

the ombudsman and larger businesses

your guide to the
Financial Ombudsman Service



Financial
Ombudsman
Service

The independent expert in settling complaints between consumers
and businesses providing financial services.



About this guide

This guide provides general information about the ombudsman service – and how we resolve complaints.

It is intended mainly for people who:

- deal regularly with customer complaints;
- work in complaints departments, compliance units and customer service departments of larger financial businesses; *and*
- may need to have regular direct contact with the ombudsman service.

We also produce a separate guide – *Smaller businesses and the Financial Ombudsman Service* – for those businesses that do not generally have much contact with us.

You can download these guides for businesses from the publications page of our website (www.financial-ombudsman.org.uk) – or you can obtain copies, free of charge, from our publications team (phone **020 7964 0092** or email publications@financial-ombudsman.org.uk).

This guide does not provide detailed legal guidance and is not a definitive statement of the law, our approach or our procedure.

About the ombudsman service

The Financial Ombudsman Service was set up by Parliament in 2001 as the independent expert in settling complaints between consumers and businesses providing financial services. We are not a regulator or an industry trade body. Nor are we a consumer champion or a government body. Our job is to settle disputes without taking sides.

Our powers are set out in:

- part XVI and schedule 17 of the *Financial Services and Markets Act 2000* and
- section 59 of the *Consumer Credit Act 2006*.

The rules that set out in detail how the Financial Ombudsman Service – and businesses – should handle complaints are published in the Dispute Resolution (“DISP”) section of the *FSA’s Handbook* (available online at <http://fsahandbook.info/FSA/html/handbook/DISP>).

What types of activity and what businesses are covered by the ombudsman service?

We cover activities that are regulated by the Financial Services Authority (FSA), such as accepting deposits and providing (or advising on) investment products, mortgages and insurance policies. We also cover consumer-credit activities as set out in the Consumer Credit Acts.

We cover all retail financial firms regulated by the FSA and all businesses holding a standard consumer credit licence from the Office of Fair Trading (OFT).

We also cover various other businesses. For example, some businesses based in Europe with UK customers are covered by our “voluntary jurisdiction”. And we can look at some complaints relating to former businesses that are no longer active in financial services.

For more details see www.financial-ombudsman.org.uk/faq/businesses/

Who can complain to the ombudsman service?

Complaints can be made by, or on behalf of, customers (or potential customers) who are:

- private individuals *or*
- “micro-enterprises”.

“Micro-enterprises” (an EU term covering smaller businesses) can bring complaints to the ombudsman as long as they have an annual turnover of less than two million euros and fewer than ten employees.

There are also some circumstances in which we can accept complaints from consumers who are neither customers nor potential customers of the business complained about. Examples include:

- employees covered by a group insurance policy that is held in the name of their employer;
- someone who has given the business they are complaining about a guarantee, or security for a mortgage or loan; *or*
- someone from whom the business complained about has sought to recover payment as part of its consumer-credit debt-collecting activities.

Is the ombudsman’s approach similar to what a court would do?

We are an informal alternative to the civil courts – and take a different approach to resolving disputes. We rarely find it helpful or necessary to have official “hearings” – and our process does not involve sworn witnesses, cross-examinations and formal legal procedures. We generally settle complaints on the basis of the paperwork that consumers and businesses send us – rather than having face-to-face meetings.

Unlike the courts, we are not limited to looking only at the specific issues the consumer has highlighted in their complaint. Our approach is “inquisitorial” – which means we can ask questions to get to the core facts of the case, rather than focus just on the issues presented to us.

We tell consumers they do not need professional help to bring a complaint to us – and that we prefer to hear from them in their own words. We decide complaints on the basis of their individual facts and merits – not on who can present the most persuasive legal arguments.

The complaints-handling process

What must my business do when it receives a complaint from a consumer?

The ombudsman service will get involved in looking at a consumer's complaint against your business *only* if you have already had the opportunity to deal with the complaint – and the consumer remains unhappy with your response.

Your business must have in place – and operate – an in-house complaints-handling procedure that complies with the complaints-handling rules.

Among other things, these rules require you to:

- send the consumer a prompt written acknowledgment (if you have not been able to resolve the complaint on the spot, or by the end of the next working day);
- ensure you keep the consumer reasonably informed about the progress of their complaint; *and*
- send the consumer a “final response” within eight weeks from the date your business received the complaint (as long as you have not already resolved the complaint by sending a response which the consumer has accepted in writing).

The time limits for dealing with a complaint apply from the date a complaint is received *anywhere* within your business. And a consumer (or someone acting on their behalf) is entitled to inform you of their complaint in a number of ways – for example, by email, phone or in person.

So businesses must make sure all relevant staff can recognise a complaint and know how their complaints process works. Businesses must also ensure that their complaints process is accessible for consumers with specific needs – for example, disabled customers.

Full details of the time limits and other requirements are set out in the “DISP” section of the *FSA handbook* (available online at <http://fsahandbook.info/FSA/html/handbook/DISP>).

What happens when a consumer contacts the ombudsman service about a complaint?

The front-line staff in our customer contact division deal with all initial enquiries from consumers – and provide them with general advice and guidance on what to do if they have a complaint about a financial service or product.

If a consumer brings a complaint to us *before* complaining direct to you, our customer contact staff will refer the complaint on to you. If you are then able to resolve the complaint to the consumer's satisfaction, we will have no further involvement in the case.

But the consumer can ask us to look into their complaint if:

- you have already sent them your final response and they remain dissatisfied; *or*
- you have had the complaint for eight weeks but have not sent your final response.

What information does the ombudsman need from consumers about their complaint?

At the initial stage we ask consumers to complete and sign our complaint form, giving us some basic information about their complaint – and their permission for us to look into it.

The form can be downloaded from our website
(on the “how to complain” page).

Or consumers may prefer to phone us direct on **0300 123 9 123** with their enquiry or complaint. If they do this, we can guide them through the complaint form over the phone. We will then send it to them to check and sign. This is generally more efficient, because it means we can encourage people to stick to the key facts.

When we receive a completed complaint form we check the details on the form – and any accompanying paperwork. If it is clear that from this information – and from the final response letter you have sent the consumer – that the complaint is one we can deal with, we pass it on to one of our teams of adjudicators for them to look into it.

Sometimes it is clear at an early stage that a particular complaint is *not* something we can deal with. Our rules allow us to ‘dismiss’ these cases without needing to look into them further.

But in some cases it may not be readily apparent whether or not a complaint is one we can deal with. The facts may be unclear or in dispute – or the case may be particularly complex.

In these circumstances, one of our adjudicators may need to look at the case in some detail before we can decide whether we are able to proceed with it. This will mean that a case fee becomes chargeable, even if we later decide the case is *not* one we can investigate.

There is more information about case fees on our website – (www.financial-ombudsman.org.uk/faq/businesses/funding.html).

What information will the ombudsman need from a business?

If we receive a complaint about your business, we will contact you and tell you what information we need. We generally settle complaints on the basis of the paperwork that you and the consumer send us, so it is important that you reply promptly to any request for information.

How long we give you to reply to any request will depend on what we need from you. Sometimes we may ask for a very quick response – for example, if our query is simple or urgent, or if we are asking for information you should already have on hand from your own investigation of the complaint. We will give you longer if we know you will need to carry out your own investigation before you can give us your reply.

If reasons specific to the case in question make it impossible for you to send us information within the time limit we have given you, please tell us immediately. Don't wait until the time limit is about to run out and *only then* ask for more time. If you delay unduly in replying to our requests for information, we may base our decision on the case using just the information we already have.

Will it matter if my business doesn't have a copy of every item of correspondence we sent to the consumer?

We usually ask to see copies of any letters and other documents that are relevant to the complaint. We appreciate that some of your correspondence may have taken the form of standard letters, generated automatically by computer.

Where it is not possible to let us have a copy of an actual letter, we may accept a copy of the standard letter that was in use at the time – together with the computer record showing that the standard letter was definitely generated and sent. Simply telling us the standard letter *would have been* generated may not be enough.

Will you need written statements from employees of our business?

If a dispute between your business and the consumer involves different recollections of a key event, we may need to ask for a written statement from a current or former employee of your business.

If we ask for a written statement from an employee, setting out how they recall a particular event, the statement should be in their own words – and signed by them. They should distinguish clearly between what they actually *remember* doing and what they think they *would have done* in that type of situation.

We expect you to make reasonable efforts to obtain written statements from any employee who may have information relevant to the complaint – even if they are no longer working for you.

What general approach does the ombudsman service take in resolving complaints?

This will depend on the facts of each individual case. But generally, we will first try to settle the dispute informally through mediation or conciliation. This can be quicker and more efficient than a formal investigation. Often just by taking a fresh look at the facts – and identifying and agreeing the key issues as we see them – we can come up with a solution that satisfies both sides.

Our approach is 'inquisitorial' – which means we can ask questions to get to the real facts of the case, rather than focus just on the issues presented to us.

At this stage, settling a dispute informally might involve us contacting you and/or the consumer – by phone – to suggest a way forward or to clarify the facts and issues involved.

If we are unable to resolve the matter over the phone – or if the nature of the case makes a written explanation more appropriate – we will confirm our position in writing. This will give the adjudicator’s opinion of the case and set out how, in the adjudicator’s view, the case should be resolved.

In some of our more complex cases, the adjudicator may seek to resolve the dispute by issuing a formal adjudication, which is sent to both parties at the same time. You and the consumer will each be given the opportunity to respond.

How does the ombudsman service reach a conclusion about the rights and wrongs in an individual complaint?

Our decisions are based on what we believe is fair and reasonable in the circumstances of each individual case. We take into account the law, rules, codes and good practice that applied at the time of the event complained about.

We look at all the relevant facts and arguments, ask both sides for their views, and listen to each side of the story. We may ask you to comment specifically on what the consumer has told us. Similarly we may ask the consumer for their views on what you have told us. After drawing together all the evidence, we will consider which version of events seems to us – on the balance of probability – to be the more likely.

In most cases, both the consumer and the business accept our adjudicator’s view and the complaint is then settled. If you disagree with the view we have put forward, you should discuss matters in the first instance with the adjudicator working on your case. If matters remain unresolved, either side may ask for a review and final decision by an ombudsman. This only happens in about one in ten cases. This is also the stage where any request for a hearing would be considered.

What happens if an ombudsman gets involved?

Where an ombudsman becomes directly involved in a case, they will first carry out an independent review of the complaint – before issuing a final decision. If the consumer accepts an ombudsman’s decision within the time limit specified by the ombudsman, both the consumer and the business are bound by the decision. Otherwise, the business is not bound – but the consumer remains free to take court proceedings against you, if they wish to do so.

A final decision by an ombudsman is the end of our complaints-handling process. Neither you nor the consumer can appeal against an ombudsman’s decision by going to another ombudsman. So don’t wait for an ombudsman’s decision and *only then*, send us your arguments. You need to have raised all your points *before* this stage, and we will give you – and the consumer – plenty of opportunity to do this.

Does a business have to comply with an ombudsman decision?

Yes. The rules require businesses to comply promptly with an ombudsman decision (or “award”) as well as with any settlement that may have been agreed earlier in the process.

If necessary the consumer can go to court to enforce an ombudsman decision.

What about confidentiality?

We will have regard for your rights of privacy. We do not automatically copy to both sides all the information we have on a case. But, in general, you should assume that we may disclose to the consumer any information you send us about the complaint. We will certainly need to summarise information that is central to our decision, as well as disclosing other information where we think it appropriate.

If you believe that some information should be confidential between you and the ombudsman service, you should mark that information clearly – and tell us why you do not think we should pass it to the consumer. We will consider your request – but we may not agree to it unless there is a strong case for confidentiality, such as security reasons. Our statutory right to demand information overrides your duty of confidentiality to any third party.

If appropriate, we may exchange information with the FSA and the OFT, as well as with other regulatory or government bodies. We are empowered to do this under the *Financial Services and Markets Act 2000* and the *Consumer Credit Act 2006*.

Can my business continue to deal as usual with a consumer while the ombudsman is considering their complaint?

While we are considering a complaint, you should continue to deal with the consumer as normal – for example, handling their account or dealing with any separate claims. But if anything you do is relevant to the complaint, you should let us know.

You are free, at any time, to revise any earlier offer you may have made to the consumer, if you think this could help resolve the complaint. But once we have started considering a case, it is important that you tell us first if you would like to make a revised offer. We can then look impartially at the offer and assess whether it seems fair – in which case we may be able to recommend it to the consumer.

While a complaint is with the ombudsman service, you should not take any legal action against the consumer about the subject matter of the complaint. And we recommend that you wait until we have finished our consideration of the complaint before you take any related legal action (such as proceedings for recovery of a debt, where that is not the focus of the complaint). You should tell us about any action you may be proposing.

Are there any time limits for consumers to refer a complaint to the ombudsman?

The complaints-handling rules set time limits for consumers to bring a complaint to the ombudsman. After these time limits have expired, the business can choose to object to the ombudsman looking at the complaint, on the grounds that it is “time-barred”.

Generally, these time limits are:

- six months from your business sending the consumer a final response (which must mention the six-month time limit); *and*
- six years from the event the consumer is complaining about (or – if later – three years from when they knew, or could reasonably have known, they had cause to complain).

Special rules on time limits apply to mortgage endowment complaints.

Under the rules, we have the discretion to look at complaints that fall outside these time limits as a result of “exceptional circumstances”. An example of this might be if the consumer was very seriously ill throughout the period when they could have complained.

We can also look at a complaint that falls outside these time limits if the business does not object to our doing so. But if a business wants to object to our considering a complaint we have received, it should let us know as soon as possible.

What if my business is unhappy with the way the ombudsman service has handled matters?

We have a separate procedure – open both to businesses and consumers – for complaints about the *level of service* we have provided. This is not a way of re-examining the *merits* of a decision we have made on a case.

The complaints procedure involves a review of the level of service we have provided – and can involve a final review by our independent assessor. There is more information on our website about our service standards and the role of the independent assessor.

How can I get more information about the ombudsman service?

Our website contains a wide range of information, including online versions of all our publications, together with factsheets, technical notes and a section especially for businesses – providing the answers to a wide range of frequently-asked questions (www.financial-ombudsman.org.uk/faq/businesses).

We produce a regular newsletter, *ombudsman news*, containing articles on our approach to different types of complaint – as well as commentary and case studies. Many businesses find *ombudsman news* a useful source of reference. It is available on our website or you can join our list of subscribers and have a copy of each issue posted to you – free of charge.

Our technical advice desk is also a free service for businesses. You can contact the advice desk for general information on any complaints-handling matter – including informal advice on what the ombudsman’s approach is likely to be on specific issues. Drawing on our many years of experience settling financial disputes, we can help businesses resolve complaints more effectively themselves at an early stage. This often avoids the need for complaints to be referred formally to the ombudsman service.

The technical advice desk is open from 9am to 5pm on Monday to Friday (phone 020 7964 1400 or email technical.advice@financial-ombudsman.org.uk).

We also take part in a wide range of industry events – from hands-on workshops to formal conferences. This is part of our commitment to sharing our complaints-handling knowledge and listening to the views of businesses.

For more details about the events we organise and take part in, see the news section of our website (www.financial-ombudsman.org.uk/news/index.html).

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www.financial-ombudsman.org.uk

contacting the ombudsman service

for general questions or technical queries

020 7964 1400 (9am to 5pm, Mon to Fri)

technical.advice@financial-ombudsman.org.uk

phone number for consumers

0300 123 9 123

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We aim to be accessible to everyone who uses our service. Information is available in different languages and formats (Braille, large-print, audiotape/ CD *etc*). And we can adapt the way we communicate, depending on individual needs. To contact us about any specific accessibility needs, email accessibility@financial-ombudsman.org.uk