

# Submission template

## Review of the Approved Financial Dispute Resolution Scheme Rules

### Your name and organisation

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What is your feedback on the proposed objective and criteria for the review? What is your feedback on the proposed weighting of the criteria?

Christians Against Poverty (CAP) is supportive of the proposed objective and criteria for the review. CAP is also supportive of the heavier weighting given to the issue of accessibility but there is still room for this to be expanded beyond the scope of the proposed review. The comments below highlight further considerations that could be made on the values of fairness, accessibility and efficiency.

#### Fairness

Many of the families working with CAP (borrowers/consumers that have ended up in unmanageable debt) are unaware of the existence of the four dispute resolution schemes and their services. This is largely because financial providers do not communicate information about dispute resolution processes in a meaningful way. Many lenders put information about dispute resolution at the bottom of lending contracts, in an inconspicuous way, which means that many borrowers do not read or understand this information.

Moreover, engaging with the process is difficult even for those who know about dispute resolution services. When borrowers complain to lenders about specific issues on the contracts, for example high fees, many lenders indicate that they cannot do anything about the issue or they give borrowers hardship application forms. No information is given to the borrowers about entering a dispute resolution process. Borrowers therefore do not know that they can proceed or how to proceed.

It is therefore important to ensure that consumers are meaningfully informed about the existence of these schemes and the dispute resolution process. Relying on financial providers to give lenders this information has proven to be ineffective.

#### Accessibility

In overall terms, many of the families that work with CAP are in vulnerable situations, surviving from one day to the next. Because of financial hardship and the secondary stresses that this can generate including mental health problems, it is difficult for many of them to initiate dispute resolution processes, provide all the information required and stay the course until an outcome is reached. Many require the support of external agencies (such as CAP) to navigate dispute resolution – and other – processes. Some families have the added barrier of language as well as cultural outlooks which make ‘complaining’ undesirable. In the past two months, CAP has supported more than 50 families to lodge complaints in the area of vehicle finance alone. Unsupported, many of these families would not have taken this step.

*“I was overwhelmed with the level of debt I was in. I was stressed about all the bills I had to pay and didn’t know where to start” CAP client.*

Dispute resolution schemes need to recognise these limitations and work in a way that supports such clients to engage.

Research conducted by MSD in 2017<sup>1</sup> shows that people experiencing hardship, especially those with complex needs/multiple disadvantage and those who are culturally or socially isolated, do not necessarily engage with mainstream government services and will often reject services. Access to dispute resolution processes needs to be improved for clients falling in these categories.

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<sup>1</sup> MSD and ThinkPlace, 2017, The Voices of people in hard-to-reach communities: Responsive tailoring of building financial capability services to ensure cultural and social inclusion, Retrieved from <https://www.msd.govt.nz/documents/what-we-can-do/providers/building-financial-capability/cultural-and-social-inclusion/the-voices-of-people-in-hard-to-reach-communities.pdf>

## Efficiency

Sometimes the dispute resolution process takes a very long time; from end to end, it can take several months. This is difficult and stressful for consumers who are dealing with multiple stressors. It is also particularly difficult for advocates like CAP because clients can give up before the process is complete.

Additionally, it is not practical for the process to require the borrower to first try to resolve the issue with the lender particularly if the complaint is about unfair treatment (for example, bullying or harassment) by the lender. This is a big barrier to engagement. Borrowers need to have other avenues to have the complaint heard apart from going through the lender first.

### **Financial cap**

2 Are you aware of any instances of consumer harm due to the issues outlined?

No. CAP's position is that a higher cap is helpful as the cost of living increases over time and this needs to be reflected in the financial compensation made.

3 Do you have any feedback on the problems outlined?

CAP's feedback relates to the problems experienced by the families that work with us in accessing and engaging with the dispute resolution process in general, not just the jurisdictional and redress cap. The dispute resolution process needs to be made more visible to consumers/borrowers. Financial service providers need to ensure that their clients are aware of these processes. Once their clients complain, providers need to address the complaints and not just push clients into hardship applications. It needs to be easier for clients/consumers to make complaints or lodge disputes. The schemes themselves need to make the dispute resolution process easier for consumers/borrowers to engage with.

### **Option one: set the primary jurisdictional and redress cap at \$350,000**

4 Do you have any feedback on this option?

CAP is supportive of the proposal to increase the primary jurisdictional and redress cap for those schemes that are still under the \$350,000 threshold. It is difficult to say whether or not this is a fair threshold given that many of the families that work with us have not been able to engage with the process (hence the threshold).

5 Are there any other costs or benefits of this option?

### **Option two: introduce a weekly alternative to a lump sum cap**

6 Do you have any feedback on this option?

Having an alternative payment method that is consistent for all schemes makes sense.

7 Do you agree that a weekly payment alternative should be introduced for all schemes? Why/why not?

Yes.

8 Is \$1,500 an appropriate weekly payment alternative? Why/why not?

Yes, this seems reasonable.

9 Are there any other costs or benefits of this option?

#### Other potential issues with inconsistent awards

10 Do you have any feedback on the problems outlined?

11 If a consistent special inconvenience award was to be introduced, in what circumstances should it be awarded? Should this be discretionary, or strictly prescribed?

CAP supports the current practice of awarding compensation for non-financial impacts including stress, humiliation and inconvenience. In particular, where there is evidence that a provider has failed to disclose information about the complaint/dispute resolution process, or where the provider has deliberately delayed the processing of a dispute, the consumer needs to be appropriately compensated.

If a consistent special inconvenience award was to be introduced, CAP would propose that such an award be largely prescribed. A discretionary award would lead to a new set of inconsistencies across the schemes in how the different schemes recognise harm and measure it. Already, even within schemes, different case managers interpret the existing laws and regulations differently. This causes a lot of variation in how disputes and complaints are handled, which impacts the outcome. It is therefore desirable that there be consistently prescribed parameters around the inconvenience award. Even so, these parameters also need to allow a measure of flexibility when this is needed. That is why CAP proposes that the special inconvenience award be *largely* prescribed rather than *strictly* prescribed.

12 If an interest award was to be introduced how should it be calculated?

CAP proposes that the interest award be calculated in line with the prevailing lending market rate.

13 What are the benefits and costs of the options?

The process and outcome need to be fair to both consumers and financial providers. Consumers need to be adequately compensated for the inconvenience or stress that they suffer. Equally, the process and outcome also need to incentivise providers to act in a timely manner and in good faith.

Some of the families that work with CAP suggest that the main reason some lenders obscure information about the dispute resolution process is that they (the lenders) are responsible for the charges incurred during this process. The inconvenience and interest awards therefore need to be fair but they should not be so prohibitive as to be counterproductive

for the borrower. That is to say, the cost of these charges should not lead more lenders into making it more difficult for borrowers to enter the dispute resolution process.

#### ***Timing of membership & jurisdiction***

14 Are you aware of any specific situations where providers have switched between schemes resulting in the situation described above? If so, what happened?

Client feedback suggests that some dispute resolutions schemes enforce legislation and regulation more rigorously than others. Partly, this is because legislation is interpreted differently by different schemes and even by individual case managers within schemes. CAP has anecdotal information suggesting that some lenders move to schemes that they consider more lenient to avoid having to deal with (and pay for) all the disputes that their clients would raise under stricter schemes.

15 Do you agree with the potential problems that may occur as a result of inconsistent scheme rules about the timing of membership/jurisdiction?

Yes.

#### **Option one: require all schemes to consider claims about current claims about current members, even if the issue arose prior to membership**

16 Do you have any feedback on this option?

CAP is supportive of this option as it is straightforward. It improves efficiency and would be much easier for borrowers to work with than trying to work with different sets of requirements across different schemes.

Ultimately, however, while it is out of the scope of this review, it would be much more straightforward for disputes to be handled by one scheme with different areas of focus under the one scheme. This would go some way in improving accessibility, efficiency and fairness; borrowers would likely be much more aware of one such scheme (than of four different schemes) and its processes would appear much more navigable.

17 Are there any other costs or benefits of this option?

#### **Option two: require schemes to consider complaints where the issue occurred when the provider was a member of the scheme, even if they are no longer a current member**

18 Do you have any feedback on this option?

This would hamper efficiency and access as it has the potential to cause unnecessary confusion for consumers.

19 Are there any other costs or benefits of this option?

#### ***Applicable time periods (limits) for bringing a claim***

20 Do you any feedback on the problems outlined?

CAP is supportive of the proposal to make these three time periods consistent across schemes.

21 Are you aware of instances of consumer harm from the problems outlined?

Yes, as mentioned above, many of the families that come to CAP do not know about the dispute resolution process, much less the time periods at play.

Once they are made aware of and start engaging with the process, there are several problems that occur.

- a. The general understanding is that the schemes do not intervene until deadlock is reached. That is to say, schemes can receive complaints but cannot act until deadlock is reached and they get information from the financial service provider. (If this is not the actual situation, this needs to be clarified with financial service providers and consumers.) During this time, clients are under extreme stress, which exacerbates the other problems in their lives.
- b. From the perspective of many consumers, the dispute resolution process takes too long. Many get overwhelmed or impatient and give up on their claims before the process is complete. As mentioned above, many of them are dealing with other life stresses and are not able to stay the course of the dispute resolution process because it is too taxing on their time and mental resources.
- c. The dispute resolution process relies on financial providers providing information relating to the claim or dispute. Some providers stall (that is, do not provide the required information in a timely manner) thereby making the process more difficult for borrowers.

**Option one: limit time period I to a maximum of two months**

22 Do you have any feedback on the option?

There needs to be more clarity for consumers as to what can and cannot happen within these two months once a scheme is notified of a dispute.

23 Are there any other costs or benefits of this option?

**Option two: create a consistent time period II of three months after deadlock**

24 Do you have any feedback on this option?

Three months would work well for those consumers/clients that are able to find the relevant information, understand the processes (including the language used in the documents), gather all the relevant documents, lodge a claim/complaint and stay the course of the process. Highly vulnerable people would not be able to do this at all, much less within three months.

Is there any obligation for financial providers to notify their respective schemes once deadlock has been reached? Are there privacy (or other concerns) that would hinder a scheme from directly contacting a client to explore whether or not they want to lodge a complaint or a claim once deadlock has been reached and the scheme has been notified by the lender?

25 Are there any other costs or benefits of this option?

**Option three: introduce discretion to hear a complaint after time period II**

26 Do you have any feedback on the option?

Yes, this would be useful but all parties would need to understand what counts as 'exceptional circumstances'.

27 Are there any other costs or benefits of this option?

Discretion to hear a complaint after time period II would be helpful. Even so, in practice, different schemes would apply discretion differently and the outcomes would be different. This would negatively affect the value of fairness.

**Option four: consistent limit for time period III**

28 Of the four schemes, which way of outlining time period III is preferable? Why/why not?

CAP finds the IFSO wording of this period – **six years after action was first subject to formal complaint to participant** – most helpful and straightforward.

This framing would give a clear starting point (that is, a date) and sidestep potential problems with trying to determine a starting point that is based on a vague time period and set of circumstances as seems to be the case in the other three schemes.

29 Are there any other costs or benefits of this option?

From the perspective of vulnerable people and the services that support them, the sooner complaints or disputes are resolved the better. Six years is a very long time for an issue to be pending.

**Other Comments**

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