

RULES

OF THE INSURANCE & SAVINGS OMBUDSMAN SCHEME

1 NOVEMBER 2006

1 Definitions and Interpretation

1.1 In these Rules unless the context otherwise requires the following expressions have the following meanings:

“*Alternate Member*” means each alternate member of the Commission appointed in accordance with Rule 11.6;

“*Annual Meeting*” means the annual meeting of the Commission held in accordance with Rule 14.1;

“*Auditor*” means the auditor or auditors for the time being of the Commission;

“*Award*” means a written decision of the ISO including:

- (a) a direction that the Participant take the action set out in the Award; and
- (b) the ISO’s reasons for the Award;

“*Board*” means the board constituted in accordance with Rule 23;

“*Chairperson*” means the chairperson of the Commission;

“*Clear Days*”, in relation to the period of a notice, means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

“*Code/s*” means any code of practice or guidelines promulgated by Nominated Industry Groups;

“*Commission*” means the Insurance & Savings Ombudsman Commission established by Rule 2;

“*Complainant*” means a person or group, jointly or severally, making a complaint to the ISO;

“*Consumer and Community Groups*” means the consumer and community groups having a direct interest in consumer issues relating to and/or advising consumers in respect of some or all of the Services, as may from time to time appear in the list drawn up or updated by the Commission under Rule 26;

“*Eligible Body*” means any corporation or other entity, including a Trustee, which in the ordinary course of its business provides all or any of the Services but excludes:

- (i) a Registered Bank (as that term is defined in the Reserve Bank Act 1989) or any subsidiary of a Registered Bank;
- (ii) any corporation or other entity which provides Personal Line Insurance Services and is not a member of the ICNZ;
- (iii) any corporation or other entity which provides Health Insurance Services and is not a member of the HFANZ;

“*Employer-funded Superannuation Scheme*” means a superannuation or savings scheme where any contribution or deposit is made in accordance with the terms of the scheme by or on behalf of an employer or other third party;

“*ISO*” means the Insurance & Savings Ombudsman appointed in accordance with Rule 16.1 of the Rules;

“*Levy*” means any fee, subscription, levy or other payment as may be determined by the Commission from time to time in accordance with Rule 10;

“*Life Insurance and Savings Participant*” means each Participant which provides Life Insurance Services and/or Savings Services;

“*Life Insurance Participant*” means a Participant which is a person or association of persons, whether incorporated or unincorporated which, in the course of business issues, or is liable under, any contract the terms of which are dependent upon the contingencies of human life;

“*Member*” means a member of the Commission;

“*Minister*” means the Minister of Consumer Affairs, or if there is no such portfolio, the Minister responsible from time to time for the administration of the Fair Trading Act 1986;

“*month*” means calendar month;

“*Nominated Industry Group(s)*” means the Health Funds Association of New Zealand Inc. (“HFANZ”), the Insurance Council of New Zealand Inc. (“ICNZ”) and the Investment Savings and Insurance Association of New Zealand Inc. (“ISI”);

“*Office of the ISO*” means the establishment, including its officers and employees, established to enable the ISO to perform his/her functions and duties;

“*Participant*” means each company or organisation which becomes a participant in the Scheme in accordance with Rule 9.1;

“*Personal Line and Health Insurance Participant*” means each Participant which provides Personal Line Insurance Services and/or Health Insurance Services;

“*Register*” means a register of Participants in the Scheme;

“*Review Committee*” means the committee appointed in accordance with Rule 22.2;

“*Rules*” means these Rules as amended from time to time, and a reference to a particular Rule has a corresponding meaning;

“*Savings Participant*” means a Participant which provides Saving Services and which is not a Life Insurance Participant;

“*Scheme*” means the Insurance & Savings Ombudsman Scheme established by these Rules and the Terms of Reference;

“*Secretary*” means the secretary of the Commission appointed in accordance with Rule 12.1;

“*Services*” means any of the following services:

- (i) “*Health Insurance Services*”: any services by way of health insurance for personal or domestic purposes or for members of group schemes;
- (ii) “*Life Insurance Services*”: insurance provided by a Life Insurance Participant, for personal or domestic purposes, but excluding insurance in respect of an employment related group insurance plan or superannuation scheme;
- (iii) “*Miscellaneous Services*”: services provided by a Life Insurance Participant or a Savings Participant for personal or domestic purposes other than those services included in paragraphs (ii) or (v) including the provision of credit under a credit contract, but excluding services in respect of an employment related group insurance plan or superannuation scheme;
- (iv) “*Personal Line Insurance Services*”: fire and general insurance provided by a member of ICNZ for personal or domestic purposes, as agreed between the ISO and ICNZ (but excluding policies which are for commercial insurance purposes, other than for Small Business);
- (v) “*Savings Services*”: savings, superannuation, investment, funds management or

funds deposit services provided by a Participant for personal or domestic purposes, but excluding the provision of credit under a credit contract and services in respect of an employment related superannuation scheme;
and includes advice and services relating to or incidental to all of those Services;

“*Small Business*” means:

- (a) an individual, a partnership of natural persons or a corporation whose shareholders are natural persons; and
- (b) who carry on a small business and, at the time the events giving rise to the claim occurred, had:
 - (i) no more than 5 employees (including working proprietors) at any one time; and
 - (ii) an annual turnover (including the turnover of related enterprises or bodies corporate or other associated entities) not exceeding \$400,000;

The following types of insurance cover are included:

Commercial Property Insurance, Business Interruption/Loss of Rents; Electronic Equipment Insurance; Machinery Breakdown; Motor; Business Travel; Personal Accident; Inland Transit in New Zealand that does not form part of an import and/or export; Marine Hull up to and including 8-metres length overall.

The following types of insurance cover are excluded:

Construction Risks, Fidelity Guarantee; Legal Liability (including Public Liability and Products Liability); Professional Indemnity; Directors & Officers; Marine Hull over 8-metres length overall; Import/Export Cargo.

“*Subsidiary*” has the meaning given in section 5(1) of the Companies Act 1993 as if “company” in that definition included any body corporate whenever and wherever incorporated including outside of New Zealand;

“*Terms of Reference*” means the Terms of Reference as amended from time to time in accordance with the Rules;

1.2 Headings to these Rules do not affect their construction or interpretation.

1.3 For the purposes of these Rules:

- (a) Services provided by a Subsidiary of a Participant that is not itself a Participant are deemed to have been provided by the Participant; and
- (b) reference to the provision of Services includes reference to their non-provision.

2 Establishment of the Commission

There is hereby established a commission to be known as the “Insurance & Savings Ombudsman Commission”.

3 Objects Duties and Powers of the Commission

3.1 The Commission shall:

- (a) appoint an ISO with power (on behalf of the Commission):
 - (i) subject to the Terms of Reference, to consider and investigate in a fair, independent and impartial manner, without charge to the Complainant, complaints arising out of the provision in New Zealand of any of the Services by a Participant; and

- (ii) to resolve such complaints as effectively and efficiently as possible;
- (b) in the event that the ISO is suspended, indisposed or otherwise prevented from carrying out his/her duties, appoint any person to act as deputy or substitute for the ISO for such period of time and, subject to these Rules, on such terms and conditions as it shall think fit (and so that while such deputy or substitute shall hold office, these Rules shall apply to him/her, with any necessary alterations, in every respect as if he/she were the ISO);
- (c) subject to these Rules, give such assistance to the ISO concerning the performance of his/her duties as it shall deem expedient;
- (d) receive, consider and refer to the Board all recommendations from the ISO for changes to the Terms of Reference pursuant to Rule 16.3 (e);
- (e) receive, consider and refer to the Minister, any Nominated Industry Group or any other appropriate body as the case may require, all recommendations from the ISO in relation to statutes, regulations or Codes pursuant to Rule 16.3 (e) and to take appropriate action for any breach or possible breach by a Participant of the law, a Code, or an obligation imposed on that Participant under the Terms of Reference or these Rules which is reported by the ISO pursuant to paragraph 10.2 of the Terms of Reference;
- (f) monitor these Rules, the Terms of Reference and the operation of the Scheme (generally and by way of the review procedure set out in Rule 22) and from time to time recommend to the Board such amendments to these Rules or the Terms of Reference as the Commission thinks fit;
- (g) at its Annual Meeting receive and, if thought fit, approve the annual report of the ISO for the period corresponding to the financial year of the Commission last ended;
- (h) from time to time, and not less frequently than once in each year, consider and, if thought fit, approve a financial budget prepared by the ISO, each such budget to be prepared in respect of a period corresponding to a financial year of the Commission;
- (i) in relation to each financial year of the Commission, prepare or procure the preparation of every document required to be comprised in the accounts of the Commission in respect of that period;
- (j) levy, charge, collect and receive Levies from Participants and expend the same in furthering all or any of the objects of the Commission or providing for the expenses of the Commission.

3.2 The Commission may:

- (a) collaborate with government or other authorities (whether national, local or otherwise) or any person on all matters relating to and affecting the provision of the Services and the settlement of complaints in relation thereto;
- (b) taking into consideration the financial budget for the Commission, retain or employ advisers or employees in connection with the objects of the Commission and to pay them such fees or remuneration as may be thought expedient;
- (c) make payment of reasonable and proper remuneration and out of pocket expenses to any Member;
- (d) invest the moneys of the Commission not immediately required in such manner as may be thought expedient;
- (e) take on lease or otherwise take possession of any real property, and in particular any land, buildings, offices and any rights or privileges necessary or

convenient for the purposes of the Commission, and to manage, demise, let, dispose of, or otherwise deal with all or part of any such property, and to alter, improve and maintain any premises which may be from time to time be required for the purposes of the Commission and to purchase, take on lease or exchange, hire or otherwise acquire any personal property and to sell, dispose of, turn to account or otherwise deal with any such property;

- (f) establish and support or aid in the establishment and support of associations, institutions, funds and trusts for the purpose of providing pensions, superannuation, insurance, retirement or other benefits to employees or ex-employees of the Commission or their dependants;
- (g) do all such other lawful things as may be incidental to or conducive to the attainment of any of the above objects.

3.3 The Commission shall have the power to suspend or to remove the ISO at any time in its absolute discretion.

3.4 The Commission may delegate any of its powers, duties or functions to one or more committees consisting of Members, officers and/or employees of the Commission and/or such other persons as the Commission shall determine. Any such committee shall exercise the powers so delegated in accordance with any directions, regulations, rules or restrictions (including, without limitation, any regulation specifying a quorum for the transaction of business by it) that may from time to time be imposed on it by the Commission. The meetings and proceedings of such a committee shall be governed (with any necessary alterations) by the provisions of these Rules regulating the meetings and proceedings of the Commission (excluding the provisions as to the quorum for transaction of business which shall, in the absence of direction, rule, regulation or restriction made by the Commission to the contrary, be 50% of the members of the committee at the relevant time, but not less than two Members) so far as the same are applicable and are not superseded (either expressly or implicitly) by any direction, regulation, rule or restriction made by the Commission.

3.5 The Commission or any committee established by the Commission, may invite any person, whether a Participant or not, to attend any of its meetings for the purpose of consultation.

4 Application of Income

4.1 The income and property of the Commission, from wherever derived, shall, subject as hereinafter provided, be applied solely towards the promotion of the objects of the Commission as set out in these Rules, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the Participants provided that nothing herein shall prevent the payment in good faith of reasonable and proper remuneration and out of pocket expenses to any Member or employee of the Commission or to any Participant, in return for any services actually rendered to the Commission, or for any information or advice supplied, nor prevent the payment of interest on money lent, or payment of a reasonable and proper rent for premises demised or let to the Commission by any Participant.

4.2 The Commission shall allocate from its income such funds as are necessary to meet the costs and expenses of the Office of the ISO, in accordance with the budget(s) approved in accordance with Rule 3.1(h).

5 Contribution on Winding-Up

Every Participant undertakes to contribute to the assets of the Commission in the event of the Commission being wound up during the time in which it is a Participant or within one year afterwards, for payment of the debts and liabilities of the Commission contracted before the time at which it ceased to be a Participant and for the costs, charges and expenses of winding up, such contribution to be proportionate to the amount of any Levy paid or payable by each such Participant in the financial year of the Commission last ended before the commencement of such winding up.

6 Distribution of Assets on Winding-Up

If upon the winding up or dissolution of the Commission there remains, after the satisfaction of all its debts and liabilities, any property whatsoever it shall be distributed to and amongst the Participants at the date of such winding up proportionately according to the amount of any Levy paid or payable by each such Participant in the financial year of the Commission last ended before the commencement of such winding up.

7 Publicising of the Scheme

Each Participant (and each Subsidiary thereof that provides Services) will have its own internal complaints procedures (set up in accordance with the relevant Codes where applicable) and undertakes to the Commission to publicise the existence and availability of those procedures and the existence, availability and other details of the Scheme to its customers.

8 Membership of the Commission

8.1 The Commission shall comprise:

- (a) a Chairperson appointed in accordance with Rule 11.14;
- (b) two representatives of the Participants, appointed by the Board;
- (c) two persons nominated by the Crown by and through the Minister.

8.2 The persons nominated to be Members pursuant to Rule 8.1(c) shall be persons who have an interest in and are knowledgeable about consumer interests relating to any aspect of the Scheme.

8.3 Members shall be appointed for an initial period not exceeding two years. A Member may be re-appointed at the expiry of any period of office but he/she shall not hold office for a period greater than six consecutive years; provided that the Commission may, after consultation with any Member and the body which that Member represents or is nominated by, determine the duration of any period of office to ensure that the final period of office of the Chairperson and any Members does not coincide in the same year.

8.4 Notwithstanding Rule 8.3, a Member shall automatically cease to be a Member if he/she:

- (a) becomes bankrupt or makes any arrangement or composition with his/her creditors generally; or
- (b) becomes of unsound mind, or becomes subject to an order under the Protection of Personal and Property Rights Act 1988; or
- (c) has for more than six months been absent without permission of the Chairperson (or in the case of the Chairperson, the majority of the other

- (d) Members) from the meetings of the Commission held during that period; or
- (e) is convicted of an indictable offence; or
- (f) commits any act of dishonesty whether relating to the Commission or otherwise or is guilty of serious misconduct or any conduct tending to bring the Commission or himself/herself into serious disrepute; or
- (g) is removed by notice in writing to the Member from:
 - (i) in the case of the Chairperson, the Board;
 - (ii) in the case of any other Member, the person or body who appointed that Member or nominated that Member for appointment; or
- (h) resigns by notice in writing to the Commission.

8.5 Upon a Member ceasing to be a Member pursuant to Rule 8.4 the resulting vacancy shall be filled:

- (a) in the case of the Chairperson, by appointment in accordance with Rule 11.14;
- (b) in the case of any other Member, by the nomination of the person entitled to appoint that Member pursuant to Rule 8.1.

9 Entitlement to and Cessation of Participation

9.1 Each Eligible Body shall be entitled, subject to Rule 9.3, to be a Participant. An Eligible Body shall become a Participant upon:

- (a) execution by that Eligible Body of the Register. The Register shall consist of one or more documents in the form then in use by the ISO each executed by or on behalf of one or more Participants; and
- (b) payment by that Eligible Body of the entry fee (if any) prescribed pursuant to Rule 10.2.

9.2 The participation of any Participant may at any time be terminated by the Commission:

- (a) if that Participant ceases to carry on or provide any of the Services in New Zealand; or
- (b) where that Participant provides Personal Line Insurance Services, if that Participant ceases to be a member of the ICNZ; or
- (c) where that Participant provides Health Insurance Services, if that Participant ceases to be a member of the HFANZ; or
- (d) upon the expiry of twelve months notice of withdrawal given by such Participant; or
- (e) if that Participant has not paid any Levy demanded by the Commission pursuant to Rule 10.9 within three months after demand is made; or
- (f) if that Participant has failed to comply with an Award made by the ISO, in accordance with the Terms of Reference.

9.3 Cessation of participation of a Participant:

- (a) shall not entitle the Participant to repayment of the whole or any part of any Levy previously paid by it;
- (b) shall be without prejudice to the Participant's liability to pay any Levy which has become due and payable before such cessation;
- (c) shall be without prejudice to the Participant's liability to contribute to the assets of the Commission upon winding up of the Commission in accordance with Rule 5; and
- (d) shall be without prejudice to the Participant's obligations in respect of any dispute referred to the ISO before such cessation or in the period up to three

months after such cessation. The ISO shall following the cessation of a Participant, determine any such complaint within six months of its receipt and shall require the Participant to pay a fee for any such complaint if the period for which that Participant has paid a Levy has concluded.

- 9.4 Upon cessation of participation of a Participant who is, or upon receipt of notice of withdrawal from a Participant who is, a member of the ICNZ the Commission shall immediately give notice of that cessation or withdrawal to the ICNZ.

10 Levies on Participants

- 10.1 The Commission may at any time and from time to time obtain money for the purposes of the Commission by raising a Levy from each Participant.

- 10.2 When a Participant first becomes a Participant in the Scheme, that Participant shall pay such entry fee as may be prescribed by the Commission from time to time and such entry fee (if any) shall be applied in accordance with Rule 4.

10.3 *Funding Formula*

Subject to Rules 10.2 and 10.4, every Participant shall pay a Levy for each financial year, on or after 1 July 2006, which is made up of:

- (a) a share of 40% of the total Levy, based on the number of Accepted Complaints that Participant had in the previous financial year as a proportion of all of the Accepted Complaints for that year; and

[“*Accepted Complaints*” means a complaint which, in the preceding financial year, the ISO has determined is within his/her jurisdiction under paragraph 4.1 of the Terms of Reference.]

- (b) a share of 60% of the total Levy, which is made up of:
- (i) the sum of \$1,000 from each Personal Line, Health and Life Insurance Participant; and
 - (ii) the sum of \$10,000.00 from each Savings Participant; and
 - (iii) a share of the balance of 30% of the total Levy paid by the Personal Line and Health Insurance Participants, based on Gross Written Premium for each one of them and their Subsidiaries as a proportion of the total Gross Written Premium for all of them and their Subsidiaries; and

[“*Gross Written Premium*” means the total amount derived in the preceding financial year by a Participant and its Subsidiaries on all contracts for the provision of Personal Line Insurance Services and/or Health Insurance Services (after deducting all returned or rebated premium amounts, but without deducting any commissions or brokerage).]

- (iv) a share of the balance of 30% of the total Levy paid by the Life Insurance Participants, based on the total number of Contracts held by each one of them and their Subsidiaries as a proportion of the total number of Contracts held by all of them and their Subsidiaries;

[“*Contracts*” means each separate agreement for the provision of Life

Insurance Services or Savings Services at the end of the previous financial year.]

- 10.4 For a Participant first joining the Scheme, that Participant's Levy in the financial year in which the Participant first joins the Scheme shall be determined as the sum of:
- (a) in respect of the Participant's Gross Written Premium, as defined in paragraph 10.3(b), (for Personal Line and Health Insurance Participants) and the Participant's total number of Contracts, as defined in paragraph 10.3(b), (for Life Insurance and Savings Participants) by the Participant, a Levy at the same rate as payable by all other Participants, and;
 - (b) the sum of \$10,000 in respect of each Savings Participant and \$1,000 for any other Participant, and;
 - (c) a fee per complaint accepted for consideration by the ISO during the Participant's first financial year of participation, at the same rate as is charged to all other Participants in the relevant financial year;
- provided that:
- (d) there shall be a reduction on a pro rata basis in respect of the Levy in (a) above for any period of participation less than a full financial year, and
 - (e) the Commission may require the Levy calculated as above to be paid in arrears or in advance (or part in arrears and part in advance) on giving notice in accordance with Rule 10.8, and
 - (f) for the purposes of (c) above the determination of complaints accepted for consideration shall be as set out in paragraph 10.3(a).
- 10.5 Each Participant shall at the commencement of each financial year supply to the Commission a certificate from that Participant's chief executive, in such form as the Commission shall determine, containing such information concerning the business of the Participant as may be necessary to establish any figure or statistic to be used in calculation or apportionment of any Levy. The Nominated Industry Groups shall supply and are authorised by the Participants to supply to the Commission such other industry statistics or information as may be held by the Nominated Industry Groups which may be required by the Commission to verify any information provided by a Participant or establish any figure or statistic to be used in calculation or apportionment of any Levy. The Commission's calculation of the amount of any Levy payable by a Participant in its own right shall, in the absence of manifest error, be final and binding upon the Participant.
- 10.6 No Participant shall obtain or be entitled to obtain from the Commission or the Board or any member, officer or employee thereof details of, or any information which, may disclose the amount, method of calculation or any figure or statistics used in the calculation of any other Participant's Levy or the number of complaints accepted for consideration by the ISO concerning any other Participant.
- 10.7 The Commission may estimate in advance the total amount of all Levies payable by a Participant during a financial year and may require payment in such

instalments and at such times as the Commission determines. All necessary adjustments, credit or further payments shall be made after all the statistics and returns necessary to calculate or apportion the Levies are available to the Commission.

- 10.8 The Commission shall serve upon each Participant a notice requesting payment of any Levy to be paid by that Participant, giving particulars of the total amount of the Levy to be paid to the Commission and the amounts payable by that Participant.
- 10.9 Each Levy will be due and payable by each Participant four weeks after the notice requesting it has been served by the Commission.
- 10.10 In 2007 and at intervals of not more than 5 years thereafter, the Board shall review the method of calculating the Levy to be charged to Participants pursuant to Rule 10.3 and the Board shall, pursuant to Rule 18.1, consult with Participants and Nominated Industry Groups.

11 Proceedings of the Commission

Commission Meetings

- 11.1 The Members may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 11.2 Three Members of the Commission may at any time, and the Secretary must on the requisition of three Members, convene a meeting of the Commission.

Questions Decided by Majority

- 11.3 Subject to these Rules, questions arising at a meeting of the Commission are to be decided by a majority of votes of Members (or Alternate Members) present and voting and any such decision is for all purposes deemed a decision of the Commission.
- 11.4 An Alternate Member of the Commission present at any meeting of the Commission has one vote for each Member for which he/she is an Alternate Member and if he/she is a Member also has one vote as a Member.
- 11.5 In the event of there being an equality of votes, the Chairperson of the meeting, in addition to his/her deliberative vote, shall have a casting vote.

Alternate Members of the Commission

- 11.6 One Alternate Member of the Commission shall be appointed for each Member of the Commission (other than the Chairperson) at the same time and in the same manner as each Member of the Commission is appointed.
- 11.7 An Alternate Member is entitled to notice and to receive minutes of all meetings of the Commission and, if the Member is not present at such a meeting, is entitled to attend and vote in his/her stead.
- 11.8 An Alternate Member may exercise any powers that the Member may exercise and in the exercise of any such power by the Alternate Member he/she is an officer of the Commission and not deemed to be an agent of the Member.

- 11.9 An Alternate Member is subject in all respects to the conditions attaching to the Members generally except that he/she is not entitled to any remuneration otherwise than from the Member for whom he/she has been appointed as Alternate Member.
- 11.10 The appointment of an Alternate Member may be terminated at any time by the appointer notwithstanding that the period of the appointment of the Alternate Member has not expired. If the Member for whom he/she has been appointed an Alternate Member ceases to be a Member, then the appointment of the Alternate Member shall continue until a replacement for the former Member is appointed, at which time the appointment of the Alternate Member shall be either terminated by notice in accordance with this Rule 11.10 or re-confirmed by appointment of the Alternate Member as Alternate Member for the replacement Member in accordance with Rule 11.6.
- 11.11 The termination of an appointment of an Alternate Member must be effected by a notice in writing signed by the appointer and served on the Commission.
- 11.12 The notice of termination of the appointment of an Alternate Member may be served on the Commission by serving it on the Secretary of the Commission or by forwarding it by facsimile transmission or other means of electronic written communication and in the case of a facsimile transmission or other means of electronic written communication, the appearance at the end of the message of the name of the Member terminating the appointment is sufficient evidence that the Member has signed the notice.

Quorum for Members Meetings of the Commission

- 11.13 At all meetings of the Commission including Annual Meetings, the number of Members whose presence (either in person or by representation by an Alternate Member) is necessary to constitute a quorum is three provided there is present at any such meeting a Member appointed pursuant to Rule 8.1(b) (or an Alternate Member appointed for such a Member) and a Member appointed pursuant to Rule 8.1(c) (or an Alternate Member appointed for such a Member).

Chairperson of the Commission

- 11.14 (a) The Chairperson of the Commission shall be appointed as both Chairperson and a Member by the Members, including the retiring Chairperson provided that where the retiring Chairperson has ceased to be a Member by virtue of the operation of Rule 8.4 (a)-(f) (inclusive) or by reason of the death of the retiring Chairperson, the retiring Chairperson's vote in respect of the appointment of the incoming Chairperson shall be exercised by a representative of the Board.
- (b) The Chairperson shall be appointed to hold that office for the period or periods as set out in Rule 8.3.
- (c) The Board and each Participant shall use their best endeavours to ensure that no person is appointed as the Chairperson who has a material interest or a past association or relationship which may conflict with his/her duties as Chairperson.
- 11.15 When a meeting of the Commission is held and the Chairperson is not present within ten minutes from the time appointed for the meeting the Members present must elect one of their number to be Chairperson of that meeting.

Written Resolution by the Commission

11.16 A resolution in writing signed or assented to by letter, facsimile or any other electronic written communication or printed message by all the Members (or by their respective Alternate Members) shall be deemed to have been passed as if it had been passed at a meeting of the Commission duly convened and held.

11.17 For the purposes of Rule 11.16, two or more separate documents in identical form signed by one or more Members (or Alternate Members) are together deemed to constitute one document containing a statement in those terms signed by those Members (or Alternate Members) on the respective dates on which the separate documents are signed or otherwise assented to. A letter, telegram, facsimile or other electronic written communication or printed message shall be adequate and conclusive proof of such assent.

Commission Meeting

11.18 For the purposes of these Rules, a meeting of the Commission means:

- (a) a meeting of the Members and/or Alternate Members assembled in person on the same day and at the same time and place; or
- (b) the Members and/or Alternate Members communicating with each other by any technological means of oral or oral and visual communications by which they are able simultaneously to hear each other and to participate in discussion notwithstanding that they (or one or more of them) are not physically present at the same place;

and a Member or Alternate Member participating in a meeting pursuant to Rule 11.18(b) is deemed to be present (including for the purpose of constituting a quorum) and entitled to vote at the meeting.

Validity of Acts of Members

11.19 All acts done by any meeting of the Commission or by any person acting as a Member are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Member, or to act as a Member, or that a person so appointed was disqualified, valid as if that person had been duly appointed and was qualified to be a Member.

- 11.20 (a) Except as otherwise provided by these Rules, neither a Member nor an Alternate Member shall vote at a meeting of the Commission on any resolution concerning a matter in which he/she has, directly or indirectly, an interest which is material and which conflicts or may conflict with the interests of the Commission.
- (b) A Member or Alternate Member shall not be counted in the quorum present at a meeting in relation to a resolution on which he/she is not entitled to vote.
- (c) The Commission may by a majority of votes suspend or relax to any extent, either generally or in respect of any particular matter, any provision of the Rules prohibiting a Member or Alternate Member from voting at a meeting of the Commission. All Members shall be entitled to vote at a meeting of the Commission on a resolution put pursuant to this Rule 11.20(c) and Rule 11.20(a) shall have no application to such a resolution.
- (d) If a question arises at a meeting of the Commission as to the right of a Member or Alternate Member to vote, the question may, before the conclusion of the

meeting, be referred to the Chairperson and his/her ruling in relation to a Member or Alternate Member other than himself/herself shall be final and conclusive. The Chairperson's ruling in relation to himself/herself shall be subject to approval of a majority of the other Members.

11.21 Members, including the Chairperson, shall each be remunerated by the Commission on such terms and conditions as the Commission shall following consultation with the Board, determine in respect of each Member and the Chairperson provided that any Member, including the Chairperson, may elect not to receive such payment. Members, including the Chairperson, shall be entitled to be paid such travelling, hotel and other expenses as are reasonably and properly incurred by them in connection with the business of the Commission. Alternate Members shall be remunerated only in accordance with Rule 11.9 but shall be entitled to be paid such travelling, hotel and other expenses as are reasonably and properly incurred by them acting in the place of any Member in connection with the business of the Commission.

11.22 Subject only to Rule 11.21, a Member may not hold any other office of profit under the Commission nor, either personally or by his/her firm, act in a professional capacity for the Commission.

Minutes

11.23 The Commission must cause minutes to be made:

- (a) of the names of Members present at all meetings of the Commission; and
- (b) of all proceedings of Annual Meetings and of other meetings of the Commission;

and cause those minutes to be entered in the minute book within one month after the relevant meeting is held.

11.24 The minutes referred to in Rule 11.23 must be signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the next succeeding meeting.

12 Secretary

Appointment of Secretary

12.1 The Commission shall appoint the ISO or one of the other employees of the Commission to act as Secretary to the Commission on such terms, at such a remuneration and upon such conditions as it thinks fit.

Suspension and Removal of Secretary

12.2 The Commission shall have the power to suspend or remove the Secretary at any time in its absolute discretion.

Powers and Duties of Secretary

12.3 The Commission may vest in the Secretary such powers, duties and authorities as it may from time to time determine and the Secretary must accept all such powers and authorities subject at all times to the control of the Commission.

Secretary to Attend Meetings

12.4 The Secretary is entitled to attend all Annual and other meetings of the Commission and may be heard on any matter except where the Secretary has, directly or indirectly, a

personal interest in the business of that meeting of the Commission. The Secretary shall not be entitled to vote at any meeting of the Commission.

13 Inspection of Records

The Commission may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Commission or any of them will be opened to the inspection of Participants, and a Participant does not have the right to inspect any document of the Commission except as provided by law or authorised by the Commission.

14 Annual Meetings

14.1 The Commission must, in addition to any other meeting held by it, hold a meeting to be called the Annual Meeting at least once in every calendar year and within three months of the end of each of the Commission's financial years, and shall at that meeting receive the annual report of the ISO, and approve a financial budget for the Commission and the Office of the ISO for the succeeding year.

14.2 In addition to the Members (and where applicable the Alternate Members), the following persons shall be entitled to attend and speak (but shall not be entitled to vote) at any Annual Meeting of the Commission:

- (a) the ISO;
- (b) the Secretary;
- (c) each Participant, through a representative appointed by that Participant;
- (d) each Consumer and Community Group, through a representative appointed by that Consumer and Community Group;
- (e) the Minister, either personally or through a representative;
- (f) the Auditor;
- (g) each member of the Board; and
- (h) each Nominated Industry Group, through a representative appointed by that Nominated Industry Group.

14.3 No other person shall be entitled to attend any Annual Meeting unless expressly authorised by the Commission.

14.4 The Commission shall, at its Annual Meeting, appoint an Auditor to prepare an audit certificate for the annual financial statements of the Commission in the succeeding year. Such appointment shall be effective from the end of the Annual Meeting and expire at the next succeeding Annual Meeting.

15 Financial

15.1 The Commission shall:

- (a) cause proper financial records to be kept for the activities of the Commission and the Office of the ISO;
- (b) cause financial statements to be prepared at such intervals as the Commission shall determine;
- (c) cause annual audited financial statements to be prepared for presentation at the Annual Meeting and for inclusion in the Annual Report;
- (d) have such bank accounts as it deems necessary, and shall operate these bank accounts in such manner as the Commission determines from time to time.

- 15.2 All cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Commission, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner and by such persons as the Commission determines from time to time.

16 The ISO

- 16.1 (a) The ISO shall be appointed by the Commission to hold office with the Commission (subject to paragraph (b) of this Rule) for a period of two years and at such remuneration and on such terms and conditions of engagement as the Commission shall think fit. The person holding the office of ISO may be reappointed at the expiry of his/her period of office. The ISO may be suspended or removed from office at any time in accordance with Rule 3.3.
- (b) The ISO shall neither be an employee of, nor hold any office or position with a Participant, nor shall he/she, either personally or by his/her firm, act in a professional capacity for the Commission or any Participant.
- (c) The ISO shall be entitled to be paid such travelling, hotel and other expenses as are reasonably and properly incurred by him/her in connection with the business of the Commission or the Office of the ISO.
- (d) The ISO shall receive notice of and shall be entitled to attend and/or participate in (but not to vote at) every meeting of the Commission, except where the ISO has, directly or indirectly, a personal interest in the business of that meeting of the Commission.

- 16.2 The powers and duties of the ISO to consider complaints against Participants of the Scheme shall be as set out in the Terms of Reference.

- 16.3 Other powers and duties of the ISO are as follows:

- (a) The ISO shall be responsible for the day to day administration and conduct of the business of the Office of the ISO. He/she shall have power to incur expenditure on behalf of the Commission in accordance with the current financial budget approved by the Commission.
- (b) In consultation with the Chairperson and subject to his/her approval, the ISO shall have power on behalf of the Commission to appoint and dismiss employees, consultants, independent contractors and agents, and to determine their terms of employment or engagement.
- (c) Except as agreed between the ISO and the Commission, the ISO shall attend each meeting of the Commission and shall give the Commission any information and assistance (including general information about any complaint) which they reasonably request.
- (d) At least 28 days before the Annual Meeting of the Commission the ISO shall send to the Commission a report containing, in relation to the preceding financial year of the Scheme, a general review of his/her activities during that year and such other information as the Commission may reasonably direct.
- (e) The ISO may from time to time make recommendations to the Chairperson in relation to:
- (i) the amendment or variation of the Terms of Reference; or
 - (ii) any relevant statutes or regulations which may be introduced, amended or modified and which have a bearing on the discharge of his/her responsibilities; or
 - (iii) any Code or other code of practice which may be introduced, amended

or modified and which has a bearing on the discharge of his/her responsibilities.

- (f) The ISO shall have the power to delegate to any employee, consultant, independent contractor or agent any of his/her powers, duties or functions. Any such delegate shall exercise the powers so delegated in accordance with the Terms of Reference and with any directions, regulations or restriction that may from time to time be imposed by the ISO. The exercise of such a delegated power shall be valid as if exercised personally by the ISO.

16.4 The ISO shall not exercise any power which the Rules expressly give to the Commission or any other person.

16.5 The ISO shall automatically be removed from office if he/she:

- (a) becomes bankrupt or makes any arrangement or composition with his/her creditors generally; or
- (b) becomes of unsound mind, or becomes subject to an order under the Protection of Personal and Property Rights Act 1988; or
- (c) resigns by notice in writing to the Commission; or
- (d) is convicted of an indictable offence; or
- (e) commits any act of dishonesty whether relating to the Commission or otherwise or is guilty of any serious misconduct or conduct tending to bring the Commission, the Scheme or himself/herself into serious disrepute; or
- (f) following a medical examination by two medical practitioners made at the direction of the Commission or at the initiative of the ISO, is declared by both of the examining medical practitioners to be permanently incapable of performing his/her duties; or
- (g) shall absent him/herself from his/her duties without the permission of the Commission and the Commission has resolved to terminate his/her appointment; or
- (h) by reason of illness or accident, is incapacitated from attending to his/her duties for more than an aggregate period of two months in any period of twelve consecutive months and the Commission has resolved to terminate his/her appointment.

17 Confidentiality

17.1 Except as provided in Rule 17.2 or as required by law or as properly and reasonably required in connection with any legal proceedings instituted by or against the Commission or any of its officers or any of the Members, no Member or Alternate Member shall disclose to any person (other than another Member or Alternate Member or the ISO) any information concerning a complaint referred to the ISO from which it would or might be possible to identify the Complainant or any Participant named in a complaint or any other information or matter of a confidential nature or any matter relating to the handling of complaints by the ISO.

17.2 Rule 17.1 shall not, subject to the Terms of Reference, prohibit the disclosure of any information to any Participant named in a complaint.

18 Changes to the Rules and Terms of Reference

18.1 Prior to making any alteration or addition to or any deletion or replacement of these Rules or Terms of Reference, the Board shall give notice of the proposed alteration,

addition, deletion or replacement to and consult with each Participant, the Consumer and Community Groups, the Nominated Industry Groups, and the Minister: provided that for any proposed amendment to Rule 10 (Levies on Participants), consultation may be limited to Participants and Nominated Industry Groups.

18.2 These Rules and the Terms of Reference may at any time be altered, added to, deleted or replaced by the Board provided that the Board has undertaken consultation pursuant to Rule 18.1 and provided further the Board shall give sixty Clear Days notice of its intention to do so to every Member, every Alternate Member and the ISO.

19 Notices

19.1 A notice may be given by the Commission to any Participant or other person receiving notice under these Rules either by serving it personally or by sending it by post, facsimile transmission or any other means of electronic written communication to such Participant or other person at the address as shown in the Register or the address supplied by such Participant or other person to the Commission for the giving of notices to such Participant or other person.

19.2 Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter containing a notice, and the notice shall be deemed to have been served two days after the date of its posting.

19.3 Where a notice is sent by facsimile transmission, or other means of electronic written communication service of the notice is deemed to be effected by properly addressing the facsimile transmission or other means of electronic written communication and the notice is deemed to have been served on the date of its despatch.

19.4 Notice of every Annual Meeting of the Commission must be given in a manner authorised by Rule 19.1 to:

- (a) each Member and Alternate Member of the Commission;
- (b) the ISO;
- (c) the Secretary;
- (d) each Participant;
- (e) each Consumer and Community Group;
- (f) the Minister;
- (g) the Auditor;
- (h) each member of the Board; and
- (i) each Nominated Industry Group.

19.5 No other person is entitled to receive notices of Annual Meetings.

20 Realisation of Assets on Winding Up

If the Scheme is wound up the Commission may proceed to realise the property of the Commission or set such value as it considers fair upon any property to enable it to satisfy any outstanding debts or liabilities and to divide the then remaining property to and among Participants in accordance with Rule 6.

21 Indemnity

Every Member, Alternate Member, the ISO and every agent, officer or employee of the Commission is hereby indemnified out of the property of the Commission against any

liabilities incurred by him/her in his/her capacity as Member, Alternate Member, ISO or agent, officer or employee, notwithstanding any irregularity or informality in his/her appointment, arising out of or pursuant to the lawful activities of the Commission except that such indemnity shall not extend to protect such Member, Alternate Member, ISO, agent, officer or employee from any damage or loss arising out of wilful neglect, default or dishonesty on their part.

22 Review of the Scheme

22.1 The Commission shall in the third year following adoption of these Rules (on 13 May 1994) and at intervals of not more than five years thereafter, conduct a public review of the operation of the Scheme and of the Terms of Reference.

22.2 For the purposes of the review, the Commission shall appoint such person or persons as the Commission thinks fit to review the Scheme, provided that no person who is a Member, Alternate Member, ISO or agent, officer or employee of the Commission shall be appointed.

22.3 The Reviewer/s shall determine the procedures and timetable to be adopted in the review, but shall ensure that submissions and comments regarding the operation of the Scheme are invited from:

- (a) each Participant;
- (b) each Member;
- (c) each Nominated Industry Group;
- (d) each Consumer and Community Group;
- (e) the Consumers' Institute of New Zealand;
- (f) the Minister;
- (g) the ISO;
- (h) the general public; and
- (i) any other person or group the Reviewer/s considers appropriate.

22.4 On completion of its review, the Reviewer/s shall prepare and present to the Commission a written report regarding the operation of the Scheme. The report shall include such recommendations as the Review er/s thinks appropriate or desirable for the more efficient or improved operation of the Scheme and may include recommendations as to:

- (a) improving publicity and access to the Scheme;
- (b) desirable amendments to the Terms of Reference;
- (c) improvements to the procedures and practices adopted by the ISO; and
- (d) improvements to any other aspect of the operation of the Scheme.

22.5 The Commission shall arrange publication of the Review report and shall ensure that copies are made available to all those persons listed in Rule 22.3(a) - (g) and all other persons who have made a submission. The Commission shall consider the Review report at the next succeeding meeting of the Commission. The contents of the Review report shall also be discussed at the next succeeding Annual Meeting.

23 The Board

23.1 There shall also be established a Board whose sole object shall be to perform those functions ascribed to it in these Rules being:

- (a) appointment of two Members pursuant to Rule 8.1(b) and two Alternate

- Members pursuant to Rule 11.6;
- (b) review of Rule 10.3 pursuant to Rule 18.1;
- (c) consultation concerning Members' remuneration pursuant to Rule 11.21;
- (d) amending the Rules and Terms of Reference pursuant to Rule 18.

The Board shall have all powers necessary to complete those functions but shall have no other object or powers. The Commission shall provide such services and assistance to the Board as may be necessary to enable it to perform its functions and shall bear any costs incurred by the Board in performance of its functions.

23.2 The Board shall comprise:

- (a) two persons nominated by the ICNZ;
- (b) two persons nominated by the HFANZ;
- (c) two persons nominated by the ISI representing Participants who provide Life Insurance Services;
- (d) two persons nominated by the ISI representing Participants who provide Savings Services;

and in respect of each person appointed in terms of (a) to (d) above, an alternate Board member may be appointed in the same manner as the manner in which the Board member was appointed. Such alternate Board members shall in all respects be subject to these Rules in relation to the Board and Board members as is set out in Rules 11.6 to 11.12 for Alternate Commission Members as if the reference to the Commission were a reference to the Board.

23.3 Board members shall be appointed for such period as the organisation, group or persons appointing the Board member shall determine and may from time to time and at any time be removed and/or replaced by the organisation, group or persons appointing the Board member.

23.4 The Board shall meet as and when necessary to perform the Board's functions but no less regularly than once in every period of twelve months. Meetings may be called by the chairperson of the Board or by requisition of not less than three members of the Board. Notice of meetings shall be given to each Board member in accordance with Rule 19.1 which Rule shall be read as if references to the Commission were references to the chairperson of the Board and references to the Participants were references to members of the Board. No person other than the members of the Board, and their alternates, shall be entitled to receive notice of Board meetings or to attend, speak or vote at any Board meeting except at the express invitation of the Board.

23.5 The Board shall at twelve monthly intervals, elect from amongst its members a chairperson who shall hold office for a period of twelve months, unless earlier removed or replaced by a resolution of the Board. Upon expiry of his/her term of appointment, a chairperson shall be eligible for re-election. If at the commencement of any meeting of the Board the chairperson of the Board is absent, the members present may elect a temporary chairperson from the members of the Board then present to be chairperson of that meeting.

23.6 The chairperson of the Board shall cause minutes to be made in books provided for that purpose:

- (a) of all appointments of officers made by the Board;

- (b) of the names of the members of the Board present at each meeting of the Board;
 - (c) of all resolutions and proceedings at all meetings of the Board.
- 23.7 The quorum necessary for the transactions of the business of the Board shall be six or all members of the Board, whichever is the lesser. The continuing members of the Board may act notwithstanding any vacancy in their body.
- 23.8 All acts done by the Board or by a member of the Board shall notwithstanding that it is afterwards discovered that there was some defect in the appointment of such person or that such person was not qualified to act, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board.
- 23.9 A resolution in writing signed or assented to by letter, facsimile or any other electronic written communication or printed message by all the members of the Board for the time being entitled to receive notice of a meeting of the Board, shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Two or more separate documents in identical form signed by one or more members of the Board are together deemed to constitute one document containing a statement in those terms signed by those members of the Board on the respective dates on which the separate documents are signed or otherwise assented to.
- 23.10 For the purposes of these Rules, a meeting of the Board means:
- (a) a meeting of the members of the Board assembled in person on the same day and at the same time and place; or
 - (b) the members of the Board communicating with each other by any technological means of oral or oral and visual communications by which they are able simultaneously to hear each other and to participate in discussion notwithstanding that they (or one or more of them) are not physically present at the same place;
- and a member of the Board participating in a meeting pursuant to Rule 23.10(b) is deemed to be present (including for the purpose of constituting a quorum) and entitled to vote at the meeting.
- 23.11 A meeting shall nonetheless be validly called if all of the members of the Board for the time being entitled to receive notice shall, at or before the meeting, have agreed in writing to waive notice of the meeting.
- 23.12 The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall except as set out in Rule 23.13 be decided by a majority of votes. In the case of an equality of votes the chairperson of the meeting shall, in addition to his/her deliberative vote, have a casting vote.
- 23.13 Notwithstanding the provisions of Rule 23.12, a question arising at any meeting of the Board relating to exercise of the Board's powers or functions conferred by Rule 18 shall require the support of 75% of the members of the Board present and entitled to vote at that meeting provided that:
- (a) where the question arising at any meeting of the Board relates to exercise of the Board's powers or functions conferred by Rule 18 in respect of:

- (i) Rules 10.3(b) and/or Rule 23.13;
 - (ii) paragraph 3.2 of the Terms of Reference;
 - (iii) any other provision of the Rules or Terms of Reference which affects the interpretation, construction, operation or effect of the provisions set out in sub-paragraphs (i) and (ii) above;
- that exercise of the Board's powers or functions conferred by Rule 18 shall also require the support of 75% of the members of the Board appointed pursuant to Rule 23.2(a) and (b); and
- (b) where the question arising at any meeting of the Board relates to exercise of the Board's powers or functions conferred by Rule 18 in respect of:
 - (i) Rules 10.3(c) and/or 23.13;
 - (ii) paragraph 3.2 of the Terms of Reference;
 - (iii) any other provision of the Rules or Terms of Reference which affects the interpretation, construction, operation or effect of the provisions set out in sub-paragraphs (i) and (ii) above;
 that exercise of the Board's powers or functions conferred by Rule 18 shall also require the support of 75% of the members of the Board appointed pursuant to Rule 23.2(c) and (d).

24 Obligations of Participants

24.1 Each Participant shall -

- (a) operate a bona fide internal complaints handling service for its clients in respect of any complaints or disputes in relation to any Services it provides to the public;
- (b) advise the ISO of the name and contact details of a person to act as the principal point of contact on behalf of the Participant in respect of any complaints made by a person to the ISO, and keep the ISO informed of any changes in such details;
- (c) at all times comply with the Rules and Terms of Reference for the Scheme.

24.2 Each Participant shall be deemed by virtue of execution of the Register to have undertaken to the Commission (but not to any other Participant) to be bound by the Rules, the Terms of Reference and by any Award which, in accordance with the Terms of Reference, is made by the ISO against it and accepted by the Complainant. Services provided by a Subsidiary of a Participant shall, where that Subsidiary is not itself a Participant, be deemed to have been provided by the Participant and each Participant shall ensure and if necessary, procure that each such Subsidiary complies fully with the Rules, Terms of Reference and any Award. Where such a Subsidiary of a Participant fails to comply with an Award, the Participant shall be bound by and shall comply with that Award.

25 Test Cases

- 25.1 (a) At any time before the ISO has made an Award, the Participant may notify the ISO in writing that it has invoked the Test Case procedure, because the complaint involves:
 - (i) an issue which has important consequences for the business of the Participant or of Participants generally; or

- (ii) an important or novel point of law; and
- (b) on notification, the ISO shall cease to consider the complaint and he/she shall inform the Complainant in writing of the receipt of the notice within 7 days and the effect of the notice upon the complaint.
- (c) Neither the Participant's decision to invoke the Test Case procedure, nor the grounds of that decision, shall be called into question by the ISO or by any court.

25.2 For any complaint concerning:

- (a) the declination of a claim; or
- (b) the avoidance or termination of a policy on the grounds of non-disclosure or misrepresentation; or
- (c) the termination of a policy on the grounds of a breach by the Complainant of an express or implied term of a policy (including a term implied by law)

the Participant shall, within 3 months of giving notice to the ISO invoking the Test Case procedure, commence proceedings against the Complainant for a declaration that it was entitled to decline the claim, avoid the policy, or terminate the policy (as the case may be). Such proceedings shall be commenced in the registry of the High Court nearest the Complainant's residence, and shall be ordinary proceedings (rather than proceedings under Parts IV or IVA of the High Court Rules). If the Participant fails to commence proceedings within 3 months, the ISO shall resume considering the complaint.

25.3 For any other complaint, the Participant shall, within 3 months of giving notice to the ISO invoking the Test Case procedure, and if it is reasonably practicable as a matter of law, commence proceedings against the Complainant for an order designed to resolve the complaint. Such proceedings shall be commenced in the registry of the High Court nearest the Complainant's residence. If it is not reasonably practicable as a matter of law for the Participant to commence proceedings – for example, because the nature of the complaint is such that the proceedings must be commenced by the Complainant – the Participant shall notify the Complainant in writing that this is the case as soon as possible (and in any event within 1 month of giving notice to the ISO invoking the Test Case procedure) so that the Complainant can commence proceedings. If the Participant does not give such notice to the Complainant, and then fails to commence proceedings within 3 months, the ISO shall resume considering the complaint.

- 25.4
- (a) The Participant shall pay the Complainant's reasonable and actual costs and disbursements on a solicitor and own client basis associated with the Test Case procedure in the High Court.
 - (b) The Participant shall pay the Complainant's reasonable and actual costs and disbursements on a solicitor and own client basis associated with the Test Case

procedure on any appeal instituted by the Participant from the High Court or from the Court of Appeal (including the Complainant's costs and disbursements associated with any cross-appeal instituted by the Complainant on such an appeal).

- (c) For the avoidance of doubt, paragraph (b) does not apply where the Participant has merely cross-appealed on an appeal instituted by the Complainant.
- (d) If the parties cannot agree on the extent of the Complainant's reasonable costs and disbursements under paragraphs (a) or (b), the dispute shall be referred to a Queen's Counsel for expert determination. The Queen's Counsel shall be agreed between the parties, or failing agreement shall be appointed by the President of the Law Society in the District in which the proceedings were issued. The Queen's Counsel is also to determine, taking into account the relative success of each party on the determination of the costs dispute, the extent to which each party is to pay the Queen's Counsel's costs.
- (e) The Participant's obligations under paragraphs (a) and (b) are conditional on the Complainant not breaching the confidentiality provisions referred to in paragraph 5.2 of the Terms of Reference.

25.5 Once the ISO has decided under paragraph 4.1 of the Terms of Reference that a complaint falls within his/her jurisdiction, a Participant may not, by issuing proceedings in court in respect of the complaint, remove that complaint from the ISO's jurisdiction, except under this Rule 25 or under paragraph 4.3 of the Terms of Reference.

26 Consumer and Community Groups

The Commission shall draw up, and shall from time to time update, a list of consumer and community groups having a direct interest in consumer issues relating to and/or advising consumers in respect of some or all of the Services. In drawing up and updating the list the Commission shall consult with the Ministry of Consumer Affairs (or, if there is no such Ministry, the Ministry from time to time responsible for the administration of the Fair Trading Act 1986).