

## Summary of FOS Terms of Reference changes January 2015

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All these changes take effect for disputes lodged on or after 1 January 2015 unless stated otherwise.

Description	TOR paragraphs
<p><b>1. Appointment of Adjudicators</b></p> <p>Create role of Adjudicator and provide them with powers similar to an Ombudsman (subject to limitations set down by Chief Ombudsman).</p> <p>Adjudicators are being appointed to deal with disputes classified as 'Fast Track'. The Operational Guidelines (OG) and other publications will explain how disputes will be classified as 'Fast Track'.</p>	<p>2.2, 2.5, 2.6, 5.3, 8.5, 8.6, 17.5, 17.6, 20.1</p>
<p><b>2. One-step lodgement and referral process</b></p> <p>Enable FOS to refer all disputes back to the FSP for resolution within a timeframe that FOS specifies.</p> <p>Timeframes will be set out in the OG.</p>	<p>6.3, 6.4, 15.3, 15.4</p>
<p><b>3. Outside Terms of Reference (OTR) objection timeframes</b></p> <p>Provide flexibility in the objection timeframe when a dispute is excluded because it is outside FOS's jurisdiction.</p> <p>Guidance on timeframes are set out in the OG. The standard timeframes are:</p> <ul style="list-style-type: none"> <li>• 7 days – where a dispute is OTR due to a Court judgment</li> <li>• 14 days – When the OTR reason is clear and straightforward</li> <li>• 30 days – in all other cases</li> </ul>	<p>5.3, 7.5</p>
<p><b>4. Small business credit disputes</b></p> <p>Specifically exclude disputes involving recovery of a debt from a small business involving a credit facility that exceeds \$2 million.</p>	<p>5.1r)</p>

Description	TOR paragraphs
<p><b>5.1. Multiparty Traditional Trustee Company Service disputes</b></p> <p>Amend paragraphs 15.7 and 20.1 to dispense with the requirement to obtain the consent of all ‘other affected parties’ where we are satisfied their interests would not be adversely affected by an outcome.</p>	15.7, 20.1
<p><b>5.2. Traditional Trustee Company Service disputes – exclusions</b></p> <p>Automatically exclude disputes:</p> <ul style="list-style-type: none"> <li>• where at least one beneficiary is a minor or lacks mental capacity</li> <li>• where a complaint about the service provided may be made under any of the laws listed in Schedule 8AC of the <i>Corporations Regulations 2001</i> (various state and territory laws about guardianship of minors and people under a disability)</li> <li>• about the service provided to a person lacking mental capacity by a trustee who was appointed by a court</li> <li>• about the alleged capacity of the testator to make a valid will.</li> </ul>	5.1s), 5.1t)
<p><b>6.1. Small business general Insurance disputes – business interruption.</b></p> <p>Expand FOS’s jurisdiction to include loss of profits/business interruption insurance for general insurance disputes lodged on or after <b>1 January 2016</b>.</p>	20.1
<p><b>6.2. Small business general insurance broking disputes</b></p> <p>Restore FOS’s jurisdiction to that of the antecedent scheme, the Insurance Brokers Dispute Facility.</p> <p>This will enable FOS to deal with disputes between a small business and a general insurance broker about any ‘General Insurance policy’ that is not an ‘excluded product’.</p> <p>Changes take effect for disputes lodged on or after <b>1 January 2016</b>.</p>	20.1

Description	TOR paragraphs
<p><b>7. Uninsured third party motor vehicle disputes</b></p> <p>Expand FOS's jurisdiction in relation to uninsured third party motor vehicle disputes so as to enable FOS to:</p> <ul style="list-style-type: none"> <li>• consider the dispute even if the insured driver who caused the damage has failed to pay the excess; and</li> <li>• make an award of up to \$5,000 (rather than \$3,000 as is presently the case).</li> </ul>	<p>4.2(b)(iv) &amp; Schedule 2</p>
<p><b>8. Disputes lodged by agents charging a fee for service</b></p> <p>When an applicant is represented or assisted by a fee-for-service agent, FOS may refuse to consider the dispute if:</p> <ul style="list-style-type: none"> <li>• the agent is engaging in inappropriate conduct, or</li> <li>• the dispute does not include information requested by FOS.</li> </ul> <p>The OG will clarify how this provision will be applied.</p>	<p>6.1d)</p>
<p><b>9. Discretion to allow sale of an asset</b></p> <p>FOS may allow an FSP to sell an asset that is the subject of a dispute.</p> <p>For the first 12 months of its operation, this discretion will only be exercised by an Ombudsman.</p>	<p>13.1</p>
<p><b>10. Accountants joining FOS</b></p> <p>FOS will not consider a dispute against an accountant that involves professional accountancy services unless they are provided in connection with one of the following:</p> <ul style="list-style-type: none"> <li>• <b>financial service</b> within the meaning of section 766A of the <i>Corporations Act 2011</i> or section 12BAB of the <i>ASIC Act 2001</i></li> <li>• <b>credit activity</b> within the meaning of the <i>National Consumer Credit Protection Act 2009</i></li> <li>• <b>tax (financial) advice services</b> within the meaning of the <i>Tax Agent Services Act 2009</i>.</li> </ul> <p>An accountant is an individual who is a member of either the CPA, ICAA or IPA.</p>	<p>5.1u) 20.1</p>

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<p>The OG will clarify what we take into account when considering whether a service falls within “professional accountancy services”.</p>																
<p><b>11. Indexation of compensation caps</b></p> <p>The following compensation caps have changed as a result of paragraph 9.8:</p> <table border="0" data-bbox="193 593 1002 896"> <tr> <td>Income stream</td> <td>-</td> <td>\$8,300 per month</td> </tr> <tr> <td>Broker disputes</td> <td>-</td> <td>\$166,000</td> </tr> <tr> <td colspan="3">(except if it involves a life policy)</td> </tr> <tr> <td>Consequential loss</td> <td>-</td> <td>\$3,300</td> </tr> <tr> <td>All other disputes</td> <td>-</td> <td>\$309,000</td> </tr> </table> <p>No change to the \$3,000 limit for non-financial loss.</p> <p>The cap for uninsured third party motor vehicle disputes has increased to \$5,000 due to the changes made to this jurisdiction (see 7.).</p>	Income stream	-	\$8,300 per month	Broker disputes	-	\$166,000	(except if it involves a life policy)			Consequential loss	-	\$3,300	All other disputes	-	\$309,000	<p>9.3, Schedule 2, Schedule 3</p>
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<p><b>12. Joining other FSPs</b></p> <p>FOS can join another FSP to a dispute if it would lead to a more efficient and effective resolution.</p> <p>The second FSP will have all the rights and duties under the TOR as if it was the first FSP.</p> <p><b>This applies to any open dispute from 1 January 2015 onwards.</b></p> <p>The OG will set out what factors FOS will take into consideration when joining another FSP.</p>	<p>7.4 (new)</p>															
<p><b>13. Platform clients accessing EDR</b></p> <p>FOS can review disputes involving an investment purchased directly or indirectly through a platform offered in Australia.</p>	<p>4.2a)iii)</p>															