



FINANCIAL REGULATOR  
*Rialtóir Airgeadais*

**Financial Services Ombudsman Conference**

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**Financial Regulator and Ombudsman cooperation and Regulatory issues:**

Good morning Ladies and gentleman...

I would like to welcome you to the Conference which is taking place at a very challenging and busy time for regulators and ombudsmen worldwide. Despite the immediate current challenges of our day- to- day jobs, it is opportune to take some time to compare and contrast our different systems and to examine what must be done to improve regulation and consumer protection going forward.

As you all know we are currently making significant changes to our regulatory structure here in Ireland.

Last week, the Minister for Finance announced how our new system of financial regulation will operate. We are now working with the Department of Finance and our Central Bank colleagues to implement the Government decision as quickly as possible.

Clearly, just as in other countries, the system of regulation in Ireland was not robust enough to tackle excessive lending by banks, threats to financial stability and poor corporate governance in some banks.

The new structure, the Central Bank of Ireland Commission will be a single, fully integrated regulatory institution, replacing the current board structure of the Central Bank and Financial Services Authority, which links the Central Bank and the Financial Regulator. The new Central Bank of Ireland Commission will be chaired by the Governor of the Central Bank and will be responsible for both the supervision of individual firms and the stability of the financial system. A new Head of Financial Supervision will report to the Commission on the regulatory and supervisory functions and objectives set for the new structure and a head of Central Banking will report on the performance of Central Banking functions. The process of recruiting the new Head of Financial Supervision is underway as is the recruitment of additional staff with the skills, experience and market-based expertise to operate effectively in the new regulatory environment.

We welcome reform aimed at making the market a safer place for consumers of financial services. I think it is important, in the context of the conference here today, to state that it has been widely acknowledged that the consumer directorate of the Financial Regulator has worked extremely well for consumers and it is important that the new consumer protections we have built up since 2003 are maintained in the planned new structures. As you may be aware, the reform involves the reassignment of our current information and education functions to the National Consumer Agency, while the Office of the Financial Services Ombudsman will retain its current separate statutory role.

This reform is aimed at tackling weaknesses in the current regulatory structure. Weaknesses have not only been identified here but in most jurisdictions. The current global crisis has underlined the need for a system-wide approach to regulation and supervision. It is clear now that although the build up of pressures at a macro or system-wide level was widely recognised, the systems that were in place, both internationally and in Ireland, failed to ensure that these pressures were adequately tackled. To be effective, any new structure will need to bridge the gap between financial stability, or macro prudential supervision, on the one hand, and micro-prudential, or traditional supervision, on the other. The proposed restructuring in Ireland is designed to achieve just that.

The proposals of the de Larosière report are particularly important on this point and the European Commission has put forward a new supervisory framework based on these proposals. The framework recognises explicitly the need for macro-prudential risk assessments in order to identify emerging vulnerabilities in the financial system and to issue risk warnings but also, and crucially, the necessity to follow these with policy actions when appropriate. The details of the proposed new EU framework are still to be ironed out but we very much welcome the broad thrust of the proposals.

The current crisis has also made it clear that risk management practices across all parts of the financial sector need to be improved significantly. One of the key aspects that must be addressed is ensuring that the regulatory framework does not magnify the cyclicity already inherent in the financial system, as it has during the current crisis. In this context, it is essential that mechanisms and procedures are developed to ensure that banks can accumulate reserves in

good times to act as a cushion when the cycle turns. Clearly, accounting standards play an important part here and initiatives are underway both at the IASB and the Basel Committee to improve reporting in order to reduce cyclicity. The restructuring of bank executive remuneration packages is another important issue related to risk management practices, and the re-alignment of incentives to prioritise long-term sustainability above short-term profitability is necessary.

**At this stage,** and especially because I am addressing an international audience, I think it would be helpful to give you some background on the structure that has been in place in Ireland since 2003 and to explain how the Financial Regulator and the Office of the Financial Services Ombudsman operate within that structure.

I will therefore

- outline the consumer protection system we currently operate here in Ireland,
- explaining how it works in practice, how it works well for consumers,
- look at the tensions that can arise between regulators and ombudsmen and explain how we deal with these here, and
- look at the issue of financial regulation and consumer protection in the context of the current global financial crisis and to comment on the way forward, as I see it, for consumer protection.....

**The current consumer protection system in Ireland:**

Protection for consumers of financial products and services in Ireland centers around two statutory offices – the Financial Regulator and the Financial Services Ombudsman.

The Financial Regulator was set up in 2003 to bring prudential regulation and consumer protection into one organisation – amalgamating regulatory functions of four bodies, including the Central Bank of Ireland and the Office of the Director of Consumer Affairs, into a single organisation and adding new regulatory functions in the area of consumer protection. As we developed, we saw the need for new powers to protect consumers, for new Codes, to bring non-regulated financial services providers within the regulatory net and set about getting these in place. In 2004 we got powers to impose administrative sanctions where financial services providers do not comply with legislation or our regulatory requirements. From 2006 and 2009 we introduced a number of new statutory Codes, including the unique Consumer Protection Code, the Code of Conduct on Mortgage Arrears as well as Minimum Competency Requirements. We sought the inclusion of non-deposit taking lenders such as sub-prime lenders and home reversion firms within our regulatory net. We have provided useful and relevant information about financial products and services in plain English for consumers through publications, our helpline and our website, [www.itsyourmoney.ie](http://www.itsyourmoney.ie), and have taken initiatives to foster access to financial services and to develop financial education for consumers.

Under the new structure, the consumer protection function is to remain within the new Central Bank Commission, clearly recognising the important links between prudential regulation and consumer protection. Our consumer information and education function, which is widely recognised as a highly

effective service for consumers, is to be transferred to the National Consumer Agency. The NCA has welcomed the addition of this effective unit to its organisation. The Consumer Information service has worked very well within the Financial Regulator but, I am confident that it will continue to provide consumers with the timely, clear and appropriate information about financial products and services from its new home.

### **The Financial Services Ombudsman:**

In 2005 the right of the consumer to a fair deal from regulated financial services providers was enhanced with the setting up of the new statutory Financial Services Ombudsman's Bureau. The Financial Services Ombudsman provides an impartial, independent and cost-free dispute resolution process for individual consumers who have complaints about their financial services providers. It is important to note that the Irish Financial Services Ombudsman is a statutory role, with powers of investigation and adjudication. The new Ombudsman replaced a number of industry based schemes. The Financial Services Ombudsman deals with complaints from individual consumers regarding financial products and services and can issue a binding award in favour of a consumer. Parties who appear before the Ombudsman have a right of appeal to the courts.

### **How the Financial Regulator and the Financial Services Ombudsman work to protect consumers:**

In Ireland consumer protection issues have been at the forefront of the regulatory agenda since the Financial Regulator was set up in 2003. Our explicit mandate for the protection of consumers is carried out through the provision of information to empower consumers and our power to protect consumers through issuing statutory codes of conduct that the firms we regulate must comply with.

The Consumer Protection Code, for example, sets the standards regulated firms must meet in conducting business with consumers. Through this Code we require regulated firms to have complaints procedures in place to deal with issues that arise for consumers. Under these procedures consumers must first take their complaint to their financial services provider. If they are not satisfied with the resolution proposed they can then take their complaint to the Financial Services Ombudsman. The Financial Regulator provides information for consumers on how to make a complaint and how to contact the Financial Services Ombudsman's office.

### **Distinct Roles:**

Each organisation has its own clear and distinct role. While the Financial Services Ombudsman adjudicates on complaints from individual consumers, we regulate financial services providers and provides information for consumers about financial products and services and on what they can do if they feel they have an issue about a financial product or service.

We cannot deal with complaints from individual consumers but can help individual consumers to understand their rights as customers of financial services firms, to learn about financial products and services and to make a complaint to a firm and/or to the Financial Services Ombudsman. The Financial Services Ombudsman takes into account the Financial Regulator's Consumer Protection Code and our other codes and regulations in examining complaints from consumers.

This structure works well for consumers because our organisations communicate and co-operate at operational level. The Financial Services Ombudsman reports regularly and publicly on the issues that consumers bring to his attention and on

the outcomes of his investigations. Information made available to the Financial Regulator by the Financial Services Ombudsman Office includes details of the types of complaints received and the number of complaints about a particular issue. Where the FSO feels that a complaint, or a number of complaints, either about the same firm or a similar issue across a number of firms, may indicate a wider issue, he can report his concerns to the Financial Regulator who can follow up if it considers this could be a wider industry issue.

At an operational level we have a Memorandum of Understanding which we review every year, our officials meet every three months and the Ombudsman and the Chief Executive meet formally twice a year. Of course, in between we have informal contact when issues require it.

Reports from the Financial Services Ombudsman on matters that have been brought to his attention can feed into our intelligence in deciding on the focus of the themed inspections we use to police industry, input into forming new Codes or regulations, or, used to provide warnings or other relevant information for consumers.

Last year, for example, we carried out a number of themed inspections based on reports from the Ombudsman. These include an inspection of how insurance companies handle claims from consumers under their travel policies for loss or damage to personal items, an examination of potential conflicts of interests arising from mortgage intermediaries providing property services and an inspection of sales practices with regard to the sale of unit-linked whole of life policies.

Co-operation between our offices has undoubtedly resulted in improvements for consumers in these areas.

**Natural tensions - What are these tensions, how is Ombudsman role different from that of Regulator :**

As you would expect, we do not always agree and sometimes there can be tensions between our organisations. We may disagree from time to time about how an issue should be pursued or the relative importance or impact of a particular complaint or issue. That is, I think you as Ombudsmen would agree, a very normal part of the process of examining what can be complex and multi-faceted issues. In fact, I think it would be more unusual if we were always in agreement on all issues.

In dealing with these issues we are aware that we each have our own clear and distinct responsibilities and that we both act in the public interest. At the end of the day, we are each confident in the professionalism and goodwill of the other in finding the best solution for consumers of financial services.

**Financial Regulation – what went wrong, what needs to change.....**

We cannot discuss regulation and consumer protection here today without reference to the global financial crisis and the failure of regulation internationally to tackle the issues that caused the crisis.

As you are all well aware, the turmoil in global financial markets can be traced back to early 2007 with problems emerging in capital markets due to losses on securities linked to US sub-prime mortgages. Since that time, the severe deterioration in the US sub-prime market and the ensuing global liquidity shortage has resulted in serious problems in international banks such as Northern Rock, Bear Stearns, Fannie Mae and Freddie Mac. Throughout 2007 and 2008 the availability of funding on the international inter-bank and

wholesale markets tightened. The pace of the deterioration intensified in September 2008, with the collapse of Lehman Brothers. Interbank markets froze, restricting funding to the very short end of the market. Irish banks were affected because of their reliance on international markets to provide funds to meet the strong domestic demand for credit. Governments and central banks everywhere were forced to intervene in an unprecedented way and on an unprecedented scale. The steps taken have included direct financial sector interventions, as well as monetary and fiscal policy responses. Recapitalisations, deposit guarantee extensions, the provision of credit and liquidity, and programmes to deal with distressed assets have all been undertaken to support financial institutions, while central banks have cut policy rates to historically low levels and have introduced a range of non-conventional monetary policy measures.

### **Response in Ireland:**

Here in Ireland, Irish banks had limited exposure to structured financial products but the interaction of the global shock to financial markets with the pre-existing vulnerabilities in the domestic economy triggered systemic repercussions here. The particular vulnerability here was an overheated property market that had been financed through the banking sector, largely with funds raised on wholesale markets both at home and abroad. Irish banks had in recent years become more reliant on the international capital markets for funding to meet the strongly growing private sector demand for credit. This strong growth in the demand for credit from the private sector arose mainly from the construction industry and for property acquisition. This was supported by consistently positive and over-optimistic economic forecasts for the economy and the property market and by tax incentives for property investment. Other factors that supported the rapid

expansion of the broadly defined property sector included low interest rate, ready availability of credit. Clearly, and with the benefit of hindsight, banks were seriously overexposed to the property sector.

As far back as 2004 the Financial Regulator took a number of actions to maintain the soundness and safety of banks against a background of increasing exposure to wholesale funding and rapid growth in lending particularly to the property sector. These actions included:

- New liquidity requirements;
- Increased capital requirements for high LTV mortgages;
- A conservative approach to property related lending requirements under the Capital Requirements Directive whereby more capital had to be set aside for riskier property lending;
- More onerous stress testing requirements on individual mortgage applications;
- Restrictions on predatory lending in the new consumer protection code;
- A range of consumer information campaigns in relation to debt;
- New requirements in relation to impairment provisions for credit exposures and;
- Guidance for lenders on loan application reviews;
- Seeking regulation of non-deposit-taking lenders.

Again, with the benefit of hindsight, the actions we took could have been stronger and taken earlier in the cycle. However, it is arguable whether any

regulator, acting unilaterally in an economy focused on growth and fostering competition, could have materially mitigated the property bubble. This would have required a concerted effort by all the stakeholders in the economy. These are important lessons for the future.

### **Government Action So far:**

The Irish Government response to the crisis is consistent with the general approach adopted by countries across the EU. Initially consumer deposits were protected through the introduction of a state guarantee for banks' liabilities, then banks were recapitalised to ensure viability, and most recently, measures were taken to address banks' non-performing property-related assets through the establishment of the National Asset Management Agency (NAMA).

### **Regulating to Protect Consumers in the new Environment:**

The events of the last few months have had a profound effect on all of us in the Financial Regulator. We are acutely aware of the stresses being suffered by many consumers in these difficult times and have been working to put the system right and to make our organisation stronger. We have made changes in the way we regulate and now operate a more intensive system of regulation. The legislation underpinning the Government Guarantee Scheme has given us greater powers to supervise the banks and we have used these powers extensively. A new supervisory unit defines, imposes and monitors conditions and targets under the Government Guarantee Scheme. We are now able to impose conditions regulating the commercial conduct of a covered institution's business. We are closely monitoring corporate governance, credit, liquidity management, audit and risk. We are examining and monitoring capital ratios, market share and balance sheet growth. As you are aware some regulatory

issues are still under investigation by the Financial Regulator and other bodies and I will not comment any further on these.

We have learned important lessons for the future in a number of areas including enforcement and risk and corporate governance. A better regulatory regime, based not just on the lessons from the current crisis but on the chief objectives of financial regulation is now being built for the future.

When the crisis comes to an end, the structure and shape of our banking system will be different too. This is likely to be an international trend. The banks that emerge from that process may well be smaller but better prepared for the new environment. In all of this we need to ensure that the banking system that emerges is one that meets the needs of the economy and that the interests of consumers are protected.

### **Consumer Issues:**

In a period of unprecedented turmoil on international markets, I remain clearly focused on protecting the consumers of financial products and services. Reflecting the deterioration in our economy and the increase in the numbers of people who have lost their jobs or had their work hours or wages reduced, more consumers now have financial concerns up to and including difficulties repaying the mortgage on their family home. Our new Code of Conduct on Mortgage Arrears is aimed at helping to protect people who have fallen into arrears on their homes and we are providing practical, useful information on our website to help consumers.

The structures of the Financial Regulator and the Financial Services Ombudsman have worked as powerful protections for consumers. In this current environment

I want to remind consumers who have issues with borrowings and arrears about the protections offered under our Consumer Protection Code. In place since July 2007, the Code required lenders to ensure that any loan offered is suitable for the consumer and affordable at the time it is advanced. I would like to encourage any consumer who feels they may have been mis-sold credit since our Code was put in place to take up their issue directly with their financial services provider. If they are not satisfied with the resolution proposed they can take their complaint to the Financial Services Ombudsman. Consumers should also be aware that there is a six year limitation on issues that the Ombudsman can consider.

### **Conclusions**

In summary, we remain in a very difficult and challenging environment. As the Regulator, we must, and, we will continue to act to protect the financial system in the public interest.

But it is important to state here today that the consumer initiatives taken in recent years have worked well for consumers, who now benefit from a strong statutory Code that protects them in their dealings with regulated financial services firms, and, have the ready access to clear and independent information about financial products and services that empowers them in the marketplace. And, in addition to the complaints processes that firms must have in place under the Code, consumers now have the independent, statutory office of the Financial Services Ombudsman to examine their individual unresolved complaints.

While regulation in the future must undoubtedly place greater emphasis on prudential issues, I am confident that this will not be at the expense of the protections afforded to consumers through rules for business conduct,

enforcement of those rules through investigations and sanctions and the empowerment of consumers through information.

Ends