



Complaint Procedure Handbook

If you would like more information on the Credit Ombudsman Service
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Complaint Procedure Handbook

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Complaint Procedure Handbook

Introduction

This Complaint Procedure Handbook summarises the procedures which the Credit Ombudsman Service Limited (COSL) applies in considering a consumer's complaint in accordance with the Rules of the Credit Ombudsman Service Limited.

COSL's dispute resolution services are free to consumers.

COSL follows the procedures listed below whenever a consumer lodges a complaint.

The section includes:

[Application](#)

[Initial Referral Phase](#)

[Conciliation and Investigation Phase](#)

[Determination Phase](#)

Application

Any complaint made to COSL is governed by rules called the Credit Ombudsman Service Limited Rules (COSL Rules *or* the Rules *or* these Rules).

These procedures:

- apply to all complaints received by COSL;
- apply to the Complainant, the COSL Member being complained about, and every other person who has, in accordance with the Rules, been joined as a party to the complaint (the parties).

This section includes:

[Reaching a Resolution – The Member & Complainant](#)

[Unresolved complaints](#)

[Procedural Fairness](#)

[COSL's Complaint Resolution](#)

[Communicating with Members & Complainants](#)

[Evidence that COSL Considers](#)

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Reaching a resolution – the Member & Complainant

Even if a complaint has been made to COSL, it is always open to the parties to try to resolve the complaint directly themselves. If this happens, COSL needs to know as soon as possible. If a party wants to have its settlement of the complaint recorded formally in writing, they can ask COSL to prepare a document to record the terms of the settlement. This document is called a Settlement Agreement.

If, at any stage, the Member makes an offer to the Complainant that COSL considers reasonable, COSL may recommend to the Complainant that the Complainant accept the offer. If the Complainant does not accept the offer, COSL may close the complaint unless the Complainant provides COSL with further information to justify the complaint remaining open.



Note:

For more information about Settlement Agreements, see **COSL's Guidelines to the Credit Ombudsman Service Limited Rules** published on the COSL web site at: www.cosl.com.au

Unresolved complaints

If the parties are unable to resolve the complaint themselves, COSL can make:

- a Determination; and if necessary to finally resolve the complaint
- an Award.

A Determination is decision by the Credit Ombudsman about:

- the merits of the complaint; and
- an appropriate resolution to the complaint.

An Award is a Determination that binds the Member to the Credit Ombudsman's proposed resolution of the complaint if the Complainant has accepted the Determination and

- the Member has failed to accept the Determination; or
- the Member having accepted the Determination, has failed to comply fully with it.

Procedural fairness

COSL's procedures are designed to give the parties a reasonable opportunity to present their case before any Determination or Award is made by COSL.

This means that:

- each party is kept informed of the matters considered by the Credit Ombudsman;
- each party is allowed a reasonable time to respond to those matters; and
- the Credit Ombudsman discloses to each party the substance of information relied upon by the Credit Ombudsman in making any Determination and gives the Complainant and the Member the opportunity to respond to that information.

COSL's complaint resolution

When it deals with a complaint, COSL actively seeks relevant information from the parties.

COSL expects the parties to act in good faith in presenting all relevant information.

Each party is required to present all relevant information to COSL - even if that information is not, or the party believes or suspects that it is not, favourable to their case. The parties are required to comply with all reasonable requests from COSL to provide information.

Communicating with Members & Complainants

COSL communicates with the parties by telephone, e-mail, fax, letter or, occasionally, by face-to-face meeting. If COSL thinks it's appropriate, any communication by face-to-face meeting or by telephone is confirmed to the parties by e-mail, fax or letter.

Evidence that COSL considers

COSL is not bound by any legal rules of evidence. COSL aims to resolve a complaint with as little formality and technicality as possible whilst still achieving procedural fairness to all parties.

The procedures followed by COSL are not the same as those of a Court. Although COSL may decide to hold a hearing, COSL does not have the power to take any evidence on oath nor to cross-examine any of the parties. Therefore, in practice, COSL deals with information rather than formal evidence which is given by the parties.

COSL is entitled to draw inferences and conclusions based on information supplied by the parties. Information supplied is assessed on the balance of probabilities.

If a party presents a Statutory Declaration or other document purporting to be sworn testimony, COSL may give some additional weight to the matters set out in that document. However COSL will be cautious of that kind of information because it is not in a position to impose any penalty on the party if it provides a false Statutory Declaration and of course COSL cannot test information provided by examining the party under oath.

Principles & policies

The principles and policies COSL applies in considering complaints are fully discussed in COSL's **Guidelines to the Credit Ombudsman Service Limited Rules** (COSL Guidelines) published on the COSL web site at: www.cosl.com.au.

A copy of these Guidelines can be obtained from COSL on request.

Identifying a COSL complaint

Rule 28 of the COSL Rules provides:

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"COSL will deal with a complaint if, in relation to Member Services, the Member:

- (a) breached relevant laws (or duties imposed by law) or did not give effect to a right provided by law to the Complainant in relation to the subject matter of the complaint;
- (b) breached an applicable code of practice;
- (c) not met standards of good practice in the finance industry; or
- (d) acted unfairly towards the Complainant."

COSL can only consider a complaint against someone:

- who was a Member at the time of the conduct complained about;
- who is a Member at the time the complaint is lodged with COSL; and
- whose conduct has brought them within the scope of COSL Rule 28.



Note:

See section 8 of the COSL Guidelines about identifying the proper respondent to a complaint.

Non COSL complaint

If at any point during the COSL process COSL decides that it can't deal with a complaint because it is outside of COSL's jurisdiction, COSL:

- writes and informs the Complainant of its decision, and provides reasons why; and
- if the Complainant has not already tried to resolve the complaint directly with the Member, provides the Complainant with contact details of the Member's complaints handling person (with an address if provided by the Member) so the Complainant can pursue their complaint directly with the Member concerned; and
- provides the Complainant with contact details for other external dispute resolution schemes, government departments, or other organisations that may be able to assist.

If a complaint relates to a person or organisation who is not a Member of COSL, COSL writes to the Complainant and:

- informs the Complainant that the person or organisation is not a Member of COSL; and
- provides contact details for other external dispute resolution schemes that may be able to assist the Complainant, eg., if the organisation complained about is a member of the Banking and Financial Services Ombudsman ("BFSO"), the Complainant will be given the BFSO's contact details; and
- provides the contact details of any other relevant organisation that may be able to assist the Complainant in relation to their complaint, such as the relevant Office of Fair Trading, Financial Counselling Service or Consumer Credit Legal Service.

**Note:**

For more information on complaints COSL will not deal with, see section 6 of the COSL Guidelines.

Resolutions available

A Complainant may seek monetary compensation from the Member for an amount up to a maximum of \$250,000 for any loss suffered as a result of the Member's conduct. The loss may be a direct loss or an indirect or non-financial loss.

A Complainant who has suffered a loss of more than \$250,000 can still bring their complaint to COSL if the Complainant is prepared to limit their claim to \$250,000 and abandon the excess claim.

Alternatively, or in addition to claiming monetary compensation, the Complainant may ask COSL to order the Member to do or refrain from doing some act in relation to the complaint.

If the Complainant is not seeking compensation or an order, COSL cannot deal with the complaint.

Offensive and defamatory information

If at any stage of a complaint COSL considers that any information submitted by any party is offensive to, or contains a defamatory imputation of, any other person (including COSL), COSL may refuse to receive that information or to convey that information to any other person. COSL may require the information to be amended by having all offensive or defamatory material removed before accepting or considering it.

If the party concerned does not resubmit the amended information with all offensive and defamatory material removed within 7 days of COSL notifying the party that COSL requires it to do so, COSL:

- in the case of information submitted by the Complainant, regards the complaint as withdrawn and notifies the parties of this outcome; and
- in the case of a Member or any other party, proceeds to deal with the complaint without regard to the information.

Special words and phrases

Some words and phrases in this Procedures Handbook have special meanings. Words and phrases having special meanings are defined in the COSL Rules.

Inconsistencies

If there is any inconsistency between this Complaint Procedure Handbook and the COSL Rules, then the COSL Rules override the Complaint Procedure Handbook.

Extensions of time

The COSL Rules stipulate a number of time periods within which parties have to respond to COSL.

Under Rule 122, COSL can grant a party an extension of time to comply with a COSL requirement.



Note:

See COSL Rule 122 and section 11 of the COSL Guidelines about extensions of time.

COSL procedures

COSL procedures fall broadly into 3 phases:

[Initial Referral Phase](#)
[Investigation & Conciliation](#)
[Determination Phase](#)

Each of these phases in the COSL process is discussed in the following pages.

Initial Referral Phase

The section includes:

[Telephone complaints](#)
[Written complaints](#)

Telephone complaints

When COSL receives a complaint by phone, COSL carries out a preliminary assessment of the complaint:

- COSL checks to see if the complaint is within COSL jurisdiction
- if COSL decides that the complaint is not within COSL jurisdiction, COSL informs the Complainant that this is the case, and why
- if the complaint is within COSL jurisdiction, COSL checks to see if the Complainant has tried to resolve the complaint directly with the Member
- if the Complainant hasn't, COSL invites the Complainant to try to resolve the complaint directly with the Member
- if the Complainant has tried to resolve the complaint directly with the Member and is not satisfied with the outcome, COSL invites the Complainant to send COSL their complaint in writing.



Note:

See section 1.5 of the COSL Guidelines about COSL's policies on waiving this requirement or deeming it satisfied

Written complaints

The section includes:

[Acknowledging receipt of the complaint](#)
[Preliminary Requirements](#)
[Sending the complaint to the Member](#)
[Checking the Member's response](#)
[Sending the Member's response to the complainant](#)
[What COSL does when it receives the Complainant's reply](#)
[New ground of complaint raised in Complainant's reply](#)

Acknowledging the complaint

When COSL receives a written complaint, COSL:

- sends the Complainant:
 - an acknowledgment of receipt of the complaint; and
 - a copy of this Complaint Procedure Handbook
- informs the Complainant that COSL will proceed to check the complaint for compliance with COSL's preliminary requirements
- asks the Complainant about complaints they have made to other EDR schemes (such as Banking and Financial Services Ombudsman) concerning the same subject matter as the complaint they want to lodge with COSL
- asks the Complainant to give COSL copies of all the documents they have given to other EDR schemes that they have made a complaint to about the same subject matter as the complaint they want to lodge with COSL
- asks the Complainant to sign a consent to:
 - disclose information and documents to other parties; and
 - obtain information and documents about the complaint from other EDR Schemes;and to return the signed consent to COSL as soon as possible.

Preliminary requirements

After COSL has received from the Complainant:

- all signed consents required; and
- copies of all documents given to other EDR schemes that the Complainant has made a complaint to about the same subject matter as the complaint they want to lodge with COSL;

COSL then checks to see if the complaint is within COSL jurisdiction. If the complaint was initially made by telephone, further information in the written complaint may show it isn't within COSL jurisdiction.

If COSL thinks that:

- it is appropriate; and
- it can do so without compromising COSL's impartiality,

COSL may assist the Complainant in framing the complaint to:

- remove irrelevant matters; and
- ensure the complaint is "comprehensive", ie. it includes all relevant issues in the one complaint

COSL also sends the Complainant a copy of or extract from any policy COSL has on the type of complaint received.

If COSL decides that the complaint isn't within COSL's jurisdiction, COSL informs the Complainant that this is the case, and why.

If the complaint is within COSL's jurisdiction, COSL checks to see if the Complainant has tried to resolve the complaint directly with the Member concerned. If the Complainant previously made a telephone complaint to COSL about the same matter and COSL was satisfied the Complainant had tried to resolve the complaint directly with the Member, COSL skips this step.

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If the Complainant hasn't tried to resolve the complaint directly with the Member, COSL invites the Complainant to try to resolve their complaint directly with the Member.

If COSL is satisfied that:

- the Complainant has tried to resolve the complaint directly with the Member; or
- in the special circumstances of the case, this requirement should be waived or deemed satisfied;

COSL sends a copy of the complaint to the Member for a response.



Note:

See section 1.5 of the COSL Guidelines about COSL's policy on waiving this requirement or deeming it satisfied.

Sending the complaint to the Member

COSL sends the Member:

- a copy of the complaint (as modified by COSL, if this has occurred);
- copies of all documents as received from the Complainant accompanying the complaint;
- a copy of this Complaint Procedure Handbook; and
- if COSL has a policy on the type of complaint received, a copy of or extract from that policy

At the same time, COSL sends a confirmatory letter to the Complainant.

The Member has to give COSL a response to the complaint within 21 days of receiving it.

The Member's response must be a substantive response, that is. it must:

- clearly state the Member's position in relation to the complaint;
- address all issues raised by the Complainant;
- provide all relevant and accurate information; and
- provide copies of all relevant documents.

The Member can ask COSL for an extension of time to respond to the complaint but must do this within 21 days of receiving it.



Note:

See COSL Rule 122 and section 11 of the COSL Guidelines about extensions of time.

Checking the Member's response

The Member's response is checked to see if the complaint is still within COSL jurisdiction (further information received from the Member may show it isn't).

If COSL decides that it isn't within its jurisdiction, COSL informs the Complainant and the Member that this is the case, and why.

Sending the Member's response to the Complainant

If after examining the Member's response COSL decides that the complaint is still within COSL jurisdiction, COSL sends the Complainant:

- a copy of the Member's response;
- copies of all documents as received from the Member; and
- if COSL has not already done so, a copy of or extract from any policy COSL has on the type of complaint received.

At the same time, COSL sends a confirmatory letter to the Member.

The Complainant has to give COSL a reply to the Member's response within 21 days of receiving it.



Note:

See COSL Rule 122 and section 11 of the COSL Guidelines about extensions of time.

What COSL does when it receives the Complainant's reply

When it receives the Complainant's reply, COSL re-checks jurisdiction. If COSL decides that the complaint isn't within COSL's jurisdiction, COSL informs the Complainant and the Member that this is the case, and why.

If it appears from the Complainant's reply that the complaint has been resolved, COSL asks the Complainant to confirm that the Complainant considers the matter to be resolved.

If the complaint is still within COSL jurisdiction and it appears from the Complainant's reply that the complaint has not been resolved, COSL commences the Conciliation and Investigation Phase of the COSL process.

New ground of complaint raised

If the Complainant's reply raises a ground of complaint not raised in the Complainant's original complaint COSL may at its discretion allow this new ground to be included in the complaint.



Note:

See COSL Rules 29 and 30 and section 5.3 of the COSL Guidelines about new grounds of complaint.

Investigation & Conciliation

The section includes:

[Investigation](#)
[Conciliation](#)

Investigation

Once COSL decides that:

- the complaint has not been resolved during the Initial Referral Phase of the COSL process; and
- the complaint is still within COSL's jurisdiction,

COSL sends to each party a Case Summary.

A Case Summary comprises:

- a summary of jurisdictional issues;
- a summary of how COSL sees each party's case;
- a summary of the strengths and weaknesses of each party's case;
- a list of key issues in the complaint;
- a list of any further documents required by COSL;
- a list of targeted questions, ie. questions addressing specific issues and documents.

Each party has 21 days to respond to COSL.

Investigative process

COSL conducts whatever level and scope of investigation as it thinks is appropriate having regard to the subject matter of the complaint.

In cases COSL regards as complex, it conducts a rigorous investigative process.



Note:

See section 2.3 of the COSL Guidelines for an example of COSL's investigative process in a complex case.

Conciliation

Once COSL has received the parties' responses to the Case Summary, COSL sends the parties a Case Assessment. The Case Assessment comprises:

- COSL's preliminary findings on the complaint; and

- COSL's recommendations to the parties about resolving the complaint.

COSL invites each party to make a submission to COSL on the Case Assessment including the remedy, if any, proposed by COSL in its Case Assessment.

Each party has 21 days to respond to the Case Assessment.

New ground of complaint raised

If the Complainant's response to the Case Assessment raises a ground of complaint not raised in the Complainant's original complaint COSL will only in exceptional circumstances consider allowing this new ground to be included in the complaint.



Note:

See COSL Rules 29 and 30 and section 5.3 of the COSL Guidelines about new grounds of complaint.

Responses to the Case Assessment

When it receives the parties' responses, COSL re-checks jurisdiction. If COSL decides that the complaint isn't within COSL's jurisdiction, COSL informs the parties that this is the case, and why.

If it appears from the parties' replies that the complaint has been resolved, COSL asks the Complainant to confirm that the Complainant considers the matter to be resolved.

If the complaint is still within COSL jurisdiction and it appears from the Complainant's reply that the complaint has not been resolved, the complaint is referred to the Credit Ombudsman and the Determination Phase of the COSL process commences.

Determination Phase

Once the Credit Ombudsman decides that:

- the complaint has not been resolved during the Conciliation and Investigation Phase of the COSL process; and
- the complaint is still within COSL's jurisdiction,

the Credit Ombudsman sends to each party its Determination of the complaint - ie. the Credit Ombudsman's decision about the merits of the complaint and how it is proposed to resolve it.

The Credit Ombudsman also sends to the Complainant a Deed of Release. A Deed of Release is a document having the effect of releasing each of the parties to it from any further liability one has to the other in respect of the matters covered in the document.

If the Complainant wants:

- to accept the Determination; and

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- to bind the Member to that Determination;

the Complainant must within 28 days:

- sign an acceptance of the Determination;
- sign the Deed of Release; and
- give both signed documents to COSL.

If the Complainant does not give both signed documents to COSL within that period of 28 days:

- the Member is not obliged to sign an acceptance of the Determination;
- the Member cannot be required to comply with the Determination; and
- COSL will declare the complaint closed.

If COSL receives both signed documents within the period of 28 days:

- the Member must within 28 days sign an acceptance of the Determination and give that signed acceptance to COSL; and
- the Member may choose to sign the Deed of Release and give that signed document to COSL.

Once the Member signs the acceptance of the Determination, the Member is bound by it.

If the Member:

- does not give COSL a signed acceptance of the Determination within 28 days; or
- if, having signed an acceptance of the Determination, the Member fails to comply fully with it, the Credit Ombudsman may make a binding Award against the Member in terms of the Determination.

If the Credit Ombudsman makes an Award, a copy of it is given to each party to the complaint.