

what a “final decision” by an ombudsman means

If a consumer accepts a final decision by an ombudsman before the deadline we give them, the decision becomes legally binding. This factsheet explains what that actually means.

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.

This is the end of the matter as far as our process is concerned – whether the consumer accepts the ombudsman’s final decision or not. And no ombudsman, however senior, can overrule the decision of another ombudsman.

If the ombudsman’s final decision finds in favour of the consumer – and the consumer accepts the decision before the deadline we gave them – the decision becomes legally binding. This applies to both the business that the consumer has complained about *and* the consumer themselves.

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

what does a “binding” decision mean in practice?

If a consumer accepts an ombudsman’s final decision before the deadline we gave them, 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. It applies when the ombudsman decides that the customer has lost out as a result of what the business has (or has not) 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 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 an individual 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.

The power the ombudsman has to put things right can range from instructing a business to pay a customer up to £100,000 (£150,000 for complaints we received from 1 January 2012) – for example, as compensation for money lost on a poorly-advised investment – 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 specified by the ombudsman directly or 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.

what if a business does not agree with an ombudsman's decision?

A final decision by an ombudsman is the last “appeal” stage of a process involving a number of increasingly formal reviews. By the time an ombudsman makes a final decision, both sides will have had plenty of opportunities to put forward all their comments, views and relevant facts.

If a consumer accepts an ombudsman's decision before the deadline we gave them, 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 quickly as possible. In some cases, the ombudsman tells the business to pay interest to the consumer up to the date the compensation is paid. 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 quickly, as directed by the ombudsman.

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

Usually, we find that the business is having difficulty calculating the exact amount of compensation required. Sometimes there are delays because 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 business still does not comply with the decision?

Only a very small number of businesses fail to do what an ombudsman tells them, once we have reminded them about the legal requirement to comply.

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 FSCS is the “final safety net” for customers of regulated financial businesses that are unable to pay what they owe. It is entirely separate from the Financial Ombudsman Service and it has its own set of rules. But we cooperate closely with the FSCS. And we aim to hand over any cases like this to the FSCS as quickly 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. But 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 that are covered by the ombudsman service. The Office of Fair Trading (OFT), the consumer protection agency, also has statutory powers over the businesses it licenses.

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

what’s the role of the FSA and the OFT if a business will not pay?

Businesses that are regulated by the FSA – and are covered automatically by the ombudsman service – are required under the FSA’s rules to cooperate 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 cooperate 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 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 if 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 following information 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 courts may enforce the ombudsman's decisions. 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 relevant business is 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 make sure that any proceedings were brought in exactly the *same names* as on the ombudsman's final decision.

Because of the different procedures and court processes involved, it is important that you get independent legal advice before you start.

phone **0300 123 9 123**

- Monday to Friday – 8am to 6pm
- Saturday – 9am to 1pm

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.

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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 Parliament set us up to do.

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]
- Citizens Advice Scotland [www.cas.org.uk]
- 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.lawscot.org.uk/find
- The Law Society of Northern Ireland <http://www.lawsoc-ni.org/solicitors-directory>