

# ANNUAL REPORT TE PŪRONGA Ā-TAU

2021/2022



**FSCL**

FINANCIAL SERVICES  
COMPLAINTS LTD

RATONGA PŪTEA  
PUNA MANAAKI

A FINANCIAL OMBUDSMAN SERVICE

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



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OF OUR YEAR

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COMPANY  
DIRECTORY

# FSCL IS AN INDEPENDENT DISPUTE RESOLUTION SCHEME ESTABLISHED IN 2010 AND APPROVED BY THE MINISTER OF CONSUMER AFFAIRS UNDER THE FINANCIAL SERVICE PROVIDERS (REGISTRATION AND DISPUTE RESOLUTION) ACT 2008.

Our role is to resolve complaints between consumers and their financial service provider about financial services and advice, including insurance, loans, managed funds and trustee services.

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

FSCL's decision-making process is independent of our scheme participants and industry sectors. FSCL's Financial Ombudsman & 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.

## HOW WE WORK

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

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

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

SNAPSHOT OF OUR YEAR

214

DISPUTES  
INVESTIGATED  
AND RESOLVED

1077

CONSUMER  
COMPLAINTS  
PROCESSED  
BY OUR EARLY  
ASSISTANCE TEAM

2500

CONSUMER  
ENQUIRIES  
ABOUT  
FINANCIAL  
SERVICE  
PROVIDERS  
ANSWERED

**FSCL AND OUR  
CEO GRANTED  
APPROVAL  
TO CALL  
OURSELVES AN  
OMBUDSMAN  
SERVICE**





**MEASURING AN  
ORGANISATION'S SUCCESS  
WHEN THINGS ARE GOING  
WELL IS EASY, BUT A TRUE  
TEST OF ITS METTLE IS  
WHEN THINGS ARE NOT  
PLAIN SAILING.**



## THE FSCL TEAM IS OUR GREATEST ASSET.



**Jane Meares**  
Board Chair

The 2021/22 year was another challenging one for all New Zealanders as we continued to address the uncertainties caused by the ongoing pandemic and the related disruption to professional and personal lives.

I am pleased to report that FSCL has navigated the past year expertly and continues to be responsive and proactive to constant change. This is testament to a well-run organisation, with an effective leadership team at the helm.

I am proud of how the team has continued to resolve complaints and support our scheme participants, who are still coping with a raft of changes to the legislation that guides how they do business, not to mention the wider economic environment they operate in.

Acknowledging that the FSCL team is our greatest asset, and the ongoing challenges they face, the Board carried out an employee engagement survey earlier this year. We were pleased with the results which showed overall a highly engaged team, motivated to do their best, and which felt secure and looked after in the COVID-19 environment.

As you will see in the financial statements, this year FSCL recorded a modest loss. As FSCL is a not-for-profit entity with good cash reserves, and as the Board did not wish to see the size of the reserves increase, the Board budgeted for a loss this financial year.

### REVISED TERMS OF REFERENCE – INCREASED FINANCIAL LIMIT

One positive change this year was the revisions made to FSCL's Terms of Reference.

We re-wrote them in plain language to make them easier to read and understand.

We increased the scheme's financial cap from \$200,000 to \$350,000 and increased the amount that can be awarded for non-financial loss from \$2,000 to \$5,000. Other changes included an increase in the timeframe for consumers to refer complaints to us once a deadlock has been reached from two to three months.

I believe these changes are important and will help to make it easier for more consumers to access the scheme.

### OMBUDSMAN NAME

In "breaking news", in mid-June the Court of Appeal released its judgment in our long-running quest for the scheme to be able to use the Ombudsman title. The Board is delighted to report that the Court of Appeal directed the Chief Ombudsman to allow FSCL and our Chief Executive Officer to use the name. We are starting to incorporate our new name into our brand. The Board believes the use of this name will properly reflect the role the scheme plays and will also bring a greater understanding of our role and in turn improve consumers' access to justice.

### GOVERNANCE NEWS

In Board news, we are sad to say farewell to Roger Kerr who's been a director and industry representative on FSCL's Board for the past ten years. Roger brought over 35 years of merchant and investment banking experience to the Board. His governance experience and expert insights and suggestions have been invaluable and we will miss his input.

We have started recruiting for a new industry representative to join the Board.

### THANKS

I thank my fellow directors for their ongoing support and the significant contributions they make to FSCL's strategic direction.

The hard work and dedication of FSCL's capable and knowledgeable team have contributed greatly to another successful year for our service. I am always reminded when I review our case notes of the wealth of experience and expertise we have in the team. Notwithstanding the challenges this year has brought, their focus on resolving complaints fairly and appropriately with a high degree of professionalism does not waiver.

I particularly thank our Chief Executive Officer, Susan Taylor, for her continued hard work and leadership.

We expect the year ahead to be another busy and challenging year for FSCL and the wider financial services industry, but I have every confidence that FSCL will continue to go from strength to strength, delivering an efficient and world class dispute resolution service.



A handwritten signature in black ink, appearing to read 'Susan Taylor'.

Susan Taylor  
Financial Ombudsman  
& Chief Executive Officer

# THIS YEAR HAS BEEN ANOTHER BUSY AND IMPORTANT ONE FOR FSCL, DEFINED BY THE ONGOING CHALLENGES PRESENTED BY THE PANDEMIC, HIGHER COMPLAINT NUMBERS, AND AN ACTIVE REGULATORY ENVIRONMENT.

Overall, I am proud of the work our team has done and the resilience they have shown in meeting the challenges the last year has given us.

At times of economic turbulence, with consumers facing increasing pressure and rising costs, maintaining consumer confidence in the financial markets is more important than ever. Access to effective dispute resolution plays a crucial part in maintaining that confidence and consumers' trust in the financial organisations and advisers that they interact with on a regular basis.

We know that nothing happens in isolation and that the wider economic environment will impact our work. As history has shown us with the global financial crisis in 2008, an economic downturn inevitably means an increase in complaints at a later date.



## FSCL IS NOW AN OMBUDSMAN SCHEME

I share our Board Chair's delight in being granted approval, following a Court of Appeal judgment, to use the Ombudsman title. The title carries considerable mana and, in my view, acknowledges the work FSCL does in providing a world-class dispute resolution service.

## NEW TE REO NAME FOR FSCL

In addition to refreshing the look and feel of our website, as part of the work we are doing improving our cultural competency, we commissioned a translation of our name into Te Reo Māori – Ratonga Pūtea Puna Manaaki.

The word "Puna" represents a body of water, a spring which in the Māori world view holds a significance in its supportive properties and "Pūtea" means money. So Ratonga Pūtea Puna Manaaki is all about a place where people are welcomed into a calm, caring, safe, and supportive environment to discuss their money issues. We felt this aptly described FSCL and reflected our organisational values.

## SUPPORTING CONSUMERS AND SCHEME PARTICIPANTS

We aim to be proactive in supporting consumers who need our help, particularly vulnerable consumers. To that end, we continue to engage regularly with financial mentors who are out in the community, working with and supporting consumers in financial strife. Our "faces to places" initiative with the three other financial dispute resolution schemes is working well in educating financial mentors on the role of the schemes. These informal meetings between our team members and financial mentors have provided an opportunity for mentors to ask questions in a relaxed environment, getting to know who we are, and how we can help.

This theme of support extends to our scheme participants too. We recently surveyed our participants to understand what we can do better, in terms of our communications and the resources we offer, to ensure that we are meeting our participants' needs as they too cope with continually changing and challenging environments.

We have used the feedback from the survey to inform our wider participant communications strategy.

We have signed memoranda of understanding with the FMA, the Commerce Commission and FinCap.

## SHARING OUR EXPERTISE

We have continued to present monthly webinars on topical issues and cases. From time to time, we have had guest presenters come in to talk about regulatory changes and compliance.

We publish case notes on most completed investigations, and these are regularly uploaded to our website. We see the case note publication as an important part of being transparent and sharing the lessons learned from complaints assists in increasing standards in the financial services industry.

This year we have started on a detailed knowledge management system which will include writing guides on recurring issues to inform both consumers and participants. This work will be ongoing through the 2022/23 year.

## LOOKING AHEAD

We expect another busy year ahead with further legislative changes including the passing of the Conduct of Financial Institutions Act. With the challenging economic times and ongoing volatility in financial markets, we expect to see an increase in complaint numbers, particularly complaints concerning:

- alleged irresponsible lending
- financial hardship
- KiwiSaver hardship withdrawals
- investment advice.

We will be staging our biennial conference in May 2023 with the theme "OUR future is NOW". We hope to see many of our participants and other stakeholders at the conference.

## THANKS

I would like to particularly thank Roger Kerr for his service to FSCL as a longstanding Board member. Roger's governance experience and support for FSCL has been much appreciated and he has made a very valuable contribution to FSCL's strategic direction over the past ten years. I also thank our Board Chair, Jane Meares, and other directors for their ongoing support and guidance.

I thank my team for their dedication and commitment over the past 12 months, always striving to deliver the best service possible to those who use our dispute resolution scheme, while facing the continual challenges that come with living with a pandemic.

He moana pukepuke e ekengia e te waka – a choppy sea can be navigated. Working together, I believe we will continue to effectively weather the storm.

HOW DO CONSUMERS RATE US?

**WE SURVEY ALL CONSUMERS WHO HAVE HAD A COMPLAINT FORMALLY INVESTIGATED BY US. THEIR FEEDBACK HELPS US TO CONTINUALLY LOOK FOR SERVICE IMPROVEMENTS.**

OF THOSE WHO RESPONDED:

91%

FSCL  
COMPLAINT  
PROCESS  
WAS EASY  
TO USE AND  
UNDERSTAND

88%

THE FSCL  
PROCESS  
PROVIDED AN  
OUTCOME IN A  
TIMELY MANNER

“

**I HAD MY FIRST  
ENCOUNTER WITH  
FSCL NOT LONG AGO.  
I WAS IMPRESSED  
RIGHT FROM THE START.  
THE HANDLING OF THE  
MATTER COULD NOT  
HAVE BEEN BETTER.  
THANK YOU.**



96%

**FSCL STAFF  
LISTENED TO ME  
AND SHOWED  
ME COURTESY  
AND RESPECT**

90%

**FSCL STAFF  
DESCRIBED THE  
PROCESS TO ME  
AND EXPLAINED  
THE MERITS OF  
MY POSITION  
IN RELATION TO  
THE COMPLAINT**

# IN LINE WITH THE TRENDS WE SAW LAST YEAR, WE EXPERIENCED A 15% INCREASE IN COMPLAINTS TO OUR SERVICE THIS YEAR WITH 1,077 COMPLAINTS RECEIVED (FROM 931).

A complaint is where a consumer contacts us about an issue with their financial service provider.

Our Early Assistance team helps refer the complaint back through the financial service provider's internal complaints process and keeps a watching brief to make sure the complaint is satisfactorily resolved.

However, we had a slight drop in new dispute investigations opened with 239 new disputes, compared to 254 last year.

We also dealt with a much higher volume of general enquiries to our office – nearly 2,500 compared to 1,370 last year. The increase in complaints and enquiries may be due to a couple of factors:

- our efforts in our consumer outreach and media work to raise our profile, and
- worsening economic conditions meaning consumers are reaching out more to their financial service providers or advisers, and in turn to the dispute resolution scheme.

We completed fewer dispute investigations this year with 214 completed investigations (from 286).

The breakdown of cases between simple, standard, and complex is very similar to last year's numbers, with approximately 26% of cases classified as complex. Cases are classified as complex if they involve difficult questions of fact or law, large files, and/or one or both parties exhibit challenging behaviour. Cases are classified as standard if they involve common complaint issues and do not raise any unusual facts or novel issues or points of law. A simple case is one which can be resolved very easily, usually within 4 weeks of the file being opened, and with very little work needed from our team.

We completed:

- 18 simple case investigations with an average working day count of 22 days, against a target of 20 days
- 141 standard case investigations with an average working day of 59 working days, against a target of 65 working days

- 55 complex case investigations with an average working day count of 111 days, against a target of 130 days.

This was an excellent effort by our team, considering the continuing disruption we have faced this year due to the COVID-19 pandemic.

This year complaints against lenders were the largest portion of cases investigated at 32%, compared to 18% the previous year. As was expected, with the absence of travel insurance complaints this year, complaints against insurers fell from 43% to 14% of cases investigated.

Complaints were up against card issuers, financial advisers, and transactional service providers, but down slightly against trustee companies and fund managers.

Complaints about consumer credit were by far the highest category of complaints, forming 30% of the cases investigated, followed by complaints about mortgage loans at about 10%.

We negotiated compensation totalling \$759,983.

Although the total amount of compensation was far less than last year, there were few large awards of compensation with the average compensation sum being around \$2,000. Although this sum may be considered small, it can make a huge difference to the lives of some of the more vulnerable consumers that we help through our service.

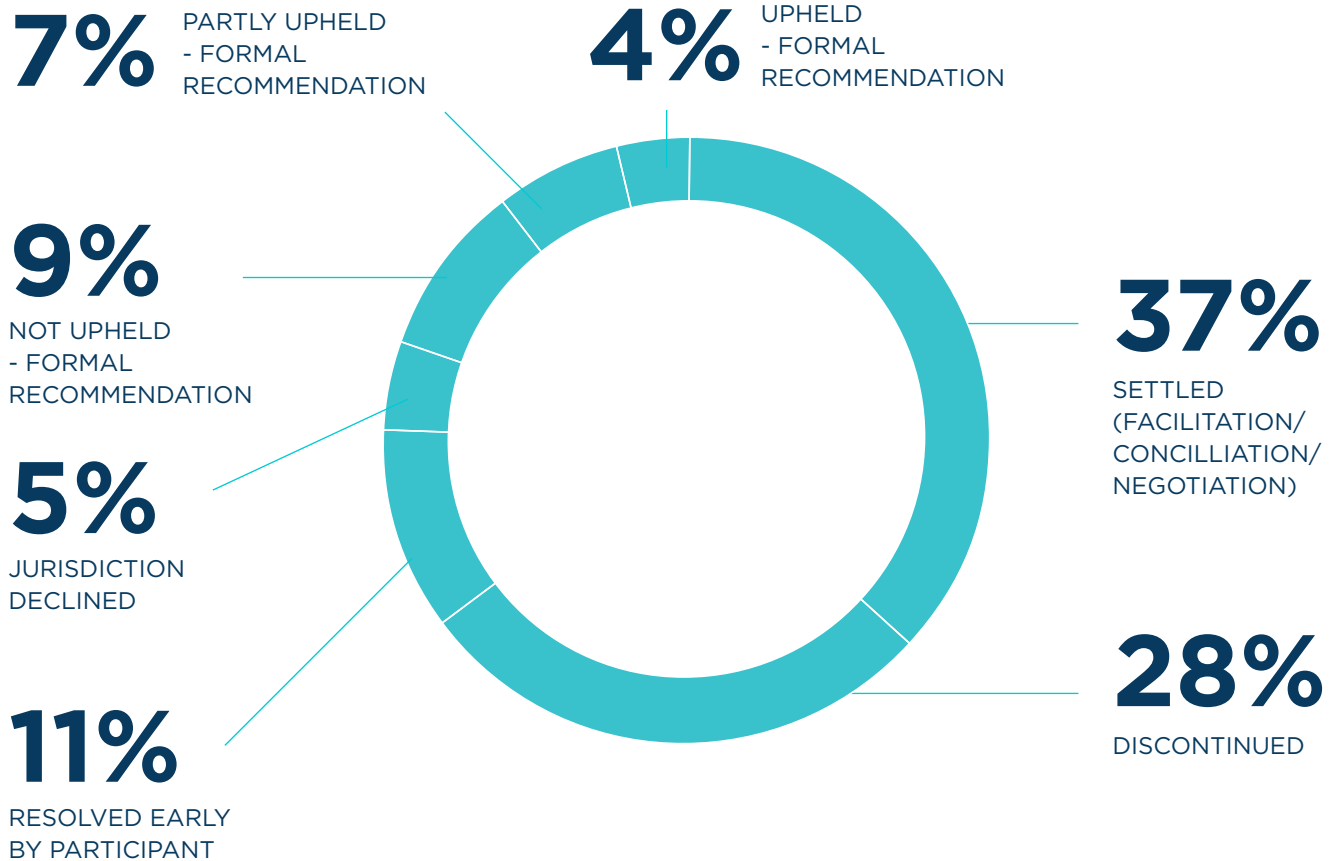
79 cases were settled through our process without the need for a final (binding on the scheme participant) decision, and 23 further cases were resolved by the participant very early in the process. In cases that are settled, the consumer receives compensation or some other remedial action, such as a fee waiver or a loan restructure. 60 cases were discontinued by the consumer after we advised them that we were unlikely to uphold their complaint.

This year we issued recommendations on 42 cases or about 20% of all cases investigated.

## CASE OUTCOMES

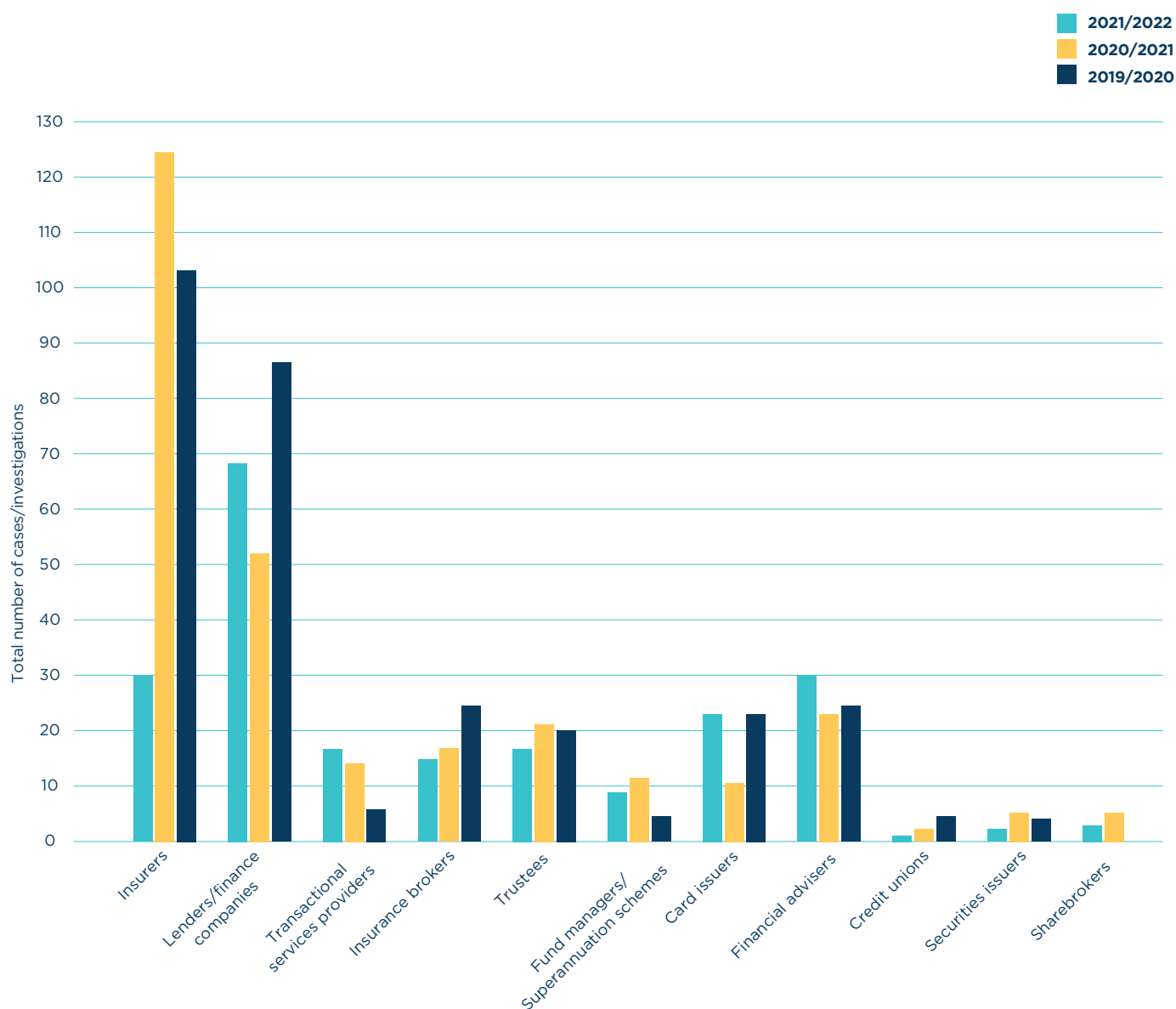
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## INVESTIGATIONS COMPLETED 2021/2022



	21/22	20/21	19/20
SETTLED (FACILITATION/CONCILIATION/NEGOTIATION)	<b>79</b>	97	91
DISCONTINUED	<b>60</b>	82	103
RESOLVED EARLY BY PARTICIPANT	<b>23</b>	23	44
JURISDICTION DECLINED	<b>10</b>	8	18
NOT UPHELD - FORMAL RECOMMENDATION	<b>20</b>	43	31
PARTLY UPHELD - FORMAL RECOMMENDATION	<b>14</b>	27	8
UPHELD - FORMAL RECOMMENDATION	<b>8</b>	6	3

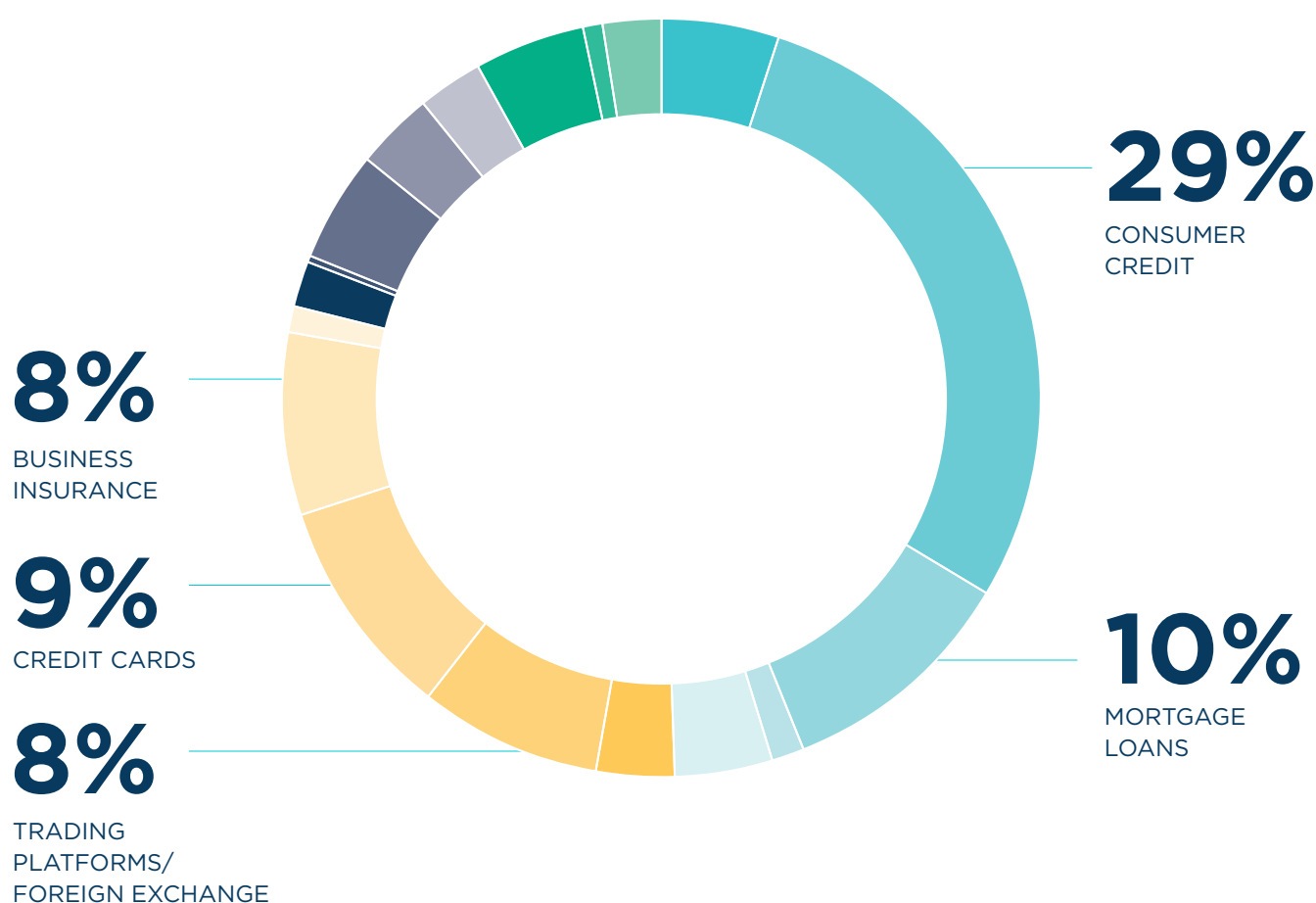
## CASES INVESTIGATED BY PARTICIPANT CATEGORY



PRODUCT CATEGORIES  
FOR CASES INVESTIGATED

# 214

## CASES INVESTIGATED BY PRODUCT CATEGORY 2021/2022



	21/22	20/21	19/20
Travel insurance	11	100	81
Consumer credit	61	44	66
Mortgage loans	22	16	14
Travel cards	3	3	17
Estate administration	9	11	15
Motor vehicle insurance	7	8	9
Trading platforms/ foreign exchange	17	9	6
Credit cards	20	7	6
Business insurance (formerly material damage insurance)	17	24	6
Debt collection	2	2	5

	21/22	20/21	19/20
Business finance	4	1	5
Health	1	2	2
Income protection	0	3	3
KiwiSaver	10	13	3
Superannuation and managed funds	7	4	4
Home and contents insurance	6	6	9
Life	10	9	9
Marine insurance	2	3	4
Securities	0	6	2
Investment funds	0	5	5

## THIS YEAR HAS BEEN ONE OF BUSINESS AS USUAL IN TERMS OF THE CASES WE HAVE INVESTIGATED, WITH A SLIGHT INCREASE IN COMPLAINTS ABOUT LENDERS.

The increase is not surprising given the challenging economic conditions we are currently facing.

The cases investigated have covered a wide variety of subjects including loan issues, problems with business insurance products, miscommunication between a client and adviser, unsuitable advice, and problems transferring money overseas. Examples of the cases we have investigated in the past 12 months can be found in our case notes published on our website – [www.fscl.org.nz](http://www.fscl.org.nz).

Despite the recent turmoil in the financial markets, we have yet to see many complaints from consumers who have seen their investment funds reduce in value. When this happens, a consumer will sometimes look to blame the fund manager for not managing the investment fund properly or blame their financial adviser for placing them in products with too high a risk for their personal risk profile.

Although these complaints may soon or may still be to come to us in the second half of this calendar year, the low numbers of complaints relating to this subject matter may also be evidence that fund managers and advisers have done a good job of setting their clients' expectations so that consumers understand that investment markets can go down from time to time, meaning that they will suffer losses, but over the longer term the investment fund should provide them with a good return.

There has been some very helpful messaging from the regulator and fund managers in the media reminding consumers not to panic when they see the value of their KiwiSaver or investment accounts fall. If the consumer has a longer-term investment timeframe, say five years or more, the general advice is that you may be better to wait for the market to recover. If in doubt, the consumer should seek personalised financial advice.



**YOU DO A GOOD JOB, I AM PLEASED WITH THE RECENTLY INCREASED AUTHORITY OF FSCL.**

In an emerging trend, we have seen a 22% increase in cases involving fraud over the past year, although case numbers are still relatively low. Unfortunately, when times are hard, fraud cases increase, with the frauds becoming increasingly more sophisticated. It's a good time to remember the well-worn line that if something sounds too good to be true, it probably isn't true. Case study 1 is an example of a recent case where a person lost money by investing in a bogus overseas investment scam.



Another common cause of complaint to our service this year concerns “clawback” fees which some advisers charge their clients when a loan is repaid, or an insurance policy cancelled within the first 24 to 30 months of the loan being drawn down or the insurance policy taken out.

As well as clearly disclosing the fee in the documentation, we encourage mortgage advisers to discuss the potential for a clawback fee with the borrower when arranging the finance. The adviser should explain when a fee may be charged, the approximate amount of the fee and how the fee has been calculated. The adviser should always keep a record of their discussion with the borrower. Case study 2 is a case where the adviser waived a clawback fee when the fee came as a great shock to his clients.

“

**I THINK IT IS KNOWING THAT SOMEONE IS THERE AND APPROACHABLE WHICH HAPPENS WHEN I HAVE EVER HAD TO CALL. THE PERSON WAS HELPFUL AND PLEASANT TO DEAL WITH.**

One of our most frequent case issues is where a borrower, often assisted by a financial mentor, complains to us saying that the lender has loaned money irresponsibly to them, breaching the lender’s obligations under the Credit Contracts and Consumer Finance Act 2003. Under the Act, when approving a loan, a lender must make reasonable enquiries to satisfy itself that the borrower will be able to repay the loan without suffering substantial hardship.

A borrower’s deteriorating financial position can lead to the borrower defaulting on loan payments, but sometimes the underlying issue is that the loan was never truly affordable from the start. Case study 3 is an example of this. In this case we were also very concerned about the car dealer’s “hard sell” tactic, flying the borrower to Auckland from the South Island with no return ticket. This left the borrower with little option but to buy a car to get himself home.

In other cases, a borrower finds themselves struggling to pay their loan because their circumstances change, for example, they lose their job or suffer a relationship breakdown. We encourage borrowers to contact their lender as soon as possible in these circumstances because the sooner someone acts, the more likely it is the lender will be able to provide some hardship relief.

Case study 4 is an example of such a case. In this case the lender was able to provide the borrower with some loan relief to help him get back on his feet again.

# WHERE'S MY MONEY GONE? A SOPHISTICATED SCAM

Maria had saved \$50,000 and decided to invest it. Maria began looking online at different investment firms and found one that she was really interested in.

Maria wanted to be careful as she was investing a large sum of money, so she researched the background of the company she was investing with. The company was registered in the United Kingdom and had several international branches. Maria was happy with what she found – rave reviews. The company was a reputable investment one that served an international market, and Maria found them very prompt at responding to her emails and phone calls.

In January 2021, Maria made the decision to invest her savings with the company.

She arranged an international transfer of her NZD50,000 to the company's bank account in Canada. Maria received regular updates about her investment over the next eight months.

In August 2021, Maria had her hours reduced due to COVID-19, so she contacted the company to arrange withdrawing some of her investment funds. The company stopped returning her calls and emails, so Maria started to worry. She did a deeper search into the company and found that she had actually been dealing with a fraudulent copycat company that mimicked the reputable company she thought she had invested with. Maria had been the victim of a scam.

Maria contacted the company she used for the international transfer and asked them to recall her \$50,000 payment. The transfer company asked the Canadian bank that they work with to recall the payment from the scammer's account (which was with another Canadian bank).

The scammer's bank told the transfer company's bank that the recipient account had been closed, so they could not recall the funds. Maria was not happy with this response and urged the transfer company to have the Canadian banks launch an investigation into the fraud. The transfer company explained the situation to the Canadian bank, but were told that nothing further could be done.

The transfer company told Maria to raise the issue with law enforcement both in New Zealand and Canada. Maria did not think the transfer company had done enough to help her recover her money, so she complained to FSCL.

## Dispute

Maria thought that the transfer company should push the banks harder to investigate the fraud. She couldn't contact the banks directly herself because she was not a party to the transaction, so she thought the transfer company should be doing more to help.

The transfer company made two requests to the Canadian bank that they work with to recall the funds and provide a fraud reference number. The bank told them that the matter was closed, so the transfer company didn't see anything further they could do.



**SHE HAD ACTUALLY BEEN DEALING  
WITH A FRAUDULENT COPYCAT  
COMPANY THAT MIMICKED THE  
REPUTABLE COMPANY.**



## Review

We saw that the transfer company had followed Maria's instructions and arranged for the funds to be deposited in the account she gave them. It wasn't their fault that the account was being used by a scammer. There was nothing on the face of the transaction to raise a red flag that fraud might be involved.

We looked at the contract between Maria and the transfer company to see if it said anything about what they might do in the case of fraud and scams, but the contract didn't say anything about fraud.

Next, we considered what would be 'fair and reasonable' to expect the transfer company to do in order to assist Maria. We thought that their attempts to have the Canadian bank open a fraud investigation were fair, but that ultimately, they couldn't force them to do this.

We asked the transfer company to reach out to the Canadian bank one more time to see if the matter could be escalated. The transfer company did this, but they got the same response from the bank – that the recipient account had been closed so nothing could be done. The recipient bank could launch an investigation if they wished, but this was up to them.

Whilst we sympathised with Maria, we found that there were no contractual obligations on the transfer company to do anything further, nor was there anything else they ought to have done. We agreed that the best place for Maria to raise her concerns now, was with law enforcement agencies.

## Resolution

Maria discontinued her complaint and told us she would speak with the police to see if they could help her.

## INSIGHTS FOR CONSUMERS

Consumers need to be mindful that there are some extremely sophisticated scams run by experienced fraudsters. Whilst the firm Maria thought she was dealing with was in fact a very reputable firm, the copycat website looked identical and tricked Maria into investing her money through that website.

It pays to be extra cautious when sending money overseas to a company you have not dealt with before. Once you send funds internationally, it might be very difficult to trace them or have overseas institutions provide any assistance if things go wrong.

Consumers may wish to talk to a financial adviser before investing money on-line with an overseas company.

# CLAWBACK FEE CONFUSION

In 2020 when Lui and Fiafia bought a house, a mortgage adviser helped arrange the finance. In 2022 Lui and Fiafia were expecting their first baby and needed a bigger house. This time a different mortgage adviser helped them with the finance.

The transaction went smoothly until, shortly after Lui and Fiafia moved into their new home, the original mortgage adviser called to say that, because the loan on their first home had been repaid early, he would charge them a fee. Lui and Fiafia were aware of the early repayment fee they had already paid the bank and believed this was what the mortgage adviser was referring to.

When Lui and Fiafia received the mortgage adviser's invoice for \$3,500, they were shocked. Their baby had been born six weeks early and Fiafia had started her parental leave earlier than expected, reducing their income. Lui and Fiafia contacted the mortgage adviser to say they did not know he would charge them a fee for repaying the loan early. Lui and Fiafia had not budgeted for this large expense and could not afford to pay it.

The mortgage adviser sent Lui and Fiafia a copy of his terms of engagement which stated:

*If you repay your loan either in part or in full before 27 months of drawdown date, part or the full amount of brokerage is clawed back by the bank or lending institution. In such cases, the actual clawed back amount will be paid by the client in full, if you don't give us a chance to arrange your finance from another bank or lending institution.*

Lui and Fiafia replied that they still understood this to refer to the bank's early repayment fee and complained to FSCL.



**LUI AND FIAFIA HAD NOT  
BUDGETED FOR THIS LARGE  
EXPENSE AND COULD NOT  
AFFORD TO PAY IT.**



**GIVEN THE SIZE OF THE FEE,  
IT SHOULD BE A PRIORITY FOR  
ALL MORTGAGE ADVISERS TO  
EXPLAIN THE FEE TO THE CLIENT,  
WHEN GIVING THEIR ADVICE.**

## Dispute

Lui and Fiafia said they had budgeted for the bank's early repayment charge because they broke the original term of the loan early. However, neither the original mortgage adviser nor the new mortgage adviser had told them that, if they repaid the loan early, they would also have to pay the mortgage adviser a clawback fee. Lui said:

*To be sprung with such an unexpected and extravagant fee is unjust and unfair and it is clearly something we cannot afford to pay as we are down to one income now due to my wife being on maternity leave. Such a substantial fee should be explained to customers first and foremost when we request your services. It appears to be a hidden fee.*

The mortgage adviser called Lui and explained he had checked his contract with his lawyer and was satisfied that he was entitled to charge the fee. However, to resolve the complaint, the mortgage adviser offered to reduce the invoice by half.

Lui and Fiafia did not accept the mortgage adviser's offer.

## Review

When we told the mortgage adviser that we had started our investigation into Lui and Fiafia's complaint, the mortgage adviser said he would waive Lui and Fiafia's invoice entirely.

## Resolution

Lui and Fiafia accepted the mortgage adviser's settlement offer but repeated their concern that no-one had ever previously mentioned or explained a "clawback" fee to them. Given the size of the fee, it should be a priority for all mortgage advisers to explain the fee to the client, when giving their advice.

# INSIGHTS FOR CONSUMERS AND PARTICIPANTS

When a mortgage adviser arranges finance for a borrower, their service is free to the borrower because the mortgage adviser is being paid by the bank. If the borrower repays the loan early the bank will recover, or 'clawback', some of the money the bank paid to the mortgage adviser, effectively depriving the mortgage adviser of some of their income. The mortgage adviser will then invoice the borrower to recover the money that they have lost.

Although the clawback fee is likely to be mentioned in the mortgage adviser's contract with the borrower, many borrowers are completely unaware that the mortgage adviser might charge them a fee if the loan is repaid early and are shocked at the amount of the fee, often a few thousand dollars.

# CHANGE IN CIRCUMSTANCES MASKS ORIGINAL LOAN UNAFFORDABILITY

Arjun is a solo dad of three primary school age children living in the South Island. Arjun needed a car and saw one advertised in Auckland. Arjun called the car dealer and discussed buying the car. The car dealer offered to fly Arjun to Auckland to collect the car.

When Arjun arrived at the car yard in Auckland, the dealer submitted a loan application for him. The lender calculated that Arjun had a weekly surplus of \$280 and would be able to afford the weekly loan payments of \$140. Arjun accepted a loan of \$17,000 to buy the car and drove it back home.

Arjun missed the first loan repayment and was regularly defaulting on loan repayments within two months of drawing down the loan. When Arjun moved from transitional housing to a more expensive permanent rental, he was struggling financially, and asked a financial mentor for help.

The financial mentor immediately identified the defaults soon after drawdown as a 'red flag' and asked the lender for more information about how it calculated loan affordability. When the lender did not give the financial mentor the affordability assessment, she complained to FSCL on Arjun's behalf.



**IT APPEARED THAT THE LENDER HAD NOT MET ITS RESPONSIBLE LENDING OBLIGATIONS BECAUSE ARJUN COULD NOT AFFORD TO REPAY THE LOAN WITHOUT SUFFERING SUBSTANTIAL FINANCIAL HARDSHIP.**

## Dispute

The financial mentor was very concerned about the car dealer's actions, saying Arjun understood the loan would be approved before he had even applied for it. Further, flying Arjun to Auckland to buy the car meant that Arjun had little option but to accept the car and loan offered because he could not afford to buy a return flight ticket home. Although the financial mentor had not seen the affordability assessment, on the information available to her, Arjun's budget was in weekly deficit at the time he applied for the loan.

The lender said it was not responsible for the car dealer's actions and it had assessed the loan application on its merits. The lender was satisfied that the loan was affordable and that it was Arjun's change in accommodation that was causing his financial difficulty.



## Review

When we looked at the lender's affordability assessment, we were concerned to see the lender had:

- included a WINZ disability allowance for one of Arjun's children in Arjun's income without allowing for the corresponding costs the disability allowance was designed to cover
- under-estimated Arjun's food costs, allowing for only one adult and one child when Arjun was responsible for three children
- not allowed for non-food items
- not allowed for transport related costs, which Arjun would now incur.

Considering all these factors, it appeared that the lender had not met its responsible lending obligations because Arjun could not afford to repay the loan without suffering substantial financial hardship.

We put this information to the lender and asked if it would be prepared to reconsider its earlier position that Arjun's financial difficulty was caused by his increased accommodation costs.

The lender reconsidered and agreed to our suggestion that it refund the interest and fees charged on the loan, reducing Arjun's loan balance by about \$6,000.

## Resolution

Arjun accepted the lender's offer and agreed to repay the residual debt at \$50 a week.

## INSIGHTS FOR FINANCIAL MENTORS

A change in financial circumstances, contributing to financial hardship, can sometimes mask loan unaffordability from the outset. If a borrower defaults on a loan shortly after drawdown this can indicate that a lender may not have met their responsible lending obligations when assessing loan affordability.

# FINANCIAL MENTOR AND LENDER WORK TOGETHER TO PROVIDE HARDSHIP RELIEF

In 2019 Kate borrowed \$36,000 to consolidate debt she had with one lender and four credit card providers. The debt consolidation reduced Kate's loan repayments by half, from \$1,200 to \$600 a fortnight. Kate successfully repaid the debt until April 2020 when her employer reduced her hours, and her pay, by 20% as a result of the Covid-19 lockdown. Kate contacted her lender who offered to reduce her loan repayments to \$300 a fortnight for one year.

In February 2021 Kate told the lender she was still struggling financially and asked if she could continue to repay the debt at \$300 a fortnight. The lender reassessed Kate's financial situation and offered Kate a slightly reduced loan repayment but were not able to continue the \$300 fortnightly payments.

Kate's financial situation did not improve and, in mid-2021, she asked a financial mentor for help. The financial mentor prepared a statement of financial position for Kate to support another hardship application to the lender. The statement showed that, in addition to the lender's loan with a balance owing of \$30,000, Kate had a \$15,000 loan from another lender and three credit cards with total debt of \$23,500. The financial mentor said the most Kate could pay the lender was \$300 a month.

Kate also explained a little more about her circumstances. In 2019 Kate had been in an abusive relationship. Kate's husband had expected her to borrow money to support their lifestyle which is why, after refinancing the debt in 2019, Kate had borrowed more money. By mid-2021 Kate had left her husband.

Given this history, the lender was sympathetic to Kate's situation and said they would reconsider a hardship application but needed three months' worth of bank statements to get a clear picture of her financial situation. It took Kate some time to organise this information.

By March 2022 the lender had enough information to assess the hardship application and offered to:

- reduce the interest rate from 13% to 5% per annum
- reduce the loan repayments from \$300 a week to \$450 a month
- review Kate's financial situation in six months.

As a consequence of this restructure, the lender explained the term of the loan would increase from 56 months to 80 months, but the overall interest payable would reduce from \$10,000 to \$5,000.

Kate's financial mentor did not accept the lender's proposal and complained to FSCL.

## Dispute

Kate's financial mentor said the lender was being unreasonable and that Kate could not afford to pay the lender \$450 a month. Kate's financial mentor said that her budget showed the most she could pay was \$300 a month. The financial mentor was concerned that by reducing the payments, the term of Kate's loan would be extended, costing her more in the long run.

Kate's financial mentor was also concerned that the lender may not have met their responsible lending obligations when lending in 2019, noting that the lender's budget allowed only \$200 a week for food for a family of two adults and two children.

The lender sympathised with Kate's financial situation, especially as an abuse survivor. However, the lender disagreed with the financial mentor's budget assessment and said there was enough money in Kate's budget to pay them \$450 a month. The lender considered their refinancing proposal was very reasonable. Although the reduced payments would extend the loan term, the reduced interest rate would mean that there would be no extra cost to Kate.

# INSIGHTS FOR PARTICIPANTS

We acknowledge that hardship applications can be challenging, especially when a lender feels the borrower has brought the situation upon themselves by incurring further debt. However, when assessing a hardship application, a lender should take the borrower as they find them and work with the borrower, and the financial mentor, to find a durable, workable solution. We were pleased to see a lender asking for all the necessary information and carrying out a robust assessment before offering a solution that combined both a reduced interest rate and repayment amount that made repaying the loan affordable for Kate.

## Review

We had some concerns that the lender appeared to have under-estimated the amount in Kate's budget for food. However, we noted that Kate had met all the loan repayments until Covid-19 intervened and that the debt consolidation had improved her financial situation. It seemed to us there were other factors, like Covid-19 and the abusive relationship, that were the main causes of Kate's current financial difficulty.

We spoke to Kate's financial mentor who agreed that Kate would withdraw her complaint about the irresponsible lending if the lender would accept \$300 a month until November 2022.

## Resolution

The lender agreed to accept \$300 a month until November 2022 when they would reassess Kate's financial position with a view to increasing her payments to \$450 a month, and the complaint was resolved.



**WE WERE PLEASED TO SEE A LENDER ASKING FOR ALL THE NECESSARY INFORMATION AND CARRYING OUT A ROBUST ASSESSMENT BEFORE OFFERING A SOLUTION.**



# SUMMARY PROFIT AND LOSS STATEMENT

FOR THE YEAR ENDED 30 JUNE 2022

	2022 \$	2021 \$
Revenue	1,955,738	1,821,667
<b>TOTAL REVENUE</b>	<b>1,955,738</b>	<b>1,821,667</b>
<b>Expenses</b>		
Administration	2,084,178	2,014,243
Non cash items	39,472	32,494
<b>Total expenses</b>	<b>2,123,650</b>	<b>2,046,737</b>
<b>NET BUSINESS SURPLUS</b>	<b>(167,912)</b>	<b>(225,070)</b>
Other income	63,440	107,209
	63,440	107,209
<b>NET SURPLUS</b>	<b>(104,472)</b>	<b>(117,861)</b>

# SUMMARY STATEMENT OF MOVEMENTS IN EQUITY

FOR THE YEAR ENDED 30 JUNE 2022

	2022 \$	2021 \$
Net surplus for the year	(104,472)	(117,861)
Equity at beginning of year	2,596,223	2,714,084
<b>EQUITY AT END OF YEAR</b>	<b>2,491,751</b>	<b>2,596,223</b>

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

# SUMMARY BALANCE SHEET

FOR THE YEAR ENDED 30 JUNE 2022

	2022 \$	2021 \$
<b>EQUITY</b>	<b>2,491,751</b>	<b>2,596,223</b>
<b>Current assets</b>		
Cash, bank balances and short term deposits	2,434,278	2,555,990
Receivables	66,362	81,749
Prepayments	8,046	8,776
	2,508,686	2,646,515
<b>Non current assets</b>		
Property, plant and equipment	83,277	96,675
Intangibles	82,645	15,504
Work in progress	-	13,348
	165,922	125,527
<b>TOTAL ASSETS</b>	<b>2,674,608</b>	<b>2,772,042</b>
<b>Current liabilities</b>		
Payables	54,858	59,260
Income in advance	15,615	10,800
Accrued charges	96,923	78,366
Lease incentive	11,933	11,933
	179,329	160,359
<b>Non current liabilities</b>		
Lease incentive	3,528	15,460
	3,528	15,460
<b>TOTAL LIABILITIES</b>	<b>182,857</b>	<b>175,819</b>
<b>NET ASSETS</b>	<b>2,491,751</b>	<b>2,596,223</b>

## APPROVAL OF FINANCIAL STATEMENTS

These Summary Financial Statements have been approved by the board on 25 August 2022. For and on behalf of the Board of Directors:



DIRECTOR



DIRECTOR

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

## SUMMARY FINANCIAL STATEMENTS

# SUMMARY STATEMENT OF CASHFLOW

FOR THE YEAR ENDED 30 JUNE 2022

	2022 \$	2021 \$
<b>CASH WAS PROVIDED BY (USED FOR)</b>		
<b>Operating activities</b>		
Receipts from Participants	1,976,974	1,880,205
GST movement	13,109	(11,590)
Operating costs	(2,072,153)	(2,027,642)
Income tax paid/(refunded)	26,030	(12,642)
	(56,040)	(171,669)
<b>Investing activities</b>		
Payments to property, plant and equipment and intangible assets	(93,215)	(9,625)
Payments to work in progress	-	(13,348)
	(93,215)	(22,973)
<b>Financing activities</b>		
(Increase)/decrease of term deposits	(12,883)	200,951
Net interest received	27,542	38,791
	14,659	239,742
<b>NET MOVEMENT IN CASH</b>	<b>(134,596)</b>	<b>45,100</b>
Opening bank balances	429,127	384,027
<b>CLOSING BANK BALANCES</b>	<b>294,531</b>	<b>429,127</b>
<b>Represented by</b>		
Bank balances	294,531	429,127
<b>CLOSING BANK BALANCES</b>	<b>294,531</b>	<b>429,127</b>

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

# NOTES TO THE SUMMARY FINANCIAL STATEMENTS

FOR THE YEAR ENDED 30 JUNE 2022

The Summary Financial Statements have been prepared for the individual entity Financial Services Complaints Limited for the accounting period ended 30 June 2022. Also included for comparative purposes are figures for the period ended 30 June 2021.

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

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

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

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

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

The Full Financial Statements for the year end 30 June 2022 were authorised for issue by the directors of Financial Services Complaints Limited on 25 August 2022 and an unmodified audit report was issued by BDO at that date.

The Full Financial Statements for the year end 30 June 2021 were authorised for issue by the directors of Financial Services Complaints Limited on 27 August 2021 and an unmodified audit report was issued by BDO at that date.

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



BDO Wellington Audit Limited

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

The accompanying summary financial statements, which comprise the summary balance sheet as at 30 June 2022, the summary profit and loss statement, the summary statement of cashflow and summary statement of movements in equity for the year then ended, and related notes are derived from the audited special purpose financial statements of Financial Services Complaints Limited for the year ended 30 June 2022. We expressed an unmodified audit opinion on those special purpose financial statements in our report dated 25 August 2022. Those financial statements, and the summary financial statements, do not reflect the effects of events that occurred subsequent to the date of our report on those financial statements.

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

### Directors' Responsibility for the Summary Financial Statements

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

### Auditor's Responsibility

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

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

### Opinion

In our opinion, the summary financial statements derived from the audited special purpose financial statements of Financial Services Complaints Limited for the year ended 30 June 2022 are consistent, in all material respects, with those special purpose financial statements in accordance with FRS-43.

### Basis of Accounting and Restriction on Distribution and Use

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

*BDO Wellington Audit Limited*

**BDO WELLINGTON AUDIT LIMITED**

25 August 2022

Wellington

New Zealand

## COMPANY DIRECTORY

Level 4, Legal House, 101 Lambton Quay  
Wellington 6011

### INCORPORATION NUMBER

2303993

### IRD NUMBER

103-018-668

### DIRECTORS

Jane Meares  
Tuhi Leef  
Liesl Knox  
Mary Holm  
Roger J Kerr

### SHAREHOLDER

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

### ACCOUNTANTS

KPMG  
10 Customhouse Quay  
Wellington

### AUDITORS

BDO Wellington  
Level 1, 50 Customhouse Quay  
Wellington 6011

**WWW.FSCL.ORG.NZ**

**LEVEL 4, LEGAL HOUSE,  
101 LAMBTON QUAY,  
WELLINGTON.**

**PO BOX 5967,  
WELLINGTON 6145**

**T 0800 347 257**

**INFO@FSCL.ORG.NZ**



FINANCIAL SERVICES  
COMPLAINTS LTD

RATONGA PŪTEA  
PUNA MANAAKI

A FINANCIAL OMBUDSMAN SERVICE