

Financial Dispute Resolution Service

# Annual Report **2022–2023**



# Contents

Welcome .....	3
Scheme report .....	4
About us.....	5
The year in review.....	6
Case studies.....	9
Finances .....	12

## Year in review

1 July 2022 – 30 June 2023

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### Our Scheme Members

A full list of members can be found in the '[member search](#)' section of our website, [\*\*www.fdrs.org.nz\*\*](http://www.fdrs.org.nz)



# Haere mai

## On behalf of the Advisory Council, it is my pleasure to present the 2023 Annual Report.

2023 was another strong year for the Financial Dispute Resolution Service (FDRS), which has continued its important work to resolve complaints between financial service providers and their customers. FDRS has also worked to make a positive difference in the broader financial services industry.

The Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**Act**) requires an independent review of FDRS to be undertaken this year. An independent party must assess the service offered by FDRS against the provisions of the Act. Richard Kirkland of RiskIQ has been engaged to complete this important work. FDRS is pleased the preliminary findings of the review noted no systemic issues with the service. RiskIQ made some helpful recommendations for improvements, which will be considered and implemented over time by FDRS, Fair

Way and the Advisory Council. The review will be provided to the Minister as required by the Act.

Fair Way is committed to continued improvement for FDRS. As part of this commitment, Fair Way requested that RiskIQ undertake a maturity assessment of FDRS against the Government Centre for Dispute Resolution best practice framework. This assessment is a significant piece of work and when completed it will no doubt provide additional areas for consideration as we move forward.

Fair Way has been active in the wider sector, providing feedback and insights to support the Government's desire to implement changes across all dispute resolution scheme providers. FDRS made submissions to the Ministry of Business, Innovation and Employment (**MBIE**) about the proposed regulations and potential impacts these could have on complaint pathways available

for clients. FDRS is supportive of the intent to harmonise certain rules within the sector. There is still work to be done to ensure the new regulations are workable for all stakeholders and address any unintended consequences. At the time of writing, MBIE is engaging more widely with all dispute resolution scheme providers to address some of the technical and practical issues regarding implementation of the proposed regulations.

Throughout the financial year, FDRS supported 1278 scheme members who provide financial advice and services to a wide range of New Zealanders. The FDRS membership has continued to evolve following implementation of the licensing requirements of the new financial advice regime, the conduct regime for banks and insurers, and the changing legislative landscape. As these changes become embedded, FDRS expects to

see its focus shift from foundational implementation to maintaining best practice conduct.

I would like to acknowledge Jeanie Robinson, Richard Binner, Samantha Brennan, and the wider team for the work they do delivering FDRS.

I would also like to thank the Board of Fair Way for their continued oversight and support and I have greatly appreciated the work and commitment of my fellow Advisory Council Members – David Whyte, Toni Dodds, Trevor Slater, and Simon Roughton. I look forward to supporting FDRS and the Advisory Council in continuing their work in the 2024 year.

**Stephen Ward**  
Chair of Advisory Council



# Kia ora

## Together we can achieve more.

We started this year with the motto “together we can achieve more” and I’m delighted to reflect on the hard work and results achieved by the FDRS team.

We supported 1278 members and received 451 complaints from consumers who required independent assistance to work through an issue with their financial service or advice provider. This is up 12.5 percent from last year and is 22 percent higher than the previous year.

One area we have been focusing on is strengthening opportunities for members to learn about complaints and work directly with their clients on resolution. We are seeing strong results from our informal process with 95 percent of matters resolved

this way. While overall complaints increased, only 5 percent progressed through to our formal process this year, a 67 percent reduction from the previous year. Even in our formal stages, we look for collaborative opportunities for resolution. Of the 22 complaints resolved during our formal process, 27 percent were closed directly between the member and customer (early settled). Only four cases required an adjudicator to review the evidence and submissions, making an independent decision on the matter.

We recognise that many people are experiencing financial challenges during the current cost of living crisis, and the important role that the financial sector is playing in supporting their clients to navigate these. Through

our information programmes, sector engagement, and dispute resolution work, it’s a privilege to be able to play a small part in supporting New Zealanders towards their financial goals.

We expect to receive the final report from the independent review shortly. We are already planning work for the year ahead to action the recommendations and look at ways we can continue to improve and deliver best practice dispute resolution.

He rau ringa e oti ai. Many hands make light work. At Fair Way, we have a fantastic team of people who are passionate about supporting people in conflict. I’d like to express my gratitude to all the wonderful people who make

FDRS what it is, especially Samantha Brennan - Client Manager, Bruce Reid – Membership Coordinator, our amazing team of Scheme Officers working with consumers, and talented Resolution Practitioners who conciliate and adjudicate complaints.

I would also like to acknowledge the mahi of FDRS Advisory Council, who this year have shared their expertise with our members through webinars and articles. I’m looking forward to the year ahead.

**Jeanie Robinson**  
**Financial Dispute Resolution Service**



# About us

## We aim to resolve disputes as early as possible.

If you have a complaint about a financial service provider who is a member of our scheme, we can work with you and your financial service provider to reach agreement on your complaint. The phases are:

### Informal process

#### 1. Initial complaint and informal resolution

An opportunity for you and your financial service provider to work out the issue together.

When a consumer contacts us, our first step is ensuring that the Scheme Member has been made aware of the complaint and has an opportunity to resolve it.

If the consumer has already made a complaint to the Scheme Member and is not satisfied with their response, or two months have passed since they made the complaint, we will open a complaint file.

This information is sent to the Scheme Member, who is asked to provide their version of events or agreement to resolve the complaint. The Scheme Member has 21 days to do either of the above.

Our Scheme Officers work with all parties involved to resolve the complaint, through an informal facilitative approach.

### Formal process

#### 2. Investigation, facilitation, and early settlement

FDRS actively works with you and your financial service provider to settle the matter as quickly as possible.

If the complaint has not been resolved through informal resolution, an assessment is undertaken by our expert team who recommend ways to deal with the complaint. If both sides agree, facilitation and/or conciliation can be used to help them find a mutual agreement.

##### Facilitation

The formal facilitation phase is used to try and guide the parties to an agreement in an informal but assisted manner. This phase can be completed by the Scheme Officer.

##### Conciliation

The conciliation phase is mediation where the conciliator is permitted to have input into the content of the complaint as well as the process. This stage is undertaken by a Resolution Practitioner who has completed formal mediation training.

### Formal process

#### 3. Formal adjudication

If needed, we make a decision.

In situations where resolution cannot be reached, or where the consumer or Scheme Member do not wish to participate in facilitation or conciliation, one of our specialist adjudicators will investigate and make a formal decision on the complaint.

This is binding on the Scheme Member and is also binding on their client if they accept the adjudicator's decision.

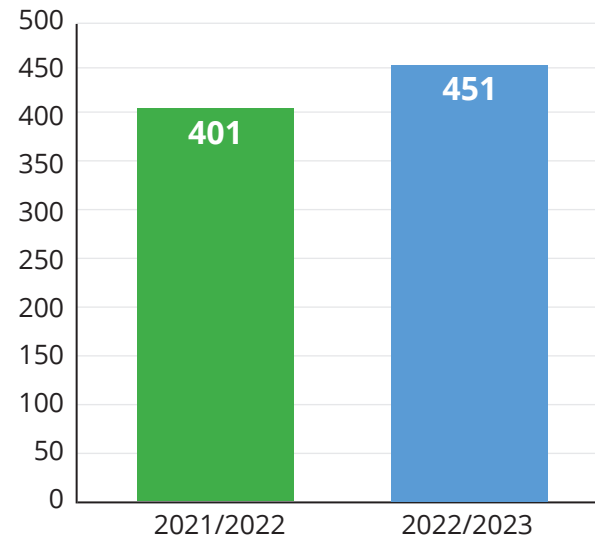


# The year in review

## Complaints increased 12.5%

FDRS received **451** complaints in 2022/23, which is up 12.5% from last year, and is 22% higher than 2020/21.

**95%** were resolved or closed during the informal process. **22** complaints progressed through to our formal process.



## How complaints were resolved

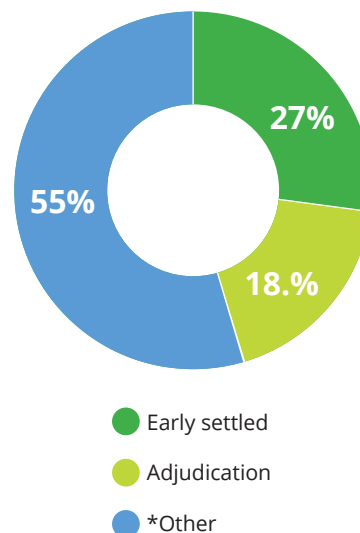
While overall complaints increased, more cases were resolved informally, meaning fewer cases progressed through to our formal process.

FDRS began the year with 8 on hand, carried forward from 2021/22.

During the year, FDRS accepted 22 complaints into the formal process. This is a 67% reduction from last year.

Of the 30 total, **22 were resolved or closed** with formal dispute resolution assistance. 8 remained on hand at year end.

\*The 'other' category includes matters where we had no jurisdiction or where complaints were withdrawn



## Timeliness

**91%** were completed within the benchmark of **180 days**.

The average time to complete a case was **63.5 days**, which is a decrease in time from 68.1 days last year.

**2022/2023**  
91%

**2021/2022**  
97%

## Feedback

*It's the sort of business where you are happy to pay the fee with the hope that you never have to use their services.*

*Professional and courteous. They assisted our client in using our internal process, regarding an administrative matter.*

*I would not hesitate to contact the FDRS team should I need to.*

*Excellent communication and always a very prompt reply.*

*I added an adviser and the person I spoke to realised that my membership was incorrect and fixed it - very helpful and pleasant to deal with.*



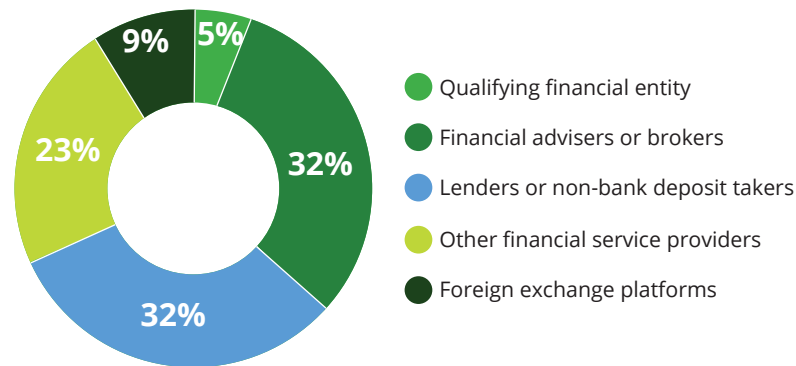


## Complaints by member type

Of the **22** complaints that were accepted into our process, here is the breakdown by specific member type.

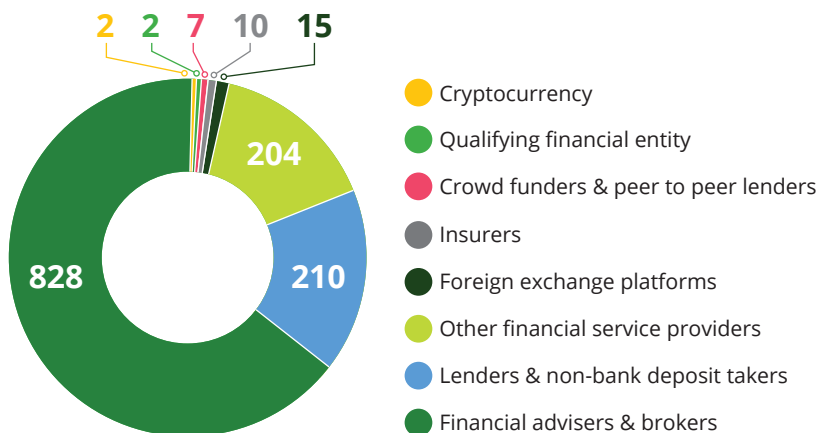
Formal complaints about financial advisors or brokers comprised of 32% of the total complaints received this year, increasing from 29% last year.

\*Due to rounding, percentages do not total 100% exactly.



## Membership overview

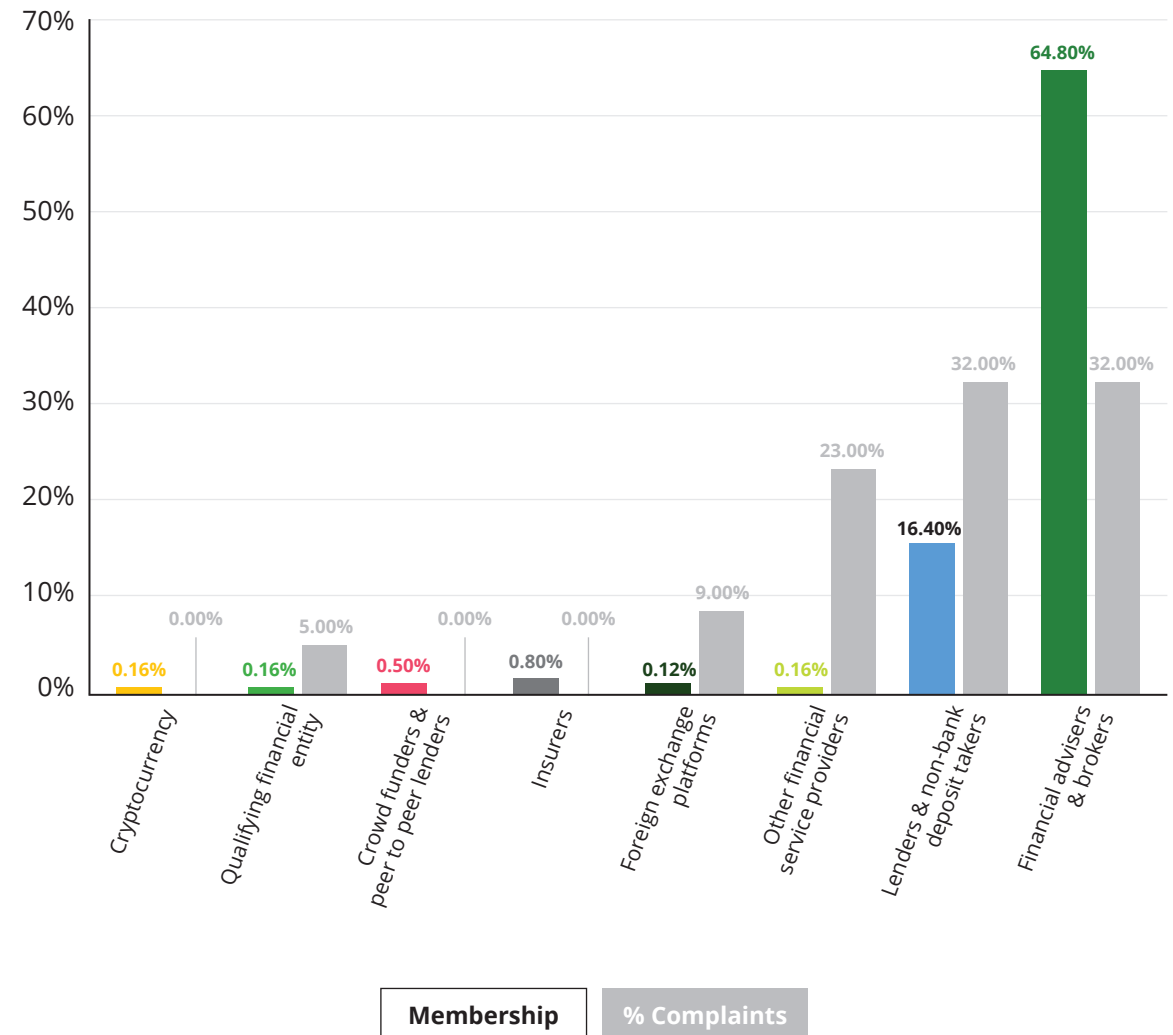
Here is an overview of our 1278 members.



## Complaints in proportion

Here is an overview of our membership in proportion to the complaints received.

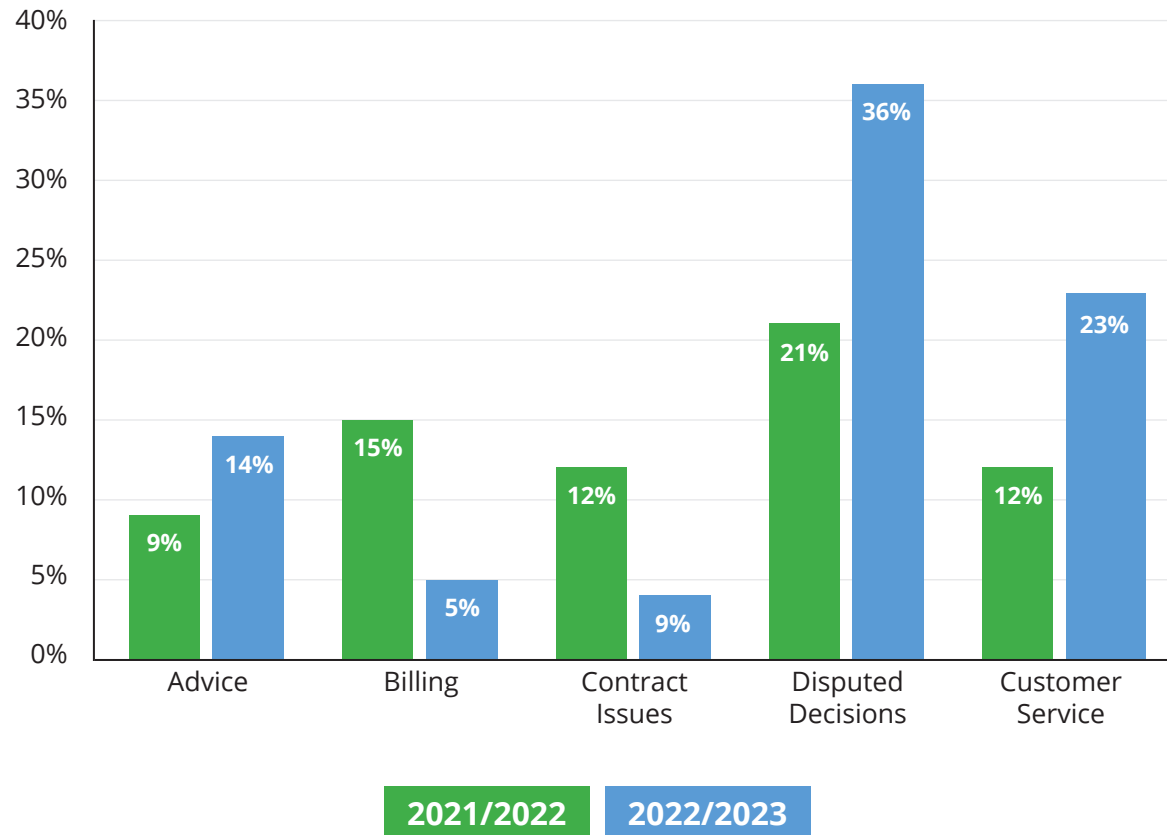
\*Due to rounding, percentages do not total 100% exactly.





## Top five complaint themes

Of the **22** formal complaints received the majority were about **decisions** made by financial service providers. The biggest increase in this category related to **maladministration in lending**.



## Member survey results

We asked our members to rank statements on a scale of one to five, where one is the lowest and five is the highest. Here are some of our results:

*FDRS respond promptly to member enquiries.*

**98.46%** of respondents scored us as a three or higher.

Average rating **4.42**

*FDRS provides a professional complaint resolution service.*

**96.92%** of respondents scored us as a three or higher.

Average rating **4.42**

*I feel I can call FDRS and get help with a complaint.*

**95.58%** of respondents scored us as a three or higher.

Average rating **4.41**

*FDRS provides good value to its members.*

**89.55%** of respondents scored us as a three or higher.

Average rating **4.04**





# Case Studies

## T&Cs and contracts

This case shows how important it is for clients to read the fine print in any signed Terms and Conditions. Once the terms are accepted, it is difficult for customers to assert that they were not informed about the mechanism for payment where it was clearly spelled out in the documentation.

This does emphasise just how important it is for providers to carefully explain their standard contracts to avoid misunderstandings and subsequent conflicts. In this case, the delays were completely outside of the NZ provider's control. Ultimately, there was nothing the fund managers could have done to influence the course of events.

## Superannuation situation

### Background

A Customer's complaint concerning the transfer of their Australian superannuation funds to their New Zealand KiwiSaver fund was referred to the Financial Dispute Resolution Service (FDRS). The Customer claims they were misinformed about the process of transferring their funds by cheque when there were other options available that would not have caused significant delays and subsequent monetary loss.

The cheque was posted from Australia to New Zealand using standard postal services, which at the time were experiencing significant delays due to the pandemic. This delay meant that the cheque was in transit for a considerable period.

Further delays were compounded by administrative processes and clearance issues. In total, it took seven weeks to complete the Customer's request to transfer funds from their Australian superannuation account to their New Zealand KiwiSaver account. The Customer believes this resulted in almost two months' worth of investment earnings being lost.

### Next steps

As per FDRS process, mediation was suggested to both parties, but they declined to participate. The next available step is adjudication, in which an impartial professional makes a decision based on submissions provided by both parties.

The Customer admitted that they missed the fine print about the transfer by cheque. They assumed a telegraphic transfer would take place and argued that neither the procedure for posting a cheque nor the possibility of transferring payments by EFT had been explained. According to the Customer, even though the cheque was issued following their completion of an application form, it does not mean that they were fully informed about it.

The Australian superannuation fund believed they had adequately advised the Customer. They noted that they had a phone conversation, in which the Australian superannuation

provider had explained the withdrawal choices to the Customer. They also provided a fact sheet for the Customer. The Customer's superannuation fund transfer adhered to the requirements for the Departing Australia Superannuation Payment (DASP) which requires the use of a cheque. However, the Customer states they currently hold dual citizenship of both Australia and New Zealand. Therefore, a DASP would not apply to them.

The New Zealand KiwiSaver fund acknowledged delays due to covid-19 restrictions, with staff not permitted to be on site and local banks operating remotely, limiting the ability to complete the physical transaction of processing the cheque. General practice allows fourteen days for the cheque to clear, be converted and the funds to become available in the new account.

### Outcome

The overall conclusion of FDRS is that the Customer's dispute is not upheld after considering all of the issues identified by the parties, in their final submissions. The adjudicator expressed sympathy for the Customer and their experience, however, could not find in their favour.

The process to transfer by cheque and postal service was approved by the Customer, regardless of the Customer's statement that they were not informed about the possibilities of the Digital Funds' transfer and had no alternative options to move the funds. The Australian superannuation provider had no control or responsibility, over the postal and administrative delays. They could not expedite the process and the delays, both in transit and processing within New Zealand, were outside their influence.

Both the Australian and New Zealand providers acknowledged that delays had taken place and that it had been a challenging and stressful process for the Customer. However, the factors were external and beyond their control once the process was initiated.



# Case Studies

## Lessons for brokers

This case highlighted the need for brokers to recognise the party's competing duties – the duty of the customer to disclose material information and the broker's obligation to fully consider the impact of new information and subtle changes to the coverage. Does the broker need to make further enquiries to assess whether new risks have emerged from policy changes and disclosures?

This referral also shows how important it is that brokers document all discussions and record any changes in writing. In this case, there was no clear evidence or correspondence to confirm the nature, content, or outcomes of the party's discussions. The absence of corroborative evidence that the brokers "did ask questions and discuss the risks and cover" had a significant impact on the broker's ability to verify what conversations had taken place. Evidence of these conversations might have enabled the brokers to show that they had met their obligations to advise the clients of the risks.

## Burglary on a building site

### Background

Financial Dispute Resolution Service (FDRS) received a complaint from a customer regarding a failure to arrange appropriate insurance cover for the tools and materials on a construction site. The customer was building their own home and had engaged with a financial service provider to ensure that they were protected during the construction of the house.

Unfortunately, there was a burglary of the trade-related tools and materials onsite. When the customer proceeded to claim compensation for the burglary, they were informed that the tools and materials had not been part of their cover. At this stage, the customer contacted FDRS. The broker disputed that there was a failure to arrange appropriate insurance coverage as they had not been informed that the build would be conducted by the customers themselves and, hence, that they would need insurance for the tools on the construction site.

### Next steps

FDRS first encouraged the broker to resolve the dispute directly with their customer. When the complaint remained unresolved, FDRS assessed that the dispute was within the jurisdiction and suggested mediation as an option, but the parties were unwilling to meet and discuss the matter in person. The dispute was, therefore, escalated to adjudication, where an independent adjudicator makes a decision based on the evidence submitted by both parties. Submissions were provided and shared between both parties. The broker insisted that they had arranged appropriate insurance, as they were not informed that the customer would be the main contractor on the build and could, therefore, not have known that insurance for tools would be covered. The customer claimed that this information had been disclosed.

During the adjudicators review of submissions, it was determined that the customer had failed to inform the broker that they would be the main contractor on two occasions but did clarify this on a third instance. The customer was advised to quantify their loss of trade-related items with their

depreciated actual and current value along with evidence including pictures, and purchase receipts. The customer provided an excel spreadsheet with a list of tools they claimed had been stolen from the construction site along with their replacement cost. No further evidence in the form of receipts or photos was submitted. The parties were then invited to seek agreement on the value of the customer's listed trade tools. The parties were unable to reach an agreement on this.

### Next steps

The adjudicator considered two questions:

1. Whether the provider had failed to arrange appropriate insurance cover.
2. If the broker had indeed failed to provide appropriate insurance cover, what compensation would the customer be entitled to?

In relation to the first question, the adjudicator partially upheld the complaint. The adjudicator determined that once the broker became aware of the change to the customer's role as the main contractor on the build, the broker breached their obligation to exercise reasonable skill and care. They did not fulfil their obligation as they failed to make further inquiries about the customer's additional risks and propose additional insurance cover to meet those identified risks. This failure exposed the customer to foreseeable loss of their trade tools because of theft. However, as the customer had failed to clearly inform the provider that they would be the main contractor on two separate occasions, it was determined that the liability would be shared. The adjudicator found that the broker was one-third responsible for the loss and should, therefore, bear one-third of the cost of compensation. However, as the customer was unable to provide sufficient evidence to quantify their actual losses, no compensation was awarded for the breach.



# Case Studies

## Know before you buy

It's easy for consumers to be confused by the various options out there. There is a difference between layby sales and purchases using a buy now, pay later service. Layby involves paying in instalments and getting the item once it's paid off. Buy now, pay later allow you to receive purchases right away then pay it off. These services are often advertised as no interest, however extra costs and fees can be incurred if you miss payments or can no longer keep up to date with payments.

Some retailers also provide hire purchase and options to buy on credit. These options allow you to receive the item immediately, and pay for it over time in instalments, however interest and fees can often apply.

We recommend reading through all the terms and conditions before signing up for a purchase, and having a chat with a budget adviser if you find yourself relying on these options for essentials.

## Layby sales

### Background

In mid-2022 a customer agreed to buy an Xbox Series X Combo for \$2,499.00 from an online provider. It was going to be a present for her nephew.

The customer agreed to pay the purchase price in weekly instalments on the understanding that after 12 instalments, the Xbox would be delivered to her. She would pay the rest of the purchase price off while getting to use the Xbox. This means it was a layby sales agreement.

Unfortunately, although the customer paid all the instalments as agreed, the Xbox was not delivered on time. The provider asked her to wait for two more weeks as they did not have the right product in stock. It was not delivered within that timeframe, so she contacted the provider again.

When the product did eventually arrive, the customer found it was an Xbox One with two faulty controllers and some additional items with packaging that had already been opened. The provider said they had given her extra accessories as a gesture of goodwill.

However, the customer was not happy as she believed they were used items. When she queried the state of the product, the provider told her it was refurbished. According to the provider she had agreed to that. But the customer said 'no', why would she pay \$2,499.00 for used goods?

The customer lodged a complaint with FDRS seeking a refund of all instalments, less \$250 so she could keep the Xbox she received for her nephew.

The provider offered a full refund if everything was returned in their original packaging. If the customer wanted to keep them, she could do so for no refund and the provider offered to waive the balance she owed. By this stage she had paid over \$700.00.

### Next steps

FDRS worked with the customer and the provider to find out more information and to clarify their perspectives. For example, FDRS identified what contract terms applied between the parties.

Before FDRS could consider the customer's complaint further, we needed to see if it came within the jurisdiction of our service. We can consider "financial services" which are given a specific meaning by the law. Unfortunately, that definition of "financial services" does not include "layby sale agreements" so we could not make a decision on this complaint.

However, we did make the following observations to the customer and the provider to help guide them towards agreeing on a solution:

- We pointed out that the contract between them included a promise from the provider that the product was new.
- There was nothing in the contract documentation showing that the customer agreed to the product being refurbished.
- The price of \$2,499 seemed unreasonably high for the products in the condition received by the customer.
- The Consumer Guarantees Act applied which meant the provider had to guarantee that the product was of an "acceptable quality". If it did not, the customer was entitled to certain refunds under that Act.
- The Fair Trading Act applies to layby sales, which prohibits misleading or unfair conduct.

It appeared to FDRS that the provider could have prevented this situation by advising the customer upfront that it did not have the particular product in stock and by keeping in regular contact with the customer about the true state of what stock it had available.

It also appeared that the provider was not familiar with what was in its standard terms and conditions, so it potentially breached them by supplying a product that was not new.

At the end of the day, FDRS was pleased to help by pointing the customer and the provider in the right direction so that they could work together to find a solution.



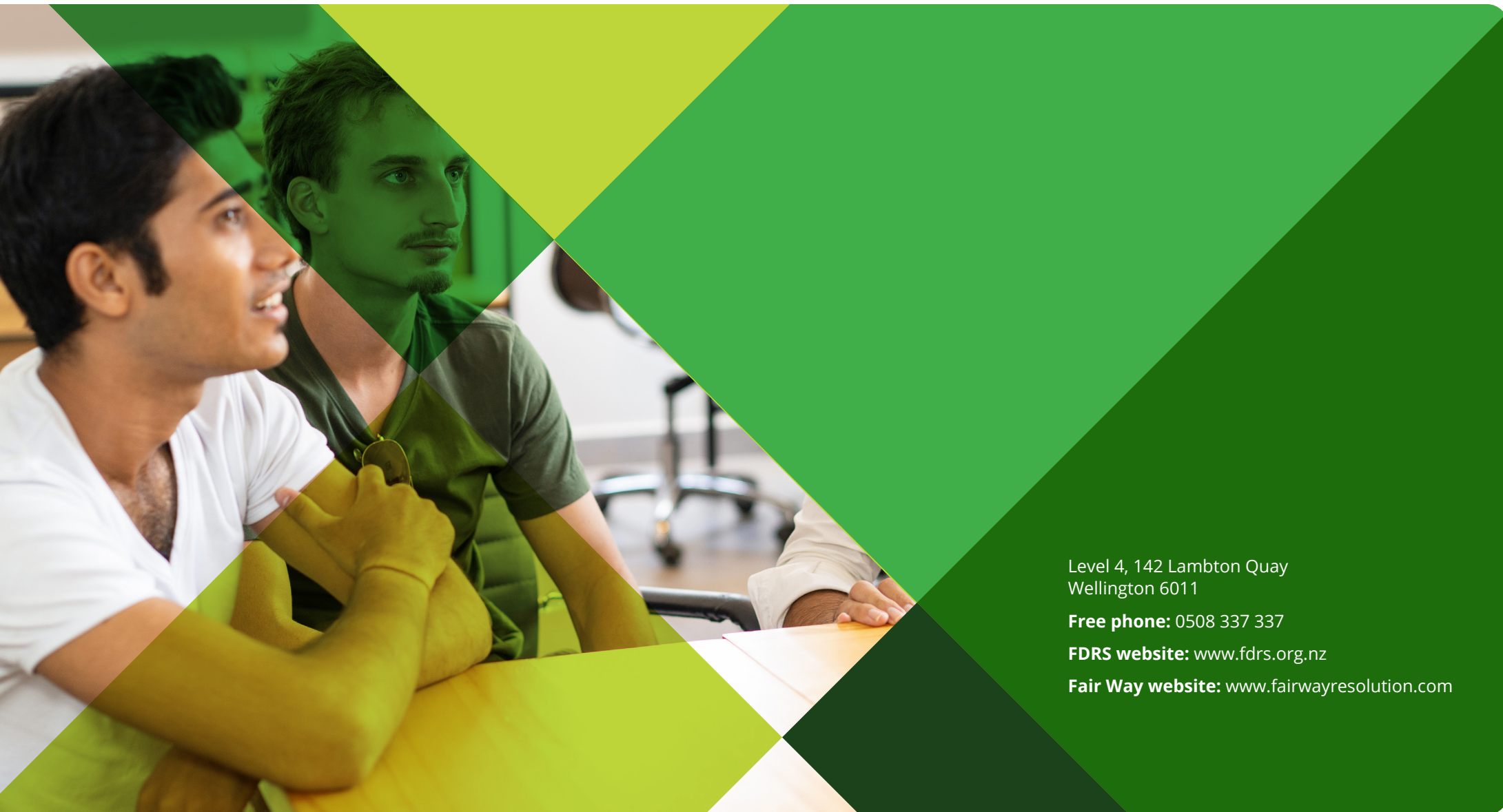
# Finances

	2023 \$000	2022 \$000
<b>Income</b>		
Membership Fees	526	552
Complaint and other Fees	15	35
<b>Total Income</b>	<b>541</b>	<b>587</b>
<b>Expenditure</b>		
Advisory Council	22	15
Travel and Marketing	5	2
Personnel	107	107
Other	2	–
Office and Corporate Support	406	410
<b>Total Expenditure</b>	<b>542</b>	<b>534</b>
<b>Profit / (Deficit)</b>	<b>(1)</b>	<b>53</b>





**kia tau**  
YOUR EXPERTS  
IN DISPUTE  
RESOLUTION



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