

DAVID HUGGINS

So you think you've lost money because of bad advice from your financial planner.

What should you do?

The first place you should think about is the Financial Ombudsman Service, known as FOS. FOS is a dispute resolution service and it is compulsory for all financial planners to be members. The service gives consumers of financial services powerful and cost-effective remedies and will always be a better option than starting legal proceedings for disputes that fall within its jurisdiction.

Before you bring your dispute to FOS you need to have made a written complaint to your financial planner and given them 45 days in which to respond. If they don't respond within 45 days or you are not satisfied with the response you are then entitled to make a complaint to FOS.

You can make a complaint very easily, either by letter or by using the complaint form on the FOS website. If you can't formulate your grievance yourself, FOS can help you draft your complaint.

Alternatively, you may want to get a lawyer to assist you through this process. Importantly, FOS is free and you are not exposed to the risk of having to pay your financial planner's costs should your complaint not be upheld.

FOS is not a court. In making a decision about your complaint it is not bound by the rules of evidence that apply in a court. FOS can make a decision on the basis of what it believes to be a fair outcome as opposed to an outcome that is strictly in accordance with legal principles.

In contrast to court proceedings, the approach taken by FOS gives you a substantial tactical advantage.

FOS uses very flexible procedures. FOS initially tries to resolve a dispute by mediation or negotiation. If this doesn't work, FOS prepares a

recommendation that sets out how FOS thinks that the dispute should be resolved. If you and your financial planner accept the recommendation, your dispute can be settled at this stage.

If you or your financial planner don't accept it, FOS will make a determination about your dispute. Importantly, the determination is binding on your financial planner but not on you. This means that if you don't agree with the determination you don't have to accept it and can

start legal proceedings. The position is entirely different for your financial planner: they must comply with the determination.

As part of a determination, FOS can require your financial planner to do a wide variety of things but most importantly FOS can require the payment of money to you as compensation for the financial loss you have suffered. The amount of money that can be paid is capped at \$150,000 but this will increase to \$280,000 for disputes lodged after January 1, 2012.

The cap applies to each claim but your dispute may involve multiple claims. For example, if your dispute was about bad advice that was provided on three separate occasions you could potentially make three claims as part of one dispute, with a cap of \$150,000 applying to each claim.

FOS will not deal with a claim where the potential value of the claim is more than \$500,000.

If your claim is less than \$500,000, you are entitled to have it dealt with by

FOS but your claim will be capped. Given the consumer advantages of the FOS process over the time and resources required to take someone to court, for most it would be well worth making a complaint to FOS even if you believed that the amount you were entitled to was substantially more than \$150,000.

To contact the Financial Ombudsman Service: Phone 1300 780 808; Website: www.fos.org.au



Complex: If you need a hand to complain about poor financial advice, the free Financial Ombudsman Service can help fix it.

Picture: Getty Images