

Determination by the Ombudsman

A final and binding Determination has been issued by the Ombudsman. In this factsheet we explain about:

- Publication of the Determination
- Complying with the directions in the Determination
- What you can do if the Ombudsman has not decided in your favour
- Appealing the Determination

Publication of the Determination

Ombudsman Determinations are published on our website and are generally anonymised and have the name of the person making the complaint as well as any other identifying personal data removed – unless such data is essential for understanding the decision or there is another reason why we consider it is appropriate to publish it.

If we are considering not anonymising a decision, or we are asked not to anonymise a decision by a party, we will ask you and the other parties involved in the case for comments. However, ultimately, it will be a matter for the Ombudsman to decide on a case-by-case basis.

If you have any issues with this, please contact the Adjudicator assigned to your case.

Confidentiality

Although the Determination is not confidential, your duty to keep all other papers and information relating to our investigation confidential remains and will not change.

As we have previously informed you, you must treat all documents and information you have received relating to the complaint as confidential. You must not disclose documents or information you have received from us during our investigation to anyone who was not a party to the complaint without our prior consent, unless you are taking advice from them in connection with the complaint. You should make your advisers aware that they have the same responsibility to keep this information confidential.

If anyone breaks these rules regarding confidentiality, that person could even be found in contempt of court and be subject to penalties imposed by the court.

Complying with directions

If the Ombudsman has upheld the complaint the Determination will probably include directions against one or more parties, saying what steps they must take to put matters right. They must now comply with those directions unless they:

- successfully appeal against the Determination; or
- pending an appeal hearing, apply for the Determination to be stayed by the court (in Scotland the equivalent term is sisted), which effectively means that the Determination is put on hold until the outcome of the appeal is known.

If a party appeals the Determination you will be made aware because you will be served with a Notice of Appeal.

Directions made by the Ombudsman can be enforced against a person who has failed to comply with them. Where to take enforcement action is generally as follows:

- in England and Wales, in a County Court - the appropriate one being the nearest County Court to the party that has not complied with the Ombudsman's directions;
- in Northern Ireland, through either the Enforcement of Judgments Office or the County Court depending on the nature of the Ombudsman's directions to be enforced;
- in Scotland, by Sheriff Officer.

If you think enforcement action is necessary, you will need to take the required steps yourself. You can contact the Adjudicator in the Ombudsman's office who handled your case for more information. You will need a copy of the Determination, formally certified by the Ombudsman, before proceeding.

If the Ombudsman has not decided in your favour

Because the Determination is final and binding the Ombudsman cannot change it, except for minor errors (such as typing mistakes). There is no point in writing to the Ombudsman further at this stage to ask for the decision to be changed. If you want the decision changed you must appeal to the appropriate court. You can only appeal on a point of law. If you intend to appeal, you may want to consult a solicitor or talk to your local Citizens' Advice Bureau or Law Centre.

About Appeals

Appeals are made to the Chancery Division of the High Court in England and Wales, the Court of Session in Scotland or the Court of Appeal in Northern Ireland.

The Ombudsman has directed for England and Wales that the person wishing to appeal must lodge the appeal **within 28 days** after the date of an Ombudsman Determination. This is a longer period than would otherwise be required under the Civil Procedure Rules (21 days). Any application for extension of time should ordinarily be made to the High Court.

In Scotland a person wishing to appeal must first write to the Ombudsman **within 14 days** after the date of a Determination asking him to state a case to the Court of Session and setting out why it is believed he has made an error of law.

Different time limits apply in Northern Ireland and local advice should be taken.

These are **strict timeframes** and local legal advice should be taken if you are in any doubt about what to do. The appropriate courts may give an extension on request in certain circumstances, although this is not guaranteed.

Appealing an Ombudsman's Determination is a statutory right and you do not need the Ombudsman's consent to lodge an appeal.

Procedure in England, Wales and Northern Ireland

In England and Wales, appeals require the permission of the High Court. This means that an appellant (the party bringing the appeal) will need to satisfy the court that the appeal has a real prospect of success or that there is some other compelling reason why it should be heard. The Appellant's Notice Form (N161) contains a section which deals with permission to appeal. There is no similar requirement at present for appeals in Scotland or Northern Ireland.

If you appeal, the Ombudsman should **not** be listed as a respondent in the Notice of Appeal. The respondent to an appeal should be the party or parties on the "other side" of the matter determined by the Ombudsman¹. However, you **must** send the Ombudsman a copy of the Notice of Appeal². Failure to send the Ombudsman a copy of the Notice of Appeal may have adverse financial implications for you. The High Court suggests that where the appellant is an unrepresented individual, the respondent should also take it upon themselves to confirm that the Ombudsman has been served with the Notice of Appeal. This is particularly important because the Ombudsman may wish to become a party to an appeal. The Ombudsman cannot consider his position unless he is alerted to the appeal.

Occasionally the Ombudsman may wish to participate in an appeal - for example, when in the Ombudsman's opinion, being represented would assist the court to come to the right decision, or if the outcome of the appeal might affect the Ombudsman's legal jurisdiction or office procedures. If the Ombudsman is represented, it will be for this purpose, not to support either side. However, the Ombudsman will only take this decision after receipt of the Notice of Appeal.

If you appeal and the court decides that the Ombudsman's decision should be upheld then it is expected that the normal principle will apply, which is that you, as the unsuccessful party, should pay the costs of the successful party.

If an appeal is lodged against you, you will be served with a Notice of Appeal. You will then have to decide whether you wish to be represented (or appear in person) at the appeal. If you are represented (or appear in person), and the court decides that the Ombudsman's decision should be changed, then you may have to pay some or all of the costs of the appeal. If you

¹ Moore's (Wallisdown) Ltd v Pensions Ombudsman and others [2001] All ER 299 at paras 71-82; [2002] Pensions LR 73 at paras 75-77

² Practice Direction 52D, paragraph 3.4 (which relates to Civil Procedure Rule 52.4(3))

decide **not** to be represented (or appear in person) it is not expected that you would be required to pay any of the costs.

It may also be possible for you to apply to the court to have costs recovery limited in the appeal³.

Procedure in Scotland

In Scotland, an appeal against a Determination follows a process known as an "Appeal by Stated Case"⁴. The first step is to write to the Ombudsman (**within 14 days** of the date of the Determination) asking him to state a case to the Court of Session and setting out why you think he has made an error of law. There are very specific requirements about what needs to be included in this application. The Ombudsman must send every other party a copy of this application and those parties will have an opportunity to raise additional questions that they would like resolved on appeal.

Once all the parties have had a chance to raise further questions, the Ombudsman must decide whether he is going to "state a case". This involves the Ombudsman giving full written reasons for this decision in a format set out in the relevant court rules.

Once the stated case is prepared, each party who has raised questions must decide whether they wish to proceed with the appeal. If they do, they must then apply to the Court of Session to begin the court appeal process.

The Ombudsman is entitled to decide not to state a case in relation to some or all of the questions raised. For example, he may do so where he considers that some or all of the questions do not require consideration or are frivolous.

Any party is entitled to ask the Court of Session to require the Ombudsman to state a case where a question is not addressed in the stated case, or where the Ombudsman has refused to state a case in the first place. Again, this must be done **within 14 days** of notification of the refusal.

In Scotland, a party who is unsuccessful in any court proceedings is normally required to pay their own costs, as well as the costs of the successful party.

You may wish to obtain legal advice from a solicitor or speak to Citizens Advice Scotland as soon as possible if you are considering, or are otherwise involved, in this route. The appeal process in Scotland is a very strict procedure, set out in law.

Further Information

- Further useful information can be found as follows:
- The Handbook for Litigants in Person. This is produced by the Judiciary and can be found at <http://www.judiciary.gov.uk>.

³ Under 52.19 of the Civil Procedure Rules (Orders to limit the recoverable costs of an appeal - general)

⁴ 41.49 Rules of the Court of Session 1994

- The Community Legal Service Directory which can be found at: <https://www.lawgazette.co.uk/directories/legal-services-directory>
- Citizens Advice Scotland: <http://www.cas.org.uk/>
- HM Courts and Tribunals Service: www.gov.uk/government/organisations/hm-courts-and-tribunals-service
- Judiciary of Scotland: <http://scotland-judiciary.org.uk/16/0/Court-Structure>
- Department of Justice Northern Ireland: www.courtsni.gov.uk