



OMBUDSMAN
for Banking Services
and Investments

OMBUDSMAN
des services bancaires
et d'investissement

A Guide for Participating Firms

This guide is for firms participating in OBSI, or those interested in joining.

The guide outlines the general approach we expect our participating firms to take in handling complaints, and what you should expect from us when we deal with your customers who have brought their unresolved complaints to us.

What's in this guide?

You'll find the following topics covered in this guide:

- What is OBSI?
- Obligations of firms
- Complaints that OBSI deals with
- Complaints that OBSI won't deal with
- How we work
- How long does it take?
- Privacy and confidentiality
- Independence and impartiality
- Fairness and our decisions
- Appeals or complaints about OBSI
- Our structure and funding

If you have a question and can't find the answer in this guide, don't hesitate to contact us at 1-888-451-4519.

What is OBSI?

OBSI is an independent and impartial dispute resolution service. Our job is resolving disputes between participating banking services and investment firms and their customers if they haven't been able to solve them on their own.

As an alternative to the legal system, we work informally and confidentially with you and your customer to find a fair outcome.

If we decide that you have acted unfairly, made an error or given bad advice, and your customer has lost money or suffered damages as a result, we will recommend that you make your customer "whole" by restoring their financial position to where it should have been. If we think you have been fair, or made a fair offer to resolve the complaint, we will let the customer know.

We are not a regulator, and we don't punish or fine firms or the people who work for them. We focus on whether the customer should be compensated, based on the circumstances of the case.

Obligations of firms

As a participating firm in OBSI, what are our obligations?

Participating firms in OBSI have three basic obligations:

- Establish an internal complaint handling system headed by a senior officer.
- Promote your complaint handling process to your customers, including telling customers they have the right to bring a complaint to OBSI if they are unsatisfied with how you have dealt with it.
- Cooperate with our investigations by producing documents and making employees available for interviews as required.

The bank financial groups have internal ombudsman offices which are the final internal level of escalation of a customer complaint. Independent investment firms typically have a compliance officer, reporting to a senior official, who will deal with complaints.

What are good practices in complaint handling?

- Most complaints can be handled quickly and effectively if they are dealt with promptly. It's good business – and cheaper – to settle most complaints as soon as possible. Addressing complaints promptly can also allow you to reach a settlement before attitudes and positions harden. Firms should set internal benchmarks to deal with complaints promptly.

- Good internal complaint handling starts at the front line. Every employee should know how your process works and be able to explain it clearly to customers.
- Every customer who has a complaint should be given a written document outlining the complaint process in the firm, including the recourse to OBSI, and have the process explained to them.
- The final letter outlining your position on a complaint should outline the complaint, the results of your internal investigation and the rationale for your final position. It should tell your customer they have the right to take their complaint to OBSI within six months if they remain unsatisfied with your response and give them our full contact information.
- In general, firms should be communicating their complaints process more frequently and more prominently. This is an important way of assuring your customers that you take complaints seriously. Your participation in OBSI lets them know that you support an impartial and independent review of their complaint if they remain unsatisfied.

Complaints that OBSI deals with

What kind of complaints will you look at?

Our mandate is fairly broad. We look at complaints about mishandled accounts, misleading information or inappropriate advice where there is financial loss or other damages for your retail or small business customers.

Typical product or service complaints involve:

- Debit and credit card fraud
- Mortgage prepayment penalties
- Suitability of investment advice
- Transaction disputes

We are able to make recommendations for amounts up to \$350,000.

The Case Studies section of our website gives you some examples of the complaints we have investigated.

However, before we look at a complaint, we require the customer to try first to complain to the firm they dealt with. We let consumers know that most disputes can be resolved by the firm without our intervention, and when they contact us prematurely we will send them to you.

These are general guidelines, and our Terms of Reference will give you more detailed information. If you are still unsure, please contact us.

Complaints that OBSI won't deal with

What kind of complaints won't OBSI deal with?

We won't take on a complaint if:

- The complaint is or has been the subject of a court action or arbitration process
- You have already responded to the complaint, and the client knew that they could escalate it to us but did not do so on a timely basis
- You have already offered, and the client has accepted, a settlement
- It's about a general commercial decision, such as an interest rate on a credit card or a credit decision

These are general guidelines, and our Terms of Reference will give you more detailed information. If you are still unsure, please contact us.

How we work

What happens when you look at a complaint from our customer?

After a consumer has submitted a complaint to us, we review the material sent to us. That will typically include your final response letter. Our first issue is to make sure the complaint falls within our mandate. If we don't think we can get involved, we will let the consumer know as soon as possible.

If our assessment shows that you have treated the client fairly, or made a fair offer, we will let them know, and explain to them why we think that way.

We may also try to resolve the complaint quickly by facilitating a settlement if we see a good chance that you could come to an agreement with the consumer without a full investigation.

We might also ask you to consider an issue that we believe has been overlooked by you.

If the case requires a full investigation, we will ask you, your customer and any other parties involved in the dispute to sign an agreement before we start. The agreement outlines our rules and authorizes you to release to us your files related to the complaint.

When we are finished our investigation, we send a draft of our report to you, and then to your customer, for a brief comment period. Then we send to both parties a final report that sets out our findings and any recommendations we make.

What information will you need from our customer? And from us?

We begin our look at cases with the final letter you sent to your customer with your position or offer on how you will address their complaint. Your customer will have normally sent that to us.

We will require you to send us a copy of your file on the case. That file must contain all material related to your internal investigation of the complaint. We will need material such as notes from conversations with your staff, relevant emails or faxes, account statements, customer records from internal databases, transaction records, opening agreements, internal policies, correspondence and the like. We also may need to talk to employees or agents involved, and we expect you to make them available to us.

Do you punish or fine firms, employees or advisors like a regulator can?

No, OBSI is not a regulator and it is usually regulators or governments that have the power to punish firms or licensed individuals such as investment advisors.

OBSI does something most regulators don't – we look at complaints and recommend whether your customer should be compensated.

How long does it take?

How long does it take OBSI to resolve a complaint?

That depends on several factors such as the complexity of the issue – or issues – involved or the availability of the records we need for our investigation.

In general we try to complete our investigation within 180 days. Complex cases can take longer to resolve, and many cases can be resolved more quickly. Our commitment is to keep you and the customer informed of our progress throughout.

What about limitation periods?

We will tell your customer to seek legal advice if they have a concern about their limitation period and the impact on their legal rights. If we are informed that an investigation may affect a customer's limitation period, we will seek an agreement with both parties to "stop the clock" while we investigate. You are not obliged to agree, but we believe that access to our service, as an alternative to the legal system, should be encouraged, not discouraged.

In Ontario, the law says that bringing a complaint to OBSI “stops the clock” for as long as we are trying to resolve a case. That means the limitation period is paused for our review and investigation in that province. As with your customers, we do not give professional or legal advice to firms, and you may want to consult with your own counsel on these issues.

Privacy and Confidentiality

How do you protect privacy?

We gather personal information about your customers only with their consent and use it only for the purpose intended. Please read our Privacy Statement on our website for a more detailed explanation.

Is the information you collect confidential?

The ombudsman process is confidential, and we believe that confidentiality helps us build trust with both parties as we seek to find a fair outcome. That’s why, as an alternative to the legal system, we require you and the firm to agree that you won’t try to use our material, or involve any of our employees, as part of any subsequent legal action.

We will ask you before we share any of the documents you give to us directly with the customer, but you should assume that we may need to refer to the facts in those documents, or summarize them, in our final report. If there is material that is particularly sensitive you should bring that to our attention.

While we produce Case Studies and compile statistics to communicate with and inform people about our service, we do not release information or talk about specific cases in a way that would identify the parties.

Independence and impartiality

Are you a consumer advocate?

As an impartial service, we are neither a consumer nor an industry advocate. It’s important that we maintain our impartiality so both sides of a dispute know they are getting a fair hearing.

That means we don’t give financial or professional advice to your customers.

Fairness and our decisions

How do you make your decisions?

After reviewing the facts of your case, OBSI will make a decision based on “fairness in the circumstances” to both parties. We look at:

- Good financial services and business practices
- Accepted industry standards and practices
- Standards established by regulators, professional associations or your firm
- Laws and regulation

Above all, we look at the circumstances of the actual case and determine what would be a fair and reasonable outcome. Each file is different, and while our Case Studies will help you understand our approach, we look at each new case with fresh eyes.

If we are recommending compensation, we will aim to “make your customer whole” by putting them in the financial position they should have been in if there hadn’t been a problem. We do not recommend compensation for damages such as pain and suffering, aggravation or reputation harm. We may recommend other non-financial compensation if appropriate.

If we believe you have acted fairly, or made a fair offer where there is a problem, we will let your customer know.

Does my firm have to follow your recommendation?

You do not have to follow our recommendation. However, if you refuse, we will make public your failure to comply with our recommendation. We have an excellent rate of acceptance of our recommendation among both our clients and firms.

Do customers have to follow your recommendation?

No, they do not have to accept our recommendation. If they remain unsatisfied, they may still be able start a legal action or pursue other avenues to resolve the dispute. Customers of IDA member firms may be able to use its arbitration service.

We advise customers that if they accept our recommendation for compensation, and the firm has also agreed, their firm may require them to agree to give up any future claims about the complaint before they will be compensated. We also advise them that they may want to get professional advice before signing that kind of document. We don’t normally get involved at this stage unless we think the firm is being unreasonable.

Appeals or complaints about OBSI

Can my firm appeal your findings?

The Ombudsman's decision is final. To maintain the independence and impartiality of our staff, our Board of Directors does not look at specific cases

What if we have a complaint about your service?

If you believe you have not been treated fairly or your case has been mishandled by us, you may complain to the Chair of our Board of Directors. While the Board does not look at specific facts of a case, we do want to make sure our service is fair to all parties and we are serving you well.

Our structure and funding

What is OBSI's structure?

We have an independent Board of Directors responsible for the overall governance of the service. By independent we mean people who have not been employed by either the industry or government for at least five years.

OBSI regularly meets and discusses issues with government regulators, policy-makers, industry and consumer representatives, but we carefully guard our independence. That's important so we can continue to be the impartial and fair service that consumers and firms expect when a dispute needs to be resolved.

Our staff is headed by the Ombudsman, and we have two teams of investigators: one for Banking Services and the other for Investments. The Ombudsman is also independent of industry and government. Our staff is experienced, professional and highly qualified to undertake case assessments and investigations.

How are you funded?

We levy fees on all of our participating firms based on their size or volume of business. Our budget is set each year by the Board of Directors based on the recommendations of staff.