



An tOmbudsman Seirbhísí
Airgeadais agus Pinsean

Financial Services and
Pensions Ombudsman

Presentation to the Joint Committee on Finance, Public Expenditure and

**By Liam Sloyan
Financial Services and Pensions Ombudsman
10 May 2023**

Background and current position

Good afternoon, Chairman, Deputies and Senators. I am pleased to have this opportunity, together with my colleague, MaryRose McGovern, Deputy Financial Services and Pensions Ombudsman, to engage with you today on the General Scheme of the Financial Services and Pensions Ombudsman (Amendment) Bill (the “**General Scheme**”) published by the Minister for Finance on 9 April 2023.

The Financial Services and Pensions Ombudsman (FSPO) was established on 1 January 2018 by the **Financial Services and Pensions Ombudsman Act 2017**, as amended (the “**FSPO Act**”). The principal function of the FSPO is to investigate complaints made by consumers, including small businesses and other organisations, against regulated financial service providers and pension providers. Section 12 of the FSPO Act requires the investigation of complaints in an appropriate manner proportionate to the nature of the complaint including by informal means, mediation and formal investigation, including oral hearings, if required.

When any consumer is unable to resolve a complaint or dispute with their provider, they can refer their complaint to the FSPO. The FSPO provides an independent, fair, impartial, confidential and free service to resolve complaints through either informal mediation, leading to a potential settlement agreed between the parties, or formal investigation and adjudication, leading to a legally binding decision, subject only to a statutory appeal to the High Court.

The procedures of the FSPO greatly encourage mediation between the parties on a voluntary basis, so that every effort can be made to facilitate the resolution of complaints, in a way that empowers the parties themselves to design and agree a confidential solution. This is done in accordance with the provisions of Section 58(1) of the Act which requires the Ombudsman to try, as far as possible, to resolve a complaint by mediation. The FSPO’s mediation services, made available to providers and complainants, adhere to a [code of ethics](#), which is available to the public, on our website.

Mediation by its very nature, is a confidential process, which facilitates discussion between the parties on an “off the record” basis. Any evidence of anything said or admitted during a

mediation conducted by the FSPO under the Act, is not admissible in any subsequent formal investigation by the FSPO, or admissible in any proceedings before a Court.

Where these early interventions do not resolve the dispute, the FSPO formally investigates the complaint. Formal investigation is a detailed, fair and impartial process carried out in accordance with fair procedures. It involves a full gathering and exchange of evidence and submissions between the parties to the complaint, until both parties have concluded their respective observations.

I can decide to hold an Oral Hearing where there is a conflict of fact in the documentary evidence made available by the parties, which cannot be resolved without hearing oral evidence from those parties. **Section 47 (3)(b) of the FSPO Act**, provides that I may require any person to attend and be examined on oath. The procedures of the FSPO, in the event of an Oral Hearing, include cross-examination of the various witnesses' evidence. Our [Oral Hearing Guidelines](#) are available to the public, on our website.

In most instances there are either no material conflicts of fact, or any such conflicts of fact can be resolved by reference to the documentary and audio evidence. Therefore, Oral Hearings are held by the FSPO in a limited number of investigations, typically less than ten each year.

On completing the investigation of a financial service complaint, I issue a decision that the complaint is upheld, substantially upheld, partially upheld or rejected. Legally binding decisions are issued by the statutory office holders, or by a staff member where there is a delegation in place to do so, on behalf of the FSPO. A financial service complaint can be found to be upheld, substantially upheld or partially upheld on one or more of the grounds set out in **section 60(2) of the FSPO Act**. As outlined above, decisions are legally binding, subject only to a statutory appeal to the High Court.

Overview of Zalewski v The Workplace Relations Commission decision

In April 2021, the Supreme Court held that the exercise of powers by Adjudication Officers pursuant to the Workplace Relations Act 2015, as amended (the "2015 Act"), was an administration of justice within the meaning of Article 37 of the Constitution.

The Supreme Court outlined that section 41(13) of the Workplace Relations Act 2015, which requires all hearings before an Adjudication Officer to be held otherwise than in public, to be inconsistent with the Constitution. It further held that the absence of a provision for the administration of an oath, or any possibility of punishment for giving false evidence, is contrary to the Constitution. It held that cross-examination of witnesses is fundamental to the concept of fair procedures though the absence of an express provision for cross-examination in the WRC's governing legislation, was insufficient in itself, to render the Act unconstitutional, given the presumption that an Act will be operated in a manner consistent with the Constitution.

While the FSPO Act contains several provisions which recognise the quasi-judicial role of the FSPO, and the concept of fair procedures, the decision in Zalewski has required quasi-judicial

bodies, including the FSPO, to examine their processes and procedures to ensure consistency with the Constitutional requirements.

Over the last two years, the FSPO has engaged with the Department of Finance on proposed legislative amendments, suitable to address the issues raised by the Zalewski judgment, including a specific consultation process in respect of the proposed provisions of the General Scheme. The FSPO welcomes the publication of the General Scheme before you today, which includes provisions to take account of the comments made in Zalewski, and additional legislative amendments which seek to clarify my statutory powers with respect to complaints regarding financial service providers which are no longer authorised by the Central Bank of Ireland.

In the context of the statutory role of the FSPO, and taking account of the fact that confidential and sensitive personal data is generally at the heart of the vast majority of FSPO complaint investigations, the FSPO considers that it is appropriate and in the best interests of complainants in particular, that a statutory amendment, as provided for in Head 8 of the General Scheme, must include the potential for a hearing in public, where considered appropriate, rather than introducing public hearings as the default position. Although some complainants may indeed desire a public hearing, many complainants value maintaining privacy over their financial affairs. The FSPO recognises the risk of discouraging potential complainants from making complaints against their financial service providers or pension providers, which might thereby reveal a broader or indeed potentially systemic issue or conduct, because they are unwilling to risk the disclosure to the public of their private financial details. The potential impact of complainants not being willing to pursue a complaint to the FSPO could be very significant.

I consider that in fulfilling my functions pursuant to section 12(1), to investigate complaints in “an appropriate manner proportionate to the nature of the complaint”, the potential to conduct hearings in public must be introduced in a manner which recognises this proportionate approach to investigations, such that I may decide to hold a hearing in public or in private, having consulted with the parties.

Similarly, in taking account of the various forms of “investigation” anticipated by Section 12(1) of the Act, in particular the FSPO’s mediation processes as outlined above, it would be contrary to the Act, and contrary to the well-established procedures for conducting mediations, for any FSPO investigation by way of mediation, to be conducted in public. Head 9 of the General Scheme seeks to ensure that mediation is conducted in private to maintain the confidentiality of this important process, noting that mediation, as required under section 12(2) of the FSPO Act, does not constitute the administration of justice.

The FSPO relies on complainants to make known their dissatisfaction with the conduct of their financial service providers or pension providers, because I have no power to commence an investigation, in the absence of a complaint being made by a “complainant” within the meaning of the Act. It is only when individual complaints are pursued to the FSPO, that the FSPO has an opportunity to examine the issues raised by such complaints and to thereby

potentially identify issues or matters that may be of a systemic nature. Over the last two years my office has referred 25 matters to the regulatory authorities, because of concerns that the issues noted in each such individual complaint, could have a systemic impact.

In addition, the proposed amendments to sections 47 (3) and 59(1) of the FSPO Act, as provided for in Head 6 and Head 10 respectively, address comments made in the Zalewski judgment regarding the cross-examination of the person being examined on oath, and the potential obstruction of my work. The FSPO welcomes these targeted amendments, which will better equip the FSPO in the performance of its statutory functions.

With respect to the additional legislative clarifications included in the General Scheme, the FSPO welcomes, in particular, the proposed amendment to subsection 2(1) of the FSPO Act (Head 3). This amendment, once enacted, will clarify my statutory power to investigate complaints against a financial service provider, which was regulated at the time of the conduct complained of, even if the provider has ceased its regulated status before the complaint was made to the FSPO, or before the FSPO's investigation of the complaint has been concluded.

Finally, with regard to Head 5, the FSPO recognises the requirement for the demarcation between the processes of the FSPO and the Credit Reviewer, noting that the Department of Finance is currently preparing legislation to put the Credit Review Service on a statutory footing. The FSPO considers it appropriate that this Head is included to clarify that the Credit Reviewer holds an entirely different role. This provision, and similarly, the proposed amendments to section 50 of the FSPO Act, once enacted, will clarify that a complainant may not make a complaint to the FSPO about a matter that falls within the jurisdiction of the Credit Reviewer.

Conclusion

I thank the Committee for the opportunity to engage with it today. The Office of the Financial Services and Pensions Ombudsman plays a vital role in Ireland's consumer protection framework and these amendments, once enacted, will reinforce the statutory basis of the FSPO. We are guided by our values of fairness, integrity, independence, accessibility and effectiveness. These values are at the very heart of how we approach our daily work and interactions with our customers. We will be very happy to answer any questions members may have.