

## Professional negligence: to complain or claim?



A question which often arises when a professional has let someone down is whether to complain following the professional's internal complaints procedure – perhaps referring the complaint to an Ombudsman or their professional body where applicable – or to bring a claim through the courts.

There are benefits and disadvantages to each avenue.

### Negligence by a financial services professional

This question is perhaps most pronounced in a financial services context, where, for example, a regulated financial adviser has provided negligent financial advice which has caused you a loss.

If you have received negligent financial advice from an FCA regulated financial adviser, which has caused you a loss, then you can either pursue this complaint/claim via the Financial Ombudsman Service (FOS), or via the courts.

The primary benefit of the FOS, and indeed most Ombudsman services, is one of costs.

It is a general rule of litigation that *the loser pays the winners legal costs*. However, in the event that you make a complaint to the FOS and you are not successful, then you are not liable for the defendant's costs. Everyone simply walks away.

This is in contrast to litigation, where if you pursue your claim against your financial adviser in the courts, and subsequently lose your claim – then you will have to pay some or all of the financial adviser's legal fees in defending the claim.

## The ombudsman: an informal process

A further benefit of the FOS, and indeed most Ombudsman services, is that it is a rather more informal process as compared to court, and everything is typically dealt with on the papers with no need for any evidence to be provided in person or at hearing; there is no 'cross-examination'.

The dispute is typically determined over the phone, by email, or post (depending on what mode of communication suits). This is important, because it means that the FOS process is much less stressful and far more straight forward than court.

## Compensation caps

However, it is important to be aware of the FOS compensation caps (and indeed, most Ombudsman services will have compensatory caps):

- £355,000 for complaints referred to us on or after 1 April 2020 about acts or omissions by firms on or after 1 April 2019
- £350,000 for complaints referred to us between 1 April 2019 and 31 March 2020 about acts or omissions by firms on or after 1 April 2019
- £160,000 for complaints about acts or omissions by firms before 1 April 2019, and which are referred to our service after that date.

This is also important, because if your loss is £500,000 and you are successful at FOS, you may only be awarded compensation of £160,000 (but up to £355,000), whereas if you pursued your claim in court, and were successful, you may receive 100% of your loss by way of damages, i.e. £500,000.

It is also always important to consider 'how' the relevant Ombudsman will determine your complaint.

The FOS determines complaints on what they deem is "fair and reasonable in all the circumstances of the case". This may be different to a court, which would decide your claim by strictly applying the law.

## How we can help

We have extensive experience in bringing professional negligence claims via the courts, or by way of referral to the Financial Ombudsman Service and other Ombudsman services.

If you would like to discuss which avenue might be most appropriate for you, on a free, no-obligation basis, then please contact a member of our [professional negligence team](#).



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