

FICS Annual Review

2004

*Resolving Financial
Industry Complaints*



FINANCIAL INDUSTRY
COMPLAINTS SERVICE LIMITED

ABN 64 068 901 904



Alison Maynard
Chief Executive

It is with much pleasure and in accordance with the Rules of the Financial Industry Complaints Service Limited that on behalf of the Board, Management and Staff of FICS I present the Annual Review for the period ending the 31st December 2004.

This year we have divided the Annual Review into three sections. The first section is about who we are and what we do, including details on the team at FICS and featuring interviews with four of our team members. The second part of the Review concerns what we have achieved this year, with reports from myself, the Chair of the Board, the Panel Chair and information relating to other FICS activities such as our education programme. The third section is simply the statistical information relating to the complaints received and processed at FICS during 2004.

I hope you find our Annual Review interesting and informative and would welcome any comments which should be forwarded to our National Relations Manager, Trevor Slater who can be contacted on (03) 8623 2000 or email tslater@fics.asn.au.

A handwritten signature in cursive script that reads "Alison Maynard".

Alison Maynard
Chief Executive

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FINANCIAL INDUSTRY
COMPLAINTS SERVICE LIMITED

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Who we are and what we do

The Team at FICS

“The real power of the team begins to work when everyone pools their individual resources and uses them to achieve the best outcome for the customer and the organisation”.

Michele Nash – Trainer, Facilitator and NLP Practitioner

As stated in the FICS 2003 Annual Review “an organisation is only as good as its people”.

As is evident from the information on the following pages, FICS is fortunate to have a Team that not only has a vast amount of experience and knowledge in the financial industry and the resolution of complaints but is also highly motivated and dedicated to the principles and practices of the FICS process.



Back Row L – R: Maureen Murrill; Michele Foulds; Michael Ridgway; Michael Arnold; Alan Smith; Dennis Cooper; Robert Dane; Trevor Slater; Fran Bolger; Ada Bombardieri; Judith Floody; Michael Croyle; Nick Crowhurst; Amy Freestone; Michael D’Argaville; Brian Carpenter and Tania Martin.

Front Row L – R: Claire Axelson; Dianne Comtesse; Alycia James; Denny Meadows; Maria Romeo; Louise Sciacca; Alison Maynard; Lorraine Russell-Haddon; Nichola Brown and Jacinta Stute.

Absent: Helen Brown; Karen Driessen; Kevin Haddon; Andrea Joynes; Sophie McSweeney; Ian Pugh; Phillip Robinson; Averil Summers; Ben Walker

Who we are and what we do

About FICS

“Providing an independent service resolving disputes between Members and Consumers fairly and efficiently”.

The Mission Statement of FICS

The Financial Industry Complaints Service (FICS) is approved by the Australian Securities and Investments Commission (ASIC) under ASIC Policy Statement 139 which sets out the requirements for an approved external dispute resolution (EDR) scheme. The basis of PS139 is that any such EDR scheme must be accessible, independent, fair, accountable, efficient and effective. FICS fulfils the requirements of PS139 and in doing so, is able to offer a range of services to help consumers and providers of financial services resolve their complaints.

FICS is an alternative to the courts and provides resolution of complaints against the criteria of the relevant law, good industry practice, relevant industry codes and what is fair in all the circumstances. The process is informal and inquisitorial rather than adversarial. It is a national service and is free to consumers.

ASIC issue Australian Financial Services Licences (AFSL) to providers of financial services. One of the conditions of an AFSL is that the licence holder must be a member of an approved EDR scheme such as FICS, if it is dealing with retail clients.

At the end of 2004 there were in excess of 2,500 providers of financial services which have nominated FICS as their EDR scheme. These are referred to as “Members” of FICS.

The FICS process aims, in the first instance, to resolve complaints by mutual agreement between the parties. If this is not possible, the matter can be referred to the Panel or the Adjudicator who have the ability to make a formal determination which is binding on the Member.

A Constitution and a set of Rules govern the operations of FICS. The Constitution sets out the objectives of the company and governs the operations of the company. The Rules, on the other hand, provide the detail on how FICS will deal with complaints. A copy of the Constitution and Rules are available upon request or on the FICS website www.fics.asn.au.

Who we are and what we do

The Resolution of Complaints

When a complaint is received an initial assessment takes place to assess whether the complaint falls within the FICS Rules. If so, it is then assigned to a Case Manager who provides the FICS Member with the complaint and any material supplied by the complainant and requests a response.

When the response is received the matter is assessed by the Case Manager and a suitable course of action planned with a view to providing the best opportunity for resolution of the complaint. Each complaint is treated on its own merits and the way a complaint is treated at FICS depends on the individual circumstances of the matter.

The Case Manager may use a number of different methods to resolve the complaint including, shuttle negotiation (where the Case Manager speaks or writes individually to each party to generate options for resolution), the non-binding expression of an opinion as to the merits of each party's case (only the Panel or the Adjudicator can make formal binding determinations). The Case Manager may also refer the complaint to the FICS conciliation team for consideration that a formal Conciliation Conference be conducted or directly to the Panel or the Adjudicator (where there is clearly no further opportunity for negotiation between the parties).

FICS commenced conducting formal conciliation in July 2004 after a pilot programme.

Conciliation helps resolve disputes by sharing information, identifying issues in dispute and in common, discussing them and generating options for resolution.

A Conciliation Conference is a process in which the complainant and Member come together, usually via a telephone link-up, and with the assistance of the FICS conciliator generate options to resolve the complaint.

It is not a process that attempts to determine who is right and who is wrong. It is a recognised and successful method of resolving complaints by meeting the needs of all parties.

The FICS Conciliation Conference process has been specifically designed for the users of the FICS process. The conferences are undertaken on a strictly confidential basis and are conducted by qualified and experienced FICS conciliators.

The Members have embraced the Conciliation Conference process and have cooperated and provided valuable feedback in its development. Since its inception both complainants and Members have indicated very high levels of satisfaction when participating in Conciliation Conferences.

Although Case Managers and Conciliators make every attempt to resolve complaints by mutual agreement, at times this cannot be achieved. In such matters the case is referred to the Panel, an Adjudicator if the case is non-complex and its value is under \$30,000, for a formal determination.

Once a complaint enters the process for determination the file passes to a Panel Case Manager. The complainant and the Member are provided with a case summary setting out FICS' understanding of the issues in dispute, and what arguments are being relied upon by each party in support of their case. All documents received by FICS are provided to both parties. At this stage both parties are provided with a list of these documents to ensure a complete exchange of all material on the file has taken place.

The complainant and Member are invited to submit comments in response to the case summary, and to respond to each other's comments. All parties have the opportunity to address the issues and evidence which will be considered by the Panel or Adjudicator.

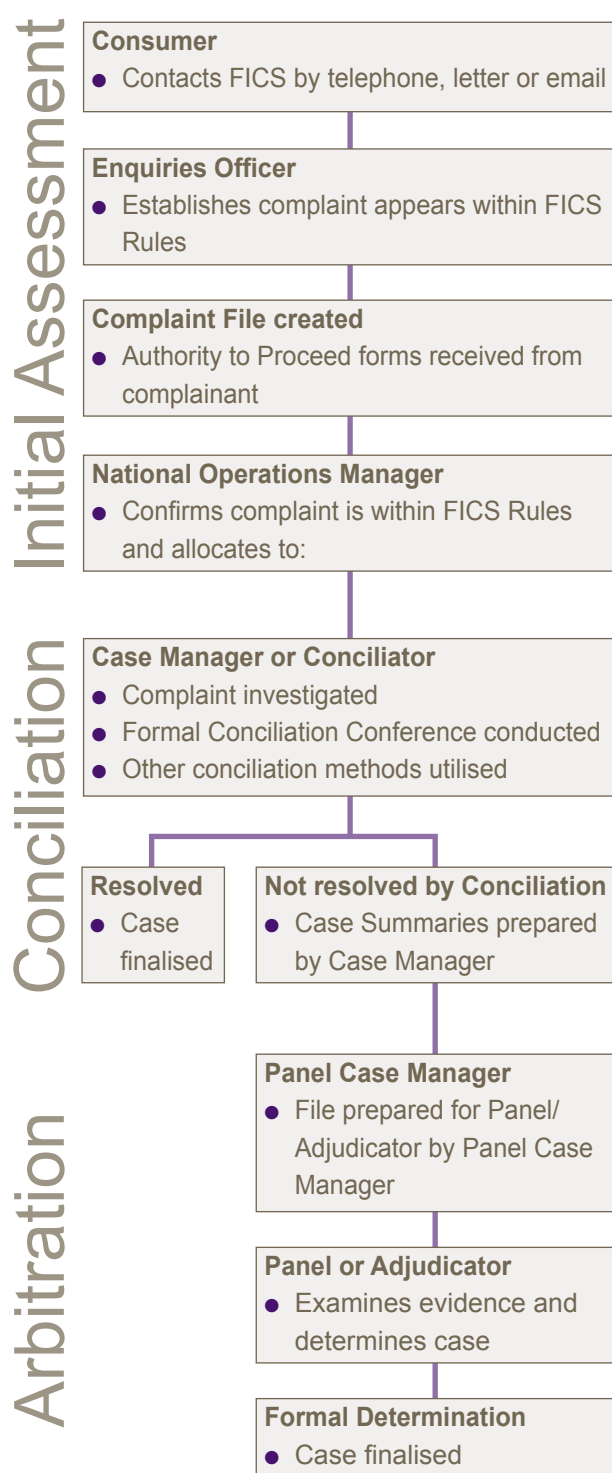
When a complaint is referred a formal determination is decided upon the contents of the file, including all material provided by the complainant and the Member. The Panel rarely conducts Panel hearings with the parties present. Lawyers only appear in some exceptional circumstances.

Who we are and what we do

The Panel, which is made up of an industry representative, a consumer representative and an independent Chair, makes a written determination including reasons, which is binding on the Member but not binding on the complainant. The same process is followed for matters decided by the Adjudicator who sits alone.

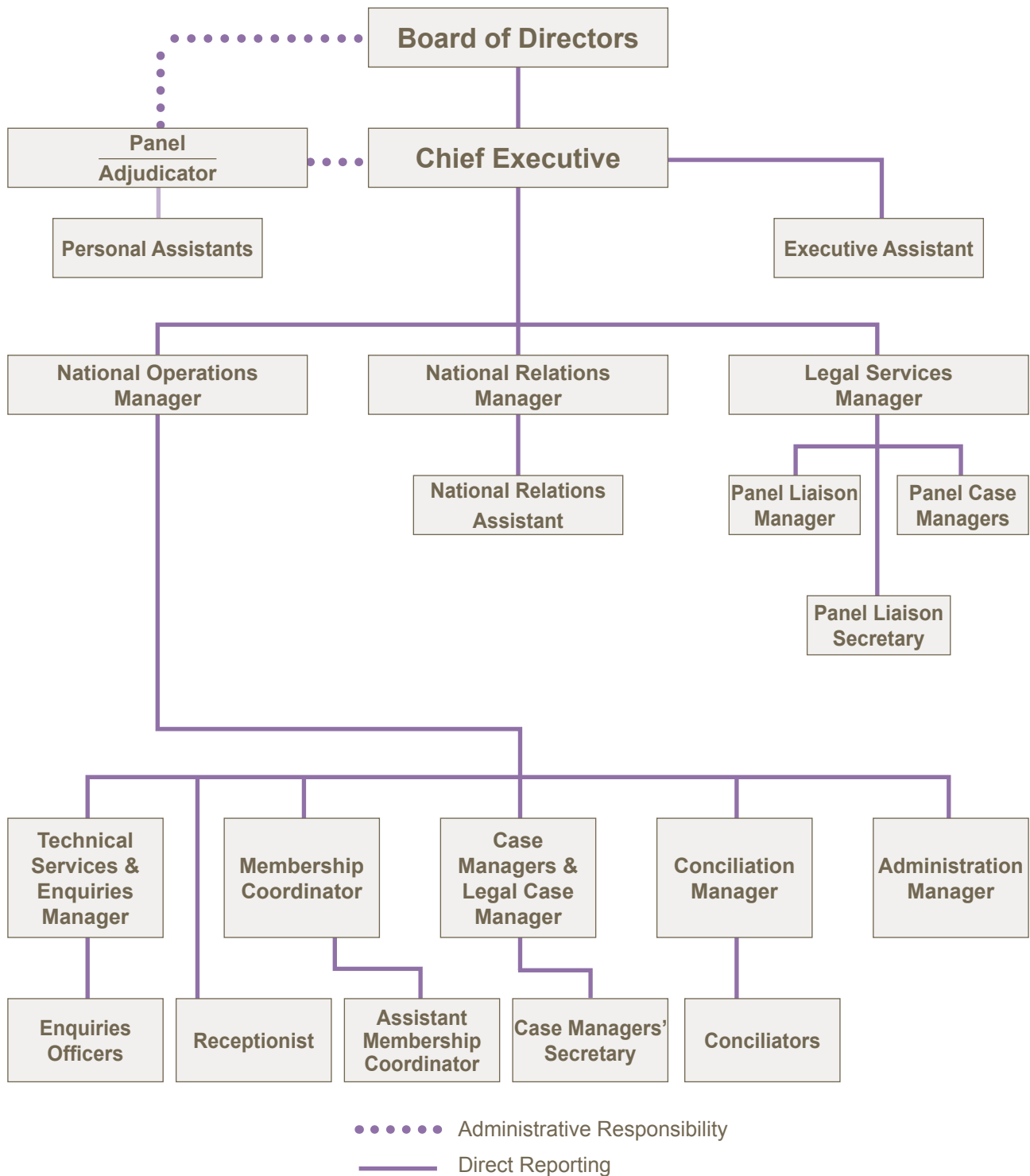
Flow charts showing the complaint process (on this page) and the conciliation process (on page 34) are included in this Review.

Complaints Flow Chart



Who we are and what we do

Organisation Chart



Who we are and what we do

Chief Executive

Alison Maynard has been the FICS Chief Executive since January 2001. Prior to this she was the National Operations Manager at Insurance Ombudsman Service Limited. She has also worked as a Director of the SIO Consumer Appeals Centre, Supervisor of Clinical Training at Leo Cussen Institute (Solicitor Training) and as a solicitor at the Coburg Legal Centre.

Alison holds a Bachelor of Jurisprudence and a Bachelor of Law from Monash University. She was admitted to legal practice in April 1982.

National Operations Manager

Denny Meadows has been National Operations Manager since October 2002. He has over 20 years experience as a lawyer. Over the 15 years prior to joining FICS he was a member of a number of different Government tribunals – the Social Securities Appeals Tribunal, the Mental Health Review Board, the Veterans Review Board and chaired the Victorian Legal Aid Panel of Independent Reviewers.

Denny has also worked in private practice as both a solicitor and a barrister and in Government positions, including service as a Legal Officer with the Ministry of Consumer Affairs.

Legal Services Manager

Mike D'Argaville, who holds the qualifications of B.A. Hons, LL.B, started at FICS in October 2002 as a Panel Case Manager, and became Legal Services Manager in August 2003. Before working for FICS, he was a Case Manager and Senior Case Manager at Insurance Ombudsman Service Limited, a legal research officer and tribunal member for the Social Security Appeals Tribunal, and a solicitor.

National Relations Manager

Trevor Slater commenced with FICS in November 2001 as a Case Manager. He was appointed to his current role in September 2003. Before joining FICS he was the Negotiations Manager for AMP Life Ltd, which involved the resolution of high level complaints. Trevor is a qualified mediator and negotiator and holds a Graduate Diploma in Conflict Resolution from La Trobe University. He is also a Senior Associate of the Australian and New Zealand Institute of Insurance and Finance.

Membership Coordinator

Lorraine Russell-Haddon has been the Membership Coordinator for FICS since June 2000. She has performed various roles including stenographer with Lumley Life, Secretary/Personal Assistant to National Marketing Managers of Adler Triumph and CSR Limited, and lastly before joining FICS, a Risk Control Liaison Officer for Myer Melbourne for eight years.

Legal Case Manager

Claire Axelson started as Legal Case Manager with FICS in May 2004. Claire has a B.A. Hons, LL.B from Monash University and was admitted to practice in early 2002. Prior to joining FICS she worked as a solicitor with Freehills Lawyers, where she developed strong dispute resolution skills and experience.

Who we are and what we do

Case Managers

Nichola Brown, who is a qualified mediator, has been employed at FICS since mid 2003 as a Case Manager. Prior to FICS she worked for AMP in various roles including the Complaints Management Team, dealing predominantly in dispute resolution and complaint analysis. She has extensive experience in complaint handling, negotiation and mediation and vast knowledge of the financial services industry.

Dennis Cooper has been with FICS since its very early days, when it was initially established by the life insurance industry. Prior to this he worked for many years for the AMP Society in customer service management. He has completed formal mediation training and qualified as a Fellow of the Australian and New Zealand Institute of Insurance and Finance.

Andrea Joynes worked in the stockbroking industry for 11 years, and worked as a stockbroker for the last eight years. She has a Diploma in Financial Markets, Australian Securities Institute of Australia (ASIA) and joined FICS in mid 2002. Since that time Andrea has completed formal training in mediation and negotiation.

Maureen Murrill joined FICS as a part time Case Manager in September 2002. Maureen's background includes experience in stockbroking and as a business journalist/editor with national newspapers and magazines. As such she has extensive knowledge of the current and historical financial sector, in particular financial planning and stockbroking. She is also a qualified mediator and is an associate of the ASIA.

Phillip Robinson commenced at FICS in April 2003. He is a Solicitor (LL.B) and has a BA majoring in History. Both were obtained at the University of Otago, NZ. He has also completed a Graduate Certificate in Financial Planning through ASIA. Phillip has experience in a variety of legal areas, including administrative law and financial services law, as well as investigating and resolving complex complaints, as an advocate, company representative and through working for an independent authority.

Alan Smith has an extensive knowledge of the financial services industry having been with FICS since it was initially established by the life insurance industry. Prior to this he was in the life insurance industry for over 30 years, working in the areas of customer service management, superannuation, trusts, underwriting and claims.

Panel Liaison Manager

Jacinta Stute brings to the role 21 years experience in the legal industry. She was a law clerk at Galbally & O'Bryan, Solicitors, from 1983 to 1995, a barristers' clerk for A J Dever Pty Ltd between 1995 and 2000 and a paralegal with Clayton Utz, Lawyers, from 2001 to 2004. Her extensive experience in litigation dispute resolution acquired in all jurisdictions complement her current role in alternative dispute resolution.

Panel Case Managers

Fran Bolger was admitted to practice as a lawyer in 2003. She has the qualifications BA, Dip Ed., Grad Dip Hum, LL.B. She undertook Articles at Deacons and had two years experience in commercial law before joining FICS. Fran also has experience in the community legal service sector, volunteering at West Heidelberg Community Legal Service during her studies. Fran was initially a secondary teacher then worked in programme management and marketing in the tertiary education sector for 11 years before embarking on her legal career.

Ada Bombardieri, who has the qualifications of B.Comm., LL.B, M. Corp.Law was admitted to practice in 1989 and worked as a solicitor until 2001 when she joined Insurance Ombudsman Service Limited as a Case Manager. In August 2003 she joined FICS as a Panel Case Manager. Ada brings to FICS a vast array of skills and knowledge in the fields of commercial law and external dispute resolution schemes.

Who we are and what we do

Nicolas Crowhurst commenced with FICS in January 2005. After gaining a Joint Honours Law and Management Science degree (LL.B / BA Hons) at Keele University in the UK, he completed his professional studies for the English Bar in 2000 and became a member of Grey's Inn, London. After working in-house at the United Bank of Switzerland, he came to Australia in 2002. Working mainly in the field of large scale litigation and arbitration, Nick also spent nine months negotiating and drafting contracts for ANZ's national accredited group of training providers.

Ian Pugh was admitted to legal practice in 2000. He has a Bachelor of Arts, Bachelor of Laws, Graduate Diploma of Criminology and Graduate Diploma of Education. Work experience includes employment at the Australian Competition and Consumer Commission, State Revenue Office and private legal practice. Ian brings to FICS legal knowledge gained in the regulatory environment.

Sophie McSweeney started with in FICS April 2004. She has an Art Law degree from the University of Melbourne. She worked as a commercial litigator at Arnold Bloch Leibler and then was an Associate to Justice Julie Dodds-Streton in the Supreme Court of Victoria.

Conciliation Manager

Michael Ridgway previously worked with the Energy and Water Ombudsman Victoria (EWOV) for five years as the Manager Conciliation, and as a Conciliator. Michael also worked with the Australian Securities and Investments Commission (ASIC) in its Public and Commercial Services Directorate, where he was responsible for assessing and investigating complaints involving corporate misconduct and breaches of corporations and financial services laws and regulations. Prior to working with the EWOV, Michael completed an Arts/Law degree at the University of Melbourne.

Conciliators

Dianne Comtesse joined FICS in May 2004. Prior to being appointed as a Conciliator with FICS, she previously worked at the Superannuation Complaints Tribunal (SCT) as a conciliator and case officer for three years. Her previous working background is in Local Government handling contentious planning disputes and waste management issues and in the Travel Industry for 15 years in various positions including handling complaints by both corporate and holiday clients. Dianne has qualifications in mediation and negotiation, travel management and workplace training and assessment.

Alycia James joined FICS as a member of the conciliation team in October 2003. Prior to this she was a conciliator with the EWOV. Her other employment background is in the Financial Counselling Welfare and Youth sectors. Alycia has a Diploma in Community Services – (Welfare), Diploma in Community Services – (Financial Counselling) and is qualified in workplace training and assessment. Since joining FICS she has qualified as a mediator.

Technical Services and Enquiries Manager

Robert Dane commenced with FICS in mid 2003 as the Enquiries Manager. In early 2004 he also took on the role of Technical Services Manager. Robert's background is in the technical area of IT and before joining FICS he was involved with the EFT industry.

Who we are and what we do

Enquiries Officers

Brian Carpenter commenced with FICS in May 2004. His work has mainly been in the customer service/client liaison field, with experience in banking, finance, insurance and other related industries. He holds a Bachelor of Arts in Media Studies from RMIT and is Tier 2 compliant under the FSRA.

Judith Floody commenced with FICS in March 2004. She has been in administration for eight years and has also performed roles as personal assistant, receptionist, project coordinator and social worker. She holds a Bachelor of Arts in Sociology & Law from La Trobe University and a Bachelor of Social Work from Melbourne University.

Administration Officer

Ben Walker started with FDICS in May 2005 as Administration Manager. His responsibilities include assisting senior manager with administrative tasks and developing FICS HR capabilities. He has experience as an HR adviser in a diverse range of sectors including Defence, Victoria's Department of Treasury & Finance, an employer association and most recently for World Vision Australia. Ben has a BA (Hons) and a Graduate Diploma in HR.

Support Staff

Helen Brown joined FICS in January 2005 as National Relations Assistant. She holds a BA in Media & Politics has completed studies in marketing and writing and is currently studying for a Graduate Diploma in Public Relations. Helen has previously worked as a Communications Officer, Marketing Assistant and as a Personal Assistant/Office Manager.

Karen Driessen commenced with FICS May 2005 as receptionist. Her working background has been customer service and/or reception related with over 10 years experience in a variety of small and large companies, associations and organisations including Telstra – Communications Department, State Emergency Service Head Office and most recently Australian Physiotherapy Association Head Office.

Michele Foulds is the Personal Assistant to the National Panel Chair. She has worked as a personal assistant to senior management in various industries, the most recent experience being in the insurance industry.

Amy Freestone joined the FICS team in December 2004. After eight years in management roles in the hospitality industry she made a career change and moved into the administrative field in March 2004. Amy is the Case Manager's Secretary.

Kevin Haddon has been assisting the Membership Coordinator since October 2003. Prior to this Kevin worked in the oil industry for over 19 years as a Wholesale Accountant and as a Territory Manager for eight years.

Tania Martin joined FICS in May 2004 as Receptionist. She has a tourism and hospitality background and has seven years experience in reception and office administration. She is now the Panel Liaison Secretary.

Maria Romeo joined FICS as an Executive Assistant. As well as providing administrative support to the Chief Executive, she coordinates many of the FICS events, such as board meetings and liaison meetings. Maria has over 18 years experience in the administrative/assistant field.

Averil Summers commenced with FICS in February 1994 as a secretary providing support to the Case Managers and Enquiries Officers. She was instrumental in the creation of the FICS Membership area, before leaving on maternity leave. Upon return she provided support to the Panel Liaison Officer and National Relations Manager. Averil now supports the Panel team.

Who we are and what we do



Interview

Dennis Cooper – Case Manager

What do you enjoy about working at FICS?

Using my expertise to try and resolve complaints. My long association with the financial industry together with a strong belief that there is always another side to every complaint enables me to identify with both parties, breakdown distrust and work towards an objective and satisfactory conclusion.

What do you find the most frustrating?

That Members see us as consumer advocates and complainants see us as not independent and therefore always willing to defend the opinion of Members. I have always said that provided we get about the same number of accusations from Members and consumers we are probably doing our job effectively.

In your opinion what are the strengths of the FICS process?

It removes a power imbalance and can provide a quick and low-cost alternative to the legal processes and the courts.

At times you must speak to some very angry people. Can you tell me about the worst you have had and how did you deal with them?

In a one-off case I once had a very agitated and aggressive bikie who was dressed out in full gear, huge in stature and ready to thump someone. I mainly listened for the first half hour, made a quick call to the Member contact officer, who satisfied him that his concerns had been clearly understood. It was incredible how his attitude changed once he knew that I was trying to help.

You have been involved with FICS for some time and have seen it evolve into the organisation it is today. In your view what are the best changes that have occurred in the FICS process?

I believe the best changes have been in the speeding up of the process, largely due to more resources, and the implementation of full document exchange between the parties.

Complaint handlers have quite a high burn-out rate. You have been in this field for a number of years how can people dealing with complaints avoid the burn-out factor?

I have been handling complaints now for over 13 years and still enjoy the challenge. To avoid the burn-out factor you cannot afford to take on emotionally the complainant's concerns. Remember that the dispute should always remain between the parties and do not allow yourself to become embroiled in the dispute.

What do you think the future holds for FICS?

I believe FICS plays a vital role within the financial system and providing Members continue to respect and uphold the values of FICS, we can continue to improve our important contribution to the industry and its consumers.

Who we are and what we do



Interview

Judith Floody – Enquiries Officer

What do you enjoy about working at FICS?

That FICS helps people in the community and gives consumers the right to have their problem or issue heard, investigated, and a decision made, if not negotiated prior. This helping of the general community allows me to go home at nights knowing that I have not only helped individual people, but their families, the industry and community at large.

What do you find the most frustrating?

I do not find any aspects frustrating, but challenging, such as callers who do not listen, are extremely aggressive or do not understand the process even after extensive correspondence and many telephone conversations. These challenges make the day interesting and additionally not knowing what to expect, I think it is a great facet of the job.

In your opinion what are the strengths of the FICS process?

Some of the strengths are having a real person to discuss the issues with and provide the relevant information.

Providing referral guidance to the appropriate scheme, if it is not a matter for FICS to deal with.

Explanation of the process via the phone and supported through the complaint information kit, allows realistic expectations to be set rather than unrealistic expectations for an often already upset client.

When your work level is high and everybody wants their case resolved/finalised immediately it must be quite stressful. What do you do to cope with the demands of working at FICS?

Laugh. There is nothing like a good laugh to alleviate any stress or pressure. The Enquiries team is renowned for having a bit of a joke.

Enquiry staff particularly those on the telephone have a high turnover rate. Why do you think this is and how can it be prevented?

Enquiries is a demanding position. Not only are you dealing with very angry or distressed clients who can be quite demanding but also investigation work.

You have to keep motivated on the positive results that we can reach, i.e. settling a dispute without the need for FICS to be involved, satisfying the complainant and Member.

In recent times there have been a number of changes at FICS. In your view what are the best changes that have occurred to the FICS process?

Clearer initial letters, Statements of Authority and development of a check list to go out as part of the initial complaint kit. This gives the complainant a clearer understanding of the process they are embarking on.

Who we are and what we do

The FICS Panel National Panel Chair

Michael Arnold has extensive private legal practice experience and was formerly Deputy President and Judge of the Accident Compensation Tribunal. More recently he has held the positions of Referee, Alternate Panel Chair and Alternate Adjudicator with The Insurance Ombudsman Service. He is also a part-time legal member of the Medical Practitioners Board.

Michael's qualifications include Bachelor of Laws and Diploma of Public Policy – Public Sector Management. He has also undertaken studies in Japanese Law, Minerals Law, Industrial Relations Law and Mediation.

Panel Chair

Michael Croyle completed his LL.B and his Master of Laws and Letters at Melbourne University. He was admitted to practice as a Barrister and Solicitor Supreme Court of Victoria in March 1968 and the Roll of Counsel, Victorian Bar, in August 1972. He has been a Judge of the Accident Compensation Tribunal in Victoria and is accredited in mediation and has also performed the duties of an Alternate Referee at IOS.

Alternate Panel Chairs

Ron Eggleston is a retired Magistrate.

Murray Gerkens is currently a Legal Practitioner, practising as a consultant to FCG Legal Pty Ltd in areas of corporate, commercial, criminal, administrative and immigration law. Murray was formerly a Magistrate of the State of Victoria, Chairman of Victorian Police Discipline Board, Chairman of the Country Fire Authority Tribunal, Chairman of the Melbourne & Metropolitan Fire Brigades Tribunal and was the first member of the Refugee Review Tribunal.

Ian Thompson qualified as a Barrister at Lincoln's Inn and is a Barrister & Solicitor, in Victoria. He has previously served as the Panel Chair for the Life Insurance Complaints Service. For 11 years he was the Deputy President of the Commonwealth Government's Administrative Appeals Tribunal and for six years was a Judge of the Court of Appeal in Fiji.

Dick Viney is a Barrister and Solicitor of the Supreme Courts of Victoria and Western Australia.

Panel Members Life Insurance Representatives

Robert Emery has worked in the financial services industry for over 30 years, the last 13 years as Compliance Manager with CBA, IAG (NRMA) and currently with ClearView Retirement Solutions (a company of the MBF Group) as Head of Compliance and Risk. He was appointed as an industry member of the FICS Panel in 1998. He is a Fellow of the National Institute of Accountants, a member of the Australian Institute of Company Directors and a Councillor of the Australian Compliance Institute.

Iain Ross is experienced as a life insurance executive, superannuation consultant, trustee and board member. He qualified as an actuary in 1962 and worked in life insurance in the UK until 1972 consulting with R Watson and Sons mainly with superannuation funds till 1997. He was the Chief Executive Officer of Scottish Amicable Australia in 1997, became the chief actuary of Colonial when it acquired Scottish Amicable in 1990. Iain was the former president of the Institute of Actuaries of Australia and Chairman of the Life Insurance Federation. Since retiring from full-time work in 1994, he has held various positions on boards and committees.

Who we are and what we do

Graham Slater is an actuary with a wide experience in life insurance. He was appointed an industry member of the FICS Panel in June 2002. He is also currently a member of the Life Insurance Actuarial Standards Board and the convener of the Professional Standards Committee of the Institute of Actuaries of Australia. Until his retirement from full-time employment in August 2000, he worked for the AXA Asia Pacific Group for many years, ultimately becoming its Group Chief Actuary and the appointed actuary of both the National Mutual Life Association and Australian Casualty & Life. He was also a director of Australian Casualty & Life and of AXA China Region and is a former member of the Council of the Institute of Actuaries of Australia.

Stockbroking Representatives

Frank 'Keith' Baumgartner commenced his stockbroking in 1956 with Ian Potter & Co until 1976 and was appointed as a Stock Exchange Inspector by the Melbourne Stock Exchange 1977. He joined E L & C Baillieu 1978, and was elected as a member of the Stock Exchange of Melbourne 1987. He became a Director of E L & C Baillieu from 1987. He was a Member of the National Settlement Advisory Committee and Chairman of the Melbourne division. He was appointed to the Melbourne Stock Exchange Board 1989 and was appointed to ASX Melbourne Board on its formation in 1994.

Currently he is a Panel member for the National Adjudicatory Tribunal and for the ASTC Disciplinary Tribunal.

Brendan Egan has 40 years experience in the securities industry. He is Partner/Director/Deputy Chairman Ord Minnett/JPMorgan. He was a Member/Affiliate Australian Stock Exchange; Director of the Australian Stock Exchange Limited from 1992-1999 and Chairman of the Securities & Derivatives Industry Association from 1999-2002.

Alex Knipping is an accredited stockbroker and former member of the Securities & Derivatives Industry Association. He was an ASX Authorised Representative from 1998-02 and has been a Justice of the Peace for Victoria since 1992.

Barry Murray has a Diploma in Options Strategies from the Sydney Stock Exchange and has completed a Futures & Options Course in Commodities at the Educational Institute in Chicago, USA. He holds Derivatives Advisor Accreditation with ASX and is qualified as a Consultant in Exchange Traded Options and is an accredited adviser under the Australian Financial Services Act.

Financial Planning Representatives

Anne Bartholomew has worked in the financial services industry since 1984 initially in banking and funds management before moving to financial planning. She is currently a senior adviser at Mercer Human Resource Consulting Financial Planning in Melbourne. She completed a Masters Degree of Business Administration in 1984 and is a Certified Financial Planner.

John Hewison entered the financial planning industry in 1985 following a successful career in senior corporate management and private consulting. John was elected as a Director of the FPA in 1997 as the representative of small Principal Members. In 2000-01, he was elected by the Board as the FPA Chairman and served in that capacity until his compulsory retirement as a Director in November 2001.

Peter Roan is a Certified Financial Planner with over 18 years experience in the financial services industry including management roles. Peter is a member of the Financial Planning Association and currently Chapter Chair for the Western Division (NSW) for a seventh year. He is also: an Accredited Advisor for the National Seniors Association; a past member of the FPA National Education Committee; a past member of the Financial Planning Industry Efficiency Advisory Group; current Member of the Australian Ethical Investment Association.

Who we are and what we do

Brian Scullin has a degree in economics from the Australian National University. He began his career with the Federal Public Service where he worked for seven years on economic policy. He spent eight years working as a consultant/lobbyist and also cabinet secretary in Canberra.

In late 1986 Brian took up a position as head of Holt Public Relations and in 1988 was appointed the inaugural executive director of the Association of Superannuation Funds of Australia (ASFA). He joined Bankers Trust Australia in 1993 as a business strategist and later was posted to Tokyo as president of Japan Bankers Trust Company in 1997. Brian was appointed head of Deutsche Asset Management Japan in August 1999 and in October was appointed regional head of Asia/Pacific with responsibility for the Australian, Asian and Japanese markets. He is a part-time member of the Federal Government's Financial Reporting Council (FRC) and a director of State Super Financial Services.

Peter Van West has been the owner of Investment Initiative for over 11 years. He is a senior planner for the firm. In 2001, three colleagues and himself established their own Dealer Principal company, Financial Force Pty Ltd, which is a Dealer Principal Member of the Financial Planning Association. His role is Director, Compliance, Training and Development. Prior to establishing Investment Initiative he was Manager, Financial Planning, Queensland for Trust Company of Australia Limited for six years. Before that he worked for the ANZ Banking Group where he was a Personal Banking Officer.

Max Weston is a practising financial planner. He has had 37 years continuous experience in the securities industry including: 14 years working in all facets of stockbroking; eight years as Executive Director, Godfrey Weston Ltd; three years as Chief Investment Manager, Equities, Growth Equities Mutual Limited; and 11 years as Executive Director and National Chairman – KPMG Financial Services Pty Ltd/St George Wealth Management Limited.

Gavin Wright joined the financial services industry in 1986 through National Mutual. He has worked in the insurance, accounting and banking industries but with a focus in financial planning. In 1993 he was appointed to head the financial planning unit of KPMG for Victoria and Tasmania and built that practice substantially, before he left to start his own practice Wright Planning in 1997. In July 2001, Investec and Wright Planning came together to establish the Private Client Advisory unit in Melbourne. In 2004 Gavin reestablished Wright Planning Pty Ltd. Gavin is a Certified Financial Planner (CFP) and is Chair of the Education Committee for the FPA.

Consumer Representatives

John Berrill was the consumer representative on the FICS Panel between 1995 and 2001 and was reappointed from 2003. He is an insurance and superannuation lawyer and in private practice is a partner of the national law firm, Maurice Blackburn Cashman. John is an accredited personal injuries specialist and is a member of: Consumers' Federation of Australia; Insurance Council of Australia – Consumer Consultative Committee; Superannuation Complaints Tribunal Liaison Committee; Law Institute of Victoria Superannuation Committee. John was a founding member of the Victorian HIV/Aids legal service, was a member of the FICS Rules Committee and has been a legal adviser to many disability support groups.

Stephen Duffield is currently Manager, Human Rights Unit – Human Rights & Equal Opportunity Commission. He holds a Bachelor of Jurisprudence. He has been a Government Relations Consultant; Director, Strategic Communications, SA Department of the Premier and Cabinet.

Khaldoun Hajaj is a prominent consumer advocate with expertise in dispute resolution, general insurance, life insurance and superannuation, a Director of Policy and Research at the Financial Services Consumer Policy Centre and is Visiting Fellow at the University of New South Wales Faculty of Law. He has qualifications in Arts, Political Economy and is completing a Law Degree. He held policy related positions at Federal and State Parliaments and has had first hand experience of industry practice whilst working as a Government Relations Adviser at the Financial Planning Association. He is a member of the Consumers' Federation of Australia.

Who we are and what we do

Winsome Hall is a Trustee of the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme Boards. She was appointed a member of the Board's Audit and Risk Management Committee in 1997 and has been Chair of this Committee since 1998 until November 2004, ensuring oversight of a major review of accounting operations and the introduction of risk management procedures. Winsome was first appointed by the Minister of Finance as a member nominee recommended by the ACTU, in 1996.

In 2001 Winsome was appointed to the Board of Colonial First State Private Capital Limited. She was appointed to the Board's Audit Committee in 2003. Winsome has previously been a Director in the Department of Prime Minister and Cabinet, providing advice on a range of social and economic issues including superannuation. She has also been ACT Branch Secretary of the Community and Public Sector Union.

Jenny Lawton was appointed to the Panel in 2003. She worked from 1987 to 2005 as a consumer advocate and financial counsellor in a variety of community settings, including four years with the Victorian Aboriginal Legal Service. These roles involved conducting casework and undertaking policy and research into consumer financial issues, as well as actively promoting consumer education and professional development on related topics. Trained and experienced in alternative dispute resolution techniques, Jenny has also taken on consultancy roles for commercial and consumer projects. She has held various Board positions with the Consumer Rights Council Victoria, was Chairperson of the Welfare Rights Unit for nine years, and has been an Executive Member of the Consumers' Federation of Australia since 2000. A graduate in primary teaching, arts and law, Jenny was an alternate member of the General Insurance Claims Review Panel between 1993 and 2004.

Joan Staples has a strong background in consumer and non-government organisations, combined with skills in rigorous legal analysis and practical application of administrative law. She is a Council Member of the Australian Consumers' Association (ACA).

She is currently lecturing at the University of NSW Law Faculty, in areas of corporate governance and public advocacy, particularly in not-for-profit corporations and associations. Her experience in ACA, the National Consumer Affairs Advisory Council and the former Australian Federation of Consumer Organisations has provided her with knowledge in the financial sector over many years.

Kim Wilson is a qualified solicitor and mediator and acts as a consultant in areas of policy development and strategic advice, Government relations, regulatory affairs, facilitation, mediation and arbitration, negotiation and issues management. In recent times his appointments and consultancies have included: Deputy Chairman, NSW Coal Compensation Tribunal; Chairman, Fair Trading Advisory Council, Infomercial Inquiry; Member, Internal Ombudsman Panel, Civil Aviation Authority Australia; and Presidential Consultant, National Native Title Tribunal.

Who we are and what we do

Interview



Michael Croyle – Panel Chair

Why are you working at FICS?

First, it is an ‘emerging’ organisation. Whilst it has been in existence in one form or another for 14 years, it is now maturing. I am fortunate to be part of a group of people in this exciting and important phase as we cope with the demands involved in this development. I hope that the experience I bring to the organisation is contributing to meeting the needs of FICS and the industry that we service.

After many years practising law, I am sure that alternative dispute resolution systems are essential in our modern community. Many people can not afford to litigate an issue in the court system. Efficient and timely dispute resolution is economic both for the individual and the company or organisation which provides various financial services.

Alternative dispute resolution processes are exactly that – alternatives to the court system. They will never supplant the court system but they gain from the involvement of lawyers with experience in the traditional system. It is essential that alternative dispute resolution schemes (such as FICS) have at their core, an independent decision-maker. Without that feature, an alternative dispute resolution scheme would not be able to provide a fair decision and would lack credibility. And that is why the position of Panel Chair attracted me. The Constitution and Rules of FICS guarantee that the Panel Chair be independent.

ASIC Policy Statement 139 provides the framework in which FICS operates. The FSRA legislation is relatively new and requires the financial services industry (including FICS) to develop an understanding of the subtleties of its requirements and a modus operandi to effectively and efficiently implement its philosophy. None of this is easy and it places stresses on all parties involved, providers of financial services, their clients (who turn out to be complainants) and FICS itself.

In my view, the best way to cope with those demands is to develop teamwork and to work hard at our skills and constantly review the needs of the parties who come to FICS. Job satisfaction is essential and this is achieved when the task is done to the best of your ability.

In the Panel area, that process is being employed. Communication, both amongst our own working group and with the parties who are participating in the process, is the best way to deal with the demands of the job.

The complexity of the disputes requires long hours of work which can engulf your life at times. Working hard is not foreign to me but you have to develop techniques to ‘switch off’. And so I have interests outside work such as following my beloved Demons and playing golf as often as I can.

I have probably already answered your next question, “Do you think having a knowledgeable, motivated and passionate team at FICS is required?”, The answer is obviously “Yes”. To my way of thinking, working with the Panel team demands motivation and skill. Fortunately, we have such people in the Panel area. It is part of my job to ensure that they obtain the satisfaction that is required in any job, particularly one requiring intense intellectual concentration.

In this context, I am trying to hand on my experience and techniques for analysing the voluminous material which the parties to the disputes provide.

It follows from what I have said that I believe that there is an important role for FICS in the future.

Who we are and what we do

The Board of Directors

Peter E. Daly, AM (Chair)

Appointed a Director of the Company in December 1993 and Chair in January 1997. Peter came to Australia in 1980 from South Africa and was appointed the Chief Executive and Managing Director of Norwich Winterthur Group in 1983. He has held a number of directorships since then and was the President of the Insurance Council of Australia Limited 1986-1987 and Chief Executive Officer from 1991-1997. He has served as the Deputy Chairman of the Zoological Parks and Gardens Board and is the Chair of Insurance Ombudsman Service Limited.

On 14 March 2004, Peter was awarded the Order of Australia for services to the insurance industry and to the community, particularly through the advancement of alternative dispute resolution and consumer protection.

Dominic Alafaci B.Ec., B.Bus.(Acc), CPA,CFP

Appointed a Director of the Company on 16 March 2004 representing industry participants. Dominic was a member of the Australian Society of Investment and Financial Advisors, which helped form today's Financial Planning Association (FPA), and is currently a Director of the FPA. He has also sat on the FPA's Audit Committee, the State Council and other FPA committees since its inception. Dominic has held senior roles as a practitioner for Bain & Company, Deutsche Bank, and has served as Financial Planning Manager for HSBC and more recently as the Managing Director of Collins House Financial Services Pty Ltd, a boutique multi-disciplinary practice.

Richard Gilbert BCom, Dip Ed and MMgt Econ (UNSW)

Appointed a Director of the Company in 2003 as an industry representative, Richard is the Chief Executive Officer of the Investment and Financial Services Association (IFSA). He held the position of Deputy CEO during the period 1998-2002. Prior to the formation of IFSA, Richard was the Executive Director of the Investment Funds Association. His experience in funds management includes employment as General Manager, Wholesale Distribution, in the Credit Union Services Corporation (1994-1997). From 1991 to 1994 he was Secretary to a number of Senate Committees, including the Senate Select Committee on Superannuation. Whilst working in the Senate, Richard was the foundation Director of the Parliamentary Education Office (1989-1991). He has been a member of the International Investment Fund Association since 2002 and has been a Board member of the Financial Industry Council of Australia since 1 January 2005.



Who we are and what we do



David W. Lidbetter, B.Sc., Dip.Scc Inst.

Appointed a Director of the Company on 10 November 1999 as a consumer representative. In 1975 David was appointed Managing Director for Berger Paints Australia, a position held until 1980 when he was appointed Supervising Director and Chief Executive of the parent group Berger Jenson & Nicholson which was responsible for operating companies worldwide. In 1986 he retired to pursue his private interests. He has played a part in community work and in 1986 was appointed as Community Representative on the Sydney Airport Community Forum and various airport Committees.



Jenni Mack, BA, MALP (Admin Law and Policy)

Appointed a Director of the Company on 10 November 1999 as a consumer representative. Jenni has extensive consumer affairs and complaints handling experience. She is a Director of the Australian Consumer's Association (Choice magazine) and a former executive director of the Consumers' Federation of Australia, the peak consumer body. She was the NSW Deputy Legal Services Commissioner responsible for handling complaints about lawyers. Jenni represents the community on the NSW Judicial Commission (which amongst other things deals with complaints about judicial officers), the Migration Agents' Registration Authority's complaints panel and is a director of Insurance Brokers Disputes.



Dr Justin E. Malbon, LL.B (Adel) LL.M (York, Can) PhD (UNSW) Barrister

Appointed a Director of the Company on 20 November 2002 as a consumer representative. He is an Associate Professor and Dean of the Law School at Griffith University. Prior to that he was an Assistant Parliamentary Counsel with the Queensland Office of Parliamentary Counsel and a solicitor at the Melbourne office of Blake Dawson Waldron. He has been actively involved in the consumer movement for many years, holding positions as president of the Queensland Consumers Association and as a member of the Board of the Australian Federation of Consumer Organisations.



David W Squire Dip All, GMQ (UNSW), QPIB, AACI

David was appointed a Director of the Company on 9 August 2002 representing industry participants. Currently the National Industry Liaison Manager (Financial Planning and Insurance) for MLC, the Wealth Management Division of the National Australia Bank, David has over forty years experience in general banking, life insurance and financial planning in a variety of roles. He has a record of industry advocacy dating back to 1982 and is currently a director of the National Insurance Brokers Association, a member of the IFSA Regulatory Affairs Board Committee and the FPA Regulations Committee and National Councillor of the Australian Compliance Institute and chairs a number of active committees of the aforementioned bodies.

What we have achieved



Peter E. Daly, AM
Chair of the Board

Chair of the Board's Report

During a year in which membership grew to more than 2,500 FICS has placed great emphasis on interacting with its Members to enhance the service provided to all stakeholders.

FICS promotes the resolution of complaints at the earliest stage possible, and sees its role as assisting and encouraging Members and consumers to resolve their complaints before they reach FICS for resolution.

Outreach to Members

Member Information Seminars were conducted Australia-wide for the benefit of new and existing members. There was greater activity in the area of liaison with Members and industry associations. Further, FICS identified a need for improved internal dispute resolution processes and ran the first IDR Workshops for Members in Sydney in late 2004.

Cooperation with other Schemes

Another area of activity has been the alliances with other external dispute resolution (EDR) schemes in the financial services sector. The Board sees the future of FICS being inextricably linked with the other EDR schemes.

The major area of focus for cooperation between the schemes has been planning the development of one information technology system for FICS, the Banking & Financial Services Ombudsman, Insurance Ombudsman Service Limited and the Credit Union Dispute Resolution Centre. The implementation of the project will begin in 2005. The integrated IT system will present opportunities for further cooperation. 2004 also saw the expansion of the call centre to deal with complaints from a wider number of schemes in the financial sector.

The Constitution and the Rules

The Board identified a need for changes to the Constitution which were passed, after consultation with Members, at an Extraordinary General Meeting on the 19 November 2004. The Board has further instigated a major review of the FICS Rules resulting in part from the findings of the Independent Review of FICS, and also arising from the complaints experience of FICS, which has now had five years of operation in its current form.

Stakeholders' Support

I am pleased to say that FICS receives excellent support from its Members, the industry associations and the consumer movement. Their support and involvement enhances the operations of FICS at all levels.

What we have achieved

Board Committees

The Board Finance Committee met on a regular basis during 2004. The Board Selection Committee also met during 2004 in relation to consumer appointments to the Panel, and the appointment of the second Panel Chair. The Rules Committee met during the year to consider the changes to the Rules concerning the monetary limit for the Adjudicator. I would like to thank all Committee Members for their participation and work during the year.

Thanks

Further, I would like to thank the Panel and Adjudicators for the work they have undertaken. I thank the full-time Panel Chairs/Adjudicators, Michael Arnold and Michael Croyle, and the part-time Panel Chairs/Adjudicators, Murray Gerken, Ron Eggleston, Ian Thompson and Dick Viney. The industry representative and consumer representatives on the Panel make an important contribution to complaints being dealt with by the Panels and I would like to thank them for their participation.

I extend my sincere appreciation to my fellow Directors for their support, hard work and commitment during the past year. A special thank you to the Chief Executive, Alison Maynard, her Management Team and all the staff for their dedication and professionalism year-on-year.

A handwritten signature in black ink, appearing to read 'Peter E. Daly', with a stylized flourish at the end.

Peter E. Daly, AM
Chair of the Board

What we have achieved

About the Board

Responsibilities of the Board

- Overseeing and monitoring the activity of FICS and ensuring the independence of the dispute resolution process
- Appointing the Chairs of the Panel, Adjudicators, consumer representatives and industry representatives to the Panel
- Ensuring that the Panel and the Adjudicators adhere to the Rules, but not to the extent of overturning a decision made by either body
- Analysing statistical information in relation to FICS
- Analysing and commenting on (if appropriate) the Annual Review
- Effecting appropriate changes to the Rules after consultation with interested stakeholders
- Ensuring that FICS meets all government benchmarks, policies and guidelines for complaint handling schemes to ensure FICS maintains its status as an approved EDR scheme
- Identifying recurrent or ongoing industry problems and reporting serious misconduct or other matters required by the regulators
- Satisfying itself that the promotional programme or projects are adequately funded

Meetings

The Board met six times in February, April, May, July, October and November. Three meetings were held in Sydney and three in Melbourne.

Major initiatives

- Commencement of a major review of the FICS Rules
- Approval of the amendment to Rule 23 allowing the Adjudicator to deal with complaints involving claims up to \$30,000 and consequential amendments to related Rules
- Continuation of alliance initiatives with BFSO, IOS and CUDRC with particular emphasis on information technology systems
- Changing the FICS Constitution with particular reference to expulsion of Members and selection of the Chair of the Board
- Appointing Michael Croyle as the second full-time Chair of the Panel for a period of three years until July 2007
- Appointment of Ian Thompson as an Alternate Panel Chair for a period of three years until January 2007
- The appointment of consumer and industry representatives on the FICS Panel

Committees

Finance Committee (Standing Committee)

Chair: David Lidbetter

Members: Richard Gilbert, Alison Maynard* (Chief Executive) and Brian de Kock* (Company Secretary)

Meetings: Five

Function: Monitor accounts, review annual accounts and meet with auditors.

What we have achieved

Panel Chair Selection Committee (Ad Hoc)

Chair: Peter E. Daly, AM

Members: Jenni Mack, David Squire and Alison Maynard*

Meetings: One

Function: To oversee selection process and recommend candidates to the Board for appointment

Consumer Panel Member Selection Committee (Ad Hoc)

Chair: Alison Maynard

Members: Jenni Mack (David Lidbetter, alternate one meeting) and David Squire

Meetings: Two

Function: To oversee selection process and recommend candidates to the Board for appointment

Rules Committee (appointed by FICS Management)

Chair: Alison Maynard

Members: Consumer representatives – Jenni Mack and Justin Malbon. Industry association representatives – David Mico (IFSA), Phillip French (IFSA), Paul Shevtzoff (FPA) and Doug Clark (SDIA)

Meetings: One

Function: This Committee provides the major consultative vehicle for the Board when construing Rule changes. In practice proposed Rule changes are signed off by this Committee before being considered by the Board

* In attendance by invitation, to provide guidance and advice

Constitution and Rules

FICS is governed by a Constitution and Rules. The Constitution sets out the objectives of the company and governs the operations of the company. The Rules provide the detail on how FICS will deal with complaints. The Constitution of the company may only be changed at a General Meeting or an Extraordinary General Meeting however, the Rules may be changed by the Board.

The Rules Committee

The Rules Committee was formed in early 2000 to be a consultative body representing the stakeholders of FICS. It has the ability to make recommendations to the Board in relation to the Rules. The Board has adopted a practice of referring Rule changes to the Rules Committee for consideration prior to Board consideration.

Constitution and Rule changes during 2004

One major Rule change occurred during 2004. The change to Rule 23 and related consequential amendments provided for the Adjudicator to deal with more complaints (previously dealt with by the Panel), increasing the monetary limit from \$10,000 to \$30,000. Importantly, the Rule provides for the Adjudicator to refer a complaint to the Panel if he or she thinks it is too complex or too significant to decide.

The Constitution was amended during 2004. The amendments were passed at a General Meeting held on 19 November 2004. The changes concerned updating definitions and language, in recognition of the current regulatory environment, clarification of the power of the Board to determine in which category a Member would be placed and a clarification of the notice period in relation to cessation of membership.

The changes also included a new method for appointment of the Chair of the Board, giving equal rights to consumer and industry directors in relation to the appointment. Further, the procedures in relation to expulsions of Members for non-compliance with the Rules or failing to pay monies due to FICS were streamlined and clarified.

What we have achieved

Chief Executive's Report



Alison Maynard
Chief Executive

Introduction

The FICS team has had another challenging year. The membership of FICS increased from 2,335 at the end of 2003 to 2,501 at the end of 2004. The team of 28 full-time and six part-time staff, together with two full-time Panel Chairs, four part-time Panel Chairs and 22 industry and consumer Panel members worked hard to reduce the number of complaints from 1,232 at the end of 2003 to 915 at the end of 2004.

Complaints

FICS dealt with 9,878 telephone contacts and received 1,416 new complaints. We received 725 new life insurance complaints, 449 new financial planning complaints, 93 new stockbroking complaints, 141 new managed investment complaints and eight other complaints.

Conciliation

After a trial programme and comprehensive training of staff the FICS Conciliation Conference process got into full swing in August 2004 with pleasing results. During the period 53 Conciliation Conferences were conducted and 11 cases were resolved by mutual consent before a Conciliation Conference was organised. The feedback received from Members and complainants participating in Conciliation Conferences shows overwhelming endorsement of the process. FICS is looking to build on the success of the programme during the next 12 months.

Panel

The Panel operated with a full-time Panel Chair, Michael Arnold, for all of 2004 and a further full-time Panel Chair, Michael Croyle appointed on 1 July 2004. During 2004 all the Panel Chairs were also appointed as Adjudicators. The full-time Panel Chairs were ably assisted by Ron Eggleston, Murray Gerkens, Ian Thompson and Dick Viney. The Panels finalised a total of 430 complaints and the Adjudicators 65 complaints, including Determinations and matters that were Outside Rules, Withdrawn or Finalised by agreement.

Cooperation

FICS keenly participated in cooperative projects with the Banking & Financial Services Ombudsman, Insurance Ombudsman Service Limited and the Credit Union Dispute Resolution Centre. In particular, an assessment was made of the IT requirements of all organisations with a view to sharing one IT system. IT is seen as being the platform for further cooperation between the schemes.

The joint call-centre was expanded in early 2005 to include Insurance Brokers Disputes Limited and the Superannuation Complaints Tribunal, which along with the four schemes above and the Credit Ombudsman can all be contacted on 1300 78 08 08, the Toll Free telephone number.

Further plans for cooperation between the schemes include:

- Consideration of an improved enquiries function shared by all
- Joint promotional activities.

Who we are and what we do

Liaison

Liaison Meetings for Members were held in Sydney and Melbourne during 2004. A new programme of Member Information Seminars was also undertaken in Melbourne, Sydney, Brisbane and Cairns. The aim was to ensure Members are aware of the complaints process and activities of FICS. Additionally, combined Liaison and Member Information Seminars were held in Perth and Adelaide.

Arising out of FICS complaint handling, a need was identified for internal dispute resolution training to be provided for Members. Members were surveyed in relation to this possibility and the first IDR Workshops were successfully conducted in Sydney.

Further, FICS held a number of meetings with individual Members and industry associations to exchange feedback and further cooperation between FICS and the industries.

FICS National Conference

A second successful national conference was held in Sydney on 9 & 10 September 2004. The conference topics included:

- Changes at FICS
- Industry and Consumer Perspectives
- IDR Panel
- Workshops on case related issues.

Presentations by speakers may be viewed on our website www.fics.asn.au

Rules

FICS commenced a major review of its Rules during 2004. An Issues Paper was released with an invitation for submissions. This was followed by a Discussion Paper as well as consultation meetings held in Melbourne and Sydney. The Rules Review will continue and is expected to be finalised during 2005. The only amendment to the Rules during 2004 was a change to provide for an increased Adjudicator limit of \$30,000. This Rule change came into effect on 1 January 2005.

Constitution

Important amendments included giving consumer and industry directors equal rights in relation to the appointment of the Chair of the Board and streamlined procedures for the expulsion of Members failing to pay monies due to FICS, or failing to comply with a Determination.

What we have achieved

Legal Action

A legal action, commenced in the Supreme Court of NSW in 2002 by a Member against FICS and a consumer, concluded in September 2004. The Court did not uphold the Member's challenge to the constitutionality of FICS, finding that FICS was not exercising judicial power.

It did, however, find that the FICS decision could be reviewed because one party was not given notice of an issue in dispute and there was failure to give adequate reasons for the decision.

In 2003 FICS introduced processes to ensure parties are notified of all issues and supporting material via FICS Practice Note 2. This ensures that the Panel and Adjudicators provide more comprehensive and detailed reasons for their decisions.

FICS is investigating the introduction of an internal review process for Determinations as part of the Rules Review. Furthermore, we are investigating ways of managing risk, particularly the costs, resources and the continuing likely impact on FIC's Professional Indemnity Insurance cover.

Thanks

I thank my Management Team and all the staff at FICS, the Panel Chairs and Panel members for their hard work and dedication during 2004.

I thank the Board and its Chair, Peter E. Daly, AM for their ongoing guidance and support.



Alison Maynard
Chief Executive

What we have achieved

Panel Chair Report



Michael Arnold
National Panel Chair

The year 2004 has seen the Panel deal with a significantly higher number of complaints. This followed my appointment as the first full-time Panel Chair in November 2003 and the introduction of Michael Croyle as a second full-time Panel Chair in mid-2004.

The Panel determined 396 complaints in all made up of 176 life insurance, 140 financial planning, 54 stockbroking and 26 managed investments complaints. In addition to these Determinations there have been 61 decisions by the Adjudicator and 331 rulings on jurisdiction.

The Panel in particular this year was required to determine a number of matters with complex issues and diametrically opposed points of view in relation to losses incurred in investments in managed funds in the period between 2001 and 2003. These complaints made up a greater proportion of the Panel's work than in the past and had been a major part of the backlog of cases. The Panel believes there may be a reversal of the growth in these investment complaints as security markets have been less volatile since 2003 and the returns achieved by many managed funds are now meeting investor expectations.

Procedural Fairness

The Panel, has been reminded of the need to afford procedural fairness to the parties to a dispute that comes before it, prior to its making a Determination of the merits. The decision of *Masu Financial Management P/L v FICS and Julie Wong* (No 1) [2004] NSWSC 826 reaffirmed the fact that dispute resolution bodies such as the Panel must ensure that there is due process. The difficulty the Panel does face in doing this is balancing the need to meet FICS Rules of having the proceedings as informal as possible and with the minimum of legal formality and technicality and yet satisfy the parties that they have received a fair hearing and had their issues addressed.

The Panel, as part of FICS, provides an alternative dispute resolution to the Courts and as a consequence may produce different outcomes. This almost inevitably means that from time-to-time there will be tension between Members and FICS as a decision-making body. However, the Members must understand that FICS as an ASIC approved external dispute resolution body has a broader responsibility to consumers and Members than the Courts in determining complaints in relation to the provision of financial services and the sale of financial products.

Panel Members

The last 18 months has seen the appointment of a number of new Panel members, both industry and consumer. The importance of having appropriately qualified, experienced and objective Panel members cannot be overestimated. Some complaints are succinctly put by complainants and are well addressed by Members. However, parties to complaints often adopt a high moral position. Complainants frequently represent themselves as being badly wronged by the deliberate or grossly negligent behaviour of a Member while Members are often most affronted by allegations made against them.

There is a need not only to assess the merits of each complaint, as well as issues of fairness, but there is a requirement to stand back and assess some very emotive rhetoric that often impacts upon the logic in the arguments made by parties to a dispute in these circumstances.

What we have achieved

Disability and Income Replacement Policies – Offset Clauses

The Panel has noted that an issue has arisen in a number of complaints about the interpretation of clauses offsetting the benefits received by insureds from personal injury or workers compensation claims and other sources of income against benefits payable under disability or income replacement policies.

Apart from the difficulties in interpretation that arise from a number of differing clauses, the Panel is concerned that when consumers are applying for a policy they are not made aware of the condition. This can cause problems as in some cases the “offset clause” is expressed so widely that it catches lump sum payments received by injured insureds by way of compensation, which has nothing to do with loss of income.

The Panel believes that in order to comply with the spirit of the FSRA legislation clear information about the effect of an offset clause in a policy should be included in the Product Disclosure Statement provided prior to the purchase of a policy.

Expert Evidence

The Panel, as part of its decision-making process, often has to consider evidence that is characterised as “expert evidence”. Traditionally this has been in the form of specialist medical opinion in life insurance complaints.

The use of expert evidence in disputes that come before the Panel now has the potential to be increased following the judicial decision in *Newman & Ors v Financial Wisdom Limited & Anor* [2004] VSC 216. The judge, Mandie J, placed heavy reliance on evidence given by Adjunct Professor Wes McMaster, a person he deemed to be qualified to give expert evidence in financial planning disputes in reaching a decision in favour of the persons claiming loss. Accordingly, it is timely to generally consider the role of expert evidence in the determination of disputes by the Panel.

It must be remembered that the courts have received expert evidence since very early times. As long ago as 1558 Saunders J said, “If matters arise in our law which concern other sciences or faculties, we commonly apply for the aid of that science or faculty which it concerns, which is an honorable and commendable thing in our law. For thereby it appears that we do not despise all other sciences but our own, but we approve of them and encourage them as things worthy of commendation”. *Cross on Evidence* suggests by way of examples, that expert evidence was accepted in those days on such matters as the effect of a wound or the meaning of a Latin word.

In those times, experts were called as assistants to the courts and their evidence was accepted as such. There was no concern about the reliability of the evidence. However, by the 17th century the trial began to assume its modern form and these experts were seen as mere witnesses. In fact, by the beginning of the 19th century there were textbooks requiring that witnesses generally must not state their opinions. The ensuing development of the adversarial system of litigation saw detailed rules of evidence developed about the admissibility of expert opinion and expert witnesses tended to become advocates for opposing points of view in litigation.

This led to the courts warning that caution should be exercised in blindly accepting an expert opinion. They also identified problems with the role of expert witnesses. There is no doubt that experts can honestly hold different opinions and with intellectual rigour come to different conclusions. However, because of the adversarial nature of litigation conducted in courts of law, the evidence of an “expert” had to be critically examined. This was particularly because there was a temptation for an “expert” to become a “gun for hire”, i.e. a person whose purpose was to advance the position of the parties for whom they are giving evidence rather than in providing assistance to the decision-maker.

However, in more recent times courts have developed new rules and practice requirements regulating the admissibility and use of such evidence. This is to ensure full disclosure by the parties of such evidence prior to the trial to improve the efficiency of the courts. The Federal Court of Australia several years ago went one step

What we have achieved

further and issued a practice note that could be interpreted as rolling back the role of an expert to that of an “assistant of the court”. Other jurisdictions have followed and in effect a code of practice has been developed for expert witnesses. The Panel believes that this approach is the appropriate way to go. However, cynicism still exists and expert witnesses must ensure there is complete objectivity in their approach to providing evidence. There has been recent discussion of the roles of expert witnesses in *Makita (Australia) Pty.Ltd. v Sprowles (2001) 52NSWLR 705* and *ASIC v Rich (2005) 149*.

The Panel, in determining whether it should accept expert evidence, must be satisfied certain criteria have been met. It has been established judicially that if a subject is outside the experience of jurors, then, provided there is a recognised body of science or learning which deals with this behaviour, a suitably qualified expert may be called to give opinion evidence about it [*Frye v United States 293 F1013 (1923)*]. In *Clark v Ryan (1960) 103 CLR 486*, the majority of the High Court required that there be “an organised branch of knowledge in which the witness is an expert”.

The decision whether a particular field of knowledge is shown to be a sufficiently organised branch of science will depend in each case upon the evidence led in support of such a conclusion; upon the precise question upon which the expert’s opinion is to be sought and also upon the general area of science in question. Once the field of expertise is established, it is necessary to consider whether the expert is skilled in that field and it is for the Panel, as decision-maker, to determine whether the witness has undergone such a course of special study or experience as will render the witness expert in a particular subject.

In weighing expert evidence it must be remembered that the admissibility of expert opinion is an exception to the rule against the admission of hearsay evidence. Accordingly, the competency and credit of the witness are relevant matters for the trier of fact in determining the weight of the evidence. In short, expert evidence must be weighed in the light of all the other evidence. Experience in the courts has shown experts often providing conflicting opinions and coming to different conclusions from the same set of facts.

In evaluating the evidence it must be remembered the function of any expert is to now assist a decision-making body on questions of fact in areas which are not of common knowledge. The expert is there “to furnish the judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the judge or jury to form their own independent judgement by the application of these criteria to the facts proved in evidence”, (*Davie v Edinburgh Magistrates 1953 SC 34 at 40 per Lord President Cooper*). The expert witness assists but must never supplant the role of the decision-maker.

The Panel accordingly weighs the expert opinion, as it must in accordance with the law. In the High Court case of *Ramsay v Watson (1961) 108 CLR 64.2 at 645*, the judges said:

“That some medical witness should go into the box and say only that in his opinion something is more probable than not, does not conclude a case. A qualified medical practitioner may, as an expert witness, express his opinion as to the nature and cause or probable course of an ailment. But it is for the jury to weigh and determine the probability. In doing so, they may be assisted by the medical evidence, but they are not simply to transfer their task to the witness. They must ask themselves ‘are we on the whole of the evidence satisfied on the balance of probabilities of the fact’”.

This was reinforced by the New South Wales Court of Appeal in the *State of New South Wales t/a New South Wales Department of Agriculture v Allen [2000] NSW CA (13 July 2000)*. The same principles apply to the expert evidence submitted by the parties to the Panel. The Panel, like any fact finding body, cannot abdicate its responsibility by accepting an opinion of an expert witness as ipso facto the determinant of the ultimate question of whether either party has established its position.

Nevertheless, the provision of expert evidence in relation to a dispute can be of great assistance to the resolution of a dispute provided that they give it objectively and for the purposes of informing the Panel rather than as an advocate for either party.

What we have achieved

The Future

The Panel is acutely aware, as are most of the community and all of its policy-makers, of the impact of an ageing population on our society. The need to increase savings, make arrangements for adequate superannuation and have secure investments in place to provide for long-term income is a paramount requirement to maintain our stability and growth.

This places a high responsibility on those providing financial services and products to consumers at different stages of their lives, particularly as we shift into a higher interest situation. This responsibility extends to the specific tailoring of plans for individuals and an appreciation of a person's tolerance of risk. The Panel has seen many instances of generic plans developed more to sell products rather than to meet the individual's needs.

These plans may, in a technical sense, meet regulatory requirements but not the needs or objectives of the customer. The same applies to schemes that become fashionable at a certain point of time such as margin lending that saw a high percentage of gearing in portfolios. Such arrangements were suitable for some and not for all – certainly not in a falling market. Many complaints came to the Panel in relation to issues surrounding negative gearing.

This year will see the introduction of “choice in superannuation” and large numbers of people moving into different variants of allocated pensions to secure their future. The Panel's experience has been that a change in investment structure or approach can often lead to misunderstanding unless there is clear explanation of all the ramifications including impact on ancillary benefits and market trends. These can be the seeds for the complaints that come before the Panel and there is an expectation that financial advisers will show great care when initiating change.

Thanks

I extend my appreciation for the assistance provided from Panel members from a number of industries and professions. These include Life Insurance (Bob Emery, Iain Ross and Graham Slater); Stockbroking (Frank Baumgartner, Brendan Egan, Alex Knipping and Barry Murray); Financial Planning and Funds Management (Anne Bartholomew, John Hewison, Peter Roan, Brian Scullin, Peter Van West, Max Weston and Gavin Wright).

The same applies to our consumer representatives John Berrill, Stephen Duffield, Khaldoun Hajaj, Winsome Hall, Joan Staples and Kim Wilson.

Recognition should be given to the work of my fellow Panel Chairs, Adjudicators and the Panel members who are required to deal with increasingly complex and diverse matters. We have very able Panel Chairs in Michael Croyle, Ron Eggleston and Murray Gerkens, whilst the bulk of the Adjudicator work has been done by Ian Thompson and Dick Viney.



Michael Arnold
National Panel Chair

What we have achieved

Conciliation Report

Overview of FICS Conciliation Conference Process

In 2002 FICS underwent an Independent Review. Arising from this Review and from feedback received from Members, National Relations Manager, Trevor Slater, undertook a research project into the viability of conducting formal Conciliation Conferences as part of the dispute resolution processes.

As a result of the research project, a Conciliation Conference pilot was established and successfully conducted between August 2003 and July 2004. The conciliation team was formally established in July 2004, and the Conciliation Conference process commenced full operations from August 2004. The conciliation team is Michael Ridgway (Conciliation Manager), Dianne Comtesse (Conciliator) and Alycia James (Conciliator).

Since August 2004 the Conciliation Conference process has proved to be very successful, with excellent results, including the number of cases resolved through conciliation and the average time taken to resolve a case through conciliation. Members have responded positively to the conciliation process, and their cooperation has assisted in its success. The conciliation team has received very positive feedback from Members and complainants who participated in Conciliation Conferences. The results of surveys undertaken are outlined below.

Cases are normally assessed for Conciliation Conference suitability at two points of the process – when a Member's initial response to a complaint is received, and when one or both parties to a complaint requests a Conciliation Conference.

Between August and December 2004, the conciliation team achieved some excellent results.

Snapshot of Conciliation Conference Results in 2004

- 53 Conciliation Conferences were conducted, 11 cases were resolved before a Conciliation Conference was organised. Six face-to-face conciliations were conducted.
- The resolution rate of cases referred to the conciliation team was 58% (before, at or after a Conciliation Conference was held). Five cases were still in negotiation after a Conciliation Conference was held.
- Once they were referred the conciliation team took an average time of 41 days to resolve cases.

Conciliation Survey Results

The conciliation team sends surveys to all Members and complainants who participate in a Conciliation Conference. Between August and December 2004, a total of 53 surveys were received (32 from Complainants and 21 from Members), representing an overall survey return rate of 50%. Outlined below are results from the conciliation surveys. These provide a barometer of the complainant and Member experience of each aspect of the conciliation process, including:

- The quality of the information provided by FICS prior to a Conciliation Conference;
- The fairness of the Conciliation Conference process;
- The opportunity for both parties to speak openly and have their say;
- Satisfaction with the outcome; and
- Whether the conciliator acted fairly, impartially and effectively.

What we have achieved

a) Outcome Sought

- 34% of complainants were seeking amounts between \$10-50,000, 28% were seeking amounts between \$1-10,000, and 16% of complainants were seeking payment greater than \$50,000. 22% did not answer this question or did not nominate an amount.

b) Information and Understanding Prior to the Conciliation Conference

- 96% of complainants and Members agreed or strongly agreed that the conciliation guide sent before the Conciliation Conference was helpful.
- 98% of complainants and Members agreed or strongly agreed that the information relayed to them prior to conciliation gave them confidence in the process.

c) Conciliation Conference Experience

- 98% of complainants and Members agreed or strongly agreed that they understood their role and what was happening during the Conciliation Conference.
- 98% of complainants and Members agreed or strongly agreed that they were able to discuss their concerns during the Conciliation Conference.
- 100% of complainants and Members agreed or strongly agreed that they were treated equally in their conciliation, and they had the opportunity to speak freely.
- 87% of complainants and Members agreed or strongly agreed that the Conciliation Conference helped to identify the issues in dispute.
- 83% of complainants and Members agreed or strongly agreed that they were involved in developing options for resolution during the conciliation.
- 79% of complainants and Members disagreed or strongly disagreed that they felt pressured to reach a resolution at the Conciliation Conference.

d) Conciliation Outcome

- 79% of complainants and Members agreed or strongly agreed that conciliation helped move their complaint forward.

e) Conciliator Satisfaction

- 100% of complainants and Members agreed or strongly agreed that the conciliator conducting their conciliation was fair and impartial and managed the process effectively.
- 100% of complainants and Members agreed or strongly agreed that the conciliator understood their concerns.

Conciliation Results for August to December 2004

1. Cases Referred for Conciliation Conference

Case Type	Life	Financial Planning	Managed Investments	Stockbroking	All Cases
Conciliation suitable	39	43	5	8	95
Conciliation not suitable	27	31	4	4	66
TOTAL	66	74	9	12	161

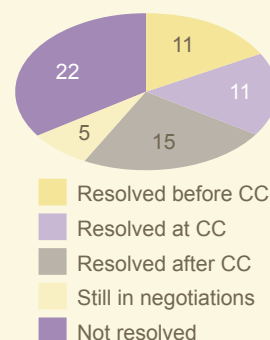
What we have achieved

- 161 cases were referred during August to December 2004.
- 46% of these were Financial Planning cases, 41% were Life Insurance cases.
- 59% (95) of the 161 cases referred were suitable for conciliation.

2. Conciliation Outcomes

- 53 Conciliation Conferences were held in the period, and 11 cases were resolved by the conciliation team prior to a conciliation being held.
- 58% of cases (37) were resolved before, during or after a Conciliation Conference. 8% of cases (5) were currently still in negotiations. 34% of cases (22) did not resolve at conciliation, and were referred to the Panel or Adjudicator.

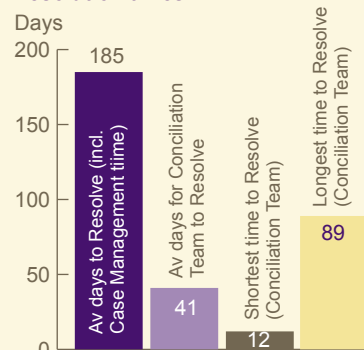
Conciliation Outcomes



3. Average Days to Resolve

- The average time taken to resolve cases once referred to the conciliation team was 41 days.
- The shortest resolution time was 12 days, and the longest time was 89 days.

Resolution times



Comments of Participants

The conciliation surveys contain several questions that ask for comments from Members and complainants about the Conciliation Conference process. Outlined below is a sample of comments provided by participants.

Complainant Comments

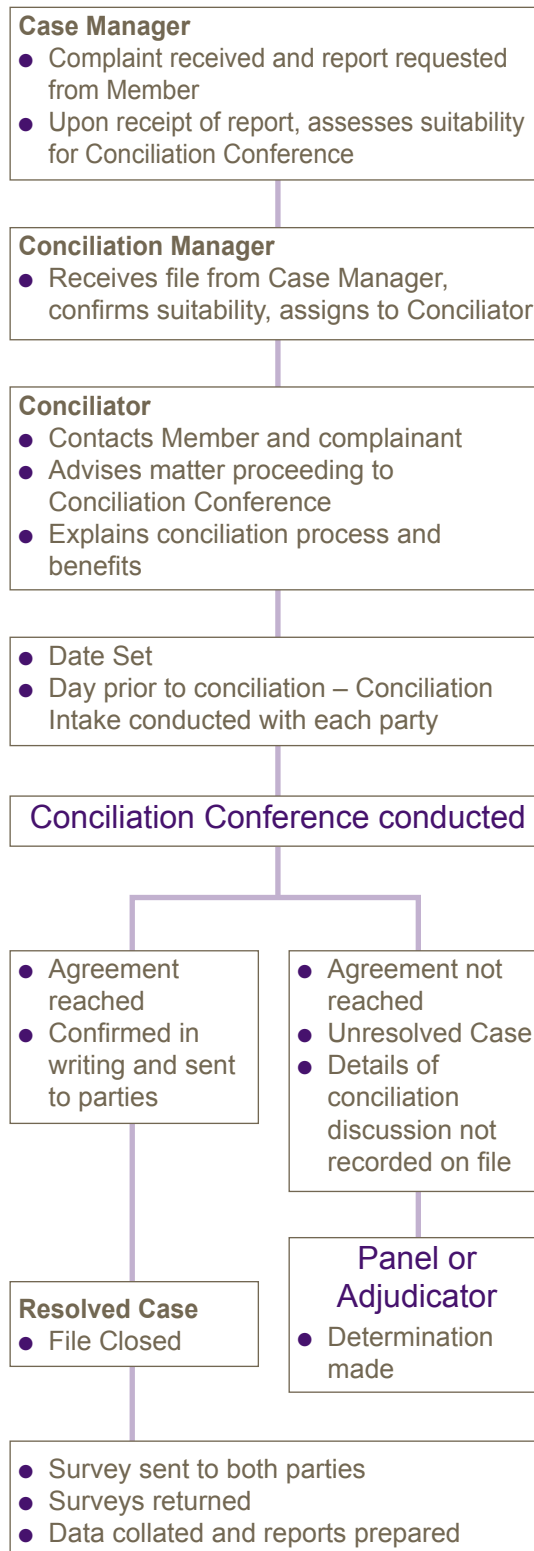
- “My conciliator was excellent. Fair and impartial, but aware that I was a novice at such things. Very compassionate, but very impartial”.
- “It [gave] me the opportunity to voice my concern”.
- “[The Conciliator] helped it along in a highly professional and sincere manner. She resolved the matter when I had no success”.
- “Good for both parties to present case fairly and equally, and cover all issues”.

Member Comments

- “It gave the opportunity for all parties to negotiate and hear each other’s perspective”.
- “Happy to use conciliation in future cases where I believe that there will be a benefit of faster resolution”.
- “[I] felt the conciliation was helpful... as I gained more understanding of [the] client’s perspective and what may have happened during the original advice process”.
- “It works well. The process of conciliation always moves the complaint forward in a big jump”.

What we have achieved

Conciliation Flow Chart



What we have achieved

Case Study 1– Financial Planning

Mr Z was not satisfied with the choice of investments given to him at the initial consultation with XYZ Financial Planning, as he felt he was only offered XYZ Funds. Mr Z also felt that his portfolio was not reviewed on a regular basis, as there was only one full review of his investment portfolio in the 3 year period.

XYZ Financial Planning believed that the basis for Mr Z's dissatisfaction was the decline in returns in his investments, and maintained that the advice given to Mr Z was appropriate and reasonable, and was given after assessing Mr Z's circumstances and risk profile. XYZ believed that the decline in value of his investments was market related and not caused by any wrong-doing by XYZ Financial Planning. XYZ Financial Planning also believed it constantly monitored Mr Z's account and was in contact with Mr Z by phone to provide advice to him in relation to his financial affairs.

A Conciliation Conference was arranged and the parties discussed their expectations and responsibilities in relation to the investment portfolio. A compromise, without prejudice, settlement was reached where XYZ Financial Planning offered to refund all review fees paid by Mr Z and to assign a new financial planner to manage Mr Z's future investments and service provision needs.

Case Study 2 – Financial Planning

On the advice of her accountant Mrs F had approached R Consulting to set up an allocated pension. Following acceptance and implementation of the investment plan, Mrs F became concerned that the minimum pension payment she received was greater than the portfolio income, and the fund was selling her equities to fund her payments. Mrs F was aware, however, of fluctuations in financial markets at the time of making her investments.

Mrs F felt that after setting up the investment portfolio at a moderately aggressive risk level, no notification, information or strategies were provided by her financial planner to reduce the losses that were occurring in her portfolio. She also became concerned that her portfolio was too high a risk for her. This led her to seek financial advice from another source, as she did not believe that R Consulting was satisfying her expectations of ongoing service provision. As Mrs F now had low confidence in R Consulting, she wanted to change her allocated pension. However, she was dissatisfied that R Consulting refused to waive the exit fees that were applicable. Mrs F claimed \$25,000 compensation from R Consulting for inappropriate advice, poor service and the pension exit fees.

R Consulting's position was that the advice provided was appropriate to Mrs F's circumstances. Mrs F had participated in the completion of a personal financial profile which set out her needs, objectives and circumstances. Mrs F had also advised that she was willing to accept reasonable risk for a potentially increased return. R Consulting advised that Mrs F did not enter into an ongoing advice agreement, and that she had been provided with the relevant Customer Information Brochure for the Fund.

A Conciliation Conference was arranged and the parties discussed the original financial goals of Mrs F, her risk profile and her expectations in relation to the ongoing levels of service. Mrs F agreed that the pension exit fees had been applied appropriately. An ex gratia settlement for less than \$5,000 was subsequently reached at the conciliation, that reflected the level of service Mrs F believed she had been provided by R Consulting.

Case Study 3 – Life/Superannuation

Mr L entered into a superannuation policy with Company X in 1990. At the time of entering the policy Mr L was unaware of the potential application of exit fees if he exited the policy prior to maturity. Mr L became aware of the exit fee when setting up his own self managed superannuation fund in 2003; his intention was to roll the Super policy into his new fund.

Mr L contacted Company X and was advised that the \$1,800 fee was applicable and that he would have been advised of it at the time of entering the policy. Mr L was dissatisfied with this response and Company X advised him to take his complaint to the Superannuation Complaints Tribunal (SCT). The matter was subsequently determined to be outside of SCT jurisdiction and was referred to FICS.

Both parties were keen to conciliate to resolve the dispute. There was positive discussion of the issues at conciliation, however, due to the time that had lapsed from policy inception there were minimal records that Company X had maintained on its file. Following negotiations during and after conciliation, Company X offered full reimbursement of the exit fee, which was accepted by Mr L.

What we have achieved

Case Study 4 – Financial Planning

Mr and Mrs K entered into a financial plan with Y Finance after Mr K's work position was made redundant in 2001. Mr and Mrs K's financial plan identified them as growth investors and recommended a number of managed investments. After six months a review was sent to Mr and Mrs K showing significant losses in capital. Mr and Mrs K contacted Y Finance to express their concern, and were advised to maintain their portfolio. After another six months losses, a rebalance to more conservative investments was undertaken. Mr and Mrs K were satisfied with the more conservative portfolio, however, they were dissatisfied as they believed that they should not have been initially assessed as being growth investors.

The parties subsequently participated in a Conciliation Conference. Y Finance maintained that the risk profile recommendations provided to Mr and Mrs K were appropriate to their circumstances. However, Y Finance did agree that its customer service and communication with Mr and Mrs K had not been adequate. In light of this, an ex gratia offer of \$8,000 was made to Mr and Mrs K during the conciliation, which was accepted.

Case Study 5 – Life Insurance

Mrs X took out a critical illness policy with ABC Insurance in 1996. The policy provided for a benefit of \$150,000 if a critical illness was incurred. In January 2004, Mrs X made a claim after being diagnosed with multiple sclerosis. However, ABC rejected her claim as it believed her condition did not meet the criteria for multiple sclerosis. The policy definition of multiple sclerosis required 25% of function impairment. Mrs X's specialist had assessed her impairment as being around 10%.

Mrs X was dissatisfied with her claim being rejected as she believed that the policy definition was dated and too narrow, and did not reflect industry standard definitions. Mrs X was also dissatisfied that she took out the policy to cover such an illness occurring, and it had not fulfilled this need.

FICS arranged a Conciliation Conference. The issues discussed at conciliation included industry standard definitions of multiple sclerosis, when and how ABC reviewed and updated its policy definitions, and whether ABC intended to change its policy definition of multiple sclerosis in the future.

The complaint was resolved at conciliation, with ABC advising that it was currently reviewing its policy definition of multiple sclerosis, with a new definition to commence in the following 12 months. ABC was also willing to reassess Mrs X's claim if her condition changed at all. Mrs X was happy that her concerns had been heard and acknowledged by ABC.

What we have achieved

Education

FICS places significant emphasis on its educative role including activities such as seminars and industry forums.

In addition to FICS regular activities, in 2004 FICS launched two significant education programmes for its Members. The Member Information Seminars and the Internal Dispute Resolution Training Workshops.

Member Information Seminars

During 2003 and 2004 FICS membership increased substantially. As a result of this it was recognised that a number of Members were unaware of the overall FICS complaint process. With this in mind it was decided to commence Member Information Seminars.

These were conducted by Chief Executive, Alison Maynard, the National Panel Chair, Michael Arnold and the National Relations Manager, Trevor Slater and ran for approximately four hours, contained information concerning the FICS process from when a complaint is lodged through to finalisation.

Attendees were provided with a Member Information Seminar manual which contained comprehensive information on the FICS process including guidelines on how to respond to a complaint.

The Member Information Seminars were conducted throughout Australia and were well attended by Members.

Internal Dispute Resolution Member Training

Over the last few years the requests from Members for assistance with the resolution of complaints, at Internal Dispute Resolution (IDR), prior to escalation to FICS increased. As a result Members were surveyed to determine if they were interested in participating in a complaints handling workshop being conducted by an external trainer and designed exclusively for Members.

Responses from Members indicated that there was a need for this. Based on this information a workshop was put together in consultation with Nina Harding who is an experienced and qualified trainer, mediator and facilitator.

A workshop was planned to take place in Sydney and advertised accordingly. The response from Members was overwhelming and as a result FICS undertook three such workshops in Sydney with in excess of 90 Members attending.

The feedback from Members clearly indicated that the content of the workshop was meeting their requirements. It is planned that the IDR skills workshop will be conducted Australia-wide in 2005.

It was extremely pleasing to see such a high level of interest and attendance from Members at these workshops. The response by Members clearly indicates that they are taking complaints seriously and have a desire to resolve them by way of mutual agreement with their customers.

The FICS Website

FICS disseminates much information via its website www.fics.asn.au.

The website contains FICS contact details, Determinations of the Panel and the Adjudicator, the Rules and Constitution, complaint forms, privacy information, the FICS Annual Review and our regular Bulletins.

During 2004 additional web pages containing information for new Members, FICS press releases and publications were added to the site.

Nine FICS Bulletins were issued in 2004 which contained such matters as minutes of liaison meetings, Practice Notes issued, announcement of staff changes, notification of Rule changes and notification of meetings with Members.

What we have achieved

Involvement with La Trobe University

La Trobe University in Melbourne, as is the case with other universities throughout Australia, conducts Graduate Certificate and Graduate Diploma courses in Conflict Resolution. Teaching institutions like La Trobe University rely upon the cooperation of commercial organisations such as FICS to assist them in the practical training of dispute resolution skills. FICS has recognised that part of its role is to assist such teaching institutions with dispute resolution programmes.

During 2004 a number of presentations were made by FICS staff to La Trobe University students as part of their on-going studies.

FICS also joined discussions with students undertaking the subject Dispute Resolution System Design and in particular worked closely with two students who commenced a project designed to implement an internal complaints procedure for FICS. It is envisaged that this procedure will be completed during 2005.

Conferences and Seminars Presentations

Alison Maynard, Chief Executive

18 - 19 March	International Finance Sector Ombudsman Conference, London, United Kingdom
31 March	Trustee Corporation Association Conference, Melbourne
28 April	FPA Principal Members Conference, Melbourne
16 - 17 June	Consumer Representatives Forum, Melbourne
4 - 5 August	IFSA Conference, Brisbane
8 August	ALUCA Conference, Cairns
1 September	Financial Counsellors Seminar, Melbourne
20 October	Financial Counsellors Conference, Fremantle
25 October	SOCAP Conference, Melbourne
9 November	Consumer Credit Conference, Melbourne
1 December	FPA Convention, Sydney

Michael Arnold, National Panel Chair

29 - 30 April	Australian Claims Convention, Sydney
16 - 17 June	Consumer Representatives Forum, Melbourne
2 - 3 September	Australian Claims Expo 04, Sydney
9 November	IOS Conference, Sydney

What we have achieved

Trevor Slater, National Relations Manager

23 February	Singapore Delegation, Melbourne
9 June	Financial Planning Association, Sydney
18 June	Capstone Financial Planning, Melbourne
8 August	ALUCA Conference, Cairns
27 August	Securities Institute, Melbourne
18 August	La Trobe University, Melbourne
29 September	Tribeca Group, Sydney
30 October	La Trobe University, Melbourne
12 November	AVIVA (Insurance), Melbourne
25 November	FICS Complaint Workshop, Sydney
26 November	Independent Retirees, Warrnambool
1 December	FPA Convention, Sydney
2 December	Asteron and Tower Complaint Workshop, Sydney
9 December	FICS Complaint Workshop, Sydney

Media Articles

The Age, Money Manager section, 18 February

Independent Financial Adviser, February 2004, 8 March, 15 March, 19 April, 17 May, 7 June, 16 August, 29 August and 27 September

Money Management Magazine, 29 January and 29 August

Financial Planning Magazine, February, May, September

Sydney Morning Herald, 27 July, 11 August

The Australian, 17 March

Choice Money & Rights Magazine, 1 April

Sun Herald, 29 August

Personal Investor, November

ASIC Media Release, 27 August

Sunrise Exchange, 17 August

Crikey.com, 29 September

The Australian & New Zealand Institute of Insurance & Finance Journal, February

Master Funds Quarterly, March

What we have achieved

Systemic Issues and Serious Misconduct

FICS has a responsibility to identify systemic issues and cases of serious misconduct that arise from complaints, refer these matters to the relevant Member(s) for response and action and report information about the systemic issues or serious misconduct to ASIC in accordance with agreed guidelines and thresholds.

A systemic issue is one that may have further implications for a Member beyond the immediate actions and rights of the parties to the complaint. Whilst several complaints of the same type may indicate a systemic issue, it is not enough to define or classify systemic issue by reference only to the number of complaints FICS may receive. A systemic issue can be identified by one complaint; this is because the effect of the particular issue will clearly extend beyond the parties to the complaint.

Rule 63 provides that *“the Board must ensure that FICS has procedures in place for dealing with systemic issues and serious misconduct”*. FICS has published its procedures for dealing with systemic issues and serious misconduct in Bulletin No. 5, October 2001.

Some systemic issues/serious misconduct dealt with during 2004 were:

Poor Advice and Churning

FICS received a complaint that an authorised representative of a Member had advised a husband and wife to surrender a life policy and commence three new life policies, two income protection policies and trauma cover. This complaint was determined by the Panel. It was noted that there was “a huge premium cost relative to [the complainants] modest combined pre-tax income”. The Panel found that the complainants were provided with inappropriate advice and that the adviser’s actions constituted churning and decided in favour of the complainant. The Panel also recommended that FICS deal with this matter as a systemic issue or serious misconduct.

In response to FICS inquiries, the Member conducted an audit of a selection of the adviser’s files and reported back that there was no evidence of inappropriate advice or churning in those files. In view of this, FICS was satisfied that no further action was warranted.

Delay in Providing Information to FICS

On two separate complaint files, the same Member took over two months to provide its initial response to the complaints, despite being requested to provide its response within 21 days in accordance with FICS Rule 21. The responses were only provided after repeated reminders and were incomplete and then the Member further delayed in providing additional information required.

After FICS wrote to the Member raising this as a systemic issue, the additional required information was provided in relation to both complaints.

Subsequently, the Member responded to the systemic issue, explaining that the delays had been caused by the need to retrieve files from their representative and by staff being on leave. The Member also advised that they had addressed the systemic issue by hiring a new staff member, reviewing their internal complaints process, including redesigning internal complaints checklists and pro forma documents, and commenced a new training initiative to refresh staff on their complaints process. An assurance was given that these measures would ensure that delays experienced in these two particular complaints would not be repeated.

FICS formed the view that these measures appeared to satisfactorily address and rectify the systemic issue raised.

What we have achieved

Failure to Inform Legally Represented Consumers of their Right to Complain to FICS

Under FICS Rule 7, Members are required to advise complainants that they may complain to FICS if they are unhappy with the outcome of a complaint dealt with by the Member's IDR.

FICS became aware that two Members had failed to inform complainants that they could complain to FICS and, on following this up with the Members concerned, ascertained that they had a practice of not informing legally represented complainants that they could complain to FICS. The Members said that they assumed that if the complainant was legally represented, they had decided to go down the legal route rather than alternative dispute resolution or that the solicitors were obliged to advise their clients about FICS.

These Members were advised that Rule 7 requires them to inform complainants about FICS regardless of whether or not they are legally represented. Both Members accepted this advice and agreed to change their practice. This issue was also publicised in FICS Bulletin No. 27.

Multiple Complaints Against the Same Adviser

FICS noticed that it had four current complaints against one Member that involved the same adviser. There also appeared to be some common elements to the complaints relating to advice to purchase shares in a particular company, with whom the adviser was alleged by some of the complainants to have a close relationship. Three of the complainants also alleged that the advice to invest in this company was inappropriate because of its speculative nature.

Investigation with the Member revealed that they had already taken remedial action in respect of this adviser over these issues and that ASIC had also previously investigated. Accordingly, FICS decided that it was unnecessary and inappropriate to take this matter any further.

What we have achieved

Future Developments

The financial services environment is always changing. The increase of financial awareness of consumers in the area of investing in shares is a good example.

As such FICS will need to continue to develop its services, in particular the provision of first class complaint resolution processes to keep meeting the needs of both consumers and Members.

In 2005 FICS has Plans to:

- Finalise the Rules Review
- Examine the feasibility of introducing an internal review of procedural fairness in Determinations when raised by a Member or complainant
- Complete information packages for Members, which will be a step-by-step guide on how to respond to a complaint which is lodged at FICS
- Survey participants in the FICS process to continue to develop and improve the way FICS operates
- Undertake a programme to increase the awareness of FICS by consumers, in particular those from non-English speaking backgrounds
- Continue to improve working relationship with Members
- Conduct Internal Dispute Resolution Workshops Australia-wide
- Continue to update and improve the FICS website including enhancement of statistical information
- Complete an internal complaints process to manage and monitor complaints made against FICS
- Conduct the 2005 Annual National Conference in Melbourne
- Examine further opportunities for cooperation with other financial sector external dispute resolution schemes
- Participate with La Trobe University to allow a student to undertake 150 hours work at FICS as part of their Conflict Resolution studies.

Statistics

Telephone Contacts

	2003	2004
TOTAL	9,513	9,878

The above figures are the total number of calls received during the period.

Nature of Complaint

	2003		2004	
	No.	%	No.	%
Denial of claim	739	17	417	16
Inappropriate advice	375	8	328	13
Misrepresentation	1,257	28	137	5
Non-disclosure	107	2	197	8
Policy values/charges	262	6	78	3
Standard of company service	1,410	31	1,108	43
Share transaction - misunderstanding	55	1	12	<1
Policy terms & conditions	309	7	233	9
Technical problems	n/c*	n/c*	41	2
No written plan	n/c*	n/c*	1	<1
Customer with special needs	n/c*	n/c*	1	<1
Training competencies	n/c*	n/c*	4	<1
TOTAL	4,514	100	2,557	100

Not all calls require a Nature of Complaint or Product Types to be recorded. Instances of such calls include those Outside Jurisdiction or follow up calls from complainants regarding case progression.

Product Types

	2003		2004	
	No.	%	No.	%
Allocated Pension	182	4	71	2
Bank Deposits	5	<1	14	<1
Debentures	1	<1	17	<1
Deferred Annuity	48	1	27	1
Endowment	122	3	52	2
Funeral Plan	n/c*	n/c*	23	1
Futures & Futures Options	n/c*	n/c*	6	<1
Immediate Annuity	52	3	7	<1
Income Protection	1,232	26	835	24
Investment Regular Premium	70	1	41	1
Investment Single Premium	847	18	70	2
Master Trusts	9	<1	6	<1
Managed Funds	31	1	148	4
Managed Investments	144	3	400	12
Managed Investments - Cash	28	1	3	<1
- Currency	7	<1	n/c*	n/c*
- Shares	322	7	n/c*	n/c*
Mortgage Protection	n/c*	n/c*	11	<1
Regular Premium	51	1	41	1
Shares - Derivatives				
Warrants	207	4	257	7
Single Premium	8	<1	15	<1
Superannuation - Company	29	1	30	1
- Personal	325	7	274	8
Term/Temporary Insurance	252	5	148	4
Timeshare	n/c*	n/c*	1	<1
Total & Permanent Disablement	225	5	158	5
Trauma	63	1	60	2
Unit Trusts - Property	27	1	39	1
Whole of Life	505	11	673	20
TOTAL	4,792	100	3,427	100

* Data not collected

Statistics

Written Complaints

Active Complaints

	2003	2004
New complaints received	1,038	1,416
Reopened	268	109
Finalised	863	1,758
ACTIVE AT END OF PERIOD	934	915

Previous to 1/9/2003, *New Complaints Received* did not include those cases that had not yet been assessed or required further investigation. As a result, a true comparison of cases active at the end of the period including those cases previously not counted is 1,232 at the end of 2003 and 915 cases at the end of 2004. This indicates a drop of 317 active cases.

Finalised does not include those cases where a Panel or Adjudicator Determination has been issued but the case remains open pending further administrative requirements.

New Complaints received

Industry	2004
Life Insurance	725
Financial Planning	449
Stockbroking	93
Managed Investments	141
Non FICS Industry Type	1
Other*	7
TOTAL	1,416

* Denotes industry types that do not fit the standard complaints categories.

New Complaints Progressed to Investigation

	2003	2004
Life Insurance	441	467
Financial Planning	419	284
Stockbroking	95	59
Managed Investments	83	123
TOTAL	1,038	933

A complaint is progressed to investigation when a signed Authority to Proceed and Summary of Complaint is received and a preliminary assessment made that it is within jurisdiction.

All Complaints Finalised During Period

Industry	2003	2004
Life Insurance	413	850
Financial Planning	296	598
Stockbroking	86	156
Managed Investments	68	147
Others		7
TOTAL	863	1,758

The 2004 figures include complaints that were closed after an initial assessment was made by the Enquiries team as to the jurisdiction, merit and content of the complaint. Refer to *Complaint not forwarded to Member* in subsequent tables.

Status of Open Complaints at end of period

	2003		2004	
	No.	%	No.	%
New complaints not yet assessed	10	<1	1	<1
Investigation pending*	270	22	159	17
Complaints under investigation	600	49	433	47
Complaints referred to Adjudicator	30	2	56	6
Complaints referred to Panel	304	25	247	27
Adjudication issued**	4	<1	1	<1
Determination issued**	14	1	18	2
TOTAL	1,232	100	915	100

* A complaint is only progressed to investigation when a signed Authority to Proceed and Summary of Complaint is received and a preliminary assessment made that it is within jurisdiction.

** The complaints remain open pending finalisation of administrative requirements.

Analysis of Complaints Pending Investigation

2004	No.	%
Information not provided	57	36
No authority received	58	36
Pending decision on jurisdiction	31	20
Not been to IDR	13	8
TOTAL	159	100

Statistics

Geographic Distribution of New Complaints that Progressed to Investigation

2004	Life Insurance		Financial Planning		Managed Investments		Stock-broking		All Industries	
	No.	%	No.	%	No.	%	No.	%	No.	%
Australian Capital Territory	11	2	13	5	11	9	3	4	38	4
New South Wales	132	28	80	28	37	30	17	29	266	29
Northern Territory	4	1	0	0	1	1	1	2	6	1
Queensland	93	20	57	20	24	20	8	14	182	20
South Australia	44	9	17	6	5	4	4	7	70	6
Tasmania	15	3	6	2	7	6	0	0	28	3
Victoria	124	27	79	28	30	24	16	27	249	27
Western Australia	39	8	27	10	4	3	9	15	79	8
No State Recorded	5	2	5	1	4	3	1	2	15	2
TOTAL	467	100	284	100	123	100	59	100	933	100

Statistics

Summary of all Complaints Finalised and their Outcomes

Complaint Outcomes		2003		2004	
		No.	%	No.	%
Complaint not Forwarded to Member	Duplicated****	n/c*	n/c*	73	11
	Outside Rules	56	79	260	41
	Withdrawn	5	7	139	22
	Other**	10	14	159	25
	Resolved by Member*****	n/c*	n/c*	7	1
Total		71	100	638	100
Case Manager	Other**/Duplicated****	n/c*	n/c*	1	<1
	Outside Rules	46	7	68	11
	Withdrawn	45	7	66	11
	Resolved by Member*****	n/c*	n/c*	87	14
	Conciliation Conference - Finalised by agreement	1	<1	33	5
	In favour of complainant	307	49	234	37
	In favour of Member	229	36	136	22
Total		628	100	625	100
Adjudicator	Outside Rules	n/c*	n/c*	1	2
	Withdrawn	n/c*	n/c*	2	3
	Finalised by agreement	n/c*	n/c*	1	2
	In favour of complainant	16	46	20	30
	In favour of Member	19	54	41	63
Total		35	100	65	100
Panel	Outside Rules	1	<1	2	<1
	Withdrawn	3	2	19	4
	Finalised by agreement	n/c*	n/c*	13	3
	In favour of complainant	77	60	196	46
	In favour of Member	48	37	200	47
Total		129	100	430	100
Total	Duplicated****	n/c*	n/c*	74	4
	Outside Rules	103	12	331	19
	Withdrawn	53	6	226	13
	Complainant did not respond***	10	1	159	9
	Resolved by Member*****	n/c*	n/c*	94	5
	Conciliation Conference - Finalised by agreement	1	<1	33	2
	Finalised by agreement	n/c*	n/c*	14	1
	In favour of complainant	400	46	450	26
In favour of Member	296	34	377	21	
TOTAL		863	100	1,758	100

* Data not collected.

** Pre the deployment of CIMS, "Other" was a category given to complaints closed due to the complainant not responding.

*** Includes complaints closed where the complainant did not respond to requests for further information after at least two follow ups.

**** Complaints that were closed due to either the complainant trying to bring/raise a complaint multiple times and/or complaints closed due to administrative errors.

***** Complaints closed that were resolved by the Member either before being referred to a Case Manager or at the initial Case Manager stage (applicable to 2004 only).

Statistics

Resolution Times

Industry Type	Case Manager				Adjudicator				Panel			
	2003		2004		2003		2004		2003		2004	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Life Insurance												
Up to 60 Days	63	21	74	25	1	14	7	28	1	2	7	4
61 - 90 Days	35	12	34	12	1	14	2	8	0	0	8	4
91 - 120 Days	44	15	34	12	1	14	2	8	3	5	12	6
121 - 150 Days	31	10	21	7	2	30	2	8	11	17	15	8
151 - 180 Days	30	10	28	9	0	0	2	8	4	6	10	5
181 - 211 Days	18	6	18	6	1	14	4	16	8	13	12	6
212 - 241 Days	23	8	11	4	0	0	1	4	3	5	11	6
Over 241 Days	58	18	72	25	1	14	5	20	34	52	119	61
Total	302	100	292	100	7	100	25	100	64	100	194	10
Financial Planning												
Up to 60 Days	54	25	47	22	3	16	4	15	0	0	1	1
61 - 90 Days	35	16	26	12	5	28	6	23	2	5	2	1
91 - 120 Days	32	15	21	10	4	22	4	15	0	0	8	6
121 - 150 Days	22	10	14	7	4	22	1	4	2	5	8	6
151 - 180 Days	21	10	16	8	1	6	1	4	4	10	11	7
181 - 211 Days	11	5	11	5	0	0	5	19	6	15	11	7
212 - 241 Days	6	3	12	6	1	6	1	4	4	10	8	6
Over 241 Days	33	16	65	30	0	0	4	16	23	55	98	66
Total	214	100	212	100	18	100	26	100	41	100	147	100
Stockbroking												
Up to 60 Days	10	16	11	20	1	25	1	14	0	0	2	3
61 - 90 Days	5	8	4	7	0	0	1	14	1	6	2	3
91 - 120 Days	13	21	1	2	2	50	1	14	2	12	2	3
121 - 150 Days	4	6	2	4	0	0	0	0	0	0	1	2
151 - 180 Days	9	15	5	9	0	0	0	0	0	0	2	3
181 - 211 Days	4	6	7	13	1	25	0	0	4	21	1	2
212 - 241 Days	3	5	3	5	0	0	0	0	1	6	1	2
Over 241 Days	14	23	22	40	0	0	4	58	16	56	50	82
Total	62	100	55	100	4	100	7	100	24	100	61	100
Managed Investments												
Up to 60 Days	8	16	18	27	4	67	1	14	0	0	0	0
61 - 90 Days	7	14	7	11	1	17	1	14	1	14	0	0
91 - 120 Days	11	22	7	11	0	0	1	14	1	14	13	46
121 - 150 Days	10	20	9	14	0	0	2	28	0	0	1	4
151 - 180 Days	3	6	4	6	0	0	0	0	0	0	3	11
181 - 211 Days	2	4	8	12	1	16	0	0	1	14	2	7
212 - 241 Days	2	4	2	3	0	0	0	0	1	14	1	4
Over 241 Days	7	14	11	16	0	0	2	30	3	44	8	28
Total	50	100	66	100	6	100	7	100	7	100	28	100
TOTAL	628		625		35		65		136		430	

Statistics

Referral Source of Complaints that Progressed to Investigation

2004	Life Insurance		Financial Planning		Managed Investments		All Industries	
	No.	%	No.	%	No.	%	No.	%
Accountant/Solicitor	62	13	26	9	6	5	2	3
Agent / Broker/Financial Adviser	19	4	16	6	15	12	3	5
Community Groups	6	1	1	<1	0	0	0	0
FICS Website	3	1	2	1	0	0	0	0
Financial Planning Association	1	<1	5	2	0	0	0	0
Friend/Relative	2	<1	9	3	0	0	0	0
Government Agency	15	3	17	6	8	6	8	14
Insurance Ombudsman	4	1	0	0	0	0	0	0
Insurance Company	2	<1	0	0	0	0	0	0
Media	1	<1	5	2	0	0	3	5
Member	263	56	126	44	64	52	24	41
Members of Parliament	3	1	0	0	1	1	0	0
Professional Bodies	5	1	6	2	0	0	2	3
Superannuation Complaints Tribunal	2	<1	6	2	1	1	0	0
Telephone Directory	79	17	65	23	28	23	17	29
TOTAL	467	100	284	100	123	100	59	100

Statistics

Industry Information – Life Insurance

Status of Open Complaints at end of period

2004	No.	%
Investigation Pending*	83	18
Complaints under investigation	220	48
Complaints with Adjudicator	24	5
Complaints with Panel	115	25
Adjudication issued	0	0
Determination issued	17	4
TOTAL	459	100

* A complaint is not referred to a Case Manager until a signed Statement of Authority and Summary of Complaint is received, and a preliminary investigation made to ensure the complaint is within jurisdiction.

Nature of New Written Complaints by Category that Progressed to Investigation

	2003		2004	
	No.	%	No.	%
Standard of Member Service	70	16	50	11
Denial of claim	295	67	291	62
Inappropriate advice	16	4	16	3
Policy values/charges	16	4	20	4
Policy terms and conditions	11	2	41	9
Non-disclosure	5	1	10	2
Non-disclosure - fees/charges	1	<1	2	<1
- risk	1	<1	0	0
- conditions & warning	0	0	1	<1
- tax/social security	1	<1	1	<1
Misrepresentation	25	6	35	7
TOTAL	441	100	467	100

Nature of Complaint by Policy Type that Progressed to Investigation

Policy Type	Denial of Claim	Values/Charges	Misrepresentation	Terms & Conditions	Standard of Member Service	Non-disclosure	Inappropriate Advice	TOTAL
Whole of Life	12	10	6	7	11	3	2	51
Endowment	0	2	4	1	4	1	0	12
Investment Regular Premium	0	0	2	0	0	0	4	6
Investment Single Premium	0	0	3	0	2	0	1	6
Term/Temporary	30	0	7	7	12	1	0	57
Income Protection	187	8	9	17	13	5	5	244
Total & Permanent Disability	35	0	0	1	1	0	0	37
Trauma	27	0	1	3	0	0	0	31
Allocated Pension	0	0	1	0	1	0	0	2
Superannuation - Personal	0	0	0	0	1	4	3	8
Regular Premium	0	0	0	0	1	0	0	1
Deferred Annuity	0	0	0	0	2	0	0	2
Immediate Annuity	0	0	2	0	1	0	0	3
Mortgage Protection	0	0	0	5	0	0	0	5
Funeral Plan	0	0	0	0	1	0	1	2
TOTAL	291	20	35	41	50	14	16	467

Statistics

Summary of all Complaints Finalised and their Outcomes

Complaint Outcomes		2003		2004	
		No.	%	No.	%
Complaint not forwarded to Member	Duplicated****	n/c*	n/c*	36	11
	Outside Rules	36	90	122	36
	Withdrawn	n/c*	n/c*	85	25
	Other**	4	10	92	27
	Resolved by Member*****	n/c*	n/c*	4	1
Total	40	100	339	100	
Case Manager	Outside Rules	29	10	28	10
	Withdrawn	17	6	29	10
	Resolved by Member*****	n/c*	n/c*	38	12
	Conciliation Conference - Finalised by agreement	n/c*	n/c*	10	3
	In favour of complainant	124	41	95	33
	In favour of Member	132	44	92	32
Total	302	100	292	100	
Adjudicator	Withdrawn	n/c*	n/c*	2	8
	In favour of complainant	4	57	15	60
	In favour of Member	3	43	8	32
Total	7	100	25	100	
Panel	Outside Rules	1	2	1	1
	Withdrawn	2	3	9	5
	Finalised by agreement	n/c*	n/c*	8	4
	In favour of complainant	38	59	89	45
	In favour of Member	23	36	87	45
Total	64	100	194	100	
Total	Duplicated****	n/c*	n/c*	36	4
	Outside Rules	66	16	151	18
	Withdrawn	21	5	125	15
	Other*/Complainant did not respond***	2	<1	92	11
	Resolved by Member*****	n/c*	n/c*	42	5
	Conciliation Conference - Finalised by agreement	n/c*	n/c	10	1
	Finalised by agreement	n/c*	n/c*	8	1
	In favour of complainant	166	40	199	23
	In favour of Member	158	38	187	22
TOTAL	413	100	850	100	

* Data not collected.

** Pre the deployment of CIMS, "Other" was a category given to complaints closed due to the complainant not responding.

*** Includes complaints closed where the complainant did not respond to requests for further information after at least two follow ups.

**** Complaints that were closed due to either the complainant trying to bring/raise a complaint multiple times and/or complaints closed due to administrative errors.

***** Complaints closed that were resolved by the Member either before being referred to a Case Manager or at the initial Case Manager stage (applicable to 2004 only).

Statistics

Analysis of Complaints Outside Rules

2004	No.	%
Underwriting decision	5	3
Investment performance	2	1
Subject to legal proceedings	2	1
Over monetary limit	34	22
Complainant knew all facts over six years ago	10	7
Complaint lodged with another scheme	15	10
Level of charges	1	1
Not a current Member	42	28
Company not involved in complaint	2	1
Complainants interest insufficient	4	3
Level of premium	1	1
Management of fund/scheme as a whole	3	2
Punitive/Consequential damages sought	2	1
Superannuation Trustee decision	28	19
TOTAL	151	100

Case Study – Case Manager Resolution

The complainant was a life insured under a Term Life insurance policy which commenced 6 February 1997. The policy also included a disablement lump sum benefit of \$90,000.

The insured was a 55 year-old man who had worked as a certified financial planner since 4 November 1987.

According to the claim form completed by the complainant on 19 June 2002, he had not been able to work at any time since 7 November 2001 due to an illness he described as “Chronic Major Depression”.

On 24 July 2003 the Member informed the complainant by letter that the claim had been declined on medical grounds as he was not totally and permanently disabled.

On 11 September 2003 the Member received a letter of objection from the complainant’s business partner. On 21 October 2003 the Member reaffirmed its decision to deny the claim and a complaint was submitted to FICS on 29 December 2003.

The Member responded to FICS by letter dated 24 February 2004 stating that it was reviewing the matter “but in the spirit of compromise and a gesture of goodwill” were willing to make an offer of settlement for \$45,000. The offer was made on a “no admission of liability” basis and was open until 11 March 2004 at which time it would expire.

The Case Manager expressed a personal view that the medical evidence upon which the Member relied is open to interpretation and that the complainant should therefore carefully consider the settlement offer of \$45,000.

On 8 April 2004 the Member concluded that having considered additional medical evidence in concert with the available evidence on file they were unable to determine that the complainant was totally and permanently disabled in accordance with the relevant policy definition. However, the Member agreed to make an offer of settlement on a no admission liability basis for \$90,000.

A Deed of Release was signed and the matter settled in May 2004.

Statistics

Case Study – Adjudicator Determination

The Member is a life insurance company, a subsidiary of a bank. The bank provides a credit card facility to its customers. The Member offers an insurance policy, the cover of which is related to the insured person's credit card debt. It provides life insurance cover, total disability cover and critical illness cover. In the event of death the Member pays the bank the amount of the insured person's indebtedness plus interest charges on the indebtedness for a maximum of two months after the date of death. During a period of temporary disablement the insurer pays the bank the amount due as set out in the bank's last credit account statement. Benefits similar to the benefit paid upon death are paid upon total disablement and upon a critical illness being suffered. In the policy critical illness is defined as meaning the first diagnosis of the insured person suffering any of the following illnesses occurring after the commencement date of the policy: blindness, malignant cancer, chronic renal failure, coronary artery bypass surgery, heart attack, major organ transplant surgery and stroke. Illness is defined as meaning a disease or sickness.

On 1 April 2003 the complainant held a credit card issued by the bank. On that day someone from the bank or the Member phoned her and offered her the opportunity to purchase a policy, described above. She agreed to do so and the policy was then issued. She authorised the bank to debit the monthly premium of \$0.70 per \$100 of the outstanding monthly balance of her credit card account each month. The policy was then issued and sent to her. Late in May 2003, while overseas, she was found to have an abscess on an ovarian tube. Because of that a total hysterectomy was performed by a surgeon in that country. The complainant then made a claim under the policy both for the temporary disablement benefit and the critical illness benefit. The Member paid \$91.80 as the temporary disablement benefit but declined to pay anything for the critical illness benefit. The complainant did not complain about the amount paid in respect of the temporary disablement benefit but she did complain about the rejection of her claim for the critical illness benefit.

Neither suffering the abscess on the ovarian tube nor requiring the hysterectomy surgery comes within the definition of "critical illness" in the policy. However, the complainant said that, when the policy was sold to her, she was misled to believe that it would cover any critical illness. It is clear from the terms in which the complainant made her complaint to the Member and to FICS that her understanding of what constituted a critical illness was that it was one that was life-threatening. She said that the abscess on the ovarian tube and the hysterectomy constituted such a critical illness because she nearly lost her life.

The Adjudicator found that hysterectomy surgery is performed frequently on many women in Australia and elsewhere in the world. Although all surgery, particularly where an anaesthetic is administered, involves some risk to the patient's life, hysterectomy is not a type of surgery that generally involves any substantial such risk. The surgeon who performed the operation provided a certificate of having done so but did not state that there were any unusual complicating circumstances that substantially increased the risk to the complainant's life. The Adjudicator, therefore, was unable to find that it was a life-threatening operation and there was no evidence that the abscess was itself life-threatening if appropriate surgery was performed, as in fact occurred. Consequently, even if during the telephone conversation which resulted in the complainant purchasing the policy she was misled to believe that the policy covered all life-threatening illnesses, so that the Member might have some obligation to pay the benefit for any life-threatening illness, it had no obligation to pay it because the abscess and the hysterectomy did not come within what she understood to be the meaning of the term in the policy. Accordingly the complaint was not upheld.

Case Study – Panel Determination

This matter concerned a claim made under a Trauma Recovery Policy. The complainant had suffered a tumour on the brain and subsequently lodged a claim. The insurer denied the claim on the grounds the claimant's illness did not meet all of the conditions of the policy under 'benign brain tumour'.

In September 2001 the complainant, suffering blurred vision, attended a doctor. A CT scan revealed a tumour on the brain and she underwent neurosurgery on the 2 October 2001. Although she made a satisfactory recovery her vision remained impaired and she continued to suffer health issues. The bulk of the tumour was removed, but not completely. She was free of epilepsy but the tumour damaged nerves affecting her eyesight. At the time of the onset of her illness the complainant was a married woman with children and worked five to six days per week. She subsequently made a claim for Trauma Recovery Benefit.

Statistics

The policy stated that the Member would pay a lump sum on the first occurrence of one of the listed medical conditions, brain tumour being one of those conditions. The policy conditions for a brain tumour stated that to qualify for the benefit the illness needed to contain the following elements:

“it cannot be totally removed by surgery; its growth cannot be arrested by other available techniques; it is life threatening; it has caused a permanent inability to perform at least two of the specified ‘activities of daily living’”.

The policy defines activities of daily living as the inability to do: bathing/showering; dressing/undressing; eating/drinking; using the toilet to maintain personal hygiene; getting in and out of bed, chair or wheelchair, or moving from place to place by walking, or wheelchair or without a walking aid.

The Member initially declined the claim in January 2002 and although the complainant supplied further medical information the Member continued to maintain their position and declined the claim on two further occasions the last being in August 2002.

The complainant referred the matter to FICS and supplied a number of reports from medical practitioners that she claimed clearly showed she had fulfilled all of the policy conditions and as such should be entitled to the benefit.

In response the Member explained to FICS the reasoning behind the denial. They stated that based on current medical evidence they accepted that the complainant suffered from a brain tumour that could not be totally removed by surgery and that its growth could not be arrested by other available techniques. However, they denied that the complainant’s condition was life threatening or that it had caused permanent inability to perform at least two of the specified activities of daily living. The Member did concede that in some circumstances, for instance in public places, the complainant may have difficulty moving from place to place without assistance.

The complaint proceeded to the Panel for a formal determination. The two questions the Panel needed to address were, was the complainant’s condition life threatening and had it caused permanent inability to perform at least two of the specified activities of daily living.

The Panel took into consideration the medical reports submitted both by the complainant and the Member. They commented that the medical reports must be read in the context in which they are written. For example the treating neurosurgeon was dealing with the current medical condition when he wrote to another doctor and was not turning his mind to the questions the Panel was now considering.

The Panel concluded that the medical evidence made it clear that the condition was life threatening at the time of the operation and required constant on-going supervision and remained a threat to her life in the future. They stated a threat is something that has the potential to harm but which may never come to pass. Therefore, in relation to this aspect of the policy condition, they concluded that there was no doubt that the complainant’s condition had been and remained life threatening.

In relation to the activities of daily living they stated it was clear from the medical evidence that her medical condition and restrictions they cause are permanent, although they may fluctuate to some degree.

They stated that ‘inability to perform’ in the Panel’s view could not mean total inability. For example if that were the case a person would not qualify if they could eat or drink even with assistance. The Panel formed the view that it was sensible and appropriate that ‘inability to perform’ means that the individual is restricted to performing these activities only with assistance, or in other words being unable to perform these activities independent of outside help.

Further, in relation to the inability to perform the activities of daily living they referred to the Macquarie Dictionary which states that inability is defined as ‘lack of ability; lack of power, capacity, means’.

With reference to the medical evidence and the complainant’s statements which the Panel accepted, the Panel formed the view that the complainant was not able to carry on her life freely and independently. Further, they also concluded there was no evidence to the contrary and found that the aftermath of her tumour affected her ability to perform each and every one of the activities of daily living identified in the policy and that the level of her restriction was far greater than the Member’s submissions suggested i.e. difficulty in some circumstances.

As a result the Panel directed the Member to pay the benefit to the complainant.

Statistics

Industry Information – Financial Planning

Status of Open Complaints at end of period

2004	No.	%
New Complaint - not yet assessed	1	<1
Investigation pending*	44	15
Complaints under investigation	129	43
Complaints with Adjudicator	21	7
Complaints with Panel	100	34
Adjudication issued	1	<1
Determination issued	1	<1
TOTAL	297	100

* A complaint is not referred to a Case Manager until a signed Statement of Authority and Summary of Complaint is received, and a preliminary investigation made to ensure the complaint is within jurisdiction.

Nature of New Written Complaints by Category that Progressed to Investigation

	2003		2004	
	No.	%	No.	%
Inappropriate advice	260	62	155	55
Misrepresentation	55	13	24	8
Non-disclosure	5	1	5	2
Non-disclosure - fees/charges	12	3	27	10
- risk	2	<1	2	1
- conditions & warnings	1	<1	1	<1
Policy values/charges	1	<1	1	<1
Standard of Member service	80	19	55	19
Share transaction - misunderstanding	1	<1	4	1
Denial of claim	1	<1	3	1
Technical problems	1	<1	3	1
Policy terms & conditions	0	0	1	<1
Non-disclosure tax/social security	0	0	3	1
TOTAL	419	100	284	100

Nature of Complaint by Contract Type that Progressed to Investigation

Policy Type	Denial of Claim	Values/Charges	Misrepresentation	Share Transaction Misunderstanding	Std of Member Service & Tech Probs	Non-disclosure	Inappropriate Advice	Policy Terms & Conditions	TOTAL
Managed Investments	0	0	3	0	12	5	41	1	62
Superannuation - Personal	0	0	0	0	18	18	40	0	76
Allocated Pension	0	0	4	0	2	2	18	0	26
Investment Single Premium	0	0	2	0	2	0	5	0	9
Shares - Derivatives/Warrants	0	0	0	4	11	2	18	0	35
Managed Funds	0	0	6	0	5	4	22	0	37
Managed Investments - Cash	0	0	0	0	0	0	2	0	2
Investment - Regular Premium	0	0	1	0	0	0	2	0	3
Immediate Annuity	0	0	3	0	1	0	0	0	4
Unit Trusts Property	0	0	3	0	1	1	1	0	6
Deferred Annuity	0	1	1	0	1	2	0	0	5
Single Premium	1	0	0	0	0	1	0	0	2
Superannuation - Company	0	0	0	0	1	1	2	0	4
Income Protection	1	0	0	0	0	0	4	0	5
Master Trusts	0	0	0	0	2	0	0	0	2
Term/Temporary	0	0	0	0	1	0	0	0	1
Whole of Life	1	0	1	0	1	2	0	0	5
TOTAL	3	1	24	4	58	38	155	1	284

Statistics

Summary of all Complaints Finalised and their Outcomes

Complaint Outcomes		2003		2004	
		No.	%	No.	%
Complaint not forwarded to Member	Duplicated****	n/c*	n/c*	27	13
	Outside Rules	16	70	92	43
	Withdrawn	2	9	37	17
	Other**	5	22	55	26
	Resolved by Member*****	n/c*	n/c*	2	1
Total	23	100	213	100	
Case Manager	Duplicated****	n/c*	n/c*	1	<1
	Outside Rules	10	5	26	12
	Withdrawn	20	9	27	13
	Resolved by Member*****	n/c*	n/c*	28	13
	Conciliation Conference - Finalised by agreement In favour of complainant	1	<1	16	8
	In favour of Member	128	60	85	40
	In favour of Member	55	26	29	14
Total	214	100	212	100	
Adjudicator	Outside Rules	n/c*	n/c*	1	4
	In favour of complainant	8	44	8	31
	In favour of Member	10	56	17	65
Total	18	100	26	100	
Panel	Withdrawn	n/c*	n/c*	4	3
	Finalised by agreement	n/c*	n/c*	3	2
	In favour of complainant	26	63	74	50
	In favour of Member	15	37	66	45
Total	41	100	147	100	
Total	Duplicated****	n/c*	n/c*	27	5
	Outside Rules	26	9	119	19
	Withdrawn	22	7	68	11
	Other**	5	2	55	9
	Resolved by Member*****	n/c*	n/c*	30	5
	Conciliation Conference - Finalised by agreement	1	<1	16	3
	Finalised by agreement	n/c*	n/c*	3	1
	In favour of complainant	162	55	167	28
	In favour of Member	80	27	112	19
TOTAL	296	100	598	100	

* Data not collected.

** Pre the deployment of CIMS, "Other" was a category given to complaints closed due to the complainant not responding.

*** Includes complaints closed where the complainant did not respond to requests for further information after at least two follow ups.

**** Complaints that were closed due to either the complainant trying to bring/raise a complaint multiple times and/or complaints closed due to administrative errors.

***** Complaints closed that were resolved by the Member either before being referred to a Case Manager or at the initial Case Manager stage (applicable to 2004 only).

Statistics

Analysis of Cases Outside Rules

2004	No.	%
Investment performance	2	2
Over monetary limit	17	14
Complainant knew all facts over six years ago	4	3
Complaint lodged with another scheme	5	4
Level of charges	1	1
Not a current Member	70	59
Not been to Member's IDR	1	1
Company not involved in complaint	7	6
Complainants interest insufficient	1	1
Management of fund/scheme as a whole	4	3
Superannuation Trustee decision	7	6
TOTAL	119	100

Case Study – Case Manager Resolution

Mr B, in December 2002 had \$60,000 to invest. He sought advice from his bank. While Mr B's previous investment history is unclear, he did acknowledge that he and his wife owned some shares. They had always invested in both names. He was essentially the sole income earner.

The advice from the bank's financial planner was to invest in managed funds but to gear the investment by borrowing \$60,000 through a margin loan from the bank. The bank's financial planner advised Mr B to make the investment in his name as he was in the top tax bracket, something which later proved to be incorrect and part of his overall complaint.

About nine months into the investment Mr B wanted to change the structure of his portfolio, allowed under the terms of the investment. When he attempted to do this he became aware his financial planner had left the bank, and consequently had difficulty in finding someone else to take him through the process of changing the structure of his portfolio.

His instructions were slow to be acknowledged and then mistakes were made in the execution. He regularly received two statements, a quarterly statement from one area of the bank and a monthly statement from another subsidiary of the bank. He was never able to reconcile these accounts and was unable to get anyone to tell him what his "true" position was.

Mr B wrote a number of letters to many areas in the bank, with limited success. The bank acknowledged that information provided by Mr B's accountant was correct, that is, had the investment been made in joint names, he would have been financially better off. The bank agreed to compensation of around \$1,600.

Mr B was not satisfied with this investigation and came to FICS .

He set out his position in an elaborate colour-coded spread sheet and without any input from the bank, it appeared that Mr B had suffered financially and that there were unauthorised transactions on his account.

After contact by the Case Manager, the bank agreed to send two representatives to Melbourne to meet with Mr B and FICS. The representatives from the bank were able to demonstrate to Mr B what went wrong with his account.

An initial error was made at the time he changed the structure of his investments and this was compounded during the process of trying to correct it.

The settlement facilitated by the FICS Case Manager was that the bank would liaise with Mr B's tax accountant to produce two sets of figures. The first was the tax liability that flowed to Mr & Mrs B if the investment had been made in their joint names from the start. The second was the tax liability on Mr B as if he made the investment in his own name from inception. Mr B would assume responsibility for tax under the dual name investment and the bank would reimburse him the difference. The bank also made some allowance for the cost of Mr B's accountant.

Mr B took total responsibility from the start of the current financial year. The bank also agreed that it would learn from this experience and encourage systems to be put in place to alert investors to problems when they arise and when investors are allocated new financial planners.

Statistics

Case Study – Panel Determination

This complaint concerned an allegation by a husband and wife that the Member, a financial planner, provided inappropriate advice and did not exercise appropriate duty of care in relation to a recommended gearing strategy for investments, which failed when the equity markets failed.

The complainant sought investment advice from the Member through its authorised representatives. They owned their house, had some shares and money in the bank. The necessary client data form and financial services agreement was completed in October 1999. An Asset and Income Management Solution Report was also prepared for the complainants. The recommendation was to gear them into investments using security from both their home and a marginal lending facility. Following this advice an Investment and Borrowing Risk Acknowledgement was signed by the complainants at the end of October 1999. An Authority to Proceed was also signed by the complainants in early November 1999 and investments were made utilising negative gearing strategy. Reviews took place in May and November 2000, May and November 2001 and August 2002. All were signed off by the complainants.

The investments performed well for a number of years. The complainants made good profit in the first year and used the surplus to invest in additional shares as well as purchasing a motor vehicle. However, they became concerned when the fall in the share market and consequent decline of their portfolio value occurred and complained to the Member in the second half of 2002.

They alleged that due to the apparent fall in the investment they were required to sell their home to discharge the mortgage and margin loan. They sought compensation ranging between \$60,000 and \$100,000 which they believed they had suffered as a result of poor advice.

The Member declined their claim and asserted that they were initially appropriately advised and were supported by six monthly reviews and were happy with the portfolio until the markets fell. Further, they believed that the complaint was performance driven and that the complainants did not take into account the benefits received from the investment.

The matter was unable to be resolved by mutual agreement and proceeded to the Panel for a formal Determination.

The Panel stated that in order for the complainants to succeed they must establish on the balance of probabilities that the Member did not act in accordance with the duty of care owed to them and as a result suffered a financial loss.

In looking at the question of duty of care the Panel referred to a number of legal documents including Butterworth's Australian Legal Dictionary which states in part "in the performance of professional work a professional person must apply the standard care of the ordinary skilled person exercising and professing to have that skill".

Further, they also referred to the 6th edition of Securities and Financial Services Law by Baxt, Black and Hanrahan which at paragraph 1306 describes a duty of care as one that is to be measured having regard to what is reasonable in the circumstance. It states:

"although a financial services licensee is not required to have an extraordinary level of skill or the highest professional attainment it must exercise due care, skill and diligence and must bring to its task the competence which is usual among persons practicing as the financial services licensee".

The Panel stated that financial advisers must provide their clients with appropriate recommendations in relation to investments in order to meet their duty of care and that an adviser must take into consideration the clients' needs, circumstances, risk profile and time-frame for investment before providing their advice.

As such the Panel drew the conclusion that in order to establish there had indeed been a compensational loss the Panel needed to consider if the advice was appropriate and if the complainants were adequately informed of the risks.

They identified that there was not much documentary evidence provided by the complainant to determine what loss, if any, had been suffered. The Panel concluded that the payment of the outstanding mortgage on their home was not evidence of a loss. Further, they added that although the financial plan was not very impressive, and the strategy was aggressive and could be subject to criticism, it was well within industry practice and covered the risk profile and asset allocation and a detailed analysis of the gearing, including the downside if the markets fell. They also noted that the complainants did not dispute they received a copy of the plan, signed an Authority to Proceed and attended regular review meetings where they agreed they were happy to continue.

In summary the Panel concluded that it was satisfied that the complainants had been influenced by the downturn in the investment after the initial period of investment of about three years. They added that the complainants had not made any recorded complaint about the nature of the investment strategy in this period and that their complaint followed the reduction in the value of their investments which led to them selling them and exiting the strategy prepared by the Member's adviser. They also noted that the claim followed a rebound in the market which would have led to a recovery of investments if they had not exited the strategy.

The Panel was satisfied that any loss the complainants suffered related to the performance investments and as FICS does not have jurisdiction to award compensation for losses due to market performance the matter was found in favour of the Member.

Statistics

Industry Information – Managed Investments

Status of Open Complaints at end of period

2004	No.	%
Investigation pending	16	17
Complaints under investigation	55	59
Complaints with Adjudicator	8	9
Complaints with Panel	15	16
Adjudication issued	0	0
Determination issued	0	0
TOTAL	94	100

* A complaint is not referred to a Case Manager until a signed Statement of Authority and Summary of Complaint is received, and a preliminary investigation made to ensure the complaint is within jurisdiction.

Nature of New Written Complaints by Category that Progressed to Investigation

	2003		2004	
	No.	%	No.	%
Inappropriate advice	33	41	25	20
Misrepresentation	11	13	51	41
Non-disclosure	1	1	1	1
Non-disclosure – fees/charges	1	1	5	4
Policy terms & conditions	1	1	1	1
Standard of Member service	36	43	36	29
Technical problems	0	0	2	2
Non-disclosure – risk	0	0	1	1
Policy value/charges	0	0	1	1
TOTAL	83	100	123	100

Nature of Complaint by Contract Type that Progressed to Investigation

Contract Type	Misrepresentation	Standard of Member Service	Non-disclosure	Inappropriate Advice	Terms & Conditions	Technical Problems	Policy Values/Charges	TOTAL
Managed Investments	9	19	1	11	0	1	0	41
Superannuation - Personal	0	1	0	3	0	0	0	4
Allocated Pension	1	0	0	2	0	0	1	4
Investment Single Premium	1	1	0	3	0	0	0	5
Managed Investments - Cash	0	0	0	0	0	1	0	1
Managed Funds	30	9	5	1	0	0	0	45
Master Trusts	0	0	0	0	1	0	0	1
Shares - Derivatives/Warrants	0	3	0	3	0	0	0	6
Superannuation - Company	0	1	0	0	0	0	0	1
Unit Trusts Property	6	2	1	2	0	0	0	11
Time Share	4	0	0	0	0	0	0	4
TOTAL	51	36	7	25	1	2	1	123

Statistics

Summary of all Complaints Finalised and their Outcomes

Complaint Outcomes		2003		2004	
		No.	%	No.	%
Complaint not forwarded to Member	Duplicated****	n/c*	n/c*	5	11
	Outside Rules	4	80	20	43
	Withdrawn	1	20	9	20
	Other**	n/c*	n/c*	11	24
	Resolved by Member*****	n/c*	n/c*	1	2
Total	5	100	46	100	
Case Manager	Outside Rules	4	8	10	15
	Withdrawn	3	6	7	11
	Resolved by Member*****	n/c*	n/c*	14	21
	Conciliation Conference - Finalised by agreement	n/c*	n/c*	5	8
	In favour of complainant	28	56	24	36
	In favour of Member	15	30	6	9
Total	50	100	66	100	
Adjudicator	In favour of complainant	3	50	3	43
	In favour of Member	3	50	4	57
	Total	6	100	7	100
Panel	Outside Rules	n/c*	n/c*	1	4
	Finalised by agreement	n/c*	n/c*	1	4
	In favour of complainant	3	43	6	21
	In favour of Member	4	57	20	71
Total	7	100	28	100	
Total	Duplicated****	n/c*	n/c*	5	3
	Outside Rules	8	12	31	21
	Withdrawn	4	6	16	12
	Other**	n/c*	n/c*	11	8
	Resolved by Member*****	n/c*	n/c*	15	10
	Conciliation Conference - Finalised by agreement	n/c*	n/c*	5	3
	Finalised by agreement	n/c*	n/c*	1	1
	In favour of complainant	34	50	33	22
In favour of Member	22	32	30	20	
TOTAL	68	100	147	100	

* Data not collected.

** Pre the deployment of CIMS, "Other" was a category given to complaints closed due to the complainant not responding.

*** Includes complaints closed where the complainant did not respond to requests for further information after at least two follow ups.

**** Complaints that were closed due to either the complainant trying to bring/raise a complaint multiple times and/or complaints closed due to administrative errors.

***** Complaints closed that were resolved by the Member either before being referred to a Case Manager or at the initial Case Manager stage (applicable to 2004 only).

Analysis of Cases Outside Rules

2004	No.	%
Investment performance	3	10
Over monetary limit	1	3
Complainant knew all facts over six years ago	2	7
Complaint lodged with another scheme	5	17
Punitive/consequential damages sought	1	3
Subject to legal proceedings	1	3
Not a current Member	8	27
Company not involved in complaint	5	17
Management of fund/scheme as a whole	3	10
Superannuation Trustee decision	1	3
TOTAL	30	100

Statistics

Case Study – Adjudicator

The complainant in this case had invested funds through the FICS Member's Master Fund. Part of the money invested had been provided to him by A and as such the investment was mortgaged to A. The Member was therefore authorised to accept instructions from A regarding the investment.

The complainant had notified the Member of the investment strategy he wished to apply, that is to say the manner in which any money invested was to be spread between three managed funds. On 2 August 2002 the Member altered that strategy both in respect of the complainant's current investments and for any future investments. It did so as a result of having received a request from him for a change in the strategy. However, the request related only to future investments and not to current investments. The Member misread the instruction and altered the strategy for both the current and future investments. On 13 August 2002 he corrected that error by returning a number of units in each managed fund to the number that had existed on 2 August 2002.

In September 2002 the Member made a further error. A faxed copy of a redemption request was received by the Member on 20 September 2002 and was acted upon on that day. On 23 September 2002 an original request document was received by the Member and it also acted on that request. The Member failed to observe that it was the same request, a copy of which had been sent by fax on 20 September and acting upon it meant that the Member had made a second redemption. Two days later the Member corrected its error by purchasing for the complainant units of each of the managed funds, so as to bring his holding up to what it had been on 23 September 2002.

The Member has a website from which any person who is currently an investor through its Master Fund is able to obtain information in relation to their investment. However, only the results of the investment and not the actual transactions and explanations are provided on the website. The action taken by the Member to correct the errors it had made did not appear on the complainant's account on the website although the final balance was correct.

The complaint in this case concerns both the fact that the errors were made and the failure by the Member to show on its website the manner in which the errors were corrected. The Member accepted that it made the errors, which it described as administrative in nature, and informed FICS and the complainant that in future it will send written details of all reversals to investors affected by them. The complainant stated that as a result of the erroneous redemption of his investment on 23 September 2002 for two days he was deprived of his opportunity to change his investments to the extent of the amount of the redemption. He stated that he was constantly monitoring the market and it was a critical period for investment and sought compensation for that and also for the value of his time making the complaint to FICS and engaging in correspondence with FICS in respect of it.

The Adjudicator expressed the view that before the Panel or an Adjudicator can direct a Member to pay compensation to a complainant it must be satisfied that the Member has committed either a breach of its contract with a complainant or a tortious neglect of duty which it owed to him at common law.

The Adjudicator found that in this case the Member had breached the contract with the complainant by making errors and failed to provide him with the efficient service which it had agreed to. The Adjudicator stated "consequently he (the complainant) may be entitled to recover in a court of law an amount appropriate to compensate him for loss suffered as a result of those breaches of the contract".

The Adjudicator added that the powers of FICS are not as extensive as those of the Courts and its Panel and Adjudicators cannot direct a Member to pay compensation for consequential loss nor award punitive damages that a Court might decide should be ordered in proceedings before it.

The Adjudicator found that in the present case all that had been shown by the complainant in respect of loss of investment opportunity was the fact that his opportunity to make any investment was lost. The Adjudicator added that the complainant had not provided any information regarding the investments which he would have made if the opportunity had not been lost and even if he had done so the loss would still have been a consequential loss.

Statistics

The Adjudicator noted that the Member offered an ex gratia payment of \$500 as compensation for the inconvenience which the complainant suffered. However, despite this offer the Adjudicator also noted that he did not have the power to direct the Member to make such an ex gratia payment. Notwithstanding this the Adjudicator also stated that he felt the Member had made substantial administrative errors in dealing with the complainant's account, that this was most unsatisfactory and as a result the complainant was □

In relation to the lack of information on the Member's website concerning details of transactions, in particular adjustments and reversals, the Adjudicator stated that it was unsatisfactory that the Member had undertaken to notify investors by way of letter only. He expressed the view that this may take a number of days and in the meantime the website was not reflecting a correct position. The Adjudicator said "the website should provide the investor with all the information which he needs in order to review his financial situation on a daily basis. It is unsatisfactory that the investor, having been informed on the website that his investment has decreased, should then be left on the relevant date uncertain why the amount shown has changed and indeed whether it has been properly changed. In my view the Member is failing in its obligation to its investors by not showing corrections of errors on the website as soon as they are made".

In this case the Adjudicator found that the complaint, that the Member breached its contract through obligations with the complainant in respect of the management of his investment, was upheld. Further the complaint concerning the failure of the Member to provide details on its website of actions taken to correct errors is also upheld. However, no direction for payment or compensation was made due to the fact that the investor had not suffered a direct loss and the amount claimed was outside the FICS Rules.

Statistics

Industry Information – Stockbroking

Status of Open Complaints at end of period

	No.	%
Investigation pending	16	25
Complaints under investigation	29	45
Complaints with Adjudicator	3	5
Complaints with Panel	17	25
Adjudication issued	0	0
Determination issued	0	0
TOTAL	65	100

* A complaint is not referred to a Case Manager until a signed Statement of Authority and Summary of Complaint is received, and a preliminary investigation made to ensure the complaint is within jurisdiction.

Nature of New Written Complaints by Category that Progressed to Investigation

	2003		2004	
	No.	%	No.	%
Standard of Member service	34	36	17	29
Inappropriate advice	52	55	23	39
Misrepresentation	1	1	0	0
Non-disclosure - risk	0	0	1	2
Non-disclosure - fees/charges	1	1	2	3
Share transaction - misunderstanding	7	7	16	27
TOTAL	95	100	59	100

Nature of Complaints by Contract Type that Progressed to Investigation

Contract Type	Values/ Charges	Misrep- resentation	Share Transaction Misunderstanding	Standard of Member Service	Non- disclosure	Inappro- priate Advice	TOTAL
Shares - Derivatives/Warrants	0	0	15	16	3	22	56
Investment Single Premium	0	0	0	1	0	1	2
Futures and Futures Options	0	0	1	0	0	0	1
TOTAL	0	0	16	17	3	23	59

Statistics

Summary of all Complaints Finalised and their Outcomes

Complaint Outcomes		2003		2004	
		No.	%	No.	%
Complaint not Forwarded to Member	Duplicated****	n/c*	n/c*	0	0
	Outside Rules	n/c*	n/c*	24	73
	Withdrawn	n/c*	n/c*	8	24
	Other**	3	100	1	3
	Resolved by Member*****	n/c*	n/c*	0	0
Total		3	100	33	100
Case Manager	Outside Rules	3	5	4	7
	Withdrawn	5	7	3	5
	Resolved by Member*****	n/c*	n/c*	7	13
	Conciliation Conference - Finalised by agreement	n/c*	n/c*	2	4
	In favour of complainant	27	44	30	55
	In favour of Member	27	44	9	16
Total		62	100	55	100
Adjudicator	Finalised by agreement	n/c*	n/c*	1	14
	In favour of complainant	1	25	1	14
	In favour of Member	3	75	5	72
	Total	4	100	7	100
Panel	Outside Rules	n/c*	n/c*	0	0
	Withdrawn	1	6	6	10
	Finalised by agreement	n/c*	n/c*	1	2
	In favour of complainant	10	59	27	44
	In favour of Member	6	35	27	44
	Total	17	100	61	100
Total	Duplicated****	n/c*	n/c*	0	0
	Outside Rules	3	4	28	18
	Withdrawn	6	7	17	11
	Complainant did not respond***	3	3	1	1
	Resolved by Member*****	n/c*	n/c*	7	4
	Conciliation Conference - Finalised by agreement	n/c*	n/c*	2	1
	Finalised by agreement	n/c*	n/c*	2	1
	In favour of complainant	38	44	58	38
	In favour of Member	36	42	41	26
TOTAL	86	100	156	100	

* Data not collected.

** Pre the deployment of CIMS, "Other" was a category given to complaints closed due to the complainant not responding.

*** Includes complaints closed where the complainant did not respond to requests for further information after at least two follow ups.

**** Complaints that were closed due to either the complainant trying to bring/raise a complaint multiple times and/or complaints closed due to administrative errors.

***** Complaints closed that were resolved by the Member either before being referred to a Case Manager or at the initial Case Manager stage (applicable to 2004 only).

Analysis of Complaints Outside Rules

2004	No.	%
Over monetary limit	10	35
Complainant knew all facts over six years ago	1	4
Punitive/consequential damages sought	2	7
Not a current Member	8	27
Company not involved in complaint	3	11
Management of fund/scheme as a whole	1	4
Complainant's interest insufficient	1	4
Not been to Member's IDR	1	4
Level of charges	1	4
TOTAL	28	100

Statistics

Case Study – Panel Determination

This complaint concerns a claim for compensation by a complainant who alleges she was provided with poor stockbroking advice via a newsletter published by the Member.

The complainant asserts that the Member's website states that the newsletter "provides independent financial advice on resources, from a team of experienced mining professionals and financial analysts. Our objective is to be transparent, accountable and ethical".

In January 2002 a general recommendation in the Member's newsletter advised readers to purchase shares in a particular broadcasting organisation. The shares were purchased for 74 cents. They fell in price to 50 cents, then 36 and 22 cents during which time the Member recommended a hold on the stock. In September 2002 the Member recommended to sell by which time the stock had dropped to 8.5 cents.

When the complainant originally raised the complaint with the Member, the Member apologised and without an admission of liability offered a one year's free subscription to their newsletter. This was accepted as settlement by the complainant, however as the Member failed to deliver on their offer the complainant decided to refer the matter to FICS and seek compensation for the loss she had incurred. During the FICS process the Member increased their offer to two years free subscription of their newsletter but this was also declined by the complainant.

The Member acknowledged with hindsight the stock would have been better avoided. However hindsight, they stated, is an analytical tool that no investor or analyst is able to draw upon when assessing the merits of an investment.

The Member also drew to the attention of FICS that its website stated "the website and all its contents is prepared for general information only, and as such, the specific needs, investment objectives or financial situation of any particular user have not been taken into consideration. Individuals should therefore talk with their financial planner or adviser before acting on any information present on this website".

The Panel considered the question, was the Member required to consider the personal circumstances of each subscriber who invests in a financial product referred to in the newsletter? They noted that the newsletter issued by the Member contained general securities advice but it did not purport to consider the individual circumstance of its subscribers. It merely focussed on assessing the prospects of certain companies and whether they are relatively undervalued. As such the issue that the Panel considered was whether a securities adviser in providing general advice is or was required to consider the individual circumstances of the complainant which would include an assessment of the complainant's risk profile.

In its deliberations the Panel considered relevant legislation applicable at the time, in particular ASIC Policy Statement 122 issued in May 1997. Policy Statement 122 states that ASIC considers the conduct or business rules, being Sections 849 and 851 of the Corporations Law, only apply to personal security recommendations.

The Panel noted that Policy Statement 122 also supplies information about general securities advice. It states in part "general securities advice is advice on specific securities (such as the nature or effect of the securities) without any express or implicit recommendation that any particular action in relation to those securities is appropriate for certain persons in light of their individual investment objectives, financial situation and particular needs. Such advice may be provided ... as subscribers to a stockbroker's circular or newsletter. This is because there is no need to tailor that advice to any investor's individual circumstances and needs".

This ASIC Policy Statement also provides advice on how to avoid general securities advice being construed as personal advice. These warnings primarily concern a disclosure to the investor that the advice is general advice only and accordingly does not consider their personal circumstances.

With reference to this and other legislation as well as good industry practice the Panel formed the view that in this case the Member had provided an appropriate warning in its newsletter to the complainant and other subscribers that the advice is general advice only and should not be construed as personal securities recommendations. They added the relationship between the Member and the complainant was that of author and subscriber to a newsletter, or in other words, vendor and purchaser of information and that the Member in publishing the required warnings in the newsletter had met the required standard of care and there had been no breach of its duty.

As such the Panel determined that the Member was not responsible for the losses of the complainant.

Statistics

Members

Membership numbers – 31 December 2004

Category A	Life Insurers	42
Category B	Reinsurers	4
Category C	Managed Investments	288
Category D	Superannuation	6
Category E	Brokers, Financial & Security Advisers	156
Category F	A, C, or E Membership – Non-voting	2,005
TOTAL		2,501

Further details of the classes of FICS Membership can be found in the FICS Constitution on the website:
www.fics.asn.au



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