

FDRS Rules – updates from 18 July 2024

The effect of the Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024 ("New Regulations") on FDRS

Introduction

On 25 March 2024, Her Excellency the Governor General, by Order in Council, issued the [Financial Service Providers \(Rules for Approved Dispute Resolution Schemes\) Regulations 2024](#) ("New Regulations"), made under the [Financial Service Providers \(Registration and Dispute Resolution\) Act 2008](#) ("FSPA").

As the New Regulations became a part of Fair Way's Financial Dispute Resolution Service (FDRS) Rules when they came into force on 18 July 2024, we have prepared a summary of these changes for your information. The summary sets out the original FDRS Rules which are subject to change, the New Regulations affecting those rules and a summary of the effect of the changes required to FDRS Rules to ensure they are consistent with the new Regulations. Please read this information alongside the [Financial Dispute Resolution Service Rules](#) dated November 2021.

Implied Rules within FDRS

Sections 63(3) and 63(4) of the FSPA require that the rules of approved dispute resolution schemes (such as FDRS Rules) be treated as containing all of the same terms as regulations made under the FSPA (such as the New Regulations). This is done by implication so that, if the two are inconsistent, the New Regulations will prevail.

To prevent any confusion FDRS will change its rules on 18 July 2024 to ensure that they comply with the New Regulations. A summary of those changes follows;

Time frame for FDRS accepting complaints

Existing FDRS Rule	New Regulation
Rule 9(1)(c)(ii) state that in all cases, the complainant must refer the complaint to the scheme 'within two years after first making that complaint to the member in any other case; and	Regulation 1(5) states that "The scheme may extend the 3-month period that applies under subclause (4), but only if— <ul style="list-style-type: none"> (a) the extension is for a period that is no longer than 9 months; and (b) the scheme is satisfied that the extension is justified by exceptional circumstances

Existing FDRS Rule	New Regulation
Rules 9(1)(c)(iii) and 12(f) state that in all cases, the complainant must refer the complaint to the scheme "within six years of the act or omission on which the complaint is based."	Regulation 1(7) states that "a person may not make a complaint to the scheme more than six years after the person becomes aware, or should reasonably have become aware, of the facts or events giving rise to the complaint."

Effect of the change

Rules 9(1)(c)(ii) of the FDRS Rules are inconsistent with the New Regulations so, from 18 July 2024 the extension period will be for a total of 12-months.

Rules 9(1)(c)(iii) and 12(f) of the FDRS Rules are inconsistent with the New Regulations so, from 18 July 2024 the limitation period will run from the time the complainant becomes aware of the facts or events giving rise to the complaint rather than from the date of the act or omission which gave rise to the complaint.

Compensation for special inconvenience or expenses

Existing FDRS Rule	New Regulation
Rule 10(4) states that compensation may be awarded to the complainant "up to an amount not exceeding \$3,000 for special inconvenience or expenses in making or pursuing the complaint".	Regulation 2(2)(c) states that "special compensation of no more than \$10,000 + GST (if any) may be awarded to a person."

Effect

Rule 10(4) of the FDRS Rules is inconsistent with the New Regulations so, from 18 July 2024, the maximum compensation sum will be increased from \$3,000 to \$10,000.

Compensation

Existing FDRS Rule	New Regulation
Rule 27(1)(a) states that the Scheme Adjudicator may require a member to pay, up to \$200,000 lump sum compensation and/or, up to \$1,500 per week if the complaint relates to a regular payment under a financial advice product.	Regulation 2(2) states that the scheme may require the member to pay up to \$500,000 + GST (if any) lump sum compensation and/or \$2,600 + GST (if any) per week if the complaint relates to a regular payment under a financial advice product.

Effect

The first sentence of rule 27(1)(a) of the FDRS Rules is inconsistent with the New Regulations so, from 18 July 2024, lump sum and weekly compensation limits are increased to \$500,000 and \$2,600 + GST respectively.

Compensation - Jurisdiction

Existing FDRS Rule	New Regulation
Rule 10(5) states that a complaint is not within the jurisdiction of the Scheme if the amount claimed as compensation exceeds \$200,000 or \$1,500 (plus GST if any) per week (as distinct from a lump sum payment).	Clauses 2.2(2) and (4) state that the scheme may require the member to pay \$500,000 + GST (if any) lump sum compensation and/or \$2,600 + GST (if any) per week if the complaint relates to a regular payment under a financial advice product.

Effect

Rule 10 is inconsistent with the New Regulations so, from 18 July 2024, and notwithstanding that rule 10(5)(c) provides that a minimum of sixty days' notice of any increase in compensation limit applying must be given, the increased compensation limits will apply.

Due to the inconsistency, and for the avoidance of doubt, the Scheme Adjudicator will treat the eligibility limits under rule 10(1) as being the same as the increased compensation limits of \$500,000 + GST (if any) lump sum compensation and/or \$2,600 + GST (if any) per week for regular payments.

Consolidated complaints

Existing FDRS Rule	New Regulation
Rule 13(2) permits two or more complaints from the same complainant to be consolidated "if they deal with the same, or substantially the same, events or facts."	Regulation 2(3) states that the scheme may treat complaints made by a person about a member as a single complaint, but "only if those complaints concern the same, or substantially the same, events or facts; and it is fair and reasonable to treat them as a single complaint in the circumstances."

Effect

Rule 13(2) of the FDRS Rules is inconsistent with the New Regulations so, from 18 July 2024 the additional requirement of fairness and reasonableness will be applied to any consolidation decision.

Conclusion

As always there is a lot of detail which lies behind the summary presented above and we invite you to look at the full versions of both the FDRS Rules and the New Regulations. The intention of this information sheet is to inform you of the key points.