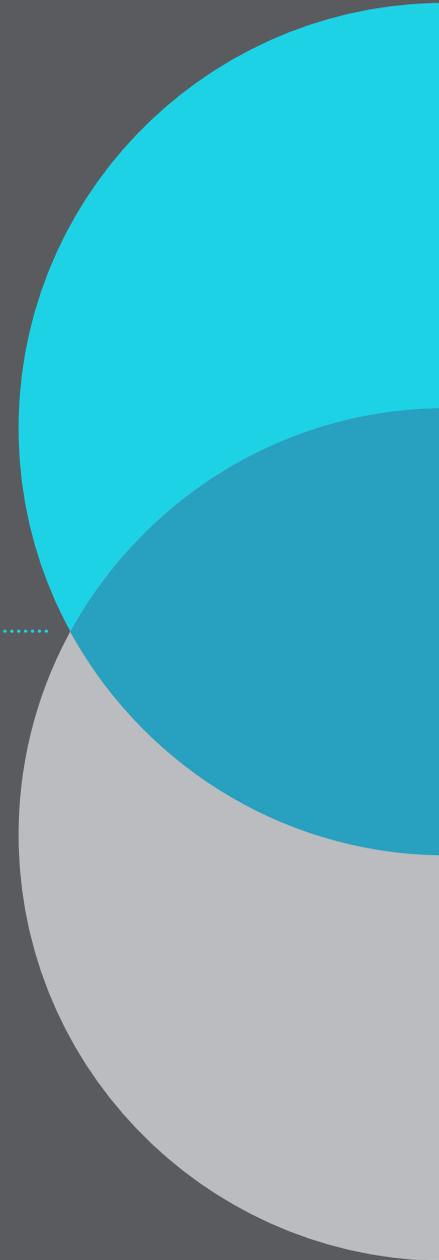




REFRESHER – FIXED TERM AND ONGOING FEE ARRANGEMENTS

03 August 2022



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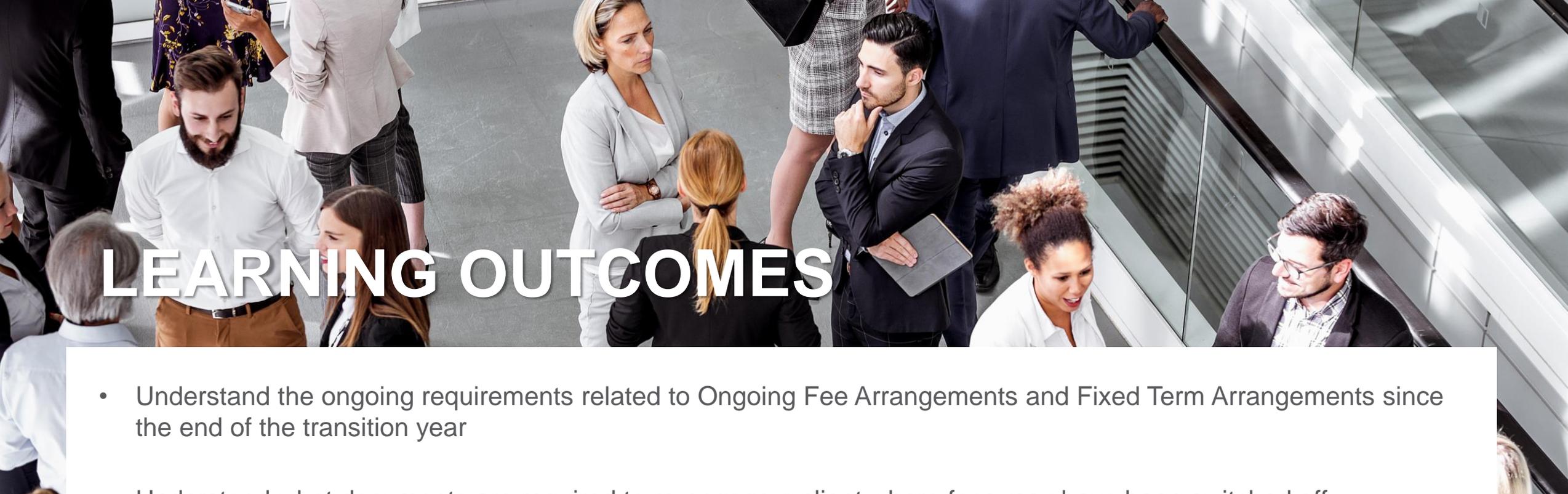
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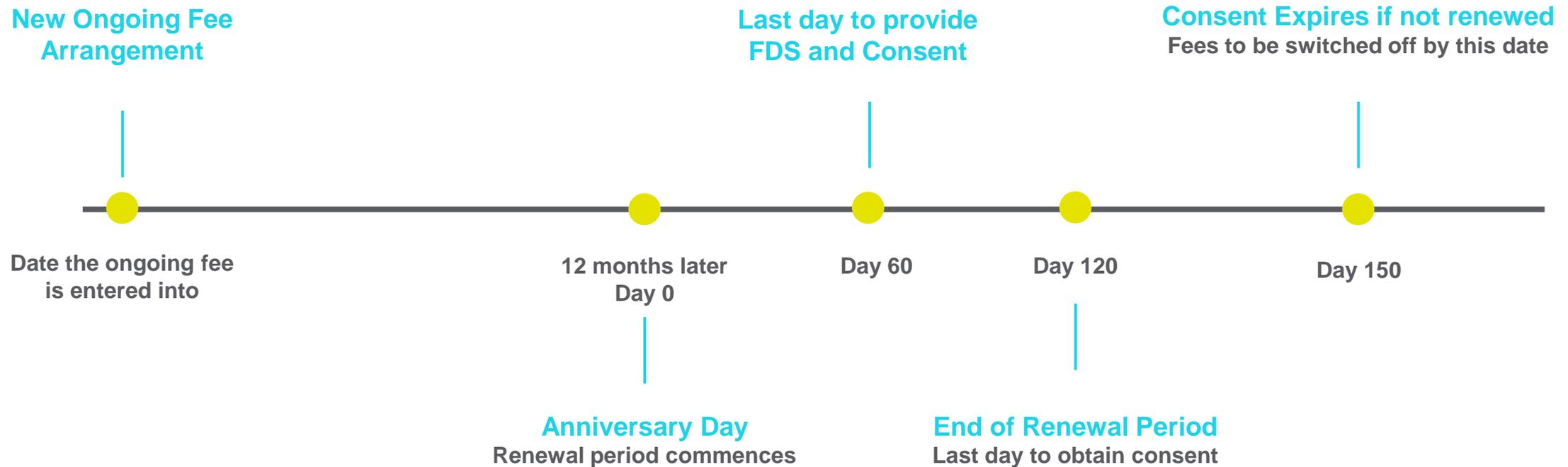
LEARNING OUTCOMES

- Understand the ongoing requirements related to Ongoing Fee Arrangements and Fixed Term Arrangements since the end of the transition year
- Understand what documents are required to re-engage a client where fees may have been switched off
- Understand the process of how to “re-set” an Anniversary Date
- Understand the requirements related to advice fees deducted from bank accounts
- Understand how to reduce the risk of complaints or reportable situations to ASIC

ONGOING FEE ARRANGEMENT DEFINITIONS

Key Term	Description
Ongoing Fee Arrangement (OFA)	Any ongoing advice fee arrangement with a period of more than 12 months
Fixed Term Agreement (FTA)	Advice fees paid with a period of 12 months or less
Anniversary Day (static date)	New OFAs (after 01 Jul 21), the anniversary of the day the OFA was entered into Existing OFAs (pre 01 Jul 21), the anniversary of the Transition Day (the day the client was provided with an FDS during the transition year)
Transition Period	12 month transition period between 01 Jul 21 and 30 Jun 22 to provide the new enhanced FDS to existing OFA clients
Transition Day	Earlier of: <ul style="list-style-type: none">- The day the FDS was given within the Transition Period; and- The last day of the Transition Period
Renewal Period	Period of 120 days beginning on the Anniversary Day in which to obtain client consent. Fees must be switched off after a further 30 days (150 days)

ONGOING FEE ARRANGEMENT TIMING REQUIREMENTS



FIXED TERM ARRANGEMENT TIMING REQUIREMENTS

New Fixed Term Arrangement

Date the fixed term arrangement is entered into

End of Fixed Term

Fees switched off unless new Fixed Term Arrangement has been entered into

12 months later

XX days later

New Fixed Term Arrangement
Client enters new arrangement and signs product issuer consent

REQUIREMENTS FOR DIFFERENT FEE ARRANGEMENTS

	Super			Non-Super			Bank Account		
	OFA	Fixed Term	One-Off	OFA	Fixed Term	One-Off	OFA	Fixed Term	One-Off
FDS	✓	✘	✘	✓	✘	✘	✓	✘	✘
Consent Form* (for an ongoing fee or to deduct a fee)	✓	✓	✓	✓	✘	✘	✘	✘	✘
Services to be included in the Consent Form	✘	✓	✓	✘	N/A	N/A	N/A	N/A	N/A
Fee Estimate and Rationale	✓	✓	✘	✓	N/A	N/A	N/A	N/A	N/A
End Date	150 days after Anniversary Day	12 months or less	N/A	150 days after Anniversary Day	12 months or less	N/A	N/A	12 months or less	N/A

FTA VS OFA CONSIDERATIONS

Consideration	FTA	OFA
Cashflow is a priority	Potentially less flexible and vulnerable to short term revenue interruption with no grace period for 'renewals'.	You prefer having an additional 120 days for renewal to maintain cashflow.
Clients renew promptly	You are confident that clients will renew.	Clients need to be followed up to get them to renew.
Products do not offer fee end dates	One off fees may not suit your cashflow needs.	Regular cashflow is preferable over a one off fee.
Charging fees from bank accounts	A new DDA must be signed each year.	Clients need to renew the OFA in writing, but a new DDA is not required annually.
Fee disclosures and estimates	A fee estimate is required on the fixed term agreement, but you don't have to report fees from the previous year. There may be less reconciliation of fees needed for an FTA.	Fees for the previous year and an estimate for the upcoming year is required on the FDS. Accurate disclosure will require more work to reconcile fees.
Ability to produce timely FDS	An FTA may minimise the risk of breaches and refunds associated with failure to provide timely and accurate FDSs.	Must be able to produce an accurate FDS within 60 days of the Anniversary Day.

POLLING QUESTION

Q1: Have you transitioned clients to a fixed term arrangement?

- a) Yes, all advice fee paying clients are on a fixed term arrangement
- b) Some advice fee paying clients are on a fixed term arrangement and some remain on ongoing fee arrangements
- c) No, all clients have remained on an ongoing fee arrangement



FREQUENTLY ASKED QUESTIONS

Q: I didn't provide an FDS during the transition period (01/07/21 – 30/06/22), what do I do now?

You were required to provide the client with an FDS before the end of the 12 month transition period.

If the FDS was not issued the OFA terminates. You must commence a new OFA and obtain new consent to deduct a fee.

Q: Will all the product issuers cease the advice fees where a consent form has not been provided to them?

Generally, product issuers have systems and processes in place to switch off ongoing advice fees where a consent form has not been provided. However, only Superannuation Trustees have specific obligations to do so.

Our suggestion to avoid a breach is to proactively notify non-superannuation product issuers where a client has not signed a consent form and request the fees be switched off.

FREQUENTLY ASKED QUESTIONS

Q: Will the product issuers switch off the fees as at 30 June 2022 where a consent form has not been provided to them?

Where an FDS was not provided the Transition Day is effectively 30 June 2022.

Therefore, the fees may continue for a further 60 to 120 days. Consider if you provided the FDS and consent prior and ensure you instruct the provider to cease the fees to avoid a breach.

Q: Should I remain the servicing adviser for a client where the ongoing advice fees have been switched off?

Generally, the cessation of a fee arrangement does not automatically remove the servicing adviser.

Where remaining as a servicing adviser, we recommend notifying the client in writing that no ongoing advice or reviews will be provided, the adviser will still have access to their personal information and they may re-engage the adviser for one off advice by request.

POLLING QUESTION

Q2: If an OFA ceases, do I need to provide a final FDS?

- a) Yes. It is a requirement to inform the client of the services they received for the fees they paid prior
- b) No. Once an OFA ceases, your obligation to provide an FDS ceases



FREQUENTLY ASKED QUESTIONS

Q: How can I recommence the OFA after it terminates?

You must arrange for a new OFA (or possibly an FTA) to recommence the fees.

The arrangement must be an arrangement in writing. You should not simply rely on a new FDS or a new consent form as evidence of a new arrangement.

Q: Can I reset the Anniversary Day?

No. The Anniversary Day is a static date.

To change the Anniversary Day you would need to cease the current OFA and commence a new OFA.

This would include having the client sign a new agreement, ceasing the fees with the provider and then signing a new consent form.

POLLING QUESTION

Q: Can I issue an FDS before the Anniversary Day?

- a) Yes, providing you include an estimate of fees
- b) No, you can only provide an FDS after the Anniversary Day
- c) Maybe, it depends on what the product issuer will allow



FREQUENTLY ASKED QUESTIONS

Q: Can I provide the FDS at the annual review meeting?

An FDS cannot be given before the Anniversary Day which is 12 months from the date the OFA commences. The services promised must be delivered before the Anniversary Day and disclosed in the FDS. The review and FDS don't generally occur in the same period. However, you could conduct the annual review and provide an FDS during the 60 day renewal period as illustrated below



FREQUENTLY ASKED QUESTIONS

Q: How do I transition a client from an OFA to an FTA?

1. Provide the client with a new fixed term agreement, which terminates the previous OFA. There is no requirement to provide a final FDS to the client when ceasing an OFA.
2. Complete a consent form/fee authority with the expiry date and provide it to the product issuer.

Q: How do I transition a client from an FTA to an OFA?

1. Provide the client with a new ongoing fee agreement, which terminates the previous FTA. This will set the anniversary day.
2. Complete a consent form and provide it to the product issuer.

FREQUENTLY ASKED QUESTIONS

Q: How soon before the expiry of the FTA can I get a new FTA signed by the client?

You can get a new FTA signed before the expiry date of a previous FTA, however the product issuer may determine that term for the new FTA starts from the date the client provides consent.

Advisers, should only ask clients to sign a new FTA after they have provided the services to the client.

Product issuers may specify a time period after the consent is given by the client in which they must receive the consent form after the client signs e.g. within 60 days.

Q: I moved to FTAs before product issuers had fixed term options.

Did I need to have the client sign a consent form during the transition year?

Yes. Where a product issuers did not have the functionality to identify an FTA, then they would view these clients as ongoing fee clients.

In this case if you have not provided a signed consent form to the provider between 01 Jul 2021 and 30 Jun 2022, the provide may switch off the fees

FREQUENTLY ASKED QUESTIONS

Q: Is a failure to provide an FDS a breach? And is it a deemed reportable situation?

Failure to comply with the obligation to provide an FDS is a breach with a civil penalty. However, is not a deemed reportable situation. This was defined in regulations.

Charging ongoing fee after termination of ongoing fee arrangement (s962P) is a breach with a civil penalty and is a deemed reportable situation.

[Breach+Reporting+Regulations+2021.pdf](#)
([squarespace.com](#))

TIPS AND OBSERVATIONS

- Ensure you have a clear defined service agreement (either Ongoing Fee Agreement or Fixed Term Agreement). It is recommended not to rely upon wording in the SoA alone.
- Fees should be commensurate with the services in the agreement.
- Ensure that only fees related to superannuation/retirement advice are charged to superannuation. Even minor breaches of the sole purpose test are a deemed reportable situation to ASIC.
- Ensure all clients/entities are engaged and sign the engagement documents.
- Do not have clients sign un-dated documents or future dated documents. This will be a deemed reportable situation.



Questions