

what a “final decision” by an ombudsman means

This factsheet explains the legal standing of a final decision by an ombudsman – where the consumer accepts the decision within the timescale set by the ombudsman and it becomes legally binding.

Every year the Financial Ombudsman Service resolves tens of thousands of disputes between businesses providing financial services and their customers. We settle most of these disputes informally, without having to use our official ombudsman powers. But in around one in ten disputes, either or both sides “appeal” to the ombudsman for a final decision.

If the ombudsman’s final decision finds in favour of the consumer – and the consumer accepts the decision within the timescale set by the ombudsman – the decision then becomes legally binding both on the business that the consumer has complained about *and* on the consumer themselves.

But if the ombudsman’s final decision *doesn’t* find in favour of the consumer, the consumer doesn’t have to accept it – and it doesn’t become binding. The consumer is free to go to court instead (depending on any court requirements or restrictions – for example, on time limits).

Whether the consumer accepts an ombudsman’s final decision or not, the decision is final. It is the end of the matter so far as our process is concerned. No ombudsman, however senior, can overrule the decision of another ombudsman.

what does a “binding” decision mean in practice?

If a consumer accepts an ombudsman’s final decision – within the timescale set by the ombudsman – the decision is binding on both the business and the consumer.

This means that the business is required by law to do whatever the ombudsman says is necessary – to put things right for the consumer.

A decision by an ombudsman that finds in favour of the consumer – and tells the business what it must do to put things right – is sometimes called an ombudsman “award”.

does an ombudsman award mean the ombudsman pays?

No. An ombudsman award is the instruction that the ombudsman gives a business on how it has to put things right for its customer – in cases where the ombudsman decides that the customer has lost out as a result of what the business has (or hasn’t) done.

The Financial Ombudsman Service does not have its own fund of money, to compensate consumers with complaints. Instead, we have the official power to tell businesses what *they* must do, to compensate their customers whose complaints we uphold.

what can the ombudsman tell a business to do – to put things right for a customer?

Parliament gave the ombudsman the power to tell a business what it has to do, to put things right for a consumer with a valid complaint.

Generally speaking, if the ombudsman upholds a consumer’s complaint – and agrees that the consumer has lost out – the aim is to put the consumer in the position

they would now be in, if the problem leading to the complaint had never happened in the first place.

The power the ombudsman has to put things right can range from instructing a business to pay a customer up to £100,000 – as compensation for money lost on a wrongly-advised investment, for example – through to telling a business to send flowers to a customer to say sorry for poor service.

where does the ombudsman get the power to make these decisions?

The ombudsman's powers are set out in the Financial Services and Markets Act 2000. This is where Parliament gave the ombudsman the power to make “money awards” and “directions”.

A “money award” is where the ombudsman tells a business to settle a complaint by paying a particular amount of money as compensation. The actual amount involved is *either* specified by the ombudsman directly – *or* it is calculated by the business following instructions (or a “formula”) given by the ombudsman.

A “direction” is where the ombudsman tells a business to take particular steps to put something right – other than by paying compensation. This may be appropriate, for example, where the complaint is about inaccurate information put on someone's credit-reference file.

so what if a business doesn't agree with an ombudsman's decision?

A final decision by an ombudsman is the last “appeal” stage of a procedure that involves a number of reviews – at increasing levels of formality. By the time an ombudsman makes a final decision, both sides will have had ample opportunity to put forward all their comments, views and relevant facts.

If a consumer accepts an ombudsman's decision within the timeframe set by the ombudsman, the decision becomes binding. This means that the business is required by

law to do what the ombudsman tells it to do – to put things right for their customer.

We expect businesses to comply with ombudsman decisions as promptly as possible. In some cases, the ombudsman tells the business to pay interest to the consumer, running up to the date the compensation is paid as required. So the business will not want to delay unnecessarily.

and what if a business won't comply with a decision?

In the vast majority of cases, businesses settle complaints as directed by the ombudsman – promptly and efficiently.

In the small number of cases where this does not happen, we are usually able to step in and sort things out. Where a consumer comes back to us – to say that nothing seems to have happened following an ombudsman's decision in their favour – we get in touch with the business involved, to find out what they are doing.

Usually in these cases, we find that the business is having difficulty calculating the exact amount of compensation required. Sometimes there are delays where the business has to rely on other experts, to provide specialist information or to run complex technical calculations.

If this is the case, we will try to help the business wherever we can – and we will make sure that the consumer is kept fully informed about what is going on.

what if the decision still isn't complied with?

Only a very small number of businesses fail to do what an ombudsman tells them – once we have been in touch with them and reminded them about the legal requirement to comply with an ombudsman decision. Sometimes the problem for the business can be financial. They may say they cannot afford the compensation we have told them to pay their customer.

If the business is (or was) regulated by the Financial Services Authority (FSA) – or by

one of the FSA's predecessor regulators – the matter might be referred to the Financial Services Compensation Scheme (FSCS), the “final safety net” for customers of regulated financial businesses that are unable to pay what they owe.

The FSCS is entirely separate from the Financial Ombudsman Service and it has its own different rules. But we co-operate closely with the FSCS. And we aim to hand over any cases like this to FSCS as promptly and efficiently as possible.

what happens if the business has the money to pay – but refuses to do so?

This is extremely rare. Parliament set up the Financial Ombudsman Service to *decide* complaints – not to act as a law enforcer or a bailiff. However, Parliament strengthened the power of ombudsman decisions in two ways – to help any consumer in these circumstances.

First, Parliament gave the regulator, the FSA, a wide range of powers to deal with the financial businesses that it regulates – and which are covered by the ombudsman service. The Office of Fair Trading (OFT), the consumer protection agency, also has statutory powers over businesses it licenses.

Secondly, Parliament made ombudsman decisions “legally enforceable” in court – which means that consumers have the back-up of the law of the land, to support decisions by the ombudsman in their favour.

what's the role of the FSA and the OFT if a business won't pay?

Businesses that are regulated by the FSA – and are covered automatically by the ombudsman service – are required under the FSA's rules to co-operate with the ombudsman. This includes complying with any decision that ombudsmen may make.

Similarly, businesses with a standard consumer credit licence issued by the OFT are covered automatically by the

ombudsman service – and are required to do as the ombudsman says.

The FSA and the OFT are separate organisations from the ombudsman service. They have their own powers in relation to the businesses they regulate or license.

We can pass information to the FSA and the OFT about any business they regulate or license that fails to co-operate with us. The FSA can – and does – take action against firms it regulates that refuse to do what the ombudsman has requested. And the OFT can take away or restrict the licence of businesses that break the rules.

This kind of regulatory action is entirely separate from our own work at the ombudsman service.

how is an ombudsman decision enforceable in court?

Parliament did not give the ombudsman enforcement powers – that is not our job. Instead, Parliament made legal provision for consumers *themselves* to be able to enforce our decisions in court – in the unlikely event that this becomes necessary.

Enforcing an ombudsman's decision in court should not mean having to argue the merits of the case again. The process is similar to enforcing a judgment where a case has been heard in court. We can provide more information about the enforcement process where necessary.

But we cannot give legal advice on individual cases – or represent consumers in court. We would strongly recommend any consumer in these circumstances to get their own independent legal advice.

The next page of this factsheet highlights some of the important issues you would need to be aware of – if you were in the rare position of considering court action to enforce an ombudsman decision.

what is the law that makes ombudsman decisions legally enforceable?

The Financial Services and Markets Act 2000 sets out the basis on which the ombudsman's decisions may be enforced in the courts. The relevant provisions of this Act of Parliament are in Part XVI and Schedule 17.

what type of legal action would this involve?

It is very important that you begin the right kind of legal action in the right court. There are different legal processes – and starting the wrong proceedings in court could lead to serious problems.

You would need to make sure you launch *enforcement* proceedings – not *fresh* proceedings that might re-open the dispute the ombudsman has already settled.

The court where you would need to start any legal action depends on where you live – and on where the business the decision is against is itself based. There are differences in the way the courts work – depending on whether you (or the business) are in Scotland, Northern Ireland, or England and Wales.

You would need to be very careful that any proceedings were brought in exactly the *same names* as the names on the ombudsman's final decision.

Because of the different procedures and court processes involved, it is important that you get independent legal advice on getting the right court and legal procedure.

phone **0300 123 9 123** (8am to 6pm, Monday to Friday)

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.

© Financial Ombudsman Service Ltd, July 2010

who can help with legal advice on this?

The ombudsman service cannot give legal advice – or help people through the courts. That is not what we were set up to do by Parliament.

To successfully enforce an ombudsman decision in the courts, you would almost certainly need professional legal advice and guidance.

Free sources of legal advice for consumers include:

- Citizens Advice [www.citizensadvice.org.uk] and the Community Legal Service [www.clsdirect.org.uk]
- Citizens Advice Scotland [www.cas.org.uk] and the Scottish Association of Law Centres [www.govanlc.com/salc]
- Advice NI [www.adviceni.net] in Northern Ireland

If you are looking for a lawyer to help you, details of law firms are available online at:

- The Law Society (covering England & Wales) www.lawsociety.org.uk/choosingandusing/findasolicitor.law
- The Law Society of Scotland www.lawsocot.org.uk/find
- The Law Society of Northern Ireland www.lawsoc-ni.org/cgi-bin/findafirm