

Submitting case files to the Financial Ombudsman Service

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As requested by CILA and as part of the ombudsman's commitment to working with the industry - and with smaller businesses in particular - I am pleased to be able to offer some practical advice on this topic.

I'll deal first with the formal position before turning to more practical considerations.

The ombudsman's powers

When considering consumers' complaints the Financial Ombudsman Service has broad powers both to:

- define the scope of its own investigations; and
- require evidence from either party to the dispute.

These powers are needed for effective exercise the inquisitorial remit granted to the service by parliament.

The ombudsman's powers to require evidence are set out in the *Dispute Resolution: Complaints* sourcebook (known as 'DISP') contained in the FSA Handbook – see DISP 3.5.8 R *et seq* (available online at <http://fsahandbook.info/FSA/html/handbook/DISP/3/5>).

Additionally, businesses are under an obligation to '*cooperate fully*' with the ombudsman service and '*comply promptly with any settlements or awards made*' - see DISP 1.4.4 R (<http://fsahandbook.info/FSA/html/handbook/DISP/1/4>).

These regulatory obligations bind directly on your principal, the insurer, as the legal entity responsible for the complaint. But loss adjusters acting for insurers in matters later referred to the ombudsman will no doubt wish to ensure that they do everything possible to assist their principals in maintaining full regulatory compliance.

How can this best be done?

Practical considerations

When consumers first refer complaints to the ombudsman service we set up new files based on the information they provide, including the name of the business that they consider to be responsible for what has gone wrong. Where consumers have been dealing with loss adjusters appointed by their insurers they will often give those businesses' names, rather than the names of the insurance companies which are ultimately accountable for the claims decisions. So when we first take a complaint on as a case to be investigated we may write to the loss adjuster advising that we have done so and requesting the file papers relating to the claim. This letter is known as the case conversion letter.

In responding to this letter and submitting the file papers, the first and most useful thing the loss adjuster can do is state explicitly the nature of its involvement in the case and its relationship with the insurer. For example has the loss adjuster merely investigated the claim on behalf of the insurer or has it also decided the outcome of the claim under delegated authority or as a claims handling agent? The insurer's full, correct name should also be given.

This will enable us to correctly identify the business with regulatory responsibility for the complaint and ensure that the complaint case is properly set up as against that business in our records. This is important both for the ultimate legal enforceability of our decisions and the accuracy of the business-by-business complaint outcome data we are now publishing twice a year.

Next - and assuming its insurer principal is happy for it to do so - the loss adjuster should provide a summary overview of the claim, up to the then current date. This is particularly important if there have been further communications/events after the issue of the business's final response letter (i.e. the letter issued at the conclusion of the business's in-house complaints procedure, giving the consumer referral rights to the Financial Ombudsman Service).

This summary overview should be accompanied by the file papers, that is to say a copy of the *complete* file held by the loss adjuster, arranged in chronological order and including:

- a copy of the insurer's letter of instruction (in 'investigation only' cases), *or*
- details of the general delegated authority under which the loss adjuster has acted (in delegated authority cases); *or*
- a copy of the insurer's letter authorising the loss adjuster to investigate and decide the outcome of the particular claim (in claims handling agent cases);

and:

- copies of all of the loss adjuster's reports to the insurer;
- copies of all correspondence between the loss adjuster and the insurer (including responses);
- copies of all correspondence between the loss adjuster and the consumer (including responses); and
- a copy of any final response letter issued to the consumer.

NB The file should include all these items, but not be limited to them – as stated above, it should be a *complete file*, arranged *in date order*. Copies are acceptable (we will ask if we wish to see the original of a particular document) and it is particularly helpful if key documents are tagged for easy identification.

Additionally, where the loss adjuster has decided the claim outcome under either a general delegated authority or a case specific authority, the file should also include a copy of the policy documentation in force at the time of the claim, (i.e. policy booklet and schedule of insurance).

We may need to ask some further questions and the adjudicator will be in touch if necessary. But by providing all of this information and documentation at the outset you will help us to be able to get to grips with the case more readily at the beginning of our investigation. And a speedier investigation and early outcome has to be better for all concerned.

At the time of writing (February 2010) the ombudsman service has more or less completed a process of recruiting, training and deploying additional staff to meet our ever-growing caseload, so new cases are now being allocated to adjudicators much more quickly. So it is important that businesses keep their own complaint files in good order so that they are well placed to respond rapidly to our case conversion letter and file request if/when it comes.

As I remarked at the beginning of this piece, I was happy to respond to CILA's request for the above information as part of the ombudsman's commitment to

working with the industry and with 'smaller businesses' in particular. In recent years we've put in place a range of measures aimed at helping those businesses that do not have frequent dealings with the ombudsman service to understand how it works and what is required of them.

Information available online includes our 'guides to the ombudsman' for both larger and smaller businesses, as well as a series of 'quick guides' covering specific topics. Many common 'single-issue' topics are also addressed via our FAQ web-pages, where we have a special sub-section for questions frequently asked by 'smaller businesses'. Please see www.financial-ombudsman.org.uk/publications/guides_for_firms.htm and <http://www.financial-ombudsman.org.uk/faq/index.htm>

Copies of our publications are also available in hardcopy by e-mailing publications@financial-ombudsman.org.uk or telephoning 020 7964 0092.

You may also find it helpful to call our Technical Advice Desk. This answers queries about the scope of the ombudsman's jurisdiction (which complaints it can consider) and its processes and procedures. It can also help businesses 'reality test' their proposed responses to consumer complaints by giving an informal opinion as to how the matter might be viewed by the ombudsman if it were later to be referred to the service. Businesses making claims decisions also find this service useful.

You can telephone the Technical Advice Desk on 020 7964 1400, 10.00am to 4.00pm, Monday to Friday – see www.financial-ombudsman.org.uk/contact/tech-advice.htm for further information.