



2018/2019

ANNUAL REPORT



**WE RESOLVE
COMPLAINTS SIMPLY
AND CONFIDENTIALLY
BY WORKING WITH
CONSUMERS AND THEIR
FINANCIAL SERVICE
PROVIDER TO REACH
A FAIR OUTCOME.**

CONTENTS

SNAPSHOT OF OUR YEAR 4

CHAIR'S FOREWORD 6

CEO OVERVIEW 8

HOW DO CONSUMERS RATE US? 10

CASE STATISTICS 12

CASE ISSUES 17

CASE STUDIES 18

BOARD DETAILS 28

COMPANY INFORMATION 29

SUMMARY FINANCIAL STATEMENTS 30

COMPANY DIRECTORY xx

SNAPSHOT OF OUR YEAR

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.

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.

258

Cases investigated
and resolved

4,952

Consumer
enquiries and
complaints
about financial
service providers
answered

90%

Overall satisfaction
with FSCL's services

7,150

Scheme participants

19

Training
presentations
and webinars



Jane Meares
Board Chair

CHAIR'S FOREWORD

I continue to be impressed at the breadth of issues FSCL deals with – not only in resolving disputes, but in providing expert comment on changes to the regulatory landscape and in sharing information with our participants, consumers and the wider sector.

While every organisation has a rhythm to its year, that does not mean we can predict with any certainty the challenges and opportunities that lie ahead.

In a year where we have continued to see a lot of change or proposed change in the regulatory area, particularly for financial advisers and lenders, it has been a steady but busy year at FSCL. Complaints have remained at a similar level to last year, there have been many option papers to consider and submit on and, pleasingly, an increase in demand for the FSCL team to share their work and insights from complaints.

The year has also been a steady one for the Board, with no changes at board level and industry representative, Roger Kerr, reappointed for a further three-year term as from 1 October 2018.

The Board has taken the opportunity to make some refinements to our processes to ensure we are carrying out our governance role effectively. This year we undertook our biennial self-assessment process to assist in doing this. We also made a change to FSCL's terms of reference to remove the option for decisions to be made by way of a panel hearing, confirming that the sole

decision-making authority for complaints would rest with our Chief Executive Officer. The Board continues to be mindful that it is not the role of the Board to involve itself in the resolution of disputes, but rather to operate as governors. I extend my thanks to my fellow directors for their wise guidance in these matters.

STRATEGIC REVIEW

The Board carried out a thorough review of FSCL's strategy earlier this year. The organisation will continue to focus on:

- increasing consumer awareness of FSCL and its services and increasing consumers' trust in the scheme
- providing FSCL participants with the tools to help avoid or resolve complaints quickly
- contributing to law reform, drawing on our experience and expertise obtained from investigating and resolving complaints
- supporting our staff with training and tools to help them continue performing at a high level, and
- sharing the lessons learned from complaints with all our stakeholders.

“WHILE EVERY ORGANISATION HAS A RHYTHM TO ITS YEAR, THAT DOES NOT MEAN WE CAN PREDICT WITH ANY CERTAINTY THE CHALLENGES AND OPPORTUNITIES THAT LIE AHEAD.”

The scheme is due for its second independent review early next year. We will be encouraging stakeholders to make a submission to the independent reviewer. Feedback can only help FSCL improve the quality of our services.

USE OF THE OMBUDSMAN TITLE

Last year I reported that we were awaiting the Chief Ombudsman's decision on FSCL's application to use the ombudsman title. In February 2018, the Court of Appeal allowed FSCL's appeal of the Chief Ombudsman's refusal to allow us use of the name and directed the Chief Ombudsman to reconsider FSCL's application.

After waiting nearly 15 months for the Chief Ombudsman's reconsideration, we were extremely disappointed to receive Mr Boshier's final decision in June, again declining FSCL's use of the ombudsman name. As I noted last year, FSCL meets the recognised ombudsman principles of fairness, independence, accessibility, accountability, efficiency and effectiveness. Our experience shows that consumers have greater awareness of and trust in an organisation with the ombudsman name and are more likely to find and approach a complaints service called an ombudsman. The Board is now considering its options, one of which may be to ask the courts to review the reasonableness of the Chief Ombudsman's decision.

It is also disappointing that in March this year, the Minister of Justice introduced a new bill to parliament, the Ombudsman (Protection of Name) Bill, which seeks to prohibit use of the

ombudsman name by any non-government dispute resolution scheme. There are savings provisions for the two existing industry ombudsman schemes and FSCL, if we succeed in obtaining the use of the name.

We see the bill as a backward step for consumer protection. In our view, the current protection in the Ombudsman Act, where the Chief Ombudsman's consent is required to use the name ombudsman and strict quality criteria apply, strikes the right balance between the need to preserve the integrity and mana of the ombudsman name and recognising quality dispute resolution schemes that consumers and participants trust will provide a fair and independent hearing.

THANKS TO FSCL STAFF

The Board is well aware of the contribution that our Chief Executive Officer Susan Taylor and her team make to FSCL's work. Ensuring that our staff are supported is a key concern of the Board. Challenging complainants and occasional participants often bring an unwanted level of stress to staff, and concerns for their health, safety and mental wellbeing are paramount. On behalf of the Board, my thanks to all our staff for their dedication and commitment, in what can at times be a challenging environment.



Susan Taylor

Susan Taylor
Chief Executive Officer

CEO OVERVIEW

Effective, independent and impartial dispute resolution is an essential part of the consumer protection framework in the financial services sector. FSCL plays an important part in this framework, we take pride in our work and the positive influence we can have.

It has been a busy year for FSCL as the numbers show, and an eventful year in the wider sector. Our participant numbers have remained steady with approximately 7,200 financial services providers choosing FSCL as their external dispute resolution scheme. Complaint intake has also been steady.

We have continued to share our experience gained from our investigations to help educate consumers, train our participants, and inform policy makers when considering new laws and regulations.

REGULATORY CHANGES

On the regulatory front, we have seen:

- the passing of the Financial Services Legislation Amendment Act, which introduces licensing for financial advisers and a number of new legal duties, including the duty to prioritise the customer's interests
- the introduction of a new code of professional conduct for financial advice services, which will apply to all advisers in the future

- reviews of the Credit Contracts and Consumer Finance Act, Fair Insurance Code and insurance contract law
- reports by the FMA and Reserve Bank into the conduct of banks and life insurers.

All these moves aim to lift standards within the industry and to improve customers' experiences when dealing with financial advisers or financial service providers. This can only be positive for the industry and for its consumers.

OMBUDSMAN PROTECTION OF NAME

As our Board Chair Jane Meares has reported, we have also seen a new bill aiming to further restrict use of the ombudsman title. New Zealand is the only country in the world to afford some protection to the ombudsman name – a person may only use it with the consent of the Chief Ombudsman. The proposed new law will further restrict use to government organisations or entities (with the Minister of Justice's consent), meaning no private sector dispute resolution or complaints schemes will be able to seek use of the name. It is disappointing that that bill was designed without any consultation with affected or interested parties outside government.

“ALL THESE MOVES AIM TO LIFT STANDARDS WITHIN THE INDUSTRY AND TO IMPROVE CUSTOMERS’ EXPERIENCES WHEN DEALING WITH FINANCIAL ADVISERS OR FINANCIAL SERVICE PROVIDERS. THIS CAN ONLY BE POSITIVE FOR THE INDUSTRY AND FOR ITS CONSUMERS.”

Internationally, there are many industry-based consumer dispute resolution schemes which operate alongside parliamentary or state ombudsmen to provide access to justice for consumers. Indeed, the word ‘ombudsman’ is synonymous with a consumer’s right to have a grievance independently investigated and fairly heard. Provided quality criteria apply for use of the ombudsman title, there is, in my view, no sound policy reason for placing New Zealand apart from the rest of the world and restricting use of the name to government organisations.

We have submitted strongly against the bill.

OUTREACH

A key principle in operating a financial dispute resolution scheme is ensuring accessibility. FSCL has continued to promote its services to the public and to make this a priority. We have run a number of workshops for consumer organisations and financial mentors to educate them about our work and how we can help, and we have published consumer newsletters and case notes on our website. More recently, we have contributed to FinCap’s revamp of its client management system, which we hope will, in time, allow more efficient referral of cases from financial mentors to the financial dispute resolution schemes.

During the year we conducted 19 workshops, webinars, conference and professional development presentations for participants, and made 10 submissions on consultation and options documents for relevant new laws, regulations and codes.

Despite the heavy workload in terms of our outreach, training and policy assistance, we have continued to maintain the efficiency and effectiveness of our core work – investigating and fairly resolving complaints.

THANKS

I am grateful to our Board Chair, Jane Meares, for her guidance and support during the past year. I also thank the other Board members for their insight and commitment to the betterment of FSCL for all stakeholders.

This year’s annual report reflects many aspects of all the work FSCL does, not just in resolving complaints, but in sharing our expertise and experience with others, providing excellent support services and training to our participants, and consumer outreach. This work would not be possible without our staff members’ resilience, commitment to, and belief in the work that FSCL does. I thank them all.

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.

90%

The FSCL complaint process was easy to use and understand

95%

FSCL staff listened to me and showed me courtesy and respect

**"I WISH TO THANK YOU
ALL FOR YOUR SUPPORT,
ESPECIALLY FSCL
FOR THE THOROUGH
INVESTIGATION YOU
GUYS DID."**

COMPLAINANT

89%

The FSCL
process
provided an
outcome
in a timely
manner

88%

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

CASE STATISTICS

**It has been another busy year for FSCL.
We responded to 4952 enquiries and
complaints, slightly up on last year.
As with previous years, more than half
were about lenders and finance companies.**

The number of new cases we opened for investigation (disputes) remained steady, with 282 cases opened, just short of last year's 288. After a big jump from the previous year 35%), it appears this level of disputes is the new norm. We completed slightly more investigations this year with 258 cases compared to 245 cases in 2017/2018.

We once again reduced the number of average working days to investigate and resolve a complaint, down to 50 working days from 55 last year. We also met our timeliness targets on our different case categories. We completed:

- 86% of simple cases within 20 working days against a target of 80%.
- 85% of standard cases within 65 working days against a target of 80%.
- 89% of complex cases within 130 working days, again exceeding our target of 80%.

Complaints against insurers remained the greatest proportion of the cases we investigated at 34%, although this was slightly down on last year's 36%. Complaints against lenders remained steady at 21%.

This year the financial product most complained about was consumer credit, making up 19% of the cases investigated, followed by travel insurance on 17%. We received more complaints than last year about credit cards, mortgage

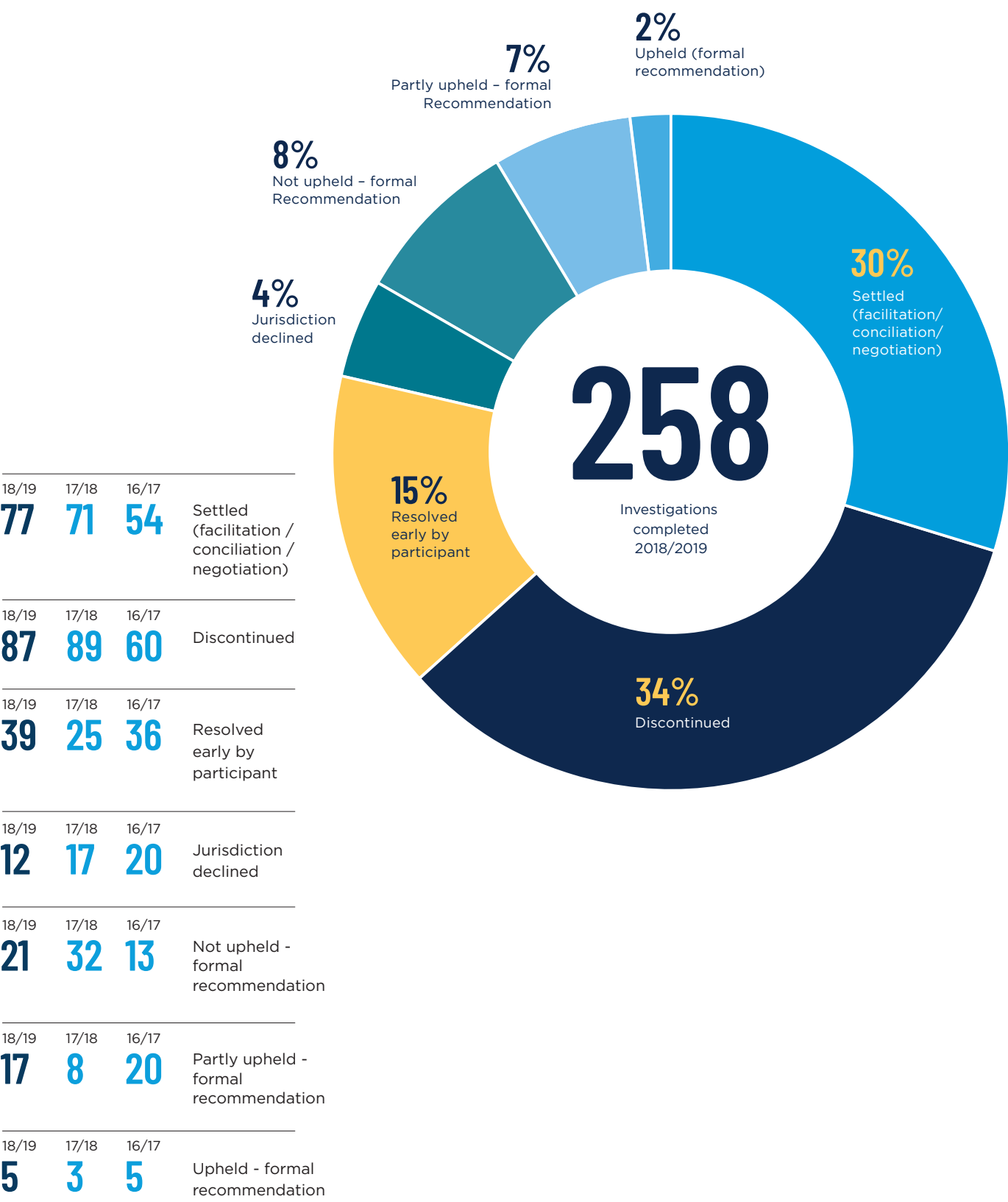
loans, trading platforms, foreign exchange services, KiwiSaver hardship withdrawal applications, and home and contents insurance. Complaints about travel cards were down, but other categories of complaints were roughly on a par with last year's numbers.

We negotiated or awarded compensation totalling \$848,846, up 47.5% from the \$575,274 awarded in 2017/2018. The largest individual settlement was \$114,000 in a case involving losses made on a trading platform.

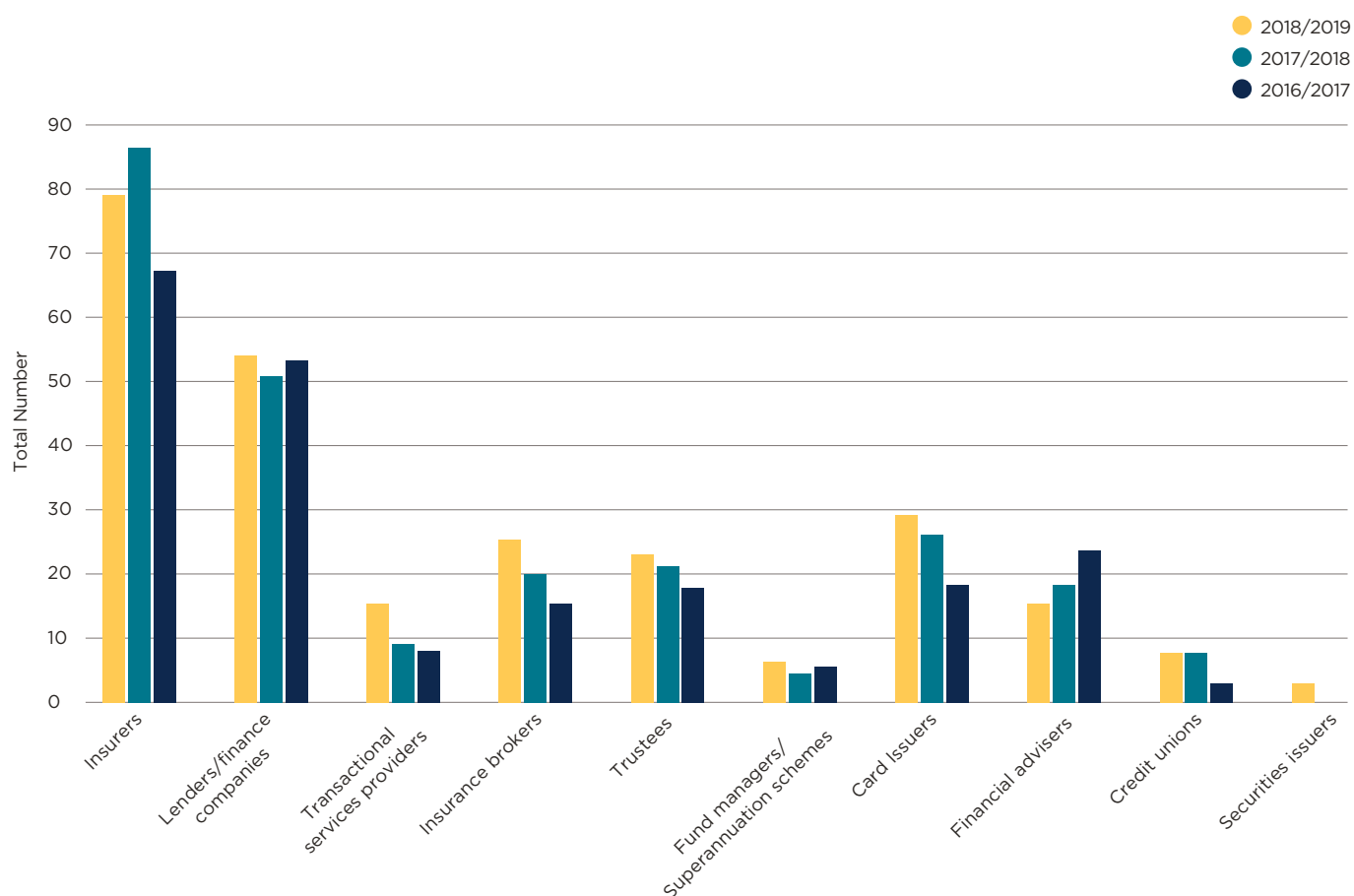
Eighty-seven cases were discontinued by the complainant after we advised them that we were unlikely to uphold their complaint. This was slightly more than the number of cases which were settled (77). An additional 39 cases were resolved by the participant very early in the process. This is encouraging because cases that are settled early are more likely to result in a satisfied customer. In cases that were settled, the complainant received compensation or some other remedial action such as an apology, a fee waiver, or a loan restructure.

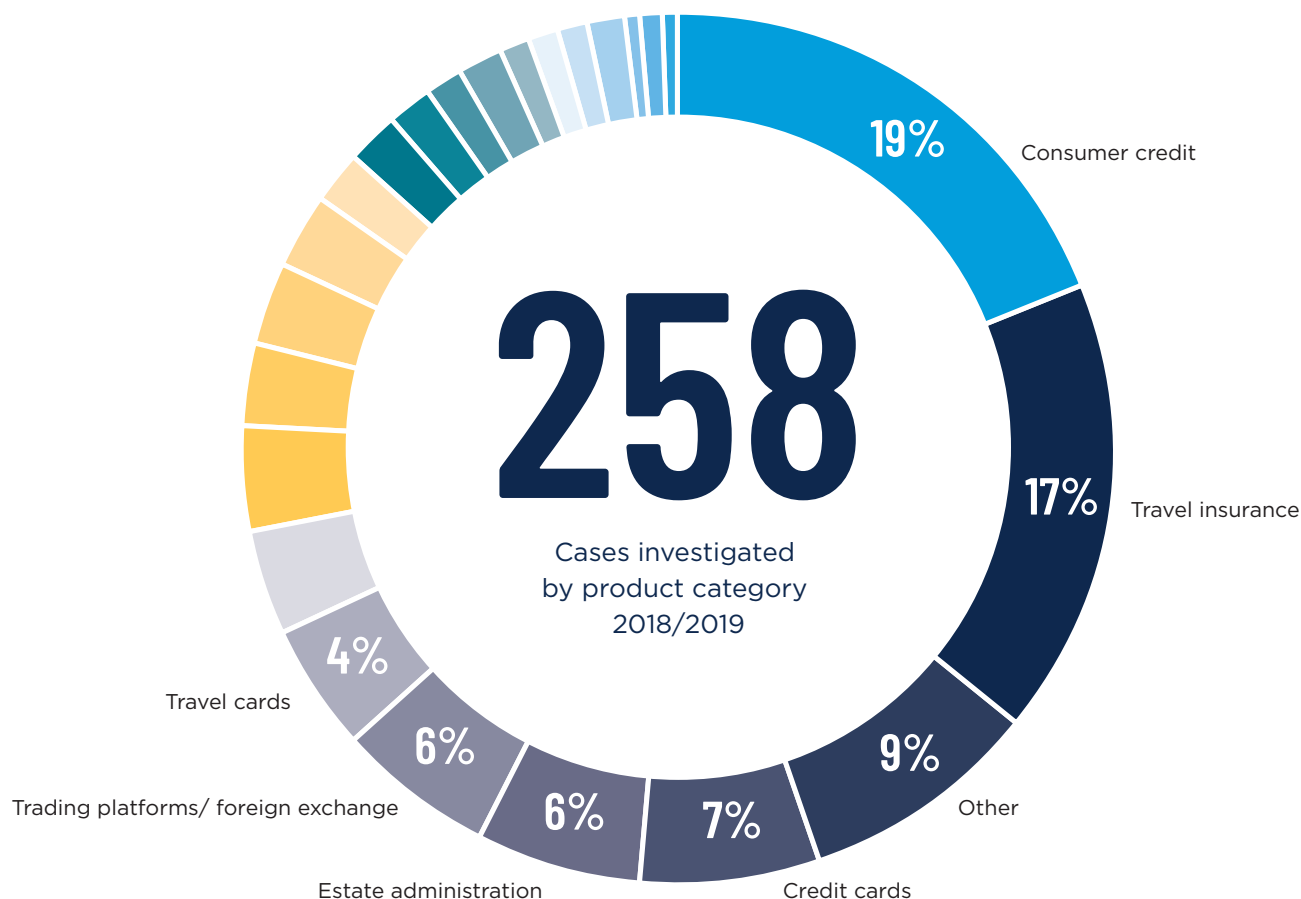
We issued formal recommendations, the final step in our process, on 43 cases, the same number as last year.

CASE OUTCOMES



CASES INVESTIGATED BY PARTICIPANT CATEGORY





PRODUCT CATEGORIES FOR CASES INVESTIGATED

| | 18/19 | 17/18 | 16/17 |
|-------------------------------------|-------|-------|-------|
| Consumer credit | 49 | 41 | 45 |
| Travel insurance | 44 | 65 | 39 |
| Other | 23 | 33 | 39 |
| Credit cards | 17 | 6 | 9 |
| Estate administration | 16 | 17 | 14 |
| Trading platforms/ foreign exchange | 15 | 8 | 8 |
| Travel cards | 12 | 19 | 9 |
| Mortgage loans | 10 | - | - |
| Home and contents insurance | 10 | 3 | 3 |
| Motor vehicle insurance | 8 | 10 | 9 |
| KiwiSaver | 8 | 3 | 3 |
| Public liability | 7 | - | - |
| Material damage insurance | 5 | 6 | 3 |
| Marine insurance | 5 | 2 | - |
| Health | 4 | 4 | 3 |
| Income protection | 4 | 3 | 3 |
| Superannuation and managed funds | 4 | - | - |
| Business finance | 3 | 3 | 3 |
| Business interruption | 3 | 2 | 8 |
| Life | 3 | 2 | 7 |
| Timeshares | 3 | - | - |
| Pet insurance | 2 | 6 | 3 |
| Peer to peer | 2 | 2 | - |
| Debt collection | 1 | 5 | - |

**"THIS WAS A
PARTICULARLY
CHALLENGING
COMPLAINT WHICH
I BELIEVE WAS
ADDRESSED IN A FAIR
AND PROFESSIONAL
MANNER."**

SCHEME PARTICIPANT

CASE ISSUES

INSURANCE

Declined insurance claims continue to be the most common complaint FSCL investigates. The Ministry of Business, Innovation and Employment is currently undertaking a major overhaul of New Zealand's insurance law. In a very general sense, the reforms look to consolidate insurance statutes and case law, helping to reduce complexity. The proposed reforms also focus on how to deal with non-disclosure, and aim to provide clarity around problems that arise where there is an adviser, broker, or agent acting as an intermediary between the insurer and the consumer.

Following the trend in previous years, travel insurance is the type of insurance consumers contact us about most often. This year, 17% of FSCL's investigations were about travel insurance, a slight decrease from last year. Case study 1 is an interesting case, where we found that information the consumer told their travel agent was deemed to be information the insurer knew. Under the Consumer Guarantees Act, the policy was never fit for purpose (based on the information the agent knew, but did not pass onto the insurer). We said the insurer should pay the claim. Case study 2, another travel insurance case, is an example of a claim which the insurer could have declined, on a strict interpretation of the policy. However, because the insurer's online health questionnaire could have been clearer about what the consumer needed to disclose, the insurer did the right thing and paid the claim.

Case study 3 is a typical example of complaints we investigate about insurance advisers. It highlights the inherent difficulty under the current law, in consumers carrying the burden of having to assess what information to disclose to their insurer when applying for insurance.

As we have stated often in the past, consumers:

- don't understand the extent of their duty of disclosure, nor the consequences of non-disclosure
- often think insurers will automatically obtain all their medical records at the time of applying for insurance, and therefore they do not need to disclose every medical condition or visit to the doctor.

Advisers have an important role to play in explaining the duty of disclosure to their clients and in ensuring their clients disclose their full medical history to the insurer.

In the case at hand, we also found there were shortcomings in the adviser's advice process, both in relation to the questions he asked his client to assist with full disclosure, and the records he kept of his advice. We hope advisers' new obligations under the Financial Advisers Legislation Amendment Act and the Code of Professional Conduct for Financial Advice Services, which will come into force next year, will help to avoid these types of complaints arising in the future.

CONSUMER CREDIT

As in previous years, a significant portion of FSCL's investigations were about lending issues. Complaints about consumer credit made up 19% of investigations this year. The Credit Contracts and Consumer Finance Act (CCCFA) is also under review, building on the 2015 reforms which introduced (among other things) the responsible lending principles. Case study 4 highlights the concerning and ongoing problem of lenders not complying with their responsible lending obligations, despite the new regime being in force for four years.

The case also highlights the problems that arise when debt collection agencies become involved with an unpaid debt, which can place a further layer of unnecessary stress on consumers. The amendments to the CCCFA will increase lenders' disclosure requirements when involving a debt collector and are a welcome proposed change to consumer credit law.

ESTATE ADMINISTRATION

In recent years we have seen an increase in complaints investigated about estate administration by professional trustee companies. Underlying a number of these complaints are existing, longstanding disputes between family members, exacerbated by the death of a loved one. This is often coupled with the beneficiaries feeling aggrieved that their loved one appointed a trustee company as the executor of the estate, instead of a family member, or the family's lawyer.

These are often challenging complaints to investigate because they are usually complex and emotionally charged.

Case study 5 highlights some of the common issues we see in estate administration complaints – most notably, complainants considering estate administration fees to be unreasonably high, and poor communication.



CASE STUDY 1

NOT-SO-EASY RIDER



Dennis and Karen booked a trip to the United States. They planned to hire a motorcycle, load it with their luggage, and travel where the wind took them, with Dennis driving and Karen riding pillion. When they booked their flights and bought travel insurance through their travel agent, they told the agent about their plans, who commented that it was something she would love to do.

A week into Dennis and Karen's trip, the motorcycle skidded on a slippery road and rolled. Karen suffered various injuries including a broken collarbone, which required surgery. The total cost of her treatment in the United States was around US \$130,000. Dennis and Karen submitted a claim under their travel insurance policy for the medical costs.

The insurer declined to pay on the basis there was an exclusion in the policy for motorcycles with an engine size over 200cc. The motorcycle Dennis and Karen had hired was 1,700cc. The insurer checked with the travel agent, who said her normal practice is to mention the exclusion whenever anyone tells her they plan to ride a motorcycle.

Dennis and Karen complained to FSCL.

DISPUTE

Dennis and Karen said that their travel agent knew the purpose of their trip. They said there was no way such a trip, with two passengers and all their luggage, could be done on a 200cc motorcycle. They said the agent did not tell them the insurance cover was limited to a motorcycle of no more than 200cc engine size.

REVIEW

We reviewed the evidence and considered that the Consumer Guarantees Act applied. The insurance policy Dennis and Karen had purchased was not fit for the purpose of their trip. They had made the purpose known to the travel agent, and there was no reason they should not have relied upon her expertise.

We thought it most likely that the travel agent had not mentioned the exclusion. Dennis and Karen were experienced motorcyclists, and we doubted that they would have purchased that particular policy had the agent mentioned the 200cc exclusion.

RESOLUTION

We discussed our review with the insurer who agreed to overturn its decision and settle Dennis and Karen's claim.

FSCL PARTICIPANT INSIGHT

Where a person makes the purpose of their trip known to an insurer (or the insurer's agent), and relies on the insurer's expertise, the insurer must sell the person a policy that is fit for that particular purpose.

CASE STUDY 2

FOOD ALLERGY PREVENTS TRAVEL

Kate booked and paid for a trip to Vietnam for her family and arranged travel insurance at the same time.

Shortly before travelling, Kate became aware that shrimp paste was commonly used in Vietnamese cooking. Her daughter Grace had experienced a minor reaction when eating prawns six years earlier, with the skin around her mouth becoming red. Grace had not eaten prawns since.

Kate consulted an allergy specialist who diagnosed Grace with a severe crustacean allergy. The doctor advised against travelling to Vietnam as the allergy was so severe that even if Grace ate food from a wok that had previously cooked shrimp paste, she would likely have a life-threatening anaphylactic reaction.

Kate cancelled the family's trip and submitted an insurance claim on the basis that she had been forced to cancel the trip due to unforeseen circumstances.

The insurer declined Kate's claim referring to a clause that it would not accept a claim arising from a disinclination to travel, or personal wishes. From the insurer's perspective, the cancellation was precautionary as there was no actual sickness preventing Grace from travelling. The insurer acknowledged there would be a greater risk for Grace to travel, but considered this was risk the family could manage.

Kate did not accept the insurer's decision and referred her complaint to FSCL.

DISPUTE

Kate did not accept that she had cancelled the trip because she had changed her mind. The family very much wanted to travel to Vietnam, and only cancelled on medical advice. Given the severity of Grace's allergy, the prevalence of shrimp paste in Vietnamese food, and the language barrier, Kate did not think it was reasonable for the trip to go ahead.

The insurer maintained its position reiterating that the trip was not cancelled as a result of illness or injury, but to prevent a possible incident. It said it considered the allergy to be a pre-existing medical condition that should have been disclosed when the policy was purchased. The insurer also referred to a clause in the policy allowing it to decline a claim for ongoing signs or symptoms that are undiagnosed.

REVIEW

We reviewed the complaint and did not agree that the insurer could decline the claim on the grounds that Kate had changed her mind about the trip. Kate cancelled the trip on medical advice. If Grace had travelled against the advice of her doctor and experienced an allergic reaction, the insurer may have declined her claim under another clause in the policy.

In our view, the more relevant question was whether Grace's medical condition was pre-existing. When Kate booked the trip, she knew that Grace had a prawn allergy that was significant enough to exclude prawns from Grace's diet. However, until Kate consulted a specialist, she had no idea the allergy was life threatening.

If, when purchasing the insurance, Kate had wondered whether Grace's reaction was a pre-existing medical condition, she would have gone through the online pre-existing medical condition questionnaire. One question asked whether the insured had had a major allergic reaction. We asked the insurer what it would consider to be a major allergic reaction and it said:

- a hospital admission
- diagnosis from a doctor
- needing to carry an epi-pen or other medication.

In our view, redness around the mouth would not qualify as a major allergic reaction, and, even if Kate had mentioned it, the insurer would not have been concerned.

The online pre-existing medical condition questionnaire also asked if Grace had any undiagnosed ongoing signs or symptoms. If Grace had eaten prawns again and had another reaction, this might have qualified as an ongoing sign or symptom. However, we considered this question was really aimed at people who are sufficiently concerned about a medical condition to have consulted a doctor, but have not yet had a diagnosis. We did not think Kate would have thought the question applied to Grace.

RESOLUTION

We suggested the insurer reconsider its approach and settle Kate's claim. The insurer did so, and agreed to accept Kate's claim, saying this case fell into a grey area which had slipped through the online questionnaire. Kate was very happy with the outcome.

FSCL CONSUMER INSIGHT

Sometimes your individual circumstances may not fit neatly into an insurer's online questionnaire. This complaint is a reassuring example of the insurer 'doing the right thing' when it comes to claim time.

BACK CRACKING, BUT COVER LACKING

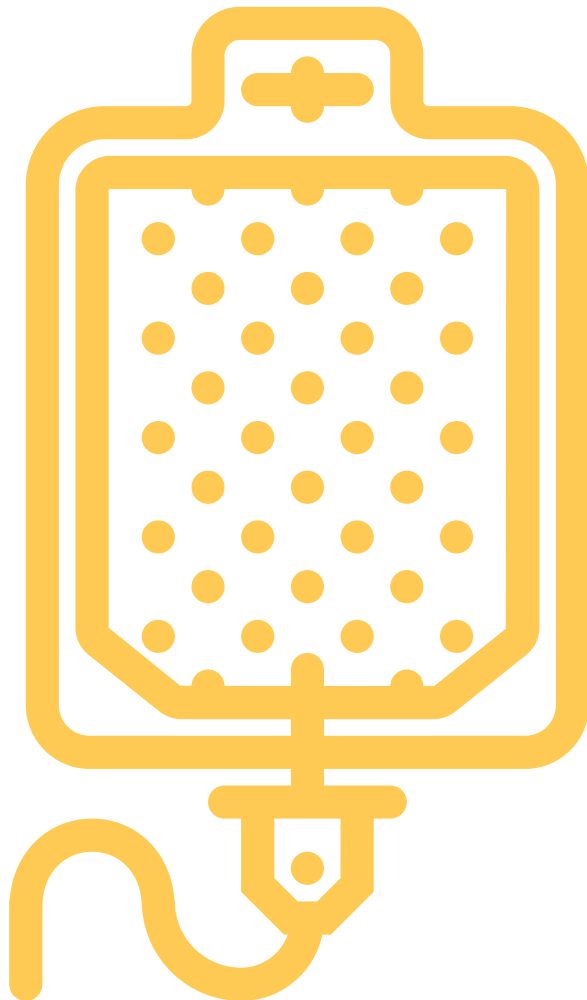
In January 2014, Brian completed an application for mortgage protection and health insurance. A 55-year-old builder, Brian disclosed in the application that he had tuberculosis as a child, had broken his leg in 1982, and had suffered a bad back strain in 2003 which had injured his sciatic nerve and required treatment. Brian also disclosed that he regularly went to a chiropractor for ‘general health’ reasons.

Brian didn't pay his insurance premiums on the policy and, after a few months, his cover lapsed.

In September 2015, Brian decided to renew his insurance cover and met with an insurance adviser. The adviser recommended a mortgage protection insurance product and asked Brian to complete an application form which they went through together. Brian did not disclose his medical history as he felt it wasn't relevant. The policy was accepted and placed by Brian's new insurer.

In January 2017, Brian suffered a shoulder injury. Brian went to his chiropractor who manipulated the shoulder and it felt better. Unfortunately, Brian's shoulder worsened and by July 2017 he was unable to swim. Brian's chiropractor referred him to a doctor who did an ultrasound. The doctor found that a muscle in Brian's shoulder had been partially ripped from the bone, and that he had overstrained it. In December 2017, Brian had surgery to repair his shoulder and was off work for a few weeks.

Brian filed a claim with his insurer. The insurer reviewed his full medical history and declined to cover Brian's time off work. The insurer also cancelled Brian's insurance cover on the grounds that had Brian fully disclosed his medical history, it would not have insured him. Exclusions for any conditions relating to his full spine, right shoulder, migraines, right hip and left leg would have made Brian uninsurable.



Brian complained and, after considering Brian's position further, the insurer agreed to reinstate the policy, with exclusions for Brian's full spine and right shoulder. Due to the right shoulder exclusion, Brian's claim remained declined.

Brian complained to FSCL.

DISPUTE

Brian felt his adviser had let him down badly. He believed his adviser had not asked him the right questions about his medical history when he applied for insurance, and that the adviser did not make it clear that he needed to disclose his full medical history.

The adviser did not believe he had done anything wrong. He said he had made Brian aware of the need to disclose all pre-existing health conditions, had spent some time going through the detailed health questionnaire with Brian, and had told him that if a claim was made it was likely the insurer would contact Brian's GP for a full medical history.

REVIEW

We asked the adviser to provide us with his full file on Brian's insurance, including all disclosure information he had given Brian and the completed application form.

There were not many file notes or letters from the adviser to support his position. However, we considered it was more likely than not that

Brian had omitted to tell his adviser about his previous medical history and the extent of his visits to the chiropractor over the years.

In our view, Brian's regular visits to the chiropractor were something a reasonable person would have disclosed when asked general questions about their health.

We found it difficult to believe the adviser wouldn't have insisted Brian disclose the chiropractor visits had the adviser known about them. And knowing about them, it's likely the adviser would have asked further questions resulting in full disclosure.

We also discovered that the adviser had not asked Brian about any previous insurance he had held. This was a fault on the adviser's part, particularly where the client was middle-aged and self-employed in a physical profession. Had the adviser known about previous cover, he would likely have dug deeper and been made aware of Brian's previous disclosure. The adviser should also have made further enquiries of Brian, given that he was presenting as a 55-year-old builder with no disclosures or previous ACC claims.

However, we considered that the adviser's failure to ask Brian these questions had not caused or contributed to Brian suffering a financial loss. Even if Brian had made full disclosure, his claim would not have been covered because the insurer would have added exclusions for Brian's full spine and right shoulder.

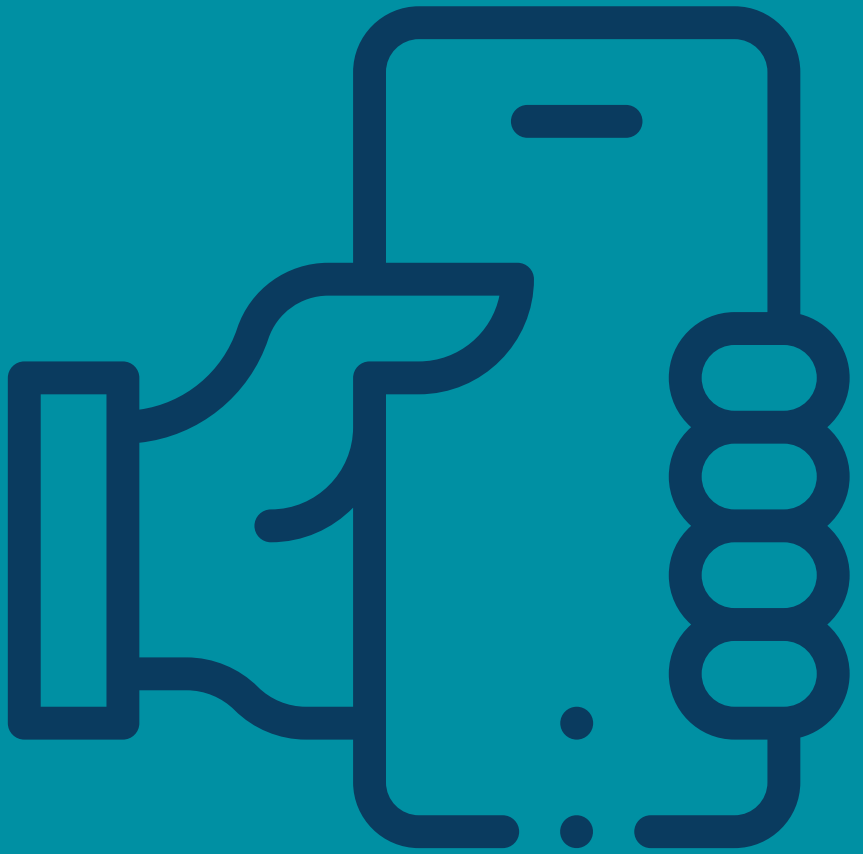
We found that the adviser's shortcomings in questioning Brian gave him the false impression he had exclusion-free cover, and that, had more in-depth questions been asked, Brian would have been spared the inconvenience of having to negotiate with the insurer to have his policy reinstated, albeit with exclusions. In our view, the shortcomings in the adviser's service had caused Brian inconvenience.

RESOLUTION

We recommended the adviser pay Brian \$750 in compensation for inconvenience. Brian and the adviser accepted our recommendation.

FSCL CONSUMER INSIGHT

It is crucial you give full disclosure of all medical conditions to your insurer when completing an application for life, health, mortgage repayment or income protection insurance. It can also help to provide a copy of your medical records to your insurer when you apply for insurance.



CASE STUDY 4

MOBILE TRADERS AND MOBILE DEBT

Jodi received a letter from a debt collection company demanding payment of \$900. Confused, she asked her sister Whina for help.

Whina discovered the debt related to a phone Jodi had bought from a mobile trader. Because Jodi had failed to make the weekly payments of \$30, she had not received the phone. When Jodi didn't respond to the mobile trader's demands for payment, the mobile trader sold the debt to a debt collection company.

Whina asked the debt collection company to explain how the mobile trader had satisfied itself that Jodi could afford the payments. The mobile trader was unable to provide any information to show it had checked that Jodi could afford the payments. It did, however provide a statement that Jodi had signed agreeing that she could afford the purchase without incurring any hardship.

Whina complained to FSCL, on Jodi's behalf, that the mobile trader had not satisfied its responsible lending obligations. Because the debt had been sold to the debt collection company, Whina believed the debt collection company should now be responsible.

DISPUTE

We referred the complaint to the debt collection company's internal complaints process, which passed the debt back to the mobile trader. The debt collection company, on behalf of the mobile trader, immediately issued a notice of intention to commence legal proceedings.

Whina came back to us, worried about the threatened legal action. Whina was concerned that the mobile trader would delay responding to the complaint, and in the meantime her sister would have to appear in court.

REVIEW

Because the mobile trader had not yet had the opportunity to resolve the complaint directly with Jodi and Whina, we referred the complaint back to the mobile trader's internal complaints process. We alerted the mobile trader and the debt collection company to our terms of reference which prevent anyone from commencing legal action once a complaint is lodged with FSCL and remains unresolved.

RESOLUTION

The mobile trader responded immediately, confirming debt recovery action was on hold and that it would investigate and respond to Whina's complaint. The mobile trader promptly agreed to write off Jodi's debt and take no further legal action. Both Whina and Jodi were satisfied with this response and discontinued their complaint.

FSCL PARTICIPANT INSIGHT

Although it was great that this complaint was resolved so quickly, it is concerning to see a lender:

- **believing it can satisfy its responsible lending obligations by asking a borrower to sign a statement confirming they can afford the payments**
- **commencing legal action while a complaint is with us.**

We remind participants that:

- **before lending you must undertake a thorough and documented process showing that the borrower can afford the loan repayments without suffering financial hardship**
- **a collection company will be responsible for lending decisions made by the original lender**
- **once a complaint has been lodged with us, you cannot commence legal action without our permission.**

EXECUTIVE DECISIONS – THE 5% FEE

**Jenny made a will with a trustee company.
The beneficiaries of Jenny's will were her
brother David and sister Katherine.**

When Jenny died, she owned a house and a car. With David's help, the trustee company sold both and charged Jenny's estate 5% of the total value of the estate, about \$15,000.

David was shocked at the amount the trustee company charged for what he perceived to be the administration of a very straightforward estate. David said that if Jenny had appointed him as executor, he could have administered her estate with the help of a lawyer at a fraction of the cost. David asked the trustee company to justify its fee. It responded that it had charged 5% of the value of the estate, as allowed by the Trustee Companies Act 1967.

David complained to FSCL.

DISPUTE

David did not accept that the trustee company should be able to charge a flat fee of 5%. In David's opinion, the trustee company should have to justify the work behind the \$15,000 it had charged. David wanted us to review the administration of the estate and propose a fee based on the actual work undertaken by the trustee company.

The trustee company explained that the service it provides is different from the service a lawyer would have provided had David been executor. When a trustee company administers an estate, it provides an end-to-end service and accepts substantial financial liability for all the estate decisions and actions. The 5% charged covers all the work involved in:

- applying for probate
- collecting assets
- collecting tax information and applying for an IRD number
- paying all the bills and collecting refunds
- closing bank accounts
- selling the house and car
- distributing funds to beneficiaries
- preparing the financial statements, and
- communicating with beneficiaries.

The trustee company was satisfied it had charged the estate the correct amount as allowed under the law.



REVIEW

We explained to David that we were not going to be able to provide the answers he was looking for. The trustee company's fee is not based on the work undertaken, but on the 5% of the value of the estate, as allowed by the Trustee Companies Act. In addition, the Act allows the trustee company to charge the estate separately for other specific tasks including:

- preparing tax returns
- managing property
- tracing beneficiaries
- realising assets
- carrying on business
- any work of a special or unusual nature.

From what we could see, the fees charged by the trustee company were in line with the Act and with fees charged by other trustee companies. We advised David that we were unable to take his complaint further.

RESOLUTION

David was disappointed with the outcome, but was pleased he had sought clarification. We discontinued our investigation.

FSCL INSIGHT FOR CONSUMERS

The sentiments expressed by David are not unusual. Many beneficiaries feel aggrieved by the 5% fee charged by trustee companies. People expect to pay an amount proportionate to the work undertaken and have great difficulty accepting that a trustee company will charge based on the value of the estate.

We encourage consumers to talk to their families about their decision to appoint a trustee company. There are good reasons why a person decides they would prefer a trustee company to administer the estate and have their estate pay the administration costs. But, once that person has died, it can be difficult for people grieving at the death of a relative to understand the reasons behind the decision.

BOARD DETAILS



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 currently has a number of governance roles and is Chair of the Risk and Audit Committee of the Parliamentary Counsel Office, a director of ECNZ, an independent member of two commercial advisory boards for the Department of Corrections, 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 Co-CEO for CORE Education Limited.

He is also a board member for Workbridge, the largest employment agency in New Zealand for people with a disability, injury or illness, and is a chartered member of the Institute of Directors.

Tuhi has several years of governance experience and attained his postgraduate certificate in governance from Waikato University.

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 has been the IBANZ CEO since 2006. 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

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.



ROGER J KERR

Industry Representative

Roger has over 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 June 2018.

Roger is currently Executive Chair of Barrington Treasury Services Limited and a director of Pie Funds Limited, ETOS Limited, Hedgebook 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 the 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 ended 30 June 2019

| | 2019 | 2018 |
|-----------------------------|------------------|------------------|
| | \$ | \$ |
| Revenue | 1,693,657 | 1,680,639 |
| Total revenue | 1,693,657 | 1,680,639 |
| Expenses | | |
| Administration | 1,669,844 | 1,524,797 |
| Non cash items | 38,238 | 34,443 |
| Total expenses | 1,708,082 | 1,559,240 |
| Net business surplus | (14,425) | 121,399 |
| Other income | 91,962 | 142,001 |
| | 91,962 | 142,001 |
| Net surplus | 77,537 | 263,400 |

Summary statement of movements in equity for the year ended 30 June 2019

| | 2019 | 2018 |
|------------------------------|------------------|------------------|
| | \$ | \$ |
| Net surplus for the year | 77,537 | 263,400 |
| Equity at beginning of year | 2,700,901 | 2,437,501 |
| Equity at end of year | 2,778,438 | 2,700,901 |

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

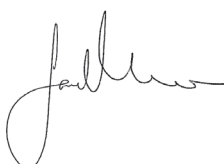
SUMMARY FINANCIAL STATEMENTS

Summary balance sheet as at 30 June 2019

| | 2019 | 2018 |
|---|------------------|------------------|
| | \$ | \$ |
| Equity | 2,778,438 | 2,700,901 |
| Current assets | | |
| Cash, bank balances and short term deposits | 2,335,648 | 2,609,969 |
| Receivables | 55,131 | 64,418 |
| Prepayments | 20,450 | 23,270 |
| | 2,411,229 | 2,697,657 |
| Non current assets | | |
| Property, plant and equipment | 97,868 | 110,113 |
| Intangibles | 29,842 | 48,431 |
| Term deposits | 381,213 | - |
| | 508,923 | 158,544 |
| Total assets | 2,920,152 | 2,856,201 |
| Current liabilities | | |
| Accounts payable | 36,530 | 44,928 |
| Income in advance | 3,621 | 1,575 |
| Accrued charges | 96,923 | 100,444 |
| Lease incentive | 3,713 | 3,712 |
| | 140,787 | 150,659 |
| Non current liabilities | | |
| Lease incentive | 927 | 4,641 |
| | 927 | 4,641 |
| Total liabilities | 141,714 | 155,300 |
| Net assets | 2,778,438 | 2,700,901 |

APPROVAL OF FINANCIAL STATEMENTS

These summary financial statements have been approved by the board on 30 August 2019. For and on behalf of the Board of Directors:



Director



Director

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

SUMMARY FINANCIAL STATEMENTS

Summary Statement of Cashflow For the year ended 30 June 2019

| | 2019 | 2018 |
|---|----------------|----------------|
| | \$ | \$ |
| Cash was provided by (used for) | | |
| Operating activities | | |
| Receipts from Participants | 1,697,952 | 1,689,482 |
| Receipts from legal costs awarded | - | 50,430 |
| GST movement | (3,792) | 1,835 |
| Operating costs | (1,682,502) | (1,489,586) |
| Income tax paid | 9,329 | (12,668) |
| | 20,987 | 239,493 |
| Investing activities | | |
| Payments to property, plant and equipment and intangible assets | (7,404) | (29,392) |
| | (7,404) | (29,392) |
| Financing activities | | |
| Increase of term deposits | (56,245) | (56,848) |
| Net interest received | 93,309 | 91,571 |
| | 37,064 | 34,723 |
| Net movement in cash | 50,647 | 244,824 |
| Opening cash balances | 371,265 | 126,441 |
| Closing bank balances | 421,912 | 371,265 |
| Represented by | | |
| Bank balances | 421,912 | 371,265 |
| Closing bank balances | 421,912 | 371,265 |

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

SUMMARY FINANCIAL STATEMENTS

Summary balance sheet for the year ended 30 June 2019

The Summary Financial Statements have been prepared for the individual entity Financial Services Complaints Limited for the accounting period ended 30 June 2019. Also included for comparative purposes are figures for the period ended 30 June 2018.

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 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.

The Full Financial Statements for the year end 30 June 2018 were authorised for issue by the directors of Financial Services Complaints Limited on 31 August 2018 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 2019, 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 2019. We expressed an unmodified audit opinion on those special purpose financial statements in our report dated 30 August 2019. 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
30 August 2019
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 Chairman 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

KPMG
10 Customhouse Quay
Wellington

AUDITORS

BDO Wellington
Level 1, 50 Customhouse Quay
Wellington 6011



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FSCL
FINANCIAL SERVICES COMPLAINTS LTD