



FINANCIAL  
DISPUTE  
RESOLUTION

# Annual Report

1 JULY 2011 TO 30 JUNE 2012

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# Scheme Manager Report

Where the 2010-2011 year focus was upon ensuring the reserve scheme was operationally robust, and a drive for member acquisition, the 2011-2012 year was characterised by greater consumer engagement, cementing relationships with scheme members and handling an increasing complaint enquiry load.

Complaint enquiries from consumers continue to increase as awareness slowly grows. 186 out of the 244 complaint enquiries for the year were outside jurisdiction, primarily because the complaint had yet to be made to the scheme member. 43 complaints were resolved or withdrawn at an early resolution stage, one was resolved by conciliation and three were determined by the Adjudicator.

None of those complaints were upheld, but three systemic issues were found in one case which have been addressed by the member.

Most of the complaint enquiries were about a member's alleged failure to follow instructions, unauthorised transactions, adverse decisions and hardship. These involved a range of providers, including online forex margin trading platforms, finance companies and insurance advisers.

Whilst complaints must be made to a scheme member before FDR can consider them within its jurisdiction, we do encourage complainants to register their complaint with FDR first. This way we can assist all parties facilitate an early resolution of the issue by offering guidance on complaint making and handling, providing the appropriate tools, procedures, understanding and benefits of good complaints management. We can assist with translation and consumer advocacy services. Our early involvement also means we can ensure accessibility for complainants, monitor for systemic issues and offer assistance to scheme members to address these.

Many scheme members are now realising that proactive and constructive complaints management is a valuable tool. Inviting customers to provide feedback including complaints is a very smart and cost effective tactic which can assist businesses evaluate their service and product proposition to increase customer advocacy and profitability.

We think our proactivity in early resolution and monitoring and managing systemic issues will more effectively promote confidence in our scheme members by improving consumers' access to redress from those providers, to resolve issues.

Our first survey on complainants produced excellent results with 86% of respondents saying they were either satisfied or very satisfied with the FDR service.

Nevertheless unprompted awareness of FDR remains undesirably low at 2% according to a recent Dispute Resolution Services (DRSL) survey on consumer awareness and barriers to access. This suggests that despite 66% of scheme members declaring they disclose their complaints procedure to their customers; they could do more to promote it. What was encouraging in the survey was that two thirds of respondents, once informed, said they would use FDR if they had an issue with their financial service provider in future. Clearly we will need to monitor for promotion of the scheme by members. This is a compliance matter.

We have continued to support Consumer Affairs with their Consumer Rights Days throughout New Zealand to raise consumer awareness about the dispute resolution schemes, and with the 0800LoanStress campaign in early 2012 which targeted consumers of "third tier" lenders facing financial hardship. Both of these initiatives have been very successful if measured by the immediate and noticeable increase in enquiry numbers.

Membership has grown to 1599, a net increase of 50 over the 12 month period after significant rationalisation through voluntary and compulsory de-registration by the Financial Service Providers Register and termination due to non-payment of fees. Over 300 new financial service providers joined FDR over the 12 month period.

Our annual scheme member survey again produced very pleasing results with 81% either satisfied or very satisfied with FDR services. Whilst exceeding our own targets, we have identified and taken initiatives to improve satisfaction with those not so satisfied.

We are pleased to have made submissions to the Law Commission and Consumer Affairs about consumer access to redress, consumer awareness, credit repossession and credit contract law reform. We have also assisted other agencies such as the Financial Literacy & Retirement Commission with development of material for the earthquake affected Christchurch residents.

Complaint enquiries and management activity is anticipated to increase due to improved consumer awareness through more proactive promotion by our scheme members. Consequently we expect there will be more complaints escalating to the FDR dispute process.

We will continue to build relationships with our scheme members, aiming to provide them with information and tools about complaints management and systemic issues, assisting them to identify, manage and prevent complaints escalating to FDR, which in turn could improve customer advocacy and profitability.

FDR is well set up with systems, experience and expertise to handle disputes where complaints have not been resolved between the parties. But the real value for all parties to an issue is in early resolution, and FDR will continue to play a proactive role in this area, in order to promote consumer confidence in their financial service providers.



Stuart Ayres, Scheme Manager

# Scheme Adjudicator Report

As expected, the volume of enquiries shows a significant increase on last year. However, the numbers have fallen far short of what was forecast. We believe this is due mainly to three factors: the professionalism of the majority of our scheme members, their robust internal complaints processes, and low awareness of dispute resolution schemes among the general public.

What is surprising is the relatively high proportion of enquiries about online margin traders from complainants based offshore. About a third of all complaints emanated from that sector. This fact, together with the type of service provided by a sizeable portion of our registered membership, has clarified online margin trading as the area of complaint that we can expect to encounter frequently in the foreseeable future. We have accordingly fortified our panel of experts by adding a specialist in this area, and provided additional specialised training for all our staff.

While one of the reasons for setting up a 'reserve scheme' was to provide a fallback for financial service providers that were not accepted as members of other schemes, we did not expect to be managing complaints from consumers based overseas about providers operating offshore. Although the providers met membership and registration requirements by supplying local office addresses, we have had reason to question whether some of them ever had a genuine presence in New Zealand. This called into question whether their services were 'provided' in New Zealand - one of the jurisdictional requirements. We are working with the regulatory authorities on this issue.

We are very pleased with the cooperation received from those scheme members whose customers have taken complaints through the FDR process. Members have responded quickly to our requests, and have provided full information within the stipulated timeframes. They have quickly grasped the intent of the scheme which is to help the parties agree on a mutually acceptable resolution as early and as cost-effectively as possible.

Sometimes, where we consider that the issue is best resolved by means of a decision on a point of law, or where one or both parties have demonstrated behaviour inconsistent with a negotiated settlement, we will move the dispute directly to the determination stage in order to save time and cost.

Having experienced the process in action, most scheme members have recognised the benefits of an external, independent regime for resolving the more difficult disputes. They have also appreciated the pragmatic, non-legalistic and non-technical approach to resolving disputes – an approach that sets this scheme and the other approved dispute resolution schemes apart from the more traditional forums. It is an approach that also saves time and cost for all parties.

We will continue to work with our members to enhance their internal customer complaints systems, but with increased promotional activities planned for the next year, we expect complaint volumes to continue the growing trend.



Derek Pullen, Scheme Adjudicator

# Dispute Resolution Services Limited (DRSL)

## Ownership and Governance

DRSL was established in 1999, and on 1 July 2011 became a Crown Entity Company under Section 4 of the Public Finance Act 1989. Its shareholding ministers are the Minister of Finance and the Minister for ACC. DRSL's board reports to the Ministers through the Department of Labour. The Chairman of the Board is Peter Blades. Other board members are Dr Marie Bismark, Anita Chan, Tupara Morrison, and John Spencer CNZM. DRSL's Chief Executive is Neil McKellar.

## What DRSL does

DRSL is a specialist dispute resolution company. It provides services and systems to solve disputes between organisations and the people they come into contact with. Disputes of all kinds and all levels of complexity, including medical, insurance, disability, employment, real estate, environmental, financial and commercial are resolved by DRSL. Approximately 10,000 issues are handled each year.

DRSL has a team of approximately 120 personnel, including 40 highly qualified mediators and adjudicators, and a strong team of client-focused advisers, administrators and management.

DRSL understands very well the need to respond positively to differing cultural needs and to the needs of people with disabilities. DRSL is well-versed in tikanga Maori and can conduct meetings in Maori and in Pacific Island languages. We routinely provide support and translation services for our clients.

## FDR – Financial Dispute Resolution

FDR is the Government's reserve dispute resolution scheme as defined in the Financial Service Providers (Registration and Dispute Resolution) Act 2008. It is owned and managed by Tourism, Events and Consumer Affairs within the Ministry of Business Innovation and Employment (MBIE).

DRSL was awarded the contract to operate FDR, the Reserve Scheme. The scheme commenced operations 1 October 2010. It operates under the Financial Service Providers (Dispute Resolution - Reserve Scheme) Rules 2010 and Financial Service Providers (Dispute Resolution-Reserve Scheme Fees) Rules 2010.

FDR is an independent dispute resolution scheme to help consumers and financial service providers resolve disputes as early as possible through Alternative Dispute Resolution. The scheme is free for consumers to use.

## FDR Team

FDR is a busy small team of nine. It is resourced and structured to provide effective, efficient, independent, accessible, fair and accountable alternative dispute resolution for its members and their customers.

The Scheme Manager is independent from the jurisdictional process and the Scheme Adjudicator is independent from business aspects. They are supported by a team of Facilitators, Conciliators and Adjudicators who have been specifically trained to manage disputes in the financial services sector.

In case of peak work flows, FDR can call on selected members of the large DRSL dispute resolution team.

The FDR team is located in Wellington, with the Relationship Manager based in Auckland, where 60% of FDR Scheme Members have their place of business. DRSL has offices in Auckland, Wellington, Christchurch, Dunedin and Hamilton.

<b>Stuart Ayres</b>	Scheme Manager	38 years in finance sector; banking, finance, mortgage and insurance advice, industry association
<b>Derek Pullen</b>	Scheme Adjudicator	LLB. Legal practice and teacher. 17 years adjudication – practice and management experience
		Member Arbitrators and Mediators Institute of New Zealand
<b>Rob Tucker</b>	Auckland Representative	37 years in finance sector; banking, finance, mortgage and insurance advice, industry association
<b>Richard Hazelwood</b>	Facilitator	Qualified mediator. LEADR
<b>Pat Brown</b>	Facilitator	Stockbroking experience
<b>DRSL</b>	Adjudicators (2)	Assigned to FDR –specific training in finance
<b>DRSL</b>	Conciliators (2)	Assigned to FDR-specific training in finance
<b>DRSL</b>	Corporate	Finance, Human Resources, Systems

Full profiles can be found at [www.fdr.org.nz](http://www.fdr.org.nz)

## Subject Matter Experts

FDR has an independent panel to call upon when subject matter expert opinion is required by the Scheme Adjudicator. Their full profiles can be found at [www.fdr.org.nz](http://www.fdr.org.nz)

<b>Josephine Campbell</b>	Banking, investments, financial advice
<b>Chris Kelly</b>	Trust law
<b>Justin Kerry</b>	Finance companies, consumer and business finance
<b>David Greenslade</b>	Financial advice, mortgage, insurance and investment advisers
<b>David Whyte</b>	Insurance
<b>Ho Yew Mun</b>	Capital & securities markets, forex and commodity trading
<b>John Ford</b>	Forex and commodity trading

# The Complaints and Disputes Process

## Rules about the complaints process

The Reserve Scheme Rules stipulate that a scheme member must maintain, promote and make accessible its own internal complaints procedure and external dispute resolution scheme and use its best endeavours to resolve complaints under those procedures.

FDR has a responsibility to give general advice to members on the development and maintenance of good complaints resolution procedures and to monitor and report on members' compliance with the Rules. FDR cannot consider complaints within jurisdiction unless the complainant has first made the complaint to the member's internal complaints procedure.

In summary, FDR assists the parties to a complaint to reach early resolution, to prevent those complaints escalating to the FDR dispute resolution process. Disputes can be a consequence of poor complaint management.

A full copy of the FDR scheme rules can be found at [www.fdr.org.nz](http://www.fdr.org.nz), or on the New Zealand Legislation website.

## FDR process overview

The complaint can be escalated as a dispute to the FDR four-level dispute resolution process if it has not been resolved within the member's complaints procedure. That is, the complainant is not satisfied with a scheme member's decision, or deadlock has been reached.

Typically most disputes can be resolved in the initial stages of the FDR dispute process through facilitation.

## The steps of the FDR process

**Registration – (Level 0)** – The complaint is assessed for jurisdiction and deadlock. The complaint must have already been made to the Scheme Member, and the Scheme Member given an opportunity to resolve it.

The complaint must also be about an event that happened after the date that the Scheme Member joined FDR, and after 1 October 2010.

**Facilitation (Level 1)** – Information is gathered from all parties and exchanged. This may often result in resolution, once all the parties can see all of the information, and gain a better understanding of the other's position. However, if there is no resolution at this stage the dispute moves to Level 2.

**Conciliation (Level 2)** – FDR gathers more information from all parties and assesses the dispute. At this level FDR aims to help the parties reach an agreement themselves.

FDR arranges meetings and acts as a mediator between the parties. The meetings are either face-to-face or via video or telephone conference. If the parties can't reach an agreement or a meeting doesn't take place, FDR considers all of the information and recommends a settlement – a process known as conciliation. If the parties don't agree to the recommended settlement, the dispute moves to Level 3, Adjudication.

Parties can opt to circumvent the conciliation process to have the issue determined by an Adjudicator at Level 3. The Adjudicator may decide adjudication is the appropriate way to resolve a dispute.

**Adjudication (Level 3)** – FDR proposes a final decision. If the parties don't agree with the proposed decision, FDR issues a final decision. If the final decision is accepted by the complainant the decision becomes binding on the Scheme Member.

If the consumer is still not happy with the outcome the complaint is closed. The consumer is still able to take the matter through other channels such as the Courts or the Disputes Tribunal.

If the parties reach a private settlement FDR strongly recommends a formal agreement document is drawn up by FDR, to ensure the agreement is absolutely clear to all parties, that the decision can be enforced, and that there is an independent record of what was agreed.

### **Member support to resolve issues early**

FDR has helped members comply with the Rules by providing guidelines to establish complaints procedures. It has also provided material "Avoid Disputes, Not Complaints" to develop and maintain best practice complaints management, root cause analysis and tips on conflict management. This initiative has been supported by personal calls upon many members by the Scheme Manager and Auckland's relationship manager.

### **Non jurisdictional cases left open**

In March 2012 we reviewed our complaint handling process and decided to leave the complaint enquiry file "open", while the complaint was being handled within the scheme members internal complaints process. This way we can assist all parties facilitate an early resolution of the issue by offering guidance on complaint making and handling, providing the appropriate tools, procedures, understanding and benefits of good complaints management. We can also monitor for systemic issues and accessibility for the consumer.

Feedback from all parties would suggest that this is time and effort well spent with many satisfactory early resolutions between parties, thus avoiding escalation to the FDR disputes process.

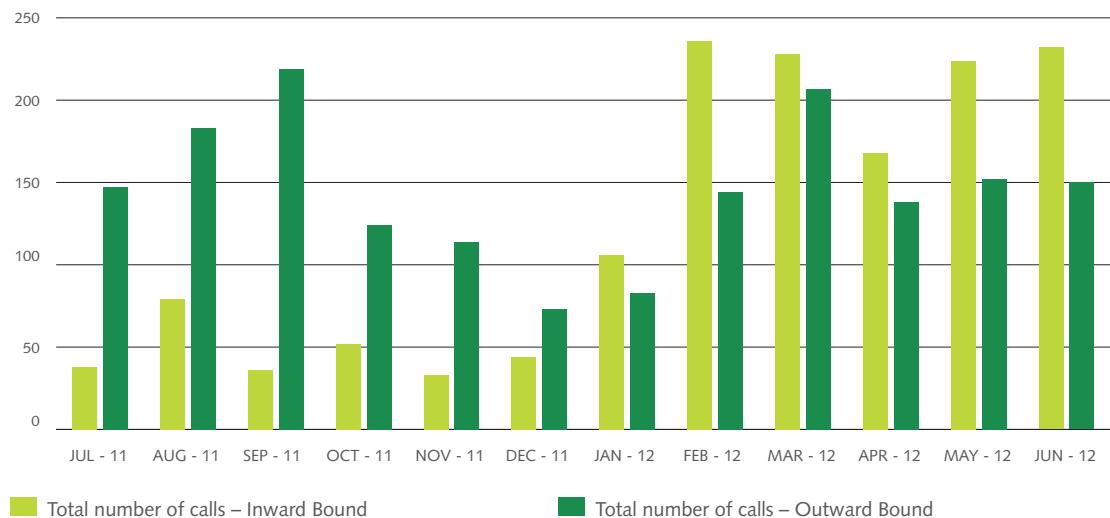
### **Cost**

The entire complaint process is free to the complainant unless they want to engage representation. Members are charged a fee determined by the level of resolution of the dispute.

# FDR Activity

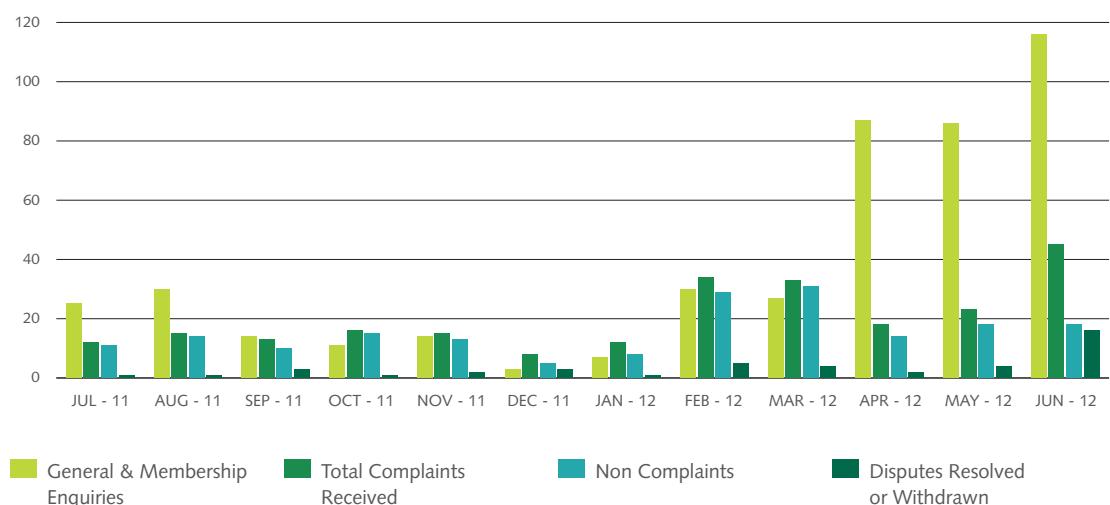
During the 12 month period to 30 June 2012 the facilitation team received over 1500 inbound calls and made over 1700 outbound calls covering complaint enquiry, dispute resolution, enquiry and applications for membership; compliance surveys; membership renewal and debtor management.

## Total Enquiry Activity & Outbound Calls



The following chart has removed calls about the same incident or enquiry.

## FDR – Summary of Enquiries/Complaints/Disputes 2011-2012



# Complaints

## Overview

There were 244 complaint enquiries in the 12 month period. 186 were outside jurisdiction and of those 105 had yet to log a formal complaint or had not reached deadlock with the member's complaint procedure. 43 of the remaining complaints were resolved or withdrawn and there were 8 "work in progress" at year end. One of the disputes reached a conciliated resolution at Level 2; and three claims were not upheld by the Adjudicator at Level 3.

## Jurisdiction (Non Complaints)

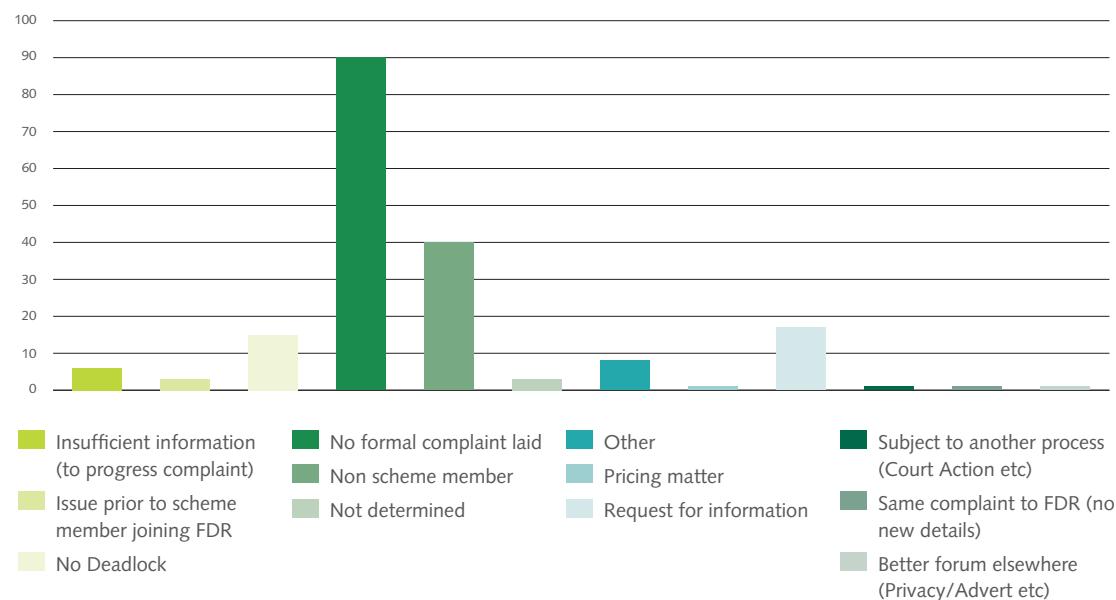
FDR can cover disputes from individuals or qualifying group if they are a "retail client". Disputes must be about the conduct of a financial service provider providing a service in New Zealand, and may relate to an alleged breach of a contract, a statutory obligation, an industry body, or any other legal obligation or an unfair practice.

A complaint must be made to a member first and referred to the reserve scheme after a decision notice or deadlock notice has been given to the complainant by the member and within prescribed time limits.

Compensation claimed must not be more than \$200,000 and the complaint must not relate to a members general policies and practices or commercial judgments or investment performance.

33% of the complaint enquiries were outside jurisdiction altogether, and included requests for information about how to make a complaint; members belonged to another scheme, or there was insufficient information at that point to proceed.

### FDR – Non Complaints – by category 2011 - 2012



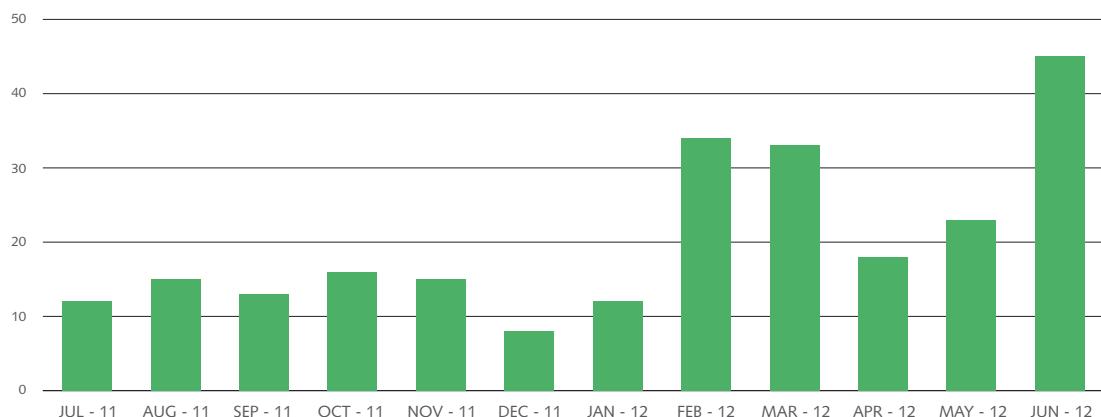
## Causes of complaints

- » A large number of the complaint enquiries related to issues with online margin trading accounts. Traders need to make themselves familiar with provider's terms and conditions and consequences of adverse movements in prices. Understanding the mechanics of this sector requires a certain level of sophistication.
- » 20% of the 244 complaint enquirers alleged a member's failure to follow or a delay in instructions. Many of these complaints came from consumers who were denied their request to draw on their margin accounts.
- » 14% related to unauthorised transactions, where complainants have alleged that their financial service provider did not have their authorisation to draw on their margin accounts.
- » 13% were complaining about a financial service providers decision, ranging from denial of request for withdrawal of KiwiSaver funds; denial of insurance claims, inappropriate mortgagee sale.
- » 13 % of complainants expressed financial difficulty. These complaints largely came about due to increased consumer awareness from a Consumer Affairs initiated 0800LoanStress campaign. Many of the callers had suffered an unexpected event or loss of income and wanted to know how to go about deferring or rearranging loan payments. Some were stressed about impending action to repossess security.

Supporting this campaign resulted in many instances of satisfied finance companies and borrowers.

- » 10% complained about quality of service. Most of these callers complained about oppressive sales techniques of providers.

### Total FDR Complaints Received 2011 - 2012



## Who were the complaints about?

- » 30% of complaints were about online margin trading platforms
- » 30% related to finance companies and
- » 10% were about insurance advisers and agents.

Many of these complaints related to online margin trading platforms. The nature of high leverage means there is little room for volatility (say in exchange rate) before a loss (or profit) is incurred.

The complainant is often an "unsophisticated" individual endeavouring to make "fast" money who typically has no experience with commodity trading, has not familiarized themselves with the model, consequences of possible outcomes nor read the terms and conditions of the contract with the provider. This is a complex financial product where good understanding, prudence and diligence are highly recommended.

The other sector most complained about was the "third tier" finance companies, providing consumer loans to relatively unsophisticated and overcommitted borrowers many of whom are unaware of the true cost of credit, consequences of defaulting on payments and other terms of the contract.

FDR often facilitated a successful resolution between the parties by arranging advocates for the consumer, meetings or dialogue with the scheme member. The impending Code of Responsible Lending should help avoid some of these issues in the future.

Insurance advisers also featured in the top three sectors most complained about. This follows similar patterns in U.K. and Australia. The complaints often stemmed from an insurance company declining a claim because of pre-existing conditions and exclusion of cover. Advisers were then implicated as they were invariably involved in the information gathering and disclosure at the writing of the policy.

## Scheme Member internal complaint process

All financial service providers must:

- » Establish, publish and promote their internal complaints procedure and independent dispute resolution scheme, receive and consider complaints and use best endeavours to resolve those complaints as soon as possible.

FDR must:

- » Give general advice to members on the development and maintenance of a complaints procedure, monitor members' compliance with these rules, regularly report the results of that monitoring to the advisory body with advice on what actions FDR has taken, or proposes to take, in the case of breaches by members.

## What we are doing about it

Upon joining, all FDR scheme members are given comprehensive guidelines, templates, online and personal support to assist them establish the required internal complaints procedures and develop a complete complaints management system.

We have also developed guidelines about "Avoid Disputes, Not Complaints" and sent to all customers free of charge. The aim of these guidelines is to help members deal with complaints immediately and effectively, to avoid them developing into disputes that progress to FDR. An effective complaints management procedure can help businesses better connect with their customers, recognise and address systemic issues, enhance their service proposition and generate new business.

### Compliance survey

Since January we have surveyed 384 organisations asking if they have complaints procedure and disclose it to their customers.

212 or 55% responded. 156 or 74% said they disclose their internal complaint's procedure to their customers.

75 (35%) said they wanted assistance to establish a complaints procedure. At year end, we had called upon 44% of those.

### Systemic issues

FDR must report systemic issues that it identifies, in the course of considering a complaint, to the Advisory Body (Consumer Affairs), the member concerned, and any other members as considered appropriate.

A systemic issue is an issue that has material implications, beyond the parties to the particular complaint. Examples include poor disclosure or communications processes, information technology problems, administrative or technical errors, flaws in the design of financial products or other financial services, or inaccurate interpretation by a member or members of standard terms and conditions.

Our first response after identifying a systemic issue is to work with the scheme member to attempt to resolve and avoid the potential to report them to the advisory board and ultimately the regulator. The members we have worked with to date have appreciated our proactive and constructive approach, realising the potential to improve their value proposition to their clients.

FDR reported three systemic issues about one provider in the period, and are alert to the possibility of two more as outlined below.

1. The Adjudicator determined there were three systemic issues presenting from one complaint about one scheme member. The advisory body agreed to FDR's recommendation that the scheme member be given the opportunity to resolve the issues before reporting to the regulator. The member has subsequently addressed these issues to the satisfaction of the advisory body. See Case Study 1

#### *Determination*

- » **The** policy document was too technical. It was unrealistic to accept that an ordinary customer would understand the information being sought, or what they were signing up for
- » **There** should have been a better, written record of the communications to complainant and in file notes

- » **The** agent's application form indicated that the provider was based in New Zealand and therefore that consumers would be protected by New Zealand law. This was not the case.

*What customers can do*

- » **People** entering into contracts must ensure they understand what they are contracting to, what their obligations are and what the consequences of not complying with the contract will be. If they do not understand the terms and conditions, they should insist on clarification from the financial service provider and/or seek independent legal advice.
- » **Keep** records of all contracts, diary notes and of all communications with the provider, including emails.
- » **Ensure** that their financial service provider is registered on the Financial Service Providers register, [www.fspr.govt.nz](http://www.fspr.govt.nz) (and belongs to an independent dispute resolution scheme).

*What members can do*

- » **Ensure** terms and conditions are in a format and language that is understood by their customers. This may mean offering translation services.
- » **Maintain** diary notes and records of communications with customers
- » **Ensure** that the information disclosed to customers is not misleading, or creating unrealistic expectations.

2. At time of report a significant systemic issue was becoming apparent concerning online trading platforms. One such complaint escalated to a dispute which was determined by adjudication at Level 3 in the reporting period. The complaint was not upheld.

The complaint relates to the Scheme Member, who is an online trading platform, liquidating its Customer's position, on the basis that it considered the funds in the trading account fell below the minimum margin level required. In particular, the Customer has claimed the data displayed on the Scheme Member's on-line platform was wrong, which misled the Customer to the extent that he did not realise the actual extent of the losses.

FDR engaged one of its experts on trading platforms. The Adjudicator required sufficient evidence that the Customer's loss resulted from some flaw in the service provided by the Scheme Member.

*Determination*

The Adjudicator had great sympathy for the position in which the customer found himself – he had lost a significant amount of money. However the Adjudicator could not establish that the data displayed was actually wrong around the time of the liquidation and had to conclude the claim from the customer has not been proven, and therefore the complaint to FDR must be dismissed.

The primary reason FDR reached that view, was that on the evidence available, it had not been established that the website was in fact displaying incorrect values. Putting aside any contractual limitations, even to consider this complaint solely on the basis of fairness, or the Fair Trading Act or Consumer Guarantees Act, unless it could be established that the data displayed was wrong, the complaint to FDR would still be unsuccessful.

#### *What customers can do*

- » **Margin** trading is very complex and potential to quickly lose one's investment is inherent. It is not for the "unsophisticated" and a high level of understanding and diligence is required
- » **Carefully** read terms and conditions
- » **Keep** records of all transactions.

#### *What members can do*

- » **Provide** customers with clear unambiguous terms and conditions, early in the application process
- » **Provide** warnings directed at unsophisticated traders and examples of pitfalls
- » **Maintain** vigilance on the integrity of the trading platform.

3. At 30 June 2012, FDR had received in excess of 50 similar complaint enquiries (not yet within FDR jurisdiction /in dispute) relating to one online trading platform scheme member.

The complainants allege an unauthorised third party lost up to 65% of their investment over a two day period trading on the platform, and that the scheme member was implicated by endorsing a broker's Power of Attorney.

This is a complex case in which there are allegations of large scale fraud and money laundering. It does illustrate the risks inherent in transacting in sophisticated financial products with unknown providers.

## Time taken to resolve disputes

Two of the principals of Alternative Dispute Resolution are efficiency and effectiveness. These are measured by monitoring timeliness of dispute resolution (average days of completed resolution).

We aim to resolve at least 50% of total disputes within 60 business days; at least 60% within 90 business days and at least 90% within 180 business days. FDR exceeded all targets.

# Case Studies

## Case Study 1

### **A case of wrongful advice, poor communication and mismanagement, a myriad of issues led to an acrimonious dispute and a lengthy resolution process.**

An adviser of an insurance agency approached Mr A and offered him the opportunity to take out 'hospital insurance', This would cover him for hospital-related treatment and care and be linked to an existing life insurance policy that Mr A had taken up three years earlier.

Mr A accepted the offer and paid a month's premium. The adviser confirmed that the cover would be effective immediately and sent Mr A's application to the insurance company for approval. Mr A set up a weekly premium-payment schedule.

Later that month Mr A was admitted to hospital with pneumonia and a fever – and when he was well again he made a claim under his hospital insurance. At about the same time, the insurance company approved his policy but doubled his premiums. It said this was because Mr A had some pre-existing health issues that made him a 'higher risk' client.

Mr A refused to pay the extra money. He denied that he had any health problems and provided two medical certificates in support. However, the insurance company refused to change its mind. Instead, the adviser told Mr A that he would receive a full refund of the premiums he'd paid.

Incensed about the situation, Mr A decided to cancel his life insurance too. He advised the agency in writing, requesting a refund of his premiums. However, he was only refunded the premiums paid for the hospital cover.

Mr A made a formal complaint about the agency and its adviser through his local Community Law Centre. He asked for a refund of all the premiums he'd paid in the previous three years, disputed his alleged 'medical conditions' and complained about the agency's poor communications and failure to provide important information.

The parties couldn't agree on a way to resolve the dispute, so the Community Law Centre referred it to FDR. However, despite trying to facilitate an early resolution the parties remained deadlocked. They asked for the dispute to go to 'adjudication', through which the adjudicator would issue a determination on the dispute that would be binding on the Scheme Member.

The adjudicator found that:

- » Mr A was not entitled to a refund of all his past premiums, because the insurer had refunded the premiums relating to the hospital cover and Mr A had received the benefits of life insurance cover while he had it
- » **There** was no evidence that Mr A actually had hospital cover, as both parties failed to provide clear evidence of this
- » **The** agency had failed to provide adequate communications. The adjudicator directed the agency to provide a written apology to Mr A
- » **On** the basis of the available evidence, it was unlikely that Mr A had any pre-existing health conditions. The adjudicator said the agency should have done more to settle this matter between the insurer and Mr A, and directed it to provide a written apology to Mr A for failing to clarify the issues in relation to pre-existing conditions earlier
- » **Aspects** of the complaint justified it being referred to the authorities as a systemic issue
- » **The** policy document was too technical. It was unrealistic to accept that an ordinary customer would understand the information being sought, or what they were signing up for
- » **There** should have been a better, written record of the communications to Mr A and in file notes
- » **The** agent's application form indicated that the insurer was based in New Zealand and therefore that Mr A would be protected by New Zealand law. This was not the case.

The adjudicator's recommendation to the Ministry of Consumer Affairs was that the agency be given a month to fix the systemic issues.

## Case Study 2

**A complaint is resolved quickly, but in the process a major – potentially illegal – issue is revealed.**

Susan discovered that she'd overpaid 10 months' worth of premiums on a life insurance policy for her mother, who was terminally ill. Frustrated by the insurer's failure to respond to her repeated requests for a refund, she made a complaint to FDR.

While the complaint was outside FDR's jurisdiction (Susan should have first made a formal complaint to the insurer), we raised the issue informally and the overpaid premiums were refunded straight away. Susan was delighted, as she felt she'd run out of options.

However, the matter revealed potentially illegal activity by the insurance adviser with whom Susan had arranged the insurance. Susan had believed that the policy was to cover her mother's funeral expenses, but she discovered that the policy owner (and the person insured) was actually her father, who was in very good health.

It's possible that the insurance adviser deliberately made the change because he believed that the mother's application for insurance would be declined. However, he did it without letting Susan or her mother know. Combined, these two factors added up to a potential act of 'gross misconduct'.

This isn't something that FDR can act on, because there was no complaint about it and no actual loss. However, it's a matter that could be reported to the Financial Markets Authority.

## Case Study 3

**Conciliation is a cost effective, hassle free way of resolving a dispute. Through the skillful work of a FDR Conciliator, a mortgage company comes to the party even though borrower misunderstood the fine print.**

Angela inherited some money and decided to use it to reduce her home loan.

Unfortunately it wasn't that easy, because the home loan agreement she'd signed included a number of special conditions. The mortgage company did offer her some other options, but because Angela didn't fully understand them she contacted FDR for help.

The FDR conciliator spent many hours learning about the dispute and talking to Angela and the mortgage company. He reviewed the options and came up with some new ones, and encouraged both Angela and the mortgage company to see the issue from different perspectives.

By the end of the process Angela understood more clearly the terms of the original agreement, the mortgage company's offer and the choices available to her. She agreed to one of the original options, with a slight variation, and signed a 'settlement agreement' with the mortgage company.

This was a good result. By working early with the FDR conciliator to resolve the issue, Angela and the mortgage company saved what could have been a lot of frustration, time and money, and avoided any need to take the dispute to adjudication or court.

FDR often finds that time spent problem-solving early in a dispute can save everyone a lot of worry and expense later.

## Case Study 4

**Father loses house guaranteeing son's business loan. An all too common issue where parents feel emotionally bound to support their children's' risky ventures and don't read the fine print.**

Mr Y, a lawyer, contacted FDR on behalf of his client, Mr J.

Three years earlier, Mr J had provided a guarantee (secured by a mortgage over his home) for a \$10,000 loan being taken out by his son, Mr S. The guarantee meant that Mr J was liable to repay the loan if his son couldn't do so.

The loan was to help Mr S's struggling business – and because it was for business purposes, Mr J and Mr S agreed that the Credit Contracts and Consumer Finance Act 2003 wouldn't apply.

Unfortunately Mr S's business continued to make a loss, and despite the loan term being extended to reduce the payments, he couldn't keep up. The business eventually failed and Mr S stopped making any loan payments at all.

The finance company then issued a 'Property Law Act Notice' to Mr J and Mr S. This required them to pay \$55,000 to the finance company, which included the payments still owing, as well as fees and 'penalty' interest. Mr J and Mr S didn't have this kind of money, so under the Notice Mr J (as the loan guarantor) was required to sell his house to get it. They contacted Mr Y for help.

Mr Y wrote to FDR. He complained that the move to a mortgagee sale was unfair practice, that the waiver of the Credit Contracts and Consumer Finance Act had been inappropriate, and that Mr J and Mr S had been unaware that Mr J's house could be sold if the loan wasn't repaid. He also questioned whether Mr J and Mr S had been advised to consult a lawyer at the beginning. He wanted the mortgagee sale stopped.

Unfortunately FDR couldn't help Mr Y because the finance company wasn't a member of the FDR scheme at the time the problem arose. We advised him of other ways to resolve the dispute, such as taking it to court.

However, in reviewing the case, we believe that the finance company acted appropriately. It had evidence of its recommendation that Mr J and Mr S get independent legal advice; the loan had been for business purposes and therefore could be excluded from the Act; the company had provided information on the penalty interest rate and fees if Mr S didn't repay the loan; and Mr J had clearly signed the mortgage and loan documents.

However, the company could have acted differently. For example, it could have done more at the start to assess the business's ability to repay the loan, and it could have asked for the loan to be repaid earlier (such as when payments were missed or when the debt was getting out of hand and repayment looking increasingly unlikely). This could have avoided the high final repayment amount and perhaps an unnecessary mortgagee sale.

# Membership

Many members have told us they chose FDR as their dispute resolution scheme because it is independent of any industry association and is owned by the Government. DRSL has financial stability and an excellent track record, in-house and external expertise in the finance industry, very good complaint-handling systems and resources. DRSL has access to a large pool of expert and experienced mediators, conciliators and adjudicators; geographic spread (including on-the-ground expert and experienced representation in New Zealand's major finance centre, Auckland) and a very credible expert panel. FDR has competitive fees in most sectors.

All scheme members have been given comprehensive guidelines, templates, online and personal support to help them establish the required internal complaints procedures. FDR representatives visited over 170 scheme members during this reporting period, mostly to monitor for complaints procedure compliance, but latterly have commenced a service call programme.

## Membership numbers

FDR's membership of 1599 represents approximately 20% of total financial service providers. There has been a net increase of 50 members from last June.

### New members

302 new members joined FDR in the 12-month period.

### Who are our members?

FDR members include some of New Zealand's largest businesses who make share issues to the public, operate finance, leasing, credit card and insurance divisions, superannuation schemes, insurance and mortgage adviser groups. Additionally there are many fund managers, smaller finance companies, foreign exchange and derivative traders, and quite a large contingent of offshore finance houses and commodity traders registered to operate in New Zealand.

#### 1. Advisers

77% of total membership is type two; mortgage and/or insurance adviser organisations or individuals.

Of these:

- » 79% (75%, 2011) are registered financial advisers (RFA) of which approximately 35% are mortgage advisers; 55% are insurance advisers; and 10% are finance advisers
- » 9% (10%, 2011) are authorised financial advisers (AFA) – investment planners and financial advisers and
- » 11.5% (15%, 2011) are adviser or broker organisations.

#### 2. Credit Providers

10% of total membership are credit providers, or small finance companies, with total retail lending of \$3.362 billion.

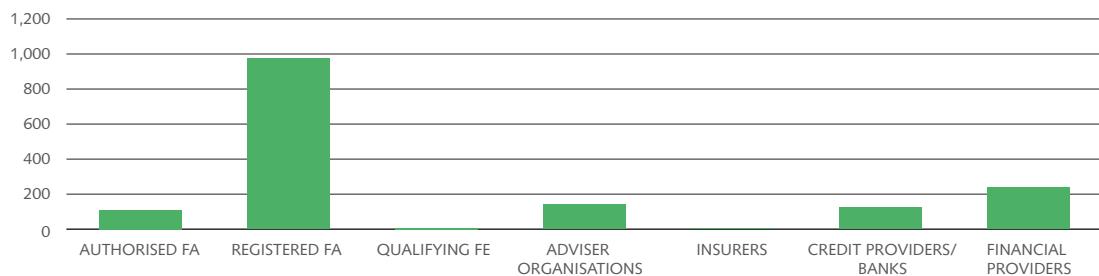
#### 3. Insurance

There are only four insurance companies with total in force premiums for retail clients, of \$70 million.

#### 4. Other financial service providers

This group makes up 19% of total membership. Typically, these are organisations involved in changing foreign currency; operating money or value transfer services; issuing securities to the public; fund managers; commodity trading providers; issuing or managing a means of payment; or in many cases several of these services, and superannuation trustees.

#### Membership Type



#### Full list of members

The full membership list can be viewed at [www.fdr.org.nz](http://www.fdr.org.nz).

#### Scheme members by location

60% (960) of scheme members are in Auckland, serviced by our Auckland representative Rob Tucker.

Scheme Manager Stuart Ayres is based in Wellington, and services key groups and members around the other cities and regions of New Zealand. 65 scheme members have offshore origins.

# How Members rated FDR

A survey of scheme members was undertaken by ResearchNZ in May 2012 to track satisfaction and to identify any potential issues or areas of improvement.

Of the 563 approached, 259 participated in the survey. 46 percent participation is regarded as a good response rate.

## Key findings

The key findings of this survey are summarised as follows:

- » **Since** joining the Scheme, half of FDR's members reported having had direct contact with FDR staff
- » **The** nature of this contact reflects the fact that the Scheme is relatively new and largely involves courtesy calls from FDR, or queries from members who want to understand more about FDR's role, how the complaints process works and what their obligations are as a financial service provider (particularly with regard to setting up or reviewing their internal complaints process)
- » **At** this stage, very few have had contact in relation to a customer complaint (four percent)
- » **Those** who have had contact with FDR were largely satisfied with the level of service they received. 81% were satisfied/very satisfied.

In addition to being helpful, proactive and personable, FDR staff also rated positively in terms of being:

- » **Accessible** (72%)
- » **Knowledgeable** (77%)
- » **Prompt** and efficient (76%).

## Conclusion

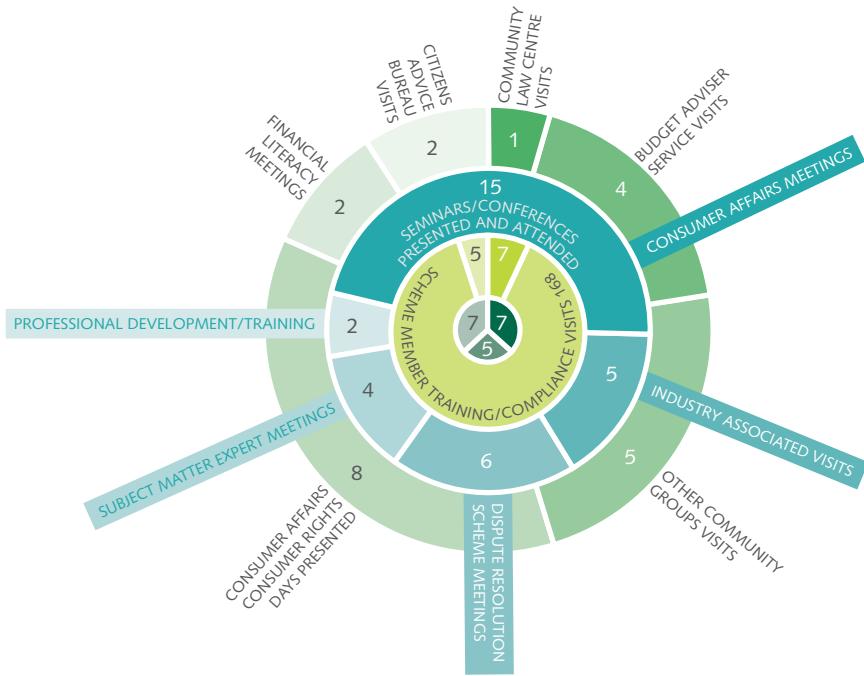
The majority of members have yet to experience FDR's core service.

With this in mind, those who had received a call or visit from FDR appeared to be relatively impressed with that interaction and reassured that when (or if) the time came and they required the services of FDR, they would be in good hands. This was most clearly reflected in the fact that those who had had direct contact with FDR were twice as likely to recommend FDR to any colleagues who were looking for a disputes resolution service provider, compared to those who had yet to receive any contact.

*"[Name] at FDR is superb. The organisation is well run and the product excellent. And I hope I never have to use them, ever".*

# Community and Industry Engagement

This chart illustrates the external relationship activity of the Scheme Manager and Auckland Manager.



## Consumer awareness

Consumer awareness remains very low. See DRS Survey of consumer's "barriers to access" below. The primary responsibility for promoting consumer awareness rests with the financial service providers.

Raising consumer awareness has been top of mind this past year, and we have been busy calling upon scheme members, budget advisory service centres, citizen's advice bureaux, and community law centres when the opportunity arises. We regularly follow up with them to ensure they have a supply of promotional material on hand.

Presenting at Consumer Rights Days with Consumer Affairs and other agencies has been very successful, invariably resulting in an increased level of complaint enquiry, and to service clubs such as Rotary and Probus.

## Assisting agencies

We have contributed to DIG (Dispute Industry Group) Language project – developing material to assist Aotearoa Literacy and ESOL teachers about the language of complaint; and assisted the Financial Literacy and Retirement Commissioner with content of a financial issues' booklet for earthquake affected Canterbury residents.

## Seminars, conferences, industry knowledge

We maintain our finance sector expertise and networks by attending seminars, customer and industry conferences, industry association visits and training days.

FDR Scheme Manager is a member of the Financial Services Institute of Australasia (FINSIA) and regularly attends monthly meetings for networking among finance industry executives, and updates on topical issues from guest speakers and forums.

The Scheme Adjudicator is a member of the Arbitrators and Mediators Institute of New Zealand (AMINZ).

### **Approved dispute resolution schemes**

The regular meetings with the approved schemes provide a useful forum for discussion on particular cases, internal processes, trends and systemic issues, raising consumer awareness and managing relationships with other agencies and the regulator.

### **Submissions**

In August 2011 we made two own motion submissions to Consumer Affairs to raise consumer awareness and accessibility to dispute resolution.

In March 2012 we responded to the Law Commission on the Review of the Credit (Repossession) Act 1997; and in May 2012, responded to a Consumer Affairs request about the Credit Contracts and Consumers Finance Amendment Bill.

### **DRSL survey of consumer's "barriers to access"**

DRSL engaged ResearchNZ recently to survey for awareness and barriers to access for all of its services, including FDR.

743 members of the general public were surveyed-Maori and Pacific peoples were oversampled.

The results were very informative. The low level of awareness was not surprising given the relative newness of the scheme and lack of promotion.

Unprompted awareness of FDR was 2%. After prompting, awareness rose to 15%. Whilst 33% said they could deal with the issue themselves, once better informed about the service two thirds of respondents then said they would use the service if they had an issue in the future.

### **Website, [www.fdr.org.nz](http://www.fdr.org.nz)**

There have been many favourable comments about [www.fdr.org.nz](http://www.fdr.org.nz). Feedback has been that it is attractive, easy to find and to navigate and that membership information, application and complaint processes are well set out and easy to use. The scheme member list and news is updated regularly and the members' only area has a number of useful tools such as the internal complaints guidelines, templates and best practice modules, logos and links.

# Consumer Feedback

## Complainant's survey

We are required to undertake 6-monthly surveys of complainants. ResearchNZ undertook our first survey, for the three-month period February to April 2012. Complaint activity prior was too low to warrant surveying.

The survey elicited a very good 41% response rate of 14 interviews. 86% of respondents were either satisfied or very satisfied with the way FDR staff dealt with their complaint, and the dispute resolution process. 78% would refer their friends to FDR. This resulted in a very high net promoter score of +50.

FDR also receives a lot of unsolicited feedback, praising staff and providing thoughts on how the process went. A number of comments continue to be received about the lack of knowledge of FDR before they became engaged in the dispute process.

## A conciliated resolution

*"Please accept this email as confirmation that we are settling our dispute with X re: the non-cancellation of our insurance policy.*

*Please also accept this email as a BIG thank you for all your help and kindness during this unfortunate issue. Your professionalism and thoughtfulness was very much appreciated and something you should be very proud of. It has been a pleasure dealing with you and I wish you all the very best for the future. Again, many thanks Y."*

## RE application for membership

*"Good Morning! Have I ever told you that you are the best? I'm not sure if it had anything to do with you, but we heard from Y today. Our legal team will be replying to her before the day is up."*

## Response to a decision

*"You are a star!"*

## Application for membership

*"Thank you X you have been a pleasure to deal with".*

## Application for membership

*"Dear X, Thank you for your e-mail. I appreciate your support; I found the resources on your website very useful. Kind regards, Y."*

## On-going relationship with large group scheme member

*"Hi Y, A note to put on record my appreciation of the efficient manner in which you manage the XX's group scheme with the FDR.*

*I can always totally rely on you, that new memberships are dealt with promptly and efficiently. As well, knowing that with your expert knowledge, advisers have been given the appropriate information, followed up by you ensuring they have "ticked all the appropriate boxes" Y it is a pleasure working with you – good teamwork and well deserving of praise.*

*They did not help me directly but they did help. They listened, it was great. I did not feel I was being pushed away. I was happy. I did ring back for more advice and it was given without any hesitation or bias or anything like that. If I had another problem I would ring them.*

*I think it is a great service. It was like having a lawyer and not paying for them!*

*It was simple, I could understand everything and it was just really good to feel that someone cared about the small person rather than the big person. I feel like a battery and I actually got recharged through FDR."*



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