

TABLE OF CHANGES: TERMS OF REFERENCE DECEMBER 2022

Current wording	Reason for change	Proposed final wording
<p>1. Definitions and Interpretation</p> <p><i>"Applicable Monetary Limit"</i> means:</p> <p>the sum of \$1,500 (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); or</p> <p>the sum of NZ\$200,000 (plus GST, if GST applies), in any other case, for a claim against a Participant;</p>	<p>The 2018 Review of the IFSO Scheme recommended increasing the lump sum and weekly payment sum of the Applicable Monetary Limit. After the Review was completed, other Approved Schemes and the District Court increased their lump sum limits to \$350,000.</p> <p>Cabinet recently approved MBIE's proposal to set a consistent limit of \$500,000 for all Approved Schemes, by regulation, for a lump sum limit of \$500,000. As the proposal is expected to be implemented in 2023, by regulation, we have recommended that figure for lump sum payments (see pages 9-13 of the Regulatory Impact Statement provided as part of these consultation documents).</p> <p>The 2018 Review of the IFSO Scheme recommended increasing the weekly amount to \$3,000 relative to a lump sum limit of \$350,000. We are proposing a higher amount so that it is in line with a lump sum limit of \$500,000 with a mechanism to increase with the CPI.</p>	<p>Definitions and Interpretation</p> <p><i>"Applicable Monetary Limit"</i> means:</p> <p>a) the sum of NZ\$6,700 (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</p> <p>b) the sum of NZ\$500,000 (plus GST, if GST applies), in any other case, for a claim against a Participant.</p>

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New definition added.	This is the definition used in the Constitution	" <i>Approved Scheme</i> " means a dispute resolution scheme which has been approved by the Minister in accordance with Part 3 of the Act and that approval has not been withdrawn;
" <i>Assessment</i> " means a written document prepared on behalf of the Scheme pursuant to paragraph 13.1(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.		Change " <i>document</i> " to Decision
New definition added		" <i>Commerce Commission</i> " means the regulatory authority established under the Commerce Act 1986;
" <i>Consumer Credit Contract</i> " has the same meaning as in the Credit Contracts and Consumer Finance Act 2003;	This definition has become redundant	Delete definition
" <i>Consumer Goods</i> " has the meaning as in the Credit Contracts and Consumer Finance Act 2003;	This definition has become redundant	Delete definition
New definition added. Ancillary amendments have been made to relevant references to "decision" in the Terms of Reference: definitions of an Award and Recommendation and in paragraphs 9.1 c); 12.2 and 13.3 .	Assists to clarify the decision making process set out in paragraph 13.	" <i>Decision</i> " means a written decision made by the Scheme and/or the Ombudsman and includes an Assessment, a Recommendation, or an Award, as set out in paragraph 13;

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"Enforcement Action" has the same meaning as in section 83J of the Credit Contracts and Consumer Finance Act 2003;	This definition has become redundant	Delete definition
"Nominated Representative" has the same meaning as in the Financial Advisers Act 2008;	This definition is no longer relevant	Delete definition
"Qualifying Financial Entity" has the same meaning as in the Financial Advisers Act 2008;	This definition is no longer relevant	Delete definition
"Scheme" means the Insurance & Savings Ombudsman Scheme Incorporated until 1 November 2015 and the Insurance & Financial Services Ombudsman Scheme Incorporated from that date on;	This definition has become redundant and can be simplified.	"Scheme" means the Insurance & Financial Services Ombudsman Scheme Incorporated;
New definition added	To be consistent with the new definition added to the Constitution.	"Stakeholders" are any or all of those who have an interest in the Scheme, including but not limited to Participants, the Minister, relevant industry and consumer associations and other interested organisations and persons;
1.3 These Terms of Reference will apply to a Complaint made to the Scheme on or after 1 July 2015, where Deadlock was reached in accordance with paragraph 8 on or after 1 July 2015.	The dates will be added when the timing is confirmed.	These Terms of Reference will apply to a Complaint made to the Scheme on or after [xx xx 2023], where Deadlock was reached in accordance with paragraph 8 on or after [xx xx 2023].

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<p>4. Making a Complaint to the Scheme</p> <p>A Complaint about a Participant may be made to the Scheme by completing the Scheme's complaint form and providing the information required by that form. The Complaint may be hand delivered to the Scheme or sent by email, fax or post.</p>	<p>The method of making a complaint has become outdated and should be removed in order to avoid future obsolescence.</p> <p>The Scheme should also have broad discretion to provide assistance to Complainants to ensure accessibility of the service.</p>	<p>A Complaint about a Participant may be made to the Scheme by completing the Scheme's complaint form and providing the information required by that form. The Scheme may assist a Complainant in making the Complaint, if required.</p>
<p>5. Type of Complaint within the Scheme's jurisdiction</p> <p>5.2 The Scheme will only consider (or continue to consider) a Complaint made to the Scheme where the Scheme is satisfied that:</p> <p>a) the claim against the Participant made in the Complaint either:</p> <p>i) represents a monetary amount not more than the Applicable Monetary Limit; or</p> <p>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;</p>	<p>Some Complaints do not have a clear monetary amount in dispute. Therefore, an appropriate alternative is required.</p>	<p>5.2 The Scheme will only consider (or continue to consider) a Complaint made to the Scheme where the Scheme is satisfied that:</p> <p>...</p> <p>a) the claim against the Participant made in the Complaint:</p> <p>i) represents a monetary amount not more than the Applicable Monetary Limit; or</p> <p>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; or</p> <p>iii) the Complainant accepts the maximum amount the Scheme can award under 14.1 is \$500,000;</p>

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<p>5. Type of Complaint within the Scheme's jurisdiction</p> <p>5.2 The Scheme will only consider (or continue to consider) a Complaint made to the Scheme where the Scheme is satisfied that:</p> <p>...</p> <p>c) the subject matter of the Complaint has not previously been considered by the Scheme or, if this has occurred, that relevant new evidence is available;</p>	<p>A discretion needs to be added to this provision so that the IFSO Scheme has the ability to accept or decline subsequent disputes only where it is fair and reasonable to do so.</p>	<p>5.2 The Scheme will only consider (or continue to consider) a Complaint made to the Scheme where the Scheme is satisfied that:</p> <p>...</p> <p>b) the subject matter of the Complaint has not previously been considered by the Scheme, unless, at the Ombudsman's sole discretion, there is relevant new evidence that had not previously been reasonably available;</p>
<p>5.2 The Scheme will only consider (or continue to consider) a Complaint made to the Scheme where the Scheme is satisfied that:</p> <p>...</p> <p>d) prior to the date the Complaint was made to the Scheme:</p> <p>c) proceedings had not been commenced in any court, or tribunal, or before any arbitrator or ombudsman, or any other body involved in dispute resolution to consider and/or determine the subject matter of the Complaint; or</p>	<p>It is appropriate to allow Complainants to pause or discontinue proceedings so a complaint can be brought to the IFSO Scheme.</p>	<p>5.2 The Scheme will only consider (or continue to consider) a Complaint made to the Scheme where the Scheme is satisfied that:</p> <p>...</p> <p>d) prior to the date the Complaint was made to the Scheme:</p> <p>i) proceedings have not been commenced in any court, or tribunal, or before any arbitrator or ombudsman, or any other body involved in dispute resolution to consider and/or determine the subject matter of the Complaint, or where any proceedings have been commenced and discontinued, prior to a final decision being made in those proceedings; or</p>

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<p>5. Type of Complaint within the Scheme's jurisdiction</p> <p>5.2 The Scheme will only consider (or continue to consider) a Complaint made to the Scheme where the Scheme is satisfied that:</p> <p>...</p> <p>d) prior to the date the Complaint was made to the Scheme;</p> <p>iii) the Complainant had not agreed to be bound by the terms and conditions of a full and final settlement agreement with the Participant;</p>	<p>Clarity is needed that the settlement must cover the subject matter of the complaint.</p>	<p>5.2 The Scheme will only consider (or continue to consider) a Complaint made to the Scheme where the Scheme is satisfied that:</p> <p>...</p> <p>d) prior to the date the Complaint was made to the Scheme:</p> <p>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;</p>
<p>5.2 The Scheme will only consider (or continue to consider) a Complaint made to the Scheme where the Scheme is satisfied that:</p> <p>...</p> <p>e) there is not a more appropriate forum to deal with the Complaint, for example, another independent or statutory Complaints or conciliation procedure;</p>	<p>It is not appropriate for the IFSO Scheme to suggest alternative forums.</p>	<p>5.2 The Scheme will only consider (or continue to consider) a Complaint made to the Scheme where the Scheme is satisfied that:</p> <p>...</p> <p>e) In the opinion of the Ombudsman, the Scheme is the appropriate forum to deal with the Complaint;</p>

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<p>5. Type of Complaint within the Scheme's jurisdiction</p> <p>5.2 The Scheme will only consider (or continue to consider) a Complaint made to the Scheme where the Scheme is satisfied that:</p> <p>...</p> <p>f) the Complaint is not lacking in substance and is being pursued reasonably by the Complainant and not in a trivial, frivolous or vexatious manner, or in bad faith; and</p>	<p>The current wording is old fashioned and linked to legal concepts. The IFSO Scheme believes it is more appropriate to target the types of complaints which lead to Complainant dissatisfaction because of the IFSO Scheme's limited jurisdiction.</p>	<p>5.2 The Scheme will only consider (or continue to consider) a Complaint made to the Scheme where the Scheme is satisfied that:</p> <p>...</p> <p>f) the Complaint is:</p> <p>i) not lacking in substance; or</p> <p>ii) not of a type where there is no reasonable prospect of the Scheme being able to award a remedy under clause 14; or</p> <p>iii) being pursued reasonably in accordance with the Scheme's Service Charter; or</p>

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<p>6. Exclusions from Jurisdiction</p> <p>6.1 Subject only to paragraph 5.3, the Scheme may not consider those parts of a Complaint which, in the opinion of the Scheme, relate to:</p> <ul style="list-style-type: none"> a) the Participant's commercial judgment, assessment and pricing of risk 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: <ul style="list-style-type: none"> i) accept, issue, renew, terminate (except in the case of alleged non-disclosure or mis-statement 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, <p>provided that the Scheme is satisfied the Participant has made its decision in accordance with the terms of the contract or the Participant's rules of operation.</p>	<p>This adds a more specific reference to premiums and rates tables, for clarity.</p> <p>We invite comment on whether the "prudent person" standard is still relevant?</p> <p>.</p> <p>This clarifies 6.1 d) ii) and makes it more relevant to financial services that are not insurance-related.</p>	<p>6.1 Subject only to paragraph 5.3, the Scheme may not consider those parts of a Complaint which, in the opinion of the Scheme, relate to:</p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> i) accept, issue, renew, terminate (except in the case of alleged non-disclosure or mis-statement in relation to an insurance claim) or decline to renew a contract for the provision of Financial Services; or ii) <u>change any terms and conditions of the Financial Service;</u> <p>provided that the Scheme is satisfied the Participant has made its decision in accordance with the terms of the contract or the Participant's rules of operation.</p>

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<p>8. Timeframe for Referring a Complaint to the Scheme</p> <p>8.2 Notwithstanding paragraph 8.1, the Scheme may consider a Complaint referred to it by a Complainant if the following circumstances apply:</p> <p>a) the Complainant has made a written Complaint to the Participant and at least 2 months have elapsed since the date of that Complaint; and</p> <p>b) the Participant has either not advised the Complainant that Deadlock has been reached or has failed to provide the information referred to in paragraph 8.1; and</p> <p>c) the Scheme considers that Deadlock has been reached.</p>	<p>The reference to requiring a complaint in writing has been removed.</p>	<p>8.2 Notwithstanding paragraph 8.1, the Scheme may consider a Complaint referred to it by a Complainant if the following circumstances apply:</p> <p>a) the Complainant has made a Complaint to the Participant and at least 2 months have elapsed since the date of that Complaint; and</p> <p>b) the Participant has either not advised the Complainant that Deadlock has been reached or has failed to provide the information referred to in paragraph 8.1; and</p> <p>c) the Scheme considers that Deadlock has been reached.</p>
<p>8.4 Even if paragraph 8.1 or paragraph 8.2 applies, the Scheme will not consider a Complaint:</p> <p>...</p> <p>a) Where it is more than 6 years since the matter was first the subject of a formal Complaint by the Complainant to the Participant; or</p>	<p>Cabinet has approved a maximum cut-off timeframe of 6 years from the date a consumer becomes aware of an issue for a complaint to be considered. (see pages 22-23 of the Regulatory Impact Statement).</p>	<p>8.4 Even if paragraph 8.1 or paragraph 8.2 applies, the Scheme will not consider a Complaint:</p> <p>...</p> <p>a) Where it is more than 6 years since the Complainant first became aware of the issue giving rise to the matter; or</p>
<p>8.4 Even if paragraph 8.1 or paragraph 8.2 applies, the Scheme will not consider a Complaint:</p> <p>...</p> <p>b) for Participants which are Qualifying Financial Entities and the Complaint is about one of their Nominated Representatives, acting in the capacity of their Nominated Representative: where the act or omission giving rise to the Complaint first occurred before 1 July 2011.</p>	<p>This is no longer relevant.</p>	<p>Delete.</p>

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<p>9. Confidentiality</p> <p>9.1 The Scheme's dispute resolution service is a confidential negotiation process. Accordingly:</p> <ul style="list-style-type: none"> a) the Scheme will not begin considering a Complaint until the Complainant has confirmed in writing acceptance of confidentiality in the format required by the Scheme; and b) subject to paragraph 9.2, the Participant must keep confidential all information relating to or obtained in the course of the investigation of the Complaint by the Scheme including any decision made, in respect of the Complaint. <p>9.2 If a Complainant breaches the confidentiality undertaking signed in accordance with paragraph 9.1(a), the Scheme and the Participant may take whatever action they consider appropriate in the circumstances including:</p> <ul style="list-style-type: none"> 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. 	<p>This provision clarifies that parties cannot use information provided during the IFSO Scheme complaint in subsequent court proceedings. It is also unwieldy and has been amalgamated.</p> <p>The reference to confirming acceptance in writing has been removed.</p>	<p>9.1 The Scheme's dispute resolution service is a confidential negotiation process. Accordingly:</p> <ul style="list-style-type: none"> a) the Scheme operates on a "without prejudice" basis. This means that any information obtained through the Scheme cannot be used in any subsequent proceedings unless required by an appropriate court process; and b) the Scheme will not begin considering a Complaint until the Complainant has confirmed acceptance of confidentiality in the format required by the Scheme; and c) subject to paragraph 9.2, the Participant must keep confidential all information relating to or obtained in the course of the investigation of the Complaint by the Scheme including any Decision made, in respect of the Complaint. <p>9.2 All parties (including Scheme staff) must maintain the confidentiality of all information provided to them through the course of a complaint, except:</p> <ul style="list-style-type: none"> 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; c) with the consent of the party who provided the information; d) as required or permitted by law; e) as part of a referral under paragraph 17.2 b); or f) where the information is already publicly available.

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<p>9.3 The Scheme, its officers and employees must not disclose to any person:</p> <ul style="list-style-type: none"> a) any information concerning a Complaint made to 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, <p>except:</p> <ul style="list-style-type: none"> f) as authorised by the party identified; g) to carry out its responsibilities under the Act or these Terms of Reference; h) as required by law; or i) as properly and reasonably required in connection with any legal proceedings instituted by or against the Scheme or any of its officers or employees. 	<p>A new 9.3 is added - see above – and the current paragraph 9.3 is renumbered 9.4.</p>	<p>9.3 If a Complainant or representative breaches the confidentiality obligation under paragraph 9.1 and 9.2, the Scheme and the Participant may take whatever action they consider appropriate in the circumstances including:</p> <ul style="list-style-type: none"> a) discontinuing considering the Complaint; and b) disclosing the terms of any Decision. <p>9.4 The Scheme, its officers and employees must not disclose to any person:</p> <ul style="list-style-type: none"> a) any information concerning a Complaint made to 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, <p>except:</p> <ul style="list-style-type: none"> c) as authorised by the party identified; d) to carry out its responsibilities under the Act or these Terms of Reference; e) as required by law; or f) as properly and reasonably required in connection with any legal proceedings instituted by or against the Scheme or any of its officers or employees.

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10. Investigation Processes 10.1 Where the Scheme accepts a Complaint, the Scheme must provide the Participant with full details of the Complaint, including a copy of the Complaint documents, together with evidence of the Complainant's compliance with the requirements of paragraph 9.1 (a).	The reference to providing the Complaint documents has been removed and the reference to paragraph 9 amended.	10.1 Where the Scheme accepts a Complaint, the Scheme must provide the Participant with details of the Complaint, together with evidence of the Complainant's compliance with the requirements of paragraph 9.1.
10.2 On receipt of Complaint information in accordance with paragraph 10.1, the Participant must provide the Scheme with a written response to the Complaint, together with any relevant information held by the Participant, provided that if:	This clarifies the IFSO Scheme gives Complainants a copy of the Participant's submission.	10.2 On receipt of Complaint information in accordance with paragraph 10.1, the Participant must provide the Scheme with a written response to the Complaint (which will be provided to the Complainant), together with any relevant information held by the Participant, provided that if:
10.5 While the Scheme will not usually hold a hearing, the Participant and the Complainant must be given a reasonable opportunity to make written submissions to the Scheme, prior to the Scheme making an Assessment, Recommendation or Award in relation to the Complaint.	The reference to a submission in writing has been removed.	10.5 The Participant and the Complainant must be given a reasonable opportunity to respond and/or make written submissions to the Scheme, prior to the Scheme making a Decision.

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<p>11. Resolution Methods</p> <p>11.1 The Scheme may decide the method and process to be used to resolve the Complaint. This may include:</p> <ul style="list-style-type: none"> a) negotiation; b) conciliation; c) mediation; or d) making a decision about the Complaint in accordance with the process set out in paragraph 13. 	<p>This has been consolidated and simplified.</p>	<p>11.1 The Scheme may decide the method and process to be used to resolve the Complaint. This may include alternative dispute resolution techniques or making a Decision about the Complaint in accordance with the process set out in paragraph 13.</p>
<p>11.2 At any time a Complaint is under consideration by the Scheme, it may be resolved by agreement between the Complainant and the Participant and the agreement will be binding on both the Complainant and the Participant.</p>	<p>This clarifies the IFSO Scheme process cannot be circumvented by either party while the complaint is being considered to ensure transparency.</p>	<p>11.2 At any time a Complaint is under consideration by the Scheme, it may be resolved by agreement between the Complainant and the Participant with the Scheme's consent and/or involvement if, in the opinion of the Ombudsman, the Scheme's involvement is required.</p>

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<p>13. Decision Making Process</p> <p>13.1 The process for the Scheme to make a decision about a Complaint is as follows:</p> <p>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.</p> <p>b) If the Complainant or the Participant requests a review of an Assessment, the Ombudsman, on behalf of the Scheme, 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:</p> <p>i) the Ombudsman is of the opinion that there is relevant new evidence; or</p> <p>ii) the Ombudsman believes that a Recommendation should be made in respect of the Complaint.</p> <p>The parties may agree to resolve the Complaint in accordance with the Recommendation.</p>	<p>This allows the IFSO Scheme to issue an Award without first making a Recommendation. It addressed a procedural issue experienced where some Participants do not request a review, but also do not agree to comply with the Assessment.</p>	<p>13.1 The process for the Scheme to make a Decision about a Complaint is as follows:</p> <p>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:</p> <p>i) If the Complainant accepts an Assessment which upholds or partially upholds the Complaint; and</p> <p>ii) the Participant does not request a review under 13.1 b, and does not indicate it will accept the Assessment within one month, then the Ombudsman, on behalf of the Scheme, may make an Award against the Participant.</p> <p>b) If the Complainant or the Participant requests a review of an Assessment, the Ombudsman, on behalf of the Scheme, 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:</p> <p>i) the Ombudsman is of the opinion that there is relevant new evidence; or</p> <p>ii) the Ombudsman believes that a Recommendation should be made in respect of the Complaint.</p> <p>The parties may agree to resolve the Complaint in accordance with the Recommendation.</p>

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<p>13. Decision Making Criteria</p> <p>13.1 The process for the Scheme to make a decision about a Complaint is as follows:</p> <p>...</p> <p>c) If, within one month after it is made, a Recommendation upholding the Complaint has been accepted by the Complainant but not by the Participant, the Ombudsman may, on behalf of the Scheme, make an Award against the Participant.</p> <p>d) 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, within one month after it is made, the Complainant agrees to accept the Award in full and final settlement of the subject matter of the Complaint. The Scheme will provide the Complainant with a form (addressed to the Scheme and the Participant) to be used by the Complainant to evidence this acceptance.</p>	<p>This change is to clarify an Award may be issued where a Participant does not comply with a Recommendation.</p> <p>It also clarifies how the process applies to partially upheld complaints.</p>	<p>13.1 The process for the Scheme to make a decision about a Complaint is as follows:</p> <p>...</p> <p>c) if, within one 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 the Scheme, may make an Award against the Participant.</p> <p>d) 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.</p>
<p>13.2 If a Participant or former Participant fails to comply with an Award, the Scheme may:</p> <p>a) terminate the Participant's membership; and/or</p> <p>b) refer the matter to the Financial Markets Authority.</p>	<p>This clarifies that the Scheme can notify other Approved Schemes so that a Participant cannot move to another Approved Scheme after failing to comply with an Award.</p>	<p>13.2 If a Participant or former Participant fails to comply with an Award, the Scheme may:</p> <p>a) terminate the Participant's membership; and/or</p> <p>b) refer the matter to the Financial Markets Authority, the Commerce Commission and/or any other relevant regulator; and/or</p> <p>c) notify other Approved Schemes.</p>

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<p>14. Remedies</p> <p>14.1 Subject to paragraph 14.2, where the Scheme upholds a Complaint, it may find that the Participant should undertake remedial action including:</p> <ul style="list-style-type: none"> 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. 	<p>This change is to clarify the position on partially upheld complaints.</p>	<p>14.1 Subject to paragraph 14.2, where the Scheme upholds or partially upholds a Complaint, it may find that the Participant should undertake remedial action including:</p> <ul style="list-style-type: none"> 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.
<p>14.3 In addition to any remedy under paragraph 14.1, the Scheme may find that, where there has been undue or unreasonable delay or other such circumstances caused by the Participant, the Participant should pay the Complainant interest at the 90 day bank bill rate on an amount to be paid to the Complainant in accordance with paragraph 14.1: interest may be calculated from the date of the events giving rise to the claim.</p>	<p>A more appropriate interest rate is that applied by the Disputes Tribunal or District Court. This is in line with the interest rate some Participants are already required to apply in some areas of their business.</p>	<p>14.3 In addition to any remedy under paragraph 14.1, the Scheme may find that, where there has been undue or unreasonable delay or other such circumstances caused by the Participant in the opinion of the Scheme, the Participant should pay the Complainant interest at the rate set out in Money Claim Act 2016 (or subsequent legislation) on an amount to be paid to the Complainant in accordance with paragraph 14.1: This is separate to any interest actually incurred by a Complainant.</p>

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<p>14. Remedies</p> <p>14.4. In addition to, or as an alternative to any remedy under paragraph 14.1, the Scheme may:</p> <ul style="list-style-type: none"> a) find that the Participant should make a payment to the Complainant of an amount not exceeding \$10,000 where: <ul style="list-style-type: none"> i. the Complainant has incurred special inconvenience or expense in making and pursuing the Complaint; or ii. in the opinion of the Scheme, it is appropriate to compensate the Complainant for incidental expenses incurred by the Complainant or for any loss arising from any delay in settling the claim; or iii. in the case of a complaint relating to a repossession under Part 3A of the Credit Contracts and Consumer Finance Act 2003, in the opinion of the Scheme; it is appropriate to compensate the Complainant for non-financial loss, stress, humiliation, and inconvenience; m) suggest that the Participant undertakes reasonable steps to improve its processes. 	<p>Cabinet has approved a consistent special inconvenience award of up to \$10,000 for all Approved Schemes (see pages 14-15 of the Regulatory Impact Statement).</p> <p>As Complainants can be unfairly disadvantaged by records held by external entities, for instance credit report or the Insurance Claims Register. Therefore, we believe it is fair and reasonable to include the new paragraph c).</p>	<p>14.4 In addition to, or as an alternative to any remedy under paragraph 14.1, the Scheme may:</p> <ul style="list-style-type: none"> a) find that the Participant should make a payment to the Complainant of an amount not exceeding \$10,000 for any special inconvenience which, in the opinion of the Scheme, the Complainant has suffered; and/or b) suggest that the Participant undertakes reasonable steps to improve its processes; and/or c) require the Participant to update or change any records, including those held by external entities to the extent possible.

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Current wording	Reason for change	Proposed final wording
<p>15. Rights of parties to institute Court or Debt Recovery Proceedings</p> <p>15.1 The Complainant may take alternative court action against the Participant at any time, including if the Complainant rejects an Assessment, Recommendation or Award in relation to the Complaint. If the Complainant does this, the Scheme must cease considering the Complaint.</p> <p>15.2 Where a Complaint is made to the Scheme that relates to a debt owed to a Participant, that does not relate to a Consumer Credit Contract, 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 referred to the Scheme.</p> <p>15.3 Neither a Participant nor a Participant's agent may take or continue Enforcement Action in relation to Consumer Goods where Section 83J of the Credit Contracts and Consumer Finance Act 2003 prevents them from doing so.</p> <p>15.4 A Participant may not prevent the Scheme from considering, or continuing to consider, the Complaint by issuing proceedings in court, unless:</p> <p>...</p> <p>b) the Participant has notified the Scheme, prior to the Scheme making an Award 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:</p>	<p>The IFSO Scheme believes it is appropriate to have a provision which does not distinguish between consumer and non-consumer credit contracts.</p>	<p>15.1 The Complainant may take alternative court action against the Participant at any time, including if the Complainant rejects a Decision in relation to the Complaint. If the Complainant does this, the Scheme must cease considering the Complaint.</p> <p>15.2 Where a Complaint is made to the Scheme that 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 referred to the Scheme.</p> <p>15.3 deleted.</p> <p>15.4 A Participant may not prevent the Scheme from considering, or continuing to consider, the Complaint by issuing proceedings in court, unless:</p> <p>...</p> <p>b) the Participant has notified the Scheme, prior to the Scheme making a Decision 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:</p>

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Current wording	Reason for change	Proposed final wording
<p>16. Access to Information</p> <p>16.1 Where any party to a Complaint requests the Scheme to provide access to any information about the Complaint, the Scheme may respond to that request as it considers appropriate subject to the Privacy Act 1993 and any other applicable legal obligations.</p>	<p>This is required to update reference to the Privacy Act 2020 and allow for any relevant or subsequent legislation.</p>	<p>16.1 Where any party to a Complaint asks the Scheme to provide access to any information about the Complaint, the Scheme may respond to that request as it considers appropriate, subject to the Privacy Act 2020 (or subsequent legislation) and any other applicable legal obligations.</p>
<p>17. Other Powers and Duties of the Scheme</p> <p>17.2 Where the Scheme identifies, in the course of an investigation of a Complaint, a breach or possible breach by a Participant of the law, a Code, or an obligation imposed on that Participant under these Terms of Reference or the Constitution, the Scheme may:</p> <ul style="list-style-type: none"> a) advise the Participant; b) notify the Minister, Financial Markets Authority or other regulator; and/ or c) take such other action it considers appropriate including to determine whether a broader issue exists that warrants remedial action. 	<p>This addition clarifies the IFSO Scheme can notify other Approved Schemes. to ensure proper functioning under the Act.</p>	<p>17.2 Where the Scheme 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 or the Constitution, the Scheme may, as is appropriate:</p> <ul style="list-style-type: none"> a) advise the Participant; b) notify the Minister, Financial Markets Authority, and/or other regulator; and/ or c) notify any other Approved Scheme.

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Current wording	Reason for change	Proposed final wording
New subsection added	The inclusion of procedures for dealing with systemic issues in the TOR was a Recommendation made in the 2018 Review of the IFSO Scheme.	17.3 Where the Scheme identifies an issue that affects more than one customer of the Participant/Participants, the Scheme may conduct a systemic investigation and require the co-operation of the Participant/Participants concerned to achieve a good outcome for customers.