Lane has given us in broad terms the Central Bank's interpretation of it, which is supportive of the bank's interpretation. I put it to him that that completely ignores clause 3.6 which provides a very explicit definition of what a tracker interest rate mortgage loan is. If one takes clause 3.6.(i), the tracker interest rate is made up of two parts, the ECB's main refinancing operations minimum bid rate which is variable and the tracker margin as stated in Part 1 of the particulars of offer of mortgage loan subject to clause 3.6.(iii). Professor Lane does not have Part 1, but in this case, Part 1 states a margin of 1.1%. Clause 3.6.(ii) states a tracker interest rate applicable at any time will change within five working days of a change in the ECB rate, while clause 3.6.(iii) states the bank may adjust the tracker margin upwards if the valuation report values the property at less than the property price estimated value shown in the particulars of offer of mortgage loan. That is not the issue in dispute as that does not apply, but we have very clear definition on what a tracker mortgage is. In the context of this mortgage contract, the tracker interest rate is the ECB rate plus the tracker margin which is stated elsewhere in the mortgage offer and which in this case was 1.1%.

If we go back to clause 3.2, it is very clear what the options are for the customer at the end of the fixed-rate period, namely, a further fixed rate period, conversion to a variable interest rate mortgage loan or conversion to a tracker interest rate mortgage loan. It goes on to state "at the bank's then prevailing rates appropriate to the mortgage loan". There is no definition of what the prevailing rates are, what they mean or what can be interpreted from it, but there is a very clear definition in clause 3.6 of what a tracker interest rate mortgage loan is. I put it to Professor Lane that the interpretation the bank - AIB in this case - has put on the contract - this is replicated across a large number of the 4,000 customers - which the Central Bank seems to support has no regard to clause 3.6 which defines explicitly what a tracker interest rate mortgage loan is.

Professor Philip Lane: When we looked at this - there is a big body of work to be done to sort this out because it did affect a lot of customers - the assessment we made was that the interpretation was the one we have gone over several times today. If we make an alternative decision, our regulatory decisions can be challenged on appeal. In other words, if we make a regulatory decision in the belief it will be successfully appealed by the regulated firm, of course if we do not think we can stand over it based on the evidence and advice we have received, that means there is that interpretation. I recognise the confounding nature, but the Deputy can be assured that throughout we have always had a consumer focus. We push as far as we can in favour of the consumer, but it remains the case that it must be within the bounds of what is permitted by regulation. I will hand over to Ms Rowland who led the work.

Ms Derville Rowland: I stand over everything we said this morning. We made the decision on a particular set of facts with the particular benefit of the document and all of the surrounding material. I have a document in my hand, but I do not have the benefit of Part 1. When we look at something, we look at all of the information available to us in making the decision. As I do not have the benefit of seeing all of the information, I cannot say if it is identical to the other contracts and pieces of information at which I have looked, together with many others. I note what Deputy Michael McGrath said about what Part 1 states and the way at which he would look at it. I do not wish to gainsay him. I accept his point of view, but for me to express a view on it, I would need to see all of the material, as I am sure he understands.

Deputy Michael McGrath: Yes, but it is the standard contract. It is the contract that I suspect governs a large number of the 4,000 cases AIB has now stated are included in the scoping exercise and in which it is offering €1,000 in compensation.

Professor Philip Lane: That is why we felt there was a layer of additional comfort, the interpretation that the dominant clause was the then prevailing rate in determining what the tracker rate would be when the customer rolled from the fixed rate. In other words, compared to a situation where any bank stated this type of contract was out, because there is no loss, we have included them, but the fact is they did not receive their contractual rights to be offered the tracker rate, whether it was more or less expensive. Because they are included they can use the appeals mechanism which is independent to test what they are saying that in their circumstances they interpreted the clause to which Deputy Michael McGrath is referring as the total guidance in this case. In other words, we have left the door open in order that this debate can continue through the independent appeals mechanism. As a matter of generality, the systemic issue is the definition of the then prevailing rate.

Our expert advice was that this would have led to an expensive tracker rate being charged from late 2008 onwards, but it remains the case that they are included in the examination. If they do not accept this offer or interpretation, the independent appeals mechanism is available to challenge it. On top of that, the ombudsman remains in place, as does the courts option. That

is the answer we received and it provides the option to continue to pursue the matter. As regulator, we felt that at a systemic level, that was going to be in line with the regulation, but that does not prevent further action and we deliberately designed it in that way. Because they are included they can use the independent appeals mechanism if they want to test the interpretation. The people who are running the independent appeals mechanism may come to the conclusion to which Deputy Michael McGrath has come, that, essentially, in the individual case we have the evidence of what they understood the interpretation of the then prevailing rate to be; therefore, it remains a live issue for those who believe they were misled or that the full nature of the documentation they had was misinterpreted.

We are in the position where the initial offer recognised that they should have received an offer of a tracker rate, which they did not. In this case it is being stated the tracker rate the bank should have offered would have been expensive. It remains the case that the independent appeals mechanism, the ombudsman and the courts remain open to any of those concerned to challenge that interpretation. That is the built-in assurance mechanism that there are additional ways to test it. We felt that within the bounds of the regulation the dominant interpretation was that it was permissible to reset the price of the tracker mortgages in line with the prevailing conditions at the time following the roll-off from the contracts.

Our mandate is to protect consumers. That is the only criterion - whether we can protect consumers within the realm of the regulations. That pushes it as far as we think we can go, subject to the regulatory framework. It is not about siding with the banks but about making an objective decision, with the advice of our staff and external legal advisers.

Deputy Michael McGrath: I believe Professor Lane is wrong. That is my honest view. When I read through the documentation, I believe it is clear and that he is on very thin ice. He has selectively relied on one clause in the mortgage contract which refers to the prevailing rate. He is shaking his head. Will he, please, hear me out? There is no definition whatsoever of the "prevailing rate". The clause is very clear that the customer is entitled to a tracker interest rate mortgage loan. It goes on to mention the bank's prevailing rate which is undefined, but Professor Lane seems to have no regard to the corresponding clause that defines what a tracker interest rate mortgage loan is. The only variable element is the ECB rate, plus the tracker margin which is stated elsewhere in the mortgage documentation. This is common to the other mortgages caught up in this cohort. Professor Lane should let me finish. Kicking this down the line to the appeals mechanism, the ombudsman and perhaps the courts is a cop-out. The best chance customers have at this stage of having this issue dealt with is through the regulator. In AIB's case 4,000 instances have been identified. The delegates have said, perhaps ten times between all of them, that while this is at a systemic level, the individual cases will go through and that the individuals concerned will have recourse to all of the further steps. If the matter is not dealt with now, the chances of the ombudsman overturning it are quite slim because Professor Lane has given the Central Bank's endorsement in broad terms to the approach of the institutions to this issue. It has been signed off on.

Professor Philip Lane: To repeat, we took this issue very seriously. We take the perspective of the consumer entirely, subject to the limits of the regulation. All of the terms and conditions included in the contracts were studied by us and our advisers. It is not a question of discounting or ignoring. They were studied intensely and a large amount of work went into the decision. We disagree with the Deputy. Our role as regulator is focused on solving the systemic element, but that does not rule out the fact that in an individual case there may be extra pieces of information. An individual may have additional correspondence with a bank or a broker. He or

she may have recorded conversations or a record of interactions with members of staff. I know from other sources that many people might be unhappy with this outcome, but we have taken it as far as we think we can go, subject to the regulatory framework, and have left the door open, through the appeals mechanism, for those who want to bring forward additional information. I respect the fact that there are differences of view. It is clear that is the case, but we have pushed it as far as we can.

Deputy Michael McGrath: It is clear that is Professor Lane's view, but I do not believe it has been pushed as far as possible. This will leave a sting in the tail in the handling of the tracker mortgage issue. Professor Lane has placed a greater priority on a reference to the prevailing rate, which is undefined. Greater priority has been placed on one interpretation of an undefined element of the contract than on a very explicit definition of the tracker mortgage rate.

Ms Derville Rowland: With respect, it cannot be said that that represents the totality of our work or thinking. What I have been given is a two-page photocopy of Part 4 of a contract, with two parts placed in front of me and presented immediately as the defining moments, but that is not how the work was carried out. I do not have the complete information. This was given to me a few moments ago. The Deputy will understand why I believe this does not present me with an opportunity to give a full articulation or presentation. With this document, it appears to me that something important is not here, namely, clause 3.6.i in Part B. As it is not in front of me, I cannot say what it is or what it is not, let alone make a just comparison with the many long hours of work we put in in considering substantively the tracker margin issue.

Deputy Michael McGrath: It would be very helpful if the Central Bank wrote to the committee setting out its assessment of the prevailing rate issue and the factors it took into account in arriving at the broad conclusion that the approach of the institutions was to interpret the prevailing rate as being that which applied at the time a person came off the fixed rate.

Professor Philip Lane: That would probably be more effective. In a verbal two-way conversation on the issue we can only give a partial explanation, whereas if we lay out our explanation on paper, it can be studied by the committee.

Deputy Michael McGrath: We will have further engagement.

The delegates have been asked this question, but I want to get a clear answer. The Central Bank has not to date found any evidence that there is a corresponding problem in the case of commercial loans. I corresponded with Ms Rowland who responded. I will send on the additional information requested on an individual case. More broadly, the Central Bank has not found any issue with tracker rate commercial loans. Will the delegates be clear on that issue? I am referring to EURIBOR-linked loans and similar practices engaged in by banks.

Mr. Ed Sibley: The short answer to that question is no, we have not seen any such evidence. We are aware of the specific case to which the Deputy referred and have followed up on it, to the best of our understanding, and will continue to explore it. There are very clear contractual terms in the particular circumstance.

Deputy Michael McGrath: I am speaking in broad terms. I do not expect-----

Mr. Ed Sibley: We have carried out an enormous amount of work in connection with commercial loans to small and medium enterprises, SMEs, over a long period. For the avoidance of doubt, the SME owners who have mortgages fall within the scope of the tracker mortgage examination. That is not the Deputy's question, but I want to be very clear on that issue. Since

the crisis we have carried out numerous inspections in the banks looking at SME loans, led primarily by the banking supervision mechanism, and how they were being dealt with. We have seen no evidence of problems in that regard. We also note that the protections in place for SME borrowers are somewhat different from those in place for retail borrowers, but at this stage we have seen no evidence of problems. There is one particular issue in the public domain about the treatment of distressed SME debt in one particular bank, but I do not believe it is relevant to the precise question being asked.

Deputy Michael McGrath: My question is whether the Central Bank has identified any case in which it believes a bank wrongly took a commercial customer off a tracker rate-type loan, typically a EURIBOR plus loan, and whether there is a wider probe into that issue or if a wider probe is thought to be unnecessary.

Mr. Ed Sibley: The word "wrongly" is important in that question. We have seen cases in which there have been changes, but the contract between the borrower and the bank associated with the particular loans are very clear.

Deputy Michael McGrath: The contract provided for the changes.

Mr. Ed Sibley: Exactly.

Deputy Michael McGrath: In the delegates' view, no case has been identified in which there was a breach of-----

Mr. Ed Sibley: No.

Ms Derville Rowland: Not to my knowledge.

Deputy Michael McGrath: It is important to be clear because people constantly come to us to make allegations in respect of commercial loans.

Mr. Ed Sibley: If the Deputy has specific information which indicates that there is such evidence, we will be happy to receive it, as we were in the case he recently referred to us. We will look into it and if there are issues that need to be followed up, we will do so.

Deputy Michael McGrath: I want to ask about the miscalculation of arrears by Start Mortgages and Tanager. There has been some confirmation in that regard. I am aware of a court case in Northern Ireland and know that both Start Mortgages and Tanager have written to customers about an incorrect calculation of arrears and how interest was treated. Will Professor Lane bring us up to date on where the Central Bank stands on this issue, what its role is and whether he has any information or figures in respect of it?

Professor Philip Lane: We are aware of this issue and Ms Rowland is best placed to answer.

Ms Derville Rowland: We are aware of this issue and we have been actively involved with it for quite some time. We are in supervisory engagement on the matter. In broad historical terms, it is not a practice that is predominant in this jurisdiction. The methodology used for calculation of arrears is a different approach. This was a more UK-based approach. In a UK court case, the judge, in effect, stated that one cannot have one's cake and eat it by capitalising arrears, on the one hand, and then claiming there are arrears, on the other. There was no double charging, if I call it that, but there was an overstatement of arrears. The judge stated the arrears must extinguished if they are capitalised. It was an approach. What subsequently occurred was that the UK regulator did not introduce a rule banning it, but stated, effectively, that

people's repayment amounts might be increased on a monthly basis and if, for example, they were increased by more than £50, it would make it very difficult to pay and so it guided against that. We were aware of this and took the view that it was not a practice we wanted to see here. I am glad to say that it was not a practice widely held in any event in this jurisdiction, but it did arise with entities that had their origins in the UK. We guided very strongly that it was to stop and that is what we expect to see. We are aware of what happened and we are taking regulatory action.

Deputy Michael McGrath: Is Ms Rowland stating that it did not impact on the overall amount outstanding on the loan, including the arrears, but that it may have impacted on the calculation of the monthly repayment?

Ms Derville Rowland: The level of indebtedness was correct. The monthly repayment was larger because the arrears were capitalised, but the arrears were overstated. This could be a risk if the two systems did not talk to each other, if the Deputy understands. It was very distressing for people to perceive or believe arrears were presented as being larger than they should have been because the amounts were also being capitalised. It was an information presentational problem. The arrears could be overstated, as well as being dealt with separately through an approach where they would be capitalised, and that could result in a larger monthly repayment request being made.

Deputy Michael McGrath: When Ms Rowland says regulatory action is being taken what does she mean? Has she identified how many lenders are involved?

Ms Derville Rowland: I cannot provide specific information but it is a live regulatory matter.

Deputy Michael McGrath: What is the Central Bank's view in circumstances where these entities have brought repossession proceedings or are before the courts in respect of customers?

Ms Derville Rowland: My understanding is they have been withdrawn from the court proceedings in order to ensure that they check and catch this issue. We are looking into it.

Chairman: I will follow up on the very same point on the action of the Central Bank in regard to Tanager and Start Mortgages. The cases that have ended up in court would have caused a considerable amount of difficulty, trauma and unnecessary actions for the borrower, and left many people quite distressed. In the context of this, how will they be compensated for what has happened to them?

Ms Derville Rowland: I cannot comment on any of those matters. I certainly recognise-----

Chairman: No, is it within the remit of the Central Bank to deal with such things to that extent?

Ms Derville Rowland: At the moment, our key focus is on ensuring that this practice ceases and we will take it step by step. At the moment, we are ensuring that this matter does not continue. That is our first focus. As we deal with the problem we will look into the various aspects of it.

Chairman: All I am asking is whether the Central Bank has the power to deal with it beyond just that.

Ms Derville Rowland: We would have to look deeper and step by step into the regulatory

issues that are arising. We have significant and widespread regulatory powers and we are able to use them where it is appropriate to do so.

Chairman: That is fine. That is what I wanted to know. I asked earlier about credit servicing firms. On the list, the total number of transitional credit servicing firms is three and the total number of authorised credit servicing firms is eight. Will the witnesses explain what are transitional credit servicing firms?

Professor Philip Lane: I will ask Ms Mitchell to explain.

Ms Helena Mitchell: When the Consumer Protection (Regulation of Credit Servicing Firms) Act came into effect in 2015, a number of firms were providing that service. They stood authorised until such time as they went through the full authorisation process by the Central Bank. They are on our register, but they are subject to the regulatory requirements and then they must go through a full authorisation process. Some decisions are yet to be made on authorising the transitional firms.

Chairman: With regard to the eight listed, we have been writing to Pepper Asset Servicing as a firm that gives management services. I do not see it listed here among the eight.

Ms Helena Mitchell: It is authorised as a retail credit firm I believe, and not a credit servicing firm. If another authorisation is held, a firm may be able to provide that service. It is on a register, but it is on the retail credit firm register.

Chairman: So it is an authorised agent.

Ms Helena Mitchell: Yes.

Chairman: What is the separate list Ms Mitchell is speaking about?

Ms Helena Mitchell: We have different categories of firms that are authorised. What the Chairman has in front of him is the credit servicing register.

Chairman: Yes.

Ms Helena Mitchell: Retail credit firm is a different authorisation type and Pepper Asset Servicing is on that register.

Chairman: Can we get a list of those also? How many other lists of these firms does the Central Bank have?

Ms Helena Mitchell: There are more than 3,000 retail firms and there are various registers.

Chairman: Okay. Regarding the list of credit servicing firms, again we were dealing with Capita Asset Services. I understand it was purchased by Link.

Ms Helena Mitchell: Yes, Link Asset Services.

Chairman: In registering these firms is it possible to insist on the name being registered in such a way as that there is a clear distinction? For example, we have Acenden DAC and Acenden Limited. These are two different firms doing the same thing. Is that right?

Ms Helena Mitchell: I am not sure of the details. I can check it for the Chairman and come back to him.

Chairman: They are listed as credit servicing firms. Going down through the list, I am making the point the distinction between these firms is not clear enough. I presume they are separate legal entities of their own standing as they are registered here.

Ms Helena Mitchell: I do not have the register in front of me, but I can check and come back to the Chairman.

Chairman: It is similar to the question we asked of AIB when it came before the committee. AIB has in excess of 100 companies and it has two banking licences. It would seem, from reading the name of the bank that holds the licence, the only difference in the context of the visual, is in the titles "AIB plc" and "AIB, plc".

Professor Philip Lane: Let me make a general point. This is a real issue in finance. If we take the global firms, they have thousands of legal entities within them, if we think about diving into a big global bank. We regulate many international banks. We get a global map of how one entity relates to another. Absolutely, this is all driven by corporate lawyers setting up legal entities to suit particular transactions for all sorts of reasons. It is the case that life would be a lot easier for everyone, for us for visibility and for the committee and the general public, if, for example, it was obvious in every case what is the parent firm and what is the ultimate controlling firm. I agree that the law is such that firms can set up all sorts of subsidiaries and vehicles that may be interconnected and the position is not always obvious. In the examples the Chairman has given at least the same name is showing up somewhere, but we know many global firms have all sorts of bizarrely named entities below them. It is a job of work for us as regulators to keep clear about the interconnections between firms. It makes it hard for everyone else to keep track of what is going on. I agree with that.

Chairman: I want to ask in specific terms about AIB. Is this not AIB plc and then AIB, plc?

Professor Philip Lane: We can come back on the details-----

Chairman: The bank only has two banking licences and that comma is the only difference between both of them, excepting the fact they are two very separate entities. When a person goes to a court and begins to explain publicly that his or her loan was with AIB, plc, the courts can often believe that the person is tricking around with the title but in fact it is quite a significant and fundamental difference. Will the Central Bank please check this? Is this the only difference? I have already asked AIB and will ask again. The public needs to know and we need to state clearly the difference - if there is one - between the two companies with this type of title.

Mr. Ed Sibley: The easiest thing to do is to come back to the committee on the specifics.

Chairman: That is okay. The other issue on the vulture funds is that the responsibility and the obligation conditions of the original loan travel with the loan wherever it goes.

Professor Philip Lane: No, the originator is responsible for paying out. No matter who holds the loan now, the bill is paid by the original firm, on tracker mortgages.

Chairman: Concern has been raised at this committee, particularly from the small and medium-sized enterprise, SME, sector, about restructuring units within AIB and Ulster Bank. The unit in Ulster Bank came into focus first. Some loans that were sold on were performing loans. It has been found that the loans are now mixed up under the name of one particular fund. There may be a number of portfolios in that fund that actually represent competitors. There may be two or three portfolios, let us say they are hotels for example. They all represent hotels but they

are three different portfolios. The management of the fund relative to the loans is such that the performing loan is put under pressure because the vulture fund wants to get a different outcome. Let me finish painting this scenario for the witnesses. In other words, it may very well want to amalgamate all the portfolios and sell it as one but it has a performing loan that makes it difficult to sell. The fund management is using its muscle and this is anti-competitive. It is forcing the performing loan in a particular direction. I refer to a scenario in which the entity responsible for the loan, or which owes the loan, takes an action such as going to the Central Bank. As the Central Bank does not deal with individual cases - which I understand - that entity would be referred to the financial services ombudsman. Because the turnover of that entity is greater than €3 million, it has nowhere to turn but to the courts. To take a case to court against one of the vulture funds, which may be owned by Goldman Sachs or whoever, is simply not possible for an SME of that size. In the context of the Government asking the Central Bank if more legislation is needed, would Professor Lane perhaps consider that issues such as this require a different view regarding legislation? In Europe, an SME is defined as having a turnover of €50 million. In Ireland it is €3 million. When the Central Bank is asked by the Minister or by this committee if it needs stronger legislation, would Professor Lane consider recommending a change in legislation or regulation around that area of SMEs? Does the Central Bank want to go that far in its recommendations or not?

Professor Philip Lane: The Chairman has given an example, the core of which is essentially the same as the way we recognise that it is much better to use the ombudsman framework for households and for micro-enterprises valued below €3 million as an alternative to going to court. Given the asymmetry between a SME worth €10 million or €20 million compared with a gigantic global firm, the Chairman is saying that an ombudsman framework would be better than a court process. Because that is to do with handling individual cases, however, I believe it is a matter for the Oireachtas to make that decision. It is not a direct regulatory decision or issue of the ombudsman or the courts. In other words it is in the judicial realm rather than our realm, which is about the systemic handling of debt, loans and other financial services. We have protections for households and for SMEs as currently defined. The Chairman has asked whether our consumer protection framework should be expanded to include SMEs of a higher value.

Chairman: Yes.

Professor Philip Lane: We can come back to the committee on that. Given the way the question has been framed I do not know if we have exactly a-----

Chairman: When the Central Bank-----

Professor Philip Lane: We operate under the framework you give us.

Chairman: The Central Bank observes the market and the activities within that market - good and bad. When the Central Bank is asked whether it wants more powers, would it say to the Minister that from a consumer protection aspect, perhaps the Government should look at having an ombudsman or a role for the Central Bank to play in protecting SMEs that have a turnover value up to €50 million?

Professor Philip Lane: This is a valid issue to raise but the Central Bank operates under the framework given to us through the legislation. The Central Bank can always stand ready to give advice to the legislators. When asked what are the pros and cons of expanding the remit from €3 million to some higher number, this must be a politically led debate. We do, however, stand ready to advise the Government on the pros and cons of making the decision. We do this

a lot with regard to EU regulation.

Chairman: Could the Central Bank offer that advice to this committee?

Professor Philip Lane: I believe we would have to refer back to the Department of Finance about the modalities of the traditional way, which I recognise as being different in a minority Government situation, in how we offer advice to the Ministry and to the Oireachtas and so on. Perhaps my colleague, Ms Rowland, will comment on this.

Ms Derville Rowland: I certainly think it is fair to ask us to consider further the role of protective regulation in the SME space. The SME regulations as currently drafted conceive of €50 million in the SME lending code.

Mr. Ed Sibley: As the committee has asked us to consider it, the best thing to do is consider it. We will do that and come back on it. It is a reasonable question.

Chairman: With regard to the proposed Irish banking standards board, which was raised earlier on, what do the witnesses believe the make-up of the board would be? Have the witnesses been asked about the make up of that board?

Mr. Ed Sibley: Does the Chairman mean who is on it and how it is constructed?

Chairman: Yes, to ensure that it is not just window-dressing.

Mr. Ed Sibley: As I understand it, the board will be organised in a similar way to the UK board but we have not been consulted on it and nor would I expect us to be consulted on the construct because it is separate and distinct from any regulatory action. It is one of the actions being taken by the banks in recognising they have an issue in trying to address standards overall. As we said earlier, I believe it is a welcome development and it is at least a recognition that the banks need to do something. It does not, however, change anything we are doing from a regulatory perspective and nor would I expect it to change anything from a legislative perspective.

Chairman: What about their independent appeals board as regards trackers? Is Professor Lane satisfied that the boards or systems are independent?

Professor Philip Lane: The answer is "Yes". In designing this framework and holding the firms to account in executing it, it is vitally important that the membership have a majority of independents and others, including those with a strong consumer voice. Ms Rowland may be able to elaborate on that point.

Ms Derville Rowland: That is correct. We were very prescriptive in terms of the framework and how it should operate and that there be independent appeals with people suitably qualified with consumer-focused membership. A key requirement is to have a chairperson who is a qualified barrister or solicitor with at least 15 years post-qualification experience and has professional experience in assessing compensatory awards. We have prescribed the quality and types of people who should sit and make those decisions, such as those with competent finance backgrounds - qualified accountants, actuaries with at least 15 years post-qualification experience - and also a person with a consumer voice who has competent, credible experience. The more serious cases must be heard by a fully independent board and the cases with lesser impacts - I do not mean to denigrate them in any way - must be heard by a board with a majority of independent members. We wanted to ensure the quality of the independent element in those

frameworks.

Senator Rose Conway-Walsh: The Chair has kindly asked many of the questions I wished to pose. If a person has gone to the ombudsman and there has been a ruling on a disagreement, for example, between the Central Bank and the bank, can that person then return to the ombudsman? Once the ombudsman has ruled, can a person return to it? For example, if the Central Bank and the bank do not agree on a matter and it goes to the ombudsman, who rules on it or has ruled on it in the past, can it then go back again to the ombudsman?

Ms Derville Rowland: A dispute between the Central Bank and a bank should never go to the ombudsman. The ombudsman hears complaints from members of the public who are not satisfied with an event or occurrence with regard to their financial service product, approach or process. The first step of the expected procedure is for a person who is dissatisfied to make a complaint to and seek resolution from the lender that provided the service. If the lender, such as a bank, for example, does not resolve it to the satisfaction of the customer, the customer is then within his or her rights to make a complaint to the ombudsman, who will determine the matter. That determination would be between the customer and his or her lender on whatever is the issue. My understanding is that such decisions of the ombudsman are binding.

However, if the Senator is asking this in the context of the tracker mortgage examination, we were very clear and set out on a number of occasions that lenders were to ignore those decisions, start again with the tracker mortgage examination, take into account all relevant considerations and not be blinded by the decision of the ombudsman. The ombudsman supported that message. That is how we expected matters to be conducted in the examination. It is not particularly a question for me to answer but more for the ombudsman. The ombudsman is bound by his decision but if there is new information or a different aspect on things, my understanding is that it can open it up again from a different point of view.

Senator Rose Conway-Walsh: A person can go through the process a second time if new information comes to light.

Ms Derville Rowland: Yes.

Senator Rose Conway-Walsh: That is clear enough.

I very much welcome that the witnesses have publicly said that the vulture funds should come before this committee because I found it extremely worrying that they were refusing to so do. I note one item of correspondence from a vulture fund that says it is in constant contact with the Central Bank and is regulated accordingly. Are the witnesses happy with the way vulture funds are-----

Professor Philip Lane: Is the Senator referring to credit servicing firms or the ultimate loan owners, which might be a global firm that is not regulated here? Does she mean the local entity or the global firm?

Senator Rose Conway-Walsh: I am referring to the local entities which are regulated in Ireland.

Professor Philip Lane: Yes.

Senator Rose Conway-Walsh: Are the witnesses happy with the way such firms are currently performing?

Professor Philip Lane: Those firms are subject to the regulations through the credit servicing firms Acts. I will not say we are ever happy with any firm. They are subject to our regulations and have been through or are going through an authorisation process and will always be subject to follow-up, inspection and supervision. We have regulatory reach over them. We have different strategies for keeping track of how regulated firms are doing. It is partly reactive as problems come up and partly anticipatory through general inspections and so on. However, there is a framework in place to deal with those firms. That said, when the Senator or anyone else receives information, it should be passed to us. We welcome information from all sources such as protected disclosures, public representatives or individuals that can feed us any information. Such information is helpful to us in deciding where to look, how to intervene and so on.

Senator Rose Conway-Walsh: Have the witnesses found that the volume of information that has been received in regard to vulture funds has increased over the past number of months?

Ms Helena Mitchell: Not in regard to credit servicing firms. The term "vulture fund" is commonly used for the unregulated loan owners. However, the volume of information received regarding credit servicing firms has not increased.

Senator Rose Conway-Walsh: It has not increased for the regulated entities. The witnesses can see how it is confusing for people. People are interested in the banks that bunched up their loans and sold them off to what we would term "vulture funds". In many cases, people do not know who owns their loans and are in a very vulnerable position.

Professor Philip Lane: It is vital that the Oireachtas pass this law. We have a fair amount of reach compared to many jurisdictions where there is no such law. The fact that we came up with this structure whereby we have reach over the credit servicing firms means that even if a global investor owns the loan, and the global trade in loans is getting bigger all the time, there is a good degree of protection. This is quite an effective way to deal with the global issue of how one regulates and supervises loans at a national level that have a global ownership. This is an effective framework. We now have sight of these firms through authorisation and supervision and, therefore, have a mechanism to ensure they are subject to our various codes. That is an effective step this country has taken in this case.

Senator Rose Conway-Walsh: The future will tell.

Chairman: For clarification, it was stated that the Central Bank had said there was some degree of satisfaction with those agencies.

Senator Rose Conway-Walsh: No, what------

Professor Philip Lane: We did not say that.

Chairman: I want to make it clear that I earlier went through this issue with the witnesses and I am not satisfied------

Professor Philip Lane: We did not say that we are satisfied.

Chairman: That is okay. The Central Bank needs to remind these credit servicing agents of their obligations and responsibilities to the Oireachtas. The formal complaint that I have made to the Central Bank through the committee indicates that these companies are using strong-arm tactics with individuals and Members of the Oireachtas have complained to me about them. I expect that, in line with what was said earlier, such companies would be reminded of those ob-

ligations and responsibilities and of the desire of the Central Bank that they make themselves accountable to committees such as this one. That point was made earlier. I apologise for interrupting the Senator.

Senator Rose Conway-Walsh: That fits in with what I was going to say.

Professor Philip Lane: Absolutely. We not only remind such companies of that through the authorisation process and our ongoing supervision and regulation but have mechanisms to hold them to account. Members have spoken about the experiences of which they have heard and have told the personal stories of how people have been treated.

Chairman: They are horrendous.

Professor Philip Lane: We have the ability to hold banks to account through the regulations, the codes and so on.

Senator Rose Conway-Walsh: Those stories will increase as the number of attempted repossessions increase. Is the Central Bank satisfied that there are no attempts to repossess the homes of people involved in the tracker mortgage debacle?

Professor Philip Lane: This is a massive priority for us and we use the phrase "stop the harm" in this context. We need to make sure nothing is ongoing in this respect and repossessions should not be proceeded with where a person is part of this examination.

Ms Derville Rowland: We made it clear in the framework that a protective position was required to be taken by lenders. If in doubt, they must put a gate on the procedure. I am sorry it has been going on for so long but it is a job of an enormous scale. Lenders have been reminded of the seriousness with which we expect them to take this matter. We have been on-site with each of the main lenders and it has been part of the on-site supervisory work we have been doing. We have checked exactly what they are doing in respect of this issue. It is a collaborative piece of work between the conduct supervisors and the banking supervisors, because the latter are very familiar with the layout and structure of lenders. We take this very seriously.

Senator Rose Conway-Walsh: It was said earlier that originators were responsible for tracker mortgages even when they were sold off. Why does that not happen across the board?

Professor Philip Lane: The issue is when the harm was caused. If the harm was caused when the ownership was with a firm which later sold the mortgage on, it is the entity which caused the harm which is held responsible. If the loan was sold on and new harm was generated by the ongoing loan being mishandled, the new owner is responsible. It is about matching the harm to the lender.

Senator Rose Conway-Walsh: Will there be any difference between how the current and former board members of banks will be treated? I am glad the Central Bank is reminding board members of their responsibilities to identify criminality. Many of those former members will have big pensions. Are they out of the system now?

Ms Derville Rowland: They would be the subject of any enforcement scrutiny. We look at when an issue arose and try to match it with culpable persons in senior positions at the time. We examine the actions taken by the directing minds of the time and there is a challenge for current board members in the context of their obligation to put the customer first and to quickly and adequately compensate the people and families affected. There are those who took decisions

in the past and those who take decisions now in the context of the examination. I look to the current senior managers for a competent, responsible response, but the directing minds in place at the time are also accountable and responsible.

Senator Rose Conway-Walsh: I cannot conclude without asking the witnesses whether they think the culture in the banks has changed. They will be familiar with the geography of Mayo, where there is often a 50-mile round trip to the nearest bank, but I was alarmed to hear of a story over Christmas of someone who went to their own bank to take money out, only to be told they could not do so and would have to come back another day between certain times. That does not suggest a change of culture or banks that are consumer-led. Does it worry the witnesses that "customers" is almost a dirty word for banks now? The banks do not want customers in rural areas going to their tellers.

Mr. Ed Sibley: We have touched on the broader question of the culture in the banks and can go into it further if the Senator wishes. The issue of the approach banks are taking to their branch networks is not specific to Ireland but can be seen across Europe and globally. Branch networks are retreating and this is problematic from the perspective of financial inclusion. Some banks have chosen to withdraw altogether and there are branch closures in certain areas, leaving those areas underbanked. Others are taking cash out of branches and the branches serve more as sales vehicles than traditional bank branches. One can understand the cost drivers associated with these moves but the Senator is right to ask how this works alongside a bank's customer-centric approach. We think of this in the context of the credit union sector and the importance of that sector from the perspective of financial inclusion outside the large conurbations. The situation is a cause of concern.

Ms Derville Rowland: I recognise the distance people have to travel in Mayo and it is regrettable but the strength of the credit union movement is a benefit in such areas.

Professor Philip Lane: Financial inclusion is a social policy issue. As is the case with the question of rural broadband, the question of populations receiving adequate financial services is one for public policy solutions. One option may be to impose conditions on commercial banks but there are other options. One has to manage the conflict between what is commercially sensible and what is socially desirable. Ultimately, that is for the political system to decide as it may require subsidies or other such things.

Senator Rose Conway-Walsh: It may require further taxation or levies on banks to be given to local post offices and credit unions to support them for the services they give to communities which are otherwise excluded from financial services.

Chairman: It might also include the Central Bank examining the recent report published by this committee on the credit union sector. The witnesses might let us have their views on the report and on community banking. If the bigger operators, the commercial banks, are not going to service local communities in the way a Sparkassen bank does in Germany, perhaps the time has come for the Central Bank to look favourably upon the credit union sector and the provision of mortgages and community banking through the credit unions. That is where we are going with this in respect of the big banks now.

Mr. Ed Sibley: I will respond on those two points. I have looked at the work of the committee on credit unions and have studied the report carefully. We see some degree of overlap with the work of the credit union advisory committee, CUAC, implementation group, of which we are a part. It is a very important area and probably warrants a separate discussion. Certainly, I

will be happy to return to the committee with the registrar to have a discussion of our view of the credit union sector, the issues we see in that sector and how it needs to move forward. We are doing a great deal of work on business model development. We issued a paper last year providing guidance on longer-term lending and we are looking at the rates relating to longer-term lending. We have also done work on the investment guidelines. There is a rich seam of conversation to be had on that and I am happy to have it.

Chairman: As part of that conversation, perhaps Mr. Sibley would write to us about the Central Bank's views on the report.

Mr. Ed Sibley: Certainly.

Chairman: We are having a round-table discussion with all the stakeholders about community banking and credit unions to see if we can further the establishment of community banking in Ireland. In that regard, it would be interesting to have a discussion with Mr. Sibley and the registrar.

Mr. Ed Sibley: I am happy to do that. With regard to the Sparkassen, I met representatives of Irish Rural Link and the Sparkassen in the past couple of weeks. They are very clear about the approach they wish to take, which is a full banking licence and a full banking model. We have a clear authorisation process and we are happy to work through that. As I understand it, the issue is not about the authorisation process or the work of the Central Bank but funding the capital for whatever they wish to do. Sparkassen are operating as consultants but in order to operate a bank here, they must fund it. The costs associated with building infrastructure must be found. In terms of any engagement or progress that must be made in that regard, there is a process we are going through repeatedly with Brexit at present in respect of the authorisation process. We are happy to engage on it, but it would be as part of a banking licence application. That obviously requires the funding and the capital to do that, which is not a matter for us.

Chairman: I will come back to Mr. Sibley on that. I call Senator Kieran O'Donnell.

Senator Kieran O'Donnell: Regarding the redress and compensation, the witness mentioned that the average compensation was 15% of the redress amount. Is there a range and what is it? Is there a maximum or ceiling of 30% or 40% and is there a baseline figure of 10%, for example? How does it work?

Professor Philip Lane: In terms of the framework, it ranges from zero to unlimited for many homeowners concerned. It is not the case that there is a formula in which there is a cap. It is important to make that point. As we get closer to having the full set of cases processed, we will come back to the committee with much more detail about the distribution. It is important to convey more of how this is panning out in terms of the categories of smaller claims, so we will do that. At present, because we only have a partial list, it would be misleading to get into-----

Senator Kieran O'Donnell: When does the Central Bank anticipate it will have a complete list of people affected by the tracker issue?

Professor Philip Lane: We have indicated that we believe the payouts will be virtually concluded by the end of June. The exception is that the appeals will continue and that could lead to outsized awards where there has been serious harm. We can convey quite an amount in the June report.

Senator Kieran O'Donnell: In addition to the 33,700 to date, and 26,600 are the cohort,

when does the Central Bank expect to find the final figure for those impacted?

Ms Derville Rowland: We are working on it now. We should make good progress in this quarter on many things. If I find trouble it will take me longer. That is to be expected, because we are not going to start doing a bad job now and leave things undone. However, we have our sights on where we need to look, if I can put it that way, and eight of our 11 on-site inspections on these issues are completed. We are making good progress and we have our sights on the issues. I believe we will have many of these matters tidied up and addressed, or certainly closed out of everybody's thinking, before the end of March. However, there is a caveat. Where we find unexpected things we definitely will deal with them but that might take a little time, as the committee has seen. It is fine if it is smooth but it takes time to address issues.

Senator Kieran O'Donnell: The witness said four enforcement investigations are currently under way and that it is expected all the main lenders will face such investigations. Has the Central Bank specified who is involved in those enforcement investigations?

Ms Derville Rowland: Two names are already in the public domain for some time so we can say who they are - PTSB and Ulster Bank are the names in the public domain. The other two entities know who they are but their names are not in the public domain. Therefore, I am prohibited from disclosing them. However, they might emerge in some other way and if that happens I can confirm it. Others will follow. The main lenders-----

Senator Kieran O'Donnell: Are the two main lenders?

Ms Derville Rowland: All the main lenders can expect enforcement action, so they are.

Senator Kieran O'Donnell: Two of the four are main lenders. I have another quick question. An issue has arisen regarding how to define the group impacted by trackers. We are dealing with many people who have contacted us. How did the Central Bank break down the 33,700? Did it break the figure down into cohorts of people who were originally on a tracker mortgage and came off that mortgage and were put on a fixed rate mortgage, groups that came off the tracker mortgage and were put on a variable rate mortgage and groups that went to the bank assuming they were going on a tracker mortgage but were put directly on a variable rate mortgage? Did the Central Bank examine it in that depth? How did it define the groups that fell within the scope of the investigation?

Professor Philip Lane: The principle was to be universal about it, so it is not just private dwelling homes but also buy-to-let. First, it was if one originally had a tracker interest rate. The second was if in the underlying mortgage agreement, the tracker interest rate was an option in that agreement. The third is if one ever had the option to go onto a tracker interest rate. It is a universal approach. The reason it is so complex is that many different problems have arisen - there are all sorts behind the basic idea of a tracker examination. For most people on trackers, there has been no problem. They got their tracker, held onto it and it has moved along. The problems are where people were moving from trackers to fixed rates and what happened next, where it was not properly explained to people what was implied by giving up a tracker and so forth. It is 33,000, which is a large number of people, but it remains contained to where problems have arisen.

Senator Kieran O'Donnell: Let us say somebody had gone to a bank and had been offered a tracker, because in many cases the variable rates were very low. The person received an agreement that did not mention it was a tracker agreement. Does *caveat emptor* or buyer

beware apply there? If there is no mention of a tracker in the agreement even though the person might have been under the impression when meeting the bank that the person would be put on a tracker rate, does that fall within the scope?

Professor Philip Lane: In fairness, if there is no documentation that it is a tracker, it falls outside. We had a variation of that question this morning. It so annoying. We are aware of the standard variable rate - we had another discussion about that. A tracker is a type of variable rate. The fact is that there is no precision. There was not enough deep thinking at the time to be super clear as to whether it was a tracker with a fixed margin. With some of these trackers, the difference between them and other types of variables is hard to understand and explain.

Senator Kieran O'Donnell: If someone believes that he or she does not fall within the scope of this, would that person have recourse to the Central Bank?

Professor Philip Lane: It remains the case that, for individuals, the route is through the Financial Services and Pensions Ombudsman. No action is needed on the 33,000 or so accounts in respect of which we have been able to get the banks to pay redress and compensation. People have either been written to or will be written to by the banks. If they are not being written to, they can still go to the ombudsman.

Senator Kieran O'Donnell: Is it correct to say that the ombudsman has given a number of cases to the Central Bank as part of the investigation?

Professor Philip Lane: That is not how I would phrase it. I might ask Ms Rowland to explain.

Ms Derville Rowland: When we were scoping the job in the beginning, we took insights, information, tips and lines of inquiry from every source of assistance because we could then triangulate where to look and the kinds of matter to examine. The ombudsman was one of those useful sources, as were many external advisers and our own supervisory work.

Senator Kieran O'Donnell: The Central Bank did not take up the specific cases over which the ombudsman would have given it sight. If he spotted a case that clearly fell within the examination's remit, the Central Bank would obviously take it up.

Ms Derville Rowland: Yes.

Senator Kieran O'Donnell: My next point is slightly unrelated. An issue that has become a feature, particularly in the past six months, is the level of concentration of property within the control of vulture funds or whatever one wants to call them. I can only speak from my experience in Limerick. If property comes up for sale in a large block of apartments or the like, in most cases it will be under the control of what people out there would call a vulture fund. I have heard anecdotally that if this is happening in Limerick, which we regard as the real capital of Ireland in rugby terms, it is probably even more pervasive in Dublin.

In terms of the stability of the market, does Professor Lane, as Governor of the Central Bank, have concerns about such a large concentration of control of property being within the ambit of the vulture funds? I do not know whether the Chairman has encountered this, but dealing with people who are in rental properties under the control of the funds has become a recurring feature of our work. There are serious concerns in this regard. I felt that I had to raise this issue today. What is the Governor's view?

Professor Philip Lane: At the most general level, what is happening in the property market - residential, rental and commercial - has general economic significance as well as social significance. That is why the Oireachtas and Government are so consumed with housing and property-related issues.

Senator Kieran O'Donnell: Yes.

Professor Philip Lane: Our role in all of this is to try to determine how that will play out, whether it has any potential to disrupt the financial system and whether it could be destabilising. We are constantly engaged in playing out different scenarios regarding the development of the property market. In terms of the concentration of ownership, the incentives of-----

Senator Kieran O'Donnell: Control rather than ownership. The loans are held-----

Professor Philip Lane: Yes. That is a valid distinction to make, although it depends on-----

Senator Kieran O'Donnell: Ultimately, control of the direction of the properties in question is held by the vulture funds.

Professor Philip Lane: At a general level, I will not say that there is a firm evidence base to claim that it is inevitably destabilising or adverse from a macroeconomic perspective. There could be distributional issues. For example, does it affect some types of households more than others? The Senator mentioned renters. A list of issues arise in terms of the protections offered to tenants and so on by housing policy. From the point of view of keeping an eye on the stability of the financial system, however, there is not a strong platform to infer too much from this.

Senator Kieran O'Donnell: It was not particularly a feature up until now. Even though the vulture funds controlled the property, the property was at a relatively depressed price. In the meantime, many of the loans have been sold on by NAMA and are controlled by vulture funds. In some cases, receivers are being appointed, which means that the properties in question will be sold to realise the assets' value. If something happens once, one takes note. If it happens two or three times in quick succession, one has to question it. That is my role as a public representative. What I have described is becoming a feature.

When Mr. Sibley attended previously, I probably questioned him on the regulation of the funds that dictate policy as distinct from the agents that act on their behalf within the Irish State and are regulated directly by the Central Bank. It is a broader question that is probably going to become more of a feature as the property market continues its recovery and funds seek to realise value. Has the Central Bank examined this matter in any depth empirically? Many of the relevant cases that I have encountered involve young couples who got caught in the property crisis and could not purchase a home. They entered the rental market in 2004 or 2005 and rented for seven or eight years in the same place. Suddenly, they find that receivers have been appointed. They are worried. They are not dealing with a bank down the road, but with someone who, to them at least, is faceless. This falls within the Central Bank's remit in terms of prudential regulation and the financial stability of the banking system and the State itself. This is a broad request for Professor Lane's observations, connected with regulation and the financial system.

Professor Philip Lane: The Senator covered a great deal there. This issue is much broader than the spectrum we examine. For example, the protections afforded to tenants relate to the regulation of tenancies, which is not a matter for us.

Senator Kieran O'Donnell: No.

Professor Philip Lane: There is an observation internationally. These firms are global and are not just in Ireland. Some of the risks that we consider at a European and international level include the possibility of these firms collectively pursuing similar strategies, deciding to sell at the same time or the funding underlying them changing. At that macro systemic level, we are examining this matter as part of a wider international effort. At the level of the consequences for individual tenants, though, that is a social policy issue.

Senator Kieran O'Donnell: I would not-----

Professor Philip Lane: There is a global programme of work for regulators.

Senator Kieran O'Donnell: I accept that, but perhaps the Governor will take my observations on board and build them into the Central Bank's analysis of the system in Ireland. I am encountering this on the ground. Funds control a significant number of properties that are either for sale or about to come up for sale. It is becoming a feature.

Professor Philip Lane: Let me make an observation. We have been doing something in the past year or two because we are aware that the typical data feeds we receive do not capture some of the richness of what is happening in the market in real time. What we have now is a programme of round tables. We recently had a very interesting one with the commercial real estate advisers. We have been building up intelligence about what is going on in terms of large portfolios, which is very helpful. We are intent on expanding the range of intelligence we get. The observations that the Senator has made are quite helpful and we can continue this discussion some other time.

Senator Kieran O'Donnell: I thank Professor Lane.

Chairman: I have just a few questions. The Central Bank identified 900 cases that related to AIB. There was an issue around the 900 cases that AIB did not accept but the Central Bank had deemed to be impacted. Is that correct?

Professor Philip Lane: I am not sure about that number. The basic point is that any disputes that we have had we brought to a conclusion in December. All of that has been resolved.

Ms Derville Rowland: I have dealt with a number of these issues. There are 900 cases that have been accepted.

Chairman: Has the Central Bank followed up on that to determine whether the applicable rate has been corrected?

Ms Helena Mitchell: Yes.

Chairman: I mean the 900 cases. Has the Central Bank checked if the rate is correct?

Professor Philip Lane: Maybe Ms Mitchell can answer.

Ms Derville Rowland: Have they now been returned-----

Chairman: Yes.

Ms Derville Rowland: -----to the rate?

Ms Helena Mitchell: The original rate, yes.

Ms Derville Rowland: I do not have that information. Perhaps my colleague, Ms Mitchell, is prepared to give an answer.

Ms Helena Mitchell: I believe that they are going back on their original rates.

Chairman: They have not gone back yet. That is the question.

Ms Helena Mitchell: No, not yet.

Chairman: Why is there such a delay? The witnesses may not know now so I ask them to forward an answer.

Ms Helena Mitchell: Yes.

Ms Derville Rowland: Yes.

Chairman: Some of my questions are specific because customers or individuals have written to the committee.

Ms Derville Rowland: It could be that that is one of the more recently included matters. It could be a timing issue.

Chairman: Please let us know the status of that.

I refer to AIB again. The tracker through AIB was not available in 2009-2010 and the bank has had to put people back on trackers in 2017. The people affected were placed back on a tracker because they were entitled to do so but the conditions being applied are the 2009-2010 ones rather than the current market.

Ms Derville Rowland: Does the Chairman mean the rate?

Chairman: Is that acceptable behaviour?

Professor Philip Lane: I think this is part of the prevailing rate debate. Again, we have committed earlier on, to write to the committee to explain the framework in more detail.

Chairman: I am willing to wait for responses to my questions because I want the most up to date and accurate response.

Professor Philip Lane: Yes.

Chairman: In terms of breaches in banking regulations and the regulatory framework in general, how far back can the Central Bank go? Are there restrictions in terms of years? In 2014, the Central Bank fined a bank for a breach that took place in 1995 or something similar.

Ms Derville Rowland: For us it will be a matter of the year that the issue arose in combination with the regulatory rules in place at the time. For example, the consumer protection code in the Central Bank of Ireland came into being in 2006. Therefore, one could not have a breach that pre-dates the code. To determine whether anything is in breach of the code one must consider when the rules were in place. Depending on the rules and the frameworks that one is considering, and when the events arose, there is no limitation period on us to go back in time. If we find something from quite some time ago, and there was a rule in place which was breached, we can pursue that.

Chairman: I want to ask questions about SMEs in Ireland and the money that the European

Investment Bank gave to the Central Bank.

Professor Philip Lane: I will answer the questions.

Chairman: How does the Central Bank monitor that? Does it play a role in ensuring that the money is lent fairly and properly to clients?

Professor Philip Lane: We definitely analyse it. We are about to publish our latest SME report, which has material on the impact of that source of funds and the availability of credit and so on to the SMEs. We are looking at it at that level because we want to understand what is going on with SME lending.

In terms of compliance, I imagine the EIB monitors the situation. It is an agreement on lending between the European Investment Bank and various intermediaries. It is for the EIB to monitor the situation and it is not directly for us to do.

Chairman: Let us say a client has been refused a loan by a bank in Ireland but one that deals with the fund given by the European Investment Bank and the appeals office decides that the person should have received the loan and the disagreement rumbles on. In that case does the European Investment Bank request performance indicators from various banks for the loan?

Professor Philip Lane: That is my presumption but we can come back to the Chairman more formally after we have checked that out.

Mr. Ed Sibley: It would be helpful to have a little bit more detail on the information the Chairman has to make sure that we answer his question fully.

Chairman: I do not want to go into the precise details. Let us say, for example, an individual customer of a bank applies for funding from it but the bank refuses without giving a stand-up reason, an appeal is lodged with the appeals office which agrees the person was entitled to the loan because his or her figures were correct and when the person returns to the bank, it refuses. In that case, the appeals section declared that the original application complied with the guidelines and the figures were correct but for some reason the main bank in Ireland says "No." I am concerned about the way the fund is managed and that it is getting lost in the general activities of a bank. I ask the witnesses to come back to me on this matter.

The committee has received correspondence on trackers. For example, KBC has acknowledged, after a long argument that the person concerned is impacted on one mortgage for two buy-to-lets or something. The person gets word on the one mortgage but no word on the other matters. Everything is left in abeyance and no information is forthcoming. It is a similar situation with AIB. One gets the same spiel from it in terms of one's position within the analysis and whether it has been impacted. The Central Bank has direct contact with banks. I presume such contact makes banks move as fast as they possibly can to resolve all of these issues.

Professor Philip Lane: Exactly. We think that a lot has been done. Especially in those cases which were only accepted by the banks at the tail end of last year, it is running into these few months and into the first half of the year. They are all timelined to go as quickly as possible. They are set up on an account-by-account basis rather than an individual-by-individual. That means one might get a letter about one account and then another letter when the bank has dealt with the different accounts at a different point in time.

Chairman: I want to discuss how banks recognise their losses over the years and how that

is reported. Would the tracker issue not have meant that they should reported losses because of having to repay the money and having to pay compensation and redress and so on? Is the Governor satisfied that the banks, not only relative to the tracker issue but generally, properly report their losses, if any?

Professor Philip Lane: Behind that is the question regarding what is the role of provisioning. I will ask Mr. Sibley, who is the lead in this area, to indicate how this is handled.

Mr. Ed Sibley: It has been an ongoing cause of interaction with the banks since the financial crisis as to whether they have enough capital, whether they are recognising problem loans in the right way - I appreciate this is a different matter but the same principle would apply - and whether they are provisioning appropriately for losses associated with those issues? There is a huge amount of judgment within the framework and the accounting rules. They are changing to try to address some of the issues that were evident from the crisis but the interaction is ongoing. We do credit inspections to ensure that loan books are adequately provided for. We carry out ongoing analytical reviews. We are never absolutely satisfied that they have 100% the right number because there is a lot of judgment involved. On a broad basis, we are satisfied that the banks are adequately recognising where they have problem loans and, broadly speaking, they have sufficient provisions to cover those loans.

It continues to be one of our key priorities where there may be an incentive for the banks perhaps to be less prudent because it impacts on their profitability. We are continually pushing to make sure that provision levels are prudent and appropriate. We do that every year. As long as non-performing loans remain high in the system it will be a continuing activity for us in the foreseeable future.

Chairman: Does the Central Bank receive the minutes of meetings from the banks? I asked the Minister about this matter earlier in the week.

Mr. Ed Sibley: I assume the Chairman is referring to the main retail lenders and, yes, the supervisory teams receive the board packs and, typically, we would see those for the board subcommittees, such as the risk committees.

Chairman: The Central Bank does see the minutes.

Mr. Ed Sibley: Yes, that would be part of those board packs.

Chairman: Does Mr. Sibley see any difference of approach in each of the banks to the various issues at board level? Are the reporting headlines all the same? Have they added new headline issues to the reporting mechanism? Is there more detailed reporting from risk managers, all that kind of thing?

Mr. Ed Sibley: It is another source of ongoing interaction from a supervisory perspective. Broadly speaking, minutes and board packs have improved over the years. There is a degree of tension between having every word recorded and getting a sense of the meeting and the discussion and challenges at board level but they have been on an upward trajectory.

Chairman: In respect of Mr. Sibley's letter of 10 January to the committee about its meeting and the complaints made about Jonathan Sugarman, I will not go into great detail but I am preparing my own response, if I deem it necessary, on the issues raised. My concern is the timeframe between Mr. Sugarman's complaint of 2007 and the inspection in October 2007. I hope there is a greater urgency of response to complaints and issues raised about breaches reported

to the Central Bank now.

Mr. Ed Sibley: We take breaches very seriously. I know the Chairman has raised concerns about this instance and that he raised them again in passing on Tuesday. I would like to spend a couple of minutes dealing with this issue.

Since the financial crisis, and certainly since the appointment of Matthew Elderfield as Deputy Governor of the Central Bank, the credible threat of enforcement has been central to our overall supervisory approach and the evidence of that which we referred to earlier is more than 100 successful public enforcement cases and millions of euros worth of fines imposed, including in respect of the entity where Mr. Sugarman worked. I note that my predecessor and his predecessor considered this issue specifically. There have been third-party reviews of the issue and the broader control framework in place. We have also conducted our own investigations on this matter. I am satisfied that the action taken on this case was appropriate and that includes considering the further meeting held by the Chairman of the committee, Mr. Sugarman, the Governor, members of my team and of Ms Rowland's team. The type of business we are talking about in this case is noteworthy. It is a subsidiary of a parent organisation and many of its transactions, its core business, are associated with the parent, as a funding vehicle for the parent company. It certainly was at that period. Typically that involved relatively large transactions. Any comparison with Northern Rock or the domestic banking system here are not well founded. In respect of the specific breach that Mr. Sugarman refers to in August 2007 the liquidity regime in Ireland changed in July 2007. That is a backdrop to the incident but in more general terms, where there are large transactions, the regime in place at the time was focused on matching maturities and liabilities associated with different time bands. Where there are significant and sizeable transactions, however, it is possible and plausible that through placing or completing a transaction overnight potentially under a new regime, human error could result in some breach that would not necessarily indicate a fundamental problem with liquidity or a fundamental breakdown of systems and controls, or a wider systemic issue. The amount of time being spent on this case demonstrates the seriousness with which we take information that is brought to us. It is thoroughly investigated. That is what we have done in this case. I appreciate that the Chairman will respond to us by letter but I thought it important to get those points across as clearly as I could.

Chairman: At the meeting with the Governor and his colleagues, that point certainly came across but that does not mean it has been accepted. On the issue of reporting, Mr. Sugarman reported a breach that was 20 times over the limit and when that was assessed independently it was found to be 40 times over the limit. It was not just a single breach. It went beyond that.

In his letter, Mr. Sibley says that the Central Bank is satisfied it has taken appropriate action in regard to all information received in respect of the matter. That is so in respect of the report the Central Bank received and the action taken but it has not confirmed whether it fined the bank, or whether there was an administrative sanction relative to that complaint and it is something Mr. Sibley keeps saying he cannot comment on.

Professor Philip Lane: We tried to explain the range of how we deal with any breach of our regulations. There is a range which remains private - any regulator in the world will have private actions - and then a range where there is a public disclosure of the administrative sanction. I agree that those who want to learn more and so on do hit a wall, a limit of information here. We do not indicate publicly actions that are within the realm of private regulatory actions. The fact that we have not spoken publicly about the regulatory response in terms of any sanction creates this asymmetry of information in that we are precluded from disclosing any more. This

provides a source of frustration, I am sure, for the committee and for Mr. Sugarman but what we are saying is that we are satisfied. We have no reason not to maintain the highest regulatory standards. It is essential that we are a first-class regulator for these wholesale banks and for all other entities. We have given our assurance, subject to the limitations of confidentiality under which we operate, that we are satisfied that we dealt with this in a way that is entirely in keeping with being a first-class, robust and intrusive regulator.

Chairman: I certainly feel frustration about knowing whether someone was sanctioned in one way or another. When the crash came, on the night of the guarantee and so on, the figures that were given to the Minister of the time and that were talked about afterwards obviously were wrong. The banks misled everyone. The companies that represented the banks in terms of audit and so on were the ones that conducted the audit. There must have been serious ongoing breaches during those years that were not dealt with. If they were dealt with or known as breaches, we might have been aware of what was going to happen a lot sooner.

Mr. Ed Sibley: I think there is a slightly different point there. One of the flaws leading up to the crisis was the regime itself.

Chairman: The regulatory regime?

Mr. Ed Sibley: In terms of what was required from a liquidity monitoring and reporting perspective, it was pretty short-dated. An institution could look fine from a liquidity reporting perspective because it did not go beyond 30 days, but have a big cliff of maturities beyond the 30 days. The regime itself was too short-dated in terms of making sure liquidity and funding of banks, not just in Ireland, was on a robust footing. There have been very significant changes to the liquidity regime to which banks now operate as a result of the failings of the pre-crisis regime not just in Ireland but globally. That is a very different matter from the matter in hand here, which is very specific. It is not around being 20 times past what was required. This type of thing is associated with having a maturity or liability in one of the time buckets when it should be in a different one. It does not indicate a fundamental problem with liquidity in the firm at the time.

If I may close by repeating myself, the evidence that we are willing to take enforcement action is the more than 100 cases that have been taken. We take a proportionate approach to using our enforcement powers and have taken more than 100 cases in the intervening period, where there have been serious breaches that warranted an enforcement action. There would be no reason for us not to take enforcement action in this case if it was warranted. We have evidence that we do take that action where it is warranted.

Ms Derville Rowland: I took liquidity breach cases in the aftermath of the crisis to set benchmarks and markers. The first one was Irish Life & Permanent as it was then - R.I.P., I guess - where we did have liquidity breaches that deserved enforcement cases. There is consistent evidence to demonstrate enforcement cases back at that time. One facet of enforcement is the total commitment to public outcomes of those cases from the administrative sanctions procedure, and therefore all of the outcomes of those publicly available cases have been published. That is a very important thing. However, private enforcement such as cautions cannot be disclosed publicly. They are disclosed in aggregate form in an annual report to demonstrate that they exist in aggregate numbers but, on a case-by-case basis, they cannot be used. They are suitable for the more limited kind of severity of a breach where there is really no substance in terms of fundamental harms. I thought I would add that because I was probably in fact setting up the policies and procedures and taking these enforcement cases at the time in the broader

set-up of the framework.

Chairman: My last comment on this, for today's meeting anyway, is that the one complaint that sticks in my mind that Jonathan Sugarman made at our meeting was that there were other breaches. He said he was told not to report those breaches. I am sure Mr. Lane can recall that part of the meeting, when I expressed my shock that this would be said. It goes to the heart of the issue, certainly in his case. I do not know whether there are any other cases with other banks. As a risk manager, he was told not to report the other breaches at that time. That is the reason he resigned. He had reported breaches properly in accordance with the law and what broke him, in terms of the decision he had to make to stay or not to stay in the bank, was the fact that he was being told not to report the breaches. That bank is still in business in this country, regardless of what type of banking it does. Regulation is regulation, regardless of the bank.

Professor Philip Lane: We have said - and we fully stand behind it and it has been subject to repeated third-party reviews and so on - that we are satisfied. I understand the reasons that Mr. Sugarman has given. That has been factored into how we have investigated and viewed this event. Again, it is a frustration that we cannot disclose any more information. However, the ultimate point here is that we are committed to being an intrusive regulator, to actively using our enforcement powers and we do. There are certain categories of outcomes, however, which remain private and only in certain cases do we go public. We understand the account that Mr. Sugarman has given and that I think was fully factored into how this case was handled. We have tried to go as far as we can, subject to the confidentiality restrictions, in trying to explain what we did. Ultimately, what we are saying is that we have no reason to be anything but the most effective regulator we can be and we are satisfied that we handled this appropriately.

Chairman: Were you aware of that allegation or accusation beforehand, that he had been told not to report?

Professor Philip Lane: I am familiar with his explanations.

Chairman: I had not heard him say so before that day. I will consider what you have written and will consider a response to it. We are now at the end of our-----

Senator Gerry Horkan: I have one very brief question.

Chairman: It must be a brief one because we are finished.

Senator Gerry Horkan: I will be brief. Are there cut-off dates for people who got redress and compensation but who want to appeal it? Is there a window in this respect? I do not know if it was addressed but I apologise if it was.

Ms Helena Mitchell: It is 12 months. That is from receiving it to making the appeal.

Professor Philip Lane: They can cash the money now.

Senator Gerry Horkan: There is a finite period for appeal. It is 12 months. So 12 months from next March, or I hope around that time-----

Professor Philip Lane: It is the time from when the letter is received.

Senator Gerry Horkan: Will we know the full extent then? If it is only starting the appeals process, it could take a while.

Ms Helena Mitchell: Yes.

Chairman: That concludes the meeting. I thank the witnesses.

The joint committee adjourned at 4 p.m. until 4 p.m. on Tuesday, 23 January 2018.