Not good enough

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A new report recommends sweeping changes to the financial industry's complaints service, reports Michelle Innis.

If you've ever suffered the double indignity of buying a dud financial product and then finding that no one would listen to your complaint, you're not alone. A sweeping review of one of Australia's peak complaints bodies, the Financial Industry Complaints Service (FICS), says it has let consumers down badly.

The report, prepared by two academics, found that consumers with complaints about financial products or advisers rarely won their cases. Not surprisingly, a large number of consumers who have been through the complaints process with FICS felt embittered by the experience.

FICS was established to help consumers resolve complaints about financial advice, investment advice and the sale of investment products. FICS also reviews disputes over superannuation products sold by life insurance companies.

The review found that more than 60 per cent of consumers felt they were unable to participate during the FICS process; almost 80 per cent said they had no control over the outcome and no control over the process. More than a third of all complainants felt they were forced to settle their dispute with the other side, and more than 62 per cent believed that FICS had not delivered a fair outcome.

In 79.2 per cent of complaints, consumers lost their case.

Most surprising of all, companies that were FICS members sometimes told consumers there was no industry body to which to address their complaint, despite it being a licensing requirement that members tell consumers about FICS.

Senator Stephen Conroy, the Opposition spokesman on finance, small business and financial services, says: "Financial literacy levels are low and complexity is part of the game. It's no accident that there are 27 different names to the way people can take your money from you.

"If you complain and feel that you haven't been given a fair hearing, then it's pretty damning. It all goes back to why people have little confidence in the sector."

FICS is just one of a number of complaints bodies or tribunals available to investors who have a complaint about a finance sector product or advice. It is also the first to undergo a thorough, independent review of its work, as required by the Australian Securities and Investments Commission (ASIC).

Review co-author Professor Tania Sourdin of La Trobe University in Melbourne said consumers wanted an opportunity to present their case, and the key was communication.

"A lot of people didn't think the process was fair; they weren't happy getting an advisory letter telling them their case had no merit."

More than 52 per cent of cases were dealt with by an advisory letter from FICS, and 97 per cent of those letters told the complainant that there was no case to pursue.

The chief executive officer of FICS, Alison Maynard, was appointed 12 months before the review began. She says she fully supported the review, which provided the catalyst for many changes she'd hoped would be made.

"I had concerns about the way things were being done," Maynard says. "In fact, we held off making some changes until the review was completed, to make sure we had it right.

"Positive things have come from the review for consumers. However, if we are serving consumers better, then I believe we are also serving our members [companies] better."

Lawyer Peter Bobbin, of the Argyle Partnership, says some of FICS's problems stemmed from the fact that it had been in operation for only a short time, and the industry was undergoing enormous change.

"It's a continuous evolutionary process, and one would hope that every three-year review would improve things," Bobbin says. "FICS has been hated; no one likes to be called before any board of review. But it's also supported, because it tries to make the consumer complaints process transparent.

"It was young and people working there were trying to get their feet on the ground. It wasn't well known among consumers. Some members didn't understand it. Now consumers should feel like they get an opportunity to be heard."

Maynard says between 55 and 60 per cent of all cases are settled in favour of its member companies. "But that means the rest of the cases are decided in favour of the consumer," she says. "We're now very careful to tell the consumer the reason behind those decisions."

Chris Connolly, a consumer advocate and the director of the Financial Services Consumer Policy Centre at the University of NSW, concurs that the perception of fairness in the decisions made by FICS has improved.

He says if a matter is referred to a panel to be decided, the panel members may include "someone very senior, like an ex-judge", an industry person and a consumer representative.

"To go to court and have that sort of matter heard might cost the consumer $30,000," Connolly says. "As a result of the review, FICS is committed to a much greater level of contact between its staff and the complainant. We're happy with those changes."

FICS isn't the only complaints tribunals to undergo a shake-up. The Australian Banking Industry Ombudsman and Insurance Enquiries and Complaints are next in line. Along with FICS, these bodies receive more complaints about the finance industry than any other.

Also on the review list are Insurance Brokers Dispute Limited and the two credit union schemes, the Credit Union Dispute Resolution Centre and the Financial Co-operative Dispute Resolution Scheme. These reviews will take place over the next two years. All these schemes will be reviewed every three years.

All licensed financial service providers must be members of an ASIC-approved consumer dispute resolution scheme.

The dispute resolution systems aim to provide consumers with a cost-efficient means of resolving a dispute. The bodies approved by ASIC provide an alternative to the more expensive and complex court system, although each tribunal or scheme has its limitations.

"We want a better environment for complaints from consumers," says Peter Kell, the executive director for consumer protection at ASIC. "The aim is to ensure that there is accountability and all stakeholders have their say.

"Consumers across the industry must have access to cheap, accesible dispute resolution, which is probably more important in this sector than in any other part of the economy," he says.

"The history of FICS is that it was a bad scheme," says Connolly. "But it's improved out of sight. There's a queue of similar reviews to be conducted. Once they're finished, people will feel more confident about the systems."

FIXING FICS

Recent recommendations arising from the FICS review have changed the way the organisation handles complaints. Previously 50 per cent of all complaints were dealt with by advisory letters - a process complainants found unsatisfactory.

Now FICS initially asks complainants to complete a standard "complaints form". It will use telephone conciliation between parties to help them reach settlement, and face-to-face conciliation is another option.

Where an advisory letter is sent - and FICS estimates this will be less than 10 per cent of cases - it will include further options for action, including panel or adjudicator review.

FICS members include one-man financial planning firms, stockbrokers, fund managers, banks and life insurance firms.

The dispute scheme is funded by its members, and consumers do not pay a fee to lodge a complaint. FICS decisions are binding on members, but if a decision goes against a consumer and they feel unjustly treated, they may take the matter further with FICS, ASIC or the courts.

Kell says when market conditions are poor, people are more likely to scrutinise their returns and the advice they've been given.

He also says the introduction of the Financial Service Reform Act has led to many large-scale changes within the sector. "Several of the schemes have had to expand their coverage to ensure they satisfy the requirement, under the law, of dealing with the full range of complaints."

The Australian Consumers Association's spokeswoman on finance policy, Catherine Wolthuizen, points out FICS can deal only with complaints that concern amounts of $250,000 or less for life insurance companies, or $100,00 or less for other complaints. She says these amounts are unrealistic, given most people are saving to fund their retirement.

"The threshold at which people are denied access to FICS is very low," she says.

Narelle Brown, a vice-president at the Financial Counsellors Association of NSW, says: "You have to have a well-documented plan to take to someone who might help you. Most people aren't sure what to tell the person on the other end of the telephone. It's often best to get an independent person to work with you before you go to a complaints scheme." However, she says that the onus on the consumer is often too great. Also, a FICS member might receive advice on a resolution without the complainant being present. "That seems to me to be an unequal power base, weighted against the consumer."

BAD ADVICE

Ms B complained to the FICS panel that advice she received from her broker about the purchase of shares was not appropriate. FICS directed the broker to compensate her for the loss she suffered as a result of purchasing 10,000 One.Tel shares, 3000 Solution 6 shares and 2000 Q-Vis shares.

It also gave her the opportunity to include other shares into its decision. She applied to have 2500 Coates Hire shares and 2500 Brazin shares included.

The panel found that the broker should not have advised Ms B to buy shares other than those of substantial companies with a good track record.

It was satisfied that Coates Hire met that criterion, noting its price was now higher than when they were bought. But Brazin failed to do so and was included in the stocks she was compensated for.

Ms B's loss was calculated as seen in the table below. The broker was directed to pay her $42,721.01 plus interest at the rate of 5 per cent a year from October 31, 2002, to the date of payment.

YOUR MONEY AND YOUR LIFE

In January 1992, Mrs A purchased a "whole-of-life" insurance policy. Ten years later in March 2002, she asked the insurer about cashing it in, expecting to receive the amount she had paid in premiums: $10,716.05.

The insurer told her she would receive only $4000. After complaining, she was offered $4127. Mrs A then approached FICS.

She told the panel that the policy had been sold to her by an agent on the basis that it was like a savings plan. The insurer rejected this and argued she must have been aware she was buying a life insurance policy, nothing more.

It relied on a brochure, the policy, the policy schedule, a written explanation of the "whole-of-life plan" and an annual statement of benefits to argue its case.

But the panel noted that on the cover of the brochure the product was referred to as a "personal whole-of-life plan", followed by a description of it as "a life insurance plan that guarantees protection and builds a nest egg for additional security".

The brochure also stated the product was "more than just life insurance!" On the second page under the heading "cash value", it said: "While your full life cover is maintained, your plan acquires a cash value after three years, which over time grows into an attractive nest egg."

As the insurer placed such emphasis on the cash value the policy would acquire, it would be most surprising if the agents selling it did not do the same, noted the panel.

Also, the annual statement of benefits gave details of three different types of benefit. The first was described as the policy benefit, that is to say, the benefit payable upon death. It showed the sum insured plus bonuses, the amounts of which were stated. It then showed in dollar terms what it referred to the "investment value". The third benefit was described as a "capital growth bonus", which was also shown as having a dollar value.

There was nothing in the annual statement of benefits that would have alerted a person that the cash value of the policy at the end of 10 years would not be the amount of the premiums paid up to that time.

The panel upheld Mrs A's complaint and the insurer was directed to pay the total amount of all the premiums she paid in respect of the policy less $3500 (or any greater amount already paid to her), plus interest at the rate of 5 per cent a year from March 21, 2002, to the date of payment.