MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
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Discussion paper

Review of the Approved Financial Dispute Resolution Scheme Rules

April 2021

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The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on **6 May 2021.**

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at: ***https://www.mbie.govt.nz/have-your-say/review-of-approved-financial-dispute-resolution-scheme-rules***. This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission.

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Please direct any questions that you have in relation to the submissions process to ***DRSReview@mbie.govt.nz***.

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The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on the review of approved dispute resolution scheme rules. We may contact submitters directly if we require clarification of any matters in submissions.

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Contents

List of Acronyms

AFCA	Australian Financial Complaints Authority
BOS	Banking Ombudsman Scheme
FDRS	Financial Disputes Resolution Scheme
FSCL	Financial Services Complaints Limited
FSPR	Financial Service Providers Register
GCDR	Government Centre for Dispute Resolution
IFSO	Insurance & Financial Services Ombudsman Scheme
MBIE	Ministry of Business, Innovation and Employment
Participant	Financial service provider who is a member of a dispute resolution scheme
Provider	Financial service provider
Scheme	Approved financial dispute resolution scheme

1 Introduction

Background

1. The Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**the Act**) governs approved financial dispute resolution schemes (**the schemes**). The schemes are private companies that resolve disputes between consumers and financial service providers (**providers**). The schemes are designed to be a faster and less formal alternative to the courts. The schemes are free for consumers to use, and scheme decisions are only binding if accepted by the consumer.

2. Section 52(2) of the Act sets out principles that must be adhered to by the Minister responsible for approving the schemes. The principles are accessibility, independence, fairness, accountability, efficiency and effectiveness. These principles are central to financial dispute resolution.

3. There are four schemes. All financial service providers with retail clients are required to belong to a scheme; providers can choose their scheme and are able to change schemes. Each scheme is required to have a set of rules that govern how they resolve disputes. Scheme rules are issued by the schemes, and changes must be agreed to by the responsible Minister provided they comply with the principles listed in the Act,[1] and the requirements of Section 63.[2] Under the Act, regulations can also be made to prescribe matters which must be included in, or can be implied into, scheme rules.

4. In 2016 MBIE completed a review of the Act.[3] The review found that with the schemes each setting their own rules, situations can arise where consumers' access to redress is limited. The review also noted the potential for consumers to lose access to redress if providers switch between the schemes. The report recommended working with the schemes to identify improvements to be made to promote access to fair and effective redress by standardising some scheme rules through regulation. The current review of scheme rules is based on this recommendation.

[1] ***http://www.legislation.govt.nz/act/public/2008/0097/latest/DLM1109563.html#DLM1109563***
[2] ***http://www.legislation.govt.nz/act/public/2008/0097/latest/DLM1109578.html#DLM1109578***
[3] ***https://www.mbie.govt.nz/assets/ce47fb2bdf/final-report-review-of-the-operation-of-the-fa-and-fsp-acts.pdf***

Scope of this review

5. The scope of this review is to focus on jurisdictional rules. Jurisdictional rules include those which state what complaints schemes can consider and the limitations on the redress that schemes can award in such circumstances. In particular, this review focuses on:

    - the financial limits for hearing a claim;
    - limits on compensation that can be awarded;
    - jurisdictional timeframes for being a scheme member; and
    - timeframes for bringing a claim.

6. We think it is particularly important for all schemes to have consistent jurisdictional rules. This is to ensure all consumers can reliably access resolution services, and to prevent potential consumer harm and confusion caused by consumers being governed by different rules depending on provider membership. There are also natural justice implications from consumers having different access to redress, and potentially different treatment or outcomes depending on what scheme a provider may happen to belong to.

What this review does not cover

7. This review is not intended to look at scheme rules in their entirety. MBIE recognises that the schemes are independent entities that operate in slightly different contexts (e.g. different types of members resulting in potentially different consumer groups accessing them). The fundamental aspects of the schemes, such as jurisdiction, should be consistent across the board. However, absolute uniformity in all rules would undermine the ability of the schemes to respond to the different contexts and the needs of providers or complainants2, which is a key feature of the regime.

8. Furthermore, discussion about combining the schemes into one large dispute resolution body is outside the scope of this review. MBIE recognises that The Australian Financial Complaints Authority was established in 2018 by the Australian government to streamline the financial dispute resolution system in Australia. MBIE will continue to monitor the Australian experience, but is not considering a similar approach in New Zealand at this time.

Process and timeline

9. A current timeline for this consultation process and review is set out below.

The schemes

10. **The Banking Ombudsman Scheme (BOS)** was set up in 1992 as a way for banks to deal with consumers' complaints. It became an approved dispute resolution scheme under the Act in 2010. BOS members include all of the main banks and their subsidiaries, along with several credit unions and building societies. The 2016 MBIE review found BOS was the most well-known financial services dispute resolution scheme.

11. **The Insurance and Financial Services Ombudsman Scheme (IFSO)** was established in 1995 as a voluntary insurance industry scheme. IFSO, then known as the Insurance and Savings Ombudsman Scheme, became an approved dispute resolution scheme under the Act in 2011. IFSO had 4,716 members in 2020, including insurance companies, superannuation schemes, financial advisers, credit providers and corporate and individual financial service providers.

12. **Financial Services Complaints Limited (FSCL)** was established in 2009. FSCL became an approved dispute resolution scheme under the Act in 2010. FSCL had 7,125 members in 2020, including insurers, lenders, transactional service providers, insurance brokers, trustees, credit unions, card issuers and financial advisers.

13. **Financial Dispute Resolution Service (FDRS)** is operated by FairWay Resolution Ltd. FDRS was originally mandated in the Financial Service Providers Act in 2008 as a reserve scheme with the purpose of accepting financial providers that were not accepted by the approved dispute resolution schemes (at the time). FDRS was disestablished as a reserve scheme in 2014 and then became an approved dispute resolution scheme under the Act. FDRS had 2,227 members in 2020, including insurers, financial advisers and brokers, lenders or non-bank deposit takers and other financial service providers.

Changing scheme rules

14. Scheme rules can be changed in two ways; either mandated by the Government through regulations, or voluntary changes by the schemes after the approval of the Minister responsible for the Act (**The Minister**).

15. The Minister can pass regulations under section 79 of the Act to prescribe rules about the schemes. Policy decisions resulting from this review will be implemented through regulations under section 79. According to the Act, the Minister must not recommend the making of such

regulations unless the Minister has consulted the FMA and other parties that the Minister considers are likely to be substantially affected by the regulations. Once regulations are passed, the schemes must comply with the rule changes. Regulations under section 79 have not previously been made.

16. The process to make voluntary changes to scheme rules typically requires consultation with members, the Minister, industry and consumer associations. Once proposed rule changes have been decided, the schemes must notify the Minister of the proposed changes in accordance with Section 65 of the Act. The Minister then decides whether or not to approve the changes. If the Minister approves the proposed changes, the scheme can change its rules.

17. For the purposes of this review, changing scheme rules through regulations is the most appropriate way to implement policy decisions. This is because it is the most effective way to ensure there is uniformity across the schemes where required, which is a key purpose of this review. Furthermore, making regulations is an effective way to avoid competitive disadvantages that may impact some schemes if either the rules, or the timing of implementation, are inconsistent across all four schemes.

2 Objectives and criteria for the review

18. We seek your feedback on our proposed objective and criteria for the review.

Objective for the review

19. Section 2A sets out that the purposes of the Act are "to promote the confident and informed participation of businesses, investors, and consumers in the financial markets, and to promote and facilitate the development of fair, efficient, and transparent financial markets". Section 47 gives the specific purpose for dispute resolution, which is "to promote confidence in financial service providers by improving consumers' access to redress from providers through schemes to resolve disputes". The section also states that schemes are intended to be "accessible, independent, fair, accountable, efficient and effective".

20. We propose that the main objective of the review is to improve consumer access to redress available through the schemes. Establishing consistent scheme rules in key jurisdictional areas may also contribute to the main purposes of the Act.

Criteria for the review

21. We seek your feedback on the criteria for the review. These criteria have been drawn from the principles in the Act, which are accessibility, independence, fairness, accountability, efficiency

and effectiveness. These principles are consistent with the Best Practice Dispute Resolution Principles developed and promulgated by the Government Centre for Dispute Resolution (**GCDR**).[4]

22. While it is important that the rules and operation of the schemes on the whole are consistent with all the principles in the Act, some of the principles are more relevant to the review than others. Since this review is focused on jurisdictional issues with an impact on access to redress and access to justice, the principles which are most relevant are: accessibility, fairness, efficiency and effectiveness. The principles of accountability and independence relate less to jurisdictional issues than to issues of governance. The relevant principles have in turn been chosen as the proposed criteria for the review. The criteria will be used to assess how well each proposed option achieves the objective of the review. The criteria may apply to a package of options and not all the criteria will be directly applicable to every option assessed in this review.

Criterion one: Accessibility

23. The principle of accessibility suggests that dispute resolution should be easy for consumers to find, enter and use regardless of the consumer's capabilities and resources. Accessibility will be improved if more consumers are aware that they can bring a claim through the schemes. Additionally, accessibility includes facilitating vulnerable consumers' access to dispute resolution.

Criterion two: Fairness

24. The principle of fairness suggests that consumers should have equitable access to dispute resolution, as well as an equal chance of a fair outcome from taking their disputes to whichever scheme their financial service provider is a member of. Similarly rules that govern the schemes should not be overly onerous on consumers in a way that undermines confidence and discourages use of financial dispute re solution overall.

Criterion three: Efficiency

25. Timeliness is a key element of the principle of efficiency. In the context of this review, it means that dispute resolution should be provided in a timely way that does not compromise quality and unacceptable or preventable process delays should be avoided.

26. Improving efficiency is intended to add value for both providers and consumers in terms of more timely and improved outcomes. This may mean ensuring that rules are not overly onerous in a way which prevents consumers from being able to bring claims to schemes in a timely fashion, or that once complaints are with a scheme, that they do not hinder timely resolution.

[4] The GCDR provides leadership and stewardship to support a systems-based, best practice approach to dispute resolution in New Zealand.

Criterion four: Effectiveness

27. The principle of effectiveness suggests schemes should be capable of achieving their desired purpose which is to improve access to redress by resolving disputes. In the context of this review, effectiveness means that scheme rules should allow appropriate complaints to reach the schemes and that rules are not a barrier to resolving complaints. Scheme rules should not result in any unintended consequences.

Proposed weighting of criteria

28. For the purposes of this review, the criterion of accessibility will be weighted more heavily than the other criteria. This is because the problems this review seeks to address are primarily jurisdictional issues which impact consumers' access to bringing their claims to a scheme. Addressing these problems will increase access to justice, and as such, while the other criteria are important, we propose that accessibility should be weighted more heavily in evaluating options.

1	What is your feedback on the proposed objective and criteria for the review? What is your feedback on the proposed weighting of the criteria?

3 Financial cap

Introduction

29. Section 63 of the Act sets legal requirements for some substantive points which must be included in all scheme rules. Section 63(i) states the scheme rules must set out the remedial action that the scheme can impose on a participant in order to resolve a complaint. The scheme rules for each of the approved schemes set out a maximum value for the complaints that it can consider and award, as set out below.

Current situation

Table one: summary of financial cap rules

	PRIMARY FINANCIAL CAP
Banking Ombudsman Scheme (BOS)	$350,000. (Paragraph 27, BOS Terms of Reference).
Insurance & Financial Services Ombudsman Scheme (IFSO)	$200,000 or $1,500 per week where the claim relates to a product that provides regular payments (e.g. income protection insurance). (5.2(a)(i) IFSO Terms of Reference).
Financial Services Complaints Limited Scheme (FSCL)	$200,000. (15.1 FSCL Terms of Reference).
Financial Dispute Resolution Scheme (FDRS)	$200,000. (10.1 FDRS Rules).

Primary financial cap

30. The primary financial cap refers to both the maximum redress that can be awarded and the maximum complaint value for bringing a claim to the scheme. The maximum complaint value is calculated as the value of the claimed amount rather than the total value of the financial product or service. For example, in a dispute about a mortgage valued at $500,000, a scheme may still consider a dispute if the value of the claim is one-fifth of the value of the product at $100,000.

Weekly alternative to the primary financial cap

31. The weekly alternative to the primary financial cap operates where the financial product or service is valued not as a lump sum but as a regular payment. In such cases the total value of

the claim, being the sum of a weekly payment, would likely be above the primary financial cap. The weekly alternative is used to ensure complaints about such products can be heard by the scheme. As per the above table, IFSO is currently the only scheme to offer a weekly alternative to the primary financial cap.

Problems with the current situation

The level at which financial caps are set may limit accessibility

32. The $200,000 financial cap of IFSO, FSCL and FDRS may be too low. The financial cap was set in line with the District Court limit which was set at $200,000 in 1992. Goods and services that cost $200,000 in 1992 would cost approximately $350,204 in the fourth quarter of 2020. BOS raised their financial cap to $350,000 in 2019 in an effort to increase accessibility and be in line with the District Court.

33. If the financial cap is too low, it may limit access to redress for those with disputes valued over this amount who cannot afford court proceedings. If the cap is too high, it could pressure schemes to become more like the courts – slower and more formal. Schemes may not have the resources and expertise to consider higher value disputes, which could arguably be more complex and technical. This would therefore impact the efficiency, and potentially effectiveness, of the scheme.

34. More generally, the financial caps for bringing a complaint may be too low given the price of financial products today. A report by The Australian Treasury found that due to the high cost of housing in some Australian cities, consumers face challenges when dealing with complaints about mortgages, mortgage guarantees and insurance claims as they are often valued above the financial cap.[5] The lack of accessibility to dispute resolution stemming from an increase in the cost of housing since the caps were set is likely replicated in New Zealand.

35. As IFSO is the only scheme to offer a weekly alternative to the financial cap, this may have an impact on accessibility for consumers. For example, in a dispute about income protection insurance, if the total value of the weekly income payments (when added together) exceeds the primary financial cap, consumers may not be able to access a scheme (except for IFSO).

36. While the majority of insurance providers are registered with IFSO, some are registered with other schemes. BOS has members who offer insurance products and both FSCL and FDRS have insurance brokers as members. Any of these providers may offer products with a weekly payment, yet they would only have access to redress if their provider is registered with IFSO.

[5] ***https://treasury.gov.au/sites/default/files/2019-03/R2016-002_EDR-Review-Final-report.pdf*** - At chapter 8, page 154.

Inconsistencies in financial caps may impact fairness

37. The differences in financial caps could mean consumers' access to redress varies depending on which scheme their provider is a member of. For example:

    - Because the total financial cap differs between schemes, some consumers may not have access to redress if their claim is for over $200,000, while other consumers would (if their provider belongs to BOS).
    - An insurance consumer may not have access to redress for an income protection policy with a total value over the financial cap unless their provider belongs with IFSO who offers a weekly payment alternative which can exceed the total financial cap.

38. There is further the risk of regulatory arbitrage as providers may be incentivised to change schemes to be subject to provider-friendly rules, though we do not have evidence of this occurring.

2	Are you aware of any instances of consumer harm due to the issues outlined?
3	Do you have any feedback on the problems outlined?

Options to address these issues

39. We seek feedback on the proposed options that would be effective in addressing the problems relating to the value of the primary financial cap. The options are not mutually exclusive; all options seek to address different discrete issues which relate to the overall financial caps.

Option one: set the primary jurisdictional and redress cap at $350,000

40. Option one is to set the primary financial cap (for jurisdiction and redress) at $350,000. This could be done in two ways:

    - By setting it at $350,000 through regulation. The cap would be reviewed by MBIE in the future as appropriate.
    - By tethering it to the District Court limit. The cap would change with any future changes to the District Court limit.

    ✓ This would increase the value of claims that are eligible for consideration under the dispute resolution schemes, thereby improving accessibility.

    × However if this results in an increase in caseload or complexity of cases, it could result in schemes being under-resourced to deliver accessible, timely and effective dispute resolution services (assuming a correlation between higher value claims and complexity).

4	Do you have any feedback on this option?

5	Are there any other costs or benefits of this option?

Option two: introduce a weekly alternative to a lump sum cap

41. Option two is to introduce a weekly alternative to the total lump sum payment for all schemes. This alternative would create consistency across the schemes. We propose extending the $1,500p/w limit currently offered by IFSO to the rest of the schemes.

    ✓ For products with weekly payments (e.g. income protection insurance) where the sum-total value may exceed the primary cap, introducing a weekly alternative would mean that consumers bringing complaints about these products would have greater access to schemes.

6	Do you have any feedback on this option?
7	Do you agree that a weekly payment alternative should be introduced for all schemes? Why/why not?
8	Is $1,500 an appropriate weekly payment alternative? Why/why not?
9	Are there any other costs or benefits of this option?

Other potential issues with inconsistent awards

42. In addition to the primary financial cap discussed above, there are some other differences in rules in terms of the remedial action that the scheme can impose on a participant in order to resolve a complaint.

	SPECIAL INCONVENIENCE AWARD	INTEREST PAYMENT AWARD
Banking Ombudsman Scheme (BOS)	$9,000 (Paragraph 29, BOS Terms of Reference).	Does not have a separate interest award.
Insurance & Financial Services Ombudsman Scheme (IFSO)	$3,000 (14.4(a) IFSO Terms of Reference).	May award interest at 90 day bank bill rate where there has been undue or unreasonable delay by participant. (14.3 IFSO Terms of Reference).
Financial Services Complaints Limited Scheme (FSCL)	$2,000. (15.2 FSCL Terms of Reference).	May award interest on a payment. CEO will calculate interest having regard to any relevant factors. (15.5 FSCL Terms of Reference).
Financial Dispute Resolution Scheme (FDRS)	$3,000. (10.4 FDRS Rules).	Can award interest as part of an inconvenience award but does not exist as a separate award.

Special inconvenience awards

43. All four schemes may award a special inconvenience award for inconvenience over and above the financial cap, though the amounts are inconsistent between the schemes. These are typically intended to compensate consumers for non-financial impacts including stress, humiliation and inconvenience.

44. In practice, there are differences in how the inconvenience award is applied between schemes. IFSO for example can only order an inconvenience award in limited circumstances such as special inconvenience in making the complaint or for incidental expenses incurred in settling a claim. Other schemes such as BOS can order an inconvenience award in a wider array of situations for any inconveniences suffered as a result of the members' action or inaction.

Interest awards

45. FSCL and IFSO both have formal interest awards that compensate for certain situations (e.g. to account for an unreasonable or undue delay by the provider in the complaints resolution process). IFSO and FSCL both have different methods for calculating interest. Although BOS and FDRS do not have a formal interest award, they can in practice award interest as part of their special inconvenience award. The BOS can only award interest where it is a part of direct financial loss.

Are these other inconsistencies causing issues?

46. For example, the inconsistencies in financial caps may impact efficiency. FSCL and IFSO are the only schemes with an official interest award. The interest award may provide an incentive for providers to act efficiently and avoid preventable delays in both the internal processes and scheme dispute resolution process for resolving any given complaint. It may also encourage providers to honour redress awards in a timely manner. As BOS and FDRS do not have an official interest award, providers may not face the same incentive to ensure timely redress.

47. If they are identified as issues, options to resolve them could include:

- Setting a consistent special inconvenience award of $10,000. Increasing the special inconvenience award would allow schemes to compensate for non-financial harm in a wider range of situations. As the award is discretionary this may not lead to an actual increase in the amounts awarded but will create the flexibility for schemes to compensate where they think it is justified. This could create clarity and consistency.

- Set a consistent interest award. The existence of the interest award and how it is calculated would be consistent across the schemes to compensate for unreasonable delays from providers in honouring awards. This award would encourage providers to avoid preventable delays and comply with scheme awards.

10	Do you have any feedback on the problems outlined?
11	If a consistent special inconvenience award was to be introduced, in what circumstances should it be awarded? Should this be discretionary, or strictly prescribed?
12	If an interest award was to be introduced how should it be calculated?
13	What are the benefits and costs of the options?

Table two: impact of options for financial cap

	Option one (tether financial cap to District Court)	Option two (introduce weekly alternative)
Accessibility *[weighted higher than other criteria]*	++(++) This option will increase accessibility to the schemes.	++(++) More consumers bringing a claim about products with weekly payments could access the schemes.
Fairness	++ Consumers will have equal access to schemes and rules across schemes will become consistent and less complex.	++ Consumers will have equal access to the schemes as they will be subject to the same rules.
Efficiency	0 We do not expect there to be any significant impact on efficiency.	0 We do not expect there to be any significant impact on efficiency.
Effectiveness	- Claims may be more complex reducing schemes' ability to resolve complaints and resulting in increased costs.	0 We do not expect there to be any significant impact on effectiveness.
Overall assessment [*accessibility weighted at 200%*]	+++++	++++++

Key:

++ **much better than doing nothing/the status quo**

+ **better than doing nothing/the status quo**

0 **about the same as doing nothing/the status quo**

- **worse than doing nothing/the status quo**

- - **much worse than doing nothing/the status quo**

Initial preferred option

48. MBIEs initial preferred option is a combination of both options one and two. We are also interested in the results of feedback in regard to the other three options.

4 Timing of membership & jurisdiction

Introduction

49. All dispute resolution schemes, in their jurisdictional rules, set out whether they only consider complaints about current members, or whether they only consider complaints about providers who were members at the time when the action complained about took place.

Current situation

50. FSCL and IFSO rules specify that claims can only be made about current members. BOS and FDRS on the other hand only consider complaints about providers who were or are members when the action subject to the complaint took place.

Problems with the current situation

Inconsistent jurisdictional rules may impact accessibility

51. These inconsistencies have the potential to leave some consumers without access to redress. If an incident was to occur while the provider was a member of either FSCL or IFSO and the provider subsequently moved to BOS or FDRS, the consumer may have no access to redress. This is because both FSCL and IFSO only consider claims from current members and BOS and FDRS require the provider to be a member when the action occurred. As providers are free to switch between schemes there is a potential for this problem to manifest. Here is a hypothetical scenario to highlight how this issue may occur:

> Jackie Smith receives financial advice from FastFinancialAdvice Ltd, a hypothetical financial advice firm registered with FSCL. Several months later, Jackie complains to FastFinancialAdvice Ltd about an issue with the service provided by the firm, but they reach deadlock. FastFinancialAdvice Ltd has now switched dispute resolution schemes and is registered with FDRS. When Jackie brings her complaint to FDRS, she is told they cannot consider her complaint because they only consider complaints about providers who were members of the scheme when the issue took place. FSCL can also not consider her complaint as they only consider complaints about current members. Jackie is left without access to redress through a dispute resolution scheme.

52. As the BOS primarily has banks as members, it is unlikely for providers to move from other schemes to BOS. FDRS membership consists of insurers, insurance brokers, financial advisors and others. It is possible for members of IFSO and FSCL to move to FDRS.

53. MBIE understands the schemes have informal arrangements to manage situations where it is not clear which scheme can investigate a complaint. In these circumstances, jurisdiction depends on the goodwill of the provider to allow either scheme to consider the complaint. As neither of the schemes have formal jurisdiction to hear the complaint, if the provider does not voluntarily subject themselves to jurisdiction, neither scheme could enforce an award on the provider. It would therefore be preferable if the jurisdiction of schemes was clear and consistent for providers and consumers.

Inconsistent jurisdictional rules may impact efficiency

54. The inconsistencies in scheme rules may further impact the efficiency of scheme rules. If informal arrangements are used to decide which scheme is best placed to deal with the complaint, this will cause a delay for both the consumer and provider for resolving the complaint which undermines the efficiency of the dispute resolution process.

Inconsistent jurisdictional rules may impact effectiveness

55. As both BOS and FDRS can only consider claims about providers which were members when the issue occurred, they may have problems enforcing their decisions. The primary enforcement mechanism of the schemes is the power to revoke the providers' membership with the scheme. This would result in de-registration from the FSPR as all financial service providers are required by law to be registered with a dispute resolution scheme (and they would not be able to simply join another scheme before they have resolved the dispute). If a provider moved from BOS or FDRS to another scheme, the effectiveness of the schemes would be undermined as they may struggle to enforce their decisions due to not having the ability to revoke the provider's membership.

14	Are you aware of any specific situations where providers have switched between schemes resulting in the situation described above? If so, what happened?
15	Do you agree with the potential problems that may occur as a result of inconsistent scheme rules about the timing of membership/jurisdiction?

Options to address timing requirements

Option one: require all schemes to consider claims about current members, even if the issue arose prior to membership

56. This option would make regulations to require schemes to consider complaints about current members. This would mean that schemes would be able to consider complaints about current members even where the issue arose prior to the provider's membership with their current scheme.

- ✓ This option would reduce time delays that would otherwise occur if time was spent deciding which scheme is best placed to deal with a claim that may be outside of both schemes' jurisdiction.
- ✓ This option would allow schemes to effectively enforce decisions against participants as they would have the ability to revoke the provider's scheme membership which would result in de-registration from the FSPR.

16	Do you have any feedback on this option?
17	Are there any other costs or benefits of this option?

Option two: require schemes to consider complaints where the issue occurred when the provider was a member of the scheme, even if they are no longer a current member

57. This option would make regulations to require scheme to be consistent in limiting jurisdiction to claims from providers who were members of the scheme when the action occurred.

- ✓ This option would reduce time delays that may occur in deciding which scheme is best place to deal with a claim outside of both schemes' jurisdiction, thereby increasing accessibility.
- × This option may decrease the schemes' effectiveness as they may struggle to revoke the provider's scheme membership if the participant is not a current member. This would undermine the primary enforcement tool schemes have over providers.
- × This option may increase confusion for consumers as to where they should take their complaint, since the scheme their provider is a member of may not be able to hear their complaints. This will have a flow on effect of decreasing efficiency when bringing a complaint to the scheme.

18	Do you have any feedback on this option?
19	Are there any other costs or benefits of this option?

Table three: impact of options for timing of membership and jurisdiction

	Option one *(schemes can only consider complaints regarding current members)*	Option two *(Schemes can only consider complaints where the action complained about occurred when provider was a member)*
Accessibility ***[weighted higher than other criteria]***	+(+) This increases accessibility. Consumers who had no access due to provider changing schemes would have access to redress.	+(+) This increases accessibility. Consumers who had no access due to provider changing schemes would have access to redress.
Fairness	+ This would increase fairness as consumers would be subject to the same rules.	+ This would increase fairness as consumers would be subject to the same rules.
Efficiency	+ Clear and consistent rules would encourage efficiency as it would be clear which scheme should hear the complaint.	0 While clear rules may improve efficiency, this may be undermined by confusion if consumers contact the current scheme the provider is a member of but they cannot consider the complaint.
Effectiveness	+ This will allow schemes to utilise their enforcement tools and leverage with providers in the case of non-compliance.	- Schemes would struggle to enforce awards as they have no leverage over providers.
Overall assessment [*accessibility weighted at 200%*]	+++++	++

Key:

++ **much better than doing nothing/the status quo**

+ **better than doing nothing/the status quo**

0 **about the same as doing nothing/the status quo**

- **worse than doing nothing/the status quo**

- - **much worse than doing nothing/the status quo**

Initial preferred option

58. MBIEs initial preferred option is option one.

5 Applicable time periods (limits) for bringing a claim

Introduction

59. When bringing a complaint to a scheme, all complaints must first go through the member's internal complaints process. This typically results in internal resolution (the provider and the complainant reach an agreement) or deadlock. If neither is reached (for instance, if the complainant never hears back from the provider), the scheme can still hear a complaint subject to some conditions.

60. The relevant time period rules can be broken down into three parts, based on how the schemes currently operate:

- The first time period is when a scheme becomes available after a complainant has brought a complaint for internal dispute resolution with the provider, without deadlock or decision.
- The second timeframe limits the time to bring a claim to the scheme if deadlock has been reached.
- The final time period specifies the total deadline after which the scheme cannot consider a complaint.

Current situation

Table four: summary of time periods for bringing a claim

TIMING RULES			
	TIME PERIOD I **WHEN DISPUTE RESOLUTION SCHEME BECOMES AVAILABLE AFTER INTERNAL COMPLAINT (WITHOUT DEADLOCK)**	**TIME PERIOD II** **TIMEFRAME FOLLOWING DEADLOCK AFTER WHICH DISPUTE RESOLUTION SCHEME BECOMES UNAVAILABLE**	**TIME PERIOD III** **TOTAL DEADLINE FOR HEARING A COMPLAINT**

TIMING RULES			
	TIME PERIOD I **WHEN DISPUTE RESOLUTION SCHEME BECOMES AVAILABLE AFTER INTERNAL COMPLAINT (WITHOUT DEADLOCK)**	**TIME PERIOD II** **TIMEFRAME FOLLOWING DEADLOCK AFTER WHICH DISPUTE RESOLUTION SCHEME BECOMES UNAVAILABLE**	**TIME PERIOD III** **TOTAL DEADLINE FOR HEARING A COMPLAINT**
Banking Ombudsman Scheme (BOS)	Three months have passed without deadlock (Paragraph 6 BOS Terms of Reference).	Must bring claim within three months of deadlock (Paragraph 6 BOS Terms of Reference). Can consider up to six months after deadlock in exceptional circumstances (Paragraph 6.1 BOS Terms of Reference).	Six years after the complainant became (or should have become) aware of action (Paragraph 8 BOS Terms of Reference).
Insurance & Financial Services Ombudsman Scheme (IFSO)	Two months have passed without notification of deadlock (and scheme considers deadlock reached) (8.2 IFSO Terms of Reference).	Must bring claim within three months of deadlock (8.1 IFSO Terms of Reference). May consider up to 12 months after deadlock if in the Ombudsman's opinion it would be fair and reasonable to do so (IFSO Terms of Reference 8.3).	Six years after action was first subject of formal complaint to participant (8.4(a) IFSO Terms of Reference).
Financial Services Complaints Limited Scheme (FSCL)	20 working days have passed since the complaint without notification from the provider that it has a good reason to extend time for resolving the complaint. Can extend up to 40 days if provider has good reason to extend (5.1 FSCL Terms of Reference).	Must bring complaint within two months of deadlock (5.1 FSCL Terms of Reference).	Six years after the complainant became (or should have become) aware of action (8.1(i) FSCL Terms of Reference).
Financial Dispute Resolution Scheme (FDRS)	Two months have passed since making complaint (9.1(b)(iii) FDRS Rules).	After deadlock/decision – Must bring complaint within three months of deadlock/decision. (9.1(c)(i) FDRS Rules). After 2 months have passed – Must bring complaint within two years (9.1(c)(ii) FDRS Rules).	The action occurred more than six years before the complainant made complaint to participant (12.1(d) FDRS Rules).

Time period I

61. As listed in the table above, all schemes set out how to bring a complaint without formal deadlock differently. IFSO rules state that once two months have passed without notification of deadlock, the complaint can be brought to the scheme if it considers deadlock to be reached. FDRS rules state a complaint can be brought to the scheme once two months have passed. Similarly, the BOS allows complaints to be brought to the scheme once three months have passed without deadlock. FSCL has the shortest timeframe where claims can be brought after 20-40 working days without deadlock.

Time period II

62. FSCL is the only scheme to limit the timeframe for bringing a complaint after deadlock to two months. All three other schemes limit the time period to 3 months after deadlock has been reached. IFSO and BOS both have a discretionary time period beyond the deadlock timeframe, for circumstances where it is appropriate to extend the timeframe. Other schemes can only consider complaints where all parties agree.

Time period III

63. All four schemes set out a total deadline after which they cannot consider a claim. This time period is six years but the commencement date for this time period is inconsistent. BOS and FSCL set the six year period from when the complainant became (or should have reasonably become) aware of the action giving rise to the complaint. IFSO sets the time period from when the action was first subject to a formal complaint to the member. FDRS's limit applies where the action being complained about occurred six years before the complainant made the complaint to the member.

Problems with current situation

Timing limits may impact accessibility

Time period I

64. If the internal complaints process is slow or delayed, some consumers have to wait longer than others before a scheme becomes available. This delays access to redress. While it is recognised that providers are encouraged to be prompt in resolving complaints, there is the risk that on occasion a complaint may not be resolved by the provider swiftly. Furthermore, if the relationship between the provider and the consumer breaks down, this may further delay the resolution of the complaint.

Time period II

65. The time limit following deadlock after which the dispute resolution scheme becomes unavailable may limit access to the schemes altogether for consumers who face unforeseen delays.

66. Many consumers should be able to bring their claim to the scheme shortly after internal dispute resolution, as the provider has an obligation to provide information about which scheme to contact and the timeframe to do so. While a short timeframe here may be reasonable for most consumers, consumers in vulnerable situations may not be able to meet this timeframe. Some consumers may not be able to bring their claim to the scheme due to exceptional circumstances outside of their control. Some consumers may also need additional support or assistance to bring a claim. In these circumstances, consumers may lose access to redress.

Inconsistencies in the time periods may impact fairness

67. The inconsistencies in the time periods or time limits for bringing a claim can result in unequal results for consumers. As rules are different between schemes, consumers may be subject to more or less favourable timing requirements depending on which scheme their provider is a member of. This does not promote fairness. Furthermore, as providers can switch between schemes they may be encouraged to switch to a scheme with stricter time frames which may result in less claims being brought from consumers.

Time period I

68. The differences in the timeframe for when a scheme becomes available for consumers can lead to adverse effects for consumers. The 20 day limit for FSCL is only extended in very rare circumstances. This is much shorter than the three month timeframe for BOS. In circumstances where the provider may be delaying internal dispute resolution, consumers whose providers are members of FSCL will have access to a scheme before other consumers. This does not promote fairness.

Time period II

69. FSCL is the only scheme that has a two month limit to bring a claim following deadlock rather than three. Consumers are subject to a tighter timeframe to bring a complaint if their provider is registered with FSCL. This does not promote fairness.

70. BOS and IFSO have a discretionary timeframe to hear a complaint beyond the initial timeframe following deadlock. If a consumer was subject to exceptional circumstances, BOS and IFSO would have discretion to consider the complaint beyond the three month deadline. Consumers whose providers are registered with FSCL or FDRS cannot have the timeframe extended. This inconsistency negatively impacts fairness.

Time period III

71. The inconsistencies in the total deadline may lead to various adverse effects for consumers. FDRS starts its time frame from when the issue occurred, while IFSO starts its timeframe from when it was first the subject of a formal complaint. If a consumer is unaware of the issue (they have not yet realised the issue with the financial product or service), their timeframe would be much longer than a consumer whose provider is registered with FDRS. This difference is entirely dependent on which scheme the provider is registered with and undermines fairness.

72. Furthermore, given the long-term nature of many financial products, imposing a timeframe that commences at the time of the relevant issue results in many consumers not having access to redress. Consumers purchasing financial products such as long-term insurance products will likely not become aware of a problem until they try to claim on it. This will likely occur at a significantly later stage than when it was purchased. Consumers whose provider is a member of FDRS would likely not be able to bring a complaint about such long-term products.

20	Do you any feedback on the problems outlined?
21	Are you aware of instances of consumer harm from the problems outlined?

Options to address the timing requirements

73. These options address issues relating to all three time periods. Option one seeks to address the issues in time period I. Options two and three both seek to address the issue in time period II. Option four seeks to address the issue in time period III. The options are not mutually exclusive.

Option one: limit time period I to a maximum of two months

74. Option one is to set the time frame after which schemes must become available for consumers to a maximum of two months. This option imposes a maximum of two months, meaning individual scheme rules may specify a shorter time limit below two months. BOS would need to decrease their timeframe to a maximum of two months, but FSCL's timeframe could remain at 20 days.

- ✓ This would decrease the time consumers must wait before accessing the scheme without deadlock for consumers whose provider is registered with BOS. This would improve accessibility.
- ✓ As BOS would have to decrease their timeframe to a maximum of two months, this would improve fairness. As this is a maximum time limit, the rules will not be completely equal but overall fairer (for example if FSCL retains its timeframe of 20 days).
- × This option may cause claims to be rushed through the internal dispute resolution process and result in complaints reaching the schemes that could have been resolved internally.

22	Do you have any feedback on the option?
23	Are there any other costs or benefits of this option?

Option two: create a consistent time period II of three months after deadlock

75. Option two is to create a consistent time frame of three months after a deadlock notice is granted. This would bring FSCL into line with the other schemes.

    ✓ This would increase the timeframe for consumers to bring a claim to the scheme therefore increasing accessibility. All schemes would have the same time limit, thus improving fairness.

    × However if consumers have a longer period to bring their claim they may delay bringing their complaint to the scheme. This would decrease the efficiency of the process.

24	Do you have any feedback on the option?
25	Are there any other costs or benefits of this option?

Option three: introduce discretion to hear a complaint after time period II

76. Option three is to introduce a discretionary time period beyond the initial timeframe after deadlock. This discretion would only be used by a scheme in special circumstances where it is appropriate to extend the period.

    ✓ This would allow the schemes to hear claims beyond the initial timeframe in exceptional circumstances thereby increasing accessibility, especially for vulnerable consumers.

    ✓ This would increase the schemes' jurisdiction to hear complaints and resolve more disputes. This would increase effectiveness.

26	Do you have any feedback on the option?
27	Are there any other costs or benefits of this option?

Option four: consistent limit for time period III

77. Option four is to create a consistent total timeframe of six years, which specifies how long an issue may be within the schemes' jurisdiction when brought as a complaint. We are consulting on how this time period should be defined. This option would increase clarity and consistency in the rules for the total timeframe to bring a claim.

28	Of the four schemes,[6] which way of outlining time period III is preferable? Why/why not?
29	Are there any other costs or benefits of this option?

[6] At page 30-31 of this paper.

Table five: impact of options for timing issues

Criteria	Option one (*limit period I to a maximum of two months*)	Option two (*consistent period II of three months after deadlock)*	Option three (*introduce discretion after time period II*)	Option four (*consistent time period III*)
Accessibility [*weighted higher than other criteria*]	+(+) This would increase accessibility as schemes would become available earlier for consumers without a deadlock notice.	+(+) This would make schemes more accessible as there is a longer time period in which to bring their claim.	+(+) This would make schemes more accessible, in particular for vulnerable consumers.	+(+) This will increase the accessibility of schemes, particularly when bringing claims about long-term financial products.
Fairness	+ This would increase fairness as period I would be consistent across schemes.	++ This would increase fairness as consumers would have a consistent time period in which to bring a complaint.	+ This would increase fairness as all schemes will have a consistent discretionary period.	++ This would increase fairness as all schemes would have consistent rules.
Efficiency	+ This may increase efficiency as providers will be encouraged to resolve complaints more quickly.	- This may discourage consumers from bringing a claim promptly as they have a longer period to do so.	0 We do not expect there to be any impact on efficiency.	0 We do not expect there to be any impact on efficiency.
Effectiveness	- Claims may be rushed through the internal process, resulting in claims which may have been	0 We do not expect there to be any impact on effectiveness.	+ This would increase schemes' ability to hear appropriate claims, thus increasing their effectiveness.	0 We do not expect there to be any impact on effectiveness.

	resolved internally, wasting scheme resources.			
Overall assessment – [*accessibility weighted at 200%*]	+++	+++	++++	++++

Key:

++ **much better than doing nothing/the status quo**

+ **better than doing nothing/the status quo**

0 **about the same as doing nothing/the status quo**

- **worse than doing nothing/the status quo**

- - **much worse than doing nothing/the status quo**

Initial preferred option

78. MBIEs initial preferred option is a combination of options one, two, three and four.