07 October 2016

Professor Ian Ramsey
External Dispute Resolution Framework Review Panel
C/- The Treasury
Langton Crescent
PARKES ACT 2600

Initially online and also by email to: EDRreview@treasury.gov.au

Dear Professor Ramsey

[online to: https://consult.treasury.gov.au/financial-system-division/dispute-resolution/consultation/intro/view]

Review of the Financial System External Dispute Resolution Framework

The Mortgage and Finance Association of Australia (MFAA) thanks the Minister for Financial Services, the Hon. Kelly O'Dwyer MP, the Panel and the Treasury for the opportunity to make a submission on the Review of the Financial System External Dispute Resolution Framework (Review).

Overview of the MFAA's position

MFAA members have little or no involvement with the Superannuation Complaints Tribunal (SCT). We therefore offer no comment on this scheme.

The MFAA holds the view that the current External Dispute Resolution (EDR) regime of the two current EDR providers, the Credit & Investments Ombudsman (CIO) and the Financial Services Ombudsman (FOS) meets consumer and industry needs effectively and efficiently in reviewing and considering complaints against mortgage and finance brokers in relation to disputes about both consumer credit and unregulated credit.

It is our strong belief that these two current providers are fit-for-purpose and meet the needs of this Association as well as the requirements and objectives of our members. Both schemes appear to provide appropriate services to meet consumer needs while minimising costs and maximising efficiencies. That said, the vast majority of mortgage brokers are members of the CIO, recognising the fact that CIO has the specific knowledge, expertise and history in successfully resolving customer disputes in the mortgage broking sector.

The MFAA notes that there has been much media speculation about the potential to establish a single "tribunal" to deal with all financial services complaints. This speculation, and Government commentary in favour of such an option, entirely prejudges the outcomes of this review. The MFAA implores the Government to allow the review to conclude before any decisions on a 'tribunal' are made.

The MFAA sees the suggested "tribunal" as a response to the conduct of the "big four" banks and not the wider credit and financial services sectors. As such it is only reasonable that the potential scope of such a "tribunal" should be limited to the big four banks and/or large lenders. To do otherwise would punish the vast majority of the participants in the sector (including the 12,800 mortgage broker businesses and members of the MFAA) who have done no wrong, and indeed their customers who are well served by the Credit and Investments Ombudsman (CIO) and the Financial Ombudsman Service (FOS).

The statutory requirement for EDR membership of a scheme for those dealing in regulated credit[1] means that our members have a choice. This choice means that where our members detect a lack of service or an inadequate outcome in a matter in which they are involved by their EDR scheme they have the option to move to the alternative. Because both schemes rely on membership subscriptions, this gives both schemes a tendency to promote efficiency. In addition, while the two schemes offer similar operational processes and allow memberships from mortgage and finance brokers, their contrasting procedures and membership base allow our members to select a scheme which gives them better results without lowering consumer expectations or outcomes.

Member Reach

Of the 12,800 individual and business members, each mortgage or finance broker runs a small, or sometimes a large, business. These range from one-person broker operations to multi-broker businesses employing tens, or sometimes hundreds, of people. Each broker in each business is capable of dealing with many hundreds of consumers and if each MFAA member was in contact with just four clients or consumers each week, these businesses are able to reach nearly 2.7 million Australians every week.

EDR Cost

As stated, membership of an EDR scheme is mandatory for MFAA members. The costs for the two schemes differ and we believe, for example, that the CIO offers a one-time complaint lodgement at no cost to the relevant financial services provider (FSP). No MFAA member has complained to the MFAA about the cost of EDR membership and members appear to accept this cost as a cost of doing business.

That said, should any change be made to the structure of the schemes, or to introduce an industry-wide complaints "tribunal", it is likely that costs will be affected. If costs rise, there is a potential for destabilisation of the industry. This is a strong concern for the Association. The MFAA's brokers are all small business owners who are generally cost sensitive. While current EDR membership costs can be sustained, the government's current consideration of Australian Credit Licensing arrangements may impact on the numbers of brokers in Australia. Any change to either the credit licensing landscape or to structure or framework of the current EDR regimes in relation to costs may have a substantial effect on broker numbers.

[1] Includes any entity regulated under Section 47, National Consumer Credit Protection Act 2009 (NCCP Act).

Brokers currently provide more that 53% of new introductions of customers to lenders. Any large-scale or structural change to statutory or mandatory obligations, including EDR membership, may lead to a significant change to broker numbers and may therefore have a profound effect on competition in the market.

A proposal to consider establishing an industry-wide complaints "tribunal" appears to us to be fundamentally flawed. This process, we believe, is likely to add considerable time to the resolution of disputes, a key issue for complainants, add unnecessarily to consumer stress and would most likely increase costs to industry participants as well as acting as a further drain on the public purse. It is also likely to unreasonably increase the compliance obligations for our members, by applying inappropriate standards and processes, and lead to poor consumer outcomes in both time taken to resolve the disputes and the quality of decisions.

MFAA Standards

The MFAA has been consistent throughout its more than 35 year history in that it has always sought enhanced standards of education and professionalism by mortgage and finance brokers across Australia. Its record supporting these objectives has been publicly exemplified in numerous reports and submissions to government and to regulators over many years.

MFAA Disputes Regime

In its pursuit of enhanced professional standards for the broking sector, in 2003 the MFAA established:

1. a requirement for members to provide an Internal Dispute resolution process;

2. an independent dispute resolution body, the Mortgage Industry Ombudsman Service (MIOS), the precursor of the current CIO. This scheme was designed to minimise consumer distress and, together with access to a mandated and appropriate Internal Dispute Resolution (IDR) process, provide a free-to-consumer process to deal with complaints against an MFAA member; and

3. a disciplinary process where complaints against members could be reviewed by an independent investigator and considered by an appointed Tribunal to deal with those complaints under a Disciplinary Rules regime. It allowed the MFAA Tribunal to order sanctions (but not compensation) against the relevant member. These Rules have since been authorised by the Australian Consumer & Competition Commission (ACCC).

The MFAA Tribunal and the MIOS (CIO) have always operated completely separately from each other.

Members were required to hold membership of an appropriate EDR scheme, the MIOS (CIO) at the time, being most appropriate for mortgage and finance brokers. The other EDR schemes at the time included the Banking & Financial Services Ombudsman (BFSO) which subsequently merged with the FICS and other smaller providers to form the FOS.

EDR Role

Access to the precursor schemes of the FOS, that is the BFSO, FICS, etc was unavailable to mortgage and finance brokers. Since the inception of the NCCP Act requiring membership of one of the two EDR schemes, brokers have had the option to choose one or the other scheme. That said, historically, members therefore tended to be members of MIOS, now CIO, rather than the FOS.

Consequently, this has led to the CIO's significant expertise in dealing with smaller, or lower cost, matters because the majority of consumer disputes involving brokers tended to be lodged with the CIO. The CIO's case managers and systems generally appear to therefore support the view that it has superior experience and capability in dealing with these types of disputes.

In contrast, in relation to credit, the FOS understandably, deals with more disputes involving banks and other non-bank lenders as well as financial service providers, insurers etc. There appears to be a tendency for larger organisations, including lenders, to hold FOS membership and therefore, the FOS has no doubt aligned its procedures, capabilities and staff experience toward complaints and disputes involving these larger organisations.

While the FOS has attracted some broking businesses to membership, we believe that this is more likely to be a cost-based decision rather than a decision based on effective case management or consumer outcomes.

EDR Standards

The fact that we have two current providers allows competitive tension to require both organisations to continue to improve consistency in service, processing times and outcomes and to use benchmarking techniques to improve and enhance the services they provide. Any proposal to merge the two bodies, or to establish an industry-wide 'tribunal" is unlikely to provide any improved outcomes for consumers or for EDR members in relation to credit disputes and is likely to lead to price increases when competition is removed.

Based on commentary made at the Review Panel's 5th September 'Industry Roundtable' discussions, organised by Treasury, it appears that industry stakeholders fairly unanimously hold the view that the current CIO and FOS EDR schemes are managing consumer credit issues appropriately, in a timely fashion and with the minimum of difficulty.

In conclusion, to reiterate, we contend that the current two EDR schemes regime in relation to credit disputes meets consumer and stakeholder objectives effectively and efficiently in reviewing and considering complaints against mortgage and finance brokers in relation to disputes about both consumer credit and unregulated credit. Equally, the consideration of a "tribunal" should be quarantined to the four major banks or at least large lenders, allowing freedom of choice to remain for MFAA members as to which existing scheme (CIO or FOS) they choose to join.

MFAA History and Membership

Established in 1982, the MFAA is focused on the representation and maintenance of high professional standards for mortgage and finance brokers and other intermediaries, including mortgage management businesses and non-bank lenders. Our records indicate that the vast majority of the MFAA's 12,800 members, all of whom must be members of an EDR scheme, are members of the CIO. Its membership profile also includes ADI lending institutions that distribute

their products via intermediaries and businesses that provide support services to the mortgage and finance sector.

Any response or questions about this submission should be directed to the MFAA's Head of Legal & Compliance, Peter Kennedy, on 02 8905 1312 or at: peter@mfaa.com.au.

Yours sincerely

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