

Introduction

Fairway Resolution Limited (Fair Way) as owner and operator of the Financial Dispute Resolution Service (FDRS) is pleased to provide the Minister with a copy of the FDRS Independent Review and our response to the recommendations of this review.

FDRS is one of four approved dispute resolution schemes: Banking Ombudsman (BOS); Insurance and Financial Services Ombudsman (IFSO); Financial Services Complaints Ltd (FSCL); and Financial Dispute Resolution Service (FDRS).

Fair Way is required to commission an independent review of the FDRS at least once every 5 years.

After an external Expression of Interest process, Fair Way and the FDRS Advisory Council agreed upon Richard Kirkland, Risk IQ, as a suitable Independent Reviewer with the necessary critical analysis skills, financial experience and ability to engage with varied stakeholder groups. RiskIQ was appointed in April to perform the role of independently reviewing FDRS.

On 5 September we received the final copy of the Reviewer's review of the Service which stated the following:

Based on the review procedures I performed and evidence presented in Section 2, nothing has come to my attention indicating that FDRS has not complied with the provisions as set out in s.52 of the Act as mandatory considerations for approval and s.63 which prescribes the rules required to be included in an approved Dispute Resolution Scheme.

In what we believe is a first in New Zealand, the Reviewer constructed the review of in-scope matters using the Government Centre for Dispute Resolution (GCDR) framework. This framework has been designed to provide a maturity assessment of dispute resolution systems against best practice principles. We agree with the Reviewer's view that ongoing self-assessment using the maturity model will provide greater prominence to the dispute resolution best practice principles.

Through the review process, the Reviewer identified 5 key thematic findings and associated areas for enhancement. The five themes were:

1. Governance arrangements
2. Service Performance Reporting
3. Independent Review action plan
4. Engagement and access
5. Technology and security

This document addresses those themes and associated recommendations.

In principle, the high-level thematic observations are accepted. However, there are a few details relating to the recommendations resulting from those themes that are either not accepted or have already been completed or commenced.

The Reviewer also made some observations relating to enhancements against the GCDR maturity model assessment framework. While these will not form a substantive part of this response, there are several observations that will be beneficial for FDRS to consider implementing. These will form part of an operational improvement programme through Fair Way.

1. Governance arrangements

The Reviewer noted there is scope to strengthen the governance focus, accountability, and independence of the Governing Body and Advisory Council in relation to FDRS, recommending:

Fair Way consider enhancing its governance of the Scheme through a combination of the following arrangements and instruments.

- a) Develop separate terms of reference (charters) for each of the Governing Body and Advisory Council,***
- b) Provide an explicit statement of Fairway's long-term investment policy and objectives regarding FDRS, supported by a Deed of Undertaking in respect of future financial support,***
- c) Develop an internal resourcing adequacy assessment process for FDRS***
- d) Consider re-constituting the Advisory Council as a formal board (rather than an advisory body)***

Several of the recommendations in this area can be summarised as FDRS providing greater visibility of actions and activities already in place. Fair Way has a demonstrated commitment to the ongoing delivery of FDRS services to both members and clients of members. This commitment sees Fair Way actively allocating resources to the FDRS team to enable it to fulfil all the responsibilities of the Act and grow maturity against GCDR standards.

While we accept the current operating and governance structure could be modified to meet changing organisational needs and market expectations, this needs to be carefully considered against the service purpose, GCDR best practice standard and operational efficiency.

We agree that providing greater visibility of the governance related outcomes will be beneficial. We are committed to extending this for points a) – c). We note that both the Fair Way Board and the FDRS Advisory Council have a clear charter, relating to the day-to-day oversight and escalation functions.

We accept recommendation a) in part. As constructed today, the FDRS Advisory Council fills the skill gap by supplementing the Board's knowledge, strategic thinking and understanding relating to the financial services industry, together with bringing specific consumer insights. This capability creates a bridge between governance obligations and practical consumer focused delivery. In considering the Reviewer's report, we can see benefit in codifying some of these functions and activities, in addition to providing more structured dialogue between the Advisory Council and the Fair Way Board. To that end, we will review the

existing governing documents of the current structure to embed the points raised in the Independent Review.

We accept recommendation b) in full. While the ongoing funding of the FDRS service is, in Fair Way's view, implicit, we acknowledge from an external perspective that a more explicit expression of this would be useful and create greater clarity for measurement against Section 51(1)(c) of the Act. Fair Way commits to bring expression to this part of the recommendation.

We accept recommendation c) in part. Fair Way is one of New Zealand's largest dispute resolution providers, running an agile and mixed delivery model to ensure all services are provided in a safe and compliant way. Our current structure provides the necessary agility to deploy resources in a way to ensure delivery of our services across multiple industries. Our expansive training, experience and breadth of resources means that Fair Way can respond to both short-term and long-term fluctuations in demand for services. This ability sets us apart from most dispute resolution organisations in New Zealand and is something that is attractive to all our clients. We accept the importance of having adequate resourcing within FDRS and continue to commit to maintaining appropriate levels using existing and proven structures across Fair Way's services. We commit to bringing greater visibility to stakeholders in this area.

We do not accept recommendation d). Noting the commercial structure that Fair Way employs to provide a flexible dispute resolution model that is responsive to market needs and changes, we believe having a separate Board would be counterproductive and lead to a reduction in Fair Way's ability to respond appropriately to governance, operational and consumer needs and responsibilities.

We do not agree that FDRS requires a separate Board to achieve the uplift the Reviewer articulates. One of the benefits of FDRS being part of the larger Fair Way organisation is the ability to share resources and respond to market changes. This agility has the potential to be eroded if two boards existed, leading to inconsistent delivery of services across Fair Way.

We further note that the GCDR encourages collaboration between dispute resolution systems. Within Fair Way, this currently occurs seamlessly through the course of delivering our services. We believe the advisory council has a critical role to play in being hands-on in the operational direction and deployment of strategy for FDRS. To move to a formal board structure, we believe, would create unnecessary inefficiencies.

2. Service Performance Reporting

The Reviewer noted that the Scheme Rules is essentially the only area where the purpose of the Service is promoted, therefore leaving a potential gap for stakeholders wishing to engage. The Review recommended:

that FDRS develop, report and govern in accordance with a more structured performance management framework.

The purpose of the Scheme centres around principles set out in section 52(2) of the Act. While the Reviewer states that the Scheme complies with the Act's requirements, we acknowledge and agree there are areas of reporting that could be improved. We accept this recommendation in full.

In bringing this recommendation to life within the Scheme, we will utilise the work completed over the last few years regarding the capture of information and performance data.

As part of scoping this work, we will look to industry best practice examples relating to Annual Reporting, Consumer and Member Manifestos and Statements of Performance Expectations, together with engaging the Advisory Council and other industry stakeholders.

Noting this recommendation together with recommendation 4, we will investigate the viability of regularly publishing a dashboard detailing the performance of the Scheme. We note the success that the Banking Ombudsman has had in this area, however we are mindful of the challenges of statistical relevance given the small size of our data set. In any case, more visibility relating to timeliness KPIs, resolution rates and systemic issues will be a welcome addition for stakeholders considering engaging with the service.

3. Independent Review action plan

Looking back to the recommendations made in the 2018 Independent Review, we have seen significant change in the delivery of the FDRS service in line with those recommendations. We were not surprised to see the Reviewer focus on the two in-flight recommendations (effective data collection and proactive member engagement). These two aspects of the 2018 Review will consistently feature in ongoing improvements to the service over years to come.

In respect of the 2 ‘in flight’ actions, I recommend that:

- a) A formal policy and systematic approach be designed and implemented to monitor and manage member compliance with rules on an ongoing basis and***
- b) That additional resources and effort are deployed to realise improved strategic and operational insights into and reporting of complaints and dispute resolution with a focus on the efficacy of the ‘early resolution strategy’.***

As noted in the Review executive summary, FDRS has kept a regular reporting cadence and action plan relating to the 2018 Review recommendations. We plan to continue this approach as we track the agreed actions from this Review. This plan has oversight from Fair Way senior management and the Advisory Council.

We note that a requirement of the Act is for Financial Service Providers to maintain a license to provide services to clients. Standard Condition 2 requires license holders to have a documented internal complaints procedure (ICP) and follow guidelines relating to creating awareness, for customers, of escalated dispute resolution pathways. To that end, we do not believe it is a primary role of FDRS to monitor these requirements for all members, especially given the annual declaration made to the Financial Markets Authority on these matters, amongst other things. We do however acknowledge that as part of operating a robust dispute resolution service, FDRS has a responsibility to ongoing education and, where complaints arise, to make enquiries regarding general compliance with licensing conditions.

We partly accept a) and already have processes to enable checks for a sub-section of the FDRS membership base. This is currently done through our regular member (one-on-one) engagements. As part of these member meetings, we check member's details on their website and their ICP through a series of inquisitive questions. We commit to creating a checklist for FDRS staff to use when engaging one-to-one in monthly member meetings and for these to be held against the member's record.

From an education perspective, FDRS runs regular webinars for members covering a wide range of topics. Over the course of the year, a range of compliance related sessions are held. For example, over the course of last year we hosted the FMA twice for webinars relating to compliance/licensing.

We conditionally accept b) noting that the work completed over the last period on our case management system, Kōwhai, is an enabler for the collection and analysis of data. As referenced in the report, substantial work and investment has been made in the case management system used to deliver FDRS services. It is important that we now take the necessary next steps to ensure that information is collected and used appropriately.

Through our regular engagement with GCDR, we understand Standard 9 regarding the collection and use of data is a complex area to navigate, with the dispute resolution industry treading carefully through the issues. Despite this complexity, we are committed to continuing to work in this area.

In terms of using the information to bring efficacy to the early resolution process, this needs to be considered through the lens of case volumes and case types. An ongoing challenge within any dispute resolution process is the nuance of case types, which means cases need to be looked at on their merits and with the evidence provided. Often, we find that after the early resolution phase, when more detailed submissions are provided, the direction of the case may change.

We agree that reliable data from similar previous cases can provide some insight based on previous outcomes, and at times help the resolution process. However, we are mindful of not relying on them entirely as we navigate the early resolution process. To the extent that Fair Way continues to successfully work through other early resolution processes across various industries, we will ensure relevant learnings are fed back into our fortnightly Action Learning Group discussions.

Finally, the above will be completed with a lens on privacy and we will consider any improvement actions against the latest direction provided by the Privacy Commissioner.

4. Engagement and access

As noted by the Reviewer,

It became apparent through the review that achieving effective, continuous engagement with key stakeholders and demonstrably meeting Principle 1 – User focused and accessible, is a challenge. FDRS has an outreach / engagement programme and is working collaboratively with the other alternative dispute resolution schemes with some positive results.

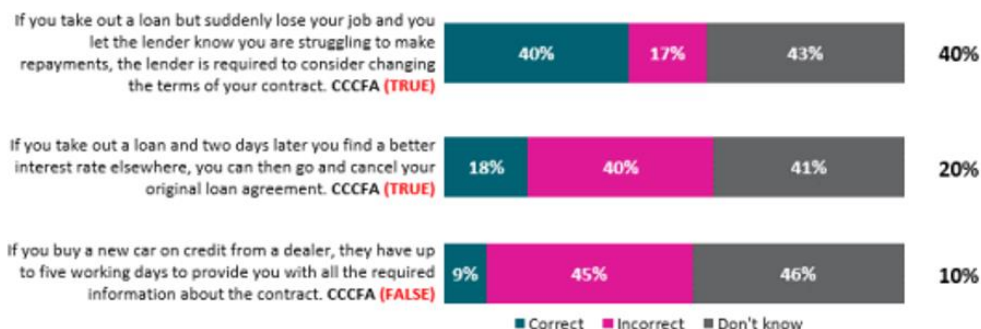
Engagement and access continue to be one of the most significant challenges facing all dispute resolution services. Within the financial services sector, the four dispute resolution schemes meet quarterly to discuss issues relevant to the sector. In addition, through the Community Outreach Group (COG) we proactively engage with key industry stakeholders, particularly advocacy groups (e.g. Fincap, CAP, Salvation Army etc.) The Reviewer recommended:

DRS actively explore and lead collective industry opportunities to lift capability and maturity in the following two areas:

- a) **Awareness of financial dispute resolution services and**
- b) **Developing formal and informal networks to discuss engagement and associated data and information needs**

MBIE’s Consumer Survey (2022) found over 57% of the population are either unaware (29%) or aware with no knowledge (28%) of the Credit Contracts and Consumer Finance Act (CCCFA). Noting this is a primary piece of financial legislation, among others, the survey points to a broader issue around knowledge and awareness, and this is an industrywide (government included) challenge. It is not practicable for a singular DRS to influence broader industry awareness where knowledge of underlying legislation remains low.

The following extract from the MBIE Consumer Survey 2022 illustrates this point.



Fewer than 40%, at best, of the population can correctly answer simple questions relating to consumer protection afforded to them via the CCCFA.

While FDRS endorses the importance of lifting capability and maturity for the reasons noted, we accept this recommendation to the extent that we can control and reasonably fund it through member levies. It is important to note that some of this work is already in place, and most recently all DRS providers have agreed to work with the Commerce Commission to support developing CCCFA awareness, and the pathway that dispute resolution provides in the case of unresolved issues. Together with the greater reach of the Commerce Commission, we can make inroads into the awareness, accessibility and trust issues that are present.

We fully support the intent of b) noting GCDR Standard 9 on how dispute resolution schemes collect data and information for analysing the effectiveness of services and improving performance, is an important consideration. This applies to both dispute resolution schemes and the regulatory systems in which they operate. With the increasing impost of privacy issues and system attacks relating to data storage and security, FDRS, through Fair Way is continually monitoring the breadth of data we maintain, balanced against the privacy risk.

In terms of engagement with customers and members, this is a critical and ongoing area of opportunity, as engagement journeys change. In respect of this part of the recommendation, Fair Way is fully committed to working with all stakeholder groups to adapt engagement journeys and the tools available to ensure access is as smooth as possible. As an immediate response, we will look to the technology we are using across other dispute resolution services and, where appropriate, employ relevant options for customers. In addition, we remain committed to engaging with community groups, including advocacy groups, to enable this to happen.

5. Technology and security

FDRS expand the scope of the existing generic GCDR Maturity Assessment model and further tailor to incorporate components relevant to its own business model, with specific assessment threads covering information security and cyber-risk capabilities.

Fair Way agrees with the intent of the recommendation and the ongoing need to ensure security keeps pace with everchanging threats. Security is a high priority at Fair Way. We are continuously testing and improving our security posture and use the following guiding pillars as we implement our plan and continuously improve our security maturity:

- Cloud First
- 360-degree security
- Zero-Trust
- No legacy

As part of Fair Way's 360-degree and Zero-Trust approach to security, we already use an AI-powered cybersecurity platform to detect and protect Fair Way users from cyber threats. We also protect our network infrastructure behind encrypted encapsulation. We continuously monitor alerts from this platform, and other security platforms that make up Fair Way's multi-layered approach to protecting our users, systems, and the information that we are custodians of.

AI-based threats are one of the many examples where cyber threats are becoming more sophisticated and increasing the risks to any enterprise, which reinforces Fair Way's approach and investment in security.

Fair Way commits to continuing to invest in this area and, while acknowledging the usefulness of the GCDR framework, is conscious that removing static procedures, processes and responses to security are paramount for successful ongoing protection.

6. Conclusion

During the course of the Independent Review, the Reviewer has engaged with a wide range of stakeholders, broadly representing all aspects of the financial services industry. The Reviewer found that FDRS complies with the provisions as set out in section 52 as mandatory considerations

for approval and section 63 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

While the Reviewer also made several recommendations to improve the Scheme, he has not stated that these are required as a prerequisite for renewal of the approval by the Minister of Commerce and Consumer Affairs for FDRS to operate as an external independent dispute resolution scheme.

As detailed in our response, the Reviewer's high-level thematic observations are accepted in principle. However, there are a few details relating to the recommendations resulting from those themes that are either not accepted in full or have already been completed or commenced.

In the opinion of Fair Way, the approval for FDRS to operate as an external independent dispute resolution scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 should be confirmed.

We welcome any questions or discussion on either this response or the Independent Review.