

the ombudsman and smaller 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 Financial Ombudsman Service – and how we resolve complaints.

It is intended mainly for businesses that are covered by the ombudsman service but don't usually have much direct contact with us.

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



You can download this guide 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).

About the Financial Ombudsman Service

What exactly is 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*.

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 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 And we can look at some complaints relating to former businesses no longer active in financial services.

See www.financial-ombudsman.org.uk/faq/businesses/ for more details.

What does it mean for my business to be 'covered by the ombudsman service'?

In simple terms it means that you must have in place – and operate – complaints-handling procedures that comply with the complaints-handling rules. And consumers who have a complaint about your business will generally be able to refer it to the ombudsman service.

However, we will only get involved in looking at a consumer's complaint against your business if you have already had the opportunity to deal with it yourself – and the consumer remains unhappy with your response.

What are the complaints-handling rules that my business has to follow?

The rules that set out in detail how 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>).

These rules apply to all businesses that *are* or *have been* regulated by the FSA or the OFT. The rules reflect what is widely considered to be good practice. The rules also set out how the Financial Ombudsman Service handles the complaints that are referred to it.

Who is eligible to complain to the ombudsman service about individual businesses?

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 a guarantee – or security for a mortgage or loan – to the business they are complaining about; *or*
- someone from whom the business complained about has sought to recover payment as part of its consumer-credit debt-collecting activities.

Dealing with consumer complaints – what a business needs to do

What procedure must my business have in place for dealing with any complaints?

The rules require each business to have in place – and to operate – an effective and clear complaints-handling procedure. You must use this procedure to deal with any complaint from anyone who is eligible to refer their complaint to the ombudsman service.

Your procedure must take into account, among other things:

- the time limits for dealing with complaints; *and*
- the consumer's ultimate right to refer any unresolved complaint to the ombudsman service.

You must publish a summary of your complaints-handling procedure. You may wish to do this by producing a leaflet. This should:

- cover how you handle and resolve complaints; *and*
- explain that – if the complaint is not resolved – the consumer may be entitled to refer it to the ombudsman service.

You must refer in writing to the availability of this summary at, or immediately after, the point of sale (or – if your contact with the consumer does not involve a sale – at the point of first contact). You must also:

- provide consumers with this information in writing, if they ask for it; *and*
- automatically supply a copy of the summary, when you acknowledge a complaint.

You'll find more information on what you have to tell consumers about us in our online technical resource on our website.

What else should my business take into account when drawing up its complaints-handling procedure?

Your business should take reasonable steps to ensure all relevant employees are aware of – and follow – the complaints-handling procedure. And your procedure should be accessible for consumers with specific needs, for example, disabled customers.

You must put appropriate management controls in place to ensure your business handles complaints fairly, consistently and promptly – and resolves them at the earliest opportunity. This helps to minimise the possibility of unresolved complaints needing to be referred to the ombudsman service.

You should take account of decisions made by the ombudsman service on similar types of complaints. If you receive recurring complaints, you should analyse the causes and take remedial action, where possible. If you decide redress is appropriate, it must be fair and you must honour an offer if the consumer accepts it.

A consumer has made a complaint about my business – what happens now?

Under the rules you are required to try and resolve any complaints at the earliest opportunity. You have up to eight weeks in which to do this (this is sometimes referred to as the ‘eight-week rule’). The eight weeks start from the date a complaint is received anywhere in your business. 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 – as well as by letter. So you must make sure all relevant staff can recognise a complaint and know how the complaints procedure works.

The ombudsman service won’t consider a complaint against your business until you’ve first had the opportunity to deal with it yourself. But we can look into any complaint that you have not been able to settle to the consumer’s satisfaction – or that you have failed to settle within the required time limits.

When handling complaints, your business should:

- send the consumer a prompt written acknowledgement (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’ no later than eight weeks after your business received the complaint (if you have not already resolved the complaint by sending a response which the consumer has accepted in writing).

What is a ‘final response’?

This is your full response – in writing – to the consumer’s complaint.

If a consumer remains dissatisfied and brings their complaint to us, we usually use your final response as our starting point when we look at the case.

Bear in mind that many complaints arise out of simple misunderstandings that have escalated. So a sensitive reply that shows you are concerned to have an upset customer can often help calm things down – even when the answer is ‘no’.

Your final response should:

- summarise the complaint, setting out the results of your investigation and your final view on the issue the consumer has raised;
- be open in acknowledging any mistakes that may have happened;
- give details of any offer you have made to settle the complaint, with a clear explanation of how you arrived at that offer;
- tell the consumer they have the right to refer the complaint to the ombudsman service within six months of your final response; *and*
- include our contact details and a copy of our leaflet, *Your complaint and the ombudsman.*

What if I believe the complaint is not one that the ombudsman service covers?

If you think the complaint is not one that we cover, you can explain this in your final response. But you will also need to tell the consumer that it is for the ombudsman service, not you, to decide this.

What if I'm not able to send a final response within the eight-week time limit?

Under the rules you will normally be expected to have resolved the complaint – or to have sent a final response – within the eight-week time limit.

If exceptional circumstances mean you are unable to do this, the rules say you must send the consumer a response in which you:

- explain why you are not yet able to send a final response;
- tell the consumer they can refer the complaint to the ombudsman service if they are dissatisfied with the delay; *and*
- enclose a copy of the ombudsman's consumer leaflet, *Your complaint and the ombudsman*.

The consumer does not have to bring the complaint to us as soon as the eight weeks are up. But they may choose to do so. It is up to you to convince them that you are taking the matter seriously and you really do need extra time.

How do I obtain copies of the ombudsman's consumer leaflet?

Under the rules you must send out our consumer leaflet, *Your complaint and the ombudsman*:

- when you send your final response to the complaint; *or*
- if you run out of time and are not in a position to send your final response.

To order supplies of the leaflet you will need to complete the order form (available on the publications page of our website at www.financial-ombudsman.org.uk) and send it to us with your payment. There is also information on our website about:

- the availability of the leaflet in alternative formats, including Braille, large print and in languages other than English;
- arrangements for businesses who deal with consumers (and their complaints) over the internet; *and*
- the use of our logo to help promote consumer awareness of the ombudsman service.

You must *not* send consumers photocopies of our consumer leaflet or hard-copy print-outs of it from our website.

How the ombudsman service deals with complaints against businesses

What happens when a consumer contacts the ombudsman service?

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 the consumer your final response.

What information do consumers need to give the ombudsman 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).

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 from this information – and from the final response letter you have sent the consumer – that the complaint is one we can deal with, we will pass it on to one of our teams of adjudicators who will start to look into it.

What about complaints that the ombudsman *can't* deal with?

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' such cases without needing to look into them further.

But in some cases it is not 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 or not we are able to proceed with it. This will mean that a case fee becomes chargeable, even if we later decide that the case is not one we can investigate.

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

What information will the ombudsman need from my 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 as promptly as possible 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 my 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.

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 issues the consumer has highlighted in their complaint. 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.

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.

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.

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’ report, 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 the business and the consumer 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. If the consumer accepts an ombudsman’s decision, it is binding on you. The rules require businesses to comply promptly with any ‘money award’ or ‘direction’ that the ombudsman makes. You must also comply promptly with any settlement you may have agreed to make at an earlier stage of our process.

If necessary, the consumer can go to court to enforce an ombudsman decision. And the relevant regulator may take into account any failure by you to comply with an ombudsman’s decision.

What amount can the ombudsman tell businesses to pay consumers?

The ombudsman service can tell you to pay a consumer an amount for financial loss – and/or pain and suffering, damage to reputation, and distress and inconvenience. The maximum amount (or ‘award’) the ombudsman can instruct you to pay is £100,000.

The ombudsman can also direct a business to take appropriate action, such as to apologise or correct records. And we can also award costs (although this happens very rarely).

Will you fine my business if you uphold a complaint against it?

No. We are not a regulator and it is not our job to fine or punish businesses. Our role is to settle individual disputes between businesses and consumers.

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*.

More information about complaints and the ombudsman service

Can my business deal with a consumer as usual 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 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 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.

Is there any time limit for consumers referring 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 in ‘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 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 to both 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 in a particular 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 is the ombudsman service funded?

We are funded by a levy paid by businesses covered by the Financial Ombudsman Service – and by individual case fees paid by businesses when they have complaints considered by us.

adjudicator	10, 11, 15
adjudication	15
awards by an ombudsman	17
case fee	11, 20, 21
complaint form	10
complaint procedures	2, 4, 5
complaint rules	2, 8, 16, 19, 20
conciliation	14
confidentiality	18
Consumer Credit Act	1, 18
consumer-credit licence	1
consumer leaflet, <i>your complaint and the ombudsman</i>	6, 7, 8
disability and other accessibility needs	5, 8
dismissal of complaint	11
DISP rules (in FSA's Handbook)	2
distress and inconvenience	17
'eight-week rule'	5, 6, 7, 9
eligible complainant	3
enforcing an award	16
'fair and reasonable'	15
FAQs on website	21
final ombudsman decision	15, 16
final response letter	6, 7, 8, 9, 10
Financial Services and Markets Act	1, 18
Financial Services Authority (FSA)	1, 18, 21
hearings	14, 15
help for businesses	21
independent assessor	20
investigation	14
levy	20, 21
mediation	14
micro-enterprise	3
money award	16
Office of Fair Trading (OFT)	1, 18, 21
Ombudsman news	21
privacy	18
'six-year rule'	20
technical advice desk	21
time-limits	4, 12, 19, 20

please fold out for index



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www.financial-ombudsman.org.uk

contacting the ombudsman service

for general complaints-handling questions or technical queries

020 7964 1400 (10am to 4pm, Mon to Fri)

technical.advice@financial-ombudsman.org.uk

phone number for consumers

0300 123 9 123

address

Financial Ombudsman Service

South Quay Plaza

183 Marsh Wall

London E14 9SR

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 with people, depending on their needs. To contact us about any specific accessibility needs, email accessibility@financial-ombudsman.org.uk or phone 020 7964 0766.