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# Treating Your Insurance Customer Fairly

AN EXECUTIVE SEMINAR FOR THE INSURANCE AND MORTGAGE INDUSTRIES

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**09:00 Consumer Protection Code – 2 Years On. Issues, Findings and the Future**

Bernard Sheridan, Financial Regulator

**09:45 Claims – Issues and Trends**

Sophie Hart, Financial Services Ombudsman Bureau

**10:30 Refreshments**

**11:00 Dealing With Problems, What Happens When It Goes Wrong?**

Evelyn Hanrahan, Financial Services Compliance & Training Ltd

**11:45 Speaker Panel Discussion**

**Facilitator:** Alan McGilton, Group Head of Development, OSG

**Participants:** Bernard Sheridan, Financial Regulator / Danielle Keane, Financial Services Ombudsman's Bureau / Evelyn Hanrahan, Financial Services Compliance & Training Ltd

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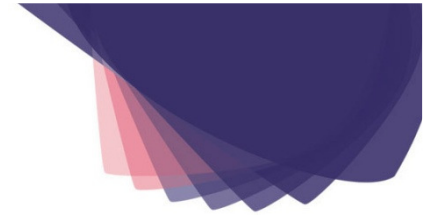
# Consumer Protection Code – 2 years on.



FINANCIAL REGULATOR  
*Rialtóir Airgeadais*

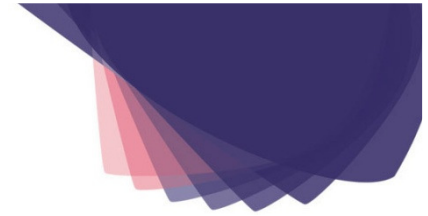
Bernard Sheridan  
Head of Consumer  
Protection Codes

July 2008



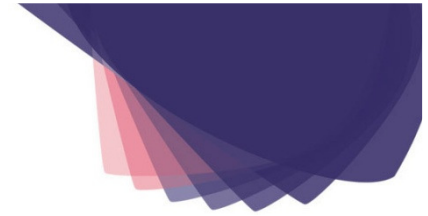
# Introduction

## Consumer Protection Code



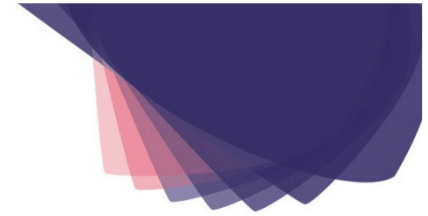
# Relevant requirements

- Code
- Minimum Competency Requirements
- MiFID
- Renewal Regulations
- Consumer Protection Act
- Addendum to Code



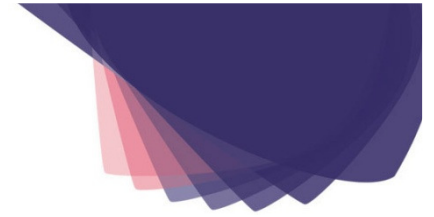
# General Principles

- Duty of Care
- Systems and Controls
- Full disclosure that informs the customer
- Avoiding conflicts of interest



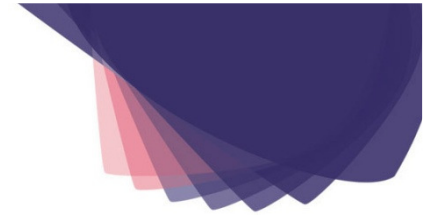
# Advertising

- Industry letter issued
- New letter to be issued to highlight concerns
- Annual Report information
  - 2006 – 84
  - 2007 – 133



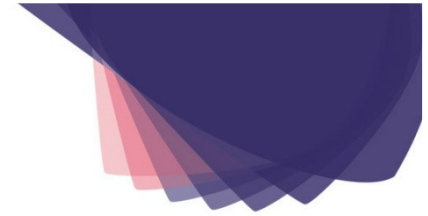
# Advertising Concerns

- Inclusion of Key Information in SMALL PRINT
- Font Size
- Introductory/Promotional Rates
- Definition of an Advertisement/Websites



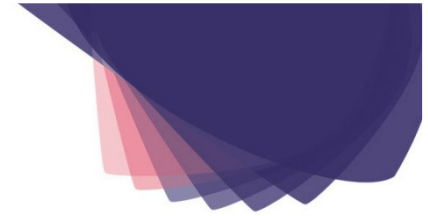
# Terms of Business

- Start of the process
- Needs to be explained
- Description of services provided
- Statement of charges



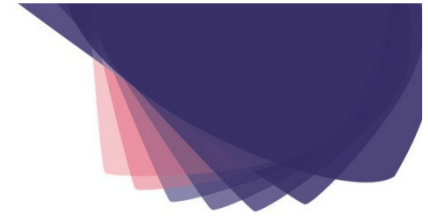
# Knowing the Consumer

- Gather and record sufficient information
- Purpose is to enable firm “to provide a recommendation appropriate to that consumer”
- Get consumer to certify accuracy of information



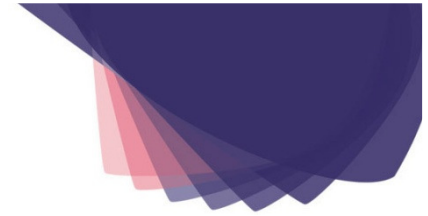
# Provision of information for consumer

- Clear and comprehensible
- Key items must be brought to the attention of consumer
- **PRINT SIZE TO BE CLEARLY LEGIBLE !**



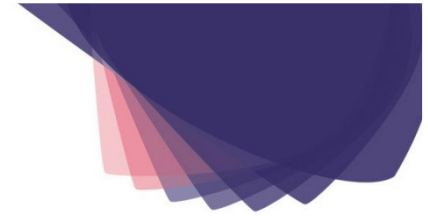
# Suitability

- Recommendations based on facts gathered
- Product offered must be suitable TO THAT CONSUMER
- Specific recommendations must be most suitable



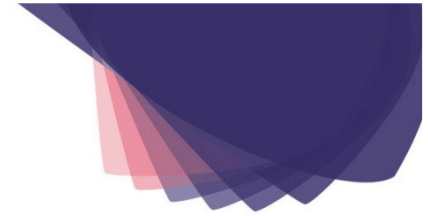
## Reasons why statement

- Must set out why advice is suitable to that consumer
- Should not be generic statement about the product and must be linked to “Knowing the consumer” process
- Must be given before decision is made
- Then decision can be made by consumer



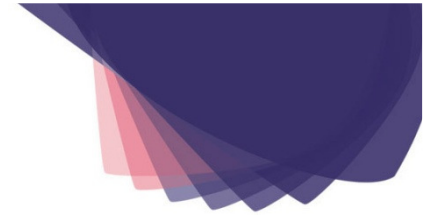
## Industry letter of 18<sup>th</sup> June 2008

- Duty of care
- Ensuring consumers are fully informed
- Knowing the consumer/suitability
- Sales to older/vulnerable customers
- Expectation of firms by the Financial Regulator



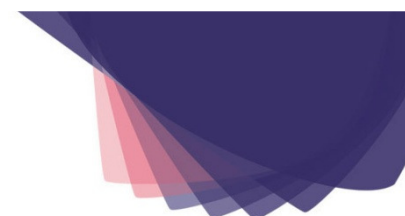
## Dealing with errors

- Code provisions focus on sorting out for the consumer
- Firm must have procedures and controls to identify errors and also to deal with them
- Material charging and pricing errors
- Need to respond to consumers in a positive way
- Need to deal professionally with media interest



# Monitoring Compliance

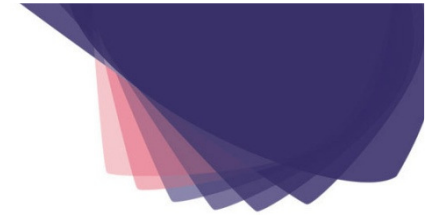
- Themed inspections
- Themed reviews
- Mystery shopping
- Investigation of individual issues



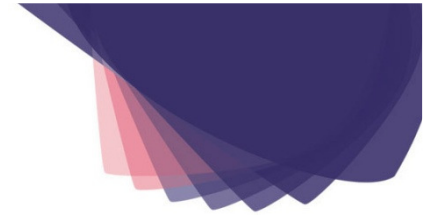
# Insurance themes

- Claims handling
- Serious illness
- Charges and premium rebates
- Issuing receipts

# Admin Sanctions Cases



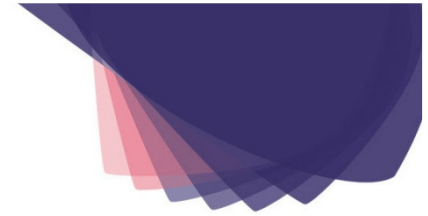
- Failure to issue receipts – fine of €5,000 and firm reprimanded
- Lack of resources and procedures, failure to seek sufficient information and failure to disclose fees – reprimand and firm no longer authorised
- Difference between initial quotes and cost of policy retained by the firm – fine of €10,000 and firm reprimanded



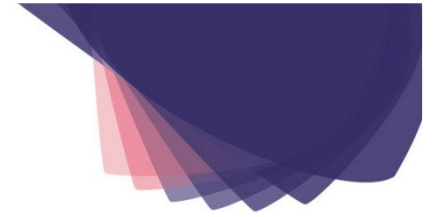
## Current themes

- Unit linked whole of life
- Receipts and Travel Insurance
- MiFID Clients Categorisation
- Complaints handling by banks

# Other themes

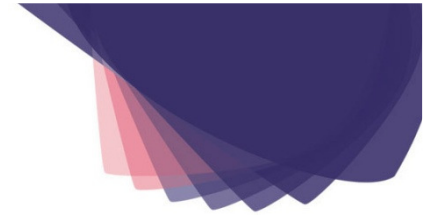


- Materiality re errors
- Conflicts of interest – intermediaries
- Arrears handling policies
- Other investigations

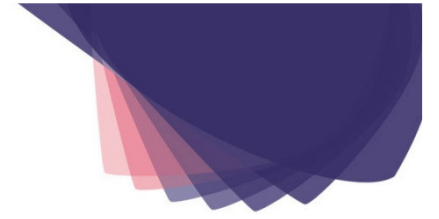


# Transparency

- Review of the Intermediary market
- Review of the Life Disclosure Regulations



# The future ?



# Summary

*Thank you*



FINANCIAL REGULATOR  
*Rialtóir Airgeadais*

# The Role of the Ombudsman in Consumer Complaints

*Institute of Governance, Risk and Compliance, 9 July 2008*

*Sophie Hart, Senior Investigator, FSOB*



**Financial Services  
Ombudsman**

# Outline of Presentation



- The statutory role of the Financial Services Ombudsman
- Complaints trends
- Case studies
- Things to consider



## Why have a Financial Services Ombudsman in Ireland?

**Insurance Ombudsman of Ireland**

**Est. 1992**

**Ombudsman for Credit Institutions**

**Est. 1990**

**McDowell Report 1999**

**Central Bank & Financial Services  
Authority Act 2004**

**1 April 2005**

**Financial Services  
Ombudsman's Bureau**

## What is the role of the Financial Services Ombudsman?

- A statutory officer who deals independently and impartially with unresolved complaints from consumers about their individual dealings with their financial service providers.
- All financial providers regulated in Ireland are subject to investigation by the Ombudsman.
- No cost to the consumer.
- Broader issues of consumer protection are the responsibility of the Financial Regulator.



## Complaints to the Financial Services Ombudsman

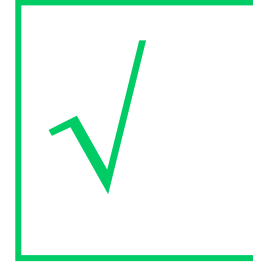


### Who can complain?

- All personal customers.
- Limited companies with a turnover of €3,000,000 or less.
- Unincorporated bodies, charities, clubs, partnerships, trusts etc.



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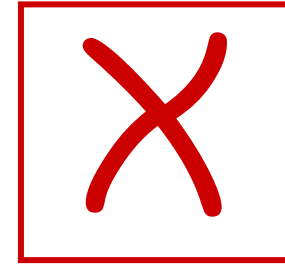
What type of complaints may be examined?

Any kind of complaint by a consumer who feels dissatisfied about:

- *The provision of a financial service by the financial service provider*
- *An offer to provide such a service*
- *Failure to provide a particular financial service that has been requested*



Financial Services  
Ombudsman



What type of complaints may **NOT** be examined?

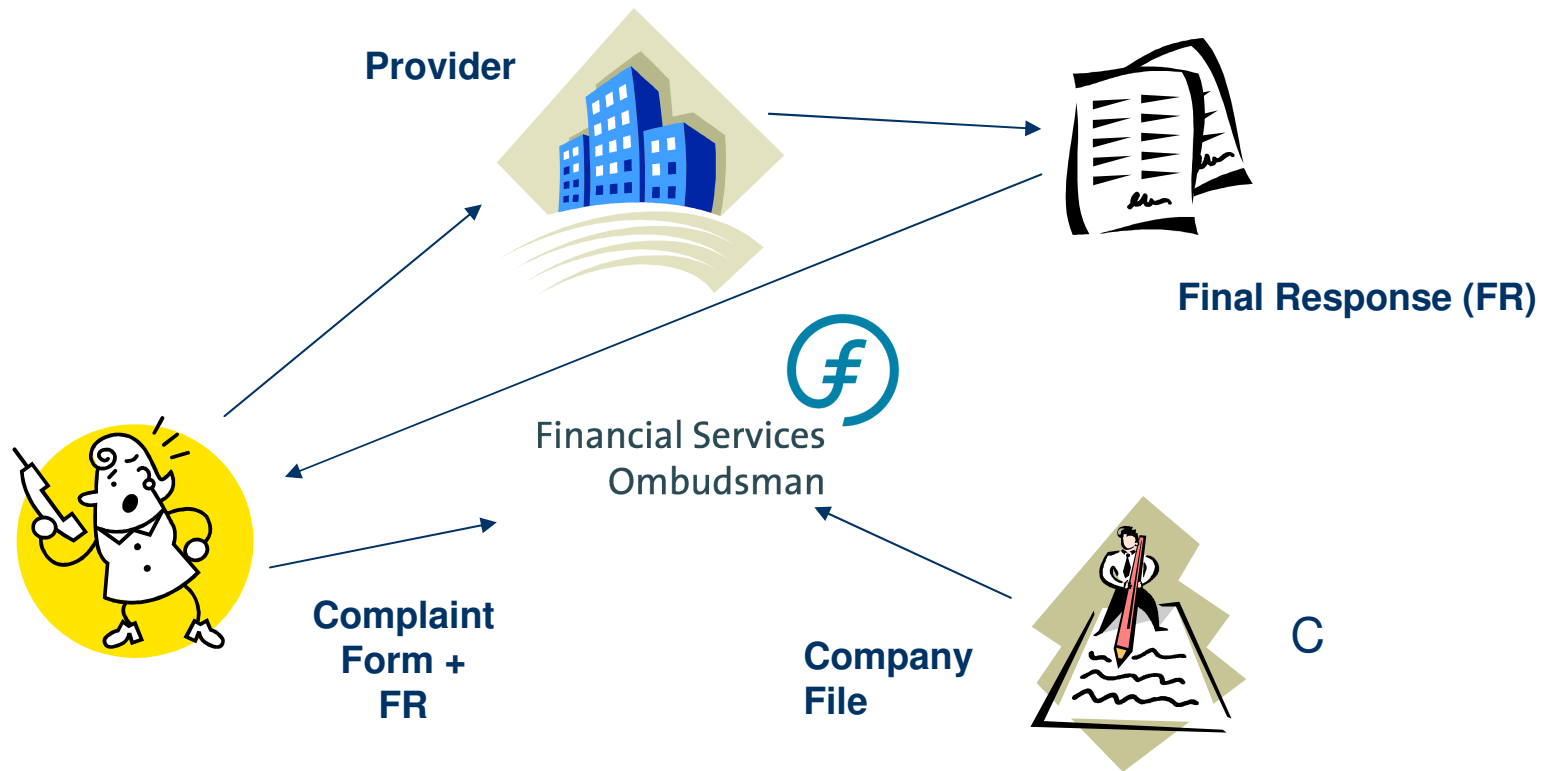
A consumer is not entitled to make a complaint if the conduct complained of:

- *Is or has been the subject of legal proceedings before a court or tribunal*
- *Occurred more than six years before the complaint is made*
- *Is within the jurisdiction of the Pensions Ombudsman*



Financial Services  
Ombudsman

## How does a consumer bring a complaint to the FSOB?





What forms of redress can the Ombudsman offer the consumer?

The Ombudsman can direct the service provider to do one or more of the following:

- Review or change the conduct complained of
- Provide reasons for that conduct
- Pay compensation up to a maximum of €250,000 or €26,000 annuity
- Take any other lawful action



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Ombudsman

## What if financial service providers refuse to cooperate?

The Ombudsman has extensive legal powers:

- To require the provision of information.
- To enter premises and demand the production of documents.
- To seek a Court Order in the event of non-compliance.
- Obstructing the Ombudsman is an offence liable to a fine of up to €2,000, imprisonment for three months, or both.





## Areas of Co-operation

### **MOU with Financial Regulator and Pensions Ombudsman**

- If a matter arises during investigation of complaint which becomes indicative of a persistent pattern of complaint, will inform the Financial Regulator for appropriate regulatory action.
- Co-operation with Pensions Ombudsman to avoid unnecessary overlap in the area of pensions.
- Memorandum of Understanding signed in March 2006 – enhanced protection of the consumer.



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Ombudsman

## COMPLAINTS – 30% increase in new complaints

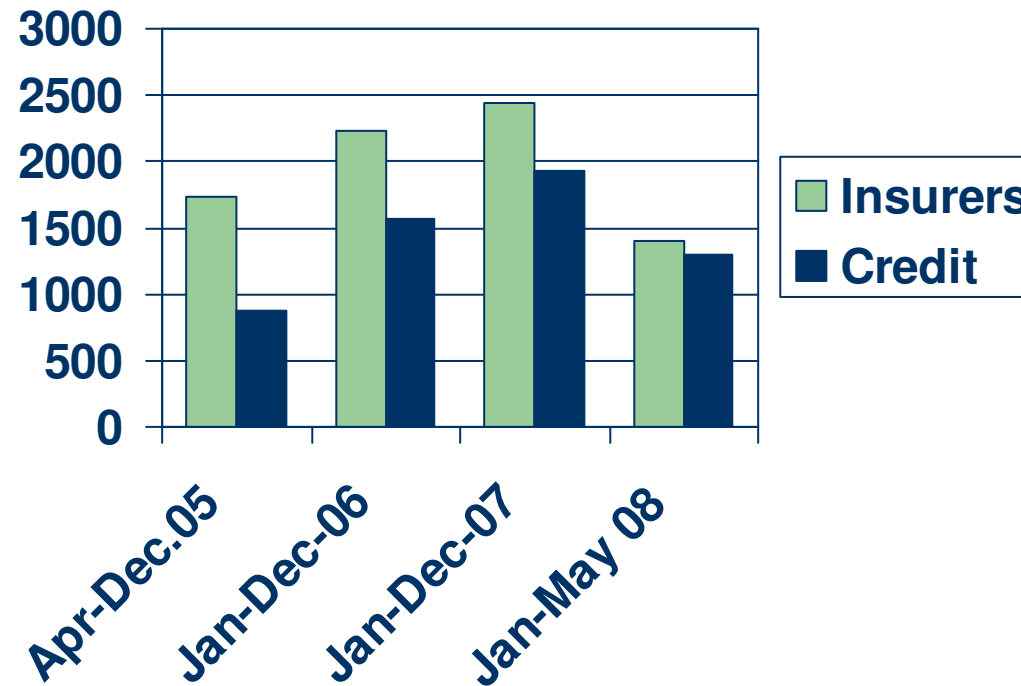
2710 new complaints in first six months of 2008:

- **1440** new insurance complaints
- **1270** new credit institution complaints

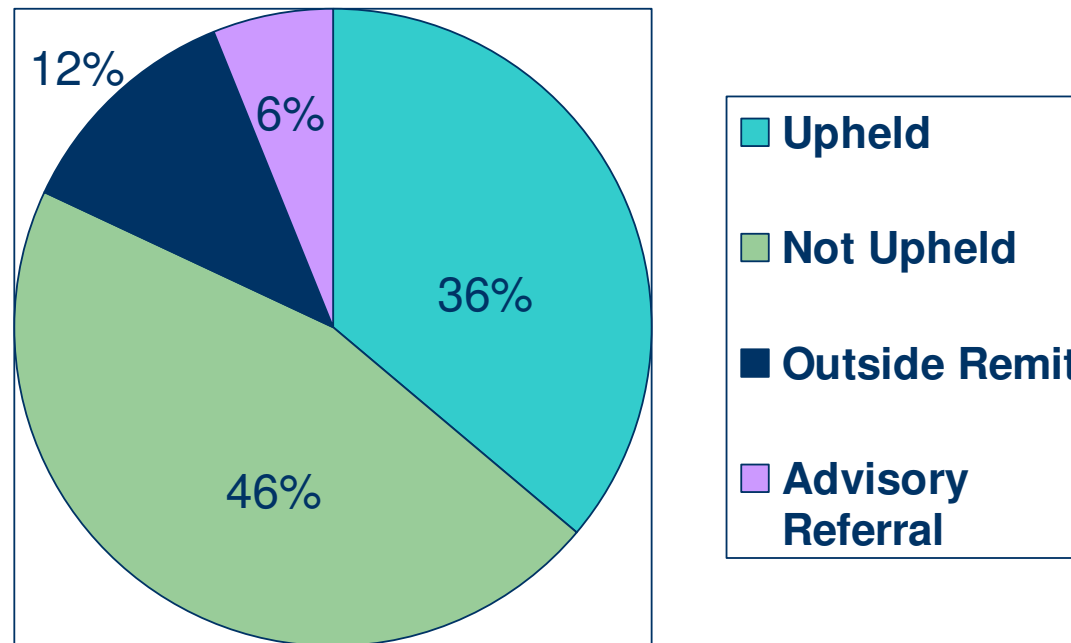


**30%** increase in new complaints on this period last year –  
**WHY?**

# Complaints received since April 2005



## Focus on 2007- Increase 15% on 2006



4534 complaints concluded:  
2363 following investigation by Ombudsman  
1671 following referral to Provider

## Insurance complaints received – areas of business

### Largest areas of complaint in insurance:

- Motor 482
- Travel 387
- Life Assurance (incl.PHI) 299
- Investment Policies 192



### Largest areas of complaint in credit institutions:

- Account transactions 588
- Mortgages 348
- Credit Card Disputes 279
- Lending 272



## Nature of complaints received - Insurance



# Case Studies



- Published six monthly
- Highlight the work that we do and the sort of issues that arise – complaints that we can and cannot look at.
- Useful source of info.
- Website
- Annual Report



# Travel Insurance Case



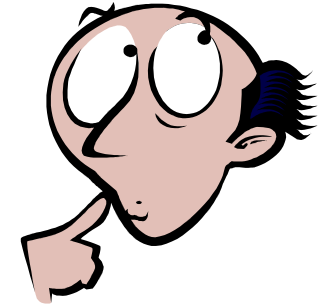
# Motor Insurance Case



# Life Assurance Case



## What the Ombudsman takes into consideration...



For example:

- Relevant policy terms and conditions - clear and unambiguous?
- Can complaint be proven or refuted by either party?
- What is the evidence?
- Telephone or other records - may demand higher level of proof from service providers.
- All reasonable steps taken to resolve matter before referral to Ombudsman?
- Has Consumer Protection Code been complied with?
- Has customer been treated fairly?
- Are there any other circs to be taken into account?



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## Importance of referrals back to FSP

In 2007, **1,671** complaints resolved after referral back to providers' internal complaints procedures.

- Simple, straightforward and accessible system.
- Staff awareness of how the process works.
- Prompt and appropriate response within agreed timeframes.
- Consistent approach - thorough and fair investigation
- Right to complain to the Ombudsman - *terms of business letter*.
- A 'final response' letter issued by senior management



## How FSP should view the Ombudsman

- Independent and impartial hearing
- Opportunity to rectify mistakes/correct errors
- Avoid expense and difficulties of litigation
- Learn from key issues – improve products and enhance service
- Free service to your customers
- Happy customers/good for business

## Our Mission Statement

*“To adjudicate on unresolved disputes between complainants and financial service providers in an independent and impartial manner thereby enhancing the financial services environment for all sectors”.*



Financial Services  
Ombudsman

Thank you for your attention...

## **Financial Services Ombudsman's Bureau, Ireland**

Telephone Number	00 353 1 6620899
Fax	00 353 1 6620890
Email	<a href="mailto:enquiries@financialombudsman.ie">enquiries@financialombudsman.ie</a>
Website	<a href="http://www.financialombudsman.ie">www.financialombudsman.ie</a>



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# FINANCIAL SERVICES COMPLIANCE & TRAINING



# The Practicalities of Dealing with Compliance



**Evelyn Hanrahan**  
BA HDE QFA FLIA

# Overview

1. General Principles & Provisions
2. Recent Correspondence from the Financial Regulator
3. How to identify and deal with Errors
4. The Inspection Process (In brief)
5. Some Case Studies
6. How do you know if your firm is compliant?

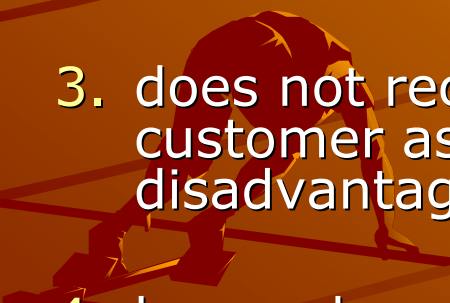
# 1. General Principles & Provisions



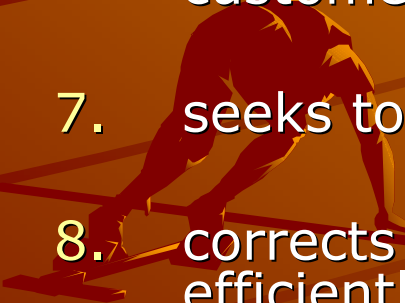
# General Principles

A Regulated Entity must ensure that in all its dealings with customers and within the context of its authorisation it:

1. acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market
2. acts with due skill, care and diligence in the best interests of its customers
3. does not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service
4. has and employs effectively the resources and procedures, systems and control checks that are necessary for compliance with 'The Code' (Consumer Protection Code)



# General Principles continued....

5. seeks from its customers information relevant to the product or service requested
  6. makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer
  7. seeks to avoid conflicts of interest
  8. corrects errors and handles complaints speedily, efficiently and fairly
  12. Complies with the letter and the spirit of The Code
- 

# Provisions

- ◆ Behind each General Principle there are a number of significant Provisions; providing more detailed guidance to you the Regulated Entity.

# Principles with a twist!

'Where uniformity of practice or behaviour is required rules will be required to supplement principles to ensure that the required outcomes are achieved in a business'\*

\*Mr Patrick Neary, CEO, Financial Regulator. 26<sup>th</sup> November 2007

## 2. Recent Correspondence from the Financial Regulator



# Recent Correspondence

- ✦ Correspondence applies equally to all Regulated Entities
- ✦ **March 2008:** Fees/Charges, Errors, Ancillary Products, Retention of Premium Reductions
- ✦ **June 2008:** Duty of Care, Need to provided clear and accurate information, Knowing the Customer, Suitability of Product recommended

# Principles & Provisions

- ✦ Firstly, reference is made to a General Principle:
- ✦ **General Principle 6:** makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer
- ✦ Secondly, The Provisions referenced, but not detailed in the correspondence provides additional guidance

## PROVISION 12. CHAPTER 2: INFORMATION TO THE CONSUMER

- ◆ A regulated entity must ensure that all information it provides to a consumer is clear and comprehensible, and that key items are brought to the attention of the consumer.

- ◆ The method of presentation must not **disguise, diminish or obscure** important information.

# Case Study No. 1 - Fees

Remember

General Principle 6 & Provision 12  
Chapter 2



# Case Study No 1: Fees

## THE CASE

- ◆ Mortgage Broker carries out considerable work on a client's behalf in the Finance arena
- ◆ Once it was clear this was not to be a commission based case the Broker wrote to the client confirming as per his Terms of Business he will have to charge a fee as he will not receive commission. The scope of the work and the fee payable was clearly set out
- ◆ Client e mailed Broker to proceed, with the work, no reference to the fees. Work concludes. Broker sends Invoice
- ◆ Client sends e mail saying "take me to court if you want, I won't be paying"

## THE RESPONSE

- The Broker attempted to resolve the matter amicably. With no option the Broker took legal action
- District Court case heard last summer
- **TWO KEY DOCUMENTS** identified by the Judge. Terms of Business & Fee Letter and the contents of same
- The Judge was swift and robust with his response in favour of the Broker, awarding the initial fee and costs
- The judge was scathing in his response to the Client - Why?

# **3. How to Identify and Deal with Errors.**



# General Principles

- **Principle 8** corrects errors and handles complaints speedily, efficiently and fairly



# PROVISION 45. CHAPTER 2

- ✦ Errors in a charge or price must be corrected: speedily, efficiently and fairly
- ✦ Where the regulated entity considers that there may have been a **material** charging or pricing error, without delay, must inform the Financial Regulator of its proposals for correcting any such error as may have occurred.

# Errors continued.....

and

- ✦ notify all affected consumers, both current and former, in a timely manner and in such form as may be agreed with the Financial Regulator, of any **material** charging or pricing error that impacted negatively on the cost of the service or the value of the product provided.

# How do you define a Material error?

- ✦ Material error is difficult to define so the 'but for' test is often applied in legal cases
- ✦ Materiality of a mistake/error becomes relevant when it is shown that 'but for' it one of the parties would have declined to contract.
- ✦ If the client had known there was a charge of €25 or €1,500 would they

# Summary - What is expected of you?

- ◆ You are expected to take immediate action to review existing processes and procedures to ensure they are in full compliance with 'The Code'
- ◆ Identify any weaknesses or deficiencies and rectify these immediately
- ◆ **General Principle 4** employ effectively the resources, procedures, systems and control checks that are necessary for compliance with 'The Code'

# 4. The Inspection Process (In Brief)



# Frequently Asked Questions

- + Sure, they aren't doing many audits, are they?
- + What will bring them to Audit our Firm?
  - ✓ **Routine Inspections**
  - ✓ **Themed Inspections: Premium handling/Fee disclosure to clients/Anti Money Laundering/Consumer compliant (s) of serious magnitude**
- + I won't get closed down will I?
  - ✓ **You may! You may also be issued with a fine and public sanction**
- + They can't just walk in, can they?
  - ✓ **Yes, more Mystery Shopping planned for 2008**
- + I am an employee, can I be still be interviewed or held responsible?
  - ✓ **Yes – prohibited from future career in Financial Services**

# Protocol on Regulatory Inspections

- ◆ Protocol negotiated on your behalf
- ◆ Document on [www.financialregulator.ie](http://www.financialregulator.ie)
- ◆ 15 Days Notice: it is my opinion that this has worked positively for all concerned
- ◆ You can request an earlier visit and the Financial Regulator may request a earlier visit with your agreement

# Continuation .....

## When the Inspection is not routine!

- ◆ Notice will not be 15 days and not themed
  - ◆ The Regulator will often know more than you do! How/Why?
  - ◆ A very serious matter impacting negatively on the consumer
  - ◆ You may need to consider seeking legal advice
- Don't let a visit be non routine
  - Have a co-operative attitude
  - Take action to resolve all issues raised immediately

# Inspection Findings: Investment Firms

- ◆ Non Compliance with the Regulatory Requirements
  - ✓ Client files not evidencing compliance: knowing the client information, notes of discussions, verbal assurances etc
  - ✓ Evidence of Compliance deteriorating
  - ✓ Suitability Statements not documenting an understanding of the client and the match to the recommended product (s)
  - ✓ Unauthorised individuals paid for referrals
  - ✓ Absence of structure to monitor business process

# Inspection Findings: Mortgage Firms

- ◆ Non Compliance with the Regulatory Requirements
  - ✓ Little or no evidence of mortgage research
  - ✓ Fees charged outside the scope of the Terms of Business with no evidence of fee letter to clients
  - ✓ Evidence of Fraud; forged documents
  - ✓ Inadequate compliance with Anti Money Laundering obligations
  - ✓ Client Data shared outside of remit (without clients permission)

# Inspection findings: General Firms

- ◆ Non Compliance with the Regulatory Requirements
  - ✓ Inadequate compliance with the requirement to disclose fees/charges in a manner that informs the customer
  - ✓ Internal controls not aligned to business operations: staff handling client money not monitored
  - ✓ Ancillary products not clearly identified
  - ✓ Rebate premiums: non compliance with the timing of issue & deduction of fees

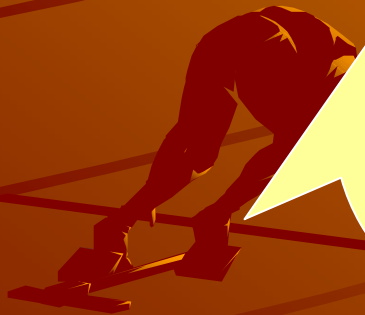
# Client File Information Trail

**1. Record Information  
'Know your Client'**

**2. Evidence  
your Product  
Research on File**

**3. Summarise  
the 'story'  
Suitability Statement**

**THE WORST OF INK SURVIVES THE BEST  
OF MEMORIES**



# The Importance of Process & Procedure

**Remember General Principle 4** has and employs effectively the resources, procedures, systems and control checks that are necessary for compliance with 'The Code'

- Your firms Procedures Manual will demonstrate your interpretation and application of the Consumer Protection Code in your business
- These documented procedures must be an accurate reflection of your firms business methodologies and the day to day practises that operate in your firm
- Your firms Procedures Manual doubles as a Training Manual for new members of staff (Minimum Competency Requirement)

# Case Study No. 2: When Compliance matters get complicated!



# Case Study No 2

## THE CASE

- ✦ Firm's Accountant identified a breach of the IIA in relation to a transaction through the Client Premium Account. This was remarked upon in his sign off on the firms accounts.
- ✦ Regulator corresponded with the firm on the matter
- ✦ Regulator arrived in the firm for a full inspection
- ✦ Regulator letter raised queries on client files following inspection
- ✦ After due process the firm was facing a fine & sanction

## THE RESPONSE

- Accompanying correspondence did not address action taken by the firm to ensure this would not occur again
- Firm did not responded in a timely or informative fashion
- Regulator identified further breaches of IIA during the audit
- Responses slow and not very robust
- It should never have gotten to this stage!

# Resolution

- ◆ Following lengthy negotiations (2005 – 2007) with the Financial Regulator a Supervisory Warning was issued to the firm



# Supervisory Warning

◆ Supervisory Warning: Where non compliance with The Code is at a critical level but does not warrant a Fine or Sanction the Regulator may appoint an Approved Third Party to supervise your firm.

◆ Approved Third Party: An independent third party agreeable to the Regulator to supervise the firm, reporting to the regulator at agreed intervals.

# The Impact of this Process on the Firm

- ◆ Stress levels could not have been any higher
- ◆ Drive & Focus taken from business development
- ◆ Staff resources diverted to meeting regulator requirements
- ◆ **RESULT = Massive loss of productive new business time**

# The Financial Impact of Regulation

**The Cost of Regulation is HIGH**

**BUT**

**The Cost of Poor Regulation is  
ENORMOUS**



# What is good Compliance?

➤ Your firm's Compliance System should be:

✓ Customer Focused

✓ Reputation Conscious

✓ Appropriate, Robust  
and

✓ Working Effectively



# In Summary

1. General Principles of our Regulations
2. Recent Correspondence from the Financial Regulator
3. How to identify and deal with errors (as they may occur)
4. The Inspection Process (In brief)
5. Some Case Studies
- 6. How do you know if your firm is compliant?**

## 6. In Conclusion

How do you know if your firm is compliant?



It depends on how you answer this question .....

*Is this is the right way to do this for the business and for our customers?*

OR

*Is this is what is required to stay out of trouble with the regulator?*





FINANCIAL SERVICES  
COMPLIANCE & TRAINING

**THANK YOU**

from

**Evelyn Hanrahan**  
**evelyn@hanrahan.biz**  
**061 - 340506**  
**086 - 6067056**





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# Treating Your Insurance Customer Fairly

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