

Assisting a constituent who has a financial services dispute





Who we are

The Financial Ombudsman Service (FOS) Australia is a not-for-profit, non-government organisation that resolves disputes between consumers and financial services providers (FSPs).

Our service is free of charge for applicants, with the costs of running the service being met by our members.

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

FOS is an external dispute resolution scheme approved by the Australian Securities and Investments Commission (ASIC).

How we help

We resolve disputes between consumers (including some small businesses) and FSPs:

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

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

What we provide

- › impartial, accessible and independent dispute resolution
- › a national service that is free to consumers
- › a less formal and cheaper alternative to court
- › a collaborative approach with consumers and FSPs to help resolve disputes.

Who can lodge a dispute with FOS?

Anyone who has an unresolved complaint with an FSP can lodge a dispute with us if the FSP is a member of FOS. This includes:

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

To find out if an FSP is a member of FOS (see www.fos.org.au/resolving-disputes/find-a-financial-services-provider)

Types of disputes we can consider

FOS considers many types of disputes involving our members including:

- › banking and finance
- › credit
- › estate planning and management
- › financial planning and investment advice
- › motor vehicle, home, contents and travel insurance
- › insurance broking
- › life insurance
- › managed funds
- › mortgage and finance broking
- › pooled superannuation funds
- › stockbroking
- › timeshares
- › traditional trustee services.

Disputes that we can consider are set out in our Terms of Reference, at www.fos.org.au/tor.

Types of disputes we can't consider

Disputes outside our jurisdiction are listed in more detail in our Terms of Reference, but for example, we can't deal with disputes regarding:

- › A business that is not a member of FOS when the dispute is lodged
- › Issues that have already been dealt with by a court, tribunal, arbitrator or another ASIC-approved external dispute resolution scheme
- › Some matters that are the subject of legal proceedings or another ASIC-approved external dispute resolution scheme
- › Specific insurance products such as compulsory third party, private health and some commercial general insurance products
- › Decisions of trustees of regulated superannuation funds and approved deposit 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 cannot deal with complaints about fees, unless certain circumstances apply, such as where the fee was not allowed in the contract or in cases of inadequate disclosure or poor service.



What you can do to help a constituent with a dispute

At FOS, we encourage consumers to try to resolve disputes directly with their FSPs wherever possible.

For further information, see www.fos.org.au/beforelodging

If a constituent contacts your office about a complaint they have with an FSP, you can help them by:

- › Making sure they have a good understanding of what FOS does (see www.fos.org.au)
- › Making sure they have a clear understanding of what the dispute is about
- › Encouraging them to put together any relevant documents they have about the dispute (see www.fos.org.au/checklist)
- › Checking that their FSP is a FOS member (see www.fos.org.au/findfsp)
- › Helping them think about a realistic outcome that they consider would resolve the dispute

Before lodging a dispute with FOS, here are some steps to consider:

- › Has the constituent complained directly to their FSP?
- › Has the constituent given the FSP 45 days to respond (21 days in financial difficulty cases)? (see www.fos.org.au/beforelodging)
- › Check again that their FSP is a FOS member (see www.fos.org.au/findfsp)
- › Has the constituent received a Statement of Claim? If so, recommend they lodge their dispute immediately

To lodge a dispute with FOS, use our online dispute form at www.fos.org.au/beforelodging.

Consumers can also lodge their dispute by email, over the phone, letter or fax.



Limits on claims and compensation

- › We can accept claims up to \$500,000
- › The monetary compensation we can award for a claim is limited to \$309,000 except for disputes involving general insurance broking (\$166,000), income stream life insurance (\$8,300 per month) and uninsured third party motor vehicle claims (\$5,000)
- › The limit on consequential (indirect) loss is \$3,300 per claim
- › The limit on non-financial loss is \$3,000 per claim.



Time limits

Time limits apply for lodging a dispute with FOS. In most cases, your constituent has two years to lodge a dispute with us from the date of the FSP's final response to their complaint.

If your constituent has not contacted their FSP'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 consider a dispute lodged after these time limits if we believe exceptional circumstances apply.



How we resolve disputes

A dispute can be closed at different stages in our dispute resolution process:

- › through an agreement between the consumer and FSP
- › through a preliminary view or decision made by FOS
- › because the dispute is discontinued
- › because it is outside our Terms of Reference.

What if we can't help?

If we cannot help your constituent with their dispute, we can often suggest other organisations that may be able to do so - for example, the ASIC hotline (1300 300 630) or www.asic.gov.au.

Our dispute resolution process has three stages

Registration and Referral

- › Here we lodge all the disputes we receive, record basic information about the issue(s) in dispute and send the details to the FSP.
- › If the FSP has not been contacted by the applicant, it has 45 days to respond directly (21 days in cases of financial difficulty).
- › If the FSP has already been contacted by the applicant, FOS refers the dispute to the FSP to provide a further opportunity (21 days) for the parties to resolve their dispute.
- › If this does not happen, the dispute progresses to Case Management.

Case Management

- › Our Terms of Reference team assesses whether it is the type of dispute we can consider.
- › Those we accept are divided into fast track (for simpler, lower-value disputes), standard and complex disputes.

- › We gather information about the dispute and select the most suitable way to resolve it between the parties (eg conciliation, negotiation).
- › If it is not resolved, the dispute progresses to the decision stage.

Decision

- › Decisions or assessments are reached following a FOS recommendation or other assessment about the merits of a dispute.
- › A preliminary view is an assessment following a detailed investigation into a dispute.
- › If the applicant or FSP rejects the preliminary view or the FSP fails to respond, an Ombudsman or panel reviews the dispute and makes a formal, written decision called a determination.
- › If the applicant accepts our written decision, it is binding on the FSP.
- › This is the last thing we can do to resolve a dispute.

Our website

At www.fos.org.au, you will find a wide range of information such as how we handle disputes, how to lodge a dispute, how we improve accessibility for people with additional needs, fact sheets and other publications about our service. These publications include:

- › our quarterly online magazine, The Circular, which includes dispute information, case studies and analysis (see www.fos.org.au/circular)
- › FOS Approach documents that help individuals, small business owners and FSPs better understand how we reach decisions about key issues (see www.fos.org.au/approach)

Useful information

How we help people with additional needs

We aim to make our service accessible to all consumers, and give everyone in the community the information they need about FOS in a format that suits them.

Our website has been designed to make content accessible to people who do not speak English. We have added descriptive terms to images to help visually impaired consumers access information, and we provide a free phone service for consumers with a hearing or speech impairment.

We also help staff to understand the issues that may impact on people bringing disputes to FOS, such as mental health issues and family violence, which can include elder financial abuse.

Free interpreter service

If English is not your constituent's first language, information on our website is available in a range of languages.

You can also call 131 450 to arrange a free interpreter service or we can arrange it for your constituent. Call us on 1800 367 287 (9am to 5pm Melbourne time from Monday to Friday).

National Relay Service

For the hearing and speech impaired:
www.relayservice.com.au

TTY/voice call 133 677 (local)

Speak & Listen 1300 555 727 (local)

Internet relay call

Go to www.nationalrelayservice.com.au/call, enter our number 1800 367 287 and click 'connect'.

Will your constituent need help to lodge their dispute?

Our service is free to consumers and they do not need to pay someone to lodge a dispute with FOS.

If they think they may need help, they might qualify for free legal aid or financial counselling assistance. See www.nationallegalaid.org or www.financialcounsellingaustralia.org for more information.

Legal or financial advice

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



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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

Email

Send an email to info@fos.org.au

Phone

Call us on **1800 367 287 (1800 FOS AUS)**

Mail

Send dispute forms to:

Financial Ombudsman Service
GPO Box 3
Melbourne 3001