

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CENTRAL BANK OF IRELAND
AND
THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

1. Introduction

The purpose of this Memorandum of Understanding (“**MoU**”) is to provide a framework for the relationship between the Central Bank of Ireland (“**the Bank**”) and the Office of the Financial Services and Pensions Ombudsman (“**the FSPO**”). The FSPO is also referred to herein as the “**Ombudsman**”. It reflects the fact that while each of these two bodies is independent of each other and each has a distinct function, they co-operate and communicate constructively with each other in order to assist in the effective carrying out of their respective functions.

This MoU refers to these two parties as “**the Co-operating Parties**” or a “**Co-operating Party**”, when referring to one party alone.

Terms not defined in this MoU shall have the meaning given to such terms by the Financial Services and Pensions Ombudsman Act 2017 (“**the FSPO Act**”).

2. General structure

The Bank was established under Part II of the Central Bank Act 1942 (as amended) (“**the Central Bank Act**”).

The Financial Services and Pensions Ombudsman was established by the FSPO Act effectively merging the Financial Services Ombudsman’s Bureau and the Office of the Pensions Ombudsman, each of which ceased to exist and both of whose functions were transferred to the FSPO. The FSPO became operational from 1 January 2018.

The Co-operating Parties enter into this MoU pursuant to Section 18(9) of the FSPO Act, setting out the terms under which the Co-operating Parties agree, to give effect to the provisions of Section 18 relating to:

- a) co-operation between the Co-operating Parties with a view to ensuring that the provisions of the FSPO Act operate in a way that contributes to promoting the best interests of consumers and actual or potential beneficiaries of financial or pension services and to the efficient and effective handling of complaints.
- b) the provision of records or copies of records, or information, dealing with specified matters, or matters of a specified kind, relevant to the performance of the functions of the Bank when requested in writing by the Bank, or when the Ombudsman considers it to be appropriate.

- c) the receipt by the Bank of recommendations made by the Ombudsman or the Financial Services and Pensions Ombudsman Council pursuant to Section 18(5) of the FSPO Act with respect to measures that the Bank might take so as to:
 - i. effectively deal with persistent patterns of complaints made against (i) specified financial service providers, or (ii) a specified class of financial service providers, or (iii) specified pension providers, or (iv) a specified class of pension providers;
 - ii. improve the way in which financial service providers or pension providers deal with complaints that are made against them; or
 - iii. effectively deal with any other matter relating to promoting the interests of consumers and actual or potential beneficiaries of financial services or pensions.

The Co-operating Parties also desire to enter into this MoU in order to provide for the supply of information between them and to maintain controls on the uses of and the confidentiality of any information thus shared, taking account of the parties' respective obligations.

3. Roles of the Co-operating Parties

The respective roles of the Bank and the FSPO are summarised below:

3.1 The Central Bank of Ireland

The Bank is responsible for the prudential supervision of individual financial service providers, conduct of business, including protection of consumer interests, and the stability of the financial system overall.

The role of the Bank under this MoU shall be managed and overseen on behalf of the Bank by the Director of Consumer Protection.

3.2 The Financial Services and Pensions Ombudsman

The function of the Ombudsman is to investigate and resolve individual complaints made by eligible complainants or actual or potential beneficiaries about the conduct of regulated financial service providers or pension providers, in accordance with the FSPO Act. The Ombudsman is therefore the arbiter of unresolved disputes and is impartial. The Ombudsman has the powers specified by the provisions of sections 60 and 61 of the FSPO Act, to direct redress when issuing a decision on an individual complaint.

The role of the Ombudsman under this MoU shall be managed and overseen on behalf of the Ombudsman by the Deputy Financial Services and Pensions Ombudsman.

3.3 Jurisdiction for purposes of handling complaints

The Ombudsman has sole responsibility for deciding whether a complaint falls within jurisdiction.

Broader issues of consumer protection are the responsibility of the Bank and, if such issues are brought by consumers to the attention of the Ombudsman, the Ombudsman may, where appropriate, refer them to the Bank for consideration and in that event, will inform the complainant accordingly.

Pursuant to Section 56(7) of the FSPO Act, where the Ombudsman considers, during an investigation or following the completion of an investigation, that there is—

- i. a persistent pattern of complaints (whether he or she finds that such complaints are upheld or not),
- ii. a persistent pattern of facts or evidence arising from the complaints, or
- iii. any other matter that would be of concern to the Bank,

the Ombudsman shall inform the Bank.

Matters referred by the Ombudsman to the Bank pursuant to section 56(7) of the FSPO Act, shall be termed ‘referrals’.

In cases of uncertainty, the Co-operating Parties may, where required, liaise to decide which Co-operating Party (if any) is the correct forum to investigate a complaint or issues arising from a complaint and to ensure that the complaint can be properly dealt with.

3.4 Co-ordination of communication relating to regulatory action

The Co-operating Parties will, where appropriate, seek to coordinate communication with consumers and with financial service providers and seek to keep each other informed where the circumstances of a complaint, or complaints, give rise to regulatory action by the Bank, and where it is likely that steps will be taken to address the generality of the problems and concerns, which may have arisen in the operations of a financial service provider or in those of a number of financial service providers.

4. Co-operation between the Co-operating Parties

4.1 General co-operation and communication

The Co-operating Parties will seek to maintain strong and constructive relationships with each other in order to contribute to promoting the best interests of consumers of financial services and to the efficient and effective handling of complaints.

The Co-operating Parties recognise that close co-operation and communication with each other is of particular importance because their functions are closely related. In particular, it is recognised that each has responsibilities to contribute to the consumer protection framework thereby ensuring that systemic and/or serious patterns of complaints are acted upon at the earliest opportunity, to improve the general position of consumers of financial services.

4.2 Information sharing and consultation

The Co-operating Parties have agreed that they should seek to observe the following principles:

- i. There should be consultation, as appropriate, as soon as practicable on any issues or initiatives that might have significant implications.
- ii. Where appropriate they will seek to achieve consistency of approach and to avoid confusion or misunderstanding as to their respective roles.
- iii. Where appropriate, they will seek to exercise their respective statutory responsibilities in a complementary fashion mindful of the role and responsibilities of the other Party.
- iv. Each Co-operating Party will as soon as practicable, bring to the attention of the other, such issues as are understood to have the potential to impact on the other, and where appropriate, consult in relation to measures that might be taken to deal with persistent, systemic and/or serious patterns of complaints, to improve the way in which regulated financial services providers deal with complaints.

The Co-operating Parties will seek to act in accordance with these principles by ensuring that there is an appropriate and timely flow of information between them. This exchange of information should take place on a regular and routine basis, and as frequently as may be required to address specific matters.

4.3 Meetings

The Co-operating Authorities will meet regularly (at appropriate levels of seniority) and not less than annually, to discuss matters of mutual interest and will communicate routinely between meetings on such matters of shared interest that may arise in the course of day-to-day operations.

4.4 Appointment of Designated Liaison Persons

The Co-operating Parties shall each appoint a designated liaison person (“**the Designated Liaison Person**”) to act as a single point-of-contact for all communications between them.

As far as practicable, and subject to Section 4.5 below, the Designated Liaison Person for each of the Co-operating Parties shall be copied on all communications and shall be in attendance at all meetings between the Co-operating Parties.

4.5 Appointment of Specialist Liaison Persons

In addition to the appointment of the Designated Liaison Person, the Co-operating Parties may from time-to-time appoint additional specialist designated liaison persons for specialist matters relating to specified topics (“**the Specialist Liaison Person**”)

Where a Specialist Liaison Person has been appointed to a specified topic, all correspondence relating to this specified topic shall be sent to this Specialist Liaison Person. The Specialist Liaison Person shall be in attendance at all meetings between the Co-operating Parties relating to the specified topic.

In addition, all communications shall continue to be copied to the Designated Liaison Person. However, the Designated Liaison Person shall not be required to attend meetings relating to a specified topic.

5. Supply of information and information sharing

In accordance with Section 18(4) of the FSPO Act, the Financial Services and Pensions Ombudsman may or shall, whenever asked to do so by the Bank, provide the Bank with records or copies of records, or information, dealing with matters, or matters of a kind, specified by the Bank from time to time, relevant to the performance of the Bank's functions.

5.1 General and routine information sharing by the Ombudsman

In particular and without limitation to the above paragraph, pursuant to Section 18(4) of the FSPO Act, the Financial Services and Pensions Ombudsman may or shall when requested to do so by the Bank, and where the requirements of S18(4) of the FSPO Act are met, provide the Bank records or copies of records, or information dealing with specified matters, or matters of a specified kind, relevant to the performance of the Bank's functions and access to more specific details, relevant to the performance of the Bank's functions if this appears to the Bank to be necessary from consideration of the records and/or information supplied, including the following:

- a) Statistical information about complaints-handling activities on an annual basis, setting out key complaint trends and details on complaints received by product, sector and complaint type.
- b) Complaint information relevant to the performance of the Bank's functions regarding an individual financial service provider, in response to a particular requirement of the Bank, or where the Ombudsman considers it appropriate.
- c) Public reports and/or information made public e.g. annual, overview, digests, reports on the number of complaints made to the FSPO, and their outcomes media releases/notices etc.
 - and may provide an advance copy at least 24 hours in advance of publication, embargoed as appropriate.
- d) When requested relevant to the performance of the Banks functions, following a decision to decline to investigate a complaint, or to discontinue an investigation of a complaint, a copy of the relevant determination;
- e) Statistical and qualitative information about complaints where jurisdiction has been declined, on an annual basis, setting out appropriate details.
- f) General updates on changes to legislation.

5.2 General and routine information sharing by the Bank

Subject to its duties of confidentiality and professional secrecy, the Bank may provide to the Ombudsman with the following, noting that any commitments that the Bank provides are non-binding and any information sharing is always subject to the Bank's confidentiality requirements:

- a) Briefing on regulatory action taken which is likely to affect the Ombudsman in the exercise of statutory functions.
- b) Briefing on any proposed changes to codes of practice, orders, rules or guidance of the Bank relating to complaints handling, at least 24 hours in advance of publication/change, where practicable.
- c) Statistical and qualitative information arising from consumer research or related activities of relevance to the Ombudsman's functions.
- d) The Bank may provide an advance copy of any complaints data at least 24 hours in advance of publication, embargoed as appropriate.
- e) Public reports containing information on complaints e.g. the Consumer Protection Outlook Report and Consumer Protection Bulletins (as appropriate).
- f) When requested, information on authorisation status, company status, post-authorisation status, authorisations held, and other regulatory information required by the Ombudsman held by the Bank.

5.3 *Specific information sharing by the Ombudsman*

Without limitation to the above, the Ombudsman may provide the Bank with appropriate and specific information relating to a complaint (or complaints) for its general consideration:

- a) Where the circumstances of the complaint appear to call into question:
 - i. a financial service provider's fitness and probity;
 - ii. whether any specified person may not be a fit and proper person to carry on a relevant function;
 - iii. or if it appears that a criminal offence or a serious regulatory contravention may have occurred.
- b) If it appears that a complaint or a series of complaints may give rise or are giving rise to issues of regulatory relevance to the Bank (whether or not the financial service provider or complainant has drawn the issues to the attention of the Bank).
- c) If it appears that it may be desirable and appropriate for the Bank to consider using one or more of its regulatory tools, including the exercise of its investigative and other enforcement powers, the making of rules or the giving of guidance to a financial service provider.
- d) In response to a request from the Bank where it is, or is contemplating, using any of its regulatory tools in relation to the subject matter of the request.
- e) Where it appears that a regulated financial service provider has failed to comply with a direction, made by the Ombudsman, or a court order in respect thereof.

- f) Where it appears that a financial service provider has, without reasonable excuse, failed to comply or significantly delayed in complying with a requirement to provide information or to produce documents to the Ombudsman.
- g) If it appears that it may be necessary for the Bank to exercise its powers to address shortcomings in a financial service provider's complaint handling procedures.

5.4 Specific information sharing by the Bank

Subject to its duties of confidentiality and professional secrecy:

- a) Where the Bank considers that issues of regulatory relevance have arisen that may also be the subject of a complaint investigation by the Ombudsman, it may where appropriate alert the Ombudsman, as the case requires, to the issues and discuss any proposed action, if the Ombudsman agrees that it is appropriate to do so.

5.5 Confidentiality and permissible uses

The Co-operating Parties recognise that the exchange of information between them is an important dimension contributing to the efficient and effective handling of complaints. They are equally conscious of the need for discretion and for the adoption of procedures that protect (i) the interests of individual complainants, (ii) the confidential nature of certain information, and (iii) the professional secrecy obligations of the Bank under Section 33AK of the Central Bank Act and EU law, to which the terms of this MoU are subject.

They each consider it prudent for them to commit to a level of confidentiality between them as regards the exchange of non-public information, including information concerning individual complaints or the actions of a Co-operating Party in an individual instance and in the context of a particular complaint. They may be able to assist each other through the sharing of certain information, as appropriate, as provided for under the relevant statutory provisions.

Where one Co-operating Party requests information from another Co-Operating Party, the requesting party shall state in its request the purpose for such request and the proposed use of such information. The party from which the information is being requested will require that such request be set forth in writing.

Subject to Section 18(4) of the FSPO Act, where one Co-Operating Party provides information to another Co-Operating Party (whether pursuant to a request or otherwise), the Co-operating Party receiving such information shall only use such information within the limits of the purpose agreed with, or consented to by, the Co-operating Party providing such information.

A Co-operating Party shall not disclose third party non-public information received from the other Co-operating Party (whether pursuant to a written request or otherwise) except with the consent in writing of the Co-operating Party that provided such information, or pursuant to a legally enforceable demand or obligation. A Co-operating Party that is subject to such demand or obligation shall inform the other Co-operating Party of the legal provision(s) that require such disclosure within a reasonable time of the Party becoming aware that such demand or obligation has been confirmed to be legally enforceable.

6. Recommendations made by the Ombudsman

Pursuant to Section 18(5) of the FSPO Act the Ombudsman may make recommendations with respect to certain measures that the Bank might take in response to specific situations.

The Ombudsman shall provide a copy of any recommendations to which Section 18(5) of the FSPO Act applies (whether a recommendation of the Ombudsman or a recommendation of the Financial Services and Pensions Ombudsman Council) to the Director of Consumer Protection with a further email copy being sent to the Designated Liaison Person for the Bank.

All recommendations to which Section 18(5) of the FSPO Act applies, shall be clearly marked as a recommendation to which Section 18(5) applies.

7. Memorandum Not Binding

Except for the paragraph next following, this MoU does not create legally binding relations between the Co-operating Parties. This MoU shall not be construed so as to restrict the performance by any Co-operating Party of its functions or exercise by it of its statutory powers.

This MoU shall not operate to make a Co-operating Party (or any employee, officer or agent thereof) liable to any person in damages or otherwise for anything done or omitted for which such person would not otherwise be so liable.

8. Implementation and review

This Memorandum of Understanding is signed by the Co-Operating Parties with effect from 17 October 2023

The Co-operating Authorities will monitor the operation of this Memorandum of Understanding and will review it from time to time as necessary.

SIGNED by:


FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Date: 17 October 2023

SIGNED by:


DIRECTOR OF CONSUMER PROTECTION
THE CENTRAL BANK OF IRELAND

Date: 24 October 2023