



Key Contact

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“... FOS can challenge the categorisation of a client..”

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THE FINANCIAL OMBUDSMAN SERVICE

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Overview

This briefing note is aimed at newly authorised firms, those firms that have recently added retail customers to their scope of permission or those wanting to refresh their understanding of the Financial Ombudsman Service (“FOS”).

What is FOS?

FOS is a public body that was set up by Parliament to carry out statutory functions set out in the Financial Services and Markets Act 2000 (Part XVI – The Ombudsman Scheme) on a non-commercial and not for profit basis. FOS is not a regulator and therefore it cannot fine firms.

In order to meet the definition of an ombudsman FOS must meet specific criteria relating to independence, effectiveness, fairness and public accountability.

FOS is funded by levies on the financial services industry. These are collected by FSA along with their own fees and the levies for the Financial Services Compensation Scheme. Firms can be exempt from FOS levies providing they do not have permission to deal with retail customers or operate funds that have retail customers as investors.

What is FOS’s jurisdiction?

FOS has three different jurisdictions: compulsory; consumer credit; and voluntary. Regulated activities and ancillary activities connected with them are covered by the compulsory jurisdiction.

Only eligible complainants are covered by FOS. The definition of an eligible complainant is:

- a private individual;
- a business, which has a group annual turnover of less than £1 million at the time the complainant refers the complaint to the respondent;
- a charity which has an annual income of less than £1 million at the time the complainant refers the complaint to the respondent; or
- a trustee of a trust which has a net asset value of less than £1 million at the time the complainant refers the complaint to the respondent.

There are however, some exceptions to this definition, including clients that have been categorised as professional clients. It is important to be aware, however, that FOS can challenge the categorisation of a client, particularly those opted up from retail to professional.

For General Insurance activities, Commercial Clients that meet the above size criteria fall within FOS’s jurisdiction.

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How does FOS operate?

FOS charges firms a £450 case fee for each complaint received. However, the first three complaints received in a year are free. This is to ensure that those firms that rarely have a complaint with FOS are not penalised in the same way as those with a high volume of complaints.

FOS aims to settle disputes between customers and businesses in an impartial way by considering the facts and information put forward by each side. When there is a lack of evidence FOS will make a judgement based on reasonable probability. This highlights an important reason to ensure your records are in good order.

FOS, based on its findings and conclusions, can make awards in favour of consumers. Awards can include costs (though this is rare) and awards for inconvenience and distress (although these are not high, typically £50 to £150). FOS can also direct firms to take action (eg make changes to records).

Firms are required, by FSA rules, to comply with FOS directions and awards up to £100,000. Although FOS can make a higher award the firm does not have to comply with any amount above £100,000. This limit has remained unchanged since FOS's inception – one reason being that very few awards are ever greater than this amount.

Consumers do not have to accept FOS's judgment and can still pursue a case through the courts. If a consumer accepts FOS's judgement it is binding on both them and the firm.

When a complaint goes to FOS

Each case is likely to be handled by a different adjudicator so it is important to bear in mind that they will not know anything about the firm. Providing any information requested promptly will help the progress of any case – although it is important to remember that cases, particularly more complex ones, can take months to resolve.

FOS recommends that firms try to continue dealing with the complainant of a case with FOS as normally as possible. If you are considering taking legal action against the complainant (whether related to the complaint or not) you should inform FOS of this but, ideally, wait until the case has been considered.

It is important to comply with awards and directions made by FOS promptly. FSA rules require this and non compliance could result in Enforcement action by FSA.

How to minimise the risk of complaints being referred to FOS

Treating your customers fairly should always help minimise the complaints you receive in the first place. But it is important to ensure that the firm has implemented a robust complaints handling procedure. This includes ensuring staff are trained to identify complaints – and know what to do if they receive one.

If you do receive a complaint consider the issues from the complainant's point of view and treat the complaint in a fair and reasonable manner.

Make use of the information available from FOS, including the FOS website, newsletters and other publications as these all provide good guidance on FOS's view. If necessary make use of the FOS technical queries line – FOS encourages this and has provided examples of firms that found it helpful in resolving a complaint.

Finally it is important that you remember to treat your complainants fairly.