

Submission on discussion document: *Effective financial dispute resolution*

Your name and organisation

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Responses to discussion document questions

Issue 1: Consumer awareness of and access to dispute resolution

1

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

Yes, DBAS recognises this as a major issue and one which we must deal with on a regular basis.

We do not have many clients we work with who even know about the schemes and pathways for complaints, let alone navigate them alone and confidently.

The access to schemes is problematic, however for DBAS, we have two bigger problems with the schemes:

The first being the number of schemes we must deal with and the disproportion of skill, outcomes, and time frames for each one.

The DRS needs to be standardised. We are of the strong opinion that to do this and save time searching for who the DRS when submitting a complaint, there should be only one DRS in Aotearoa.

Having only one scheme would streamline the process for lenders, consumers, and consumer advocates alike.

This would see more of an awareness of such a consumer right.

One scheme would see the less skilled and less fair schemes disappear, for the betterment of all.

The second genuine issue we have with the schemes is the time it takes to come to a resolution, or even before that, a deadlock with the creditor so the DRS can step in.

When a client presents to our service, they are not coming for help to complain about a creditor. Most are not aware of that consumer right or process. They are coming to us as they are in financial and often mental desperation.

During our mahi with the client, we identify an issue with the credit the client has and encourage the client to allow us to make further enquiries on their behalf if they feel unable to do this themselves. In doing so, we see a shift in the client immediately, restoring some power back to them just by the client knowing they have this right.

The entire process of gathering information from the creditor to ensure that proper checks etc had been done, waiting for the creditor to submit the information (often they do not so we then have to make a complaint to their DRS for this initial reason alone), and then submitting a complaint about a suspected CCCFA breach to the lender, waiting for their reply, the backwards and forth from there until a stalemate is reached (often the lender will not agree a stalemate has been reached) and then the DRS stepping in, gathering their own or more information from both parties and then reaching a decision, often takes months.

During the months of the consumer advocate working on this complaint, they also need to keep the client engaged so the complaint can continue through the process.

Keeping a client engaged in the process is not easy, as often the initial crisis the client had presented with was resolved and so the client often drifts away as we cannot give them a timeframe the complaint will be resolved by.

Once the client is no longer engaged, the consumer advocate has no choice but to close the complaint.

When a complaint is closed with no resolution, the lender has no accountability or obligation to check they have complied with the CCCFA and so will continue with their behaviour. The client continues to be at the tail end of the lenders' behaviour.

DBAS understands the DRS will soon have 3 months to resolve a complaint. How is that fair and reasonable for the consumer? We have instances in our mahi where we have supported clients with kai support for weeks until the client gets an outcome from the complaint made.

For example, we supported a client for 7 months until her complaint was finally resolved and her full balance of the debt waived.

2

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

DBAS has the strong belief that the reason for better awareness of the DRS is due to the financial mentors and other consumer advocates educating each other in the processes.

There has also been a concerted effort from two of the DRS to engage more with financial mentors and this will also be a contributing factor.

We think the Panui now being distributed to financial mentors from the Commerce Commission showing stats on FM's complaints also may have made a difference. This is good mahi by ComCom.

Having 2 schemes actively promote their services to financial mentors has highlighted the differences between the schemes.

3

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

It comes down to a power imbalance. The creditor has all the jargon and legalise, while the consumer feels something isn't right.

It is often an intimidating process for financial mentors to complain to a lender, knowing that lender has a legal team working for them and the financial mentor is normally part of a not-for-profit community organisation and all the funding constraints that go with that.

If Aotearoa had a Financial Rights Legal Centre (FRLC) like Victoria, Australia does (Consumer Action Law Centre), this would not only alleviate the burden and time put on financial mentors but go some way to even out the power imbalance and ensure there is a safe space for consumers to go with their credit contract concerns.

4

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

- the above-mentioned power imbalance*
- the lack of knowledge of the process or the right to complain*
- the time it takes to get to a stalemate with the lender before the DRS steps in*
- the way in which complaints need to be submitted. Even financial mentors have submitted a complaint via email, only to be told they need to use a form online.*

5

- *the fear of not being successful and the perceived potential consequences of this.*
- *the feeling of being totally overwhelmed by the process at every step of the way. In the first instance of making a complaint to a DRS, the DRS points the consumer back to the lender, asking them to try resolve it by themselves. This is intimidating and the consumer has gone to the DRS for a reason.*
- *for financial mentors and other consumer advocates often not submitting a complaint comes down to the time permitted to work with that client – which leads to funding and education of the industry – both of which are in desperate need to be addressed.*
- *The lack of a Financial Rights Legal Centre (FRLC) to assist the public.*

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

DBAS has examples of their own kaimahi having had trouble accessing a DRS, let alone our clients.

As mentioned above, one of our kaimahi submitted a complaint via email (as per the options on the DRS's website) only for the response to be for the FM to use the online form.

The same kaimahi complained about a lender re affordability to the lenders DRS, only to be told that the debt has been sold to a debt collector. The financial mentor then had to track down the debt collectors DRS and deal with them. In dealing with the new DRS another lengthy wait was had as the debt collector had no records or evidence of the debt. How can this be? Surely if a debt collector is buying a debt, they would have all docs pertaining to that debt? The answer is they do not unfortunately. This complaint took over 3 months to be resolved, with the debt collector eventually waiving the total debt of over \$4000.

DBAS feels each time new credit is given, the DRS attached to the lender needs to be informed and some communication (generic text or email) could be sent directly from the DRS to the consumer introducing themselves.

Issue 2: Enhancing scheme effectiveness through improved oversight and accountability

6

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

Not at all and not even close.

We would like to see the five yearly reviews publicly advertised or even invitations on feedback to consumer advocates sent out in a timely manner.

This would ensure the reviewer has a full and complete picture of how the DRS is performing.

Just this year, an exceedingly small group of financial mentors were belatedly invited to participate in a review of a scheme. Due to the short notice, only a small handful were able to attend.

We note from this hui, there was no follow up regarding the feedback submitted at the meeting or if there was any action taken due to it.

How can a scheme be effective when there is so much variation between the four of them?

In our office, it has got to the point where kaimahi mentally cross their fingers when a client tells us who their lender is they have debts with, hoping they may 'get the decent DRS' to deal with. It is a hit and a miss for knowledge and skill and commitment between the DRS.

How can a scheme be effective when members of the public do not know they exist?

When we tell a client about the existence of the schemes and their rights as consumers to access them, they are shocked to learn this.

How can a scheme be effective when the scheme has a power imbalance with the people it is there to protect?

DRS get access to all docs from the lender but the financial mentor or advocate who made the complaint, does not. The advocate has a challenging task to work best for the client with the limited resources or understand the decisions made from the DRS without all the facts.

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

No, they are not. Here are a few more of our experiences.

One DRS has the representative or the client themselves sign a privacy waiver stating the complaint is to be kept confidential and not discussed with anyone else. We find this oppressive and deeply resent having to sign this, however if we are to do the best we can for the client, we have no choice.

In our line of work, as you would have read, we are very much in a David vs Goliath situation and so we often speak with others for advice and feedback, etc. We do not enjoy being gagged.

We know of many other financial mentors who do not submit complaints to DRS due to some or all the issues raised.....its too hard. If financial mentors think like this, what chance do our whanau have in navigating this complex and mis matched, disproportionate, and unequal system?

When a DRS or lender responds to any communication from the client and / or the representative regarding a complaint, it invariably comes back to the client and or the representative in 'lawyer speak.' This is not helpful and once again highlights the power imbalance we and our communities must deal with while fighting for the client's consumer rights and protection.

It is unfortunate that we currently have four DRS schemes because we inevitably see lenders migrate to the scheme that will most likely resolve complaints in their favour. This is unacceptable and should not happen. In our industry we refer to this as 'dropping down the ladder until they hit the bottom'.

8 *Do you agree with these criteria for assessing the options? Why/why not?*

The creation of a Financial Rights Legal Centre would be useful in this area of analysing the 4 points.

The setting of consistent timeframes is welcomed by our sector. However, that time frame being 3 months for a resolution is unfair to the client and the advocate for the reasons mentioned prior.

We would ask what the criteria is now and how is that measured, if at all. Obviously, any improvement on the current practices would be welcomed.

Status quo: Retain existing model and monitor the impact of aligning the schemes' rules

9

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

Not even close. Aotearoa only needs one scheme and that one scheme to work well for the fairness of all.

The creation of just one scheme could be the opportunity to initialise a Financial Rights Legal Centre in conjunction with the changing of the 4 schemes into 1.

There needs to be fairness, access, and accountability for all. At present the 4 schemes work differently, and this is unfair, confusing, and frustrating.

As mentioned previously we believe the DRS needs to contact the consumer when the consumer first receives new credit, to make an introduction.

Option to address issue 1: Supporting consumer access and awareness of schemes

10

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

The funding of a Financial Rights Legal Centre (FRLC) would be the best option.

This would enable consumers to have the correct, skilled, dedicated, and consistent guidance they need while being supported through the complaints process.

Enabling the inception of a FRLC would then enable Financial Mentors to do what they do best, financial mentoring.

As a lender must pay to be part of a DRS, we would like to see some of those costs be passed onto the financial mentor / consumer / advocate when a complaint upheld against the lender.

This would incentivise both parties – highlighting to the lender that all checks and ticks needs to have been completed before supplying credit, thus ensuring safe practises for the public and less hassle and investigation for the lender – and another revenue stream and compensation for the financial mentor for the time it takes to identify an issue, make a complaint and keep the client engaged.

DBAS strongly urges the naming of lenders who have found to be in breach of the CCCFA on websites as this would be another incentive for lenders to ensure they are doing their job properly. It will also enable lenders to learn from others mistakes before they make it themselves.

11

What are the likely costs of implementing these options?

We think the question needs to be “What is the cost of having inadequate consumer protection?”

12 *Should these options be led by government, or the schemes themselves?*

This needs to be done at Government level.

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

As all mentioned before:

Financial Rights Legal Centre – having a specialist service that provides information, support, and advocacy.

Improving and increasing the funding of financial mentoring services. You will be aware there has been a reduction in the number of MSD funded budgeting services recently. DBAS is one of these and a main concern for our community is who will now identify and complain on our peoples' behalf? We understand for all the reasons listed in this submission, many financial mentors do not submit formal complaints to DRS and so many lenders shoddy practises may continue to go unchecked for the sole reason of the reduction of financial mentors.

Paying advocates to complain – incentive each side – lenders into doing the right thing and advocates to complain

Option to address issue 2: Enhancing scheme effectiveness through improved oversight and accountability

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

This sector seems to have limped along with no direction or accountability for long enough. The bones of the concept are sound; however, the standardisation of the schemes is sorely needed. This would be easily achieved if there was just one.

15 *Do you think there are issues with the performance or effectiveness of the schemes?*

Yes, as per our previous answers

16 *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?*

Its common sense and fair to have consistency.

The way to have this is to just have one DRS and a Financial Rights Legal Centre and for public consultation / feedback to reviewers.

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

Shorter timeframes for not only resolutions but also for lenders to resolve a complaint before it is escalated to a DRS.

The use of DRS privacy waivers no longer permitted.

Implement a 'fines' type system for low level breaches, i.e., not supplying info requested within the timeframe to an advocate or consumer = \$2000 to the consumer, as well as being named for dismissive and arrogant behaviour. The more 'fines' the heavier the penalty.

The allowance of lenders to dictate to a consumer or advocate when the advocate needs to respond by. For example:

a client being sent a new credit contract with reduced interest rate and no fees due to negotiations with the lender with the DRS involved.

To get to this point took weeks of the financial mentor waiting for first the documents, and then responses from the lender.

However, when a resolution was reached, the lender gave the client one working day to agree and sign the new contract. David and Goliath in action once again.

This example also shows the total disregard of the lender ensuring their customer knows what they are signing.

Another example is a debt collector who bought a debt who gave the financial mentor 10 working days to reply (accept or decline) to an offer stemmed from negotiation. The financial mentor first complained to the debt collector with no response, and so to the DRS two and a half months prior. Why is there not one rule (time) for all concerned?

We find this practice from lenders of demanding answers within a noticeably brief time almost bullying and intimidation tactics.

Once again, we speak about the need for a Financial Rights Legal Centre - Not all financial mentors are equipped to submit complaints and no financial mentoring services have adequate funding to cover the times it takes to support a client through this process.

Yes, many regions in Aotearoa have Community Law Centres, but unfortunately, they are not all equipped to deal with CCCFA enquiries.

Many financial mentoring services receive referrals regarding CCCFA breaches from their local law centre. Thankfully Otepoti is not one of these and would like to acknowledge the support we receive from our Law Centre.

18

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?

Advocates would like to see a clear pathway for complaints re DRS, but in a perfect world there would be only one DRS and they would conduct themselves properly and in a timely manner.

Effective and impartial governance could be achieved by excluding anyone who currently works in the DRS and finance industries. Governance should consist of experts who were previously employed in these industries, people with legal expertise, members of the public and cultural representation.

19

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?

The satisfaction of the complainants and advocates.

	<p><i>The systemic changes from lenders.</i></p> <p><i>The statistics from a Financial Rights Legal Centre.</i></p> <p><i>The total amount paid out or waived from each lender.</i></p>
20	<p><i>Are there any risks or unintended consequences associated with the options we are considering?</i></p> <p><i>A new scheme will need to hit the ground running and be appreciative of what our communities need - equity and safety.</i></p>
21	<p><i>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.</i></p> <p><i>Once again, we ask the question “What is the cost of having inadequate consumer protection?”</i></p> <p><i>Having one independent DRS scheme would be far more economic to run than having the four that we currently have.</i></p>
22	<p><i>Are there any other ways to improve schemes’ accountability and effectiveness?</i></p> <p><i>Please take note of all our other recommendations.</i></p>
Other options	
23	<p><i>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?</i></p> <p><i>What is the impact of having better processes? You have already identified the need for change, hence this submission process – why wait, when you have the answers?</i></p>
24	<p><i>Are there any other areas and options for change that we should consider that have not been addressed in this discussion document?</i></p> <p><i>Please see all our other comments, recommendations, and responses.</i></p>

Other comments

We would like to thank the Minister for seeking our views on this subject as it is part of our regular mahi and one we know needs vast improvement.

However, the time pressure associated with this submission is restrictive.

DBAS feels we have had little time to put into this submission, and many other services and / or organisations may not have had the time to submit at all.

DBAS urges the Minister to consider the strain financial mentoring services and other consumer advocates are under at present, due to increased workload from the increase of clients and the

complexity of cases (including lodging complaints) and, in a lot of cases, including ours, withdrawn funding.

DBAS would like to thank MBIE for the opportunity to be in hui with them recently where our concerns were raised regarding the RLC.

We would welcome this engagement again. This is a practical way for us to contribute to decisions affecting our whanau in our communities and our motu.