**LAHIFFE & ASSOCIATES  
 Public Affairs & Political Communications** 

**OIREACHTAS REPORT FOR APTI**

**January 15 - 17, 2018**

**PENSION ISSUES**

**Dail**

Tuesday, January 15

**Written Questions**

**Investment Fund Regulation**

***Deputy Joan Burton****asked the****Minister for Finance****his views on closet indexing which is subject to investigation of 2,000 Irish investment funds in view of the fact that the European Securities Market Authority has indicated between 5% and 15% of UCITs could be closet indexers.*

#### [Minister for Finance](https://www.oireachtas.ie/en/members/member/Paschal-Donohoe.S.2007-07-23/): CBI is the competent authority for authorising and supervising UCITS funds in Ireland. In Q4 2018, CBI began key supervisory work to review all Irish domiciled UCITS funds that report to be actively managed to determine if they are potentially index tracking. ESMA has defined closet indexing as the situation "whereby asset managers claim, according to their fund rules and investor information documentation, to manage their funds in an active manner while the funds are, in fact, staying very close to a benchmark and therefore implementing an investment strategy which requires less input from the investment manager and charge management fees in line with those of funds that are considered to be actively managed."

#### CBIs investigation of 2,000 Irish investment funds is to ensure that investors are not misled or misinformed about the investment objectives, policies and charges set out in fund documentation. The supervisory work on potential closet indexing takes into account the work and methodology developed by ESMA, which CBI contributed to, and the findings in its study. It is important that any issues identified are dealt with appropriately in order to ensure that investors are treated fairly. To that end, CBI will be following-up with any relevant funds identified as potential ‘closet indexing’ funds, up to and including the use of the full suite of supervisory powers depending on the nature of the findings.

**Investor Compensation Scheme**

***Deputy Michael McGrath****asked the****Minister for Finance****if CBI makes it compulsory as part of its licensing requirements for investment firms and pension providers to be part of the investor compensation scheme; the number of investment firms or pension providers that are operating here which are not part of the scheme; if they are part of a compensation scheme in other jurisdictions; if auto enrolment were to be implemented under the Strawman proposal, if these pensions would be covered by the investor compensation scheme if one of the operators of the scheme fails; if not, the compensation scheme which will be available for customers in such an instance in which a pension provider fails; the types of pensions covered by the investor compensation scheme; if it is just PRSAs and ARFs; the compensation scheme available if a pension provider fails and the pension fund is an occupational pension fund; and if he will make a statement on the matter.*

#### [Minister for Finance](https://www.oireachtas.ie/en/members/member/Paschal-Donohoe.S.2007-07-23/): The Investor Compensation Company DAC (ICCL) is an independent body set up in accordance with the Investor Compensation Act, 1998 (the Act). The ICCL is Ireland’s statutory ‘fund of last resort’ for customers of authorised investment firms. Membership of the investor compensation scheme is mandatory for the following categories of authorised investment firms as defined in the Act:

- MiFID investment firms;

- Investment business firms authorised in accordance with the Investment Intermediaries Act, 1995;

- Credit Institutions licenced in accordance with Section 9 of the Central Bank Act of 1971;

- Insurance intermediaries;

- UCITS Management Company authorised to provide Individual Portfolio Management services;

- AIF Management Company authorised to provide Individual Portfolio Management services.

There are currently 3,410 authorised investment firms that are in scope for the purposes of the Act.

The Act prescribes that the ICCL shall pay compensation to clients of the aforementioned categories of investment firms (“compensation obligation”). The compensation obligation of the ICCL is restricted to “eligible clients”, in essence clients, that are not defined in the Act as excluded investors, such as professional and institutional investors, including among others a pension or retirement fund.

In respect of eligible clients’ investments, the compensation obligation relates to eligible client money held, and, eligible client investment instruments held, administered and managed in connection with the provision of certain investment services, that the failed investment firm is unable to return to the eligible investor in accordance with legal and contractual conditions applicable. The compensation obligation is limited to 90% of the eligible investors’ net loss, subject to a maximum payment of €20,000 per eligible investor.

The investment instruments that are eligible for compensation under the Act are set out in Section 2 of the Investment Intermediaries Act, 1995 (IIA) and Schedule 1 Part 3 of the European Union (Markets in Financial Instruments) Regulations 2017 (MiFID). It is apparent from the investment instruments referred to in Section 2 of the IIA that PRSAs are listed and therefore in-scope, subject to all other elements of the compensation obligation being satisfied in accordance with the Act. An ARF is not a defined investment instrument within the scope of the Act and the compensation obligation, if any, would need to be considered, on a case-by-case basis, by an Administrator appointed in accordance with the provisions of the Act to validate claims received from clients of the relevant failed firm.

Occupational pension policy is a matter for the Department of Employment Affairs and Social Protection (DEASP) and is underpinned by the Pensions Act 1990 which provides certain protections to members of an occupational pension scheme in the event of the insolvency of their employer. SpecificallyS48A provides a liability in law for the Minister for Finance to make payments of certain certified amounts to the trustees of an occupational pension scheme where the resources of the scheme are not sufficient to discharge liabilities in relation to certain benefits. In order to be eligible for such a payment, there must be a double insolvency of both the employer and the pension scheme.

Section 48A operates in the event of the wind up of a pension scheme, where both the employer and the scheme are insolvent at the date of wind up, and the scheme has insufficient funds to meet the liabilities of a scheme in respect of benefits referred to in S48 (1AB) paragraphs (b), (c), and (d), the Minister for Finance will provide monies from the Exchequer to fund the shortfall - the shortfall being 50% of the benefits, and where the annual amount is €12,000 or less, 100% of the benefits.

Regarding the proposed implementation of an Auto-Enrolment scheme, the Minister for Employment Affairs and Social Protection has primary responsibility in this area. However, the detailed evidence building and consultation required to deliver an Automatic Enrolment system is now being undertaken over an initial project planning phase. This will include an investigation of the potential organisational models for delivery and the likely costs involved. Until this work is complete and a preferred model chosen, it would not be possible to confirm the specific operational structure and design characteristics.

**Individual Investment Data**

***Deputy Michael McGrath****asked the****Minister for Finance****the number of individual investors*

*here that would be deemed to be eligible investors under the Investor Compensation Act 1998; if CBI publishes such data; and if he will make a statement on the matter.*

#### [Minister for Finance](https://www.oireachtas.ie/en/members/member/Paschal-Donohoe.S.2007-07-23/): The Investor Compensation Company DAC (ICCL) is an independent body established in accordance with the Investor Compensation Act 1998 and is Ireland’s statutory ‘fund of last resort’ for the clients of authorised investment firms. The Act prescribes that the ICCL shall pay compensation to clients of specified categories of investment firms where a firm is unable to meet its financial obligations to those clients. The compensation obligation of the ICCL is restricted to “eligible clients”, who are clients which don't fall under the definition of professional or institutional investors. There are currently 3,410 authorised investment firms that are in scope for the purposes of the Act.

In respect of eligible clients’ investments, the compensation obligation relates to eligible client money held, and eligible client investment instruments held, administered and managed in connection with the provision of certain investment services, that the failed investment firm is unable to return to the eligible investor in accordance with legal and contractual conditions applicable. The compensation obligation is limited to 90% of the eligible investors’ net loss, subject to a maximum compensation payment of €20,000 per eligible investor.

Neither the ICCL nor CBI collect information on the number of eligible investors under the Act.

**Public Service Pensions**

***Deputy Peter Burke****asked the Minister for Public Expenditure and Reform his plans to increase the public service pension payment a retired public sector worker receives in line with the additional years they can now work up to 70 years of age; and if he will make a statement on the matter.*

[**Minister for Public Expenditure and Reform**](https://www.oireachtas.ie/en/members/member/Paschal-Donohoe.S.2007-07-23/)**:** The Public Service Superannuation (Age of Retirement) Act 2018 came into effect on 26 December 2018. The Act provides for an increase in the compulsory retirement age of public servants recruited prior to 1 April 2004, from 65 to 70, other than a member of the uniformed pension fast accrual group, such as Gardai, Prison Officers, Fire Fighters and members of the Permanent Defence Force who, for operational reasons are required to retire early. Now that legislation has come into effect, no public servant, other than a member of the uniformed pension fast accrual group mentioned above, has a compulsory retirement age of less than 70.

Under the terms of the Public Service Superannuation (Age of Retirement) Act 2018, affected public servants may remain in work beyond 65 and up to 70 on current terms and conditions, including pay and pension. Public servants who choose to remain at work after 65 will continue to be a member of the relevant pension scheme and they will accrue pension benefits and pay pension contributions in the normal way, in line with scheme rules. Pension will continue to accrue as normal past 65, subject to the statutory maximum of 40 years’ reckonable service, and pension will become payable on the date of retirement. Accordingly, the further adjustment of existing pension payment terms for public servants in consequence of the enactment Public Service Superannuation (Age of Retirement) Act 2018 does not arise.

**Public Sector Retirement**

***Deputy Fiona O'Loughlin****asked the Minister for Public Expenditure and Reform the situation regarding public service employees who are on or about to participate in the final years of age under the Public Service Superannuation (Age of Retirement) Act 2018; if a person (details supplied) can be considered for the extended retirement age in the Civil Service; the number of persons in the Civil Service availing of the one year extension before retirement; and if he will make a statement on the matter.*

[**Minister for Public Expenditure and Reform**](https://www.oireachtas.ie/en/members/member/Paschal-Donohoe.S.2007-07-23/)**:** Prior to the enactment of the Public Service Superannuation (Age of Retirement) Act 2018 on 26 December 2018, the compulsory retirement age of 65 continued to apply and pre-2004 public servants reaching that age were required to retire. In recognition of the fact that there would be an unavoidable delay between the Government Decision to amend the compulsory retirement age and the enactment of the legislation necessary, I introduced temporary arrangements for those facing compulsory retirement in the interim. These enabled public servants who reached 65 to retire as required but to be rehired for 1 year until they reach eligibility for the State Pension at 66. Enactment of legislation has no effect on those public servants who are availing of the interim arrangements. The terms of their fixed term contracts will continue to apply and they will cease working at 66 as previously provided. In the Civil Service, my understanding is that there are approximately 150 people who have availed of this arrangement.

The purpose of the interim arrangements was to offer a limited, temporary solution to individuals who reached 65 before the commencement of the necessary legislation. It was clearly indicated that availing of the arrangements did not confer any rights to any new arrangement that might be provided for in future legislation and I understand that the arrangements were welcomed in that context. If the interim arrangements had not existed, individuals in this position would have had to cease working at 65. Public servants who are currently availing of the interim arrangements have retired at 65, received lump sums and are receiving pension (subject to abatement). They are thus in a very different position to public servants who had not yet reached 65 before the enactment of the legislation.

The necessity for people reaching 65 to enter the interim arrangements ceased with effect from 26 December 2018. Any relevant public servant reaching 65 on or after that date has a new compulsory retirement age of 70 and can choose to remain at work up to that age, on current terms and conditions.

**DB Provisions**

***Deputy Mary Lou McDonald****asked the Minister for Employment Affairs and Social Protection if the AG is satisfied with the DB provisions in the Social Welfare, Pensions and Civil Registration Bill 2017; and if the Bill can now proceed to Committee Stage.*

***Deputy John Brady****asked the Minister for Employment Affairs and Social Protection the stage plans are at to move the Social Welfare, Pensions and Civil Registration Bill 2017 to Committee Stage; the timeframe for same; and if she will make a statement on the matter.*

[**Minister for Employment Affairs and Social Protection**](https://www.oireachtas.ie/en/members/member/Regina-Doherty.D.2011-03-09/)**:** The General Scheme of the Social Welfare and Pensions Bill 2017 (now the Social Welfare, Pensions and Civil Registration Bill 2017) was published in May 2017 and contained a number of key measures relating to DB schemes. It is intended that these measures will act to support existing provisions in the Pensions Act by providing for further protection for scheme members’ benefits and enhancing employer responsibilities for their schemes.

In July 2018, Government approval was obtained to draft additional provisions to be included in the Bill on Committee Stage including provisions relating to DB schemes. In developing these provisions, it is essential to be cognisant of the current pension landscape in Ireland so that a balanced, proportionate approach is developed and that unintended negative consequences do not arise. Under existing pension law, there is no legislative obligation on the employer to make contributions to a scheme. However, the provisions of this Bill will introduce a new regime into the Pensions Act 1990 which, amongst other things, will ensure that an employer cannot “walk away” at short notice from the pension scheme it is supporting by providing for a 12-month notification period, and will enable the Pensions Authority to make a funding obligation direction specifying payments to be made by a sponsoring employer to the pension scheme where no agreement is reached, within a specified time period, to resolve a funding deficit.

The DB provisions are very technical and involve complex policy issues. In order to achieve a resilient solution, it has been necessary to consult in detail with other Government Departments and obtain numerous legal advices from the Office of the AG on various aspects of the provisions. When these matters have been resolved and amendments approved by Government, an early date for Committee Stage will be requested.

Wednesday, January 16

No relevant business

Thursday, January 17

**Written Questions**

**Investment / Life Regulation**

***Deputy Michael McGrath****asked the****Minister for Finance****if greater resources will be provided to CBI, and specifically the client asset specialist team, for the purpose of regulating appropriate investment firms or life companies in view of the expected rise in the use of private pensions by workers in the coming years; the staffing levels of the client asset specialist team of the Central Bank and if he will make a statement on the matter.*

#### [Minister for Finance](https://www.oireachtas.ie/en/members/member/Paschal-Donohoe.S.2007-07-23/): The Client Asset Specialist Team (CAST) has cross-sectoral ownership within CBI for client asset and investor money risk. The primary role is to supervise and inspect client asset and investor money arrangements, and monitor the risks to the safekeeping of client assets and investor money in investment firms and fund service providers. CAST had 8 staff at end December 2018 and this is expected to increase to 10 by the end of March 2019. The protection of client assets remains a key priority of CBI, and the ongoing resourcing of all prudential supervisory activities, including client assets, is reviewed regularly to ensure agreed supervisory strategies and outcomes can be met.

**Pension Fund Values**

***Deputy Michael McGrath****asked the Minister for Finance the average monetary value of a pension fund accumulated by workers using personal retirement savings accounts, approved retirement funds or an occupational pension fund; if the maximum limit under the investor compensation scheme is sufficient to cover these monetary values in the event of a failed investment firm or broker; and if he will make a statement on the matter.*

[**Minister for Finance**](https://www.oireachtas.ie/en/members/member/Paschal-Donohoe.S.2007-07-23/)**:** The Pensions Authority (PA) advised that at the end of Q3 2018, the value of assets held in PRSA accounts stands at circa €6.6bn. The number established at that time was 275,739 resulting in a mean average value of PRSAs of circa €24,000. Not all of the established PRSAs are current active contacts. Therefore, the average value of assets held within active PRSA accounts would likely increase if such accounts were excluded.

ARFs are not pension funds, *per se*. They are investment options into which the proceeds of certain pension arrangements can be invested on retirement. Based on a survey of QFMs, which Revenue conducted during 2017 and 2018, the mean average value of ARFs was almost €187,000 and the mean average value of AMRFs managed by those fund managers was almost €58,000. I stress that these figures are from a survey rather than drawn from tax returns. I should also point out that some individuals may hold more than one ARF.

Regarding the average value of occupational pension funds, the most accurate approximation can be made from examining annual scheme information data, based on data from 2015 Annual Scheme Information (ASI) returns, which show a total value of assets held in occupational pension schemes of circa €95.4bn and 1,267,787 scheme members.

Coverage of the Investor Compensation Scheme (ICS) is set out in the Investor Compensation Act 1998 (the Act). Investment instruments which are eligible for compensation under the Act are set out in Section 2 of the Investment Intermediaries Act, 1995 (IIA) and Schedule 1 Part 3 of the European Union (Markets in Financial Instruments) Regulations 2017 (MiFID). It is apparent from the investment instruments referred to in Section 2 of the IIA that PRSAs are listed and therefore in-scope, subject to all other elements of the compensation obligations being satisfied in accordance with the Act.

An ARF is not a defined investment instrument within the scope of the Act. Therefore, the compensation obligation, if any, would need to be considered, on a case-by-case basis, by an Administrator appointed in accordance with the provisions of the Act to validate any claims received from clients of the relevant failed firm. A pension or retirement fund is defined as an "excluded investor" for the purposes of the Act and is therefore outside the scope of ICS coverage.

The ICCL does not collect product specific data from all 3,410 member firms in respect of the individual investors with whom those firms provide investment services, and that would be deemed to be eligible investors under the Act as the ICCL.

In respect of eligible clients’ investments, the compensation obligation of the ICS relates to eligible client money held, and, eligible client investment instruments held, administered and managed in connection with the provision of certain investment services, that the failed investment firm is unable to return to the eligible investor in accordance with legal and contractual conditions applicable. The compensation obligation is limited to 90% of the eligible investors’ net loss, subject to a maximum compensatable payment of €20,000 per eligible investor. Due to the introduction in January 2018 of the new requirements for investment firms under MiFID and also to the experience of ICCL in dealing with compensation claims over a number of years, at this point in time it is considered that the maximum payment threshold applicable in Ireland is adequate.

Regarding the proposed implementation of an automatic enrolment pension system, detailed evidence building and consultation processes required to deliver a system is now being undertaken within an initial project planning phase. This will involve an investigation of the potential organisational models for delivery and the likely costs involved. It will also include an assessment of whether a trust-based model, under a Master Trust regime, or a contract-based model will be pursued and whether additional levels of regulation will be required. Until this work is completed and a preferred model chosen, it is not possible to confirm the specific operational structure and design characteristics of the automatic enrolment system.

**Seanad**

Tuesday, January 15

Adjourned

Wednesday, January 16

Adjourned

Thursday, January 17

Adjourned

**Oireachtas Committee**

No relevant business

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**LAHIFFE & ASSOCIATES  
Public Affairs & Political Communications**

**+353 87 256 2166**

www.linkedin.com/in/franklahiffe