



FINANCIAL  
DISPUTE  
RESOLUTION

  
**FairWay**  
Lead • Resolve • Agree

**Financial Dispute Resolution Scheme**  
**Annual Report**  
**1 July 2014 – 30 June 2015**

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# Report from the Chair of the Advisory Council

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It is my pleasure on behalf of the Advisory Council of the Financial Dispute Resolution Scheme to present the 2015 Annual Report.

The year ending 30 June 2015 saw the Scheme transition from being the reserve scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2010 to being an approved scheme. The transition has been smooth. Membership remains strong, and it is pleasing to see the high levels of satisfaction with the Scheme's service, from both members and complainants.

The Advisory Council met twice during the year, as well as responding less formally to email enquiries and telephone calls, and was able to provide input and provide guidance and direction to the Scheme on several issues.

The Advisory Council is satisfied the Scheme continues to provide effective and independent services in a way that can resolve disputes efficiently and thoroughly.

The Advisory Council is aware of the large number of complaints emanating from foreign exchange trading operations. The Advisory Council notes that management, the Board of FairWay Resolution, and the regulator are actively taking steps to identify delinquent traders and address concerns in this area.

The next twelve months will be another busy period for the Scheme, as it focuses on raising consumer awareness about access to dispute resolution services, continues to develop its conflict management advice and complaints handling service, and enhances its case management system.

I would like to thank and acknowledge the Board of FairWay Resolution Limited for their leadership and management of the Scheme and my fellow Advisory Council members for their work during the year.

Finally, I would like to thank our Scheme Director, Stuart Ayres, and his staff, for their efforts and excellent work over the past year.

**Stephen Ward**

Chair of the Advisory Council

## Scheme Director's Report

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This report concludes the end of the first year as an approved scheme. The transition from the reserve scheme went very well with little impact on members who were conferred membership entitlements, fees and jurisdiction of the previous regime.

Since then we have continued to gain new members, but there has been a small decline in membership as providers have consolidated or exited the industry

Total activity was down on the 2014 year, but total registered enquiry and complaint cases increased, primarily from overseas investors complaining about an issue with one online forex trading member especially, who has since been deregistered.

Three quarters of the 475 complaints cases were referred back to members' internal complaints processes and we continue to case manage these to ensure that complainants obtain access to redress with their provider.

Only 20% of the cases were about New Zealand providers, of which 30% related to finance companies who resolved the issue with the party directly. The balance of onshore cases were spread evenly among insurers, insurance and mortgage advisers, and were primarily in respect of declined claims or failure to follow instructions. These also were mostly resolved directly between the parties -as they should be.

91 cases escalated to the scheme's formal dispute process scheme. We facilitated early resolution of most, including two by conciliation, but 23 cases were decided by adjudication, with 16 complaints upheld.

We have recorded a variety of reasons for the complaints, but the underlying systemic issue continues to be consumers not checking the credentials of the providers and too readily accepting complex and lengthy terms and conditions, often in an unfamiliar language, without understanding them. On the other hand, we believe some providers take advantage of the lack of financial literacy and sophistication of the consumer.

Perhaps an unintended consequence of regulation has been disclosure overkill and complexity which many consumers do not read or understand, and providers creating entitlements and indemnities in their terms and conditions to mitigate risk. We envisage that some of these issues will be addressed in the current review of the Financial Adviser Act and Financial Service Providers (Registration and Dispute Resolution) Act, on which the scheme has also made a submission.

The scheme and its members have had to assimilate a number of other important changes to legislation over the period with implementation of the Financial Markets Conduct Act and, significant changes to consumer and consumer credit law.

FairWay's ownership of the scheme has assisted us to be more innovative with our service, communications and value proposition for members. We have simplified membership categories, revised fees and aligned information to feedback received in a recent members' survey, to ensure that members are getting great value. We continue to provide an on-

demand best practice dispute resolution service with a world class case management process managed by qualified personnel; member support with compliance, conflict resolution and disputes prevention, and information in the form of case studies, decisions, fact sheets, position statements and guidelines. If members play their part with suitable promotion we believe that the scheme will assist to improve consumer confidence, customer advocacy and business processes.

Some members are now beginning to accept that promoting an independent dispute resolver and complaints handling process is actually a benefit to their business. Not only does it promote credentials and help enhance reputation, it promotes transparency and is an invitation for their customers to provide feedback, be it good, bad or simply suggestions. The scheme met all but one of its key performance measures. We aim for most cases in the formal process to be resolved by early resolution; however the nature of the disputes and lack of response from some members has necessitated resolution at the higher level-adjudication.

In all other areas we are very pleased with the results, especially the increases on previous period in overall satisfaction with the scheme's service from both members (92%) and complainants (81%). Of particular note is the increase in the likelihood of users to recommend the scheme to others: with a 54% increase in Net Promoter Score from complainants to +57, and 110% increase for members, to +42.

Unfortunately consumer awareness of dispute resolution schemes in general and the right to complain remains unacceptably low. We are working with the other schemes to mitigate confusion and enhance access but the primary responsibility to ensure that consumers have access to dispute resolution rests with the financial service providers themselves and we will continue to monitor and if necessary admonish, advise and if no suitable response, ultimately report noncompliance to the regulator.

The Advisory Council has provided valuable independent advice and guidance, particularly about our approach to handling the often complex online trading platform issues; increasing consumer awareness; the change to scheme rules reducing the internal complaints handling period from 3 to 2 months, fee revision, and contributing toward the scheme's submissions on the CCCF Act, and FA Act & FSP Act review.

The year ahead promises to be as busy and interesting as the one gone by, as we continue to increase consumer awareness directly and through scheme members, monitor for member compliance of promotion of the scheme, begin to experience some impact from the review of the FSP and FA Acts and continue to deal with the challenges of complaints about a number of online commodity trading platforms escalating to the formal disputes process.



**Stuart Ayres**

Scheme Director

## Total activity

**↓24%**      **4,830 (6,364)**

- Total activity is a measure of incoming and outgoing phone calls and emails with our two facilitators. It excludes 2,337 email notifications from the Financial Service Providers Register (FSPR) about changes in registration status.
- It is a useful measure to determine resources required to deliver an on-demand scheme.
- From this we note that each facilitator handles ten enquiries per day, 50% email /50% phone.

## Registered enquiry

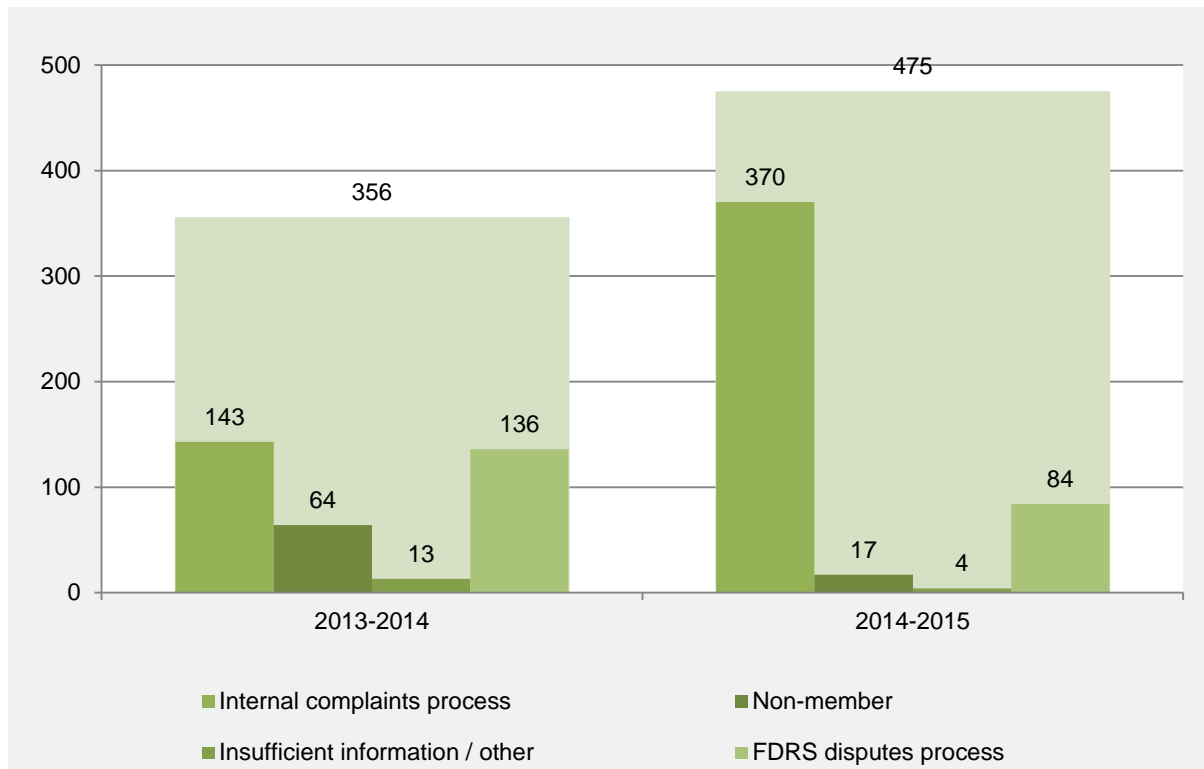
**↑8%**      **2,919 (2,703)**

- This data is extracted from our case management system where we register every individual membership and complaint enquiry as a case.
- The total comprises 1,275 membership enquires 23% less than last year, not unexpected due to the transition from reserve scheme.
- A 50% increase in complaint enquiries to 1,419 due in most part to one forex trading platform member.

Enquiries summary	Current YTD 2014-2015	Last YTD 2013-2014	
<b>Total enquiries received</b>	2,919	2,703	<b>216</b>
<b>Total complaints received</b>	475	355	<b>120</b>
<b>Non-complaints</b>	382	217	<b>165</b>
<b>Disputes resolved or withdrawn</b>	59	148	<b>(89)</b>
<b>Disputes on-hand</b>	40	8	<b>32</b>

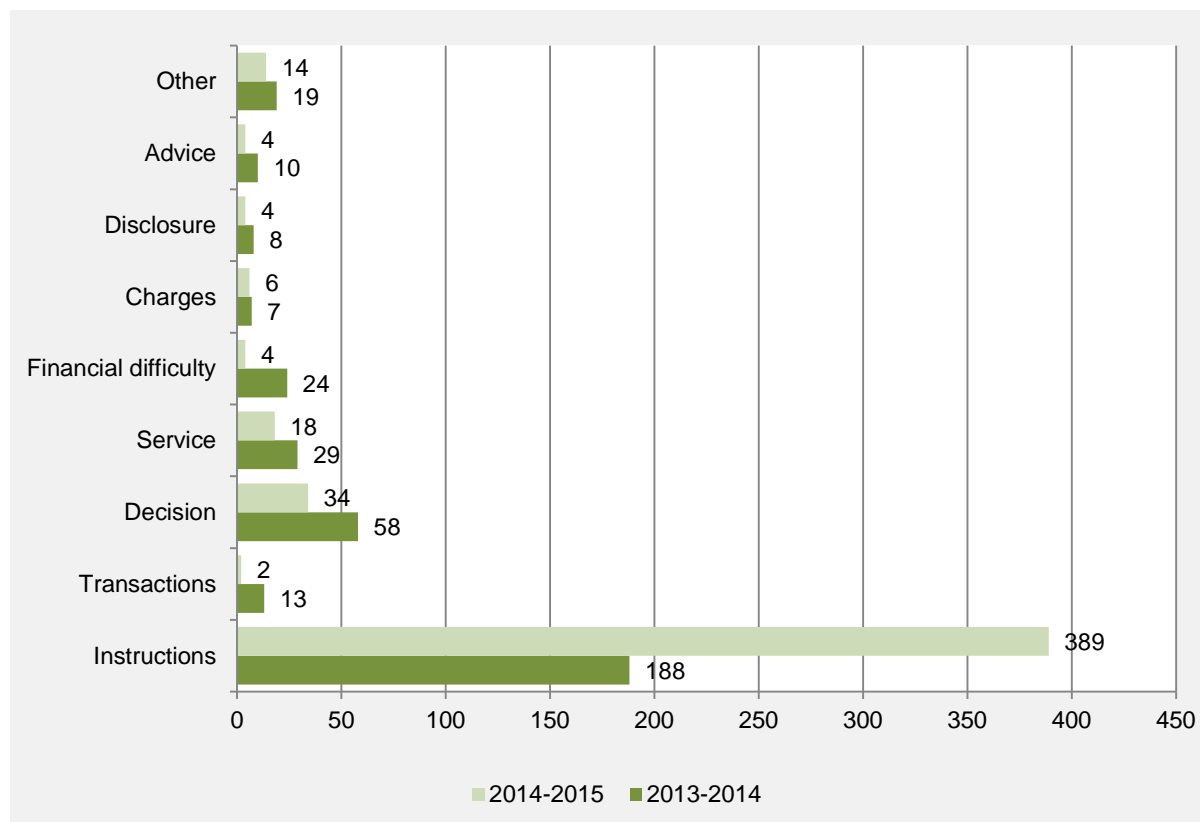
## Complaints registered

↑34% 475 (355)



- A 34% increase in total registered complaints, but a 38% decrease in complaints escalating to the scheme's formal dispute process.
- The scheme nevertheless case manages all complaints to ensure complainants were able to get access to redress for their issues.

## Complaints categories



### Failing to follow instructions

- 82% or 389 of the total complaints were about members' failing to follow instructions, specifically failing to reimburse investors funds when requested. Online trading platforms were over represented.
- Only 13 New Zealand providers failed to follow instructions
- 10 cases of this category resolved at facilitation, with 16 decided by the adjudicator.

### Decisions

- 7% of complainants were concerned about their financial service provider's decision. Over half of these because their insurer declined their claim. One of those was over a misinterpretation of terms and was successfully settled by conciliation agreement.
- Two cases involving an online trading platform escalated to adjudication, where one complaint was upheld, the other not upheld.
- All others were resolved within members' complaint process.



## Poor service

- Poor service was a reason given for 4% of total complaints.
- Half of these related to New Zealand providers, most resolved directly between the parties with the one coming before the adjudicator, not upheld.

## Financial Difficulty

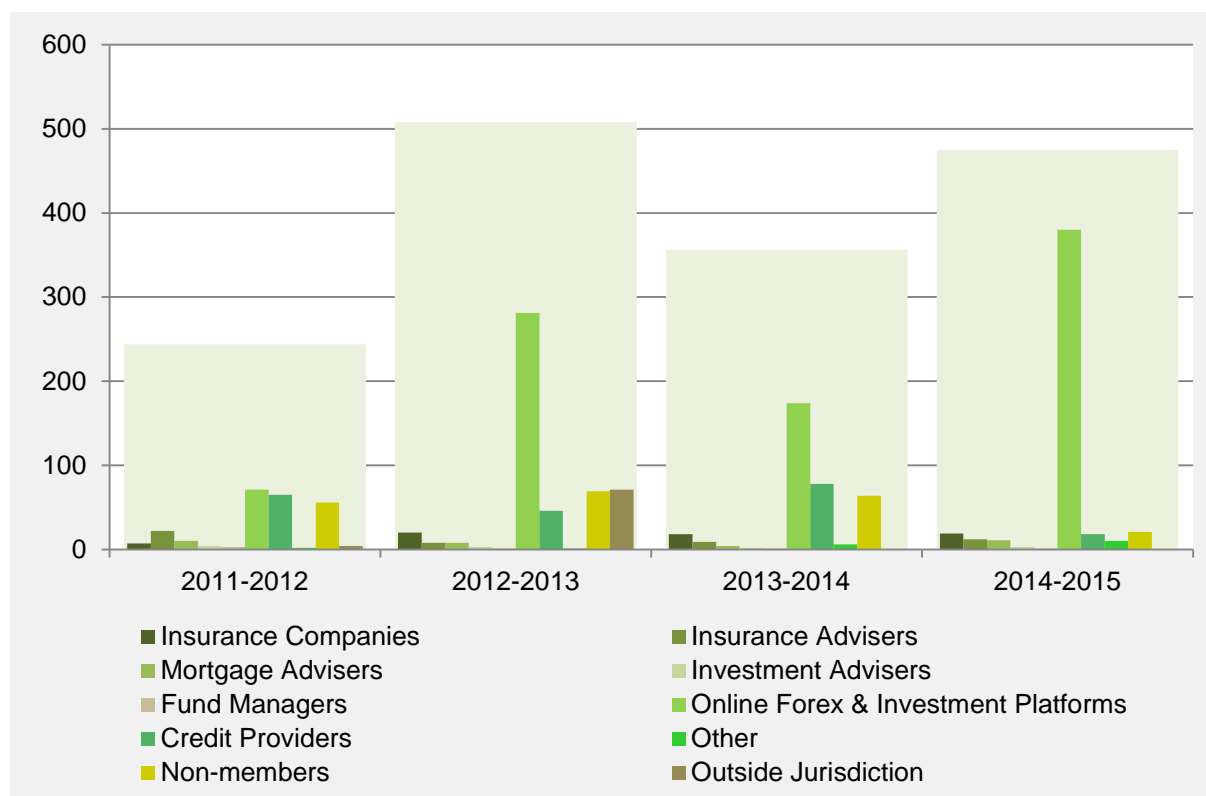
- Only four cases were about financial difficulty compared to 24 last year. We would have expected more given the focus upon “third” tier lenders over the period.

## Unauthorised transactions

- Complaints about unauthorised transactions were well down on last year, and both resolved within the providers’ complaints process.

# Complaints by provider type

Forex traders bring **80%** of complaints



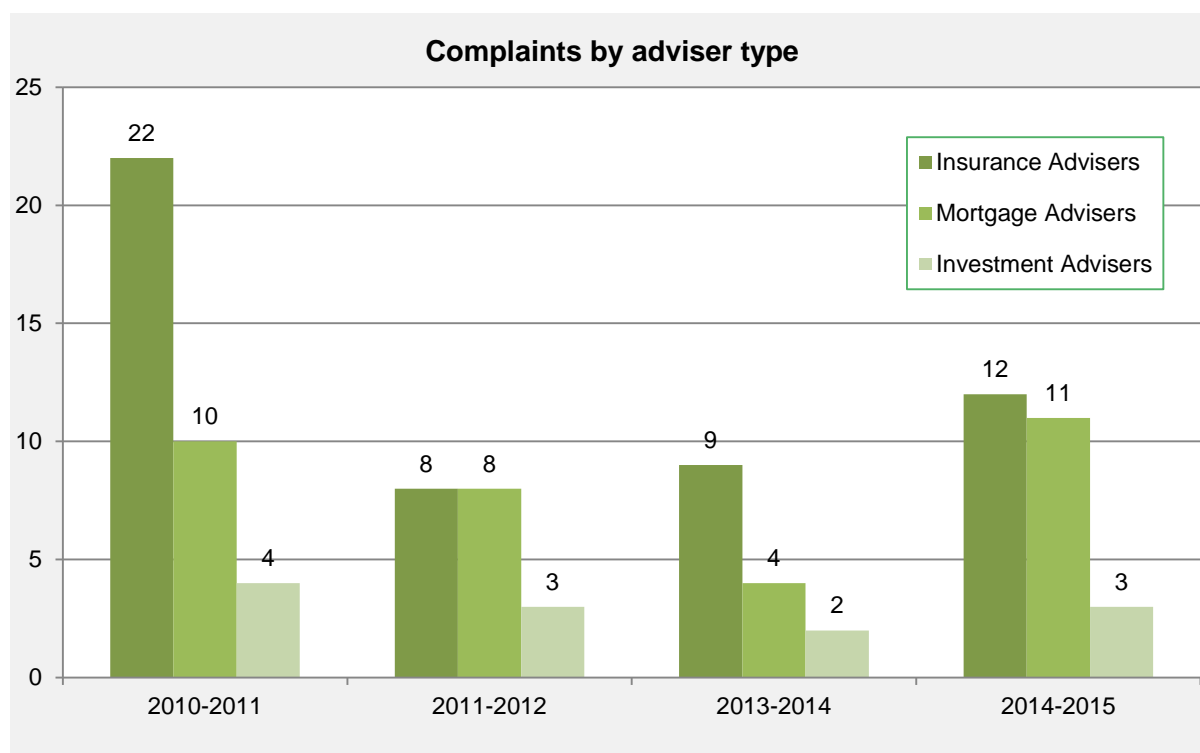
## Online Forex trading platforms

- At 80% of total, the prevalence of complaints about offshore owned online forex trading platforms continues.
- Almost all complainants allege “failure to follow instructions”...to refund investments.
- Those providers who have not complied with orders to repay investors, or who are unable to prove they are operating from a place of business in New Zealand, have been deregistered.

## Insurance companies and credit providers

- The next largest categories were insurance companies and credit providers, but at only 4% respectively, cannot be considered problematic
- All but one of these 37 complaints were resolved directly between the parties.

## Advisers



**27%** of NZ resident complaints about advisers

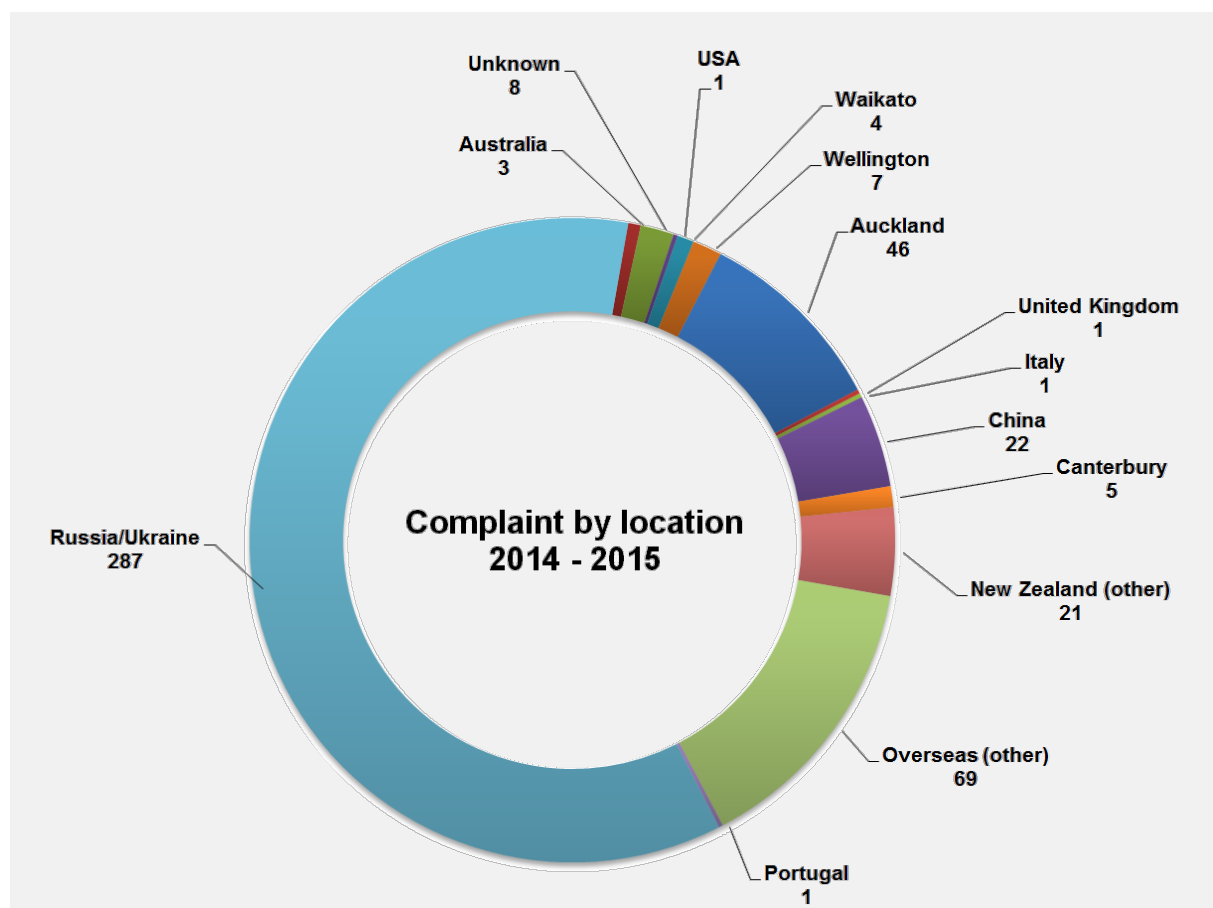
- Only 6% of total complaints were about advisers. However this increases to 27% when excluding the 380 complaints about online forex traders.

- 26 complaints is relatively small considering that over 70% of members are advisers and reflects good practice and / or poor promotion of a complaints process.
- It is noted that very few advisers promote their complaint process on their website.
- All complaints were resolved directly between the parties.

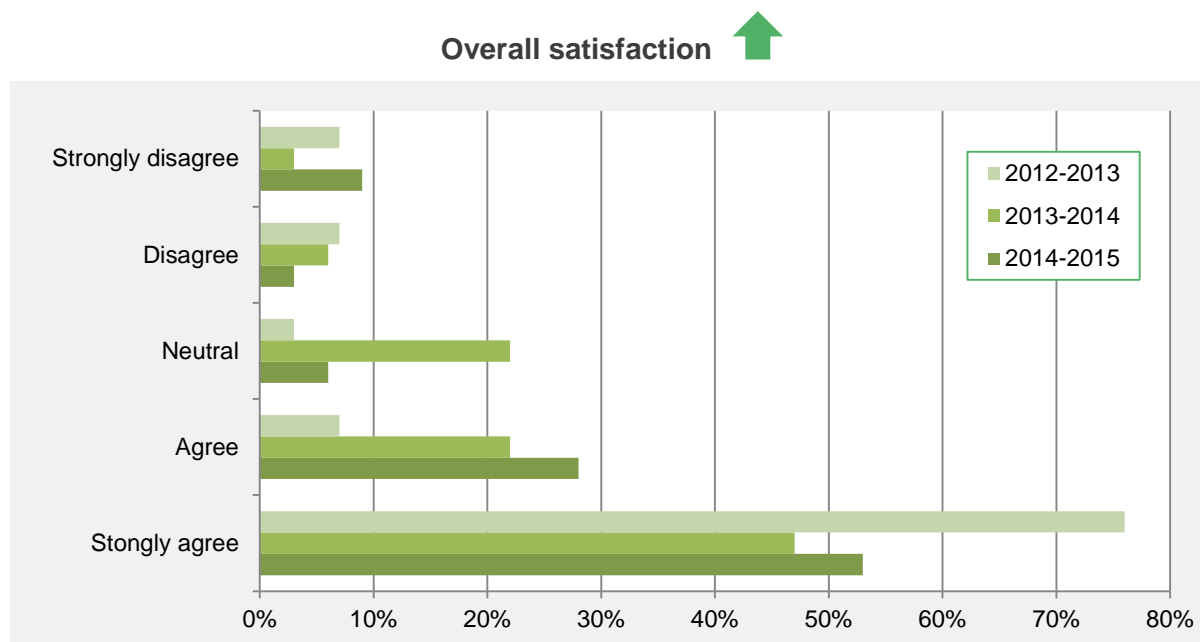
## Complaints by location

**83%** of complaints from non-residents

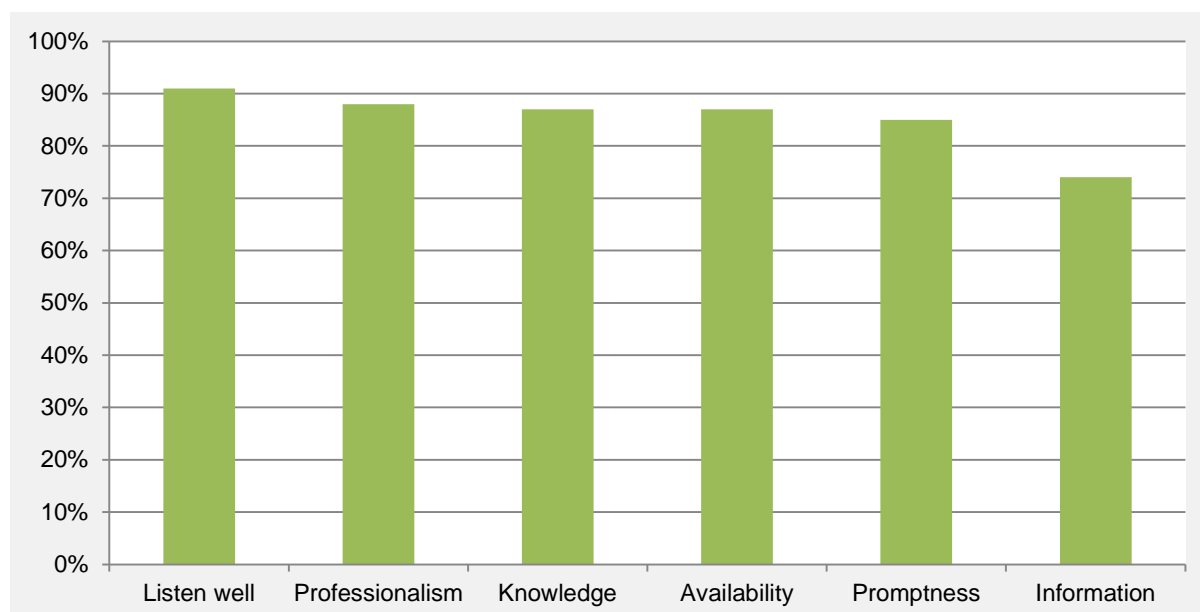
- Given the nature of complaints, it is no surprise that 83% of complaints came from non-residents, with 287 from Russia/Ukraine and 96 from other countries.
- 83 or 17% of the complaints registered originated in New Zealand.



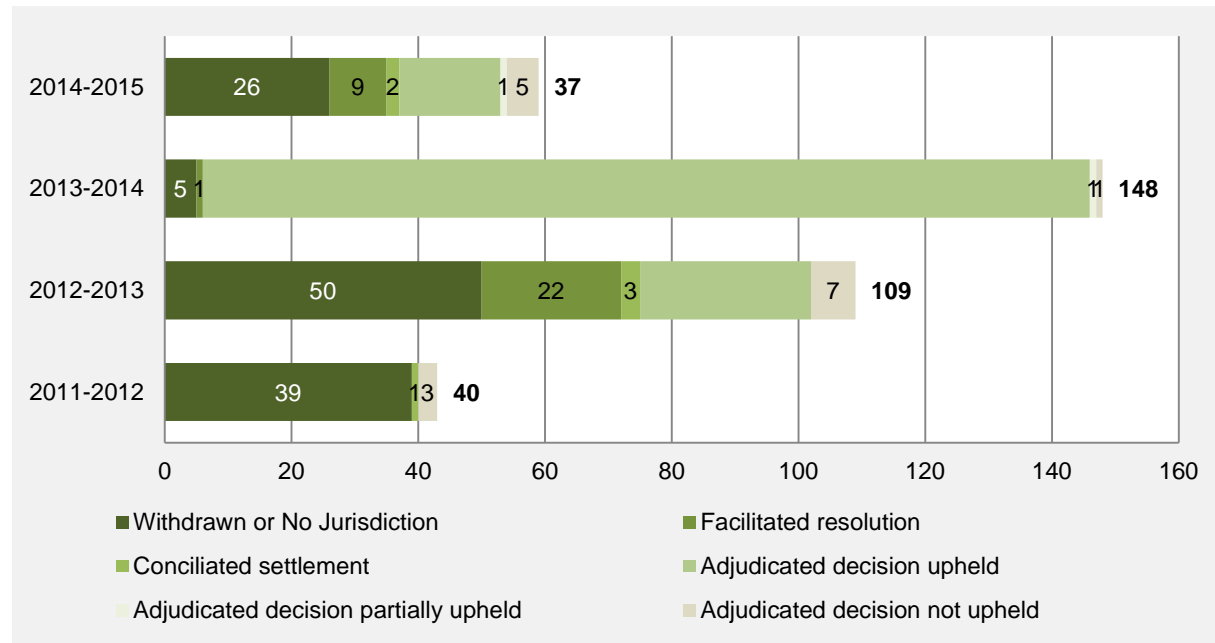
## Complainant (customer) satisfaction



- Overall satisfaction about staff and process improves 17% to 81%
- A good result considering outcomes do not always meet expectations
- Staff well regarded
- Net promoter score increases 54% to +57



## Disputes resolved



- 59 of these were resolved in the year, leaving 40 disputes on hand at end of the year.
- 18 withdrawn at facilitation
- Seven ruled outside jurisdiction and nine complainants did not follow through.
- Two confidential conciliated settlements.
- One dispute concerned a party alleging his financial planner failed to follow instructions about switching KiwiSaver.
- The other dispute was over an insurance settlement amount.
- Sixteen of the complaints that escalated to the Adjudication level related to online FX trading platforms.
- Seven were about New Zealand based providers. One was a now liquidated and deregistered money transfer provider, who stole a number of transferees remittances.
- Two involved insurance companies and two were about finance companies.

## Upheld/not upheld

Sixteen complaints were upheld (including the money transfer service and one insurance company - see case study attached). One complaint about a New Zealand credit provider was partially upheld, and five were not upheld.

Decisions upheld/not upheld	Current YTD 2014-2015	Last YTD 2013-2014	
Complaint upheld	16	134	(118)
Complaint partially upheld	1	-	1
Complaint not upheld	5	8	(3)

## Compensation awarded

\$366,300 awarded to 16 complainants.

## Systemic issues

- Providers failing to follow instructions
- Investors failing to research bona fides of provider
- Consumers failing to understand terms and conditions
- Complex terms and conditions
- Poor disclosure of complaints and dispute process.

## Lessons

For consumers	For providers
<ul style="list-style-type: none"> <li>• Check the credentials of providers.</li> <li>• Do not enter into terms and conditions without understanding them, or where the provider does not have a good reputation.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide regular, clear and concise disclosure.</li> <li>• Review decisions posted on website for guidance as to what is considered fair and reasonable in the context of code, legislation and common law.</li> <li>• Promote and use complaints process and disputes scheme as a valuable business tool.</li> </ul>

## Case studies

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### Unreasonable conduct

After reaching “deadlock” with the scheme member, complainant brought dispute to scheme alleging scheme member had not reimbursed capital and profits from on line forex trading.

The scheme member contended that:

- all withdrawal requests had been processed and therefore, there were no outstanding withdrawal requests
- it was not responsible for any failure of funds transfer as the transfers were managed by a third party company and therefore the matter was outside FDRS jurisdiction.

The adjudicator found that:

- the complainant contracted with the scheme member, and if there are monies due to the complainant, it is due by the scheme member
- how the scheme member dealt with processing its payments is of no concern to the complainant, or any other trader using its online platform
- any contention by the scheme member that the complainant should be contacting a third party for any monies due is absolutely untenable from a consumer legislation or contract law perspective
- the complainant had shown that it was more likely than not that the scheme member had not acted in accordance with the provisions of the agreement between the parties; and also that it had acted unreasonably; or unlawfully
- there was sufficient basis to conclude that the complainant's loss resulted from the actions of the scheme member
- the evidence showed the scheme member paid money, which was due to the complainant, to a related (to the scheme member) third party.

The complaint was upheld and the scheme member was ordered to reimburse in full the withdrawal request.

### Claim should not have been excluded

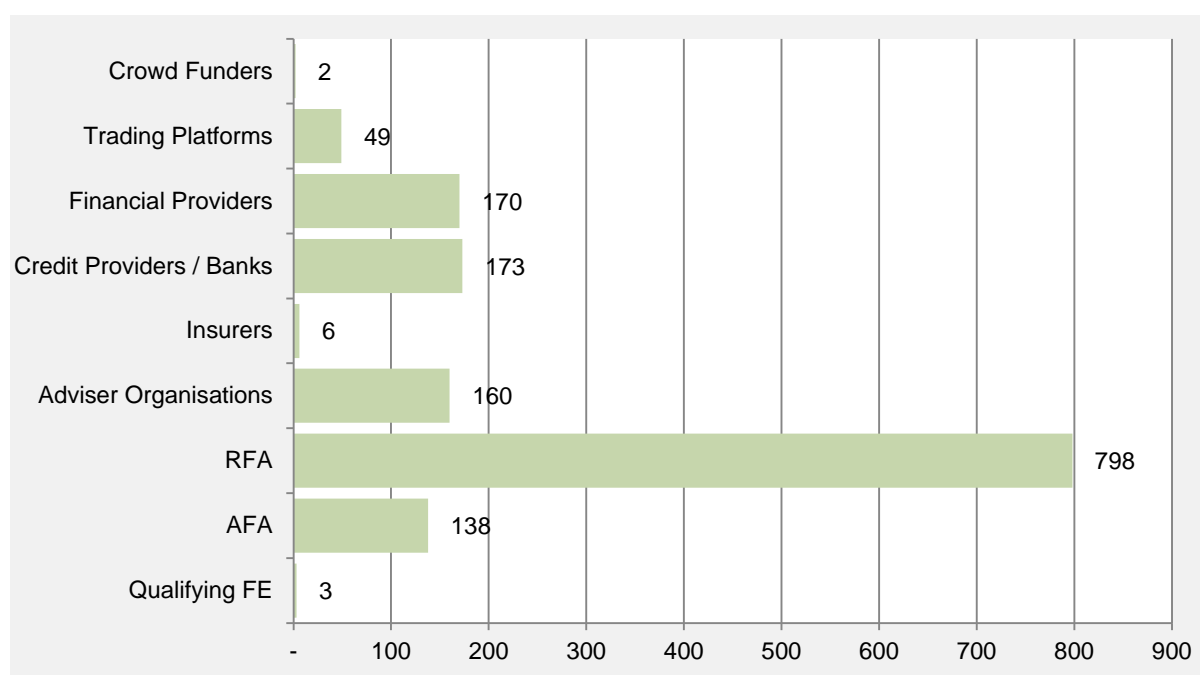
- Complainant entered into a contract with a builder for the construction of a new dwelling.
- Complaint to builder about defects not remediated satisfactorily.
- Complainant lodged claim under builders guarantee insurance with the Scheme Member.
- Insurer declined claim citing an exclusion of liability clause for claims.

- Complainant objected through scheme member's internal complaints process.
- No resolution, therefore complaint "deadlocked" and escalated to FDRS formal disputes process.
- Attempt at conciliation unsuccessful and brought before scheme adjudicator.

The adjudicator found that:

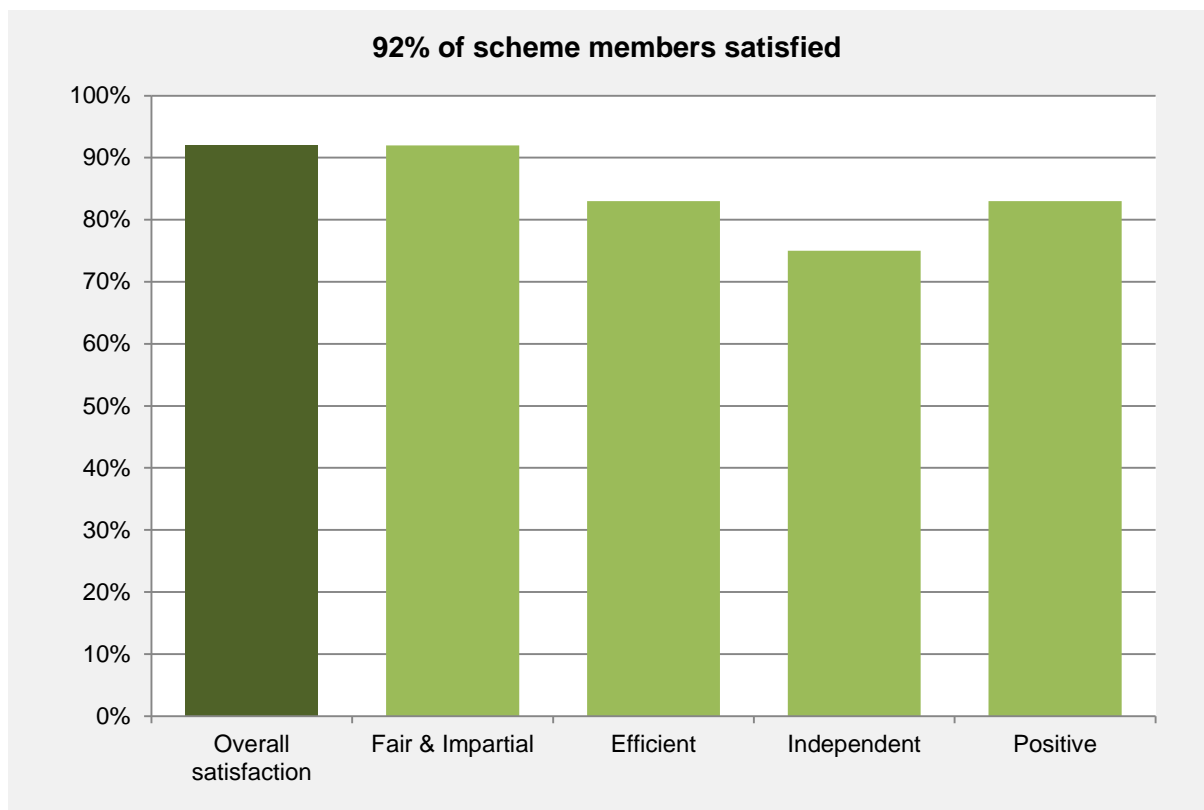
- the claim was not excluded from consideration
- directed the scheme member to investigate the customer's claim
- issue a decision in due course with respect to any relief which may be available under the guarantee.

## Members

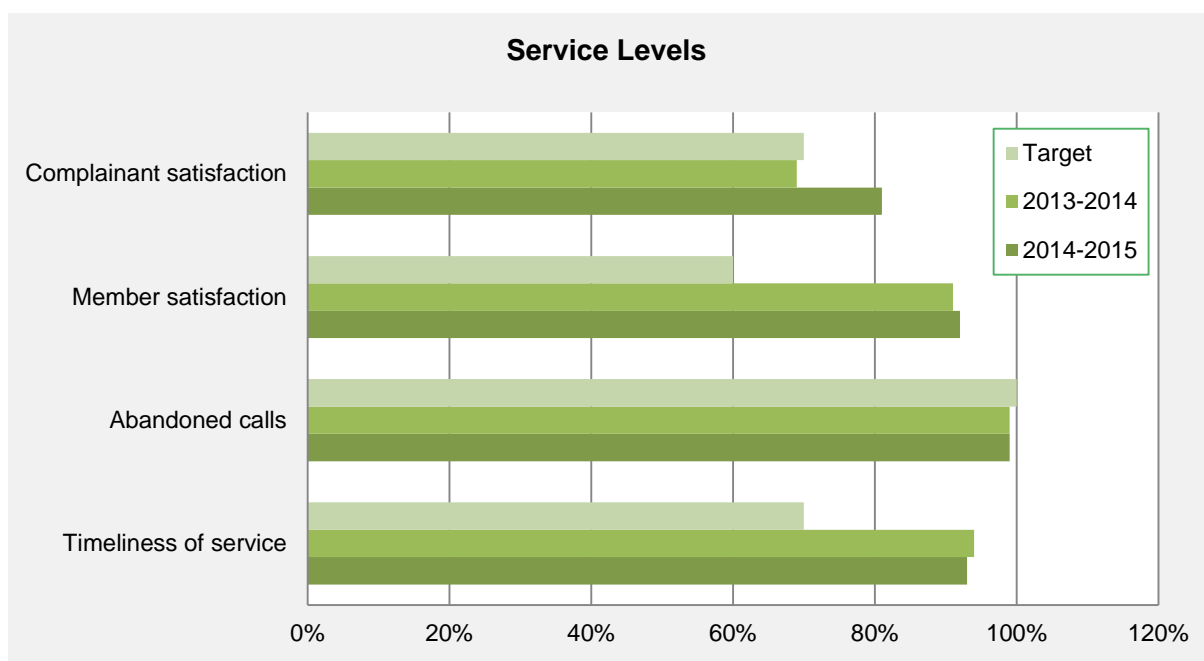


- 240 new members, mostly advisers, but net decrease to 1,499
- A number of providers deregister as they consolidate, no longer provide a financial service, or failed to comply with adjudicators orders
- Net decrease in forex trading platforms
- Membership representative of all financial service provider types
- Net promoter score increases 110% to +42

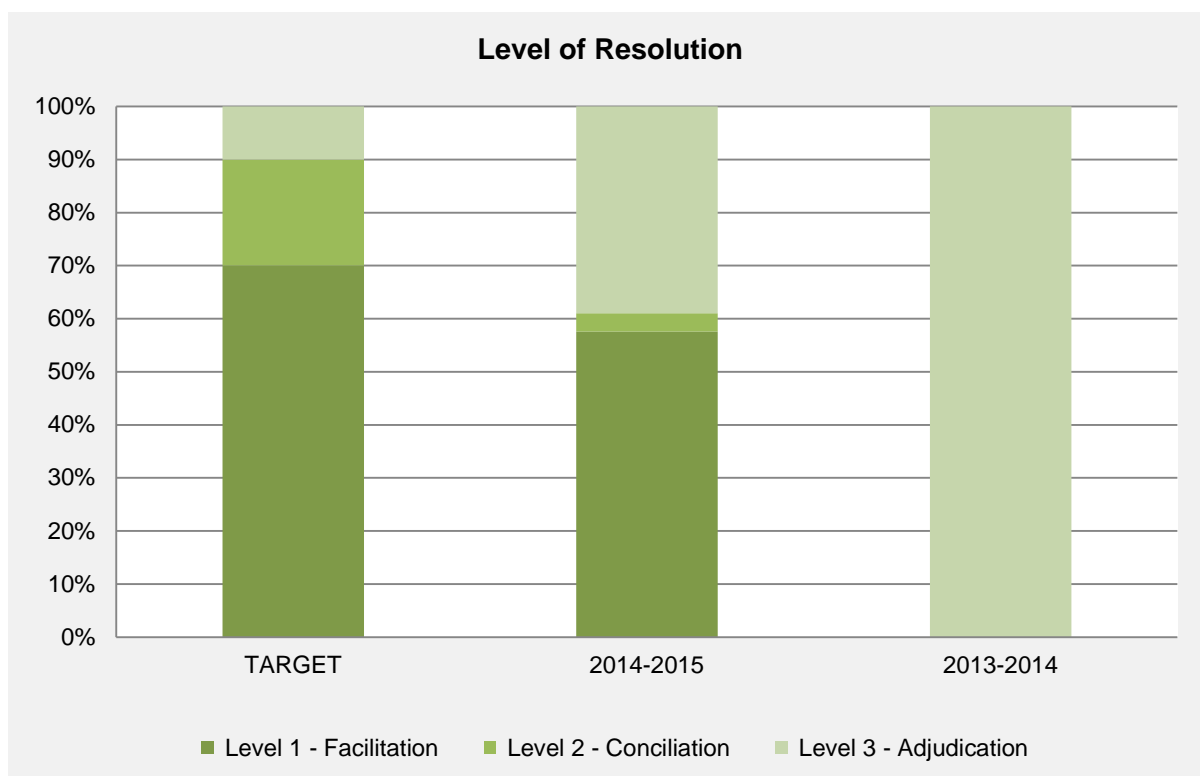




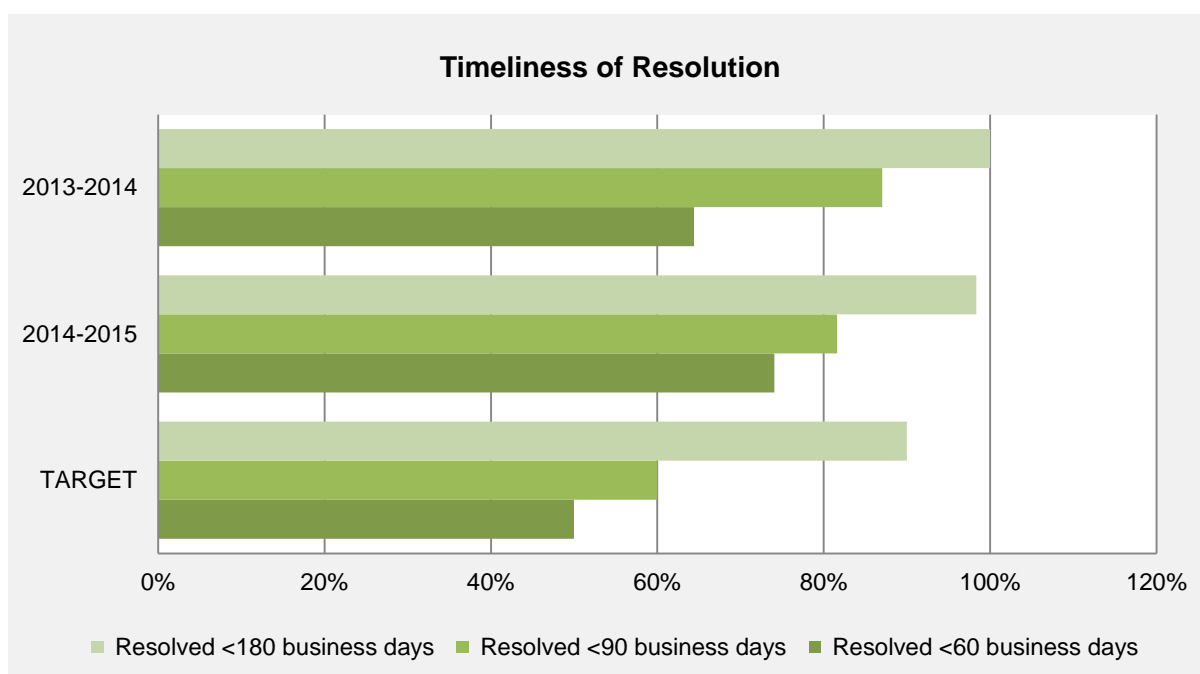
## Key performance areas



- Improvement in both satisfaction surveys, well above targets
- Slight reduction in response time to enquiries but well ahead of target



- Targets not achieved. Unavoidable, as skewed by number of offshore complaints about forex traders requiring decisions in absence of member



- All disputes resolved within time targets
- One exceeded 180 days by consent of both parties, due to complexity.

# Complaints about the scheme

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## A matter more appropriately heard in another forum

- One complaint was received over the reporting period
- Dissatisfied that a decision had been made on jurisdiction, contending that the process was carried out incorrectly and that a decision could have been made
- Also concerned that the adjudicator accepted the submissions of the scheme member and allowed an opportunity for complainant comment
- A complex case where the adjudicator decided the matter was more appropriately heard in another forum.

FairWay's complaints investigator responded that they have no authority to interfere or reverse the decision of the adjudicator:

1. The independence of the FDRS process must be maintained
2. It is a matter for the adjudicator to determine whether it is proper and appropriate for the FDRS to proceed with determination of the dispute
3. There were no service delivery issues, the correct process had been adhered to, natural justice was preserved and rules of the scheme had been followed
4. There has been no further correspondence from the complainant.

# Community and industry engagement



## Consumer wareness

- Consumer awareness of financial dispute resolution schemes and ability to make complaints to their provider remains very low
- The four schemes have been collaborating to increase awareness
- This scheme has recommended that the Ministry of Consumer Affairs provide the necessary resources
- Consumer agency visits have increased, although long term effectiveness questionable
- Many members— especially credit providers, have responded to our frequent urgings to promote the scheme and their complaints process prominently on their website. Advisers could do better.

## Seminars and conferences

The Scheme Director presented at six consumer agency seminars in 2014, attended a financial literacy workshop hosted by Commerce Commission, and two member conferences and an association conference.

## Approved dispute resolution schemes

- Quarterly meetings of all schemes provides a useful forum for discussion on particular cases, internal processes, trends and systemic issues, raising consumer awareness, and managing relationships with other agencies and the regulator
- The offshore owned online forex trading platforms were a systemic issue among all schemes (apart from Banking Ombudsman)
- Consumer Law, Consumer Credit Law, the review of the Financial Advisers Act and Financial Service Providers (Registration and Dispute Resolution Act) 2008 were discussed when MBIE, Commerce Commission and FMA attended
- Apart from the online forex trading platforms, no new common systemic issues were raised
- Raising consumer awareness was top of mind at all meetings
- Agreed for one 0800 number for consumers to access all schemes. Resourcing for that remains outstanding.

## Submissions

Three submissions made over the year

1. Credit Contracts and Consumer Finance Act 2003 amendments, and jurisdiction of the Financial Dispute Resolution Scheme
2. Submission to amend the scheme's rules
3. Feedback on the review of the Financial Advisers Act 2008 and Financial Service Providers (Registration and Dispute Resolution Act) 2008.



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