

Introduction

This is the submission by the Financial Ombudsman Service (FOS) commenting on the draft *Guidelines for recognising external dispute resolution schemes under section 35A of the Privacy Act 1988* released in August 2013 by the Office of the Australian Information Commissioner.

This submission has been prepared by the office of FOS and does not necessarily represent the views of the Board of FOS. It draws on the experience of FOS and its predecessors in the resolution of disputes about financial services.

Information about FOS

FOS commenced operations on 1 July 2008. It is an independent dispute resolution scheme that was formed through the consolidation of three schemes:

- the Banking and Financial Services Ombudsman (BFSO)
- the Financial Industry Complaints Service (FICS) and
- the Insurance Ombudsman Service (IOS).

On 1 January 2009, two other schemes joined FOS, namely:

- the Credit Union Dispute Resolution Centre (CUDRC) and
- Insurance Brokers Disputes Ltd (IBD).

FOS is an external dispute resolution (EDR) scheme approved by ASIC. Membership of FOS is open to any financial services provider (FSP) carrying on business in Australia including providers not required to join a dispute resolution scheme approved by ASIC. Replacing the schemes previously operated by BFSO, FICS, IOS, CUDRC and IBD, FOS provides free, fair and accessible dispute resolution for consumers unable to resolve disputes with FSPs that are members of FOS.

Members of BFSO, FICS, IOS, CUDRC and IBD are now members of FOS. The members of those schemes included:

- BFSO – credit providers, mortgage brokers, payment system operators, Australian banks and their related corporations, Australian subsidiaries of foreign banks and foreign banks with Australian operations
- FICS – life insurance companies, fund managers, friendly societies, stockbrokers, financial planners, pooled superannuation trusts, timeshare operators and other Australian FSPs
- IOS – general insurance companies, re-insurers, underwriting agents and related entities of member companies
- CUDRC – credit unions and building societies
- IBD – insurance brokers, underwriting agents and other insurance intermediaries.

FOS and its predecessor schemes have over 20 years experience in providing dispute resolution services in the financial services sector, and it is estimated that FOS covers up to 80% of banking, insurance and investment disputes in Australia.

FOS provides services to resolve disputes between member FSPs and consumers, including certain small businesses, about financial services such as:

- banking
- credit
- loans
- general insurance
- life insurance
- financial planning
- investments
- stock broking
- managed funds and
- pooled superannuation trusts.

As well as its functions in relation to dispute resolution, FOS has responsibilities to identify and resolve systemic issues and obligations to make certain reports to ASIC. FOS also monitors compliance with a number of industry codes of practice.

FOS is a not for profit organisation that provides services free to consumers. FOS is funded by its members, which are FSPs. A significant proportion of its funding is from case fees, and the fees paid by an FSP reflect the number of disputes in which it is involved and the stages to which they progress.

FOS is governed by a board with an independent chair and:

- four “industry directors” appointed based on their expertise in and knowledge of the financial services industry, independence and capacity and willingness to consult with the industry and
- four “consumer directors” appointed based on their expertise in consumer affairs, knowledge of issues pertaining to the industry, independence and capacity and willingness to consult with consumer organisations.

Submission

Paragraph 3.10

Paragraph 3.10 requires an EDR scheme to give a complainant information about making a complaint to the Information Commissioner even if the scheme conducts an internal review and the complainant is satisfied with its outcome. It should be made clear that the requirements to provide information only apply where:

- a complainant is not offered an internal review or
- an internal review is conducted and the complainant is not satisfied with its outcome.

Paragraph 4.14

We understand that the proposed reporting requirements are:

- annual reporting under paragraphs 4.14 and 4.15 and
- reporting of any systemic issues or repeated interferences with privacy when an EDR scheme becomes aware of them under paragraph 4.17.

If this is not correct, the reporting timeframes should be made clearer. If the proposed requirements are as outlined above, paragraph 4.14 should not open with the phrase “In addition to their annual reporting” (because it sets out annual reporting requirements). A minor alteration that could be considered is changing the opening phrase to “In addition to the reporting required under paragraph 4.17”.

Paragraph 4.15

In paragraph 4.15, a) and c) include the phrase “in the financial year”, but b) and d) do not specify any timeframe. We consider that the guidelines should specify the timeframe for which each aspect of reporting is required. One option would be to add:

- “in the financial year” at the end of b) and
- wording such as “identified in the financial year” at the end of d).

Paragraph 4.16

The meaning of the term “industry regulator” used in paragraph 4.16 is not explained and should be clarified.

Paragraphs 4.16 and 4.20

In comments made jointly with other EDR schemes, we have requested an opportunity to provide input on the Enforcement Guidelines. Footnote 12 indicates that the Enforcement Guidelines affect the operation of paragraph 4.16. Footnote 13 indicates that those guidelines also explain the arrangements for referral of complaints to EDR schemes, which paragraph 4.20 requires the schemes to accept. We have not been able to fully consider the ramifications of paragraphs 4.16 and 4.20 because we have not been able to examine the Enforcement Guidelines.

Paragraph 5.10

In paragraph 5.10, the reference to paragraph 4.27 is incorrect. It should refer instead to paragraph 4.7.