



Collegiate

UNDERWRITING

A Guide to The Financial Ombudsman Service

Financial Ombudsman

Dealing with complaints can be a stressful and worrying time for a firm. Here we provide some of the key information and guidance for dealing with complaints which have been referred to the Financial Ombudsman Service (FOS).



What happens before a matter is referred to FOS?

Before a complaint can be referred to FOS, the advisor firm has 8 weeks to provide a final response letter (FRL) setting out whether they think the complaint should be upheld and if so, whether any compensation should be paid. FOS referral rights should always be set out in the FRL, if they are not, this may extend the period a complainant has to refer the matter to FOS. The FOS referral wording can be found at DISP 1 Annex 3 and requires certain wording to be included, as well as the FOS's website address and a copy of the FOS leaflet.

When can a matter be referred to the FOS?

A matter can be referred to the FOS once a complaint has been made to the financial advisor and they have provided a final response letter or 8 weeks has passed. The referral must be made within 6 months of the FRL unless there are exceptional circumstances. If FOS referral rights were not included in the FRL or were incorrect then the FOS may decide that they can look at the matter regardless of when this was referred.

Notification of referral

**The first three complaints referred to FOS are not chargeable.
However, from the fourth complaint there will be charge of
£750 per case.**

1

If you receive notification that a complaint has been referred to FOS you should make your broker and insurer aware. The initial complaint should have been notified to your insurer already and so they will be aware of the matter. You should check that the complaint matches with the one made and dealt with in the FRL and that no additional complaints have been included. If completely new grounds for complaint have been included, you may be allowed to respond to these in a separate FRL.

2

With the agreement of your insurer, a copy of your file can be sent to the investigator, however this should not include any correspondence with insurers or internal notes relating to the investigation of the complaint. You also have the opportunity to provide further submissions to FOS about the complaint should this be needed, however insurers will want to approve any drafts. It is always possible to ask the FOS for an extension of time in order to consider their findings and prepare a response if needed.

3

Lastly, it is important to consider whether FOS have jurisdiction to consider the complaint and if not, this should be raised straightaway.

Investigation



Recently the FOS have been giving firms a two week window in which to make a 'reasonable offer' to resolve the matter. If such an offer is made and accepted, the FOS will not change the outcome to "in favour of the consumer." If a dispute is relatively small or something a firm is likely to lose at the FOS, consideration should be given to this option. However a firm must remember that all offers must be agreed by their insurers.

An investigator will review the matter in the first instance. If relevant, they will consider jurisdiction first and provide a decision on this, otherwise they will just deal with the merits of the complaint and provide a written decision to the parties. It is becoming more common for investigators to deal with jurisdiction and merits in one decision to try to streamline the process.

The investigator's decision will confirm if the complaint is upheld or not, if any compensation should be awarded and if so, how it should be calculated. If the decision is not agreed by either party they can request that this is referred to an Ombudsman for a final decision. The parties will have the opportunity to respond to the investigator's decision and provide further information or arguments.

Once the matter has been referred to an ombudsman they will review all the information and evidence again and will come to a decision. If an ombudsman disagrees with the investigator's findings they will often issue a preliminary decision setting out why and inviting both parties to comment further. If the ombudsman broadly agrees with the investigator they will usually issue a final decision straightaway.

Jurisdiction

FOS do not always have jurisdiction to consider a complaint.

The most common reasons for this are:

- The referral to FOS was made over 6 months after the FRL was sent.
- The advice was provided over 6 years ago and the complainant was (or should have been) aware of the relevant issues over 3 years ago.
- The complainant is not an eligible complainant
- The product complained about is not something that the FOS can look at (usually because the product was not regulated at the time the advice was given)



Who isn't an "eligible complainant"?

These rules are set out in Disp 2.7 but eligible complainants typically don't include:

- X a micro enterprise (a type of small business) with an annual turnover or balance sheet of more than €2 million or more than ten employees.
- X a charity with an annual income of more than £6.5 million
- X a trust that has a net asset value of more than £5 million.
- X a small or medium-sized enterprise (SME) with an annual turnover of £6.5 million or more and either a balance sheet of more than £5 million and 50 or more employees.

What happens once a decision has been made?

If the complainant accepts the decision, this is binding on the firm and they will have to carry out any steps directed in order to resolve the matter.



If the decision is not accepted in the time frame given by FOS then this will not be binding on the parties. The decision will be published on the FOS website and can be searched by firm name. The FOS will often award a monetary settlement and will set out how this should be calculated. It will be the responsibility of the advisor firm to carry out the calculations and they will need to confirm to the complainant how the final figure has been calculated in clear and simple terms.

There will often also be an award for distress and inconvenience, for the majority of cases these will usually be between £100 and £500 but can be much higher where the issues complained of have had a significant impact.

The decision will usually give a time frame for payment and award 8% interest on the settlement amount for payment after this date. This can cause problems where a firm needs to obtain information from a third party, such as the current pension provider, however, FOS are generally unsympathetic to any arguments that the advisor firm has not caused the delay and will still require the interest to be paid. If a letter of authority is needed, it is useful to get this as soon as possible after the decision, or ask the complainant to provide the information needed.

How much the FOS can award?

- £430,000 for complaints referred on or after 1 April 2024 about acts or omissions by firms on or after 1 April 2019.
- £415,000 for complaints referred between 1 April 2023 and 31 March 2024 about acts or omissions by firms on or after 1 April 2019.
- £375,000 for complaints referred between 1 April 2022 and 31 March 2023 about acts or omissions by firms on or after 1 April 2019.
- £355,000 for complaints referred between 1 April 2020 and 31 March 2022 about acts or omissions by firms on or after 1 April 2019.
- £350,000 for complaints referred between 1 April 2019 and 31 March 2020 about acts or omissions by firms on or after 1 April 2019.
- £195,000 for complaints referred on or after 1 April 2024 about acts or omissions by firms before 1 April 2019.
- £190,000 for complaints referred between 1 April 2023 and 31 March 2024 about acts or omissions by firms before 1 April 2019
- £170,000 for complaints referred between 1 April 2022 and 31 March 2023 about acts or omissions by firms before 1 April 2019.
- £160,000 for complaints about acts or omissions by firms before 1 April 2019, and which are referred before 1st April 2022.

In Summary

While dealing with a complaint referral to the FOS can be worrying, the firm will have a chance to put forward their comments and respond to the investigator's decision and request that this is referred to an Ombudsman. Your insurer and broker will be able to assist you with any response and will be able to guide you through the process. You should ensure that they are kept updated throughout the process.

This guide was written by Charlotte Major at Collegiate Claims.

It has been produced for information purposes only and is not to be relied upon or construed as legal advice.

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