

# Assisting a client who has a financial services dispute



For consumer advocates





## Who are we?

The Financial Ombudsman Service (FOS) Australia offers fair, independent and accessible dispute resolution for consumers who are unable to resolve complaints with member financial services providers.

Our members include banks, insurers, credit providers, financial advisers and planners, debt collection agencies and other businesses that provide financial products and services.

A not-for-profit, non-government organisation, FOS resolves disputes quickly and efficiently, providing a cheaper alternative than going to court. Our service is free of charge for applicants, with the costs of running the service being met by our members.

## How we help

We resolve disputes between consumers and Financial Services Providers (FSPs):

- in a cooperative, efficient, timely and fair manner
- with minimum formality and technicality, and
- as transparently as possible, taking into account our obligations for confidentiality and privacy.

This involves understanding all aspects of a dispute without taking sides, and making decisions based on the specific facts and circumstance of each dispute.

## Who can lodge a dispute with FOS?

Anyone who has an unresolved dispute with a financial services provider can lodge a dispute, if the provider is a FOS Australia member. This includes:

- › individuals
- › partnerships of individuals
- › small businesses
- › clubs or incorporated associations.

## What sorts of dispute does FOS cover?

We can handle disputes about a range of financial issues including:

- › Banking and finance
- › Credit
- › Home, contents, travel and life insurance
- › Insurance broking
- › Financial planning
- › Investments
- › Managed funds
- › Mortgage and finance broking
- › Pooled superannuation funds
- › Stockbroking
- › Timeshares
- › Estate planning and management
- › Traditional trustee services

## Types of disputes we cannot cover

There are some types of disputes that we cannot deal with. It is also important to note that time limits apply for lodging a dispute with us.

These are listed in more detail in our Terms of Reference (see [www.fos.org.au/tor](http://www.fos.org.au/tor)), but for example, we cannot deal with disputes regarding:

- › a business that is not a member of FOS when the dispute is lodged. See if a business is a member on our website, [www.fos.org.au/member](http://www.fos.org.au/member)
- › issues that have already been dealt with by a court, tribunal, arbitrator or another ASIC-approved external dispute resolution (EDR) scheme
- › some matters which are the subject of legal proceedings or another ASIC-approved EDR process
- › specific insurance products, such as compulsory third party insurance or private health insurance and some commercial general insurance products, decisions of trustees of approved deposit funds and regulated superannuation funds

- › an FSP's assessment of the credit risk posed by a borrower (with exceptions in cases of irresponsible lending or financial hardship)
- › the investment performance of an investment product, unless it concerns non-disclosure, misrepresentation or misleading conduct.

We also can't deal with disputes about fees, unless certain circumstances apply. For example, FOS can't deal with a complaint that a fee charged was 'too high', but we can deal with disputes where the client claims:

- › the fee charged was not allowed by the contract between them and the FSP
- › the fee was not adequately disclosed
- › there was poor service (in which the dispute is about poor service) and they are claiming a refund of the fee.



## What can you do to help your client with a dispute?

If someone contacts you about a complaint they have with a financial services provider, you can do the following to help them:

- › Ensure they have a good understanding of what FOS does
- › Ensure they have a clear understanding of what the dispute is about
- › Encourage them to put together any relevant documents they have about the dispute. A document checklist is available at [www.fos.org.au/checklist](http://www.fos.org.au/checklist)
- › Help them think about a realistic outcome that they consider would resolve the dispute.

Here are some steps for your client to consider before they lodge a dispute with us:

- › Has your client complained to their financial services provider directly?
- › Has your client given the FSP 45 days to respond? (21 days in financial difficulty cases)
- › Is the FSP a participating member of FOS? Go to [www.fos.org.au/findfsp](http://www.fos.org.au/findfsp) to check
- › Has your client received a Statement of Claim? If so, recommend they lodge their dispute immediately.

At FOS, we encourage consumers to try to resolve disputes directly with their financial services providers whenever possible. For more information, please go to [www.fos.org.au/beforelodging](http://www.fos.org.au/beforelodging).

## How we resolve disputes

### 1 Registration and Referral

A consumer registers their dispute with us. We then contact their FSP requesting a response to us and to the consumer.

### 2 Resolution by agreement

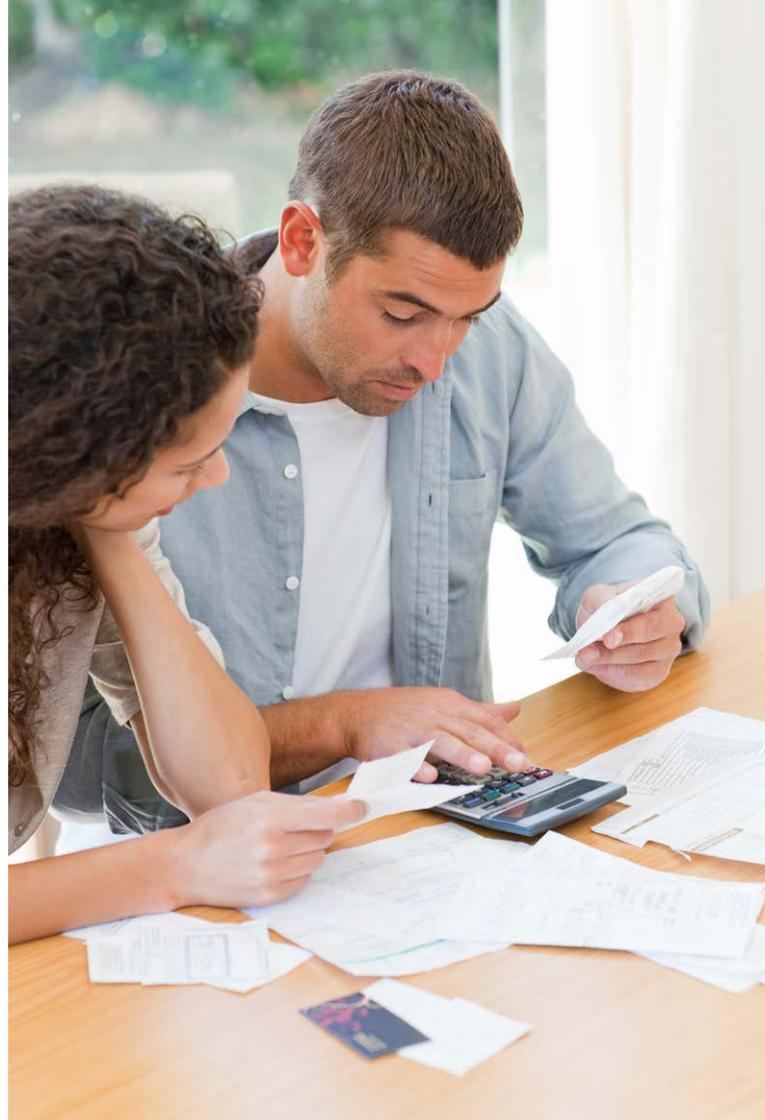
We gather information about the dispute from the consumer and the FSP and apply the most suitable method to resolve the dispute (eg conciliation, negotiation or decision).

### 3 Written decision

If the parties cannot reach an agreement, we will provide a written assessment of how we think a dispute should be resolved.

A written decision is binding on the FSP if the consumer accepts it, and is the last thing we can do to help resolve a dispute.

We have created a series of documents to help consumers and financial services providers better understand how we reach decisions about key issues. These documents explain the way we approach some common issues and dispute types (see [www.fos.org.au/approach](http://www.fos.org.au/approach)).



## Useful information

### **Are there time limits?**

There are time limits for lodging a dispute with FOS. In most cases, your client has two years to lodge a dispute with us from the date of the financial services provider's final response to their complaint with them.

If your client has not contacted their financial services provider's complaints area, they must lodge their dispute with FOS within six years of the date they became aware of the loss they suffered.

We may still consider a dispute lodged after either of these time limits if we believe exceptional circumstances apply.

### **What if we can't help with your client's dispute?**

If we can't manage your client's dispute, we can often suggest other organisations that may be able to help. You can call the Australian Securities and Investment Commission hotline on 1300 300 630 or visit [www.asic.gov.au](http://www.asic.gov.au) for advice on who else you can ask for help.

### **Will your client need help lodging their dispute?**

Our service is free to consumers and they do not need to pay someone to help them lodge a dispute with FOS. If they think they may need help, they might qualify for free legal aid or financial counselling assistance. Visit [www.nationallegalaid.org](http://www.nationallegalaid.org) or [www.financialcounsellingaustralia.org.au](http://www.financialcounsellingaustralia.org.au) for more information.

### **Interpreter service**

If English is not your first language, information on the FOS website is available in a range of languages. We can also arrange access to a free interpreter service.

Call the free interpreter service on 131 450 or call us on 1800 367 287 (9am to 5pm Melbourne time from Monday to Friday) and we will organise an interpreter for you.

### **Accessibility**

We are tailoring our website to be as accessible as possible. We have added descriptive terms to images to help visually impaired consumers access information on the FOS website and we provide phone services for consumers with a hearing or speech impairment.

## **National Relay Service**

For the hearing and speech impaired  
[www.relayservice.gov.au](http://www.relayservice.gov.au)

TTY / Voice call 133 677 (local)

Speak & Listen 1300 555 727 (local)

Internet Relay Call

Go to [www.relayservice.gov.au](http://www.relayservice.gov.au), select the type of call  
and enter our number 1800 367 287.

*Please note that we do not provide legal or financial  
advice. Details of consumer advocacy and legal  
services are provided on our website.*

## Further information on our website

- › Factsheets on our dispute resolution process, natural disasters, managing your privacy, tips and resources for seniors and more:  
[www.fos.org.au/factsheets](http://www.fos.org.au/factsheets)
- › A checklist of the types of documents and other information that will be useful when lodging a dispute: [www.fos.org.au/checklist](http://www.fos.org.au/checklist)
- › Brochures on how to resolve disputes, conciliation conferences, credit trouble and scams:  
[www.fos.org.au/brochures](http://www.fos.org.au/brochures)
- › The Circular, our online magazine that provides practical information and explains how we approach substantive issues: [www.fos.org.au/circular](http://www.fos.org.au/circular)
- › The FOS Approach, a series of documents to help individuals, small business owners and financial services providers better understand how we reach decisions about key issues:  
[www.fos.org.au/approach](http://www.fos.org.au/approach)
- › Free online training to complement your professional development: [www.fos.org.au/elearning](http://www.fos.org.au/elearning)





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## Contact us

The following options are available when lodging a dispute with FOS:

### Online

Disputes can be lodged online at [www.fos.org.au](http://www.fos.org.au) or by sending an email to [info@fos.org.au](mailto:info@fos.org.au)

### Phone

Disputes can be lodged by calling us on **1800 367 287 (1800 FOS AUS)** (9am to 5pm from Monday to Friday)

### Mail

Dispute forms can be sent to:

Financial Ombudsman Service Limited  
GPO Box 3  
Melbourne 3001