



**Independent Review of
Financial Dispute Resolution Services
May 2018**

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1 FOREWORD

1.1 The scope of the review

- Part 3 (subpart 1) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the Act) requires financial service providers to be registered and generally required to be members of a Dispute Resolution Scheme if they provide financial services to retail clients. The Act also requires the members of an approved Dispute Resolution Scheme to comply with scheme rules and binding resolutions.
- Part 3 (subpart 2) sets out the application process, the mandatory considerations and the withdrawal of approval for an approved Dispute Resolution Scheme. A requirement of the Act (s.63) is that the person responsible for an approved Dispute Resolution Scheme must issue rules about that scheme, and those rules must provide for, or set out a number of different aspects, including the requirement (s.63 (1)(q))

“that an independent review of the scheme must occur at least once every five years after the date of the scheme’s approval and must be provided to the Minister within three months of completion”.

- Financial Dispute Resolution Service scheme rules (dated 1 April 2015) provide a framework for operation of the scheme and include in their rules under s.60, Part 6 – ‘Reporting by and accountability of the scheme’ the following:
 1. The scheme must commission an independent review of the scheme at least once every five years after the date of the scheme’s approval
 2. The independent reviewer must be appointed following consultation with the Ministry of Consumer Affairs
 3. The scheme must provide a copy of the review to the Minister within three months of completion
 4. The scheme must co-operate with any person appointed by the Governing Body under advice and monitoring by the Advisory Council to carry out an independent review of the scheme; and
 5. The scheme must make available to the person appointed by the Governing Body to carry out the review information on the following matters:

- a) the timeliness of the complaints resolution process; and
 - b) whether the scheme is meeting the principles set out in section 52 (2) of the Act and complying with its obligations set out in these rules; and
 - c) the results of any review by the scheme of its operations.
- Financial Dispute Resolution Service (FDRS) is an approved dispute Resolution Scheme under section 51 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. FairWay Resolution Limited (FairWay) is the owner and operator of the approved scheme.
- FairWay operate the Financial Dispute Resolution scheme under the trading name of Financial Dispute Resolution Service (FDRS). As an approved provider of Financial Dispute Resolution Services and in concordance with this requirement the FairWay Board has commissioned this independent five-year review.
- This report outlines the findings of the Five Year Independent Review of the approved Financial Disputes Resolution Service scheme provided by FairWay. For ease of reading and reporting reference is made to Financial Dispute Resolution Service acronym, FDRS. Any reference to the Board is about FairWay Resolution Limited as this report has been commissioned by the Board.
- The Board requested the scope of the review was as set out in section 52 of the Act, and did not specify a focus on any particular principle; as such, the reviewer has determined the review was to assess whether Financial Dispute Resolution Service scheme rules are adequate and comply with the principles listed in sections 52 and the requirements of section 63 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- Further background information about the FDRS scheme is provided later in the report, however, it is important to note at this stage, for ease of reading that the reviewer has relied on the Government Centre for Dispute Resolution (GCDR) best practice principles which differ slightly from those set out in the Act and scheme rules. GCDR added a principle of 'user focused' and provided useful framing questions for the principles which have been used to guide the review process.
- I would like to apologise in advance, this review will almost certainly not have done justice to the FDRS scheme's many achievements and successes. By their nature, these reports perfunctorily note success and focus on areas for

development. The very fact the scheme started life as the default member Dispute Resolution Scheme, with expectations that members would possibly switch to one of the other approved schemes, which in the main has not occurred, combined with consistently high member satisfaction rating is in itself a useful indicator of the success of the scheme.

1.2 The reviewer

- The reviewer is Simon Roughton from Orb Solutions. Simon is a director of Orb Solutions Limited which offers a range of services in associated dispute resolution industry. He holds a Masters (Education Leadership) and contracts across a wide range of dispute resolution service jurisdictions, including Human Rights Commission, Office of the Privacy Commission, Real Estate Authority, and Utilities Disputes. He also provides consultancy advice on processes and practice to organisations that have dispute resolution functions, such as ACC, Ministry of Education and Netsafe. Simon is an NMAS accredited mediator and assessor. He is also a member of the Society of Consumer Affairs Professionals in Business Australia Incorporated (“SOCAP”).

1.3 Acknowledgments

The reviewer wishes to thank:

- FairWay Resolution Limited for making the necessary arrangements for the field visit;
- the staff of Fairway for their time in answering questions and providing information;
- the many individuals from consumer groups, provider organisations and other stakeholders who generously gave up their time to discuss the Financial Dispute Resolution Service scheme with the reviewer, and
- the Government Centre for Dispute Resolution (GCDR) for their valuable work in developing best practice dispute resolution guidance, tools and resources;
- their input is greatly appreciated and ensured the reviewer could come to a holistic view on the performance of Financial Dispute Resolution Service.

2 BACKGROUND

- It is a requirement of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 that financial service providers are registered and generally required to be members of a Dispute Resolution Scheme if they provide financial services to retail clients.
- It is also a requirement of the Act (section 63) that the person responsible for an approved Dispute Resolution Scheme must issue rules about that scheme, and those rules must provide for, or set out key provisions. These key provisions form the basis of the review.
- It is also a requirement under s.63(1)(q) of the Act that any approved scheme must undergo an independent review at least once every five years after the date of the scheme's approval and must be supplied to the relevant Minister by FairWay within three months of completion. The Board of FairWay appointed Simon Roughton, from Orb Solutions Limited, as the independent reviewer for 2018.
- The scope of this review was to assess whether Financial Dispute Resolution Service scheme rules are adequate and comply with the principles listed in subsection (2) and the requirements of section 63 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- FairWay has operated a financial Dispute Resolution Scheme since 1999. The company was originally formed by ACC to handle the first step of disputes. The original name of the company was Dispute Resolution Services Limited (DRSL). On 1 July 2011, it became a Crown entity company under Section 4 of the Public Finance Act 1989. DRSL provided services and systems to resolve disputes, including medical, insurance, disability, employment, real estate, environmental, financial and commercial.
- FDRS was the Government's reserve Dispute Resolution Scheme, as defined in the Financial Service Providers (Registration and Dispute Resolution) Act 2008. FDRS was owned by Ministry of Business Innovation and Employment (MBIE). On 1 October 2010 DRSL was awarded the contract to operate FDRS, the Reserve Scheme. It operated under the Financial Service Providers (Dispute Resolution – Reserve Scheme) Rules 2010 and Financial Service Providers (Dispute Resolution – Reserve Scheme Fees) Rules 2010.
- In 2013 notification was given that the Reserve Scheme was to be disestablished with a target date of 30 June 2014, and approval was given to

the Reserve Scheme operator, FairWay Resolution Limited (formerly Dispute Resolution Services Limited) as the approved scheme to replace it. The year ending 30 June 2015 saw the scheme transition from being the reserve scheme to being an approved scheme. There was little impact on members who were conferred membership entitlements, fees and jurisdiction of the previous regime.

- In July 2017 FairWay transitioned from Crown-ownership to become privately owned by employees.
- This review was commissioned by the Board as the owner of Financial Dispute Resolution Service. However, it is beyond the scope of this report to comment on any other aspect of FairWay's dispute resolution services, such as ACC, Building and Construction, Telecommunications, International Students, Family Dispute, or any other services it currently provides.
- While this review is technically reviewing the scheme over the past five years, the focus of the report is predominately on the scheme in its current form. As indicated from the above, there has been significant changes in structure and accountability lines over the past five years and there would be little to gain from analysing processes from three to five years ago. Notwithstanding this, annual reports over the past five years have been used to identify trends and areas in which FDRS have used available data to improve its processes, and there is no evidence to suggest it was not operating effectively and efficiently for the first three years of the review period.

3 EXECUTIVE SUMMARY

3.1 Overall conclusion

- The reviewer can confirm that Financial Dispute Resolution Service [FDRS] is a successful and professionally run scheme which provides an effective and efficient service to users of its service. It complies with the provisions as set out in s.52 as mandatory considerations for approval and s.63 of the Financial Service Provider (Registration and Dispute Resolution) Act 2008 which prescribes the rules that need to be included in an approved Dispute Resolution Scheme.
- The FDRS scheme is owned and operated by FairWay Resolution Limited. (FairWay). It has undergone a number of significant changes over the years and with the shift from being a Crown-owned entity to a private company, makes the timing of this review useful, as it provides an opportunity for FairWay to discuss with the scheme and stakeholders about future developments which would be of benefit.
- FDRS is one of four financial Dispute Resolution Schemes in New Zealand and 16% of the financial service providers belong to the FDRS scheme. Therefore, any recommendations made, are done so within the context of this scheme relative to the size of its operation. I wish to note that a number of the recommendations are not new insights to both the current and immediate past client director, who had already started making changes to the scheme to ensure it continues to meet the requirements of the Act and the principle of being a user focused service.
- It is important to recognize the emphasis FDRS places on best practice dispute resolution, either with the member's internal complaint process or when a complaint is with FDRS. There is a strong emphasis from FDRS on allowing parties the opportunity to find ways to resolve a complaint at the earliest possible opportunity and at the lowest level. The parties are also made aware of their right to have an independent adjudicator consider their complaint, and of their rights to a legal process outside of the dispute resolution process.
- A key strength of the FDRS model is the scheme adjudicator(s) independence from any dispute resolution process that has taken place before any referral to the adjudicator for a final decision. This independence of the adjudicator

provides parties with an extra layer of confidence that the scheme has effectively minimised any perceived or actual bias.

- The scheme was assessed against AS/NZS 10002:2014 standard ‘Guidelines for complaint management in organisations’, ‘Key Practices for Industry-Based Customer Dispute Resolution’ referred to in this document as ‘Key Practices’, and the Government Centre for Dispute Resolution (GCDR), New Zealand, best benchmark principles.
- While the reviewer is confident the scheme is professionally run, delivering sustainable results and meeting its intended objectives, it is also a purpose of the review to allow the scheme to consider areas for future development. What follows is the reviewers’ recommendations as areas of priority for future development.

3.2 Areas of priority for further development

The areas which were identified for further development are:

- Review and update the scheme rules.
- Develop systems for more effective data collection.
- Take a more proactive approach to members providing leadership on best practice complaint resolution procedures and ensuring compliance, when necessary.
- Tighten up the role and function of the Advisory Council to provide further level of independence for the scheme.
- Create a process manual to increase consistency of approach.
- Ensure scheme is adequately resourced to ensure areas of priority are achieved.

3.3 Review and update scheme rules

- The current scheme rules (dated 1 April 2015) were a result of changes made in response to the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014. Since that time modern alternative Dispute Resolution Schemes are moving beyond the consideration of individual complaints and are actively contributing to improvements in both complaint handling and service delivery within the industry being overseen. FDRS should place more emphasis on these latter functions and the Scheme Rules should be amended to reflect this.

- The current scheme rules (2015) need to more accurately reflect the changes which have occurred within the structure of FairWay as the governing body. FairWay is now a privately-owned entity and there are gaps in the scheme rules; particularly around the role and function of the scheme adjudicator and advisory council. An example of this is the overlap in function of the scheme adjudicator and the client director in determining whether the scheme has jurisdiction. Determining jurisdiction of a complaint should rest with the client director on the proviso that a user of the service has the right to have the adjudicator make a determination on jurisdiction, if requested.
- It is recommended when reviewing the rules that it includes in Part 1 – ‘Core Features of the scheme the principle of ‘user focused’ alongside the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness in determining the scheme rules. This would bring the scheme into alignment with the Government Centre for Dispute Resolution benchmark principles.
- It is important to note, there are likely changes to the Act which are currently being considered, which may impact on scheme rules moving forward, and pragmatically it may make sense to wait for the Act changes to be finalised before requesting that Ministers consider a change of rules, as required under s.66 of the Act.

3.4 Data collection and use

- Data is critical to understanding the triggers, outcomes, costs and systemic issue trends, which then allows users to identify mitigation measures and opportunities for improvements.
- FDRS should explore ways to better collect and analyse data from enquiries and complaints. The current processes for collecting data are relatively manual, time and resource intensive, and not necessarily capturing accurate and meaningful information which will assist them in promoting the long-term interests of consumers and financial service providers. The data it does collect on timeliness of complaints in its process indicates it operates efficiently, however, it is not necessarily providing good quality data on disadvantaged consumers and their ability to redress.
- A challenge inherent in the scheme is that there is currently no requirement for scheme members to self-report the number of complaints it receives through its

internal complaint process, nor any data on how effectively the complaint was handled, or any other data to assist the scheme in promoting the long-term interests of consumers and financial service providers. Therefore, the scheme has to rely on data from complaints which have gone to the scheme and make assumptions on number and outcome of complaints which members might receive and resolve through their internal complaint process and extrapolate this out. This is not necessarily a reliable indicator of a complainant's access to redress. This is highlighted in the vision of MBIE's Consumer Protection & Standards branch which has a goal of improving consumer access to redress. They have relied on data from a National Consumer Survey 2016 which showed that of the 55% of consumers who experienced a DR issue in the previous two years, that a third took no action.

- It is recommended that the FairWay Board consider a requirement under the scheme rules for members to provide meaningful data to the scheme on its internal complaints, to improve overall complaint handling.
- Recent consumer research conducted in the UK suggested that there were significant gaps on data collected by ADR schemes, particularly in relation to the demographics of their users. These data gaps were seen as limiting ADR schemes' ability to understand and expand their customer base, particularly to include disadvantaged or vulnerable individuals. See:

<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Gaps%20overlaps%20consumer%20confusion%20201704.pdf>

3.5 Provide leadership to scheme members on best practice complaint handling

- It would be useful to have as a main function of the scheme, an emphasis on contribution to improvements in both complaint handling and service delivery for members. This would include strategies to increase member's ability to manage complaints effectively within their internal process, and to use FDRS service as a mechanism to ensure customers, as users of the service, are able to get effective and efficient resolution of their complaint.
- The reviewer was told that the majority of scheme members see belonging to an approved scheme as simply a legislative requirement, and a compliance cost. Associated with this is the low number of complaints which go through

FDRS process from members, which means there is not a strong driver from members of the scheme to do things to improve their complaint handling.

- Currently FDRS does not have the resources to provide leadership on best practice complaint handling beyond providing information on its own website, the occasional webinar, and through monthly newsletters, or other communications. The current client director has been proactive in meeting with scheme members around the country which is assisting with building a trust relationship which will hopefully encourage members to see FDRS as a resource for early resolution of complaints.
- The scheme rules require members to have their own complaints resolution procedures and sets minimum requirements for those procedures. Currently FDRS is not resourced to a level which would allow it to effectively monitor compliance of the procedures, as set out in rule 49 'Duties on members to have own complaints resolution procedures'.
- To increase the awareness and effectiveness increasing the schemes ability to monitor compliance, and when necessary act against a member, would assist in making improvements in complaint handling for financial disputes. As a starting point, it is recommended that the scheme focus on ensuring members have taken a proactive approach to increase awareness and accessibility of dispute resolution for consumers, particularly those who are disadvantaged. One measure which may be useful is to encourage scheme members to include a link to the FDRS website which outlines what a consumer should expect from the internal complaint process, and what their options are.

3.6 Role and function of Advisory Council

- The role and function of the Advisory Council needs to be reviewed. Currently the 'terms of reference' for the Advisory Council are not in alignment with FairWay Resolution Limited entity and do not reflect the best practice principles as outlined by GCDR.
- It would be useful for FDRS as an approved privately-owned dispute resolution service, to have an external independent body, which is able to monitor and if necessary provide recommendations and actions from the FairWay Board on any perceived or actual breaches of section 52 of the Act. The current scheme rule 57 states 'the Governing Body appoints the Advisory Council to oversee the operation of the scheme on its behalf and to provide it with advice from time

to time'. Having an independent council which has more ability to monitor the scheme would provide more effective and transparent checks and balance for the Board.

3.7 Develop a process manual

- Develop a process manual for FDRS to aid with consistency of approach to complaint handling and to mitigate risks associated with any changes in personnel, and to help with annual review process. The process manual needs to be a living document and reviewed periodically.

3.8 Resourcing of scheme

- While the approved FDRS scheme is owned and operated by FairWay, the scheme FDRS operates relatively independently of FairWay in its day-to-day operations. There is an accountability line with the client director providing reports on a monthly basis to the Board, via the General Manager of Service Delivery.
- Having a larger organisation which operates dispute resolution across a wide range of jurisdictions allows for some sharing of resources and provides a financial buffer for FDRS. It also means FDRS has access to wider organisational policies and procedures. There is also sharing of expertise of best practice in dispute resolution. A good example of the sharing of resources has been having one 0800 number for contact about any of the jurisdictions that FairWay offers. The call might initially be received by FairWay; however, any financial enquiries and complaint matters are dealt with only by one of the FDRS staff. FDRS would need to ensure that consumers are not confused as to who the complaint body is that they are dealing with.
- FairWay will need to carefully consider the resources available to FDRS scheme. This is particularly important if it wishes to grow the market share of scheme members and to be viewed as a scheme which adds value to members and consumers. It is remarkable how effective the scheme is managed considering the limited resources it currently operates under. If the Board were to agree to implementation of recommendations, there would be a need to increase, at least in the short term, the resources to allow the client director to action recommendations.

4 SUMMARY OF BENCHMARK PRINCIPLES RECOMMENDATIONS

- What follows is recommendations of things for the FairWay Board to consider in relation to FDRS application of the benchmark principles as set out in Section 63, Subpart 2b of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

<http://www.legislation.govt.nz/act/public/2008/0097/75.0/DLM1109578.html>.

This is also attached in the appendix.

- As noted in the methodology, the reviewer has relied on the Government Centre for Dispute Resolution (GCDR) framework in making these recommendations. Some of these benchmark principle recommendations are referred to already in the priority recommendations.

4.1 User focused and accessibility

- Add ‘User Focused’ to the scheme rules principles.
- Ensure processes are responsive to people with disabilities and learning and/or cultural barriers.
- The Board should continue with its focus on raising the profile of FDRS and the services it offers to consumers and members, with a particular focus on users who are under-represented. Socio-demographic information gathered should be compared with the equivalent statistics produced by Statistics New Zealand and where there are identified areas of under-representation, work should be undertaken with relevant representative groups on how best to remedy this issue.
- The Board should revise the rules for providers to promote the scheme, beyond having it simply on their website and disclosure documentation.
- FDRS should set and monitor standards of complaint handling against which providers will be expected to conform.
- Create a clear FDRS branding which is separate from FairWay. For example, letterheads with both FairWay and FDRS may create confusion for consumers.

4.2 Independence & Fairness

- The Board should continue to ensure the scheme adjudicator bases decisions on what is fair and reasonable in all the circumstances. However, it should

produce guidance, and/or host a webinar for providers, on the fair and reasonable test and how it is applied to decisions.

4.3 Accountability

- Revision of terms of reference for Advisory Council to be an external body to encourage ongoing improvement and better outcomes across the system.

4.4 Efficiency

- The Board should invest in an intelligent system which routinely collects and records financial disputes to assist the scheme to report against its performance, objectives, quality standards, targets, general data including outcome trends and any issues arising.

4.5 Effectiveness

- The Board should consider tightening up the rules and processes for systemic and serious misconduct issues.

5 PART ONE: REVIEW OF THE SCHEME BENCHMARK PRINCIPLES

5.1 Principle one: user focused and accessible

“Users of dispute resolution services are at the centre of all aspects of the dispute resolution system. Dispute Resolution is easy for potential users to find, enter and use regardless of their capabilities and resources”.

- A requirement to belong to a scheme when offering financial advisory services is mandatory and there is choice in which scheme to use. The process for new members to join the FDRS scheme is simple, transparent and clearly explained as to their rights and responsibilities both verbally and in written material. The person responsible for membership enquiries is separate from complaints which ensures a level of independence.
- Once a consumer is aware of the services available from FDRS the process is clearly explained, and they are provided with information about the role of FDRS and the options which are available, including adjudication and legal processes. Consumers are provided guidance on information to supply in support of their complaint and FDRS makes a decision on the best dispute resolution approach. If the complaint has not been through a member’s internal complaint process, the complainant is offered the opportunity for FDRS to assist in getting the complaint to the scheme member.
- New Zealand historically has a ‘low complaint attitude’ and it is also hard for consumers to get access to redress due to cultural barriers, disability, financial literacy and literacy more generally. Raising awareness for consumers that a financial dispute resolution service exists, and is an option for them, is not an easy sell. Annual report data since 2013 highlights a lack of awareness of FDRS. Unprompted consumer awareness has consistently been reported to be around 2 to 3%. The challenge of raising the awareness, both unprompted and prompted of the scheme is one shared by a majority of complaint resolution bodies.
- The National Consumer Survey 2016 highlighted that of the 55% of consumers who experienced a dispute resolution issue in the previous two years, a third took no action. Consumers had more awareness of organisations that provided information on consumer rights and laws, with Citizens Advice Bureau only 5% of those surveyed not being aware of this service, whereas 85% of consumers

were not aware of Financial Dispute Resolution Service. This low awareness rate of FDRS was shared with other financial dispute organisations and comparable with results for electricity, gas, and telecommunications dispute organisations. The exception to the low awareness was the Banking Ombudsman scheme which had 51% awareness and the Disputes Tribunal with 80% awareness of the scheme.

- FDRS predominately relies on the scheme member to provide its users with information about the Dispute Resolution Scheme. FDRS has also been involved in raising awareness of the scheme using strategies such as building relationships with the Citizen Advice Bureau (CAB), publications, newsletters, webinars, and direct engagement with the community through such things as Community Rights days. It is unclear how successful these strategies have been as the percentage of unprompted awareness has not changed significantly over the time.
- It is noted that FDRS are part of a new MBIE Consumer Protection & Standards branch working group, which has one of its initiatives to improve consumer access to redress. The vision of the Consumer Protection Partnership (CPP) is to share information, knowledge and resources to help consumers know their rights, know what to do if things go wrong, and get help if they need it.
- A challenge which FDRS faces, is it holds 16% of the market share of financial service providers' membership of Dispute Resolution Schemes, which is a relatively small percentage with the Insurance Ombudsman and Financial Services Complaints Limited (FSCL), holding 37% and 50% respectively. So, any raising of consumer awareness of the schemes would need to take into account the relative size of the schemes and their ability to resource promotion accordingly.
- FDRS explained the number of complaints that FDRS manages through its process is relatively small. It was suggested that the main reason is because the majority of providers had good internal complaint processes. Survey results suggest that beyond the FOREX complaints, most complaints are managed effectively through the scheme members internal complaint processes. While this assumption has some merit, it appears to be relatively untested.
- There has been a focus on educating the members of the scheme to clearly communicate the complaints process and the option of FDRS. In the FDRS

2015 annual report's comment about unprompted awareness, "but the primary responsibility to ensure that consumers have access to dispute resolution service rests with the Financial Service Provider themselves and we will continue to monitor and if necessary, admonish, advise and if no suitable response, ultimately report non-compliance to the regulator."

- Currently FDRS do a web search of providers to make sure the members have provided information about the complaint process. Due to resourcing, this has been done on an ad-hoc basis and the quality of data from this is insufficient to comment on how successful this approach and outcome has been. It would be useful for FDRS to have more data on this to allow them to develop their strategic plan on raising consumer awareness.
- FDRS have taken a positive approach with its members in relation to requirements under rule 49 of the FDRS scheme:

"A member must:

- a) Establish (either itself or through membership or arrangement with another body) proper procedures for dealing with complaints about the provision of financial services by the member; and*
- b) Publicise to customers those procedures for making a complaint, that the service is free of charge, to the scheme; and*
- c) Receive and consider complaints under those procedures; and*
- d) Use its best endeavours to resolve complaints under those procedures."*

- One such measure which was suggested by FDRS to members, was for it to take on a role of providing a compliance rating, reviewing the process, promotion and accessibility of the members complaint process. The rating would be included on the membership schedule on FDRS website and the member could use it for promotional purposes. This was put to the members in a survey in 2015 and of the 34 responses received from the members, 14.71% said yes, 38.24% said no, and 47.06% said maybe, and needed more information.
- This has not progressed as a compliance rating, however there is merit in exploring this further as an effective strategy and function of the scheme. The client director has been working with scheme members to encourage them to promote their internal and Dispute Resolution Scheme as a way of building trust with consumers. Anecdotal feedback given to reviewer suggests this has

been a positive move and some members are displaying information in their office(s) about being members of the FDRS scheme.

- FDRS offers more than a dispute resolution process for individual complaints. The scheme also provides information to its members about potential areas for complaints in their financial process or communication with consumers. FDRS provides members with information via its newsletters, website and webinars on potential situations which may lead to complaints. For example, in the National Consumer Survey 2016, consumers were presented with scenarios around interest rates and contract conditions. Only 16% of consumers were aware that a lender may charge more than 100% interest on a consumer credit contract with 50% not knowing and 34% incorrect. Ensuring members are aware of things like this allows them to be proactive in communicating clearly that information, reducing likelihood of complaints.
- As indicated earlier, consumer awareness of industry-based Dispute Resolution Schemes is not high, the majority of consumers are simply not aware of the service unless they have a need to use such a service. Associated with that are natural justice principles which require the scheme members the opportunity to resolve the complaint directly with the complainant. The checks and balances on the internal complaint processes of members varies. Some of the scheme members belong to a large entity which allows them to be well resourced in complaint handling and resolution, other scheme members may not have a strong process which means the manner in which the complaint is managed may be less effective. The issue is there is scant information on the quality of the internal processes. Ultimately this has a flow on effect to consumers ability to redress. Complaints which have gone through to the scheme are managed effectively, however there is scope to improve consumers awareness on a larger scale, particularly about its function to provide an independent dispute resolution process.
- One useful step would be to separate out Financial Dispute Resolution Service from FairWay Limited in its branding and marketing. Having both logos on letterheads, same phone numbers and dual websites can be confusing for consumers. FDRS have taken some steps to address this, for example, up until recently a consumer would call an 0800 number to make a financial enquiry or complaint and someone from FairWay would make the initial response. Often, that person might not have been able to provide the

appropriate response to a financial enquiry. FDRS have rectified this by ensuring that any caller contacting either with an enquiry or complaint is now managed by one of two dedicated FDRS staff and non-FDRS staff automatically transfer all enquiries and complaints to FDRS staff.

- Attempts have been made to work across the sector to raise awareness of financial Dispute Resolution Schemes by having a presence at community days, however as each of the schemes business models are to a degree in competition, there is little incentive for all schemes to work together and practical realities, such as resourcing, make this a challenge.
- Notwithstanding the inherent challenges of raising the awareness of the scheme, there are clear indicators the current scheme is user focused and accessible. FDRS have made a number of significant changes to its processes to make the service more accessible to members and consumers. Some of these include a new website which provides useful and transparent information about all aspects of its operation. The process is responsive to language and cultural barriers. It is recommended that FDRS include on its website and processes access to the scheme for people with disabilities. For instance, it could place on its website a video in New Zealand Sign Language. It should also check that its online complaint form is able to be used by those with visual impairments.
- Feedback from members commenting on the ease of use for entering the scheme. FDRS has a dedicated membership team who deal with all relevant membership access. FDRS separated out membership from its facilitators, mediators and adjudicators. The user fee charged was revised after FDRS privatised and is in alignment with other similar schemes. Feedback from members in surveys have consistently indicated satisfied or very satisfied with their membership in the scheme. The survey results were in alignment with comments made in conversations with scheme members.
- The staff expertise of FDRS is high. They have currently well qualified staff with significant experience in financial dispute resolution field. The incumbent client director has a broad range of skills and expertise. The previous one remains employed at FairWay and is also a valuable resource, both for institutional knowledge and the ability to provide support if workload increased or if a client director was on leave. There are a relatively low number of current complaints

which require an adjudication decision. FDRS has a pool of adjudicators at its disposal.

- The scheme rules state it is a function of a scheme adjudicator to make determinations on whether a complaint is covered by the scheme. This is something which needs reviewing and should primarily be the function of the client director, with the right of appeal for the consumer and scheme member to request the adjudicator for a jurisdiction decision, if required.
- When a complainant makes a written complaint, they are provided with information about the complaint process and advised of their rights. They are also provided with information to allow them access to the appropriate tribunal or court, in the event it is outside of jurisdiction. It would be useful for FDRS to have this clearly explained on its new website, under 'How we work'.
- Complainants are required to put their complaint in writing, providing supporting information. Complainants can also contact FDRS directly on the free phone number and they will provide guidance on how to make a complaint and can assist in getting the complaint to the member if needed. The service is free of charge and there are staff competent to assist.

5.2 Principles two & three: Independent and fair

"Disputes are managed and resolved in accordance with applicable law and natural justice. All dispute resolution functions are, and are seen to be, carried out in an objective and unbiased way".

- The scheme rules and processes generally meet the requirement of independence as set out in the GCDR guidelines. It is worth noting that GCDR's question about independence is: "Is the scheme as independent as possible?" This is an important qualifying question, as any scheme is not truly independent, as there is always a reliance and a relationship with something else. An argument may be made that as FairWay Limited is a private company with a profit-making rationale that this will impact on its perception or actual independence. It is clear from the information provided that FDRS are acutely aware of the need to mitigate against these risks and do this very effectively with its Financial Dispute Resolution Service.
- It is clear from discussions with relevant staff that consideration is given to ensuring the scheme is as independent as possible. One significant change

which occurred recently was to separate the membership (administration) from its enquiries and complaints. A second example implemented by the current client director was to remove the 'member only' section from its website. The purpose of this was to increase transparency and independence. Any individual can see the fee structure paid by a member.

- FDRS have also streamlined its process for complaints which have either not been through the member's 20-day process or were not in its jurisdiction to deal with the complaint. One recent change is for FDRS to keep out of the process once the complaint is with the member. In this way, it allows for natural justice principle to apply. It also uses early dispute resolution processes by providing information to both parties on the process and possible things to consider.
- FDRS is owned and governed by FairWay which has policies and processes for all employees and dispute resolution processes to identify and manage any perceived or real conflicts of interest. FairWay also has policies and procedures to comply with the Privacy Act, 1993 and there are no indicators that any breach of privacy and confidentiality has occurred.
- The previous client director rewrote a significant number of the processes. These changes were clearly outlined and done to meet a procedural fairness standard. Comments from survey results indicate these have been successful. Even when an adjudicator has made decisions which went against the person, the feedback has been that the process was clearly explained and the way the decision was made was fair. Comments were also made that they were provided information on their options outside of the scheme process.
- A third example of how FDRS meets its obligations to be independent and fair is the requirement to have an independent adjudicator. Any complaint requiring a decision from the adjudicator is not reliant on considerations presented by the scheme. The scheme will prepare the relevant material and only provides responses of fact to the scheme adjudicator. The scheme does not provide comment to the adjudicator on any aspect of the complaint. It would be useful for FDRS to adapt the information on the website about the role of the adjudicator and the adjudication process.
- The decisions provided in the case studies clearly show the adjudicator was independent and objective, the decision complied with natural justice, reasons were provided for their decision and the basis for making the decision was

clearly articulated. The statistical data of adjudicator decisions are not significantly weighted towards either consumer or scheme member.

- Final determinations are based on the adjudicator considering what was fair and reasonable in all the circumstances. However, using the principles of what was fair and reasonable in all the circumstances could be a reason a scheme member or complainant may perceive there to be unfairness in the process. It would be important for the adjudicator to be clear on the basis for its decision on what is fair and reasonable in all the circumstances, as it is a balancing act for the adjudicator as they need to make a final decision having regard to the law, relevant industry codes of practice; and good industry practice. The adjudicator is also not bound to give effect to strict legal rights or obligations or to legal forms or technicalities.
- It would be worth FDRS emphasising the fundamental purpose of Dispute Resolution Schemes is that they are an alternative to courts, rather than a replication of a court process. Associated with this would be the need to ensure the complainant of their rights to bring proceedings to a court or tribunal. The information provided to complainants meets the best practice principles.
- The scheme is owned and operated by FairWay, as approved by the Minister. The Governing Body is the Board of Directors of FairWay, taking advice from the Advisory Council. Its functions and responsibilities are defined in the 'Terms of Reference of the Governing Body and Advisory Council', and include responsibility for the operation of the scheme according to the scheme rules.
- This is one area in which it is recommended FairWay Board make some changes to ensure there is more transparency and independence. The Advisory Council's functions state they advise the Board of the operation of the scheme according to the benchmark principles. There was little evidence to show the effectiveness of the Council in the advice it provided nor in its ability to take any action beyond advice. As an example, the wording in the Terms of Reference related to 'The Functions of the Council' are somewhat ambiguous.

"5 (ii) Receive and consider recommendations from the Scheme on matters relating to:

- a) Systemic and serious misconduct issues
- b) Membership termination
- c) Members compliance with the rules

d) Monitor the Scheme to ensure appropriate action is taken to assist Members remedy the issues and if necessary ensure the Scheme reports to the appropriate agencies."

- While they are an advisory body with no responsibility or liability for the scheme, they could serve a more useful purpose in providing a check and balance process for the scheme. The current client director provides his monthly report to both his manager and to Chair of Advisory Council. While this is useful to provide them with this communication, the recommendation would be for more regular meetings with the Council and for it to be asking 'the hard questions' to ensure the scheme is meeting its obligations. It is also not clear what happens to any input or recommendations from the advisory council to the FairWay Board.
- It is recommended the Advisory Council have more ability to consider information and data being received by the client director, so it can confidently advise the Board on the operation of the scheme according to the benchmark principles.
- FairWay Resolution Limited sets the FDRS annual budget through a mix of fixed and variable levies. The variable levies element is calculated using the actual number of complaints considered by FDRS in the previous year. All things being equal, that establishes a sound financial base for the year's operations. However, it can create problems if, in a particular year, there is a surge in complaints which are outside of jurisdiction or a result in changes in legislation. An historical example of this was the FOREX trading, which accounted for a significant number of complaints which FDRS had to manage. However, funding did not sufficiently cover cost of the scheme. In these situations, FDRS was faced with dealing with a surge in complaints while the funding for them was not received until the following year.
- The FOREX complaints were a challenge for FDRS and consumers. FDRS had a fixed number of staff to manage an anticipated set workload. A surge in complaints outside of their jurisdiction created problems with the management of casework. Inevitably, this led to delays in closing cases. Complainants were not satisfied as they could not get any redress and it was not easy to explain the reasons. As a result, satisfaction with the scheme by complainants dropped.

5.3 Principle four: Accountability

“There is public confidence in Dispute Resolution Scheme. Those involved in its design and delivery are held to account for the quality of their performance. Regular monitoring and assessment and public reporting encourages ongoing improvement and better outcomes across the system.”

- As a private entity FDRS is accountable to FairWay Board and ultimately to the Minister as required in s.52 (1 & 2) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- FDRS has in place many measures to ensure there is public confidence in the scheme. They have consistently assessed their own performance and made changes to ensure better outcomes for members and consumers. The annual reviews, which are publicly available and provided to the Minister, highlight areas where FDRS has met and/or exceeded key performance indicators and in areas where there has been a gap it has put processes in place. These include the following:
 - a) Time to close complaints, with targets for 60 and 90 and 180 days;
 - b) Time to close complaints made against the scheme;
 - c) Member satisfaction;
 - d) Complainant satisfaction;
 - e) Unprompted awareness; and
 - f) Reporting of compliance with the scheme document by providers.
- The contents of the annual report are in line with the expectations contained within the Key Practices document.
- A review of the annual reports of other schemes indicate that the targets used are broadly similar between organisations, although due to differences in processes, nomenclature and the actual standards used direct comparison of performance is impossible. There is scope for FDRS to consider revising the measures to ensure the indicators include:
 - a) customer focus;
 - b) service usage by socio-demographic breakdown compared to information from Statistics New Zealand;
 - c) customer satisfaction (by socio-demographic breakdown);
 - d) unprompted and prompted awareness;
 - e) provider focus;

- f) satisfaction surveys by type of member;
- g) responsiveness of members to FDRS recommendations (excluding binding decisions).

5.4 Principle Five: Efficient

“Dispute Resolution provides value for money through appropriate, proportionate and timely responses to issues. It evolves over time and makes good use of information to identify systemic issues.”

- Scheme members and consumers need to have confidence that the scheme is operating efficiently by keeping track of complaints, ensuring complaints are being dealt with in the most appropriate process or forum and the scheme is regularly reviewing its performance.
- The model operated by Financial Dispute Resolution Service sets out how a complaint brought to it should be handled. There is a clear process which considers jurisdiction issues, privacy issues and how the complaint should be progressed. Should the complaint fall outside the jurisdiction of FDRS it would be referred timeously to the appropriate body. There are clear time limits set in the scheme rules for the handling of the complaint, which include the timeliness of acknowledging and responding to an initial complaint, time taken to investigate a complaint, and the time taken to make a decision.
- The mechanisms for deciding if a complaint is at deadlock and therefore allowing FDRS to deal with the complaint are reasonable. Jurisdiction information as outlined in Part 2 of scheme rules is summarised on its website and users have the opportunity to discuss any concerns about jurisdiction. As discussed earlier, it is recommended a change in rules to allow delegation to the client director to make decisions on jurisdictions in the first instance rather than a scheme adjudicator would be useful.
- For the majority of members, the legislative requirement to belong to a Dispute Resolution Scheme, means they see belonging to the scheme as simply a compliance cost. From the members perspective, there are not significant numbers of complaints which are not directly managed through its internal complaint process. FDRS refers complaints, and when appropriate provides support to the consumer in getting the complaint directly to the member if it has not been through their process.

- The time frames in each of the complaint processes are in line with scheme rules and a focus is on ensuring complainants and members are kept informed about the progress of their dispute through the process. FDRS have streamlined their triage process with the aim on resolution at the earliest opportunity. The scheme requires complainant and member to have provided all relevant information at the earliest opportunity.
- Survey results and interviews indicate those that did need to use the service found the process clear and efficient. The 2016 /2017 annual report results were:
 - a) 100% of surveyed consumers found FDRS's process fair and independent.
 - b) Average number of days to resolve a complaint: 25 days (down from 55 in the previous year).
 - c) 89% of FDRS scheme members found FDRS easy to work with and 83% found FDRS efficient in dealing with complaints.
 - d) 10 webinars, 9-member events, 29 sector engagement meetings and events, 4 sector training events.
 - e) 1543 scheme members.
 - f) 236 complaints registered with FDRS.
 - g) 455 complaints completed, 230 of which were resolved by scheme members before FDRS's formal process.
- FDRS takes a proactive role with complaint handling as well by providing a scheme member with an opportunity to discuss a complaint which is still with the member. It provides advice on things the member should consider and refers them to appropriate pieces of legislation related to their complaint. This conversation is with either the facilitator or client director. The scheme does not instruct or give their view on the merits of a particular complaint.
- One member who was interviewed commented about being frustrated when contacting FDRS for advice at an early stage of a complaint in its internal complaint process and was told there was no indication of any breach of the rules. Based on that information, the member turned down the complaint and the complainant exercised their right to use FDRS. The client director used early dispute resolution strategies and suggested the information the client and member had provided, that if it went to a formal adjudication that the complaint might be upheld. The Member acted on information provided by the client

director and resolved the complaint. The Member also commented on the professionalism, explanation of the process, advice on the processes and impartial approach taken in response from the client director.

- While the situation was not ideal, the response from the client director to improve both the situation and the process was appropriate. As a result, clearer guidelines on role, independence, and ensuring measures were put in place to limit similar situations occurring.
- FairWay is a large dispute resolution organisation which has well qualified staff with the requisite skills, qualifications and experience. The FDRS scheme is a small part of this organisation with only three full-time staff. FairWay has identified the importance of ensuring it has well qualified staff for this area.

5.5 Principle Six: Effectiveness

“Dispute Resolution delivers sustainable results and meets intended objectives. It fulfils its role in the wider government system by helping minimise conflict and supporting a more productive and harmonious New Zealand.”

- A measure of the FDRS scheme's effectiveness on whether it is delivering sustainable results and meeting its intended objectives is by reviewing whether it has an appropriate and comprehensive jurisdiction and periodic independent reviews of its performance.
- The Act prescribes the scope of the scheme, including the adjudicators decision making powers. Historically as the scheme was set up as the reserve scheme there were some gaps in the scheme rules. The rationale was for the reserve scheme to provide a fall back from financial service providers that were not accepted as members of other schemes. As a result, the reserve scheme received complaints from consumers where the providers were operating off shore. The complaints from these foreign exchange (FOREX) significantly skewed complaint figures and used a lot of FDRS resources.
- With the exception of the FOREX complaints, the scope of the scheme rules is sufficient to deal with the majority of complaints, and the specified maximum of \$200,000 is consistent with the nature, extent and value of customer transactions in the financial service industry.
- The scheme has rules which allow for referral of systemic industry and serious misconduct issues which have been identified. There are gaps in what happens

once a systemic or serious misconduct issue has been identified. The current process appears to be that the client director is required to report to the Advisory Council as the terms of reference state a function of the council is to 'receive and consider recommendations on matters relating to systemic and serious misconduct issues'. It then requires the Advisory Council to 'monitor the scheme to ensure appropriate action is taken by the scheme to assist members remedy the issues and if necessary the scheme reports to the appropriate agencies'. The Board needs to consider revising the process it uses for ensuring systemic and serious misconduct issues are dealt with by the scheme as the current process lacks clarity on where responsibility and accountability for taking necessary action lie.

6 METHODOLOGY

The following approach to the review was adopted.

- Phase 1: Desk-top research was undertaken by the reviewer. Documents necessary for the review was provided by FDRS for consideration both prior and during the review period. In addition, other documents were sourced from relevant websites. More than 100 individual documents were reviewed and these are listed in Appendix 1.
- Phase 2: Fieldwork was undertaken in Wellington. This consisted of discussions held between the reviewer and representatives from users of the service, advisory council members, CEO, other stakeholders, and staff from FDRS itself. Users of the service not located in Wellington were contacted via Skype or phone calls. A list of those with whom discussions were held is in Appendix 2. A total of 26 meetings were held. Finally, while conducting the fieldwork, the reviewer was presented with further documents by those interviewed.
- Meetings with FairWay Resolution Limited management to clarify issues and discuss findings from review.
- The reviewer is confident that all relevant information necessary for this review was collected and considered.

7 STRUCTURE OF THE REPORT

The report is structured as follows:

- A review of whether Financial Dispute Resolution Service scheme rules are adequate and comply with the requirements of section 63 and the principles set out in subsection (2) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- In assessing FDRS' dispute resolution processes, the reviewer has relied on the AS/NZS 10002:2014 standards document 'Guidelines for complaint management in organizations,' the 'Key Practices for Industry-based Customer Dispute Resolution'¹ and the Government Centre for Dispute Resolution (GCDR) best practice principles² which were released in 2018.

¹ https://static.treasury.gov.au/uploads/sites/1/2017/06/key_pract_ind_cust_dispute_resol.pdf

² <http://www.mbie.govt.nz/about/our-work/roles-and-responsibilities/government-centre-dispute-resolution/tools-and-resources/dispute-resolution-best-practice-principles>

- The GCDR framework was particularly useful as it looked generically at best practice principles of Dispute Resolution Schemes across a range of jurisdictions and the framing questions under the principles provided useful indicators to guide the review process.
- The reviewer has relied heavily on the framework provided by the Government Centre for Dispute Resolution and this report has been complied using GCDR's model. As indicated in the foreword, GCDR added a principle of 'user focused' to the six principles set out in the Act. GCDR's view is that users of dispute resolution services are at the centre of all aspects of the dispute resolution system and dispute resolution process needs to be easy for potential users to find, enter, and use regardless of their capabilities and resources.
- GCDR pragmatically grouped some of the principles; 'User focused and Accessible', 'Independent and Fair' and kept separate, accountability, efficiency and effectiveness. Further explanation of the grouping is provided below in Part 1: Review of the Scheme Principles.
- Following the review of the individual principles using the benchmark questions provided by GCDR, the overall consideration of whether FDRS meets its scheme and requirements as set out under s.63 (1) of the Act is undertaken.

8 OVERALL OPINION

- The overall view of the reviewer is that Financial Dispute Resolution Service is both meeting its purpose and legislative requirements as an approved scheme, and, is meeting the principles of user focused and accessible, independent and fair, accountability, efficiency, effectiveness and the rules of natural justice.
- While it is meeting these requirements, the reviewer has identified some areas which, if implemented, believes will improve the efficiency and effectiveness of Financial Dispute Resolution Service and ensure its continued success into the future.

9 APPENDICES

9.1 Appendix 1: List of documents reviewed

1. FairWay Resolution Limited website
2. Financial Dispute Resolution Limited
3. Financial Dispute Resolution Service website
4. Financial Dispute Resolution Service Customer Satisfaction Survey Annual Report(s) 2012, 2013, 2014, 2015, 2016
5. Financial Dispute Resolution Service Scheme Member Satisfaction Report(s)
6. Financial Dispute Resolution Service Scheme Annual Report(s) (2014, 2015, 2016, 2017)
7. Survey of FDRS Scheme Members (May 2015)
8. Rules for Financial Dispute Resolution Service (FDRS)
9. Terms of Reference of the Governing Body and Advisory Council to Financial Dispute Resolution Scheme Owned and Operated by FairWay Resolution Limited, 2017
10. FDRS Monthly Reporting 2015-2018
11. FDRS Membership process: Onboarding new members
12. FDRS process (2016 & 2017)
13. FDRS Reporting Requirements
14. FMA Quarterly Reports
15. Notice of Member's Forum 2016
16. Scheme Risk Assessment
17. An Overview of FDRS (2014)
18. FDRS Complaint Handling Guidelines (2014)
19. FDRS Welcome Pack checklist (2014)
20. FDRS newsletters
21. Report on Consumer Rights Day – 26 May 2016
22. Complaint form, 2017
23. The complaints process at Financial Dispute Resolution Service, 2017

9.1.1 Other documents:

24. [Benchmarks for Industry-based Customer Dispute Resolution, 2015](#)
25. [Key Practices for Industry-based Customer Dispute Resolution \(2015\)](#)
26. [Government Centre for Dispute Resolution – Best benchmark principles:](#)
27. AS/NZS 10002:2014 'Guidelines for complaint management in organisations':
28. [Financial Service Providers \(Registration and Dispute Resolution\) Act 2008:](#)

29. [Financial Advisors Act, 2008](#)
30. [Financial Services Legislation Amendment Bill](#)
31. [Financial Service Providers \(Registration\) Regulations, 2010](#)
32. [Confusion, gaps, and overlaps: A consumer perspective on alternative dispute resolution between consumers and businesses](#)

9.2 Appendix 2: List of persons interviewed:

Trevor Slater	Client service director, Financial Dispute Resolution Service
Rex Woodhouse	Independent Adjudicator
Steven Friedlander	(Scheme member) AIL
Robert Fletcher	(Scheme member) NZ Home Loans Ltd
Jennifer Mahony	ex client service director of FDRS. Current Client director, Telecommunications Dispute Resolution Service
Julia Clark	(Scheme member) Black Label Mortgages Ltd
Glen Hildreth	Financial Markets Policy
Bruce Scott	(Scheme member) Broadlands Finance Ltd
Sarah Melton	(Scheme member) Booster
Kristine Brown	FairWay General Manager: Corporate & Governance
Rhys West	FairWay Resolution CEO
Rebecca Lee	FairWay Privacy Officer
Nicola McClenaghan	FairWay Resolution Coordinator, Financial Dispute Resolution Service
Claire Hancock	FairWay Customer Service Lead
Lezanne Gibbs	Credit Advocacy Adviser, Commerce Commission
Justin Kerr	Advisory Council Industry Representative, Financial Dispute Resolution Service
Stephen Ward	Advisory Council Independent Chair, Financial Dispute Resolution Service
Bill Bevan	Advisory Council Consumer Representative, Financial Dispute Resolution Service
Bruce Lee	(Scheme Member) Pets n Sure