

2013 Independent Review of the Financial Ombudsman Service

Under its ASIC terms of approval, FOS must commission regular independent reviews of its operations and procedures. This independent review was commissioned by the FOS Board, in consultation with the Australian Securities and Investments Commission (ASIC), in July 2013. The report of the independent reviewers, Cameron Ralph Navigator, follows a six-month detailed assessment of FOS's operations.

The review assessed FOS's operations against the ASIC Regulatory Guide 139 benchmarks of Accessibility, Independence, Fairness, Accountability, Efficiency and Effectiveness, and also assessed FOS's jurisdiction and dispute resolution process.

The key recommendations from the independent review focus on the need for FOS to increase the pace of its current efforts to eliminate dispute backlogs and reshape its dispute processes to reduce the time taken to resolve new disputes.

The FOS Board shares the concerns about the time taken to resolve disputes and the impact this has on both consumers and financial services providers, and has taken steps to address these issues. These steps include the initiatives set out in FOS's 2013-2014 Business Plan, which are already having an impact on reducing dispute backlogs. The Board accepts that more needs to be done to increase the pace of these efforts.

To reduce backlogs and streamline dispute processes, FOS will:

- Introduce a new process to fast-track decisions for simpler and low-value disputes.
- Review of the current two-step dispute lodgement processes with the aim of introducing a one-step process where the financial services provider has a final opportunity to resolve the dispute before FOS starts its review.
- Add specialist expertise earlier in the dispute process and reduce the number of times a dispute changes hands.
- Consult with stakeholders on its current approach to hardship disputes.
- Introduce plain English drafting to more effectively communicate the outcomes of a dispute to applicants and financial services providers.

The review found that FOS has made significant improvements in its performance in recent years, including its management, organisational capability and infrastructure.

The FOS Board welcomed the review's findings on the improved quality of FOS's decision making and robust quality assurance arrangements implemented across the organisation in recent years.

While the recommendations of the independent review are primarily directed at FOS's operations, the report may be of interest to a wider audience in the light of the Financial Services Inquiry.

The FOS Board's response to each of the Independent Review recommendations follows.

Independent Review Recommendation	FOS's Response
Chapter 7: Timeliness and Process Design Issues	
<p>Recommendation 1</p> <p>FOS should apply additional resources to reducing the Specialist Resolution Group unallocated disputes queues using a combination of additional temporary staff, use of overtime and weekend projects and diverting of staff with appropriate expertise from other areas within FOS including from the Early Case Management Teams.</p>	<p>FOS agrees with this recommendation and will add temporary staff and implement other measures to increase the pace of current initiatives to significantly reduce current backlog by December 2014. In doing so, we will continue to maintain a strong focus on the quality of FOS's decision making.</p>
<p>Recommendation 2</p> <p>Where FOS expedites a dispute to a Determination without a Recommendation first being made, FOS should provide FOS's preliminary view to the parties in writing before the Determination is made. This should be done succinctly, for example, it may be possible to extend an issues letter by simply adding a few paragraphs setting out FOS's preliminary view.</p> <p>Where a Recommendation is not accepted by either party and the dispute proceeds to Determination, in the interests of efficiency and timeliness, the Case Manager most familiar with the case should prepare the initial draft Determination – in order for a formal decision to be made after review of the issues by the Ombudsman or Panel.</p>	<p>FOS will explore a variety of measures to provide parties to a dispute with a succinct preliminary view. Depending on the nature and type of disputes involved, FOS considers different measures may be required.</p> <p>FOS agrees with this recommendation in principle and will, wherever possible, explore ways to reduce hand-offs of disputes and streamline our processes.</p>
<p>Recommendation 3</p> <p>FOS should commence the necessary consultation steps to amend its Terms of Reference to introduce a streamlined process for simpler, low value disputes. The process could be less document-based and run by a Board appointed Adjudicator who would decide the matter after direct contact with the parties.</p> <p>FOS should also publish guidance for</p>	<p>FOS agrees with this recommendation and will introduce a fast-track process for simpler and lower-value disputes. This process will be implemented on a pilot basis in 2014 under our current Terms of Reference, initially for credit reporting disputes.</p> <p>FOS will publish guidance and information</p>

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<p>stakeholders as to the types of disputes that would be appropriate for this streamlined process and how the streamlined process will operate.</p>	<p>for stakeholders on how this process will operate as part of its implementation.</p>
<p>Recommendation 4</p> <p>In consultation with stakeholders, FOS should re-design its Registration and Acceptance processes so that all lodged disputes are referred to the FSP's internal dispute resolution contact to provide the FSP with a final chance to resolve the dispute. The re-design should include the following elements:</p> <ul style="list-style-type: none"> • a commitment by FSPs to timeframes agreed with FOS for the acknowledgement of disputes and provision of a substantive response; • FOS informing the Applicant of the relevant timeframes and that the Applicant should revert to FOS if those timeframes are not met or if the Applicant is unhappy with the FSP's substantive response to the dispute; • FSP agreement to an evaluation framework that provides FOS and consumer representative stakeholders with assurance as to the fairness and timeliness of outcomes achieved through this assisted referral process; and • Where the Applicant does bring the dispute back to FOS – FOS should immediately begin its process of jurisdiction checking and information collection without providing the FSP with any further review opportunity. 	<p>FOS agrees with this recommendation for the redesign of our current registration and acceptance stages of our dispute process, including an appropriate evaluation framework to provide assurance on timeliness and fairness on outcomes achieved through the process.</p> <p>FOS will do so as a key element in the review of our current dispute process.</p> <p>Subject to consultation with stakeholders, the aim is to implement all major changes to our dispute process on or before 1 July 2015. FOS will look for opportunities to pilot or phase in any changes as early as possible prior to this date.</p>
<p>Chapter 8: Organisational Design</p>	
<p>Recommendation 5</p> <p>FOS should adopt the following design principles to guide future organisational design and development:</p> <p>a) Resilience – maximise the natural resilience of</p>	<p>FOS agrees that these high-level design principles provide a useful general guide for organisational design and development.</p>

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<p>its teams – aiming for the ability to flexibly respond and innovate.</p> <p>b) Maximise the reach of experience – FOS design philosophy should place the most experienced case officers as close to the less experienced staff as practicable, strengthening development and providing some ‘future-proofing’.</p> <p>c) Early involvement of senior staff – place senior, experienced input as close to the front end of the process as practicable with input that will give the parties confidence that the merits of the dispute are being engaged with.</p> <p>d) Minimise hand-offs – aim for an environment where once allocated to a case officer who can substantively deal with the matter, the file stays with them and need only be read by the responsible officer and a supervising senior decision-maker/ quality reviewer.</p> <p>e) Minimise overlays – aim for an environment where resources spent organising the work are minimised (allocating/ categorising/ reviewing for these purposes) and as much time as possible is spent resolving the dispute.</p> <p>f) Maximise accountability – aim for a design that maximises individual staff members and local teams’ sense of accountability for the end-to-end process.</p> <p>g) Maximise elasticity of productivity – aim for a design that encourages a natural ramping up and down of productivity as workload ebbs and flows.</p>	
Chapter 10: Jurisdiction/ Scheme Coverage	
<p>Recommendation 6</p> <p>In consultation with stakeholders, FOS should reshape its approach to financial difficulty disputes to take a more assertive approach that produces</p>	<p>FOS agrees that the financial difficulty jurisdiction has features that make it different from other areas of our External Dispute Resolution work. FOS will consult</p>

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<p>more timely resolution, including:</p> <p>a) postponing consideration of allegations of past misconduct until after the resolution of the financial difficulty application, thereby simplifying and focusing the initial information collection;</p> <p>b) greater preparedness by FOS to decline to continue to consider the dispute particularly if:</p> <ul style="list-style-type: none"> o the lender has reasonably fulfilled its obligation to try and accommodate the Applicant; o the Applicant without reasonable excuse fails to provide a Statement of Financial Position or meet other FOS requests; or o the application is by a small business and relates to large sums of money and raises complex issues that are more suited to resolution in the courts; <p>c) More proactive assessment by FOS as to whether a proposed hardship variation is likely to be viable, in the interests of ensuring that settlements reached through FOS assist Applicants to move out of hardship and to meet their obligations to their lenders.</p> <p>d) FOS should regularly survey previous financial difficulty Applicants to test whether outcomes achieved through FOS are proving to be sustainable and helping the Applicant to overcome their financial difficulty and to meet their obligations to the FSP.</p> <p>e) FOS should update its materials for FSPs and consumers to ensure full transparency about changes that are made.</p>	<p>with stakeholders on the approach to financial difficulty disputes and on how it can best streamline its current processes for disputes in this area.</p>
<p>Recommendation 7</p> <p>FOS should consult with ASIC and other stakeholders with a view to amending its Terms of</p>	<p>FOS will consult with its stakeholders with the view to amending its Terms of</p>

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<p>Reference to allow FOS to consider a traditional trustee services dispute, without the consent of all other affected parties, where FOS is satisfied that their interests would not be prejudiced by doing so.</p>	<p>Reference to allow it to consider traditional trustee services disputes without the consent of all other affected parties. This will require appropriate safeguards.</p>
<p>Recommendation 8</p> <p>From the 2014/15 financial year, FOS should commence collecting data so that it can report how often it exercises its discretion to allow an Applicant with an 'out of time' dispute to utilise FOS's service.</p>	<p>FOS will start gathering this information as soon as practicable.</p>
<p>Recommendation 9</p> <p>In the case of large, complex commercial credit disputes, FOS should be more active in exercising its discretions under the Terms of Reference to refuse to consider the dispute if FOS considers this course of action appropriate, for example, because there is a more appropriate place to deal with the dispute such as a Court. To ensure transparency, FOS should develop and publish guidance as to the factors that it will take into account, which could include the number, quantum and complexity of the loans, the number of parties, the complexity of issues involved, whether the parties were legally advised at the time of entering into the loans and whether independently facilitated mediation by a qualified mediator has begun.</p>	<p>FOS agrees with this recommendation and will develop further guidance on its approach to the exercise of the discretion to refuse to consider disputes on the basis that certain disputes are more appropriately dealt with by the Courts.</p>
<p>Recommendation 10</p> <p>FOS should commence the necessary consultation steps to amend the Terms of Reference to expand FOS's jurisdiction to include loss of profits/business interruption insurance and to include an 'exceptional circumstances' discretion so that FOS can, where appropriate, consider a dispute in relation to an excluded category of insurance. To allow time for FOS to first address its dispute resolution timeframes, the jurisdictional expansion should not take effect until</p>	<p>FOS will engage with stakeholders with the view to amending its Terms of Reference and expanding its jurisdiction to deal with these disputes.</p>

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1 January 2016.	
<p>Recommendation 11</p> <p>FOS should commence the necessary consultation steps to amend the Terms of Reference to expand its jurisdiction to disputes between insurance brokers and small businesses about any general insurance policy other than an Excluded Policy (thereby restoring its jurisdiction to that of the antecedent scheme, the Insurance Brokers Dispute Facility).</p>	<p>FOS will engage with stakeholders with the view to amending its Terms of Reference and expanding its jurisdiction to deal with these disputes.</p>
<p>Recommendation 12</p> <p>FOS should commence the necessary consultation steps to amend its Terms of Reference to expand its jurisdiction in relation to uninsured third party motor vehicle disputes so as to enable FOS:</p> <ul style="list-style-type: none"> • to consider the dispute even if the insured driver who caused the damage has failed to pay the excess to their insurer; and • to make an award of up to \$5,000 in these types of disputes (rather than \$3,000 as is presently the case). 	<p>FOS will engage with stakeholders with the view to amending its Terms of Reference and expanding its jurisdiction to deal with these disputes.</p>
<p>Recommendation 13</p> <p>FOS should commence the necessary consultation steps to amend its Terms of Reference to add in the words "excess or policy conditions" after the words "base premium" paragraph 5.1e). This will ensure that confidential rating factors and weightings are protected where they are applied to determine commercial terms other than just the base premium.</p>	<p>Given likely divergent stakeholder views, FOS will consult further with stakeholders on this issue.</p>
Chapter 13: Fairness	
<p>Recommendation 14</p> <p>When deciding whether to exercise its discretion to accede to an Applicant's request that FOS re-</p>	<p>FOS will develop and release further guidance on its approach to the exercise of</p>

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<p>open a dispute that was closed on the basis of the Applicant's previous failure to respond to a FOS request, FOS should take into account the following factors:</p> <ul style="list-style-type: none"> the reasons for the Applicant's previous failure to respond to FOS's request, for example, difficulty in managing FOS's process, for example, where FOS's timeframe had become prolonged, significant personal problems or problems locating information requested by FOS; the time that has elapsed since the dispute was discontinued; and the extent of prejudice to the FSP if the dispute is re-opened, for example, an impending date after which court action is barred. 	<p>its discretion to re-open a dispute closed in these circumstances.</p>
<p>Recommendation 15</p> <p>FOS should revisit its processes for closing unmeritorious disputes with a view to streamlining its processes, ensuring that its controls are adequate to achieve fairness and ensuring that where an objection is made to the closure decision that this is fairly considered.</p> <p>FOS's Operational Guidelines should be updated to enhance transparency about these processes.</p>	<p>FOS will revisit its process for closing unmeritorious disputes with the view to streamlining the process and making its approach clearer in the FOS Approach documents and Operational Guidelines.</p>
<p>Recommendation 16</p> <p>Where FOS asks an Applicant to evidence assertions (ie FOS's information request is unspecific as to the documentary evidence to be provided), FOS should use its telephone contact with the Applicant to check that the Applicant understands the reason for the request and the kinds of evidence that could be provided.</p>	<p>FOS agrees with this recommendation and notes that steps have been taken to increase telephone contact as part of efforts to improve accessibility, timeframes and dispute resolution processes. FOS will continue to enhance its efforts in this area.</p>
<p>Recommendation 17</p> <p>FOS should revisit its early resolution processes to achieve much earlier engagement by FOS with</p>	<p>FOS agrees with this recommendation and notes that steps have been taken to</p>

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<p>the parties about the merits of the dispute, so that this can inform settlement negotiations.</p> <p>Where negotiations appear promising, FOS should facilitate the collection of information from the Applicant as to the loss that was incurred.</p> <p>For complex matters, or where the Applicant does not have the skills to quantify their loss, FOS should assist the Applicant with quantification of loss.</p>	<p>implement this approach as part of efforts to improve accessibility, timeframes and dispute resolution processes. FOS will continue to enhance its efforts in this area.</p>
<p>Recommendation 18</p> <p>Settlement guidance provided by FOS should be informed by FOS's views of the merits of the case. FOS should leave it to the parties to factor in their own practical considerations, for example, the value for an Applicant of early access to a monetary settlement or the importance for FSPs of avoiding the higher case fees incurred if the dispute escalates to a FOS decision.</p>	<p>FOS agrees with this recommendation and will develop further internal guidance to assist the facilitation of agreements between the parties to a dispute.</p>
<p>Recommendation 19</p> <p>FOS should work with its FSP members to develop programs whereby FOS staff can build their industry expertise.</p> <p>FOS should also continue to use recruitment opportunities to bring in staff with current industry experience. Where there are industry skills and experience gaps, then FOS should look at the possibility of secondments from the insurance and investments industry (as is done in Banking and Finance).</p>	<p>FOS agrees with this recommendation and has already developed a range of programs to enhance the expertise of FOS staff. FOS will work with stakeholders to further develop these training programs.</p> <p>FOS already uses recruitment opportunities to bring in staff with current industry and community experience.</p>
<p>Recommendation 20</p> <p>FOS should undertake an internal review comparing the approach to non-financial loss awards in Recommendations, Ombudsman Determinations and Panel Determinations and across industry sectors, with a view to enhancing the guidance that is provided as to the kinds of</p>	<p>FOS agrees with this recommendation and will review and develop further guidance as to the kinds of circumstances in which non-financial loss awards should be made.</p>

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<p>circumstances in which awards of this type should be made.</p>	
<p>Recommendation 21</p> <p>FOS should add to its Operational Guidelines by explaining its approach to determining from what date an award of interest should be payable. Some examples would assist.</p>	<p>The FOS Operational Guidelines outline the approach FOS applies to determining from what date an award of interest should be payable. FOS will consider how it can best provide examples of this approach through the FOS Circular or other publications.</p>
<p>Recommendation 22</p> <p>FOS should expand the review procedure so that a review request may be made by an FSP that can demonstrate that the relevant issue is of significant ongoing importance to the FSP. The other review preconditions applicable to an industry body or consumer organisation must also be met by the FSP.</p>	<p>FOS has already taken steps to amend the current Review process to allow for an individual FSP to request a review of the FOS approach to a type of dispute (subject to a number of safeguards).</p>
<p>Recommendation 23</p> <p>FOS should commence the necessary consultation steps to amend its Terms of Reference to oblige FOS (rather than to give FOS a discretion) to stop considering a dispute where FOS has been provided by the FSP with a complying test case procedure notice – but only so long as the FSP complies with the undertakings in that notice.</p>	<p>To date FOS has not been requested by an FSP to use the current test case procedures and as a result there is no practical experience on the application of these procedures. Accordingly, FOS does not consider this recommendation to be a priority.</p>
<p>Recommendation 24</p> <p>Where an Applicant enters into a settlement agreement through FOS or FOS makes a decision in favour of the Applicant, FOS should ensure that there is clarity as to the timeframe within which the FSP must carry out remedial action.</p> <p>The Applicant should be advised that they can revert to FOS if the remedial action does not occur within the specified timeframe.</p> <p>FOS should undertake sample monitoring of FSP compliance with settlements and awards through its planned telephone surveying of Applicants</p>	<p>FOS agrees with this recommendation and will continue to enhance its correspondence with the view to making this information clearer to applicants and financial services providers.</p> <p>FOS agrees with this recommendation and will include this issue in its quarterly applicant survey, with the view to reviewing the sustainability of settlement agreements</p>

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whose dispute has closed.	made through FOS.
Chapter 14: Accountability	
<p>Recommendation 25</p> <p>As part of its website redevelopment, FOS should extract significant ongoing guidance that was or is released via its periodic publications and file this on its website by topic. This will enhance ongoing access to this material.</p>	<p>FOS agrees with this recommendation and will further develop guidance material and its publication on the FOS website. FOS notes that it has already started this process through the current publication method of <i>FOS Approach</i> documents.</p>
<p>Recommendation 26</p> <p>To increase the transparency of the Annual Review, FOS should:</p> <ul style="list-style-type: none"> • provide information about dispute outcomes on the basis that disputes closed at the Registration Stage are excluded; • classify as “Discontinued” a dispute where: <ul style="list-style-type: none"> ○ the FSP responds to the Applicant’s complaint by explaining its reasons for rejecting the complaint; & ○ the Applicant makes no response to FOS as to whether or not it is satisfied by that explanation; • information about Assessments should not be classified in the Annual Review under the heading “Resolved by Agreement”; • FOS decisions should be categorised as “in favour of the Applicant” only if the Applicant is awarded substantively most of the remedy the Applicant was seeking; • further information should be provided as to numbers of disputes falling into the various subcategories of dispute outcomes disclosed on pages 42 and 43 of the 2012/13 Annual Review (some grouping of some of these 	<p>FOS agrees with this recommendation in principle and will review how best it can enhance the current reporting of disputes in its Annual Review.</p>

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<p>subcategories may be appropriate);</p> <ul style="list-style-type: none"> • further information should be provided as to the timeframe of disputes that are closed in a period that exceeds 180 days, for example, the numbers of disputes closed in 181 to 364 days, the number of disputes closed in 365 to 729 days and the number of disputes closed in more than 730 days; and • FOS should report its performance against its timeliness KPIs. 	
<p>Recommendation 27</p> <p>FOS should include in the Comparative Tables information about how an FSP's "Average Resolution Length" for disputes is calculated.</p>	<p>FOS agrees with this recommendation and will include this information in its next release of the comparative tables.</p>
<p>Chapter 15: Efficiency</p>	
<p>Recommendation 28</p> <p>FOS should strengthen the process where it writes to an Applicant to say that the Applicant's dispute is outside Terms of Reference. The letter should more comprehensively set out the relevant facts, identify and explain in accessible language the exclusion being relied upon and explain why the exclusion is applicable to the Applicant's dispute. Where a dispute has progressed beyond the Acceptance stage, FOS should telephone the Applicant to provide oral explanation as well.</p>	<p>FOS agrees with this recommendation and will further develop and strengthen its processes to inform applicants that a dispute is outside its Terms of Reference.</p>
<p>Recommendation 29</p> <p>Where an Applicant objects to an outside Terms of Reference decision or an FSP asserts that a dispute is not within Terms of Reference, FOS should take a fresh look at the matter and should err on the side of consulting an Ombudsman. The response to the Applicant or FSP should make it clear that the objection has been carefully considered and should give full transparency to FOS's reasons for its view on jurisdiction.</p>	<p>FOS agrees with this recommendation and will further develop and strengthen its processes for deciding when a dispute is not within Terms of Reference.</p>

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<p>Recommendation 30</p> <p>Rather than using the info@FOS email address, an email sent to a dispute party should be sent from a FOS personal email address. This will increase the recipient's confidence that a reply to the email will in fact reach the intended recipient.</p>	<p>FOS agrees that it can improve the way parties are able to contact the person handling their dispute at FOS and will consider this recommendation in reviewing how it might best do so.</p>
<p>Recommendation 31</p> <p>Quality review of a draft letter should encompass perusal of the file to ensure that the letter does not simply follow the template but rather is tailored to the relevant circumstances and engages appropriately with previous correspondence from the addressee.</p>	<p>FOS agrees with this recommendation and will implement it as part of its quality assurance reviews.</p>
<p>Recommendation 32</p> <p>Training provided to FOS staff should emphasise how important it is that they critically consider whether an information request proposed to be made is practical and necessary. In situations where it is difficult to know how to gather the necessary factual information, FOS should discuss the information gap with the relevant party to the dispute with a view to identifying the most efficient way to address the issue.</p>	<p>FOS agrees with this recommendation and will further develop its internal guidance and training to emphasise the importance of critically considering whether an information request is practical and necessary.</p>
<p>Chapter 16: Effectiveness</p>	
<p>Recommendation 33</p> <p>FOS should for a limited period of time move a couple of its Systemic Issues Team case managers to its SRG Case Management Team to help them reduce the unallocated queue at the Recommendation Stage so as to improve its dispute resolution timeframes. This should be seen as an investment in more timely systemic issues investigations in the future.</p>	<p>FOS does not agree with this recommendation. The recommendation to shift two case managers from the Systemic Issues team will have no material impact on reducing the dispute queues and poses risks that FOS will not identify and deal with potentially significant systemic issues. Also, FOS considers that to do so would compromise FOS's ability to comply with its requirements under ASIC's Regulatory Guide 139. FOS will review its current Systemic Issues process to see how it can be improved, including our interactions with financial services providers.</p>