

27 April 2018

Code Working Group
C/- Code Secretariat (Poppy Haynes and Max Lin)
Ministry of Business, Innovation & Employment
Email: code.secretariat@mbie.govt.nz

Dear Ms Haynes and Mr Lin,

Submissions on the code of professional conduct for financial advice services

Our submissions are informed by our role as an independent financial dispute resolution scheme, which investigates complaints across the broad spectrum of financial advice and products (except banking).

We formally investigated 24 complaints about financial advisers (out of a total of 216 complaints investigated), in the year ended 30 June 2017. While complaint numbers are relatively small, the 24 complaints represented a 70% increase on adviser complaints investigated in the previous 12 months.

Our submissions focus on areas where we consider the Code Working Group (CWG)'s proposals for the code should be amended or expanded on. We have not commented where we are generally in agreement with the CWG's proposals, or do not think we are qualified to comment. We have referred to specific paragraphs and questions, generally following the order of the consultation paper.

1. Paragraph 4 – 'good advice outcomes'

- 1.1. We are dubious about the phrase 'good advice outcomes'. Although the consultation paper refers to good advice outcomes not necessarily meaning a product will perform well, we suggest that the phrase will focus consumers on the outcome of advice rather than the quality of advice. The code does not focus only on outcomes; it is equally focussed on good processes to prepare and record advice. We suggest replacing 'good advice outcomes' with 'quality advice' or simply, 'good advice'.
- 1.2. With reference to the current definition of a 'good advice outcome' we consider it should read that a good advice outcome occurs when: the client is given financial advice that meets a reasonable client's needs (**both current and future needs**) in the

particular client's circumstances, having regard to the nature and scope of the financial advice. The nature of financial advice is that it is often some years before the customer receives the benefit of a 'good advice outcome' (for example, when they have a trauma or income protection claim). Both the client's immediate and future needs should be considered.

2. Paragraphs 5 and 48 – 'generic group of clients' and 'record keeping'

- 2.1. These paragraphs state that to achieve good advice outcomes, the Financial Advice Provider (FAP) must have processes, explanations, and **records** to evidence how those expectations were considered and met, by reference to either the particular client **or a generic group of clients with similar characteristics and circumstances to which it is reasonable to associate the particular client given the nature and scope of the advice.**

'Generic group of clients'

- 2.2. Whenever reliance is placed on a person being within a generic group, there is a risk the advice provided will not be suitable to that particular client. We are always cautious about placing people into generic groups, because this is counter-intuitive to "knowing" your client. We would not want to see advisers saying they met their obligations by considering clients belonged to a generic group, when the situation did not warrant this.
- 2.3. We note paragraph 48 states that the ability to rely on a client being a member of a generic group depends on the nature and scope of the advice being given. We agree that with some types of advice it could be suitable to rely on the person being a member of a generic group. For example, if a client is identified as being a conservative investor it may, in some circumstances, be appropriate to give generic advice based on that investor type.
- 2.4. We suggest the code should not refer to advice being given to people fitting within generic groups. If an adviser has sufficient records to show a client has characteristics which place them in a generic group, and appropriate steps have been taken given the client's membership of that group, that should be sufficient evidence that the client's individual needs have been met.
- 2.5. It would be useful if the code provided examples, identifying where it would be appropriate to consider a client part of a generic group, and where it would not.

Record keeping

- 2.6. We welcome reference at paragraphs 48 and 120 to keeping records showing how the advice provided met the client's expectations, for instance within a statement of

advice. In many financial advice complaints, there is a complete lack of file noting, and it is near impossible to determine what verbal advice was or was not provided.

- 2.7. Please find attached at appendix A, a case note of a complaint we investigated where the lack of file notes was problematic. We also have a number of other case notes on our website about financial adviser complaints, which you may wish to read.

3. Paragraphs 8, 74, 84, and 87 and question D – standards of ethical behaviour

- 3.1. The CWG proposes two categories of minimum standards for ethical behaviour: advice-giving standards (that apply when financial advice is given to clients), and organisational standards (that apply on an ongoing basis to all persons who customarily give financial advice to clients).
- 3.2. We understand the theory behind having two categories of minimum standards is that FAPs will have obligations to ensure their FAs and NRs receive ethics training, there are processes for resolving ethical dilemmas within the FAP's organisation, and there will be overall compliance systems in place.
- 3.3. However, having two sets of ethical standards appears to be a duplication of ethical requirements and could lead to confusion and a lack of consistency. This may make it difficult for advisers and FAPs to manage client expectations. We consider FAPs, as well as advisers, should act ethically. However, we consider it would be more workable if there were ethical standards for individual advisers, and the role of the FAP is to have **administrative** ethical processes in place, rather than another set of ethical standards.
- 3.4. This would mean the FAP having an administrative system to check its FAs and NRs have undergone the required ethical training (applicable to their role), and that there is a process FAs or NRs can follow in approaching the FAP if they are facing an ethical dilemma. These would fit into an overall compliance system. With robo-advice however, the ethical standards would apply directly to the FAP.
- 3.5. We would not want to discourage FAPs having their own internal codes of ethical conduct, however we consider it too onerous to **require** FAPs to put organisational codes of conduct in place (paragraph 74). However, if the code were to require both individual and FAP-level codes of conduct we would expect the code to make clear that if there is a conflict between codes, the Code of Professional Conduct for Financial Advice Services would prevail.

- 3.6. With reference to paragraph 84, we consider there should be a further bullet point noting that the NR/FA/FAP will treat a client with respect when a complaint is made.
- 3.7. With reference to paragraph 87, we consider that any ethical behaviours extending beyond strict legal obligations should be included in the code. The code is not simply to codify the law; it can also operate outside a strictly legal approach and give guidance on best practice. We consider some additional standards could be an adviser's commitment that:
- a) Documents will be explained to clients, including each element of the advice provided.
 - b) The adviser will actively confirm they have explained their ethical requirements to the client (rather than simply asking the client to acknowledge the adviser provided the explanation).

Paragraph 13 – how can ethical training be provided?

- 3.8. The CWG is aware of research suggesting significant benefits to having timely reminders of ethical obligations. With reference to paragraph 75, the dispute resolution schemes (DRSs) could assist in continuing professional development on the complaint management aspect of ethics training. FSCL regularly presents workshops to its scheme participants about the causes of complaints, how to avoid complaints, and how to recognise and deal with complaints.
- 3.9. It is unclear how **initial** ethical training will be delivered. We suggest this could be a requirement of the level 5 qualification. For other non-adviser staff, a part of their overall induction training could be training on ethical matters relevant to their role (i.e. part of the overall compliance programme of the FAP). There could also be refresher courses run periodically for FAs and NRs and, for non-adviser staff, short refreshers as part of a FAP-wide compliance programme.
- 3.10. The current content of the level 5 qualification does not include any specific ethics paper or module. We suggest it could be useful for the CWG to speak with the NZQA about incorporating ethics training into the level 5 course.

4. Paragraph 12 – scalability

- 4.1. This paragraph notes the code requirements will be scalable based on the nature and scope of the advice being provided, but should not vary between two businesses providing identical advice merely because of business size. We strongly agree with this approach.

5. Paragraph 18 – standard of ‘competence, knowledge, and skill’ met in the aggregate

- 5.1. We expect there will be a number of FAPs interested in relying on having competence, knowledge, and skill in the aggregate, rather than having all its advisers qualified up to level 5. However, we see this proposal as presenting unnecessary risk to consumers and, possibly, to FAPs as well. At the end of the day, the client expects the person sitting across the table to be competent and sufficiently qualified to provide the advice they are giving, and to be able to answer all questions they may pose to the FA/NR.
- 5.2. The concept of meeting the standard in the aggregate working may be possible if the FAP has essentially ‘templated’ all the processes it wants its FAs and/or NRs to follow. FAs and NRs who have not met the requisite qualification requirements would need to be fully trained on when any advice process they are involved with is moving outside the realms of what they are templated or sufficiently qualified to do. The FA/NR would also have to make clear to the client their limited training/qualifications and the client given the option of meeting with a fully trained and competent FA. However, we anticipate implementation of a templated process may be difficult to manage on a practical level.
- 5.3. If a templated advice model were not implemented, we see the only viable alternative being full oversight by a senior FA who meets the requisite qualification requirement. However, this is unlikely to be attractive because of unnecessary duplication of work.
- 5.4. We suggest if the aggregate proposal proceeds, the code provides an example of how a FAP will provide advice via an aggregate model, and the extent of the templating it is required to implement to ensure it is sufficiently overseeing the work of the FA/NR.

6. Qualification requirements

Paragraph 21 – ‘understanding of’ versus ‘meeting’ level 5

- 6.1. This paragraph speaks to FAs/NRs meeting or having an understanding of the level 5 unit standard.
- 6.2. We consider it insufficient to have only an ‘understanding’ of the standard. To ensure competence there should be an across-the-board minimum qualification. There is a distinct move towards the professionalisation of financial advisers, which is to be encouraged. In the professions, there is a general expectation by the public that the person providing them a service had to obtain a qualification to provide the

service. It is also commonplace to require people to upskill when changes are made to minimum qualification standards within professions.

- 6.3. In line with the sentiment in paragraph 177, the alternative to requiring all advisers to have obtained level 5 is for the FMA / MBIE to devise a method of assessing whether FAs have enough experience and/or knowledge to meet the equivalent of the level 5 standard. However, this would be a large undertaking effectively requiring an audit of randomly selected adviser files (because advisers need to demonstrate not only that they understand the requirements and have sufficient product knowledge, but that they consistently apply the requirements and knowledge).
- 6.4. If the FMA / MBIE decide the better option is to 'test' advisers' experience and knowledge, it may be more efficient to simply require advisers to obtain the level 5 qualification. We consider that if advisers have enough experience and knowledge to meet the level 5 standard, it should not be difficult to obtain the qualification (although we do appreciate there is a cost) during a suitable transitional period.

Paragraph 24 – level 5 or level 7 qualification?

- 6.5. This speaks to there being a requirement to meet level 5 for **product advice**, and the requirement to have a level 7 qualification (degree) for giving **financial planning advice**. Financial planning advice extends to giving advice about a personal risk insurance plan.
- 6.6. We consider the requirement to have a degree to provide insurance planning advice is too high, and that the level 5 qualification would be sufficient. In our experience, it is generally RFAs who provide the bulk of personal risk insurance planning advice. If RFAs without a degree qualification are required to gain a degree, there is a risk a large number of RFAs will leave the industry. This is not a good outcome for consumers because they will have less access to and choice of advisers.
- 6.7. There is also the risk advisers will simply provide limited advice and 'sell' clients insurance products, without considering products within an overall insurance plan for a client. Most consumers would not understand the adviser is merely selling a product and not providing advice, which is not a good consumer outcome.
- 6.8. If providers of some financial advice are going to require a degree qualification, we consider the degree needs to be in one of the listed areas (e.g. financial planning/accountancy/commerce/economics), and the advisers should have specific knowledge of the products they are advising on. We consider a person with some unrelated degree, for example in arts or science, would not have sufficient product or industry knowledge to provide good advice to consumers.

7. Paragraphs 50 and 147 – complaints

- 7.1. We consider there should be additional bullet points at these paragraphs stating how the FAP effectively manages complaints, both internally and externally.

8. Paragraph 55 – principle 2

- 8.1. It is not clear what ‘basic knowledge’ means. We consider there should be an assumption the client knows little more than that they are, for example, applying for life insurance or seeking a mortgage. It should not be assumed that clients understand basic concepts such as disclosure obligations.
- 8.2. In the case note at appendix A, the adviser assumed the client knew the insurance company would not be requesting a copy of his full medical records at the initial underwriting stage. This is a reasonably common consumer misconception in adviser complaints we investigate.

9. Paragraph 67 – the code should be understandable

- 9.1. This speaks to the code being clearly drafted and says that ‘where appropriate’ it is intended that retail clients will be able to understand what the code says and the standards of advice they should receive. We consider retail clients should **always** be able to understand what the code says about the standards of advice they should receive. Otherwise, the code will lack consumer accessibility, and it will be impossible for consumers to know whether they are receiving advice that meets the minimum code requirements.

10. Paragraph 88 – fee payment example

- 10.1. We question the example used in this paragraph about an incorrect fee being quoted to a consumer, where it is suggested a FAP has no legal obligation to honour the representation. The consumer in this situation would be entitled to complain to the FAP and the FAP’s DRS. If the complaint was before FSCL, we may find the consumer was misled, and that the adviser could only charge the fee represented. Ethically, a FAP would need to recognise there could be a complaint about the issue, and that the DRS could address the complaint (if necessary).

11. Question F – minimum conflict of interest management standard

- 11.1. We consider the code should include a minimum standard on conflict of interest management. It does not need to focus on any particular situation – it could remain high level so it could apply to any type of conflict situation. We suggest the code includes a few examples of conflict of interest situations, and how these were resolved.

12. Paragraph 100 – bullet point 6

- 12.1. This speaks to client information only being held for as long as it is required, and then disposed of, or securely deleted.
- 12.2. Under paragraph 5.1 of FSCL's attached Terms of Reference (TOR), FSCL can only consider a complaint where the act or omission giving rise to the complaint occurred after 1 April 2010. In the case of FAPs, FAs and NRs, this is the date the advice was originally provided. Under a related paragraph of the TOR (8.1(i)), FSCL cannot consider a complaint where more than six years have passed from the date the complainant first became aware **or should reasonably have become aware** of the act or omission giving rise to a complaint.
- 12.3. In effect these two paragraphs mean FSCL can look at a complaint where the act or omission occurred more than six years previously, but no earlier than 1 April 2010. This is because although the advice may have been provided more than six years previously, it is often only when, for instance, an insurance claim is declined, that the complainant **could reasonably have become aware of the act or omission giving rise to a complaint.**
- 12.4. We would therefore expect FAPs to keep records of all advice provided since 1 April 2010. FAPs would need to retain these records, because, depending on the final wording of the Act, FAs and NRs may not be required to register individually with a DRS and the FAP will be responsible for a complaint arising from the advice given by its FAs and NRs, and for payment of any compensation that may be awarded. In our view FAPs must undertake to retain records and deal with any complaints where the NR or FA who provided the advice was licensed with the FAP at the time the advice was provided.
- 12.5. This aligns with current AFA code standard 13 which makes it clear that records need to be kept for 7 years, but that the 7-year period begins from the date the last of the potential benefits under a product can be realised. We consider the code could require records to be kept for 6 or 7 years after the last benefits have been utilised under an insurance policy, with a long-stop of 20 years after the advice was provided (whichever is earlier).

13. Question 5 – FAPs' framework for resolving ethical dilemmas

- 13.1. Yes – we consider FAPs should have a system for recording ethical dilemmas and any systemic issues. In addition, FAPs' overall complaints management process should mention that the DRSs can assist in resolving any ethical complaints that were unable to be resolved internally.

14. Question T – requirement for explicit sign off when advice provided directly by a FAP

- 14.1. We understand this question is referring to when robo-advice is provided. We further understand this is already a requirement for robo-advice; algorithms and the advice output of the robo-adviser needs to have been sufficiently tested by the FAP to ensure the advice is sound.

15. Paragraph 115 and question X – contracting out of ethical standards

- 15.1. We agree with FAPs being unable to contract out of their responsibility for ensuring ethical standards are being met. Ultimately the FAP is responsible for the actions of its FAs and NRs (say if a complaint was ever raised with the DRS).

16. Question BB – changes to current client care standards

- 16.1. We consider the AFA code definition of complaint could be improved. Currently it states that a complaint is any expression of dissatisfaction, except where the complaint is trivial or vexatious.
- 16.2. We often hear from financial service providers (usually at the beginning of an investigation), that they consider a complaint is trivial or that the complainant is being vexatious. However, those complaints are able to be investigated by FSCL, and although they may lack merit, are not trivial or vexatious complaints. We find some financial service providers have a poor understanding of the difference between a complaint that may lack merit, and a trivial or vexatious complaint.
- 16.3. Under its TOR, FSCL can decline to investigate a complaint if it is frivolous or vexatious (although that is a very high bar). We consider it would be better placed for the DRSs, rather than the FAP, to decide whether the complaint is frivolous or vexatious.
- 16.4. We suggest the definition of a complaint used by FSCL is adopted by the code. This is drawn from the International Standards Organisation's definition of a complaint (standard 10002) and reads: "means an expression of dissatisfaction made to a participant [adviser/FAP] related to its products or services where a response or a resolution is explicitly or implicitly expected". This ensures consistency.
- 17. Paragraph 130 and question EE – any further advice-giving standards?**
- 17.1. We consider there should be an advice-giving standard in relation to replacement insurance advice, because we often investigate complaints in this circumstance. We suggest in drafting a replacement insurance advice standard, the CWG could consider that when an adviser is recommending replacing one product with another,

regardless of whether this is with a new insurance provider or not, a comprehensive written statement of advice should be provided, including, for example:

- a) Product and provider differences, stating the specific reasons for the proposed replacement and why the current policy cannot adequately fulfil the customer's objectives.
- b) The key differences between the two policies (existing and recommended) relevant to the client.
- c) The duty of disclosure.
- d) Underwriting risks.
- e) The costs to the client and revenue to the adviser and their business.
- f) How the implementation of the replacement business will take place, including when to cancel the existing insurance policy.
- g) Indication of review dates.

18. Advice suitability

Paragraph 134 – bullet point 2 – verbal advice

- 18.1. We do not agree advice should only be given verbally. Although advice could initially be given verbally, it should be followed up in writing. This avoids advisers and consumers having different expectations about the advice being provided and helps to avoid complaints down the track.
- 18.2. With reference to the suggested guidance above for replacement insurance advice, in complaints we investigate, there is often a distinct lack of any real personal (to the client) advice-giving in statements of advice. There appears to be a significant amount of copying and pasting of standard wording about the benefits of different insurance policies and different insurance companies, but rarely is there detailed consideration of the particular client's circumstances or needs, or specifically tailored advice. We strongly suggest the code provides an example of what would be considered a good statement of advice.
- 18.3. In the same vein, we endorse the sentiments at paragraphs 138 and 139 that suitability analyses are crucial in most advice-giving situations. With reference to

paragraph 143, we suggest the code could also provide an example of (the limited case) where a suitability analysis was not required.

Paragraph 151 – documentation of good advice outcomes for all clients

- 18.4. This paragraph speaks to situations where detailed paperwork, showing how a good advice outcome has been achieved, may not be necessary for each client. It would be helpful if the code provided an example of where this might be appropriate.
- 18.5. In our view it is risky for the code to allow for situations where a FAP could say it provided a good advice outcome to a client, without a paper trail to prove that. A paper trail documenting the advice provided and why that advice was provided is best practice and creates a safety net for advisers.
- 18.6. When investigating complaints, we are unlikely to accept a FAP stating something akin to: 'this is our general process and therefore the process must have been followed for this particular client'. The client will inevitably say the process was not followed, and then FSCL will be in a 'he said she said' situation. We may be more likely to accept the client's version of events because the transaction will have been specific to them, as opposed to the financial adviser who deals with many clients.

If you have any questions about our submissions, please contact us.

Yours sincerely

S 9 (2) (a)

Susan Taylor
Chief Executive Officer

S 9 (2) (a)

Stephanie Newton
Case Manager

"Whose responsibility is disclosure when an adviser (or another intermediary) is involved?"

In August 2014, Walter was hit in the head by a cricket ball during a game of indoor cricket. The subsequent post-concussion syndrome which he suffered as a result of this injury meant he was unable to continue working. In December 2015, Walter submitted an income protection claim under his life insurance policy. His insurer then requested his full medical details, declined his claim and cancelled the policy (retrospectively) from its inception on the basis Walter did not disclose the full details of his mental health history and history of drug and alcohol use.

The insurer argued Walter's insurance application would not have been accepted had it known the extent of his mental health history and history of drug and alcohol abuse. The insurer said it had no reason to request full details of Walter's medical history upon his application in 2013.

Walter complained to his adviser, claiming that the adviser did not fulfil his duties to make clear the importance of disclosing all medical information. When the adviser rejected Walter's complaint, Walter complained to FSCL.

Material information

The adviser filled out the form for Walter in his presence before having Walter sign it and initial every page. Walter and the adviser disagreed about what Walter disclosed to the adviser, and what the adviser wrote down on the application form. Walter said he disclosed more about his past drug and alcohol use, and the adviser's decision not to include this information implied the information was not necessary or material to the insurer.

The adviser's view

The adviser provided us with his *usual* advice process, and maintained that he made it very clear to Walter that all information must be disclosed.

The adviser pointed to the fact that he ensured Walter initialled every page. The application form was also accompanied by a provision which said:

In order for us to advise you properly and select a suitable insurance policy for you, you agree to:

- *Provide full and accurate information to us when we complete your fact find and needs analysis.*
- *Complete the application forms for the policies you have selected truthfully and disclose all relevant matters on the form, misses nothing out.*

In addition to this at the end of the application form, the adviser had the client write "this form was completed truthfully" which Walter had signed next to.

Walter's view

Walter said he disclosed to the adviser more than was written down on his application form and that the adviser was "very blasé about everything." Walter maintained that his adviser filled out the form for him and did not include all the information which he gave to the adviser. He also said the adviser used language like "they're not going to crucify" you for "having smoked a bit of weed" and implied that the insurer would request Walter's full medical records.

Walter said the adviser should have made it clear the insurer may not request his medical records upon receiving his insurance application. Walter said he felt rushed to complete the form because he and the adviser met at his house, and by the time the meeting had finished it was after 10pm. Walter said the adviser was responsible for making it "crystal clear" what Walter was expected to disclose on the application form.

Review

It was clear that there were some deficiencies in the adviser's advice process with a lack of documentation or file notes detailing the steps he took with Walter. As a result, it was a *'he said, she said'* situation where it was difficult for us to determine where the truth of matter lay. We said it would have been helpful if the adviser had kept file notes of what was discussed.

As the professional, the adviser is responsible for keeping contemporaneous file notes.

Appendix One.

4/23/2018

"Whose responsibility is disclosure when an adviser (or another intermediary) is involved?" | Financial Services Complaints Ltd

Furthermore, the adviser's usual advice process and the duty of disclosure section in the application form give an impression that Walter's full medical records would be requested. As a matter of best practice, the adviser could have made it clearer that the insurer would not necessarily seek all Walter's medical records.

However, there was insufficient evidence that the adviser intentionally told Walter not to disclose certain information about his medical history and drug and alcohol use. As Walter had signed the proposal form, saying that this form was completed truthfully, the onus was on him to read the form and correct any mistakes, errors or omissions.

Although the advisor's processes could have been better there was no guarantee that Walter would have been in any better position. We found it likely that the insurer would not have insured Walter had he fully disclosed his mental health history, drug and alcohol abuse. As a result, we did not uphold Walter's complaint.

Our insight

Whether one is using an adviser or not in order to obtain insurance, the onus is on the person seeking insurance to ensure that all the information obtained or detailed in an application form is correct.

It is also important to remember that insurers will not automatically obtain all of your medical records when seeking insurance.

This case also shows important it is for an adviser to keep contemporaneous file notes/ memoranda detailing actions taken and advice given to clients.

TERMS OF REFERENCE
OF
THE FINANCIAL SERVICES COMPLAINTS LIMITED SCHEME
OPERATED BY
FINANCIAL SERVICES COMPLAINTS LIMITED (FSCL)

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A. PRELIMINARY MATTERS

1. Introduction

1.1 Purpose of the Scheme

The FSCL Scheme is an independent external dispute resolution scheme to resolve complaints between Complainants and Participants. The Scheme is free of charge for Complainants. The Scheme's costs are met by the Participants.

1.2 FSCL's main objectives are to:

- provide Complainants free of charge with an accessible alternative to legal proceedings for the resolution of their complaints against FSCL's Participants
- act as an approved external financial dispute resolution scheme for the financial services industry, and
- actively facilitate the resolution of complaints about financial services.

1.3 In dealing with complaints, FSCL:

- must do what in its opinion is appropriate with a view to resolving complaints in a cooperative, efficient, timely and fair manner
- shall proceed with minimum formality and technicality
- shall be as transparent as possible, whilst also acting in accordance with its confidentiality and privacy obligations, and
- must comply with the principles of accessibility, independence, fairness, accountability, effectiveness and efficiency.

1.4 Scope of the Terms of Reference

These Terms of Reference set out:

- who is eligible to lodge a complaint
- the types of complaints that FSCL can consider
- how FSCL resolves complaints

- the types of remedies that FSCL can provide, and
- other related matters.

These Terms of Reference are binding upon Participants.

1.5 Amendments to the Terms of Reference

The Board may amend these terms of reference:

- in accordance with the Constitution
- following consultation with the Participants and key consumer organisations, and
- with the approval of the Minister under Section 66 of the Act.

2. FSCL structure

2.1 Appointment of Chief Executive Officer

The Board appoints the Chief Executive Officer. In making appointments, the Board will consider candidates' objectivity, qualifications, experience and personal qualities.

2.2 Chief Executive Officer's powers and duties

The Chief Executive Officer has the power to exercise all powers and discretions conferred on FSCL by these Terms of Reference and to carry out all responsibilities attributed to FSCL by these Terms of Reference. The Chief Executive Officer's powers and duties include:

- making jurisdictional decisions
- resolving complaints by making recommendations and determinations
- chairing and participating in FSCL Panel processes
- delegating any of those powers and discretions (other than the power to make final decisions on jurisdiction, recommendations and determinations) to any employee or contractor engaged by FSCL.

2.3 Appointment of Panel Members

FSCL's Board of Directors appoints the Panel Members. In making appointments, the Board will:

- consider candidates' qualifications, experience and personal qualities
- where appointing consumer representatives as Panel Members, follow a merit selection process that includes input by relevant consumer groups. The consumer representative must be well-informed, impartial and objective, and
- where appointing industry representatives as Panel Members, follow a merit selection process that includes input by relevant industry groups. The industry representative must be well-informed, impartial and objective.

2.4 FSCL Panels

- (a) A FSCL Panel will be comprised of the Chief Executive Officer and two Panel Members, one of whom is a consumer representative and one of whom is a financial services industry representative.
- (b) A FSCL Panel has the power to resolve complaints by making determinations.
- (c) A Panel Member's duties are to participate from time to time, where requested by FSCL, in a FSCL Panel responsible for resolving a complaint by making a determination.

B. ROLE OF FSCL UNDER THESE TERMS OF REFERENCE

3. Principles FSCL must have regard to

3.1 In dealing with a complaint under these Terms of Reference, FSCL must deal with the complaint on its merits and do what, in its opinion, is fair in all the circumstances, having regard to each of the following:

- any applicable legal rule or judicial authority
- general principles of good industry practice and any applicable code of practice
- resolving complaints in a cooperative, efficient and timely way
- keeping Complainants and Participants informed of progress, and

- assisting Complainants and Participants to reach informed and voluntary agreements to resolve complaints.

4. Procedures offered by FSCL

4.1 A complaint may be lodged with FSCL by:

- delivery to the postal address
- facsimile
- email to info@fscl.org.nz
- completing the website's on-line complaint form
- telephone (0800 347 257).

4.2 FSCL offers two main types of procedure:

- a conciliation process in which a FSCL case manager uses his or her reasonable endeavours to resolve the complaint by communicating with the Complainant and the Participant involved, or by referring the complaint for a conciliation conference, and
- if conciliation fails, or is unlikely in the opinion of the Chief Executive Officer to resolve the complaint, a recommendation by the Chief Executive Officer or a determination by the Panel on the complaint.

4.3 These procedures are free of charge to the Complainant.

5. What conditions have to be met before using these procedures?

5.1 Before FSCL can consider (or continue to consider) a complaint made, it must be satisfied that:

- the complaint is made by or on behalf of:
 - a person or group of persons to whom or for whom or for whose benefit the financial service was provided; or a partnership comprising of persons – if the partnership carries on a business, the business must be a Small Business
 - a person who has provided a guarantee or security for the financial service

- a Small Business (whether a sole trader or constituted as a company, partnership, trust or otherwise)
- a club or incorporated association – if the club or association carries on as a business, the business must be a Small Business, or
- a body corporate of a strata title or company title building which is wholly occupied for residential or Small Business purposes, and
- either, the complaint has been referred to the Participant’s internal complaints handling service and has reached “deadlock”, that is one of the following:
 - the complaint was made to the Participant more than 20 working days previously and the Participant has not notified the Complainant in writing that it has good reason to extend the time for resolving the complaint and what that good reason is, and
 - in any case, the complaint has taken longer to resolve than 40 working days, or
 - if the Complainant does not accept a final proposal for resolution of the complaint made by a Participant at any time, or
- the Participant concerned has informed the Complainant that deadlock has been reached and the Complainant makes the complaint to FSCL within two months of being informed:
 - that deadlock has been reached
 - of the right to refer the complaint to FSCL (with the full contact details for FSCL)
 - that if the complaint is not referred to FSCL within two months, FSCL will not be able to consider the complaint, and
- the act or omission giving rise to the complaint first occurred on or after 1 April 2010.

5.2 Participants must:

- have a documented internal complaints process appropriate to the nature of their services and scale of their operations, including providing and keeping

up to date information as to the position and title or positions and titles of staff responsible for complaint handling

- provide information about their internal complaints process to their customers or clients
- if required by their insurer, notify their insurer of complaints they receive within the time limit prescribed by their policy
- when advising Complainants of the outcome of complaints dealt with by the Participant's internal complaints handling system, also advise Complainants that they may complain to FSCL, if they are not satisfied with that outcome, and
- provide FSCL's contact details to Complainants both at the time that the Complainant first makes a complaint to the Participant, and when advising the Complainant of the outcome of the complaint dealt with by the Participant's internal complaints handling system.

5.3 If FSCL has concerns about the performance of a Participant's internal complaints process, FSCL may, upon giving the Participant 20 working days' notice, undertake an audit of the Participant's internal complaints process and provide advice to the Participant on appropriate remedial action.

5.4 Participants must not in any circumstances charge the Complainant any fee, or seek to be reimbursed for any fee payable by the Participant to FSCL, in connection with a complaint made to FSCL.

6. Assistance in making a complaint to FSCL

6.1 To provide fair and effective resolution of complaints, and to facilitate the clear identification of the matters in dispute, FSCL may assist Complainants to draft and lodge complaints. This includes assistance:

- to clarify the nature of the complaint including the issues raised and the matters which might be relevant to those issues, and
- to reduce the complaint to writing,

but does not extend to advocating for the Complainant. A person wishing to make a complaint can contact FSCL for assistance in making a complaint in writing.

C. JURISDICTION OF FSCL

7. Types of complaints that can be considered by FSCL

7.1 Subject to these Terms of Reference, FSCL has the power to conciliate and determine complaints about any act or omission by a Participant, in relation to a financial service including:

- breaches of contract by the Participant
- breaches of statutory obligations
- breaches of industry codes and/or non-compliance with relevant industry practice by the Participant
- complaints relating to repossessions of motor vehicles or other goods
- any other matters provided for by FSCL.

7.2 Notwithstanding any other paragraph of these Terms of Reference, FSCL may consider a complaint where all parties to the complaint and FSCL agree. If so, the procedures set out in Section D will apply to the resolution of that complaint.

7.3 FSCL may determine a complaint where:

- the act or omission giving rise to the complaint first occurred on or after 1 April 2010, and
- the amount which the Complainant has claimed or could claim in respect of the subject matter of the complaint does not exceed the Financial Limit.

7.4 The Financial Limit does not apply to any amounts in relation to:

- interest that may be claimed or awarded, and
- compensation for inconvenience that may be claimed or awarded under paragraph 18.2.

8. Exclusions from FSCL's jurisdiction

8.1 FSCL cannot consider a complaint:

- (a) against an entity which is not a FSCL Participant at the time the complaint is made;
- (b) about the level of a standard industry fee, premium or charge, or interest rate, except a complaint concerning non-disclosure or misrepresentation or incorrect application of the standard industry fee, premium or charge, or interest rate;
- (c) about the investment performance of a product, except a complaint concerning non-disclosure or misrepresentation, or misleading conduct;
- (d) relating to the management of a fund or scheme as a whole;
- (e) relating to a Participant's commercial judgment in decisions about lending or security or insurance, but this does not prevent FSCL from considering complaints:
 - claiming maladministration in lending, loan management, security or insurance matters
 - about an alleged breach of a Participant's compliance with lender responsibilities under the Credit Contracts and Consumer Finance Amendment Act 2014 and Responsible Lending Code, or
 - about the variation of a credit contract as a result of a Complainant being in financial hardship;
- (f) about underwriting or actuarial factors leading to an offer of a life insurance contract on non-standard terms;
- (g) the subject matter of which has already been dealt with in a previous complaint to FSCL by the same Complainant against the same Participant, and there are insufficient additional events and facts raised in the new complaint to warrant FSCL's consideration of the new complaint;
- (h) the subject matter of which has already been dealt with by a court, tribunal or arbitrator, or any other independent or statutory complaints or conciliation body, or any investigation by a statutory Ombudsman;
- (i) where more than six years have passed from the date the Complainant first became aware or should reasonably have become aware of the act or omission giving rise to the complaint;
- (j) where the Complainant, and any other person to whom the Participant owes a duty of confidence, has not waived the duty of confidence owed to the Complainant and any other person in respect of any information which FSCL

may request a Participant to produce for the purpose of its consideration of a complaint;

- (k) where the value of the Complainant's claim exceeds \$200,000.

8.2 Discretion to exclude complaints

FSCL may refuse to consider, or continue to consider, a complaint, if FSCL considers this course of action appropriate, for example, because:

- (a) there is a more appropriate place to deal with the complaint, such as a court, tribunal, or another dispute resolution scheme or the Privacy Commissioner;
- (b) the complaint relates to a Participant's practice or policy and does not involve any allegation of:
 - maladministration
 - inappropriate application of the practice or policy, or
 - breach of the law or any relevant code of practice;
- (c) where it appears to the Chief Executive Officer, on the basis of the facts presented by the Complainant, the relevant Participant has made a reasonable settlement offer in settlement of the complaint;
- (d) the complaint being made is frivolous or vexatious or not being pursued in a reasonable manner;
- (e) after lodging the complaint with FSCL, the Complainant commences legal proceedings against the Participant in respect of the subject matter of the complaint;
- (f) the Complainant is not a retail client as defined by the Act.

9 Decisions on jurisdiction

- 9.1 The Chief Executive Officer shall decide whether a complaint falls within the Terms of Reference. In reaching this decision he or she shall request and consider representations from both the Complainant and the Participant concerned.

- 9.2 The Chief Executive Officer will advise the Complainant in writing if a complaint is excluded, and give his or her reasons for excluding the complaint.
- 9.3 If, within 10 days of receipt of this advice, the Complainant objects to a decision made by the Chief Executive Officer in accordance with paragraph 9.1, the Chief Executive Officer will review the matter if the Chief Executive Officer is satisfied that the Complainant's objection may have substance. If so:
- the Chief Executive Officer will inform the other parties involved in the complaint
 - all parties will be given an opportunity to provide submissions, if appropriate
 - all parties will be provided with copies of each other's submissions, and
 - the Chief Executive Officer will review the matter and provide the parties with the Chief Executive Officer's final decision referred to as a jurisdictional decision that will set out the reasons for the decision.

D. INFORMATION RELATING TO COMPLAINTS

10. Provision of information by Participants

- 10.1 The Chief Executive Officer may require any Participant named in a complaint to provide any information that, in the view of the Chief Executive Officer, relates to that complaint.
- 10.2 Participants must, as soon as is reasonably required, disclose the information requested by the Chief Executive Officer. However, a Participant is exempt from disclosing such information if the Participant certifies to the Chief Executive Officer:
- that the disclosure of the information would place the Participant in breach of its duty of confidentiality to a third party who has not consented to disclosure, despite the Participant using its best endeavours to obtain such consent, or
 - the Participant does not have the information requested, or

- to provide the information would breach a Court order or prejudice a current investigation by the police or another law enforcement agency.

11. Disclosure of information to parties

11.1 If any party to a complaint:

- (a) supplies information to the Chief Executive Officer and requests that he or she treat it as confidential, the Chief Executive Officer must not disclose that information to any other person, except with the consent of the party supplying the information. However, before supplying such information to the Chief Executive Officer, the Participant shall first notify the Chief Executive Officer of the request for confidentiality and the reasons for such confidentiality;
- (b) requests access to any information on the Chief Executive Officer's file, the Chief Executive Officer must, subject to these terms of reference, legal requirements and any procedural standard developed by the Chief Executive Officer, make the information available.

12. Responding to general enquiries

- 12.1 FSCL may respond to general enquiries, provide general information and give advice on the procedure for referring a complaint to FSCL. It is not FSCL's function to provide information about individual Participants or their financial services or products.

E. COMPLAINT RESOLUTION PROCESS

13. When a complaint is received

- 13.1 FSCL is not bound by any legal rule of evidence. FSCL's decisions do not create precedents.

13.2 After receiving a complaint, FSCL must:

- use its reasonable endeavours to resolve the complaint in a timely manner
- comply with the requirements of natural justice and procedural fairness, and
- regularly inform the parties of progress towards resolving the complaint.

13.3 In resolving the complaint, FSCL may:

- assist the Complainant with drafting and lodging a complaint, and
- investigate the complaint in the manner set out in these Terms of Reference and consistent with the rules of natural justice.

13.4 At any time that FSCL is considering a complaint it may seek to promote a settlement or withdrawal of the complaint by one or more of the following methods:

- negotiation
- conciliation
- deciding the complaint in accordance with the process set out in paragraph 14.

13.5 When deciding a complaint, FSCL may consult with industry and consumer advisers as FSCL thinks appropriate.

14. Recommendations and Panel Referrals

14.1 If the Complaint is not resolved by agreement and/or conciliation, the Chief Executive Officer, at the request of the Complainant or the Participant concerned, may make a recommendation for settlement or withdrawal of the complaint. Before doing so, he or she must:

- ensure that the parties to the complaint are provided with access to the documentation, information and material upon which FSCL proposes to rely in its recommendation or determination;
- first give the Complainant and the Participant 20 working days notice of his or her intention to make such recommendation;
- during the period of notice (or such longer period as the Chief Executive Officer may agree) allow the Complainant or the Participant to make further representations to the Chief Executive Officer in respect of the complaint; and
- if no agreement has been reached at the end of the period of notice make a recommendation.

14.2 A recommendation must:

- state the name of the Participant concerned in relation to the complaint
- be in writing, and
- include a summary of the reasons for making the recommendation.

14.3 If, in making a recommendation:

(a) the Chief Executive Officer is minded to :

- propose that a complaint be settled or withdrawn on terms which appear to him or her to be acceptable to both the Complainant and the Participant concerned, or
- make a recommendation for the settlement or withdrawal of the complaint, and

(b) that settlement or withdrawal would involve the provision by the Participant of any service or require an action to be taken by the provision of valuable consideration (whether in the form of a money payment or otherwise),

the recommendation must, unless the Participant has agreed otherwise, state that it is open for acceptance by the Complainant only if he or she accepts it in full and final settlement of the subject matter of the complaint.

15. Panel Referrals and Procedures

15.1 With the Chief Executive Officer's agreement, a Panel may determine complaints involving a claim of greater than \$50,000 or such other amount as nominated by the Board from time to time, and any complaint referred by the Chief Executive Officer to the Panel.

15.2 The Chief Executive Officer, when dealing with a complaint, decides what procedure to follow, subject to the following:

- the proceedings are to be as informal as possible, with a minimum of legal formality and technicality
- the Panel is not bound by the rules or practice as to evidence, but may inform itself in any manner it thinks fits, and
- the Panel must apply the rules of procedural fairness.

16. Hearings

- 16.1 A Panel may hold a hearing for the purposes of taking oral evidence or receiving oral submissions if the Chief Executive Officer is satisfied it is appropriate and necessary to do so. The conduct of any such hearing will be at the discretion of the Chief Executive Officer having regard to the provisions of paragraph 3.1.
- 16.2 In the event of such a hearing all parties are expected to attend. The Complainant may appoint a person to assist him or her. Neither party shall be allowed legal representation except at the discretion of the Chief Executive Officer.
- 16.3 If external legal representation for a Panel hearing is first requested by a Participant and allowed by the Chief Executive Officer, the Participant must pay the reasonable costs of legal representation for the Complainant. In the event of any dispute as to payment of costs, the amount of those costs will be determined by the Chief Executive Officer.

17. Decisions

- 17.1 A Panel will try to reach a decision as soon as practicable after the complaint is referred to the Panel for determination.
- 17.2 Each person on a Panel has one vote. A decision is made by a simple majority.
- 17.3 A Panel must issue reasons for its decisions in writing.
- 17.4 Panel decisions do not create binding precedents.

18. Powers of the Chief Executive Officer and Panels to order compensation or other forms of redress

- 18.1 The Chief Executive Officer and Panel may award compensation for any financial or economic loss which is a direct result of any act or omission in respect of which a complaint is upheld, and direct a refund of fees or commission, up to the amount of \$200,000. However, where the parties have agreed under paragraph 7.2 that FSCL can deal with a complaint, there shall be no maximum limit on the compensation the Chief Executive Officer and Panel can award under this provision.
- 18.2 The Chief Executive Officer and Panel may also award compensation not exceeding \$2,000 to compensate the Complainant for non-financial loss, including stress, humiliation and inconvenience suffered by him or her as a result of the acts or omissions of the Participant concerned.

18.3 The Chief Executive Officer and Panel may direct the Participant to carry out or refrain from specific actions to the extent that this is necessary to provide redress for any matter in respect of which a complaint has been upheld, including

- the forgiveness or variation of a debt
- the release of security for a debt
- the repayment, waiver or variation of a fee or other amount owing to the Participant or its representative or agent including the variation in the applicable interest rate on a loan
- the reinstatement or rectification of a the contract
- variation of the terms of the credit contract in cases of financial hardship, and
- the meeting of a claim under an insurance policy by, for example repairing, reinstating or replacing items of property.

18.4 The Chief Executive Officer and Panel cannot award:

- monetary compensation in the nature of punitive damages, or
- compensation for financial or economic loss or damage that is not a direct result of any act or omission in respect of which a complaint is upheld.

18.5 The Chief Executive Officer and Panel may decide that the Participant pay interest on a payment to be made by the Participant to the Complainant. The Chief Executive Officer and Panel will calculate interest from the date of the cause of action or matter giving rise to the claim. The Chief Executive Officer and Panel may have regard to any factors it considers relevant, including the extent to which either party's conduct contributed to delay in the resolution of the matter.

18.6 If the Panel holds a hearing at the request of the Participant, the Participant must meet the Complainant's reasonable costs of attendance, including reasonable costs for travel and accommodation.

19. Complainant's acceptance of recommendations or determinations

19.1 A Complainant must elect whether or not to accept a recommendation of the Chief Executive Officer or determination of the Panel by informing FSCL in writing within one calendar month of the date the decision is sent to the Complainant.

19.2 Where a Complainant elects to accept the recommendation of the Chief Executive Officer or determination of the Panel, the Complainant is bound by all aspects of that decision.

19.3 If a Complainant does not inform FSCL within the specified time, the Complainant shall be taken to have elected not to accept the decision.

20. Participant bound to abide by recommendations and determinations

20.1 Where the Complainant accepts the Chief Executive Officer's recommendation or Panel's determination, the Participant must implement the decision as soon as practicable after being informed the Complainant has accepted it.

21. Termination

21.1 Where a Participant or former Participant fails to meet its obligations under these Terms of Reference and/or fails to comply with the Chief Executive Officer's recommendation or Panel's determination, FSCL may take any action it considers appropriate including:

- terminating the Participant's membership; and/or
- referring the matter to the Financial Markets Authority.

22. No liability

22.1 FSCL, the Chief Executive Officer, Panel members, Board members and/or FSCL employees are not liable for any loss, damage or liability that arises from anything done or omitted to be done in the course of his or her duties, unless the person has acted in bad faith.

22.2 No FSCL decision is able to be reviewed or appealed in any form, to any other person, court, tribunal, statutory complaints authority, or other approved dispute resolution scheme or body, except as contemplated by the Act.

F. INDUSTRY PROBLEMS

23. Reporting systemic issues

23.1 The Board must ensure that FSCL has procedures in place for dealing with systemic issues.

- 23.2 A systemic issue is an issue that will have an effect on other persons beyond the parties to the complaint. FSCL must identify systemic issues and refer these to the relevant Participant for remedial action. In each case, FSCL must obtain a report from the Participant as to the remedial action undertaken and continue to monitor the matter until a resolution has been achieved that is acceptable to FSCL.
- 23.3 FSCL must report systemic issues to the relevant licensing authority.

G. COLLECTION AND SHARING OF INFORMATION BY FSCL

24. Data collection

24.1 FSCL must collect and record comprehensive information relating to its complaints resolution, for example:

- the number of complaints and enquiries
- demographics of the Complainants (where practicable)
- details of complaints which were not considered by FSCL and why
- the outcome of complaints that were resolved by FSCL
- the current caseload including the age and status of open cases
- the time taken to resolve complaints
- a profile of complaints that identifies:
 - the cause of the complaint
 - any systemic issues or trends.

25. Referrals by FSCL to other dispute resolution schemes

25.1 FSCL will ensure that FSCL staff has information, mechanisms and procedures in place:

- for referring relevant complaints to other more appropriate forums, including other approved external dispute resolution schemes, and
- to share prescribed information with other approved schemes, the Reserve Scheme and the Registrar of Financial Service Providers.

H. LEGAL PROCEEDINGS

26 Debt recovery or other proceedings

26.1 Subject to paragraph 26.2, where a Complainant lodges a complaint with FSCL, the Participant must not:

- instigate legal proceedings against the Complainant relating to any aspect of the subject matter of the complaint
- pursue legal proceedings instituted prior to the lodging of the complaint with FSCL, save to the minimum extent necessary to preserve the Participant's legal rights and, in particular, must not seek judgment in the proceedings, and
- without the Chief Executive Officer's consent, take any action to recover a debt the subject of the complaint, to protect any assets securing that debt, or to assign any right to recover that debt while FSCL is dealing with the complaint.

26.2 Notwithstanding subparagraph 26.1, with FSCL's agreement and on such terms as FSCL may require, the Participant may:

- issue proceedings where the relevant limitation period for such proceedings will shortly expire – but those proceedings may not be pursued beyond the minimum necessary to preserve the Participant's legal rights, or
- exercise any powers it might have to freeze or otherwise preserve assets the subject of the complaint.

26.3 If the complaint is subsequently decided by FSCL and becomes binding upon the Participant, the Participant will abandon any aspect of proceedings against the Complainant that are inconsistent with that decision.

26.4 Settled proceedings

Where a complaint had been lodged with FSCL and is subsequently resolved by agreement between the parties, the Participant will not instigate or continue legal proceedings to the extent that those proceedings are inconsistent with that agreement.

I. ADMINISTRATIVE RESPONSIBILITIES

27. Responsibilities and requirements

27.1 The Chief Executive Officer is responsible for:

- (a) FSCL's and the Scheme's day to day management, administration and conduct. He or she shall have power to incur expenditure on behalf of the Board in accordance with the current financial budget approved by the Board;
- (b) appointing and dismissing employees, consultants, independent contractors and agents (other than Panel members), and determining their terms of employment or engagements;
- (c) attending, in a non-voting capacity, Board meetings;
- (d) promoting FSCL and its complaints handling procedures;
- (e) reviewing these Terms of Reference and making recommendations to the Board on any amendments he or she considers are required;
- (f) preparing an annual report containing, in relation to the preceding FSCL financial year, a general review of his or her activities and FSCL's finances during that year and, at least 21 days before FSCL's annual general meeting, sending that report to each Board member;
- (g) at his or her discretion, making:
 - ad hoc confidential reports to the Board on matters coming to his or her attention concerning Participants' general compliance with FSCL, and
 - general observations about the purpose and operation of FSCL in any general forum.

27.2 The Chief Executive Officer must not exercise any power which the Constitution of FSCL expressly gives to the Chairperson, the Board or any other person.

28. Definitions

In these Terms of Reference, the following expressions have the following meanings:

<u>Act</u>	the Financial Service Providers (Registration and Disputes Resolution) Act 2008
<u>Board</u>	is the FSCL Board of Directors as defined in the <u>Constitution</u>
<u>Chief Executive Officer</u>	means a person appointed to that position by the Board under the Constitution
<u>Complainant</u>	means a person who has a Complaint that has been lodged with FSCL and who, under paragraph 4 is eligible to use the Scheme.
<u>Complaint</u>	means an expression of dissatisfaction made to a Participant related to its products or services where a response or a resolution is explicitly or implicitly expected
<u>Constitution</u>	means the Constitution of Financial Services Complaints Ltd
<u>Consumer representative</u>	means a person appointed to that position by the Board under paragraph 2.3
<u>Determination</u>	means an assessment by a Panel about a complaint in accordance with paragraph 15 of these Terms of Reference
<u>Financial limit</u>	means \$200,000 as at 1 April 2010
<u>Financial Service</u>	means any financial service provided by a financial services provider registered under the Act
<u>Financial Services Industry</u>	means the provision of all forms of services, advice or products in connection with insurances, superannuation, retirement savings accounts, funds management, financial advice, investment advice and sales of financial or investment products, investment, securities and derivatives, the provision of loans and mortgages and any other areas that the Board determines should fall within these Terms of Reference.
<u>Financial services provider</u>	means a provider of a Financial Service that is a Participant. A reference to a Financial Services Provider

includes any employee, agent or contractor of the Financial Services Provider including any person who has actual, ostensible, apparent or usual authority to act on behalf of the Financial Services Provider or authority and to act by necessity in relation to a financial service.

FSCL

Financial Services Complaints Limited

Industry problem

means a systemic fault including a consistently recurring problem, fault or defect that may be confined to a particular product, a particular company or that may be relevant to the whole or part of the Financial Services Industry, which related to a Participant's dealings with its clients.

Industry representative

means a person appointed to that position by the Board under paragraph 2.3

Jurisdictional Decision

means a decision under paragraph as to whether, under these terms of Reference, FSCL is able to consider a complaint or whether FSCL should exercise its discretion to exclude a complaint

Minister

means the Minister of Consumer Affairs

Panel

means a body whose composition is determined under paragraph 2.4

Participant

means any FSCL member in respect of which these Terms of Reference are applicable

Recommendation

means an assessment by the Chief Executive Officer about a complaint in accordance with paragraph of the Terms of Reference

Scheme

means the dispute resolution scheme operated by FSCL

Service

means the complaint resolution scheme described in these Terms of Reference

Small Business

means a business that, at the time of the act or omission by the Participant that gave rise to the Complaint is a business with less than 19 employees

Terms of Reference

means these Terms of Reference as amended from time to time in accordance with the Constitution