

Amendments to Operational Guidelines

Guidelines to paragraph 6 of the Terms of Reference are shown as tracked changes below.

Paragraph 6.1 - Lodging of Disputes

6.1 Lodging of Disputes

- a) A party to a Dispute may lodge the Dispute with FOS by referring the Dispute to FOS for resolution.
- b) FOS may assist Applicants with this process.
- c) A Financial Services Provider that lodges a Dispute with FOS must have obtained the Applicant's prior consent.

The guidelines to paragraph 6.1 address these issues:

- *How is a Dispute lodged?*
- *What is meant by "Registration" and the FSP's opportunity for internal dispute resolution?*
- *What assistance with lodgement does FOS provide?*

How a Dispute is lodged

A Dispute is treated as being "lodged" with FOS when it is first referred to FOS for resolution. A Dispute may be referred to FOS:

- by submitting an Online Registration Form or Dispute Form, available on the FOS website www.fos.org.au;
- in writing, using the Registration Form or Dispute Form that an Applicant can download from the FOS website, or by email, fax or letter; or
- in a case where assistance from FOS is needed, by telephone.

To help FOS to deal with a Dispute, the party lodging the Dispute should provide the following information at the time of lodgment or as soon as possible after lodgment:

- name and contact details of prospective Applicant;
- key issues;
- outcome sought;
- if available, FSP's name, relevant details of the Financial Service (for example a policy or account number); and
- the date of any complaint made to the FSP.

If an FSP wants to lodge a Dispute itself, it must first obtain the Applicant's written consent to lodgment and provide a copy of this to FOS at the time of lodgment.

“Registration” and FSP’s opportunity for internal dispute resolution

If an Applicant lodges a Dispute with FOS and:

- the Applicant has not previously asked the FSP to remedy the matter; or
- the Applicant has asked the FSP to remedy the matter but the period allowed for internal dispute resolution (IDR) has not expired~~45 days has not yet passed since the Applicant first contacted the FSP to make the request,~~

FOS ~~takes the approach that it~~ will give the FSP the opportunity to resolve the Dispute internally. This opportunity, the time periods allowed and FOS’s ability to extend or reduce these time periods are explained in paragraphs [6.3](#) and [6.4](#) and the guidelines to those paragraphs.

In these circumstances, FOS “registers” the Dispute and forwards the details to the FSP with a request that the FSP try to resolve the Dispute. The effect of registration is to suspend any FOS action on the Dispute until:

- the period allowed for IDR has expired~~45 days or the balance of 45 days allowed for the FSP to resolve the Dispute has passed~~; and
- the Applicant has contacted FOS to ask it to deal with the Dispute.

FOS will advise the Applicant that if:

- they remain unsatisfied after receiving the FSP’s ~~internal dispute resolution (IDR) response~~ “IDR Response” as defined in paragraph 14.1 (which is explained below in the guidelines to paragraph 6.2); or
- the period allowed for IDR has expired~~time allowed for the FSP to resolve the Dispute has passed~~ and no resolution has been reached,

they can contact FOS and ask it to deal with the Dispute and provided the Dispute is otherwise within FOS’s jurisdiction, FOS will deal with it.

Assistance from FOS

FOS explains the Dispute lodgment process on its website and in printed brochures that are available to anyone making a request. The FOS staff that handle telephone enquiries are trained to explain how Disputes can be lodged.

FOS prefers Applicants to lodge Disputes in writing but if the need arises, FOS can help Applicants who are only able to lodge by telephone.

Although FOS is impartial and does not act as an advocate for any party, FOS can provide help to Applicants to ensure the following:

- Applicants understand whether they are eligible to lodge a Dispute with FOS;
- Applicants understand what is meant by “lodgment”, “registration” and IDR;
- Applicants know what documents to provide to FOS to support their Application;
- the Dispute process flows smoothly and in a timely way; and
- parties are able to put their case to FOS.

FOS can also provide specific assistance with any part of the FOS process to Applicants with special requirements who may be disadvantaged if they do not receive that assistance. For example, FOS can arrange to register Disputes in languages other than English and arrange for them to be translated at no cost to the Applicant (see also the guidelines to paragraph [7.2](#)).

FOS can also refer disadvantaged Applicants to community legal centres, legal aid offices, financial counsellors or other services for assistance after they have lodged their Dispute.

Paragraph 6.2: Time limits

6.2 Time limits

a) Where a Dispute relates to a variation of a Credit Contract as a result of financial hardship, an unjust transaction or unconscionable interest and other charges under the National Credit Code, FOS will not consider the Dispute unless it is lodged with FOS before the later of the following time limits:

- (i) within two years of the date when the Credit Contract is rescinded, discharged or otherwise comes to an end; or
- (ii) where, prior to lodging the Dispute with FOS, the Applicant received an IDR Response in relation to the Dispute from the Financial Services Provider – within 2 years of the date of that IDR Response.

b) In all other situations, FOS will not consider a Dispute unless the Dispute is lodged with FOS before the earlier of the following time limits:

- a(i) within six years of the date when the Applicant first became aware (or should reasonably have become aware) that they suffered the loss; and
- b(ii) where, prior to lodging the Dispute with FOS, the Applicant received an IDR Response in relation to the Dispute from the Financial Services Provider - within 2 years of the date of that IDR Response.

However, FOS may still consider a Dispute lodged after either of these time limits if FOS considers that exceptional circumstances apply.

The guidelines to paragraph 6.2 address the following issues:

- What are the time limits for lodging a Dispute?
- What are the exceptions to the time limits?
- *How does FOS assess when an Applicant “should reasonably have become aware” of the loss?*
- *What is an IDR Response?*

Time limits for lodging Disputes

There are two different time limits for lodging Disputes:

- a limit that applies to a Dispute relating to a variation of a Credit Contract as a result of financial hardship, an unjust transaction or unconscionable interest and other charges under the National Credit Code (the special credit time limit); and
- a limit that applies to all other Disputes (the general time limit).

Where the general time limit applies to a Dispute, FOS will ~~only~~ consider ~~the~~ Dispute if it is "lodged" (as explained in the guidelines to paragraph [6.1](#)) -before the earlier of ~~the following time limits~~:

- ~~within 6 years of~~ 6 years after the date when the Applicant first became aware, or "should reasonably have become aware" they suffered the loss; and
- if the Applicant received an IDR Response (as defined in paragraph [14.1](#)) from the FSP; - ~~within 2 years~~ after of the date of that response.

Where the special credit time limit applies to a Dispute, FOS will consider the Dispute if it is "lodged" before the later of:

- 2 years after the date when the Credit Contract is rescinded, discharged or otherwise comes to an end; or
- if the Applicant received an IDR Response from the FSP – 2 years after the date of that response.

The special credit time limit applies to a Dispute about a variation of a contract regulated under the National Credit Code (which is a Credit Contract as defined in paragraph 14.1) that relates to financial hardship, unconscionable conduct or an unjust transaction, including maladministration in lending, Such a Dispute may be lodged if the contract is still on foot or came to an end within the last 2 years, even if the Applicant became aware, or should reasonably have become aware, more than 6 years earlier that they had suffered the loss,

Exceptions to time limits

Paragraph 6.2 allows FOS to ~~However, FOS may still~~ consider a Dispute lodged after ~~either of these~~ time limits if FOS considers that there are exceptional circumstances that warrant an extension of time. This will be assessed on a case by case basis. FOS will not decide that exceptional circumstances apply merely because the time allowed for lodgement has expired and the Applicant is disadvantaged by being unable to use the FOS process.

Paragraph [4.4](#) also provides an exception to the time limits ~~rules~~ which is explained in the guidelines to that paragraph.

Awareness of loss

Awareness of loss

To work out the date when the Applicant “should reasonably have become aware” they suffered the loss, FOS considers when a reasonable person, in the Applicant’s particular circumstances, should have become aware that they suffered the loss. This may require FOS to consider what the Applicant was aware of and what additional inquiries it would have been reasonable for the Applicant to make. For example, if an Applicant received information in a document but did not read it carefully, when determining when they should reasonably have become aware they suffered the loss, FOS may take into account:

- the format of the document;
- how complex the document was;
- how long the Applicant had to read it; and
- whether the Applicant had any warnings or recommendations from the FSP, for instance about the need to obtain independent legal advice in relation to the document.

IDR Response

When calculating the time limit for lodging a Dispute, one important issue is whether the 2-year time limit referred to above will not apply unless the Applicant received an IDR Response as defined by the TOR.

An IDR Response must be a written response from the FSP addressed to the Applicant stating the following:

- the FSP’s IDR (internal dispute resolution) process has concluded;
- the FSP’s final decision about the complaint has been made;
- what the FSP’s final decision is, with the word “final” given prominence;
- the Applicant has the right to take the complaint to FOS;
- the time limits that apply if the Applicant wishes to take the complaint to FOS; and
- FOS’s contact details.

- FOS’s contact details are as follows:
Financial Ombudsman Service
GPO Box 3
Melbourne VIC 3001

Telephone: 1300 780808
Fax: (03) 9613 6399
Web: www.fos.org.au
Email: info@fos.org.au

An FSP should:

- ensure that an IDR Response is dated;
- record when the Applicant was sent the IDR Response; and

- keep a copy of the IDR Response.

An IDR Response should include the wording provided below or words having the same effect:

- We have completed our review of your complaint in accordance with our internal dispute resolution process;
- Our final decision in relation to your complaint is:
- You should be aware that because this is our final decision, if you wish to pursue this complaint further by taking it to the Financial Ombudsman Service, you will need to do so within 2 years of the date of this letter.
- The Financial Ombudsman Service is an independent external dispute resolution scheme approved by the Australian Securities and Investments Commission. We are a member of this scheme and we agree to be bound by its determinations about a dispute.

~~FOS's contact details are as follows:~~

~~Financial Ombudsman Service~~

~~GPO Box 3~~

~~Melbourne VIC 3001~~

~~Telephone: 1300 780808~~

~~Fax: (03) 9613 6399~~

~~Web: www.fos.org.au~~

~~Email: info@fos.org.au~~

Exceptional circumstances

FOS can extend either of the above time limits if there are exceptional circumstances. This will be assessed on a case by case basis, but the Applicant will need to demonstrate some exceptional reason for extending time, beyond the fact that the deadline has passed and they are disadvantaged by being unable to use the FOS process.

Paragraph 6.3: Opportunity for internal dispute resolution

6.3 Opportunity for internal dispute resolution

Subject to paragraph 6.4, where an Applicant lodges a Dispute with FOS:

- a) before complaining to the Financial Services Provider; or
- b)(i) within 21 days of the Applicant first requesting a variation of a Credit Contract as a result of financial hardship or postponement of enforcement proceedings, or a further 30 days from the date of any agreement made as a result of that request; or
- (ii) within 21 days of the Applicant first requesting the Financial Services Provider to remedy the matter where the Dispute involves a default notice; or
- (iii) in all other cases, within 45 days of the Applicant first requesting the Financial Services Provider to remedy the matter;
and but before receipt of the Financial Services Provider's IDR Response;

FOS must notify the Financial Services Provider of the Dispute and give the Financial Services Provider =

- c) 45 days (if paragraph a) applies) the whole of the period which would have applied under paragraph b); or
- d) or, the balance of the 45 day period (if paragraph b) applies) the balance of the applicable period;
to provide an IDR Response.

The guidelines to paragraph 6.3 address the following issues:

- What period is allowed for IDR?
- How does FOS refer a Disputes to an FSPs for IDR internal dispute resolution?
- What happens when an Applicant raises new issues?

General guidance on opportunity for IDR

Applicants usually approach FOS in the following situations:

- they have not yet sent their Dispute to an FSP's IDR process;
- within the period allowed for IDR 45 days of first asking an FSP to remedy the matter, but before receiving the FSP's IDR Rresponse;
- after the period allowed for IDR more than 45 days after first asking an FSP to remedy the matter, but before receiving the FSP's IDR Rresponse; or
- after receiving the FSP's IDR Rresponse which has not remedied the matter.

If:

- a Dispute has not yet been through an FSP's IDR process; or

- the ~~45-day~~ period allowed for IDR has not ~~expired~~ended,

FOS will usually register the Dispute details and refer it back to the FSP for consideration through the FSP's IDR process.

~~In cases where the Applicant did not ask the FSP to remedy the Dispute before referring it to FOS, the 45-day IDR period commences when FOS refers the Dispute to the FSP.~~

Before the IDR period ends, FOS will confirm to the Applicant they can contact FOS to progress an unresolved Dispute.

Period allowed for IDR

The periods that paragraph 6.3 usually allows for IDR are:

- in a Dispute involving a request to vary a Credit Contract as a result of financial hardship or to postpone enforcement proceedings
 - 21 days from the date of the request or
 - if an agreement has been made as a result of the request, a further 30 days from the date of the agreement;
- in a Dispute involving a default notice under the National Credit Code, 21 days from the date when the Applicant first requested the FSP to remedy the matter; and
- in any other Dispute, 45 days from the date when the Applicant first requested the FSP to remedy the matter.

If an Applicant lodges a Dispute without first complaining to the FSP, the IDR periods stated above are allowed. In this situation, the IDR period commences when FOS refers the Dispute to the FSP for IDR.

Where the Applicant requested the FSP to remedy the issues in dispute before lodging a Dispute with FOS, the IDR period commences on the date of the expression of dissatisfaction to the FSP, whether in writing or by any other means. This will usually be the date when the Applicant contacts the FSP outlining the issues in dispute. The IDR period commences on the date when the Applicant first contacts the FSP and expresses dissatisfaction, not when the expression of dissatisfaction reaches any internal department of the FSP set up to deal with Disputes.

FOS may extend or reduce the period allowed for IDR as explained in paragraph 6.4 and the guidelines to that paragraph.

How FOS refers a Dispute to an FSP for IDR

FOS refers a Dispute ~~back to the~~ an FSP for IDR by providing the Dispute details to the FSP's nominated contact. Referral will usually be by email, fax or mail, depending on the contact details of the FSP. FOS prefers to refer matters by email where possible. To assist the FSP to more easily identify the Dispute, where possible FOS sends to the FSP:

- name and contact details for the Applicant (including details of the Applicant's representative where one has been authorised);
- a short summary of the issues in dispute; and
- the FSP's reference number (if provided).

~~Before the IDR period ends, FOS will confirm to the Applicant they can contact FOS to progress an unresolved Dispute.~~

~~Where the Applicant requested the FSP to remedy the issues in dispute before lodging a Dispute with FOS, the IDR period commences on the date of the expression of dissatisfaction to the FSP, whether in writing or by any other means. This will usually be the date when the Applicant contacts the FSP outlining the issues in dispute.~~

What happens when Applicant raises new issues

In some circumstances, however, FOS may start to consider a Dispute when new issues raised by the Applicant have not been through IDR. In most cases, we will incorporate the new issues into the existing Dispute and provide the FSP with an opportunity to respond to the new issues without opening a new file. This may happen when the new issues are:

- closely related to issues that have been through IDR; or
- so minor that FOS considers they would be unlikely to impact on an IDR Response provided by the FSP.

If the new issues are unrelated to the existing an Applicant who lodges a Dispute with FOS has previously been through IDR with the FSP, but later raises new issues in the Dispute, FOS will normally refer these new issues back to the FSP to go through IDR before FOS considers the Dispute.

~~In some circumstances, however, FOS may start to consider a Dispute when new issues raised by the Applicant have not been through IDR. This may happen when the new issues are:~~

- ~~closely related to issues that have been through IDR; or~~
- ~~so minor that FOS considers they would be unlikely to impact on an IDR Response provided by the FSP.~~

While the period usually allowed for IDR is 45 days, paragraph 6.4 provides for the IDR period to be extended or shortened in certain circumstances.

Paragraph 6.4: FOS discretion to vary normal IDR timeframes

6.4 FOS discretion to vary normal internal dispute resolution timeframes

Notwithstanding paragraph [6.3](#) FOS may:

- a) give the Financial Services Provider a longer period to resolve the Dispute if FOS considers special circumstances exist; or
- b) commence investigating or otherwise progressing the Dispute immediately if FOS considers the matter urgent.

The guidelines to paragraph 6.4 address these issues:

- When can FOS extend, or reduce, the IDR period for a Dispute?
- How can a party request FOS to alter an IDR period?

Extending IDR period

FOS may extend the IDR period for a Dispute if FOS considers special circumstances exist. ~~This means FOS may give the FSP more than 45 days to provide an IDR response.~~

Examples of special circumstances include:

- where settlement negotiations are progressing, but taking longer than the IDR period ~~45 days~~, and both parties agree to continue negotiations without FOS's involvement;
- where an FSP is waiting for a report by an expert or external consultant before providing an IDR Response and FOS considers the resulting delay reasonable; or
- where records an FSP needs to respond to a complaint are old and difficult to retrieve.

Any party may ask for an extension to the IDR period. The request must:

- be in writing;
- be made as early as possible and before the ~~45-day~~ IDR period expires;
- state the period of the extension sought;
- explain the special circumstances considered to warrant the extension; and
- provide copies of supporting documents.

When deciding whether there are special circumstances, as well as considering the circumstances of the relevant Dispute and general principles of fairness, FOS will consider:

- whether the parties to the Dispute agree to the extension of the IDR period;
- whether the Applicant had previously contacted the FSP about the Dispute;
- whether any settlement negotiations are progressing and, if so, how long they are taking;
- whether the FSP is waiting for information to help it to provide an IDR ~~r~~Rresponse; and

- whether the length of the extension requested is reasonable.

There is a limit to the extension that FOS may grant in certain credit related Disputes. Where a Dispute involves a request to vary a Credit Contract as a result of financial hardship or to postpone enforcement proceedings, FOS may extend the 21 day period allowed for the FSP to consider the request, but the extension cannot be longer than 14 days.

If FOS decides to extend the IDR period for a Dispute, it will advise both parties of the decision and the reasons for it and confirm the new IDR timeframe.

Reducing IDR period

FOS may start to deal with a Dispute before the IDR period ends if FOS considers the matter urgent. This means FOS may commence investigating or otherwise considering the Dispute. ~~In these cases, the FSP would not be given 45 days or the balance of 45 days to provide an IDR response.~~ Examples of urgent situations include:

- where the Applicant is in ill health;
- where an FSP is in administration, liquidation or has otherwise ceased trading;
- where delaying investigation would significantly disadvantage a party; and
- where any delay may cause or exacerbate financial hardship for the Applicant.

Any party to a Dispute may request urgent consideration of the Dispute. The request must:

- be in writing;
- be made as early as possible and before the ~~45 day~~ IDR period expires;
- explain the circumstances considered to warrant reducing the IDR period; and
- provide copies of supporting documents (e.g. medical reports, legal proceedings, default and rescission notices).

In cases where FOS considers it may deal with the Dispute before the IDR period ends, it will discuss the Dispute with the FSP before making a decision. When considering whether it should reduce the IDR period, FOS will assess relevant factors including:

- whether an FSP is in external administration or has ceased trading;
- the Applicant's medical condition if it affects their ability to participate in FOS's consideration of the Dispute (especially if it is delayed);
- legal proceedings against the Applicant by a third party; and
- the requirement for urgent access to funds.

If FOS decides to start dealing with a Dispute before the IDR period ends, it will advise both parties of the decision.

Paragraph 6.5: Disputes lodged with other ASIC approved EDR schemes

6.5 Disputes lodged with other ASIC approved EDR Schemes

For the purposes of these Terms of Reference, where a Dispute is referred to FOS by another ASIC approved external dispute resolution (“EDR”) scheme, the time limit for bringing a Dispute to FOS will apply from the date when the Dispute was lodged with the other EDR scheme and the Dispute will be deemed to have been lodged with FOS on the date that it was lodged with the other EDR scheme.

General guidance on Disputes lodged with other schemes

A Dispute may be lodged with an external dispute resolution (EDR) scheme other than FOS and later referred to FOS. If a Dispute is lodged with an ASIC approved EDR scheme, then referred to FOS by that other scheme:

- the time limits for lodgement specified in paragraph 6.2 will apply from the date when the Dispute was lodged with the other scheme; and
- that date will be deemed to be the date of lodgement with FOS.