

## **Insurance and savings Ombudsman of New Zealand, September 2006**

This morning I would like to talk to you about financial intermediaries or independent representatives and complaints. I would like to firstly say that, I have a little trouble getting my tongue around the word intermediary and as you may hear, I sometimes slip a second "t" in, as my good wife often points out to me. So to ensure that I do not continually embarrass myself throughout this presentation, and annoy those people that like good and proper speech, I am may at times refer to intermediaries as representatives, thus saving myself a lot of embarrassment.

At the beginning of the presentation I will take you through a quick overview of the Financial Industry Complaints Service otherwise known as FICS, including some of our latest statistics and then move on to the challenges FICS faces with dealing with complaints involving representatives. I will also look at the challenges insurers and other financial organizations face in relation to such complaints, and try to provide a few answers on ways to address these challenges.

### **Slide 1**

FICS has a three level process. Firstly, a complaint is assessed to see whether or not it falls within the rules of FICS. In particular, we ask the complainant if they have raised the complaint with the member company concerned which is part of the FICS rules requirement. If they have not, we refer them back to the member company.

Secondly, once a complaint is believed to be within our rules, it is accepted and referred to a case manager for consideration for a conciliation conference or processed by other negotiation style techniques, with a view to try to resolve the

complaint. I should point out that to 31 August this year 78% of our complaints which total 798, have been resolved in these first two stages.

Thirdly we have the arbitration part of the FICS process. This is undertaken by a FICS panel or adjudicator which assesses the information and issues a formal determination which is binding on the member company.

### **Slide 3**

Here are some of the features of FICS and I won't go through each bullet point. However I can say, that the fact that the process is at no cost to consumers, and that Panel / Adjudicator determinations are binding on the member company, but not on the consumer, are two of the main complaints that we receive from FICS members in relation to our process. Both of these requirements are entrenched in the approval conditions for FICS set done by the regulator ASIC.

### **Slide 4**

FICS has monetary limits which are displayed here on this slide. In the last few months we have conducted a comprehensive review of our rules. Initially this was to include an increase to monetary limits including increasing the \$100,000 to \$250,000 for financial advice etc. However, arising from the consultation period with our members it came to FICS' attention that a number of professional indemnity insurers would not increase their limits, which meant that providers of financial advice would not have sufficient cover. So currently the displayed limits here are still applicable.

### **Slide 5**

I thought I would show you a couple of slides of FICS statistics. As you can see these are the complaints that we have received last year and 2006 to date. The

last box, complaints referred for investigation, is the second stage of the FICS process that I mentioned earlier.

### **Slide 6**

This slide gives a bit more detail in relation to the complaints referred for investigation, and the breakdown of where they are coming from. I have highlighted life insurance and financial planning, as this is the main area that intermediaries or representatives are involved in complaints.

### **Slide 7**

I would like to now move on to some of the challenges that FICS faces in relation to complaints concerning representatives.

*Who is the complaint against?*

What I mean by this is, is that from time to time a consumer will bring a complaint to FICS and it is unclear whether the complaint is against an insurer for example, or one of their representatives or intermediaries. In such a situation there are a number of ways FICS would look at the complaint.

Firstly, they would examine the information supplied by the consumer to see if there is sufficient information to determine who FICS should seek a response from. I should add here, that often a representative of a company is just that. In other words, they do not hold separate membership of FICS and as such the insurer or financial services company, who is a member, would then carry the responsibility for responding to the complainant.

Secondly, FICS would look to see exactly what the allegations by the complainant are. For example, if it concerned a denial of claim, does the denial

relate to the assessment of medical evidence or a like, or does it relate to the application process. In such a situation it may be the case that the denial of claim is the responsibility of the insurer and the application process is a responsibility of the representative.

It may also be the case the FICS would need to seek further information from the complainant or even the insurer to try to establish who should respond to the complaint.

*He said I said.*

It is not uncommon in particular in relation to an insurance complaint, that FICS receives two vastly different versions of events from the consumer and the representative. As FICS primarily deals with a complaint on the papers contained within the file and the written information provided by the parties, at times it can be difficult to determine who is telling the 'truth', for want of a term. Again FICS would handle this complaint in a number of ways.

For example, they may seek clarification from either party to see if other documents existed which support their version of events. FICS would also look at the insurance proposal, to see if there are other similar inconsistencies in the completion of the application that may show a particular course of action.

It may be the case that one version of events is not supported by documentary evidence. Although it does not automatically mean that version is dismissed, documentary evidence does tend to add support or credibility to a particular version.

At the end of the day if the complaint is unable to be resolved by conciliation or negotiation the panel or the adjudicator will make a determination on the balance of probabilities.

An insurer may also face similar challenges in relation to the *He said I said* problem when they receive a complaint relating to a non disclosure issue, for example. As well as following a similar pattern to what FICS do, an insurer may also want to look at the pre-existing knowledge and relationship the representative has with the client or the insured.

I remember some years ago being we received a complaint concerning a gentleman who suffered a nervous breakdown and had had his claim for benefits denied. He was a self employed motor mechanic and retail bike sales person. The claim was denied because upon of investigation, it was revealed that this particular gentleman was working from sunrise to way past midnight each day. The insurer claimed that if they had been aware of this knowledge they would have not issued a contract on any terms. The application stated that the complainant was only working around 50 hours per week, when in fact he was working far in excess of this amount.

In his defence, the complainant stated he had actually told the representative of the number of hours he was working in a conversation sometime around when the application was completed and as such the representative was aware of the long hours.

When the complaint came to me I asked the insurer to look further into the assertions made by the complainant in relation to the level of knowledge their representative had about the working conditions of the complainant. In particular did he have any knowledge, as a result of the existing relationship with the complainant, of the hours being worked? At the time I thought that in light of the complainant's assertions this question should have been asked.

The result of this enquiry revealed that the representative and the complainant saw each other quite often in the street, so to speak, and often spoke. The

representative conceded that it was not unusual for him to ask 'how is business – working hard?' to which the complainant often replied something like '20 hours a day / 7 days a week'.

I suggested to the insurer that they may like to reconsider their position. They did not and the matter proceeded to the Panel who found in favour of the complainant.

### **Slide 8**

*No proper version of events provided.*

When a direct allegation is made against a representative and either the representative or the insurer declines to provide a first person version of events and they paraphrase any statement made, it makes it very difficult for FICS to determine how accurate this information is. With this in mind, FICS insists that representatives provide a full statement or a version of events.

I should point out here that if the representative is not a member of FICS, and as such an insurer is responsible for the complaint, FICS would not (except in an extreme circumstances) approach the representatives directly. What we try to do is to point out to whoever is responsible for responding to the complaint that it is in their interests to present the best possible evidence to support their position and a paraphrased or edited statement from a representative or an intermediary is second class evidence.

### *Remedies and Enforcement*

From time to time a complaint is received against an entity, either an intermediary or a company, who is no longer a member of FICS. This could be for a number of reasons. For example, they have closed their business down or

the representative has parted company with the insurer or company. This of course makes it very difficult for FICS to investigate a complaint and very difficult for an insurer or company to comprehensively respond to a complaint. There is no easy answer to this particular point. However, FICS' position is that the best efforts must be made to contact the entity who complaint is made against and seek a response, so that the best possible evidence can be produced.

I recall one FICS member telling me that despite their best efforts they could not find the person, yet when I looked in the telephone book there was his name and number and location of his new business address. 'Best effort'? – I don't think so.

Another problem for FICS if the particular entity is no longer in business, and no longer a member of the FICS scheme, is that issuing a binding determination and enforcing that determination is virtually impossible.

## **Slide 9**

I would now like to move on to some of the challenges that an insurer or financial company may face in dealing with complaints concerning representatives or intermediaries. I hope that I may also be able give you some ideas on how to address these challenges.

Firstly, I must say that these comments are based on the understanding that financial intermediaries or representatives are either authorized representatives of your organization, have some sort of agency agreement, or at least have approval to sell the products that you provide.

*A poor practice equals exposure*

If the representative has poor practices and they are not doing the right thing so to speak, then your organization might be exposed in the case of a complaint. It goes without saying this could be quite disastrous for your organization and as such you need to take steps to prevent poor practices by representatives.

I have seen many examples where a representative is selling the product or the service of an organisation with very little control or checking by the company that he or she is representing. One simple example might be that they are selling a product that is not on your approved list without your knowledge. So my first suggestion to you is that you need to have in place some controls that regularly checked to ensure (or to try to ensure and I concede that is not always possible to do so) that the representative is acting in a proper manner.

Secondly, I have seen examples of situations where an insurer or a financial company becomes exposed through simply the fact that the representative is poorly trained or has a poor knowledge of a particular product or service. It is sometimes not sufficient to simply provide documented evidence such as brochures and alike to a representative and expect he or she to fully understand the workings of the product. It may be the case that training sessions with follow up training sessions or even examinations are a way to minimize the chance for this occurring.

A good example of not having sufficient knowledge of a particular product is reflected by the current problems in Australia concerning the investment group Westpoint. In simple terms, Westpoint was aggressively marketed to the mums and dads of Australia with the enticement of high returns for minimal risk. High returns of 15% compared to a bank that was providing somewhere in the vicinity of 5%. These were primarily marketed to financial planners who to a great extent were also sucked in to this deception. The problem that has arisen is that the financial planners who in a lot of cases were simply lazy or not doing their job properly, failed to look at or become aware of the level of risk involved in such an

investment. WestPoint have gone broke leaving a trail of somewhere in the vicinity of \$300 million dollars lost by investors. In many cases the financial planner and more importantly the company they represent have left holding the bag.

A cynical person could say that if the financial planner had done their job properly, and researched the risks and disclosed those risks to investors the situation may be different.

One other tip that may help insurers or financial organizations in minimizing their exposure due to poor practices is to be aware of warning signs that may indicate a dud intermediary or representative. I don't intend to go through all of these possible early warning signs, but to simply say that if something doesn't quite feel right, then it is quite likely that it isn't.

For example, it may be the case that the representative declines to attend a training session or declines to provide a home telephone number, or declines to provide some other insignificant detail. I often hear companies with intermediary types of complaints say they felt that this person was not right, 'but I took him on anyway'. What I am saying to you is this, if you have concerns investigate those concerns until you are confident this is the person you want representing your organization or selling your products.

#### *Finding quality intermediaries or representatives.*

I am quite firmly of the view that a licence does not make you a professional. Simply because you hold a license or approval to sell financial products, this does not necessarily mean that your actions will not generate complaints, or in fact you are a professional competent financial services representative. People are motivated by many different things. Psychologists may argue with you that it is not always money, however, I can tell you that it quite often it is and in the

financial industry this at times to can cause problems. Why do I say this can cause problems? Well because if the money is good enough, then the action taken by the representative may not be the most professional manner. I don't want to harp on the fact, but Westpoint is probably another good example of this. However, I would like to give you a better example.

Recently, I was at a dinner at a conference held by lets say a small group of financial planners. At the dinner, there was a fund manager undertaking a presentation, to entice these financial planners to place their clients in this particular product. Again without giving too much detail, the product was a winery with a second fund relating to truffles. I recall quite clearly thinking to myself that this is a high risk investment and the chap doing the presentation wasn't really disclosing to the financial planners the level of risk concerned. However, I also thought when it came to question time these professional financial planners would ask questions in relation to risk and returns.

The presentation finished and number of hands went in the air. What do you think was the first question asked? Was it how high is the risk involved in this investment? Or how long do you think you will be able to provide such a level of return? Or what is the long term future of the winery and truffle market? Or what is being done about the glut of grapes at the moment?

It was none of these. The first question asked? "What level of commission are you paying?" I turned to the 'president' of this particular group and I said to him, a little cynically I have to admit, "What type of investor would put their money in this investment?" To which, with eyebrows raised, he promptly replied "One with a high risk tolerance Trevor."

Call me cynical but I fear this could be a source of future complaints. At least I won't have to worry about looking for a job in the near future.

Now let's look now at somebody I spoke to just a few weeks after this dinner. This particular financial representative had been in the business for quite a while. We had received a complaint about him in relation to a denied insurance claim. Inadvertently we had charged him the FICS fee when in fact it should have been charged to the insurer. However neither FICS nor this financial representative had picked up this error for at approx eight months. During this time, we had done quite a bit of work on the file. We decided that we could not refund the whole FICS fee and thought that it would be fair if we simply charged him the case opening fee of a few hundred dollars. So I decided to visit him and discuss this offer with him. When I met with him he fairly quickly agreed that this was a far outcome.

We then got onto talking about matters like Wes point and other high risk investments. He told me that he had a professional financial planner in his small organization and along with himself took a lot of time before deciding which products to place on their approved list. He told me that Westpoint was not one of them despite the fact that he had been visited many times by representatives of Westpoint trying to entice him to sell this product. I thought to myself, this is very interesting and asked him how he decided what would go on his approved list.

He said "Trevor, the first thing that I do whenever I hear of a new product or a new offer from a fund or whatever it is, is say to myself, how will this benefit my clients"? He added, "I also have a view that to make money from investing, you must be prepared for some short term pain for long term gain". I thought to myself, I have heard this many many many times. However, he went on to say that he also believed that based on his experience, short term gain, as was the case with Westpoint, leads to long term pain.

I would suggest to you, that this is the type of person you would like as your representative or selling your product, not the one who asked who much commission was being paid by the wine grower.

## **Slide 10**

I would like to just now touch on one other area that I feel is essential to good complaint handling in relation to financial intermediaries or in fact just about any complaint and that is good complaint handling procedures and staff.

There is no doubt in my mind that highly qualified and experienced complaints handling staff are a benefit to any organization. What I mean by this, is that they should be well trained in alternative dispute resolution skills, in particular they should have some sort of formal training in mediation or negotiation. They should be able to communicate at all levels. I know you have probably heard this many times before, but it is important that they can get along with just about anybody.

They should be able to build rapport quickly, because you do not have much time to resolve a complaint when it comes in before alienating the person further and doubling the complaint – one about the content and one about the complaints handling process.

Some people have these skills naturally or act in the above manner unconsciously.

However, there are techniques that can be used to build rapport quickly and communicate effectively.

How many people were in my workshop yesterday? I must apologise to you as I just want to briefly talk about the skill of 'matching' that you would have heard me speak about yesterday.

'Matching' is a technique of mirroring a person's behaviour to help build a relationship quickly.

For example, if my wife writes you a complaint letter, as she is a pretty old fashion type of lady, she will start the letter with "Dear Mr Slater". Then she will quite formally set out her concerns conclude with "yours sincerely" "Robyn Slater" in brackets "Mrs". As I said, quite an old fashion lady.

If you did not match her style and responded to her by starting your letter with "Hi Robyn" or maybe even "Dear Robyn" you would highly offend her. This would cause her to be more alienated with you and in fact create a second complaint the first being about the content and the second being about the process of complaint handling.

'Matching' applies to all forms of communication whether it is written, spoken or in person. It is a very very simple technique to listen to the volume, pace, tone, the words that they use, look at the words that people write, how they set out their letters, how they set out their emails and to match the style. Likewise, when speaking to someone in person and matching their actions. The key is to be subtle

The reasoning behind this is that we tend to like people like ourselves and if we can show a complainant we are in some way like them, then the chances of a relationship forming (which allows for more effective communication of both good and bad news) is increased.

A good complaint handler should also be able to investigate but not interrogate. What I mean by this is that they should have good questioning skills that are not challenging to the person and will not result in the person becoming defensive. Therefore your complaints handler, should use things like open questions and

allow the person to speak freely rather than just “did you do this”, “when did you it” type of style. Again some people will have conscious ability to do this and some will unconscious ability.

Finally, good complaints handling staff should have knowledge of investigative skills, for example, the technique known as Scientific Content Analysis or SCAN.

SCAN is a technique used to identify predominately missing information. This is important to know as without all of the information a balanced decision cannot be made.

When a person speaks or writes in a pure version, that is they have not been directly accused of something and as such forced to lie or be completely truthful, a person will tell the truth but will just leave out information, often to deceive.

By using SCAN the location of possible missing information can be identified and enquiries targeted rather than using a scatter gun approach.

Again this was in my work shop yesterday, so I won't go over all the techniques that I did yesterday. However, I will give you a couple of quick techniques and if you want to see me afterwards, I am happy to tell you where to find further information.

One of the indicators of missing information is when a person answers the question by not answering the question. For example, a few years ago, my adult daughter was overseas working and telephoned us in the middle of the night explaining that her boyfriend, who was living in a different country at the time, had accused her of seeing another man. My wife being quite a smart although old fashioned person said to her, “are you seeing another man”, her response was, “that does not matter he should trust me”. So as you can see in that small example, there is no lie as such, there is simply just missing information.

Another example may be a question to a claimant along the line of “did you tell you representative that you had a bad back? If the answer is something like “he knew all about my health” then this would contain missing information and as such be deceptive as the question was not answered. But it is not a lie!

Politicians are very good at this deception technique. Next time you see a politician interviewed and they don’t answer the question, this is an indication that they are being deceptive, but I am sure I did not need to tell you that.

The “Scan” technique has been used in many many investigative styles and is highly successful. If you are interested the web site you need to visit is [www.lsiscan.com](http://www.lsiscan.com)

## **Slide 11**

Good complaint handling is important in fact vital. I could stand here and bore you with numerous facts and figures, but I am just asking you to take my word for it today.

So, what I mean by good complaint handling? Firstly, it should be well resourced. People working in the complaint handling area, should have sufficient support, staff and other resources to do their job properly. It should be well supported by top management. You may hear later today about the new Australian and International Standard” on complaints handling and that it is now a requirement of that Standard for top management to support the complaints team and the complaints process.

Let me give you one quick example of management not supporting their complaints handling team. Many years ago, there was an insurance

representative that also did investment advice who was “churning business”. What I mean by “churning business” is he would take the money of a particular investor, put it in a product, and once that product had earned sufficient amount of money to cover his commission, he would move that investor into another product, in most cases without them specifically asking him to do so. The capital usually did not go down, but he did receive commission. In this particular case, this representative had been doing this for a number of years and had earned many many thousands of dollars of commission predominantly from people who had retired or what could be called received a golden hand shake.

He was a particularly nice gentleman, and I remember interviewing him thinking, how could such a nice person be such a rogue, but he was, and after a fairly lengthy investigation that took our team quite a while, it was decided that we recommend that his agency be terminated. This recommendation was not taken lightly but was motivated by the fact that he had broken the law.

I recall quite clearly being summoned to one of Australia’s airports to meet with the head sales manager of Australia and New Zealand. We sat down to brief him on what had happened and before we had even got into the first two or three paragraphs, he said to us, “is it absolutely necessary to terminate this person’s agency”. Slightly surprised, I asked him why he had this opinion, and his response was “because he had earned a lot of money for this organization by the number of sales he had been able to complete” It took nearly two hours to convince this particular sales manager, that this gentleman should no longer be associated with the organization that I worked for. I must say, I felt a little disillusioned.

Your complaints handling staff should also be well recognized and valued. In the past if you failed processing applications and new business you went to the telephones and if you failed this you went to the complaints area. I am happy to say this is changing. You should value your complaints staff.

Finally, in relation to the complaint handling staff, I just would like to suggest that one role or position that I believe is an under utilized is what we could be called a "visitation officer". When I say visitation officer, I mean somebody attached to the complaints handling team or even the claims team that goes out and meets clients and representatives who have lodged a claim or a complaint or in a issue of dispute and speaks to them. Such a person needs to be fairly skilled but I can tell you that if an organization is prepared to consider using such a person the benefits are far reaching.

For example, a good visitation officer will be able to make observations in relation to a person being visited who has made a claim for a disablement benefit. Such as the condition of the house, the garden, whether there are muddy boots on the front lawn, all those sort of things that indicate that the person who is claiming that they are unable to work, may not be necessarily telling the truth. What this then allows is for the claims manger for example to do is to hone in their investigations in a particular area rather than taking a scatter gun effect and hoping they get it right. The other benefit of a visitation officer is if in fact the person they are visiting presents as being genuine which of course happens very often, is that the complainant feels that they are receiving very specialized proper treatment and as such it is fabulous public relations.

There is an obvious cost involved in having such a visitation officer, but the amount of money saved by being able to direct valuable resources to the right area and the public relations exercise far out ways the cost.

So to summarise, there are challenges involving financial intermediaries both for organizations like FICS and insurer or financial companies. However, good intermediaries or representatives are an asset to your organization and will generate good income and good business for you. In relation to complaint

handling, a good team well resourced and well looked after is an invaluable resource and should be seen as just that.

I am of course happy to take any questions, thankyou!