



**FINANCIAL SERVICES COMPLAINTS LTD**

**INDEPENDENT REVIEW**

**Conducted by the**

**FOUNDATION FOR EFFECTIVE MARKETS  
AND  
GOVERNANCE**

**FEBRUARY 2015**



---

**ACN 094 694 078 ABN 84 094 694 078**  
**PO Box 7017 Yarralumla ACT 2600 Australia**  
**Phone +61262813134**  
**Email: [executivedirector@femag.org.au](mailto:executivedirector@femag.org.au)**  
**URL-[www.femag.org.au](http://www.femag.org.au)**

## CONTENTS

<b>FOREWORD</b> .....	<b>1</b>
<b>SUMMARY</b> .....	<b>2</b>
<b>RECOMMENDATIONS</b> .....	<b>4</b>
<b>BACKGROUND</b> .....	<b>7</b>
<b>THIS REVIEW</b> .....	<b>12</b>
<b>METHOD</b> .....	<b>16</b>
<b>SATISFACTION WITH FSCL'S SERVICES</b> .....	<b>18</b>
<b>BENCHMARK PRINCIPLES AND KEY PRACTICES</b> .....	<b>21</b>
<b>ACCESSIBILITY</b> .....	<b>22</b>
<b>INDEPENDENCE</b> .....	<b>28</b>
<b>FAIRNESS</b> .....	<b>29</b>
<b>ACCOUNTABILITY</b> .....	<b>31</b>
<b>EFFICIENCY</b> .....	<b>33</b>
<b>EFFECTIVENESS</b> .....	<b>36</b>
<b>OTHER ISSUES</b> .....	<b>41</b>
<b>REFERENCES</b> .....	<b>41</b>
<b>APPENDICES</b> .....	<b>42</b>
• <b>APPENDIX A - REVIEW TERMS OF REFERENCE</b> .....	<b>42</b>
• <b>APPENDIX B - FSCL CONSTITUTION AND TERMS OF REFERENCE</b> .....	<b>50</b>
• <b>APPENDIX C - FSCL's EXIT SURVEY QUESTIONNAIRES</b> .....	<b>104</b>
• <b>APPENDIX D - ANZOA PRINCIPLES AND KEY PRACTICES</b> .....	<b>110</b>
• <b>APPENDIX E - INTERNATIONAL NETWORK OF FINANCIAL OMBUDSMAN SCHEMES DOCUMENT: EFFECTIVE APPROACHES TO FUNDAMENTAL PRINCIPLES</b> .....	<b>120</b>
• <b>APPENDIX F - SUGGESTED CONTENT FOR A BOARD CHARTER</b> .....	<b>136</b>
• <b>APPENDIX G - NAMING BY OMBUDSMAN SCHEMES</b> .....	<b>138</b>
• <b>APPENDIX H - LEGAL STRUCTURE OF INDUSTRY OMBUDSMAN SCHEMES</b> .....	<b>140</b>

## **FOREWORD**

The *Foundation for Effective Markets and Governance* (FEMAG) is an experienced non-profit international research, advising and review body specialising in consumer and competition policy, regulation, and government accountability systems. The Foundation's personnel have worked in these areas in ASEAN nations, Australia, New Zealand, Timor-Leste, Solomon Islands, Tonga, Vietnam, United Kingdom, Egypt, Oman, India, and South Africa. FEMAG's personnel have functioned as participants in the governance, administration and decision-making organs of a number of ombudsman/external dispute resolution schemes, have reviewed a number of schemes and have advised on, and been directly involved, in the development of such schemes.

We wish to thank all those gave their time in our interviews and shared their opinions and ideas which provided us with valuable knowledge and insight. These included representatives of participating companies, individuals who made inquiries and complainants, representatives of government and community stakeholder bodies, the directors and former directors and staff and former staff of FSCL.

## **SUMMARY**

- Having carefully reviewed complaint files, evaluation questionnaires completed by both participants and complainants, internal records and procedures and having interviewed a wide range of stakeholders we are of the opinion that FSCL is an effective external complaint handling/dispute resolution scheme.
- In our opinion FSCL meets the requirements of the relevant legislation, it complies with its own terms of reference and it adheres to principles and practices that meet international benchmarks. It is very well governed and managed such that its services are delivered efficiently and are of the highest quality.
- The FSCL constitution, terms of reference and operational procedures are generally sound and meet the requirements of the Financial Services Providers (Registration and Disputes Resolution) Act 2008 – FSP (R & D) Act (the Act) specifically in relation to:
  - 1 Amended purposes of the Act as set out in section 2A
  - 2 Part Three of the Act
  - 3 Section 56 in relation to factors governing withdrawal of approval
  - 4 The rules as set out in the Terms of Reference comply with section 63
  - 5 Obligations under sections 64, 67, 68 and 69 are met
  - 6 The duty to co-operate with other schemes is observed.
- Following our review we suggest some measures to improve policies, procedures and outcomes.

The FSCL meets the key principles prescribed in the Act which we assess as being national and international standards. It also meets the principles drawn from the ANZOA Guidelines and the Guidelines issued by the International Network of Financial Services Ombudsman Schemes and the principles set out in the Australian Benchmarks for Industry-Based Consumer Dispute Resolution Schemes that have been accepted in New Zealand and Australia as the relevant template for measuring external complaint handling schemes.

These principles are:

- Accessibility;
- Independence;
- Fairness;
- Accountability;

- Efficiency; and
- Effectiveness.

FSCL policies and practices conform to the best practice standard AS/ISO 10002:2006 – *Guidelines for complaints handling in organisations*.

- The Constitution and Terms of Reference of FSCL comply with the provisions of the Act and are soundly implemented. There are, however, a number of recommendations we consider would improve the extent to which FSCL contributed to achieving the purposes set out in the Act by improving processes and outcomes for all parties.
- Internal complaint handling processes employed by some participants could be improved and we have some recommendations on this.
- To improve transparency and to assist participants' and consumers' understanding of good practice and processes we recommend that FSCL name participants in statistical reports in the Annual Report and also that full decisions and recommendations be published in anonymised form with the exception that in cases where parties might be identified only more generalised reports of decisions and recommendations would be published. This would bring FSCL into line with the New Zealand Banking Ombudsman, comparable schemes in Australia and elsewhere.

## **RECOMMENDATIONS**

- 1. FSCCL publish summarised results in its annual reports of the questionnaires completed by complainants and participants at the end of the resolution process.**
- 2. FSCCL seek agreement on standardisation of exit survey questionnaires with other financial services disputes resolution scheme providers.**
- 3. FSCCL explore further opportunities for the promotion of EDR schemes in collaboration with other scheme operators, the government and other stakeholders.**
- 4. FSCCL seek to have the issue of joint promotion further considered at the quarterly meetings of EDR schemes and seek agreement including from Government on a collaborative approach to increasing accessibility/awareness including:**
  - consulting with relevant community organisations and commissioning research to determine the most cost effective means of:**
    - a) informing all citizens, especially the least privileged and least financially literate, that complaining or raising a problem is a positive thing to do as it may assist in improving the service of the financial service provider and the financial services industry and benefiting all consumers, and**
    - b) informing them of the ways they may make complaints or raise problems.**
  - based on that research, a pooling of resources on a proportional basis to achieve increased propensity to complain/raise problems and increased awareness, including through relevant community organisations and professions such as lawyers and accountants, of the ways to do that, and**
  - considering pooling of resources to develop a single toll free consumer complaint phone referral facility possibly associated with Complaintline.**
- 5. FSCCL constitution be amended to require public advertising of board vacancies and to prescribe a three term limit for directors.**

6. ***FSCL establish a charter to assist the directors in carrying out their duties to ensure the scheme meets its purpose and adheres to its principles.***
7. ***Paragraph 2.2 of FSCL's key practices be amended to read:  
The scheme regularly publishes anonymised copies of all recommendations and decisions on its website unless such a copy would not prevent the identification of a participant or a complainant in which case only summary with non-identifying information about that determination is to be published for the purposes of:***
  - ***educating scheme participants and consumers, and***
  - ***demonstrating consistency and fairness in decision making.***
8. ***FSCL seek agreement with other financial services disputes resolution scheme providers on publishing participant's names against statistics in annual reports and websites.***
9. ***The ToR be amended to require participants - as they renew annually - to renew their compliance undertaking.***
10. ***FSCL consider the appointment of a further senior staff member to assist the CEO in the final stages of complaint handling.***
11. ***FSCL seek to have the current financial jurisdictional limit considered at the quarterly meeting of EDR schemes and if necessary seek a direction from Government on the appropriate amount.***
12. ***FSCL consider increasing the amount available for an award in relation to inconvenience from the present \$500 to \$2000.***
13. ***The CEO be given a discretionary power to investigate an issue, including a systemic issue, regardless of how that issue is brought to the CEO's attention, after consultation with the relevant Participant or Participants affected by the issue and to institute the normal procedures for recommendations and decisions.***

**14. The FSCL ToR be amended to:**

- **require each participant to have an internal dispute system that is appropriate to the nature of its services and scale of its operations and to require them to provide information on this system including the name or names of staff responsible for complaint handling and update this information as needed, and**
- **make clear that if FSCL becomes concerned about the performance of a Participant's complaint handling processes or performance, the FSCL may undertake an audit of the Participant's processes and provide advice to the Participant on necessary remedial action.**

**15. FSCL seek to have the issue of Disputes Tribunals dealing with financial service complaints considered at a quarterly meeting of EDR schemes.**



## **BACKGROUND**

New Zealand/Aotearoa is a country that took a lead in the development of industry ombudsman or EDR schemes with its Banking Ombudsman Service (BOS) and Insurance and Savings Ombudsman (ISO) schemes being established in the early to mid-1990s not long after similar schemes were established in Australia and the UK. Industry ombudsman/EDR schemes for the financial services industry sector, usually funded by those sectors, can now be found in many countries with developed economies and quite a number of countries with emerging/developing economies. For other industry sectors such schemes have also been operating in Australia, New Zealand and the UK for a number of years, but this has not developed in other countries.

There is an Australian and New Zealand Ombudsman Association (ANZOA) that has been important in establishing principles and developing practices for industry ombudsman schemes in these countries. The International Network of Financial Services Ombudsman Schemes is playing the same role for financial services industry ombudsman globally.

The label "ombudsman" is used in 24 of the 38 countries that have financial services industry ombudsman schemes like those in New Zealand.

### ***Socio-economic characteristics of New Zealand***

New Zealand has a well-developed economy with per capita GDP adjusted for purchasing power parity around the middle of OECD countries. It is not among the OECD countries with the widest distributions of income and wealth (by Gini coefficients) and has a significant minority with quite low levels of wealth and income. In recent years, as is the case in many other countries, the percentage of income/wealth received/held by the upper percentile has grown at the expense of the majority.

New Zealand's Human Development Index places it 7th in the world in the 2013 list though it would be lower than that on the inequality adjusted HDI. Very importantly New Zealand is number one in the 2014 Social Progress Index which means that currently no other country is doing better at tackling the causes of inequality through policies and programs in areas such as education and health care.

New Zealand's has a population of around 4.5 million. The 2013 census revealed ethnic groupings comprised of people from a variety of origins including European, Māori, Asian Pacific, Middle Eastern, Latin American and African.

New Zealand has an adult literacy rate of 99 percent and over half of the population aged 15 to 29 hold a tertiary qualification. The OECD's Programme for International Student Assessment ranks New Zealand's education system as the 7th best in the world, with students performing exceptionally well in reading, mathematics and science. There is nevertheless a significant number of people with somewhat limited English proficiency.

### ***Public policy and regulatory regime***

The Financial Services Providers (Registration and Disputes Resolution) Act 2008 – FSP (R & D) Act (the Act) has the twin purposes of:

- a)** promoting the confident and informed participation of businesses, investors, and consumers in the financial markets; and
- b)** promoting and facilitating the development of fair, efficient, and transparent financial markets.

The Act, which has been the subject of two significant sets of amendments since 2008, seeks to achieve these purposes through requiring retail financial service providers to be participants in an approved external complaints resolution scheme. There are four schemes to which financial service providers may belong and they compete with each other for membership.

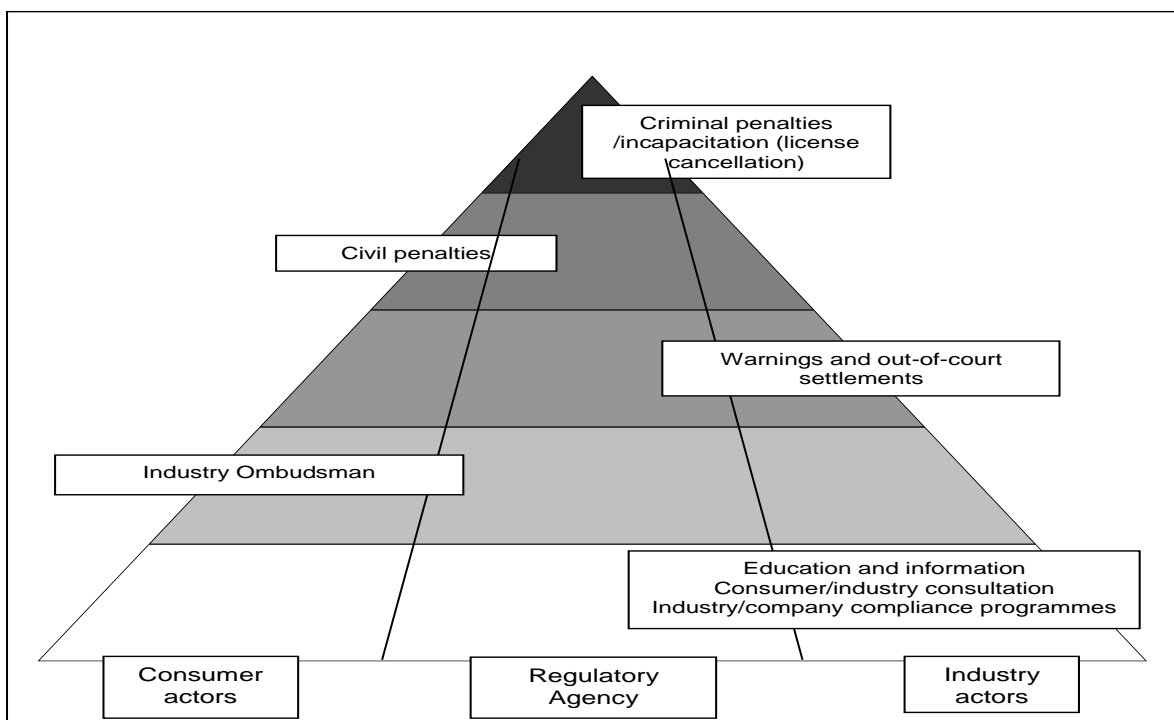
Part 3 of the Act sets out the purposes of dispute resolution schemes, together with rules, principles and governance measures required of them to be approved by the Minister for Consumer Affairs.

The principles enunciated by the legislation clearly imply that effective resolution of disputes by these schemes is to be accessible to all citizens regardless of their socio-economic status, level of education, language, disability, and that the very unsophisticated users of financial services should find it no harder to have a complaint effectively resolved than the most sophisticated.

The regime is established to achieve complete coverage of prescribed financial service providers. There are providers operating outside the regime. In the near future it will not be lawful for an unlicensed provider to obtain interest on a loan. This should reduce the level of unregulated financial service provision but it is possible that some will remain.

The regime is intended to exclude financial service providers which fail to meet the requirements of the law. A financial service provider in breach of the requirements of the ombudsman/EDR scheme to which it belongs may have its membership of that scheme terminated. As membership of a scheme is a legal requirement, expulsion from the scheme may result in cessation of trading.

The diagram below depicts a soundly operating regulatory regime. It is derived from the compliance pyramid concept developed by Ayers and Braithwaite (Ayers, Ian and John Braithwaite - 1992).



Under all regulatory regimes there is considerable scope for both consumer actors (consumers and consumer and other community organisations) and industry actors (companies and industry associations) to assist compliance with regulation by contributing at the base level. Individual consumers can contribute by drawing a company's attention to marketplace problems. Companies, perhaps with the assistance of industry associations, can do much by way of internal compliance programmes and complaint handling. Consumer organisations work with industries and companies and can distribute information to consumers.

Industry ombudsman schemes can make a very significant contribution at the next level. Whilst their basic purpose is to resolve individual complaints/disputes they contribute generally by:

- improving the handling of complaints/disputes by companies themselves
- helping to contain the costs of problems in an industry to that industry as far as possible rather than such costs being imposed on the population at large and thus providing an incentive for improvements in the industry
- helping to improve the efficiency and equity of the market served by the industry
- improving information about the industry and thus aiding development of policy by government and action in relation to systemic problems by the relevant agencies.

In some regulatory regimes there is scope for both consumer and industry actors to contribute right up to the top level.

The stronger the support for the regulatory regime at the base levels the wider the pyramid may be and thus the need for action at the upper levels is reduced and the greater the effectiveness in terms of both equity and efficiency.

It is necessary for the top level to be, and be seen to be, real. This does not mean it has to be frequently used, but a real potential for utilisation is necessary. In the end, governments must make it clear that it is prepared to back up the regulatory system when necessary.

### ***Culture and complaints***

Of critical importance is that people understand that complaining or bringing a company's attention to a problem is not only about fixing a problem they might have. It also helps to improve the way a company operates and therefore the industry in general improving things for all their fellow citizens.

We were told by a number of our interviewees that there is a lower inclination to complain in New Zealand than in some other countries. In our experience in working in a number of countries there are significant cultural differences in attitudes to complaining. We were told that there is a somewhat negative view of complaining in Maori/Polynesian culture. It may be that the social value of seeking resolutions to problems needs a general community discussion.

### ***The competitive model***

In undertaking this review, we were particularly interested to test the efficacy of the competitive EDR model which operates in New Zealand. To our knowledge it is rare.

In its 2008 paper, *Lessons from ombudsmania* (Brooker 2008), the UK National Consumer Council considered this model to be 'conceptually and practically flawed'. Referring to the telecommunications sector, it says:

*“The telecommunications model falls down hardest, because the choice of redress scheme lies with the firm, not the consumer. This creates a perverse incentive for firms to choose the scheme which is cheapest – or which develops a reputation for industry-friendly decisions.*

*For example, a competing consumer adjudication scheme run by IDRS:*

*...can offer cheaper membership fees than the ombudsman, partly because it has no enquiry line to signpost consumers to further help if their complaint is out-of-scope – something which consumer organisations would consider a necessary consumer protection measure.*

*Other complications arise for consumers in multiple scheme landscapes, where confusion can be generated about to whom they should complain.”*

We have come to the conclusion that on balance, competition between EDR schemes has not been dysfunctional. We see risks and advantages and disadvantages in both competitive and monopoly models. The advantages of competition are clearly to push schemes to greater levels of efficiency and potentially greater levels of quality in their services. There is a risk of a race to the bottom in quality in the quest to maintain market share or membership because of pricing pressures. We have seen no evidence that this has occurred in this sector.

The competitive model does have disadvantages due to the collective action or free rider problems. The collective action problem would occur where it is desirable for all schemes to make a change to achieve greater effectiveness, but one scheme making that change might disadvantage it against the others so no scheme makes the change.

The free rider problem would occur where one scheme taking certain action would benefit the other schemes allowing them to “free ride” on its efforts.

We believe these can be overcome by cooperation, collaboration and coordination with the proviso that anti-competitive acts are avoided. We consider this implies a significant role for government to assist in the identification of issues that require cooperation and collaboration and to assist in coordination. We have made some recommendations relating to this.

The competitive model also has a disadvantage where a complaint involves two or more provider companies which belong to different schemes. For example an insurance product of one company might be sold by another company on its behalf. If the two companies belong to different schemes investigation and resolution of the complaint will be more complicated and time consuming as cooperation and information exchanges between the two schemes would be required. In our inspection of case files we noted that when this has occurred such cooperation has worked satisfactorily.

Changes in markets and consumer needs will require periodic review of the nature and structure of external dispute resolution services. It is evident that the nature and structure of the market for services in New Zealand is going to change significantly. As a result of this and as it seems to be a trend internationally, in time, there might be consideration of some amalgamation of EDR schemes which could lead to advantages in terms of efficiency for both industry and consumers. A useful development would be a national portal that could ensure that consumers were directed to the most relevant existing scheme to handle their complaints.

## **THIS REVIEW**

Amongst other requirements, Section 63(q) of the Act provides that approved schemes must undergo external review each five years.

The Financial Services Complaints Limited (FSCL) is an approved external disputes resolution scheme for the purposes of the *Financial Services Providers (Registration and Disputes Resolution) Act 2008* – Financial Service Provider (R&D) Act.

This is the first review of FSCL to be conducted under the legislation. FSCL commenced operations in 2010. It is now the scheme with the largest number of participants. The Act places a heavy onus on a scheme operator and, following 2 sets of legislative amendments since the FSCL began, there are many compliance and assessment issues to be considered.

In addition to a review of the first five years of operation of the FSCL, this review considers the likely changes in the regulatory regime.

FSCL is a not for profit organisation and is funded by a combination of membership and complaint fees levied on its participants. As with the other EDR schemes FSCL's services are free to consumers.

FSCL operates in competition with two other dispute resolution schemes:

- Insurance and Savings Ombudsman (ISO)
- Financial Disputes Resolution (FDR).

The Banking Ombudsman could compete, but we understand that until now it has not sought members outside the banking sector.

The number of FSCL's participants (financial service provider members) has grown rapidly and now stands at over 6,000. They are drawn from most sectors of the financial services industry, excluding retail banking. In terms of participant numbers FSCL is the largest scheme though this does not take account of the size of member companies in terms of turnover thus its relative size in terms of total turnover of the businesses it covers.

The breakdown of FSCL's participants is as follows:

- financial advisers (1090)
- mortgage brokers (530)
- insurance brokers (1030)
- insurance companies (12)
- finance companies (286)
- credit unions (13)
- stockbrokers (400)
- fund managers (142)
- superannuation schemes (115)
- transactional service providers (228)
- trustee companies (4)
- Card issuers (6)
- crowd funders and peer-to-peer lenders (9)
- securities on issue providers (50)
- charities/not-for-profit organisations (21).

## *Independent Review of Financial Services Complaints Ltd 2015*

FSCL has experienced solid, year-on-year growth in the inquiries and complaints it receives:

Year	Inquiries	Investigations	Closed cases	Recommendations
2010-2011	265	35	20	2
2011-2012	1259	115	92	8
2012-2013	1708	162	149	28
2013-2014	3159	201	202	17

As a new entrant scheme, FSCL has shown consistent, year-on-year increases in both membership and activity. In competition with the other established schemes, FSCL had to offer a service before it had the participant companies to provide the funds needed to pay for that service. We are of the view that much of the explanation for the significant growth of FSCL is due to confidence amongst financial service providers in the quality and cost efficiency of its service. A critical part of this review has been to determine whether that confidence is supported by evidence from participants and consumers.

### ***Review scope***

The Terms of Reference for this review can be found at **Appendix A**. In summary they require the review to consider and report on whether or not, as an approved scheme, FSCL is complying with the 6 benchmark principles set in the Act, namely:

- accessibility
- accountability
- effectiveness
- efficiency
- fairness
- independence.



We also assessed performance against FSCL's own ToR, which are at **Appendix B** with particular reference to:

- *the requirement to resolve complaints in a cooperative, efficient, timely and fair manner, whilst proceeding with minimum formality and technicality, and*
- *FSCL's processes to ensure consistency and high quality decision making in accordance with its obligations under the TOR to resolve a complaint on its merits, to do what in its opinion is fair in all the circumstances, having regard to:*
  - (i) the law;*
  - (ii) any applicable legal rule or judicial authority;*
  - (iii) general principles of good industry practice and any applicable code of practice.*

In addition we were asked to consider whether there is any disadvantage to FSCL in not using the name "Ombudsman", particularly when considering consumers' accessibility to the FSCL and to consider whether:

- the current financial limits of \$200,000 for direct financial loss and \$500 for inconvenience are appropriate; and
- a complainant should be permitted to access FSCL if prepared to waive any claim amount that is in excess of the \$200,000 financial limit.

## **METHOD**

In undertaking the review, we considered a large range of information from within the FSCL and relevant equivalent procedures and processes from other external disputes resolution FSCLs with which we are familiar.

Sources of information included:

- FSCL's Constitution
- FSCL's terms of reference
- FSCL's Participation Agreement
- FSCL's principles and key practices
- FSCL's strategic plan
- FSCL's Annual Reports
- Reports to FSCL's Board on surveys of complaint parties
- Forms used by FSCL
- Leaflets issued by FSCL
- FSCL's participants' manual
- FSCL's participants' internal disputes manual
- The FSCL Website
- Examination of 25 complaint case files
- FSCL's survey of participants' compliance with internal dispute resolution requirements
- Discussions with the Chair and directors, the CEO, General Manager, the Early Assistance Officer and case managers, as well as a former director and a former case manager
- Interviews with 10 complainants
- Interviews with representatives of 10 participants
- Interviews with external personnel representing the following:
  - Ministry of Business, Innovation and Employment - responsible for consumer affairs
  - Financial Markets Authority (FMA)
  - The office of the New Zealand Parliamentary Ombudsman
  - Consumer New Zealand
  - Ombudsmen in various international schemes

- Documents produced by the Australian and New Zealand Ombudsman Association (ANZOA)
- Benchmarks for Industry-based Customer Dispute Resolution schemes (the Benchmarks), Consumer Affairs Division, Australian Department of Industry, Science and Tourism, 1997
- The International Standard on Guidelines for Complaints Handling in Organizations (ISO:10002)
- The International Standard for Guidelines for Dispute Resolution External to Organizations (ISO:10003)
- *Consumer Guarantees Act 1993*
- *Fair Trading Act 1986*
- Constitution, rules, websites, and Annual Reports of various industry ombudsman schemes including:
  - New Zealand: Banking Ombudsman Scheme Ltd
  - New Zealand: Insurance & Savings Ombudsman
  - UK: Financial Ombudsman Service Ltd
  - UK: Ombudsman Services Ltd
  - UK: The Property Ombudsman
  - South Africa: Ombudsman for Banking Services
  - Australia: Energy & Water Ombudsman (NSW) Limited
  - Australia: Financial Ombudsman Service Ltd
  - Australia: Telecommunication Industry Ombudsman Ltd
  - Canada: Ombudsman for Banking Services and Investments
  - Canada: General Insurance OmbudService
  - Canada: OmbudService for Life & Health Insurance.
- The paper "Effective Approaches to Fundamental Principles" produced by the International Network Financial Services Ombudsman Schemes
- British and Irish Ombudsman Association, Guide to principles of good complaint handling, 2007
- Commonwealth Ombudsman (Australia), Better practice guide to complaint handling; 2009
- Steve Brooker, *Lessons from Ombudsmania*, February 2008, National Consumer Council, United Kingdom
- Handbook: The why and how of complaints handling, Standards Australia HB 229-2006.

## **SATISFACTION WITH FSCL'S SERVICES**

### ***Complainants***

FSCL asks all complainants to complete a questionnaire at the completion of the handling of their complaint regardless of whether resolution is in their favour or not. The questionnaire used, which in our view is well-designed, is at **Appendix C**. This is a good practice and should continue. The results of this regular survey of complainants shows a high level of satisfaction with service delivery. Complainants whose complaints were not upheld or who did not obtain the resolution that they were seeking were also generally positive about the procedures adopted by FSCL and the courtesy with which they were treated.

In conjunction with our review of complainant questionnaires, we also conducted interviews by telephone with a number of consumers who had used FSCLs services. Results from these interviews support the positive assessment obtained from our review of the questionnaires.

#### ***Comments by complainant interviewees:***

*"Really happy with FSCL – will recommend it to my family and friends"*

*"Real life saver – probably saved my sanity"*

### ***Participants***

FSCL surveys participants in the same way. The questionnaire for participants, which we also consider is well designed is also at **Appendix C**. The results show high levels of satisfaction for both participants against whom complaints were upheld and to a greater extent, for those not upheld.

We conducted interviews with representatives of participants which again corroborated the results of FSCL's surveys.

#### ***Comments by participant interviewees:***

*"FSCL has been very helpful in assistance with complaints"*

*"All investigators have shown a grasp of the issues or have quickly informed themselves as needed"*

*"We like telling customers we are a member of FSCL are proud to be one"*

We **recommend** that

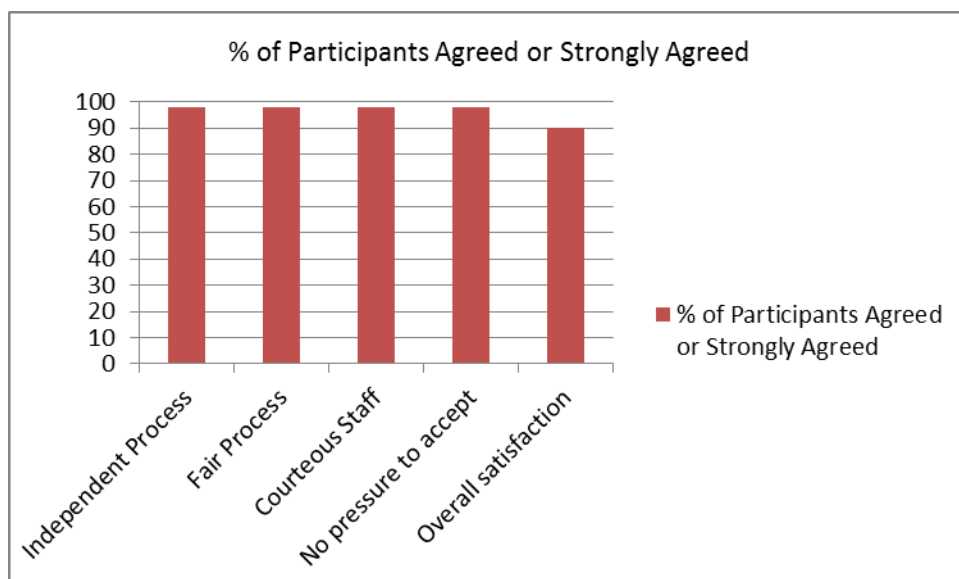
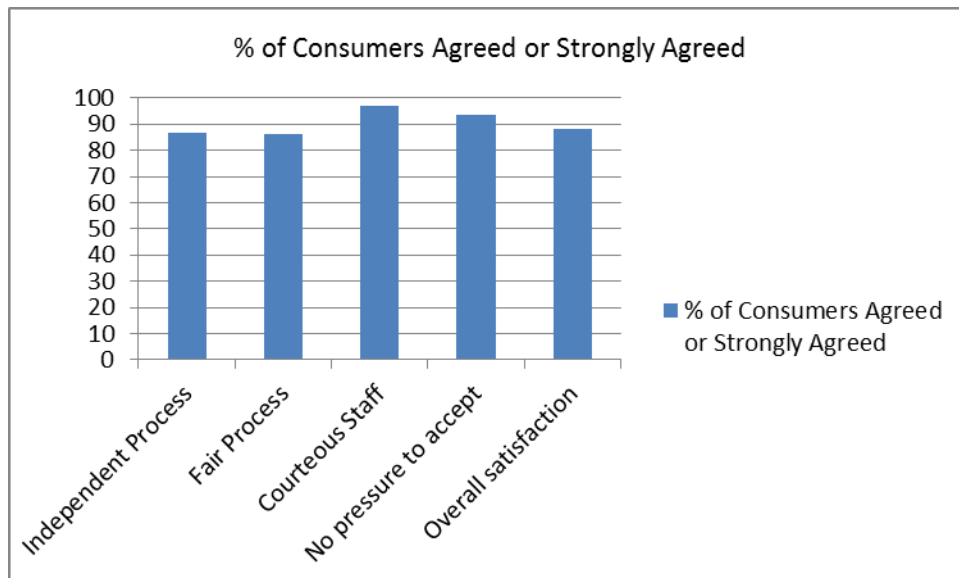
- 1** ***FSCCL publish summarised results in its annual reports of the questionnaires completed by complainants and participants at the end of the resolution process.***

We note that the Insurance and Savings Ombudsman (ISO) and the Banking Ombudsman Scheme (BOS) publish similar information in their annual reports.

For comparison purposes there would be value in all FSP schemes using the same questionnaires. We therefore **recommend** that

- 2** ***FSCCL seek agreement on standardisation of exit survey questionnaires with other financial services disputes resolution scheme providers.***

**Exit Surveys 1 October 2013 – 1 October 2014**



While responses were generally positive some representatives of participants we interviewed questioned the value of the scheme. Our interviews with government and other observers suggest that some companies new to processes of external dispute resolution have not appreciated its general value. FSCL has devoted effort to educate participants about the value to them and the industry of external dispute resolution and provides useful guidance with a participants' manual and an internal disputes manual, with its "Call Us" program for participants. FSCL also works with industry organisations to educate their members.

The FSCL has an obligation to ensure that participants have robust internal systems for the management of complaints. Educating and informing its members must be a major role for any industry ombudsman scheme. However, in our view there would be considerable value, especially in terms of economies of scale and scope if all industry ombudsman schemes collaborated to promote the value of their services to all sectors of industry in New Zealand. We therefore **recommend** that

- 3** ***FSCL explores further opportunities for the promotion of EDR schemes in collaboration with other scheme operators and the government.***

## **BENCHMARK PRINCIPLES AND KEY PRACTICES**

Procedural rules for FSCL are set out in the Act as well as its Terms of Reference. These include a set of 6 benchmark principles which are not defined in the act, but are elaborated by FSCL at Appendix 1 of the Terms of Reference. In guidance notes on the application of procedural rules, Consumer Affairs identifies international standards and best practice as the source of the benchmarks. Consumer Affairs' website provides a commentary on the benchmark principles ([consumeraffairs.govt.nz](http://consumeraffairs.govt.nz)). We have reviewed the Benchmark Principles applied by FSCL against the Consumer Affairs guidance notes and current best practice sources.

The benchmark principles set out in the Act are not defined. The Consumer Affairs website provides commentary on the benchmark and refers to international standards and best practice as their source. This section of the report provides an evaluation of the extent to which FSCL applies these.

FSCL has committed itself to a set of key practices in relation to each of these principles. The principles and key practices are at **Appendix A**. And at **Appendix D** are the current principles and key practices adopted by ANZOA in their rules and criteria for membership. These are derived from the principles and key practices for industry ombudsman recommended by the then Australian Department of Industry Science and Tourism. FSCL's principles and key practices are substantially in accord with ANZOA's. We make recommendations on publication of decisions and on naming participants in general statistics in annual reports which would bring FSCL's key practices more closely in line with ANZOA. We note that ANZOA's key practices differ from the Consumer Affairs guideline. Our view is that ANZOA should be seen as setting the benchmark to which ombudsman/EDR schemes should conform.

ANZOA includes a "purpose" statement for each principle and the document is set out differently from FSCL's. We think it would be useful for FSCL to include the purpose statements and to set out its principles as ANZOA has and put it on the website so that it can be seen that they are in accord. We have included the purpose statements in the discussions below.

It is important that FSCL continue its active role with the International Network to help develop and maintain sound principles and key practices that may be followed by industry ombudsman schemes internationally.

## **ACCESSIBILITY**

### **Principle**

The scheme makes itself readily available to consumers by promoting knowledge of its existence, being easy to use and having no cost barriers.

### **Purpose**

To promote access to the scheme on an equitable basis.

FSCL's strategic plan sets the following objectives:

*Raise the FSCL profile – both in the general or wider financial industry and in the consumer sector*

- *Educate main stream media via targeted marketing (possibly using external consultants)*
- *Continue presentations to centres of influence such as Professional Advisers Association (PAA), Insurance Brokers Association of New Zealand Inc. (IBANZ), NZ Financial Advisers' Association (NZFAA), dealer groups etc*
- *Look for opportunities to participate in industry associations such as the Association of Dispute Resolvers (LEADR), The Australian and New Zealand Institute of Insurance and Finance (ANZIIF), GRC) etc*
- *Look to participate in associations with a consumer focus such as society of Consumer Affairs Professionals (SOCAP)*
- *Offer to present at consumer groups/functions such as service clubs, senior citizen groups, Citizens' Assistance Bureaux (CABs), family budgeting centres etc*
- *Run a FSCL conference in 2015*
- *Ensuring (via a second audit) that FSCL participants clearly list details of FSCL on their website.*

FSCL has experienced an 84% increase in inquiries during the last year and a 24% increase in the number of cases investigated. This builds significantly on increases in previous years. The fact that there has been significant growth in FSCL's inquiry numbers may be a positive indicator in relation to accessibility. All interviewees from stakeholders expressed the view that this increase is largely the result of a steady growth in awareness of complaint handling schemes in general. This is supported by figures for the BOS and ISO. The BOS has experienced 30% and 13% increases in inquiries for its last two reporting periods and the figures in the last three ISO Annual Reports for inquiries are: 2011 – 1625, 2012 – 2833 and 2014 – 3215.



A survey published by the Ministry of Business Innovation and Employment into external dispute resolution in the financial services sector found a low level of general awareness of FSCL along with other EDR schemes. As FSCL's CEO noted in the last Annual Report:

*“only one in ten consumers was able to name at least one financial services dispute resolution scheme, while only six out of ten consumers recognised an agency when prompted.”*

In our view general awareness of the name of a complaint body is no longer a useful measure of the ability of someone to find the appropriate complaint handling body when it is needed. People now seek information in new ways. For example, if “financial complaint” is searched on Google, FSCL comes up as the first in the resulting list. If “insurance complaint” is searched the ISO is number one and FSCL does not appear until page 7. However, interviewees told us that contacting ISO in relation to a complaint with an insurer that was a participant of FSCL they were immediately referred to FSCL. Searching using the term complaint and the name of a particular company in some tested cases up the FSCL site in the first page or two of the Google list. This does not in our testing work for all schemes; we were not able to find the ISO using this search method.

Simply searching on “complaint” puts “Complaintline” second to the New Zealand Parliamentary Ombudsman and “How to complain | Consumer Affairs” third on the first Google page.

Complaintline is a very useful service that has a listing of apparently all complaint handling bodies in New Zealand. A comprehensive list of services and goods makes it easy to find the appropriate complaint body. This site acknowledges that it is modelled on an Australian site. We understand some funding from New Zealand government sources supports this facility.

The 21<sup>st</sup> century has seen a continuing expansion of information sources and of the technologies to deliver that information. The volume of information now available makes sorting the good from the bad, the useful from the useless a near impossible task for individual consumers. Only the largest advertisers and government campaigns can afford to cut through the ‘noise’ of information.

It is increasingly necessary for individuals to rely on others to absorb and process the information that may be important. In the area of financial services this means reliance on dedicated information bodies such as citizen advice bureaux and libraries, and non-government organizations such as budgeting services, consumer advocacy bodies, ethnic

bodies, and so on. They are the information guides. As well as the internet, directories, and friends, people turn to these agencies to find out who can fix a problem. We think FSCL should continue to devote significant resources to working with these agencies.

From our interviews we consider that the consumer complaint days organised by the Ministry of Business, Innovation and Employment (MBIE) may be worth continuing though we understand that there has not been a thorough evaluation of their usefulness. We were also advised that using local free newspapers and local radio for promoting FSCL's service including in other appropriate languages such as Samoan and Chinese can be valuable. The growing use of mobile phones and the growth of smart phones may have significant potential. We were told that broadcast texting is being used to communicate with some less privileged groups in New Zealand. The new communications technologies based on smart phones provide exciting new platforms for delivering information which may assist FSCL in future. We note that such developments elsewhere.

We think general coverage of financial services complaints advice in the main media including through liaison with consumer writers in the print media will continue to be useful.

We strongly support the current practice of FSCL in working through organisations with particular reach into communities of marginalised and disadvantaged consumers. We were advised by several interviewees that high level of staff turnover in these organisations makes the task more difficult. Ensuring these organisations are kept up to date with information and complaint kits, and having regular staff visits to them can produce significant benefits. We think that performance measurement relating to awareness should include this activity.

In our experience, it is not unusual for consumers to talk to their solicitor or accountant about a complaint with a financial service provider and we have heard that sometimes the lawyer or accountant commences action on the consumer's behalf rather than referring them to a free of charge and appropriate EDR scheme. This seems to be because there is insufficient awareness of EDR schemes in these professions and if so this needs correcting through continuing professional development requirements in these professions. In our view it is unethical for a lawyer or accountant to charge for such assistance unless the consumer has been effectively informed of the EDR option. A recommendation below refers to this.

### ***Reaching Young Consumers***

Little research has been published on the ways in which young people deal with problem resolution in the consumer goods and services field. However, some recent work by team participant John Wood undertaken with this demographic (16 to 25 years old) revealed the following:

- they will return to the place of purchase and try and get an outcome;
- they will try and find a solution from friends;
- they will try and find a solution on the internet, particularly via social media;
- they may approach an NGO such as a financial counselling service;
- they are unlikely to ring or write or email the company concerned if the problem isn't sorted at the place of purchase;
- they are unlikely to go to an EDR scheme; and
- they will tell everyone they know about the 'bad deal' they got.

A conclusion we draw is that a scheme's having a presence in social media is worthwhile and paid advertisements on Facebook and Google could be worthwhile.

It is an unfortunate reality of dispute resolution schemes that it is hardest to reach the people who most need them and encourage them to seek help. The objectives of FSCL are appropriate and pursuing the suggestions we have made may be helpful, but more knowledge of what works in the New Zealand context is needed.

Under the competitive arrangements addressing shortcomings in the area of accessibility and awareness is difficult due to collective action and free rider problems. There is a disincentive for any one scheme to invest heavily in this. There is the risk that FSCL participants may be unsupportive as they may see this as increasing complaints and costs to them directly and through their EDR scheme thus placing them at a disadvantage to those companies associated with other EDR schemes. There is also the issue that the other EDR schemes which are not contributing to expansion of general awareness could nonetheless benefit – in other words “free-ride” on the investment made. We have concluded that collaboration amongst all financial services ombudsman/EDR schemes and ideally with industry ombudsman for other industries on the issue is needed. We consider collaboration on awareness efforts particularly important in the run up to the expected new responsible lending code.

Accordingly we **recommend** that

- 4** ***FSCL seek to have the issue of joint promotion further considered at the quarterly meetings of EDR schemes and seek agreement including from Government on a collaborative approach to increasing accessibility/awareness including:***
- ***consulting with relevant community organisations and commissioning research to determine the most cost effective means of:***
    - a) ***informing all citizens, especially the least privileged and least financially literate, that complaining or raising a problem is a positive thing to do as it may assist in improving the service of the financial service provider and the financial services industry and benefiting all consumers, and***
    - b) ***informing them of the ways they may make complaints or raise problems.***
  - ***based on that research, a pooling of resources on a proportional basis to achieve increased propensity to complain/raise problems and increased awareness, including through relevant community organisations and professions such as lawyers and accountants, of the ways to do that, and***
  - ***considering pooling of resources to develop a single toll free consumer complaint phone referral facility possibly associated with Complaintline.***

### ***The term Ombudsman***

The terms of reference for this review asked us:

*“to consider whether there is any disadvantage to FSCL in not using the name “Ombudsman”, particularly when considering consumers’ accessibility to the FSCL.”*

The use of the word “ombudsman” in a description of dispute resolution schemes is the subject of considerable published material. A thorough canvassing of the issue can be found under the title “What’s in a name? Use of the term “ombudsman” by Prof John McMillan, then Commonwealth Ombudsman of Australia April 2008. This article reviews the history and uses of the term and provides a detailed analysis of issues.

In undertaking our review we sought opinions from a wide range of stakeholders. We heard differing views. Some said the term ombudsman implied formal and possibly intimidating processes and might make some consumers reluctant to pursue a complaint. On the other hand we were told that “ombudsman” had “gravitas” and that because it clearly implied independence and impartiality consumers would be more confident that they would get a fair hearing. The fact that membership of FSCL has grown significantly and that there has been steady growth in inquiries and complaints could suggest little disadvantage, but we cannot say that growth would not have been greater with the ombudsman title.

***Comment by an interviewee:***

*“Not being able to use the term “Ombudsman” limited FSCL’s ability to recruit companies from some sectors”*

We are of the view that “ombudsman” is an appropriate title for an organisation that meets ANZOA’s criteria as FSCL does. The term “ombudsman” is now widely used internationally for industry EDR schemes and it is a term that is increasingly familiar to consumers. With increasing globalisation of markets including increasing cross border transactions by consumers it makes sense that the term become universal.

The Ombudsman Act 1975, section 28A provides that the term ombudsman is not to be used to describe a scheme unless the Chief Ombudsman has given written consent. To date, approval has only been granted twice, to the Banking Ombudsman and the Insurance and Savings Ombudsman. The Chief Ombudsman has published a policy statement that contains limited guidance on whether approval will be granted, mixed with observations on the justification for the restriction. A statement by the Chief Ombudsman concerning restrictions on the use of the name was published in the New Zealand Ombudsman annual report 2001/02,

On balance we find that there may be some disadvantage to FSCL in not using the term “ombudsman” in its name. However, under the provisions of the Ombudsman Act 1975, it is for the Chief Ombudsman to grant approval. In principle we understand the need to protect the integrity of the title “ombudsman” but do not see a valid objection to FSCL using it.

It might be argued that under the competitive model having two or more EDR schemes dealing with the same sector or sectors of industry using the label “ombudsman” would be confusing. We suggest that it would be no more confusing than the present situation.

## **INDEPENDENCE**

### **Principle**

The decision-making process and administration of the scheme are independent from scheme participants.

### **Purpose**

To ensure that the processes and decisions of the scheme are objective and unbiased and are seen to be objective and unbiased.

## **Overseeing Entity - The Board**

### ***Board membership***

The current board membership with an independent Chair, two participants representing participants and two participants representing Consumers and qualifications for participants and their selection as determined in FSCL's constitution are appropriate and in accord with ANZOA principles. FSCL has publicly advertised board vacancies. We **recommend** that

- 5 the FSCL constitution be amended to require public advertising of board vacancies and to prescribe a three term limit for directors.***

Keeping the number of Board participants to as few as are needed to carry out effectively the Board's duties is also seen as good practice; and supplementary assistance, if necessary can be gained through the establishment of sub-committees with co-opted participants or by the use of advisory committees.

### ***Role, powers and duties of the Board***

Broadly speaking the role of the Board is to provide independent governance of FSCL to appoint the CEO and approve financial service providers as participants, to determine fees and the budget. The functions, responsibilities, and duties of the Board as specified in the constitution of FSCL are appropriate and equivalent to those of the majority of industry FSCLs. Our discussions with directors and examination of various documents gives us confidence that the board exercises its powers and carries out its duties effectively.

Nevertheless we think it would be useful for it to have a statement elaborating its duties. We **recommend** that:

- 6** ***FSCL establish a charter to assist the directors in carrying out their duties to ensure the scheme meets its purpose and adheres to its principles.***

Suggested content for such a charter is at **Appendix F**. We found that the current board in fact already does nearly all the things in this list.

***Comment by a complainant interviewee:***

*“I was surprised and pleased that a non-government body was so independent of industry”*

## **FAIRNESS**

### **Principle**

The scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.

### **Purpose**

To ensure that the decisions *and procedures* of the scheme are fair and are seen to be fair.

### ***Natural Justice***

It was apparent from our examination of case files and interviews with both complainants and participants that FSCL adheres to the principles of natural justice. In all of the case files and interviews it appeared to us that all parties were given adequate opportunity to make their case. Complainants were provided with all the assistance they needed to articulate their concerns. This appropriately stopped short of advocacy and complainants understood that it is not the function of FSCL to represent their specific interests. We observed no evidence of bias in investigations or decision making.

***Comment by a participant interviewee:***

*“FSCL demonstrates a clear understanding of both sides”*

***Comment by a complainant interviewee:***

*“Wonderful service. They were there at the right time. Advice was on the money. They didn’t get involved in my emotional baggage!”*

***Complainant – provider meetings and mediation***

We understand that FSCL has arranged meetings between complainants and providers. One of our complainant interviewees indicated that she felt under some pressure to achieve an outcome and to accede to an offer of settlement because FSCL had arranged the meeting. In arranging such meetings, FSCL should emphasise to complainants that it has not come to any view as to the merits of the complaint and that the complainant should feel quite free to refuse settlement offers and take the complaint formally to FSCL if they so wish.

***Comment by a complainant interviewee:***

*“Would have been good if I had been talked through some choices particularly in relation to offers the company makes which are less than what I want.”*

Our interviews generally strongly indicated that FSCL’s mediation processes were very sound.

***Comment by complainant interviewee:***

*“In mediation I did not feel pressured”*

Inevitably mediation will not satisfy complainants every time.

***Comment by complainant interviewees:***

*“I felt ganged up on in mediation”*

*“Should take care to ensure there is no feeling of power imbalance in mediation.”*

***Language interpretation***

FSCL has not thus far found it necessary to subscribe to the interpretation service provided by the New Zealand government. It should be prepared to do so. We note that as a government organisation FDR has access to this service free of charge. It is not satisfactory that all EDR schemes do not have access on the same basis.



## ACCOUNTABILITY

### Principle

The scheme publicly accounts for its operations by producing written determinations, published in case notes and information about complaints and highlighting any systemic industry problems.

### Purpose

To ensure public confidence in the scheme and allow assessment and improvement of its performance and that of scheme members.

### **Determinations**

The ANZOA principle is

*“The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic problems.”*

And the ANZOA key practice is:

*The scheme regularly provides written reports of determinations to scheme participants and any interested bodies for the purposes of:*

- a. educating scheme participants and consumers; and*
- b. demonstrating consistency and fairness in decision-making.*

*Written reports of determinations do not name the parties involved.*

In the context of FSCL, we interpret ‘determinations’ to include Recommendations and Binding Decisions.

Currently, FSCL publishes Case Notes on its website and in its Annual Report. To make this aspect of accountability to the public clear, we **recommend** that

- 7** ***paragraph 2.2 of FSCL’s key practices be amended to read:***  
***The scheme regularly publishes anonymised copies of all recommendations and decisions on its website unless such a copy would not prevent the identification of a participant or a complainant in which case only summary with non-identifying information about that determination is to be published for the purposes of:***
  - educating scheme participants and consumers, and***
  - demonstrating consistency and fairness in decision making.***

## **Reporting**

The ANZOA key practice states:

*The scheme publishes a detailed and informative annual report containing specific statistical and other data about the performance of the scheme, including, (inter alia):*

- h. the names of those scheme participants which do not meet their obligations as participants of the scheme ;*

Examples of where a FSCL Participant does not meet its obligations under the FSCL ToR will include where it does not provide information as and when requested, or where it does not comply with a determination made under the FSCL

In our view, however, the requirement should go further. In order for consumers to obtain some impression of how individual participants perform within the FSCL, participants' names should be published against statistics in the Annual Report and Website. This would also provide valuable comparative information to participants about competitors' performance, and contribute to improving their performance.

Reporting names in such a manner should be welcomed in a competitive industry and, as is evident from **Appendix G**, is now practiced by most schemes. We appreciate that the competitive model makes this somewhat problematical. If one scheme reports in this way and others do not there is a risk of migration of companies from that scheme. We also appreciate that there is a concern that with such reporting companies could be inclined to try to keep complaints from the EDR scheme. If they were to do so they would be in breach of their obligations under the scheme and subject to greater risk perhaps, even licence cancellation, so we consider this unlikely behaviour and have not observed it in schemes elsewhere that report in this way.

There is frequent discussion about applying a qualifier in these circumstances, such as per customer or turnover. Other schemes do this using broad band categories in terms of customer numbers. For FSCL the following might be appropriate:

- Under 1000 customers
- 1000 to 5000 customers
- 5000 to 20,000 customers
- 100,000 to 500,000 customers
- 500,000 to 1 million customers
- Over 1 million customers.

It would also be appropriate to comment that a company might have a larger number of complaints going to FSCL than a similar competitor not because the quality of its service is poorer but either because it is more effective in encouraging feedback and providing information on complaining or on the other hand because its internal complaint handling is less effective or possibly both. We **recommend** that

**8** *FSCL seek agreement with other financial services disputes resolution scheme providers on publishing participant's names against statistics in annual reports and websites.*

It was suggested to us that participants would find useful a quarterly newsletter analysing trends in complaints useful.

***Participant compliance reporting***

It can be a very constructive process for Participants to monitor their own compliance with requirements of their membership of FSCL. We **recommend** that

**9** *the ToR be amended to require participants - as they renew annually - to renew their compliance undertaking.*

FSCL has undertaken an audit of some of the Participant's websites, and random audits of Participant's materials for compliance. We comment further on this below.

## **EFFICIENCY**

### **Principle**

The Scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

### **Purpose**

To give customers and scheme participants confidence in the scheme and to ensure the scheme provides value for its funding.

### ***Funding - costs and fees***

Costs will always be a major concern for participants - as it is in all such external complaint handling organizations – and rightly so. It is perhaps trite to say that the efficiency of FSCL and the efforts made by participants to eliminate causes of complaints, and to learn from them, are the keys to minimising the costs of the FSCL to participants, but it is true.

We are confident that the Board, CEO and staff are very aware of the need to undertake their work as efficiently as possible without sacrificing professionalism in handling complaints. Particular efficiency measures such as the early assistance procedures mentioned below have been introduced by FSCL and we are confident that there are and will be continuing efforts to reduce costs where practical.

In its last financial year FSCL reduced annual fees. By the same token participants should be prepared for increases in fees when these can be justified in the case of unforeseen circumstances such as the Christchurch earthquake and changes in public policy and legislation. The expected new rules on responsible lending is likely to lead to an increase in complaints.

Increases in fees could also be justified for greater expenditure on promotion whether or not this is indicated as a result of our recommendation in the accessibility section on collaboration on promotion.

The scale of fees FSCL charges for individual complaints is in line with other industry ombudsman schemes. FSCL sets these fees to cover most of the actual costs of the processing complaints from beginning to end. We say “most” because it seems that the amount of time the CEO must devote to the final stages of resolving complaints is growing and this may not be fully covered. As we indicated earlier, further growth in complaints numbers can be expected as awareness grows and probably because of additional grounds for complaint arising out of the expected change in legislation covering lending. We therefore **recommend** that

***10 FSCL consider the appointment of a further senior staff member to assist the CEO in the final stages of complaint handling.***

If this is not done there is a risk that as complaint numbers continue to grow, the CEO will not be able to devote sufficient time to the overall management of FSCL.

The competitive model under which FSCL operates raises the risk that pressure to drive down both annual fees and case fees may lead to inadequate resources for proper investigation. We saw no evidence of this but it is something that the board should keep under review.

### **Early assistance**

We were impressed with the early assistance procedures of FSCL which seems to have contributed significantly to an improvement in the efficiency of complaint handling. Under this procedure a complainant who contacts FSCL who has either not commenced a complaint with the financial service provider or has done so, but not made progress is offered assistance. This normally involves helping with reduction of their complaint to writing. The Early Assistance Officer then transmits this to the financial service provider. The progress of the complaint is monitored and if it is not resolved between the complainant and the financial service provider within 40 days FSCL takes it over. There is no requirement for the financial service provider to advise that deadlock has been reached. We strongly commend this procedure. It not only contributes to efficiency but also accessibility, fairness and effectiveness.

#### **Comment by a complainant interviewee:**

*“Excellent service – I’m now very much more aware that I can do things (in my financial dealings) better myself”*

### **Discretion to exclude complaints**

Having the power to exclude a complaint is important for the efficiency of a dispute resolution scheme, but this can be a controversial issue. In our view there are occasions when this is appropriate and we consider that ToR Paragraph 8.2 which gives the CEO discretion to exclude complaints for various reasons including that it is “frivolous or vexatious or not being pursued in a reasonable manner” is sound as are the procedures specified to be followed on the exercising of this discretion.

### **Tracking of complaints**

We were impressed with the comprehensive reports on case handling times made to every Board meeting. The figures show that FSCL is operating very well in terms of the performance measures for the time periods for the various stages in the complaint case process. This was corroborated by our examination of case files and our interviews with both complainants and participants.

### ***Information management***

FSCL has shown strong growth in membership and inquiries and complaints received. To date internal systems which include a significant proportion of manual or handwritten records have been able to cope with this. We believe that future growth of the audit experienced in recent years may lead to the need for an investigation of greater levels of automation. We suggest that the CEO gives consideration to a scoping study for future systems automation.

## **EFFECTIVENESS**

### **Principle**

The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

### **Purpose**

To promote customer confidence in the scheme and ensure that the scheme fulfils its role.

### ***Financial limits***

The current financial limits are consistent with those of other financial services schemes. Most of our interviews including those representing participants agreed that there is logic in setting the limit to accord with the District Court limit which we understand is to be set at \$350,000 in the near future. We believe that a rather higher limit of say \$1million would be appropriate to allow for consideration of disputes in relation to higher insurance claims. It is likely that significant numbers of consumers have had insurance claims of this magnitude rejected but that the likely costs of proceeding through court processes make this impractical.

FSCL in fact previously had a limit of \$100,000 while the ISO had the \$200,000 figure. It made sense for FSCL to bring its limit in line with ISO. However, it would be difficult for FSCL to raise its limit unilaterally as there would be a risk of participants transferring to ISO or FDR.

Similarly a number of our interviewees, including those representing participants, agreed that there should be an option for a complainant who has a potential claim that exceeds the limit to have that complaint considered on the basis that any resolution would only be for an amount at or below the limit.

We **recommend** that

- 11** ***FSCL seek to have the current financial jurisdictional limit considered at the quarterly meeting of EDR schemes and if necessary seek a direction from Government on these issues.***

The terms of reference for the review call for an evaluation of the adequacy of the present \$500 limit to an award for inconvenience.

Responses from stakeholders varied. Most of our Participant interviewees were opposed to an increase while complainants felt a larger sum should be available. Noting that the legislation prohibits the imposition of penalties, we nonetheless recognise that in certain cases the level of inconvenience may call for a greater sum. We **recommend** that

- 12** ***FSCL consider increasing the amount available for an award in relation to inconvenience increased from the present \$500 to \$2000.***

### **Systemic problems and own motion investigations**

ANZOA's members have endorsed a policy statement entitled:

*ESSENTIAL CRITERIA FOR DESCRIBING A BODY AS AN OMBUDSMAN.*

*Inter alia the document states:*

*"Powers - In addition to investigating individual complaints, the Ombudsman must have the right to deal with systemic issues or commence an own motion investigation."*

FSCL's ToR state:

*"F. INDUSTRY PROBLEMS*

*23. Reporting systemic issues*

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

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

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

Systemic issues may be relatively small matters, requiring simple changes to administrative procedures, or they may address significant issues about policy, administration, or rules. An example might be an unclear term in an insurance contract. The aim of pursuing systemic issues is to prevent detriment to the clients of an organization (and to the organization itself) and to reduce future complaints by addressing underlying defective processes.

The ToR are unclear on whether FSCL may consider systemic issues brought to its attention by, for example, a regulator, Member of Parliament, media report, etc. It is also possible that a matter which is not a systemic issue might come to FSCL's attention other than by means of a complaint. We **recommend** that

- 13** *the CEO be given a discretionary power to investigate an issue, including a systemic issue, regardless of how that issue is brought to the CEO's attention, after consultation with the relevant Participant or Participants affected by the issue and to institute the normal procedures for recommendations and decisions.*

### ***Internal complaints mechanisms***

An organisation's complaint handling system has a multiplicity of purposes, which can deliver benefits for all the participants. Such a system provides an opportunity for the consumers of an organisation's services to have their voice heard on those occasions when:

- the organisation fails to deliver its services;
- they are delivered in a manner that is unacceptable to the consumer;
- the organisation fails to meet its own standards of service, or those considered generally acceptable for the industry in which the organisation operates;
- the organisation fails to meet an undertaking; or

the organisation acts in a manner that the consumer considers to be injurious to his or her interests or self.

Secondly, a complaint handling system provides a unique opportunity for an organisation to find out what its consumers think of it, both good and bad, a window into the minds of its consumers and avoids their tarnishing the reputation of an organisation by voicing their complaints in the wider community. An organisation will fail to discover what its public thinks is wrong with it until there is a critical mass that compels attention.



Thirdly, a complaint handling system is an essential ingredient of a client service quality program. Research has shown that effectively handling a complaint will lead to greater levels of loyalty and customer satisfaction than if there had been no problem at all. (TARP 1995)

Finally, effective complaint handling is a major component of an accountability system. It is a declaration by an organisation that it has sufficient confidence in itself to conduct its business in the public gaze; invite complaints, deal with them properly, and report publicly on the outcomes.

It is evident that an external complaint handling scheme's success will depend to a degree on the effectiveness of the internal complaint handling processes established by the FSCL's participants.

FSCL promotes ISO 10002:2006 – *Guidelines for complaints handling in organizations*, to its participants to develop or assess the adequacy of their internal complaint handling processes. We note that ISO 10002:2006 has been superseded in Australia and New Zealand by AS/NZS 10002:2014. It also provides assistance in a range of other ways and our interviews with representatives of participants made it very clear that this assistance is well appreciated and of very high quality.

It is pointless for FSCL to refer complainants back to participants if it is unable to have faith in that participant's processes. FSCL has undertaken some work to assess compliance with requirements for internal dispute resolution through a survey of websites of lending companies amongst its participants. The results were generally poor.

Of FSCL's 271 lenders only 159 actually had websites. Of those 28 were considered satisfactory in terms of information provided about complaint making, 12 were rated average and the remainder, 75%, were rated unsatisfactory. Consequently, we **recommend** that

**14**     ***the FSCL ToR be amended to:***

- ***require each participant to have an internal dispute system that is appropriate to the nature of its services and scale of its operations and to require them to provide information on this system including the name or names of staff responsible for complaint handling and update this information as needed, and***
- ***make clear that if FSCL becomes concerned about the performance of a Participant's complaint handling processes or performance, the FSCL may undertake an audit of the Participant's processes and provide advice to the Participant on necessary remedial action.***

This would assist both the Participant and the FSCL to improve efficiency in handling complaints.

***Defaulting FSCL participants***

FSCL's ToR state:

21. *Termination*

21.1 *Where a Participant or former Participant fails to meet its obligations under these Terms of Reference and/or fails to comply with the Chief Executive Officer's recommendation or Panel's determination, FSCL may take any action it considers appropriate including:*

- *terminating the Participant's membership; and/or*
- *referring the matter to the Financial Markets Authority.*

"Fails to comply" would therefore include failure to comply with the requirements in relation to internal complaints handling.

***Monitoring implementation of complaint resolutions by participants***

An issue that is causing some concern in a number of dispute resolution schemes is the failure of a participant to implement undertakings made in the resolution of a complaint with a customer. While it is not apparent that this has become an issue with FSCL, it is, nevertheless, something worth watching.

## OTHER ISSUES

### ***Disputes tribunals***

Disputes between consumers and financial service providers (FSP) should be dealt with by the specialist EDR schemes New Zealand has established. FSP's should refer complainants to the relevant EDR scheme. However a consumer with a complaint against a FSP might commence an action through the Disputes Tribunal without the FSP's knowledge. It might be appropriate for the Disputes Tribunal to have a mechanism such that before it commences dealing with that dispute the consumer is informed that they may take the dispute to the relevant EDR scheme. It is also possible that a FSP might seek to have a dispute dealt with by the Disputes Tribunal that is more appropriately dealt with by the relevant EDR scheme. During the course of our review, a number of stakeholders raised what they saw as the inappropriate use of the Disputes Tribunal either by complainants or creditors. In both cases it was put to us that the EDR schemes are the most appropriate venue for resolving disputes and we note ToR 8.1 (h) on the dispute resolution website:

*"The Disputes Tribunal cannot be used to recover a debt that is not disputed."*

We therefore **recommend** that

- 15** ***FSCL seek to have the issue of Disputes Tribunals dealing with financial service complaints considered at a quarterly meeting of EDR schemes.***

## REFERENCES

Ayres, Ian and John Braithwaite (1992) - "Responsive Regulation: Transcending the deregulation debate". New York: Oxford University Press. Page 35.

Brooker, Steve (2008) - "Lessons from ombudsmania", National Consumer Council, London, 2008 Brooker op. cit. page 12

TARP (1995) – "American Express/SOCAP study of complaint handling in Australia", 1995