# TERMS OF REFERENCE

## INSURANCE & FINANCIAL SERVICES OMBUDSMAN LIMITED

1 JULY 2025

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## 1. DEFINITIONS AND INTERPRETATION

**1.1** In these Terms of Reference, unless the context otherwise requires, the following expressions have the following meanings:

**Applicable Monetary Limit** means:

**(a)** the sum of NZ$2,798 (plus GST, if GST applies) per week where the claim against a Participant relates to a product that provides regular payments (as distinct from a lump sum). The sum per week will be subject to a notified CPI linked increase (rounded up) to be determined annually by the Ombudsman as at 1 July; or

**(b)** the sum of NZ$500,000 (plus GST, if GST applies), in any other case, for a claim against a Participant.

**Approved Scheme** means a dispute resolution scheme which has been approved by the Minister in accordance with Part 3 of the FSP Act and that approval has not been withdrawn;

**Assessment** means a written Decision prepared pursuant to clause 18.1(a) that summarises the Complaint, analyses the issues and sets out whether the Complaint is upheld and if so what remedy, if any, is appropriate;

**Award** means a written Decision, with reasons, made by the Ombudsman in relation to a Complaint that:

**(a)** is binding on the Participant in the circumstances set out in clause 18.1(e) and (e); and

**(b)** includes a direction that the Participant undertake remedial action permitted by clause 19 and set out in the Award;

**Business** has the same meaning as in the FSP Act;

**Commerce Commission** means the regulatory authority established under the Commerce Act 1986;

**Complaint** means an expression of dissatisfaction about a Participant, where a response or resolution is explicitly or implicitly expected from the Participant;

**Complainant** means a person or body that, at the time of making the Complaint to the Scheme, is:

**(a)** a person or group of persons, whether acting jointly or severally;

**(b)** the trustees of a family trust including a corporate trustee (if the family trust carries on a business, it must be a Small Business);

**(c)** a club or an incorporated society;

**(d)** a unit title body corporate or a body corporate of a company title building which is occupied for residential or Small Business purposes; or

**(e)** a Small Business;

**Deadlock** represents the point in time at which the Participant has fully considered a Complaint through its internal complaints handling procedure and has decided that a Complaint cannot be resolved by that procedure or IFSO considers Deadlock has been reached under clause 13.1;

**Decision** means a written decision made by IFSO and/or the Ombudsman for the Scheme and includes an Assessment, a Recommendation, or an Award, as set out in clause 18;

**Direct Compensation** means compensation for 1 or both of the following:

**(a)** Any direct loss suffered by the Complainant as a result of the Participant's conduct;

**(b)** Any direct expenses reasonably incurred by the Complainant in making the Complaint.

**Effective Date** means 1 April 2025;

**Financial Services** means any financial services provided in New Zealand by a financial services provider registered under the FSP Act;

**FSP** means a Financial Service Provider in accordance with the FSP Act;

**FSP Act** means the Financial Service Providers (Registration and Dispute Resolution) Act 2008;

**IFSO** means Insurance & Financial Services Ombudsman Limited;

**Interest** means in relation to an amount payable under clause 19.2(c), interest calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016, where:

**(a)** the first day of the period for which interest is payable is the day on which any delay in paying the amount under clause 19.2(a) or 19.2(b) (as the case may be) becomes unreasonable; and

**(b)** the last day of the period for which interest is payable is the day on which the amount is paid.

**Minister** means the Minister of the Crown who is for the time being responsible for Part 3 of the FSP Act;

**Month** means calendar month;

**Ombudsman** means the Insurance & Financial Services Ombudsman and Chief Executive Officer appointed by IFSO from time to time, and in relation to any particular exercise of the rights, powers and obligations under these Terms of Reference, includes the Ombudsman's permitted delegate(s);

**Participant** means each individual, company or organisation which becomes a Participant in the Scheme in accordance with clause 4 of these Terms of Reference;

**Recommendation** means a written Decision, with reasons, made by the Ombudsman pursuant to clause 18.1(b) as to whether or not a Complaint has been upheld and, if upheld, what remedial action permitted by clause 19 the Participant should undertake;

**Role Holder** means the person holding the office of Ombudsman on the day prior to the Effective Date, acting in that capacity;

**Rules** means those provisions in these Terms of Reference that are "rules about approved dispute resolution schemes" pursuant to section 63(1) to (4) of the FSP Act;

**Scheme** means the Insurance & Financial Services Ombudsman Scheme which was operated by the Society prior to the Effective Date and continues to be operated by IFSO from the Effective Date, and which is an approved dispute resolution scheme continued by IFSO under the FSP Act, and a reference in these Terms of Reference to the Scheme doing or receiving anything or otherwise having a role, means IFSO and/or the Ombudsman doing or receiving that thing or carrying out that role for the purposes of the operation of the Scheme;

**Service Charter** means the Service Charter for the Scheme published by IFSO from time to time;

**Small Business** means a Business that has no more than 19 full-time equivalent employees;

**Society** means the incorporated society having registration number 2541616, currently called IFSO Incorporated and previously known as Insurance & Financial Services Ombudsman Scheme Incorporated;

**Society Documents** means the constitution of the Society and the Scheme Terms of Reference in force prior to the Effective Date;

**Special Compensation** means compensation for 1 or both of the following:

**(a)** any non-financial loss, stress, humiliation, and inconvenience suffered by the Complainant as a result of the Participant's conduct;

**(b)** any loss of opportunity suffered by the Complainant as a result of the Participant's conduct.

**Subsidiary** has the meaning given in section 5(1) of the Companies Act 1993 as if "company" in that definition included any body corporate whenever and wherever incorporated including outside of New Zealand;

**Terms of Reference** means these Terms of Reference as amended from time to time in accordance with clause 25.

**1.2** For the purpose of these Terms of Reference:

**(a)** Financial Services provided by a Subsidiary of a Participant that is not itself a Participant are deemed to have been provided by the Participant; and

**(b)** reference to the provision of Financial Services includes reference to their non-provision.

**1.3** These Terms of Reference will apply, from the Effective Date to a Complaint made to the Scheme, whether to the Society or to IFSO, where Deadlock was reached in accordance with clause 13 on or after 1 April 2024.

**1.4** The following transitional provisions apply to the interpretation of these Terms of Reference:

**(a)** for Participants who joined the Scheme prior to the Effective Date, their participation is deemed to continue when the operator of the Scheme is IFSO, notwithstanding that the Scheme was operated by the Society prior to the Effective Date and IFSO from the Effective Date;

**(b)** in respect of any function, duty, or power of IFSO or the Ombudsman:

**(i)** all information and documents held by the Society are considered to be held by and for the benefit and use of IFSO for the purpose of the continued operation of the Scheme in accordance with these Terms of Reference, and:

**(A)** the confidentiality obligations in clause 14 are not breached by the transfer of information and documents from the Society to IFSO;

**(B)** expert advice obtained by the Society under clause 15.4 may be relied on by IFSO;

**(ii)** anything done, or omitted to be done, or that is to be done, by or in relation to the Scheme by the Society is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to IFSO;

**(iii)** the commencement, continuation, or enforcement of proceedings by or against the Society may instead be commenced, continued, or enforced by or against IFSO, and any limitation or other defence that would have applied to the original defendant is deemed to apply equally to IFSO or the other party, as the case may be; and

**(iv)** the completion, continuation or enforcement of a matter or thing that would, but for the transfer of the operation of the Scheme from the Society to IFSO, have been completed by the Society or the Role Holder under the Society Documents may be completed, continued or enforced by IFSO or the Ombudsman.

**(c)** The transfer of the operation of the Scheme from the Society to IFSO does not, by itself, affect any of the following matters:

**(i)** any decision made, or anything done or omitted to be done, by the Society or the Role Holder in relation to the performance or exercise of its, his or her functions, powers, or duties under the Society Documents; or

**(ii)** any other matter or thing arising out of the Society's or Role Holder's performance or exercise, or purported performance or exercise, of its, his or her functions, powers, or duties under any enactment; and

**(d)** The Society, IFSO and Participants will each do all things and execute all documents reasonably required to give effect to this clause 1.4 and any other thing required to give effect to treating the Scheme as being continuous despite the transfer of operations to IFSO.

## 2. DELEGATION POWERS

**2.1** IFSO operates the Scheme. IFSO has:

**(a)** authorised the Ombudsman to exercise, on behalf of IFSO, all powers and discretions conferred on IFSO by these Terms of Reference; and

**(b)** permitted the Ombudsman to sub-delegate any of those powers and discretions (other than the power to make Final Decisions on jurisdiction under clause 12, decisions to include information under clause 15.3(b), Recommendations and Awards) to any employee or contractor engaged by IFSO.

**2.2** Any rights, powers, duties or obligations recorded in these Terms of Reference as being for the Ombudsman are deemed to be exercised by the Ombudsman (or his or her permitted delegate) on behalf of IFSO and not in their own personal capacity.

## 3. PRINCIPAL POWERS AND DUTIES OF IFSO

**3.1** IFSO's principal powers and duties in respect of the Scheme are:

**(a)** to resolve, without charge to the Complainant, Complaints and to do so in a way that is accessible, independent, fair, accountable, efficient and effective; and

**(b)** to promote and publicise the Scheme to consumers and Small Businesses and to encourage and provide advice to Participants on the development and maintenance of good complaint-handling practices.

## 4. PARTICIPATION

**4.1** IFSO will admit as a Participant of the Scheme an applicant which provides Financial Services unless the applicant:

**(a)** is not eligible for registration under the FSP Act; or

**(b)** is refused participation in the Scheme under clause 4.3.

**4.2** An FSP may apply in writing to IFSO to become a Participant by completing and signing the Scheme's application documentation and fulfilling any other Scheme application requirements.

**4.3** An applicant may be refused admission, because of that applicant's:

**(a)** material or persistent breach of an Approved Scheme's rules; or

**(b)** failure to take remedial action imposed on the applicant by an Approved Scheme; or

**(c)** failure to pay an Approved Scheme's fees; or

**(d)** failure to continue to be an FSP that may be a Participant of the Scheme.

**4.4** A Participant's participation in the Scheme will commence from the date of IFSO's approval of the application or, if later, the date on which the Participant completes all of the Scheme's application requirements.

**4.5** IFSO must maintain a public Register of Participants.

**4.6** Participants of the Scheme on the day prior to the Effective Date are deemed to continue to be Participants from and after the Effective Date, subject to the ongoing terms of participation applying from time to time in these Terms of Reference.

## 5. OBLIGATIONS OF PARTICIPANTS

**5.1** Each Participant:

**(a)** must at all times comply with these Terms of Reference;

**(b)** must operate a bona fide internal complaints handling procedure in relation to their Financial Services for the benefit of users of its services that:

**(i)** is publicised and promoted to users of its services; and

**(ii)** informs users of its services that the Scheme is available to provide them with a free complaints resolution service, by publicising and promoting it on the Participant's website and/or any contractual documents;

**(c)** must appoint a contact person for IFSO and provide IFSO with the name and contact details of that person and any replacement contact person appointed from time to time;

**(d)** must comply with any Award which, in accordance with these Terms of Reference, is made against the Participant and accepted by the Complainant;

**(e)** where an Award is made against a Subsidiary of a Participant and accepted by the Complainant, must comply with the Award if the Subsidiary does not do so;

**(f)** consents to IFSO making public (including by publishing):

**(i)** any failure by the Participant to comply in whole or in part with an Award against the Participant, or a Subsidiary of the Participant, that has been accepted by the Complainant in accordance with the requirements of these Terms of Reference; or

**(ii)** the termination of the Participant's participation in the Scheme.

**(g)** consents to the provision of any information concerning the Participant by IFSO to the Minister, the Financial Markets Authority or other regulator;

**(h)** must not act in any manner which damages, or has the potential to damage, the reputation of the Scheme, Society or IFSO or bring the Scheme, Society or IFSO into disrepute; and

**(i)** must not take steps to recover any Scheme complaint fee incurred as a Participant of the Scheme from a Complainant.

## 6. PARTICIPANT FEES AND LEVIES

**6.1** A Participant agrees to pay IFSO any fees or levies charged by IFSO in respect of the Scheme on the Participant. IFSO will calculate these in accordance with the Schedule of Participant Fees and Levies set by IFSO in respect of the Scheme and revised from time to time.

**6.2** Where IFSO needs information from the Participant about its business in order to calculate any fees or levies, IFSO may ask the Participant to provide that information, and the Participant must promptly provide and certify that information as requested by IFSO. IFSO's calculation of the amount of any fees or levies payable by the Participant will, in the absence of manifest error, be final and binding upon the Participant.

**6.3** IFSO may invoice a Participant for a fee or levy at the time and in the manner it considers appropriate, for example, in advance, in arrears, by instalments or, where the fee or levy is referrable to IFSO's receipt and consideration of a Complaint at a time that is proximate to the Complaint. Where a fee or levy is charged in advance, IFSO may estimate the fee or levy payable by a Participant for the period of time to which the fee or levy is referrable and then make any necessary adjustment following the end of that period.

**6.4** A Participant must make payment to IFSO within the timeframe specified in the Schedule of Participant Fees and Levies for each fee or levy or, if no timeframe is specified there, not later than 4 weeks after receipt of an invoice from IFSO requesting payment of that amount.

## 7. LIMITATIONS

**7.1** There is no limit on the number of Participants. Participation is not transferable.

## 8. TERMINATION OF PARTICIPATION

**8.1** A Participant may terminate their participation in the Scheme by giving IFSO at least 12 months' written notice. The termination will take effect upon expiry of that notice, or as agreed with IFSO.

**8.2** IFSO may, by written notice to the Participant, at any time immediately terminate its participation if the Participant in the opinion of IFSO:

**(a)** has not paid any fee or levies invoiced by IFSO within 3 months of the date of the invoice;

**(b)** materially or persistently breaches, or fails to perform, any obligation of the Participant under these Terms of Reference;

**(c)** fails to take remedial action imposed on the Participant under these Terms of Reference, or by any other Approved Scheme;

**(d)** acts in a way that brings the Participant or the Scheme or IFSO into disrepute; or

**(e)** fails to continue to be a FSP that may be a Participant of the Scheme.

**8.3** If, for any other reason, IFSO wants to terminate a Participant's participation in the Scheme, IFSO must give the Participant reasonable notice being not less than 1 month.

**8.4** Termination of participation, whether by the Participant at the expiry of notice in accordance with clause 8.1 or by IFSO giving notice in accordance with clause 8.2 or 8.3:

**(a)** does not entitle the Participant to repayment of the whole or part of any fee or levies previously paid by it to IFSO;

**(b)** is without prejudice to the Participant's liability to pay any fee or levies which has become due and payable to IFSO;

**(c)** is without prejudice to the Participant's obligations (including to pay fees or levies to IFSO) in respect of any Complaint made or referred to the Scheme before the date of termination of participation.

**8.5** Clauses 8.3 and 8.4 survive the termination of the Participant's participation in the Scheme.

## 9. MAKING A COMPLAINT

**9.1** A Complaint may be made to the Scheme by completing the Scheme complaint form and providing the information required by that form.

## 10. TYPE OF COMPLAINTS THAT CAN BE CONSIDERED UNDER THE SCHEME

**10.1** Subject to clause 10.2 and any other legal rules relevant to the provision of the services, IFSO has the power to consider Complaints made by a Complainant relating to:

**(a)** breaches of contract by the Participant;

**(b)** breaches of statutory obligations by the Participant;

**(c)** breaches of industry codes by the Participant; and

**(d)** non-compliance with relevant industry practice.

**10.2** The Scheme will only consider (or continue to consider) a Complaint if IFSO is satisfied that:

**(a)** the claim against the Participant made in the Complaint:

**(i)** represents a monetary amount not more than the Applicable Monetary Limit; or

**(ii)** is part of a larger claim (representing whatever monetary amount) that has been accepted by the Participant and that part represents a monetary amount not more than the Applicable Monetary Limit;

**(b)** the Complaint is made either:

**(i)** by or on behalf of the person to whom, or for whom, or for whose benefit, the Financial Services were provided (the Scheme has no power to consider a Complaint against a Participant from a person who is an uninsured third party in a claim relating to that Participant); or

**(ii)** by a person who has provided a guarantee or security for, or repayment of, the Financial Service;

**(c)** the subject matter of the Complaint has not previously been considered under the Scheme, unless, at the Ombudsman's sole discretion, there is relevant new evidence that had not previously been reasonably available;

**(d)** prior to the date the Complaint was accepted for consideration under the Scheme:

**(i)** a court, or tribunal, or arbitrator or ombudsman, or any other body involved in dispute resolution has not made a determination in respect of the subject matter of the Complaint; or

**(ii)** the subject matter of the Complaint had not been to a mediation in which a resolution had been agreed to by the Complainant; or

**(iii)** the Complainant had not agreed to be bound by the terms and conditions of a full and final settlement agreement with the Participant in respect of the same subject matter of the Complaint;

**(e)** In the opinion of the Ombudsman, the Scheme is the appropriate forum to deal with the Complaint;

**(f)** the Complaint:

**(i)** has sufficient substance; or

**(ii)** has a reasonable prospect of the Scheme being able to award a remedy under clause 19; or

**(iii)** is being pursued reasonably in accordance with the Scheme Service Charter; and

**(g)** the Participant has not given the Scheme a notice pursuant to clause 20.3 of these Terms of Reference.

**10.3** Nothing in these Terms of Reference will prevent the Scheme from considering a Complaint, that is otherwise outside the Scheme's jurisdiction, if the Participant consents.

## 11. MATTERS THAT ARE EXCLUDED FROM THE SCHEME

**11.1** Subject only to clause 10.3, under the Scheme IFSO may not consider those parts of a Complaint which, in the opinion of IFSO, relate to:

**(a)** the Participant's commercial judgment, assessment and pricing of risk (including premiums and rate tables) or commercial decisions relating to its business;

**(b)** the Participant's investment strategies or practices, other than to verify the Participant's adherence to the "prudent person" standard appropriate to the nature of the investment portfolio;

**(c)** the Participant's funds management performance or declared earning rates, or the returns offered, or practice of setting interest rates; or

**(d)** a decision by the Participant to:

**(i)** accept, issue, renew, terminate (except in the case of alleged non-disclosure or misstatement in relation to an insurance claim) or decline to renew a contract for the provision of Financial Services; or

**(ii)** impose any conditions or limitations, or vary premiums or charges, in relation to a contract for Financial Services,

provided that IFSO is satisfied the Participant has made its decision in accordance with the terms of the contract or the Participant's rules of operation.

## 12. JURISDICTIONAL DISPUTES

**12.1** IFSO will decide whether or not a Complaint (or, if relevant, all parts of a Complaint) is within its jurisdiction under these Terms of Reference.

**12.2** If the Complainant or the Participant objects to a decision as to jurisdiction made by IFSO pursuant to clause 12.1 and the Ombudsman considers that the objection may have substance, the Ombudsman, on behalf of IFSO, must carry out a review and make a written final decision on jurisdiction with reasons provided. The Ombudsman must first give the Complainant and the Participant a reasonable opportunity to make submissions as to jurisdiction.

## 13. TIMEFRAME FOR MAKING A COMPLAINT

**13.1** A Complaint must first be made directly to the Participant, following which a Complainant may then make a Complaint to IFSO if:

**(a)** The Complainant has not been advised that Deadlock has been reached by the Participant about the Complaint made to the Participant within 2 months from when the Complaint was made; or

**(b)** The Complainant has been advised by the Participant that Deadlock has been reached within 2 months from when the Complaint was made to the Participant but is not satisfied with the decision.

**13.2** If clause 13.1(b) applies and the Complainant has received written advice of Deadlock, the Complainant may make a Complaint to IFSO within 3 months after the Deadlock was advised in writing by the Participant, provided however, that IFSO may extend the 3 month period if:

**(a)** The extension is for a period of no longer than 9 months; and

**(b)** IFSO is satisfied that the extension is justified by exceptional circumstances.

**13.3** IFSO will not consider a Complaint:

**(a)** where it is more than 6 years after the Complainant became aware of, or should reasonably have been aware of, the facts or events giving rise to the Complaint; or

**(b)** for Participants that joined the Scheme on or after 1 July 2010: where the act or omission giving rise to the Complaint first occurred before the Participant first registered on the Financial Service Providers Register.

## 14. CONFIDENTIALITY

**14.1** The Scheme's dispute resolution service is a confidential negotiation process. Accordingly:

**(a)** IFSO and the Scheme operate on a "without prejudice" basis. However, a Decision may be produced in subsequent proceedings, where it is required by a court or tribunal, or arbitrator or ombudsman, or any other body involved in dispute resolution; and

**(b)** IFSO will not begin considering a Complaint until the Complainant has confirmed in writing acceptance of confidentiality in the format required by the Scheme; and

**(c)** subject to clause 14.2, the Participant must keep confidential all information relating to, or obtained in the course of, the investigation of the Complaint through the Scheme, including any Decision made in respect of the Complaint.

**14.2** All parties (including IFSO staff) must maintain the confidentiality of all information provided to them through the course of considering a Complaint, except:

**(a)** to the extent reasonably necessary to resolve the Complaint;

**(b)** to the extent reasonably necessary to discuss the Complaint with their lawyer, adviser, accountant or insurer, or to obtain expert advice;

**(c)** with the consent of the party who provided the information;

**(d)** as required or permitted by law, including referring a matter to a regulator;

**(e)** as part of a referral under clause 22.2(b); or

**(f)** where the information is already publicly available.

**14.3** If a Complainant or representative breaches the confidentiality undertaking given in accordance with clauses 14.1 and 14.2, IFSO and the Participant may take whatever action they consider appropriate in the circumstances including:

**(a)** discontinuing considering the Complaint; and

**(b)** disclosing the terms of any Assessment, Recommendation or Award that has been made in relation to the Complaint.

**14.4** IFSO, its officers and employees must not disclose to any person:

**(a)** any information concerning a Complaint made through the Scheme that would make it possible to identify the Complainant or the Participant; or

**(b)** any other information or matter of a confidential nature;

except:

**(c)** as authorised by the party identified;

**(d)** to carry out its responsibilities under the FSP Act or these Terms of Reference;

**(e)** as required by law, including referring a matter to a regulator; or

**(f)** as properly and reasonably required in connection with any legal proceedings instituted by or against IFSO or the Society or any of its officers or employees.

## 15. INVESTIGATION PROCESSES

**15.1** Where the Scheme accepts a Complaint, the Scheme must provide the Participant with the Complaint information, together with evidence of the Complainant's compliance with the requirements of clause 14.1.

**15.2** On receipt of the Complaint information in accordance with clause 15.1, the Participant must provide IFSO with a written response about the Complaint (which IFSO will provide to the Complainant), together with any relevant information held by the Participant, provided that if:

**(a)** the Participant provides information that it claims to be privileged and confidential, this may not form part of IFSO's consideration of the Complaint; and

**(b)** in the opinion of the Ombudsman, urgency is required in respect of investigating the Complaint, the Ombudsman may decide to require the Participant's full co-operation in providing any relevant information within a shorter than usual timeframe.

**15.3** Subject to the other provisions of these Terms of Reference, the Scheme may consider any information and, taking an inquisitorial approach, make such enquiries as it thinks are fair and reasonable in the circumstances provided that:

**(a)** the Scheme is not obliged to consider any information that, in its opinion, has not been obtained and/or relied upon by either party in good faith; and

**(b)** the Ombudsman may decide to accept for consideration new information provided to the Scheme by a party to the Complaint that has not previously been provided to the other party, but only if the information was not previously known, or could not have reasonably been expected to be previously known, by the party providing the information. If the Ombudsman decides to allow the information to be considered, the information must be provided to the other party for their response.

**15.4** The Scheme may obtain expert advice including from a legal expert, industry expert, medical practitioner or building expert appointed by the Scheme. Where this occurs, the Scheme may require the Participant to pay or contribute to the cost, provided that the fees of the expert do not deviate significantly from the usual market rate for such advice.

**15.5** The Participant and the Complainant must be given a reasonable opportunity to respond and/or make submissions to the Scheme, prior to the Ombudsman making a Decision.

**15.6** The Scheme may take whatever steps it considers reasonable where a party to a Complaint fails without reasonable excuse to provide information or take some other step requested under the Scheme as part of investigative processes. This may include:

**(a)** proceeding with the resolution of the Complaint on the basis that an adverse inference may be drawn from the party's failure to comply with the request; or

**(b)** where the Complainant fails to comply with the request, refusing to continue considering the Complaint.

## 16. RESOLUTION METHODS

**16.1** IFSO may decide the method and process to be used to resolve a Complaint. This may include alternative dispute resolution techniques or making a Decision about the Complaint in accordance with the process set out in clause 18.

**16.2** At any time a Complaint is under consideration by IFSO, it may be resolved by agreement between the Complainant and the Participant with the IFSO's involvement if, in the opinion of the Ombudsman, IFSO's involvement is required.

## 17. DECISION MAKING CRITERIA

**17.1** When making a Decision about a Complaint, IFSO will do so by reference to what is, in its opinion, fair and reasonable in all the circumstances. In determining what is fair and reasonable, IFSO may consider:

**(a)** the educational, cultural and personal circumstances of the Complainant as are relevant to the Complaint;

**(b)** the manner in which the Complainant has been dealt with by the Participant;

**(c)** the manner in which the Complainant has dealt with the Participant;

**(d)** the degree to which the Participant was in control of the systems and procedures which are the subject of the Complaint; and

**(e)** any other matter IFSO considers relevant.

**17.2** While IFSO is not bound by the legal rules of evidence or by its (or the Society's) previous Decisions, IFSO shall have regard to:

**(a)** any applicable rule of law;

**(b)** the rules of natural justice, insofar as they apply to the procedure adopted by IFSO in relation to the Complaint;

**(c)** relevant industry practice; and

**(d)** any Codes applicable to the subject matter of the Complaint.

## 18. DECISION MAKING PROCESSES

**18.1** The process for IFSO to make a Decision about a Complaint is, as follows:

**(a)** An Assessment is prepared, and a copy provided to the Complainant and the Participant. The parties may agree to resolve the Complaint in accordance with the Assessment. However:

**(i)** If the Complainant accepts an Assessment which upholds or partially upholds the Complaint; and

**(ii)** the Participant does not request a review under clause 18.1(b) and does not indicate it will action the Assessment within 1 month after the date it is delivered to the Participant,

then the Ombudsman may make an Award against the Participant.

**(b)** If the Complainant or the Participant requests a review of an Assessment, the Ombudsman may carry out a review. If significant new issues arise, the Ombudsman may decide that a second Assessment is required, or the Ombudsman may make a Recommendation if:

**(i)** the Ombudsman is of the opinion that there is relevant new evidence; or

**(ii)** the Ombudsman believes that a Recommendation should be made in respect of the Complaint.

**(c)** The parties may agree to resolve the Complaint in accordance with the Recommendation made pursuant to clause 18.1(b).

**(d)** If, within 1 month after it is made, a Recommendation upholding or partially upholding the Complaint has been accepted by the Complainant but not actioned by the Participant, the Ombudsman, on behalf of IFSO, may make an Award against the Participant.

**(e)** An Award is issued to and is binding on both the Complainant and the Participant against which it is made, even if the Award is made after the Participant leaves the Scheme, if the Complainant agrees to accept the Award in full and final settlement of the subject matter of the Complaint as evidenced in writing.

**18.2** If a Participant or former Participant fails to comply with an Award, IFSO may:

**(a)** terminate the Participant's membership; and/or

**(b)** refer the matter to the Financial Markets Authority, the Commerce Commission and/or any other relevant regulator; and/or

**(c)** notify other Approved Schemes.

**18.3** No Decision of IFSO is capable of review or appeal in any form, to any other person, court, tribunal, statutory complaints authority, or other body, except as contemplated by the Act.

## 19. REMEDIES

**19.1** Subject to clause 19.2, where IFSO upholds or partially upholds a Complainant's claims in respect of a Complaint, it may find that the Participant should undertake remedial action including:

**(a)** the payment of a sum of money;

**(b)** the forgiveness or variation of an amount owing to the Participant;

**(c)** the release of security for debt;

**(d)** the reinstatement, rectification, variation or termination of a contract; or

**(e)** the meeting of a claim under an insurance contract by, for example, repairing, reinstating or replacing items of property.

**19.2** Where the remedial action includes the payment of a sum of money, unless otherwise agreed, IFSO may only require the Participant to pay the Complainant 1 or more of the following:

**(a)** Direct Compensation equivalent to no more than the Applicable Monetary Limit; and

**(b)** Special Compensation of no more than $10,000 (plus GST, if any); and

**(c)** Interest in relation to any amount payable under (a) or (b).

**19.3** For the purposes of clause 19, IFSO may treat Complaints by a Complainant as a single Complaint, but only if –

**(a)** those Complaints concern the same, or substantially the same, events or facts; and

**(b)** it is fair and reasonable to treat them as a single Complaint in the circumstances.

**19.4** In addition to, or as an alternative to any remedy under clause 19.1, IFSO may:

**(a)** suggest that the Participant undertakes reasonable steps to improve its processes; and/or

**(b)** require the Participant to update or change any records to the extent possible, including those held by the Insurance Claims Register, debt collection agencies and/or credit rating agencies.

## 20. RIGHTS OF PARTIES TO INSTITUTE COURT OR DEBT RECOVERY PROCEEDINGS

**20.1** The Complainant may take alternative court action against the Participant at any time, including if the Complainant rejects a Decision in relation to a Complaint. If the Complainant does this, IFSO must cease considering the Complaint.

**20.2** Where a Complaint relates to a debt owed to a Participant, the Participant must not take any action to recover the debt, to seize any assets securing the debt or to assign any right to recover the debt, after the Complaint has been accepted by IFSO and while IFSO is considering the Complaint.

**20.3** A Participant may not prevent IFSO from considering, or continuing to consider, the Complaint by issuing proceedings in court, unless:

**(a)** the Participant determines that the Complaint involves an issue which has important consequences for the business of the Participant or of Participants generally or an important or novel point of law; and

**(b)** the Participant has notified IFSO, prior to IFSO making a Recommendation in relation to the Complaint, that it intends to institute High Court proceedings to resolve the issue by way of declaratory judgment and the Participant provides an undertaking that it will:

**(i)** within 3 months of the date of the notice, institute proceedings in the registry of the High Court nearest the Complainant's residence;

**(ii)** pay the Complainant's costs and disbursements (if not otherwise agreed, on a solicitor and own client basis) of the proceedings at first instance and any subsequent appeal proceedings commenced by the Participant (including the Complainant's costs and disbursements associated with any cross-appeal instituted by the Complainant in relation to the Participant's appeal proceedings);

**(iii)** make interim payments in relation to those costs and disbursements if and to the extent that this is reasonable; and

**(iv)** prosecute the Complaint expeditiously.

**20.4** On receipt of notification pursuant to clause 20.3(b), IFSO must:

**(a)** cease considering the Complaint for as long as the Participant complies with the undertaking required by that clause; and

**(b)** tell the Complainant that the Participant is instituting legal proceedings to test the law and the effect of this upon the Complaint.

## 21. ACCESS TO INFORMATION

**21.1** Where any party to a Complaint requests IFSO to provide access to any information about the Complaint, IFSO may respond to that request as it considers appropriate, subject to the Privacy Act 2020 (or subsequent legislation) and any other applicable legal obligations.

## 22. OTHER POWERS AND DUTIES OF IFSO

**22.1** To inform the community of its activities, IFSO must publish an annual report (**Annual Report**) and may publish other material from time to time.

**22.2** Where IFSO has reasonable grounds to believe a Participant has breached or is likely to breach the law, a Code, or an obligation imposed on that Participant under these Terms of Reference IFSO may, as is appropriate:

**(a)** advise the Participant;

**(b)** notify the Minister, Financial Markets Authority and/or or other regulator; and/or

**(c)** notify any other Approved Scheme.

**22.3** Where IFSO identifies an issue that affects more than one customer of the Participant/Participants, IFSO shall refer the matter to the regulator.

## 23. PARTICIPANT MEETINGS

**23.1** A meeting of Participants may be called by IFSO. Notice of the meeting must be given by reasonable prior notification on the Scheme website. Participants do not have to be notified individually.

**23.2** Each Participant is entitled to attend a meeting of Participants. IFSO may also invite other persons to attend a meeting.

**23.3** Subject to clause 23.4, IFSO will conduct a meeting with Participants as it sees fit.

**23.4** A meeting of Participants will be a discussion forum rather than a forum with decision making responsibilities.

**23.5** The Annual Report will be provided to the Participants via the Scheme website, or by way of email or presented at a meeting of Participants.

## 24. INDEPENDENT REVIEW OF SCHEME

**24.1** IFSO will ensure that an independent review of the Scheme is undertaken not less than once every 5 years; and

**24.2** The independent review report of the Scheme will be provided to the Minister within 3 months of completion.

**24.3** The independent review report must be made public by being published on the Scheme's website.

## 25. AMENDMENT OF TERMS OF REFERENCE

**25.1** Subject to clause 25.2 hereof these Terms of Reference may only be amended, added to, deleted or replaced (**Changes**) by IFSO as follows:

**(a)** with the prior approval of the Minister insofar as there are any changes to the Rules as contained in these Terms of Reference; and

**(b)** having taken reasonable steps to consult with Participants and any other stakeholders IFSO considers relevant.

**25.2** Notwithstanding any other provision in these Terms of Reference, IFSO must take the steps required to amend, add to, delete or replace these Terms of Reference where required by regulation made under the FSP Act or to incorporate provisions implied in accordance with section 63(3) of the FSP Act, or where required by any other legislation. Any such amendment, addition to, or deletion from, or replacement of these Terms of Reference in accordance with this clause will take effect on the date the regulation, legislation or other legislative amendment takes effect and will be notified to Participants by IFSO as soon as reasonably practicable.