

# TERMS OF REFERENCE

## FOR 2025 INDEPENDENT REVIEW OF FINANCIAL SERVICES COMPLAINTS LIMITED (FSCL)

### 1. BACKGROUND

- 1.1. FSCL is an independent external dispute resolution service approved by the Minister of Consumer Affairs under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the FSP Act). FSCL is a not-for-profit organisation funded by its participants. This is by way of annual membership fees and case fees. FSCL's service is free to consumers.
- 1.2. There are three other approved dispute resolution services – the Banking Ombudsman Scheme, the Insurance and Financial Services Ombudsman Scheme, and FDRS (Financial Dispute Resolution Service).
- 1.3. In 2022, FSCL obtained approval from the Chief Ombudsman to be known as a Financial Ombudsman Service and its Chief Executive Officer to be titled Financial Ombudsman.
- 1.4. FSCL has over 5,000 scheme participants who are financial service providers (FSPs) from all sectors of the financial services industry.
- 1.5. FSCL has been assisting consumers and FSPs to resolve complaints since 2011. FSCL operates in accordance with its Terms of Reference and Terms of Participation.
- 1.6. In July 2024, the Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024 came into force, aligning rules of the four financial dispute resolution services around timeframes to access and compensation limits. This resulted in an updated Terms of Reference for FSCL that have been in place since 18 July 2024.
- 1.7. FSCL is governed by an independent Board consisting of two consumer representatives, two industry representatives, and an independent Chair. FSCL currently has 16 staff, including Financial Ombudsman and Chief Executive Officer, Susan Taylor.
- 1.8. Under section 63(q) of the FSP Act, FSCL must have an independent review at least once every five years. FSCL's most recent independent review was in 2020.

## 2. REVIEW SCOPE

2.1. FSCL is required to meet and comply with the six benchmark principles (the principles) set out in the FSP Act, being:

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

2.2. The review's main objective is to examine, and make recommendations about, how effectively and efficiently the scheme operates to resolve and prevent complaints. The review is asked to consider and report on whether FSCL is meeting the principles, with particular regard to and focus on the principles of accessibility, effectiveness, and fairness.

2.3. We set out below a more detailed explanation of the principles and questions to be addressed.

2.4. The review is also asked to assess performance against FSCL's Terms of Reference, in particular:

- > the requirement to resolve complaints in a cooperative, efficient, timely, and fair manner, whilst proceeding with the minimum formality and technicality, and
- > FSCL's processes to ensure consistency and high quality decision making in keeping with its obligations under its Terms of Reference to deal with a complaint on its merits and do what is fair in all the circumstances, having regard to the law, any relevant code of practice, and the principles of good industry practice.

## 3. METHODOLOGY

3.1. It is expected the review process will include the reviewer:

- > Approving an issues paper for public submissions on the review.
- > Interviewing FSCL's Board members, management, and staff.
- > Reviewing FSCL's Terms of Reference, policies and procedures, data, and other key documents.
- > Reviewing the educative and awareness work undertaken by FSCL for both participants and consumers.

- > Reviewing 20 random dispute, and ten random complaint case files.
- > Interviewing stakeholders including:
  - participants
  - consumer groups and advocates
  - representatives from MBIE, the FMA, the Commerce Commission, the ICNZ, the FSF, and other dispute resolution services.
- > Reviewing complaints received about FSCL's process.

#### 4. ACCESSIBILITY

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

##### *Questions*

- 4.1. Does the scheme produce readily available material for consumers in plain language to explain:
  - > how to access the scheme
  - > how the scheme works
  - > information about and guides to common complaints to the scheme
  - > any restrictions on the scheme's powers
  - > timelines for the scheme's processes.
- 4.2. The scheme has increased the awareness activities it undertakes since the 2020 review, particularly with consumer groups. Is there any further awareness work that the scheme can undertake?
- 4.3. Is there more the scheme could be doing to ensure participants tell their customers about their own internal complaints processes, and FSCL, at the time the customer makes a complaint?
- 4.4. Is there more the Government, including regulators, could be doing to ensure FSCL participants tell their customers about their own internal complaints processes, and FSCL, at the time their customer makes a complaint?

#### 5. EFFECTIVENESS

*Principle:* The scheme is effective by having an appropriate and comprehensive Terms of Reference and periodic independent reviews of its performance.

### *Questions*

- 5.1. Are the scheme's scope and Ombudsman's powers clear?
- 5.2. Does the Ombudsman have the power to make monetary awards of sufficient size and other awards (but not punitive compensation) as appropriate?
- 5.3. Does the scheme have a policy for dealing with systemic issues?
- 5.4. Does the scheme require participants to set up internal complaints processes and does the scheme have the capacity to advise participants about their internal complaints processes?
- 5.5. In light of the introduction of section 67 of the FSP Act in 2021, and FSCL's Systemic Issues policy, should FSCL be reporting more in-depth information about its systemic issue and material breach work?
- 5.6. Could FSCL be more effective when submitting on relevant legislative update consultations?
- 5.7. Should FSCL be more proactive in suggesting legislative changes where data and insights gained from complaints highlight regulatory gaps?

## **6. FAIRNESS**

*Principle:* The scheme produces dispute outcomes that are fair and are seen to be fair by observing the principles of procedural fairness and natural justice, by making decisions on the information before it, and by having specific criteria upon which its decisions are based.

### *Questions*

- 6.1. Are both parties given sufficient opportunity to put their case to the Ombudsman?
- 6.2. Does the scheme observe the principles of natural justice and adopt a rigorous, credible approach to reaching decisions?
- 6.3. Does the scheme make decisions having regard to the law, relevant codes of practice, and good industry practice?
- 6.4. Does the scheme treat the parties to complaints with empathy?
- 6.5. Are both parties told of the reasons for any preliminary or final decision?
- 6.6. Are complainants informed of the reasons for why a complaint is outside jurisdiction?
- 6.7. What feedback could be provided on FSCL's fairness project? Is there anything more, or different, that could be done to improve fairness?

## 7. ACCOUNTABILITY

*Principle:* The scheme publicly accounts for its operations by producing:

- > an Annual Report
- > case notes
- > information about complaints, such as consumer guides and media releases.

### *Questions*

- 7.1. Does the scheme provide sufficient statistical and other data about its performance including:
  - > the numbers and types of complaints it receives and the outcomes
  - > the time taken to resolve complaints
  - > complaint trends and case studies
  - > consumer and participant feedback on the scheme's complaint resolution processes.
- 7.2. Does the scheme have appropriate processes for managing complaints about itself?

## 8. EFFICIENCY

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

### *Questions*

- 8.1. Does the scheme have reasonable time limits set for each of its processes that facilitate speedy resolution of complaints without compromising quality decision making?
- 8.2. Do the scheme's staff keep the parties adequately informed about the progress of the complaint?
- 8.3. Does the scheme keep records of all complaints, their progress and outcomes?
- 8.4. Does the scheme seek feedback from the parties about their views of the scheme's performance?
- 8.5. Does the scheme have mechanisms in place to fast track or prioritise complaints where the consumer has particular vulnerabilities, or in complaints where time is of the essence?

- 8.6. Does the scheme have sufficient resources to enable the efficient management of its case load and to meet its legal requirements, including consumer and industry education, complaint prevention, and work to raise industry standards?

## 9. INDEPENDENCE

*Principle:* The decision making process and scheme administration are independent from scheme participants.

### *Questions*

- 9.1. Are the scheme's operations and processes sufficient to ensure its independence and the public's perception of independence?
- 9.2. Is the scheme's Board composition appropriate to ensure both its independence and the public's perception of its independence?