



The complaint process – enquiry, mediation, investigation, adjudication, appeal



*This is not a definitive statement of the legal position and does not in any way override any of the provisions as laid out in the **Arbiter for Financial Services Act**. It has been drawn up to explain in simple terms the processes and procedures implemented by the Office of the Arbitrator for Financial Services for handling of complaints.*

If you notice that there is a problem or you need help with a situation

You may contact the Office of the Arbitrator for Financial Services to enquire about a situation you might be experiencing or you wish to have some guidance as to how you might approach an issue. To do so, you may call or email our offices ([click here for contact details](#)). We may be able to provide you with information or guidance without going deeply into your issue. Our replies to you will be for information only.

We may also be able to assist you with the process of making a complaint with the Office of the Arbitrator for Financial Services. If you have difficulty putting your complaint to us, we may help you fill out the necessary complaint form on the basis of what you tell us. We do not offer legal advice and therefore we will not provide you with any guidance as to how you should articulate your complaint. You also have the right to appoint a person of your trust to lodge a complaint with this Office.

Our duty is always to remain impartial, at whatever stage of the complaint process.

First step

Lodge a complaint with your financial services provider

You have the right to lodge a complaint against your financial provider if you think that the service he has provided you is not up to standard, or if it fails to match the promised or advertised outcome.

When filing a complaint, your first step would be to decide what you want to achieve.

Sometimes it can be a matter of seeking an explanation or to put things right. It is very important to ask for an explanation right away if you have a problem or there is something which you cannot understand.

Sometimes, you may not have copies of documentation you had signed at the time you purchased a product or availed of a service. If that's the case, request a copy of any documentation you had signed at that stage. Such documentation may be of help while you are formulating your complaint.

If you believe that you have not obtained a satisfactory response to your queries or requests, you need to make a formal complaint.

Always put your complaint to your provider in writing and keep a copy of your letter. You must give your provider an opportunity to look into your problem and allow it reach a solution.

IMPORTANT NOTICE

Does your complaint relate to the conduct of a financial services provider which occurred between 1 May 2004 and 18 April 2016?

If it does, you have until 18 April 2018 to submit a complaint for consideration by the Arbiter for Financial Services. The Office might not be able to handle your complaint if received later than that date. Bear in mind that prior to submitting your complaint to us, you should have already submitted a complaint with the provider and allowed sufficient time to send you its reply. [Click here for the complaint process.](#)

Does your complaint relate to the conduct of a financial services provider which occurred on or after 18 April 2016?

The Arbiter for Financial Services shall have the competence to hear a complaint if it is registered in writing with the financial provider not later than two years from the day on which the complainant first had knowledge of the matters complained of.

It is therefore in your best interest to ensure that the complaint is submitted to your financial provider by registered mail and acknowledged shortly after you send it. Do keep a copy of the complaint, proof of registered mail and the provider's acknowledgement in case you need to pursue your complaint further with the Office of the Arbiter for Financial Services.

Writing a complaint to the provider

Your letter to the provider needs to be clear, simple and to include essential information. You are less likely to get a good result if your letter is sarcastic or abusive.

Here are some points which you could follow:

- It does not matter if your letter is in Maltese or in English. Don't worry about grammatical errors – express yourself to the best of your abilities.
- Write "Complaint" at the top of your letter.
- If possible, type the letter or write clearly in black or blue ink – in case it needs to be photocopied.
- Include any reference numbers, for example, for the product you bought, the account you hold, or a customer reference.
- State your case clearly, including relevant dates. Put down the dates in a sensible order. Avoid unnecessary detail and repetition. Be firm but remain polite.
- Send copies of documents (if these are relevant) but always hold on to the original documents.
- Every time you write, keep a copy of your own letter for reference.
- If you phone the financial provider or have a meeting, then make a note of the date, the name of the person you talked to and the main points made by each of you. We recommend that you write a follow-up letter to confirm what was said or agreed. If for some reasons you do not hear anything within the required timeframes, call the provider to check on the progress of your complaint.

Allow some time for the financial provider to respond to your complaint

A provider must seek to resolve any complaints with consumers. That is why you must, in the first instance, contact your provider, outline your complaint and give it a reasonable opportunity to deal with it.

Your provider has 15 working days from the date it receives your written complaint within which to attempt to investigate and resolve your complaint.

The stage at which the Office of the Arbiter for Financial Services can accept a complaint

Once you have made the provider aware of your complaint, the point at which the Office of the Arbiter for Financial Services will accept the complaint is:

- At any time during the 15 working days when the investigation by the provider is completed and the provider has written to you informing you of this;

or

- After the expiry of the 15 working days and the provider has not written to you in reply to your complaint.

The Office of the Arbiter for Financial Services may also refuse to deal with a complaint on the grounds that:

1. The complaint is frivolous and vexatious; or
2. The complaint is or has been the subject of a law suit before a court or tribunal initiated by the same complainant on the same subject matter; or
3. The complainant fails to comply with a request for information within a period specified by the Arbiter for Financial Services.

If the Arbiter for Financial Services determines that a complaint does not fall within his competence, the Arbiter is required to inform the complainant of the decision and reasons for it.

If you wish to make a complaint to this Office please go through the section 'Submitting a Complaint' on our website www.financialarbiter.org.mt

Second Step

Submitting a complaint to the Office of the Arbiter for Financial Services

If you have followed the **First Step** and if your complaint has not been resolved by the provider to your satisfaction, you can then proceed to lodge your complaint with us. In order to lodge a complaint you will need to complete a complaint form and submit it along with the final letter from the provider. This letter is issued by the provider when you have completed its internal complaints process with no resolution. If the provider has not provided you with a response, you would be able to indicate this to us in the complaint form.

Setting out your complaint

When submitting your complaint it is important that you present your complaint in a clear and concise manner. You should detail what has happened to date, and how you feel you have a legitimate complaint. Moreover, you need to clearly identify the reason or reasons why you feel the financial services provider has let you down. It is important that you include all key dates and name the product or service you are complaining about. You should also clearly illustrate what would remedy the situation for you.

You may submit your complaint as follows:

Using our complaint form

We encourage you to submit your complaint using our complaint form (in pdf format), which can be downloaded from our website www.financialarbiter.org.mt (click on FOR CONSUMERS on the top menu).

Complaints should be submitted in Maltese. We may occasionally accept complaints in English (such as if the complainant is not Maltese).

Compile and save the complaint form on your computer, then print it. Do not forget to sign the form before you post it to us. We are unable to accept complaint forms which are (a) handwritten; (b) unsigned or submitted by e-mail; and (c) are not accompanied with the payment of €25 which is the fee payable with every complaint.

Sending a complaint letter

If you send us a letter (rather than using our complaint form), we will contact you and ask you to sign a declaration giving permission to the Office of the Arbiter for Financial Services to review your complaint.

Payment of a fee

On submitting your complaint, you are required to pay a fee of €25. Cheque payment for complaints sent by post should be addressed to *The Office of the Arbiter for Financial Services*. Cash payments may also be made if the complaint is lodged personally at our offices in Floriana. Other payment arrangements (such as by bank transfer) are also accepted. Further details on request.

A receipt is issued when effecting payment. The fee may be refundable in particular circumstances – see below.

Documentation

On submitting your complaint it is important that you include all relevant documentation in your possession which this Office may refer to during the complaint process. This may include letters to and from the provider, policy documents, statements etc. It is vital that you also submit the final letter from the provider (if he has sent it to you) as this will clearly indicate that the provider's complaint process has been exhausted.

Assessing a complaint

When the complaint is received by this Office, it is assessed informally to determine whether we can accept it or not depending on the law.

If the matter is deemed to be outside the remit of the Office of the Arbiter for Financial Services (i.e. where we cannot deal with the complaint by law), the complainant will be informed as to why it cannot be accepted.

If the complaint can be accepted it will continue to the next stage of our process which is to offer mediation to both parties to the dispute.

If you need help with making a complaint please contact the office on Freephone 80072366 or +356 21249245 or by email complaint.info@financialarbiter.org.mt. We are not permitted to give advice or opinions on the content of your complaint but we can guide you in relation to our own procedures and processes.

The next step

Your complaint form or letter, as well as all documentation attached to it, is sent to the financial services provider for its comments. The provider has 20 days from receipt of the complaint to submit its response to the Office.

As soon after we receive from the provider, we will send you a copy of its response together with an invitation to refer the complaint to mediation.

Third step

How we mediate complaints

Mediation

If we establish that your complaint falls within the remit of the Office of the Arbiter for Financial Services, we recommend mediation as the first and best option for resolving the matter.

The aim of mediation is to give both sides the opportunity to develop a shared understanding of the complaint and work towards reaching a solution.

It has many benefits and is quicker than investigation and adjudication and can save time and effort for all involved

Voluntary

Participation in the mediation by the parties to a complaint is voluntary. This means that both the complainant and the provider have to agree to take part. Either the complainant or the provider can end it at any time.

Also, any solution reached in mediation requires both the complainant and the provider to agree.

If the complainant decides to withdraw the complaint, he or she would need to inform the Arbiter in writing who shall issue an order for the termination of the complaint procedures. At this stage, the fee of €25 that had been paid when the complaint was submitted will be refunded in full.

The Mediator

Mediation is a carefully managed process where a mediator appointed by the Arbiter for Financial Services will ensure that the process is fair. The mediator's role is to help both the complainant and the provider to reach an agreed resolution of the differences.

The mediator is independent and does not act for, or side with, either the complainant or the provider.

The mediator will not impose a solution or oblige either or both of the parties to accept or reject an offer. Instead, he or she will facilitate the efforts of both parties to find a solution that is acceptable to both parties.

Confidentiality

Mediation is an informal and confidential process, conducted in private. Anything said during mediation and any document prepared for the mediation, cannot be used in any later investigation of your complaint, or in any legal action before a court.

The agreement

If the complainant and the provider agree a settlement during mediation, what has been agreed will be written down and communicated to the Arbiter for Financial Services. Once it has been signed by both parties, and accepted by the Arbiter, that agreement becomes legally binding on both the complainant and the provider.

This concludes the dispute, thus ending the complaints process. The complainant will be reimbursed the fee of €25 he or she would have paid with the complaint.

If agreement is not reached

If either the complainant or the provider are not willing to take part in mediation, or if the mediation is not successful in reaching a solution, then the complaint will go to investigation and adjudication where a decision is made by a different third party.

The mediator will have no role in the investigation or adjudication of any complaint that they were involved in mediating. Moreover, any form of exchanges made between the parties will remain strictly confidential.

The mediation process

If both parties agree to attempt mediation, a mediator will be assigned to the complaint. The mediator will make the arrangements to suit everyone concerned.

The mediator will submit the complaint to the provider for comments and observations. The provider may be asked to submit its comments or even asked to reach a settlement with you depending on the circumstances of the case.

The mediator may also convene a meeting between the parties depending on the complaint and its severity. If the mediator decides to convene a meeting, the complainant may bring a friend, relative, or representative (paid or otherwise).

If either the complainant or the provider engage legal or other professional assistance at the mediation, it should be noted that any legal or other costs incurred are their responsibility.

All mediations take place in our office in Floriana. Both the complainant and the provider must attend in person at the scheduled mediation in our offices in Floriana.

The mediator will schedule a date for mediation which is suitable to both parties.

This date will be a weekday and the mediation may take place at any time between 10am and 3pm.

Where possible, we will schedule the mediation a week in advance to provide everyone with adequate notice.

Mediation timescales

It is not possible to say how long mediation might last. It will depend on factors including the approach and willingness of you and the provider at the mediation.

Mediation - Guidelines

Why

Where appropriate, mediation is an alternative method of trying to resolve complaints.

It is a process where the parties to the complaint try to reach a solution through agreement with the assistance and support of a mediator rather than through an immediate investigation and a decision from the Arbiter for Financial Services on the complaint.

When

If mediation is to take place, BOTH parties to the complaint must be willing and elect to participate in mediation. If one party wants to take part in mediation and the other party does not, then no mediation will take place and the matter will proceed to investigation and adjudication.

Mediation is an option that is available to both parties. It is a voluntary stage in the handling of a complaint by this Office. Parties to a complaint are not obliged to take up mediation if they do not wish to.

If BOTH parties decide to attempt mediation, the complaint will be assigned to a mediator.

How

The mediator will inform the provider of the complaint and invite the provider to

accept mediation. Generally speaking, mediation typically involves meeting(s) between the mediator and both parties. But the mediator may also exchange emails with the parties concerned or phone the parties, depending on the circumstances of the case.

If the mediator calls a mediation meeting, the date and time of any meetings will be decided by the mediator, having consulted with both parties.

Mediation is an informal process. It is also confidential and is conducted in private.

The mediator's role is to try to facilitate an agreed resolution of the complaint between the parties. The mediator is independent. He/she does not act for (or side with) either party to the dispute. His/her role is to independently assist both parties in reaching an agreed resolution of their differences.

It should be remembered that in a mediation, a party cannot be forced to accept a settlement/outcome. The mediator will not impose a decision on the parties. Both parties must voluntarily agree the outcome.

The mediator has no authority to settle the dispute himself/herself or to act on either party's behalf.

It is not possible to advise how long a mediation might last. It will depend on a

number of factors, including the attitude of the parties involved in the mediation and the progress (if any) being made at a mediation.

May not always be possible

Participation in a mediation by the parties to a complaint is voluntary and a party may withdraw from the mediation at any time.

If either party chooses not to engage in mediation, then the complaint will be dealt with by the Arbiter by way of investigation and adjudication.

If both parties agree to mediation, but during the course of a mediation, either or both of the parties withdraw from a mediation or if the mediator forms the view that the attempt to resolve the complaint by mediation is unsuccessful, then the mediation will come to an end. Both parties will be informed by the mediator that the mediation is at an end and the complaint will then be subject to investigation and adjudication by the Arbiter.

If, during the course of a mediation, the parties reach an agreement to resolve the complaint and both parties agree the resolution/outcome, then that agreement will be recorded in writing, signed by both parties and will become legally binding on

the parties. The complaint will be at an end and so it will not be referred to investigation and adjudication (final decision) by the Arbiter.

Confidentiality

Evidence of anything said or admitted during a mediation

(or an attempted mediation) and any document prepared for the purposes of the mediation, are not admissible in any subsequent investigation of the complaint (unless the person who made the admission or to whom the document relates, consents to its admission) or in any proceedings before the

Arbiter for Financial Services or a Court. If however during the mediation an agreement is reached between the parties, that agreement will be recorded in writing, signed by both parties and will then be legally binding.

Fourth step

Investigating and adjudicating complaints

If the mediation has not been successful or has been refused, the Arbiter – who may be assisted by an investigator – will start investigating your complaint. The Arbiter will not have access to any information which might have been exchanged during mediation. Any person who the Arbiter may decide to appoint to assist him with the investigation into a complaint will exclude any person who was involved during mediation.

Exchange of documentation

All the parties to the complaint will be given the opportunity to make written submissions with respect to the complaint.

A full copy of these responses and any evidence is required to be provided to the Arbiter within 20 days from receipt of communication by the Arbiter that he is investigating the complaint.

Information and documentation received by the Arbiter by one party is provided to the other party in the complaint.

The process of documentary exchange continues until each party has made the required submissions. All parties will be given time to respond. This is one reason why some complaints can take some time to resolve.

The Arbiter is also required to hold at least one sitting for the hearing of a complaint. Such hearings may be made in public, depending on the Arbiter's decision.

The powers of the Arbiter to investigate are extensive. He may request witnesses to testify, request third parties to provide relevant information which may be required as part of the investigation and even carry out inspections at the premises of a provider.

Adjudication

All the circumstances surrounding the complaint will then be examined. Every case is judged on its individual merits.

The time taken to investigate a dispute depends on the complexity of the individual. In general, the Arbiter is required to proceed with adjudication of a complaint within 90 days from the date when a complaint is submitted. However, this period may be extended to up to one year when cases are complex.

Finding

When the investigation is complete, the Arbiter prepares his findings and conclusions in writing. The Arbiter notifies the parties to the complaint of a date and time and will convene a meeting during which he reads out his judgement in public.

Appeal

Decisions reached by the Arbiter may be subject to appeal by either party to the complaint.

When no appeal is made by either party, the decision taken by the Arbiter becomes final and binding on all parties.