



Good Shepherd

Australia New Zealand

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**Committee Secretary
Legal and Constitutional Affairs References Committee**

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Dear Committee Secretary

Senate Inquiry: Resolution of disputes with financial service providers within the justice system

Good Shepherd Australia New Zealand welcomes the opportunity to contribute to the Senate Legal and Constitutional Affairs References Committee Inquiry into resolution of disputes with financial service providers within the justice system (Inquiry).

About us

Good Shepherd Australia New Zealand (Good Shepherd) is a community services organisation that aims to disrupt the intergenerational cycle of disadvantage with a focus on women, girls and families. We provide services that address social and economic exclusion and promote policies that support individuals and families at vulnerable times in their lives. Our services include financial counselling and financial capability programs.

A central part of our purpose is to challenge the systems that entrench poverty, disadvantage and gender inequality. The Women's Research, Advocacy and Policy (WRAP) Centre does this through a range of research, policy development and advocacy activities.

Good Shepherd is part of a global network of services and advocates established by the Congregation of Our Lady of Charity of the Good Shepherd, with representation at the United Nations as a Non-Government Organisation.

Overview

In this submission we respond to Terms of Reference a (iii), b, c and d with a focus on how vulnerable and disadvantaged members of the community may be negatively impacted in the resolution of disputes with financial service providers (FSPs). We highlight how issues of fairness and access to justice are at risk in the legal and court system, and note the potential of the Australian Financial Complaints Authority (AFCA) as an alternative forum.

Our commentary is drawn from consultation with financial counsellors in our services and three case studies which provide insight into the lived experience of clients. Case studies and FSPs have been de-identified, including the omission of some information, to protect their identities.

Term of Reference A: Whether the way in which banks and other financial service providers have used the legal system to resolve disputes with consumers and small businesses has reflected fairness and proportionality, including:

(iii) Whether banks generally have behaved in a way that meets community standards when dealing with consumers trying to exercise their legal rights.

The following statement from one of our financial counsellors illustrates a history of banks not meeting community standards:

Disrupting the intergenerational cycle of disadvantage for women and girls.

The credit providers don't take an Ombudsman complaint or any sort of complaint seriously at all anymore it would appear. There is no respect for the complaint process as a means to improving how they do business. The Ombudsman and other services meant to keep them honest seem to not have any stance or credibility but [instead occupy] a wishy-washy middle ground.

They have no power to make a determination and credit providers don't care if an Ombudsman says, "I think this debt is not recoverable".

This counsellor also reflected on the lack of accountability and efficacy under the current system:

There doesn't seem to be any real consequences to motivate the credit providers to change their behaviour to work with a business model of integrity. It is all about greed and no care for impact on the person's life. To be honest, in my work I rarely use the Ombudsman service anymore because it seems to make no difference to the outcome.

The practice experience of our counsellors and the experiences of our clients demonstrate that poorly handled complaints and hardship applications are a common occurrence when dealing with banks. This is illustrated by requests for documents being delayed or not provided at all, such as in the case study below.

Case study: Home loan and disclosure of documents

A female client with children fell behind in her mortgage payments. As she had been in arrears more than once she could not get a plan. She owed approximately \$10,000 on home loans.

The financial counsellor requested documents but the bank was reluctant to provide them. The counsellor had to apply twice for the documents. What was eventually produced was still not what was specifically asked for.

The counsellor considers there is a question of whether the loan should have been given in the first place; that is, responsible lending.

One reason given for the refusal of documents relating to the serviceability test was "because it was a secret".

This reportedly common practice is a breach of community standards. AFCA has the power to properly investigate misconduct, and must provide remedies in instances of banks and FSPs not being forthcoming with documentation and disclosures.

Term of Reference B: The accessibility and appropriateness of the court system as a forum to resolve these disputes fairly

The criminal justice system and the courts are over-burdened and under-resourced. This results in lengthy delays which can impact both emotionally and financially for the participants, diminished time for judges and magistrates to do their jobs, and increased workloads for court workers. The courts and legal system are based on an adversarial model that is not designed to be easily understood or navigated by the lay person. Many of our clients are vulnerable due to complex forms of disadvantage such as low income, poor physical and/or mental health and experiences of family violence. For these people the barriers to accessing justice via the court system are significant.

From this perspective, there is potential for AFCA to assist those without access to free legal advice and representation. As a less formal alternative model, AFCA can prioritise what is fair and reasonable, helping it be more accessible and appropriate than the court system.

Case study: Relationship debt

A female client in her 30s with English as a second language, has two children, receives a Centrelink payment and lives in public housing. Her partner and his friend defrauded the bank for millions. They were caught and imprisoned. The client was sent a bill for approximately \$8 million.

Due to the stage of the case when the client visited the financial counsellor she was required to go to court. At court the counsellor was able to discuss the matter with the opposing lawyer. The counsellor informed the other side she was the ex-partner of the perpetrator and she could not pay it. The client also did not want to take the option of bankruptcy.

Outcome: The client was required to pay \$4,000 to settle with the bank (she borrowed money from her brother). The counsellor said the bank was only prepared to do this in order to formalise a criminal matter in court for the purposes of insurance.

Term of Reference C: The accessibility and appropriateness of the Australian Financial Complaints Authority (AFCA) as an alternative forum for resolving disputes

Having only commenced in November 2018 it is not yet possible to accurately gauge how well AFCA is working in terms of accountability.

However, Good Shepherd remains concerned about several aspects of dispute resolution that AFCA aims to remedy. One of our financial counsellors with over 20 years' experience stated the problem was: "Bad loans designed to fall over. You then hit a brick wall with the bank". (See Appendix 1 – Case study: FSP lack of fair and reasonable dealings).

Nonetheless, this practitioner notes changes as a result of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, and remains optimistic, noting:

Banks didn't care before. However, the difference now after the Royal Commission is it is so much easier to get a debt waiver. Because they don't want anyone to dig any deeper for something like responsible lending breaches . . . AFCA is different because FOS was paid by the industry and AFCA is a new authority.

Many cases this counsellor has been involved included vulnerable and disadvantaged people. His reflection is that: "AFCA still needs more power to be able to create a more level playing field for the vulnerable and disempowered".

Unlike the courts, a feature of AFCA is that its determinations are binding on the FSP but not the consumer. This levels some of the inherent power and resourcing imbalance between FSPs and consumers. However, this feature is only effective if firms are members of AFCA and remain so.

Another important consideration for AFCA is the exclusion of complaints already dealt with in the Family Court. As noted in previous Good Shepherd submissions, economic abuse is a feature of family violence. We would therefore advocate that AFCA should still be able to consider disputes against a financial firm post a Family Court property order or settlement for matters where they involve economic abuse.

The issue of compensation was also raised by our financial counsellors. Due to the stress, anxiety and hardship experienced by clients in disputes with financial institutions there is a strong case for AFCA to increase the amount of compensation above the current limit of \$5,000.

Term of Reference D: The accessibility of community legal centre advice relating to financial matters

It is well established that Community Legal Centres (CLCs) and financial counsellors have limited funding and resources. CLCs generally do not have the capacity to represent everyone. This results in unmet need with many people being turned away from services. Additionally, vulnerable and disadvantaged people may not even be aware of services available to them.

Combined with the difficulties of navigating the legal system, this situation reinforces the need for sufficient funding to resource financial counsellors and CLCs to assist with disputes.

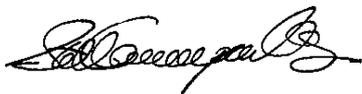
In conclusion we recommend:

- AFCA provide sufficient remedies in instances where FSPs do not cooperate with dispute resolution processes.
- AFCA (continues to) prioritise assisting people who face significant barriers to accessing justice.
- AFCA consider handling disputes against FSPs post Family Court property order or settlement.
- An increase in funding for financial counsellors and CLCs to meet unmet need.

We thank the Committee for the opportunity to provide a submission in relation to this Inquiry. For any queries in relation to this submission please contact:

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Yours sincerely



Stella Avramopoulos
Chief Executive Officer

Appendix 1 – Case study: FSP lack of fair and reasonable dealings

Case study: Financial Services Provider lack of fair and reasonable dealings

A female client is in her 60s and married with adult children. The client's husband has a severe case of depression and was awarded compensation. Compensation has finished and both have applied for Centrelink payments.

Client has been advised she is not eligible for Centrelink as she is not an Australian citizen. Client presented with home loan arrears of about \$3,000.

The home loan was being serviced by contributions from their children.

Client refinanced her home loan through a broker who insisted she move her superannuation. Client had a workplace injury and is waiting for compensation.

Client's husband has been out of work for 2 years since and supported family from redundancy payments which have now finished. Client also has a car loan which is currently with debt collectors. FOS dispute lodged.

Contacted the FSP being the home loan creditor provider. FSP resisted all hardship provisions for client, was obstructive and refused to work towards a fair and reasonable hardship plan. FSP refused to accept client's third-party authority and demanded driver's license, date of birth and passport information. Financial counsellor (FC) requested copies of all documentation relating to the loan.

FSP was only supplied a copy of the contract. FC wanted all other documents including: General terms and Conditions, Loan agreement, Memorandum of Mortgage, Serviceability Assessment, Details of Settlement Funds and Direction and Authority, Statement of Assets and Liabilities, Direct Debit request (Consumer Loan agreement)(client signed blank form), Declaration of customer's financial situation (Client signed blank form), and Authority by Guarantors to obtain credit information (Client signed blank form) by the broker.

FC has made same request through the Credit and Investments Ombudsman (CIO). This matter was then referred to CIO. When the FC raised the matter of the Royal Banking Commission and the FC will use this case as an example, they suddenly became more cooperative.

FC suggested our client revisit Centrelink. Centrelink had made an error in entering information our client had provided. That money in the bank was \$249.00 but had been entered as \$24,900. Losing the decimal point created a waiting period.

Outcome:

The creditors offered no payments for 6 months followed by new repayments for a period of 3 months. The FSP will capitalise the arrears to the loan and extend the term of the loan to minimise the loan repayments at current levels.

Client is satisfied with the outcome. However FSP lack of cooperation and a fair and reasonable approach hindered and caused unnecessary distress.

FC reflection is that FSP needs to change their approach and adopt a more fair and reasonable approach to resolving hardship matters. FSP as the creditor has not taken responsibility for the broker's actions and FSP continue to hide relevant documentation from the FC and the CIO.