Regulatory Impact Statement: Establishing Consistent Jurisdictional Rules for Approved Financial Dispute Resolution Schemes

Purpose of Document	
Decision sought:	*Amendments to the Financial Service Providers (Registration and Dispute Resolution) Act 2008 Act to establish consistent jurisdictional rules for approved financial dispute resolution schemes.*
Advising agencies:	*Ministry of Business, Innovation & Employment (MBIE)*
Proposing Ministers:	*Minister of Commerce and Consumer Affairs*
Date finalised:	*12 October 2022*

Problem Definition

The Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) governs approved financial dispute resolution schemes (the schemes). The schemes are private companies that resolve disputes between consumers and financial service providers.

There are four schemes, each of which issues its own set of rules in accordance with regulations and Ministerial approval as set out in the FSP Act. With each scheme setting its own rules, inconsistencies have arisen that mean some consumers receive different outcomes throughout the complaints and resolution process, depending on which scheme their financial service provider is registered with. In some instances, this may lead to worse consumers outcomes through lost or limited access to redress.

Executive Summary

Background

MBIE completed a statutory review of the FSP Act in 2016. This review identified several inconsistencies between the schemes' rules which impact consumer access to justice and redress. Following this review, MBIE began work in 2020 to identify possible improvements to scheme rules (the review). The following broad issues were considered as part of the review:

- the financial limits for claims that can be heard by a scheme
- limits on compensation that can be awarded
- jurisdictional timeframes for complaints about former scheme members; and
- timeframes for bringing a claim.

The review included public consultation on a discussion document, as well as disucssion with the schemes and other key stakeholders from the financial services sector. There was broad consensus from submitters that regulatory changes should be made to align scheme jurisdictional rules and achieve more fair and equitable outcomes for consumers.

Proposal

MBIE proposes several options to change scheme rules in order to improve fairness and equity of redress for consumers throughout the complaints and resolution process. The preferred options would be implemented by making regulations under section 79(1)(cb) of the FSP Act. The options are summarised under the relevant subheadings below.

Financial caps for complaints

These options relate to the schemes' financial caps, which is the maximum complaint value a scheme will consider. The financial caps of the schemes are not consistent, which can result in unequal redress outcomes for consumers. The value of the schemes' financial caps also do not accurately reflect the current value of many financial products today.

MBIE's preferred options are to:

- set a consistent financial cap of $500,000 for all of the schemes and review the cap every five years to ensure it continues to reflect the value of financial products as they change over time
- set a consistent weekly alternative cap for regular payment products, such as some insurance products, of up to $1,500 and review it every five years as part of the review of the overall financial cap.

Remedies and awards

These options relate to compensation and interest that can be paid to consumers due to inconvenience or delays during the provider's consideration of the complaint. The value of awards and methods used to calculate interest are not consistent across schemes, which can result in different compensation outcomes for consumers.

MBIE's preferred options are to:

- set a consistent special inconvenience award of up to $10,000 for all of the schemes
- set a consistent interest award using the same method to calculate interest which is in line with the Interest on Money Claims Act 2016.

Timing and jurisdiction of membership

These options relate to the approach schemes take to considering complaints about former members that were a member when an action subject to complaint took place. Currently schemes use informal arrangements to negotiate over these types of membership issues, which can cause administrative burden and slow down the complaints process.

MBIE's preferred option is to:

- require all schemes to consider complaints about current members, regardless of when a complaint occurred.

Time periods for bringing forward a complaint

The schemes have a range of different rules regarding when a consumer may bring forward a complaint. For example, some schemes allow a consumer to bring a complaint up to six years after an issue occurred, while others allow a complaint up to six years from when the consumer became aware (or should have become aware) of the issue. MBIE's preferred options include setting consistent rules on these matters.

Impact of the preferred options

We expect the proposed changes to scheme rules will have significant benefits for consumers by way of increased access to schemes and fairer redress outcomes. This supports the purpose of dispute resolution set out in Section 47 of the FSP Act, which is "to promote confidence in financial service providers by improving consumers' access to redress from providers through schemes to resolve disputes".

At this stage we expect compliance costs to be reasonably low. We expect that any changes to scheme rules may result in schemes passing on additional costs to financial service providers. Financial service providers could be required to pay higher compensation during the dispute resolution processes.

Constraints and limitations on the scope of options

We have considered options that relate only to the schemes' jurisdictional rules.

Combining the schemes into one large dispute resolution body is not an option that we have considered. The schemes are independent entities that operate in slightly different contexts. Each scheme comprises of members from different parts of the financial services sector, resulting in different consumer groups accessing them. For example, the Banking Ombudsman largely caters to the banking sector, whereas the Insurance and Financial Services Ombudsman caters to a broader range of consumers.

We recognise that The Australian Financial Complaints Authority was established in 2018 by the Australian government to streamline the financial dispute resolution system in Australia. MBIE will continue to monitor the Australian experience as part of its monitoring of the system.

Data limitations

Qualitative data obtained through stakeholder consultation is the primary evidence base used to inform our understanding of the problem and analysis of policy options.

Limited quantitative evidence is available to quantify the exact number of consumers impacted by inconsistencies between the schemes' rules. While data is available on total numbers of claims rejected by schemes, no data is available on consumers who choose not to pursue a complaint because of the understanding that their claim would not be accepted

under current rules. Further, there is a lack of evidence to quantity the loss or harm to consumers as a result of inconsistent redress outcomes. We also note there is no population data available to understand which groups (e.g. socio-economic or ethnicity) of consumers may be more likely to access or benefit from dispute resolution schemes. We therefore refer to all consumers throughout this document and are unable to make any observations on demographic trends in the relation to the issues we seek to address.	
Responsible Manager(s) (completed by relevant manager)	
William Townsend Acting Manager Financial Markets Ministry of Business, Innovation & Employment 12 October 2022	
Quality Assurance (completed by QA panel)	
Reviewing Agency:	Ministry of Business, Innovation & Employment Regulatory Impact Assessment Review Panel
Panel Assessment & Comment:	MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Section 1: Problem definition and objectives

What is the context behind the policy problem and how is the status quo expected to develop?

Financial dispute resolution falls within the financial markets conduct regulatory system. The system's purpose is to promote the confident and informed participation of businesses, investors, and consumers in financial markets, and to promote and facilitate fair, efficient and transparent financial markets.

Financial Service Providers (Registration and Dispute Resolution) Act 2008

The FSP Act requires all financial service providers (providers) to be registered and, if they provide services to retail clients, belong to an approved financial dispute resolution scheme. The schemes deal with customer complaints or disputes with their financial service provider, and are designed to be a faster and less formal alternative to the courts. Providers can choose their scheme and are able to change schemes. The schemes are free for consumers to use, and scheme decisions are only binding if accepted by the consumer.

There are four approved schemes:

- Banking Ombudsman Scheme (**BOS**)
- Insurance Financial Service Ombudsman (**IFSO**)
- Financial Dispute Resolution Service (**FDRS**)
- Financial Services Complaints Limited (**FSCL**).

Each scheme is required to have a set of rules that govern how it resolves disputes and what disputes it may consider. Scheme rules are issued by the schemes, and changes must be approved by the Minister of Commerce and Consumer Affairs to ensure they comply with the principles listed in the section 52 of the FSP Act. These principles are accessibility, independence, fairness, accountability, efficiency, and effectiveness. Section 79 of the Act prescribes that the Minister can create regulations to perscribe matters which must be included in, or implied into, scheme rules.

Inconsistencies between the schemes' rules are affecting consumer redress outcomes

MBIE completed a statutory review of the FSP Act in 2016. This statutory review identified several inconsistencies between the schemes' rules which were impacting consumer access to justice and redress. It was recommended that further work should be undertaken with schemes to identify improvements that could be made to promote access to fair and effective redress by standardising some scheme rules.

Consequently, MBIE began work in 2020 to identify possible improvements to scheme rules (the review). The four year delay between the statutory review in 2016 and subsequent 2020 review was due to other government priorities. The review's focus was on jursidictional rules, (the operational rules which define the issues or scenarios that consumers can bring forward complaints about, and the types of redress that schemes can award).

The following broad issues were considered as part of the review:

- the financial limits for hearing a claim
- limits on compensation that can be awarded
- jurisdictional timeframes for being a scheme member; and
- timeframes for bringing a claim.

These issues were selected for the review based on the inconsistencies that were identified between the scheme's rules in the 2016 statutory review.

The review included public consultation on a discussion document, as well as disucssion with the schemes and other key stakeholders from the financial services sector.

Consultation

The consultation invovled the release of a discussion document[1] outlining the key problems and options to address the problems. A total of 21 written submissions were received through consultation from the schemes, consumer groups and financial service providers. There was broad consensus from submitters that regulatory changes should be made to align scheme jurisdictional rules in order to achieve more fair and equitable outcomes for consumers. Details on key suggestions and concerns raised by stakeholders are discussed under each of the proposed options in Section A.

Counterfactual

Without regulatory intervention, inconsistencies between the schemes' rules are likely to remain or further diverge, and consumers will continue to experience issues through the complaints process. While absolute uniformity in scheme rules would likely undermine schemes' abilities to respond to different types of complaints in their respective parts of the sector, there is a need for fundamental aspects of the system-level framework to be consistent. This is to ensure that all consumers can access equivalent levels of redress regardless of the scheme their provider is registered with.

What is the policy problem or opportunity?

The review has identified five distinct problems relating to the schemes' jurisdictional rules. The separate policy problems and opportunities addressed in this RIS are set out in turn in the sections below.

What objectives are sought in relation to the policy problem?

The primary objective in relation to this review is to improve consistency across scheme jurisdictional rules to increase consumer access to redress through the schemes. This objective aligns with the specific purpose of dispute resolution set out in section 47 of the FSP Act, which

[1] The discussion document is available at: [Discussion paper: Review of the approved financial dispute resolution scheme rules (mbie.govt.nz)]

is “to promote confidence in financial service providers by improving consumers’ access to redress from providers through schemes to resolve disputes”.

Establishing consistent scheme rules in key jurisdictional areas may also contribute to the main purposes of the FSP Act which are “to promote the confident and informed participation of businesses, investors, and consumers in the financial markets, and to promote and facilitate the development of fair, efficient, and transparent financial markets”.

What scope will options be considered within?

Options relate specifically to the schemes’ jurisdictional rules. We have considered options that relate to four key areas and that all of these should be conducted in order to achieve necessary change:

- the financial limits for claims that can be considered
- limits on compensation that can be awarded
- timing of jurisdiction and membership
- timeframes for bringing a claim.

What criteria will be used to compare options to the counterfactual?

We have assessed each policy option against three criteria:.

Fairness

Does the option enable consumers to have fair and equitable access to dispute resolution and an equal chance of a fair outcome?

Efficiency

Does the option maintain or improve efficiency at a scheme or system level?

Effectiveness

Does the option help to create a more effective dispute resolution scheme that is easy for consumers to find, enter and use?

These criteria have been drawn from the principles in the FSP Act, which are accessibility, independence, fairness, accountability, efficiency and effectiveness. The principles are consistent with the Best Practice Dispute Resolution Principles developed and promulgated by the Government Centre for Dispute Resolution.

While it is important that the rules and operation of the schemes on the whole are consistent with all the principles in the Act, some of the principles are more relevant than others. Since the problems identified and proposed changes relate mostly to jurisdictional issues with an impact on access to redress and justice, we consider the principles which are most relevant are: fairness, efficiency, and effectiveness. The principles of accountability and independence relate less to jurisdictional issues than to issues of governance. We considered the principle of accessibility as very similar to and encompassed by the principle of effectiveness and therefore did not include it as a standalone criterion itself.

Changing scheme rules

Scheme rules can be changed in two ways; either mandated through regulations, or voluntary changes by the schemes after the approval of the Minister.

The process to make voluntary typically requires consultation with members, the Minister, industry and consumer associations. Once proposed rule changes have been decided, the schemes must notify the Minister of the proposed changes in accordance with Section 65 of the FSP Act. The Minister then decides whether or not to approve the changes. If the Minister approves the proposed changes, the scheme can change its published rules that govern how they consider and consider complaints. Without approval from the Minister, the schemes cannot change any of their rules under the Act.

Regulations are able to be made under section 79 of the Act on the recommendation of the Minister to prescribe rules about the schemes. Once regulations are passed, the schemes must comply with the rule changes. Regulations under section 79 have not yet been made. We consider changing scheme rules through regulations is the most appropriate way to implement policy decisions. This is because it is the most effective way to ensure there is uniformity across the schemes where required, which is a key purpose of this work. Furthermore, making regulations is an effective way to avoid competitive disadvantages that may impact some schemes if either the rules, or the timing of implementation, are inconsistent across all four schemes.

Details on the implications of scheme rules being changed via regulations, including implementation considerations and risks, are discussed in Section 2.

Section A: Financial cap

Problem definition

Each scheme has a primary financial cap which defines both the maximum redress that can be awarded and the maximum complaint value that can be brought to the scheme. The maximum complaint value is calculated as the value of the claimed amount in dispute rather than the total value of the financial product or service (e.g. a dispute over a $100,000 portion of a mortgage product valued at $500,000). Schemes may also consider a portion of a complaint up to its financial cap, rather than disqualify the complaint in its entirety because the initial complaint fell over the cap.

BOS and FSCL have a primary financial cap of $350,000 (above which they will not consider a complaint unless both the provider and consumer agree). This aligns with the District Court's current monetary limit of $350,000. IFSO and FDRS have a lower primary cap of $200,000 which was set in line with the District Court limit in 1993.

The above inconsistencies in the value of schemes primary financial caps can affect consumers access to, and outcomes of, redress depending on whether their provider is registered with a scheme that has a $200,000 or $350,000 cap. This issue is mitigated somewhat by the fact that all bank complaints are heard by BOS, and most insurance complaints are heard by IFSO. However, other complaints, such as those outside of the banking and insurance sector, may be awarded differing amounts of redress by different schemes for similar complaints.

The primary financial caps of the schemes do not reflect the current value of many financial products today. Data from March 2022[2] shows that the average mortgage for all borrower types in New Zealand is $401,000 and the average for first home buyers is $586,000. The value of life insurance products is also typically of higher value than the schemes' current primary caps, averaging $566,000.

Most stakeholders that we consulted with agree that a cap of $200,000 (set in 1993) is now most likely insufficient. With rising inflation, financial products and services that cost $200,000 in 1993 would cost approximately $374,042.99 in 2022 when adjusted for Consumer Price Index inflation[3]. FSCL reports that before increasing its cap to $350,000 from $200,000, it declined over 35 claims across a six-year period due to the claims being outside of its jurisdictional cap (more may have not been pursued by consumers at all due to being outside of the cap). IFSO also reported instances where consumer redress is limited due to a claim being higher than IFSO's financial cap. This is most commonly seen for life insurance claims over $200,000, and home insurance in a total loss situation such as the Canterbury Earthquakes.

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2 What is the Average Home Loan in New Zealand? - Canstar

3 https://www.rbnz.govt.nz/monetary-policy/inflation-calculator

Weekly alternative financial cap

IFSO and FDRS also consider complaints if they would otherwise exceed the primary financial cap but relate to a product that provides regular weekly payments up to the value of $1,500. BOS and FSCL only consider these complaints if the total payments are under the primary financial cap or the provider and consumer agree. The inconsistencies in the availability of an alternative financial cap may result in situations where some consumers with similar claims about regular payment products are otherwise excluded from accessing redress (e.g. by having to lower a claim to meet the primary financial cap, forgo a claim entirely, or resort to costly court proceedings) depending on the scheme their provider belongs to.

Consumer advocacy groups, such as Consumer NZ and FinCap, have expressed concern about BOS and FSCL not having an alternative financial cap, especially for claims about weekly repayment rates on mortgages or some high-cost credit contracts. There is consensus from consumer groups during consultation, as well as other key stakeholders, that all schemes should offer an alternative payment cap for regular payment products in order to promote fairer outcomes for consumers.

What options are being considered?

Primary financial cap

Option A (1) – maintain status quo and do not create a consistent financial cap

This option would involve no change and would preserve flexibility for schemes to set their own cap. This may have some benefit given the specialisation of each scheme across different sectors.

In the absence of a consistent financial cap, consumers' access to, and outcomes of, redress would continue to differ depending on which scheme their provider is registered with. If the $200,000 financial cap for IFSO and FDRS were to remain, consumers would likely face difficulties accessing adequate redress for the current value of financial products given this cap was set in line with the District Court jurisdictional limit 29 years ago in 1993.

Option A (2) - set a consistent financial cap of $350,000 for all schemes that is tethered to the District Court's monetary limit

This option would create regulations to mandate that the schemes' financial cap is tethered to the District Court's monetary limit which is currently set at $350,000. Every time the Ministry of Justice raises the value of the District Court's monetary limit, the schemes financial cap would increase to the same value. Schemes would continue to have discretion to waive the portion of claims that are more than the cap.

This option would enable more consumers to access the schemes with complaints that were previously excluded or not pursued due to lower financial caps. A consistent financial cap also creates a fairer system for consumers who will be able to access similar compensation for claims of similar value, regardless of the scheme their provider is registered with. Stakeholders were generally supportive of this option, with some noting $350,000 as a minimum desirable level to set the primary financial cap.

A disadvantage of this option is that if the District Court's monetary limit is not regularly reviewed, as has been the case historically, the cap may again lose pace with the cost and value of financial products. This concern was raised by several stakeholders during consultation. The Insurance Council NZ and NZ Business Association also noted it is inappropriate to tether the cap, as the schemes should not be seen as a substitute for the courts as they are not adjudicative. It is important that the schemes remain a cost-effective and a fast-paced forum for consumers to resolve claims, and therefore flexibility should be maintained to change the cap when needed.

Option A (3) – set a consistent financial cap of $500,000 for all schemes and review it every five years (preferred)

This option would create regulations for a mandatory financial cap of $500,000 for all schemes. Schemes would continue to have discretion to waive the portion of claims that are more than the cap. We also propose that MBIE, in consultation with the schemes, reviews the $500,000 cap every five years to assess whether it is still fit for purpose. This would ensure that the financial cap continues to be aligned with the cost of financial products as they change over time and that consumers are not being excluded from accessing schemes due to an outdated financial cap threshold.

This option better reflects the inflation adjusted dollar value of financial products in 2022 compared to the status quo and Option A(2). Increasing the financial cap to $500,000 across all schemes would enable more consumers to access the schemes with complaints that were previously excluded or not pursued due to lower financial caps. A consistent financial cap also creates a fairer system for consumers who will be able to access similar compensation for claims of similar value, regardless of the scheme their provider is registered with.

This option was not consulted on during the public consultation process, however MBIE consulted on it individually with the schemes in July 2022. BOS and IFSO are supportive of this option as a way to increase possible access for consumers to schemes. FSCL and FDRS noted possible resourcing implications for schemes if more complex cases are assessed due to a higher cap. However, as FSCL note, case fees should make up for extra cases and the financial cost to schemes shouldn’t be huge.

During consultation several submitters noted the need for a cap that accurately reflects the current value of financial products. Examples were noted of disputes not moving forward due to the low value of schemes caps at the time ($200,000), and consumers not having the funds to access the courts. Some submitters considered this was a risk for consumers falling through the cracks and therefore unable to access redress. This was seen particularly during the Canterbury Earthquakes with many higher value insurance claims.

One limitation of this option is that it may be resource intensive for MBIE to review the financial cap every five years.

Option A (4) – set a consistent financial cap of $1,000,000 for all schemes

This option would create regulations for a mandatory financial cap of $1,000,000 for all schemes. Schemes would be able to waive the portion of claims that are more than the cap, where both the financial service provider and the complainant agree.

A key benefit of this option is that it may allow the cap to stay consistent for a longer period as it would likely keep pace with inflation and growth in the value of financial products for the foreseeable future. It would also ensure high-value financial products are accounted for, meaning the schemes would be more accessible to a greater number of consumers.

A $1,000,000 cap is likely to have significant resourcing implications for the schemes. We did not consult on this option; however, we anticipate it is likely to impose cost and complexity on the schemes as they would be required to consider a greater number of complaints and more high value technical complaints which may be better suited for an adjudicative court-based process. It would also impose costs on providers through scheme complaints fees and compliance administration costs.

Weekly alternative caps

Option B (1) - maintain status quo and do not create consistent weekly alternative caps

This option would involve no change. In the absence of a consistent weekly cap for each scheme, IFSO and FDRS would continue to consider claims for regular payment products, up to the value of $1500, as an alternative to the primary financial cap. FSCL and BOS would continue to not consider claims about regular payment products unless the total value of the product is less than the primary financial cap.

The main disadvantage of this option is that it would continue the existing risk that some consumers go without redress for complaints about regular payment products if their financial service provider is registered with FSCL and BOS.

Most stakeholders, including FSCL and BOS, were not in favour of maintaining the status quo as they believe this inconsistency does not promote fair access to schemes.

Option B (2) – set a weekly alternative payment cap of up to $1500 for all schemes and review every five years (preferred)

This option would create regulations to mandate all schemes to consider claims on regular payment products up to the value of $1500. This amount is based on the IFSO and FDRS existing weekly alternative payment cap. We understand this was set by IFSO in 2015 and adopted by FDRS based on standard health and disability insurance payment amounts.

As it targets different types of financial products, this option would not be mutually exclusive with changes to the primary cap and could be implemented on its own or with Option A(3). We recommend implementing this option with Option A(3).

A consistent weekly alternative payment cap would likely improve accessibility to the schemes as consumers whose provider is a member of BOS or FSCL could access redress for claims regarding high value payment products with values above the primary financial cap. It also creates a fairer system for consumers who will be able to access compensation for similar claims, regardless of the scheme their provider is registered with. More than half of stakeholders were supportive of this option for these reasons.

A $1500 weekly alternative payment cap may become insufficient over time as the value of financial products continue to rise. This was a key concern raised by some stakeholders. To address this issue, we propose that MBIE review the $1500 cap every five years to assess whether it is still fit for purpose. We propose that this review would be undertaken as part of the review of the primary financial cap, as set out in Option A(3).

Option B (3) – set a weekly alternative payment cap of up to $2500 for all schemes and review every five years

This option would create regulations to mandate all schemes to consider claims on regular payment products up to the value of $2500. This amount is based on feedback from FSCL, and from IFSO and its five-yearly review, which note $1500 (Option B 2) as too low to cover claimants on high incomes. This option would not be mutually exclusive with changes to the primary cap and could be implemented on its own or with Option A(3).

A consistent weekly alternative cap of up to $2500 would provide similar benefits to Option B (2), in terms of fairness and accessibility to schemes for consumers with claims regarding regular payment products with values above the primary cap. It would also allow for better access to schemes for consumers on high incomes for disputes regarding income protection or similar risk insurance products.

However, this option is also likely to impose greater cost and complexity on the schemes than the other weekly alternative options as they would be required to consider a greater number of complaints and more high value complaints. It may also impose higher costs on providers through scheme complaints fees and compliance administration costs.

While this option was not consulted on, given that two of the schemes do not currently have a weekly alternative cap we consider Option B (2) as the most appropriate option to start with as an improvement on the status quo. Further, while a $2500 cap is preferred by some of the schemes, we consider the additional benefits over $1500 would accrue to a small group of high-income consumers. The value of the weekly alternative cap can be re-considered as part of the review of the primary financial cap in five years.

Section B: Remedies and awards

Problem definition

All of the schemes offer "inconvenience awards" to consumers on top of the financial cap for any non-financial harm or inconvenience suffered as a result of a provider's action or inaction throughout the complaints process (e.g., stress, humiliation). Three of the schemes (excluding BOS) also award interest to be paid with the final payment to compensate consumers for delay in addressing complaints. The details of each of the schemes' awards is set out in **table 1** below.

Table 1: summary of awards by scheme

	MAXIMUM INCONVENIENCE AWARDS	INTEREST PAYMENT
BOS	$9,000	Does not pay interest.
IFSO	$3,000	May award interest on a payment made by the provider to the complainant. Interest is paid at the 90-day bank bill rate and calculated from the date of events giving rise to the claim.
FSCL	$2,000	May award interest on a payment made by the provider to the complainant. Interest is calculated from the date of the action or matter that led to the claim.
FDRS	$3,000	May award interest on a payment made by the provider to the complainant. Interest is calculated in accordance with the Interest on Money Claims Act 2016

Inconvenience awards

The amount of these awards differ across schemes. The difference in these amounts is significant, with FSCL offering the lowest amount at $2,000 and BOS the highest at $9,000. This means that two consumers with similar cases may both receive awards, but these awards may differ significantly in value depending on the scheme their provider is registered with. This creates an issue of fairness between consumers.

There are also inconsistencies between the types of circumstances where schemes can award compensation for inconvenience. IFSO can only order an inconvenience award in limited circumstances, such as a special inconvenience in making the complaint or for incidental expenses incurred in settling a claim. The other schemes can order an inconvenience award in a wider range of situations for any inconvenience suffered by consumers due to a provider's action or inaction. This means it is possible that some consumers are receiving compensation for certain inconveniences while others in similar circumstances are not.

Around half of stakeholders consulted commented on this and believed that inconsistent scheme awards are unfair for consumers due to some individuals potentially receiving less compensation than others.

Interest awards

There are also inconsistencies between when interest is awarded on a payment and how the interest is calculated. FSCL, IFSO and FDRS award interest on a payment for certain situations, such as for an unreasonable or undue delay by the provider in the complaints process. They each have different methods for calculating the interest awarded, as set out in table 1. BOS does not award interest.

Inconsistencies in the amount of interest awarded can result in some consumers receiving no compensation or less compensation for delays in the resolution of complaints, depending only on the scheme their provider is registered with. Providers who belong to schemes with low interest awards may not have as strong of an incentive to ensure timely resolution of complaints.

Consumer advocacy groups have expressed concerns about the fairness of the current distribution of awards due to inconsistent calculations and availability of compensation. Around half of stakeholders consulted agreed there should be consistency of awards across schemes.

What options are being considered

Inconvenience awards

Option C (1) – maintain status quo and do not create a consistent special inconvenience award

This option would involve no change. This would preserve flexibility for schemes to set their own inconvenience awards. Consumers would likely continue to receive inconsistent awards, with the value awarded dependant on the scheme their provider is registered with.

Option C (2) – set a consistent special inconvenience award of up to $10,000 for all schemes (preferred)

This option would create regulations for a mandatory inconvenience award of up to $10,000 for all the schemes. The award would provide consumer redress for non-financial harm, such as incidental expenses, humiliation, and stress.

We consider $10,000 to be an appropriate value to cap the award as it is close to the BOS cap of $9000 which is currently the highest of all the schemes' non-financial harm awards. The schemes would maintain discretion to decide on the appropriate amount of redress for each claim, dependant on the level of harm to the consumer.

A key benefit of this option is that it will help to create fairness for consumers who experience difficulties during dispute resolution processes. A $10,000 award value could also create a stronger incentive for providers to treat consumers fairly during the complaints process.

Most stakeholders were in favour of a consistent maximum cap for these reasons. Some submitters disagreed on quantum (some higher, some lower), but there was general consensus that a consistent maximum is the best approach. This option is unlikely to have many impacts on schemes or providers, being only $1,000 higher than BOS' current maximum, and with actual quantum awarded still being at the discretion of schemes.

Interest awards

Option D (1) – maintain status quo and do not create a consistent interest payment or method to calculate interest

This option would involve no change and would preserve flexibility for schemes to award interest on a claim at their discretion. Schemes would continue to use their own method to calculate interest, which would result in consumers being awarded interest inconsistently depending on the scheme their provider is registered with.

Option D (2) – create a consistent interest award for all schemes using a prescribed method (preferred)

This option would create regulations to mandate all schemes to award interest on top of a claim where there was a delay. The interest would be calculated from the date the claim arose using the same method as the District Court, which is set out in Section 12 of the Interest on Money Claims Act 2016. This method uses observations from the retail 6-month term deposit rate that have been published by the Reserve Bank of New Zealand and takes an average of these six rates with an added premium of 0.15% to the base rate to calculate per annum interest.

This option would improve consumer access to redress as all consumers would be eligible for interest to be awarded on a payment compared to the status quo where BOS excludes this.

All stakeholders supported a separate and consistent interest award as a fair way to address delays for consumers, and to align with what the courts currently do. Some stakeholders suggested using the 90-day bill rate as a basis of calculation because it is publicly available and therefore more transparent. However, using the District Court method to calculate an interest rate would ensure that interest compensation is calculated consistently across the dispute resolution system and would improve fairness by ensuring that consumers receive similar redress when they do experience delays.

Section C: Timing of jurisdiction and membership

Problem definition

All scheme jurisdictional rules set out whether the scheme considers complaints about current members only, or whether it considers complaints about providers that were members at the time when the action subject to complaint occurred. FSCL and IFSO rules specify that claims can only be brought about current members. BOS and FDRS rules specifiy that claims can be brought about current or former members who were a member when the action subject to complaint took place but no longer are. As providers are free to switch between schemes there is a potential for some consumers to be left without access to redress. Here is a hypothetical scenario to highlight how this issue may occur:

Jackie Smith receives financial advice from FastFinancialAdvice Ltd, a hypothetical financial advice firm registered with FSCL. Several months later, Jackie complains to FastFinancialAdvice Ltd about an issue with the service provided by the firm, but they reach deadlock. FastFinancialAdvice Ltd has now switched dispute resolution schemes and is registered with FDRS. When Jackie brings her complaint to FDRS, she is told they cannot consider her complaint because they only consider complaints about providers who were members of the scheme when the issue took place. FSCL can also not consider her complaint as they only consider complaints about current members. Jackie is left without access to redress through a dispute resolution scheme.

We have been advised by the schemes that informal arrangements are typically made to decide which scheme is best placed to deal with a complaint in these types of situations. FSCL and FDRS have noted a few cases where confusion over membership jurisdiction has caused delays in resolution for both the consumer and provider due to the time it takes to investigate a providers membership history and negotiate which party should address the complaint. These lengthy processes undermine the efficiency of the dispute resolution process. There is also a risk that these types of informal arrangements may also lead to disagreements between the schemes or refusals to consider complaints.

As both BOS and FDRS only consider claims about providers that were members when the issue occurred, they may have problems enforcing a decision where a former member brings a complaint. The primary enforcement mechanism of the schemes is the power to revoke a provider’s membership. This would result in de-registration from the Financial Service Providers Register as all financial service providers are required by law to be registered with a dispute resolution scheme (and they would not be able to join another scheme before they have resolved a dispute). If a provider moved from BOS or FDRS to another scheme, the effectiveness of the schemes would be undermined as they may struggle to enforce decisions due to not having the ability to revoke a provider’s membership.

What options are being considered

Option E (1) – maintain status quo and do not make changes to membership jurisdiction

This option would preserve flexibility for schemes to decide whether to consider complaints about current members only, or whether to consider complaints about former members that were members at the time when the action subject to complaint occurred. Schemes would continue to use informal good-faith arrangements to decide which scheme is best placed to deal with a complaint when it is not immediately clear.

This option would likely result in continued inefficiencies for schemes when processing complaints about providers that were not registered with them when the complaint took place. It would also undermine the schemes' power to enforce decisions against a participant if a provider in question is not currently a scheme member. The risk that some consumers are unable to access redress in certain circumstances would remain.

Option E (2) – require all schemes to consider complaints about current members, regardless of when a complaint occurred (preferred)

This option would create regulations to mandate all schemes to consider complaints about current members, regardless of whether the provider was a member at the time the complaint occurred.

A key benefit of this option is that it would be straightforward for consumers and schemes to understand which scheme is required to manage a complaint. It would also improve efficiency as the process for handling historic claims would not require ad-hoc negotiation between schemes.

This option would also allow schemes to enforce decisions more effectively against providers as they would have the ability to revoke the provider's scheme membership (due to them being a current member), which would result in deregistration from the Financial Service Providers Register if they were not able to become a member of another scheme. This could create an incentive for schemes to treat consumers fairly.

Option E (3) – require all schemes to consider complaints about providers that were members of the scheme when the complaint occurred

This option would create regulations to mandate all schemes to consider complaints about providers that were a member of the scheme when the complaint occurred, regardless of whether they are a current or former member of the scheme.

This option may be more complex and potentially confusing for the schemes, providers, and consumers. The consumer and provider would have to spend time and effort figuring out which is the relevant scheme when the conduct occurred. It would also likely create administrative difficulties for schemes trying to gather information if the provider is no longer a member of the scheme.

Most stakeholders were not in favour of this option due to it being resource intensive, with schemes being required to investigate complaints while not being paid membership fees by the provider in question. Some of the schemes also noted that they may not be able to revoke a provider's scheme membership if the provider is not a current member. This would mean that schemes do not have an enforcement tool available.

Section D: Time periods for bringing a complaint

Problem definition

When bringing forward a complaint to a scheme, a complainant must first have laid a complaint with their financial service provider. Financial service providers typically have a dedicated complaints resolution team which deal to such matters. In many cases this leads to internal resolution where the provider and the complainant reach an agreement or deadlock (deadlock is when a provider has fully considered a complaint through its internal complaints procedure and has decided that the complaint cannot be resolved by that procedure). If neither is reached, for instance, if the complainant never hears back from the provider, the scheme can still hear a complaint subject to some conditions.

Currently, schemes have a range of different rules regarding when a consumer may bring a complaint. The relevant time-period rules can be broken down into three parts, based on how the schemes currently operate. The problem definition and proposed options for each of the three time periods are detailed under the relevant subheadings below.

Time Period I

Time Period I is when a scheme becomes available after a complainant goes through internal dispute resolution with their financial services provider but without deadlock or internal resolution. For example, if FastFinancialAdvice Ltd doesn't resolve, respond to or reach deadlock in Jackie Smith's complaint, time period I is how much time must have passed since Jackie Smith first complained to FastFinancialAdvice Ltd before she can take a complaint to a scheme.

Time Period I allows providers time to resolve a complaint, while also allowing consumers to bring a complaint to a scheme if a provider doesn't resolve the complaint in a reasonable time period.

- FDRS and IFSO rules state a complaint can be brought to the scheme once two months have passed since the complaint was brought to a member's internal complaints process without deadlock.
- BOS rules allow complaints to be brought to the scheme once three months have passed since the complaint was brought to a provider's internal complaints process without deadlock.
- FSCL has the shortest timeframe, where claims can be brought after 20 working days (approximately one calendar month) without deadlock (or 40 if the provider has a good reason to extend the timeframe).

These different approaches to Time Period I may lead to some consumers experiencing delays in being able to access dispute resolution for their complaints depending on the scheme their provider is registered with. While providers do require sufficient time to work through internal complaints resolution processes, particularly complex cases, this lack of consistency is likely resulting in unfair outcomes for some consumers. For example, a consumer can take their complaint to FSCL quite quickly within one calendar month without deadlock but have to wait three months if with BOS.

What options are being considered

Option F (1) – maintain status quo and do not set a consistent time period

This option would preserve flexibility for schemes to decide the time period for when they will consider a complaint if internal resolution or deadlock is not reached. This may maintain unfair outcomes for consumers as some consumers will have to wait longer than others to access scheme services. Most stakeholders agreed on this issue.

Option F (2) – set applicable time period I to a maximum of two months for all schemes (preferred)

This option would create regulations to mandate a maximum time-period of two months after a complaint has been made in which a scheme must become available to a consumer. This means that individual scheme rules may specify a shorter time limit to below two months if they wish. After this two-month period, consumers may choose to take a complaint forward to a scheme if internal resolution or deadlock is not reached. While slight inconsistencies will remain with this option, we consider there is not enough to warrant changing FSCL's 20-day rule.

This option would uphold fairness for all consumers with a consistent timeframe across schemes. It would also likely lead to faster accessibility to redress for consumers whose provider is registered with BOS which currently has a three-month time-period. Setting a two-month time limit would incentivise providers to consider all complaints efficiently. Approximately half of stakeholders supported this option and agreed that consumers who had a longer wait time were at a distinct disadvantage.

Time Period II

Time Period II is when a scheme becomes unavailable after a complaint reaches deadlock. For example, how much time after a deadlock is reached within which Jackie can escalate her complaint to a scheme. Outside of this time the scheme becomes unavailable to her.

Time period II encourages consumers to bring a complaint to a scheme without undue delay. IFSO limits the timeframe for bringing a complaint after deadlock to two months, while the other three schemes limit the time period to three months. This puts consumers whose provider is a member of IFSO at particular disadvantage due to having less time to bring a complaint forward post-deadlock.

All the schemes have an additional discretionary timeframe in which to consider a complaint beyond the initial post-deadlock timeframe in the case of exceptional circumstances. BOS and FSCL may consider cases up to six months post-deadlock for exceptional circumstances and IFSO up to 12 months. FDRS does not specify a time limit for this discretionary period.

The time period following deadlock after which a dispute resolution scheme becomes unavailable for a complaint may limit access to redress for consumers who face unforeseen delays such as family situations, health reasons or an inability to understand scheme requirements. Consumers can also lose the ability to take a complaint due to a lack of awareness of timeframes, or difficulties gathering the required information. FSCL have recorded two instances where they have declined a claim for falling outside of the two-month time period.

It is possible that more cases have not been considered because they fell outside of the time period.

What options are being considered

Option G (1) – maintain status quo and do not set a consistent time period

This option would preserve flexibility for schemes to decide the time period for when they will no longer consider a complaint after deadlock has been reached. The schemes would also continue to set their own discretionary time period where they may consider exceptional cases.

The main disadvantage of this option is that consumers will continue to face unfair outcomes, with different rules applying to when access to schemes expires post-deadlock depending on which scheme a provider belongs to. Consumers whose provider is a member of IFSO would be at a particular disadvantage due to the scheme currently having a two-month time period before it becomes unavailable post-deadlock compared to the other three schemes which have a three-month time period.

There are also inconsistencies in the additional discretionary time each scheme allows to consider exceptional cases which may result in unequal access to redress for consumers.

Option G (2) – set applicable time period II to three months for all schemes (preferred)

This option would create regulations to mandate a time period of three months for consumers to approach a scheme after a deadlock notice is granted. This would bring IFSO in line with the other schemes.

Setting a consistent time period will ensure that all consumers have the same amount of time to access a dispute resolution, thus improving fairness. Having a consistent time period after deadlock was favoured by more than half of stakeholders, with many consumer advocates agreeing that three months is an adequate period for most consumers. The schemes also agreed to three months as a sufficient time period due to there being little evidence of complaints falling outside of this period.

One disadvantage of this option is that some consumers accessing IFSO may not act as promptly on complaints compared to the status quo, as they would have longer to do so (three months instead of two). On balance this is a minor potential inefficiency and the benefits of having consistent time frames across schemes outweighs this risk.

Option G (3) – set a consistent additional time period of up to nine months for all schemes to consider complaints in exceptional circumstances (preferred)

This option would create regulations to mandate an additional time period of up to 9 months for all schemes to consider cases in exceptional circumstances *after* the post-deadlock period. We advise that this option is implemented in conjunction with Option G(2) above which would result in a total time-period of up to 12 months for a complaint with exceptional circumstances to be considered.

A key benefit of this option is that it would allow vulnerable consumers a reasonable amount of time to approach a scheme with a complaint. It would also provide consistency and finality for when all exceptional cases must be resolved. We consider nine months to be an appropriate time as combined with option G(2), it equates to the current time period of IFSO which has the longest total time period for considering cases in exceptional circumstances.

This option was not consulted on during consultation, however a large majority of stakeholders were in favour of schemes offering an additional exceptional circumstances period beyond the initial period after deadlock. We do not expect it to have a significant impact on scheme resources as all currently offer extensions to consider complaints in exceptional circumstances.

Time Period III

Time Period III is the final deadline for a complaint to be considered. For example, the total time period within which Jackie can make a complaint. Outside of this time the scheme cannot accept her complaint.

All of the schemes have a total time period of six years for a consumer to bring forward a complaint. However, the commencement date for this time period differs across schemes:

- FDRS: six years from when the issue occurred (shortest)
- BOS and FSCL: six years from when the consumer became aware (or should have become aware) of the issue
- IFSO: six years from when the issue was first subject to a formal complaint to the provider (longest).

These differing time periods can result in consumers losing access to redress at different points depending on which scheme they access. Given the long-term nature of many financial products, imposing a time period that commences from the time an issue occurs may result in consumers missing out on access to redress simply because they were not aware of the issue. For example, consumers purchasing products such as life insurance are unlikely to become aware of a problem until they make a claim. Consumers accessing BOS or FSCL may also face inconsistent outcomes due to the schemes' 'should have become aware' clause regarding commencement date. This clause is subjective and may be open to interpretation.

We are aware of 23 instances where FSCL and BOS have denied consumers access to the schemes due to falling outside of the six-year time period from when they became aware of an issue and not understanding when the time period began. There may be other unreported instances where this has occurred.

What options are being considered

Option H (1) – maintain status quo and do not create a consistent commencement date for bringing a complaint to a scheme

Under this option all the schemes would continue to have a six-year deadline for when a consumer may bring forward a complaint, however inconsistencies would remain for when the six-year deadline commences.

A key disadvantage of this option is that consumers would continue to face inconsistent time periods for when they are eligible to access schemes, depending on the provider their scheme is registered with. Consumers making a complaint about a long-term financial product, may be at particular disadvantage where they may not become aware an issue until they come to claim on it.

Option H (2) – set a consistent six-year deadline for all schemes (preferred)

This option would create regulations to mandate a maximum cut-off timeframe of six years applying over time periods I and II. The time period would begin on the date a consumer becomes aware of an issue. The schemes would no longer accept a claim from this date and discretionary circumstances would not be permitted.

This option would increase clarity and consistency in the rules for the total timeframe to bring a claim. We consider starting time period III on the date a consumer becomes aware of an issue to be the best option as consumers with long-term financial products would have greater access to schemes as they often only become aware of an issue years after purchasing a product. Having a timeframe that commences at the time the relevant issue occurs would result in more consumers not having access to redress. This is because consumers purchasing products such as long-term insurance products are unlikely to become aware of a problem until they try to claim on it which is likely to occur significantly later than when it was purchased.

This option also aligns with Section 9(1)(a)(i) of the Interest of Money Claims Act 2016 which specifies that any interest awarded begins on the day on which the cause of action arose.

One limitation of this option is that the schemes would lose discretion to extend this time period in certain circumstances where a consumer is unable to meet this six-year deadline. We consider this to be a minor risk as schemes have reported that very few consumers are excluded from the schemes within this time period.

Key:

+ = positive
- = negative
0 = no change

How do the options compare to the status quo?

Financial Caps

Primary Financial Cap

	Option A(1) – Status Quo	Option A(2) - $350,000 cap tethered to district court limit	Option A(3) – $500,000 cap (preferred option)	Option A(4) - $1,000,000 cap
Fairness	0 Different outcomes for complaints of similar value.	++ Equal access to schemes and more consistent outcomes for complaints of similar value.	++ Equal access to schemes and more consistent outcomes for complaints of similar value.	++ Equal access to schemes and more consistent outcomes for complaints of similar value.
Efficiency	0 Court processes required for higher value complaints.	+ Court processes required for higher value complaints. Compliance costs for schemes to consider more complaints and complex cases. Costs may be passed on to financial service providers through membership fees/levies. Higher compensation costs for some financial service providers.	++ More complaints and complex cases considered by schemes, avoids unnecessary court processes. Compliance costs for schemes to consider more complaints and complex cases. Costs may be passed on to financial service providers through membership fees/levies. Higher compensation costs for financial service providers.	+ Significantly more complaints and complex cases considered by schemes, avoids unnecessary court processes. Cost pressures for schemes and providers to consider significantly higher volumes of complaints and complex cases. May reduce schemes overall efficiency processing more complaints.
Effectiveness	0 Some consumers excluded from accessing schemes for higher value complaints. Does not reflect the current values of financial products.	+ Rules across schemes will become consistent and less complex Improves consumer access to schemes that currently have a $200,000 cap. Does not reflect the current values of financial products.	++ Rules across schemes will become consistent and less complex. Better reflects the current value of financial products.	++ Rules across schemes will become consistent and less complex Significantly improves consumer access to schemes. Better reflects the current value of financial products and accounts for future increases in product value.
Overall assessment	0	+	++	++

Weekly Alternative Payment Cap

	Option B(1) – Status Quo	Option B(2) – $1500 weekly cap (preferred option)	Option B(3) – $2500 weekly cap
Fairness	0 Different outcomes for complaints about regular payment products.	++ Equal access to schemes and more consistent outcomes for complaints about regular payment products	++ Equal access to schemes and more consistent outcomes for complaints about regular payment products
Efficiency	0 Court processes required for some complaints about regular payment products.	++ More complaints considered by schemes, avoids unnecessary court processes. Compliance costs for schemes that currently have no weekly alternative cap. Costs may be passed on to financial service providers through membership fees/levies.	+ More complaints considered by schemes, avoids unnecessary court processes. May place cost pressures on schemes and providers to consider higher volumes of complaints. May reduce schemes' overall efficiency processing more complaints.
Effectiveness	0 Some consumers cannot access schemes for complaints about regular payment products	++ Improves consumer access to schemes. Reflects a broader range of financial products.	++ Improves consumer access to schemes. Reflects a broader range of financial products.
Overall assessment	0	++	+

Remedies and Awards

Inconvenience Awards

	Option C(1) – Status Quo	Option C(2)- $10,000 inconvenience award (preferred option)
Fairness	0 Consumers awarded different amounts for similar inconveniences.	++ All consumers equally awarded for inconveniences.
Efficiency	0 Lesser value awards may not incentivise providers to act in good faith.	++ All providers are equally incentivised to act in good faith.
Effectiveness	0 Some consumers are not able to access redress for inconveniences suffered during the complaints process	++ Improves consumer access to redress for inconveniences suffered during the complaints process
Overall assessment	0	++

Interest Awards

	Option D(1) – Status Quo	Option D(2) – consistent interest award and calculation (preferred option)
Fairness	0 Consumers awarded different amounts or nothing depending on the scheme their provider is registered with.	++ All consumers equally awarded interest for delays.
Efficiency	0 Some providers not incentivised to act promptly on complaints, delaying consumer access to redress.	++ All providers incentivised to act promptly on complaints. Consistent interest calculations resulting in better efficiencies across schemes.
Effectiveness	Some consumers are unable to access redress for delays in the complaints process	All consumers have access to redress to compensate for delays in the complaints process.
Overall assessment	0	++

Membership and jurisdiction

	Option E(1) – Status Quo	Option E(2) – schemes consider complaints about current members regardless of when the complaint occurred (preferred option)	Option E(3) – schemes consider complaints about providers that were members of the scheme when the complaint occurred
Fairness	0 Consumers subject to different rules depending on the scheme their provider is registered with.	++ Consumers subject to the same rules	++ Consumers subject to the same rules.
Efficiency	0 Schemes face administrative burdens, cost and delays negotiating membership issues. Difficulties for schemes enforcing decisions over former members.	++ Provides clarity for which scheme should manage a claim. Less costs for schemes to consider claims about paying members only.	- Provides clarity for which scheme should manage a claim. Consumer has to take time to figure out which is the relevant scheme.
Effectiveness	0 Some consumers may not have access to redress or may have to go to court if they cannot access a scheme.	++ All consumers have equal access to redress can access a scheme, regardless of their providers membership status. Schemes can utilise their enforcement tools and leverage with providers in the case of non-compliance	+ All consumers can access a scheme, regardless of their providers membership status Schemes would struggle to enforce awards as they have no leverage over providers.
Overall assessment	0	++	+

Time periods for accessing schemes services

Applicable Time Period I

	Option F(1) – Status Quo	Option F(2) – set time period I to up to two months (preferred option)
Fairness	0 Some consumers have less time than others to access redress.	+ Greater consistency in the time complaints are processed by providers. Not fully consistent as FSCL has a shorter period.
Efficiency	0 Some providers may not act on complaints promptly, delaying consumer access to redress.	+ Providers are incentivised to act promptly on complaints.
Effectiveness	0 Lack of consistency in time taken to process complaints	- Claims may be rushed through the internal process, resulting in claims which may have been resolved internally, wasting scheme resources.
Overall assessment	0	+

Applicable Time Period II

	Option G(1) – Status Quo	Option G(2) – set time period II to three months (preferred option)	Option G(3)- set period II to nine months post-deadlock for exceptional circumstances (preferred option)
Fairness	0 Some consumers have less time than others to access a scheme post-deadlock	++ Greater consistency in the time a scheme is available post-deadlock.	++ Greater consistency in the time a scheme is available post-deadlock for consumers with exceptional circumstances.
Efficiency	0 Court processes maybe required to resolve disputes outside the time period.	+ Avoids unnecessary court processes. Provides consistency across schemes for when cases must be resolved. May discourage consumers of IFSO from bringing a claim promptly as they have a longer period to do so than the status quo.	+ Avoids unnecessary court processes. Provides consistency and finality for when all exceptional cases must be resolved.
Effectiveness	0	++ Schemes are more accessible as there is a longer time period for consumers to bring a claim	++ This would make schemes more accessible, in particular for vulnerable consumers.
Overall assessment	0	++	++

Applicable Time Period III

	Option H(1) – Status Quo	Option H(2) – set a consistent six-year deadline for all schemes (preferred option)
Fairness	0 Some consumers may lose access to redress at different times, depending on how the six-year deadline is interpreted.	++ Greater consistency in the time resolution is reached across schemes.
Efficiency	0 Lack of clarity around when the time period commences for some schemes.	++ Clarity and consistency across rules for the commencement date of a complaint.
Effectiveness	0 Some consumers have less time than others to access a scheme	++ This will increase the accessibility of schemes, particularly when bringing claims about long-term financial products
Overall assessment	0	++

What option, or combination of options is likely to best address the problem, meet the policy objectives, criteria and deliver the highest net benefits

Based on the above analysis, officials consider the best combination of options to address all of the problems are:

Option A (3) – set a consistent financial cap of $500,000 and review the cap every five years

This option will create fairer and more consistent outcomes for consumers, and improve accessibility to dispute resolution for consumers with higher value complaints. On balance, $500,000 is the preferable amount to set the financial cap as it better reflects the current value of financial products compared to the status quo. A five yearly review of the value of the cap will ensure that it continues to reflect the value of financial products as they change over time.

Option B (2) – set a consistent weekly alternative cap of up to $1,500 and review the cap every five yearsto

This option will create fairer and more consistent outcomes for consumers, and improve accessibility dispute resolution for consumers with complaints about regular payment products. It will also increase access to BOS and FSCL as more consumers will be able to approach these schemes with complaints about a wider range of financial products. A five yearly review of the cap will ensure that it continues to reflect the value of financial products as they change over time.

Option C (2) – set a consistent special inconvenience award of up to $10,000

This option will ensure all consumers have equal access to compensation for similar inconveniences throughout the complaints process. A $10,000 limit is consistent with BOS which currently has the highest award limit of the schemes. A higher value inconvenience award may help to incentivese providers to act promptly on complaints.

Option D (2) - set a consistent interest award using a perscribed method

This option will ensure all consumers are equally compensated interest where there is a delay in processing a claim. Using the same method to calculate interest across schemes will increase fairness of outcomes for consumers.

Option E (2) - require all schemes to consider complaints about current members, regardless of when a complaint occurred

This option will provider greater clarity around which scheme should manage a complaint, and reduces the administrative burden for schemes having to negotiate over membership issues. This improves overall efficiency, making it easier for consumers to find which scheme to approach with a complaint. It also ensures that schemes are able to enforce decisions against providers for all complaints as they will only consider complaints about current members.

Option F (2) – require all schemes to set time period I to a maxiumum of two months

This option will ensure all consumers can access a scheme within a maximum of two months after a complaint has been made, creating a fairer and more accessible system for consumers. For consumers whose provider is registered with BOS, there will be a shorter period before deadlock is reached and the consumer can access the scheme compared to the status quo.

Option G (2) and G (3) – require all schemes to set time period II to three months and additional time period of up to nine months for all the schemes

These options will ensure that all consumers have a three-month period to approach a scheme post-deadlock and will bring IFSO in line with the other schemes. This will help to create a fairer and more accessible system for consumers.

An additional time period of up to nine months for exceptional circumstances will allow for a total of 12 months for consumers facing difficult circumstances, such as ill-health, to access a scheme post-deadlock.

Option H (2) – require all schemes to set a consistent deadline of six years after the consumer became aware of the issue

This option will provide clarity and consistency in scheme rules for the total timeframe a consumer can bring a claim. Consumers with long-term financial products would have greater access to schemes as they often only become aware of an issue years after purchasing a product.

This combination of options works well and complement each other, and we expect there will be no negative implications of introducing all of the options in tandem. There is also an efficiency benefit to making all of these changes at once by minimising any related costs and disruptions of rule changes.

What are the marginal costs and benefits of the combined preferred options?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred options compared to taking no action[4]			
Regulated parties: Financial Dispute Resolution Schemes	Increasing the value of the financial cap and introducing a weekly alternative cap may have some resourcing implications for the schemes which may need to consider more complaints and high-value technical complaints. MBIE expects any compliance costs are likely to be low and, in any case, fees paid by providers should make up for costs of extra cases. This was confirmed by the schemes during consultation. One-off implementation cost to update rules.	Low monetised impact	Medium
MBIE	One-off implementation cost for MBIE and Parliamentary Counsel Office to implement decisions and draft regulations. Ongoing resource costs for MBIE to review scheme financial caps every five years. We expect this to be straightforward without the need for any additional FTE above baseline and that we would be supported by the schemes during this process.	Low monetised impact	Medium
Financial Service Providers	Any financial services provider required to accommodate the changes to scheme rules may face increased membership fees. Financial service providers could also face higher compensation costs during dispute resolution processes. However, this would reflect compensation for the harm or impact caused to consumers.	Low monetised impact	Medium
Consumers	Direct costs to consumers from dispute resolution schemes are unlikely. There is a theoretical risk that fees charged by a financial service provider to consumers could increase if costs to providers increase. However, we expect that this would be unlikely given costs to financial service providers are not expected to increase significantly.	Nil impact	High
Courts	No direct costs to the court system.	Nil impact	High
Total monetised costs		Low total monetised impact	Medium
Non-monetised costs		Unknown total non-monetised impact	Medium

[4] There is limited evidence available on the exact financial costs of implementing the combined options. Overall, we expect costs to be low.

Additional benefits of the preferred option compared to taking no action			
Regulated parties: Financial Dispute Resolution Schemes	Efficiency gains from certainty of putting clear rules and process in place. For example, currently informal arrangements are typically used to decide which scheme is best placed to deal with a complaint when a provider has switched schemes. The new rules will make it straightforward to determine which scheme is required to manage a complaint.	Low non-monetised impact	Medium
MBIE	Greater consistency across the financial markets regulatory system through more consistent dispute resolution.	Medium non-monetised impact	Medium
Financial Service providers	Increased certainty regarding complaint resolution processes.	Low non-monetised impact	Medium
Consumers	Increased access to redress through schemes. Setting consistent scheme rules will support the purpose of dispute resolution set out in Section 47 of the FSP Act, which is "to promote confidence in financial service providers by improving consumers' access to redress from providers through schemes to resolve disputes". More equitable outcomes for similar cases regardless of which scheme a provider is registered with.	Medium monetised impact	Medium
Court	Increased financial caps may result in the less disputes going to the courts.	Medium monetised impact	Medium
Total monetised benefits		Low - medium total monetised impact	Medium
Non-monetised benefits		Medium total non-monetised impact	Medium

Section 2: Delivering the options

How will the new arrangements be implemented?

The preferred options would be implemented by making regulations under section 79(1)(cb) of the FSP Act to prescribe provisions to be implied into the rules of the schemes. MBIE will work with Parliamentary Counsel Office (PCO) to draft the regulations and will consult with the schemes directly as part of this process.

The rules set out in regulations will be deemed to become part of the scheme rules at the time the regulations come into force. Accordingly, the Minister will not need to approve or consider whether each scheme's restatement of the rules set out in the regulations correctly synthesise the regulations.

However, after regulations are made, the Minister of Commerce and Consumer Affairs would formally write to the schemes about the regulations and ask them to ensure that their rules reflect the regulations. The schemes would be responsible for incorporating the rules set by regulations into their terms of reference and updating any informational material, including their website. The schemes would, in their own rules, restate the rules set by regulations. They would also identify where their existing rules are inconsistent with the rules implied by regulations and remove or amend them as necessary. MBIE will liaise with the schemes as they work to update their rules.

We anticipate that the changes are likely to come into effect in the first half of 2023. A transitional arrangement will likely be required in regulations as the new rules come into effect. This will allow for the schemes to manage the application of the new and old rules for claims that span before and after the date that regulations come into force. We will determine this transition period in consultation with the schemes during the drafting of the regulations.

MBIE will continue to engage with key stakeholders, including the schemes, consumer advocacy groups and financial service providers, to ensure the regulatory changes are understood. The changes will be communicated via MBIE's website.

Implementation considerations and risks

This work has progressed slower than anticipated due to COVID-19 related disruption and several process delays. We expect the schemes will support the proposed changes if progressed.

Once the regulations stating the rules applicable to all schemes come into force, the rules of any scheme are:

- the rules (as approved by the Minister) and stated on the relevant scheme's website, and
- the rules implied by the regulations into each scheme (s63(3) of the FSP Act).

To the extent that there is any inconsistency between the rules implied by regulations and existing rules, the existing rules are of no effect (s63(4) of the FSP Act).

There is a risk that the schemes do not or incorrectly re-state their rules after the regulations are introduced. We intend to work closely with the schemes throughout the regulations drafting process to ensure all rule changes are understood and implemented correctly. We anticipate that the schemes will co-operate in updating all rules changes correctly (given that they are in favour of the proposed changes, and the potential reputational risks to their businesses if they do not).

Affected parties including financial service providers and consumers will need to be informed of the rule changes e.g. changes to timeframes for bringing a claim. Financial service providers may also need to update their own website material. Schemes may wish to consider coordinating communications.

We do not foresee any material implementation risks for the affected parties, including for financial service providers and consumers.

How will the new arrangements be monitored, evaluated, and reviewed?

Under section 63(1)(q) of the FSP Act, the schemes are required to undergo an independent review every five years. These reviews may identify impacts of the proposed changes on the schemes.

In addition to the five yearly reviews of each scheme, the rules relating to the primary financial cap and weekly alternative cap will be reviewed by MBIE every five years (as noted at Option A(3) and Option B(2)). This will enable us to assess whether these continue to be aligned with the cost of financial products and whether there is any reason to increase the value of the caps.

MBIE also receives correspondence from the public about their experiences with the schemes from time to time. Some of this correspondence may give insight into how the rules of the scheme are working. In its role as a regulatory system steward MBIE will assess any issues as they arise over time.

MBIE may also evaluate the changes to scheme rules as part of any other evaluations of regulatory changes. For example, a future evaluation of changes under the Financial Services Legislation Amendment Act 2019 which changed the regime for financial advice and parts of the FSP Act could consider the impacts of changes to scheme rules.