

# Submission on discussion document: *Effective financial dispute resolution*

## Your name and organisation

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## Responses to discussion document questions

### Issue 1: Consumer awareness of and access to dispute resolution

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

Yes, we think there is a problem with low consumer awareness and access to dispute resolution.

MBIE's Consumer Survey 2022 confirms low awareness of all the schemes. Our research and experience dealing with consumers with issues with financial service providers supports MBIE's findings that there is low awareness of all the schemes.

Members who contact us with issues about financial service providers are often unaware of the various schemes.

We have also heard that some schemes are easier to access and engage with than others and that some schemes offer a fast track process for complainants who are facing financial hardship. However, this is not widely known and doesn't appear to be consistent across the schemes.

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

No, we do not agree that an increase in the volume of disputes indicates better awareness of and access to all schemes. In our view, an increase in the volume of disputes could indicate any one of a number of things, including:

- Financial mentors or organisations, such as Consumer NZ and Citizens Advice Bureaux referring more people to dispute resolution schemes.
- Higher numbers of people struggling with the current cost-of-living crisis.
- Higher numbers of disputes with organisations.
- Issues relating to the high volume of scams in New Zealand, particularly those facilitated by the banking and telecommunications sectors.
- Higher number of events (such as extreme weather events) driving claims.

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

Some barriers include:

- Complaints not being recognised as such.
- The behaviour and attitude of the service provider's employees towards the consumer.
- The fact consumers may not understand their rights.
- The fact consumers may not be aware of, or understand, the dispute process.
- The fact financial service providers don't always make it easy for customers to know what to do when a problem arises. Some providers don't provide dispute resolution information in a prominent or accessible manner.

- The time and effort involved in making a complaint.
- Fear of repercussions.
- The power imbalance between the consumer and the service provider.

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

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Barriers to accessing dispute resolution schemes include:

- Lack of awareness. The fact there are four different schemes is confusing for consumers and contributing to low awareness levels. The inconsistencies between schemes and the fact that some schemes are perceived as better than others, is also a barrier.
- Lack of understanding of consumer rights.
- The time it takes to reach a resolution can act as a barrier to some consumers.
- The scheme's terms of reference may be too narrow in some cases. For example, if a consumer has an issue with the pawnbroking arm of a business, this won't be covered. Bundled lending and insurance issues may also sit with separate schemes, despite being part of the same issue. See also our answer to question 5 below.
- The fact schemes are not required to publish their decisions also acts as a barrier, particularly where large numbers of complaints are dealt with through early resolution processes. If consumers and advocates could see the outcomes and data on trends resulting from similar complaints, they would feel more empowered to take action themselves. Requiring the publication of decisions creates openness and transparency and greater confidence in the schemes. It would also act as a deterrent to poor behaviour if financial service providers are named in the decisions.

In Australia, AFCA is required to publish decisions unless it has a valid reason for withholding them. AFCA is also required to publicly report on the number of determinations issued each six months, and the number of determinations not published due to there being a compelling reason for not naming the firm.

Similarly, in the UK the Financial Ombudsman Service is also required to publish its decisions and provide data on businesses and complaints as well. It is required to include the name of the respondent firm, unless it would be inappropriate to do so. We want the same rules to apply in New Zealand.

- We have heard from mentors that some of the schemes main contacts can be unhelpful and resist working towards early resolution of a complaint. For example, they may reject evidence from a mentor that an issue is deadlocked.
- The fact schemes don't follow up on solutions offered by providers when consumers are referred back to the provider. In some cases, the provider's proposed solution is not always fair and reasonable but the consumer may not know this.

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

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Yes, we are aware of several recent cases involving consumers who have instructed their banks to pay large sums of money to another local bank account for genuine reasons that turned out to be authorised push payment scams. In these cases, the consumer has been awarded a partial refund of the money they lost because their bank was deemed to be

partly responsible for the loss. However, the consumer has had no come-back against the bank the money was transferred to because they are not a customer of that bank. While the dispute resolution scheme was acting in accordance with its rules, those rules are not fit for purpose in these types of situations. We think this needs to change.

Please also see our answer to question 4 above.

## Issue 2: Enhancing scheme effectiveness through improved oversight and accountability

6

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

No, we do not think the current oversight and accountability mechanisms are sufficient to ensure the schemes' effectiveness.

The requirements to produce an annual report and conduct an independent review every 5 years are not sufficient.

In our view, greater oversight is needed to better understand whether the schemes are performing adequately.

In our view, there should be a single dispute resolution scheme with much greater oversight and accountability, similar to AFCA or FOS. In recognition of the very different skillsets required, a single scheme could have three divisions, dealing with banking, insurance and other financial services.

7

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

No, we strongly support the introduction of a single dispute resolution scheme, similar to that in Australia or the UK.

We have heard from financial mentors that some schemes are a lot better than others to deal with. This is problematic for consumers and mentors and needs to be addressed.

We have ended up with four schemes by chance, rather than by design. With the exception of the Banking Ombudsman Scheme, members can freely switch between the schemes and find the scheme that best suits their interests. This is also problematic for consumers. We consider it is time to design a more effective scheme.

8

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

Yes, we support the criteria of a scheme being accessible, accountable, providing effective services and cost efficient.

However, to be effective, we consider greater consistency and fair outcomes for consumers are required.

*Status quo: Retain existing model and monitor the impact of aligning the schemes' rules*

9

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

No, we do not think the new regulations will be sufficient to achieve the objectives of a scheme that is accessible, accountable, providing effective services and cost efficient. While

the new regulations go some way to address some of the issues with the schemes, they will not result in the objectives being fully met.

Having four different schemes will continue to confuse consumers, even if they do have the same rules and the same compensation and financial award limits. This is because the rules will be applied differently, and the culture and quality of each scheme will vary. We do not support this approach.

Consumers need a 'one stop shop' for financial services complaints. In our view, having a single scheme would benefit consumers as it would:

- Raise awareness of the scheme,
- Ensure the same rules apply to all disputes,
- Ensure the process and decisions are quick and consistent,
- Eliminate confusion about where to go and ensure disputes can be lodged and resolved in a seamless and straightforward manner, and
- Eliminate the need to take a dispute to more than one scheme where services are bundled.
- Be easier to provide appropriate oversight, and
- Benefit from increased economies of scale.

Publication of complaints should also be mandatory to increase transparency and effectiveness.

#### *Option to address issue 1: Supporting consumer access and awareness of schemes*

10

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

We consider all the options suggested would provide some help to consumers to resolve issues with their financial service provider. However, we do not think any of these options would be sufficient.

Also, we do not agree that 'more services' are required that provide information, advice or navigation support to consumers. We consider more funding is required for the existing services.

As already stated, we support the introduction of a single scheme.

11

*What are the likely costs of implementing these options?*

Any analysis of the cost of implementing these options should consider the cost of not improving the dispute resolution services. This cost is currently borne by consumers and needs to be addressed.

12

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

The Government should enact a legislative framework for a single independent dispute resolution scheme, similar to that in the UK or Australia.

13

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

Yes, see our previous answers about having a single dispute resolution scheme.

*Option to address issue 2: Enhancing scheme effectiveness through improved oversight and accountability*

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

Yes, we consider the effectiveness of schemes would be improved if there was greater accountability.

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

Yes, as mentioned above, we have heard from financial mentors that some schemes are better to deal with, and more effective than others. We understand feedback has been provided to the various schemes about this but it has not had any impact.

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, if a single scheme isn't adopted there should be consistent rules and timeframes for carrying out an independent review. The reviews should be done at the same time and conducted by the same organisation at more regular intervals than five yearly.

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

Yes, we consider government should set minimum standards for the scheme/s.

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?*

We consider there should be appropriate consumer representation and expertise on any scheme/s.

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, schemes should be required to publicly report against performance targets and standards as well as report on complaints data and publish their decisions. We consider this would help raise public awareness of the schemes and provide an incentive for companies to improve compliance.

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

No comment.

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.*

No comment.

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

See our comments above about having a single dispute resolution scheme.

#### *Other options*

**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?*

No. As already mentioned, we think the best option is to introduce a single dispute resolution body. In Australia, AFCA was introduced after the review of the financial system external dispute resolution and complaints framework (the Ramsay Review) recommended:

- the establishment of a single external dispute resolution body for all financial disputes to replace the Financial Ombudsman Service, Credit and Investments Ombudsman and Superannuation Complaints Tribunal; and
- improved access to dispute resolution services for individuals and small businesses, with a new organisation able to investigate complaints relating to matters with a monetary limit of \$1 million and grant compensation of up to \$500,000.

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

See our comments above about a single dispute resolution scheme.

## **Other comments**