



MINISTRY OF CONSUMER AFFAIRS
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**Guidelines to Assist Schemes applying
to become an
Approved Dispute Resolution Scheme
under
The Financial Service Providers
(Registration and Dispute Resolution)
Act 2008**

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Foreword

Every day, New Zealanders use one or more of an extensive list of financial services available to them. These include:

- Day-to-day transactions such as the use of EFTPOS and credit cards, internet and telephone banking, writing cheques;
- Purchase of insurance for travel, personal effects, health, vehicles, homes and more;
- Obtaining financial advice relating to investments or different credit options;
- Taking out mortgages or credit for consumer goods, from motor vehicles to household goods;
- Depositing money in term deposits, investment shares, debentures.

Despite using such services, however, most New Zealanders don't think of themselves as participants in the financial market. Rather, we are simply going about our daily business paying for goods and services, using banking, insurance and credit services.

For most of us, these transactions occur without any cause for concern and we are confident when using electronic transactions, banks, credit unions etc. It is for this reason that consumer confidence is really important – without it, we cannot have a well-performing financial sector.

But things can go wrong with the provision of financial services, and it can be very stressful for the individual affected when this occurs.

As soon as something does go wrong the consumer should, in the first instance, contact their product or service provider to see whether the matter can be resolved directly. The issue often relates only to a minor fault, problem or misunderstanding and can readily be resolved.

Occasionally, however, the consumer and provider cannot agree. This leads to a dispute.

In order to promote confidence in financial service providers, the Financial Service Providers (Registration and Dispute Resolution) Act 2008 improves consumers' access to redress and dispute resolution by requiring financial service providers offering financial services to the public to sign up to a dispute resolution scheme.

Under the Act, financial service providers have two options: join an industry-run dispute resolution scheme approved by the Minister of Consumer Affairs, or sign up to the government reserve scheme.

These guidelines are designed to assist schemes considering making an application to become an approved dispute resolution scheme.

I hope that financial service providers will take advantage of the opportunity afforded by the Act to establish their own schemes and have them approved. The best delivery of consumer dispute resolution occurs when the industry is committed to supporting a robust and independent dispute resolution process.

Hon Heather Roy
Minister of Consumer Affairs

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Glossary of Abbreviations and Terms

ASIC: The Australian Securities and Investment Commission. Under the Corporations Act 2001 (Australia), ASIC has an equivalent function to the Minister of Consumer Affairs in approving consumer dispute resolution schemes in the financial sector.

Benchmarks/ Benchmark Principles/Australian Benchmarks: Benchmarks for Industry-based Customer Dispute Resolution Schemes, released in 1997 by the Consumer Affairs Division of the Department of Industry, Science and Tourism. The benchmarks are directly incorporated into section 52(2) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

FSP: Financial service provider.

FSP Act: Financial Service Providers (Registration and Dispute Resolution) Act 2008.

MCA/the Ministry: Ministry of Consumer Affairs.

Minister: Unless otherwise specified, the Minister of Consumer Affairs.

Reserve scheme: The financial service providers reserve dispute resolution scheme.

Scheme: These guidelines refer to “the scheme” as if it has legal personality. It is recognised that a scheme is comprised of different entities with different statuses that carry out different functions. References to “the scheme” being responsible for an action should be read as flexible as to which part of the scheme carries out that action, unless otherwise specified.

Background – Improving Regulation of the Finance Sector

1. In September 2008, three pieces of legislation were enacted to improve the regulation of financial institutions, financial products and financial providers: the Reserve Bank Amendment Act 2008, the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
2. The main requirements arising from this legislation are:
 - Registration of all financial service providers to provide a means of identifying and monitoring financial service providers;
 - Prudential supervision by the Reserve Bank of non-bank deposit takers;
 - Regulation by the Securities Commission of financial advisers to encourage professionalism and improve consumer confidence in the sector; and
 - Providing for a comprehensive approach to consumer dispute resolution and redress.
3. The desired outcomes from this new legislation and existing legislation regulating the finance sector are:
 - Achieving a sound and efficient financial sector;
 - Investment that encourages growth and innovation;
 - An environment that facilitates wealth accumulation; and
 - Confidence in the sector encouraging participation by consumers and market participants.
4. The Reserve Bank is the sole regulator of New Zealand's financial system, including the non-bank deposit-taking sector. The Reserve Bank Amendment Act 2008 provides for prudential regulation with regard to non-bank deposit takers.
5. The Financial Advisers Act 2008 specifies who may perform a financial adviser service and the financial products and services they may advise on. The Act establishes different tiers of disclosure and conduct obligations, according to the complexity and risk posed by the advice given. Those who wish to provide advice on securities, futures contracts or an interest in land, or who provide a financial planning service, will be required to be authorised by the Securities Commission, as well as registered on the register of financial service providers. Those who wish to provide advice in regards to a call debt security, a bank term deposit, an insurance product (excluding a life insurance product issued after 31 December 2008) or a consumer credit contract will be required to be registered, but not authorised.
6. The Financial Advisers Act also provides for advisers to operate as part of a qualifying financial entity for certain financial adviser services. In this case, the entity itself takes on responsibility for ensuring the individual advisers within its organisation comply with their obligations under the Act. To receive qualifying financial entity status the entity must seek approval from the Securities Commission.

The Financial Service Providers (Registration and Dispute Resolution) Act 2008

7. The Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) was enacted to set up a registration system for financial service providers and to improve consumer access to redress.
8. The FSP Act has three parts. Parts 1 and 2 concern the registration of financial service providers. Administration of the registration system is the responsibility of the Companies Office, Ministry of Economic Development.
9. Part 3 concerns consumer dispute resolution, which is a mandatory requirement of registration for those providing financial services to the public. Administration of Part 3 is the responsibility of the Ministry of Consumer Affairs. Every financial service provider (FSP) must be either a member of an approved dispute resolution scheme or the reserve scheme. The FSP Act sets out the principles and minimum requirements for the rules of approved dispute resolution schemes and the reserve scheme.
10. In summary, the rules of any approved scheme and the reserve scheme need to comply with the following principles¹ which are considered international best practice:
 - **Accessibility:** The scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers;
 - **Independence:** The decision-making process and administration of the scheme are independent from scheme members;
 - **Fairness:** The scheme promotes decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based;
 - **Accountability:** The scheme publicly accounts for its operations by publishing its determinations and information about complaints and by highlighting any systemic industry problems;
 - **Efficiency:** The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance;
 - **Effectiveness:** The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.
11. This paper provides guidance to those who are considering making applications to the Minister of Consumer Affairs to become an approved dispute resolution scheme. The Guidelines were prepared incorporating submissions on a discussion paper in June 2009 entitled “Draft Guidelines to Assist Schemes applying to become an Approved Dispute Resolution Scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008”.

¹ These principles are set out in Part 3 of the FSP Act and are based on the Benchmarks for Industry-based Customer Dispute Resolution Schemes developed by the Australian Department of Industry, Science and Tourism. The description of the principles is taken from the Benchmarks.

12. The policy underpinning the FSP Act anticipates that financial service providers will seek to have their own dispute resolution schemes approved. A dispute resolution scheme that is developed by financial service providers for their own particular industry should be more effective, as it will have better knowledge and expertise regarding the participants' products and services and receive more support and commitment.

Legislative Framework Relating to Applications to Become an Approved Dispute Resolution Scheme

13. Section 51 of the FSP Act provides for applications to the Minister of Consumer Affairs to become an approved dispute resolution scheme.
14. An application for approval needs to contain the rules of the scheme.
15. The scheme's rules may be in the form of a single document or may be set out in a variety of documents, including the scheme's terms of reference, specific rules, dispute resolution protocol, constitution, code of conduct and the membership participation agreement. The exact arrangement of a scheme is left to members to decide upon.
16. There is scope within the requirements of the FSP Act and the suggestions in these guidelines, for a scheme to tailor its rules to suit its membership, including the particular sector of the financial industry from which the members are drawn.
17. The rules, as a minimum, must address the requirements for scheme rules as set out in section 63 of the FSP Act and the benchmark principles: accessibility; independence; fairness; accountability; efficiency; and effectiveness.
18. Section 52 of the FSP Act sets out the considerations the Minister must have regard to in evaluating an application. These considerations are:
 - a. Whether the scheme has an appropriate purpose;
 - b. Whether the applicant has undertaken reasonable consultation on the scheme with members or potential members of the scheme, and persons (or their representatives) likely to be substantially affected by the scheme;
 - c. Whether the applicant has adequate funding to enable it to operate the scheme according to the scheme's purpose and in accordance with the rules about the scheme;
 - d. Whether the applicant's directors and senior managers are competent to manage a dispute resolution scheme;
 - e. Whether the scheme is capable of resolving disputes about the types of financial services provided by the members or potential members of the scheme;
 - f. The amounts of money that complaints lodged with the scheme may be about, and whether those amounts are reasonable and appropriate;
 - g. Whether the rules about the scheme are adequate and comply with the benchmark principles (see above), and the requirements of section 63;
 - h. The number of currently approved dispute resolution schemes;
 - i. The types of financial service providers that may be members of currently approved dispute resolution schemes;
 - j. The proposed size of the scheme;
 - k. The types of financial service providers that may be potential members of the scheme;
 - l. Any other applications for approval that have been made.
19. The FSP Act also provides for regulations to prescribe an application fee and other information to be provided with the application. There are no such regulations and no plans for regulations.

Guidance on Seeking Approval

20. The FSP Act's requirements for a dispute resolution scheme to be approved are at a fairly high level. This document discusses in more detail possible approaches a dispute resolution scheme might consider in order to meet the various matters within its control that the Minister will have regard to in making a decision on approval.
21. This is intended as guidance material only. The guidelines are not intended as a manual or a type of prescriptive instruction. The Minister will consider all applications. Different approaches to those set out here will still be approved if they are compliant with the FSP Act.
22. An applicant for approval must have undertaken consultation with affected parties. Section 52(1)(b) requires that the Minister has regard to whether the applicant has undertaken consultation with parties likely to be substantially affected, including industry and consumers.

Purpose, Objective and Scope

Purpose and Objective

23. Section 52(1)(a) requires that the Minister has regard to whether the scheme has an appropriate purpose.
24. As a minimum, it is suggested a scheme clearly states that it will consider complaints with respect to a particular type of financial provider who may be a member of the scheme, and will facilitate the satisfaction, settlement or withdrawal of complaints whether by agreement, by making awards or by other appropriate means. Other matters that could appropriately be covered in the scheme's purpose include, but are not limited to:
 - Providing advice to members of the scheme on dispute resolution; and
 - Providing information to potential users of the scheme and community agencies.
25. Documents such as the scheme's constitution, terms of reference or charter would likely set out the purpose and the types of financial service providers who may be members of the scheme. Section 63(a) of the FSP Act requires the scheme to accept all providers of that type. This is to avoid having multiple schemes for the same types of financial service provider. Membership of a scheme is discussed further at paragraphs 68-70.

Example: Banking Ombudsman Constitution

The objects of the Company are:

- To appoint and support a Banking Ombudsman with power:
 - to consider, subject to the Terms of Reference, complaints in connection with the provision of banking and other financial services by any Participant;
 - to facilitate the satisfaction, settlement or withdrawal of such complaints whether by the making of recommendations or awards or by such other means as shall seem expedient;
 - to promote and publicise the Banking Ombudsman scheme and to encourage and provide advice to Participants on the development and maintenance of good complaint-handling practices; and
- To collaborate with government or other authorities (whether national, local or otherwise) or any corporations, companies or persons on all matters relating to and affecting the business of those banking and other financial services [referred to in clause 2.1.1 of the Constitution] and the settlement of complaints in relation thereto.

Scope

26. Intertwined with the purpose of a scheme is the scope of a scheme. The scope of a scheme is generally defined by two factors:
- The classification of consumer complaints; and
 - The monetary claims limit or cap.

A scheme needs to clearly state which consumer complaints may be considered by the scheme and the amounts of money that complaints lodged with the scheme may be about.

Classification of Consumer Complaints

27. The FSP Act does not define “complaint”. Rather, section 63(g) specifies that the scheme must have a rule that complaints can be made about:
- Breaches of contract by the member;
 - Breaches of statutory obligations by the member;
 - Breaches of industry codes by the member; and
 - Any other matters provided for in the rules.
28. Similar to the FSP Act, a scheme could consider not defining “complaint” and instead rely on the scope of the scheme’s rules to provide general guidance on the type of complaint that can be considered.
29. Typically, complaints made seek redress related to cost, timeliness, fairness, contractual matters, business practice, poor service or interpretation of service/product rules, terms and conditions.
30. A scheme might want to consider noting what would not be covered as a complaint. It is suggested that complaints covered by the scheme are limited to matters arising from the provision of financial services or financial products, where the complainant has suffered direct financial loss. A scheme’s rules may also specify that “complaint” does not include dissatisfaction with commercial decisions, prices or interest rates where no actual “harm” requiring redress has been suffered.

Example: ASIC Regulatory Guide on Approving External Dispute Resolution Schemes in the Financial Sector

The ASIC guidelines take the view that, as a starting point, a scheme should be able to consider any complaint where the complainant has suffered a direct financial loss.

31. Generally, dispute resolution schemes do not consider complaints about decisions made in the exercise of the commercial judgement of a member organisation, although it is suggested the scheme rules should provide that the scheme can consider complaints about commercial judgement which involves an act or omission contrary to or not in accordance with a duty owed at law, in a code of practice, or pursuant to the terms (express or implied) of the contract between the scheme member and the consumer.
32. Commercial judgement involves matters such as assessment of risk, underwriting practices, methods or procedures for setting charges or premiums, or commercial decisions relating to its

business. The scheme may, however, consider investigating administrative matters about how commercial judgement is affected.

33. A disputed transaction handled by a scheme may involve matters that are disciplinary complaints. Disciplinary complaints will need to be referred to the appropriate body. A disciplinary complaint is one related to conduct or competence and is an expression of dissatisfaction or concern that a financial service provider has not acted competently or ethically, or has acted negligently. These complaints are handled by the relevant industry disciplinary body.
34. Disciplinary proceedings are of a different nature to consumer dispute resolution. Disciplinary procedures do not normally involve compensation for consumers. A consumer dispute resolution scheme, however, is aimed at providing redress for consumers. Therefore a complainant seeking redress for any harm resulting from a financial service provider's conduct or incompetence may be taken to a dispute resolution scheme. Schemes should include procedures for information sharing with the appropriate disciplinary bodies for their members.
35. The important point is that consumers are clear which complaints can be taken to the scheme. While categories can be used to demarcate the scheme's jurisdiction, it is suggested there should not be an obligation on a complainant to frame their complaint according to the relevant category.
36. A scheme wishing to define "complaint" within its rules could consider a definition such as the one in the Australian Standard on Complaints Handling (AS ISO 10002-2006), as follows:

Example: Definition of "complaint" in Australian Standard

A "complaint" should be viewed as an expression of dissatisfaction made to an organisation, related to its products, or the complaints-handling process itself, where a response or a resolution is explicitly or implicitly expected (AS ISO 10002-2006).

ASIC recently adopted this definition when approving schemes in the Australian financial sector. ASIC views this definition as advantageous as it "removes the onus on investors and consumers to explicitly state that something is a complaint, promotes more consistent treatment of complaints and helps prevent complaints from falling through the cracks" (Consultation Paper 102 Sept 2008).

37. With respect to "Any other matters provided for in the rules", the important principle to observe is that the scheme rules should not unnecessarily limit complaints. There are many bases on which complaints can be laid. The Disputes Tribunal, for instance, has jurisdiction over claims based on contract, quasi-contract, and certain torts. Other possible bases include unconscionable conduct and unfair contract terms.

When Complaints can be taken to the Disputes Scheme

38. A scheme will need to consider a number of rules for when complaints can be taken, concerning:
 - When complaints can move from the member's internal processes to the dispute resolution scheme;
 - An overall time limit for taking complaints to the scheme from the time the complaint is first lodged with the member;

- A limitation on when complaints can be brought to the scheme after the event or omission which results in the complaint;
 - When the scheme’s jurisdiction over complaints becomes effective.
39. It is expected that the rules of a dispute resolution scheme will provide that in the first instance a consumer’s complaint will need to be taken up with the FSP member who provided the product or service. The rules will then need to be clear when the complaint can be taken to the dispute resolution scheme. This can occur when the scheme is satisfied that the FSP member has provided their final position on the complaint, when the complaint has been deadlocked or when the FSP member has failed to consider the complaint in time. For example, the rules may provide for access to the scheme where:
- redress has not been offered to the consumer or the redress offered was considered unsatisfactory or the parties have agreed they are in deadlock and the complaint was lodged within a specified time period of deadlock being reached (and the member had informed the customer of this time limit); or
 - it has been a specified time period (say 2 months) since the complaint was lodged, and the complaint has not been resolved, even if the FSP member has not advised the matter is in deadlock.
40. Essentially, the dispute resolution scheme rules need to provide clear timeframes for when a complaint can be taken to the scheme. The aim should be to provide a suitable period for the complainant and the FSP member to resolve the matter; yet also to allow the complainant an avenue for alternative consideration of the complaint if he or she feels that the complaint is not being fairly processed.
41. “Deadlock” refers to the situation where a complaint reaches an impasse in the FSP member’s internal complaints scheme. The consumer is dissatisfied with how the complaint is being dealt with, but the FSP member has not referred the complaint to the external dispute resolution scheme.
42. Section 63(e) of the FSP Act requires the scheme’s rules to specify a period after which the scheme, if asked by a complainant, must investigate a complaint that has been made directly to a FSP member. This is to avoid the situation where a complaint remains deadlocked at the internal scheme level. In order for a deadlock provision to operate effectively, a complainant must know that an external scheme exists and that they have a right to access it after a certain period (for instance, in the Banking Ombudsman rules, below, this period is 3 months).

Example: Banking Ombudsman Terms of Reference

The Banking Ombudsman shall only consider (or continue to consider) a complaint made to him or her if he or she is satisfied that:

- a. the complaint has been fully considered by the internal complaint procedures of the Participating Bank named in the complaint (set up as required by the New Zealand Bankers’ Association Code of Banking Practice) and the complainant has not accepted any observations made or conditions of settlement or satisfaction offered by that Participating Bank and deadlock has been reached, or the Participating Bank has not advised the complainant that deadlock has been reached within 3 months of the complaint being formally made to it.

43. The scheme rules may also want to provide for an overall time limit for taking complaints to the scheme from the time the complaint was first lodged with the member. For example, the reserve scheme has a two year time limit, with discretion to consider complaints outside of the timeframe if there are special circumstances. ASIC requires that schemes have a limit of two years from when the member provides a final response at the internal complaints stage.
44. Schemes should consider a limitation on when complaints can be brought to the scheme after the event or omission which results in the complaint. For instance, ASIC requires all schemes to have a 6 year time limit from the date that the consumer first became aware, or should reasonably have become aware, that they suffered the loss the complaint is about.
45. A scheme should also establish clear rules about when its jurisdiction becomes effective and about retroactive application. For new schemes, it is not expected that a scheme would have jurisdiction over complaints arising from an act or omission which occurred prior to the scheme's establishment. An exception would be where the complainant could not reasonably be aware of the act or omission until after the establishment of the scheme. Schemes also need to provide rules for when a scheme should have jurisdiction over complaints about new members to the scheme.

Example: Banking Ombudsman Terms of Reference

NB: The Banking Ombudsman was established on 1 January 1992

The Banking Ombudsman shall only consider (or continue to consider) a complaint made to him or her if he or she is satisfied that

b. the act or omission giving rise to the complaint:

- (i) first occurred on or after 1 January 1992; or
- (ii) first occurred not earlier than six months prior to that date, but the complainant did not become aware of it, and could not with reasonable diligence have become aware of it, until on or after that date;

provided that the Banking Ombudsman may in his or her discretion decide not to consider (or continue to consider) a complaint if the complainant has had knowledge of the act or omission giving rise to the complaint for more than 12 months before the complaint is made to the Banking Ombudsman.

Dual Access

46. The scheme rules may also want to set out whether its FSP members may refer complaints to the scheme. Dual access is not a requirement in the Act and dispute resolution schemes are established primarily for the benefit of consumers. However, there is some merit in allowing a FSP member to refer a complaint to the scheme in some circumstances, such as when the member's internal scheme is unable to resolve a dispute with a particularly vexatious complainant or if access to an independent dispute resolution scheme would be useful for resolving a complaint that is complex and potentially contentious in a timely and independent manner.
47. It is expected that dual access would only be allowed in limited circumstances. Best practice for vexatious and complex complaints at the internal complaints stage may be for the FSP member to declare deadlock so that the consumer can lodge the complaint with the scheme.

48. If a scheme provides dual access, the rules should identify the circumstances in which it can be invoked by a member, and perhaps any specific fee requirements.

Who can make a Complaint to the Scheme?

49. Section 63(c) of the FSP Act requires approved dispute resolution schemes to have a rule stating that consumers and businesses with 19 or less full time equivalent employees may lodge complaints. “Business” is defined in the Act to include any profession, trade, or undertaking, whether or not carried on with the intention of making pecuniary profit. This definition is wide-ranging and captures small businesses through to kindergartens, sports groups and community organisations. A scheme might find it useful to provide a clear description to better assist potential users of the scheme.
50. The scheme may wish to extend access to the scheme to other classes of complainant. This is neither a requirement of the FSP Act; nor is it precluded. For example, a scheme might provide that all primary schools may use the scheme on the basis that some primary schools will have 19 or less full time equivalent employees but others are larger.
51. The scheme rules ideally should not limit the classes of complainant to “past or present customers”. Consumers who have been refused a service, or who have received a service without actually being a customer of the FSP member, should not be excluded from accessing the scheme. However, it is not expected that the scheme will provide consumers with a forum for complaints where a service has been declined to them based on lawful grounds.
52. Third parties who are not customers of the FSP member, but who are seeking to receive a benefit from the policyholder’s insurance, should be encouraged to pursue their claims through other more appropriate fora.

Amount Claims may be About

53. The FSP Act does not specify a monetary limit in respect of complaints that may be considered by an approved dispute resolution scheme. When considering whether a scheme is to be approved, the Minister will consider whether the amount of money that complaints lodged with the scheme may be about is reasonable and appropriate (section 52(1)(f)). It is suggested schemes should specifically set either a limit or a cap. In choosing the limit or cap amount, the scheme should be guided by the nature, extent and value of consumer transactions in the relevant industry.
54. A compensation limit usually states the maximum value of a claim that can be brought to the scheme. In such a case, if the value of the claim is above the limit, then the claim cannot be lodged. A cap usually means that consumers may bring a dispute to the scheme where the value of the claim is above the cap; however, awards may only be made to the cap. A consumer waives the excess of their claim in order to have access to an external dispute resolution scheme. The Disputes Tribunals Act 1988 allows a claimant to abandon part of their claim to bring it within jurisdiction (section 14). Under that Act, once the Tribunal has made an order in regards to the claim, the person against whom the claim was made is discharged from liability for the abandoned amount.
55. The current Banking Ombudsman Scheme and the Insurance & Savings Ombudsman Scheme can consider claims to the value of \$200,000. The expectation is that any limit or cap is not less than the Disputes Tribunal claims limit. The Disputes Tribunals Act 1988 amended in 2009 has a limit of \$15,000 or \$20,000 with the consent of both parties.

56. Following consultation on a proposal to replace monetary limits with compensation caps when approving external dispute resolution schemes in the financial sector, ASIC will require from 1 January 2010 that schemes operate a compensation cap up to a capped amount that is consistent with the nature, extent and value of consumer transactions in the relevant industry or industries. From 1 January 2012, schemes must adjust the cap every three years using whichever increase is higher, the Consumer Price Index or the Male Total Average Weekly Earnings.

Example: Compensation Caps in the ASIC Guidelines (RG 139.159)

In operating a minimum compensation cap:

- (a) the scheme should handle the complaint and make an award up to its compensation cap (or higher if the scheme member agrees);
- (b) a consumer or investor with a complaint involving an amount that is higher than the EDR scheme's compensation cap may be required to waive the excess at the end of the EDR process; and
- (c) the EDR scheme outcome should not bind the consumer or investor if they do not choose to accept it. However, if the complainant accepts the EDR outcome, the scheme or member may require the complainant to accept the EDR outcome as full and final satisfaction of their claim and it will be binding on both parties (i.e. the balance of the claim cannot be pursued in another forum, for instance a court of competent jurisdiction).

57. In addition, under the ASIC Guidelines schemes must be able to award interest or earnings in addition to the amount awarded by the compensation cap. The ability to award interest is seen as an incentive for parties to resolve the complaint more expeditiously, as well as providing for fair and reasonable outcomes. Under the ASIC Guidelines, the scheme rules must provide that interest is calculated from the date of the cause of action or matter giving rise to the claim.
58. Schemes seeking approval in New Zealand may wish to consider including in the rules whether a consumer's claim for interest can be allowed over and above a cap or limit, and whether the cap or limit will be indexed in a similar way to the ASIC requirements.

Complaint must be Free of Charge

59. As required by section 63(l) of the FSP Act, the rules of the scheme must provide that there will not be a fee charged to any complainant to investigate or resolve a complaint.
60. Secondly, schemes must not make awards for costs against consumers. Vexatious and unmeritorious complaints should be identified at early stages in the dispute resolution process.

Unacceptable Actions by Complainants

61. A scheme may wish to consider having a process for responding to complainants who are abusive or unreasonable, in order for the scheme to remain effective and efficient. Unreasonable complainants may absorb resources that could be used for meritorious cases. Unreasonable complainants, however, should not be confused with complainants who require sensitivity, for instance in areas of mental capacity. If the scheme has a process for responding to unacceptable actions by complainants, the details of complaints that have been rejected should be recorded for accountability and audit purposes.
62. Vexatious complainants may also skew the number of complaints against a member, in particular if that member is a small entity. This could have important ramifications for the

funding burden placed on the member (funding is discussed in a later section). The UK Financial Ombudsman Service allows 4 free complaints a year to members in recognition of this possibility. A free complaint allowance for FSP members may not be possible in this instance, given the smaller scale of New Zealand's operations, but a scheme may want to consider mechanisms to recognise the effect of vexatious complainants on an FSP member's scheme fees.

Complaints where a member ceases to carry on business

63. The scheme's rules should address the situation when complaints are received about a scheme member that:
 - Ceases to carry on business (for instance the member closes its doors to consumers but is still licensed/authorised and/or registered);
 - Ceases to have a licence/authorisation/registration; or
 - Becomes insolvent under administration.
64. ASIC has recently introduced a requirement for scheme rules to afford the scheme a discretion whether to allow such complaints.
65. In the instance where a scheme member has ceased to carry on business and where the scheme has recommended a compensation award, the consumer may not be able to receive any compensation as there is no entity against which the compensation award can be enforced. In addition, liquidators are not bound by the decisions of external dispute resolution schemes.
66. However, the consumer may still receive some benefit from laying such a complaint, for instance where the scheme member has been placed in administration and subsequently recovered and resumed trading. In this scenario, the complainant would be able to enforce the compensation award against the member. The scheme decision may also assist a complainant in a creditor position.

Membership Requirements and Obligations

67. The scheme rules need to clearly specify the requirements and obligations of membership to the scheme. Typically, these would be contained in participation agreements between the scheme and the member organisations.

Scheme Membership

68. The scheme rules should describe how a financial service provider may become a member of the scheme. Section 63 of the Act requires the following rules regarding scheme membership to be included in the scheme's rules:
 - the types of financial service providers that may be members of the scheme, and all providers of that type must be eligible (section 63(a));
 - how to become a member of the scheme and how membership may be terminated (section 63(b)); and
 - that membership is not open to a financial service provider who has not taken remedial action imposed on it by another approved dispute resolution scheme or the reserve scheme (section 63(k)).

69. The ideal situation is that financial service providers should only be a member of one scheme. However, it is recognised that some entities offer a variety of business services which may not be covered by a single scheme.
70. Schemes may have reasonable limitations on the types of financial service providers they will accept, such as limiting membership to financial service providers providing products related to insurance and savings; or financial service providers who are members of a recognised industry association. The Minister will consider the appropriateness of any membership criteria in the scheme rules.

Obligation to Comply and Co-operate

71. It is important that the scheme rules address FSP members' obligations to comply and co-operate with the scheme, and any relevant code of practice. It is suggested that to demonstrate commitment to the scheme there should be, as a minimum, an obligation on every FSP member to comply with a recommendation or award made by the scheme decision-maker.
72. There should also be an obligation on FSP members to provide the scheme with the necessary information to enable effective investigations by the decision-maker, except where such information may be lawfully withheld by the FSP member.
73. Schemes may also like to impose an obligation for FSP members to co-operate with each other.

Example: Banking Ombudsman Participation Agreement

The Participants and the Company will:

- support and pursue the Objects by whatever reasonable means are within their control;
- work collaboratively together to achieve the Objects; and
- not take any action or do any thing in contradiction to the Objects or the spirit or intent of the Objects.

Effective Internal Complaints Handling

74. FSP members need to have internal complaints handling systems. Front-line internal complaints staff are critical when it comes to recognising complaints, assisting complainants and avoiding the unnecessary escalation of complaints.
75. A scheme may look to include, as a basic requirement of scheme membership, that there is an effective internal complaints handling process. Certain industries may already include standards for internal complaints handling within their Code of Practice, in which instance a scheme may adopt those standards.
76. A scheme does not need to prescribe detailed internal processes, however, there should at least be minimum standards covered in the membership obligations. Suggested options include approaches such as:
 - Specifying minimum standards;
 - Requiring a basic defined level of training for staff handling complaints;
 - Issuing guidelines to members;

- Requiring a system to be in place for recording details of the complaint (which is accessible to the external dispute resolution scheme if the complaint is taken to the scheme); and
- Requiring a common system for internal complaints handling by scheme members. It is important though that if this is a condition of membership it does not create an unnecessary barrier to entry for eligible members of the relevant provider type.

Example: Common Internal Systems in the Australian Standard

This standard notably requires the involvement of top management in complaints handling (i.e. promotion, support, direct involvement). The standard also provides a common process for receiving, tracking, acknowledging, investigating and responding to complaints. (AS ISO 10002-2006).

Consumer Accessibility Requirements on Members

77. Section 63(r) of the FSP Act requires that schemes have a rule that members must inform consumers and businesses who may access the scheme about the scheme. Best practice would be to inform consumers in writing, at various stages of the relationship between the consumer and the FSP member.
78. An effective disputes resolution scheme is one that people know exists and when someone wants to use it, its processes are accessible. In order to achieve this, the commitment of scheme members to its promotion is crucial. Promotion by FSP members will work in conjunction with promotion by the scheme itself and by the Government.
79. Schemes should demonstrate commitment to accessibility. As such, a scheme may want to impose some promotion obligations on FSP members, such as requiring promotional material available at the point of sale of financial products, and the continued provision of information on bills or disclosure statements. Another suggestion is that a scheme requires its FSP members to have accessible internal processes, such as a clearly labelled “complaints” section on their websites. Information on websites should be on the home page, or one click away. Consideration could also be given to promotional information targeted both at individual consumers and at the organisations they are likely to go to for help with a complaint, such as Citizens’ Advice Bureaux.
80. A major obstacle to accessibility for consumers in dealing with FSP members can be the manner in which members classify communications from consumers as queries or complaints. As discussed earlier, schemes need to decide whether they will define “complaint”. Consumers need to be clear about which complaints can be taken to the scheme. The suggested good practice is that a scheme has a common definition of complaint on all members’ internal schemes, and in addition educates members about the need to investigate all queries even if the word “complaint” is not used by the consumer.
81. A further accessibility problem at the scheme FSP member level can be the number of complaints left at deadlock stage within the internal complaints procedure. As discussed earlier, schemes should have in place a rule about when complaints can be referred to the dispute resolution scheme. One approach may be for all members of a scheme to commit to a certain process for handling complaints and when to pass them to the dispute resolution scheme.
82. A scheme may also consider requiring FSP members to tell all consumers making a complaint to a member’s internal system at the outset that ultimately an external dispute resolution system is

available. Best practice would be to provide the information on the internal and external complaints process when first entering into a contractual relationship with the consumer, and providing this information again when a complaint is laid.

83. The accessibility principle encompasses internal as well as external accessibility. Schemes must be easy to find, and easy to deal with once they are found. The process should be clear, simple and easy for the consumer to use. The scheme should impose requirements on its members that facilitate internal accessibility, such as the provision of information in a timely fashion, and co-operation with the decision-maker and his/her staff.
84. Accessibility requirements on members should recognise differences in capacity between smaller and larger members, without compromising the service available to consumers who go to smaller financial service providers.
85. The underpinning principle is that accessibility cannot be achieved without a climate of commitment to the overall aims of the scheme. Schemes may wish to monitor accessibility at the member level through the use of mystery shoppers.

Example: Insurance & Savings Ombudsman Rules

Each Participant (and each Subsidiary thereof that provides Services) will have its own internal complaints procedures (set up in accordance with the relevant Codes where applicable) and undertakes to the Commission to publicise the existence and availability of those procedures and the existence, availability and other details of the Scheme to its customers.

Example: Insurance Broking Division of Financial Ombudsman Service of Australia (IBD)

A member who subscribes to IBD will:

- a. make available to Clients information on IBD;
- b. co-operate with the Case Manager and the Referee in the investigation of a dispute involving the Member or any other Member of their representatives; and
- c. have a fully documented internal process for handling disputes with Clients covered by IBD in accordance with the Corporations Act 2001 and ASIC regulatory guide 165.

When Membership can be Terminated

86. The scheme rules should provide for a scale of sanctions for non-compliance, with termination of membership being at the pinnacle.
87. The scheme rules need to clearly state when and how there can be termination of membership. It is suggested that grounds for terminating membership include if the member:
 - Fails to pay any fees or charges of the scheme without reasonable explanation;
 - Fails to uphold remedial action recommended/required by the scheme's decision-maker without reasonable explanation; or
 - Commits a substantial or persistent breach of the rules of the scheme, and fails to rectify the breach after receiving notice from the scheme.
88. The scheme rules should also provide for termination of membership at the member's request, for the notice period required for withdrawing from a scheme and the treatment of complaints that are lodged during this notice period.

89. FSP members who request termination of membership from a scheme should bear in mind that in order to be registered as a financial service provider, they must be a member of an approved scheme or the reserve scheme if they provide to the public. The Registrar will deregister financial service providers who do not meet this criterion.

Example: Banking Ombudsman Participation Agreement

A Participant may, at any time, give no less than three calendar months' written notice to the Company to the effect that it wishes to withdraw from this Agreement. Such withdrawal will take effect upon expiry of that notice and will have the effect of terminating this Agreement only insofar as it affects that Participant.

The Company may, by written notice to the relevant Participant, at any time immediately terminate the participation of any Participant if that Participant:

- ceases to be a Registered Bank; or
- has not paid any levy or subscription demanded by the Company pursuant to clause 9.4 within three months after written demand is served on the Participant; or
- has, in the reasonable opinion of the Board, failed to comply with an award made by the Banking Ombudsman in accordance with the Terms of Reference within one month after such award is made; or
- breaches, or fails to perform, any other material obligation of that Participant under this Agreement and fails to remedy the breach or perform the obligation within one month after written notice from the Company is served on the Participant specifying the breach or failure and requiring remedy.

Structural and Governance Requirements

90. The FSP Act does not specify structural or governance requirements for schemes. It is left up to the scheme to determine which structure most adequately meets the needs of FSP members and the benchmark principles.
91. The governance of the scheme should provide for clear independence of the scheme from the FSP members. It is suggested that to ensure independence, the decision-maker and/or the scheme's staff should be responsible for the handling and determination of complaints; be accountable only to the overseeing body; and be adequately resourced.
92. Independence is not just about actual arrangements and processes, but also about perceptions.

The ASIC guidelines state that the principle of independence means that a scheme should be a legal entity in its own right: that is, it should be an incorporated entity.

93. Schemes should aim for a governance structure that avoids industry-capture by interest groups, and prohibits industry from vetoing decisions made by the governance board.
94. Schemes may wish to consider having a body to act as a forum for FSP members. This body could appoint industry representatives to the governance board, and would help co-ordinate industry interests and settle on mandates for the industry representatives. It should not, however, be the rules decision-making body.
95. A further suggestion is that schemes separate the functions of setting the budget and allocating the costs amongst FSP members. For example, the governance board could set or approve the

budget for the operation of the scheme, but a separate body such as the member forum could decide how the cost is to be divided amongst the members. Funding arrangements are discussed further below.

Governance Board

96. Good practice suggests a scheme should have a governance board that has the responsibility and appropriate powers to oversee the operations of the scheme. If this approach is adopted, it is suggested that there is a balance of consumer and industry voices on the governance board. Generally, this equates to equal numbers. The governance board needs to represent the interests of both stakeholders to a scheme – the FSP members and consumers.
97. Ideally, the representatives on the governance board are drawn from the top levels of management of the scheme's FSP members. From observing various schemes, top level commitment to a scheme at the governance board level seems to result in more overall commitment to the aim of the scheme by FSP members. There should also be an independent chair. The Minister is required to consider whether the scheme's directors and senior managers are competent to manage a dispute resolution scheme (section 52(d)).
98. The scheme rules should set out how representatives on the governance board are to be appointed. One option for consumer representatives is to use the Ministry of Consumer Affairs consumer representative network as a source of possible nominees². Other options are to consult with respected consumer organisations, or invite the Minister of Consumer Affairs to make the appointments. The emphasis should be on achieving actual and perceived independence from industry.

Example: Banking Ombudsman Constitution

The Board shall comprise:

- A Chairperson, appointed in accordance with clause 10.1;
- Two representatives of Participants, appointed by the Council of the New Zealand Bankers' Association;
- One person appointed by the Crown by and through the Minister of Consumer Affairs or, if there is no such portfolio, such other Minister of the Crown as the Chairperson may consider appropriate; and
- One other person who shall ordinarily be the Executive Director for the time being of [Consumer NZ] or such other person representative of bank customers as the Chairperson may consider appropriate following prior consultation with the Board, who in either case shall be appointed by the Chairperson acting in his or her capacity as Shareholder.

99. The scheme rules should also set out the criteria for appointing industry representatives and the independent chair. One option is to task a members' forum with appointing the industry representatives, but the representatives should be people in whom consumers can have confidence. The Banking Ombudsman and the Insurance & Savings Ombudsman schemes provide for a separate process for choosing an independent chair. In the telecommunications

² Network members are primarily from non-governmental organisations, and are:

- already appointed to represent the interests and concerns of consumers on boards, councils or committees; or
- meet Cabinet Guidelines for effective consumer representation and are suitable for appointment.

sector, the Telecommunications Dispute Resolution Service provides for more consumer than industry representatives, with the chair elected from the consumer representatives.

100. The scheme rules should set out the functions for the governance board. It is suggested that the functions should be along the lines of:
- Appointing the decision-maker, who it is suggested is to have no relationship with the scheme members that fund or administer the scheme which would give rise to a perceived or actual conflict of interest. It is suggested that the decision-maker is accountable to the governance board rather than the scheme members;
 - Agreeing on the budget;
 - Recommending and promoting consultation about proposed changes to the rules and the terms of reference;
 - Receiving and considering complaints about the operation of the scheme (the governance board could elect to consider the complaint itself or could seek advice from an independent person);
 - Monitoring systemic issues from complaints lodged with the scheme, including complaints falling outside the terms of reference;
 - Monitoring the reporting of systemic issues and / or serious misconduct by the scheme; and
 - Monitoring the scheme's ability to manage its caseload and perform its functions.
101. It is suggested that the scheme rules set out the governance board's powers (such as recommendations) in the event that the scheme is not performing to the required standards. It is suggested that the scheme is required to respond in a timely and appropriate manner to any recommendations of the governance board addressing complaints about the operation of the scheme.
102. Another suggested function of the governance board is responsibility for appointing the person to manage the day-to-day operations of the scheme. That person or the governance body could be responsible for appointing, supervising and dismissing the scheme's staff. This includes consultants, contractors, agents and other necessary staff.
103. The Minister is required to have regard to whether the scheme directors and senior managers are competent to manage a dispute resolution scheme.

Resolving Disputes

Dispute Resolution Techniques

104. There are several techniques that a scheme may employ to resolve a dispute. The main methods are negotiation, facilitation, mediation, arbitration, conciliation, investigation and expert determination. It is suggested that the scheme rules should provide that arbitration and expert determination are only used after other techniques have been attempted.

Example: General Insurance Enquiries and Complaints Division of Financial Ombudsman Service Australia

IEC's objective is to facilitate the satisfactory settlement or withdrawal of disputes which are referred to it. IEC will make a further attempt to promote conciliation as a means of resolving a dispute to the satisfaction of the parties concerned; but where a conciliated solution is not practicable, a Panel, Referee or Adjudicator may determine the dispute.

Determination by the Decision-maker

105. The scheme rules need to set out:

- The powers for the decision-maker; and
- Matters the decision-maker is required to have regard to.

106. The decision-maker should be responsible for the determination of complaints. The decision-maker's powers should be set out in the rules, as required by section 63(i) of the FSP Act, and should include the power to order compensation or to recommend a member takes certain actions.

107. Section 63(h) of the FSP Act specifically requires rules providing that the decision-maker may consider any information in relation to a complaint and make any inquiry that is fair and reasonable in the circumstances. It is suggested that the scheme rules require that the decision-maker makes determinations based on what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law.

108. The rules should provide that the decision-maker is not bound by any legal rule of evidence, nor any previous decision made by him or her.

109. Two common approaches regarding decision-making structure are: one commissioner/ adjudicator; or a panel of decision-makers. Some schemes use a combination of the two, depending on the value of the claim.

Example: Decision-Making Structure in the General Insurance Enquiries and Complaints Division of Financial Ombudsman Service Australia

This scheme issues decisions via a Panel, a Referee and an Adjudicator depending on the value of the claim. An Adjudicator may only require the member to pay or be liable for an amount of \$3,000 or less. A Panel or Referee may require a member to pay or be liable for an amount of \$120,000 or less. A Panel or Referee may make a recommendation for an amount greater than \$120,000 but not exceeding \$290,000.

110. A scheme needs to outline the appointment process and criteria for decision-makers. Typically, decision-makers would have expertise in alternative dispute resolution and/or have a legal background, as well as the necessary attributes and experience to perform the functions of decision-maker.

Example: Disputes Tribunals Act 1988 section 6A(2)

No person may be appointed as Principal Disputes Referee unless that person

- a. Holds a Bachelor of Laws from a university in New Zealand or a qualification that the Minister

considers is equivalent to such a Bachelor of Laws; and

- b. Is capable, because of the person's personal attributes, knowledge, and experience, of performing the functions of a Referee and the functions of the Principal Disputes Referee set out in section 6C

111. A scheme may also choose to outline a removal process for decision-makers, or may deal with this aspect through the private employment contract.

Example: Insurance & Savings Ombudsman Scheme

3.3 The Commission shall have the power to suspend or to remove the Insurance & Savings Ombudsman (ISO) at any time in its absolute discretion.

16.5 The ISO shall automatically be removed from office if he/she:

- a. becomes bankrupt or makes any arrangement or composition with his/her creditors generally; or
- b. becomes of unsound mind, or becomes subject to an order under the Protection of Personal and Property Rights Act 1988; or
- c. resigns by notice in writing to the Commission; or
- d. is convicted of an indictable offence; or
- e. commits any act of dishonesty whether relating to the Commission or otherwise or is guilty of any serious misconduct or conduct tending to bring the Commission, the Scheme or himself/herself into serious disrepute; or
- f. following a medical examination by two medical practitioners made at the direction of the Commission or at the initiative of the ISO, is declared by both of the examining medical practitioners to be permanently incapable of performing his/her duties; or
- g. shall absent him/herself from his/her duties without the permission of the Commission and the Commission has resolved to terminate his/her appointment; or
- h. by reason of illness or accident, is incapacitated from attending to his/her duties for more than an aggregate period of two months in any period of twelve consecutive months and the Commission has resolved to terminate his/her appointment.

Natural Justice

112. Schemes are required by section 63(f) of the FSP Act to include in the scheme rules that complaints about members must be investigated in a way that is consistent with natural justice.
113. Natural justice imposes a duty on the scheme to act fairly towards both consumers and FSP members. The fairness principle in section 52(2) of the FSP Act encompasses many aspects of natural justice. In particular, natural justice requires:
 - Adequate notice to be given to both parties of important steps and decisions;
 - The opportunity for both parties to be heard and for their views to be considered before the decision is made.

Remedial Action

114. As required by section 63(i) of the FSP Act, the scheme rules must provide for the types of remedial action that the scheme can impose on a FSP member to resolve a complaint, and when different remedies might be appropriate. The examples given in the FSP Act are a requirement to change systems and monetary compensation.
115. According to the British and Irish Ombudsman Association it is vital that schemes offer a range of redress options. Suggested options that a scheme should have within its toolbox are: apology, remedial action by a member i.e. “putting things right” and financial compensation. These different tools can be used in isolation or in combination.
116. It is not expected that schemes will impose punitive or exemplary damages.
117. The scheme rules must also provide for how remedial action may be enforced against members, including after members have left a scheme (section 63(j)). The rules must state that a resolution is binding on the member concerned (section 63(m)) and that a resolution is also binding on the complainant, if the complainant accepts the resolution (section 63(n)).
118. As noted earlier under membership requirements, the rules must also state that a FSP who has not taken remedial action previously imposed on that provider by another approved scheme or the reserve scheme cannot join the scheme (section 63(k)).

Example: British and Irish Ombudsman Association view on deciding upon appropriate remedies

The decision-maker should consider “the degree to which the complainant contributed to the failure, the time that has elapsed since the event, and the time and trouble experienced by the complainant in pursuing the complaint. The reviewer should also consider the implications for others similarly affected, the capacity of the organisation to comply and the implications for other similar organisations.”

Reviews of Determinations

119. The FSP Act does not require schemes to provide appeal rights to an outside forum, such as the District Court.³ There was some discussion of appeal rights by the Finance and Expenditure Committee which considered the Bill preceding the FSP Act. It was decided that appeal rights and review processes would reduce finality and would undermine the low cost nature of the scheme. However, a number of FSPs considered there needed to be some basic review rights. Accordingly, schemes may consider internal mechanisms for reviewing determinations.
120. For clarity, under a review process a decision may be confirmed or revoked, but may not be varied. An appeal is a reconsideration of the decision based on the merits of the facts (substantive appeal), or on the process (procedural appeal). An appeal body or court may substitute the initial decision with one of its own.
121. If any review processes are provided for in a scheme, it is important that there are clear rules for refusing reviews based on the substantive merits of the case, as allowing such reviews may lead to an unnecessarily protracted process. This would undermine the purpose of dispute resolution

³ Although a consumer can take court action at any time, this is as an alternative to the dispute resolution scheme process, rather than to review a scheme decision.

schemes as a simple, low cost method of resolving complaints. Consumer dispute resolution schemes generally do not provide for reviews or appeals for that reason (see the ISO rule below).

122. It may be possible for complainants or FSP members to seek judicial review of the decision-maker's decision. Private organisations can be susceptible to judicial review if they are exercising a public function under statute. For instance, the Institute of Chartered Accountants has been subject to judicial review even though it is a privately funded organisation, as it exercises regulatory powers and functions that are statutory. Approved schemes under the FSP Act will be in a similar position – they are private bodies with private funding, however, they will have statutory approval and will carry out regulatory powers under statute.

Example: Insurance & Savings Ombudsman Terms of Reference

No decision of the ISO shall be capable of review or appeal in any form, by any other person, court, tribunal, statutory complaints authority, or other body.

Compliance Monitoring of Members

123. Schemes should have mechanisms to monitor compliance, and some form of sanction for when there is non-compliance with a rule of the scheme (i.e. those rules that are related to the process and operation of the scheme, rather than a ruling of the decision-maker). As previously suggested, schemes may wish to impose an obligation to co-operate with the scheme as a condition of membership.
124. The greatest incentive for compliance is the fact that a FSP must be a member of an approved dispute scheme or the reserve scheme in order to be registered. Without registration, the FSP cannot legally operate in the market. It is suggested a scheme has a scale of sanctions including name-and-shame through to termination of membership for breaches of the membership rules. Schemes may wish to include information on member compliance in the annual report.
125. The rules should include a mechanism to enable the scheme to meet its obligation under section 67(c) to report to the relevant licensing authority where there is a series of material complaints about a particular licensed provider or class of licensed provider.

Alternative Legal Action

126. The scheme rules must provide that the complainant may take alternative court action against the member at any time (section 63(o)). Once this occurs, the scheme may cease investigating the complaint (section 63(p)).
127. The accessibility of consumer dispute resolution schemes can be undermined by allowing members to take alternative court action once a complaint has been lodged by a consumer. However, there are two situations where a scheme may consider it important to allow a member to pursue the matter before the general courts.
128. The first situation is where a limitation period is about to end. Scheme members should be allowed to preserve their legal rights by taking court action, however, it is suggested the scheme rules should provide that only the minimum necessary action is to be taken. Under this scenario, it is suggested the rules provide that once a complaint is resolved by the scheme decision-maker, the member will discontinue any aspect of the legal proceedings that is inconsistent with the agreement or determination.

129. The second situation where alternative legal proceedings by the member would be appropriate is in test cases concerning an important legal issue for the industry. The scheme rules should provide for a system for test cases. A member should only be allowed to take a test case upon agreement by the scheme. As a complainant may be prejudiced by the test case procedure, the member should pay for the complainant's reasonable legal costs.

Procedural Rules

130. Section 63 of the Financial Service Providers Act provides that a scheme must have procedural rules that:

- Specify how a consumer may make a complaint to the scheme (section 63(d));
- Provide that a complaint can be lodged free of charge (section 63(l));
- Provide for a period after which complaints to a member which remain unresolved can be investigated by the scheme (section 63(e));
- Provide, in resolving a dispute, the decision-maker may consider any information and make any inquiry that is fair and reasonable in the circumstances (section 63(h)); and
- Provide complaints must be investigated in a way that is consistent with natural justice (section 63(f)).

131. These have all been discussed above. In addition, the Act requires that the procedural rules are adequate in terms of the benchmarks. Some suggestions on how the benchmark principles can be reflected in the procedural rules follow.

Accessibility

132. As already discussed, the scheme's process should be easy to use and have no cost barriers (they must be free to consumers). Approaches that demonstrate accessibility might include, but are not limited to, whether the scheme:

- Uses an informal, non-adversarial approach (although allows for formal procedures such as arbitration where necessary);
- Has adequate funding allocated in the budget to use on achieving an internally accessible process, such as for promotional materials;
- Has processes that are simple for complainants to use and understand;
- Provides complainants with assistance in describing what their complaint is and how it came about;
- Has flexibility in the way complaints can be made, for example, allowing oral complaints and providing for the scheme to record the complaint and send it to the complainant for confirmation;
- Has a toll free number for consumers to contact the scheme;
- Provides interpreters if needed;
- Allows complainants to use support persons;
- Allows complainants to authorise a person to represent them in respect of a dispute, if the complainant is a child, seriously ill, mentally handicapped, frail, elderly or non-English speaking;

- Provides for the scheme member to pay the reasonable legal costs of complainants where the scheme member is the first party to request to be legally represented and the decision-maker agrees to that request;
- Has measures in place to help customers with special needs, be they socio-economic, cultural, language, geographical or physical needs, to access the scheme and use it effectively;
- Provides material in various languages which is easily accessible and simple to use, explaining: how to access the scheme; how the scheme works; major areas the scheme deals with; and limits on the decision maker's powers;
- Does not require complainants to attend hearings or meetings; and
- Employs other methods to resolve complaints, such as emails, phone calls and online forms.

133. Accessibility issues may be a result of capacity or circumstance. In particular, the information asymmetries and complex nature of financial transactions and products require extra measures to ensure accessibility for consumers. A good rule of thumb for deciding what accessibility requirements are necessary is to consider what might remedy any imbalance between the complainant and the member.

134. Section 64 of the Financial Service Providers Act requires that the person responsible for an approved dispute resolution scheme must make copies of the scheme's rules available to the public free of charge.

Independence

135. The scheme's processes and administration should be independent from scheme members. Approaches that demonstrate independence might include, but are not limited to, whether the scheme:

- Has a decision-maker who is responsible for the determination of complaints, and who is not answerable to scheme members for determinations;
- Has a decision-maker who has no relationship with the scheme members that fund or administer the scheme which would give rise to a perceived or actual conflict of interest;
- Has staff who are not selected directly by scheme members, and are not answerable to scheme members for the operation of the scheme;
- Is overseen by a separate entity with a balance of consumer and industry interests; and
- Has sufficient funding to enable its caseload and other relevant functions necessary to fulfil its terms of reference to be handled in accordance with the principles in section 52(2) and the rule requirements in section 63.

Fairness

136. The scheme's processes should be perceived as promoting decisions which are fair and are seen to be fair. Approaches that demonstrate fairness might include, but are not limited to, whether the scheme:

- Advises complainants of their rights to access the legal system or alternative redress mechanisms at any stage, including if the complainant rejects the resolution of their complaint by the scheme;

- Allows both parties to put their case to the decision-maker;
- Informs each party of the arguments and case of the other party;
- Has flexibility built into procedural rules so that the scheme has discretion to respond appropriately to a complainant's or member's individual circumstances;
- Has a decision-maker who, when making a decision, relies only on information available to both the parties (i.e. not confidential documents) unless special circumstances apply;
- Has a decision-maker who, in making determinations or recommendations, has regard to what is fair and reasonable in all the circumstances; and regard is also given to any relevant industry codes and established legal principles;
- Has procedural guarantees of due process;
- Informs parties of the reasons for a determination, and the procedure by which a recommendation of the decision-maker may be accepted by the parties to the complaint;
- Advises a complainant why a complaint is outside the jurisdiction of the scheme;
- Encourages but does not compel either party to provide information relevant to a complaint;
- Insures any sensitive and confidential information that is provided is kept confidential by the decision-making body and its staff, unless disclosure is required by law or in order to meet one of the other benchmark principles; and
- Overall, the process is transparent to both parties.

Accountability

137. The scheme should publicly account for its operations and should highlight systemic industry problems. Approaches that demonstrate accountability might include, but are not limited to, whether the scheme:

- Regularly provides written reports of decisions of note (with names deleted) to members and other interested parties;
- Publishes a detailed and informative annual report, which is available to the public. Regarding the annual report, it is suggested this contain information such as:
 - information about how the scheme works;
 - results of the internal review;
 - statistics on caseload, resolved cases, cases rejected on jurisdictional grounds, the amount of time taken to resolve complaints;
 - results of feedback surveys;
 - some examples of typical cases;
 - information on compliance with the benchmark principles;
 - the list of members;
 - information on performance standards;
 - the results of the independent review, if any independent review has been conducted that year;

- financial statements which sufficiently illustrate how the funding is being utilised;
- a list of scheme members who committed substantial, material or persistent breaches of their membership obligations (and who have not remedied that breach);
- any systemic issues arising from complaints, and how those issues have been dealt with;
- information about new developments or key areas in which policy or education initiatives are required; and
- Requires the governance board to report on member compliance.

Efficiency

138. The scheme should operate efficiently by keeping track of complaints, having a process for ensuring complaints are considered appropriately and regularly reviewing its performance. Approaches that demonstrate efficiency might include, but are not limited to, whether the scheme:

- Deals only with complaints within its scope, has an obligation to identify the nature of a complaint and has procedures to refer complaints outside its jurisdiction to the appropriate forum;
- Has a process to carry out the obligation under section 67 to co-operate with other approved schemes, the Registrar, and the reserve scheme, for instance has clear protocols or Memoranda of Understanding;
- Has a process to refer systemic industry problems that become apparent from complaints to the relevant licensing authority, and alerts scheme members about such issues; and
- Keeps track of complaints by using systematic records, has best practice benchmark time limits for the resolution of complaints, and provides complainants with receipts indicating acceptance of their complaint and the projected timeframe for resolving the complaint.

Effectiveness

139. The scheme should operate according to appropriate and comprehensive terms of reference or objectives and provide for independent review. Approaches that demonstrate effectiveness might include, but are not limited to, whether the scheme:

- Has clear scope, and that scope is sufficient to deal with the majority of consumer complaints about its FSP members;
- Grants clear powers to the decision-maker;
- Has mechanisms in place for the decision-maker to refer systemic industry problems to the governing body;
- Has the power to make monetary awards of sufficient size, according to the nature, extent and value of customer transactions in the financial services industry; and
- Requires the scheme to respond in a timely and appropriate manner to any recommendations of the governance board addressing complaints about the operation of the scheme.

Discussion of Particular Procedures

Written Decisions

140. In order to satisfy the fairness and accountability benchmarks, decision-makers have an obligation of a degree of consistency and openness in decision-making. One way consistency can be achieved is through issuing written decisions. This does not amount to a requirement to be bound by previous decisions (as in a court when faced with a binding precedent). Fairness and accountability also require that parties to a dispute are able to ascertain the reasons for the decision-maker's determination, and identify the evidence that has been relied on in reaching that conclusion.
141. Written decisions can be used in two ways:
- To provide parties to a dispute with a clear understanding of the decision-maker's reasoning; and
 - As a publicly available education tool.
142. International good practice is that written decisions are made widely available to the public in an anonymous and/or summarised form. Examples are the Banking Ombudsman and the Insurance & Savings Ombudsman Case Notes. Providing case notes allows FSP members of a scheme to educate themselves and adjust their practices, as well as educating consumers. In the long run, this will avoid many trivial or systemic disputes. Written decisions allow schemes to contribute to the development of law in the financial sector. One option may be for case notes to be accessible on the scheme's website.
143. Written determinations may withhold certain types of information, such as confidential, commercially sensitive, legally privileged or personal information.

Example: British and Irish Ombudsman Association view on publishing determinations

“So far as it is possible and practicable, final determinations should be published in a way that enables everyone concerned to understand the evidence, the application of rules and policies and the reasons for any conclusions reached... Some schemes make their determinations public and, where this is the case, they should be available for convenient reference by their stakeholders, who should also have easy access to the policies and procedures that lead to decisions.”

(BIOA Guide to Principles of Good Complaint Handling 2007)

144. The ASIC guidelines recommend the provision of written reasons for decisions. To enhance transparency, one suggestion is to include with the written decision advice specifying the documents relied on, which can be provided to parties upon request. The ASIC guidelines also recognise that endangerment to a third party or security reasons may preclude the sharing of documents.

Legal Representation and Support Persons

145. In the list of approaches that could be considered for demonstrating a scheme meets the accessibility principle, the following were noted:
- If a scheme member is the first to request legal representation and the decision-maker agrees to it, then the scheme member is required to pay for the reasonable costs of legal representation for the consumer; and
 - The scheme allows for support persons for those consumers who are disadvantaged or vulnerable due to capacity or circumstance.

Legal Representation

146. Whether or not those taking or defending a complaint should be allowed legal representation is a difficult issue. Industry-led dispute resolution schemes are similar to the Disputes Tribunal, which does not allow for legal representation.
147. Accordingly, the suggested principle is that legal representation should be discouraged, as it may undermine the aims of a simple, quick and inexpensive method of dispute resolution.
148. However, due to the prevalence of in-house legal teams it may be hard to avoid. Insurers often obtain legal advice when considering a claim made under a policy. A blanket ban on legal representation may simply encourage members to “bury” the legal advice that they have received.
149. The inquisitorial nature of the decision-making process should alleviate the problem, as it is the decision-maker’s and not the complainant’s responsibility to test the member’s case. Legal representation for the consumer therefore becomes less important if the decision-maker is respected. In addition, schemes should have some staff with legal training.

Support Person

150. Identifying vulnerable or disadvantaged consumers is often a matter of common sense. For many people, even writing a letter or engaging in a telephone conversation may be intimidating. An accessible and fair process, and an accessible and fair culture amongst the members’ staff and the scheme’s staff, will help many consumers. Schemes should be aware that vulnerability may be caused by the complexity of information involved in the financial sector. Schemes may like to maintain a referral list of community and social agencies, to assist vulnerable and disadvantaged consumers.

Funding Requirements

151. Section 52(1)(c) of the Financial Service Providers Act requires the Minister to have regard to whether the applicant seeking scheme approval has adequate funding to enable it to operate the scheme according to the scheme’s purpose and rules. Accordingly, applicants will need to provide details of their funding arrangements.
152. Schemes are usually funded by the members. The funding arrangements are likely to be specific to the structure of the industry/industries from which membership is drawn. As such, these guidelines make some overarching suggestions. It is up to schemes to set appropriate detailed funding rules. An example follows of the Insurance & Savings Ombudsman funding formula.

153. One suggestion is that the members' forum sets the funding mechanism, subject to approval by a governance board. The governance board would then be required to ensure that the funding mechanism meets certain principles. Some suggestions are that the funding mechanism:
- Has a user pays component for financial service provider members which encourages robust internal complaints mechanisms;
 - Ensures efficient and effective resolution of complaints.
154. Suggestions for demonstrating the adequacy of funding that will enable the effective operation of the scheme include, but are not limited to:
- Transparency and fairness – the funding details should be clearly set out in the rules, including ongoing fees, one-off fees to establish the scheme, and any per-complaint charges or pro rata charges;
 - Amount to be included in the rules, so that any changes to the funding arrangements must comply with the rule change procedures under the Act. This is to avoid a scheme from later undermining its effectiveness by lowering the fees to an unviable level;
 - User pays component as an incentive for the improvement of members' internal schemes;
 - Any incentives to promote efficiency;
 - Avenues for members to dispute the amount they have been charged by the scheme;
 - Independence of the scheme from its members should not be compromised by the funding arrangements – both actual and perceived independence;
 - Sufficient funding secured to enable the scheme to operate in accordance with the benchmarks, i.e. scheme must not compromise on its effectiveness in order to lower the fees to members; and
 - Adequate funding, and adequate mandate, to carry out promotional activities.
155. The scheme rules should specify how the budget will be set. The budget should be set in such a way that the principles of independence and effectiveness are satisfied.

Example: Insurance & Savings Ombudsman Rules – Funding Formula

10.3 Subject to Rules 10.2 and 10.4, every Participant shall pay a Levy for each financial year, on or after 1 July 2006, which is made up of:

- a. a share of 40% of the total Levy, based on the number of Accepted Complaints that Participant had in the previous financial year as a proportion of all of the Accepted Complaints for that year; and

[“Accepted Complaints” means a complaint which, in the preceding financial year, the ISO has determined is within his/her jurisdiction under paragraph 4.1 of the Terms of Reference.]

- b. a share of 60% of the total Levy, which is made up of:

(i) the sum of \$1,000 from each Personal Line, Health and Life Insurance Participant; and

(ii) the sum of \$10,000.00 from each Savings Participant; and

(iii) a share of the balance of 30% of the total Levy paid by the Personal Line and Health Insurance Participants, based on Gross Written Premium for each one of them and their Subsidiaries as a proportion of the total Gross Written Premium for all of them and their Subsidiaries; and

[“Gross Written Premium” means the total amount derived in the preceding financial year by a Participant and its Subsidiaries on all contracts for the provision of Personal Line Insurance Services and/or Health Insurance Services (after deducting all returned or rebated premium amounts, but without deducting any commissions or brokerage).]

(iv) a share of the balance of 30% of the total Levy paid by the Life Insurance Participants, based on the total number of Contracts held by each one of them and their Subsidiaries as a proportion of the total number of Contracts held by all of them and their Subsidiaries;

[“Contracts” means each separate agreement for the provision of Life Insurance Services or Savings Services at the end of the previous financial year.]

10.4 For a Participant first joining the Scheme, that Participant’s Levy in the financial year in which the Participant first joins the Scheme shall be determined as the sum of:

- a. in respect of the Participant’s Gross Written Premium, as defined in paragraph 10.3(b), (for Personal Line and Health Insurance Participants) and the Participant’s total number of Contracts, as defined in paragraph 10.3(b), (for Life Insurance and Savings Participants) by the Participant, a Levy at the same rate as payable by all other Participants, and;

- b. the sum of \$10,000 in respect of each Savings Participant and \$1,000 for any other Participant, and;

- c. a fee per complaint accepted for consideration by the ISO during the Participant’s first financial year of participation, at the same rate as is charged to all other Participants in the relevant financial year; provided that:

- d. there shall be a reduction on a pro rata basis in respect of the Levy in (a) above for any period of participation less than a full financial year, and

- e. the Commission may require the Levy calculated as above to be paid in arrears or in advance (or part in arrears and part in advance) on giving notice in accordance with Rule 10.8, and

- f. for the purposes of (c) above the determination of complaints accepted for consideration shall be as set out in paragraph 10.3(a).

Performance Monitoring of Schemes

“If you can’t measure it then you can’t manage it” Barry Adams, Queensland Energy Ombudsman

156. The performance of approved schemes will be monitored and assessed through a number of avenues:
- The scheme’s rules must require an independent review of the scheme at least once every 5 years, and that review is to be supplied to the Minister (section 63(q));
 - The scheme must supply the Minister with an annual report containing prescribed information (section 68); and
 - The Minister may also ask for further information in order to assess compliance with the principles of fairness, independence, accountability, efficiency, effectiveness and accessibility.
157. It is suggested that schemes look at monitoring their performance through a mix of objective and subjective data. Objective measures might include collecting data on the number of complaints received, the average time per complaint, demographic information on the complainants accessing the scheme, the range of complaints and the types of product or service being complained about. To round out the impression of the objective data, information such as user satisfaction could be helpful.

Annual Report

158. The Act requires the scheme to provide an annual report to the Minister of Consumer Affairs within 3 months of the end of the financial year. Paragraph 137 provides a list of suggested information to include in the report. Required information may be provided for by regulation.
159. The Act also requires that the scheme makes copies of the annual report available to the public at the scheme’s head office and on the internet.

Setting Performance Standards

160. The Act does not explicitly describe or require performance standards for approved schemes. It is suggested, however, that schemes consider having some performance standards. These can be particularly important when reviewing a scheme. Performance standards should enable third parties to determine that the scheme is operating according to the principles.
161. Members of the various sectors are best placed to develop their own performance standards that reflect the complexities of their business. Scheme applicants are expected to apply their institutional knowledge with the benchmark principles. Performance standards could also include broader issues, such as the overall accessibility of the scheme.

Example: Banking Ombudsman’s Accessibility Benchmark

“Is it [the scheme] easily accessible to, and easy to use for, consumers regardless of their location, resources (intellectual and material), literacy, language skills, health status and other personal circumstances?” (2006 Independent Review)

Performance Monitoring

162. Apart from setting performance standards, performance monitoring consists of three aspects – developing programmes to achieve goals, measuring performance to see if it meets the goals, adjusting and implementing new programmes to ensure continued high performance. These monitoring efforts can combine with complaint tracking systems to form the basis of regular internal reviews of the scheme.

Independent Review

163. Schemes are required by section 63(q) to have a rule that an independent review of the scheme will take place every 5 years. Section 63(q) also requires that the independent review is supplied to the Minister of Consumer Affairs within 3 months of completion.
164. Schemes might wish to consider appointing the independent reviewer through the governance board, following consultation with the Ministry of Consumer Affairs. The terms of reference for the review could be determined using a similar process.
165. A further suggestion is that schemes make copies of the independent review available to relevant stakeholders. A summary of the review may be included in the annual report for that financial year.

Further Features of the Approved Schemes System

Amending the Scheme Rules

166. If a scheme wishes to amend the scheme rules, the scheme must notify the proposed changes to the Minister (section 65). The Minister will consider whether the changes are adequate in regards to the benchmark principles, and whether the rule requirements under section 63 are met. If the Minister does not approve the change, then the change must not be made.
167. If the scheme has not heard from the Minister within 45 working days of the notification being made, the change is treated as having been approved by the Minister (section 66). The scheme cannot have rules that conflict with this process.
168. Any processes for scheme rule changes should take care not to:
- Give one group of stakeholders a disproportionate influence compared with other stakeholders; and
 - Undermine the scheme's independence from those that provide funding.

Exit Requirements

169. The Minister must withdraw approval if the person responsible for an approved scheme so requests. The withdrawal takes effect from any future date requested (section 56(3)). The members of the scheme will become members of the reserve scheme unless other arrangements have been made to join another approved scheme (section 61).

Revoking Approval

170. Approval does not expire. The indefinite period of approval is intended to encourage investment in resources and staff capability. The Minister is able to review the functioning of approved schemes through mechanisms such as the annual report (section 68), and the independent reviews (section 63(q)).

When the Minister may withdraw approval (section 56)

171. The Minister may withdraw approval under section 56 for a number of specified reasons. These include:
- A breach of a requirement prescribed in regulations;
 - A failure to comply with scheme rules;
 - A list of current members has not been maintained or published;
 - The scheme's rules have not been published;
 - Required information has not been supplied to the Minister, such as the annual report, information requested under section 69, and the independent review required under the scheme rules;
 - Changes to the rules have not been notified to the Minister;
 - The provision for co-operation and information sharing has not been complied with; or

- The scheme no longer satisfies the principles of fairness, independence, accountability, efficiency, effectiveness and accessibility.
172. When deciding whether to withdraw approval, the Minister must have regard to a number of the initial approval considerations, in light of the principles of fairness, independence, accountability, efficiency, effectiveness and accessibility. These considerations are:
- Whether the scheme has an appropriate purpose;
 - Whether there has been reasonable consultation with persons likely to be substantially affected by the scheme;
 - Whether there is adequate funding for the scheme to operate according to its rules and its purpose;
 - Whether the directors and senior managers are competent to manage a dispute resolution scheme;
 - Whether the scheme is capable of resolving disputes about the types of financial services provided by its members;
 - The claims limit, and whether this is reasonable and appropriate; and
 - Whether the scheme rules comply with section 63, and with the principles of fairness, independence, accountability, efficiency, effectiveness and accessibility.

Notice of Intention to Withdraw Approval (section 57)

173. Once the Minister decides to withdraw approval, he or she must give notice to the person responsible for the scheme stating the reasons for withdrawal. The Minister's notice may require the person responsible for the scheme to notify all members, or to provide the Minister with a contact list so that the Minister may notify the members. During the notice period, the scheme must not accept any new members (section 58(1)(b)).

Objection to Withdrawal of Approval (section 58)

174. A notice period of 20 working days applies, during which the person responsible for the scheme may object to the Minister's intention to withdraw approval under section 56(4). Once the Minister receives an objection, he or she cannot proceed with the withdrawal until satisfied that any or all of the withdrawal reasons in section 56 apply.

Notification, Publication and Effect of Withdrawal of Approval (sections 59-61)

175. After withdrawing approval, the Minister must notify both the Registrar and the person responsible for the scheme as soon as practicable. The withdrawal becomes effective from the date the person responsible for the scheme is notified. Members of the scheme then become members of the reserve scheme.
176. The Minister must ensure that the withdrawal is published in the Gazette, and that the Chief Executive updates the details that are available for public inspection under section 78.

Process for Approval of Scheme

Lodging an Application for Approval

177. The person responsible for a scheme who wishes to seek approval for that scheme should lodge a written application with the Minister of Consumer Affairs.
178. An application for approval should include a cover letter addressed to the Minister and must include documentation that clearly indicates how the scheme meets the benchmark principles and the requirements of the FSP Act.
179. The Minister will acknowledge receipt of the application. The Minister can only make a decision on the application following consultation with the Ministers of Finance and Commerce. It is anticipated that the approval process will take about 3 months.
180. The Minister will consider the guidance contained in this document in assessing a scheme's compliance with the benchmark principles and the FSP Act. However, other approaches will be considered if they are compliant with the FSP Act. Applications will be considered based on their merits. The Minister may request further information from the scheme during the approval process.
181. The FSP Act allows for an application fee. However, no such fee is prescribed at this time.

Information that should be included in an application

- Cover letter addressed to the Minister;
- Details on how the scheme meets the benchmark principles and the requirements of the FSP Act;
- Scheme rules, in whatever form they appear i.e. Terms of References, Protocols, Constitution, Participation Agreements;
- Prescribed information concerning the mandatory approval considerations. (There are currently no additional prescribed requirements.);
- Current and projected membership details;
- Any other information necessary to demonstrate how the scheme meets the requirements of the Act.

Notification and Publication of Decision

182. The Minister will provide applicants with written notification of the outcome of their application. If the application has been successful, the approval will be published in the Gazette. The details of the scheme, and the name and business address of the person responsible for the scheme, will be made available to the public at the Ministry of Consumer Affairs' head office and internet site.

Transitional Arrangements (for existing schemes)

183. For those existing schemes that are seeking approval, a transition period will be allowed where the requirements of the FSP Act and the approval process mean that a scheme must make changes to the current arrangements.
184. Schemes will be permitted to operate under their existing rules until the new arrangements are approved. Following approval, a scheme will be permitted a reasonable lead in time to amend internal processes, e.g. print new brochures, staff training.

Appendix 1: Quick Checklist for Applicants for Approved Industry-Based Dispute Resolution Schemes

NB: Schemes may wish to separate these requirements into a number of different documents

Purpose, Objective and Scope

Para ref	Title	Achievement Standard	FSP Act
	<i>Objectives</i>		
23-25	Overall objective	<p>The scheme rules provide for an appropriate purpose.</p> <p>Suggestion:</p> <p>The scheme purpose covers–</p> <ul style="list-style-type: none"> • To facilitate the satisfaction, settlement or withdrawal of complaints with respect to member FSPs, by making awards or by other appropriate means; • To provide advice to members; and • To provide information to potential users of the scheme. 	s52(1)(a)
22	Consultation	The scheme has undertaken consultation with parties likely to be substantially affected, including industry and consumers.	s52(1)(b)
	<i>Scope</i>		
26	Clear scope	The scheme rules are clear on the scope of the scheme and the powers of the decision-maker.	Effectiveness
17	Scheme rules	The scheme rules cover the requirements of section 63, and satisfy the benchmark principles.	s52(1)(g) s52(2) s63
68 - 70	Coverage of sector	The scheme states in its rules which types of financial service providers may be members of the scheme. All providers of that type must be eligible for membership.	s52(1)(k) s63(a) s63(k)
49 - 52	Complainants	As a minimum, the scheme provides in its rules that consumers and businesses that have no more than 19 full-time equivalent employees may access the scheme.	s63(c)

Para ref	Title	Achievement Standard	FSP Act
		<p>Suggestion:</p> <p>The scheme may wish to extend access to the scheme to other classes of complainant.</p>	
59 - 60	Free access	The scheme rules specify that it is free of charge for consumers to lodge a complaint.	s63(l)
28, 36	Definition of complaint	<p>Suggestion:</p> <p>The scheme may wish to adopt a definition of complaint.</p>	
27- 37	Coverage of complaints	<p>The scheme states in its rules what complaints about members may be made</p> <p>Suggestions:</p> <p>The scheme rules provide for consideration of complaints regarding;</p> <ul style="list-style-type: none"> • Breaches of contract; • Breaches of statutory obligations; • Breaches of industry codes. <p>The scheme is not required to investigate areas of commercial judgement, but should address complaints about the administration of commercial judgement.</p> <p>The scheme rules require that disciplinary complaints are referred to the appropriate body, but allows for the scheme to provide consumer redress for such complaints as appropriate.</p> <p>The scheme does not have to investigate complaints that are the subject of alternative court action.</p>	s63(d) s63(g) s63(p)
53 - 58	Amount claims may be about	<p>The scheme's scope is sufficient to deal with consumer complaints involving monetary amounts up to a specified maximum that is consistent with the nature, extent and value of customer transactions in the relevant industry. The scheme may utilise either a cap or a limit. The cap or limit is specified.</p> <p>Suggestions:</p> <p>The scheme rules consider whether a consumer's claim for interest can be allowed over and above a cap or limit.</p>	Effectiveness s52(1)(f)

Para ref	Title	Achievement Standard	FSP Act
		Consideration is given to indexing the cap or limit, or providing for the cap or limit to be reconsidered by the 5-yearly independent review.	
61 - 62	Unacceptable actions by complainants	<p>Suggestion:</p> <p>The scheme rules provide a procedure for dealing with vexatious complainants.</p>	Effectiveness Efficiency
38 - 45	When complaints can be taken	<p>The scheme rules provide for when complaints can be taken.</p> <p>Suggestions:</p> <p>These rules cover:</p> <ul style="list-style-type: none"> • Deadlock; • Limitation periods; • Retroactive application. <p>The scheme rules provide that in the first instance a consumer's complaint will need to be taken up with the FSP member who provided the product or service.</p> <p>The scheme rules provide for a period after which complaints made to a member's internal complaints process may move to the scheme.</p> <p>The scheme rules provide for a limitation period for when complaints can be brought to the scheme after the cause of action accrues which results in the complaint.</p> <p>The scheme has clear rules about when its jurisdiction becomes effective. The scheme has transitional arrangements to cover complaints lodged prior to the implementation of the FSP Act.</p>	s63(e) Accessibility
46 - 48	Dual access	<p>Suggestion:</p> <p>The scheme rules allow a member to refer complaints to the scheme in certain instances.</p>	

Membership Requirements and Obligations

Para ref	Title	Achievement Standard	FSP Act
<i>Membership Rules</i>			
68 - 70	Joining the scheme	<p>The scheme rules describe how a financial service provider may become a member of the scheme.</p> <p>The scheme rules provide that membership is not open to an FSP who has not complied with remedial action imposed on it by another approved scheme or the reserve scheme.</p>	s63(b) s63(k)
86 - 89	Termination	The scheme rules provide for how membership is terminated, including termination at the member's request.	s63(b)
<i>Obligation to Comply and Co-operate</i>			
71 - 72	Obligation to comply	<p>Suggestion:</p> <p>The scheme rules impose on members an obligation to comply and co-operate with the scheme.</p>	
73	Co-operation with other members	<p>Suggestion:</p> <p>The scheme rules impose an obligation for scheme members to co-operate with each other</p>	
72	Information provision	<p>Suggestions:</p> <p>The scheme rules oblige members to provide to the scheme's staff and the scheme's decision-maker necessary information to enable effective investigations in a timely fashion.</p> <p>The member is not obliged to provide information to the scheme where such a disclosure is prohibited by law. The member may also take reasonable measures to protect information that is confidential and/or subject to privilege, such as making deletions to the provided material.</p>	Effectiveness Fairness

Para ref	Title	Achievement Standard	FSP Act
<i>Effective Internal Complaints Handling</i>			
74 - 76	Internal dispute resolution	<p>Suggestions:</p> <p>The scheme rules require all members to have a robust internal complaints resolution system.</p> <p>The scheme sets general, minimum or specific standards for the internal systems to achieve, or imposes a common system.</p>	Effectiveness
<i>Consumer Accessibility Requirements on Members</i>			
77 - 85	Promotion of scheme	<p>The scheme rules require the scheme's members to inform their customers who are consumers and businesses and other organisations with less than 19 full time employees, about the scheme.</p> <p>Suggestion:</p> <p>The scheme rules have promotion obligations on members to ensure the accessibility of the scheme for consumers.</p>	s63(r) Accessibility
<i>Binding Determinations</i>			
117	Binding on members	The scheme rules state that a determination of the decision-maker is binding on the scheme member concerned. The resolution is binding on the complainant if the complainant accepts the resolution.	Effectiveness s63(m) s63(n)

Structural and Governance Requirements

Para ref	Title	Achievement Standard	FSP Act
<i>Governance Board</i>			
96	Oversight role	<p>Suggestion:</p> <p>The scheme rules provide for a governance board with responsibility to oversee the operation of the scheme according to the benchmark principles.</p>	Independence

Para ref	Title	Achievement Standard	FSP Act
96 - 98, 135	Composition	<p>Suggestion:</p> <p>The governance board has equal numbers of consumer and industry representatives, with an independent chair.</p>	Independence
98	Consumer representatives	<p>Suggestion:</p> <p>The scheme rules outline how consumer representatives are appointed to the governance board.</p>	Independence
99	Industry representatives	<p>Suggestion:</p> <p>The scheme rules provide that the representatives of industry interests are:</p> <ul style="list-style-type: none"> • Persons in whom consumers and consumer organisations can have confidence; • Elected by members, for instance through a members' forum if one exists. 	Independence
99	Independent chair	<p>Suggestion:</p> <p>The scheme rules provide for an independent chair.</p>	Independence
100 - 102	Functions	<p>Suggestion:</p> <p>The scheme rules provide that the functions of the governance board include:</p> <ul style="list-style-type: none"> • Appointing the decision-maker; • Agreeing on the budget; • Considering changes to the scheme rules; • Receiving and considering complaints about the operation and performance of the scheme; • Receiving information about, and taking appropriate action in relation to, systemic industry problems referred by the scheme. 	Independence
103	Competency	<p>Suggestion:</p> <p>The scheme directors and senior managers must be competent to manage a dispute resolution scheme.</p>	s52(1)(d)

Para ref	Title	Achievement Standard	FSP Act
	<i>Members' Forum</i>		
94	Members' forum	<p>Suggestion:</p> <p>The scheme considers allocating certain governance tasks to a forum comprised of industry members. Appropriate tasks would be deciding how the budget is to be allocated amongst members, and electing industry representatives to the governance board.</p> <p>A members' forum should not have the power to amend the scheme's rules.</p>	
	<i>Appointing Decision-Maker</i>		
100, 135	Appointment of decision-maker	<p>Suggestion:</p> <p>The scheme rules provide that the decision-maker is appointed by the governance board and has no relationship with the scheme members that fund or administer the scheme which would give rise to a perceived or actual conflict of interest.</p>	Independence
110	Qualifications of decision-maker	<p>Suggestion:</p> <p>The scheme rules provide for the necessary qualifications for a decision-maker, such as legal or dispute resolution expertise and relevant attributes and experience.</p>	
102	Other staff	<p>Suggestion:</p> <p>The scheme rules provide that the scheme staff are independent of members and are to be appointed by either the governance board or the decision-maker.</p> <p>The governance board or the decision-maker could have the power to appoint and dismiss employees, consultants, independent contractors, agents and other necessary staff, and to determine the terms of their employment or engagement.</p>	Independence
	<i>Handling Complaints about the Scheme</i>		
100	Referred to governance board	<p>Suggestion:</p> <p>The scheme rules provide that the scheme receives complaints about the operation of the scheme, and refers them to the governance</p>	Independence

Para ref	Title	Achievement Standard	FSP Act
		board. It is suggested this exclude complaints about the content of a determination by a decision-maker, but include procedural complaints about a determination (also noted above under governance board).	
101, 139	Governance board recommendations	<p>Suggestion:</p> <p>The scheme rules provide for the scheme to respond in a timely and appropriate manner to any recommendations of the governance board addressing complaints about the operation of the scheme.</p>	Effectiveness

Decision-Making

Para ref	Title	Achievement Standard	FSP Act
	<i>Decision-Maker</i>		
106, 109	Function	<p>Suggestion:</p> <p>The scheme rules provide for the scheme to have a decision-making body/person responsible for the determination of all complaints.</p>	
106	Powers	<p>Suggestions:</p> <p>The scheme rules provide that the decision-maker has the power to:</p> <ul style="list-style-type: none"> • Recommend that a complaint should be settled or withdrawn; • Uphold a complaint against a member. <p>If a complaint is upheld, the decision-maker has the power to:</p> <ul style="list-style-type: none"> • Recommend a member to take certain actions to make amends; • Recommend a member to pay compensation to the complainant; • Where the member has not accepted the recommendation, make an award against the member. 	s63(i)

Para ref	Title	Achievement Standard	FSP Act
100, 135	Independence	<p>Suggestions:</p> <p>The scheme rules provide for the decision-maker to be independent of the scheme members.</p> <p>The scheme rules provide that the decision-maker is accountable to the governance board rather than the scheme members.</p>	Independence
107	Fair and reasonable determinations	<p>Suggestions:</p> <p>The scheme rules provide that the decision-maker makes determinations based on what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law.</p> <p>The scheme rules provide that the decision-maker will not be bound by any legal rule of evidence, nor any previous decision made by him or her.</p>	Fairness
<i>Written Determinations</i>			
140 - 142	Reports	<p>Suggestion:</p> <p>The scheme rules provide for the scheme to provide written reports of determinations to scheme members and any interested bodies for the purposes of:</p> <ul style="list-style-type: none"> • Educating scheme members and consumers; • Demonstrating consistency and fairness in decision-making. 	Accountability
143	Sensitive information	<p>Suggestion:</p> <p>The scheme rules provide for certain types of information to be withheld from any published determinations or reports of determinations, such as confidential, commercially sensitive, legally privileged or personal information.</p>	
<i>Remedial Action</i>			
114 - 118	Types of remedial action	The scheme rules must provide for the types of the remedial action that the scheme can recommend in order to resolve a complaint.	s63(i)

Para ref	Title	Achievement Standard	FSP Act
		<p>Suggestion:</p> <p>The rules outline when each type of remedial action would be appropriate.</p>	
116	Not punitive	<p>Suggestion:</p> <p>The scheme rules do not allow the decision-maker to award punitive or exemplary damages.</p>	
117 - 118	Enforcement	<p>The scheme rules provide how remedial action may be enforced against members, including members who have left the scheme subsequent to the determination.</p> <p>Suggestion:</p> <p>The scheme rules also provide for how remedial action is to be enforced on a member who ceases to carry on business.</p>	<p>s63(j)</p> <p>Effectiveness</p>

Accessibility

Para ref	Title	Achievement Standard	FSP Act
	<i>Promoting the Scheme</i>		
132	Publicity	<p>Suggestion:</p> <p>The scheme provides material which is easily accessible and simple to use, explaining:</p> <ul style="list-style-type: none"> • How to access the scheme; • How the scheme works; • Major areas the scheme deals with; and • Limits on the scheme's powers. 	Accessibility
	<i>Accessing the Scheme</i>		
134	Rules	The scheme rules are expressed clearly and made available to the public, free of charge, at the scheme's head office (during ordinary office hours) and on the internet.	s64
132	Processes	Suggestion:	Accessibility

Para ref	Title	Achievement Standard	FSP Act
		The scheme has processes that are simple for complainants to understand and easy to use.	
132	Easy access	Suggestion: The scheme provides mechanisms for easy access, such as a free phone number, a freepost service and an online submission form.	Accessibility s63(d)
132	Assisted access	Suggestion: The scheme has measures in place to help customers with special needs, be they socio-economic, cultural, language, geographical or physical needs, to access the scheme and use it effectively.	Accessibility
132	Assisted complaints	Suggestion: The scheme rules do not require a complainant to put a complaint in writing and provide that the scheme will record the complaint in writing and send it to the complainant for confirmation.	s63(d)
59 - 60, 132	Free access	The scheme rules specify that the scheme is free to complainants. Suggestion: This fact is highlighted in all promotional material.	s63(l)
132, 150	Support persons	Suggestion: The scheme rules allow complainants to use support persons. Support persons should help complainants with barriers to access, be they socio-economic, cultural, physical or related to the technical nature of the subject matter.	Accessibility
132	Other languages	Suggestions: Schemes provide information about the resolution process in languages other than English which are common amongst its consumers (this could be ascertained by consultation). Schemes provide an interpreter if necessary.	Accessibility
132,	Legal costs	The scheme rules provide for the member to pay the legal costs of a complainant where the	Accessibility

Para ref	Title	Achievement Standard	FSP Act
		member is the party seeking to be legally represented and the decision-maker agrees to that request.	
132	Informal approach	<p>Suggestions:</p> <p>The scheme rules are flexible in the way complaints can be made.</p> <p>The scheme rules discourage a legalistic, adversarial approach.</p> <p>The scheme does not require complainants to attend hearings or meetings.</p> <p>The scheme employs alternative methods to investigate and resolve complaints, such as emails, phone calls, online forms.</p>	Accessibility

Procedural Requirements

Para ref	Title	Achievement Standard	FSP Act
	<i>Natural Justice</i>		
112-113	Natural justice	<p>The rules will state that parties to a complaint are entitled to be treated according to natural justice.</p> <p>Natural justice requires:</p> <ul style="list-style-type: none"> • Adequate notice to be given to both parties of important steps and decisions; • The opportunity for both parties to be heard and for their views to be considered before the decision is made; • That both parties are informed of the reasons for the determination. 	Fairness s63(f)
	<i>Other Fairness Requirements</i>		
136	Withholding information	<p>Suggestion:</p> <p>The scheme rules do not allow the decision-maker to compel disclosure of information by either party to a complaint.</p>	Fairness

Para ref	Title	Achievement Standard	FSP Act
136	Exclusions from scheme	The scheme rules provide that complainants are advised of the reasons why their complaint is outside the jurisdiction of the scheme or otherwise excluded.	Fairness
136	Complaint information	Suggestion: The scheme rules provide that confidential or sensitive information provided for the purpose of dispute resolution is kept confidential by the decision-making body and its staff, subject to disclosure required by law.	Fairness
<i>Accountability</i>			
137,1 40- 144	Written decisions	Suggestion: Schemes could publish summaries of final decisions, with reasons, subject to any confidentiality requirements. The summaries of decisions could be made available to interested parties.	Accountability Accessibility Fairness
<i>Commencement of Legal Proceedings</i>			
126	By the consumer	The scheme rules provide that the complainant may take alternative court action against the member at any time, including if the complainant rejects the resolution. If the complainant takes alternative court action against the member, the scheme may cease investigating the complaint.	s63(o) s63(p)
127- 129	By the scheme member	Suggestion: The scheme rules provide that after a complaint has been lodged, the scheme member may only lodge legal proceedings in the following circumstances: a. To preserve their legal rights where a limitation period is about to expire, subject to the following conditions: (i) while the scheme is dealing with the complaint, the member will not pursue the legal proceedings beyond the minimum necessary action to preserve its rights; and (ii) if the complaint is resolved, whether by agreement or determination, the member	

Para ref	Title	Achievement Standard	FSP Act
		<p>will discontinue any aspect of the legal proceedings that is inconsistent with the agreement or determination;</p> <p>b. in test case situations.</p>	
<i>Efficiency – Referrals and Information Sharing</i>			
138	Referring complaints	<p>Suggestion:</p> <p>The scheme rules provide that scheme staff have the information, mechanisms and procedures for referring relevant complaints to other, more appropriate, forums.</p>	Efficiency
138	Information sharing about complaints	The scheme rules provide that scheme staff have the mechanisms and procedures in place to share prescribed information with other approved schemes, the reserve scheme and the Registrar.	s67(a) and (b)
138	Systemic problems	The scheme rules provide that there are mechanisms and procedures in place for referring systemic industry problems that become apparent from complaints to the relevant licensing authority. Schemes should also notify scheme members of such issues.	s67(c) Effectiveness Efficiency
<i>Efficiency - Tracking Complaints</i>			
138	Systems	The scheme rules require the scheme to keep systematic records of all complaints and enquiries, their progress and outcomes.	Efficiency
138	Time limits	<p>Suggestions:</p> <p>The scheme rules specify a best practice benchmark time for the resolution of complaints; and the scheme has a mechanism to ensure that the time limits for dealing with complaints are complied with as far as possible.</p> <p>There are rules regarding the extension of this timeframe for more complex complaints, or in extenuating circumstances.</p>	Efficiency
138	Receipts	<p>Suggestion:</p> <p>The scheme rules provide for staff to provide complainants with a receipt indicating the acceptance of the complaint within a certain</p>	Efficiency

Para ref	Title	Achievement Standard	FSP Act
		period upon receiving the complaint. The receipt could include information on the process for resolving complaints, including the projected timeframes.	

Funding and Budgeting Requirements

Para ref	Title	Achievement Standard	FSP Act
	<i>Funding Arrangements</i>		
151	Adequacy	The scheme rules ensure that the scheme has adequate funding to enable its operation according to the scheme's purpose and in accordance with the scheme rules.	s52(1)(c)
152	Funded by members	The scheme rules usually require that the scheme is funded by the members.	
154	Transparency	Suggestion: The scheme rules provide that the funding arrangements are clear and transparent to stakeholders.	Accountability
153-154	Funding mechanism	Suggestion: The scheme rules state how the funding mechanism is set.	
	<i>Budgets</i>		
95, 155	Budget setting	Suggestion: The scheme rules provide for a system of budget setting which ensures actual and perceived independence of the scheme from industry, and allows the effective operation of the scheme.	Independence Effectiveness

Compliance Monitoring and Enforcement

Para ref	Title	Achievement Standard	FSP Act
	<i>Rules to provide for compliance</i>		
123	Compliance monitoring	Suggestion: The scheme rules provide mechanisms to monitor member compliance with the scheme.	Effectiveness
123-124	Compliance enforcement	Suggestion: The scheme rules include mechanisms aimed to ensure compliance, such as naming and shaming, reporting to regulatory agencies.	Effectiveness
	<i>Overseeing Entity to Report on Compliance</i>		
124	Annual report	Suggestion: The annual report includes information on member compliance.	Accountability
125	Reports to licensing authority	The scheme rules require that if there is a series of material complaints about a particular licensed provider or class of licensed provider, the overseeing entity must report that fact to the relevant licensing authority.	s67(c)

Amending the Scheme Rules (for explanatory purposes)

Para ref	Title	Achievement Standard	FSP Act
	<i>Amending the Scheme Rules</i>		
166	Notification	Any changes that a scheme wishes to make to the scheme rules are to be notified to the Minister of Consumer Affairs. The scheme rules must not contain any provisions inconsistent with this.	s65
166	Approval by Minister	The Minister may approve a change to the scheme rules if the Minister considers the proposed change complies with the benchmark principles, and the statutory requirements for scheme rules. The scheme rules must not contain any provisions inconsistent with this.	s66(1)(a)

Para ref	Title	Achievement Standard	FSP Act
166	Rejection by Minister	The Minister may refuse to approve the changes if they are not adequate and do not comply with the benchmark principles and the statutory requirements for scheme rules. If the Minister does not approve the change then the change must not be made. The scheme rules must not contain any provisions inconsistent with this.	s66(1)(b)
167	Deemed approval	If the Minister does not notify the scheme within 45 working days of the notification of the change, the change is treated as having been approved by the Minister. The scheme rules must not contain any provisions inconsistent with this.	S66(3)

Performance Monitoring Requirements

Para ref	Title	Achievement Standard	FSP Act
	<i>Performance Standards</i>		
160 - 161	Standards to be set	<p>Suggestions:</p> <p>The scheme rules include standards against which the performance of the scheme will be measured.</p> <p>The performance standards set are sufficient to allow external parties to readily determine if the scheme is operating according to the benchmark principles.</p>	Efficiency
	<i>Annual Reports</i>		
158-159	Annual reports	<p>The scheme rules require the scheme to provide the Minister of Consumer Affairs with an annual report within 3 months after the end of the scheme's financial year (this timeframe is required by s68).</p> <p>The annual report may contain information such as:</p> <ul style="list-style-type: none"> information about how the scheme works results of the internal review 	<p>Accountability</p> <p>s68</p> <p>s69</p>

Para ref	Title	Achievement Standard	FSP Act
		<ul style="list-style-type: none"> • statistics on caseload, resolved cases, cases rejected on jurisdictional grounds, the amount of time taken to resolve complaints • results of feedback surveys • some examples of typical cases • information on compliance with the benchmark principles • the list of members • information on performance standards • the results of the independent review, if any independent review has been conducted that year • financial statements which sufficiently illustrate how the funding is being utilised • a list of scheme members who committed substantial, material or persistent breaches of their membership obligations (and who have not remedied the breach) • any systemic issues arising from complaints, and how those issues have been dealt with • information about new developments or key areas in which policy or education initiatives are required. 	
159	Annual report publicly available	The scheme must have copies of the annual report available to the public at the scheme's head office and on the internet.	s70
	<i>Independent Review</i>		
163	Scope of review	The scheme rules require that an independent review must occur at least once every 5 years after the date of the scheme's approval.	s63(q) Effectiveness
164	Terms of reference	Suggestion: The scheme rules provide that the terms of reference for any independent review will be determined by the governance board following consultation with the Ministry of Consumer	Effectiveness

Para ref	Title	Achievement Standard	FSP Act
		Affairs.	
164	Reviewer	Suggestion: The scheme rules provide that the independent reviewer is appointed by the governance board following consultation with the Ministry of Consumer Affairs.	
163	Supply to the Minister	The scheme rules require that the independent review must be supplied to the Minister of Consumer Affairs within 3 months of completion.	s63(q)
165	Independent review publicly available	Suggestions: The scheme makes copies of the independent review available to relevant stakeholders. A summary of the independent review is included in the annual report for that financial year. The annual report is required by section 70 to be made available to the public at the scheme's head office and on the internet.	Effectiveness

Exit Requirements

Para ref	Title	Achievement Standard	FSP Act
	<i>Winding up the scheme</i>		
169	Request to Minister	The Minister of Consumer Affairs must withdraw the approval of the scheme upon the scheme's request.	s56(3)
169	Date of effect	The removal of approval takes effect from any future date requested by the scheme.	s56(3)
169	Transfer of members	The scheme rules require the scheme to give its members adequate notice to make arrangements to join another approved scheme if the members wish. If no alternative arrangements have been made then members will automatically be transferred to the reserve scheme on the date of effect.	s61

Appendix 2: The Australian Benchmarks

The Australian Benchmarks for Industry-based Customer Dispute Resolution Schemes are directly incorporated into the Act in section 52(2). They provide the key standards for schemes to meet. The benchmark principles were developed by the Consumer Affairs Division of the Australian Department of Industry, Science and Tourism, in consultation with the New Zealand Ministry of Consumer Affairs. The benchmarks were chosen as an illustration of international best practice in consumer dispute resolution schemes.

- **Accessibility:** The scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers.
- **Independence:** The decision-making process and administration of the scheme are independent from scheme members.
- **Fairness:** The scheme promotes decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.
- **Accountability:** The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.
- **Efficiency:** The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.
- **Effectiveness:** The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

Examples of how the benchmarks might be incorporated into a scheme's rules are discussed in Part Four.