

Joint Consumer Submission

Review of compensation
arrangements for consumers of
financial services

Joint Consumer Submission

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1. Introduction

This document is the Joint Consumer Submission in response to the *Consultation Paper for the review of compensation arrangements for consumers of financial services* (simply called the Consultation Paper in this document), which was prepared in April 2011 by Mr Richard St John for Treasury as part of the Future of Financial Advice (FOFA) reform process. A list of consumer representatives and consumer organisations consulted during the development of the Joint Consumer Submission appears at the end of this document (Section 4).

The Consultation Paper provided a comprehensive analysis of current arrangements for compensation in the financial services sector, and raised many serious issues about shortcomings in those arrangements.

We welcome the opportunity to comment on potential improvements and reforms in these arrangements.

We note that the review is only concerned with the position of a retail client whose loss is attributable to the misconduct of a financial services licensee – it is not concerned with losses that result from failure of a financial product or general investment losses. We therefore restrict our comments to those issues.

Overall, consumer representatives support the introduction of a statutory compensation scheme of last resort as an urgent priority. This is a proposal that consumers organisations have previously supported (in 2002 and 2008). We also support some other specific measures to enhance existing compensation arrangements.

1.1. Consumer view on current arrangements

Current compensation arrangements are contained in the regulatory regime for financial services under Chapter 7 of the Corporations Act 2001. Licensees are required to have compensation arrangements in place in relation to their retail clients. There are around 3,300 relevant licensees and 40,000 authorised representatives covered by this requirement.

There are five types of compensation arrangement in place, and the following table summarises the view of consumer representatives on each of these arrangements:

Sector	Summary	Consumer view
Investments and advice	Professional indemnity insurance (PII) is used to provide an indirect means for compensating clients relating to investment advice. Where a licensee's policy responds to a claim it assists the licensee to pay any compensation awarded to a client. Where this is not the case, the client's prospects of recovering will depend on the available financial resources of the licensee. Corporations Regulations require a licensee to hold professional indemnity insurance which is "adequate" having regard to considerations that relate to the licensee's business, clients and exposure to claims.	The compensation arrangements in this sector are very weak and are the source of significant consumer detriment (this is discussed in more detail in the sections below). The combination of insurance and the financial resources of the individual provider have not been sufficient to cover claims in many circumstances, and the absence of a backup source of compensation has left consumers without compensation, despite valid claims. The bulk of the Joint Consumer Submission concerns this sector.

Sector	Summary	Consumer view
Markets	Operators of financial markets, such as the stock exchange, have compensation arrangements to cover losses by clients who entrust property to market participants, such as stockbrokers. The National Guarantee Fund (NGF) of the Australian Securities Exchange (ASX) is one example. It provides compensation in circumstances where a client suffers loss through default or unauthorised dealing with the client's funds or property	Consumer representatives have some concerns regarding the NGF. The governance of the NGF is not best practice (the governing body of the NGF includes no consumer representation) and there has been no review of the NGF Terms of Reference since 1987. Consumer awareness of the NGF is almost non-existent and the lack of payouts to consumers who have suffered losses in recent years is also a concern (there have been only two successful claims in the last ten years). Also, the recent introduction of new markets such as Chi-X raises concerns about the consistency of compensation arrangements across the market sector. The Joint Consumer Submission does not make any detailed suggestions for reform in the markets sector at this time.
Deposits and Insurance	The Financial Claims Scheme (FCS), introduced in October 2008, covers loss by depositors or policyholders due to insolvency of an authorised deposit-taking institution (ADI) or general insurer. The FCS guarantees bank deposits up to the specified cap, and also protects insurance policyholders who have an insurance claim.	Consumer representatives believe the compensation arrangements in place in the deposit and insurance sector provide a significant degree of confidence and also help to address some competition concerns for smaller providers. The Joint Consumer Submission does not make any suggestions for reform in this sector. The financial limits of the FCS scheme are the subject of a separate review, and consumer representatives will make comments to that review.
Superannuation	The Superannuation Industry (Supervision) Act 1993 enables the Minister to make grants of financial assistance for loss incurred by a superannuation fund trustee from fraud or theft. These are typically funded by a small levy on other superannuation funds.	Consumer representatives believe the compensation arrangements in place in the superannuation sector have worked well in recent years, and many consumers have benefited from these arrangements by receiving either 90c or 100c in the dollar in compensation. The Joint Consumer Submission does not make any suggestions for reform in this sector.
Credit	There is no specific compensation arrangement in place for licensees who provide credit advice such as finance brokers and mortgage brokers. Generally they will be required to have insurance in place as a condition of their licence. The circumstances in which a compensation claim needs to be made against a credit advisor are limited, but there are instances where consumers make successful EDR claims against finance brokers and mortgage brokers which remain unpaid.	Consumer representatives believe that the limitations of relying on insurance as a compensation mechanism also apply to credit licensees. We are aware of a small number of cases of uncompensated loss in this sector, where credit brokers have refused to pay EDR determinations or have become insolvent. The losses in this sector are typically in the \$10,000 to \$20,000 range. We note that the proposed scheme of last resort may have to include jurisdiction to deal with credit matters (e.g. following a successful claim at FOS or COSL which remains unpaid). The number of such claims is likely to remain very small.

As can be seen from the summary table above, the focus of the Joint Consumer Submission is on improving compensation arrangements in the investment advice sector.

1.2. Consumer recommendations

We make three key recommendations for improvements in the compensation arrangements available in the investment advice sector:

Improved Disclosure regarding insurance (required immediately)

The current regulations require licensees to include in the FSG a statement about the kind of compensation arrangements they have in place. For licensees who hold professional indemnity insurance, ASIC requires a statement that they have such insurance in place and whether it will cover claims in relation to the conduct of employees and representatives who no longer work for them.

In practice, consumers with a claim, their legal advisers and even EDR schemes all face difficulties in identifying whether or not relevant insurance exists, the name of the insurer and the type of insurance coverage in place. Considerable effort and expense is wasted in attempting to locate this basic information.

Consumer representatives believe that the detailed disclosure of insurance details, including the name of the insurer, the type of policy, run-off arrangements and any key restrictions should be disclosed in the FSG. This information and any other insurance information relevant to a claim should also be disclosed immediately when a complaint or claim is received by the licensee. We view this as an urgent priority requiring immediate action.

Standardisation of insurance products (required in the medium term)

The Consultation Paper suggests that insurance coverage could be enhanced by a combination of improved monitoring and greater standardisation of insurance products.

The Consultation Paper notes that ASIC conducts only limited, risk-based surveillance of licensees' insurance arrangements, including the "adequacy" of professional indemnity insurance. ASIC does not conduct ongoing compliance checks on the insurance held by *all* licensees. Consumer representatives accept that this level of compliance monitoring could be improved, but we recognise that this may have considerable cost and resource implications. The current risk-based approach to compliance monitoring therefore appears appropriate in a sector with 3,300 licensees.

However, consumer representatives do support greater standardisation of insurance products. Current coverage appears to be very ad hoc and the existence of "an insurance policy" provides little benefit for consumers if the policy is subject to severe restrictions in relation to payment limits (sometimes 'per claim' and sometimes 'per year' or a combination of both), severe excesses, and strict time limits for notification of claims. The most significant gap in current coverage is in relation to run-off cover – which is often the cause of consumer detriment where a licensee has ceased trading and only had a 'claims made' policy in place.

Consumer representatives therefore support an initiative to improve the standardisation of insurance cover for licensees. This could be achieved by the development of a stronger, mandatory ASIC list of requirements for minimum inclusions in insurance policies. We anticipate that this process may take some time to implement, and consumer representatives would expect to be invited to be part of any committee or working group established to guide the standardisation process. We view this as a medium term priority.

Implementation of a scheme of last resort (required immediately)

The Consultation Paper notes that there is no scheme of last resort available in the advice sector. If insurance fails (which occurs regularly and for a variety of reasons), consumers do not have the same protection that is available in the superannuation, markets, deposits and insurance sectors. This gap is the chief cause of uncompensated loss for retail consumers in Australia.

Consumer representatives submit that the impact of this uncompensated loss in the advice sector has a massive impact on the individual consumers, and we provide some details of the type and extent of this impact below. We also note that this gap in protection has a negative impact on the level of confidence in the sector, and is even beginning to undermine the work and reputation of the EDR schemes, which are unable to deliver compensation in all cases.

The Joint Consumer Submission recommends that a scheme of last resort is implemented immediately for the investment advice sector. We suggest some key guiding principles in relation to the governance of such a scheme. Consumer representatives would expect to be invited to be part of any committee or working group established to guide the design and implementation of a scheme of last resort. We view this as an urgent priority requiring immediate action.

2. Evidence of problems faced by consumers in claiming compensation

The Consultation Paper identifies common problems faced by consumers in seeking compensation. However, it seeks further evidence of the prevalence of such problems and the impact on consumers.

This information is difficult to quantify (see section 2.3 below for some of the challenges involved in collecting data on this issue). The following sections set out some of the common consumer experiences with compensation arrangements (restricted to the investment advice sector).

2.1. The failure of insurance cover

Licensees are expected by ASIC to have insurance that covers liability arising under a claim, such as an award made by a Court or an EDR scheme. In practice, a licensee's claim for payment of such a claim under its professional indemnity insurance policy may not be straightforward. The insurer is likely to look at the basis for the award and whether the specific circumstances are covered, and not excluded, by the policy. The fact that a Court or EDR scheme has made an award in favour of a retail client may not be enough to satisfy the insurer. Some claims are denied and it can be complex for the consumer to take this matter further.

Some of the common experiences where insurance cover fails include:

- **Expired insurance cover**
In some cases insurance cover has expired at the time the claim is made, and the business has ceased to trade. The majority of insurance policies are now sold on a claims made basis. However, the nature of investment advice (and loss) means that it is unlikely that all claims will be made while the business is still trading and paying its insurance premiums. Run-off cover would normally protect consumers in this situation but it is not always taken up by licensees. Indeed, run-off cover may not always be available.
- **Breach of an insurance contract**
An insured party normally has a number of obligations under an insurance contract such as to inform the insurer about a claim or loss as soon as possible, and to take reasonable steps to lessen liability in relation to a claim. If a licensee fails to meet such an obligation, the insurer may be entitled to deny payment of a claim. Further, an insurer who can demonstrate that the breach has a material impact on the risk associated with the policy may be entitled to cancel the contract. A breach of contract will typically be through no fault of the consumer, but they will bear the brunt of the removal of coverage.
- **Caps on claims**
It is common for insurance coverage to be the subject of a financial limit or cap. A variety of such caps exist in the market, including limits 'per claim', limits 'per year', 'total' limits etc. A combination of these caps will often appear in the same policy. In practice, these caps represent a significant barrier to compensation for consumers. Malpractice in the advice sector tends to have an impact on a group of consumers, who all lodge complaints and claims at slightly different times. A successful claim by the first few consumers will exhaust one of the 'caps' and the insurance provider will be entitled to deny all future claims. However, this process will be hidden from consumers, who may still expend considerable time and resources (e.g. legal fees) without knowing that the caps have been reached.

- **Excesses**
In order to reduce premiums (and also to discourage some small claims), a licensee and an insurer may negotiate an excess in the insurance policy. The licensee will therefore have to meet the first portion of any successful claims against them. This excess will usually not be apparent to consumers. In cases where the licensee is no longer trading or is in financial difficulties, the excess will obviously reduce the payout to consumers, even where they have a successful claim and insurance is still in place. Typically, an excess of \$50,000 per claim may apply. If the claim quantum is \$70,000 and the licensee is keen to settle, the PI insurer's attitude becomes critical. (Case study: A substantial number of cases related to the collapse of Westpoint involved advice from the same licensee and factual situations of marked similarity. However, these were not settled despite the licensee's willingness, due to the PI insurer's requirement of a Determination being issued in all cases, thereby substantially delaying compensation payments. If liquidation of the licensee intervenes, then the \$50,000 is no longer available.)

- **Policy limitations**
Insurance policies may include limitations on the type of products and behaviour that are covered by the policy. These limitations are often contentious and can be disputed in court – however this is an expensive process and is a barrier to consumers seeking compensation. The range of policy limitations is quite diverse and they have proved to be either a barrier or at least a delaying tactic in some claims. In nearly all cases, fraud is not covered by insurance policies – and this is a major gap that can only really be addressed by the introduction of a scheme of last resort.

2.2. Impact on individual consumers

The impact of uncompensated loss in the advice sector is well documented in:

ASIC Consumer Advisory Panel / Susan Bell Research, *Compensation for retail investors: the social impact of monetary loss*, ASIC Report 240, May 2011.

The research looks at the personal impact of uncompensated loss on 29 investors who lost money through the failure of managed investment schemes, or because of financial advice deemed to be inappropriate for their circumstances. A small number of consumers in the study received limited compensation (4-60c in the dollar). However, no consumer received full compensation and the majority received no compensation.

Some of the key findings of that research are:

- For investors without reserves, the impact of the loss was immediate. They needed to pay a margin call, or they suddenly found themselves without money to live on, or in some cases without anywhere to live and therefore were unable to get work. Their situation then got worse, as their credit card debit escalated.

- For other investors, the first six months were critical. During this period, they realised that they could not cope with some usual household expenses, such as car insurance, car repairs, or Christmas presents. In some cases, credit card debt started to escalate. Problems have lasted several years in some cases.

- 17% of the consumers in the study experienced ‘catastrophic’ loss. They lost their homes or seemed about to do so. One couple moved into a caravan for a while; another lived in their car. All have been seriously ill since the loss – with either a new illness or an existing one aggravated by stress. All went without food on occasion and in some cases without heating or cooling for their home since their loss.
- Other investors (27%) cut back on their way of life to the minimum. Typically these had been self-funded retirees who were now on the pension, living a life of frugality.
- The prolonged anger, uncertainty and worry left many of these people suffering from depression, even for those who have managed to stay afloat financially. One of the key reasons for these mental health problems has been a sense of powerlessness and isolation.
- There has also been an impact on families, particularly a long-lasting strain between some husbands and wives because one partner won’t let the other forget that they had been the main instigator of the investment. Some parents have had to work multiple jobs or travel away from home to work, which has affected their children negatively.

The study also noted that there was some support amongst the research subjects for a compensation scheme. Those in favour of the idea of compensation felt that they were innocent victims of a system which failed them. For example, several investors believed that they had paid for advice which was supposedly independent advice from an expert. (Page 36)

Interestingly, some of the subjects did not support a compensation scheme, believing that hardship management tools might be more appropriate to their circumstances (e.g. an interest free loan to help pay off debts).

Overall the message from the research is clear – where a consumer suffers uncompensated loss it can often have a catastrophic impact on the individual and their immediate family.

2.3. Impact on the community

The impact on the community of uncompensated loss is more difficult to measure. It may be noticed in various fields, such as:

- An increase in the number of people requiring welfare assistance from Government;
- An increase in people seeking community services, especially emergency payments and financial counselling;
- Increased requests for early / emergency access to superannuation;
- Increased utilisation of corporate hardship programs (lenders, utilities etc.);
- Increased credit defaults; and
- Increased number of bankruptcies.

We have explored whether data is available in each of these categories, and unfortunately it appears that data is not retained that would indicate the original cause of the financial loss. Data is recorded on the immediate problem being faced by the consumer (e.g. eviction, legal action by a creditor etc.) rather than the broad circumstances leading to that problem. Where data is recorded regarding an investment related loss (e.g. data from NICRI and credit and debt assistance lines), it is not clear from the data whether the loss resulted from misconduct rather than a general economic loss.

As a result, the limited data available is that held by the EDR schemes, and this has already been presented to Treasury during this review.

Some additional information on the impact on the community of uncompensated loss is also available in the ASIC Consumer Advisory Panel / Susan Bell Research:

The community will also bear some of the cost because of previously self-funded retirees now on the government pension, and because of the physical and mental health problems suffered by investors who now have no medical insurance. (Page 10)

One of the most interesting aspects of the ASIC-CAP study is the comparison of the subjects against the broader population using the HILDA measure of financial stress (Page 41):

	Consumers with financial loss %	National average (HILDA) %
I could not pay my electricity, gas or telephone bills on time	14	12
I could not pay the mortgage or rent on time	7	6
I pawned or sold something	28	4
I went without meals	17	3
I was unable to heat my home	10	2

The HILDA measure of financial stress is used as an indicator of potential social exclusion – so the high scores recorded by the research subjects are a significant concern to the broader community, as social exclusion usually results in a number of additional community impacts (e.g. predatory behaviour, health problems etc.).

The ASIC CAP research also noted that some investors sought Centrelink assistance for the first time after the loss. These were usually retirees who could no longer fully fund their retirement. (Page 47) Others planned to go on the pension instead of funding their own retirement. The research includes the following case studies:

“At the end of the day I am not going to be self funded when I turn 65. I am going to rely on my pension.” Investor; Male; 55–64; Queensland; Metropolitan.

“What am I going to do? I sit back and say ‘I have lost this money, I am just going to have to retire on zippo’.” Investor with margin loan; Female; 45–54; NSW; Metropolitan.

This research indicates that uncompensated loss is likely to have a wider impact on the community, including additional cost pressure on the welfare system.

2.4. Impact on industry and Government

The impact on the financial services industry is also discussed in the ASIC Consumer Advisory Panel / Susan Bell Research:

Many will never invest again. They now expect to put all their money 'in the bank'. (Page 10)

The research includes the following findings on changes in attitude towards the industry (and Government) following the loss:

	Consumers with financial loss %
I no longer trust financial advisers	66
I no longer trust the government	41
I no longer trust the banks	41
Other	17
None of these	14
I am unsure	7

The evidence is clear that the absence of effective compensation in the investments and advice sector will have a significant impact on consumer confidence in that sector. The sector compares poorly with some of its direct competitors (superannuation, markets, bank deposits) in that it does not have a scheme of last resort in place. Consumers will come to realise that compensation is available in some other sectors – particularly following the successful compensation of superannuation investors in recent years and the high profile of the bank deposit guarantee.

In addition, consumer representatives are very concerned at the potential erosion of confidence in existing consumer protection mechanisms, in particular EDR schemes. A growing proportion of determinations at FOS result in no compensation for consumers, due to the financial collapse of the licensee and the failure (for a variety of reasons) of insurance coverage. Through no fault of its own, FOS may suffer from a perception that it is an unreliable source of compensation.

Consumers are already reluctant to use the EDR schemes and many consumer representatives report that it takes considerable effort to convince consumers that it is worthwhile lodging a complaint with FOS or COSL. If consumers become aware that a successful EDR claim may not result in compensation it may become even more difficult to convince consumers to lodge claims. The ASIC-CAP research also indicated that many victims blamed themselves and were unwilling to pursue their rights to compensation.

In addition, EDR schemes may themselves become reluctant to accept consumer claims where there is a risk that no compensation will be available – even where the consumer claim is valid. This is an understandable position – EDR schemes have to manage their own resources carefully and handling valid claims that have no chance of success must be a frustrating task for EDR staff.

Finally, the impact of uncompensated loss may also undermine the role of ASIC and Government in the regulation of the financial services sector. Although some consumer attitudes may be misplaced, consumers who lost their savings tended to blame the Government and ASIC:

Many now also distrust the government – specifically ASIC. They believe that ASIC should have protected inexperienced investors better, prevented new unscrupulous schemes operating; policed ongoing funds and schemes more rigorously and intervened earlier. (ASIC-CAP Research, Page 10)

These negative impacts on industry and Government are reversed in those sectors where proper compensation arrangements are in place.

3. Proposed reforms

The Consultation Paper (Chapter 5) proposes some limited reforms, and seeks suggestions for additional reforms.

The following sections provide a consumer representative perspective on the three key proposals in the Consultation Paper.

3.1. Improvements to Professional Indemnity Insurance

The Consultation Paper suggests several mechanisms to enhance the effectiveness of professional indemnity insurance in underpinning compensation arrangements.

The following table provides consumer representative feedback on each of the key proposals:

Proposal	Consumer representative view	Priority
A tighter approach to the administration of the requirement for professional indemnity insurance	There are some weaknesses in the oversight of insurance requirements. These include the reliance on a self-assessment of 'adequacy' and an apparent lack of rigour and regularity in compliance monitoring. However, consumers accept that compliance monitoring is resource intensive and that even a detailed investigation may not uncover some insurance limitations. On balance we do not believe that directing significant resources to oversight and compliance monitoring will deliver the same result for consumers as other initiatives presented in the Consultation Paper (in particular, the development of a scheme of last resort).	Low priority For consumer representatives, improvements in administration and oversight are a low priority compared to other suggested reforms.
The promotion of standard professional indemnity insurance cover including to deal with claims after licensees cease to trade	The development and regulation of standard insurance products, particularly a requirement to include run-off cover, is an essential reform. However, consumer representatives believe that this reform may take some time to reach agreement on the content of standard insurance products and find market solutions to implement such products.	Medium priority Consumer representatives support an initiative to improve the standardisation of insurance cover for licensees, including mandatory run-off cover. We anticipate that this process may take some time to implement, and consumer representatives would expect to be invited to be part of any committee or working group established to guide the standardisation process. We view this as a medium term priority
Improved disclosure of insurance arrangements	Consumer representatives strongly support improved disclosure of insurance arrangements. Under current practice it is very difficult to identify the name of the insurer, the type of cover and the scope and limits of that cover. We propose that the name of the insurer and some key features of the insurance coverage should be disclosed in the up-to-date FSG. We also propose that the insurance details (including if applicable the unavailability of insurance) should be disclosed immediately to any person making a claim or complaint.	High priority Consumer representatives support the immediate introduction of a requirement to disclose insurance details in the FSG and additional disclosure of up-to-date insurance details to anyone making a claim or complaint.

Consumer representatives urge caution against relying on insurance as a stand-alone solution. Even with perfect, standardised insurance policies in place, breaches of the insurance contract by the licensee may still result in the removal of cover for consumers.

3.2. Improved capital adequacy requirements

The ultimate risk for clients in recovering compensation stems from a licensee's overall financial position at the time a claim is made. The Consultation Paper asks whether more attention should be given to the adequacy of licensees' financial resources.

In general, consumer representatives do not support proposals to enhance the financial capacity of licensees as a stand-alone tool for enhancing compensation arrangements. While this may be an important issue for the overall quality of financial services, it is unlikely to have a significant positive impact on the specific issue of compensation arrangements. Considerable resources and effort could be expended on this type of initiative, but the type of licensees that collapse can be very clever at maintaining a perception that they are financially sound until it is too late.

Consumer representatives believe priority should be given to other measures.

3.3. A "scheme of last resort"

The Consultation Paper considers introducing a scheme to provide retail clients with last resort recourse to compensation in relation to the investments and advice sector.

Consumer representatives support this proposal – indeed we believe it is the key initiative and should receive the highest priority. Such a scheme would fill an obvious gap in compensation arrangements in Australia, as last resort arrangements are in place in other sectors, including markets, superannuation, bank deposits and insurance claims.

This gap is the chief cause of uncompensated loss for retail consumers in Australia.

Consumer representatives submit that the impact of this uncompensated loss in the advice sector has a massive impact on individual consumers. We also note that this gap in protection has a negative impact on the level of confidence in the sector, and is even beginning to undermine the work and reputation of the EDR schemes, which are unable to deliver compensation in all cases.

We recommend that a scheme of last resort is implemented immediately for the investment and advice sector.

The Consultation Paper considers some specific issues in the establishment of a scheme of last resort. The following table provides a consumer perspective on each of these matters:

Issue	Consumer view
The liability standard for eligible claims	<p>The scheme should operate where a retail client has received an award of compensation by an EDR scheme, a court, an administrator or a liquidator. It should also operate where ASIC has taken regulatory action that would result in compensation for retail clients. Claims should not necessarily be restricted to matters covered by the Corporations Law – although we expect the vast majority of claims would fall into this category.</p> <p>The scheme should cover loss arising from a broad range of misconduct, fraud and the misappropriation of funds.</p>

Issue	Consumer view
Circumstances in which a claim can be brought	<p>The scheme should only accept claims where some attempt has been made to collect compensation from the licensee and (where relevant) the insurer.</p> <p>Although these options should be exhausted, the test for 'exhaustion' should be reasonable, and not require extensive expenditure or time pursuing options that are unlikely to succeed. The compensation scheme can play an important role in providing compensation quickly, before the damage is exacerbated.</p> <p>Ideally the scheme itself will develop guidelines and resources for assisting consumers and their advisers pursue other options. The scheme may also play a role in providing direct assistance and in some cases even takeover the claim (e.g. pursuing insurance in difficult circumstances). This may result in the scheme receiving some funds that will help to offset the scheme costs.</p> <p>The scheme should have the ability to address systemic issues and allow collective claims for compensation. For example if one consumer has received an EDR determination and remains uncompensated due to the failure of insurance, then other consumers with similar claims against the same licensee should be able to approach the compensation scheme directly without having to repeat the EDR process. This will be more efficient.</p> <p>The scheme could also play some role in contacting consumers or promoting the availability of the scheme where a systemic issues has been identified.</p> <p>Consumer representatives accept that there may need to be a reasonable time limit in which claims must be lodged.</p>
Capping of claims	<p>Consumer representatives accept that capping claims may be appropriate. For example, compensation in the superannuation sector is often capped at 90c in the dollar, and this scheme has still had a positive impact on individual consumers and industry confidence. Such a cap can help to avoid catastrophic impacts at a reasonable price.</p> <p>Consumer representatives do not support a cap below 90c in the dollar. For example, compensation in the superannuation sector is typically paid at either 90c or 100c in the dollar. Confidence in the advice sector may fail if the sector is subject to a lower cap.</p> <p>We note that the restriction of the scheme to 'retail clients' will in effect limit the size of claims, as will the financial limits on the jurisdiction of the EDR schemes. In practice this will become a second type of 'cap'.</p>
Relationship to current compensation arrangements including statutory schemes	<p>The scheme should operate in addition to the current compensation arrangements for the investments and advice sector (insurance and financial adequacy). Over time the operators of the scheme may make recommendations for improvement to the operation of other parts of the compensation regime (e.g. insurance) based on their experience.</p> <p>The development of a scheme of last resort in the advice and investments sector should have no immediate impact on the schemes which already exist in other sectors. However, over time, consideration could be given for better coordination or even consolidation of the schemes.</p> <p>Consideration should be given to allowing credit matters to be covered by the scheme of last resort, as this will address another gap in the compensation arrangements available to consumers. The number of credit related claims will be very small.</p>
Relationship to EDR schemes and legal system	<p>The scheme should accept claims based on awards of compensation by an EDR scheme, a court, an administrator a liquidator or ASIC. Such claims should not be the subject of a further merits review.</p> <p>EDR schemes should remain independent of the scheme of last resort.</p>

Issue	Consumer view
Funding arrangements	<p>Consumer representatives believe that funding should be provided through a combination of a pre-funded component (based on management costs and an estimate of claims) and a post-funded levy if required to compensate consumers for significant losses. The scheme should have the ability to borrow and maintain reserves in order to manage cash-flow over a long period of potential volatility.</p> <p>Where excess funds are retained for long periods the scheme should have the ability to fund preventative measures such as public interest education and research programs.</p>
Authority for scheme	<p>The scheme should have statutory backing. It should have clear independence from ASIC and EDR schemes, although it may be useful for ASIC to have a role in approving or registering the scheme according to the legislation or guidelines developed for that purpose (similar to the EDR scheme guidelines).</p> <p>Consumer representatives do not support the Consultation Paper proposal to change the industry nature of the current EDR schemes (FOS and COSL) and require them to have statutory backing. [Consultation Paper 5.107]</p>
Governance arrangements	<p>Consumer representatives support the establishment of the scheme as an independent body governed by a constitution and with a board of directors comprising an equal number industry and consumer representatives. The Chair should be independent.</p> <p>Initial appointments may need to be made by the Government – however schemes of this support can develop their own independent appointment processes over time.</p>
Process for systemic improvements	<p>The scheme should be subject to independent review every three years. These reviews should be published.</p>

4. Organisations and representatives consulted

The listed *consumer organisations* have been consulted in the development of this Joint Consumer Submission and endorse its contents.

The listed *individuals* have contributed to the content of the submission. Please note that where they are consumer representatives on EDR schemes they are speaking in their private capacity and do not represent the views of the EDR schemes.

4.1. Consumer organisations

Australian Investors' Association

Australian Shareholders' Association

CHOICE

Consumer Credit Legal Centre NSW

Financial Counselling Australia

National Information Centre for Retirement Incomes (NICRI)

4.2. Individuals

David Coorey, Consumer representative FOS (Board)

Stephen Duffield, Consumer representative FOS (Panel)

Jenni Mack, Consumer representative FOS (Board)

Justin Malbon, Consumer representative FOS (Panel)

Denis Nelthorpe, Consumer representative FOS (Board)

Paul O'Shea, Consumer representative FOS (Panel)