

Ongoing Fee Arrangements – Frequently Asked Questions

We've received a few questions from clients about the new Ongoing Fee Arrangements (**OFA**), so our team of lawyers and consultants have teamed up to answer some of the most frequently asked questions.

Consent

How does express written consent work when there are joint account holders? How does this work if we are sending consent requirements via email with a link to respond that they are providing consent?

Each of the joint account holders will need to give their written consent. The [ASIC Corporations \(Consent to Deductions — Ongoing Fee Arrangements\) Instrument](#) states that the written consent may only be given by an account holder by signing or agreeing in writing (including electronically) to the terms of the written consent.

If you are requiring clients:

- to sign the consent – each account holder must sign the consent; or
- to provide their consent by responding via an electronic link – you must obtain the written response from each account holder.

With SMSFs with multiple trustees/directors, do they also need to each provide express written consent?

If an SMSF has multiple trustees, each trustee will need to provide their written consent.

If an SMSF has a corporate trustee, whether one or all of the directors must provide the written consent will depend on the wording of the SMSF's constitution.

Fee Disclosure Statement (FDS)

Can we separate between a major service (the review) and a minor service/option available to the clients? Why doesn't the FDS Template list ad hoc services that may be offered?

The obligation is to include information about the amount of each ongoing fee to be paid by your client, and the services that your client will be entitled to receive.

How you choose to present this information is up to you. So, services which will definitely be provided, and others that may be provided depending on the circumstances, can be separated. Ensure that the client's entitlement to each service, and the fee that will or may be payable, is clear.

If you include 'optional' or 'reactive' services, you will still need to specify the service and a reasonable estimate of the fee if the actual fee is not known. Importantly, the client should not be charged a fee for a service that the client does not take up or receive.

We also note that services can be provided to a client on an ad hoc basis that fall outside the scope of the OFA and can be charged separately.

Anniversary Day

Is the anniversary date the date the "Instruction to proceed" is signed, or earlier in the process, such as when the adviser is engaged before the SOA is created?

The "anniversary day" is defined in the legislation (section 962G(3) of the Act) as "the anniversary of the day on which the arrangement was entered into".

It is not entirely clear what is meant by "entered into". With a written agreement, depending on the circumstances, the date the arrangement is entered into will generally be when the offer you make to the client to provide services for a fee for a period of more than 12 months is accepted by the client, or when the offer made by the client is accepted by you. An ongoing fee arrangement could also be entered into orally or through conduct. In those cases, it is much more difficult to determine when the arrangement was entered into.

So, it's a question of fact that depends on the evidence. For this reason, we recommend that you record your OFA in writing, that it specifies the date it commenced, and that it be signed. The anniversary date will then be one year after that date.

In ASIC's FAQ 7, it gives the example where the client signs an Authority to Proceed to enter into an ongoing fee arrangement on 15 August 2021, and states that the anniversary day for that arrangement will be 15 August for all future years.

What is the difference between the disclosure date (in the old regime) vs anniversary date (in the new regime) for existing clients?

'Disclosure day' is the concept currently used in the law to calculate when an FDS

must be given. Currently, this is 60 days from the anniversary day.

Under the new law, the concept of a 'disclosure day' is not used. The timing for giving the FDS, for receiving the client's election to renew the OFA, and the date of termination in the absence of the client electing to renew the OFA, will be based on the anniversary day (**AD**):

- Re the FDS: AD + 60 days
- Re renewal: AD + 120 days
- Re termination: AD + 150 days

For your existing client base, the day you provide them with an FDS during the transition period will become the "anniversary day". For all new clients that sign up to an OFA after 1 July 2021, the "anniversary day" will be the day that the OFA is entered into.

Transition-related

We did a bulk FDS run last year on 1 July 2020. Now, with the new consent forms, we are obviously wanting to spread the anniversary days out over the year on a day that is selected (preferably their main review date).

If, for example, we chose say 1 November for a client (when their review is planned), how do we account for FDS disclosure if we don't send them an FDS on 1 July 2021? I.e. they would not have received an FDS for 16 months.

You are able to provide FDSs that are due on or after 1 July 2021 any time before 1 July 2022 (the **transition period**), regardless of when they would have been due under the old rules. Similarly, you need to obtain consent before 1 July 2022. So, assuming that the bulk FDSs you provided to clients on 1 July 2020 were given within the correct timeframe last year, you will be able to provide the

next round of FDSs any time within the transition period.

If the period between the client receiving their last FDS and the new FDS is more than 12 months, as it will be in your case, the FDS should cover the entire period to prevent any gaps in the disclosure period. In relation to this example, the FDS should cover the previous 16 months or more, depending on what the disclosure period was in the last FDS (e.g. it may have been dated 1 July 2020 but related to the disclosure period ending on 30 May 2020) and the upcoming 12 months.

Other

If the OFA terminates and we need to enter into a new fee arrangement with the client, is a new SOA required?

A distinction must be made between the ongoing fee arrangement (OFA), which is the arrangement agreed to between a retail client and the adviser for the provision of personal advice where an ongoing fee will be paid, and an SOA, which is an advice document triggered by the giving of personal advice to a retail client.

A new OFA does not trigger the need for an SOA, only the giving of financial product advice does that.

Is the 60, 120 days running concurrently?

Yes – both the 60-day period to give an FDS and the 120-day renewal period run concurrently from the anniversary day, regardless of when the FDS is given within that period.

For example, if the anniversary day is 1 January:

- the FDS needs to be given by 1 March (60 days from 1 January);

- the election to renew needs to be received by 30 April (120 days from 1 January).

The 120-day time period that dictates the date by which the licensee must receive the election to renew will not change, regardless of whether the FDS was provided on 1 January, 10 January, 20 February, etc.

For a full list of FAQs on Ongoing Fee Arrangements, subscribe to the [HN Hub](#).

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