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## Essential Tips on How to Complete the Financial Ombudsman Service (FOS) Complaint Form



A photograph showing a person's hands typing on a laptop keyboard. In the foreground, an hourglass is visible, symbolizing time. The background is blurred, showing green foliage.

# 1

## Know your time limits

As a general rule, you must complain to FOS after you have first complained to the business responsible and within six months of that business sending a final response rejecting your complaint.

Furthermore, you must complain within six years of the event being complained about. For financial mis-selling cases, the event is normally the advice to invest which lead to the financial loss. However, what if you were not aware at the time of the advice that something was wrong. An exception to this rule (which applies the law in negligence claims) allows you to bring a complaint within three years of

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when a customer knew (or ought reasonably to have known) that they had cause to complain. For example, you may have obtained information about the advice or investment many years later that made you realise the advice was wrong.

FOS do not uphold and pay compensation on all complaints. FOS ask in their complaint form when the advice or service took place and many claims are rejected on time limit grounds.

We have seen many FOS complaint forms completed by unrepresented customers who did not provide full information which lead to the complaint being rejected. They ask for our help in overturning the decision but this can be difficult when the wrong information was initially given.

If your complaint relates to advice or events more than six years ago, it is worth getting legal advice to make sure you give the fullest explanation in the form as to why the complaint is being submitted late.





## 2

### **To obtain and include the correct documents in your application**

The FOS complaint form asks you to include the final decision letter from the business you are complaining about and any other supporting documents. Whilst you may have documents from the business you are complaining about (such as a customer agreement, illustrations, suitability letter and statements), you probably will not have all relevant documents that FOS will need to consider in making a decision.

Once a complaint is submitted, FOS will typically write to the business asking them to provide these relevant documents. In a financial advice complaint, this will usually be the business's whole client file including the 'Fact Find' questionnaire, a risk profile of the customer, and the documents mentioned above that the customer may also have. Also, there will be emails and notes/recordings of telephone calls with the customer.

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We strongly believe you should have sight of all these relevant documents BEFORE you submit your FOS complaint form.

Aside from what the business said in their final response letter rejecting your complaint, these documents could contradict or undermine your claim. It is very important you see and review these before you submit a FOS complaint. Ideally, this should be done before you even make your initial complaint to the business but most certainly before you submit a later FOS complaint.

Data protection laws entitle you to obtain all documents held by a business that concern you, whether you wish to pursue a complaint or not. Any specialist solicitor like ourselves will make this request for you (called a Data Subject Access Request – DSAR) and properly review these documents and identify breaches of the FCA Conduct of Business Source Book Rules before preparing and submitting your complaint.

Even if you intend to complain unrepresented by yourself, you should make this request yourself and obtain all relevant documents before you complain.



### 3

## Know what financial losses you can claim for

An important question on the FOS complaint form is, “How have you been affected – financially or otherwise?”.

It is important and good practice to know what financial losses you can claim for and to set these out in your complaint.

Of course FOS can calculate this for you but we have seen cases of them getting this wrong. If you have lost money from poor pension or investment advice, you may think you are only entitled to be compensated for what you have lost (plus interest). However, following our landmark case of *Adams v Options SIPP*, the rules have changed and redress bodies such as FOS have to award compensation based on what your pension or investment would have been worth but for the bad advice.

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Such cases often involve a transfer out of a pension, ISA or investment that was suitable for the customer into an unsuitable one. The correct calculation for loss is what that investment (known as the Notional Transfer Value – NTV) would have been worth if it was left alone OR the complained about advisor had advised to invest in a suitable investment.

The question on the complaint form also asks how have you “otherwise” been affected. Losing a large chunk of your pensions or life-savings can have a dramatic effect on your wellbeing. If that loss and the business’s previous communications about it have caused stress and anxiety, you can claim up to £500 for upset. If that has happened, it is important to detail that in answer to that question.



## 4

### How would you like them to put things right for you?

The FOS complaint form asks this further important question.

Customers may think that the obvious answer to this question is to be compensated for the financial loss they have suffered. However, to be fully compensated (for which the rules and law allows), the correct answer is to seek to be put back in the financial position you would have been in if the complained about advice and actions had not taken place. In a pension transfer case, this requires the Notional Transfer Value calculation discussed at point 3 above and in a mis-sold investment case, this may require a comparison with a suitable benchmark index, such as the FTSE UK Private Investors Income Total Return Index. The difference between that and simply the return of a lost investment can be staggering, particularly if the loss occurred many years ago. Since April 2021, FOS have been required to apply this when calculating awards however, we have seen examples of them seeking to argue exceptions which can result in lower calculations of compensation. We think it is therefore very important to set out what your loss is and what you are claiming for.





**5**

## **Get legal representation (or at least legal advice) from a specialist solicitor**

Whilst the FOS complaint form looks simple to complete, answering the questions incorrectly and not giving the fullest relevant information possible can prejudice a positive outcome or detrimentally affect the calculation of your compensation.

The rules protecting customers of financial service businesses are complex and while FOS has a statutory duty to apply these rules, their decisions are generally more principle based than rule based. The overarching principle applied is Principle 6 of the FCA Principles of Business i.e. to treat customers fairly. However, this does allow FOS a wide discretion when upholding or rejecting complaints.

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We monitor FOS uphold percentage rates for pension, ISA and investment advice cases and over the years, this has generally been around 50-60%.

By contrast, our success rate when submitting these types of FOS complaints for clients is over 90%.

We see many cases of clients coming to us after having FOS complaints rejected which they have submitted themselves or used an unqualified claims company to do so. Not all but many of these cases could have had better outcomes if the complaint forms had been properly prepared. It is important to ensure that your complaint is given the best possible chance of success at the first time of asking. Once an Ombudsman makes a Final Decision about the complaint then there is no further internal appeal process at the FOS and the only way a Decision can be reversed is via judicial review. It can be extremely difficult to overturn the rejection of a poorly prepared or deficient complaint.

# NEXT STEPS

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Please do not hesitate to contact Tim Wixted at Wixted & Co. Solicitors for a free consultation to see if we could act for you on our “no win, no fee” basis.

5 minutes of your time spent now could prove invaluable and make a huge difference.

**ACT FAST, DO NOT DELAY. PROTECT YOUR FINANCIAL SECURITY FOR TOMORROW BY ACTING TODAY.**

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## ABOUT THE AUTHOR

Tim has been a qualified solicitor for 27 years. He founded his practice in 2001 specialising in litigation, and since that time, the practice has recovered over £100 million in compensation for 1000's of clients. Since 2008, his focus has been on Financial Services professional negligence. He has handled and overseen 100's of cases, including notable group actions against pension operators, banks and financial advisors, including the landmark Adams v Options Court of Appeal case.

Tim has regularly contributed to the Press and Radio on Pension and Investment mis-selling. He has also given speaking presentations on the subject at conferences. He is a part-qualified IFA (Independent Financial Advisor) which provides him greater insight into financial services negligence and mis-selling. He is also a qualified New York State lawyer, currently non-practising.

For a free initial discussion, please email [twixed@wixedandco.co.uk](mailto:twixed@wixedandco.co.uk) or call 0808 092 1443 and ask to speak to Tim Wixted in relation to a claim.

