

Submission on discussion document: *Effective financial dispute resolution*

Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	Insurance & Financial Services Ombudsman Scheme (IFSO Scheme)
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 your survey shows low consumer awareness and accept that, generally, there is a low awareness of dispute resolution schemes (DRSs) across all sectors in New Zealand, including the financial sector.

Education and awareness are interdependent. Where financial literacy and capability are low, it is inevitable that awareness of potential issues and avenues for resolution will also be low. There can be additional capability issues which inhibit consumers from pursuing dispute resolution, or other legal avenues for a wide range of civil matters.

In certain sectors of New Zealand, there are low levels of financial literacy and, in others, low financial confidence.¹ Research by the Financial Services Council of New Zealand (FSC) has indicated that New Zealand has decreasing financial literacy.² The Retirement Commission's extensive research and reporting also indicates that the financial capability of many New Zealanders is problematic,³ with New Zealanders saying that they would rather discuss drugs, alcohol or politics, than discuss financial matters.⁴ This is particularly in certain demographics and sectors in New Zealand.

We are optimistic about educational tools such as Banqer in schools, which has dispute resolution awareness as part of the programme, and will have a positive impact on many of these issues for the future generations. An ongoing longitudinal study into young New Zealanders' personal finance journey has found improving levels of financial literacy and confidence in their ability to manage money.⁵

As a result, raising awareness of dispute resolution schemes must be done as a collective approach, coming from various avenues, including government and the financial service providers themselves. This is particularly because targeted awareness, meaning providing the information when it is most needed, should be the primary focus. Consumers need to be

¹ Kempson, E and Evans, J., 2021. New Zealand financial capability. Survey 2021. Technical report and regression tables.

² Financial resilience trends in New Zealand, Insights and Trends.

³ The National Strategy for Financial Capability.

⁴ <https://retirement.govt.nz/news/latest-news/money-week-2019-now-were-talking/>

⁵ https://www.massey.ac.nz/documents/1500/Longitudinal_Study_Stage3_August_2023.pdf

made aware of the availability of dispute resolution, at the point at which it is most relevant to them – when something goes wrong and they have a complaint.

As a result, we believe it may be appropriate for government to add additional requirements for financial service providers (FSPs) to provide information to consumers to enhance awareness of dispute resolution. This is in addition to existing disclosure requirements (e.g. CCCFA and regulation 229F of the Financial Markets Conduct Regulations 2014), together with having requirements for FSPs about consumer awareness set out in the Approved Schemes⁶ rules, e.g. the members of Utilities Disputes Limited (UDL) must include on every bill sent to consumers notice of their membership of UDL. Insurers could include notice of the IFSO Scheme on every renewal notice.

As noted, since the survey was completed, there has been an increase in complaints referred to the IFSO Scheme. Increased claims lead to increased complaints. We note that economic conditions and extreme weather events have resulted in increased media attention on financial services and disputes. The IFSO Scheme engages with the media, releasing information for consumers relevant to these events. This ensures relevant information about the dispute resolution process is being provided to those to whom it may be relevant at the time. We also regularly publish media releases about financial services, including a few recent conversations on Radio New Zealand about the new Contracts of Insurance Bill. It is unfortunate that tighter economic conditions are now impacting local media, e.g. FairGo was an effective method of providing consumer awareness, with the IFSO making regular contributions over a long period of time.

We have increased joint outreach for training and information on dispute resolution with the Approved Schemes, specifically targeting the frontline resources, like financial mentors, who are the most likely ones to deal with consumers when they have a complaint.

Access and awareness are separate concepts. Across dispute resolution schemes (DRSs), there are recognised barriers to entry. We set out our views on this in more detail in response to question 3. However, broadly, we recognise that some of these barriers can be removed or changed with increasing use of technology. Since its inception in 1995, the IFSO Scheme has seen an exponential increase in complaints. Given the majority of complaints the IFSO Scheme considers are still insurance complaints, the addition of dispute resolution

⁶ IFSO Scheme, Financial Services Complaints Limited (FSCL), Banking Ombudsman Scheme (BOS) and Financial Dispute Resolution Services (FDRS)

for credit and other financial services in 2010 is not solely responsible for the increase – there are other economic, environmental and awareness factors which have had some influence on the increase. Improvements are regularly being made by the IFSO Scheme to its operation and interaction with consumers e.g. the online complaint form.

We acknowledge and agree there is a role for consumer advocates, such as financial mentors, to support consumers to access dispute resolution services. In particular, consumers in vulnerable circumstances may benefit from an advocate who can help them make and escalate their complaint. Our experience is that, like consumers, there is also variability in the knowledge and capability of financial mentors. The IFSO Scheme and other Approved Schemes regularly engage in training for the financial mentors. However, some have a misconception of the role of the Approved Schemes and further professionalisation and support for these consumer advocates will enhance their ability to support consumers to access to dispute resolution. We note that Massey’s FinEd Centre provides excellent training for some financial mentors.

2

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

Yes. Increased media resulting from topical financial issues, such as banking scams, the Contracts of Insurance Bill and issues relating to the extreme weather events has led to increased awareness over the last 12 months. We have also increased the collaborative consumer outreach with the Approved Schemes.

3

What are the barriers for consumers in accessing financial service providers’ internal complaints processes?

Our view is founded on the extensive research and reporting from services such as FSC and the Retirement Commission, which show that financial capability is one of the largest barriers to accessing the FSPs’ internal dispute resolution (IDR).

As set out in ASIC’s report on *“The consumer journey through the Internal Dispute Resolution process of financial service providers”*, the most significant barrier to entering IDR is that *“Almost half (47%) of considerers did not make a complaint because they did not think it would make a difference”*; of the remainder, *“More than a third of considerers did not think it was worth their time (38%) or did not have enough time (22%) to make a complaint”*.

Instead, it was noted that the majority simply complained to their social circle. As a result,

“a lower overall self-perception of financial confidence may have contributed to some consumers not approaching financial service providers to initiate the IDR process”.

ASIC’s report is based on Australian data at about the time when Australia moved to a single financial dispute resolution body – AFCA (previously, FOS). As a result, even with a single financial dispute resolution process, barriers to making complaints exist irrespective of outreach made by the DRs. FMA surveys have shown similar results.⁷

Therefore, the majority of consumers do not even start to make a complaint and this strongly highlights the range of capabilities required to access DRs. This is another reason why it is so important for consumers to be able to rely on informed advice from consumer advocacy groups, like financial mentors, to take their complaints to DRs.

As a result, we reiterate that financial capability needs to be embedded in a collective approach through a range of organisations across the financial sector.

At a more granular level, to enable a “quick win”, we believe a regulatory/ statutory requirement for FSPs’ ongoing, regular disclosure of IDR processes and information about the Approved Schemes should be introduced. In addition, we suggest it could be appropriate for MBIE to review the type of training frontline staff receive across the financial sector to ensure a consistent understanding of a complaint and how frontline staff can give information and assistance to a customer to facilitate their ability to make a complaint when a problem is identified, as part of the CoFI regime.

We support increased transparency of IDR processes, given that this is where the overwhelming majority of complaint outcomes are reached. Requirements for FMA monitoring as part of its CoFI remit, together with better data reporting directly to the FMA, may be a more appropriate use of limited resourcing e.g. monitoring to ensure sufficient information about FSPs’ IDR processes is published in a prominent position on their websites.

4

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

We understand there are barriers for consumers making complaints. There is a significant body of work from researchers setting out the barriers to accessing justice processes, including consumer complaints, including the reports listed above in Q3.

⁷ <https://www.fma.govt.nz/assets/Reports/FMA-Consumer-Experience-with-the-Financial-Sector-Survey-2022.pdf>

In terms of the academic literature on why people do not complain, there are broad and varying reasons why people do not complain and (financial and legal) capability requires more than financial education, or financial literacy.

People fail to complain if they have **low levels of legal capability**,⁸ which is linked to vulnerability.⁹ **Legal capability** is “*the personal characteristics or competencies necessary ... to resolve legal problems*”¹⁰, described as knowledge (of the law, being able to identify legal issues, awareness of available services), skills (planning, management, communication) and psychological readiness to act (confidence, determination, emotional fortitude).¹¹

Psychological readiness can be affected by “*shame, a sense of insufficient power, fear, gratitude and frustrated resignation*”.¹² Deficiencies in any aspect of legal capability can limit one’s ability to resolve legal problems.¹³ Some say low legal capability is the biggest barrier to access to justice.¹⁴ Very little research has been conducted in New Zealand about why consumers do not complain to DRSs. A 2017 study of hard to reach people who did not present in a crisis, not even to advice agencies, indicated consumers were unaware there was a legal problem, what services were available and did not appreciate the relevance of services to their problem.¹⁵

⁸ Legal Services Board, 2020. Reshaping legal services to meet people’s needs: An analysis of legal capability. Available from: <https://www.legalservicesboard.org.uk/analysis-of-legal-capability>; Coumarelos, C., Macourt, D., People, J., McDonald, H., Wei, Z., Iriana, R. and Ramsey, S., 2012. *Legal Australia-wide survey: Legal need in Australia*. New South Wales: Law and Justice Foundation. Available from: <https://lawfoundation.net.au/our-research/legal-need-survey/>; Denvir, C., Balmer, N.J. and Pleasence, P., 2013. When legal rights are not a reality: do individuals know their rights and how can we tell?. *Journal of social welfare and family law*. vol. 35, no. 1, pp.139-160; McDonald, H.M. and People, J., 2014. Legal capability and inaction for legal problems: knowledge, stress and cost. *Updating Justice*. vol. 41, pp.1-11.

⁹ Coumarelos et al, 2012, above n.8.

¹⁰ Above n.9, p. 29

¹¹ Pleasence, P., Coumarelos, C., Forell, S. and McDonald, H.M., 2014. *Reshaping legal assistance services: building on the evidence base: a discussion paper*. Sydney: Law and Justice Foundation of NSW. Available from:

<http://www.lawfoundation.net.au/ljf/app/&id=D76E53BB842CB7B1CA257D7B000D5173>; Pleasence, P. and Balmer, N.J., 2019. Development of a general legal confidence scale: A first implementation of the Rasch measurement model in empirical legal studies. *Journal of Empirical Legal Studies*. vol. 16, no. 1, pp.143-174.

¹² Sandefur, R.L., 2007. The Importance of Doing Nothing: Everyday Problems and Responses of Inaction. In: P., Pleasence, A., Buck and N.J., Balmer, eds. *Transforming Lives: Law and Social Process*. United Kingdom: The Stationery Office. pp. 116-137, p.127

¹³ Above n.12.

¹⁴ Galanter, M., 1976. The duty not to deliver legal services. *University of Miami Law Review*, vol. 30, pp. 929-945.

¹⁵ MSD., 2017. *The Voices of People in Hard-To-Reach communities*. Available from: <https://www.msd.govt.nz/documents/what-we-can-do/providers/building-financial-capability/cultural-and-social-inclusion/the-voices-of-people-in-hard-to-reach-communities.pdf>

Various studies, including those of New Zealand,¹⁶ have identified low levels of legal capability in people with debt problems.¹⁷ Māori are more likely than average to report **knowing a little or nothing about their consumer rights** and Pacific people are less likely than average to be aware of consumer laws.¹⁸

To progress a complaint, one also needs **literacy, language, communication and information-processing skills**.¹⁹ In 2018 in New Zealand, more than 1.25 million adults (or one in every 4) had literacy difficulties in their everyday lives²⁰ and this does not necessarily account for the difficulties people experienced with the “*jargon-heavy financial services industry*”.²¹ Literacy levels are lower on average among Māori and Pasifika in New Zealand.²²

Vulnerability can also affect one’s skills, causing heightened stress levels, increased time pressures, one’s brain to be preoccupied, limiting the ability to manage, decreased processing power, reducing perspective and changing attitudes towards risks.²³ This can mean some consumers struggle to communicate or explain their problem and others give up.²⁴ Many studies have also shown inaction can be caused by low psychological readiness to act²⁵ and perceptions about complaining.²⁶

¹⁶ MBIE., 2018. *NZ Consumer Survey 2018*. Available from: <https://www.mbie.govt.nz/business-and-employment/consumer-protection/consumer-research-and-reports/nz-consumer-surveys/>

¹⁷ Buck et al 2007; Day, L., Collard, S. and Hay, C., 2008. *Money advice outreach evaluation: qualitative outcomes for clients*. London: LSRC. Available from: <http://www.bristol.ac.uk/medialibrary/sites/geography/migrated/documents/pfrc0813.pdf>; Coumarelos et al. 2012, above n.9.

¹⁸ MBIE., 2018, above n.16.

¹⁹ Nheu, N. and McDonald, H.M., 2010. *By the people, for the people? Community participation in law reform*. Sydney: Law and Justice Foundation of NSW. Available from: <http://www.lawfoundation.net.au/>

²⁰ Literacy Aotearoa 2020

²¹ Stock, R., 2019. Financial disputes schemes failing Maori and Pasifika. *Stuff*. New Zealand, May 12 2019. Available from: <https://www.stuff.co.nz/business/money/112528545/financial-disputes-schemes-failing-maori-and-pasifika>, p.3

²² Above n.21.

²³ Rowe, B., Holland, J., Hann, A. and Brown, T., 2014. *Vulnerability exposed: The consumer experience of vulnerability in financial services*. ESRO. Available from: <https://www.fca.org.uk/publication/research/vulnerability-exposed-research.pdf>

²⁴ Above n.23

²⁵ Above n.12

²⁶ Balmer, N.J., Buck, A., Patel, A., Denvir, C. and Pleasence, P., 2010. Knowledge, capability and the experience of rights problems. Available from: <https://lawforlife.org.uk/publications/>; Pleasence et al. 2019, above n.11; Productivity Commission, 2014. *Access to Justice Arrangements. Productivity Commission Inquiry Report Overview*. Australian Government Productivity Commission. Available from: <https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>; McDonald and People 2014, above n.8; Cornelis, M., McPherston R., Gill, C. and Creutzfeldt, N., 2019. *ESRC Just Energy Workshop*, from: <https://esrcjustenergy.files.wordpress.com/2019/04/policy-brief-esrc-just-energy-workshop.pdf>.

Research in New Zealand has produced similar findings. People fail to act due to: fear; frustrated resignation;²⁷ gratitude;²⁸ and a lack of confidence.²⁹ They also fail to act due to their perceptions: that complaining would make no difference, cost too much, damage the relationship with the other party³⁰ and take too long.³¹ However, specific to New Zealand, some also perceive the system as racist³² or culturally incompatible³³ – the services were “not for them”.³⁴ Also, consumers feel judged/ under surveillance,³⁵ they are exhausted from having to retell their story over and over³⁶ and they are also prevented from complaining due to pride.³⁷

From our experience as an Approved Scheme in the New Zealand financial DRS context, we believe one of the largest barriers is financial capability. We also note that there is a misconception by some sectors that the IFSO Scheme is a government department which can act as a barrier for some consumers who do not trust government agencies. While we understand that some consumers have found the requirement under the FSP Act to first make a complaint to the FSP to be a significant barrier, we believe this requirement is appropriate, given the number of complaints which are resolved through that IDR process. The opportunity for the FSP to resolve the complaint directly with their customer also promotes increased trust and loyalty between the two, which is beneficial for the financial services sector generally. It enables the complaint to be resolved for both parties more quickly than is possible through the Approved Schemes. Therefore, we reiterate that a whole of sector approach is required, with the FSPs themselves being a key factor in increasing consumer awareness, access and fair outcomes through their IDR processes.

²⁷ MSD., 2017, above n. 15.

²⁸ Mission, A.C., 2014. *Demonstrating the complexities of being poor: An empathy tool*. Available from: <https://www.msd.govt.nz/documents/what-we-can-do/providers/building-financial-capability/cultural-and-social-inclusion/the-voices-of-people-in-hard-to-reach-communities.pdf>

²⁹ MBIE., 2018, above n.16; Hart, D., 2019. *Banking Ombudsman Scheme Independent Review*. Available from: <https://bankomb.org.nz/about-us/independent-review-2019/>

³⁰ Above n.29

³¹ Mission 2014, above n.28.

³² Cumming, J. and Gribben, B., 2007. *Evaluation of the primary health care strategy: practice data analysis 2001 – 2005*. Wellington: Ministry of Health. Available from:

<https://www.wqtn.ac.nz/health/centres/health-services-research-centre/docs/reports/downloads/PHCSE-FINAL.pdf>;

Houkamau, C., Stevens, A., Oakes, D. and Blank, M., 2019. *Taking Control: Māori Responses to Money Management, Wealth and Saving*. Ngā Whakautu a te Māori mō Te Whakahaeretanga o Te Pūtea, Te Whairawatanga me te Penapena Pūtea.

³³ Salvation Army, 2013. *Submission to the Credit Contracts and Financial Services Law Reform Bill*. Available from: <https://www.salvationarmy.org.nz/article/submission-credit-contracts-and-financial-services-law-reform-bill>

³⁴ MSD., 2017, above n.15, p.38

³⁵ MSD., 2017, above n.15.

³⁶ Mission 2014, above n.28.

³⁷ MSD., 2017, above n.15.

5

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

We have had specific situations where consumers have English as a second language and mental health issues which can hamper access to appropriate DRS.

We have a large number of consumers who use the help of representatives, such as family members or financial mentors, to make complaints. Our processes are designed to enable representatives to support consumers. We have heard that some financial mentors find it challenging to access the IFSO Scheme. However, we note that other financial mentors have no issues. As a result, some of those issues appear to be as a result of the capability of the financial mentors, e.g. we note a recent example where a financial mentor had been asked if they would like the IFSO Scheme to contact the FSP on their behalf, or would they prefer to do it themselves. This was presented to the IFSO Scheme as a barrier to entry. We are concerned about the professionalism of financial mentors and believe that New Zealand should move to the model in Australia, where financial mentors are appropriately trained as financial counsellors and compensated, rather than working on a voluntary basis, to ensure consumers are getting more financially informed assistance.

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?

Section 52(2) of the FSP Act sets out principles (accessibility, independence, fairness, accountability, efficiency and effectiveness; collectively referred to as the principles) by which the Approved Schemes are required to operate. These principles were modelled on the Benchmarks for Industry-based Customer Dispute Resolution (the Benchmarks), published by the Australian Treasury (2015), which set out the accepted standards for industry-based dispute resolution in Australia and have been followed in New Zealand. A supplementary guide, *Key Practices for Industry-based Customer Dispute Resolution*, spells out practical ways that schemes can implement the Benchmarks. The principles are also closely similar to the relevant *Australian and New Zealand standard on complaint management: AS/NZS 10002.2014* (the Standard).

The Benchmarks provide that **Accountability** means “*the office publicly accounts for its operations by publishing its final determinations and information about complaints and reporting any systemic problems to its participating organisations, policy agencies and regulators*”, the purpose being to ensure public confidence. The key practices required to show the Benchmark of Accountability are that the scheme makes its determinations available to participants and interested bodies, uses comments from complainants and participants to inform improvement to processes and reporting, and also publishes a detailed annual report containing various data and performance indicators.

Equally, in the Benchmarks, **Effectiveness** means “*a scheme will be effective by having an appropriate and comprehensive jurisdiction and range of powers, and will periodically arrange an independent review of its performance.*” The key practices required to show the Benchmark of Effectiveness are that the scheme’s jurisdiction and powers are adequate to deal with complaints (including appropriate monetary awards), staff should be properly trained, systemic issues should be identified and referred to a regulator, a service complaint process should be available to dissatisfied complainants, IDR processes are required, participants must co-operate with the scheme and act on binding decisions, and an independent review should be undertaken at regular intervals, having regard to the Benchmarks and involving consultation.

We are pleased to confirm that we do all of the above, in accordance with the Benchmarks, and with our obligations under the FSP Act.

While MBIE has referred to “*oversight*” and “*accountability*”, the Approved Schemes are required to meet the principles in the FSP Act, with Accountability meaning what it has always been held to mean in the Benchmarks, rather than MBIE’s interpretation of what it means. We respectfully submit that it would not be appropriate for “*government to have greater influence over how [the Approved Schemes] operate*” outside of their obligations under the FSP Act, because that influence could be and could be seen to compromise their independence.

However, we understand that MBIE’s concerns seem to be more about the transparency and comparability of public reporting. The IFSO Scheme, FSCL and BOS (the 3 not-for-profit schemes) have the same level of detailed reporting in their annual reports and have robust independent public reviews every 5 years, which are published on their websites and provided to the Minister. They comply with the key practice of Effectiveness in the Benchmarks and with the principles.

We would welcome any feedback from the Minister about what additional data he would like to see in the future, noting that the Minister already has the power to request information from the Approved Schemes under the FSP Act, if he believes more information is required.

7

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

We refer to our answer to Q6, and the meaning of the Benchmark and principle of Effectiveness set out above.

We note that the Regulations aligning the Approved Schemes for a more consistent approach have yet to come into force, but our Terms of Reference clearly set out our process and jurisdiction. While we have mechanisms under the FSP Act for referring systemic issues, the government has limited the systemic issues which can be referred, as set out in s 67. We have previously indicated concerns about these limitations and would welcome a broader ability to refer systemic issues to the regulator.

The IFSO Scheme has a core senior staff of solicitors, who have a minimum of 13 years' experience, specifically in financial service dispute resolution. Most of the staff are legally trained, and/or have significant industry experience. As a result, we have one of the most experienced industry DRSs.

The IFSO Scheme has a service process to deal with service complaints about our process, which is published on our website and complaints are immediately referred to it.

The IFSO Scheme undertakes 5 yearly independent reviews in accordance with s 63(1)(q) of the FSP Act, and the IFSO Scheme Commission appoints an independent reviewer, as do all the 3 not-for-profit schemes, who has appropriate experience and expertise to conduct the review against the Benchmarks and involve stakeholder and public consultation.

As a result, we are confident that the IFSO Scheme meets the Effectiveness Benchmark and principles in the FSP Act.

In addition, we note that the FSP Act requires participants to comply with IFSO Scheme Awards which are binding decisions on participants. In 2023, for the first time in its 29 years, the IFSO Scheme had to take proceedings to enforce an Award against a non-compliant financial adviser participant on behalf of a complainant (*Insurance & Financial Services Ombudsman v Kevin Hartfield* CIV-2023-043-000288 [2024] NZDC 7142). This proceeding resulted in practical enforcement of the Award and received positive judicial comments

about the IFSO Scheme and its processes. (It is to be noted that there is a significant problem with enforcement of Awards - made by the Approved Schemes, which was introduced as s 49F(2) of the FSP Act, as amended on 1 March 2017 by s 261 of the District Court Act 2016. The Approved Scheme must apply to the District Court for an order requiring a participant to comply with a binding decision of the scheme. This adds significant time and complexity for the consumer who has received a positive decision from the scheme, significant cost for the scheme to commence a legal process in the District Court to obtain an order, and allows a non-compliant participant to continue to evade their responsibilities to their customer for the length of the legal process – sometimes 1-2 years. This delay, complexity and cost is unreasonable and was introduced into the FSP Act without consultation with the Approved Schemes. Section 42F(2) – (4) should be repealed and an Approved Scheme’s binding decision should be enforceable, without a court order, in the same way as an arbitral award is enforceable in the courts.)

8

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

The Benchmarks, on which the principles in the FSP Act are based, are industry standards across New Zealand and Australia and form the foundation of industry-based dispute resolution. Moreover, they are closely similar to the Standard. We respectfully submit that it is unreasonable and unacceptable for MBIE to set out its own criteria in the paper at paragraph 34, which do not properly align with the Benchmarks, the FSP Act principles or the Standard.

The principles of Accountability, Effectiveness and Efficiency are not correctly represented in MBIE’s criteria and, moreover, the criterion used of “*Cost efficient*” is quite wrong when it says that it is “(for government and providers, who may pass on costs to consumers)”. The whole point of the Approved Schemes is that costs should not be passed onto consumers; in accordance with s 63(1)(l) of the FSP Act, the Approved Schemes must not charge a fee to a complainant, and nor should government or providers be allowed to pass the cost of dispute resolution on to consumers.

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 support the status quo, because the new Regulations need time to come into effect so their impact can be properly assessed. The 3 not-for-profit schemes are well aligned with

the new regulations, even though they will not come into force until 18 July 2024. As MBIE started the process on the alignment over 4 years ago in January 2020, that resourcing will have been of no value, without careful consideration being given to how the changes made by the Regulations improve the dispute resolution process for consumers. However, we also support a government awareness campaign, organised and paid for by government, to increase consumer awareness of DRs generally.

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?

The IFSO Scheme fully supports option a. – increased support services. Our experience is that when services which support consumers are well funded with appropriate experience, they are able to get good outcomes. The education, upskilling and professionalism of financial mentors is essential, as capability needs improvement across the board. We note the difference between the professionalism and funding in Australia for the equivalent financial councillors, and would strongly support such a move in New Zealand. There are available training mechanisms already in place, e.g. through the FinEd centre at Massey University. While the Approved Schemes currently undertake a number of training initiatives for financial mentors, including regular joint webinars, professionalism of that sector is required to give consumers greater confidence to make a complaint.

The IFSO Scheme fully supports option b. – including creating an ongoing disclosure requirement for the FSPs' IDR processes. We believe there could be scope under CoFI licensing conditions, or as part of organisational Fair Conduct Programmes, to have enhanced complaints awareness and disclosure requirements, in addition to those already set out in legislation and regulations.

The IFSO Scheme fully supports option c. for an awareness campaign, organised and paid for by government.

The IFSO Scheme is not unsupportive of option d., but similar initiatives have failed in the past. A website for all DRs in New Zealand was available called "*Complaint line*", however it was still a challenge for consumers in terms of awareness of the website and was eventually dropped. The Approved Schemes use a warm handover approach currently, so if a consumer goes to the wrong scheme initially, it should not prevent them from reaching the correct scheme with assistance to do so. Should a practical option be found, we would

be supportive of it. As the IFSO, Karen Stevens, is the current Chair of the Australian and New Zealand Ombudsman Association (ANZOA), we are aware of similar work taking place in Australia. We suggest waiting to find out how the Australian initiative is introduced, before resourcing a new single entry system in New Zealand.

11

What are the likely costs of implementing these options?

Option a. Given most of our concerns relate to the financial capability of consumers and financial mentors, we believe government resources are best directed to option a. If financial mentors are to receive proper training and become a professional group, as they are in Australia, then they would need to receive government assistance for proper training and qualification. We believe that this should be a priority.

Option b. would have limited cost to government, if it is added to/refined in the existing review of CoFi and the Responsible Lending Code (or monitoring in the case of creditors under the Code), requiring FSPs to improve information to consumers about complaints processes. The FMA and Commerce Commission could play an important role monitoring poor FSP performance in respect of providing complaint information for their customers.

Option c. - an awareness campaign - would be funded by government, and could be costly but, on a long-term basis, also effective.

Option d. should be considered when the Australian initiative is trialled and if a practical cost-effective solution is found.

As not-for-profit schemes, the IFSO Scheme, FSCL and BOS must minimise costs for their participants to ensure costs of dispute resolution are not passed on to consumers. For that reason, we do not have resources to put the options suggested into place, without government funding. Moreover, option b. is a matter for regulation and/or for the regulator.

12

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

For the reasons set out above, we would suggest a close collaborative approach, with government funding. The 3 not-for-profit schemes do not have the resourcing to fund these options, particularly a. and c.

13

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

Increasing financial literacy and capability of consumers will certainly be effective as a long-term option. Bringing professionalism into the financial mentor sector with the appropriate training and qualifications will have the short-term effect of assisting consumers with more informed advice and, therefore, better access to and awareness of dispute resolution when it is needed.

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?

We are concerned about how several key Benchmarks, on which the FSP Act is based and which the DRSs are assessed, are represented in this paper. We are concerned about the changes in meaning of the key Benchmarks used in this paper – i.e. Effectiveness and Accountability, which have the specific meanings set out in response to question 6.

We note the 3 not-for-profit schemes have consistently demonstrated accountability, as defined in the FSP Act and Benchmarks in their reports. We agree that there could be alignment in the nature and specificity of the data in the annual reports. However, there are already mechanisms for aligning the published reports, to generate better comparison. We are open to having required reporting, and we note that ss 69 -70 of the FSP Act already allow for this.

15

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

The 3 not-for-profit schemes are performing well and demonstrating Effectiveness in accordance with the Benchmarks and the FSP Act. We note that, as part of our annual financial audit, the IFSO Scheme is now also required to provide a Statement of Service Performance which gives information on its performance to the independent auditor.

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?

There could be more consistency in how the Approved Schemes carry out independent reviews. The 3 not-for-profit schemes appoint an independent reviewer, with extensive experience and knowledge of dispute resolution/Ombudsman schemes. The 3 not-for-profit schemes require the independent reviewer to apply the Benchmarks. It would be inappropriate to have a related party carrying out the review, as this would undermine the

independence of the review. We assume that the Minister carefully considers whether the reviews meet the required standard of independence.

For that reason, we agree that it could be good practice to have more guidance about what the independent review should cover e.g. some degree of measurement against the Benchmarks.

17

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

It is unnecessary for the government to set further scheme rules, as it has already been done by the introduction of the Regulations in July 2024 and the alignment of rules took MBIE 4 years to put into place. Instead, we believe it would be a better use of resourcing to have a statutory requirement on FSPs to make sure their processes are disclosed appropriately to consumers, in the manner we have suggested above.

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?

The IFSO Scheme does not think it is “*necessary for government to make changes to ensure effective and impartial governance of the schemes*”, because the 3 not-for-profit schemes have effective and impartial governance already. Each of the 3 not-for-profit schemes have an equal number of industry and consumer representatives and an independent chair on their respective governance bodies. This is a balanced structure, giving equal weight to the key stakeholders, having regard for the need to have industry and consumer experience and knowledge at the Board table to better inform the strategic direction of the scheme and take into account all relevant interests.

The IFSO Scheme has some experience of government appointments to the Commission, because the Minister of Consumer Affairs used to be responsible for appointing the consumer Members to the IFSO Scheme Commission. Following several political appointments of individuals who had no ties to any consumer group and professed to having no knowledge about the financial sector or insurance to be able to contribute in any meaningful way, it was decided by the Commission to limit the future process to consultation on the appointment of consumer Members. During a later consultation process, the Ministry of Consumer Affairs provided a list of possible candidates for a consumer Member on the Commission. A selection process was undertaken, interviews held and the successful candidate selected from the Minister’s list. However, the then

Minister declined to appoint the candidate, saying they were not his choice and he would not appoint them. Following that very embarrassing experience, the Commission decided to select consumer Members who could operate in a way that was independent and impartial, and who could contribute to the improvement of the IFSO Scheme through their ties into various communities, bringing an understanding of what consumers wanted from a dispute resolution process.

Overall, in order to function effectively, one of the most important considerations in appointing people to governance roles is a balance of skills around the board table. Governance bodies are often the best placed to determine what balance is necessary, based on the skill set at any particular time.

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?

The IFSO Scheme is already required to report against performance measures in its Annual Report and annual financial statements, together with the annual Statement of Performance for audit purposes. In accordance with the FSP Act, all Approved Schemes must adhere to the principles in s 52(2), which are set out in the Benchmarks and which are closely aligned with the Standard. The IFSO Scheme is measured against the Benchmarks / principles in every Independent Review. We do not believe any further “*performance targets or standards*” are reasonable or necessary.

In response to footnote 7, the GCDR did not work “*collaboratively with the dispute resolution sector to develop best practice standards*” – they took elements from the Benchmarks and the Standard and created their own framework, despite the fact that the need for a different framework was questioned at the time. We understand that the GCDR, as part of MBIE, is being or is soon to be disestablished.

20

Are there any risks or unintended consequences associated with the options we are considering?

The proposals to have greater government involvement will inevitably lead to increased costs, more bureaucracy, delays, and the over complication of a dispute resolution system set up to be simple, agile and a cost-effective alternative for consumers to the courts.

21

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.

The proposals to have greater government involvement are likely to result in significant additional costs for the schemes, scheme participants and/or consumers. However, the approach the IFSO Scheme supports and has set out in this paper should minimise government spending and resourcing with both staff and funding.

22

Are there any other ways to improve schemes' accountability and effectiveness?

The proposed merger of IFSO Scheme and FSCL will mean that there is one less Approved Scheme. We believe that this will improve consumer access, as one entity will cover approximately 7,000 FSPs and receive 90% of the non-banking financial service complaints, with FDRS having about 1,700 non-bank FSPs as participants. With the merger, the collaboration between the 3 not-for-profit schemes will inevitably increase. The IFSO Scheme has a strong history of collaboration with BOS, including sharing knowledge and dealing with joint complaints. There is already collaboration between Approved Schemes, on joint outreach to consumers and consumer groups.

Other options

23

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?

The IFSO Scheme agrees 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.

If time is not given to assess the impact of the Regulations, we will not know whether they have had any meaningful impact and brought about any improvements for consumers.

Given the alignment process took MBIE 4 years to put in place, it is reasonable to presume that time is required from July 2024 when the Regulations come into effect to assess whether they have brought about the changes they were intended to make. Further changes to the Approved Schemes at this stage could be detrimental. In addition, with the proposed merger, we note that some of the issues raised could become moot, without the need for government intervention and consequent resourcing.

Are there any other areas and options for change that we should consider that have not been addressed in this discussion document?

Quarterly meetings with the Minister and the Approved Schemes would go a long way to ensure open dialogue and provide an opportunity to raise any concerns. Quarterly meetings could ensure the Minister is kept up to date with any developments in the area and hear directly from the Approved Schemes about trends in complaints and any issues likely to arise that might have an effect on consumers, or the financial sector.

Other comments

The IFSO Scheme appreciates the opportunity to be able to provide submissions on the issues raised in the discussion document.

We understand and agree with the government's objective in respect of issue 1., to improve outcomes for consumers and consumer awareness of and access to dispute resolution.

We question the proposed options in respect of issue 2., to enhance scheme effectiveness through improved oversight and accountability. We would like to know what the perceived problem is with the Approved Schemes' effectiveness. Moreover, is there any empirical evidence of a problem and, if so, what is that evidence? Has it ever been raised with the Approved Schemes and, if so, was any action taken apart from the alignment process?

Finally, we would be very concerned if changes were decided upon and there was no opportunity for consultation before a decision was made, particularly given the Regulations for the alignment of schemes do not come into effect until 18 July 2024.