

# **Independent Review**

**of the**

**Insurance & Financial Services Ombudsman Scheme  
December 2018**

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## EXECUTIVE SUMMARY

This is the report of an independent review of the Insurance & Financial Services Ombudsman Scheme (**IFSO Scheme**). A review is required to be conducted every five years. Earlier independent reviews of the IFSO Scheme were conducted in 1997, 2003, 2008 and 2013.

This review finds that the IFSO Scheme is well established and effective. It handles a large number of complaints and enquiries each year that result in decisions providing remedies of measurable benefit to many consumers. The IFSO Scheme makes an incisive and important contribution to public discussion of insurance and finance sector issues, risks and strategies. The IFSO Scheme is well managed, both by the Commission, the Ombudsman and other IFSO Scheme staff. Internal management and record keeping within the office is of a high standard.

This report highlights evolutionary developments in the broader government, industry and community context for industry complaint resolution, and stresses the importance of the IFSO Scheme having a clear strategic focus on meeting new challenges to ensure continuing relevance, effectiveness and innovation. Matters highlighted in the report include:

- the competitive environment for dispute resolution schemes
- government legislative and policy review of the insurance and finance sectors
- the public spotlight on unacceptable conduct in banking, insurance and financial services
- the impact that technology will have on the insurance and financial sectors and the service dispute issues to which this could give rise.

The report draws attention to stakeholder comments on their expectations of the IFSO Scheme and dispute resolution bodies, including the importance of the IFSO Scheme:

- having a high public profile
- proactively engaging with government in conveying its complaint handling insights and contributing to government legislative and policy reviews
- proactively engaging with consumer bodies to explore practical steps that can be taken to enhance the accessibility of the IFSO Scheme to individual consumers
- working with other approved financial dispute resolution schemes to explore avenues for collaborative work, particularly on consumer access to the schemes
- developing the IFSO Scheme's experience in the broader financial sector, to augment its established expertise in the insurance sector.

The report makes five recommendations for the IFSO Scheme to –

- examine the adequacy of the information provided by Participants in the IFSO Scheme to clients/consumers about internal complaint handling arrangements and about taking a complaint to the IFSO Scheme
- examine the effectiveness of internal complaint handling by Participants
- amend the IFSO Scheme Terms of Reference to refer to the IFSO Scheme's procedures for dealing with systemic complaint problems
- review and clarify the guidance for case managers on the application of decision-making criteria in the Terms of Reference, and in particular the 'fair and reasonable' criterion
- review the Applicable Monetary Limit in the Terms of Reference.

## 1 NATURE AND SCOPE OF THIS REPORT

The IFSO Scheme is an approved dispute resolution scheme under Part 3 of the *Financial Service Providers (Registration and Dispute Resolution) Act 2008 (NZ) (FSP Act)*. An approved scheme must issue rules that require an independent review of the scheme to be conducted at least once every five years. The review report is to be supplied to the Minister.<sup>1</sup>

That requirement is implemented by the IFSO Scheme Constitution which states that an independent public review of the Scheme's complaint handling service will be carried out at least every five years.<sup>2</sup> The Reviewer is to ensure that submissions and comments are invited from Participants in the Scheme, Members of the Commission, relevant industry and consumer associations, the Minister of Consumer Affairs, the general public and any other person or group the Reviewer considers appropriate. The Report of the Reviewer may contain findings and recommendations, and is to be published on the IFSO Scheme website.

The 2018 IFSO Scheme Review was conducted by Professor John McMillan AO. Prof McMillan has relevant Australian experience as Commonwealth Ombudsman (2003-10), New South Wales Ombudsman (A/g) (2015-17), Executive Member of the Australian and New Zealand Ombudsman Association (2005-10, 2016-17) and as an administrative law researcher and academic.

Earlier independent reviews of the IFSO Scheme were conducted in 1997, 2003, 2008 and 2013. The first two reviews were conducted by review committees appointed by the IFSO Scheme and the later two reviews were conducted by Mr Phil Khoury and Ms Debra Russell of The Navigator Company Pty Ltd (2008) and Cameron Ralph Navigator (2013). The reports of the last three reviews are published on the IFSO Scheme website.

The format adopted in this review (as in earlier reviews) is to have regard to the matters the Minister is required by the FSP Act to consider in deciding whether to approve an application to be a dispute resolution scheme.<sup>3</sup> The Minister is to consider all aspects of the scheme, such as its purpose, membership, governance, resources and skills. The Minister is to consider those matters in light of six principles that are listed in the Act:<sup>4</sup>

- accessibility
- independence
- fairness
- accountability
- efficiency
- effectiveness.

The six Principles are drawn from the *Benchmarks for Industry-based Customer Dispute Resolution*,<sup>5</sup> that have common recognition in New Zealand and Australia – in legislation and policy guides – as the Benchmarks for good practice in industry-based dispute resolution schemes. The Benchmarks were first adopted in 1997, and were re-issued in a revised form in 2015 by the Australian Minister for Small Business, together with a supplementary guide, *Key Practices for Industry-based Customer Dispute Resolution*. The Key Practices spell out practical ways for implementing the Benchmarks in dispute resolution schemes.

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<sup>1</sup> FSP Act s 63(1)(q).

<sup>2</sup> Constitution of the Insurance & Financial Services Ombudsman Scheme Incorporated (1 July 2015) clause 7.

<sup>3</sup> FSP Act s 52.

<sup>4</sup> FSP Act s 52(2).

<sup>5</sup> *Benchmarks for Industry-based Customer Dispute Resolution*, The Treasury, Australia, 2015.

The 2008 Review of the IFSO Scheme focussed on its compliance with the Principles of Fairness and Efficiency. The 2013 Review focussed on the Principle of Accessibility. For the 2018 Review I was asked to give special consideration to two other Principles – Accountability and Effectiveness. I was asked to consider whether the IFSO Scheme fundamentally meets the standards in the Key Practices for those two Principles. All six Principles and the Key Practices have nevertheless been considered in this Review. I was also asked to consider how the IFSO Scheme should evolve and to note areas that could be changed or improved to achieve a balanced outcome for the various stakeholders in the IFSO Scheme.

### **Purpose of independent scheme review**

The format of an independent scheme review should be tailored to the purpose of the review. I will state briefly what I see to be the threefold purpose of a review of this kind.

The first is to outline, in a public document, and for the benefit of the stakeholders of a scheme, the information that has been assembled by the Reviewer. The stakeholders were noted above as people and organisations the Reviewer is required to consult – Participants, Commission members, Complainants, the public, and government and non-government bodies. The views expressed by those stakeholders are summarised in this report, together with other information I have assembled from IFSO Scheme documents and resources, staff interviews, and other schemes and public sources.

A second purpose is to make recommendations for improvements in the operation of a scheme. The recommendations may relate to any aspect of a scheme, though particular attention should be given to how a scheme discharges its core function of resolving complaints it receives from members of the public. A related issue is to consider how a scheme has responded to recommendations made in previous independent reviews.

A third purpose is to undertake a horizon-scanning exercise and highlight general trends or issues that a scheme should be actively considering. Examples are impending legislative changes or insights that can be drawn from other reviews such as the Australian Royal Commission into the Banking, Superannuation and Financial Services Industry.

## **2 CONDUCT OF REVIEW**

This Review commenced in May 2018. The following steps were taken:

- A visit by the Reviewer to the IFSO Scheme office in Wellington over two weeks in May 2018
- A desk-based review of a range of hard-copy and web-published IFSO Scheme documents, including previous Review reports, Commission meeting minutes, governance documents, annual reports, letter templates, and statistical reports
- Review of a random and representative sample of IFSO Scheme case files
- Interviews with the Ombudsman (Karen Stevens), the Deputy Ombudsman (Louise Peters) and approximately 10 other staff
- Interviews with the Chair of the Commission and with 6 current and former Commission Members
- Interviews with the representatives of ten Participants in Auckland and Wellington
- Telephone interviews with two government representatives/regulators, and an invitation to the Minister to consult on the review
- Interview with a non-government consumer organisation
- Interviews with the Ombudsman/Commissioner of three other New Zealand dispute resolution schemes
- Telephone interviews with 15 Complainants whose matters had been closed

- Attendance at the ANZOA conference in Wellington from 21-23 May 2018, and discussion with conference participants
- Posting on the IFSO Scheme website of an invitation to make a submission or speak to the Reviewer.

### 3 CONTEXT/OPERATING ENVIRONMENT

In this section I will make some observations about the broader government, industry and community context in which the IFSO Scheme complaint resolution function is discharged.

#### History and development of the IFSO Scheme

The IFSO Scheme was established in 1995 as a voluntary insurance industry scheme, called the Insurance and Savings Ombudsman Scheme (**ISO Scheme**). This year – 2018 – marks the 23<sup>rd</sup> year of operation.

The FSP Act, enacted in 2008, required financial service providers to be listed on the Financial Service Providers Register and belong to a dispute resolution scheme approved by the Minister under that Act. The ISO Scheme became an approved dispute resolution scheme in 2011.

The title of the office was changed from 1 July 2015 to the current title of the Insurance & Financial Services Ombudsman Scheme. This important change was marked by the adoption of a revised Constitution and new Terms of Reference. This is the first independent review of the IFSO Scheme to be conducted following this structural change.

The changes occurring over the last decade resulted in a significant expansion in membership of the Scheme, from 47 participants in 2010 to 4,800 in 2018. The Participants include insurance companies, 9 superannuation schemes, financial advisers, credit providers and corporate and individual financial service providers.

The IFSO Scheme Constitution outlines the structure and governance arrangements for the IFSO Scheme, including provisions dealing with the role of the Commission, the Ombudsman and Participants:

- Governance is vested in the Commission, which comprises a Chairperson, between 3-5 members from the financial services industry, and 3-5 members with relevant knowledge of consumer interests (the members are appointed individually and not in a representative capacity). Among the responsibilities of the Commission are to appoint and to oversee the performance of the Ombudsman, including by an annual review. The Commission may admit as a Participant in the IFSO Scheme any financial services provider registered under the FSP Act.
- The Ombudsman is responsible for managing the affairs of the IFSO Scheme, including staffing, finances, complaint management, public relations, legislative compliance, and reporting to the Commission and the Minister.
- The obligations of Participants include compliance with the IFSO Scheme rules, operating a bona fide internal complaints handling service that can be accessed free of charge by Complainants, complying with any Award made by the IFSO Scheme under the Terms of Reference and that is accepted by the Complainant, consenting to the IFSO Scheme publicising the Participant's failure to comply with an Award, and consenting to the Scheme providing information about the Participant to the Minister or a regulatory body.

The Terms of Reference lay down the rules relating to the principal function of the IFSO Scheme of resolving complaints about the provision of financial services by Participants in the IFSO Scheme. Key provisions (in summary form) are:

- A complaint must relate to a Participant breaching a contract, statutory obligation or industry code, or not complying with a relevant industry practice, in relation to a financial service provided to the Complainant.
- The Complainant's claim against a Participant must fall within the Applicable Monetary Limit, which is a total lump sum of \$200,000 or \$1,500 per week in relation to a product that provides for regular payments.
- Within those limits the IFSO Scheme is to decide what is fair and reasonable in all the circumstances.
- Unless a Participant consents, the IFSO Scheme cannot review a Participant's commercial judgments or decisions, financial acumen or refusal to provide financial services.
- A complaint cannot be made to the IFSO Scheme until a Participant advises a Complainant that Deadlock has been reached, or two months have elapsed since the Complainant complained to the Participant and the IFSO Scheme considers that Deadlock has been reached.
- A complaint must be made to the IFSO Scheme within three months of a Complainant being advised by a Participant that Deadlock was reached, or within such extended period agreed to by a Participant or allowed by the IFSO Scheme.
- The IFSO Scheme may resolve a complaint by negotiation, conciliation, mediation, by providing an Assessment (or Recommendation) that the parties accept, or by making an Award if a Complainant but not a Participant accepts an Assessment. An Award is binding on the Participant and may require it to pay money to the Complainant, to forgive or vary a debt, or to meet a claim under an insurance contract. The rules do not preclude a Complainant from separately taking other action or instituting legal proceedings following an IFSO Scheme decision.
- There is a duty of confidentiality on the parties regarding information obtained in the course of an investigation.

## Competitive environment

Four dispute resolution schemes have been approved under the FSP Act:

- IFSO Scheme: as at 30 June 2018 there were 4,770 Participants, comprising 53 insurance companies, 2,209 financial advisers, 520 financial adviser businesses and 1,988 other financial service providers. In the 2017-18 reporting year the IFSO Scheme received 3,357 complaint enquiries and 320 formal complaints. The two largest areas of complaint work were Fire and General Insurance, and Health, Life and Disability Insurance. (More detailed figures are given below.)
- Financial Services Complaints Ltd (**FSCL**), approved in April 2010. The figures provided in the 2017/18 Annual Report are that FSCL had 7,100 scheme participants; it dealt with 4,859 enquiries and complaints; and investigated and resolved 245 cases. The four largest areas of work in the cases resolved were travel insurance (27% of cases), consumer credit (21%), travel cards (8%) and estate administration (7%).
- Financial Dispute Resolution Service (**FDRS**), approved in 2014. This scheme had operated earlier as the government Reserve Scheme under the FSP Act.<sup>6</sup> The Reserve Scheme arrangement was discontinued on 1 July 2014, and FDRS has since been owned and operated by Fairway Resolution Ltd, which is a conflict management company that resolves disputes in a broad range of areas including commerce, ACC, building and construction, telecommunications, workplace conflict and child care. The figures provided in the 2017/18 Annual Report are that FDRS had 1,874 scheme

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<sup>6</sup> See Dispute Resolution Act s 71 (repealed on 1 July 2014).

members, dealt with 915 enquiries and 9 formal complaints. The two largest areas of work in formal cases were lenders and non-bank deposit takers (38%) and foreign exchange platforms (29%).

- Banking Ombudsman Scheme (**BOS**), established in 1992, and became an approved scheme in 2010. There are 19 participants in the scheme, comprising all major banks and a building society. The figures provided in the 2017/18 Annual Report are that the Banking Ombudsman dealt with 3,972 enquiries, complaints and disputes that year.

The competitive environment for approved dispute resolution schemes was a prominent issue in most of the discussions that were undertaken for this review with Participants, government regulators and IFSO Scheme staff. The four most common ways in which the issue was raised were –

- whether competition among IFSO Scheme, FSCL and FDRS to attract and retain participants had a distorting effect on their independence and, in particular, whether a scheme would be more inclined to decide in favour of a Participant rather than a consumer
- whether the community generally, and unsuccessful Complainants in particular, would perceive that the schemes faced a conflict of interest which would tend to be resolved in favour of the participants funding the scheme through fees and levies
- the beneficial effect that competition could have on the outlook of a scheme in raising its profile with participants and the community and offering benefits beyond the mere resolution of complaints
- the reasons that may cause a participant (and particularly a large insurance company or financial service provider) to withdraw from one scheme and join another.

Those themes are relevant to some of the discussion in other chapters in this report. However, the main point to be made is that it is clear the competitive scheme environment will continue, as there is no strong pressure from any quarter to alter present arrangements. The creation of a competitive scheme system is a major theme in the FSP Act, and a number of people in politics and government have spoken publicly and privately in support of this arrangement. The schemes often note in their annual reports the achievements and benefits of their particular scheme and only occasionally draw attention to the potential downside of competition.

An example nevertheless of a forceful criticism being made of the competitive environment was in the IFSO Scheme submission to the Review of the *Financial Advisers Act 2008*, in responding to a question on whether multiple schemes lead to poor outcomes for consumers. The submission drew attention to other policy statements that criticise this development, including a statement by the Australian and New Zealand Ombudsman Association, 'Competition among Ombudsman offices', and a report in 2012 to the World Bank, 'Resolving disputes between consumers and financial businesses: Fundamentals for a financial Ombudsman'.

The major scheme Participants to whom I spoke did not express any strong concerns and were generally focussed on establishing good complaint handling arrangements internally and with the scheme to which they belong. The rationale for multiple schemes will also be linked to the high number of participants in IFSO Scheme, FSCL and FDRS (over 13,000) and the high number of enquiries and complaints those schemes receive (over 9,000 annually).

It is therefore important that the IFSO Scheme continues to respond positively to competitive pressures, in ways that are discussed later in this report.

### **Legislative and culture reviews**

Some of the legislative and policy review work currently underway in New Zealand government in relation to financial services deals with issues that intersect with IFSO Scheme work. It is important that the IFSO



Scheme keeps abreast of these reviews – as it is in fact doing – to assess their relevance to its work and to contribute to the review work.

A review that is squarely relevant is the Insurance Contract Law Review being undertaken by the Ministry of Business, Innovation and Employment (**MBIE**). An Issues Paper, *Review of Insurance Contract Law*, was published in May 2018 and an Options paper was to be released in late 2018.

The dispute resolution regime and the FSP Act are outside the scope of the Insurance Contract Law Review.<sup>7</sup> Nevertheless, many issues raised in the Issues Paper intersect with IFSO Scheme work, as reflected in the 51 questions on which the Issues Paper invited public submissions. The IFSO Scheme made a lengthy submission to the Review, that responded to many of the questions and included complaint case studies that illustrated problem areas in New Zealand insurance law that were being addressed in the Review.

One area on which the IFSO Scheme was well-placed to make a valuable contribution, as reflected in its submission, was on consumer misunderstanding of the duty of disclosure and the action that an insurer can take when there is a material non-disclosure according to the ‘prudent underwriter test’. This is a frequent complaint issue and the IFSO Scheme is well-placed to contribute its experience to the government review.<sup>8</sup> The submission makes constructive suggestions for legislative reform that would be of clear benefit to consumers and would alter the principles applied by the IFSO Scheme in complaint resolution. The Issues Paper notes that New Zealand law on the duty of disclosure has not been reformed along the same lines as the law in Australia and the United Kingdom.<sup>9</sup>

Another way the review could be relevant at present is in relation to the criteria applied by the IFSO Scheme in resolving complaints. There is an ambiguity in the IFSO Scheme Terms of Reference that state, on the one hand, that a complaint must relate to a Participant breaching a legal or code obligation but, on the other hand, that the IFSO Scheme is to resolve a complaint by deciding what is fair and reasonable in the circumstances. A couple of the IFSO Scheme staff to whom I spoke alluded to this point by querying whether the IFSO Scheme should give more free-standing emphasis to the ‘fair and reasonable’ criterion. A justification for considering this approach could be found in the comments made in the government Issues Paper about the impact of New Zealand law on consumer interests. The IFSO Scheme submission to the Review includes a knowledgeable discussion on differing perspectives on measuring fair treatment for consumers.

Two other matters I would note in the IFSO Scheme submission that illustrate the value that it can contribute to a government review are its views on the fragmented approach to regulation and oversight of insurance law and practice, and management of conflicts of interest in the insurance industry.

Another proposed legislative reform that will be relevant to the IFSO Scheme is the Financial Services Legislation Bill 2017, that would impose an obligation on approved dispute resolution schemes to report certain complaints to the relevant regulator and to co-operate with other schemes to which a complaint is relevant.<sup>10</sup> In a report on the Bill in July 2018, the New Zealand Parliament Economic Development, Science and Innovation Committee proposed that additional reporting requirements could be added by regulation.<sup>11</sup> The IFSO Scheme made a submission relating to the wording of the proposed new legislative provision.

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<sup>7</sup> Ministry of Business, Innovation and Employment, *Review of Insurance Contract Law*, Issues Paper (May 2018) p 9.

<sup>8</sup> I note that similar problems about disclosure and remedies have been raised by the IFSO Scheme over many years – for example, in a submission twelve years earlier to the Review of Financial Products and Providers being undertaken by the Ministry of Economic Development (submission, 30 November 2006).

<sup>9</sup> Issues Paper, pp 18-22.

<sup>10</sup> Financial Services Legislation Amendment Bill 2017, clause 87, replacing s 67 of the Dispute Resolution Act.

<sup>11</sup> Financial Services Legislation Amendment Bill as reported by the Economic Development, Science and Innovation Committee (July 2018), p 5.

Another way in which government policy and legislative review activity potentially intersects with IFSO Scheme work can be found in the list of strategic priorities announced by the Financial Markets Authority (**FMA**). The FMA has listed eight areas of strategic focus that include the following four that are potentially relevant to IFSO Scheme work:<sup>12</sup>

- Governance and culture: Firms have an organisational culture that places customer interests at the centre of their business, and reflects high standards of corporate governance
- Conflicted conduct: Incentive structures and practices are designed and implemented with a focus on customer outcomes, and conflicts of interest are appropriately identified and mitigated
- Sales and advice: Practices are designed and implemented to meet the needs of customers. Providers demonstrate appropriate capability and due skill, care and diligence.
- Frontline regulators: Frontline regulators contribute to well-regulated financial markets through effective oversight of relevant markets and participants.

Once again it is important that the IFSO Scheme continues to keep abreast of government initiatives in areas such as these. I note that it has made submissions in the last couple of years to a number of government reviews of the *Financial Advisers Act 2008*, disclosure requirements under that Act, consumer credit regulation, and a Draft Code of Professional Conduct for Financial Advisers. I believe these submissions are a valuable distillation of the IFSO Scheme expertise and insights, and I comment below that it should consider publishing its formal and substantive submissions on its website.

### **Public spotlight on banking, financial and insurance practices**

The conduct of banking, insurance and financial services is always topical in the public arena and lies behind the steady expansion of Ombudsman and dispute resolution services in New Zealand and Australia. There has been heightened interest in financial sector conduct issues in recent times, as reflected in public discussion surrounding the proceedings and interim report of the Australian Royal Commission into the Banking, Superannuation and Financial Services Industry (**Royal Commission**). The Royal Commission was established in December 2017, published an interim report on 28 September 2018 and is to make a final report by 1 February 2019.

There has been keen interest in New Zealand in the matters exposed during the Australian Royal Commission hearings. That interest will undoubtedly continue, not least because the Commission interim report noted multiple incidents of unacceptable conduct that, it said, were often driven by greed and were not adequately punished.<sup>13</sup> That criticism was partly directed at inadequate regulatory oversight by the two Australian regulators, the Australian Securities and Investment Commission (the conduct regulator) and the Australian Prudential Regulation Authority (the prudential regulator).

The adequacy of the regulatory response to financial service misconduct has been flagged by the Royal Commission as an important issue for the final report. The interim report contains some discussion of the work of the complaint resolution schemes, such as the Financial Ombudsman Service (**FOS**) and the Credit and Investments Ombudsman (**CIO**) (which were merged from 1 November 2018 in a new Australian Financial Complaints Authority (**AFCA**)). The work of the dispute resolution agencies falls within the Terms of Reference of the Royal Commission, which include 'the effectiveness of mechanisms for redress for consumers of financial services who suffer detriment as a result of misconduct by financial services entities' and 'the adequacy of ... the internal systems of financial services entities ... to provide appropriate redress

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<sup>12</sup> [fma.govt.nz/about-us/what-we-do/strategic-priorities](http://fma.govt.nz/about-us/what-we-do/strategic-priorities)

<sup>13</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Interim Report* (2018) 'Executive Summary', Vol 1, p 1.

to consumers'. The dispute resolution approach of FOS and AFCA has also been identified in the Interim Report as an issue for further consideration in relation to small and medium enterprises.<sup>14</sup>

It is noteworthy too that in its first month of operation AFCA reported a 47% rise in complaints received compared to the three predecessor schemes. In November 2018 AFCA received over 13,000 phone enquiries, and 6,522 complaints from consumers and small businesses of which 21% were about general insurance.<sup>15</sup>

It is important that the IFSO Scheme takes note of these Australian developments and any light they may shed on New Zealand practice. The relevance of Australian developments – specifically to banking but also to the financial services industry generally – was foreshadowed in May 2018 in a joint letter sent by the Chief Executive of the FMA and the Governor of the Reserve Bank of New Zealand (RBNZ) to the Chief Executives of New Zealand banks and the New Zealand Bankers' Association.<sup>16</sup> The letter referred to the 'obvious cross-over in terms of entities, people and practices' between the Australian and New Zealand financial services sector. The purpose of the letter was to learn more about the actions being taken in New Zealand to identify and address conduct issues.

The cross-over relevance of Australian and New Zealand practices will also be drawn both generally and indiscriminately in the public mind. Possible trends are that New Zealand consumers will either be less tolerant of financial services sector misconduct in New Zealand, or will have heightened expectations of intervention by the IFSO Scheme and other Ombudsman and dispute resolution schemes. An example is a media article, written shortly after the FMA/RBNZ letter, which commented that 'There's currently a stronger evidence-based case for a Royal Commission into the conduct of the NZ insurance sector than the NZ banking sector'.<sup>17</sup>

### **The impact of technology on the insurance sector**

An ascendant theme in all areas of policy review and forecasting is the impact of technology and the digital environment. Developments that are relevant to the insurance sector are autonomous vehicles, genetic testing, cyber security, ride sharing, home rental, chatbots, robo-advice, privacy protection, fraud detection and microinsurance.

These changes will have an ancillary impact on dispute resolution schemes, particularly as to the types of claims and disputes that may need to be resolved. The way that established principles are applied – such as the purchasers' duty of disclosure – may also need to be evaluated differently when policies are entered into in a different way. It is therefore important that the IFSO Scheme is turning its mind to these trends and changes at an early stage.

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<sup>14</sup> Royal Commission *Interim Report*, pp 182-3

<sup>15</sup> Australian Financial Complaints Authority, Media Release, 'Financial complaints soar in first month of AFCA operations', 5 December 2018.

<sup>16</sup> See also Financial Markets Authority Media Release, 'Financial Services Conduct and Culture Review', MR No 2018-24, 30 May 2018.

<sup>17</sup> Gareth Vaughan, 'Any NZ inquiry into the conduct of the financial services sector will require a lengthy and deep probe into the insurance sector', [www.interest.nz/opinion](http://www.interest.nz/opinion), 16 May 2018.

## 4 SCHEME OVERVIEW – KEY STATISTICS

This part of the report provides a factual overview of IFSO Scheme work, drawn principally from the Annual Report summaries for the 2015/16, 2016/17 and 2017/18 reporting years.

### IFSO activity

	2015/16	2016/17	2017/18
Complaint enquiries	3,193	3,227	3,357
Complaints	272	314	320
Calls received	7,720	7,853	8,221
Website visits	52,692	43,344	39,978
Info sheets and brochures distributed		2,500+	1,000+
Speeches, presentations, webinars		39	39
Media interviews, responses, releases		68	70
Webinar attendance		898 (19 webinars)	1,077 (16)

### Complaint breakdown

	2015/16	2016/17	2017/18
Total complaints	272	314	320
<b>Complaints received by sector</b>			
<ul style="list-style-type: none"> <li>Fire and general insurance (incl house, travel, vehicle, contents)</li> </ul>	61% (165)	64% (201)	64% (206)
<ul style="list-style-type: none"> <li>Health, life and disability</li> </ul>	30% (83)	29% (90)	31% (98)
<ul style="list-style-type: none"> <li>Financial advisers</li> </ul>	3% (8)	3% (10)	2% (7)
<ul style="list-style-type: none"> <li>Credit contracts</li> </ul>	4% (10)	3% (9)	2% (7)
<ul style="list-style-type: none"> <li>Superannuation</li> </ul>	1% (3)	1% (4)	1% (2)
<ul style="list-style-type: none"> <li>Other financial services</li> </ul>	1% (3)		

<b>Complaint outcomes</b>	2015/16	2016/17	2017/18
<ul style="list-style-type: none"> <li>Complaint not upheld</li> </ul>	67% (182)	75% (235)	72% (232)
<ul style="list-style-type: none"> <li>Complaint upheld</li> </ul>	3% (9)	1% (4)	2% (7)
<ul style="list-style-type: none"> <li>Complaint partly upheld</li> </ul>	3% (8)	2% (6)	2% (7)
<ul style="list-style-type: none"> <li>Complaint settled</li> </ul>	25% (66)	21% (65)	24% (76)
<ul style="list-style-type: none"> <li>Complaint withdrawn</li> </ul>	2% (5)	1% (4)	0% (1)

<b>Complaint outcomes</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>
<ul style="list-style-type: none"> <li>Remedies: money paid by Participants to consumer</li> </ul>	\$1.4m	\$2.2M	\$3.2M (68 complaints)
<ul style="list-style-type: none"> <li>Timeline: average working days to close complaint</li> </ul>	88.9 days	92.8 days	78.19 days

### **Participant statistics**

(The participant breakdown was described differently in the two annual reports)

	<b>2016/17</b>	<b>2017/18</b>
Total no of participants	4,641	4,770
<ul style="list-style-type: none"> <li>Insurance companies</li> </ul>	54	53
<ul style="list-style-type: none"> <li>Advisor businesses/financial service providers</li> </ul>	847	901
<ul style="list-style-type: none"> <li>Superannuation schemes</li> </ul>	9	9
<ul style="list-style-type: none"> <li>Individuals</li> </ul>	3,731	3,807

## **5 STAKEHOLDER COMMENTARY ON IFSO SCHEME PERFORMANCE**

This section provides a summary of views that have been expressed about the IFSO Scheme's work and performance by some key stakeholder groups. Most of the views are taken from interviews that I conducted, and some views are taken from other surveys or studies commissioned by the IFSO Scheme.

### **IFSO Scheme Participants**

This section summarises the results of interviews conducted with IFSO Scheme Participants in three separate surveys – by this Reviewer in 2018, and in two earlier surveys commissioned by the IFSO Scheme in 2016. The IFSO Scheme is, of course, already aware and has been acting on the findings from the 2016 surveys. They need be noted only briefly in this report, but it is nevertheless advantageous to refer to them in this public report to provide a consolidated account of the performance review work undertaken by the IFSO Scheme.

#### ***Interviews conducted by Reviewer (2018)***

I interviewed staff from ten Participants in May 2018. Many were large insurance companies providing a representative range of insurance products. The staff interviewed had liaised with the IFSO Scheme on complaints and other work, though their level of interaction with IFSO Scheme staff varied in frequency. Nearly all interviews were conducted in person in Auckland or Wellington.

A commonly expressed view in the interviews was confidence and trust in the professionalism of the IFSO Scheme and the value that Participants derive from it. There was frequent reference to the practical, fair, balanced and commonsense approach that IFSO Scheme staff bring to complaint resolution, and to the

good quality of its review work. A couple of Participants observed that the cost of belonging to the IFSO Scheme was not large or troubling.

Participants commonly expressed the view that they had confidence in the fairness and thoroughness of their own internal complaint handling processes. Consequently, they were generally satisfied that when a matter had reached Deadlock and could be taken to the IFSO Scheme the Participant's position could be soundly argued during the complaint process. The Participants nevertheless accepted that external complaint oversight by the Scheme was valuable, as the IFSO Scheme perspective and fresh mind would be welcome and would provide an opportunity for the parties to explore options for resolving the dispute on agreed terms. That viewpoint is reflected in the IFSO Scheme complaint statistics, which show that roughly two-thirds of complaints are not upheld but a quarter are settled.

Participants mentioned that they sometimes disagreed with IFSO Scheme staff views and with Assessments that were made. However, no-one to whom I spoke dwelt on this point. There was general acceptance that this was a feature of external dispute resolution oversight. Nor did any Participant suggest that the handling or resolution of individual cases had caused them to reconsider their membership of the IFSO Scheme.

The Participants singled out a few aspects of the IFSO Scheme that they particularly valued. One was the informal opportunity offered for a pre-Deadlock sound-out discussion with IFSO Scheme staff to obtain their perspective on the complaint issues. The Participants often mentioned that Karen Stevens and other senior IFSO Scheme staff were readily available and brought considerable knowledge and experience to these discussions. The IFSO Scheme staff could be forceful and strong-willed in expressing their views – they were 'straight talkers'. While the impact of this informal interaction with the IFSO Scheme cannot be measured, an underlying suggestion was that the IFSO Scheme influence in assisting consumers is stronger than the statistics may indicate (particularly the relatively high 'not upheld' figure).

The Participants were also appreciative of the other information and services that the IFSO Scheme provides to Participants, such as webinars, e-newsletters, publication of case studies and the annual conference. Allied to that, Participants were comfortable with (and saw value in) the IFSO Scheme adopting a stronger and more proactive public profile and contributing to public discussion of insurance and finance risks, problems and practical consumer strategies. There was recognition that the IFSO Scheme had become more active in public education, advice and feedback activities. No qualms were expressed on this front. Indeed, a couple of Participants mentioned that knowledge of the IFSO Scheme in the wider community was not as strong as it could be, and that raising awareness should be a strategic target for the IFSO Scheme.

Participants saw an opportunity for the IFSO Scheme to go a step further and to use the new Salesforce data base to provide more information to Participants on complaint enquiries and issues relevant to them. There is no correlation drawn in the published statistics of how the large number of complaint enquiries and telephone calls that the IFSO Scheme receives may be relevant to individual Participants.

Another comment was that it was easier to deal with some IFSO Scheme staff than others, or that there would be occasional intransigence displayed by a staff member in the discussion of individual complaint issues. It was accepted that any such concern could most appropriately be addressed if there was an opportunity (as there is at present) for the Participant to escalate the discussion to a more senior IFSO Scheme staff member. Consistency in complaint resolution approaches within the IFSO Scheme office was also said to be an issue that the office should continue to monitor through its own internal processes. An example given of a matter that could be monitored was the greater readiness of some case managers to phone a Participant for a preliminary discussion when a complaint was first received. This could also hasten the resolution of complaints that relate less to the Participant and more to the conduct of a broker/adviser or to more than one insurer.

Participants were also asked for their attitude on the IFSO Scheme having a more explicit or overt role in raising, highlighting or reporting on systemic issues that relate either to complaints generally or to a particular Participant. A couple of Participants said they had no concerns about the IFSO Scheme looking at systemic issues and would not oppose an amendment of the Terms of Reference to confer this role on the IFSO Scheme. However, most Participants gave a more guarded response, and could not see that this change in the IFSO Scheme role was needed. One reason for this reservation was that the success of the IFSO Scheme was built upon its practical and professional approach in handling individual complaints. Participants had confidence in how the IFSO Scheme discharged this role. A function of investigating and reporting on systemic issues may take the scheme beyond its acquired experience and understanding of issues. There was concern that the IFSO Scheme could develop more of an advocacy role than a balanced perspective. Shifts of this kind could lead to more conflict with Participants.

Another reason that Participants gave for their reservation about a systemic role is they felt it was already open to the IFSO Scheme to raise such issues in the course of complaint investigation. For example, a couple of Participants commented that they always valued and acted upon the comment by an IFSO Scheme staff member that 'This is one of a number of similar complaints we have received about you or this issue'. Participants were generally open to IFSO Scheme staff taking a more active role in raising systemic issues in this way, including with government regulatory bodies. It was also mentioned by one Participant that it would be valuable if the IFSO Scheme commented more on the wording of industry policies, drawing from its experience of having to construe and apply those policies during dispute resolution.

Another issue that was mentioned in general terms by a number of Participants was compliance with privacy principles. Various dimensions of this topic were alluded to – concern about data and cyber security threats, deciding what personal information could be shared and with whom, internal management of personal information, and staff awareness of privacy law requirements. The Participants who raised the topic of privacy were satisfied that their businesses were adequately attuned to privacy issues and to the reputational damage that privacy breaches could cause. However, the fact that privacy was raised a number of times in discussion, points to the importance of this topic and the scope for the IFSO Scheme to play a proactive role in privacy discussions.

#### ***Participant satisfaction study – key Participants (2016)***

The IFSO Scheme commissioned Peter Rose & Associates to conduct a Participant satisfaction study in 2016. The firm conducted telephone interviews in September 2016 with 32 Participants that have more regular contact with the IFSO Scheme than most Participants. The same template questions were asked of each Participant. The questions canvassed a range of issues regarding the quality, consistency and influence of IFSO Scheme decision making, staff capability, contact with Participants, liaison with customers, and the rules of the Scheme. The report to the IFSO Scheme provided a standardised summary of the Participants' responses to each question.

I am aware from my own discussion with IFSO Scheme case managers that they have been addressing many of the issues raised in this study. For example, the Fast track procedures are addressing some of the concerns about better triaging of complaints and minimising costs in case resolution.

Key study findings were:

- There was a consistently high level of satisfaction among Participants with the IFSO Scheme rules, decision making and performance of its functions. The senior staff of the IFSO Scheme were singled out for special praise by a number of Participants.
- Adverse IFSO Scheme decisions and suggestions were taken seriously and had led to changes in policy wording, internal procedures and external communication.
- Some Participants valued having informal interaction on complaint issues with IFSO Scheme staff, such as pre-Deadlock discussions (though not all Participants thought that was appropriate).

- There were some adverse comments, for example, about the approach of some case managers, inconsistency between case managers and in following precedents, lack of technical and commercial skills among IFSO Scheme staff on some issues, short turn-around times for Participant submissions, a pro-complainant/settlement bias in dispute resolution, and too much reliance on the 'fair and reasonable' resolution standard. Other comments in the study suggest that Participants acknowledged that the IFSO Scheme was generally open to addressing these concerns in individual cases, for example, by flexible adjustment of timeframes or more senior IFSO Scheme staff joining a discussion.
- Training through means such as webinars and fact sheets was appreciated.
- Suggestions were made for improvements to IFSO Scheme processes, for example, more regular progress reports, better triage analysis of complaints when received, early clarification of vague complaints, more probing of Complainant stories, introduction of a peer review oversight process, and clarification of the start date for the six year long stop period for receipt of complaints.
- The individual responses recorded in the study indicate that the concerns expressed by some Participants and their suggestions for improvements were not necessarily shared by other Participants (and indeed were usually only expressed by a small number of Participants). Accordingly, the study recommended that the IFSO Scheme develop a tailored approach on some issues towards key Participants.

### ***Participant satisfaction study – majority of Participants (2016)***

The IFSO Scheme commissioned Business Health to conduct a Participant satisfaction study in 2016. The firm invited 2,303 Participants to complete an on-line questionnaire. A total of 159 Participants (7%) did so in November-December 2016. The report by Business Health to the IFSO Scheme gave a statistical breakdown of all responses, the Participants' free-text comments, and the Business Health analysis of the responses.

The breakdown of Participants who completed the questionnaire was 'individual financial adviser' (45%), 'adviser business' (27%) and 'insurer' (13%). A large majority (82%) had more than eight years' industry experience.

The analysis in the study report provides considerable statistical detail on matters that were informative for the IFSO Scheme but do not need to be summarised in this report. The survey questions canvassed how Participants learnt of the IFSO Scheme, why they joined, whether they had previously belonged to another scheme, whether they intended to remain with the IFSO Scheme, whether they would recommend the IFSO Scheme to others, how regularly they had contact with the IFSO Scheme in relation to complaints, and whether they used IFSO Scheme resources (such as the public and Participant-only website sections, webinars, newsletters and case studies).

The key study findings to note in this public report are:

- Of the 14% of respondents that had a complaint considered by the IFSO Scheme in the previous twelve months, a high proportion were extremely/mostly satisfied with the complaint investigation (86%), IFSO Scheme contact with the parties (81%), information provided to the parties (91%), case manager capabilities (86%) and decision-making process (86%).
- There was a high satisfaction level among Participants who had previously been a member of another scheme.
- There was a high satisfaction level among the minority of Participants who had used the opportunity for free and informal discussion with IFSO Scheme staff or who had referred clients to the free complaint enquiry service.
- Other than in disclosure documents, only a minority of Participants were publicising the IFSO Scheme to clients and prospects in other ways – through their website (31%), in contract policy information (25%), social media (3%), and in complaints brochure/information (25%). An



explanation for those low figures may be that many individual Participants do not, for example, have a website or use social media.

- The two issues most commonly flagged by Participants to be addressed in the following twelve months were fees/costs and education/information (especially relating to regulatory changes).

## **Complainants/consumers**

### ***Interviews conducted by Reviewer (2018)***

I conducted telephone interviews with 15 Complainants whose matters had been closed, mostly in the last year. An attempt was made to contact a larger number of Complainants to invite their participation in the review, but some declined and others could not be contacted.

Most Complainants were strongly complimentary of the IFSO Scheme and staff, even if their complaint was not upheld. People felt they had received good service from the office and that it acted independently in handling the complaint. A number of people singled out the staff for being pleasant, helpful, efficient and providing a clear explanation of the process, of the principles being applied and the outcome. A strong theme in some comments was that the Participant had been unreasonable or intransigent in dealing with the claim and that the Ombudsman's intervention was a much-needed circuit-breaker.

A couple of Complainants to whom I spoke did not share that positive assessment. They felt that the Ombudsman's involvement achieved nothing and that the office simply echoed the views already expressed by the Participant.

Two other issues raised by a few Complainants can be noted. The first was the issue of delay in finally resolving a person's claim and complaint. While the Complainants understood the steps that had to be taken both by Participants and the IFSO Scheme to resolve a complaint, some said they would have benefited from more active intervention by IFSO Scheme staff to bring matters to a head (including before Deadlock) so that the complaint process could move to the next stage.

Secondly - and generally speaking - Complainants expect an Ombudsman's office to inject something different into the complaint process. The Complainant may already understand the reasons given by a Participant for rejecting a claim, and feel that it adds nothing to the process if the Ombudsman's office simply repeats those reasons. Complainants felt they would be reassured if there was at least a sense that the Ombudsman was attempting to understand the grievance from the Complainant's perspective and to see if a different outcome could be achieved. That, after all, is why the Complainant went to the trouble of approaching the Ombudsman's office.

To gauge a consumer perspective on the IFSO Scheme I also met the CEO of one of the peak organisations that is active in providing community support and advice to other organisations and individuals on financial and consumer credit issues.

The comments relevant to the IFSO Scheme were along three lines. The first was that the IFSO Scheme could be more active in reaching out to or making itself known to consumers who may benefit from contacting it. The perception from the outside is that the competition between dispute resolution schemes has led to them directing disproportionate effort to contacting and servicing Participants. A better balance should be struck, particularly because the New Zealand consumer movement is not strong. This places a stronger obligation on dispute resolution schemes to target consumers and to speak to and meet with consumer organisations. This could also allay some confusion and uncertainty about their areas of speciality, and in particular where complaints about consumer credit and loans can best be taken.

A second discussion theme was that there could be better coordination and cooperation between the dispute resolution schemes in targeting consumers. For example, they should explore options for joint

advertisements and programs and even call centre entry. The absence of any public display of coordination between the schemes supports the impression that their focus is on competing with each other to maintain and strengthen their scheme membership.

A third theme was that the IFSO Scheme should look at ways of removing access barriers. An example given was the requirement for a letter of Deadlock before the Scheme took on a matter.

### ***IFSO Scheme consumer questionnaire (2017-18)***

The IFSO Scheme uses a Survey Monkey to seek feedback from Complainants at the conclusion of the dispute process. I was given an internal report prepared on 143 questionnaire responses that were completed between March 2017 and June 2018. Those responses are probably reliable as a good cross-section of IFSO Scheme Complainants: the ten questions referred to below were completed by 143 respondents; and 53% of respondents said their complaint was not decided in their favour, while 47% said it was decided in their favour (wholly, partly or settled). The following table provides the statistical responses to ten questions.

<b>Results surveyed from March 2017 – June 2018 (143 responses)</b>	<b>Agree</b>	<b>Disagree</b>	<b>Don't know</b>	<b>Skipped</b>
Q3: Did you receive enough information from your financial service provider about its own internal complaints process?	62%	29%	8%	1%
Q4: Did you receive enough information from your financial service provider about the IFSO Scheme?	59%	30%	8%	3%
Q5: Did the IFSO Scheme staff member give you a clear explanation about the IFSO Scheme process upon first contact?	85%	11%	1%	3%
Q6: Was the case manager helpful and easy to speak to on the telephone?	80%	13%	3%	4%
Q7: Did the IFSO Scheme keep you well informed about progress on your complaint?	78%	17%	2%	3%
Q8: Were the reasons for the decision about your complaint explained clearly?	77%	17%	3%	3%
Q10: Do you feel as though you were heard?	57%	29%	10%	4%
Q11: Did the IFSO Scheme resolve your complaint within a reasonable time?	67%	21%	6%	6%
Q13: Was the IFSO Scheme service easy to use?	78%	13%	4%	5%
Q14: Is the IFSO Scheme independent of financial service providers?	59%	20%	15%	6%

The questionnaire also allowed respondents to provide a free-text response on four questions:

- How did you find out about the IFSO Scheme?

The three most common sources of information (roughly 30% in each case) were through the respondent's insurance company, through personal knowledge or an internet search, or being informed by a friend, family member or adviser.

- Do you have any comment about IFSO Scheme communication?

The responses to this question ranged across the spectrum of communication performance. There were multiple responses on each of the following three themes: praise for clear and excellent communication from the IFSO Scheme, including for some nominated staff members; criticism of sporadic and slow communication by the Scheme; and complaints that the IFSO Scheme was biased in favour of the insurance companies.

- Do you have any comment about the IFSO Scheme process?

The responses to this question were along the same lines as the previous answers – on the one hand, complimenting the IFSO Scheme for being thorough and fair; and on the other hand, complaining that the IFSO Scheme analysis of the complaint lacked rigour and was biased in favour of the insurance company.

- Do you have any general comments?

The responses to this question elaborated on the contrasting perspectives referred to above.

### **IFSO Scheme Commission Members**

I interviewed 6 current and 1 former Commission Members, including the current Chair.

The Commission Members spoke highly of the IFSO Scheme, the performance of the Commission itself, and the support provided by the IFSO Scheme office to the Commission. No suggestions were made for any radical or fundamental changes in the IFSO Scheme. Continuation of the current high standard of work was seen to be the main priority.

The Commission Members felt that the Commission was functioning well and performed the governance function required by the IFSO Scheme Constitution. Commission meetings were regular and well run, Commission Members received good supporting papers prior to meetings, and there was good interaction between Commission Members and the Ombudsman and other staff during the meetings.

A number of Commission Members observed that a particular challenge facing the IFSO Scheme is to ensure that a consumer perspective is prominent in Commission discussions. Consumer protection is at the heart of an external dispute resolution scheme, yet consumer interests can be diverse and not easily articulated. Commission Members who represent consumer interests may face practical difficulties in fully ascertaining and distilling a consumer perspective on individual issues. There was, accordingly, a general feeling among Commission Members that it was their joint responsibility to be alert to consumer interests, and for this to be an integral element of Commission work and discussions.

Generally, Commission Members and some Participants to whom I spoke thought that a current strength of the IFSO Scheme was that it had stable leadership, particularly under the current Ombudsman who had held that role for two decades. One reason is that the Ombudsman had considerable experience, respect and profile in the industry – which were important qualities in the current competitive and changing environment. Another observation was that many senior managers in the insurance sector in particular had similar longevity with their particular businesses. Their stable and predictable relationship with the IFSO Scheme was valued.

## Other stakeholders

I spoke to two senior officers from government regulatory bodies – the FMA and MBIE. The discussions focused principally on the commercial regulatory environment and the issues that were being highlighted in government reviews and other financial sector developments in Australia and abroad.

Generally, the discussions underscored the contemporary importance of the IFSO Scheme keeping a watching brief on policy reviews and regulatory discussions and contributing when it can do so. The regulators are not directly involved in consumer dispute resolution, but have a strong interest in being informed by the dispute resolution schemes about complaint issues and trends. The comment was made that the IFSO Scheme could be more active and forthcoming in sharing information and insights. It was said that some other dispute resolution schemes had been better than the IFSO Scheme in doing so. As noted earlier, a stronger disclosure obligation will be placed on dispute resolution bodies by proposed changes to the *Financial Services Legislation Act*.

The regulators were aware that the IFSO Scheme had been active in the present competitive dispute resolution environment in strengthening its profile and contributing to consumer awareness discussions. This initiative by the IFSO Scheme is welcomed, particularly because New Zealand does not have a large consumer movement that can more actively raise issues or provide a consumer perspective.

It was implicit in these discussions that the regulators could benefit from the IFSO Scheme playing a more regular role in identifying and reporting on systemic problems in the insurance and finance sectors.

I spoke also to three senior officials in other dispute resolution schemes. The discussion was generally about the regulation of the New Zealand insurance and financial sectors, and the competitive environment for dispute resolution. There was nothing specific said about the IFSO Scheme that warrants mention in this review.

A strong theme in the discussions was that the dispute resolution schemes accept the current alternative scheme/competition arrangements, and appreciate the need to work sensibly and respectfully alongside each other. It was noted that there is strong pressure on each of the schemes to deliver more for scheme participants and the community generally, to be efficient in dispute resolution and to keep participation fees at a low level. There was also a keen awareness that the schemes could not be complacent, as participants could choose to move from one scheme to another.

Another discussion theme was that it was important for the schemes to be able to highlight systemic issues and refer these to a regulator when appropriate. The schemes to which I spoke said these options were open to them.

## 6 ASSESSMENT OF IFSO SCHEME PERFORMANCE

This section summarises some of the work undertaken for this review to assess the performance of the IFSO Scheme. Recommendations arising from this analysis are made later in the report.

### **IFSO Scheme response to recommendations in the 2013 Independent Review**

The 2013 Independent Review of the IFSO Scheme made 16 recommendations. All recommendations were accepted by the Commission, and progress in implementing the recommendations was a standing agenda item for Commission meetings. My assessment is that all recommendations have been implemented over the past five years, though some recommendations require ongoing action. The summary below of the recommendations provides a picture of the issues that have been addressed and improvements that have

been made in the IFSO Scheme in recent years. Subject to a few comments at the end of this section, I have not spelt out the specific implementation action taken on each recommendation as that extra detail adds little to the overall picture.

**2013 Recommendations:** That the IFSO Scheme –

1. Look for opportunities to demonstrate its proactivity in assisting consumers, for example, through an active media strategy and identification of common complaint situations
2. Adopt a staffing strategy to cope with unexpected demands in complaint work
3. Strengthen its staff capacity in corporate service work and case handling
4. Further develop the Enquiry and Complaint Procedure Manual
5. Develop expertise in new IFSO Scheme jurisdictions through staff secondments to other EDR schemes
6. Realign the responsibilities of the Ombudsman and the Deputy Ombudsman so that the Ombudsman can take on more external-facing activity
7. Review fee structures with a view to enhancing EDR efficiency
8. Amend the Terms of Reference to increase the IFSO Scheme Applicable Monetary Limit for regular payment products to \$1500 per week
9. Make the Case Studies and Consumer Information Sheets more personal and engaging
10. Revise the IFSO Scheme website and consumer information material to better explain that IFSO Scheme staff can assist Complainants to complete the standard complaint lodgement process
11. Accept complaints in appropriate circumstances without a Deadlock letter, as permitted by the Terms of Reference (para 8.2)
12. Conduct a periodic follow up with a sample of Complainants who have been referred back to a Participant for a Deadlock letter, to ascertain if the Complainants are getting satisfactory service
13. Work with Participants to ensure consumer awareness of the Scheme, and explore similar educational work with industry associations, consumer groups and regulators
14. Amend the Terms of Reference to allow consumers to lodge a dispute within the extended period of 90 days of receipt of a Deadlock letter, and after that time in extenuating circumstances
15. Explore opportunities to build a stronger public profile and an assertive public stance
16. Collaborate with other bodies to explore options to improve accessibility to financial sector EDR by disadvantaged groups.

My view that the IFSO Scheme has implemented all recommendations is subject to the following comments:

- A few of the Recommendations (and especially Recommendations 1, 13 and 16) highlight the need for the IFSO Scheme to connect with consumer and advocacy groups to broaden community awareness and understanding of the IFSO Scheme. Valuable work has been undertaken by the IFSO Scheme to forge those links, though the understandable response to that effort will likely be that more can be done. Recommendations relating to consumer contact and awareness necessarily require ongoing work that must evolve and adapt to contemporary circumstances and events.
- As to Recommendation 7, the competitive dispute resolution scheme environment has meant that there is a continuing awareness by the IFSO Scheme of the need to adopt a competitive fee structure. Consequently, the review envisaged by this recommendation is now more in the nature of an ongoing review process.
- As to Recommendation 9, I note below that the IFSO Scheme has an excellent record in recording and publicising case outcomes, but further presentation and editorial work can be undertaken on the website to present selected case studies in a more informative and engaging way.
- As to Recommendation 10, the IFSO Scheme website has been enhanced to provide guidance to potential Complainants, and specifically for people for whom language, sight or hearing impairment may be a barrier (see 'Contact Us'). However, there is no explicit statement on the website (along the lines envisaged in this recommendation) that a person may seek assistance from IFSO Scheme staff in completing the standard complaint lodgement process. It may be that that is adequately

understood or assumed by members of the public, having regard to the high number of telephone calls and enquiries the IFSO Scheme receives compared to the number of formal complaints.

- As to Recommendation 14, the Terms of Reference have been amended but this is not reflected on the IFSO Scheme website. Specifically, the Complaints section of the website that outlines ‘Complaints the IFSO Scheme can consider’ and the ‘IFSO Scheme Complaints process’ does not mention timelines for complaining and the opportunity to seek an extension of time. This merges with a broader issue that I take up in the ‘Recommendations’ section of this report on the need to provide additional public guidance on the features and limitations of the IFSO Scheme complaints process.

### **Participant website references to the IFSO Scheme**

I looked in May 2018 at the websites of 18 of the large insurers that are Participants, to see how they refer to the IFSO Scheme:

- 16 of the 18 insurers referred to the IFSO Scheme in a way that identified it as a complaint avenue that is available to customers/clients.
- The references to the IFSO Scheme in the Participants’ websites varied in location and quality. In some instances the IFSO Scheme was clearly mentioned in an easily accessible complaints page. In other instances the complaints page was either ‘nested’ and was not readily identifiable, a number of clicks were necessary to find the complaints page, or the reference to the IFSO Scheme was in the body of another document.
- Some insurers provided a link to the IFSO Scheme website without explaining properly the purpose of the link.

My assessment of the Participants’ website references to the IFSO Scheme can be compared to the responses given by Complainants in feedback questionnaires administered by the IFSO Scheme. One statistic given earlier in this report was that only 59% of Complainants who completed the feedback questionnaire in 2017-18 agreed that they had been given enough information by their financial service provider about the IFSO Scheme. That figure has been roughly consistent between 2004-17.<sup>18</sup> While there has been a 15% variation from the lowest to the highest ‘agreed’ annual response over that period, the average ‘agreed’ response over the period has been 57% annually. There has also been an overall trend of increased satisfaction with the information provided by Participants to consumers, though the upward trend has not been striking nor consistent from year to year.

### **IFSO Scheme website**

I compared the IFSO Scheme website to those of other comparable dispute resolution bodies in New Zealand and Australia (in New Zealand – FSCL, FDRS, and BOS; and in Australia – the AFCA, and two of the bodies that it replaced on 1 November 2018, the FOS and the CIO). The purpose of the comparative review was to identify strengths and limitations in the IFSO Scheme website.

I preface the following remarks with three observations. Firstly, there is no ideal website design or presentation – as a cursory glance at the infinite variety of government agency and industry body websites will reveal. Variations abound not only on appearance but on matters of substance, content and structure. Some agencies, for example, opt for websites that are content rich, even on the homepage, while others opt for a minimalist or more streamlined appearance. The facilities that are available on a website will also be tailored to the scale and resources of an organisation and the volume of website traffic it receives.

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<sup>18</sup> Figures taken from IFSO Scheme annual reports 2004-17.

Secondly, there can be a downside in making piecemeal changes to a website in response to suggestions or by copying an innovative feature of another website. Website revision is best done following a professional and expert review on a periodic basis. Consequently, the purpose of the following analysis is merely to draw attention to strengths and limitations of the IFSO Scheme website that can be taken on board in the ongoing review process.

Thirdly, my overall impression of the IFSO Scheme website – and I state this impression as a non-expert in website design! – is that it is a high quality website. The website has a clean and uncluttered appearance; it contains a diverse range of content that is well-presented and easy to navigate; and the content is clearly written and easy to read or view.

### ***Making a complaint***

The IFSO Scheme website contains advice on making a complaint at three separate points on the homepage, including a link to a flowchart. The IFSO Scheme phone number is given at three points; there is a link to a dedicated 'Complaints' section; and there is a link to an online complaint form. Complaints can be made online, by email or mail.

The online complaint form uses conditional formatting, so that some options are hidden until a box is checked (for example, representative complaints). The form does not explicitly ask if Deadlock has been reached, although this requirement is stated in other sections of the website.

Features not found on the IFSO Scheme website, that are found on one or more of the other dispute resolution body websites, include:

- A complaint can be made through Facebook.
- Documents can be uploaded when the online complaint form is used.
- The complaint form invites the Complainant to enter a reference or Deadlock number for the complaint.
- The conditional formatting on the online complaint form contains a larger number of questions or drop down boxes to invite greater complaint specificity and extra complaint detail.
- The box to enter a Participants' name on the online form is dynamic and linked to the search facility on the website, making it easy to use. On the IFSO Scheme website the Participants are searchable from a separate page. There is a possibility that a Complainant will enter the name of an organisation that is not a Participant.
- The website has a live chat service to provide assistance to Complainants.
- The online complaint form explicitly asks if any form of disability accessibility service or an interpreter is required.

### ***Access to case studies***

The IFSO Scheme website contains a link to 'Case Studies' that can be accessed from any page on the website. The Case Studies page contains a search facility, by which a keyword search (for example, 'travel', 'medical', 'earthquake') will bring up a large number of anonymised case studies (most available as a PDF). The initial landing page for the case studies arranges them chronologically, and refers to the 'Case No', 'Sector/Service', 'Resolution', and 'Date Closed'. This means that three clicks are necessary to reach an individual case study.

The individual case studies are commonly 1-2 pages in length. They contain identifying detail (Service, Outcome, Closed, and Casebook index), followed by a Summary and the Case Manager's Assessment.

The following feature is found on some other dispute resolution body websites:

- Case studies can be accessed in either of two ways – through a search facility or through a summary page that is accessible by one click from the homepage and provides key words and a 1-2 sentence summary of the complaint issue (for example, ‘Ch-ch-ch-changes. Did Sarah’s insurance adviser fully explain the very broad exclusion clause in the medical insurance policy?’).

### ***Website accessibility and languages***

The IFSO Scheme website contains prominent links on the homepage for Participants, Complainants and links to other information. A detailed sitemap is repeated at the bottom of most pages.

A link in the sitemap leads to a dedicated page for language options, access to the NZ Relay service for sign language, and advice that the IFSO Scheme can arrange interpreters. This page is accessible by one click from most pages. PDF brochures printed in eight languages (including Te Reo Maori) are accessible from this page.

Features not found on the IFSO Scheme website, that are found on one or more of the other dispute resolution body websites, include:

- Up to 13 languages are featured.
- There is a video in New Zealand sign language.

### ***News and publications***

The IFSO Scheme website contains a ‘News and Publications’ page that is accessible by one click from any other website page. The News and Publications page contains videos featuring the Ombudsman, a ‘Tip of the Month’ and links to other pages for Media releases, Media articles, Info sheets, brochures, Annual reports and Independent Reviews. There is no search function on the News and Publications page.

Features not found on the IFSO Scheme website, that are found on one or more of the other dispute resolution body websites, include:

- News items are featured on the homepage.
- A search facility enables news items to be searched by year, free text or type of publication.
- A title and content summary is provided for articles available on the website.

### ***Contact information***

The IFSO Scheme phone number is prominent on every page of the website, and is listed three times on the homepage. The IFSO email address is listed twice on the homepage.

These features are standard on other dispute resolution body websites.

### ***Key documents***

Documents that are accessible on the website and accessible from links on the homepage include the Constitution, Terms of Reference, Annual reports and Independent Reviews.

These features are standard on other dispute resolution body websites.

### **Management and administration of the IFSO Scheme**

I referred earlier in this report to the interviews that I conducted with Commission Members. The view conveyed to me (and also by IFSO Scheme staff) is that the Commission plays an active management role



(as required by the Constitution) and that a strong and interactive working relationship exists between the Commission and senior IFSO Scheme staff.

This was confirmed by the minutes of Commission meetings for the last three years that I read as part of this review. Matters I note are:

- the Commission meetings are well-attended
- there is a good meeting agenda that covers all key program, governance and risk management issues
- the Financial Reports to the meeting are comprehensive
- the Commission receives a comprehensive report from the Ombudsman, and
- there is good dialogue between the Ombudsman and Commission Members.

I have not delved into financial management issues, given that the IFSO Scheme relies on external financial auditors and consultants, the Budget is a major agenda item at each Commission meeting, the external financial auditor attends the Commission meeting, and the Annual Report contains a financial report summary. I should nevertheless add – without qualification – that there is prudent financial management of the Scheme. It operates on a modest budget of around \$2M annually; the financial reserve in 2018 was \$1.45M; and there has been a 10% reduction in annual membership fees since 2014. No major budgetary concerns were raised in any of the material that I examined.

Another important management feature is that standing items for the Commission meetings are the review of Business Risks and Strategic Measures. Though the performance level can vary from one quarter to another, in most quarters the target is met or exceeded.

The Scheme took a major step forward in introducing a new computer-based complaints management system in July 2017 (CRM/Salesforce). An internal project report concluded that ‘The CRM has successfully been implemented on time, within budget, and with no major issues during the “go live” phase.’ A number of important benefits were recorded, and include improving the management of existing member data, better processing and data entry for online applications, and better workflow support for case management. I saw too that the new system is making good use of Salesforce data, in regularly providing a detailed and easily understandable breakdown of enquiry and complaint issues and resolutions, timeframes and outcomes.

I will briefly mention two other positive management issues that arose in discussion with Commission members and IFSO Scheme staff. There was strong support expressed both internally and by Participants for the Fast track complaint procedures that were introduced in about 2014. These ensure that there is upfront consideration of whether complaint issues can be resolved by a simpler process. Staff reported to me the worthwhile results that arise from an early analysis and discussion of complaint issues with Complainants – who may not have previously spoken to any person about the complaint. Staff seem committed to taking cases down the Fast track procedure where practicable. Participants also expressed their strong support for the Fast track procedure, and indeed suggested there was scope for greater upfront complaint triaging and discussion with the parties.

I was reassured in my discussions with senior IFSO Scheme staff that they are keenly aware of and are responding to the need for strengthened privacy protection for personal information and to guard against cyber attacks. This is a matter discussed at Commission meetings and on which the IFSO Scheme is obtaining expert external assistance.

### **IFSO Scheme staff comments**

I met with many of the IFSO Scheme staff members to elicit their views on the performance of the office, and to discuss the support they received from the office. Some of the staff comments are picked up under

other headings (for example, relating to their support for the Fast track procedures and the public engagement activities). There were a few other points mentioned by more than one staff member that I shall briefly note in this section.

All staff spoke highly of the internal culture of the office (and this aligned with my impression from my time in the office). They felt there was good rapport between senior and other staff and a willingness to discuss difficult or novel complaint issues at any stage of the process. Staff also expressed their respect for the professionalism and high standard of work of other staff.

Some staff members are undertaking further study or training with the support of the office. Generally, they indicated that they received strong office support for professional development. Most of the staff attended the ANZOA conference in Wellington in May 2018.

Staff noted the impact on complaint resolution of working in a competitive dispute resolution environment. While staff were committed to resolving complaints on a professional basis according to accustomed principles, they nevertheless gave thought to how a Participant may react to the complaint resolution or procedure, or how a Complainant may construe their complaint not being upheld. It was important in the competitive environment that they could talk to the Ombudsman or another senior staff member during the complaint investigation, and especially before deciding to uphold a complaint.

A related observation was that there is insufficient clarity on resolving a complaint under the 'fair and reasonable' criterion. I noted above that there is ambiguity on this issue in the Terms of Reference, and recommend below that the matter be given further consideration.

A couple of other staff comments to note briefly are that there is scope for the IFSO Scheme to lift its profile further; and there is a need for added vigilance to ensure that Participants do not unnecessarily string out the internal complaint process before issue of a Deadlock letter.

## **Public engagement**

A topic I examined as part of this review was the public engagement activity of the IFSO Scheme. This is self-evidently an important issue in reviewing an Ombudsman scheme. It is implicitly an element of the Accountability and Effectiveness Principles that are a partial focus of this review. A theme of the 2013 Independent Review report was that the IFSO Scheme should implement strategies to lift its public profile and to establish stronger connections with community and industry associations. The competitive environment for dispute resolution bodies also makes this an important issue.

My overall impression is that the public engagement strategy pursued by the IFSO Scheme since the last Independent Review in 2013 has been active and successful. My overall impression is that the IFSO Scheme has lifted its public profile, contributed regularly to public discussion of insurance and financial problems and risks, undertaken more consumer awareness initiatives, and provided a good range of information resources to Participants and the community generally. A comment frequently volunteered to me during the interviews for this review was that the Ombudsman (Karen Stevens) has a strong public profile, and that IFSO has made a positive contribution to building community awareness of insurance and finance risks and strategies. Bearing in mind that the IFSO Scheme is a small organisation, my view is that the range and frequency of its public engagement activities has been impressive.

The IFSO Scheme has a Communications and Marketing Manager (Zoe Priestley) who has excellent skills and energy in media and communications and has outlined a clear media strategy. This is well captured in an 'Engaging with media' presentation developed by Zoe, that includes quotes from newspaper headlines featuring the IFSO Scheme, and outlines a media briefing strategy and the proactive approach the Scheme has adopted to get messages out to the community. I was informed that the Scheme responds to about two media enquiries a week.

A few Annual report statistics given earlier in this report illustrate what I believe to be an impressive public engagement performance by the IFSO Scheme, particularly as a relatively small organisation:

- Website visits in the last two years: 43,344 and 39,978
- Speeches, presentations and webinars: 39 and 39
- Media interviews, responses and releases: 68 and 70
- Brochures distributed nationwide: 2,500+ and 1,000+
- Webinar attendance: 898 (19 webinars) and 1,077 (16)

The webinars have been run in conjunction with the Institute of Financial Advisers and Professional IQ College for Insurance Brokers Association of New Zealand. I looked at some of the webinars and thought the theme and content to be excellent. An example is the webinar on *'Top 10 insurance issues for clients'*, that explained why many complaints were not upheld, followed by group discussion topics for financial advisers on 'how would you help clients avoid these issues?' and 'how you can help clients' (for example, explain the level of insurance cover at the outset, check customer expectations and reinforce the need for evidence to support a claim). A similar example is the webinar on *'Resolving customer dissatisfaction: tips on dealing with customer complaints'*, that contains clear, direct and comprehensive messages on developing and publicising complaint processes, the elements of good complaint handling, and indicative customer responses to the IFSO Scheme feedback questionnaire. Other webinar presentations that impressed me for their clear and practical presentation were *'Resolving Customer Dissatisfaction'* and the *'IFSO Scheme Resolution Process'*.

It is notable too that the IFSO Scheme provides strong support to the Australian and New Zealand Ombudsman Association. Karen Stevens has been an Executive Member of ANZOA for many years, and the IFSO Scheme office played the lead role in organising the ANZOA conference in Wellington in May 2018. The IFSO Scheme is also a member of the International Network of Financial Services Ombudsman Schemes and Karen Stevens is the current Chair.

### **IFSO Scheme case management**

I read a random sample of complaint files for the last few years. It is clear that the IFSO Scheme – with 23 years' experience – has a well-structured and managed approach to opening, recording and closing complaints. I was impressed by the care taken in each of the files that I read to provide a comprehensive and objective record of how the complaint was analysed and resolved. The IFSO Scheme has developed an excellent and detailed Review Checklist to provide guidance and ensure consistency in case handling. The factual analysis of complaint issues recorded in the complaint files was rigorous. The initial letter to the Complainant explained the IFSO Scheme role; interim letters explained matters clearly and invited reconsideration of contested issues; and the closure letter also contained clear and adequate reasons for the decision and provided a feedback questionnaire form. Each file also contained a case summary that meant that the handling of the complaint could easily be checked or reviewed by another staff member, and that the precedent value of the file was accessible.

The individual advice provided to Complainants on IFSO Scheme procedures is supplemented by guidance on the IFSO Scheme website that implements the Key Practices for dispute resolution bodies that are referred to below. I note in particular the clear guidance on *'Service complaints about the IFSO Scheme'*.

I was similarly impressed by the practice adopted by the IFSO Scheme from commencement of distilling each formal investigation into a Case Study that is published in an anonymised form on the IFSO Scheme website. The Case Studies have a consistent form, length and presentation. These are of great value to the IFSO Scheme office itself, and to Participants, Complainants, government and the community generally. The Case Studies draw out very well why many complaints are not upheld and the steps that can be taken to avoid insurance and financial problems arising. The IFSO Scheme makes excellent use of the Case Studies in its annual reports, webinars and media alerts and briefings.

The only improvement I recommend, as discussed later in this report, is that work should be undertaken to present a small selection of the case studies in a more readable form on the IFSO Scheme website.

## **ANZOA Conference**

I attended the ANZOA biennial conference in Wellington in May 2018. As noted earlier, the IFSO Scheme was involved with the organisation of the conference and IFSO staff members presented in a number of sessions.

The conference had special relevance to this review, as the conference program addressed each of the six Benchmarks (or Principles) for dispute resolution bodies (under the conference theme, 'Checks and Balances'). The conference included a session on periodic independent reviews, in which I participated as a panel member.

There was a great deal of useful discussion at the conference on practical measures that can be adopted to meet the six Benchmarks. I briefly note some of the valuable suggestions made by speakers:

- short term secondment of scheme staff to other dispute resolution bodies
- calling Complainants to check if matters were settled
- consulting periodically with consumer or focus groups
- arranging for independent assessment of scheme decisions
- adopting a social media strategy
- implementing a targeted focus on reaching particular stakeholder groups, especially the disability community, vulnerable consumers, young people, the aged, new arrivals
- examining whether the scheme understands the demographic composition of its client group
- reviewing how staff interact with Participants, for example, as to email style and fraternisation
- checking if recommendations or binding decisions are implemented
- actively engaging board/commission members in running the scheme
- positioning the scheme (and ombudsman) as a trusted source of information.

## **7 PRINCIPLES AND KEY PRACTICES**

A specific focus of this independent review was IFSO Scheme compliance with two of the six Principles that apply to the accreditation of industry-based dispute resolution schemes. The two Principles are Accountability and Effectiveness. As noted earlier, those Principles are defined together with practical guidance on implementing them, in a guide issued by the Australian Minister for Small Business in 2015, *Key Practices for Industry-based Customer Dispute Resolution*.

The Key Practices were used as a focus in this review, especially in assessing IFSO Scheme performance. The conclusion I have reached is that the IFSO Scheme has met the requirements of the Principles and the Key Practices, subject to a few comments and recommendations in this report. The following two tables summarise my observations on IFSO Scheme compliance with the Key Practices for the Principles of Accountability and Effectiveness.

## Principle – Accountability

### Principle

The office publicly accounts for its operations by publishing its final determinations and information about complaints and reporting any systemic problems to its participating organisations, policy agencies and regulators.

Key Practices	IFSO Scheme Practice
<ul style="list-style-type: none"> <li>publish guidelines and policies for dealing with complaints</li> </ul>	<p>The IFSO Scheme website provides clear information for consumers on complaints that can be considered, how to make a complaint, and service complaints about the IFSO Scheme process. A complaint form can be downloaded. Contact details are provided.</p> <p>Recommendation 4 in this report is that the IFSO Scheme review the guidance that is provided to case managers on the application of decision making criteria in the IFSO Scheme Terms of Reference, to ensure that clear and consistent information is provided to consumers, including if necessary on the website.</p>
<ul style="list-style-type: none"> <li>prepare a written report on a final determination, and make it available to the participants and interested bodies. These may be published in a de-identified form</li> </ul>	<p>The IFSO Scheme provides a letter of advice to Complainants to explain the decision made in a case accepted for investigation. The letters that I reviewed were of a high quality. A detailed file case note, adopting a standard format, is prepared on each such case. These notes form the basis for summarised case studies that are prepared for all complaints resolved by the IFSO Scheme and that are published in an anonymised form on the IFSO Scheme website. This report notes that the case studies are accessible only through a search facility. By contrast, the websites of some other dispute resolution bodies enable case studies to be accessed also through a summary page.</p>
<ul style="list-style-type: none"> <li>take account of comments from complainants and participating organisations in reviewing internal processes and procedures</li> </ul>	<p>Upon closure of a complaint a Complainant is emailed a survey asking for their views on how the complaint was handled. The responses are regularly aggregated by the IFSO Scheme, as reflected in a table in this report.</p>
<ul style="list-style-type: none"> <li>publish an annual report that contains statistical and other data about the performance of the office, its complaint work during the year, as well as a description of the office’s jurisdiction, procedures, activities and participating organisations</li> </ul>	<p>The IFSO Scheme publishes an annual report that complies with this Key Practice.</p> <p>I noted above that the IFSO Scheme has made a number of valuable submissions to government inquiries. Consideration should be given to publishing the more formal and substantive submissions on its website.</p>

## Principle – Effectiveness

<p><b>Principle</b> The office is effective by having an appropriate and comprehensive jurisdiction and periodic independent reviews of its performance.</p>	
<p><b>Purpose</b> To promote community confidence in the office and ensure that the office fulfils its role.</p>	
<p><b>Key Practices</b></p>	<p><b>IFSO Scheme Practice</b></p>
<ul style="list-style-type: none"> <li>the scope and powers of the office are clear</li> </ul>	<p>These are clearly set out in the Terms of Reference. New Terms of Reference were adopted in 2015.</p>
<ul style="list-style-type: none"> <li>the scope and powers of the office are adequate to deal with the issues raised in complaints, including the power to make appropriate monetary awards</li> </ul>	<p>The Terms of Reference confer adequate powers on the office. The Applicable Monetary Limit on complaints has been increased following independent reviews in 2008 and 2013. Recommendation 5 in this report is that the IFSO Scheme Commission review the current Limits, having regard to contemporary circumstances and a foreshadowed increase in the Applicable Monetary Limit for complaints to the Banking Ombudsman Scheme.</p>
<ul style="list-style-type: none"> <li>systemic problems raised in complaints can be referred to an appropriate regulator if required, or brought to the attention of policy bodies and industry associations</li> </ul>	<p>The IFSO Scheme is required by the <i>Financial Service Providers (Registration and Dispute Resolution) Act 2008</i> s 67 to refer ‘a series of material complaints’ to the regulator. On an informal basis, the IFSO Scheme has adopted a practice of discussing systemic complaint problems with Participants. There is, however, no explicit reference in the IFSO Constitution or Terms of Reference to the IFSO Scheme being able to deal with systemic issues. Recommendation 3 in this report is that the Terms of Reference be amended to require the IFSO Scheme to have procedures in place for dealing with systemic problems that become apparent from complaints, and to refer those issues to Participants and, where appropriate, to government regulators or policy makers.</p>
<ul style="list-style-type: none"> <li>the office staff are appropriately qualified and resourced and engage in professional development</li> </ul>	<p>I believe this Key Practice is met, based on my own discussion with staff of their experience and qualifications, the support provided to them for enrolment in continuing education, and my observations about staff participation in professional development activities (such as the biennial ANZOA conference in Wellington in 2018, and the annual IFSO Scheme conference).</p>
<ul style="list-style-type: none"> <li>procedures are in place to receive complaints about the office that are dealt with in a timely and appropriate manner</li> </ul>	<p>The IFSO Scheme website provides detailed information on ‘Service complaints about the IFSO Scheme’, including indicative timelines for dealing with complaints.</p>

Key Practices	IFSO Scheme Practice
<ul style="list-style-type: none"> <li>the office advises participating organisations on the need to set up an internal dispute resolution mechanism</li> </ul>	<p>The Constitution requires each Participant to establish a bona fide internal dispute resolution mechanism, and to inform customers of complaint procedures. Recommendation 2 in this report is that the IFSO Scheme devise and undertake a small scale project to examine the effectiveness of internal complaint handling by Participants.</p>
<ul style="list-style-type: none"> <li>the office ensures that participating organisations cooperate with the office, abide by its rules and implement final determinations</li> </ul>	<p>The IFSO Scheme website provides information for Participants, including a Participant’s login. Information is regularly provided to Participants during the year by seminars and e-bulletins. The impression I gained from discussion with Participants is that they have a high opinion of the steps taken by the IFSO Scheme to liaise with Participants and to require their cooperation in investigations.</p>
<ul style="list-style-type: none"> <li>the office has procedures to ensure industry compliance and to ensure redress for customers if a member does not implement a binding determination</li> </ul>	<p>This Key Practice is addressed in the Terms of Reference.</p>
<ul style="list-style-type: none"> <li>a periodic independent review is conducted in consultation with stakeholders of the performance, procedures and scope of the office</li> </ul>	<p>This independent review, as required by the Constitution to be conducted every 5 years, meets this Key Practice.</p>

## 8 FINDINGS AND RECOMMENDATIONS

### Overall assessment of IFSO Scheme performance and compliance with Principles

The IFSO Scheme is well established and effective. Over the past 23 years it has handled 58,660 complaint enquiries and investigated 6,400 complaints. In the last year its decisions resulted in payment by Participants of compensation totalling \$3.2 million to 68 Complainants. There are 4,770 Participants in the Scheme. The Scheme makes an incisive and important contribution to public discussion and analysis of insurance and finance sector issues, risks and strategies. There is a strong consumer protection theme in the public comments that the IFSO Scheme has made to government inquiries, in public relations work and to Participant seminars.

The IFSO Scheme is well managed, both by the Commission, the Ombudsman and other IFSO Scheme staff. There is strong and respected leadership by the Ombudsman and other senior staff. There is an equally strong commitment at all levels to ensuring the successful performance and harmonious operation of the Scheme. Close attention is paid to compliance with the six Benchmarks (Principles) for industry-based dispute resolution schemes. There is a clear agenda, and reliance on expert external assistance, for addressing risk and strategic performance indicators.

Internal management and record keeping within the office is of a high standard. There is robust internal review of efficiency, effectiveness and consistency. The business improvement program in the IFSO Scheme has led to the recent introduction of a new computer-based complaint management system, and adoption of a more active and successful public engagement strategy.

I have not found it necessary in this report to make detailed recommendations on specific aspects of the IFSO Scheme. Matters of detail were helpfully taken up in earlier Independent Reviews, and have been addressed by the IFSO Scheme. In addition, the IFSO Scheme is competently and professionally managed, and has a wealth of experience in complaint resolution. I am satisfied that it pays adequate attention to both the fundamental elements and the finer points of complaint resolution. There would be little gain in this report providing a checklist for ongoing management and development of the IFSO Scheme.

A key theme of this report is that the broader government, industry and community context for industry complaint resolution is evolving. It is important that the IFSO Scheme has a clear strategic focus on meeting new challenges in this transformative context and on demonstrating continuing relevance, effectiveness and innovation. Among the matters that were highlighted earlier in this report were:

- the competitive environment for dispute resolution schemes
- government legislative and policy review of the insurance and finance sectors
- the public spotlight on unacceptable conduct in banking, insurance and financial services
- the impact that technology will have on the insurance and financial sectors and the service dispute issues to which this could give rise.

I also drew attention to stakeholder comments on the expectations they hold of the IFSO Scheme and dispute resolution bodies, including:

- the IFSO Scheme must strive to have a high public profile, and indeed strive to lift its profile even higher than at present
- the IFSO Scheme should proactively engage with government in conveying its complaint handling insights and contributing to government legislative and policy reviews
- the IFSO Scheme should proactively engage with consumer bodies and explore practical steps that can be taken to enhance the accessibility of the IFSO Scheme for individual consumers
- the approved financial dispute resolution schemes should explore avenues for collaborative work, for example, on consumer access to the schemes
- the IFSO Scheme's experience is heavily weighted in the insurance sector; in the new competitive environment it needs to explore ways of strengthening its expertise in areas such as superannuation, investments, securities, financial advice, broking services, loans and credit.

I have not framed any of those matters as a specific recommendation. I am aware that the IFSO Scheme, including the Commission, is attuned to those issues and regularly discusses them. It is nevertheless important to highlight them in this report as key issues that should form part of strategic thinking and planning within the IFSO Scheme.



## Recommendations

I make recommendations on the following specific issues that arose in this review.

### 1. *Internal complaint resolution by Participants*

Participants in the IFSO Scheme are obliged to establish an effective internal complaint system that is visibly linked to the IFSO Scheme. This obligation is spelt out in clause 10 of the Constitution of the IFSO Scheme:

10.1 Each Participant:

....

- b) must operate a bona fide internal complaints handling service in relation to its Financial Services for the benefit of Complainants and publicise to users of their Financial Services the availability of that service;
- c) must, in writing, inform users of their Financial Services that the Scheme is available to provide them with a free complaints resolution service ...

One of the 'Principal Duties' of the IFSO Scheme is to assist Participants to comply with that obligation. Specifically, clause 3 of the Terms of Reference provides that a principal duty of the Scheme is 'to encourage and provide advice to Participants on the development and maintenance of good complaint-handling practices'. The expectation that an external dispute resolution scheme will monitor the effectiveness of internal complaint handling arrangements in participating organisations is also stated in the *Key Practices for Industry-based Customer Dispute Resolution*.<sup>19</sup>

It was apparent in this Review that the major Participants in the IFSO Scheme are aware of their internal complaint handling obligations and have taken steps to implement them. The elements of effective internal complaint handling are also a prominent topic in webinars and other educative work that the IFSO Scheme undertakes. Two of the questions in the consumer questionnaire that the IFSO Scheme sends to Complainants at the conclusion of the dispute process enquire as to whether the person received adequate information from the financial service provider about its own internal complaints procedure and about the IFSO Scheme.

Notwithstanding the prominence that is given to complaint handling arrangements in that way, there is a mixed picture as to how effectively the arrangements are working, both as to knowledge of complaint handling arrangements and as to the effectiveness of internal complaint handling.

As to knowledge of arrangements, the aggregated responses to the IFSO Scheme consumer questionnaire were that 62% of respondents felt they had been given adequate information about a financial service provider's internal complaints procedure, and 59% about the IFSO Scheme. My own analysis of the websites of 18 of the large Participants was that information about access to the IFSO Scheme was not provided to customers/clients on two of the websites, and was not readily identifiable on some other websites.

As to the effectiveness of internal complaint handling arrangements, the picture that I have gleaned is necessarily anecdotal and impressionistic. Nonetheless, a number of Complainants to whom I spoke were strongly critical of their complaint handling experience with a Participant. The high and growing number of enquiries and complaints to the IFSO Scheme and the other approved schemes also confirms the need for all parties to maintain ongoing scrutiny of the effectiveness of internal complaint handling arrangements.

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<sup>19</sup> *Key Practices*, clauses 1.4-5, 1.12, 6.9-10.

### ***Recommendation 1***

The IFSO Scheme devises and undertakes a small scale project to examine the adequacy of the information provided to consumers/Complainants by a sample of Participants, about internal complaint handling arrangements and about taking a complaint to the IFSO Scheme. The project could focus on information provided in Participants' advice material and letters and on websites. The aim of the project would be to prepare an anonymised report to be presented to Participants, perhaps at the annual IFSO Scheme conference, on good and poor practice, supplemented if necessary by best practice guidelines.

### ***Recommendation 2***

The IFSO Scheme devises and undertakes a small scale project to examine the effectiveness of internal complaint handling by Participants. The project could look at a sample of cases relating to a number of Participants. The project would partly draw on information available to the IFSO Scheme from its own complaint files, but would ideally involve some examination of the Participants' files in cooperation with the Participants. The aim of the project would be to prepare an anonymised report to be presented to Participants, perhaps at the annual IFSO Scheme conference, on good and poor practice measured against the best practice standards/guidelines published by other bodies. The report should include guidance on the measures that Participants can adopt to audit their own internal complaint handling.

## ***2. IFSO Scheme examination of systemic issues***

There is no explicit reference in the IFSO Constitution or Terms of Reference to the IFSO Scheme being able to deal with systemic issues. The common understanding of a systemic issue in complaint resolution is that the same issue has arisen either in complaints relating to more than one participating organisation or in multiple complaints relating to a single participating organisation.

The Terms of Reference are generally premised on the assumption that the IFSO Scheme will be receiving and examining individual complaints. There is, nonetheless, some ambiguity, to the extent that a principal duty of the Scheme is 'to resolve ... Complaints arising out of the provision of Financial Services by a Participant' (clause 3.1); and the Scheme, in addition to advising a Participant or regulator of a breach of a legal or code obligation, may 'take such other action it considers appropriate including to determine whether a broader issue exists that warrants remedial action' (clause 17.2(c)). The *Financial Service Providers (Registration and Dispute Resolution) Act 2008* s 67 also refers to the duty of an approved scheme to refer to the regulator 'a series of material complaints'.

It would be consistent with those provisions for the IFSO Scheme to draw a Participant's attention to a recurring complaint issue, or to group a few similar complaints for efficient investigation (though a decision would necessarily have to be made individually in each case). The IFSO Scheme has proceeded on that basis – and, for example, reported in the 2018 Annual Report that it had queried and resolved 4 potential systemic issues with Participants.

It is desirable, in my view, that the IFSO Scheme should have explicit authority in the Terms of Reference to deal with systemic issues. This would provide a firmer basis for raising systemic issues with Participants, exploring suitable remedial options for individual Complainants and taking action to prevent the recurrence of systemic problems. It would also enable the Scheme to move to the next step, following discussion with Participants, of defining the procedure to be followed in raising and handling systemic issues.

The IFSO Scheme is open to the criticism that it falls short of best practice in not having an explicit authority to deal with systemic issues. The authority to do so is generally understood to be an essential and defining feature of an Ombudsman (or independent external dispute resolution) scheme. The *Key Practices for Industry-Based Customer Dispute Resolution* refer on five occasions to this function:

- as a Key Practice for 'Independence', the office must be able to convey information about systemic problems to the overseeing entity (that is, the Commission)
- as a Principle of 'Accountability', the office must publicly account for its operations by reporting any systemic problems to its participating organisations, policy agencies and regulators
- as a Key Practice for 'Accountability', the office should include information about systemic problems arising from complaints in its annual report
- as a Key Practice for 'Efficiency', the office should have mechanisms and procedures for dealing with systemic problems that become apparent from complaints, including by investigating those issues or referring them to relevant participating organisations, regulators or policy makers, and
- as a Key Practice for 'Effectiveness', the office should have mechanisms for referring industry problems, based on cases brought to dispute resolution, to an appropriate regulator for action if required.

The Australian and New Zealand Ombudsman Association has highlighted the importance of a systemics function by undertaking a survey in 2018 of the practice adopted by all members, in line with a commitment in ANZOA's 2014-19 Strategic Plan to 'Document the systems and procedures used by Ombudsman offices to identify and investigate systemic issues'. Members reported that they dealt with systemic issues either through a specific function or pursuant to an agreed understanding with participating organisations. The results of the survey provided to ANZOA members also include information that would be valuable to the IFSO Scheme as to the procedures and criteria adopted by other members.

I noted earlier in this report that Participants generally thought it appropriate and helpful for the IFSO Scheme to draw attention to recurring or systemic problems, but that some Participants had reservations about the Terms of Reference being amended to make this role more explicit. The main concern was that this may take the complaint resolution focus off individual complaint handling and result in the IFSO Scheme developing more of an advocacy role. Clearly this concern will need to be addressed and explained by the IFSO Scheme and by Commission Members if the Terms of Reference are amended. It should be a relatively straightforward matter of explaining to Participants that there has been no transformation of the role of other schemes that play an active role in raising systemic issues. The benefit to Participants and Complainants, of dealing with systemic issues, can also be reiterated.

### ***Recommendation 3***

The Terms of Reference be amended (for example, clause 3, 'Principal Powers and Duties of the Scheme') to require the IFSO Scheme to have procedures in place for dealing with systemic problems that become apparent from complaints, and to refer those issues to Participants and, where appropriate, to government regulators or policy makers.

### ***3. Clarification of review criteria***

My impression is that there is an unresolved ambiguity in the IFSO Scheme principles and practice about the application of the 'fair and reasonable' decision making criterion.

The decision making criteria are, in effect, dealt with in two separate clauses of the Terms of Reference. Clause 5, headed 'Type of Complaints within the Scheme's jurisdiction', states that the IFSO Scheme has power to consider a complaint relating to a Participant breaching a contract, statutory obligation or industry code, or not complying with a relevant industry practice. Clause 12, headed 'Decision Making Criteria', states that the IFSO Scheme will make a decision 'by reference to what is fair and reasonable in all the circumstances'; relevant circumstances include applicable rules of law, the rules of natural justice, relevant industry practices and Codes, the circumstances of a Complainant, and how their complaint was dealt with by a Participant.

It is unclear, from the bare text of the Terms of Reference, how far the IFSO Scheme can go in applying its own notion of what is 'fair and reasonable' in the face of legal principles and policy terms on which a

Participant relies in rejecting a claim or complaint. There is no elaboration of this textual tension on the IFSO Scheme website, which simply advises under 'Our Process' that 'When both parties cannot agree on an outcome, a fair and reasonable decision will be made'. Some Participants to whom I spoke felt that the IFSO Scheme relied too heavily on the 'fair and reasonable' criterion; some IFSO Scheme staff to whom I spoke felt that greater reliance should be placed on the criterion; and some Complainants thought that the IFSO Scheme had adopted an overly-legalistic or formalist approach.

I also observed some variable explanations of the IFSO Scheme approach in letters sent to Complainants. Following are five phrases that appear to be commonly used:

'I have made a decision which, in my opinion, is fair and reasonable in all the circumstances'

'We can only make a decision about what is fair and reasonable based on the policy wording'

'The IFSO Scheme can only consider whether [the Participant] correctly and reasonably applied the terms and conditions of the policy to the claim'

'The IFSO Scheme must make decisions by reference to what is, in its opinion, fair and reasonable in all the circumstances, having regard to the law'

'At law, the insurer is entitled to rely on its legal rights and the IFSO Scheme cannot make a decision which ignores those legal rights, even if it does not seem fair, or has harsh results, in all the circumstances'

I should add that the letters in which that different phrasing was used provided a careful explanation of the reasons for the IFSO Scheme decision. The basis for the decisions should have been clear to the Complainants, who were also advised when a complaint was not upheld of the scope of their right to seek review of a decision.

I acknowledge too that ambiguity surrounding the meaning of the 'fair and reasonable' criterion may provide some strategic operational benefit to the IFSO Scheme when it is negotiating an outcome with a Participant.

Overall, however, I think there is a need for the IFSO Scheme to review its guidance material and operating practices to ensure clarity in how the 'fair and reasonable' criterion is applied. It is undesirable, given the frequency with which the issue arises, if IFSO Scheme staff do not adopt a consistent practice, and if Participants and Complainants are unclear about the IFSO Scheme approach.

#### ***Recommendation 4***

The IFSO Scheme review the guidance that is provided to case managers on the application of decision making criteria in the Terms of Reference, to ensure there is clarity and consistency in how the 'fair and reasonable' criterion is to be applied. A particular focus of the review should be to spell out how that criterion is to be applied, having regard to legal principles, Code requirements, industry practice and policy terms.

#### ***4. Review of the Applicable Monetary Limit***

The Terms of Reference provide that the IFSO Scheme can only consider a complaint that represents a monetary amount not more than the Applicable Monetary Limit (clause 5.2). The limit is currently set at \$200,000 as a lump sum amount (plus GST), or \$1,500 per week (plus GST) if a product provides regular payments.

Those amounts have been increased from time to time – for example, the lump sum was increased from \$150,000 to \$200,000 following the 2008 Independent Review of the ISO Scheme, and the weekly payment from \$1,000 to \$1,500 per week following the 2013 review.

It is sensible that the Monetary Limit should be reviewed regularly and increased from time to time. This would be in line with inflationary pressures, commercial and social realities, and the role of the IFSO Scheme as an accessible alternative dispute resolution mechanism for consumers. I understand that the Applicable Monetary Limit for lump sum payments under the New Zealand Banking Ombudsman Scheme is to be increased from \$200,000 to \$350,000. This is in line with an increase in the jurisdictional limit that applies to claims in the District Court of New Zealand. I note too that much higher monetary caps apply to complaints to the Australian Financial Complaints Authority – for example, the total cap for general financial claims is \$500,000 and for income stream insurance is \$13,400 per month.<sup>20</sup>

There is necessarily a degree of arbitrariness in selecting a monetary cap limit. However, two weighty factors should be maintaining parity with comparable limits for other dispute resolution options, and ensuring that in the current environment the IFSO Scheme remains a viable, accessible, cost-free and non-adversarial dispute resolution option for consumers. On that basis I favour an increase in the lump sum amount to \$350,000.

A weekly payment limit of \$1,500 also seems inappropriately low. It equates to an annual income of \$78,000, which may be less than that received by many potential claimants. It is particularly important that consumers who have disputes over disability payments have adequate access to a cost-free dispute resolution option. I understand that the current weekly limit has posed difficulties for the IFSO Scheme in accepting some complaints of that nature.

***Recommendation 5***

The IFSO Scheme review the Applicable Monetary Limit and increase the lump sum maximum to \$350,000 in line with the Banking Ombudsman Scheme and the weekly monetary limit to \$3,000, to ensure that consumers who have disputes over disability payments have access to justice.

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<sup>20</sup> [www.afca.org.au/what-to-expect/outcomes-afca-provides](http://www.afca.org.au/what-to-expect/outcomes-afca-provides)