

Introduction

1. In January 2024, the Minister of Commerce and Consumer Affairs announced plans to reform aspects of New Zealand's financial services regulation. The consultation documents released by MBIE about the reforms describe how they are designed to rationalise the financial services regulatory landscape and reduce compliance costs for the industry. MBIE also notes that the reform package seeks to improve outcomes for consumers by ensuring New Zealanders can confidently access credit in a way that is safe.¹
2. As part of Phase 2 of the reform proposals, MBIE is publicly consulting on a range of amendments to the Credit Contracts and Consumer Finance Act (CCCFA), and these include an opportunity to make submissions on the accessibility and effectiveness of the dispute resolution system.
3. The Disputes Tribunal is part of the financial dispute resolution system, as it has jurisdiction to hear claims under the CCCFA (Part 2, Schedule 1, Disputes Tribunal Act 1988 (DTA)). As Principal Disputes Referee, it is part of my role to liaise with interested persons, where appropriate, on matters affecting proceedings in the Tribunal (s6C(1)(g) DTA). It is in that capacity that I make this submission.
4. This submission is in three parts.
 - (a) Part 1 provides a background to the work of the Disputes Tribunal.
 - (b) Part 2 explains the current limited use of the Disputes Tribunal in CCCFA matters.
 - (c) Part 3 sets out ways to enhance the use of the Disputes Tribunal in CCCFA matters for creditors and debtors.
5. The submission concludes that there would be gains to be made in the overall efficiency of the market for consumer credit by giving greater access to the Disputes Tribunal for both creditors and debtors. Better access for creditors could be achieved by giving consumer creditors the option of using the Tribunal without requiring them to provide evidence of a dispute. Better access for debtors could be achieved through transfer of selected Judgment by Default claims from the District Court to the Disputes Tribunal for a hearing.
6. It is submitted that this greater access to the Disputes Tribunal would enhance the effectiveness and accessibility of the dispute resolution regime in CCCFA matters.

Part 1: The work of the Disputes Tribunal

7. The Disputes Tribunal is a division of the District Court that hears certain civil claims up to the value of \$30,000.00. It is designed to provide a speedy, simple and effective tool for consumers, businesses and any member of the public to resolve their differences.

¹ MBIE, [2024 financial services reforms | Ministry of Business, Innovation & Employment \(mbie.govt.nz\)](https://www.mbie.govt.nz/2024-financial-services-reforms)

Currently, it costs between \$59.00 - \$234.00 to file a claim, and the average age to dispose of a claim is between 3-4 months.

8. In the Disputes Tribunal, most claims are filed online. A single application form is completed, and evidence is loaded via an online portal in one transaction. The Tribunal completes service on the respondent. In the District Court, an applicant has to file multiple hard copies of specified documents and attachments. Filings in the District Court must include a Statement of Claim, a technically complex legal document which requires specialist drafting skills. In the majority of District Court filings, the plaintiff is obliged to serve physical copies of the filings on the defendant. This step usually involves process servers, at an additional cost.
9. In the Disputes Tribunal, a hearing is scheduled and set down when documents are served. The parties simply turn up for the hearing (either in person or via telephone) and the matter is dealt with. No further documents need be filed unless directed by the Referee during the hearing. In the District Court, once served, a defendant has 25 working days to file a Statement of Defence, a technically complex legal document responding to the plaintiff's Statement of Defence. If the Defendant wishes to run a positive defence (such as an argument that a loan was invalid due to breaches of CCCFA lender requirements) the defendant is obliged to file affidavits of evidence, and a schedule of documents, both of which require specialist drafting skills to prepare. A \$75.00 filing fee must be paid, unless the defendant's circumstances qualify for a fee waiver, a process which requires a separate form to be completed. Once the Statement of Defence is filed, a matter is set down for a case management conference, where further directions including for discovery of documents, with matters usually being tracked to a Judicial Settlement Conference. Trials, when they do occur, might not happen in the same year as the matter is filed.
10. The Tribunal is made up of 65 Referees in 36 District Courts around the country, conducting up to three hearings a day. Referees are experienced in the law and across all members, have an average of 16 years post qualification experience. A Referee has a dual function, to assist the parties to resolve matters, and to determine the dispute if the matter is not resolved. The Tribunal has inquisitorial powers and has the discretion to conduct investigations into matters before it of its own motion. Referees issue written decisions for all determinations, and since 2021, all decisions of interest, being about 15-20% of the output, are anonymised, and published on the Ministry of Justice website.
11. Many hearings begin by telephone, and some are fully resolved that way. Others take place in a hearing room at the applicant's local court, with parties able to attend remotely if they live elsewhere.
12. In 2023, the Tribunal dealt with 12,451 claims to the value of \$106,000,000.00. Approximately 25% of these are resolved before a hearing, and approximately 25% settle at a hearing, resulting in approximately 6500 decisions each year. The work of the Tribunal is made up of 60% contract disputes, 20% consumer matters (8% consumer goods and 12% consumer services), 10% car accident disputes, 6% tort claims, 3% fencing and neighbour disputes and 1% other, which includes a negligible number of CCCFA claims (at approximately 0.1%).

Part 2: The current limited use of the Disputes Tribunal in CCCFA matters

13. It is uncommon for creditors to use the Disputes Tribunal for the enforcement of consumer loans. If such claims are filed, it is rare for these to be defended, and even less likely that debtors would file their own dispute.
14. Creditors are unable to use the Disputes Tribunal in many cases, as they often lack evidence of any dispute to file the claim in the Tribunal in the first instance. This means they must generally lodge and serve their claims in the District Court and are unable to take the benefit of a Tribunal process that might enhance debtor engagement, and the increased likelihood for matters to be resolved by agreement.
15. Debtors do not usually use the Disputes Tribunal either. The existing industry dispute resolution schemes are free to consumers and are designed to be a faster and less formal alternative to the court system. Decisions within that scheme are only binding if accepted by the consumer. The schemes can award compensation, but do not have enforcement powers. It is rare for the Disputes Tribunal to ever receive an application following an industry dispute resolution process.
16. However, the MBIE consultation paper on CCCFA dispute resolution refers to a lack of engagement by debtors with the industry schemes. In particular, the paper refers to 2022 survey data that demonstrates a lack of understanding and awareness and refers also to “other complex barriers that may dissuade consumers from taking action when a dispute arises.”² MBIE notes that this systemic disengagement can stem from a lack of knowledge of how to begin the process, a lack of knowledge of rights, the time and effort involved and a fear of the consequences.
17. As a result of these different structural challenges for both creditors and debtors, there is minimal engagement with the Disputes Tribunal as a dispute resolution mechanism for CCCFA matters.

Part 3: Ways to enhance the use of the Disputes Tribunal for creditors and debtors

18. By far the greatest proportion of CCCFA claims that enter any form of dispute resolution process enter the system as creditor applications for Judgment by Default in the District Court. Of the approximately 10,000 debt claims that are active at any one time in the District Court, consumer loans represent an unknown exact portion, but would number into the thousands per year.
19. Despite these numbers, the Judgment by Default process suffers from the same systemic disengagement as both the industry schemes and the Disputes Tribunal. Once a claim is lodged and served, Rule 15.7 of the District Court Rules empowers a Registrar to seal a judgment by default for a liquidated demand if no statement of defence is filed within a specified period. A copy of this Rule, and other provisions referred to in this submission are in Appendix 1. A fraction of total claims are defended. Upon receipt of the formal documents, most debtors never engage, with all the same factors at play set out in Part 2.

² MBIE 2024 Discussion Paper, “Effective Financial Dispute Resolution”, (mbie.govt.nz)

20. The consequence of these current settings is that creditors miss out on the dispute resolution processes available in the Disputes Tribunal, and debtors miss out on any regulatory oversight of their loans.
21. There are two simple changes to the current model that could improve the choices available to creditors and resolve the systemic disengagement from debtors.

Increased choice for creditors

22. When the Disputes Tribunal Act 1988 (DTA) was drafted, there was a concern that unless debts were excluded, they could overtake the work of the Tribunal. Consequently, a provision was inserted that excluded debts, except in certain circumstances (s11).
23. The first of these circumstances is set out in s11(1)(a). That section enables a Registrar to allow a claim where it is satisfied that the debt is in dispute (see Appendix 1). The Registrar is often satisfied in the case of a small business that an unpaid invoice is adequate evidence of a dispute, even in the absence of customer engagement. It has been demonstrated on many occasions in the Tribunal that disengagement is not a good indicator of consensus. This is particularly so in the context of small businesses and consumers, where a dispute is often revealed at the hearing, despite it not being obvious at the point of filing.
24. The same reasoning can be applied in the context of consumer loans, where it could be argued that it is even more likely that debtor disengagement is at play. Consideration could be given to offering consumer creditors the option of filing their claims in the Disputes Tribunal, rather than the District Court, regardless of whether they can provide immediate evidence of a dispute as to the amount owed. This would give creditors the option of lower filing fees, faster timeframes and an engagement process that enhances the potential for settlement of the claim. As the Disputes Tribunal is a division of the District Court, any order produced whether by settlement or decision has the same status as an order produced through the Judgment by Default process.
25. There may be resourcing implications of this idea that in the available timeframe for submissions have not been canvassed with the Ministry of Justice. However, as this option would be *in addition to*, rather than instead of, the Judgment by Default process, it is considered these implications would not be unmanageable.

Access by default for debtors

26. A second circumstance in which the Disputes Tribunal can hear claims for debts is set out in s11(1)(c). That section allows the Disputes Tribunal to lodge a claim for a debt where the claim has been transferred from the District Court under s37 (see Appendix 1). Section 37 gives a Registrar or Judge a discretion, of their own motion, to transfer any claim within the DT jurisdiction. CCCFA claims are within jurisdiction (so long as they are under \$30,000, which many are). As a result, this machinery could be used to transfer selected Judgments by Default to the Disputes Tribunal without the debtor engaging or filing a defence. It is easier for a debtor to engage with the Disputes Tribunal than a District Court proceeding. The Tribunal is also able to proceed at a hearing without the debtor, and to provide an objective assessment of the claim on an inquisitorial basis.

27. Again, there may be resourcing implications of this idea that in the available timeframe for submissions have not been canvassed with the Ministry of Justice. However, as this option would also be *in addition to*, rather than instead of, the Judgment by Default process, it is considered these implications would not be unmanageable. Not all claims would be transferred, but only those which are identified from the claim as potentially giving rise to benefit from review.
28. Whilst costs are not generally recoverable in the Disputes Tribunal, s43(4) would preserve the right of the successful creditor to seek their costs if they have filed in the District Court first, for any claims that are transferred under s37(1) (Appendix 1). The Tribunal also has a broad discretion in s20 to award interest which would be relevant in dealing with consumer credit claims (Appendix 1).

Conclusion

29. The Disputes Tribunal offers a dispute resolution mechanism that could be of greater use to both creditors and debtors in CCCFA claims.
30. Entry by choice for creditors and entry for default for debtors would provide a pathway that would underpin the accessibility and effectiveness of dispute resolution processes for consumer credit. At the same time, these options would align with the wider objective to improve outcomes for consumers by ensuring New Zealanders can confidently access credit in a way that is both effective and safe.

Janet Robertshawe
Principal Disputes Referee
19 June 2024

APPENDIX 1: Legislation referred to in submission

Rule 15.7, District Court Rules

15.7 Liquidated demand

- (1) If the relief claimed by the plaintiff is payment of a liquidated demand in money and the defendant does not file a statement of defence within the number of working days required by the notice of proceeding, the plaintiff may seal judgment in accordance with this rule for a sum not exceeding the sum claimed in the statement of claim plus—
 - (a) interest (if any) payable as of right calculated up to the date of judgment (if interest has been specifically claimed in the statement of claim); and
 - (b) costs and disbursements as fixed by the Registrar.
- (2) If the plaintiff claims costs and disbursements, the plaintiff must file a memorandum setting out the amount claimed and how that amount is calculated, together with any submissions in support of the claim.
- (3) A Judge or a Registrar may authorise the sealing of a judgment under subclause (1) if satisfied that the relief claimed by the plaintiff falls within this rule.
- (4) A Registrar has the jurisdiction and powers of the court under these rules to fix costs and disbursements under subclause (1)(b).
- (5) For the purposes of this rule and [rule 15.9](#), **liquidated demand** means a sum that—
 - (a) has been quantified in, or can be precisely calculated on the basis of, a contract relied on by the plaintiff; or
 - (ab) is quantified in, or can be precisely calculated on the basis of, or by reference to, an enactment relied on by the plaintiff; or
 - (b) has been determined by agreement, mediation, arbitration, or previous litigation between the same parties; or
 - (c) is a reasonable price for goods supplied or services rendered (when no contract quantifies the price).

Section 11 Disputes Tribunal Act 1988

11 Further limitations on jurisdiction

- (1) A debt or liquidated demand may be the subject of a declaration under [section 10\(1\)\(b\)](#), but, subject to subsection (2) of this section, a claim for a debt or liquidated demand is not within the jurisdiction conferred by section 10(1)(a) unless—
 - (a) the applicant satisfies a Registrar, before the claim is lodged in the Tribunal, that the claim, or a part of the claim, is in dispute; or
 - (b) the applicant either—
 - (i) satisfies a Registrar before the claim is lodged in the Tribunal; or
 - (ii) not having lodged or attempted to lodge the claim pursuant to subparagraph (i), satisfies the Tribunal at a hearing—

that the claim is in the nature of a counterclaim by a respondent against an applicant; or
 - (c) the claim is transferred to the Tribunal pursuant to [section 37](#).

Section 37 Disputes Tribunal Act 1988

37 Transfer of proceedings from District Court, etc

- (1) Where proceedings within the jurisdiction of the Tribunal have been commenced in the District Court before a claim in respect of the same issues between the same parties has been lodged in the Tribunal, or transferred to the Tribunal under this section, a District Court Judge or Registrar may, on the application of either party or of that Judge's or that Registrar's own motion, order that the proceedings be transferred to the Tribunal.
- (2) Where proceedings within the jurisdiction of the Tribunal have been commenced in the High Court before a claim in respect of the same issues between the same parties has been lodged in the Tribunal, or transferred to the Tribunal under this section, that court or a Judge of that court may, on the application of either party or of its or that Judge's own motion, order that the proceedings be transferred to the Tribunal.
- (3) The Tribunal to which proceedings are transferred under subsection (1) or subsection (2) may have regard to any notes of evidence transmitted to it and it shall not be necessary for that evidence to be given again in the Tribunal unless the Tribunal so requires.

Section 43(4) Disputes Tribunal Act 1988

- (4) Where—
- (a) any proceedings within the jurisdiction of the Tribunal have been commenced in the District Court; and
 - (b) those proceedings have been transferred to the Tribunal under [section 37\(1\)](#); and
 - (c) the Tribunal is satisfied that those proceedings were commenced in that court and not in the Tribunal on account of any act or omission of any party to those proceedings that was intended or likely to induce the party who commenced those proceedings to believe that the proceedings were not within the jurisdiction of the Tribunal,—
the Tribunal may order the first-mentioned party to pay to the party who commenced the proceedings—
 - (d) the fee paid by the latter party in respect of the filing of those proceedings in the District Court; and
 - (e) any solicitor's costs incurred by the latter party in respect of the preparation of the documents necessary for the filing of those proceedings, which costs shall not exceed the amount prescribed in relation to that matter under rules made under the [District Court Act 2016](#).

Section 20 Disputes Tribunal Act 1988

20 Power of Tribunal to award interest

- (1) Subject to subsection (2), where the Tribunal makes an order under [section 19\(1\)\(a\)](#) or [section 47\(3\)\(b\)](#) that a party to the proceedings pay money to another party to the proceedings, the Tribunal may, if it thinks fit, order that there shall be included in the amount so ordered to be paid interest, calculated in accordance with (or on a basis that ensures it does not exceed interest calculated in accordance with) [Schedule 2](#) of the Interest on Money Claims Act 2016, on the whole or any part of that amount for the whole or any part of the period between the date when the cause of action arose and the date of the making of the order.
- (2) Subsection (1) does not—
- (a) *[Repealed]*
 - (b) apply in relation to any debt upon which interest is payable as of right, whether by virtue of any agreement, enactment, or rule of law, or otherwise.
- (3) Where the Tribunal makes an order under [section 19\(1\)\(a\)](#) in respect of a debt upon which interest is payable as of right, and in respect of which the rate of interest is not agreed upon, prescribed, or ascertained under any agreement, enactment, or rule of law, or otherwise, there shall be included in the amount ordered to be paid interest, calculated in accordance with (or on a basis that ensures it does not exceed interest calculated in accordance with) [Schedule 2](#) of the Interest on Money Claims Act 2016, for the period between the date as from which interest became payable and the date of the making of the order.
- (4) The monetary restrictions provided for by [section 10\(1A\) and \(3\)](#), and [section 19\(4\) to \(6\)](#) do not apply in respect of any interest claimed, payable, or ordered to be paid under this section.