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Ministry of Business, Innovation and Employment

Wellington

By email: consumer@mbie.govt.nz

Effective Financial Dispute Resolution – Submission by Christians Against Poverty

Tēnā koutou, thank you for inviting submissions on the effectiveness of financial dispute resolution in Aotearoa. Dispute resolution plays a critical role in helping consumers access fair outcomes when things go wrong. It is often only through taking a case to the dispute resolution scheme – or the threat of taking a case – that compels a lender to engage seriously with a borrower or their representative.

CAP has over 15 years of experience working with people in financial hardship. One important aspect of this work is the advocacy for, and representation of, clients with dispute resolution services. CAP has successfully advocated for positive outcomes for vulnerable consumers in over 100 cases. CAP has a 94% success rate with dispute resolution schemes so we trust that our expertise will be a valuable contribution to help understand the effectiveness of dispute resolution in Aotearoa.

CAP appreciates the opportunity provided in the Discussion Paper (Q23 and Q24) to highlight the importance of the consolidation of services into one dispute resolution scheme, as is the case in overseas jurisdictions. CAP urges MBIE and the Minister to expedite efforts towards this outcome and we provide rationale in our responses below for the importance of this change for better outcomes for consumers.

CAP provides feedback on the specific questions from the Discussion Paper, below, and we welcome further opportunities to discuss any aspects of this submission.

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

Yes, consumer awareness and accessibility are low – there is also significant variance across the different schemes. Very few clients of CAP know about, let alone have contacted, a dispute resolution scheme.

This is mainly due to consumers not having an adequate understanding of their rights to make a complaint. Even if people were aware that they had been the victim of irresponsible lending, they may not know there is recourse through dispute resolution.

The different schemes also have different approaches to promotion of their services.

Clearly lenders do not have a strong incentive to promote dispute resolution and expound on the benefits, but this is likely the main avenue that borrowers come to know of dispute resolution services, through the regulatory obligation of lenders to notify borrowers.

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

This could be the case, but there are other factors that have undoubtedly played a key role in increasing the volume of disputes.

Financial mentors have been sharing knowledge of successful outcomes that may have lifted the number of disputes that have come from the advocacy sector.

CAP has invested in the employment of three additional full-time staff specifically to increase the number of complaints raised with lenders, which has led to a doubling of the number of annual disputes raised with lenders annually since 2021.

This would represent only a small percentage of widespread irresponsible lending and there is a urgency to scale the work of financial mentors and advocacy to effectively meet this need.

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

There are several that warrant attention:

Staff not appropriately advising people about the complaints process

Finding information on how to make a complaint is often not easy to find on a financial service provider's website.

A consumer may have uncertainty around the time frames involved, what to expect through the process, and uncertainty of what the outcome may be.

The timeframes involved can erode any willingness to take a complaint further. It can sometimes be months before a lender has conducted their own review and has concluded that the issue is at deadlock.

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

There are many borrowers that are not explicit enough about a borrower's right to have a complaint reviewed by their dispute resolution scheme.

At times, a lender may hold back issuing a letter of deadlock, delaying access to raise a complaint further.

In addition to the barriers mentioned in Q1 and Q3, a consumer may be afraid of the consequences of making a complaint: Will the lender treat me worse? Will a complaint make the situation worse? Will I get in trouble?

CAP spends significant time with people to work through these concerns to give a person confidence to give permission for CAP to raise a complaint.

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

CAP is often advocating on behalf of people so we understand the specific language used and can interpret that or simplify it for clients in order to get a process moving forward.

1. For many of the clients on whose behalf CAP makes a complaint, English is not a first language. Each of the different scheme's websites have varying levels of information about their services in different languages, and there is variation in how accessible this is to find on the websites.
2. For clients that require another party to advocate (like CAP), different schemes have varying forms for a complainant to complete, e.g., a '*Permission to Release Information*' form. These forms are not written in plain English and have quite a bit of technical jargon.

Any barriers to entry are multiplied for CAP whenever a client has to engage with more than one lender's complaint process and scheme.

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

The Discussion Paper has appropriately highlighted that these are services to the public and, as such, need appropriate oversight and accountability. There are a few issues to identify:

- a. There is concern from the advocacy sector that board composition in some schemes is weighted to industry representation. CAP would prefer to see a single scheme reporting to the appropriate regulator. This regulator should also have oversight and approval of the scheme's board to ensure there is balanced representation from stakeholders.
- b. The schemes also seem to have different mechanisms for escalating/sharing data with the regulators. CAP is unsure whether systemic issues are being identified appropriately and shared with the regulating authorities.

- c. Sometimes the findings from a particular scheme are not consistent with previous findings from the same scheme. There is no clear method of oversight of judgements/rulings or mechanisms to review decisions in light of previous findings.

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

No.

- a. CAP is concerned that there is significant variation between the schemes in their interpretation of the law. One example would be whether the scheme considers government support payment as income. One scheme may treat a Best Start payment as income that can be used to service a loan while another may exclude it as unreliable to be considered income (or segregate it as meeting a necessary temporary expense). Inconsistent interpretation makes it challenging to determine whether a complaint will be considered favourably.
- b. CAP is concerned that there is significant variation between the schemes in their rulings of remediation. One scheme may award compensation for distress and emotional harm, another may not, (or they at least have different thresholds and different values). One scheme may recommend the waving of interest and charges from the inception of the loan; another may recommend the waving of partial charges from a certain date. One scheme may rule that the affected borrower can choose to keep the vehicle, another scheme may rule that a vehicle should be surrendered, even if that is contrary to a good outcome for the affected borrower.
- c. CAP is concerned that the process is unduly slow for many complainants. While a couple of schemes have an 'early resolution' team that engage earlier with a complainant, other schemes may take much longer to action. There is also variation in the way schemes require lenders to comply with the timeframes in which they must undertake a certain action, such as provide further information. It can sometimes take months to fully resolve a case due to the inaction and delays by a lender and multiple extensions of time being provided.

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

Yes, although CAP would recommend that 'Accessible to consumers' is amended to 'all consumers' that would acknowledge that those who would most benefit from easier access are often the hardest to engage with because they face significant barriers to engagement, as discussed in Q4.

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

No, the compensation limits are not an issue that typical clients of CAP have ever encountered. While alignment of rules may bring some consistency of possible remediation and timeframe, there will remain variation in implementation and enforcement. CAP recommends that the above-described issues will best be addressed through the consolidation towards one scheme.

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

CAP appreciates the recognition in the Discussion Paper of the important role of financial mentors and consumer advocates. The people that are least engaged from current dispute resolution are the same groups that financial mentors and consumer advocates are already skilled at engaging. Financial mentors and consumer advocates help people to engage financial service providers through negotiating payment arrangements, completing hardship applications, restructuring debts, seeking waivers. CAP recommends providing more funding and support to the financial mentor sector which will be a highly effective method of increasing engagement with financial service providers.

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

FinCap have information on funding the sector appropriately.

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

CAP recommends the government leading a consolidation towards one scheme with government leading this project to see all recommendations implemented accordingly.

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

CAP strongly supports The Community Law Centre's recently proposed pilot for a Financial Rights Legal Centre. This will be an excellent source of information, advice and navigation, but importantly also of pro bono legal advocacy. Modelled on successful international examples, this pilot is proposing to address sorely missing legal expertise in consumer rights for both consumers and advocates.

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

Yes, see previous answers to Questions 6 and 7.

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

Yes, see previous answers to Questions 6 and 7. CAP's main concerns about effectiveness stem from the variation between multiple different schemes. This is ineffective for complainant or their advocates, who may have several engagements across different schemes at the same time.

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

Yes, aside from the consolidation to a single scheme to resolve this, having one appointed reviewer conduct an equivalent review across each scheme is recommended.

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

Yes, CAP would further recommend scheme alignment on commitment to Te Tiriti o Waitangi, responses to vulnerable borrowers, engagement with speakers of other languages, and escalation of outcomes to regulating bodies,

18. Do you think it is necessary for government to make changes to ensure effective and impartial governance of the schemes? If yes, what changes would best meet this aim?

Yes, all schemes should have independent governance with a range of stakeholder views, including consumer advocacy. While industry representation is important, this should come from non-members of the scheme.

19. Do you think the schemes should have to report against performance targets or standards? If yes, how should these standards be reported and what metrics should be used?

Yes, these standards should be reported on frequently (annual reporting is too infrequent).

An annual review should include an executive summary that highlights systemic issues identified and how these were escalated to regulatory enforcement bodies.

20. Are there any risks or unintended consequences associated with the options we are considering?

As previously mentioned, the best improvements to dispute resolution could come through the consolidation towards one scheme. There is the risk that the significant benefits of moving to a single scheme have been overlooked as it is not an option that has been tabled.

21. Will any of these proposals result in significant additional costs for the schemes, scheme participants and/or consumers? If yes, please describe the magnitude of these costs.

Effective dispute resolution will shape lender behaviour and lead to effective enforcement. The benefits to consumers – particularly vulnerable consumers and those in financial hardship – will outweigh any additional costs.

22. Are there any other ways to improve schemes' accountability and effectiveness?

Yes, see previous answers.

23. Do you agree that the impact of regulations to align scheme rules, along with any other improvements proposed in this document, should be assessed before considering changes to the current scheme model? Why/why not?

CAP appreciates the willingness for consideration of the current scheme model. Our concern is that the proposed improvements, while generally good, will have very limited impact, because the inherent culture and operations of existing schemes is quite different. CAP therefore recommends a broader response to improve scheme effectiveness by consolidating schemes, in line with examples from similar international jurisdictions.

24. Are there any other areas and options for change that we should consider that have not been addressed in this discussion document?

CAP is aware of many cases of creditors filing for default sitting with the District Court. There are even higher barriers for engagement in an adversarial self-representation to defend against charges from a creditor. The level of debtor engagement in that process is worryingly low.

Time after time, CAP encounters families that have had a judgement against them from the District Court that they've really had no engagement with or awareness of. There would be a very large percentage of these claims that wouldn't pass muster in a responsible lending investigation. Surely there is scope for a collaborative sector effort to improve outcomes for people that would otherwise have a default judgement made against them.

CAP welcomes any questions or comments on this submission.

Ngā mihi nui,

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Privacy of natural persons