



Number 21 of 2017

**Central Bank and Financial Services Authority of Ireland (Amendment) Act
2017**



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**CENTRAL BANK AND FINANCIAL SERVICES AUTHORITY OF IRELAND
(AMENDMENT) ACT 2017**

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[No. 21.]

*Central Bank and Financial Services Authority of Ireland
(Amendment) Act 2017.*

[2017.]

ACTS REFERRED TO

Central Bank Act 1942 (No. 22)

Central Bank and Financial Services Authority of Ireland Act 2004 (No. 21)



Number 21 of 2017

**CENTRAL BANK AND FINANCIAL SERVICES AUTHORITY OF IRELAND
(AMENDMENT) ACT 2017**

An Act to provide for the strengthening of the functions of the Financial Services Ombudsman, the consumer complaint procedure and related matters. [25th July, 2017]

Be it enacted by the Oireachtas as follows:

Definitions

1. For the purposes of this Act:

“Act of 2004” means the Central Bank and Financial Services Authority of Ireland Act 2004;

“Principal Act” means the Central Bank Act 1942.

Amendment of section 57BA of Principal Act

2. Section 57BA of the Principal Act (as inserted by section 16 of the Act of 2004) is amended by the insertion of the following definition:

“ ‘long-term financial service’ means—

- (a) subject to paragraph (b), a financial service the duration of which is a fixed term of 5 years and one month, or more, but, notwithstanding that the aggregate term of them may be 5 years and one month (or more), there does not fall within this paragraph a series of consecutive terms in respect of a financial service’s duration (provided no individual one of them is 5 years and one month, or more, in length), or
- (b) a financial service that is life assurance to which, by virtue of Regulation 4 of those Regulations, the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994) apply (not being life assurance falling within Class VII defined in the first Annex thereto) and regardless of whether the term of which life assurance is fixed at a specified calendar period or not;”.

Amendment of section 57BK of Principal Act

3. Subsection (4) of section 57BK of the Principal Act (as inserted by section 16 of the Act of 2004) is amended by adding the word “undue” between the words “without” and “regard”.

Amendment of section 57BS of Principal Act

4. Section 57BS of the Principal Act (as amended) is amended by the substitution of the following for subsections (5) to (9):

- “(5) A regulated financial service provider falls within this subsection if, in the preceding financial year, at least 3 complaints relating to the regulated financial service provider which have been made to the Financial Services Ombudsman have been found by that Ombudsman to be upheld, substantially upheld or partially upheld.
- (6) The information referred to in subsection (4) is—
- (a) the name of the regulated financial service provider, including any trading name (if different),
 - (b) where applicable, the identity of any group of which the regulated financial service provider is a member, and
 - (c) the number of complaints found to be upheld, substantially upheld or partially upheld in respect of the regulated financial service provider in the preceding financial year.
- (7) For the purposes of the law of defamation the publication of the information referred to in subsection (4) in a report under subsection (1) shall be absolutely privileged.
- (8) A report under subsection (1) shall not divulge the identity of any complainant nor shall anything be published in the report which may lead to the identification of any complainant unless the complainant consents in writing.
- (9) For the purposes of this section if the regulated financial service provider has appealed against the Financial Services Ombudsman’s finding that a complaint has been found to be upheld, substantially upheld or partially upheld the complaint is to be taken to have been so found only when—
- (a) the finding is affirmed (with or without modification) on appeal, or
 - (b) the appeal is withdrawn, struck out by the High Court or abandoned.”.

Amendment of section 57BX of Principal Act

5. (1) Subsection (3) of section 57BX of the Principal Act (as inserted by section 16 of the

Act of 2004) is amended by substituting “Subject to subsections (3B) to (3E), a consumer” for “A consumer”.

- (2) Section 57BX of the Principal Act is further amended by inserting the following after subsection (3A):

“(3B) Subsection (3)(b) shall not apply to a complaint by a consumer in relation to conduct that relates to a long-term financial service.

(3C) A complaint by a consumer in relation to conduct (the “conduct concerned”) that relates to a long-term financial service shall be made to the Financial Services Ombudsman within whichever of the following periods is the last to expire:

- (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 Financial Services Ombudsman may allow where it appears to him or her that there are reasonable grounds for requiring a longer period and that it would be just and equitable, in all the circumstances, to so extend the period,

but no complaint in relation to such a service may be made unless either—

- (i) the conditions specified in subsection (3D) are satisfied, or
- (ii) the Financial Services Ombudsman has allowed a longer period under paragraph (c).

(3D) The conditions referred to in subsection (3C)(c)(i) are that the long-term financial service concerned has not expired or otherwise been terminated more than 6 years before the date of the complaint, and the conduct complained of occurred during or after 2002.”.

- (3) Section 57BX of the Principal Act (as inserted by Section 16 of the Act of 2004) is amended by the insertion of the following:

“(3E) The time limits specified in subsection (3C) shall apply to the following:

- (a) any complaint received by the Financial Services Ombudsman which had not been assessed as to its suitability for consideration by the Financial Services Ombudsman; and
- (b) any complaint received by the Financial Services Ombudsman before the coming into force of this subsection that was refused as being outside the applicable time limits in this Act and that has been resubmitted to the Ombudsman on or after the coming into force of this subsection.”.

Amendment of section 57CA of Principal Act

6. The Principal Act is amended by substituting the following for section 57CA (as inserted by section 16 of the Act of 2004):

“57CA.(1)The Financial Services Ombudsman shall, as part of an investigation, try, as far as possible, to resolve a complaint by mediation.

(2) The Financial Services Ombudsman shall engage with complainants and providers to ensure that the objective of mediation is understood to promote engagement in the mediation process.

(3) Participation in mediation by the parties to a complaint is voluntary, and a party may withdraw at any time.

(4) The Financial Services Ombudsman may, on reasonable grounds, abandon an attempt to resolve a complaint by mediation as he or she considers appropriate.

(5) Evidence of anything said or admitted during a mediation, or an attempted mediation, of a complaint, and any document prepared for the purposes of the mediation, are not admissible—

(a) in any subsequent investigation, under this Part, of the complaint (unless the person who made the admission, or to whom the document relates, consents to its admission), or

(b) in any proceedings before a court or a tribunal in the State.

(6) Where an attempt to resolve a complaint by mediation is unsuccessful, the Financial Services Ombudsman shall—

(a) deal with the complaint by adjudication, and

(b) notify the parties in writing accordingly.”.

Amendment of section 57CI of Principal Act

7. (1) Section 57CI of the Principal Act (as inserted by section 16 of the Act of 2004) is amended by substituting the following for subsection (1):

“(1) On completing an investigation of a complaint that has not been settled or withdrawn, the Financial Services Ombudsman shall make a finding in writing that the complaint—

(a) is upheld,

(b) is substantially upheld,

(c) is partially upheld, or

(d) is rejected.”.

- (2) Section 57CI of the Principal Act (as inserted by section 16 of the Act of 2004) is further amended by substituting the following for subsection (2):

“(2) A complaint may be found to be upheld, substantially upheld or partially upheld only on one or more of the following grounds:

- (a) the conduct complained of was contrary to law;
- (b) the conduct complained of was unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;
- (c) although the conduct complained of was in accordance with a law or an established practice or regulatory standard, the law, practice or standard is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;
- (d) the conduct complained of was based wholly or partly on an improper motive, an irrelevant ground or an irrelevant consideration;
- (e) the conduct complained of was based wholly or partly on a mistake of law or fact;
- (f) an explanation for the conduct complained of was not given when it should have been given;
- (g) the conduct complained of was otherwise improper.”.

(3) Section 57CI of the Principal Act (as inserted by section 16 of the Act of 2004) is further amended by substituting the following for subsection (4):

“(4) If a complaint is found to be upheld, substantially upheld or partially upheld, the Financial Services Ombudsman may direct the financial service provider to do one or more of the following:

- (a) to review, rectify, mitigate or change the conduct complained of or its consequences;
- (b) to provide reasons or explanations for that conduct;
- (c) to change a practice relating to that conduct;
- (d) to pay an amount of compensation to the complainant for any loss, expense or inconvenience sustained by the complainant as a result of the conduct complained of;
- (e) to take any other lawful action.”.

Amendment of section 57CL of Principal Act

8. Section 57CL of the Principal Act (as inserted by section 16 of the Act of 2004) is amended by substituting the following for subsection (3):

“(3) An appeal under this section must be made—

- (a) not later than 35 days of the date of notification of the finding of the Financial Services Ombudsman, or

(b) within such further period as the High Court may allow.”.

Amendment of section 57CP of Principal Act

9. Section 57CP of the Principal Act (as inserted by section 16 of the Act of 2004) is amended by substituting the following for subsection (2):

“(2) The High Court may not grant an application under subsection (1) unless it is of the opinion that the conduct sought to be restrained is likely to prejudice or negate the effect or implementation of a decision that the Financial Services Ombudsman might make under this Chapter if that Ombudsman were to find the complaint to which the conduct relates is upheld, substantially upheld or partially upheld.”.

Short title

10. This Act may be cited as the Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017.