



08 December 2014

CENTRAL BANK OF IRELAND

Macro-prudential policy for residential mortgage lending

Consultation Paper CP87

RESPONSE OF THE FINANCIAL SERVICES OMBUDSMAN'S BUREAU

GENERAL REMARKS

The FSOB welcomes the opportunity to engage in the consultation process and to provide this Response to clarify an aspect of how the proposed policy may impact on the work and functions of the FSOB.

Impartiality of FSO - The FSOB wishes to emphasise that it is required to be impartial as between Complainants and financial service providers, and in that respect it does not seek to advocate any particular view on the proposed policy outlined in the Consultation Paper *per se* rather, it is keen to ensure that any proposed new policies or procedures and/or any enacted legislation is clear in relation to its impact on the jurisdiction of the FSO and does not present the FSO, potential Complainants and financial services providers with impractical or adverse jurisdictional issues.

Focus of Response - Having regard to that overarching concern, this Response accordingly focuses on a particular aspect having or likely to have a bearing on the jurisdiction and/or functions of the FSOB, rather than focusing on issues of a more general nature and/or issues impacting or likely to impact upon other bodies such as the Central Bank. It is the view of the FSOB that it cannot justifiably comment on matters in which it has no legal function.

The FSOB acknowledges that the right to bring a complaint to the FSO is but one of the regulatory protections afforded to consumers of financial services. The FSO has no remit in any of the other regulatory protections addressed in the proposed policy which largely involve the Central Bank rather than the FSO, and for the reasons set out above no substantive comment in respect of those regulatory protections is made in this Response.

POTENTIAL IMPACT ON FSOB

It is assumed that if customers of regulated financial services providers are dissatisfied with a decision of that provider in respect of the provision of a mortgage loan in accordance with the proposed new policy, such customers may seek to bring a complaint to the FSOB in respect of that decision. The FSOB is keen to clarify:

- It has always been - and continues to be - the position and practice of the FSOB not to interfere with the commercial discretion of a financial services provider. Thus, where appropriate, the FSO will investigate whether the process adopted by a financial services provider in arriving at particular decision is reasonable and/or in accordance with applicable legal requirements and codes, but the FSO will not seek to interfere with the commercial discretion itself of the financial service provider to make that decision.
- In circumstances where a Complainant might bring a complaint, for example, in respect of a refusal by a financial services provider to provide a mortgage loan at a given LTV (or in accordance with other such criteria as envisaged by the proposed policy), the FSO may examine the process by which the decision to refuse was arrived at – essentially to investigate whether the process was procedurally reasonable and/or in compliance with applicable legal requirements and codes but the FSO would not seek to substitute his views in relation to the decision for that of the financial service provider.

The FSOB would be anxious that any reference in any proposed policy and/or proposed legislation to referral of complaints to the FSOB might clarify this for all stakeholders but particularly for potential complainants.

Specific function of FSO - it is worth noting also by way of clarification, that the FSO has a clearly defined function and jurisdiction as set out by statute (*The Central Bank and Financial Services Authority of Ireland Act 2004*). As noted in the Public Consultation paper, the FSO is a statutory officer who deals independently with unresolved complaints between consumers about their individual dealings with regulated financial service providers. The FSO is not a regulatory body and does not exercise any regulatory functions and has an entirely different remit and jurisdiction to the Regulatory Authority (the Central Bank).

The respective roles of the FSO and the Central Bank as established by statute are entirely distinct. Having said that, the FSO clearly does play an important role in providing eligible consumers with access to an informal and expeditious alternative dispute resolution mechanism.

Statutory remit of FSO - The position of the FSO in relation to its statutory functions, as has been stated publicly on many occasions, is that it operates its scheme in accordance with the applicable statutory and other law and in circumstances where under the law the FSO has no powers or jurisdiction to act then legally it simply cannot do so. If it is the case that any new legislation provides additional powers and/or areas of jurisdiction for the FSO then, subject to any resource issues which

such increased jurisdiction may bring, the FSO will continue its work in accordance with any such new legislation.

SPECIFIC CONSULTATION QUESTIONS

For the reasons set out above the FSOB, is of the view that it is not appropriate for it to make any response to any of the specific Consultation Questions (1-12) given their subject-matter, rather it is more appropriate that those questions may be addressed by other stakeholders.



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