

Financial Dispute Resolution Service

# Annual Report **2020-2021**



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## Year in review

1 July 2020 – 30 June 2021

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### Our Scheme Members

A full list of members can be found in the 'member search' section of our website, [www.fdrs.org.nz](http://www.fdrs.org.nz)



# Welcome

## On behalf of the Advisory Council it is my pleasure to present the 2020/21 Annual Report.

For more than a decade, Financial Dispute Resolution Service (FDRS) has supported both consumers and financial service providers with access to independent dispute resolution services. FDRS was established with the principles of fairness, accountability, accessibility, independence, effectiveness and efficiency. These principles continue to be the foundation for its services, and guide the organisation's continuous improvement.

This year, FDRS supported more than 2,000 members and received 369 enquiries from consumers requiring assistance in resolving their complaints. This was a 20 percent increase in enquiries from last year, and 94% of enquiries were resolved or closed in the initial phase. This demonstrates the effectiveness of the team's early dispute resolution approach. The remaining complaints that required a more

formal intervention were either resolved through facilitation and conciliation, or decided through adjudication.

This year, many FDRS members have been navigating their way through the transitional licensing requirements under the new financial regime. FDRS is pleased to have assisted our members through this process. A regular webinar series covered topics including the standard conditions for transitional licensing, best practice for internal complaints processes, and appropriate record keeping. This has helped our members to meet their obligations under the new licensing regime.

I would like to recognise Jeanie Robinson, Richard Binner and the team for their continued efforts in delivering FDRS services. I would also like to thank the Board of FairWay for their continued oversight

and support. I have greatly appreciated the work and commitment of my fellow Advisory Council Members – David Whyte, Toni Dodds, Trevor Slater and Simon Roughton.

FDRS and the Advisory Council looks forward to continuing this work in 2022.



**Stephen Ward**  
Chair of Advisory Council



# Scheme report

## Ko te kairapu, ko ia te kite. He who seeks will find.

Our Annual Report is a snapshot in time. It provides an opportunity to reflect on the year that has been. However, we shouldn't wait for the year to end to reflect. Throughout the year, it is important to listen to feedback, to observe trends in real time and to continually improve.

We hold regular learning groups, so the team can reflect on their practice and on the service they provide. We continue to innovate and improve our service where we can. This year, we moved to a new case management system which enhanced our internal ways of working. We also introduced a new contact centre solution, improving the experience of customers who phone our team.

This is my first Annual Report as Operations Manager for FairWay's Commercial Services, which includes Financial Dispute Resolution Service (FDRS). While I have been at FairWay for five years, the world of FDRS was new to me. I have really

enjoyed learning in depth about the financial sector. It has been a pleasure to meet so many of our members throughout the year and I sincerely thank them for sharing their insights and time with me.

Our team have been kept on their toes this year. I would like to thank Tanya Cosgrove and Isaac Tekai for their great work managing the enquiries and complaints received. This year, they have noticed an increase in complaints where the consumer was facing financial difficulty, which we believe COVID-19 has exacerbated. With the licensing changes, Bruce Reid has been busy communicating with our members and actioning any resulting changes in their membership.

While the financial sector has been evolving, so too has FDRS. A big focus for us recently has been reviewing our current scheme rules and looking at areas for improvement. Thank you to all our

members who reviewed the proposed draft new rules and to those who got in touch as part of the consultation. The feedback received was supportive and having been encouraged by this, we are progressing with the necessary next steps. We expect to see new rules implemented this financial year.



**Jeanie Robinson**  
Financial Dispute  
Resolution Service



# About us

## We aim to resolve disputes as early as possible.

If you have a complaint about financial service provider who is a member of our service, then we will work with you and your financial service provider to reach agreement on your complaint. The phases are:

### 1. Initial complaint and early resolution

**An opportunity for you and your financial service provider to work out the issue together.**

When a consumer contacts us, our first step is ensuring that the Scheme Member has been made aware of the complaint and has an opportunity to resolve it.

If the consumer has already made a complaint to the Scheme Member and is not satisfied with their response, or two months have passed since they made the complaint, we will open a complaint file.

This information is sent to the Scheme Member, who is asked to provide their version of events or agreement to resolve the complaint. The Scheme Member has 21 days to do either of the above.

### 2. Investigation, facilitation and resolution

**FDRS actively works with you and your financial service provider to settle the matter as quickly as possible.**

If the complaint has not been resolved through early resolution, an assessment is undertaken by our expert team to decide the most suitable way to deal with the complaint.

#### Facilitation

The Facilitation phase is used to try and guide the parties to an agreement in an informal but assisted manner.

#### Conciliation

The Conciliation phase is mediation where the conciliator is permitted to have input into the content of the complaint as well as the process. This stage is undertaken by a Resolution Practitioner who has completed formal mediation training.

### 3. Formal adjudication

**If needed, we make a decision.**

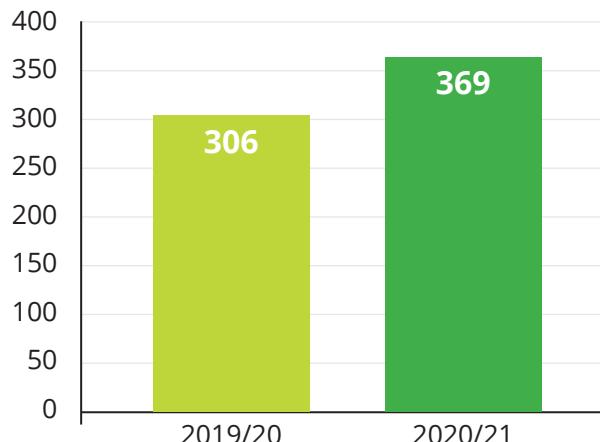
In situations where resolution cannot be reached, one of our specialist adjudicators will investigate and make a formal decision on the complaint.

This is binding on the Scheme Member and is also binding on their client if they accept the adjudicator's decision.



# The year in review

## Enquiries increased 20.5%

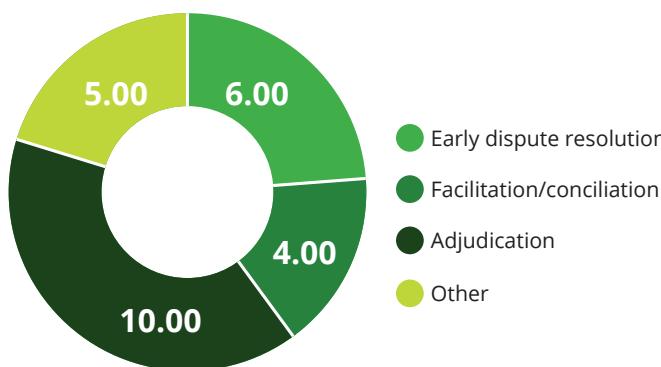


We had **369** enquiries in 2020/21, **up 20.5%** from last year.

**94%** were resolved or closed in our initial phase.

Only **23** were accepted as complaints.

## How complaints were resolved



**25 complaints** required formal dispute resolution assistance, including 2 complaints which rolled over from the previous year. This graph shows how these complaints were resolved.

'Other' includes complaints where we had no jurisdiction or where we had to cease consideration, for example if a provider was de-registered from the FSPR.

## Timeliness

**2019/2020**  
100%

**100%** were completed within the benchmark of **180 days**.

**2020/2021**  
100%

The average time to complete a case was **102 days**.

## Feedback

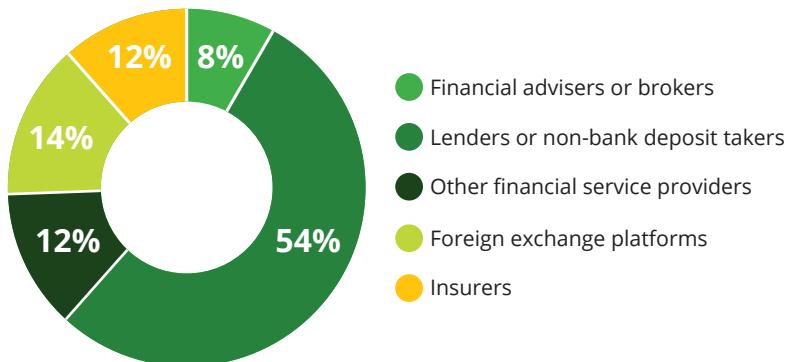
*"Excellent prompt replies with the information required in a simple to understand manner."*

*"Team member I spoke with was most helpful given the sensitive nature of the call & content."*

*"I attended a couple of online webinars and the team seemed very friendly. Regular email updates are appreciated."*



## Complaints by member type

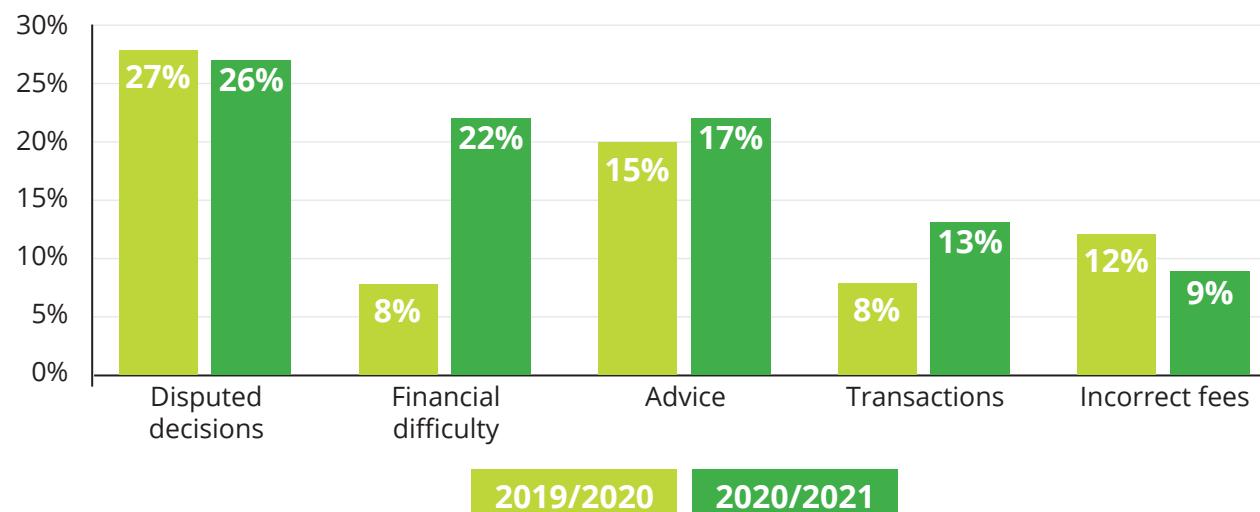


Of the **23 complaints** that were accepted into our process, here is the breakdown by specific member type.

Complaints about lenders or non-bank deposit takers comprised **27%** of the total complaints received last year, increasing to **54%** this year.

## Top five complaint themes

Of the 23 accepted complaints, most complaints received were about **decisions** made by financial service providers. The biggest increase involved complaints where the customer was facing **financial difficulty**.



## Member survey results

We asked our members to rank statements on a scale of one to five, where one is the lowest and five is the highest. Here are some of our results:

***"The team at FDRS are easy to contact."***

95.83% of respondents scored us as a three or higher.

Average rating

**4.38**

***"The team at FDRS are friendly and helpful."***

97.88% of respondents scored us as a three or higher.

Average rating

**4.43**

***"FDRS respond promptly to member enquiries."***

97.73% of respondents scored us as a three or higher.

Average rating

**4.41**

***"FDRS provides good value to its members."***

95.84% of respondents scored us as a three or higher.

Average rating

**4.27**



# Case studies

## When suspicion is not enough



### Background

This case involved the cancellation of online trading and withholding of customer funds for an alleged breach of obligations on the part of the customer. An online investment company (the provider) seized a deposited amount and cancelled trades that it deemed to be suspicious. The provider claimed the trades were not done on a manual basis but through an auto-trade function. It claimed this function allowed the investor to "catch market price delays during important economic news." The provider alleged the investor used phishing practices, through organised cloud servers with special additional terminals installed on different servers, to benefit from delays. The online investment company refused to release any of these funds or profits made to the investor. It held the money in trust and said it was busy doing its own investigation. The provider also stopped communicating with the investor which left him frustrated.



### Next steps

More than five months later, the internal investigation had not been completed and the investor approached Financial Dispute Resolution Service (FDRS) to lodge a complaint. The complaint was accepted and both parties were given an opportunity to make submissions. The dispute could not be resolved through mediation and the investor asked that the matter be adjudicated.



### Adjudication

After considering the terms of the contract and the submissions made by both parties, the FDRS adjudicator issued a proposed decision. The investor accepted the proposed decision. The provider did not accept the decision, but failed to provide any further information. The adjudicator proceeded to issue a final decision. In his final decision the adjudicator found there was nothing in the terms of agreement which prohibited the customer from exploiting any system delay (even though he could not make a finding that this had occurred). The adjudicator also found there was no provision requiring the customer to only engage on the platform from a specific country, not to use cloud servers or refrain from using auto-trading.



### Outcome

In the end, the adjudicator determined that the provider had to refund the deposited funds and the profit from the cancelled trades to the sum of \$10,699.51.

# Case studies



## Mechanical failure leaves you out of pocket

### Background

When Ms N bought an old car, she took out vehicle insurance against mechanical failures. Shortly thereafter the car's engine broke and Ms N got a quote to have it replaced. The quote was more than the value of the car. Ms N lodged a claim under her automotive insurance policy hoping her insurer would work with her to resolve her claim. However, the insurer failed to deal with her claim. Instead it raised several technical points and refused to pay Ms N anything. This left Ms N feeling frustrated. When Ms N realised her insurer was not going to honour her claim, she decided to refer the dispute to Financial Dispute Resolution Service.

### Mediation

A mediation was arranged for Ms N and her insurer however they were unable to resolve the matter and Ms N asked that her matter be adjudicated.

### Adjudication

The adjudicator considered the submissions from both Ms N and her insurance company. The adjudicator held that Ms N had lodged her claim within the prescribed period provided for in her policy. The adjudicator also found Ms N's policy was fully paid up and not in arrears when she lodged her claim. The adjudicator held the claim was straight forward and the insurance company should have worked with Ms N to resolve her complaint.

### Outcome

The insurance company had to pay Ms N the full amount she was entitled to under her insurance policy.

## Commercial building insurance rate review

### Background

In May 2019, Ms B sought the services of an insurance broker (the Provider), to secure insurance for a commercial building. In July 2019, an offer of insurance with Insurer C was made by the Provider to Ms B, who accepted this on the basis that the terms and conditions allowed for a rate review. From October 2019, Ms B began undertaking the required work on the premises to seek a rate review reduction. In November 2019, the provider sought an update on the remaining actions required. No update was received and in July 2020 the Provider presented the renewal of the insurance policy which included a premium reduction. Ms B filed a complaint on the basis that the Provider failed to keep her informed of developments with the insurer and failed in its undertaking to obtain a rate reduction from the insurer for the 2019 year.

### Next steps

FDRS assisted the parties to exchange further information in support of their respective views but a facilitated resolution could not be reached. The dispute proceeded to adjudication and submissions were sought.

### Outcome

The complaint was not upheld. The adjudicator noted the Provider is an insurance broker. As such any policy taken out by a customer from the broker is not an insurance policy with the broker, but a policy with the insurer. This means that it is not for the Provider to fix the rates that will be charged for the insurance, and that the rates must be set by the insurer. There could be an expectation that the Provider would raise with the insurer if conditions for a rate reduction were met, but ultimately it would be for the insurer to decide if any reduction in rates was to be extended. Further, Ms B had not met the required conditions for the rate review prior to the expiry of the first term of the insurance policy and the adjudicator was not persuaded that the Provider had failed to act in a reasonable way in relation to the potential rates review. The Provider accepted the decision, but Ms B did not.



# Case studies

## A reasonable opportunity to pay before repossession



### Background

In late 2019, Ms C took out a loan and used her car as security for the loan. Only a couple of months later Ms C experienced financial hardship when a fire damaged her home. Ms C and her family were also impacted by COVID-19. These factors resulted in Ms C falling behind on the repayment of her loan. The finance company made several attempts to get hold of Ms C but she was no longer staying at the address listed on her loan agreement. The finance company also posted a notice to Ms C's last known address (the notice). This notice explained Ms C had to repay the arrears amount, failing which her car would be repossessed to settle the loan. There was no evidence Ms C had received the notice. Realising Ms C was no longer living at her old address, the financing company made enquiries and when it found Ms C's new address appointed an agent to repossess Ms C's car. Acting on this mandate, the agent repossessed the car despite Ms C offering to settle a portion of the loan within a couple of days.



### Next steps

Even though Ms C acknowledged her account was in arrears, she said the finance company should not have repossessed her vehicle as it should have given her an opportunity to settle a portion of the loan. She raised a complaint with her finance company and when the complaint was not resolved, it was referred to Financial Dispute Resolution Service. The parties were unable to resolve the dispute at mediation and Ms C asked that her matter be adjudicated.



### Adjudication

A Zoom hearing was held where both parties presented evidence and made further submissions. The adjudicator considered these, as well as the provisions of the Credit Contracts and Consumer Finance Act 2003 (CCCFA). The adjudicator found that although the finance company was entitled to start a process to repossess Ms C's car, its process had to comply with the provisions of the CCCFA. Under the CCCFA a defaulting party should be given an opportunity to remedy any breach and should be informed of the consequences if the arrears are not paid. The adjudicator found the finance company was aware Ms C was living at a new address before it repossessed the car. Because it only served a notice at Ms C's old address, she was never given a chance to remedy the breach. The adjudicator concluded that the financing company breached the provisions of the CCCFA and was therefore not entitled to repossess Ms C's car.



### Outcome

The financing company had to return Ms C's car and had to ensure it followed a proper procedure provided for under Part 3A of the CCCFA.

# Finances



	2021 \$000	2020 \$000
<b>Income</b>		
Membership Fees	588	574
Complaint and other Fees	40	20
<b>Total Income</b>	<b>628</b>	<b>594</b>
Expenditure		
Advisory Council	26	30
Travel and Marketing	-	12
Personnel	134	139
Computer Systems	26	52
Other (Premises, Systems, Support etc)	367	331
<b>Total Expenditure</b>	<b>553</b>	<b>564</b>
<b>Profit / (Deficit)</b>	<b>75</b>	<b>30</b>



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**FairWay website:** [www.fairwayresolution.com](http://www.fairwayresolution.com)