

Credit providers are regulated by the *National Consumer Credit Protection Act 2009*. That Act requires that credit providers hold an Australian Credit License. This includes banks, credit unions, building societies and finance companies. Section 47 of that Act provides that a credit licensee must be a member of an approved external dispute resolution scheme. Such schemes are approved by ASIC. The Financial Ombudsman Scheme ("FOS") is an approved scheme.

As a condition of being a member of FOS, credit licensees are required to agree to be bound by our Terms of Reference. Paragraph 13 of our Terms of Reference prohibits a financial services provider from:

- 1) commencing legal proceedings against the applicant relating to any aspect of the dispute
- 2) pursuing legal proceedings relating to debt recovery instituted prior to the lodging of the dispute by the applicant with FOS provided that the applicant has not taken a step beyond lodging a defence or a defence and counter claim. Attending a directions hearing is not considered to be a step for the purposes of the Terms of Reference
- 3) taking any action to recover a debt the subject of the dispute, protect any assets securing that debt or to assign any right to recover that debt while FOS is dealing with the dispute.

An exception to these prohibitions is where FOS agrees in writing to a financial services provider taking legal proceedings or enforcement action. This will only occur in limited circumstances, such as where it necessary to preserve property the subject of a dispute or where a limitation period is about to expire.

If Paragraph 13 applies, then a court is likely to receive a request to adjourn or discontinue the legal proceedings while the dispute is being considered. An applicant who has lodged a dispute with FOS on-line will receive an auto generated email response confirming that a dispute has been lodged which can be produced to the court. If the application is made by telephone, letter or email, the applicant will receive a letter or email acknowledging receipt of their dispute – but there may be a delay in receipt. For further information, see FOS Circular 3.1 on the Publications page of the FOS website [www.fos.org.au](http://www.fos.org.au).

The provisions of the Terms of Reference (including paragraph 13):

- 1) are contractually binding on the FSP and
- 2) apply to both regulated and unregulated credit, including some business lending.

A wilful breach of an obligation under the FOS Terms of Reference can constitute an act of serious misconduct. Under the Terms of Reference FOS must report all serious misconduct to ASIC.