

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2023] IEHC 2  
Record No. 2021 907 JR**

**BETWEEN**

**JOSEPH BAYNES and ANN BAYNES**

**Applicants**

**-and-**

**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

**Respondent**

**Ruling delivered by Mr Justice Cian Ferriter on this 11<sup>th</sup> day of January 2023**

1. This ruling sets out my decision on the appropriate substantive orders in this judicial review and the appropriate order as to costs arising out of my judgment of 2 December 2022 last ([2022] IEHC 678). Abbreviations used in that judgment are also used in this ruling.
2. In arriving at this ruling, I have considered the helpful written submissions furnished by both parties on the question of final orders and costs.
3. In summary, the applicants seek an order of *certiorari* of the entire FSPO decision under challenge and also seek their full costs on the basis they say they were entirely successful. The FSPO contends that the applicants lost on two of the three grounds of challenge advanced (and abandoned a fourth) and have only been partially successful in relation to their challenge to the FSPO's decision (losing on the core challenge to its decision under s.51(2)(a)(ii) of the 2017 Act) such that *certiorari* is only warranted in respect of its decision under s.51(2)(a)(iii) of the 2017 Act. The FSPO also submits that a partial costs order of no more than 50% would be appropriate in the circumstances.

4. In my view, the FSPO is correct in its contention that the orders sought by the applicants would not reflect the fact that the applicants were unsuccessful in respect a number of their key grounds of challenge and in particular were unsuccessful in their challenge to the decision made by the FSPO under s.51(2)(a)(ii) of the 2017 Act. Accordingly, *certiorari* would not be appropriate in respect of the decision under s.51(2)(a)(ii) which I have found was lawfully arrived; rather the order of *certiorari* should be confined to the decision under s.51(2)(a)(iii) of the 2017 Act.
5. As the applicants have not been entirely successful in respect of their case, this is not a situation to which s.169(1) Legal Services Regulation Act, 2015 applies and I approach the question of costs on that basis.
6. In weighing the question of costs, while the applicants were unsuccessful in respect of a number of their grounds of challenge, I take into account the fact that:
  - (i) much of the pleading and affidavit evidence would have been required in any event in order to ground that part of the case in respect of which they were successful
  - (ii) written submissions would still have been required but on a more net basis
  - (iii) the hearing concluded in a little over a day but would likely have taken most of a day even if the applicants had confined their case to the s.51(2)(a)(iii) challenge.
7. Accordingly, while it would not be appropriate to award the applicants their full costs, this was not a case where the evidence, argument and hearing were very significantly added to as a result of unsuccessful grounds of challenge. Weighing all the circumstances, I believe that the appropriate costs order is that the applicants should recover 60% of their costs from the FSPO such costs to be adjudicated in default of agreement.
8. Accordingly, I will make the following final orders:
  - (i) An order of *certiorari* quashing that part of the respondent's Determination dated 5 August 2021 declining to allow, pursuant to s.51(2)(a)(iii) of the Financial Services and Pensions Ombudsman Act, 2017, a longer period for the making of the applicants' complaint;
  - (ii) An order pursuant to Order 84, r.27(4) RSC remitting to the respondent the determination of whether the applicants' complaint meets the requirements of the statutory time limits pursuant to s.51(2)(a)(iii) of the Financial Services and Pensions Ombudsman Act, 2017;

such determination to be made by a new decision maker on the submissions made to the respondent to date, and any further submissions from the parties, whether or not in response to any information sought by the new decision-maker;

- (iii) An order dismissing the remainder of the application for judicial review;
- (iv) An order that the applicants do recover 60% of their costs of the proceedings from the respondent, such costs to be adjudicated in default of agreement.