

Information sheet about oral hearings

The TPO process is designed to begin and end with the Ombudsman. It is not usually necessary for the Ombudsman to hold a hearing unless he considers that:

The documentary evidence or written submissions are so unclear that the disputed facts cannot be resolved without the need for oral evidence, or

The dispute raised issues of credibility of one of the parties. However, if there is an allegation of dishonesty on a material fact and upon which the case turns, it will be considered whether the allegation can be considered fairly without oral evidence. If not, the Ombudsman may decide that the matter is more suitable for the courts.

Each case is initially reviewed by a Case Officer who prepares a case review for the Ombudsman and from which the proposed decision is made. Case Officers do not hold oral hearings. As part of the TPO process either party is able to make representations regarding the Ombudsman's proposed decision and make representations. The Ombudsman will consider all the evidence and arguments submitted. It is at this stage that the possibility of a hearing can be considered, though in the many of cases both parties are happy for the Ombudsman to proceed to his final decision without the need for a hearing.

Requesting an oral hearing

If you are considering asking the Ombudsman to hold an oral hearing, please read this leaflet thoroughly as it explains what a hearing does and does not involve. It is suggested that in the majority of cases, the appropriate time to ask for an oral hearing is on receipt of the Ombudsman's proposed decision. You will need to:

Put your request in writing, setting out the issues you wish to raise, so that the Ombudsman can consider whether they are material to his final decision.

Understand that any hearing will be held in public. If you feel that the hearing should be in private, you must give your reasons.

The Ombudsman will consider your request. He is not bound to grant a hearing. He will decide whether or not to grant a hearing and whether it should be held in private or public. He will write to you with his reasons.

Hearings in general

The Ombudsman's Terms of Reference require that complaints are resolved impartially, fairly, quickly and informally. The TPO procedures are quite different from the courts. Hearings are informal. The Ombudsman is unable to take evidence under oath and witnesses cannot be cross examined.

Any hearing must assist the Ombudsman in establishing and clarifying any issues in connection with deciding the outcome of the case, that cannot be determined from the documentary evidence. The Ombudsman will restrict the evidence and arguments to the points that are material to his final decision.

Any complaint regarding the processes and procedures of the TPO should not form part

of the hearing (there is a separate procedure for dealing with any complaint about the way in which the Ombudsman has applied his Terms of Reference).

Unless indicated to you, the hearing will be held in public. This means that although the hearing will not be publicised, members of the public or press may attend.

Legal representation

The hearing will be informal and will form part of the Ombudsman's investigation. It is not necessary for either party to be legally represented. However, if the agent indicates that he will have legal representation, the complainant will be informed and given the opportunity to be legally represented. If that is the case, the agent will be invited to meet the reasonable legal costs of the complainant in this regard to ensure balance. If that cannot be agreed and the complainant cannot afford legal representation, the Ombudsman, whilst remaining impartial, must ensure that the unrepresented party is not disadvantaged at the hearing.

Before the hearing

The parties will be asked to provide:

A list of anyone who will be taking part on their behalf.
How long they believe it will take to present their evidence and arguments.
The dates when they and any witnesses cannot attend.

The Ombudsman will decide on the timescale needed for the hearing.

The parties will then receive confirmation of the date of the hearing and its location.
The parties will be asked to provide a summary of the evidence they intend to call and any points they intend to make at the hearing.
The parties will be asked to provide a list of any questions they wish the Ombudsman to put to the other side at the hearing.

At the hearing

As already mentioned the hearing will be informal. Introductions will be made. The hearing will be recorded but not transcribed. A copy of the recording will be made available to the parties if so requested.

The parties should know that they must not interrupt each other and will have the opportunity to put questions through the Ombudsman.

Each side will be given the opportunity to state their evidence. After each person has spoken, the Ombudsman will raise any questions he may have, or any questions that have been raised by the other side that he considers are relevant.

The Ombudsman will then explore any further issues that he may consider are material, if any.

Each side will then be invited to make any final statements. A time limit may be set by the Ombudsman for each stage of the hearing.

Before the hearing closes, the parties will be informed of the next steps to be taken. This may include further investigations being made by the Ombudsman or one of his Case

Officers on his behalf, or reviewing the submissions and issuing his final decision in writing at a later date. The Ombudsman will not give his final decision at the hearing.

After the hearing

Once the Ombudsman has completed his review, he will send his final decision to both parties simultaneously.