

FINANCIAL SERVICES COMPLAINTS LTD

INDEPENDENT DISPUTE RESOLUTION



FINANCIAL SERVICES COMPLAINTS LIMITED

We resolve complaints simply and confidentially by working with consumers and their financial service provider to reach a fair outcome.

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2010/2020 COMPARISON

Total participants



2009/2010

2019/2020

4,000 7,125

Total disputes



2009/2010

2019/2020

20 298

Total enquiries and complaints



2009/2010

2019/2020

265 3422

In 10 years we've resolved more than



1988

disputes

In 10 years we've dealt with more than



30,000

complaints and enquiries about
financial service providers

In 10 years we've awarded



\$6,080,550

in compensation

Who we are and what we do

FSCL is an independent dispute resolution scheme established in 2010 and approved by the Minister of Consumer Affairs under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Our role is to resolve complaints between consumers and their financial service provider about financial services and advice, including insurance, loans, managed funds and trustee services.

FSCL is a not-for-profit company funded by a combination of membership and complaint fees levied on participating financial service providers. We provide our services to consumers free of charge.

FSCL's decision-making process is independent of our scheme participants and industry sectors. FSCL's CEO and staff are entirely responsible for handling and determining complaints and are not subject to external influence by any of FSCL's stakeholders.

SNAPSHOT OF OUR YEAR

Consumer enquiries about financial service providers answered

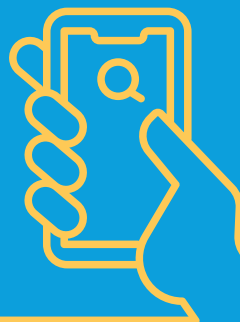
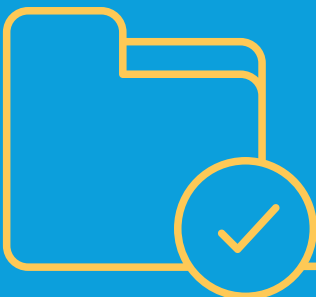
2,654

Disputes investigated and resolved

298

Consumer complaints about financial service providers answered

768



How we work

We resolve complaints through investigation, working confidentially and in a non-legalistic manner to assist both sides to reach a fair outcome.

Our process is both inquisitorial and consensus-based and focuses on producing a mutually acceptable outcome. Both scheme participants and consumers are afforded an equal opportunity to put forward their cases. This is intended to ensure procedural fairness and to promote effective dispute resolution.

When a complaint cannot be resolved by agreement, our CEO can make a recommendation which is binding on the participant, but only if the consumer accepts the recommendation in full and final settlement of the complaint. The recommendation includes our CEO's reasons for making the recommendation.

Scheme participants

7,125

Overall satisfaction
with FSCL's services

90%

Successful 5-year
independent review



CHAIR'S FOREWORD

This year has been one of challenges for FSCL, but also a year with much to celebrate, including FSCL's 10th birthday. Over the last 10 years the scheme has grown and evolved, and we have much to be proud of.



A stylized, handwritten signature in black ink, reading 'Jane Meares'.

Jane Meares
Board Chair

We have more staff, more scheme participants, more awareness of the scheme resulting in more complaints, and the scheme has adapted to transformative technology so that, for example, where once all cases were on paper, our case handling is now paper free.

The need for the scheme has never been greater, as demonstrated by the high number of complaints coming to us for investigation and resolution, and the increasing demands for FSCL's training expertise, helping participants improve their systems, processes and knowledge to avoid or resolve complaints themselves.



Covid-19 challenges

The past few months have been dominated by the Covid-19 pandemic and its effects on FSCL's work and plans for the year ahead. Sadly, one of the repercussions of the pandemic is likely to be greater financial hardship for many. We anticipate this will also bring with it an increased number of complaints, to add to the already high caseload.

As a Board, we are committed to ensuring that the scheme has adequate resources and staff to cope with the increased workload so that FSCL can continue to deliver an efficient and world-class service.

The Covid-19 pandemic has also brought about delays in various legislative reforms including licensing of financial advisers, originally expected to be completed in June this year, but now delayed until March 2021. FSCL has done a lot of work to ensure financial advisers are ready for the changes in membership structures that will be necessary for transitional licensing, and has provided advisers with support as they prepare for licensing. This work will now continue into next year.

“

We are committed to ensuring that the scheme has adequate resources and staff to cope with the increased workload.

”



Independent scheme review

The highlight of the past year was FSCL's second independent external review (required by the legislation under which we operate), conducted by Sir David Carruthers. The independent review is very important to us, not least to provide assurance to us and the system as a whole that we are meeting our approval criteria and best practice, but also to identify areas where we could improve our service. We were delighted that Sir David found that FSCL is a very well-managed, professionally-run scheme which provides an excellent service to users. Sir David observed that the scheme is well led and provides an effective and efficient service of a high standard. Sir David interviewed a number of scheme participants, consumer organisations and other stakeholders as part of his review process. I wish to thank all those who contributed their time and views.

The report made several recommendations including around succession planning, monitoring of scheme participants' internal complaint mechanisms, and accessibility to ensure that FSCL is available to consumers, in particular to vulnerable communities.

Some recommendations are already being implemented and the remaining will be considered further over the next year. The Board continues to focus on improving consumer awareness and access to the scheme. We are pleased with the progress being made, as the CEO reports on, but there is still much to do. To that end, the Board has recently approved the recruitment of a marketing and communications adviser to assist with this work.

Use of Ombudsman title

It saddens me to report that we are about to head back to court again to seek a judicial review of the Chief Ombudsman's further refusal to grant FSCL use of the Ombudsman title. As confirmed by our independent review, FSCL meets all the recognised quality standards of an Ombudsman including, in particular, fairness and independence. As I noted last year, the Board strongly believes that use of the name will allow us to raise consumer awareness of the scheme and give assurance to all users – consumers and participants alike – that a complaint will be resolved fairly and independently.



Board news

Later this year Gary Young steps down from the Board. Gary has been an industry member representative since January 2014, and I thank him for his measured and wise counsel and his service. The Board is about to start recruiting for Gary's replacement. I congratulate consumer representative board member, Mary Holm, who was awarded an ONZM in the Queen's Birthday Honours for her services to financial literacy education. We are proud of Mary's achievement. Mary was reappointed for a further three-year term as from 1 October last year.

I thank all my fellow directors for their insights and the wisdom they each bring to our discussions.

And last, but certainly not least, on behalf of the Board, I would like to extend our thanks to all FSCL's capable and knowledgeable staff. They often work in trying circumstances, dealing with difficult and distressed people, yet remain focused on resolving complaints fairly and appropriately while supporting each other to do so. In particular, I would like to acknowledge FSCL's CEO, Susan Taylor, for her leadership of the organisation which, as noted above, was commended in our independent review.

CEO OVERVIEW

This year we celebrate FSCL's 10th birthday. The 10 years since FSCL's creation have gone remarkably quickly. Looking back, I am very proud of the scheme's achievements.

Some highlights include:

- 1,988 cases investigated and resolved
- many thousands of complaints referred to participants and resolved directly with consumers
- total compensation of more than \$6 million awarded to consumers
- growth in participant numbers from 4,000 at the start of 2011 to more than 7,200 today
- contributions to new policy and legislation that have helped shape the laws applying to financial services and advice
- working and training to improve industry standards and financial literacy.

In those 10 years FSCL's role in the financial services industry has also evolved. While our core function is to investigate and resolve individual consumer complaints against financial service providers, an increasingly important part of our job is sharing the lessons learned from complaints. We have built up a wealth of experience in our team and a useful body of case notes. We use these tools to run training for both consumer organisations and scheme participants. We hope that by sharing our knowledge and expertise, we help to raise standards in the financial services industry and improve consumer financial literacy. I believe we are starting to achieve those goals.



Busiest year in 10-year history but satisfaction high

At a time when we all live with some uncertainty and division, bringing opposing sides together and encouraging resolution is part of our daily work. This is reflected in what has been our busiest year yet. Complaint numbers have continued to rise, with a remarkable 36% increase in the complaints that we investigate.

The scale of demand for our help this year has presented challenges and has put some pressures on the time it's taken us to look into complaints. It's reassuring that consumers' satisfaction with our service has nonetheless remained steady. More than eight in 10 rated us positively, including those whose complaints we upheld and those who did not get the outcome they had hoped for. In turn, feedback shows that our scheme participants' confidence in us remains robust. We never take this confidence for granted, and work hard to maintain it – from regular, quality engagement with our scheme participants and early assistance service for complaints, to our work helping to raise awareness of our scheme and the work that it does.

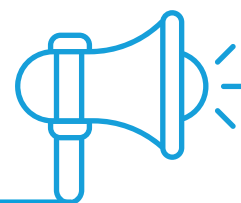


Impact of Covid-19 on operations and case load

Like the rest of New Zealand, our year has been affected by the Covid-19 pandemic. Fortunately, we are well equipped to work remotely and our team was up and running immediately when we entered level 4 lockdown, remaining busy throughout. We had an unprecedented level of complaints going into lockdown and that trend continued throughout lockdown, with some of those cases reflecting the impact of Covid-19 on consumers.



Susan Taylor
Chief Executive Officer



The pandemic also resulted in the postponement of our conference “Making Cents of Change” that was due to take place in May. We will be rescheduling the conference for either later this year or early 2021.



Independent scheme review

One of the year’s highlights, as our Chair has reported, was our second independent review. We are required to have an independent review every five years to ensure that we are meeting our approval criteria of independence, fairness, efficiency, effectiveness, accessibility and accountability. Our reviewer, Sir David Carruthers, was satisfied that the scheme meets all those objectives and that the service we provide is of a very high standard. We were also very pleased that the reviewer formed a satisfactory view of our office culture, environment, leadership, and internal and external relationships. The excellent report is a testament to the hard working and dedicated team that we have at FSCL.



Participant services to raise standards

As part of helping financial advisers prepare for licensing, we have reviewed and updated manuals and guides for our participants on internal complaints processes, including templates. We have also introduced a regular webinar series. Our first webinars focused on transitional licensing and complaints processes for advisers. Our latest webinars have featured a recent case, examining the cause of the complaint, how it was resolved, and lessons learned. These webinars are always very well-subscribed.

Consumer outreach a priority

Making sure that the scheme is accessible to consumers is a continual challenge but a top priority. We devote a lot of time and resources to our outreach activities.

Over the last few years we have developed strong working relationships with a number of consumer organisations, including FinCap and the Salvation Army, enabling us to extend our reach and impact, and get greater insight into consumer issues. We have started running training webinars for consumer organisations on topical issues, such as irresponsible lending. Alongside our regular newsletters and case notes, these provide advocates with valuable information on the issues we can help with and our approach, facilitating referrals. We are also developing a strategy for assisting vulnerable consumers facing hardship and challenges in the months ahead, as a result of the Covid-19 pandemic.

Given we are one of four financial services dispute resolution schemes, it makes sense to approach consumer outreach at a sector level. We look forward to working collaboratively on improving consumer outreach with colleagues across the various schemes and have established a working group to plan a strategy to improve awareness of the schemes.



Thanks

I thank our Board Chair, Jane Meares, and fellow directors for their support and for always challenging us to be the best scheme we can. I thank all my team for their focus, hard work and commitment to providing all our stakeholders with an excellent service during what has been both a challenging and rewarding year.

As we move into the 2020/2021 reporting year, I look back with pride on all that we have achieved in our first 10 years and the wider impact that our service is having. I am excited about what is to come.

HOW DO CONSUMERS RATE US?

We survey all consumers who have had a complaint formally investigated by us. Their feedback helps us to continually look for service improvements.

The FSCL complaint process was easy to use and understand

90%



FSCL staff listened to me and showed me courtesy and respect

93%



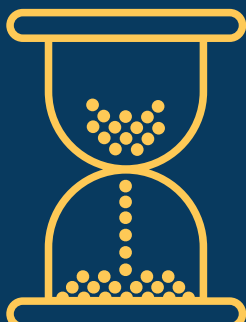
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**I found the case manager
so good to work with,
he knew what he was going
to do and got it done.**

”

**The FSCL process
provided an outcome
in a timely manner**

90%



**FSCL staff described the process
to me and explained the merits of
my position in relation to the complaint**

87%



CASE STATISTICS

We have just had our busiest year in our 10-year history. In 2019/2020 we opened 383 cases for investigation, compared to 282 last year, a 36% increase.



Although we have been busy with new complaints relating to the impact of the Covid-19 pandemic, our case numbers were already up across the board in the first half of the reporting year. We hope the increase reflects both our consumer outreach and our scheme participants more readily referring clients who have unresolved complaints to FSCL.

We also completed more investigations this year, 298 compared with 258 in 2018/2019.

This year we started reporting separately on 'complaints' and 'enquiries', rather than a combined category of 'complaints and enquiries'. A complaint is where a consumer contacts us about an issue with their financial service provider. Our Early Assistance Team will help refer the complaint back through the financial service provider's internal complaints process and will keep a watching brief to make sure the complaint is satisfactorily resolved. An enquiry is where a consumer contacts us with a more general query relating to a financial service, wanting information, rather than making a formal complaint. Using this new reporting, we dealt with 768 complaints which were referred to scheme participants and largely resolved directly between the parties. We also fielded 2,654 enquiries about financial services.

We had a slight increase in the average number of working days we took to investigate and resolve complaints, up from 50 to 54. But given the large increase in case numbers we were pleased to be able to keep the average working time a file is opened to under three months.

The high case load is also reflected in our timeliness targets on our different case categories, where we dropped slightly below target for standard and complex cases. We completed:

- 87.5% of simple cases (35 cases) within 20 working days against a target of 80%

- 78% of standard cases (210 cases) within 65 working days against a target of 80%
- 77% of complex cases (53 cases) within 130 working days, against a target of 80%.

Complaints against insurers remained the largest proportion of cases investigated at 35%, roughly the same as last year (34%). The second largest category was complaints against lenders at 29%.

Although last year consumer credit was the financial product most complained about, this year we saw travel insurance once again make up the largest complaint category at 27%. Consumer credit complaints made up 22%.

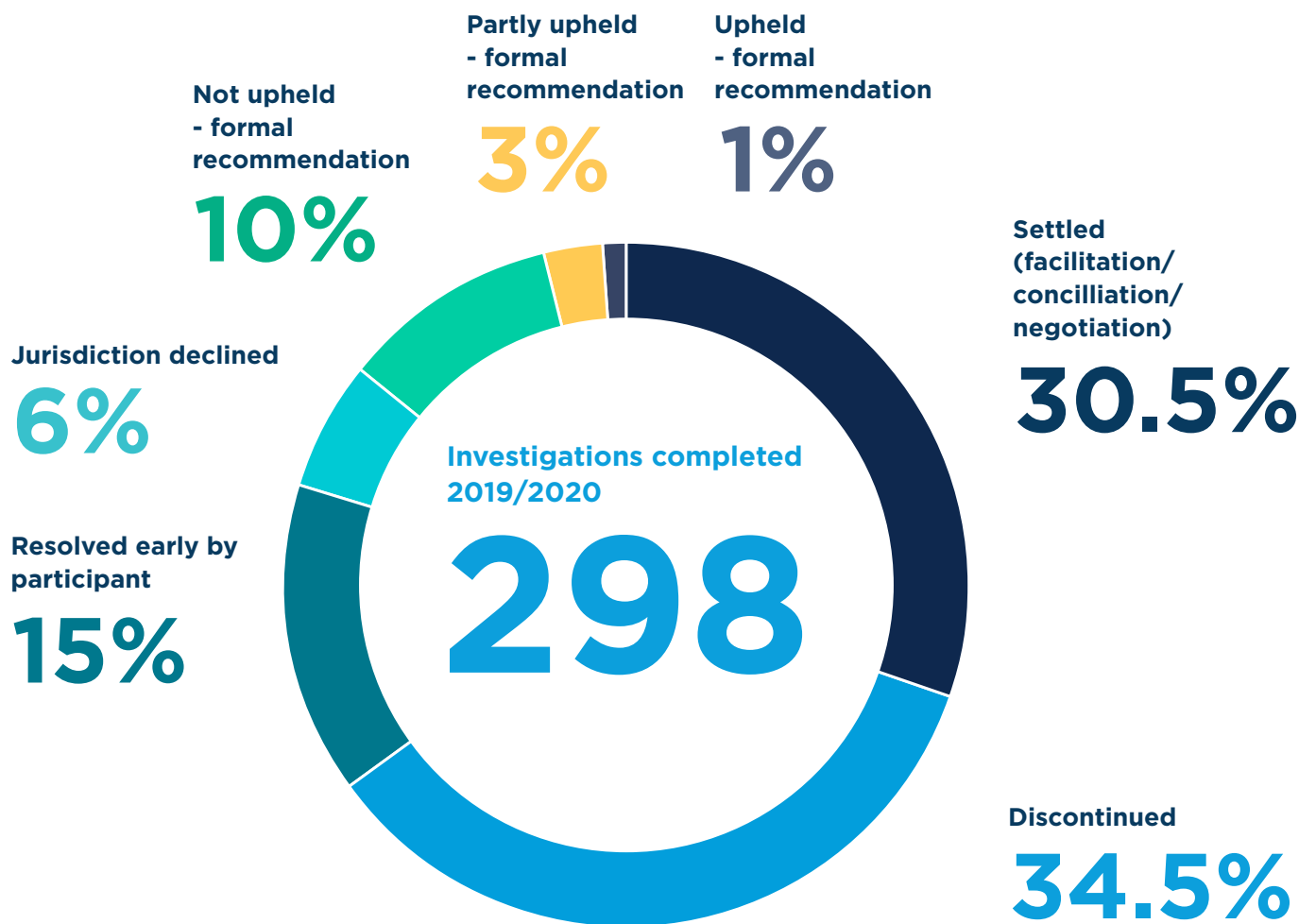
We received more complaints than last year about mortgage loans and travel cards, but fewer complaints about trading platforms, credit cards and KiwiSaver.

We negotiated or awarded compensation totalling \$989,641, up from \$848,846 in 2018/2019. The largest individual settlement was just over \$154,000 in a case involving a mortgagee sale of a property that had not been carried out in accordance with the law.

One hundred and three cases were discontinued by the complainant after we advised them that we were unlikely to uphold their complaint. Forty four cases were settled by the participant very early in the investigation process and a further 91 cases were settled later in the investigation process with the help of our case managers. In cases that are settled, the complainant receives compensation or some other remedial action such as an apology, a fee waiver, or a loan restructure.

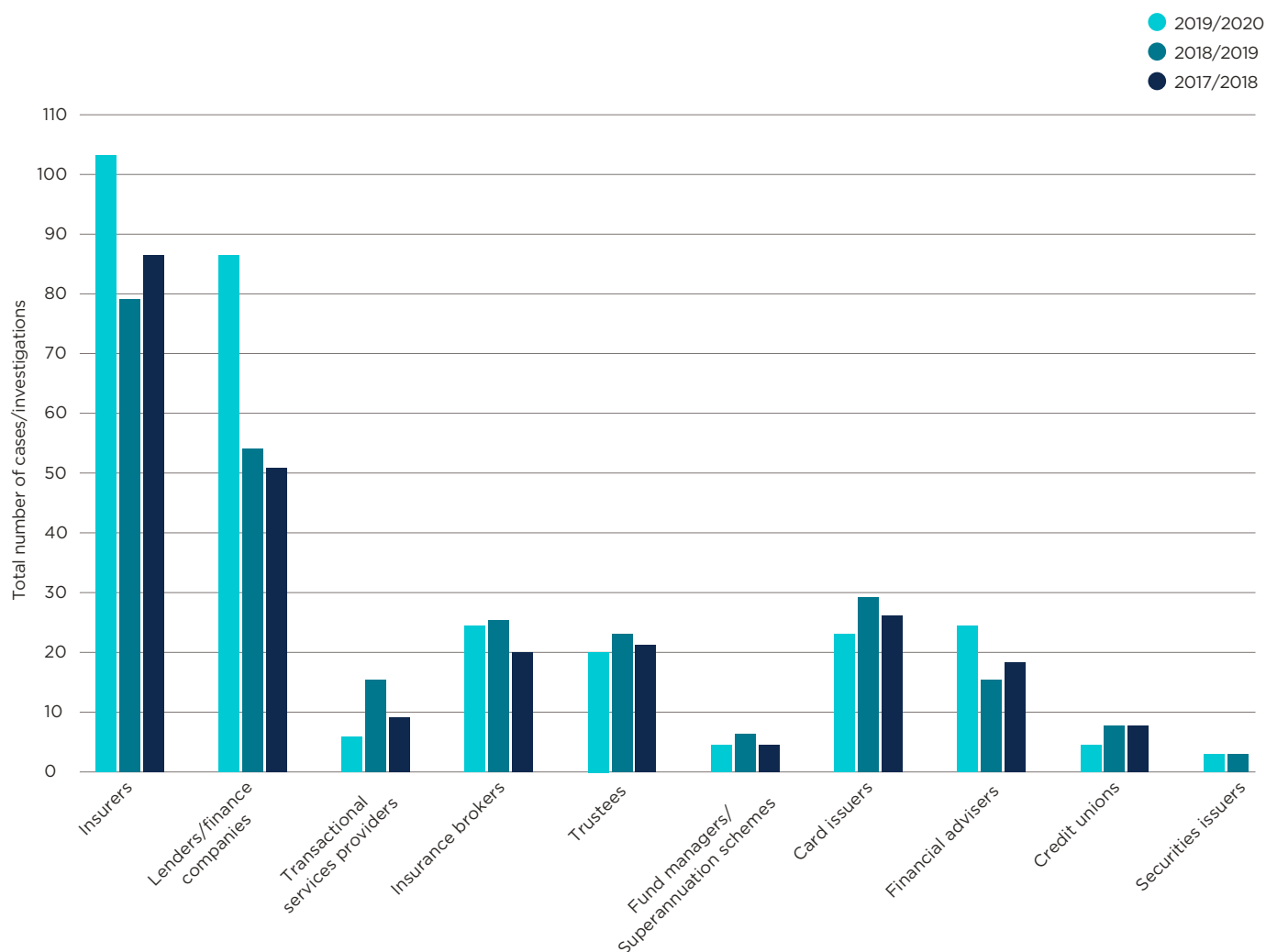
We issued formal recommendations, the final step in our process, on 42 cases, roughly the same as last year (43). However, because total case numbers rose, the proportion of cases that needed to go all the way to a formal recommendation dropped to 14%. This is positive because it means that cases are being resolved earlier without the need for us to impose a formal decision.

CASE OUTCOMES

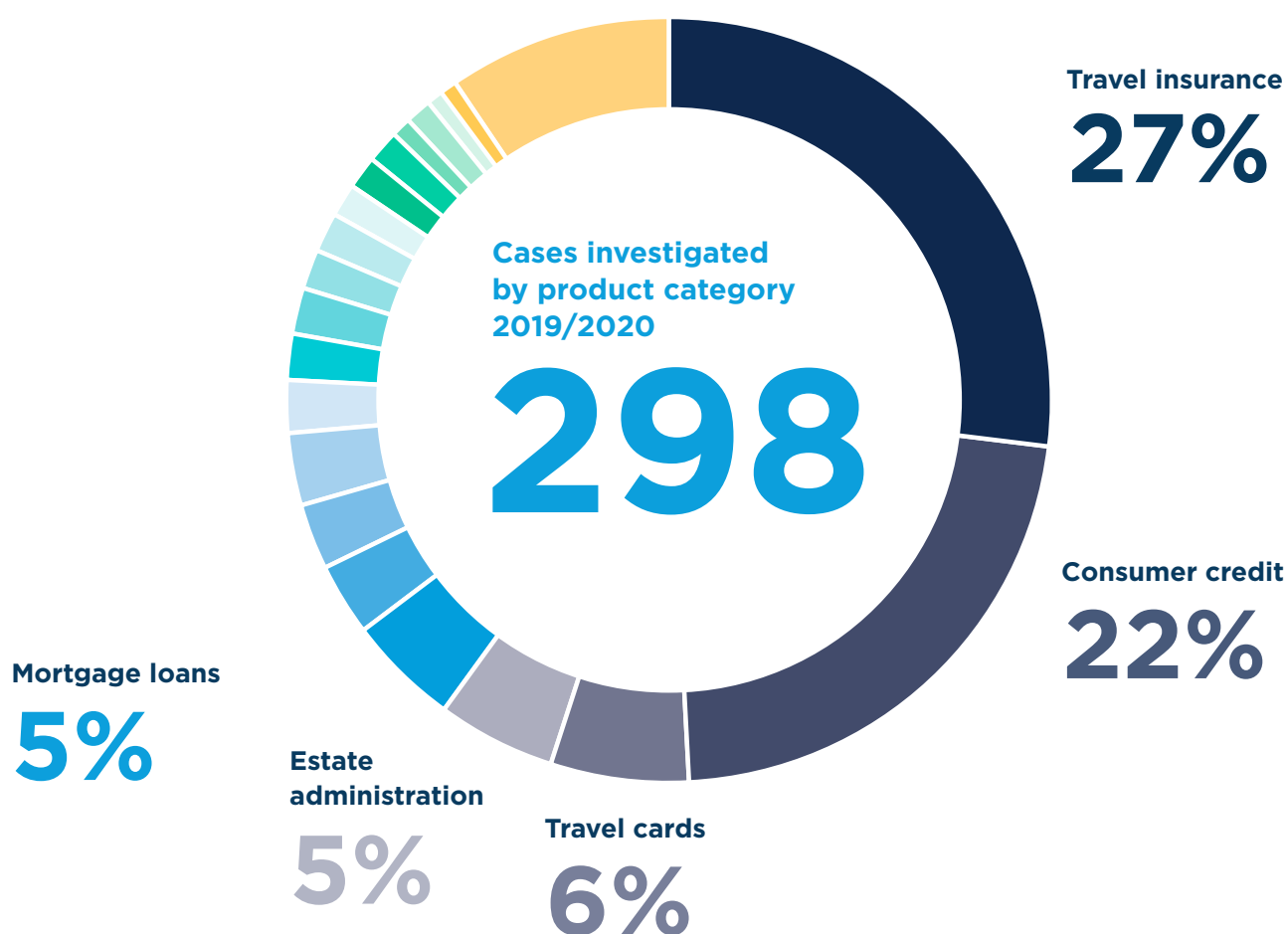


	19/20	18/19	17/18
Settled (facilitation/conciliation/negotiation)	91	77	71
Discontinued	103	87	89
Resolved early by participant	44	39	25
Jurisdiction declined	18	12	17
Not upheld - formal recommendation	31	21	32
Partly upheld - formal recommendation	8	17	8
Upheld - formal recommendation	3	45	3

CASES INVESTIGATED BY PARTICIPANT CATEGORY



PRODUCT CATEGORIES FOR CASES INVESTIGATED



	19/20	18/19	17/18		19/20	18/19	17/18
Travel insurance	81	44	65	Debt collection	5	1	5
Consumer credit	66	49	41	Business finance	5	3	3
Travel cards	17	12	19	Superannuation and managed funds	4	4	-
Estate administration	15	16	17	Business interruption insurance	4	3	2
Mortgage loans	14	10	-	Marine insurance	4	5	2
Motor vehicle insurance	9	8	9	Income protection insurance	3	4	3
Home and contents insurance	9	10	3	KiwiSaver	3	8	3
Life insurance	9	3	2	Health insurance	2	4	4
Trading platforms/foreign exchange	6	15	8	Securities	2	-	-
Credit cards	6	17	6	Other	28	23	33
Material damage insurance	6	5	6				

CASE ISSUES



Travel insurance

Travel insurance is once again the product most complained about to FSCL. This is not surprising given the natural inclination to complain or challenge a declined insurance claim.

We have recently seen an influx of complaints relating to disrupted or cancelled travel as a result of the Covid-19 pandemic. Some travel insurance policies have a blanket exclusion for loss resulting from a pandemic, but other insurers rely on a 'government interference' exclusion to decline claims. This excludes claims arising directly or indirectly out of government interference in the insured person's travel.

In some of the cases we've investigated so far, there is typically more than one reason why travel has been cancelled. But if travel restrictions brought about by Covid-19 are the main cause for those disruptions, the claim is likely excluded from cover. In case study 1, the complainant claimed they cancelled their trip on their doctor's advice. While that may have been one of the reasons for not travelling, we found the border closures of the country they were visiting was the main reason for the cancellation. This meant the insurer was entitled to decline their claim.

Case study 2 is a fairly common complaint we see where an insurer has declined cover for lost property left unattended in a public place. In this case we found in favour of the insured who had left a travel pouch containing valuable items in an airport bathroom. Consumers are obliged to take reasonable care of their property, however, what is considered reasonable is decided on a case-by-case basis. Generally, we ask ourselves what a reasonable person would have done in the same situation. This case was finely balanced but we decided that the insured person had taken sufficient care of his property.



Consumer credit

Consumer credit complaints make up the second largest category of complaints investigated. Typical complaints allege irresponsible lending, unfair recovery action or unreasonable fees.

We also see complaints where a borrower is sold credit-related insurance at the same time as they take out the loan, but the insurance is of little to no value to them. For example, the borrower is not working full-time and so would not qualify for redundancy cover under the policy. The insurance is paid in a lump sum added to the loan principal, so the borrower also pays interest on the insurance premium for the life of the loan. We urge lenders to make sure the borrower understands the agreement they are entering into and that any insurance product is suitable for that particular borrower's needs.

Case study 3 is an example where a particularly vulnerable borrower was sold credit-related insurance of little value to him. The case raised further concerns about the suitability of the loans made to this borrower.

Case study 4 is an example of a case where the lender got a Property Law Act notice wrong resulting in the borrowers' house being sold at mortgagee sale causing them a substantial loss. In this case the lender recognised its mistake and did the right thing – putting the borrowers back in the position they would have been in had the house not been sold at mortgagee sale.

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This was a complex case going back many years and we are grateful for FSCL’s guidance to help resolve this ongoing matter.

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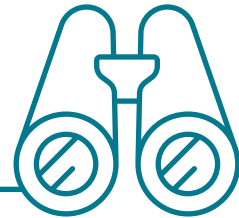
Poor communication

As we often mention in our training with scheme participants, many complaints result from poor communication between the business or adviser and their client. Typically, if communications had been clearer, the complaint would not have been made and the relationship would have been preserved. Case study 5 is one such example where better communication could have made all the difference.



Systemic issues

We have investigated two large systemic issues this year, both involving undisclosed or poorly disclosed fees. In both cases the scheme participants have made or are in the process of making changes to their disclosure.



Looking ahead

We have already started to see a number of complaints flowing from the Covid-19 pandemic. So far these have mainly been travel insurance complaints, but we have also seen complaints where a borrower is suffering serious financial hardship because they have lost their job or are facing reduced income and they feel the lender is not giving them sufficient relief. We expect to see more of these complaints as the various government financial relief packages end in the next few months.

We have also seen complaints where consumers thought they had insurance cover, such as business interruption insurance or income protection insurance, that would cover them for losses flowing from the pandemic, but this has not been the case. We also expect to see KiwiSaver complaints relating to declined financial hardship withdrawals, or where consumers have received less than they thought they would from their fund. We are getting ready for higher complaint numbers and will no doubt be reporting on these cases in our next annual report.



COVID-19 – WHAT’S THE REASON FOR YOUR CLAIM?

Atalia and her husband were due to travel to Canada in late March 2020. They had purchased their trip using their platinum credit card, so they qualified for automatic travel insurance.

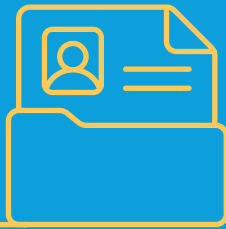
However, the Covid-19 virus put a stop to the trip. Atalia cancelled her flights in late March, and filed a claim under her travel insurance policy. The insurer declined her claim, saying Atalia had cancelled her trip due to government interference, which was excluded under her policy. Atalia was not pleased with this decision, so she complained to FSCL.



Dispute

The insurer said that Atalia cancelled her trip due to Canada closing its borders in mid-March. Atalia’s policy did not cover government interference, so her claim was declined.

Atalia said she cancelled her trip based on doctor’s advice, not because of the border closures. She and her husband had seen their doctor in early March, and the doctor had told them that they should not travel overseas, due to her husband’s heart issues.



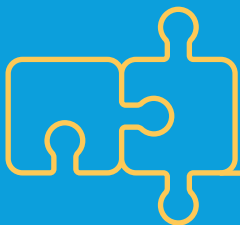
Review

After reviewing the relevant evidence, we found that the insurer was entitled to decline Atalia's claim. Atalia clearly had multiple reasons for cancelling her trip, so the insurer needed to look for the main reason – in insurance terminology, this is the proximate cause for the claim.

We accepted that the doctor's recommendation was a major factor in Atalia's decision, but we were satisfied that the border closures were the main reason Atalia needed to cancel her trip. Atalia was advised by her doctor not to travel nearly a month before her trip, but she did not cancel the trip right away. It was only once the borders in Canada closed that Atalia took steps to cancel her trip and file a claim.

Since the main reason for the cancellation was the border closures, the claim fell under the exclusion for government interference, and the insurer was entitled to decline the claim.

Even if Atalia had cancelled her trip due to her doctor's recommendation, we found that her claim still wouldn't be covered. The doctor had recommended against travel mainly because Atalia's husband's history of heart issues meant that he was at high risk if he contracted Covid-19. These heart issues were pre-existing medical conditions, which were not covered by Atalia's policy.



Resolution

Atalia was disappointed, but she accepted our decision.



FSCL consumer insight

Some insurance policies have a blanket exclusion for pandemics or epidemics. If your insurance policy has a pandemic exclusion, it will be very difficult to make a claim if it is in any way related to Covid-19.

Other policies don't have a specific exclusion for pandemics. In these cases, the insurer will need to look carefully at the circumstances around your claim and assess whether it falls under any of the policy's exclusions.

As well as carefully reading your insurance policy before purchasing, it's worth checking your policy before making a claim, to see if there are any exclusions which could apply to you.



HOW CARELESS IS GROSS CARELESSNESS?

Jiang was returning to New Zealand from overseas, travelling with his elderly parents. After a long day of travel, Jiang left his parents at the departure gate to go to the bathroom. While washing his hands, Jiang put a travel pouch containing his phone, headphones, sunglasses, and two cameras beside him at the wash basin. When the boarding call for his flight sounded, Jiang's thoughts went immediately to his parents who were keen to get on the flight without delay. Jiang ran from the bathroom, leaving the pouch behind.

After about five minutes, Jiang noticed the pouch was missing and returned to the bathroom, but the pouch was gone. The lost and found counter was unattended so Jiang asked ground crew what he should do and was told to get on the flight and call the airport once he arrived back in New Zealand.

Jiang followed the ground crew's advice but, when he called the airport, was advised that the pouch had not been handed in. Jiang lodged an insurance claim for \$5,700.

The travel insurer declined the claim, referring to an exclusion in the policy for items left unattended in a public place. Jiang disagreed and complained to FSCL.



Dispute

The insurer explained that it was a condition of the policy that Jiang not leave items unattended. The insurer acknowledged that it routinely receives and accepts claims for low value items that are accidentally left behind. However, given the value of the items in the pouch, the insurer considered that a reasonable person would not have taken the pouch off, and if they had, would have remembered to pick it up again. The insurer considered that Jiang had been grossly careless and was not entitled to compensation for his loss.

Jiang did not believe his claim was excluded by the policy. Jiang accepted that he had been careless, but did not consider his actions amounted to gross carelessness. Jiang said that it was a momentary lapse of attention, he did not intend leaving the pouch behind, and considered this was exactly the scenario that insurance was intended to cover.



Review

The central issue to this complaint was whether Jiang's actions amounted to gross carelessness. We considered Jiang's actions in two parts:

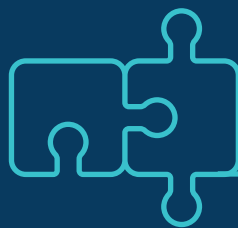
- the decision to remove the pouch from his neck and place it beside him at the basin
- the failure to pick the pouch back up again.

Jiang explained that he removed the pouch to prevent it from banging against the basin while he was washing his hands. This was a conscious decision and by doing so, Jiang introduced an element of risk. However, the risk of loss at this point was so slim that we had difficulty concluding that Jiang could be considered careless at this point.

Then, human nature intervened. Jiang heard his boarding call and his attention was immediately diverted to his elderly parents. Jiang momentarily forgot about the pouch. We needed to decide whether this action was merely careless, or whether it reached the bar of gross carelessness.

In our view, value is relevant when determining the care a person can reasonably be expected to take, but it is not the only factor. We noted that the items were stolen from a bathroom in a busy airport, and while the only people with access to that bathroom must have a boarding pass and a passport, the location carried with it some risk. However, the action was inadvertent, a momentary lapse on the part of a tired, stressed traveller. It was also relevant that the items were left for a matter of minutes only. As soon as Jiang realised the pouch was missing, he returned to the bathroom.

In our view, Jiang had not been grossly careless and the insurer was obliged to accept the claim.



Resolution

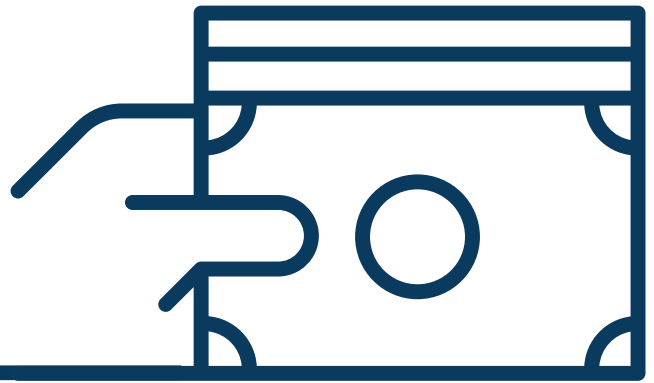
Both Jiang and the insurer accepted our view and Jiang's claim was paid out.



FSCL consumer insight

It is a condition of insurance that the insured takes reasonable care of their property. What is reasonable is decided on a case-by case-basis, but some of the factors we will take into consideration are:

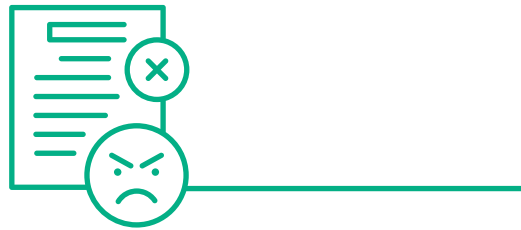
- **the situation in which the loss occurred**
- **whether there were lots of people around, or the insured is in a remote location**
- **whether the location is known to be risky**
- **the time of day the loss occurred**
- **whether this is a risk the insured routinely takes, or whether it was an inadvertent, momentary lapse of attention.**



UNSUITABLE CREDIT-RELATED INSURANCE



Akamu has an intellectual disability. While he has reasonably good verbal skills, he cannot read or write and, in his doctor's opinion, is unable to understand financial transactions.



During the 1980s, Akamu attended a sheltered workplace, but when that closed, he became a beneficiary. Akamu's family, in particular his niece Rebecca, kept an eye on him. More recently Akamu became a superannuitant and started living with Rebecca. In the context of this change, Rebecca reviewed his bank statements.

Rebecca discovered payments to a finance company. When she explored further, she discovered Akamu owed about \$5,000. Rebecca did not understand how a finance company could have loaned such a large amount of money to someone who, in her eyes, did not understand what he was doing.

Rebecca asked the finance company to wipe Akamu's debt and refund all the payments he had made over the years. The finance company declined, and Rebecca complained on Akamu's behalf to FSCL.

Dispute

The finance company disagreed that Akamu did not understand the financial transactions and considered he was liable to repay the debt. The finance company went on to explain that:

- Akamu had been an excellent customer for many years
- it was aware that he had an intellectual disability, but said it always took extra time to go through all the documents slowly with him
- recently, Akamu had asked questions about early repayment indicating he was capable of understanding the transaction
- it always contacted Akamu's two reference people before finalising the lending and had occasionally spoken to Rebecca, but no-one had ever raised concerns before
- it carefully assessed each application and was satisfied Akamu could afford the loan.

Rebecca said she recalled one telephone call from the finance company some years earlier, but said she thought Akamu had repaid that loan. Rebecca disagreed that the finance company had contacted her more recently. She said that each time the finance company approved a loan, Akamu believed he had repaid the last loan. In fact, this was not the case and Akamu's debt to the finance company was gradually increasing. Rebecca asked us to take a look at the finance company's decisions to lend.



Review

We reviewed Akamu's lending history. Over the last 10 years the finance company had approved 12 loans. The first loan, for which we had records, showed a top-up of \$800 to a loan balance of \$1,800. The history showed repeated requests from Akamu asking for more money and, with each approved loan Akamu's debt increasing.

After 6 June 2015, when the responsible lending obligations came into force, we were satisfied the finance company had followed a reasonable assessment process and that Akamu could indeed afford the loan. However, even without taking into consideration Akamu's status as a vulnerable consumer, we were concerned about the credit-related insurance sold to Akamu.

There was no evidence that the finance company had followed any insurance application process and it was unable to show us that it had considered whether the insurance would meet Akamu's needs, as required by the Credit Contracts and Consumer Finance Act.

We were concerned that, as a beneficiary, Akamu would not be eligible to claim under the provisions of the policy relating to lost income. Although there was a death benefit, this was likely to benefit the lender more than Akamu given he had no dependants or assets. We were also concerned that the amount of the lump sum premium, just over half the amount of the loan, was excessive.

Irrespective of Akamu's status as a vulnerable borrower, we felt the insurance was likely mis-sold and the finance company should cancel the policy and refund the premiums and interest to Akamu.

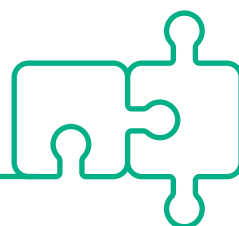
We then considered the finance company's decision to lend to Akamu. Under the Credit Contracts and Consumer Finance Act, the finance company was obliged to help Akamu make an informed decision. While it had identified that Akamu needed additional assistance, it was difficult for us to determine to what extent Akamu understood the transaction.

Given his actions, we were satisfied that Akamu understood he was borrowing money and needed to pay it back. But we wondered whether he understood that:

- when borrowing \$700, he would pay the finance company \$270 as an application fee

- he had not fully repaid the last loan when borrowing money again
- his outstanding balance was continually increasing.

In the light of these uncertainties, and our concerns about the credit-related insurance, we invited the finance company to propose a resolution.



Resolution

Although the finance company did not accept all our observations, it offered to:

- reduce Akamu's debt to \$2,000
- waive all future fees and interest
- allow Akamu to repay the loan at \$25 a week.

Rebecca and Akamu accepted the finance company's offer.



FSCL participant insight

The term 'intellectual disability' describes a broad spectrum of abilities. Some people with intellectual disabilities are able to make financial decisions and live relatively independent lives. For others, such decisions are beyond their understanding. This decision should not be seen as a precedent that finance companies can never lend to people with intellectual disabilities, as such an outcome would be a breach of human rights.

However, responsible lenders are obliged to make sure borrowers understand the agreement they are entering into. For most lending decisions this will be straightforward, but when dealing with a vulnerable borrower, we acknowledge that lenders are placed in a difficult position, because lenders are not qualified to assess a person's cognitive abilities. One solution may be, if you suspect the borrower may not understand the agreement, to ask the borrower to bring a support person with them so that you can gather more information about the borrower's level of understanding.

4

CASE STUDY



MORTGAGEE MISTAKES

In 2017, Lee and Brian bought a house for around \$550,000 with a deposit of \$150,000. They initially borrowed the balance of the purchase price from a bank, but ran into financial difficulties when Brian was made redundant. They refinanced with an interest-only mortgage from a non-bank lender, agreeing to pay around \$3,000 in loan repayments on the first of each month.

Brian got a new job, but unfortunately was made redundant again, and the couple defaulted on their 1 July loan repayment. The lender demanded payment of the outstanding amount, plus penalty interest (of almost \$2,000) and a default fee. Lee and Brian paid the outstanding amount and the default fee on 17 July, but disputed the penalty interest. They then defaulted on their 1 August loan payment.

On 30 August, the lender issued a Property Law Act (PLA) notice to Lee and Brian. According to

the PLA notice, Lee and Brian had to pay almost \$450,000, made up of the full amount of the mortgage, plus interest and fees, by 2 October. Under the PLA notice, the lender would proceed to a mortgagee sale if the amount demanded was not paid. Lee and Brian were overwhelmed by this demand; they could not pay \$450,000. The lender proceeded with a mortgagee sale and sold the property for around \$500,000. Once the lender's debt was repaid, Lee and Brian walked away with only \$10,000.

Lee and Brian complained to FSCL.



Dispute

The essence of Lee and Brian's complaint was that the lender had sold their home too cheaply. The lender disputed this, saying it had used a respected real estate firm, that the house was sold by auction, and that there was more than one bidder on the day.

Overall, we considered that the errors were so significant that a court would likely have deemed the PLA notice invalid. We wondered if history might have taken a different course had Lee and Brian known they had to pay only \$4,400. They may have come up with that amount or taken steps to agree with the lender that they could sell the property themselves. We also noted that it may never have got to that point had the lender made a demand for the correct amount after 1 July.



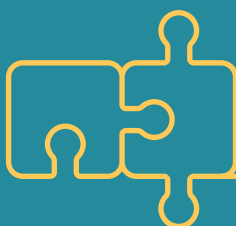
Review

We could not see any obvious flaws in the sales process itself. We noted that properties sold by mortgagee sale almost inevitably yield less than if sold in a willing seller/buyer situation.

However, we noticed significant defects in the PLA notice. The law says that a lender can only make demand in a PLA notice for amounts that are actually outstanding (the payments the borrower had defaulted on, plus any associated default interest/fees). The total amount owing under the mortgage only becomes payable if the borrower does not pay those outstanding amounts. In this case, the PLA notice said that the total amount owing under the mortgage was payable. That was incorrect. The lender could legitimately only have made demand in the PLA notice for around \$4,400 (the default amounts), not \$450,000 (the total amount owing under the mortgage).

The PLA notice contained other errors too. For example, penalty interest was incorrectly calculated. We could see that this mistake had been made shortly after the 1 July payment default – the lender demanded almost \$2,000 in penalty interest, when it was only entitled to demand around \$20. It was also not entitled to demand a default fee, meaning that, unbeknownst to them, Lee and Brian brought themselves up-to-date with their 17 July payment.

It appeared that the lender had incorrectly treated the loan as a business loan, when making demand for payment, rather than a consumer credit contract.



Resolution

We proposed that the lender refund the interest and fees that had been (incorrectly) demanded in the PLA notice and deducted from the house sale proceeds, a total of about \$21,000. We also invited the lender to make a settlement proposal to Lee and Brian, bearing in mind the material defects in the PLA notice and the mistakes in the original demand for payment.

The lender took a principled approach to our suggestion. Without admitting liability, the lender made a payment to Lee and Brian of around \$155,000. For Lee and Brian, this effectively put them back in the position they were in three years earlier, when they had \$150,000 saved for a deposit. This was a life-changing outcome for them.



FSCL participant insight

It is vital that a PLA notice complies with the law and correctly sets out what a borrower must pay. Consumers are entitled to rely on the accuracy of PLA notices, as they have to make, often very significant, decisions based upon them.

5

CASE STUDY



FUNGI FIASCO

Yann operates a natural beauty product business and imports a mixed-fungi product to make his lotions. One of these fungi became listed as a ‘new organism’ and was prohibited from entering New Zealand. Yann contacted his manufacturer and requested that his mixed-fungi orders exclude the prohibited fungus.

A shipment of Yann’s mixed-fungi was caught at the border and quarantined. Yann needed the product urgently to be able to market his lotions at the most profitable time of the year. To avoid missing this window, Yann ordered another batch of mixed-fungi by air freight.

Unfortunately, the air-freighted fungi did not arrive in time and Yann couldn’t sell his lotions within the window of demand. Yann lodged a business interruption claim for his lost income and a marine cargo claim for the spoiled shipment.

In the meantime, the Ministry for Primary Industries alerted Yann to the fact that the ingredient list on the quarantined bottles of mixed-fungi included the prohibited fungus. Yann, with the support of the manufacturer, claimed that the product was incorrectly labelled

and did not contain the prohibited fungus.

The Ministry tested the ingredients, detected the fungus and subsequently destroyed the product. Yann contacted his broker to raise the possibility of claiming under his statutory liability policy for this additional loss.

Yann did not receive any updates about his claims for an extended period. He began to feel increasingly desperate and complained to his broker.

When the broker told Yann that he was only covered for his marine cargo claim, Yann complained to FSCL then moved his business to a new insurance broker who said he had identified a product recall policy that would have covered Yann’s loss.



Dispute

Yann complained that his broker had failed to provide cover for the situation that had caused his financial loss. He also believed that his broker's service through the claims process was unacceptable. He felt his broker had failed to advocate for him and did not keep him up-to-date on the progress of his claims.

The broking firm responded that there was no insurance policy that would have covered the loss caused by the Ministry quarantining and destroying the mixed-fungi shipment. The firm felt that the broker had been diligent and had apologised for any mistakes during the claims process.

Although some parts of Yann's claims had been handled diligently, overall the level of communication was poor. The broker had not responded to Yann's questions and had failed to keep him informed about any progress in his claims.

Cover under Yann's statutory liability policy would only be triggered if Yann was prosecuted. The Ministry hadn't laid charges against Yann and the policy did not cover the situation. The broker was aware of this from the outset but did not explain this to Yann. The communication fell below an acceptable standard and caused Yann to lose faith in the competency of his broker.

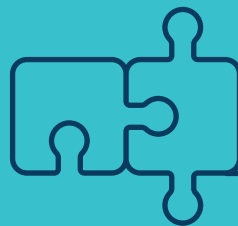


Review

We explained to Yann that we could only require the broker to compensate him for any financial loss that was a direct cause of the broker's actions or omissions.

We asked Yann to provide a copy of the policy that his new insurance broker said would have covered his situation. On review, we concluded that although the policy provided Yann's business with some extra benefits, it did not cover this particular loss. This was because the policy provided for product recall, which was the recall or withdrawal of the sale or use of the insured's product. The quarantining and destruction of Yann's imported mixed-fungi was neither. The policy also required the product to be defective in order to be covered. The mixed-fungi was as it was supposed to be, but now contained a banned substance.

We recommended that Yann contact his supplier to seek a remedy for his loss. The manufacturer of the fungi had erroneously confirmed in writing that the mixed-fungi being quarantined was because of a labelling issue, not because it contained the prohibited fungus. Yann's loss was the result of the manufacturer's error, not any fault by his broker.



Resolution

We found that Yann's financial loss was not his broker's fault, but the level of service and communication was not satisfactory and caused Yann unnecessary stress and inconvenience. We proposed that his broker pay Yann \$1,000 compensation. While this wasn't the outcome that Yann was looking for, he accepted the payment from his broker to settle the complaint.



FSCL participant insight

Good communication is essential in your relationship with your clients, especially when you are delivering bad news. Be up front about policy limitations and keep your clients informed throughout the claims process, even if you do not have much progress to report.

BOARD OF DIRECTORS



Jane Meares
Board Chair

Jane is a commercial barrister, with a wide range of public and commercial experience. She is also the Chief Commissioner of the Transport Accident Investigation Commission, a standing commission of enquiry and an independent Crown entity. Jane is also the Deputy Chair of the Electoral Commission.

Jane currently has a number of governance roles and is a director of ECNZ, Chair of the Ballet Foundation of New Zealand Trust and a trustee of the UNICEF Children's Foundation.



Tuhi Leef
Consumer Representative

Tuhi hails from the north (Ngāpuhi, Ngāti Whātua) and is currently the CEO for the Genesis Youth Trust.

Tuhi has several years of governance experience and attained his postgraduate certificate in governance from the University of Waikato. He is also a chartered member of the Institute of Directors.

Over the last five years Tuhi has used his strong financial services background to help several hundred Māori, Pasifika and New Zealand whānau improve their financial literacy, mainly assisting families with budgeting, savings and debt reduction plans.



Gary Young
Industry Representative

Gary was the Insurance Brokers Association of New Zealand CEO from 2006 to early 2020. Prior to this Gary worked in insurance for 30 years, mainly in insurance broking with local and international companies as a broker/adviser, CEO, director and shareholder. Since 2009 Gary has been a member of the Code Committee for financial advisers and is currently a director of Professional IQ College, an NZQA-accredited private training establishment for financial services.



Mary Holm ONZM
Consumer Representative

Mary writes a personal finance Q&A column in the Weekend Herald, presents a financial segment on RNZ, and is a best-selling author and seminar presenter on personal finance. Mary is also a former director of the Financial Markets Authority. She holds an MBA in finance from the University of Chicago. Mary has been the business editor of the Auckland Sun and Auckland Star, and a member of the Capital Markets Development Task force and the Savings Working Group. In 2020 Mary was awarded an ONZM for her service to financial literacy education in New Zealand.



Roger J Kerr
Industry Representative

Roger has more than 35 years of merchant and investment banking experience in New Zealand's financial and investment markets. Roger is regarded as one of New Zealand's leading professional advisers and commentators on local and international financial markets, the New Zealand economy and corporate treasury management. He was a director/shareholder of Asia-Pacific Risk Management Ltd from 1998 to 2012 and a partner and contractor at PwC New Zealand (Treasury Advisory) from 2012 to 2018.

Roger is currently Executive Chair of Barrington Treasury Services Limited and a director of Pie Funds Limited, ETOS Limited, Mie Pay Limited and Forli Partners Limited.

COMPANY INFORMATION



Financial Services Complaints Ltd (FSCL) was incorporated as a limited liability company on 26 August 2009, incorporation number 2303993. The registered office is at level 4, 101 Lambton Quay, Wellington.

FSCL was approved by the Minister of Consumer Affairs as an approved dispute resolution scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 in April 2010.

Board of Directors

FSCL's Board of Directors is responsible for overseeing the operations of the company, for ensuring independent decision making by the Chief Executive Officer and staff of the company, and for preserving the independence of FSCL's dispute resolution scheme.

Under its constitution, FSCL's Board of Directors is made of up of:

- an independent Chair appointed by the Board
- two participant/industry directors appointed by the Board to represent the participants of FSCL
- two consumer directors appointed by the Board to represent the interests of consumers.

Chief Executive Officer

The Chief Executive Officer:

- has overall management responsibility of FSCL's dispute resolution scheme
- is empowered to make binding recommendations and determinations in relation to consumer complaints made against FSCL participants
- is responsible for establishing systems and procedures to maintain FSCL's efficient and effective operations in accordance with FSCL's terms of reference
- has all the other powers, functions and duties conferred by FSCL's constitution and terms of reference, and as conferred and delegated by the Board from time to time.

Independence in decision-making

The decision-making process and administration of FSCL's dispute resolution scheme are independent of its participants who provide its funding. The Chief Executive Officer and FSCL's staff are:

- entirely responsible for the handling and termination of complaints
- accountable only to the Board of Directors.

FSCL's terms of reference

Complaints about participants are dealt with by FSCL in accordance with the terms of reference promulgated by FSCL's Board and as approved by the Minister of Consumer Affairs.

FSCL's participants

A list of FSCL's participants is available on its website – www.fscl.org.nz

Shareholder

The shareholder of the company holds the shares on trust for the fulfilment of the company's objects which are to provide an external dispute resolution service for its participants. There are 100 ordinary shares.

SUMMARY FINANCIAL STATEMENTS

Summary profit and loss statement
for the year end 30 June 2020



	2020	2019
	\$	\$
Revenue	1,768,649	1,693,657
TOTAL REVENUE	1,768,649	1,693,657
Expenses		
Administration	1,871,103	1,669,844
Non cash items	38,268	38,238
Total expenses	1,909,371	1,708,082
NET BUSINESS SURPLUS	(140,722)	(14,425)
Other income	76,368	91,962
	76,368	91,962
NET SURPLUS	(64,354)	77,537

Summary statement of movements in equity
for the year ended 30 June 2020

	2020	2019
	\$	\$
Net surplus for the year	(64,354)	77,537
Equity at beginning of year	2,778,438	2,700,901
EQUITY AT END OF YEAR	2,714,084	2,778,438

These summary statements are to be read in conjunction with the notes to the summary financial statements

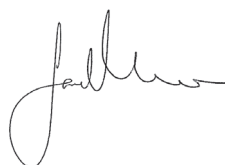
Summary balance sheet for the year end 30 June 2020

	2020	2019
	\$	\$
EQUITY	2,714,084	2,778,438
Current assets		
Cash, bank balances and short term deposits	2,711,841	2,335,648
Receivables	62,447	55,131
Prepayments	25,188	20,450
	2,799,476	2,411,229
Non current assets		
Property, plant and equipment	111,792	97,868
Intangibles	23,255	29,842
Term deposits	-	381,213
	135,047	508,923
TOTAL ASSETS	2,934,523	2,920,152
Current liabilities		
Payables	74,417	36,530
Income in advance	55,067	3,621
Accrued charges	90,028	96,923
Lease incentive	927	3,713
	220,439	140,787
Non current liabilities		
Lease incentive	-	927
	-	927
TOTAL LIABILITIES	220,439	141,714
NET ASSETS	2,714,084	2,778,438

APPROVAL OF FINANCIAL STATEMENTS

These Summary Financial Statements have been approved by the board on 28 August 2020. For and on behalf of the Board of Directors:

These summary statements are to be read in conjunction with the notes to the summary financial statements



Director



Director

SUMMARY FINANCIAL STATEMENTS

Summary Statement of Cashflow
for the year end 30 June 2020



	2020	2019
	\$	\$
CASH WAS PROVIDED BY (USED FOR)		
Operating activities		
Receipts from Participants	1,798,770	1,697,952
GST movement	7,831	(3,792)
Operating costs	(1,849,449)	(1,682,502)
Income tax paid	6,629	9,329
	(36,219)	20,987
Investing activities		
Payments to property, plant and equipment and intangible assets	(45,605)	(7,404)
	(45,605)	(7,404)
Financing activities		
Increase of term deposits	(32,865)	(56,245)
Net interest received	76,804	93,309
	43,939	37,064
NET MOVEMENT IN CASH	(37,885)	50,647
Opening bank balances	421,912	371,265
CLOSING BANK BALANCES	384,027	421,912
Represented by		
Bank balances	384,027	421,912
CLOSING BANK BALANCES	384,027	421,912

These summary statements are to be read in conjunction with the notes to the summary financial statements

SUMMARY FINANCIAL STATEMENTS

Notes to the summary financial statements for the year end 30 June 2020



The Summary Financial Statements have been prepared for the individual entity Financial Services Complaints Limited for the accounting period ended 30 June 2020. Also included for comparative purposes are figures for the period ended 30 June 2019.

The specific disclosures included in the Summary Financial Statements have been extracted from the Full Financial Services Complaints Limited Financial Statements. The Summary Financial Statements do not include all disclosures provided in the Full Financial Statements and cannot be expected to provide as complete an understanding as provided by the Full Financial Statements.

Financial Services Complaints Limited does not have a general purpose financial reporting requirement. Financial Services Complaints Limited's constitution requires the preparation of special purpose financial statements within five months of the company's balance date.

The Full Financial Statements for Financial Services Complaints Limited have been prepared applying the Public Benefit Entity Simple Format Reporting - Accrual (Not for Profit) ("PBE SFR-A (NFP)") standard with the exception of an entity information page and the preparation of a statement of service performance.

The purpose of the Full Financial Statements is to provide users with consistent year on year information regarding the financial performance and position of Financial Services Complaints Limited and so that the company can meet its obligations under the Income Tax Act.

The Summary Financial Statements are presented in New Zealand dollars, which is the operational currency of Financial Services Complaints Limited. All financial information presented in New Zealand dollars has been rounded to the nearest dollar.

The Full Financial Statements for the year end 30 June 2020 were authorised for issue by the directors of Financial Services Complaints Limited on 28 August 2020 and an unmodified audit report was issued by BDO at that date.

The Full Financial Statements for the year end 30 June 2019 were authorised for issue by the directors of Financial Services Complaints Limited on 30 August 2019 and an unmodified audit report was issued by BDO at that date.

A copy of the Full Financial Statements can be obtained via the Financial Services Complaints Limited's website; <http://www.fscl.org.nz/>.



BDO Wellington Audit Limited

INDEPENDENT AUDITOR'S REPORT ON THE SUMMARY FINANCIAL STATEMENTS To the Shareholders of Financial Services Complaints Limited

The accompanying summary financial statements, which comprise the summary balance sheet as at 30 June 2020, the summary profit and loss statement, the summary statement of cashflow and summary statement of movements in equity for the year then ended, and related notes are derived from the audited special purpose financial statements of Financial Services Complaints Limited for the year ended 30 June 2020. We expressed an unmodified audit opinion on those special purpose financial statements in our report dated 28 August 2020. Those financial statements, and the summary financial statements, do not reflect the effects of events that occurred subsequent to the date of our report on those financial statements.

The summary financial statements do not include all the disclosures included in the special purpose financial statements. Reading the summary financial statements, therefore is not a substitute for reading the audited special purpose financial statements of Financial Services Complaints Limited.

Directors' Responsibility for the Summary Financial Statements

The directors are responsible for the preparation of a summary of the audited special purpose financial statements in accordance with FRS-43: *Summary Financial Reports* ("FRS-43").

Auditor's Responsibility

Our responsibility is to express an opinion on these summary financial statements based on our procedures, which were conducted in accordance with International Standard on Auditing (New Zealand) (ISA (NZ)) 810, "Engagements to Report on Summary Financial Statements".

Other than in our capacity as auditor we have no relationship with, or interests in, Financial Services Complaints Limited.

Opinion

In our opinion, the summary financial statements derived from the audited special purpose financial statements of Financial Services Complaints Limited for the year ended 30 June 2019 are consistent, in all material respects, with those special purpose financial statements in accordance with FRS-43.

Basis of Accounting and Restriction on Distribution and Use

Without modifying our opinion, we draw attention to the Notes to the summary financial statements, which describes the basis of accounting. The summary financial statements are prepared to assist the shareholders by providing users with consistent year on year information regarding the summary financial performance and position of Financial Services Complaints Limited. As a result, the summary statements may not be suitable for another purpose. Our report is intended solely for the shareholders and should not be distributed to or used by parties other than the shareholders.

BDO Wellington Audit Limited

BDO WELLINGTON AUDIT LIMITED

28 August 2020

Wellington

New Zealand

COMPANY DIRECTORY



Level 4, 101 Lambton Quay
Wellington 6011

Incorporation number

2303993

IRD number

103-018-668

Directors

Jane Meares
Tuhi Leef
Gary Young
Mary Holm
Roger J Kerr

Shareholder

The Board Chair is the company's sole shareholder and holds the shares on trust for the fulfilment of the company's objective, which is to provide an external dispute resolution scheme for its participants.

Accountants

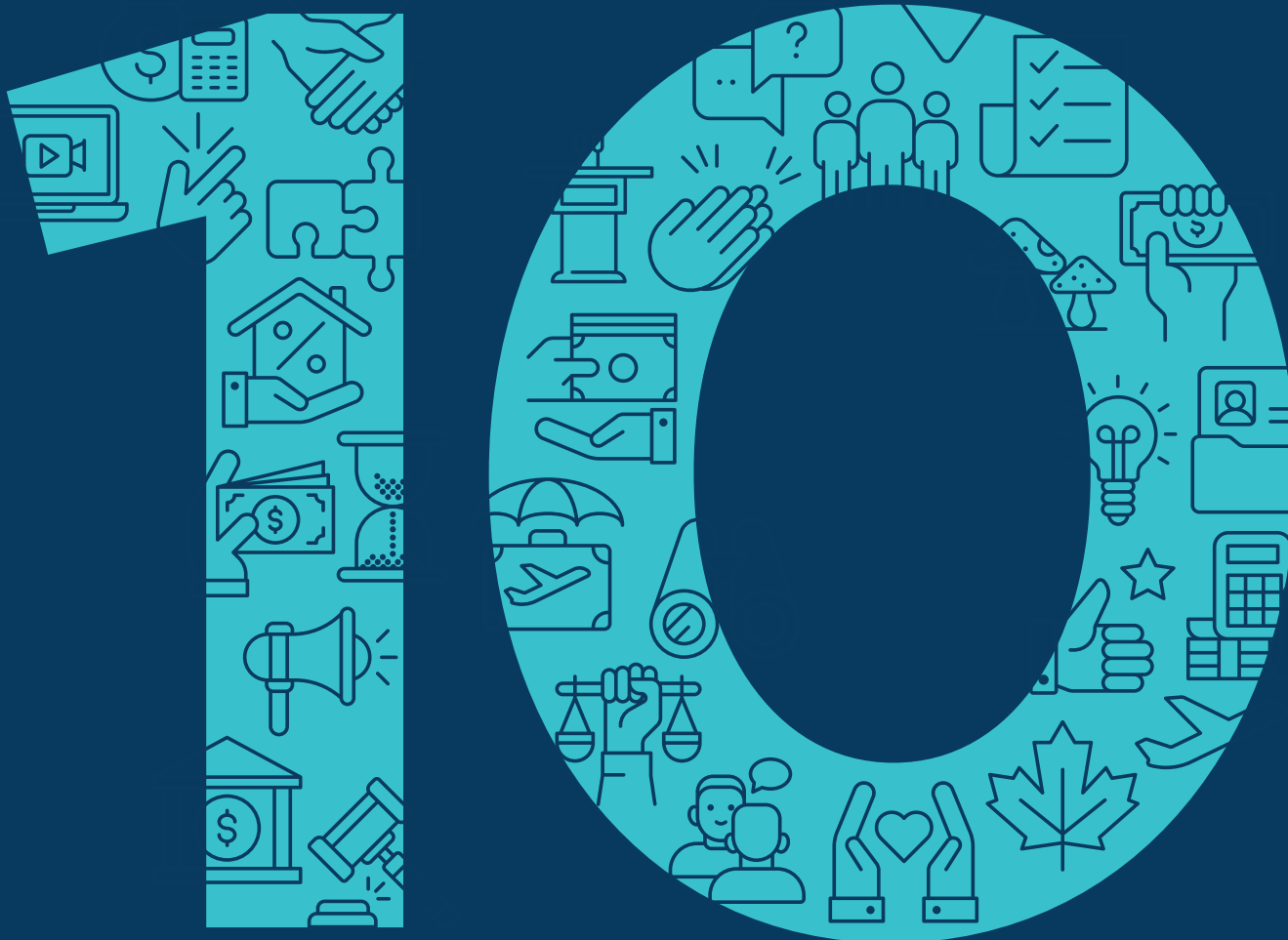
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FSCL
FINANCIAL SERVICES COMPLAINTS LTD

INDEPENDENT DISPUTE RESOLUTION