ANNUAL REPORT
TE PŪRONGA Ā-TAU

2022/2023

A Financial Ombudsman Service

FSCL FINANCIAL SERVICES COMPLAINTS LTD
RATONGA PŪTEA PUNA MANAAKI

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

CONTENTS

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

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

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

FSCL's decision-making process is independent of our scheme participants and industry sectors. FSCL's Financial Ombudsman & Chief Executive Officer and staff are entirely responsible for handling and determining complaints and are not subject to external influence by any of FSCL's stakeholders.

HOW WE WORK

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

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

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

DISPUTES UP
37%
COMPLAINTS UP
25%

274
DISPUTES INVESTIGATED AND RESOLVED

'OUR FUTURE IS NOW'
CONFERENCE HELD WITH
98%
ATTENDEE SATISFACTION

15
WEBINARS
FOR SCHEME PARTICIPANTS AND CONSUMERS

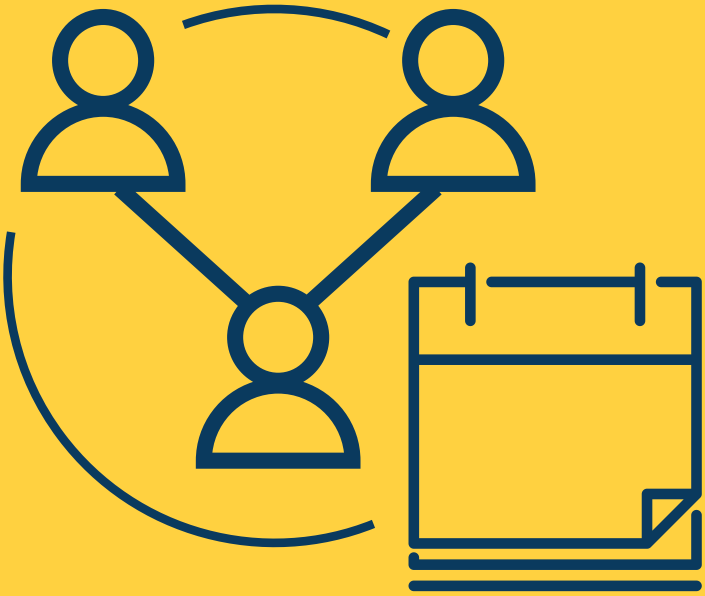
4
GUIDES
ON COMMON COMPLAINTS ISSUED

PARTICIPANTS' RESOURCE LIBRARY
LAUNCHED

92%
OF CONSUMERS WHO USED OUR SERVICE FOUND OUR PROCESS EASY TO USE AND UNDERSTAND

95%
OF CONSUMERS WHO USED OUR SERVICE FELT LISTENED TO AND SHOWN RESPECT

88%
OF CONSUMERS WOULD RECOMMEND FSCL TO OTHERS



IN MY INTRODUCTION LAST YEAR, I REFLECTED ON HOW 2021/22 HAD BEEN CHALLENGING FOR NEW ZEALANDERS AS WE CONTINUED TO ADDRESS THE UNCERTAINTIES CAUSED BY THE ONGOING COVID-19 PANDEMIC.

While I was hopeful that disruptions would reduce as we headed into a new year, unfortunately, this has proven not to be the case. Extreme weather events, the rising cost of living and higher inflation, on top of three years of uncertainty caused by the pandemic, has created a perfect storm. We know that consumers and businesses are under mounting pressures, evidenced by the large increase in the number of complaints we are seeing.

While we cannot control these external circumstances, we can remain agile and flexible, proactively responding to an everchanging external environment, while ensuring we continue to provide an efficient and world class dispute resolution service.

Part of being responsive is looking for where efficiencies can be made. We recently reviewed our strategic canvas for the next few years and will have an increasing focus on the prevention of complaints. During times of economic stress, the importance of accessible, fair, and independent dispute resolution becomes more evident and important. We will continue to make sure that our processes are as easy and accessible as possible. It is important to use the

Jane Meares
Board Chair

THIS CONFERENCE WAS RECOMMENDED TO ME, AND I AM GLAD I CAME.

takeouts from the complaints investigated to educate both consumers and participants about common misunderstandings and pitfalls, and on how similar complaints may be prevented from occurring in the future. The Board is supporting additional resources to assist with developing our educational tools, such as training videos, guides to common types of complaints, and webinars.

The Board has also provided for additional staff to help us manage the increase in complaints. It is important that we continue to resolve complaints in a timely manner and to make sure that our team is well resourced and supported.

FSCL is a not-for-profit entity with good cash reserves and has recorded a modest loss in its financial statements. The Board budgeted for a loss this financial year, largely due to the need for additional staff resources to cope with the large increases in complaints and disputes.

FURTHER CHANGES TO OUR RULES

We expect to see regulations in the next few months to make changes to the four financial dispute resolution services' rules to promote consistency between the schemes' rules.
The main changes we are likely to see are:

- increases in compensation limits for both financial and non-financial loss and
- setting maximum time limits for scheme participants to resolve complaints through their internal complaints processes.

INCREASED ACCESSIBILITY

As I reported last year, we are now able to use the Ombudsman title, a name that more accurately reflects the work that we do. One of our aims in seeking use of the name was to increase consumers' awareness of and trust in our service. I'm pleased to report that we have certainly seen higher interest in our regular media releases on topical issues and case notes and the resulting greater consumer awareness is evidenced in part by the increase in complaints to the service.

In the interests of transparency, we will continue to share the lessons learned from complaints through our case notes. Not only do these help consumers understand the role our service plays, but they fulfil an important educative function, helping deepen consumers' understanding of financial services and products and the way that they work.

GOVERNANCE NEWS

In Board news, we welcomed Joy Marslin to the Board as an industry representative director in October last year. Joy brings a wealth of experience with her, having worked in the financial services sector for over 30 years in client services, product, leadership, and governance positions.

We are sad to say farewell at the end of June to Liesl Knox who has been an Industry representative and director on our Board for the last three years. Liesl made an invaluable contribution to FSCL's governance in that time. We will miss her input and wish her well in her new role overseas.

We are very pleased to have appointed Paul Jamieson of Avanti Finance Limited to take Liesl's place on the Board. Paul leads the treasury function for Avanti, following 20 years of experience in banking and financial markets both in New Zealand and overseas.

THANKS

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

I particularly thank our Financial Ombudsman and Chief Executive Officer, Susan Taylor, for her continued leadership and hard work. Under Susan's guidance, the organisation continues to provide a service that we, as a Board, are very proud of.

I was reminded at our conference earlier this year of the depth of experience and expertise we have in the organisation. I have absolute faith in the expertise of FSCL's team and thank them for their mahi and the dedication and professionalism they have demonstrated over another challenging 12 months.

FINANCIAL OMBUDSMAN AND CHIEF EXECUTIVE OFFICER'S MESSAGE

Susan Taylor
Financial Ombudsman and Chief Executive Officer

IN REFLECTING ON THE YEAR THAT WAS, I AM REMINDED OF OUR BOARD CHAIR, JANE MEARES' COMMENT IN LAST YEAR'S ANNUAL REPORT THAT "MEASURING AN ORGANISATION'S SUCCESS WHEN THINGS ARE GOING WELL IS EASY, BUT A TRUE TEST OF ITS METTLE IS WHEN THINGS ARE NOT PLAIN SAILING".

Last year we acknowledged that it had been a busy year defined by the ongoing challenges presented by the pandemic, higher complaint numbers, and an active regulatory environment. This year has seen much of the same, and as past experience has shown, in times of economic pressure, we see an increase in complaints. This year we have had a significant increase in complaints made to our service with a 25% increase in complaints and a 37% increase in the disputes that we formally investigate and resolve. It is a true testament to our team's hard work and dedication that, despite the large increase in dispute numbers and complexity, we had no cases that had been open for more than 6 months at the year's end.

MAKING THINGS EASIER

One of the ways we are coping with the increased numbers of complaints and supporting our scheme participants and consumers is through our new Early Assistance Plus programme which we are currently trialling. The goal of this approach is to prioritise early resolution, flagging cases that we feel can be quickly resolved without needing to launch a full investigation.

If it appears that the complaint is deadlocked, but we think that, with a little bit of extra help, we can quickly resolve the complaint, we contact the participant and look at reaching an earlier resolution. Not only does this cost our participant less in time and money, but it also ensures a quicker outcome for the consumer.

SHARING OUR EXPERTISE – 2023 CONFERENCE

A highlight of the last year was our biennial conference "Our Future is Now" held in May. The conference was a great success with more than 98% positive feedback from conference attendees. This has signalled to us that there is a high demand for the training that we offer, including lessons learned from the complaints that we investigate and how to avoid similar complaints arising in the future. This is a way in which we can add value to our participants' businesses.

During my opening at the conference, I shared a whakataukī which sums up how we view our role in terms of supporting our scheme participants and the wider community:

Mā te rongo, ka mōhio, Mā te mōhio, ka Mārama, Mā te mārama, ka mātau, Mā te mātau, ka ora.

Through listening comes awareness, through awareness comes understanding, through understanding comes knowledge, through knowledge comes life and wellbeing.

In addition to working proactively to try to resolve complaints earlier in the process, we know that one of the most important things we can do is support scheme participants by sharing our knowledge.

In addition to our regular webinars, we launched a resource library last year, which is full of resources for our participants to help them with their internal complaints processes, as well as understanding our process, together with useful guides on common complaint issues.

Some of the guides issued this year are also of assistance to consumers, including guides on clawback fees and guides on understanding applications to withdraw KiwiSaver funds on the grounds of significant financial hardship, and serious illness.

As part of our increased focus on preventing complaints, we will be stepping up our knowledge management work, including preparing more guides on common complaint issues, in the year ahead. This work will be led by Kylie Stratton who has been appointed to a new role of Knowledge, Data, and Projects Manager.

CONSUMER OUTREACH

Our consumer outreach work over the past year has been very ably led by our Case Manager and Early Assistance Team Manager, Meryn Gates. Meryn has run a number of training sessions for consumer groups, attended financial mentor huis around the country and online, and continued to develop our working relationships with consumer advocacy groups.

BRAND REFRESH

We have refreshed our brand to take account of our new Ombudsman title and are very pleased with our fresh new look which gives greater emphasis to the Ombudsman name.

LOOKING AHEAD – WHAT DOES IT MEAN TO BE FAIR?

As an Ombudsman service, fairness should be at the heart of everything we do. The law requires us to demonstrate and show that we are demonstrating fairness, and our terms of reference also require us to do what is fair in all the circumstances in determining complaints. This includes delivering both a fair process and fair outcomes for all parties to a complaint.

Over the next 12 months, we will be taking a good hard look at our fairness jurisdiction and how that works in practice. This will include looking at the way we structure our written decisions on complaints.

THANKS

I would like to thank outgoing director Liesl Knox for her mahi and governance support as an industry representative director on our Board over the past three years. I also thank Jane Meares and the other directors for their ongoing support and guidance which help to ensure the continuing success and value of the service that we provide.

I thank my team, especially my senior leadership team, for their hard work over the past 12 months. I know that each of them is dedicated to making a positive difference in their roles. This is evidenced by the excellent feedback we receive about their professionalism and service from scheme participants and consumers.

I am proud of the work we do and how the team proactively responds to the challenges that continue to arise from time to time. I have no doubt that whatever challenges may come our way over the next year, we are well placed to handle them.

BUILDING ON THE INCREASE IN COMPLAINTS THAT WE SAW LAST YEAR, AS WE EXPECTED, WE SAW ANOTHER SHARP INCREASE IN COMPLAINTS THIS YEAR WITH 1,349 COMPLAINTS COMING INTO OUR EARLY ASSISTANCE AREA COMPARED WITH 1,077 COMPLAINTS LAST YEAR.

A complaint is where a consumer contacts us about an issue with their financial service provider. Our early assistance team helps refer the complaint to the financial service provider's internal complaints process and keeps a watching brief to make sure the complaint is satisfactorily resolved.

Dispute investigations also increased this year by a massive 37%, with 326 new disputes, compared to 239 last year. A dispute is a case where FSCL formally investigates the complaint and helps negotiate the settlement or withdrawal of the complaint.

We completed the investigation of 274 disputes this year compared to 214 last year.

As at 30 June 2023, we had no cases that had been opened for more than six months, and only 20 cases that were between three and six months old. This statistic reflects the great work by our case management and early assistance teams and demonstrates our efficiency in resolving complaints. Resolving a dispute as soon as possible in the process benefits everyone in terms of time and money saved and it being more likely that the consumer will be satisfied with the outcome of their complaint.

Initial enquiries to the office were down slightly – 2,415 compared to 2,500 last year. An initial enquiry is where the consumer is making a general enquiry about a particular financial service provider or product, or is wanting general information about our service, and does not yet have a complaint.

We expect that the increase in complaints and disputes is due in large part to current economic circumstances with high interest rates on loans and the higher cost of living that New Zealanders are facing. The increase is also likely due in part to the higher media profile we have enjoyed over the past year.

The breakdown of cases between simple, standard, and complex is similar to last year's numbers. Approximately 28% of cases were classified as complex and 58% of cases as standard. Cases are classified as complex if they involve difficult questions of fact or law, large files, and/or one or both parties exhibit challenging behaviour. Cases are classified as standard if they involve common complaint issues and do not raise any unusual facts, novel issues, or points of law. A simple case is one which can be resolved very easily, usually within four weeks of the file being opened, and with very little work needed from our team.

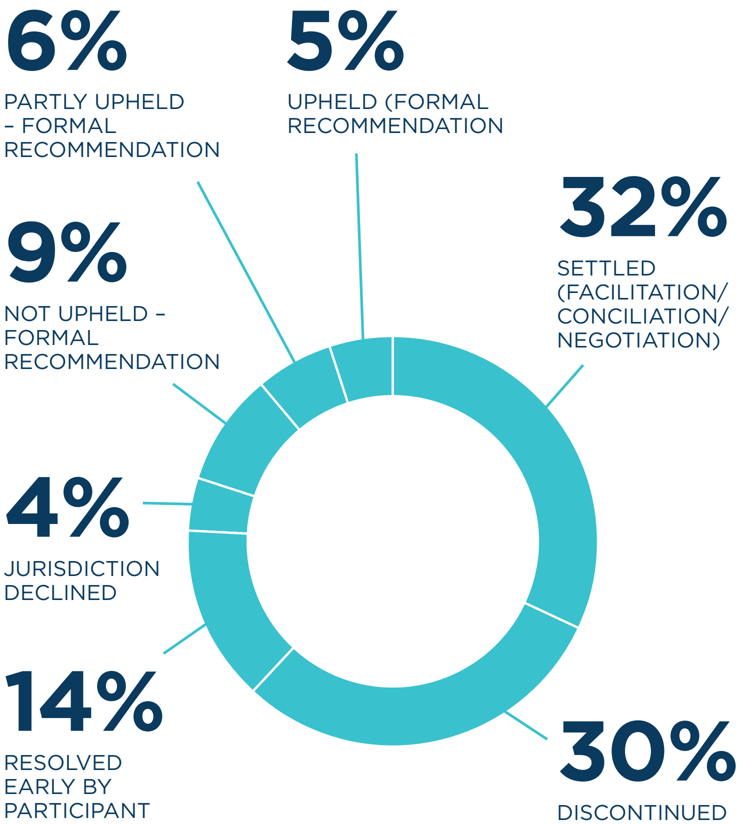
We completed:

- 38 simple case investigations with an average working day count of 16 days, against a target of 20 days
- 159 standard case investigations with an average working day count of 52 working days, against a target of 65 working days, and
- 77 complex case investigations with an average working day count of 102 days, against a target of 130 days.

This result compares very favourably with last year.

274

INVESTIGATIONS COMPLETED 2022/2023



This year, complaints against lenders were again the largest portion of cases investigated at 38%, compared to 32% last year. Complaints against insurers and card issuers were both up in numbers this year. Complaints against other financial service provider types remained similar to last year.

Complaints about consumer credit were by far the highest category of complaints, making up 32% of the cases investigated, followed by complaints about business insurance at 9% and credit cards at 7%.

We negotiated or awarded compensation totalling $1,418,735, nearly double last year's compensation of $759,983. The largest single award of compensation was $150,000.

88 cases were settled through our process without the need for a final binding (on the scheme participant) decision and 39 cases were resolved by the participant very early in the process. The increase in the number of cases resolved early by the participant reflects the introduction of our complaints triage process which encourages participants to resolve complaints early without needing the case to go right through the FSCL investigation process. In cases that are settled, the consumer receives compensation or some other remedial action such as a fee waiver or a loan restructure. 82 cases were discontinued by the consumer after we told them that we were unlikely to withhold their complaint.

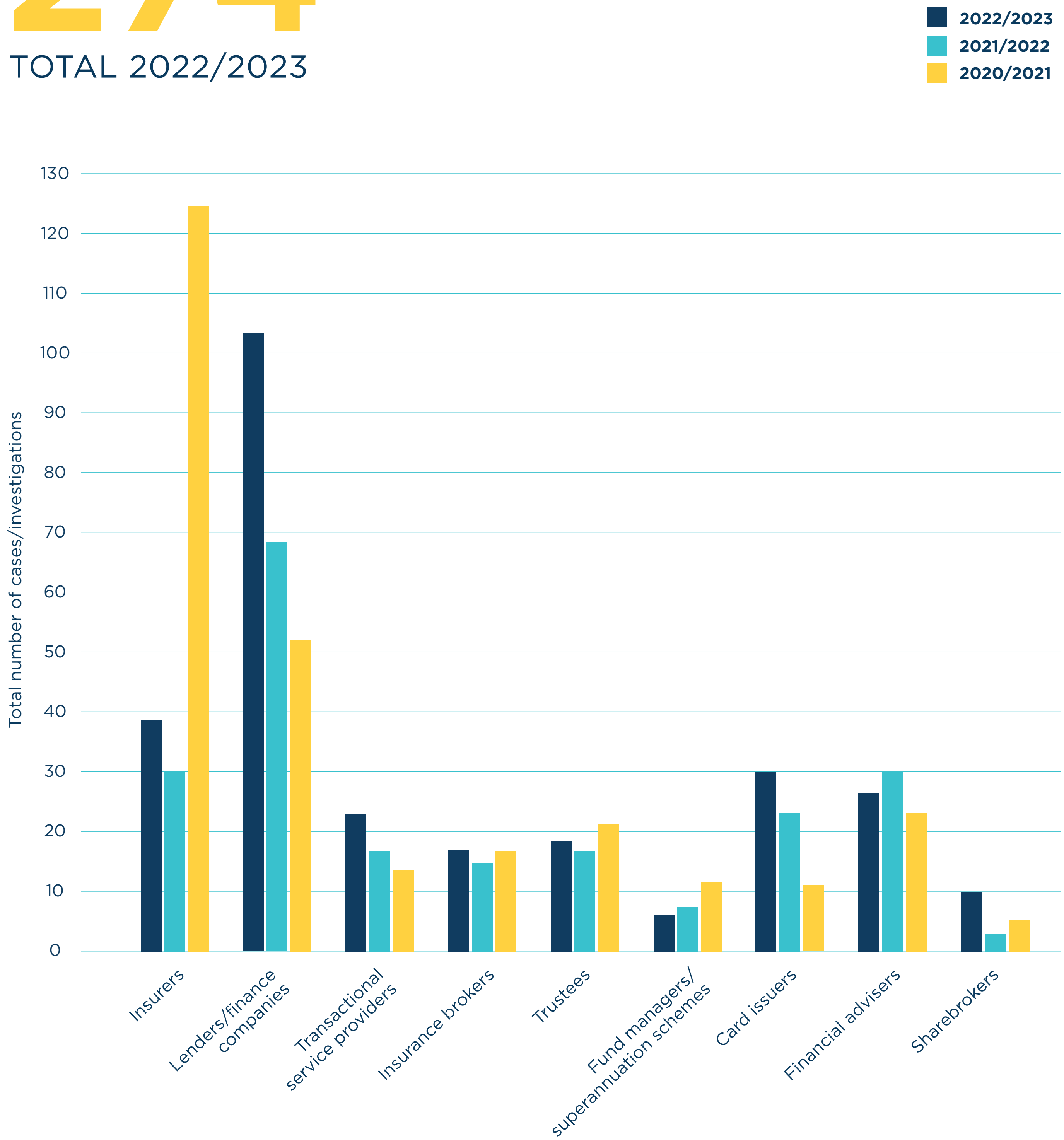
This year we issued recommendations on 55 cases or about 20% of all cases investigated.

	22/23	21/22	20/21
Settled (facilitation/conciliation/negotiation)	**88**	79	97
Discontinued	**82**	60	82
Resolved early by participant	**39**	23	23
Jurisdiction declined	**10**	10	8
Not upheld – formal recommendation	**26**	20	43
Partly upheld – formal recommendation	**15**	14	27
Upheld (formal recommendation)	**14**	8	6

CASES INVESTIGATED BY PARTICIPANT CATEGORY

274

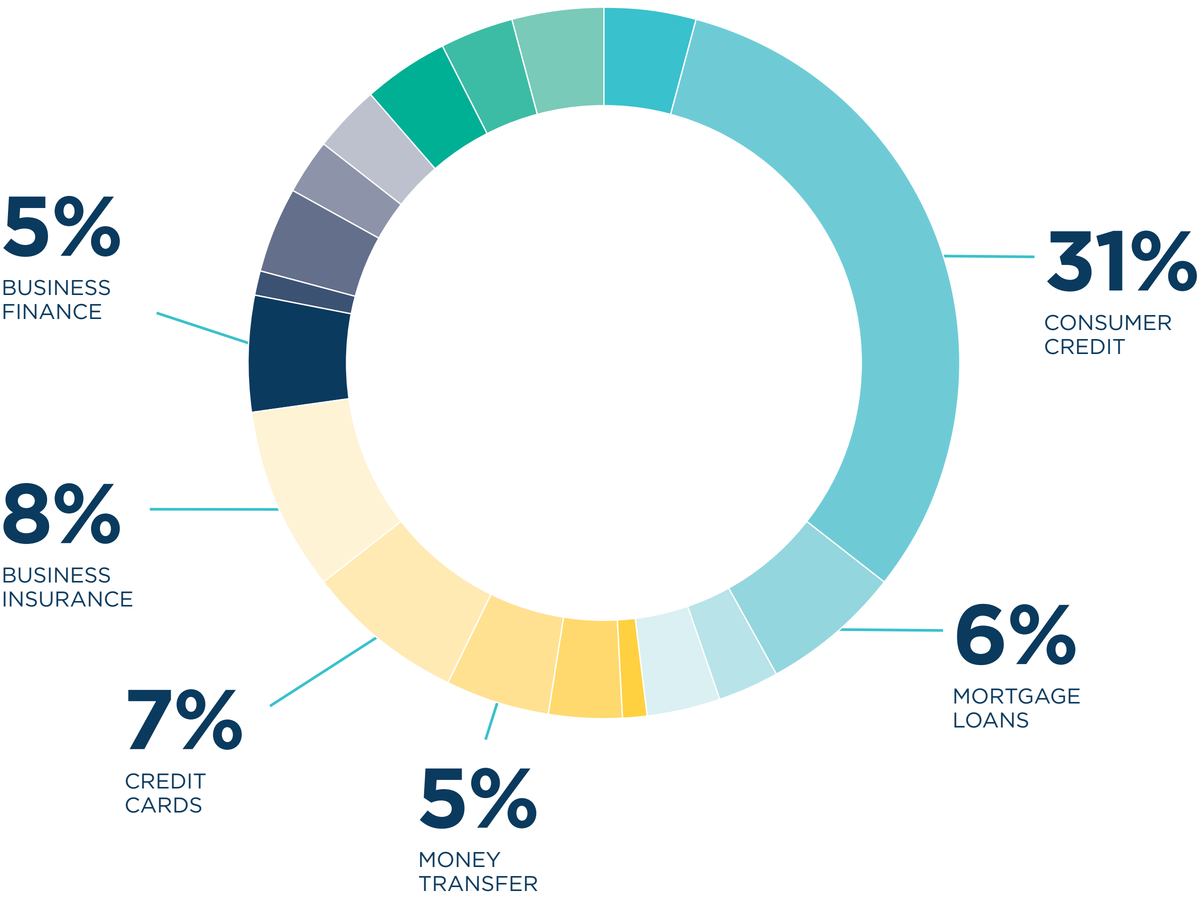
TOTAL 2022/2023



PRODUCT CATEGORIES FOR CASES INVESTIGATED

274

TOTAL 2022/2023



	22/23	21/22	20/21
Travel insurance	**12**	11	100
Consumer credit	**86**	61	44
Mortgage loans	**17**	22	16
Travel cards	**8**	3	3
Estate administration	**9**	9	11
Motor vehicle insurance	**3**	7	8
Trading platforms	**9**	17	9
Money transfer / foreign exchange	**13**		
Credit cards	**20**	20	7
Business insurance (formerly material damage insurance)	**23**	17	24

	22/23	21/22	20/21
Business finance	**14**	4	1
Health	**3**	1	2
KiwiSaver	**11**	10	13
Superannuation and managed funds	**7**	7	4
Home and contents insurance	**8**	6	6
Life	**11**	10	9
Securities	**9**	0	6
Other	**11**		

WE RECEIVE COMPLAINTS ABOUT A WIDE RANGE OF FINANCIAL PRODUCTS AND SERVICES AND THIS YEAR HAS BEEN NO EXCEPTION.

Complaints relating to loans – including complaints about irresponsible lending, hardship relief, and fees and charges – continue to dominate our case load. To some extent, the increase in lending complaints reflects the current economic times. Past experience shows that when interest rates and the cost of living are increasing, complaints about loans tend to go up.

This year, we have also seen a small increase in complaints about business loans. The responsible lending obligations set out in the Credit Contracts and Consumer Finance Act 2003 (the Act) do not apply to business loans, or loans to trusts and companies and, in most of the complaints we have seen this year, this has come as a surprise to the consumer.

Unfortunately, in some of the cases where we find the lender has loaned irresponsibly, the borrower has defaulted on the loan within the first three months. An early default is a large "red flag" that the loan was likely unaffordable from the outset. In cases such as these, the borrower will surrender the car for the lender to sell. Typically, the car sells for several thousand dollars less than the borrower paid, leaving the borrower with a large residual debt still to pay to the lender even after all interest and fees have been removed from the loan. Case Study 1 is an example of such a case. Currently, there is no specific remedy in the Act to allow a court or dispute resolution service to consider writing off all or part of the residual debt, if the particular circumstances of the case warrant that.

"FAIRNESS IS A HOT TOPIC IN FINANCIAL SERVICES AT THE MOMENT.

> **WE THANK YOU FOR ALL YOUR HELP, IT HAS BEEN A GREAT LEARNING EXPERIENCE FOR US BOTH.**

Fairness

As mentioned earlier in this report, we will be starting work on a fairness project this coming year. Fairness is a hot topic in financial services at the moment with the enactment of the Conduct of Financial Institutions Act which amends the Financial Markets Conduct Act 2013 to ensure that financial institutions treat their customers fairly by putting the consumer at the forefront of their decisions and actions. And financial advisers are now legally obliged to give priority to their clients' interests and to treat them fairly. It was very pleasing to see an insurer take a fair and reasonable approach to settling a claim and complaint as shown in Case Study 2.

KiwiSaver guides

In the past year, we have issued several guides to help consumers understand the limited circumstances in which they may be able to access their KiwiSaver funds early before retirement age. These circumstances include where the consumer is suffering:

- significant financial hardship, or
- serious illness.

KiwiSaver funds are for a particular purpose – to provide money for people in their retirement. As such, the bar is set deliberately high if a KiwiSaver member wants to try to access their KiwiSaver funds before retirement age. The guides about KiwiSaver are available on our website.

Very occasionally, applying the law and KiwiSaver guidelines can lead to an unfair outcome and, unfortunately, Case Study 3 is an example of this. In the circumstances of this particular case, it seemed very unfair that the consumer, who was terminally ill and almost certainly would not live to the age of 65, was unable to withdraw their KiwiSaver funds early to spend some quality time with her young family. We encourage the policymakers to look at possible changes to the withdrawal criteria for serious illness next time the KiwiSaver Act is reviewed.

Our final Case Study 4 is about a complaint made against a mortgage broker where the consumers said they felt the mortgage broker gave them poor advice about how long to fix the interest rate on their home loan.

In times where interest rates are rising and falling rapidly, we see complaints where the consumer feels the mortgage broker should have done more to foresee the effect those rises or falls may have on their loan interest rates. The consumer typically complains that the broker should have told them to fix their interest rate for a longer period (when rates are rising) or fix for a shorter term (when rates are falling).

In this case, we found the broker had given suitable advice in the circumstances and that the consumers were making their complaint using the benefit of hindsight after fairly sharp interest rate rises in a relatively short period of time.

CASE STUDY ONE

AN UNAFFORDABLE MOTOR VEHICLE LOAN

Mikaere borrowed approximately $18,000 in July 2021 to buy a car. He was receiving income from Work and Income New Zealand (WINZ), including an unsupported child benefit for a child in his care at the time. Mikaere immediately and repeatedly defaulted on his weekly loan repayment of $155 a week. A family member helped Mikaere return the car to the lender.

The lender sold the car, leaving a residual debt which Mikaere struggled to repay. With the assistance of a budgeting service, Mikaere complained to FSCL that the loan was unaffordable.

Dispute

Mikaere said that the loan was unaffordable and left him with a weekly budget deficit. He said that the loan was particularly unaffordable when the unsupported child benefit stopped soon after his loan application was accepted, meaning that his income had decreased.

The lender said that their assessment of Mikaere's bank statements showed that he could pay for necessities and his current expenses, as well as service the loan, without facing hardship.

"WITHOUT FINANCIAL PRUDENCY AND OVERSIGHT ORGANISATIONS LIKE YOURS, THE WORLD WOULD BE A MUCH WORSE PLACE WITH A LOT MORE STRIFE, SO I THANK YOU FOR THE EXCELLENT MAHI YOU DO.

Review

We found that the lender had not met their lender responsibility under section 9C(3)(a) of the Credit Contracts and Consumer Finance Act 2003 (the Act), as they could not have been reasonably satisfied that Mikaere could make the loan repayments without suffering substantial hardship.

The lender had estimated Mikaere's weekly food costs as $115 for himself and one dependent child. We referred to Inland Revenue's 2020 Household Expenditure Guide (the Guide) for someone in Mikaere's position and found that the estimated cost should have been closer to $200. We considered the Guide to be a fair and objective resource to estimate Mikaere's weekly food expense as it reported the average expenditure for similar households in the same region.

After adjusting the loan affordability assessment for the new food figure, the loan put Mikaere's budget in a weekly deficit of approximately $50 a week. Mikaere's default on his first and subsequent repayments was further strong evidence that the loan was unaffordable.

We also noted that we did not see any evidence that the lender attempted to clarify whether the benefit would be consistent throughout the term of the loan.

Resolution

We were satisfied that it was appropriate to apply the remedies outlined in the Act. The lender was to credit the amount Mikaere had already paid in interest and fees back to his loan account. No further interest or fees could be charged to the loan. The lender should then agree on an affordable repayment plan with Mikaere for the remaining loan balance.

INSIGHTS FOR PARTICIPANTS

Lenders should check against a reputable external expenditure guide that all estimated expenses for a potential borrower are reasonable for someovne in their position. Further, where it is unclear that a particular source of income will continue throughout the term of the loan, lenders should consider enquiring further.

CASE STUDY TWO

TAKING A FAIR AND REASONABLE APPROACH TO AN INSURANCE CLAIM SETTLEMENT

Pradeep has an equipment hire business. In 2018, when Pradeep came to collect his equipment from a building site, some of it was missing. Pradeep contacted his insurance broker who put the insurer on notice that Pradeep may make a claim but indicated that Pradeep was going to try to get his customer to compensate him for the loss.

Two years later Pradeep was in the same position again. When Pradeep arrived to collect the equipment, some of it was missing. Again, Pradeep attempted to get his customer to cover the loss. When the customer refused, Pradeep remembered that he had insurance for his equipment that was lost or stolen while out on hire.

Pradeep contacted his broker who advised him to make a claim for both events. Pradeep's broker submitted the claims but warned Pradeep that the insurer may decline the 2018 claim because of the time taken to submit it. Both claims were for about $20,000 each.

The insurer assessed and declined the claims relying on a policy exclusion for unexplained disappearances. The policy did not cover loss caused by:

Unexplained disappearances, shortages revealed only by taking of an inventory or shortages due to clerical or accounting errors.

Further, the insurer noted that it was impossible to determine the excess because the building sites had been burgled on multiple occasions and Pradeep could not point to a particular event when his equipment had been stolen. The insurer needed to know how many 'events' gave rise to the loss so they could calculate the excess on each 'event'.

Pradeep did not accept the insurer's decision and complained to FSCL.

Dispute

Pradeep did not agree the exclusion clause relied on by the insurer applied to his loss and was very disappointed that the insurer appeared to be relying on a technicality to decline the claim. Pradeep said he had always been upfront with his broker that equipment could be out on long term hire, and it was impossible for him, after the event, to know when the items were stolen.

The insurer said that because Pradeep discovered the loss when checking the hired equipment back onto his yard the loss fell within the unexplained disappearance clause. The insurer also noted that one of the building sites had reported to the police fifty different occasions where items had been stolen. The excess on Pradeep's policy was $1,000. Although the insurer could not know how many occasions Pradeep's items had been stolen, it was conceivable that there were multiple events.

"

VERY EMPATHETIC AND HELPFUL, THE PERSONAL SKILLS OF EVERYONE INVOLVED ARE EXCELLENT.

Review

We were not convinced that the insurer could rely on the unexplained disappearances clause to decline Pradeep's claim. It was our view that the phrase 'unexplained disappearances' was coloured by the words coming after it, suggesting loss discovered during an inventory or stock take was not covered. The loss in this case was not discovered during an inventory or stock take, but rather was discovered when Pradeep collected his equipment from the building site. We also observed that unless you catch a thief red-handed, most theft is unexplained.

We agreed that calculating the excess was problematic and asked if the insurer would be prepared to pay Pradeep half the most recent claim, being $10,000, on a fair and reasonable basis. The insurer agreed, but Pradeep considered it unfair that the 2018 loss was not included in the settlement. Pradeep said he was inconvenienced by having to submit a claim when the insurer intended declining the claim on the grounds of delay.

Resolution

We decided that, in the circumstances, the insurer's offer of $10,000 was reasonable. Calculating the excess was impossible and splitting the loss equally for the second claim seemed the fairest way of resolving the complaint. We did not include the 2018 loss in the settlement because, in our view, if Pradeep had pursued the complaint more quickly, he would have discovered the excess problem sooner and could have taken steps to avoid the future loss. The insurer had been prejudiced in investigating the claim by Pradeep's delay.

After further consideration, Pradeep accepted the $10,000 offered by the insurer.

INSIGHTS FOR CONSUMERS

We encourage consumers to submit insurance claims promptly. The longer you take, the more difficult it is for your insurer to assess your claim. It was great to see an insurer prepared to take a pragmatic approach and agree to a 'fair and reasonable' resolution in this case.

CASE STUDY THREE

WHEN IS AN ILLNESS SERIOUS ENOUGH TO ACCESS KIWISAVER FUNDS BEFORE RETIREMENT AGE?

Leah wanted to withdraw her savings early from KiwiSaver. She had incurable cancer and was not expected to reach the retirement age (65 years of age).

Leah applied for an early withdrawal on the grounds of serious illness. The supervisor of Leah's KiwiSaver scheme declined her application. The supervisor was not satisfied Leah met the criteria for an early withdrawal. The doctor who completed the medical declaration on Leah's withdrawal application certified that she did not meet the criteria. She was expected to live for at least another 12 months.

Under the KiwiSaver Act 2006 (the Act), a KiwiSaver member can only make a serious illness withdrawal if the supervisor is reasonably satisfied the member is suffering from serious illness.

Serious illness is defined in the Act. It means an injury, illness, or disability that either:

- poses a serious and imminent risk of death, or
- results in the member being totally and permanently unable to engage in work for which they are suited by reason of experience, education, or training.

Leah complained to FSCL that the supervisor's decision was unfair. She believed she should be entitled to access her savings early as she wanted to spend money on having some quality time with her young family.

Dispute

The supervisor maintained that Leah did not meet the criteria for a serious illness withdrawal.

Leah believed it was unfair that she could not withdraw her savings. She was not going to need the savings for her retirement because she would not live to the retirement age. She was also unable to use KiwiSaver to help buy a home. She would not be able to get a home loan because of her prognosis.

Leah also believed it was unfair that she could not access her savings early because she was still able to work. While she continued to work for financial reasons, she had sacrificed time spent working which she could have spent with her family.

Leah also said it was arbitrary that someone with a life-shortening congenital illness can access their KiwiSaver early, but she could not because her life-shortening medical condition was not congenital (a condition present from birth).

Leah also noted that some KiwiSaver members were able to access KiwiSaver early if they had been financially affected by the devastating cyclones in early 2023. Leah challenged why she was also not worthy of similar compassion and empathy.

Review

When considering a complaint about a declined early KiwiSaver withdrawal, FSCL must have regard to the law. A supervisor can only approve a withdrawal if it is reasonably satisfied, based on the medical evidence before it, that the member meets the withdrawal criteria in the Act.

In Leah's case, while we felt considerable sympathy for her, we concluded that the supervisor's decision to decline her application was reasonable given the medical declaration that she did not meet the withdrawal criteria. We had no reason to believe the declaration was inaccurate. Leah was working and she was not at imminent risk of death.

We take imminent to mean that death must be about to happen, or is very likely to happen soon, in the next 6–18 months. Leah's prognosis was more than 18 months.

Outcome

Leah agreed to discontinue her complaint when we explained the law and our view that the supervisor's decision was reasonable.

> **"SOMEONE WITH A LIFE-SHORTENING ILLNESS SHOULD BE ABLE TO ACCESS THEIR KIWISAVER EARLY.**

INSIGHTS FOR CONSUMERS

The threshold for an early KiwiSaver withdrawal on the grounds of serious illness is very high. A member can only make a serious illness withdrawal if the supervisor is reasonably satisfied the member is suffering from serious illness, as defined in the Act.

A member who is not eligible for a serious illness withdrawal may wish to contact their KiwiSaver provider to discuss whether they may be eligible for a significant financial hardship withdrawal instead. A member may be eligible if significant financial difficulties have arisen because of a medical condition, for example, because of medical treatment costs or the member has reduced their working hours.

CASE STUDY FOUR

WHEN INTEREST RATE RISES CAUSE UNWELCOME SURPRISES

Lia and Chris were in the market to buy their first home. In July 2021, a mortgage broker helped Lia and Chris get pre-approval from the bank to borrow up to $550,000. In September 2021, Lia and Chris's offer of $620,000 to buy a property was accepted, and they paid a deposit of 10%. The purchase was due to settle in December 2021.

In the lead-up to settlement, Lia and Chris were in frequent contact with the mortgage broker about how to structure their loan. Lia's key concern was to structure the lending so she and Chris could get their equity in the property up to 20% as soon as possible. That way, they could stop paying a low equity premium (LEP) of 0.75% added to the interest rate on their loan. The mortgage broker said that rising house prices would lead to higher equity, so Lia and Chris needed to be on shorter fixed terms to be ready to remove the LEP.

In November 2021, Lia emailed the mortgage broker to confirm how she and Chris wanted to split their loan. Essentially, they wanted to fix half of it for one year, and half for two years. The mortgage broker gave a statement of advice setting out the interest rates for the loan structure Lia had outlined, and Lia and Chris settled their purchase.

The mortgage broker didn't hear from Lia and Chris again until October 2022, when Chris emailed him. By that time, interest rates had risen. Additionally, it looked as though Chris was about to be made redundant. Chris wanted information about a variety of fixed term rates, including four- or five-year rates. The mortgage broker advised against locking in for much longer than three years, referring again to the goal of removing the LEP.

"THE OUTCOME OF THIS REALLY HAS CHANGED MY DAUGHTER'S FUTURE FOR THE BETTER. I CAN'T THANK YOU ENOUGH!

Lia and Chris were very unhappy about the rising interest rates, and the impact on their financial situation. They felt they had been badly advised by the mortgage broker, and they complained to FSCL.

Dispute

Chris thought that, back in 2021, the mortgage broker had focused too much on the goal of removing the LEP, and not enough on guarding against inflation. Chris thought they should have fixed the loans for four or five years. Chris also thought the mortgage broker should have been in touch with him and Lia from early 2022 as interest rates began to rise, to give advice about possibly breaking the fixed terms and re-fixing for a longer period. He also objected to the advice the mortgage broker gave in 2022, and was critical of the mortgage broker for being unable to predict what would happen with interest rates.

The mortgage broker didn't agree with Chris's complaints. He said that removal of the LEP was a key consideration for Lia and Chris in 2021, and that this supported having shorter fixed terms. He gave advice to Lia and Chris in 2022 when they reached out to him, but in the end, they did not take that advice; instead, they made arrangements directly with the bank.

Review

We had to be careful not to consider Chris's complaint with the benefit of hindsight. Although we could see that the mortgage broker had advised Lia and Chris that interest rates might rise, he did not foresee the dramatic rises that eventuated.

Based on what the mortgage broker knew at the time, including what was happening with the official cash rate (OCR), we didn't think his 2021 advice to fix the bulk of the loans for short terms was unreasonable. There was evidence that removing the LEP was Lia and Chris's key consideration. If the mortgage broker had recommended fixing for longer terms, Lia and Chris could have been locked into still paying the LEP when they had already reached 20% equity.

We thought it was too much of a stretch to say that the mortgage broker had an obligation to proactively reach out to Lia and Chris in 2022 when interest rates were rising. That wasn't part of the agreement he had with them. We also noted that, as Lia and Chris hadn't followed the advice that the mortgage broker gave in 2022, it cannot have caused them any loss.

Resolution

Lia and Chris did not accept our decision, but they didn't provide any new information or strong argument to cause us to reconsider it and we closed our investigation.

INSIGHTS FOR CONSUMERS

Hindsight is a wonderful thing – but not when it comes to assessing a complaint about the impact of unexpectedly high interest rates. No one can say with certainty what will happen with interest rates or property prices in the future. This is particularly so when there is global economic volatility.

SUMMARY PROFIT AND LOSS STATEMENT

FOR THE YEAR ENDED 30 JUNE 2023

	2023	2022
	$	$
REVENUE	1,993,001	1,955,738
Total revenue	**1,993,001**	**1,955,738**
EXPENSES		
Administration	2,175,034	2,084,178
Non cash items	48,972	39,472
TOTAL EXPENSES	2,224,006	2,123,650
Net business surplus	**(231,005)**	**(167,912)**
OTHER INCOME	123,134	123,134
	123,134	63,440
Net surplus	**(107,871)**	**(104,472)**

SUMMARY STATEMENT OF MOVEMENTS IN EQUITY

FOR THE YEAR ENDED 30 JUNE 2023

	2023	2022
	$	$
Net surplus for the year	(107,871)	(104,472)
Equity at beginning of year	2,491,751	2,596,223
Equity at end of year	**2,383,880**	**2,491,751**

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

SUMMARY BALANCE SHEET

FOR THE YEAR ENDED 30 JUNE 2023

	2023	2022
	$	$
Equity	**2,383,880**	**2,491,751**
CURRENT ASSETS		
Cash, bank balances and short term deposits	1,944,326	2,434,278
Receivablesi	84,747	66,362
Prepayments	16,346	8,046
	2,045,419	2,508,686
NON CURRENT ASSETS		
Property, plant and equipment	77,908	83,277
Intangibles	61,984	82,645
Term deposits	411,265	-
	551,157	165,922
Total assets	**2,596,576**	**2,674,608**
CURRENT LIABILITIES		
Payables	85,611	54,858
Income in advance	-	15,615
Accrued charges	123,557	96,923
Lease incentive	3,528	11,933
	212,696	179,329
NON CURRENT LIABILITIES		
Lease incentive	-	3,528
	-	3,528
Total liabilities	**212,696**	**182,857**
Net assets	**2,383,880**	**2,491,751**

APPROVAL OF FINANCIAL STATEMENTS

These Summary Financial Statements have been approved by the board on 24 August 2023. For and on behalf of the Board of Directors:

DIRECTOR

DIRECTOR

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

SUMMARY STATEMENT OF CASHFLOW

FOR THE YEAR ENDED 30 JUNE 2023

	2023 $	2022 $
Cash was provided by (used for)		
OPERATING ACTIVITIES		
Receipts from Participants	2,045,219	1,976,974
GST movement	1,394	13,109
Operating costs	(2,181,297)	(2,072,153)
Income tax paid/(refunded)	(18,335)	26,030
	(153,019)	(56,040)
INVESTING ACTIVITIES		
Payments to property, plant and equipment and intangible assets	(22,943)	(93,215)
	(22,943)	(93,215)
FINANCING ACTIVITIES		
(Increase)/decrease of term deposits	(56,770)	(12,883)
Net interest received	97,276	27,542
	40,506	14,659
Net movement in cash	**(135,456)**	**(134,596)**
Opening bank balances	294,531	429,127
Closing bank balances	**159,075**	**294,531**
REPRESENTED BY		
Bank balances	159,075	294,531
Closing bank balances	**159,075**	**294,531**

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

NOTES TO THE SUMMARY FINANCIAL STATEMENTS

FOR THE YEAR ENDED 30 JUNE 2023

The Summary Financial Statements have been prepared for the individual entity Financial Services Complaints Limited for the accounting period ended 30 June 2023. Also included for comparative purposes are figures for the period ended 30 June 2022.

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

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

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

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

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

The Full Financial Statements for the year end 30 June 2023 were authorised for issue by the directors of Financials Services Complaints Limited on 24 August 2023 and an unmodified audit report was issued by BDO at that date.

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

A copy of the Full Financial Statements can be obtained via the Financial Services Complaints Limited's website: **fscl.org.nz**.

BDO Wellington Audit Limited

INDEPENDENT AUDITOR'S REPORT ON THE SUMMARY FINANCIAL STATEMENTS

To the Shareholders of Financial Services Complaints Limited

The accompanying summary financial statements, which comprise the summary balance sheet as at 30 June 2023, the summary profit and loss statement, the summary statement of cashflow and summary statement of movements in equity for the year then ended, and related notes are derived from the audited special purpose financial statements of Financial Services Complaints Limited for the year ended 30 June 2023. We expressed an unmodified audit opinion on those special purpose financial statements in our report dated 24 August 2023. Those financial statements, and the summary financial statements, do not reflect the effects of events that occurred subsequent to the date of our report on those financial statements.

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

Directors' Responsibility for the Summary Financial Statements

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

Auditor's Responsibility

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

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

Opinion

In our opinion, the summary financial statements derived from the audited special purpose financial statements of Financial Services Complaints Limited for the year ended 30 June 2023 are consistent, in all material respects, with those special purpose financial statements in accordance with FRS-43.

Basis of Accounting and Restriction on Distribution and Use

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

BDO Wellington Audit Limited

BDO WELLINGTON AUDIT LIMITED

Wellington
New Zealand
24 August 2023

COMPANY DIRECTORY

Level 4, Legal House, 101 Lambton Quay
Wellington 6011

INCORPORATION NUMBER

2303993

IRD NUMBER

103-018-668

DIRECTORS

Jane Meares
Tuhi Leef
Liesl Knox
Mary Holm
Roger J Kerr – until 30 September 2022
Joy Marslin – from 1 October 2022

SHAREHOLDER

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

ACCOUNTANTS

KPMG
10 Customhouse Quay
Wellington

AUDITORS

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A Financial Ombudsman Service

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RATONGA PŪTEA PUNA MANAAKI