

CHiLD POVERTY ACTION GROUP

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Ministry of Consumer Affairs

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Submission on Approval of Financial Sector Consumer Dispute Resolution Schemes

Child Poverty Action Group thanks the Ministry for the opportunity to participate in this consultation on the guidelines for the external dispute resolution (EDR) schemes for financial service providers (FSPs) and financial advisors (FAs).

Child Poverty Action Group (CPAG) comprises a group of academics and workers in the field dedicated to achieving better policies for children. The aims of our organisation are:

- The development and promotion of better policies for children and young people.
- Sharing information and connecting with other groups with similar concerns.
- Elimination of child poverty in Aotearoa New Zealand by 2020

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Introduction

As we have stated in our previous submissions on the financial products, providers, and advisors legislation and regulation, Child Poverty Action Group (CPAG) urges the Committee to consider the impact of regulation, legislation, and the associated policies on low income families and their children. In New Zealand, children are disproportionately among our poorest citizens. CPAG argues that a deterioration in the economic position of children from low income families, and the consequent social costs, can be partially attributed the lack of adequate consumer protection in the financial sector.¹

CPAG commends the New Zealand Government for attaching urgency to this legislation and regulation. Financial products, services, providers and advisors impact on children indirectly because their parents and caregivers are the investors and consumers of financial and insurance products and services. Current protection is inadequate and there is a critical need for improved and extended protection of consumers in the financial sector. Regulation of the sector, including authorisation and registration of FSPs and FAs will go some way toward providing protection of consumers, and will thus assist in restoring confidence in the financial sector, and increasing consumer participation.

CPAG also commends the government for making membership of an EDR scheme a prerequisite for FSP and FA registration. This greatly increases the protection of consumers. We are also pleased that the intention is for the Reserve EDR scheme to be established by May 2010. For the scheme in general to have integrity, and to gain and maintain the trust of consumers, the service must be provided free to consumers. We are pleased that Section 63 (l) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 makes it illegal to charge consumers for dispute resolution services.

CPAG submits the following responses to the Guidelines consultation:

Relationship with existing schemes

This scheme maybe a very large entity which will have to provide EDR services for a very broad section of FSPs for a number of reasons, including:

- many sections of the financial service provider industry will opt for the reserve scheme to avoid the work involved in setting a separate scheme; and
- the existing schemes' boards have not yet declared their intentions regarding extending their EDR services beyond their existing membership.

¹ CPAG (2007) Submission on the Review of Financial Products and Providers; CPAG (2008) Submission on the Financial Service Providers (Registration and Dispute Resolution) Bill; and CPAG (2008) Submission on the Financial Advisors Bill.

It is important that this scheme does not undercut or undermine the standards set by the existing scheme. Because many of the members of the scheme may be sole traders or small entities, member standards and obligations must be explicit.

Compensation Cap

The compensation cap needs to be the same as the two existing industry based schemes otherwise customers of members with the reserve scheme will have potentially reduced compensation and service providers could opt for the reserve scheme to limit their possible future liability.

Definition of a complaint

The definition should be given further clarity by adding: “**Any** expression of dissatisfaction...for which the complainant **implicitly or explicitly** expects redress”

Members obligations and compliance

Member companies don't always fulfill their obligation to publicise the scheme nor to inform customers of their right to take a complaint to the Ombudsman. Therefore:

- The scheme regulations need to spell out in more detail the obligations on members to provide information to their customers about the reserve scheme and basic good practice regarding dispute resolution (para 57,58).
- A member should be required to inform their customers in writing of their right to take their complaint to the scheme (para 45).
- As a minimum requirement, a basic code of rights, produced in poster format by the scheme members, should display information in premises visited by customers, or one click away within the member's website. Compliance with these or similar requirements should be monitored regularly by the scheme, and members should be required to report annually on their processes/performance in relation to a list of key requirements/obligations.
- It would also be useful to set out the range of actions (e.g financial penalties or incentives) which can be taken by the scheme where a member has committed substantial /material breaches of their member obligations. Currently there is only reference to reporting in the Annual report and the potential loss of scheme membership from failing to carry out required remedial action on a complaint, or for breaches of the rules. (para 59).

Accessibility

Free phone access to the scheme will ensure cost is not a barrier to complainants.

Paras 78 to 85 of the discussion document cover consumer accessibility requirements on members. Section 63 (r) of the Act requires schemes to have a rule that members must inform potential consumers and businesses about the scheme. Para 85 states: “the underpinning principle is that accessibility cannot be achieved without a climate of commitment to the overall aims of the scheme”.

We suggest that accessibility must be monitored and enforced. It may be that termination of membership, and consequently cessation of registration, is a consequence of limiting accessibility to EDR, or of inadequate or non-provision of internal dispute resolution services.

Scheme reviews

Two types of reviews are recommended:

1. Process reviews: While there is provision for internal reviews of performance (para 74) we believe there should be three yearly independent reviews of the scheme's complaint handling processes to ensure they are robust and meet the requirement of natural justice and the benchmarks.
2. Structural reviews: Four years after the development of the reserve scheme there needs to be a review of the framework of the scheme, its governance structure and relationship with the Ministry of Consumer Affairs, and its scope and place as the EDR service for sections of the FSP industry.

The Advisory Body and Governance

Rather than a foundation advisory body, when the governance and operating rules of the scheme are finalized, industry representatives to the governance structure should be appointed for two years. After this those whose industry sector are members of the scheme could be appointed for a 3 year term. Consumer representatives could be appointed for a three then two year term. Perhaps one consumer representative could be appointed by a nationally recognized body concerned with consumer interests, e.g. NZ Federation of Family Budgeting Services; and at least one consumer representative could be appointed by the Minister for Consumer Affairs.

We would not adopt a policy of "naming and shaming" providers that breach the scheme rules or requirements unless in the first instance, a warning and explanation was provided and documented by the governors or the ombudsman of the scheme.

Indicative Timetable (page 37)

We urge realignment of the timetable dates to ensure that the Advisory Body is appointed in good time to have a real and significant input into the process for and the selection of, the service provider.

In Summary

- the compensation cap for the reserve scheme must match that of the two existing industry based schemes;
- the definition of a complaint needs to be clarified by adding: "Any expression of dissatisfaction...for which the complainant implicitly or explicitly expects redress....";
- the scheme regulations must require members to provide information in writing to customers regarding: consumer rights; good practice regarding

dispute resolution; their internal dispute resolution process; the reserve EDR scheme; and the customer's right to take their complaint to the scheme;

- access to the scheme must be free to consumers;
- member compliance with the obligations and conditions of membership of the scheme must be regularly monitored, including external reviews; and
- the Advisory Body needs to be appointed in good time to be involved in the selection of the Reserve EDR Scheme provider.