

FINANCIAL SERVICES CONSULTATIVE CONSUMER PANEL

Painéal Comhairleach Tomhaltóirí na Seirbhísí Airgeadais

Financial Services
Consultative Consumer Panel

Annual Report

2009



FINANCIAL REGULATOR
Rialtóir Airgeadais

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Chairman's Statement

While, in recent years, there has been unprecedented turmoil in global financial markets, the year 2009, in the opinion of the Consumer Consultative Panel, demonstrated in the starkest terms that consumers were not adequately protected against these developments by the Irish regulatory structures. The Panel therefore supports the Government decision that the public is entitled to a full examination of what went wrong in the banking system and that as a country, we need to understand the origin of the crisis so that we can ensure that we do not make the same mistakes again. In this regard we intend making submissions to the Government's two Committees investigating the Banking Crisis which will report by May 2010, outlining our views in this regard.

The Financial Regulator in its Strategic Plan 2008-2010 stated that its role was to assist consumers "*make informed financial decisions in a safe and fair market and to foster sound dynamic financial institutions in Ireland*". The Regulator may have done some good work in some areas such as the provision of consumer information, but in its main prudential role it is the view of the Consumer Panel that it utterly failed to protect the Irish consumer.

With that in mind, immediately upon my re-appointment as Chairman in January 2009 by the Minister for Finance, Mr. Brian Lenihan T.D., I asked a sub-group of the Panel to investigate whether the 'principles-based' regulation as enacted by the Regulator had adequately protected consumers during this crisis. The sub-group produced within 3 months a robust and well researched Report on the Current Financial Regulatory Framework (May 2009). Many of its recommendations have become mainstream viewpoints by economic commentators. The Report's conclusion is that the difference between 'principles' and 'rules' based regulation is a false dichotomy – rules should regulate financial markets while principles should operate above the rules to influence market behaviour.

The Government is committed to a fundamental reform of how the financial services sector is regulated and plans to adopt legislation in 2010 to merge the Financial Regulator into the Central Bank creating the Central Bank of Ireland Commission. I will refer to this matter later in my Statement.

Consumer Protection Code

The Consumer Panel is happy with the increased number of themed inspections on the Code that took place in 2009 and the increased availability of information and feedback to the Panel on these inspections. The Panel though is still concerned that many consumers are unaware of their enhanced rights under the Code especially as it is not advertised at the point of sale. The Code is to be reviewed in 2010 and the Panel may commission research to assist it in preparing a robust input into this consultative review, which will demonstrate the degree to which the new Central Bank of Ireland Commission believes consumer protection is a fundamental part of the future Irish financial regulatory system. In this regard, the Panel is heartened by the decision of the new Head of Financial Supervision, Mr. Matthew Elderfield to create the position of Assistant Director for Consumer Protection answering directly to him.

Credit Unions

The Panel has always taken a keen interest in issues relating to Credit Unions and has always had a good relationship with the Registrar, Mr Brendan Logue. I would like to thank him for his co-operation and wish him all the best in his retirement. The Panel believes that credit unions have made a major contribution to the provision of financial services in Ireland and that the "ethos" of Credit Unions is worth protecting. The Panel has supported the Registrar in his efforts to introduce a fitness and probity regime for Credit Union Directors; his proposals on the amendment of Section 35 of the Credit Union Act 1997 regarding the re-scheduling of loans provided that strict controls in relation to liquidity and provisioning are put in place.

Vulnerable Consumers

The Consumer Panel commended the Financial Regulator's Financial Capability Study and the Report of the National Steering Committee on Financial Education which were published in 2009. Even though this work will now be transferred to the National Consumer Agency, the Panel intends to maintain a keen interest in the issue and supports the establishment of a Financial Capability Fund as soon as possible, having been agreed to by the Government and Financial Institutions under the State Guarantee Scheme for Financial Institutions (September 2008). The Panel continues to advocate the introduction of a Basic Bank Account by the main financial banks and submitted its recommendations on this issue to the Minister for Finance in June 2009.

Consumer Debt

Consumer debt is certain to become an ever more important issue in the coming year so we are considering commissioning research to see how other jurisdictions have dealt with this problem. Equally, we will be closely monitoring the Statutory Mortgage Arrears Code and fully support the recent amendment of the Code whereby a property cannot be re-possessed within 12 months, so long as the owner is in discussion with the mortgage provider on how to deal with the issue of mortgage payments.

Miscellaneous Items

The Consumer Panel commends the Mazars Report published in 2009, as it confirmed the views of the Panel which had been articulated in our Budget Reviews for the past number of years, that the Financial Regulator could improve its efficiency in a number of areas, whilst at the same time a number of examples of best practice were noted. In that regard, we support the need to continually benchmark the Financial Regulator's Budget against comparative data for similar institutions in other jurisdictions.

The Panel has continued under its statutory function to present its views on public consultations by the Financial Regulator and in particular, I must commend those Panel members who provided input to our substantial response to the de Larosière Report of the "High Level Group on Financial Supervision in the EU".

Conclusions

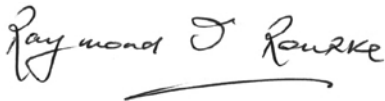
As stated in the Introduction, the Financial Regulator failed to adequately protect consumers in the past two turbulent financial years. In relation to the Government's reform of the financial regulatory structures by means of the establishment of the Central Bank of Ireland Commission, the Consumer Panel recommends the following:

- The introduction of product authorisation for individual financial products like that which exists for pharmaceuticals;
- Principles v. Rules – rules should regulate the financial markets while principles should operate above the rules to influence market behaviour;
- Consumer representation on the Board of the new Central Bank of Ireland Commission;
- Systemic risk should be enhanced in the new Irish regulatory structures;
- There should be a clear demarcation of the roles for the new Commission, the National Consumer Agency and the Department of Finance;
- Amendment of Section 33AK of the Central Bank Act to permit the new Central Bank of Ireland Commission to name institutions in relation to the enforcement of the Consumer Protection Code;
- Benchmarking should be instigated in order to assess 'value for money' as the Panel stipulated in our submission on the Financial Regulator's Budget 2008 and 2009;

- Confirmation of the Commission's role in relation to various Consumer Protection Laws in the financial area – advertising, consumer credit, distance selling of financial products;
- Reform of the existing debt collection laws; and
- The continued importance of the Credit Union sector in Ireland.

While the Financial Regulator completed much good work on behalf of consumers in 2009 particularly in relation to education and consumer information, unfortunately those consumers with mortgages, pensions and shares have, and will, pay an on-going price in the coming years for the failure of the Irish regulatory system to protect and adequately take into account the important position of consumers.

The Consumer Panel, despite contrary views from the financial services sector, will continue to argue that any financial regulatory system that neglects the role of consumers does so at its peril. We have learnt that lesson once in Ireland; we do not need to have a repeat of that situation any time soon.



Raymond O'Rourke

Raymond O'Rourke

Chairman

Section 1: Perspective of the Consumer Panel on the Current Financial Regulatory Framework

In May 2009, the Consultative Consumer Panel produced a report on the current regulatory framework entitled "Perspective of the Consumer Panel on the Current Financial Regulatory Framework".

The panel believe that most Consumers have lost substantial sums of money because of the inadequate functioning of the present financial regulatory structures. The response of the Financial Regulator has been deficient to date. Governance issues seem to be viewed as existing entirely within regulated institutions and not with the Department of Finance, the Central Bank or the Financial Regulator. There is a need to address what gets regulated in the financial industry, how it gets regulated, when it gets regulated and by whom. Changes must be effected at both National and European Level and the change is as much about a transformation in the willingness of regulators to act as it is about any formal structures.

The main points of the report are as follows:

Reorganisation of the Financial Regulatory Structure

The Consumer Panel welcomes the commitment to reform the Central Bank of Ireland but is concerned about where the consumer fits into the new framework.

Financial Consumer Agency

The Consumer Panel would suggest that the Government should consult widely before establishing a Financial Consumer Agency; and that such an agency would need to have a major role in financial education, advocacy, and competition policy in relation to financial products.

Rules, Principles and Sanctions

The issue of rules or principles is a false dichotomy. Both rules and principles have a place in the regulatory process. There must be real commitment from regulated entities to abide by the principles and rules.

Systemic Control

The Financial Regulator must be aware of new developments in the financial services markets especially if they pose a systemic risk to financial stability.

Rearrangement of Financial Architecture

Investment banks must be separated from the current structure in order to avoid a conflict of interest between borrowers and lenders. They must not control everything. Retail banks should be reorganised towards the traditional building society model and regulated so that they are prevented from becoming closeted Investment Banks.

De Larosière Report

The Consumer Panel broadly supports the De Larosière recommendations; but strongly recommends that a new group specialising in systemic risk be added.

The Report was circulated to the Financial Regulator, the Minister for Finance Mr. Brian Lenihan TD, the Department of Finance, the IBF, the Irish Insurance Federation and other financial services industry stakeholders, members and the committees of Dail and Seanad Eireann, Commissioner Mc Creevy, the European Commission services and the media.

Section 2: Comments on the Financial Regulator's Budget for 2009

Under its statutory obligations, the Consumer Panel made the following comments to the Department of Finance in relation to the Financial Regulator's Budget for 2009.

Credit Institutions (Financial Support) Scheme 2008

The Panel was supportive of the Financial Regulator's view that the Scheme should be fully funded by industry rather than 50:50 as originally had been anticipated. The Panel noted their concern that the credit institutions may try to pass on these additional costs to consumers by means of extra charges, therefore they will continue to monitor the performance of the Regulator in this matter, as it would defeat the purpose of this Scheme if consumers indirectly paid for a proportion of the costs of the Scheme in this fashion.

Staffing Numbers

In order to complete the tasks mandated under the Credit Institutions (Financial Support) Scheme 2008, there will be an increase of 20 in the staff complement together with associated staff related non-pay costs. There will also be a budget of €3.0 million set-aside to provide for the potential appointment of external professional service providers (auditors, forensic specialists) to assist in the increased level of supervision of credit institutions specified under the Scheme. Finally, a contingency of €0.25 million is to be set-aside for other obligations that may be imposed on the Financial Regulator under the terms of the Scheme. In principle, the Consumer Panel agreed with these expenditures, but wanted there to be stringent oversight as to their use. The sums should not be utilised just because they are contained in the 2009 Budget, rather they should always be used in line with the terms and objectives of the Scheme.

Benchmarking

The Consumer Panel highlighted in 2008 that the need to benchmark the Financial Regulator Budget against comparative data for other similar institutions in other countries was imperative. The Panel was therefore supportive of the Mazars Report which reviewed the business structure within the Financial Regulator. The Panel was also interested to learn that the Department of Finance and the Department of An Taoiseach, in conjunction with the Economist Intelligence Unit, completed two reports on this issue of benchmarking the Financial Regulator against comparable institutions. These benchmarking exercises must be continued in relation to the soon to be established Central Bank of Ireland Commission structure.

Shared Services

The Panel has commented in 2008 on the issue of Shared Services and in particular the issue of the HR function within the Shared Services budget of €19.4 million. Using the same analysis as in 2008, the figures in 2009 are that HR costs/pay are in the region of 4.7%. While there has been a major improvement from the 11% HR costs/pay highlighted in 2008, there is still room for further improvement. Our informal research in 2008 suggested that the HR function in two other broadly similar organisations accounts for 1.8% and 2.1% of pay costs.

Spencer Dock

The Consumer Panel noted in May 2009 media reports that the Financial Regulator was to spend €8 million on a fit-out of its new offices at Spencer Dock and that the annual rent would be in the region of €2.5 million. While the Financial Regulator refuted the accuracy of these figures the Panel continues to be concerned at the costs involved in moving to the Spencer Dock facility and will continue to monitor this item in relation to the 2010 Budget.

Section 3: Suggestions and Submissions Made

The Consultative Consumer Panel of the Financial Regulator is mandated and required by Section 57CY of the Central Bank and Financial Services Authority of Ireland Act, 2004, to, among other matters,

- a) Provide the Financial Regulator with comments and suggestions with respect to the performance of the financial services industry;
- b) Suggest initiatives that the Financial Regulator should take, and
- c) Comment on draft policy and regulatory documents.

The Panel made the following formal submissions in 2009:

- Perspective on the Current Financial Regulatory Framework
- Review of the Financial Regulator's performance
- Consultative Consumer Panel Annual Report for 2008
- Position paper on "Basic Banking Account – Banking for All"
- Response to Registrar of Credit Unions regarding Regulatory Reserve Ratio for Credit Unions
- Submission to Registrar of Credit Unions regarding Introduction of a Fitness and Probity Regime for Credit Union Directors, Supervisors and Managers and for a Limitation of the Term of Office for Credit Union Directors and Supervisors
- Submission to the consultation on "Responsible Lending and Borrowing"
- Chapter VII Consultation
- Letter to Minister for Education, Minister for Social Affairs and Minister for Finance commenting on Financial Capability Study Report
- Letter to Financial Regulator commenting on Financial Product Regulation

Section 4: Regulatory Issues Considered

During 2009, the Panel considered a number of regulatory concerns at length, both at its meetings, and through dedicated sub-groups. Major issues considered were:

- Anglo Irish Bank Investigations
- Sub-group to focus on “Future Regulatory make-up, Principles vs Rules”
- New Directors Loan Requirements
- Introduction of a Fitness and Probity Regime for Credit Union Directors, Supervisors and Managers and for a Limitation of the Term of Office for Credit Union Directors and Supervisors
- Financial Product Regulation
- Transposition of the Consumer Credit Directive
- Code of Conduct on Mortgage Arrears

Section 5: Review of Financial Regulator 2008/2009

The Consultative Consumer Panel of the Financial Regulator is mandated and required by Section 57CY of the Central Bank and Financial Services Authority of Ireland Act, 2004, to, among other matters,

- (a) monitor the performance by the Financial Regulator of its functions and responsibilities under the Act;
- (b) provide the Financial Regulator with comments with respect to the performance of its functions and responsibilities, and
- (c) provide the Financial Regulator with comments and suggestions with respect to the performance of the financial services industry.

The "Performance Review of the Financial Regulator" was issued in December, 2009, and represents the view of the Consumer Panel on the work and performance of the Financial Regulator for 2008/2009.

It is the view of the Panel that the Financial Regulator failed, primarily, in its prudential supervision role, but also, in a number of respects, in its consumer mandate. The conclusions we have formed are summarised in the following table:

Goals Performance

High Level Goals	Performance
1. Consumer Standards	<ul style="list-style-type: none"> ■ We welcome the increased number of consumer themed inspections and review meetings in 2008. ■ We are concerned that no serious effort has been made to promote or make the public aware of the Consumer Protection Code. ■ It is unacceptable that the commitment to review the Consumer Protection Code in 2009 will now not be met in light of the fact that the code should be revised and strengthened. ■ The statutory code on mortgage arrears is inadequate. ■ We remain concerned at the lack of information and detail provided by the Financial Regulator following consumer themed inspections and reviews. ■ The Panel believes that the Financial Regulator has not done enough to protect consumers from institutions seeking to rebuild their balance sheets by passing on higher mortgage lending rates to hard-pressed consumers. ■ We note the introduction of a code of conduct for business lending to small and medium enterprises in February 2009. However we doubt the effectiveness of this code in ensuring a supply of credit to viable and sustainable enterprises in the SME sector.
2. Standards for regulated firms	<ul style="list-style-type: none"> ■ We welcome the more "hands on" and intrusive regulation and supervision of the financial institutions under the bank guarantee scheme. It is unfortunate that it took the imminent collapse of the banking system to initiate this more effective regulation of the sector. ■ The Financial Regulator failed in its role to ensure robust prudential supervision of the Irish Financial Services Sector since its establishment in 2003.

High Level Goals	Performance
2. Standards for regulated firms <i>(continued)</i>	<ul style="list-style-type: none"> ■ The Panel believes that there was a failure to ensure banks followed responsible and sustainable lending policies and practice and too much trust in willingness of regulated entities to do the “right thing”. ■ It is unacceptable that very little has been done to enhance corporate governance since the financial crisis. ■ We believe it is unacceptable that the Authority (Board) of the Financial Regulator has failed to take responsibility for their stewardship of the organisation during the last six years. ■ The Panel continues to be deeply concerned that Section 33AK of the Central Bank Act inhibits the Financial Regulator in its communications with the Panel and with the public and others.
3. Consumer Information	<ul style="list-style-type: none"> ■ We commend the work of the Financial Regulator in relation to the provision of information to consumers, in particular the itsyourmoney.ie website which recorded a 54% increase in hits in 2008 over the previous year. ■ The Panel commends the Financial Regulator for acting as a conduit to produce the National Steering Group on Financial Education report containing recommendations which the Consumer Panel fully supports. ■ There is a concern that the skills, experience and expertise of staff who have contributed to the excellent work of the Financial Regulator in the area of information will be lost in the transfer of these functions to the National Consumer Agency.
4. Innovation and Competition	<ul style="list-style-type: none"> ■ The Panel believes that the Financial Regulator should be far more pro-active rather than limiting itself to an analysis of competition on a yearly basis. ■ The Panel believes that competition can be good for consumers, but only when it is underpinned by adequate consumer protection legislation and regulation. We question as to whether the financial innovation and increased competition of the last few years has always served consumers well.
5. Operations	<ul style="list-style-type: none"> ■ We welcome that our benchmarking review of the budget was accepted. ■ The fundamental weaknesses in the Financial Regulator Budget raised by the Panel in relation to IT issues, shared costs, balance of resource allocation, etc were taken on board by the Financial Regulator. ■ The commissioning by the Financial Regulator of a business process review which was conducted by Mazars was a welcome development. ■ The Panel notes the findings of the Mazars report which suggest that the Financial Regulator is not offering good value for money. ■ The Financial Regulator has been slow to respond to our comments and concerns about the budget costs.

Full details of the Performance Review are available on our website.

Section 6: Appendices

Appendix 1 – Schedule of Meetings Attended

- The Panel met 10 times in 2009
- The average attendance was 9 members (out of 11)
- The Chairman, Raymond O' Rourke attended ACOI's Annual Conference in March 2009
- The Chairman, Raymond O'Rourke attended a meeting with the Minister for Finance on the reform of the regulatory structure in June 2009.
- The Chairman, Raymond O'Rourke gave a presentation to the FIN-USE Expert Forum of Financial Services and attended the European Commission Hearing on Responsible Lending and Borrowing in Brussels in September 2009.
- John Maher attended CESR Retail Investor Workshop in August 2009.
- John Maher, Kathleen Barrington and Noel Mulcahy attended the EUROFI 2009 Conference in Gothenburg, Sweden in October 2009
- The Chairman, Raymond O' Rourke made a presentation at the IBF's Annual Conference in October 2009, which he also attended along with Sean O' Sullivan.

There were several formal and informal sub-group meetings covering the following topics:

- Financial Regulator's Budget for 2009
- Business Process Review of the Financial Regulator – Mazars
- Performance of the Financial Regulator

Appendix 2 – History and Functions of the Consumer Panel

The Financial Services Consultative Consumer Panel (“Consumer Panel”) was formally established by the Financial Regulator under the CBFSAI Act, 2004 with effect from 1 November 2004, when the first meeting was held. The Minister for Finance appointed 20 members to the Consumer Panel consisting of personal, professional and small business consumers of financial services, consumer advocates and activists, and experienced individuals from industry, and the banking, academic and media communities. In October 2007, Mr. Raymond O’Rourke was appointed Chairman by the Minister for Finance following the resignation of Mr. Brendan Burgess.

On 23 January 2009, the Minister for Finance reappointed 11 existing members to the Consumer Panel, including the reappointment of Mr. Raymond O’Rourke as the Chairman.

The functions of the Consumer Panel are set out in detail in the section of the Act on the Functions of the Panel, and may be summarised as follows:

- monitor the performance by the Financial Regulator of its functions and responsibilities under this Act;
- providing the Financial Regulator with comments with respect to the performance of its functions and responsibilities;
- providing the Financial Regulator with comments and suggestions with respect to the performance of the financial services industry;
- when requested to comment on policy and regulatory documents issued, or to be issued, by the Financial Regulator;
- to comment on the Financial Regulator’s draft estimate of income and expenditure and consult with the Minister for Finance before he approves the draft estimate of income and expenditure; and
- providing the Financial Regulator with suggestions for initiatives that, in the Panel’s opinion, the Financial Regulator should take with respect to the performance of its functions and responsibilities.

Appendix 3 – Members of the Consumer Panel

The current members of the Panel were appointed by the Minister for Finance on 23 January 2009 for a term of 3 years.

1. **Raymond O'Rourke** is the Chairman of the Panel. He is a specialist consumer lawyer with a background in EU affairs, having worked in Brussels for the European Parliament and BEUC (European Consumers Association).
2. **Kathleen Barrington** is a freelance business journalist with a special interest in personal finance issues.
3. **Frances Byrne** is the Director of One Parent Exchange and Network (OPEN). OPEN is the national network of lone parent self-help groups that have joined together to represent the interests of lone parents living in poverty and social exclusion.
4. **Michael Culloty** is a Social Policy and Communications Officer with the Money Advice and Budgeting Service.
5. **James Doorley** is the nominee of the Consumers' Association of Ireland (CAI), and was recently appointed Chairman of the CAI Council. He is currently Assistant Director of the National Youth Council of Ireland.
6. **John Maher** is a chartered accountant, and is a senior lecturer in Accounting and Finance at the Waterford Institute of Technology.
7. **Professor Noel Mulcahy** is former Executive Vice President of the University of Limerick. He is a former member of Seanad Eireann and Co-director of the National Centre for Work-Based Learning.
8. **Fidèle Mutwarasibo** is a Research and Integration Officer with the Immigrant Council of Ireland.
9. **Sean O'Sullivan** is Chairman of the Centre for Financial Services Innovation and is also the Managing Director of Seabrook Research Limited, a software development company, based in Cork.
10. **Fiona Reynolds** is a solicitor with Reynolds & Co in Gorey, Co Wexford.
11. **Eileen Walsh** is a senior volunteer member of the Society of St. Vincent de Paul with a particular interest in national social policy and justice issues. She is Chair of the Policy Analysis Group of the Society.

Acting Secretary: Lillian Fleming, Central Bank

Appendix 4 – Panel Expenditure

The Panel is funded by the Financial Regulator, and its direct expenditure in 2008 was as follows:

Expense Item	Actual Amount for 2009	€
Travel and Subsistence		16,032.06
Consultancy-Research Assistance		13,802.40
Attendance Allowances		12,772.48
Publishing		1,264.12
Misc		359.40
Total		44,230.46

Members of the Consumer Panel are paid an attendance allowance of €150 for each meeting they attend. This is not paid to those members who are attending in a professional capacity.