

FINANCIAL OMBUDSMAN SERVICE



Banking & Finance

How to resolve your dispute

The Financial Ombudsman Service (FOS) is an independent organisation offering free and accessible dispute resolution services to financial services consumers across Australia.

The FOS Banking & Finance division resolves disputes relating to banks, and other financial service providers.

**Please call 1300 78 08 08
or visit www.fos.org.au**



Does your dispute fall within our Terms of Reference?

The types of disputes the Banking & Finance Ombudsman can consider and his powers to resolve disputes are set out in the FOS Banking & Finance Terms of Reference.

You can get a copy of the FOS Banking & Finance Terms of Reference and a current list of FOS Banking & Finance members by calling 1300 78 08 08 or visiting our website at www.fos.org.au

As a general rule we can consider your dispute if:

- » it is about a financial service provided to you by a member
- » you are an individual or a small business, and
- » the amount of loss you claim is less than \$150,000 if the event occurred before 1 December 2004, or
- » the amount of loss you claim is less than \$280,000 if the event occurred on or after 1 December 2004.



What is a 'small' business?

If you are a business and you want to lodge a dispute, then you will have to meet the small business criteria that applied at the time your dispute arose.

Please contact us to discuss whether your business meets our criteria.



What disputes are we unable to consider?

There are some types of disputes that we are unable to consider. These are set out in the Terms of Reference.

We are unable to consider disputes about a financial services provider's general policies, such as interest rates and fees, or disputes about commercial decisions, such as whether an application for credit is declined.

We are unable to consider a dispute that has been or is being considered in another forum, such as a court, tribunal or the Office of the Federal Privacy Commissioner.



What happens first?

We encourage you to resolve the dispute directly with your financial services provider in the first instance.

When you first telephone us we will usually refer you to the financial services provider's head office. If you have already contacted the financial services provider and the matter remains unresolved, you will need to write to us.



Writing to us

When you write to us you may write informally, but try to be as specific as possible about what you are saying the financial services provider has done and what damage it has caused you. Your dispute may be lodged by mail, fax, or via our website at www.fos.org.au. If you require assistance to lodge a dispute please call us on 1300 78 08 08.



What information do you need to give us?

Your letter to us should include:

- » your name
- » your address
- » your telephone number
- » the name of the financial services provider, and
- » any relevant account details.

You should also send us copies of documents that are relevant to your dispute.

Use of information

- » If your correspondence contains information that is sensitive or relates to third parties, please refer to our *FOS Managing Your Privacy* brochure for guidelines on how we will treat this information.
- » You may ask us to keep part or all of the information you provide confidential. Confidential information will not be passed on to the financial services provider. However, you should be aware that we will not be able to use that confidential information to make a decision adverse to the financial services provider.
- » The information exchanged between the parties during the course of consideration of a dispute by this office is provided on a without prejudice basis and admissions made by you or the financial services provider may not be used in evidence in any later proceedings.

Do you need to obtain legal advice?

There is no need to obtain legal advice about lodging a dispute but you may do so if you wish. Legal costs will usually be borne by you if you choose to use a legal adviser.

What happens to your correspondence?

After we receive your correspondence we will write to you about whether we can consider your dispute. We will also send a copy of your correspondence to the financial services provider. A representative of the financial services provider may contact you to discuss your dispute.



What happens if your dispute cannot be considered by the Ombudsman?

If we are unable to consider your dispute we may refer you to another organisation, which may also be a dispute resolution scheme.



What must the financial services provider do?

The financial services provider has 30 days to respond to your dispute.

Sometimes a financial services provider asks for longer than 30 days, particularly if you have raised a complex matter or if there is a problem locating relevant documents.



What happens if your dispute is unresolved?

If the dispute is unresolved when the financial services provider responds to us, we will give further consideration to the dispute and either write to you, refer it to the financial services provider for further comment or investigate the matters raised.



How long does an investigation take?

Because we have a high caseload, there may be a delay before your case is allocated to a case manager for investigation. The investigation process itself can also be time consuming.



What is your role in an investigation?

Your case manager will contact you when he or she needs information. You may contact your case manager at any time to discuss your case.



What happens when an investigation is completed?

If the dispute is not resolved by negotiation during the investigation process, then the case manager will write to you and the financial services provider, stating how he or she thinks the case should be resolved. This is called a 'Finding'.

A Finding is a decision about the merits of a claim and an opinion about how the dispute should be resolved.

The Finding will explain the reasons for the case manager's conclusions.



What do you do when you receive a Finding?

You may accept or reject the Finding. If you and the financial services provider accept the Finding, then the case is resolved and we will close our file.



What should you do if you reject the Finding?

If you reject the Finding then you will need to write to us explaining why. For example, you may believe that the Finding was based on incorrect information or you may have new, compelling information about the dispute.



What happens to your case if the Finding is rejected?

If either you or the financial services provider reject the Finding, then your case will be referred to the Ombudsman who may make a formal Recommendation about how the dispute should be resolved.



What do you do if you receive a Recommendation from the Ombudsman?

You may accept or reject the Ombudsman's Recommendation. However, if you reject it, we will not be able to consider the matter further and we will close our file.

If both you and the financial services provider accept the Recommendation then your case is resolved.



What happens if the financial services provider does not accept the Ombudsman's Recommendation?

If you accept the Recommendation but the financial services provider does not, then the Ombudsman may issue a Determination. A Determination is binding on the financial services provider.



Conciliation conferences

Another method of resolving a dispute is a conciliation conference. Your case may be suitable for a conference, which would be attended by you, the financial services provider and the Ombudsman or a senior staff member. The Ombudsman decides whether or not to hold a conciliation conference.



Interpreters

If English is not your first language then we may arrange for your correspondence to be translated free of charge. There may be some delay as we arrange and wait for the translations.

Interpreters may also be made available at any time for telephone calls or for a conference with the Ombudsman.



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Withdrawing your dispute

FOS is an alternative to other forums such as courts and tribunals.

You may withdraw your dispute at any time. If you wish to preserve the option of pursuing the dispute in another forum, then you should seek independent legal advice because the time limit for bringing a matter before another forum may expire while the Ombudsman is considering your dispute.

Is tax payable on compensation payments?

If the dispute is resolved with an amount of compensation being paid to a disputant, there may be GST or other tax implications. Disputants are encouraged to obtain advice from their accountants, financial advisers or from the Australian Taxation Office.

How to contact us

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| Phone | 1300 78 08 08* |
| Fax | 03 9613 6399 |
| Post | GPO Box 3, Melbourne VIC 3001 |
| Email | info@fos.org.au |
| Website | www.fos.org.au |

* 9am – 5pm AEST. Calls will be charged for the cost of a local call from landlines. Calls from mobile phones will be charged at the applicable rate from your carrier.