

**Senate Economics Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates

2015 - 2016

**Department/Agency:** Australian Securities and Investment Commission

**Question:** AET 85

**Topic:** Financial Ombudsman Service - statistics on resolutions of disputes

**Reference:** Hansard page no. 26 - 11 February 2016

**Senator:** Xenophon, Nick

**Question:**

**Senator XENOPHON:** Sure. I do want to run through a few other things very quickly in relation to this. Are statistics collected or obtained by ASIC as to the way in which matters are resolved in terms of whether it is in favour of the applicant or in favour of, say, the financial institution, and the types of matters that are resolved? In other words, does a financial institution, for instance, win all the small-value disputes or does the applicant tend to win the big-value disputes? Can you provide on notice details of how those matters fall in terms of both the absolute numbers and the qualitative nature of those?

**Mr Medcraft:** We have that data.

**Mr Day:** Do you mean in front of FOS or by FOS?

**Senator XENOPHON:** By FOS, yes.

**Mr Day:** We can give you the information that they provide us. They may be a better place to give you that information directly.

**Senator XENOPHON:** I am just trying to understand if ASIC takes an interest in that.

**Mr Kell:** Yes, we do and it is actually one of the conditions of their approval, which is that they provide that information.

**Answer:**

**FOS statistical reports to ASIC**

ASIC's policy settings require schemes to collect and report to ASIC (and publicly in a comprehensive summary and analysis in their annual reports) detailed statistical information. This includes information about

- The number of complaints (or disputes) and inquiries received;
- The demographics of complainants;
- The number of complaints that fall outside the scheme's terms of reference (with reasons)
- The scheme's current caseload, including the age and status of open cases;
- The time taken to resolve disputes;
- The profile of disputes to enable identification of the type of product or service involved, the product or service provider, the purpose for which the product or service was obtained, the underlying causes of the dispute and any systemic issues or other trends; and
- The number of disputes closed and an indication of the outcomes.

Senior ASIC personnel meet with senior personnel from each approved scheme on a quarterly basis. The main focus of these meetings is on the statistical reports, trends and issues arising from the scheme's current caseload and issues arising from the systemic issues work of the scheme.

## **FOS statistics and outcomes**

Last financial year the FOS received 31,895 disputes and closed 34,714 disputes.

Given the volume and diversity of disputes FOS deals with every year, ranging from motor vehicle insurance disputes, consumer credit and financial hardship disputes through to complex life insurance or investment advice related disputes, it is difficult to report on outcomes at an aggregate level where comparisons are particularly meaningful across licensee type or product or service type.

Relevantly, FOS members (financial services providers) must, as part of their dispute resolution licence requirements have internal dispute resolution (IDR) process to attempt to resolve disputes with their customers directly, in the first instance. Where a dispute escalates to a scheme, the scheme will deal with each dispute on its merits.

It is a principle of alternative dispute resolution and ASIC's own policy settings that schemes have some flexibility in their dispute resolution processes to resolve the diversity of complaints they receive efficiently and effectively and with the minimum of formality and technicality. It is also in the interests of both parties to resolve disputes as soon as practicable and to manage expectations about processes and possible outcomes

The vast majority of FOS disputes are resolved by agreement between the parties although those resolutions may occur at different stages of the process depending on the type of product or complexity of the dispute. FOS report resolution outcomes in four categories:

- Closed by agreement - 63% last financial year;
- Resolved by FOS decision or assessment - 13%;
- Discontinued - 6%
- Outside the Terms of Reference (OTR) - 17%.

The remaining 3% were resolved by a FOS 'assessment'. This refers to circumstances where FOS gives guidance to the parties on the merits of the disputes.

The FOS Independent Review (IR) at 17.6 recommended that FOS change the way it reports on dispute outcomes where a dispute is closed at registration stage of the FOS process. This change applies to disputes where an assessment has been made that further investigation of a matter is not warranted. For example, in cases where there was no loss, loss has been appropriately compensated by the FSP or there was clearly no error by the FSP, and in financial difficulty disputes, where an FSP has proposed a fair and reasonable repayment or credit variation but the proposal has not been accepted.

This change in the classification of disputes from the category of 'assessment' to outside terms of reference (OTR) means that there has been an increase in matters excluded OTR in the past year.

## **Outcomes by licensee – FOS Comparative Tables**

FOS annually publishes Comparative Tables on their website which present disputes statistics about financial services providers that are members of FOS. Dispute data is presented in one of 22 product categories segmented into Banking and Finance, General insurance and Investments, Life Insurance and Superannuation. The tables give information about each FSP listed:

- Chance of a Dispute Coming to FOS
- Average Length in Resolution
- Outcomes of the Resolution Process.

The purpose of the tables is twofold; first to help consumers find out how likely other consumers were to lodge a dispute with FOS about a product or particular licensee and to see the outcomes of disputes. FOS members can compare their dispute performance with other members which may in turn help them improve their complaints handling processes.

### **Changes to FOS process implemented since the Independent review**

In response to recommendations from the Independent review, FOS has made a raft of changes to scheme procedures, reporting, terms of reference and communications. After public consultations and pilot projects for some initiatives, FOS introduced a new streamlined dispute process.

The Independent review also recommended that settlement guidance provided by FOS should be informed by FOS's views of the merits of the case. FOS should leave it to the parties to factor in their own practical considerations, for example, the value for an Applicant of early access to a monetary settlement or the importance for FSPs of avoiding the higher case fees incurred if the dispute escalates to a FOS decision. In response, FOS developed further internal guidance to assist in the facilitation of agreements between the parties to a dispute. This was supported by training for FOS staff.

Where more matters resolve earlier in the process, quality assurance processes are important to ensuring that settlement agreements are fair and appropriate and ASIC engages with both schemes on these issues.