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“(d) remit the matter concerned for reconsideration by the Regulatory Authority, together with any recommendation or direction of the Appeals Tribunal as to what aspects of the matter should be reconsidered and, in the case of an appealable decision made under Part IIIC, set aside the decision.”;

(b) by inserting the following subsection after subsection (2):

“(2A) Paragraphs (b) and (c) of subsection (2) apply only to an appealable decision made under Part IIIC.”.

Amendment of section 57AK of Central Bank Act 1942 (Right of appeal to High Court).

15.—Section 57AK of the Central Bank Act 1942 (as inserted by section 28 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended by substituting the following subsection for subsection (3):

“(3) An appeal under this section must be made within 28 days after the notification of the decision or within such extended period as that Court allows.”.

New Part VIIB inserted into Central Bank Act 1942.

16.—The Central Bank Act 1942 is amended by inserting the following Part after Part VIIA (as inserted by section 28 of the Central Bank and Financial Services Authority of Ireland Act 2003):

“PART VIIB

FINANCIAL SERVICES OMBUDSMAN

CHAPTER 1

Interpretation and objects of Part

Definitions.

57BA.—In this Part—

‘Bureau’ means the Financial Services Ombudsman’s Bureau;

‘Bureau staff member’ means a person appointed under section 57BN;

‘complaint’ means a complaint made by a consumer under this Part about the conduct of a regulated financial service provider;

‘conduct’ includes alleged conduct;

‘consumer’ means—

(a) a natural person when not acting in the course of, or in connection with, carrying on a business, or

(b) a person, or group of persons, of a class prescribed by Council regulations;

‘Council’ means the Financial Services Ombudsman Council established by section 57BC;

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‘Council regulations’ means regulations made by the Council under section 57BF and in force; Pt.2 S.16

‘eligible consumer’, in relation to a regulated financial service provider, means a consumer—

- (a) who is a customer of the financial service provider, or
- (b) to whom the financial service provider has offered to provide a financial service, or
- (c) who has sought the provision of a financial service from the financial service provider;

‘investigation’ means an investigation of a complaint;

‘parties’ in relation to a complaint, means the complainant, the regulated financial service provider against whom the complaint is made, and any other person who, in the opinion of the Financial Services Ombudsman, should be treated as a party to the complaint;

‘Pensions Ombudsman’ means the person holding or acting in the office of Pensions Ombudsman under section 128 of the Pensions Act 1990.

Objects of this Part. 57BB.—The objects of this Part are as follows:

- (a) to establish the Financial Services Ombudsman as an independent officer—
 - (i) to investigate, mediate and adjudicate complaints made in accordance with this Part about the conduct of regulated financial service providers involving the provision of a financial service, an offer to provide such a service or a failure or refusal to provide such a service, and
 - (ii) to exercise such other jurisdiction as is conferred on the Financial Services Ombudsman by this Part;
- (b) to ensure that the Financial Services Ombudsman and the staff of the Financial Services Ombudsman’s Bureau are accessible and that complaints about the conduct of

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regulated financial service providers are dealt with efficiently and effectively and are adjudicated fairly;

(c) to enable such complaints to be dealt with in an informal and expeditious manner;

(d) to improve public understanding of issues related to complaints against regulated financial service providers and related consumer protection matters.

CHAPTER 2

Financial Services Ombudsman Council

Establishment of
Financial Services
Ombudsman
Council.

57BC.—(1) There is established by this section a Council called the ‘Financial Services Ombudsman Council’.

(2) The Council is to consist of such number of persons, not fewer than 5 nor more than 10, as the Minister decides.

(3) The Minister shall appoint the members of the Council, but only after consulting the Minister for Enterprise, Trade and Employment. At least one of the members (other than the Chairperson) must be a person who has knowledge or experience of consumer protection and other consumer issues relating to the provision of financial services and at least one of the other members must be a person who has knowledge or experience of the financial services industry.

(4) The Minister shall appoint a Chairperson from among the members of the Council who have knowledge or experience of consumer issues relating to the provision of financial services.

(5) A member of the Council holds office for such period, not exceeding 5 years, as is specified in the member’s document of appointment, unless the member ceases to hold office under Schedule 6.

(6) Such a member is eligible for reappointment.

(7) Schedule 6 has effect with respect to the Council.

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Functions and powers of Financial Services Ombudsman Council. 57BD.—(1) The functions of the Council are— Pt.2 S.16

- (a) to prescribe guidelines under which the Financial Services Ombudsman is to operate, and
- (b) to determine the levies and charges payable for the performance of services provided by the Financial Services Ombudsman, and
- (c) to appoint the Financial Services Ombudsman and all Deputy Financial Services Ombudsmen, and
- (d) to keep under review the efficiency and effectiveness of the Bureau and to advise the Minister, either at the Minister's request or on its own initiative, on any matter relevant to the operation of the Bureau, and
- (e) to advise the Ombudsman on any matter on which the Ombudsman seeks advice, and
- (f) to carry out such other activities as are prescribed by this Part.

(2) The Council has no role with respect to how the Financial Services Ombudsman deals with a particular complaint.

(3) The Council has such powers as are necessary to enable it to perform its functions.

Council may impose levies and fees for the purposes of this Part. 57BE.—(1) The purpose of this section is to enable the Financial Services Ombudsman to have sufficient funds to enable that Ombudsman to perform the functions imposed, and to exercise the powers conferred, on that Ombudsman by this or any other Act.

(2) Council Regulations may prescribe levies or fees to be paid by specified classes of financial service providers.

(3) Without limiting subsection (2), Council Regulations may provide for any of the following matters:

- (a) the persons, or classes of persons, who are required to pay specified kinds of levies or fees;
- (b) the amounts of those levies or fees;
- (c) the periods in respect of which, or the dates by which, specified levies or

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fees are to be paid to the Financial Services Ombudsman;

- (d) penalties that are payable by a person who fails to pay a levy on time or pay a required fee;
- (e) the keeping of records, and the making of returns to the Financial Services Ombudsman, by persons who are liable to pay a specified levy or a specified fee;
- (f) the collection and recovery of levies and fees.

(4) The Council may, by proceedings brought in a court of competent jurisdiction, recover as a debt an amount of levy or fee payable under Council Regulations made for the purpose of this section.

Council to make regulations for the purposes of this Part.

57BF.—(1) The Council shall make regulations for or with respect to matters—

- (a) that are, by this Part, required or permitted to be prescribed, or
- (b) that are necessary or convenient to be prescribed for the purpose of enabling the Financial Services Ombudsman to perform the functions imposed, and to exercise the powers conferred, on that Ombudsman by this Part.

(2) In particular, a regulation under subsection (1) may do any of the following:

- (a) prescribe matters that the Financial Services Ombudsman must take into account when investigating or adjudicating a complaint;
- (b) prescribe procedures to be followed in processing a complaint;
- (c) specify circumstances in which the Financial Services Ombudsman can dismiss a complaint without considering its merits;
- (d) specify the place or places at which the Financial Services Ombudsman is required to make available copies of any report that that Ombudsman is, by a provision of this Part, required to prepare or publish.

(3) Regulations under this section can be made either on the initiative of the Council or at the request of the Financial Services

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Ombudsman, but they do not take effect until the Minister has consented to them in writing. Pr.2 S.16

(4) As soon as practicable after the Minister has consented to regulations in accordance with subsection (3), the Council shall arrange to lay them before each House of the Oireachtas.

(5) A House of the Oireachtas may pass a resolution annulling regulations laid before the House in accordance with subsection (4), but only within 21 sitting days after they are laid.

Council chairperson to provide Minister with reports.

57BG.—The chairperson of the Council is required to provide the Minister with such reports relating to the activities of the Bureau as the Minister requires from time to time. However, such a report must not include particulars or comments on any complaint that is being or has been investigated by the Financial Services Ombudsman.

Council chairperson to appear before Oireachtas committee when required.

57BH.—(1) The chairperson of the Council is required to attend a meeting of a joint committee of the Houses of the Oireachtas whenever asked to do so by the committee and to provide such information (including documents) as the committee specifies and as is in the possession of, or is available to, that chairperson.

(2) Such a committee is not entitled to request the chairperson of the Council to provide information relating to any complaint that is then being investigated, mediated or adjudicated by the Financial Services Ombudsman. The chairperson must refuse to comply with a request from the committee to provide it with any such information.

CHAPTER 3

Financial Services Ombudsman's Bureau

Financial Services Ombudsman's Bureau.

57BI.—(1) There is established by this section a bureau called the 'Financial Services Ombudsman's Bureau'.

(2) The Bureau consists of the Financial Services Ombudsman, each Deputy Financial Services Ombudsman and the staff members holding office under section 57BN.

Financial Services Ombudsman.

57BJ.—(1) The Council shall, whenever the occasion requires, appoint a suitably qualified person to be the Financial Services Ombudsman. However, if a person has been appointed as Financial Services Ombudsman or as Financial Services Ombudsman designate before the commencement of this section, that person is

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taken to have been appointed by the Council under this subsection.

(2) Subject to Schedule 7, a person appointed as the Financial Services Ombudsman holds office for such period, not exceeding 6 years, as is specified in the document of appointment.

(3) Such a person is eligible for reappointment at the end of a period of office.

(4) A person is not eligible for appointment as the Financial Services Ombudsman if the person—

(a) is a member of either House of the Oireachtas or is, with the person's consent, nominated as a candidate for election as such a member, or

(b) is a member of the European Parliament or is, with the person's consent, nominated as a candidate for election as such a member or to fill a vacancy in the membership of that Parliament, or

(c) is a member of a local authority or is, with the person's consent, nominated as a candidate for election as such a member.

Functions and powers of Financial Services Ombudsman.

57BK.—(1) The principal function of the Financial Services Ombudsman is to deal with complaints made under this Part by mediation and, where necessary, by investigation and adjudication.

(2) Subject to this Part, the Financial Services Ombudsman has such powers as are necessary to enable that Ombudsman to perform the principal function referred to in subsection (1).

(3) The Financial Services Ombudsman may authorise any Deputy Financial Services Ombudsman or any other Bureau staff member, by name, office or appointment, to perform any of the functions, or exercise any of the powers, imposed or conferred on the Financial Services Ombudsman by this or any other Act.

(4) The Financial Services Ombudsman is entitled to perform the functions imposed, and exercise the powers conferred, by this Act free from interference by any other person and, when dealing with a particular complaint, is required to act in an informal manner and according to equity, good conscience and the substantial merits of the complaint without regard to technicality or legal form.

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Deputy Financial
Services
Ombudsman.

57BL.—(1) The Financial Services Pt.2 S.16
Ombudsman Council shall, whenever the
occasion requires, appoint one or more suit-
ably qualified persons to be Deputy Financial
Services Ombudsmen. However, if a person
has been appointed as a Deputy Financial Ser-
vices Ombudsman or as a Deputy Financial
Services Ombudsman designate before the
commencement of this section, that person is
taken to have been appointed by the Council
under this subsection.

(2) Subject to Schedule 7, a person
appointed as a Deputy Financial Services
Ombudsman holds office for such period, not
exceeding 6 years, as is specified in the docu-
ment of appointment.

(3) Such a person is eligible for
reappointment at the end of a period of office.

(4) A person is not eligible for appointment
as a Deputy Financial Services Ombudsman if
the person—

(a) is a member of either House of the
Oireachtas or is, with the person's
consent, nominated as a candidate
for election as such a member, or

(b) is a member of the European Parlia-
ment or is, with the person's con-
sent, nominated as a candidate for
election as such a member or to fill
a vacancy in the membership of
that Parliament, or

(c) is a member of a local authority or is,
with the person's consent, nomi-
nated as a candidate for election as
such a member.

(5) Within the scope of the authority con-
ferred by the Financial Services Ombudsman,
a Deputy Financial Services Ombudsman may
perform any of the functions, or exercise any
of the powers, of the Financial Services
Ombudsman imposed or conferred on the Fin-
ancial Services Ombudsman by this or any
other Act.

(6) Any act done or omitted to be done in
accordance with subsection (5) is taken to
have been done or omitted to have been done
by the Financial Services Ombudsman.

(7) A Deputy Financial Services Ombuds-
man is entitled to perform the functions and
exercise the powers under subsection (5) free
from interference by any other person, except
that that Ombudsman shall—

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(a) comply with directions given by the Financial Services Ombudsman, and

(b) keep the Financial Services Ombudsman informed about the progress made with respect to dealing with complaints that are assigned to the Deputy Financial Services Ombudsman.

Acting Financial Services Ombudsman.

57BM.—(1) The Council shall appoint the Deputy Financial Services Ombudsman, or, if there are two or more such Ombudsmen, one of those Ombudsmen, to act as Financial Services Ombudsman during the absence of the Financial Services Ombudsman or during a vacancy in the office of that Ombudsman.

(2) No one is entitled to question the appointment under this section of a Deputy Financial Services Ombudsman to act as Financial Services Ombudsman.

(3) A Deputy Financial Services Ombudsman is, when acting as the Financial Services Ombudsman, taken to be that Ombudsman.

Bureau staff.

57BN.—(1) Subject to this section, the Financial Services Ombudsman is responsible for appointing and employing persons necessary for the proper functioning of the Bureau.

(2) Persons may be appointed under subsection (1) on a permanent, temporary or part-time basis or as consultants.

(3) Persons appointed under subsection (1) are to be employed on such terms and conditions (including conditions as to remuneration and allowances) as the Council determines. In making a determination under this subsection, the Council is to have regard to—

(a) the Government's policy with respect to the remuneration of public sector employees, and

(b) any directions that the Minister may give from time to time for the purpose of giving effect to that policy.

(4) Within the scope of the authority conferred by the Financial Services Ombudsman, a person appointed under subsection (1) may perform any of the functions, or exercise any of the powers, imposed or conferred on the Financial Services Ombudsman by this or any other Act.

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(5) Any act done or omitted to be done in accordance with subsection (4) is taken to have been done or omitted to have been done by the Financial Services Ombudsman. Pt.2 S.16

(6) A Bureau staff member is entitled to perform the functions and exercise the powers authorised under subsection (4) free from interference from any other person, except that the staff member shall—

(a) comply with directions given by the Financial Services Ombudsman or a Deputy Financial Services Ombudsman, and

(b) keep the Financial Services Ombudsman, or the appropriate Deputy Financial Services Ombudsman, informed about the progress made with respect to dealing with complaints that are assigned to the staff member.

(7) Schedule 7 has effect with respect to the Financial Services Ombudsman, the Deputy Financial Services Ombudsman and the members of the Bureau staff appointed under this section.

Immunity of
Financial Services
Ombudsman and
others.

57BO.—(1) A Bureau staff member is not liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings in respect of any act done, or omitted to be done, in the course of performing a function imposed, or exercising a power conferred, on the member by or under this or any other Act unless it is proved that the act was done, or omitted to be done, in bad faith.

(2) Civil or criminal proceedings in respect of any act or omission referred to in subsection (1) may be brought against a Bureau staff member only with the leave of the High Court.

(3) The High Court may grant leave under subsection (2) only if satisfied that there is substantial evidence that the person to be proceeded against has acted, or omitted to act, in bad faith.

(4) For the purposes of this section, ‘bureau staff member’ includes the Financial Services Ombudsman and each of the Deputy Financial Services Ombudsmen.

Accounts and reports

Financial Services Ombudsman to ensure proper accounts are kept in respect of the Bureau.

57BP.—(1) The Financial Services Ombudsman shall ensure that accounting records are kept that properly record and explain the financial transactions of or relating to the Bureau.

(2) The Financial Services Ombudsman shall ensure that the accounting records relating to the Bureau comply with the accounting standards (if any) notified in writing to the Financial Services Ombudsman by the Council, acting on the advice of the Minister.

(3) The Financial Services Ombudsman shall ensure that the accounting records relating to the Bureau are kept for 6 years after the transactions to which they relate are completed. The Financial Services Ombudsman may, at the end of that period, direct that those records be retained or arrange for them to be disposed of in such manner as that Ombudsman considers appropriate. This subsection has effect despite any other enactment to the contrary.

(4) The Financial Services Ombudsman is required to make the accounting records available at all reasonable times for inspection by any member of the Council who requests to see them.

Financial Services Ombudsman to arrange for preparation of annual statement of accounts.

57BQ.—(1) Within 4 months after the end of each financial year, the Financial Services Ombudsman shall arrange for the preparation and transmission to the Comptroller and Auditor General of a statement of accounts for the year. The statement must be in a form approved by the Council acting in consultation with the Minister. A form of statement approved under this subsection remains in force until superseded by another form of statement so approved.

(2) The Comptroller and Auditor General shall audit and report on the statement of accounts and, as soon as practicable after completing the report, give the report and the statement to the Financial Services Ombudsman and to the Council.

Financial Services Ombudsman to prepare annual report of activities of the Bureau.

57BR.—(1) The Financial Services Ombudsman shall, not later than 6 months after the end of a financial year—

(a) prepare an annual report specifying the activities of the Bureau during that year, and

(b) submit the report to the Council.

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(2) An annual report must be in such form and deal with such matters as the Council has notified to the Financial Services Ombudsman and must include or be accompanied by the audited statement of accounts prepared for the financial year concerned. Pt.2 S.16

(3) As soon as practicable after receiving an annual report, the Council shall deliver the report to the Minister.

(4) As soon as practicable after receiving an annual report, the Minister shall arrange for a copy of the report to be laid before both Houses of the Oireachtas.

(5) On becoming aware that subsection (4) has been complied with, the Financial Services Ombudsman shall arrange for the publication of the annual report.

Financial Services Ombudsman to publish certain other reports.

57BS.—(1) Within 3 months after the end of each financial year, the Financial Services Ombudsman shall publish a report containing—

(a) a summary of all complaints made to that Ombudsman during the preceding financial year and of the results of the investigations into those complaints, and

(b) a review of trends and patterns in the making of complaints to that Ombudsman.

(2) The Financial Services Ombudsman may publish such a report more frequently than once a year if that Ombudsman thinks it would be in the public interest to do so.

(3) The Financial Services Ombudsman may, with the approval of the Council, publish reports on other matters relating to the operation of the Bureau.

Financial Services Ombudsman to arrange for preparation of annual estimate of income and expenditure.

57BT.—(1) Not later than 3 months before the beginning of each financial year, or within such extended period as the Council may allow, the Financial Services Ombudsman shall arrange for—

(a) the preparation of a statement setting out estimates of the income and expenditure relating to the Bureau for that year, and

(b) submit the statement to the Council for approval.

(2) The statement must—

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(a) specify the amounts expected to be collected and recovered during the financial year concerned from the imposition of levies and fees under section 57BE, and

(b) specify any other sources from which funds are expected to be obtained during that year to finance the Bureau's activities and the amounts expected to be raised from those sources, and

(c) specify the activities that the Bureau proposes to undertake during that year.

(3) Before submitting the statement to the Council for approval, the Financial Services Ombudsman shall provide it with particulars of the estimates referred to in subsection (1)(a). As soon as practicable after being provided with those particulars, the Council shall give the Financial Services Ombudsman its views on those estimates.

Financial Services Ombudsman to prepare strategic plan.

57BU.—(1) The Financial Services Ombudsman shall, at least 3 months before the beginning of each financial year—

(a) prepare for the year a strategic plan that complies with this section, and

(b) submit the plan to the Council for its approval.

(2) A strategic plan must specify—

(a) the objectives of the activities of the Bureau for the financial year concerned, and

(b) the nature and scope of the activities to be undertaken, and

(c) the strategies and policies for achieving those objectives, and

(d) targets and criteria for assessing the performance of the Bureau, and

(e) the uses for which it is proposed to apply the Bureau's resources.

(3) If the Council has in writing notified the Financial Services Ombudsman of any requirements with respect to the form in which the strategic plan is to be prepared, the plan must comply with those requirements.

(4) As soon as practicable after approving a strategic plan, the Council shall deliver the plan to the Minister.

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(5) As soon as practicable after receiving the Financial Services Ombudsman's strategic plan, the Minister shall arrange for a copy of the plan to be laid before both Houses of the Oireachtas. Pt.2 S.16

(6) On becoming aware that subsection (5) has been complied with, the Financial Services Ombudsman shall—

(a) arrange for the publication of the strategic plan, and

(b) take all reasonably practical steps to implement it.

Financial Services Ombudsman to provide Council and Minister with reports.

57BV.—(1) The Financial Services Ombudsman is required to provide the Council or the Minister with such reports relating to the activities of the Bureau as the Council or the Minister requires from time to time. However, such a report must not include particulars or comments on any complaint that is then being considered by the Financial Services Ombudsman.

(2) The obligation imposed by subsection (1) is in addition to that imposed by section 57BR.

Financial Services Ombudsman to appear before Oireachtas committee when required.

57BW.—(1) The Financial Services Ombudsman is required to attend a meeting of a joint committee of the Houses of the Oireachtas whenever asked to do so by the committee and to provide such information (including documents) as the committee specifies and as is in the possession of, or is available to, that Ombudsman.

(2) Such a committee is not entitled to request the Financial Services Ombudsman to provide information relating to any complaint that is currently under investigation. The Financial Services Ombudsman must refuse to comply with a request from the committee to provide it with any such information.

CHAPTER 5

How consumer complaints are to be dealt with

Complaints about conduct of regulated financial service providers.

57BX.—(1) An eligible consumer may complain to the Financial Services Ombudsman about the conduct of a regulated financial service provider involving—

(a) the provision of a financial service by the financial service provider, or

(b) an offer by the financial service provider to provide such a service, or

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(c) a failure by the financial service provider to provide a particular financial service that has been requested.

(2) Except in the case of a complaint that may be within the jurisdiction of the Pensions Ombudsman, the Financial Services Ombudsman has sole responsibility for deciding whether or not a complaint is within that Ombudsman's jurisdiction.

(3) A consumer is not entitled to make a complaint if the conduct complained of—

(a) is or has been the subject of legal proceedings before a court or tribunal, or

(b) occurred more than 6 years before the complaint is made, or

(c) relates to a matter that is within the jurisdiction of the Pensions Ombudsman, or

(d) is of a class prescribed by Council Regulations.

(3A) Despite subsection (3)(a), the Financial Services Ombudsman may accept a complaint against a regulated financial service provider who has begun legal proceedings in relation to a matter to which the complaint relates, but only if that Ombudsman reasonably suspects that the regulated financial service provider has begun those proceedings in order to prevent the making of the complaint, or to frustrate or delay its investigation.

(4) A consumer is entitled to make a complaint in respect of the conduct of a regulated financial service provider even if the conduct complained of occurred before the commencement of this section provided the conduct did not occur more than 6 years before that commencement.

(5) For the purpose of subsections (3) and (4), 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.

(6) A consumer is not entitled to make a complaint unless the consumer has previously communicated its substance to the regulated financial service provider concerned and has given that financial service provider a reasonable opportunity to deal with it.

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(7) A complaint must be in writing. Pt.2 S.16
However, the Financial Services Ombudsman may receive a complaint that is not in writing if that Ombudsman considers it appropriate to do so. In that event, the Financial Services Ombudsman shall reduce the complaint to writing as soon as possible after receiving it.

(8) As soon as practicable after receiving a complaint about the conduct of a regulated financial service provider, the Financial Services Ombudsman shall provide the financial service provider with a copy of the complaint.

(9) The Financial Services Ombudsman may enter into an arrangement with a person under which that person will receive complaints on behalf of that Ombudsman.

(10) A complaint received by a person under such an arrangement is, for the purposes of this Part, taken to have been received by the Financial Services Ombudsman.

(11) If the Regulatory Authority receives a complaint that appears to be within the jurisdiction of the Financial Services Ombudsman, it shall, without delay, refer the complaint to that Ombudsman for investigation. A complaint referred under this subsection is, for the purposes of this Part, taken to have been made under subsection (1) by the consumer concerned.

Duty of Financial Services Ombudsman to investigate complaints.

57BY.—(1) The Financial Services Ombudsman shall investigate a complaint if satisfied that the complaint is within the jurisdiction of the Financial Services Ombudsman.

(2) If, immediately before the commencement of this section, a complaint about the conduct of a regulated financial service provider is being dealt with by mediation, investigation or adjudication by a person under a voluntary scheme for the mediation, investigation or adjudication of complaints about that kind of conduct, the Financial Services Ombudsman may, with the consent of the complainant and if satisfied that the complaint is within that Ombudsman's jurisdiction, continue with the mediation, investigation or adjudication of the complaint as if the complainant had made the complaint under this Part after that commencement.

(3) If, immediately before the commencement of this section, a complaint about the conduct of a regulated financial service provider is being dealt with by mediation, investigation or adjudication by the Regulatory Authority, that Ombudsman may, with the consent of the complainant and if satisfied that the complaint is within that Ombudsman's

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jurisdiction, continue with the mediation, investigation or adjudication of the complaint as if the complainant had made the complaint under this Part after that commencement.

Financial Services Ombudsman may decline to investigate or to continue to investigate complaint.

57BZ.—(1) Without limiting section 57BY, the Financial Services Ombudsman can decide not to investigate a complaint, or to discontinue an investigation of a complaint, on the ground that—

- (a) the complaint is frivolous or vexatious or was not made in good faith, or
- (b) the subject-matter of the complaint is trivial, or
- (c) the conduct complained of occurred at too remote a time to justify investigation, or
- (d) there is or was available to the complainant an alternative and satisfactory means of redress in relation to the conduct complained of, or
- (e) the complainant has no interest or an insufficient interest in the conduct complained of.

(2) The Financial Services Ombudsman may make preliminary inquiries for the purpose of deciding whether a complaint should be investigated under this Part and may request the complainant to provide further written particulars of the complaint within a period specified by that Ombudsman.

(3) The Financial Services Ombudsman may decide not to continue to investigate a complaint if the complainant fails within a reasonable period to comply with a request for further written particulars.

(4) As soon as practicable after deciding not to investigate a complaint, or to discontinue an investigation of a complaint, the Financial Services Ombudsman shall—

- (a) inform the complainant in writing of the decision and the reasons for it, and
- (b) provide the Regulatory Authority with a copy of the decision.

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Financial Services
Ombudsman to
attempt to deal with
complaint by
mediation in first
instance.

57CA.—(1) On receiving a complaint, the Financial Services Ombudsman shall, as far as possible, try to resolve the complaint by mediation. Pt.2 S.16

(2) Participation in the mediation by the parties to a complaint is voluntary, and a party may withdraw at any time. The Financial Services Ombudsman may abandon an attempt to resolve a complaint by mediation on forming the view that the attempt is not likely to succeed.

(3) 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.

(4) If 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 accordingly.

Persons entitled to
make certain
submissions to
Financial Services
Ombudsman.

57CB.—When investigating a complaint, the Financial Services Ombudsman shall provide the parties with an opportunity to make submissions with respect to the conduct complained of.

Financial Services
Ombudsman to
conduct
investigations in
private.

57CC.—The Financial Services Ombudsman shall ensure that investigations are conducted in private.

Progress report to
complainant.

57CD.—The Financial Services Ombudsman may, in the course of investigating a complaint, periodically report to the complainant on the progress of the investigation and, in so doing, may make such comments to the complainant on the investigation and its consequences and implications as that Ombudsman thinks fit.

Financial Services
Ombudsman can
require regulated
financial service
provider to give
information.

57CE.—(1) To enable a complaint to be investigated, the Financial Services Ombudsman may require the regulated financial service provider concerned and any associated entity of that financial service provider—

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(a) to provide information either orally or in writing, or

(b) to produce any document or other thing, or

(c) to provide a copy of any document,

that appears to that Ombudsman to be relevant to the investigation. However, this subsection does not authorise the Financial Services Ombudsman to require the provision of information, or the production of a document or copy of a document, the communication of which is subject to legal professional privilege.

(2) A requirement under this section may be made orally or be in writing but must specify or describe the information, document or thing required, and must fix a time and specify a place for compliance.

(3) The power conferred by subsection (1) can be exercised in relation to a regulated financial service provider, or an associated entity of the financial service provider, irrespective of whether the Financial Services Ombudsman has entered the premises of the financial service provider in accordance with section 57CF.

(4) For the purpose of obtaining information relevant to investigating or adjudicating a complaint about the conduct of a regulated financial service provider, the Financial Services Ombudsman may—

(a) summon any officer, member, agent or employee of the financial service provider to attend before that Ombudsman, and

(b) examine on oath any such officer, member, agent or employee in relation to any matter that appears to that Ombudsman to be relevant to the investigation or adjudication.

(5) Without limiting subsection (4), the Financial Services Ombudsman has the same powers that a judge of the High Court has when hearing civil proceedings that are before that Court with respect to the examination of witnesses (including witnesses who are outside the State).

(6) A person who is summoned to appear before the Financial Services Ombudsman under this section is entitled to the same rights and privileges as a witness appearing in civil proceedings before the High Court.

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(7) Information provided by a person in response to a requirement made under subsection (1), or an answer to a question put to a person in the course of an examination conducted under subsection (4), is not admissible as evidence against the person in criminal proceedings, other than proceedings for—

- (a) if the information or answer was provided on oath, perjury, or
- (b) an offence against section 57CH.

Financial Services Ombudsman may enter premises of regulated financial service provider or associated entity of such a provider.

57CF.—(1) When investigating a complaint about the conduct of a regulated financial service provider, the Financial Services Ombudsman may, at any reasonable time—

- (a) enter and inspect any business premises occupied or used by the financial service provider or by any other body or person who appears to that Ombudsman to be associated with that provider, and
- (b) inspect any document or thing in or on the premises.

(2) If a document is kept in a non-legible form, the Financial Services Ombudsman may request the person apparently in charge of the document to reproduce it in a legible form or to give to that Ombudsman such information as that Ombudsman reasonably requires in relation to the document.

Circuit Court may order person to comply with requirements, etc., of Financial Services Ombudsman.

57CG.—(1) The Financial Services Ombudsman may apply to the Circuit Court for a compliance order against a person if it appears to that Ombudsman that the person—

- (a) has failed to comply with a requirement made to the person by that Ombudsman under section 57CE, or
- (b) has failed to comply with a summons under that section to appear before that Ombudsman for examination, or
- (c) having complied with such a summons, has refused to be examined, or
- (d) has otherwise obstructed that Ombudsman in the exercise of a power conferred by this Part.

(2) If, on hearing an application seeking a compliance order against a person, the Circuit Court is satisfied that the person has failed or refused to do the act in question, the Circuit

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Court may make an order requiring the person to do that act.

(3) The Circuit Court may not hear an application for a compliance order unless—

- (a) the person against whom the order is sought appears at the hearing, or
- (b) the Court is satisfied that that person has been served with a copy of the application.

(4) On the hearing of an application for a compliance order against a person, the Circuit Court shall set aside a requirement made to the person—

- (a) to provide information, or
- (b) to produce a document or other thing, or
- (c) to provide a copy of a document,

if it is of the opinion that the person is entitled to claim legal professional privilege with respect to the provision of the information, the production of the document or thing or the provision of the copy.

Obstruction of Financial Services Ombudsman in the performance or exercise of functions and powers.

57CH.—A person who—

- (a) obstructs the Financial Services Ombudsman in the exercise of a power conferred by this Chapter, or
- (b) without reasonable excuse, fails to comply with a requirement or request made by that Ombudsman under this Chapter, or
- (c) in purported compliance with such a requirement or request, gives information that the person knows to be false or misleading, or
- (d) refuses to comply with a summons to attend before, or to be examined on oath by, that Ombudsman,

commits an offence and is liable on summary conviction to a fine not exceeding €2,000 or to imprisonment for a term not exceeding 3 months, or both.

Adjudication of complaints.

57CI.—(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 substantiated, or
- (b) is not substantiated, or
- (c) is partly substantiated in one or more specified respects but not in others.

(2) A complaint may be found to be substantiated or partly substantiated 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) The Financial Services Ombudsman shall include in a finding—

- (a) reasons for the finding, and
- (b) any direction given under subsection (4) as a result of the finding.

(4) If a complaint is found to be wholly or partly substantiated, 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;

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(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.

(5) The Financial Services Ombudsman may not direct the payment of an amount of compensation exceeding an amount (if any) prescribed by Council Regulations.

(6) A direction requiring a regulated financial service provider to pay an amount of compensation may provide for interest to be paid at a specified rate if the amount is not paid by a date specified in the direction.

(7) The Financial Services Ombudsman shall give a copy of a finding under this section—

(a) to the complainant, and

(b) to the regulated financial service provider to which the complaint relates.

(8) If a finding under this section contains a direction under subsection (4), the financial service provider concerned—

(a) shall comply with the direction within such period as is specified in the direction, or within such extended period as the Financial Services Ombudsman allows, and

(b) shall, within 14 days after the end of that period or extended period, notify in writing the Financial Services Ombudsman of action taken or proposed to be taken in consequence of the direction.

(9) Subject to the outcome of any appeal against a finding of the Financial Services Ombudsman in respect of a complaint, the finding is binding on the complainant, the regulated financial service provider concerned and every other person who is a party to the complaint.

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Enforcement of
Financial Services
Ombudsman's
directions.

57CJ.—(1) In this section—

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‘direction’ means a direction included in a finding made by the Financial Services Ombudsman under section 57CI;

‘enforcement order’ means an order of the Circuit Court to enforce a direction.

(2) If a regulated financial service provider fails to comply with a direction within the period, or by the date, specified in the direction, the Financial Services Ombudsman or the complainant in whose favour the finding was made may apply to the Circuit Court for an enforcement order in respect of the direction.

(3) The Circuit Court may not hear an application for an enforcement order unless—

(a) the regulated financial service provider concerned appears at the hearing as respondent to the application, or

(b) if that financial service provider does not appear at the hearing, the Court is satisfied that a copy of the application has been served on that financial service provider.

(4) On hearing an application for an order to enforce the direction, the Circuit Court shall, if satisfied that the direction was one that the Financial Services Ombudsman was empowered to make, make an order requiring the regulated financial service provider concerned to comply with the direction within a period, or by a date, specified in the order.

(5) The Circuit Court may not hear an application for an enforcement order in respect of a direction if the regulated financial service provider concerned has appealed against the finding in which the direction is included and either—

(a) the finding or direction has not been affirmed (with or without modification), or

(b) that financial service provider has not withdrawn the appeal.

(6) If, on the hearing of an application for an enforcement order, the Circuit Court is satisfied that, because of the lapse of time, it would not be possible for the regulated financial service provider concerned to comply with such an order, the Court shall make an order providing the complainant with such redress as it considers appropriate in the circumstances.

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(7) If an enforcement order requires a regulated financial service provider to pay an amount of money, the Circuit Court may direct that financial service provider to pay to the complainant concerned interest on the amount for all or a specified part of the period—

(a) beginning 4 weeks after the date on which the direction was given to that financial service provider, and

(b) ending with the date of the order.

(8) The interest payable on such an amount is to be at the rate referred to in section 22 of the Courts Act 1981.

CHAPTER 6

References and Appeals under this Part to the High Court

Financial Services Ombudsman may refer question of law to High Court.

57CK.—(1) When dealing with a complaint, the Financial Services Ombudsman may, on that Ombudsman's own initiative or at the request of the complainant or the regulated financial service provider concerned, refer for the opinion of the High Court a question of law arising in relation to the investigation or adjudication of the complaint.

(2) The High Court has jurisdiction to hear and determine any question of law referred to it under this section.

(3) If a question of law has been referred to the High Court under this section, the Financial Services Ombudsman may not—

(a) make a finding to which the question is relevant while the reference is pending, or

(b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the High Court on the question.

Right of appeal to High Court against Financial Services Ombudsman's finding.

57CL.—(1) If dissatisfied with a finding of the Financial Services Ombudsman, the complainant or the regulated financial service provider concerned may appeal to the High Court against the finding.

(2) The Financial Services Ombudsman can be made a party to an appeal under this section.

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

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- (a) within such period and in such manner as is prescribed by rules of court of the High Court, or Pt.2 S.16
- (b) within such further period as that Court may allow.

Orders on appeal to the High Court relating to Financial Services Ombudsman's finding.

57CM.—(1) The High Court is to hear and determine an appeal made under section 57CL and may make such orders as it thinks appropriate in light of its determination.

(2) The orders that may be made by the High Court on the hearing of such an appeal include (but are not limited to) the following:

- (a) an order affirming the finding of the Financial Services Ombudsman, with or without modification;
- (b) an order setting aside that finding or any direction included in it;
- (c) an order remitting that finding or any such direction to that Ombudsman for review.

(3) If the High Court makes an order remitting to the Financial Services Ombudsman a finding or direction of that Ombudsman for review, that Ombudsman is required to review the finding or direction in accordance with the directions of the Court.

(4) The determination of the High Court on the hearing of such an appeal is final, except that a party to the appeal may apply to the Supreme Court to review the determination on a question of law (but only with the leave of either of those Courts).

Appeal stays the finding of the Financial Services Ombudsman.

57CN.—A finding of the Financial Services Ombudsman does not take effect, and may not be implemented, while an appeal under section 57CL or an application under section 57CM(4) is pending in relation to the finding.

CHAPTER 7

Supplementary provisions

Protection and other provisions relating to disclosures of information.

57CO.—(1) A provision of any Act or law that prohibits or restricts the disclosure of information does not—

- (a) operate to prevent or restrict the disclosure of information, or
- (b) affect a duty to disclose information,

under this Part.

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(2) A person who discloses information under or for the purpose of this Part does not incur liability for defamation or other civil liability only because of the disclosure.

(3) Nothing in this Part affects an obligation or power to provide information apart from this Part.

Power of Court to grant injunctions in certain cases.

57CP.—(1) The High Court may, on an application made by the Financial Services Ombudsman, grant an injunction restraining conduct in which a regulated financial service provider is engaging or in which a regulated financial service provider appears likely to engage, if the conduct is conduct that is being investigated or is proposed to be investigated under this Part.

(2) The High Court may not grant an application under subsection (1) unless 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 wholly or partly substantiated.

(3) The High Court may not require the Financial Services Ombudsman to give any undertaking as to damages as a condition for the granting of an injunction in consequence of an application referred to in subsection (1).

Financial Services Ombudsman and Council to co-operate with Regulatory Authority and others.

57CQ.—(1) The Council and the Financial Services Ombudsman shall co-operate with the Regulatory Authority (and, in particular, the Consumer Director) and the Pensions Ombudsman with a view to ensuring that the provisions of this Part operate in a way that contributes to promoting the best interests of consumers of financial services and to the efficient and effective handling of complaints.

(1A) The Financial Services Ombudsman shall, whenever asked to do so by the Regulatory Authority, provide that Authority with records or copies of records, or information, dealing with specified matters, or matters of a specified kind, relevant to the performance of that Authority's functions.

(2) The Council and the Financial Services Ombudsman may make recommendations to the Regulatory Authority, the Consumer Director and the Registrar of Credit Unions with respect to measures that that Authority, Director and Registrar might take so as—

- (a) to effectively deal with persistent patterns of complaints made against specified regulated financial service providers or against a specified class of those financial service providers, or
- (b) to improve the way in which regulated financial service providers deal with complaints that are made against them, or
- (c) to effectively deal with any other matter relating to promoting the interests of consumers of financial services.

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(3) As soon as practicable after the commencement of this section, the Financial Services Ombudsman, the Pensions Ombudsman and the Regulatory Authority shall enter into a memorandum of understanding setting out the terms under which they agree to give effect to this section.

CHAPTER 8

Reciprocal arrangements with corresponding agencies of other EEA Countries

Definitions
(Chapter 8).

57CR.—(1) In this Chapter—

‘complaint’ includes a complaint within the meaning of the EEA Memorandum of Understanding;

‘EEA Memorandum of Understanding’ means the Memorandum of Understanding on a Cross-border Out-of-court Complaints Network for Financial Services in the European Economic Area or, if the memorandum is amended or is replaced by another memorandum, means the memorandum as so amended or that other memorandum.

Financial Services Ombudsman may subscribe to EEA Memorandum of Understanding.

57CS.—The Financial Services Ombudsman may, with the approval of the Council, subscribe to the EEA Memorandum of Understanding.

Financial Services Ombudsman may refer complaints to other EEA dispute settlement body.

57CT.—If the Financial Services Ombudsman subscribed to the EEA Memorandum of Understanding, that Ombudsman may refer a complaint made to that Ombudsman to another EEA dispute settlement body in accordance with the terms of that Memorandum.

Financial Services Ombudsman may mediate, investigate and adjudicate complaints referred by other EEA

57CU.—If the Financial Services Ombudsman has subscribed to the EEA Memorandum of Understanding, that Ombudsman may mediate, investigate and adjudicate on any complaint referred to that Ombudsman by