



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Review of the Approved Financial Dispute Resolution Scheme Rules: Release of Discussion Document	Date to be published	12/05/2021

List of documents that have been proactively released

Date	Title	Author
24/03/2021	<i>Cabinet Paper – Review of the Approved Financial Dispute Resolution Scheme Rules: Release of Discussion Document</i>	<i>Office of the Minister of Minister of Commerce and Consumer Affairs</i>
24/03/2021	<i>Cabinet minutes – DEV-21-MIN-0046</i>	<i>Cabinet Office</i>

Information redacted

NO

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IN CONFIDENCE

Office of the Minister of Commerce and Consumer Affairs

Cabinet Economic Development Committee

Release of discussion document: Review of the Approved Financial Dispute Resolution Scheme Rules

Proposal

- 1 This paper seeks Cabinet agreement to release for public consultation the attached discussion document *Review of the Approved Financial Dispute Resolution Scheme Rules* and the related consumer summary. The discussion document seeks feedback on proposed options to improve the schemes' accessibility by making consistent key approved financial dispute resolution scheme rules.

Relation to government priorities

- 2 The proposals in the discussion document seek to improve equitability of access to financial dispute resolution for all consumers. This relates to the government commitment to grow and share New Zealand's prosperity more fairly.

Executive Summary

- 3 There are four approved financial dispute resolution schemes which resolve complaints between consumers and financial service providers. The schemes are independent entities and set their own sets of rules which govern how they resolve disputes. This has resulted in various inconsistencies between schemes.
- 4 Differences in scheme rules can be necessary for each scheme to adapt to their own circumstances. However, inconsistencies in jurisdictional rules – which govern what complaints the schemes can consider, and limitations on the redress schemes can award – can impact overall accessibility to the schemes and should therefore be consistent.
- 5 This discussion document focusses on three key issues: financial caps for bringing a complaint (and the limits on compensation that can be awarded), timing of membership (and its impact on jurisdiction) and the applicable time periods which impact when and how a scheme can hear a complaint. Inconsistencies in these areas impact consumers' ability to access the schemes. The discussion document seeks feedback on the problems and the proposed options to make rules consistent.
- 6 Submissions on the document will be open for approximately five weeks from 1 April to 6 May 2021. I intend to return to Cabinet with final policy

recommendations for changes to the approved financial dispute resolution scheme rules in August 2021 in order for regulations to be drafted and passed in late 2021 or early 2022.

Background

- 7 The Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the Act) governs approved dispute resolution schemes. The schemes are private companies, set up to resolve disputes between consumers and financial service providers including banks, insurance providers, and financial advisors.
- 8 The schemes provide a free dispute resolution service for consumers and are an alternative to the traditional court system. The schemes play a crucial role in supporting the financial markets and resolve a significant number of disputes related to financial services annually.
- 9 There are four such schemes: the Banking Ombudsman Scheme (BOS), the Insurance and Financial Services Ombudsman Scheme (IFSO), Financial Services Complaints Limited (FSCL), and Financial Dispute Resolution Service (FDRS). The schemes are separate entities with differing memberships that deal with slightly different types of financial disputes.
- 10 The Act requires all financial service providers (providers) with retail customers to belong to a scheme, and allows providers to switch between schemes. Each scheme is required to have a set of rules that govern how they resolve disputes. Scheme rules are issued by each individual scheme but all changes must be agreed to by the responsible Minister.
- 11 In 2016, MBIE completed a review of the Act. The review recommended regulations be made to align the approved financial dispute resolution scheme rules to remove jurisdictional differences that limit redress. This discussion document seeks to address the issues identified in the 2016 review.

Regulations are required to make scheme rules consistent

- 12 Making regulations under section 79 of the Act is the most effective way to ensure uniformity between schemes. Regulations will ensure all scheme rules are changed together and are consistent across the schemes.
- 13 As schemes set their own rules, this has led to various inconsistencies in scheme rules between schemes. This is particularly significant for jurisdictional rules which govern what complaints the schemes can consider, and limitations on the redress schemes can award. While absolute uniformity in scheme rules would undermine the ability for schemes to respond to their different contexts, consistency in jurisdictional rules is desirable.
- 14 Inconsistencies in jurisdictional rules can have a direct impact on consumers' access to redress through the schemes, which can result in some consumers gaining redress where others cannot. This may lead to consumer harm and confusion where the ability to bring a complaint or the redress which can be

awarded is governed by different rules depending on which scheme a provider is a member of. There could also be a risk of providers switching between schemes to avoid rules which disadvantage them.

- 15 The Financial Markets Authority and all four schemes are supportive of the need for consistent scheme rules in jurisdictional areas. The schemes recognised it would be desirable for changes to be made through regulations as it is an effective way to avoid competitive disadvantages that schemes may encounter by setting consumer-friendly rules before others.

Comment

- 16 I propose to release the attached discussion document *Review of the Approved Financial Dispute Resolution Scheme Rules*.
- 17 Ideally, feedback will be received from the four schemes, financial service providers and consumers who have engaged with the schemes.
- 18 The feedback from this discussion document will be a crucial step in filling any evidence gaps and establishing the extent of the problems identified. Furthermore, consultation will allow for evaluation of the proposed options and identify any alternative options to address issues. This consultation will inform final policy recommendations.
- 19 The discussion document is divided into three sections to seek feedback about three broad issues.

Financial caps for bringing a claim to schemes

- 20 Currently, there are inconsistencies in the maximum value of a claim (the primary financial cap) which can be brought across the schemes. This in turn creates inconsistencies in the maximum value of awards which schemes can make. BOS has a limit of \$350,000, while the other three schemes have a limit of \$200,000. Furthermore, only IFSO offers an alternative weekly cap of \$1500 per week (which applies to claims about products with a weekly value rather than a lump sum e.g. income protection insurance).
- 21 Consistency across the financial caps is important due to the direct impact caps have on consumer access to schemes, and the amount of redress available to consumers through the schemes. As the primary financial cap was originally set in line with the original District Court limit, which was subsequently increased in 2017, it may also be necessary to increase the cap. A higher consistent cap may also be necessary since the costs of financial products and the value of complaints have increased over time.
- 22 This discussion document proposes aligning the primary financial cap across schemes to \$350,000 which would bring the other three schemes in line with BOS. The discussion document also seeks feedback on whether the weekly alternative cap should be offered by schemes other than IFSO, and whether it should increase from \$1500. Finally, the discussion document seeks

feedback on whether uniformity is needed in other discretionary financial rewards schemes can make above the primary financial cap.

Timing of membership and jurisdiction

- 23 Some schemes only consider complaints from current members. Other schemes only consider complaints from providers who were a member of the scheme when the action being complained about took place. If a provider switched membership between schemes, this could lead to uncertainty about which scheme is able to consider a complaint. There is a risk that some consumers may be left without redress. There may also be a risk of providers intentionally switching schemes to avoid liability.
- 24 To address this issue, regulations could be made stating all schemes can only consider complaints from current members, or only consider complaints from providers who were a member of the scheme when the action being complained about took place. The discussion paper seeks feedback on both of these options.

Applicable time periods (limits) for bringing a claim

- 25 Consumers are subject to three time limits when bringing their complaint before a scheme:
- 25.1 **Time period one:** when the scheme becomes available after an internal complaint to provider without decision or deadlock. This could occur, for instance, if a consumer complains to their provider and never hears back, or if a provider takes long to resolve a dispute
- 25.2 **Time period two:** the timeframe after deadlock or decision after which the scheme becomes unavailable. This occurs after consumers complain to their provider but are dissatisfied with the response or the resolution offered, and are subject to a maximum time limit to bring their complaint to a scheme.
- 25.3 **Time period three:** the total timeframe for bringing a complaint to the scheme. This refers to how long after an initial event (i.e. the action being complained about or the initial complaint to the provider) a consumer decides to take their complaint to a scheme.
- 26 Inconsistencies in all three timeframes impact fairness, accessibility, and the efficiency with which schemes can resolve disputes. It may be preferable to have a shorter time period one to ensure providers resolve disputes internally in a quick manner. It may also be preferable to have a longer time period two to ensure that consumers have enough time to escalate their complaint to a scheme if they are dissatisfied with their provider's response.
- 27 This discussion paper seeks input on the problems identified as well as options to set consistent timeframes for the three time periods.

Next Steps

- 28 The next step in this review is to release the discussion document and consumer summary for public consultation. I am seeking agreement for the attached discussion document and consumer summary to be released on 1 April 2021, with consultation lasting for about five weeks.
- 29 I intend to return to Cabinet with final policy recommendations on changes to the approved financial dispute resolution scheme rules in August 2021 in order for regulations to be drafted and made in late 2021 or early 2022.

Consultation

- 30 The Financial Markets Authority, the Treasury, the Ministry of Justice, the Government Centre for Dispute Resolution (part of the Ministry of Business, Innovation and Employment) and the Department of Prime Minister and Cabinet have been consulted on this paper.

Financial Implications

- 31 There are no financial implications from the release of the attached discussion document.

Legislative Implications

- 32 The release of this discussion document does not raise any legislative implications. Regulations will need to be made under the Act to give effect to the proposals in the discussion document.

Regulatory Impact Statement

- 33 The Regulatory Impact Assessment (RIA) Quality Assurance panel at Ministry of Business, Innovation and Employment has reviewed the discussion document and confirms that it substitutes for a Regulatory Impact Statement. The discussion document is likely to lead to effective consultation and support the delivery of a quality Regulatory Impact Analysis to inform subsequent decisions.

Publicity

- 34 The Ministry of Business Innovation and Employment will post the discussion document on its website and provide copies to interested parties for consultation. The Ministry will also publish a copy of this paper on its website.
- 35 The Ministry will proactively engage with consumer and business groups throughout this consultation process to seek feedback.

Population Implications

- 36 There are no impacts from the release of the discussion documents on any population groups. However, policy proposals resulting from this review may

have positive impacts on access to dispute resolution through schemes for population groups in vulnerable circumstances.

Human Rights

- 37 There are no inconsistencies between the proposals in this paper and the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that the attached discussion *document Review of the Approved Financial Dispute Resolution Scheme rules* outlines and seeks feedback on proposed changes to approved financial dispute resolution scheme rules;
- 2 **agree** to the release of the attached discussion document titled *Review of the Approved Financial Dispute Resolution Scheme rules*, and the consumer summary, subject to minor amendments consistent with the policy outlined in the paper;
- 3 **note** that the discussion document is intended for release on 1 April 2021 for public consultation for approximately five weeks;
- 4 **invite** the Minister of Commerce and Consumer Affairs to report back to Cabinet on the outcome of consultation and submit final recommendations on regulations for Cabinet approval later in 2021;
- 5 **note** that the Ministry of Business, Innovation and Employment will publish a copy of the discussion document and consumer summary on its website.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs

Appendices

The discussion document *Review of the Approved Financial Dispute Resolution Scheme Rules* and the accompanying Consumer Summary, both of which are intended for public release, are attached.