

**TERMS OF REFERENCE**  
**OF**  
**THE FINANCIAL SERVICES COMPLAINTS LIMITED SCHEME (FSCL)**  
**OPERATED BY**  
**FINANCIAL SERVICES COMPLAINTS LIMITED**

**A. PRELIMINARY MATTERS**

**1. Introduction**

1.1 Purpose of the Scheme

The Scheme is operated by FSCL and has been established as an independent forum to resolve complaints between Complainants and Participants. The Scheme is free of charge for Complainants. The costs of the Scheme are met by the Participants.

1.2 Principles that underpin FSCL operations and processes

In dealing with Complaints, FSCL:

- a) must do what in its opinion is appropriate with a view to resolving complaints in a cooperative, efficient, timely and fair manner;
- b) shall proceed with minimum formality and technicality;
- c) shall be as transparent as possible, whilst also acting in accordance with its confidentiality and privacy obligations; and
- d) must comply with the principles of accessibility, independence, fairness, accountability, effectiveness and efficiency.

1.3 Scope of the Terms of Reference

These Terms of Reference set out:

- who is eligible to lodge a Complaint,
- the types of Complaints that FSCL can consider,
- how FSCL resolves Complaints,
- the types of remedies that FSCL can provide and, other related matters.

These Terms of Reference are binding upon Participants.



#### 1.4 Amendments to the Terms of Reference

The Board may amend these terms of reference in accordance with the Constitution and following consultation with the Participants and key consumer organisations and with the approval of the Minister under Section 66 of the Act.

## 2. FSCL structure

### 2.1 Appointment of Chief Executive Officer

The Board of Directors of FSCL appoints the Chief Executive Officer. In making appointments, the Board will consider candidates' objectivity, qualifications, experience and personal qualities.

### 2.2 Powers and duties of the Chief Executive Officer

- a) The Chief Executive Officer has the power to exercise all powers and discretions conferred on FSCL by these Terms of Reference and to carry out all responsibilities attributed to FSCL under these Terms of Reference. The Chief Executive Officer's duties include:
  - (i) making jurisdictional decisions;
  - (ii) resolving complaints by making recommendations and determinations; and
  - (iii) the chairing of and participation in FSCL Panel processes.
  
- b) In addition to the powers and duties specified in paragraph (a), the Chief Executive Officer's powers and duties also include:
  - (i) subject to FSCL's Constitution, the day to day management and promotion of FSCL and the Scheme (including the power to appoint and dismiss employees, contractors and agents (other than Panel members) and to incur expenditure consistent with FSCL's budget);
  - (ii) the establishment and maintenance of internal systems and procedures to fulfil these Terms of Reference;
  - (iii) deciding in accordance with paragraph 15.1 whether a recommendation or determination in respect of a dispute will be made by the Chief Executive Officer or the Panel; and
  - (iv) authorising an employee of or contractor to FSCL to:
    - decide whether FSCL is able under these Terms of Reference to consider a complaint and whether FSCL should exercise the discretion to exclude the complaint, other than making jurisdictional decisions, and
    - carry out any or all other responsibilities and exercise any or all other powers and discretions conferred on FSCL by these Terms of Reference, other than making recommendations or determinations,

- (v) where improvements to the Terms of Reference are identified, making recommendations to the Board for changes to these Terms of Reference.

### 2.3 Appointment of Panel Members

The Board of Directors of FSCL appoints the Panel Members. A Panel Member will be a consumer representative, and an industry representative. In making appointments, the Board will:

- a) consider candidates' qualifications, experience and personal qualities;
- b) where appointing consumer representatives as Panel Members, follow a merit selection process that includes input by relevant consumer groups. The consumer representative must be well-informed, impartial and objective;
- c) where appointing industry representatives as Panel Members, follow a merit selection process that includes input by relevant industry groups. The industry Representative must be well-informed, impartial and objective.

### 2.4 FSCL Panels

- a) A FSCL Panel will be comprised of the Chief Executive Officer and two Panel Members, one of whom is a consumer representative and one of whom is a financial services industry representative.
- b) A FSCL Panel has the power to resolve Complaints by making Determinations.
- c) A Panel Member's duties are to participate from time to time, where requested by FSCL, in a FSCL Panel responsible for resolving a complaint by making a determination.

## **B. ROLE OF FSCL UNDER THESE TERMS OF REFERENCE**

### **3. Principles FSCL must have regard to**

3.1 In dealing with a Complaint under these Terms of Reference, FSCL must deal with the Complaint on its merits and do what, in its opinion, is fair in all the circumstances, having regard to each of the following:

- (a) any applicable legal rule or judicial authority;
- (b) general principles of good industry practice and any applicable code of practice;
- (c) resolving Complaints in a cooperative, efficient and timely way;

- (d) keeping Complainants and Participants informed of progress;
- (e) assisting Complainants and Participants to reach informed and voluntary agreements to resolve Complaints.

#### **4. Procedures offered by FSCL**

4.1 A complaint may be lodged in writing to FSCL by delivery to the postal address, by fax to the fax number provided, by email to the general address provided or by posting on the website in some other form provided. Enquiries may be made or concerns expressed by telephone, but these are not received as complaints until put into writing.

4.2 FSCL offers two main types of procedure:

- (a) a conciliation process in which a FSCL case officer uses his or her reasonable endeavours to resolve the Complaint by communicating with the Complainant and the Participant involved, or by referring the Complaint for a conciliation conference;
- (b) if conciliation fails, or is unlikely in the opinion of the Chief Executive Officer to resolve the complaint, a recommendation by the Chief Executive Officer or a determination by the Panel on the complaint.

4.3 These procedures are free of charge to the Complainant.

#### **5. What conditions have to be met before using these procedures?**

5.1 Before FSCL can consider (or continue to consider) a Complaint made, it must be satisfied that:

- (a) the Complaint is made by or on behalf of:
  - an individual or group of individuals to whom or for whom the Participant's services in question were provided; or a partnership comprising of individuals – if the partnership carries on a business, the business must be a Small Business;
  - a Small Business (whether a sole trader or constituted as a company, partnership, trust or otherwise);
  - a club or incorporated association – if the club or association carries on as a business, the business must be a Small Business; or
  - a body corporate of a strata title or company title building which is wholly occupied for residential or Small Business purposes, and
- (b) either, the Complaint has been referred to the internal complaints handling service of the Participant concerned and has reached “deadlock”, that is one of the following:

- (i) the Complaint was made to the Participant more than 20 working days previously and the Participant has not notified the Complainant in writing that it has good reason to extend the time for resolving the complaint and what that good reason is, and
  - (ii) in any case, the complaint has taken longer to resolve than 40 working days; or
  - (iii) if the Complainant does not accept a final proposal for resolution of the complaint made by a Participant at any time, or
- (c) the Participant concerned has informed the Complainant that deadlock has been reached and the Complainant makes the Complaint to FSCL within two months of being informed:
  - that deadlock has been reached,
  - of the right to refer the Complaint to FSCL (with the full contact details for FSCL),
  - that if the Complaint is not referred to FSCL within two months, FSCL will not be able to consider the Complaint; and
- (d) the act or omission giving rise to the Complaint first occurred on or after 1 April 2010.

## 5.2 Participants:

- (a) must have a robust internal complaint handling system that has been approved by the Board;
- (b) must, if required by their insurer, notify their insurer within the time limit prescribed by their policy of complaints they receive;
- (c) must, when advising Complainants of the outcome of complaints dealt with by the Participants' internal complaints handling system, also advise Complainants that they may complain to FSCL, if they are not satisfied with that outcome;
- (d) must provide FSCL's contact details to Complainants both at the time that the Complainant first makes a complaint to the Participant, and when advising the Complainant of the outcome of the complaint dealt with by the Participant's internal complaints handling system.

## 6. Assistance in making a Complaint to FSCL

- 6.1 To provide fair and effective resolution of Complaints, and to facilitate the clear identification of the matters in dispute, FSCL may assist Complainants to draft and lodge Complaints. This includes assistance to clarify the nature of the complaint, the issues raised and the matters which might be relevant to those issues, and to reduce the complaint to writing, but does not extend to advocating

for the Complainant. A person wishing to make a Complaint can contact FSCL for assistance in making a complaint in writing.

## **C. JURISDICTION OF FSCL**

### **7. Types of Complaints that can be considered by FSCL**

7.1 Subject to these Terms of Reference, FSCL has the power to conciliate and determine Complaints about any act or omission by a Participant, in relation to a financial service including:

- (a) breaches of contract by the Participant;
- (b) breaches of statutory obligations;
- (c) breaches of industry codes by the Participant;
- (d) any other matters provided for by FSCL.

7.2 Notwithstanding any other paragraph of these Terms of Reference, FSCL may consider a complaint where all parties to the Complaint and FSCL so agree. If so, the procedures set out in Section D will apply to the resolution of that Complaint.

7.3. FSCL may determine a Complaint where:

- (a) the act or omission giving rise to the Complaint first occurred on or after 1 April 2010, and
- (b) the amount which the Complainant has claimed or could claim in respect of the subject matter of the Complaint does not exceed the Financial Limit.

7.4 The Financial Limit does not apply to any amounts in relation to:

- (a) interest that may be claimed or awarded, and
- (b) compensation for inconvenience that may be claimed or awarded under paragraph 18.2.

### **8. Exclusions from FSCL's jurisdiction**

8.1 FSCL cannot consider a Complaint:

- (a) against an entity which is not a Participant of FSCL at the time the Complaint is made;

- (b) about the level of a standard fee, premium or charge, or interest rate, except a Complaint concerning non-disclosure or misrepresentation or incorrect application of the standard fee, premium or charge, or interest rate;
- (c) about the investment performance of a product, except a Complaint concerning non-disclosure or misrepresentation;
- (d) relating to the management of a fund or scheme as a whole
- (e) relating to a Participant's commercial judgment in decisions about lending or security or insurance, but this does not prevent FSCL from considering complaints about administration in lending or security matters;
- (f) about underwriting or actuarial factors leading to an offer of a life insurance contract on non-standard terms
- (g) the subject matter of which has already been dealt with in a previous Complaint to FSCL by the same Complainant against the same Participant, and there are insufficient additional events and facts raised in the new Complaint to warrant FSCL's consideration of the new complaint.
- (h) the subject matter of which has already been dealt with by a court, tribunal or arbitrator, or any other independent or statutory complaints or conciliation body, or any investigation by a statutory Ombudsman;
- (i) where the Complainant knows or should reasonably have known of all the relevant facts, including the right to lodge a complaint with FSCL, more than 6 months before first notifying FSCL about the Complaint;
- (j) where the Complainant, and any other person, to whom the Participant owes a duty of confidence, has not waived the duty of confidence owed to the Complainant and any other person in respect of any information which FSCL may request a Participant to produce for the purpose of its consideration of a complaint.
- (k) where the value of the Complainant's claim exceeds \$200,000.

## 8.2 Discretion to exclude Complaints

FSCL may refuse to consider, or continue to consider, a complaint, if FSCL considers this course of action appropriate, for example, because:

- (a) there is a more appropriate place to deal with the complaint, such as a court, tribunal, or another dispute resolution scheme or the Privacy Commissioner;

- (b) the Complaint relates to a Participant's practice or policy and does not involve any allegation of either maladministration; or inappropriate application of the practice or policy; or breach of the law or any relevant code of practice;
- (c) where it appears to the Chief Executive Officer, on the basis of the facts presented by the Complainant, the relevant Participant has made a reasonable settlement offer in settlement of the Complaint;
- (d) the Complaint being made is frivolous or vexatious or not being pursued in a reasonable manner;
- (e) after lodging the Complaint with FSCL, the Complainant commences legal proceedings against the Participant in respect of the subject matter of the complaint.

## **9 Decisions on jurisdiction**

- 9.1 The Chief Executive Officer shall decide whether a Complaint falls within the Terms of Reference. In reaching this decision he or she shall request and consider representations from both the Complainant and the Participant concerned.
- 9.2 The Chief Executive Officer will advise the Complainant in writing if a complaint is excluded, and give his or her reasons for excluding the complaint.
- 9.3 If, within 20 days of receipt of this advice, the Complainant objects to a decision made by the Chief Executive Officer in accordance with paragraph 9.1, the Chief Executive Officer will review the matter if the Chief Executive Officer is satisfied that the Complainant's objection may have substance. If so:
  - (a) the Chief Executive Officer will inform the other parties involved in the complaint;
  - (b) all parties will be given an opportunity to provide submissions;
  - (c) all parties will be provided with copies of each other's submissions; and
  - (d) the Chief Executive Officer will review the matter and provide the parties with the Chief Executive Officer's final decision referred to as a jurisdictional decision that will set out the reasons for the decision.

## **D. INFORMATION RELATING TO COMPLAINTS**

### **10. Provision of information by Participants**

- 10.1 The Chief Executive Officer may require any Participant named in a Complaint to provide any information that, in the view of the Chief Executive Officer, relates to that Complaint.
- 10.2 Participants must, as soon as is reasonably required, disclose the information requested by the Chief Executive Officer. However, a Participant is exempt from disclosing such information if the Participant certifies to the Chief Executive Officer:
- (a) that the disclosure of the information would place the Participant in breach of its duty of confidentiality to a third party who has not consented to disclosure, despite the Participant using its best endeavours to obtain such consent; or
  - (b) the Participant does not have the information requested; or
  - (c) to provide the information would breach a Court order or prejudice a current investigation by the police or another law enforcement agency.

### **11. Disclosure of information to parties**

- 11.1 If any party to a complaint:
- (a) supplies information to the Chief Executive Officer and requests that he or she treat it as confidential, the Chief Executive Officer must not disclose that information to any other person, except with the consent of the party supplying the information. However, before supplying such information to the Chief Executive Officer, the Participant shall first notify the Chief Executive Officer of the request for confidentiality and the reasons for such confidentiality;
  - (b) requests access to any information on the Chief Executive Officer's file, the Chief Executive Officer must, subject to these terms of reference, legal requirements and any procedural standard developed by the Chief Executive Officer, make the information available.

### **12. Responding to general enquiries**

- 12.1 FSCL may respond to general enquiries, provide general information and give advice on the procedure for referring a complaint to FSCL. It is not a function of FSCL to provide information about individual Participants or their financial services or products.

## **E. COMPLAINT RESOLUTION PROCESS**

### **13. When a complaint is received**

- 13.1 FSCL is not bound by any legal rule of evidence. Its decisions do not create precedents.
- 13.2 After receiving a complaint, FSCL must:
- (a) use its reasonable endeavours to resolve the Complaint in a timely manner;
  - (b) comply with the requirements of natural justice and procedural fairness; and
  - (c) regularly inform the parties of progress towards resolving the Complaint.
- 13.3 In resolving the complaint, FSCL may:
- (a) assist the Complainant with drafting and lodging a Complaint; and
  - (b) investigate the complaint in the manner set out in these Terms of Reference and consistent with the rules of natural justice.
- 13.4 At any time that FSCL is considering a complaint it may seek to promote a settlement or withdrawal of the complaint by one or more of the following methods:
- a) negotiation;
  - b) conciliation;
  - c) deciding the Complaint in accordance with the process set out in paragraph 14.
- 13.5 When deciding a Complaint, FSCL may consult with industry and consumer advisers as FSCL thinks appropriate.

### **14. Recommendations and Panel Referrals**

- 14.1 If the Complaint is not resolved by agreement and/or conciliation, the Chief Executive Officer, at the request of the Complainant or the Participant concerned, may make a recommendation for settlement or withdrawal of the Complaint. Before doing so, he or she must:

- (a) ensure that the parties to the Complaint are provided with access to the documentation, information and material upon which FSCL proposes to rely in its recommendation or determination;
- (b) first give the Complainant and the Participant concerned 20 working days notice of his or her intention to make such recommendation;
- (c) during the period of notice (or such longer period as the Chief Executive Officer may agree) allow the Complainant or the Participant concerned to make further representations to the Chief Executive Officer in respect of the complaint; and
- (d) if no agreement has been reached at the end of the period of notice make a recommendation.

14.2 A recommendation must:

- (a) state the name of the Participant concerned in relation to the Complaint;
- (b) be in writing;
- (c) include a summary of the reasons for making the recommendation.

14.3 If, in making a recommendation:

- (a) the Chief Executive Officer is minded to :
  - (i) propose that a Complaint be settled or withdrawn on terms which appear to him or her to be acceptable to both the Complainant and the Participant concerned; or
  - (ii) make a recommendation for the settlement or withdrawal of the Complaint; and
- (b) that settlement or withdrawal would involve the provision by the Participant of any service or require an action to be taken by the provision of valuable consideration (whether in the form of a money payment or otherwise):

the recommendation must, unless the Participant has agreed otherwise, state that it is open for acceptance by the Complainant only if he or she accepts it in full and final settlement of the subject matter of the complaint.

## **15. Panel Referrals and Procedures**

- 15.1 A Panel may determine Complaints involving a claim of greater than \$50,000 or such other amount as nominated by the Board from time to time, and any complaint referred by the Chief Executive Officer to the Panel.

- 15.2 The Chief Executive Officer, when dealing with a Complaint, decides what procedure to follow, subject to the following:
- (a) The proceedings are to be as informal as possible, with a minimum of legal formality and technicality.
  - (b) The Panel is not bound by the rules or practice as to evidence, but may inform itself in any manner it thinks fits.
  - (c) The Panel must apply the rules of procedural fairness.

## **16. Hearings**

- 16.1 A Panel may hold a hearing for the purposes of taking oral evidence or receiving oral submissions if the Chief Executive Officer is satisfied it is appropriate and necessary to do so. The conduct of any such hearing will be at the discretion of the Chief Executive Officer having regard to the provisions of paragraph 2.2.
- 16.2 In the event of such a hearing all parties are expected to attend. The Complainant may appoint a person to assist him or her. Neither party shall be allowed legal representation except at the discretion of the Chief Executive Officer.
- 16.3 If external legal representation is first requested by a Participant and allowed by the Chief Executive Officer, the Participant must pay the reasonable costs of legal representation for the Complainant. In the event of any dispute as to payment of costs, the amount of those costs will be determined by the Chief Executive Officer.

## **17. Decisions**

- 17.1 A Panel will try to reach a decision as soon as practicable after the Complaint is referred to the Panel for determination.
- 17.2 Each person on a Panel has one vote. A decision is made by a simple majority.
- 17.3 A Panel must issue reasons for its decisions in writing.
- 17.4 Decisions of the Panels do not create binding precedents.

## **18. Powers of the Chief Executive Officer and Panels to order compensation or other forms of redress**

- 18.1 The Chief Executive Officer and Panel may award compensation for any financial or economic loss which is a direct result of any act or omission in respect of which a complaint is upheld, and direct a refund of fees or commission, up to the amount of \$100,000. However, where the parties have agreed under paragraph 7.2

- that FSCL can deal with a Complaint, there shall be no maximum limit on the compensation the Chief Executive Officer and Panel can award under this provision.
- 18.2 The Chief Executive Officer and Panel may also award compensation not exceeding \$500 to compensate the Complainant for inconvenience suffered by him or her as a result of the acts or omissions of the Participant concerned.
- 18.3 The Chief Executive Officer and Panel cannot award:
- (a) monetary compensation in the nature of punitive damages; or
  - (b) compensation for financial or economic loss or damage that is not a direct result of any act or omission in respect of which a complaint is upheld.
- 18.4 The Chief Executive Officer and Panel may direct the Participant to carry out specific actions or refrain from specific actions, to the extent that this is appropriate to provide redress for any matter in respect of which a Complaint has been upheld.
- 18.5 The Chief Executive Officer and Panel may decide that the Participant pay interest on a payment to be made by the Participant to the Complainant. The Chief Executive Officer and Panel will calculate interest from the date of the cause of action or matter giving rise to the claim. The Chief Executive Officer and Panel may have regard to any factors it considers relevant, including the extent to which either party's conduct contributed to delay in the resolution of the matter.
- 18.6 If the Panel holds a hearing at the request of the Participant, the Participant must meet the Complainant's reasonable costs of attendance, including reasonable costs for travel and accommodation.

## **19. Complainants' acceptance of recommendations or determinations**

- 19.1 A Complainant must elect whether or not to accept a recommendation of the Chief Executive Officer or determination of the Panel by informing FSCL in writing within one calendar month of the date the decision is sent to the Complainant.
- 19.2 Where a Complainant elects to accept the recommendation of the Chief Executive Officer or determination of the Panel, the Complainant is bound by all aspects of that decision.
- 19.3 If a Complainant does not inform FSCL within the specified time, the Complainant shall be taken to have elected not to accept the decision.

**20. Participant bound to abide by recommendations and determinations**

20.1 Where the Complainant accepts the recommendation of the Chief Executive Officer or Determination of the Panel, the Participant must implement the decision as soon as practicable after being informed the Complainant has accepted it.

**21. Termination**

21.1 A Participant who does not comply with the recommendation of the Chief Executive Officer or determination of the Panel that the Complainant has elected to accept may have its participation terminated in accordance with the provisions of the Deed of Participation.

**22. No liability**

22.1 No Chief Executive Officer, Panel member, Board member or employee of FSCL is liable for any loss, damage or liability that arises from anything done or omitted to be done in the course of his or her duties, unless the person has acted in bad faith.

**F. INDUSTRY PROBLEMS**

**23. Reporting systemic issues**

23.1 The Board must ensure that FSCL has procedures in place for dealing with systemic issues.

23.2 A systemic issue is an issue that will have an effect on other persons beyond the parties to the Complaint. FSCL must identify systemic issues and refer these to the relevant Participant for remedial action. In each case, FSCL must obtain a report from the Participant as to the remedial action undertaken and continue to monitor the matter until a resolution has been achieved that is acceptable to FSCL.

23.3 FSCL must report systemic issues to the relevant licensing authority.

**G. COLLECTION AND SHARING OF INFORMATION BY FSCL**

**24. Data collection**

24.1 FSCL must collect and record comprehensive information relating to its complaints resolution, for example:

(a) the number of Complaints and enquiries;

- (b) demographics of the Complainants (where practicable);
- (c) details of Complaints which were not considered by FSCL and why;
- (d) the outcome of Complaints that were resolved by FSCL;
- (e) the current caseload including the age and status of open cases;
- (f) the time taken to resolve Complaints;
- (g) a profile of complaints that identifies:
  - (i) type and purpose of Financial Service;
  - (ii) type of Participant
  - (iii) the cause of the Complaint;
  - (iv) any systemic issues or other trends.

## **25 Referrals by FSCL to other dispute resolution schemes**

25.1 FSCL will ensure that FSCL staff has information, mechanisms and procedures in place:

- (a) for referring relevant complaints to other more appropriate forums, including other approved external dispute resolution schemes; and
- (b) to share prescribed information with other approved schemes, the Reserve Scheme and the Registrar

## **H. LEGAL PROCEEDINGS**

26.1 Debt recovery or other proceedings

- (a) Subject to paragraph (b), where a Complainant lodges a complaint with FSCL, the Participant:
  - (i) must not instigate legal proceedings against the Complainant relating to any aspect of the subject matter of the Complaint;
  - (ii) must not pursue legal proceedings instituted prior to the lodging of the complaint with FSCL save to the minimum extent necessary to preserve the Participant's legal rights and, in particular, must not seek judgment in the proceedings; and
  - (iii) must not, without the consent of the Chief Executive Officer, take any action to recover a debt the subject of the Complaint, to protect any assets securing that debt, or to assign any right to recover that debt while FSCL is dealing with the complaint.
- (b) Notwithstanding subparagraph (a), with FSCL's agreement and on such terms as FSCL may require, the Participant may:

- (i) issue proceedings where the relevant limitation period for such proceedings will shortly expire – but those proceedings may not be pursued beyond the minimum necessary to preserve the Participant’s legal rights, or
  - (ii) exercise any powers it might have to freeze or otherwise preserve assets the subject of the Complaint.
- (c) If the Complaint is subsequently decided by FSCL and becomes binding upon the Participant, the Participant will abandon any aspect of proceedings against the Complainant that are inconsistent with that decision.

26.2. Settled proceedings

Where a Complaint had been lodged with FSCL and is subsequently resolved by agreement between the parties, the Participant will not instigate or continue legal proceedings to the extent that those proceedings are inconsistent with that agreement.

**I. ADMINISTRATIVE RESPONSIBILITIES**

**27. Responsibilities and requirements**

27.1 The Chief Executive Officer is responsible for:

- (a) the day to day administration and conduct of FSCL and the Scheme. He or she shall have power to incur expenditure on behalf of the Board in accordance with the current financial budget approved by the Board;
- (b) appointing and dismissing employees, consultants, independent contractors and agents, and determining their terms of employment or engagements;
- (c) attending, in a non-voting capacity, meetings of the Board
- (d) promoting FSCL and its complaints handling procedures;
- (e) reviewing these Terms of Reference and making recommendations to the Board on any amendments he or she considers are required;
- (f) preparing an annual report containing, in relation to the preceding financial year of FSCL, a general review of his or her activities and FSCL’s finances during that year and, at least 21 days before FSCL’s annual general meeting, sending that report to each Board member.
- (g) at his or her discretion, making:

- (i) ad hoc confidential reports to the Board on matters coming to his or her attention concerning Participants' general compliance with FSCL, and
- (ii) general observations about the purpose and operation of FSCL in any general forum.

27.2 The Chief Executive Officer must not exercise any power which the Constitution of FSCL expressly gives to the Chairperson, the Board or any other person.

## **28. Definitions**

In these Terms of Reference, the following expressions have the following meanings:

<u>Act</u>	The Financial Service Providers (Registration and Disputes Resolution) Act 2008
<u>Board</u>	has the same meaning as in the <u>Constitution</u>
<u>Chief Executive Officer</u>	means a person appointed to that position by the Board under the Constitution
<u>Complainant</u>	means a person who has a Complaint that has been lodged with FSCL and who, under Paragraph 4. is eligible to use the Scheme.
<u>Complaint</u>	means an expression of dissatisfaction made to a Participant related to its products or services where a response or a resolution is explicitly or implicitly expected
<u>Constitution</u>	means the Constitution of Financial Services Complaints Ltd
<u>Consumer representative</u>	means a person appointed to that position by the Board under paragraph 2.3
<u>Determination</u>	means an assessment by a Panel about a complaint in accordance with paragraph 15 of these Terms of Reference
<u>Financial limit</u>	means \$200,000 as at 1 April 2010
<u>Financial Service</u>	means: <ul style="list-style-type: none"> <li>(a) a financial adviser service:</li> <li>(ab) a broking service:</li> <li>(b) acting as a deposit taker as defined in the Reserve Bank of New Zealand Act 1989:</li> <li>(c) being a registered bank:</li> </ul>

- (d) keeping, investing, administering, or managing money, securities, or investment portfolios on behalf of other persons:
- (e) providing credit under a credit contract:
- (f) operating a money or value transfer service:
- (g) issuing and managing means of payment (for example, credit and debit cards, cheques, travellers' cheques, money orders, bankers' drafts, and electronic money):
- (h) giving financial guarantees:
- (i) participating in an offer of securities to the public in either of the following capacities (within the meaning of those terms under [section 2\(1\)](#) of the Securities Act 1978):
  - (i) as an issuer of the securities:
  - (ii) as a promoter:
- (ia) acting in any of the following capacities (within the meaning of those terms under [section 2\(1\)](#) of the Securities Act 1978) in respect of securities offered to the public:
  - (i) as a trustee:
  - (ii) as a unit trustee:
  - (iii) as a superannuation trustee:
  - (iv) as a manager:
- (j) changing foreign currency:
- (k) entering into derivative transactions, or trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities (including shares), and futures contracts on behalf of another person:
- (l) providing forward foreign exchange contracts:
- (m) acting as an insurer:
- (n) providing any other financial service that is prescribed under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

*Financial Services Industry* means the provision of all forms of services, advice or products in connection with life insurances, superannuation, retirement savings accounts, funds management, financial advice, investment advice and sales of financial or investment products, investment, securities and derivatives, the provision of mortgages and any other areas that the Board determines should fall within these Terms of Reference.

*Financial services provider* means a provider of a Financial Service that is a Participant. A reference to a Financial Services Provider includes any employee, agent or contractor of the Financial Services Provider including any person who has actual, ostensible, apparent or usual authority to act on behalf of

the Financial Services Provider or authority and to act by necessity in relation to a financial service.

FSCL

Financial Services Complaints Limited

Industry problem

means a systemic fault including a consistently recurring problem, fault or defect that may be confined to a particular product, a particular company or that may be relevant to the whole or part of the Financial Services Industry, which related to a Participant's dealings with its clients.

Industry representative

means a person appointed to that position by the Board under paragraph 2.3

Jurisdictional Decision

means a decision under paragraph as to whether, under these terms of Reference, FSCL is able to consider a complaint or whether FSCL should exercise its discretion to exclude a complaint.

Panel

means a body whose composition is determined under paragraph 2.4

Participant

means any member of FSCL in respect of which these Terms of Reference are applicable

Recommendation

means an assessment by the Chief Executive Officer about a complaint in accordance with paragraph of the Terms of Reference

Scheme

means the dispute scheme operated by FSCL

Service

means the complaint resolution scheme described in these Terms of Reference

Small Business

means a business that, at the time of the act or omission by the Participant that gave rise to the Complaint is a business with less than 19 employees.

Terms of Reference

means these Terms of Reference.