



Message from the Chief Ombudsman

Terms of Reference and Operational Guidelines

The Board of the Financial Ombudsman Service approved our new Terms of Reference (TOR) on 18 December 2009.

The approved Terms of Reference will come into effect from 1 January 2010 and will apply to all disputes received by FOS on or after that date.

Disputes received by us before 1 January 2010 will continue to be dealt with under the currently applicable Terms of Reference (Banking & Finance, General Insurance, Insurance Broking, Investments Life Insurance & Superannuation, or Mutuals).

A copy of the 2010 Terms of Reference can be found at www.fos.org.au/tor.

Our focus now turns to ensuring all of those who access the Financial Ombudsman Service are aware of how our new TOR and Operational Guidelines (OG), which come into effect on 1 January 2010, will operate. It is critical that our stakeholders have enough information to feel confident about using our services.

The focus of our communication for the next three months is on ensuring that helpful information is made available to you, including the following:

1. An Overview of our Dispute Resolution Process available at www.fos.org.au/disputesinfo.
2. A searchable version of the TOR and OG will be available at www.fos.org.au/og from January in a new format with added functionality to make the information easy to find and navigate through.
3. Hard copy start-up user guides will be posted out to stakeholders for January 2010, designed to highlight the main changes and where to go for more information.
4. Three e-learning modules (introduction to the Financial Ombudsman Service, our jurisdiction, and our dispute resolution processes) will be available on our website in February 2010.
5. Information sessions will be held in most capital cities in February/March 2010.

For more information about these activities, please contact Jane Hill, Member Relationship Manager, at jhill@fos.org.au or Robyn McCutchan, Community Program Manager, at rmccutchan@fos.org.au.

Changes to our Constitution

At the Annual General Meeting on 7 December 2009, the membership approved a number of changes to our Constitution. The main changes can be summarised as follows:

- Membership will no longer be automatically terminated if a member becomes insolvent, ceases to trade or ceases to hold an Australian Financial Services licence. Instead the Board will have a discretion whether to cancel the membership, with applicable notice.
- The requirement to conduct independent reviews of the Service has been more closely aligned to ASIC's requirements, particularly Regulatory Guide 139.
- It has been made clearer that the Constitution and the applicable Terms of Reference form a binding contract between the Financial Ombudsman Service and each of its members.

A copy of the amended Constitution can be found at www.fos.org.au/constitution

New transitional funding approach

Each of our predecessor schemes had its own funding system and its own approach to case fees. We have been working to identify a single system of charging case fees and levies to operate across all of our member financial services providers (FSPs) in a fair and consistent manner.

We have consulted with a range of stakeholders including members and industry bodies to evaluate the options and seek feedback. Our Board has now approved a transitional funding model based on a member paying a base levy determined by the relative size of their business compared to other members. This meets our criteria of:

- being fair and consistent for all member FSPs
- enabling us to operate effectively and sustainably
- being flexible and adaptable to allow for projected growth to occur, and
- being applicable to the expanding and diverse range of businesses who seek membership with us.

We have sent out information to member FSPs to further explain the new funding model and how it will operate for their business. Any member who has not received this information can contact us on 1300 56 55 62.

The fundamental core of the funding model is that the Financial Ombudsman Service is an industry funded service which operates on a user pays system. In accordance with ASIC RG 139, it must be offered free to consumers.

In addition, it is in the interests of all parties to resolve disputes at the earliest possible stage. Therefore we would prefer to adopt a model that provides incentives to appropriately reward members for effective resolution of their customers' concerns.

Finally

I would like to thank you for your support throughout the year and wish you all a safe and enjoyable holiday season.

Colin Neave
Chief Ombudsman

John Price, new Ombudsman – General Insurance



We welcome the recent appointment of John Price as Ombudsman—General Insurance. John has over 30 years' experience in the insurance and legal industries.

You can find more information about John, our other Ombudsmen as well as our Board at www.fos.org.au/governance.

Proposed Privacy Act changes – their impact

During 2006 and 2007, the Australian Law Reform Commission (ALRC) undertook a comprehensive review of the *Privacy Act 1988*, including credit reporting. After extensive public consultation and consideration of 585 submissions and the release of three Issues Papers inviting comment, the ALRC released its final report *For Your Information: Australian Privacy Law and Practice* in May 2008.

In October 2009, the Federal Government announced its first response to the ALRC's report, reviewing 197 of the 295 recommendations and accepting either in full, or with qualification, 175 of them.

The ALRC recommended, and the Government accepted, that numerous amendments to the *Privacy Act* are warranted, including drafting a new set of Unified Privacy Principles to replace the two regimes that currently govern privacy in the public and private sectors. The Government also accepted the ALRC's view that the credit reporting provisions of the *Privacy Act* require updating. Some of the proposed amendments are discussed below.

Disclosure of personal information

At present, the National Privacy Principles (NPPs) permit the use and disclosure of information for the primary purpose for which it was collected and for secondary related purposes. So far as the Financial Ombudsman Service is concerned, information is collected for the purpose of dispute resolution and is passed to the relevant member for that purpose. Accordingly, it is within the permitted scope of the NPPs.

The disclosure of information about a customer by a member to us is also for that purpose. However, at present there is no express provision permitting this. We take the view that any disclosure by a member in response to a dispute is a "secondary related" disclosure, which the person lodging the dispute would reasonably expect in the circumstances. However, we submitted to the ALRC that disclosure in these circumstances should be expressly permitted, and the ALRC recommended such a change.

The Government has accepted the ALRC's recommendation that a new additional exception to the Use and Disclosure principle, permitting information to be used or disclosed where "necessary for the purpose of a confidential alternative dispute resolution process".

Investigation of privacy complaints

The Government has accepted the ALRC's recommendation that the Privacy Commissioner should have discretion to decline to investigate a complaint about a claimed breach of privacy where the dispute is being handled or is more appropriately handled by an external dispute resolution scheme recognised by the Privacy Commissioner. This should prevent any "double-handling" of disputes which are brought both to us and the Privacy Commissioner.

Our Banking & Finance group currently investigates disputes regarding credit reporting and privacy more generally. From 1 January 2010, our Investments, Life Insurance & Superannuation group and our General Insurance group will also have power to consider privacy complaints forming part of a more general dispute. It is expected that the Financial Ombudsman Service will be considered an appropriate external dispute resolution scheme for referral of disputes by the Privacy Commissioner.

Credit reporting

The Government has accepted some of the ALRC's recommendation for more comprehensive credit reporting, although declined to accept all changes suggested. As a general comment, more comprehensive credit reporting will be permitted, but not fully "positive" credit reporting. Credit files will be permitted to contain information about types of accounts held by an individual, the dates of open and closure of accounts and the relevant credit limits. This will replace the current (and rarely used) provision allowing credit providers to be listed as current credit providers, if they wish, but with no further detail.

A more major change is the proposal to permit "repayment performance history" to be included. This will comprise details of whether or not, over the preceding two years, the individual missed repayments and the number of times the individual was in arrears. This change will not take effect until responsible lending obligations (applicable to licensees subject to the proposed National Consumer Credit Protection legislation) are enacted and only credit providers who are subject to those obligations will be permitted to handle repayment history data.

Further proposed changes to the credit reporting and more general privacy provisions can be viewed at www.pmc.gov.au/privacy. An exposure draft of the new legislation is expected in early 2010.

For more information on privacy, please contact Jillian Brewer, Privacy Manager, at privacy@fos.org.au.



Asking what you think

We are conducting two different surveys to gain feedback and insights into what our consumer and industry audiences want from our service.

Member survey

Throughout November, we conducted a number of focus groups with a diverse range of member FSPs to confirm what the key areas of interest for member services are. Building on the feedback provided in these focus groups, we have now invited member FSPs to provide their feedback about us, via the 2009 Member online survey.

We have commissioned DBM Consultants, an independent market research firm, to manage this survey. DBM will provide us with the results of the survey but individual responses will be de-identified so individual responses will remain confidential.

We hope member FSPs will share their thoughts so we may gain a better understanding of how best to provide the right information at the right time to help resolve disputes.

If you have any queries about the survey, please contact Jane Hill, Member Relationship Manager, at jhill@fos.org.au or 03 8623 2043.

Consumer survey

We are undertaking market research, again with the assistance of DBM Consultants, to determine the levels of access by members of the community to our service. This will look at areas such as how consumers learn about our service, the general awareness of the Financial Ombudsman Service among various demographics in Australian society, awareness of internal dispute resolution (IDR) processes, and the type of information that will best assist consumers to resolve disputes with their financial services provider.

It is important for us to ensure that any underrepresented groups are made aware of their ability to access our services. It is also important for us to promote to consumers the opportunity to access IDR with their financial services provider.

If you have any queries about the survey, please contact Robyn McCutchan, Community Program Manager, at rmccutchan@fos.org.au or (03) 9613 6392.

Results

The results of both these surveys will be used to improve our services and communications through our publications, website, workshops and seminars, as well as more broadly contribute to better dispute resolution for member FSPs and consumers. We will provide an update about the key messages we receive.

Financial difficulty conciliation conferences

A key element of our Banking & Finance group's new approach to financial difficulty disputes involves more extensive use of telephone conciliation conferences. Conciliation can be a much faster and more effective way of resolving disputes than our standard investigation process. Our conciliators encourage an open and informal discussion between the parties, during which both parties are able to put forward their points of view and gain a better understanding of the issues.

The use of conciliation conferences for financial difficulty disputes is now well under way. As we had hoped, the process is proving to be a very successful method for resolving disputes. In the period April to November 2009, 43 telephone conciliation conferences were held. Of these, 39 (or 91%) were either resolved through the conciliation process or have post-conciliation negotiations still underway.

The large range of options that can be generated during a conciliation conference allows for more flexibility of outcomes. The types of agreements reached through conciliation include repayment arrangements that are affordable for the debtor, sometimes involving partial waivers of debt. In some cases, the only option might be the sale of a property. In these cases, the outcome of conciliation could include an agreed timeframe for the sale of the property by the debtor, which takes into account the needs of both parties.

As the cases (at right) show, we are finding that conciliation conferences help the parties to turn their focus towards the future, rather than concentrating only on the history of a dispute. This is proving to be one of the key benefits of the new process – both parties are encouraged to look at the 'bigger picture', and agree on a way to move forwards.

You can find a guide to our conciliation conferences on our website homepage at www.fos.org.au under 'Latest Publications'.

CASE STUDY

Owning the decision to sell

Mr and Mrs F were both still working but close to retirement. Mrs F fell ill and was unable to work. The couple could no longer afford to keep up their home loan repayments, but they didn't want to sell their home. They had made no repayments for over a year and the equity in the property was steadily decreasing.

The Financial Ombudsman Service arranged a conciliation conference between Mr and Mrs F and their financial services provider (FSP). During the conference the couple realised that their best option was to sell their home themselves, rather than wait for it to be repossessed. The FSP agreed to allow them six months to do this, which took into account the prime selling season for their beachside property. The FSP also offered a small ex-gratia payment on the settlement.

CASE STUDY

When the financed vehicle creates greater capacity to earn

Mr G possessed a vehicle financed by a loan from the FSP and which secured the loan. Mr G used the vehicle to visit customers. Irregular repayments had been made to the loan. After failed attempts to negotiate a repayment arrangement with Mr G, the FSP wished to enforce its security as the loan was significantly in arrears. Mr G did not want to lose the vehicle as he would lose his earning capacity and would not be able to visit his customers. Mr G's statement of financial position did not show a surplus that would allow him to meet the repayments.

The Financial Ombudsman Service arranged a conciliation conference between Mr G and the FSP. During the conciliation conference Mr G said that he had a new employment contract due to start in a few months time that would allow him to meet the full repayments and repay the arrears. A repayment arrangement was agreed which would allow reduced repayments until the new contract started. Voluntary surrender of the vehicle would be given if there was default. The resolution would allow Mr G to keep his vehicle and retain his earning capacity while giving the FSP an immediate right to the vehicle if there was a further default.

Our Financial Difficulties Team includes:

1. Joanna Harris
2. Georgina Frost
3. Anna Mandoki
4. Tim Goss
5. Sally Thompson



Financial difficulty roadshows

The Financial Ombudsman Service has recently developed dedicated information sessions for legal advisory, financial counsellor groups and financial services providers around Australia on its process for handling financial difficulty disputes.

Presented by our Financial Difficulties Team, these practically based sessions have been provided in response to the expected changes resulting from the proposed new National Consumer Credit Protection legislation and our new Terms of Reference.

In particular the focus has been on how the changes impact financial difficulty dispute procedures.

Areas covered include:

- variations to consumer credit contracts
- timing of disputes and use of internal dispute resolution processes
- resolution handling options, and
- telephone conciliation conferences.

The sessions were very well received with high numbers of participants. For those who were unable to attend the sessions, you can find information on our website at www.fos.org.au under 'Consumer Information' then 'Financial difficulty'.

This includes:

- a fact sheet for consumers
- a fact sheet for consumer advocates and participating financial services providers
- a guide to how conciliation conferences work
- slides from the recent financial difficulty workshops for consumer advocates, and
- a downloadable *Statement of Financial Position* form.

For more information on this or other community programs, please contact Robyn McCutchan, Community Program Manager, at rmccutchan@fos.org.au.



Our reporting approach in accordance with ASIC RG 139

While the Financial Ombudsman Service has always had a strong approach to reporting on dispute resolution, we are currently seeking to further improve this approach to comply with the new *ASIC Regulatory Guide 139: Approval and oversight of external dispute resolution schemes*.

From 1 January 2010, under RG 139, we must publish information about complaints received and closed, with an indication of outcomes against each member, presented in an appropriate context in our annual review.

We are currently reviewing options to determine the best approach for our whole of organisation reporting. We have identified several options based around cases, products, types of problem, outcomes and the businesses who provided the products and services.

As an external dispute resolution forum, our focus is on providing information which is accurate, fair, identifies good dispute resolution and highlights opportunities for addressing consumer concerns so as to reduce the number of disputes.

To achieve the right approach, we are consulting with stakeholders and will publish the approach we will take as soon as this is confirmed.

If you wish to let us know your views about this issue, please contact Silvia Renda, Continuous Improvement Manager, at srenda@fos.org.au.

Regulatory issues: advancing dispute resolution through submissions

At the Financial Ombudsman Service we are always looking at how we can contribute to better dispute resolution, both at a regulatory and practice level.

Since the last edition of eNews, we have made submissions on several issues including submissions to:

- the Inquiry by the Parliamentary Joint Committee on Corporations and Financial Services into collapses in the financial services industry, and
- the Australian Securities and Investments Commission's Consultation Paper 115 on "responsible lending".

For more information on submissions, please contact Carolyn Bruns, Policy Manager, at cbruns@fos.org.au.

Changes to member contact details

As part of the new process and procedures, we are changing how we use member financial services provider (FSP) contact details. These contacts have had different names and functions in the past, depending on which predecessor scheme a member belonged to.

We are now streamlining the process to make it easier for consumers to try to resolve their dispute directly with the FSP. It will also help with the new registration process, where we inform FSPs of disputes that are lodged with us before the FSP has had an opportunity to resolve the dispute through its internal dispute resolution (IDR) process.

New IDR registration contact

To ensure all FSPs receive disputes that have been registered with us, we will send the disputes to the FSP's IDR registration contact. To allow a smooth transition to the new process, we have updated our database to identify IDR Registration Contacts for all FSP members from existing contact categories.

- For all General Insurance members, the new IDR Registration Contact is the previous "IDR Contact".
- For all Banking & Finance and Mutuals members, the new IDR Registration Contact is the previous "Letter contact".
- For all Investments, Life Insurance & Superannuation members, the new IDR Registration Contact is the previous "Complaints contact".
- For all Insurance Broking members, the new IDR Registration Contact is the previous "Main contact".

If any FSP member wishes to update their IDR Registration Contact information, please email membership@fos.org.au or call 1300 56 55 62.

Public contact

We will be displaying on our website the contact details for all our members' complaints areas. We do this to ensure all consumers are able to contact all FSP members of the Financial Ombudsman Scheme so they can try to resolve the dispute directly with the FSP, prior to lodging a dispute with us.

To allow a smooth transition to the new process, we have updated our database to identify the Public Contact for all FSP members from existing contact categories.

- For all General Insurance members, the new Public Contact is the previous "Website IDR Contact".
- For all Banking & Finance and Mutuals members, the new Public Contact is the previous "Written & Phone contact".
- For all Investments, Life Insurance & Superannuation members, the new Public Contact is the previous "Complaints contact".
- For all Insurance Broking members, the new Public Contact is the previous "Main contact".

If any FSP member wishes to update their Public Contact information, please email membership@fos.org.au or call 1300 56 55 62.



Community and industry events

Information about coming events are available on our website at www.fos.org.au/events.

ANZIF 16th Annual Sunshine seminar

Colin Neave, Chief Ombudsman, spoke at the Australian and New Zealand Institute of Insurance and Finance (ANZIF) in September.

Colin's presentation covered the services we offer and coming changes under our new Terms of Reference and the accompanying Operational Guidelines, as well as information on our decision making process.

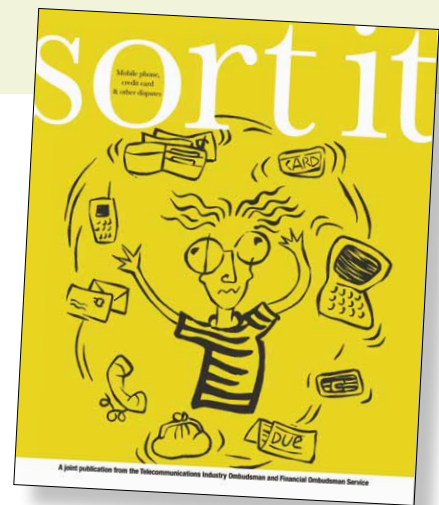
General Insurance forum – Investment in investigation saves fees

A key message at the forum from John Price, Ombudsman – General Insurance, was the need to approach the investigation of a claim with an open mind rather than with a focus on proving an insured consumer wrong.

DARU 2009 conference

Alison Maynard, Ombudsman - Investments, Life Insurance & Superannuation, spoke at the Disability Advocacy Resource Unit (DARU) Conference in November.

Alison presented an overview of the role of the Ombudsman, as well as insights into our services and how looking at accessibility is a key focus of ours for 2010.



Comview 2009 Annual Conference

As a joint initiative with the Telecommunications Industry Ombudsman, we again hosted a stand at the annual conference of the Victorian Commercial Teachers Association in November.

Our main aim was to promote *Sort It*, our resource for students and young consumers.

Anhui Province of China delegation

The Chief Ombudsman, Colin Neave, together with Ombudsmen Philip Field, Alison Maynard and John Price, welcomed a delegation of more than 20 government representatives from the Anhui Province of China to the Financial Ombudsman Service on Wednesday 18 November.

Insights were shared during a presentation outlining our role and the processes involved in dispute handling. The session was marked by a lively discussion regarding the new Terms of Reference, the underlying concepts inherent in the Operational Guidelines and the key features of our process and how these could be translated to a Chinese situation.

Fact sheets

We produce fact sheets to address particular issues, answering frequently asked questions or looking at how we approach such issues.

Recent fact sheets include:

Fixed interest investments – looking at the general approach we have adopted in considering disputes about fixed interest investments.

Financial difficulty – Looking at what to do when people find themselves unable to meet their repayments under a credit facility.

These fact sheets are available on our website at www.fos.org.au/publications.

Avoiding, Managing & Resolving Complaints workshops

We are currently finalising the next round of Avoiding, Managing & Resolving Complaints workshops for 2010.

These one-day workshops are specifically designed to provide members with skills and information on how to avoid, manage and resolve complaints using their own internal dispute resolution (IDR) process, thus avoiding the need (and cost) of referral to the Financial Ombudsman Service.

Next workshops

Sydney – 26 March (Standard) and 16 April (Advanced)

Melbourne – 14 May (Standard) and 1 July (Advanced)

Venues will be announced soon.

We'll be seeking expressions of interest for IDR workshops in Brisbane, Perth and Adelaide in the new year.

For more information on our workshops, please contact Karen Driessen, Communications, Policy & Relations, on kdriessen@fos.org.au.

Case Studies

The following cases have recently been added to our case study archive at www.fos.org.au/casestudies.

We have provided a brief introduction to each case study below.

Case studies may be based on recent determinations or prepared specially for recurring cases or cases of particular interest. The aim of the case studies is to promote consistent decision making without the need to escalate the matter.



Charge backs – consumer delay in providing evidence of withdrawn authorisation

Mr A had purchased jewellery in Asia, offering his credit card for payment. He was told by the merchant, who had taken the card out of Mr A's sight, that the card would not swipe. Mr A said he then paid in cash. The bank requested evidence of the payment by other means and there was a delay in Mr A providing the appropriate documentation...



Maximum demerit points – you cannot disclose what you do not know

Mr B made a recent claim with his insurance company for damage to a motor vehicle following an accident. The claim was denied on the basis that Mr B had not made disclosure that he had reached the maximum 12 penalty points on his licence...



Stockbroking – need for up to date assessment of clients' needs and appropriate diversification

Mr and Mrs C received advice from their stockbroker and purchased units in an Initial Public Offer in scheme Y. When scheme Y dropped in value, they claimed that the stockbroker failed to both take into account their tolerance to risk and to research the scheme properly before advising them to invest...

What do you think of Financial Ombudsman Service News?

We welcome your feedback.

We want our newsletter to be as relevant, interesting and useful as possible, so please do let us know if you have any ideas or suggestions for future issues by emailing publications@fos.org.au.

Careers with us

If you are interested in career opportunities with us, please see www.fos.org.au/careers.



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Karl Chapman
Financial Ombudsman Service
GPO Box 3
Melbourne Vic 3001

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