

Complaints Procedure

Initial Steps

There should be a formalised complaints handling process in place in every financial service provider which is easy to access. All staff should be aware of it. A senior management person should be responsible for ensuring that the complaints handling process works in a fair and proper manner.

Final Response from the Financial Service Provider

Upon receiving written notification of the complaint and request for a Final Response from the Complainant, the Provider has 25 working days in which to try to resolve the complaint by its internal complaint procedures. If at the end of the twenty five working days, a resolution has not been attained, a Final Response letter must be issued to the Complainant by the nominated member of senior management. (If the Provider requires more time to review the complaint, for example if it requires the Complainant to undergo a medical examination, the Bureau must be notified of same).

The Final Response letter must:

- Contain a detailed account of the dispute at hand
- Address all issues outlined in Complainant's Complaint Form
- Quote the applicable loan contract terms/policy conditions/terms of business etc
- Give details of any redress offered to the Complainant by the Provider
- State that it is the Final Response of the Provider for the purpose of referring the matter to the Financial Services Ombudsman's Bureau
- Advise the Complainant that he/she has 15 working days from the date of said Final Response to refer the matter to the Financial Services Ombudsman's Bureau for investigation

How complaints are dealt with

Lodging a complaint

When a complainant contacts the Financial Services Ombudsman's office (this office) it will be sent a Complaint Form. This should be completed, signed and returned to this office within 14 days and accompanied by any letters, or documents which have been sent to and/or received from the Financial Service Provider (Provider) and any other documents that it feels should be put before this office in handling the complaint. A complainant's written authorisation is required if it wishes to be represented by a third party.

When the Complaint Form is received by this office it is assessed to determine whether the complaint falls within the remit of the Ombudsman or whether it should be investigated. It may be necessary to request further information from the complainant at this point. If the matter is deemed to be outside the remit of the Ombudsman or a decision is made not to investigate it the complainant will be informed as to why it cannot be investigated.

If the complaint is deemed to be within the remit of the Ombudsman, the complainant will be advised to write to a nominated member of senior management in the Provider concerned stating the complaint as concisely as possible, asking the designated member of senior management to

give the matter his/her attention and to issue a Final Response letter. A copy of the complaint form and attachments will on that date be also sent to the Provider.

A Final Response letter must be issued when the complaint has been reviewed by the nominated member in the Provider. This letter outlines the Provider's position in relation to the matter in dispute and must be issued within **25** working days. If the complainant is not satisfied with the explanation or response made by the Provider, it must submit the Final Response letter to this office within **15** working days of the Provider issuing same.

Mediation

When this office has received the Complaint Form and the Final Response letter issued by the Provider, it will assess the complaint and the option of mediation will be offered to both parties by the Ombudsman as a means of resolving the matter. If mediation is not availed of or is unsuccessful then a formal investigation of the complaint by the Ombudsman will begin.

Investigation

In the course of investigation the Provider will be required to answer a series of questions posed by the Ombudsman and to submit any material and make any submissions which the Provider sees as being desirable to put before the Ombudsman or which the Ombudsman requires to see, to enable the Ombudsman to investigate and adjudicate upon the complaint. This must be done within **20** working days.

These responses and documents will be copied to the complainant who will be given **10** working days to submit any observations. Any observations from the complainant will be copied to the Provider who will be given **5** working days to submit any further observations.

It should be noted that any medical data will only be copied to the complainant's nominated medical professional.

All the circumstances surrounding the complaint will then be examined. Further information or supporting documentation may be requested from both parties. Every case is judged on its individual merits. The time taken to investigate a dispute depends on the complexity of the individual case as well as outside factors, such as the availability of relevant material. In general, we aim to complete the investigation within **20** working days. However, for certain cases supplementary information will be necessary which may cause the **20** working days to be extended.

After reviewing the evidence the Ombudsman will consider whether an oral hearing is necessary. If an oral hearing is held then the oral evidence given under oath at that hearing will be reviewed together with the documentary evidence and a Finding will be issued to both parties. Where an oral hearing is not deemed to be necessary a Finding will issue to both parties after all the evidence has been reviewed in full.

Finding

The Finding of the Financial Services Ombudsman is legally binding on both parties, subject only to appeal by either party to the High Court. A party has **21** calendar days from the date of the Financial Services Ombudsman's Finding in which to appeal to the High Court.

Mediation

- 1 Where appropriate, Mediation is an alternative method of trying to resolve complaints.
- 2 It is a process where the parties to the complaint try to reach a solution through agreement with the assistance and support of a mediator rather than through an immediate investigation of the complaint and a decision from this Office on the complaint.
- 3 If a mediation is to take place, BOTH parties to the complaint must be willing and elect to participate in mediation. If one party wants to mediate the complaint and the other party does not, then no mediation will take place and the matter will proceed to investigation and adjudication.
- 4 Mediation is an option that is available to both parties. It is a voluntary stage in the handling of a complaint by this Office. Parties to a complaint are not obliged to partake in mediation if they do not wish to.
- 5 If BOTH parties decide to attempt mediation, the complaint will be assigned to a mediation officer (the "Mediator").
- 6 The Mediator will then contact both parties to schedule the mediation.
- 7 Generally speaking, mediation typically involves meeting(s) between the Mediator and both parties. The venue for any mediation meeting will be decided by the Mediator and the date and time of any meetings will be decided by the Mediator, having consulted with both parties.
- 8 Mediation is an informal process. It is also confidential and is conducted in private.
- 9 The Mediator's role is to try to facilitate an agreed resolution of the complaint between the parties. The Mediator is not a decision-maker (unlike a Judge).
- 10 The Mediator is independent. He/she does not act for (or side with) either party to the dispute. His/her role is to independently assist both parties in reaching an agreed resolution of their differences.
- 11 Participation in a mediation by the parties to a complaint is voluntary and a party may withdraw from the mediation at any time.
- 12 If either party chooses not to engage in mediation, then the complaint will be dealt with by the Office by way of investigation and adjudication.
- 13 If both parties agree to mediation, but during the course of a mediation, either or both of the parties withdraw from a mediation or if the Mediator forms the view that the attempt is not likely to succeed or if the attempt to resolve the complaint by mediation is unsuccessful, then the mediation will come to an end. Both parties will be informed by the Mediator that the mediation is at an end and the complaint will then be subject to investigation and adjudication by this Office.
- 14 If, during the course of a mediation, the parties reach an agreement to resolve the complaint and both parties agree the resolution/outcome, then that agreement will be recorded in writing, signed by both parties and will become legally binding on the parties. The complaint will be at an end and so it will not be referred to investigation and adjudication (final decision) by this Office.
- 15 It should be remembered that in a mediation, a party cannot be forced to accept a settlement/outcome. The Mediator will not impose a decision on the parties. Both parties must voluntarily agree the outcome.
- 16 The Mediator has no authority to settle the dispute himself/herself or to act on either party's behalf.
- 17 Evidence of anything said or admitted during a mediation (or an attempted mediation) and any document prepared for the purposes of the mediation, are not admissible in any subsequent investigation of the complaint (unless the person who made the admission or to whom the document relates, consents to its admission) or in any proceedings before a Court. If however during the mediation an agreement is reached between the parties, that agreement will be recorded in writing, signed by both parties and will then be legally binding.

- 18 It is not possible to advise how long a mediation might last. It will depend on a number of factors, including the attitude of the parties involved in the mediation and the progress (if any) being made at a mediation.
- 19 Any costs or expenses incurred by either party to a complaint by participating in the mediation process will not be paid for by the Mediator or this Office. Any such costs/expenses are a matter for the party who incurs the costs/expenses to bear himself/herself.

Oral hearings

- 1 An oral hearing may be necessary where there is an issue of fact in dispute between the parties to the complaint which cannot be fairly resolved without hearing the parties. Hearings will be in private.
- 2 The Financial Services Ombudsman (the "Ombudsman") may decide of his own accord to call an oral hearing and/or either party to a complaint may request an oral hearing.
- 3 If either / both parties to a complaint request an oral hearing, the Ombudsman may or may not agree to the request. It is for the Ombudsman alone to decide whether it is an appropriate case in which to hold an oral hearing.
- 4 If the Ombudsman deems that an oral hearing is necessary, the Office of the Ombudsman (the "Office") will write to each party to the complaint and notify them of this. The parties will be informed of the issue(s) in respect of which it is necessary to hear oral evidence. The parties will be notified of the date/time and venue of the oral hearing.
- 5 If an oral hearing is necessary, it will be limited to hearing only those witnesses whose evidence it is necessary to hear for the purpose of resolving the disputed issue(s).
- 6 In advance of the oral hearing, the Ombudsman may notify the parties of the identity of those witnesses on either/both sides from whom he would like to hear evidence at the oral hearing.
- 7 In advance of the oral hearing, each party may request the Ombudsman to allow it to call other witness(es) to give evidence on its behalf on the issue(s) in dispute. Such requests will be considered by the Ombudsman having regard to the requirement that an oral hearing be limited to hearing only those witnesses whose evidence it is necessary to hear for the purpose of resolving the disputed issue(s). The Ombudsman may summon/ask witnesses to appear before it. If you want a witness to be subpoenaed to appear on your behalf you must ask the Ombudsman at least 10 days before the scheduled hearing date. Witnesses are entitled to the same immunities and privileges as if before the High Court.
- 8 The Ombudsman will conduct the oral hearing in private and as informally as is practicable.
- 9 Witnesses will be required to give evidence under oath/affirmation.
- 10 Each party will be entitled to cross-examine the witnesses. Any cross examination should be as informal as possible, concise, polite and professionally efficient.
- 11 Each party is permitted to be legally represented, if desired. Any costs incurred by the party in that regard will not be borne by this Office and are a matter for the party itself.
- 12 Except for very exceptional circumstances, if you do not turn up, the Ombudsman will proceed without you. It is not the policy of the Ombudsman to cancel or postpone hearings. A minimum of 72 hours notice is normally required in the event of any such exceptional circumstances and documentation substantiating the circumstance will be required in order to consider any postponement.
- 13 During the hearing you must do as the Ombudsman asks you. At the start the Ombudsman will explain how the hearing will run and will at any time answer any questions you may have on the procedures. Remember if you would like to, you may have someone speak on your behalf. You may bring a relative, friend or colleague, as well as a solicitor or other professional, for that purpose.
- 14 At the hearing, the party who made the complaint (the complainant) will be asked to speak first. The other party (the respondent) may cross-examine/question all those giving evidence

on behalf of the complainant, including the complainant. When the complainant has finished its evidence, the respondent will then be asked to present its evidence and the complainant may cross-examine/question all those giving evidence on behalf of the respondent, including the respondent.

- 15 **In summary at a hearing you will be entitled and will be given the chance to:**
 - **Speak**
 - **to have someone speak on your behalf**
 - **give evidence and have witnesses give evidence on your behalf**
 - **cross-examine/question witnesses about what they have said at the hearing**
 - **cross-examine/question any witness about any Report/ Document they have produced in connection with the case.**
- 16 At the end of the oral hearing, the Ombudsman may invite both parties to make short final oral submissions.
- 17 The Office may arrange for a stenographer to take a transcript of the evidence and submissions made at the oral hearing.
- 18 **Any costs or expenses incurred by either party to a complaint in relation to an oral hearing will not be paid by this Office. Any such costs/expenses are a matter for the party who incurs the costs/expenses to bear himself/herself.**

[Redress](#)

What redress can the Ombudsman order?

The Ombudsman can direct the service provider to do one or more of the following:

- Rectify or change the conduct complained of or its consequences
- Provide reasons or explanation for that conduct
- Change that practice
- Pay compensation up to a maximum of €250,000 or €26,000 annuity
- Take any other lawful action

[Refusal to Cooperate](#)

What if your financial services provider refuses to cooperate?

The Ombudsman has extensive legal powers to require the financial services provider to provide information including the power to require employees to provide information under oath. If necessary the Ombudsman can enter premises of providers and demand the production of documents etc. In the case of non compliance the Ombudsman can seek a Court Order.

Anyone who obstructs the Ombudsman commits an offence and is liable to a fine of up to €2,000, imprisonment for three months or both.

[Appeal](#)

Section 57CL(1) of the Central Bank and Financial Services Authority of Ireland Act 2004 provides that, "if dissatisfied with a finding of the Financial Services Ombudsman, the Complainant or the regulated financial service provider concerned may appeal to the High Court against the finding." In general the appeal must be commenced within 21 days after the Ombudsman issues his finding.

Statutory Instrument No. 14 of 2007-Rules of the Superior Courts (Statutory Application and Appeals) 2007- provides that an appeal must be made to the High Court:

- not later than twenty one days following the Ombudsman's decision or
- within such further period as the Court, on application made to it by the intending appellant, may allow where the Court is satisfied that there is good and sufficient reason for extending that period and that the extension of the period would not result in an injustice being done to any other person concerned in the matter.

Regulated Financial Service Providers

Section 2 (g) of the Central Bank and Financial Services Authority of Ireland Act 2004 provides:

- a) a financial service provider whose business is subject to regulation by the Bank or the Regulatory Authority under this Act or under a designated enactment or a designated statutory instrument, or
- b) a financial service provider whose business is subject to regulation by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank or the Regulatory Authority under this Act or under a designated enactment or designated statutory instrument, or
- c) in relation to Part VIIB only, any other financial service provider of a class specified in the regulations for the purposes of this paragraph.
- d)

Are foreign regulated financial service providers subject to investigation by the Ombudsman?

A financial service provider whose business is authorised and supervised by the authority of another EEA country which is comparable to the functions of the Central Bank and Financial Regulator in Ireland, is included in the definition of a 'regulated financial service provider' under section 2(g) of the Central Bank and Financial Services Authority of Ireland Act 2004. Accordingly, a complaint about a financial service provider regulated in another EEA country can be investigated by the Financial Services Ombudsman's Bureau.

The Financial Services Ombudsman's Bureau also cooperates with [FIN-NET](#), the Cross-border Out-of-Court Complaints Network for Financial Services, which aims to facilitate the out-of-court resolution of consumer disputes when the service provider is established in an EEA country other than that where the consumer lives. The network brings together more than 35 different national schemes that either cover financial services or handle consumer disputes.

While the Financial Services Ombudsman's Bureau can investigate a complaint about a financial service provider who is regulated by a comparable authority in another EEA country, under the FIN-NET/EEA MOU, the Financial Services Ombudsman's Bureau may refer a consumer to another EEA dispute settlement body if it is deemed more appropriate for that body to deal with a complaint.

What do you do if your complaint is about a financial service provider who is regulated in another country?

If the financial service provider is regulated by a comparable authority in another country, you may refer your complaint to the Financial Services Ombudsman's Bureau.

However, under the FIN-NET/EEA Memorandum of Understanding, in some circumstances, the Financial Services Ombudsman may deem it appropriate to refer your complaint to the settlement body in the country of your financial service provider. In this event, the Financial Services Ombudsman will advise you of the contact details of the appropriate settlement body.

What do you do if you are residing in another country but the financial service provider you are complaining about is regulated in Ireland?

If the financial service provider is regulated by the Financial Regulator, although residing outside of Ireland, you may refer your complaint to the Financial Services Ombudsman's Bureau for investigation.