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Re: Banking Ombudsman Scheme Independent Review Issues Paper

Fair dispute resolution schemes should be readily available to ensure people, whānau and communities working with financial mentors do not have hardship compounded or caused by financial providers' misconduct. FinCap recommends continuous improvement of financial disputes resolution in Aotearoa towards greater financial wellbeing in all communities.

FinCap welcomes the opportunity to comment on the Banking Ombudsman Scheme (**BOS**) Independent Review Issues Paper (**Issues Paper**). We also thank you for inviting us to discuss our feedback directly with you. FinCap provides this feedback based on our regular interactions with financial mentors where we promote the option of dispute resolution to resolve an issue the whānau they are supporting is facing.

We repeat our ongoing policy position that a transition to a single dispute resolution scheme is needed.¹ Otherwise, we reinforce our feedback in our earlier discussion as to areas where BOS should continue its initiatives or improve its approach in the submission below.

About FinCap

FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the 185 local, free financial mentoring services across Aotearoa. These services supported over 69,000 whānau facing financial hardship in 2023. We lead the sector in the training and development of financial mentors, the collection and analysis of client data and encourage collaboration between services. We advocate on issues affecting whānau to influence system-level change to reduce the causes of financial hardship.

Responses to Issues Paper topics

Accessibility

BOS could be more accessible to vulnerable consumers who could most benefit from their services. Financial mentors find BOS accessible but, in theory, the general public should not need a financial mentor to help them find and access BOS.

Financial mentors' awareness of BOS being available has improved in recent years through BOS proactively building rapport with financial mentors in targeted outreach initiatives. Financial mentors also tell us that initial contact with BOS is efficient and effective in helping them navigate what escalations at banks or other pathways to resolution are available in the relevant circumstances.

FinCap has recommended BOS and other dispute resolution schemes put more resources into specialist community engagement with cohorts who are likely to have a complaint but are

¹ As most recently detailed in our submission on effective dispute resolution here: <https://www.fincap.org.nz/news/>

underrepresented in contact demographics. The current community outreach from BOS is a step in the right direction but needs to expand in scale. Increasing familiarity with, and confidence in, BOS through community engagement will increase accessibility.

More investment in community engagement will increase the likelihood a vulnerable consumer would approach BOS and therefore is increasing accessibility. However, this would have to be coupled with efforts to support a vulnerable complainant and ensure equity throughout a longer complaints process towards preventing disengagement where they are overwhelmed by technicality. Financial mentor's feedback gives us the understanding that BOS staff are likely to be competent at recognising their role in 'opening the door' to help someone commence resolution. However, financial mentors have generally fed back that some aspects of schemes' processes can be intimidating, such as understanding and feeling able to challenge a preliminary decision. BOS should have a vulnerability policy that outlines how it would act to prevent disengagement from such a potential issue arising.

FinCap is also aware that BOS has the ability to fast track complaints where they may be causing ongoing hardship. This is unlikely to be known by a person who might be able to make use of the support. Often when considering whether or not they pursue an option to pursue rights relating to consumer protections, the whānau supported by financial mentors are racing against substantial hardship from the culmination of several debts. This can instead drive them towards options like insolvency procedures or the need to make an early withdrawal of Kiwisaver funds to address hardship. These last two options may have ongoing consequences for financial wellbeing. We would recommend further, clear, promotion that this process is available and a consideration of broadening the situations where it can be utilised to improve access to BOS.

Fairness

Financial mentors have shared that the three-month wait for potential resolution with internal complaints processes is a long period of time. As explained above, ongoing hardship may mean a complainant abandons a complaint and opts instead for an alternative option which is less favourable in the long term. The three-month wait is also frustrating in cases where the parties might effectively be in deadlock, but this is not acknowledged by the scheme participant. A complainant or their representative then has to undertake further work to make the case the next step be progressed earlier. We again recommend hardship fast track processes are promoted more, and their application broadened. We also recommend consideration as to whether the general timeframes for internal resolution could be shortened through agreement with the Government or other means.

Our previous comments around financial mentors reporting processes around preliminary decisions at schemes being difficult might also be relevant to the consideration of fairness.

Accountability

Financial mentors have fed back that BOS' naming members in complaints dashboards increases their confidence in their scheme. However, they would also welcome naming the bank in all case studies. FinCap also would welcome more reporting of systemic issues identified, which member they were with, and what actions were taken to resolve them in reporting. This would increase the accountability of BOS, the member and the regulator who should be following up on these issues.

Otherwise, financial mentors and FinCap have also observed that members of BOS tend to settle disputes early more often, in comparison to members at other schemes. This can be great for the complainants involved but there might not be as much visibility to the public and regulators of any systemic issues or breaches involved, and what was done about them. There is also a risk that a complainant settles for less than what is fair where they are given the impression by the member that there is little chance they will get anything better, if continuing with a complaint. We recommend BOS

consider how it can better assess the appropriateness of remedies in disputes that settle early like this, or share its visibility of this if it is already doing so.

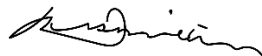
Otherwise, FinCap is concerned that schemes are generally setting too high a threshold for what is a material complaint, that should be shared with the relevant regulator. We have observed a few instances where schemes have worked with members to resolve an issue but told us they would not flag it with the regulator. An example is some communications from a member that might have had the effect of misleading the customer. Misleading conduct is prohibited under the Fair Trading Act but the scheme said it was not material and that they would not escalate further, despite our pointing out the potentially misleading conduct could have seen substantial hardship for some customers.

Effectiveness

FinCap welcomes BOS' ongoing work towards the prevention of issues that lead to complaints. We participate in the Community Advisory Group and see this as valuable for BOS identifying issues it can resolve that might otherwise not be identified because complaints are not made or a trend in them is not spotted. Feedback from the group has seen BOS helpfully champion the need for access to bank accounts for all, better acceptance by banks of financial mentor's privacy authorisations, and that frontline bank staff correctly accept a request to cancel a direct debit. However, some of these are accepted by BOS members and are actively worked on while others have not been accepted or worked on by all. This demonstrates that BOS' effectiveness currently has limitations.

Please contact Senior Policy Advisor Jake Lilley on jake@fincap.org.nz or 027 278 2672 to discuss any aspect of this submission further.

Ngā mihi,



Ruth Smithers
Chief Executive
FinCap