

FSCL's provisional response to the recommendations made by the March 2020 Independent Review

Risk

1. *FSCL should put in place a succession plan for the CEO as soon as possible.*

We accept this recommendation and are actively working on succession planning.

Resources

2. *The current financial reserves are sensible and should be safeguarded at the present time.*

We accept this recommendation and note that the need for a level of healthy financial reserves is even more important at the current time during the uncertainty caused by the Covid-19 virus.

Scheme members

3. *There is a need to ensure that Scheme members' internal dispute mechanisms are monitored and enhanced by FSCL to proper standards.*

We accept this recommendation. We will shortly be starting a website audit of all Scheme members to check that information is clearly available about their own internal complaints procedures and about the ability for customers to refer unresolved complaints to FSCL, including FSCL's contact details.

FSCL is also collecting information from consumers who contact our office with a complaint about how the consumer came to know about us. We will communicate with Scheme members whose internal complaints processes are considered deficient and will require those Scheme members to improve their internal complaints processes and meet best practice.

Accessibility

4. *FSCL should develop a focussed accessibility strategy in order to be available to vulnerable communities and part of that plan must involve collaboration with other Schemes.*

We accept this recommendation and agree that a coordinated effort across all dispute resolution schemes, not just the financial dispute resolution schemes, is important in order to share costs and resources. We take active steps each year to improve our consumer outreach and note that currently:

- We will be taking part in and presenting at hui around New Zealand organised by FinCap (currently postponed due to the Covid-19 pandemic).
- We have developed constructive working relationships with the Salvation Army and Christians Against Poverty and will be presenting a specialised workshop on lending issues, including irresponsible lending, to financial mentors later in 2020.
- We distribute brochures about our services to community organisations such as Citizens Advice Bureaus and Community Law Centres.

We consider that Government should also be assisting with outreach, both in the coordination of the outreach, and contributing to the cost of outreach, in order to reach vulnerable communities in particular.

Natural justice

5. *FSCL's practice of giving its preliminary view to all parties to a dispute is unhelpful and the person who is the subject of an adverse finding should have the opportunity of commenting on that finding before it is finally confirmed. FSCL should ensure that a Scheme member who may have an adverse finding against it included in a notice of recommendation is fully aware of this fact before the notice is issued and has had an opportunity to comment on it.*

We consider our practice of issuing preliminary decisions, either by way of a less formal preliminary view letter or a more detailed notice of recommendation, complies with both our terms of reference and, to our knowledge, best practice of industry ombudsman and other dispute resolution schemes. Under our terms of reference, we have to give 20 working days' notice of a recommendation (and preliminary view) to both parties to the complaint. Both parties then have the opportunity to comment and to provide further evidence before a final decision (Recommendation) is made. As such, we consider that both parties (Scheme member and consumer) are given sufficient notice and opportunity to comment before a final decision is made.

We note that in nearly all cases, the case manager will also have communicated with the Scheme member or consumer before an adverse finding is made so that the party is aware of the likely finding before a written notice of recommendation or preliminary view is issued.

Apart from the case referred to by the reviewer in paragraph 10.8 of the report, we are not aware of any other cases where a party has complained that they had not received a proper opportunity to comment on an adverse finding before a notice of recommendation was issued.

Adding an extra step into the process will lead to extra working days and delays in completing the investigation of a complaint or issuing a final Recommendation on a complaint.

However, FSCL will survey and consult with other ombudsmen and dispute resolution schemes to confirm that its current practice accords with best practice for industry ombudsmen and dispute resolution schemes.

Public good and reporting

6. *One of the values of FSCL's service is the collection of data and the ability to interpret patterns and trends so as to advise Scheme members and others, in order to prevent complaints in the first place. In addition, as from 29 June 2020, FSCL will have a duty to report to regulators on material and likely material breaches of financial markets legislation, which will make good data collection processes very important. There is a need for a uniform approach by the financial dispute resolution schemes in this area, in particular, having regard to the competitive environment in which the schemes operate.*

We agree with this recommendation and we will take steps to identify complaint patterns and trends and report on these to both Scheme members and to the regulators. FSCL has a systemic issues policy (see paragraph 20 of our terms of reference).

We are liaising with the other financial dispute resolution schemes and with the regulators as to how best to practically manage the new reporting requirement under section 67 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. The regulators will provide their views on "materiality" which will then inform memoranda of understanding to be entered into with the regulators. We hope that this will ensure there is a uniform approach across the schemes and that the schemes are providing the regulators with information that is both material and useful to them.