

How to raise complaints following Clarke award ruling

The effect of the Court of Appeal (CA) ruling on the award made by the Financial Ombudsman Service (FOS) on the ability to bring further claims: [Clark v In Focus Asset Management & Tax Solutions Ltd \[2014\] EWCA Civ 118](#)

Summary

On 14 February, the CA held that acceptance of an award issued by FOS will bar a complainant from starting legal proceedings to pursue additional compensation arising from the same complaint.

Background

The respondents, *Clark*, successfully referred a complaint to FOS concerning financial advice provided by the appellant, *In Focus*, which they claimed had caused them losses in excess of £500,000.

The respondents received an award of £100,000; this being the highest award of compensation available at the time, but the ombudsman's report recommended that they should receive compensation in full. As a result, the respondents accepted the award subject to their right to claim further compensation.

Proceedings were issued, but the respondents' claim was struck out on the basis that they had already accepted a FOS award.

The respondents appealed and Mr Justice Cranston in the High Court held that the respondents were not prevented from making a claim against *In Focus* for additional compensation. *In Focus*, in turn appealed.

Appeal

A primary issue for the CA to determine was whether the respondents were precluded from starting legal proceedings by the operation of the doctrine *res judicata*; the principle that a cause of action may not, generally, be brought again once there has been a judicial decision on the same facts.

The CA allowed the appeal and held that, because the FOS award amounts to a judicial decision, the respondents were precluded from bringing additional proceedings, if those proceedings were based on the same facts which FOS had already considered in the process of granting the award.

Implications of the decision

The decision in *Clark* confirms that a complainant must either pursue a complaint with FOS or issue proceedings in court.

Complainants should consider from the outset whether a FOS award will be enough to compensate them. This decision has confirmed that it is not possible to take advantage of

the cheaper (and potentially quicker) route of pursuing a claim with FOS whilst retaining the option of bringing proceedings to top up any award granted if the complainant (and perhaps the ombudsman too) think that the FOS award is insufficient.

As a result of *Clark*, complainants whose losses are greater than £150,000 (the maximum FOS award available at present) should think carefully before pursuing a claim with FOS and should also consider formal legal proceedings, although if there are no time constraints, it may be possible to obtain a helpful decision from FOS, reject the award, and rely on the FOS findings to support legal proceedings.

In doing so they will heed the advice in *Clark* of Lady Justice Arden that; what those seeking greater redress “[have] to do to obtain this higher level of compensation [is] to reject the award and bring court proceedings for that amount”.

Anyone faced with a decision about how and where to raise their complaints should consider the extent of their losses and, if in any doubt, take legal advice on the options available.

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