

**Report to the Insurance & Savings Ombudsman  
Scheme (“ISO Scheme”) Commission**

**2013 Independent Review**

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## I. INTRODUCTION

This Independent Review is conducted by Cameronralph Navigator, a Melbourne-based consultancy with an extensive background in external dispute resolution processes. The Report centres around field work conducted in New Zealand in May 2013.

It is the second independent review of the ISO Scheme that has involved consultants Phil Khoury and Debra Russell. The previous one was conducted in 2008 under the name of The Navigator Company (now merged with Cameron Ralph Pty Ltd) and was structured against the Benchmarks for Industry-Based Customer Dispute Resolution Schemes. These benchmarks were established by the Australian government in 1997 and widely adopted by members of the Australian and New Zealand Ombudsman Association (ANZOA).

The Benchmarks have been picked up in the subsequent reforms and are now set out as Principles in the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (“the Act”). Compliance with the Principles is a pre-condition for an EDR scheme’s approval under the Act.

By way of introduction, we apologise in advance that we will almost certainly not have done full justice to the ISO Scheme’s many achievements and successes. By their nature, these reports perfunctorily note successes and extensively rehearse areas for improvement. Their nature is also to look to the future and see gaps between today’s satisfactory performance and the imagined demands of tomorrow. Both profoundly unfair. We trust that our commendations, however briefly stated, are given due weight.

## 2. EXECUTIVE SUMMARY

Our review was conducted over the period from April to July 2013 and was to have a particular focus on Accessibility amongst the six Principles specified in the Act.

On our re-visit to the ISO Scheme, we found a scheme that had been through quite significant change in the five years since the 2008 Review. We found that the ISO Scheme is a competent, well-run EDR scheme that meets the six Principles, and:

1. Exhibits the same sensible, careful approach to complaints resolution that we had been impressed with in 2008;
2. Has successfully absorbed its much larger and wider range of participating member firms (with more work to do);
3. To the limited extent that complaints from the new areas of responsibility have begun to trickle in, has begun the process of broadening its skills and capacity to address these complaints; and
4. Meets the key practice areas under Accessibility, however has some areas of exposure under this Benchmark where a more assertive, proactive approach would strengthen its actual and perceived performance.

This is a successful and professionally run scheme, so our suggestions for improvement are for subtle shifts in balance or emphasis, not radical change.

The recurring key theme of our findings is that the ISO Scheme needs to move subtly towards a more proactive, assertive, 'front foot' style of operation that strengthens and underscores its leadership in financial sector EDR.

Our recommendations for future improvement include:

1. Strengthening the ISO Scheme's capacity and skills mix;
2. Continuing to professionalise its procedures and systems;
3. Continuing to shift the Ombudsman's role to be more outward-facing;
4. Taking a more proactive leadership role in the community;
5. Improving the ISO Scheme's accessibility to consumers through a more engaging, flexible, open approach;
6. Taking a firmer approach with Participants that are not meeting their obligations to make consumers aware of the ISO Scheme and those that are unreasonably delaying their handling of consumer complaints; and
7. More proactive and collaborative investigation of accessibility issues for consumers.

## 3. PROJECT APPROACH

### 3.1. REVIEW SCOPE

Our Review scope included high-level coverage of all of the Principles set out in the Act. In particular, we were asked to focus on the Principle of “Accessibility” and to consider:

- the impact of the ISO Scheme’s expansion into new areas of jurisdiction on original Participants, new Participants and consumers;
- whether the ISO Scheme has a national focus and application
- whether it is readily available and accessible to consumers
- whether it promotes knowledge of its existence
- whether it is easy to use
- whether it is accessible to disadvantaged consumers
- whether it has staff who are adequately trained in complaints handling and provide assistance to consumers; and
- whether there are cost barriers to consumers of insurance and savings products.

### 3.2. METHODOLOGY

Our work program included:

1. interviews of ISO Scheme managers and some staff;
2. review of ISO Scheme website consumer materials;
3. review of about 20 complaints files (this included all concluded new jurisdiction files and 5 Christchurch earthquake files);
4. interviews of 26 stakeholders (representatives of Ministry of Business Innovation & Employment, ISO Scheme Board and Commission members, new and old jurisdiction Participants, consumer representatives);
5. telephone interviews of 10 previous complainants; and
6. telephone interviews of 18 people who in the last few months contacted the ISO Scheme with an enquiry but who have not lodged a complaint with the Scheme.

### 3.3. STRUCTURE OF OUR REPORT

Our report begins with a discussion of the context in which the ISO Scheme operates. We then discuss the key issues that we consider are confronting the Scheme in carrying out its dispute resolution responsibilities and provide our recommendations as to how best to address those issues. The Accessibility Principle is then considered in some detail.

Lastly we provide our high level findings as to how the ISO Scheme is meeting the other Section 52(2) Principles. This is reported in tabular form, reflecting our lesser focus on these Principles.

### **3.4. ACKNOWLEDGEMENTS**

We would like to acknowledge the support provided to the review by the Insurance & Savings Ombudsman and staff who were very helpful and open in their discussions with us. We also owe a debt of gratitude to the industry, government and consumer stakeholders who gave of their time for interviews.

## 4. CONTEXT

The ISO Scheme has been through a period of significant change in the five years since the last Independent Review. Law reform, a significant expansion of scope of jurisdiction, a new Constitution and Terms of Reference, a change in the governance arrangements, a huge increase in the number and range of Participants, the advent of competing EDR schemes in the financial sector, significant external impacts from the global financial crisis and the Canterbury earthquakes, national elections, multiple responsible Ministers, a shift of office and an expansion of staff numbers – to name the major ones.

For financial external disputes resolution, the past five years have brought significant upheaval in other countries too. In Australia, a merger of five financial industry schemes into the Financial Ombudsman Service radically changed the landscape, with the resultant organisation many times larger and with the need for and capacity for more sophisticated operations.

The UK FOS continued to expand to cope with an explosion in GFC-driven and uniquely local financial product scandals – reaching a scale that no other part of the world even approaches. For the 12 months to March 31, 2013, the UK FOS reported just over 2 million enquiries and estimates that in the next 12 months they will deal with 385,000 matters at a cost of well over \$500m NZD.

North America also experienced huge increases in complaint numbers, although the news was less happy for some disputes resolution services, with the Comptroller of the Currency in the US being stripped of some complaint-handling jurisdiction over perceived shortcomings and the Ombudsman for Banking Services and Investments (OBSI) in Canada under concerted attack from parts of the investments and banking sectors, losing coverage of some firms to alternative disputes resolution services provided by legal practices.

In Europe, there has been a rapid expansion of provision of external disputes resolution – especially in former eastern block countries that are striving to meet new EU standards for financial consumer protection. A similar dynamic is driving adoption of external disputes resolution in third world and emerging economies – often as a condition of development funding from the likes of the World Bank and/or the IMF.

These dynamic changes highlight how comparatively new EDR is as a mechanism for disputes resolution and how its evolution continues – often in quite different ways.

It is quite timely that the ISO Scheme's 4th Independent Review should come at this point in the organisation's history – a point where multiple changes have been absorbed and where the organisation is looking forward to a new era of operation – and no doubt more adaptation and change.

## 5. KEY ISSUES

On our return to ISO, we were interested to see how the Scheme had coped with the influx of a more wide-ranging and much more numerous membership of Participants and how the Scheme was coping with complaints from the new areas of financial services coverage.

Added to that obvious agenda was the particular focus that the Commission had authorised – that of how well the ISO Scheme is meeting the Accessibility benchmark.

We found a scheme that:

1. Exhibits the same sensible, careful approach to complaints resolution that we had been impressed with in 2008;
2. Has successfully absorbed its much larger and wider range of participants and stakeholders (with more work to do);
3. To the limited extent that complaints from the new areas of responsibility have begun to trickle in, has begun the process of broadening its skills and capacity to address these complaints; and
4. Meets the key practice areas under Accessibility, however has some areas of exposure under this Benchmark where a more assertive, proactive approach would strengthen its actual and perceived performance.

A recurring theme that runs through our observations and recommendations in this 2013 Review is that we think the time is right for the ISO Scheme to take the next step in its evolution, to shift a little to the ‘front foot’ and subtly, but firmly, take a more assertive and more proactive role with stakeholders.

This is a successful and professionally run scheme, so our suggestions for improvement must be taken as recommendations for subtle shifts in balance or emphasis. They should not be taken as significant criticism or as advocating wholesale or dramatic change.

The ISO Scheme (as many other EDR schemes) can rightly point to the ‘balance’ of tone and neutrality of the Scheme as one of its great strengths – and one that has kept its reputation with industry healthy and strong. In this and the last review, many industry interviewees commented that the ISO Scheme ‘knows its role’ and positively remarked on the Scheme resisting calls to greater activism or straying too far from industry practice.

We do not aim to change this attention to neutrality, nor do we advocate any radical change towards ‘activism’. We are acutely conscious that industry EDR schemes must be very careful when pressing against the boundaries of existing industry practice. Often this is properly a matter for government policy or for regulation. There can also be a delicate balance of competing considerations that can have unforeseen consequences if disturbed.

Because our recommendations are for subtle change does not mean that we make them lightly. Adaptation over time has been a feature of all successful EDR schemes

and equally, failure to adapt has invariably played a part where EDR schemes have suffered a loss of reputation and fall from grace.

We do think that the environment for the organisation has changed and that the ISO Scheme must adapt – to a more complex environment; to a more complex range of products and complaints; to greater community expectation of leadership from the Scheme; to the increased scale of its operations; and to ‘competition’ from other schemes.

## 5.1. PROACTIVITY

One aspect of the changed world for the ISO Scheme (and for almost every other EDR scheme we know of) is that post-GFC, post-miss-selling scandals, post-bushfires, post-floods, post-earthquakes, there is a higher expectation of the EDR scheme to proactively demonstrate some leadership in efforts to deal with the aftermath of a crisis.

We are fully aware that there has been a healthy debate about the ISO Scheme contribution to the Canterbury earthquake recovery efforts and that we are latecomers to this debate. We are aware that considerable effort has been made by the ISO Scheme to assist consumers and authorities in dealing with the aftermath of the earthquakes. We are also aware that for earthquake complaints the ISO Scheme has engaged in more active ‘shuttle negotiation’ than is usually the case – which has provided benefits for the parties involved. But this is not necessarily well known and in our interviews with stakeholders we heard concerns that the ISO Scheme had not been sufficiently ‘visible’ and had not been seen to take a sufficient leadership role amongst the players assisting with resolution of the insurance issues.

We understand that in these circumstances, there will often be rational, sensible reasons for being conservative with the organisation’s profile – especially when it could be argued that there are already too many players bumping into each other! We also understand that as EDR schemes become larger, better known and more important to the community, that expectations of them will increase.

We also note that not all financial services providers will necessarily be opposed to some greater role or profile for the ISO Scheme. Many New Zealand insurers also operate in Australia, where the Insurance Ombudsman has for many years acted as a key coordinator of disaster recovery on behalf of the insurance industry, sending staff to the local area, providing a toll-free number and assisting consumers with advice on making claims. (Note that we are not suggesting this role for the ISO Scheme, rather illustrating that a higher profile can be entirely compatible with industry interests.)

We accept that with greater expectations come greater risks, including that the ISO Scheme will not be able to deliver to overblown expectations, that the Scheme’s staff will be drawn into unproductive, endless rounds of meetings about issues that may not really be their business, that other authorities’ actions will compromise the ISO Scheme’s independence, etc. These are the inevitable risks that ‘come with the territory’ however, the alternative - to not be seen to meet these community expectations - has its own risks.

EDR schemes are particularly exposed to reputational risk and the confidential nature of their casework means that most of that reputation is based on how

people talk about the scheme – not a function of its actual results. We have also found that once an EDR scheme attracts a negative reputation, it is extremely difficult to recover from this – and the facts are often no defence. We have seen criticisms over timeliness, consistency, fairness, and toothlessness take hold and bedevil an EDR scheme for years.

Our advice to EDR schemes is that they must jealously monitor and guard their reputations and act as needed before the criticisms can reach ‘critical mass’. This as an example of where we think the ISO Scheme needs to adapt to what is a changing set of expectations and shift the balance towards a more proactive, ‘front-foot’ stance.

### Recommendation 1.

**That the ISO Scheme look for opportunities, particularly in crisis situations, to demonstrate greater proactivity in assisting consumers to obtain resolution of their complaints. This could include:**

- a more active media strategy to publicise outcomes achieved through the Scheme;
- identifying repeat fact situations or ‘road-block’ issues and working with the relevant Participant(s) to streamline their approach to complaints of that type; and
- the Ombudsman continuing the transition of her role to a more external focus (see also Recommendation 6 as to this).

## 5.2. WORKLOAD

Over the years, we have observed that the ISO Scheme is a carefully managed scheme that keeps tight control over costs and keeps staff numbers to an appropriate level for the workload. We have heard directly from participants that this attention to costs is much appreciated.

As the ISO Scheme has experienced in recent times, it is, of course, often difficult for an EDR scheme to find staff with the right mix of skills and temperament to match the EDR scheme’s working environment as it changes. A surge in complaint volumes is very hard to recruit for quickly – recruitment can be slow, and new staff do not always prove to be a good fit. Inevitably, a small organisation such as the ISO Scheme may find a need for rapid expansion of capacity hard to cope with.

During the period that our Review examined, although overall performance was maintained at a sound level, there were times when the staffing levels were not fully adequate to meet high demand periods (despite best efforts from the ISO Scheme) and participants, consumers and other stakeholders noticed and raised their concerns with us.

To address these issues, the best EDR practice we have observed is where scheme management are prepared to err a fraction on the high side of ‘perfect’ on the staffing front and where they have developed techniques to help manage workload

more flexibly (eg. to build up a part-time workforce that is willing to increase hours when called on and to work fewer hours when that is appropriate).

This strategy requires a level of confidence in workload projections and a little more of that ‘front foot’ stance in winning industry support for marginally higher funding through the governance and consultation structures. We also understand that this can be difficult – especially when economic times are not ideal for industry participants – and the ISO Scheme will need to engage with participants to win their support.

### Recommendation 2.

**That the ISO Scheme’s staffing strategy should be set in a way that gives it more capacity to cover surges in workload or to manage staffing setbacks such as illness or resignation. When workload turns down, any short-term surplus capacity could be used on special projects, for example, those recommended in this report.**

## 5.3. ACCESSIBILITY

This area of performance was the key requested focus for this Review, and we discuss it in some detail in a dedicated section of the Report below. We note here under the heading of Key Themes, that there are a number of observations that we make under Accessibility that, to our minds echo this key theme of evolving the ISO Scheme into to a more confident, proactively inclusive scheme.

## 5.4. SKILLS

Part of the gradual reconfiguration that we think is inevitable is to bring a broader skillset to the ISO Scheme. On the assumption that over time, the mix of ISO Scheme's complaints will more or less mirror that found in the similar legal and cultural settings of UK, Canada and Australia, it is inevitable that the spread of skills within the ISO Scheme will need to reflect the spread of financial services covered and the types of complaints received.

While it is generally true that a skilled complaint investigator can adapt to different types of complaint, we do not subscribe to the view that ‘a complaint is a complaint is a complaint’. Complaints do differ in complexity and in the nature of the options for resolution. It is also true that for the confidence of consumers and Participants, there is no substitute for deep industry knowledge. There is also the risk that without different perspectives, unfamiliar complaints will be seen through a familiar lens, resulting in key issues being overlooked.

The ISO Scheme has had a practice of employing staff with a mix of legal and insurance industry experience. Since 2011, the ISO Scheme has also recruited senior managers, one of whom is the Deputy Ombudsman with other broader financial sector experience. We think that over time, the ISO Scheme will need to continue to recruit additional staff with experience in the new areas of financial services.

That is not to say that the new jurisdictions present the only demand for improved skills in the coming years. The office will need to strengthen its administrative capabilities (some has already taken place), its communication and publicity capacity and broaden its base of technology skills. There is already demand from Participants that the ISO Scheme make greater use of email communication and requests from Participants for information about complaint enquiries received by the ISO Scheme that pertain to them. Over time, there is also likely to be demand from Participants for a web-based facility to ascertain the current status of their complaints with the ISO Scheme – something that larger schemes in other jurisdictions offer.

In the complaint-handling domain, as a complement to the ISO Scheme's legal skills and its case manager mediation training (through LEADR), increased negotiation skills will pay off as the ISO Scheme works to achieve more frequent early resolution (eg. through shuttle negotiation or formal conciliation).

Documented procedures will also need to be regularly updated and enhanced to spread the value of expertise, capture learnings and ensure consistency and efficiency.

### Recommendation 3.

**That as the ISO Scheme grows in size it continues to broaden its staffing profile to strengthen its corporate services capabilities (including in particular communication, publicity capabilities and information technology skills) and its case handling skills (including early resolution of complaints through shuttle negotiation and conciliation and handling of complaints in its new areas of jurisdiction).**

### Recommendation 4.

**That the ISO Scheme continues to develop its Enquiry and Complaint Procedure Manual to maximise its guidance for Case Managers and to promote the quality of its practices.**

One useful way of accelerating learning as the ISO Scheme transitions to a larger scheme is for its staff to spend some time seconded to another broad-based Ombudsman service. The obvious candidate is the Australian Financial Ombudsman Service - which has the advantage of proximity and has the spread of financial services, experience and scale to provide a valuable learning opportunity for one or more ISO Scheme staff.

The Credit Ombudsman Service in Australia (COSL) is Sydney-based and has a good hardship complaint process that could also be looked at. Although much more costly, Canada's OBSI has the most sophisticated processes for handling investments complaints that we have seen. We note that in a reverse process,

COSL invited a key analyst from OBSI to come to Sydney and share knowledge with COSL staff.

To put a practical illustration, we think that (say) the Deputy Ombudsman and/or one of the more experienced case officers could usefully spend several weeks at FOS working with FOS staff and would pick up valuable insight into some of the technical and operational issues that come with a full spread of financial services complaints – in particular those that are yet to impact on the ISO Scheme.

Of course, this is not a suggestion that the ISO Scheme ought to slavishly follow FOS practices. All EDR schemes are unique and operate in their own unique environment. Rather we anticipate that a senior, experienced staff member would be able to adapt any relevant learning to their own environment and pass that learning on to procedures and to other staff through day-to-day supervision.

#### Recommendation 5.

**That the ISO Scheme seek to challenge its organisational thinking and ready itself for complaints in its new jurisdictions by seeking secondment opportunities with other like EDR schemes, such as Australia's Financial Ombudsman Service, for one or more of the ISO Scheme's experienced staff.**

We also note that as the scale of the ISO Scheme increases and external demands on the Ombudsman increase (discussed elsewhere) there will be some need to reduce her internal workload. We are careful not to suggest radical change here. One of the ISO Scheme's strengths over the years has been the quality control and consistency that comes from the Ombudsman's supervision. The appointment of a Deputy Ombudsman is an excellent step and has allowed for a gradual, sensible delegation of selected tasks from the Ombudsman. This process of gradual, selective delegation should continue.

#### Recommendation 6.

**That there should continue to be a progressive realignment of responsibilities from the Ombudsman to the Deputy Ombudsman to free the Ombudsman up to take on more external-facing activity.**

We are conscious that some stakeholders expressed the view that the Ombudsman should be clearly seen to be removed from day-to-day case file oversight – in order that any request for review would be seen to be seen with 'fresh eyes'. While we agree that this would strengthen the ISO scheme's reputation for fairness and independence, in our experience, this is almost impossible to achieve in a small EDR scheme.

From our enquiries, we were satisfied that for the scale of the office, the Ombudsman's role is as reasonably confined to matters of process and file QA as is practically possible and that the Ombudsman is not unduly involved in the day-to-day substantive decisions on matters.

## 5.5. THE COMPETITIVE ENVIRONMENT

Our conversations with people close to the ISO Scheme produced much commentary about how ISO Scheme should now be dealing with the issue of 'competition' in disputes resolution in the financial sector.

Some felt that the presence of competing EDR schemes would be comparatively short-lived, with either the irritation of inconsistent approaches, public criticism, the overall cost of the system, or regulator/government concern over the apparent confusion and inefficiency eventually driving a reduction in the number of players.

Most participants that we spoke to were not particularly conscious of what other schemes were doing to promote themselves or to market to existing ISO Scheme members, however a handful had the impression that one or other of the competing schemes were 'trying harder' to promote their services.

To some extent this is not a matter for public discussion around the Independent Review. From our perspective, while we are sceptical about the value of multiple schemes, it is too early for us to be able to identify specific impacts of 'competition' in the operational effectiveness of ISO. The observable impact is that of the larger and more diverse participant base – commented on throughout the report.

## 5.6. FEES & LEVIES

One of the operational aspects of EDR schemes that we often think is not fully optimised is the area of fees and levies. Typically fees and levies are seen as a nuisance, hygiene issue - one that is essential but somehow distasteful. We have frequently seen fees and levies set in a 'once-every-three years' setting where the focus is on negotiating industry association politics and on achieving the lowest noise solution that will deliver sufficient funding. In these cases, everyone retires from the debate exhausted and hugely relieved that it is over for another 3 years!

This is completely understandable - but it misses a key dynamic in complaint handling - ie. whether fees encourage appropriate incentives amongst participant firms.

This can be a very sensitive issue. Taken at its crudest, the idea of escalation points in case fees can be dismissed as a form of 'structured blackmail' - and we accept that some complaint fee structures can result in firms taking commercial decisions to settle unworthy complaints to avoid higher case fees. Equally, it can be argued that this is standard commercial practice in customer service for many firms and there is nothing unique about this when it applies during EDR.

This is not our aim and we encourage EDR schemes to develop fee scales that reflect their own particular complaint types and industry environment. What is important is that fee scales encourage Participants to behave responsibly towards EDR complaints.

This can include a small 'flag-fall' fee that encourages Participants to make sure that complaints are not making it to the EDR scheme when they still haven't been considered at the right level by the firm - equally, the fee scales can help to encourage a more senior level in the firm to consider a matter afresh before allowing it to go to a full investigation. The inverse is also true - a flat case fee can encourage Participants to let more complaints go through the full process, wasting everyone's time and expense because there is no marginal fee cost.

The point is that fees and levies have a significant effect on the behaviour of Participants and on their perception of 'fairness' of the fees and cost-effectiveness of the service overall. This is true of any funding/fees & levies model whether it is proactively managed or simply left to a 'default' setting.

We do not propose any particular solution for the ISO Scheme - but observe that comparatively few complaints (around 27%) are resolved through shuttle negotiation before going to a full investigation. This is likely to be an issue for the ISO Scheme if complaint volumes build in the way that other jurisdictions have experienced. A useful contrast was illustrated by the approach taken with many of the earthquake complaints, which did involve a more flexible, shuttle negotiation approach. We would encourage the next fee review to examine whether the case fees are aligned as effectively as they could be.

#### **Recommendation 7.**

**That the next fee review examine whether EDR efficiency including early resolution outcomes could be enhanced by case fee structure changes.**

## 6. ACCESSIBILITY PRINCIPLE

Accessibility was the Principle selected by the ISO Scheme Commission as the particular focus for this Independent Review. Although in the past, we have found this Benchmark can be a little difficult to find substantive evidence for and can tend not be a central feature of our observations, in this instance we found that it was a highly appropriate focus for the Review.

We have divided our observations around Accessibility into three dimensions:

1. The first we have termed ‘good practice’ – and this is the standard of Accessibility that we have come to expect from well-run EDR schemes;
2. The second is ‘areas for improvement’ – which is where the ISO Scheme can strengthen Accessibility based on better practice that we have seen elsewhere; and
3. The third dimension is where we invite the ISO Scheme to begin to think more proactively about how to improve accessibility to those outside of the usual group of users of financial sector EDR schemes.

### 6.1. GOOD PRACTICE

For basic consumer accessibility, the ISO Scheme follows common good practice we have seen elsewhere and clearly meets what is currently envisaged by the Benchmark.

The service is free to consumers. The ISO Scheme and contact details are advertised in the usual directories and on the ISO website. There is a national toll-free number and enquiries and complaints can be lodged via email and the ISO website.

The website provides materials regarding how to complain – including in 7 different languages - and a *Fair Go* video that explains how the ISO Scheme works. ISO makes use of a ‘hearing relay’ and provides access to an interpreter service for non-English speaking consumers. The Scheme has Consumer Information Sheets on a variety of issues including the Christchurch Earthquakes. A recent initiative is *Consumer Focus*, a newsletter for consumer. The website also includes a large number of Case Studies.

The ISO Scheme participates in opportunities to provide information to consumers with Participants, with government agencies and consumer organisations. The Ombudsman makes herself available for media interviews and there is periodic use of media releases for key announcements.

This accessibility extends to providing information and training for Participants, through speaking at conferences and training courses, providing briefings for staff, etc.

The ISO Scheme publishes an Annual Report that provides information about the service, example Case Studies and statistical analysis of the enquiries and complaints received.

In all these usual respects, the ISO Scheme meets the Accessibility Benchmark. In addition, in almost all cases, our interviews with complainants found very good feedback about the service from the ISO Scheme. We expect that these complainants are also providing this good feedback to colleagues, friends and relatives – an excellent way to spread community awareness of the ISO Scheme.

## **6.2. AREAS FOR IMPROVEMENT**

In the second dimension of ‘better practice’, we identified a few areas where with some subtle change; we think that the ISO Scheme could strengthen its accessibility to consumers. These include:

- Increasing its Applicable Monetary Limit for regular payment products;
- Better presentation of some website materials;
- More visibility as to the assistance available for disadvantaged consumers accessing the ISO Scheme, including the Scheme’s preparedness in appropriate cases to assist where oral complaints are made;
- More flexible approach to assisting consumers where their complaint against the financial services provider has been unreasonably delayed;
- More proactive effort to ensure that Participants comply with their obligation to make consumers aware of their right to go to the ISO Scheme; and
- Seeking to enhance its public profile .

### **6.2.1. APPLICABLE MONETARY LIMIT FOR REGULAR PAYMENT PRODUCTS**

In our 2008 Review, we recommended that the ISO Scheme amend its Term of Reference to increase its monetary jurisdiction from \$150,000 to \$200,000 for lump sum payments and from \$1,000 per week to \$1,500 per week for regular payment products.

The Applicable Monetary Limit for lump sum payments was increased when the new Terms of Reference were adopted with effect from March 2012. The maximum weekly payment amount was not, however, increased. This issue was raised with us during the stakeholder consultations undertaken for this Review.

As in 2008, we are of the view that the weekly Applicable Monetary Limit should be increased. As noted in our last review report, it is difficult to determine the extent to which the current level is a barrier to access. One might look to the numbers of complaints rejected by the ISO Scheme, however this will inevitably significantly understate the issue because some proportion of dissatisfied consumers with disputes over that monetary limit will not have approached the ISO Scheme at all. For all sorts of commercial reasons, Participants will not share this information. Our expectation is that there are a small, but substantive number of consumers who are excluded from the ISO Scheme because of the monetary limit.

First, the limit has remained at the current level since 2006 and thus the real value has been eroded by inflation since that time. Using the New Zealand Reserve Bank

Calculator, just to have kept pace with inflation, the limit should be at around \$1200 per week today.

Second, comparable schemes overseas routinely accept disputes for higher amounts. The equivalent Australian FOS limit is \$7500 AUD per month, which - subject to the prevailing exchange rate - is closer to \$2000 NZD per week. Other schemes do not have any specified limit, with some accepting any complaint but limiting their award to the single amount limit (eg. \$200,000).

Third, the argument we have heard that the ISO Scheme does not have the capability to handle more complex, higher value complaints has even less validity today. We have seen no evidence that complaints become more complex between \$1000 and \$1500 dollars per week and after seven more years of experience, the ISO Scheme must surely be up to the task. Finally, the income levels that the increase would contemplate covering are not such that they could be argued as being the domain of only the wealthy or sophisticated investor.

We are satisfied that increasing the jurisdiction limit to at least \$1500 per week is a comparatively minor adjustment which will provide a few more consumers with an effective alternative to legal proceedings without any unreasonable imposition on participant firms.

#### Recommendation 8.

**That the ISO Scheme's Applicable Monetary Limit for regular payment products should be increased to at least NZ\$1,500 per week.**

### 6.2.2. PRESENTATION OF SOME WEBSITE MATERIALS

The ISO Scheme's website includes many helpful resources for consumers. Whilst information describing the complaints process is presented in a consumer-friendly manner, the ISO Scheme tends to adopt a formal approach, a strictly neutral and cautious tone and a minimalist presentation style in material that addresses the substance of complaints. This can be seen in the ISO Scheme's Case Studies (which have a consumer and industry audience) and even in Consumer Information Sheets. In contrast, the Case Studies of other New Zealand schemes are written in a more personal and engaging style and with a more friendly, approachable presentation.

We think that this is an area where some subtle changes can and should be made in the interests of enhancing the ISO Scheme's accessibility. To do so would not be to put at risk the Scheme's hard won reputation for neutrality. It would, however, help to modernise the ISO Scheme's image and to make the Scheme seem a little less formal and distant.

#### Recommendation 9.

**That the ISO Scheme should revisit the style and presentation of its Case Studies and Consumer Information Sheets with the aim of making these more personal and engaging.**

### 6.2.3. COMPLAINT LODGEMENT

Currently, the ISO Scheme requires complainants to lodge their complaints in writing – using the prescribed complaint form. This has the advantage of ensuring that all the essential information is provided at the outset and that the ISO Scheme does not have the inefficiency of chasing up missing information.

The length and detail required by the complaint form was the subject of occasional comment from consumers we interviewed, however we think this is a perfectly reasonable requirement for the majority of middle-class, educated consumers. It is however, a substantive hurdle for accessibility to the ISO Scheme for those with low levels of education, of limited language skills or where cultural difference acts to discourage persisting with a complaint.

We understand that from time to time, where the complainant is not able to readily provide their complaint details in writing and in full, the ISO Scheme staff will assist the complainant to complete the complaint form. This is consistent with the principle of ‘levelling the playing field’, consistent with the intent of the Benchmark and can be readily shown to be well short of ‘consumer advocacy’ or any such potential criticism. The ISO Scheme does not, however, publicise on its website or in its consumer information that it provides this service. This may mean that some consumers, in need of this service, are deterred from bringing their complaint to the Scheme.

Our experience with other schemes is that, even where this complaint-lodgement assistance service is publicised by the scheme, it is rarely called on – but greatly appreciated when it is needed.

#### Recommendation 10.

**That the ISO Scheme website and consumer information material explain that ISO Scheme staff are able to assist consumers who have difficulty completing the standard complaint lodgement process by themselves.**

### 6.2.4. DEADLOCK

In our last independent review (2008) we raised the concern that the absolute insistence on a Deadlock letter from the Participant may have been acting as a hurdle to access. This practice was well-entrenched even though the ISO Scheme’s Rules enabled the Scheme to act on a consumer’s complaint if the ISO Scheme considered that the complaint had been through the internal complaints procedure and was unable to be resolved by that procedure.

Subsequent to our review, the ISO Scheme amended its Terms of Reference to meet the requirement of Financial Service Providers (Registration and Dispute Resolution) Act 2008 Section 63(e) which requires a scheme’s rules to specify “a period after which the scheme, if asked by a complainant, must investigate a complaint that has been made directly to a member”. Consistent with this, paragraph 8.2 of the ISO Scheme’s new Terms of Reference now specify a 2 month

period since the date of a complaint, after which the Scheme can take on a complaint if the Participant has fully considered the complaint, even if a Deadlock letter has not been issued.

We understand the strengths of the Deadlock-first policy - for Participants, for consumers and for the ISO Scheme.

- For Participants, it gives them every chance to resolve the matter before it escalates to the ISO Scheme;
- For consumers, it encourages them to make a direct complaint to the Participant; and
- For the ISO Scheme it provides a clear, evidentiary 'flag' that simplifies the Scheme's complaint investigation and no doubt avoids disagreement with Participants over whether a complaint is ready for the ISO Scheme.

The weakness in this system occurs when the consumer is not aware of the availability of the ISO Scheme as an avenue of complaint review, and/or where the Participant processes break down or customer service is poor. In these cases, the consumer can suffer inordinate delays in the resolution of their matter or even may, through exhaustion or ignorance of their right of recourse to the ISO Scheme, abandon a complaint that may have been legitimate. When this happens, it is the consumer who is paying the price for the system.

The 'safety valve' for this weakness in a Deadlock-first system is the time limit. Once a consumer's complaint has been with a Participant for a prescribed amount of time without resolution or deadlock, the consumer is entitled to go to the EDR scheme. This is what is intended by Financial Service Providers (Registration and Dispute Resolution) Act 2008 Section 63(e). As stated in the guidance provided by the Ministry for Consumer Affairs, "this is to avoid the situation where a complaint remains deadlocked at the internal scheme level". As also noted in that guidance, "for a deadlock provision to operate effectively, a complainant must know that an external scheme exists and that they have a right to access it after a certain period (for instance, in the Banking Ombudsman rules, below, this period is 3 months)".

This 'safety-valve' is not being used at the ISO Scheme. In the 14 months since the provision was adopted through the Terms of Reference, no matters have been accepted without a Deadlock letter and we understand that the last time this was done was in 2009 under the old Terms of Reference where a matter was 'deemed' to be in deadlock. The ISO Scheme has the practice of using telephone contact to prompt participants where a deadlock letter has been too long in coming.

In contrast, FOS in Australia regularly accepts complaints that have not achieved the equivalent of deadlock. In the general insurance area (the best parallel with traditional ISO Scheme complaints), they estimate that between 10 and 15% of the complaints accepted have not reached formal deadlock with the Participant.

## Recommendation 11.

**That the ISO Scheme begin to firmly apply its Terms of Reference option (paragraph 8.2) to accept complaints without a Deadlock letter where**

the circumstances are appropriate (eg. long delay, poor service, communication breakdown).

### 6.2.5. DEADLOCK REFERRALS

We are also concerned about the outcomes for those consumers who approach the ISO Scheme before obtaining a Deadlock letter and who are referred back to their Participant. To test this aspect of Accessibility, we conducted a simple telephone survey of 16 consumers who had been referred back to their Participant some 2 to 3 months ago and whose complaints had not arrived back at the ISO Scheme. As it happened, all of those within our sample were in dispute with an insurer and 4 of the 16 related to earthquake claims. The results were not at all reassuring - as shown in the table below.

Outcome as at interview	No. of claimants
Settlement reached with insurer	5 (in 2 cases the request for a Deadlock letter, after the claimant's contact with the ISO Scheme, resulted in the insurer reversing its previous apparent refusal of the claim)
Claimant said claim still progressing / frustratingly slow/ close to deadlock	7
Claimant told us that claim had been refused (although Deadlock letter not issued)	2
Claimant intending to reinvigorate matter with insurer by seeking a Deadlock letter	1
Deadlock letter issued by insurer but claimant has not yet lodged complaint with the ISO Scheme	1
Total	16

94% of these consumers reported poor to extremely poor service from their insurer. 12% of the 16 consumers had been pursuing their claim for 4 to 6 months, 19% for 6 to 12 months and a further 12% for in excess of 1 year. Claimants' comments included that consumers need more education about how to deal with a stalled insurance claim and about the availability of the ISO Scheme. Also that the ISO Scheme needs to put more pressure on insurance companies to sort the claim out or to provide a Deadlock letter.

Our testing is too small a sample to be conclusive, but it signals that the claims/complaints processes within at least some insurers is acting to deny consumers a Deadlock letter and is thereby discouraging access to the ISO Scheme.

Whilst the data was not available to enable us to undertake testing, we are also concerned that many of the ISO Scheme's new Participants will lack mature internal complaints handling systems and will also fail to provide Deadlock letters in a timely way, thereby discouraging access to the ISO Scheme.

This hypothesis would be consistent with the lack of awareness of complaints handling obligations evident from the ISO Scheme's recent survey of 250 Participants which asked Participants to self-assess as to whether they were meeting their membership obligations to publicise their complaints handling system and ISO Scheme membership - 13% of Participants reported that they were not doing this.

Although it is not a complete picture, to address this problem, we think that the ISO Scheme should be systematically tracking a sample of those referred back for Deadlock – perhaps every 4 or 6 months. This type of study is particularly important given the huge increase in number of complaint enquiries – a 74% increase from 2010/ 2011 to 2011/ 2012 – whilst surprisingly complaint numbers did not increase at all during this period.

This approach would provide the ISO Scheme with valuable intelligence about what consumers confront in dealing with Participants and provide the Commission with some basis for tracking this important aspect of Accessibility over time.

#### Recommendation 12.

**That the ISO Scheme conduct periodic telephone follow up of a sampling of consumers who are referred back to the relevant Participant for a Deadlock letter. The process should track whether consumers are obtaining satisfactory service on referral, whether any of those experiencing long delays should have their complaint accepted by the ISO Scheme under Paragraph 8.2 of the Terms of Reference and whether there are problems with obtaining Deadlock associated with particular Participants.**

#### 6.2.6. MAKING CONSUMERS AWARE OF THE ISO SCHEME

A perennial issue for EDR schemes is monitoring participating firms' compliance with their obligation to make consumers aware of their right to take an unresolved complaint to the scheme. For the ISO Scheme, under its old jurisdiction and with comparatively very few members, this was a more manageable task. In its new incarnation, with some thousands of members, this is inevitably more difficult.

The risk is greater because many of the new Participants are very small, many will only rarely, if ever, have a complaint and many will not have particularly robust systems and procedures that would ensure that this awareness obligation is met.

While those complainants that do find their way to the ISO Scheme can be easily checked for Participant advice, the risk is of course, that there are complainants that are not being informed and who do not find their way to the Scheme. This is much harder to identify, however our limited telephone research (see earlier) and the ISO Scheme's own research project indicates that this is likely to be happening often enough to be a concern.

We are aware that this has been the subject of considerable educational effort with new Participants. From 1 July 2013, there will be a new Participant website. The ISO Scheme has provided new Participants with template documents to help them build robust IDR practices. Presentations and webinars have focused on Participants' obligations to publicise their membership of the ISO Scheme. Further, where a complaint is lodged and the ISO Scheme is alerted that a Participant did not advise the consumer of their ISO Scheme rights, this is followed up with the Participant. This approach is entirely appropriate with a significant population of Participants that are new to the ISO Scheme and are not yet accustomed to these obligations.

We note however that once this early education phase is complete, in the interests of meeting the Accessibility Benchmark, the ISO Scheme will need to develop a more robust system of assuring itself that consumers are being made aware by Participants. We acknowledge that the ISO approach will have to take into account the differing regulatory obligations on Participants to make consumers aware of disputes processes that apply.

Some EDR schemes conduct periodic 'shadow-shopping' to test Participant adherence to awareness obligations. We doubt that this will be very satisfactory for ISO unless done in concert with other EDR schemes and/or regulators. The ISO Scheme's membership agreement only places a very general obligation on Participants to make consumers aware of their rights to go to the ISO Scheme. In our experience, unless the Participant has very specific obligations that are readily approximated in a shadow-shopping scenario, it is difficult and can be unfair to be forming judgements about the Participant's compliance.

Some improved information can also be obtained by more rigorous checking of how consumers have come to the ISO Scheme and by recording whether correspondence from Participants on case files has direct reference to the ISO Scheme. Deadlock letters by their nature have near 100% compliance with the awareness obligations, however it is our experience that this does not always produce the result that the consumer actually understands!

We understand that for new Participants it is early days and we understand that the ISO Scheme is alive to this issue and has undertaken sound first-step research to begin to assess the degree of compliance. This is a critical aspect of Accessibility and we think that over time, the ISO Scheme's approach will need to become more robust. We think that the ISO Scheme will likely have to move to make the Participant awareness obligations more specific and measurable, and would benefit from taking a cooperative approach with other interested groups.

### Recommendation 13.

**That the ISO Scheme continue its process of investigation and education of Participant compliance with their obligation to make consumers aware of their rights to go to the ISO Scheme. Over time, the ISO Scheme should move to making membership obligations more specific and should look to collaborating with other interested groups such as industry associations, consumer groups and regulators.**

#### 6.2.7. TIME LIMIT FOR COMPLAINT

The ISO Scheme's Terms of Reference only permits a consumer to come to the ISO Scheme if the complaint is lodged within 2 months of receipt of the Deadlock letter. This is a very limited window by comparison with other schemes we are aware of. Whilst the Banking Ombudsman and Financial Services Complaints Limited also only allow 2 months, Financial Dispute Resolution allows up to 3 months, Australia's Financial Ombudsman Service allows up to 2 years and Canada's OBSI allows even longer (subject to provincial statutes of limitations).

We understand the intent of the time limit, which is to encourage consumers to make an early decision and to bring the complaint to the ISO Scheme while it is comparatively easy to deal with (staff at the Participant are still in place, the consumer's memory is still reasonably fresh, etc).

We also understand that this is a timeframe that is more relevant to insurance complaints – which are almost all related to refused insurance policy claims. These are generally more time sensitive than other financial services complaints and 2 months could be seen as reasonable in that context.

Particularly in other financial services matters, we think this is less reasonable. For example in investment matters, it may take quite some time for a consumer to understand or obtain advice on the impact and importance of a matter in dispute with a Participant. We also note that, based on the experience of some of the consumers that we interviewed, some of them are experiencing significant delays (of many months) in the handling of their complaint by the Participant. For a consumer who has been waiting for a year or more for a response, to be told that they must prepare and lodge their complaint with the ISO Scheme within 2 months must seem patently unfair.

We think that it would be consistent with the ISO Scheme's high EDR standards for at least 3 months to be permitted as a standard window for complaint lodgement – and the ISO Scheme should make it clear that if there are extenuating circumstances that they will accept complaints beyond that timeframe.

### Recommendation 14.

**That the ISO Scheme amend its Terms of Reference and its public information to provide:**

- a) consumers with 3 months after receipt of a Deadlock letter in which to lodge a complaint with the ISO Scheme; and
- b) that in extenuating circumstances, the ISO Scheme is able to accept complaints after that 3 month timeframe.

### 6.2.8. PROFILE RAISING

A key element of Accessibility relates to the EDR scheme's ability to raise community awareness of its service – in an appropriate and cost-effective way. The three key ways of making consumers aware are (in order of importance):

- a) through Participants directly informing their customers (discussed above);
- b) through referral points (community services, government, industry associations); and
- c) through directly raising their profile in the community.

Referral points are an area where EDR schemes can make quite a difference through targeted proactive effort, and we encourage schemes to build relationship with referral points, to provide referral points with regular updates of information, to supply referral points with printed materials and links to relevant material on the ISO Scheme website and to ensure this is all kept up to date by periodic checking.

The ISO Scheme is active in this endeavour and, for example, has provided information about the Scheme to Citizens Advice Bureau and to the Canterbury Earthquake Recovery Authority. We were satisfied that the level of effort in this area is sound.

Of course, direct profile raising by the ISO Scheme will affect not only general community awareness but also the awareness of referral points in the community. For this reason, while we believe that EDR schemes should not waste resources on trying to achieve an unwarranted and unsustainable public profile, we also think it is critical that EDR schemes are alert to times when the community is turning to them and be responsive and ensure that their presence is easy to find when it is sought.

This is the reason why we recommend that the ISO Scheme should be subtly shifting its public profile. We do not advocate that the ISO Scheme push its profile beyond what is naturally appropriate, but it must not allow its profile to be wanting. This has been a matter of some criticism in regard to the Canterbury earthquake response and we think this illustrates that the balance must be shifted a little.

In other words, the current conservative, cautious profile that the ISO Scheme has maintained needs to be a little bolder, a little more outspoken, a little more authoritative, a little more assertive. This includes the ISO Scheme presence in the earthquake response (discussed elsewhere) but also extends to a myriad of current settings including media activity generally, to the selection of Case Studies for the Annual Report, to the language used on the website, to the relationship with the regulator, to the speeches given to conferences, and to the connection with industry and consumer bodies.

We do not pretend to second-guess every aspect of these many dimensions to public profile, however to put it in a folksier way, we would recommend that the

'volume knob' be turned from perhaps 5 out of 10 currently - to 6 ½ out of 10 in future.

#### Recommendation 15.

**That the ISO Scheme be prepared to take more opportunities to increase its public profile and to take a subtly more assertive public stance.**

### 6.3. ACCESSIBILITY 'OUTSIDE THE BOX'

One criticism of financial sector EDR schemes in every country where we have worked is that they are essentially 'middle class' schemes, geared for relatively well educated, financially aware consumers with the confidence to know when they are not happy with their service and to competently present their complaints to be dealt with by a neutral 'umpire'.

There are some grounds for this view, as invariably investigation reveals that scheme complaints do not reflect the general population – in ethnicity, in education, in socio-economic status. The defending argument is that financial sector products are mainly provided to the middle classes and that the population of complainants more closely reflects the population of users of financial services.

Clouding the whole issue is the absence of reliable statistical information on which to base judgements or track progress. EDR schemes are frequently small and do not have the resources to form a view that is evidence based. It is also true, to our knowledge, that despite the frequently echoed suspicion that there are consumers who should be but are not accessing financial sector EDR, there has been little reliable evidence of this – other than anecdotally.

Where EDR schemes have stretched their resources to reach out to possible groups of such consumers, this has not produced floods of newly aware disadvantaged consumers making legitimate complaints. For example, we have seen many endeavours to raise profile in non-English speaking ethnic communities – that have not produced any discernably greater level of access to EDR from those communities.

That lack of success to date has not stopped the concerns of many who deal with the disadvantaged. Amongst issues fuelling this concern are the increasing number of financial hardship complaints that are coming to EDR schemes covering credit products and services. FOS in Australia estimate that fully one quarter of their complaints now relate to financial hardship.

Another group that can be significantly disadvantaged in the community are older citizens. Despite this, few EDR schemes track the age of their complainants. In Canada, with a greater recent community focus on the welfare of seniors, the OBSI has revealed that some 40% of its complaints involve senior citizens and closer examination is revealing some consistent and concerning themes.

We understand the difficulties that EDR schemes face in trying to deal with these aspects of Accessibility. We understand that Participants do not have a commercial interest in funding EDR schemes to seek out more complainants. We understand that EDR schemes are not economic or social research facilities and the capability to understanding the dynamics affecting these patterns of community behaviour is likely to be outside the expertise of the staff normally employed in an EDR scheme.

That said, these are squarely issues of Accessibility and squarely part of the environment that EDR schemes are intended to serve. We do not think that the difficulty is sufficient response to those who would criticise EDR schemes for not doing enough. Moreover there can be low cost opportunities for EDR schemes to help the community to develop a deeper understanding of these dynamics – in partnership with others such as industry bodies, consumer advocates, regulators, government policy departments, academics and researchers.

A level of interest from the ISO Scheme, some small contribution (through access to data and EDR scheme experience and insight) and a willingness to participate in some joint coordination would be a way to publicly demonstrate goodwill and some leadership in this space – without alarming Participants.

We also think this would be a positive way for the ISO Scheme to demonstrate some leadership amongst the community of competing EDR schemes in New Zealand.

#### Recommendation 16.

**That the ISO Scheme reach out to regulators, government policy makers, academics, researchers, industry bodies and consumer advocates with a view to collaborating on projects to develop an improved understanding of accessibility to financial sector EDR by disadvantaged groups in the community.**

## 7. OTHER PRINCIPLES

Whilst the Accessibility Principle was our focus, our Review procedures were sufficient to satisfy us that the ISO Scheme is operating in a way that meets the other five Principles that are enshrined in its Terms of Reference and Constitution.

The table below sets out those Principles, the key practice areas for each Principle as set out in the 1997 Benchmarks for Industry-Based Customer Dispute Resolution Schemes and our comments as to the ISO Scheme's practices.

Key Practice Areas	ISO Scheme Practices
<b>Independence</b>	
Decision-maker and staff	The Insurance and Savings Ombudsman is appointed by the ISO Scheme Commission. The Ombudsman appoints staff. They are not answerable to Participants or the ISO Scheme Commission for the way in which specific complaints are handled.
Overseeing entity	<p>The ISO Scheme is an incorporated association.</p> <p>It has a Commission which is comprised of 3 industry representatives, 3 consumer representatives and an independent Chair. The Commission appoints the Ombudsman and oversees the ISO Scheme.</p> <p>The ISO Scheme also has a Board that appoints the industry members on the ISO Scheme Commission and consults with the Commission as to funding issues and changes to the Constitution and Terms of Reference. Whilst our enquiries suggest that the Board is still developing its view as to how it can most effectively operate, including as a conduit for the ISO Scheme to industry, it would seem that the dual governance model is at this stage supporting the ISO Scheme to effectively carry out its mandate.</p>
Funding	<p>The ISO Scheme is funded by fees and levies paid by Participants. These fees and levies are set at the commencement of each financial year by the Commission in conjunction with the Board. The Commission then approves the Scheme's budget.</p> <p>Our enquiries suggest that both the Commission and the Board are aligned in ensuring that the ISO Scheme is sufficiently funded to be fully effective.</p>
Changes to constituent documents	<p>The Commission has the power to make changes to the Constitution and Terms of Reference and is responsible for considering any change recommendations made by the Ombudsman or a reviewer. The Board must be consulted about proposed changes.</p> <p>A new Constitution and Terms of Reference came into effect on 1</p>

	March 2012.
<b>Fairness</b>	
Determination criteria	<p>The ISO Scheme's Terms of Reference require decisions to be made by reference to what is fair and reasonable. In deciding this, the Scheme shall have regard to any applicable rule of law and relevant industry practice and Codes.</p> <p>Our file review suggested the ISO Scheme is becoming more confident in giving effect to its fairness mandate. Considerations of fairness are likely to be particularly important in ISO Scheme's new areas of jurisdiction where complaint issues are likely to be less about contractual issues and more about financial services provider conduct issues.</p>
Procedural fairness	<p>The ISO Scheme accords procedural fairness to both parties. Complainants are made aware in Assessment letters that they may at any stage institute legal proceedings. Reasons are provided where a complaint is found to be outside jurisdiction.</p>
Confidentiality	<p>The ISO Scheme's Terms of Reference require the parties to maintain confidentiality. Both parties can be asked to provide information, but where reasonable the Scheme may excuse them from doing so. Where a Participant fails to provide requested information, the ISO Scheme is entitled to draw an adverse inference from the failure to comply. If the Participant provides information on a confidential basis, the ISO Scheme is not permitted to rely on this information.</p>
<b>Accountability</b>	
Decisions	<p>The ISO Scheme publishes on its website detailed Case Studies that set out the facts of a complaint, the steps taken by the Case Manager and the result. 250 new Case Studies were published in 2012.</p>
Reporting	<p>The ISO Scheme publishes an Annual Report on its website that provides information about how the Scheme can help consumers, statistical information about complaints, timeframes and systemic issues (where relevant) and other information. The ISO Scheme's website also includes a list of Participants.</p>
<b>Efficiency</b>	
Appropriate processes and forum	<p>The ISO Scheme checks to ensure that a complaint relates to an ISO Scheme Participant and is within jurisdiction. Where appropriate, complainants are referred to other NZ schemes.</p> <p>It provides opportunity for IDR procedures to be utilised before the ISO Scheme commences considering the complaint.</p> <p>The ISO Scheme's Terms of Reference exclude complaints that are</p>

	<p>lacking in substance and complaints that are being unreasonably pursued by the complainant or in a trivial, frivolous or vexatious manner or in bad faith.</p>
Tracking of complaints	<p>The ISO Scheme’s case management system enables complaints to be tracked and timeframes to be managed. Issues relevant to timeframes are discussed earlier in this report.</p>
Monitoring	<p>The ISO Scheme has set performance targets against which its performance is monitored. Now that it has some experience of workloads from its new jurisdictions, it may be appropriate to review these performance targets to make them more ambitious and help drive continuous improvement.</p> <p>It maintains systematic records of all complaints and enquiries, their progress and outcomes so as to enable its performance to be reviewed.</p> <p>The ISO Scheme provides reporting to the Commission that enables it to oversight its performance.</p>
<b>Effectiveness</b>	
	<p>Our file review suggested that the ISO Scheme’s Assessments demonstrate consistent quality in the assessment and resolution of complaints.</p>
Coverage	<p>The Terms of Reference specify the ISO Scheme’s Applicable Monetary Limit as NZ\$200,000 of NZ\$1,000 per week where the claim relates to a product that provides regular payments. Whilst our Review did not identify any concerns about the fixed cap, there was concern that the regular payment amount presents an undue barrier (see earlier in our report).</p> <p>The Terms of Reference permit an award of interest where there has been undue or unreasonable delay. An award of up to \$3,000 may be made where special inconvenience or expense has been suffered. Our file review included complaints in which these types of awards were made.</p> <p>Complainants have the right to decline to accept an ISO determination.</p>
Systemic issues	<p>The ISO Scheme’s Terms of Reference give the Scheme power to pursue a breach or possible breach by a Participant where it considers a broader issue may exist that warrants remedial action.</p>
Scheme performance	<p>The ISO Scheme has procedures for dealing with complaints about the Scheme. However a register of complaints is not maintained, reducing the effectiveness of the audit trail.</p>

<p>Participant obligations</p>	<p>The ISO Scheme’s Constitution requires Participants to have a bona fide internal complaints service and to publicise this service. They are also required to inform their clients in writing of the availability of this service. The ISO Scheme’s Terms of Reference require Participants to advise a complainant in the Deadlock letter about the existence of the Scheme and that they have 2 months to refer their complaint to the Scheme. Notwithstanding these requirements, the ISO Scheme’s recent surveying suggests there is much non-compliance with these obligations. This is discussed earlier.</p> <p>The ISO Scheme’s Terms of Reference provide that an Award is binding upon a Participant if accepted by the complainant.</p> <p>The ISO Scheme’s Constitution enables a Participant’s participation in the Scheme to be terminated if they breach their obligations under the Constitution or Terms of Reference. So far, the ISO Scheme has not had circumstances that it considered required this power to be executed.</p>
<p>Independent review</p>	<p>The ISO Scheme’s Constitution requires an independent review every 5 years. Broad stakeholder input is required. Our review fulfils this obligation.</p>

## 8. LIST OF RECOMMENDATIONS

### Recommendation 1.

That the ISO Scheme look for opportunities, particularly in crisis situations, to demonstrate greater proactivity in assisting consumers to obtain resolution of their complaints. This could include:

- a more active media strategy to publicise outcomes achieved through the Scheme;
- identifying repeat fact situations or ‘road-block’ issues and taking working with the relevant Participant(s) to streamline their approach to complaints of that type; and
- the Ombudsman continuing the transition of her role to a more external focus (see also Recommendation 6 as to this).

### Recommendation 2.

That the ISO Scheme’s staffing strategy should be set in a way that gives it more capacity to cover surges in workload or to manage staffing setbacks such as illness or resignation. When workload turns down, any short-term surplus capacity could be used on special projects, for example, those recommended in this report.

### Recommendation 3.

That as the ISO Scheme grows in size it seeks to broaden its staffing profile to strengthen its corporate services capabilities (including in particular communication, publicity capabilities and information technology skills) and its case handling skills (including early resolution of complaints through shuttle negotiation and conciliation and handling of complaints in its new areas of jurisdiction).

#### Recommendation 4.

That the ISO Scheme continues to develop its Enquiry and Complaint Procedure Manual to maximise its guidance for Case Managers and to promote the quality of its practices.

#### Recommendation 5.

That the ISO Scheme seek to challenge its organisational thinking and ready itself for complaints in its new jurisdictions by seeking secondment opportunities with other like EDR schemes, such as Australia's Financial Ombudsman Service, for one or more of the ISO Scheme's experienced staff.

#### Recommendation 6.

That there should continue to be a progressive realignment of responsibilities from the Ombudsman to the Deputy Ombudsman to free the Ombudsman up to take on more external-facing activity.

#### Recommendation 7.

That the next fee review examine whether EDR efficiency including early resolution outcomes could be enhanced by case fee structure changes.

#### Recommendation 8.

That the ISO Scheme's Applicable Monetary Limit for regular payment products should be increased to at least NZ\$1,500 per week.

#### Recommendation 9.

That the ISO Scheme should revisit the style and presentation of its Case Studies and Consumer Information Sheets with the aim of making these more personal and engaging.

#### Recommendation 10.

That the ISO Scheme website and consumer information material explain that ISO Scheme staff are able to assist consumers who have difficulty completing the standard complaint lodgement process by themselves.

#### Recommendation 11.

That the ISO Scheme begin to firmly apply its Terms of Reference option (paragraph 8.2) to accept complaints without a Deadlock letter where the circumstances are appropriate (eg. long delay, poor service, communication breakdown).

#### Recommendation 12.

That the ISO Scheme conduct periodic telephone follow up of a sampling of consumers who are referred back to the relevant Participant for a Deadlock letter. The process should track whether consumers are obtaining satisfactory service on referral, whether any of those experiencing long delays should have their complaint accepted by the ISO Scheme under Para 8.2 of the Terms of Reference and whether there are particular problems with obtaining Deadlock associated with particular Participants.

### Recommendation 13.

That the ISO Scheme continue its process of investigation and education of Participant compliance with their obligation to make consumers aware of their rights to go to the ISO Scheme. Over time, the ISO Scheme should move to making membership obligations more specific and should look to collaborating with other interested groups such as industry associations, consumer groups and regulators.

### Recommendation 14.

That the ISO Scheme amend its Terms of Reference and its public information to provide:

- a) consumers with 90 days after receipt of a Deadlock letter in which to lodge a complaint with the ISO Scheme; and
- b) that in extenuating circumstances, the ISO Scheme is able to accept complaints after that 3 month timeframe.

### Recommendation 15.

That the ISO Scheme be prepared to take more opportunities to increase its public profile and to take a subtly more assertive public stance.

### Recommendation 16.

That the ISO Scheme reach out to regulators, government policy makers, academics, researchers, industry bodies and consumer advocates with a view to collaborating on projects to develop an improved understanding of accessibility to financial sector EDR by disadvantaged groups in the community.