

# **FINANCIAL SERVICES COMPLAINTS LIMITED (FSCL) – A FINANCIAL OMBUDSMAN SERVICE**

**RATONGA PŪTEA PUNA MANAAKI**

**Five Year Independent Review**

**May 2025**

Prepared by Nanette Moreau Hammond

## Contents

Introduction and history .....	1
Scope of review .....	2
Executive summary .....	4
Recommendations.....	5
Accessibility and awareness.....	5
Fairness .....	5
Effectiveness .....	6
Review process.....	6
Current operations.....	7
FSCL and the statutory principles.....	11
Accessibility .....	11
Raising awareness of the scheme.....	13
Fairness .....	16
Effectiveness .....	18
Independence.....	20
Efficiency .....	21
Accountability .....	22
Other matters .....	24
Single scheme.....	24
Ombudsman name .....	27
About the reviewer .....	28
ATTACHMENT 1 - REVIEW OF BENCHMARK PRINCIPLES	
ATTACHMENT 2 – TERMS OF REFERENCE	

## Introduction and history

Financial Services Complaints Limited (FSCL) was formed in 2010 following the approval of the then Minister of Consumer Affairs under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act).

The role of FSCL is to resolve complaints by consumers about financial services and advice provided by their financial service providers, who are participants of the FSCL Scheme. This includes non-bank lenders, finance companies, credit unions, building societies, insurance companies, financial advisers including mortgage brokers and insurance brokers, corporate trustees, fund managers, issuers of securities, transactional service providers, card issuers and many more.

FSCL is a not-for-profit company funded by a combination of membership and case fees levied on participating financial providers. The service of resolving disputes is provided to consumers free of charge as required by the FSP Act and by industry-based dispute resolution scheme best practice principles.

FSCL is governed by a Board of Directors, part of whose governance role is to protect the independence of its decision maker and to ensure that the processes which are employed, are independent of Scheme members.

In 2022 FSCL received approval from the New Zealand Chief Ombudsman under the Ombudsman Act 1975 s28A to use the Ombudsman title. The consent was granted at the direction of the New Zealand Court of Appeal following proceedings initiated by FSCL over a seven-year period. (*Financial Services Complaints Ltd v Chief Ombudsman [2022] NZCA 248*). FSCL commented in its 2022/23 Annual Report that the changed title had 'led to higher interest in its regular media releases on topical issues and case notes, resulting in greater consumer awareness of FSCL evidenced by an increase in complaints'.

Section 63(1)(q) of the FSP Act requires that every five years an independent review of the Scheme is to be completed within the requirements of the statutory framework and be provided to the Minister within three months of completion. Previous independent reviews were conducted in 2015 and 2020.

The purpose of the review is to ensure that the Scheme is meeting its standard approval criteria of fairness, accessibility, effectiveness, independence, accountability, and efficiency (the principles), as set out in Attachment 1.

The specific Terms of Reference for the 2025 Independent Review of FSCL are contained in Attachment 2 of this review. The Board of FSCL appointed Nanette Moreau Hammond to conduct the review. The Board asked for each of the principles to be considered, with particular focus on accessibility, fairness, and effectiveness.

## Scope of review

The methodology used in this review process included interviewing the Chair and all members of FSCL's Board of Directors, Susan Taylor, FSCL Ombudsman and Chief Executive, FSCL management and staff, participants from various parts of the industry, consumer groups and financial mentors.

Meetings were also held with representatives from the Ministry of Business, Innovation & Employment (MBIE), the Financial Markets Authority (FMA), Commerce Commission, Insurance Council of New Zealand (ICNZ), Financial Services Federation (FSF), and other dispute resolution services, including the three other financial service dispute resolution schemes, (the Banking Ombudsman Scheme (BOS), the Insurance and Financial Services Ombudsman Scheme (IFSO), and Financial Dispute Resolution Service (FDRS)).

The review also included a random selection of dispute files and complaint case files. Disputes are cases FSCL investigates after a participant has been unable to resolve a complaint through its internal complaints process. FSCL receives complaints about their service from time to time and the review included consideration of those complaints. It is important to note this review does not reconsider the outcome of any cases.

Finally, the reviewer met with the responsible Minister, the Hon Scott Simpson, Minister of Commerce and Consumer Affairs, to discuss his expectations of the current dispute resolution environment and its future.

There were other developments that occurred since the last review and certainly within the last 12 months affecting FSCL. These are important events affecting the work of FSCL.

The Ombudsmen for IFSO and FSCL jointly announced on 22 April 2024 that both organisations were evaluating a merger. These two organisations represent approximately 90% of financial services complaint cases (excluding banking). The IFSO scheme paused the merger talks later in 2024. See also the comments in the Single Scheme section.

In April 2024, the Minister of Commerce and Consumer Affairs announced proposals to undertake financial services reform. MBIE released three Discussion Papers on 22 May 2024. Two are relevant to this review.

The first is 'Effective financial dispute resolution'. The Discussion Paper examines reform options on two themes:

- increasing consumer awareness and access to internal and external complaint procedures regarding financial service providers
- improving oversight and accountability of approved dispute resolution schemes to make them more effective.

On 31 March this year, the Minister of Commerce and Consumer Affairs introduced the Financial Service Providers (Registration and Dispute Resolution) Bill 2025 to Parliament. The Bill gives effect to Cabinet decisions to make a couple of targeted amendments aimed at improving the independent review of the dispute resolution schemes and safeguarding the effectiveness and independence of their governing boards.

The second paper was 'Fit for purpose financial services conduct legislation'. The Discussion Paper looks broadly at streamlining financial services regulation, including options for amending the fair conduct principle that applies to financial service providers from March 2025. Legislative reform is happening with both the Credit Contracts and Consumer Finance Act 2003 (CCCFA) and the Responsible Lending Code.

Since the last review in March 2020, FSCL has established Memorandums of Understanding with the Financial Markets Authority, the Commerce Commission, and FinCap.

The FSCL Terms of Reference have undergone changes for cases received before 1 March 2022, cases received from 1 March 2022 and cases received from 18 July 2024. The last change altered the amounts of compensation limits/monetary caps, making them consistent across all four financial service dispute resolution schemes. FSCL also revised its Terms of Participation in May 2020 and produced an Engagement Charter in July 2024.

In conjunction with MBIE, one piece of work, which the four financial schemes have been engaged in, is a review of the Key Performance indicators to standardise them across all four schemes. This is discussed in more detail in the section Accountability.

Responsibility for the Credit Contracts and Consumer Finance Act (CCCFA) will be moving from the Commerce Commission to the Financial Markets Authority. This will likely take place by the end of 2025. This is expected to streamline the regulatory framework, improve efficiency, and align the FMA's role as the primary regulator for financial service industries conduct, enhancing consumer protection.

There has been and will be a great deal of change in the financial services industry, in legislation, products and services offered, and technology, including AI. It is a changing and dynamic environment particularly during times of economic uncertainty and hardship.

## Executive summary

Overall, the review confirms that FSCL provides a professional, accessible, and well-managed Ombudsman Scheme for the financial services industry. FSCL complies with the FSP Act and regulations.

There have been several changes to the financial services industry in the last five years. This is always a challenge for an organisation and its staff and governance. The review provided confidence in the ability of FSCL to 'keep up with the play'.

The Board is comprised of highly effective individuals. Each Board member has a clear understanding of their role and responsibilities in independently guiding a not-for-profit dispute resolution scheme, working to resolve disputes between consumers and financial service providers, large and small.

The Ombudsman and her staff work positively together. This is reflected in the feedback received from consumers, consumer organisations, financial mentors, FSCL participants and the regulators. FSCL is very well led by the Ombudsman, who provides an energy and work ethic reflected in how the office conducts itself.

The review considered the six principles governing dispute resolution in industry-based schemes. These are accessibility, fairness, effectiveness, independence, efficiency and accountability. As requested by the Board in the terms of reference for the review, particular focus was given to the first three principles. While the review demonstrated strong alignment with the principles, there are some additions which would strengthen and enhance the scheme's performance. These are outlined in the recommendations below, supported by comments in the discussion of the individual principles.

Timely, responsive, accessible, trusted, credible, easy to communicate with, and well-reasoned were some of the words used by those interviewed. One question that did arise, flowing from the recommendation raised in the 2020 review, and that is succession when Susan Taylor steps away. While it is an important question, it is not one that is easily solved in a small organisation in a changing environment. This review considered the problem, but the solution will need to be found by the Board if and when the situation arises. Needs of the organisation are dynamic and probably best dealt with at the time.

Once complaints reach FSCL they are dealt with effectively. The question is how to get consumers to FSCL? The biggest and ongoing challenge for FSCL is to increase awareness. While there is a good deal of great work being done by the team through webinars, newsletters, media, etc. there needs to be an increased focus on awareness. This is a challenge to solve before the next five-year independent review.

That said, FSCL meets its objectives, providing a service of a high standard.

## Recommendations

Following completion of the independent five-year review, it is recommended:

### Accessibility and awareness

One of the main concerns with dispute resolution services is that consumers don't know they exist and that they can access them easily if they have a problem. To ensure participants and their customers know about FSCL and how to access the scheme, FSCL should:

1. Conduct desk audits on an ongoing basis of participants' websites to ensure proper information about both the participant's internal and external complaints process. The website should respond to searches such as 'problem', 'dispute', 'complaint' as examples. The information should include all contact details for FSCL and that FSCL's service is 'free, and independent'.
2. Conduct a 'mystery shopper' exercise with a random selection of participants, twice yearly, to ensure front line staff, who take calls from their customers, recognise a 'complaint' or 'problem' and provide the appropriate information about both the internal and external complaints process, including FSCL.
3. Engage a search engine consultant to optimise the capability of finding information about FSCL, and use of AI, such as Chat GPT and Co Pilot as sources of directing customers who have an issue with their financial service provider to FSCL. It should be noted that, while the FSCL videos on the website are very good, information in videos on a website is not searchable.
4. Continue ongoing training to ensure FSCL participants are aware of their regulatory obligations to advise their customers about FSCL.
5. The Board and Ombudsman should consider additional community outreach resources to assist vulnerable, and disadvantaged consumers.

### Fairness

FSCL has done a great deal of work around the fairness principle. During the review interviews, considerable interest was expressed about FSCL's fairness project. Issues, such as 'have regard to the law', in decision making and why should a participant pay fees when they feel they have done 'nothing wrong' should be discussed.

1. FSCL should conduct another one of their very useful and helpful webinars on their fairness project, including discussions on 'have regard to the law' and why dispute resolution is free to consumers. It would be useful to make the fairness checklist more widely available.

## Effectiveness

To be effective, FSCL must be able to provide relevant and helpful information to participants, consumers, consumer advocates and regulators. This information will encourage and support the financial industry to improve the services for the benefit of consumers, including small businesses.

1. Expand reporting and feedback to participants and regulators on the types of complaints FSCL is dealing with. During interviews, participants expressed their desire for more information about how they are performing relative to other service providers in their particular area.
2. It was universally accepted that webinars based on actual cases were most effective in training, and FSCL should continue to provide their high-quality webinars.
3. Both participants and consumer advocates endorsed FSCL's early assistance programme and strongly supported its continued use.
4. Systemic issues and material breaches reporting should be top of mind for FSCL staff when considering a complaint. This may be assisted using AI to identify trends.

There are no specific recommendations on the other three principles of independence, efficiency and accountability. However, the recommendations above will contribute to the overall success of FSCL. No recommendation is made on the 'Other matters' – one scheme and the Ombudsman name raised at the end of this review.

## Review process

The review was conducted during January to May 2025.

The Board published the Terms of Reference for the review in January, calling for any submissions. Seven submissions were received from a participant, consumers, and consumer groups.

The reviewer visited the FSCL Office on three occasions over five days and met with Susan Taylor, Ombudsman and Chief Executive Officer, and staff, both operational and administrative. Interviews were held with staff and the reviewer observed outgoing calls by staff with a participant and a consumer, and attended



the weekly team meeting to review the status of cases and caseloads. Meetings begin and end respecting Māori tradition.

While in the office the reviewer met with the Chair of the FSCL Board, Jane Meares, and Board member, Joy Marslin. In Auckland, in-person meetings were held with the other three Board members – Tuhi Leef, Paul Jamieson and Mary Holm.

The reviewer also held 25 interviews, in person in Auckland and Wellington or by Teams, in New Zealand and Australia. This represented seven consumer/ advocacy bodies, two professional associations, nine participants, three financial dispute resolution schemes, and four government agencies/regulators. Most interviews had two or more attendees. In several interviews, people had interacted both with FSCL and with the Australian Financial Complaints Authority (AFCA), the single financial services dispute resolution service for Australia. This provided an interesting insight into how the two dispute resolution schemes work.

The reviewer examined internal and web-published FSCL documents, including previous Review reports, governance documents, media interviews, annual reports, webinar presentations for consumer advisers and participants, specific financial service guides, case studies, case files, and consumer and participant exit surveys. A comprehensive Guide to FSCL's investigation process for participants was updated in July 2024. The review included the relevant legislation and work completed resulting from the recommendations of the 2020 independent review including the Fairness project.

## Current operations

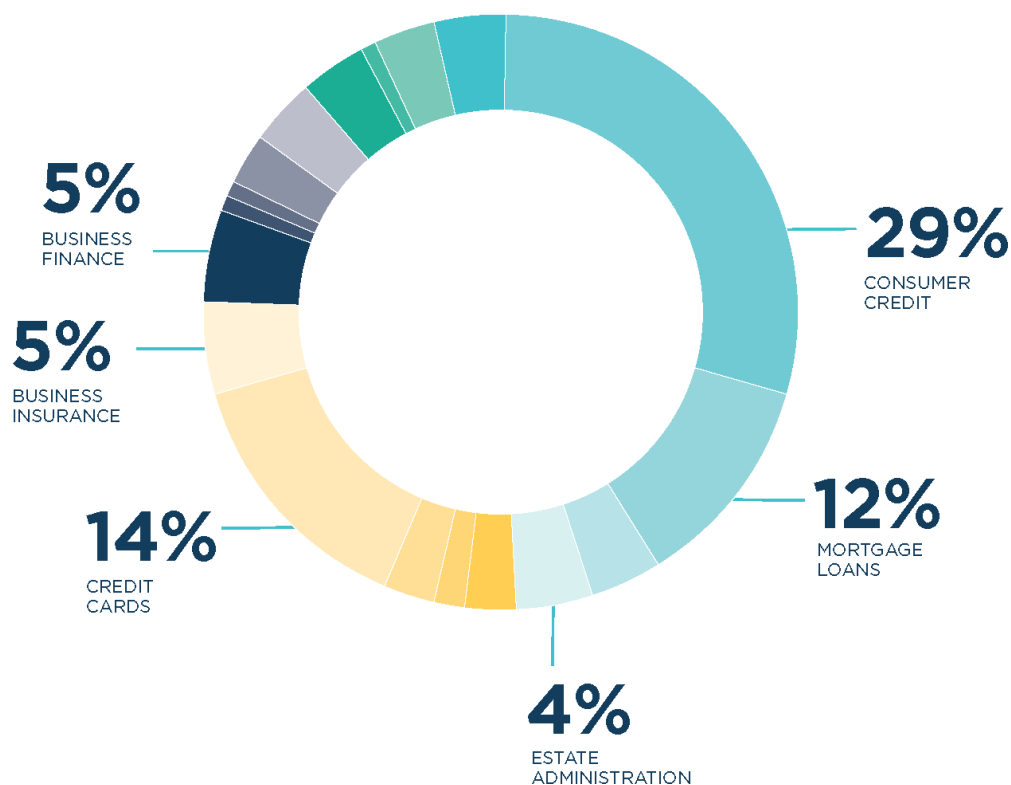
Currently there are 9,355 members. This includes numbers in the various 'branches' of industry as follows:

- Advisers – 8,470 (some firms have more than one adviser under their membership)
- Lenders – 392
- Transactional service providers – 267
- Insurers – 16
- Fund managers – 149
- Securities issuers – 31
- Crowd funders – 12
- Charities – 13
- Corporate trustees – 5

The 2023/2024 annual report recorded that complaints were up 6% and disputes up 10%. There were 364 disputes investigated and resolved, a 33% increase over 2022/23. The table below shows the outcomes for the periods covering 21/22 through to 23/24.

	23/24	22/23	21/22
Settled (facilitation/conciliation/negotiation)	125	88	79
Discontinued	103	82	60
Resolved early by participant	62	39	23
Jurisdiction declined	17	10	10
Not upheld – formal decision	38	26	20
Partly upheld – formal decision	14	15	14
Upheld – formal decision	5	14	8

The table below shows Product Categories for Cases Investigated.



For the 2023/24 year, the Annual Report recorded that FSCL conducted 29 webinars for participants and consumers. Seven more guides on common complaints were issued and the Engagement Charter and Fairness Checklist were launched.

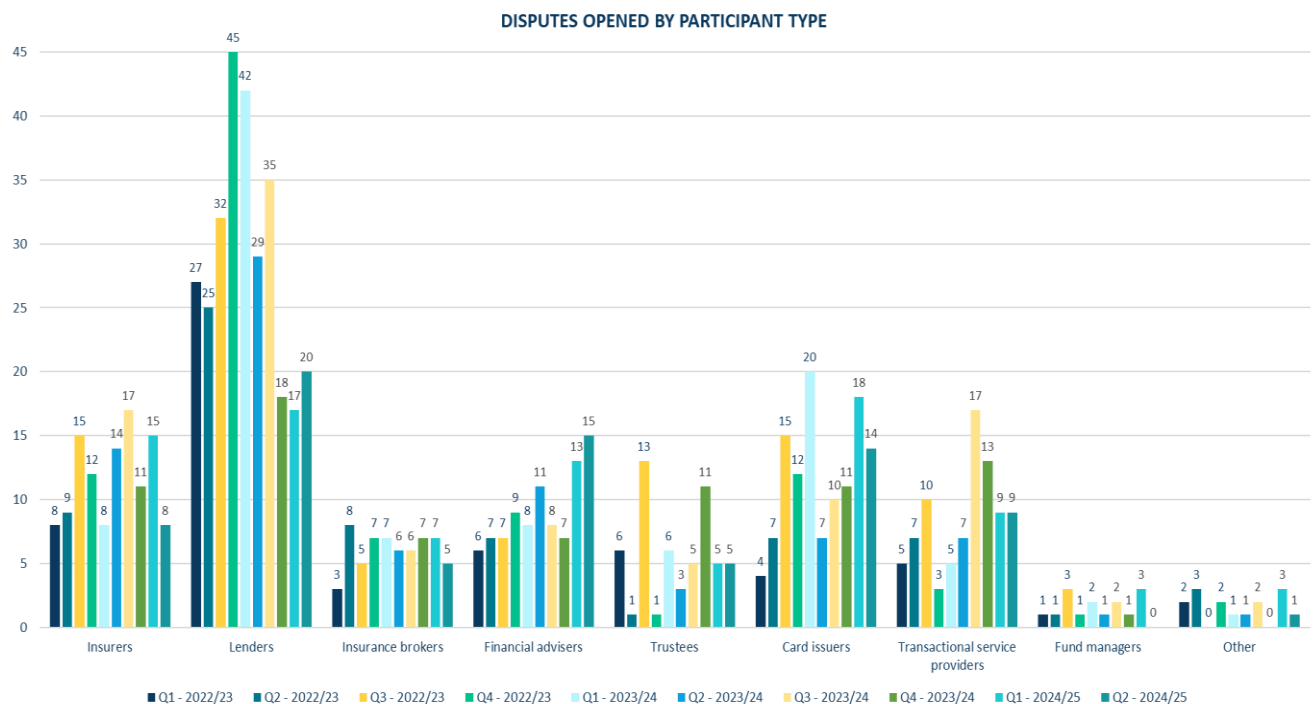
The Board is provided with a quarterly Dashboard setting out the following statistics including:

- New members by category
- Terminated members by category
- Reasons for termination

- Disputes opened
- Disputes opened by participant type, (see example below)
- The percentage of cases closed in target time
- Consumer disputes exit survey
  - How did you find out about FSCL?
  - Amount of information FSCL provided about process
  - Did FSCL process take into account both parties' positions?
  - Describe how well we listened to you
  - How time efficient were we in giving an outcome?
  - How likely would you be to recommend FSCL to your friends and family?
- Participant disputes exit survey
  - Describe the amount of information we provided about our process
  - How fair was FSCL's process at taking into account both parties' position?
  - Please describe how well we listened to you
  - How time efficient were we in giving you an outcome?

The statistics generally cover the last 12 months. While very useful, sometimes the number of responses to consumer and participant exit surveys is low and can skew a result. However, generally the feedback on the consumer and participant surveys was very positive.

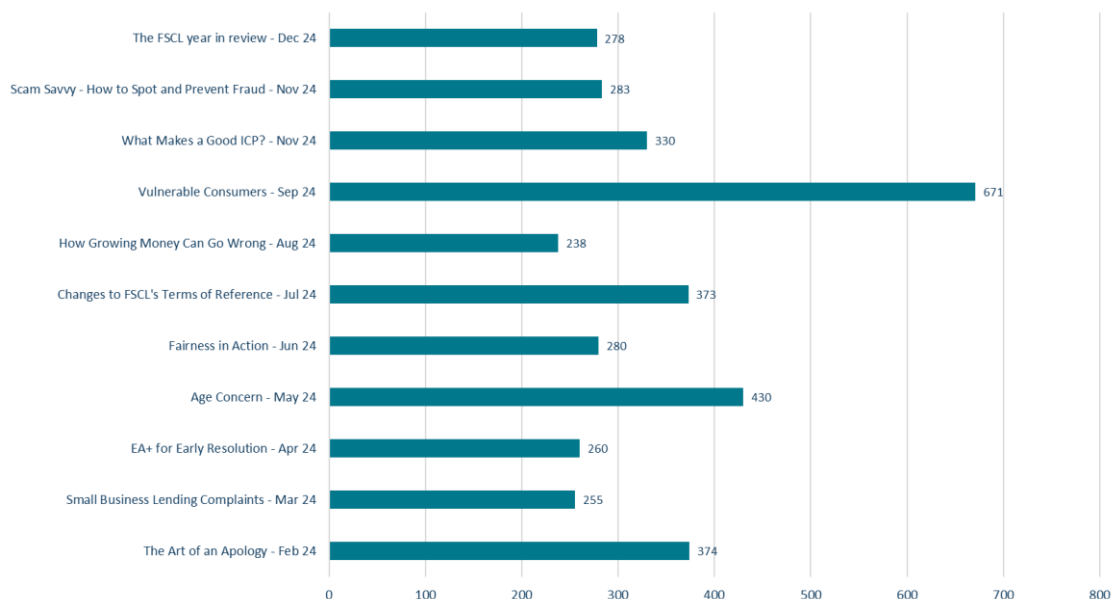
91% of surveyed consumers found FSCL service easy to use, 90% felt listened to and 87% would recommend FSCL to others.



As well as the dashboard, the Board receives SMART goal reporting, including:

- Administrative team - 95% of new membership applications processed in 3 working days
- Participant engagement of newsletters and member communications
- Case of the month registrations (see below)
- Early Assistance team - % of new complaints received and referred to scheme participants within 3 working days
- Early Assistance team - % of cases closed within 20 working days of being referred to participants
- Early Assistance team – consumer survey responses.

The FSCL team presents a Case of the Month webinar. Feedback was again extremely positive as these cases come ‘alive’, are very relatable and an excellent training source. The table below outlines the name of the Case of the Month and records the number of registrations. Many participants, within a company, said they would gather the relevant people from across their business to attend, often followed by a discussion about the case. This is an excellent way to increase knowledge.



With the continual change occurring in the workplace, training is essential. A review of the FSCL staff training tracker was impressive and showed the breadth of training staff receive. Examples include several initiatives in Te Reo, Māori concepts in dispute resolution, plain language, dealing with difficult people, and dealing with people experiencing economic harm.

The quality and impact of the current operations will be discussed in more detail under each of the six statutory principles. However overwhelming feedback from all interviews was extremely positive about the operation of the scheme and the office.

## FSCL and the statutory principles

As noted, the FSCL Board asked that all six principles be considered, with a focus on accessibility, fairness and effectiveness.

### Accessibility

*Underlying principle:*

The office makes itself readily available to customers by promoting knowledge of its services, being easy to use and having no cost barriers.

*Purpose:* To promote access to the office on an equitable basis.

Making a complaint is not for the faint-hearted and New Zealanders generally do not have a culture of complaint. Therefore, when an individual decides to take some action, it is critical there is an easy, and clear path to an external dispute resolution service that can be trusted, and the consumer can confidently approach. This needs to be coupled with a provider who is open and responsive to complaints, has a robust process internally for dealing with complaints, and works openly with the external dispute resolution scheme.

One of the most challenging features of any dispute resolution scheme is, firstly, awareness of the scheme's existence; and secondly, ensuring accessibility to consumers who want to use the dispute resolution process.

Under the current structure of external dispute resolution in the financial services area, participants determine which of the four schemes they will belong to. The website sets out, for participants, the process for joining FSCL. Included are the benefits FSCL offers, and a useful resource library. The website also sets out the Terms of Reference, Terms of Participation and the fee structure for participants.

The Financial Markets Authority (FMA) regulates New Zealand's financial markets. Their website page 'Disputes and consumer protection' says:

All businesses that offer *financial* services to retail customers must belong to an independent dispute resolution scheme. They must provide the name of their dispute resolution scheme in their disclosure documents, or you can search for it on the [Financial Service Providers Register](#).

An accessible, easy to find website is the first door for consumers. FSCL meets the principle of no cost barrier as the scheme is free to consumers. The front page of their website (<https://fscl.org.nz/>) says "We're here to help resolve complaints about financial services. We're free, fair and independent". The byline then goes on to say, "We can look into complaints about credit, finance and loans, insurance, money transfer services, investments, financial advice, and KiwiSaver."

There is a clearly marked box "How to make a complaint" and includes very helpful and easy to understand videos. These include "How to make a complaint",

*"The Complaints Process"*, and *"How we can help"*. The videos detail the ways a consumer can contact FSCL, including that a consumer can contact FSCL directly in the first instance.

Where a consumer has not yet raised their dispute with the financial provider, FSCL will assist by emailing the details through to the participants' internal complaints process. This is unlike some of the other schemes which require a "deadlock letter" from the financial service provider before assisting a consumer. FSCL will also follow up after 10 working days and then again in 20 working days, if FSCL has not heard in the meantime that the complaint has been resolved.

The FSCL approach provides the consumer with a sense of confidence. Paragraph 37 of the Terms of Reference says a complainant can contact FSCL if they require help to make a complaint in writing. Paragraph 40 says that staff of FSCL may help the complainant to draft and lodge a complaint. In doing this, staff must remain independent and not act as advocates for the consumer.

The website has an online complaint form which consumers can directly input into. Details of the number of ways a consumer can access the scheme are provided including an 0800-phone number, email and post. There are numerous very helpful guides and case studies for consumers, covering a very wide range of topics. These also provide valuable insights for participants. Information about the complaints process is available in 12 different languages.

FSCL provides accessibility to consumers through the New Zealand Relay service, a telecommunication service for people who are deaf, deaf-blind, experiencing hearing loss or have a speech condition. If English is not a consumer's first language, FSCL has language services available through the phone interpreter service, Transnational. These services are free to consumers and available 24/7.

Because there are four financial dispute resolution schemes, consumers need to know which scheme to contact. The front page of the website details the names of all participants who belong to FSCL. Where the consumer is unsure of which scheme they should contact, FSCL will do a 'warm handover' to ensure the consumer gets to the right place. Several comments were made that FSCL is very quick to pick up the phone, unlike some of the other schemes.

FSCL offers a wide topic range, easy to access and understand:

- webinars,
- brochures,
- TV, radio, newspaper articles, social media.

FSCL also conducts community and participant visits which are highly valued and establish and enhance a good working relationship.

There is a constant challenge as participants' staff change, so ongoing education through webinars is critical. The most relatable are based on the case study approach.

In March 2025, FSCL launched a new guide “Promoting external dispute resolution to your clients”. This was followed by a webinar, led by the Ombudsman, on 25 March. The guide sets out disclosure obligations under the CCCFA and the Financial Markets Conduct regulations. It also sets out what information must be included on participants’ websites and in communications with participants’ customers. There is a ‘self-assessment checklist’ attached so participants can evaluate their own compliance with FSCL’s rules.

As part of the review, a limited check of websites by the reviewer found a number of FSCL participants’ websites were either non-existent or substantially lacking in information about both their own internal complaints process and FSCL.

There are at least two ways to provide a focus for participants on ensuring they know what is required.

The first is through a desk audit, conducted by FSCL staff, of participants’ websites. This could be done by a random search of participants’ websites.

The second is through a mystery shopper exercise. A mystery shopper exercise of random participants would be very informative to assess how well the participants’ staff are communicating the internal and external dispute resolution processes. Initially, the outcome of the mystery shopper exercises should be provided to the participant’s Chief Executive and senior staff and to the FSCL Board anonymously. Even the knowledge that participants could receive a mystery shopper call tends to sharpen the focus of the participants on ensuring staff on the front line are trained to recognise a complaint and how the complaint process works.

Based on the findings of the mystery shopper, if participants were not communicating the requirements of the regulators to inform consumers of dispute resolution processes, a few prosecutions would not go amiss. Again, it is important to ensure internal complaint processes of financial service providers are robust, clearly understood and communicated to their customers, both initially and at the time an issue arises.

The FMA has an important role in monitoring and requiring financial service providers and financial advisers to ensure they are complying with legislative and regulatory requirements, including telling consumers about internal and external dispute resolution options.

## **Raising awareness of the scheme**

Awareness is the greatest challenge for virtually all external dispute resolution schemes, and it is true in the financial services sector, not aided by the confusion caused by having four schemes. The difficulty is there is no easy way to ensure consumers are aware they can even raise a dispute, much less where to go. Increasing awareness is particularly critical to meet the needs of the vulnerable and disadvantaged.

When a consumer is purchasing a financial product or service, their eye is most likely not on “what will I do if I have a problem”. It is certainly worthwhile for all financial service providers to advise consumers about their internal disputes process and the ability to go to an external dispute resolution service when the consumer is making their ‘purchase’. However, it is imperative that participants recognise the complaint, problem, dissatisfaction or dispute as soon as the consumer contacts them. This relies heavily on ensuring the participants’ staff understand their own internal, as well as the external, complaints processes.

It is then that the consumer should again be given information about the internal and external ways the consumer and participant can resolve the problem. This is sometimes called “just in time resolution”. The consumer is made aware when they need to understand the process, but still relies on the consumer contacting the participant, or being aware of external assistance through a dispute resolution scheme.

Organisations have tried to solve this problem, and as yet there does not seem to be the silver bullet. Some of the initiatives taken by FSCL are community outreach, webinars for consumer groups, financial mentors, and participants and their staff. FSCL keeps access to the scheme simple once a consumer finds them.

Every two years, MBIE conducts the “Consumer Protection – NZ Consumer Survey”. The results of the 2024 survey show awareness of both consumer law, and in particular the CCCFA, and how to resolve a dispute, remain low in many cases.

Some of the concerns raised in the survey were: people did not know where to go, they were not aware of a dispute resolution scheme that would handle the problem, and they did not want a bad relationship with the provider. There may also be some cultural differences about questioning people in authority or simply understanding that sometimes things go wrong, and it is not necessarily the consumer’s fault.

In terms of awareness of dispute resolution schemes, the survey reported:

*General consumer awareness of dispute resolution services is strong, with 8 in 10 aware of at least one service, despite a longer-term downwards trend. While awareness of various dispute resolution services remains broadly consistent with 2020, fewer consumers are aware of at least one agency (down from 83% in 2022 to 80% in 2024). While most consumers claim to have heard of the Disputes Tribunal of New Zealand, awareness is at its lowest level to date at 61%, compared to 73% in 2022. This is followed by the Banking Ombudsman Scheme (49%) and the Motor Vehicle Disputes Tribunal (35%). Awareness of all other listed dispute services is less than 30%.*

FSCL’s specific figures were disappointing and a surprise to the reviewer, although awareness had increased from 14% in the 2022 survey to 16% in the 2024 survey. MBIE did not use FSCL’s full name in the survey and did not include



'Financial Ombudsman Service'. In the survey IFSO was on 28%, and FDRS was on 18%.

The Board and Ombudsman are taking the Consumer Survey results seriously, recognising that consumer awareness is very important. The reviewer does note however, that, in addition to general awareness, what is really important are two things - FSCL ensuring their participants are being diligent in advising consumers about their dispute resolution process, including FSCL, when a problem arises and secondly having accessible, and responsive external dispute resolution services available to consumers, when needed. The reviewer believes FSCL is providing a quality external service.

The second point was drawn out in a recent survey conducted by FinCap.

FinCap is a charitable trust which supports more than 700 financial mentors across New Zealand in their work, building the capability and professionalism of financial mentors to reduce the causes of hardship for consumers.

FinCap recently conducted a survey of financial mentors around the country to develop a Net Promoter Score (NPS) for the four financial dispute resolution schemes - Banking Ombudsman, IFSO, FDRS, and FSCL. The results are based on more than 40 financial mentors answering the question - "How likely are you to recommend (name of each of the four financial dispute resolution schemes) to a friend or colleague? The results are reflected in "Promoters, Passives, and Detractors".

Although FinCap has not yet released the results publicly, FinCap did advise that FSCL was the only one of the four financial dispute resolution schemes to have a positive Net Promoter Score.

FSCL, as one of the four schemes, is a member of Community Outreach Group (COG). COG meets quarterly and engages with both industry and most particularly with advocacy groups, such as FinCap, Christians Against Poverty (CAP) and Salvation Army.

In addition to the work FSCL is doing with participants to ensure they are telling their customers about FSCL, an audit of the FSCL website should be conducted to evaluate FSCL's Search Engine Optimisation (SEO). This would ensure that consumers can easily locate the site when searching online for information on how to make a complaint. Additionally, consideration should be given to emerging technologies, including conversational AI (eg, chatbots like ChatGPT) and voice-based search, to enhance accessibility. For example, "Co-pilot" immediately brought up FSCL when asked "What can I do if I have a problem with my insurance company?"

FSCL awareness would also benefit from putting additional resources into community outreach. A community-based person interacting with a wide range of organisations dealing with vulnerable, disadvantaged and hard to reach consumers would be ideal. The Board and Ombudsman may consider the work

being done by the Utilities Disputes Community Engagement Officer as an example and even exploring the possibility of working with them.

A senior financial mentor at a budgeting service suggested in the submissions to the review “instead of saying a dispute resolution scheme is there for you to make a complaint could you say, *“a dispute resolution scheme provides free help if you think something about your loan was/is unfair”*. The message is ‘keep it simple’ and relatable.

## 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.

In July 2024, the FMA produced a report “Understanding Fairness in Financial Services”. The report found:

*“The majority of New Zealanders generally agree on what constitutes fairness in financial services...The research centres on a consumer survey of approximately 3000 New Zealanders who answered a range of questions about fairness. Respondents were invited to assess 33 hypothetical scenarios that New Zealanders could have experienced with financial providers. Respondents evaluated how fair each scenario was on a scale. Of the 33 scenarios, 29 were written that described people experiencing potentially unfair treatment by a financial service provider. These were called ‘unfair risk scenarios’. Four more scenarios without an unfair risk were included, called ‘neutral scenarios’, to provide a comparison.*

*The FMA’s purpose is built on promoting fair, efficient, and transparent financial markets. Further, from March 2025, financial institutions (including banks, insurers, and non-bank deposit takers) will be required to ensure they treat consumers fairly under the Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI). The research is intended to support evidence-based conversations with industry and stakeholders on what fair treatment means. The research is not guidance for financial service providers.*

### Key findings

- *81% of respondents believe it’s important everyone has the same opportunities in life*
- *72% expect fair treatment from their financial service provider*
- *69% believe they receive fair treatment from their KiwiSaver provider*
- *63% believe they receive fair treatment from their bank*
- *57% believe they receive fair treatment from their insurance provider.*

FMA Chief Economist, Stuart Johnson, said: “With fairness in financial services at the heart of our purpose and mandate, we wanted to test the hypothesis on whether there is a reasonable consensus on what constitutes fairness in practice. Fairness generally, is a broad concept which some perceive as too personal to apply to everyday financial activities. This research has shown that when presented with specific customer focused scenarios, people have a remarkably consistent understanding of what constitutes fairness in financial services.”

At the same time the FMA was focussed on fairness, FSCL were also conducting their own project on fairness in the dispute resolution context.

FSCL has completed the Fairness project plan. The plan’s purpose was “to make improvements to complaint handling processes and decisions so that we continue to:

- deliver our service in a fair and consistent way
- be open and transparent with our stakeholders
- deliver fair outcomes to complaints”.

The project has delivered an Engagement Charter, and a Fairness Checklist, both of which provide a focus for staff and the parties to maintain a sense of fairness throughout the process.

Originally scheduled to be completed by 30 June 2025, the review has now been completed to ensure written decisions clearly explain *“how we applied our fairness jurisdiction and why the decision is fair. At the same time, we will review the structure and length of our decisions”*. The second part of the review is also now complete and FSCL have changed the way decisions are structured and written. The Project speaks to ensuring natural justice and a rigorous approach in reaching decisions.

The project outlines the success measures of the Fairness project, including “positive feedback in FSCL’s next independent review about the application of our fairness jurisdiction”.

The review finds this work is commendable and should be continued and made available and visible to participants, consumers, and regulators. A copy of the Fairness checklist appeared on the desks of staff which is a signal of the importance of keeping fairness front and centre in the process.

In the review of case files, feedback in exit surveys, complaints about FSCL and the numerous interviews, the consensus was parties are given sufficient opportunity to put their case to the Ombudsman.

This is enhanced by the two-step decision making process where there is a preliminary decision before a final decision, allowing any additional information to be provided. There are clearly set out reasons for decisions. Where a matter is outside jurisdiction, reasons are given. Feedback from parties is generally very

positive. A few concerns were expressed by consumers who felt they had not been listened to adequately.

In an interview and in a submission to the review, participants raised the issue of FSCL's 'have regard for the law' rather than 'apply the law'. This is always a difficult challenge and balance for the decision maker, and one that can be a source of frustration to participants.

The meaning of the 'fair and reasonable' standard was dealt with in the High Court decision, *Contact Energy Ltd v Moreau* [2018] NZHC 2884 [121]). The decision explained the rationale for a complaint scheme being able, in the Court's words, to 'depart from the relevant law if it is fair and reasonable to do so' (at [121]). This was also commented on in another High Court of New Zealand case, *IAG v Forde* [2020] NZHC3233. "*There is some latitude to depart from a strict legal approach when considering a complaint and making recommendations.*"

'Complaint mechanisms, the Court explained, must be distinguished from court proceedings, which resolve disputes by applying the law to settle a legal cause of action. By contrast, complaint mechanisms aim to provide a different style of dispute resolution and to settle disputes informally and on an agreed basis between the parties. It is always open to parties to settle a matter on a different basis to what a court would do.'

The Court in *Moreau* noted that jurisprudence in the United Kingdom and Australia was consistent with the approach in dispute resolution schemes which provide for 'having regard to the law'. FSCL's view, that it can depart from the law if it is fair and reasonable to do so, is correct.

In reviewing the feedback in interviews and exit surveys, the review confirmed that FSCL meets the standards of fairness as set out in the principles. While there may be different views of what fairness means to one party or the other to a dispute, in the final analysis, the principles form the basis of assessment.

## Effectiveness

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

As with any dispute resolution scheme, resolution as early as possible is often seen as most effective as parties can then get on with their lives. For appropriate cases FSCL's early assistance process is highly regarded. However, some issues require additional information and time to reach resolution, and to deliver an outcome.

FSCL has Terms of Reference which direct the way complaints are handled. The Terms clearly lay out what can and cannot be considered by the scheme. The process for resolving complaints is set out in some detail and the need to report systemic issues is included.

As noted above in the scope of review, the Terms of Reference have been amended three times during the review period – in March 2020 and 2022, and again in July 2024. The last review increases the power of the Ombudsman to make monetary awards of up to \$500,000 for direct financial loss and up to \$10,000 for non-financial loss or special inconvenience. This change means all four financial service provider schemes have the same jurisdictional limits. These limits have been set by government and seem to be adequate at this time.

FSCL has conducted independent reviews of the scheme in 2015, 2020 and this review in 2025. This is in line with legislative requirements and dispute resolution best practice guidelines.

As required under section 67A of the FSP Act in 2021, FSCL's 'Dealing with and reporting Systemic Issues policy', and clause 66 to 68 of the Terms of Reference, systemic issues and material breaches are to be reported to the relevant regulator.

An example of a recent systemic issue was with a car finance company, a member of the FSCL Scheme. FSCL had for some time been raising concerns about this company based on the number and frequency of complaints. If systemic issues and material breaches are identified by the scheme and reported to the regulator, be it Commerce Commission or Financial Markets Authority, it is very helpful if the Ombudsman is informed of what action will be taken. As reported on the Commerce Commission website, the Commission has filed civil proceedings against this car finance company for breaches of CCCFA.

The Terms of Reference are clear that participants must operate and make it known to customers that they have an internal complaint handling service. As part of general disclosure requirements, participants must disclose their complaints handling and dispute resolution process as part of the information they provide to clients about their services. Section 229F of the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020, details the information that must be disclosed when a complaint is received.

It is clear that some people wishing to make a complaint are not being advised by their participant of the right to contact FSCL. This is contrary to the requirement set out in the Terms of Reference and in regulation. (See also comments made under Accessibility and the work FSCL is undertaking on promoting external dispute resolution to customers).

Participants interviewed were confident the information about both the internal and external complaint handling processes were being readily provided to potential complainants. This contrasts with some feedback in the exit surveys that consumers were not always advised about FSCL. Both the FSP Act and the terms of participation, that all participants agree to, require each participant to operate an internal complaint handling service and inform customers the scheme is available as a free external complaints' resolution service.

It is a sign of a mature industry to acknowledge complaints and problems. While the old adage 'a complaint is a gift' may be out of fashion, it is true a great deal can be learned from concerns expressed by consumers.

With increased information gained from KPI's and system reporting, FSCL will be well placed to provide input to legislative consultations and insights highlighting regulatory gaps. The work on KPI's and expanded reporting is discussed in Accountability.

## Independence

*Principle:* The decision-making process and administration of the office are independent from participating organisations.

As FSCL Ombudsman, Susan Taylor, is the final decision maker if a dispute remains unresolved. As such, she has no relationship with participants which would give rise to a perceived or actual conflict of interest. Her relationship as Chief Executive Officer of FSCL is to the FSCL Board, who makes the appointment to the position. The FSCL staff are answerable to her and are reminded regularly of their need to remain independent from both participants and consumers.

As has been pointed out many times by the reviewer in a variety of contexts, for both the decision maker and the scheme, maintaining both actual and perceived independence is akin to 'walking a tightrope'. Consumers may feel there is a bias towards participants as they fund the scheme, and participants may feel there is a bias to consumers.

In the review of case files, and discussions with the Ombudsman and staff, there were no signs of bias towards either party. The exit surveys reviewed very occasionally raised issues of bias for one party or the other. This was in contrast to all the interviews, where the feedback was that while a party may not have agreed with an outcome, they understood the reasoning and were content with the overall approach of the scheme and the certainty decision-making provided.

Throughout the review there were no comments or questions raised specifically about the composition of the FSCL Board. In interviews with the Chair and each of the Board members, there was an overwhelming sense of responsibility and commitment to ensuring the best interests of FSCL as an organisation. All five people are highly qualified individuals with impressive backgrounds and a very clear understanding of director duties. While they bring experience in industry and consumer issues, they each demonstrated a very clear understanding of their role and the significance of actual and perceived independence in their Board decision making.

In making Board appointments, it is a very important element that Board members, in addition to understanding the director role, have credibility and experience in both industry and consumer fields.

## 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.

The scheme has established reasonable time limits for the dispute resolution process and applies them consistently for both consumers and participants. Where the complaint is with the participant, staff use a good tracking system for follow up on progress. They also are effective in following up with both parties on progress when the complaint is with FSCL. Interview feedback was generally very positive by financial mentors, participants, and in exit interviews by consumers.

As was noted in the 2020 recommendations, there was a question about the value in having both a preliminary decision, then ability for further parties to comment, and then a final decision. The two-step process does provide a bit of a safety valve by allowing for any clarification of information when making the final decision. The final decision is binding on the participant if the consumer accepts the decision. Generally, the two-step process is considered best practice in dispute resolution and worth maintaining.

In the review of case files, it was clear FSCL staff had a good system of follow-up ensuring timelines were followed. Parties can request additional time within reason. The case file review demonstrated an effective system of recording and follow-up that is ongoing throughout the process until the complaint is closed.

When the complaint matter is closed, parties are asked for their feedback on the scheme's performance. The review considered feedback from consumers, consumer representatives, and participants received between January and December 2024.

There were a range of comments, as can be expected, sometimes linked to the outcome a consumer receives. However, there were consumers who said even though they did not receive the outcome they had hoped for, the process and reasons for the outcome were clear and understandable. Participants echoed much the same response that the process and information was clear and understandable.

Funding for the scheme comes from the participants. One submission made to the review questioned why the participant should pay where a decision was not upheld against a participant. One of the underlying principles of industry-based dispute resolution schemes is they are 'free' to consumers. It is taken as part of the industry's 'cost of doing business'.

There was some feedback from participants about fees, about how small agencies can structure their processes to deal confidently with complaints, or where a complaint was not upheld, but the participant still had to pay the fee. This may be a useful topic for a webinar for small agencies on how best to handle a complaint when received.



During 2024, FSCL embedded into their processes a new Early Assistance stage (EA Plus) which looks to prioritise early resolution, flagging cases that can be quickly resolved without needing a full investigation. This has proved successful in seeing more complaints resolved at a very early stage in the process. It is also highly regarded by both participants, and consumers and their representatives.

Both in the interviews and in exit surveys, the feedback about early assistance was very positive from both consumer advocates and participants.

There were 112 consumer and mentor responses to the early assistance team survey. The responses were very positive and appreciative of issues being resolved very quickly.

There were 42 participant responses to the early assistance team survey. Participants generally said the early resolution process was helpful, and the FSCL team was engaged with a clear desire to assist both parties from the outset.

There was overwhelming feedback from the financial mentors and participants that outreach and education were extremely valuable. The webinars run by FSCL received particular mention. Often participants said they would bring in several of their staff to watch a webinar on a relevant topic.

## Accountability

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

This principle refers to accountability and transparency publicly, to the FSCL Board and to consumers, participants and regulators both in its conduct and the quality of the decision making.

The scheme publicly accounts for its operations by producing:

- Annual Reports
- independent five-year reviews
- case notes
- consumer guides
- media releases and Ombudsman appearances on television, radio and in print
- newsletters to consumer representatives and participants

FSCL makes all of the above publicly available on its website.

Some participants interviewed asked for more complaint trends and case studies in their area of service provision. They wanted to know how they were performing in their particular area relative to other participants.



The four financial schemes were asked by the Minister, working with MBIE, to produce a standard set of Key Performance Indicators. At the time of finalising this review, the proposed reporting elements across the four schemes are:

Proposed aligned reporting

1. Numbers of enquiries, complaints and disputes
2. Dispute resolution outcomes: proportion and number of disputes
  - outside jurisdiction (broken down into reason categories)
  - discontinued
  - settled
  - determination issued (including preliminary decisions that are then settled or discontinued without a final decision)
3. Percentage of complaints responded to within two working days (excluding standard form responses)
4. Average time for resolving disputes
  - \* Measured from date **dispute** received to date process is at an end
  - \* Working days
  - \* Including jurisdiction declined disputes
5. Percentage of calls answered
6. Percentage of disputes resolved within 90 working days
7. Consumer satisfaction:
  - net promotor score (from the question “Would you recommend this service to a friend?”)
  - percentage of consumers who report the process was completed in a timely way
  - percentage of consumers who report the process was fair and impartial
8. Member/FSP satisfaction (on an annual basis)
9. Awareness of financial dispute resolution schemes (from an external source, such as the Ministry’s consumer survey)
10. Actions undertaken to promote access and awareness

11. Number of potential compliance breaches reported to regulators
12. Top complaint areas/common complaint themes
13. Number/percentage of complaints across sectors or service types
14. Numbers and categories of members
15. How consumers found out about the DRS.

The provision of all information prepared by FSCL through their annual report and their website satisfies the accountability principle. In addition to the Dashboard Statistics and SMART goal reporting for the Board, this will be further enhanced by having a standard set of key performance indicators across all four schemes accessible to consumers and the public, the individual scheme Boards, regulators and the financial industry.

Occasionally, if either party is dissatisfied and raises a particularly serious issue or involves the Ombudsman and Chief Executive Officer's conduct, parties may refer their complaint directly to the Board Chair. The Board Chair cannot interfere with the outcome of the Ombudsman's decision but can review the service received. This approach of dealing with complaints about the scheme's service complies with best practice principles.

## Other matters

Two other matters arose during the review. The first was there should be one dispute resolution scheme for all financial services. The second was the use of the title Ombudsman.

## Single scheme

The current MBIE review of dispute resolution schemes advised in the relevant Discussion Paper that their review was not examining the issue of scheme consolidation. However, in a media statement in April 2024 foreshadowing the MBIE review, the Minister of Commerce and Consumer Affairs stated he supported the IFSO/FSCL merger. The IFSO scheme advised the potential merger was paused.

As the review is being finalised, the reviewer became aware that the IFSO scheme has advised FSCL that its Board no longer wishes to pursue a merger. The FSCL Board has stated it continues to support a merger in the financial dispute resolution area and considers that a merger has the potential to improve consumer outcomes, including awareness, and create efficiencies and opportunities that would benefit all stakeholders.

In the reviewer's view, it is regrettable that the IFSO scheme do not wish to continue merger discussions as simplifying the dispute resolution landscape would be beneficial for consumers and provide a 'level playing field' for participants as the number and nature of new entities and financial offerings become increasingly complex.

There was an overwhelming view from consumers and consumer representatives there should be one dispute resolution scheme for all financial services. This was also reflected in comments during interviews with several participants and participant industry related associations.

It does raise the question as to why there should be competition in external dispute resolution schemes, as is the case in New Zealand with four schemes in the financial services industry.

Competition creates a double-edged sword. While some would say it might encourage innovation and efficiency, it leads to inconsistent standards and outcomes, a potential focus on profit over fairness, and, importantly, reduced accessibility. Multiple schemes likely impair actual or perceived scheme independence, given the strong individual scheme interest in retaining and perhaps growing the participant base. It is confusing for users of a scheme, understanding which scheme to approach. In effect, it is making it hardest for the very people a dispute resolution scheme is meant to serve.

Consumers do not choose which scheme they are covered by. The participant chooses. In dispute resolution parlance, a participant could 'forum shop' and if they did not like the decisions, they could 'forum hop'. FSCL did say they have not had many participants leave and go to another scheme as it requires a lot of effort to do so.

Not only would a single scheme create a 'level playing field' for all participants, if done well, a single scheme would remove duplication, streamline services, and create operational efficiencies. A single scheme would have sufficient resource to conduct research, raise awareness, engage in community outreach to all, identify systemic issues, strengthen financial service providers' internal dispute resolution systems, and provide better information to participants, consumers, regulators and government.

In 2016, the Australian Government commissioned a review of external dispute resolution in financial services. At the time there were three providers – Financial Ombudsman Service, Credit and Investments Ombudsman, and the Superannuation Complaints Tribunal. The terms of reference and steps to the Final report are found at: <https://treasury.gov.au/review/review-into-dispute-resolution-and-complaints-framework>

*"Review of the financial system external dispute resolution and complaints framework"*, referred to as the 'Ramsay Report', produced their final report in April 2017. Professor Ian Ramsay was the Chair of the three-member review team. There were 11 recommendations, the most significant being one scheme for all

financial services disputes. Other recommendations include the features and powers of a single scheme, increased oversight by regulation, and improvements in transparency.

Appendix 1 of the report details dispute resolution practices overseas and in other sectors, as it was at the time of writing the report. Details are provided on the United Kingdom (single scheme), Singapore (single scheme), New Zealand (four schemes) and Canada. At the time of writing this review, Canada still has four schemes, in a complex federal/provincial political system.

As a result of the Ramsay Report, and eighteen months later, the Australian Financial Complaints Authority (AFCA) was established on 1 November 2018. It serves as the single independent dispute resolution body for all financial complaints in Australia.

AFCA reported in January 2024:

*Australia's financial dispute resolution scheme has reached a major milestone – five years of operation. Consumers have taken more than 400,000 disputes to the Australian Financial Complaints Authority (AFCA) in that time, securing a total of \$1.2 billion in compensation and refunds.... A Treasury-led [Independent Review](#) in 2021 found AFCA was “performing well in a difficult operating environment and a changing regulatory landscape” and reaffirmed its impartiality and its fairness jurisdiction.*

It is interesting to note at the time discussions were occurring about the creation of AFCA, the peak body for parliamentary and industry-based dispute resolution, the Australian and New Zealand Ombudsman Association (ANZOA) wrote stating:

*competition among ombudsman schemes runs counter to the principles of independence, accessibility, fairness, efficiency, effectiveness and accountability. ANZOA is of the view that poor performing financial firms may choose to join a scheme they believe is not as rigorous in its approach to complaints. In its submission, ANZOA argued that a framework consisting of multiple schemes could have negative impacts because: It may lead to manipulation of dispute resolution services, differing standards and inconsistencies in decision making which could be adverse for both consumers and members; and may dilute the value of the ombudsman scheme as a source of information and analysis to contribute to the ongoing improvement of an industry, to the detriment of consumers, financial firms and the wider community.*

FSCL's Ombudsman, the Insurance and Financial Services Ombudsman, and the Banking Ombudsman are members of ANZOA, but FDRS does not have a person who is an ANZOA member (and may not have a person who would qualify for ANZOA membership).

In discussions during the review, some participants and consumer advocates have had experience with AFCA. Feedback was they have good and useful resources and information on their extensive dashboard. Participants felt there

was some pressure to lean to the consumer, while the consumer advocates believed it was balanced. Because of the sheer size of AFCA, there was a feeling of distance and not really knowing the scheme staff in the way it currently operates in New Zealand.

Being part of ANZOA at the time of transition to a single scheme in Australia, it was obvious the change was not for the faint hearted. The change was done quite quickly following on from the Ramsay Report. It was controversial and not easy but overall seems to be working. This was reinforced in independent reviews conducted in 2021 and 2024.

The United Kingdom has a single statutory financial services dispute resolution body established by Parliament, the Financial Ombudsman Service (UK FOS). Under the Financial Service and Markets Act 2000 (UK) (the FSM Act), financial firms are required to attempt to initially resolve disputes through internal complaints handling systems. Where this fails, a complainant may seek resolution through UK FOS.

UK FOS is an independent statutory dispute resolution scheme, which was formed in 2001 under Part XVI and Schedule 17 of the FSM Act. It was established to create a free, informal and single point of contact for consumers to replace the former eight ADR schemes, which had been criticised for having 'inaccessible procedures and overlapping jurisdictions.

Bringing together New Zealand's four financial service scheme will take a government initiative, involvement and direction.

The reviewer was not asked to consider a one scheme scenario, however, as it kept being raised, it seemed best to include something about it, without going into any depth. It may be useful for the Board and Ombudsman to meet with the Minister of Commerce and Consumer Affairs to explore the future of FSCL and the four schemes, the amalgamation with the IFSO scheme, and a single scheme.

## **Ombudsman name**

A few people interviewed commented on the name and use of Ombudsman. There was some speculation that it may put some people off bringing their complaint to a scheme. They expressed a view that the name is not well understood and is somewhat old fashioned.

Use of the name Ombudsman was discussed in the Ramsay Report in paragraphs 2.14 to 2.23.

For most of those interviewed the name was not an issue and several were aware of the long and difficult battle FSCL went through to secure approval to use the name Ombudsman. They also said it does provide mana.

Consumer advocates and some participants said if there was to be change in the structure of financial dispute resolution services, 'please keep the name simple and reflect it is about having a problem/complaint/dispute'.

## About the reviewer

FSCL's Board appointed Nanette Moreau Hammond to conduct FSCL's 2025 Five Year Independent review. Nanette is the Chair of the Advertising Standards Authority Appeal Board and a member of the Security and Reliability Council (part of the Electricity Authority). She is the former Commissioner and Chief Executive of Utilities Disputes Limited. Nanette has a Canadian Commerce degree, a New Zealand law degree and trained as a mediator in the United States. She has extensive experience in Canada and New Zealand in both the public and private sectors.

# ATTACHMENT 1 - REVIEW OF BENCHMARK PRINCIPLES

## Benchmark 1 - Accessibility

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

### Key Practices

- 1.1 The Scheme seeks to ensure that all financial services consumers are aware of its existence;
- 1.2 The Scheme produces readily available material in plain language to explain:
  - how to access the Scheme
  - how the Scheme works
  - the major areas with which the Scheme deals, and
  - any restrictions on the Scheme's powers.
- 1.3 The Scheme requires scheme participants to inform their customers about the Scheme.
- 1.4 Complainants can make initial contact with the Scheme orally or in writing but the complaint must ultimately be put in writing.
- 1.5 The Scheme's Terms of Reference are expressed clearly.
- 1.6 The Scheme's staff have the ability to handle customer complaints and are provided with adequate training in complaints handling.
- 1.7 The Scheme's staff explain to complainants in simple terms:
  - how the Scheme works
  - the major areas it deals with
  - any restrictions on its powers, and
  - timelines applicable to each of the Scheme's processes.
- 1.8 The Scheme's staff assist complainants to put a complaint in writing, where complainants need assistance to do so.
- 1.9 The Scheme's processes are simple for complainants to understand and easy to use, particularly for vulnerable consumers.

- 1.10 The Scheme uses appropriate techniques, including conciliation, mediation and negotiation in attempting to settle complaints.

### Specific questions

- Are the Scheme's promotional activities adequate and appropriate?
- Are there any barriers to use, including cost?
- Is there anything more, or different, you believe could be done to make the Scheme more accessible to all consumers?

## Benchmark 2 - Accountability

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

### Key Practices

- 2.1 The Scheme regularly provides written reports of determinations to Scheme participants and complaints.
- 2.2 The Scheme regularly publishes case notes on its website for the purposes of:
- educating Scheme participants and consumers, and
  - demonstrating consistency and fairness in decision making.

Case notes do not name the parties involved.

- 2.3 The Scheme publishes a detailed and informative Annual Report containing specific statistical and other data about the Scheme's performance including:
- information about how the Scheme works
  - the numbers and types of complaints it receives and their outcome
  - the time taken to resolve complaints
  - any systemic problems arising from complaints
  - examples of representative case studies
  - information about new developments or key areas in which policy or education initiatives are desirable.
- 2.4 The Annual Report is distributed to relevant stakeholders and published on the Scheme's website.



## Benchmark 3 - Effectiveness

3. **Principle** – The Scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

### Key Practices

- 3.1 The Scheme's scope and decision-maker's powers are clear.
- 3.2 The decision-maker has the power to make monetary awards of sufficient size and other awards (but not punitive damages) as appropriate.
- 3.3 The Scheme has a policy for dealing with systemic issues.
- 3.4 The Scheme has procedures in place for receiving complaints about the Scheme including responding to any such complaints in a timely and appropriate manner.
- 3.5 The Scheme requires participants to set up internal complaints processes.
- 3.6 The Scheme has the capacity to advise Scheme participants about their internal complaints processes.
- 3.7 The Scheme has mechanisms to encourage Scheme participants to abide by the Scheme's rules.
- 3.8 The decision-maker's determinations are binding on the Scheme participant if complainants accept the determination.

## Benchmark 4 - Efficiency

4. **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.

### Key Practices

- 4.1 The Scheme deals only with complaints that are within its Terms of Reference and have not been dealt with, or are not being dealt with, by another dispute resolution forum, and
  - which have been considered, and not resolved to the complainant's satisfaction, by a scheme participant's internal complaints resolution process, or

- Where a scheme participant has refused, or failed within a reasonable time, to deal with the complaint under its internal complaints process.
- 4.2 The Scheme has mechanisms and procedures for referring relevant complaints to other, more appropriate, dispute resolution bodies and/or regulatory authorities.
  - 4.3 The Scheme has mechanisms and procedures for referring systemic industry problems that become apparent from complaints to relevant regulators.
  - 4.4 The Scheme excludes vexatious and frivolous complaints at the decision- maker's discretion.
  - 4.5 The Scheme has reasonable time limits set for each of its processes which facilitate speedy resolution of complaints without compromising quality decision-making.
  - 4.6 The Scheme's staff keep the parties informed about the progress of their complaint.
  - 4.7 The Scheme keeps records of all complaints and inquiries, their progress and their outcome.
  - 4.8 The Scheme conducts regular performance reviews.
  - 4.9 The Scheme's staff seek periodic feedback from the parties about the parties' perceptions of the Scheme's performance.
  - 4.10 The Scheme reports regularly to the overseeing entity on the results of its monitoring and review.

## Benchmark 5 - Fairness

5. **Principle** – The Scheme produces decisions which 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.

### Key Practices

- 5.1 The decision-maker bases determinations on what is fair and reasonable, having regard to the law, good industry practice and relevant industry codes of practice.

- 5.2 The Scheme's staff advise complainants of their right to access the legal system or other redress mechanisms at any stage if the complainant is dissatisfied with any of the Scheme's decisions or with the decision-maker's determination.
- 5.3 Both parties can put their case to the decision-maker.
- 5.4 Both parties are told the arguments, and given sufficient information, to know the other party's case.
- 5.5 Both parties have the opportunity to rebut the arguments of and information provided by the other party.
- 5.6 Both parties are told of the reasons for any determination.
- 5.7 Complainants are advised of the reasons why a complaint is outside jurisdiction or is otherwise excluded.
- 5.8 The decision-maker encourages but cannot compel complainants to provide information relevant to a complaint.
- 5.9 The decision-maker can require that Scheme participants provide all information which, in the decision-maker's view, is relevant to a complaint, unless that information identifies a third party to whom a duty of confidentiality or privacy is owed, or unless it contains information which the Scheme participant is prohibited by law from disclosing.

### Specific questions

Is the Scheme's process transparent and clear?

Does the Scheme's process sufficiently allow both parties to the dispute to be heard? Are principles of natural justice met?

Does the Scheme demonstrate a rigorous, credible approach to reaching its decisions? Is there anything more, or different, you believe could be done to improve fairness?

### Benchmark 6 - Independence

- 6. **Principle** – The decision-making process and Scheme administration are independent from scheme participants.

### Key Practices

- 6.1 The Scheme has a decision-maker who is responsible for the determination of complaints.
- 6.2 The decision-maker is not selected directly by Scheme participants and is not answerable to Scheme participants for determinations.
- 6.3 The decision-maker has no relationship with the Scheme participants that fund or administer the Scheme which would give rise to a perceived or actual conflict of interest.
- 6.4 The Scheme's staff are not answerable to Scheme participants for the Scheme's operation.
- 6.5 There is a separate entity set up formally to oversee the independence of the Scheme's operation. The entity has a balance of consumer and industry interests.
- 6.6 Representatives of consumer interests on the overseeing entity are:
  - capable of reflecting consumer's viewpoints and concerns, and
  - persons in whom consumers and consumer organisations have confidence.
- 6.7 As a minimum the overseeing entity's functions should include:
  - appointing or dismissing the decision-maker
  - recommending or approving the Scheme's budget
  - recommending and being consulted about any changes to the Scheme's Terms of Reference
  - receiving regular reports about the Scheme's operation, and
  - receiving information about, and taking appropriate action in relation to, systemic industry problems referred to it by the Scheme.
- 6.8 The Scheme has sufficient funding to enable its case load and other relevant functions necessary to fulfil its Terms of Reference to be handled in accordance with these benchmarks;
- 6.9 Changes to the Terms of Reference are made in consultation with relevant stakeholders, including Scheme participants, industry and consumer organisations and Government.

### Specific questions

Is there anything more, or different you believe could be done to ensure the scheme's independence?

## ATTACHMENT 2 – TERMS OF REFERENCE

### TERMS OF REFERENCE FOR 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 Service, 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 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 25 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 within current resourcing?
- 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 67A 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*

Does the scheme provide sufficient statistical and other data about its performance including:

- information about how the scheme works
- the numbers and types of complaints it receives and the outcomes
- the time taken to resolve complaints
- complaint trends and case studies
- information about new developments or key areas in which policy or education initiatives are desirable
- consumer and participant feedback on the scheme's complaint resolution processes.

- 7.1 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?