



FINANCIAL
OMBUDSMAN
SERVICE

2009-2010 Annual Review



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About FOS

The Financial Ombudsman Service (FOS) is an independent organisation offering free and accessible dispute resolution services to the customers of financial services providers (FSPs) across Australia. FOS can deal with disputes about the following broad types of product: credit, insurance, investments, payment systems and deposit taking. FOS is funded by its member FSPs. Membership of the Financial Ombudsman Service is open to any FSP operating in Australia. Our service is free to consumers.

About this review

This Annual Review covers the 2009–2010 financial year (1 July 2009 to 30 June 2010). It follows the reporting requirements for external dispute resolution (EDR) schemes set out in ASIC Regulatory Guide 139. The review is available in print form and on the FOS website at www.fos.org.au/annualreview. A summary version is also available. To order additional print copies of this review, please email publications@fos.org.au.

Comparative tables

This year, in accordance with new provisions in ASIC Regulatory Guide 139, we are publishing a series of comparative tables showing disputes data about named members.

The comparative tables are only available as part of the online version of the review: www.fos.org.au/annualreview.

Overview

The Year at a Glance

- 23,790 new disputes, up 6% on the previous year. See page 27.
- 21,543 disputes resolved, up 27% on the previous year. See page 68.
- 226,825 calls received by our call centre. See page 17.
- New Terms of Reference and new dispute resolution process started on 1 January 2010. See pages 2-5.
- Early Resolution Team formed to handle disputes in the early stages of our process. See page 4.
- 251 presentations to consumer, community, industry and member groups. See page 12.
- Staff numbers were increased to handle the rising volume of disputes. See page 10.
- 1,416 new members joined FOS. See page 11.
- New funding model was introduced. See page 2.
- 58 systemic issues were resolved. More than 36,000 customers were affected and more than \$17.5 million was paid to customers by financial services providers. See page 73.
- Comparative tables showing disputes data about named financial services providers. See www.fos.org.au/annualreview.

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Message from the Chair of the Board, Professor The Honourable Michael Lavarch

Building a first-class dispute resolution scheme

The Financial Ombudsman Service (FOS) is a young organisation with deep roots. It was formed in 2008 through a merger of the three major financial services dispute resolution schemes operating in Australia at the time: the Banking and Financial Services Ombudsman (BFSO); the Financial Industry Complaints Service (FICS); and the Insurance Ombudsman Service (IOS). On 1 January 2009, the Credit Union Dispute Resolution Centre (CUDRC) and the Insurance Brokers Disputes Ltd (IBD) also joined FOS.

Many of our directors and our staff had worked for one of the predecessor schemes, and they have considerable experience and knowledge of alternative dispute resolution and all segments of the financial services industry. They are the ideal team to build a new, first-class dispute resolution service.

Of course, merging five organisations into one takes considerable work, but it is also an opportunity to share ideas, review policies and streamline processes. This year, FOS introduced its new Terms of Reference and Operational Guidelines, its new dispute resolution process and its new funding model. Together they give FOS a framework that will sustain it well into the future and cater to the needs of the broad range of financial services providers (FSPs) and consumers that FOS serves.

New Terms of Reference and Operational Guidelines

Until 31 December 2009, FOS operated under five different Terms of Reference (TOR) that were modified versions of the documents that governed the operations of our predecessor schemes. In 2008 and 2009, after extensive consultation with stakeholders, we developed new Terms of Reference for all of FOS. The new Terms of Reference were approved by ASIC in December 2009 and came into effect on 1 January 2010. They broadly set out what kinds of disputes we can deal with, our dispute resolution processes, and our reporting obligations.

On 1 January 2010 we also released our Operational Guidelines, which explain in detail how the Terms of Reference work in practice. FOS conducted road shows around the country in early 2010 to introduce FSPs and consumers to our new Terms of Reference, Operational Guidelines and dispute resolution process.

New funding model

In accordance with ASIC Regulatory Guide 139, which sets the rules that external dispute resolution schemes like FOS must follow, our services are paid for by industry and are free to consumers. In 2010, FOS introduced a uniform funding model that applies to all of our members, replacing the various funding models that were used by our predecessor schemes. The new model, which consists of a base levy, a user charge and case fees, is designed to distribute the costs of running FOS fairly between our members. It is a 'user pays' model that charges members in accordance with their use of FOS.

Comparative tables

As part of this year's Annual Review, FOS is publishing a series of comparative tables about the disputes performance of its members. The comparative tables show how many disputes our members had in different product groups (relative to the size of their business in the product group), how far their disputes went through the FOS dispute resolution process and what the outcomes of their disputes were.

Both FSPs and consumers will benefit from the comparative tables. FSPs can compare their disputes performance to that of other FSPs and set targets for their businesses accordingly. Consumers can find out how likely other consumers were to bring a dispute to FOS about a particular product from a particular FSP, and what were the outcomes of disputes at FOS.

The comparative tables will only be published on the FOS website (www.fos.org.au/annualreview) and will only cover the period 1 January to 30 June 2010, not the full financial year. The comparative tables will become a regular part of our reporting to ASIC and our members.

Thanks

I would like to thank the Board's Advisory Committees for their expert advice and guidance over the past year. I would also like to thank Kerrie Kelly for her service as a director at FOS and at one of our predecessor schemes, the Insurance Ombudsman Service. Kerrie was succeeded as an industry director on the FOS Board by Robert Belleville. Robert has had a long, distinguished career in the insurance industry, including serving as Group Executive, Personal Insurance at Suncorp, Chief Executive of Promina Direct Division and CEO of AAMI.

In November 2009 the Board appointed John Price as Ombudsman, General Insurance. John had been a Referee, Adjudicator and Panel Chair at FOS (and the Insurance Ombudsman Service) since 2004. We are fortunate to have someone with John's great industry experience and reputation in this key position.

Thank you, finally, to all the staff of FOS, who have very ably carried out their core business of resolving disputes this year while making some major changes to policies and processes. The Board is very grateful for their enthusiasm, intelligence and sheer hard work.



**Professor The Honourable
Michael Lavarch**

Chair of the Board



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Message from the Chief Ombudsman, Colin Neave

One organisation, one approach

The past year was a demanding but very productive one for the Financial Ombudsman Service (FOS). We started the year with a considerable number of disputes carried over from 2008–2009, and the number of disputes coming to FOS continued to rise in 2009–2010. FOS received 23,790 disputes in 2009–2010, up from 22,392 in the previous financial year and 14,359 in the year before that. But the number of disputes we resolved also rose significantly, from 17,007 in 2008–2009 to 21,543 in 2009–2010.

We also continued the process we began in 2008–2009 of merging our five predecessor schemes into one organisation with one approach to dispute resolution. Many changes have been made this year to standardise and streamline the way we resolve disputes, so that all types of financial disputes that consumers bring to FOS are now handled through a single process. Of course, we have also maintained our considerable breadth of experience and expertise; we have specialist dispute resolution teams that cover all areas of the financial services industry.

New dispute resolution process

The FOS Terms of Reference, our broad set of rules about what kinds of dispute we can consider and how we consider them, came into effect on 1 January 2010. The Terms of Reference underpin our new dispute resolution process, which replaces the various processes we inherited from our predecessor schemes. The new process contains four stages: 1. Registration; 2. Acceptance; 3. Case Management; and 4. Outcome. The process is outlined on page 19 of this review.

The first stage, Registration, involves referring the dispute to the relevant financial services providers (FSPs). It gives the FSP an opportunity to solve the problem itself, before FOS gets involved. A dispute can skip the Registration stage if the FSP has already had sufficient opportunity to resolve the problem before the consumer contacts FOS. We have already seen the benefits of formally incorporating the Registration stage into our process.

Of the 8,425 disputes that FOS registered between 1 January and 30 June 2010, only 29% went through to the Acceptance stage of our process (as at 30 June 2010). The high proportion of disputes that have been resolved during the Registration stage is a testament to the ongoing commitment of our members to effective and efficient dispute resolution and customer service.

Expansion and restructuring

To handle the steadily increasing workload, FOS hired many new people this year. At the start of the year we had 212 staff and at the year's end we had 286. Hiring more case-handling staff, in particular, has given us the extra capacity we need to reduce the number of disputes in our system.

We have also made important structural changes. Most significantly, we recently established an Early Resolution Team to handle disputes in the early stages of our resolution process. Having a large team dedicated to early resolution of disputes will enable us to increase the proportion of disputes that are resolved by agreement directly between the FSP and the consumer or with the help of a FOS case worker. This will minimise the need for more extensive investigations and formal decisions by FOS.

Awareness and access

FOS is continually raising awareness of our organisation in the community. This year we have made 251 presentations, including speeches at large industry and consumer conferences, presentations to members on particular topics, such as financial difficulty, and seminars for special groups, such as rural and Indigenous communities. We have also produced a variety of publications for both consumers and members.

This year we have used our website even more than in past years to deliver information and services. Online delivery is a cost-effective way to extend our reach, and it is the preferred communication medium of many of our stakeholders. On 1 January 2010 we introduced an online dispute form that consumers can use to lodge disputes with FOS.

Within six months, the online form had become clearly the most popular method of lodging a dispute. We have also been developing a series of online tutorials explaining our dispute resolution process.

Promoting early resolution of disputes

One theme linking most of the changes we have made this year is the promotion of *early, collaborative resolution of disputes*. Our dispute resolution services should be seen as a last resort. In most cases, the consumer and the FSP can work together to resolve their dispute and a third party like FOS will not be required. Our members can support this goal by having efficient, effective complaints procedures and, more broadly, by maintaining high standards of customer service across their organisations.

If communication between a consumer and an FSP breaks down or they reach a stalemate, FOS can help to resolve their dispute. We start by using informal, collaborative methods, such as conciliation and negotiation, and only make a formal decision on a matter if these methods are not successful.

Early, collaborative resolution of a dispute can save all parties time, money and trouble. Perhaps most importantly, it helps the consumer and the FSP to preserve a strong business relationship. That is in the best interests of consumers, FSPs and the financial services industry generally.

Systemic issues

Another key aspect of our work is the identification and resolution of systemic issues. Systemic issues can affect many more consumers than those who complain to us, and the work we do with our members to find solutions and redress for all affected customers remains one of the lesser known services provided by FOS. We continue to see our members responding constructively to our queries.

This year 58 systemic issues were resolved. For the cases in which the FSP was able to tell FOS how many customers were affected and how much money was paid to customers, a total of 36,544 customers were affected and over \$17.5 million was paid out.

Thanks

My thanks to the FOS Board, the Advisory Committees, and my fellow Ombudsmen for their support and advice throughout the past year. Thank you also to the wonderful staff of FOS. The past year has been stressful at times for many of us, because of the volume of disputes FOS has handled and the many changes we have made, but everyone at FOS has worked exceptionally hard and professionally throughout the year.

In September 2010, FOS is moving to a shiny new home in the Docklands suburb of Melbourne. The move represents the next step in the integration of the predecessor schemes into a single, cohesive organisation. It will bring us together on two floors, in an open plan office designed to facilitate the sharing of ideas and expertise. We are all eagerly anticipating the move.



Colin Neave
Chief Ombudsman



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Our Organisation

Community and Industry Engagement

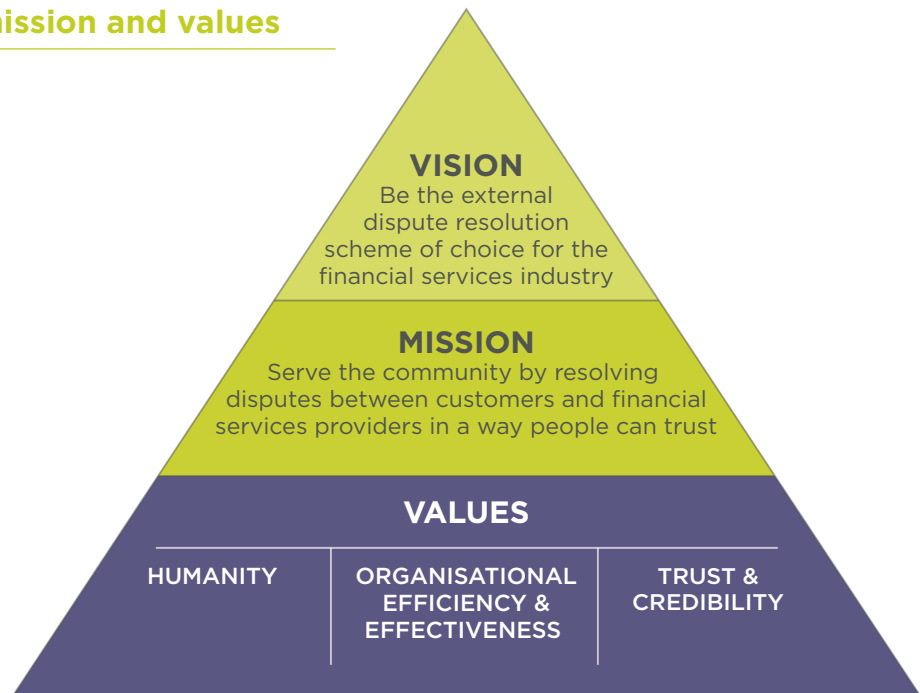
Our Dispute Resolution Process

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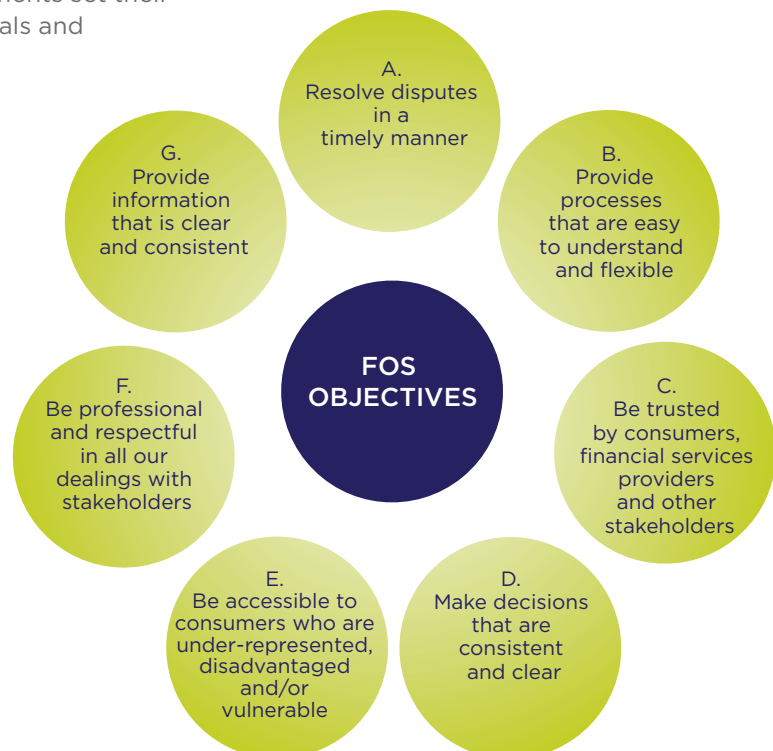
Our organisation

Our vision, mission and values

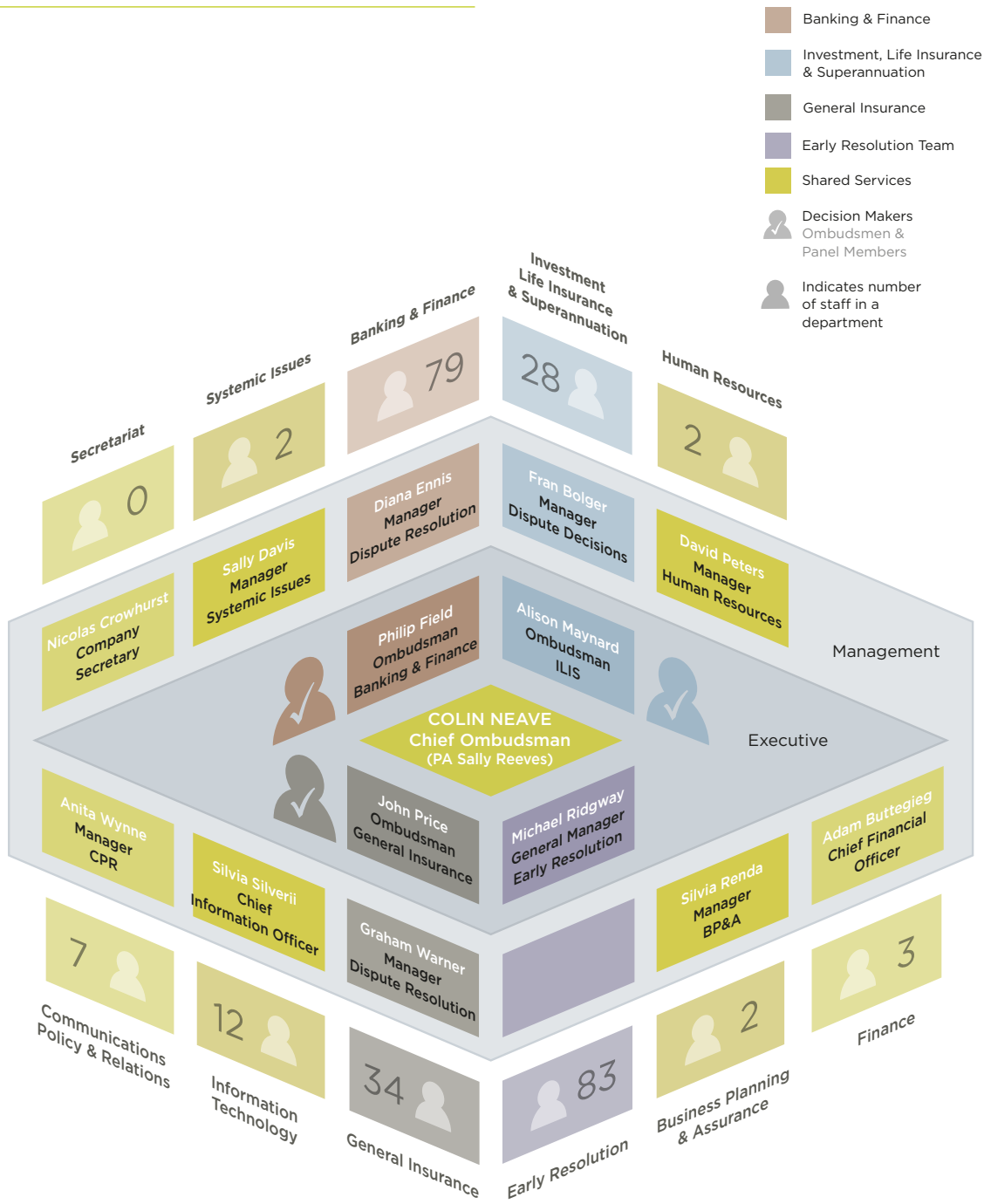


Our objectives

The following diagram shows the Financial Ombudsman Service's seven long-term objectives. These objectives set the framework within which our management team and individual departments set their short- and medium-term goals and measure their progress.



Our structure



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- Community and Industry Engagement
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Our Board of Directors

The Financial Ombudsman Service is governed by an independent board consisting of four industry representatives, four consumer representatives and an independent chair. The Board also seeks expertise and advice from specialist Advisory Committees containing industry and consumer representatives.

- 1 Professor The Honourable Michael Lavarche
– *Chair of the Board*
- 2 Dr Brendan French – *Industry Director*
- 3 David Coorey – *Consumer Director*
- 4 Russell McKimm – *Industry Director*
- 5 Jenni Mack – *Consumer Director*
- 6 David Squire – *Industry Director*
- 7 Denis Nelthorpe – *Consumer Director*
- 8 Robert Belleville – *Industry Director*
- 9 Catriona Lowe – *Consumer Director*



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Our staff

The Financial Ombudsman Service's human resources philosophy is built on the premise that strong professional knowledge and skills will enable us to achieve our long-term objectives. We thus continue to focus on building the expertise of our staff in such areas as alternative dispute resolution, law, accountancy, banking and finance, insurance, investments, communications, information technology and administration.

FOS has also continued to increase our staff numbers and has sought to attract new people with relevant industry experience to complement our existing talent and skill base. During the 2009–2010 financial year, we added a total of 74 staff, a 35% increase from the previous financial year. This increase was designed to enable the organisation to manage the increased volume of new disputes received over this and the previous financial year.

As a group, we are committed to finding fair resolutions to disputes and to demonstrating the values of humanity, organisational efficiency and effectiveness, and trust and credibility.

	1 July 2009	30 June 2010	Change (%)
Full time	134	165	+ 23%
Part time* and casual	78	121	+ 55%
Total	212	286	+ 35%

* Our part-time staff include decision-making panel members and adjudicators.



Our members

The Financial Ombudsman Service's members are financial services providers who have chosen us as their ASIC-approved external dispute resolution scheme. Our members include banks, credit unions, building societies, general insurance companies and their agents, life insurance companies and brokers, superannuation providers, fund managers, mortgage and finance brokers, financial planners, stockbrokers, investment managers, friendly societies, time share operators, credit providers and authorised credit representatives.

The following table shows how many members FOS had at the start and end of the financial year. The total increased by 36% during the year. Some of our new members were authorised credit representatives (ACRs) of other businesses. Under the national credit regime introduced on 1 July 2010, ACRs must be a member of an external dispute resolution (EDR) scheme like FOS.

	1 July 2009	30 June 2010	Change (%)
Financial service providers	3941	4755	+ 21%
Authorised credit representatives	0	602	-
Total	3941	5357	+ 36%



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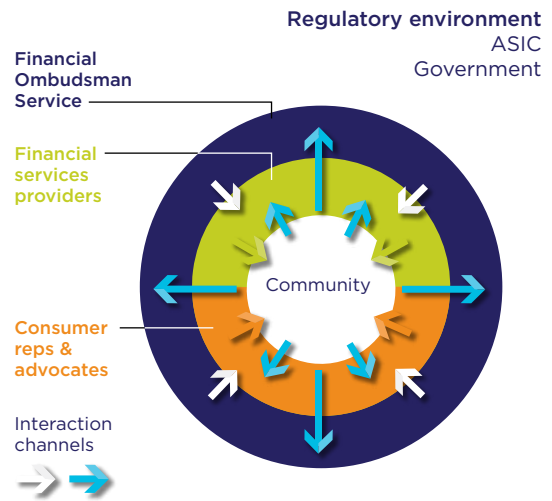
Our approach

The Financial Ombudsman Service's primary job is to fairly and independently resolve disputes between consumers and financial services providers (FSPs). But to be an effective dispute resolution service, we engage more broadly with consumers and FSPs, as well as industry and government bodies.

In particular, we:

- raise awareness of FOS in the community
- inform consumers and members about how our dispute resolution process works and how we approach specific issues
- encourage our members to improve their systems for handling complaints, to maximise the proportion of disputes that are resolved quickly and collaboratively
- contribute to discussions about legislation and policy relating to the financial services industry, alternative dispute resolution and the jurisdiction of FOS.

We do these things through a mix of events and presentations, print and website publications, partnerships and policy submissions.



Where we went and who we spoke to

FOS staff gave 251 presentations in 2009–2010. We spoke at events in all the capital cities and in large and small towns. The table at the top of the next page shows the number of presentations we gave in each state and territory, divided by metropolitan and rural location. The spread of the presentations across the country does not completely match the spread of the Australian population, but it is closer than it has been in past years. The proportion of presentations given in Victoria has been steadily falling and the proportions of presentations given in Queensland and Western Australia have been steadily rising.



Presentations by location

Location	Metro	Rural	Total	%	% of Australian population*
VIC	86	11	97	39%	25%
NSW	65	11	76	30%	33%
QLD	21	13	34	13%	20%
WA	15	2	17	7%	10%
SA	11	2	13	5%	7%
TAS	4	1	5	2%	2%
ACT	5	0	5	2%	2%
NT	1	1	2	1%	1%
New Zealand	2	0	2	1%	-
Total	210	41	251	100%	100%

* As at 31 December 2009.
Source: www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0

The chart below shows the main audience groups for our presentations in 2009-2010. About half of the presentations were for FOS members. We engaged with the community both directly and via FSPs, consumer representatives, advocacy groups and community legal centres.

Presentations by audience

Members	[Bar chart showing 121 presentations]										121
Industry	[Bar chart showing 36 presentations]										36
Consumer representatives	[Bar chart showing 57 presentations]										57
Consumers (direct)	[Bar chart showing 37 presentations]										37



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Surveys

This year we commissioned two major national surveys, one of our members and one of the community. These surveys have helped us to gauge:

- how well known FOS is in the community and whether people have an accurate idea of what we do
- how we are perceived by our members
- which communication channels the community and members currently use to learn about FOS and which channels they would like to use.

From our community survey we learned that:

- around 50% of individuals are aware of FOS
- most of those who have heard of FOS correctly understand what we do
- many people do not realise the breadth of the financial areas FOS covers – most people know we cover banking services but not as many people are aware of our other areas (such as insurance and investments).

From our member survey we learned that:

- members are generally satisfied with our service – 61% rated us positively, 17% negatively – and most view FOS as a trustworthy, credible organisation
- members would like more information about FOS decisions so that they can assess whether FOS is taking a consistent approach
- more than three quarters of members would like to receive information from FOS primarily through electronic channels (emails and the FOS website).

The surveys have helped us to set benchmarks for community and member perceptions and identify areas we need to focus on.

Contributions to changes in legislation and policy

This year, we contributed to discussions on reforms to legislation and policy affecting areas such as consumer credit and financial advice. We continued to participate in the Financial Services Disclosure Advisory Panel, a joint industry and consumer consultation group facilitated by ASIC and Treasury. We also made submissions to enquiries, reviews and issues papers, including:

- the Parliamentary Joint Committee's inquiry into collapses in the financial services industry
- Treasury's options paper on unfair terms in insurance contracts
- ASIC's consultation papers about responsible lending and dispute resolution requirements for consumer credit and margin lending
- APRA's discussion paper about liability insurance
- the OECD's survey on financial consumer protection, and
- the National Alternative Dispute Resolution Advisory Council's reference relating to the integrity of alternative dispute resolution processes.

FOS has continued to work on a proposal for the development of a last resort compensation scheme for retail clients of financial services. Activities this year have included meetings with industry associations, consumer representatives, ASIC and Treasury. We have also met with and supplied relevant data to Richard St John, who is conducting a review on the need for, and the costs and benefits of, a statutory compensation scheme for financial services.

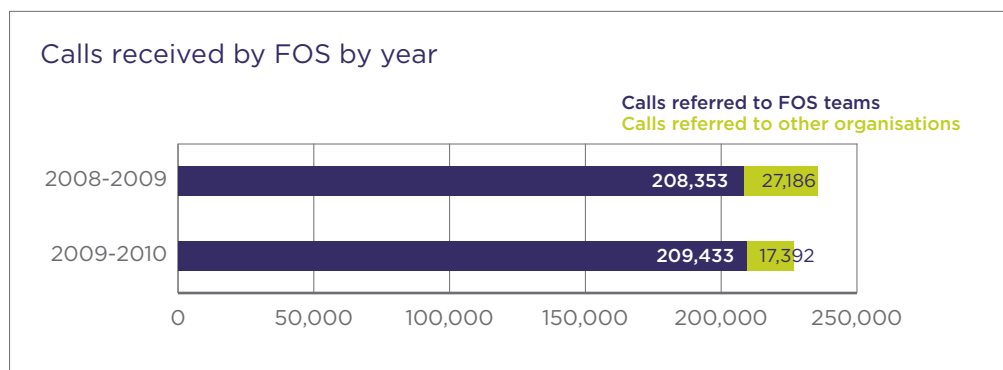
Phone calls

Our call centre received an average of 900 calls each business day in 2009–2010. We received 226,825 calls in 2009–2010, which is 4% less than the number of calls we received in the previous financial year. The number of calls being referred on to FOS teams increased by 1%, but the number referred to other organisations fell by 36%.

There are a few reasons why the number of calls referred externally fell so much. The Credit Ombudsman Service Limited (COSL) and the Superannuation Complaints Tribunal (SCT) used to receive all their calls through FOS but have recently set up their own consumer lines. Also, as consumers have become more aware of what FOS does, the number of calls we refer to organisations such as the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA) and the Telecommunications Industry Ombudsman (TIO) has dropped.

Calls received by FOS by year

	2008–2009	2009–2010	Change
Calls referred to FOS teams	208,353	209,433	+1%
Calls referred to other organisations	27,186	17,392	-36%
Total calls answered by FOS call centre	235,539	226,825	-4%



Calls referred to other organisations

FOS refers calls on to a number of other organisations. The main organisations we referred calls on to this year were the Superannuation Complaints Tribunal (61%), the Credit Ombudsman Service Limited (10%), the Australian Securities and Investments Commission (5%), and consumer affairs and fair trading agencies (5%).

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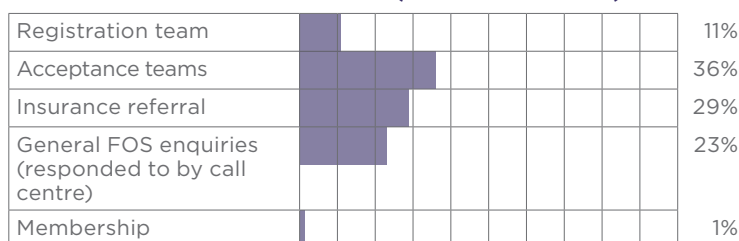
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Calls handled by FOS teams

The chart below shows which FOS teams responded to the 103,034 calls that were handled internally between January and June 2010. Almost half of the calls were about disputes and hence were handled by our Registration Team (11%) or Acceptance Teams (36%). These teams process all the disputes received by FOS. About a quarter of the calls were general enquiries about FOS and were handled by our call centre staff. Another 29% of the calls were from consumers looking for particular types of insurance cover; FOS helps these consumers by giving them the details of insurance companies that offer the type of cover they are looking for.

Calls referred to FOS teams (Jan-June 2010*)

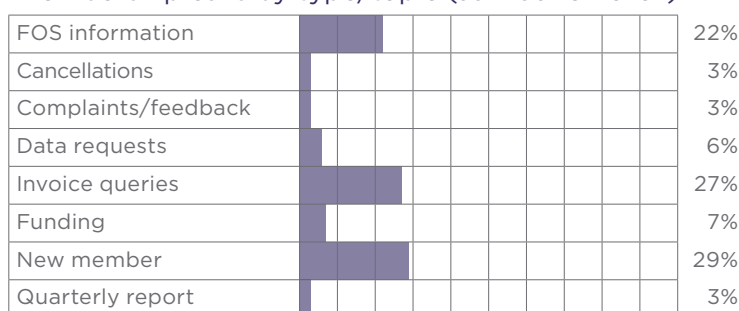


* FOS has only collected data at this level of detail since 1 January 2010.

Calls from members

The chart below shows the types of membership calls we received between January and June 2010. There were three main types: businesses calling to join FOS (29%), members with questions about invoices (27%) and members wanting general information about FOS and its services (22%).

Membership calls by type/topic (Jan-June 2010*)



* FOS has only collected data at this level of detail since 1 January 2010.

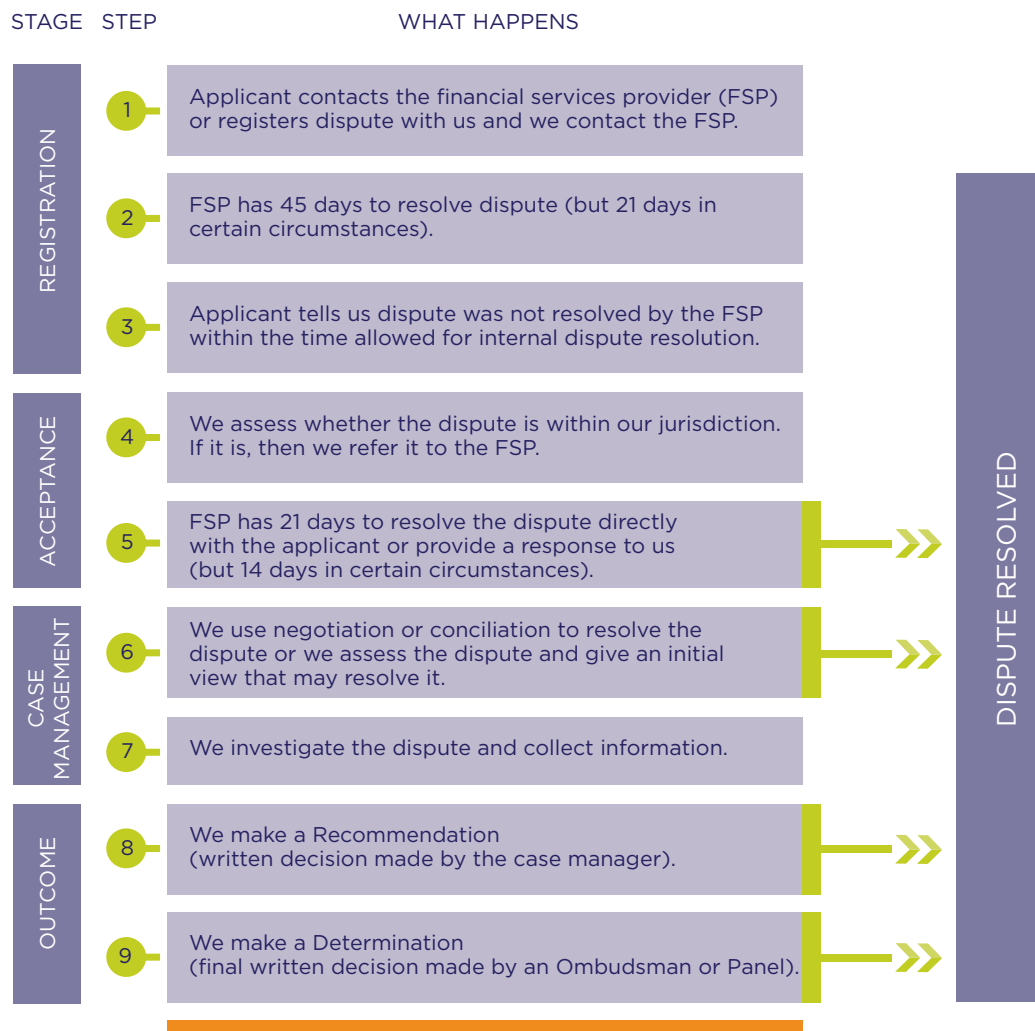
Our Dispute Resolution Process

New process



On 1 January 2010, FOS introduced its new dispute resolution process. This process applies to all disputes received since 1 January 2010. The single new FOS process replaced the various processes of the five predecessor schemes that merged to form FOS. The old processes still apply to disputes we received before 1 January 2010.

How the process works



If certain legal proceedings relating to debt recovery are already on foot when a dispute is lodged with us, we expedite the dispute resolution process – see page 45.

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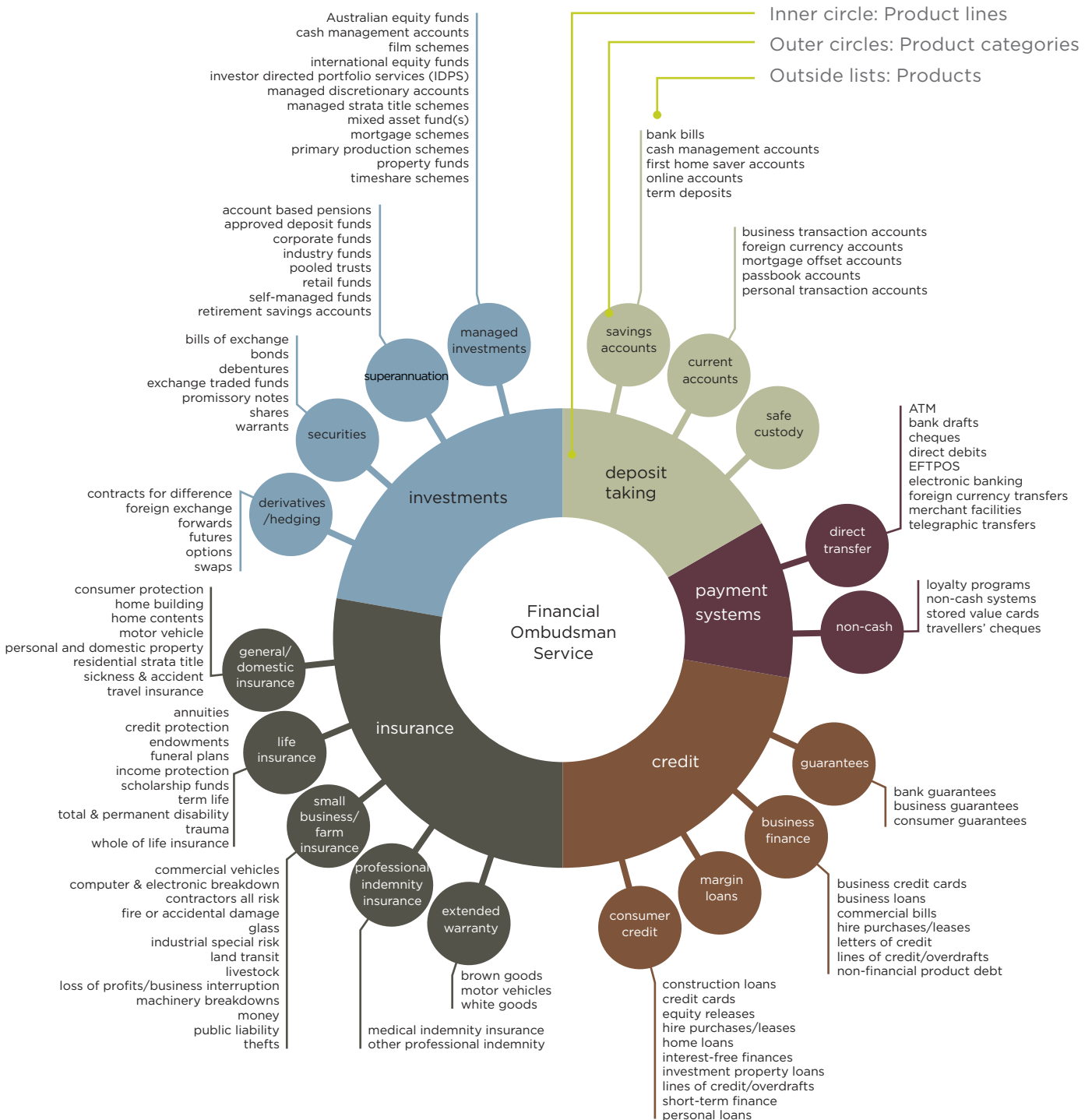
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Products

The disputes we can handle relate to five broad product lines: credit, insurance, investments, deposit taking and payment systems. The diagram below shows these product lines and the product categories and individual products that are covered by each product line.



Issues

FOS classifies a dispute according to the issue or issues it involves. This is usually done at the Acceptance stage of our dispute resolution process. The bold lines in the table below give the major types of issues, and the lines under them list all the specific issues that fall under each type.

Advice	Instructions
Failure to provide advice	Delay
Inappropriate advice	Failure to follow instructions/agreement
Incorrect advice	Incorrectly processed instructions
Charges	Non-Terms of Reference (Non-TOR) issues
Deductible or excess	Privacy and confidentiality
Incorrect commissions	Consumer credit reporting
Incorrect fees/costs	Failure/refusal to provide access
Incorrect interest added	Other privacy breaches
Incorrect premiums	Unauthorised information disclosed
No claim bonus	
Disclosure	Service
Incorrect product/service information	Delay in claim handling
Insufficient product/service information	Delay in complaint handling
Misleading product/service information	Failure to provide special needs assistance
	Inappropriate portfolio liquidation
Financial difficulty	Incorrect financial information provided
Decline of financial difficulty request	Loss of documents/personal property
Default notice	Management of applicant details
FSP failure to respond to request for assistance	Service quality
Request to suspend enforcement proceedings	Technical problems
Financial services provider's (FSP's) decision	Transactions
Cancellation of policy	Dishonoured transactions
Cancellation of refund	Unauthorised transactions
Claim amount	Incorrect payment
Commercial credit reporting	
Denial of application	
Denial of claim	
Denial of claim - applicant non-disclosure	
Denial of claim - exclusion/condition	
Denial of claim - fraudulent claim	
Denial of claim - no policy or contract	
Denial of claim - no proof of loss	
Denial of variation request	
Error in debt collection	
Inappropriate debt collection action	
Inappropriate margin call notice	
Interpretation of policy terms and conditions	
Maladministration in lending	
Maladministration in loan management	
Product terms features/service	

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Sales and service channels

FOS classifies each dispute according to the sales or service channel the consumer used to purchase or get advice about the product in dispute. Below is a full list of the sales and service channels of our members. Some financial services providers (FSPs) operate through multiple sales or service channels; other FSPs operate through a single channel.

Administration services provider	Make a market
Bank	Managed discretionary account operator
Building society	Managed investments scheme operator
Charity/community fund	Mortgage aggregator
Clearing/settlement house	Mortgage broker
Corporate advisor	Mortgage manager
Coverholder	Mortgage originator
Credit provider	Non-cash payment system provider
Credit reporting agency	Pooled superannuation trust
Credit representative	Private health insurer
Credit union	Product distributor
Custodial & depository service	Product issuer
Debt collector or buyer	Professional indemnity insurer
Derivatives dealer	Reinsurer/reinsurance agent
Finance broker	Research house
Financial advisor/planner	Securities dealer
Foreign exchange dealer	Stockbroker
Friendly society	Superannuation fund trustee/advisor
Fund manager	Travellers' cheques/foreign currency transfer provider
General insurance broker	Trustee
General insurer	Underwriter/underwriting agency
Life insurance broker	Warranty provider
Life insurer	

Outcomes

When FOS finishes handling a dispute, we classify the dispute according to its *outcome* and *outcome type*. The outcome is the way in which the dispute has been resolved or finalised. The outcome type is what happened as a result of the dispute being resolved or finalised. The possible outcomes and outcome types are listed in the table below.

The **purple rows** show outcomes that have been reached by agreement between the consumer and the financial services provider. They can reach agreement either by communicating directly with each other (resolved by financial services provider) or with the help of FOS (conciliation, negotiation or assessment).

The **green rows** show outcomes reached through a written decision by FOS, either a Recommendation or a Determination. For more information about these dispute resolution methods, refer to the 'How to resolve your dispute' brochure on our website: www.fos.org.au/brochures.

The white rows show outcomes that are not actual resolutions. A dispute can be finalised at FOS without being resolved either because it is outside our Terms of Reference (i.e. it is not the kind of dispute FOS can consider) or because the consumer chooses to discontinue it or ceases contact with FOS.

Outcome	Outcome types
Conciliation Negotiation Assessment Resolved by financial services provider	Monetary compensation in full Monetary compensation in part No payment or action Other product or service Policy/contract altered, voided or cancelled Apology Not disclosed
Decision in favour of applicant	Monetary compensation in full Monetary compensation in part Non-monetary compensation and/or action Monetary equivalent
Decision in favour of financial services provider	No compensation or action
Decision confirming financial services provider action/offer	Compensation/action in accordance with previous FSP offer
Discontinued	Failure to respond Discontinued by Applicant
Outside Terms of Reference	Outside Terms of Reference

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How applicants lodged disputes at FOS

Consumers can lodge disputes with FOS on our website, over the phone, or by letter, email or fax. The largest proportion of disputes (43%) was lodged on our website using our online dispute form. The online dispute form was only released on 1 January 2010, so it has very quickly become the most popular way of lodging disputes at FOS.

How disputes were lodged at FOS*

Website (online dispute form)		43%
Phone		22%
Letter or fax		27%
Email		7%
In person		<1%

* The lodgement method was recorded for approximately 55% of disputes.

How applicants heard about FOS

Many people who lodged a dispute with FOS (33%) already knew about FOS before they had a reason to lodge a dispute. Others heard about FOS through the internet (15%), the FSP they had a dispute with (12%), or word of mouth from friends, family and colleagues (11%).

How applicants heard about FOS*

Already knew about FOS		33%
Another dispute resolution scheme		3%
Community centre/ consumer representative		1%
Family/friends/colleague (word of mouth)		11%
Financial counsellor		3%
Financial planner		2%
FSP the consumer had a dispute with		13%
Government agency		5%
Internet		15%
Legal aid/free legal service		4%
Media (e.g. newspaper, magazine)		2%
Member of Parliament		1%
Phone directory		2%
Solicitor		5%

* Referral information was recorded for approximately 36% of disputes.

How we count disputes

Internal and external dispute resolution

The first stage of our dispute resolution process, Registration, creates an opportunity for *internal dispute resolution* (IDR). It gives the financial services provider (FSP) a chance to try to resolve the dispute with its customer using its internal dispute resolution or complaint handling system.

The other three stages of our process comprise external dispute resolution (EDR). EDR occurs when FOS, as an independent external party, helps the FSP and the consumer to resolve the dispute. EDR is only necessary if IDR fails to resolve the dispute to the consumer's satisfaction.

What we record about complaints referred for IDR

FOS is an EDR service and we record substantial information about disputes that are in the EDR stages of the dispute resolution process. At Registration, our aim is to refer the dispute on to the relevant FSP as quickly as possible. We lodge the dispute in our system, record some basic information, and then send the details to the FSP.

What we record about disputes requiring EDR

In the Acceptance stage of our process, we assess whether a dispute falls within our jurisdiction and we record extensive information about it. We classify it according to the product(s) or service(s) it relates to, the issue(s) it raises, and the sales or service channel(s) through which the consumer bought the product(s) in dispute. Having such detailed information about disputes makes it easier for us to resolve them. It also enables us to report accurately and thoroughly about the disputes we have dealt with.

What we record about disputes involving multiple issues or products

Many cases are about one type of product and involve one issue. But some cases are about more than one product or service or more than one issue. For example, a consumer might complain about both the credit decision for a loan (product A) and the disclosure for an investment product (product B) funded by the loan.

The approach FOS usually takes is to establish one case file but to record the fact that more than one product has been complained about and/or that more than one issue has been raised. This is an important aspect of both case management and dispute resolution. It ensures all aspects of a dispute are considered and it provides an accurate picture of the causes of customer concern.

When reporting on the products complained about, we count all of the disputes we have received about that product. So a case about two different products would count as two disputes, one for each product.

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Reporting the total number of cases

When we report the number of disputes we received in total, we include all of the disputes we received, including those received and resolved in the Registration stage of our process. And we count each case as one dispute, so that we can accurately compare cases received with cases closed. This is what we have done in the following sections of this review:

- How many disputes we received this year (page 27)
- Financial difficulty disputes received and closed by month (page 43)
- Legal proceedings disputes received and closed by month (page 46)
- Total disputes resolved (pages 68–72).

Reporting disputes about products

When we want to examine the disputes that FOS investigated and helped to resolve, we exclude the cases we received and closed in Registration. We focus on the disputes that involved FOS, which are the disputes that required EDR. We refer to these as **accepted disputes**, because they are disputes that reached the Acceptance stage of our dispute resolution process. They need to have been received and have reached the Acceptance stage within this financial year to be included in the year's figures. A small percentage of accepted disputes are judged to be outside our jurisdiction (see page 71), but most are resolved by FOS.

For the accepted disputes, we can break down the number of disputes by product, issue and sales/service channel. This is what we have done in the following sections of this review:

- How many disputes we received by product line (pages 28–9)
- What the disputes were about (pages 30–1)
- Registration (pages 35–6)
- Credit disputes (pages 37–41)
- Insurance disputes (pages 49–55)
- Investment disputes (pages 56–61)
- Payment system disputes (pages 62–4)
- Deposit taking disputes (pages 65–7).

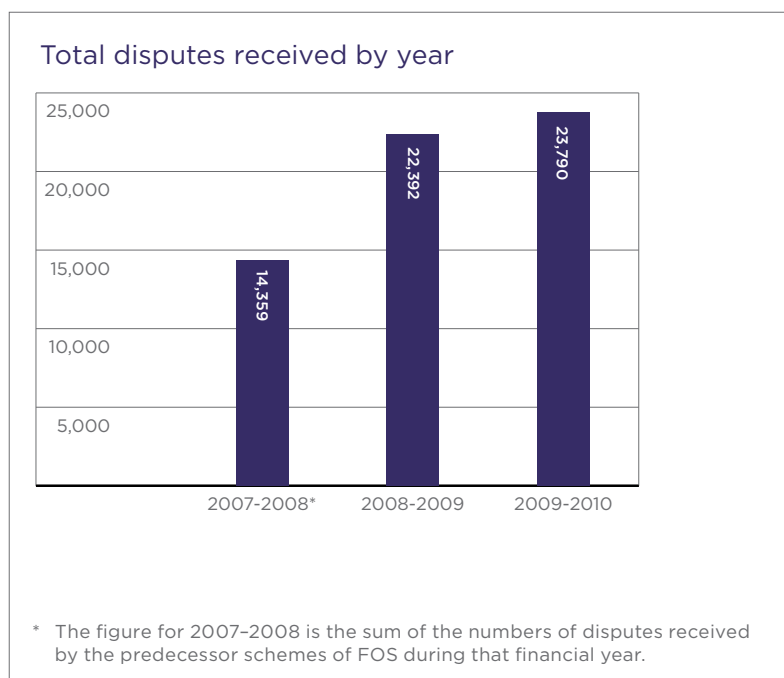
Also, in these sections, we count the number of times a customer complains about a product. So a case that is about three products will be counted as three disputes, one for each of the three products.

Total disputes received

How many disputes we received this year

FOS received 23,790 new disputes in 2009–2010. This was a 6% increase on the number received in the previous financial year. We continued to see the effects of the Global Financial Crisis this year. We also started receiving more disputes per month after we introduced our new Terms of Reference on 1 January 2010.

The new Terms of Reference have increased dispute numbers because they widened our jurisdiction in various ways – for example, they gave FOS the power to consider some disputes for which legal proceedings were on foot (see page 45) and increased the monetary limit on claims we can consider to \$500,000.



We introduced our new Terms of Reference and our new dispute resolution process on 1 January 2010. The total number of disputes we received in 2009–2010 includes:

- for July to December 2009, all disputes received into the old dispute resolution systems used by the different areas of FOS
- for January to June 2010, all disputes received into our new dispute resolution system, which is used by all areas of FOS

In our new system, a dispute can be received by FOS, or be lodged with FOS, at either the first stage (Registration) or the second stage (Acceptance) of our dispute resolution process. A consumer who has already complained to the financial services provider and has received a response or has waited sufficient time for a response will bypass the Registration stage. Their dispute will go straight into the Acceptance stage.

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How many disputes we received by month

From July to December 2009, we received 1,723 disputes per month on average. In the first six months of 2010, we received an average of 2,242 disputes per month. So we received around 500 more disputes a month after we brought in our new Terms of Reference.



How many disputes we received by product line

The table and chart below show how many disputes we received for each product line in 2008-2009 and 2009-2010. The number of disputes we received increased for four of our five product lines; the increases in disputes about credit (17%), insurance (24%) and investments (27%) were particularly significant. The only product line that recorded a decrease was deposit taking, which fell 10%.

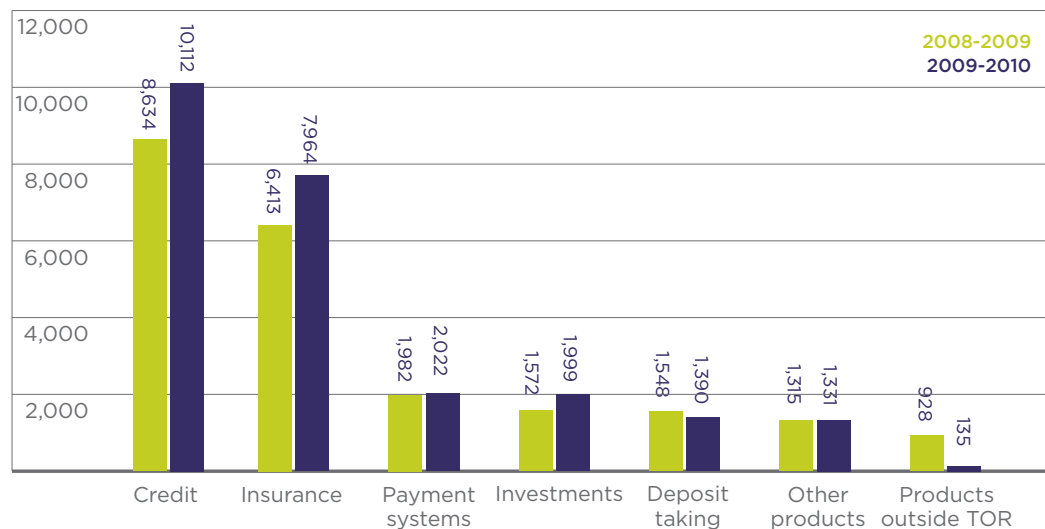
Disputes received by product line and year

Product Line	2008-2009*	2009-2010	% Change	% of Total in 2009-2010
Credit	8,634	10,112	+17%	41%
Insurance	6,413	7,964	+24%	32%
Payment systems	1,982	2,022	+2%	8%
Investments	1,572	1,999	+27%	8%
Deposit taking	1,548	1,390	-10%	6%
Other products	1,315	1,331	+1%	5%
Products outside Terms of Reference	928	135	-85%	1%
Total	22,392	24,953**	+11%	100%

* The numbers of disputes by product line for 2008-2009 are higher than the numbers given on page 19 of our 2008-2009 Annual Review. At the end of the 2008-2009 financial year, there were 3,285 disputes in Registration that had not been classified by product line. Subsequent classification of these disputes by product line has enabled us to revise the numbers for 2008-2009.

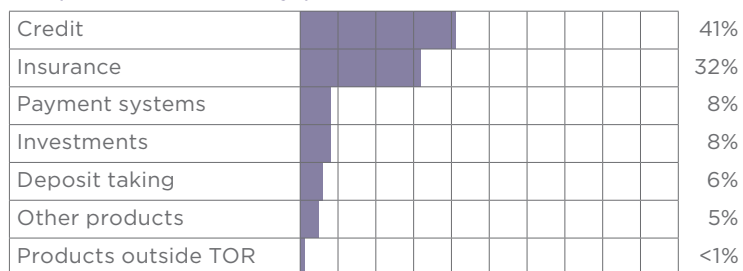
** Note that the total of 24,953 for 2009-2010 does not match the total of 23,790 stated in the 'How many disputes we received this year' section on page 27. The total in that section is based on counting each case, even if the case is about multiple products, as one dispute. The total in this section is based on counting cases about multiple products as multiple disputes. For further explanation of this, see 'How we count disputes' on pages 25-6.

Disputes received by product line and year



The chart below shows the proportion of disputes that related to each of the five product lines in 2009-2010. Credit and insurance continue to be the product lines generating most of the disputes.

Disputes received by product line in 2009-2010



What the disputes were about

The table below shows the number of accepted disputes for each sales/service channel. It also shows the proportion of accepted disputes that raised each type of issue for all the sales/service channels.

	TOTAL NUMBER OF ACCEPTED DISPUTES	ISSUE TYPE		
		Advice	Charges	Disclosure
Administration service provider	6			
Bank	7,928	4%	11%	3%
Building society	21	5%	5%	5%
Charity/community fund	1			
Clearing/settlement house	3			
Corporate advisor	1			
Credit provider	392	2%	12%	2%
Credit reporting agency	31			
Credit representative	2			
Credit union	207	3%	13%	2%
Custodial & depository service	20		10%	5%
Debt collector or buyer	199	<1%	1%	<1%
Derivatives dealer	13	8%	16%	15%
Extended warranty provider	23	65%	4%	
Finance broker	18	11%	28%	5%
Financial advisor/planner	1,063	59%	4%	11%
Foreign exchange dealer	5			
Friendly society	3	67%		33%
Fund manager	147	2%	5%	50%
General insurance broker	107	17%	19%	1%
General insurer	5,059	<1%	3%	<1%
Life insurance broker	16		19%	6%
Life insurer	580	1%	13%	6%
Make a market	8			
Managed discretionary account operator	2			
Managed investments scheme operator	243	4%	5%	35%
Mortgage aggregator	2			
Mortgage broker	5			20%
Mortgage manager	12		33%	
Mortgage originator	16	6%	25%	6%
Non-bank*	596	1%	9%	2%
Non-cash payment system provider	109	2%	1%	
Private health insurer	1			
Product issuer	7		14%	14%
Research house	3			
Securities dealer	26	4%	4%	23%
Stockbroker	134	13%	2%	7%
Superannuation fund trustee/advisor	36	6%	11%	8%
Superannuation broker	1	100%		
Travellers' cheques/foreign currency transfer provider	1			
Trustee	11		18%	9%
Underwriter/underwriting agency	3	33%		
Other	291	3%	7%	3%
Total	17,352	6%	8%	3%

* 'Non-bank' was a category used under our old Terms of Reference to cover a variety of sales/service channels. It is not used under our new Terms of Reference, which uses the categories listed on page 22.

Financial difficulty	FSP decision	Instructions	Non-TOR	Privacy & confidentiality	Service	Transactions	Other
	33%	17%		33%	17%		
20%	17%	11%		4%	9%	15%	6%
33%	9%	14%			5%	24%	
	100%						
34%	33%			33%			
						100%	
36%	19%	8%		11%	4%	6%	
	13%	3%		84%			
				100%			
7%	19%	10%		8%	11%	24%	3%
	65%				5%	15%	
39%	24%	2%		28%	4%	1%	
		15%			23%	23%	
	18%				13%		
	6%	22%			17%	11%	
<1%	3%	5%		1%	13%	3%	<1%
	60%				20%	20%	
3%	11%	8%			17%	4%	
	37%	3%	1%	1%	14%	1%	6%
	80%	<1%	2%	<1%	7%	<1%	6%
6%	31%	19%			13%	6%	
<1%	55%	2%			19%	4%	
		13%			37%	50%	
					100%		
1%	14%	12%		<1%	23%	6%	
	50%				50%		
	40%	20%			20%		
17%	17%	17%				16%	
31%	13%	6%			13%		
20%	25%	4%		17%	6%	13%	3%
	72%	2%			6%	17%	
	100%						
	43%				14%	15%	
					100%		
	8%	19%			19%	23%	
1%	16%	10%			26%	25%	
3%	33%	8%			28%	3%	
						100%	
	28%				18%	27%	
	67%						
7%	13%	8%	33%	1%	5%	7%	13%
11%	37%	7%	1%	4%	9%	9%	5%




Who and where the disputes came from

FOS promotes its services to all Australians and strives to cater for the diverse needs of the Australian population. We collect basic information about applicants – the people and small businesses who lodge disputes at FOS – to help us gauge whether our services are as accessible and easy to use as possible.

Types of applicant

Our dispute resolution services can be used by individuals and certain types of small business who are customers of a FOS member. (For information about which types of small business can use our services, refer to paragraph 4.1 of our Terms of Reference: www.fos.org.au/tor.) As the chart below shows, the vast majority of applicants were individuals.

Types of applicant*




Individual		93%
Small business - incorporated		5%
Small business - unincorporated		2%

* The type of applicant was recorded for 73% of disputes.

Gender of applicants

FOS promotes its services equally to women and men through our events, publications and website. Nevertheless, more men than women lodged disputes with FOS in 2009–2010, by a fairly wide margin. Consumer research we conducted this year found that a slightly higher percentage of men than women are aware of FOS, and this might partially explain why more men than women lodged disputes with FOS. But there are likely to be other broader, social factors at play. FOS will be exploring this issue further in the 2010–2011 year.

Gender of applicant*

Male		55%
Female		33%
Joint		12%

* Gender was recorded for 99% of disputes.

Where applicants were from

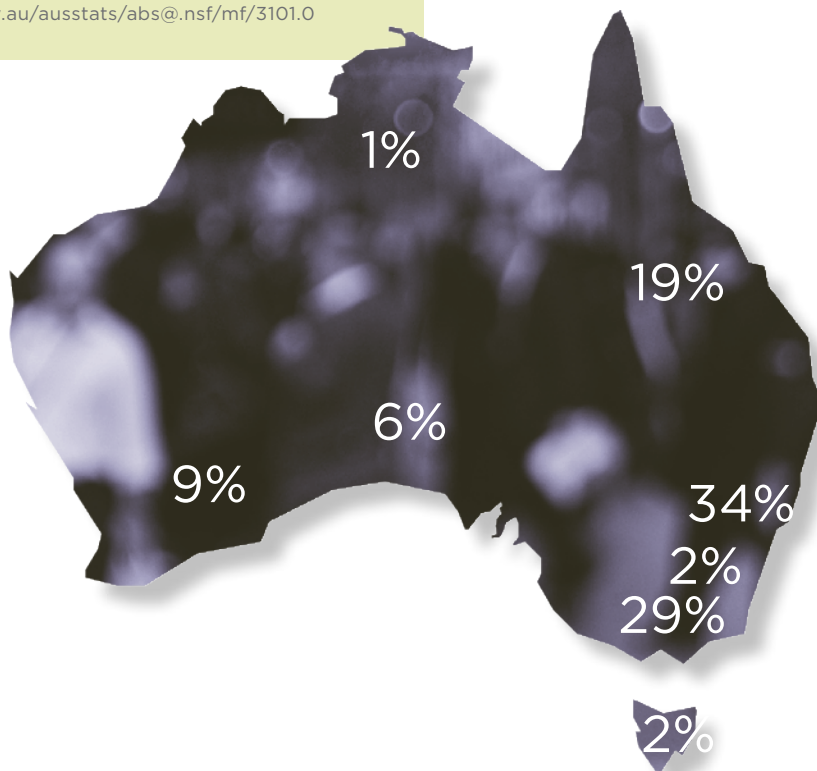
The people who lodged disputes at FOS came from all states and territories. The spread of applicants across the country roughly matched the distribution of the Australian population, as the table below shows. A small percentage of disputes came from people who were outside Australia when they lodged their dispute (for example, because they had a problem with a credit card or travel insurance while travelling overseas).

Where applicants were from*

Location	% of disputes	% of Australian population at 31 December 2009**
NSW	34%	32%
VIC	29%	25%
QLD	19%	20%
WA	9%	10%
SA	6%	7%
TAS	2%	2%
ACT	2%	2%
NT	1%	1%
Other country	1%	

* The applicant's location was recorded for 96% of disputes.

** Source: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0>



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Interpreting and translation services

When applicants lodge their disputes with FOS, they can tell us if they might need the help of an interpreter/translator to communicate with FOS. Not all applicants who indicate that they might need an interpreter/translator end up using one, but if one is required at any stage in the process then FOS will arrange and pay for the service. An interpreter/translator can help the applicant explain the details of their dispute to FOS and can translate all correspondence.

Between January and June 2010, 157 applicants indicated that they would need an interpreter/translator. The languages that an interpreter/translator were most commonly requested for were Chinese (including Mandarin, Cantonese and other Chinese languages), Greek, Arabic, Vietnamese and Turkish.

Interpreting/translation requests (Jan-June 2010*)

Language	Applicants requesting interpreter/translator	Language	Applicants requesting interpreter/translator
Afghan Persian	2	Macedonian	6
Albanian	2	Nepali	1
Arabic	15	Persian	5
Bengali	2	Polish	2
Bosnian	2	Portuguese	1
Chinese**	41	Punjabi	2
Deaf - oral	1	Russian	2
Deaf - sign	1	Serbian	3
Filipino	3	Sinhala	1
Fijian Hindi	1	Spanish	3
French	2	Tamil	2
Greek	16	Thai	2
Hebrew	1	Tok Pisin	1
Hindi	1	Turkish	9
Hungarian	3	Ukrainian	1
Italian	4	Urdu	1
Japanese	1	Vietnamese	10
Korean	7	Total	157

* FOS did not capture data on interpreter/translator requests before 1 January 2010.

** An applicant can ask for an interpret/translator for Mandarin, Cantonese or any of the languages within the Chinese language group.

Representatives

Our processes are designed so that applicants do not need any legal or financial advice or representation. We recognise, however, that some applicants might prefer to have someone else lodge their dispute for them at FOS or act on their behalf during the dispute resolution process. The applicant needs to give written authority for someone else to represent them at FOS.

About 10% of applicants used an authorised representative in their dealings with FOS. The main kinds of representative used were relatives, friends, financial counsellors and solicitors.

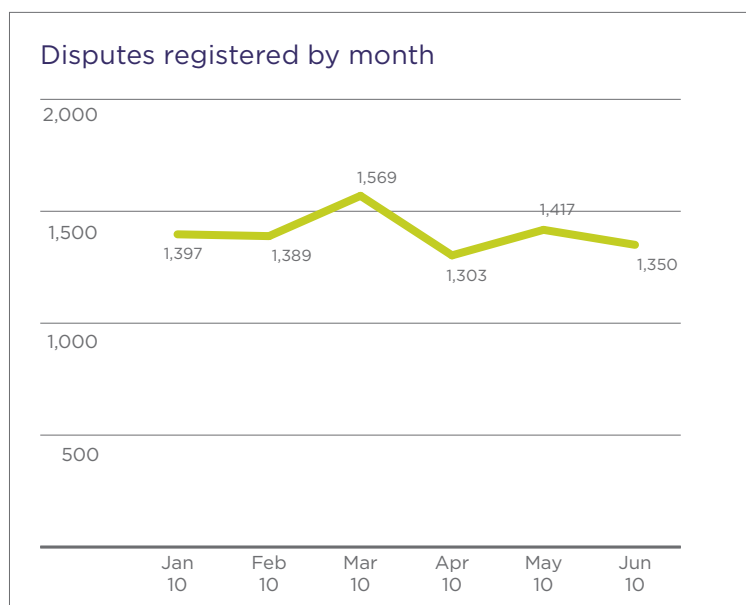
Registration

Our Registration process is quite simple. When a consumer lodges a dispute at FOS, we record the basic details. Then we pass the details on to the FSP and give them 45 days (in most cases) from when they first received a complaint to resolve the dispute.

If the FSP's response does not resolve the dispute, or if the consumer doesn't receive a response, the consumer can come back to FOS. We will proceed to the second stage of our dispute resolution process, Acceptance. For a diagram of the full process, see page 19.

In the first six months our Registration process was operating, we registered 1,400 disputes a month on average. The flow of incoming disputes was very steady, apart from a small spike in March and a slight dip in April.

The majority of the disputes registered have been about either credit (41%) or insurance (36%) products.



Disputes registered by product line and month

	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Total	% of total
Credit	596	502	657	541	610	589	3,495	41%
Insurance	449	555	576	514	489	471	3,056	36%
Deposit taking	111	113	116	109	109	100	658	8%
Payment systems	117	87	108	69	98	96	575	7%
Investments	80	86	90	69	108	91	524	6%
Non-TOR*	0	0	3	0	3	1	7	<1%
Other	44	46	19	1	0	0	110	1%
Total	1,397	1,389	1,569	1,303	1,417	1,350	8,425	100%

* Non-TOR is a product category for disputes involving products that do not come within the FOS Terms of Reference - products such as workers compensation, phone bills and other utility bills.

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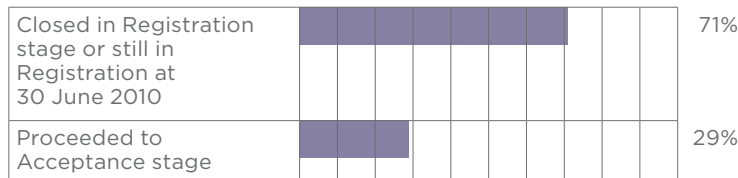
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During the first six months of 2010, 8,425 disputes were registered. In the same period, 2,420 disputes (29%) proceeded from the Registration stage to the Acceptance stage of our process. Most of the remaining 6,005 disputes (71%) were closed during the Registration stage; a small proportion were still in Registration at 30 June 2010. A dispute is closed during Registration either because the FSP and the consumer have agreed on a resolution to the dispute or because the consumer has decided not to proceed to the next stage of the FOS process.

The fact that such a high proportion of disputes were resolved during the Registration stage shows that, in the majority of cases, the internal dispute resolution (IDR) processes of our members are effectively resolving disputes and our Registration process is working effectively. External dispute resolution – negotiation, conciliation and the other methods used by FOS – is usually not required for registered disputes.

Outcomes of registered disputes



A dispute can bypass Registration and go straight to the Acceptance stage if the consumer has already been through the IDR process before coming to FOS. During the first six months of 2010, 5,662 went straight to the Acceptance stage.

Common problem: Registration

Most disputes are registered with us after a consumer has raised their concerns directly with their financial services provider (FSP) but before the complaint has been addressed through the FSP's internal dispute resolution (IDR) process. The reason the consumer approaches us to register their dispute may be because they have not managed to get in contact with the specific area or person responsible for the FSP's IDR process.

To avoid such situations, we encourage FSPs to ensure that their IDR processes are highly accessible and that information about their IDR process is highly visible to consumers. We also encourage consumers to contact an FSP's complaints or disputes department or person as a first step if they have a complaint. If a dispute can be resolved through the FSP's internal process, the consumer won't need to register it with us.

Credit disputes

During 2009-2010 we accepted a total of 7,296 disputes involving credit products. The vast majority (88%) of these disputes related to consumer credit products, with the second largest category being business finance products (7%). The financial services providers with the greatest number of credit disputes were banks (81%).

Credit disputes by product category

Product category	Accepted disputes	% of product line	% of total disputes
Consumer credit	6,466	88%	37%
Business finance	511	7%	3%
Margin loans	116	2%	1%
Guarantees	57	1%	<1%
Other*	146	2%	1%
Total	7,296	100%	42%

* The disputes classified as 'Other' were not classified in further detail at the end of the reporting period. These disputes are included in the next chart but not in any of the subsequent charts.

Credit disputes by product category

Consumer credit	88%
Business finance	7%
Margin loans	2%
Guarantees	1%
Other	2%

Credit disputes by issue type

Advice	4%
Charges	11%
Disclosure	3%
Financial difficulty	27%
FSP decision	20%
Instructions	10%
Privacy & confidentiality	7%
Service	9%
Transactions	8%
Other	1%

Credit disputes by sales/service channel

Bank	81%
Credit provider	5%
Credit union	1%
Debt collector or buyer	3%
Financial advisor/planner	1%
Non-bank*	6%
Other	3%

* 'Non-bank' was a category used under our old Terms of Reference to cover a variety of sales/service channels. It is not used under our new Terms of Reference, which uses the categories listed on page 22.

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Consumer credit

The consumer credit area generates the largest volume of disputes across FOS. This year 6,466 consumer credit disputes were accepted, which represents 37% of all disputes accepted. The three main categories of consumer credit disputes were home loans, credit cards and personal loans.

The most common issue arising in credit disputes was financial difficulty. For more details about financial difficulty disputes, please refer to pages 42-4. While financial difficulty was the primary issue (28%), we also dealt with disputes arising from a financial services provider's decision (20%) and disputes about fees and charges (11%).

Consumer credit disputes by issue type

Advice															3%
Charges															11%
Disclosure															3%
Financial difficulty															28%
FSP decision															20%
Instructions															9%
Privacy & confidentiality															8%
Service															9%
Transactions															8%
Other															1%

Consumer credit disputes by sales/service channel

Bank																	81%
Credit provider																	5%
Credit union																	2%
Debt collector or buyer																	3%
Non-bank																	6%
Other																	3%

Common problem: Consumer credit

A couple has a loan securing their family home with some available equity and they decide to use that equity to buy an investment property. The financial services provider (FSP) approves a loan application that covers the full purchase price of the investment property and all purchase costs, based on the combined value of the family home and the new property.

Despite receiving rental income, the couple struggles to meet the balance of the repayment and the investment loan falls into arrears. The FSP commences debt collection activity, finally taking possession of the investment property and selling it as mortgagee in possession, leaving a residual debt of approximately \$25,000. The couple lodges a dispute with FOS, claiming that the FSP should never have approved the loan to finance the investment property as they could not afford the repayments even with the rental income.

FOS handles many disputes similar to this one. We review these disputes in relation to what we call 'maladministration in lending'. We consider whether the FSP has breached any legal obligations to the customer, any applicable Codes, its own policies or good industry practice. Before approving the loan, the FSP needs to have assessed the customer's capacity to service the loan, and not just have relied on the value of the securing properties.

FOS will also take into account the information disclosed by the customer when they made the loan application. The information should have presented an accurate picture of the customer's financial position and capacity to repay the loan.

Business finance

Disputes about business finance products related to a variety of business products, including business loans, lines of credit, hire purchase agreements, leases and business credit cards.

Business finance disputes followed the same trend as consumer credit disputes, with financial difficulty being the focus of 25% of these types of disputes. The majority of the financial difficulty disputes related to a request for assistance by the small business to the financial services provider. Another common issue was decisions made by financial services providers (24%) – in particular, decisions about approving finance and about the ongoing management of business facilities.

Business finance disputes by issue type

Advice																5%
Charges																13%
Disclosure																5%
Financial difficulty																25%
FSP decision																25%
Instructions																14%
Privacy & confidentiality																2%
Service																7%
Transactions																3%
Other																1%

In line with the general trend for credit disputes, the majority of disputes concerning business finance involved banks (89%).

Business finance disputes by sales/service channel

Bank																89%
Credit provider																4%
Debt collector or buyer																1%
Non-bank																4%
Other																2%

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Margin loans

A margin loan is a loan that allows an investor to borrow cash against the value of listed shares or units in managed funds. FOS accepted 116 disputes about margin loans in 2009-2010. In about 70% of these disputes, the consumer claimed that the financial services provider that sold them the margin loan had either given them inappropriate advice or made an inappropriate margin call.

Margin loan disputes by issue type

Advice																39%
Charges																4%
Disclosure																3%
Financial difficulty																1%
FSP decision																27%
Instructions																11%
Service																9%
Transactions																5%
Other																1%

Almost half the margin loan disputes (45%) were brought to FOS by customers of financial advisors or planners. Banks (23%) and stockbrokers (17%) were also involved in a fair proportion of disputes about margin loans.

Margin loan disputes by sales/service channel

Bank																23%
Credit provider																4%
Credit union																1%
Financial advisor/planner																45%
Managed investments scheme operator																9%
Product issuer																1%
Stockbroker																17%

Guarantees

Less than 1% of all credit disputes related to guarantees. These disputes included three categories of guarantees – bank, consumer and business. The most common issue in these disputes was whether the financial service provider's initial decision to require the applicant to be guarantor could be considered appropriate. Other disputes arose when a financial services provider exercised its rights under the guarantee and the guarantor was experiencing financial difficulty.

Guarantee disputes by issue type

Advice																				9%
Charges																				9%
Disclosure																				2%
Financial difficulty																				14%
FSP decision																				35%
Instructions																				21%
Privacy & confidentiality																				4%
Service																				3%
Transactions																				3%

Guarantee disputes by sales/service channel

Bank																				91%
Credit provider																				2%
Debt collector or buyer																				5%
Other																				2%

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Financial difficulty disputes

The number of disputes lodged with FOS concerning financial difficulty has increased progressively since the end of 2008, when the Global Financial Crisis weakened the financial position of many consumers. During 2009 there was a steady increase in these types of disputes.

On 1 January 2010 our jurisdiction concerning financial difficulty disputes expanded when our new Terms of Reference came into effect. Further jurisdictional changes were made with the introduction of the National Credit Code (NCC) on 1 July 2010. Where a financial difficulty dispute is lodged with us, we now have the power to vary a contract regulated by the Uniform Consumer Credit Code (UCCC) or the NCC.

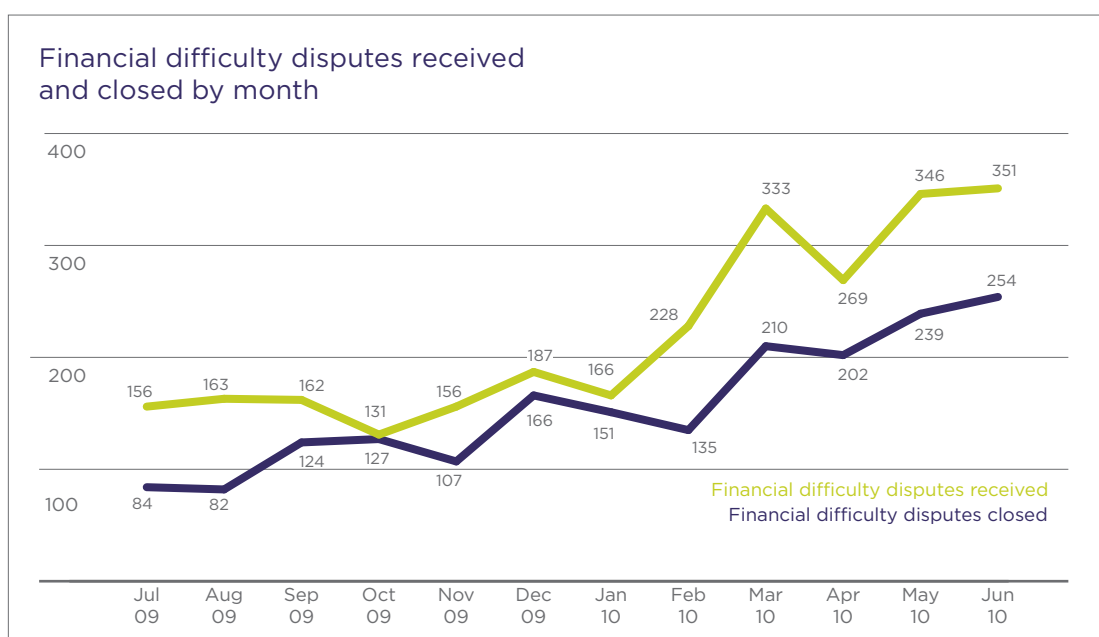
In early 2009, anticipating that the changes to our Terms of Reference and the national regulation of credit would increase the number of financial difficulty disputes lodged with FOS, we established a specialised Financial Difficulty Team. The team has grown to 24 staff over the past 18 months. The Financial Difficulty Team Manager heads up the team, which includes 10 Case Managers, Legal Counsel, a Disputes Team Manager, an Acceptance Manager and 10 Case Officers. The team members have a mix of banking, legal and financial counselling backgrounds. They are all well equipped to deal with the variety of financial difficulty disputes we receive from individuals and small businesses, relating to both secured and unsecured credit.

As consumers in financial difficulty are often in a vulnerable and emotional state, we strive to deal with their disputes quickly, efficiently and sensitively. If their disputes cannot be resolved for some time, they are likely to incur additional debt such as fees and interest, which will only exacerbate their financial problems. With this in mind, in 2009 FOS started using telephone conciliation conferences (TCCs), which we had been using for some other disputes, as a method of resolving financial difficulty disputes. Our financial difficulty staff have attended externally accredited courses to ensure that they have the skills to conduct TCCs.

ASIC's Regulatory Guides 139 and 165 have reduced the time allowed for financial services providers to respond to applications for hardship variation or requests for postponement of enforcement proceedings for regulated credit facilities from 45 to 21 days. Similarly, we have reduced the initial response timeframe for financial services providers from 21 to 14 days for disputes involving financial difficulty. Many disputes that are not resolved after the initial referral will proceed to a TCC. This has contributed to a higher resolution rate in the early stages of the dispute resolution process.

During the period July to December 2009, we received an average of 159 financial difficulty disputes per month. From January to June 2010, this increased to an average of 282 disputes per month. The number of financial difficulty disputes closed each month has increased correspondingly from 84 in July 2009 to 254 in June 2010.

The vast majority (around 90%) of financial difficulty disputes related to a credit product. In most cases it was a consumer credit product – such as a home loan, personal loan or credit card – though some disputes related to business finance products. Financial difficulty disputes have also been lodged about insurance and investments products, but only to a very small extent (in both cases 1%).



For 41% of the financial difficulty cases we closed in 2009–2010, FOS facilitated an agreed resolution between the consumer and the financial services provider. For another 26% of cases, the FSP resolved the dispute by working directly with the consumer.

Outcomes of financial difficulty disputes

Agreed resolution	[Bar chart showing 41%]										41%
Resolved by financial services provider	[Bar chart showing 26%]										26%
Conciliation	[Bar chart showing 3%]										3%
Negotiation	[Bar chart showing 2%]										2%
Decision in favour of applicant	[Bar chart showing 1%]										1%
Discontinued	[Bar chart showing 17%]										17%
Outside Terms of Reference	[Bar chart showing 10%]										10%

Common problems: Financial difficulty

1. Credit card debt

Many financial difficulty disputes relate to arrears on a credit card account. In many cases the applicant's financial situation has declined through unemployment or illness. Often they have prioritised home loan repayments and had no monthly surplus to meet the arrears or monthly credit card repayments.

A consumer in this position can usually apply to their financial services provider (FSP) for financial hardship assistance. However, many FSPs will not assess an application for hardship assistance unless all requested supporting documentation has been provided.

If an applicant has provided sufficient information about their current financial position to enable an assessment of their application to be made, we expect the FSP to review the information and assess the application.

In some cases unreasonable requests for information are delaying the hardship assessment process. Such information may include copies of rental agreements, utility bills, third party information and medical reports (where a medical certificate has already been provided).

The request for information must be reasonable and any offer of assistance made by an FSP can be made on the basis that further supporting documentation will be provided.

2. Property loan debt

Another scenario that leads to financial difficulty disputes is an applicant having substantial arrears on their home loan account or investment loan account. A review of the applicant's current financial position might show that they will not be able to clear the arrears and meet future repayments in the short to medium term. Sale of the secured property might be the only option that will result in repayment of arrears and the outstanding debt.

In this situation, the financial services provider should consider granting the applicant a fixed period of time (say four to six months) in which to sell the property, on the condition that if the sale is not completed within this timeframe, the applicant will surrender the property to the financial services provider.

This option reduces legal fees and other costs associated with repossession of the secured property, and it gives the applicant a reasonable period of time in which to sell the property.

Legal proceedings previously issued (LPPI) disputes

Prior to 1 January 2010, FOS could not consider any dispute where legal proceedings had been issued before the dispute was brought to us. Our new Terms of Reference (TOR) expanded our jurisdiction. Paragraph 13.1(a)(ii) of the TOR outlines when we can consider a dispute that is already in court. We can do so if legal proceedings relating to debt recovery have been issued before the dispute is lodged at FOS and the applicant has not taken a step beyond lodging a defence or a defence and counterclaim. An Operational Guideline explaining the operation of paragraph 13.1(a)(ii) is available at www.fos.org.au/og.

We treat legal proceedings disputes as urgent and expedite the dispute resolution process. Early identification of these disputes is critical to enable us to expedite the process. Our online dispute form asks if legal proceedings have been commenced in a court. For those disputes that are not lodged online, our staff have been trained to identify whether legal proceedings are on foot when a dispute is lodged via telephone, letter, email or fax.

Once we have identified that legal proceedings are on foot, we will assess whether the dispute falls within our jurisdiction. We will ask both parties to send us information and documents that will help us make this assessment.

In some cases, the documents show that debt recovery legal proceedings have not yet been issued. Where this occurs, the dispute will no longer be expedited and will be dealt with through our standard dispute resolution process. In other cases, judgment may have been entered before the dispute was lodged or the applicant may have taken a step beyond lodging a defence or a defence and counterclaim. The complexities of these disputes may require an assessment from our Legal Counsel.

If the dispute is within our jurisdiction, we will refer it to the financial services provider (FSP) for a response. Our expedited process sets shorter response times for the parties to the dispute. If the financial services provider does not respond within 14 days, or if the FSP requests an extension of time to respond at any stage of the process, the dispute will no longer be expedited.

Unless FOS receives signed terms of settlement or written confirmation from the applicant that the dispute has been resolved after initial referral of the dispute, the dispute will progress to the next stage of our dispute resolution process.

A telephone conciliation conference is compulsory for all legal proceedings disputes (whether expedited or not). The conciliation conference is an opportunity for the parties to explore how the dispute might be resolved. It is a fast, efficient, collaborative way of resolving a dispute and it will be facilitated by a trained FOS staff member.

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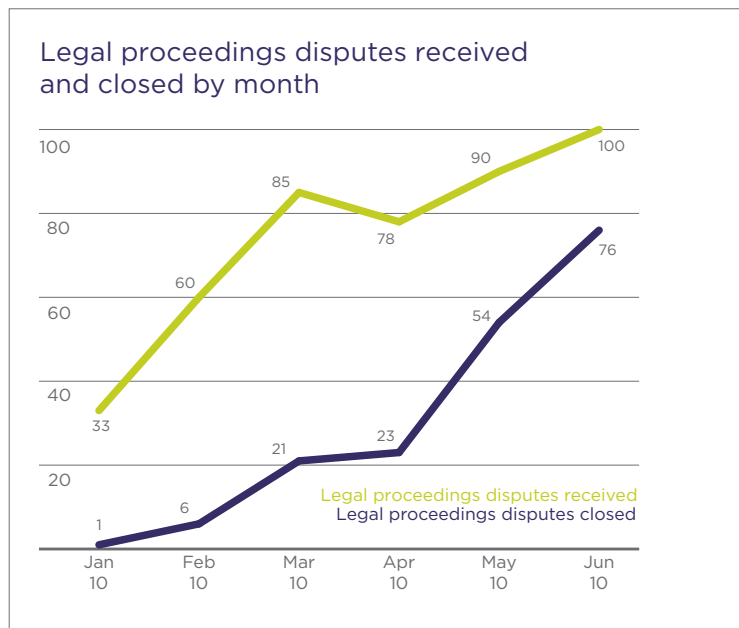
If the dispute is not resolved within a reasonable time after the conciliation conference and remains expedited, it will be investigated and a decision on the merits of the case will be reached.

For an applicant, failure to comply with our dispute resolution process may result in closure of our file and reinstatement of the legal proceedings. For a financial services provider, failure to comply with our TOR or Operational Guidelines will be regarded as serious misconduct under paragraph 11.3 of the TOR.

We have seen a steady increase in the number of legal proceedings disputes lodged each month, with a total of 446 disputes lodged in the first six months of 2010.

Legal proceedings disputes received and closed by month

	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Total
Disputes received and expedited	26	40	52	37	39	62	256
Disputes received and not expedited	7	20	33	41	51	38	190
Total disputes received	33	60	85	78	90	100	446
Disputes closed	1	6	21	23	54	76	181



Most legal proceedings disputes (89%) related to consumer credit products, such as home loans, personal loans and credit cards. Another 6% related to business finance products, such as business loans, business credit cards, hire purchases and lines of credit.

Legal proceedings disputes by product category

Business finance	6%
Consumer credit	89%
General/domestic insurance	2%
Guarantees	1%
Other	2%

The majority of legal proceedings disputes lodged since 1 January 2010 involved issues of financial difficulty (70%). Financial difficulty disputes were dealt with in the previous section of this review.

Legal proceedings disputes by issue type

Advice	1%
Charges	4%
Financial difficulty	70%
FSP decision	16%
Instructions	4%
Privacy & confidentiality	2%
Service	2%
Other	1%

The largest proportion of legal proceedings disputes lodged to date occurred between banks and their customers (66%). Credit providers (12%) and debt collectors or buyers (10%) were the only other sales/service channels involved in a significant proportion of these disputes.

Legal proceedings disputes by sales/service channel

Bank	66%
Building society	1%
Credit provider	12%
Credit union	2%
Debt collector or buyer	10%
Financial advisor/planner	1%
General insurer	3%
Mortgage originator	1%
Other	4%

One third of the legal proceedings disputes FOS closed were resolved by the financial services provider (FSP). Almost half of the disputes closed fell outside our Terms of References. This is because in many cases the FSP had obtained judgment or the applicant had already taken a step beyond lodging a defence or a defence and counterclaim. In many cases in which the applicant was experiencing financial difficulty, they did not seek help until the FSP executed upon the judgment debt. FOS is unable to consider a dispute at this late stage and the consumer should seek urgent legal advice.

Outcomes of legal proceedings disputes

Resolved by FSP											34%
Conciliation											4%
Negotiation											6%
Discontinued											9%
Outside Terms of Reference											47%

Common problem: Legal proceedings

A woman has recently separated from her husband and has three dependent children. She has a credit card account and has previously been able to meet monthly repayments, as her husband had contributed to household expenses. Now her husband is no longer contributing any money and she is unable to meet the monthly repayments.

She receives telephone calls and notices from the financial services provider, but family pressures prevent her from dealing with the problem and she hopes it will all just go away. She is served with legal proceedings and immediately consults a financial counsellor. They advise her to lodge a dispute with FOS.

This is a common scenario. FOS could consider the dispute, because the applicant has acted quickly after being served with the court documents. We would hold a telephone conciliation conference and help the two parties to find a mutually satisfactory solution – for example, a repayment plan that gives the applicant time to resolve her financial issues with her husband.






Insurance disputes

The total number of insurance disputes we accepted in 2009–2010 was 5,684. The vast majority (83%) of these disputes related to general/domestic insurance products. The other insurance product categories for which we handled a significant number of disputes were life insurance and small business/farm insurance.

Insurance disputes by product category










Product category	Accepted disputes	% of product line	% of total disputes
General/domestic insurance	4,732	83%	27%
Life insurance	643	11%	4%
Small business/farm insurance	253	4%	1%
Extended warranty	38	1%	<1%
Professional indemnity insurance	18	<1%	<1%
Total	5,684	100%	32%

Insurance disputes by product category

General/domestic insurance		83%
Life insurance		11%
Small business/farm insurance		4%
Extended warranty		1%
Professional indemnity insurance		<1%

What were the insurance disputes we dealt with about? In the majority of disputes (76%), the key issue was a decision made by the financial services provider (FSP). Most commonly, it was a decision by the FSP to deny an insurance claim. More details are contained in the 'General/domestic insurance' section on the next page.

Insurance disputes by issue type

Advice		1%
Charges		5%
Disclosure		1%
FSP decision		76%
Instructions		1%
Non-TOR		1%
Service		9%
Transactions		1%
Other		5%

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General insurers and life insurers were involved in 84% and 10% of insurance disputes respectively. No other sales or service channel accounted for more than 2% of insurance disputes.

Insurance disputes by sales/service channel

Bank																					1%
Financial advisor/planner																					1%
General insurance broker																					2%
General insurer																					84%
Life insurer																					10%
Other																					2%

General/domestic insurance

Disputes about general/domestic insurance products accounted for 83% of insurance disputes and 27% of all disputes FOS accepted in 2009-2010. Four particular products generated almost all of the general/domestic insurance disputes: home building, home contents, motor vehicle and travel insurance.

The number of home building disputes, although high at 28% compared to home contents disputes at 10%, dipped as a percentage compared to total motor vehicle disputes, which made up 41% of disputes received. This figure includes all forms of motor vehicle disputes, from uninsured third party to accidental damage, theft and fraud. Travel disputes as a percentage have continued the recent trend and dropped from 16% of disputes last year to 13% this year.

The cause of most (81%) of the disputes about general/domestic insurance products was a consumer's dissatisfaction with a decision made by the FSP, usually a decision to deny a claim. This decision in most cases was based on the application of an exclusion or condition in the contract by the FSP.

There were also a reasonable number of disputes about the amount offered to settle claims, non-disclosure of relevant information by the consumer to the FSP (see the 'Common problem' box on page 51), and delays in handling claims.

General/domestic insurance disputes by issue type

Advice																					1%
Charges																					3%
FSP decision																					81%
Instructions																					1%
Service																					8%
Other																					6%

Most general/domestic insurance products are sold directly by general insurers or their agents. Not surprisingly, then, almost all (97%) the disputes we handled for this product category involved general insurers.

General/domestic insurance disputes by sales/service channel

Bank																				1%
General insurance broker																				1%
General insurer																				97%
Other																				1%

Common problem: General/domestic insurance

The General Insurance Panel and Ombudsman still find their most difficult cases to determine relate to allegations of non-disclosure. Many cases raise the issue of whether the consumer has fulfilled their duty to disclose certain information to the insurer before entering the insurance contract.

The consumer is required to disclose any information they know, or could reasonably be expected to know, is relevant to the insurer’s decision about whether to enter the insurance contract. If the consumer does not fulfil this duty, the insurer may be entitled to refuse to pay an insurance claim or to cancel the policy. However, the consumer’s duty to disclose this information only applies if the insurer has asked questions to elicit the information, either in person, over the phone, via the internet or in a letter.

For an FSP to deny an insurance claim on the basis of non-disclosure of relevant information by a consumer, they need to establish that they have complied with the relevant sections of the *Insurance Contracts Act* (ICA). The Financial Ombudsman Service’s interpretation of this legislation is contained in the article ‘Non-disclosure and misrepresentation’ in Issue 3 of *The Circular* and in Practice Note 1: ‘Section 29, Insurance Contract Act’ (both are available at www.fos.org.au/publications). FOS is finding in a number of cases that consumers are winning their cases due to the FSP failing to follow Practice Note 1 and *Circular* Issue 3.

Section 21A of the ICA was amended some years ago to require an insurance company to ask specific questions when first arranging the policy before an obligation arises for the consumer to provide an answer. This obligation will also apply to policy renewals once the current amendments proceed through Parliament.

If consumers are applying for insurance for themselves or on behalf of a spouse or other family member, then it is important for them to answer the questions fully as they relate to them and the other party. If they are not sure about some matter (e.g. their son’s driving record), they should make an effort to find out before answering the question. If the consumer makes an oversight or deliberately withholds information, then the insurer may avoid paying a claim in the future.

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Life insurance

Disputes about life insurance products accounted for 11% of the insurance disputes FOS accepted in 2009–2010. About a third of the life insurance disputes related to income protection insurance, and another third related to term life insurance or total or permanent disability (TPD) insurance. Other life insurance products for which we accepted disputes included consumer credit, whole-of-life and trauma insurance.

Half the life insurance disputes were about some decision the FSP had made. As with general/domestic insurance, the type of decision that most frequently caused disputes was a decision to deny a claim. There were also significant numbers of disputes about service and charges. Service complaints were especially common for term life and TPD insurance.

Life insurance disputes by issue type

Advice	5%
Charges	13%
Disclosure	6%
FSP decision	52%
Instructions	3%
Service	17%
Transactions	3%
Other	1%

As you would expect, the vast majority (87%) of life insurance disputes involved a life insurer. The only other sales/service channel that accounted for more than 5% of disputes was financial planners/advisors.

Life insurance disputes by sales/service channel

Bank	1%
Financial advisor/planner	6%
General insurance broker	1%
Life insurance broker	2%
Life insurer	87%
Superannuation fund trustee/advisor	1%
Other	2%

Common problem: Life insurance

A consumer has an income protection policy and makes a claim. Their insurer denies the claim because they believe that the consumer failed to tell them about a pre-existing medical condition before signing the insurance contract. The consumer complains to FOS that their claim has been wrongly rejected.

FOS handles many insurance disputes like this. They are essentially about what insurers must ask customers and what customers must disclose to insurers before entering an insurance contract. These issues and our position on them are discussed in detail in the Common Problem section on page 51.

Small business/farm insurance

About 4% of the insurance disputes FOS accepted in the year related to small business/farm insurance products. Small businesses and farms take out insurance to cover such things as vehicle damage, fire or accidental damage to property, machinery breakdowns, public liability, thefts and loss of profits.

For small business/farm insurance, as with most other insurance categories, the leading cause of disputes was a decision by an FSP that a consumer disagreed with. Again, the decision was most often a decision to deny a claim, though for a fair proportion of disputes the decision related not to whether a claim was valid but to the amount offered to settle a claim.

Small business/farm insurance disputes by issue type

Advice	■																		5%
Charges	■	■																	9%
FSP decision	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	75%
Non-TOR	■																		2%
Service	■																		5%
Other	■																		4%

Almost all the disputes about small business/farm insurance products were between general insurers (84%) or general insurance brokers (13%) and their customers. This is what we would expect, as these are the main types of business that either sell small business/farm insurance or provide advice about it.

Small business/farm insurance disputes by sales/service channel

General insurance broker	■	■																	13%
General insurer	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	84%
Other	■																		3%

Extended warranty

FOS accepted only 38 disputes about extended warranty products in the year. Most of these disputes were about extended warranties for motor vehicles, though extended warranties are also available for products such as brown goods (TVs, radio, computers, etc.) and white goods.

The most common cause of these disputes was a consumer's belief that the FSP had given them incorrect advice about the product.

Extended warranty disputes by issue type

Advice	■	■	■	■	■	■	■	■	■	■	47%
Charges	■										3%
Disclosure	■										5%
FSP decision	■	■	■	■							26%
Privacy & confidentiality	■										3%
Service	■	■									13%
Other	■										3%

For 55% of these disputes, the FSP involved was an extended warranty provider. The only other two types of provider who had more than one dispute in this product category were general insurance brokers and general insurers.

Extended warranty disputes by sales/service channel

Extended warranty provider	■	■	■	■	■	■	■	■	■	■	55%
General insurance broker	■	■	■	■							26%
General insurer	■	■									16%
Other	■										3%

Professional indemnity insurance

Disputes about professional indemnity insurance are relatively rare: we only accepted 18 this year, making this the product category with the fewest disputes. Two thirds of these disputes related to medical indemnity insurance.

The cause of disputes about professional indemnity insurance, in the majority of cases, was a consumer's dissatisfaction with a decision by the FSP to deny a claim.

Professional indemnity insurance disputes by issue type

Charges	■	■	■																	17%
Disclosure	■																			6%
FSP decision	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	61%
Service	■	■																		5%
Other	■	■																		11%

About three-quarters of these disputes were brought to FOS by customers of general insurers, and the rest by customers of general insurance and life insurance brokers.

Professional indemnity insurance disputes by sales/service channel

General insurance broker	■	■	■																	17%
General insurer	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	78%
Life insurance broker	■	■																		5%

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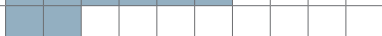


Investment disputes

The total number of investment disputes we accepted in 2009–2010 was 1,639. The product category that accounted for the largest share (60%) of investment disputes was managed investments. The other categories with a significant number of disputes were superannuation and securities.

Investment disputes by product category










Product category	Accepted disputes	% of product line	% of total disputes
Managed investments	974	60%	5%
Superannuation	326	20%	2%
Securities	285	17%	2%
Derivatives/hedging	54	3%	<1%
Total	1,639	100%	9%

Investment disputes by product category

Managed investments		60%
Superannuation		20%
Securities		17%
Derivatives/hedging		3%

The bulk of investment disputes were about problems, or perceived problems, with a financial service provider's (FSP's) advice (38%), disclosure (18%) or service (17%). Advice-related complaints included claims that FSPs gave inappropriate advice or failed to provide advice. Disclosure-related complaints included claims that FSPs provided insufficient, misleading or incorrect information about a product or service.

Investment disputes by issue type

Advice		38%
Charges		5%
Disclosure		18%
Financial difficulty		1%
FSP decision		6%
Instructions		7%
Service		17%
Transactions		7%
Other		1%

More than half (58%) of the investment disputes that FOS handled were about products or services provided by financial advisors or planners. The other sales/service channels for which there were a significant number of investment disputes were managed investments scheme operators (13%), fund managers (9%) and stockbrokers (7%).

Investment disputes by sales/service channel

Bank																			4%
Derivatives dealer																			1%
Financial advisor/planner																			58%
Fund manager																			9%
Managed investments scheme operator																			13%
Securities dealer																			2%
Stockbroker																			7%
Superannuation fund trustee/advisor																			2%
Other																			4%

Managed investments

Disputes about managed investment products accounted for 59% of all investments disputes. The main types of managed investment products we accepted disputes about were mixed asset funds, property funds, timeshare schemes and cash management accounts.

The issues that were raised in managed investment disputes reflected those raised in investment disputes generally. Managed investment disputes were most often about advice an FSP had given a consumer (41%). Disputes about disclosure – insufficient, misleading or incorrect information – were also common (23%), as were disputes about service problems (15%).

Managed investment disputes by issue type

Advice																			41%
Charges																			4%
Disclosure																			23%
Financial difficulty																			1%
FSP decision																			6%
Instructions																			6%
Service																			15%
Transactions																			3%
Other																			1%

For 62% of managed investment disputes, the consumer was complaining about a product – or advice about a product – sold to them by a financial planner or advisor. This reflects the primary role of financial planners/advisors in this market. The only other sales/service channels for which we accepted many disputes about managed investment products were managed discretionary account operators (19%) and fund managers (13%).

Managed investments disputes by sales/service channel

Bank											3%
Financial advisor/planner											62%
Fund manager											13%
Managed investments scheme operator											19%
Stockbroker											1%
Other											2%

Common problems: Managed investments

1. Advice about investment products

A consumer invests in a number of managed investment products that their financial advisor has recommended to them. These products then go down in value and the consumer starts to believe that their advisor gave them bad advice. The consumer believes the investments their advisor recommended were unsuitable for them given their financial circumstances and objectives.

This is a common situation, one that gives rise to many disputes that are brought to FOS. How could such disputes be prevented? There are things that both advisors and consumers should do.

A financial advisor is required to thoroughly understand a client's financial circumstances and objectives, as well as the level of risk their client is willing to accept and what products will be most suitable for their client. They also need to explain – in terms their client can understand – the features and the risks of each investment product.

A consumer needs to ask plenty of questions of their financial advisor to make sure they properly understand the investment options available to them. In particular, they need to understand the risks of investing in different products and be comfortable with the risks inherent in the products they ultimately choose to invest in.

2. Frozen funds

Since 2008, a number of fund managers have been forced to freeze their funds, giving customers of the funds little or no opportunity to redeem their investments – temporarily at least. Some of these customers have complained to FOS that their financial advisors had not alerted them to the fund managers' powers to freeze redemptions. Other customers of frozen funds have complained to FOS that the fund manager has denied their application for withdrawal on hardship grounds.

Investors should always ask advisers to explain clearly the risks of the funds they are considering, including the risk that redemptions may be frozen. Advisers need to make sure they tell clients about the risks (as well as the benefits) of any recommended investment, including the possibility that funds can be frozen.

Superannuation

We accepted 326 disputes about superannuation products over the year. The two superannuation products we handled the most disputes about were self-managed fund accounts and account-based pensions. Other superannuation products, such as accounts with retail funds and industry funds, were the subject of only small numbers of disputes.

In 44% of the superannuation disputes we accepted, the consumer complained about advice an FSP had given them or had failed to give them. Disputes about service quality were also common.

Superannuation disputes by issue type

Advice																44%
Charges																7%
Disclosure																10%
Financial difficulty																1%
FSP decision																6%
Instructions																7%
Service																20%
Transactions																5%

About three-quarters of the superannuation disputes we accepted were between financial advisors or planners and their customers.

Superannuation disputes by sales/service channel

Bank																4%
Credit provider																1%
Financial advisor/planner																74%
Fund manager																3%
Life insurer																2%
Managed investments scheme operator																5%
Superannuation fund trustee/advisor																9%
Trustee																1%
Other																1%

Securities

We accepted 285 disputes about securities over the year. Most of these disputes were about shares. We handled only small numbers of disputes about the other types of securities – bonds, warrants, promissory notes and debentures.

The securities disputes we handled raised a broad range of issues. The two most common complaints from consumers were that an FSP gave them inappropriate advice or failed to follow instructions or an agreement.

Many types of company sell derivatives/hedging products or offer advice about them. Make a market companies were involved in 28% of the disputes about these products. Make a market companies quote both a buy and a sell price for instruments or commodities held in inventory, hoping to make a profit on the bid/offer spread or turn.

Derivatives/hedging disputes by sales/service channel

Derivatives dealer																			19%
Finance broker																			2%
Financial advisor/planner																			15%
Foreign exchange dealer																			8%
Fund manager																			4%
Make a market																			28%
Managed investments scheme operator																			9%
Research house																			4%
Securities dealer																			9%
Stockbroker																			2%

Common problem: Contracts for difference

Online retail sales of contracts for difference (CFDs) have grown rapidly in Australia over the past decade. FOS is concerned that the typical retail investor does not adequately understand the risks inherent in over-the-counter (OTC) trading in CFDs. CFDs are very complex, highly leveraged products, and some retail investors who have not understood how they work have lost large sums of money trading in them. Some of these investors have brought disputes to FOS.

In July 2010, the Australian Securities & Investments Commission (ASIC) published an extensive report (Report 205) following a “health check” of the CFD market. Report 205 is available online at www.asic.gov.au/asic/ASIC.NSF/byHeadline/Reports. It reviews business models for CFD issuers, market dynamics, advertising, disclosure documents, investor attitudes and behaviour, and investor complaints data, but it leaves open aspects of consumer protection.

A “feature” of OTC trading is that the issuer of the CFD (or other product) only gives the investor general information or advice about the product. They do not advise the investor about whether CFDs are a suitable product for them to invest in, given their financial circumstances and objectives. If an investor wants such personal advice, they have to seek it out and pay for it. This option is rarely taken up. Most investors sign up online and then find themselves bound by very strict terms and conditions that they do not understand.

In our experience, the only investors who trade in CFDs successfully are sophisticated traders who watch and manage their investments full-time. These investors understand risk control, money management and trading discipline.

FOS believes that retail investors should be properly educated about CFDs before being allowed to trade in them. One option that has previously been raised with Treasury and ASIC in a different forum would be to require retail investors to have an accountant’s certificate or independent Australian financial services licensee certificate before they can trade in CFDs.

Payment system disputes




During 2009–2010 a total of 1,200 disputes were accepted concerning payment system products and services. This represented 7% of all the disputes accepted at FOS. The majority of these disputes (74%) related to direct transfer services, such as electronic banking, direct debits, cheques, ATMs, merchant facilities, EFTPOS, foreign currency transfers and telegraphic transfers. Another 21% of these disputes related to non-cash products, such as non-cash systems, loyalty programs, stored value cards and travellers' cheques.

Payment system disputes by product category

Product category	Accepted disputes	% of product line	% of total disputes
Direct transfer	896	74%	5%
Non-cash	248	21%	1%
Other*	56	5%	<1%
Total	1,200	100%	7%










* The disputes classified as 'Other' were not classified in further detail at the end of the reporting period. These disputes are included in the next chart but not in any of the subsequent charts.

Payment system disputes by product category

Direct transfer		74%
Non-cash		21%
Other		5%

In many of the payment system disputes, the consumer claimed that the financial services provider had permitted an unauthorised transaction or transferred an incorrect amount.

Payment system disputes by issue type

Advice		3%
Charges		7%
Disclosure		1%
FSP decision		21%
Instructions		10%
Privacy & confidentiality		1%
Service		7%
Transactions		48%
Other		2%

The main providers of payment system products and services are banks and companies that specialise in non-cash payment systems. Most of the disputes involved banks (70%) or non-cash payment system providers (10%) and their customers.

Payment system disputes by sales/service channel

Bank											70%	
Credit provider												1%
Credit union												5%
Custodial & depository service												1%
Non-bank*												10%
Non-cash payment system provider												10%
Other												3%

* 'Non-bank' was a category used under our old Terms of Reference to cover a variety of sales/service channels. It is not used under our new Terms of Reference, which uses the categories listed on page 22.

Direct transfer

Electronic banking represented 28% of these types of disputes, followed by cheques (22%) and ATMs (16%).

Direct transfer disputes by issue type

Advice														3%
Charges														8%
Disclosure														1%
FSP decision														12%
Instructions														11%
Privacy & confidentiality														1%
Service														8%
Transactions														54%
Other														2%

Direct transfer disputes by sales/service channel

Bank											85%			
Credit provider														1%
Credit union														7%
Non-bank														4%
Other														3%

Common problem: Direct transfer

As consumers use internet banking more often to transfer money between accounts and pay bills, there has been a corresponding increase in complaints about unauthorised internet banking transactions. Often these unauthorised transactions are made by a person close to the account holder, such as a family member, friend or employee.

The Electronic Funds Transfer Code of Conduct sets limits on the extent to which an account holder can be held liable for unauthorised transactions; but an account holder may still be liable if they contribute to the losses by, for example, disclosing their password to another person or writing down their password without disguising it. To avoid potential liability, consumers should take great care to maintain the secrecy of their internet banking password.

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Non-cash

We accepted 248 disputes about non-cash products and services in 2009–2010. For about half of these disputes the issue related to a decision that the financial services provider had made. The decisions that most commonly gave rise to disputes were decisions to deny an application to use a non-cash system or to deny a request to chargeback money that had been transferred. The other major issues in disputes about non-cash products and services were unauthorised transactions and dishonoured transactions.

Non-cash disputes by issue type

Advice	4%
Charges	3%
Disclosure	1%
FSP decision	53%
Instructions	5%
Service	6%
Transactions	26%
Other	2%

Three sales/service channels accounted for more than 90% of the disputes about non-cash products and services: non-cash payment system providers (43%), non-banks (28%), and banks (20%).

Non-cash disputes by sales/service channel

Bank	20%
Credit provider	1%
Custodial & depository service	5%
Non-bank	28%
Non-cash payment system provider	43%
Other	3%

Deposit taking disputes

This is the smallest area of disputes lodged across FOS, with 863 disputes being accepted about deposit taking products and services in 2009–2010. Three quarters of these disputes related to current accounts, with 22% involving savings accounts and only 2% concerning safe custody services. A broad range of problems gave rise to these types of disputes, including unauthorised transactions, instructions not being followed and problems with fees and charges. The vast majority of deposit taking disputes involved banks and their customers. This is not surprising given banks are the main providers of these types of products and services.

Deposit taking disputes by product category

Product category	Accepted disputes	% of product line	% of total disputes
Current accounts	638	74%	4%
Savings accounts	188	22%	1%
Safe custody	20	2%	<1%
Other*	17	2%	<1%
Total	863	100%	5%

* The disputes classified as 'Other' were not classified in further detail at the end of the reporting period. These disputes are included in the next chart but not in any of the subsequent charts.

Deposit taking disputes by product category

Current accounts	74%									
Savings accounts	22%									
Safe custody	2%									
Other	2%									

Deposit taking disputes by issue type

Advice	4%									
Charges	16%									
Disclosure	3%									
Financial difficulty	1%									
FSP decision	13%									
Instructions	15%									
Privacy & confidentiality	5%									
Service	12%									
Transactions	30%									
Other	1%									

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Deposit taking disputes by sales/service channel

Bank											92%	
Building society												1%
Credit union												4%
Non-bank*												1%
Other												2%

* 'Non-bank' was a category used under our old Terms of Reference to cover a variety of sales/service channels. It is not used under our new Terms of Reference, which uses the categories listed on page 22.

Current accounts

The category of current accounts includes personal and business transaction accounts, passbook accounts, mortgage offset accounts and foreign currency accounts. More than 80% of all current account disputes involved personal transaction accounts and the most common issue involved transactions.

Current account disputes by issue type

Advice																					3%	
Charges																						17%
Disclosure																						1%
Financial difficulty																						1%
FSP decision																						14%
Instructions																						14%
Other																						1%
Privacy & confidentiality																						6%
Service																						11%
Transactions																						32%

Current account disputes by sales/service channel

Bank											91%	
Building society												1%
Credit union												5%
Non-bank												1%
Other												2%

Common problem: Current accounts

A common scenario concerns an applicant who disputes a charge that has been debited to their account. FOS will review the relevant account terms and conditions to assess whether the charge has been properly disclosed by the financial services provider (FSP) and whether the charge is in accordance with the scale of charges generally applied. We cannot review the policy decision made by the FSP to impose a charge if the charge is not otherwise in breach of an applicable law or obligation.

Savings accounts

Disputes about savings accounts made up 22% of all deposit taking disputes. They included disputes concerning cash management accounts, term deposits, online accounts, first home saver accounts and bank bills.

Savings account disputes by issue type

Advice	7%
Charges	15%
Disclosure	9%
FSP decision	10%
Instructions	19%
Other	2%
Privacy & confidentiality	3%
Service	11%
Transactions	24%

Savings account disputes by sales/service channel

Bank	96%
Credit union	2%
Other	2%

Safe custody

Safe custody involves the storage of valuable documents, jewellery or other possessions in a vault at the bank. Only 2% of deposit taking disputes related to safe custody services.

Safe custody disputes by issue type

FSP decision	5%
Instructions	10%
Service	80%
Transactions	5%

Safe custody disputes by sales/service channel

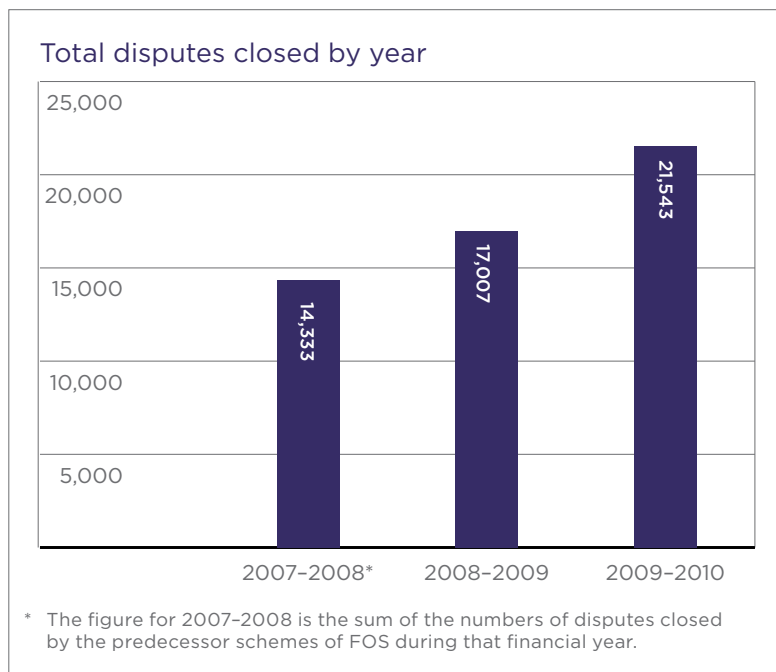
Bank	95%
Financial advisor/planner	5%

Total disputes resolved

How many disputes we resolved this year

FOS resolved 21,543 disputes in the 2009–2010 financial year, which is 27% more than in the previous financial year. This large increase is a result of a number of factors:

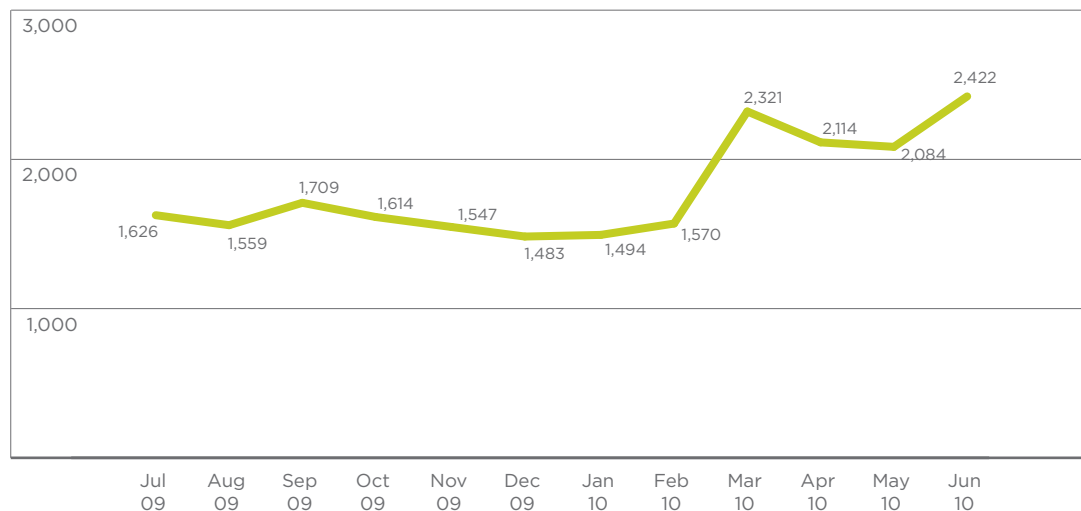
- the increase in disputes received (see page 27)
- our increase in staff numbers (see page 10) and hence in our capacity to handle cases
- the quick resolution of disputes in 2010 through our new Registration process, which involves referring a dispute to the internal dispute resolution (IDR) system of the relevant financial service provider (see page 35).



How many disputes we resolved each month

The number of disputes resolved each month averaged 1,575 over the first eight months of the financial year. Then, in March 2010, the number of disputes resolved jumped up to 2,321, and it stayed high for the rest of the year. From March to June 2010, we resolved an average of 2,235 disputes a month. The same factors that explain the overall increase in disputes resolved this financial year compared to last financial year explain the increase in resolutions in March to June 2010.

Total disputes closed by month



How long we took to resolve disputes

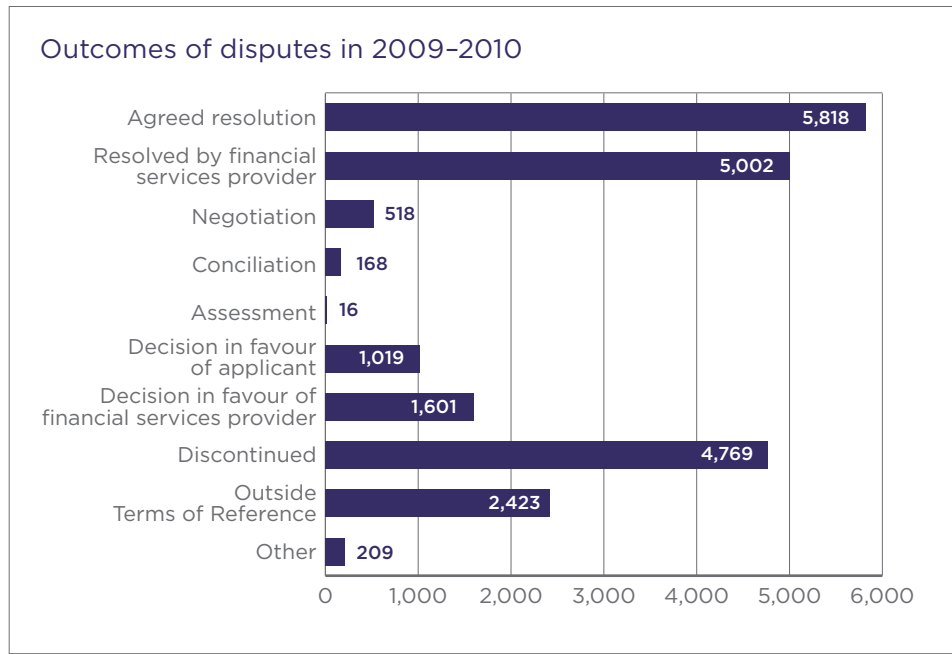
Of the 21,543 disputes we resolved in 2009–2010, almost half were resolved within three months and almost 80% were resolved within six months. After the changes we have made this year – adding more staff, introducing our new dispute resolution process and developing an Early Resolution Team – we expect these proportions to be even higher in the next financial year.

Days taken to resolve disputes

<30	█	█																		14%
31-60	█	█	█	█																24%
61-90	█	█																		10%
91-120	█	█	█																	12%
121-180	█	█	█	█																19%
>180	█	█	█	█	█															21%

Outcomes of disputes

The different possible outcomes of a dispute brought to FOS are listed in the Outcomes section on page 23. The outcomes of the disputes resolved this year are shown in the chart below.

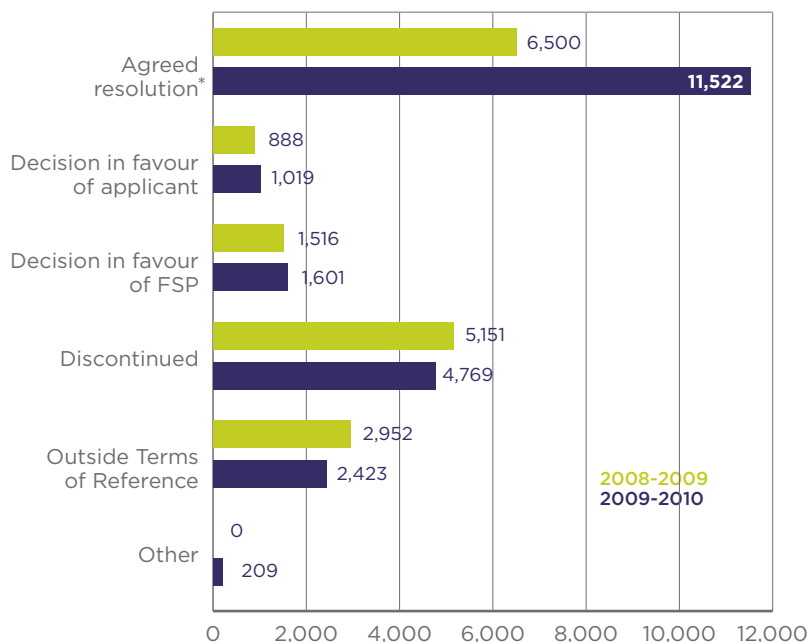


'Agreed resolution' is an outcome that was used under our old Terms of Reference to cover resolutions reached collaboratively, without FOS having to make a formal decision on the matter. Under our new Terms of Reference, we have split these types of resolution or outcome into four categories – resolved by financial services provider, negotiation, conciliation, assessment – corresponding to the way a resolution was reached.

In the chart at the top of the next page, we have grouped these four outcomes with 'agreed resolution' so that we can compare the outcomes of disputes resolved in the 2009–2010 and 2008–2009 financial years. The most obvious change is a large increase in the number of agreed resolutions. This shows that our emphasis on collaborative methods of dispute resolution is reducing the proportion of disputes that FOS needs to make a formal decision about. Moreover, it shows that our new Registration process is helping us to minimise the proportion of disputes that FOS needs to take an active role in resolving.

The number of disputes that were outside our Terms of Reference dropped – this is discussed in the next section.

Outcomes of disputes in 2008-2009 and 2009-2010



* The 'agreed resolution' number for 2009-2010 includes disputes with an 'agreed resolution' under our old Terms of Reference plus disputes with any of four outcomes under our new Terms of Reference - resolved by financial services provider, negotiation, conciliation or assessment.

Disputes that were outside our jurisdiction

Our Terms of Reference (TOR), available at www.fos.org.au/tor, explain our jurisdiction - what kinds of dispute we can handle, who can bring disputes to FOS, and which kinds of financial services provider we can handle disputes about. Until 31 December 2009, FOS operated under five different TOR that were modified versions of the documents that governed our predecessor schemes. On 1 January 2010, our new Terms of Reference came into effect.

In the 2009-2010 financial year, 2,423 disputes that we received were outside our jurisdiction, which is 18% fewer than for the previous financial year. The number dropped for several reasons. Some financial services providers that previously weren't members of FOS have become members, so we can now consider disputes involving them and their customers. Also, our new Terms of Reference have widened our jurisdiction - particularly in relation to financial difficulty disputes where legal proceedings have been started - so we are now able to deal with some disputes that were previously dealt with by other bodies.

This year we have sought to explicitly identify which kinds of disputes we can't handle on our website and in publications for consumers. More work on this is planned for the 2010-2011 year.

The tables below categorise the disputes that were outside our jurisdiction. There are two tables, one for the five old Terms of Reference and one for the new Terms of References, because they used different categories.

Disputes outside our old
Terms of References
(1 July 2009 to 30 June 2010*)

Category	Number
Applicant – large business	15
Business policy	147
Commercial decision	42
Criminal proceedings under way at the time dispute lodged with us	1
Dispute more appropriately dealt with by another forum (court or EDR scheme)	380
Dispute previously dealt with by a court or other EDR scheme	10
Dispute settled prior to coming to FOS	12
FSP not a member of ours	442
Investment performance	1
Legal proceedings under way at the time dispute lodged with us	15
Level of fee, premium, charge or interest	15
Management of a fund or scheme as a whole	43
No financial service	123
No loss sustained by applicant	3
Other	43
Outside product range	10
Outside monetary limits	144
Outside our time frames	78
Outside product range	70
Outside scope of uninsured third party motor vehicle jurisdiction	71
Outside statute of limitations	4
Superannuation trustee decision	61
Underwriting or actuarial factors	5
Total	1,735

* The old Terms of Reference still applied after 1 January 2010 to disputes that had come into FOS before this date.

Disputes outside our new
Terms of References
(1 January to 30 June 2010*)

Category	Number
4.1 Applicant not eligible	3
4.2(a) Dispute not under Australian law	5
4.2(b) Type of dispute outside Terms of Reference	100
4.2(c) Not a current FOS member	243
4.3 Excluded general insurance policy	33
5.1(a) Privacy only	5
5.1(b) Level of fee/premium/charge	29
5.1(c) Credit risk assessment	24
5.1(e) General insurance premium ratings/weightings	3
5.1(f) Insurance cover refusal	5
5.1(h) Trustee decision	20
5.1(i) Management of fund as whole	38
5.1(j) Allocation of benefit	1
5.1(k) Dispute previously dealt with by FOS	4
5.1(l) Dealt with by court/tribunal/scheme	57
5.1(n) Lodged with other EDR scheme	3
5.1(o) Claim exceeds \$500K	9
5.2(a) More appropriate forum	60
5.2(c) FSP practice/policy	37
5.2(d) Frivolous/vexatious/lacking substance	1
6.2(a) Outside 6 year time limit	7
6.2(b) Outside 2 year IDR time limit	1
Total	688

* This is the period in which the new Terms of Reference have been in operation.

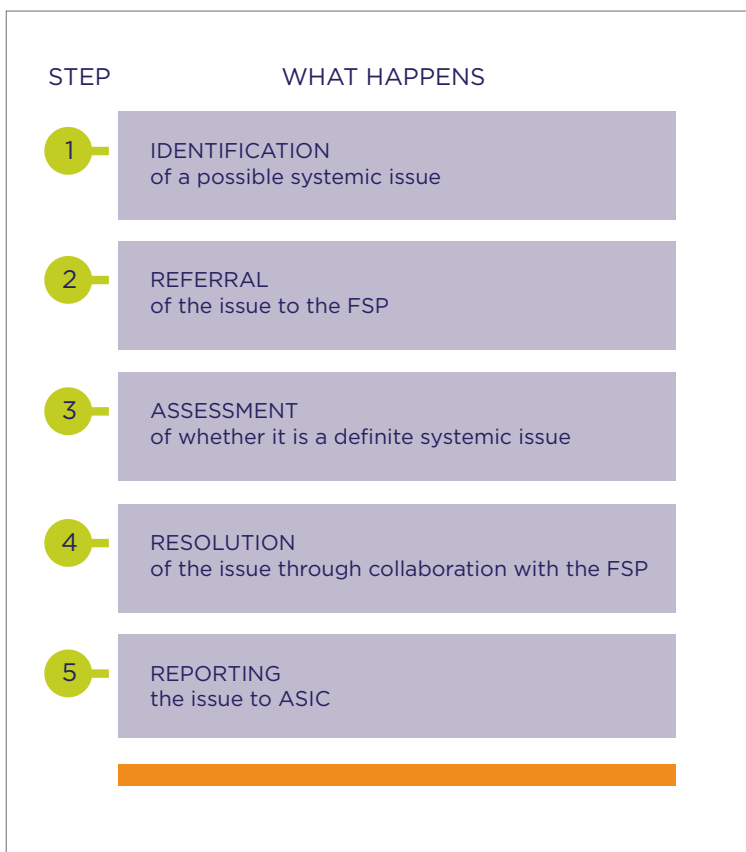
Systemic Issues and Serious Misconduct

Under ASIC Regulatory Guide 139, FOS is obliged to identify, resolve and report on systemic issues and serious misconduct. A systemic issue is defined in our Terms of Reference as an issue that will have an effect on people beyond the parties to a dispute. Serious misconduct is defined as conduct that may be fraudulent or grossly negligent or may involve wilful breaches of applicable laws or obligations under the Terms of Reference.

By dealing effectively with systemic issues and serious misconduct, FOS can raise industry standards and help consumers to obtain fair compensation for financial losses.

Our systemic issues process

This year FOS developed a single process for identifying and managing systemic issues for all areas of our organisation and we improved the way we train our staff in how to identify systemic issues. The steps in our process are as follows:



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1. Identification

While FOS is handling a dispute, we consider whether the dispute raises any issues that might be systemic. Identification of a possible systemic issue can occur at any stage of the FOS dispute resolution process.

2. Referral

Once a possible systemic issue has been identified, we refer it to the relevant financial services provider (FSP). We will detail the issue, ask for further information, and invite the FSP to formally respond.

3. Assessment

We then assess the FSP's response and determine whether the issue is definitely systemic. Investigations are carried out by our systemic issues staff, in consultation with the relevant Ombudsman.

If we decide that the issue is not in fact systemic, then the matter is concluded (though FOS may reconsider an issue at a later time in light of new information relevant to the issue). If we decide that it is a systemic issue, then we will manage its resolution in conjunction with the FSP.

4. Resolution

FOS will work with the FSP to resolve the systemic issue. Resolution of the issue will require the FSP, where appropriate, to:

- identify all affected customers
- compensate the affected customers fairly for any financial loss, and
- implement a strategy to prevent the problem from recurring.

5. Reporting

We report to ASIC quarterly on the numbers of possible and definite systemic issues and on the nature, progress and resolution of definite systemic issues. FSPs are not identified in these reports. This year FOS consolidated its reporting to ASIC on systemic issues from all areas of FOS in one format.

FOS only identifies an FSP in a report to ASIC if the FSP has not dealt with a definite systemic issue to the satisfaction of the relevant Ombudsman.

Systemic issues and serious misconduct this year

This year, we identified 71 possible systemic issues; 58 of these were found to be definite systemic issues and were resolved to the satisfaction of the relevant Ombudsman. These systemic issues included:

- application of incorrect interest rates
- incorrect break cost methodology on principal and interest loans
- inadequate refunds of lenders mortgage insurance premiums
- processing delays resulting in losses
- failure to link eligible offset accounts
- failure to cancel direct debits on request
- licensee notification delays
- failure to adequately disclose fees
- errors in credit listings
- incorrect claim denials
- misleading conduct
- incorrect policy interpretation.

The actions that FSPs took to fix systemic issues included:

- reimbursing affected customers for losses, including interest
- amending contractual and product documentation
- improving staff training
- case by case review of appropriate rectification for affected customers
- changing processing systems to rectify the problems
- undertaking to rectify future complaints
- reviewing their processes and procedures
- corresponding with affected customers to correct previous statements
- removing fees that had been charged incorrectly.

For some of the 58 systemic issues we resolved, the FSP was able to tell FOS how many customers were affected by the issue and how much money was paid to the affected customers. In total, for these cases, 36,544 customers were affected and over \$17.5 million was paid to customers.

We reported one case of serious misconduct to ASIC this year. It involved a member that had repeatedly and wilfully breached its membership obligations (see page 76).

Examples

Break cost methodology on fixed principal and interest loans

In the course of investigating a number of disputes relating to break costs on fixed principal and interest loans, FOS found that a number of members were not adequately taking into account the present day value discounting required for principal repayments over the remaining term of the fixed rate loan. This was resulting, in some cases, in an incrementally higher break cost for the customer.

In order to resolve this systemic issue, all of the FSPs involved:

- adopted a present day value methodology for all future calculations of break costs on fixed principal and interest loans
- reviewed the break costs charged on all early repayments of fixed principal and interest loans since 1 September 2008 and refunded any variance, and
- agreed to pay interest on the refunds from the date of payment of the break costs to the date of repayment at the rate of 3% per annum.

In one case, the FSP estimated that the issue affected 1,304 accounts and that \$592,000 (including interest) would be refunded to customers.

Disclosure of merchant facility fee

One FSP had unilaterally altered the terms of its merchant facility agreement by increasing fees and charges without notice. The FSP indicated that 13,051 merchants using terminals had not received the required notice of the fee change.

The financial services provider agreed to pay refunds to all affected customers and reset their facility fee back to the level it was at before the unadvised change. It paid 70 refunds totalling \$12,065.

Failure to link eligible offset accounts

FOS discovered that one FSP involved in a number of disputes had not always correctly linked its offset home loan feature to an eligible offset account. Over 12 months, the FSP identified all the affected customers and reimbursed about \$11.6 million to those customers. The FSP also fixed and enhanced its system to ensure that the problem did not recur.

Inappropriate avoidance of policies

In certain circumstances, an insurer can 'avoid' a customer's insurance policy, which means they can cancel the policy as though it never existed and reject any claims made by the customer. While handling a number of disputes about a particular insurer, FOS noted instances where the insurer had sought to avoid a policy in response to innocent non-disclosure or misrepresentations by the customer before the insurance contract was signed.

Under section 28 of the *Insurance Contracts Act 1984*, an insurer can only avoid a contract of insurance if the customer's non-disclosure or misrepresentation was fraudulent, and sections 59, 60 and 63 preclude retrospective cancellation of policies by insurers.

In these cases, FOS determined that the insurer had sent letters to the customers incorrectly informing them that their policies had been avoided. An audit of the insurer's files concerning cancelled policies established that another five customers had been similarly affected.

The insurer sent letters to the affected customers, correcting the previous letters. It also raised the issue with relevant staff and made sure that they were aware of the laws relating to the cancellation of policies.

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Repeated and wilful breaches of FOS membership obligations

The conduct of one FSP member of FOS was identified by the relevant Ombudsman as serious misconduct. The member wilfully contravened the FOS Terms of Reference and Operational Guidelines while a case involving it was open. Specifically, the FSP:

- issued legal proceedings after a dispute had been lodged with FOS and after the FSP had asked FOS for permission to issue legal proceedings and had been declined in writing
- entered a default judgment against an applicant after a dispute had been lodged with FOS where legal proceedings were on foot when the dispute was lodged.

In accordance with our Terms of Reference and our obligations to ASIC, the relevant Ombudsman reported the member's behaviour to ASIC as a case of serious misconduct and named the member. He expressed his view that the member's conduct frustrated the dispute resolution process and the rights of applicants to have their cases properly considered and determined by FOS.

Glossary

Term/acronym	Explanation
Accepted dispute	A dispute that has passed through the Acceptance stage of our dispute resolution process – it can either have proceeded from the Registration stage into Acceptance or gone directly into Acceptance
ADR	Alternative dispute resolution – ways of resolving disputes that don't involve going to court
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
EDR	External dispute resolution – dispute resolution managed by an independent third party (the Financial Ombudsman Service is an EDR scheme)
FSP	Financial services provider
GFC	Global financial crisis
IDR	Internal dispute resolution – every member should have IDR processes in place to handle disputes they receive about their business
Make a market	Someone who through a facility, place or other means, regularly states prices at which they propose to acquire or dispose of financial products on their own behalf – e.g. contracts for difference
Member	Financial services provider that is a member of the Financial Ombudsman Service
OECD	Organisation for Economic Co-operation and Development
Ombudsman	Someone who investigates complaints and mediates fair settlements between aggrieved parties (e.g. consumers) and organisations (e.g. financial services providers).
Outcome	The way in which a dispute has been resolved or finalised
Outcome type	The result or consequences of the resolution or finalisation of a dispute
Product	Specific type of product within a product category (e.g. shares are a product within the securities product category)
Product category	Group of products within a particular product line (e.g. securities are a product category within the investment product line)
Product line	Broad line of products (e.g. Investments)
RG 139	ASIC Regulatory Guideline 139 sets out the requirements of how an organisation like the Financial Ombudsman Service can become an ASIC-approved EDR scheme and how they have to operate and report to maintain it
Sales/service channel	The channel a consumer used to purchase or get advice about the product in dispute
TOR	Terms of Reference, the rules and processes that the organisation follows

Contact us

We recommend that you visit our website www.fos.org.au for comprehensive information about our services and help to answer questions you may have.

To talk to one of our customer service staff, call **1300 78 08 08***. Other helpful contact details are:

info@fos.org.au

GPO Box 3 Melbourne VIC 3001

www.fos.org.au

* 9am - 5pm AEST/EDT. Calls will be charged for the cost of a local call from landlines. Calls from mobile phones will be charged at the applicable rate from your carrier.

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