

## **Citizens Information Board Submission on the amalgamation of the offices of the Financial Services Ombudsman and the Pensions Ombudsman (March 2015)**

### **Introduction**

The Citizens Information Board has no difficulty in principle with the proposed amalgamation of the offices of the Financial Services Ombudsman and the Pensions Ombudsman.

Pensions are among the most complex financial products and it seems clear that the body that deals with occupational pensions, RACs and PRSAs should also be dealing with private pensions, Buy Out Bonds, ARFs and AMRFs. If there is to be a separate Pensions Ombudsman in the new amalgamated office, this person should deal with all pension complaints. The pensions industry should contribute to the cost of the Pensions Ombudsman in the same way as the financial services industry pays the costs of the FSO.

The CIB favours the further development of alternative dispute resolutions mechanisms such as the Ombudsman offices and considers that the proposed amalgamation of these two offices provides an opportunity to create a user friendly integrated service.

The CIB recognises that the proposed amalgamation has the potential to provide a better customer service and possibly a seamless and co-ordinated service to citizens who are aggrieved by the providers of financial services including pensions. Any changes that are made to the role or powers of the offices should be aimed at trying to ensure such a seamless and co-ordinated service.

The CIB considers that each office currently provides a valuable service. It is notable that a significant element of the work of the Pensions Ombudsman involves providing information to people who are unsure about the redress mechanisms that may be available to them. The most common complaints to the Pensions Ombudsman include membership/entry conditions, miscalculation of benefits, non-remittance of contributions, loss of value.<sup>1</sup> Some

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<sup>1</sup> PQ 182 of 20 January; PO Annual Reports

of these issues need to be dealt with by the regulatory authorities. Complaints in relation to mortgages feature strongly in the FSO's workload. Again, there needs to be more clarity in relation to the respective roles of the Ombudsman and the Central Bank.

It is not surprising that people find the complaints and redress landscape confusing. It is imperative that the regulatory authorities (the Central Bank and the Pensions Authority), the Ombudsman offices and the Competition and Consumer Protection Commission all co-operate in providing information which clarifies the precise role of each in relation to consumer complaints.

### **Specific questions asked in the consultation process**

#### **Limitation periods**

*1a: What is the appropriate time limit that should apply regarding financial services complaints (to the FSO)?*

In general, the limitation period which applies for the Pensions Ombudsman, that is, three years from the discovery of the cause of the complaint, seems to be a fair approach. It is recognised that some complaints manifest themselves fairly quickly (for example, in relation to current accounts) whereas complaints in relation to insurance and pensions may not become apparent until many years after the relevant event. A simple six year limitation period would not be fair in these cases.

*1 b: If there is a change to the limitation period for complaints to the FSO, should it be applied retrospectively or prospectively and what implications (legal and non-legal) may arise from acceptance of either approach?*

Any change in limitation period would have to take account of the likelihood that the records retention policy of financial institutions is in some way related to the current limitation periods. Therefore, a changed limitation period would have to be gradually introduced.

*1 c: Are there any issues and or possible unintended consequences that might arise in respect of any changes to the limitation periods for the FSO?*

The CIB does not have a view on this matter.

*2 a: Are there any changes that might be applied to the existing limitation period applied to the PO.*

As already stated, the limitation period for the PO seems reasonable.

## **Governance structure of the new Financial Services and Pensions Ombudsman**

*3 a: Should a council or similar governance structure be retained for the amalgamated entity?*

The CIB does not have a strong view on whether or not there should be a council or similar body. It is not clear that one is needed. Other Ombudsman offices (for example, the Ombudsman, the Ombudsman for Children) do not have a council. The main roles of the FSO Council relate to setting guidelines and determining the levy on the financial services providers. There seems to be no particular reason why these functions could not be carried out by the Minister for Finance and/or the Minister for Social Protection.

One of the major advantages of any Ombudsman office is its independence. The public perception that it is independent is almost as important as the actual independence. Any governance arrangement that would dilute this independence would not be appropriate.

*3 b: If a council is retained what is the appropriate formation of the council for the amalgamated body (membership, size, experience etc.)?*

If there is to be a council, it should be small and have representation from experienced consumer advocates and experts in financial services.

*3 c: If a council is retained what powers should the council have?*

They should be broadly similar to the current FSO Council powers. The Council should not have any role in decisions on complaints.

## **General powers of the FSO and PO**

*4 a: Are there amendments needed to the existing powers of the PO?*

As stated above, the Pensions Ombudsman should deal with complaints about all pension products.

*4 b: Should some powers that are solely the responsibility of the PO, and powers solely the responsibility of the FSO be extended to the ombudsman of the amalgamated body and what powers are proposed?*

It is not clear if it is proposed to retain separate Ombudsman within the amalgamated office. If there is to be one Financial Services and Pensions Ombudsman, that person should have all the powers currently available to the FSO and the PO.

4 c: *What additional powers might be given to the ombudsman of the amalgamated body and on what basis (powers of investigation, scope etc.)?*

The new office should have the power to deal with complaints made on behalf of people who are unable to complain themselves, for example, children, people with impaired capacity and people who are deceased.

The Pensions Ombudsman currently has more power in this respect than the FSO but the PO's powers to deal with "a member of the deceased's family or some other person who is considered by the Pensions Ombudsman to be a suitable person to represent them" is too vague. The legislation should clearly set out who is entitled to complain on behalf of these groups. It should specifically recognise the role of the personal guardian which is proposed in the *Assisted Decision-Making (Capacity) Bill 2013*.

In relation to borrowers in mortgage arrears and the CCMA and MARP, the FSO is currently restricted to investigating complaints regarding adherence to the process by the lender. Consideration should be given to a more substantive role for the Office in relation to the 'reasonableness' of the solution offered to the borrower in arrears with some independent arbitration or recourse for the borrower on the offer/decisions of the banks.

Overall there should be no loss of investigation powers. The powers of the FSO, PO, the Ombudsman, the Ombudsman for Children and the Competition and Consumer Protection Commission need to be analysed and compared. Similar powers of investigation should be available to all such bodies.