

Submission

to the

Ministry of Business, Innovation and
Employment

on the

Discussion Documents: *Fit for
purpose Financial Services Reform
(Dispute Resolution Paper)*

19 June 2024



About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following eighteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - China Construction Bank
 - Citibank N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank N.A.
 - KB Kookmin Bank Auckland Branch
 - Kiwibank Limited
 - MUFG Bank Ltd
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Contact details

3. If you would like to discuss any aspect of this submission, please contact:

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Introduction

4. This submission sets out NZBA's response to the Ministry of Business, Innovation and Employment (**MBIE**) discussion paper, Effective financial dispute resolution, released on 22 May 2024 (**Dispute Resolution Paper**).
5. NZBA's response to MBIE's two other discussion papers (*Fit for purpose consumer credit legislation* and *Fit for purpose financial services conduct regulation*) is set out in a separate submission.
6. NZBA will also seek to engage with MBIE about all three papers in the coming weeks to provide any further assistance possible to help the Government best achieve the stated objectives of phase two of the financial services reform programme.
7. Please note that we have included content in this submission and in the appended submission template.

Executive Summary

8. NZBA's feedback on this paper is focussed on the Banking Ombudsman Scheme (**BOS**) of which its members are participants. NZBA has not, including given the time available, considered the issues and options identified in the discussion paper in relation to the three other schemes. However, NZBA supports the objective of a well-functioning dispute resolution scheme system across all financial services providers in New Zealand.
9. NZBA's observation is that the discussion paper is in the early stages of development as to what issues exist and what changes, if any, are required. This has meant that parts of the discussion paper are speculative, rather than evidence-based. Where evidence is provided, it is limited and/or high-level survey evidence without specific examination of the individual schemes or underlying issues with them. Given the early stage thinking in the discussion paper, NZBA's current view is that any recommendation to the Minister following consideration of the submissions should not involve any regulatory reform but, at most, further targeted and evidence-based review and consultation.
10. NZBA would be very happy to provide further detail and context to MBIE about internal complaints handling and the operation of the BOS if this is required. In the meantime, preliminary answers to MBIE's submission template have been included as an appendix to this letter. We also set out below wider, overarching points that are relevant to understanding the issues and options raised in the discussion paper (particularly given NZBA's position that the issues and options raised require further targeted and evidence-based review and consultation in the first instance). NZBA suggests this content should be read prior to and alongside review of the appended answers.



NZBA's commitment to effective complaints and dispute resolution

11. NZBA does not agree with the statement, so far as its members are concerned, that "there could be low awareness amongst financial services providers of the value of effective complaints processes and dispute resolution for resolving issues with their customers and identifying ways to improve their service".¹
12. NZBA's members' awareness of, and commitment to, effective complaints processes and dispute resolution, including the BOS, are already evidenced and assured by a number of internal (voluntary) and external (regulatory) frameworks.
 - 12.1. The NZBA's Code of Banking Practice sets out principles of good banking practice that every member bank agrees to follow in their customer relationships.² The Code was prepared in consultation with the BOS, is a requirement of participation in the BOS,³ and sets out in clear detail how and when customers can access the BOS. The Code also provides that each NZBA member should make information about its internal complaints process easily available, including on its website.
 - 12.2. The FMA and RBNZ Bank Conduct and Culture Review in 2018 included a recommendation that "[banks] need to review how they define and record customer complaints, and make it easy for customers to raise concerns".⁴ In response, each NZBA member submitted a workplan outlining its commitment and plans for addressing the regulators' recommendations, including in relation to complaints.⁵ Since that time, further work has continued both at individual banks and at an industry level, including connected with the development of the BOS complaints dashboard. From the BOS reporting now available from that effort, it can be seen that banks are doing an effective job at resolving customer complaints internally. In 2022-2023, the BOS reported that out of 102,000 customer complaints made to banks, only 5,500 required escalation to the BOS (ie approximately 95% of customer complaints were resolved internally by banks).⁶
 - 12.3. Banks are already subject to various applicable laws and regulations in relation to complaints processes and dispute resolution, including requirements to inform customers about their complaints processes and the BOS. These include:
 - 12.3.1. certain provisions of the Credit Contracts and Consumer Finance Act 2003, including:

¹ Discussion paper, paragraph 25.

² See <https://www.nzba.org.nz/wp-content/uploads/2023/12/Code-Of-Banking-Practice-A4-PRINTABLE.pdf>

³ BOS Participation Agreement, clause 6.1, available at: https://assets.bankomb.org.nz/public/Reference-documents/Participation-Agreement-January-2021_2023.pdf

⁴ See Bank Conduct and Culture Report, available at: <https://www.fma.govt.nz/assets/Reports/Bank-Conduct-and-Culture-Review.pdf>

⁵ See NZBA press release dated 13 February 2013, available at: <https://www.nzba.org.nz/2019/02/13/spotlight-on-banking-conduct/>

⁶ See <https://bankomb.org.nz/media-releases/2023-media-releases>.



- 12.3.1.1. s 17, which requires initial disclosure of the information in Schedule 1, which includes at paragraph (ua) – (uc) information about the applicable dispute resolution scheme; and
- 12.3.1.2. s 26B which requires disclosure about the applicable dispute resolution scheme in the event of hardship applications or complaints under the Credit Contracts and Consumer Finance Regulations 2004;
- 12.3.2. s 63(1)(r) of the FSPA, which requires that scheme rules include a provision that scheme members must inform consumers about the scheme. S 63(1)(r) is reflected in the BOS Participation Agreement, at clause 6.1;⁷ and
- 12.3.3. requirements under the FMCA and the FMCR in relation to product disclosure statements and service disclosure statements.
- 12.4. Planned provisions in the COFI regime would add to the existing legal requirements. Specifically:
 - 12.4.1. s 446D(1)(d) of the FMCA (as inserted by s 12 of the COFI Amendment Act), which specifically extends the fair conduct principle to customer complaints; and
 - 12.4.2. s 446H of the FMCA (as inserted by s 12 of the COFI Amendment Act), which requires information about complaints processes to be published on the bank's website and provided to any person who requests the information.

Awareness and accessibility

- 13. While identified as a potential issue by MBIE, low awareness and access to the BOS is not NZBA members' experience.⁸ As above, NZBA members provide information about the BOS to customers at regular stages in the customer relationship, including in the event of a complaint.
- 14. The BOS takes a number of actions to enhance public awareness of its role and activities and, as noted in the discussion paper, MBIE's own New Zealand Consumer Survey 2022 recorded that awareness of the BOS is markedly higher than the other three financial dispute resolution schemes considered by the paper.⁹ The BOS regularly engages in media campaigns (most recently in relation to scams), and with the NZ media and consumer advocacy groups. The BOS website contains a number

⁷ BOS Participation Agreement, available at: https://assets.bankomb.org.nz/public/Reference-documents/Participation-Agreement-January-2021_2023.pdf

⁸ NZBA would welcome discussion with MBIE to understand what awareness and/or accessibility issues have been identified by MBIE in relation to the BOS (if any); and/or the scope for further research into this issue.

⁹ Discussion paper, paragraph 23.



of information sheets about the BOS; it also provides contact information (including a free-of-charge hotline) so that consumers can ask questions.

15. That said, NZBA is open to discussing further with MBIE the options set out in paragraph 50 of the paper. NZBA's preliminary comments are as follows:
 - 15.1. NZBA does not consider that any further regulatory changes are required in relation to communicating complaints processes and dispute resolution schemes to customers. As above, there are a range of existing or upcoming regulatory requirements in this area and NZBA members have also self-regulated themselves in relation to the information that is provided to customers via the Code of Banking Practice.
 - 15.2. Any awareness campaign (especially if it encompasses multiple schemes) needs to be carefully designed by relevant stakeholders to ensure that it genuinely addresses/targets established deficits in consumer awareness and/or understanding of the BOS (and other schemes). NZBA would advocate focusing on whether there are specific awareness and/or accessibility issues faced by vulnerable customers (for example, customers with lower levels of literacy). Any awareness campaign could then be tailored to enhance awareness and/or access for vulnerable customers.
 - 15.3. Any awareness campaign should be designed to take into account previous, current and/or planned awareness campaigns by the schemes themselves, to ensure consistency and coherence.
 - 15.4. Care is required in such campaigns that they do not confuse consumers as to the primary role of financial services providers in resolving customer complaints. That is, consumers should be reminded that internal complaints are a required first step in the dispute resolution process; and that the majority of complaints are resolved at this stage without recourse to a dispute resolution scheme. Indeed, focussing on the distinction between banks and the schemes, and their respective roles in the dispute resolution process, may also be important in any awareness campaign. NZBA members observed that consumers sometimes mistake the BOS to be a consumer advocacy body, like Consumer NZ, rather than an independent dispute resolution body.
 - 15.5. NZBA is not immediately in support of a "single front door" for financial services complaints, as suggested in paragraph 50(d) of the discussion paper.
 - 15.5.1. NZBA's members' experience is that consumers already identify the BOS as the correct scheme for relevant complaints.
 - 15.5.2. The schemes all have existing obligations to ensure that a complaint is referred to the most appropriate scheme.¹⁰

¹⁰ S 67 of the FSPA imposes a duty for schemes to cooperate with other schemes if a complaint involves members of those schemes. This duty has been implemented by each scheme in their respective Terms of Reference; see eg rules 1.4 and 2.6 of the BOS Terms of Reference, available at: https://assets.bankomb.org.nz/public/Reference-documents/Terms-of-reference-1-Jan-2021_2023.pdf



- 15.5.3. It is unclear whether this potential initiative is a replacement of or addition to the current options for complaining to the BOS and other schemes. The latter risks causing confusion and inefficiency without any clear practical benefit.
- 15.5.4. Such an initiative may have the effect of diluting awareness of the BOS.
- 15.5.5. Such an initiative may come with a regulatory burden of requiring banks to change and update their complaints and dispute-related communications to customers which reference the BOS.
- 15.5.6. Such an initiative may impose other compliance costs on NZBA members, eg if members have to engage with an additional third party organisation other than the BOS.
- 15.5.7. NZBA is, however, conscious that there may be broader benefits to NZ Inc from such a proposal and are therefore happy to continue to engage on it.

Oversight and accountability

- 16. NZBA considers that the BOS generally operates effectively and that there is no pressing need for reform in relation to oversight and accountability. In relation to the points raised at paragraph 52 of the MBIE paper, NZBA's preliminary comments are as follows:
 - 16.1. NZBA is generally supportive of improving the consistency (and potentially statutory frequency (eg on an annual basis)) of independent reviews, as suggested in paragraph 52(a) of the discussion paper. NZBA considers that any approach to this issue should be the subject of review and consultation and led by the schemes which have had primary conduct and experience of the independent review process.
 - 16.2. NZBA has not identified any immediate need or proposals for the government setting additional scheme rules in relation to the BOS as referred to in paragraph 52(b) of the discussion paper. However, NZBA is not inherently opposed to potential review and consultation on this issue. In that event, NZBA considers any future review and consultation could address the following factors (although the NZBA notes its expectation that many of these issues may be adequately addressed by the BOS itself, through revisions to its scheme rules).
 - 16.2.1. The effect of the pending implementation (from 18 July 2024) of the \$500,000 compensation limit.¹¹ For the BOS, this represents a substantial increase in its existing jurisdiction, from \$350,000. It is possible that this increase in the compensation limit could result in the BOS dealing with more complex complaints and encountering

¹¹ Clause 2, Schedule 2, Financial Service Providers (Rules for Approved Dispute Resolution Schemes) Regulations 2024 ("**FSP ADRS Regulations**").



new issues not addressed by the existing scheme rules (including the potential need for increased rigour regarding evidential requirements versus discretion; and the limited recourse available to scheme participants following a BOS determination). This in turn could require review of the compensation limit and/or associated scheme rules.

- 16.2.2. The effect of the pending implementation (from 18 July 2024) of a 2 month deadline for financial service providers to provide a final decision to any complaint,¹² and whether it allows sufficient time for effective resolution by internal complaints processes or risks increasing pressures on the BOS.
 - 16.2.3. The need for consideration of timeframes to be imposed on schemes or, at least, reporting on the timeliness. Under the new regulations, the BOS will not be subject to any timeframes and the current turnaround time for the BOS is substantially longer than the 2 months being imposed on banks. This means that customers may still be required to wait a significant time for resolution of their complaint (where escalated to the BOS), which could be detrimental to customers' overall satisfaction with a complaints process and their sense of fairness in relation to it. If there are perceived delays in a scheme process, this has potential knock-on reputational impacts for the financial service provider. However, NZBA is concerned that any timeframes for compliance with scheme processes should remain realistic and cost-effective.
 - 16.2.4. The effect of any reforms to the Credit Contracts and Consumer Finance Act 2003 making it more principles based and the introduction of the COFI regime on the types of complaints referred to schemes and the criteria for dealing with them.¹³ Again, it is possible that certain potential reforms could result in the BOS dealing with more complex complaints and encountering new issues not addressed by the existing scheme rules (including the potential need for increased rigour regarding evidential requirements versus discretion).
 - 16.2.5. The operation of, and need for consistency in relation to, the application of "industry practice". This would likely assist both consumers and scheme members.
- 16.3. NZBA does not consider that further government regulatory intervention is required in relation to the independent governance of the BOS as discussed at paragraph 52(c) of the paper. The existing external and internal governance frameworks applicable to the BOS are effective. In this regard, the 2019 BOS Independent Review considered accountability in detail, and did not indicate any significant concerns about accountability (beyond specific

¹² Clause 1, Schedule 2, FSP ADRS Regulations.

¹³ In relation to the COFI regime, note that this may be, at least, partly addressed if private rights of action are removed from the COFI regime. See NZBA's separate submission on the Conduct discussion paper, NZBA seeks that these private rights of action are removed, at least, at the outset of the regime.



recommendations to enhance investigation and reporting on systemic (industry-wide) issues.¹⁴ Accordingly, increased/enhanced reviews (as envisaged under paragraph 52(a) of the discussion paper) should be sufficient. Further, NZBA members support retaining the benefits of industry expertise that can be gained from the current governance structures.

- 16.4. As for paragraph 52(d) of the paper, NZBA members do not consider that additional regulation is required in relation to further data collection or reporting for the BOS. The BOS already provides a detailed annual report, and quarterly updates via its complaints dashboard,¹⁵ on a range of metrics (including, for the avoidance of doubt, metrics relevant to the broad principles identified in the GCDR/MBIE best practice standards referenced in the discussion paper).¹⁶ NZBA does not perceive a need for regulatory intervention, therefore, requiring schemes to take the step of collecting data on key metrics and reporting on them. That said, NZBA members remain supportive of the BOS continuing to evolve and enhance its complaints analysis and insights through its dashboard reporting.

¹⁴ See the 2019 Independent Review of the Banking Ombudsman Scheme, page 14, available at: [Independent-review-Banking-Ombudsman-Scheme-2019.pdf](#) (bankomb.org.nz)

¹⁵ See <https://bankomb.org.nz/complaints-dashboard>

¹⁶ As referenced at paragraph 52(d) of the discussion paper and available at: <https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/best-practice-guidance-on-dispute-resolution/assessing-a-dispute-resolution-scheme>



Appendix A – Completed Dispute Resolution Submission Template

Submission template

Submission on discussion document: *Effective financial dispute resolution*

Your name and organisation

| | |
|-------------------------------------|--|
| Name | New Zealand Banking Association |
| Organisation (if applicable) | New Zealand Banking Association |
| Contact details | Antony Buick-Constable Deputy Chief Executive & General Counsel antony.buick-constable@nzba.org.nz |

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

The Privacy Act 2020 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

MBIE intends to upload submissions received to MBIE's website at www.mbie.govt.nz. If you do not want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE's website because... [Insert text]

Please check if your submission contains confidential information:

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because... [Insert text]



Responses to discussion document questions

Issue 1: Consumer awareness of and access to dispute resolution

1

Do you think there is a problem with low consumer awareness and access to dispute resolution?

NZBA considers that there are reasonable levels of consumer awareness and access in relation to its relevant dispute resolution scheme, the Banking Ombudsman Service (the "BOS").

2

Do you think the recent increase in the volume of disputes indicates better awareness and access to the schemes?

NZBA considers that the recent increase in the volume of disputes referred to the BOS is largely related to an accelerating increase in the number and sophistication of consumer scams.

3

What are the barriers for consumers in accessing financial service providers' internal complaints processes?

NZBA has not identified any specific barriers in relation to banks' internal complaints processes. NZBA members consider there are no barriers to access. Indeed, NZBA members and the BOS maintain high levels of publicity and transparency regarding banks' internal complaints processes. This is evidenced by the high number of complaints received by banks internal complaints processes (102,000 in the 2022-2023 BOS reporting period).

4

What are the barriers for consumers in accessing dispute resolution schemes?

NZBA has not identified any specific barriers to access in relation to the BOS. NZBA members consider there are low barriers to access.

5

Do you have any specific examples or case studies of situations where consumers have experienced issues accessing a financial dispute resolution scheme?

Not answered.

Issue 2: Enhancing scheme effectiveness through improved oversight and accountability

6

Do you think that current oversight and accountability mechanisms are sufficient to ensure schemes' effectiveness? Why/why not?

NZBA considers that these mechanisms are sufficient, although there is scope for improving the consistency (and statutory frequency) of independent reviews across schemes.

7

Do you think that the schemes are as effective as they could be? Why/why not?



NZBA considers the BOS is already an effective scheme. However, NZBA supports the BOS identifying and implementing improvements where possible. In this regard, NZBA considers that the BOS's existing approach to reporting and independent reviews is sufficient to ensure continual review and improvement of the BOS.

8 *Do you agree with these criteria for assessing the options? Why/why not?*

NZBA agrees with the broad criteria set out at paragraphs 33 and 34 of the discussion paper. Save that it notes that scheme dispute resolution services are free and, therefore, it does not agree with the reference to the idea of providers passing on costs to consumers at paragraph 34(d).

Status quo: Retain existing model and monitor the impact of aligning the schemes' rules

9 *Do you think that the new regulations will be sufficient to achieve the objectives set out above?*

NZBA considers that these objectives are already being achieved in relation to the BOS. NZBA considers that further time post-implementation of the new regulations will be needed to properly understand their impact on the effectiveness/operation of the BOS (and other schemes).

Option to address issue 1: Supporting consumer access and awareness of schemes

10 *Which of the options we have described above would be most effective to support consumers to resolve issues with their financial service provider?*

Given NZBA's view that the BOS has good levels of awareness and access, NZBA is presently supportive of option (c) (an awareness campaign) only, and subject to appropriate limits namely:

- ensuring that it is sufficiently targeted;
- ensuring it addresses awareness and access issues that are identified based on data;
- ensuring that it takes into account the view of all relevant stakeholders in the relevant scheme(s) to ensure messaging is consistent and does not undercut other existing or planned awareness initiatives;
- ensuring that it does not confuse customers; and
- ensuring that it is cost-effective.

However, NZBA is open to discussing and exploring the other options with MBIE further.

11 *What are the likely costs of implementing these options?*

NZBA is unable to provide specific indications of likely costs at this stage. However, NZBA is concerned that any options that are considered should be cost-effective and proportionate.



12 *Should these options be led by government, or the schemes themselves?*

NZBA considers that any options/reforms should be led by the schemes themselves, due to their scheme- and industry-specific expertise and ongoing engagement with scheme participants. NZBA considers any reforms to the BOS will be incremental and additive to the BOS's existing self-governance efforts. The BOS will be best placed to ensure that any reforms are appropriate and joined up with existing efforts to reform and enhance the BOS.

13 *Are there any other approaches that would improve consumer access to and awareness of dispute resolution options?*

No – therefore not answered.

Option to address issue 2: Enhancing scheme effectiveness through improved oversight and accountability

14 *Do you think that there is a need for dispute resolution schemes to be more accountable?*

NZBA members consider the existing internal (ie within the BOS) and external (ie regulatory) frameworks are effective in ensuring that the BOS is accountable.

15 *Do you think there are issues with the performance or effectiveness of the schemes?*

No.

16 *Do you think there should be consistency in how the schemes carry out independent reviews? What would be the best approach for achieving this consistency?*

NZBA is supportive of improving the consistency of independent reviews. NZBA considers that the best approach for achieving consistency will require further review and consultation in due course. However, NZBA believes that any approach should be led by the schemes / industry; and that the BOS approach to independent reviews is currently effective.

17 *Do you think government should set further scheme rules? If yes, what areas of the scheme rules should be set by government?*

NZBA members have not identified any immediate need or proposals for the government setting additional scheme rules in relation to the BOS. In NZBA members' experience, the BOS is already an effective scheme. However, NZBA members are not inherently opposed to potential review and consultation on this issue. In that event, NZBA members consider any future review and consultation could address:

- the impact of the new regulations;
- whether the BOS (and other schemes) should be subject to timeframes for providing final decisions and/or, at least, reporting on these aspects; and/or



| | |
|----------------------|--|
| | <ul style="list-style-type: none">• whether the BOS (and other schemes) should be subject to specific rules of evidence and/or limits on discretion. <p>Having said that, NZBA expects these issues may be adequately addressed – insofar as they relate to the BOS – by the BOS itself as part of its ongoing review processes.</p> |
| 18 | <p><i>Do you think it is necessary for government to make changes to ensure effective and impartial governance of the schemes? If yes, what changes would best meet this aim?</i></p> |
| | <p>No – NZBA considers that the BOS does an effective job, through existing governance measures, at ensuring it is effective and independent.</p> |
| 19 | <p><i>Do you think the schemes should have to report against performance targets or standards? If yes, how should these standards be reported and what metrics should be used?</i></p> |
| | <p>No – NZBA considers that the BOS's existing reporting (which is extensive) is sufficient to ensure transparency and accountability.</p> |
| 20 | <p><i>Are there any risks or unintended consequences associated with the options we are considering?</i></p> |
| | <p>NZBA would caution that the options MBIE is considering require further evidence-based review and discussion before any decision around implementation. Without further detailed review and consideration, NZBA's concern in relation to the BOS is that the options would risk unnecessarily complicating the operation of what is already an effective scheme, without clearly defined benefits, and at a cost to BOS participants.</p> |
| 21 | <p><i>Will any of these proposals result in significant additional costs for the schemes, scheme participants and/or consumers? If yes, please describe the magnitude of these costs.</i></p> |
| | <p>NZBA considers this question (and the wider consequences of the options) cannot be properly assessed without further evidence-based review and consultation.</p> |
| 22 | <p><i>Are there any other ways to improve schemes' accountability and effectiveness?</i></p> |
| | <p>Not answered.</p> |
| Other options | |
| 23 | <p><i>Do you agree that the impact of regulations to align scheme rules, along with any other improvements proposed in this document, should be assessed before considering changes to the current scheme model? Why/why not?</i></p> |
| | <p>Yes – for the general reasons set out above.</p> |
| 24 | <p><i>Are there any other areas and options for change that we should consider that have not been addressed in this discussion document?</i></p> |



Not answered.

Other comments