



An tOmbudsman Seirbhísí
Airgeadais agus Pinsean

Financial Services and
Pensions Ombudsman

DRAFTING GUIDELINES

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PURPOSE

This document has been prepared for internal purposes with a view to offering guidance when drafting FSPO documentation. While it is intended that drafters will adhere to these guidelines and they are indicative of the desired approach to document drafting, the guidelines are not intended to create a rigid or inflexible structure for drafting FSPO documentation. The guidelines are not intended to be an exhaustive consideration of how to approach drafting in all circumstances and scenarios, and drafters must always take account of the individual considerations arising on a complaint file.

1. Introduction

The Financial Services and Pensions Ombudsman (the “FSPO”) is committed to living up to its values of Fairness, Integrity, Accessibility, Independence and Effectiveness (see Appendix 1) in all aspects of its daily work.

Adherence to our carefully developed, robust and fair processes and procedures is a key element of living our values. Some of our written communications can be of particular significance to the parties to a complaint, for example:

- the Summary of Complaint (incorporating the “Schedule of Questions” and the “Schedule of Evidence Required”)
- the Preliminary Decision,
- the Legally Binding Decision,
- any jurisdictional determination (whether a preliminary opinion or a final determination on jurisdiction).

Adhering to our values, requires that when such communications are issued, they represent a thorough examination and consideration of all relevant evidence and submissions and these communications must be written in a clear, accurate and accessible manner.

This Guide has been prepared to assist in achieving these aims and should, where possible, be adhered to in the drafting of all FSPO documentation.

The FSPO is a statutory body, committed to ensuring fair procedures, a thorough investigation of complaints and ultimately when appropriate, the issuing of a Legally Binding Decision.

The principal function of the FSPO is to investigate complaints in an appropriate manner proportionate to the nature of the complaint. The FSPO must endeavour to be accessible to the public and ensure that complaints about the conduct of financial service providers and pension providers are dealt with in an informal manner, efficiently, effectively and fairly. When dealing with complaints the FSPO is required to act according to equity, good conscience and the substantial merits of the complaint without undue regard to technicality or legal form. The language used should also be precise, accessible and easily understood.

The FSPO is not a Court. The FSPO was established to provide a route of redress as an alternative to the Court system. For this reason, language used in the Court system should be avoided in FSPO communications. Further details in this regard are set out in the **House Style** section of this Document (Section 5).

2. Jurisdiction of the FSPO

The FSPO is governed by the ***Financial Services and Pensions Ombudsman Act 2017, as amended*** (the “**Act**”). The Act sets out the full extent, and also the limits of the Ombudsman’s remit. As a creature of statute, the FSPO only has the powers and functions which are prescribed by its governing legislation. The FSPO cannot take any action which goes beyond the limits of those powers and functions as specified in the Act.

It may not always be possible at the outset of dealing with a complaint, to have absolute clarity on jurisdictional matters. Jurisdictional issues may come to light during the various stages of a complaint investigation, including at adjudication stage when all of the evidence is being fully assessed.

Where a complaint is at Adjudication stage and a concern arises that some or all elements of a complaint may be outside the Ombudsman’s jurisdiction, or there is a concern as to the identity of one or other of the parties, this should be discussed with the **Director of Investigation Services** as soon as the issues are identified.

The critical ingredients in approaching a complaint investigation are:

- **The correct identification of the Complainant/s**
- **The correct identification of the Provider**
- **The correct identification of the conduct complained of and when that conduct happened**

While all aspects of jurisdiction should be considered, particular attention should be given to the statutory time limits for making a complaint.

It may, in certain circumstances, be necessary for the Ombudsman to decline jurisdiction in a particular complaint, or in one or more aspects of a complaint, even at a late stage in the adjudication of a complaint.

In certain circumstances it may be necessary for jurisdictional assessments to be conducted by the Legal Services Team. The **Director of Investigation Services** will refer matters, as appropriate, to the **Legal Services Team**.

3. Drafting the Summary of Complaint, incorporating the “Schedule of Questions” and the “Schedule of Evidence Required”

3.1 The Summary of Complaint

- 3.1.1 In preparing the Summary of Complaint you should draw from the expression of the complaint made by the Complainant in all the submissions made to this Office; the Complaint Form and any further submissions.
- 3.1.2 Particular attention should be afforded to the identity of the Complainant. If a complaint is in joint names, the plural “Complainants” and “first Complainant” or “second Complainant” should be used, as appropriate.
- 3.1.3 The capacity in which the complaint is being brought should be clarified early in the body of the Summary of Complaint. For example, if the complaint is being made on behalf of the director/s of a limited liability company, the trustee/s of a trust or the executor/s of an estate, this should be clearly stated. It is often useful to also then set out, as applicable, the following: ‘(referred to below as the Complainant/s)’.
- 3.1.4 The details in the Summary of Complaint should be presented chronologically, as the details/events relevant to the complaint occurred, but there is no need to repeat details unnecessarily, or to quote every date or the date when submissions were made or received, unless of particular pertinence. The Summary of Complaint is exactly that. It is a synopsis of what has led to the complaint being progressed to a formal investigation.
- 3.1.5 Relevant quotes from the Complainant’s submissions may be used throughout the Summary of Complaint, though these should be used carefully. The Summary of Complaint should be just that, a Summary, not a cut and paste of all of the Complainant’s submission.
- 3.1.6 Particular care is required where more than one financial service provider has been mentioned/may be involved, in order to make clear that the complaint investigation concerns only the conduct of the particular financial service provider against which the complaint is made.

For example, a Complainant will sometimes make assertions within the same complaint against:

(i) a broker and (ii) a separate insurer

or

(i) the bank which sold the insurance policy and (ii) the insurer which declined the policy benefits claimed

In that event, it should be made clear that only the conduct of the specific provider against which the particular complaint is made, is the subject of that particular investigation.

Where two or more linked complaints are made, it is the practice of the FSPO to investigate the individual complaints regarding the conduct of each provider, separately but contemporaneously.

- 3.1.7 If a jurisdictional assessment of a complaint has been conducted and it has been determined that there are elements of the complaint that are not within this Office's jurisdiction to investigate, this should be briefly highlighted in the Summary of Complaint (with reference to the correct section of the ***Financial Services and Pensions Ombudsman Act 2017***) and only those elements of complaint which can proceed and are now the subject of the investigation should be set out in the identification and articulation of the Complaint for investigation.
- 3.1.8 Similarly, in the unusual event that an offer/gesture of goodwill was proffered by the Provider and accepted by the Complainant during the course of the complaint so far, to resolve certain specific elements of the complaint, then this should be referenced, in order to clarify the elements of the complaint that have been resolved, and those remaining elements that are being investigated.
- 3.1.9 A Summary of Complaint must be drafted having regard to the detail in the House Style section (section 5) of these guidelines.

Identifying the complaint

3.1.10 A critical element in investigating and adjudicating a complaint is the correct identification, from the outset, of the conduct of the Provider which is the essence of the complaint. The Provider must be given a reasonable opportunity to understand the complaint it is being asked to address.

3.1.11 The complaint must be identified in a way that specifies the **conduct of the Provider**, which is the subject of the complaint, and ideally specify the relevant date/s. If there is more than one complaint, these should be specified as:

*“The first element of the complaint is that the Provider
The second element of the complaint is that the Provider”*

3.1.12 Complaints should only be broken into separate elements where the conduct complained of relates to entirely separate conduct with potentially separate impact on the Complainant. Otherwise, the complaint should not be, unnecessarily, broken down into multiple or minute elements.

3.1.13 The complaint to be addressed should be formulated in the form of a statement rather than a question:

The complaint is that in/or [DATE] the Provider ...wrongfully..., unreasonably ..., failed to ... or incorrectly...”

The complaint should NOT read:

The complaint is “whether the Provider...”

The consequences of the conduct complained of, are not a separate element of that conduct, and are therefore not a separate element of the complaint for investigation. The impact of the conduct complained of is a matter to be considered in the adjudication.

3.1.14 The Summary of Complaint should ideally conclude with an identification of what the Complainant wants or is seeking to resolve the complaint, but this is not an absolute requirement, as it may not be known.

3.2 The “Schedule of Questions” and the “Schedule of Evidence Required”

- 3.2.1 The Schedule of Questions and Schedule of Evidence Required should ask relevant targeted questions of, and seek relevant evidence from, the Provider with respect to the conduct complained of. In this regard, it may be appropriate to limit a timeframe/give a date range which is relevant to the question.
- 3.2.2 Questions / the request for evidence should be presented chronologically or in a specific sequence having regard to the interactions that occurred between the parties to the complaint.
- 3.2.3 Avoid asking lengthy questions or questions with a number of parts, unless those parts are clearly differentiated.

If there are important discrepancies between the information contained on the complaint file and information that has been communicated to the Complainant that are relevant to the complaint, those discrepancies should be highlighted and a response requested.

- 3.2.4 Avoid using accusatory and/or emotive language when drafting a Summary of Complaint unless very obviously quoting directly from either party’s submissions, where appropriate.
- 3.2.5 Care should be taken not to ask questions, or use language, which would suggest that the FSPO believes/accepts a particular version of events or has in some way pre-judged the matter. The FSPO cannot form any opinion until all of the evidence has been received and assessed. For example:

“The Complainant says the Provider did not answer his call on the 3 May 2021. Why did the Provider fail to answer the Complainant’s call?”

This suggests we believe what the Complainant has set out. Pending receipt and assessment of all of the evidence however, it is not possible yet to determine if the Complainant is correct and so we should instead ask:

“The Complainant says the Provider did not answer his call on the 3 May 2021. If the Provider does not dispute this, please explain why it failed to answer the Complainant’s call. If it does dispute it, please detail why.”

- 3.2.6 At the end of the Summary of Complaint document, include a list of all of the submissions/documentation/correspondence/case notes within the Case History on CMS, which you are enclosing with the Summary of Complaint to the Provider.

Before issuing the Summary of Complaint to the Complainant or Provider, check the date which appears on the Summary of Complaint itself and the letters to the Complainant and Provider. Ensure that these correspond with the date of issue of the Summary of Complaint.

4 Drafting the Decision

4.1 Layout of the Decision

- 4.1.1 A Decision must be drafted using the FSPO Template which is laid out in the following order:

- The first part of the Decision is **Background**
- The second part of the Decision is **The Complainant's Case**
- The third part of the Decision is **The Provider's Case**
- The fourth part of the Decision is the **The Complaint/s for Adjudication**
- The fifth part is either **Preliminary Decision** or **Decision**
- The sixth part of the Decision is the **Conclusion**

- 4.1.2 Decisions must be drafted having regard to the detail in the House Style section (section 5) and the FSPO's practice of anonymising Decisions because of its obligation to protect the identity of the parties (section 4.8).

4.2 Background

- 4.2.1 The Background section of the Decision should comprise a very short paragraph, which sets out the product type that forms the basis of the complaint. It should be on the following lines:

The complaint concerns the cancellation of a credit card account, which the Complainant held with the Provider and the effect of that cancellation on the Complainant's credit rating.

- 4.2.2 If the persons initiating the dispute are the directors of a company, or the trustees of a trust, it will be important to establish and state whether the complaint being pursued by this individual is in a personal capacity or whether the Complainant is the company or trust itself.

For example:

*"This complaint relates to a policy of insurance incepted by the Complainant Company through the Provider in **2018**. The Provider, against which this complaint is made, is the Broker which sold the policy to the Complainant Company.*

4.3 The Complainant's Case

- 4.3.1 Particular attention should be afforded to the identity of the Complainant. If a complaint is in joint names, the plural "Complainants" and "first Complainant" or "second Complainant" should be used, as appropriate.
- 4.3.2 The details in the Complainant's Case should be presented chronologically, as the details/events relevant to the complaint occurred.
- 4.3.3 The Summary of Complaint can be the starting point though should not be rigidly followed or copied into this section of the Decision. Whilst the Summary of Complaint may have originally captured the Complainant's complaint, additional aspects may have been added or clarified during the course of the investigation. For this reason, the entire complaint file must be considered, to establish if additional details are required.

- 4.3.4 In preparing the Complainant's Case you should draw from the expression of the complaint made by the Complainant in all submissions made to this office: The Complaint Form and any additional submissions made, throughout the investigation, including submissions made in response to submissions made by the Provider. It is not necessary to clarify when certain submissions were made to this office, unless there is a particular relevance to it (for example where the Complainant accepts an explanation given by the Provider during the course of the investigation with respect to a detail relevant to the complaint, which alters an earlier position adopted on that point). The important point is that the details are presented chronologically, as the details/events relevant to the conduct complained of occurred.
- 4.3.5 The Complainant's Case should express the complaint as the Complainant sees it themselves and relevant quotes from the Complainant's submissions may be used throughout the Complainant's Case, where pertinent.
- 4.3.6 It is not necessary to repeat points made by the Complainant where the same point has been expressed in a number of ways, across the various submissions made.
- 4.3.7 While you may refer to particular pieces of evidence that have been commented on by the Complainant, it is not necessary to quote from the underlying evidence in the Complainant's Case section. Quoting from the evidence should be reserved for the "Preliminary Decision" or "Decision" section of the document.

For example, if a complaint relates to Special Condition 4 of the Letter of Offer and Condition 5 of the General Terms and Conditions, then for "The Complainant's Case", it is enough to say:

"The Complainant says that he disagrees with the Provider's interpretation of Special Condition 4 of the Letter of Offer and seeks to rely on Condition 5 of the Terms and Conditions."

- 4.3.8 It should be noted that some Complainants may not be able to easily or clearly outline their concerns or their position and may simply state that something has gone wrong which they believe is not right, fair or reasonable. In that event, it may be necessary to examine the facts and interpret the Complainant's complaint. However, to ensure the impartiality of the FSPO, this must be done without introducing or creating complaints or elements which have not been raised by the Complainant.

- 4.3.9 Headings may be used, if necessary, where a complaint relates to multiple products, for example, if a number of pension products are the subject of a complaint and the Complainant's complaint spans the life of those products or if there are multiple mortgage loans and the background to each mortgage loan has a different journey.
- 4.3.10 The Complainant's Case should be presented in neutral language that makes it clear that the case being presented is that of the Complainant and has not yet, at this stage in the Decision, been evaluated by the FSPO. Words such as, "asserts", "suggests", "contends", "states" "submits" "outlines" "argues" or "says" should be used.
- 4.3.11 There is no guide as to the number of paragraphs or pages that the Complainant's Case might comprise, once all relevant points are captured. You should ensure that there is an appropriate balance between the Complainant's Case and the Provider's Case.

4.4 The Provider's Case

- 4.4.1 The Provider usually includes a summary of the dispute with the Provider's formal response to the Summary of Complaint. This can generally be used as a guide to the Provider's view of its own position. The Provider's Case should be a summary of all the submissions made by the Provider, including its final response to the Complainant, and its formal response to the Summary of Complaint issued by the FSPO, and any additional submissions made, including submissions made in response to submissions made by the Complainant.
- 4.4.2 The account in "The Provider's Case", should be presented chronologically, as the details/events/conduct relevant to the complaint occurred.
- 4.4.3 Relevant quotes from the Provider's submissions may be used throughout the Provider's Case.
- 4.4.4 Headings may be used, if necessary, where a complaint relates to multiple products for example, if a number of pension products are the subject of a complaint and the Complainant's complaint spans the life of those products or if there are multiple mortgage loans and the background to each mortgage loan has a different journey.

- 4.4.5 It is not necessary to repeat points made by the Provider where the same point has been expressed in a number of ways across the various submissions made.
- 4.4.6 While you may refer to particular pieces of evidence that have been commented on or relied upon by the Provider, it is not necessary to quote from the underlying evidence in the Provider's Case section. Quoting from the evidence very often works best when it is reserved for the "Preliminary Decision" or "Decision" section of the document.

For example, if a complaint relates to a dispute about certain communications between the Provider and the Complainant and the Provider has submitted in evidence recordings of those calls and the Provider's internal notes, for "The Provider's Case", it is adequate to say:

*"The Provider submits that it does not agree that its representative was rude, dismissive, or did not act on the Complainant's instructions received during the telephone call on **24 June 2020**. In this regard the Provider relies on the recording of the telephone call on **24 June 2020**, its internal notes and the letter that issued to the Complainant on **25 June 2020**."*

- 4.4.7 The Provider's Case should be presented in neutral language that makes it clear that the case being presented, is that of the Provider and it has not yet, at this stage in the document, been evaluated by the FSPO. Words such as, "asserts", "suggests", "contends", "states" "submits" "outlines" "argues" or "says" should be used.
- 4.4.8 There is no guide as to the number of paragraphs or pages that the Provider's Case might comprise, once all relevant points are captured. You should ensure that there is an appropriate balance between the Provider's Case and the Complainant's Case.

4.5 The Complaint/s for Adjudication

- 4.5.1 A critical element adjudicating a complaint is the correct identification, from the outset, of the complaint for adjudication. The complaint for adjudication should be clearly set out in succinct terms under the heading, "*The Complaint for Adjudication*".

- 4.5.2 The Complaint for Adjudication should reflect the complaint as set out in the Summary of Complaint. It must be expressed in a way that specifies the conduct of the Provider, which is the subject of the complaint. At this stage all the relevant dates/timelines should be apparent and be included as appropriate.
- 4.5.3 There may be instances where some words in the identification of the Complaint for Adjudication may be altered from that contained in the Summary of Complaint. There must be good reason to do this. If this is required, you should highlight any changes and the reasons for those changes, to the **Director of Investigation Services**, when presenting the draft Preliminary Decision.

4.6 The Preliminary Decision and Legally Binding Decision

- 4.6.1 Every complaint is different and, while two complaints may appear to relate to the same issues, the facts are rarely the same. The Ombudsman is not bound by any previous Decision. Every complaint turns on its own individual merits. However, consistency in approach is required.
- 4.6.2 When drafting a decision, the entire file must be read. Careful consideration must be given to both the evidence and submissions from the Complainant and the evidence and submissions from the Provider. The drafter must glean a clear understanding of the nature of the dispute, how it has arisen, and the matters which will have to be determined. If there is inadequate evidence to form that understanding, the gaps in the evidence should be identified to the **Director of Investigation Services** and the file should be returned, without drafting the Preliminary Decision until such time as the gaps in evidence can be filled.

A completely impartial, independent and balanced approach must be taken in the adjudication and demonstrated in the Decision.

- 4.6.3 The Preliminary Decision or Legally Binding Decision should commence with the pre-approved text with respect to the investigation of the complaint and the exchange of documentation. The next paragraph then deals with the requirement for an Oral Hearing. Further details on the consideration of whether an Oral Hearing is necessary is contained at paragraphs 4.6.26 – 4.6.31.

4.6.4 The presentation of the Decision will depend on the nature of the complaint/s for adjudication, as follows:

(a) In some instances, it may be appropriate to present the decision in two parts under the headings “**Evidence**” and “**Analysis**”. The evidence section will contain the relevant evidence under consideration for example the details from the Letter of Offer and quotes from the terms and conditions under consideration. The analysis section will then analyse the evidence.

(b) In some instances, it may be appropriate to present the evidence (for example the interactions between the parties) chronologically and analyse and comment on the evidence throughout the Decision.

(c) In some instances, it may be appropriate to use headings related to the elements of a complaint under consideration and present the elements of the complaint and the analysis under such headings.

4.6.5 All elements of the complaint must be clearly outlined and addressed in the Decision. However, it is not necessary to repeat, in detail, the submissions made by a complainant and/or a provider on a particular issue, throughout the Decision. These submissions should be reflected already in “The Complainant’s Case” and “The Provider’s Case”, as detailed at 4.3 and 4.4 above.

There will be occasions when some submissions do not neatly fit into a particular location and it is then a question of judgment as to where those submissions should be referenced, even if only briefly. In some limited circumstances, this may not sit neatly into the chronology which has been set out.

4.6.6 The Decision must be reasoned.

4.6.7 A matter which may appear to be of limited relevance or to have little bearing on the outcome of the complaint, can be relevant to painting a full picture of the events, and should not be ignored or overlooked. Both parties to the dispute should be able to know from reading the Decision that the Ombudsman has taken everything into account in reaching a decision and that every concern or assertion raised has been addressed.

4.6.8 The main aspects of a dispute should be examined and dealt with individually. However, if multiple issues have been raised by a Complainant in relation to a particular point and it does not seem necessary or helpful to deal with each one separately, it may be sufficient to deal with them collectively.

- 4.6.9 All relevant dates should be correctly and appropriately recorded and bolded in accordance with the House Style at section 5.
- 4.6.10 Documents which have been submitted in evidence, should be given the name of that document as contained on the heading of the document itself. Names of documents should be in bold. You may be required to anonymise certain elements of a name, if the document names the Provider concerned or has another identifying feature (see Anonymising Decisions section at 4.8).
- 4.6.11 No opinion or comment should be made on matters that have not been investigated and that do not form part of the adjudication, particularly the conduct of any third party. Likewise, if an aspect of a complaint proves to be outside the Ombudsman's jurisdiction, this should already have been pointed out to the Complainant, but it may be necessary to refer to it again. However, no opinion should be offered as to the merits of any matter which is not being investigated.

**No opinion should be offered as to the merits of any matter
which is not being investigated**

- 4.6.12 Comments or points made should always be specific to the complaint being adjudicated. For example, a comment relating to "the Provider's conduct" should relate only to its conduct in relation to the complaint for adjudication, not its conduct generally, or in respect of any other customer.
- 4.6.13 A level of knowledge should not be imputed to a party without clear evidence or reason.
- 4.6.14 Every decision must be supported by the evidence and submissions available in respect of that particular complaint only. Material must never be quoted, referred to or used from a separate complaint file (whether the complaints are linked or not) or from the Internet, or any other source unless such evidence has been made available to both parties for comment. If it is deemed necessary to rely on evidence from a linked file involving the same Complainant, the **Director of Investigation Services** should be contacted and advice sought, on how to proceed.

- 4.6.15 Where a Complainant or his/her representative, or a Provider, or its representative, refers to details of another complaint or complaint file, which are not available as part of the evidence, it will be necessary to notify any issues in this respect to the **Director of Investigation Services**.
- 4.6.16 The content of Decisions should not be repetitive. Terms or Conditions should not be repeated throughout a Decision. Terms and Conditions being considered must always be accurately considered/quoted from the appropriate original documentation, and it is critical to establish that the correct edition of the Terms and Conditions has been supplied and quoted. Such quotations should not be sourced from either party's submission.
- 4.6.17 When examining a complaint, it may become clear that additional evidence is required from one or other of the parties involved, before the Preliminary Decision can proceed. Where this arises, the matter should be discussed with the **Director of Investigation Services**.

Reflecting offers of compensation or goodwill

- 4.6.18 It remains possible, at any stage of the process, for a settlement offer or goodwill gesture to be made by the Provider.
- 4.6.19 Such offers may be proposed to be in full and final settlement of the complaint. In that event, the practice of the FSPO is to notify the Complainant and explain that:
- (a) if the offer is accepted, the FSPO will note that the matter has been settled and will close the file
 - (b) if the offer is not accepted, the FSPO will note that it has been rejected and continue with the formal investigation or adjudication of the complaint against the Provider and in due course a Legally Binding Decision in relation to the complaint, will issue to both parties.

The Complainant cannot accept a settlement offer made in full and final settlement and also have the complaint proceed to adjudication.

Written confirmation of (a) or (b) above should be contained on the complaint file.

- 4.6.20 If there is evidence of acceptance of a full and final settlement on a complaint file that has been referred for adjudication, the matter should be discussed with the **Director of Investigation Services** as soon as possible.

4.6.21 Any formal offer made by a Provider to resolve a complaint should be recorded in the Decision, including the following detail:

- (a) The date the offer was made or increased should be recorded. The stage in the process at which the offer was made, should also be recorded.
- (b) The fact that the Complainant rejected the offer or offers, and
- (c) Whether an offer remains available to the Complainant to accept.

4.6.22 If the complaint is not upheld, no direction should be given by the FSPO for redress or for payment of compensation, notwithstanding any offer made.

4.6.23 If (i) an early settlement offer has been made, (ii) that offer is deemed by the FSPO to be sufficient in the circumstances, and (iii) it remains available to the Complainant for acceptance, then the FSPO may decide it is not necessary or appropriate to uphold the complaint.

Regard must be had to whether the offer was made at the outset of the investigation (that is, in the original formal response to the Summary of Complaint) or if it was a late offer when the investigation was more advanced. A late offer, even if it is sufficient, may result in the complaint being upheld.

4.6.24 If the complaint is upheld, whether in whole or in part, the Preliminary Decision will indicate an intention to direct redress and/or the payment of compensation.

4.6.25 Where an apology has been made at any point of the process this should be referred to in the Decision.

Establishing if an Oral Hearing is necessary

4.6.26 When a thorough analysis of all evidence and submissions has been undertaken, consideration must be given as to whether a decision can be arrived at based on the submissions and evidence available on the file, or whether the submissions and evidence furnished disclose a conflict of fact such that an Oral Hearing is desirable to resolve any such conflict.

4.6.27 It will also be necessary to establish if the submissions and evidence furnished are sufficient to enable a decision to be made without the necessity for holding an Oral Hearing. The outcome of this consideration should be recorded using the FSPO's standard wording, or an amendment of that wording may be appropriate in certain circumstances.

- 4.6.28 While the Investigation Team or Drafter can suggest that an Oral Hearing may be appropriate, the decision in respect of whether to hold an Oral Hearing will be made by the Ombudsman or Deputy Ombudsman.
- 4.6.29 The Oral Hearing process resides within the Investigation Services' function. Oral Hearings provide an opportunity for the Chair of the Hearing to hear evidence in a formal setting which facilitates the cross examination of witnesses.
- 4.6.30 In complaints where the additional step of an Oral Hearing has been undertaken, the adjudication will consider the transcript of the evidence and cross-examination which is also shared with the parties. The person who chairs the Oral Hearing will usually issue the Decision.
- 4.6.31 In respect of complaints for which an Oral Hearing was held, it will be appropriate to include a paragraph in the body of the draft Preliminary Decision or the draft Legally Binding Decision, along the following lines:

'As there was such a fundamental conflict within the written submissions furnished by the parties, I took the view that the matter required an Oral Hearing so that oral evidence on oath / affirmation could be adduced by the parties in respect of the core issues. An Oral Hearing held on [date] was called to explore the events surrounding ...'

The Oral Hearing guidelines are included at **Appendix 2**

Summarising paragraph

- 4.6.32 The Preliminary Decision or Legally Binding Decision should conclude with a paragraph summarising the decision. This is especially important where the Decision is a lengthy one. Example as follows:

"Having regard to all of the above, the evidence does/does not support the Complainant's complaint that the Provider....."

- 4.6.33 In certain circumstances, if the complaint is upheld, substantially upheld or partially upheld, if it is considered appropriate to do so, a direction under **s60 (4) of the Act** or **s61 of the Act** may be made.

- 4.6.34 The word “rejected” should only be used in the Conclusion at the end of the Decision (see below). In the body of the Decision, terms such as “I do not propose to uphold or I do not uphold” should be used instead.

4.7 Conclusion

- 4.7.1 The Conclusion should be presented in the format set out in the Preliminary Decision / Legally Binding Decision template as follows:

“Conclusion

My Preliminary Decision is that this complaint is upheld/substantially upheld/partially upheld/rejected, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, on the grounds prescribed in **Section 60(2)....**

I direct/intend to direct pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider”

- 4.7.2 The highlighted areas in the Conclusion should be amended to reflect the Decision.
- 4.7.3 Great care should be taken when deciding the basis on which it is intended to uphold the complaint. The appropriate provision for a complaint being upheld, substantially upheld or partially upheld must be identified from the provisions set out in **Section 60(2) of the Act** in the case of complaints upheld against financial service providers. The relevant sub-section must be inserted in the brackets.
- 4.7.4 Where a complaint is upheld, substantially upheld or partially upheld under **s60(2)(b) or s60(2)(c) or s60(2)(d) of the Act**, the decision must identify specifically the ground on which the complaint is upheld substantially upheld or partially upheld.

For example, if a complaint is upheld pursuant to **Section 60(2)(b)** it is because of “*the conduct complained of was unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant*”. It has been made clear by the High Court that if relying on Section (b) it is important for the FSPO to specify which of those descriptions is the accurate one, that is,, was the conduct unreasonable, unjust, oppressive or improperly discriminatory.

As a result, if the FSPO decides that the conduct of the Provider was unfair, it may be appropriate to follow this by saying that in those circumstances, it is also considered to have been *“unreasonable and unjust within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017.**”*

S60(2)(d) of the Act details that a complaint may be upheld as *“the conduct complained of was based wholly or partly on an improper motive, an irrelevant ground or an irrelevant consideration”*.

A conclusion based on this ground might read, as follows:

*“My Preliminary Decision is that this complaint is upheld, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, on the ground prescribed in **Section 60(2)(d) of the Act** as the conduct complained of was based partly on an irrelevant consideration.”*

Directions under s60(4) of the Act and s61 of the Act

- 4.7.5 Compensation may be directed under **s60(4) of the Act** where a complaint, against a financial service provider, is upheld, substantially upheld or partially upheld in accordance with the Act. Any compensation directed may only be for **loss, expense** or **inconvenience** sustained by the Complainant, as a result of the conduct complained of, as appropriate.
- 4.7.6 Compensation should not be directed for matters such as “stress”, “upset” or other matters not provided for in the Act.
- 4.7.7 Specific amounts of compensation should not be directed for specific elements of the complaint. In arriving at an amount of compensation, the conduct of the Provider in relation to the entirety of the complaint and its impact on the Complainant, will be taken into account.
- 4.7.8 A Provider should not be directed to issue an apology. It may be appropriate, in certain circumstances, to direct that a Provider issue a letter providing reasons or explanations for the conduct to a Complainant.
- 4.7.9 Where the complaint is a pension complaint being dealt with under **Section 61 of the Act** rectification may be directed. Compensation cannot be directed. This is because financial redress under **Section 61 of the Act** cannot exceed any actual loss of benefit under the scheme concerned.

PENSION COMPLAINTS

No compensation can be directed.

Redress cannot exceed any actual loss of benefit under the scheme.

4.8 Anonymising Decisions

4.8.1 Pursuant to **Section 62 of the Financial Services and Pensions Ombudsman Act 2017**, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(c) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

4.8.2 Decisions should be prepared bearing in mind that in the vast majority of complaints against financial service providers, the Decisions will be published. No detail, or combination of details, in the content, should disclose the identity of the Complainant or make them identifiable. Although redactions can be made for the purposes of preparing a “Published Decision”, it is preferable that Decisions are prepared with the anonymity requirements already built in, which will mean that no further redactions are then required.

4.8.3 Names or identifying features for Complainants, Providers or third parties should not be used including:

- Names
- Addresses
- Date of Birth or Date of Death of a Complainant or their relative
- Locations
- Full account numbers – use **** where necessary
- Names of third parties such as representatives/doctors/hospitals/third party companies.

- 4.8.4 Initials should be used for third parties where it is necessary to refer to them, but care should be taken so as not to use initials which are very unusual for example Von Trapp. Mr VT within a small industry, may result in the initials revealing the identity of the person and thus the Provider's or the Complainant's identity. Mr. X or Mr. A, may be more suitable in such circumstances.
- 4.8.5 Particular care should be taken when transcribing evidence or submissions to replace names, including the names of the Complainant or Provider. This should be done by using square brackets as follows, [Complainant] or [Provider] or [Location].
- 4.8.6 Other identifying information may need to be excluded. These could include a Complainant's rare illness, unusual circumstances of a death, name, and location of the hospital the Complainant attended, or attending doctors.
- 4.8.7 It is important to note that other unusual aspects referred to in a Decision could potentially identify a Complainant and may need to be stated in more general terms.
- 4.8.8 In relation to Providers, Decisions should:
- Not include the Provider's name or address (this applies to all providers whether or not a party to the dispute)
 - Not include the location of a Provider (in respect of banks, it is important to remove any reference to sort codes or branches, which can identify the individual bank branch). Branches should be identified as "the local branch" or "branch A" and "branch B"
 - Ideally do not include names of products or internal systems that might identify the Provider
- 4.8.9 Great care should be taken when using the "*snipping tool*" in Word, or similar methods to insert evidence in a Decision. The risk associated with inserting snips is that it is not subject to a general word search and may inadvertently identify a party's name. Branding, logos, corporate colours, marketing tag lines or wording, website details, or sort codes, may also identify a party or third party even if the name itself is not visible. Snips/reproductions should be carefully considered in that context.

5 House Style

5.1 To ensure quality and consistency in the presentation of Decisions issuing from this Office, and published by this Office, the *FSPO House Style* set out in this document must be applied when drafting Decisions. There may be situations which call for a slight adaptation of this layout, and Drafters must use their own reasonable discretion in this regard. However, deviations should only occur if justified and necessary.

The FSPO is not a Court

5.2 The FSPO is not a Court so certain terms that are more appropriate to Courts should not be used. Neither is the FSPO a regulatory body. For those reasons, the Ombudsman:

- does not find for a party or find against a party
- does not investigate a “case”
- does not make “awards”
- does not “award” compensation
- does not sanction or penalise a party

Rather, where appropriate, the FSPO will direct compensation or redress. The language in the FSPO Act 2017, is the appropriate language to use when directing redress or compensation in that context.

5.3 The following conventions should be observed:

- Decisions should be drafted in the first person and as the decision comprises an adjudication by the Ombudsman or Deputy Ombudsman on the issues raised.
- Use possessive singular or plural where appropriate, for example, Complainant’s or Complainants’.
- Capital letters should be used for “Complainant” and “Provider”.
- The ***Financial Services and Pensions Ombudsman Act 2017*** should be presented in bold and italics.
- Use **Calibri (body)** font.

- Use font **size 12**.
- Align the text to the Left (**do not justify**).
- Use **1.15 space**.
- Do not indent Paragraphs unless quoting from a document.
- Insert one line space between paragraphs.
- Insert one line space between subsequent parts of the Decision and between paragraphs.
- Numbers should be depicted in written form from one to ten. Thereafter, they are written as numerals.

For example, One, two, three or 25, 100, 150, 237...

- When making a reference to sums of money, they should be written as follows:

€150.00
 €2,212.78
 IR£100.00
 STG£175.00

The figures should also be stated in words in brackets. For example, “€150.00 (one hundred and fifty Euro)”.

- Abbreviations such as “can’t” or “didn’t”, should not be used unless in a direct quotation.
- Do not refer to the Complainant or to the Provider involved in a dispute by name, or in any way reveal their identities. Refer only to “the Complainant” and “the Provider” (See the “Anonymising decisions” section at 4.8). Ensure consistency by always using “Provider” throughout rather than words such as respondent, bank, or company.
- The Provider **is a singular noun** and should be recoded in that way. For example, “The Provider states that **it** has declined this claim on the grounds that ...”.

It is also appropriate to refer to the Provider, **which** was responsible for something that happened, that is, not the Provider “who” (unless the Provider is in fact a person, acting as a sole trader).

- If there is more than one Complainant, the Complainants shall be referred to as “the First Complainant” and “the Second Complainant”.
- When referring to an organisation dealing with financial service complaints in another jurisdiction the term “*alternative dispute resolution bodies*” should be used unless the correct title of the organisation can be used, as not all organisations that deal with financial service complaints, in other jurisdictions, have “ombudsman” in their title.
- Reference to dates must be consistent and accurate and recorded in **bold**. Dates are written as follows: **23 September 2002, 1 April 2001**
- Live links should not be included.
- Every effort should be made to avoid the use of Latin terms, and the plain English translation should be used, for example *inter alia* means among other things. However, if Latin terms are essential and cannot be avoided, they should always be presented in *italics*.
- The use of words and terms such as “hereinafter”, “aforesaid” and “same” should be avoided.
- Double negatives should never be used unless as a direct quotation.
- A list of other acceptable and unacceptable words and terms is set out in Appendix 3.
- Page numbers should be inserted in all Decisions.

Do Not Use Double Negatives

5.4 Documents, submissions, correspondence, or evidence on the file should not be written on. Items of importance which have been referred to in the body of the decision, should be identified by adding visible tabs on the appropriate page, so they are very easy to locate.

5.5 The correct template, font and format should be used for all documents.

Referencing

5.6 Quotations from a letter or other communication, from audio evidence, or from policy provisions, must be presented in the form of precise and accurate quotes, as they appear in the letter or email or policy document, using inverted commas. Paraphrasing of such evidence is not acceptable.

5.7 When quoting from policy provisions all quotations must be accurate. You must ensure that the page number and title of the Policy Provision quoted, is specified. The quotation should be in quotation marks (“...”), italicised, and indented. The edition reference of the policy document, or of the Terms and Conditions booklet should also be quoted.

5.8 Other than when referring to correspondence to this office, it is important when referring to communications or to reports, to record:

- The date the correspondence or report was issued or received
- Who it is from
- To whom it was sent or directed

5.9 When referring to case law, cases should be cited in the following form:

Hewitt v. Bonvin [1940] 1 K.B. 188

East Donegal Co-Operative Livestock Mart Limited v. Attorney General [1970] J.R. 317

Church and General Insurance Co. v. Connolly, unreported, High Court, Costello J., May 7, 1981.

Laycock v. Grayson (1939) 55 T.L.R. 698

Accuracy and attention to detail

- 5.10 Particular care should be taken in relation to the language and words used. The FSPO investigates “complaints”. **It does not investigate “cases” or “claims”.**
- 5.11 Care is required when referring to conducts and activities to accurately reflect them. It is important that the correct words are used in respect of matters such as payments, repayments, refunds, reimbursements, depending upon the circumstances that have given rise to their use. For example, in relation to hire purchase agreements, the payments to be made will usually be “**instalments**” as distinct from “**repayments**”. These are important distinctions and should be considered and used carefully.
- 5.12 If dictation tools are utilised it is critically important that all drafts should be **carefully proof-read** before being submitted. Mistakes can undermine confidence in the FSPO’s investigation process and the Decision itself. Every effort should be made to avoid any errors in terms of presentation, grammar, or syntax.

Appendix 1 FSPO Values

Our Values



Fairness

- > We will adopt an impartial, independent, objective approach, dealing with each complaint based on its own merits.
- > We will listen to all parties in dispute, asking questions to redress the balance between them.



Accessibility

- > We will be responsive to the needs of our customers.
- > We will communicate clearly and in a professional manner.
- > We will provide guidance and support to access our services.



Independence

- > We will be independent in how we handle complaints, yet accountable to the people and to the Oireachtas.



Integrity

- > We will uphold the highest ethical standards.
- > We will earn trust by delivering our services in an unbiased, transparent and professional manner.
- > We will respect the confidentiality of those seeking our services.



Effectiveness

- > We will continuously seek ways of improving how we communicate and deliver our services.
- > We will seek to deal with every complaint in the most effective, efficient and timely manner.

Appendix 2 Oral Hearing Guidelines

ORAL HEARING GUIDELINES

1. An Oral Hearing may be necessary where there is an issue of fact in dispute between the parties to the complaint which cannot be fairly resolved without hearing the parties. As of June 2021, FSPO Hearings are conducted otherwise than in public.
2. The Financial Services and Pensions Ombudsman (FSPO) may decide to call an Oral Hearing.
3. One or both of the parties to a complaint may request an Oral Hearing. In that event, the FSPO may or may not agree to the request. It is for the FSPO alone to decide whether it is an appropriate complaint in which to hold an Oral Hearing.
4. If the FSPO deems that an Oral Hearing is necessary or would be helpful, to resolve the issues raised by the complaint, each party to the complaint will be notified. The parties will be informed of the issue(s) in respect of which oral evidence will be required. The parties will be given an opportunity to advise of any dates which are unsuitable for attendance to give oral evidence and once that opportunity has passed, then a formal Notice of Hearing will issue to the parties confirming the date and time and venue of the Oral Hearing.
5. If an Oral Hearing is scheduled, it will be limited to hearing only those witnesses whose evidence is required for the purpose of resolving the disputed issue(s).
6. In advance of the Oral Hearing, the FSPO will notify the parties of the identity of those witnesses, from whom evidence is required at the Oral Hearing.
7. In advance of the Oral Hearing, each party may request the FSPO to allow it to call other witness(es) to give evidence on its behalf in respect of the issue(s) in dispute. Such requests will be considered by the FSPO, having regard to the requirement that an Oral Hearing will be limited to hearing only those witnesses whose evidence it is necessary to hear for the purpose of resolving the disputed issue(s).
8. The FSPO may require any person to attend before the Oral Hearing, either voluntarily or by summons, to be examined on oath in relation to any matter. The FSPO may also require such person to produce any documents or copy documents which in the opinion of the FSPO are relevant to the investigation of the complaint.

9. If a party to the complaint wants a witness to be summoned by the FSPO to appear, a request must be made to the FSPO at least 20 working days before the scheduled Hearing date.
10. Pursuant to **Section 47(8)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Ombudsman has all the powers, rights and privileges vested in the High Court or a judge of that Court on the hearing of civil proceedings in respect of the examination of witnesses, including the administration of oaths and affirmations and the examination of witnesses outside the State.
11. Witnesses required to give oral evidence are entitled to the same immunities and privileges as if a witness before the High Court.
12. Any information provided by a witness giving evidence or answering questions at an Oral Hearing of the FSPO, is not admissible as evidence against that person in criminal proceedings other than in respect of perjury or in relation to an offence committed under **Section 59** of the **Financial Services and Pensions Ombudsman Act** (Obstruction of the work of the FSPO).
13. No witness shall be required to provide information or produce a document or a copy document, the communication of which is subject to legal professional privilege.
14. The FSPO will conduct the Oral Hearing in private, and in a way which is as informal as practicable.
15. Witnesses will be required to give evidence under oath/affirmation.
16. Each party will be entitled to cross-examine the witnesses of the other party. Any cross examination should be as informal as possible, concise, polite, and professionally efficient.
17. Each party is permitted to be legally represented, if desired. Any costs incurred by the party in that regard will not be borne by the FSPO and are a matter for the party itself.

18. Other than in very exceptional circumstances, if a party does not attend on the scheduled Hearing date, the FSPO will proceed with the Oral Hearing without that party. It is not the policy of the FSPO to cancel or postpone Hearings. A minimum of 3 days' (72 hours') notice is normally required in the event of any such exceptional circumstances giving rise to a request to have an Oral Hearing cancelled or postponed. Documentation substantiating the circumstances arising, will be required in order for the FSPO to consider any request for a cancellation or postponement.
19. Pursuant to Section 12(9) of the ***Financial Services and Pensions Ombudsman Act 2017***, the Financial Services and Pensions Ombudsman may authorise and direct any Deputy Ombudsman or any member of the Ombudsman's staff to chair an Oral Hearing.
20. During the Oral Hearing, each party must do as the Chairperson of the Hearing asks. At the start of the Oral Hearing, if any of the parties has a question as to how the Oral Hearing will be conducted, the Chairperson will answer any such questions.
21. Similarly, if, in the course of the Hearing a party has a question as to the procedures for the Oral Hearing, the Chairperson will respond to any such queries.
22. A Complainant can decide to have somebody else (one person) speak on his behalf or her behalf, but the Complainant must give their own evidence in person. The Complainant may also choose to be represented by a solicitor or other professional, but the cost of engaging professional assistance is a matter for each party themselves and will not be borne by the FSPO. The Complainant may also bring a relative, friend or colleague to the hearing as a support, without that person speaking on the Complainant's behalf.
23. At the Hearing, the party who made the complaint (the Complainant) will be asked to speak first. The other party (the Respondent) may cross-examine/question all those giving evidence on behalf of the Complainant, including the Complainant. When the Complainant and the Complainant's witnesses, have finished giving evidence and have been cross-examined, the Respondent will then be asked to present its evidence and the Complainant (or the Complainant's representative) may cross-examine/question all those giving evidence on behalf of the Respondent.

24. In summary, at a Hearing you will be entitled and will be given the chance to:

- **speak**
- **to have someone speak on your behalf**
- **give evidence and have witnesses give evidence on your behalf**
- **cross-examine/question witnesses about what they have said at the Hearing**
- **cross-examine/question any witness about any Report/Document they have produced in connection with the complaint.**

25. At the end of the Oral Hearing, the Chairperson may invite both parties to make short final oral submissions.

26. This Office will arrange for a stenographer to take a transcript of the evidence and submissions made at the Oral Hearing which will be shared with the parties.

27. **Any costs or expenses incurred by either party to a complaint, in relation to an Oral Hearing will not be paid by the FSPO. Any such costs/expenses are a matter for the party incurring the costs/expenses to bear himself/herself/itself.**

28. It is the practice of the FSPO to schedule Oral Hearings in a location which is wheelchair accessible.

29. If any particular requirements arise, for example sign language interpretation, please advise this Office within the period referred to above at Paragraph 4, or as soon as possible thereafter.

Appendix 3 Some acceptable and unacceptable words and terms

Preferred/Acceptable	<u>Not</u> Acceptable
“Complainant” or where there is more than one Complainant, they should be referred to as “first Complainant”, “second Complainant” and so on.	“First named Complainant” or “FNC” or any other word or term
English For example: “among other things” “that is”, “through” or “by” “approximately”	Latin and terms or abbreviations For example “ <i>inter alia</i> ” “ <i>i.e.</i> ” “ <i>via</i> ” “ <i>circa</i> ”
I note	It is noted
The Provider or Complainant: says/submits/asserts/states/contends or the Provider’s records indicate	The Provider or Complainant confirms/notes/alleges or “it is stated by ...”
<i>“Recordings of telephone calls have been furnished in evidence. I have considered the content of these calls.”</i> [Provide details and quotes from the relevant calls as necessary.] Where phone calls “cannot be located” use CPC and if appropriate state that it is disappointing or unacceptable (unless an acceptable explanation has been given)	<i>“I have listened to all telephone calls”</i>
Provider	Bank, company, insurer Respondent/defendant
“It” and “its” when referring to a Provider	“they”, “their” or any other description
The account was deemed to have fallen into arrears [if appropriate]	The account was in arrears
Complaint	Case
I do not consider it appropriate to .../ I do not uphold	I am unable to uphold
The complaint was received by this Office	The complaint was lodged
I accept or I do not accept	I feel/I think/I do not feel/I do not think
“This” or a description	“Same”
The Provider or the Complainant “rejects”/“disagrees”/“denies”	The Provider or the Complainant “refutes”
I “direct”	I “award” or I “find in favour”

I “uphold”/“substantially uphold”/“partially uphold”/“do not uphold”/“reject”	I “find for”, “I find in favour of” or “I find against”
The Provider has not complied with...	The Provider is guilty of...
Experts should be referred to as “the expert [doctor/engineer/assessor] appointed by either the Complainant or Provider as appropriate. <u>There is no justification for describing an expert appointed by one party as independent and not the expert appointed by the other party.</u> No judgment or opinion to be offered on the independence or otherwise of experts.	“Independent” assessor/doctor.
The Constitution of Ireland	Our/the Constitution
Jurisdiction in relation to	Jurisdiction over
Accepted	Admitted
Believe/believed	Feel
During a phone call	On the phone call/in a phone call