



**Financial Dispute Resolution  
Scheme (FDRS)  
2013 Annual Report**

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# Scheme Manager's report

The reserve scheme continues to mature with stability in membership, increasing levels of consumer awareness and complaint enquiry, further evidence of the systemic issues prevalent and a growing certainty over the way to best ensure consumers are able to get redress for issues they have with their financial service providers. The positive impact that a good complaints handling system can have on providers' businesses has also become increasingly evident.

That said, the government has decided to disestablish the reserve scheme in 2014, but has approved the reserve scheme operator FairWay Resolution Limited (formerly Dispute Resolution Services Limited) as an approved scheme to replace it.

The increase in complaints has been predominantly from unanticipated quarters – non New Zealand residents complaining about offshore originated online FOREX, commodity and spread betting trading platforms. These complex complaints – often requiring expert opinions – have occupied a considerable amount of our team's time as each complaint escalates through to the Financial Dispute Resolution scheme because the member has not responded or has not satisfactorily resolved the complainant's issue within their internal complaints process.

Many have resulted in adjudicated decisions upholding the complaint, and systemic and serious misconduct issues that we have had to report to the New Zealand regulator and, or a regulator from another jurisdiction. Some of the complaints were not upheld as the complainant did accept the terms of trade that have left them out of pocket. However, we are now finding against providers where we think their conduct or lack of disclosure has been unreasonable, even though the complainant accepted the terms and conditions. Providers should be guided accordingly.

Otherwise, complaint enquiries and parties in dispute have been relatively lighter than anticipated. Those issues cover most sectors of membership, predominantly relating to credit providers who allegedly acted inappropriately in debt collection, or who have failed to respond to applications for hardship.

With increased volumes, systemic issues have featured more in our workflow with seven new reported issues for the year. Apart from the obvious issues with five online traders, two of whom were identified to the regulator, we reported a trend developing with one (de-identified) authorised financial adviser, one (de-identified) insurance company and the other an insurance adviser who rectified

the issue on the cusp of previous year end. All five de-identified members responded positively and appropriately to our invitation to correct the issues, thus avoiding identification to the regulator, and have been removed from subsequent reports.

The prevailing systemic issues relate to long, complex terms and conditions, often not in the first language of financially illiterate consumers who all too readily accept the contract without understanding what happens if things go wrong, or don't read it. Some members have preyed on this knowledge unfortunately, whereas others understand and appreciate our proactive involvement in helping them address these issues as it benefits both their customers and their business.

Many members do need to improve disclosure, promotion and access to redress for consumers and we will continue to play an active monitoring, educating and supporting role.

We will also continue to support financial literacy initiatives undertaken by the Ministry, Financial Literacy Commissioner, consumer advocate agencies and directly with community groups.

Unprompted consumer awareness remains very low at 3%, despite our ongoing support of consumer rights days and continued promotion to members of their need to be compliant in maintaining and promoting a complaints process. What was encouraging in the consumer awareness and barriers to access survey was that two thirds of respondents, once informed, said they would use FDRS if they had an issue with their financial service provider in future.

Although 67% of members say they disclose their complaints process, very few actively promote it. We have been taking a firmer line with members as we have been calling upon them over the past six months to remind and help them with their compliance obligations, particularly as the regulator is beginning to take a more active interest in identifying indicators for compliance, such as disclosure, promotion and accessibility to the complaints process. The website is often the regulator's first reference point.

At the other extreme, a number of members have subscribed to the notion that a well-managed complaints management system can be one of their most valuable business tools to engage with their customers, improve reputation and advocacy, service and products features and delivery, and bottom line. They are inviting feedback from their customers, including complaints, understanding that a satisfied complainant is more likely to be an advocate than a satisfied customer; and making the most of the valuable information received from people who care enough about their business to raise an issue. We have completed some interesting

surveys and applied a cost / benefit analysis to some of our member types, demonstrating that it pays to "Avoid Disputes, Not Complaints".

Most of the 3,520 enquiries received for the year related to membership. 42% of our inbound enquiries were from the Financial Service Provider's Register (FSPR). 35% of total enquiries were from providers applying for membership, members enquiring about their scheme membership renewal or responding to reviews about their complaints management procedure and 20% related to complaints. 55% of complaints registered were referred back to members to be considered first within their complaints handling process.

Our facilitators keep the case file open and continue to track these enquiries with the complainant. The oversight of complaints with the internal complaints process was not envisaged when the Financial Service Providers Act was conceptualised, but we find by having complainants contact us in the first instance we are better able to collect more helpful data to monitor for systemic issues and consumer confidence in their providers.

Membership numbers remained relatively static at 1570 – down only 29 on the previous year, which means there were in excess of 430 new members. Offshore originated membership almost halved as registrations were terminated by the FSPR. These were more than offset by new onshore membership from all sectors, but predominantly financial advisers.

It was most pleasing to receive the results of our second annual survey

on members in April which found that 80% were either satisfied, or very satisfied with the level of service they received from Financial Dispute Resolution - well in excess of the 60% benchmark. This is particularly pleasing as it was during a period of increased complaint enquiry about the respondents. Significantly, our net promoter score (see page 27 for a definition of net promoter score) increased by 13 points to +14. That does mean though that 20% were not satisfied. Whilst some dissatisfaction is not unexpected – as complaints and decisions about them are not always agreeable or are going to go their way – it is important that members see the process as being fair and appropriate, and we will continue to strive for improvement.

Our annual report on rolling surveys of complainants provided excellent results with 86% (benchmark is 70%) of respondents saying they were either satisfied or very satisfied with the FDRS service, with 79% scoring the highest possible score of 5/5.

72% of respondents said that it was extremely likely that they would recommend FDRS to a friend if they had a problem with their financial provider, resulting in a very satisfactory net promoter score of +66. Again, things will not always go the way of the complainant who often engages us in a stressed state. The result is therefore very pleasing, but we will always try to do better.

We have continued to work closely with the other dispute resolution schemes about issues that are common to us. The "highlights" addressed were about the need to preserve member and complainant confidentiality within the boundaries of the law;

sharing resources about raising consumer awareness; ensuring a seamless transfer of members between schemes (though very few eventuated); preventing non-compliant providers joining from other schemes (for example where they have not complied with a decision) and coordinating a response to the Credit Contracts and Financial Services Law Reform Bill.

Our Auckland relationship manager and to a lesser degree myself, have maintained a proactive calling programme upon members to cement the relationship, to find out if we are meeting their needs, helping them with compliance and demonstrating the value in a well-run complaints management system. We presented at a number of member and association conferences also.

In addition to supporting the Ministry with its Consumer Rights Days, visits were also made upon consumer support agencies and other community groups to build consumer awareness.

The 2013-2014 year has begun with a large influx of complaints about online trading platforms and membership continues to grow. The scheme is in good shape and members for the most part appear to be compliant. We will be working to assist them and the government in the transition to an approved scheme in the 2014-2015 year. Meantime it is business as usual.



Stuart Ayres, Scheme Director

# Scheme adjudicator's report

Last year I noted a high proportion of enquiries about online traders from complainants based overseas. I identified this area of complaint as one that we could expect to frequently encounter in the future. So it has proven to be. As can be seen elsewhere in this report, by far the majority of complaints were about online FOREX and investment platforms, most based offshore. We continue to experience a sense of detachment, both geographic and linguistic, in dealing with complaints from customers residing overseas about offshore-based providers.

We are now more carefully investigating whether the members complained about have a place of business in New Zealand, as opposed to only a serviced office or address for service. If not, we are obliged to decline jurisdiction on that ground alone, despite the fact that the entity is a member of our scheme. This anomaly is not fair on the customers that might have signed up to the trading service based on the representation of the availability of the FDR scheme. The authorities are aware of the issue and it is for them to resolve.

Nevertheless, we have made good use of the experts that we added to our panel last year in anticipation of these complaints, and our adjudicators have themselves now

acquired the relevant expertise through repeated exposure to this category of complaint.

A number of our enquiries have been hardship-related, where the customers have run into financial difficulty and are looking to us to solve their problems. We are unable to be of much assistance in these matters, other than to explain consumers' rights under the relevant legislation. Where members have made decisions to decline hardship applications, we are sometimes able to examine the process used in reaching those decisions, but the best outcome for consumers is usually that the providers are required to make the decision again. Our advice is for consumers to approach the provider as soon as the difficulties surface, so that possible restructured payment plans can be considered and can have some prospect of success.

For the remainder of complaints received during the year, the issues are invariably wrapped up by the members' terms and conditions, which, unless patently unfair, invariably dictate the outcome. We can only beat the same drum as do all our counterparts in the business of consumer complaint resolution – read the fine-print and know what you are signing up to!

Finally, I acknowledge those scheme members who have cooperated with us through the dispute resolution process by being responsive, meeting deadlines and demonstrating good faith in attempting to achieve resolution. Such cooperation benefits everyone involved and leads to the best chance of restoring business relationships with their customers.



Derek Pullen, Scheme Adjudicator

# FairWay Resolution Limited

## Ownership and Governance

FairWay Resolution is the new trading name to replace Dispute Resolution Services Limited which has changed its legal name to FairWay Resolution Limited. The company was established in 1999, and on 1 July 2011 became a Crown owned Company under Section 4 of the Public Finance Act 1989. Its shareholding ministers are the Minister of Finance and the Minister for ACC. FairWay Resolution's board reports to the Ministers through the Ministry of Business, Innovation and Employment. The Chairman of the Board is Peter Blades. Other board members are Anita Chan (Deputy Chair), Tupara Morrison, and John Spencer CNZM. FairWay Resolution's Chief Executive, Greg Pollock, joined the company in January 2013.

## About FairWay Resolution

FairWay Resolution's vision is to be the leading conflict management services provider by protecting consumers' rights, improving organisations' capabilities, and strengthening public trust in those organisations.

Organisations that invest in building capability for constructive conflict and complaints management reap the rewards through enhancing their reputation, improved internal and external relationships and customer advocacy, business intelligence, services and products, and improving profitability.

FairWay Resolution's services span the full conflict management cycle from prevention to complaints management and dispute resolution. Its triage service provides for end-to-end case management and customer care to optimise business efficiency and intelligence, and customer satisfaction. Effective complaints management is seen by many organisations as central to their business model.

FairWay Resolution Limited is an independent, Crown-owned company with over 100 staff and offices in four centres in New Zealand. It handles over 9,000 disputes each year — of all kinds and all levels of complexity, including medical, insurance, family, business to business, rural, financial services, telecommunications and real estate.

FairWay Resolution works with organisations that care about their stakeholders' experiences to custom-design and optimise the benefits of effective complaints management and dispute resolution services. Organisations that have chosen FairWay Resolution to partner with them include Accident Compensation Corporation, Christchurch Earthquake Recovery Unit, the Real Estate Agents Authority, Ministry of Business, Innovation and Employment (Consumer Affairs) with the Financial Dispute Resolution Scheme and the Telecommunications Carriers Forum ([www.tdr.org.nz](http://www.tdr.org.nz))

The scale, multi sector experience and expertise give clients confidence in FairWay Resolution's ability to meet their evolving needs in order to deliver superior service to their customers. The business has recently made a significant investment in a state of the art case management system enabling secure and fast inter-party electronic file transfer and management, and maintains very robust privacy policy and procedures, fulfilling a commitment to protecting the privacy of all parties to a dispute. This reflects a thorough understanding of technical and legislative issues that arise in different sectors that use FairWay Resolution's services.

# About FDRS

Financial Dispute Resolution Scheme (FDRS) is an independent dispute resolution scheme that helps consumers and financial service providers resolve disputes as early as possible through the Alternative Dispute Resolution process. The scheme is free for consumers to use. It is the Government's reserve dispute resolution scheme as defined in the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP). It is owned and managed by Consumer Affairs within the Ministry of Business, Innovation and Employment (MBIE).

FDRS operates under the Financial Service Providers (Dispute Resolution - Reserve Scheme) Rules 2010 and the Financial Service Providers (Dispute Resolution-Reserve Scheme Fees) Rules 2010.

FairWay Resolution was awarded the contract to operate FDRS, the Reserve Scheme which commenced operations 1 October 2010. In April 2013, the Minister announced the disestablishment of the reserve scheme with target date 30 June 2014. At the same time, the Minister announced that FairWay Resolution had been approved as an approved scheme. The Minister's explanatory letter to members advised "...it will provide a seamless transition

for reserve scheme members to their new scheme, preserving all the benefits of the reserve scheme including providing of jurisdiction for issues which arose whilst they were members of the reserve scheme".

Reserve scheme members will receive more communication about the approved scheme from FairWay Resolution early 2014.

## FDRS Team

FDRS is a small and busy 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. Because of FairWay Resolution's size the resource is scalable to meet fluctuating demands.

The Scheme Director 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.

The FDRS team is located in Wellington, with the Relationship Manager based in Auckland, where 60% of FDRS Scheme Members have their place of business.

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

Stuart Ayres, Scheme Director	41 years in finance sector; banking, finance, mortgage and insurance advice, industry association
Richard Hazelwood, Scheme Manager/ Facilitator	Qualified mediator / LEADR trained
Derek Pullen, Scheme Adjudicator	LLB. Legal practice and teacher. 22 years adjudication – practice and management experience
	Member of the Arbitrators and Mediators Institute of New Zealand (AMINZ)
Rob Tucker, Auckland Representative	41 years in finance sector; banking, finance, mortgage and insurance advice, industry association
Pat Brown, Facilitator	Share broking experience
Adjudicators (2)	Both LLB. Arbitration / tribunal experienced
Mediators / Conciliators (2)	Qualified mediators. Members of AMINZ
Corporate Services	Human Resources, Finance, Tenancy, IT, Communications

## Subject Matter Experts

FDRS has an independent panel to call upon when subject matter

expert opinion is required by the Scheme Adjudicator. The panel members' full profiles can be found at [www.fdr.org.nz](http://www.fdr.org.nz)

Josephine Campbell	Banking, investments, financial advice
Chris Kelly	Trust law
Justin Kerr	Finance companies, consumer and business finance
David Greenslade	Financial advice, mortgage, insurance and investment advisers
David Whyte	Insurance
Ho Yew Mun	Capital & securities markets, FOREX and commodity trading
Dr Chris Malone	Forex and commodity trading

# Responsibilities under the Reserve Scheme Rules

Members are bound by the reserve scheme rules. A breach of the rules could mean termination of membership and de-registration as a financial service provider.

One of the primary responsibilities for members under the rules is they must maintain, promote and make accessible a complaints procedure for their customers and use best endeavours to resolve complaints under those procedures.

## FDRS's responsibility

FDRS has a responsibility to give general advice to members on the development and maintenance of good complaints procedures and to monitor and report on members' compliance with the rules. Every scheme member was given guidelines to implement and operate an internal complaints process and how to access and work with the external scheme FDRS's dispute resolution process.

The guidelines given to members are based on international standards AS ISO 10002 "Guidelines for complaint handling in organisations". All members have been surveyed as to whether they operate and disclose a complaints process and many have been called upon to produce evidence and offered training where agreed.

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

## FDRS process

FDRS's dispute process is based on the principles of the Australian Benchmarks for Industry Based Customer Dispute Resolution Schemes - accessibility, effectiveness, efficiency, independence, fairness, accountability, and the methodology of Alternative Dispute Resolution.

FDRS cannot consider complaints within jurisdiction unless the complainant has first made the complaint to the member's internal complaints procedure and rendered "Deadlocked". However, we recommend complainants contact FDRS in the first instance so that we can ensure access to the member's internal complaints procedure, monitor for systemic issues and complainant access to redress and ultimately – satisfaction.

Throughout both the internal and external process, FDRS assists the parties to reach early resolution, to prevent the complaint escalating through the FDRS dispute resolution process.

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

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

## The steps of the FDRS 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 FDRS, 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) – FDRS gathers more information from all parties and assesses the dispute. At this level FDRS aims to help the parties reach an agreement themselves.

FDRS 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, FDRS 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 Level 2 – 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) – FDRS proposes a decision. If the parties don't agree with the proposed decision, FDRS issues a final decision which if accepted by the complainant becomes binding on the scheme member.

If the complainant is not happy with the decision, the complaint is closed and they are still able to take the matter through other channels such as the Courts or the Disputes Tribunal.

If the parties reach a private settlement FDRS strongly recommends a formal agreement document is drawn up by FDRS, 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.

## **End-to-end case management**

Complainants are encouraged to make their complaint to FDRS initially. That way we can better monitor for systemic issues and consumer access to redress and consumer satisfaction and confidence in their providers. If we receive a complaint from a consumer before a scheme member has had an opportunity

to consider it we will open a case, take basic details and guide the complainant to the member's internal complaints process. We will ensure the complainant has access to make their issue known to the member and that the member has the opportunity, systems and techniques to consider the complaint properly. We can assist all parties to facilitate an early resolution of the issue to avoid escalation to the external disputes process by offering guidance on complaint making and handling, providing the appropriate tools, procedures, understanding and benefits of good complaints management. The case is closed when the complainant says so.

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 FDRS disputes process.

## **Members' compliance survey**

We have not undertaken another survey since January 2012 when 74% of respondents said they disclosed an internal complaints procedure.

However, we have reviewed those members' websites to determine level of disclosure and accessibility to find that disappointingly only a few promote their complaints procedure on their websites. However most do disclose an internal complaints procedure in their disclosure and terms and conditions documents.

We urge better promotion and access for their customers to lodge complaints, preferably on their websites. Members have been made aware of the regulator becoming

more proactive by monitoring provider's websites for indications of customer reach and compliance, to determine whether they should be making further investigations.

## **Cost to complain**

The entire complaint process is free to the complainant. Members are charged a fee determined by the level of resolution of the dispute. The longer a complaint is left unresolved, the greater the cost to the organisation.

# FDRS activity

It has been customary to measure activity by volume of phone calls and facsimiles but with the increasing use of online derived communications it is appropriate to include that channel when monitoring and reporting on the activity of our facilitation team. This data does not include the phone calls, emails or personal calls of relationship manager and Scheme Director.

The total activity equates to 25 contacts or 12 contacts per facilitator per day, and includes outbound calls to complainants, members, Financial Service Providers Registrar (FSPR) and other stakeholders.

To ensure inbound telephone calls are answered within the key performance indicators agreed with the Ministry, overloads and out of

hours are outsourced to a call centre which took 62% of the total. Whilst KPIs for “responsiveness” have been easily achieved we would prefer that most calls were answered first by FDRS staff and we have taken measures to reverse that statistic.



## Type of inbound enquiry

Of the total activity, 3520 contacts were inbound. 35% were from members or providers enquiring about membership, membership renewal or responding to reviews about their complaints management procedure, reflecting our keen interest to ensure they are compliant and effectively managing conflict.

42% of the enquiry was from FSPR seeking membership verification for annual renewal of registration; advising of notices to terminate membership, and reconciling names and contact details.

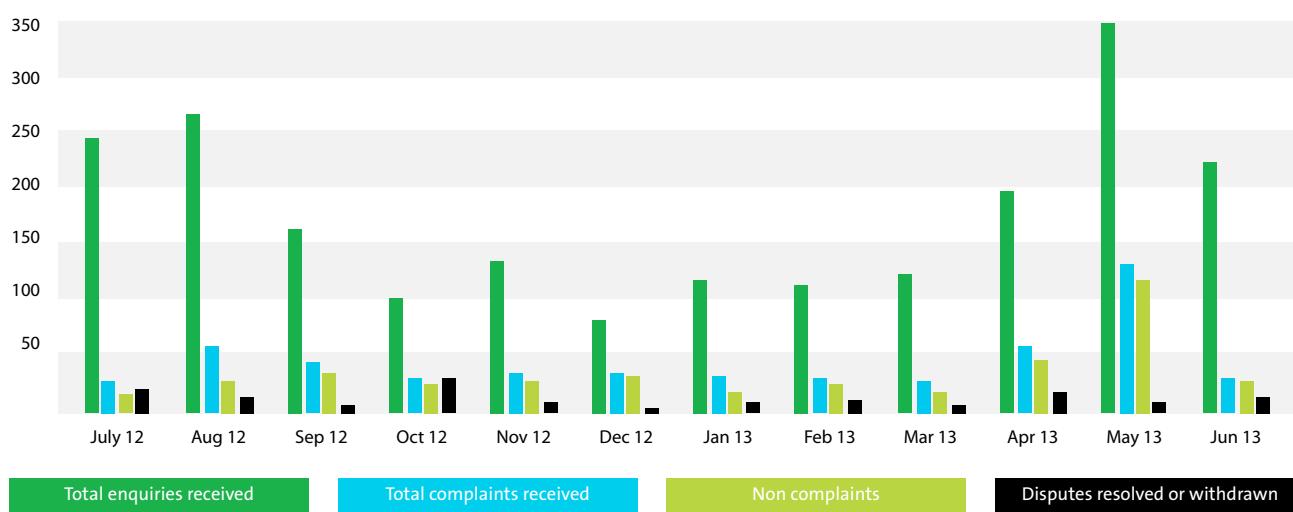
terminated by the FSPR as they could not verify that they were providing a financial service from a place of business in New Zealand.

## Total inbound enquiry

3520



## FDRS - Summary of enquiries/complaints/disputes 2012-2013



# Complaints registered

## Overview

Complaints registered are all complaints received before considering jurisdiction. They include complaints that have not yet been considered or reached deadlock within a member's internal complaints process; and complaints that, if "deadlocked" may have been subsequently deemed outside jurisdiction because for example, "the provider was not providing

a financial service from a place of business within New Zealand". FDR can only decide jurisdiction, including eligibility of registration and membership, once escalated to the FDRS process.

There was a 108% increase in complaints registered on the previous period. 396 of those 508 were outside jurisdiction, 60% of which were because no formal complaint had been lodged with

the scheme member and 9% had not reached deadlock. 77 of the complaints registered but outside jurisdiction were about members of other dispute resolution schemes and referred to them accordingly.

The remaining 109 complaints were within jurisdiction.

## Complaints Registered

508



## Complaints categories

As was the case last year, most of the complaints related to issues with online FOREX, commodity or investment platforms.

### Failure to follow instructions (51%)

261 of the 508 complaints registered in the year alleged members' failure to follow instructions or a delay in instructions.

Two thirds of those (180) related to Goodsense Investments Limited (membership has since been terminated); where the complainant alleged they had not received the refund of their account balance from their investment account. These complaints were referred back to the member to consider within their internal complaints process. 15 were subsequently "deadlocked" and resolved (upheld) within the FDRS process to 30 June. The balance have been processed since 30 June (see Disputes Registered – Outcome below).

34 related to online margin trading FOREX platforms where complainants alleged the member used a different

stop out rate to that which was ordered or where the member failed to reimburse investor funds (because the stop out depleted their margin trading accounts).

### Unauthorised transactions (19%)

In 78 or 19% of instances the complainant alleged that the provider made unauthorised transactions on their account.

73 of those instances related to the one provider, IB Capital NZ where it was alleged the provider had fraudulently obtained investor authorisation for a third party to trade on their account. FDRS could not consider these within its jurisdiction as it was found that IB Capital NZ did not provide a financial service from a place of business in New Zealand. However we did put considerable time in managing these cases with the complainants, the local and international regulators and receivers. IB Capital NZ was deregistered and its membership terminated, with the directors being investigated by international authorities for fraud.

7% of complainants had issues with a financial service provider's decision, primarily denial of insurance claims because of prior medical condition not disclosed at application.

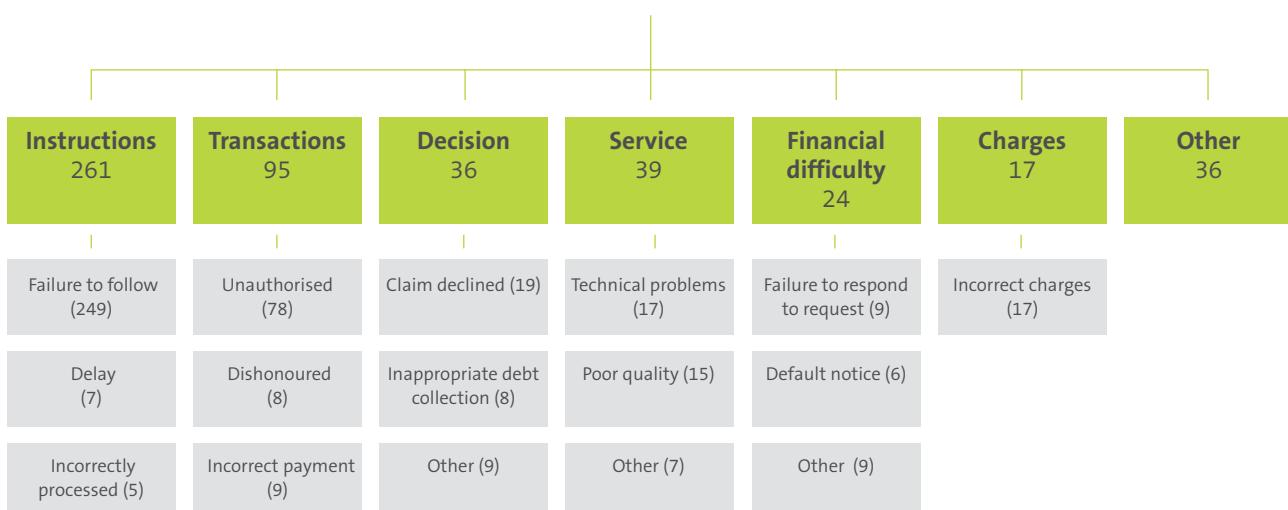
Only 5% of complainants expressed financial difficulty. This is down from 14% last year, due to the Ministry of Business, Innovation and Employment engaging the New Zealand Federation of Budgeting Services to operate the Loan Stress line. It is not known how successful this initiative has been for the Ministry after a very successful period with the dispute resolution schemes.

The primary cause of financial difficulty stems from poor literacy among (in many cases desperate) consumers who fall prey to significant promotions in their language and who do not understand long, complex financial contract terms and conditions in small print often not in their first language. It is only when things go wrong that some consumers refer to the contract, if they can find it.

8% complained about quality of service, mostly around technical problems.

## Complaints categories

508



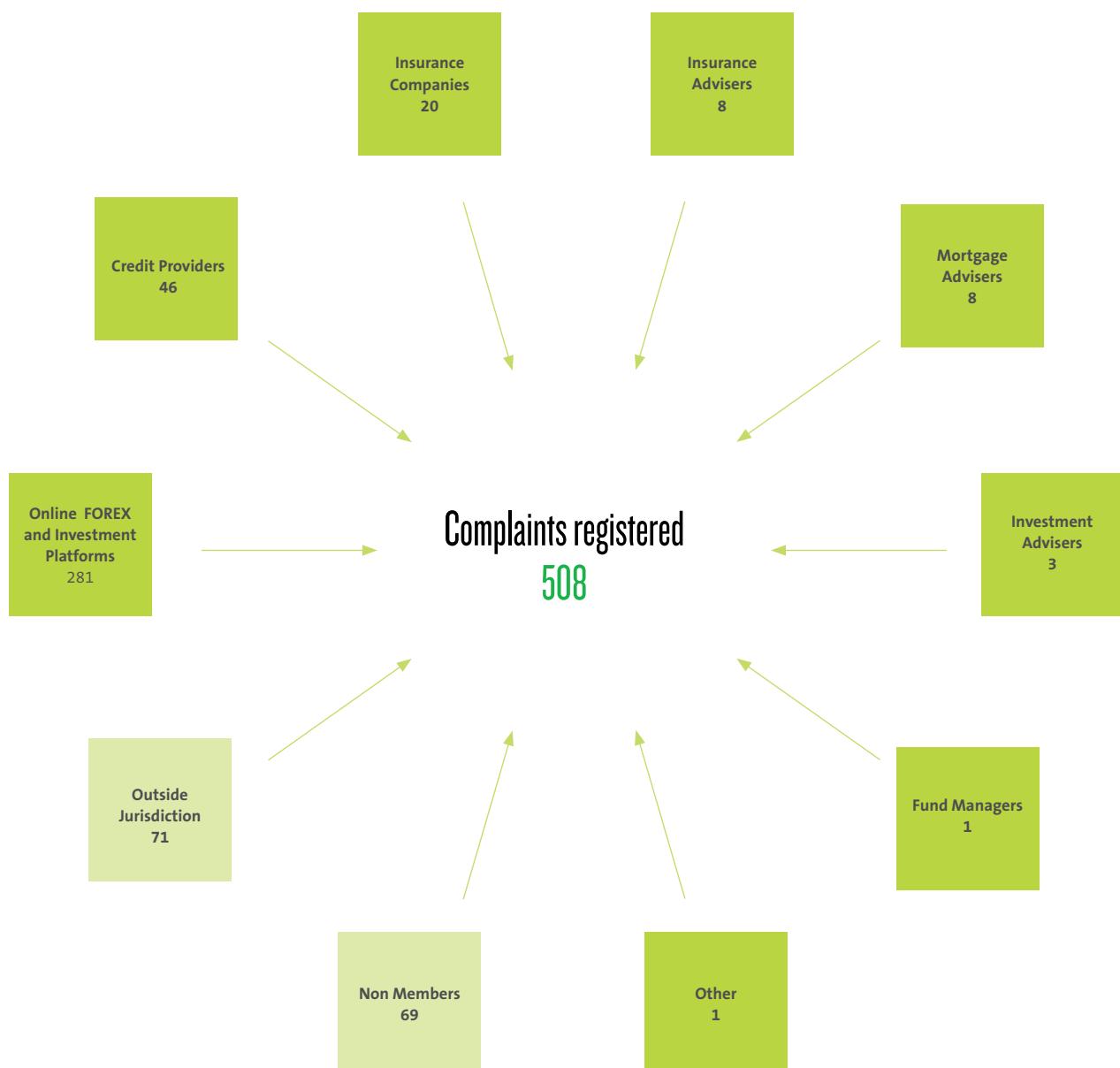
## Who were the complaints about?

55% of complaints registered related to online FOREX trading and investment platforms, all foreign owned. Goodsense origins were Portugal, using brokers from

around Europe; and IB Capital NZ, Netherlands, using an Australia broker who allegedly fraudulently obtained authority for a US based third party trader to transact on investors behalf, resulting in losses believed to be in the region of USD90m. We had extensive

involvement with USA, Australian and Netherlands regulators and USA receivers.

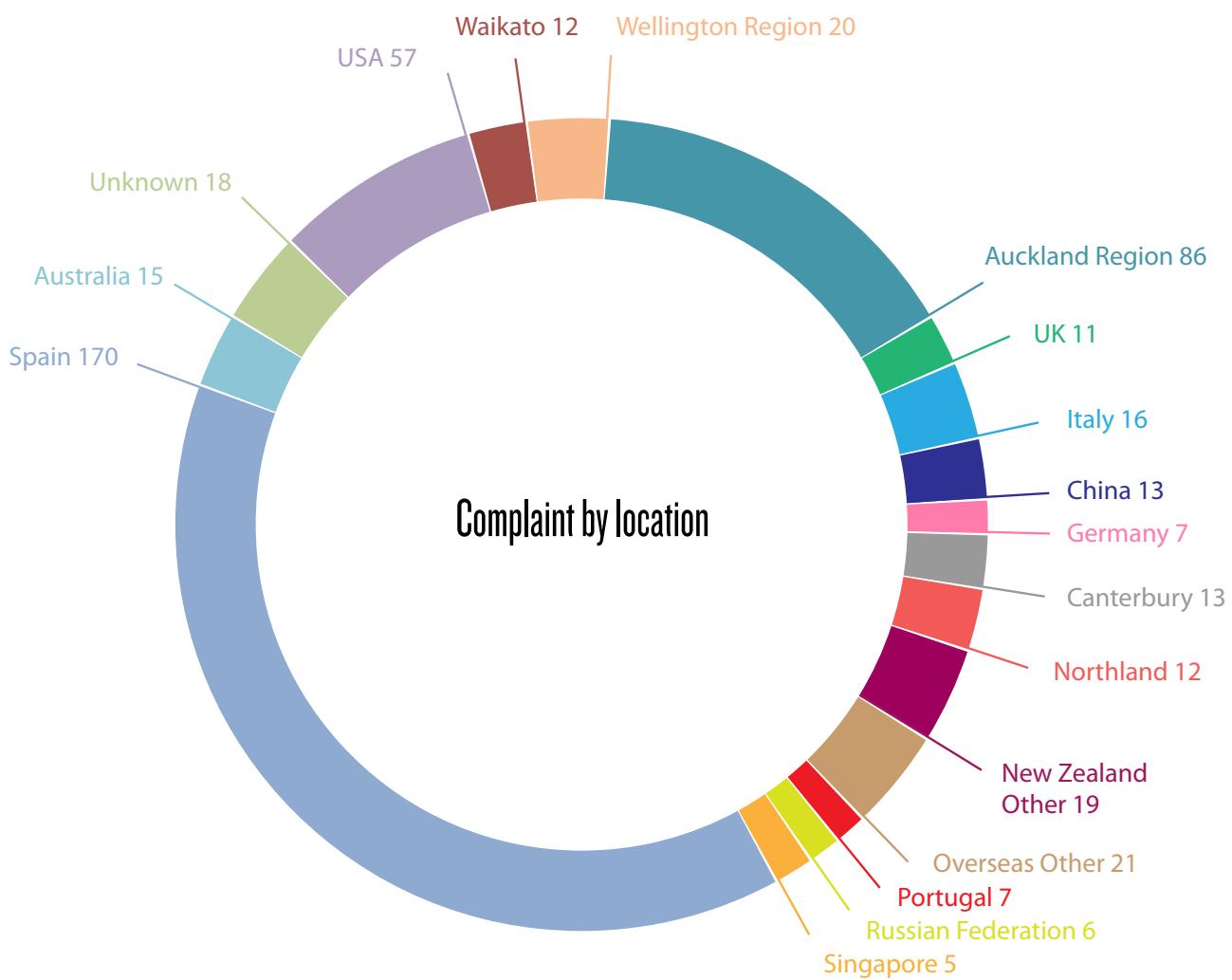
The balance of these online platform providers have origins in China or Russia.



## Where were the complaints from?

68% of all complaints originated from non-residents. 33% of complainants were from Spain, relating to Goodsense Investments

Limited. 17% of complaints originated from the Auckland area (where 60% of members are domiciled). USA was the source of 11% of complaints, mostly relating to IB Capital NZ (outside jurisdiction).



## In jurisdiction

FDRS can cover disputes from individuals or qualifying groups if they are a “retail client”. Disputes must be about the conduct of a financial service provider providing a financial service from a place of business 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 considered by 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 member’s general policies and practices or commercial judgments or investment performance.

78% of the complaints registered were outside jurisdiction. 280 or 55% were referred back to the member’s formal complaints

procedure; 15% related to members of another scheme, with the balance providing insufficient information at that point to proceed.

FDRS maintains an overview of the complaints referred back to the member’s complaints procedure to ensure complainants get access to redress of their issue with the member.

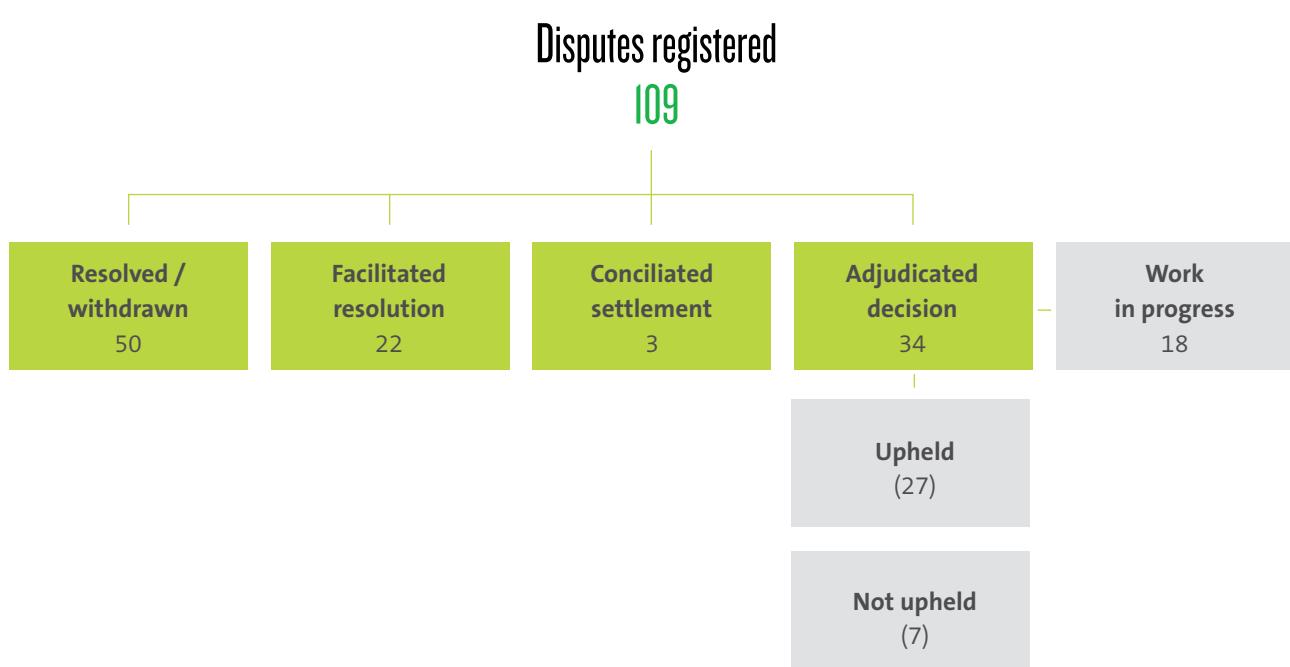
The remaining 109 complaints were within jurisdiction. 50 were withdrawn and 59 resolved. Of those resolved 22 or 37% were resolved at Facilitation (Level 1); three only at Conciliation (Level 2) and 34 or 58% went for an adjudicated decision (Level 3). 27 complaints were upheld and decisions were accepted; seven were not upheld and not accepted by complainants. 18 remained “on hand” at annual review date.

### Adjudicated decisions (L3) 34 Upheld 27

79% of the adjudicated complaints were upheld, with 15 of those relating to Goodsense Investments Limited (spread betting).

These complaints alleged that Goodsense failed to follow instructions by not refunding investments (and not denied by scheme member). Goodsense was ordered to refund a total of USD 898,244 (since 30 June USD3.852m). Goodsense has not honoured the order and its FDRS membership and its FSPR registration has been terminated.

11 of the remaining upheld complaints related to three online FOREX platforms, where the adjudicator found that the members failed to follow instructions by either withholding funds because of / or using a stop out or liquidation rate significantly different to what the investor ordered and also well wide of the average market rate. In all cases the members complied with the orders to make good the differences or refund to the investor.



## Not Upheld 7

21% of the complaints adjudicated were not upheld.

Five complaints were about three online FOREX platforms and one about an online investment platform, with complaints ranging from a provider's decision, technical problems with the platform and failure to follow instructions. These complaints were not upheld as it was found the provider had acted within the terms of agreement with the complainant.

One of the other two related to a mortgage adviser allegedly charging incorrect fees, and the other an insurance company that declined an insurance claim due to pre-existing conditions.

## Conciliation (L2) 3

Two of the cases referred to mediation / conciliation were resolved and settled in the complainant's favour. One involved an insurance company who allegedly failed to follow instructions and cancelled cover. Through mediation they agreed to reinstate the policy.

The other case involved an investment adviser who allegedly misrepresented their service resulting in a loss to the complainant. The mediation settlement agreement provided for the adviser to reimburse the complainant, which they honoured.

The remaining case referred to mediation related to IB Capital NZ. Consideration ceased when it was determined that the complaint was outside jurisdiction as the member did not provide a financial service from a place of business within New Zealand.

## Facilitation (L1) 22

20% of complaints registered within jurisdiction were subsequently "ceased consideration" when the Scheme Adjudicator ruled that they were outside jurisdiction as the scheme member (IB Capital NZ – reported elsewhere) was found to not be providing a financial service from a place of business within New Zealand. One of the 22 was consolidated into another complaint.

## Registration (L0) 50

43 complaints were withdrawn at the registration or "mini" jurisdiction check because the complaint had not reached deadlock within the member's internal complaint process.

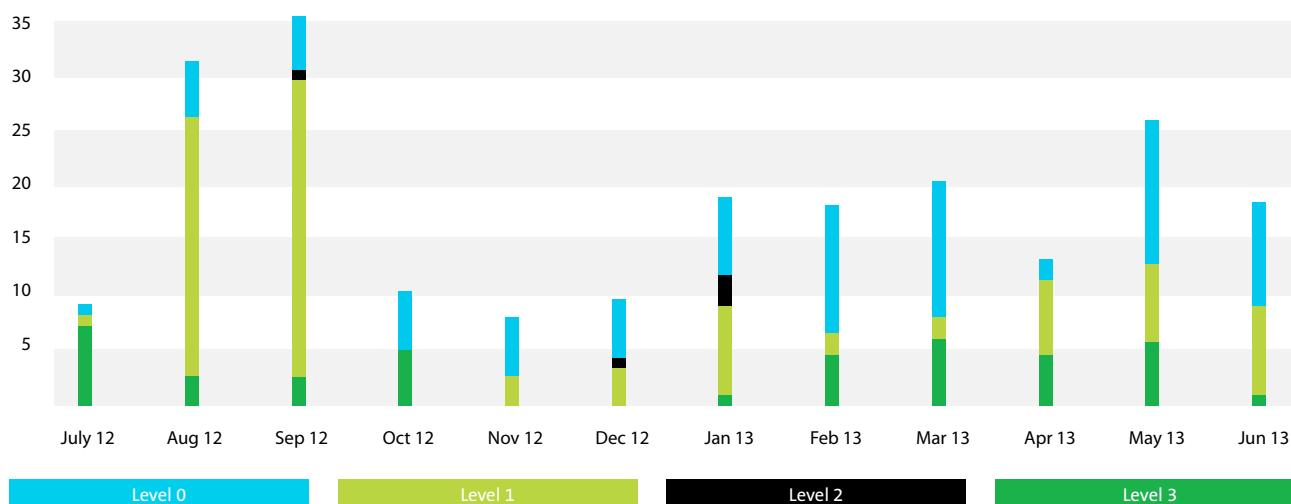
34% or 17 related to IB Capital NZ and the balance were complaints that covered a broad range of providers from offshore and within New Zealand.

The remaining seven were subsequently deemed outside jurisdiction after further information came to light in early exchanges between parties.

## Work in progress

It has been a year of two halves with the first period relating to disputes concerning IB Capital NZ and the latter to Goodsense Investments Limited. At year end there were 18 complaints on hand within FDRS jurisdiction. 15 related to Goodsense Investments Limited; two to one other online trading platform and the other to a "local" insurance adviser. All disputes were resolved within time targets.

## FDRS Disputes on hand 2012-2013

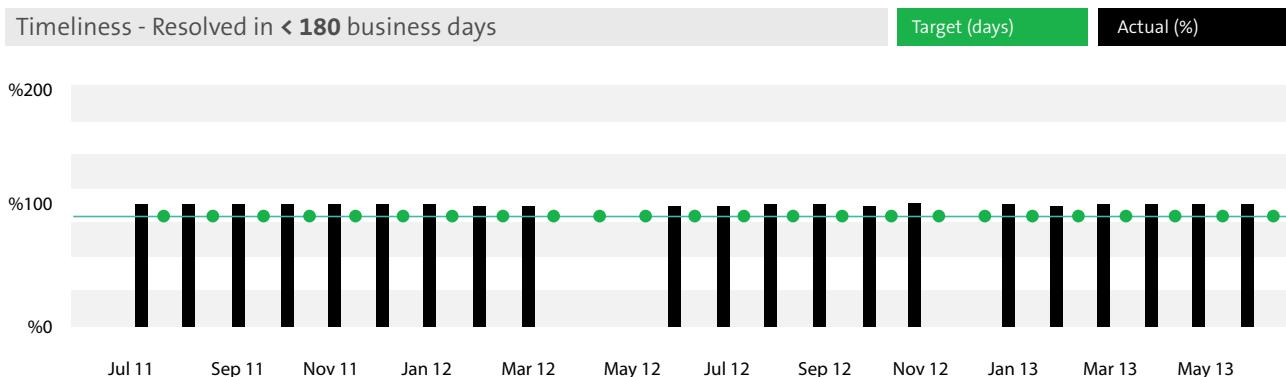
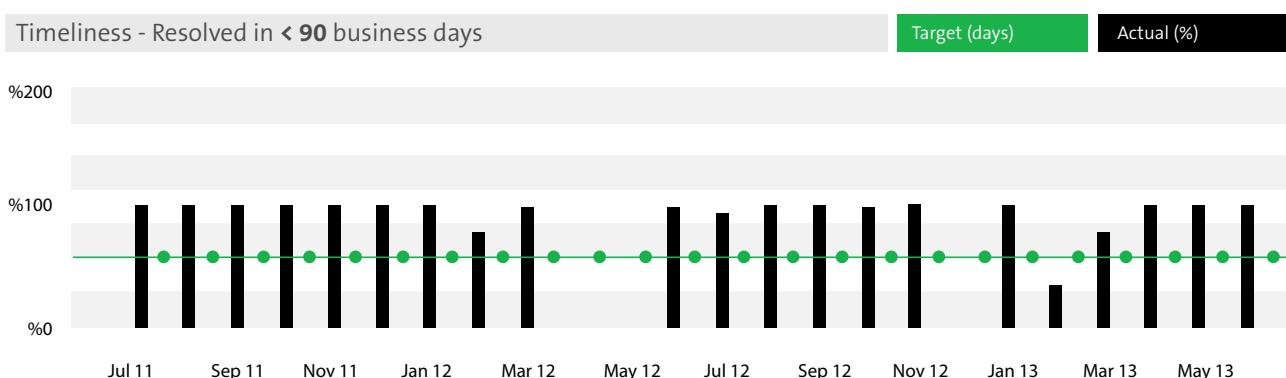
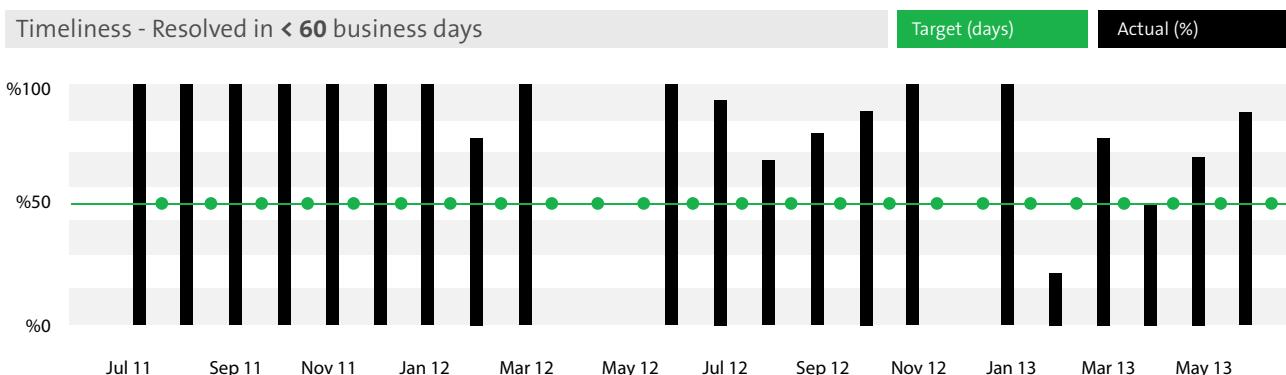


# Time taken to resolve disputes

Two principles 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.

We easily met our timeliness targets on all counts but for one case in February which was extended by agreement with the complainant due to the inaccessibility of the offshore based scheme member.

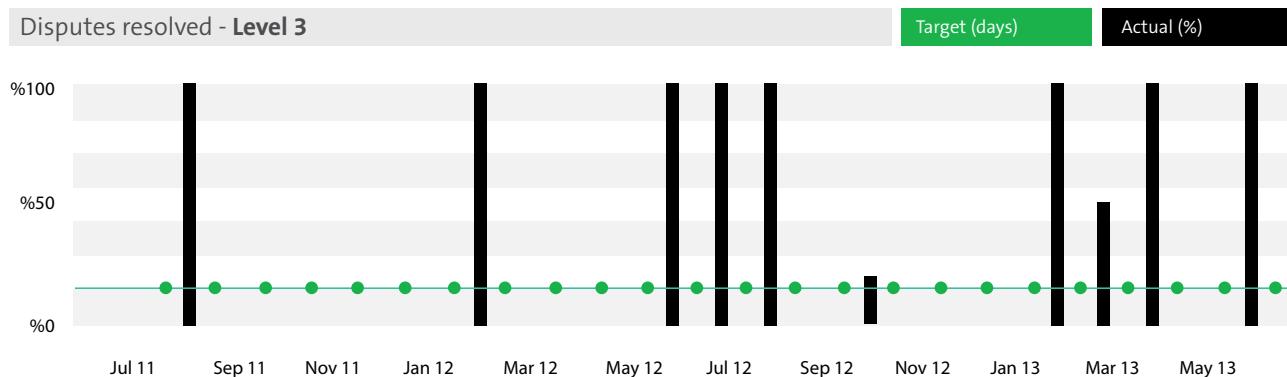
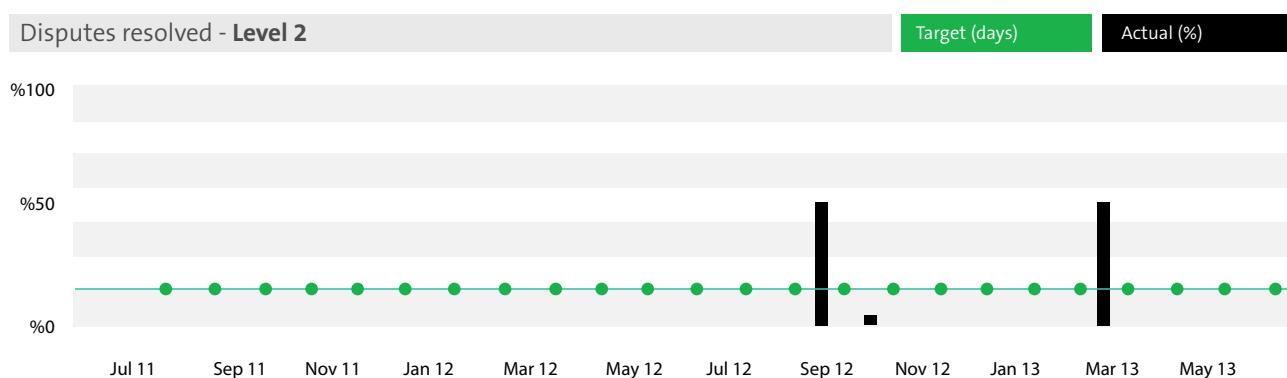
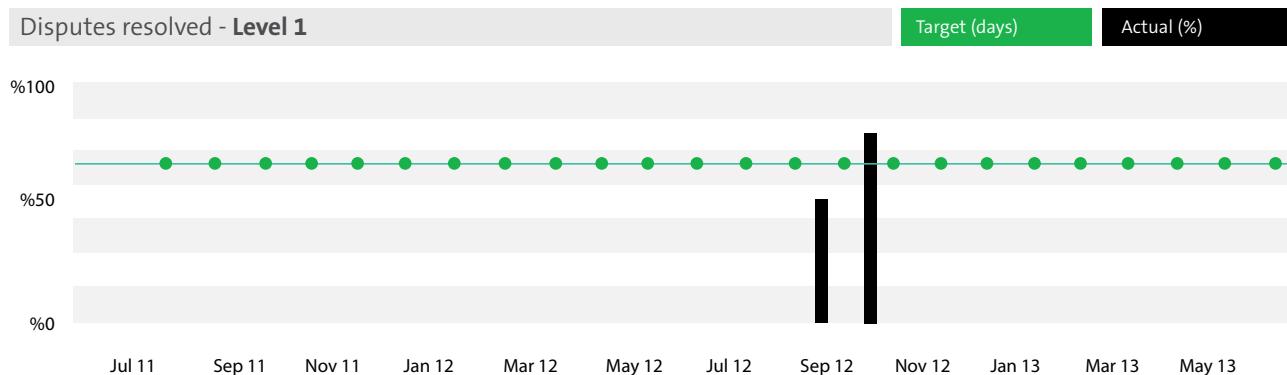


# Level of resolution

When establishing the scheme, it was envisaged that 70% of disputes would be resolved by early resolution / Facilitation (Level 1); 20% by Conciliation (Level 2) and 10% by Adjudication (Level 3).

66% of complaints registered were resolved early. They were withdrawn, deemed outside jurisdiction or resolved by Facilitation; only 3% by Conciliation and 31% by an adjudicated decision.

The result was skewed by the high number of adjudicated decisions with all but three relating to the foreign owned online platforms (FOREX and spread betting).



# Systemic issues

FDRS must report any systemic issue 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.

FDRS reported seven systemic issues throughout the year. Two were reported to the Advisory Body and

regulator as “identified” (IB Capital NZ and Goodsense Investments Limited) and five were reported “de-identified” and either corrected issues or remain “on watch”.

<b>Scheme Member</b>	<b>Nature of business</b>	<b>Issue</b>
Goodsense Investments Limited (membership terminated, FSPR de-registered)	Online spread betting. Portugal	146 complaints were received. 15 upheld (all upheld since). Failure to follow instructions to release investor funds. Suspected fraud. Total USD .898m (since year end USD 3.852m).
IB Capital NZ (membership terminated, FSPR de-registered)	Online margin FOREX trading. Netherlands	103 complaints were received. The Adjudicator ruled outside jurisdiction as not providing service from place of business within New Zealand. Fraud suspected. USD 90m involved.
De-identified #1 (presenting) Membership / FSPR current Member has complied with order	Online margin FOREX trading. Russia	19 complaints were registered since membership began (12 in reporting period), alleging manipulation of exchange rate when closing out position resulting in closure of margin trading account. Four complaints to adjudication. Three not upheld; one upheld. Complex obscure terms and conditions. Insufficient disclosure.

<b>Scheme member</b>	<b>Nature of business</b>	<b>Issue</b>
De-identified # 2 (presenting) Membership / FSPR current Member has complied with orders	Online margin FOREX trading Russia	17 complaints registered since membership (nine in reporting period), alleging manipulation of exchange rate when closing out position resulting in closure of margin trading account. Five adjudicated decisions, all "upheld". Complex obscure terms and conditions. Insufficient disclosure.
De-identified # 3 (presenting) Membership / FSPR current Member has complied with settlement agreement	Authorised Financial Adviser Auckland	Four complaints since membership (three in reporting period). Misrepresentation of services, failure to meet agreed needs.  One complaint unresolved and escalated to FDRS. Mediation resulted in settlement agreement and complainant satisfied.
De-identified # 4 (presenting) Membership / FSPR current Resolved at ICP	Insurance company Auckland	Eight complaints about declined claims for lost mobile phones sold under plans. Resolved satisfactorily at member's internal complaints process.
De-identified # 5 Membership / FSPR current	Online margin FOREX trading Russia	14 complaints since membership (11 in reporting period). Two complaints escalated to adjudication, and "not upheld". Alleged unreasonable stop out price. Complex obscure terms and conditions. Insufficient disclosure.

# Case studies

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## CASE STUDY 1

### Understanding contracts

This case study is typical of a number of complaints adjudicated over the year, where it was found that the complainant had agreed to the terms and conditions, even though the result of the transaction seemed to be “a little on the harsh side.”

The complainant alleges the scheme member, an online FOREX margin trading platform provider, did not act on ‘stop loss orders’ in time, causing financial loss when there was a small movement in the exchange rate. The complainant made a complaint to the member and requested return of the investment. The member responded that the trade was conducted within accepted terms and conditions. The complaint “deadlocked” at the member’s complaints process and escalated to FDRS dispute resolution process.

The case was determined by the Adjudicator as the parties could not agree to a resolution or settlement. The Adjudicator sought independent expert advice. The complaint was “not upheld” as the member had complied with its terms and conditions. However, the Adjudicator made the observation that the trades were “a little on the harsh side”.

After a number of similar complaints about the member, the scheme identified a systemic issue presenting and requested the member make its terms and conditions less complex and more accessible.

Note, in a more recent similar case, the Adjudicator upheld the complaint and ordered the member to strike a more reasonable settlement rate as the spread was too wide of a reasonable mark. The member complied.

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## CASE STUDY 2

### Conciliation reinstates policy

A home owner complained that his insurance company had inappropriately canceled a residential construction policy on completion of works, nullifying a guarantee of the builder’s work, should the builder’s own guarantee fail. The insurance company declined his request and subsequent complaint through its complaints process, escalating it to FDRS dispute resolution. The parties eventually agreed to a mediation meeting by video conference with one of FairWay’s experienced mediators. The mediation developed into a conciliation process where the mediator recommended a resolution which the parties agreed to. The insurance company agreed to reinstate the policy on slightly revised terms.

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## CASE STUDY 3

### Reading the full contract

A typical situation is where consumers are too readily accepting terms and conditions and mandates without properly understanding the implications of their content.

A complainant had entered into a mandate with a mortgage adviser to secure \$1m to purchase an investment property. A set up front fee plus fee of 1% of loan amount payable on acceptance of any loan. The adviser secured a loan offer for \$2m, including refinance of another bank loan to make more collateral available. The adviser charged a 1% fee on \$2m accordingly. The complainant disputed this charge with the adviser, claiming the refinance did not constitute new lending and was outside the terms of the mandate agreement.

The issue became “deadlocked” and escalated to FDRS. Both agreed immediately to an adjudicated decision. The Adjudicator determined that the complainant was fully aware of the meaning of the terms when accepting the mandate, was aware of the increased requirement and its implications on the fee and had an opportunity to challenge it when accepting the finance offer. The Adjudicator held that the mandate was clear and unambiguous, and could find no evidence that the complainant had been misled. The complaint was “not upheld” and the member was entitled to charge the full fee.

# Membership

Many members have told us they chose FDRS as their dispute resolution scheme because it is independent of any industry association and is owned by the Government. They like it that the operator – FairWay, has financial stability and an excellent track record, in-house and external expertise in the finance industry, very good complaint-handling systems and resources. FDRS membership fees are competitive across most sectors and especially with groups of advisers and organisations of similar shareholding and membership sharing an internal complaints procedure.

All scheme members have been given comprehensive guidelines, templates, online and personal support to help them establish the required internal complaints procedures. FDRS representatives visited over 130 scheme members during this reporting period to assist with compliance, managing

and making the most of complaints handling procedures. FDRS promotes best practice in complaint management and provides a number of modules to scheme members that we have themed 'Avoid Disputes, Not Complaints'.

## Membership numbers

FDRS's membership of 1570 is slightly down on the previous period (1599). This is a consequence of 433 new members offset by 462 terminated. The terminations were due to a number of factors, primarily members voluntarily de-registering one or some of their businesses from the FSPR as it is either not trading as a financial service provider or were withdrawing from the finance sector altogether.

A number of terminations were initiated by the FSPR as providers either failed to submit an annual

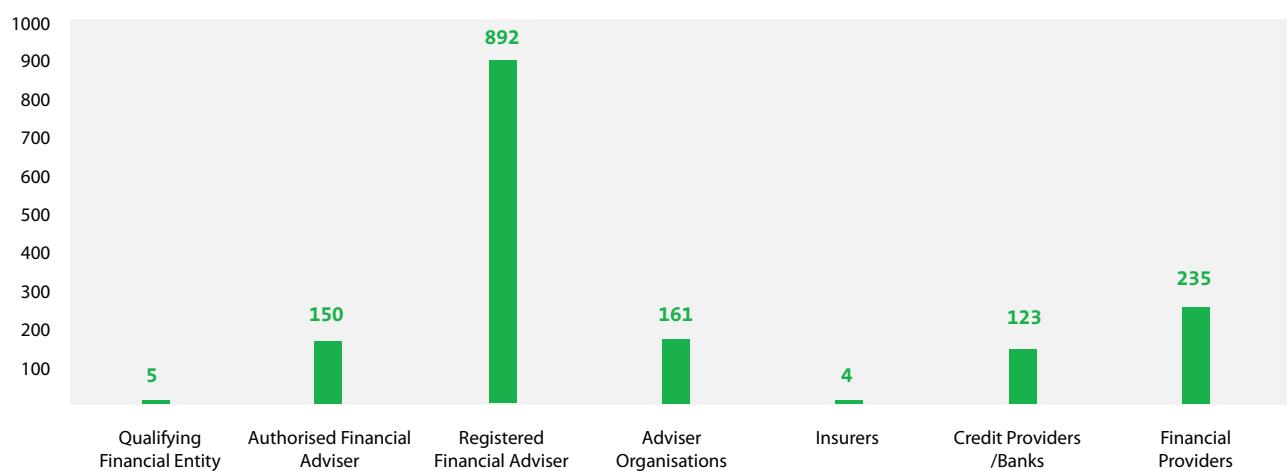
return; were deemed to be not providing a financial service in New Zealand, or have made false or misleading representations (offshore originated organisations). FDRS members represent about 20% of total financial service providers in New Zealand (outside of Qualifying Financial Entities).

## Who are our members?

FDRS members include some of New Zealand's largest businesses who make share issues to the public, operate finance, leasing, credit card and/or insurance divisions; superannuation schemes, and 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 originated online platforms providing FOREX, commodity margin trading.

## Membership types

1570 members



## Full list of members

The full list, including associated entities and individual advisers, can be found 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 Director Stuart Ayres is based in Wellington, and services key groups and members around the other cities and regions of New Zealand. 35 scheme members have offshore origins – a reduction of 30 from previous period.

### North

Auckland 816  
North Shore 9  
Manukau 9  
Paihia/Hikurangi/KeriKeri 4  
Kaitaki/Mangawhai/Morrinsville 10  
Kaitaia 1  
Whangarei 10  
Thames 36

Tauranga 26  
Mt Maunganui/Papamoa 7  
Hamilton 51  
Tokoroa 1  
Rotorua 23  
Whakatane 16  
Gisborne 12

Taupo 19  
New Plymouth 19  
Stratford 1  
Napier 8  
Hastings 19  
Woodville 1  
Wanganui 12  
Palmerston North 19

Levin 1  
Paraparaumu 7  
Porirua 1  
Upper Hutt 1  
Lower Hutt 6  
Wellington 158

### South

Nelson 20  
Motueka 5  
Picton 1  
Blenheim 8

Christchurch 142  
Greymouth 3  
Hokitika 1  
Ashburton 6

Timaru 3  
Dunedin/Mosgiel 41  
Wanaka 6  
Queenstown 10

Invercargill 10

# Members by New Zealand contact

1570

# Member satisfaction survey

A survey of 141 scheme members was undertaken by ResearchNZ in April 2013 to track satisfaction with FDRS services and to identify any potential issues or areas of improvement. Sometimes decisions do not always find in the members favour, and as some of the comments would suggest, the requirement for a compliance regime is not altogether welcome.

## Key findings

The key findings of this survey are summarised as follows (previous year in brackets).

- Since joining the scheme, 75% (52%) of FDRS's members reported having had direct contact with FDRS staff
- The nature of this contact reflects the fact that the scheme is relatively new and largely involves courtesy calls from FDRS, or queries from members about scheme fees, how to register as a financial service provider and how the complaints procedure works.
- Only 7% (4%) have had contact in relation to a customer complaint.

- Those who have had contact with FDRS were largely satisfied with the level of service they received.
- 80% (81%) were satisfied/very satisfied, which is significantly higher than KPI 60%.

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

- Accessible 80% (72%)
- Knowledgeable 79% (77%)
- Prompt and efficient 81% (76%).

## FDRS net promoter score is +14.

Net Promoter Score (NPS) was developed in a commercial setting to measure the likelihood of a company's customers recommending the company to a friend, family member or acquaintance. Measured on a 0-10 point scale, respondents are initially divided into three groups: Promoters (rating their likelihood to recommend 9-10, Passives 7-8 and Detractors 0-6). To calculate the NPS, the percentage of respondents who are Promoters is subtracted from the proportion who are Detractors. Ideally, the NPS should be at least +10.

## Some members' comments

“I can always get hold of them and they are very helpful. It's useful to be able to speak to someone.”

“Whenever I contacted them, they always came straight back to me. Very happy with their service.”

“On the occasions I have asked for information or guidance, staff have been able to deal with my inquiry immediately.”

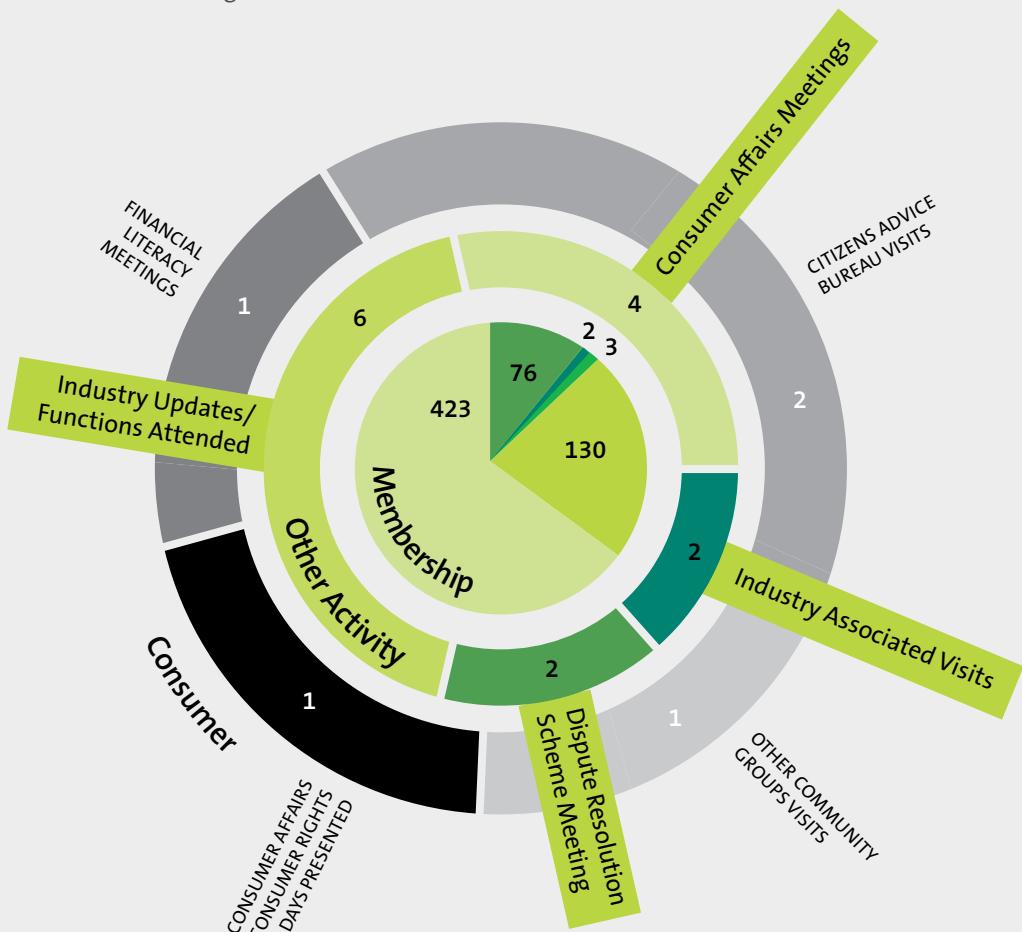
“We've received prompt and efficient responses from a designated contact person who is aware of our company and how it operates.”

“Responsive and included useful links to websites etc. Also pragmatic re resolving complaints pre-deadlock.”

“I have been impressed with their whole organisation. They are not bureaucratic and they have a sense of humour. They are here to help both parties.”

# Community and industry engagement

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



## Consumer awareness

Consumer awareness remains relatively low. Our 2012 Survey of consumers' "barriers to access" revealed "unprompted awareness" at 3% only. We have not undertaken a consumer awareness survey

this year, however given more disclosures, and our continued efforts with consumer rights days and personal calls on consumer agencies, awareness will have increased. This may also be reflected in the increased number

of complaint enquiries. The primary responsibility for promoting consumer awareness rests with the financial service providers themselves.

## Working with other agencies

We have continued to be involved with the DIG (Dispute Industry Group) Language project; the Financial Literacy and Retirement Commission and the Commerce Commission, in addition to our usual interaction with the Ministry and Financial Markets Authority.

## 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.

Our need to call upon subject matter experts for opinions on cases has been limited to the disputes about the online investment and FOREX trading platforms.

FDRS's Scheme Director 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. He is also a member of Society of Consumer Affairs Professionals in Business

Australia Incorporated ('SOCAP'). SOCAP Australia is the pre-eminent association for consumer affairs, complaints prevention and complaints handling professionals in Australia, nationally recognised for its thought leadership in consumer affairs and the networking opportunities it provides its members.

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

We made one submission in the year on the Credit Contracts and Financial Services Law Reform Bill.

## Website

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. The report from the customer satisfaction survey found that 34% of complainants visited the website. 80% said they found the website either very or somewhat useful.

Website analytics for 1 July 2012-30 June 2013:

Visits to site	32,135
Unique visitors	24,285 (74%)
Page views	96,472
New Zealand	30%
China	12%
Russia	11%
USA	5.5%
Malaysia	4%

# Consumer feedback

## Complainants survey

We commission independent researcher ResearchNZ to undertake rolling monthly surveys of complainants' satisfaction with the FDRS complaints handling process, culminating in an annual report. Our key performance indicator is that more than 70% of customers are satisfied or very satisfied. The results are based on a total sample of 29 customers.

86% of respondents were either satisfied or very satisfied with FDRS staff. 79% provided the highest possible rating of "5 out of 5" about the way in which staff handled their complaint. 76% gave staff the

highest possible rating "5 out of 5" in terms of their professionalism and knowledge.

There were only four suggestions for improvement, and were related to responding to customers more promptly and increasing follow up with customers.

FDRS Net Promoter Score was calculated at a very positive +66.

FDRS also receives a lot of unsolicited feedback, praising staff and providing thoughts on how the process went.

## Propensity to recommend FDRS

"In my case, I think everything was just right. There is nothing extra I would have wanted, they were prompt in helping me."

"Just keep it up; it was really good to have a personal touch."

"I appreciated their help, they were really professional and they helped me through a really stressful time."

"I can't praise them enough. The lady was so lovely."

"They were prompt, very professional and very helpful."

## Propensity to recommend FDRS

If any of your friends were in a dispute with their financial service provider, how likely would you be to recommend FDRS to them?

10 - Extremely likely    5 - Neutral    0 - Extremely unlikely

