Collegiate

UNDERWRITERS' UPDATE

RISK BULLETIN

Financial Adviser Edition

July 2026

FOS clarifies what constitutes a complaint and how the six-month referral period applies.

A controversial 2025 FOS decision that initially ruled a valid complaint was not a complaint has been overturned in 2026, with new clarification issued on complaint definitions and the six-month referral deadline.

In May 2023 clients of an IFA firm sent an email titled "formal complaint" stating:

"We are now making a Formal Complaint…over your handling, conduct and dereliction of duty in regard to our financial affairs which were intrusted to your firm.
Please send me details of your complaints procedure and policy so that we can formalise this complaint and begin this process".

The Claimants had been clients of the firm since 2019 and had been receiving initial and ongoing advice regarding their investments.

The IFA responded the same day, provided its complaints handling process and asked for more specifics of the complaint. No further information was received so in June 2023, the firm acknowledged the complaint and issued a seven-page final response letter, rejecting the complaint and providing full FOS referral rights.

In November 2024, after the six-month referral period had expired, the claimants sent a further complaint regarding the handling of their investments. They stated:

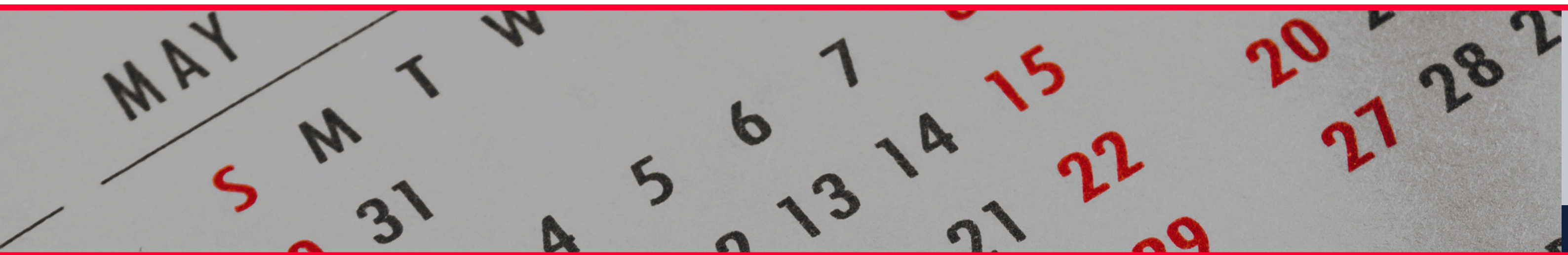
"Following a period of prolonged ill health,and after gathering information, advice and examining correspondence in detail, we are now in a position to begin this Formal Complaint, based on your own Complaint Handling leaflet…."

The IFA responded that the Claimants' original email had been treated as a complaint as it was titled "formal complaint" and referred to the firm's handling of the Claimants' financial affairs. The IFA therefore, had treated it as a complaint and issued a final response in accordance with the DISP rules. They did not provide new FOS referral rights.

The Claimants subsequently referred the complaint to the FOS in January 2025 and the IFA argued it had been referred outside the relevant time limits.

The initial Investigator found that FOS could consider the matter as the Claimants' e-mail in May 2023 did not reach the definition of a 'complaint'. The investigator considered that in May 2023 the Claimants were merely enquiring about the complaints process and informing the IFA of their intention to make a formal complaint. Whilst the email displayed their dissatisfaction, it did not specify what services they were complaining about or allege a financial loss and, as such, the IFA should not have treated it as a complaint and their response was of no value for time barring purposes.

In 2026, an Ombudsman reversed this decision and clarified when a matter constitutes a complaint and how the six-month FOS referral period applies.



What Constitutes a Complaint?

The initial FOS finding was alarming in that it both went against the requirements set out on the FCA Handbook regarding complaint handling and, on simple facts alone, ignored that the email in May 2023 was headed "formal complaint". The definition of a complaint as set out at in the FCA Handbook is:

"…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, claims management service or a redress determination, which:

(a)alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and

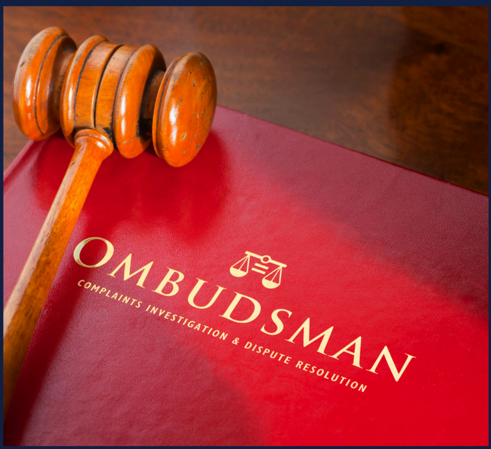
(b)relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products or claims management services, which comes under the jurisdiction of the Financial Ombudsman Service."

Accordingly the threshold for something to be considered a complaint is relatively low as there is no requirement for detailed allegations or proof of loss. An expression of dissatisfaction relating to a firm's services that may result in loss, material distress or inconvenience, is sufficient.

The Claimants' email of May 2023 clearly reached this threshold and, in line with regulatory requirements, the IFA were correct to treat it as a complaint and issue a final response letter as also set out in the FCA DISP rules. Accordingly, the decision was disputed with the FOS.

Reversed Ombudsman Decision

In early 2026, an Ombudsman reconsidered the matter and issued a Provisional Decision that reversed the findings of the Investigator and helpfully clarified a number of issues. In considering the DISP rules and definition of a complaint in the FCA Handbook, under which the FOS are granted their powers, the Ombudsman found that the email of May 2023 did constitute a formal complaint for the following reasons:



- it was titled "formal complaint" and stated that a complaint was being made;
- it referred to the firm's handling, conduct and alleged dereliction of duty in relation to the Claimants' financial affairs;
- it implied that the Claimants believed they had suffered, or might suffer, financial loss, distress or inconvenience; and
- the firm reasonably treated the email as a complaint and invited further information before issuing its response.

Final Response Letters and Time Limits

Having found that the Claimants' email of May 2023 was a complaint, the Ombudsman needed to decide if the final response letter was valid and, therefore, as more than six months had passed before it was referred to the FOS, if the complaint was outside of their jurisdiction to consider. Under the DISP rules set out in the FCA Handbook a final response is:

"a written response from the firm which:

(a) accepts the complaint and, where appropriate, offers redress; or
(b) offers redress without accepting the complaint; or
(c) rejects the complaint and gives reasons for doing so; and which informs the complainant that, if he remains dissatisfied with the firm's response, he may now refer his complaint to the Financial Ombudsman Service and must do so within six months.

and which:

(d) encloses a copy of the Financial Ombudsman Service's standard explanatory leaflet;
(da) provides the website address of the Financial Ombudsman Service;
(e) informs the complainant that if he remains dissatisfied with the respondent's response, he may now refer his complaint to the Financial Ombudsman Service; and
(f) indicates whether or not the respondent consents to waive the relevant time limits in DISP 2.8.2 R or DISP 2.8.7 R (Was the complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in DISP 1 Annex 3R."

The Ombudsman was satisfied that the IFA's correspondence in June 2023 did meet the definition of a final response. It was responding to a complaint, it rejected the complaint, gave reasons for doing so and informed the Claimants that they could refer the complaint to the FOS within six months.

The Ombudsman went on to consider the Claimants' November 2024 correspondence and the impact this would have on jurisdiction. The Ombudsman found that the IFA were right not to treat the Claimants' November 2024 letter as a new complaint. If the Claimants' letter was not a new complaint, and the IFA's reply not a new final response, then the six month time limit given in June 2023 would apply. The Ombudsman was satisfied that – with one exception regarding fees – the Claimants' complaint in November 2024 was materially the same as the complaint that was responded to in June 2023. Subsequently, the complaint was not one which they could consider.

The Ombudsman also highlighted that in not providing a second set of FOS rights, but referring to the previous ones given in the final response sent in June 2023, the FOS referral period clock did not start again. Whilst not expressly stated, this seems to imply that if a new set of FOS rights were given albeit the complaint was the same, the six month referral clock would start over again.

Exceptional Circumstances

The Ombudsman also considered whether the failure to refer the complaint to the FOS within six months was because of exceptional circumstances, given the Claimants had highlighted challenging circumstances regarding their health and being carers.

It is well known and repeatedly established by the FOS that it is a very high bar for what amounts to exceptional circumstances, generally requiring a Claimant to be physically incapacitated for the entire relevant period to such a degree that they cannot refer the matter to the FOS by any means including with assistance from a third party. This Ombudsman decision was in line with such, stating that the Claimants' circumstances would not have prevented them from bringing their complaint to the FOS within the six month time limit. They *"…had the option of referring their complaint to us at any point in the six month period by phone or email, or to do so through a representative. So, I don't think there are exceptional circumstances which would mean I could look into their complaint."*

Key Takeaways for Advisers

- What constitutes a complaint and a valid final response letter is set out in the FCA Handbook DISP rules. A complaint only needs to be an "oral or written expression of dissatisfaction" which suggests loss or material distress and inconvenience may be suffered (not actually has).
- Accordingly, providing the complaint definition is met, a final response letter (FRL) which fully addresses the issues and provides FOS rights should be sent to the Claimant.
- Care should be taken if a 'second' complaint regarding the same issues is received to assess whether any new points have been raised and whether previous FOS referral rights should be referred to as opposed to new ones given.
- The threshold of what constitutes an 'exceptional circumstance' for the purpose of late referrals to the FOS is a high bar to reach.
- New FOS rights for the same complaint could restart the six-month referral period.