

The following mini case studies demonstrate how the Ombudsman goes about resolving conflicts.

Mini case study 1

No claims bonus

This complaint, from a lady in her mid 70s, stemmed from the loss of her no claims bonus as a result of a third party claim against her motor insurance policy following a road traffic accident. The Complainant acknowledged that she bumped into the back of the third party's car but denied that she had caused any damage, contending that the damage claimed must have pre-dated the accident as evidenced by her own undamaged vehicle. The repair cost for the other car was €850. As a result the Complainant's No Claims discount was reduced from 50% to 20%.

In this case, the Ombudsman found that the damage was quite slight and the sum for repairs not significant. He also took account of the Complainant's age, her genuine belief that no damage was caused and he was satisfied that she had contacted the Company to inspect her car. He felt that the loss of 30% on the No Claims Discount was rather harsh and he reduced the loss to 5%, to be applied for one year only.

Mini case study 2

Travel insurance

The Complainant planned a holiday for August 2007 and purchased a travel insurance policy for same in April 2007. Her stepfather became ill in July 2007 and sadly passed away shortly afterwards. The Complainant cancelled her holiday as a result and submitted a claim to the insurance company amounting to €1,100. The Company rejected the claim, stating that while the policy did provide cover for the death or illness of a 'relative', a step-parent was not included under the definition of 'relative'.

The Ombudsman noted the close relationship between the Complainant and her stepfather as her step-father had been married to her mother for 35 years. He also considered the meaning of 'relative' as defined in the policy. Taking into account the overall circumstances of the case and the possible confusion that could arise from the policy definition of 'relative', the Ombudsman directed the Company to pay 75% of the claim submitted.



Conclusion

The Financial Services Ombudsman is a statutory impartial and independent officer whose actions play a vital role in the overall regulatory environment for financial services. All the regulation in the world is of little use to the individual consumer if he/she cannot have access to a system of redress so as to ventilate the alleged wrong done and have it remedied.

Glossary

Arbitrator: Someone chosen to judge and decide a disputed issue.

Code of Conduct: This is a set of conduct of business rules that firms must follow when dealing with consumers. It outlines the standard consumers expect when dealing with a company governed by a code of conduct.

Collective Bargaining: Negotiation between groups of workers (usually but not always involving trade unions) and their employer or employers to determine wages, hours, rules, and working conditions.

Complainant: A person, group, or company that makes a complaint, as in a legal action.

Student activity

1. Give three examples of the type of conflict that may arise between consumers and a Financial Services firm?
2. What is conflict resolution?
3. Why is it important for businesses to resolve conflict with consumers?
4. Why is it important for consumers to resolve conflict with businesses?
5. What is an Ombudsman?
6. Why do consumers bring their complaints to an Ombudsman?
7. Describe four other non-legislative methods of conflict resolution.
8. Consumers of financial products and services are protected by legislations and codes of conduct. Name two pieces of legislation that protect consumers.
9. What is a code of conduct?

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Financial Services Ombudsman

Financial complaints resolution



Learning outcomes

- The role of the Financial Services Ombudsman
- Consumer complaints
- How to make a complaint to the Financial Services Ombudsman
- Mini-case studies – the Financial Services Ombudsman in action.

Introduction

The Ombudsman is an independent person who, after a fair, thorough review of a complaint, decides if it is justified. If it is, the Ombudsman makes recommendations to resolve the problem. An Ombudsman is impartial and provides a free service. There are a number of ombudsmen in Ireland, and they look into different kinds of complaints.

The establishment of the Financial Services Ombudsman

The Financial Services Ombudsman deals with complaints against Financial Service Providers. This includes:

- Banks
- Building societies
- Insurance companies
- Credit Unions
- Mortgage, insurance and other credit intermediaries
- Stockbrokers
- Pawnbrokers
- Money lenders
- Bureaux de Change
- Hire purchase providers
- Health insurance companies.

The Financial Services Ombudsman Bureau was established under the Central Bank and Financial Services Authority Ireland Act 2004 which helps improve consumer protection. Along with the ***Sales of Goods and Supply of Services Act (1980)*** and the ***Consumer Information Act (1978)*** consumer's rights with regard to goods and services, in particular financial services, are stronger than previously.

The role of the Financial Services Ombudsman

The Financial Services Ombudsman investigates complaints from individual customers and small/medium businesses (SMEs) who have unresolved disputes with financial service providers that are either regulated by the Financial Regulator or are subject to the terms of the Consumer Credit Act 1995.

The Financial Services Ombudsman acts in an independent and impartial manner and whether a complaint can be upheld or not is determined on the basis of evidence. The Ombudsman services are an alternative method of ***dispute resolution***. Other such methods of resolving disputes include ***negotiating*** a solution, ***conciliation***, ***arbitration*** and ***collective bargaining***.



Consumer complaints

Consumers of financial products and services are protected by legislation and **Codes of Conduct**. Responsible consumers know their rights and make complaints if they are not satisfied. Consumers will, and are, entitled to complain. Financial Service Providers will, and do, make mistakes. Against that background, matters that have not been resolved between their customers and Financial Service Providers are referred to the Ombudsman.

Complaint trends by nature of complaint

Credit Institutions 2008

General Account Issues	294
Misleading Information/Mis-selling	219
Fees & Charges	121
Mortgage Issues	168
ATM Withdrawals	161
Interest Rates	153
Service Issues	152
Repayment Terms	138
Insurance Issues	135
Disputed Transactions	127
Credit Card Issues	110
Lending Issues	109
Investment Issues	90
Other	78
Investment Loss	74
Opening/Closing Accounts	74
Transfer of funds/account	72
Cheques	66
Credit Rating	64
Redemption/Change of Mortgage	58
Refusals	54
SSIA Issues	19
Dormant Accounts	11
Total	2615



Insurance Sector 2008

Repudiation of Claim	736
Claims handling Issues	195
Customer Care	121
Maladministration	504
Mis-selling	462
Misrepresentation	83
Settlement Amount	169
Lapse/ Cancellation of policy	158
General Advice	51
Pre-Existing Condition	83
Policy Reviews	175
Premium Rates	??
Non Disclosure	34
Surrender Values	105
Paid up Policy values	51
Direct Debit	9
No Claims Bonus	24
Third Party Insurers	42
Commission Charges	48
Subrogation	11
Bonus Rates	4
Policy Renewal	29
Declined Quotation	13
Pre-Accident Value	18
Unfair Treatment	7
Share Allocation	62
Premium Collection	11
Fraud	1
Unclassified/ Outside Bureau's Remit	79
Total	3332

The Financial Services Ombudsman's role is to be an independent **arbitrator** dealing with individual complaints against financial services providers. Complaints must first be made to the financial institution concerned and then to the Financial Services Ombudsman if a consumer is still dissatisfied. The Financial Services Ombudsman will then consider the matter and whether he/she may investigate same. The Financial Services Ombudsman has the power to order financial institutions to rectify the conduct complained of and to pay compensation.

To date, over 100 case studies have been published to increase consumer awareness and highlight the type of cases that are dealt with and what lessons can be learned.

Making a complaint

A bank, insurance or finance company will not want unhappy customers. It's important that businesses providing financial services hear any concerns that consumers have – and put things right when needed. If consumers of financial services are not happy with how a business deals with their complaint then they can contact the Financial Services Ombudsman.



Consumers may make a complaint to the Financial Services Ombudsman where they feel they have not got satisfaction about:

- The provision of a financial service by a financial service provider
- An offer by the provider to provide such a service
- Failure by the provider to provide a particular financial service that has been requested.

Here are some examples of the types of consumer complaints the Financial Services Ombudsman would investigate:

- A lender's letter outlining the details of a loan is unclear and doesn't explain the figures as well as it might do
- A customer misunderstands calculation of interest payments on a loan
- The repudiation of a claim made under an insurance policy
- The management and administration of investment products.

Who can complain to the Financial Services Ombudsman?

- All personal customers
- SMEs (i.e. Small limited companies with a turnover of €3,000,000 or less)
- Unincorporated bodies, charities, clubs, partnerships, trusts etc.

What complaints cannot be made?

A consumer is not entitled to make a complaint if the matter:

- Is or has been the subject of legal proceedings before a court or tribunal
- Occurred more than six years before the complaint is made
- Is within the jurisdiction of the Pensions Ombudsman.

Costs

If a **complainant** engages solicitors or any other professional assistance to handle their application, any costs incurred legal or otherwise, are entirely their responsibility.

Complaint procedures – steps to follow

- Request a Complaint Form from the Financial Services Ombudsman's Bureau or download one from its website.

- The Complaint Form will be examined by the Financial Services Ombudsman. If the complaint is within his/her remit, the Complainant will be asked to write to the Financial Service Provider against which the complaint is made. The Financial Service Provider must issue a 'Final Response' letter which outlines the Provider's position in relation to the matter in dispute.
- When the Ombudsman has received the Complaint Form and the Final Response, the option of mediation will be offered to both parties 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.
- When investigating the complaint, the Financial Service Provider will be asked a series of questions by the Ombudsman and asked to submit documentation.
- All the circumstances surrounding the complaint will then be examined. After examining 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.
- Findings of the Financial Services Ombudsman are legally binding on both parties, subject only to appeal by either party to the High Court.

Redress

The Financial Services Ombudsman can direct the financial 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.

Investigation & enforcement

More than 17,453 complaints have been received since the office opened in April 2005. By December 2008, 5947 complaints were received, an increase of 36% over 2007. 3012 complaints were resolved in the complainants' favour-62% overall either because of an amicable mediated settlement or through a legally binding ruling in the consumer's favour.

Although each party has a statutory right to do so, there have been very few appeals to the High Court against Decisions made by the Ombudsman.

The Ombudsman can award compensation of up to €250,000 where a complaint is upheld. Decisions by the Ombudsman are binding on both parties subject only to an appeal by either the complainant or the financial service provider to the High Court.