

enforcing an ombudsman's decision in court

This factsheet explains why a consumer may need to enforce an ombudsman's decision in court – and what this involves. But it shouldn't be taken as legal advice.

why do I need to go to court?

If a consumer accepts an ombudsman's final decision before the deadline we set, the decision is "binding" on both sides. This means the business must put things right in the way the ombudsman tells it.

In almost all cases upheld by the Financial Ombudsman Service, the business does this without a problem.

But in a few cases, the business doesn't respond to a final decision. If this happens, we'll first try to get in touch to find out why. And if we can't contact the business – or we find it's refusing to comply with the decision – we report it to its regulator.

When Parliament made the law establishing the Financial Ombudsman Service – the Financial Services and Markets Act 2000 (FSMA 2000) – it made an ombudsman's decision legally enforceable in court.

So if the regulator's involvement doesn't have any effect, court is the final option. Parliament gave consumers the power to enforce ombudsman decisions in court – rather than the ombudsman service.

why can't I just sue the business in court?

If you tried to sue the business, it could be able to reargue the merits of your case (in other words, whether your complaint is justified) – and the outcome might not be the same.

However, the ombudsman has *already* decided the complaint should be upheld in your favour – and this decision can be enforced.

how do I start enforcement proceedings?

The United Kingdom has three separate legal systems – in England and Wales, in Scotland, and in Northern Ireland. Enforcement proceedings can be started through:

- in England and Wales, the County Court
- in Scotland, the Sheriff Court
- in Northern Ireland, the Enforcement of Judgments Office or the County Court.

You will usually need to start enforcement proceedings in the branch of the court that is local to the business – but you may be able to get help first from the branch of the court that is local to you.

Location of courts and enforcement offices can be found online at:

- in England and Wales: www.hmcourts-service.gov.uk
- in Scotland: www.scotscourts.gov.uk
- in Northern Ireland: www.courtsni.gov.uk

whose name should the proceedings be brought in?

The proceedings should be brought in the name(s) written at the top of the ombudsman's final decision – next to "complaint by".

So if the final decision refers to "Mr John Smith and Mrs Mary Smith", the enforcement proceedings shouldn't be started just in the name of "Mr Smith and Mrs Smith".

what does enforcement involve?

Because it's unusual for our decisions to have to be enforced, many courts and legal representatives are unfamiliar with

the process. So it may help to show them this factsheet.

The court procedure will differ depending on whether the ombudsman has made a “money award” or a “direction”. We’ll tell you which applies in your case.

for a “money award”

When the ombudsman makes a “money award”, they tell the business to pay a particular amount of money as compensation. The actual amount involved is either specified by the ombudsman directly or calculated by the business following instructions (or a “formula”) given by the ombudsman.

If the ombudsman makes a money award in your case, you or your legal representative can:

- draw the court enforcement office’s attention to section 228(5) of FSMA 2000 which provides that the ombudsman’s decision is final and binding;
- draw the court enforcement office’s attention to paragraph 16 in schedule 17 of FSMA 2000, concerning the enforcement of ombudsman money awards; *and*

in England and Wales

ask the County Court to order that the money award be recovered by execution issued from the County Court as if it were payable under an order of that court

in Scotland

ask the Sheriff to enforce the money award as if it were a judgment or order of the Sheriff (and whether or not the Sheriff could have granted such a judgment or order)

in Northern Ireland

ask the Enforcement of Judgments Office to enforce the money award as a money judgment under the Judgments Enforcement (Northern Ireland) Order 1981.

www.financial-ombudsman.org.uk

This factsheet for consumers is only a general guide. It is not legal advice. We look at each case on its own individual facts and merits. We will always give you the chance to query anything you don’t understand or agree with.

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for a “direction”

When the ombudsman makes a direction, they tell the business to take particular steps to put something right – other than paying compensation.

If the ombudsman makes a “direction” in your case, you or your legal representative can:

- draw the court enforcement office’s attention to section 228(5) of FSMA 2000 which provides that the ombudsman’s decision is final and binding; and
- draw the court enforcement office’s attention to section 229 (9) of FSMA 2000, concerning the enforcement of ombudsman directions, and ask it to enforce the direction:

in England and Wales

by an injunction in the County Court or High Court

in Scotland

by an order under section 45 of the Court of Session Act 1988

in Northern Ireland

by an injunction in the County Court or High Court.

what if the business *can’t* pay up?

In some cases, the business has ceased to trade – meaning it wouldn’t be able to meet any payment the court told it to make.

If this happens, you can refer your claim to the Financial Services Compensation Scheme (FSCS). The FSCS (www.fscs.org.uk) is the final “safety net” for customers of regulated businesses that are unable to pay what they owe.

The FSCS is completely separate from the Financial Ombudsman Service and it has its own, different rules. But if it takes on your claim – and if you agree we can do so – we’ll pass on information we have about your complaint as quickly as possible.