

The Guidance to the Standards on Complaints



ENFORCEMENT
CONDUCT
BOARD

The Guidance to the Standards on Complaints

Introduction

1. Compliance with the Enforcement Conduct Board's Professional Values and Standards of Practice for Enforcement Firms ("the Standards") is mandatory. This Guidance provides further details on how enforcement firms can comply with the Complaints section of the Standards ("the Complaints Standards"). Paragraphs from the Complaints Standards are set out in italics below, followed by guidance to assist firms to comply with these paragraphs.
2. If there is a concern in relation to non-compliance with the Complaints Standards, the Enforcement Conduct Board ("ECB") will take into account whether the enforcement firm has sought to follow this Guidance.

What is a complaint?

3. It is important in any complaint handling process to have clarity about the definition of a complaint.

A complaint is:

An expression of dissatisfaction, however put, that requires a response. It will be about the negative impact of the standard of service, actions or inaction provided by the enforcement firm, its own staff, or its contractors.

4. A complainant should not need to use the word 'complaint' for it to be treated as one.

What isn't a complaint?

5. Enforcement firms may receive contact either in writing or by telephone that appears to be a complaint. However, there is a distinction between everyday requests for action to be taken or pointing out that something has gone wrong and the point at which someone is dissatisfied and wishes to complain.
6. **Everyday conversations:** these are issues, queries or concerns that are raised and dealt with quickly and resolved before the complainant becomes dissatisfied and wants to make a complaint.
7. **A service request:** a request that the enforcement firm takes action, fixes a problem, reconsiders a decision or provides a service. Crucially a service request is a request for action to be taken, it is not a complaint about the action that has been taken or a complaint about the failure to take action. Like everyday conversations these should be raised and resolved quickly before the person affected by enforcement action becomes dissatisfied.

8. By way of example, if a person is, on reflection, unhappy with the payment plan that has been agreed and they contact the enforcement firm and ask it to amend the plan - that would be a service request. It is a request for action to be taken.
9. If, having reviewed matters, the enforcement firm is unable to amend the plan to the extent that the person wants, that person may then be dissatisfied and submit a complaint about the enforcement firm's consideration of matters.
10. **Feedback:** is an opinion given, whether requested or not, that does not require a response.
11. Correspondence may be received that covers both service requests and a complaint. Where possible, one response should be sent to the complainant covering both matters. Decisions about whether to treat the correspondence as a service request or a complaint should be based on:
 - a) The balance in the correspondence between the service request and the complaint;
 - b) The significance to the individual of the service request and the complaint; and
 - c) Whether the individual asks for the correspondence to be treated as a service request or a complaint.

Welcoming complaints

FS7 An enforcement firm openly welcomes complaints.

An enforcement firm must:

FS7.1 Publish its complaint handling policy, which must:

FS7.1.1 Set out its complaint handling process;

FS7.1.2 Promote the use of it.

12. Complaints should be seen as a valuable source of feedback and insight into how it and / or its enforcement agents are performing.
13. A firm's complaint handling policy should include:
 - a) The ways an individual can make a complaint;
 - b) The timeframes for responding to complaints;
 - c) How the complaint will be considered at each stage of the complaints process.
14. The complaint handling policy should be clear and easily accessible from the firm's website.

15. It should clarify that:

- a) Complaints are welcome and will be taken seriously.
- b) Where possible, complaints will be:
 - i) Resolved at the earliest opportunity;
 - ii) Used as a tool to improve service going forward.

An enforcement firm must:

FS7.1 Publish its complaint handling policy, which must:

FS7.1.3 Reassure complainants about how they will be treated.

16. The complaint handling policy should include reassurances for complainants that:

- a) They will be listened to and treated fairly;
- b) Their complaint will be dealt with honestly and proportionately;
- c) The fact they have complained will not have a negative impact on their interaction with the enforcement firm and / or the relevant enforcement agent.

An enforcement firm must:

FS7.1 Publish its complaint handling policy, which must:

FS7.1.3 Set out the support that is available to make a complaint.

17. This should include:

- a) Information about the support that is available to assist an individual to complain, with relevant links;
- b) Links to the ECB's website.

An enforcement firm must:

FS7.1 Publish its complaint handling policy, which must:

FS7.1.5 Explain which types of complaints it can and cannot consider.

18. This provides clarity about the complaints process and is done to help minimise complaints that fall outside the remit of the complaints process being referred to the enforcement firm. This should include information about:

- a) The types of complaints that fall within the remit of the complaints policy; and
- b) The types of complaints that do not fall within the remit of the complaints policy.

An enforcement firm must:

FS7.1 Publish its complaint handling policy, which must:

FS7.1.6 Set out how it uses complaints to make improvements to its service.

19. This should include:

- a) Maintaining accurate records on complaints and complaint outcomes that can be reviewed and audited;
- b) Reviewing complaint outcomes to identify trends or issues and areas for improvement;
- c) Sharing relevant learning with staff and contractors to ensure that improvements are embedded;
- d) Processes for monitoring compliance with the improvements that have been identified.

An enforcement firm must:

FS7.2 Provide clear and accessible information on how an individual can make a complaint in any correspondence with a person subject to enforcement.

20. As a minimum this should include that:

- a) There is a complaints process; and
- b) Where to locate information about it (e.g. a link to a website and a telephone number).

21. To enable clear and accessible information about the complaints process to be provided, all staff and contractors should be made aware of the complaints process and the role they are expected to play within it.

22. Any changes to the complaints process should be communicated to staff and contractors, as and when those arise. This should include, making staff and contractors aware of:

- a) The content of the complaint process;
- b) Any changes to the complaint process;
- c) Where the complaint process can be located, so that this can be shared with the complainant on request;
- d) Their role in the complaint process, including the action they should take if someone is dissatisfied with the service or lack of service they have received.

An enforcement firm must:

FS7.3 Have appropriate resources in place to enable it to investigate the number of complaints it anticipates it could receive.

23. This should include:

- a) Having a complaints function that has been resourced to respond to the number of reasonably anticipated complaints within the relevant timescales and, to the extent that this is possible depending on the size of the business, has a degree of separation from the enforcement process itself;
- b) Providing staff who consider complaints with the training and resources they need to provide an early resolution to complaints;
- c) Providing training to staff who consider complaints on effective complaint handling.

Clear and accessible complaints process

FS8 An enforcement firm has a clear and accessible complaints process.

An enforcement firm must:

FS8.1 Put in place a complaints process which is clear and simple, with no more than two stages. The complaints process will comprise:

FS8.1.1 Where appropriate, an informal stage, in which the enforcement firm attempts to resolve the complaint informally with the complainant within 5 working days.

24. The 5 working day timeframe starts from the date the complaint is acknowledged.

FS8.1.2 If the enforcement firm cannot resolve the complaint informally, a formal stage, which should be concluded within 20 working days (unless, due to exceptional circumstances, a longer period is required to investigate it appropriately).

25. The 20 working day timeframe starts, as appropriate, from either:

- a) The date the case is passed by the firm from the informal to the formal stage; or
- b) The acknowledgement of the formal complaint received from the complainant.

FS8.2 Ensure the complainant is updated when it is clear that the relevant timeframes at FS8.1 cannot be met, and arrangements are put in place for the complainant to be provided with regular and meaningful updates.

26. If, due to exceptional circumstances, the 20 working day timeframe cannot be met, the delay must be managed appropriately.

- a) The complainant should be updated on progress as soon as the firm is aware that the complaint will not be resolved within the 20 working day timeframe;
- b) Regular and meaningful updates should then be provided until the decision is issued;
- c) The firm should notify the complainant of their right to complain to the ECB when the complaint reaches 20 working days.

An enforcement firm must:

FS8.3 Accept complaints over the telephone, in writing or via any other communication channel actively used by the enforcement firm.

27. That means complaints can be made via:

- a) The telephone;
- b) Email;
- c) Letter;
- d) Any other communication channel actively used by the enforcement firm, including in person during an enforcement visit, text message, WhatsApp etc.

The key is that complainants should be able to access the complaints process in a way that is simple and meets their needs.

An enforcement firm must:

FS8.4 Where appropriate, signpost the complainant to the support that is available to assist them in making a complaint.

28. This should include:

- a) Providing information on the support that is available to the person affected where they request assistance or where it is clear they will need support to navigate the complaints process;
- b) Making staff and contractors aware of the support that is available so that they can share this with the complainant, where appropriate;
- c) Accepting complaints from and communicating with representatives of the complainant and have a process in place to enable that to happen in a straightforward way that complies with GDPR.

An enforcement firm must:

FS8.5 Provide reasonable adjustments to the complaints process to ensure it is accessible to the complainant, taking into account any particular needs or circumstances.

29. To help with this process enforcement firms should keep in mind the duties placed on them by the Equality Act 2010, the Welsh Language Act 1993 and any other relevant legislation, an individual's circumstances and vulnerabilities and consider any requests for reasonable adjustments sympathetically and on a case-by-case basis.

30. This could include adjustments:

- a) To the way complaints are received;
- b) To contact arrangements with the complainant;
- c) To the resolution and investigation process;
- d) To the way the decision is provided.

An enforcement firm must:

FS8.6 Provide responses to complaints which are clear and accessible.

31. Responses must:

- a) Be written in language that is easy to understand and appropriate for the complainant;
- b) Where possible, reflect the language used by the complainant as this shows that you have listened to them and understand their point of view;
- c) Avoid, as far as possible, using legal jargon;
- d) Where references are made to relevant legislation, explain the relevance of that legislation in a way that is easy to understand.

Dealing with complaints properly

FS9 An enforcement firm deals with complaints properly.

Acknowledging the complaint

An enforcement firm must:

FS9.1 Promptly acknowledge a complaint and provide information about how it will be handled.

32. We would usually expect an enforcement firm to acknowledge a complaint within 2 working days of receiving it. The acknowledgement should:

- a) Where possible, set out who will consider and respond to the complaint and their contact details;
- b) Ask the complainant to confirm whether they have submitted all the evidence they have in support of their complaint;
- c) Where possible, set out how they intend to manage any reasonable adjustments that have been requested;
- d) Where possible, let the complainant know about any aspects of their concerns they cannot consider. If known, it should provide to the complainant information about how to escalate those concerns. If not known, provide the contact details for relevant advice organisations. E.G we would expect the firm to provide the complainant with details about how to access the creditor's complaints process;
- e) Provide a clear timeframe within which the complainant will receive a response.

33. If it is not clear from the information received, the acknowledgement should ask the complainant how they would like the firm to communicate with them and whether they have any communication requirements.

Confirming the complaint

An enforcement firm must:

FS9.2 Inform the complainant, as soon as possible, if it cannot investigate their complaint, or any aspects of it.

34. It is better to confirm the complaint and the outcome being sought with the complainant, where that is possible. That is because the real basis for the complaint is often not clear until it has been discussed. As a minimum, the enforcement firm must try to confirm the complaint with the complainant where:
- a) The complaint is unclear;
 - b) There is not sufficient information within the complaint to determine the event or course of events they are complaining about;
 - c) The investigation of the complaint has identified some poor service on the part of the enforcement firm, but the impact of that poor service and / or the outcome sought is not clear.
35. It is better to notify the complainant at the outset if there are any aspects of the complaint that the enforcement firm is unable to consider. That way the complainant can direct their complaint to the correct body as soon as possible. For example, complaints about the actions of the creditor. The enforcement firm should let the complainant know at the outset if there are any aspects of the complaint that it cannot consider. If known, it should provide to the complainant information about how to escalate those concerns. If not known provide the contact details for relevant advice organisations. As above, we would expect the firm to signpost the complainant to the creditor's complaints process.

The informal resolution of the complaint

An enforcement firm must:

FS8.1 Put in place a complaints process which is clear and simple, with no more than two stages.

The complaints process will comprise:

FS8.1.1 Where appropriate, an informal stage, in which the enforcement firm attempts to resolve the complaint informally with the complainant within 5 working days.

36. The informal resolution stage provides an opportunity for a light touch complaint investigation and decision. Typically, cases that can be resolved at informal resolution stage will be ones where the complaint:
- a) Is clear;
 - b) Is not complex;
 - c) Does not cover multiple, overlapping issues.

37. Complaints that are unlikely to be resolved informally are those where, one or more of the following features apply:
- a) The complaint raises multiple issues of complaint;
 - b) The complaint raises complex issues that need to be looked into in depth and will require more than 5 working days to unpick;
 - c) There has been a complete breakdown in the relationship between the enforcement firm and the complainant.
38. Decisions to pass a complaint straight to the formal stage should be made by someone who is suitably experienced.
39. The informal resolution stage is usually more successful if it is conducted by telephone, but it is not a requirement to do so and will depend on the complainant's preferred method of communication and the nature of the complaint.
40. At informal resolution stage firms should consider the relevant evidence to decide whether something has gone wrong that needs to be put right. Like the formal investigation stage this may include, as relevant:
- a) Reviewing the body worn video footage;
 - b) Reviewing any other recorded communications including, call recordings, case notes, letters and text messages;
 - c) Comparing the action taken against the ECB's standards, this Guidance, the firm's own policies and relevant legislation and deciding whether something has gone wrong that needs to be remedied.
41. Regardless of the method taken to complete the informal resolution stage, unless there is a compelling reason not to do so, the firm should provide a written summary setting out its conclusion to the complainant and / or their representative, this will include, as appropriate:
- a) The complaint;
 - b) The action that has been agreed to resolve the complaint and a timeline for when that will be completed;
 - c) The explanation provided for the events that led to the complaint;
 - d) The next stage in the complaints process.

The formal investigation of the complaint

An enforcement firm must:

FS9.3 Where informal resolution has not been successful, ensure that the formal investigation of the complaint is undertaken by a member of staff who is suitably independent.

42. This means that a member of staff who was not involved in the events that led to the complaint undertakes the investigation of it, where feasible that should be someone who is senior to and / or suitably independent from the person being complained about.

An enforcement firm must:

FS9.4 Conduct a fair and proportionate investigation into a complaint, reviewing all the relevant evidence to find out what happened.

43. Decisions about the information that is required will differ from case to case.

Evidence that is likely to be relevant includes:

- a) Body worn video footage of interactions with the complainant, (where that is relevant to the subject of the complaint);
- b) Any other recorded communications with the complainant including, call recordings, case notes, letters and text messages (where that is relevant to the subject of the complaint);
- c) The views of the person who is the subject of the complaint where it is not clear why they took the action they did and / or the investigation has highlighted concerns about their conduct.

An enforcement firm must:

FS9.5 Consider honestly and fairly whether something has gone wrong and inform the complainant of the outcome.

44. Firms should review the ECB's standards, this Guidance, the firm's own policies and any relevant legislation to identify what should have happened in the circumstances relevant to the complaint.

45. They should assess honestly and fairly all complaints against the ECB's standards, this Guidance, the firm's own policies and any relevant legislation to ascertain whether something has gone wrong.

46. Where something has gone wrong, the enforcement firm should acknowledge that and take action to put matters right.

47. Even if the enforcement firm has not made an error, it should also consider whether the application of the ECB's standards, policies and relevant legislation has resulted in an unfair outcome for the individual and whether action could be taken to put that right. Things to consider here would be:

- a) Whether the person subject to enforcement acted properly but, despite that, they have suffered an unfair outcome. This might happen, for example, in a case where an enforcement agent has visited, a fee has been applied, but the debt had been cleared prior to the visit without the enforcement firm being notified;
- b) Whether, unbeknown to the enforcement firm, the person subject to enforcement was unable to engage in the enforcement process because it was unaware of the adjustments the individual needed to enable them to do so. As a result, fees had been incurred.

48. Decisions about what action to take to remedy matters should be based on the impact the mistakes have had on the person affected.

49. Remedies could include:

- a) Apologising;
- b) Providing an explanation for the action that was undertaken or the way the process works;
- c) Providing a financial remedy for financial loss;
- d) Providing a financial remedy for non-financial loss (such as removing a fee or a consolatory payment);
- e) Putting a plan in place for future communication;
- f) Reconsidering a decision;
- g) Taking action to move matters forward if there has been a delay;
- h) Amending records where they contain an error;
- i) Changing policies, procedures or practices;
- j) Providing additional training.

50. The remedies to the complaint should be set out in the decision letter. Remedies, such as apologies should be provided in the decision letter and, if not, issued within 10 working days of the decision being issued. Remedies such as payments for financial loss and consolatory payments should be issued within 10 working days of the firm receiving the relevant payment method information.

51. Where remedies cannot be provided within 10 working days the decision letter should let the complainant know the timeframe for implementation and, where appropriate, when they will be next updated on matters.

The decision

52. Unless there is a reasonable adjustment in place specifying another form of communication, the enforcement firm should notify the complainant in writing of the outcome of their complaint.

53. The enforcement firm should provide a clear, honest and evidence-based explanation for its decision. The decision should reflect the views of the complainant, their individual circumstances and, where appropriate the views of the person who is the subject of the complaint. It should include:

- a) The complaint;
- b) Clarification about any matters that did not fall within the remit of the complaint investigation e.g the actions of the creditor;
- c) The action that has been taken to investigate the complaint;
- d) What happened (with reference to the relevant evidence);
- e) What should have happened (with reference to the ECB's standards, this Guidance, the firm's own policies and / or the relevant legislation);
- f) If the enforcement firm has acted appropriately, an explanation of why the enforcement firm is satisfied that this is the case;
- g) If there is a difference between what happened and what should have happened, an open and honest acknowledgement of that, with the firm taking responsibility where something has gone wrong;
- h) Where something has gone wrong, an acknowledgement of the impact of that on the person affected;
- i) Where something has gone wrong and there has been an impact on the person affected, an explanation of the action the enforcement firm is going to take to remedy that;
- j) Where appropriate, the action the enforcement firm is going to take to learn from the complaint and improve their service going forward.

An enforcement firm must:

FS9.6 Notify the complainant that they can escalate a complaint to the ECB.

54. Responses to complaints should clearly set out:

- a) How to access the next stage in the complaints process;
- b) Where relevant, any time limits on the escalation of complaints to the next stage;
- c) Once enforcement firms have completed their formal consideration of a complaint, details of how the complainant can contact the ECB. This should include:
 - i. A link to the ECB's website;
 - ii. The telephone number for the ECB's complaints team;
 - iii. The timeframes to put the complaint to the ECB;
 - iv. Where appropriate, clarification that putting a complaint to the ECB does not affect the complainant's right to further pursue their complaint to the relevant Ombudsmen once the ECB has completed their consideration of it;
 - v. Where the ECB is not the only second tier complaint handler, details of alternative organisations which the complainant can contact, such as the Local Government and Social Care Ombudsman, and the Public Sector Ombudsman for Wales and, where it is required under their contractual obligations the creditor.

Culture of continuous improvement

FS10 An enforcement firm has a culture of continuous improvement.

An enforcement firm must:

FS10.1 Maintain a record of complaints and complaint outcomes which can, on request, be analysed and audited.

FS10.2 Ensure that a suitably experienced person within the enforcement firm is responsible for reviewing complaints and ensuring that improvements are made as a result.

55. Enforcement firms must have appropriate governance arrangements in place so that a suitable senior leader is responsible for ensuring that the learning from complaints is embedded and reported on. As a minimum, this should include having a senior leader who is responsible for:

- a) Reporting on complaint numbers, outcomes and themes;
- b) Reporting on the improvements that have been made as a result of complaints;
- c) Reporting on compliance with the improvements that have been identified.

An enforcement firm must:

FS10.3 Provide support to the enforcement agent or anyone who works for the firm who is the subject of a complaint.

56. Support should be provided so that the person who is the subject of the complaint feels able to provide an honest account of their actions in a non-defensive way. This should include:

- a) Letting them know that a complaint has been made against them;
- b) Letting them know how the complaint will be considered;
- c) Letting them know how they can feed into that process if they want to;
- d) Emphasising that the role of the complaints process is not to apportion blame but to provide a resolution to the complaint and identify any wider learning for the firm.

57. Where it is not clear why the staff member or contractor took the action they did, and / or where the complaint handler has concerns about the conduct of the staff member or contractor, they must be offered the opportunity to:

- a) Clarify the action they took;
- b) Explain why they considered that to be appropriate;
- c) Where appropriate, reflect on whether they might do anything differently now and the reasons for that.