Banking Ombudsman Scheme | Te Whare Rama Tōkeke

Operational guidelines

These guidelines explain how the scheme's terms of reference, or rules, work in practice. Further help can be found in information sheets outlining scheme processes.

30 November 2025

Introduction

The Banking Ombudsman Scheme Limited ("the scheme") aims to resolve disputes between scheme participants ("banks")[1] and "complainants".[2] The scheme also aims to prevent disputes, including by:

- maintaining a complaints dashboard
- identifying causes of complaints
- sharing these insights with banks, the public and regulators.

As an approved dispute resolution scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 ("the Act"), it must issue rules about how it operates, including:

- The types of complaints it can consider
- How it investigates complaints and makes decisions
- The types of compensation it can recommend.

Most of the rules are in these terms of reference ("the rules"). The rest are in the scheme's constitution and participation agreement, which cover such areas as governance, membership and funding. Operational guidelines help the public understand how the rules work.

The Act requires the scheme's services to be free to complainants. As a result, banks fund the scheme.

The scheme's core role is to help resolve complaints between banks and complainants. Another important function is to prevent complaints by identifying the causes of complaints and sharing insights with banks, the public and regulators. This helps the scheme identify problems early on and helps banks improve their practices and policies and standards of conduct.

The scheme also maintains a dashboard of all complaints in the banking sector. The aim of the dashboard is to highlight trends, lift industry standards, prevent banking problems and strengthen consumer trust in banks.

Scheme's powers

1. The scheme can:

[1] A "bank" is any organisation that is a party to the scheme's participation agreement. Use of singular (for example, "bank" or "complainant") can be taken to refer to the plural as well ("banks" and "complainants") and vice versa.

[2] A complainant is an individual, group of individuals or entity that is (or was) a customer of the bank complained about; that guaranteed, or provided security for, a loan from a bank; or that made a disputed payment to the bank complained about.

1.1 Consider complaints about the financial services a bank has provided, or failed to provide[3] *(This is subject to the limits set out in these rules.)*

The scheme can consider a range of complaints about financial services provided by a bank, including those about credit facilities and security for lending, insurance, investments and payment services. It can also consider complaints about a failure to provide financial services. For example, in looking at a complaint about a declined loan application, the scheme can consider whether the bank properly considered the application or whether it complied with its obligations under the Human Rights Act 1993.

1.2 Help a complainant by giving general information about how to make a complaint and about how banks operate *(The scheme cannot give a complainant specific information about other banks' products or services, or give any bank information about any other bank.)*

The scheme can help complainants by explaining the various ways to lodge a complaint and by giving information about the scheme's rules, processes, time frames and documents. The purpose is twofold: to enable complainants to prepare complaints correctly and to enable the scheme to assess those complaints in an efficient, timely manner.

The scheme can also give general information about how banks operate, particularly how their internal complaints procedures work. This is especially helpful when complainants, usually early on in the complaint process, want reassurance that their bank has followed standard industry practice in dealing with the matter in question. A typical practice the scheme might explain to a complainant is the way banks process payments through a clearance system. Such an explanation can often resolve the matter.

1.3 Help a complainant and a bank to resolve a complaint by encouraging both sides to reach an agreement, by encouraging a complainant to take a complaint no further if it lacks any merit, or by issuing a decision (see *Complaint-handling process*)

This is a general statement of purpose. The scheme's function is dispute resolution, and it aims to do this by helping both sides to reach an agreed outcome through facilitation or negotiation. Where the scheme considers that a complaint lacks merit, the scheme can tell the complainant of the reasons for its view and suggest the complainant withdraw the complaint. Failing that, it has the power to issue a written decision.

1.4 Refer a complaint to a more appropriate body

[3] Section 5 of the Act defines financial services. In addition, they are services that scheme members ordinarily provide inside and outside New Zealand to individuals, groups (such as partnerships and families), companies and trusts in relation to New Zealand bank accounts and products. These services include the use overseas of credit cards issued by scheme members, and advice and services relating to insurance and investments.

The scheme can refer a complaint to a more appropriate body (see rule 2.6).

1.5 Encourage banks to improve their service and complaint-handling practices

The scheme has a role to play in encouraging good service and complaint-handling procedures by banks. It performs this role by considering complaints, identifying lessons and sharing them with banks.

1.6 Promote the scheme.

The scheme publicises its services so complainants know of its existence and can use its services. Promotional work includes publishing case studies and guidelines that illustrate its approach to common banking complaints, and information sheets that explain its processes.

Preconditions to considering complaints

A complaint must meet the preconditions set out in rules 2 to 2.6 before the scheme can consider it. (Note that rule 4 gives the scheme discretion to consider a complaint that does not meet these preconditions, provided both sides agree.)

2. To consider or continue considering a complaint, the scheme must be satisfied:

2.1 The individual, group of individuals or entity making the complaint is the same individual, group or entity to receive or not receive the service that is the subject of the complaint *(The scheme accepts complaints by representatives of such individuals, groups and entities, as well as complaints about a bank that has received a disputed payment from the individual, group of individuals or entity making the complaint.)*[4]

This rule requires, in most cases, the complainant to have a direct relationship with the bank that is the subject of the complaint. The effect of this rule is to exclude consideration of:

- general complaints about banks and the banking system lodged by people who have not been directly affected by the subject of the complaint
- complaints by people who are not authorised to represent the complainant
- employment disputes with banks.

A complainant can bring a complaint about a bank without being a customer of that bank if:[5]

- The complainant has provided a guarantee or security for a loan from a bank, or
- The complainant has made a disputed payment on or after 30 November 2025 that was received by a bank. (This aligns with the introduction of the

[4] The scheme can only consider a complaint about a bank that has received a disputed payment if the payment was made on or after 30 November 2025.
[5] See definition of a complainant in footnote 2.

amendment to the Code of Banking Practice to address fraud and scam payment protections and compensation.)

Disputed payments

A disputed payment is:

- A payment made in the course of fraud or a scam where the complainant was a victim
- A payment which was intended to be made to one account, but was received into another account (a mistaken payment)

Representation of complainants

To be authorised to represent a complainant, the following applies:

Companies

Only someone authorised to represent a company in its dealings with a bank, usually a director, can make a complaint. Former directors do not usually have such a standing. However, they may have the necessary standing if all the following apply:

- They guaranteed the lending from the bank.
- The claimed loss was the result of the bank calling up the guarantee.
- The complaint is about the events that led to calling up the guarantee.

If the company is in receivership, the director may need the receiver's authority, depending on the nature of the complaint. Directors of a company in receivership retain certain powers, including the right to information from the company's bank. A director may be able to complain directly to the scheme about a bank's refusal to supply information to which the director may be entitled. The scheme has no role in considering how a receivership or liquidation was conducted.

A company wound up or struck off the Companies Register no longer exists, and therefore no complaint can be brought on its behalf. Companies struck of the register for administrative reasons, such as failing to lodge a return, may be able to get themselves reinstated on the register, and a representative can then make a complaint to the scheme.

Bankruptcy

Bankruptees can make complaints, although the scheme may need to seek the Official Assignee's consent if the complaint involves a claim for compensation.

Deceased customers

The executor or administrator of an estate will usually act as a representative for a deceased customer in a complaint to the scheme. If there is no will and the estate is too small to justify the expense of appointing an administrator, the scheme will usually accept a complaint from the main beneficiary or from the person who is winding up the deceased's affairs. If compensation is payable, it may be reasonable for the bank to require an indemnity from the complainant in case of future claims.

Incorporated societies, trusts and similar bodies

It is not always clear-cut who can make a complaint on behalf of such bodies. If the complaint involves a dispute over ownership or control of assets, including bank accounts, the complainant's representative must provide evidence of authority to act on behalf of the body. If two or more factions claim the right to represent the body, the scheme can decline to consider the complaint under rule 2.6 as being a matter more suitable for a court to resolve. The scheme has no role in resolving internal disputes.

Representatives

A complainant does not need a lawyer to make a complaint, but a complainant can choose to appoint a lawyer as a representative, just as he or she can choose an accountant, family member or friend. The key point is that representatives must not be pursuing their own interests when acting for complainants.

2.2 The alleged action or inaction happened while the bank concerned was a scheme member

The scheme can investigate a complaint only about events that occurred after the bank joined the scheme. It has no power to consider complaints about events that occurred before the bank joined.

2.3 The complaint is about the bank's breach of a contract, statutory obligation, industry code or principles of good industry practice

This rule sets out broadly the types of breaches that can constitute grounds for a complaint. The commentary on rule 9 sets out the process for establishing rules of good industry practice.

2.4 The bank has had a reasonable opportunity to consider the complaint using its internal complaint process, the complaint remains unresolved, and the scheme has received the complaint within the required time limits (see *Time limits*)[6]

[6] Banks' internal complaints procedures must comply with the New Zealand Bankers' Association's Code of Banking Practice.

The scheme will not look into a complaint until the bank has had a reasonable amount of time – specified as two months – to try to resolve it directly with the complainant through its internal complaints process. In the scheme's experience, most complaints are resolved within that time. Should it receive a complaint not first considered by the bank, it will refer it to the bank and advise the complainant it has taken this step. An exception to this is a complaint made about a bank that received a disputed payment. In accordance with the industry-developed framework for dealing with such complaints, these complaints are handled by the bank that made the disputed payment.

The scheme can consider a complaint once the bank has notified the complainant that the complaint cannot be resolved, or once the deadline for such a notification has passed (see rule 6).

The scheme does not require a complainant to put a complaint in writing to a bank. It is sufficient that the complainant conveys dissatisfaction with specific failings on the bank's part, and states an expectation that the bank will take action to resolve the dissatisfaction. A general expression of dissatisfaction with a bank and/or its products and services does not amount to making a complaint.

2.5 The same complainant, or member of a group of complainants, has not previously made a complaint to the scheme about the same matter (unless the complainant produces relevant new evidence)

The scheme cannot consider a complaint from the same complainant about the same events and facts. This rule does not exclude related complaints, such as a complaint about events that took place after the scheme finished its investigation. The subject matter may be related to the original complaint, but it is not the same. The scheme can, for example, consider a complaint that a bank has failed to take action agreed to as part of settling the previous complaint.

"New" evidence means evidence unavailable to the complainant at the time the scheme looked into the first complaint. It is not evidence the complainant possessed but did not produce. Nor is it evidence the complainant did not possess, but knew about and could reasonably have obtained. Nor, finally, is new argument new evidence. A complainant may put forward a different argument or propose a different interpretation of evidence, but neither is grounds to reconsider the complaint.

The scheme can, however, reconsider a complaint when new events and facts are presented that were unavailable to the complainant at the time *and* this new information is central to the thrust of the complaint (as opposed to merely incidental or peripheral new facts).

If the scheme receives a complaint from a spouse, partner or other close associate of a previous complainant that seems to present much the same case, it may look at whether the new complainant is merely acting as an agent for the previous complainant. If it finds this to be so, rule 2.5 prevents it from considering the complaint.

If the decision on the original complaint was made long ago, the scheme can take into account the timeframes set out in rules 7 and 8 and the fairness principle about finality of process in deciding whether to reconsider the complaint.

2.6 It would not be more appropriate for a court, tribunal, arbitrator, independent or statutory complaints body or regulatory body to consider the complaint.

This rule gives the scheme the discretion to decline jurisdiction if there is a more appropriate place for a complaint, such as:

The courts

The scheme may consider it more appropriate that a court deals with a complaint if it cannot determine a question of fact or credibility without testing the evidence in court. A court may also be more appropriate in cases where the outcome can be reached only by determining the rights of a person or entity not a party to the complaint. An example might be a bank customer who complains that a bank is denying him or her access to funds, over which another person claims ownership.

The scheme may also consider the courts more appropriate for complaints involving a substantial claim. It may also decline to consider a complaint if the complainant's purpose is to get information in preparation for legal action against the bank. The court system's discovery process may be a more appropriate route for obtaining information in these circumstances.

Statutory complaints bodies

Office of the Ombudsman

Generally speaking, the scheme does not direct complaints to the Ombudsman because the Ombudsman's role is to consider complaints about government bodies, not banks. The exception is non-banking-related complaints about Kiwibank, which is a Crown entity and a member of the scheme.

Privacy Commissioner

The scheme considers some complaints involving both privacy and the provision of a financial service. It does not consider complaints involving privacy only or principally, instead referring the matter to the Privacy Commissioner.

Others

The scheme may decline to consider complaints more appropriately dealt with by statutory complaints bodies such as the Human Rights Commission or Advertising Standards Authority.

Regulatory bodies

The scheme may decline to consider a complaint where it considers the issue would be more appropriately addressed by a regulatory body (the Commerce Commission, Financial Markets Authority or Reserve Bank), such as where:

- The complaint is being currently considered by a regulatory body.
- The complaint is about a bank's regulatory or compliance obligations.
- The complainant's desired outcome is enforcement action against the bank.

The scheme has memoranda of understanding with regulatory bodies, which are statements of intent between the parties to consult, co-operate and exchange information to assist each other, subject to the relevant legislation and scheme rules.

Financial services complaints bodies

Insurance & Financial Services Ombudsman

When there is a complaint in which a bank sells an insurance policy but a non-bank organisation (generally an insurance company) provides the cover and is a member of the Insurance & Financial Services Ombudsman's scheme, the two schemes agree that:

- The Insurance & Financial Services Ombudsman will consider complaints about an insurance company's claim decision.
- The scheme will consider complaints about the bank's sale process.
- The two schemes will decide which will consider all other types of complaints.

Other financial dispute resolution schemes

The scheme adopts a similar approach with Financial Services Complaints Limited and FairWay when complaints involve organisations that are members of more than one financial dispute resolution body.

Australian Financial Complaints Authority

When a complaint involves a New Zealand bank and its Australian parent, the scheme in the country where the complainant lives will begin inquiries, but may transfer the complaint if the bank in the other country is responsible for the matter in dispute.

Outside scheme's powers

The scheme cannot consider complaints that fall within rules 3 to 3.8. It tries to establish whether a complaint is one it can consider before getting into any detailed examination of the case, but this is not always possible. Should the scheme become aware during an investigation that a complaint may fall within these rules, it will

advise both sides and give them an opportunity to comment before deciding whether it can continue considering the complaint.

3. The scheme cannot consider a complaint about financial services a bank has provided, or failed to provide, if:

3.1 The complainant could reasonably claim, more than $500,000 (plus GST, if any) for direct loss and direct incidental expenses, or more than $2,600 (plus GST, if any) per week where the claim relates to a product that provides regular payments (*But the scheme can consider a claim that would otherwise exceed these amounts if the complainant agrees in writing to limit the claim to these amounts.)* (see *Claims and compensation*)

The $500,000 limit applies to complaints made to the scheme on or after 18 July 2024. Complaints made before this date are subject to the previous terms of reference, which had a claim limit of $350,000.

The $500,000 limit applies to the compensation claim, not the value of the transaction or product (such as a home loan), which could be more.

There is a separate limit of $2,600 per week where the claim relates to a product that provides regular payments. This includes some types of insurance where the policy provides weekly or monthly payments rather than a lump sum.

In assessing the amount a complainant could reasonably claim, the factors the scheme will consider include whether:

- The complainant's claim of over $500,000 is based on insufficient knowledge. The basis for the claim may mean that the amount the complainant can *reasonably* claim and/or any award of compensation is less than $500,000.
- The complainant has claimed a remedy the scheme cannot recommend, such exemplary or punitive damages, or compensation for indirect loss. Once these are removed, the amount a complainant could reasonably claim may be under $500,000.
- The complainant alleges irresponsible lending, and argues that the bank should write off their debt, which exceeds $500,000. The scheme seldom accepts such an argument. In many cases, a complainant's loss is only interest and fees payable to the bank. The scheme will consider complaints of this type, provided the interest and fees are less than $500,000 and the complainant agrees to proceed on this basis.

Limiting a claim

Where a complainant's reasonable claim exceeds $500,000 and the bank does not agree to the scheme considering the complaint (see rule 4), the scheme can consider the complaint if the complainant agrees in writing to limit their claim to $500,000.

Unless the parties agree otherwise, all settlements through the scheme are in full and final settlement of the complaint. A complainant who limits their claim as

described above, cannot accept a full and final settlement of their complaint through the scheme, and then pursue the bank for their excess claim (i.e., the amount above the scheme's limit). The scheme makes clear to complainants that settling their complaint through the scheme will limit their ability to pursue the bank through other avenues.

Similarly, a decision issued by the scheme and accepted by a complainant is a full and final settlement of a complaint (see rule 24). A complainant who limits their claim as described above, cannot accept the scheme's decision as a full and final settlement of their complaint, and then pursue the bank for their excess claim in another forum.

If a complainant agrees in writing to limit their claim to $500,000, the scheme will treat the complainant's claim in the same way it would treat a claim for $500,000 which was not limited. This means that if, when a complainant has limited their claim to $500,000, the scheme considers it appropriate to apportion liability between the parties for the claim, the scheme will not have regard to the amount of the complainant's excess claim. Any apportionment will be based on the claim of $500,000.

The scheme's approach is illustrated by the following example. A complainant is the victim of a scam and suffers a loss of $1,000,000. The complainant agrees in writing to limit their claim to $500,000 and in its decision, the scheme considers it appropriate to apportion liability between the parties for the claim – 30 per cent to the complainant and 70 per cent to the bank. The scheme accordingly recommends that the bank reimburses the complainant $350,000 (70 per cent of $500,000). It does not have regard to the complainant's full loss of $1,000,000 (and excess claim of $500,000). If the complainant accepted the scheme's decision it would be in full and final settlement of their complaint. The complainant could not then pursue the bank for their excess claim.

However, where a complainant agrees in writing to limit their claim to $500,000, and does not accept the scheme's decision on their complaint, they are free to pursue the bank through other avenues for the full amount of their claim (see rule 24). In the example above, if the complainant did not accept the scheme's decision, they could pursue the bank for their full loss of $1,000,000.

The ability to limit a claim applies to complaints considered by the scheme on or after 1 July 2025 (subject to the other requirements in the rules). This means that if a complaint has been considered by the scheme prior to 1 July 2025, a complainant does not have the ability to limit their claim to $500,000.

A complaint will have been considered by the scheme prior to 1 July 2025 if a complaint has been made to the scheme prior to this date.

If the amount a complainant could reasonably claim exceeds $500,000, the bank does not agree to the scheme considering the complaint, and the complainant does not agree to limit their claim, the scheme cannot consider the complaint.

3.2 The claim is part of a bigger claim or is related to another claim the complainant has made, or could reasonably make, and the total amount of the claims for direct loss and direct incidental expenses is more than $500,000 (plus GST, if any), or more than $2,600 (plus GST, if any) per week where the claim relates to a product that provides regular payments

This rule is intended to prevent a complainant from splitting a complaint into component parts and claiming up to $500,000 (or $2,600 per week) for each part. In cases where there are related claims, the scheme will consider whether it is more appropriate for the courts to deal with all the claims.

A complainant can, however, limit their claim as set out in rule 3.1 (see above).

3.3 A court, tribunal, arbitrator, independent or statutory complaints body or regulatory body has considered, or is considering, the complaint or any other complaint on the same subject by the same complainant *(The scheme will stop considering any complaint that is also taken to such a body.)*

The purpose of this rule is twofold: to prevent complainants from using the scheme as an appeal body for decisions made by other competent bodies; and to prevent complainants from taking matters simultaneously before several bodies.

The scheme does not exclude a complaint merely because there is, or has been, related court action. This rule applies only where the complaint and the legal proceedings are between the same parties and have the same subject matter.
This rule does not prevent the scheme from considering complaints about a different aspect of a subject heard, or being heard, by another body. Where the amount of loss depends upon the outcome of legal proceedings between the complainant and a third party (for example, when relationship property is being separated), the scheme may defer considering the complaint until those proceedings are complete.
The scheme could also consider a complaint if another body had not considered compensation or if it had a different function, such as a punitive or disciplinary role.

Bankruptcy

A bankrupt complainant can make a complaint to the scheme. However, if the complaint relates solely to the size of the debt, such a matter will have been considered during the bankruptcy proceedings and the scheme will therefore not consider the complaint.

Mortgagee sales

A mortgagee sale is a legal process to facilitate the sale of a property by a mortgagee, as opposed to a forum for a complainant to raise concerns about the financial services provided (or not) by his or her bank. As such, the occurrence of a mortgagee sale at the same time as the scheme's consideration of the complaint does not trigger this clause.

Timing

A question sometimes arises about the timing aspect of this rule, that is, whether the other body "has considered, or is considering" the complaint. For example, a person may start legal proceedings while unaware of the scheme's existence but stop proceedings after learning of the scheme and subsequently make a complaint to the scheme. Provided the court has made no judgment, the scheme will consider the complaint.

The scheme will not consider a complaint if the complainant starts legal proceedings or lodges a complaint with another dispute resolution body *after* complaining to the scheme.

Note that a bank has no obligation to withdraw legal proceedings against someone who complains to the scheme *after* the bank begins proceedings. The scheme cannot consider a complaint in such circumstances.

3.4 The complainant has previously reached a settlement with the bank about the matter.

The scheme will not consider a complaint if the complainant has accepted a bank's compensation offer or some other settlement proposal as full and final settlement of the matter in dispute. Invariably, such an offer or proposal will contain a clause ruling out any further liability by the bank.

The scheme will consider a previously settled complaint if the bank relied on misleading or deceptive conduct or duress to obtain the settlement – but the test for such a step is high. The scheme will not regard a bank as having obtained a settlement under duress if the bank advised the complainant of the steps it was entitled to take if the two sides did not reach a settlement – steps that might include taking legal proceedings or exercising its rights under a contract.

3.5 The complaint is about a bank's commercial judgement about lending, security or insurance decisions *(But the scheme can consider complaints about the administration of loans or insurance policies, or the administration of applications for loans or insurance policies.)*

This rule recognises that assessing the risk of lending money or providing insurance cover is at the core of a bank's business, and that the scheme's role is not to involve itself in decisions about how much risk the bank is prepared to take on.

The scheme can, however, consider the administration of a bank's assessment of risk. A bank must collect and consider information for such an assessment within a reasonable time. In doing so, it must meet its obligations under the law and relevant codes of practice, and it must take into account relevant considerations and disregard irrelevant ones.

The scheme can, for example, consider a complaint about the administration of a bank's assessment of a complainant's ability to service a loan, its assessment of a request for assistance from a complainant in financial hardship, and the administration of debt recovery activity.

In general, the scheme will not consider a complaint about a bank's refusal to provide cover for certain medical conditions, or to provide cover but at a higher premium. However, it will consider a complaint about the administration of an application for insurance or the administration of a claim under a policy.

3.6 The complaint is about a bank's policies or practices *(But the scheme can consider complaints alleging that a policy or practice breaches a duty or obligation the bank has to the complainant, or that the bank has inappropriately applied or improperly administered a policy or practice.)*

This rule recognises that banks are free to set and apply policies and practices about their products and services provided they act within the law, comply with relevant codes of practice and meet their contractual obligations. The words "duty or obligation" generally refer to a legal obligation or an obligation under a code of practice. They do not include a moral or ethical duty, neither of which is enshrined in law and about both of which opinions differ.

In applying this rule, the scheme assesses whether a complaint relates to a bank policy or practice, and if so whether the policy or practice involves a breach of an obligation to the complainant, or whether the policy or practice has been inappropriately applied or improperly administered. Examples of policies or practices include the closure of branches and the clearance times for transactions.

The scheme can consider a complaint about a policy or practice if either breaches an obligation or duty owed to the complainant.

3.7 The complaint is about a bank's charges for financial services or about its interest rates *(But the scheme can consider complaints alleging that a bank failed to disclose, or misrepresented, information about charges or interest rates, or incorrectly applied charges or interest rates, or breached any law or industry code.)*

Recognising that the scheme is not a price regulator, this rule stipulates that the scheme cannot consider complaints solely about the level of a bank's charges or interest rates. But this rule does not exclude complaints about whether a bank has charged the wrong fee, failed adequately to disclose a fee, reneged on a promise to waive fees or any similar complaint. Nor does it exclude complaints about a failure to provide a service for which a fee was charged.

The scheme can consider a complaint that a credit fee or default fee in a consumer credit contract is unreasonable. Such a practice would be in breach of the Credit Contracts and Consumer Finance Act 2003. The scheme can consider complaints about early repayment fees on fixed-interest consumer loans (which can include

home loans). Such fees, and the attendant obligations of creditors, are covered by the same Act.

This rule relates to charges by banks only, not those charged by others such as valuers, lawyers and real estate agencies engaged by banks and passed on to customers. The scheme may consider complaints about these third-party fees, such as whether a contract provided for the fees to be passed on, whether the contract conditions for passing on the fees had been met, and the reasonableness, given the circumstances, of passing on the fees.

If a complaint concerns the reasonableness of a fee itself and the agency is a member of a body with a dispute resolution mechanism empowered to consider such a complaint, the scheme may seek guidance from that body or, if appropriate, refer the complaint to that body for resolution.

Finally, this rule's bar on considering complaints about the level of interest charged on credit facilities or paid on deposits does not prevent the scheme from considering complaints that a bank has misled a customer about the interest rate applicable to a deposit or loan, or that a bank has made a mistake in how it has charged interest.

3.8 The scheme agrees to a bank's test case request (see *Test cases*).

A bank can ask the scheme to decline to look into a complaint if it considers that the complaint should be treated as a test case, that is, a court should decide the matter because it may have important consequences for the bank or banks generally, or it raises an important new point of law. If the scheme agrees to such a request, it cannot consider the complaint further. Rules 32 to 34 explain test case requests in more detail.

4. The scheme can consider a complaint that would otherwise be outside its rules if both sides agree.

Provided both sides agree, the scheme will consider whether to exercise its discretion and look at a complaint otherwise outside its rules. In assessing whether it would be appropriate to do so, the scheme takes into account the nature of the complaint, the reasons for the request for the scheme's involvement, the availability of any other forum to consider the complaint, and any special circumstances. The scheme advises both sides in writing of its decision. In looking into such a complaint, the scheme follows all other rules except the rule (or rules) the two sides agreed to set aside.

Other grounds for not considering a complaint

Rules 5 to 5.4 relate to complaints the scheme would ordinarily consider but the circumstances outlined here make it inappropriate to do so. The scheme has the discretion to decline to consider complaints on these grounds at any time during an investigation.

5. The scheme can decline to consider, or stop considering, a complaint if satisfied any of the following applies:

5.1 The complaint has no reasonable prospect of success

The scheme does not lightly apply this rule because it would deny complainants access to a forum for their concerns. It is likely to exercise its discretion to decline to consider a complaint that, from the outset, plainly lacks merit. Such complaints include those that depend on an untenable position of law or fact, or where there is only a remote possibility of merit. Applying this rule saves the complainant, the bank and the scheme time and resources in dealing with a matter that is clearly without merit. Our information sheet on complaints with no reasonable prospect of success explains our approach in more detail.

5.2 The complaint is frivolous or vexatious, or the complainant is not pursuing it in a reasonable way

The scheme has the discretion to decline to consider complaints that are frivolous, vexatious or are not being pursued in a reasonable way. The threshold for applying this rule is high. Frivolous complaints include those that are groundless and cannot possibly succeed. Vexatious complaints are those that amount to an abuse of process. They include complaints where the purpose is not to seek resolution or redress from a bank. Another example is a complainant who is on a “fishing expedition” to obtain information for use in court or other proceedings. The scheme has the power to request documents and information, but it exercises it solely to help resolve a complaint and for no other purpose.

As for pursuing a complaint in a reasonable way, the scheme expects complainants to be co-operative. They can demonstrate this by providing documentation and information in support of their complaint. A complainant who refuses to provide documents or information, or otherwise is unco-operative, risks a decision by the scheme to stop considering the matter further.

The scheme recognises that complainants may express their views in emotionally loaded, intemperate and even hostile terms. Though undesirable and likely to make consideration of a complaint difficult, it is not in itself sufficient to amount to unreasonableness. However, persistent threatening or abusive behaviour crosses the line. The scheme may terminate its consideration of a complaint if the complainant acts in this way towards staff or any other party involved in the complaint. The scheme will usually issue warnings before such a step. A complainant’s health problems may be considered when deciding whether to apply this rule. (See our customer service charter.)

5.3 The complainant has not suffered, and is unlikely to suffer, direct loss or any significant inconvenience

The scheme’s main function is to put complainants back in the position they would have been in, but for a bank’s wrongful act or error. It is not a productive use of the

scheme's time and resources to consider a complaint where a complainant has had no change in his or her position, has suffered no financial loss, and has experienced only extremely limited inconvenience – especially if the bank has, for example, made an apology in the case of a minor mistake.

5.4 The bank has made a reasonable offer to settle the complaint. *(This decision is based on the facts as presented by the complainant.)*

The scheme's test for this rule is whether the bank's settlement offer is reasonable if everything the complainant has said is accepted as true.

Time limits

Both banks and complainants want complaints to be dealt with as quickly and efficiently as possible. Rules 6 to 6.3 set out the steps and time limits to ensure such an outcome.

6. The scheme can consider a complaint only if:

6.1 It receives the complaint within three months of a bank's written notification to the complainant that it has fully considered the complaint and that the complainant now has the right to take the complaint to the scheme before that deadline. *(In exceptional circumstances, the scheme can consider a complaint received between three and twelve months after this notice.[7] Beyond twelve months, a bank's consent is necessary.)*

In general, the scheme can consider a complaint if the complainant approaches it within three months of receiving written notice from the bank that attempts to resolve the complaint have reached an impasse. Specifically, the notice must state that:

- The bank has fully considered the complaint.
- The complainant now has the right to go to the scheme within three months.
- A failure to do so within three months may mean the scheme is unable to consider the complaint.

In exceptional circumstances, the scheme will consider a complaint made up to twelve months after a written notice from a bank. Those circumstances include a death in the family, a significant incapacity or the onset of a serious illness. The scheme may ask the complainant to explain the circumstances that led to the late lodgement and may, where appropriate, seek evidence of those circumstances.

or

6.2 The complainant took the complaint to the bank at least two months ago, and the bank has not sent such a written notification

[7] Exceptional circumstances include a death in the family, a significant incapacity or the onset of a serious illness.

This rule states that the scheme can consider a complaint from a complainant who:

- has taken the matter to the bank
- has been unable to resolve it with the bank within two months
- has not received a written notice from the bank, as spelled out in rule 6.1.

or

6.3 The bank has asked the scheme to consider the complaint.

The scheme will accept a bank's request to consider a complaint before the two-month deadline on trying to resolve the matter internally expires if:

- The complainant does not accept the bank's final position on the complaint.

  or

- The bank considers there is no reasonable prospect of resolving the complaint directly with the complainant.

  or

- The bank considers an independent assessment of the complaint is a more appropriate way to resolve the matter.

The bank can make such a request at any time during the two months.

7. The scheme can decline to consider a complaint if the complainant was aware of a bank's action or inaction for more than 12 months before making the complaint to the scheme.

The scheme has the discretion to decline complaints in the circumstances outlined in rule 7 because the passing of time can mean relevant information is no longer available, and this in turn can make it difficult to reach a satisfactory conclusion about the complaint.

Note that the scheme does not have any discretion when more than six years have passed since a complainant became aware of (or should have become aware of) the event(s) forming the subject of the complaint. It must refuse to consider complaints about such distant matters (see rule 8).

The scheme applies two tests in deciding whether to apply rule 7:

- whether it has a reasonable chance of conducting a satisfactory investigation and reaching a conclusion on the merits of the complaint
- whether the complainant has been reasonably diligent in pursuing the complaint.

The scheme will seek the bank's view on whether the delay would affect its ability to respond to the complaint (and if so, how). The scheme will take into account the bank's response in making its decision. It will usually take no further action if the complainant's delay led the bank to believe the complaint had been resolved and it had acted on that belief.

Reasonable chance of a satisfactory investigation

If some years have passed, it is likely much of the information needed to reach a conclusion is no longer available. Section 156A of the Reserve Bank of New Zealand Act 1989 requires banks to keep certain transaction information for seven years before destroying it, but the types of information are specific and quite limited. Banks are under no legal obligation to hold most other information. Routine or commonplace records are seldom kept for particularly long. Furthermore, banks' policies on retaining information vary. The scheme may ask a bank about such policies, as well as the information it actually holds, before applying this rule.

An investigation that relies largely or solely on people's memories of events because no records from the time remain is unlikely to lead to a satisfactory conclusion, so the scheme could decline to consider such a complaint.

Reasonable diligence

The scheme will usually favour the complainant and proceed with an investigation if:

- The complainant went to the bank soon after the event(s) in question, but the complaint was not resolved, and the complainant was not told about the bank's internal complaints procedure or the existence of the scheme.
- The event(s) took place more than a year ago, but the complainant has been actively trying to resolve the matter ever since.
- The complainant had complained to the bank, which had failed to send a written notification, as set out in rule 6.1.
- The disruption arising from a health problem or other serious personal issue (such as the need to leave an abusive relationship) prevented the complainant from pursuing the matter sooner.

8. The scheme cannot consider a complaint if the complainant became aware of, or should reasonably have become aware of, a bank's action or inaction more than six years ago.

This rule is in keeping with the general six-year limitation on legal proceedings intended to recover money or claim compensation. The purpose is to provide an incentive to make complaints within a reasonable period of time so scheme decisions can be based on reliable evidence. In the case of complaints about matters that occurred more than six years ago, the evidence is more likely to be of questionable reliability or even non-existent.

In deciding whether a complainant "should reasonably have become aware" of the matter, the scheme will consider:

- the nature of the complaint
- what the complainant was aware of, and whether it would have been reasonable to have made inquiries sooner
- any relevant documents or advice the complainant received about the matter.

In making its decision, the scheme can consider what actions a reasonable person in the same situation would have taken.

Decision-making criteria

9. In making any decision, the scheme must be fair in all the circumstances, having regard to the law, any relevant code of practice, and principles of good industry practice.

This rule sets out the general framework within which the scheme makes decisions (including whether it has the power to consider a complaint in the first place). The framework consists of the principles of fairness and good industry practice, the law and any relevant industry or statutory code.

Fairness

The scheme bases its decisions on what it considers to be fair in all the circumstances of a case. The scheme can take a broader approach than the courts. The scheme not only considers the law but also any code and any other principles of good industry practice.

Codes of practice

Industry codes of practice typically contain obligations and require standards of service that are higher than those required by the law. Statutory codes of practice contain principles and standards of professional conduct required of financial service providers. The code of practice most relevant to the scheme's work is the New Zealand Bankers' Association's Code of Banking Practice, to which all banks in the scheme agree to adhere. Others include:

- Responsible Lending Code
- Fair Insurance Code
- Code for Financial Advertising
- Code of Professional Conduct for Authorised Financial Advisers.

The scheme has the power to investigate a complaint about a breach of a code.

Principles of good industry practice

If the law or codes of practice do not clearly establish what is good industry practice in a particular case, the scheme may clarify the principles of good industry practice. In doing so, the scheme may, as it thinks appropriate:

- conduct a survey of the scheme's participants
- take into account good practice guidance from industry and regulators
- draw on the experiences of its staff and Ombudsmen
- consult with relevant experts or advisors.

Natural justice

10. In making any decision, including whether to consider, or continue considering, a complaint, the scheme must follow the rules of natural justice, which include giving both sides:

10.1 Adequate notice of important steps and decisions

10.2 The opportunity to provide information, express their views, and to have those views considered, before a decision

10.3 The reasons for the decision in writing and within a reasonable time.

Rules 10 to 10.3 require the scheme to act with procedural fairness. In particular, both sides must get an opportunity to comment beforehand on decisions, whether they concern the merits of a complaint or the scheme's jurisdiction to investigate. Whenever possible, the scheme makes decisions on jurisdiction before considering the substance of complaints. Occasionally, it does not become clear until later on that the scheme lacks jurisdiction, or should exercise its discretion not to consider a complaint further. In such cases, the scheme will notify both sides, seek comment and consider it before making that decision.

Rules 23 and 24 set out the process for making decisions on the merits of complaints.

11. The scheme is not bound by legal rules of evidence when arriving at decisions.

The scheme is not bound by any legal rule of evidence in assessing evidence and information. The scheme can take into account evidence that would be inadmissible in a court (for example hearsay), but may attach less weight to it than other evidence.

Unlike a court, the scheme has no power to examine witnesses on oath. For this reason, it would not normally comment on the credibility of complainants, bank staff or others unless independent evidence supported such comments. It can legitimately comment on inconsistencies in an account of events relevant to a complaint. It can also legitimately note that a complainant or bank's account has been consistent throughout, or that one side's account of events is inherently unlikely. Faced with

differing accounts of events and finding no independent evidence in support of either side, the scheme can conclude that no decision on the complaint is possible.

Burden of proof

The scheme does not require either side to prove its case, but it must nonetheless decide whether, on the balance of probabilities, there is enough evidence or information to support a complainant's case. It is not for a bank to disprove a complainant's allegations. The scheme applies the balance of probabilities standard as it would be applied in civil litigation. To uphold a complaint, the scheme must be satisfied it is more probable than not that events occurred as the complainant described them.

In certain circumstances, the burden of proof shifts to the bank. In such cases, the scheme's task is to decide whether enough evidence exists to support the bank's view that it should not be liable for a complainant's loss. An example is the unauthorised use of a credit card. A bank has an obligation to reimburse a customer's loss unless the customer acted negligently. The scheme's task is to decide whether, on the balance of probabilities, there is enough evidence or information to support a bank's contention that the customer acted negligently.

Requests for information

12. The scheme can consider any information and make any inquiries about a complaint that it considers relevant. When considering a complaint, the scheme may consult relevant experts and industry and consumer advisors, as it thinks appropriate.

This rule makes it clear the scheme has the power to decide what information is relevant to its consideration of a complaint. The scheme expects both sides to co-operate with it and to provide all relevant information within a reasonable time. The scheme is not limited to considering information from the parties to the complaint and may seek external advice as it deems fit.

Requesting information from banks

The scheme is able to request any personal information the complainant is entitled to under the Privacy Act 2020. Where bank records contain relevant information to the complaint but third-party information is intermingled in those records, the bank should redact any third-party information where release of that information would cause the bank to breach its privacy or confidentiality obligations.

The scheme can also request a bank provides other information, for example information about complainant entities, or copies of bank policies, training materials or internal communications.

The scheme will advise a bank that fails to provide information within a reasonable time that it will make a decision based on currently held information unless the bank

complies soon. The scheme will advise complainants who fail to give it information or documents they hold that it can make a decision based on currently held information or can stop considering their complaints under rule 5.2 if they do not comply.

Requesting personal information from third parties

Occasionally the scheme will decide that someone else, such as the Police or a complainant's lawyer or accountant, may have relevant information. The scheme will ask the complainant to contact this person for the information or ask the complainant to give it authority to approach the individual or organisation directly.

Consulting experts and advisors

If it considers it appropriate, the scheme may consult with relevant experts or industry or consumer advisors. Such consultation may occur where the scheme is considering cases which:

- are complex or novel, or
- involve a contentious or difficult point of law, or
- have potential precedent value,[8] or
- involve a matter of public interest.

Decisions about such consultations are solely at the scheme's discretion.

In consulting with relevant experts and industry and consumer advisors, the scheme will comply with its obligations under the Privacy Act 2020 to the complainant and its duty of confidence to the bank.

Legal advice

The scheme may engage external legal advice. It will typically do so where the case involves a point of law that requires expert legal advice beyond that available to the scheme in-house. Such external legal advice is privileged, and the scheme is not required to share it with either party to the complaint.

Expert advisors

The scheme may consult an expert advisor (for example, leading academics, regulators or other dispute resolution services) where that person or organisation has specific expertise in the subject-matter of the complaint.

Industry advisors

The scheme may consult with industry advisors, for example when determining what is current industry practice. Industry advisors will typically be subject matter experts

[8] Although the scheme is not bound by its previous decisions, it recognises that its decisions should be as consistent as the circumstances of individual complaints allow and are often considered to have precedent value.

who are staff members of existing scheme participants. However, where there is insufficient expertise among the scheme participants, the scheme may approach other experts.

Consumer advisors

The scheme may consult with consumer advisors, for example when determining principles of good industry practice or what is fair and reasonable.

13. A bank must, as soon as practicable, give the scheme any information relevant to a complaint, if asked. *(A bank can refuse such a request if it would cause the bank to breach its duty to keep information confidential, and the bank has made reasonable efforts to get consent from the individual, group or entity it owes that duty to.)*

The scheme expects a bank to set out its position on a complaint, along with relevant documents, which may include bank files, diary notes, copies of agreements, phone recordings, relevant policies and procedures, and any electronically stored information. The bank must provide this within five working days. Requests for an extension of time are considered if documents are old or have been archived. If the required file is large or an original the bank does not want to part with, it can forward it to a branch near the scheme's offices for examination.

Legal privilege

A bank does not have to give the scheme documents protected by legal privilege, but may choose to. Sometimes a bank may agree to give the scheme a summary of a legal opinion for forwarding to a complainant.

Duty of confidence

Complaint about a complainant's bank

Where the scheme believes that another person or entity's information may be relevant to a complaint about a complainant's bank, the bank should attempt to get consent from that person or entity to release the information to the scheme. Where that consent is not provided, the bank does not have to give the scheme information if release would cause it to breach its duty of confidence.

When a bank cannot get consent, the scheme will assess whether it is possible to consider, or continue considering, the complaint. It may seek comment from both sides before reaching this decision.

Complaint about a bank that received a disputed payment

To consider a complaint about a bank that received a disputed payment, relevant information will include any scam intelligence available to the bank, what the bank did in response to that intelligence and the bank's rationale for the actions it took or decided not to take.

Information provided to the scheme by a bank that has received a disputed payment is generally provided to the scheme in a deidentified way, with all third-party personal information redacted. Such information will be accepted by the scheme in confidence and not shared with the complainant.

The information can be taken into account by the scheme when considering the complaint, and the scheme can outline a summary of the information relied upon.

14. Either side to a complaint can ask that information given to the scheme be kept confidential. *(If a bank makes such a request, it must give the reason for the request before providing the information.)*

Complainants and banks have the right to supply information on the basis the scheme keeps it confidential. However, the scheme cannot usually take into account such information from one side in reaching a decision that goes against the other.[9]

If a complainant provides information relevant to the complaint and asks for confidentiality, the scheme will explain that it cannot use the information in making a decision against the bank because this would be contrary to the principles of natural justice, which would require the bank to be given the opportunity to comment on the information. The scheme will then ask whether the complainant still wants the information to be treated in confidence.

A bank that wants to supply information in confidence must contact the scheme *before* providing the information and explain the general nature of the information and the reason for the request. Examples of such information might include credit risk criteria and details about its internal operations.

15. The scheme must not pass on information it has agreed to accept in confidence without the sender's consent.

The scheme has a duty not to release information accepted in confidence unless the sender agrees. If the scheme considers releasing such information will help resolve a complaint, it will discuss this view with the sender and seek consent. Sometimes the scheme will, with the sender's approval, pass on a summary of the information. As explained above at rule 13, in considering a complaint about a bank that received a disputed payment, the scheme can provide a summary of the information received in confidence.

16. A bank, when giving information to the scheme, must identify any parts related to its fraud detection and security measures, which the scheme automatically regards as having been given in confidence. The scheme can take into account such measures in considering a complaint, but cannot disclose details about them to the complainant.

[9] See above at rule 13 for an exception to this regarding complaints about banks that receive disputed payments.

The scheme can take into account a bank's fraud detection and security measures when considering a complaint. The scheme accepts that a bank's fraud detection and security measures are usually confidential, but it nonetheless requires a bank to identify this type of information when supplying material to the scheme because the nature of the information may not be readily apparent. Identification prevents inadvertent disclosure.

17. The scheme must respond to any request by either side for information about a complaint in accordance with the Privacy Act 2020, any obligation of confidentiality and any other legal obligations.

The scheme goes about its work in a way that is even-handed and open to both sides to a complaint. If one side seeks information provided by the other side, the scheme will supply it unless the information has been given in confidence.
The scheme will not usually release documents such as drafts and internal memos that it created in the course of considering the complaint. It may also withhold legal advice sought in the course of considering the complaint.

18. The scheme must destroy or, if asked, return information given in confidence as soon as possible after it has dealt with a complaint.

The scheme's practice is to return or destroy confidential information immediately after closing a file, if asked. The rest of the information is kept indefinitely for statistical purposes.

Legal proceedings and debt recovery action

19. A bank must get the scheme's consent before starting legal proceedings against a complainant over a matter the scheme is considering.[10] *(The scheme cannot unreasonably withhold consent.)*

Rule 3.3 prevents the scheme from considering any complaint that becomes the subject of legal proceedings. If it is a bank that starts proceedings, the effect is to deny the complainant the opportunity to have the scheme consider his or her complaint. Rule 19 is intended to ensure a bank starts proceedings only after giving serious thought to the consequences of such a step. It does this by requiring that the scheme give its consent, which it will do if a bank can give good reasons for taking such action. The scheme requires convincing reasons, given it is already considering the matter. One such reason might be that a delay in starting legal proceedings would prejudice a bank's financial or legal position.

This rule does not include mortgagee sales because a forced sale by a bank does not involve an application to a court and does not therefore amount to legal proceedings. As a result, the scheme can continue to investigate a complaint during

[10] Legal proceedings mean proceedings before a court or tribunal.

a mortgagee sale. If requested, however, it is able to fast-track consideration of a complaint in such circumstances.

20. A complainant does not need the scheme's consent before starting legal proceedings against a bank over a matter the scheme is considering.

A complainant is free at any time to take legal proceedings against a bank. But as required by rule 21, the scheme will stop considering the complaint because a matter in dispute cannot be simultaneously before the scheme and a court or similar body. Before stopping, the scheme will check that the legal proceedings concern the same subject matter, not a related one. (See rule 3.3 for more on related issues.)

21. The scheme must stop considering a complaint once either side begins legal proceedings, and must advise both in writing. (*In the same way, the scheme regards any proposed outcome or compensation as withdrawn if the complainant begins legal proceedings.)*

This rule has the same general purpose as rule 3.3. The difference is one of timing. Rule 3.3 is concerned with legal proceedings that have previously taken place, or are currently taking place, about the subject of a complaint before the scheme. (In either circumstance, the scheme won't consider the complaint.) Rule 21 is concerned with legal proceedings that *start* while the scheme is considering a complaint. Again, the scheme will stop looking at the complaint, and will notify both sides.

Rule 21 adds that if a complainant starts legal proceedings after a bank has made an offer to settle the complaint, or after the scheme has proposed a settlement, including compensation, such offers or proposals are treated as having been withdrawn. The reason is that, in starting legal proceedings, the complainant has in effect rejected the offer or declined the settlement proposal.

22. A bank must notify the scheme if it is taking, or intends to take, any action to recover a debt that is the subject of a complaint to the scheme. *(Debt recovery action includes protecting any interest in assets securing the debt and assigning the debt.)*

The scheme must be notified in advance of a bank's debt recovery action. The reason is that, given warning, it can discuss with both sides whether speeding up its consideration of the complaint could be an alternative to debt recovery action.

Steps to recover a debt include issuing a formal demand for payment, issuing notices under the Property Law Act 2007, appointing receivers and referring a debt to a debt collection agency.

A bank is entitled to take debt recovery action while the scheme is investigating a complaint, except where the complaint is subject to the scheme's financial difficulty fast track process. Where a bank has taken debt recovery action, the scheme can, if it upholds the complaint, require the bank to compensate the complainant for any losses resulting from such action.

The fact the scheme is considering a complaint does not free the complainant from an obligation to keep repaying any loan, including interest and any fees. The consequences of failing to do so rest with the complainant.

Complaint-handling process

The scheme aims for minimal formality in considering complaints. Wherever possible, it tries to facilitate an agreement between the two sides as it looks into a complaint. The key steps in the process are to: consider the available information, including both sides' views, assess what happened, help the two sides to reach an agreement and, failing that, make a decision that is binding if accepted by the complainant.

23. The scheme's complaint-handling procedure is generally to:

23.1 Gather relevant information, including what a complainant and a bank have to say

A complainant and a bank must provide the scheme with all information that will help it to facilitate an agreement (including that a complainant withdraws the complaint) or reach a decision. What is relevant information is for the scheme to decide, although it will consider any comments from either side about the relevance of material.

In general, the scheme requires information within five working days. Extensions can be sought where information cannot reasonably be provided in this time frame, and the scheme expects requests for extensions of time to be accompanied by reasons, and how many extra days are sought. It will generally grant requests for reasonable extensions. It advises both sides when granting an extension, and includes reasons. It advises only the side making a request when it declines an extension. It includes the reasons and reiterates the deadline.

23.2 Try to facilitate a resolution *(This may include a complainant taking the complaint no further or both sides reaching an agreement.)*

Having gathered the information and provided both sides with an opportunity to comment on it, the scheme will assess the material before it. It gives this due weight, having regard to the decision-making criteria set out in rule 9, and reaches conclusions on the balance of probabilities. The scheme may also take into account – but not be bound by – previous decisions involving similar facts and issues in dispute.

The scheme will share its conclusions with both sides. If they accept the conclusions, or resolve the matter themselves with the scheme's help, the matter ends there. If not, the scheme gives both sides an opportunity to make any further comments before it makes a decision under rule 23.3. It usually allows 10 working days for comments.

23.3 Issue a decision, following the rules of natural justice. *(The decision sets out the facts as the scheme sees them, evaluates the matters in dispute and recommends an outcome, which may include the payment of a sum of money and state a deadline for acceptance.)*

The scheme makes a decision after both sides have had a reasonable opportunity to:

- provide information and make submissions
- consider the other side's information and submissions
- consider the views the scheme reached under rule 23.2.

If compensation has been recommended, a complainant has 10 working days to accept the recommendation. An extension is possible in certain circumstances, such as if a complainant will be away during this time or wants to seek professional advice. If the scheme does not hear back within 10 working days, it can offer no more help to the complainant.

24. A scheme decision becomes binding on a bank if accepted by a complainant by the stated deadline as a full and final settlement. If not accepted, the complainant is free to take legal proceedings against the bank.

A complainant does not have to accept a decision. Rejecting a decision leaves open all avenues to seek legal redress. (At that point, the scheme can offer no more help or hear any appeal.) If a complainant who has previously limited the amount of their claim under rule 3.1 does not accept the scheme's decision, they are free to pursue the bank through any avenue for the full amount of their claim.

But a decision, once accepted, puts an end to the subject of the complaint through any other body or court. A bank has no right of appeal if a complainant accepts the scheme's decision. A complainant who has limited the amount of their claim under rule 3.1, cannot accept the scheme's decision as a full and final settlement of their complaint, and then pursue the bank for any excess claim (i.e. the amount above the scheme's limit of $500,000).

If the decision requires the bank to take some action, such as paying compensation, the scheme will ask the complainant to sign a form accepting the decision as a full and final settlement of the complaint.

25. The scheme has the right to make and change its complaint-handling procedure.

The scheme sets its complaint-handling procedure in accordance with the principles of natural justice, accessibility, independence, fairness, accountability, efficiency and effectiveness as set out at section 52(2) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Nonetheless, it reserves the right to change its procedure.

26. The scheme is not bound by any of its previous decisions.

The scheme is not bound by any previous decision because consumer and banking law, together with applicable standards, changes over time. Nonetheless, it recognises that its decisions should be as consistent as the circumstances of individual complaints allow.

Claims and compensation

The scheme does not require a complainant seeking financial compensation to establish precisely how much was lost as a result of a bank's alleged error, but the complainant must be able to show there was a loss and how the bank caused it.

27. The scheme can consider claims up to $500,000 (plus GST, if any) for direct loss and any direct incidental expenses a complainant reasonably had to meet in taking a complaint to a bank, or up to $2,600 (plus GST, if any) per week where the claim relates to a product that provides regular payments.

Direct loss

Direct loss covers all economic damage that occurred as a direct result of a bank's error. "Direct" loss means there must be an unbroken link between the bank's error and the complainant's loss.

Where appropriate, the scheme can add interest to the amount awarded. When interest itself forms part of the amount lost (as when a bank makes an error with interest-earning funds), the scheme will award compensation at the rate the funds would have earned. When a complainant has lost the use of such funds, but it is unclear what use he or she would otherwise have been put to, the scheme can award interest at the rate specified in the Interest on Money Claims Act 2016.

The scheme can also award interest on any amount of compensation where there has been an unreasonable delay in that compensation being paid – see rule 30 below.

Reimbursing a loss as a result of unauthorised use of a credit or debit card or internet banking fraud is a bank's responsibility under its customer contract and under the Code of Banking Practice (unless a customer has acted fraudulently or negligently), but it does not have to reimburse any lost interest since the cause was fraudulent activity, not a fault on the bank's part. For this reason, the scheme will not award interest in such cases unless the bank has unduly delayed accepting liability or has otherwise been at fault.

Direct loss can include the cost of legal and other professional advice incurred before a complaint reached the scheme. But to award reimbursement of such costs, the scheme must be satisfied a complainant incurred them as a direct result of the bank's error, that it was reasonable to seek professional advice, and that the costs are reasonable. The scheme usually regards it as reasonable to have legal representation if a bank has taken an adversarial or legalistic approach to the complaint and/or has not told the complainant about the scheme.

A direct loss claim can include the loss of income incurred while a complainant deals with the complaint by, for example, taking leave without pay to attend a meeting. The scheme will seek evidence for such a loss. But in general, the scheme does not award compensation for a complainant's own time in pursuing the complaint. The scheme's service is free of charge to complainants, who in turn are expected to devote some of their own time to the complaint

Direct incidental expenses

These are payments a complainant has had to make as part of the complaint process and are usually limited to minor expenditure such as photocopying, phone calls and travel to meetings. The scheme requires copies of receipts or other proof of expenditure when assessing such claims.

Direct incidental expenses do not usually include the cost of legal and other professional advice incurred while the scheme investigates a complaint. The scheme is designed so complainants do not need a lawyer. Complainants who choose to engage one or seek other professional advice must generally pay for such services themselves.

In some cases, however, the scheme will award a contribution by the bank to a complainant's cost of legal or other professional advice if it was reasonable for a complainant to have done so. In deciding whether it was reasonable, the scheme can take into account whether the lawyer:

- was acting as a trustee, executor or any similar capacity
- helped clarify and/or resolve any complex or technical legal questions
- was involved throughout the complaint
- was a witness to, or otherwise involved in, the events that led to the complaint and had special knowledge relevant to the complaint.

28. The scheme can decide that a bank or complainant should undertake a course of action to resolve the complaint up to the value of $500,000 (plus GST, if any), or up to $2,600 (plus GST, if any) per week where the claim relates to a product that provides regular payments, including:

28.1 payment of compensation for direct loss and direct incidental expenses

28.2 forgiveness or variation of a debt, including varying the applicable interest rate on a loan

28.3 variation, rectification, setting aside or reinstatement of a contract

28.4 the release of a security for debt

28.5 the meeting of a claim under an insurance policy, by, for example repairing, reinstating or replacing items of property.

This rule sets out examples of remedies that maybe provided to a complainant. Some remedies have a financial value and some do not. This rule confirms that the maximum claimable through the scheme for financial loss is $500,000, or $2,600 per week where the claim relates to a product that provides regular payments.

In deciding on appropriate remedy, the scheme will seek to put the complainant back in the position he or she would have been in, had the bank not caused the loss.

Sometimes non-monetary remedies are appropriate because it leads to fairer outcomes for both sides. Examples include:

- discharging a guarantee considered unenforceable
- reinstating an insurance policy voided for alleged non-disclosure where the bank was the underwriter
- removing an incorrectly made default listing from a customer's credit file.

The scheme makes non-monetary awards only in formal decision after both sides have had the opportunity to make submissions. Such an award can never result in a bank being in breach of any legal obligation, such as anti-money laundering or health and safety legislation.

29. The scheme can also award compensation for any inconvenience a complainant suffered as a result of a bank's action or inaction up to a maximum of $10,000 (plus GST, if any).

Compensation for inconvenience includes:

- the intangible effects of wrongful acts or omissions, such as distress, embarrassment or anxiety
- more tangible but unquantifiable types of loss, such as loss of opportunity, disruption of financial planning or damage to a bargaining position.

The scheme must be satisfied a complainant has in fact suffered inconvenience. The mere fact a bank has made an error does not in itself mean a complainant has suffered inconvenience or suffered it sufficiently to warrant compensation.

In making its assessment, the scheme will consider whether, in the circumstances, it is reasonable that a person would have suffered stress and inconvenience. The scheme can also take into account a complainant's subjective assessment of that inconvenience. If, for example, a complainant is in poor health, a bank error may result in a more than normal level of inconvenience.

On the whole, however, the scheme expects complainants to be reasonably capable of tolerating some inconvenience from an unexpected problem at their bank. (Rule

5.3 makes clear the level of inconvenience must be “significant”.) The scheme also expects complainants to take reasonable steps to minimise any inconvenience.

30. The scheme can award interest on any amount of compensation where there is an unreasonable delay in that compensation being paid *(Interest will be calculated from the day the delay becomes unreasonable until the day the amount is paid, and in accordance with schedule 2 of the Interest on Money Claims Act 2016.)*

This rule applies in cases where there has been an unreasonable delay in a bank paying a complainant compensation awarded by the scheme. It provides that the scheme can require the bank to pay the complainant interest on the amount owing for the duration of the unreasonable delay.

The requirement that interest is calculated in accordance with the Interest on Money Claims Act 2016 comes from schedule 2 of the Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024.

31. The scheme cannot award punitive or aggravated damages.

Compensation is intended, as far as possible, to put a complainant back in the position he or she would have been in but for the bank’s wrongful conduct. An award for inconvenience recognises the inconvenience a complainant has suffered. Neither payment is intended to punish a bank.

Test cases

32. A bank can, at any time before a decision is issued, ask in writing that the scheme not consider, or stop considering, a complaint because it believes:

32.1 The complaint involves a matter with potentially important consequences for the bank’s business, or for banks generally

or

32.2 The complaint involves, or may involve, an important or new point of law.

33. Such a request must also state that the bank will begin legal proceedings in New Zealand against the complainant within six months of the request, and that it will:

33.1 Pay the complainant’s reasonable costs in the test case (unless the costs arise through a complainant’s counterclaim, cross-appeal or similar procedure)

33.2 Make interim payments for these costs if it thinks it reasonable and to the extent it thinks it reasonable.

A bank that wants the scheme to treat a complaint as a test case must give notice in writing and explain why it considers rules 32.1 or 32.2 apply. The notice must include

any specialist banking advice received about rule 32.1 or any legal advice received about rule 32.2.

The notice must also confirm the bank will begin legal proceedings within six months of the request and pay the complainant's reasonable costs as set out in rules 33.1 and 33.2. The purpose of rules 33 to 33.2 is to ensure:

- The bank acts promptly and efficiently in bringing the case to court.
- The complainant is not, as far as possible, financially disadvantaged by the scheme's agreeing to the bank's request.

34. The scheme will not consider, or will stop considering, a complaint if it agrees to a bank's request to make a test case of the complaint. The scheme will notify the complainant in writing of the request, the date of receiving it and the effect on the complainant of granting the request.

In assessing a request, the scheme considers whether the bank has acted reasonably in reaching the conclusion that the complaint raises a matter of importance that would be better dealt with by a court. It may seek expert advice in arriving at a decision.

If the scheme agrees that a complaint should be treated as a test case, it will advise the complainant of the request, the date of receiving it and what the scheme's decision to agree to the request means for the complainant, in particular that it may be up to six months before the matter is lodged with a court, and the bank must pay the complainant's legal costs. If the bank fails to start legal proceedings within six months, the scheme will start or resume consideration of the complaint.

Delegation of powers

35. The scheme authorises the Banking Ombudsman to exercise all the powers and discretions set out in the scheme rules.

36. The scheme permits the Banking Ombudsman to delegate any of those powers and discretions to any employee or contractor, consistent with a delegation framework approved by the board.

These rules enable the Banking Ombudsman to employ staff to consider complaints, including forming views for the purpose of resolving them, and facilitating a resolution of complaints. The rules also enable the Banking Ombudsman to engage independent experts – such as hand-writing and computer system experts, lawyers and accountants – to provide advice on specific matters relevant to a complaint. The scheme reserves the right to accept or reject such advice.

Personal and other information

37. Personal information collected by the scheme can be:

37.1 Used in its public reports and case notes after removing identifying details

37.2 Kept only as long as is necessary in accordance with the Privacy Act 2020.

38. The scheme must not disclose to a third party any personal information that may identify either side in a complaint, or is confidential and has been obtained in the course of performing its work.

39. The scheme can disclose identifying and confidential information if any of the following applies:

39.1 An authority with the legal power to do so demands it

39.2 The law requires it

39.3 The scheme or any of its directors or employees needs it as part of legal proceedings

39.4 The scheme needs to consult with a court, tribunal, arbitrator, independent or statutory complaints body or regulatory body to decide on the most appropriate body to consider a complaint. *(The complainant's consent is necessary before the scheme can disclose any potentially identifying information.)*

40. The scheme can disclose information to a complainant or a bank named in a complaint. (But see *Requests for information for limitations*.)

41. The scheme can disclose information to its chair or the chair's authorised deputy, or to the Banking Ombudsman, or to any scheme director, employee, consultant or agent who reasonably needs the information to carry out his or her work.

42. The scheme must tell a bank if it becomes aware of any threat to the bank's staff or property in the course of its work.

43. The scheme must, within 28 days of its annual general meeting, send its board an annual report for the preceding financial year, along with any other information the board requests. *(The report must be published and reach the Commerce and Consumer Affairs Minister by 30 September each year.)*

44. The scheme can make recommendations to:

44.1 The chair about rule changes or about any new or revised codes of practice that may affect its work

44.2 The New Zealand Bankers' Association about its Code of Banking Practice.

45. The scheme can release information about a complaint and/or the bank concerned to:

45.1 Another dispute resolution scheme (if the bank is a member and the scheme is approved under the Act)

45.2 The Registrar of Financial Service Providers (in accordance with sections 17 and 34 of the Act).

46. Before doing so, the scheme must, wherever possible, get a complainant's or a bank's consent to release any information that may identify either side.

The scheme keeps information confidential, except when certain circumstances allow it to do otherwise, in conformity with its obligations under the Privacy Act. Rule 37 sets out how the scheme can use information, and for how long it can keep it. Rule 38 affirms the Act's requirement to keep information confidential. Rules 39 to 46 sets out the circumstances in which the scheme can pass on information.

Systemic issues and material contraventions of legislation

47. The scheme:

47.1 can conduct investigations into possible systemic issues in accordance with its Systemic Issues Protocol

47.2 must report any material contravention of relevant legislation by a bank to the relevant regulatory body in accordance with its obligations under the Act.

Systemic issues protocol

The scheme is committed to identifying and addressing any systemic problems, so as to prevent widespread harm. The ability to investigate systemic issues both complements and aligns with the scheme's prevention and dispute resolution functions, ensuring that a problem affecting one individual can be dealt with in the interests of other consumers in the same or a similar position.

The scheme has developed the following protocol to identify potential systemic issues, bring them to a bank's attention, ensure appropriate remediation and prevent future recurrence.

Definition of systemic issues

Systemic issues are concerns about banking services that have the potential to affect more than one individual complainant. They may affect the customers of one bank, a class of customers or banks, or they may be industry-wide. Some examples are:

- inadequate disclosure or communication
- administrative or technical errors
- inaccurate interpretation of standard terms and conditions
- inadequate processes to ensure lending is affordable.

Resolving systemic issues

The scheme will notify the relevant bank/s of a possible systemic issue and seek information about the issue. If the bank's response to the notification leads the scheme to believe the issue is systemic, the scheme will work with the bank to resolve it.

To resolve the systemic issue, the scheme may ask the bank to:

- Identify all affected customers.
- Remediate any negative impact for customers.
- Prevent future recurrence.

Systemic issues and regulator reporting

Where a systemic issue is also a material contravention of relevant legislation, the issue will be handled in accordance with the scheme's regulator reporting protocol.

Regulator reporting protocol

The scheme is required by section 67 and 67A of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to report material contraventions of relevant legislation to the relevant regulatory body.

The scheme has developed the following protocol to identify and assess potential material contraventions of legislation.

Relevant legislation

The issue identified must involve a legal obligation owed by a scheme participant under any of the following Acts:

- the Reserve Bank Act 1989
- the Insurance (Prudential Supervision) Act 2010
- the Non-Bank Deposit Takers Act 2013
- the Credit Contracts and Consumer Finance Act 2003
- any of the Acts listed in schedule 1 of the Financial Markets Authority Act 2011.

Assessment criteria

The scheme must report issues if it has reasonable grounds to believe the participant has breached any of the above Acts in a material respect, as per the following guidance from the Commerce Commission:

- "reasonable grounds" means that the belief should be based on available evidence

- “material respect” means the issue may be systemic or it is significant in its own right.

Reporting to relevant regulatory bodies

If the scheme remains of the view that there are reasonable grounds to believe that the bank has materially contravened relevant legislation, it will report this belief to the relevant regulatory body as soon as reasonably practicable.

Records

48. The scheme must keep comprehensive records and statistics of complaints, including:

48.1 The number of complaints

48.2 The complaints the scheme did not consider, and why

48.3 The outcome of complaints the scheme handled

48.4 The current caseload, including how long unresolved cases have been open

48.5 The time taken to resolve complaints

48.6 A profile of complaints that identifies the type of service the bank offered, the cause of the complaint and any industry issues or trends.

The scheme uses a case management system to record complaints made to it and publishes statistical information in its annual reports.