



An tOmbudsman Seirbhísi  
Airgeadais agus Pinsean

Financial Services and  
Pensions Ombudsman

## **Time Limits for making a complaint to the Financial Services and Pensions Ombudsman**

The governing legislation of the FSPO is the *Financial Services and Pensions Ombudsman Act 2017*, which was commenced with effect from 1 January 2018. Six months earlier however, changes had been made to the time limits for making complaints to the Financial Services Ombudsman about the conduct of financial service providers.

This change to the time limits from July 2017, was carried over to the FSPO and is now set out in *Section 51* of the *Financial Services and Pensions Ombudsman Act 2017*. The text of Section 51 is reproduced in the Appendix to this note.

A complaint about a “*long-term financial service*”, can be made not only (i) within a period of 6 years of the date of the conduct complained of, but also (ii) within a period of 3 years of a certain “*date of knowledge*” as prescribed at *Section 51(2)(ii)* of the Act and, in addition, (iii) the FSPO has a statutory discretion, regarding such complaints, to extend the time where there are reasonable grounds for requiring a longer period and it would be just and equitable in all the circumstances to do so.

Considerable work is undertaken by the FSPO in its interactions with Complainants and Providers, to ensure a clear understanding by the parties as to what constitutes a “*long-term financial service*”. *Section 2* of the *Financial Services and Pensions Ombudsman Act 2017* originally prescribed that a “*long-term financial service*” essentially constituted:

- (i) a product or service with a fixed term of 5 years and 1 month or more,  
or
- (ii) life assurance.

This remained the position until 29 October 2018, when the definition of a “*long-term financial service*” was amended by *Section 9* of the *Markets in Financial Instruments Act 2018*, such that the definition now includes the following provision:-

*“Notwithstanding the fact that the financial service does not fix its duration to be of a term such as is referred to in paragraph (a) of the definition of ‘long-term financial service’ in subsection (1), a financial service shall be regarded as falling within that definition if it would be reasonable for a consumer to expect its duration to be of at least the length referred to in that paragraph and that reasonable expectation arises by reason of—*

- (a) the manner in which the financial service operates to provide a financial benefit to the consumer,*
- (b) the type of assets with which its operation is connected, or*
- (c) representations made by the financial service provider, as distinct from where such an expectation arises in the case of—*

- (i) *a current account with a financial institution, or*
- (ii) *any other financial service of an indefinite duration that is widely available and does not possess specialised characteristics.”*

This somewhat complex statutory amendment now forms an integral part of the FSPO’s remit.

In instances where a Complainant and a Provider are of differing opinions as to whether a complaint has been made within the statutory time limits the FSPO makes an opportunity available to both parties to offer their respective opinions and observations, prior to making a final determination as to whether the relevant time limit has been met.

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## **Appendix**

### **Section 51 of the *Financial Services and Pensions Ombudsman Act 2017*.**

#### **Time limits for complaints to Ombudsman**

- 51.** (1) A complaint in relation to conduct referred to in *section 44(1)(a)* that does not relate to a long-term financial service shall be made to the Ombudsman not later than 6 years from the date of the conduct giving rise to the complaint.
- (2) A complaint in relation to-
- (a) conduct referred to in *section 44(1)(a)* that, subject to the requirements specified in *subsection (3)*, relates to a long-term financial service, or
  - (b) conduct referred to in *section 44(1)(b)*, that is subject to the requirements specified in *subsection (4)*,
- shall be made to the Ombudsman within whichever of the following periods is the last to expire:
- (i) 6 years from the date of the conduct giving rise to the complaint;
  - (ii) 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 giving rise to the complaint;
  - (iii) such longer period as the 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.

- (3) The requirements referred to in *subsection (2)(a)* are that-
  - (a) 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, or
  - (b) the Ombudsman has allowed a longer period under *subsection (2)(iii)*.
- (4) The requirements referred to in *subsection (2)(b)* are that-
  - (a) where the conduct occurred prior to the establishment day, that conduct occurred within the period between 13 April 1996 and the establishment day, or
  - (b) the Ombudsman has allowed a longer period under *subsection (2)(iii)*.
- (5) For the purposes of *subsections (1) and (2)*-
  - (a) conduct that is of a continuing nature is taken to have occurred at the time when it stopped and conduct that consists of a series of acts or omissions is taken to have occurred when the last of those acts or omissions occurred, and
  - (b) conduct that consists of a single act or omission is taken to have occurred on the date of that act or omission.
- (6) The time limits specified in this section shall, on and after the establishment day, apply to the following:
  - (a) any complaint received by the Financial Services Ombudsman or the Pensions Ombudsman which had not been assessed as to its suitability for consideration by the Financial Services Ombudsman or the Pensions Ombudsman, as the case may be;
  - (b) any complaint received by the Financial Services Ombudsman or the Pensions Ombudsman before the establishment day that was refused as being outside the applicable time limits in the Act of 1942 or the Act of 1990 respectively and that has been resubmitted to the Ombudsman on or after the establishment day.