



NATIONAL AUSTRALIA BANK SUBMISSION

Consultation on the financial system
external dispute resolution framework

7 October 2016

1.0 Overview

National Australia Bank (NAB) welcomes the opportunity to provide feedback to the Consultation for the review into the financial system's external dispute resolution (EDR) framework (the Ramsay Review). As a member of the Australian Bankers' Association (ABA), NAB has also contributed to and is supportive of its submission to this Consultation.

NAB strives to provide customers¹ the best possible service and customer experience. When NAB receives customer complaints, we seek to resolve them in a timely manner. Where complaints are not resolved to the satisfaction of customers, NAB supports the role of external schemes to assist in resolving disputes.

As the *Issues Paper* notes, these external schemes are a key provider of consumer protection, facilitating an alternative to the legal system and a forum for identifying and resolving systemic issues at an individual licensee level or across the industry.² NAB believes having access to EDR forums that are accessible, efficient and effective for consumers – which come at no cost to the consumer – is a cornerstone of the financial system.

As one of the largest financial services companies in Australia, NAB deals with all three EDR schemes: the Financial Ombudsman Service (FOS), the Credit & Investments Tribunal (CIO) and the Superannuation Complaints Tribunal (SCT). The large majority of NAB's interactions are with FOS and SCT.

NAB seeks to make it easier for customers when things go wrong and believes that both bank and EDR schemes need to be structured with this objective. We encourage the Panel to consider the industry's commitments to enhance the handling of customer complaints, which were announced in April 2016. The relevant initiatives are:

- i. Establishing an independent customer advocate in each bank, to ensure retail and small business customers have a voice and customer complaints directly relating to the bank, and the third parties appointed by the bank, are appropriately escalated and responded to within specified timeframes. (Catherine Wolthuizen was announced as NAB's independent customer advocate for retail and small business customers in July 2016);
- ii. Working with ASIC to expand its current review of customer remediation programs from personal advice to all financial advice and products; and
- iii. Evaluating the establishment of an industry wide, prospective, mandatory last resort compensation scheme covering financial advisers.

Overall, NAB believes the existing individual EDR schemes are working reasonably effectively; however enhancements can be made which will improve consumer outcomes. For example, there is merit in the adoption of a single industry funded EDR scheme operating alongside the existing statutory SCT.

On the question of alternative models, NAB does not have a view on the creation of a banking complaints tribunal but is open to working with the Review and proposes eight areas we believe are of benefit to consumers and encourage the panel to have regard for when considering the issue.

This submission focuses on sections of the *Issues Paper* where NAB's views and experience will be of most value to the review panel.

¹ Throughout the submission, the word customer is used to describe customers of the National Australia Bank while the word consumer describes those who consume financial services.

² Issues Paper, p6

1.1 Outline of NAB's interaction with each EDR scheme

FOS

- All Australia based NAB companies holding an Australian Financial Services Licence (AFSL) are members of FOS except Advantedge (see below).
- FOS is open to all consumers and small business customers who have a complaint about NAB's service where the claim amount is less than \$500,000.
- NAB also engages with FOS when issues arise from individual disputes which they believe may have wider impacts beyond an individual customer. NAB treats these matters seriously and works with FOS to ensure any systemic issue is appropriately remediated.

CIO

- Customer of Advantedge (a NAB owned wholesale funder and distributor of white-label home loans).

SCT

- Superannuation customers of NAB (either MLC or Plum branded), either with an employer default fund, or a retail fund, can access SCT.
- Complaints can relate to the administration of customer accounts, the product, and the manner of its sale and service issues.
- Complaints concerning group life insurance claims are also handled by SCT.

2.0 Internal dispute resolution

Question 5: Is it easy for consumers to find out about IDR processes when they have a complaint? How could this be improved?

NAB believes it is relatively easy for customers to learn about NAB's internal dispute resolution (IDR) processes. Customers can lodge complaints with NAB in person, over the phone, via mail and through a variety of ways online (such as email, on nab.com.au or via social media). Information on how to lodge a complaint is available at our retail branches and on our website. It is also displayed in the internet banking accounts of customers and on statements of various banking products.

Question 6: What are the barriers to lodging a complaint? How could these be reduced?

NAB does not believe there are significant barriers to the lodgement of complaints. NAB staff receive mandatory compliance training to ensure that the definition of a complaint, as set out in the Australian and New Zealand Standard of Complaints Management (AS NZ 10002-2014), is understood. This training ensures staff can recognise a complaint; regardless of how customers choose to interact with NAB. It also ensures that complaints are lodged and managed in accordance with our obligations.

Reasons why customer complaints may not be lodged could be due to excessive demand through telephone banking (e.g. long queues) or technological problems with online banking platforms. Both of these are usually short-term operational problems (when they occur), rather than longer-term barriers to the complaint lodgement process.

Question 7: How effective is IDR in resolving a consumer disputes? For example, are there issues around time limits, information provisions or other barriers for consumers?

NAB's IDR processes are effective at resolving customer disputes. Complaints represent 0.04% of the 2.1 million daily interactions customers have with NAB. Close to 40% of complaints are resolved by the person who the customer first told about the problem. Approximately 80% of complaints were resolved to the customer's satisfaction within five business days of receipt of the

complaint. While more complex complaints can take longer to resolve, almost all were resolved within 45 days.

NAB has invested in a complaints management system which ensures every customer receives a letter when their complaint is resolved (or if their complaint remains open beyond 21 or 45 days). These letters provide details of the relevant EDR scheme if they are dissatisfied with the complaint's progress or resolution. NAB's experience has been that only 1.2% of customers making a complaint chose to escalate their concerns to an external scheme. Of the complaints made to FOS, only 30% had their complaint progress past the initial FOS stage where it is referred back to NAB's IDR team to review and resolve (if possible). Overall, approximately one complaint per 700,000 customer interactions is referred to and accepted by FOS, a 64% improvement year-on-year for NAB.

Overall, the current IDR process is effective as it gives customers the opportunity to resolve a complaint at the first instance without initially being referred to an EDR scheme.

Question 8: What are the relative strengths and weakness of schemes' relationship with IDR processes?

NAB believes EDR schemes are a cornerstone of the financial system and help to enhance consumers' trust with financial services providers. NAB uses the information provided by FOS in explaining decisions (such as circulars and determinations) to improve IDR processes so customers receive an enhanced experience. Changes to FOS processes in 2015 mean that all complaints received by FOS are first referred back to members to see if they can be resolved directly with the customer. This is consistent with the FOS Chief Ombudsman's view that it is "better for both parties if firms can resolve problems directly with their customers."³

This approach has significantly improved the experience for customers as it has resulted in more cases being resolved directly. It has also enabled FOS to allocate more resources to complaints that are unable to be resolved directly between consumers and members. SCT also refers all complaints back to NAB in the first instance to resolve if this process has not already occurred.

Question 9: How easy is it for consumers to escalate a complaint from IDR to EDR schemes and complaint arrangements? How common is it for disputes to move between IDR and EDR, or between EDR schemes?

There are no barriers for consumers to escalate a dispute from an internal to external scheme. All holders of an AFSL are required to provide their customers with contact details for EDR schemes. For example, NAB publishes contact details for FOS on nab.com.au and provides its contact details in letters sent to customers regarding complaints. NAB has also built a complaints management system to ensure compliance with that obligation.

In NAB's experience, when complaints are raised with the incorrect EDR scheme, effective processes exist to ensure that they are transferred to the correct scheme.

3.0 Existing EDR schemes and complaints arrangements

Question 14: What are the most positive features of the existing arrangements? What are the biggest problems with the existing arrangements?

NAB considers the EDR schemes' processes for lodging and considering consumer complaints are easy to access for consumers and the industry. The conciliation processes used by FOS and SCT have been successful in assisting parties to reach resolution. As noted in the response to question eight, a further positive of the system is when a complaint is lodged with an EDR scheme in the first instance the process allows the financial service provider an opportunity to review and resolve the complaint before it is considered. This process works well in resolving disputes and is effective in reducing the workload of EDR schemes.

³ FOS Chief Ombudsman Shane Tregillis, Address to 2016 FOS National Conference, 9 September

The existence of multiple EDR schemes means consumers may be forced to deal with multiple schemes for the resolution of a single dispute, for example complaints involving the actions of a broker and a mortgagee. If fewer EDR schemes existed, a dispute could possibly be resolved more effectively and efficiently.

Question 17: To what extent do EDR schemes and complaints arrangements provide an effective avenue for resolving complaints?

NAB believes FOS is most effective in dealing with discrete matters such as bank fees, overcharging, late fees, interest rates, break fees and the general operation of customer facilities. NAB believes FOS' effectiveness could be further improved by the allocation of more resources to deal with higher value and more complex matters that are currently within its terms of reference. In certain areas this has already occurred. For example, NAB has seen FOS develop considerable expertise in dealing with customer complaints relating to financial planning advice.

NAB does not support any increase in jurisdiction which would see determinations on matters, such as the effectiveness of any security or the validity of a receiver's appointment. These types of issues are best dealt with in accordance with the established legal principles and with judicial overview.

SCT is proficient in dealing with complaints that fall within its jurisdiction. Its complaints management process is similar to FOS and focuses on resolving complaints through conciliation.

Question 18: To what extent do the current arrangements allow each of the schemes to evolve in response to changes in markets or the needs of users?

Current arrangements for CIO and FOS allow the schemes to be reasonably flexible in response to changes in markets or the needs of users. The respective terms of references are not overly prescriptive and, as non-statutory schemes, FOS and CIO can change their terms of reference relatively easily after the appropriate consultation and ASIC approval. Through publishing circulars which interpret law, FOS also helps provide consumers and financial services providers a position on relevant emerging issues.

Question 19: Are the jurisdictions of the existing EDR schemes and complaints arrangements appropriate? If not, why not?

NAB believes the current jurisdictions are broadly appropriate, but improvements can be made. NAB supports the expansion of jurisdictions to better cover small business through an appropriate increase in FOS' monetary thresholds to better cover small business; believing that these customers have not always had access to appropriate EDR forums. It is important that if FOS or any EDR scheme's jurisdictions was expanded, it has the necessary resources and expertise to resolve complaints from this sector.

By way of international comparison, NAB notes that whilst FOS UK can consider complaints dealing with a wider range of financial products and services than FOS Australia, it is only able to consider complaints from businesses which employ fewer than 10 people and have an annual turnover or annual balance sheet not exceeding €2 million.⁴ The compensation cap of £150,000 is also smaller than FOS' current cap of \$309,000.

Question 20: Are the current monetary limits for determining jurisdiction fit-for-purpose? If not, what should be the new monetary limit? Is there any rationale for the monetary limit to vary between products?

Existing monetary limits for determining jurisdiction are appropriate for consumer disputes. Again though, NAB believes there is room for improvement in disputes for some types of consumers. While supportive of the increase in FOS' eligibility threshold for small business, NAB believes the new limits proposed by FOS in its consultation are too high.⁵ Adopting notably higher limits would likely attract more complex types of complaints, which would be better addressed by the

⁴ The FOS UK annual turnover of up to €2 million is a limit set under European Union law

⁵ E.g. FOS is proposing increasing the small business credit facility claim limit from the current \$500,000 to \$2 million

judicial system. Banks do not have a uniform definition of a small business and there are various definitions across state and federal government, along with various government agencies and statutory bodies. NAB supports the ABA's proposal on this matter in their submission that small business should be able to bring complaints up to \$1 million and FOS should be able to make awards of up to \$1 million.

Importantly, NAB's experience is that very few disputes referred to either FOS or CIO are unable to be considered because of the quantum of a claim.

Question 21: Do the current EDR schemes and complaints arrangements provide consistent or comparable outcomes for users? If outcomes differ, is this a positive or negative feature of the current arrangements?

As EDR schemes are not bound by previous decisions, it is possible for consumer outcomes to differ and inconsistencies to develop. However, by developing and releasing 'approach' documents so members and consumers can better understand the approach and remedies, NAB believes FOS has helped ensure greater consistency of outcomes. NAB has not experienced significant inconsistency in FOS' rulings.

Question 22: Do the existing EDR schemes and complaints arrangements possess sufficient powers to settle disputes? Are any additional powers or remedies required?

NAB believes that current EDR schemes possess sufficient powers to settle disputes.

Question 23: Are the criteria used to make decisions appropriate? Could they be improved?

FOS currently takes into account legal principles (defined by FOS in this context as the law generally, including the common law, important precedents and applicable legislation), industry codes, good industry practice and previous decisions of FOS though such decisions are not binding. NAB is satisfied with the criteria but notes the importance of EDR scheme staff being adequately trained to apply the criteria appropriately, as FOS is not bound by the usual legal rules of evidence.

Question 24: What are the advantages and disadvantages of the different governance arrangements? How could they be improved?

NAB considers governance one of many features that impacts scheme effectiveness; others include the criteria by which decisions are made, the effectiveness and expertise of staff, and organisational structure.

Question 25: Are the current funding and staffing levels adequate? Is additional funding or expertise required? If so, how much?

NAB believes FOS staffing levels for its current responsibilities are adequate; something evidenced by the average time to resolve a complaint falling from 95 days in 2014-15 compared to 62 days in 2015-16.⁶ The backlog that existed in the past has also been eliminated, meaning there are no longer any complaints over 365 days old. The new FOS process of initially referring all complaints to members has resulted in a 13% reduction in the number of complaints that require active investigation by FOS while full time equivalent staff numbers marginally increased year on year.

If schemes expand their small business jurisdictions, it will be necessary to recruit staff with appropriate expertise to ensure the quality and efficiency of outcomes is not compromised.

Question 26: How transparent are current funding arrangements? How could this be improved?

NAB supports the current industry funding arrangements for FOS and CIO. As a statutory scheme, the level of SCT funding is a matter for the Government to determine.

⁶ FOS Chief Ombudsman Shane Tregillis, Address to 2016 FOS National Conference, 9 September

Question 28: To what extent does current reporting by the existing EDR schemes and complaints arrangements assist users to understand the way in which the scheme operates, the key themes in decision-making and any systemic issues identified?

FOS produces various publications to explain their activities, including ‘approach’ documents, publishing decisions, issuing circulars covering topical issues, reporting on systemic issues and regularly presenting to stakeholders. As a user, NAB is satisfied with its reporting. SCT produces an annual report but NAB observes that it lacks the detail of the FOS annual report.

Question 29: What measures should be used to assess the performance of the existing EDR schemes and complaints arrangements?

NAB believes the key performance measures should be:

- Applicant and member satisfaction;
- Time taken to resolve complaints and the number of complaints successfully resolved; and
- A decreased reliance on written decisions to resolve complaints.

4.0 Gaps and overlaps in existing EDR schemes and complaints arrangements

Question 30: To what extent are there gaps and overlaps under current arrangements? How could these be addressed?

The Terms of Reference for FOS limits its ability to consider disputes relating to decisions made by Trustees of approved deposit funds and of regulated superannuation funds. Notwithstanding its ability to exercise discretion where there may be a more appropriate forum to review the complaint, FOS will consider disputes relating to all other matters of regulated superannuation funds. It is important to note that the FOS alone determines what falls within its jurisdiction and what does not. This causes overlap between the jurisdiction of SCT and FOS for all superannuation related matters that do not concern decisions of Trustees.

Question 32: Do the current arrangements result in consumer confusion? If so, how could this be reduced?

NAB’s experience is that there is some confusion for customers who lodge complaints with the incorrect EDR scheme. The main point of confusion is when customers lodge a dispute with FOS where the most appropriate forum is SCT. One option to address this confusion could be limiting FOS’ ability to consider complaints relating to approved deposit funds and regulated superannuation funds, simply referring the entire matter to SCT.

Question 33: How could concerns about insufficient jurisdiction with respect to small business lending (including farming) disputes be best addressed?

NAB believes farm debt mediation (FDM) helps parties find constructive solutions to problems. NAB is a longstanding supporter of the process and advocate for the introduction of a single, national, standardised FDM process.⁷

5.0 One Body

Question 38: Is integration of the existing arrangements desirable? What would be the merits and limitations of further integration?

NAB believes simplification and greater clarity about the role of existing EDR schemes will remove confusion for consumers and ensure that complaints with multiple issues are dealt with effectively and efficiently. Simplification would reduce the delays experienced by consumers when complaints are transferred from one EDR scheme to another. Any EDR framework should be appropriately resourced to ensure consumer complaints are processed in the timeliest manner possible.

⁷ See NAB’s submissions to the Parliamentary Joint Committee Inquiry into the impairment of customer loans and the Federal Government’s Agricultural Competitiveness White Paper

While FOS and CIO are currently operating reasonably effectively, NAB believes there is merit in the existence of a single industry funded scheme. The creation of a single EDR scheme and ombudsman for all complaints (other than those dealt with by SCT) would provide customers with a simpler experience, further ensuring the consistency of decision making and providing for economies of scale benefits. This reform would continue the consolidation of schemes, which has occurred over the past 15 years.⁸ Overall, there seems no compelling policy reason for continuing with two industry funded schemes. The current existence of two schemes, FOS and CIO, appears to be largely for historical reasons. A single scheme could provide a more uniform and simpler experience for consumers.

NAB encourages the adoption of variable fees for different sized organisations if a single scheme was adopted. This would ensure smaller financial services providers, particularly those who are currently members of CIO, would not be charged higher fees to join a larger EDR scheme.

NAB also supports ongoing statutory funding for SCT given the compulsory nature of superannuation and the technicalities of many wealth management related complaints. A single, industry funded EDR scheme operating with the existing SCT would offer customers an improved and more consistent experience.

As an example of a 'one-stop scheme', FOS UK has successfully brought together several voluntary complaint schemes to be the mandatory EDR body for the UK financial services sector. FOS UK covers all firms and activities which are authorised by the Financial Conduct Authority (FCA) and includes firms holding a consumer credit licence in what was formerly the consumer credit jurisdiction.

6.0 An additional forum for dispute resolution

Question 42: Would the introduction of an additional forum, in the form of a tribunal, improve user outcomes?

The *Issues Paper* canvasses several potential options for the establishment of a banking complaints tribunal and how it could operate within a broader EDR framework.

NAB is considering the role a new tribunal could have within the existing EDR framework and recent legislative developments designed to support consumer protections, such as the extension of unfair contract terms (UCT) to small business loans.

There is merit in considering alternative models which avoid overlap or arbitrage of existing bodies, while placing a premium on low cost and prompt resolution of consumer complaints.

Question 43: If a Tribunal were desirable, what should be its key features?

NAB does not have a view on the desirability of a Tribunal in the absence of a specific proposal but is committed to working with the Review Panel as it considers the issue in more detail. NAB acknowledges that the Panel will first need to assess the nature of any gaps or deficiencies in the current complaints resolution framework before it can determine whether these are best addressed by the introduction of a Tribunal, as opposed to, for instance, expanding the existing EDR schemes. When considering a Tribunal, NAB would encourage the Panel to have regard for the following:

1. Any Tribunal should complement the existing EDR complaints arrangements.
2. If a Tribunal is styled as an intermediate step between current EDR schemes and the judicial process, NAB believes it should be more judicial in nature than some of the current EDR schemes (e.g. FOS).
3. Any Tribunal should focus on resolution of disputes between consumers and providers of banking products. It should be a targeted and focussed decision making body that is designed to rapidly develop specialist expertise.

⁸ Issues paper, p9

4. Any Tribunal would need to have financial limits to the value of claims it could determine.
5. Decisions of the Tribunal should be binding on both parties. Appeal rights available following Tribunal rulings also need to be considered. Ordinarily, appeals from Tribunals are by way of appeal to the Supreme Court on administrative law grounds. If these principles applied to a Tribunal for banking it would mean that a party dissatisfied with a ruling would only be able to appeal the decision to the Supreme Court on very limited grounds. If successful on appeal the matter would be remitted back to the Tribunal for a fresh decision. This would seem unlikely to deliver a quick or cost effective outcome for parties.
6. Providing the Tribunal with public funding should be considered. Being reliant on industry funding would duplicate the existing FOS and CIO schemes and could cause consumers to question its degree of independence.
7. To ensure the best quality outcomes, parties should have the option of being legally represented in Tribunal proceedings.
8. A Tribunal should focus on providing redress; it should not be a body that advocates for changes in processes or practices except in exceptional circumstances.

Uncompensated consumer losses

Question 49: Should a statutory compensation scheme of last resort be established? What features should form part of such a scheme? Should it only operate prospectively or also retrospectively? How should the scheme be funded?

The ABA industry initiatives announced in April 2016 included a commitment to “evaluate the establishment of an industry wide, mandatory last resort compensation scheme covering financial advisers”. They also note industry’s “support [for] a prospective scheme being introduced where consumers of financial products who receive a FOS determination in their favour would have access to capped compensation where an adviser’s professional indemnity insurance is insufficient to meet claims.” NAB continues to support this position and is participating in the ABA’s evaluation through membership of an industry working group examining the issue.

Summary

NAB is committed to improving customer outcomes and making it easier for them when things go wrong. Improvements to EDR schemes may benefit financial service providers but any changes should be primarily focused on enhancing consumer experiences and outcomes such as extending jurisdictions of EDR schemes to better cover small business. NAB encourages the Review Panel to focus on both identifying opportunities for improving the existing EDR schemes along with assessing options for new, expanded or combined schemes. Ultimately, the more effectively an EDR scheme is able to assess a customer’s complaint; the better it is for all consumers.