

DÁIL ÉIREANN

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

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

Dé Máirt, 15 Nollaig 2020

Tuesday, 15 December 2020

Tháinig an Comhchoiste le chéile ag 13.30 p.m.

The Joint Committee met at 13.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Mick Barry,	Aidan Davitt.
Pearse Doherty,	
Bernard J. Durkan,	
Mairéad Farrell,	
Jim O'Callaghan,	
Neale Richmond,	
Peadar Tóibín.	

I láthair / In attendance: Senator Eugene Murphy.

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

Banking Issues in Ireland: Central Bank

Chairman: I remind members to turn off their mobile phones. If they wish to take off their masks when they are speaking for identification purposes, they should please do so. Today we are engaging with the Central Bank. I welcome Mr. Ed Sibley, Ms Gráinne McEvoy and their colleague, Mr. Anthony Cahalan.

On privilege, the witnesses 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. Witnesses are protected by absolute privilege in respect of the presentation they make to the committee. I remind members that privilege applies if they are attending the meeting or are on site but if they are attending remotely they do not have the same privilege. I ask Mr. Sibley to give his opening statement.

Mr. Ed Sibley: Good afternoon. I am joined by Ms Gráinne McEvoy, director of consumer protection at the Central Bank. We very much welcome the opportunity to appear before the committee today and discuss banking matters and hear the committee members' views on the sector.

I would like to address the committee's invitation to discuss the NatWest strategic review of Ulster Bank's future direction. In order for us to supervise effectively and for connected legal prohibition reasons we are not able to publicly discuss our engagement with individual firms on confidential matters. In the same vein, it would be inappropriate for us to appear at a hearing with a regulated firm. This is why we respectfully declined the request to attend last week's meeting. We indicated in our response that we remained available, as always, to the committee on all matters relating to our mandate. We take our engagement with this committee and our accountability to the Oireachtas very seriously. Such engagement is one of several ways in which we demonstrate accountability for the work we undertake in safeguarding monetary and financial stability, and working to ensure that the financial system operates in the best interests of consumers and the wider economy. We would welcome the opportunity to discuss further how we can improve our engagement with the committee such that we can help support it in meeting its objectives.

I will now briefly outline some of our current areas of focus in respect of the retail banks in Ireland, with households, businesses and the wider community as a whole to the forefront of our minds. Much of the Central Bank's focus this year has been on mitigating the unprecedented impact of the Covid-19 pandemic. The Central Bank's intertwined responsibilities of consumer protection, monetary policy, prudential regulation, payments and so on have strong interconnections with each other. This positions us well to understand and mitigate the effects of the pandemic through monetary policy, macro prudential tools and supervision.

A key priority for us is that there are suitable supports in place to help borrowers affected by income shocks caused by the pandemic and that lenders continue to seek to sustainably resolve borrowers' longer term distress. We have made our expectations clear on how borrowers should be treated and how lenders should engage constructively with distressed borrowers to ensure appropriate and tailored solutions to borrowers' circumstances are put in place. We expect all lenders to have appropriate strategies, the necessary financial and operational resources and a suite of appropriate sustainable solutions to resolve distressed debt, whether it

arose before or as a result of the pandemic. We are also continuing to engage with a range of stakeholders on this issue and have been listening closely to borrower representatives such that our work continues to evolve.

The culture of firms is important in delivering our aspiration of a financial system that sustainably serves the needs of the economy and its consumers. The failures of the past decade or so, notably relating to the tracker mortgage scandal, demonstrate this importance and also highlight that more progress is required. We expect to see boards taking responsibility for the culture of their firms, overseeing product development and usage, actively promoting diversity and inclusion at all levels to improve decision-making and ensuring that robust internal systems are in place to drive effective cultures, including well-developed risk management frameworks. Where this does not occur, we will take appropriate supervisory action. Where serious or egregious breaches occur, we take enforcement action. We are also seeking to strengthen the regulatory framework. We are currently working with the Department of Finance to progress the individual accountability framework. This seeks, among other things, to enhance the accountability of senior individuals in banks.

For the consumer and the taxpayer, safeguarding financial stability is one of the most important ways in which the Central Bank works to protect their interests, including seeking to ensure that the banking system operates in a safe, sound and sustainable way. Banks need to be in a position to absorb shocks and have the ability to build buffers to withstand future shocks in order that they can serve the economy and consumers over the long-term. The Irish banking system entered this crisis with substantial buffers of loss absorbing capital and considerably more robust business models, less risky loan books and better operational resilience than compared with the situation before the global financial crisis. This ensured that they have been better able to continue to support their customers and the real economy through the pandemic.

The shift to digitally enabled services within the retail banks is already profound and is accelerating, including due to the behavioural changes arising from the pandemic. As we look to the future of the retail banking sector, we see a rapidly changing landscape. During the pandemic we have seen changes in consumer behaviour around use of cash, including significant increases in online transactions. This acceleration of existing global trends is connected with consumers moving away from using banks in a number of ways. Challenger firms, for example, providing payments services, often specialise in one service meaning they can be more agile and responsive to customer needs in that area. This is putting increasing pressure on banks to improve their digital offerings and change their approach to engaging with their customers. While there are many benefits to this development for many people, it does increase the risk of financial exclusion, for example, due to age or income factors.

We recognise the importance of the credit union sector in this regard, with its wide network of community-focused and highly trusted co-operatives. Irrespective of how retail banks choose to serve their customers they must, at a minimum, meet the standards we have in place for protecting consumers. While decisions about the provision of services and branch networks are commercial matters for individual institutions, we have clear expectations on the need to take a consumer-focused approach. The consumer protection code sets out the requirements on firms to ensure clear, timely communications with customers regarding any such permanent changes to a bank's branch network and to have alternative channels available to consumers to avail of banking services.

In the event that a regulated entity intends to withdraw from the Irish market, the withdrawal must be undertaken in accordance with the provisions of Irish financial services legislation, in-

cluding the Central Bank's statutory codes of conduct. Where a loan is sold or transferred, the protections that were available to borrowers prior to the transaction continue to be in place with the new loan owner. This ensures that borrowers whose loans are sold or transferred maintain the same regulatory protections, including under the various Central Bank's statutory codes of conduct, such as the consumer protection code and the code of conduct on mortgage arrears.

There are, of course, many other issues relevant to the Irish banks. We have also been continuing to work to mitigate the risks posed to the economy, consumers and the wider financial system of the UK's departure from the EU. Brexit has already led to a significant growth in the size of the internationally focused banking sector in Ireland. Going forward, we will be increasing our work on climate change, which is relevant to all banks operating in Ireland. I look forward to our discussion on these and other important issues and developments relating to the banking sector.

Deputy Neale Richmond: I thank Mr. Sibley for his presentation and, more importantly, his responses to the queries raised previously. There are two matters I would like to address separately, the first of which picks up on the issue we discussed at the previous meeting and Mr. Sibley's correspondence in regard to Brexit and its impact on the Irish financial system. Mr. Sibley referred to significant growth and mentioned that the issuing of banking licences or the reallocation of staff is not necessarily the best indicator in that regard. Is it possible to get a breakdown of the areas within banking or the business models in respect of which we are seeing that growth? For example, is it focused in one particular area or is it spread evenly? Which spreads are more important? Mr. Sibley also referred to the strategy to avoid empty-shell policy on the part of banks. Can he provide a little more detail on that? I will refer to the second matter following Mr. Sibley's responses to those questions.

Mr. Ed Sibley: The change in the banking landscape is primarily focused on international activity and investment banking-type activity rather than on retail banking or Irish customers. Brexit has necessitated that the banks operating out of the UK and providing services into the EU across a range of areas, be that corporate lending, investment banking, transaction services and so on, need to locate in EU countries. As a result, there was a movement of part of the banking services from London to Dublin, Frankfurt, Paris and Amsterdam.

On the second aspect of the Deputy's question, we seek to ensure that the hearts and minds of the organisation are operating out of Dublin. If they are authorised here, they need to have boards, strong management capability and effective risk management here. We recognise that they are interconnected. They are typically part of wider international groups so there is a reliance on other parts of those groups for the provision of services such as, for example, those relating to IT. There has been a transition process for capability to move from London to other parts of the EU. Some of that transition has been slowed by the pandemic but we continue to expect that there will be hearts and minds here. I would add that we operate very much as part of the Single Supervisory Mechanism. We are party to the European approach to banking supervision and there is a strong degree of consistency regarding how we expect entities to operate. We expect firms to operate in Dublin as they would be expected to operate in other parts of the eurozone.

Deputy Neale Richmond: I thank Mr. Sibley for his responses. Before I move to my second substantive point, can he tell me, in the context of growth, if there are entities from certain jurisdictions whereby it is recognisable that there is a particular emphasis? That feeds into my wider question, which is not necessarily Brexit-related but which relates, rather, to resilience and banking provision in the State as much for the consumer as for employees. I know there are

specific cases Mr. Sibley will not go into and I do not expect him to do so. However, I would welcome the general opinion of the Central Bank on how well the banking system in this State is currently operated and serviced for consumers in terms of it being a viable market for other markets. Is there any concern that, perhaps, it is over-dominated by certain institutions or, more worryingly, that certain entities looking at the model in Ireland are concerned that it could force them to make decisions in the coming 12 months or so which would have major consequences? If so, what role is the Central Bank playing in that regard?

Mr. Ed Sibley: As I understand the question, it relates to the banks that are serving the economy, businesses and consumers here rather than those that are coming to Ireland as a result of Brexit. By international and European standards, the Irish retail banking market is somewhat concentrated. It is more concentrated than in other jurisdictions in terms of the level of competition in the market. There are definitely more competitive banking markets. That said, we have seen more competition across and between the Irish banks over the past few years. We are seeing some degree of competition coming in from outside, either from other banks or from other types of more specialist financial services providers. In addition, the retail banking market is, from an SME perspective, even more concentrated. There are primarily three banks that are providing services to SMEs of any real scale within Ireland. The other two provide some such services but not of particular scale. That potentially is an even more concentrated market.

In terms of our role if a firm decides to leave, in the system we operate we expect firms to be able to enter the market and, also, exit the market. If they are to exit, it is important that they do so in an orderly fashion and without too much risk of externalities or cost to the taxpayer or the State. Whenever there is a significant business change for a large institution, we would engage extensively with that firm about the approach it is taking to that change and how the risks associated with the change would be managed. We do have particular requirements under the consumer protection code in terms of engagement which, my colleague, Ms McEvoy, will provide a little more detail on.

Ms Gráinne McEvoy: First and foremost, our expectation is that firms adopt a consumer-focused approach in terms of their engagement and their interaction and that all communications are clear and transparent to the customer regarding the actions they are taking. For example, in the context of the closure of branches, while our code requires that at least two months' notice is provided, in practice, the notice period should be longer than two months. The approach is very much around ensuring that consumers are considered, factored into any key decisions and that there is continuity of service, which is critical in this context.

Deputy Neale Richmond: Mr. Sibley referred to over-concentrated. Is that a concern from the bank's point of view?

Mr. Ed Sibley: I said that the banking market here is somewhat more concentrated than in other jurisdictions. There are some challenges in that regard around, for instance, interest rate transmission from a monetary policy perspective. This issue has been subject to much discussion, including by this committee. As stated earlier, we are seeking for the financial system as a whole to serve the economy, businesses and consumers. There are a number of aspects to that, resilience being one, and governance mismanagement being another. We do not have a direct role in terms of competition. We can see some positive developments, not necessarily linked to the banking system in terms of different types of competition coming into the market and different types of service provision. I think we will see technology and innovation accelerating and continuing to disrupt the sector somewhat.

Deputy Pearse Doherty: I welcome the witnesses. The tracker mortgage examination has taken up a large part of this committee's work in previous years. Unfortunately, we have not concluded with it. These are statements I would have made to the Central Bank when it issued its final report in July 2019. I know the Chairman was also very vocal in saying that there were outstanding cases. When the Central Bank closed off on the tracker mortgage examination in July 2019, its final report outlined that 40,100 customers were affected with €683 million paid out by lenders. A total of 99 family homes and 216 buy-to-let units were lost. A number of months roll on and what happens? AIB had to pay out millions of euro to 5,900 other victims when it had to announce in April that it also denied these individuals tracker mortgages, following a single case taken to the Financial Services and Pensions Ombudsman which upheld the finding.

We talk about cohorts of people in different types of contracts. Nearly 6,000 people in this type of contract were missed by the Central Bank. Claims that were being made went through the independent process with AIB and were refused. The Central Bank oversaw that and signed off a final report stating that it was done and dusted, although it was going to continue to monitor the Financial Services and Pensions Ombudsman. That does not absolve it from its responsibilities, in terms of the consumer protection role that the Oireachtas has given the Central Bank. In the middle of such a serious examination how could it miss that nearly 6,000 customers were also denied and wrongly impacted by AIB over their tracker mortgages?

If that were not good enough, three months later, in July last, AIB announced that there were another 1,000 victims of the tracker mortgage scandal, again as a result of an examination following a complaint to the Financial Services and Pensions Ombudsman. Each of those affected through EBS and Haven, which are subsidiaries of AIB, were paid approximately €6,000. The earlier group of 6,000 victims were offered €1,650. We discussed this at the previous committee. Members of the previous committee said that these people were entitled to a tracker mortgage and the €1,650 did not deal with the issue. I am baffled that the Central Bank continued to miss this, despite warnings from me and other committee members and from advocates arguing for it.

How did the Central Bank miss seeing that one bank had more than 7,000 additional victims of the tracker mortgage scandal, which the Central Bank, when it signed off on the report in July 2019, believed did not exist?

Mr. Ed Sibley: We are deeply concerned by what happened with the tracker mortgage scandal and we have done a considerable amount of work to try to rectify the situation. As the Deputy mentioned, the final report was never presented as the end of our work. It was the end of that aspect of the investigation and we committed to continue to engage, to look at and, particularly, to monitor the work of the Financial Services and Pensions Ombudsman. I will let Ms McEvoy talk more on this.

Ms Gráinne McEvoy: I thank the Deputy for his question. In the first instance, the Central Bank had included the 6,000 AIB customers within the tracker mortgage examination. They received a certain amount of redress and compensation from AIB. However, by virtue being included in the examination, they had access to engage through the channels that were set up under the framework supporting the examination. That includes access to the Financial Services and Pensions Ombudsman which ultimately ruled in their favour, as the Deputy rightly cited.

It is important to reiterate Mr. Sibley's point that while the supervisory phase of our work had concluded last year, we continued and still continue to monitor the decisions in appeals out

of the Financial Services and Pensions Ombudsman and, ultimately, if any of those cases are escalated to the courts system in Ireland.

Almost all - more than 99% - of the redress and compensation has been paid, amounting to €710 million paid to 40,500 customers. Those outstanding are those who are difficult to track down or seek to have points of contact. I note the Deputy's points, but from our perspective, by virtue of them being included under the examination, they had access to those channels which ultimately yielded a different outcome for those consumers.

Deputy Pearse Doherty: What would have happened to those 5,900 people if that single individual had not taken a case to the Financial Services and Pensions Ombudsman?

Ms Gráinne McEvoy: As I mentioned, they had already been caught within the examination and had received some form of redress and compensation from-----

Deputy Pearse Doherty: They received €1,650.

Ms Gráinne McEvoy: It is for that very reason that the examination framework was established. It was broader than the role the Central Bank plays regarding the tracker mortgage examination. It ensured that all the protections afforded to consumers which are available at a national level are accessible to those customers. More importantly, while we will look at things at a systemic level to see where redress is compensated and require those firms to make those payments of redress and compensation, it does not close the door for those customers. They can accept that payment. If they are unhappy, they can still progress their case through the Financial Services and Pensions Ombudsman and in turn through the courts. An important aspect of the framework is to ensure that those supports exist for those customers.

Deputy Pearse Doherty: I understand all that. What would have happened if that single individual had not taken a case to the Financial Services and Pensions Ombudsman?

Mr. Ed Sibley: As Ms McEvoy has described, the framework was set up in such a way as to allow for decisions by the Financial Services and Pensions Ombudsman to be translated into action across a broader group of people who had been affected by the same issue. Throughout the tracker mortgage examination, we pushed the banks incredibly hard to try to take a customer-centric view of their sins regarding tracker mortgages. We have outlined to this committee some of the resistance we have experienced in some of the enforcement investigations we have had. There are limits on how much I can go into this. We would have pushed cases such as these as hard as we possibly could - to the edge and beyond of our legal mandate. The Financial Services and Pensions Ombudsman has a different mandate. We have ensured that the judgments made by the Financial Services and Pensions Ombudsman are being more broadly applied when they are made.

Deputy Pearse Doherty: A total of 5,899 people who were affected did not take a case to the Financial Services and Pensions Ombudsman. If that individual had not taken the case, they would not have got up to €30,000 in compensation because the Central Bank had finished its supervisory role when it completed its examination into that part.

Is Mr. Sibley suggesting to me that when the Central Bank concluded its final report, it believed that there were up to 6,000 further victims of the tracker mortgage with AIB? As Mr. Sibley said, he was pushing AIB regarding this cohort but was not getting a response from it.

Mr. Ed Sibley: That is not what I am saying.

Deputy Pearse Doherty: What is Mr. Sibley saying? I want to focus on this. I appreciate the way the examination was set up. People have the right to raise the matter with the Financial Services and Pensions Ombudsman and the right to seek redress in the courts but the Central Bank has a consumer protection role.

Mr. Ed Sibley: Of course.

Deputy Pearse Doherty: With all that goes on in banks and insurance, I understand it is very difficult for the Central Bank to spot what is happening and usually something is spotted after the fact or on foot of a consumer's complaint. However, in this case, we are six or seven years into a major scandal where money was wrongly taken from the accounts of 40,000 people with respect to overcharging. People lost their family homes. Where did the Central Bank's consumer protection role feature for these 5,900 consumers? How could it have missed something so blatant? That was missed not only once but three months later there was another case involving 1,100 consumers. The witnesses appeared before the members of this committee and those points were made to them.

Mr. Ed Sibley: As Ms McEvoy has described, the framework was set up in a certain way to allow for where there were findings by the ombudsman and for those to be more broadly applied. We ensured that was the case.

Deputy Pearse Doherty: The Financial Services and Pensions Ombudsman is not before me and I am not asking that office how it dealt with its consumer protection role. Witnesses from the Central Bank are before us. The bank has a statutory obligation in terms of consumer protection. The witnesses were fully aware through the tracker mortgage examination that banks had been fleecing their customers. Members of this committee pointed out this cohort of individuals, other forums such as Askaboutmoney, which I am sure the bank monitors, and other groups were campaigning on this issue but the Central Bank completely abdicated its consumer protection role for this cohort of individuals. I acknowledge what the bank did at later stages for others but for this cohort, how could it get so wrong? We cannot turn back the clock but we need to have faith in the Central Bank that this will not happen again. It is terrible that an organ of the State, which is in place to protect consumers, in the middle of a major scandal basically washed its hands of these customers and left them to decide whether they would or would not take it any further.

Ms Gráinne McEvoy: It is important to reiterate the point that the Central Bank included these customers as part of the examination. It is for that very reason they had access, if they were unhappy with the outcomes they received bilaterally with AIB, to bring those issues forward through the Financial Services and Pensions Ombudsman, FSPO. It is important to acknowledge that.

Deputy Pearse Doherty: Let me acknowledge that point. The bank included them in the examination but when it examined them, it did not come to the conclusion they should have been awarded a tracker mortgage. Is that correct? That is what AIB was also arguing, including right through its appeals process. That was then overturned by the Financial Services and Pensions Ombudsman. That is the core of the issue.

How did the Central Bank come to the conclusion - given this was within the scope of the examination and it considered this cohort - these individuals were not entitled to a tracker mortgage and, therefore, the administrative penalty of €1,615 that was offered to them was appropriate? That was the Central Bank's conclusion.

Ms Gráinne McEvoy: The Central Bank made an informed view based on the breadth of the review we had undertaken for these customers but bear in mind the FSPO has a very different role. It looks at individual circumstances and takes into account a far wider set of criteria than we would have the power to do. That is a key delineation between our role as a systemic regulator and the ombudsman's role to ascertain and review individual complaints. It is also important to note the framework the bank established and developed ensured that the individual's outcome that the Deputy referenced was applied right across the board to all the customers impacted by that decision of the FSPO. From our perspective, that is a critical component of the framework. We continue to challenge the institutions and lenders in that context to make sure that individual decision has a read right across to all customers who were impacted in the same manner.

Deputy Pearse Doherty: I am quite alarmed by what I hear from the Central Bank. Ms McEvoy spoke of an informed view and I am sure it was, but does she acknowledge it was the wrong view and that the bank came up with the wrong conclusion? She referred to different criteria the Financial Services and Pensions Ombudsman can take into account but at the core of this was the question of whether these individuals should have been offered a tracker mortgage. The Financial Services and Pensions Ombudsman ruled they were entitled to a tracker mortgage. The Central Bank, in the examination which went on for years, came to a different conclusion.

Ms Gráinne McEvoy: It did, at a different point in time based on a different set of criteria. What is really important, as I said before, is that the decision of the ombudsman has been applied right across to the 5,900 customers.

Deputy Pearse Doherty: What about the 1,100 customers? How did the bank miss those? Three months later, in July, AIB announced its subsidiaries, EBS and Haven, also took money. At the core of this is overcharging and entitlement to a tracker mortgage. Those subsidiaries deducted money from people's bank accounts that they had no right to do because these individuals had a right to a tracker mortgage. Some €6,000 in compensation was paid to 1,100 customers. How did the bank miss that one?

Ms Gráinne McEvoy: It is not fair to say it was missed. It is important to note that right from the outset, the Central Bank challenged each of lenders within the scope of the tracker mortgage examination and pushed hard. That resulted in an additional 20,000 customers being included from where the banks initially drew the line, if that makes sense. Those additional customers came about through thorough and further engagement with AIB where it discovered those customers were also caught within the confines of the tracker mortgage examination. It is very much back to the core point that the intervention and continuous challenge - Mr. Sibley spoke about that being quite difficult and fraught in certain cases - resulted in more customers impacted by the actions of the banks being caught within the confines of the examination.

Deputy Pearse Doherty: I will move on from that issue. I ask the Central Bank to update its final report. We know there are at least another 7,000 victims and more money has been paid out. I ask the witnesses to update the bank's report.

I wish to ask about the accountability regime. Mr. Sibley has mentioned this in his opening statement for the past three years and it is three years since the bank has called for this. We still do not have legislation on holding senior executives accountable. I refer in particular to KBC. We know the breaches in which KBC was involved saw 11 families lose their homes as a result of the tracker mortgage scandal. There was an €18.3 million fine and 3,700 victims in that

bank. We know that the stop the harm principle was not adhered to, rather the approach was to inflict harm right up to the endpoint. KBC continued to inflict harm during the tracker mortgage examination. Has anybody in KBC been held accountable or queried in respect of fitness and probity standards? Has anybody in KBC been asked to resign by the Central Bank given that in the middle of the examination, it continued to repossess homes? Am I correct that a home was repossessed from somebody who should not have had their home repossessed? KBC continued to overcharge during that entire period. Has there been any individual accountability in KBC?

Mr. Ed Sibley: I think it was our director of enforcement who described KBC's behaviour as abhorrent. I think that was the adjective she used in our statement following the publication of the investigation into KBC. Clearly, its behaviour was atrocious and has had a devastating effect on families and individuals. We continue to investigate. Our enforcement investigation remains open at this stage across all that we saw in our tracker mortgage investigation. One reason we pushed for the individual accountability framework is because of the challenges in holding individuals to account under the current legislation. We think the individual accountability framework can be improved. We are working with the Department of Finance and are keen for that to be in place as quickly as possible. Clearly, matters relating to what happened in KBC are to the fore of our minds when we look at fitness and probity for instance and absolutely have been part of our considerations in terms of further fitness and probity applications. Unfortunately, some of that is not transparent to the Deputy at this stage but certainly our enforcement investigations continue to try to hold the individuals who were responsible to account.

Deputy Pearse Doherty: I appreciate that. Finally, I wish to ask about a case with which Mr. Sibley may be familiar. A letter related to it was shared on social media platforms. It involves a loan that was sold by Ulster Bank to the vulture fund, Promontoria Scarriff. It was a loan about which there was engagement with Ulster Bank until June last year. There was an expectation of an arrangement being entered into and documentation to verify that. The loan was sold unilaterally to this vulture fund, Promontoria. The individual continued to make partial payments as they had been, expecting Ulster Bank's arrangement, although it was not signed off on, would be adhered to by Promontoria. Promontoria then said that it does not do that type of arrangement and would not do anything that Ulster Bank was offering. It called in the full loan on 23 October 2020, and has since issued a repossession order, asking the family of two adults and three teenagers to vacate their family home in the month of Christmas, before 21 December.

We hear from the Central Bank all the time that the same regulations and oversight apply to vulture funds as to main street banks. This is what vulture funds do because they have no interest in the long term. What do the witnesses say to a case like that and to people who may be concerned about Ulster Bank selling its loans to a vulture fund, Cerberus, which is one of the worst in the market? The word that comes from the Central Bank is that the protections follow but the reality is that the bank can call in the loan if one falls into any difficulty and increase the variable interest rate at any time.

Mr. Ed Sibley: Ms McEvoy can provide more information on our approach and the protections that are in place. The Deputy is right that the protections that are in place are the same whether it is a bank or not, and expectations are effectively the same. I cannot comment on the individual circumstances because I have not seen the detail. As ever, if the Deputy has information that he would like to share, we will look at that. We have significant empathy and sympathy for anyone in that circumstance. There are protections in place for people, especially if it is the family home, in the code of conduct for mortgage arrears and what needs to take place, with repossession as the absolute last resort. There are also protections in place in the courts system.

Ms Gráinne McEvoy: Our expectations are clear, particularly where a loan is sold, that if a borrower is meeting the terms of his or her arrangement, the loan owner should continue to honour the arrangement. The due diligence that was undertaken by the original lender passes forward so that the new lender has a full suite of information about the borrower and is not making decisions based on its shorter-term experience with the borrower and has the background to the case. We have publicly communicated that if the borrower is communicating, the new loan owner should not unilaterally move or change the arrangement that the borrower has. That is critically important. On Mr. Sibley's point, the code of conduct for mortgage arrears applies to both banks and non-banks, and there are strict criteria about repossessions.

Deputy Jim O'Callaghan: I thank the witnesses for their attendance. Do they think that any prosecutions will arise from issues identified in the tracker loan scandal?

Ms Gráinne McEvoy: We cannot comment on individual cases at this point. I can comment on two of the most significant fines that the Central Bank has issued in respect of administrative sanctions. In 2019, Permanent TSB was subject to an administrative sanction of €21 million. This year, KBC was subject to a fine of €18.3 million. Mr. Sibley mentioned this earlier. Our work on enforcement and reviews of the actions of individual lenders regarding their compliance with the consumer protection code and the fitness and probity of individuals remains open and ongoing.

Deputy Jim O'Callaghan: I commend the bank on the administrative sanctions that have been imposed. I am not asking the witnesses to comment on individual cases. Does the bank, as an institution, believe that there will be prosecutions without identifying whom those prosecutions will be against?

Mr. Ed Sibley: Does the Deputy mean prosecutions through the courts as opposed to our own actions?

Deputy Jim O'Callaghan: Yes.

Ms Gráinne McEvoy: I cannot comment.

Deputy Jim O'Callaghan: Have files been sent to the Garda?

Mr. Ed Sibley: We have been having engagement with the Garda.

Deputy Jim O'Callaghan: The witnesses obviously believe there is *prima facie* evidence of the commission of criminal offences if they have passed files to the Garda. Is that correct?

Mr. Ed Sibley: I think it would be suspicion as opposed to actual hard evidence. We cannot really comment on-----

Deputy Jim O'Callaghan: I am not asking the witnesses to comment on individual cases. The bank has described it as abhorrent behaviour, stating that millions have been deducted from customers' accounts. In the ordinary course of events, one would have thought that this should result in criminal prosecution, let alone criminal sanction. Would the witnesses agree with that?

Mr. Ed Sibley: A predecessor of mine spoke at the equivalent of this committee many years ago about white-collar crime and the outcomes of white-collar crime relative to other types of crime. Those circumstances are similar today.

Deputy Jim O'Callaghan: I am not being facetious. Why are the witnesses being reticent

about it? Should the Central Bank not be anxious to see wrongdoing, if it constitutes criminal behaviour, being prosecuted before our courts rather than merely being the subject of an administrative sanction?

Mr. Ed Sibley: The only reason that we are being careful on this particular point is that it is beyond our gift. It is not within our responsibilities. It is for another part of the State. We are taking care with that. We have been forthright with our view of what happened with the tracker scandal.

Deputy Jim O’Callaghan: Is there ongoing engagement with An Garda Síochána in respect of this issue?

Mr. Ed Sibley: I can come back to the Deputy on that. It has moved to the bank’s enforcement area.

Deputy Jim O’Callaghan: Another issue is the assignment or sale of loan books by financial institutions to other entities. Do the witnesses believe that the protection that exists at present is sufficient, or do they think that the expectation that customers may have needs to be given some legal effect?

Mr. Ed Sibley: What does the Deputy mean by “expectation”?

Deputy Jim O’Callaghan: Ms McEvoy mentioned the expectations that people may have when they get a loan in the first instance. That expectation may not have legal effect. If one gets a loan from a long-established bank, one expects it to behave in a certain way, then when the loan is sold to another entity which may not have the same record in the market, one would probably still hope and expect to be treated the same way, but that expectation does not have any legal effect, does it?

Mr. Ed Sibley: We are clear about the minimum standard, which is the statutory codes and complying with all legal requirements, as well as the broader approach that firms have and how they deal with their customers. We expect firms to treat their customers fairly. We supervise all entities that have consumers as part of their customer base in similar fashion. Strong protections are in place. Loan sales are not just a feature in Ireland. We have made sure, including through the work of members of this committee, that protections that are in place are the same regardless of the loan owner.

Ms Gráinne McEvoy: As Mr. Sibley referenced in the opening statement, ensuring the fair treatment of borrowers is a key priority for the Central Bank, particularly those who are in or facing financial distress and difficulty. That has been an area of high priority for us, to which we have dedicated a lot of supervisory resources over previous years. Moreover, we will continue to do so to ensure that our expectations are met, irrespective of who the owners of the loans are.

Deputy Jim O’Callaghan: Do the witnesses think the statutory protections in place at present are sufficient or that we as legislators should improve them?

Ms Gráinne McEvoy: I think they are sufficient. The code of conduct on mortgage arrears was reviewed in 2018. The outcome of that review concluded that it was an effective document and working as planned. It is important to note that the Central Bank keeps all of its statutory and regulatory requirements under continuous review. They are living documents and we regularly and frequently consult on changes and enhancements that we make to the wide suite of consumer protections and wider regulatory obligations. We continue to maintain things under

continual review.

Deputy Jim O’Callaghan: On the final point, Ireland’s consumers have the third highest mortgage interest rates in the euro area. What needs to be done to improve competition in the market for mortgage purposes?

Mr. Ed Sibley: There are a number of reasons for interest rates being higher in Ireland, and we discussed some of them with the committee previously. Part of it is a factor of the crisis we had. We still have the legacy of that crisis today. It is evident that mortgage lending in Ireland has historically been riskier. That results in banks having to hold more capital relative to that lending, which also has an influence on price. We are comparing averages, but there are significant differences in different markets around the eurozone, including length of mortgage lending, for example, and having longer-term fixed rate mortgages in some jurisdictions and, atypically, non-interest costs in some jurisdictions. There are multiple reasons for the differences, but competition is evidently part of the reason that banks can charge higher interest rates in Ireland than those in other countries.

What we have done is to seek to address some of the fundamental issues affecting the functioning of the mortgage market, including trying to address the longer term mortgage arrears and trying to put in place a more resilient system, with business models as well as macroprudential rules to enhance the resilience of borrowers. We have sought to encourage and facilitate greater switching. We are doing some more work on the behavioural triggers that could be applied to facilitate a greater degree of switching. That will not only have an impact in terms of the individual borrowers but will help to drive greater competition into the market. Finally, we are seeing very nascent signs of potentially more competition coming into the mortgage market, not necessarily exclusively through the banking system.

Deputy Jim O’Callaghan: I thank the witnesses.

Deputy Bernard J. Durkan: I thank our guests for appearing before the committee and giving us the benefit of their knowledge. I, like others in this room, have been critical of the Central Bank over a long period in the past. This is not personal and I do not want any of the witnesses to take it as personal, but there are issues which public representatives have had to face which were unusual, to say the least. They still continue. To put it in the vernacular, the banking system in this country still punishes borrowers above and beyond other borrowers across Europe for something they did wrong during the crash, and I will come to that momentarily, or for something they are about to do wrong on the basis that they are a higher risk than those elsewhere.

There is no such thing as risk-free lending anywhere in the world. It does not exist. However, we were led to believe during and immediately after the financial crash that it should have been risk free. It is not, never can be and never will be, nor should it be. That is why there is speculation in markets and so forth. I also realise, like everybody here, that we must have a stable banking system. That is fundamental to an open economy, and we must be sure there are good practices that protect the economy and protect the consumer. Reference has been made to this at length.

One of the problems I and all of us have faced is sitting down across a table from the representatives of banks which had lent money to borrowers, knowing they should not have done so. They knew it was impossible to meet the demand at a later stage but, clearly, they were of the mind that it would be all right because there was an inflationary situation and property

prices would exceed all expectations. What in God's name was going on at that stage? Nobody would think like that and presume that it was going to continue. It could not happen. I am sure you, Chairman, other members of the committee and I advised countless people that under no circumstances should they borrow in the way that was being suggested to them. Obviously, people did not always take that advice. It was harsh advice at the time, and they saw people like us as impeding them and their progress. In the long run, we were speaking for their well-being. To outline what happened, no worthwhile regulations were applied at that time. Hence, the full extent of the problem.

What happened next was worse. The banks retrospectively applied good conduct on borrowing after the event. It was the most amazing performance. When the horse was well and truly bolted and galloping down the far end of the track, suddenly the banks said they were going to apply good banking practice and good regulations on the borrower, who had already borrowed far in excess of what his or her capability of repayment could and should be. On the one hand, there must be good confidence in the banking system, but on the other we must restore public confidence where the consumer is concerned.

There has been reference to the code of conduct on mortgage arrears. That has been quoted to me several times. The code of conduct benefits the bank over the borrower to a great extent. The bank tells the borrower his or her borrowings are unsustainable and, as a result, this is how we must proceed. The limit is that it repossesses the property. It might take a while, but the bank will repossess it. It will pile on interest and so forth, in many cases piling on the interest with no regard to what it is doing to people, to such an extent that there is no other way out except to liquidate the debt and repossess the property. I will not go into the emotional situation of the thousands of people who found themselves in the extraordinarily sad position of having lost or losing their homes. That was on the cards for perhaps six months or a year or whatever the case may be. It is still happening.

Does the Central Bank have the power to impose on what are now regarded as vulture funds some type of recognition for the fact that they acquired the loan books at a knock-down rate in many situations, with a discount of 30%, 40%, 50%, 60% and up to 80% in some cases? Of course, the borrower never knows what the full discount was, but the borrower must pay for it. The borrowers are now falling into what is known as distressed debt, because they have not been able to repay or discharge the loan. That is because they were never going to be able to repay it. It was not possible from the outset. The unfortunate borrowers include business borrowers and the businesses involved, who gave personal guarantees in respect of their households and so forth. They ended up in tragedy. I and everybody else in the committee have sat in front of vulture fund representatives while men and women cried openly, sought mercy and got none. That is a very sad thing with which to conclude. However, that is the way it happened.

All the time, members of the committee were tabling parliamentary questions. We could not ask too many questions in case we would cause a flight of funds, and we could not ask too many pointed questions. We asked questions as to whether the banking system and the economy were based on sound economic fundamentals. As to the number of times we tabled those questions, I sometimes dream about them. The reply was "Yes", they were. In fact, it was "No", they were not. However, nobody recognised what we were trying to say at the time. Nobody cared. There were financial regulators, ombudsmen and the Central Bank. That was presided over by all these agencies, without demur, and we know what the consequences were. The Chairman will be glad to know I have come to this conclusion. We need some hope for those who are in what are called distressed loan scenarios. We need some recognition that the banking system,

whether a vulture or original lender, is going to take into account the circumstances. They say to us “that was then and this is now”. In other words, it was fine then but the banks are not part and parcel of the previous regime and the new rules will be applied now, whether people like it or not, and nothing can be done about it.

We may not be able to do anything about it now but we might have to. Instead of a continuing reference to the code of conduct and the last review of the code of conduct in 2018, I ask that the code be urgently reviewed again with greater recognition of the hardship caused to many borrowers.

Incidentally, we all know these borrowers as people who ran their businesses and homes very effectively for many years, borrowing money and paying it back, never leaving money owing to anybody. They were always able to pay it back, except when there was a convergence of a massive amount of overhang of borrowing at the same time and place, which rendered the State and the banks insolvent. It was an incredible performance but nobody accepted responsibility. Nobody came with us to the table to speak on behalf of the people who find themselves with distressed mortgages. It is within the capacity of the banks and the Central Bank to oversee a system that is fair to these people. It is a matter for the Central Bank at this stage.

A final point relates to banking competition. A number of raiders introduced themselves to this jurisdiction before the banking crash, undermining the banking system in the country by undercutting others, offering mortgages and borrowings at a rate never known before. Loans were granted on interest-only terms, so what sort of system were we in? This was meant to be the system for the foreseeable future, and it was seen as good banking according to the system that applied at the time.

I am not asking the witnesses to comment on an individual bank but if a bank moves from our system now, it will not be in the interest of the consumer or the business people served by that bank, particularly if that bank’s loan book is to be transferred to a vulture fund. There is now a conundrum that the Central Bank must resolve. We cannot do it. These controls are in the hands of the Central Bank.

I would like to see us retain the level of competition within the banking system in this country and on a sound footing. Everything must be done to ensure it continues without interruption, and that in the event of vulture funds deciding they can seize an opportunity to take over a major chunk of the banking system in the country, we must remind them that they are only here in sufferance and they are only partially accountable to the Central Bank. We have asked all these questions before and there are unregulated third parties involved with borrowing in this country and taking over loan books. We asked the questions many times and were told they would be subject to usual rules and regulations but these bodies are not subject to such rules.

It is all fine to complain about this but somebody must do something about it fairly soon. I have gone long over my time, for which I apologise, but at any time in future if the Chairman wishes members to attend a meeting with the Central Bank or representatives of banks or vulture funds, we will be more than happy to attend and support.

Chairman: Do the witnesses wish to comment on any of the remarks made by Deputy Durkan?

Mr. Ed Sibley: I certainly welcome the opportunity to comment and he has covered a large amount of ground. I am conscious of the time limits but I am certainly happy to engage within

this committee and bilaterally if helpful.

The Deputy spoke about the financial crisis and the behaviour, business models and approach in the entire system failed leading into the financial crisis. I have no disagreement there. We have worked very hard over the past decade or more to both deal with the crisis that enveloped the country and to put in place a much more resilient system that protects the country, borrowers and consumers from any recurrence. It very significantly enhanced the regulatory framework both from a resilience perspective but also from a consumer protection perspective.

We have also undertaken much work to try to address the level of distress that resulted from the banking crisis. There has been much progress over many years on that. We can look at the level of restructuring that has taken place across mortgages; approaching a quarter of loans that existed at the time of the crisis have had some degree of restructure. More than 130,000 loans were restructured to address elements of distress and another approximately 60,000 were addressed pre-distress.

When I reference numbers I am acutely conscious that I am talking about individuals and households. Unfortunately, there is still a legacy of distress, primarily with mortgage holders, the majority of which are now more than two years past due on mortgage repayments, both sitting within the banking system and some outside the banking system. We are absolutely committed to continuing to try to address that to the greatest extent that we can.

The majority of these borrowers are paying something and about half are deemed to be co-operating. There are potential solutions within the financial system for many of those borrowers but there are also challenges that go beyond the financial system where the borrowers are not co-operating or making repayments. We must consider the safety nets available for those types of borrowers.

Even right up to the courts system it is never too late to engage and we can see that with what comes out of the courts. We are pushing hard from a lender perspective to ensure they continue to strive to engage and we have also taken the hard lessons from the financial crisis into how we deal with the distress evident from the Covid-19 pandemic. We are trying to ensure the issues that arose immediately after the financial crisis do not arise again. This relates to borrowers whose incomes have been affected by the pandemic, and they should be supported to the greatest extent possible so they do not go into longer-term arrears.

The Deputy referred to raiders coming in and affecting the market. For any firm authorised in Ireland and any bank authorised within the eurozone able to branch into Ireland, we expect it to have a robust business model that is likely to be sustainable over the long term. It should have sufficient financial resources, including in times of stress, and it should have a good grasp of its risks. It should be well run and be able to be resolvable in the event that it fails.

I hope this addresses some of what the Deputy raised but as I said I am happy to engage bilaterally if that is helpful.

Deputy Peadar Tóibín: I was taken by Mr. Sibley's statement that Ireland's banking market is somewhat concentrated. Would it not be fair to say the Irish banking market is an oligopoly, or very concentrated?

Mr. Ed Sibley: It is certainly concentrated relative to other European countries' markets.

Deputy Peadar Tóibín: In other words, if one were to design a banking market, it would

not at all be our banking market. Our banking market shows enormous supplier power. The banks exert far more power than they normally would if there were healthier competition within the market. We have two pillar banks, in the words of the Government, and they have about 80% of the market. Instead of seeing that much increased competition, we are seeing one of the significant players probably leave the market over the next while. Is it not therefore a significant objective of the Central Bank, given its responsibilities to consumers, and a significant objective of the Government to see a radical transition from this overly concentrated market - dangerously concentrated, in my view - to a functioning competitive market over the coming years? For example, banks have enormous power over interest rates. Ireland has either the highest or the second highest mortgage interest rate in the European Union. I understand that the banking difficulties we have had play a part in this, but the banking structure also plays a radical part in it. There is no doubt that if there were tighter competition, it would chase those interest rates down somewhat. Consider even the way the banks interact with customers. The banks can determine most elements of the engagement with customers because they have this enormous supplier power. The locations of banks and the banks' closing down of their units in smaller provincial towns and throughout the country have an enormous effect on enterprise, families, etc. Is it not a very negative element of the banking industry that it is so concentrated?

Mr. Ed Sibley: I agree with the Deputy that there is a high degree of concentration in the industry. As I have referred to a couple of times, our aspiration is for the banking system and the key markets within it, including the mortgage market, to function better than they do today. Competition can play a role here. We are not the Competition and Consumer Protection Commission, so there is a limit to our direct responsibilities but, as I have touched on, the overall functioning is important to us and part of our aspiration. As to how we go directly at this issue, we think about what the underlying issues are and about the underlying cases of dysfunction, to the extent that it is there, and we recognise that barriers to entry to deliver banking services to Irish customers are, for European banks, incredibly low. If one is operating within the EU today-----

Deputy Peadar Tóibín: Would it be fair to say that the fact that banks in this country enjoy profits that are tax-free is also a barrier to entry? For example, Permanent TSB will not pay any taxes until 2038. AIB will not pay any taxes on its profits until 2037. If I were a European company coming into a market and was competing with companies that were not paying tax on their profits, would that be a barrier to entry?

Mr. Ed Sibley: Personally, I do not think so. If one-----

Deputy Peadar Tóibín: If I were operating in any other market and my competitors were not paying any tax, that would have an effect on my ability to compete with them.

Mr. Ed Sibley: In and of itself, yes, possibly, but we should think about the banks that are operating here relative to new banks potentially coming in, overall operating costs that the banks have here relative to potential new entrants, and the legacy of technology and systems that need work here. If we were to look at what the Deputy refers to in isolation, perhaps that is the case, but I would not have thought it is a compelling reason that European banks are not seeking to enter the Irish market. We try to look at the biggest issues in the system as a whole, from an overall functioning perspective, a borrower service perspective and a consumer perspective, and how best we can help address them. We cannot force lenders to lend. We cannot force new entrants. We do not have a direct role from a competition perspective. What we can see is that there have been issues with how banks have been operating. There have been issues with the challenges around distressed debt, which we have talked about already. There are is-

sues as to how markets function in terms of, for instance, the amount of switching and so on. We are trying to address some of these underlying factors within our overall responsibilities.

Deputy Peadar Tóibín: Mr. Sibley mentioned the entry of European competitors into the Irish market, which would be fantastically welcome. However, the three potential blocs within the financial system that could operate in competition more directly with the banks are An Post, a public banking system and even the credit union system. The barrier to those who wish to enter this market is, therefore, Government policy. I am sure there are regulatory constraints and that it might be difficult for some of these organisations to operate under their current structures. There is no public banking system here but, between An Post and the credit unions, surely if there were the policy will to develop An Post and the public banking system on the model of the Sparkasse system in Germany, for example, or to empower the credit unions to operate within that space, they could offer a significant competitive opportunity for people throughout the country.

Mr. Ed Sibley: I would tend to agree with the Deputy to a very large extent in that the overall functioning of the market is not just about the banks. He is absolutely right about that. We have taken action to facilitate and allow credit unions to lend significantly more, both in long-term mortgage lending and to the smaller SME sector.

Deputy Peadar Tóibín: Is there any understanding of the volume of that lending?

Mr. Ed Sibley: It is slow, to be frank about it. There are a number of issues here such as the scale of individual credit unions and the capacity of the credit unions to move their business models with any kind of scale. I think there are potential opportunities for more of a shared services model within the credit union sector. Some individual credit unions are proving very successful in growing their loan books, but in aggregate across the system not so much. It is important also to think about the technology changes we are living through and which are, to my mind, accelerating, not just from a mortgage market perspective. I refer to the likes of Revolut and other payment service providers, the potential for peer-to-peer and so on. I think that will continue to shake up the industry here. I have had a number of engagements with the likes of Irish Rural Link. I met representatives of the Sparkassen when I was in the UK. I was responsible for the supervision of the Landesbanken, which are connected with the Sparkassen, so I am familiar enough with that business model. Ultimately, it requires investment for a public bank to operate in Ireland, but that would be subject to the same criteria as for any bank looking to be authorised in Ireland. Ultimately, banking licences are the responsibility of the ECB, but we would have a role to play. It comes down to someone putting in the money behind it.

Deputy Peadar Tóibín: Sometimes the market structure in Ireland is the elephant in the room in that we talk so much about everything else. Mario Draghi said in 2018, I think, that the mortgage market in Ireland operates as a de facto monopoly. That was the language he used. There is no doubt but that a de facto monopoly hurts consumers significantly. That is the nature of monopolies.

I will change tack. It has been reported to me by a number of people that there seems to be an upsurge in receivers disposing of distressed properties. These are people who are in a distressed situation with their banks. They have a property, a business, a farm, etc. They are finding almost after the fact that their property or farm has been sold to a vulture fund or some other kind of fund and that the value that has been achieved in the sale is far less than what was offered in negotiations between the individual and the bank itself. Is it not the responsibility of the receiver to achieve the best possible price for the property in that scenario? Has the Central

Bank analysed the volume of transactions and values achieved in those sales? The data would help us decide if a major problem is happening all of a sudden.

Mr. Ed Sibley: Again, I express my sympathy for anyone in that circumstance. As the Deputy has described things, it sounds as though circumstances are such that the legal title has already been transferred. I do not think that he has described a sale of a loan but a sale of a property so the ownership of that property has already transferred. I guess a court order has been applied but not executed in terms of repossessing the property. There are strong protections in place for an owner-occupier or family home. Some farms are classified as a commercial premises so protections are different. If the title has already been transferred through the court process then the same level of protection is not there. We are actively tracking court orders for primary dwelling homes.

Ms Gráinne McEvoy: Mr. Sibley has adequately covered the issue.

Deputy Peadar Tóibín: Can we, as a committee, receive the up-to-date information on volumes so we can assess if there has been a change in behaviour?

Mr. Ed Sibley: Yes, we can follow up. To the end of quarter 2 of this year, the number of court orders for owner-occupier houses has consistently been coming down for a good while. Unsurprisingly, the number really came down in the second quarter because of the pandemic. We can also see that right up to the court cases being heard engagement still worked. Many cases were settled on the steps of the court so court orders were not executed. I can certainly share the information we have in that regard. The Deputy's question is partly that but partly something else in terms of those who have been sold post-title transfer.

Deputy Peadar Tóibín: Yes. It is not just owner-occupiers. I have heard from people who have buy-to-lets and businesses or farms.

The Central Bank warned at the start of the process that there would be a €22 billion hole in the Government's finances this year due to Covid, etc. What does the future hold in terms of the European rules being reapplied and the timescale? What policy options are available to the Government in order for it to achieve the European rules in the future?

Mr. Ed Sibley: It would be better if I came back to the Deputy with replies to his questions. In the bank we have a central banking side that does more of the forecasting in terms of Government finances and the like, which we published.

Deputy Peadar Tóibín: Please give details.

Mr. Ed Sibley: Very recently we published our financial stability review. I outlined our perspectives in terms of a base case for the economy and an adverse scenario. We also publish a quarterly bulletin that presents our view of what is happening in the economy as well as forecasting. I can share those aspects with the committee.

Senator Aidan Davitt: I thank the delegation for coming here. The Central Bank is in the unenviable place of defending the indefensible. We have heard about some Irish banking practice and, unfortunately, at best the banks seem to use the Central Bank like a mudflap. The threat of fines that the Central Bank has sanctioned, and the threat in other cases, have not had a great bearing on the behaviour of the banks, as pointed out by the good Deputies here today. Has the Central Bank issued a threat to revoke or withdraw the banking licence of an existing bank, banks or in terms of banking that has been issued through Ireland?

As Deputy Tóibín has mentioned, I, too, want to talk about what happens when banks sell loans to so-called vulture funds. I know that banks sell a book of loans and loans are bundled together. However, banks do not pick the price to sell a loan at out of the air so every property has a value in a loan book. Is the Central Bank informed when a loan is sold, for example, by Ulster Bank to Pretorius or whoever?

Mr. Ed Sibley: Yes.

Senator Aidan Davitt: I believe that the least a bank should do is inform the person concerned about the value the loan has been sold at. Does Mr. Sibley think that is a possibility?

Online fraud and the variety of such fraud has become a massive issue in Ireland. As banking increasingly moves towards online banking and faceless banking, online fraud will become an even bigger problem. One of the major banks, Bank of Ireland, recently ran an advertising campaign to make its customers aware of online fraud. What else can we do to combat online fraud?

Some of my friends run a company but they had a lot of money taken off them because somebody pretended to be somebody else and money was sent to the wrong account. My friends found dealing with their bank to be fine but they are afraid to say much about the incident. Can protocols be put in place? Can safety measures be strengthened by the Central Bank or the ombudsman? Can a branch of the Central Bank act as an intermediary in such cases? The banks do return the moneys stolen if one has not done anything intentionally. In fairness to the Irish banking system, there is a lot of cover for affected customers. However, there are many instances where there is no cover and people lose their money simply by making a mistake in good faith. Can something more be done to protect the consumer in these cases?

Mr. Ed Sibley: I will answer the final point made about security and Ms McEvoy might cover secure customer authentication. Personally, I do not feel that I am here to defend the indefensible. We are grateful for the opportunity to be here. We take our responsibility to be accountable and transparent, in respect of the work we do, incredibly seriously. There are clearly issues in the financial system and it is helpful for us to come to the committee to discuss those issues. I welcome the opportunity to continue to enhance how we engage.

Regarding the specific questions raised, concerning the five retail banks, which I think was the aspect raised, I am not aware of any threat we have made to revoke the licences of those five banks. That could possibly have been before my time, but I have been working in the Central Bank for more than eight years and I am not aware of it. What we have done, and continue to do, as appropriate, from time to time is to apply restrictions on licences for various reasons, for example, if we have concerns regarding the safe operation of an institution, its business model, its financial stability or aspects of how it might be interacting with its customers. We do that from time to time, and beyond banks.

Moving on to loan sales, typically, they are sold on a portfolio basis. They are dealt with in commercial terms and the lenders, typically, decide to not share that information. To my knowledge, those portfolios would not be valued, from a mortgage loan perspective certainly, on an individual loan basis. What I would expect to happen is for a purchaser to do a level of due diligence, which would probably be sample based rather than looking every loan, and then offering a price based on that due diligence, which would also include forecasting of future performance and the like, as well as underlying property values. It is a matter for those purchasers concerned whether they choose to disclose or not. Typically, the prices are overall aggregates.

Senator Aidan Davitt: Are the purchasers obliged to write and provide notification?

Mr. Ed Sibley: Yes, they are.

Senator Aidan Davitt: Which they do, that is fine.

Mr. Ed Sibley: There is a requirement on the seller to give notification, and then on the buyer to-----

Senator Aidan Davitt: Yes, to notify who is buying the loan. When the buyers are going to that bother, at that stage, to write and provide notification, I think the moving price at which the loan is being sold should also be included in that notification. I have no doubt that the purchasers will have an idea of that information, because they will be on the phone the next day to the people whose loans they have bought telling them they are in charge now. It is no problem if it is a tickety-boo loan, but most of these types of loans are bundled in certain packages, such as performing, non-performing, etc. A figure exists in that context. We need not-----

Mr. Ed Sibley: There would be an aggregate figure, as I said. On an individual property, however, certainly for mortgage lenders-----

Senator Aidan Davitt: I am sure it is legislation in the context of the Central Bank which is ensuring that these new purchasers must write and inform the people whose loans they now own of the details. These institutions are not doing it for the good of their health, but because of legislation.

Mr. Ed Sibley: It is a requirement.

Senator Aidan Davitt: Yes, and when these companies are doing that, I suggest that it should also be a requirement to include the moving value, the net or book value, at the time the loan is being sold, or the sale value.

Mr. Ed Sibley: Typically, the aggregate value would be available. That is, as I said, however, the aggregate rather than individual value. I completely take the point being made by the Senator, however. Perhaps Ms McEvoy might like to comment on that point, in respect of the security aspects.

Ms Gráinne McEvoy: Is that in respect of the phishing aspect?

Mr. Ed Sibley: Yes, exactly.

Senator Aidan Davitt: I am sorry, but before we go off the point, do the witnesses from the Central Bank think that my suggestion is a good idea? People would then at least have an idea where their loan is and what is going on with it. We hear of customers quite often, whom Deputy Doherty speaks of every day of the week, who seem to be in the dark all the time in respect of their loans. In this regard, if my suggestion were taken up, people would at least know that their loan is being sold and the value at which it is being sold. Do the witnesses think that it might be helpful if the customers were entitled to that kind of information?

Ms Gráinne McEvoy: The obligations are there for the seller to inform the person with the loan.

Senator Aidan Davitt: We have crossed that bridge. That is fine.

Ms Gráinne McEvoy: That is fair enough, and there is, equally, an obligation and responsi-

bility on the new loan owner to engage and interact with the customer. I hear what the Senator is saying, and we could certainly consider it. Like any change we make to any of our rules, codes, obligations and requirements, however, it would be subject to public consultation. We would also do so once we had given due consideration to the merits, the value added, etc. Those are things we can certainly take away from this meeting.

Chairman: I thank the Senator.

Ms Gráinne McEvoy: Can I address the question on phishing?

Chairman: Please do.

Ms Gráinne McEvoy: The Senator has raised an important point. We have certainly acknowledged that we have seen an increase in this practice. I have a great deal of sympathy for those consumers who have been impacted by phishing attacks and alerts. This happens, however, in an environment outside of the regulatory parameters. We have, though, issued warnings for consumers on our consumer hub and bringing to their attention the likelihood of the format that such attacks can take. I refer to informing customers to not click on links which they do not recognise, and all those kinds of things. That is in the area of trying to enhance consumers' awareness of, and educate them about, the risks contained within those kinds of email attacks.

At a broader level, a European directive entitled the payment services directive, EU 2015/2366 PSD2 is in play. It has existed since 2015 and has since been amended. The premise of that directive and the background behind it is to increase security in respect of transactions online and to minimise, as far as possible, fraud or other types of attacks which may arise. We have worked closely with our industry in recent years to ensure that it is fully *au fait* with the requirements of PSD2 and that those companies concerned have updated their IT systems and channels of interaction with consumers to ensure compliance with the requirements of the direct, particularly in the area of strong customer authentication.

That aspect is increasingly common and, as a consumer himself, the Senator will probably have experienced situations, when seeking to complete a transaction online, where an additional code might have been required, or a security question may have needed to be answered, or, depending on the technology, a fingerprint might be required. All those enhancements seek to strengthen how consumers interact with online transactions and to minimise, insofar as is possible, the risks of fraud or attacks. It is fair to say in many cases, however, that legislation, regulation and the industry were probably a step or two behind the attackers. That does not mean, however, that we should not do all we can to ensure that the interests of consumers are best protected.

Deputy Mairéad Farrell: One thing this committee has been discussing and dealing with is the future of Ulster Bank. Last week, we had representatives from the Financial Services Union, FSU, before the committee. Unfortunately, it was only representatives from that union who were available to speak to us then. I feel strongly about the future of Ulster Bank, because it supports 3,000 people in jobs on a regionally-balanced basis. We are concerned about the major impact of any change in that regard. In 2019, Ulster Bank provided new lending of €3.1 billion into the southern economy, with deposits of €22 billion. Ulster Bank is the third largest mortgage lender in this State and provides 20% of lending to our SMEs.

We are concerned about its future. The parent company of Ulster Bank, NatWest, has stated that it will undertake a strategic review of the operations of Ulster Bank, including the potential

closure of the bank's operations in this State. It was also reported recently that Goldman Sachs has been employed to undertake that strategic review. The witnesses will be aware that Goldman Sachs itself has been involved in the Irish mortgage market, namely, in setting up vulture funds which have bought up distressed debts from our retail banks and then selling on those debts, without paying a cent in tax on its profits, through section 100 structures. Can the witnesses tell us what contact there may have been between them, the FSU and Ulster Bank staff in respect of NatWest or Ulster Bank regarding terms of reference of this strategic review?

Chairman: We covered that earlier. It is clear from our interaction with the Central Bank before the meeting that it is not in a position to comment on NatWest or Ulster Bank.

Deputy Mairéad Farrell: We have a report that Cerberus, which is one of the most aggressive vulture funds, has stated that it is considering buying up Ulster Bank's entire loan book, which would be extremely worrying. Can Mr. Sibley explain what impact this will have on Ulster Bank borrowers, customers and mortgage holders? He stated earlier that there should be no place in Irish banking for vulture funds. I would be interested in hearing if he would support Deputy Pearse Doherty's No Consent, No Sale Bill, which would prohibit the sale of mortgage loans to vulture funds without the consent of borrowers.

Another question concerns the impact of the withdrawal on the Irish market. I know that Deputy Pearse Doherty wrote to the Central Bank on 25 November about the withdrawal and the impact that would have, and that the Central Bank said in response that the exit of one entity from such a system, all other things being equal, could contribute to upward pressure to lending interest rates and could potentially lead to weaker credit availability. For Mr. Sibley, what would the withdrawal of Ulster Bank mean for the Irish banking sector and consumers?

Mr. Ed Sibley: Deputy Mairéad Farrell may have picked up my opening statement a little wrong in terms of one of the matters to which she referred. If one of the larger banks, or any of the banks, given their number and the amount of competition in the market, was to exit, clearly, there is the potential for that to have significant implications. I completely empathise in terms of the concerns of and uncertainty for those people working for an organisation where there is this type of strategic review ongoing. There was a similar example previously in connection with KBC. A strategic review was undertaken in regard to KBC a couple of years ago and there was similar speculation. At the end of that, KBC decided to stay. I cannot comment or speculate on what will happen with Ulster Bank but it is not a total given that it will leave. I appreciate that there is uncertainty for people who are working for Ulster Bank, and that must be challenging.

In terms of the competition point the Deputy makes, and she referred to my letter, where I would be most concerned is in regard to SMEs. We are seeing a degree more competition in the mortgage market, so the trend is downward and one measure would be interest rates. There has been an increase in competition and we are, as I touched on earlier, seeing signs of potential other competition coming into the market, both from banks and non-banks in mortgages. However, the SME lending is more concentrated again because, of the banks, there are only three banks that are lending to SMEs at any kind of scale. In terms of potential implications were Ulster Bank to decide to leave, that would be the area that is most concerning in terms of the functioning of the market.

There are other options out there for SMEs, and the other two banks and the credit unions are able to lend to smaller SMEs, but none of that is approaching the scale of Ulster Bank's lending to SMEs. Clearly, that potentially is an area where both the provision of service and

lack of price competition might well be a factor. I would agree with the Deputy on her concerns.

Deputy Mairéad Farrell: I would be very interested in the credit union issue as well, and I know Mr. Sibley talked to Deputy Tóibín about that. When the FSU was here, it stated that one concern it had was that if the branches close, and I appreciate we do not know and, hopefully, it will not be the case, we would lose local knowledge. As Mr. Sibley knows, if there is a banking branch, there is that local knowledge of the people, of the farmer and of the local business, so that is one issue that would be concerning. I thought it was quite an interesting point by the FSU and, in that sense, if that were to happen, I think a greater importance would be set on the credit union sector. Mr. Sibley stated that he recognised the importance of the credit union sector. Specifically, we need to recognise the help it can provide people in terms of increasing financial exclusion and, obviously, that would be a great concern with the increasing digitisation of banking. We know there are huge swathes of the country that just do not have broadband, so that is not a factor for them, and there are people who are not able to undertake online banking, as well as the fact we are, unfortunately, moving away from community-based branches.

The Central Bank said recently in regard to the banks that there can be a distance between what they say and what their customers experience. Many credit unions have contacted me because they are concerned about their future. They would be concerned about what the Central Bank says and what they themselves experience, and this is what they have come to me about. They are concerned about the scale of the crisis facing them in the next five years. They have said the regulations being placed on the sector at the moment put them at a competitive disadvantage to the banks, and that this has stymied their ability to lend and, therefore, is strangling the customer's ability to borrow. At the same time, we see that Ulster Bank could potentially exit the market, which would add to that. We cannot underestimate the huge opportunity that credit unions have and the positive impact they can have if there is this move towards the closure of local bank branches.

I want to refer to a number of concerns the credit unions raised with me in regard to-----

Chairman: We are running out of time.

Deputy Mairéad Farrell: Do we not have until 3.30 p.m.?

Chairman: We do, but I have to come in. I will allow the Deputy until 3.20 p.m. and then I will need to take ten minutes.

Deputy Mairéad Farrell: That is okay but I have been waiting.

Chairman: So have I.

Deputy Mairéad Farrell: First, there are the lending regulations introduced just a few months ago which allow credit unions to lend 7.5% of their assets for secured loans such as house loans. Larger credit unions can lend up to 15%. This was seen as an advancement of regulation but the credit unions are quite concerned about it. We know that in large, developed credit union movements in other countries, credit unions are allowed to lend up to 60%. We also know that over half of the consumer credit market in Ireland is for mortgages. How can credit unions provide a real alternative with this kind of restriction in place? Given that they feel they are stymied in terms of having a more balanced loan book, is this creating a greater risk for credit unions? Some credit unions have come to me and stated that they want to set their own limits for what they can lend. I would be interested to hear Mr. Sibley's views on that. Those are the issues they have come to me with.

Mr. Ed Sibley: As I have said a couple of times before at this committee, we would very much welcome coming in and having a session on credit unions. If the committee would find that useful, I could come in with the registrar and talk about where we are with credit unions.

Chairman: We proposed we would take that as part of our work programme early on.

Mr. Ed Sibley: As a specific answer to the Deputy's direct question, even before the regulations were changed, there was significant capacity within the limits for credit unions to lend a significant amount more. With the new regulations coming in, I think it is in the order of €1.5 billion to €2 billion of extra lending that the credit union unions can do within the limits, so they are nowhere near hitting the limits and they are such a long way from it.

There are some real challenges within the credit union sector in terms of the longer-term sustainability and viability of their business model. There has been a lot of hard work done by the credit unions and the membership bodies. The Central Bank has done a lot of hard work in terms of supporting the credit unions over the past decade or so. There has been a significant amount of consolidation in the sector and some growth of some much bigger credit unions, while at the same time maintaining much of the credit union footprint around the country. That challenge of being very attractive to savers, and part of that has a demographic aspect, but less attractive for borrowers means they are significantly under-lent relative to their balance sheets. There is capacity and, as I have said, I am very happy to come back and discuss credit unions in more detail.

Deputy Mairéad Farrell: There is great concern out there and, if we are seeing that kind of movement away from bank branches, credit unions have very significant potential to fill that gap.

Mr. Ed Sibley: Sure, I understand that.

Chairman: I will ask a few questions, although Mr. Sibley probably will not be able to answer them in the short time remaining. I do, however, wish to put them on the record. Perhaps he could come back to us with answers. I thank him for the comprehensive response to the various issues raised at the previous meeting which we received earlier today.

The committee and I sent some material to bring an issue to the attention of the bank. Money was borrowed from Anglo Irish Bank, most of which was paid to an associate of that bank and ended up in an Anglo Irish Bank deposit account. Over time and through the process, this destroyed the individual's business. What is the response of the Central Bank to cases of serious money laundering such as this? Who deals with it? Is it Ms McEvoy or somebody else? Is it considered a consumer protection issue? Where in the Central Bank should the detail of such a case be directed for a comprehensive and early response?

Mr. Ed Sibley: I am not totally sure of the details of this case but I am very happy for the Chairman to send it to me. I will make sure that anything the committee sends is forwarded to the right department.

Chairman: I will refer to what we will call an accounting loophole. Chartered Accountants Ireland has confirmed that it allows banks to conceal losses while its counterpart in the UK has admitted that the same loophole is contrary to European company law. There was reported an article in the *Financial Times* by Matthew Vincent on 7 May, which shows that the Central Bank of Ireland relied on this flaw. There was a similar article by Niall Brady in *The Sunday Times* on 31 May covering the same issue. Why has the Central Bank not challenged the facts

as presented in these articles? Should it not do so to allay public fear or to ensure public understanding and to give the public a better grasp of what is going on?

Mr. Ed Sibley: We do not necessarily challenge all inaccurate reporting on the Central Bank.

Chairman: These particular articles were significant in that, if what they stated is true, they would create serious doubt in the minds of those leading banks and central banks.

Mr. Ed Sibley: I recall the articles coming out but I cannot recall the precise details. If the Chairman wishes to pass them on for us to look at them-----

Chairman: I will send them on.

Mr. Ed Sibley: Please do. From the perspective of recognising loan losses and the amount of provisioning applied to a loan when it starts to get into distress, there are lots of rules but a great deal of judgment can be applied in their implementation.

Chairman: I will come back to Mr. Sibley on that.

Mr. Ed Sibley: These rules are primarily for the accounting bodies and the auditors. We look at the overall safety and soundness.

Chairman: I want to know the Central Bank's view of these issues. I will put some specific questions to Mr. Sibley. I raised the issue of EBS tied agents. We were told that it is a matter of tied agents versus the bank and that the courts are involved. Within the complaint of the EBS tied agents is the detail that EBS knowingly misrepresented its financial position to the markets, creditors and the Central Bank. Knowing that this is part of the complaint, surely it is the Central Bank's job to investigate. I am not asking about individual EBS agents or specific instances related to the ongoing challenge. I am asking whether the Central Bank has looked at the complaints made by the EBS agents, rather than acting on any one individual case. Has the Central Bank looked at the matter of the flawed accounts used to exploit the very same loophole about which we talked earlier on? Is anybody at work on that?

Mr. Ed Sibley: We briefly discussed the issue of the EBS tied agents here previously. I have every sympathy for them. I have met them.

Chairman: We know that but is work ongoing on this issue?

Mr. Ed Sibley: We have looked at everything we have received from the EBS tied agents. We continue to monitor and there is an ongoing-----

Chairman: Has the Central Bank engaged with EBS on the allegations being made about its procedures, processes and so on?

Mr. Ed Sibley: We have engaged with AIB and EBS with regard to the complaints made by the tied agents. As I have said previously, it seems to be primarily a civil dispute. It is working its way through the courts.

Chairman: No, it is not. It goes beyond that. That is the point I am making. It is a civil dispute in that the agents are contesting their contractual arrangements, but there is also the issue of the bank's activity as outlined within the tied agents' argument.

Mr. Ed Sibley: We have met some of the EBS tied agents to discuss that issue. I recall that

we wrote to the committee on the issue previously, but I will check on that.

Chairman: The Central Bank did write to us but I am not letting the issue go. I am going to pursue it because I believe that, outside the contractual issues between the two parties, an investigation should take place into EBS as regards its accounting practices, the information it gave about the bank and so on. I am putting that on record and I will come back on it.

On the tracker mortgage issue, a number of banks have told customers that the tracker examination does not apply to non-home mortgages. Buy-to-let investors are, therefore, exposed to deliberate banking malpractice, as are farmers and others. They were charged interest rates higher than were expected. Is that a fact and can these cases be examined? Does the Central Bank agree that banks cannot exclude commercial mortgages from tracker redress? Are commercial mortgages on tracker rates excluded from redress?

Mr. Ed Sibley: Is the Chairman referring to buy-to-let mortgages?

Chairman: Yes, but it could also be any other commercial mortgage.

Ms Gráinne McEvoy: Buy-to-let mortgages were included as part of the tracker mortgage examination.

Chairman: Beyond that, are other connected loans included in the redress mechanism? If a loan is somehow connected to a tracker rate, is it included or excluded?

Ms Gráinne McEvoy: We will take that question away with us if it is okay with the Chairman. It is interesting to hear the specifics of what he is talking about. I do not want to misguide him.

Chairman: I have a minute left. Ms McEvoy was talking about consumer protection. I correct her on the following issue every time. It is impossible to deal with Start Mortgages. Customers find it impossible, as do I as a third party. One cannot get through to the company on the phone. There are issues and concerns it will not address. The word “abhorrent” was used with regard to KBC. The other side won a court case against the bank. It was to pay out on that basis but still has not done so. It just refuses to pay. Deputy Doherty will be aware of a particular case regarding Bank of Ireland. It was specifically mentioned in correspondence that an individual had a tracker mortgage but the bank has refused to acknowledge this. It has conducted internal investigations. The way the banks are handling issues is bizarre and they are getting away with it.

Deputy Doherty raised the issue of evictions and repossessions. How many repossessions have occurred over the past while? How many occurred during the pandemic? People continue to be brought to court and dragged all over the place, even at Christmastime, with regard to their mortgages. It seems that no one is intervening. Deputy Doherty put the letter on record and he was right to do so. What legal practice or bank in its right mind would tell people to be out by 21 December? Somebody, perhaps the consumer protection unit, should intervene. I will say it again; the protections do not travel with the loan or with the customer. That just does not happen. In the cases I have come across, of which there have been quite a few, Deputies Durkan and Doherty have been at pains to point out at every meeting that this does not happen. Usually, it applies to those who are not well heeled with lawyers. In the case of lay litigants, who may have a damn good argument, the bank just kicks them around the place, showing them no respect whatsoever. We have to find somewhere we can turn. I apologise for ending the meeting abruptly but I am obliged to conclude it because we have reached 3.30 p.m. As Chairman,

I will write to our guests because the matter in question has been raised during the meeting. I will put the various questions to them and allow them to respond in writing with the details of what they have outlined during the meeting.

Mr. Ed Sibley: I thank members for their time. The more detail they can give us on the specific examples that have been cited, the better we will be able to respond.

Chairman: I will relay those questions to the clerk to the committee, who will put them to the bank. I thank Mr. Sibley and Ms McEvoy for taking the time to attend, along with their colleague in the Gallery.

The joint committee adjourned at 3.31 p.m. until 12 noon on Wednesday, 16 December 2020.