INSURANCE & SAVINGS OMBUDSMAN I·S·O

ISO Scheme: Review Report

The Insurance & Savings Ombudsman Commission is pleased to release the Report of the independent Review of the Insurance and Savings Scheme.

The last Review of the Scheme was in 2003. The ISO Rules require an independent Review of the ISO Scheme at five yearly intervals. The Navigator Company was selected to conduct this year's Review. It is a Melbourne based company with extensive experience and knowledge of industry dispute resolution schemes and has had involvement in a number of scheme reviews.

The Review addressed two benchmarks in particular – Efficiency and Fairness - but also addressed a number of other matters of current interest and future interest.

The Commission takes pride in the overall finding of the Review that "... *in the ISO* [Scheme] *we found a very effective small to mid size EDR scheme, with an excellent reputation amongst the overwhelming majority of its stakeholders. We were impressed with the simplicity and efficiency of the operation, with the depth of knowledge of the industry displayed by staff and with the quality of service provided to consumers ... The Commission should be well pleased with the ISO's operational performance ...*".

The Review's recommendations and suggestions will be extremely useful in ensuring the ISO Scheme continues to deliver a high standard of service to consumers and to the industry, and conforms to international best practice for industry based dispute resolution.

Over the coming months, the Commission will be considering the recommendations in detail and working with the ISO and the ISO Board on implementation issues.

Chair
Insurance & Savings Ombudsman Commission

Independent Review

Insurance & Savings Ombudsman (New Zealand)

Phil Khoury

Debra Russell

June 2008

1. Contents

2. Introduction

2.1 The Navigator Company was selected by the Commission of the Insurance & Savings Ombudsman of New Zealand (ISO) to conduct an independent review of the operations of the scheme in November 2007 (The Review).

2.2 The review is the 3rd independent review in the ISO's 13 year history with previous reviews conducted in 1997 and 2003. The Review is intended to be quite different to previous reviews – both as a product of rule changes made in 2004 and of the current Commission's wish to target the Review to areas of particular interest.

2.3 Unlike previous reviews, this one is conducted by external consultants rather than a Committee, and the primary focus is defined by two of the six benchmarks commonly used for External Disputes Resolution (EDR) schemes in Australia and New Zealand – Fairness and Efficiency (a copy of the Industry Benchmarks is attached to this Report as Attachment D).

2.4 This narrow scope was intended to focus the Review - but not to the absolute exclusion of other aspects of the ISO operation. The approach agreed was to focus our own effort on those two benchmarks, and if significant issues outside of that scope came to our attention via our own investigations or if raised by stakeholders, then we would of course, consider them.

2.5 Preparation for the Review began in December with an opportunity for an initial briefing of the Reviewers by the Ombudsman, Karen Stevens. Background documents followed early in 2008 with Wellington and Auckland field work conducted in the second week of April.

2.6 We offer our sincere thanks to the Ombudsman and to her staff, who organised our visit efficiently, were endlessly helpful, friendly and open to all of our questions – sensible or otherwise. We are also indebted to the many stakeholders that gave generously of their time at interview and who provided written submissions and - of course - to the Commission members who also contributed greatly to our fact-finding.

Our approach

The role of Ombudsman Schemes

2.7 Because we often find that stakeholders to any review can hold quite different mental conceptions of the role and place of an ombudsman scheme, it is worth making a few introductory remarks about our view of the ombudsman scheme role. Hopefully these few words will assist the reader to both understand our approach and to interpret the Review.

2.8 We view independent EDR/ombudsman schemes as an integral component of the overall consumer protection framework of any jurisdiction. To the extent that other components of the framework (the legislative obligations on the financial service providers, regulatory agencies, the courts, etc.) take a greater or lesser role – then the ombudsman's role should vary in response. For example in environments where the costs of going to the courts are higher, we would expect to see higher financial jurisdiction limits for the industry ombudsman scheme or where regulators are less active, we would expect to see more attention to systemic issues by the industry ombudsman scheme.

2.9 Industry ombudsman schemes survive by the goodwill of their three principal constituent stakeholders - participating firms and industry bodies; consumers; and government/regulators. Without minimum levels of confidence and support from these three 'legs', the stool cannot stand - and at the next stress point will surely be replaced by some other mechanism. We therefore give considerable weight to the attitudes of each stakeholder grouping - and to the necessity for active management of the three sets of relationships to ensure the long-term success of an ombudsman scheme.

2.10 The question of what constitutes a 'level playing field' between a financial services provider and the retail or small business consumer is a 'live' consideration for every industry ombudsman scheme we have reviewed and can be the subject of much heated debate. The obligations on both parties can be formally defined in statute, in policy or in contract - but our experience of over 125 interviews with consumers that have used an ombudsman service shows that these formal definitions are - for the most part - quite irrelevant to the consumer experience.

2.11 Our view is that the industry ombudsman service - within all the constraints of the law, its rules and constitution - should be taking a practical, down-to-earth view of what it is reasonable to expect of both the consumer and of the financial services provider, given the asymmetries of their respective knowledge, sophistication and resources.

2.12 There are a range of views about the 'proper' role of the industry ombudsman. Some interpret the idea of neutrality to mean that the ombudsman service should be quite passive, dealing only with what comes through the door, taking the narrow interpretation of the facts and leaving all else alone.

2.13 Others would have the industry ombudsman take up arms on behalf of the consumer, waging a righteous crusade against evil-doing in the financial services industry whenever and wherever it may arise. Of course, neither position is correct.

2.14 Industry ombudsman services are in a unique position in the financial system. No one else has their information, no one else has their perspectives of the consumer issues prevalent in the sector, no one else understands the consumer experience as they do and no one else has their familiarity with common (and best) practice across the sector.

2.15 No other body is in as good a position to be simultaneously trusted and respected by each of the three sets of stakeholders. As old-fashioned as it may sound, that simultaneous trust and respect cannot exist unless the ombudsman service is clearly seen to be using their unique position to stand for and do what is right - within its own remit.

2.16 We think, and we think that the community expects, a modest level of proactivity - not looking for causes, but actively pursuing those issues that call for action. An industry ombudsman service is a resource of great potential value to each of the three sets of stakeholders and it would be a great waste if this resource were not put to good use for the community.

Inside the Ombudsman's Office

2.17 Investigative environments lend themselves to fairly solitary work. An investigator in an ombudsman's office can work for long periods of time in comparative isolation. Even where structured reviews of case files occur – they are often largely done in a solitary fashion by a supervisor or mentor simply reviewing the documentation. In a chicken and egg fashion, this environment can in turn attract and retain staff with a preference for working in comparative isolation.

2.18 In most ombudsman schemes we encourage processes that increase interaction between staff. We think this increases the speed at which new staff accumulate experience, spreads innovation and best practice, and encourages more consistent judgments about the scheme stance to common scenarios. In addition, a more lively, dynamic office environment will act to retain a more diverse mix of staff – and hence perspectives – an essential ingredient to long term health in complaint-handling.

Knowledge of the New Zealand environment

2.19 We were provided with excellent background briefings by the Ombudsman and her staff and our interviewees showed great patience in walking us through the relevant unique features of New Zealand's financial services environment. To the extent that we have misunderstood anything, we must take responsibility for that – it is certainly not for want of a proper briefing.

2.20 There are some obvious differences between the New Zealand scene and the one we are most familiar with in Australia. A significantly less intrusive regulatory environment, some differences in the applicable legislation and a somewhat different industry culture were noteworthy. On the whole, however, we thought that the similarities were more important than the differences.

2.21 Where we have made comparisons with other parts of the world, we have tried to point out the differences that qualify those comparisons.

Terminology

2.22 We noted early in our review, that the term "ISO" seems to be used interchangeably as referring to the scheme and as referring to the Ombudsman herself. For our own clarity, we have used "ISO" when referring to the scheme and "Ombudsman" when referring to the person.

Experience

2.23 The views of the Reviewers are informed by some eight years of consulting to EDR schemes in the financial, legal professional services and transport sectors. In that time the Reviewers have completed six Independent Reviews of financial sector EDR schemes - Australian Banking and Financial Services Ombudsman (BFSO), the Australian Insurance Brokers Disputes Ltd (IBD), the Australian Credit Union Disputes Resolution Centre (CUDRC), the Australian Credit Ombudsman Service Ltd (COSL – the mortgage industry and related financial service providers) and the Ombudsman for Banking Services and Investments (OBSI) in Canada. In addition to the New Zealand ISO, The Navigator Company is currently conducting the triennial Independent Reviews of the Australian Financial Industry Complaints Service (FICS) and the Australian Insurance Ombudsman Service (IOS).

2.24 A number of aspects relating to governance were raised in the course of the Review. It is worth noting that the principal of The Navigator Company, Phil Khoury, is also a founding principal of Cameron Ralph Pty Ltd, one of the leading governance advisory firms in Australia. In that role he has some 5 years of governance advisory experience to listed companies and not-for-profit organisations, including providing governance design advice and board performance advice to Australian EDR schemes Energy and Water Ombudsman of NSW (EWON), FICS, and to the Financial Ombudsman Service (FOS) – the new organisation that will merge the operations of FICS, IOS and the BFSO.

3. Executive Summary

3.1 In the ISO, we found a very effective small to mid-size EDR scheme, with an excellent reputation amongst the overwhelming majority of its stakeholders. We were impressed with the simplicity and efficiency of the operation, with the depth of knowledge of the industry displayed by staff and with the quality of service provided to consumers.

3.2 The ISO is clearly meeting its own standards and, with one exception and one area of concern (see below), those expected by the Industry Benchmarks for Fairness and Efficiency. The Commission should be well pleased with the ISO's operational performance.

3.3 In considering areas which might be improved, we were influenced by the likelihood that the New Zealand Government's imminent financial sector regulatory reforms will bring about change for the ISO. With this in mind, we have recommended stronger solutions tailored to suit the future. Such robust solutions might not have been strictly necessary if the current operating environment were not facing imminent change.

3.4 The recommendations for improvement that we have made can be summarised under the following four headings.

Strengthening systems and processes

3.5 We found that the ISO's operation could be generally strengthened by a greater level of systematisation and documentation of procedures and processes. We have made a number of detailed recommendations to this end.

Fairness and transparency

3.6 We found that the ISO could make some greater use of the decision-making flexibility afforded it by its Terms of Reference; and while retaining its consideration of the law and the terms of contracts and policies, that it should give more emphasis to the overarching decision criteria of "Fair and Reasonable" in its Assessments.

3.7 We have recommended that in a few places, some greater transparency through sharing of information received from the parties may assist with natural justice and the parties' acceptance of the final outcome.

3.8 We encountered a number of quite significant and difficult issues that were raised by stakeholders, but which fell outside the scope of the Review. As per our agreement with the ISO Commission, we have considered and responded to the main 'other' issues, to the extent that we were able. There were some limits to this investigation which are discussed in the body of the Report. The issues fall under the following two themes.

Updating jurisdiction

3.9 We concluded that there are grounds for an increase in the monetary jurisdiction limits for the value of complaints that ISO deals with. We recommend a mechanism for regular adjustment of these amounts in the future.

3.10 We concluded that an increase in the size of the small businesses that are able to access the ISO is justified, and recommend that the ISO conduct some more in-depth research to ascertain how best to serve consumers in the small business sector.

Structure and governance for the future

3.11 We found a case for reform of the ISO's legal and voting structures and its governance framework. However, we have not made specific recommendations on a new configuration beyond suggesting that a company structure and a unitary Board are more likely to serve the organisation better into the future. This is because:

a) the nature of the subject demands more in-depth investigation than we were able to complete;

b) changes to structure and governance should be developed with stakeholders – not designed from a distance; and

c) the imminent changes as a result of the government's financial sector reforms are likely to be the key drivers of this change.

Exceptions

3.12 While we understand that the regulatory environment is very different in New Zealand, and we understand that the ISO does proactively raise systemic issues, we note that the ISO does not meet that aspect of the Efficiency Benchmark (also in the Effectiveness Benchmark) which requires that the scheme have the authority to investigate systemic issues and refer them for resolution by participating firms.

3.13 We also had a concern about whether the ISO fully meets that part of the Efficiency Benchmark that requires periodic Independent Reviews, given the high number of recommendations from previous Reviews that have been supported by the Commission and not been accepted by the Board.

4. The Review Process

4.1 The Review methodology consisted of the following steps:

a) A face-to-face initial briefing with the Ombudsman;

b) A desk-based review of a range of ISO documents including publicity material, Terms of Reference, Rules, Annual Reports, statistics, procedural guidance, previous reviews, the most recent Casebook and so on;

c) Preparing a representative sample of ISO case files to use as a basis for our analysis and interviews;

d) Briefings and interviews with the Ombudsman and ISO staff once in New Zealand;

e) Review of the case management system and standard template documents;

f) In-person and telephone interviews with representatives of participating firms, industry associations, regulators, Commission members, other ombudsman schemes and consumer representatives;

g) Review of 6 written submissions;

h) Detailed case file reviews;

i) Telephone interviews with clients after review of their case file (a total of 26 clients were ultimately spoken with and over 30 files examined in detail);

j) Reviewing a range of ISO material provided in response to queries and issues raised; and

k) Analysis of statistics and case management system reports.

5. Fairness

The Review Scope specifically directed the Reviewers to assess:

WHETHER THE ISO SCHEME:

- Produces decisions which are in keeping with the Terms of Reference
- Observes the principles of procedural fairness
- Has specific criteria upon which it bases its decisions
- Is consistent in how it deals with Complainants and Participants
- Adheres to the confidentiality provisions set out in the Terms of Reference

The Review is also to be carried out within the wider context of the Benchmarks for Industry-Based Customer Dispute Resolution Schemes (see Attachment D).

The Benchmark definition of Fairness goes into greater detail as to what features go to make up the decision-making basis, procedural fairness in the context of an EDR scheme, the provision of information to the Ombudsman and the obligations of confidentiality.

5.1 This Benchmark is often the most difficult to assess and brings to the fore differences in expectations on the part of participating firms and complainants. Whilst we were satisfied that the ISO meets this Benchmark, we considered that there was some scope for ISO to fine tune its processes and its settings in the interests of enhancing the fairness of outcomes.

Strength of procedures

5.2 Fairness dictates that procedures are clear and adhered to well, to minimise staff differences in approach and outcomes.

5.3 At ISO, the Enquiries Adviser has a procedures manual that provides guidance. The case managers have a comprehensive bank of template letters and precedent paragraphs that assist in their consistency of approach. New case managers work closely with an experienced case manager (one of the two Team Leaders) to induct the new person into the way in which complaints are handled. Consistency and adherence to procedures are also assisted by the Ombudsman's personal reviews before an Assessment is finalised.

5.4 There is, however, no procedures manual that details complaint investigation and resolution procedures. This is a gap that is likely to become more significant if the Office increases in size, for example, as a result of an expansion in jurisdiction following the enactment of the Financial Services Providers (Registration and Dispute Resolution) Bill. It is also quite possible that documented procedures will be something that the Minister will expect to see as part of an application for Ministerial approval of the scheme. But, even in today's environment, we think that a procedures manual is important. Our review identified some procedural inconsistencies that may be partly attributable to the lack of documented procedural guidance – these are discussed in the commentary below.

RECOMMENDATION 1.

ISO should bring together the various current guides and instructions to create an integrated procedures manual for case managers on the investigation and resolution of complaints.

Confidentiality

5.5 ISO's Terms of Reference specify that ISO's process is "without prejudice" and confidentiality must be maintained by both parties to the dispute - the complainant is required to confirm acceptance of this before ISO can commence investigation.

5.6 We found well-established procedures supporting this requirement. A standard form letter is used to explain to the complainant the requirement to maintain confidentiality. This letter is clear and it would appear from our interviews with complainants that the confidentiality requirement is well understood by complainants.

Natural justice

5.7 It has long been the practice at the ISO for the complainant's letter to be provided to the participating firm after the requisite consent has been obtained from the complainant. The participating firm then provides a written response to the complaint. Under previous procedures, this response would not normally be provided to the complainant. A decision was taken by ISO in May 2007 that, in the interests of providing the complainant with natural justice, the complainant would be provided with a copy of the participating firm's submission and that the participating firm would be advised of this in the standard letter requesting a complainant's file.

5.8 A further change made after July 2007 was that material provided later in the complaints process (for example, an expert's report) would also be subject to 'natural justice' exchange of information to the other party. ISO began to warn both parties that the ISO's decision-making may not take into account an expert's report or other such material if it was provided without permission to share with the other party.

5.9 We understand that the ISO policy allows for some use of judgement in deciding when additional information should be shared. This is on the basis that at some point the exchange of material can become unproductive and unnecessarily prolong resolution of the matter. There can also be expert reports that may be essential to the determination of the matter, but contain some peripheral material of a sensitive or inflammatory nature.

5.10 These policies are not set out in a formal procedure but are consistent with our discussions with case managers. We understand that standard correspondence templates provide guidance to staff and explain this to the parties to the dispute.

5.11 Clearly this exchange of information and argument is very important to an EDR scheme. The complainant must have access to the participating firm's submissions, or they are denied the opportunity of adding relevant information or argument to the original complaint. Later in the process, an expert report provided by one party but not shared with the other party, raises the possibility that relevant errors in the assumptions or reasoning will go unchallenged. Finally, insufficient transparency can reduce the confidence that both parties have in the EDR scheme's process and the outcome.

5.12 Through our review of ISO files, we tested whether these natural justice processes were working. For all reviewed files where the participating firm's submission was requested after May 2007, there was evidence that the participating firm's response had been provided to the complainant. We did see 2 files from within the post-July 2007 period where there was subsequent significant correspondence with the participating firm that was not provided to the complainant. Judging by the dates of these files, this may simply have been a delay in fully implementing the revised approach. In both cases, the correspondence led to a full settlement – a good outcome for the complainant.

5.13 We think that there would be advantage in strengthening the consistency of the processes that are meant to deliver natural justice. We think that this would also provide some protection for the ISO in the case of any future judicial review.

RECOMMENDATION 2.

The ISO should detail its natural justice practices in a procedures manual and in training for new case managers.

The manual and training should set out the default policy that substantive correspondence or material from one party to the dispute should only be taken into account by the ISO if it can be provided to the other party.

The policy should include guidance on the limited circumstances where there may be exceptions to the policy.

Conciliation

5.14 The ISO's Terms of Reference provide that at any time a complaint is under consideration, the ISO may resolve the complaint by agreement between the complainant and the participating firm.

5.15 Consistent with this, the ISO looks for matters – particularly those where a small amount of money is involved – that may be able to be quickly settled by agreement between the parties before an ISO investigation is commenced. We were satisfied that this process works well.

5.16 In 2007, the ISO introduced a formal conciliation process to operate in appropriate cases as an alternative to the investigation and Assessment process. This broadening of approach was consistent with the 2003 Review recommendation that ISO explore other forms of dispute resolution. To date, formal conciliation has only occurred twice, but to good effect in both cases (as we saw from our review of those files). We would expect, however, that there will continue to be only a small number of matters subject to formal conciliation. This is because the approach can be resource intensive for the ISO and so needs to be reserved for cases where it is most likely to yield benefits that cannot be achieved through the normal investigation and Assessment approach.

5.17 This expansion of the ways in which the ISO can deal with the disputes that are brought before it is sensible and has been implemented with an appropriate level of caution.

Quality of investigation

5.18 We found that case managers generally undertake a thorough investigation of the matters in issue. For example, in a dispute where it was important to establish what communication had occurred between the participating firm and the complainant, the case manager had looked at the participating firm's communication logs (sent and returned mail and telephone logs), obtained evidence on how the Post Office handled misdirected mail, etc. For the most part, interviewed complainants appeared satisfied that case managers had sufficiently looked into their complaint.

5.19 In most cases we saw a diligent, enquiring approach taken, seeking out reasonably available advice or opinion. In our file review, we did, however, identify some variability in the extent to which case managers pursued issues that involved technical expertise. For example, in some general insurance weather damage cases, a builder was asked to provide an opinion (by way of a check) on the loss assessor's view, yet in other cases there appeared to be unquestioning acceptance of the loss assessor's view. It was not apparent to us from reading the file why one matter warranted a fresh opinion and the other did not.

5.20 We think that it would strengthen consistency of approach and outcomes if there were a more robust process to determine for which matters fresh technical advice should be obtained. This process and guidance should link to our observations in the section below "Onus of Proof".

RECOMMENDATION 3.

That ISO should develop and document guidance for case managers on the types of matters and circumstances in which fresh technical advice should be sought eg. from a builder (in the case of a home insurance claim) or an equipment specialist (in the case of an accidental damage claim).

The ISO should also develop a collaborative internal review process for complaints which turn on technical issues, which apply the guidance to determine whether the advice of a fresh technical expert should be sought.

Prudent underwriter opinion

5.21 Where issues of non-disclosure arise, ISO's practice is to approach 2 or 3 underwriters for a view on whether disclosure would have changed the price or terms on which the insurance was provided – ISO has a panel of insurers that it uses for the purpose of these "prudent underwriter" opinions.

5.22 Whilst this process is a necessary step in the resolution of non-disclosure matters, we think that great care needs to be used. For example, it is important that the underwriters are only provided with the information they need to know in order to provide the opinion and extraneous "colouring" information is not provided. It is also important that the case manager ensures that he or she fully understands the opinion that has been provided, including any qualifications on that opinion. Given that underwriters frequently put their views in brief and quickly composed emails, it may be necessary to discuss the opinion by telephone.

5.23 There is also the issue of transparency around the "prudent underwriter" process. One industry submission suggested that both the complainant and the participating firm should be provided with a copy of the instructions given to the underwriters and of the opinions provided, both with the names of the underwriters removed. Having reviewed a number of files where the "prudent underwriter" process was employed, we are concerned about the practicalities of doing this – the formality of the "prudent underwriter" process would inevitably increase and with this the burden on the panel of underwriters who provide these opinions. We can imagine that in a small market, lobbying of underwriters could occur. There would also be an increase in the to-ing and fro-ing between the ISO and the parties to the dispute if the instructions to the underwriters were first provided to the complainant and the participating firm. All of the above would also likely result in rather more reluctance from underwriters to provide their expertise. We are not convinced that the benefits of extending the process in this way would justify the increased time that would be incurred.

5.24 It is, however, most important that great care is taken with the "prudent underwriter" process. We saw a couple of cases where we felt that either instructions to underwriters could have been more carefully framed or more dialogue may have been needed with an underwriter to understand the opinion being provided – here we are conscious that underwriters frequently put their views in brief and quickly composed emails. Lastly the underwriters' views must always be fairly reflected in the Assessment – quoting should not be selective. We saw a number of cases where quoting was from the underwriter who expressed the strongest opinion. To ensure that the prudent underwriter process always operates fairly - particularly if, as we have recommended, the process is not opened to the scrutiny of the parties to the dispute - we think that there is a need for strengthening the practices associated with this process.

RECOMMENDATION 4.

The ISO should develop and document guidance for case managers on the "prudent underwriter" opinion process. The process should include some collaborative or supervision processes within the ISO to ensure that requests for an opinion are consistently framed and responses received from underwriters are accurately reflected in Assessments.

Oral assertions

5.25 The ISO's practice is to make findings on documentary matters and not to make findings on oral assertions. This is because the ISO (like other external complaints handling schemes) does not take sworn evidence and so feels that credibility issues cannot be properly tested.

5.26 We recognise the difficulties that arise particularly where the participating firm and the complainant present conflicting accounts of what occurred. We saw cases where case managers went to some lengths to seek out information that might verify or discount assertions about what occurred. But we saw other cases where we felt that the fairness of the process and the outcome was arguably diminished by the ISO limiting its purview to the documents.

5.27 We think that this is an area where the ISO could usefully review what other approaches may be possible. Discussion with other schemes would be worthwhile – our experience of Australian schemes is that they also struggle with this issue but generally have become more willing to make "balance of probability" findings with oral assertions. They sometimes even adopt a default position that if there is nothing to suggest that a complainant is not telling the truth, the complainant should be believed. Another approach we have seen taken is to split the amount in dispute 50/50 where it is simply not possible to decide between the account presented by the participating firm and the complainant.

RECOMMENDATION 5.

The ISO should undertake a study of how schemes in other jurisdictions deal with oral assertions by the parties to a dispute. The study should deliver guidelines for case managers on possible approaches to taking oral assertions into account in dispute resolution.

Onus of proof

5.28 Our file review encompassed a number of complaints that centred on the proper scope of an insurance policy exclusion. As we understand the law, where the complainant establishes a *prima facie* claim, if the participating firm wishes to rely on an exclusion to decline the claim, the onus is on the participating firm to establish that the exclusion applies. Most Assessments were in fact expressed in these terms. But there were one or two Assessments that we saw that did not seem to reflect this principle fully. They seemed to accord the complainant the responsibility of establishing the inapplicability of the policy exclusion.

5.29 This is a common problem with disputes over insurance claims. The nature of the facts of most insurance claims disputes means that once the insurer makes its case for an exclusion – the consumer is of course asked to respond and it is very easy for the consumer to conclude that the onus has fallen to them to provide contra evidence. This is particularly so, where the insurer's evidence in support of the application of the exclusion is weak or expressed as balance of probability. It is important in these cases, that great care is taken by the ISO in the expression of the request to the consumer for any further evidence and in any subsequent articulation of reasons for accepting the insurer's view.

5.30 In our experience, the sense that the onus of proof is being unfairly placed is very sensitive with complainants and they often arrive at EDR already feeling as if the participating firm has unfairly put the onus on them. It is equally important the participating firms see a consistency of approach to this important issue. We accept that striking the right balance here is not always straightforward, however because of its sensitivity, it is an area that should attract some focus from EDR schemes.

RECOMMENDATION 6.

That the procedures manual for case managers provide comprehensive guidance on onus of proof issues and that template letters and staff training should be reviewed to match that guidance.

Criteria for decision making

5.31 The ISO's Terms of Reference provide that the ISO shall make decisions with reference to what is, in his or her opinion, fair and reasonable in the circumstances. In determining this, the ISO is to have regard to a range of specified factors. These include the complainant's circumstances, the dealings between complainant and participating firm and other matters the ISO considers relevant. The Terms of Reference provide that the ISO shall also have regard to any applicable rule of law, the rules of natural justice, general principles of good Insurance and Savings practice and any relevant Codes. This expression of the criteria for decision-making is highly consistent with other EDR schemes in the financial sector, save only that it is split into two paragraphs in the Terms of Reference (5.7 and 5.8). We do not think that this is a problem although it could arguably be less clear as to the hierarchy of importance.

5.32 By way of setting the context, insurance related complaints are perhaps the most 'technical' complaints that we come across in the financial sector and so there are some dangers to comparisons with the decisions of EDR schemes that deal with other types of complaints (eg. banking or savings). Although 'the law' is often cited as the key consideration, in fact most insurance claims disputes generally turn on contract issues – ie. the terms of the policy. In some cases there is precedent case law to assist the EDR scheme to interpret a set of circumstances, but often not. To the ordinary consumer, this tends to give many disputes a quite technical flavour and many complainants we interviewed described the process and decisions as 'legalistic'.

5.33 For the most part, the criteria for decision making were not directly criticised by ISO's stakeholders. However, we received one participating firm submission that the "fair and reasonable" criterion should not take precedence over compliance with the law. The concern was with the subjectivity of a fair and reasonable test. The submission also referred to the difficulties of dealing equitably with similar future claims where there are inconsistencies between an ISO decision and a strict interpretation of the law. In interviews, a few other participating firms expressed a strong view that the ISO should stick to the 'hard' aspects of any complaint – being the law and the policy wording and expressed their view that the ISO should stay away from notions of fair and reasonable or good industry practice.

5.34 We were concerned over this attitude from stakeholders. In our view, the Terms of Reference rightly give precedence to the overarching principle of what is fair and reasonable. To do so is consistent with the Benchmarks and with the principles adopted by complaints handling schemes all over the world. Moreover, this is an essential aspect of the ISO's identity as an alternative dispute resolution forum – the scheme is different, and should be different, from a court of law.

5.35 We are also supportive of the Terms of Reference enunciation of the factors that the ISO is to take into account in making decisions. Again, this is consistent with the Benchmarks – it also provides an appropriate level of guidance for the ISO without overly prescribing or legalising the decision making framework. We also make the point that 'fair and reasonable' should not be seen as an *alternative* to application of the law or the policy terms. If the law or the policy clearly indicates that the insured does not have a claim, then that is an entirely 'fair and reasonable' outcome. If the Ombudsman determines that in the circumstances a narrow technical interpretation of the policy is not the right basis for determining a dispute, then that is also 'fair and reasonable'.

5.36 The next question then is whether the Terms of Reference are being appropriately applied. Our first observation as to this is that we thought that the outcomes of the complaints we saw were overwhelmingly fair. Also we saw files that clearly showed that the ISO is taking into account all the criteria for decision-making. But there are two aspects of the decision-making that we would comment on – both of which are by way of suggested fine tuning, rather than any great change.

5.37 Our review of Assessments found a preference for reliance on an interpretation of the contract in the analysis and decision-making of a matter and even where demonstrably taking into account what is fair and reasonable, something of a reluctance to use the language of "fair and reasonable" in Assessments or Recommendations. Where we saw the ISO express a decision in terms of 'fairness' it was usually expressed as a subsidiary consideration.

5.38 We did not see that this produced any bias in outcomes to either side of the disputes. We saw one decision where a strict insistence upon the insurance policy wording seemed to us to penalise the participating firm for flexibility it had offered the complainant. Other decisions in our view achieved a fair outcome, but we thought that the decisions' credibility arguably suffered from reliance on an overly semantic dissection of the wording of the policy.

5.39 We think that it would be more consistent with the Terms of Reference and an important communication to participating members, if some greater emphasis were given to the overarching consideration of what is 'fair and reasonable' in the decision-making analysis and its articulation in Assessments.

5.40 We do not mean by this that the ISO should be ignoring the law, or be in the business of 'rewriting' the terms of the contract, or imposing uniform practices on industry, nor systematically implementing some kind of bias to the consumer. For those who suggested that the ISO might be tending to this – we found no evidence in any of the files we reviewed. We simply think that a more rigorous application and expression of all of the Decision Criteria in the Terms of Reference would produce a useful improvement in the quality and consistency of decisions – and in the messages sent to stakeholders.

5.41 We would not expect that this fine tuning would significantly change the percentage of decisions found to be in favour of the complainant. To the extent, however, that it may increase slightly the percentage of complaints where a finding is made for the complainant, we think that this would not render the ISO at odds with schemes in other jurisdictions. (See Attachment A Comparisons for a (cautious) comparison of the statistical results of the ISO and schemes in other jurisdictions.)

5.42 As a final consideration, with the prospect of a new regulatory environment that opens the possibility of the scheme having a broader jurisdiction, we think that a fresh look at this philosophical view is appropriate. We do not wish to provoke an unproductive debate over the drafting of the terms of reference, however should the future evolution of the scheme dictate a re-drafting of the Terms of Reference, there may be value in a simplified expression of the criteria for decision-making.

RECOMMENDATION 7.

That, the ISO's decision making should be expressed, consistent with the Terms of Reference, primarily in terms of what is fair and reasonable – with the terms of the insurance policy being a key area of focus.

Guidance should be developed for case managers to assist them to articulate clearly and consistently the concept of what is fair and reasonable.

Reasons for decision

5.43 Subject to the couple of points mentioned earlier, we were impressed by the quality of ISO Assessments. Consistency is enhanced by these taking a standard form. Usefully they include a chronological explanation of what occurred – this chronology incorporates the contentions of the parties. A description is also provided of ISO's investigative steps and what ISO found. Whilst a couple of participating firms expressed the view that Assessments are overly wordy, almost all feedback provided to us about Assessments was very positive. Our in-depth interviews with 26 complainants provided an opportunity to test whether the complainant had understood their Assessment and we were satisfied that there was a high rate of understanding.

5.44 We were also impressed with the procedures to communicate the reasons for decision and to give the disappointed party (or, in the case of a decision partly in favour of the complainant, both parties) a chance to review and respond to the Assessment.

5.45 Although this exchange procedure adds a few weeks to the end of the complaint process, we felt that the value-add was well worth the additional time. It is an important aspect of natural justice and we found instances where there was appropriate amendment of the Assessment as a result of views expressed. Where a decision is in favour of the complainant, the process did not seem in any way constrained by the fact that the complainant is told the Assessment outcome in advance of the ISO receiving the participating firm's comments on the Assessment.

5.46 For complainants, the communication is by phone in advance of the letter. This personal touch was much appreciated by complainants and clearly aids their acceptance of the decision and their understanding of the reasons for decision. As we have mentioned elsewhere, we found the use of the telephone by ISO staff to be first-rate and a key factor in complainants' generally positive views about the service.

Ombudsman Recommendations

5.47 The ISO's Terms of Reference provide that the ISO will review an Assessment and make a Recommendation if either party requests and the ISO believes that there is relevant new evidence or proper grounds for doing so or the ISO believes that a Recommendation should be made. Reasonable opportunity must first be afforded to the parties to make further submissions.

5.48 The availability of a review procedure is an important aspect of fairness – the grounds for a review were not criticised in any submission made to us. Criticism was, however, made by one participating firm that the ISO's construction of the Terms of Reference is overly restrictive and that there is an unpreparedness to make a Recommendation where one of the parties believes that an error of reasoning has been made. We also understand that there has been some tension recently with one participating firm over this issue.

5.49 We reviewed two lever arch folders containing Recommendations and saw the declining number of Recommendations made – last year there were just 5 Recommendations. We found a couple of instances in which Recommendations reversed the decision in the Assessment but, as the participating firm submission pointed out, reversals are rare occurrences.

5.50 Through our review of complaints files, we were also provided with a couple of examples where the ISO declined to make a Recommendation on the basis that there was no new evidence or proper grounds to overturn the decision. In these cases, although a Recommendation was not made, a detailed letter was provided by the ISO to the party requesting the Recommendation explaining why this view was formed. We did not find any instance where we could fault the reasoning in the letter.

5.51 Our conclusion is that the Recommendation procedure in the Terms of Reference is being implemented fairly and appropriately. Our work suggested that the low rates of Recommendations and reversals are testimony to many of the strengths of the scheme. The investigation process generally brings to the fore the relevant evidence and provides the parties with sufficient opportunity to put their case. Because there is senior input within the ISO's office into the process of reviewing draft Assessments and an opportunity for the disappointed party to review the Assessment, decision making is soundly based. We support the current approach of bringing matters to finality as promptly as possible – a timely "no" is much better than a "no" delivered after much waiting and to-ing and fro-ing between all concerned.

Remedies

5.52 The ISO's Terms of Reference only permit the ISO to stipulate the payment to be made to a complainant after a Recommendation has been made and accepted by the complainant but not by the participating firm – at the earlier Assessment and Recommendation stage the focus is on simply deciding whether or not the Complainant's complaint has been upheld.

5.53 Where a payment is stipulated – referred to in the Terms of Reference as an Award – the ISO is able to order the compensation of the complainant in accordance with the relevant insurance policy or other product entitlement or the complainant's direct loss. The ISO is also able to require the participating firm to pay an amount not exceeding $1,000 for any incidental expenses incurred by the Complainant in pursuing the complaint.

5.54 As noted in the 2003 Review Report, the ISO does not in practice make Awards because participating firms accept ISO decisions – usually at the Assessment stage but if not, at the Recommendation stage. Clearly this is a good result in all respects save that it prevents the ISO from awarding compensation for incidental expenses.

5.55 We agree with the 2003 Review Report that where the ISO finds fully or partly for a complainant – whether at the Assessment, Recommendation or Award stage - the ISO should have a discretion to make minor awards for incidental expenses. This is not something that we would expect ISO to exercise frequently – the discretion should only be exercised in cases where special inconvenience and extra expense has been incurred. For the present, we think the current Terms of Reference limit of $1,000 may be adequate (although we understand that the Banking Ombudsman for example has no limit on jurisdiction to make incidental payments and the power to make awards for inconvenience of up to $6,000).

RECOMMENDATION 8.

The Terms of Reference should be amended to give the ISO power to provide compensation of up to $1,000 for incidental expenses where it makes an Assessment or Recommendation (not just an Award) partly or wholly in favour of a complainant.

Other avenues open to complainants

5.56 An essential aspect of fairness is that the parties understand what other options they have if they are dissatisfied with the scheme's resolution of their complaint. Accordingly the Benchmarks stipulate that the scheme's staff should advise complainants "of their right to access the legal system or other redress mechanisms at any stage if they are dissatisfied with any of the scheme's decisions or with the decision-maker's determination".

5.57 Consistent with this, ISO case managers told us that they do generally inform complainants about the Disputes Tribunal and other *fora* that might be able to assist them where their complaint has not been upheld by the ISO. This information does appear in ISO's template documents for complaints that are out of jurisdiction; however it is not a standard element in the template for an Assessment where the complaint is not upheld nor the standard form of the letter subsequently sent to a complainant who has not elected to seek an Ombudsman's Recommendation.

5.58 We understand that there is a view from some participating firms, that the ISO ought not be 'encouraging' complainants to take further action if there complaint is not upheld. We understand that perspective, but we do not think that an independent Ombudsman can afford to be seen to be anything but absolutely transparent about their advice to consumers. To reinforce oral advice (and to guard against the risk that oral advice about alternative *fora* is inadvertently not provided), we think that the Assessment and subsequent letters to a disappointed complainant should set out this information.

RECOMMENDATION 9.

Where the ISO does not find fully for a complainant, the Assessment and subsequent letters should set out the complainant's rights to access the Disputes Tribunal and the Courts.

6. Efficiency

The Review Scope specifically directed the Reviewers to assess:

WHETHER THE ISO SCHEME OPERATES EFFICIENTLY BY:

- Managing its caseload
- Resolving complaints in a timely manner
- Tracking complaints to ensure that they are dealt with in an appropriate manner
- Regularly independently reviewing its processes
- Seeking feedback from its stakeholders

The Review is also to be carried out within the wider context of the Benchmarks for Industry-Based Customer Dispute Resolution Schemes (see Attachment D).

That definition of Efficiency is somewhat broader, notably including the concept of *Appropriate Process or Forum*. That section of the Benchmarks aims to ensure that the scheme does not inefficiently attempt to perform complaints handling work that should be done by the member firms internal disputes resolution processes; by other more appropriate external fora; by member firms as a systemic problem; or should be excluded as vexatious or frivolous.

6.1 The very first observation we must make in regard to Efficiency is that by comparison with many of the EDR schemes that we have reviewed, the ISO complaints process is remarkably straightforward and speedy. There is a practical minimum of procedural paperwork and little of the bureaucratic to-ing and fro-ing that can characterise the processes of other schemes we have seen. We were impressed to see that the ISO has managed to achieve this efficiency whilst fulfilling (subject to the matters discussed in the Fairness section) its natural justice obligations – generally striking an appropriate balance between timeliness and thorough process. Our detailed observations to follow should be read in this context.

6.2 The ISO is clearly meeting the standard specified in the Scope of the Review – as specified in the first part of the definition above. It is also meeting the standards specified in the Benchmarks – with the notable exception of an authority to deal with Systemic Issues (see section below).

Managing its caseload

6.3 The scheme has a satisfactory system for managing its caseload. Like most EDR schemes, complaints that have been initially checked for jurisdiction and identified for investigation are moved to a pre-allocation 'pool'. Case managers draw their work from this pool and are able to manage their individual caseload (numbers of concurrent investigations) to match their availability, the difficulty of the matters and to suit their preferred working style. Our observation was that case managers were maintaining sensible, manageable case loads. We were told that these could vary from a few more complex matters up to perhaps 15 cases at a time.

6.4 The nature of the workflow in most EDR scheme complaints resolution is that most case files will spend a significant proportion of the time that they are active awaiting external input (from participating firms, complainants or experts) or some input from other internal staff (team leaders or the Ombudsman). For efficiency's sake, case managers in any EDR scheme will be holding a number of files at any given time – enabling them to turn to the next matter(s) while waiting. Our observation of many schemes has been that although this number of cases on hand can vary (for the reasons above), once it grows beyond a certain number inefficiency rapidly increases, with time wasted by the case manager keeping on top of the facts of too many matters and in 'pile management'. Errors creep in and customer service suffers.

6.5 Team leaders and the Ombudsman receive a regular progress report for matters on hand and are able to monitor progress and take remedial action if required. From our observation, the overall cases on hand figures and the consistency of performance against timeliness targets indicates that the system of managing caseload has worked well.

Timeliness

6.6 As we noted in our opening remarks, we found the ISO's overall timeframes to be amongst the better ones we have seen and their overall performance compares favourably with similar complaint types in other jurisdictions. Within that overall praise of course, there remains the questions of consistency and whether all is being done to maximise turnaround performance.

6.7 We note also that small offices are more sensitive to staffing levels, with gaps caused by resignations having a considerable effect. ISO has restored its staffing levels in the last year after a period of shortage that was noticed by participating firms. The complaint resolution times for the nine months to March 2008 show a considerable improvement over the times for the previous financial year. Currently, some 70% of complaints are resolved in under 90 days and 84% within 120 days.

6.8 We were surprised to find that a small number of the submissions received from industry were critical of the ISO timeframes for resolving complaints. This may reflect experience from an earlier time, but it serves as a reminder that no matter what the average completion time, some of the parties experience above-average completion times. Satisfying stakeholders' expectations of timeliness is a continuous job – and one in which improvement is always possible.

Adherence to timelines by participating firms

6.9 Because the ISO process has a minimum number of formal steps, adherence to timelines by participating firms is less of a factor in overall timeliness than in many EDR schemes. For most matters, the firm need only provide their initial material and response to the complaint promptly (at the outset) and if the complaint is upheld, their response to the Assessment (at the conclusion).

6.10 With a few exceptions we found that participating firms adhered to requested timeframes for documents or responses. At the beginning of the complaints process, the ISO very pragmatically sends a 'warning' letter that a complaint has been received, that consents are being sought from the complainant and that on receipt, a letter requesting the participating firm's file will be sent. This simple, sensible measure goes a considerable way to ensuring a timely response – and good will from the participating firms.

6.11 We saw two or three instances where there were some delays later in the process – when further particulars were sought – but none of these were egregious and where there were delays, there was evidence on file of follow-up reminders from the ISO staff.

6.12 A more frequent issue that we encountered was dissatisfaction with the length of time taken by participating firms to handle the complaint at Internal Dispute Resolution (IDR), before the ISO can accept the complaint – see commentary under "Deadlock" below.

Deadlock

6.13 The ISO's Terms of Reference provide that a complaint will only be considered by the ISO once the participating firm has advised in writing that deadlock has been reached or, alternatively, if the ISO believes that the participating firm's internal complaints procedure has considered, but failed to resolve, the complaint and 2 months have elapsed from the date on which the complaint was made to the participating firm.

6.14 Our review of complaints files suggested that the ISO always endeavours to obtain a "deadlock" letter before taking on a complaint. Discussions with case managers confirmed this was the case. Consumer representatives told us that there can be considerable difficulties and delays in obtaining the "deadlock" letter. Several of the complainants we interviewed also spoke of this - their "deadlock" letter was only obtained after recourse to the ISO and a request by the ISO to the participating firm for this letter.

6.15 We think that efficiency would be enhanced if the ISO were to show greater preparedness to take on complaints that have been with the participating firm for more than 2 months. Where there is difficulty with finalisation of a complaint at IDR, rather than requesting the complainant to obtain a "deadlock" letter, the ISO could write to the participating firm to say that it is taking on the complaint - where the complainant has provided the ISO with correspondence that shows that 2 months have elapsed and the participating firm's internal complaints procedure has been invoked and the participating firm's correspondence provides no evidence of preparedness to finalise the complainant's complaint.

RECOMMENDATION 10.

The ISO should examine its procedures with a view to minimising the delays that can occur at the outset because of participating firm tardiness in producing a "deadlock letter". Rather than endeavouring to obtain the "deadlock" letter in each case, the ISO could instead place more reliance upon the alternative basis upon which its Terms of Reference permit a complaint to be taken: the failure of a participating firm's internal dispute resolution process to resolve a complaint within 2 months.

System support for timeliness

6.16 The ISO's case management system – dubbed ISOCS - provides a weekly status report for all complaints currently active. This report is reviewed by the Team Leaders and the Ombudsman and follow up action is taken where any matter is falling behind.

6.17 The current level of focus on timeliness by management, staff and the office systems we found to be satisfactory and meets the standards expected by the Benchmarks.

6.18 We would offer one note of caution for the future. The workload management challenges that ISO has dealt with in the time that we observed have not been extreme. There has been a fairly steady flow of work and staffing levels have mostly been adequate. The delays while files await allocation have varied but not generally exceeded around 60 days.

6.19 Should more difficult circumstances arise in the future – say from a collapse of a major participating firm or as a result of significant increases in numbers of participating firms perhaps as a result of the law reform program, then the workload management system we observed may need to be strengthened.

6.20 One simple (and we think useful) enhancement to the new case management system is to set a flag for each case to indicate whether the matter is awaiting external input (from a complainant, a participating firm or external expert) or awaiting internal action (eg. in analysis or investigation, awaiting a letter to be drafted, awaiting approval to a draft from the Ombudsman, etc). This simple enhancement provides a more useful snapshot report of current matters and would more quickly highlight the location of any potential overloads.

RECOMMENDATION 11.

That the case management system (ISOCS) be enhanced to indicate whether progress of the file is awaiting external input or internal action.

Costs

6.21 One or two stakeholders put the view that the ISO was costly compared with counterpart EDR services in other countries. This is a very difficult comparison to make in our experience, because the data is rarely comparable. For example, what is counted as a 'complaint' differs from place to place. Comparison is further complicated because many EDR schemes do not publish their charges (nor their financials) and because the scale of the counterpart organisations is so different. The IOS in Australia might be 4-5 times larger than the ISO and the United Kingdom's Financial Ombudsman Service (UK FOS) is perhaps 100 times larger. In addition to the size, each EDR scheme handles a different mix of complaint types, so even if their efficiency could be scaled to a comparable basis, it is difficult to separate out the costs for different types of complaints.

6.22 In the absence of comparable benchmarks, no rigorous financial analysis of the ISO's cost structures was conducted. We did however examine the operations of the ISO and its productivity and compare them to other EDR schemes we have seen. Rental aside, the major discretionary cost of an EDR scheme is its human resources. We briefly looked at salary costs, and training and travel expenditure. We observed a healthy level of management attention to the questions of cost. We have elsewhere noted that the processes of the ISO are as straightforward as any we have seen, with a minimum of bureaucracy. We saw no reason to conclude that it is any more or less expensive than any other financial sector EDR scheme of similar scale that we have seen. (See also the discussion on fees and levies later in the Report).

Communication with the parties

6.23 We were impressed by the level of communication between the scheme and complainants – and indeed between the scheme and participating firms. We observed a culture of willingness to use the telephone and email to keep both sides up to date on progress and to avoid time-consuming paper letter-writing where small amounts of additional information are required or minor details need checking.

6.24 Our interviews with complainants revealed a high level of satisfaction with this aspect of the complaints process – easily the best that we have seen. Quite apart from complainant and participating firm satisfaction, we have no doubt that this willingness to communicate contributes significantly to encouraging prompt responses from both complainants and participating firms when they are called on for input.

6.25 The one negative to this style of less formal communication relates to the completeness of file notes. (In making this observation, we acknowledge that out of pure self-interest, a professional reviewer might accord too much weight to the completeness of file management!) We found a number of files where there were interactions with either complainants or participant firms that were not recorded on the paper file but were on the ISOCS database and in a couple of cases apparently on neither – possibly still in an email application.

6.26 This is an inevitable risk of the use of less formal communication channels and we would not for a minute want to discourage this approach. That said, we do think that greater care needs to be taken to record each contact, no matter how inconsequential it may seem at the time – and preferably in one location. The case files represent most of the organisation's accumulated experience and they are an important tool for management in quality control, staff development, and for learning and precedent value. They are (admittedly) of critical importance to any independent review and - of course - where a complainant or participant complains about the ISO's treatment of their matter.

6.27 The first is that ISO has the practice on closure of a case file, of returning the complainant's and participating firms' materials. As well as ISO materials, file notes and draft recommendations, copies are kept of the essential external documents such as the complainant's letter, the participating firm's response letter, expert's opinions, etc. For the most part, the files are essentially complete, with the key relevant materials on the file in perpetuity.

6.28 This is not however, 100% consistent and we encountered a couple of files where some guesswork was required to piece together the content of a missing piece of paper.

6.29 We should also note at this point that the ISO file closure practice also includes the case manager writing a brief summary of the matter (every case) – which acts as an excellent covering document for the file – and becomes the basis for the Case Book summaries which are published by the ISO annually on the website. These are searchable by keywords.

6.30 This is an excellent practice, providing staff and external parties that are researching similar prior matters with a neat encapsulation of the issues that were dealt with. Being written at a time when the case manager is still reasonably familiar with the matter helps to make the Case Book summaries clearer and more effective.

6.31 We think that at the same time the summary is written, some more rigorous checks could be made to the completeness of the file. A first step might be to develop a standard report from the ISOCS case management system which shows each file note on the computer database. These can be checked against the paper file. Any missing notes could be printed in a batch at that time and incorporated into the paper file – at the same time when the file is being tidied up and participant and complainant material returned.

RECOMMENDATION 12.

That the ISO expand its file closure procedure to include a process and a supporting ISOCS report that ensures that all electronic file notes and emails are printed and placed on the paper file at its closure.

Tracking complaints

6.32 The ISOCS case management system was acquired comparatively recently and implemented in July 2007. Understandably, this system is still being refined and as is usual, it does not yet have all the reporting capabilities that the ISO requires. It will take some time before ISO staff are fully familiar with the database and its capabilities and are in a position to specify all the reporting that will be useful.

6.33 That said, we found that the system provided the range of functionality that we are accustomed to seeing in modern EDR schemes. User screens and functions were well laid out and intuitive to operate. The reporting functions used by the team leaders seemed to provide all the flexibility and power that one would expect from an up-to-date case management system.

6.34 We also saw evidence of the necessary progressive refinement taking place, with management reports being developed and improved over the nine or ten months since its implementation.

6.35 We did, however, identify an area where the overall tracking system design could be stronger, a weakness that we have seen in many EDR case management systems. It is a reflection of a characteristic of the complaints process rather than the software – which should present no obstacle to some improvement.

6.36 There are many steps in the initial stages of the complaints process that are recorded in the database – eg. receipt of complaint, issuing of early stage letters, receipt of consents, receipt of participating firm response and file, allocation, etc. This provides for very precise tracking of progress in the first perhaps 20% of a case file's life. There are however no milestones that are recorded within the investigation phase of the case – perhaps 60% of the case file's life. Once a decision is issued, the milestones reappear and the final 20% of a case file's life is once again fairly precisely tracked.

6.37 This is a significant weakness for tracking case progress – not only is most of the case file timeline lumped into "Investigation", but this is precisely the time where there is the greatest risk of delays mounting.

6.38 We understand that it is not straightforward to create meaningful milestones or steps within the Investigation phase of a complaint, however it can be done and is – in our view - worth the effort. First, management and scheme stakeholders will ultimately reap the benefit of improved tracking. Second, the process of discussing and developing the milestones is a healthy one for the organisation and often surfaces important differences in the way that individual case managers approach their investigation tasks.

RECOMMENDATION 13.

That the ISO commence a project to develop a number of milestone steps within the Investigation phase of the Complaints process. These should be developed participatively to ensure that a variety of case manager working styles are accommodated within a consistent overall framework, and trialled over a period of time.

Regularly independently reviewing its processes

6.39 The ISO's Terms of Reference oblige it to regularly review its operations – and the clear evidence that the independent review obligation is taken seriously, is that this is the third independent review of the ISO (1997, 2003 & 2008) since its establishment in January 1995.

6.40 We were surprised and somewhat concerned however, with the number of Review recommendations that have not been implemented. Any EDR scheme is perfectly entitled to either accept or reject recommendations by independent reviewers – that is entirely appropriate. The scheme's managers and governors are much closer to the day-to-day operations and stakeholders and must grapple with other priorities and limited resources in a way that Reviewers have the luxury of bypassing.

6.41 However, not only are the number of recommendations that ended up 'on the cutting room floor' significantly higher than anything we have seen elsewhere, but these rejections are distinguished because they had the apparent support of the Commission and the Ombudsman but were delayed or rejected by the other part of the governance system - the ISO Board.

6.42 This is not a healthy indicator – neither for the independent reviews of the scheme nor for the governance of the scheme. We note that this has been raised previously by the 2003 Review and we comment further under the section Structure and Governance below.

Seeking feedback from its stakeholders

6.43 We found that the ISO has a sound framework of regular activity designed to keep in touch with its stakeholders and a very good record of proactive initiatives to obtain and act on feedback. This has no doubt contributed to the strong support from participating firms that the ISO enjoys, as was confirmed in most of the written and oral submissions made to us as part of this Review.

6.44 The ISO is actively involved in regular outreach activity, conducting seminars and speaking publically about the work of the Ombudsman. This work is often done in coordination with other New Zealand Ombudsman schemes, delivering some efficiency gains, but - more importantly - greater impact. These opportunities bring the Ombudsman into regular contact with industry and community stakeholders.

6.45 We saw records of regular liaison meetings that are held with relevant government agencies where current issues are discussed and government officers are able to relay any concerns or feedback involving the ISO.

6.46 Complainants are surveyed on closing of their matters to obtain feedback from their experience of the ISO complaints process. The questionnaire is of similar standard to those we have seen in other EDR schemes. We also saw periodic analysis of the results and evidence that this had been brought to the Commission's attention.

6.47 In 2007, the ISO commissioned consumer research designed to establish the level of awareness of the ISO and the ways in which consumers with a complaint found out about the existence of the ISO. The research findings were acted on – we saw that the issues that emerged had been raised with participating firms.

6.48 We note that a number of the industry stakeholders expressed a desire for more value-added feedback from the ISO. Suggestions included more statistical analysis, information about 'best practices' that ISO had identified, information about the 'prudent underwriter' processes, more detailed case study information and in-house briefings. The ISO conference was also given very positive feedback.

6.49 This is an area in which most EDR schemes could gain considerable kudos with their industry stakeholders. Although always difficult to find the time, the investment in the relationship will always pay off in reducing the inevitable tensions that will arise from time to time.

Systemic issues

6.50 The ISO does not have a specific authority within its Terms of Reference to oblige participating firms to respond if the ISO believes that there are wider implications (potential systemic issues) arising from a complaint. Although some have argued for a broader definition, we define this as any circumstance where the Ombudsman believes that the causes of an individual complaint may apply to other customers. Examples might include where a complaint highlights a process or software problem or where ISO receives several complaints, for example, about a particular aspect of a class of insurance policies.

6.51 The Benchmarks specify under the heading of Efficiency that where systemic issues apply and where multiple complaints may arise, these should be actioned as a group by the participating firm – rather than being done one at a time by ISO. Under Effectiveness, the benchmarks further specify that where referral to the participating member does not result in an adequate response, the EDR scheme should have a mechanism to refer the matter to the relevant regulator. The ISO does not meet either of those Benchmark standards.

6.52 The importance of some systemic powers to an EDR scheme should not be underestimated. Around the world, the presence of an industry funded and supported independent complaints handling scheme has been a key part of the industry's defence against the potential of a reactive imposition of additional government regulation. The absence of a credible ability to deal with systemic matters is frequently raised by critics of self-regulation and has been a feature of consumer activism and of government responses in Australia, UK and Canada. It also leaves the industry and the EDR schemes exposed to media attacks on the so-called cosiness of the system which are very difficult to credibly defend.

6.53 We observed that ISO has actually performed part of this systemic function on a number of occasions – in an informal way, by raising the issue (policy wording, process issues) with a participating firm or by raising it generally with industry – through the "Assessment" news bulletin or through staff briefing sessions. We were also advised that on the few occasions that issues of a potentially systemic nature have been informally raised, participating firms have been very cooperative.

6.54 We acknowledge that genuinely systemic issues are comparatively rare. However, we think that the absence of formal systemic issue authority is a weakness in the ISO's 'toolkit' and a potential reputational weakness for ISO and for industry.

6.55 The New Zealand Banking Ombudsman does not have specific systemic investigation powers under its Terms of Reference, however it has a negotiated agreement regarding Systemic Issues with the participating banks. We understand from discussions with the Banking Ombudsman, that the Agreement provides that where the Ombudsman identifies an issue that has wider, systemic implications, the Ombudsman has the authority to refer this to the participating bank in the final letter. The Ombudsman has the authority to monitor progress on resolution and if not satisfied, to escalate the issue to the CEO of the bank concerned.

6.56 The Banking Ombudsman reports that there have been 4 or 5 systemic matters referred since the inception of the agreement and they have mostly been resolved quite quickly.

6.57 The comparable Australian financial sector ombudsman schemes have systemic issues jurisdiction (within a framework of support of the Australian Securities and Investments Commission (ASIC) - the consumer protection regulator), the UK FOS is able to use its 'wider implications' powers to require firms to deal with any identified systemic issues (again with the regulatory backing of the Financial Services Authority (FSA)) and the Canadian OBSI is in the process of instituting systemic investigations powers into its Terms of Reference.

6.58 At the risk of repetition of the point made elsewhere, the ability to act on systemic issues will become more important if the ISO becomes involved in handling complaints about other parts of the financial sector – in particular, if that includes advisers (insurance brokers, stock brokers, financial planners, etc). Many of the complaints arising from these firms relate to disputes over miss-selling or misleading advice – and frequently affect more than one client.

RECOMMENDATION 14.

The ISO amend its Terms of Reference to allow it to take on systemic investigations and, in consultation with participating firms, develop policies and procedures to guide case managers in these types of investigations.

Unmeritorious complaints

6.59 As a matter of efficiency, the Benchmarks expect a scheme to exclude "vexatious and frivolous complaints". In our experience, we have found this particular definition to be somewhat unhelpful. The terms have a particular (narrow) legal meaning in many jurisdictions and in normal usage, they imply an absence of good faith in the intention of the complainant. Although widely feared by founding participating firms of schemes all over the world in the early 1990's – the experience is that they have simply not happened.

6.60 In our independent reviews, we have used the broader definition of "complaints without merit". That is, those complaints which although made in good faith by the complainant (in our experience, the complainant invariably believes that they have cause) clearly do not have a sound basis. Examples may include some faulty reasoning, refusal to accept that a clear policy exclusion applies, seeking compensation for some linked event, etc.

6.61 How these matters are dealt with by the EDR scheme is very important to credibility in the eyes of the participating firms. It is particularly aggravating to incur case fees on matters that should, on any reasonable reading of the facts, be dismissed.

6.62 Striking the correct balance is not altogether straightforward for the EDR scheme. Some unmeritorious complaints may on their face warrant some initial investigation. The scheme should satisfy itself that the complainant has properly framed their complaint and must often spend quite some time in explaining the issues to the complainant. The EDR scheme has an obligation to recover its costs and its fees are almost always based on effort not merit. (To the extent that its fees are not cost-related, it must cross-subsidise from elsewhere in its revenue base. See discussion under Fees & Levies in a later section.)

6.63 Given those constraints, we thought that the ISO was doing a good job of striking the right balance. We saw evidence of potential complainants receiving appropriate advice at Enquiry stage. We saw early action to contact complainants to advise them of the unlikelihood of their complaints being successful. We saw examples of complaints that had progressed some way into the process, being withdrawn once it became clear that the matter was unlikely to succeed. In each case that we saw, the judgement made on behalf of the ISO was sound.

7. Other Issues

7.1 As discussed in the Introduction, our brief was to focus our efforts on the two benchmarks, Fairness and Efficiency, which we did. It was also understood that if other issues of significance arose from our investigations or where raised by stakeholders, we would also deal with those.

7.2 A number of issues outside the main focus of the Review scope were raised with us in the course of our interviews and in written submissions. We are unable to deal with every issue raised, but have highlighted four of the significant areas of concern which were brought to us. We responded to these particular matters: a) because they were raised repeatedly and unprompted by stakeholders and accorded significant importance; b) because we consider them to be fundamental to the operation of an EDR scheme; and c) because we consider these to be particularly important issues for the ISO governors and management to be dealing with in the lead up to the imminent reforms of New Zealand's financial sector regulation. We have dealt with them in as much depth as we were able in the sections that follow.

7.3 It should be noted that as these matters were not on the agenda of the Review at the outset, they were not discussed with all interviewees, nor were all possible avenues of investigation followed up. We have indicated where we think that further investigation or consultation is required.

8. Monetary jurisdiction limit

8.1 A number of stakeholders from both industry and consumer sides raised the question of the upper monetary jurisdiction limit for the scheme. That amount has been $150,000 since 2005 (that increase recommended by the 2003 Review). For disability insurance, a weekly claim amount of $1,000 is used (last increased in 2006). A 2007 proposal from the Ombudsman via the ISO Commission to increase the lump sum dispute limit to $200,000 was rejected by the ISO Board – in part we understand, because of the imminent independent Review.

8.2 It was clear that there had been some debate on this issue amongst the stakeholder community, with the issue raised in many of our interviews without prompting from us.

Arguments for and against

8.3 The arguments put for the monetary jurisdiction to be increased centred around two themes.

a) To maintain parity with the Banking Ombudsman's upper financial limit, which had also been $150,000 for some time and was increased a year ago to $200,000.

b) To adjust for inflation and in particular to maintain an adequate level of coverage to deal with rising building costs – in relation to complaints arising from partial or total loss of a home through fire (the most commonly quoted proxy for complaints involving the highest amounts).

8.4 Three main arguments were made against an increase.

a) That an increase is unnecessary because complaints of that size are very rare.

b) That the ISO processes and expertise may not be adequate to matters of this size, which tend to be more commercially complex and often settled by negotiation with the claimant rather than on an evidence-based process.

c) That because of the larger amounts at stake, participating firms would want the issues tested by the courts, where evidence and the credibility of the claimant and witnesses can be tested.

Alignment of limits with the Banking Ombudsman

8.5 On the question of maintaining parity with the Banking Ombudsman, we think that it is generally sensible for EDR schemes operating within the same sector to have essentially similar rules of access. The Banking Ombudsman does handle a few insurance complaints, allowing the current limit disparity to provide a different level of access for insurance consumers depending on the source of their policy. There are a few complaints that actually overlap the two Ombudsmen; there is some value to consumer awareness in having a simpler landscape; the positioning of the Ombudsman schemes in relation to the Courts is consistent and so forth.

8.6 Convergence of financial services and blurring of traditional boundaries is occurring in all economies in the world. Many governments have a declared policy objective of a 'level playing field' for consumers across the financial sector. While we do not pretend to be experts on the New Zealand government's financial sector regulatory reform agenda, this seems to be a feature of the financial sector reforms currently on the table. In summary, common monetary limits seems a sensible policy objective.

8.7 We think that in the absence of specific regulatory obligation, this is a sound but not absolutely compelling stand-alone argument for an increase. The more important consideration is that consumers for whom industry EDR is designed (unsophisticated, everyday individual and small business consumers and investors) should have access to a free dispute resolution service for their common financial products and services. If that consideration produced a compelling case for a higher (or lower) jurisdictional limit than for banking services, then the ISO should have little hesitation in moving to a differential limit. All things being otherwise equal, then the limits should align.

8.8 By way of comparison, industry EDR schemes in other countries generally operate with higher monetary limits than does the ISO. The limit for the IOS and BFSO in Australia is $280,000AUD. FICS has a limit for Life Insurance complaints of $280,000AUD or $6,000AUD per month and $150,000AUD for other complaints. The Canadian OBSI has a monetary limit of $350,000CAD.

Rising costs

8.9 On the other hand, the argument of rising costs putting a great many claims outside the scope of the ISO seems pretty clear cut. We do not pretend to be economists, nor do we wish to provoke a detailed technical economic argument, however our cursory review suggests some evidence to support this perspective.

8.10 Insurers that we asked, readily conceded that $150,000 would be adequate for very few claims for the total loss of a domestic dwelling. They advised however that the majority of disputes arising from these major claims would not be over the total cost of reconstruction. In these cases, the insurer would have accepted liability in principle and any dispute would be over a portion of the claim – eg. the standard of finish or materials to be used, etc. In these cases, some insurers told us that although technically not obliged, they would normally be willing to accept the ISO's jurisdiction. It is apparent from the files that this is not a common view amongst all participating firms – see discussion at the end of this section.

8.11 The Reserve Bank of New Zealand's CPI calculator suggests that $150,000 in 2003 is equivalent to just over $171,000 today. We note that the CPI 'basket' does not fully incorporate building and construction costs. If the cost of reconstruction of a home is a reasonable proxy for the upper end of complaints that should go to the ISO, then it is relevant that building costs have increased at a significantly higher rate than general inflation. Statistics New Zealand's website shows residential construction costs increasing since 2003 at between 4.5% per annum and just over 10% per annum – considerably greater than the CPI.

8.12 Without the expertise to make a precise calculation, it would seem fair to conclude that – after allowing for inflation in the construction sector over the last 5 years – the upper jurisdictional limit for the residential property category of complaint should be approaching $200,000. On the presumption that insurance products and premiums have kept pace with this boom, it is difficult to see why the associated complaints handling mechanisms would not also.

Numbers of matters

8.13 The number of cases found to be out of jurisdiction because they involve amounts of greater than $150,000 are comparatively rare and do not show strong evidence of increasing. For 2005/06, around 1% of the total number of written and telephone enquiries were outside of the monetary jurisdiction limit. For 2006/07 the ratio was 4% and for the nine months to March 2008, the figure is at 3.3% of the total. In this period, 4 matters received exceeded the $150,000 lump sum limit and 4 exceeded the $1,000 per week limit.

8.14 From the limited information available about these complaints, we are unable to offer any insight into the characteristics of the matters. It is worth noting that several of the 2007/08 over jurisdiction complaints exceeded both the lump sum and weekly monetary limits by a significant margin and would still have been excluded at a limit of (say) $250,000 lump sum or (say) $1,750 per week.

8.15 As the 2003 Review identified, some caution must be exercised in relying on the Ombudsman's own statistics entirely – as these figures must understate the actual number of potential complaints at that quantum. The existence of the upper monetary limit is well known amongst lawyers and other advisers, is clearly stated on the ISO website and in the ISO complaints brochure and is highly likely to be communicated by participating firms (either actively or by non-referral) – meaning that some proportion of dissatisfied consumers with disputes that are over the jurisdiction limit will not have approached the ISO at all.

8.16 We note that the small number of complaints at or over the monetary limit can be presented as an argument on both sides – either that an increase is not necessary, or that an increase would have little impact and therefore do no harm. In previous reviews, we have recommended increases where the number of complaints received that are above the limit exceeds 2% of matters. Given the likely understatement of the numbers of complaints in this monetary bracket, we are inclined to think that the current ISO numbers would warrant an increase in the limit.

Complexity of matters

8.17 We understand that insurance claims in the commercial sphere can be quite complicated to resolve, can involve multiple parties especially in the ownership of business assets and can involve a negotiated rather than strictly evidence-based process (particularly around estimates of business loss).

8.18 The ISO has, however, been handling (apparently satisfactorily) for some years now the very small number of 'commercial' disputes that fall under the $150,000 limit. The ISO staff also satisfactorily handle complaints in the area of health insurance, income protection and investments – which in our experience are every bit as complex as complaints about high-end general insurance products. Finally, the most complex lines of small business insurance are already excluded by the Terms of Reference. We are not persuaded that an increase in the maximum amount involved is either going to materially increase the numbers of high value matters, nor shift many of them above any reasonable threshold of complexity.

More robust processes

8.19 The final argument put against any increase was if the amount in dispute was higher than $150,000, participating firms would want to have the matter dealt with by the courts – in order that a more robust process of testing the claim is applied and that a strict interpretation according to the law is applied.

8.20 It is of course understandable, that as the amounts at stake in a dispute become larger, it is increasingly in the interests of the participating firm to incur the expense of litigation and take the matter to court. However, the participating firm's interests cannot be considered in isolation from the interests of the consumer on the other side of the dispute. The real issue is the threshold at which it is also reasonable to cut off the consumer's access to a free dispute resolution avenue.

8.21 The principal underlying rationale for industry-based EDR schemes is the asymmetry of expertise and resources that exists between a financial services provider and the consumer, and a recognition that legal aid will never be able to equitably bridge the divide. The upper monetary jurisdiction limits act as a proxy for the point beyond which the consumer is taken to be more sophisticated, possessing their own expertise and resources so that a court hearing the dispute is able to deal with (more) equal parties.

8.22 It was put to us during our consultations, that if more complex and high-value complaints are admitted to the ISO's jurisdiction, there may be a case for a system of differential resolution processes for different types of complaints. Examples of this approach are the Australian IOS and FICS that stream complaints of differing monetary value and characteristics to different decision-makers. For IOS, complaints involving amounts below $5000 go to a single Adjudicator and those above to a Panel. Matters involving allegations of fraud are directed to a specialist Referee.

8.23 It should be noted that the IOS and FICS processes work in the context of very much bigger schemes and it would be difficult to justify anything as complex as that for the ISO. Also one of the impressive aspects of the ISO system is its simplicity and speed, and it would be a shame to lose any more of this than was absolutely necessary in the interests of a more painstaking process.

8.24 At the end of the day, we believe that the desire of participating firms for the ISO to establish more robust processes for high-value or more complex complaints was not a convincing reason to avoid an increase in the monetary limits. We are also not convinced that a more complex ISO process would necessarily produce more consistently correct decisions, nor would it necessarily produce more satisfied participating firms.

8.25 We think however, that some form of differential process may ultimately be a necessary step in the future if ISO is to become responsible for complaints for previously non-participating sectors of the finance industry.

Conclusion

8.26 We conclude that the upper monetary jurisdiction limit should be increased – not because of one compelling argument, but because of the combination of many. These include:

a) To align with the Banking Ombudsman limits – especially with the prospect of either an expansion of responsibilities or a merger of schemes on the horizon;

b) To move closer to the limits applying in other comparable jurisdictions;

c) To adjust for inflation and in particular for rebuilding costs for the

loss of a family home; and

d) To admit a small but worthwhile number of consumer complaints that are above the current limits.

8.27 On the same reasoning, it follows that the monetary limit for disputes involving weekly amounts should be increased. From our understanding of the matters in this category that are over the limit, we think that a little larger proportional increase may be justified without straying into the domain of the sophisticated, well-resourced consumer.

RECOMMENDATION 15.

That the ISO amend its Terms of Reference to increase its monetary jurisdiction limit to disputes involving up to $200,000 for lump sum matters and up to $1,500 for weekly matters.

8.28 Further to the discussion under 'Rising Costs' above, we remain concerned that even at the proposed limits complaints involving a partial claim dispute may result in the ISO being unable to deal with an otherwise appropriate complaint. We do not support the idea of a consumer having the right to 'opt-in' to the scheme's coverage by unilaterally reducing the amount in dispute in order to fit within the ISO jurisdiction – however we do see that there are circumstances where the ISO should be able to independently form the view that the amount that is actually in dispute is less than the amount that the "consumer has claimed or could claim" and that the ISO should be able to accept the complaint.

8.29 We would not wish to create some perverse incentive for insurers to deny all liability under a policy, however we do think that the ISO should be able to accept disputes over a partial claim where liability has been accepted. The wording of any such modification to the Terms of Reference would need to be carefully constructed in cooperation with industry.

RECOMMENDATION 16.

That the ISO amend its Terms of Reference to allow it, where insurance liability has been accepted, to define the monetary value of a complaint (for the purposes of jurisdiction) according to the amount that is actually in dispute, rather than the total amount of the original claim.

Setting jurisdiction limits in the future

8.30 After our exposure to the issues and the debate surrounding the issue, we are left quite concerned that far too much effort and goodwill is being wasted in these largely unproductive arguments about monetary jurisdiction limits for EDR schemes. In particular, we are quite concerned that industry is doing its reputation little good in appearing to resist increases at every turn.

8.31 Monetary jurisdiction limits are – for better or worse – a necessary part of the EDR framework. Once upper limits are established that are broadly acceptable to the scheme's main stakeholders (consumers, government and industry), there should be a straightforward process for those limits to be revisited from time to time to ensure that they remain relevant. This should include:

a) a regular interval for review;

b) a mechanism for reviewing the monetary jurisdictional limits;

c) some agreed criteria on which the decision to adjust the limits will be made; and

d) a few relevant benchmarks that can act as proxies for the highest-value complaints that should go to the scheme.

8.32 This mechanism should be part of the organisation's governance processes – not left to be the subject of external review. It is more appropriate that members of industry and consumer representatives are involved in the process and take responsibility for the outcomes. (See also our observations on Governance).

RECOMMENDATION 17.

That the ISO Commission and Board establish a joint committee with responsibility for triennial review of monetary jurisdictional limits. The committee should be charged with ensuring that the ISO monetary limits continue to be appropriate and – when reviewing the monetary limits – should have regard to the following considerations:

- *The need to provide ready access to the ISO complaint-handling service for those consumers who are adjudged to be the target market;*
- *The need to include those products and services that are appropriate to the target market;*
- *The comparable monetary limits for EDR schemes in the financial sector in New Zealand and comparable markets; and*
- *The costs of other forms of dispute resolution services available to the consumer including Courts and tribunals, commercial mediation or arbitration.*

Fees and Levies

8.33 We received input from a number of sources expressing some dissatisfaction with the structure of the levies. This aspect of the ISO's operation was not in the scope for the Review – and the matter has been comparatively recently addressed by the ISO with a review and restructuring of the levies that took effect from the 2006/07 year. That said, we felt that it would be useful to offer some response – in particular to the extent that the fee structure is impacting the management of complaints by participating firms and in comparison with our experience of other EDR schemes.

8.34 The first observation we should make is that the ISO has a very simple funding formula by comparison with other schemes. It is made up of two parts – the first an annual levy based on the size of the participating firm and the second an annual levy based on user-pays (the number of complaints involving the firm). It is worth noting that this is not well known to many of the participating firm complaints staff we spoke with.

8.35 The fees issues raised with us stemmed from a concern over 'case fees' that are higher than the amount in dispute – which contributors felt is putting pressure on participating firms to settle complaints that they would not otherwise settle - on a purely commercial basis.

8.36 This concern generated a number of suggestions to solve the problem, including:

a) a minimum threshold for ISO complaints;

b) directing low-value complaints to the Disputes Tribunal;

c) a framework of escalating fees based on the amount in dispute;

d) a differential (lower) fee for complaints that are not upheld; and

e) a refundable fee for complainants who request a Recommendation.

8.37 Those suggestions that would involve removing access to the ISO for low-value complaints or requiring complainants to pay any sort of fee can be practically taken off the table at the outset. The principles of free access and a forum for complaints irrespective of value are so fundamentally part of the conception of industry EDR that we cannot see the community, government or the broader industry agreeing to that sort of change. We are aware of a number of attempts to institute measures such as these in a number of reviews of Ombudsman schemes around the world – and they have been fiercely resisted and failed.

8.38 The second observation we must make is that setting fees and levies for industry-funded EDR schemes is a zero-sum game. That is, the costs of the scheme must be paid for by the participating firms – in some way or other. This means two things.

a) Any reduction in fees or levies at one point of the system must be accompanied by an equal increase at some other point or points;

b) Any redistribution of the costs will result in winners and losers and

that makes any change highly political. In a multi-sector scheme such as the ISO, redistributions of fees will change the distribution of cost between large and small participating firms, between frequent users and infrequent users and between sectors.

8.39 For example, the more steps there are in the fee scale, the greater satisfaction that participating firms feel with the fairness of the fees – however it means that either levies must go up or the higher scale fees for those cases that go all the way to Recommendation must increase disproportionately to cover costs (as they are much fewer numerically). Some schemes that we are aware of charge only a few hundred dollars for early stage complaints but must charge over $7,000 for matters that go all the way through the process. This principle equally applies to differential fees for 'win or loss'. The reduction on the 'win' side must be matched by an increase on the 'lose' side.

8.40 That said, there are some advantages to a graduated fee scale, provided that it is carefully designed in consultation with the full range of the participating firms. But, we are disinclined to recommend any change at this time, both because the issue has been recently reviewed and because we expect that the implementation of the government's financial sector reforms will likely overtake any reform embarked on today.

8.41 With respect to the forthcoming changes, we caution that the introduction to the world of EDR for small businesses involved in the provision of financial services can be very difficult (eg. insurance or stock brokers, financial planners, mortgage brokers, etc). First, as commission-based businesses, they have often earned a tiny fraction in fees from a much larger transaction – which they may now be found to be liable for. Second, because of their small size, there is often a more personal, emotional stake in the dispute. Third, they frequently lack any internal complaints-handling systems or infrastructure – so are poorly equipped to cope with external complaint resolution. Fourth, the amount of the dispute may be life-threatening for their business. If the ISO in some future re-configuration acquires responsibility for new categories of members, the fees and levies will have to be carefully re-examined.

8.42 Although the suggestion to divert low-value matters to the Disputes Tribunal had more than one supporter, many from both consumer and industry sides expressed strong opposition to this idea. Apart from our assessment that this idea is unlikely to gain widespread support, from a policy perspective we think it is unwise.

8.43 First, an industry-based EDR scheme builds specialised knowledge and processes that are adapted to the unique characteristics of the industry, providing better informed and more consistent outcomes. Second, the dedicated resource of an industry scheme enables it to provide targeted reporting and feedback to industry. Third, it is able to engage in education and awareness activities which would never be prioritised by the legal system. Fourth, its resourcing can be quite responsive to workload, because of its direct connection to industry funding. In contrast, the courts are funded via government and subject to many extraneous considerations. Finally, one of the strengths of industry-based EDR is that the sector pays the cost of its own complaints, whereas the court system is funded by all taxpayers. This user-pays element is fairer for the taxpayer and provides a useful discipline for industry.

RECOMMENDATION 18.

That any reconsideration of the ISO fees and levies regime should be delayed until the future configuration of the scheme and the participating firms that will make up its membership are resolved.

At that time, the design of the fees & levies framework should draw heavily from the experience of other EDR schemes that have significant numbers of participating firms that are small businesses (ie. the UK FOS, the Canadian OBSI and the Australian FICS.)

9. Small business jurisdiction

9.1 A frequently raised issue in the Review was the low representation of small business complaints amongst the work of the ISO. There were differing views for the cause of this low representation.

9.2 Most of those who commented (industry and consumer) felt that the definition used for the purposes of admitting small businesses to the ISO jurisdiction may have been set at too low a level – although there was no real consensus as to a better definition.

9.3 Others felt that the culture of small business and the business dynamics meant that as a sector they were unlikely to take up avenues for redress. Some of the factors cited were low education levels, significant numbers from non-English-speaking backgrounds, time-poor and cash flow-dependent businesses with a low tolerance for anything that looks like a lengthy, bureaucratic process.

9.4 Regrettably, none of our random sample files involved small business complainants - however this would not have produced reliable evidence, given the tiny numbers.

9.5 In 2005, the ISO changed its Terms of Reference to include small business in its jurisdiction (a recommendation of the 1997 and 2003 Reviews). This extension of jurisdiction did not result in any significant number of small business-related complaints and certainly fewer than had been expected. The 2005/06 year recorded 6 small business complaints.

9.6 In November 2006, the number of small business insurance lines covered was clarified with more specificity, although no significant impact on total numbers of small business complaints has resulted. The total for 2006/07 was 5 and for the nine months to March 2008 the numbers are at 6 (around 3.8% of total complaints and 6.5% of Fire & General complaints). There have been 3 cases in the same nine months which were out of jurisdiction by virtue of the size of the business.

9.7 Comparisons of complaint numbers with other EDR schemes are not easily made as their published statistics do not always isolate small business complaints. We note that the IOS in Australia identifies around 4% of its referred complaints as related to Small Business product lines.

9.8 Although the ISO originally simply adopted the definition used by the Australian IOS, the definitions used by comparable EDR schemes today do generally have significantly higher limits. The New Zealand Banking Ombudsman does not distinguish a limit for small business (although complaints will only be considered if made by an individual or group of individuals). The UK FOS permits businesses with an annual turnover of up to £1m (approx $2.4mNZD). The Australian IOS defines small business as up to 20 employees (100 if the business is in manufacturing) and a turnover ceiling of $1mAUD. The BFSO uses the same definition without the turnover limit.

9.9 Even allowing for what we understand is a somewhat different profile of small business in New Zealand, we are inclined to think that the current definition is more 'micro-business' than 'small business', and that there would be some value in extending the ISO's small business jurisdiction to a convenient higher level.

RECOMMENDATION 19.

That the definition of small business for the purpose of jurisdictional access be brought into line with the next highest convenient commonly used definition (eg. Government, other EDR schemes, community) and then be kept in synchronisation with that level.

9.10 We are not convinced that this incremental change to the definition limits will necessarily result in a satisfactory level of use of the ISO by small business complainants. We think the issues are likely to be more complex and will take more than a simple jurisdictional access redefinition to solve.

9.11 This is an important Accessibility question for the ISO. Given that it was not dealt with in any depth during the 2003 Review – nor was it in scope for this Review, it should be looked at more closely at the next sensible opportunity (preferably more urgently than the next 5 year Review). Such an examination should be directed to a qualitative understanding of the dynamics of that sector, the sector's awareness of avenues for redress including EDR, awareness amongst their principal sources of advice and information and their key requirements from a complaints process.

9.12 The ISO could commence gathering data for this investigation by temporarily capturing more information from all small business enquiries and complaints (whether in or out of jurisdiction) including requesting participation in a follow up study. (This is a project that would lend itself to a joint approach with the Banking Ombudsman, Electricity and Gas Complaints Commissioner and potentially arms of government).

RECOMMENDATION 20.

That the ISO commission a study into Accessibility to the scheme by Small Business consumers.

- *This study should be qualitative in nature and aimed at better understanding what the small business sector needs in a complaints resolution service.*
- *If possible, the study should be conducted in conjunction with other interested parties including the Banking Ombudsman and the Electricity and Gas Complaints Commissioner.*

10. Structure and Governance

10.1 The Reviewers had two main sources of dissatisfaction with the governance of the scheme raised in the course of the review.

a) Dissatisfaction with the voting structure of the scheme as between sectors; and

b) Dissatisfaction with the two tier structure of Commission and Board.

10.2 It should be noted that this issue was investigated as far as practical, but no structured consultation was undertaken – in particular with the Board.

Voting structure

10.3 Without rehearsing its full history, the ISO structure originally accommodated four sectors of industry; Health Insurers, Life Insurers, Fire & General Insurers and Savings. Each of the sectors was accorded equal representation on the Board (2 seats each). The basis for this split may have been for simplicity or for political expedience; what is clear is that it is not based on the proportion of complaints, a measured distribution of actual costs, or the contribution by way of levies or fees from each sector. The table below illustrates the complaints distribution by sector.

	07/08 (part)	06/07	05/06
Fire & General	60%	55%	57%
Health Insurance	25%	19%	13%
Life Insurance & Savings	15%	26%	30%

10.4 The funding for the scheme is made up of a user-pays component based on the number of complaints that a firm has had with the ISO in the previous 12 months and a component based on the size of the participant firms within a sector (eg. gross written premium, number of policies, as appropriate). It is not clear to us that the size-based component of the funding is reflective of the different industry sectors' share of the costs. The most recent revision of the size-based levies component splits the cost equally between Health and Fire & General on the one side and Life and Savings on the other.

10.5 From our understanding, three factors combine to create some long lasting resentment of this voting structure. First is the absence of any structure that affords any participating member control or that makes the governance mechanisms accountable to the members. Second is that the Rules grant the "nominated industry groups" the right to appoint members to the Board. The third is the merger early in the life of ISO, of the industry bodies representing the Life Insurance industry and the Investment Funds industry into the Investment Savings and Insurance Association of New Zealand (ISI).

10.6 The combined effect is that the ISI controls 50% of the Board appointees – and is widely seen as having (and using) a veto right over the Board's decisions.

10.7 There are clearly some fundamental flaws with the structure. Ideally, an industry-based, multi-sector EDR scheme should have:

a) Some accountability structure that connects it directly to its members – via mechanisms such as a membership voting structure or a member council or an annual general meeting;

b) Some sound basis for proportionally allocating power;

c) Some sound basis for allocating costs; and

d) Some mechanism for ensuring that both consumer and industry governors are primarily obliged to act in the interests of the scheme – not in the interests of their constituents.

10.8 It is not clear to us on what basis reform might take place. We understand that the legal structure of the ISO itself is not clear. It is not a company; it operates more like an incorporated association and may technically be simply a joint venture. Turning to the body of law regarding the governance and structures of companies is not an immediate option. Past reviews of the ISO have observed that unless it is in the interests of the Board as constituted, structural change is unlikely to be supported.

10.9 We do not think that this is a matter which can be left to lie. The coming financial sector reforms will disturb the status quo – one way or another. For example, ISO may merge with another scheme or its membership may change to incorporate a new industry sector that will demand some say in the governance of the scheme. Equally, those founding sectors of ISO will expect some recognition of their investment in the scheme to date. Even if the ISO continues with no change and some other scheme or schemes emerge to handle complaints from the newly participating sectors, the presence of a competitor EDR scheme will provide dissatisfied ISO members with an alternative option.

10.10 Given that industry based EDR schemes depend for their long-term success on their reputations, we think that reform is essential. We also think that the future use of a company structure provides convenient, well-understood principles and very important disciplines and obligations on members and governors.

RECOMMENDATION 21.

That the ISO Commission and Board take the opportunity posed by the imminent financial sector regulatory reforms, to commence a revision of its legal and voting structure with the aim of establishing a basis for industry ownership and governance that better reflects both the financial support currently provided by each industry sector and each sectors usage of the scheme.

That review should specifically examine the use of a company structure for the future ISO.

Governance structure

10.11 The ISO has a two tier governance structure common to industry EDR schemes in the 1990's and still persisting in a handful of schemes today. The two tier structure was originally conceived by founders of the various EDR schemes that were established in the early 1990's as a way of assuring against two major fears that the stakeholders of the time possessed. The first was that industry would interfere with the operations of the scheme – hence a great emphasis on independence. The second was a fear that consumer representatives would not be responsible with the members' money – hence the reservation of the control of rules (and sometimes financial oversight) to the Boards of the schemes at the time.

10.12 At the ISO, the Commission, made up of industry and consumer representatives with an Independent Chair, is responsible for governance of day-to-day operations of the scheme and setting the budget. The Board, made up of industry representatives from each of the industry sectors, is responsible for the Terms of Reference and Rules (including levy apportionment) of the Scheme.

10.13 Most EDR schemes have now converted to a unitary governance structure – sometimes because of regulatory obligation, but more often because of problems with the two tier system. In the schemes which we are aware of, neither of the two great fears have transpired. The unitary boards that replaced the old two-tier structures have remained entirely removed from the day-to-day operations, leaving the Ombudsmen or CEOs with full independence. Equally, the unitary boards have been successful at maintaining a focus on the costs of the schemes.

10.14 The common problems experienced by the two tier EDR governance systems are entirely predictable consequences of the split in responsibilities. In designing any governance system, one of the critical success factors is to locate the main naturally occurring tensions in a place where they can be most productively dealt with. If these tensions are played out in a single body, it will not change the nature or the source of those key tensions – but it does mean that they will be evident sooner and there will be more natural pressure to resolve them. If on the other hand, the key tensions fall between two bodies, then the result can be stalling, resentment and mistrust between the bodies that can persist – sometimes for years. Often, in this case, the tensions are misdiagnosed and blamed on 'personality issues' or 'hidden agendas'.

10.15 The problems reported with the two tier governance system that operates at the ISO are almost all to do with frustration over the processes of reform to the Rules or Terms of Reference. Although some described a significant improvement in relations between Board and Commission in recent times, many were highly critical of the Board's communication and what they saw as its role as a 'house of review', or as the industry's power of veto and so on.

10.16 From our analysis of the fate of the recommendations from the 1997 and 2003 Reviews, there is some evidence in support of that view. A significant number of recommendations, accepted by the Commission have been rejected or delayed by the Board. Without entering into the merits of any particular recommendations, this is clearly a poor way to grapple with the issues and resolve what is best for the ISO.

10.17 These are classical symptoms of poor governance design. The reform tensions fall between the Commission and the Board, tending for the Commission to be disengaged from the task of persuading industry of the cost/benefit value of the reforms and tending for the Board to remain disengaged from the value of the reforms in delivering an effective, responsive EDR service.

10.18 Our brief review of the Board and Commission papers revealed considerable duplication of reporting and discussion of key issues – an inefficiency that seems unnecessary for an organisation with an annual budget of $1m or less. Even quite supportive industry interviewees conceded that the structure was a bit over complicated and clumsy.

10.19 It was out of our scope to conduct an in-depth review of the performance of the governance system, and it may be that ISO stakeholders will not be persuaded to any significant change without such a study. We also note that we did not interview all the members of the Commission and the Board, nor were the interviews we conducted directed principally at the governance system. We believe however, that there is a *prima facie* case for reform of the governance framework of the organisation and that the coming regulatory reforms provide an excellent opportunity to tackle the issue.

RECOMMENDATION 22.

That the ISO take the opportunity of the imminent financial sector regulatory reforms, to commence a revision of its two-tier governance structure with the aim of establishing a more efficient and responsive mechanism for oversight of its operations and policies than the current system allows.

That review should specifically examine the implementation of a unitary governance body.

11. Summary of Recommendations

11.1 In the following summary, our recommendations are grouped according to four organising themes. The recommendations retain their sequential numbering from the body of the Report.

Strengthening systems & procedures

RECOMMENDATION 1.

ISO should bring together the various current guides and instructions to create an integrated procedures manual for case managers on the investigation and resolution of complaints.

RECOMMENDATION 2.

The ISO should detail its natural justice practices in a procedures manual and in training for new case managers

The manual and training should set out the default policy that substantive correspondence or material from one party to the dispute should only be taken into account by the ISO if it can be provided to the other party.

The policy should include guidance on the limited circumstances where there may be exceptions to the policy.

RECOMMENDATION 3.

That ISO should develop and document guidance for case managers on the types of matters and circumstances in which fresh technical advice should be sought eg. from a builder (in the case of a home insurance claim) or an equipment specialist (in the case of an accidental damage claim).

The ISO should also develop a collaborative internal review process for complaints which turn on technical issues, which apply the guidance to determine whether the advice of a fresh technical expert should be sought.

RECOMMENDATION 4.

The ISO should develop and document guidance for case managers on the "prudent underwriter" opinion process. The process should include some collaborative or supervision processes within the ISO to ensure that requests for an opinion are consistently framed and responses received from underwriters are accurately reflected in Assessments.

RECOMMENDATION 5.

The ISO should undertake a study of how schemes in other jurisdictions deal with oral assertions by the parties to a dispute. The study should deliver guidelines for case managers on possible approaches to taking oral assertions into account in dispute resolution.

RECOMMENDATION 6.

That the procedures manual for case managers provide comprehensive guidance on onus of proof issues and that template letters and staff training should be reviewed to match that guidance.

RECOMMENDATION 10.

The ISO should examine its procedures with a view to minimising the delays that can occur at the outset because of participating firm tardiness in producing a "deadlock letter". Rather than endeavouring to obtain the "deadlock" letter in each case, the ISO could instead place more reliance upon the alternative basis upon which its Terms of Reference permit a complaint to be taken: the failure of a participating firm's internal dispute resolution process to resolve a complaint within 2 months.

RECOMMENDATION 11.

That the case management system (ISOCS) be enhanced to indicate whether progress of the file is awaiting external input or internal action.

RECOMMENDATION 12.

That the ISO expand its file closure procedure to include a process and a supporting ISOCS report that ensures that all electronic file notes and emails are printed and placed on the paper file at its closure.

RECOMMENDATION 13.

That the ISO commence a project to develop a number of milestone steps within the Investigation phase of the Complaints process. These should be developed participatively to ensure that a variety of case manager working styles are accommodated within a consistent overall framework, and trialled over a period of time.

Fairness and Transparency

RECOMMENDATION 7.

That, the ISO's decision making should be expressed, consistent with the Terms of Reference, primarily in terms of what is fair and reasonable – with the terms of the insurance policy being a key area of focus.

Guidance should be developed for case managers to assist them to articulate clearly and consistently the concept of what is fair and reasonable.

RECOMMENDATION 9.

Where the ISO does not find fully for a complainant, the Assessment and subsequent letters should set out the complainant's rights to access the Disputes Tribunal and the Courts.

Updating jurisdiction

RECOMMENDATION 8.

The Terms of Reference should be amended to give the ISO power to provide compensation of up to $1,000 for incidental expenses where it makes an Assessment or Recommendation (not just an Award) partly or wholly in favour of a complainant.

RECOMMENDATION 14.

The ISO amend its Terms of Reference to allow it to take on systemic investigations and, in consultation with participating firms, develop policies and procedures to guide case managers in these types of investigations.

RECOMMENDATION 15.

That the ISO amend its Terms of Reference to increase its monetary jurisdiction limit to disputes involving up to $200,000 for lump sum matters and up to $1,500 for weekly matters.

RECOMMENDATION 16.

That the ISO amend its Terms of Reference to allow it, where insurance liability has been accepted, to define the monetary value of a complaint (for the purposes of jurisdiction) according to the amount that is actually in dispute, rather than the total amount of the original claim.

RECOMMENDATION 17.

That the ISO Commission and Board establish a joint committee with responsibility for triennial review of monetary jurisdictional limits. The committee should be charged with ensuring that the ISO monetary limits continue to be appropriate and – when reviewing the monetary limits – should have regard to the following considerations:

- *The need to provide ready access to the ISO complaint-handling service for those consumers who are adjudged to be the target market;*
- *The need to include those products and services that are appropriate to the target market;*
- *The comparable monetary limits for EDR schemes in the financial sector in New Zealand and comparable markets; and*
- *The costs of other forms of dispute resolution services available to the consumer including Courts and tribunals, commercial mediation or arbitration*

RECOMMENDATION 18.

That any reconsideration of the ISO fees and levies regime should be delayed until the future configuration of the scheme and the participating firms that will make up its membership are resolved.

At that time, the design of the fees & levies framework should draw heavily from the experience of other EDR schemes that have significant numbers of participating firms that are small businesses (ie. the UK FOS, the Canadian OBSI and the Australian FICS.)

RECOMMENDATION 19.

That the definition of small business for the purpose of jurisdictional access be brought into line with the next highest convenient commonly used definition (eg. Government, other EDR schemes, community) and then be kept in synchronisation with that level.

RECOMMENDATION 20.

That the ISO commission a study into Accessibility to the scheme by Small Business consumers.

- *This study should be qualitative in nature and aimed at better understanding what the small business sector needs in a complaints resolution service.*
- *If possible, the study should be conducted in conjunction with other interested parties including the Banking Ombudsman and the Electricity and Gas Complaints Commissioner.*

Structure & governance for the future

RECOMMENDATION 18.

That any reconsideration of the ISO fees and levies regime should be delayed until the future configuration of the scheme and the participating firms that will make up its membership are resolved.

At that time, the design of the fees & levies framework should draw heavily from the experience of other EDR schemes that have significant numbers of participating firms that are small businesses (ie. the UK FOS, the Canadian OBSI and the Australian FICS.)

RECOMMENDATION 21.

That the ISO take the opportunity posed by the imminent financial sector regulatory reforms, to commence a revision of its legal and voting structure with the aim of establishing a basis for industry ownership and governance that better reflects both the financial support currently provided by each industry sector and each sectors usage of the scheme.

That review should specifically examine the use of a company structure for the future ISO.

RECOMMENDATION 22.

That the ISO take the opportunity of the imminent financial sector regulatory reforms, to commence a revision of its two-tier governance structure with the aim of establishing a more efficient and responsive mechanism for oversight of its operations and policies than the current system allows.

That review should specifically examine the implementation of a unitary governance body.

12. Attachment A – Comparisons of Outcomes

12.1 The tables below show the case resolution outcomes for ISO and three other comparable dispute resolution schemes.

Insurance & Savings Ombudsman

	For Complainant	Settled	Not upheld	Withdrawn	Partly upheld
2005/06	15%	6%	76%	0%	3%
2006/07	13%	18%	68%	0%	1%
2007/08 (to date)	17%	20%	56%	1%	6%

Insurance Ombudsman Service (Australia)

	For Complainant	Settled	For Participant	Withdrawn	Unsuitable for resolution
03/04	30%	14%	49%	1%	0%
04/05	28%	13%	51%	1%	7%
05/06	24%	12%	58%	0%	4%

Ombudsman for Banking Services and Investments (Canada)

	For Complainant	Settled	For Participant	Withdrawn
2005	32%	5%	63%	0%
2006	31%	7%	62%	0%
2007	41%	12%	46%	1%

Financial Ombudsman Service (UK)

Year	For Complainant (including complaints where previously offered amount was increased)	Gratuity paid by Participant (although Participant's treatment of Complainant deemed to be fair)	For Participant	Withdrawn
04/05	43%	2%	50%	5%
05/06	34%	3%	58%	5%
06/07	30%	3%	62%	5%

Commentary

12.2 For a number of reasons, it is very difficult to compare the statistics of schemes.

12.3 First, the jurisdictions of schemes vary. For example, OBSI includes investment advice matters - a higher percentage of these matters are in favour of the Complainant than is the case for other parts of their jurisdiction.

12.4 Next, schemes with small numbers of complaints are particularly prone to variations in statistical outcomes from one year to the next. Even for large schemes, events can change trends. For example, during this period, FOS's workload has been dominated by mortgage endowment disputes. More information would be required to determine how these disputes have affected statistical outcomes.

12.5 Some schemes include in their statistics the results of complaints that are resolved before a formal investigation, whereas ISO does not. In 2006/ 2007, ISO had 50 complaints that were resolved before a formal investigation was commenced.

12.6 Finally, this period, some schemes changed their method of reporting statistics. For example, FOS did not provide the outcome of the complaints resolved through guided mediation in 2004/2005 (55% of their workload).

13. Attachment B – Complainant feedback

13.1 The table below compares the feedback from the 26 complainants we interviewed over the telephone with the results of the ISO complainant exit questionnaire for the second half of 2007 and the ISO survey of complainants that was attached to the 2002 Independent Review Report.

Issue	Review group [1] (26 complainants)			ISO questionnaire results (27 completed post-complaint survey in the 2nd half of 2007)			ISO survey of complainants in 2002		
	Yes	No	Not asked /No opinion	Yes	No	Don't know	Yes	No	Don't know
ISO's service was easy to use	96%	4%	0%	96%	0%	4%	84%	8%	8%
ISO's investigation covered all issues	60%	20%	20%	81.5%	11%	7.5%	54%	42%	4%
ISO kept complainant informed	76%	24%	10%	96%	4%	0%	n/a	n/a	n/a

[1] The results from our review group are not strictly comparable with the results of the ISO questionnaire or the 2002 survey. This is because our review group were being asked to comment some months after their complaint was resolved – so memory became an issue. Also we took the approach that our results would be more representative of our review group if we did not push an interviewee to express an opinion where they did not seem to have a clear view and so for example if someone did not directly answer a question but instead moved to talk about something else we have recorded this as "no opinion expressed".

ISO's reasons for decision were clear/ understood[2]		56%	8%	36%	85%	11%	4%	68%	25%	6%
ISO took a fresh and independent look at complaint[3]		64%	16%	20%	78%	4%	18%	54%	44%	2%
ISO's speed was satisfactory		88%	8%	4%	85%	7.5%	7.5%	56%	37%	7%
Viewed ISO favourably	Won	32%	0%	0%	n/a	n/a	n/a	59%[4]	42%	n/a
	Lost	28%	40%	0%						

[2] Here our tabulation of results reflects our assessment of how well the complainant did in fact understand the reasons for their complaint outcome – not just the complainants' perception as to this. So our results are not really comparable with the written survey results.

[3] "We thought it was more meaningful to ask our review group about the independence with which the ISO approached the complaint resolution task - rather than, as in the ISO questionnaire, whether the ISO scheme is independent of the insurance and savings industry or, as in the 2002 survey, whether ISO has enough power and is sufficiently independent of the insurance and savings industry. But because different questions were asked in these 3 exercises, the results are not actually comparable."

[4] 93% of these respondents did not receive a decision that went entirely in their favour and 72% thought that the decision was unfair.

13.2 The table below collates comments made by complainants we interviewed.

	Favourable comments	Unfavourable comments
Decision in favour of complainant	"Thankful that was being listened to by ISO and very pleased with result." "Extensive research. Staff very courteous, onto issues." "ISO did its job, very good job." "Impressed with professionalism & thoroughness. Didn't feel heard by insurer but did feel heard by ISO." "Just very thankful." "Really really appreciate result." "Much easier than dealing with insurance claims officer."	

Decision in favour of participating firm	"Treated with respect and dignity." "Nothing they could do about the result." "[ISO] good." "Working within the parameters of what they had." "ISO plays an important role." "Quite impressed."	"ISO went to considerable lengths setting out all sorts of things that ISO said that they couldn't consider. This was very strange." "ISO missed main point and so never expected to be successful." "Decision grossly unfair." "ISO could have asked more questions – didn't really go beyond what was in original complaint. Would be more user friendly and accessible if Regional and face-to-face dealings possible rather than phone dealings." "ISO just stuck to their word. Wouldn't budge." "Process was fine. But don't really care about the process. Result was very poor, quite upset about that." "Didn't understand why ISO couldn't help. Thought the decision was unbelievable." "Just took insurer's side – hopeless."

14. Attachment C – Consultation

14.1 The following stakeholder input is gratefully acknowledged.

Interviews	
Vance Arkinstall, Investment Savings and Insurance Association of New Zealand	Linda Geor, Vero Insurance New Zealand
Chris Ryan, Insurance Council New Zealand	Judi Jones, Electricity & Gas Complaints Commissioner
Liz Brown, Banking Ombudsman	Chris Lysaght, IAG New Zealand
John Balmforth, AMI Insurance Limited	Roger Styles, Health Funds Association of New Zealand
Liz MacPherson, Ministry of Economic Development	Sam Huggard, ISO Commission
Claire Dale, ISO Commission	David Russell, Consumer Representative
Bill Bevan, Community Law Centre (Whitirea)	Raewyn Fox, NZ Federation of Family Budgeting Services
Stuart Robinson, Vero Insurance New Zealand	Reiny Marck, Lumley General
Jenny Fraser, TOWER Health & Life Insurance Limited	Paul Regtien, Southern Cross Healthcare
Rachel Cunningham, Southern Cross Healthcare	Pat O'Connor, Southern Cross Healthcare
Beverley Wakem, A/g Chief Parliamentary Ombudsman	Alison Timms, Chair ISO Commission
Written Submissions	
Community Legal Advice Whanganui	Lumley Insurance
Asteron Life Limited	AA Insurance
TOWER Limited	Insurance Council of New Zealand

15. Attachment D – Benchmarks

BENCHMARKS

for

INDUSTRY-BASED

CUSTOMER DISPUTE RESOLUTION SCHEMES

TABLE OF CONTENTS

PREFACE

Since 1990 various dispute resolution schemes have been set up by industry seeking to provide a cost-free, effective and relatively quick means of resolving complaints about the products or services provided by an industry. Customer dispute schemes of this type play a vital role as an alternative to expensive legal action for both consumers and industry.

The emergence of customer dispute schemes is also due in part to the increasing recognition of the value of effective industry self-regulation. Such schemes enable industry to ascertain the problems faced by their customers and take steps to rectify them, negating the need for government intervention.

Good Business Practice

Customer dispute schemes also make good business sense. They result in improved business practices and the creation of better quality goods and services for customers.

In order to encourage and support the development of customer dispute schemes the government has facilitated the development of a set of benchmarks to guide industry in developing and improving such schemes.

The benchmarks have been developed to apply primarily to nationally-based customer dispute schemes set up under the auspices of an industry. Such schemes currently exist in relation to banking, telecommunications and insurance. However, many of the principles that they represent may be capable of applying to State or Territory based industry schemes or non-industry schemes.

Flexibility

The benchmarks are constituted by key practices which it is hoped many schemes will adopt. However, it is recognised that some key practices in the benchmarks may not be applicable to the smaller sectors of industry or those sectors where there are few complaints. Every key practice does not have to be adopted by each industry sector. Industries should consider the applicability of each of the key practices to their sector taking in to account the industry's size, resources and complaint history. However, where possible, the use of these benchmarks by all customer dispute schemes is encouraged.

Some existing schemes hear complaints involving individual consumers while others allow small business to access their scheme. The benchmarks have been drafted primarily with a focus on individual consumers as users of the schemes. However, where the terms of reference of a scheme allow access to it by other entities, the benchmarks are still capable of applying to such schemes.

Most of the customer dispute resolution schemes to date have been set up in the financial services sector or the telecommunications sector. However, there are some sectors, such as the legal profession, which do not traditionally recognise themselves as an industry and which may have customer dispute resolution schemes set up independently of statute. The

benchmarks are capable of applying to dispute resolution schemes in these professions as well.

The benchmarks have a three-fold purpose. They are meant to act as a guide to good practice for those industry sectors which intend setting up a scheme to resolve disputes between their industry members and individual consumers of their goods or services. For existing schemes they will provide objective guidance on the practices to aim for in the operation of such schemes. They will also serve as a guide for consumers in giving them some idea of what they should expect from such schemes.

Voluntary Guidelines

The benchmarks do not have the force of law and are intended to be a guide to stakeholders - but adherence to them by the schemes will be a clear demonstration of their commitment to good practice.

The benchmarks have been drafted by a Working Group chaired by the Federal Bureau of Consumer Affairs and including representatives of the current major schemes - the Life Insurance Complaints Service, the Australian Banking Industry Ombudsman, the Telecommunications Industry Ombudsman and the General Insurance Enquiries and Complaints Scheme, as well as representatives of the Consumers' Federation of Australia, the Australian Competition and Consumer Commission, the Business Council of Australia and the Australian Chamber of Commerce and Industry. In drafting the benchmarks, the Working Group undertook extensive consultation with existing schemes and business and consumer groups.

Emphasis on Alternative Dispute Resolution

The schemes set up under these benchmarks will reflect an informal and inquisitorial style of dispute resolution rather than a formal and adversarial style. Thus overly prescriptive practices have been avoided and early resolution of disputes by consensus has been emphasised.

It is expected that in implementing and interpreting these benchmarks, both industry and consumers will not take an overly legalistic approach to them. The benchmarks should be approached in a spirit of seeking resolution by consensus as far as possible at an early stage to reduce costs, increase productivity and build better relationships between the parties. This is the essence of alternative dispute resolution.

Emphasis on Early Resolution at the Company Level

Customer dispute schemes do not obviate the need for each business to have its own mechanisms for dealing with complaints made by its customers. It is desirable to have a complaint resolved as early as possible after it has been made. It is only when resolution is not possible at the company level that the scheme should be utilised.

THE BENCHMARKS AND THEIR UNDERLYING PRINCIPLES

1. ACCESSIBILITY

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

2. INDEPENDENCE

The decision-making process and administration of the scheme are independent from scheme members.

3. FAIRNESS

The scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.

4. ACCOUNTABILITY

The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.

5. EFFICIENCY

The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

6. EFFECTIVENESS

The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

BENCHMARK 1 - ACCESSIBILITY

Principle

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

Purpose

To promote customer access to the scheme on an equitable basis.

Key Practices

Awareness/Promotion

1.1. The scheme[1] seeks to ensure that all customers of the relevant industry are aware of its existence.

1.2. The scheme promotes its existence in the media or by other means.

1.3. The scheme produces readily available material in simple terms explaining:

(a) how to access the scheme;
(b) how the scheme works;
(c) the major areas with which the scheme deals; and
(d) any restrictions on the scheme's powers.

1.4. The scheme requires scheme members[2] to inform their customers[3] about the scheme.[4]

1.5. The scheme ensures that information about its existence, procedures and scope is available to customers through scheme members:

(a) when a scheme member responds to a customer's complaint; and
(b) when customers are not satisfied in whole or in part with the outcome of the internal complaints mechanism of a scheme member, when the scheme

---

[1] The 'scheme' refers to a dispute resolution scheme run by an industry to resolve complaints by customers about businesses within that industry. The type of scheme which is set up will differ according to the size and nature of the relevant industry.

[2] 'Scheme members' refers to those businesses which participate in a customer dispute resolution scheme.

[3] The term 'customer' is used to refer to consumers who purchase goods or services from scheme members.

[4] This key practice relates to general promotion of the existence of the scheme by scheme members. The circumstances in which individual customers are required to be informed about the scheme is dealt with in key practice 1.5.

member refuses to deal with a complaint, or when the time period within which the internal complaints mechanism[5] is expected to produce an outcome has expired, whichever first occurs.

1.6. The scheme promotes its existence in such a way as to be sensitive to disadvantaged customers or customers with special needs.

Access

1.7. The scheme seeks to ensure nation-wide access to it by customers.[6]

1.8. The scheme provides appropriate facilities and assistance for disadvantaged complainants or those with special needs.

1.9. Complainants can make initial contact with the scheme orally or in writing but the complaint must ultimately be reduced to writing.[7]

1.10. The terms of reference of the scheme are expressed clearly.

Cost

1.11. Customers do not pay any application or other fee or charge before a complaint is dealt with by the scheme, or at any stage in the process.

Staff Assistance

1.12. The scheme's staff have the ability to handle customer complaints and are provided with adequate training in complaints handling.

1.13. The scheme's staff explain to complainants in simple terms:

(a) how the scheme works;
(b) the major areas it deals with;
(c) any restrictions on its powers; and
(d) the timelines applicable to each of the processes in the scheme.

1.14. The scheme's staff assist complainants to subsequently reduce a complaint to writing, where complainants need assistance to do so.

---

[5] An 'internal complaints mechanism' refers to the system set up within a business to handle complaints by its customers.

[6] Maximising access to the scheme could include measures such as providing toll free telephone access for consumers/complainants.

[7] In most cases the staff of a scheme will help a complainant reduce a complaint to writing where the complainant requires assistance to do so.

Use

1.15. The scheme's processes are simple for complainants to understand and easy to use.

1.16. The scheme provides for a complainant's case to be presented orally or in writing at the determination stage, at the discretion of the decision-maker.

1.17. The scheme provides for complainants to be supported by another person at any stage in the scheme's processes.

Non-adversarial Approach

1.18. The scheme uses appropriate techniques including conciliation, mediation and negotiation in attempting to settle complaints.[8]

1.19. The scheme provides for informal proceedings which discourage a legalistic, adversarial approach at all stages in the scheme's processes.

Legal Representation

1.20. The scheme discourages the use of legal representatives before the decision-maker[9] except in special circumstances.

1.21. The scheme provides the opportunity for both parties to be legally represented where one party is so allowed.

1.22. The scheme provides for the scheme member to pay the legal costs of complainants where the scheme member is the first party to request to be legally represented and the decision-maker agrees to that request.

---

8 While the focus of the scheme is mainly on alternative dispute resolution, it also has the function of arbitrating disputes which cannot be resolved by alternative means. The alternative dispute resolution techniques listed here are used before arbitration is considered. Initially, customers are encouraged to discuss their complaint with the scheme member and use any internal complaints mechanism that is available. Schemes are then encouraged to attempt to settle complaints before they get to the decision-maker. The scheme does not have to use all of the listed alternative dispute resolution techniques nor in this particular order, but the ones cited in this key practice are recognised techniques.

9 The 'decision-maker' refers to the individual, panel of individuals or other entity which is responsible for the final determination of complaints under a scheme.

BENCHMARK 2 - INDEPENDENCE

Principle

The decision-making process and administration of the scheme are independent from scheme members.

Purpose

To ensure that the processes and decisions of the scheme are objective and unbiased and are seen to be objective and unbiased.

Key Practices

The Decision-maker

2.1. The scheme has a decision-maker who is responsible for the determination of complaints.

2.2 The decision-maker is appointed to the scheme for a fixed term.

2.3. The decision-maker is not selected directly by scheme members, and is not answerable to scheme members for determinations.[10]

2.4. The decision-maker has no relationship with the scheme members that fund or administer the scheme which would give rise to a perceived or actual conflict of interest.

Staff

2.5. The scheme's staff are not selected directly by scheme members, and are not answerable to scheme members for the operation of the scheme.

Overseeing Entity

2.6. There is a separate entity set up formally to oversee the independence of the scheme's operation.[11] The entity has a balance of consumer, industry and, where relevant, other key stakeholder interests.

---

[10] Where the decision-maker consists, for example, of a panel of individuals, only the chair, or the individual who controls the decision-making process, is required to be independent of industry or consumer interests and be appointed by the entity which oversees the independence of a scheme's operation. Where the decision-maker consists of more than one individual, the chair ensures the independence of the decision-making. This allows for the relevant industry to be represented on the decision-making entity, as long as a balance between consumers and industry is maintained.

[11] An example of an entity which formally oversees the independence of a scheme could be a council or other body usually consisting of an independent chair, consumer member or members, industry member or members

2.7. Representatives of consumer interests on the overseeing entity[12] are:

(a) capable of reflecting the viewpoints and concerns of consumers; and
(b) persons in whom consumers and consumer organisations have confidence.

2.8. As a minimum the functions of the overseeing entity comprise:

(a) appointing or dismissing the decision-maker;
(b) recommending or approving the scheme's budget;
(c) receiving complaints about the operation of the scheme;[13]
(d) recommending and being consulted about any changes to the scheme's terms of reference;
(e) receiving regular reports about the operation of the scheme; and
(f) receiving information about, and taking appropriate action in relation to, systemic industry problems referred to it by the scheme.

Funding

2.9. The scheme has sufficient funding to enable its caseload and other relevant functions necessary to fulfil its terms of reference to be handled in accordance with these benchmarks.

Terms of Reference

2.10. Changes to the terms of reference are made in consultation with relevant stakeholders, including scheme members, industry and consumer organisations and government.

---

and, where relevant, other stakeholder member or members. Smaller industry sectors or those with few complaints may not have the ability or need to devote large resources to setting up such an entity. Other types of overseeing entities are not precluded as long as they allow for the relevant independence or a balance of competing interests.

12 Suitable consumer representatives can be ascertained by a number of methods, including the relevant consumer organisation providing a nominee, advertising for representatives, or the relevant consumer affairs agency or Minister responsible for consumer affairs nominating a representative. Suitable industry and other stakeholder representatives can be sought from the relevant industry association or stakeholder respectively.

13 The receipt of complaints about the scheme's operation (by the entity which oversees the independence of a scheme's operation) does not extend to receiving appeals against the determinations of the decision-maker.

BENCHMARK 3 - FAIRNESS

Principle

> The scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.

Purpose

To ensure that the decisions of the scheme are fair and are seen to be fair.

Key Practices

Determinations

3.1. The decision-maker bases determinations[14] on what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law.

Procedural Fairness

3.2. The scheme's staff advise complainants of their right to access the legal system or other redress mechanisms at any stage if they are dissatisfied with any of the scheme's decisions or with the decision-maker's determination.

3.3. Both parties can put their case to the decision-maker.

3.4. Both parties are told the arguments, and sufficient information to know the case, of the other party.

3.5. Both parties have the opportunity to rebut the arguments of, and information provided by, the other party.

3.6. Both parties are told of the reasons for any determination.

3.7. Complainants are advised of the reasons why a complaint is outside jurisdiction or is otherwise excluded.

---

[14] The term 'determinations' is used to refer to the final decision made by the decision-maker when determining a complaint. The term 'decisions' is used to refer to the decisions made by the scheme's staff.

Provision of Information to the Decision-Maker

3.8. The decision-maker encourages but cannot compel complainants to provide information relevant to a complaint.

3.9. The decision-maker can demand that scheme members provide all information which, in the decision-maker's view, is relevant to a complaint, unless that information identifies a third party to whom a duty of confidentiality or privacy is owed[15], or unless it contains information which the scheme member is prohibited by law from disclosing.

Confidentiality

3.10. Where a scheme member provides information which identifies a third party, the information may be provided to the other party with deletions, where appropriate, at the discretion of the decision-maker.

3.11. The scheme ensures that information provided to it for the purposes of resolving complaints is kept confidential, unless disclosure is required by law or for any other purpose specified in these benchmarks.

3.12. Parties to a complaint agree not to disclose information gained during the course of any mediation, conciliation or negotiation to any third party, unless required by law to disclose such information.

[15] Where a duty of confidentiality or privacy is owed to a third party in relation to information sought by the decision-maker, the scheme member can seek the premission of the third party to release that information to the decision-maker in full or with deletions as appropriate.

BENCHMARK 4 - ACCOUNTABILITY

Principle

> The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.[16]

Purpose

To ensure public confidence in the scheme and allow assessment and improvement of its performance and that of scheme members.

Key Practices

Determinations

4.1. The scheme regularly provides written reports of determinations[17] to scheme members and any interested bodies for the purposes of:

(a) educating scheme members and consumers; and
(b) demonstrating consistency and fairness in decision-making.

4.2. Written reports of determinations do not name the parties involved.

Reporting

4.3. The scheme publishes a detailed and informative annual report containing specific statistical and other data about the performance of the scheme, including:

(a) information about how the scheme works;
(b) the number and types of complaints it receives and their outcome;
(c) the time taken to resolve complaints;
(d) any systemic problems arising from complaints;
(e) examples of representative case studies;
(f) information about how the scheme ensures equitable access;

---

[16] Systemic industry problems can refer to issues or trends arising either out of many complaints about one scheme member or out of many complaints (which are essentially similar) about more than one scheme member.

[17] Written reports of determinations can consist of a concise summary of a decision-maker's determination and reasons for so determining. They do not necessarily need to include all of the evidence, arguments and reasoning of each complaint. It is not envisaged that written reports would be provided of all determinations made by the decision-maker. The determinations which are reported should be left to the decision-maker's discretion. It is not envisaged that written reports would necessarily be provided of other decisions (apart from determinations) made by the scheme.

(g) a list of scheme members supporting the scheme, together with any changes to the list during the year;
(h) where the scheme's terms of reference permit, the names of those scheme members which do not meet their obligations as members of the scheme;[18] and
(i) information about new developments or key areas in which policy or education initiatives are required.

4.4. The annual report is distributed to relevant stakeholders and otherwise made available upon request.

[18] The scheme should state in its terms of reference whether it will disclose the names of scheme members which do not meet their obligations under the scheme. Examples of where a scheme member does not meet its obligations under the scheme will include where it does not provide information as and when requested, or where it does not comply with a determination made under the scheme.

BENCHMARK 5 - EFFICIENCY

Principle

> The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

Purpose

To give customers and scheme members confidence in the scheme and to ensure the scheme provides value for its funding.

Key Practices

Appropriate Process or Forum

5.1. The scheme deals only with complaints which are within its terms of reference and have not been dealt with, or are not being dealt with, by another dispute resolution forum[19] and:

(a) which have been considered, and not resolved to the customer's satisfaction, by a scheme member's internal complaints resolution mechanism; or
(b) where a scheme member has refused, or failed within a reasonable time, to deal with a complaint under its internal complaints resolution mechanism.

5.2. The scheme has mechanisms and procedures for referring relevant complaints to other, more appropriate, fora.

5.3. The scheme has mechanisms and procedures for referring systemic industry problems, that become apparent from complaints, to relevant scheme members.

5.4. The scheme excludes vexatious and frivolous complaints, at the discretion of the decision-maker.

Tracking of Complaints

5.5. The scheme has reasonable time limits set for each of its processes which facilitate speedy resolution without compromising quality decision-making.

5.6. The scheme has mechanisms to ensure that the time limits are complied with as far as possible.

---

[19] Complaints which have been made to one scheme but are found to be more appropriately dealt with by another scheme can be dealt with by the latter scheme. It is where a complaint has been substantially considered by one scheme that a complainant is discouraged from forum-shopping.

5.7. The scheme has a system for tracking the progress of complaints.

5.8. The scheme's staff keep the parties informed about the progress of their complaint.

Monitoring

5.9. The scheme sets objective targets against which it can assess its performance.

5.10. The scheme keeps systematic records of all complaints and enquiries, their progress and their outcome.

5.11. The scheme conducts regular reviews of its performance.

5.12. The scheme's staff seek periodic feedback from the parties about the parties' perceptions of the performance of the scheme.

5.13. The scheme reports regularly to the overseeing entity on the results of its monitoring and review.

BENCHMARK 6 - EFFECTIVENESS

Principle

The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

Purpose

To promote customer confidence in the scheme and ensure that the scheme fulfils its role.

Key Practices

Coverage

6.1. The scope of the scheme and the powers of the decision-maker are clear.

6.2. The scope of the scheme (including the decision-maker's powers) is sufficient to deal with:

(a) the vast majority of customer complaints in the relevant industry and the whole of each such complaint; and
(b) customer complaints involving monetary amounts up to a specified maximum that is consistent with the nature, extent and value of customer transactions in the relevant industry.[20]

6.3. The decision-maker has the power to make monetary awards of sufficient size and other awards (but not punitive damages) as appropriate.

Systemic Problems

6.4. The scheme has mechanisms for referring systemic industry problems to the overseeing entity (where referral to the scheme member or members under key practice 5.3 does not result in the systemic problem being adequately addressed) for appropriate action.

[20] Because the loss arising from the determination of a complaint may vary according to the industry concerned, the benchmarks do not specify a monetary limit above which complaints are excluded from the scheme.

Scheme Performance

6.5. The scheme has procedures in place for:

(a) receiving complaints about the scheme; and
(b) referring complaints about the scheme to the overseeing entity for appropriate action.

6.6. The scheme responds to any recommendations of the overseeing entity in a timely and appropriate manner.

Internal Complaints Mechanisms

6.7. The scheme requires scheme members to set up internal complaints mechanisms.[21]

6.8. The scheme has the capacity to advise scheme members about their internal complaints mechanisms.

Compliance

6.9. The scheme has mechanisms to encourage scheme members to abide by the rules of the scheme.[22]

6.10. The determinations of the decision-maker are binding on the scheme member if complainants accept the determination.

Independent Review

6.11. The operation of the scheme is reviewed within three years of its establishment, and regularly thereafter, by an independent party commissioned by the overseeing entity.

6.12. The review, undertaken in consultation with relevant stakeholders, includes:

(a) the scheme's progress towards meeting these benchmarks;
(b) whether the scope of the scheme is appropriate;
(c) scheme member and complainant satisfaction with the scheme;
(d) assessing whether the dispute resolution processes used by the scheme are just and reasonable;
(e) the degree of equitable access to the scheme; and
(f) the effectiveness of the terms of reference.

6.13. The results of the review are made available to relevant stakeholders.

---

[21] The Standards Australia Standard on Complaints Handling AS 4269-1995 can assist scheme members to set up appropriate internal complaints mechanisms.

[22] Mechanisms for encouraging scheme members to abide by the rules of the scheme could include contractual obligations which a scheme member enters into when joining the scheme or naming in annual reports or otherwise those scheme members which do not abide by the rules of the scheme.