



Specialist Debt Advice Service
Spotlight
June 2019

Shelter

Complaining to the Financial Ombudsman Service (FOS)

Introduction

[FOS](#) was set up under Part XVI and Schedule 17 of the [Financial Services and Markets Act 2000](#) as a statutory alternative dispute resolution mechanism. The detailed rules that govern its activities are in the FCA Handbook at [DISP 3](#).

What complaints can FOS deal with?

FOS can deal with complaints in relation to a wide range of financial products and services including consumer credit, debt advice, mortgages, insurance, pensions, investments and, since 1st April 2019, claims management.

FOS cannot consider complaints in relation to the operation of IVAs. These normally have to go through the [Insolvency Service Complaints Gateway](#) and are routed to the Insolvency Practitioner's (IP's) regulatory body. They have powers to sanction the IP but cannot order that compensation is paid to the client. However, if the firm that sold the IVA provides debt advice and is FCA authorised, FOS may be able to consider a complaint and potentially compensate a client in respect of a mis-sold IVA.

Time limits

[DISP 2.8](#) provides for time limits for complaints to be brought to FOS. The client must normally bring the complaint within six years of the event being complained about or, if later, within three years of becoming aware (or when they ought reasonably to have become aware) that they had cause for complaint.

The complaint must first be made to the firm being complained about and then to FOS within six months of their Final Response. The client can go to FOS if they do not receive a Final Response after eight weeks.

FOS has powers to extend the time limits in exceptional circumstances or where the Respondent agrees.

Court proceedings and FOS

FOS cannot consider matters that have already been considered by a court. However, it can sometimes be possible to distinguish the subject matter of the FOS complaint from the matters that have been dealt with by court.

Where a creditor has commenced court proceedings, but the client would like a complaint to be considered by FOS, it may be appropriate to seek a stay of the court proceedings to allow this to happen.

[CPR 1.4\(2\)\(e\)](#) requires the court to encourage parties to use Alternative Dispute Resolution when exercising its case management powers. The [Pre-Action Protocol for Debt Claims](#) also aims to encourage Alternative Dispute Resolution (see para 6, in particular).

FOS may be asked to expedite their consideration of a complaint where necessary.

How do FOS consider complaints?

[Section 228](#) Financial Services and Markets Act 2000 requires (in respect of FOS' compulsory jurisdiction) that: "*A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case.*"

DISP 3.6.4 requires that:

"In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:

(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) (where appropriate) what he considers to have been good industry practice at the relevant time."

This is a wider remit than that of the courts who can usually only consider matters of law. In practice, this means that some complaints that might not constitute a legal defence or claim, may succeed when taken to FOS. Equally, technical legal defences or claims that have not involved detriment to the client may succeed in court but not with FOS. Horses for courses!

It can be helpful to refer FOS to any particular law, rules, guidance, etc that are relevant though this is not strictly necessary. But do try to explain how what has happened has not been fair or reasonable for your client and what impact this has had on them.

A complaint is usually considered, in the first instance, by an Adjudicator. They will first send out a preliminary decision for comment by both parties, followed by their decision. Either party can then ask for the complaint to be reviewed by an Ombudsman. They will undertake a full review of the complaint and may send out a preliminary decision for comment, prior to

their final decision. The Ombudsman upholds the Adjudicator decision in about 90% of cases.

Your client can choose whether or not to accept the Ombudsman [decision](#). If they do, it becomes legally binding.

What awards can FOS make?

[DISP 3.7](#) provides for the awards that FOS may make. These may be made under four headings:

- Money
- Interest
- Costs
- Directions

Money awards may include compensation for financial loss, pain or suffering, damage to reputation and distress or inconvenience.

Making a complaint

Complaint must first be made to the firm being complained about. It makes sense to make a strong complaint at this stage since this will increase the chances of the firm upholding the complaint without the need to progress it further. Firms may be [charged](#) for complaints that are made to FOS about them, even if they are not successful, so they will not be keen for complaints to progress to this stage where it can be avoided. A good complaints letter should address some key points:

- Make it clear that you are making a complaint – head your letter ‘complaint’.
- Background to the complaint – what has happened – what has the firm done wrong?
- What loss and/or damage has this caused your client?
- What do you want the firm to do to put things right – what compensation is required?
- What is your client going to do if the complaint cannot be resolved to their satisfaction – complain to FOS.

If your client is not satisfied with the firm’s Final Response (or they do not provide one within eight weeks) your client may complain to FOS. The [Complaint Form](#) can be completed online but must then be printed out, signed and posted to FOS.

Technical Advice Desk

The FOS [Technical Advice Desk](#) can be really helpful to discuss potential cases. They can help clarify whether FOS will be able to consider a particular complaint and what approach they would be likely to take in considering a complaint. You should not, however, ask them to ‘pre-judge’ the complaint without having received full representations from both parties.

Database of past decisions

There is a searchable [database](#) of FOS decisions on the FOS website. This works well – you will probably be able to find reports of similar cases that FOS have considered and what the

outcome was. This should help you get a pretty good idea of the likely outcome in your case. Perhaps the only problem is you can get a lot of case reports to sift through – but there are search filters that can help you narrow this down.

Ombudsman News

You can [subscribe](#) to FOS' regular online newsletter, Ombudsman News. Each edition focusses on a particular aspect of FOS' work. For example, the [February 2019 edition](#) focusses on debt collection complaints.

An Ombudsman News Index is also available in the Networking and Information Sharing section of the IMA website under [resources directory](#), which provides a snapshot of topics in each issue that might be relevant to money advisers.