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Financial Markets policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
Wellington

RE: Effective financial dispute resolution Discussion document

Free, accessible and fair dispute resolution should be readily available to ensure those working with financial mentors do not have hardship compounded or caused by financial providers' misconduct. Consolidating to a single financial dispute resolution scheme is a long overdue leap forward to more effective resolution when whānau need it most.

FinCap welcomes the opportunity to comment on the Ministry of Business, Innovation & Employment (**MBIE**) Effective financial dispute resolution Discussion document (**Discussion document**). While we strongly support work to improve dispute resolution, MBIE's approach should be focused on a consolidating to a single dispute resolution scheme in Aotearoa like in the United Kingdom and Australia.

FinCap also strongly welcomes the Discussion document highlighting that financial mentors often facilitate access to financial dispute resolution schemes. FinCap believes that effective dispute resolution is the clearest solution available to help financial mentors assist a whānau to challenge the unfair root cause of their financial hardship. MBIE should help financial mentors work through a funding gap and help Community Law Centres o Aotearoa find funding for a pilot financial rights legal centre if serious about realising the objectives of this consultation.

'Phase two' of the Financial Services Reforms 2024 also presents an opportunity to take a step back and address gaps in consumer protections across financial markets. There are clear gaps around some lenders and debt collectors not being held accountable to a dispute resolution scheme that need addressing.

We expand further on the above comments in the submission below.

About FinCap

FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the 185 local, free financial mentoring services across Aotearoa. These services supported over 69,000 whānau facing financial hardship in 2023. We lead the sector in the training and development of financial mentors, the collection and analysis of client data and encourage collaboration between services. We advocate on issues affecting whānau to influence system-level change to reduce the causes of financial hardship.

General comments

Collapse the four financial dispute resolution schemes into one.

Having multiple financial dispute resolution schemes is confusing consumers and their representatives and is a barrier to them confidently complaining about an issue from a financial service. FinCap strongly recommends consolidating to a single financial dispute resolution scheme. Doing so would action the ongoing united calls of multiple community organisations assisting people facing financial issues over many years.¹ This is the most effective and efficient pathway for increasing awareness and accessibility to financial dispute resolution. It would also further focus accountability and oversight alongside some other changes proposed in the Discussion Paper.

Moving to a single scheme would also resolve issues financial mentors have identified with inconsistency in decisions and approaches across the schemes. Updating practice across a single scheme to better meet the needs of consumers would be simple compared to trying to convince multiple schemes with varying rules and internal culture to update. Greater transparency could also be possible where one institution publishes insights. FinCap also acknowledges the efforts made by the schemes to be consistent in their approaches, see response to Q2 below.

Moving to a single scheme would also bring Aotearoa into line with the United Kingdom and Australia. These jurisdictions have already established that there is not sufficient merit in schemes competing for members as this can be a race to who can be the least consumer friendly and least stringent at holding members to account.

While some may argue different expertise might be needed across financial services, teams of experts could operate under a single organisation and governance structure. Various financial services' issues would have similarities and shared knowledge, among other economies of scale, would emerge. This would ultimately deliver better value for consumers against the volume of complaints considered.

Recommendation: The Government proceed immediately with arrangements to form a single financial dispute resolution scheme.

Make all debt collection accountable to dispute resolution

No matter how robust the Credit Contracts and Consumer Finance Act (**CCCFA**) and enforcement is made at this point in time, debts from before protections were effective will continue to emerge and cause substantial hardship for borrowers. This is because unfair debt collection practices go unchecked. Aotearoa does not have coherent laws or enforcement tools to effectively prevent unfair conduct from debt collectors. Common issues include unreasonable fees and charges, harassment through excessive contact, misleading claims about actions that will be taken and coercion to make unaffordable repayments. FinCap recommends the following actions to resolve these issues undermining now robust protections:

Recommendation: Amend the Fair Trading Act 1986 to better define harassment and ensure there are sufficient penalties to deter debt collector misconduct.

Recommendation: Improve mechanisms for accountability by clearly including all debt collection activities in s5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

¹ See this linked submission from FinCap as well as Christians Against Poverty, Citizens Advice Bureau, Consumer NZ and The Salvation Army's submissions on the same consultation in 2021: <https://www.fincap.org.nz/wp-content/uploads/2021/05/210505-Submission-on-Financial-Dispute-Resolution-Scheme-Rules-Discussion-Paper.pdf>

Apply CCCFA affordability assessment requirements to all loans so that dispute resolution is available to challenge unaffordable loans.

The most common issues causing financial hardship for borrowers reported by financial mentors to FinCap since December 2021 are those relating to unaffordable Buy Now Pay Later loans. Financial mentors also report similar issues with the loans commonly provided for phone handsets with ongoing plans over terms of up to 36 months. Applying the CCCFA, including the requirements for affordability and suitability assessments to lenders like these who currently sit outside lending protections is the best way to allow access to justice through dispute resolution for clients who would otherwise continue to face substantial hardship from these loans.

Recommendation: The Minister use CCCFA 137A powers to apply all consumer protections from the act to Buy Now Pay Later lending, all loans for mobile handsets and lending models that hide the cost of credit through prices well above the recommended retail price.

Responses to consultation questions

Q1. Do you think there is a problem with low consumer awareness and access to dispute resolution?

Yes. It would be very rare for someone who could make a strong complaint about the actions of a financial service to present to a financial mentor knowing this is the case. It would be even rarer that they understand that they could escalate the complaint through an external dispute resolution service.

Financial mentors tell us that two of the schemes have early assistance teams who are appropriately helpful for potential complainants who might be unfamiliar and not confident with engaging. In contrast, financial mentors regularly tell FinCap they are frustrated at how difficult they find it, as experts, to access the other two schemes. There are clear accessibility issues.

Settings around waiting for deadlock, issues that need more attention. While some schemes have fast track processes for complaints where the complainant is facing financial hardship, this is not widely known and may require the 'magic words' to get access. There are also some settings around access before usual deadlock times that rely on the discretion of leadership at the scheme. This is a barrier to smooth and confident access to complain.

Q2. Do you think the recent increase in the volume of disputes indicates better awareness and access to the schemes?

While there might be some increase, complaints the schemes see are only the tip of the iceberg of what they could assist with. Leaders of some of the schemes have attributed higher complaints numbers to inflationary pressures seeing more consumers experiencing financial difficulty.

There have also been some good joint initiatives from the schemes to promote their services and rebuild trust with financial mentors. However, these have at times been undermined by the standard for easy access promoted by one scheme's representative being undermined by another scheme being of poor quality and not meeting a financial mentor's expectation that all schemes would be as accessible.

Q3. What are the barriers for consumers in accessing financial service providers' internal complaints processes?

Financial mentors regularly report issues with internal complaints processes such as:

- Businesses' staff are often rude and judgemental towards people experiencing hardship and are therefore difficult or confronting to engage with.
- Often a lack of training or deliberate obfuscation means collection teams do not recognise that a consumer is making a complaint and then appropriately transfer it. For example, refusal to pay could be an expression of a legitimate complaint.
- Many businesses' front-line staff will refuse to accept financial mentor's privacy authorisation and end correspondence rather than recognising the financial mentor is complaining about the refusal. This has recently occurred, even when the same businesses' complaints manager has said they will implement training to rectify this recurring issue.
- Often the consumer or their representative will need to know the 'magic words' to be referred to where they can make a complaint.
- Details on how to make a complaint and external dispute resolution are often buried in financial service's contact or FAQ webpages.
- The internal complaints teams at financial services sometimes fail to respond at all, or within times that they have committed to, or are required to meet by law.
- Complaints are often illegitimately dismissed by internal complaints teams as is in the businesses' interests.

Q4. What are the barriers for consumers in accessing dispute resolution schemes?

Issues reported to FinCap by financial mentors include:

- An imbalance of power between people who are experiencing hardship and financial services needs to be overcome by dispute resolution schemes. FinCap has heard that people assisted by financial mentors are often fearful of raising a legitimate complaint about an issue such as irresponsible lending, as they perceive this may lead to severe consequences from the better resourced financial service involved. Every complaint or issue raised with a financial dispute resolution service should be valued and actioned as far as possible as otherwise, some experiencing financial hardship and other issues may be discouraged from ever raising an issue again.
- Some schemes having unhelpful main contacts that financial mentors feel resist work towards early resolution of a complaint. This can involve rejecting financial mentors evidencing that an issue is clearly in deadlock. Meanwhile, the complainant, who the financial mentor is supporting, faces ongoing hardship or loses confidence that persevering to make a complaint will lead to a fair outcome. At times FinCap staff have had to contact senior staff at schemes to facilitate a financial mentor having the issue they are raising considered.
- When some schemes refer consumers back to the financial service that they have an issue with and the lender is more helpful than before but still offers a resolution that does not reflect the consumers rights under the law, there is no follow up. While a consumer may be happy the scheme has failed to facilitate a fair resolution, instead the scheme should have checked in and checked the quality of the internal resolution.
- The time it takes to reach resolution processes or prove deadlock at all schemes can see some consumers unable to avoid an insolvency procedure or Kiwisaver early hardship withdrawal, to relieve their debt spiral. The timelier resolution of their complaint could have seen them avoid these outcomes and the associated long-term consequences of each.
- Inconsistency and quality issues have led to financial mentors losing trust in some schemes.

- Some schemes primarily offer access online and require a level of ability around filling out forms throughout their processes that are alienating to some vulnerable consumers.
- Some schemes do not have clear vulnerability policies or equivalent initiatives to try and ensure equitable access to their services.
- Some financial mentors feel some resolution processes can leave them as experts feeling out of depth in aspects of the process, such as commenting on the quality of a preliminary decision. If financial mentors feel this way with their expertise, then many in the public will not fare any better in trying to confidently access the scheme.
- Schemes' scopes are sometimes not broad enough to deal with some issues with a financial institution. For instance, a lender will not have complaints about its pawnbroking arm through its external dispute resolution scheme. Another example is an issue across bundled lending or insurance that sit with separate schemes but are part of the same issue.

Q5. Do you have any specific examples or case studies of situations where consumers have experienced issues accessing a financial dispute resolution scheme?

We have provided examples throughout this submission of issues shared with FinCap by financial mentors. We cannot republish these without clearance from the financial mentor and their client, which is impractical in the time we have had to submit. FinCap can work with MBIE after submissions closed to provide a range of case studies if helpful.

Q6. Do you think that current oversight and accountability mechanisms are sufficient to ensure schemes' effectiveness? Why/why not?

No. FinCap has, in recent years, provided strong feedback to MBIE, direct to schemes and through independent reviews on quality and structural issues at schemes and we have not observed adequate follow up. These issues have been raised because they are undermining financial mentors' trust in schemes and FinCap's attempts to promote them as an option for resolution for financial wellbeing.

Examples include financial mentors having to remind investigators at each point in an investigation that their member has not responded in the required timeframe. We have seen financial mentors spot errors in investigator's calculations. Also, financial mentors have reported mediators at schemes refusing to share evidence from the member which a decision is based on, sometimes even where the member would be required to give this to a consumer under the CCCFA or Privacy Act. There are also issues with resolution workers deciding an outcome must be fair to their lender too; by not applying the full legislated remedy to the complainant despite a finding the member breached the relevant law. FinCap has also challenged some schemes' high threshold for considering a breach or systemic issue is sufficiently material to alert a regulator. When mentors are unhappy with a scheme's finding, they have found that there are limited timeframes to request a review of decision at the discretion of leadership at the disputes resolution organisation.

These issues with quality and accountability do not reflect the access to justice that consumers should be able to expect from these schemes.

Q7. Do you think that the schemes are as effective as they could be? Why/why not?

No. Please see the many issues raised over the responses to the above questions as well as our recommendation to consolidate to one scheme in the general comments section earlier in this submission.

Q8. Do you agree with these criteria for assessing the options? Why/why not?

These criteria should be further supplemented. MBIE should also consider whether options will lead to greater consistency, relevant expertise being available to investigate all complaints and fairness for consumers. This is because:

- Inconsistency in approaches within or across schemes is undermining trust that they are worth accessing, for some financial mentors.
- Some financial mentors are frustrated that some models for resolution fail to see helpful expertise on financial services at a scheme. This can lead to commentary that accessing dispute resolution is 'luck of the draw' as to whether a consumer will get a staff member knows what they are doing.
- Some resolution processes are unfair. An example is consumers and their representatives being required to provide responses to complex issues in unrealistic timeframes while lenders are granted extensions to respond and have dedicated legal staff with legal expertise doing so.

Q9. Do you think that the new regulations will be sufficient to achieve the objectives set out above?

No. We instead recommend work to consolidate to a single scheme. The application of the rules will inevitably vary greatly across the different internal cultures and models in the schemes.

Some schemes will now have longer timeframes before a consumer can make a complaint which will reduce access.

Q10. Which of the options we have described above would be most effective to support consumers to resolve issues with their financial service provider?

Increase funding to financial mentors

Increasing funding to financial mentors would improve access to dispute resolution for whānau who need it most. The Discussion Paper is right to specifically recognise that financial mentors connect the dots by spotting issues, then knowing there is potential for a complaint and knowing how to take that complaint to a dispute resolution scheme. FinCap anticipates that the recent move to Ministry of Social Development funding contributing to a full-time equivalent model should create clearer flexibility for more financial mentors funded this way to be available to support someone all the way through a full dispute resolution process.

Unfortunately, fewer services will be receiving this more sustainable funding. FinCap recommended a \$13.8 million increase in funding from government for currently operating financial mentors to sustainably meet demand, in Budget 2024. This was not successful. This will mean less whānau will access dispute resolution. We recommend an increase in funding for financial mentoring from government and work towards a system where industry contributes to the costs of independent 'business as usual' financial mentoring.

Fund the financial rights legal service pilot proposal

FinCap strongly recommends that government funds the Community Law Centres o Aotearoa pilot of a financial rights legal service. We anticipate that such a pilot, among many other benefits, would build the confidence and capability of community services to identify complaints, access dispute resolution and engage effectively with the process. It also has the potential to improve the accountability of dispute resolution, where legal expertise might be more available to review preliminary decisions from dispute resolution staff against other decisions and the complainant's rights.

One contact point

Creating a single contact centre for all the schemes, potentially with a shared early resolution team, would be an improvement on the status quo. However, going to a single scheme approach, as we recommend in the earlier general comments section of this submission, would be a more effective and efficient approach.

Community awareness and requiring clear and prominent information.

A community awareness campaign for dispute resolution could be of use. However, targeted, ongoing community engagement from engagement professionals rather than a general, short, public service announcement approach would likely be more effective at lifting complaints. Such engagement should specifically include intensive outreach to communities that are likely to be facing challenges but are underrepresented in complaints made.

We are aware of one scheme having established a group for community insights to get regular feedback and get visibility of issues that the scheme may not be identifying through complaints. We have fed back that this group would more efficiently use members' time if it could meet all schemes at once, especially where the issues are in common across the schemes. Some effort has been made towards this, but the effort involved in getting these insights to all schemes at once at one of the meetings again points to the need for a single scheme. With such consolidation, insights could be much more efficiently fed back around to how to improve awareness.

Requirements towards communication of clear and prominent information could be an improvement on the status quo. However, we have noticed most schemes being proactive about their promotion by members as well as having helpful information and messages to encourage complaints on their websites. Otherwise, requiring better practice earlier assistance teams are likely to improve access for financial mentors and the general public.

Q11. What are the likely costs of implementing these options?

FinCap has calculated that further investment of \$13.8 million per annum will sustainably maintain the many benefits of financial mentors being available to support whānau to navigate options for financial wellbeing.

FinCap strongly supports the from Community Law Centres o Aotearoa proposed pilot of a financial rights legal service costed at \$760,000 over two years.

FinCap anticipates there would be savings through efficiencies, relative to complaints considered, where there is consolidation into a single dispute resolution scheme. There would be numerous flow-on benefits to consumers from the increasingly accessible, efficient and effective single service that would emerge. More consumers could utilise the better scheme to avoid financial hardship, insolvency procedures and Kiwisaver hardship withdrawals.

Q12. Should these options be led by government, or the schemes themselves?

As recommended in the general comments section of this submission, schemes should be compelled by government to consolidate to a single service.

A scheme should be compelled to lead any community awareness work progressed with support from government if necessary. If schemes lead engagement with a community, then it is more likely they will understand that community's needs towards improved access, and that trust will be built in the scheme through face-to-face interactions.

Q13. Are there any other approaches that would improve consumer access to and awareness of dispute resolution options?

Please see our response to consultation question 10 above and our comments in the general comments section earlier in this submission.

Q14. Do you think that there is a need for dispute resolution schemes to be more accountable?

Yes. When FinCap has had concerns around actions or gaps at financial dispute resolution schemes, we have not been confident that our concerns are being acted upon by the leaders of schemes and government officials we have raised these with. While at times we have been informed of a change process long after the fact, there were not transparent updates throughout. It was made clear that scheme members, the board or leadership at a scheme had the ultimate discretion on any changes and the process for changes.

Q15. Do you think there are issues with the performance or effectiveness of the schemes?

Yes. Some of the dispute resolution models are not consumer friendly and entrench rather than relieve power imbalances for the vulnerable. FinCap has raised many concerns directly, in independent reviews and direct to government over recent years. These have included much of the list in response to consultation questions four through six and our general comments section above.

Many financial mentors have shared frustrations that they are not confident that the schemes will be effective at resolving an issue for someone they support. This includes perceived concerns that some do not have structures in place, or a general willingness, to strongly challenge their members or encourage proactive change to prevent complaints.

Q16. 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. Where our core recommendation that consolidation to a single scheme is prioritised is not progressed immediately, FinCap recommends a single reviewer, appointed by government, simultaneously conducts an independent review of all schemes, with a public report.

FinCap saw much more progress from the most recent independent review of the external dispute scheme for telecommunications that was procured by the Commerce Commission's Retail Service Quality team.² That team then set a series of expectations for the recommendations of the review to be adopted and we saw the response prioritised by industry who engaged to explain their actions based on FinCap's feedback. Two recent bits of feedback from different sources in our sector included their volunteering that their recent interactions with telecommunications dispute resolution had strong and timely outcomes in comparison to recent interactions with the schemes for financial services.

Q17. Do you think government should set further scheme rules? If yes, what areas of the scheme rules should be set by government?

Yes. FinCap supports government intervening where necessary to set more minimum standards for scheme rules. We suggest exploring the at least the following areas:

² A summary of this process is at the bottom of this update: <https://comcom.govt.nz/regulated-industries/telecommunications/projects/2021-review-of-the-telecommunications-dispute-resolution-scheme/media-releases/commission-recommends-improvements-to-telco-dispute-resolution-scheme2>

- That the scheme has a vulnerability policy and the minimum commitments that must be included.
- Minimum standards for very accessible early resolution support.
- Minimum standards for a fast-track process for consumers in hardship and where a scheme should appropriately declare an early deadlock where the member is not engaging constructively.
- Requirements to check resolution reached from referral back to internal complaints teams reflect the consumer's rights in the circumstances.
- More accessible and flexible processes for consumers to request the final decision of resolution be reconsidered.
- Stronger principles as to what scheme rules are to aim to deliver.
- Requirements around the naming of traders and publication of decisions.
- That the scheme must have an escalating fee structure that encourages members to find resolution early rather than prolong the resolution process when there is little or no merit in arguments behind their stubbornness.
- Strong requirements for immediate reporting to relevant regulators and government policy workers where likely non-compliance or systemic issues have been identified.

Q18. 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. We encourage MBIE to ensure a range of subject matter expertise and consumer expertise in governance and draw on the settings in other industries and overseas jurisdictions that have led to more effective schemes.

Q19. 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. FinCap recommends that schemes are required to publicise results against targets or standards on a quarterly or more frequent basis so that underperformance does not take a year to be identified.

We would encourage reporting against targets or standards towards:

- Ongoing engagement of complainants throughout the resolution process with less files closed due to no further contact. This is a sign of trust and effectiveness.
- Amounts of initial inquiries resolved by referral back to internal complaints team at the member and how often these were checked for resolution having matched the complainants' rights, as well as the result of that check.
- Amounts of resolution processes opened, what businesses they were in relation to, how many were in relation to a group of issues and how often consumers accepted the outcome.
- Amounts of decisions where consumers requested a decision be reconsidered.
- That all decisions were published and named the trader.
- Any systemic issues identified and how what action was taken.
- The number of likely breaches identified and the number of times they were shared with each relevant regulator.

Q20. Are there any risks or unintended consequences associated with the options we are considering?

There is a built-up capability and expertise across the schemes, along with learnings and quality improvements, that should be factored into a potential single scheme. There is a risk, that can be managed through smooth transition, where the consolidation to one scheme could see the exiting expertise of schemes lost.

There is also a manageable risk that changes could not have enough oversight and accountability to ensure their intended outcomes. Transparency around any changes, with mechanisms for government and community groups to raise concerns that dispute resolution schemes are not delivering on changes would help manage this risk.

Q21. 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.

Ultimately improving financial dispute resolution effectiveness will lead to better outcomes and less cost on consumers. This is especially the case where the effectiveness of dispute resolution helps identify areas for improvement that prevents conduct leading to complaints reoccurring. Less strain on financial mentors' limited capacity would also be a benefit that outweighs any costs as it will they can assist more whānau facing financial hardship.

Q22. Are there any other ways to improve schemes' accountability and effectiveness?

Please see our recommendations in our earlier general comments section of this submission.

Q23. 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?

As discussed in our general comments section above and throughout our responses to the consultation questions, immediately beginning work to consolidate to a single financial dispute resolution scheme is FinCap's strongest recommendation.

Q24. Are there any other areas and options for change that we should consider that have not been addressed in this discussion document?

Financial disputes resolution schemes and financial mentors rely on people with financial hardship issues presenting and engaging to deliver better outcomes. We are aware that many whānau who may have a legitimate complaint about a breach of protections may never identify this, or make a complaint. These debts will often end up as a judgement by default in the district court as the debtor is unaware that they can, or not be confident to, engage with the court in relation to the debt. We have raised issues like this at the Consumer Protection Partnership Forum facilitated by MBIE and understand from that meeting that the Disputes Tribunal might have jurisdiction to have applications for judgement referred to the Tribunal from the registrar at the District Court, for consideration of any issues before a default judgment is made. We recommend MBIE consider how it can work with the Ministry of Justice to ensure that such improvements to help resolve consumer issues with financial service providers could be achieved through the Disputes Tribunal.

Please contact [redacted] Privacy of natural persons [redacted] to discuss any aspect of this submission.

Ngā mihi,

Privacy of natural persons

Ruth Smithers
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