

Submission template

Review of the Approved Financial Dispute Resolution Scheme Rules

Your name and organisation

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Organisation/Iwi	FairWay Resolution Limited

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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?

FairWay Resolution Limited (FairWay) accepts the proposed objectives and criteria for the review. The delivery of Dispute Resolution Services (DRS) that consumers can trust and are accessible is an important part of a robust financial system. While DRS provides an important function for consumers as an avenue to have complaints heard, it is important to have a system that promotes fairness across all parties involved in a dispute

Financial cap

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

We do from time to time see examples of the current financial caps preventing disputes moving forward (because they fall outside of jurisdiction). This is mitigated to an extent insofar as the FDRS rules complainants have the ability to reduce the level of their claim to fit within the jurisdictional limits. While this option is not used regularly there are examples of its use. This provides consumers with a choice that might allow them to save significant cost utilising an out of court resolution method.

3 Do you have any feedback on the problems outlined?

The recent Financial Dispute Resolution Service (FDRS) rules review recognises some of the points noted above. Through this review, provision was made in the FDRS rules for a weekly compensation alternative together with a framework that anticipates an increase in the financial cap. We are currently seeking ministerial approval for these revised rules. FairWay fully supports the desire to have greater consistency across all schemes.

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

4 Do you have any feedback on this option?

FairWay believes tethering to the District Court limits is the most pragmatic and efficient way of achieving this objective. While this option has the potential to increase the number of complex cases, it is important to recognise complexity isn't a function of value alone. Within the current FDRS complaints framework we see some particularly complex cases coming through the system. A well-functioning DRS should be able to handle the potential increase in complex cases, noting this may require extra time to bring about an outcome.

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

With the potential of more cases there is likely to be additional administrative cost for DRS providers. This may give rise to an increase in complaint fees for all market participants.

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

6 Do you have any feedback on this option?

We support this proposal noting that the FDRS rules review awaiting ministerial approval has already added this provision.

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

	Yes, it promotes greater accessibility for consumers and an efficient option for complaints to be heard if issues cannot be resolved directly with providers.
8	Is \$1,500 an appropriate weekly payment alternative? Why/why not?
	FairWay believe \$1,500 is currently an adequate level for weekly cover. It should however be reviewed on a regular basis. Noting many weekly benefits can be payable for long periods of time (e.g. to age 65) the accumulated value of the complaint could be of a significant value. It is not clear whether the weekly compensation is a standalone amount or whether this would be limited up to the value of the lumpsum cap.
9	Are there any other costs or benefits of this option?
	No
	Other potential issues with inconsistent awards
10	Do you have any feedback on the problems outlined?
	FairWay doesn't currently have any evidence that would suggest this situation is an issue. Very rarely do we see such awards used.
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?
	FairWay believes this should be discretionary for the Scheme Adjudicator to decide based on the specifics of the case and the rule of natural justice.
12	If an interest award was to be introduced how should it be calculated?
	FairWay do not have a preference for the interest calculation methodology, noting whatever the method it should be clearly described.
13	What are the benefits and costs of the options?
	We currently see little benefit in adjusting this area of DRS rules, noting its infrequent use. Seeing the potential for a substantial lift in limits could give rise to increased pressure towards an adjudicators or scheme administrators.
	<i>Timing of membership & jurisdiction</i>
14	Are you aware of any specific situations where providers have switched between schemes resulting in the situation described above? If so, what happened?
	FairWay has seen a very small number of instances where the situation described causes jurisdictional issues. The DRS providers work very well together to, as much as possible, ensure consumers have a pathway for their complaints to be heard. The potential for this issue has exacerbated through the transition to the new licensing regime (March 15), specifically around the linking of Financial Adviser to FAPs. This is an issue that all DRS providers raised during the consultation with MBIE. MBIE at the time suggested that licensing conditions could be used to overcome this issue.
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, although experience would suggest this is not a regular occurrence.
	Option one: require all schemes to consider claims about current claims about current members, even if the issue arose prior to membership

16 Do you have any feedback on this option?

Of the two options FairWay believe this option would provide the greatest level of simplicity to the consumer. Across all type of dispute resolution schemes consumers often get frustrated on jurisdictional issues. For financial services, the simplicity of having your current DRS responsible for complaints would be useful. There would however need to be thought given to how issues arising from existing complaints (e.g. awards not actioned) would be handled for FSPs who change DRS providers. In that instance it might be pragmatic to allow consumer choice through which DRS they would like the issues to be resolved.

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

This may cause some transfer of cost between DRS providers, however well managed complaint fees should provide the mechanism to cover this.

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?

This option is more confusing for the consumer and provides an additional administrative burden for FSPs (i.e. which DRS was the FSP a member of when this event occurred). The key issue though is the remedies available to the DRS where that FSP is no longer a member of the DRS. How can the 'existing' DRS enforce any award?

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

This give rise to the potential for greater cost for DRSs in determining jurisdiction to accept cases

Applicable time periods (limits) for bringing a claim

20 Do you any feedback on the problems outlined?

FairWay does not have any widespread evidence that jurisdictional time limits are causing issues of fairness and accessibility. While consistency is used as an argument, we don't believe in this situation, current rules differences are adversely impacting consumers.

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

We have no evidence to suggest this is a widespread issue

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

22 Do you have any feedback on the option?

This is the current position for FDRS. During our recent rules review timings were considered. The balance we need achieve is giving scheme members a fair opportunity to resolve complaints directly with consumers, while ensuring consumers have timely access to other avenue if resolution is not possible. Noting the complexities described earlier in the documents having a period of 2 months give adequate opportunity for both parties to constructively engage to address the issues.

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

No

Option two: create a consistent time period II of three months after deadlock	
24	Do you have any feedback on this option?
	As noted above our recent rules review considered these issues and a three month maximum time limit following deadlock give the consumer adequate time to bring a complaint to the DRS (which is clearly noted in the FSPs Deadlock Notice), it also provides a degree of equity or fairness for the FSP following their internal complaints handling process.
25	Are there any other costs or benefits of this option?
	No
Option three: introduce discretion to hear a complaint after time period II	
26	Do you have any feedback on the option?
	In the context of a deadlocked complaint and the notification that the complainant receives from the FSP we believe having a maximum three-month escalation period is adequate. While there is always a chance of being asked to use some discretion, we have not seen any evidence that suggests this is an issue impacting consumers access to dispute resolution services
27	Are there any other costs or benefits of this option?
	No
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 prefer the simplicity of the FDRS approach to the deadline question. The consideration is tied up in the potential for legalese (e.g. 'when a complainant became aware or reasonably should have become aware of') to create confusion and the feeling of losing access to justice for a complainant.
29	Are there any other costs or benefits of this option?
	No
Other Comments	