

Complaints

A GUIDE TO DEALING WITH CUSTOMER COMPLAINTS

Introduction

What is a Complaint?

A complaint is defined as:

“Any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, by our firm.”

What makes a Complaint?

A complaint must be in relation to the services received from the firm or matters arising whilst the complainant is or has been a customer of the firm.

The following are all examples of what makes a complaint. The list not exhaustive, however.

- If the complainant thinks he has received misleading information
- If the complainant thinks he has received poor advice
- If the complainant thinks that the advertising material is misleading
- If there is a fraud involved
- If the complainant thinks that personal data or confidential information has been mis-used

Who can make a Complaint?

An eligible complainant must be a person that it:

- A consumer; or
- A micro-enterprise
- A charity with annual income of less than £6.5m
- A trustee of a trust with a net asset value of less than £5m
- In relation to Consumer Buy to Let, a CBTL customer; or
- A small business
- A guarantor

When is a complaint not a complaint?

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It is necessary to keep a firm's professional indemnity (PI) insurers informed, as soon as possible, of any circumstance which may become a complaint in the future.

For instance, not all expressions of dissatisfaction will necessarily involve the making of a complaint. There are times when a client will seek an apology from the firm and that will be the end of the issue. Or, perhaps, the incident is relatively minor and may involve only a minor clerical or administrative act rather than any financial redress.

Such instances may be treated as a circumstance rather than a complaint. However circumstances can escalate to the same status as a complaint and it is therefore imperative that the firm treats circumstances as complaints and follows the procedure for complaints in all cases.

How can a complaint be made?

A complaint can be made by a client, a potential client or a person on behalf of either. There is no rule which states that a complaint must be made in writing.

All complaints must be handled by a suitably qualified Complaints Handler within the firm. If a client cannot settle their complaint with the firm, they may be entitled to refer it to the Financial Ombudsman Service (FOS).

Awareness of complaints

This firm must ensure that all relevant employees are aware of the Complaints procedure.

FCA Requirements

Consumer Awareness

The FCA requires that all firms publish details of their Complaints Policy. This needs to detail the process that will be followed in the event of a complaint. It should be provided to clients, or potential clients, on request or when a complaint is made.

Consumer should be made aware of the following:

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- Who to make a complaint to at the firm
- How their complaint will be dealt with, including relevant timescales
- Details of the Financial Ombudsman Service (FOS) in a clear, comprehensible and easily accessible way

The Complaints policy must be:

- On the firm's website, where one is available
- In the general conditions of a Client Agreement

A Customer must be able to make a complaint free of charge.

IFAC have produced a template for a Complaints Policy that firms are welcome to use to create their own.

Complaints Handling

Complaints Management Procedures should be effective and transparent. They should be established, implemented and maintained for the prompt handling of Complaints, or potential complaints.

The Policy should be:

- In a written format
- Clear, Accurate and UpToDate
- Endorsed by the firm's management
- Made available to all of a firm's staff to ensure full understanding

Complaints should be:

- Recorded accurately
- Analysed to identify any risks or issues
- Handled effectively and in an independent manner

Complaints Resolution

The high level process should ensure:

- Acknowledgement of Complaint
- Complaint investigated competently, diligently and impartially
- Additional information obtained as appropriate
- To assess fairly, consistently and promptly

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- Subject Matter of the complaint
- Whether the complaint should be upheld
- What remedial action or redress (or both) may be appropriate
- Whether there are reasonable grounds that another respondent may be solely or jointly responsible for the matter alleged in the complaint
- Explain the assessment of the complaint to the customer
- Offer redress or remedial action where appropriate
- Comply promptly with any accepted offer of remedial action or redress

Management Information

All complaints should be logged and its details recorded, including the measurements taken for resolution.

Where a “potential” complaint is highlighted to the Complaints Handler, this should be recorded as such and records maintained and reported on effectively.

A firm must take reasonable steps to ensure that when handling complaints it identifies any recurring or systemic problems, for example:

- Analysing the causes of individual complaints; identify the root cause
- Consider whether any root cause may affect other processes or products
- Correcting root cause where it is reasonable to do so

Where systemic problems are identified that could have an effect on other customers due to the processed or products involved, a firm should consider whether it ought to proactively take action for these clients, even though they have not made a complaint.

Complaints Process

Receipt of the complaint by the firm

Upon receipt of the complaint, details of the complaint along with the original complaint where the complaint is made in writing, should be sent to the Complaints Handler.

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Firms should ensure that where a verbal complaint is received, full details are disclosed to the Complaints Handler to allow them to acknowledge the complaint. A standard pro-forma for the reporting of Complaints is a useful tool to ensure consistency.

If the firm are able to resolve the complaint to the client's satisfaction within three working days of receipt, a final response can be issued to the client including the firm's conclusion of the complaint and a summary of investigations. If this is not possible, the complaint must be acknowledged by the Complaint Handler and the process for handling the complaint set out.

Acknowledgement of a complaint

The acknowledgement of a complaint must come from the Complaints Handler. The acknowledgement should take place as soon as practically possible but no later than five working days of receipt of the complaint by the firm.

This will be in the form of a holding letter which states that a complaint has been received and sets out the firm's understanding of the nature and details of the complaint. The acknowledgement letter should mention that the complaint will be investigated as soon as possible and provide details on when and how further contact will be made. A client can be requested to provide authority for the firm to obtain any information from third parties, such as product providers.

Recording a complaint

The complaint should be logged and its details recorded, including the measurements taken for resolution. This will allow for sufficient reporting to the firm's management and ensure that a complaint meets the relevant time limits.

Where a "potential" complaint is highlighted to the Complaints Handler, this should be recorded as such and records maintained and reported on effectively.

Investigating complaints

The investigation should be carried out by the Complaint Handler who must undertake a balanced and objective investigation without any pre-conceptions aimed at simply identifying the facts of the case.

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The investigation will include a review of the client file, with particular regard to the complaint having been made. This will involve an element of fact finding to compare the information held on file with the complaint raised by the client.

Customer contact

The adviser about whom the complaint is made, is unable to contact the client until the complaint has been resolved or prior approval is obtained from the Complaints Handler. Where contact with the client is required in relation to a matter outside of the complaint, an alternative adviser may be provided for a period of time.

Final response

As soon as the complaint investigation has been completed a formal letter and response must be sent to the client and a copy sent to a firm's PI insurers.

The Final Response must be in writing and must be one of the following:

- Accepts the Complaint and offers redress or remedial action where appropriate
- Offers redress of remedial action but does not accept the complaint
- Rejects the complaint confirming reasons why

If it is considered that redress is appropriate, it must be detailed in this response and confirmation of how this was calculated must be shown.

At this time, if the client has not already received it, the client must be provided with a copy of a leaflet informing them of the Financial Ombudsman Service (FOS) and their right to refer the complaint to them if you are unsatisfied with the final response.

If the client is dissatisfied with the final response, they have the right to refer their complaint to the Financial Ombudsman Service (FOS) within six months of the date of the final response.

The complaint is considered closed once the final response letter has been issued or, if compensation is to be paid, once this has been accepted by the client and payment has been made.

At this point, a firm's complaints register will be updated to reflect the situation and the Financial Conduct Authority (FCA) must be updated on any complaints twice a year.

Time Limits

Complaints resolved by close of the third business day

If the firm are able to resolve the complaint to the client's satisfaction within three working days of receipt, a final response can be issued to the client. If this is not possible, the complaint must be acknowledged by the Complaint Handler and the full Complaint process followed.

The Complaint Handler will issue a "Summary Resolution Communication" as follows:

- The firm's conclusion to the complaint
- A summary of investigations
- The firm consider the complaint to have been resolved
- Inform the client of their right to refer their complaint to the Financial Ombudsman Service if they remain dissatisfied
- Include web address
- Refer to additional information availability on the website

Final or other response within eight weeks

The Complaints Handler must endeavour to resolve the complaint as soon as possible.

After four weeks from the initial receipt, if the complaint is not resolved, the Complaints Handler must write to the client to inform them of the current situation. Where possible, the Complaints Handler should give an indication of the date by which they expect the case to be resolved.

It is expected that most cases can be concluded within 8 weeks and a final response issued to the customer.

If the case continues, at eight weeks from the initial receipt, the Complaints Handler must write to the client again to inform them of the current situation. Where possible the Complaints Handler must give an indication of the date by which they expect the case to be resolved. At this time, the client must also be provided with a copy of a leaflet informing them of the Financial Ombudsman Service (FOS) and their right to refer the complaint to them if they are unsatisfied with the delay.

The Ombudsman

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The Ombudsman can consider a complaint referred to them within 6 months of the date of the Final Response letter, redress determination or summary resolution communication.

The Ombudsman has a Time Barring clause and cannot consider a complaint referred to them:

- More than 6 months after the date of the Final Response letter, redress determination or summary resolution communication; or
- More than:
 - Six years after the event complained about; or (if later)
 - Three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint

Unless the complainant referred their complaint within that period and has written acknowledgement or some other record of the complaint being received

The Ombudsman can ignore the Time Barring in the event that they believe the failure to comply with the time limits was as a result of exceptional circumstances, the Ombudsman is required to by order or the firm consents to them doing so.