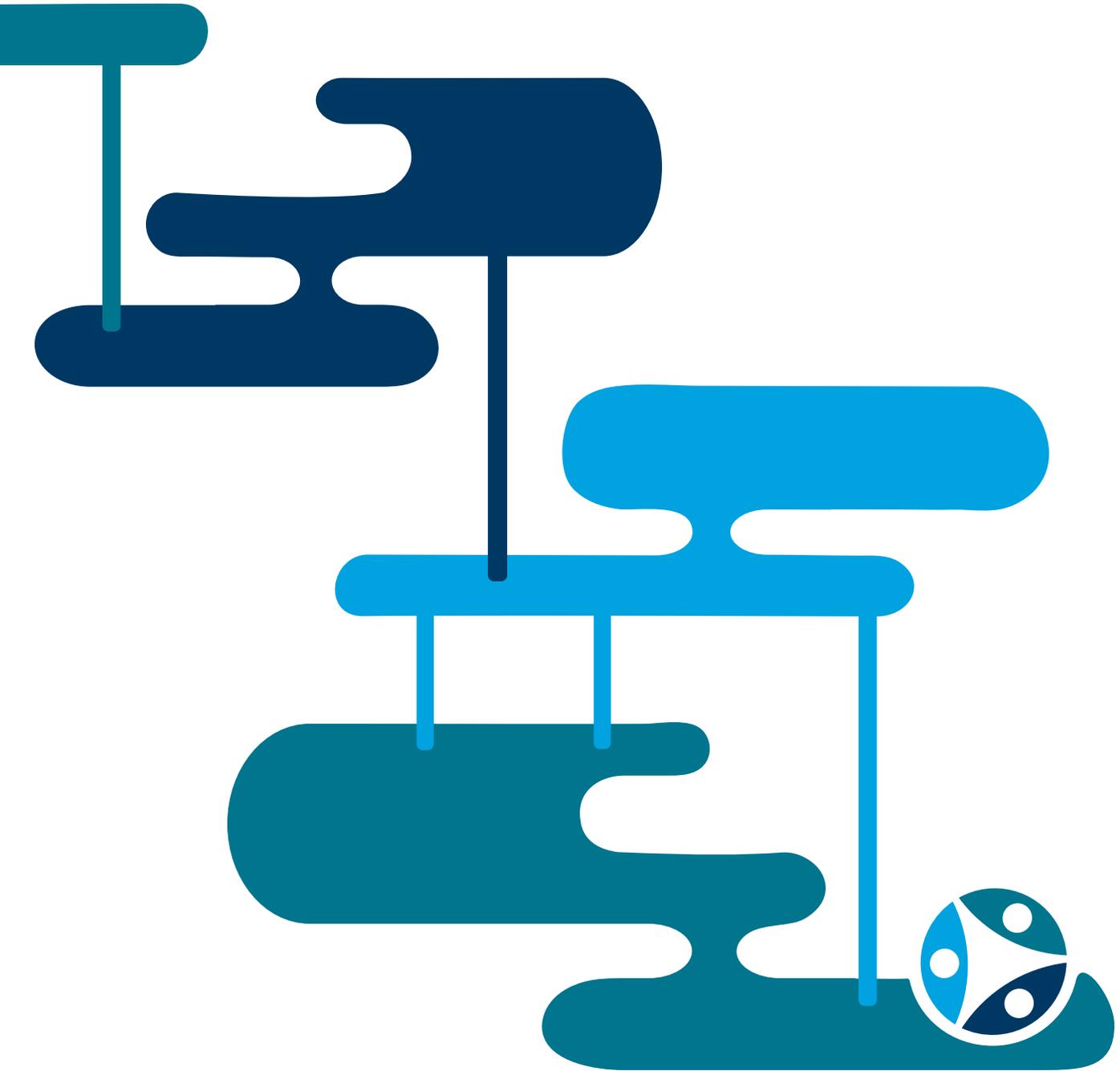


2013/2014

ANNUAL REPORT

FINANCIAL SERVICES COMPLAINTS LTD



solving problems and resolving complaints
for consumers and financial service providers

In 2013/14, we handled over 3,000 consumer enquiries and complaints about financial service providers, an 84% increase on the previous year, and formally investigated 202 cases, a 24% increase on the previous year

WHO WE ARE

FSCL is an independent not-for-profit dispute resolution service operating in the financial services sector. We are a company governed by a Board and funded by a combination of membership and complaint fees levied on our participants. Our services are free to consumers.

WHAT WE DO

FSCL's role is to help resolve complaints between consumers and their financial services provider. We cannot advocate for or represent either consumers or our participants. Our aim is to impartially assist both sides resolve their grievances between themselves without having to resort to legal proceedings.

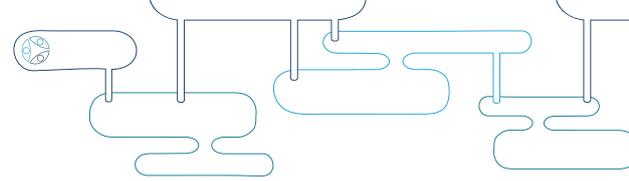
HOW WE WORK

Almost all complaints we deal with are resolved by conciliation, negotiated settlement or withdrawal of a complaint.

Our process is inquisitorial and focuses on producing a mutually satisfactory outcome for both consumers and participants. Consumers and participants are given an equal opportunity to put forward their cases.

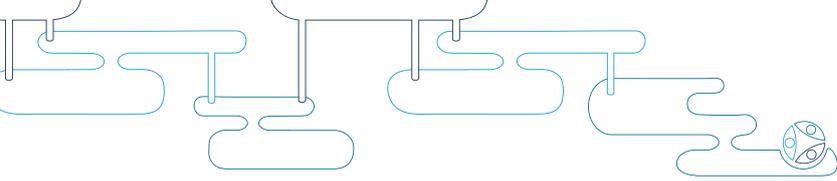
FSCL's decision-making process is independent of our participants and sectors of the industry which provide our funding. The Chief Executive Officer and staff are entirely responsible for handling and determining complaints and are not subject to external influence by any of FSCL's stakeholders.

Where a complaint cannot be resolved by conciliation or negotiated settlement, the Chief Executive Officer can make a formal recommendation which is binding on the participant, if the complainant accepts the recommendation in full and final settlement of the complaint.



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CHAIRMAN'S INTRODUCTION

I recently conducted some informal research. This involved catching the evening news bulletin every night for a week or so. In close to half of these bulletins, the phrase "natural justice" was used – either by a journalist, a commentator or someone making the news.

I am sometimes sceptical about whether any of the people bandying around the phrase "natural justice" actually understand what it means. I suspect that most use it as a synonym for the substantive outcome of some dispute which they favour.

Natural justice is shorthand for a set of flexible principles which the law has developed to ensure that decision-making is fair – it is sometimes used to mean "procedural fairness", though natural justice and procedural fairness do not cover quite the same territory.

Not all decision-making can of course be tested against such principles – your teenage son or daughter could hardly insist that you adhere to the principles of natural justice when you determine whether they are allowed to attend some function or other (though no doubt you would want them to accept that your decision is based on considerations that you regard as important, rather than on mere caprice).

one of the cornerstones of natural justice is that the decision-maker must be independent.

But decisions made by public and private decision-makers which have a significant impact on others can be challenged in the courts on the basis that the decision-maker has not approached their task fairly – that is to say that they have not adhered to the principles of natural justice.

Why am I offering up this administrative law lecture in FSCL's annual report? Well, one of the cornerstones of natural justice is that the decision-maker must be independent. So, it would be an affront to natural justice if the judge hearing a dispute between factions of shareholders in a company was a shareholder and a member of one of those factions. A judge must be entirely independent of the parties and the issues.

So too must an ombudsman exercising quasi-judicial responsibilities when making a decision in a dispute between a financial services provider and a consumer.

The Financial Service Providers (Registration and Dispute Resolution) Act 2008 says that dispute resolution schemes must adhere to strict principles of independence. FSCL's constitution reinforces this.

I follow very keenly FSCL's record in relation to the resolution of disputes between participants and consumers, particularly those which require a formal decision. That is not to say that I take any part in those processes (for me to do so would breach another natural justice principle). But I receive a fairly constant flow of information about disputes resolved, informally, in mediation or by formal decision. As we have built up a body of decisions over the past few years, I have become increasingly proud of the independence and impartiality which is evident from these.

That is why I find myself bemused by the occasional suggestion (often, I must say, from those who appear to have a vested interest) that the existence of more than one dispute resolution scheme, and therefore competition, leads to a lack of independence. As far as I am aware there is not a scintilla of evidence, internationally or here in New Zealand, to support this. The blind adherence to the proposition that it is only where there is one decision-making body that one can achieve independence appears to me to be an unintelligent position to adopt. Surely, what matters is whether the dispute resolution system – whether public or private; whether concentrated in one body or more than one body – is complying with the principles of natural justice which demand independence and impartiality in decision-makers. FSCL is demonstrably doing so, and I have no reason to think that the other schemes which exist in the financial services market are not also doing so.

This is my fourth report as FSCL's Chairman. FSCL is in very good health. Our participation levels have continued to grow and we continue to be the largest dispute resolution scheme (measured by the number of participants) in the industry, by some margin. Our growth and the efficient way which our Chief Executive Officer, Susan Taylor, and General Manager, Trevor Slater, manage the business has enabled us, for the second year in a row, to deliver a reduction in annual fees for most participants (12.5% per annum for the 2014/15 financial year). As a result of the 10% reduction in annual fees for the 2013/14 financial year, annual fee income decreased by approximately \$91,200.



Kenneth Johnston: *Chairman*

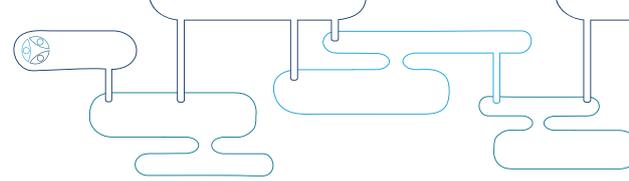
There has been one change at Board level during the last year, with Darren Pratley retiring and being replaced by Gary Young, the New Zealand Insurance Brokers' Association's Chief Executive Officer. We were sad to see Darren go. He made a significant contribution to FSCL's governance and success. Darren was one of FSCL's first supporters and worked enthusiastically and tirelessly to promote FSCL to financial advisers. Without Darren's whole-hearted support in the scheme's early days, FSCL may not have reached the heights it now enjoys. By the same token, the Board was pleased when Gary accepted its offer to become a director, not only because of his governance skills but also because of his ability to bring an insurance industry perspective to the Board. I feel privileged to serve on FSCL's Board with the other directors, Roger Kerr and Gary who are the industry representatives and Bruce Cronin and Raewyn Fox who are the consumer representatives.

During the coming year FSCL is scheduled to have its first independent review as required under the legislation. The Board and the senior management team are looking forward to this, as we hope to derive some benefit and benchmarking from an outside perspective on FSCL's governance, management, and processes.

I wish to extend my thanks to Susan and Trevor and their ongoing superb management of the company, and to FSCL's staff for their hard work and dedication.

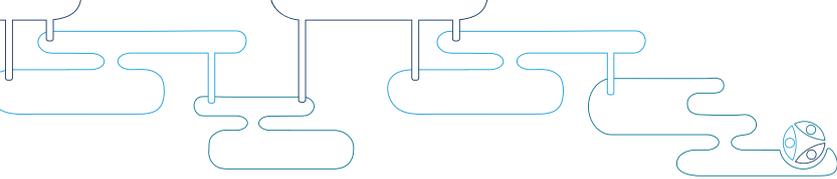
Finally, and very importantly, I thank all FSCL's participants for the loyalty they have shown to the scheme.

Kenneth Johnston: *Chairman*



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the business has enabled us, for the second year in a row, to deliver a reduction in annual fees for most participants



CHIEF EXECUTIVE OFFICER'S REPORT

I am pleased to report that FSCL has enjoyed another good year. Participant numbers continue to increase and, as at the time of writing this report, we have just welcomed our 6,000th participant. We resolved 202 cases in 2013-14, an increase of 24% on the previous year and had a massive 84% increase in the number of enquiries and complaints to the office. Despite the increased workload, we continued to work efficiently and kept our average case working days at 57.

Awareness of the dispute resolution regime

We continue to receive good feedback from both our participants and complainants about the service we provide. It was therefore very disappointing to read the results of a report commissioned by the Ministry of Business, Innovation and Employment last year into alternative dispute resolution in the financial services sector. The results included findings that, of those financial services providers surveyed:

- about 60% were unsure about the value of their membership
- more than half were unsure as to whether alternative dispute resolution produces fair outcomes for complainants or for providers.

I agree with comments from Rob Everett, the Financial Markets Authority's Chief Executive, at a recent Australian and New Zealand ombudsmen conference. He said that those numbers are too high and that we have to build confidence in alternative dispute resolution if consumers are to enjoy the benefits of it. The best way of building confidence is to ensure that:

- we communicate openly and well with our participants
- we offer additional services to participants such as training
- decisions we are required to make are consistent and fair.

Experience shows that an effective external dispute resolution scheme benefits consumers, businesses and the state.

On the consumer side, the results were also concerning. The Ministry's report showed that awareness of the dispute resolution schemes was low, only one in ten consumers were

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

These results show that more has to be done to ensure that consumers know there is somewhere they can turn if they have a problem with their financial service provider. First and foremost, providers need to be willing to tell their consumers what they are entitled to. As Rob Everett said, alternative dispute resolution is "no longer an add-on in New Zealand. It's now a fixture and one that consumers are entitled to by law".

Secondly, the dispute resolution schemes must also act to raise their profiles with consumers. Raising consumer awareness will be a priority for us in year ahead.

Some may ask why this is important. Experience shows that an effective external dispute resolution scheme benefits consumers, businesses and the state:

- Consumers have greater confidence in financial services when they know that, if anything goes wrong, they will be able to take their dispute to an independent body that will resolve the issue quickly and informally, without a lawyer.
- Financial businesses benefit because consumers are more likely to buy financial products, the cost of resolving dispute is kept to a minimum, and competitors who act unfairly are held to account.
- The state benefits because redress can be provided at minimum cost, feedback from a dispute resolution scheme can help shape future regulation and raise industry standards, and confident consumers are more likely to play their part in helping develop sound financial markets.

Consumer and credit law reform

We were pleased to see the passage into law this year of both the Consumer Law Reform Bill and the Credit Contracts and Consumer Finance Amendment Act. Although it will be some time before the full effects of the law changes are seen, we expect to see an increase in complaints when they are.

We look forward to the development of a Responsible Lending Code and hope that, among other things, the Code will set out clear guidance on process when a responsible lender accepts a guarantee.



Susan Taylor: *CEO*

We have seen some very sad cases this year where consumers have given a guarantee for another person's loan and ended up liable for the debt. Typically, the consumer has not understood the risks and implications of giving an unlimited guarantee. Case 1 in the case studies section of this report illustrates this issue.

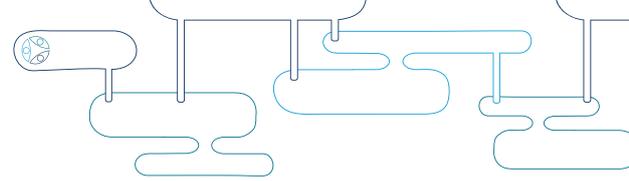
We will be submitting that the new Responsible Lending Code includes requirements that lenders must:

- be satisfied that a guarantor has received independent legal advice before signing the guarantee
- advise a guarantor that they have the option to refuse to enter into a guarantee and that there are financial risks
- give a guarantor information on request about any notice of demand made on the principal debtor
- give a guarantor at least a 24 hour "cooling off" period before signing the guarantee so that they can fully consider the implications of the arrangement
- ensure a guarantor signs the guarantee separately from the principal debtor
- not enforce a judgment against a guarantor unless the lender has made reasonable attempts to seek payment from the principal debtor.

Staff changes

In April this year we sadly said goodbye to case manager, Nick Mereu, who left to take up a position with the Insurance Council of New Zealand. Nick had been with FSCL since its early days and played a very important role in securing FSCL's success, for which we are very grateful. Over the three and a half years Nick was with us, he developed into a very able case manager and had an excellent rapport with both participants and consumers. We wish Nick all the very best in his future career.

We also welcomed Josephine Byrnes to our staff in the new role of early assistance officer. Josephine helps consumers when they first contact our office with a complaint or enquiry. In many cases the consumer is referred back to the participant for the complaint to be dealt with through the participant's internal complaints processes. Josephine will assist the consumer with this and will follow up later to check that the complaint has been resolved.



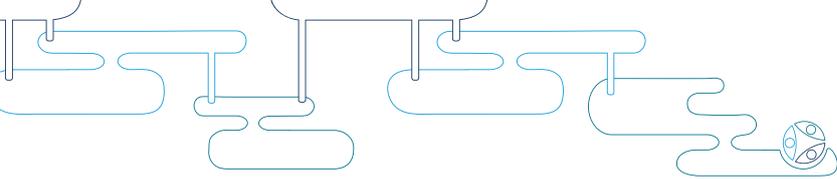
Thanks

As usual, I thank the Board, in particular, Kenneth Johnston our Chair, for ongoing encouragement and guidance. I echo Kenneth's thanks to outgoing director, Darren Pratley, for his contribution to FSCL's establishment and growth. Darren was a very loyal FSCL supporter and his enthusiasm was much appreciated by everyone here at FSCL.

I express my sincere appreciation for the ongoing support of our General Manager, Trevor Slater, and the team work of all of our staff. Our staff, both our case managers and administration teams, work tirelessly to deliver services to both our participants and consumers to a very high standard.

We look forward to another year of continued growth and efficient, fair and independent delivery of services to the financial services industry providers and consumers.

Susan Taylor: *CEO*



STAKEHOLDER RELATIONSHIPS

Participant relations

Complaints are always best resolved directly between a financial service provider and its customer. To assist with the early resolution of complaints, this year we launched our “Give us a Call” programme. The programme gives participants the opportunity to call and speak to our General Manager, Trevor Slater, to discuss a complaint they may be struggling to resolve. The programme is free and is intended to help avoid complaints being escalated to a formal investigation.



Trevor Slater: *General Manager*

Trevor has attended and presented at many participants’ conferences, road shows and professional development days. He has also run workshops and webinars for participants on topics ranging from complaint handling and business risk analysis to detecting deception.

We have regular meetings with our larger participants, those participants who generate higher volumes of complaints, industry associations and dealer groups to discuss processes and any issues of interest or concern.

functionality for the many participants and consumers who visit our site.

Our management and staff presented 12 workshops, presented at 9 conferences and gave 16 presentations to participant or consumer groups. We also issued 6 media releases on statistics and issues of general public interest.

Consumer outreach

As noted in the CEO’s report, consumer awareness for the financial dispute resolution schemes is too low, as borne out by the results of the Ministry of Business, Innovation and Employment (MBIE) survey. It is disappointing that Consumer Affairs is not holding any consumer rights days in 2014 as they are a very useful and cost-effective way of getting our message out to community groups that assist the public with consumer issues.

We have held training days for community law centre lawyers and budget advisers in Otara and Mangere. We have redesigned our consumer brochure and have distributed it to community organisations such as Citizens Advice Bureaux and Community Law Centres.

Our CEO, Susan Taylor, attended and presented at the Minister of Consumer Affairs’ credit forum in South Auckland in October 2013.

Complaints are always best resolved directly between a financial service provider and its customer.

External relationships

We have held a number of meetings throughout the year with the Minister of Consumer Affairs, MBIE staff and Commerce Commission staff to discuss complaint trends and statistics, issues arising from common types of complaints and how to raise awareness of the dispute resolution schemes among consumer groups.

We have signed a memorandum of understanding with the Financial Markets Authority and have had regular meetings to advise it of complaint trends and issues.

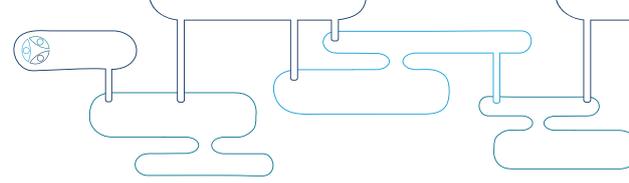
We have talked with the Retirement Commissioner about ways that we may be able to assist in raising financial literacy levels.

We met quarterly with representatives of the other three financial dispute resolution schemes to discuss ways in which we can cooperate more closely and issues of common interest.

We send participants a regular newsletter to update them on membership matters, training opportunities, complaint statistics and trends in recent cases.

This year we have launched a new newsletter, *The Lending Post* specifically for our lender and finance company participants. *The Lending Post* highlights recent law reforms, best practice guidelines and case notes of interest.

During the year we refreshed our website, adding useful resources such as articles on complaints handling and a searchable directory of case notes to provide guidance on how we approach common complaint issues. Next year we intend to commission a new website with improved user tools and



In September 2013, Susan and Trevor attended the annual conference of the International Network of Financial Ombudsmen (INFO) in Taipei. Susan presented papers at the conference on issues arising from investment complaint cases and challenges facing new financial dispute resolution schemes. INFO remains an excellent forum for sharing ideas and exchanging information with our overseas counterparts to ensure that FSCL remains at the forefront of best international practice and standards.

In April 2013, Susan Taylor and our Board Chairman, Kenneth Johnston, attended the biennial conference of the Australia and New Zealand Ombudsmen Association. Again the conference provided an excellent opportunity to learn and share from the experience and ideas of our Australasian counterparts both in the financial sector and other service industries.

We became a proud bronze supporter of Workplace Savings New Zealand. Workplace Savings is a not-for-profit apolitical member organisation that represents the interests of employers who offer workplace retirement savings schemes, their trustees and members, superannuation industry service providers including KiwiSaver, and professional advisers. We believe that long term savings for retirement is an important element in the sustainability of a healthy New Zealand economy. We see Workplace Savings' role in this area, in particular in education and advocacy, as very important and something that should be supported.

We are also strong supporters of the work undertaken by LEADR, the Association of Dispute Resolvers. All our case managers have completed or will shortly complete the LEADR mediation course. We have hosted a LEADR event at our office and plan to host more in the future. We are working with LEADR to develop a programme aimed at using more mediation in the commercial field and mentoring mediators who wish to practice in this area.

We have also renewed our association with the Society of Consumer Affairs Professionals (SOCAP). We see this as an important relationship as SOCAP's work in the consumer affairs area, particularly in internal complaint processes and skills, is world class.

Some consumer comments:

"The staff were extremely nice to me when I first called about my complaint and explained to me what to do. They certainly put me at ease and also listened to what I had to say which to me was fantastic. So thank you everyone who dealt with my complaint."

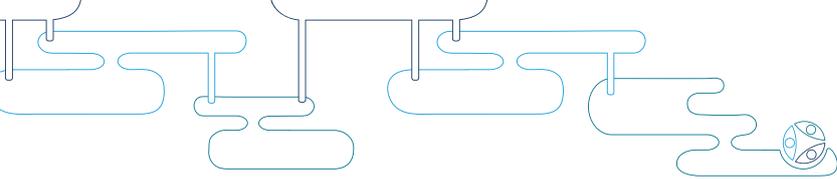
"The complaint was thoroughly investigated with an in-depth report. The staff were great and answered all my questions promptly. I have a great outcome and found the whole process to be easy to understand and was given detailed information. Great service."

From our participants:

"This was our first formal complaint. The process worked well. FSCL staff were great to deal with and explained the process well."

"I found the team at FSCL very supportive and approachable. [Case Manager] explained the process to me clearly and even though I was feeling very frustrated and upset by the complaint, she was understanding of my circumstances."

"Very professionally finalised."



CASE STATISTICS

In the year to 30 June 2014, we received 3,159 enquiries or complaints from consumers about financial service providers, a massive 84% increase on the previous year. Of those, complaints and enquiries about lenders and finance companies headed the list (834), followed by transactional service providers such as trading platforms and foreign exchange dealers (616).

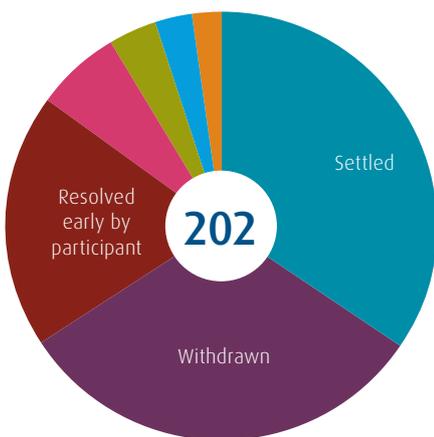
Before we begin an investigation we need to ensure our participants have had the opportunity to resolve the complaint directly with their customer. Where a complaint has not yet been through a participant’s internal complaints process, we will assist the consumer to take their complaint to the participant and will follow up later to check that the complaint has been resolved.

We will open an investigation where:

- a consumer is unable to resolve their complaint with their financial service provider
- a complaint is unresolved after 40 days of a consumer making a complaint to their financial service provider
- a financial service provider tells their customer to take their complaint to us.

In 2013/14, we opened 201 cases for investigation, up from 162 cases in 2012/13 and we completed 202 cases, a 24% increase on the 149 cases investigated in the previous year.

Case outcomes



	2013/14	2012/13	2011/12
● Settled (facilitation/conciliation/negotiation)	70	41	38
● Withdrawn	63	46	33
● Resolved early by participant	39	21	9
● Jurisdiction declined	13	13	4
● Not upheld – formal recommendation	7	18	7
● Partly upheld – formal recommendation	6	5	1
● Upheld – formal recommendation	4	5	0

We issued formal recommendations, the final step in the FSCL process, on 17 cases or just over 8% of cases. Over half the cases (109) were settled either by:

- the participant resolving the complaint within 20 working days the start of our investigation
- conciliation or shuttle negotiation between the parties with the assistance of a FSCL case manager
- a notice of recommendation advising the participant we intend to uphold the complaint and award compensation.

In all cases that were settled, the complainant received compensation or some other remedial action such as a loan restructure or an apology that satisfied their complaint.

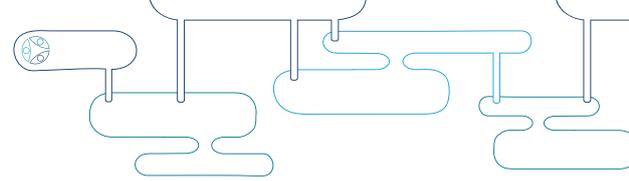
We negotiated or recommended compensation totalling \$786,372, up from \$514,785.62 last year.

Sixty-three cases were withdrawn by the complainant after we advised them we were unlikely to uphold their complaint.

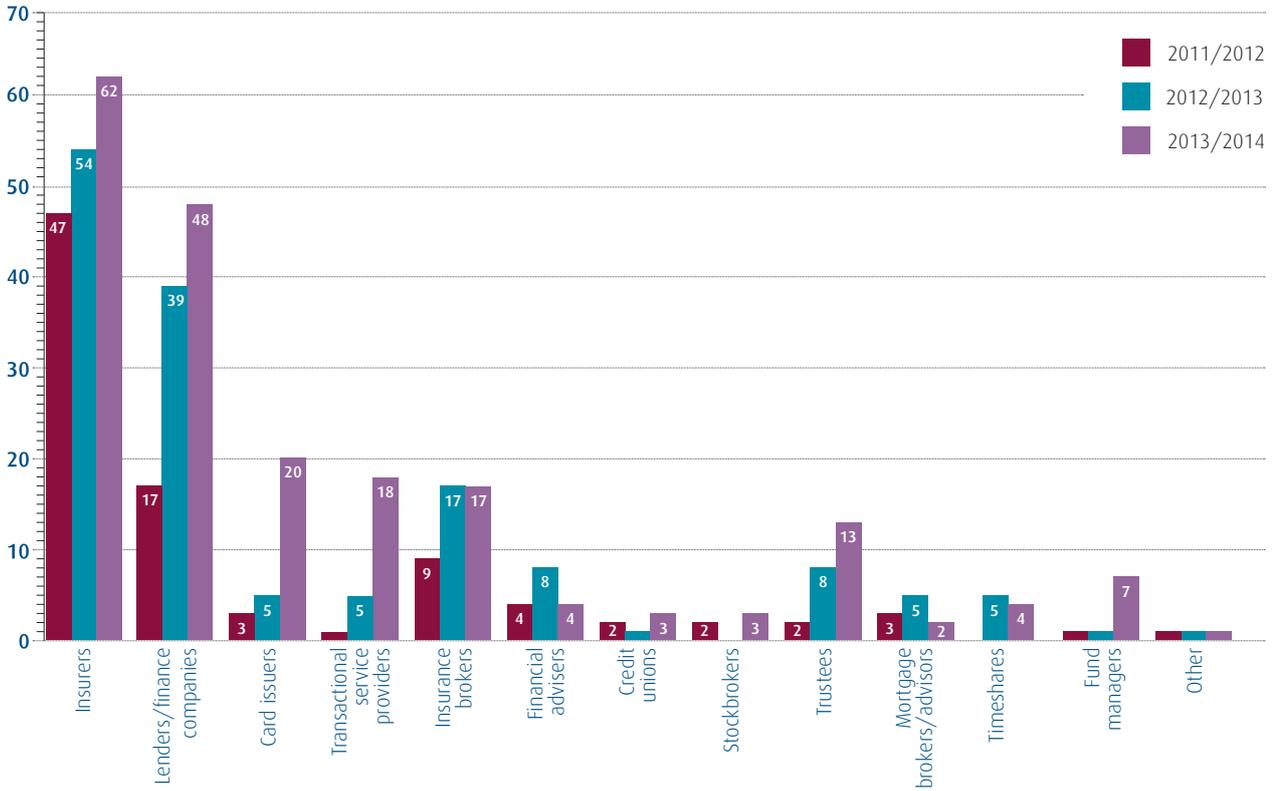
This year, complaints against insurers again made up the greatest share of the cases we investigated (31%). Complaints against lenders/finance companies made up around a quarter of the case load – 48 complaints, up from 39 last year. Complaints against card issuers (20) came in third, up from 5 complaints last year

The financial product most complained about this year was consumer credit arrangements, primarily personal loans to consumers for motor vehicle purchases, followed closely by travel insurance

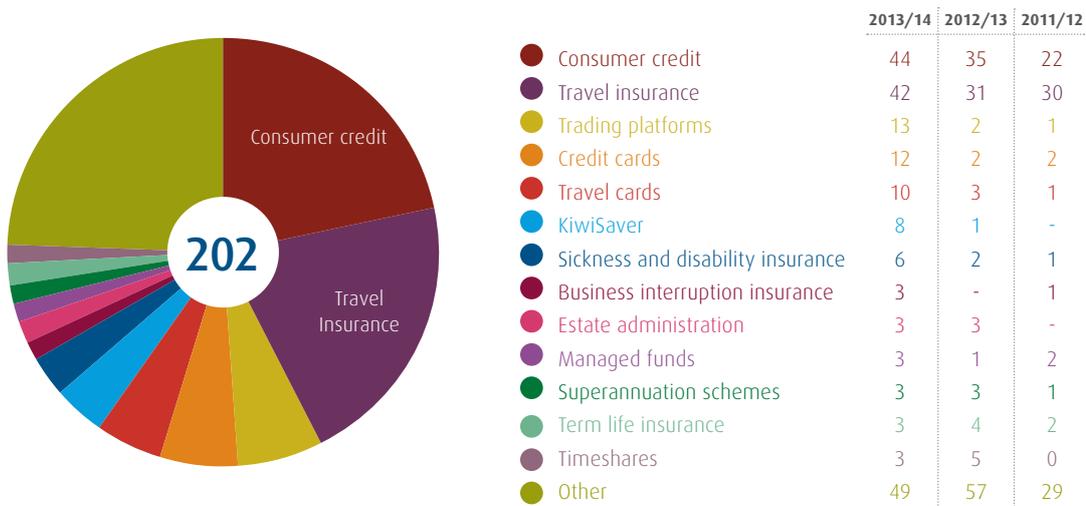
we received 3,159 enquiries or complaints from consumers about financial service providers, a massive 84% increase

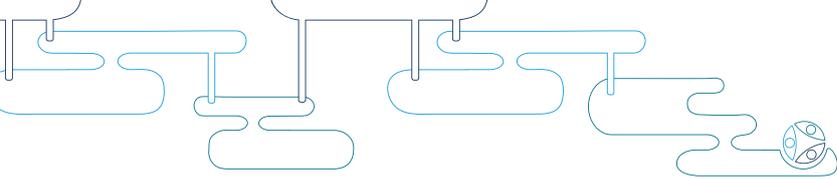


Cases investigated by participant category



Product categories for cases investigated





CASE ISSUES

Consumer credit complaints

Once again, the most common issue complained about this year was unlawful action by a lender, most commonly by way of oppressive conduct, illegal repossession or general unfair treatment.

We look forward to the Responsible Lending Guidelines which will come into effect in June 2015 alongside a Responsible Lending Code. Our CEO, Susan Taylor, is a member of the advisory group assisting the Ministry of Business, Innovation and Employment with the drafting of and consultation on the new Code. Once effective, the Guidelines and Code should provide helpful guidance as to what is considered appropriate action or behaviour by lenders, including what constitutes a responsible lender.

It is worth repeating the tips we included in last year's annual report. Consumers taking out personal or other loans should:

- read the contract carefully before signing it
- take time to understand the contract before signing it, there is no need to "sign on the spot"
- ask the lender questions if they do not understand a particular clause or clauses
- make sure they know the rate of default interest and charges they will have to pay if they cannot meet loan payments
- make sure they understand what recovery action the lender may take if they default on loan payments
- if possible, obtain legal or professional advice, perhaps through a community law centre, before signing the loan contract
- if their circumstances change, let their lender know as soon as possible as it may be possible to negotiate new or temporary loan repayment arrangements.

Travel insurance complaints

Most of our insurance complaints related to travel insurance. The cases continue to show that, unfortunately, many consumers do not read or check their policies before travel to see exactly what events they are covered for, and the limits to cover.

We strongly advise consumers to disclose as much as they can about their medical history before buying insurance cover. Pre-existing medical conditions are often excluded from cover

under travel insurance policies, and this can have disastrous and expensive consequences for travellers.

Consumers should also look closely at policy definitions to check the cover is as comprehensive as they think. For example the definition of "relative" is often confined to relatives living in New Zealand or Australia only.

Other terms to watch for:

- Age limits – cover can be limited where a trip is cut short due to the death or illness of a relative over a certain age (usually 75-80).
- Time limits – if away for more than 35 days, a person may forfeit all cover under the policy, regardless of whether the loss is suffered during or after the 35 days that would otherwise be covered.
- Value limits – for most types of cover but notably for common items such as laptop computers, tablets and smart phones.

KiwiSaver complaints

We investigated six complaints during the year from consumers claiming that their KiwiSaver scheme's trustee had unfairly or unreasonably declined their request to withdraw part or all of their funds.

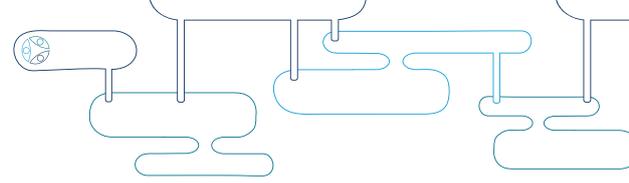
Some of the complaints show that consumers do not understand KiwiSaver's purpose, that is, to help people save for their retirement. Generally speaking, consumers cannot withdraw their KiwiSaver savings until retirement age (currently 65).

There are limited circumstances in which a consumer may be able to withdraw funds before retirement, for example:

- in cases of significant financial hardship
- buying a first home
- moving permanently overseas
- serious illness.

KiwiSaver trustees have guidelines to follow in determining whether a consumer is suffering "significant financial hardship" to such a degree that a withdrawal of funds should be allowed.

Typically, a consumer will have to show an inability to meet minimum living expenses or minimum mortgage repayments on



their home that result in the mortgagee taking steps to enforce the mortgage.

Systemic issues

During the year we received a number of complaints that raised systemic issues.

Door-to-door sales

We received a series of complaints against a company that sells goods door-to-door, extending credit to the consumer in order to purchase the goods. The consumer has to make a specified number of payments before delivery of the purchased item is made.

Complainants claimed that they had not received their goods by the promised date. In some cases, delivery had not been made six to eight weeks after the due date.

In many of these cases, the complainant decided to cancel the contract and were charged a cancellation fee, provided for in the contract, of between 10-15% of the goods' purchase price.

FSCL tips: Door-to-door sales

- Do not feel pressured to buy when a door-to-door salesperson comes calling.
- Do your homework – you may be able to purchase the same item or similar from a store for a cheaper price.
- Read the contract carefully before signing it – in particular check to see what charges you will have to pay if you decide to cancel the contract outside the seven day cooling off period.
- If the salesperson promises you incentives to sign the contract, for example, a free gift, make sure the promise is put in writing.
- If in doubt, seek advice before signing any contract from someone you trust or from a community law centre or citizens advice bureau.

We are currently awaiting a full response from the company concerned as to the reasons for the frequent delivery delays.

KiwiSaver scheme windup

We received two complaints about a fund manager that recently wound up a small KiwiSaver scheme. The complainants claimed that the fund manager had incorrectly deducted expenses associated with the fund's winding up prior to transferring the their funds to their new KiwiSaver schemes.

We discussed the complaints with the fund manager, which, after having checked the KiwiSaver fund's rules, agreed it did not have the authority to deduct the expenses and refunded all of its affected customers.

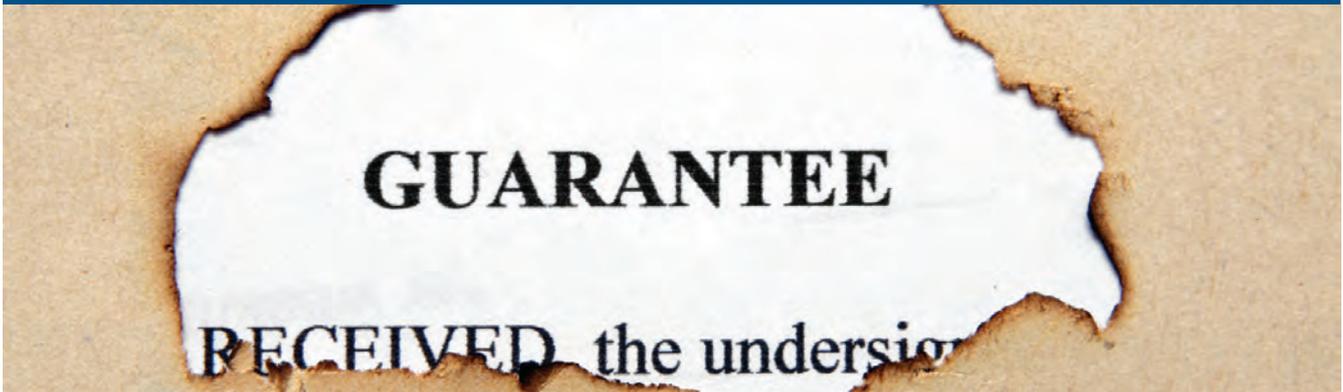
Interest over-charge

We received a complaint concerning the over-charging of interest on a credit card that had been due to a systems error. This meant that the error had the potential to apply to other customers of the credit card issuer. In answer to our further enquiries, the credit card issuer confirmed that other customers had also been over-charged over a two month period. The credit card issuer provided us with copies of letters that were sent to affected customers to apologise and to refund the interest over-charged. We were also satisfied that the systems error had been remedied.

Trading platform

We received a number of complaints against a foreign-based trading platform that customers had been unable to liquidate funds in their accounts. The trading platform did not respond to our repeated requests for information. As it failed to comply with our rules, we terminated the trading platform's scheme membership and it was deregistered from the financial services providers' register. We also suggested to the Financial Markets Authority that it post a warning on its website about this particular trading platform.

GUARANTEE FOR A FAVOUR



We find that many consumers do not understand the implications and risks of signing a guarantee for another person's loan, and often do so under pressure. In this case, a woman agreed to sign a guarantee for a colleague's son as a favour. When the son failed to pay the loan, the lender sought payment from the guarantor. The guarantor received no benefit from guaranteeing the loan, but was left to shoulder a large debt.

Unfortunately, because the guarantee was signed before 1 April 2010, FSCL's jurisdictional start date, we could not rule on the guarantee's validity. Nor could we interfere with the Court judgment the finance company had obtained. Had the guarantee been given after April 2010, we would have been very likely to find that the guarantor gave the guarantee under duress and that it would be unfair or unconscionable for the finance company to be able to rely on or enforce the guarantee.

In 2002 Nadia's colleague Tracy said her son, Jason, needed someone to guarantee a loan for him to buy a car. Nadia agreed to guarantee Jason's loan for \$5,000 to be repaid over two years. The loan was secured by Jason's car. Soon after, Tracy, Jason and the car disappeared. Jason did not repay the loan.

In 2007 the finance company obtained a court judgment against Jason and Nadia. In 2008 an attachment order was placed on Nadia's income requiring her to repay the debt at \$20 a month. The finance company was unable to find Jason. Nadia started paying \$20 a month, and did not miss any payments.

In 2011 the finance company demanded Nadia increase the payments to \$40 a month or it would repossess her property. Nadia could not afford to do so but increased the payments to \$40 a month.

Despite not missing any payments, in 2012 the finance company advised Nadia she had defaulted on her loan and that unless she paid \$9,000 within seven days it would repossess her property. Nadia contacted the finance company and was told she needed to increase the payments to \$160 a month.

DISPUTE

Nadia contacted her budget adviser who explained to the finance company that Nadia could not afford the increase. When the finance company did not accept the budget adviser's advice and continued to threaten repossession, the budget adviser referred Nadia's complaint to FSCL.

Nadia accepted she owed the finance company a debt, but considered its demands unreasonable. Nadia did not agree the finance company was entitled to repossess her property, as only Jason's car was listed as security for the loan. Nadia also argued that as the car had been repossessed the finance company was not entitled to charge interest on the outstanding debt.

REVIEW

We agreed the loan was secured by Jason's car. Whatsoever, the loan agreement did not include an "all present and after acquired property" clause. This meant that the finance company could not repossess Nadia's property. The loan agreement did not allow the finance company to use the power of attorney granted by Nadia to appropriate her property as security for the loan.

If Jason's car had been repossessed, section 35 of the Credit (Repossession) Act would have prevented the finance company continuing to charge interest. However, as there was no evidence

the car had been repossessed, legally the finance company could continue to charge interest.

We proposed the finance company:

- cap the debt at \$7,200 and stop charging interest
- credit all payments made by Nadia since July 2008 towards the \$7,200
- credit \$500 towards the debt in recognition of the stress caused to Nadia by the finance company's unlawful repossession threat
- allow Nadia to continue to repay the debt at \$20 a month.

RESOLUTION

Nadia accepted our proposal, but the finance company did not. After discussions with the finance company it became clear it was not prepared to negotiate an affordable repayment agreement. Because Jason's car had never been repossessed we could not require the finance company to stop charging interest on the debt. As the outcomes available through the FSCL process are compensatory only, we could not force the finance company to accept any reduced repayment amount. Instead we recommended, and Nadia accepted, compensation of \$500 for the stress associated with the finance company threatened repossession.

Nadia's budget adviser indicated she would continue to try to negotiate a repayment agreement with the finance company.

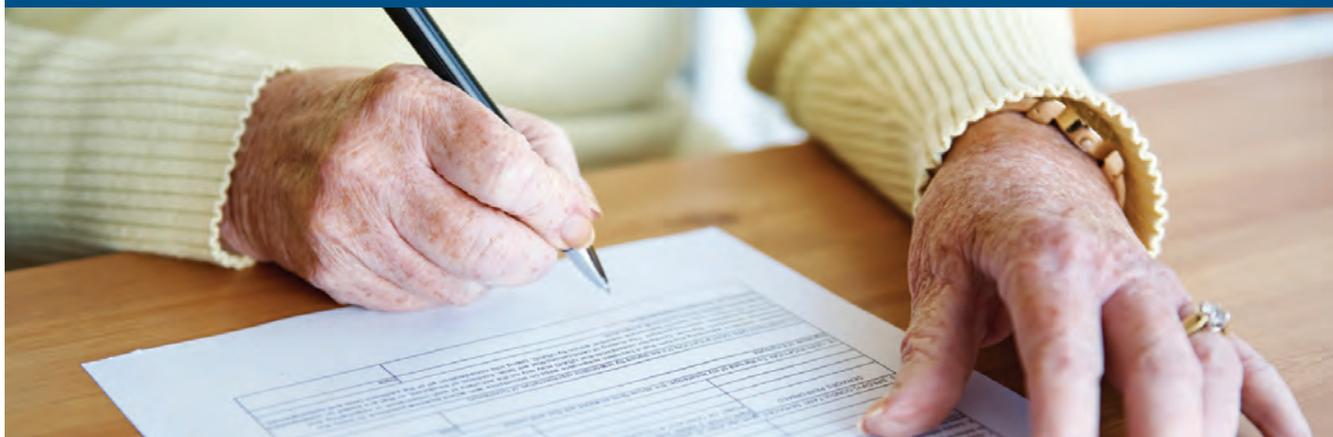
FSCL tip: Guarantees

Consumers should be very careful before agreeing to give a guarantee. If you give a guarantee the lender can require you to pay the borrower's loan and all accrued interest and charges on the loan, if the borrower defaults on payments.

You may not know the borrower has defaulted on the loan until the lender asks you to pay. The lender does not have to pursue the borrower first for the debt. Once the loan is in default the lender can pursue you, as the guarantor.

We strongly recommend getting independent legal advice before signing a guarantee.

FAMILY PROBLEMS OVER A GUARANTEE



As in the previous case study, complaints about loan guarantees often centre around a guarantor's understanding of what they're agreeing to. In this case, an elderly woman guaranteed a loan for one of her children. A few months later she was diagnosed with early dementia. Her other children were concerned that their mother had faced undue pressure to give the guarantee and did not understand what she was signing. However we found the lender had taken adequate precautions to ensure the woman had understood the implications of the guarantee.

Eve agreed to act as guarantor for a \$10,000 loan to her daughter Sonia and son-in-law David using her house as security for the loan.

When the loan company received the application, it noted Eve's age (73) and made enquiries to confirm that she understood the implications of acting as a guarantor.

Some months after the loan was advanced, Eve was diagnosed with the early onset dementia. Eve's other children, Rob and Anna, discovered the existence of the guarantee and were concerned about Sonia and David's involvement in Eve's financial affairs.

DISPUTE

Acting under Eve's power of attorney, Rob and Anna complained to the loan company about the guarantee it had allowed Eve to sign and suggested that David had used undue influence to persuade an elderly, unwell woman to guarantee the loan. Rob and Anna wanted the loan company to remove the caveat from Eve's property to allow them to sell it to pay for the specialised care Eve now needed.

The loan company responded that it had taken appropriate steps to ensure she knew what she was agreeing to. This had included talking Eve through the implications of the guarantee and explaining the loan agreement and the waiver of legal advice form with her and David. The loan company claimed there had been no sign of pressure on Eve and it did not see any evidence that she was sick or unable to understand what she was signing. It refused to lift the caveat.

Rob and Anna complained to FSCL.

REVIEW

The loan company was wise to exercise caution when it received a loan application secured by a guarantee granted by an elderly parent. However it did not necessarily follow that the parent was a victim of elder abuse or did not understand what she was agreeing to. There was nothing to suggest that Eve was confused or unaware of the implications when she signed the loan agreement or that she had been subjected to undue influence by David.

Although Eve was later diagnosed with early dementia, we concluded that she understood what she was doing at the time. There were no grounds for us to ask the loan company to release the caveat it held over Eve's property. In our view, the loan company had acted responsibly and had taken every step it could to be satisfied that Eve understood what she was doing when she signed the guarantee.

RESOLUTION

Rob and Anna wanted to sell the property and were concerned that the caveat would complicate the sale. We suggested that the loan company agree to a portion of the sale proceeds being placed on an interest bearing term deposit as continued security for the loan. This would allow access to most of the sale proceeds to fund Eve's needs with a small amount being held back earning interest until Sonia and David had fully repaid the loan. The complaint was resolved on this basis.

TRAVEL INSURANCE – A DEATH IN BALI



In this case, the complainant's husband was killed when riding a motorised scooter on holiday in Bali. The insurer declined the claim because the deceased did not hold a Balinese driver's licence. We thought it was unfair to decline the claim solely on this basis and negotiated a settlement.

Katie and her husband Michael travelled to Bali for a holiday. They hired a motorised scooter for transport on arrival. Tragically, a few days into the trip they had an accident while Michael was driving and Katie was pillion. The scooter veered off the road and down a bank, and Michael was killed.

Katie's travel insurer immediately flew Michael's brother to Bali to be with Katie. When Katie returned to New Zealand, she claimed for her expenses from the travel insurer. The expenses included repatriation of Michael's body, medical costs, repair costs to the scooter, Katie's telephone bill and a lump sum payment for Michael's death.

The travel insurer declined Katie's claim for her remaining expenses. Michael did not have a licence to drive a scooter in Bali, and the travel insurer had an exclusion from cover written in its policy wording for accidents that happen while riding "without a licence that is valid in the relevant country".

DISPUTE

After unsuccessfully complaining to the insurer, Katie complained to us that the fact that Michael did not hold a Balinese licence did not cause or contribute to the accident and that her expenses claim was valid.

REVIEW

We investigated and found:

- Michael was an experienced motorbike rider, despite never holding a New Zealand motorbike licence.
- Michael drove professionally, as a heavy vehicle and passenger vehicle driver for an adventure tour operator in New Zealand.
- There appeared to be no official drivers' licensing system for scooters in Bali, nor any documented laws, rules, policies

or procedures. Travel information suggested that travellers could visit a local police station to fill out a form and pay the officials an unspecified sum of money. On this basis, a Balinese licence was not a valid means of vetting Michael's competence to ride a scooter.

- The facts did not suggest any kind of aggravating circumstances, such as heavy traffic or poor conditions, which would have tested Michael's abilities as a rider.

Our view was that Katie had a valid argument under section 11 of the Insurance Law Reform Act, that Michael's failure to obtain a Balinese licence had not caused or contributed to the accident.

Neither did the circumstances of the accident suggest a lack of competence on Michael's part. Michael may have been inattentive towards the road and his surroundings, but he was not negligent or reckless. Michael had not been speeding or driving dangerously. While Michael should not have been driving without a licence, obtaining a licence in Bali would not have been a real check of his driving abilities.

RESOLUTION

After lengthy discussions with the travel insurer and Katie, the travel insurer offered to settle Katie's claim in part. Katie accepted this offer.



In most KiwiSaver complaints we receive, the complainant has applied unsuccessfully to withdraw funds on significant financial hardship grounds. Generally speaking, we are reluctant to interfere with the trustee's exercise of discretion on a decision. But we will check that the trustee has correctly applied the KiwiSaver Act and relevant industry guidelines, and has taken into account all relevant information provided by the member.

In this case, the complainant's application to withdraw funds on the ground he had permanently emigrated was declined as the fund's trustee was not satisfied this was the case. We found that the trustee had misapplied the KiwiSaver Act.

Daniel and Marie were KiwiSaver members. They moved to Hong Kong and after a year applied to their KiwiSaver schemes to withdraw their funds because they had permanently emigrated. They both completed the necessary forms and provided bank statements, passports with visas, a letter from Daniel's employer confirming permanent employment in Hong Kong and statutory declarations of their intention to leave New Zealand permanently.

Marie's KiwiSaver trustee released her funds but Daniel's did not.

DISPUTE

Daniel claimed he had met the requirements under the KiwiSaver Act to allow the KiwiSaver trustee to release the funds. However the trustee was not satisfied Daniel had permanently emigrated because he did not have permanent residency. Daniel explained he was unable to apply for permanent residency until he had lived in Hong Kong for seven years.

Daniel complained to FSCL that the trustee had wrongly declined his withdrawal application.

REVIEW

We considered the trustee may have incorrectly applied the KiwiSaver Act and found a strong case that Daniel satisfied the Act's requirements and was entitled to withdraw his funds.

Clause 14(1) of Schedule 1 of the Act allows a KiwiSaver member to withdraw funds if the member has permanently emigrated from New Zealand. Clause 14(3) requires the member to submit an application to the trustee of their KiwiSaver scheme.

The form must include:

- a statutory declaration that the member has permanently emigrated from New Zealand
- proof that the member has departed from New Zealand, which may be travel arrangements, passport evidence and evidence of necessary visas
- proof the member has lived at an overseas address for some time in the year following the member's departure from New Zealand.

Daniel had provided a statutory declaration that he had permanently emigrated from New Zealand and bank statements as evidence that he had lived at an overseas address during the previous year. The trustee was concerned Daniel did not have a permanent residency visa and so, in the trustee's view, did not have the "necessary visas" to permanently emigrate.

In our view, the requirement for a member to hold necessary visas could mean a visa to live and work overseas, not necessarily permanent residency overseas. Our interpretation was confirmed by the requirement that the member provide proof they had lived at an overseas address during the previous year. This requirement would be redundant if proof of permanent residency was always required.

RESOLUTION

We asked the trustee to reconsider its decision to decline Daniel's application. The trustee did so and agreed to release Daniel's funds.

ILLEGAL REPOSSESSION



This is an example of a typical complaint about consumer credit loans where the lender has allegedly illegally or unfairly repossessed goods. In these cases we have to examine the loan contract very carefully to determine what rights the lender has. Loan contracts are often complex, lengthy and difficult for the consumer to read, let alone understand.

In this case we found the lender had acted unlawfully and negotiated a restructure of the consumer's loan.

David borrowed \$7,750 from a lender to buy a car. Soon after he stopped repaying the loan. The lender repossessed and sold the car leaving David owing an unsecured debt. The lender tried to get David to repay the debt and eventually took him to court. The court ordered him to repay the debt at \$20 a week. After three years of weekly \$20 payments the lender asked David to increase his payments to \$95 a week. When David did not respond the lender repossessed and sold his television, washing machine and couch.

DISPUTE

David complained to FSCL the lender had no right to repossess and sell his property. The lender claimed David still owed it \$11,500 and that David had applied to another finance company for money to buy a car which it claimed was unfair when he still owed a debt. The lender also claimed that when the repossession agents had come to his home, David had signed a schedule allowing the lender to take his property as security for the loan.

REVIEW

We accepted David owed money to the lender, but after the car was sold, that debt was unsecured. We also accepted that David believed the schedule he signed was simply a receipt for the property taken by the repossession agents.

In our view, the lender's failure to explain that it did not have security over David's property, or the consequences of signing the schedule, was misleading and deceptive conduct under the Fair Trading Act. It may also have been oppressive conduct under the Credit Contracts and Consumer Finance Act. We concluded the

loan company had repossessed and sold property without legal authority.

We were also concerned the loan company had continued to add costs and interest to the loan balance following the sale of the car, in breach of the Credit (Repossession) Act.

RESOLUTION

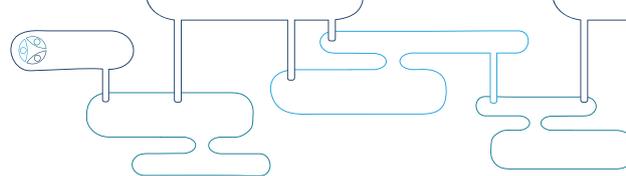
David and the lender accepted our conclusions. The lender agreed to:

- restructure David's debt, removing all interest and costs added
- confirm the debt was unsecured, and it would not take repossession action in the future
- pay David the proceeds and costs of the sale of his repossessed goods
- pay David \$500 in compensation for the stress and inconvenience caused.

FSCL tip: loan agreements

It pays to check your loan agreement carefully to see exactly what rights a lender does or does not have. If you are in doubt about the extent of the lender's rights, seek legal advice from a lawyer or Community Law Centre.

BOARD DETAILS



Kenneth Johnston

Board Chairman

Kenneth is a Wellington barrister and past National Managing Partner of one of New Zealand's large national law firms. Since commencing practice as a barrister in 1997, Kenneth has specialised in commercial litigation, but is also regularly engaged in more general civil litigation, and as an arbitrator and mediator.

Kenneth is a member of the New Zealand Law Society, the New Zealand Bar Association, the Arbitrators' and Mediators' Institute of New Zealand, and a member of LEADR's Advanced Mediation Panel.



Bruce Cronin

Consumer representative

Bruce is a chartered accountant with a management degree from Victoria University and a post-graduate degree in social science. He is a fellow of the NZ Trustees Association, the Trust Manager of Baytrust, Deputy Chair of the Tauranga Energy Consumer Trust and a fellow of the New Zealand Institute of Management. Bruce has been extensively involved with community groups and has been a Justice of the Peace since 2005.



Raewyn Fox

Consumer representative

Raewyn has been the Chief Executive Officer of the New Zealand Federation of Family Budgeting Services Inc since 1999. Raewyn has worked in budget advice for 20 years starting as the manager of the Porirua Budget Service. She has held numerous governance roles in the community and commercial sectors, including foundation member of the Community Trust of Wellington, a past consumer representative on the Commission of the Insurance and Savings Ombudsman scheme, and a member of the Task Force on the Regulation of Financial Intermediaries.



Gary Young *(as from 1 January 2014)**

Industry representative

Gary has been the Insurance Brokers' Association of New Zealand 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 IBANZ College, an NZQA accredited PTE within financial services.



Roger J Kerr

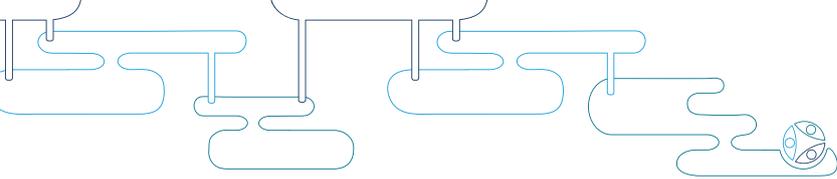
Industry representative

Roger Kerr is a Partner in PwC New Zealand. Roger was formerly a director and one-third shareholder in Asia-Pacific Risk Management Limited and has over 30 years' merchant and investment banking experience in 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.

Roger was a member of the Board of Trustees of the National Provident Fund from June 2003 to May 2012 and was Board Chairman of charitable trust service provider and fund manager Trust Investments Management Ltd from 2004 until October 2012.

* *Darren Pratley retired as an industry representative on 31 December 2013*



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 up of:

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

Chief Executive Officer

The Chief Executive Officer:

- has overall management responsibility of FSCL's dispute resolution scheme
- is empowered to make binding recommendations and determinations in relation to consumer complaints made against FSCL participants
- is responsible, with the General Manager, 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

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

- entirely responsible for the handling and determination 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 independent Board Chairman is the sole shareholder of the company. The shareholder 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.

Staff Members

Susan Taylor – Chief Executive Officer

Trevor Slater – General Manager

Rhonda Singleton – Enquiries and Administration Manager

Meryn Gates – Case Manager

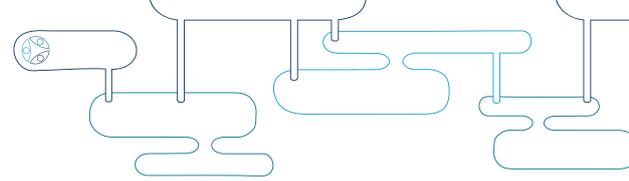
Nick Mereu – Case Manager (until April 2014)

Stephanie Chapman – Case Manager

Josephine Byrnes – Early Assistance Officer (from April 2014)

Janelle Murray – Administration Assistant

Michael Saywell – Administration Assistant (part-time)



SUMMARY FINANCIAL STATEMENTS

SUMMARY STATEMENT OF FINANCIAL PERFORMANCE

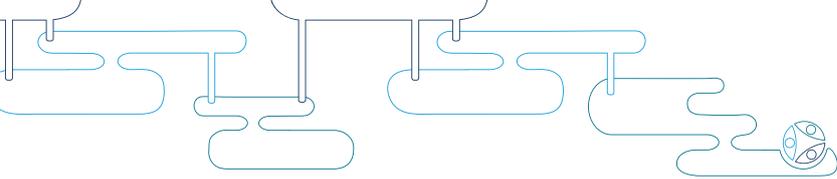
for the year ended 30 June 2014

	2014	2013
<i>Revenue</i>	1,558,252	1,643,875
Gross surplus	1,558,252	1,643,875
<i>Expenses</i>		
Administration	1,384,932	1,203,965
Finance	-	257
Non cash items	43,379	47,265
	1,428,311	1,251,487
Net business surplus	129,941	392,388
<i>Other income</i>		
Interest received	77,791	70,739
Net surplus	207,732	463,127

SUMMARY STATEMENT OF MOVEMENTS IN EQUITY

for the year ended 30 June 2014

	2014	2013
Net surplus for the year	207,732	463,127
Equity at beginning of year	1,573,393	1,110,266
Equity at end of year	1,781,125	1,573,393



SUMMARY BALANCE SHEET

as at 30 June 2014

	2014	2013
Equity	1,781,125	1,573,393
<i>Current assets</i>		
Cash, bank balances and short term deposits	1,642,005	1,450,869
Receivable	53,416	37,960
Prepayments	22,524	20,878
Work in progress	-	26,904
	1,717,945	1,536,611
<i>Non current assets</i>		
Property, plant and equipment	200,526	166,102
Intangibles	4,859	9,863
	205,385	175,965
Total assets	1,923,330	1,712,576
<i>Current liabilities</i>		
Accounts payable	30,650	32,543
Income In advance	3,120	-
Accrued charges	70,232	56,437
Lease incentive	38,203	50,203
Total liabilities	142,205	139,183
Net assets	1,781,125	1,573,393

APPROVAL OF SUMMARY FINANCIAL STATEMENTS

These summary financial statements have been approved by the board on 27 August 2014.

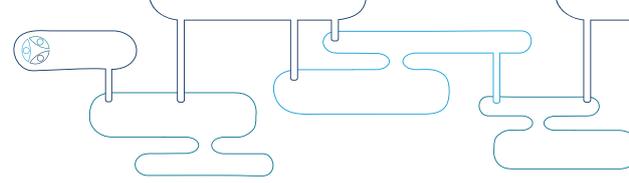
For and on behalf of the Board of Directors:

Kenneth Johnston: *Chairman*

27 August 2014

Bruce Cronin: *Director*

27 August 2014



NOTES TO THE SUMMARY FINANCIAL STATEMENTS for the year ended 30 June 2014

The Summary Financial Statements have been prepared for the individual entity Financial Services Complaints Limited for the accounting period ended 30 June 2014. Also included for comparative purposes are figures for the period ended 30 June 2013.

These Summary Financial Statements have been prepared in compliance with FRS-43: Summary Financial Statements, and comply with New Zealand Generally Accepted Accounting Practice ("NZ GAAP") as it relates to the Summary Financial Statements. 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.

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 have been prepared in compliance with the Financial Reporting Act 1993 and NZ GAAP. They comply with approved Financial Reporting Standards ("FRS") and Statements of Standard Accounting Practice ("SSAP") as appropriate for entities that qualify for and apply differential reporting concessions. Financial Services Complaints Limited is an entity qualifying for differential reporting concessions as it has no public accountability and is not large in terms of the criteria set out in the Differential Reporting Framework.

The Full Financial Statements for the year end 30 June 2014 were authorised for issue by the directors of Financial Services Complaints Limited on 27 August 2014 and an unmodified audit report was issued by BDO at that date.

The Full Financial Statements for the year end 30 June 2013 were authorised for issue by the directors of Financial Services Complaints Limited on 28 August 2013 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

**REPORT OF THE INDEPENDENT AUDITOR 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 2014, the summary statement of financial performance, and summary statement of movements in equity for the year then ended, and related notes, are derived from the audited financial statements of Financial Services Complaints Limited for the year ended 30 June 2014. We expressed an unmodified audit opinion on those financial statements in our report dated 27 August 2014.

The summary financial statements do not contain all the disclosures required for full financial statements under generally accepted accounting practice in New Zealand. Reading the summary financial statements, therefore, is not a substitute for reading the audited 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 financial statements in accordance with FRS-43: *Summary Financial Reports* (FRS 43).

Auditor's Responsibility

Our responsibility is to express an opinion on the 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 financial statements of Financial Services Complaints Limited for the year ended 30 June 2014 are consistent, in all material respects, with those financial statements, in accordance with FRS-43.

BDO Wellington

**BDO Wellington
27 August 2014
Wellington
New Zealand**

Company directory

Registered office

Level 4, 101 Lambton Quay
Wellington 6011

Incorporation number

2303993

IRD number

103-018-668

Directors

Kenneth Johnston
Bruce Cronin
Raewyn Fox
Gary Young
Roger J Kerr

Shareholder

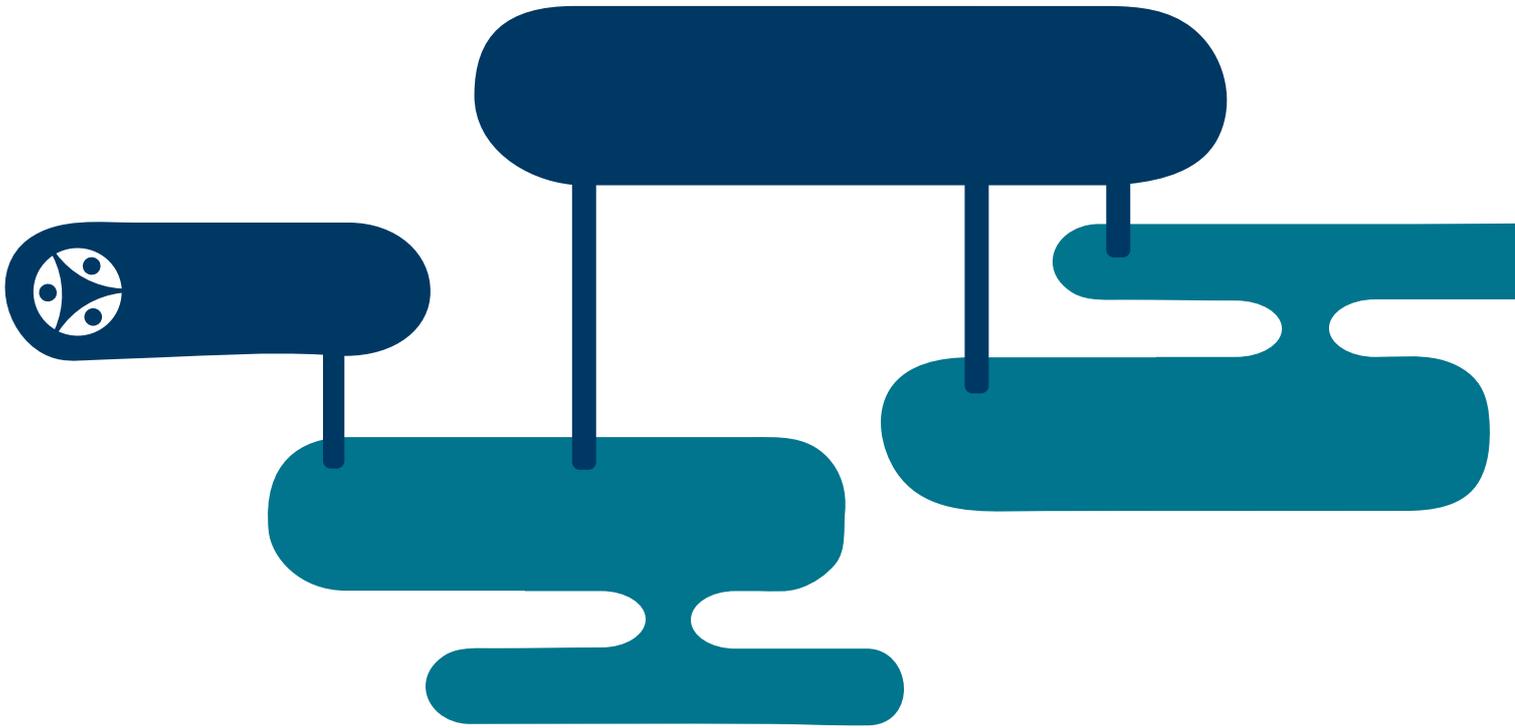
The Board Chairman is the sole shareholder of the company and holds the shares on trust for the fulfilment of the objective of the company, which is to provide an external dispute resolution service for its participants.

Accountants

KPMG
10 Customhouse Quay
Wellington 6011

Auditors

BDO Wellington
Level 1, 50 Customhouse Quay
Wellington 6011



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FINANCIAL SERVICES COMPLAINTS LTD

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