

Group Briefing September 2017

4 Important Changes to the Financial Services Complaints Process

Ireland Law Firm of the Year 2017
Chambers Europe Awards

Best Firm in Ireland 2016 & 2017
Europe Women in Business Law Awards

Best National Firm for Women in Business Law 2016 & 2017
Europe Women in Business Law Awards

Best National Firm Mentoring Programme 2016 & 2017
Europe Women in Business Law Awards

Ireland Law Firm of the Year 2016
International Financial Law Review (IFLR)
Europe Awards

Ireland Law Firm of the Year 2016
Who's Who Legal

Americas International Tax Firm of the Year 2016
International Tax Review

Advised on the 'Deal of the Decade' – Merger of Lafarge and Holcim
Mergermarket European M&A Awards

Important changes to the Financial Services Ombudsman (FSO) complaints process have recently come into effect.

The changes have been introduced by the Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017 (the “**Central Bank Amendment Act**”) which commenced on 25 July 2017. The Central Bank Amendment Act was brought forward by a non-Government TD and, unusually, it mirrors the provisions of a separate new Government sponsored Act - the Financial Services and Pension Ombudsman Act 2017 (the “**Financial Services Act**”) - which was signed on 26 July 2017 but has yet to be commenced. Once the Financial Services Act is commenced, it will overtake and replace the Central Bank Amendment Act. Importantly, however, it appears that efforts were made to harmonise the legislation, meaning that the changes introduced under the Central Bank Amendment Act will remain even when it has been replaced.

1. New Category of “Long-term Financial Services”

A new category of financial services has been introduced, “long-term financial services”, defined as financial services that:

- (a) last for at least 5 years and 1 month;
- or
- (b) are life assurance to which the EC (Life Assurance) Framework Regulations 1994 apply.

The definition of “long-term financial services” is common in both new Acts. It differs from the definition that had originally appeared in the Financial Services and Pension Ombudsman Bill (which specified that long-term financial services could not be subject to unilateral cancellation and / or annual review) which was amended to make the definitions in both Acts consistent.

The most obvious financial service to be captured by this new category is, of course, mortgages.

2. New Time Limits for Making Complaints

New time limits have been introduced for making complaints about long-term financial services to the FSO. Complaints can be made:

- (a) 6 years from the date of the conduct concerned;
- (b) 3 years from the earlier of the date on which the person making the complaint became aware, or ought reasonably to have become aware, of the conduct concerned; or
- (c) such longer period as the FSO may allow where it appears that there are reasonable grounds for requiring a longer period and that it would be just and equitable, in all the circumstances, to extend the period.

Significantly, the extension to the time limits has retrospective effective meaning that consumers can benefit from the longer limits even if the conduct complained of occurred before the enactment of the new legislation. There are some constraints on the limitation periods, however. The service the subject of the complaint must not have expired or otherwise been terminated more than 6 years before the date of the complaint and the conduct

complained of must have occurred during or after 2002. However, these constraints do not appear to curtail the discretion of the FSO to extend the period for making a complaint (although, presumably, are factors that could be taken into account by the FSO in the exercise of that discretion).

3. Mediation

The Central Bank Amendment Act includes provisions to encourage the use of mediation to resolve complaints (which are mirrored in the Financial Services Act). The FSO is obliged to resolve a complaint by mediation “as far as possible” however, the act makes clear that participation in mediation is voluntary and a party may withdraw at any time.

This change is reflective of the increased use of mediation and alternative dispute resolution mechanisms generally and will require banks and other financial institutions to adapt to deal with this new step in the complaints process.

4. New Time Limit for Appeals to the High Court

The time limit to appeal a finding of the FSO (which was within 21 days or such further period as the High Court

may allow) has been extended to allow appeals to the High Court within:

- (a) 35 days of the date of notification of the FSO’s finding, or
- (b) such further period as the High Court may allow.

WHAT’S NEXT?

The changes came into effect on 25 July 2017 when the Central Bank Amendment Act was commenced. Once the Financial Services Act is commenced, it will overtake and replace the Central Bank Amendment Act although this will not affect the substantive changes to the complaints process.

The Financial Services Act is broader in scope and will introduce other measures, most notably, to consolidate the offices of the FSO and the Pensions Ombudsman. The new combined office will deal with complaints about either financial products / services or the conduct of pension providers and will be known as the Office of the Financial Services and Pensions Ombudsman.

We will issue further updates once the Financial Services Act is commenced.

KEY CONTACTS

For further information, please contact your usual Arthur Cox contact:



ROBERT CAIN
PARTNER
+353 1 920 1050
robert.cain@arthurcox.com



DEIRDRE O'MAHONY
SENIOR ASSOCIATE
+353 1 920 1058
deirdre.omahony@arthurcox.com



MAEDHBH CLANCY
PROFESSIONAL SUPPORT LAWYER
+353 1 920 1225
maedhbh.clancy@arthurcox.com

arthurcox.com

Dublin office

+353 (0)1 920 1000
dublin@arthurcox.com

Belfast office

+44 (0)28 9023 0007
belfast@arthurcox.com

London office

+44 (0)207 832 0200
london@arthurcox.com

New York office

+1 (1)212 782 3294
newyork@arthurcox.com

Silicon Valley office

+1 (1)650 943 2330
siliconvalley@arthurcox.com