



The Furniture Ombudsman Payment Protection Scheme

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Scope

The Furniture Ombudsman Payment Protection Scheme is a mechanism that was originally devised to protect consumers who have paid 100% in advance of a home improvement installation. The Furniture Ombudsman ("TFO") holds an amount of money in a Protected Account which can be drawn upon, if needed, to pay an award of compensation to a Consumer following a Legitimate Complaint being upheld in their favour.

Background – The Furniture Ombudsman

TFO, formally known as Qualitas, was established by the Office of Fair Trading ("OFT") and some sections of the furniture and home improvement industries in 1992. It is regulated independently by a Standards Board which is Chaired by the Assistant Director of Community Protection for Hertfordshire County Council and current Chair of the Association of Chief Trading Standards Officers. TFO is a corporate affiliate member of The Trading Standards Institute and an Associate of the British & Irish Ombudsman Association (BIOA). The European Commission officially recognises its Alternative Dispute Resolution Service which is administered by staff who are professionally qualified by the Chartered Institute of Arbitrators (CI Arb).

Overview - The Furniture Ombudsman Payment Protection Scheme

In the late 1990's the O contacted a number of home improvement companies regarding the use of standard terms and conditions in agreements which required full payment in advance of installation.

In its 2005 guidance document 'Guidance on unfair terms in home improvement contracts'¹ the OFT states its belief that to compel a consumer to pay in full in advance of an installation is potentially unfair in light of the Unfair Terms in Consumer Contracts Regulations 1999, although only a court could determine such a matter in an individual case.

To charge 100% up front may remove the consumer's right of 'set off'. The OFT say² "(...) [C]onsumers who have a claim arising out of the supply of goods and/or services, and have not already paid for them, are legally entitled to withhold part of the price, so long as the claim is genuine, and the amount withheld is proportionate to the fault. This avoids unnecessary legal proceedings – first one party going to court to force the other to pay a sum of money, and then the other going back to court to recover what he should not have had to pay in the first place."

¹ Available online www.offt.gov.uk/shared_offt/business_leaflets/unfair_contract_terms/oft737.pdf at p.11, 5.3

² At p.11, 5.4

The OFT had considered applying for an injunction to prevent a number of home improvement retailers from charging consumers 100% in advance of an installation. Before formal enforcement action commenced, discussions took place between the OFT, TFO³ and the retailers concerned during which a proposal was made to establish a Payment Protection Scheme.

The OFT's stated objective with the Scheme, was to ensure that potentially illegal terms were replaced with provisions that are consistent with the legitimate interests of both business and consumers. It was the intention that this occurred across the home improvement sector as a whole, (wherever similar terms were used) not just in any one particular company's agreements.

As a result The Furniture Ombudsman Payment Protection Scheme was established and endorsed by the OFT, subject to regular periodic reviews.

In practice therefore, any home improvement retailer that requests full payment in advance within the scope of this document, must deposit an adequate amount with TFO. This amount has been agreed to be 20% of the cumulative contract price for all cases that are in dispute with TFO.

The effect of the Payment Protection Scheme is to redress the balance of interests between the business and the consumer before completion of the works and reintroduces an approved 'set off' provision. During the first 10 years of its operation, the Payment Protection Scheme has acted as a powerful tool to protect thousands of consumers.

Advances to the Payment Protection Scheme 2011

It was the intention of both the OFT and TFO to revisit the Payment Protection Scheme from time to time to ensure that it adequately protects consumers and that it remains robust and fit for purpose. In order to expand its scope for protection, the remit of the Scheme also covers the eventualities that may occur if a Full Member fails to comply with an award made by TFO or if a Full Member has an order of bankruptcy made against it or enters administration, liquidation or otherwise ceases to trade in respect of all Legitimate Complaints.

The Rules Governing The Furniture Ombudsman Payment Protection Scheme

1. The Furniture Ombudsman Payment Protection Scheme is a mechanism to legitimately protect the interests of Consumers, including those who have paid⁴ a Participating Full Member of The Furniture Ombudsman 100% in advance of

³ Under its former name, Qualitas

⁴ For the avoidance of doubt, 'paid a Participating Full Member' shall be deemed to include any method of direct or indirect payment acceptable to the Member, including circumstances in which consumers have signed a binding credit agreement with a third party for 100% of the costs in advance of the work being performed and that third party will remit an agreed sum to the Member.

a Home Improvement Installation commencing/being satisfactorily completed.

2. These rules should be read in conjunction with the *Rules Governing the Operation of The Furniture Ombudsman Alternative Dispute Resolution Service*.⁵
3. Only Full Members of The Furniture Ombudsman are eligible to participate in the Payment Protection Scheme.
4. There is a requirement laid down by the Office of Fair Trading that where a Participating Full Member relies on a contract to request full payment in advance, it is their legal duty to properly advertise and make public their participation in the scheme to Consumers so that Consumers are fully aware of their rights under the Scheme at all relevant points in the transaction and installation.
5. In order to participate in the Payment Protection Scheme, the Full Member must deposit to a Protected Account an amount that is equal to, or that exceeds, 20% of the cumulative gross contract price of all Legitimate Complaints that are being administered by The Furniture Ombudsman. Payments to and from the Protected Account shall be conducted in a manner agreed from time to time between The Furniture Ombudsman and the Participating Full Member.
6. The Furniture Ombudsman will administer the Protected Account and provide to the Participating Full Member a monthly statement detailing the balance and any supplementary advice with regards to it (such as a request for further funds).
7. A separate Protected Account shall be administered for each Participating Full Member. Funds are not centralised or transferable from Protected Account to Protected Account. For example, if Protected Account A has a shortfall, Protected Account B cannot be used to supplement it.
8. In the event of a Legitimate Complaint being made and upheld by The Furniture Ombudsman either during Conciliation or Adjudication the Full Member shall pay any Financial Award directly to the Consumer and/or carry out any out any instructions for Specific Performance.
9. If the Full Member fails within a reasonable time to meet a Financial Award or fulfil an instruction for Specific Performance, The Furniture Ombudsman shall pay the Consumer directly out of the Payment Protection Scheme an amount

⁵ Available from The Furniture Ombudsman in hard copy or online

which is equal to the Financial Award and/or in lieu of the Specific Performance. For example, if The Furniture Ombudsman awards replacement parts and the replacement parts are not made available, a payment that is equal in value to those parts will be made to the Consumer so far as it is reasonable to do so.

10. In the event that a Participating Full Member has an order of bankruptcy made against them or enters administration, liquidation or otherwise ceases to trade, The Furniture Ombudsman shall use reasonable endeavours to make a decision on any outstanding Legitimate Complaints which have not been resolved, so far as it is practicable and reasonable to do so. Upon making a decision The Furniture Ombudsman will pay any Financial Award due to the Consumer from the Protected Account in recognition of the financial compensation due or in lieu of Specific Performance. If it is not reasonably practicable to make a decision The Furniture Ombudsman will not act further. In order to carry out the necessary case work and associated administration involved, The Furniture Ombudsman shall withhold from the Protected Account the usual fees (if unpaid) as laid down in the *Rules Governing the Operation of The Furniture Ombudsman Alternative Dispute Resolution Service*.
11. Where a Participating Full Member has an order of bankruptcy made against them or enters administration, liquidation or otherwise ceases to trade, The Furniture Ombudsman will use reasonable endeavours to contact Consumers who have had a Legitimate Complaint resolved within the previous 3 months to ascertain whether or not any Financial Award or award of Specific Performance has been met. If an award has not been met and there is no real prospect that it will be met, The Furniture Ombudsman shall pay the Consumer directly out of the Payment Protection Scheme an amount which is equal to the Financial Award and/or financially representative of the Specific Performance. For example, if The Furniture Ombudsman awards replacement parts and the replacement parts have not been made available, a payment that is equal in value to those parts will be made to the Consumer so far as it is reasonable to do so.
12. Where a Participating Full Member has an order of bankruptcy made against them or enters administration, liquidation or otherwise ceases to trade, The Furniture Ombudsman will hold open the Protected Account for a period of 6 months for the purpose of administering these rules. Upon the expiry of 6 months, the balance of the Protected Account shall be paid to any natural or legal person appointed to manage the affairs of the Participating Full Member. If The Furniture Ombudsman is unable to ascertain who it should properly pay any outstanding balance from the Protected Account to, it shall be paid into court.

13. Where a Participating Full Member has an order of bankruptcy made against them or enters administration, liquidation or otherwise ceases to trade and the Protected Account is not sufficient to meet all awards or case fees in full, The Furniture Ombudsman will use its best endeavours to distribute the existing balance in a way that is proportionate to all claims and will submit a claim to the appointed natural or legal person appointed to manage the affairs of the Participating Full Member for the shortfall. Any funds received against that claim will be distributed accordingly.
14. A Participating Member shall be entitled to resign themselves from the Payment Protection Scheme by providing 3 months notice in writing to The Furniture Ombudsman and removing from circulation all literature associated with their participation in it. Resignation from the Payment Protection Scheme does not constitute resignation as a Full Member of The Furniture Ombudsman.
15. Where a Participating Full Member resigns or otherwise ceases to be a Full Member of The Furniture Ombudsman, their participation in the Payment Protection Scheme shall also cease and they agree to withdraw all terms and practices related to payment in advance. The Furniture Ombudsman shall continue to administer their Protected Account for the purposes of these rules.
16. The Furniture Ombudsman shall make available to the Office of Fair Trading any information that is requested by them with regards to the operation and administration of the Scheme.
17. The Head of The Furniture Ombudsman in conjunction with The Furniture Ombudsman Standards Board shall decide any issues of ambiguity, should any issues arise during the application of these rules from time to time.

Definitions

For the purposes of these rules, the following definitions are applied.

Adjudication – the process of adjudication on a case by The Furniture Ombudsman which leads to a formal decision on a case.

Conciliation – the process of conciliation between a Consumer and a Participating Full Member which may lead to a settlement, decision and/or award by The Furniture Ombudsman.

Consumer – any natural person who purchases goods and services under a contract for purposes which are outside his trade, business or profession.⁶

⁶ The Unfair Terms in Consumer Contracts Regulations 1999, regulation 3(1).

Financial Award – an offer of financial compensation, for example a refund of monies paid.

Home Improvement Installation – the supply and fit of a fitted kitchen, fitted bathroom, fitted bedroom, fitted home office or other installation including conservatories.

Full Member – a current Full Member of The Furniture Ombudsman who is bound by The Furniture Ombudsman Rules of Full Membership.

Legitimate Complaint – a complaint which a Consumer has placed before The Furniture Ombudsman on a Consumer Application form about a Participating Full Member made during their membership which has been accepted as having some validity.

Participating Full Member – a current Full Member of The Furniture Ombudsman who is bound by The Furniture Ombudsman Rules of Full Membership and who participates in The Furniture Ombudsman Payment Protection Scheme and the obligations laid down in The Rules Governing The Furniture Ombudsman Payment Protection Scheme.

Protected Account – the designated individual account set up and administered by The Furniture Ombudsman for the purpose of holding and distributing funds under The Furniture Ombudsman Payment Protection Scheme.

Specific Performance – an instruction to action some form of non-financial remedy, for example a repair or replacement.

The Furniture Ombudsman

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