

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

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Department/Agency: Australian Securities and Investment Commission

Question: AET 84

Topic: Monitoring of the Financial Ombudsman Service

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Senator: Xenophon, Nick

Question:

Senator XENOPHON: I get a number of FOS related complaints directed towards my office. What role does ASIC have in monitoring the function of the Financial Ombudsman Service?

Mr Kell: The starting point is that for financial services licensees, in particular those dealing with retail clients, one of their licence requirements is that they belong to an ASIC approved dispute resolution scheme to enable complaints or disputes to be heard. There are two schemes—there were originally a lot more—that are approved by ASIC: FOS and the Credit and Investments Ombudsman. We approve those schemes and then assess their ongoing operation against standards that we set out in a regulatory guide—

Senator XENOPHON: Could you set this out for me? I have a lot of questions so that may be better. I am happy for you elaborate. I want to get to some issues about ASIC funding cuts, which you may want to comment on.

Mr Kell: I am very happy to do that, but can I just add one thing. The key part of that is on the requirement that they undertake regular independent reviews as well. But I am very happy to set it out.

Answer:

Dispute resolution policy settings

ASIC administers the financial services and consumer credit dispute resolution framework, which includes internal dispute resolution (IDR) and external dispute resolution (EDR). The approval criteria for EDR schemes are set out in Corporations Regulation 7.6.02A. Within this framework, ASIC is responsible for setting or approving standards for IDR procedures and approving and overseeing the effective operation of EDR schemes.

ASIC publishes guidance *Regulatory Guide 139: approval and oversight of external dispute resolution schemes* (RG 139) to ensure that EDR schemes meet the approval criteria, which include benchmarks relating to independent governance, efficiency, effectiveness, accountability and fairness.

Approved schemes are independent companies limited by guarantee with a board responsible for scheme operations and performance. The policy settings schemes require schemes to have independent governance comprising an equal number of consumer and industry representatives and an independent chair. It is the responsibility of each scheme board to focus on ensuring independent decision-making by scheme staff and decision makers, effective consultation about any changes to the scheme terms of reference and adequate resources for the scheme to perform its functions.

There are currently two ASIC-approved EDR schemes: the Financial Ombudsman Service (FOS) and the Credit and Investments Ombudsman (CIO).

Scheme operations

Last financial year the FOS received 31,895 disputes and closed 34,714 disputes. The CIO received 4,848 complaints and closed 4,979 complaints.

As well as resolving many thousands of disputes each year, EDR schemes must identify, resolve and report on systemic issues and cases of serious misconduct to ASIC.

Systemic issues typically have implications beyond the immediate actions and rights of the parties to the dispute, such as where a system error inside a financial institution affects many consumers. Serious misconduct may involve fraudulent conduct, grossly negligent or inefficient conduct, or wilful or flagrant breaches of relevant laws.

In 2014–15, FOS reported 62 definite systemic issues and 14 cases of serious misconduct to ASIC. The CIO reported 31 definite systemic issues and 11 definite cases of serious misconduct. ASIC assessed these reports and, where appropriate, used the information to inform current or new investigations.

ASIC's ongoing work with the schemes include quarterly liaison meetings where each quarter, senior ASIC staff meet with senior EDR scheme personnel to discuss key trends and issues arising from complaints, as well as policy and regulatory issues and law reform.

Independent reviews

Formal examination of the framework and operational effectiveness and performance of EDR schemes is done by way of an Independent Review of the schemes. It is a requirement under ASIC's approval framework in Regulatory Guide 139 that approved schemes commission an independent review three years after initial approval and every five years thereafter, unless we specify a shorter timeframe. Independent Reviews provide essential feedback about how a scheme should evolve and identify any areas for change or improvement.

The FOS was established on 1 July 2008 from the merger of five predecessor schemes. After the merger, the FOS developed a single terms of reference for the scheme covering its banking and finance, general and life insurance, investments and insurance broking jurisdictions. The FOS TOR took effect from 1 January 2010.

In consultation with ASIC, the FOS Board commissioned the independent review in July 2013. This was the first independent review of the FOS commissioned three years after the new FOS TOR took effect in 2010.

Independent reviews involve a significant commitment of time and resources on the part of a scheme and stakeholders. To ensure the review produced meaningful and actionable insights, the review was conducted after the scheme had bedded down changes from the merger so both the scheme and stakeholders had had sufficient time and experience of how the scheme was operating under the new TOR.

The report of the independent reviewers, CameronRalph Navigator, followed a six-month detailed assessment of FOS's operations and the final report of the review was issued in March 2014.

The review found that there had been significant improvements in key aspects of FOS's performance, including in the clarity, quality and fairness of FOS's decision making, and that FOS met all of the benchmarks for industry-based EDR schemes except timeliness.

The Independent review made 33 recommendations. The key recommendations related to the need to reduce the dispute backlogs and reshape processes to reduce the time taken to resolve disputes.

The Independent review resulted in significant changes to FOS processes including the introduction of a new process to fast track decisions for simpler and low-value disputes. It also added specialist expertise earlier in the dispute process to reduce the number of times a dispute changes hands.

FOS implemented its new streamlined dispute process on 1 July 2015.

FOS consulted publicly on proposed changes to its terms of reference (TOR) to give effect to the recommendations of the IR. In late 2014, ASIC approved changes to FOS' TOR, the majority of which came into effect on 1 January 2015.

Consultation documents and public submissions to these processes are published on the FOS website.