

Ministry of Business, Innovation and Employment
By email: consumer@mbie.govt.nz.

1 August 2018

Dear Sir/Madam

Submission on review of consumer credit regulation

Thank you for the opportunity to make a submission on the review of consumer credit regulation.

Preliminary comments

The Banking Ombudsman Scheme (BOS) is an independent dispute resolution scheme, and is approved under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

BOS helps customers sort out problems with registered banks, and related companies, and non-bank deposit takers that meet BOS participation criteria and are members of the scheme (referred to in this submission as 'banks').

Our jurisdiction is defined by our Terms of Reference. Clause 9 states:

In making any decision, the scheme must be fair in all the circumstances, having regard to the law, any relevant code of practice, and principles of good banking practice. (The scheme must consult the banking industry in determining these principles.)

We apply the Credit Contracts and Consumer Finance Act (CCCFA), the Responsible Lending Code and the New Zealand Bankers' Association's Code of Banking Practice as relevant legal and professional standards under clause 9.



The Code of Banking Practice set out responsible lending obligations for banks before the introduction of the Responsible Lending Code in 2015. This meant banks already had policies and systems in place to ensure responsible lending. We have not seen any significant difference in our cases before and after 2015. However, we continue to receive responsible lending cases and discuss some of the themes below.

Otherwise this submission provides general observations and comments on consumer credit regulation. Overall, we strongly support the aims of the review in addressing areas where the changes to responsible lending laws in 2015 have not had the desired impact. Our comments are based on experience from the cases we see, and on our general observations of potential gaps in consumer protection generally.

Themes in our cases

We received about 50 cases relating to responsible lending between 2011 – 2014, before the reforms occurred. Since 2015, we have received 64 cases about responsible lending.

Most of these complaints involved allegations that the bank provided credit to a person who could not realistically afford it and did not adequately consider the customer's age, income, character and mental health issues.

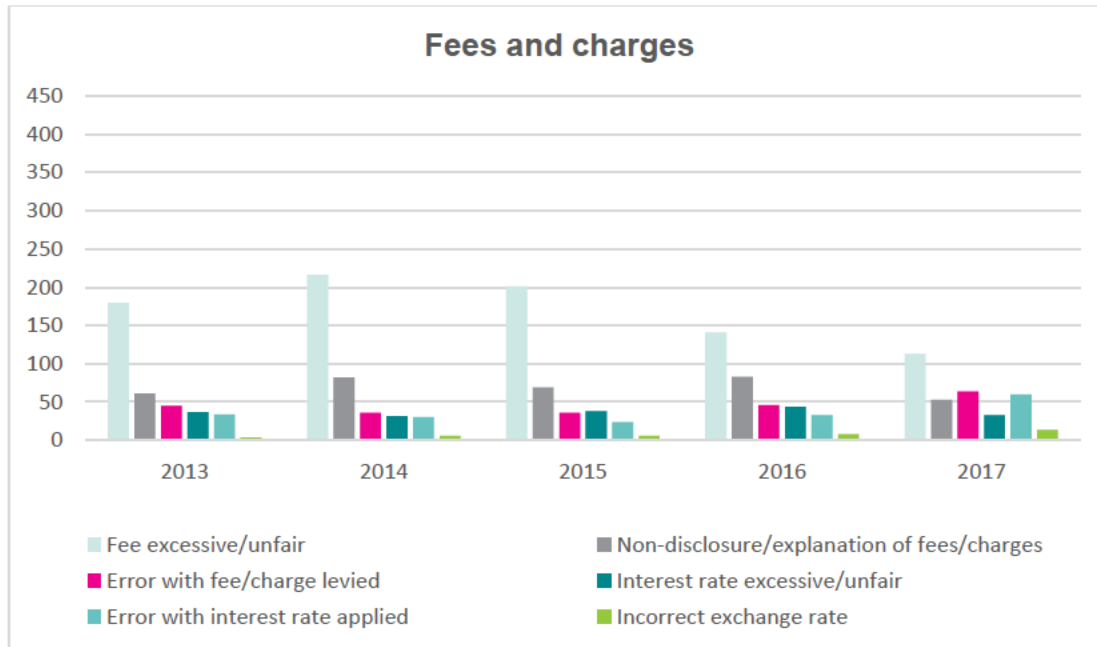
We have not seen any themes to suggest that the reforms are not working well in the context of bank conduct. As noted above, we are not surprised the volumes and themes in our cases are similar to pre-2015 due to the equivalent provisions of the Code of Banking Practice.

We are aware of concerns about affordability assessments for credit cards. We have received only a small number of cases since 2015 where it has been alleged that credit cards were issued to consumers who could not afford them. However, our data represents only a small percentage of all banking complaints as most complaints are resolved directly by the banks through their internal dispute resolution processes.

We currently have an initiative under way to enhance our oversight of banks' internal complaints data. We want to build a more comprehensive picture of customer complaints so we can provide more detailed and actionable insights to banks and the public.

Fees and charges

Our case volumes for fees and charges have remained broadly consistent over the past five years.



The most common complaint is that fees are unfair. This could be any issue from fees that have been charged when a person went into overdraft through to more complex disputes where a customer is disputing early repayment charges when breaking a fixed-interest loan. We monitor our cases for emerging themes and raise these with banks as required.

General comments

We strongly support a legislative and regulatory framework that leads to a reduction in consumer credit-related harm.

It is important for consumer confidence that unethical providers are held to account when they do not meet their legal obligations. Those who are offering services should be subject to active monitoring and enforcement activities.

We acknowledge the success the Commerce Commission has had in monitoring and enforcement activities against mobile traders, and support options to enhance the Commission's activities in relation to irresponsible lending practices.

The role of the financial dispute resolution schemes (FDRS) is to help resolve and prevent industry-related problems. FDRS provide redress when consumers have suffered harm as a result of breaches of the CCCFA and the Responsible Lending Code. The other financial dispute resolution schemes (Financial Services Complaints Limited, Financial Dispute Resolution Service and the Insurance and Financial Services Ombudsman) have similar jurisdictions to BOS in this regard, i.e. they can apply both legal and industry standards when determining consumer complaints.

This aspect of consumer protection is not canvassed on page 20 of the discussion document, but should be noted as part of assessing options for further action. Page 22 of the discussion document also notes that the Responsible Lending Code is 'not binding'. However, it is binding in the sense that FDRS can require their members to address any breaches of the Code.

Providers should be required to provide consumers with information about their rights and how to enforce them as part of disclosure requirements.

Question 8 in the discussion document asks whether there should be any change to the requirement that lenders can rely on information provided by the borrower unless the lender has reasonable grounds to believe the information is not reliable. We consider that lenders should ask for supporting documentation to substantiate information consumers provide about income and expenses in appropriate cases.

We note on page 17 that there has been some concern expressed that the Responsible Lending Code lacks prescriptive detail. We support retaining a principles-based approach to the Responsible Lending Code so that it strikes the right balance between flexibility and certainty. The Code needs sufficient flexibility to deal with differences in lenders, borrowers, and credit products, and evolving technology, as well as providing some certainty for decision-making in credit applications.

If more prescriptive provisions are introduced to the Responsible Lending Code in relation to affordability assessments and advertising, we would suggest that these provisions be proportionate to the risks, such as high-cost loans and possibly online lending where there is less opportunity to test the information being provided in support of the application.

Continued predatory behaviour by mobile traders

Although mobile traders fall outside of BOS's jurisdiction, we consider they are under regulated in New Zealand.

Currently mobile traders hide interest or fees charged into the price of the goods they are selling. We support MBIE's suggestion of requiring mobile traders to charge only the recommended retail price, so that if they want to inflate the price they will be covered by the CCCFA. As a minimum, mobile traders should be required to advise that a consumer has rights under the CCCFA and that the product can be purchased for a much lower price upfront.

Conclusion

BOS is supportive of the review and its intention to reform the law to better protect vulnerable consumers. We would welcome the opportunity to discuss any specific proposals further.

Yours sincerely

Nicola Sladden
Banking Ombudsman