

EDR Review Secretariat
Financial System Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

BY EMAIL:

<http://consult.treasury.gov.au/financial-system-division/dispute-resolution/>

Dear Professor Ramsay,

EXTERNAL DISPUTE RESOLUTION REVIEW SUBMISSION

Thank you for the opportunity to make a submission. We write to you in regard to uncompensated consumer losses and we do not believe the current monetary limits are fit for purpose. We believe the compensation cap should be increased to \$2m for matters that are not for small business

We were successful in obtaining a Determination from the FOS for inappropriate financial advice. We were aged 68 and 73 at the time of the financial advice in which [redacted] lent us money to invest according to the financial advice we obtained. Prior to financial advice we had \$840k in assets, nil debt and received superannuation pension and Centrelink pension. We had to sell our home to repay [redacted] loans and our lives have been devastated. We will not be able to enjoy the retirement we worked so hard for

We engaged Dispute Assist P/L who lodged the FOS complaint against [redacted] for inappropriate lending and [redacted] for inappropriate financial advice. FOS Determination found Bpad provided inappropriate financial advice and inadequate risk disclosure, damages \$379k but FOS max cap awarded and payable \$280k plus interest which is accruing [redacted] have not paid compensation to the us and have closed the business. [redacted] and are now trading through [redacted].

FOS Recommendation found [redacted] provided imprudent lending awarding compensation of \$53,366.61 stating that the Cumming had been partially compensated in the earlier Determination against [redacted]. The loan was imprudent as [redacted] failed to detect that we had a dependent child in our care which was evidenced in our tax records provided. The inclusion of a dependent child increased our living expenses and after taking into account child support and government benefits, our debt servicing position still resulted in a deficit. We required legal advice in order to appeal to FOS' Recommendation. Subsequently FOS' Determination again found that the loans were provided inappropriately but increased the compensation to \$87k which was paid to Cummings by [redacted].

FOS increased the compensation because where a person has claims against separate wrongdoers relating to the same loss, they may pursue claims against both. If they settle one claim for less than their total loss (as in this case [redacted] failed to pay) then they can still claim the remainder of the joint loss from the other ie [redacted]. The damming thing regarding FOS' Recommendation is that when the Recommendation was provided to the Cummings, FOS knew that [redacted] would not pay and FOS failed to advise the Cummings that if this remained the case that they could claim any joint losses from [redacted]. There are still additional losses outstanding and not paid to us by [redacted] that [redacted] was not liable for. We obtained further legal advice and was advised that if we took legal action there would be no assets available to pay us if we had a successful outcome. In any case we are not in a position to

afford a court case. The financial advisor that provided us the inappropriate advice continues to work in the industry.

In regard to Agents, Dispute Assist's service and experience was invaluable. We were not be able to deal with this matter ourselves. We believe that using an experienced agent in dealing with FOS is invaluable and would say a prerequisite to obtaining a better outcome.

We believe there should be a statutory compensation scheme of last resort and that it should be retrospective given the large amount of people effected by inappropriate financial advice.

Yours sincerely,
Malcolm and Joan Cumming.