

### Our dispute resolution process

After a consumer or small business lodges a dispute with us, we resolve it by following our process (page 3). An important step is to determine whether FOS can consider the dispute, and this is decided by our Terms of Reference.

### Terms of Reference – key facts

Our operations are governed by our published Terms of Reference (TOR). The TOR sets out who is eligible to lodge a dispute, the types of dispute that FOS can consider, how FOS resolves disputes, the types of remedies that FOS can provide and other related matters.

The principles that underpin FOS operations and processes are that in dealing with disputes:

- › we must do what in our opinion is appropriate with a view to resolving disputes in a cooperative, efficient, timely and fair manner
- › we will proceed with the minimum formality and technicality
- › we will be as transparent as possible while also acting in accordance with our confidentiality and privacy obligations.

In addition, FOS publishes Operational Guidelines to the Terms of Reference to assist understanding of the TOR and to provide further detail as to how FOS will resolve disputes.

The most recent version of the FOS Terms of Reference came in to effect on 1 January 2015 following stakeholder consultation and ASIC approval.

#### **Types of disputes we can consider**

FOS considers many different types of disputes involving our members, including banking, credit cards, mortgages, general and life insurance, financial planning and investment advice.

We may be able to help if a financial services provider has acted unfairly by:

- › breaking a law
- › breaching a relevant Code of Practice
- › not meeting standards of good practice in the relevant industry sector.

#### **Types of disputes we can't consider**

There are some types of disputes that we can't deal with, for example:

- › disputes with a business that is not a member of FOS when the dispute is lodged
- › disputes that have already been dealt with by a court, tribunal, arbitrator or another external dispute resolution scheme
- › some disputes which are the subject of legal proceedings
- › specific insurance products such as compulsory third party insurance, private health insurance and some commercial general insurance products
- › decisions of trustees of approved deposit funds and regulated superannuation funds
- › an FSP's assessment of the credit risk posed by a borrower (with exceptions in cases of irresponsible lending or financial hardship).

#### **Time limits**

Disputes must be lodged with us within six years of the applicant first becoming aware (or should have reasonably become aware) they suffered the loss. For disputes involving variation of a credit contract as a result of financial hardship, an unjust transaction or unconscionable interest and other charges, the dispute must be lodged within two years of the credit contract ending. If the applicant received an IDR response, they must lodge their dispute with us within two years of that response.

**Compensation caps (from 1 January 2015)**

A compensation cap is the maximum value of a remedy we may award for a claim. The TOR sets the levels of caps. We may consider claims up to \$500,000 (a single dispute can also contain more than one claim). However, the monetary cap on awards we can make for a claim is \$309,000 for all disputes, except:

- general insurance broking: \$166,000
- income stream life insurance: \$8,300 per month
- uninsured third party motor vehicle claims: \$5,000

The cap on consequential loss per claim is: \$3,300.

The cap on awards of non-financial loss per claim is: \$3,000.

This applies even if the actual loss is more than the relevant cap.

Disputes lodged before 2015 may be subject to lower caps. The limit does not apply to any interest or costs (to the extent these are awarded).

**Non-financial loss**

We may decide that the FSP should compensate the applicant for non-financial loss only if there has been an unusual amount of physical inconvenience, time taken to resolve the situation, or interference with the expectation of enjoyment or peace of mind. In privacy disputes, we may compensate for non-financial loss only if the applicant has suffered humiliation or injured feelings. No compensation is payable for non-financial loss if the dispute involves a claim on a general insurance policy that excludes liability for such loss.

**Remedies**

Here are examples of some of the types of actions FOS may require an FSP take:

- pay a sum of money
- forgive, or vary, a debt
- release security over a debt
- repay, waive or vary a fee or other amount paid, or owing to, the FSP or its representative or agent, including varying the applicable interest rate on a loan

**Remedies (continued)**

- reinstate, rectify or properly perform a contract
- in cases of financial hardship, vary the terms of a credit contract
- meet a claim under an insurance policy.

 **Legal proceedings**

While we are dealing with a dispute lodged with us, the FSP must not:

- instigate legal proceedings against the applicant relating to the dispute
- pursue debt recovery proceedings instituted before lodgement, except to the minimum extent necessary to preserve the FSP's legal rights (unless the applicant has taken steps beyond lodging a defence)
- take action to recover a debt that is the subject of the dispute, to protect assets securing that debt or to assign any right to recover that debt.

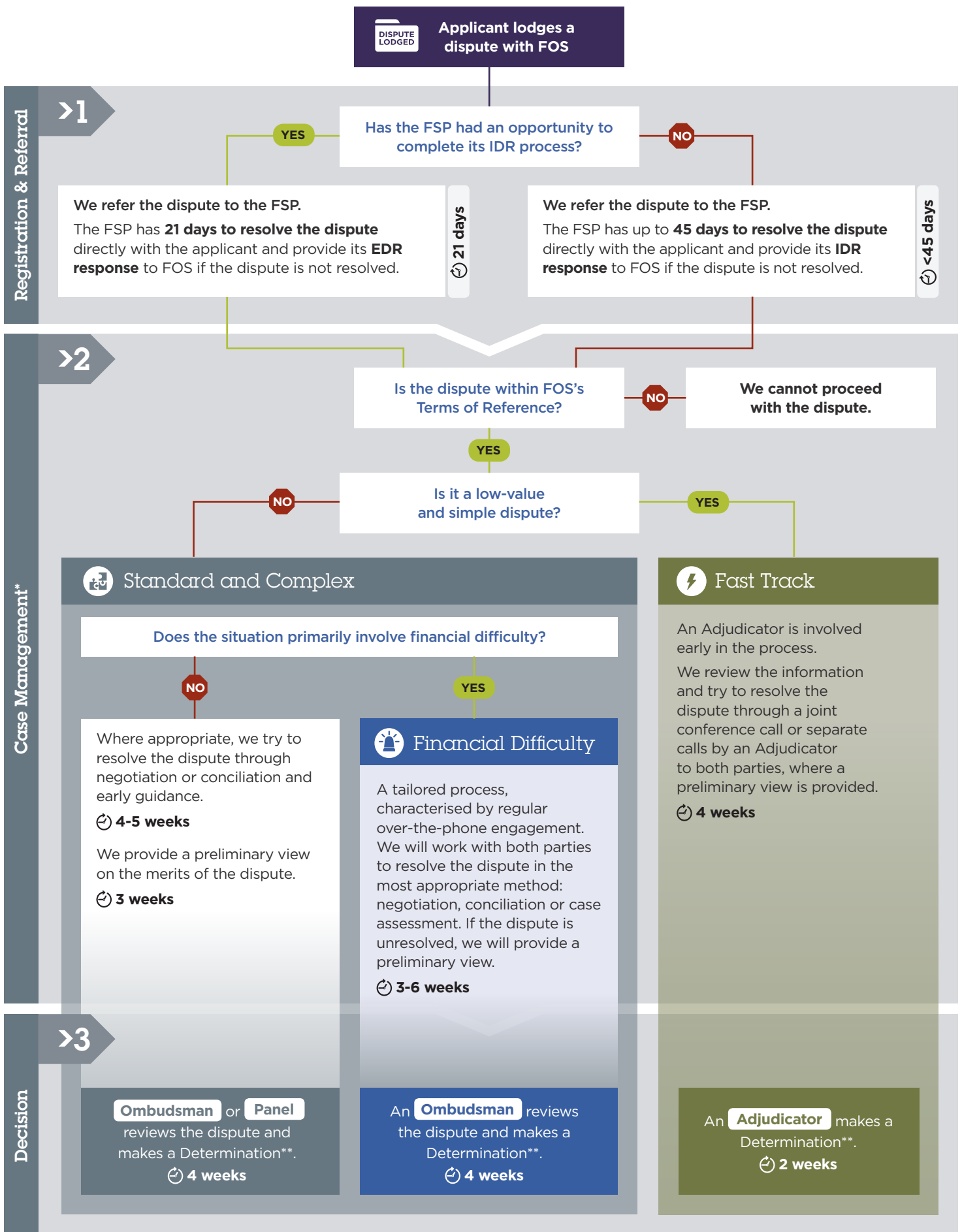
However, with our agreement, and on such terms as we may require, the FSP may issue proceedings for which the limitation will expire shortly or exercise rights to preserve assets that are the subject of the dispute.

If a dispute is decided by us, the FSP must abandon any proceedings that are inconsistent with our decision. If the FSP and the applicant have resolved a dispute by agreement, the FSP must not begin or continue legal proceedings that are inconsistent with that agreement.

The FSP must not begin defamation action of any kind in respect of allegations made to us by the applicant.

 **Financial difficulty**

We have a tailored process for financial difficulty disputes. We will review the FSP's response to the applicant's request for assistance. In most cases, a telephone conciliation conference is mandatory. If a telephone conciliation conference is conducted, the FSP and the applicant must participate. A representative of the applicant may also participate. Each party must have the authority to settle the dispute in the conference.



These are average expected timeframes.

\* A single case worker will manage the dispute wherever possible.

\*\* A financial services provider is bound by a Determination if an applicant accepts it.

## Dispute process – FAQs

### What information needs to be provided?

Financial services providers (FSPs) need to send all relevant contracts, account statements, policy documents, diary notes and dates, reports, emails, analyses, expert opinions, plans, notes, statements from staff (if applicable) and other documents.

Applicants should send all the relevant information they have.

We will:

- inform the parties about the process and the next steps before we make decisions
- give the parties an opportunity to present their views to us
- give the parties appropriate opportunities to provide information and documentation to support their case.

### Can I ask for more time to resolve a dispute?

The FSP and applicant can ask us to extend the time allowed to respond to the dispute if special circumstances would make an extension reasonable.

### When will a determination be made by a single Ombudsman or an Adjudicator, and when will it be made by a Panel?

We will decide whether a dispute should be determined by a single Ombudsman, an Adjudicator or by a full Panel by considering a range of factors, including the amount of the loss, and the complexity and significance of the dispute and any expertise required.

### What must the FSP do if there has been a binding determination requiring action by the FSP?

If the determination requires action by the FSP and it is accepted by the applicant within 30 days of receiving it, then the FSP must implement the determination.

### Key terms

**IDR:** internal dispute resolution

**EDR:** external dispute resolution

**Applicant:** person who has the complaint and is in dispute with the FSP

**FSP:** financial services provider

**Adjudicator:** decision maker (Fast Track process)

**Ombudsman:** decision maker

**Panel:** group formed to make a determination, consisting of a Chair (usually an Ombudsman), an industry and consumer representative

**Determination:** FOS's final decision

**Unconscionable:** referring to a contract that is so unfair to a party that no reasonable or informed person would agree to it.

### More information

Terms of Reference: [www.fos.org.au/tor](http://www.fos.org.au/tor)

Operational Guidelines: [www.fos.org.au/og](http://www.fos.org.au/og)

Publications: [www.fos.org.au/publications](http://www.fos.org.au/publications)

Dispute form: [www.fos.org.au/disputes](http://www.fos.org.au/disputes)