

The content

Debt Advice Handbook 15th edition

Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?
It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?
The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?
Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

Properties

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Print publication date
Feb, 2024

This content was last updated:
2025-06-26

Print ISBN
978 1 915324 11 5

2. Before starting court action

Pre-action protocols

Pre-action protocol for debt claims

The Civil Procedure Rules contain codes of practice that both parties are expected to follow before any court action is started. These pre-action protocols and a pre-action conduct practice direction are published in *The Civil Court Practice* [1] (available at justice.gov.uk/courts/procedure-rules/civil). The protocol for debt claims is at justice.gov.uk/courts/procedure-rules/civil/pdf/protocols/debt-pap.pdf.

Regardless of whether there is a protocol for the specific type of case, the practice direction expects the parties to act 'reasonably and proportionately' in exchanging sufficient information to enable them to understand each other's position, make informed decisions and attempt to resolve the matter without starting court proceedings, including considering alternative dispute resolution (see here). [2] This should usually include:

- the creditor writing to give details of the claim; *and*
- the client:
  - providing a detailed written response within a reasonable period (14 days is suggested in the case of undisputed debts); *or*
  - acknowledging the letter within 14 days if they cannot provide a detailed response within that period and then providing a full response within 30 days if third-party involvement is required (or possibly longer if specialist advice is needed).

If the practice direction is not complied with, the court can 'stay' (ie, suspend) the proceedings until the required steps have been taken, or make an order not to allow costs or to pay costs to the other party (see here). The court is not concerned with minor or technical infringements and looks at the overall effect of the non-compliance on the other party when deciding whether to impose sanctions.

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1 This is an expensive two-volume publication (plus a separate volume containing prescribed forms), published by LexisNexis. It is known as the *Green Book* and is published annually with supplements. It also contains annotations and commentary, tables summarising various common procedures, details of court costs and fees, the pre-action protocols and excerpts from relevant legislation.

2 CPR PD, para 3

Pre-action protocol for debt claims

The protocol applies to all debt claims where:

- the creditor is a business (including sole traders and public bodies); *and*
- the client is an individual (including sole traders); *and*
- no other specialised protocol applies – eg, for rent or mortgage arrears.

The protocol aims to:

- encourage early engagement, communication and exchange of information between the parties; *and*
- enable parties to resolve debt claims without court proceedings, including by agreeing reasonable repayment plans or alternative dispute resolution (see here); *and*
- encourage parties to act reasonably and proportionately with one another – eg, not running up costs which do not bear a reasonable relationship to the amount of the debt; *and*
- support the efficient management of proceedings that cannot be avoided.

Before starting proceedings, the creditor should send a 'letter of claim' to the client. It should contain:

- the amount of the debt, and whether interest and charges are continuing;
- if there was a verbal agreement, who made the agreement, what was agreed (as far as possible, what words were used) and where and when it was agreed;
- if there was a written agreement, the date of the agreement, the parties to it and the fact that a copy of the agreement can be requested from the creditor;
- if the debt has been sold, the details of the original debt and creditor, when it was sold and to whom;
- if regular instalments are currently being offered by or on behalf of the client or are being paid, an explanation of why the offer is not acceptable and why a court claim is still being considered;
- details of how the debt can be paid – eg, the method of and address for payment and details of how to proceed if the client wants to discuss payment options;
- the address to which the completed reply form annexed to the protocol and accompanying the letter should be sent.

It should also include:

- a statement of account detailing any interest and charges applied; *or*
- the most recent available statement of account with details of any interest and charges applied since that statement; *or*
- where no statements are provided, details of any interest and charges applied to the debt since it was incurred; *and*

- a copy of the information sheet, reply form and standard financial statement, all of which are annexed to the protocol.

The letter of claim should be clearly dated near the top of the letter and posted to the client on the day it is dated or, if this is not reasonably possible, the following day. If the client does not respond within 30 days, the creditor can start proceedings for the debt (subject to any other obligations the creditor has to the client – eg, under the Financial Conduct Authority's *Consumer Credit Sourcebook*).

The reply form gives the client the following options:

- admitting all, or part, of the debt and to pay or propose payment terms for the amount admitted; *or*
- confirming they are seeking debt advice; *or*
- disputing all or part of the debt; *or*
- requesting documentation from the creditor to enable them to understand the debt.

If the client requests documentation, the creditor has 30 days to either provide it or provide a written explanation of why not. The creditor cannot start proceedings less than 30 days after the documentation and/or explanation have been provided and must also give the client 14 days' notice of its intention to start the claim.

If seeking debt advice, the client must indicate on the reply form whether this will take longer than 30 days and, if so, provide details. The creditor should allow a reasonable amount of time for this advice to be obtained. The creditor cannot start proceedings less than 30 days after the reply form has been received and must give the client 14 days' notice of its intention to do so.

If the client does not fully complete the reply form, the creditor should attempt to contact them and obtain any additional information required to understand the client's position. The creditor cannot start proceedings less than 30 days after the reply form has been received and must give the client 14 days' notice of its intention to do so.

If the client indicates that they are disputing all or part of the debt, the parties should take appropriate steps to try to resolve the dispute without starting proceedings and consider alternative dispute resolution (see here).

If the client has proposed a payment arrangement and this is not accepted, the creditor should inform the client in writing and give reasons for refusing the proposal. If the proposal is accepted, the creditor should not start proceedings while the arrangement is in force. If the client defaults on the arrangement, the creditor must send an updated letter of claim and comply with the protocol again. It does not need to send any further documents that have already been supplied to the client within the preceding six months.

If the client responds but no agreement is reached, the creditor must give the client 14 days' notice of its intention to start proceedings unless there are exceptional circumstances – eg, if the limitation period is about to expire (see here). [1]

Note: some housing advisers have suggested that, because landlords routinely apply for money judgments in possession claims on the ground of rent arrears, the protocol for debt claims applies to that part of the claim. This is only possible if the claimant is a private landlord, because the pre-action protocol for rent arrears applies to claims by social landlords (see here).

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1 For further details, see T Lett, 'Pre-action protocol for debt claims', *Quarterly Account* 46, IMA

Alternative dispute resolution

Using the Financial Ombudsman Service

Using the Financial Ombudsman Service

The Financial Ombudsman Service is a form of alternative dispute resolution. If a complaint has been (or could be) referred to the Financial Ombudsman Service, the court may agree to stay the proceedings. [1] The Financial Ombudsman Service considers requests to prioritise cases where the client might clearly be disadvantaged by having to wait – eg, through financial hardship. It may be worth asking for a case to be prioritised where this can be demonstrated.

The Financial Ombudsman Service has been able to consider complaints against banks and building societies since December 2001 and against all other holders of consumer credit licences in relation to regulated consumer credit debts since 6 April 2007 (although not in relation to events that occurred before this date – see here). From 1 April 2014, it has been able to consider complaints against any firms carrying out regulated activities, including 'debt-related activities'. [2] This means it can consider a complaint about:

- the original creditor, a debt purchaser or a debt collector in relation to a regulated credit debt if the events occurred before 1 April 2014;
- a debt collector in relation to an exempt credit debt, even if the events occurred before 1 April 2014;
- the original creditor or a debt purchaser in relation to an exempt credit debt if the events occurred on or after 1 April 2014.

The Financial Ombudsman Service is not a regulator. Its role is to resolve individual disputes between clients and businesses. It does not consider complaints about the way businesses reach their commercial decisions.

In regulated consumer credit cases, although the Financial Ombudsman Service cannot consider a complaint about events that occurred before 6 April 2007, it can 'take account' of them. This means that if the complaint is about, for example, excessive charges added to an account before 6 April 2007 which the client did not find out about until after this date, it cannot adjudicate on whether or not those charges are excessive. On the other hand, if the complaint relates to excessive charges added to an account on or after 6 April 2007, in adjudicating on the complaint, the Financial Ombudsman Service can look at the agreement to see what it says, even if it was made before 6 April 2007.

The Financial Ombudsman Service does not determine whether or not a relationship between a creditor and a debtor is unfair (see here). It resolves disputes on the basis of what is 'fair and reasonable'. The Financial Ombudsman Service looks at the relevant legislation, regulations, any official guidance, relevant codes of practice and standards, and good industry practice at the time of the conduct complained about. This means it can take into account the same issues that a court would consider, but can come to a different conclusion. The Financial Ombudsman Service has an inquisitorial remit and so conducts its own enquiries, rather than just relying on what the parties tell it. [3]

Businesses that fall within the Financial Ombudsman Service's jurisdiction must have a written complaints procedure, and must publicise and operate it. The Financial Ombudsman Service cannot consider a complaint unless the business has had an opportunity to deal with it first. The client should therefore initially complain in writing to the company concerned. On receipt of a complaint, the creditor should:

- acknowledge the complaint promptly; *and*
- keep the client informed of progress; *and*
- send a 'final response' in writing within eight weeks.

A 'final response' is one which:

- either accepts the complaint and offers redress; *or*
- does not accept the complaint, but offers redress anyway; *or*
- rejects the complaint and gives reasons for this; *and*
- informs the client that if they remains dissatisfied, they have a right to refer the matter to the Financial Ombudsman Service within six months, and encloses a consumer leaflet.

If no final response has been received after eight weeks, the client can complain to the Financial

Ombudsman Service, provided the complaint is within its jurisdiction. Provided a letter is clearly the business's last word on the matter, the Financial Ombudsman Service accepts the complaint, even if fewer than eight weeks have elapsed and even if it does not contain information on the client's referral rights.

Unless the circumstances are exceptional or the business does not object, a complaint to the Financial Ombudsman Service must be made within:

- six months of the date of the final response. This time limit must have been made clear in the final response, otherwise it does not apply; *and*
- six years of the matter complained of taking place; *or*
- if later, within three years of the client's reasonably becoming aware they might have grounds for complaining. **4**

Where a complaint is made outside the relevant time limit, DISP 1.6.2(1)(f) (which is part of the *FCA Handbook*) requires the creditor to indicate in its final response whether or not it agrees to waive the time limit using the appropriate prescribed wording. In a case where the complaint was made outside the 6-year time limit and the creditor's final response had said nothing about the time limit, the complainant argued that this implied consent to waive the time limit. The FOS disagreed and refused to accept the complaint. The High Court held that consent to waive a time limit must be expressed and so, by saying nothing, the creditor had not consented. The FOS had ruled correctly. **5**

The Financial Ombudsman Service must determine complaints by reference to what is 'fair and reasonable in all the circumstances of the case'. This gives the Financial Ombudsman Service a wide discretion to consider the background and context of complaints within its jurisdiction, even where this involves matters occurring more than six years before the date of the matter complained of taking place. For example, in *R (on the application of Mortgage Agency Service Number Five) v Financial Ombudsman Service,* Ms D (a 'mortgage prisoner' at the end of her mortgage term and being threatened with repossession) made a complaint to her lender (MAS5) in October 2018 about the fairness of the interest rates charged under her mortgage. She subsequently escalated the complain to the Financial Ombudsman Service. The Financial Ombudsman Service decided it could consider the complaint about the interest rates charged from October 2012 (six years before the original complaint) but that it was relevant to the complaint to also review the history of the mortgage from January 2009, the date the mortgage reverted to a standard variable rate, including the rates applied to the mortgage. MAS5 applied for judicial review of this decision on the ground that it involved going back further than six years before October 2018. In dismissing the claim, the Administrative Court held that the jurisdiction the Financial Ombudsman Service had accepted was limited to considering complaints about interest charged after 2012. The Financial Ombudsman Service was entitled to consider the

background to a complaint within its jurisdiction and, therefore, its decision as to what it would take into account was not unlawful. [6]

A complaint to the Financial Ombudsman Service should contain the following information:

- the client's details;
- details of the business complained about;
- reference/account numbers;
- copies of the final response (if any) and of any other relevant documents – eg, the agreement and correspondence;
- a summary of the complaint. This should set out the 'story' in the client's own words, if possible, rather than take the form of a legal-type submission (this can be done later in the process, if necessary);
- how the client wants the business to address the issue. The Financial Ombudsman Service does not grant a remedy just because a business has broken rules – this is the job of a regulator. There must be some consumer detriment, not necessarily financial, such as distress, inconvenience, injury or damage to reputation;
- a letter of authorisation if the adviser is submitting the complaint on behalf of the client.

The complaints form is available at financial-ombudsman.org.uk/consumers/how-to-complain or you can phone 0800 023 4567. The Financial Ombudsman Service has published guidance for advisers on referring a client's complaint to them for investigation entitled Customer advisers - what you need to know. This includes details about the Business Support Hub which can be used - eg, to obtain information on how the Financial Ombudsman Service might view a particular complaint.

If the Financial Ombudsman Service accepts the complaint, it attempts to resolve the dispute through mediation – ie, assisting the parties to come to an agreement. If not, an adjudicator forms a preliminary view, which is circulated to the parties. If they accept this, the dispute is settled. If they do not, the case is referred to the Ombudsman for determination. If the Ombudsman upholds the complaint, the business can be ordered to:

- pay compensation for financial loss up to a limit of £445,000 for complaints about actions taken on or after 1 April 2019 where the complaint was referred on or after 1 April 2025 (£415,000 where the complaint was referred on or after 1 April 2023; £430,000 where the complaint was referred on or after 1 April 2024) and £200,000 for complaints about actions taken before 1 April 2019 but not referred to the Ombudsman until after 1 April 2025 (£190,000 where the complaint was referred on or after 1 April 2023; £195,000 where the complaint was referred on or after 1 April 2024); *and/or*
- pay compensation for non-financial loss (this tends to be a few hundred pounds maximum);

and/or

- take appropriate action to remedy the issue complained about – eg, remove excessive charges from an account.

Financial Ombudsman Service decisions are binding on the business, but not on the client, who can still take the matter to court if they remain dissatisfied. A Financial Ombudsman Service decision cannot be appealed. However, the High Court has quashed decisions of the Financial Ombudsman Service following judicial review applications, but this requires a solicitor and can incur significant costs. [7] If the business fails to comply with the decision, it can be enforced through the courts. Seek specialist advice if this becomes necessary.

More information can be found on the Financial Ombudsman Service website (financial-ombudsman.org.uk). The monthly newsletter, *Ombudsman News,* which often contains features and case studies of interest and relevance to debt advisers, is available on the Financial Ombudsman Service website. Informal guidance on practice and procedure is available from 020 7964 1400 or technical.desk@financial-ombudsman.org.uk. *Ombudsman News* 193 contains guidance for professional representatives (- eg, debt advisers) on referring a complaint to the Financial Ombudsman Service.

The Financial Ombudsman Service publishes the final decisions ('determinations') made by an ombudsman (but not the recommendations made by adjudicators which the parties have accepted). These are at financial-ombudsman.org.uk/data-insight/ombudsman-decisions. Decisions can be searched for based on a particular creditor or a specific issue.

Local county court mediation schemes

There is an increasing emphasis on alternative dispute resolution, with some courts offering local court-based mediation schemes. The parties are encouraged to use some form of alternative resolution and, even after a county court claim has been issued, the court can 'stay' (ie, suspend) the proceedings to enable them to settle their dispute by mediation or other means. Civil Procedure Rule 26.5 allows a party to court proceedings to make a written request for a stay to allow for alternative dispute resolution when that party files its allocation questionnaire. In addition to this specific provision, courts can use their case management powers to adjourn a case for alternative dispute resolution at any stage before judgment. Although prior to 1 October 2024, the courts had no power to compel parties to do so, following the Court of Appeal's decision in *Churchill v Merthyr Tydfil County Borough Council* the 'Overriding Objective' has now been amended to provide for the promotion and use of alternative dispute resolution, the courts have been given the power to order the parties to engage in alternative dispute resolution and, when making directions on the fast, intermediate or multi-tracks, are required to consider whether to order or encourage the parties to engage in alternative dispute resolution (see here). [8] In addition, in deciding what order to make about costs (if any), they can consider whether a party

failed to comply with an order for alternative dispute resolution or unreasonably failed to engage in alternative dispute resolution (see here).

Defended claims that are normally allocated to the small claims track (see here) are referred to HM Court and Tribunal's free mediation service, provided all the parties indicate in their directions questionnaire (see here) that they agree to mediation. [9] **Note**: Where claims for less than £10,000 are made either on paper or through the traditional online systems on or after 22 May 2024 (but not in any event to road traffic accident or personal injury claims nor claims started using Online Civil Money Claims prior to 4 November 2024), attending a mediation session is now compulsory under a pilot scheme due to last until 21 May 2026. When considering how to exercise its discretion to decline or order costs - eg, where a party has behaved unreasonably, the court may take into account any failure by a party to attend mediation by the Mediation Service under the pilot. [10] The directions questionnaire has been amended to explain the above and a new section E added. The one-hour session continues to be free.

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1 In *Derbyshire Home Loans v Keaney* (*Adviser* 124 abstracts), Bristol County Court stayed possession proceedings for two months to enable the borrower to pursue a possible complaint in view of the lender's failure to respond to his proposals

2 *FCA Handbook*, *Dispute Resolution: complaints*, DISP 2.3, handbook.fca.org.uk/handbook/DISP/2, which contains links to the definitions of 'regulated activities' and 'credit-related regulated activities'

3 *R (on the application of Williams) v FOS* [2008] EWHC 2142 (Admin)

4 *FCA Handbook*, DISP 2.8R. See also R Rosenberg, 'Legal round-up', *Quarterly Account* 50, IMA for a discussion of two FOS decisions on the time limit for unaffordable loan complaints made more than six years after the loans were taken out.

5 *Chapman, R (on the application of) v Financial Ombudsman Service* [2025] EWHC 905 (Admin)

6 [2022] EWHC 1979 (Admin)

7 For example, *R (TF Global Markets Ltd) v FOS* [2020] EWHC 3178 (Admin)

8 [2023] EWCA Civ 1416. The Court of Appeal held that a court can lawfully stay existing proceedings for, or order, parties to engage in a non-court based dispute resolution process, although it declined to do so in this particular case. You can view a discussion of this decision on the Shelter SDAS website

9 r26.6 CPR

10 CPR PD 51ZE, paras 6(2)(b) & 8