



Public & Regulatory Law Update

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Financial Services Ombudsman: possible changes

In a speech on its role on 26 May 2010, the Financial Services Ombudsman Mr Bill Prasifka announced possible changes to its decision making processes. The Ombudsman is going to issue public consultation guidance notes on its decision making approaches and engage with complainants and consumer groups. The Ombudsman also wants the express statutory power to name firms against whom an adverse ruling has been made. The information he wants disclosed includes the:

- Name of the firm;
- Name of the product/service at issue;
- Nature of the complaint upheld (i.e. mis-selling/breach of contract etc.);
- Amount/type of award/direction.

Mr Prasifka suggested that he would like to see a separate disclosure requirement being introduced when a firm does not comply with a finding within the allotted time. He also indicated that he wants to further explain and contextualise the raw information that is published about named firms in tabular form. For example, the total number of adverse findings against a financial service provider should be put in the context of total amount of business sold (relative market share).

Consumer credit agreement changes

The EU Consumer Credit Directive 2008/48/EC (the Directive) harmonises the regulation of consumer credit ranging from €200 to €75,000 in the EU and increases consumer protection. It was implemented in Ireland by the EC Consumer Credit Agreement Regulations 2010 (the "Regulations") which came into effect on 11 June 2010. It does not apply to mortgages.

The main changes made by the Regulations are as follows:

- The standardisation of pre-contractual information through the use of the Standard European Consumer Credit Information form (SECCI) and a list of the information that must to be contained in a credit agreement.
- The annual percentage rate of charge (APR) will be more transparent and must include all known costs and assumptions used in calculation.
- It enhances consumer protection through more adequate explanations, creditworthiness checks and credit history checks.
- In the case of credit intermediaries, all fees and ties with the credit provider must be provided for in the advertising and in the documentation provided to the consumer. The credit intermediary's fees must also be included in the APR quoted to the consumer.
- The Directive provides that compensation for early repayment of fixed rate loans may not exceed 1% (or 0.5% if less than a year remains on the fixed rate) of the amount of the credit repaid early. The creation of a threshold of €10,000 under which early repayment fees will not be charged in any one year provides enhanced benefits to consumers to repay early when the opportunity arises.
- A 14 day "right of withdrawal" applies to all credit agreements subject to the full provisions of the Directive. This "right of withdrawal" cannot be waived.



Community rated health insurance market strategy

The principle behind community rating is that everyone pays the same premium for health insurance regardless of age, gender or health profile. Risk equalisation was the method adopted by the State to underpin the system of community rating which applies to the provision of private health insurance. The purpose was to equitably neutralise differences in health insurers' costs that arise due to variations in the health status of their members. Depending on the extent of the variation, risk equalisation may result in cash transfers from insurers with lower risk members to insurers with higher risk members. However on 16 July 2008 the Supreme Court ruled that the Government's risk equalisation scheme for health insurance should be set aside (*BUPA Ireland Limited and BUPA Insurance Limited v The Health Insurance Authority, Minister for Health and Children, Ireland and the Attorney General and the Voluntary Health Insurance Board [2008] IESC 42*) (for more detail see the *Public and Regulatory Law Update, October 2008*).

On 27 May 2010 the Minister for Health and Children, Mary Harney gave further details about the Government's strategic actions to ensure the effective operation of community rating in the health insurance market to ensure that older and sicker customers are supported by younger and healthier customers. The key steps that the Government has indicated that it intends to take are:

1. To implement a new, robust, risk equalisation scheme to support the core policy of community rating. The Health Insurance Authority (HIA) will issue a consultation document to the market shortly and the goal is to publish legislation in 2011 with enactment and implementation by the start of 2013.
2. The continuation of the present interim tax relief/levy system and a new transitional arrangement from 2012 that will approximate as closely as possible to a full risk equalisation scheme (for more detail see the *Public and Regulatory Law Update, December 2008 and March 2010*). The HIA will advise on the level of tax relief/levy for 2011 under the present interim system.
3. To make a substantial capital investment in VHI so that it can meet the reserves requirements set by EU law and by the Financial Regulator and to arrange for the subsequent sale of VHI.
4. In the context of disposal, to assess which actions may be possible to achieve a more even balance of older customers between the health insurance companies in the market.
5. To engage with the European Commission on this comprehensive strategy for the health insurance market, in particular, on the new risk equalisation scheme (for which approval will be needed) and the capitalisation of the VHI in the context of authorisation and subsequent disposal, for which state aid approval will be needed.
6. The preparation of a new set of minimum benefits regulations for health insurance, so as to bring primary care and other services into the set of benefits that insurers must offer.
7. The implementation of other measures to enhance competition and choice in the insurance market such as the VHI opening travel insurance benefits to non-members.
8. The implementation of lifetime community rating, so that there is an incentive for people to take out health insurance earlier in their adult life.



Preliminary banking reports published

In January 2010 the Government commissioned two separate reports – one from the Governor of the Central Bank Patrick Honohan on the Irish Banking Crisis Regulatory and Financial Stability Policy 2003-2008 and the second from independent experts Klaus Regling and Max Watson on the Sources of Ireland's Banking Crisis (*for more background see the Public and Regulatory Law Update, March 2010*). On 9 June 2010 the two preliminary reports were published.

Irish Banking Crisis Regulatory and Financial Stability Policy report (the Honohan Report). This report looks at performance of the functions of the Central Bank and the Financial Regulator over the period from the establishment of the Financial Regulator in 2003 to the end of September 2008. It criticises the Financial Regulator, the Central Bank, the senior management of the banks and Government budgetary and fiscal policy for causing the banking crisis. It is particularly critical of the government's procyclical fiscal policy and budgetary measures aimed at boosting the construction sector.

Sources of Ireland's Banking Crisis report. The report states that domestic "home made" factors rather than factors were to blame for the crisis. It finds that bank governance and risk management were weak and this contributed to the crisis through several channels. Credit risk controls failed to prevent severe concentrations in lending on property including notably on commercial property as well as high exposures to individual borrowers and a serious overdependence on wholesale funding. It appears that internal procedures were overridden, sometimes systematically.

The Government has decided to refer the reports to the Joint Oireachtas Committee on Finance and the Public Service for its views on issues that should be covered by the terms of reference of the follow up Commission of Investigation into the banking crisis.

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