

Financial Services Innovation Centre

# Independent Evaluation of the Financial Services Consultative Consumer Panel of the Financial Regulator

September 2010

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## 1. Introduction

The Financial Service Innovation Centre (FSIC) was commissioned by the Financial Services Consultative Consumer Panel (the Consumer Panel) of the Financial Regulator to undertake an independent review of its work since its establishment in November 2004. It is a timely review as the Consumer Panel is to be abolished and replaced with a Consumer Advisory Group when the *Central Bank Reform Bill, 2010* is adopted in the autumn. The objectives of the Consumer Panel are to monitor and comment on the performance of the financial services industry, the Financial Regulator, and on any policy or regulatory documents prepared by it, from a consumer perspective. It performs an important function in the financial regulatory framework by highlighting the concerns facing consumers in the financial services industry and as an observer of the Financial Regulator in executing its functions effectively and efficiently.

Section 2 deals with the Consumer Panel in detail. It outlines the functions and objectives of the Consumer Panel as set out in legislation, its composition and activity, how it is accountable and to whom, and its expenditure since its establishment. The Section continues to review the work of the Consumer Panel since its establishment. It expresses its views and concerns through a number of channels including formal suggestions, submissions, formal letters, consultation paper responses, the budget review and performance reviews of the Financial Regulator and through its own annual reports. The Consumer Panel has respected the weight of responsibility conferred on it in championing the cause of consumers of financial services at the highest level of regulation and policy formulation in the financial services industry; it has responded by being dynamic and vociferous in its actions and work. This section will detail that work and many of the concerns raised consistently by the Consumer Panel during its tenure.

The report continues with a look at other agencies involved with consumers of financial services in Ireland such as the National Consumer Agency and the Financial Services Ombudsman. It considers the comparative consumer panel of the Financial Services Authority (FSA) in the UK and examines the Canadian framework of banking supervision and regulation with a specific focus on the Financial Consumer Agency of Canada (FCAC). The information on these organisations is included for the completeness of the report and does not review or present an exhaustive list of the work undertaken by them.

Section 3 covers the Financial Services Consultative Industry Panel (FSCIP) of the Financial Regulator. It was established at the same time as the Consumer Panel and they have two functions in common.

This section gives information on its remit, composition, structure and expenditure. It also highlights some of the work undertaken by the FSCIP but does not include an exhaustive list.

Section 4 deals with the National Consumer Agency (NCA) and the Financial Services Ombudsman (FSO). The NCA has a broad and strong mandate to promote and protect consumer interests and has taken over the responsibility of the information and education functions of the Financial Regulator since March 2010. The FSO is an independent body which investigates and adjudicates on complaints made by consumers in relation to the conduct of regulated financial services entities.

Section 5 focuses on the Financial Services Consumer Panel (FSCP) of the Financial Services Authority (FSA), UK. It is included as a comparative to the Consumer Panel. This section looks at the statutory basis and objectives of the FSCP, the composition of the panel, the remuneration of its members and its budget expenditure. The report looks at some of the work undertaken by the FSCP on behalf of consumers of financial services. It does not review the work but is rather a brief overview of the amount of work and the areas in which the FSCP is active.

Section 6 covers the Financial Consumer Agency of Canada (FCAC). It is an independent federal government agency aimed at strengthening the oversight of consumer issues and ensuring consumer education in relation to financial services. It is one of the three main agencies – along with the Bank of Canada and the Office of the Superintendent of Financial Institutions (OSFI) – involved in the Canadian structure of banking supervision and regulation. The FCAC ensures that consumers are considered in any financial regulation or policy that will affect them as well as ensuring regulated financial firms are compliant with such legislation.

## 2. The Financial Services Consultative Consumer Panel of the Financial Regulator, Ireland

### 2.1. Statutory Basis

The Financial Services Consultative Consumer Panel (the Consumer Panel) of the Financial Regulator was established under the *Central Bank and Financial Services Authority of Ireland Act, 2004*, with effect from 1 November, 2004. Section 17 of the Act<sup>1</sup> amended the *Central Bank Act, 1942*, by inserting Part VIIC which covers 'Consultative Panels'. Section 17<sup>2</sup> - Part VIIC, Chapter 2 - deals specifically with the Consultative Consumer Panel. Its members are appointed by the Minister for Finance following consultation with the Minister for Enterprise and those organisations that represent the interests of consumers. The members should, in the Minister's opinion, 'have knowledge or experience of or as consumers of financial services'<sup>3</sup>. The Consumer Panel should comprise of between five and not more than twenty members<sup>4</sup>. Each member can hold office for up to five years and is eligible for reappointment<sup>5</sup>. The Minister for Finance also appoints the Chairperson of the Consumer Panel<sup>6</sup>.

### 2.2. Responsibility of the Financial Regulator and Minister for Finance

The Financial Regulator must provide the Consumer Panel with sufficient administrative services (including technical and legal advice) and such funds as it considers necessary to allow it to perform its functions<sup>7</sup>. The Financial Regulator shall arrange for specified staff members to attend a Consumer Panel meeting when asked to do so by the Chairperson.<sup>8</sup> It must consult the Consumer Panel before issuing a policy or regulatory document and shall take into account the advice provided by the Consumer Panel on such policy or regulatory documents. Furthermore, the Financial Regulator shall provide a written statement setting out its reasons for declining to give effect to that

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<sup>1</sup> *Central Bank and Financial Services Authority of Ireland Act, 2004*. (No. 21 of 2004)

<sup>2</sup> *Ibid*

<sup>3</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 2, Section 57CX)

<sup>4</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 2, Section 57CX(1))

<sup>5</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 2, Section 57CX(5),(6))

<sup>6</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 2, Section 57CX(7))

<sup>7</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 2, Section 57CZ(1))

<sup>8</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 2, Section 57CZ(2))

advice; and if the Consumer Panel so requires, publish that statement<sup>9</sup>. The Financial Regulator is obliged to publish the Consumer Panel's annual report, the comments made by the Consumer Panel, statements of reason made by the Financial Regulator in response to such comments, minutes of its meetings, the rules of procedure of the Consumer Panel, and any other reports produced or commissioned by it.<sup>10</sup> The Minister for Finance is obliged to discuss the draft estimate of income and expenditure of the Financial Regulator with the Consumer Panel before approving it for a financial year.<sup>11</sup>

### 2.3. Functions and Objectives of the Financial Services Consultative Consumer Panel

The Consumer Panel has a broad scope as set out in the *Central Bank and Financial Services Authority of Ireland Act, 2004*.<sup>12</sup> Its purpose is to monitor and comment on the performance of the Financial Regulator and provide suggestions for initiatives on its performance, to comment on the operation of the financial services industry and to comment on policy or regulatory documents prepared by the Financial Regulator. Furthermore, it is obliged to comment on the draft budget of the Financial Regulator. The Consumer Panel Procedures were drawn up in consultation with the Financial Regulator, the Department of Finance and the Panel members.

The functions of the Consumer Panel are set out in Section 57CY<sup>13</sup> of the *Central Bank and Financial Services Authority of Ireland Act, 2004*, as follows:

***'57CY.—The functions of the Consultative Consumer Panel are as follows:***

- (a) to monitor the performance by the Regulatory Authority of its functions and responsibilities under this Act;***
- (b) to provide the Regulatory Authority with comments with respect to the performance of its functions and responsibilities;***
- (ba) to provide the Regulatory Authority with comments and suggestions with respect to the performance of the financial services industry;***

<sup>9</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 4, Section 57DF)

<sup>10</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 4, Section 57DE)

<sup>11</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 4, Section 57DF(3))

<sup>12</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 2, 57CY)

<sup>13</sup> *Ibid*

- (c) to provide the Regulatory Authority with suggestions for initiatives that, in the Panel's opinion, that Authority should take with respect to the performance of its functions and responsibilities;*
- (d) when the Regulatory Authority so requests, to comment on a policy document or regulatory document, or a proposed policy document or proposed regulatory document, prepared by that Authority;*
- (e) to provide the Regulatory Authority with comments on that Authority's draft estimate of income and expenditure for each financial year.'*

## 2.4. Composition of the Financial Services Consultative Consumer Panel

The Consumer Panel is currently made up of 11 members who are appointed by the Minister for Finance for a period of up to five years. The experience of the Consumer Panel varies across the law, journalism, academia, experienced business individuals, consumer advocates and activists. Each member has their own career outside of the Consumer Panel and their commitment to it is on a voluntary basis. The details of the Consumer Panel members can be found on the Financial Regulator's website<sup>14</sup> and in the Consumer Panel's annual reports.

There were nineteen members originally appointed to the Consumer Panel when it was established in November 2004. Five members stepped down at the end of the first term along with one resignation in early 2006. There were two appointments in June 2006 and the Minister for Finance appointed a further four new members in December 2006. The Chairman, Brendan Burgess, resigned in 2007 and Raymond O'Rourke was appointed to the position. There were four retirements during 2008. The current members were appointed for a term of three years on 23 January 2009. There have been no new members appointed since December 2006. Seven of the members have been on the Consumer Panel from its establishment, with the remainder having been appointed during and at the end of 2006.

The Consumer Panel formally meets once a month and is assisted by a staff member of the Financial Regulator. It is further divided into four sub-groups on Codes, Monitoring, Suggestions and Information and Education. The Consumer Panel meets on average 11 times each year, however, members meet additionally through the sub-groups and also attend different meetings with

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<sup>14</sup> The Financial Regulator. Information on the member of the Financial Services Consultative Consumer Panel. <<http://www.financialregulator.ie/consultative-panels/consumer/Pages/panel-members.aspx>>

government officials and various other consumer interest groups. Furthermore, members continue to work on their area of interest and on any comments, submissions or suggestions that are required to be submitted between official meetings. They are also active in attending various conferences and seminars held in Ireland and throughout the European Union in relation to financial consumer issues. Some of these have included: the National Payments Conference, the Eurofi Conference, the European Union Financial Capability Conference, the Committee of European Securities Regulators (CESR) Conference, the CESR Retail Investor Workshop, the Irish Bankers Federation (IBF) Conference, and the Financial Inclusion Conference held by the European Commission amongst others. Members have also visited with Regulatory Authorities in the UK and Sweden.

The following is a table of the formal meetings, the average attendance and the number of subgroup meetings held each year. It is not a comprehensive list of the Consumer Panel activity, additional information of its activity can be found in the Consumer Panel annual reports.

Panel Meetings	2009	2008	2007	2006	2005
<b>Meetings held</b>	10	8*	11	11	11
<b>Average Attendance</b>	9 (of 11)	10 (of 16)	14 (of 18)	14 (of 18)	14 of (19)
<b>Sub-group Meetings</b>	Several informal meetings	Several informal meetings	9 formal, several informal meetings	6 formal, several informal meetings	17

\* The Consumer Panel's term of appointment expired in September 2008 and it was not reappointed by the Minister for Finance until 23 January 2009

## 2.5. Budget and Remuneration

The Consumer Panel is funded by the Financial Regulator and had direct expenditure of €44,230.46 for the year ended 2009. The annual expenditure is broken down as follows for each year:

Expenditure Breakdown	2009	2008	2007	2006	2005
<b>Travel and Subsistence</b>	€16,032.06	€20,267.78	€21,007	€23,887	€23,076
<b>Consultancy-Research Assistance</b>	€13,802.40	€72,179.99	€2,139	€7,531	€3,525
<b>Attendance Allowances</b>	€12,772.48	€16,822.12	€22,621	€22,752	€23,400
<b>Publishing</b>	€1,264.12	€2,919.73	€4,227	-	-
<b>Business Lunches &amp; Functions</b>	-	€168.96	€2,106	€1,947	€883
<b>Training &amp; Conferences</b>	-	€1,660	€2,917	€325	€500
<b>Miscellaneous</b>	€359.40	€146.32	€133	€2,520	€7
<b>Total</b>	<b>€44,230.46</b>	<b>€114,164.90</b>	<b>€55,150</b>	<b>€58,952</b>	<b>€51,391</b>

The expenditure of the Consumer Panel since its inception in November 2004 to the end of 2009 amounts to €323,888.36. The average annual cost of the Consumer Panel is approximately €50,000 excluding the increased outlay for Consultancy/Research Assistance in 2008. This cost was for research commissioned and carried out by external consultants. It included reports on *'Banking for all – Financial Inclusion'*, *'Immigrants' Remittances from Ireland'*, and *'A Review of the Consumer Interface with Investment Risk in the Financial Services Sector'*.

Members do not get a salary for attending meetings or for any work completed in their capacity as members of the Consumer Panel. They are paid a nominal allowance of €150 for each meeting that they attend and it is not payable if they do not attend or attend in a professional capacity.

## 2.6. Accountability

The Consumer Panel must produce an Annual Report that provides details of its activities during the previous year. This is set out in Section 17 of the *Central Bank and Financial Services Authority of*

*Ireland, Act, 2004*<sup>15</sup>. Furthermore, the Chairperson of the Consumer Panel is obliged to ‘attend a meeting of the relevant Joint Committee of the Oireachtas whenever the Committee requires the chairperson to do so’.<sup>16</sup> This is set out in Section 57DH of the Central Bank Act 1942<sup>17</sup>. The Chairperson must provide the relevant Oireachtas Committee(s) with the information it reasonably requires about which the Consumer Panel is or has been concerned. The Chairman gave a presentation on the work of the Consumer Panel to the Joint Oireachtas Committee on Economic Regulatory Affairs in June 2008.

## 2.7. Working for the Consumer

The Consumer Panel is obligated to monitor the Financial Regulator from a consumer perspective, and as a consequence, can comment on both prudential supervision and consumer protection. These two aspects of financial regulation are inextricably linked and the consumer must be central in any financial regulation framework policy. The Consumer Panel circulates its opinions, views and recommendations through a number of channels. It publishes the minutes of its meetings, formal correspondence, formal submissions, statutory reports, and suggestions it has made. As previously stated, the Consumer Panel meet formally once a month as a whole, but members continue to work on their areas of interest beyond these meetings in order to prepare and publish documents, responses and letters on matters it feels necessary to comment on, both in a National and European context. The Consumer Panel is further divided into four sub-groups – Codes, Monitoring, Information and Education, and Suggestions – so that its members can focus their attention on particular areas. This facilitates better consideration and analysis of issues that may arise and allows targeted recommendations to be made for initiatives that the Financial Regulator should take in respect to the performance of its functions.

The Consumer Panel was tasked with the responsibility of ensuring the voice of the consumer is heard at the highest level of the financial regulatory framework in Ireland. It took this on board and has been dynamic and outspoken since its establishment. While fulfilling its objective of monitoring and commenting on the performance by the Financial Regulator of its functions and responsibilities, it has both commended it for the progress it has made and highlighted concerns it has had. In

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<sup>15</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 4, Section 57DE)

<sup>16</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 4, Section 57DH)

<sup>17</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC)

particular, the Consumer Panel congratulated the Financial Regulator on the introduction of the Consumer Protection Code, the Code for Moneylenders and its response in providing consumers with information on the safety of their deposits at the time of the Northern Rock Bank run and prior to the implementation of the Government Deposit Guarantee Scheme. It commended the new Head of Financial Supervision, Matthew Elderfield, on the creation of the position of Assistant Director General for Consumer Protection in its annual report for 2009 (published June 2010).

However, the Consumer Panel has also highlighted a number of concerns over the years. It has consistently drawn attention to the slowness at which the Financial Regulator operated to get things done. It commented that the Financial Regulator often *'seeks complexity and obstacles rather than to seek consumer orientated solutions to current and emerging problems.'*<sup>18</sup> Some of the examples put forward by the Consumer Panel to support this view are as follows: The Financial Regulator identified problems in relation to Endowment Mortgages in July 2004, but it took eighteen months before it issued any results of its survey of regulated financial institutions. The Consumer Protection Code was published in August 2006 and was to be fully implemented by November 2006. It was still not fully implemented by March 2007. Furthermore, a recurring issue with the Consumer Protection Code has been the lack of promotion of its existence by the Financial Regulator resulting in little awareness of it by consumers. The Consumer Panel has also highlighted that the Financial Regulator has been weak in its enforcement of the Consumer Protection Code in relation to the inadequate implementation by financial institutions. The Consumer Panel raised concerns in 2007 that some years after the collapse of Morrogh's and two years after it raised the issue with the Financial Regulator, the position of consumers was still uncertain. It also stated that consumer problems need response times measured in weeks, not years.

Additionally, the Consumer Panel has consistently highlighted the need for the Financial Regulator to work more robustly to protect consumers and not just provide them with information<sup>19</sup>. The Consumer Panel stated that enforcement needed to be prioritised and regulatory reform should not just revolve around prudential matters but rather include consumer protection as a central principle of financial regulation and policy as consumers are the ultimate end users of financial services. It repeatedly asked for clarification around the implementation of the principles-based system of

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<sup>18</sup> Financial Services Consultative Consumer Panel Annual Report 2006.

<<http://www.financialregulator.ie/consultative-panels/consumer/Documents/Consumer%20Panel%20Annual%20Report%202006.pdf>>

<sup>19</sup> See the Financial Services Consultative Consumer Panel Annual Reports 2006 -2009. See also the Financial Services Consultative Consumer Panel's Performance Reviews of the Financial Regulator 2007 & 2008/2009

regulation and the need for robust enforcement procedures to ensure compliance by regulated financial entities.

The Consumer Panel repeatedly drew attention a number of worrying developments in the mortgage market as early as 2005. In its performance review of the Financial Regulator up to 30 June 2007, it commented on the effects of increases in interest rates, higher loan-to-income ratios, mortgages based on two salaries, the increased availability of credit and the dramatic increase in sub-prime lending. It specifically stated that *'this is an area of concern which merits serious reflection by those with responsibilities for the overall stewardship of this market. It must also concern those dealing with information, advocacy and consumer protection.'*<sup>20</sup> The Consumer Panel also highlighted its concerns with the treatment of those individuals who fall into arrears and the manner in which they are treated by lenders.

The Consumer Panel has persistently highlighted Section 33AK<sup>21</sup> as an issue, particularly, that it does not fairly represent the consumer and that it is excessive in its safeguards. It has suggested that reform of the Section be considered via the *Central Bank Reform Bill, 2010*. The Consumer Panel has also requested that the Financial Regulator to benchmark itself against comparative regulatory agencies in order to assess whether or not it operates with maximum efficiency and represents value for money. This is discussed further in Section 2.7.2 under Budget Reviews.

The Consumer Panel has considered a vast number of issues faced by the financial services industry, including issues that may not always have an effect on consumers. It has issued responses to consultation papers and published suggestions and submissions to the Financial Regulator, government departments and various other organisations on a range of topics. As well as those publications that are in the public domain, the Consumer Panel actively engages with a range of different organisations and government departments on an ongoing basis. An example of this includes its response to the De Larosière Report, the recommendations of which do not have a direct effect on consumers but will influence the financial regulatory framework in Europe and consequently, Ireland.

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<sup>20</sup> Financial Services Consultative Consumer Panel. Review of the Performance of the Financial Regulator covering the period to 30 June 2007.

<<http://www.financialregulator.ie/consultative-panels/consumer/formal-correspondence/Documents/1Review%20of%20the%20Performance%20of%20the%20FR%2007.pdf>>

<sup>21</sup> Section 33AK of the *Central Bank Act, 1942* (as inserted by Section 26 of the *Central Bank Financial Services Authority of Ireland Act, 2003*)

The Consumer Panel has often commented on the defensive approach to interactions with it by the Financial Regulator<sup>22</sup>. This has resulted in the recommendations and suggestions of the Consumer Panel not achieving the attention they deserve and being rejected only to be subsequently adopted at a later stage. The lack of information received has also meant that the Consumer Panel has not always been able to discharge its duty of reviewing the Financial Regulator to the best of its ability. The Consumer Panel stated in December 2009 that they were unable to function for almost a year because officials ignored requests for meetings and that it believed *'it is unacceptable that the Board of the Financial Regulator has failed to take responsibility for their stewardship of the organisation during the last six years. The Financial Regulator did not understand many of the sectors and financial products it regulates.'*<sup>23</sup>

An unfortunate occurrence for the Consumer Panel was the expiry of its term of office in September 2008. It was not reappointed until 23 January 2009. The Consumer Panel expressed its disappointment that this occurred during the middle of the global financial crisis and the consumers' voice was not being heard at the Financial Regulator as a result. Furthermore, the Code of Conduct on Mortgage Arrears was introduced during this period with no opportunity for input from the Consumer Panel.

In some instances, the Consumer Panel has frequently drawn attention to and commented on areas of concern in the financial services market before they have been recognised as problem areas by the wider financial services industry. Some of these include: the need to review the deposit guarantee scheme, the need for robust enforcement procedures to ensure compliance with the principles-based system of regulation that was being followed by the Financial Regulator, the deficient response of the Financial Regulator to threats to consumers including the need to control the property bubble leading up to the financial crisis. The Consumer Panel also published a report *'Perspectives of the Consumer Panel on the Current Financial Regulatory Framework'* in May 2009 that criticised the Financial Regulator's performance in a number of areas. The Consumer Panel is set to publish *'Financial Regulatory Framework Review – an update'* in which it revisits the previous report. This report draws attention to the areas where the Consumer Panel sees outstanding and developing problems facing the financial services industry which will impact consumers. However, it

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<sup>22</sup> See the Financial Services Consultative Consumer Panel Annual Reports 2005 & 2006. See the Financial Services Consultative Consumer Panel's Performance Review of the Financial Regulator, July 2006. See also The Irish Times. *'Regulator failed to protect consumers, says report'* (21.12.09)

<sup>23</sup> The Irish Times. *'Regulator failed to protect consumers, says report'* (21.12.09)  
<<http://www.irishtimes.com/newspaper/frontpage/2009/1221/1224261044428.html>>

has highlighted the changes coming on stream at the Central Bank and Financial Regulator as positive steps and stated that *'good work has begun in order to stabilise our banking industry and while some decisions will be severe in the short-term, the long-term benefits to consumers must be kept in mind'*.<sup>24</sup>

### 2.7.1. Suggestions and Formal Letters

The Consumer Panel has submitted a number of suggestions to the Financial Regulator on the following topics since its establishment:

- Automated Teller Machine (ATM) Fraud
- Overcharging issues and sanctions
- Suggestion to be proactive in gaining consumer confidence
- Suggestion to publicise investigations and complaints
- A code of conduct to handle endowment mortgage shortfalls
- European Union priorities
- Equity Release
- Deposit Interest Retention Tax (DIRT) disclosure on bank statements
- A consumer guide to the Consumer Protection Code
- Shopping around for better deposit interest rates and notifications of interest rates from banks
- Financial Legislation Advisory Forum
- Sensible shopping for Christmas

These suggestions are used to both acquire information from the Financial Regulator in relation to certain issues - and following observations in the financial services industry - to make formal suggestions of actions it deems necessary. Furthermore, this format can be used to comment on a particular issue and to question how the Financial Regulator deals with such consumer issues. Letters have been issued by the Consumer Panel to the Financial Regulator for clarification and comment on a range of issues including: the consolidation of the financial services legislation, changes in the housing and mortgage market, long-term fixed rate mortgages, request for verification of priced of unit linked funds and trackers, and the Morrogh Stockbrokers collapse.

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<sup>24</sup> The Financial Services Consultative Consumer Panel. *Financial Regulatory Framework Review – an update*. (Dublin: July 2010)

Letters and suggestions generally average between one and three pages in length; they are succinct and outline the main questions or recommendations the Consumer Panel has in relation to a topic.

The Consumer Panel has had varying success with its suggestions and recommendations to the Financial Regulator. It voiced its concern over the lack of interaction with the Financial Regulator since its establishment and the slowness with which the relationship has improved over the years. Many of the Consumer Panel recommendations were initially rejected by the Financial Regulator but subsequently implemented; this shows how its persistence in highlighting consumer issues has paid off. One such area is overcharging, in particular, how the Financial Regulator deals with financial institutions that are guilty of overcharging consumers. Evidence of the Consumer Panel's influence can be seen in 'Banking Supervision: our new approach' where the Financial Regulator states that if timelines are not met by credit institutions, enforcement will follow and action may be taken where a regulated entity fails to implement adequate systems and controls to ensure compliance.<sup>25</sup>

### 2.7.2. Formal Submissions and Correspondence

The Consumer Panel has published responses on the following Consultation Papers:

- Administrative Sanctions Procedure Policy
- The Consumer Protection Code
- Fitness and Probity Requirements
- Remuneration of Intermediaries
- The Consumer Credit Directive
- Collation and Publication of insurance Liability Data
- Mergers of UCITS (Undertakings of Collective Investments of Transferable Securities)
- Compliance Statements and Auditors Reports
- Chapter VII Consultation
- Responsible Lending and Borrowing
- Response to the De Larosière Report of the 'High-Level Group on Financial Supervision in the EU'
- The Corporate Governance Requirements

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<sup>25</sup> Central Bank & Financial Services Authority of Ireland. *Banking Supervisions: our new approach*. (Dublin: June 2010)

<http://www.financialregulator.ie/press-area/press-releases/Documents/21%20June%202010%20-%20Banking%20Supervision%20-%20Our%20New%20Approach.pdf>

Each Consultation paper was carefully considered by the Consumer Panel and its recommendations submitted. It set out the proposals it considered to be positive and what it disagreed with in each, along with its suggestions for alteration. Responses to consultation papers vary in length and of those reviewed; they are generally between ten and twenty pages in length.

The Consumer Panel had considerable involvement during the formulation of the Consumer Protection Code. It met on a regular basis with those involved in its preparation but also submitted a response to the consultation paper as the first phase of its involvement in the development of the Code. It had a significant influence on the resulting Consumer Protection Code and has monitored its effectiveness since its implementation. Furthermore, the Consumer Panel recently revisited the Code and is preparing a response to be submitted when the Financial Regulator publishes its consultation paper setting out its proposals in September 2010. The Consumer Panel has more recently submitted a response to the consultation paper on Corporate Governance Requirements.

The Consumer Panel has also made submissions to the Financial Regulator on the following:

- Pension Issues
- Life Assurance Disclosure Requirements and Regulations
- Compensations Schemes for Irish Consumers of Overseas Financial Services Companies
- Exempt Unit Trusts
- Financial Product Regulation

The Consumer Panel has also interacted with government departments and various other bodies. Below is a summary of some of those submissions.

Submissions to the Department of Finance

- Consolidation of Financial Legislation
- Non-Deposit Taking Lenders

Submissions to the Committee of European Securities Regulators (CESR)

- Inducements under the Markets in Financial Instruments Directive (MiFID)
- Key Investor Information

#### Submissions to the Department of Enterprise

- Microcredit

#### Submissions to the European Union

- Credit Rating Agencies

#### Submissions to the Department of Justice

- The 3<sup>rd</sup> Anti-Money Laundering (AML) Directive

#### Submissions to the Registrar of Credit Unions

- Credit Policy
- Voluntary Consumer Protection Code for Credit Unions
- Regulatory Reserve Ratio for Credit Unions
- The Introduction of a Fitness and Probity Regime for Credit Union Directors, Supervisors and Managers
- Limitation of the Term of Office for Credit Union Directors and Supervisors

The Consumer Panel has commented, amongst others, on the following publications at the request of the Financial Regulator:

- How to Budget and Plan for the Future
- Pensions Made Easy
- Pensions - Your Options at Retirement
- Mortgages Made Easy
- Savings and Investments Made Easy
- Special Savings Investment Account (SSIA) Maturity Guide
- Stockbrokers Charges
- Investment Guidelines for Credit Unions
- SSIA Maturity Guide

The Consumer Panel undertook research which generated reports on the following areas:

- The Irish market for long-term fixed rate mortgages, Islamic mortgages, and comparisons with other EU countries

- The nature and scope of the market for immigrants' remittances from Ireland, including mechanisms, providers, risks and costs
- To identify consumers' attitudes to risk when buying savings products
- The status of investors' assets within stockbrokers' accounts when buying shares in the aftermath of the Morroghs Report

In addition, the Consumer Panel also published a position paper entitled '*Basic Banking Account – Banking for All*' and '*Perspective of the Consumer Panel on the Current Regulatory Framework*' during 2009. It also published the following reports as a result of the research listed above, '*Immigrants' remittances from Ireland*', and '*A review of the Consumer Interface with Investment Risk in the Financial Services Sector*'. It will also publish '*Financial Regulatory Framework Review – an update*' in 2010.

### Regulatory Issues Considered

The Consumer Panel also considered regulatory concerns at length at its formal meetings and through its dedicated sub-groups. Some of the issues discussed were as follows:

- The impact of the subprime crisis on Irish consumers and the delay in enacting legislation
- Section 33AK
- Overcharging by Financial Institutions
- The Australian Model of Financial Regulation Investor Compensation
- The Capital Requirements Directive (CRD)
- MiFID and various EU issues.
- Equity Release
- The Needs of SME's
- The Implementation of the Consumer Protection Code
- Consumer Access to Financial Services
- The Financial Regulator's Report on Licensed Money Lenders
- The 3<sup>rd</sup> Anti-Money Laundering Directive
- The Comptroller and Auditor General's Value for Money Report on the Financial Regulator
- The Lamfalussy Review
- Consumer Complaints including the Role of the Financial Regulator, Consumers Association of Ireland and the Financial Services Ombudsman
- Future Regulatory Framework – Principles vs. Rules

- Data Protection and Banks
- Anglo Irish Bank Investigations
- New Directors Loan Requirements
- The Introduction of a Fitness and Probity Regime for Credit Union Directors, Supervisors and Managers
- Financial Product Regulation
- The Transposition of the Consumer Credit Directive
- Code of Conduct on Mortgage Arrears.

### Review of the Financial Regulator's Performance

The Consumer Panel is required to monitor and review the Financial Regulator's performance on a continuing basis in accordance with legislation. It does this not only through a dedicated performance review, but also through the Consumer Panel's annual report, by way of a synopsis of the full review, the Chairman's Statement and in recent publications such as *'Perspective of the Consultative Consumer Panel on the Current Financial Regulatory Framework'* in May 2009 and *'Financial Regulatory Framework Review – An Update'* in 2010. The performance review is divided into five sections – Consumer Standards, Standards for Regulated Firms, Consumer Information, Innovation and Competition, and Operations. The Financial Regulator's activities are considered under each heading. The official Performance Review documents are on average ten pages in length.

Most of the concerns raised as well as the failings of the Financial Regulator highlighted by the Consumer Panel on a consistent basis are outlined in Section 2.7 of this report. The Consumer Panel has drawn attention to a number of areas of concern and failings on the part of the Financial Regulator over its years in existence. Some of these include:

- The slowness and excessive caution in dealing with controversial issues
- Concern over the lack of interest shown in the suggestions and recommendations made by the Consumer Panel
- The reluctance in explaining the impact of EU Directives on consumers and the lack of willingness to allow participation by the Consumer Panel in this area
- Requests for clarification on complaints and the need for robust enforcement for the principles-based regulation regime that was implemented by the Financial Regulator

- The lack of serious effort by the Financial Regulator to promote the Consumer Protection Code
- The lack of information and detail provided by the Financial Regulator on consumer themed inspections and reviews
- The failure of the Financial Regulator in its role to ensure robust prudential supervision since its establishment in 2003
- Concern over section 33AK of the *Central Bank Act, 1942* (as inserted by Section 26 of the *CBFSAI Act, 2003*)
- Fundamental weaknesses have also been highlighted in the review of the budget of the Financial Regulator

Similarly, the Consumer Panel has commended the Financial Regulator on areas where it has performed well since its establishment. Some of these include:

- The positive progress made on the implementation of Consumer Codes
- The publication of consumer information
- The proactive position taken in respect of maturing SSIA's
- The work undertaken with Credit Unions in relation to information collection and reporting, and risk assessments
- The increase in the number of consumer themed inspections
- The improvement in its interactions with the Consumer Panel
- Recently, the more 'hands on' and intrusive regulation and supervision of financial institutions under the bank guarantee scheme

## Budget Reviews

The Consumer Panel is obliged to comment on the draft estimate of income and expenditure of the Financial Regulator for each financial year. It has discharged its duty in this area and considers the annual budget under a number of headings such as:

- Staffing and Staff Costs
- International Comparisons
- Shared Services
- Legal Costs – Internal Staff vs. External Consultancy
- Benchmarking

It has also commented on individual budget concerns such as the lack of provision for implementing the recommendations of the Financial Capability Survey and the Financial Access Research, the Spencer Dock relocation, Reinsurance, Stock Exchanges and Information Technology reviews. The Consumer Panel did not review the budget in 2008 as its term expired in September of that year and it was not reappointed until 23 January 2009.

The concerns highlighted every year by the Consumer Panel have remained consistent. A major concern revolves around staffing costs. It accounts for the majority of the expenditure of the Financial Regulator's budget and the Consumer Panel have asked for a detailed analysis of this expenditure so that it can properly assess if the Financial Regulator is getting maximum effectiveness from its employees and is providing value for money. Furthermore, in November 2005, the Consumer Panel highlighted the OECD report on better regulation (*From Red Tape to Smart Tape*<sup>26</sup>) to urge the Financial Regulator to adopt a smart design approach to the implementation of regulation so that any changes do not automatically convert into a demand for more staff. The Consumer Panel has also repeatedly raised a concern around the allocation of resources for external consultancy. It stated that it understood the need to commission consultants for ad hoc assignments where expertise is limited but questioned why staff at the Financial Regulator has not completed some of this work considering the specialised nature of the work they undertake. It has considered these as vitally important factors as it is the consumer that ends up paying for regulation either as taxpayers or as customers of financial institutions.

Another issue consistently highlighted is the charge paid to the Central Bank by the Financial Regulator for Shared Services such as administration, I.T. services, Human Resources and training. It has been difficult for the Consumer Panel to assess whether or not this charge represents good value for money as it has not received detailed information on this issue.

Benchmarking of the Financial Regulator against comparative regulatory authorities in order to measure its effectiveness and value for money has been a recurring suggestion of the Consumer Panel in its budget reviews. Its persistence on this issue can be taken as a success, as the Mazars Report reviewed the business structure of the Financial Regulator and compared it with regulatory authorities in other jurisdictions. The Consumer Panel also welcomed the completion of two reports

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<sup>26</sup> Organisation for Economic Cooperation and Development (OECD). *From Red Tape to Smart Tape: Administrative Simplification in OECD Countries*. June 2003. <<http://www.oecd.org/dataoecd/9/62/2790042.pdf>>

on the issue of benchmarking undertaken by the Department of Finance, the Department of the Taoiseach, in conjunction with the Economist Intelligence Unit.

### **2.7.3. Annual Reports**

The Consumer Panel is obligated under legislation to publish an annual report detailing its activities during the year. The Consumer Panel has complied with this function and produced an annual report each year which can be accessed on the Financial Regulator's website<sup>27</sup>. Each report provides information on suggestions and submissions made, (and if available, the Financial Regulator's responses to those submissions), regulatory issues considered, Consumer Panel activity, a schedule of meetings attended by the members, Consumer Panel expenditure, its history and the list of the members of the Consumer Panel. The annual reports provide a synopsis of the Consumer Panel's main concerns arising in the financial services industry during the year. Additionally, they provide a summary of the budget review and performance review of the Financial Regulator that the Consumer Panel is required to complete.

Each annual report contains the Chairman's Statement. It presents a valuable observation on behalf of the Consumer Panel on the performance of and progress made by the Financial Regulator and, in its opinion, the most serious problems faced by consumers of financial services in that year, and the Financial Regulator's actions in that respect. The positive progress and improvements made by the Financial Regulator year-on-year have always been highlighted and commended. Similarly, the Chairman's Statement has been used to draw attention to the outstanding concerns of the Consumer Panel that need to be addressed and the less than satisfactory performance of the Financial Regulator in certain areas. The Consumer Panel has consistently highlighted the Financial Regulator's failure to protect consumers through robust prudential supervision and enforcement.

### **2.7.4. Minutes of Meetings**

The minutes of the Consumer Panel's meetings show a record of consistent attendance and commitment to execute its duties by the members. The minutes are published on the Financial Regulator's website<sup>28</sup>. They provide a brief description of the high-level topics discussed and

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<sup>27</sup> The Financial Regulator. Financial Services Consultative Consumer Panel Annual Reports.  
<<http://www.financialregulator.ie/CONSULTATIVE-PANELS/CONSUMER/Pages/statutory-reports.aspx>>

<sup>28</sup> The Financial Regulator. Minutes of the meetings of the Financial Services Consultative Consumer Panel.  
<<http://www.financialregulator.ie/consultative-panels/consumer/Pages/minutes-of-meetings.aspx>>

concerns raised by the Consumer Panel. They also highlight the dedication of the members to work on behalf of consumers to ensure they are represented at the highest level of financial services regulation and policy formulation. It must be noted that they do not provide a comprehensive account of the work undertaken by the members as they work as part of sub-groups and meet informally in their own time on a regular basis; there are no minutes for these informal meetings.

## 2.8. Summary

The Consumer Panel has a broad mandate that allows it to comment on, make suggestions to and monitor the Financial Regulator. It can make comments to the Financial Regulator with respect to the performance of the financial services industry and comment on any regulatory and policy documents prepared by the Financial Regulator. The Consumer Panel has been successful in performing these functions along with providing comments on the budget of the Financial Regulator. The Consumer Panel's work is outlined throughout Section 2. The Consumer Panel has been an advocate for consumers at the highest level of financial services regulation and policy development. It has provided a professional level of service with a consistent work rate and high output level despite its voluntary nature.

### 3. The Financial Services Consultative Industry Panel of the Financial Regulator Ireland

The Financial Services Consultative Industry Panel of the Financial Regulator, Ireland

The information contained on the Financial Services Consultative Industry Panel is here for completeness. It is not a review of the work of this Panel and does not include a comprehensive list of the work undertaken by it.

The Financial Services Consultative Industry Panel (FSCIP) was established by the *Central Bank and Financial Services Authority of Ireland Act, 2004*<sup>29</sup>. Similar to the Consumer Panel, the members of the FSCIP are appointed by the Minister for Finance. It should consist of between five and twenty members and currently has 19 members. The FSCIP membership is representative of the overall financial services industry in Ireland, including wholesale and retail financial services businesses.

The functions of the FSCIP are set out in Section 57DB<sup>30</sup> as follows:

***'57DB.—The functions of the Consultative Industry Panel are as follows:***

- (a) when the Regulatory Authority so requests, to comment on a policy document or regulatory document, or a proposed policy document or proposed regulatory document, prepared by that Authority;***
- (b) to provide the Regulatory Authority with comments on levies and fees that that Authority proposes to prescribe under section 33J or 33K;***
- (c) to provide the Regulatory Authority with comments on that Authority's draft estimate of income and expenditure for each financial year;***
- (d) to provide the Regulatory Authority with comments on the impact that the conditions and restrictions imposed by that Authority on financial service providers have on the competitiveness of those providers;***
- (e) to provide the Regulatory Authority with comments with respect to changing trends within the financial services industry that have implications for the functions and responsibilities of that Authority.'***

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<sup>29</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 1, Section 57CV)

<sup>30</sup> Section 17 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIIC, Chapter 3, Section DB)

The members of the FSCIP attend meetings on a voluntary basis and are not paid for work undertaken on its behalf. The FSCIP acts in an advisory capacity to the Financial Regulator on behalf of the financial industry in Ireland as a whole, as well as executing its other functions as outlined above. It is funded by the Financial Regulator and limited travel and subsistence allowances are paid in certain cases. Its expenditure from its establishment to the end of 2009 amounted to €243,788. The average annual cost is approximately €29,000. This excludes an outlay of €100,000 in 2006 for a major survey commissioned by it of 'Regulated Financial Services Entities on the Performance of the Financial Regulator'. It also commissioned research in 2007-2008 culminating in a survey of 'Unnecessary Regulatory Requirements capable of being amended by the Financial Regulator'.

	2009	2008	2007	2006	2005
<b>Meetings held</b>	10	5*	8	10	10
<b>Avg. Attendance</b>	15 (of 20)	14 (of 20)	15 (of 19.5)	14 (of 18)	-
<b>Expenditure</b>	€7,166.67	€57,482	€64,640	€108,000	€6,500

\* There were no meetings in January, April, July and August. The FSCIP's mandate expired in September and the members were not reappointed until the end of January 2009

The FSCIP has commented on various issues such as:

- Administrative Sanctions
- The Consumer Protection Code
- Fitness and Probity Requirements
- Regulatory Impact Analysis
- The Consolidation of Financial Legislation
- Implications of the Funding Levy
- Innovation and Product Development
- Mandatory Competence
- The Financial Regulator's Strategic Plan 2006-2008, 2007-2009, 2008-2010

The FSCIP has at its meetings and through its dedicated sub-groups considered the following issues:

- Regulatory Performance
- Outsourcing Guidelines
- New Directors Loan Requirements
- Financial Conglomerates

- The Impact of European Legislation such as MiFID, Solvency II, CRD, AML
- Single European Payments Area (SEPA)
- Lamfalussy Review
- Equity Release
- Comptroller and Auditor General's Value for Money Review of the Financial Regulator
- Exempt Unit Trusts

Most recently the FSCIP considered the future direction of regulation, amendments to the Code of Conduct on Mortgage Arrears and financial supervision and regulation following the G20 and the De Larosière Reports. There were also a number of matters on which the FSCIP did not comment as it was felt these were primarily issues for industry bodies to consider.

### 3.1. Summary

The FSCIP was established at the same time and under the same legislation as the Consumer Panel. The remit of the FSCIP is different to that of the Consumer Panel, having only two objectives in common. These are to comment on a policy document or regulatory document or proposed documents at the request of the Financial Regulator, and to consider its draft estimate of income and expenditure. In addition to these, the FSCIP is obliged to comment on levies and fees that the Financial Regulator proposes; comment on the impact that conditions and restrictions have on financial service providers and comment on changing trends within the financial services industry. It does not have a mandate to monitor and review the performance of the Financial Regulator in the execution of its functions as a whole or from a consumer protection perspective, or comment or make suggestions on the performance of the financial services industry.

## 4. Irish Organisations involved in Financial Services with a Consumer Focus

This is not a review of the work of either the National Consumer Agency or the Financial Services Ombudsman. The information contained here is to provide a more complete overview of the agencies that have a consumer focus in relation to the financial services industry in Ireland.

### 4.1. National Consumer Agency

The National Consumer Agency (NCA) is an independent statutory body established in May 2007 by the *Consumer Protection Act, 2007*.<sup>31</sup> The functions of the NCA are set out in Section 8 of the Act<sup>32</sup> which gives it a very broad and strong mandate to promote and protect the interests and welfare of consumers. It *'represents the voice of the consumer, enforces consumer legislation'* and, *'defends consumer interests at the highest levels of national and local decision-making'*<sup>33</sup>. The *Consumer Protection Act, 2007*, includes statutory protections for consumers from unfair and misleading commercial practices. It also gives enforcement powers to the NCA.

The Board of the NCA is appointed by the Minister for Finance, as set out in Section 10 of the *Consumer Protection Act, 2007*. The members have varied expertise and backgrounds, including legal experts, business people, consultants, consumer representatives, academics, and economists. The NCA is funded by the Department of Enterprise, Trade and Innovation with an annual grant and its accounts are subject to audit by the Comptroller & Auditor General. The grant for 2009 was €8,500,000 with an actual spend of €6,100,000<sup>34</sup>. The Agency is obliged to publish an annual report on its activities during that year, a copy of which shall be placed before the Houses of Oireachtas by the Minister. The Chief Executive is required, when requested, to give evidence to a committee of Dáil Éireann on matters such as the cost effectiveness and efficiency of the NCA and the use of its resources.

The work of the NCA can be divided into the following areas; research, providing consumer information, enforcement of legislation, education and awareness, and advocacy. The provision of information is a core activity of the NCA which operates under the principle that with accurate information, consumers can make informed choices thereby empowering them to obtain quality

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<sup>31</sup> *Consumer Protection Act, 2007*

<sup>32</sup> *Consumer Protection Act, 2007*.

<sup>33</sup> National Consumer Agency. [www.consumerconnect.ie](http://www.consumerconnect.ie). < <http://www.nca.ie/eng/About/>>

<sup>34</sup> The National Consumer Agency. Annual Report 2009. P.47

< [http://www.consumerconnect.ie/eng/Working\\_With\\_You/2009\\_NCA\\_Annual\\_Report.pdf](http://www.consumerconnect.ie/eng/Working_With_You/2009_NCA_Annual_Report.pdf)>

products and services. It publishes websites such as [www.consumerconnect.ie](http://www.consumerconnect.ie), [www.nca.ie](http://www.nca.ie), and [www.itsyourmoney.ie](http://www.itsyourmoney.ie) to provide a wide range of information on consumer rights, guides and tools for financial products and services and updates on current consumer issues. The NCA is responsible for the enforcement of consumer legislation. It can use tools such as prohibition notices, compliance notices and on the spot fines for offences relating to price display in order to enforce compliance. The NCA also has an advocacy role on behalf of consumers with legislators, government departments and relevant bodies to ensure the consumer voice is heard during the development process of legislation and policy.

The information and education of consumers of financial services functions of the Financial Regulator were transferred to the NCA in March 2010. It now publishes the 'Its Your Money' website and produces information leaflets on financial products and services. It ensures there is ongoing personal finance education so that consumers will become financially capable through the use of available information and by seeking advice. The Money Advice and Budgeting Service (MABS) and the Pensions Board are two further agencies that perform similar functions in their respective areas.

## 4.2. Financial Services Ombudsman

The Financial Services Ombudsman was established by Section 16 of the *Central Bank and Financial Services Authority of Ireland Act, 2004*<sup>35</sup> as an independent officer to investigate and adjudicate on complaints made in relation to the conduct of regulated financial services entities such as an offer to provide or failure or refusal to provide a financial service. It came into effect from April 2005.

The organisation is comprised of the Financial Services Ombudsman (FSO), the Financial Services Ombudsman Council (FSO Council), the Financial Services Ombudsman Bureau (FSO Bureau). The FSO Council consists of between five and ten members who are appointed by the Minister for Finance for a period of five years. Its functions include the appointment of the FSO, to prescribe the guidelines under which it is to operate, and to review the effectiveness of the FSO Bureau. The FSO Council also determine the levies to be paid by specified financial services providers so that sufficient funds are available to allow the FSO as a whole to perform its functions.

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<sup>35</sup> Section 16 of the *Central Bank and Financial Services Authority of Ireland Act, 2004* (amending the *Central Bank Act, 1942* by inserting Part VIII B)

The FSO Bureau consists of the FSO and the staff who support the FSO in exercising its duties. It is an independent statutory body funded by industry levies from financial services providers. The FSO can deal with complaints made by all personal customers of financial services, limited companies with a turnover of less than €3,000,000, charities, club trusts and partnerships. If a customer has followed the internal complaints procedure of a financial services provider and is not satisfied with the outcome, the FSO may investigate the complaint.

The FSO provides a remedy for consumers if a problem arises during interactions with a financial services provider. However, it does have a Memorandum of Understanding (MoU) with the Financial Regulator to reflect that while each organisation is independent of each other, and has its own distinct functions, they will need to cooperate and communicate effectively. The purpose of the MoU is to allow either body to refer complaints received from consumers that it feels falls within the remit of the other so that they may be effectively and efficiently dealt with. Further, it allows cooperation in promoting the best interests of the consumers. The broader issues of consumer protection in relation to policy and the regulation of the financial services industry is in the remit of the Financial Regulator.

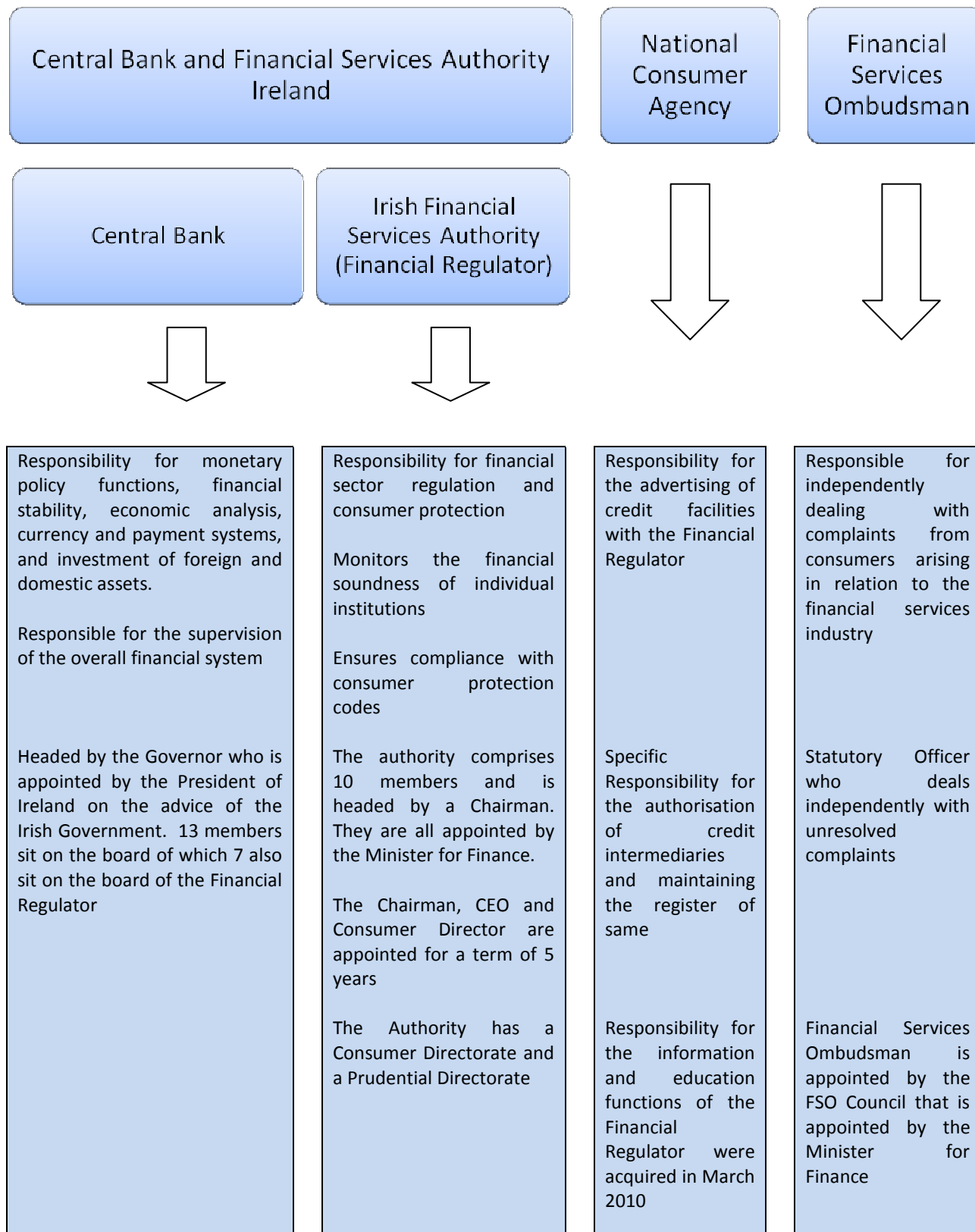
### 4.3. Summary

The National Consumer Agency (NCA) and the Financial Services Ombudsman (FSO) are both advocates of consumers, albeit from different positions. The NCA has a strong mandate of consumer protection and has enforcement capability for non-compliance with consumer legislation, but this does not extend to the financial services industry. It is primarily focused on the retail industry in Ireland but has taken over the information and education of consumers functions from the Financial Regulator since March 2010. The supervision and regulation of regulated financial entities and the maintenance of financial stability is the responsibility of the Central Bank and Financial Regulator.

The FSO plays an important role by providing an avenue of redress for unsatisfied consumers of financial services. While it cooperates with the Memorandum of Understanding with the Financial Regulator, it does not have a mandate to comment on its performance in relation to consumer protection within the financial regulatory framework. Similarly, the NCA does not possess this function either. There is no mandate for either the NCA or the FSO to provide the Financial Regulator with suggestions for initiatives in relation to the performance of its functions from a

consumer standpoint. However, both organisations may, as interested stakeholders, comment on and thereby influence draft regulation and policy open for public consultation.

Division of responsibilities of the various organisations



## 5. Financial Services Consumer Panel of the FSA UK

This is not a review of the work of the Financial Services Consumer Panel of the FSA, UK. The information contained here is an observation of a similar panel with a mandate to speak on behalf of consumers of financial services. It does not include an exhaustive list of the work undertaken by the Financial Services Consumer Panel but serves as a guide.

### 5.1. Statutory Basis and Objectives

The Financial Services Authority (FSA) in the UK has an equivalent consumer panel to that in Ireland called the Financial Services Consumer Panel (FSCP). It is an independent statutory body established by Section 10 of the *Financial Services and Markets Act, 2000*<sup>36</sup>. The purpose of the FSCP is to speak publicly on issues that it considers appropriate. It is funded by the FSA which also appoints the members. Unlike Ireland, the members of the FSCP are recruited through a process of open competition.

In addition to the *Financial Services and Markets Act, 2000*, formal terms of reference were agreed with the FSA. These terms of reference set out the role and responsibility of the FSCP. The basic aim of the FSCP is to monitor how the FSA executes its statutory objectives in relation to consumers. However, it has a broad scope as set out in the terms of reference. The FSCP provides advice to the FSA, will have regard to the interests of all groups of consumers in relation to financial services and may also look at the impact on consumers of activities outside but related to the FSA's remit. It provides a consumer perspective from the early stages of policy development to ensure the consumer is considered and included, and equally does likewise with regulation to assure its effectiveness in protecting consumers.

The purpose of the FSCP is set out in the terms of reference as follows:

**'6. The Panel will:**

- a) ***represent the interests of consumers by advising, commenting and making recommendations on existing and developing FSA policy and practices as appropriate;***
- b) ***speak on behalf of consumers by reviewing, monitoring and reporting to the FSA on the effectiveness of FSA's policies and practices in pursuing its duties;***

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<sup>36</sup>*Financial Services and Markets Act, 2000*. See Website of Office of Public Sector Information. (Date accessed, 14<sup>th</sup> May 2010) <[http://www.opsi.gov.uk/acts/acts2000/ukpga\\_20000008\\_en\\_1](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000008_en_1)>

- c) keep under review and influence actual and potential developments in financial services to enable it to (a) and 9b) effectively.*

**7. In addition, it can advise the Government on the scope of financial services regulation.**

**8. The Panel can consider other matters that assist it in carrying out its primary functions.<sup>37</sup>**

## 5.2. Composition of the Financial Services Consumer Panel

The FSCP currently has 10 members. As previously stated they are recruited through an open competition process. The experience of the members on the FSCP varies across a number of areas including journalism, law, the financial services industry, European issues, financial regulation and compliance, consumer advice, campaigning and communications. Each member has their own career outside of the FSCP and their commitment to the Panel is only a few days a month. A detailed profile on what they do outside the FSCP, the positions they have held in the past and the reasons they joined the Panel can be found on its website<sup>38</sup>. The FSCP formally meet twice a month and are supported by a secretariat of around six people.

## 5.3. Remuneration

The members of the FSCP are paid for the two days they formally meet each month and remuneration levels vary according to the days they commit to the FSCP each year. Details of the panel members' fees and expenses can be found in the annual reports of the FSCP. The fees payable to members during the year 1 April 2009 to 31 March 2010 were as follows:

Position	Fee per annum
Panel Chairman	£52,000
Panel Vice Chairman	£26,000
WG Chairs	£22,000
Members whose minimum commitment is 45 days a year	£18,000
Members whose minimum commitment is 30 days a year	£13,000 <sup>39</sup>

<sup>37</sup> Financial Services Consumer panel terms of reference  
<[http://www.fs-cp.org.uk/about\\_us/terms\\_of\\_reference.shtml](http://www.fs-cp.org.uk/about_us/terms_of_reference.shtml)>

<sup>38</sup> Financial Services Consumer Panel, UK. Panel Membership.  
<[http://www.fs-cp.org.uk/about\\_us/who\\_is\\_on\\_the\\_panel.shtml](http://www.fs-cp.org.uk/about_us/who_is_on_the_panel.shtml)>

<sup>39</sup> Financial Services Consumer Panel, An independent voice for consumers of Financial Services, Annual Report 2009/2010. P47 <[http://www.fs-cp.org.uk/publications/pdf/annual\\_report10.pdf](http://www.fs-cp.org.uk/publications/pdf/annual_report10.pdf)>

## 5.4. Budget

The FSCP is funded by the FSA and had an annual budget for year ending March 2010<sup>40</sup> of £568,000. The FSA's Board agrees the budget for the fees and expenses of the members and for any work commissioned by the FSCP. The actual expenditure for the year ending March 2010 was £503,000. The FSCP members' fees and expenses totalled £291,000. The Professional Fees budget was £372,000 which includes research expenditure; the actual spend from this allocation amounted to £152,000. This budget can be spent commissioning projects of interest, either from academics or market research agencies. The research outlay for the year was considerably lower than the budget provided as some planned research projects did not go ahead.

## 5.5. Accountability

The FSCP is obliged to produce an annual report on its work and budget expenditure for each year as set out by its Terms of Reference. It can speak out publicly to draw attention to matters in the public interest and if it disagrees with the FSA. Furthermore, it issues a monthly report of the Panel's work and concerns to the FSA Board.

## 5.6. Working for the Consumer

The FSCP work to advise and challenge the FSA from the earliest stages of its policy development to ensure it takes account of consumer interests. It also highlights the consumer perspective on the conduct of the financial services industry more generally. The FSCP is not a lobbying group but rather works with the FSA. During its bi-monthly meetings, the members review policy documents and meet with FSA staff who provide clarification on any concerns that may arise. They also form a FSCP opinion on proposals for changes in financial services regulation. The FSCP members continue to work on their specific areas of interest between official meetings. The FSCP regularly meet with other organisations which have a consumer mandate such as Consumer Focus, Which?, Citizens Advice and Age Concern. Furthermore, it is in regular contact with the UK Financial Ombudsman Service, Financial Services Compensations Scheme, and acts as a counter balance to the FSA's parallel Practitioner Panel.

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<sup>40</sup> Financial Services Consumer Panel, An independent voice for consumers of Financial Services, Annual Report 2009/2010. P47 <[http://www.fs-cp.org.uk/publications/pdf/annual\\_report10.pdf](http://www.fs-cp.org.uk/publications/pdf/annual_report10.pdf)>

Some areas where the FSCP has taken a strong line include: banking regulation, responding to the financial crisis, payment by commission and the FSA's retail distribution review, the FSA's communication with consumers, mortgage arrears/repossessions, and enforcement action by the FSA. The current areas that the Panel are pursuing include: the future shape of financial regulation, the regulation of retail banking, treating customers fairly, retail distribution review, European developments and financial capability.

The FSCP has commissioned twenty-six pieces of separate research since August 1999 averaging two a year. It uses this research to better understand consumer behaviour and to identify its own priorities, as well as influencing the FSA's consumer priorities<sup>41</sup>. Some of the areas covered included: mortgage arrears research, equitable life survey, financial reviews offered by banks, overdraft charges research, consumer perceptions of fairness within financial services, consumer confidence in the financial services industry, direct selling research and research into risk taking. It also publishes a number of letters and recommendations on issues it feels necessary to comment on.

The FSCP issue formal responses to all consultations put out by the FSA, as well as responding to UK Government and European Commission consultations that may affect how consumers interact with financial services. The Secretariat which supports the FSCP composes the consultation responses on its direction and advice. It has issued 375 responses and other publications averaging thirty-four a year. Not every response/publication was examined for this paper but of those that were, the responses averaged between three to five pages in length. A full list of the responses published can be found on the FSCP's website<sup>42</sup>.

## **5.7. Differences between the Financial Services Consumer Panel (UK) and the Irish Financial Services Consultative Consumer Panel**

The FSCP is comparable with the Irish Financial Services Consultative Consumer Panel. Both have a mandate to represent consumers by monitoring and reviewing the performance and policies of its respective Regulatory Authority. Both are capable of commenting and making suggestions in relation to the performance of and developments in the financial services industry. Furthermore, the members of the Consumer Panel and the FSCP maintain individual careers outside their

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<sup>41</sup> The Financial Services Consumer Panel. [www.fs-cp.org.co.uk](http://www.fs-cp.org.co.uk)  
<[www.fs-cp.org.uk/publications/research\\_documents.shtml](http://www.fs-cp.org.uk/publications/research_documents.shtml)>

<sup>42</sup> Financial Services Consumer Panel. Responses of the FSCP.  
<[www.fs-cp.org.uk/publications/responses/index.shtml](http://www.fs-cp.org.uk/publications/responses/index.shtml)>

commitment to their particular panel. There are, however, significant differences. The members of the FSCP are recruited through a process of open competition. This would suggest that those who apply and are appointed by the FSA have a keen interest in representing the consumers of financial services through improving policy and regulation as well as enhancing the FSA itself. This process is transparent and allows appointees to be vetted so as to ensure they possess the appropriate background to perform the functions mandated to the FSCP. It also implies that the members possess the commitment required to champion the voice of the consumer as each chooses to be actively involved. In comparison, however, the members of the Irish Consumer Panel can decline to take up a position on the Panel if they are not interested or do not think they have the time commit to the carrying out the Consumer Panel's work.

The FSCP formally meet twice a month and members are paid a fee according to the days devoted as outlined in Section 5.3 above. This is a noteworthy difference as panel members are being rewarded for their commitment in exercising the duties of the FSCP. Furthermore, it can have the effect of encouraging a higher level of activity in order to account for its significance and value for money.

Another important difference is the allocated amount of the FSCP annual budget. It had a budget of £568,000 for the year ended March 2010 with an actual spend of £503,000. The FSCP is also supported by a secretariat of approximately six staff whose cost is borne by the FSA and not included in the expenditure of the FSCP. In comparison, the expenditure of the Irish Consumer Panel for 2009 was €44,230.46 and does not have a dedicated secretariat.

It may be reasoned that UK is a larger jurisdiction and has a more significant financial services industry, with more competition in the retail banking sector than Ireland. However, prior and during the financial crisis, the problems facing the financial services industry and its real effect on consumers in both countries were similar – as is the remit of both consumer panels. The FSCP is significantly resourced in terms of support, remuneration and funding for research and comment on consultations of draft regulation and policy. Despite the significant expenditure levels, the Irish Financial Services Consultative Consumer Panel produced an equivalent level of submissions, correspondence, comments on consultations and suggestions without any remuneration. The Irish Consumer Panel is as active as the FSCP despite its voluntary basis, lack of resources and the low level of support it has received.

## 6. Financial Consumer Agency of Canada

Canada operates a three pronged approach at federal level to maintaining financial stability and the oversight of its financial services industry. Responsibility for the regulation and supervision of the financial services industry in Canada is divided between the Financial Consumer Agency of Canada (FCAC) and the Office of the Superintendent of Financial Institutions (OSFI). The Bank of Canada is the nation's Central Bank.

The Financial Consumer Agency of Canada (FCAC) was established in 2001 by the Canadian Government as an independent federal government agency to strengthen oversight of consumer issues and ensure consumer education in relation to financial services. It has responsibility for ensuring that *'federally regulated financial institutions comply with federal consumer protection laws and regulations; monitoring financial institutions' compliance with voluntary codes of conduct and their own public commitments; informing consumers about their rights and responsibilities when dealing with financial institutions; and providing timely and objective information and tools to help consumers understand, and shop around for, a variety of financial products and services.'*<sup>43</sup>. The *Financial Consumer Agency of Canada Act, 2001*<sup>44</sup> sets out the functions, administration and enforcement powers of the FCAC, as well as listing the federal consumer laws and regulations within its remit. The FCAC counts consumer protection and consumer education as two of its key responsibilities. It is obliged to prepare an annual report outlining: its activities for the year, the performance of financial institutions in complying with consumer protection, the procedures financial institutions have in place for dealing with complaints and the number and nature of complaints brought to the Agency's attention. The annual report is submitted to the Minister of Finance and the Canadian Parliament.

The FCAC is headed by a commissioner who is appointed by the Canadian government for a term of up to five years. The Commissioner has the power to issue a notice of violation if a financial institution is in contravention of its consumer obligations, is capable of making the notice public and applying a penalty of up to \$200,000 (CAD). The FCAC is funded by the Government of Canada. It had a planned budget of \$10,770,000 (CAD) for 2008-2009 with an actual spend of \$9,572,000 (CAD) and employs 49 staff.

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<sup>43</sup> Financial Consumer Agency of Canada. [www.fcac-acfc.gc.ca](http://www.fcac-acfc.gc.ca)  
< <http://www.fcac-acfc.gc.ca/eng/about/default.asp> >

<sup>44</sup> The Financial Consumer Agency of Canada Act, 2001. S.C. 2001, c.9 < <http://laws-lois.justice.gc.ca> >

## 6.1. Summary

The Canadian structure of banking supervision and regulation is very different to the Irish structure. At Federal level it operates with three separate and distinct institutions. The following diagram outlines the key aspects of each.

Bank of Canada	Financial Consumer Agency Canada	Office of Superintendent of Financial Institutions
<ul style="list-style-type: none"> <li>• Promotes the economic and financial welfare of Canada</li> <li>• It is the Lender of Last Resort, provides emergency liquidity for eligible institutions and facilitates payments systems.</li> <li>• It does not regulate financial institutions</li> <li>• It is not a Government Department and has considerable independence compared with other federal institutions</li> <li>• Governor and Senior Deputy Governor are appointed by the Board of Directors - not by the federal Government</li> <li>• Minister of Finance sits on the Board but does not have a vote</li> </ul>	<ul style="list-style-type: none"> <li>• Responsibility for Business Conduct Regulation.</li> <li>• Monitors financial institutions to ensure they follow their own voluntary codes of conduct.</li> <li>• Responsible for consumer protection and consumer education</li> <li>• Monitors and supervises financial institutions that are regulated at a federal level.</li> <li>• It does not regulate foreign bank representative offices, fraternal benefit societies or cooperative credit associations</li> <li>• Headed by a Commissioner with the power to examine matters relating to federal consumer protection laws</li> <li>• Reports to the Minister of Finance</li> </ul>	<ul style="list-style-type: none"> <li>• Responsibility for Prudential Regulation</li> <li>• Administers a regulatory framework that promotes the adoption of policies and procedures designed to manage and control risk</li> <li>• Regulates both Domestic and Foreign Institutions</li> <li>• Has limited, indirect authority over securities industry.</li> <li>• Independent agency of the Government, headed by the Superintendent.</li> <li>• Reporting to the Minister of Finance</li> </ul>

The Office of the Superintendent of Financial Institutions Canada<sup>45</sup> has two distinct functions – supervision and regulation. It is responsible for regulating and supervising all banks in Canada and all federally incorporated trust and loan companies, credit associations, life insurance companies, fraternal benefit societies, property and casualty insurance companies. It is the equivalent of the Irish Financial Regulator. The Financial Consumer Agency of Canada is the third institution in Canada’s overall financial regulation framework. It lends great power to the consumer mandate in relation to financial services in Canada by ensuring consumers are at the heart of any financial regulation or policy, and regulated firms are compliant with such legislation.

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<sup>45</sup> The Office of the Superintendent of Financial Institutions Canada.  
< [http://www.osfi-bsif.gc.ca/osfi/index\\_e.aspx?ArticleID=1534](http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?ArticleID=1534) >

## 7. Conclusions

The Consumer Panel has had an important role to play in ensuring the voice of the consumer is represented at the highest level of financial services regulation and policy formulation in Ireland, as well as, monitoring the performance of the Financial Regulator in discharging its functions. The Consumer Panel had already highlighted a number of issues in their publications in relation to its ability to effectively accomplish its objectives. Some of these issues have been highlighted again in the body of this report.

The Consumer Panel consistently drew attention to the inadequate interaction and support it received from the Financial Regulator. It encountered many difficulties in accessing timely and accurate information. This was as a result of the defensive approach taken by the Financial Regulator in dealing with the Consumer Panel from its establishment but also as a result of Section 33AK<sup>46</sup> governing the disclosure of information by the Financial Regulator that has allowed it to withhold information. The Consumer Panel raised a concern on this issue yet again in its performance review of 2008/2009<sup>47</sup>. This lack of cooperation has resulted in the Consumer Panel completing some of its performance reviews and budget reviews of the Financial Regulator without adequate information. It has stated in its budget review of 2006<sup>48</sup> that *'if it had more time and resources, these are areas which we would be probing further'* in relation to its financial information. In 2009, the Chairman of the Consumer Panel stated it was unable to function for almost a year because officials ignored requests for meetings and because of a delay in appointing a new panel<sup>49</sup>.

An additional consequence of the difficult relationship between the Financial Regulator and the Consumer Panel has been the lack of adequate consideration given to its suggestions and recommendations. It has been highlighted in this report that often the Consumer Panel's recommendations were initially rejected only to be subsequently adopted. However, there has been progress made and the relationship between the two has improved in recent years resulting in improved success by the Consumer Panel in having its work considered.

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<sup>46</sup> *Central Bank and Financial Services Authority of Ireland Act, 2003.*

<sup>47</sup> The Financial Services Consultative Consumer Panel – Performance Review of the Financial Regulator 2008/2009.

<<http://www.financialregulator.ie/consultative-panels/consumer/formal-correspondence/Documents/Performance%20Review%20of%20the%20Financial%20Regulator%20>>

<sup>48</sup> The Financial Services Consultative Consumer Panel – Budget Review of the Financial Regulator 2006.

<<http://www.financialregulator.ie/consultative-panels/consumer/formal-correspondence/Documents/Final%20Budget%20Submission%202006%20-%20Tom%20Considine%20%201%20Dec%202005.pdf>>

<sup>49</sup> The Irish Times. *Regulator failed to protect consumers, says report.* (21.09.10)

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While the Consumer Panel has had the limited administrative support from staff of the Financial Regulator, this has been in the role of secretary at meetings and as a liaison between it and the Financial Regulator. The Consumer Panel prepares its own responses, submissions and suggestions, more often than not, during the members own time.

The work rate of the Consumer Panel is to be commended. While its members are aware of the voluntary nature of the Panel, they have been very dynamic in performing the duties assigned to it. The Consumer Panel formally meets once a month but members continue to work on its behalf outside these meetings. It was found that the Consumer Panel has challenged the Financial Regulator consistently on several different areas and has been proactive in highlighting problems in the financial services industry. It has also issued a high volume of suggestions, submissions and recommendations. It has delivered a reasonably professional level of service despite being restricted by its lack of support and funding. The Consumer Panel expenditure is covered in Section 2.5 of this report and shows its small cost to the Financial Regulator in pursuing its functions.

The information in this report on how consumers of financial services are represented in Ireland by the NCA and FSO, in the UK by the FSCP and in Canada by the FCAC, highlights that no system of consumer protection is alike, nor does it seem that any one system is better than the other. Furthermore, it was found that there are very few comparable consumer panels at other regulatory authorities.

Overall, it was found that the Consumer Panel discharged its functions to a reasonably high standard despite the problems it encountered since its establishment outlined above. An increase in resources, in terms of staff and funding, would have allowed more work and better analysis in its reviews of the Financial Regulator to be completed by the Consumer Panel. It is unfortunate that the Consumer Panel is now to be abolished as it has consistently represented the interests of consumers in an often complex financial regulatory framework and financial services industry. It is hoped that the new Consumer Advisory Group will continue to build on the solid foundation work done by the Consumer Panel to date and retain the activist ethos of the existing Consumer Panel.

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## **LIST OF ABBREVIATIONS**

AML	Anti-Money Laundering
ATM	Automated Teller Machine
CBFSAI	Central Bank & Financial Services Authority of Ireland
CESR	The Committee of European Securities Regulators
CRD	Capital Requirements Directive
DIRT	Deposit Interest Retention Tax
EU	European Union
FCAC	Financial Consumer Agency of Canada
FSA	Financial Services Authority UK
FSCIP	Financial Services Consultative Industry Panel
FSCP	Financial Services Consumer Panel
FSIC	Financial Services Innovation Centre
FSO	Financial Services Ombudsman
IBF	Irish Bankers Federation
MABS	Money Advice and Budgeting Service
MiFID	Markets in Financial Instruments Directive
MoU	Memorandum of Understanding
NCA	National Consumer Agency
OECD	Organisation for Economic Co-operation and Development
OSFI	Office of the Superintendent of Financial Institutions
SEPA	Single European Payments Area
SME	Small and Medium Enterprises
SSIA	Special Savings Incentive Account
UCITS	Undertakings for Collective Investments in Transferable Securities

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