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Submitted: [guidancefeedback@comcom.govt.nz](mailto:guidancefeedback@comcom.govt.nz)

Commerce Commission  
Wellington

**RE: Consumer remediation guidance for businesses – consultation on draft**

Whānau should have confidence that issues will be resolved fairly when they are impacted by unlawful conduct from a trader. They should not be left stuck with worse financial circumstances that seriously risk their wellbeing because of such conduct.

FinCap welcomes the opportunity to comment on the *Commerce Commission's Consumer remediation guidance for businesses – consultation on draft (Draft Guidance)*. A key reason FinCap actively pushes for consumer protections, beyond deterring unfair and harmful conduct in the first place, is ensuring that the financial mentors and the whānau they work with have a pathway to unwind the harm caused by unlawful or unreasonable conduct by traders. We strongly support guidance that signals clear expectations about fair remediation.

FinCap strongly supports specific Draft Guidance in para 7 that “[remediation] *may involve putting consumers back in the position they would have been in but for the likely breach, or it may require payment of damages or another remedy (statutory or otherwise), depending on the circumstances*” as well more specific guidance on this in para 11.1.3 and the corresponding guidance that flows on from these sections.

The abovementioned Draft Guidance being followed would be useful to financial mentors and some whānau currently being supported who are stuck with very unreasonable and unfair outcomes that are prolonging harm and hardship following a trader’s breaching of the law.

We have observed that in practice the actual pursuit of a consumer issue where a whānau has been subject to a harmful breach of the law can be an intimidating and uncertain option for resolving hardship for that whānau when seeing a financial mentor. These signalled expectations of such outcomes in the abovementioned specific areas of Draft Guidance will generally increase clarity about potential outcomes when financial mentors are looking to help whānau understand what they can pursue. We anticipate that this in turn will lower barriers and increase the likelihood of a whānau pursuing a consumer issue. Doing so could result in whānau avoiding the flow on impact of the hardship that such an issue would continue to contribute to if left unresolved. Avoiding hardship and the entrenched intergenerational poverty that can result from the harm of traders breaching law is of great benefit to wellbeing in communities throughout Aotearoa.

We also support guidance in 13.3.2 and 13.4.2 but recommend this more targeted for related positive impact by guiding traders to unconditionally direct these funds to a charity or community organisation working toward the prevention or resolving of harm from unfair actions by traders. This recommended change to more focused expectations in drafting would improve community outcomes through the resourcing of often under resourced and strained financial mentors or other community workers left

'cleaning up the mess' that flows on in communities through harm caused by unfair or unlawful conduct by traders.

Otherwise, we have had limited time to provide detailed written comment beyond the above at this time and would welcome a hui with decision makers at the Commerce Commission where we could provide wider context to our above comments.

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

### **About FinCap**

FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the 200+ local, free financial mentoring services across Aotearoa. These services support more than 70,000 people in financial hardship annually. 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.

Ngā mihi,



Ruth Smithers  
**Chief Executive**  
**FinCap**