

LITIGATION, DISPUTE RESOLUTION AND INVESTIGATIONS
FINANCIAL REGULATION

Update - Emerging Trends in Complaints to the Financial Services and Pensions Ombudsman

September 2020

The Financial Services and Pensions Ombudsman ("FSPO") recently published 180 of the 199 legally binding decisions issued by it between January and May 2020 as part of its [Digest of Decisions](#).

The digest provides interesting insights on trends in complaints in the financial services sector, and follows the publication in March of the FSPO's Annual Overview of Complaints (read our previous briefing [here](#)).

Majority of Complaints Not Upheld

Of the 199 decisions issued by the FSPO between January and May 2020, 72 were fully, substantially or partially upheld and 127 were not upheld. Decisions of the FSPO, made on foot of its formal investigation process, are legally binding on both parties, subject only to a right of appeal to the High Court.

Four of these 199 decisions are under appeal to the High Court.

Tracker Mortgages Continue to Generate a High Volume of Complaints

Mortgages, in particular tracker mortgages, continue to be the subject of a significant volume of complaints to the FSPO. Over 1,200 complaints relating to tracker mortgages were being dealt with by the FSPO in August 2020.

The FSPO's latest digest summarises eight tracker mortgage-related decisions, three of which were upheld (see below). Of the five complaints not upheld, the FSPO found that the bank was not obliged to offer the customers concerned a tracker interest rate at the end of the relevant fixed interest rate period. The FSPO commented that a considerable number

of tracker mortgage complaints are from bank customers who would prefer tracker mortgage rates, but have no contractual or other entitlement to such a rate.

What is particularly evident from the three cases upheld is the FSPO's continuing focus on fairness and conduct, a trend identified in our [previous briefing](#):

- **Case 1:** The FSPO ordered a bank to write-down the principal balance on the customer's account as it had been at the end of the fixed rate interest period (approximately €314,000) by 12%. It also ordered the bank to repay the difference between the amount of interest the customer actually paid and the amount of interest she would have paid at the same rate on the written-down capital balance. The FSPO found that the bank had failed to give the customer the option to convert to a tracker interest rate at the *'then prevailing rate'* on the expiry of the fixed rate interest period, in accordance with her contractual rights. The FSPO was critical of the bank's response to the customer's complaint, noting that it sought to rely on a *"sophisticated and unmerited"* construction of the phrase *"then prevailing rates"* to deny the customer her contractual rights and had also sought to classify its failure to offer her a tracker interest rate as a *"service failure"* rather than a breach of contract. It also found that it was unreasonable for the bank to attempt to retrospectively create the tracker

interest rate margin that it argued would have been offered when the fixed interest rate period expired, by using post-breach factors that could not have been known at the time. You can read the full decision on this complaint [here](#).

- **Case 2:** A bank was directed to pay €22,000 additional compensation to a customer where the FSPO found that the compensation offered by the bank was not sufficient or reasonable to compensate the customer for the hardship suffered by the customer. The FSPO noted that it was extraordinary that the bank had stated that it did not believe that the customer had demonstrated any inconvenience in circumstances where his wife had died, he had become the sole parent to his children and he was overpaying between €200 and €800 per month over a nine year period. You can read the full decision on this complaint [here](#).
- **Case 3:** A bank was directed to pay €8,000 additional compensation to a couple where the FSPO found that the compensation already paid (€5,000) was not sufficient or reasonable to compensate them for the loss, stress and inconvenience suffered by them. The FSPO noted that both customers underwent periods of unemployment during the period of the overcharging and that one of them had been diagnosed with a serious illness. The FSPO took the view that for a couple dealing with a very serious illness,

struggling with the economic climate and relying on social welfare, an interest overpayment of, on average, €141 per month for 92 months was significant. You can read the full decision on this complaint [here](#).

Reporting to Credit Agencies

The FSPO highlighted that there have been recurring instances of lenders reporting inaccurate credit information to the Irish Credit Bureau (“**ICB**”) (an electronic database containing information from over 300 lenders operating in the Irish market which may be consulted by those lenders for the purposes of carrying out credit checks) and the Central Credit Register (“**CCR**”) (a national database, operated by the Central Bank of Ireland, to which in-

scope lenders are required to submit personal and credit information for loans of €500 or more, and in respect of loan applications of €2,000 or more – in-scope lenders must obtain a credit report from the CCR for loan applications of €2,000 or more, and may do so for loan applications below that threshold).

The FSPO noted that it is evident, from the complaints that it deals with, that incorrect reporting of credit information is occurring and that this can have very serious consequences for those concerned. What is more worrying from the FSPO’s perspective is *“the unwillingness of some financial service providers to accept when they have made mistakes and their refusal or neglect to correct the record”*. The FSPO has reminded financial services providers of the need to be *“fair,*

reasonable and proportionate” in preparing reports on the credit history of customers and to correct any errors *“quickly, fairly and comprehensively”*. It also emphasised how important it is that consumers are made aware that reporting to the ICB and CCR takes place, and what information is held about them on those registers.

COVID-19 Complaints

The FSPO has indicated that it is dealing with over 200 complaints relating to COVID-19, encompassing a broad range of areas, including credit, travel, event and business interruption insurance, and is prioritising certain of these complaints. We will be monitoring what issues are emerging and how they are decided by the FSPO. Watch this space!

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