

DÁIL ÉIREANN

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

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

Déardaoin, 24 Deireadh Fómhair 2019

Thursday, 24 October 2019

The Joint Committee met at 10 a.m.

Comhaltaí a bhí i láthair / Members present:

Joan Burton,	Rose Conway-Walsh,
Pearse Doherty,	Gerry Horkan,
Michael McGrath,	Kieran O'Donnell.
Paul Murphy.	

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

The joint committee met in private session until 10.28 a.m.

Tracker Mortgages Report: Central Bank of Ireland

Chairman: We are dealing with the Central Bank's final report on tracker mortgages, which was published last July. From the Central Bank we are joined by Ms Derville Rowland, director general, Ms Gráinne McEvoy, director, and Ms Seána Cunningham, director.

I draw the attention of witnesses to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a 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 they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

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

I invite Ms Rowland to make her opening statement.

Ms Derville Rowland: I am joined today by the director of consumer protection, Ms Gráinne McEvoy.

Chairman: I am sorry, but I must interrupt Ms Rowland. There is a vote in the House and I think we should suspend to give members an opportunity to press their own button and cast their vote. We will resume after the vote.

Ms Derville Rowland: Very good.

Sitting suspended at 10.31 a.m. and resumed at 10.40 a.m.

Chairman: I have informed the Ceann Comhairle that if there is another vote, we will continue our meeting through it. It is not fair to the witnesses to do otherwise. Ms Rowland may continue her opening statement.

Ms Derville Rowland: I am joined by the director of consumer protection, Ms Gráinne McEvoy, and the director of enforcement and anti-money laundering, Ms Seána Cunningham. I welcome the chance to update the committee on the tracker mortgage examination. The scale of banks' tracker mortgage failings was industry-wide, causing distressing and, in some cases, devastating consequences for customers. It necessitated a robust and comprehensive regulatory response that required banks to identify affected customers and to redress and compensate them for the harm the banks had caused. The examination was that regulatory response. It is the largest, most complex and significant consumer protection review the Central Bank has undertaken, probing all banks who ever offered tracker mortgage products in Ireland.

The framework required lenders to conduct the examination in four phases. These were development and submission of detailed plans; information gathering, review and report submission; calculation of redress and compensation levels; and implementation of the redress

programme. Together, these constituted the supervisory phases of the examination and the final report was issued as these phases concluded. In the final report, we indicated that banks' payment of redress and compensation was nearing completion. Today, as banks close out their redress and compensation schemes, a total of €693 million in redress and compensation has been paid to affected customers. The number of customers identified by lenders as impacted is 40,500. Banks have now paid 98% of those affected. In the final report, we described the devastating impact that the banks' failings had on those customers, with 99 people losing their homes and 216 people losing their investment properties.

The examination, as members are aware, required lenders to undertake an initial review of more than 2 million mortgage accounts to identify the number of in-scope accounts before extensive Central Bank challenge of those reviews. We were determined that everyone who should have been included in the scope of the examination was included and we pushed the banks to include them where we had a basis to do so. As a result of our challenge and intervention, the banks were forced to include 20,000 additional customers in their redress and compensation programmes. In terms of the range of redress and compensation payments, 57% of redress and compensation payments were up to the value of €10,000, 32% received amounts in the €10,000 to €50,000 range, 8% of offers were between €50,000 and €100,000 and 3% of affected customers received in excess of €100,000. There were 23 customer accounts that received in excess of €500,000, including 22 who lost properties.

The final report concluded on the review and remediation phase of the examination and set out the assurance process the Central Bank carried out in order to reach this conclusion. This assurance work included desk-based reviews, intrusive on-site inspections, data verification work, scrutiny of lenders' data returns and regular engagement with lenders. In excess of 3,000 days were spent completing Central Bank on-site work alone throughout the course of the examination. Our supervisory work is now complete but we continue to monitor the outcomes of any complaints, appeals and court cases, and if any new information of a systemic nature comes to light, we will investigate it fully. The channels available to consumers under the framework will continue to deliver outcomes. We both welcome any additional uplift in redress and compensation that affected customers may gain through these channels and remain vigilant in case any outcome has potential wider application to others. We are also conducting enforcement investigations in respect of the main banks and I will return to that subject shortly.

We are conscious that no amount of money will ever fully right the wrongs that have been done by the banks, particularly to customers who lost their family homes. However, we designed the tracker framework to maximise the chances of those affected customers securing appropriate redress and compensation. It may be helpful at this point to say a word about the objectives of the framework. In Ireland and other countries, we have seen in the past examples of redress schemes that have been quasi-judicial or adversarial in nature. Sometimes that is for very understandable legal reasons but often it can add to the stress and financial impact on those affected. The tracker framework was designed to avoid that. Put simply, the framework was designed to drive redress and compensation to those affected without those customers having to raise a complaint, or pursue litigation. This gave customers the option, if they so wished, of avoiding the costs and stress of a public adversarial process. We were of the view that they were dealing with enough financial and personal strain as it was.

Under the framework, we first required the banks to identify groups of customers affected by tracker issues and to redress and compensate those groups. The customers were not required to take any action to secure that initial redress and compensation. The money was paid out up-

front to people and they could choose what next steps they wished to take. Second, we required the banks to provide an appeals avenue free of charge and this meant that customers could appeal the initial redress and compensation they received from their bank at no cost to them and, importantly, without risking the initial award. They could cash the cheque, so to speak, safe in the knowledge that their initial award could not be lowered or taken from them. Customers also received a separate payment, which could be used by the customer to pay for independent advice on the adequacy of the lender's initial redress and compensation offer.

Third, we ensured customers retained their legal rights to pursue other avenues if they wished to do so. We required that banks would not rely on the statute of limitations to deny affected customers who might otherwise have been time-barred from bringing a claim. This was in the time before the Financial Services and Pensions Ombudsman limitation periods were amended. Customers could appeal to the Financial Services and Pensions Ombudsman, a service which is free to the customer, and they could take court proceedings without putting the awards they had already received at risk. Our framework was constructed in a way to drive redress and compensation to affected customers while leaving all elements of the State consumer protection system open to them. I recognise that this took some time but it meant nobody had to battle alone. I recognise the role of this committee in giving a voice to affected customers.

Looking ahead, we have clearly communicated to banks our expectation that if any individual outcomes come to light that have the potential to affect customers more widely, they must consider and address the broader customer impact. I reiterate that we will continue to monitor the outcomes of any appeals, complaints to the Financial Services and Pensions Ombudsman and court cases, and we will utilise our statutory powers as required to seek information from banks in respect of those outcomes. In line with this approach, we will insist on regulatory scrutiny of the circumstances surrounding litigation outcomes to identify any broader systemic customer impact.

Moving to enforcement, we take robust enforcement action that holds firms and individuals to account, deters misconduct and promotes compliance and high standards in financial services. We use the full suite of our powers and publish details of enforcement actions where we are legally permitted to do so, together with public statements outlining the standards we require of regulated firms and individuals. To date, we have concluded 131 enforcement actions resulting in penalties of almost €100 million. With respect to the tracker scandal, forensic investigations are ongoing and we are examining various lender failings, including the actions of individuals that may be relevant to establishing how and why customers lost their trackers. As the investigations began at different times, they will conclude at different times but the gravity with which we view tracker-related failings is demonstrated by the €21 million fine we imposed on PTSB earlier this year, the largest fine we have ever imposed on a regulated firm. In all, PTSB admitted 42 separate regulatory breaches.

Committee members will appreciate that I cannot discuss ongoing enforcement investigations but it is worth discussing some of the detail from the concluded PTSB case and the public statement we issued. The investigation sought to determine how and why the failures to fulfil regulatory obligations to protect its tracker mortgage customers' best interests and honour their contractual entitlements occurred. The investigation found that PTSB denied its customers a tracker mortgage or did not put them on the correct tracker rate resulting from a number of failings. These included failure to warn certain customers about the consequences of decisions they might make relating to their mortgages when breaking early from a fixed or discounted interest rate; operational and systems failings; a decision to deny certain customers the correct

tracker rate between 2009 and 2010; and incorrect legal interpretation of contractual terms and conditions. This is just one enforcement case against one bank. It required scrutiny of a significant amount of documentation spanning lengthy periods and the conduct of interviews with junior and, more importantly, more senior role holders across a number of business areas as part of that process to establish precisely the facts and the matters under investigation. As we noted in our public statement, PTSB engaged purposefully and co-operatively with the investigation, which is to its credit. However, this has not necessarily been the Central Bank's experience with every bank under investigation, and we have taken robust action where appropriate. I remind each and every bank under active investigation that co-operation with the regulator is a basic expectation of ours in the context of engagement with firms, whether in a supervisory or enforcement context, and that any lack of co-operation can have a considerable bearing on subsequent sanctions.

This brings me to the issue of culture. Cultural failings within the banking sector were a significant contributory factor in the tracker mortgage scandal. Disappointingly, these failings did not stop once the examination was launched. For example, we set out clear instructions to banks requiring them to stop the harm being caused to customers at the earliest possible opportunity. The "stop the harm" principles were designed to ensure that where banks identified affected customers, no further detriment was caused. Through on-site inspections we found evidence that certain banks failed to comply with these principles, which will be considered in the context of the ongoing enforcement investigations. It is the role of the boards and senior leadership teams to ensure that the right culture is embedded in their firms. They must define a set of values and guidelines for desired behaviour and lead by example. It is not enough to talk the culture talk. One must walk the walk as well.

When the Central Bank published its behaviour and culture report last summer, we reported that while all banks had taken steps to reinforce consideration of the consumer interest, some banks were more advanced than others and all had a distance to travel. Banks were required to submit behaviour and culture plans to us outlining how they would address the key risks we had identified. The majority of the banks were then required to resubmit their plans when we deemed the original ones insufficient or, frankly, inadequate. We will continue to monitor and challenge the banks assertively on the delivery of their behaviour and culture plans in order that they deliver for their customers.

Like most regulators, however, I am a realist rather than an optimist. I believe an extra nudge in the system is required to push regulated firms to behave properly. The Central Bank already has strong powers spanning an expansive mandate. One of these powers, which rarely features in public debate but of which industry is well aware, is our gatekeeping role under the fitness and probity regime. Put simply, where we believe an individual firm is proposing someone ill-qualified or unsuitable for a senior role, we will challenge that appointment. We take our gatekeeping role extremely seriously, and to date, since the commencement of the regime, 80 applications for senior positions have been withdrawn where the Central Bank has challenged the applicant.

While we use our existing powers to great effect in keeping unfit individuals out of financial services and pursuing individual wrongdoing where it occurs, we believe that individual accountability within the sector can be further strengthened via amendments to the legislative framework. A lack of accountability is widely seen as a key driver of misconduct, and we have therefore proposed to Government that it legislate for individual accountability measures to drive better behaviour. These include proposed enforceable conduct standards for staff in

regulated firms, such as acting honestly, ethically and with integrity; additional conduct standards for senior management; and standards for businesses. We also propose changes that would significantly reduce the chances of key people in firms being able to wash their hands of wrongdoing. We propose a senior executive accountability regime that would place obligations on firms and senior individuals to set out clearly where the responsibility and decision-making lies in their businesses. We see this as a key prong of our culture change strategy. We have previously discussed these recommendations with this committee so I do not propose to say any more about them, but we continue to work with the Department of Finance to progress these proposals.

From what we have seen in the tracker mortgage examination and from the customers whose stories we have heard, I know that people and families continue to live with the consequences. The banks that caused this damage will not be permitted to move on as if it were business as usual. At every step of the examination our focus has been on affected customers and ensuring lenders pay them appropriate redress and compensation. While the supervisory phase of the examination has now concluded, its outcomes will be taken forward and reflected in our continuing supervision and enforcement investigations.

I thank the committee. I would welcome any questions.

Deputy Michael McGrath: I welcome Ms Rowland, Ms McEvoy and Ms Cunningham and thank them for their opening statement and their work on this issue. At committee meetings we tend to focus on the outstanding issues and the negatives, and it is our job to hold witnesses to account, but many customers have eventually had good outcomes, and that should be acknowledged. The Central Bank's work in that regard has been very important.

We are now ten years on from when Charlie Weston first started writing about this issue. We are almost four years on from when the Central Bank started to investigate tracker mortgages. More than 40,000 customers have been confirmed as affected, with approximately €700 million repaid to them. Are we any closer to finding out exactly what happened or to anyone ever being held accountable for this?

Ms Derville Rowland: I thank Deputy McGrath for acknowledging the work we have done on tracker mortgages. Our only reason for doing this work is that consumers are at the heart of what we think about. We prioritised in the phasing of this work identification of the affected customers and getting the schemes up and running, although we had to challenge the lenders on the terms. As the Deputy knows from his engagement with this committee, it is a matter of getting the money flowing to those customers. I am satisfied that all but a very few more recently identified customers will be paid in short order. Some customers cannot be identified, and the money for them is ring-fenced. As we did that work, digging deep into the lenders to identify the customers affected, we were also acquiring very relevant information as to how this happened and the causes right across the lenders. As our primary focus at that time was on getting the customers identified and the redress programmes, we now pivot to a heightened focus on the enforcement cases. The Deputy will see we have already concluded one case and put a significant statement into the public arena about the issues involved in the case. As we bring these cases through to conclusion, we will see more information about the causes of this.

I will hand over to my colleague, Ms Cunningham, who might say more about how we are going about this work.

Deputy Michael McGrath: I ask Ms Cunningham to address specifically the issue of in-

dividual accountability and the Central Bank's powers in respect of the tracker mortgage issue.

Ms Seána Cunningham: Sure. In the context of individual accountability, there are two main elements of our powers, one being under the administrative sanctions procedure and the other being under the fitness and probity regime, which Ms Rowland mentioned earlier. To explain how the administrative sanctions procedure works, what the Central Bank needs to establish is that a regulated entity or firm committed a regulatory breach. It is only thereafter that the Central Bank can examine whether persons concerned in the management of that firm participated in the breach. Where we would have been seen previously, under the administrative sanctions procedure, the sanctioning of a firm, it is not unusual that it might be thereafter that we take action against an individual by way of settlement or by going to inquiry. We have sanctioned 19 senior individuals to date under the administrative sanctions procedure. Deputy McGrath has heard Ms Rowland mention the fitness and probity regime. In that context we have prohibited seven individuals from performing roles in financial services for different durations, depending on what they had done.

Deputy Michael McGrath: To clarify, none of those is tracker related.

Ms Seána Cunningham: They are not tracker related, but in the context of the investigations that are ongoing, we are looking to establish why this happened, how it happened, what decisions were taken and by whom. Then we will look at the matter through the lens of our powers to focus on the actions of individuals. That absolutely forms part of the investigations that are ongoing.

Deputy Michael McGrath: How does that ultimately work out? Might somebody be deemed unfit to hold that role under fitness and probity requirements or be placed under administrative sanctions? What are the ultimate potential sanctions?

Ms Seána Cunningham: To impose administrative sanctions we would need to establish a regulatory breach by a firm. We would then have to demonstrate that a senior individual participated in that breach. Under the fitness and probity regime we would have to demonstrate that someone is currently not fit and proper to perform their role due to a lack of competence or probity. There is quite a lot of legal complexity underpinning it, but that is how it works at a high level.

Our proposals for enhancing individual accountability are informed by our experience of conducting enforcement investigations in previous cases. We are advocating breaking the participation link whereby we have to establish regulatory breach on the part of a firm and that a senior person committed the self-same breach. Experience tells us that this is not always the case. At times it is quite difficult to frame cases around that. We are using the powers we have. We have strong powers, and in these investigations we are looking at the actions of senior individuals.

Ms Derville Rowland: We have already talked to this committee about liaising closely with the other agencies. That is our obligation. It is an obligation we take seriously and we have ongoing discussions with other agencies about their mandates. We are pressing ahead with open enforcement investigations against the main lenders in the tracker mortgage examination. They are the key priority of our enforcement team, which is pressing ahead with this. We have already publicly concluded an investigation of one legal entity, Permanent TSB, by levying the largest fine we have ever imposed. That represents a significant step up in our approach, reflecting the new heightened penalty powers that the Central Bank has acquired. We continue

to pursue all angles in all of those cases to ensure individual accountability. We continue with that very detailed and forensic work.

Deputy Michael McGrath: There are several outstanding cohorts, the largest being the AIB prevailing rate issue, which involved about 6,000 customers. Permanent TSB has been implicated in a prevailing rate issue and a discounted tracker issue. Bank of Ireland was involved in a staff tracker issue. I am aware of outstanding issues with Ulster Bank. EBS has a variable base rate issue. In broad terms it is fair to say that the Central Bank has concluded its examination of individual cases and cohorts. I wish to ask about the possibility of the Financial Services and Pensions Ombudsman who will appear before this committee after the witnesses, finding in favour of customers in respect of complaints on these issues and those findings having wider application. For example, if he finds that in principle an AIB customer should have got a prevailing rate with a margin of 1% as opposed to 5% or 6%, how will that affect the rest of the population of that cohort? Will the ombudsman have to go through each individual case or will the Central Bank revisit its approach or expect the banks to revisit theirs in dealing with the basket of customers to whom the same principle applies?

Ms Derville Rowland: We looked at the groups of customers that were included by the lenders to make sure they got the numbers right. More importantly, we looked at the groups of customers who were excluded by the lenders. As the committee members know, through our work and the work of this committee, the lenders were forced to include 20,000 more customers than they originally wished. I absolutely recognise that not everyone who wished to have a better-priced tracker received one. I can fully understand their disappointment. Where the requirements we had to look at provided a basis to go to bat for customers and require the lenders to include them in the redress programme, we absolutely did so.

We designed this programme to work with the other parts of the national framework. The redress and compensation scheme is an extra option for people who have been affected. They can absolutely go to the ombudsman or to court as they wish. If customers have been included in the redress programme, they can always take the payment upfront and try to do better for themselves with the ombudsman. It is important to remember that the ombudsman has a very different statutory mandate from that of the Central Bank, which can be very beneficial to the customers. That process allows customers to bring their personal information to the ombudsman. The lender also has to answer to the ombudsman and new information can thus come to light. When the ombudsman makes a decision, the statutory basis on which he does so is different from ours. That can be of benefit to us if any issues arise from cases.

I was asked about the feedback loop on cases before the ombudsman. It is working well. We are in dialogue with the ombudsman. If he is concerned about cases he will refer them to us and we will examine them. We will require the lender to examine them. New information may emerge, and if that gives us another angle from which to examine this on behalf of customers, we will of course do so. We also expect lenders to look at that new information. Where it is of wider applicability, we expect them to give the benefit of that read-across to the customers. That is part of the current framework. We are in dialogue with the ombudsman about cases. We will look at any issues he refers to us that raise concerns. We also expect the lenders to do that work. They will carry out a read-across, and if we get new angles on a case, we will examine them. We are here to do one thing, namely, to deliver for customers where we have a basis to do so. The system needs to work well and we need to continue to be vigilant in monitoring that.

Deputy Michael McGrath: That is welcome. I wish to be crystal clear on what Ms Rowland is saying. Let us suppose the ombudsman considers an individual customer complaint, for

example, concerning the AIB prevailing rate, and he finds in favour of that customer. Suppose the case is representative of many others in which the issues are essentially the same. In that scenario, will the application of that decision be put into effect by the banks?

Ms Derville Rowland: That is our expectation. We would speak to the ombudsman about such a case. He would send us the decisions. I am sure the committee will hear about this from him later. That decision is addressed to the lender and to the individual, so it does not contain all the information we would want if an issue was raised with us. We would go to the ombudsman and discuss the issue. We would dig into it to get as much information as possible. We would then contact the lender about it and challenge that lender. The Deputy will appreciate that the lenders make their own decisions about those cases. However, our expectations have been outlined very clearly. Ms McEvoy might wish to comment on that.

Ms Gráinne McEvoy: As Ms Rowland mentioned in her opening statement, we have been very clear with the lenders that they are required to apply the decision of the Financial Services and Pensions Ombudsman wherever it has relevance among the wider group of individuals who may be similarly impacted and to rectify matters accordingly. It is not sufficient to look at each case individually. We will challenge lenders if we find they are not doing that.

Deputy Michael McGrath: I have two final questions. I will put them together because I know we are tight for time. Ms Rowland has stated that as a result of the Central Bank's work, 20,000 additional customers have been included in the redress and compensation scheme. This was also included in her final report in July. In effect she is saying that half of the customers who have now benefited or got their money back would not have been included in the tracker programme and got their money back if the banks had been left to their own devices. Perhaps Ms Rowland could comment on that.

Finally, the witnesses acknowledge that Permanent TSB co-operated with the enforcement investigation. They have said that this has not been the Central Bank's experience with every bank under investigation and the Central Bank has taken robust action where appropriate. Will they elaborate on that? More specifically, are all of the banks fully and totally co-operating with the ongoing enforcement investigations in every respect as of today?

Ms Derville Rowland: The first question was about the stance adopted by the lenders in the course of the tracker mortgage examination. I do not believe I need to tell this committee in view of the fact that it was active and part of the national level pressure that was brought to bear on the lenders. I took up this role on 1 September 2017 and I appeared before the committee shortly thereafter. I had previously been director of enforcement. I set up the redress scheme with Permanent TSB, which was a precursor to this. New in that role, I was utterly dissatisfied with the stance of the lenders. We made that public in a report at the time, and I remember appearing before this committee and answering questions. With fantastic support from colleagues and the team in the Central Bank, I spent many weeks and months in challenging meetings with the lenders, giving them the full benefit of our analysis and views about who should be in and out. Members will recall that we wrote a report stating that the lenders had decided to resolve the disputed groups in favour of our judgment. I am sad to say that it appeared to take a level of public opprobrium and pressure from a number of angles for them to reach that view. That should never have been the case.

The key leading risk in cultural indicators that we saw as a precursor to that was the fact that the team in the Central Bank had to do more than 200 turns of the documents in the compensation award levels. The level of co-operation was absolutely not where it should have been.

That is why we are certain about a continued focus on demanding that they deliver different cultural standards. A culture is nothing but one's value set and how one behaves. We will continue to hold them to account in that regard. I have told the committee that I am a realist, not an optimist, and we believe that an individual accountability framework is necessary to strengthen the position further. It can be seen on the cutting edge of leading international regulatory frameworks, including the Financial Stability Board, which recently stated that a key feature of misconduct scandals was a lack of individual accountability.

Regarding our comments on co-operation, we have been deliberate in sharing that perspective with the committee. In some of the enforcement investigations, what we have experienced is a slow pace and long answers with no delivery of the goods that we want. We have an able team that can hold lenders that indulge in that kind of tactic with us to account. It is not something that we tolerate. If there is a lack of co-operation in enforcement investigations and that is not remedied in the course of the investigation, we will apply to the High Court to demand that we get what we need. We do that where we need to. Matters have been resolved earlier than that step being taken, but to push us near to having to take it is unacceptable. If enforcement cases conclude, an issue we take into account in penalties is co-operation. I will ask my colleague, Ms Cunningham, to say a few words about that.

Deputy Michael McGrath: She might clarify whether those are ongoing pressures.

Ms Seána Cunningham: We wanted to communicate clearly concerning an expectation about co-operation that was not necessarily being met. In that context, we would hold weekly meetings to ensure there was timeliness and be on site to challenge methodologies for retrieving data. We are on top of it, but we are signalling to regulated firms - this is broader than these investigations because it goes across all enforcement investigations - that an expectation of co-operation means that we will require the documents to come to us in a timely and proper fashion. If they do not, we will note that and impose sanctions. I am not highlighting a particular issue today that we are unable to deal with, rather the clarity of communication from the regulator about what we expect by way of co-operation.

Deputy Michael McGrath: Might I ask a straight question? In the course of the enforcement investigations, has the Central Bank had to threaten to go to the High Court or raise the prospect of going to court to secure co-operation?

Ms Seána Cunningham: Yes.

Deputy Michael McGrath: I thank Ms Cunningham.

Deputy Pearse Doherty: I will pick up on some of the points. I welcome our guests. I apologise because I am a bit under the weather today. Regarding the statistics, we know that 40,100 customers were affected by the tracker mortgage scandal according to the Central Bank's final report of May 2019. Has that number increased since the final report?

Ms Derville Rowland: Yes.

Deputy Pearse Doherty: What is the final number?

Ms Derville Rowland: The number has increased by circa 400 customers. The 40,500 that I have cited to the committee is the up-to-date number. I can tell the committee more about that number if members would like me to continue.

Deputy Pearse Doherty: Yes. Perhaps Ms Rowland might explain why there is an extra 400 since the final report.

Ms Derville Rowland: We get the data from the lenders and it takes time to verify those data. When we issued the final report, it was based on the data we had on 31 May. We had line of sight of some customers who were not included in the final report because their data were not available to us. There was a time lag between the data that we could reliably use and the information that we had. Our experience over time has been that the numbers coming from the banks can change because they can double count or there can be omissions. That is one reason.

Deputy Pearse Doherty: Is it Ms Rowland's view that this is absolutely the final number? I appreciate that she has only been in her current position since 2017, but we have been here since 2015. Indeed, it was this committee that wrote to the Central Bank asking, encouraging and demanding that it carry out the investigation in the first place. In the interim, we have seen different figures that have increased from 7,000 to 9,000, then to 11,000 all the way up to 40,500 now. Does Ms Rowland believe that to be the final figure?

Ms Derville Rowland: Some of the differences came from time lags in the data, but the other source of the increase - this is relevant to the Deputy's main question - is that of complaints. Throughout the tracker mortgage examination, there has been an in-flow of complaints from customers, including on a case-by-case basis. Approximately 11,000 complaints were made to the system overall. That number is now down to 126, I believe, but they have continued to flow inwards. A little part of the increase has come from complaints being resolved in favour of customers. The increase has been due to a variety of reasons. For example, there could be a read-across for small groups. That has adjusted the number upwards.

Deputy Pearse Doherty: Were those complaints to individual banks or to the Central Bank?

Ms Derville Rowland: To individual banks. The Central Bank cannot resolve individual complaints - that is the role of the banks. We create the systems and requirements relating to their conduct in handling those complaints. Individual complaints are resolved in the national framework on a case-by-case basis with the Financial Services and Pensions Ombudsman. If complaints were resolved in favour of customers - we would be pleased if they were - it could result in the tracker mortgage number increasing on the basis of single complaints or because of a limited read-across. We require the banks to do a read-across to see if a complaint gives rise to some aspect that had not been captured in the larger examination. That could deliver an adjustment in the number.

Deputy Pearse Doherty: We deal with people who make these complaints. They are deeply frustrated by the banks, but also by the Central Bank. I acknowledge the work that the Central Bank has done latterly in terms of pushing and pressuring the banks to own up to their responsibilities for what they have done, but the Central Bank supervises all of the work that they do. Every tracker mortgage is examined in detail by the banks to determine whether it has been affected and is in scope. In these cases, the banks have determined that the mortgages have not been affected or have not been affected to the degree that the customers believe. The Central Bank has supervised and signed off on that, meaning it again falls to the customer - we know that not all customers do this - to make the complaint and argument, to fight with the bank, to challenge its rationale and modalities and to win out finally, at which point the Central Bank says it is delighted with that. These customers are pointing out that the Central Bank is the agency that is supposed to protect them, particularly as the State has awarded it responsi-

bility for guarding the public in terms of consumer protection. Yet following scrutiny by the Central Bank of how the banks have examined a case, the consumer is left to challenge it and eventually win out.

Ms Derville Rowland: I believe that the redress and compensation scheme that the Central Bank demanded be put in place gave an option for a huge amount of work to be done as an extra choice for customers. More than 2 million accounts were put into the filter at the beginning of the process and a huge amount of scrutiny and challenge was brought to bear based on the criteria that the Central Bank could set. If we closed down the opportunity for people to bring extra information that only they might have through a complaints system, I do not think that would have been fair to them. It is the right of people to bring a complaint and to go to the ombudsman. I support them having that option. We have to make sure the system works well in support of all of that and that all parts of the system deliver for customers in a connected way.

Deputy Pearse Doherty: I ask Ms Rowland not to try to misinterpret me in suggesting that what I am trying to argue is that the Central Bank would in any way try to close down an option of appeal.

Ms Derville Rowland: I am not doing that.

Deputy Pearse Doherty: I will put the point more bluntly. The Central Bank was asleep at the wheel regarding the earlier period of this investigation. Customers who took cases to the then Financial Services Ombudsman, including extended family members of mine, had to wait four years as Permanent TSB dragged a test case through the ombudsman service, the High Court and then the Supreme Court and for campaigners, including this committee, to write to the Central Bank instructing it to take action on behalf of the customers that are affected. We know today that 40,500 of those customers are affected. The Central Bank did nothing during that period to protect those customers. It investigated the banks individually and then closed those investigations knowing that there were 33,000 additional customers affected. It was left to those individuals to argue and fight their cases without the support of the Central Bank. That is the reality of the situation. This may have happened before Ms Rowland was employed in the Central Bank but that is the reality. That is the stain on the Central Bank in regard to the tracker mortgage investigation. This is without doubt the banks' responsibility because they were the culprits. Where was the role of the Central Bank in protecting consumers? Where was its role between 2012 and 2015 when the investigation was launched and customers were left on their own? I was in the room with some of these people as they were on the phone to the banks. The banks were telling them that they were not entitled to a tracker mortgage and the people were in tears. I sat at the kitchen tables of many of these individuals. I know many of them. These people fought the system and did not get the support of all the State agencies but they were unwilling to be silenced and, as a result of going all the way to the Supreme Court, forced the State agencies into this investigation, which uncovered the greatest theft in the history of this State.

Ms Rowland may dispute everything I said but perhaps she will tell me if the Central Bank has learned any lessons regarding its approach to this investigation given what is now known in terms of the magnitude of what was going on under its nose in respect of 11 banks in this State, which robbed their customers of their own money.

Ms Derville Rowland: There is a lot in what the Deputy had to say. The only reason we are here is to work for customers in the public interest. It is the reason the team and I turn up to work every day. I acknowledge that this should not have happened and customers should never have been put in this position, but the Central Bank did a lot of work before this examination

was put in place to strengthen the policy framework, to get tracker mortgages returned to more than 7,000 people and to stop tracker mortgages being taken from people. When I was director of enforcement, I challenged the ombudsman's decisions.

In the case of Permanent TSB, we front-ran the consumer redress principles in the course of the enforcement investigation, precisely because there was litigation in place and we knew we had to act on behalf of customers because we were concerned, particularly about the impact on people who might lose their homes. We could see that despite every effort that was being made, more was needed. This extraordinary examination was necessitated and has been done and more than 2 million accounts have been put in place. The Central Bank is a learning organisation. It is right that we reflect on how to strengthen our approach to supervision. Lessons have been learned. No doubt, we can learn more over time and we will do so because it is right that we always iterate to act to best practice.

We have strengthened our own approach to supervision with the consumer protection risk assessment model that is more structured and intrusive. We have strengthened our approach to focusing on the financial services companies that pose the most risk to consumers, these being the big banks with which we all interact and which sell us the most products in their daily lives. From where I sit - I am sure Ms Cunningham and Ms McEvoy will support me in this - our job is to serve customers, to make sure that we do that job to the best of our technical abilities, to learn at all times and to strengthen our models of supervision. Responsibility for this matter rests with the lenders because this level of intrusive supervision was necessitated by their conduct.

Deputy Pearse Doherty: Did the lenders break the law?

Ms Derville Rowland: I do not want to comment about anything to do with that matter. The reason for this is I want our enforcement cases to be successful. I do not want to make any observations that will be cited in court in a litigation context that would undermine cases.

Deputy Pearse Doherty: That is fair enough. Am I correct that the Central Bank's enforcement procedure in regard to Permanent TSB has been concluded?

Ms Derville Rowland: Yes.

Deputy Pearse Doherty: Did Permanent TSB break the law?

Ms Derville Rowland: It committed 42 breaches of the requirements, which are detailed in the public statement.

Deputy Pearse Doherty: That breaks the law.

Ms Derville Rowland: It breaks the requirements cited.

Deputy Pearse Doherty: Has any member of Permanent TSB been sacked as a result of those 42 breaches of the regulations-procedures?

Ms Derville Rowland: The Deputy would have to direct that question to Permanent TSB.

Deputy Pearse Doherty: To Ms Rowland's knowledge, has any member been sacked?

Ms Derville Rowland: I am confined in what I can say about these matters. The detail provided in the public statement is all I can speak to in regard to those issues. In regard to other

issues, I cannot comment. It is not that I am trying to be unhelpful; I cannot give information beyond what is provided in the public statement. As part of the legal permission, that has to happen. I can only comment in regard to the detail as it appears in the public statement. I cannot go beyond that. My colleague, Ms Cunningham, might be able to elaborate further.

Ms Seána Cunningham: The Deputy has asked a question that should be more appropriately addressed to Permanent TSB. I, also, cannot answer it.

Deputy Pearse Doherty: Fair enough. I presume the witnesses can say if any member of Permanent TSB has been demoted as a result of this, what I call, theft? This institution took customers' money, it broke the law in the process of doing so and it was forced to return it. Do the witnesses know if any bank official has been demoted as a result of this?

Ms Seána Cunningham: I do not know. That is, again, a question the Deputy should ask of the organisation. I do not think I could answer it.

Deputy Pearse Doherty: Individual accountability, if it happens at all, will happen in different stages because the Central Bank investigations into the individual banks are happening at different stages. The first bank to be investigated was Permanent TSB. It is the institution that fought its customers all the way to the steps of the Supreme Court to try to block and frustrate the wider investigation. When are we likely to know if there will be individual accountability in regard to Permanent TSB?

Ms Seána Cunningham: I do not have a date today, unfortunately. We have large teams working on these investigations, forensically working through evidence. We are looking to complete the investigations in as timely a manner as possible. We are looking at the actions of individuals. The Deputy asked what happens to people internally. Earlier, we discussed the fitness and probity regime. We spoke about the fitness and probity we require of senior people we trust to be in positions in financial services that can have real impact. We gave the statistic of 80 people having withdrawn applications for those senior roles because of a challenge by the Central Bank. Questions on the contract and the actions of people will be asked as part of those processes and will be looked at in the context of our investigations. We are looking at those currently.

Deputy Pearse Doherty: I am not looking for a date. Will it be this year, next year or the year after? When should we be-----

Ms Seána Cunningham: There is an element of being dependent on how people engage with us. What one saw, for example, in relation to Permanent TSB was that it settled with the Central Bank. If PTSB had not settled with the Central Bank, we would have had to have gone to inquiry. When we have gone to inquiry, we have seen ourselves in legal challenge on numerous occasions, so it is very difficult-----

Senator Gerry Horkan took the Chair.

Deputy Pearse Doherty: I appreciate that and the challenges in terms of somebody challenging the bank, but the enforcement procedure and the fine has been levelled against PTSB, so I am just discussing PTSB, because we would expect and anticipate that if there was individual accountability, it would be in PTSB first as it is more advanced in this regard. Are we likely to hear of a decision this year, next year, in 2021 or in 2022? Will it be worse-----

Ms Seána Cunningham: That would not necessarily be the case. I am sorry, and I do not

mean to be unhelpful, but I do not want to commit to a date, because we are looking to conduct an investigation. I really cannot say any more, unfortunately.

Deputy Pearse Doherty: Is the Central Bank hopeful that it will be able to hold individuals accountable for what happened in the tracker mortgage scandal?

Ms Seána Cunningham: An investigation is about going through the evidence. It is about looking at the law, the legal framework and the tests that have to be made. We will take us where the evidence leads us.

Deputy Pearse Doherty: That is okay. On evidence that the Central Bank has uncovered so far, has it had cause to meet with the Garda in relation to some of that?

Ms Seána Cunningham: When we do our work in enforcement, we have an ongoing liaison and engagement with An Garda Síochána. We have obligations as the Central Bank of Ireland where we identify suspected offences to make reports to An Garda Síochána when we do. We do that. We meet it regularly. It is part of how we conduct our investigations.

Deputy Pearse Doherty: On the 80 people Ms Cunningham mentioned, who have been challenged and where applications have been withdrawn as a result of fitness and probity, are they all banking applications? Are we looking at certain credit unions also?

Ms Seána Cunningham: No. There would be a very limited number of such positions in credit unions, but it goes across all sectors. These would be applications for the most senior positions.

Deputy Pearse Doherty: How many of the 11 banks affected by the tracker mortgage scandal are we talking about in terms of the 80 people?

Ms Derville Rowland: I do not have the numbers, but it is some.

Deputy Pearse Doherty: Was the challenge on the basis of the tracker mortgage?

Ms Derville Rowland: It would be on the basis of a wide variety of issues - all issues known to us. We have to be circumspect in how we answer some of these questions, but facts and matters known to us in any of our enforcement investigations would form the basis of concerns for us, and they would form the basis of issues that we would raise. It would include matters that we know about in supervision and that we would know about the person's character outside of this. There would be other sources of information, and of course it would include matters known to us in all the enforcement investigations.

Deputy Pearse Doherty: Can this be applied only in relation to the appointment of an individual to a post within a bank or the promotion to another position? For example, if the Central Bank was of the view a director or the chief executive officer of a bank was not fit as a result of its suspicions or the evidence it had to hold a position, could it employ fitness and probity, or would it have to wait for that individual to be appointed into a different role within the bank to challenge that?

Ms Derville Rowland: We have a number of ways to do this. It is correct that the 80 to which we have referred the committee will be upon promotion or new appointment. These are particular senior roles. That could be somebody who has a role and who gets a proposal for a new job. It could be an external person appointed or proposed for appointment. Any information we have that we believe is relevant would be used. We have other powers too, where some-

body who is *in situ* doing a role can be removed from it because of facts and matters known to us. That is a separate-----

Deputy Pearse Doherty: That has not happened.

Vice Chairman: Can I ask Deputy Doherty to conclude?

Deputy Pearse Doherty: Can I just make one point before I conclude? I wrote to the Governor of the Central Bank last May. There were two parts to what I wrote. One part was a protected disclosure, which the Central Bank is investigating, but the other part, which I am happy to talk about, was in relation to an out-of-court settlement that happened in respect of Permanent TSB and a prevailing rate case. This was covered extensively in the media at the time, particularly in *The Irish Times*. The *Irish Independent* would have covered it as well. Permanent TSB settled with a customer on the prevailing rate but with a confidentiality clause. As Ms Rowland will know there are hundreds if not thousands of people who will argue with Permanent TSB that they are on the wrong rate, that they are within scope and that the bank is wrong. They will argue that they are on the wrong rate as a result of the prevailing rate. The situation I am extremely concerned about is where somebody is willing to take on the system, put his or her money on the line, go to the courts and all of the rest of it and where Permanent TSB will settle on the steps of the court but with a confidentiality clause which means nobody else will know why it settled or why that risk was removed from the bank.

As I said, I wrote to the Central Bank in May. I got a response that dealt with the protected disclosure and saying that I would get a response to the other part. To my knowledge I did not get that response but that could be my mistake. Can the witnesses explain to me what action the Central Bank has taken in relation to the out-of-court settlement and the confidentiality clause that has been placed on this individual? It is my understanding, although we can never be sure because there is a confidentiality clause, that this is extremely like the cases that are before the Financial Services and Pensions Ombudsman, if not quite identical to them. The Financial Services and Pensions Ombudsman has no insight into these cases, and he has responded to my letter. He asked me to bring it to the attention of the Central Bank. I am quite interested to hear this, because this is not the first time I have raised an out-of-court settlement and a gagging clause with the Central Bank.

There is another issue that I have asked the Central Bank to investigate which affects thousands of customers, but maybe it is for another day. It is about payment protection, and I have engaged with, and provided a dossier to, the Central Bank on that issue.

I just want to focus on the tracker rate, the prevailing rate and out-of-court settlements. Can the witnesses explain what powers and what reach the Central Bank has to look under the bonnet in terms of that case?

Ms Derville Rowland: Forgive me if I do not capture all aspects of this. There is a number of moving parts to this. We have engaged directly with the Financial Services and Pensions Ombudsman, who is very circumspect, as he has to be, about information that he takes in. He is very clear that he has to decide the cases based on the information exchanged between the complainant and the lender and nobody else is allowed into that, because that would not be permitted. That is a matter for the ombudsman in terms of what information he could or could not take into account in every event, and it is not something that I can speak to, because he will speak to keeping his own process clean-----

Deputy Pearse Doherty: That is fair enough.

Ms Derville Rowland: -----from a legal point of view. He could not take information from anybody else but he will be able to speak to that better.

I am going to talk a bit about litigation settlements and confidentiality and our approach. There are three things I should say to the committee. Being a lawyerly type formerly, I know that going to court is a really difficult thing for customers, and not everybody would want to do that. There would be good reason for people who wish to settle. Some people want to be private about that and do not want their information known to others. The Deputy will appreciate that. In fact, I think Irish people are very private about those types of things. Nobody wants to see a gagging clause being used to prevent important information reaching people who have an oversight duty or a role in the system like we do. If one sees a classic settlement, it can have very little information in it at all. It could even be as short as a page, saying here is an amount. The Deputy is absolutely right that non-disclosure agreements can be contained and kept private. However, some individuals want their business to be private, and that of course is to be respected. Our role, as a regulator, is to make sure we have effective oversight of the system. We intend to have that and we will have it. We see the feedback loops as important bases for affording us an opportunity to see if there is extra, fresh or new information that we could take into account or to determine whether we should require the lenders to look at that and do the read-across, which we have told them we expect. That will not stand in our way when we are asking the relevant questions about the basis of settlements and so on. Much of that information is not contained in the relevant documents. It is not about the final piece of paper, it is about a line of sight on the litigation. We have a line of sight.

Deputy Pearse Doherty: The Central Bank has asked Permanent TSB about that specific case.

Ms Derville Rowland: We have asked all of the lenders about the litigation that is ongoing. We know about the cases that have been settled and we are exercising oversight across those cases to see if there are case-by-case issues or if there are bases that have come out that have a wider read-across. I have been clear already in our statement and here before the committee that we expect lenders to look at the cases and, where there are common circumstances, to do the work and the read-across. We expect that of them and we will be checking.

Deputy Pearse Doherty: I will be finishing on this but if we could just have clarity, there are a lot of people watching who believe this case was really a possibility to open up their cases that are before the Financial Services and Pensions Ombudsman. Ms Rowland stated that the Central Bank has access to the details on this case. Does it have access to all of the cases?

Ms Derville Rowland: We are exercising oversight across the system.

Deputy Pearse Doherty: Including the case I have brought to Ms Rowland's attention.

Ms Derville Rowland: This would be one of a number of cases.

Deputy Pearse Doherty: Ms Rowland stated that the Central Bank is looking at these cases to see if there is a cohort affected. Has the Central Bank concluded that this out-of-court settlement does not affect a wider cohort or is this still a matter that is under consideration by the Central Bank?

Ms Derville Rowland: We have looked at these cases and the information we have to date.

We have taken no decision to the effect that the cases that have resulted in settlements between individuals and the lenders have reopened issues for us. We continue to exercise an oversight and we continue to dig further where we have risks to examine. To date, we have not taken any decision but as I have said, it is a system that we continue to look at.

Deputy Pearse Doherty: Is this case still under consideration? I need to know if that is the case. Is the settlement here-----

Vice Chairman: I cannot let the Deputy continue. There are other members who wish to contribute. The Deputy has had 27 minutes.

Deputy Pearse Doherty: I really appreciate that but I think it would very helpful to get an answer for the committee.

Vice Chairman: I will try to let the Deputy back in again but we need to move on to Senator Kieran O'Donnell.

Ms Derville Rowland: I do not have case-by-case information at my fingertips here but I am very happy to come back to the Deputy in writing on that.

Senator Kieran O'Donnell: Anyone looking in will be astounded that the numbers that were eventually brought in under the trackers were double those with which the banks came forward initially. It went from 20,000 to 40,000, which is shocking. It was a cover-up by the banks. How would Ms Rowland define the type of regulation that the Central Bank engages in now with the banks? Does she regard it as light-touch in nature?

Ms Derville Rowland: Is the Senator referring to our role?

Senator Kieran O'Donnell: No, the type of regulation the Central Bank is doing. Does Ms Rowland regard it as light-touch regulation or how would she describe it? I was a member of the banking inquiry and certainly during the Celtic tiger years the term was "light-touch regulation". How would Ms Rowland define the type of regulation that the Central Bank now has over the banks?

Ms Derville Rowland: I would say the regulatory approach and framework has transformed in the aftermath of the financial crisis. I had the great misfortune to come back to Ireland and start enforcement in the Central Bank at the time the crisis cracked. I spent an awful lot of my time, together with colleagues, retrieving documents for production in criminal investigations, which was to all of our shame and disappointment because we all live in this country and we do not want to see our system that we live in operate like that-----

Senator Kieran O'Donnell: I am sorry, I have limited time. The Central Bank did not regulate the banks correctly during the Celtic tiger era and part of the problem was light-touch regulation.

Ms Derville Rowland: Yes.

Senator Kieran O'Donnell: The Central Bank has done an immense body of work but it was not too long ago that it was before this committee. Certainly, I would have thought the Central Bank was slow in coming to the table in terms of moving on the issue of tracker mortgages. Once it commenced, it did a considerable amount of work but it was certainly slow in terms of really engaging in depth on tracker mortgages. We had various meetings here. I want to acknowledge the work that is done. However, when I look back through it and look through

the Official Report, I am prompted to inquire about what the Central Bank is doing differently. It was revealed that for many years the banks were effectively using customers' money in terms of inflated interest charges on trackers. We did a considerable body of work here as did many other people. If the investigation was not undertaken by the Central Bank it would have never come to light. What is the Central Bank doing differently now to ensure that something like the trackers cannot happen again? It was light-touch regulation back then. I want Ms Rowland to tell me how she would define the regulation now, rather than giving me a preamble and going into what we all know happened. I want to hear what type of work the Central Bank is doing now that is different in terms of regulation of the banks to ensure this will not happen again.

Ms Derville Rowland: As we did previously, we strengthened the regulatory framework which puts the right rules and requirements in place. That is something we have done and we continue to do over time. It is my intention to look at the consumer protection code that is in place now and further strengthen it with a big piece of work that might take multiple years, actually. It will bring into place the idea of segmentation of customers, digitisation and how the modern world interacts with customers. It will cover how the regulatory framework is future-focused and best fit to provide a framework through which all providers of financial services engage with customers, whereby the requirements help us all to get the best positions out of our interactions with the financial system. We continue to look at the regulatory framework. The second building block of regulation is assertive, risk-based supervision. I will ask my colleague, Ms McEvoy, who is director of consumer protection, to tell the Senator about how that works now.

Senator Kieran O'Donnell: In summary, would Ms McEvoy regard it as light-touch regulation any more?

Ms Gráinne McEvoy: Absolutely not. Ms Rowland used the language of transformation and our approach has been exactly that. We have moved away from a sectoral approach of looking at the banks because we now recognise that they are the firms that can impose the greatest harm on consumers. We are intensifying our scrutiny of those institutions. We are challenging them through a series of multiple engagements throughout the year at board and executive level throughout the organisation. We are challenging their business models, their assessment of risk, how they monitor and actually instil a culture of consumer focus within their organisations. I will give the Senator some examples of the kind of thing we would expect to see in that context. He is familiar with the report we issued last year that highlighted that all of the five retail banks have a journey to travel in terms of really embedding a consumer-focused culture. Ms Rowland and I spoke to the boards of those institutions after we had concluded that report in order to convey our expectations and our findings on the individual firms. We talk about having a robust risk management framework in place, having strategies and operational business models. What we mean in practice is that those institutions truly have the customer at the core of their operations. They have multiple committees, as the Senator and I both know. Those committees make decisions regarding whether products that are going to be launched are profitable for the firms but they should also consider whether it is suitable for customers. They decide, for example, whether they are products that the Senator or I might actually buy; that the risks are not unnecessarily high; and that a product is affordable to the customer and delivers what he or she wants. Rather than having "speak up" policies gathering dust on a shelf, we want those organisation to be able to provide evidence and show us when we go out on site that there is a culture of speaking up within them, that the individuals who work there can trust and have confidence that if they do speak up, they will be listened to and that they can call out bad behaviours. We want them not just to incentivise, reward or promote individuals on sales

targets, as it is not all about commercial decisions and sales, but also to promote individuals who deliver good outcomes for the consumers. They are the practical issues on which that we are challenging those firms looking to see evidence of same.

Deputy John McGuinness resumed the Chair.

Senator Kieran O'Donnell: Going back, why was the tracker mortgage scandal not picked up earlier by the Central Bank if it was going on for all of those years and if the Central Bank was charged with regulating the banks?

Ms Derville Rowland: I believe that the Central Bank took a lot of action before it had to launch this unprecedented examination. It should be remembered that about 7,000 tracker mortgages-----

Senator Kieran O'Donnell: I am sorry but-----

Ms Derville Rowland: -----were returned to people. When the Central Bank pulled threads to see what was going on, it discovered there were issues. Precisely as the Central Bank solved those issues and looked at the regulatory framework, it had to write letters to CEOs to tell them they had to deliver for their customers in trackers, and we also took action to-----

Senator Kieran O'Donnell: With due respect to Ms Rowland, the tracker-----

Ms Derville Rowland: -----strengthen the regulatory framework.

Senator Kieran O'Donnell: We only started on that when the tracker mortgage issue came to light in 2015, but the tracker mortgage scandal had been going on for years before that. I am not a regulator but we had ordinary people coming to us. I acknowledge the work the Central Bank has done but I have been a Member of these Houses since 2007. I was here on the night the bank guarantee was brought in. We dealt with people on the ground. We cannot afford to forget the harm it caused. I have to ask the hard question. If the tracker mortgage scandal was happening for years prior to 2015 and if the Central Bank was charged with regulating the banks, why did it not pick up on the tracker scandal earlier? It put many people under untold pressure. These were ordinary consumers and customers. The banks knew it was going on, and from what I can see, the regulator, which is the Central Bank, did not. It is legitimate to ask the question why not.

I acknowledge the phenomenal work that was done but the horse had bolted at that stage. If the Central Bank is doing ongoing regulation, why was the tracker mortgage scandal not picked up in the early years when it had started? I will not go into the precise years. Perhaps Ms Rowland could clarify this for me. When she looks back on the investigations, what was the earliest year for which people were compensated for their tracker mortgages? What year did it go back to?

Ms Derville Rowland: I just want to say that-----

Senator Kieran O'Donnell: I just want the year. What was the year?

Ms Derville Rowland: I would have to check. We required the banks to compensate €47 million to 7,000 customers. I believe it was-----

Senator Kieran O'Donnell: In what year?

Ms Derville Rowland: I would have to check, to be honest with the Senator.

Senator Kieran O'Donnell: Roughly.

Ms Seána Cunningham: I think it goes back to 2004.

Senator Kieran O'Donnell: The question I am asking, which is a very legitimate question, if this was going on for all of those years - over a ten-year period to 2015 when it came to light here - why did the Central Bank not pick it up? The banks knew they were doing it and the regulator was regulating the banks, so why was it not picked up by the Central Bank in its regulation of the individual banks? At this stage we are talking about the bones of 15 years after this started. I am asking Ms Rowland why the issue was not picked up. I am aware that Ms Rowland was not there at the time, but I am asking for her opinion.

Ms Derville Rowland: My answer is that a lot of work was done. Let us go back in time. This was at a time when ombudsman decisions were delivered on either side of that decision-making process. This was not beyond ambiguity or complexity. There were a variety of circumstances for tracker mortgages. In some cases the regulatory framework does not even deliver going back further than 2006, but the examination has delivered. This is a complex issue and what our-----

Senator Kieran O'Donnell: I am not denying that. I am making the point that-----

Ms Derville Rowland: I am saying-----

Senator Kieran O'Donnell: -----we can speak about the body of work but the bottom line is that the banks knew what they were doing. They were compensating their balance sheets because they were under severe pressure. They wanted to get profits. They found profits in any way they could. It was the role of the regulator to protect the interests of the consumer. The major investigation on this did not commence until 2015 onwards. Because I want to be certain about it, the question for me is around light-touch regulation. Ms Rowland still has not answered my question about why the Central Bank did not pick up on it and why it did not pull the banks up on it and get them to correct the measure. The Central Bank put ordinary consumers under enormous pressure. I want to be certain that what is in place now will ensure that this kind of thing could be picked up. In her statement Ms Rowland refers to the "Cultural failings within the banking sector" and that "Disappointingly, those failings did not stop once the examination was launched." Are the banks afraid of the Central Bank or do they still regard the Central Bank as, effectively, something they can ignore at their whim and as they wish? I want to know that the mainstream banks are afraid of the Central Bank.

Ms Derville Rowland: The Senator will have to ask the banks what they think of the Central Bank. From working with the responsibility of leading a team that works in the public interest, we practise an intrusive, assertive and risk-based supervision with specific focus on the banks. Ms McEvoy has detailed a little how we drive a focused approach at the banks. Part of our approach is assertive, risk-based supervision supported by a credible threat of enforcement, about which I hope the Senator will see we are very serious.

If I may go back in time, it is true that the regulatory landscape was utterly different back then than the present landscape today. This is for the betterment of all of us. Responsibility for discharging their obligations to the customer rests with the banks, and the leadership of the banks is significantly important in setting the tone from the top. It is important that we are vigilant as regulators in making sure that we look at the conduct of the banks, look at the products

and services that they design and sell to their customers, and scrutinise the way they sell to their customers.

Senator Kieran O'Donnell: Yes.

Ms Derville Rowland: We are absolutely committed to that.

Senator Kieran O'Donnell: I have two more very quick questions. When did the Central Bank first become aware of the tracker mortgage scandal?

Ms Gráinne McEvoy: We introduced the framework-----

Senator Kieran O'Donnell: In what year did the Central Bank first become aware, as the regulator, that a tracker mortgage scandal was under way across all of the mainstream banks?

Ms Derville Rowland: I think what happened was that tracker issues were coming to light over time in different lenders in different ways. They came to light with different kinds of problems. There was a lot of switching, for example, in the market and the customer journey was getting complicated, along with the information people were getting. A variety of initiatives were under way. Some were strengthening the information to customers, and this is why the regulatory framework was strengthened-----

Senator Kieran O'Donnell: I do not want to-----

Ms Derville Rowland: -----and some were particular-----

Senator Kieran O'Donnell: I do not want to labour the point. There was €693 million in compensation. This is nearly €700 million, almost three quarters of a billion euro. I had a very simple question. If the witnesses do not want to answer it, that is fine. When did the Central Bank, which was the financial regulator at the time, first become aware of the tracker mortgages scandal? When was it first aware?

Ms Derville Rowland: I have no desire not to answer the Senator's question, and I apologise if I am not giving the answers he would wish.

Senator Kieran O'Donnell: I believe it is a reasonable question about when.

Ms Gráinne McEvoy: We introduced the framework in 2015 when it became apparent that some of the actions we were seeing in the individual banks were of a more systemic nature. As a systemic regulator, this was the right approach for us to take. We were quite public in-----

Senator Kieran O'Donnell: That was ten years after the tracker mortgage scandal started. It was too long.

Ms Gráinne McEvoy: On the individual cases we referred to, which resulted in €47 million being compensated to 7,100 customers, I do not know the specific date for when it was initially launched. It was apparent, however, after that ruling that this was an issue of a very wide and systemic nature and the framework was introduced in 2015 to yield results in the region of €690 million for 40,000 customers.

Senator Kieran O'Donnell: I believe it is a legitimate question to ask. As the regulator, the Central Bank was the financial regulator at the time and it should have picked up on the tracker mortgage scandal way before that date.

Ms Gráinne McEvoy: We did. That was when we introduced the framework that actually deals with it as a systemic issue. It was evident in two institutions prior to 2015. I do not have the specific date but I am happy to come back to the Senator with that date.

Senator Kieran O'Donnell: I put it to Ms McEvoy that based on what developed subsequently, this had been endemic for years, from 2004 onwards. The Central Bank as financial regulator should have picked up on it.

I have some final questions because I am aware that colleagues want to contribute. The Central Bank spent 3,000 hours investigating. What was the cost of the investigation to the Central Bank? Will Ms Rowland confirm the number of institutions currently under investigation? I am not asking for names, just the number. Does it include all the mainstream banks?

What is the Central Bank's interaction with the Financial Services and Pensions Ombudsman? Many constituents who come to us end up with the ombudsman. I would have liked representatives from both institutions here together to get an idea of the interactions. Our role is to represent the public. It is not personal. Any questions I have to put today are just questions that come up. That is our responsibility. What was the cost to the Central Bank of the 3,000 hours of investigation? How many institutions are currently under investigation? Does the number include the mainstream banks? When does the Central Bank expect to conclude the investigations? They appear to be running on for quite a lengthy period. What is the interaction with the Financial Services Pensions Ombudsman in terms of cases? Is there a protocol? Are there interactions?

Ms Derville Rowland: I do not have an absolute figure on the cost to the Central Bank of the number of hours we have spent investigating right across the organisation. There is significant work continuing in respect of tracker mortgages.

Senator Kieran O'Donnell: Is there a specific number of staff involved?

Ms Derville Rowland: It has flexed over time, and we are now bulking up on the enforcement team as we deploy the teams in the areas. It has changed over time. I do not have a figure for the Senator. With respect to the enforcement cases, we confirmed that there are six entities or institutions. We have named them. We have concluded against Permanent TSB. Five investigations are open against entities. All six of our cases involve looking at individual accountability as well as the rest. If the cases ever came to fruition, they would be counted as extra numbers.

I will ask Ms McEvoy to talk about the relationship with the Financial Services and Pensions Ombudsman.

Senator Kieran O'Donnell: What is the timeframe for the investigations?

Ms Derville Rowland: We have already said that is very dependent on the responses we get from the individuals and on how that will go. These are detailed and forensic investigations and we cannot say when precisely they will finish because it depends very much on the evidence and level of challenge or opposition, or the complexity of the matter.

May I try one more time to answer the Deputy's question on what was done previously? Tracker mortgages were returned to individuals before this examination ever got under way in 2015, as far back as 2010. Banks were stopped from taking people off tracker mortgages. That was a silent win, if I can say it that way. As far back as 2008, public warnings were issued to

lenders warning them about their duty to act in customers' best interest when recommending to them that they should switch from a tracker mortgage to another product. The Senator will recall that there may have been a good price associated with giving up a tracker mortgage and opting for a fixed rate at that point. It changed later. In 2009, public notices were made. In 2009, 224 customers were not given their contractual entitlement and the Central Bank addressed that issue. What was happening was that issues of all kinds were arising over time with tracker mortgages. Before the examination was launched, approximately 7,100 people were given back tracker mortgages.

Therefore, I cannot agree that no work was done by the Central Bank. Policy strengthening was carried out and warnings were issued to banks. Efforts were made to make sure customers did not lose tracker mortgages. People got tracker mortgages back, but what really happened was that the more the Central Bank did work, the more the issue seemed to come to light. We were working in the enforcement investigation in Permanent TSB and it made sense to set up a redress or compensation mechanism. The lenders caused the unprecedented need for such a mechanism. I am aware the Senator has not been satisfied with our answer on that, but of course I wish that more was done. I wish that this did not happen. It was wrong that it did happen, and I fully accept that.

I ask Ms McEvoy to talk about the interaction with the ombudsman.

Ms Gráinne McEvoy: We have an open and collaborative arrangement with the Financial Services and Pensions Ombudsman, as the Senator might expect. Both institutions protect customers in various ways as part of the wider State framework for protecting consumers. Our approach typically tends to be system wide, examining issues of a systemic nature, whereas the Financial Services and Pensions Ombudsman has a wider and different mandate under law. It examines individual cases. Both authorities have a memorandum of understanding whereby we allow for the sharing of information that is relevant to both. We talk about our respective roles in terms of the wider framework, and we share information in the context of decisions made or individual cases that are being considered. It is very important that we have open dialogue or collaborative engagement. It works very well.

Deputy Joan Burton: I thank the witnesses for their frankness up to now. There are, however, many people still badly affected. As well as examining the past, I would like some indication as to what will happen to those still embroiled.

I raised with the Central Bank on a number of occasions the circumstances of the Bank of Ireland staff tracker group. In late 2006 and early 2007, Bank of Ireland offered a two-year, fixed-rate mortgage product to staff in the bank. It was at the ECB rate at the time plus 0.75%. The individuals were promised that they could transfer to a tracker mortgage when the term of the fixed rate ended, after two years. Some 2,000 Bank of Ireland staff were affected by this. Over time, 1,800 were transferred by Bank of Ireland to a tracker mortgage, but for some unknown reason, 200 were not able to transfer. These were staff at various levels, from management level to administrative and branch levels. There is a dossier on how some of the individuals and their families have been affected. In some cases, their health has been broken and their careers have been badly damaged. They have written to the Central Bank. They wrote to the previous Governor of the Central Bank, Professor Philip Lane, and set out the details. They, as bankers, set out all the reasons, including the technical reasons, they should be transferred to the appropriate tracker mortgage at the appropriate rate. They have literally been going around in circles ever since with no redress at all.

The group of 200 seems entirely arbitrary. They might just have been at the end of the list, or else there was some time-based feature. I can see no reason 1,800 staff had their arrangements settled by Bank of Ireland and 200 were left out in the cold. The latter have not received any kind of adequate response from the Central Bank. I do not know whether the delegates feel they are walking on eggshells because of Bank of Ireland and that it is not within the Central Bank's capacity to act, offering clarity and an explanation as to why the 200 have been left aside. They continue to seek to be transferred to a tracker mortgage. They have suffered all the outcomes that individuals have indicated in previous testimonies to the banks themselves and to the Central Bank. Marriages have broken down, careers have been affected, and a number of individuals have suffered bad health. While much of the focus is understandably on Permanent TSB and while I, too, can tell harrowing stories about that bank, I do not understand why the members of the group in Bank of Ireland have been left out. Having gone through all of their documentation with them again recently, I am convinced they have a strong case as to be offered redress.

In her opening statement, Ms Rowland outlined a good policy - Stop the Harm - with regard to expectations on behaviour and culture. I very much welcome this. It is a major advance by the Central Bank and I congratulate the people who formulated it. It is based on approaches that have existed in other jurisdictions with which I am familiar. Many of the people in the group in Bank of Ireland have been destroyed by the failure to obtain redress. They are going from one group of people to another, including the bank itself and its mortgage support team, which sounds like a slightly ironic title. These people continue to pay their mortgages but many of them are now embroiled in heavy mortgage debt. Given the principles enunciated in Stop the Harm, can the Central Bank offer any hope to this group that the issue can be redressed? How have 1,800 people been sorted out while 200 people, for whom there is no evidence of any particular distinction, have been left to struggle and endure the type of suffering with which the Central Bank eloquently empathised in Ms Rowland's opening statement? I would like them to get the same treatment.

Ms Derville Rowland: I thank the Deputy for her question. I share her concern and sympathy for people experiencing hard times because of the economic situation in which we found ourselves and, of course, because of the behaviour of the banks in making life far harder for some than it should have been. I am aware of this case and I am also aware of the other issues the Deputy's colleagues have raised with us. We put 2 million accounts into scope for tracker mortgage examination scrutiny and a huge number of cases had to be looked at. Because we had information from a variety of sources, to give us a good indicator of where the issues might be, we made sure to challenge hard where we thought there was a basis to do so. We pushed to the limit of what we could. We did push against the lenders' view that those affected were a far more narrow group. The Deputy will recall the time we came here when the lenders had accepted approximately 13,000 customers for inclusion. That number has swelled since then, which tells us just how wrong it was.

As we went through the basis upon which our decisions were made, and we took the most pro-customer point of view, we got lots of cases included in the tracker mortgage examination. For example, we looked at the terms and conditions set out in the mortgage. If people were entitled to a tracker on the face of it, that is precisely what they got. I totally recognise that some customers are disappointed with the rate of the tracker they got but we pushed it as far as we could. We also required lenders to look at the customer journey. This means it is not just about the contract. It was about any information provided to them in the sales process, any advertisement on television being run at the time and any other documentation that might have

given people an expectation of a tracker. Where we could see a basis where that transpired to be the case, we pushed for people to be included. We certainly saw many customers get tracker mortgages on that basis. Customers might have started on a tracker and moved to a fixed rate because the price was better and it was not clear when they moved off a fixed rate. Some of them moved two or three times and it was the original documentation that had tracker promises in it and not the documentation for the second or third moves. Some of those customers also got trackers. We also looked at the disclosure regimes and whether they made it clear enough to customers over time and they also yielded cases.

I am sorry that some customers have been disappointed where we could not find a basis to force the lenders. This is one of those groups where we could not find a basis for us to force the lenders to include them. We understand the disappointment of people and their families. It is important to us if information does come to light from another source. We have been clear about the feedback loop and that it is important to work together in the national framework. A total of 2 million accounts were scrutinised. While many people who would wish to have a tracker rate did not get one, many have been included. Where we could have a basis to include customers on tracker rates, we pushed for them. Other fora have different criteria to us. For example, the Financial Services and Pensions Ombudsman has a much wider filter than the Central Bank. The statutory framework within which he can operate has a very wide discretionary basis. I am sure he can speak to the committee himself about that basis. We did the most we could yet I am absolutely sorry for people and families who have suffered and I understand it very well. We did the most we could. My colleague, Ms McEvoy, might want to say something.

Ms Gráinne McEvoy: Ms Rowland has articulated it very well with regard to those who have been included and the various reasons and circumstances in which they have been included, including where there was a lack of transparency about the rates people were offered and expectations set out in marketing information and flyers. All of those individuals have been included as part of the examination. I echo her sentiment that it is unfortunate and I am also sorry that many people are disappointed with the outcome of the review. For some people it is not what they expected or wanted. Certainly from the perspective of the Central Bank, we did all in our power and pushed to the limit and beyond to try to get as many people as possible included as part of the examination.

Deputy Joan Burton: From the documentation supplied, it is difficult to understand why, having reviewed the cases, the Central Bank has accepted that 1,800 people were able to qualify but not 200 other people with approximately the same background, working for the same entity, getting the same material and levels of information and, in particular, starting on the two-year fixed rate mortgage rolling to the staff tracker rate. That would seem to be a clear indication. The people involved work in the bank and were knowledgeable, more so than the average customer, about the arrangements into which they were entering. The explanations they have received are not sufficient.

The Central Bank is now suggesting the ombudsman has powers that it may not have. It would be appropriate if the bank could set out in detail the reasons for its decision, perhaps in writing. I would also like to hear the bank's suggestions as to why the Financial Services and Pensions Ombudsman has powers it does not have. I am interested in the Stop the Harm principles. In other countries, including the United States, it has been possible to take into account circumstances where people acting in good faith have been damaged, perhaps because in making multiple offers a bank ended up confusing or misleading them. I wonder about the principles in this context. Can the Central Bank have another look at it? It is difficult to under-

stand how 1,800 people in a bank could be acknowledged after due representation, with regard to the arrangement of the bank to roll the staff onto a tracker rate, while 200 other people, many of whom have suffered a lot of harm and significant fallout in family circumstances, have been refused.

Chairman: Before the witnesses reply, I seek the guidance of members. The ombudsman is outside and has been waiting. It was the decision of the two groups not to come in together. What do members wish to do? There is a vote at 1 p.m. and the Order of Business is at 2 p.m.

Deputy Pearse Doherty: There are also statements on Dáil divisions.

Chairman: Yes, that is at 2 p.m. We are finishing here at 1 p.m. for the vote.

Deputy Joan Burton: We will have to postpone it.

Deputy Pearse Doherty: There is no way that the session would be concluded so I suggest that we reschedule.

Chairman: We will apologise to the ombudsman and his officials and reschedule.

Deputy Joan Burton: I have another question. I accept that the witnesses do not have all the evidence here today, but in the context of what I am aware of in regard to Stop the Harm, this qualifies as a case that badly needs to be reviewed by the Central Bank. I would appreciate Ms Rowland's opinion on why the Financial Services and Pensions Ombudsman has a greater capacity in this. This dates back to 2006 and early 2007 for many of the people.

Ms Derville Rowland: We have looked at this case and found no basis to force the lender to include them for redress and compensation. That is disappointing for the 200 people who are affected by this. There are many different customer journeys, even with employees of the same bank, that will have different factors to be taken into account. I will not set out the basis of our decision in writing to these customers. In fact, it might not be helpful to them if I were to do so. We work at the system-wide level and it is important that they seek their answers from the lender about the basis of that decision.

I did not mean to observe anything other than the fact that the Financial Services and Pensions Ombudsman has a set of statutory bases upon which it can make a decision. I do not recall them now, but they are entirely different from ours. Many parts of the system have different roles and they work differently but in complement with each other. My point is no more or less than that.

The Stop the Harm approach is a protective approach we use. I am glad the Deputy thinks it is a good idea. We think so as well. It is a filter that must be applied whereby when a decision is being taken about whether somebody is affected, one takes care not to make things worse for the person until that decision has been made. If one decides that the person is affected, one keeps making sure that one does not make things worse for the person, but if one is sure that one's decision is that they are not affected, one has discharged one's obligation to apply that principle. From our perspective, the Stop the Harm principles have been applied in this context because the decision from where we sit at present is that we have no further basis to challenge for those customers. I understand that they are disappointed with that outcome.

There were 2 million accounts put into this. Some 100,000 accounts were considered and many wide and varying sets of circumstances were included. Not everybody who would wish

to be included has been. I believe I am correct in that we have met representatives of this group of customers and I understand their disappointment. I cannot get into discussing specifics as it is a matter for Bank of Ireland to discuss that with the individuals, but there are cases where there is no customer facing information, where no promise of a tracker was made, where there is no promise of a tracker in terms of the contract and there is no basis upon which the Central Bank can legitimately push for people.

Deputy Joan Burton: I have a second question on the Central Bank's regulatory role.

Chairman: We want to conclude.

Deputy Joan Burton: This is very brief and, again, the Central Bank is free to send correspondence to the committee. It is about the Permanent TSB mortgages that have been sold to Pepper. What is unclear for many of the customers is the regulatory status of Pepper and what the rights of the consumers are, given that their mortgages have been transferred to it. I refer in particular to groups of people who are paying the agreed settlement amount where they previously had a deal with Permanent TSB. The mortgage has now been sold. To return to the Stop the Harm principle, there are people, I am sure the Chairman will agree, who are terrified of what will happen next. In addition, apparently many other banks are proposing to sell the bulk of settlement loan customers to vulture funds and other funds and organisations. It would be helpful if Ms Rowland could highlight what powers the customers have, if any. At present, they are in a situation where they may have been paying the agreed settlement for a number of years. The period of the agreement might be coming to an end a number of years hence and people are genuinely terrified of these banks or organisations. They might not be banks in the regulated sense. They might be people who are looking after the accounts or funds that have bought the mortgages. There a responsibility on the Central Bank to make people's position clear.

Ms Derville Rowland: I will be happy to add further information on this in writing, but I will try to be brief as I am conscious of the time. Pepper is a regulated entity. It is a credit servicing firm pursuant to regulation. This is about people who have agreed restructured terms for their mortgages. It is not a tracker-related question.

Deputy Joan Burton: No.

Ms Derville Rowland: This is a concern about people who are worried about paying their mortgages and who might have been obliged to undertake a negotiated restructured repayment arrangement. We are clear that where somebody has agreed an alternative repayment arrangement and if the mortgage is sold, the equal protections of the regulatory framework apply regardless of who the loan owner is. Whether it is a bank or non-bank, we would expect that the performing alternative repayment arrangement that has been agreed and is being paid continues and nothing changes.

The Deputy also highlighted an important point, which is a time, and these are all written, to have a review period. People will be worried about that-----

Deputy Joan Burton: Terrified.

Ms Derville Rowland: -----because this is their home and they need a roof over their heads. That is very important. I will ask Ms McEvoy to speak on this, but we have set an expectation that where all things are equal and it is performing and working well, it should continue. However, it is important that the best interests of the customer are taken into account. Ms McEvoy will add to that as it is an important point for people.

Ms Gráinne McEvoy: We wrote to all the banks and non-banks clearly setting out our expectation that if one is in a situation where one is meeting the terms of one's arrangement, that arrangement should carry on. Equally, it is important for the customer that a review period be built in because there could be factors that need to be taken into account. Most arrangements exist for three to four years. The borrower's circumstances may have changed in that period and it is important that it is built into the contract that the customer engage with the lender again at that point in time if their circumstances have improved or disimproved. That is factored into the mortgage amount the person will continue to pay back on the mortgage, which is important.

When the regime was introduced in 2015 to require the regulation of Pepper and other credit servicing firms, the Central Bank was strong in advocating that its consumer protection code dealing with customers in mortgage arrears would apply equally to the non-banks as it would to the banks. That is to ensure the protections exist for all borrowers regardless of whether one is a borrower with a lender that is a bank or a non-bank. The protection framework that exists, the transparency obligations and the manner in which we expect the firm to deal with its customers are clearly articulated in the code. It is something on which we supervise the banks and the non-banks. I hope that addresses the question.

Senator Gerry Horkan: I thank the witnesses for attending, for their opening remarks and for the final report on the tracker scandal. It is a scandal. There is no point in trying to dress it up and saying that it is not. It is a terrible reflection of how banking was operating at the time. While there has been a cleanup, redress, compensation and so forth, 40,500 households were involved. These were not just individuals in many cases, but households with families and children and worried extended families. They saw 100 people lose their private dwelling home, with 200 other investment properties lost. It is important to highlight the percentages at times. Approximately 1,215 mortgage holders received more than €100,000 in redress and compensation, with 3,240 receiving more than €50,000 and nearly 13,000 receiving more than €10,000. These people had to change their lifestyles and make significant sacrifices. Has there been any real acknowledgement or investigation into the fact that every single bank seemed to make the same mistake in the same way? We are all supposed to believe that there is no cartel or collusion involved. It seems incredible that all of these independent operating entities made the same mistakes or treated their customers wrongly in the same way.

Ms Derville Rowland: I recall having this discussion here before. An observation was made, which stands true, that a common set of incentives operated in the external environment which had clear pathways if anyone thought about it for half a second. It was a time of significant financial crisis. The tracker mortgage product was expensive for lenders. It also turned out to be a very good product for customers. That was not always the case, as the Senator knows, because we saw the complicated switching journeys of Irish customers as a feature of what happened. My message to all customers today would be to switch and shop around for themselves to get the best products. It was present in the market at that time. The tracker was sometimes expensive compared with other options. Later, as the products began to be withdrawn, it seems that it began to be expensive for lenders. There was a common set of external circumstances which, if one took a tiny amount of time to think about them, had an obvious answer.

Ms McEvoy might comment on a feature of what happened then that I never expect to see again. That was that these products were taken off the market and no real consideration was given to existing customers who might have choicer options that were good for them and that it was all one-way thinking, which might be about the financial situation of the lender and not about the duty owed to the customers. That is precisely the kind of thing that we have said

is different now. We have a requirement, known as product oversight and governance, POG, which means that before a product is designed, approved, launched and sold, it must be clear whether it is appropriate and suitable for customers and what benefit it will give them. Proper consumer thinking has to be at the heart of the design and there has to be an approval system in the organisation. One has to think, when withdrawing a product from the market, about what existing customers are entitled to. One cannot just take it away and forget about the obligation to existing customers. The Senator made a wise observation about the system. The improvement in the procedural framework that is required should deal with the idea of taking away a product without thinking about obligations to customers.

Ms Gráinne McEvoy: Historically, commercial institutions too often looked at products solely through the lens of profitability and how to make money out of a product. There has been a significant shift, which has been driven by European authorities, among our colleagues, banking authorities and the European Securities and Markets Authority, ESMA. They have hardwired into European law the requirements and obligations of regulated firms to have product oversight and governance committees, to take into account all of the factors that Ms Rowland mentioned, including launching products, suitability for their target audience, how products are sold, what is communicated and transparency related to risk. Equally important is the question of what happens if a product is withdrawn and its implications. This is all hardwired into a wider European framework which we accept. We supervise accordingly in the national jurisdiction.

Senator Gerry Horkan: I accept that banks can introduce products, remove products and change their offering. A person who wants to get out of a contract with a bank will usually be told by the bank that certain terms and conditions apply. It is not easy for a person to walk away from an agreement with the bank. The witnesses are saying that, at the time, the banks were changing customers' terms and conditions or ignoring the original contract or terms and conditions offered. Is that what the witnesses are suggesting?

Ms Derville Rowland: That is not entirely the case. We have the breakdown of affected customers. About 21% of customers experienced operational failures, which is a matter of the bank not being good at what it is meant to do.

Senator Gerry Horkan: That is purely a systems failure.

Ms Derville Rowland: We see that as a feature of the banks. This committee will be familiar with the narrative about banks' systems not doing what they should do. It could be that a person got an offer and the bank did not put that person on the right rate for a time or there were other glitches in the system. That occurred in approximately 21% of the cases we caught in the tracker mortgage examination. In approximately 19% of cases, the wrong margin was applied. That might include a person with an offer letter with one rate, which changed in the intervening months before the conclusion of the conveyance, and then the person was put on a slightly different rate for a period. It could be a difference of a few percentage points. Approximately 60% of customers had the wrong product. That is when we talk about a person not getting a tracker. Some of those cases might involve a breach of contract, where a person had a tracker entitlement and did not get it. Others arose from what we would call the customer journey. That is important in consumer protection work. A contract is a very important document. What a customer was led to believe and other information that he or she relied upon is also important. We had to look at some of those very complex customer journeys, where the contract did not give rise to a tracker but because the customer was told something or given information that gave that expectation, we think the bank should do the right thing. That goes

well beyond contract law.

Senator Gerry Horkan: Is that one of the reasons for the increase in the number affected from 20,000 to 40,000 customers?

Ms Derville Rowland: That is right. The other matter is the disclosure obligation. It is also a feature of other jurisdictions that one improves the regulatory framework by addressing certain behaviours. We should always do that. Some of the disclosure may have left some people slightly confused or not as clear as they could have been. Some decisions were made on that basis. There is not one particular reason but all the reasons revolve around the same topic, namely, tracker mortgages. That is why this has been so difficult to crack.

Senator Gerry Horkan: Is Ms Rowland saying that she is confident that the banks were not colluding or discussing how to get out of the mess they got themselves into? Did they all operate independently because it was the obvious thing to do?

Ms Derville Rowland: I will not make any comment on whether they did or not. The observation I will make is that I think they had plenty of ability to figure it out on their own without having to ask somebody else, because there was a common set of external circumstances prevailing at the time.

Senator Gerry Horkan: There was a culture that basically said it was okay to do these things.

Ms Derville Rowland: Our culture report stated that banks did not have enough of a consumer-centric point of view. While they have made something of a start in that regard recently, they have a journey to undertake, so it is a valid observation that they did not give sufficient consideration to the impact on their customers of the design and sale of their products and their withdrawal from sale of those products. That is absolutely right and something that we expect never to see again.

Senator Gerry Horkan: I thank Ms Rowland for acknowledging that. While I know it is not in Ms Rowland's statement today, the narrative to date regarding the €693 million cost has been that this has been a cost to the banks. Most of the money that was given back was money the banks should never have had in the first place. It should always have been in the hands of the consumers. Do we have a breakdown of the €693 million figure? I accept there are administrative costs in the bank. I have another question about the costs to the Central Bank. Where do all of these fines go? Do they go to Central Bank or somewhere else? What happens to the fines?

Ms Derville Rowland: There is a lot in that so I will ask Ms McEvoy to help with some of it. On the €693 million, we have a breakdown of the different components of that figure and we know how much is redress, compensation, etc. Ms McEvoy will give those figures. Separately, the banks have reserved more than €1 billion for their administrative costs in recruiting professional advisers, as we demanded that they do to check their homework-----

Senator Gerry Horkan: Does that €1 billion figure include the €693 million?

Ms Derville Rowland: Perhaps it does. Yes, the €1 billion is inclusive of that figure.

Chairman: Will Ms Rowland give us a note breaking down that figure under all of the headings in order that we can get a clear view of these matters?

Senator Gerry Horkan: Redress and compensation are two such headings.

Ms Derville Rowland: Yes, we can provide that figure to the committee now.

Chairman: Will Ms Rowland give a hard copy to the clerk to the committee so that we can circulate it?

Ms Derville Rowland: Yes, we are happy to do that. Fines levelled by the Central Bank go back to the State. That is the right thing to do as it means the benefit-----

Senator Gerry Horkan: Are the costs incurred by the Central Bank in dealing with this matter met through its funding from the Exchequer?

Ms Derville Rowland: Yes, they are met through the levy that the lenders pay as well. With the exception of an amount of reserving that is needed for accounting reasons, the €100 million in fines the Central Bank has levelled to date go to the State. That is important and right because that is where that money should go. Ms McEvoy can give the figures.

Chairman: I have some questions.

Senator Gerry Horkan: Perhaps the witnesses can give a breakdown of the €693 million in 30 seconds.

Ms Derville Rowland: We have the breakdown here.

Chairman: I will pass my questions to the clerk in writing and ask that the relevant section of the Central Bank respond to each of them in writing.

Ms Derville Rowland: Very good.

Chairman: When the committee raised certain banking issues with Mr. Cormac Butler and his colleague, Mr. Tim Bush, they did nothing but waffle in their answers. In relation to other queries we put to them, they avoided the questions. We will send a transcript of that meeting and my questions for the Central Bank to the witnesses and ask them to deal with them accordingly.

Ms Derville Rowland: Very good.

Chairman: I have hijacked Senator Horkan's contribution but I may have to leave. With regard to breaches identified by the Central Bank, has anyone been referred by the Central Bank to the Garda?

Ms Derville Rowland: We make many referrals of suspicions of criminal offences to An Garda Síochána. I believe it is a figure we collate on an annual basis and disclose.

Chairman: I ask Ms Rowland to send the figures to us.

Ms Derville Rowland: I can certainly follow up.

Chairman: Was there a large number of referrals dating from the financial crash?

Ms Derville Rowland: I cannot recall.

Chairman: I ask for a written response indicating how many cases were referred to the Garda and how many of those related to the period of the crash.

Ms Derville Rowland: I will do my best to give the committee the information that we have.

Chairman: Was Deputy Doherty's question about whether the PTSB broke the law answered?

Ms Derville Rowland: I answered that question.

Chairman: Yes.

Ms Derville Rowland: I said that I confirmed that PTSB committed 42 breaches of regulatory requirements. They are legal requirements and a breach is a breaking of them. I absolutely confirmed that.

Chairman: It is a breach of the regulation.

Ms Derville Rowland: Yes.

Chairman: Does that mean the Central Bank-----

Ms Derville Rowland: That is the law.

Chairman: -----would have to report it to the Garda?

Ms Seána Cunningham: The distinction may be in terms of whether it is a breach of a regulatory requirement that attracts a civil penalty or a breach of a matter that is a criminal offence. The outcome in respect of PTSB was 42 separate regulatory breaches, bringing into play the Central Bank's powers under the administrative sanctions procedure.

Chairman: There were no criminal breaches.

Ms Seána Cunningham: No. For the Central Bank's outcome in respect of PTSB, they were regulatory breaches.

Chairman: On vulture funds, in answer to a question, we heard that regulation travels with the loan and so on. Again, I must say that has not been my experience when dealing with clients whose loans have been sold to the vultures. It is not normal behaviour by the banks and such clients are not treated in a normal way. In fact, the behaviour of the vulture funds has been despicable. New legislation has applied some regulation to vulture funds or their agents. In implementing that legislation, has the Central Bank engaged directly - not in writing - with the funds?

Ms Gráinne McEvoy: Yes.

Chairman: Has the Central Bank laid on the line for the funds that they must comply with the law?

Ms Gráinne McEvoy: We have had written correspondence, as I mentioned in response to Senator Horkan, in which we clearly articulated our expectation of the banks and non-banks in terms of their treatment of customers and compliance with the consumer protection code, and in terms of our expectation that where a loan has been sold by one entity to another, the arrangement in place carries and is not removed from an individual upon transfer. It would be subject to review. We have been very clear, in our expectations, that the documentation travels as well so that the non-bank can make a fully informed assessment of the individual borrower's circum-

stances. We have undertaken a number of on-site visits of those institutions this year where we assessed the books and records of those institutions and had interviews with senior individuals within those institutions. All of this forms part of our supervision of this non-aligned sector.

Chairman: Does that apply to all the main entities such as Promontoria and the other entities whose names one hears mentioned?

Ms Gráinne McEvoy: We have a register of the credit servicing firms.

Chairman: Are they all registered in one building?

Ms Gráinne McEvoy: I cannot comment as to where their addresses are.

Chairman: It is amazing.

Ms Gráinne McEvoy: The introduction of the law increased the number of applications from firms that are seeking to establish as credit servicing firms. There are now 37 firms seeking to establish in that context.

Chairman: They may all be from one address but I must check that.

What we have heard does not reflect the experience of customers who have been treated very badly by vulture funds. They have been harassed and harangued by them and chased down like criminals. The vulture funds will not appear before this committee for some reason in case they have to be transparent or are asked awkward questions. They behave in a way that is unacceptable in this State, certainly to me. One cannot contact them by calling a contact person. I use this meeting to ask those funds to send us in a list of people we can contact on behalf of clients should they wish us to do. We do not have contacts. People who are under pressure find it extremely difficult to track down emails or phone numbers for vulture funds to have issues dealt with. The only time people hear from the funds is when they want money. They never make follow-up calls and are unhelpful.

Is the Central Bank pressurising the banks directly to sell their loans?

Ms Derville Rowland: The banks are being pressurised, quite rightly, to address arrears or non-performing issues to make sure that they are healthy. That, however, is entirely different from saying what choices those banks make. The decision on how to address any prudential matters is entirely a matter for lenders.

Chairman: There is a facility in the overall structure for dealing with these loans that allows banks to place the loans to one side on their balance sheet or off their balance sheet. That is also an option.

Ms Derville Rowland: I am happy to follow up this matter in writing after the meeting. What I can categorically state is that there are plenty of options and choices available.

Chairman: Without the vultures.

Ms Derville Rowland: Nobody in the Central Bank is directing a particular course of action. We are particularly occupied----

Chairman: That is a clear message.

Ms Derville Rowland: Other than that this has to be addressed for the health of the country,

how the banks go about arranging their business is a matter for them.

Chairman: The health of the customer of the bank-----

Ms Derville Rowland: That is my focus.

Chairman: -----that provided the loan is also something that should be considered.

Ms Derville Rowland: That is right.

Chairman: It is not done by the banks.

Ms Derville Rowland: It is something to which Ms McEvoy and I have had specific regard. We have had specific communications with the banks about the high degree of care that we expect them to have in terms of any business decision they may take. They should put the consumer at the centre and think about risks. The Chairman commented on the credit servicing firms not being available for contact with customers etc. but that is not something we find acceptable at all. We have already been doing on-site inspections in the credit servicing firms in order to evaluate their compliance in key areas. As we have said, if the committee has information that it wants to provide in evidence, we would take it very seriously.

Chairman: It has gone to the stage that I will do that.

Ms Derville Rowland: We would be very happy to have regard to that.

Chairman: My view is that they could not care less about the bank or this committee. Their interest is in chasing the money and running. That must be stopped by somebody. I am just making that point. We are here to speak about the tracker cases. The Bank of Ireland tracker cases have been dealt with by Deputy Burton and the 5,000 prevailing rate cases involving AIB are still out there awaiting judgment from the ombudsman, I presume. Is that correct?

Ms Derville Rowland: The Chairman would have to ask the ombudsman about the case.

Chairman: Is that the Central Bank's understanding of the matter? Surely it is keeping an overview?

Ms Derville Rowland: My understanding is the ombudsman has a variety of cases-----

Chairman: It is those types of cases.

Ms Derville Rowland: -----before him.

Chairman: We are at 40,500 cases.

Ms Derville Rowland: That is right.

Chairman: There are further cases with the ombudsman that could add to the figure of 40,500.

Ms Derville Rowland: That is right. The ombudsman has a number of cases.

Chairman: I remind our guests that when the Central Bank representatives came here first, they told us there would be 3,400 cases. That was way back in the past. The former Governor, Professor Philip Lane, told us that and we adjourned a meeting in order to find the correct figure. It has grown since to 40,500. I really hope the cases involving Bank of Ireland and AIB

are dealt with. I know the witness will not want to comment on that and I will take it up with the financial ombudsman. It is an indication of the culture that still exists within banks that they have the best lawyers and they are financially well equipped so they can deal with these matters simply by stonewalling individuals and refusing to accept they are human beings at the end of the day. They show no compassion or humanity. It is a matter for the ombudsman. The figure of 40,500 may grow substantially over time when the ombudsman begins to deal with what he must deal with.

Does the Central Bank deal with individual complaints about trackers or banks in general?

Ms Derville Rowland: The role of the ombudsman in the national framework and his statutory role is to take complaints on a case-by-case basis. He can explain to the committee his role. The system is designed so that customers with an issue with a service, a product or any other consideration would go to their bank first and make a complaint to that lender. The ombudsman would say that as well. It is the way a customer should seek to have a problem resolved. If they do not get satisfaction from making a complaint to the bank, they have a right to take one to the ombudsman on a case-by-case basis. The role of the Central Bank is different.

Chairman: I have an example of the arrogance of one bank with respect to a matter relating to a tracker mortgage. I will not get into names or details, except to say that the matter involves Bank of Ireland. I have pursued this to the bitter end to try to resolve this issue for a particular man. From the paperwork he accumulated through freedom of information processes, it is clear that this man has been wronged in the process relating to tracker mortgages and there is a repossession order against his house on the basis of documentation that is incomplete. The attitude of Bank of Ireland is to say to the person that he should not write to it again and the matter has been dealt with. The attitude is one of stonewalling and preventing an individual going to the nth degree to defend his home on the basis of his belief that he is right. He is a lay litigant against a raft of well-paid barristers and solicitors. The bank has not demonstrated a customer-friendly approach and when it entered into an independent review of the case, it was conducted by the bank. This is what people are finding in their banks.

There is the case of another individual. She has daughters living with her in the house but she is constantly threatened by the bank. This has not changed and it is still going on. I say it to the witnesses because I want to emphasise that citizens of this State are relying on the Central Bank to keep a check on banks. I cannot say that loudly or often enough. I know this is the case having spoken to a large number of people around the country who are affected by everything that is going on. There is also the question of rates. If we go back to 2005, for example, is there a graph indicating the various increases in tracker rates over the years and an explanation from banks as to how they move or are increased? Would that come from an individual bank?

Ms Derville Rowland: It would be nigh-on impossible for us to produce such a graph. Each lender would have contracts and would have made decisions about business propositions to be made to customers. Each lender could have a wide variety of contract terms with a different way of explaining the tracker rate. The easiest way to understand it would be if a contract term cited a number but many of them did not and instead cited references to other things. Each lender would have a variety of different terms and conditions issued at different points across many years.

Chairman: Perhaps. We would have to go to each bank and ask it.

Ms Derville Rowland: Yes. They would be well placed to speak to their products-----

Chairman: Over the years.

Ms Derville Rowland: Yes.

Chairman: Perhaps they could give a commentary on such a graph, the products and so on.

Ms Derville Rowland: They should be able to produce their own information.

Chairman: This could apply to any product, including standard variable rates, etc. We will ask them about that. Ms Rowland indicated that the majority of banks were required to resubmit their plans if the Central Bank deemed the original plans insufficient or inadequate. How many banks were written to about plans and outlines of addressing key risks that were identified? How many replied and how many were simply off the mark or not responsive?

Ms Derville Rowland: The Chairman is referring to the culture review and the five main lenders in Ireland were included in that. We wrote to all of them to get their plans. Nigh-on all of them were inadequate.

Ms Gráinne McEvoy: There were varying degrees of adequacy.

Ms Derville Rowland: I thought one was adequate.

Chairman: So to varying degrees, all were inadequate.

Ms Gráinne McEvoy: One might have been better than the others, if that makes sense, but certain clarifications were still needed.

Chairman: It did not come to the mark.

Ms Gráinne McEvoy: I would not use that language. They were all asked to revisit their plans and improve them where it was deemed relevant.

Ms Derville Rowland: Some were better than others.

Chairman: They would not have been asked to revisit their plans if they came above the mark. They must have come under the mark. I am sorry for the layman's language. It is a fact.

Ms Gráinne McEvoy: A majority were inadequate and ineffective. From our perspective, they lacked credibility as to the ability to change the culture in the organisations.

Chairman: Basically, they are still the same. That is what I draw from that comment. A significant number of applications under the fitness and probity regime were withdrawn.

Ms Derville Rowland: A total of 80 were withdrawn.

Chairman: What were the reasons for those 80 applications being withdrawn?

Ms Derville Rowland: Does the Chairman want me to explain that?

Chairman: Yes.

Ms Derville Rowland: There is a subtlety here. The system works. These are called pre-approval control functions. There is a requirement to get the permission of the Central Bank before a person can take up certain very senior roles in various companies. One can decide one would like to hire a person, but one cannot hire him or her until the person has undergone

the Central Bank's stop-and-check test and the bank is satisfied that the person is competent, capable and has the requisite integrity, which is really important. We might have a concern and we expect that concern to be answered, because we have lots of sources of information, either because the person has already been working in the system or we get information from other regulators, the newspapers, Oireachtas committees or any source of information through our enforcement investigations. We then hold what we call a challenge interview. The person will be clear that we have concerns as we will have told the person what they are about. The process is private. We get ready to challenge the candidates. Some people come up and attend the interview and they are surprised we are so ready for them because we will have transcripts of previous issues and we will put documentation to them. Some people get so concerned that before or after the interview they withdraw the application and they do not allow it to go to a decision because it is a very serious thing for a negative decision to be in place against one as a senior person. A feature of the system not just in Ireland but in many jurisdictions is that people withdraw silently from the system. I might ask Ms Cunningham to say a bit more about the import of that.

Chairman: To what level does this apply within the banks?

Ms Derville Rowland: This is right across the system.

Chairman: Right across the system.

Ms Derville Rowland: Yes, right across the system. Ms Cunningham might give a flavour of the types of roles we are talking about.

Ms Seána Cunningham: These are the senior roles such as CEO and executive director. We have a list that I can happily provide to the committee. Effectively, what this is about is the Central Bank's assessment of one's fitness and probity to take up a senior role. In looking at that, we examine past conduct. Ms Rowland has given a description of how that process works in the context of people being brought in at interview and being asked difficult questions on which they need to satisfy us, and where they do not, they are aware that we may be minded to refuse them. What tends to happen in such cases is that people withdraw. There have been 80 withdrawals since the fitness and probity regime was introduced.

Chairman: Is it the applicant that the Central Bank interviews?

Ms Seána Cunningham: Yes.

Ms Derville Rowland: The applicant is the firm because it is the firm putting the person forward. We interview the person who it is proposed will take up the job.

Chairman: Right.

Ms Seána Cunningham: Firms have a responsibility in the context of the fitness and probity regime in terms of the people they put forward for those roles and a variety of roles in financial services. Something we have been looking at in a supervisory capacity and from an enforcement perspective too is how financial services are discharging their obligations in the context of their own roles in looking at the fitness and probity of individuals working in firms because that is so important in the context of all of what we are talking about. We want firms to discharge their responsibilities in that regard in order to ensure that people working in financial services are fit and proper. We also play our part in that regard.

Chairman: Ms Rowland referred earlier to the need for further legislation. The Central Bank advised the Government on individual accountability measures. Could she share that information with us?

Ms Derville Rowland: We have already shared it. It is something we proposed to the Law Reform Commission in 2017. We are of the view that it is extremely important. We also shared it in one of the measures that we thought was important for accountability and to improve governance in the culture report that was published last year. We have been publicly advocating for that and we are working with the Department of Finance as it will have to bring the legislative measures forward. What we see is that international best practice is pointing towards this as an important way forward. It is something we think would benefit clarity of role and responsibility and improve accountability and decision making because it would not be possible to say that was not my job, that it was somebody else's job. It would not be possible for a business to say that there was confusion about who was doing what. The feedback coming from the UK from the people who work in financial services is that it is helping them to run their businesses better and to be clearer about roles and responsibilities, and that it helps them to do their job better. That is precisely what we want to happen.

Chairman: When was the Central Bank's last engagement with the Government on pushing the case? I am aware of the comments in 2017.

Ms Derville Rowland: There is ongoing dialogue with the Department of Finance and Ms Cunningham appeared before the committee.

Ms Seána Cunningham: We appeared before the committee, I think it was in April. It was very helpful as an opportunity to give a bit more explanation as to the why. We are working closely with the Department of Finance on the proposals at the moment.

Chairman: The Central Bank's proposals are properly defined and it knows what they are.

Ms Derville Rowland: Yes.

Chairman: It only remains to draft the legislation around that.

Ms Derville Rowland: That is right.

Chairman: That is all the questions I have, and, not for the first time, we have run out of members as well. I thank our guests very much for coming along. I appreciate their attendance. The meeting has been very informative and helpful.

Ms Derville Rowland: I thank the Chairman.

Chairman: The clerk will write to our guests about questions in respect of which replies are still required.

The joint committee adjourned at 1.16 p.m. *sine die*.