

Submission on discussion document: *Effective financial dispute resolution*

Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	Financial Services Complaints Ltd (FSCL)
Contact details	Privacy of natural persons

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Responses to discussion document questions

Issue 1: Consumer awareness of and access to dispute resolution

1 *Do you think there is a problem with low consumer awareness and access to dispute resolution?*

We agree that there is generally low awareness of the dispute resolution schemes (schemes).

We acknowledge the findings of the FMA's 2022 consumer survey about complaints, particularly that many consumers think that making a complaint may be too hard or not worth the effort. We also agree that there is low awareness of the schemes, although we note the FMA's survey did not refer to FSCL with our Ombudsman title. If respondents had been asked if they had heard of the Financial Ombudsman Service, we expect that the awareness of FSCL would have been higher.

We consider that raising awareness of dispute resolution schemes requires a collective approach, including government and financial service providers.

2 *Do you think the recent increase in the volume of disputes indicates better awareness and access to the schemes?*

We consider the increase in complaints is likely due to a combination of factors: general increased awareness of the schemes, including increased media exposure, and the effects of our consumer outreach programme where we, alongside the other schemes, attend financial mentor hui and provide training and webinars for consumer representatives. We also think FSPs have improved in recognising and dealing with complaints, and in providing FSCL's details to complainants. The economic climate is also a contributing factor.

3 *What are the barriers for consumers in accessing financial service providers' internal complaints processes?*

Our experience is that people are often reluctant to complain because they've had a negative complaint experience with the financial service or other provider in the past, or they felt it did not 'get them anywhere'. Sometimes, consumers simply don't have time to complain, they don't want to make a fuss, or it is too overwhelming if they have several life challenges to deal with at the same time. We therefore suggest that a very effective way to increase awareness of the schemes is to educate the public that 'It's ok to complain'. The public's expectation should be that if they complain, the organisation they are complaining to would do something about it, and if the organisation doesn't, there will be an independent dispute resolution service they can contact.

In other words, if a consumer has an underlying reluctance to complain in the first place, there is very little that FSPs or the schemes can do to encourage people to complain. You could have an FSP with a 'gold standard' internal complaints process (ICP), but if the

consumer would never have complained in the first place, there is no chance for the FSP to address the complaint.

There are still a reasonable number of FSPs whose attitude towards complaints and their ICPs are outdated and/or rudimentary. Firstly, there's still poor recognition of complaints, and we continue to see many cases where people have found out about FSCL from other sources. This may be via their accountant or lawyer, or from a Google search, instead of from the FSP themselves. This is even in cases where it is very clear that the consumer has made a complaint.

We also see cases where the complaint lingers unnecessarily within the FSP's ICP, but the FSP should have 'deadlocked' it earlier and provided the consumer with FSCL's details. This can lead to complaint fatigue, where taking a complaint to the scheme seems (to the consumer) to be another 'cog in the wheel'. This can cause consumers to be less willing to engage with our process, and less willing to **settle** their complaint, because they've become entrenched in their position on the complaint.

4 *What are the barriers for consumers in accessing dispute resolution schemes?*

See our comments to question 3 above. We strongly support a regulatory requirement for all FSPs to have an effective internal complaints process, and to provide information and continual 'complaints disclosure' about the schemes, particularly at the time the complaint is made. This could reflect the current legislative requirements on financial advisers under the Financial Markets Conduct Act, and lenders under the CCCFA. At the same time, we would like to see increased regulator (Commerce Commission and FMA) action in this space. We regularly report to the regulators instances where FSPs have not followed the correct 'complaints disclosure' process outlined in legislation, but, so far, it does not appear to result in any focussed action by the regulators. There is only so much that the schemes can do to improve industry practice on this issue.

We also strongly submit that information about complaints should be prominent on all communications between FSPs and their clients, and prominent on FSPs' websites.

5 *Do you have any specific examples or case studies of situations where consumers have experienced issues accessing a financial dispute resolution scheme?*

Where English is a second language – we have translation services available to them. Consumers who have low financial capability – this is where financial mentors and consumer advocates' work is invaluable in referring the complaint to the scheme on the consumer's behalf.

Issue 2: Enhancing scheme effectiveness through improved oversight and accountability

6

Do you think that current oversight and accountability mechanisms are sufficient to ensure schemes' effectiveness? Why/why not?

All the schemes are required to comply with the approval criteria in s 52 of the FSP Act which reflect internationally recognised Ombudsman benchmarks. We do not support greater government influence over the schemes' operations as that influence could be seen to compromise our independence. We note that we (FSCL) and the other not-for-profit schemes, IFSO and BOS, have the same level of detailed reporting on case statistics, timeliness, and outreach activities in our Annual Reports. FSCL, IFSO and BOS also have detailed and robust independent reviews every five years carried out by well-qualified reviewers with Ombudsman and dispute resolution experience. Our reviews are published on our websites and provided to the Minister.

7

Do you think that the schemes are as effective as they could be? Why/why not?

In the recent webinar presented by MBIE about the discussion paper on effective dispute resolution, MBIE confirmed that there is no evidence that the schemes are ineffective. Rather, the discussion paper's purpose was to hear from the public about ways that the schemes could become even more effective. We have found it difficult to provide submissions on issue 2 in the discussion paper (effectiveness), because there is little to no detail in the discussion paper about why the schemes need to be more effective. In other words, FSCL is unsure what problem the discussion paper is seeking to resolve in terms of 'effectiveness'.

If legislative changes are proposed in the short term, based on responses to the discussion paper, we will need to know as soon as possible what the timeframe for these changes will be. This will be particularly important for us to factor in during the FSCL and IFSO (proposed) merger process. We also consider the consultation process would also be fundamentally unfair if, following the receipt of the public submissions, the schemes were not given the opportunity to be involved in targeted consultation between MBIE and the schemes, so that we have the opportunity to respond directly to any allegations that we are not effective.

We consider that the introduction of the new scheme rules in July 2024 will improve effectiveness. We anticipate that some consumer groups may submit that some schemes have more effective processes than others, particularly the early assistance process of the schemes.

One powerful tool the schemes have is that if compensation is awarded in a final decision which is accepted by the consumer, and the financial service provider (FSP) does not pay the award, the schemes have the power to notify the FSPR so they can start the deregistration of that FSP. Deregistration effectively puts the FSP out of business. This situation does not occur often, and most FSPs eventually pay the compensation following the threat of deregistration.

8

Do you agree with these criteria for assessing the options? Why/why not?

No, the internationally recognised Ombudsman Benchmarks, on which the approval criteria in the FSP Act are based, form the foundation of industry-based dispute resolution schemes both here and overseas.

MBIE appear to be giving a different meaning to those criteria in this paper. It is important to remember that costs cannot and should not be passed on to consumers – see s 63(1)(l) of the FSP Act.

Status quo: Retain existing model and monitor the impact of aligning the schemes' rules

9 *Do you think that the new regulations will be sufficient to achieve the objectives set out above?*

We think that the new regulations should be allowed to have effect before any further changes to schemes' rules or processes are considered.

Option to address issue 1: Supporting consumer access and awareness of schemes

10 *Which of the options we have described above would be most effective to support consumers to resolve issues with their financial service provider?*

Financial mentors (FMs) and consumer advocates play a pivotal role in ensuring people make complaints to their FSP, and then to the scheme. FMs for example, have built a relationship of trust with the schemes which means they support people to make complaints. FMs also connect with people at the right time (when they have a complaint / something has gone wrong), so ensuring they know about the complaints landscape, is key. This is why the schemes focus our collective consumer outreach work in reaching out to these organisations.

There is increasing need for FMs' services and any further governmental support for them, and other consumer advocates, will be beneficial. We think the training of FMs is a key factor. However, there seems to be high turnover of FMs and when the people we've built a relationship of trust with leave, we lose the connection we've established. We do note that there is no standard training for FMs in New Zealand which is different from the situation in Australia, where financial counsellors have a formal qualification. We consider it would be beneficial for FMs in New Zealand to have standardised training including specific training on recognising and helping consumers pursue complaints. We consider this a step the government could take to increase awareness of the complaints landscape for consumer groups.

We also support option c for an awareness campaign, organised and paid for by government.

We do not support option d as this would create an extra layer of process and would be another telephone number or website to answer and monitor. The current 'warm handover' process that the four schemes are running appears to be working well in ensuring the complaint reaches the right scheme.

11 *What are the likely costs of implementing these options?*

Until more details are known, this is difficult to say.

12 *Should these options be led by government, or the schemes themselves?*

We consider a **government** funded (noting that three of the four schemes are not-for-profit) consumer awareness campaign could be beneficial, to emphasise that 'It's ok to complain'. We don't think a short awareness campaign would be beneficial, it would need to be long term. This is because unless a person actually has a complaint at the time they interact with the awareness campaign, they will forget the message.

The campaign could be extended outside of just financial services, and link in Utilities Disputes, Telecommunication Dispute Resolution, and other dispute resolution services. If the government chooses to take this step, we **would not** want to see another 0800 number introduced – this is yet another number for consumers to be aware of. However, again, it might be best to await, in particular, until FSCL and IFSO's proposed merger is live, before the government takes further steps with an awareness campaign.

13 *Are there any other approaches that would improve consumer access to and awareness of dispute resolution options?*

Increasing consumers' financial capability over the longer-term.

Option to address issue 2: Enhancing scheme effectiveness through improved oversight and accountability

14 *Do you think that there is a need for dispute resolution schemes to be more accountable?*

No, as we do not understand the problem. The three not-for-profit schemes have consistently demonstrated accountability, as defined in the FSP Act and according to internationally recognised Ombudsman benchmarks.

15 *Do you think there are issues with the performance or effectiveness of the schemes?*

it is difficult for us to comment when we do not know in sufficient detail what is underlying the perception that the schemes are not performing or that they are not effective. We understand some FMs may consider the schemes are not effective because we cannot necessarily make decisions that, say, large 'debt overhangs' in lending cases should be written off. This is one of the issues being tested by the Commerce Commission in current litigation against a lender, but this will take time to progress. Our independent reviews note that we are performing well and in accordance with our approval criteria.

16 *Do you think there should be consistency in how the schemes carry out independent reviews? What would be the best approach for achieving this consistency?*

We agree it would be good to have some consistency around the appointment of suitable independent reviewers, and what the reviewer needs to review. Alignment of the timing of

the schemes' reviews could also be beneficial. It would also be helpful to provide some guidance around what needs to be in schemes' annual reports. We note that FSCL provides the metrics outlined in our annual report. We suggest it could be helpful for all the schemes' annual reports to provide information about the systemic issue/material breach regulator reporting we do, which helps to show the effectiveness of the schemes in helping to raise industry standards.

17

Do you think government should set further scheme rules? If yes, what areas of the scheme rules should be set by government?

We do not think that the government should set the schemes' rules. The Minister already has to approve our rules, and having the new regulations from July 2024 will address inconsistencies. It would be unworkable to have detailed regulations setting out how the schemes should investigate complaints. Each case has to be investigated according to the particular nature of the complaint, and the parties at play. In our view, the schemes know how best to investigate and determine complaints and we would not want to see undue prescription by Government.

18

Do you think it is necessary for government to make changes to ensure effective and impartial governance of the schemes? If yes, what changes would best meet this aim?

We do not support the Minister's appointment of board members. This is because in appointing board members, the scheme is best placed to consider the skills and strengths of current board members, choose new board members to provide a different and relevant voice at the table, and ensure those new board members have sufficient financial services knowledge. We are strongly of the view that the practice of the schemes having industry representatives on boards should be preserved; the industry voice at the board table is invaluable and necessary to ensure there is a balanced board. We also note that the schemes should all have an independent board – three of the schemes do, but FDRS do not. In our view, board independence is fundamental for a scheme to meet the independence requirement of being an approved scheme under section 52(2) of the FSP Act.

19

Do you think the schemes should have to report against performance targets or standards? If yes, how should these standards be reported and what metrics should be used?

We emphasise that if the schemes are going to have to do additional work, such as reporting on how we are meeting the GCDR standards, or reducing timeframes in which we investigate complaints, this will have an impact on our staffing levels. This could lead to increased fees for FSPs, the cost of which will eventually filter down to consumers.

With reference to paragraph 52(d) about evaluating the schemes' performance, FSCL is already reporting on the key metrics noted, in our annual report.

20	<i>Are there any risks or unintended consequences associated with the options we are considering?</i>
	Greater government involvement and prescription would inevitably lead to more costs and inefficiencies.
21	<i>Will any of these proposals result in significant additional costs for the schemes, scheme participants and/or consumers? If yes, please describe the magnitude of these costs.</i>
	See our answer to question 20 – there will be greater costs but without more details, we cannot say what the amount of the cost would be.
22	<i>Are there any other ways to improve schemes' accountability and effectiveness?</i>
	The proposed FSCL/IFSO merger will mean there is one fewer scheme. We expect this to improve accessibility as the one merged scheme will cover approximately 7,000 FSPs and handle 90% of non-banking complaints.
<i>Other options</i>	
23	<i>Do you agree that the impact of regulations to align scheme rules, along with any other improvements proposed in this document, should be assessed before considering changes to the current scheme model? Why/why not?</i>
	Yes, we need to wait and assess the effect and success of aligning the schemes' rules and the proposed FSCL/IFSO merger before making any wide-reaching changes.
24	<i>Are there any other areas and options for change that we should consider that have not been addressed in this discussion document?</i>
	More regular meetings with the Minister to discuss trends and issues.

Other comments

We agree with the government's objective to improve consumer outcomes and consumer awareness of and access to the schemes.

We do not understand the perceived issue around the schemes' effectiveness.

We wish to be consulted in any changes that were to be proposed and look forward to further discussing the issues raised in this submission.