

6 May 2021

DRS Review
Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 2526
Wellington 6140

By email: drsreview@mbie.govt.nz

Submission on "Review of the Approved Financial Dispute Resolution Scheme Rules" discussion paper

1. Introduction

Thank you for the opportunity to make a submission on the "Review of the Approved Financial Dispute Resolution Scheme Rules" discussion paper. This submission is from Consumer NZ, an independent, non-profit organisation dedicated to advocating on behalf of New Zealand consumers. Consumer NZ has a reputation for being fair, impartial, and providing comprehensive consumer information and advice.

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2. General comments

Consumer NZ supports a review of the rules relating to approved financial dispute resolution schemes. However, we're disappointed this review is not considering wider issues with the current framework and the barriers they are creating to access to justice for consumers.

We have significant concerns about the existing framework, particularly the number of schemes and lack of transparency of their decisions. We consider these factors are major barriers to access and need to be addressed in order to ensure effective financial dispute resolution.

3. Answers to questions

Our answers to specific questions in the discussion paper are set out in the submission template below.

If you require any further information, please do not hesitate to contact me.

Submission template

Review of the Approved Financial Dispute Resolution Scheme Rules

Your name and organisation

Name	Privacy of natural persons
Email	Privacy of natural persons
Organisation/Iwi	Consumer NZ

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

The Privacy Act 2020 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

MBIE intends to upload submissions received to MBIE's website at www.mbie.govt.nz. If you do not want your submission to be placed on our website, please check the box and type an explanation below.

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Please check if your submission contains confidential information:

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because...
[Insert text]

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?

We support the objective of improving consumer access to redress. However, we consider the most effective way to improve access would be to replace the four schemes with a single dispute resolution body, similar to the Australian Financial Complaints Authority (AFCA) or the UK Financial Ombudsman Service (FOS).

We don't support having four separate schemes. We consider this creates barriers for consumers and works against effective dispute resolution. Although the options in this paper address some of the issues created by having four schemes, we don't consider they will deliver the improvements required.

Financial cap

2 Are you aware of any instances of consumer harm due to the issues outlined?

We are aware of situations that could have resulted in consumer harm. For example, we received a complaint from a bank customer who obtained pre-approved finance (through a broker) to purchase a property at auction. The customer submitted a pre-auction offer on the property and, as a result, the auction was brought forward.

The customer's offer became the reserve price for the auction. A day before the auction, the customer's personal banker advised the customer's broker he was going to ask another bank employee to take over the customer's business because he also wanted to bid on the property. Both the customer and the personal banker bid at the auction.

The customer complained to us the personal banker had knowledge of his maximum bidding price, his confidential pre-auction offer and, potentially, the reserve price. Neither party was successful in purchasing the property. However, if the personal banker's bid had been accepted, the amount of harm to the consumer would have well-exceeded the financial cap.

3 Do you have any feedback on the problems outlined?

We agree the financial caps for IFSO, FSCL and FDRS are too low and are likely to be limiting accessibility. Financial caps have not kept pace with the value of financial products and the high cost of housing in New Zealand.

We note that consumers affected by the Canterbury earthquakes are likely to have benefited from higher financial caps to enable disputes about their insurance claims to be heard by dispute schemes.

The Report of the Public Inquiry into Earthquake Commission noted it is "disappointing that the Insurance and Financial Services Ombudsman considered only 198 formal complaints ... between 2010 and 2017, presumably because its jurisdiction is limited to \$200,000".¹

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

¹ Report of the Public Inquiry into EQC, March 2020, p193. Retrieved 5/5/21 from <https://eqcinquiry.govt.nz/assets/Inquiry-Reports/Report-of-the-Public-Inquiry-into-EQC.pdf>

4 Do you have any feedback on this option?

We support higher caps that are at least equivalent to those in Australia. AFCA can award up to A\$542,500 compensation for most claims of direct financial loss.² This is much higher than the proposed \$350,000 cap and provides Australians with better access to redress.

If a cap of \$350,000 is adopted, we consider it should be tethered to the District Court cap.

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

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

6 Do you have any feedback on this option?

We support the introduction of a weekly alternative to a lump sum cap for all schemes.

7 Do you agree that a weekly payment alternative should be introduced for all schemes? Why/why not?

We agree the weekly payment alternative should be introduced for all schemes. A consistent weekly payment alternative will allow more consumers to bring claims. Without this option, a consumer is unlikely to have access to redress for an income protection policy with a total value over the financial cap, unless their provider belongs to IFSO.

8 Is \$1,500 an appropriate weekly payment alternative? Why/why not?

In Australia, AFCA has a limit of \$14,500 per month for income stream life insurance. We suggest a similar amount be considered in New Zealand.

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

Other potential issues with inconsistent awards

10 Do you have any feedback on the problems outlined?

As discussed above, our preference is for one scheme, with one set of rules. Given this approach isn't currently being considered, we support as much consistency as possible between the rules of the four schemes to help ensure consumers are treated equally by all schemes.

We also support consistent special inconvenience awards and interest awards.

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?

² See <https://www.afca.org.au/what-to-expect/outcomes-afca-provides>

We consider the schemes should be able to award compensation if the circumstances merit it. Any such award should take into account the severity of the conduct and the effects on the complainant.

Schemes should have to ability to award compensation for inconvenience, whether or not the consumer has requested this compensation. Schemes should be able to make more than one award for special inconvenience if the consumer suffered multiple losses.

12 If an interest award was to be introduced how should it be calculated?

We support an interest award being calculated in a way that would provide a sufficient incentive to avoid preventable delays and comply with scheme awards.

13 What are the benefits and costs of the options?

Timing of membership & jurisdiction

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?

Yes. The rules about timing of membership/jurisdiction need to be changed to ensure these problems can't occur.

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

16 Do you have any feedback on this option?

We support 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

18 Do you have any feedback on this option?

Given schemes would struggle to enforce awards against providers that are no longer members, we think this option is not realistic.

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

Applicable time periods (limits) for bringing a claim

20 Do you have any feedback on the problems outlined?

21 Are you aware of instances of consumer harm from the problems outlined?

We regularly receive complaints about insurance companies that delay responding to complaints. These delays can result in stressful and drawn-out processes for consumers.

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

22 Do you have any feedback on the option?

We consider a timeframe of up to two months to be too long. In Australia, AFCA allows members 21 days to work with the complainant if internal dispute resolution has already been completed or the complainant is in financial difficulty. In most other cases, members get up to 45 days. We suggest a similar approach here.

We also support consistent timeframes across the schemes to reduce confusion and ensure consumers are treated fairly.

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

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

24 Do you have any feedback on this option?

We support consistent timeframes across all four schemes for bringing a complaint after deadlock has been reached. Consumers should not be subject to differing timeframes for bringing a complaint based on which scheme their provider belongs to.

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

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

26 Do you have any feedback on the option?

All schemes should have discretion to consider complaints beyond three months. This will promote fairness.

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

Option four: consistent limit for time period III

28 Of the four schemes, which way of outlining time period III is preferable? Why/why not?

We consider the time limit for making a claim should be six years after the first formal complaint by the complainant is made to the member. This allows the consumer more time to bring a complaint and does not require an assessment of constructive knowledge.

We also consider the schemes should be able to consider complaints beyond this time limit, where doing so is in the interests of fairness and justice.

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

Other Comments

To promote consumer confidence, dispute resolution processes must be transparent. We therefore consider schemes should be required to publish their decisions. In the UK, FOS is required to publish all determinations unless there are good grounds for withholding them.

Our survey research has found strong consumer support for requiring schemes to publish complaint decisions. Our 2020 survey found 82 percent of Kiwis agreed it would be useful if dispute schemes published details of the complaints they received.